

CHAPTER 4-9 HYDRAULIC PROJECTS

4-9-1 Findings

(a) The health, safety, welfare, economy security and political integrity of the Confederated Tribes of the Colville Reservation require a comprehensive system of Tribal regulations to protect aquatic resources within the exterior boundaries of the Colville Indian Reservation. The Colville Indian Reservation was established to secure the Tribes' access to important fishing places. The Colville Tribal members still depend on fish and other aquatic resources for subsistence. Colville Tribal members also depend on aquatic resources for religious rituals and other cultural and ceremonial purposes. The health, safety, welfare, and economic security of the Tribes and Reservation population continue to depend upon water quality and abundant fish and wildlife populations.

(b) Human activities conducted within, over, or adjacent to natural waters within the exterior boundaries of the Colville Indian Reservation have the potential to adversely affect aquatic resources that are critical to the health, safety, welfare, economic security and political integrity of the Colville Tribes. Therefore, a comprehensive, generally applicable and scientifically based system for review, analysis and regulation of all such activities occurring within the exterior boundaries of the Reservation is needed to protect the health, safety, welfare, economic security and political integrity of the Colville Tribes. This Chapter is intended to protect aquatic resources through requirements for hydraulic project application approvals, incorporation of technical provisions, required mitigation measures, and enforcement mechanisms.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-2 Authority and Scope

(a) This Chapter is enacted by the Colville Business Council pursuant to its inherent sovereignty over all territory within the exterior boundaries of the Colville Indian Reservation, any and all authority delegated to the Tribes by the United States, and the authority vested in it by Article V, Section 1 (a) of the Constitution of the Confederated Tribes.

(b) The provisions of this Chapter shall apply to all hydraulic projects occurring within the exterior boundaries of the Colville Indian Reservation including lands held in trust or in fee status, and on other trust lands or allotments under the jurisdiction of the Colville Tribes.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-3 Definition

Unless otherwise required by its context, as used in this Chapter:

(a) "Applicant" means the person signing the application who is responsible for compliance with all provisions of this Chapter.

(b) "Application" shall mean the hydraulic project application required pursuant to this Chapter.

(c) "Aquatic resources" means water quality and quantity, fish, shellfish, other aquatic biota, aquatic and wetland habitat, and wildlife species dependent on aquatic or wetland habitat during all or part of their life cycle.

(d) "Archaeological/Historical resources" means any material remains of past human life or activities which are of archaeological or historic interest and all historic property. Such material remains shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, or any portion or piece thereof, whether or not found in an archaeological context. Historic property includes any prehistoric or historic site, building, structure or object significant in Tribal history, architecture, culture or religion. The term includes all artifacts, records, and remains as designated. No item shall be treated as an archaeological/historic resource unless such item is at least fifty (50) years of age.

(e) “Archaeological/Historical site” means any location where an archeological/historical resource is identified. Archeological/historical sites include, but are not limited to, historic camping and gathering grounds, traditional fishing sites, sweat lodge locations, military forts, old settlers’ homes, historic buildings, historic trails, and kitchen middens.

(f) “Bed” means lands at or below the ordinary high water mark of any natural waters.

(g) “Bed Materials” means natural occurring material found in the beds of natural waters.

(h) “Burials” means any locations where human remains are found, except for those human remains that relate to a recent crime scene. Burials include purposefully interred human remains and any artifacts that may have been interred with the remains. For the purposes of this chapter, disinterred human remains will also be considered part of a burial. Colville Tribal elders have identified certain kinds of features as potentially containing burials, especially certain cairns and talus slide depressions. For the purposes of this chapter, cairns and talus slide depressions will be considered burials. Any reburial location will be considered the same as a primary burial.

(i) “Channel migration zone” means the area likely to be occupied by a stream channel over time as indicated by floodplain characteristics and evidence of active channel movement. It may include the floodplain, the area between stream channel and side channels, or an area within the full range of meander bends.

(j) “Chapter” means this Hydraulic Projects Chapter of the Colville Tribal Code.

(k) “Chemical” means a substance or substances in liquid, gas or solid form that may be applied to water, land or vegetation to accomplish specific purposes and includes pesticides, herbicides, repellents, and piscicides. In addition, “chemicals” shall include all other materials that may present hazards to the environment such as fertilizer, fire retardants, dust-control agents, oil, paint, and salt.

(l) “Cofferdam” means temporary enclosure used to keep water from the work area.

(m) “Colville Environmental Quality Commission” or “CEQC” means the environmental administrative appellate body of the Confederated Tribes of the Colville Reservation, as provided under Chapter 4-23 of the Colville Tribal Code.

(n) “Contamination” means the introduction into the atmosphere, soil, vegetation, or water, as a result of hydraulic project activities of any substance, whether in liquid, gas or solid form, in sufficient quantities as may be directly injurious to the health, safety or welfare of the Reservation population or individually injurious to the Reservation population, or which may otherwise pose a threat to Reservation resources, in particular, air quality, water quality, soil, wildlife, fish or other aquatic life and their respective habitat. Application of chemicals in accordance with the chemical label, and the conditions of an approved hydraulic project application shall not be considered contamination.

(o) “Cultural resources” means those parts of the physical environment, either natural or artificially constructed, that have cultural value to the people of the Colville Reservation.

(p) “Department” means the Environmental Trust Department of the Colville Confederated Tribes.

(q) “Dredging” means the removal of bed material.

(r) “Fill material” means material placed in natural waters within the Colville Reservation where the material has the effect of:

- (1) Replacing any portion of a natural water with dry land; or

(2) Changing the bottom elevation of any portion of a natural water.

Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in natural waters within the Colville Reservation. The term fill material does not include trash or garbage.

(s) “Fish” means all species of fish and shellfish, and all life stages of those species.

(t) “Fish & Wildlife” means the Fish & Wildlife Department of the Colville Confederated Tribes.

(u) “Fish passage barriers” means conditions caused by a hydraulic project that prevent, impede or hinder fish at any life stage from traveling within a watercourse past the project. These conditions may include excessive water velocity, length of run without rest, excessive jump height, or inadequate water depth.

(v) “Floodplain” means a generally flat landform lying adjacent to streams, composed primarily of depositional material derived from the stream, and subject to periodic flooding by the stream.

(w) “Function” means the physical, chemical, and biological processes that occur in ecosystems.

(x) “Hydraulic Project” means construction or other activities occurring within, over, under or adjacent to natural waters that may materially divert, obstruct, affect or change the natural flow or course of any natural waters or that will displace any materials within or from the bed of any watercourse. Hydraulic projects include, without limitation, placement of fill that is necessary for the construction of any structure or infrastructure in a natural water of the Reservation; the building of any structure, infrastructure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; placement of overburden, slurry, or tailings or similar mining-related materials; and artificial reefs or fish habitat structures.

(y) “Large woody debris” means trees or sections of trees larger than four inches in diameter for at least six feet, with or without rootwads, a portion of which lies waterward of the ordinary high water mark.

(z) “Mitigation” means actions that shall be required as provisions of the Department’s approval of application for a hydraulic project as necessary to avoid, prevent, minimize or compensate for impacts to habitat resulting from the proposed project activity. The type(s) of mitigation required shall be considered and implemented, where feasible, in the following sequential order of preference:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (5) Compensating for the impact by replacing or providing with in-place and in-kind substitute resources or environments.

(aa) “Natural Waters” include all bodies of surface water, including wetlands, both perennial or which exist

on an intermittent basis or fluctuate in level during the year. The entire bed underlying such water bodies, up to and including the ordinary high water mark is included whether or not the water is at peak level or fish are present. Natural waters also includes side channels, wetlands and any natural water bodies which have been altered or expanded by man by means of dams, impoundments, levees, bypasses and other structures or modifications. Natural waters excludes water conveyance systems which are artificially constructed and actively maintained for the purpose of conveying water beyond the ordinary high water mark for irrigation, stockwatering, domestic, commercial, municipal and industrial uses.

(bb) “Ordinary High Water Mark” (OHWM) means the mark on the shores of all waters found by examining the beds and banks and ascertaining where the presence and action of waters create a condition distinct from that of the abutting upland. It is the elevation above which water would enter the floodplain or intersect a terrace or hillslope, identified by a combination of the following: (1) top of point bars, (2) vegetation changing from none or annual water-tolerant species to perennial water-tolerant or upland species, (3) break in slope from the channel bank to a flat valley bottom, terrace or bench, (4) change in size, staining, or color of substrate materials (surface sediments changing from gravel to fine sand), and (5) change in the nature and amount of woody debris deposits. The width between Ordinary High Water Marks of a stream shall equal the sum of the widths of the main channel and side channels.

(cc) “Operator” means any person engaging in hydraulic projects except an employee with wages as his sole compensation.

(dd) “Person” means any individual or association of individuals of whatever nature including but not limited to a partnership, a private, public, Tribal or municipal corporation, a Tribal enterprise, or a Tribal, state or local governmental entity.

(ee) “Practicable alternative” means an alternative that is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant that could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.

(ff) “Primary contact recreation” means activities where a person would have direct contact with water to the point of complete submergence, including but not limited to skin diving, swimming, and water skiing.

(gg) “Riparian Management Zone” means a specified area alongside natural waters and wetlands where specific measures are required to protect water quality and riparian function. Riparian Management Zones shall be measured horizontally from the ordinary high water mark, or when present, the outer edge of non-forested wetlands, channel migration zone, or associated seeps. The following Riparian Management Zone minimum widths shall be applied to each side of waters:

Water Type	Minimum RMZ Width
1	150'
2	125'
3	100'
4	50'

(hh) “Side channel” means a secondary stream channel having a bed elevation below the ordinary high water elevation of the main channel and showing evidence of scour or bedload movement.

(ii) “Stream reach” means a length of stream exhibiting similar bedform, generally 300’ or longer.

(jj) “Toe” means that portion of a bank, shore, or beach extending below the ordinary high water mark

which serves to support those bank or beach materials lying above it.

(kk) “Turbidity” means the clarity of water and is a measure of the amount of light that can pass through a water body. It is the result of suspended solids in water that reduce the transmission of light. It is expressed as nephelometric turbidity units (NTUs) and measured with a calibrated turbidimeter, with the lowest values representing the clearest water. At higher levels, turbidity has a direct detrimental effect on the ability of water to support a diversity of aquatic organisms, on the recreational and aesthetic use of water, and on irrigation equipment, structure and diversion functions.

(ll) “Watercourse” means any portion of a channel, bed, or bottom of natural waters.

(mm) “Watershed Management Unit” means a first- or second-order watershed. It is usually a true watershed, sometimes a group of small watersheds or a distinctive landform. 209 Watershed Management Units have been defined for the Reservation, ranging in size from nearly 300 acres to more than 20,000 acres.

(nn) “Wetland” means those areas, which under normal conditions exhibit at least two of the following criteria: saturated surface conditions or open water present during a significant portion of the year; hydric soils; a prevalence of vegetation adapted to saturated soils. Swamps, marshes, bogs, wet meadows, and ponds typically are wetlands. For the purposes of this Chapter, wetlands are considered to be natural waters.

(oo) “Wetted Perimeter” means the areas of the water-course covered with water, flowing or non-flowing including associated wetlands.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)
(Amended 9/2/10, Certified 9/9/10, Resolution 2010-621)

4-9-4 Policies

(a) This Chapter establishes the minimum standards for hydraulic projects affecting aquatic resources and the Reservation population, and the necessary administrative procedures to achieve the policies and purpose of this Chapter.

(b) Hydraulic project regulations shall be administered and enforced by the Department except as otherwise provided in this Chapter. Enforcement shall be exclusively by civil proceeding.

(c) This Chapter shall be continuously reviewed, and the Department shall annually provide to the Tribal Council recommendations for amendments. Prior to any such revisions, the Tribal Council shall seek and evaluate recommendations of persons and agencies with expertise or interest in the subject matters.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)
(Amended 9/2/10, Certified 9/9/10, Resolution 2010-621)

4-9-5 Hydraulic Project Application

(a) No hydraulic project shall be commenced unless the Department has received and approved, or conditionally approved an application pursuant to this Chapter. The following operations do not require an application but shall be conducted in accordance with the technical provisions of this chapter:

(1) Placement of suction hoses and/or portable pumps (require a temporary water withdrawal permit, Chapter 4-10), helicopter buckets, or cleaning, adjusting, operating, and maintaining existing water diversion structures (require a water withdrawal permit, Chapter 4-10) with no associated alteration of the watercourse;

(2) Maintenance, including emergency reconstruction of recently damaged parts of currently serviceable structures. Maintenance includes cleanout and bailing out of culvert inlets, outlets, and catch basins with wheeled or track equipment operated from outside the Ordinary High Water Mark. Maintenance does not include any modification that significantly changes the character, scope, or size of the original fill design.

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(3) Minor movement of stream sediments and woody debris for the purpose of traditional or primary contact recreational activities.

(b) Where the time limit for the Department to act on a completed application has expired and no action thereon has been taken by the Department, and none of the conditions in section 4-9-7(a) exist, the operation may commence, provided that such operation shall comply in all respects with the requirements of this Chapter and other applicable Tribal and federal laws, and that the operator shall provide written notice to the Department prior to beginning operation.

(c) At the option of the applicant, applications may be submitted to cover a single hydraulic project or any number of hydraulic projects within reasonable geographic boundaries as specified by the Department. Long range plans may be submitted to the Department for review and consultation.

(d) The Department shall prescribe the form and contents of the application, specifying what information is required for the Department to accept an application for review.

(e) Applications shall be signed by the applicant, and any adjoining landowner where the hydraulic project includes upland work areas adjoining the water.

(f) Applications must be delivered to the Department at the appropriate office. The applicant may document receipt by the Department of the application by filing in person or by certified mail.

(g) Applications shall be considered received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general delivery. Applications that are not complete or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application.

(h) The information required by the Department on an application shall include but not be limited to:

(1) Name, address and telephone numbers of the applicant, and any adjoining landowner where the hydraulic project includes upland work areas adjoining the water;

(2) Description of the proposed hydraulic project or projects to be conducted, including dimensions of installation, materials used, quantities, equipment used, and any stockpile and spoils locations. Plan and profile drawings may be required by the Department;

(3) Legal description and vicinity map showing the location at which the hydraulic projects are to be conducted; adjoining lands' legal descriptions and ownership information;

(4) Site map of adequate size and detail showing location of all natural waters in and nearby the hydraulic project area and showing the limits of activity within and outside the ordinary high water mark necessary for conducting the hydraulic project;

(5) Specifications for proper protection of aquatic resources including but not limited to erosion control, fish passage, project maintenance, habitat mitigation/restoration, and monitoring;

(6) Resource baseline information such as water type, channel dimensions, wetland delineation, stream longitudinal profile as required by the Department;

(7) Information from or reference to other environmental documents prepared by the Tribes, government agencies, or consultants; soil, geological, and hydrological or watershed data relating to the hydraulic projects when required by the Department;

(8) The person or entity responsible for maintaining the hydraulic project once installed;

(9) An affirmation that the statements contained in the application are true.

(i) When the Department has determined that additional information, an environmental assessment or statement, or a mitigation plan must be prepared, an application received without the information, assessment, or statement shall be considered incomplete.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-6 Unavoidable Adverse Impacts to Wetlands

(a) Alteration of wetlands shall only occur in accordance with the requirements of CTC 4-15.

(b) Only unavoidable and necessary impacts to wetlands shall be authorized, and those shall be minimized.

(c) Any remaining impacts shall be offset through the deliberate restoration, creation or enhancement of wetlands of equivalent or greater resource value, including acreage and function.

(d) When wetland restoration, creation or enhancement is required to compensate for wetland impacts, a mitigation plan shall be submitted with the hydraulic project application.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-621)

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-7 Approval and Disapproval Policy

(a) The Department shall grant or deny approval within forty-five (45) calendar days of the Department's receipt of the completed application.

(1) The forty-five (45) day requirement may be suspended if:

- (A) After fourteen (14) days of the receipt of the application, the applicant remains unavailable or unable to arrange for a timely field examination of the proposed project.
- (B) The site is physically inaccessible for inspection.
- (C) The applicant requests delay.

(2) Immediately upon determination that the forty-five (45) day period is suspended, the Department shall notify the applicant in writing of the reason for the delay.

(b) Applications shall be approved except to the extent the Department finds:

- (1) The application is incomplete, improperly filed, or inaccurate; or
- (2) The operator has been enjoined from conducting hydraulic projects by a Colville Tribal Court action under this Chapter; or
- (3) Conducting the operation(s) in accordance with the application would be inconsistent with one or more requirements of this Chapter; or
- (4) Unreasonable risk would be posed to aquatic resources or to the health, safety and welfare of the Reservation population.
- (5) The project is likely to jeopardize the continued existence of a resident fish species within a Watershed Management Unit, a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the federally designated critical habitat of a threatened or endangered species.

(6) There is a practicable alternative to, or location for, the project that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

(7) The project will cause or contribute to significant degradation of Reservation waters, including loss of wetland area or function. Findings of significant degradation related to the proposed discharge shall be based upon appropriate factual determinations, evaluations, and tests with special emphasis on the persistence and permanence of the effects.

(8) Compensatory wetland restoration, creation or enhancement efforts are unlikely to be successful.

(9) The project will cause or contribute, after consideration of disposal site dilution and dispersion, to violations of any applicable Tribal water quality standard, toxic effluent standard or prohibition.

(10) The project will adversely affect an archaeological/historical site. Adverse effects on archaeological/historical sites shall be avoided or mitigated in consultation with the Tribal Historic Preservation Officer.

(c) If an application is properly filed but portions of it must be disapproved, any portions of the proposed operations which can be separately conducted in compliance with this Chapter without unreasonable risk to water quality or quantity, productive capacity of fish, shellfish, wetland dependent wildlife, and their habitat or the health, safety and welfare of the Reservation population shall be approved.

(d) The Department shall specify the particular operation or parts thereof disapproved and the reasons therefore, citing the provision(s) of this Chapter with which the proposed operations(s) do not comply.

(e) The Department shall specify application approval conditions when necessary to protect aquatic resources. All approvals are subject to any pertinent technical provisions, conditions stipulated on the approved application and to any subsequent additional requirements set forth in a modification of approval. Appropriate and practicable steps shall be required which will avoid or minimize potential adverse impacts of the project on the aquatic ecosystem, unless the Department approves a mitigation plan it determines is more beneficial to the environment than on-site minimization or avoidance measures.

(f) The applicant shall, when required by a condition of approval, notify the Department two (2) days before the commencement of actual project operations.

(g) Approval of an application to conduct a hydraulic project under this Chapter does not constitute approval of any other permit that may be required, and except as expressly provided in this Chapter, does not constitute a waiver of any other requirement of this Code. Other permits and requirements may also apply to certain practices, as required by the Forest Practices, Shoreline Protection, Water Quality Standards, Mining Practices Water Quality, Water Use and Permitting or other applicable laws. These may also include permits issued by the United States Army Corps of Engineers by Authority of the Clean Water Act Section 404 and the Rivers and Harbors Act Section 10 for work in navigable waters or waters of the United States.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-8 Use of Applications

(a) The approval given by the Department to conduct a hydraulic project shall be effective for a term of up to five (5) years as specified by the Department. If a written notice is submitted to the Department thirty (30) days before such term ends, an extension for one year may be granted and no new application shall be required, providing that the practices to be employed remain the same and the Department does not believe a new application is needed.

(b) Before the operator commences any hydraulic project or portion thereof in a manner significantly different from that described in the approved application, there shall be submitted to the Department a new application in the manner set forth in this section.

(c) Any project commenced must be completed within the time period stated in the application. Partially completed projects may be deemed public safety hazard, declared a nuisance and abated as such or the Department may order them removed and/or mitigated by the applicant.

(d) Any and all devices necessary for public protection and to maintain a safe and secure work site will be in place on any unfinished work area when the site is open to public access.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-9 Modification of Application

(a) The department may, after consultation with the applicant, modify an approval due to changed conditions. The modification shall become effective unless appealed as set forth in section 4-9-~~11~~19 within thirty (30) days from the notice of the proposed modification. The burden is on the department to show that changed conditions warrant the modification in order to protect aquatic resources or the health, safety and welfare of the Reservation population.

(b) An applicant may request modification of an approval due to changed conditions. The request shall be processed within forty-five (45) calendar days of receipt of the written request. A decision by the department may be appealed to the Colville Environmental Quality Commission (CEQC) pursuant to section 4-9-19. The burden is on the applicant to show that changed conditions warrant the requested modification and that such modification will not pose unreasonable risk to aquatic resources or to the health, safety and welfare of the Reservation population.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-10 Emergency Response

Notwithstanding any other provision of this chapter, no prior application shall be required for any emergency hydraulic project necessitated by fire, flood, windstorm, earthquake or other emergency defined by the Department, but the operator shall submit an application to the Department within forty-eight (48) hours after commencement of such practice, provided that the operator shall comply with any notice in writing from the Department the same as if such hydraulic project activities were being performed pursuant to an approved application.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-621)

4-9-11 Enforcement Policy

It is the policy of this Chapter to encourage informal, practical, result-oriented resolution of alleged violations and to encourage actions needed to prevent damage to aquatic resources or harm to the health, safety or welfare of the Reservation population. It is also the policy of this Chapter, consistent with the principles of due process, to provide effective procedures for enforcement. This Chapter provides the following enforcement procedures: informal Conferences; Notices to Comply; Stop Work Orders; corrective actions by the Department; civil penalties and orders; and other civil administrative or judicial relief. Enforcement procedures will be carried out by the Department, or other tribal enforcement officials as requested by the Department, or both, following these policies. The enforcement procedure used in any particular case shall be appropriate in view of the nature and extent of the violation or the damage or risk to aquatic resources and the health, safety and welfare of the Reservation population and the degree of bad faith or good faith of the persons involved.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-12 Informal Conferences

(a) Opportunity mandatory: The Department shall afford the applicant and operator or their representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking

further enforcement action, unless the Department determines that there may be either imminent environmental damages to an aquatic resource or adverse impact upon the health, safety and welfare of the Reservation population. Informal conferences may be used at any stage in enforcement proceedings, except that the Department may decline to conduct informal conferences with respect to any matter then pending before the Colville Environmental Quality Commission or the Colville Tribal Court.

(b) Reports required: Department personnel in attendance at informal conference shall keep written notes of the date and place of the conference, the persons in attendance, the subject matter discussed, and any decisions reached with respect to further enforcement action, mitigation measures or other resolution of the alleged violation.

(c) Records available: Copies of written notes shall be sent to each participant in the conference, be kept in the Department files until one (1) year after final action on the application involved, and be open to public inspection.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-13 Stop Work Order—Grounds—Contents—Procedure—Appeals

(a) The Department shall have the authority to serve upon an operator or applicant a Stop Work Order if there is any violation of the provisions of this Chapter or a deviation from the approved application, or immediate action is necessary to prevent continuation of or to avoid material damage to an aquatic resource or harm to the Reservation population.

(b) The Stop Work Order shall set forth:

(1) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;

(2) An order to stop all work in connection with the violation, deviation, damage, or potential damage;

(3) The specific course of action required to correct such violation or deviation or to prevent, correct and compensate for damage to aquatic resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to an aquatic resource or potential harm to the Reservation population; or those courses of action necessary to prevent continuing damage to aquatic resources or harm to the Reservation population where the damage is resulting from the hydraulic project but has not resulted from any violation, unauthorized deviation, or negligence; and

(4) The right of the applicant or operator to a hearing before the Colville Environmental Quality Commission: The Department shall immediately serve a copy of such order on the applicant at the address shown on the application. Included with this copy shall be notification of the right of the operator or applicant to file an appeal with the Colville Environmental Quality Commission as provided under Chapter 4-23 of the Colville Tribal Code. If such appeal is commenced, a hearing shall be held not more than twenty (20) days after a Notice of Appeal is filed with the Colville Environmental Quality Commission and a copy of the Notice of Appeal is served on the Department. The operator shall comply with the Stop Work Order immediately upon being served, but the Colville Environmental Quality Commission, if requested, shall have authority to stay, in whole or in part, the order of the Department as provided in Chapter 4-23 of the Colville Tribal Code.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-14 Failure to Take Required Course of Action—Department Authorized to Complete Course of Action—Liability of Owner for Cost

If an operator or applicant fails to undertake and complete any course of action with respect to a hydraulic project, as required by an approved application or stop work order, the Department may expend any funds

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available to undertake and complete such course of action and such operator and applicant shall be liable for the Department's costs as provided under Section 4-9-17.

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(Amended 9/2/10, Certified 9/9/10, Resolution 2010-621)

4-9-15 Failure to Obey Stop Work Order—Department Action Authorized—Liability of Owner or Operator for Costs

When the operator or applicant has failed to obey a Stop Work Order the Department may take immediate action to prevent continuation of or avoid material damage to aquatic resources or adverse impact on the health, safety and welfare of the Reservation population. If a final order or decision fixes liability with the operator or applicant, they shall be jointly and severally liable for such emergency costs which may be collected in any manner provided for in Tribal law.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-16 Inspection—Right of Entry

(a) The Department shall inspect hydraulic project sites, before, during and after the conducting of hydraulic projects as necessary for the purpose of ensuring compliance with this Chapter and to ensure that no material damage shall occur to either aquatic resources or the health, safety and welfare of the Reservation population as a result of such practices.

(b) Any duly authorized representative of the Department shall have the right to enter upon land at any reasonable time to enforce the provisions of this Chapter. All applications under this Chapter shall include a statement by which the applicant acknowledges the right of the Department to enter upon the applicant's land as set forth herein.

(c) In the event a duly authorized representative of the Department is denied access to enter upon any lands at reasonable times to enforce the provisions of this Chapter, the Department may apply to the Colville Tribal Court for a civil search warrant. The Colville Tribal Court shall have authority to issue such search warrant upon a showing of probable cause that a violation of this Chapter has occurred or is occurring .

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-17 Remedial Action—Monetary Damages— Right of Appeal

(a) Any person who fails to comply with the provisions of this Chapter, shall be liable to the Tribes for monetary damages in the full amount of the costs of detecting and repairing any damages done as a result of the violation plus the administrative costs of enforcement, including but not limited to investigatory costs, expert witnesses and collection of such damages, including attorney's fees.

(b) In the event a specific monetary value cannot readily be placed on such damages, every such violating person shall be liable for monetary damages in accordance with the liquidated damage schedule set forth as Appendix A to this Chapter. The maximum liquidated amount is two thousand dollars (\$2,000) per day for each such violation. Each day of such operation shall constitute a separate violation. In the case of a failure to comply with a written order or decision of the Department, every day's continuance after service of the written order or decision shall be a separate and distinct violation.

(c) Written Order: The monetary damages provided for in this section shall be imposed by a written order issued by the Department which describes the violation with reasonable particularity. The Department shall serve the order upon the violator either by certified mail with return receipt requested or by personal service. Any person subject to an order issued under to this section may, within thirty (30) days of receipt of the order, apply in writing to the Department for the remission or mitigation of such monetary damages. Upon receipt of the application, the Department may remit or mitigate the damages provided, that such remission or mitigation is consistent with the purposes of this Chapter and is the best interests of the Tribes. Unless a timely application for remission or mitigation is submitted to the Department or a timely Notice of Appeal is filed with the Colville Environmental Quality Commission, any damages imposed under this Section shall become due and payable thirty (30) days after service of such order.

(July 2011 version of Chapter 4-9)

(d) Right of Appeal: Any person subject to an order imposing monetary damages under this section may appeal the same to the Colville Environmental Quality Commission under Section 4-23 of the Colville Tribal Code. The filing of a timely Notice of Appeal with the Colville Environmental Quality Commission will stay the effectiveness of the order during the pendency of the appeal before the Commission. Such appeals shall be filed within thirty (30) days of service of an order of imposing monetary damages unless an application for remission or mitigation is made to the Department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty (30) days of receipt of an amended order or written decision of the Department setting forth the disposition of the application. The decision of the Colville Environmental Quality Commission shall be final agency action for purposes of judicial review.

(e) Monetary damages imposed in amounts that exceed actual rehabilitation costs will be placed into a separate account for rehabilitation purposes related to aquatic resources and administered by the Department, subject to the approval of the Colville Business Council.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-18 Enforcement

Upon the request of the Department and subject to the approval of the Colville Business Council, the Office of the Reservation Attorney or its designee, may bring an action in Colville Tribal Court to enforce any final order issued under this Chapter.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-19 Administrative Appellate and Judicial Review

Any person aggrieved by any order, decision, or other final action of the Department under this Chapter may obtain review thereof by submission of a timely Notice of Appeal to the Colville Environmental Quality Commission pursuant to Chapter 4-23 of the Colville Tribal Code. Exhaustion of such administrative remedies is a jurisdictional requirement to judicial review.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-20 Cooperation with Public Agencies—Grants and Gifts

Subject to approval of the Colville Business Council the Department is authorized to accept, receive, disburse and administer grants or other funds or gifts from any source, for the purpose of carrying out the provisions of this Chapter and to consult and cooperate with federal and state agencies in matters pertaining to this Chapter. Subject to approval by the Colville Business Council, the Department is further authorized to negotiate inter-governmental agreements provided, that any change to the requirements of this Chapter shall require a Code revision by the Colville Business Council.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-21 Federal Laws and Trust Responsibility Not Modified.

Nothing in this Chapter now or as hereafter amended shall either modify or waive any requirement to comply with applicable federal laws and regulations, or be construed to modify, waive or impair the trust responsibility of the United States.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-22 Severability.

If any provision of this Chapter, or the application thereof, to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are declared to be severable.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

TECHNICAL PROVISIONS

4-9-48 General Provisions- Policy

- (a) All applicable technical provisions shall apply to hydraulic projects unless otherwise approved by the Department.
- (b) The project shall be accomplished in a manner achieving the water quality criteria of CTC 4-8 Water Quality Standards. Activities conducted in this manner limit increases in turbidity and entry of deleterious materials in concentrations which may affect public health, the natural aquatic environment, or the desirability of the water for any use.
- (c) Wetland alteration shall be avoided, or where avoidance is not practicable, shall be minimized.
- (d) When located in waters that provide fish habitat, projects shall be designed and constructed to ensure passage of all fish life stages throughout the duration of the project. Projects in waters that provide fish habitat generally shall be designed to maintain natural watercourse cross-section and profile, gradient and bed materials.
- (e) Placement of fill material into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist.
- (f) Project design shall minimize watercourse disturbance and alteration, subsequent erosion, harm to fish habitat, riparian function, and changes to wetland hydrology.
- (g) Projects shall be designed and constructed to assure structural integrity during, and passage of, 100-year flows and associated bedload and woody debris.
- (h) During construction and throughout the life of the project, erosion and siltation controls shall be employed and maintained to prevent erosion of project installations and associated work sites. Unless otherwise approved by the Department:
- (1) Machinery shall be operated from outside the watercourse;
 - (2) Work area shall be isolated from surface waters;
 - (3) Sediment shall be contained within the work area; and
 - (4) Sediment laden water shall be pumped to a settling area, having fine sediment removed prior to discharge to the watercourse.
- (i) Borrow pits and spoils disposal sites for hydraulic projects shall be located in stable locations outside of the floodplain and Riparian Management Zone. Watercourse bed materials shall not be used in construction of the project except for material originating within the required excavation zone of the project. Deposited spoils shall be stabilized and revegetated.
- (j) Heavy equipment working in wetlands shall be placed on mats, or other measures taken to minimize soil disturbance.
- (k) When work is conducted during low flow periods, appropriate measures shall be taken to maintain near normal downstream flows.
- (l) Fish shall be isolated from work conducted within watercourses. Fish stranded in any bypass reach shall be safely removed to a location in the watercourse unaffected by the work. If at any time fish are observed in distress or a fish kill occurs as a result of permitted stream work the work will immediately stop and the Department and Fish & Wildlife shall be immediately notified.

(m) Disturbance or discharges in spawning areas shall be avoided to the maximum extent practicable during spawning or when fish eggs or alevin are present.

(n) Deleterious substances such as contaminated waste water, new concrete, grout, paint, ditch sediment, fuel and preservatives shall be prevented from entering watercourses. Structures containing concrete or wood preservatives shall be cured or dried prior to water encroachment. The use of wood or other material treated with preservatives that will harm aquatic resources shall be prohibited. Fill material shall be free of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and toxic pollutants in toxic amounts.

(o) Throughout the life of the project, monitoring and maintenance shall occur as needed to protect water quality, aquatic habitat and structural integrity of the project.

(p) Removal of temporary structures and fill shall be accomplished in accordance with a schedule approved by the Department and result in restoration of the site to its original elevation and condition.

(q) Sites disturbed by equipment operation and staging associated with the hydraulic project shall be restored upon completion of the project. All trash, pollutants, and other inorganic refuse resulting from the hydraulic project shall be removed. Restoration at a minimum will include:

(1) re-shaping of disturbed streambanks to a natural slope pattern and profile;

(2) grading or other treatment necessary to stabilize impacted soils and to minimize and disperse runoff;

(3) placement of topsoil, wood, native vegetation, and native channel material displaced by construction; and

(4) reseeded the first sowing season (September to March) following completion of use. The seed mixture shall be approved by the Department, weed-free, and shall be applied at a rate of 28 pounds per acre.

(r) Modification or exceptions to technical provisions required by this chapter may be approved by the Department where the provision has no logical application to a project or an alternative provision or a practice is substituted that provides equal or greater protection of water quality and fish life.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-49 Water Crossings

(a) Water crossings shall be located to avoid or minimize approaches crossing wetlands, channel migration zones, floodplains, and unstable slopes or landforms. To the extent practical, crossings shall be located where the channel is straight and can be crossed at right angles.

(b) All crossings shall be designed, constructed, and maintained to keep water within its natural watercourse, and to maintain hydraulic connectivity at crossings of wetlands.

(c) Right of way logs, slash and woody debris shall not be decked or piled atop the watercourse.

(d) Road approaches and ditches shall be drained to minimize runoff entering natural waters. Drainage structures shall be installed concurrently with construction of the crossing.

(e) Road fill slopes shall be designed to prevent movement or erosion of soil or fill. Fills and approaches to crossings shall be protected using vegetation, rock or other means to prevent erosion and entry of sediment to streams.

(f) Temporary crossings:

(1) Temporary crossings shall be sized to pass all anticipated flows during their period of installation. Unless installed and removed during a single low flow period, as specified by the Department, crossings shall be sized in accordance with section 4-9-48 (g).

(2) The Department may allow exceptions from fish passage requirements for temporary crossings in waters that provide fish habitat. The decision to allow exceptions shall be based on watercourse flows, needs of fish resources at the site, and duration of installation.

(3) Crossing material remaining within the watercourse following removal of the crossing shall consist only of clean rounded gravel ranging in size from one-quarter to three (3) inches in diameter, unless otherwise approved by the Department.

(4) At time of removal, remove structure and fill in accordance with 4-9-48 (p). Stabilize approaches to the crossings with rock, woody debris, vegetation or other means specified by the approved application. Approaches shall be blocked at the outer edge of the Riparian Management Zone.

(g) Bridge Construction:

(1) Placement of abutments shall provide a minimum opening width not less than the average width between Ordinary High Water Marks for the stream reach being crossed, and shall be aligned to cause the least effect on the hydraulics of the body of water.

(2) The Department may require additional measures for passage of flood flows at a crossing or its approaches.

(3) Use of instream piers to support bridge spans shall be avoided when practicable.

(4) Adequate measures shall be provided to prevent undermining of abutments due to stream bank scour.

(5) Stringers of gravel-decked bridges and log culverts shall be covered with geotextile filter fabric or other means to prevent sediment from entering the watercourse.

(h) Culvert Installation:

(1) Alignment of the culvert shall conform as much as practical to the natural alignment of the stream channel.

(2) Culverts at permanent stream crossings shall be of galvanized steel, concrete, aluminum or plastic of sufficient gauge or thickness for their intended load.

(3) Culverts draining seeps, springs or providing hydrologic connectivity at wetlands shall have a minimum diameter of eighteen (18) inches.

(4) Culverts in waters that provide fish habitat shall be designed to avoid causing fish passage barriers. Unless otherwise approved by the Department:

(A) The culvert width at the stream channel bed, or footing width, shall equal or exceed 1.2 times the average width between Ordinary High Water Marks of the watercourse.

(B) Culvert shall be set at a gradient and elevation approximating the average grade for the stream reach. Bottom of the culvert outlet shall be set below the average stream grade elevation a minimum of 20% of the culvert diameter (or vertical dimension for elliptical

culverts). A longitudinal profile of the stream may be required to establish stream reach gradient and elevation for culvert placement.

(C) Closed bottom culverts shall have bed material representative of the watercourse backfilled within the culvert forming a bed the width of the watercourse. Backfill shall consist of a mixture of gravel and rock similar in size range and quality to stream bed material representative of the stream reach.

(D) Culverts shall be sized such that net culvert capacity (total capacity minus the volume backfilled) passes 100-year flows and associated bedload and woody debris.

(E) Excavation and backfill for footings of open bottom culverts shall not encroach upon the Ordinary High Water Mark. Footing depth shall be sufficient to prevent exposure due to scour of bed materials.

(F) Alternative designs may be approved by the Department that limit flow velocity, hydraulic drop, and low flow depth to assure passage of all fish life stages.

(5) Culvert inlet and outlet shall extend beyond the toe of road embankments.

(6) Crossing shall be designed and installed to minimize erosion of downstream channel and bank materials. Watercourse at the point of discharge shall be armored or have materials placed to maintain grade control if required by the Department.

(7) The minimum depth of fill covering the culvert shall be two feet or the minimum depth necessary to protect the structural integrity of the culvert as specified by the culvert manufacturer.

(8) Fills or embankments shall be built up in two-foot layers. Each layer shall be compacted by operating tractor or other equipment over the entire surface of the layer.

(9) Material that may reasonably be expected to plug a culvert shall be hand-cleared from watercourses for fifty (50) feet upstream of the culvert inlet.

(i) Fords:

(1) Use shall be limited to periods when the watercourse is dry, or a ford structure shall separate vehicles from the water.

(2) Crossing approaches shall be designed to minimize transport of road sediment by vehicles into the watercourse.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-50 Conduit/Cable/Pipe Crossing

(a) Crossing alignment shall be as perpendicular to the watercourse as possible.

(b) Conduit/cable/pipe shall be installed at sufficient depth to prevent subsequent erosion of bed materials and exposure of the installed material. To establish appropriate depth, a longitudinal profile of the stream may be required.

(c) Boring or jacking pits shall be located outside the Ordinary High Water Mark.

(d) Trench plowing, cable placement, and covering shall occur in a single pass of the equipment.

(e) Trenches shall be backfilled with the bed materials displaced during trench excavation. Placement of additional material may be required by the Department to stabilize trench backfill and watercourse.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-51 Piers, Pilings, Docks, and Floats

(a) All piling, lumber, or other materials treated with preservatives shall be sufficiently cured to minimize leaching into water and bed materials. Treated wood with surface residues or bleeding of preservatives, and wood treated with creosote or pentachlorophenol shall not be used.

(b) Pile driving shall be limited to time periods preventing harm to fish or fish eggs.

(c) Backfilling and armoring around each structure shall take place prior to removal of cofferdams.

(d) Anchoring systems for floating structures shall be designed and deployed in a manner that will not damage the beds as a result of structure or anchor movement.

(e) Flotation material shall be enclosed and contained as needed to prevent breakup or loss of the material.

(f) Skirting or other structures shall not be constructed around piers, docks, or floats unless specifically approved in an application.

(g) Treated wood shall not be used for any above-water component (e.g., structural members, framing, fascia, hand railing, etc.) on piers, ramps or floats.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-52 Bank Protection

(a) Bank protection work shall be restricted to that necessary to protect eroding banks or other approved hydraulic project installations.

(b) Bank protection shall incorporate planting of appropriate vegetation and placement of natural or synthetic materials that will establish a cohesive root network and restore aquatic and riparian habitat where appropriate and practicable.

(c) Placement of protection material waterward of the Ordinary High Water Mark shall be minimized and limited to that necessary to protect the toe of the bank, or for incorporation of habitat components of the project.

(d) Unstable banks shall be re-sloped no steeper than 2:1 (horizontal to vertical dimension), placing overburden in a location approved by the Department.

(e) The toe shall be designed to protect the integrity of bank protection material and fill. Establishment of a stable toe shall precede placement of bank materials.

(f) Rock used for bank protection shall have angular shape. Bank protection materials shall have appropriate size and be placed in a manner to withstand 100-year flows.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-53 Fill Placement

(a) Fill shall only be placed in a stable configuration and shall not significantly reduce the average watercourse capacity, configuration, or wetland area or adversely affect aquatic function.

(b) Fill material shall not be placed in locations or in any manner that will impair surface water flow into or out of any wetland.

(c) Fill material shall be clean rock or other material approved by the Department.

(d) Temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-54 Watercourse Change

(a) Watercourse change or realignment shall be limited to that necessary to protect improved property, habitat or water quality.

(b) A permanent new or realigned watercourse shall be similar in length, width, depth, gradient, floodplain and meander configuration as the previous or natural watercourse.

(c) The changed watercourse shall provide fish habitat components, bed materials, and native vegetation equivalent or greater than that provided by the previous watercourse.

(d) The unfinished new watercourse shall be isolated from the wetted perimeter.

(e) Installation of approved fish habitat components, bed materials and bank protection shall be complete prior to diversion of water into the new watercourse.

(f) Diversion of flow into the new watercourse shall be accomplished by first removing the downstream plug; next removing the upstream plug; and then closing the upstream end of the old watercourse.

(g) The angle of the structure used to divert the water into the new watercourse shall allow a smooth transition of water flow.

(h) Filling of the old watercourse shall not decrease floodplain capacity to less than previously existed. Fill materials shall be compacted. Any sediment laden water shall have fine sediment removed prior to discharge to the watercourse.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-55 Temporary Water Bypass

(a) The temporary bypass culvert or flume shall be in place prior to initiation of other work in the wetted perimeter.

(b) A sandbag revetment or similar device shall be installed at the inlet to divert the entire flow through the culvert or flume.

(c) A sandbag revetment or similar device shall be installed at the downstream end of the culvert or flume to prevent backwater from entering the work area.

(d) Culvert or flume shall be of sufficient size to pass flows and debris occurring during the project.

(e) The discharge point must be protected from erosion.

(f) Diversion of flow into a temporary channel shall be in accordance with section 4-9-54.

(g) Prior to releasing the water flow to the project area, all bank protection or armoring shall be completed.

(h) Upon completion of the project, all material used in the temporary bypass shall be removed from the site and the site returned to pre-project conditions.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-56 Logging/Fire Trails

- (a) Tree falling, heavy equipment use, or cable yarding within or across a watercourse shall only occur in accordance with an approved hydraulic project application.
- (b) Cable yarding shall fully suspend logs or trees above the watercourse or other measures shall be taken to minimize disturbance to the watercourse. Cable corridors crossing the watercourse shall be kept as narrow as practicable, and disturbance to riparian vegetation shall be minimized.
- (c) Skidding and equipment crossings shall be limited to periods when the watercourse is dry, or a temporary crossing structure shall be installed to separate machinery and log turns from the water. Lead end of logs shall be suspended. Following use, the site shall be restored to its original condition.
- (d) Landing activities including decking and loading shall not occur in watercourses.
- (e) Accumulation of slash and woody debris within the watercourse resulting from an operation shall be minimized, and removed from the watercourse before equipment leaves the location. Debris removal shall be conducted in accordance with section 4-9-58. Large woody debris in place prior to the harvest operation shall not be disturbed. Portions of felled trees or logs embedded in the watercourse shall not be removed.
- (f) Alteration of watercourse and accumulation of sediment and woody debris within the watercourse resulting from fire trail construction shall be minimized. Equipment blade shall be raised while crossing the watercourse. Crossing sites shall be restored as soon as is practicable in accordance with section 4-9-48 (p).
- (g) Placement of fire retardant into natural waters shall be avoided wherever possible. Should retardant enter a water course, measures shall be taken as soon as is practicable to mitigate impacts to aquatic resources.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)
(Amended 9/2/10, Certified 9/9/10, Resolution 2010-621)

4-9-57 Water Diversions, Outfalls, and Drafting

- (a) No diversion project shall be commenced without water use approval in accordance with provisions of CTC Chapter 4-10 Water Use and Permitting.
- (b) Diversions and outfalls shall be designed to minimize alteration of the watercourse and flow patterns. At temporary pumping or drafting points, alterations to the watercourse shall be removed and watercourse bed and banks restored to their preexisting condition upon completion of use or no later than November 1 each year.
- (c) Diversions shall be located and designed so as not to hinder fish passage within the watercourse, and shall employ fish guards, or screens to prevent fish entry into the diversion.
- (d) Fish screens shall be designed, constructed and located as follows:
 - (1) In flowing waters, the screen shall be located at the diversion entrance, and aligned parallel to natural flow. Entrance shall be designed to prevent eddies and maintain parallel velocities past the screen. Screens at other locations shall be provided with bypass systems to efficiently collect juvenile fish and safely transport them back to the flowing water body. Such screens shall also be constructed at an angle not to exceed 45° (degrees) from the approaching flow with the downstream end of the screen terminating at the bypass system entrance.
 - (2) In nonflowing waters, diversion structures and associated fish screens will be located in adequate depths of water to minimize fish contact.
 - (3) Water approach velocity perpendicular to the screen face shall not exceed:

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(A) 0.5 feet/second for chinook salmon and steelhead fry and all fingerling salmon (fingerling minimum length: 60mm): or

(B) 0.2 feet/second for game fish fry.

(C) When screens are not readily accessible for cleaning, the screens shall be designed with an approach velocity of 0.05 feet/second.

(4) Screen openings shall not exceed 3/32 (0.09375) inch measured horizontally.

(5) The long axis of slot or rectangular screen openings shall be vertical.

(6) Screens may be constructed of any rigid material, woven or perforated, that physically excludes fish provided that structural integrity and cleaning effectiveness are not impaired.

(e) The outfall structure shall be constructed according to an approved design allowing, or preventing, the entry of fish as required by the Department.

(f) Outfall flow shall be by gravity only.

(g) Outfall flows shall not harm fish life.

(h) Outfall design shall prevent watercourse scouring at the point of discharge.

(i) Portable pumps and water tenders operated beside or within watercourses shall incorporate measures to prevent contamination of soil and water, including but not limited to use of spill containment trays or liners where practical, and measures to minimize erosion associated with the drafting operation.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-58 Woody Debris Removal

(a) Removal of large woody debris shall be limited to that necessary to protect improved property, habitat or water quality.

(b) Removal shall be conducted by grapple, cable, or hand, suspending the material as much as is practical.

(c) Removal shall be accomplished in a manner to minimize the release of bedload, logs or debris downstream.

(d) Watercourse bank shall be stabilized and revegetated. Depressions created in the watercourse bed shall be filled, smoothed over, and sloped toward the water.

(e) Removed material shall be placed in stable locations and machine piles shall be placed outside the Riparian Management Zone. Large woody debris shall be returned to the watercourse in a stable position, as required by the Department.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-59 Dredging and Gravel Removal

(a) Mineral prospecting and mining shall not be conducted within natural waters of the reservation.

(b) Dredging shall not be conducted in fish spawning areas, or within waterfowl nesting areas, except to create or improve habitat or fish access. Mitigation shall be required to prevent loss of fish habitat.

(c) During the dredging of a lake or pond, a boom or similar device shall be installed to prevent escape of floatable materials from the work area.

- (d) Dredging shall be conducted with dredge types that cause the lowest mortality on fish life.
- (e) Dredged bed materials shall be disposed of at a site specified by the Department.
- (f) If a hydraulic dredge is used, it shall be operated with the intake on or below the surface of the material being removed. Reverse purging of the intake line shall be held to a minimum.
- (g) If a drag line or clamshell is used, it shall be operated to minimize turbidity. During excavation, each pass with the clamshell or drag line bucket shall be complete. Dredged material shall not be stockpiled in the water.
- (h) Gravel and sediment removal shall be restricted to the minimum amount needed to protect capital and property improvements, for flood control purposes, or to create or improve habitat or fish access. Mitigation shall be required to prevent loss of fish habitat.
- (i) Pre-project and post project channel cross-section surveys and monitoring of gravel recruitment and other related physical parameters shall be required for large scale flood control projects.
- (j) Upon completion of dredging or gravel removal, the watercourse bed shall not contain pits, potholes, large depressions, or abrupt steps that could hinder fish passage.
- (k) Removal of large woody debris from the watercourse shall be minimized.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-60 Bulkheads

- (a) Installation of bulkheads shall be limited to the minimum amount needed to protect capital or property improvements. Mitigation shall be required to prevent loss of fish habitat.
- (b) The toe of the bulkhead shall be placed landward of the ordinary high water mark.
- (c) Rock used for bulkhead construction shall be composed of clean, angular material of sufficient size to prevent movement from water or wave action.
- (d) Watercourse bed materials shall not be used for fill landward of the bulkhead.
- (e) Excavated material shall not be stockpiled within the watercourse.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-621)

4-9-61 Aquatic Plants

- (a) Control and removal of aquatic plants shall be limited to measures required to control noxious weeds, or to create or improve habitat or fish access.
- (b) Persons or firms using any equipment to remove or control aquatic plants shall thoroughly remove and properly dispose of all viable residual plants and viable plant parts from the equipment prior to the equipment's use in a body of water.
- (c) Removal of detached plants and plant fragments from the watercourse shall be as complete as possible when using hand removal to remove or control aquatic noxious weeds. Detached plants and plant fragments shall be disposed of at an upland site so as not to reenter the watercourse.
- (d) During hand removal of weeds, existing fish habitat components such as logs, stumps, and large boulders shall not be removed or disturbed. Such existing habitat components may be relocated within the watercourse if necessary for other treatments. These habitat components shall not be removed from the watercourse.

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(e) Where possible, the entire plant shall be removed when using hand-pulling for aquatic noxious weeds.

(f) Bottom barriers or screens:

(1) Bottom barrier or screen and anchor material consisting of biodegradable material may be left in place. Bottom barrier or screen and anchor material that is not biodegradable shall be completely removed within two years of placement to encourage recolonization of aquatic beneficial plants unless otherwise approved by the department.

(2) Bottom barrier or screen material shall be securely anchored with pea-gravel filled bags, rock or similar mechanism to prevent billowing and movement offsite.

(3) Bottom barrier or screen and anchors shall be regularly maintained while in place to ensure the barrier or screen and anchors are functioning properly. Barriers or screens that have moved or are billowing shall immediately be securely reinstalled or removed from the watercourse.

(g) Mechanical harvester and cutter operations shall only be conducted in waters of sufficient depth to avoid bottom contact with the cutter blades.

(h) Dredging to control aquatic plants shall be performed in accordance with section 4-9-58.

(i) Water level manipulation to control aquatic plants shall occur gradually and in a controlled manner to prevent a sudden release of impounded water or sediments which may result in downstream bed and bank degradation, sedimentation, or flooding. Water levels shall be drawn down and brought back up at rates predetermined in consultation with and approved by the Department. Instream flow requirements shall be maintained as water levels are brought back up.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-62 Chemicals

(a) No person shall transport, handle, store, load, apply, or dispose of any pesticide, pesticide container or apparatus in such a manner as to pollute water supplies or waterways, or cause damage or injury to land, humans, desirable plants and animals, or wildlife; provided that a pesticide labeled for aquatic use and used as directed shall not be considered a violation of this subsection. Disposing of pesticides at disposal sites approved by the appropriate agency complies with the requirements of this subsection. Toxicity, volatility, and mobility of pesticides shall be considered in complying with this subsection.

(b) No person shall contaminate natural waters or soils during chemical loading, mixing, and application. Adequate, functioning devices and procedures to prevent back-siphoning shall be used.

(c) Chemicals shall be applied only in accordance with all limitations and instructions:

(1) Printed on the Environmental Protection Agency container registration label, and

(2) Established by the Federal Occupational Safety and Health Administration, as they relate to safety and health of operating personnel and the public.

(d) Chemical treatment zone shall be posted by the applicant or landowner by signing at all significant points of regular access at least five (5) days prior to treatment. Posting shall remain at least fifteen (15) days after the chemical application is complete. Extended posting periods may be required by the Department in areas where human use or consumption of plant materials is probable. The applicant or landowner shall be responsible to maintain signs during the required posting periods. Signs shall be made of suitably durable material and contain the name of the product used, identify what was treated, date of treatment, a contact name and telephone number, and any applicable restrictions.

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(e) The operator shall be required to hold a Washington State applicator or public operator certificate when applying restricted use pesticides.

(f) The operator shall comply with requirements of the Federal Insecticide, Fungicide, and Rodenticide Act pertaining to the handling and application of pesticides.

(g) During application, the operator shall keep a copy of the pesticide label on site.

(h) Daily Records

(1) Certified applicators and all persons applying pesticides to natural waters shall keep records for each application which shall include the following:

(A) The name and address of the person for whom the pesticide was applied.

(B) The address or exact location of the land where the pesticide was applied.

(C) The year, month, day and start and stop time the pesticide was applied.

(D) The product name used on the registered label and the United States Environmental Protection Agency registration number, if applicable, of the pesticide which was applied.

(E) The direction from which the wind is blowing and estimated velocity of the wind in miles per hour (mph) and the temperature in degrees Fahrenheit at the time the pesticide was applied.

(F) The total amount of pesticide applied such as pounds, gallons, ounces, etc.

(G) The amount of pesticide applied per acre or other appropriate measure.

(H) The concentration of pesticide that was applied. Liquid applications may be recorded as amount of product per one hundred gallons of liquid spray or other appropriate measure.

(I) Specific target to which pesticide was applied.

(J) Apparatus license plate number.

(K) The licensed applicator's name, certified pesticide applicator license number, address, telephone number, and the name and license number(s) if applicable of the individual or individuals making the application.

(L) The number of acres or other appropriate measure to which the pesticide was applied.

(2) Application records shall be completed and available to the Department within seven (7) days following the application of pesticide.

(3) Application records shall be kept for a period of seven years from the date of the application of the pesticide to which such records refer. The Department shall, upon request in writing, be furnished with a copy of such records forthwith by the applicator.

(i) Suspected violations of federal pesticide laws shall be reported by the Department to and investigated by the Environmental Protection Agency under authority of federal law.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-63 Fish and Wildlife Management

(a) Fish Relocation, Capture, and Transporting

(1) When required as a condition of hydraulic project approval, applicant shall capture and relocate fish that may otherwise be killed due to the project. The hydraulic project approval shall require fish capture and relocation based upon request of the Director of Fish & Wildlife.

(2) Captured fish shall be immediately and safely transferred to free flowing water.

(3) Fish shall only be relocated to locations specified by the approved hydraulic project application.

(4) The applicant may request the Department of Fish & Wildlife to assist in capturing and safely moving fish life from the job site. The Department of Fish & Wildlife may choose to provide assistance depending upon the availability of personnel and funding. Assistance requests should be submitted to Fish & Wildlife a minimum of two weeks prior to the beginning of operations requiring isolation of fish.

(b) Beaver Dam Removal

(1) Notification to and written approval by the Department of Fish & Wildlife is required.

(2) Dam alteration should be conducted according to a plan that considers and may specify measures for:

(A) controlling downstream watercourse scouring and movement of sediment stored in and behind the dam.

(B) maintenance of fish passage;

(C) providing animal control including limiting access to forage;

(D) piping water through the dam;

(E) temporary breaching and location of breach; or

(F) dam removal and disposal of debris.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-64 Archaeological, Historical, and Cultural Resources

(a) Within 200 feet of burials or archaeological/historical sites, hydraulic projects shall only be conducted in accordance with a protection plan approved by the Tribal Historic Preservation Officer.

(b) When burials or archaeological/historical resources are discovered during a hydraulic project, operations shall be halted within 1320 feet of the discovery site and the Tribal archaeologist shall be notified immediately. The operation may be resumed following development of a protection plan approved by the Tribal Historic Preservation Officer, and shall proceed in accordance with the provisions of the plan.

(c) When hydraulic projects including application of chemicals are proposed on or around sites containing significant occurrences of cultural plants or resources, the Department may require measures for their protection or enhancement, and hydraulic projects shall be conducted in accordance with such requirements.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

4-9-65 Housekeeping

During hydraulic projects, contamination of Reservation resources shall be prevented. Machine operation,

(July 2011 version of Chapter 4-9)

refueling and repair work shall be conducted in a manner preventing fuels, lubricants, coolants and other pollutants from washing into any water or waterway, seeping into the soil, or killing vegetation, fish or wildlife. Reservation lands and natural waters shall be kept clear of all trash, pollutants, and other inorganic refuse resulting from hydraulic projects.

(a) In the event that a spill occurs the Department shall be notified immediately by the operator.

(b) The Department shall require all measures necessary to clean up contaminated sites.

(Amended 7/7/11, Certified 7/15/11, Resolution 2011-471)

(Chapter amended 10/7/04, Resolution 2004-622)

(Certified 10/14/04)

(Chapter 4-9 Adopted 10/12/89, Resolution 1989-763)