

CHAPTER 4-10 WATER RESOURCES USE AND PERMITTING

GENERAL PROVISIONS

4-10-1 Declaration of Rights and Purpose

(a) In order to: promote the general welfare of the Confederated Tribes of the Colville Reservation (“Colville Tribes” or “Tribes”); develop, manage, and preserve the waters and other resources of the Colville Reservation; facilitate the United States’ compliance with its trust duties to preserve and protect in perpetuity all waters reserved for the Colville Tribes and the Colville Reservation; provided for the exercise of the inherent sovereign power of self-government by the Colville Tribes, acting by and through the Colville Business Council, hereby asserts its prior, exclusive and supreme rights in, ownership of, and jurisdiction over, the waters of the Colville Reservation and lands held in trust off-Reservation for all jurisdiction over, the waters of the Colville Reservation and lands held in trust off-Reservation for all purposes.

(b) The Colville Tribes hereby affirms that the water resources of the Colville Reservation and the Colville Tribes have been of fundamental importance to the Colville Tribes since time immemorial and must be preserved and protected in perpetuity for the best interest of the Colville Tribes. The Business Council finds that the rights and authorities of the Colville Tribes with respect to the water resources of the Colville Reservation are set forth in the decision in *Confederated Tribes of the Colville Reservation v. Walton*, 647 F. 2d 42 (9th Cir. 1981), and hereby enacts this comprehensive revision of this Chapter to facilitate the exercise of the Tribes’ authority and to protect and preserve the Tribes’ rights in water resources to the maximum extent permitted under tribal law and any federal law that may be applicable. Nothing in this Chapter shall be construed as acknowledging that the *Walton* case restricts the water rights or regulatory authority of the Colville Tribes in any way.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-2 Nature of Ownership

(a) The Colville Tribes holds the full equitable title to the rights to the use of all of the water of the Colville Reservation. The United States holds the legal title to those waters solely as trustee for the Colville Tribes.

(b) All rights to the use of the waters of the Colville Reservation are held by the Colville Tribes in perpetuity, for the use and benefit of the Colville Tribes, its members, other persons as authorized herein, and the lands and other resources of the Colville Reservation. To the maximum extent permitted by federal law, no right or privilege of any kind, from whatever sources, shall be recognized or granted unless the same shall be subject to the overriding, prior and supreme right and interest of the Colville Tribes, and the policy and provisions contained in this Chapter, amendments hereto, and administrative regulations and determination hereunder. No agent of the Colville Tribes, the Colville Business Council, or the United States shall take any action or grant to recognize any right affecting the water resources of the Colville Reservation that in any way infringe or threatens to infringe the prior and supreme rights and interests of the Confederated Tribes of the Colville Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-3 Application of Chapter

It shall be unlawful to divert or withdraw or otherwise make any use of, or take any action of whatever kind substantially affecting, the waters of the Colville Reservation unless the applicable provisions of this Chapter and regulations and determinations made hereunder have been complied with. To the maximum extent permitted by federal law, no water rights, from whatever source, shall be recognized, except rights obtained under and subject to this Chapter.

4-10-4 Waters of the Colville Indian Reservation Defined

The waters of the Colville Reservation consist of:

(a) All waters located upon or bordering the Colville Reservation, whether flowing or stationary, whether above or below the surface of the ground, whether above or below the surface of the

ground; whether percolating or non-percolating groundwater, whether subflow, tributary or non-tributary groundwater, whether groundwater hydraulically connected with surface water, or whether groundwater hydraulically or hydrologically connected with surface water; or whether diffused or contained within a defined water course or water body of any kind;

(b) All waters reserved at any time to the Colville Reservation by the United States or the Colville Tribes;

(c) All waters which, in the course of nature or as the result of artificial works, flows into or otherwise enhances such waters;

(d) All precipitation and atmospheric water; and

(e) The Colville Reservation for purpose of this Chapter shall have the definition set forth in section 1-1-362 of this Chapter.

4-10-5 through 4-10-99 [RESERVED]

WATER ADMINISTRATOR

4-10-100 Water Administrator—Appointment

The Environmental Trust Department (“Department”) shall employ a person to serve as the Water Administrator (“Administrator”) under this Chapter. The Administrator shall be employed at a salary to be fixed by the Department.

4-10-101 Water Administrator—Staff

The Administrator may, with approval of the Department, employ additional support staff.

4-10-102 Water Administrator—General Authority

In administering this Chapter, the Administrator may, in addition to other actions:

(a) Enter appropriate orders;

(b) Grant, deny, modify and revoke water use permits;

(c) File or intervene in any lawsuit arising under this Chapter, with the permission of the Colville Business Council, and defend any lawsuit filed against the Administrator with representation by the Office of Reservation Attorney;

(d) Make determinations of rights;

(e) Initiate the process for, and make recommendations regarding, determination of availability and need as provided in the subchapter on Determination of Availability and Need in section 4-10-240 through 4-10-248 of this Chapter.

(f) Initiate proceedings involving penalties;

(g) With the permission of the Natural Resources Committee (and where required the Colville Business Council), enter into administrative agreements, exchange information, and otherwise cooperate with governmental agencies both on and off the Reservation;

(h) Ensure adequate levels in streams and lakes for wildlife conservation and other values;

(i) In cooperation with the Director of the Department, determine existing and foreseeable uses of and needs for water and other related resources;

(j) Propose to the Natural Resources Committee, the Reservation of water for utilization in the future; and

(k) Take other actions provided for under this Chapter.

4-10-103 Water Administrator—General Duties

It shall be the duty of the Administrator together information related to the water administered under this Chapter. To this end, the Administrator shall:

(a) Collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the water of the Colville Reservation.

(b) Develop such additional data and studies pertaining to water and water resources as are necessary to accomplish the objective of this Chapter, including but not limited to the development of a well use database.

(c) Solicit public comment and obtain expert advice when appropriate.

(d) Investigate water uses and other activities affecting the waters of the Colville Reservation to determine whether they are in compliance with this Chapter and with applicable regulations, orders, determinations, and permits issued under this Chapter.

(e) Investigate water quality matters whenever appropriate and make referrals to authorize staff for any action that may be appropriate.

(f) Issue water permits.

(g) Provide an annual report to the Natural Resources Committee (NRC) of the Colville Business Council.

4-10-104 Water Administrator—Enforcement

It shall be the duty of the Water Administrator to ensure compliance with this Chapter, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken under this Chapter, as well as the policies and guidelines expressed throughout this Chapter. To this end the Water Administrator may:

(a) 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.

(b) Initiate by citation and other means, as provided herein, proceedings involving penalties for violations of this Chapter and the actions taken under this Chapter.

(c) Enter upon land, inspect methods of diversion and withdrawal, inspect other activities affecting water quality and quantity, install and monitor measuring and recording devices when necessary, and elicit testimony and data concerning actions affecting the quality or quantity of the waters administered under this Chapter.

(d) Require a water user to install meters and/or other measurement and recording devices at the cost of the water user.

4-10-105 Water Administrator—Advisory Function

In addition to the duties of the Water Administrator with respect to information and enforcement, the Water Administrator may, from time to time, make proposals to the Department concerning the following:

- (a) The advisability of establishing local management areas and subareas for specialized administration under this Chapter.
- (b) The advisability of making determinations of availability and need as provided in the subchapter on
 Determination of Availability and Need and Water Management Plans in section 4-10-240 through 4-10-248 of this Chapter;
- (c) The advisability of taking other actions and adopting other plans and methods in order to optimize available water supplies and minimize pollution and thermal degradation;
- (d) The advisability of purchasing and selling any interest including integrate in real or personal property;
- (e) The advisability of participating in litigation and other actions;
- (f) The advisability of the Colville Business Council entering into administrative agreements and other cooperative ventures with various agencies;
- (g) The advisability of amending or otherwise changing various sections of this Chapter or adding new sections;
- (h) The advisability of establishing flow levels or water levels to maintain or restore a healthy riparian and aquatic environment, and/or provide for navigation or other beneficial uses;
- (i) The advisability of taking any other action to further other purposes and increase the effectiveness of this Chapter.

GUIDELINES FOR ADMINISTRATION

4-10-130 General Policy Provisions

In taking any action under this Chapter, the Administrator shall be guided by the following basic policy guidelines:

- (a) Whenever practicable, actions taken should benefit the Colville Tribes and its members, and further the objective for which the Colville Reservation was created, namely, to provide a permanent home and abiding place for the Colville Tribes and their members both now and in the future. Alternatives to existing and proposed water uses to be considered shall include the option to restrict or prohibit entirely any further use of water for any reason. If there is presented to the Administrator a conflict between the Colville Tribes or any of its members with non-Tribal projects or uses, the Administrator will follow policy guidelines prescribed elsewhere in subsection (d) of this section and in sections 4-10-131 and 4-10-132 below.
- (b) In taking any action under this Chapter which may impose substantial economic hardship on persons or entities presently using water, or which threatens degradation of other economic, cultural historic, aesthetic, natural and environmental values, the Administrator shall in reaching any decisions, carefully consider and give weight to:
 - (1) The economic dislocation and hardship that would be imposed by its action;
 - (2) The investment in time, money and other resources made by the parties affected in reliance upon the existing system of distribution and use of water;
 - (3) Such other burdens as may be imposed by the actions;

(4) And the nature and extend of degradation of other economic, cultural, historic, aesthetic, natural and environmental values.

(c) The Administrator when considering a proposed action, shall balance these adverse effects against the benefits to Tribal and other interests which are advanced as justifying the proposed action consider alternatives to the proposed action which will lessen adverse effects, and, shape any final action so that its adverse effects will be minimized.

(d) Unless otherwise provide, the following uses shall, when conflicting, be given preference in the order in which they are listed:

(1) Cultural and Religious uses: The ceremonial use of water by the Colville Tribes or its membership to express and exercise their traditional religion or cultural customs;

(2) Domestic uses: Includes water for normal household purposes, such as drinking, food preparation, bathing, washing clothes and dishes, flushing toilets, and watering lawns and gardens;

(3) Municipal uses: Water withdrawn by public and private water suppliers and delivered to multiple users for domestic, commercial, and industrial uses, including public and private water systems that furnish water to at least 25 people, or that have a minimum of 15 connections;

(4) Stock watering: Water for livestock, feedlots, dairies, fish farms, managed wildlife and other on-farm or rangeland livestock water needs;

(A) On-stream: Stream access is granted for stock watering.

(B) Off-stream: Stream access is denied for stock watering.

(5) Fish, wildlife, ecosystem function: Water needed to protect, preserve or enhance habitat needed for the life cycle of fish and wildlife resident on, but not necessary native to, the Colville Reservation; Provided that nothing in this section shall be construed to waive any claim that the Colville Tribes possesses an instream water right for fisheries purposes with a priority date under federal law of time immemorial as against any other party;

(6) Agriculture: All irrigation water artificially applied to farm and horticultural crops including, but not limited to, hard wood and soft wood timber growing. Irrigation water can be self supplied or supplied by irrigation companies or districts. Includes water associated with the production of red meat, poultry, eggs, milk, and wool; and animal specialties water use, which is defined as water use associated with the production of fish in captivity;

(7) Recreation: In-stream and out of stream public uses for outdoor activities and scenic attraction; including water used to irrigate public parks, game fields, campgrounds, swimming pools and ponds, and public and private golf courses.

(8) Industry: Water for such purposes as processing, washing, and cooling in facilities that manufacture products. Major water using industries include, but are not limited to, steel, chemical and allied products, lumber, paper and allied products, and petroleum refining. Includes water associated with the production of red meat, poultry, eggs, milk, and wool; animal specialties water use, which is defined as water use associated with the production of fish in captivity; and water used for dust control and soil stabilization at construction sites and roads;

(9) Power: Water used for hydroelectric power generation is classified as an instream use and refers to the water used in the generation of electricity at plants where the turbine generators are driven by falling water. Also includes water used in the generation of electric power with fossil-fuel, nuclear, or geothermal energy;

(10) Mining: Water for the extraction of naturally occurring minerals; solids, such as coal and ores; liquids, such as crude petroleum; and gases, such as natural gas. The category includes quarrying, milling (crushing, screening, washing, and flotation), and other operations as part of mining activity;

(11) Other uses: Water use not defined above and deemed beneficial by the Administrator and the Department.

4-10-131

Guidelines for Making Most Effective Use of Available Resources

In addition to the policy guidelines contained in the previous section, the Administrator may take appropriate actions, in his or her discretion, to:

- (a) Ensure an adequate supply;
- (b) Maintain water levels for diversion and withdrawal systems;
- (c) Maintain head and pressure in surface and underground water;
- (d) Prevent or reduce obstruction of surface and ground water flow;
- (e) Increase efficiency of diversion and withdrawal, increase efficiency in application, increase return flow, prevent waste and maximum use of the available supply;
- (f) Create and enhance the efficiency of natural and artificial surface and underground storage;
- (g) Insure optimum recharge of aquifers;
- (h) Prevent or reduce loss from losing streams and aquifers;
- (i) Define and limit interbasin transfers from shifting aquifer boundaries;
- (j) Provide for exceeding safe yield determinations from groundwater sources on a short term basis during drought or for other reasons determined sound by the Administrator, including where possible guidelines or a schedule for restoration of groundwater elevations to pre-mining, or pre-drought levels.
- (k) Prevent or reduce interference between competing users of water sources, whether above or below ground;
- (l) Prevent or reduce pollution or the effects of pollution;
- (m) Prevent or reduce thermal degradation or the effects of thermal degradation;
- (n) Shape use of available supplies to promote economic, scenic aesthetic, historical, cultural, natural or domestic values, consistent with the priorities of subsection 4-10-130(d) above;
- (o) Provide for long-term development;
- (p) Penalize misuse;

- (q) Prevent interference with Tribal administration of water;
- (r) Otherwise insure conformity with the provision of this Chapter.

4-10-132 Additional Policy Guidelines

- (a) Rivers and streams of the Reservation shall be retained with sufficient flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic, and other environmental values and navigational values. Withdrawals of water that would conflict therewith should be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.
- (b) Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given to means and methods for protection of fishery resources in the planning for and construction of water impoundment structure and other artificial obstructions.
- (c) Individuals, corporations, groups, associations and other entities shall be encouraged to carry out practices of conservation and environmental protection as they relate to the use of the water of the Colville Reservation.

APPLICATIONS FOR PERMITS

4-10-160 Description of Use and Application for Permit—Required

All persons desiring to initiate new uses of water, change existing water uses that have been previously permitted under this Chapter, or take other actions substantially affecting the waters of the Colville Reservation must file a Description of Use and Application for Permit as required by this subchapter. It shall be unlawful to make any use or take any other action substantially affecting the waters of the Colville Reservation except as authorized by this Chapter.

4-10-161 Description of Use and Application for Permit—Content

Description of Use and Application for Permit shall be on forms provided by the Administrator and shall include the following information, in addition to any other information deemed necessary by the Administrator :

- (a) The name and mailing address of the applicant;
- (b) The name of if available or a description of the source or sources from which water is or will be diverted or withdrawn;
- (c) The quantity of water which is or will be used during each month of the year;
- (d) A legal description if such is readily available and other description reasonably describing the point or points of diversion or withdrawal;
- (e) A description of the method or methods of diversion or withdrawal;
- (f) The purpose or purposes for which water is or will be used;
- (g) A description of how water will be applied or consumed, including acreage and crop if the water is for irrigation and the kind and number of stock if water is for stock watering.
- (h) The best estimate reasonably possible of how much water will be returned to the source or sources, how, when, at what point or points, and with what changes in quality and temperatures;
- (i) The estimated date on which the use or uses were commenced or will be commenced;
- (j) If a use is an existing use, the history of the use, including the names of any predecessors in

title and the dates of their ownership, if known, and including a description of their uses of water;

(k) If any pre-existing right is claimed, sufficient documentation to meet the applicant's burden of demonstrating the basis of such right, including but not limited to: a description of any documents or programs upon which it is based, any statute or statutes or legal doctrine upon which the claim is based and any pertinent litigation creating or affecting the claim;

(l) If a pre-existing use or uses described, an indication whether problems of water levels and supply or problems or declining quality have been encountered in the past;

(m) The user's plan for future development of his water use or uses and related activities.

(n) The location and description of any existing or proposed water measuring, monitoring, or recording device.

4-10-162 Temporary Permits

Temporary Use and Application for Permits may be issued on forms prepared by the Administrator for time periods not to exceed one year authorizing the use of a reasonable quantity of water for the uses described and actually made while the application is pending. Approval of a Temporary Permit does not create a vested or permanent approval to use the resource(s) at reference. The Administrator may modify a Temporary Permit at his or her discretion in conformance with this Chapter.

4-10-163 Fees

Each Description of Use and application for Permit shall be accompanied by a processing fee as set forth in a Fee Schedule to be developed by the administrator and approved by Resolution of the Colville Business Council and attached as an appendix to this Chapter.

Fees for other uses will be established by and at the discretion of the Administrator and made payable upon submission of the Description of Use and Application for Permit to the Administrator. The criterion for establishing the fees will be the relative departmental expense incurred, or expected to be incurred, in processing the permit. The fees are one time payable, and do not represent a charge for the water used. The purpose of the fees is to help offset the cost of maintaining a water permit and use recording system for the Colville Tribes. Fees shall not be refunded if the permit is denied or held in pending status for any reason.

Fees for Description of Use and Application for Permit for Tribal members, tribal departments, or tribal enterprises may be waived on request to the Administrator.

4-10-164 Public Notice of and Objections to Descriptions of Use and Applications for Permits

(a) The Administrator shall publish in the Tribal Tribune, on a monthly basis, a notice of all pending applications and a statement that the application(s) described in the listing have applied for permits under this Chapter. The notice shall further state that any persons claiming that their rights may be adversely affected by the issuance of such permits may object to their issuance in accordance with the provisions for objection, notice and hearing provided elsewhere in this Chapter, and that other interested persons may also comment on the application. The Administrator may require an applicant to publish any notice of application in appropriate local weekly newspapers, to provide proof of such publication. The Administrator may also post notice of applications in the four districts of the Reservation.

(b) The Administrator shall consider all public comments received and shall make all written comments part of the administrative record.

(c) Any person or entity whose interests are or may be affected by a water use described and

applied for may within thirty (30) days from the publishing, posting, and mailing of notice that such use has been applied for file a formal objection to the issuance of the permit applied for.

(d) Objections and comments may be on forms prepared and made available by the Administrator. Objections shall include the name and mailing address of the party objecting, the name of the applicant whose application is objected to, a description of the water use objected to, a short and plain statement of reasons why a permit should not be issued or should be issued in a form different from that applied for, and any suggested conditions or other provisions which should be included in any permit granted. No written objections or comments shall be rejected if they are not on forms provided by the Administrator, so long as such objections and comments reasonably identify the proposed permit on which the comment or objection is made.

(e) Any applicant for a permit whose use is objected to may reply in writing or orally in the same manner as provided herein for objections.

(f) In addition to written objections any person or entity may comment ~~orally~~ or orally at any hearing scheduled by the Administrator upon the proposed issuance of any permit under this Chapter, provided that such person or entity shall have submitted a written comment or objection.

4-10-165 Investigation and Review of Permit Applications; Issuance of Permits

(a) In addition to gathering information from the objections, comments and hearings provided above, the Administrator shall conduct an investigation of the facts and circumstances surrounding the permit application, and shall provide notice to other tribal programs by routing any and all applications to all relevant tribal programs in accordance with the Tribes' Project Proposal Process (3P) as determined by the 3P Coordinator. The Administrator shall initiate such routing not later than five (5) days after the submission of an application. All programs receiving such notice shall provide a written response, within thirty (30) days of receipt of such notice from the Administrator; such written response shall identify other permits that may be required for the activity for which a water permit is sought, and may also recommend appropriate conditions for any permit that may be granted under this Chapter. The notice and routing procedure set forth in this subsection shall be used to comply with section 4-9-14 of this Code (Hydraulic Practices). No permit shall be issued under this Chapter unless and until the requirements of this subsection have been met.

(b) The Administrator may also solicit comments and information from the public and from appropriate governmental agencies in addition to those required under the Project Proposal Process referred to in subsection (a) above, and may otherwise gather information which will assist in issuing or denying a permit in accordance with the provisions of this subchapter.

4-10-166 Issuance or Denial of Permits

As soon as possible after objections and hearings and after a reasonable period for public comment shall have passed, as provided above, and not more than ninety (90) days after the filing of a Description of Use and Application for Permit, the Administrator shall review the comments and information gathered with respect to a specific application and then deny a permit or issue a permit in the form provided for in the subchapter on Water Permits under this Chapter dealing with the form and effect of permits.

4-10-167 through 4-10-199 [RESERVED]

WATER PERMITS

4-10-200 Form

Water permits issued in accordance with this Chapter shall be on a form standardized by the Water Administrator.

4-10-201 Information Contained

Each permit shall include:

- (a) The name and mailing address of the permittee;
- (b) The name of if available or a description of the water source(s) from, and Resources Management Units (RMU'S) from which water is or will be diverted or withdrawn;
- (c) The quantity of water which may be used during each month of the year and the maximum instantaneous rate of diversion or withdrawal if appropriate;
- (d) The legal description if such is readily available or other description reasonably describing the point or points of diversion or withdrawal;
- (e) A description of the method or methods of diversion or withdrawal;
- (f) The purpose or purposes for which water is or will be used;
- (g) A description of how water may be applied or consumed, including acreage and crop if the water is for irrigation and the kind and number of stock if water is for stockwatering;
- (h) The approximate date upon which the use (or uses) permitted has been or will be commenced;
- (i) Acknowledgement of amount of fees paid;
- (j) In addition, the water permit may contain such other information as is deemed necessary and appropriate.

4-10-202 Conditions

Each water permit issued pursuant to this Chapter shall contain whatever conditions are necessary to insure adequate quality and quantities of water to otherwise further the purposes, policies and guidelines contained within this Chapter, and to assist in the effective administration of this Chapter. These may include among other things conditions concerning:

- (a) The source from which water may be withdrawn;
- (b) The quantity of water which may be withdrawn during any particular time;
- (c) The point(s) of diversion or withdrawal;
- (d) The method(s) of diversion or withdrawal;
- (e) The purposes for which water may be used;
- (f) The method of water application;
- (g) The location and purpose of application, including acreage for crops and number of stock for stock watering;
- (h) The quantity and quality of return flow;
- (i) The time period(s) in which water may be used;
- (j) Schedules for withdrawal or diversion, including optional rotation schedules;
- (k) Provisions for surface or ground water storage of surplus flows;

- (l) Provisions for increasing the efficiency of diversion or withdrawal and application;
- (m) Provisions for maintaining minimal levels for fish, wildlife, recreational and aesthetic values;
- (n) Provisions for insuring minimum pumping and diversion levels with respect both to surface and underground water;
- (o) Provisions designed to maintain head and pressure in surface and underground water;
- (p) Provisions designed to prevent or reduce obstruction or surface and underground water;
- (q) Provisions designed to prevent or reduce obstruction of fish runs;
- (r) Provisions designed to minimize pollution and thermal degradation;
- (s) Provisions designed to insure optimum recharge of aquifers;
- (t) Provisions designed to prevent or reduce loss from losing streams and aquifers;
- (u) Provisions designed to define the limit interbasin transfers from shifting aquifer boundaries;
- (v) Provisions for exceeding safe yield determination from groundwater sources on a short term basis during drought or for other reasons by the Administrator, including where possible guidelines or a schedule for restoration of groundwater elevations to pre-mining, or pre-drought levels;
- (w) Provisions designed to prevent or reduce interference between competing users or water sources whether above or below ground;
- (x) Provisions to insure long term development.
- (y) Notice of penalties for misuse or violation of permit terms or of this Chapter, which shall be set forth in the Liquidated Damage Schedule;
- (z) Provisions to prevent interference with Tribal administration of water;
- (aa) Provisions for monitoring, measuring, and reporting;
- (bb) Other provisions necessary to ensure conformity with this Chapter and actions taken hereunder.
- (cc) Every permit issued under this Chapter shall contain the condition that no use or other action affecting the waters in question may be made unless the applicant consents to such reasonable entry upon his land as is necessary for the purpose of administering this Chapter.

4-10-203 Effect

A water permit issued under this Chapter constitutes Tribes' permission to use the waters of the Colville Reservation, subject to the terms and conditions of the permit, to this Code, and to actions taken pursuant to this Code. No water permit issued hereunder shall be construed as creating or recognizing any right than Tribal permission to use water nor shall any permit ripen into any interest other than such permission.

4-10-204 Revocability

(a) Unless otherwise indicated, water permits issued under this Chapter are revocable in accordance with the policies, purposes, guidelines and procedures established in this Chapter.

(b) Notwithstanding subsection (a) above, the Administrator may, at his option or upon application, propose for approval by the full Colville Business Council the granting of permits for specific periods of time, permits revocable or terminable only upon stated conditions, and other forms of permits providing varying degrees of permanence. Such permits may be conditioned upon payment or consideration and contain other Contractual terms.

4-10-205 Modification

Water permits may be modifiable in accordance with the procedures provided in this Chapter.

WELL DRILLING

4-10-206 Well Drilling

(a) Purpose: The drilling, making or constructing of wells within the Colville Reservation is an activity of vital interest to the public. This subchapter, sections 4-10-206 through 4-10-221, is adopted to protect the public health, welfare, and safety by providing for the regulation, permitting, and approval of well contractors and operators and for the regulation of well design and construction.

4-10-207 Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Abandoned well" means a well that is unused, unmaintained, and is in such disrepair as to be unusable.

(b) "Constructing a well" or "construct a well" means:

- (1) Boring, digging, drilling, or excavating a well;
- (2) Installing casing, sheeting, lining, or well screens, in a well;
- (3) Drilling a geotechnical soil boring; or
- (4) Installing an environmental investigation well.

(c) "Constructing a well" or "construct a well" includes the alteration of an existing well.

(d) "Decommission" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifers.

(e) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert ground water for the purpose of facilitating construction, stabilizing a landslide, or protecting an aquifer.

(f) "Environmental investigation well" means a cased hole intended or used to extract a sample or samples of ground water, vapor, or soil from an underground formation and which is decommissioned immediately after the sample or samples are obtained. An environmental investigation well is typically installed using direct push technology or auger boring and uses the probe, stem, auger, or rod as casing. An environmental investigation well is not a geotechnical soil boring.

(g) "Geotechnical soil boring" or "boring" means a well drilled for the purpose of obtaining soil samples or information to ascertain structural properties of the subsurface.

(h) "Ground water" means all waters that exist beneath the land surface or beneath the bed of any

stream, lake or reservoir, or other body of surface water whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves, including those groundwaters defined in section 4-10-4 (a). There is a recognized distinction between natural ground water and artificially stored ground water

(i) “Instrumentation well” means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes borehole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

(j) “Monitoring well” means a well designed to obtain a representative ground water sample or designed to measure the water level elevation in either clean or contaminated water or soil.

(k) “Observation well” means a well designed to measure the depth to the water level elevation in either clean or contaminated water or soil.

(l) “Operator” means a person who (a) is employed by a well contractor; (b) is licensed by the State of Washington; or (c) who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

(m) “Owner” or “well owner” means the person, firm, partnership, copartnership, corporation, association, or other entity who owns the property on which the well is or will be constructed.

(n) “Pollution” and “contamination” means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the Colville Reservation, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the Colville Reservation as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life

(o) “Remediation well” means a well intended or used to withdraw ground water or inject water, air (for air sparging), or other solutions into the subsurface for the purpose of remediating, cleaning up, or controlling potential or actual ground water contamination.

(p) “Resource protection well” means a cased boring intended or used to collect subsurface information or to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, remediation wells, environmental investigation wells, vapor extraction wells, and instrumentation wells.

(q) “Resource protection well contractor” means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded, engaged in the business of constructing resource protection wells or geotechnical soil borings.

(r) “Water well” means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering, or withdrawal of ground water.

(s) “Water well contractor” means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded, engaged in the business of constructing water wells.

(t) “Well” means water wells, resource protection wells, dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil, natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for

inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

(u) "Well contractor" means a resource protection well contractor and a water well contractor.

4-10-208 Compliance Enjoined

It is unlawful:

(a) For any person to supervise, construct, alter, or decommission a well without complying with the provisions and the rules for well construction adopted pursuant to this subchapter;

(b) For any person to cause a well to be constructed in violation of the standards for well construction established by this section and rules adopted by the Administrator pursuant to this section;

(c) For a prospective water well owner to have a water well constructed without first obtaining a water use permit under this Chapter;

(d) For any person to construct, alter, or decommission a well unless the fees required by section 4-10-213 have been paid;

(e) For a person to tamper with or remove a well identification tag except during well alteration; and

(f) For any person to contract to engage in the construction of a well or to act as a well operator without first obtaining a permit pursuant to this subchapter.

4-10-209 Powers of Administrator

The Administrator shall have the power:

(a) To issue, deny, suspend or revoke permits pursuant to the provisions of this subchapter;

(b) At all reasonable times, to enter upon lands for the purpose of inspecting, taking measurements from, or tagging any well, constructed or being constructed;

(c) To call upon or receive professional or technical advice;

(d) To adopt rules governing well construction and permitting of operators. The rules adopted by the Administrator may include, but are not limited to:

(1) Standards for the construction and maintenance of wells and their casings;

(2) Methods of capping, sealing, and decommissioning wells to prevent contamination of ground water resources and to protect public health and safety;

(3) Methods of artificial recharge of ground water bodies and of construction of wells which insure separation of individual water bearing formations;

(4) Requirements for the filing of notices of intent, well reports, and the payment of fees;

(5) Reporting requirements of operators and well contractors;

(6) Limitations on well construction in areas identified by the department as requiring intensive control of withdrawals in the interests of sound management of the ground water resource;

(e) To require the operator in the construction of a well and the property owner in the maintenance of a well to guard against waste and contamination of the ground water resources;

(f) To require the operator to place a well identification tag on a new well and on an existing well on which work is performed after the effective date of rules requiring well identification tags and to place or require the owner to place a well identification tag on an existing well;

(g) To require the well owner to repair or decommission any well:

(1) That is abandoned, unusable, or not intended for future use; or

(2) That is an environmental, safety, or public health hazard.

4-10-210 Prior Notice of Well Construction, Reconstruction, or Decommissioning

A property owner or the owner's agent shall notify the Administrator of his or her intent to begin well construction, reconstruction, or decommissioning procedures at least seventy-two hours in advance of commencing work. The notice shall be submitted on forms provided by the Administrator and shall be accompanied the fees referenced in section 4-10-213. The notice shall contain the name of the owner of the well, location of the well, proposed use, approximate start date, well contractor's or operator's name and license number, company's name, and other pertinent information as prescribed by rule of the Administrator. Rules of the Administrator shall also provide for prior telephonic notification by well contractors or operators in exceptional situations. The Administrator shall issue a receipt indicating that the notice required by this section has been filed and the fees required have been paid not later than three business days after the Administrator has received the notice and fees.

4-10-211 Modification of construction standards

The Administrator by rule shall adopt procedures to permit a well operator to modify construction standards to meet unforeseen circumstances encountered during the construction of a well.

4-10-212 Reports of Well Construction or Alteration

(a) A well contractor shall furnish a well report to the Administrator within thirty days after the completion of the construction or alteration of a well by the contractor. The Administrator, by rule, shall prescribe the form of the report and the information to be contained therein. (b) In the case of a dewatering well project:

(1) A single well construction report may be submitted for all similar dewatering wells constructed with no significant change in geologic formation; and

(2) A single well decommissioning report may be submitted for all similar dewatering wells decommissioned that have no significant change in geologic formation.

4-10-213 Fees

(a) Effective ninety (90) days after the effective date of this subchapter, a fee is hereby imposed on each well constructed on the Colville Reservation. The Administrator shall provide a receipt for all fees paid.

(b) The fee for one new water well, other than a dewatering well, with a minimum top casing diameter of less than twelve inches is one hundred dollars.

(c) The fee for one new water well, other than a dewatering well, with a minimum top casing diameter of twelve inches or greater is two hundred dollars.

(d) The fee for a new resource protection well, except for an environmental investigation well, is forty dollars for each well.

(e) The fee for an environmental investigation well in which ground water is sampled or measured is forty dollars for construction of up to four environmental investigation wells per project, ten dollars for each additional environmental investigation well constructed on a project with more than four wells. There is no fee for soil or vapor sampling purposes.

(f) The combined fee for construction and decommissioning of a dewatering well system shall be forty dollars for each two hundred horizontal lineal feet, or portion thereof, of the dewatering well system.

(g) The fees imposed by this section shall be paid at the time the notice of well construction is submitted to the Administrator. The Administrator by rule may adopt procedures to permit the fees required for resource protection wells to be paid after the number of wells actually constructed has been determined. The Administrator shall refund the amount of any fee collected for wells, borings, probes, or excavations as long as construction has not started and the Administrator has received a refund request within one hundred eighty days from the time the Administrator received the fee. The refund request shall be made on a form provided by the Administrator.

4-10-214 Violations—Cease and Desist Orders

Notwithstanding and in addition to any other powers granted to the Administrator, whenever it appears to the Administrator that a person is violating or is about to violate any of the provisions of this section, the Administrator may cause a written regulatory order to be served upon said person either personally, or by registered or certified mail delivered to the addressee only with return receipt requested and acknowledged by him or her. The order shall specify the provision of this chapter, and if applicable, the rule adopted pursuant to this section alleged to be or about to be violated, and the facts upon which the conclusion of violating or potential violation is based, and shall order the act constituting the violation or the potential violation to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable time. An order issued under this chapter shall become effective immediately upon receipt by the person to whom the order is directed, and shall become final unless review thereof is requested as provided in this section.

4-10-215 Remedies for Non-complying Wells

(a) The Administrator may order a well contractor or well operator to repair, alter, or decommission a well if the Administrator demonstrates that the construction of the well did not meet the standards for well construction in effect at the time construction of the well was completed.

(b) The Administrator may not issue an order pursuant to this section:

(1) For wells for which construction has been substantially completed before the effective date of this subchapter, more than six years after construction has been substantially completed; or

(2) For wells for which construction has been substantially completed before the effective date of this subchapter, more than three years after construction has been substantially completed. For purposes of this subsection, “construction has been substantially completed” shall mean the state of completion reached when an improvement upon real property may be used or occupied for its intended use.

(c) Subsection (b) of this section shall only apply to a well for which the notice of construction and the report have been filed with the Administrator.

4-10-216 Water Well Driller’s Qualifications and Well Construction Permit

A person shall be qualified to drill wells when they possess a Washington State well driller’s license. Well drillers shall submit copies of their licenses to the Water Administrator upon request

and upon license renewal thereafter. Upon receipt of a license the Water Administrator shall issue within five working days a permit to engage in well construction activities on the Colville Reservation. Persons who perform labor or services for a well driller are exempt from permit requirement so long as they are under the direct supervision of the permitted well driller. Each well driller or contractor shall possess an individual permit. A person shall be qualified to drill wells, and the Administrator shall issue a permit therefore, only when the person:

(a) Has submitted a completed permit application to the Administrator on forms provided by the Administrator and has paid to the Administrator the application fee determined by rule adopted pursuant to this section; and

(b) Has the field experience and educational training required by rule adopted by the Administrator pursuant to this section. The Administrator may require an applicant to demonstrate field experience and training by means of a field examination.

4-10-217 Permits—Duration—Renewal—Failure to renew, procedure—Conditional licenses

(a) Permits issued pursuant to this chapter shall be renewed every two years. A permit shall be renewed upon payment of a renewal fee and completion of continuing education required by rule adopted by the Administrator. If a permittee fails to submit an application for renewal, the renewal fee, an

d proof of completion of the required continuing education, the permit shall expire at the end of its effective term.

(b) A person whose permit has expired must apply for a new permit as provided in this chapter. The Administrator may waive any requirement for a written examination and on-site testing for a person whose permit has expired.

© The Administrator may refuse to renew a permit if the permittee has not complied with an order issued by the department or has not paid a penalty imposed in accordance with this chapter, unless the order or penalty is under appeal.

(d) The Administrator may issue a conditional permit to enable a former permittee to comply with an order to correct problems with a well.

(e) No permit under this chapter shall be required of:

(1) Any individual who personally constructs a well on land which is owned or leased by the individual or in which the individual has a beneficial interest as a contract purchaser and is used by the individual for farm or single-family residential use only. An individual who constructs a well without a permit pursuant to this subsection shall comply with all other requirements of this section and rules adopted by the Administrator, including but not limited to, well construction standards, payment of well construction fees, and notification of well construction required by this section. An individual without a permit may construct not more than one well every two years pursuant to the provisions of this subsection.

(2) An individual who performs labor or services for a well contractor in connection with the construction of a well at the direction and under the supervision and control of a permitted operator who is present at the construction site.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-218 Actions against permits—Grounds—Duration

(a) In cases other than those relating to the failure of a permittee to renew a permit, the Water Administrator may suspend or revoke a well construction permit issued pursuant to this section for any of the following reasons:

- (1) For fraud or deception in obtaining the well construction permit;
- (2) For fraud or deception in reporting;
- (3) For violating the provisions of this section, or of any lawful rule or regulation of the Administrator.

(b) The Administrator shall determine the length of well construction permit suspension.

(c) No person whose well construction permit is revoked shall be eligible to apply for a well construction permit for one year from the effective date of the final order of revocation.

4-10-219 Complaints against contractors or operators—Administrator's response—Review

Any person with an economic or noneconomic interest may make a complaint against any well contractor or operator for violating this section or any regulations under it to the Administrator. The complaint shall be in writing, signed by the complainant, and specify the grievances against the permittee. The Administrator shall respond to the complaint by issuance of an order it deems appropriate. Review of the order shall be subject to the General Hearings Provisions, sections 4-10-320 through 4-10-327.

4-10-220 Appeals

Any person aggrieved by an order of the Administrator including the granting, denial, revocation, or suspension of a license issued by the Administrator pursuant to this section shall be entitled to an appeal pursuant to the subchapter Appeals From Water Administrator Actions, sections 4-10-400 through 4-10-406.

4-10-221 Civil penalties—Amount and disposition

As provided in section 4-10-360 and the Liquidated Damage Schedule, the Administrator may assess a civil penalty for a violation of this section or rules or orders of the Administrator adopted or issued pursuant to it for:

- (1) Failure to submit completed start cards and well reports within the required time;
- (2) Failure to submit variance requests before construction;
- (3) Failure to submit well construction fees;
- (4) Failure to place a well identification tag on a new well; and
- (5) Minor or repairable construction problems.
- (6) Improper well construction;
- (7) Intentional and improper location or siting of a well;
- (8) Construction of a well without a required permit;
- (9) Violation of decommissioning requirements;
- (10) Repeated minor violations; or
- (11) Construction of a well by a person whose well construction permit has expired or has been suspended for not more than ninety days.
- (12) Without a well construction permit; or

(13) After the person's well construction permit has been suspended for more than ninety days or revoked.

(b) The penalty for a violation shall be not less than one hundred dollars and not more than five thousand dollars. In determining the appropriate penalty under subsection (3) of this section the Administrator shall consider whether the person.:

(1) Has demonstrated a general disregard for public health and safety through the number and magnitude of the violations;

(2) Has demonstrated a disregard for the well construction laws or rules in repeated or continuous violations; or

(3) Knew or reasonably should have known of circumstances that resulted in the violation

(c) For informational purposes, a copy of the notice of violation, resulting from the improper construction of a well, that is sent to a water well contractor or water well construction operator, shall also be sent by the Administrator to the well owner.

4-10-222 through 4-10-239 [RESERVED]

DETERMINATION OF AVAILABILITY AND NEED

4-10-240 When Proceeding Available

Whenever the Administrator determines that a water supply common to a particular area is or will be used beyond its capacity, or otherwise adversely affected, the Administrator shall initiate and prepare a Determination and Availability of Need for water in one or more Resource Management Units (RMU's) or Watershed Management Units (WMU's) as determined by the Administrator in accordance with the provisions of this subchapter.

4-10-241 Purposes

The purpose of proceeding to determine availability of and need for water under this subchapter should be: to evaluate existing and future needs dependent upon a particular supply, to compute with reasonable certainty the characteristics of a particular supply, including quantity, surface and underground levels, rates and directions of flow, rates of recharge, out-of-basin sources, pollution, thermal degradation, and other characteristics, at particular locations and times; to explore various methods for increasing supply such as storage, increased efficiency, alternatives to present uses, alternatives to activities presently requiring the consumption of water; to assist in land use planning in accordance with the policies and actions of the Confederated Tribes of the Colville Reservation; and to make available to various Tribal and other agencies and to members of the public information concerning the water in question.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-242 Water Administrator—Information Gathering

The Administrator shall initiate an investigation to gather and evaluate all available and pertinent data from whatever sources concerning the water supply and needs for water in question, to formulate proposals concerning the use of the water in question and to provide other information, alternatives, and recommendations. Such information, alternatives, and recommendations shall be contained in the report of the Administrator provided in this subchapter.

4-10-243 Administrator's Report of Determination of Availability and Need

Following investigation as provided for in this subchapter, the Administrator shall issue a report concerning the availability of and need for water in the particular area(s) at reference. Such report shall be known as a proposed Determination of Availability and Need Report, and may include the following, either as pertinent information, recommendations or mandatory provisions:

- (a) A description and map of the affected areas including a geographic and geologic description of the area studied, setting out as precisely as possible the boundaries of the area;
- (b) A general description of the water supply in the affected area, including a description of all sources and the various characteristics of the supply which are especially pertinent to present and proposed water uses and other actions within that area;
- (c) A computation of the water supply available at particular times and places;
- (d) A description of possible methods for increasing available supply;
- (e) A description of the various present and future needs for using or affecting the water supply in the area.
- (f) A description of present and proposed uses of and other actions affecting the water in question;
- (g) A description and evaluation of the need for each such present or proposed use or other action;
- (h) Alternatives for present uses which will minimize adverse effects of water use described in section 4-10-130;
- (i) A list of priorities to be observed within the affected areas;
- (j) A list of storage methods which are or may be proposed and implemented;.
- (k) A description of economic and technical methods which may be implemented to increase the efficiency of use;
- (l) A description of possible inter-basin transfers;
- (m) Assessment including quantification of water supply within the area which, although they may be subject to existing uses on an interim basis, are set aside for future Tribal and other needs;
- (n) Other information and recommendations or requirements reasonably calculated to inform the affected parties concerning the future management of the water in question.

4-10-244 Public Notice of Determination of Availability of Need

As soon as possible, and not more than thirty (30) days after the drafting of a proposed Determination of Availability and Need provided in section 4-10-243 above, the Administrator shall provide notice in the Tribal Tribune of a public meeting at which interested persons may comment concerning the proposed Determination of Availability and Need. Included in the notice shall be a description or map of the affected area, a description of related proceedings to date, and a clear statement pointing out that copies of the proposed Determination of Availability and Need shall be reasonably available to interested persons. The notice shall state that a meeting shall be held at a particular time and place not less than thirty (30) nor more than sixty (60) days after the date notice is completed.

4-10-245 Public Meeting of Determination of Availability of Need

The Administrator shall conduct a public meeting with respect to every proposed Determination of Availability and Need. Whenever possible such meeting shall be held in the affected District at an hour which is reasonably convenient. At such meetings, the Administrator shall provide a brief oral statement of the purposes of the hearing and description of the proceeding to date, including the proposed Determination. After the presentation is made by the Administrator, public comment shall be allowed. The Administrator shall ensure the affected public has an opportunity for full comment. Meetings may be continued to such times and places as are deemed appropriate upon adequate notice.

4-10-246 Proposed Final Determination of Availability and Need

(a) As soon as possible, and no more than thirty (30) days after the public meeting provided for in this subchapter, the Administrator shall prepare a final Determination of Availability and Need. The Administrator shall provide notice in the Tribal Tribune of this final Determination in the same manner as provided in this subchapter and shall indicate that copies of the Determination are reasonably available for public use.

(b) Subsequent to the issuance of a Final Determination of Availability and Need the Administrator may make a finding that revision of the final Determination of Availability and Need is required in response to information not available at the time of the original investigation.

4-10-247 Implementing Actions

(a) Upon completion of the above proceeding, the Administrator shall make reasonably available to parties requesting the same, copies of the Determination of Availability and Need made under the provisions of this subchapter.

(b) The Administrator shall prepare a Water Management Plan based on the Determination of Availability and Need; and the Water Management Plan shall be implemented upon adoption by the Business Council. The Water Management Plan for the affected Resource Management Unit (RMU) or Watershed Management Unit (WMU) shall:

(1) clearly establish goals of water quality and quantity management of surface water, precipitation and atmospheric water, and groundwater;

(2) provide specific actions for protection, preservation, enhancement and restoration of surface water, precipitation and atmospheric water, and groundwater;

(3) specify in-stream flows;

(4) specify surface water and groundwater normally allocable to withdrawal and use;

(5) identify specific measures to be taken in the management of surface waters and groundwaters to address drought including, but not limited to:

(A) limitations on the withdrawal of groundwater to maintain pumping within safe yield;

(B) forecasts, annually or as otherwise required, of water available for stream diversion;

(c) The Administrator shall grant, revoke, deny or modify permits in accordance with such the Water Management Plan; shall enter appropriate orders and take other actions authorized by this Chapter to prevent overuse and pollution in accordance with such Water Management Plan; and shall take whatever other actions are necessary and authorized by this Chapter to assist in the implementation of the Water Management Plan and of the policies set out in this Chapter.

4-10-248 Appeal

Any action taken pursuant to a decision by the Administrator pursuant to this Chapter, including Final Determination of Availability and Need, shall be in accordance with the administrative appeal procedures set for in sections 4-10-400 through 4-10-406.

TRANSFER AND LOSS OF RIGHTS

4-10-280 Transfer, Assignment and Creation of Security Interest

Permits issued under this Chapter shall not be subject to transfer, assignment, or creation of any

security interest, without an approved water permit change as described in this subchapter. Application for transfer, assignment, or creation of a security interest shall be made on forms prepared and made available by the Administrator. Such forms shall be designed to obtain information concerning any substantial changes that will or may occur as a result of the transfer, assignment or creation of a security interest. Every attempt shall be made to conform with the purpose of the subchapter on Applications for Permits under this Chapter, dealing with Description of Use and Application for permits.

4-10-281 Exchange of Claims for Permits Under this Chapter

Any person claiming any right in or to the waters of the Colville Reservation may relinquish such claim to the Colville Tribes in favor of a water permit issued under this Chapter, and the Administrator is empowered to undertake all negotiations and other actions necessary to execute such an exchange; Provided that nothing in this section shall be construed as recognizing or validating any claim to the use of any of the water of the Colville Reservation other than the right created under this Chapter.

4-10-282 Voluntary Relinquishment of Claims or Rights

Any holder or claimant of any right in or to the waters of the Colville Reservation may voluntarily relinquish all or a portion of such right to the Colville Tribes by any affirmative action indicating his intent to relinquish.

4-10-283 Loss by Nonuse

Any right to use or otherwise affect in any way the waters of the Colville Reservation, regardless of its origin, shall become void and revert, to the extent of the abandonment or nonuse, to the Colville Tribes when the holder of such right wholly or partially abandons the same, or fails, without sufficient cause, to use all or a portion of the water available under such right for a period of five consecutive years. This section shall be retroactive. "Sufficient cause" shall include:

- (a) Drought or any other unavailability of water;
- (b) Active services in the armed forces of the United States during military crisis;
- (c) Confinement in a mental institution, whether voluntary or not;
- (d) Incompetence by reason of age or mental incapacity;
- (e) Provision for future use as provided in this Chapter;
- (f) Other causes of nonuse beyond the control of the holder or holders of the right claimed.

Before such water rights may be deemed lost by nonuse or abandonment, the Water Administrator shall serve notice on the holders of such rights to appear at a hearing to be held before the Colville Environmental Quality Commission (CEQC) not less than thirty (30) days after the mailing or personal services of such notice and show cause why their rights should not be deemed void. Such notice shall set forth the basis on which a determination of nonuse or abandonment is sought. Such hearing shall be conducted in accordance with the procedures for contested cases set forth in the Administrative Procedures Act, Chapter 2-4 and Chapter 4-23 of this Code. The Administrator shall have the burden of proof by a preponderance of the evidence.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-284 Loss by Adverse Possession, Prescription, Estoppel, or Acquiescence

No rights to use water may be acquired by adverse possession, prescription, estoppel or acquiescence.

4-10-285 Outside Proceedings

No right granted under this Chapter may be reduced or taken or otherwise affected in any

procedure or determination or adjudication except as provided in this Chapter.

GENERAL HEARING PROVISIONS

4-10-320 Hearings and Notice of Hearings

Whenever not otherwise provided for in this Chapter hearings shall be held before the CEQC in the manner provided for in Chapter 2-4 Administrative Procedures Act governing notice and hearing, and Chapter 4-23 of the Colville Tribal Code. The CEQC shall be impaneled in Conformance with Chapter 4-23 of the Colville Tribal Code.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-321 Time and Place of Hearing

Whenever possible hearings shall be held in the affected District, at a time and place which is convenient for a major portion of the parties affected.

4-10-322 Continuances

Continuance shall be granted by the Administrator or the CEQC, as the case may be, when reasonably necessary to ensure adequate notice and opportunity to be heard. The granting of a continuance under this section shall not necessarily continue any stay of an enforcement action by the Administrator, and any continuance of any stay shall be evaluated in accordance with section 4-10-403 below.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-323 [Reserved]

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-324 [Reserved]

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-325 Consolidation of Hearings

Whenever possible hearings concerning proposed or existing actions, in a particular RMU or area shall be consolidated to prompt efficiency, minimize expense or hardship, and prevent duplication.

4-10-326 Recording

Whenever possible, hearing shall be recorded by mechanical means, provided, that any person may provide at his own expense for stenographic record. Requirements for contested case hearings and appeals before the CEQC are set forth in the Administrative Procedures Act.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-327 Decision

Whenever a decision is required in accordance with the provisions of this Chapter following a public hearing, the Administrator shall cause such decision to be published and served upon the parties.

VIOLATIONS, ENFORCEMENT AND CIVIL PENALTIES

4-10-360 Civil Penalties

Any person or government agency who diverts and uses or withdraws any waters of the Reservation without first having obtained a permit from the water administrator, or any person or government agency who fails to follow or carry out any of the requirements or conditions as are made part of such permit, or otherwise violates the provisions of this Chapter, is subject to a civil penalty of up to \$500 per day for each such violation, to be assessed proportionately to the severity of the violation. In the case of non-payment, the Administrator may levy an additional penalty of not more than \$500 after 30 days of non-payment and may take all necessary steps to ensure collection subject to the penalty appeal process as described in this subchapter. The Administrator shall develop a schedule of penalties for violations of the various provisions of this

Chapter, which is subject to approval of the Colville Business Council.

4-10-361 Notice of Violation

If the Water Administrator determines that a person has violated a provision of this Chapter or any conditions of an approved permit, he or she shall immediately issue a notice in writing describing the nature of the violation including steps that must be taken to remedy the violation and the amount of any civil penalty imposed, and serve the notice either by certified mail or personally on the alleged violator.

4-10-362 Appeal

Any person incurring any penalty under this subchapter may appeal the same to the Commission as set forth in the subchapter on Appeals. An appeal shall be filed within thirty (30) days after receipt of a notice imposing any penalty. The penalty imposed shall become due and payable thirty (30) days after receipt of the notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this subchapter is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-363 Public Nuisance

If a civil penalty is imposed pursuant to the provisions of this subchapter and the person incurring the penalty continues to operate a diversion or other such works or projects utilizing the waters of the reservation without fully complying with the provisions of this Chapter, the diversion, its works or projects are hereby declared a public nuisance and shall be subject to abatement as such.

4-10-364 Action to Collect Penalty

If the amount of any penalty is not paid within thirty (30) days after it becomes due and payable, the Office of the Reservation Attorney, upon request of the Administrator, with concurrence of the Director of the Environmental Trust Department, shall bring an action in the name of the Confederated Tribes of the Colville Reservation in the Colville Tribal Court to recover such penalty

4-10-365 Liability for Damages

Any person or governmental agency operating a diversion or using waters of the reservation without a permit as required by this Chapter or in violation of any term of any permit issued pursuant to this Chapter shall be liable in a civil action brought by the Colville Tribes in the Colville Tribal Court for any damage the Tribes may incur because of the illegal action, including any costs of monitoring, investigation, laboratory and any other fees which shall include attorneys fees.

APPEALS FROM WATER ADMINISTRATOR ACTIONS

4-10-400 Filing

Any person subject to a final order of the Administrator may appeal such order to the Colville Environmental Quality Commission (CEQC). An appeal is taken by filing with the Commission a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the CEQC when it is delivered to the Secretary of the CEQC at which time the date and time of filing shall be entered on the notice by the Secretary.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-402 Time For Filing

An appeal must be filed as provided in section 4-10-400 within thirty (30) days of the date of the decision or order appealed from, or it shall be dismissed by the CEQC.

4-10-402 Transmittal of Record

Whenever an appeal is filed the Administrator shall transmit to the Secretary of the CEQC all papers and other material constituting the records relating to the action appealed from to the

CEQC.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-403 Stay

An appeal stays all actions by the Water Administrator seeking enforcement of or compliance with the order or decision appealed from, unless the Administrator demonstrates to the CEQC that a stay would , imminent peril to life or property. In that case, the Administrator’s action shall not be stayed except by order of the CEQC or the Colville Tribal Court, issued upon application of the party seeking the stay and due cause shown, after notice to the Administrator.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-404 Decision

The CEQC shall make its decision within thirty (30) days after it receives written notice of a timely administrative appeal provided that the CEQC may reasonably extend the time for a decision with the consent of the parties to the appeal or upon a finding of fact that such an extension is necessary for proper consideration of the appeal.

4-10-405 Procedures

Any appeal filed pursuant to this section shall follow the procedures for contested cases under sections 2-4-12 through 2-4-17 of Chapter 2-4, the Colville Administrative Procedure Act and Chapter 4-23 of the Colville Tribal Code.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-406 Finality

Every decision or order of the Water Administrator that is reviewable by the CEQC under section 4-10-400 shall not be considered a final order or decision subject to judicial review. Exhaustion of all available administrative remedies, including any administrative appellate review, is a jurisdictional requirement to judicial review.

JUDICIAL REVIEW

4-10-440 Decisions Subject to Review

Any party to a decision of the CECQ arising under this Chapter may obtain review by the Colville Tribal Court by filing a timely petition for review pursuant to the procedure set forth in section 2-4-20 of Chapter 2-4, the Colville Administrative Procedure Act and Chapter 4-23 of the Colville Tribal Code. The petition for review shall briefly set forth that portion of the decision appealed from, the statutory reference(s) relied upon to support the relief requested and which standard of review set forth in CTC 2-4-20(g) provides the basis for the petition.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-624)

4-10-441 Contents of Petition

The petition for review shall briefly set forth that portion of the decision appealed from, the statutory reference(s) relied upon to support the relief requested and which standard of review set forth in CTC § 2-4-20(g) provides the basis for the petition.

PROHIBITED ACTS

4-10-470 Waste of Water Prohibited

No waters of the Colville Reservation shall be wasted, including those that have been withdrawn, diverted or otherwise used in compliance with this Chapter. The diversion or withdrawal of reasonable quantities of water in connection with construction, development, testing or repair of diversion and withdrawal works shall not be construed as waste. In the event of inadvertent loss of water owing to defects in equipment for diversion and withdrawals, such shall not be construed a waste if reasonable diligence is shown by the permittee in effecting necessary repair.

4-10-471 Additional Penalties

In addition to the penalties imposed under section 4-10-360, violations of this subchapter shall subject the person(s) or entity(ies) responsible to forfeiture of all rights to water administered under this Chapter.

The Administrator shall develop a schedule of penalties for all violations of this Chapter, subject

to approval of the Colville Business Council.

4-10-474 Overstatement of Use

Any person or entity who shall willingly, when providing information required by this Chapter, with respect to Descriptions of Use and Applications for Permits or otherwise, misstate material facts, shall be liable for a civil offense and subject to forfeiture of all rights thereunder, and to a fine not more than \$500.00.

MISCELLANEOUS PROVISIONS

4-10-500 Severability

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remaining provisions of this Chapter shall be given effect to the maximum extent possible without the invalid provision or application.

4-10-501 Construction

Doubtful provisions or applications of this Chapter shall be reasonably construed so as to give effect to its purposes.

4-10-502 Rules and Regulations

The Administrator is authorized and directed to adopt such rules and regulations as he or she deems necessary to implement the objectives and purposes of this Chapter. Such rules and regulations shall not be valid until they have been submitted to and approved by the Colville Business.

4-10-503 Review of Authority

The Administrator shall, from time to time, review the authority granted under this Chapter and propose amendments and additions hereto to the Colville Business Council in order to improve administration under this Chapter.

4-10-504 Optional Charge

The time limits provided in various places of this Chapter may be extended, for good cause shown, by the agency before whom the proceeding is pending when the ends of justice so require. Time limitations established in other Chapters, including but not limited to the Administrative Procedures Act, may only be modified in accordance with the provisions of the other Chapters.

4-10-505 Representation

Parties appearing at hearings and other proceedings provided for in this Chapter may be represented by legal counsel if they desire.

4-10-506 through 4-10-539 [RESERVED]

PARTICIPATION BY THE DEPARTMENT OF THE INTERIOR

4-10-540 Enforcement Assistance

The Administrator or Director of Environmental Trust may seek funding support and technical and staff assistance from the Department of Interior in the administration and enforcement of this Chapter and permits issued hereunder.

(Chapter 4-10 Amended 6/15/06, Certified 6/19/06, Resolution 2006-301)
(Chapter 4-10 Adopted 5/17/90, Resolution 1990-306)