

**THE SHOSHONE-PAIUTE TRIBES
OF THE DUCK VALLEY INDIAN RESERVATION**

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**ORDINANCE
of the
GOVERNING BODY
of the
SHOSHONE-PAIUTE TRIBES
of the
DUCK VALLEY INDIAN RESERVATION**

ORDINANCE NUMBER 2012-SPO-02

An Ordinance Adopting the Shoshone Paiute Tribal Water Code

BE IT ENACTED BY THE BUSINESS COUNCIL OF THE SHOSHONE-PAIUTE TRIBES THAT,

WHEREAS, This organization is an Indian Organization known as the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation defined under the Indian Reorganization Act of June 18, 1934, as amended, to exercise certain rights of home rule and to be responsible for the promotion of economic and social welfare of its tribal membership; and

WHEREAS, The Shoshone-Paiute Tribes adopted a Constitution and Bylaws pursuant to the Indian Reorganization Act in order, among other things, to secure and develop the lands and resources of the Tribes; and

WHEREAS, On March 30, 2009, Congress enacted Public Law 111-11, Subtitle C, Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement, which among other things approved the "Agreement to Establish the Relative Water Rights of the Shoshone-Paiute Tribes of the Duck Valley Reservation and the Upstream Water Users, East Fork Owyhee River" and authorized appropriations to implement the settlement; and

WHEREAS, Under the terms of the Shoshone-Paiute Tribes Water Rights Settlement, the Tribe is required to enact a water code to administer tribal water rights within three (3) years of the date of enactment; and

WHEREAS, The Business Council appointed a five-member Water Committee for the purpose of working with Legal Counsel and water consultants in drafting and completing a water code and for other purposes designated by the Business Council; and

WHEREAS, Two public scoping meetings were held to review drafts of the water code and to receive comments;

WHEREAS, The Water Committee has recommended adoption of the Shoshone-Paiute Tribes Water Code which is attached hereto;

WHEREAS, The Shoshone-Paiute Tribal Business Council has reviewed the Water Code and believes it is in the best interest of the Tribes;

NOW THEREFORE BE IT ENACTED AS FOLLOWS:

1. That the Shoshone-Paiute Tribal Business Council hereby adopts the attached Shoshone-Paiute Tribes Water Code as the law of the Shoshone-Paiute Tribes.
2. The Chairman is authorized to sign any documents necessary to carry out this ordinance.

CERTIFICATION

It is hereby certified that the Shoshone-Paiute Business Council is composed of 6 Council Members, of whom 5 constituting a quorum and a Chairman were present at a meeting held on the 16th day of March, 2012, and that the foregoing Ordinance was adopted by an affirmative vote of 5 FOR, 0 AGAINST and 0 ABSTENTIONS, pursuant to the authority contained in Article VI, Section 1(a) & (k) of the Constitution of the Shoshone-Paiute Tribes approved April 20, 1936.



TERRY GIBSON, Tribal Chairman



ANGELE SABORI, Executive Secretary

APPROVED:

SUPERINTENDENT,
Eastern Nevada Field Office
Bureau of Indian Affairs

Date

THE
SHOSHONE PAIUTE TRIBES
WATER CODE

Ordinance 2012-SPO-02

Adopted March 16, 2012

Owyhee, Nevada

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CHAPTER ONE. General Provisions.

1.1 Title. This Ordinance shall be known as the Shoshone-Paiute Tribes Water Code and may be cited as such, and shall be referred to in this Ordinance as the Water Code.

1.2 Jurisdiction and Authority. It is hereby declared that all surface waters, springs and groundwater, and all stored water, within the boundaries of the Duck Valley Reservation, and water stored in Wild Horse Reservoir, are subject to the exercise of the Shoshone-Paiute Tribes sovereign power to preserve, protect, allocate and administer.

1.3 Applicability of Ordinance.

The provisions of this Water Code are applicable to the Shoshone-Paiute Tribes, and every individual, firm, municipality, community, organization or corporation who uses water within the Duck Valley Indian Reservation. From and after the enactment of this Water Code, there shall be no diversion of surface waters or withdrawal of groundwater within the Duck Valley Indian Reservation, nor shall any means of diversion, including wells, be maintained or constructed unless an appropriate application to use such waters has been made and a permit has been issued pursuant to the provisions of this Water Code.

1.4 Findings.

In enacting this Water Code, the Shoshone-Paiute Business Council makes the following findings:

1.4.1 Water is essential to the cultural and spiritual lives of the Shoshone-Paiute People, to the economic self-sufficiency and self-determination of the Shoshone-Paiute Tribes, and to the homeland purpose of the Duck Valley Indian Reservation.

1.4.2 The Shoshone-Paiute Tribes have quantified reserved Indian water rights in Idaho under the Revised Consent Decree Approving Entry of Partial Decrees Determining the Rights of the United States as a Trustee for the Benefit of the Shoshone-Paiute Tribes to the Use of Water in the Snake River Basin Within Idaho entered in the Snake River Adjudication by the Fifth Judicial District on December 13, 2006. The Tribes also have reserved Indian water rights in Nevada under the Agreement to Establish the Relative Water Rights of the Shoshone-Paiute Tribe of the Duck Valley Indian Reservation and the Upstream Water Users, East Fork Owyhee River, ratified by the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Right Settlement, Pub. L. 111-11 (Mar. 30, 2009), subject to entry of a final judicial decree.

1.4.3 The Duck Valley Indian Reservation is not allotted and Reservation lands are held in trust by the United State for the benefit of the Shoshone-Paiute Tribes. Therefore, the Shoshone-Paiute Tribes have full jurisdiction and control over all water uses on the Duck Valley Indian Reservation.

1.4.4 The most significant uses of water on the Reservation are domestic and stock water uses, small municipal and commercial uses, irrigation uses within the Duck Valley

Irrigation Project and reservoir storage and in-stream flows for fisheries. The Tribes desire to protect these current uses, while also planning for new and expanded uses.

1.4.5 The Shoshone-Paiute Tribes expect significant improvements and expansion of existing uses and construction of new water projects to occur in the future as a result of the final settlement of the Tribe's water rights. Therefore, this water code will be an evolving document that will be periodically updated and amended as circumstances change.

1.5 Purposes. In order to preserve and protect the water resources of the Reservation for the present and future use of the Shoshone-Paiute Tribes and their members, this Water Code is intended:

1.5.1 To provide an orderly system for the sustainable use and development of the water resources of the Reservation;

1.5.2 To protect the water resources of the Reservation from over-use and from activities that may harm the resource;

1.5.3 To insure that all residents of the Reservation have an adequate quantity of clean water for domestic purposes and other uses;

1.5.4 To ensure that all water users within the Duck Valley Irrigation Project receive an equitable allocation of water

1.5.5 To protect and conserve the quantity and quality of the water resources through appropriate management and best practices; and

1.5.6 To insure that the Shoshone-Paiute Tribes manage the water resources of the Reservation to fulfill the homeland purpose of the Reservation and to protect the Tribes' sovereign authority and jurisdiction over its water resources.

CHAPTER TWO. Water Resources Board.

2.1 Establishment of Board. There is hereby established the Shoshone Paiute Water Resources Board that shall be responsible for the management and use of surface water, springs, groundwater, and storage water on the Duck Valley Reservation, and Wild Horse Reservoir off the Reservation. The Board also shall be responsible for management and operation of the Duck Valley Irrigation Project in accordance with federal and tribal law.

2.2 Authority of Board. The Shoshone Paiute Water Resources Board shall operate under the Shoshone-Paiute Business Council and shall be responsible for carrying out the purposes of this Water Code. The Board shall also recommend to the Business Council the adoption of regulations to implement the provisions of the Water Code, and appropriate amendments to the Water Code.

2.3 Appointment and Term. The Board shall consist of five members appointed by the Shoshone Paiute Business Council for three year terms. On initial appointment, two members shall be named for three year terms, two members shall be named for two year terms, and one member shall be named for a one year term. Subsequent appointments shall be for full three year terms. A member may be reappointed upon expiration of his/her term. Vacancies shall be filled through the expired term.

2.4 Qualifications. Board members shall be representative of the water users on the Reservation, or shall have special expertise relevant to the management of water resources.

2.5 Removal for Cause. A Board member can be removed by the Business Council prior to termination of his/her term only for good cause, said cause being action or inaction by the member that endangers public health and safety or involves a conflict of interest as defined herein.

2.6 Conflict of Interest. No Board member shall vote on a decision that could have a material financial effect personally or directly upon such member, his business or a member of his immediate family. A member shall disclose to the Board any such conflict prior to the time for voting, and shall not participate in the discussion of the issue upon which the vote will be taken.

2.7 Quorum. Three members of the Board shall constitute a quorum, and no business of the Board can be discussed or acted upon in the absence of such quorum. A member who discloses a conflict of interest pursuant to 2.6 shall not count in determining whether a quorum is present for discussion and action on the issue.

2.8 Chairperson and Meetings. The Board shall select a member to serve as Chairperson. The Chairperson shall preside over meetings and shall have the right to vote on any issue as to which he or she has no conflict of interest.

2.8.1 General Meetings. The first meeting shall be held within 90 days from the date of enactment of this Code, and shall thereafter be held on a schedule adopted by the Board at its initial meeting. Notice of meeting dates and times shall be published in the Tribal newspaper and posted at the Tribal Headquarters building.

2.8.2 Special Meetings. Special meetings may be held at the call of the Chairperson, providing that each member is provided notice of said meeting at least 72 hours prior to the time set for the meeting and provided that the specific agenda items to be considered are identified in the notice. No business other than that identified in the notice of special meeting can be conducted at a special meeting. The same quorum rule that governs regular meetings shall apply to special meetings.

2.9 Duties and Authority of the Board. The Board shall:

2.9.1 Oversee and generally supervise the development of the enforcement of the Water Code and implementing regulations, including the development and implementation of a budget for implementing and enforcing the Water Code.

2.9.2 Conduct meetings and special meetings.

2.9.3 Consider a comprehensive reservation water plan developed by the Director, and after holding one or more public meetings at which all interested parties shall be given the opportunity to advise the Board on the proposed plan, recommend to the Shoshone-Paiute Tribes Business Council the adoption of a final plan.

2.9.4 Review appeals from approval or disapproval of water use permits by the Water Resources Director.

2.9.5 Hear appeals of disputes regarding other water use decisions of the Director.

2.9.6 Compel production of documents or other evidence and compel attendance of witnesses at hearings conducted by the Board.

2.9.7 Adopt rules, regulations, permit forms and other forms to implement and exercise its authority and that of the Director.

2.9.8 Recommend amendments to the Code to the Business Council.

2.9.9 Advise the Business Council on all aspects of the Water Code and use and development of water under the jurisdiction and sovereignty of the Tribes, including entering into appropriate agreements, and otherwise cooperate with other governmental entities.

CHAPTER 3. Water Resources Director.

3.1 Establishment of Position of Director. There is hereby established the position of Water Resources Director who shall be appointed by the Shoshone Paiute Tribes Business Council to serve as the executive and enforcement arm of the Water Code, with authority to administer and enforce the provisions of this Water Code and implementing regulations, to supervise any staff that may be authorized by the Board, and to carry out general instructions and directions from the Board. The Director is responsible directly to the Board.

3.2 Qualifications for Director. The person appointed as Water Resources Director must be a qualified water resource manager, with an appropriate background in water resource management, water rights administration, water development or engineering. The Board shall set such additional specific qualifications it deems necessary.

3.3 Duties and Authority of the Water Resources Director. The Water Resources Director shall:

3.3.1 Gather or, if necessary, develop information, data and studies related to all surface water, springs, stored water and groundwater sources on the Reservation to assist in the use and development of water resources and the administration of this code.

3.3.2 Formulate and recommend to the Board regulations necessary to implement the Water Code, including any fee structure for water permits.

3.3.3 Direct and manage the distribution of water from all natural water sources within the Reservation, including management of the Duck Valley Irrigation Project in accordance with the Duck Valley Irrigation Project Management Plan, Addendum A.

3.3.4 Determine the availability of water on the Reservation generally and on an annual basis, including determining the type of water year on an annual basis.

3.3.5 Issue water permits in accordance with Chapter 5.

3.3.6 Issue and implement orders and directives for management of water uses; impose fines for violation of such orders and directives; suspend water uses; terminate water uses.

3.3.7 Take such action as may be necessary to enforce permits and orders and directives of the Director, including: 1) issuance of citations or notices of violation; 2) actions to control the means of diversion and 3) entry upon land and inspection; 4) installation of monitoring and recording devices; and 5) imposition of fines and other reasonable means of enforcement.

3.3.8 Hear and decide disputes between water users, and complaints relating to issuance of permits and order and directives made by the Director.

3.3.9 Develop a comprehensive reservation water plan for the management, development, conservation and optimum use of the water resources within the Duck Valley Reservation for consideration by the Board. The Comprehensive Plan shall contain a description of existing and planned uses. The plan shall quantify, insofar as possible, the unused waters within the Reservation and shall set forth a plan for the allocation of such waters among the potential uses. The Comprehensive Plan shall, among other things:

Provide for the conjunctive management of surface and groundwater resources.

Include policies designed to accomplish full economic development of Reservation water resources.

Propose levels of reasonable water use that will accommodate existing water uses and future development of water resources.

Provide for measures to protect fish and wildlife and habitat, aquatic life, recreation, aesthetic beauty, water quality, and all cultural resource considerations of the Shoshone Paiute Tribes.

CHAPTER FOUR. Policies to Guide the Board and Director.

4.1 General Guiding Principles and Policies. The following general policies shall guide the use and management of water and water uses and the actions of the Water Resources Board and the Water Resources Director.

4.1.1 Water use decisions shall preserve the jurisdiction and control of the Tribes.

4.1.2 Overall water use allocation decisions will be guided by drought, normal and surplus hydrologic conditions.

4.1.3 Groundwater use will be guided by the overall condition of the aquifer, the long term perennial yield and the cumulative impacts on the groundwater resource.

4.1.4 Planning and development of water and land resources will safeguard against surface, groundwater and storage water degradation and depletion.

4.1.5 Water use decisions shall be made, keeping in mind maintenance and enhancement of the fishery and wildlife resources.

4.1.6 Water development decisions shall recognize the hydrologic connection between surface and groundwater.

4.1.7 Water resource decisions, plans, strategies or regulations shall consider the potential effect on all cultural resources of the Tribes.

4.1.8 Water allocation and development decisions shall encourage conservation of the water resource.

4.1.9 Water resources decisions shall be made to avoid any conflict between existing uses and new uses.

4.1.10 Water resources decisions shall consider the impact on wetlands and other environmentally sensitive areas of the Reservation.

4.2 Nevada Agreement and Idaho Consent Decree. All water use and water development decisions shall be consistent with the Nevada Agreement and the Idaho Consent Decree.

CHAPTER FIVE. Permit Process.

5.1 Applicability of the Permit Process.

5.1.1 This Permit Process shall apply to all water uses within the Duck Valley Reservation, except for surface water irrigation uses within the Duck Valley Irrigation Project which shall be administered by the Duck Valley Irrigation Management Plan, Addendum A to

this Water Code. All other water uses within the Project are subject to this Code, including non-irrigation water uses and all groundwater uses.

5.1.2 No permit shall be required for de minimis domestic and stock water use, provided that an application shall be filed as set forth in 5.2 for such use for notification purposes.

5.2 Application for Permit for Existing Water Use and New Use.

Within 180 days after enactment of this Code, all persons desiring to continue existing uses of surface or groundwater, including groundwater wells, must file an Application for Permit for Existing Water Use with the Director as required by this Chapter. After such date, it shall be unlawful to continue an existing use, or initiate any new use or take any other actions substantially affecting the waters of the Shoshone Paiute Tribes except pursuant to a permit issued under this Chapter. An Application for Permit for Existing Water Use and Application for New Use shall comply with section 5.3.

5.3 Contents of Application. An Application, sworn to by the applicant on a form to be provided by the Director shall include the following information, in addition to any other information the Director may require by regulation:

Name and mailing address of applicant

Name of source from which water is used or from which will be diverted or withdrawn;

Quantity of water which is or will be used during each month of the year;

A description adequate to identify the point or points of diversion or withdrawal;

Description of the method or methods of diversion or withdrawal;

Purpose or purposes for which water is or will be used;

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;

The date on which the use or uses were commenced or will be commenced;

If the use is an existing use, the history of the use;

If a pre-existing use is involved, a statement of whether problems of water levels and supply, or problems of declining quality have been encountered in the past.

5.4 Fees. Each application shall be accompanied by any filing fee established by the Water Resources Board.

5.5 Public Notice of Application for Existing Uses. Within 60 days after the deadline for filing applications for existing uses, the Director shall publish a list of the applications, along with all pertinent information, in the ShoPai News and shall post notices in three conspicuous places on the Reservation.

5.5.1 An application for existing uses shall be granted by the Director unless an objection is filed within 30 days of the date of the publication and notice, or unless the Director finds that the use is inconsistent with the code or against public policy.

5.5.2 In the case of an objection, a hearing shall be held pursuant to section 5.9 within 30 days of the filing of the objection. All provisions of sections 5.10 through 5.14 shall apply.

5.5.3. In the case of a finding by the Director that the use is inconsistent with the code or against public policy, the Director shall issue a written decision setting forth the reasons for the finding. The applicant may file a request for reconsideration pursuant to section 5.11, or may appeal the decision pursuant to 5.13.

5.6 Hearing on Application. Within thirty days after receiving an application, the Director shall schedule a hearing on the application, and notify the applicant of the hearing date at least 45 days in advance of the scheduled hearing date.

5.7 Public Notice of Hearing. The Director shall publish notice of the scheduled hearing in the ShoPai News and shall post notice in three conspicuous places on the Reservation. The Director shall also maintain a list of scheduled hearings in the Headquarters of the Tribal Business Council.

5.8 Objections to Applications.

5.8.1 Any person whose interests are or may be affected adversely by a water use described and applied for, may, no later than five days prior to the scheduled hearing file an objection to the issuance of the permit requested.

5.8.2 An objection shall be made on forms furnished by the Director, and shall include a short statement of reasons why the permit should not be issued or should be issued in a form other than as requested, including a statement of any suggested conditions or provisions which should be included in the permit.

5.8.3 Any written objection shall be served personally or by mail on the applicant by the Director.

5.8.4 In addition to specific objections, any person may comment orally or in writing during the hearing on an application.

5.9 Interim Authorization to Use Water. Prior to the hearing, the Director may grant a temporary, revocable authorization to use water while the application is pending, and such authorization may extend for a period not to exceed one hundred eighty days.

5.10 Hearings. The hearing on the application shall be open to the public and the Director may receive all oral and written testimony offered under oath. The applicant shall present first his or her evidence in support of the application, and then shall have the opportunity to rebut any information presented in objection to the application.

5.11 Decision. The Director shall issue a written decision setting forth findings of fact in support of issuance of or denial of the application. The decision shall contain any specified

conditions to be imposed on the permit. The decision may be made at the time of the hearing, or may be made within ten days after completion of the hearing. The decision shall be delivered to all parties by mail or in person.

5.12 Petition for Reconsideration.

5.12.1 Within fourteen days after a decision is issued by the Director, any party may request the Director to reconsider the decision. The petition for reconsideration shall state in plain terms the errors in the decision that form the basis for the petition.

5.12.2 A petition for reconsideration shall be served on all other parties to the proceeding, and any party so served shall be allowed to respond within ten days of receipt of the petition.

5.12.3 The Director shall decide the petition for reconsideration.

5.13 Finality of Decisions. The decision of the Director shall be final and effective unless a notice of appeal to the Water Resources Board is filed.

5.14 Notice of Appeal. The decision of the Director may be appealed to the Water Resources Board. Notice of such appeal must be filed with the Director within fourteen days of the date the decision is issued.

5.15 Scope of Appeal. The Board may modify, reverse, or remand a decision of the Director only where such decision is without substantial basis in fact, is contrary to tribal policy or tribal law, including this Water Code, or is arbitrary or capricious.

5.16 Modification of Permit by Director. For reasons of water scarcity or to promote more efficient use of Reservation water resources, the Director may modify a permit at any time. In issuing a modification order, the Director shall exercise due care to respect justly and equitably the rights of all permittees. The Director shall notify an affected water user of his intent to modify a water permit at the earliest possible time.

5.17 Modification of Permit by Permit Holder. Any permit holder may file an application to modify an existing water permit, including an application to change the time, place, nature or quantity of water used or to be used, except that a new permit application shall be required for use of water for a different purpose.

CHAPTER SIX. Enforcement of Water Code

6.1 Violation of Permit. Any person who diverts or uses water in amounts exceeding that authorized in his permit, or for purposes, at places or in a manner other than authorized in his permit will be considered in violation of the permit, and may be cause for cancellation of the permit.

6.1.1 Issuance of Warning. Upon finding that a water user is violating one or more the terms or conditions of his permit, the Director shall send the water user a warning setting forth the alleged violation and notifying the water user that his/her permit will be subject to cancellation if the violation is not remedied within 36 hours of issuance of the warning.

6.1.2 Cancellation Hearing. If the violation is not remedied within the time period provided, the Director shall set a cancellation hearing at which the permit holder shall show cause why his permit should not be cancelled. The Director shall serve notice of the hearing on the permit holder at least fourteen days before the hearing, including the evidence of violation. Failure to appear at the hearing shall be cause for cancellation of the permit.

6.1.3 Conduct of Hearing. At the hearing, the permit holder may present any evidence or testimony that will establish that he is not in violation of his permit.

6.1.4 Finality of Decisions. The decision of the Director shall be final and effective unless a Notice of Appeal to the Water Resources Board is filed as provided in sections 5.14.

6.2 Failure to Obtain Permit. Any person required to obtain a permit under the terms of this Water Code, who diverts or uses water without first obtaining a permit will be considered in violation of this Water Code, and shall be subject to a cease and desist order.

6.2.1 Cease and Desist Order. Upon finding that a person is using water without a required permit, the Director shall serve a cease and desist order on the alleged violator. If the alleged activity does not cease or the water user provides evidence of authorization for the use within three days of receipt of the order, the Director may take such action as may be necessary to stop the water use, including but not limited to removal of diversion structures, closure of gates, or other reasonable means. The Director may also impose appropriate fines, penalties and costs

6.2.2 Appeal. A cease and desist order may be appealed to the Water Resources Board within three days of receipt, provided that no water may be used by the person filing the appeal during the pendency of the appeal. The Board shall decide the appeal under the standard provided in section 5.15.

CHAPTER SEVEN. Tribal Court Review

7.1 Jurisdiction of Tribal Court. The Tribal Court is empowered to hear appeals from any final decisions or ruling of the Board.

7.2 Filing of Appeal. Appeals of decisions of the Board shall be filed with the Tribal Court no later than thirty (30) days from issuance of such decision by the Board.

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

7.4 Standard of Review. The Tribal Court shall be limited to review of the administrative record. The Tribal Court may modify, reverse, or remand a decision of the Board only where such decision or ruling is without substantial basis in fact, is contrary to tribal policy or tribal law, including this Water Code, or is arbitrary or capricious.

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

CHAPTER EIGHT. Form and Content of Permit/Revocation.

8.1 Form. Water Permits issued pursuant to this Code shall be on a form standardized and issued by the Director.

8.2 Content of Permit. The Permit shall set forth the source of water, the quantity, the place of use, and the means of diversion. The Permit shall also include any conditions or specifications the Director finds necessary to insure adequate quality and quantity of water, and the policies and guidelines of this Code.

CHAPTER NINE. Groundwater Use Limitations.

9.1 Quantity. The quantity of groundwater historically or currently used on the Reservation is 2,606 acre-feet. Additional groundwater use may be permitted under the terms of this Water Code as long as the total additional groundwater use does not exceed a net depletion greater than the natural long term historical average perennial yield of the groundwater basin as determined by the U.S. Geological Survey or other authoritative body for that portion of hydrographic basin 37 lying within the boundaries of the Duck Valley Reservation. This limitation does not apply to groundwater available as a result of artificial recharge from the Tribe's surface water rights.

9.2 Exception. The long term historical average perennial yield may be exceeded on a short term emergency basis if the Tribe determines that additional groundwater is necessary to insure the public health and/or to preserve the economic welfare of the Reservation, and declares an emergency by resolution of the Tribal Council identifying the reasons therefor. The additional groundwater shall not exceed an amount or be pumped for a duration of time that will have a long term negative effect on the groundwater basin. The Tribe shall provide notice to the State of all applications for such additional groundwater use, and the State may object or comment on such applications in its capacity as a water right holder.

CHAPTER TEN. Disputes between Water Users.

10.1 Informal Dispute Resolution. The Director shall provide assistance to any water user to resolve a dispute with another water user.

10.2 Exhaustion. A water user must participate in an informal dispute resolution process with the Director under this Chapter as a prerequisite to filing any action in Tribal Court.

CHAPTER ELEVEN. Definitions.

11.1 Tribe or Tribes. The Shoshone-Paiute Tribes of the Duck Valley Indian Reservation.

11.2 Duck Valley Indian Reservation or Reservation. The Reservation of the Shoshone-Paiute Tribes established by Executive Order of April 16, 1877, and expanded by Executive Orders of May 4, 1886 and July 1, 1910.

11.3 Business Council. The Shoshone-Paiute Tribes Business Council, governing body of the Shoshone Paiute Tribes.

11.4 Water Resources Board or Board. The Board established under this Water Code responsible for the management and use of surface water, springs, groundwater, and storage water on the Duck Valley Reservation, and Wild Horse Reservoir off the Reservation and for the management and operation of the Duck Valley Irrigation Project in accordance with federal and tribal law.

11.5 Water Resources Director or Director. The position established under this Water Code to serve as the executive and enforcement arm of the Water Code, with authority to administer and enforce the provisions of this Water Code and implementing regulations, to supervise any staff that may be authorized by the Board, and to carry out general instructions and directions from the Board.

11.6 Person. An individual, firm, municipality, community, organization, corporation or any other entity, including the Shoshone-Paiute Tribes.

11.7 Comprehensive Reservation Water Resources Plan. The Plan for the management, development, conservation and optimum use of the water resources within the Duck Valley Reservation to be developed by the Director for consideration by the Board and adopted by the Business Council.

11.8 Duck Valley Irrigation Project. The Bureau of Indian Affairs irrigation project operated and managed by the Shoshone-Paiute Tribes under its P.L. 93-638 Self-Governance Compact.

11.9 Duck Valley Irrigation Project Management Plan. The Management Plan governing water allocation and within the Duck Valley Irrigation Project, attached as Addendum A to this Water Code.

11.10 De Minimis Domestic and Stock Water Use. For domestic and livestock water use combined, no more than 2.7 acre-feet of water per year for one single-family dwelling served by one well with a pumping capacity of no more than 35 gallons per minute.

11.11 Idaho Consent Decree. The Revised Consent Decree Approving Entry of Partial Decrees Determining the Rights of the United States as a Trustee for the Benefit of the Shoshone-Paiute Tribes to the Use of Water in the Snake River Basin Within Idaho entered in the Snake River Adjudication by the Fifth Judicial District on December 13, 2006.

11.12 Nevada Agreement. The Agreement to Establish the Relative Water Rights of the Shoshone-Paiute Tribe of the Duck Valley Indian Reservation and the Upstream Water Users, East Fork Owyhee River, ratified by the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Right Settlement, Pub. L. 111-11 (Mar. 30, 2009).

11.13 Water Code. The Shoshone-Paiute Tribes Water Code, Ordinance 2012-SPO-02.

ADDENDUM A

Duck Valley Irrigation Project Water Management Plan

Project Water Allocation

The Shoshone Paiute Tribes Water Resources Director shall manage the water allocation and water use within the Duck Valley Irrigation Project (DVIP or Project) to serve all irrigators in the DVIP in accordance with this Duck Valley Irrigation Project Water Management Plan. No individual permits will be issued to irrigators receiving water within the DVIP.

This Water Management Plan shall govern water allocation and water use within the Project based on current conditions. The Plan shall be modified if significant improvements to the DVIP are constructed, if the Project is expanded, or if the Project incurs damage that reduces the capacity of the delivery system.

Duck Valley Irrigation Project Diversions

Project diversions are the total of both Owyhee River diversion locations; China Diversion Dam and Pleasant Valley Diversion Dam.

The Owyhee River water supply for diversion to the DVIP shall be "live" flows from the Owyhee River, supplemented by storage water releases from Wild Horse Reservoir. Wild Horse Reservoir shall be managed in accordance with the Nevada Agreement and its releases for irrigation purposes shall be to supplement, not replace, "live" flow of the Owyhee River.

An annual project diversion allocation, measured in acre-feet, is the total amount of water that may be diverted during the irrigation season (April 1 through October 31) from the Owyhee River to serve irrigators within the DVIP. The annual project diversion shall be based on the following:

2.2 acre-feet per acre – crop water requirement for the types of crops grown on the Reservation based on an individual on-farm efficiency of 73%

3.0 acre feet per acre – the diversion at each individual turnout needed to provide the crop water requirement of 2.2 acre feet per acre ($2.2 \text{ afa} / 0.73 = 3.0$)

3.7 acre feet per acre – the project diversion needed to provide 3.0 acre feet per acre at each individual turnout based on an overall project conveyance efficiency of 80% ($3.0 \text{ afa} / 0.80 = 3.7 \text{ afa}$)

The annual project diversion allocation shall be calculated as the total Project acres irrigated times 3.7 acre-feet per acre. For example: 12,000 acres x 3.7 acre-feet per acre = an annual project diversion of 44,400 acre-feet.

The Project conveyance efficiency of 80% may be adjusted up or down based on actual data. The adjusted conveyance efficiency shall be used to determine an adjusted annual project allocation. In addition, the crop water requirement may also be adjusted up or down based

on a scientific/technical evaluation of the crop water requirement. If crop water requirement is adjusted, the individual diversion quantity and annual project diversion must also be adjusted using the same calculations given above in this section.

Individual Turnout Deliveries

In an average or above average water year the DVIP must deliver the 3.00 acre-feet per acre to each irrigator within DVIP project.

In a less than average water year, when there is not enough water to deliver the full 3.00 acre-feet per acre to the farm turnout, the DVIP must deliver water in equal amounts to all of the irrigators within the Project, i.e. all irrigators within the Project must equally share the shortage in a water short year.

It is the responsibility of the DVIP Manager to predict and determine the type of water year for each irrigation season, and then plan water deliveries accordingly.

The Water Resources Director shall deliver irrigation water using a "demand or call" or "rotation schedule" or other water delivery system they deem appropriate as long as it delivers irrigation water to the irrigators according to the provisions of this subsection of the Water Code.

Irrigation water shall only be delivered to lands determined to be "Presently Assessable" as defined by the Bureau of Indian Affairs Manual "55 BIAM Supplement No. 2." which defines Presently Irrigable lands as those lands which water can be delivered at the present time, and are by virtue of their soil and topographic conditions capable of economically producing crops through the application of irrigation water and have a right to share in available water.

Pre-Irrigation Season and Early Irrigation Season Irrigation Project Diversions

For the period March 1 through April 15, if Wild Horse Reservoir is spilling water in excess of its capacity, and/or during the Owyhee River annual spring run-off, the DVIP may, at the discretion of the Water Resources Director, divert Owyhee River water at either or both China Diversion Dam or Pleasant Valley Diversion Dam and deliver it to irrigators who have called for that water, on an equal basis, and not have that excess water count against the annual Project water allocation. This provision applies only while water in excess of Wild Horse Reservoir's capacity is spilling and/or during the Owyhee River annual spring run-off, and must stop immediately after the spilling stops and/or the April 15 deadline occurs, whichever is first.

Stock Water Delivered Within the Duck Valley Irrigation Project

At the discretion of the Water Resources Director, and when it does not interfere with annual off-irrigation season maintenance, water may be diverted from the Owyhee River at either China or Pleasant Valley Diversion Dams, outside of the irrigation season, for the purpose of watering livestock grazing within the Project.

The Water Resources Director must develop a method to calculate the amount of water diverted for livestock watering purposes that ensures delivery to the grazing area but does

not exceed generally acceptable and reasonable amounts of water for this purpose. Annual records must be kept by the Water Resources Director that includes total stock water diversion quantities, dates of diversion, and a list of stock water users.

Water may be delivered, in generally acceptable and reasonable amounts, through the DVIP to Lamb and Coyote Hole Reservoirs for stock watering purposes.

The Owyhee River water supply for diversion to the DVIP for stock water purposes shall be "live" flows from the Owyhee River, supplemented by storage water releases from Wild Horse Reservoir. Wild Horse Reservoir shall be managed in accordance with the Nevada Agreement and its releases for stock water use shall be to supplement, not replace, live" flow of the Owyhee River.

Stock water diverted to the DVIP shall not be counted against the Project's annual project diversion allocation for irrigation uses.

Reservoir Maintenance Deliveries Using the DVIP Water Delivery System

Diversions shall be made from the Owyhee River through the DVIP water delivery system to maintain minimum reservoir elevations for the purpose of fisheries and recreation in the following three reservoirs: Lake Billy Shaw Reservoir, Sheep Creek Reservoir, and Mountain View Reservoir; and for Tribal Farm irrigation diversions from Mountain View Reservoir.

The Tribal Fish, Wildlife and Parks Department (TFWPD) shall set appropriate minimum reservoir elevations for the named reservoirs and shall develop criteria for water delivery for minimum elevation maintenance. The Tribal Fish, Wildlife and Parks Department Manager shall coordinate elevation maintenance deliveries with the Water Resources Director to ensure the TFWPD objectives are met in a manner that does not interfere with the operations of the DVIP. The objectives of the DVIP shall have priority senior to the objectives of the TFWPD.

The Owyhee River water supply for diversion through the DVIP water delivery system for reservoir minimum elevation maintenance shall be "live" flows from the Owyhee River, supplemented by storage water releases from Wild Horse Reservoir. Wild Horse Reservoir shall be managed in accordance with the Nevada Agreement and its releases for stock water use shall be to supplement, not replace, live" flow of the Owyhee River.

Water diverted through the DVIP for reservoir minimum elevation maintenance shall not be counted against the Project's annual project diversion allocation for irrigation uses.

Disputes between Water Users

Disputes between water users in the DVIP shall be settled by the Water Resources Director in accordance with the following steps and provisions:

1. No water user in the DVIP shall prevent or impair the delivery of water to another water user in the DVIP. .

2. Any harmed water user in the DVIP shall report, in writing, any action taken by another water user in the DVIP that prevents or impairs the harmed water user from receiving his/her water delivery. The written report shall include the full name of the water user taking the harmful action (hereafter called "offending user"), a description of the action taken including date and time, and a description of how the action has harmed the reporting user. The written report shall be signed and dated by the harmed/reporting water user and be given to the ditch rider responsible for delivering water to that water user.
3. Upon receiving the written report, the ditch rider has 36 hours to investigate, and if necessary stop and or resolve the action preventing or impairing the reporting water user's receipt of water delivery. Stopping and or resolving the harmful action shall be completed with the full notification and cooperation of the offending user, i.e. the offending user must acknowledge and stop his or her action. If the action is stopped and the matter resolved during the 36 hour period, the matter shall be considered closed without penalty or fine. However, if the action has not stopped and or the matter not resolved within a 36 hour period the matter must proceed to Step 4 (following).
4. If Steps 2 and 3 do not stop an action that prevents or impairs the delivery of water to another DVIP water user, or if it is the third time within two successive irrigation seasons that the offending user's actions have reportedly prevented or impaired the delivery of water to another DVIP water user, the ditch rider shall immediately deliver the written report to the Water Resources Director for investigation and resolution. The investigation and resolution shall be concluded within 15 days of receiving the written report from the ditch rider. If the Water Resources Director finds that the offending water user's action or third action within two successive irrigation seasons has prevented or impaired the delivery of water to another DVIP water user, the Water Resources Director shall immediately stop delivering water to the offending water user and shall impose a fine on the offending water user of \$300. The fine money received shall go into the DVIP's general fund and shall be spent in accordance with the usual and customary general fund budgeting process. The Water Resources Director shall not recommence water delivery to the offending user until the fine has been paid and the harmed water user's water delivery has resumed normalcy and the harm to the user has been reconciled to the satisfaction of the Water Resources Director.

Any DVIP water user that has paid \$900 or more in fines as a result of Steps 2 through 4 shall have any subsequent fine increased to \$600 per fine until a full five irrigation seasons have been completed without acting in a manner that prevents or impairs another DVIP water user from receiving his or her delivery of water.

Fines identified in this section may be adjusted by the Water Resources Director with approval of the Water Resources Board.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
EASTERN NEVADA AGENCY
1555 SHOSHONE CIRCLE
ELKO, NEVADA 89801



IN REPLY REFER TO:
Branch of Tribal Operations

April 11, 2012

RECEIVED

APR 13 2012

SHOSHONE-PAIUTE TRIBES

Terry Gibson, Chairman
Shoshone-Paiute Tribes
P.O. Box 219
Owyhee, Nevada 89801

Honorable Chairman Gibson:

This will serve as a notice that the Eastern Nevada Agency is in receipt of the Shoshone-Paiute Tribal Ordinances No. 2012-SPO-02 entitled Tribal Water Code and Tribal Ordinance No. 2012-SPO-03, entitled Gaming Ordinance and have forwarded both ordinances to the Regional Office for review.

If you should have any questions please feel free to contact Susan Zazueta, Tribal Operations at (775) 738-0586.

Sincerely,


Joseph G. McDade
Superintendent

cc: WRO Tribal Operations
ENA Subject file w/copies
ENA Chrono file
ENA Tribal Ops Chono file
SZazueta:sz:04/11/11:dvord02&03-12ltr: 3718-P5 Tribal Ordinance File

DISTRIBUTED

DATE: 4/16/12 BY: RThomas
Original: Chairman Gibson
XC: Dea Ann
XC: Pete Patra
XC: _____
XC: _____



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
EASTERN NEVADA AGENCY
1555 Shoshone Circle
Elko, Nevada 89801



Memorandum

April 11, 2012

RECEIVED

APR 13 2012

SHOSHONE-PAIUTE TRIBES

To: Regional Director, Western Region
Attention: Tribal Government Officer

From: Superintendent /s/ Joseph G. McDade

Subject: Shoshone-Paiute Tribe Tribal Ordinance No. 2012-SPO-02

The Eastern Nevada Agency is in receipt of the Shoshone-Paiute Tribal Ordinance No. 2012-SPO-02, entitled the "Shoshone-Paiute Tribal Water Code", enacted April 20, 2012, pursuant to Article VI, Section 1(a) and (k) of the Shoshone-Paiute Tribes' Tribal Constitution. Attached are two original copies of Ordinance 2012-SPO-02.

In accordance with the Memorandum dated April 2, 2009, from the Director of Indian Affairs, all Tribal Water Codes and Water Rights Settlements must be forwarded to the Regional Office for review. (See attached copy for quick reference.)

If you should have any questions, please feel to contact Susan Zazueta, Tribal Operations Specialist, at (775) 738-0586.

Attachments:

cc: Shoshone-Paiute Chairperson

ENA Ordinance files w/copy

ENA Chrono file

ENA Tribal Ops Chrono file

SZazueta: sz:04/11/2011: 2012-SPO-02: 3718-P5 Tribal Ordinance

DISTRIBUTED

DATE: 4-16-12 BY: RThomas

Original: Chairman Gibson

XC: Use Jim

XC: Pete Council

XC: _____

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