

TITLE LX (60) – WATER CODE

[Division of Code Revision Note: Pursuant to T-027-22, Title 60 has been updated and reformatted. The Chapters, Sections, and Subsections have been renumbered and reformatted for clarity and consistency.]

CHAPTER 60.01 – GENERAL PROVISIONS

60.01.01: FINDINGS.

In accordance with the beliefs of the Yakama People and the Yakama Nation with respect to water, the Yakama Tribal Council makes the following findings:

- (a) In the Circle of Life, Water is the Giver of Life. All Life is dependent upon Water. Through the natural cycles of water, the earth and all things dependent upon the earth experience nascence, growth, purification and death. It is the responsibility of water to provide for the survival of the earth and its dependents.
- (b) Believing in the Circle of Life, the Yakama People give thanks to the Creator for Water. Thanks are given through the celebrated rites and practices of the Yakama People. Water plays a central role in ceremonies acknowledging the cycle of the seasons. Water heals. It is the responsibility of the Yakama People to look forward to and pray for the advent of the seasons of water.
- (c) The Yakama People’s way of life is based upon the fact that water provides the basis for the foods of the Yakama People, including salmon, berries, roots and other foods. Water provides life for the medicines of the Yakama People, including the flowers, leaves and roots of the healing plants. Water provides the basis for the clothing and shelter of the Yakama People, including animal hides, cedar and pine, tule reed and other materials. It is the responsibility of the Yakama People, through their way of Life and Understanding to guard and wisely use water so that good, clean water remains to sustain all things that live by and through water.
- (d) Water has personal significance. Water is the major component of the human body, and without it, humans cannot live. It is the responsibility of individuals to respect water, and to use water wisely in their daily lives.
- (e) Water has ecological significance. Water is interconnected with all other resources of the



Yakama Nation and Yakama Reservation, including timber, minerals, animals, fish, plants and humans. It is the responsibility of the Yakama People to recognize the interconnectedness of all resources and to work and live in harmony with all resources.

- (f) The human relationship with water is one of stewardship. As it is the responsibility of water to provide for all life, so it is the responsibility of humans to provide for water. The Yakama People, individually and collectively, are caretakers of the water resources of the Yakama Nation. They must act to avoid significant interruption of the natural cycles of water. They must seek to preserve the natural flows of water, both above and below the surface, necessary to provide for other forms of life. They must, above all, utilize water with wisdom and restraint, and seek to avoid its waste.
- (g) The religious, cultural, personal and ecological significance of water guides the appropriate use, management and protection of water resources, and conditions all water and land use activities in the watersheds and drainage basins of the Yakama Reservation.
- (h) The surface and groundwaters of the Yakama Reservation are interconnected by the hydrologic cycle; water is a unitary resource whether occurring as groundwater, springs, streams, rivers, soil moisture, precipitation, recharge, drainage waters, snow pack, or in any other form.
- (i) Clean water is vital to the health and welfare of the Yakama Nation, and because the use of water resources may contribute to the degradation of water quality, it is necessary to protect the environmental quality and integrity of all surface and ground waters.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.01.03: PURPOSES.

- (a) This Water Code shall establish all rights and interests in the water resources of the Yakama Nation, and shall provide a mechanism for regulating the use and management of all waters that arise on, border, traverse, or underlie the Yakama Reservation or which are off-reservation and subject to the jurisdiction of the Yakama Nation.
- (b) The Committee, Director, and Water Code Administration staff shall understand and observe the following purposes, and all activities and decisions pertaining to water resources made under the authority of this Code shall be consistent with this section:



- (1) The provision of information and guidance to all persons and decision makers concerning water use issues;
- (2) The maintenance and improvement of present levels of water quantity and quality;
- (3) Responding to the cultural and religious values of the Yakama Nation;
- (4) Encouraging public involvement in the decision-making process;
- (5) Avoiding cross-transfer of problems related to water use to other environmental media; and
- (6) Promotion and encouragement of conservation efforts regarding water usage.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.01.05: DEFINITIONS.

As used in this Title, unless otherwise explicitly stated, the terms set forth below shall be defined as follows:

- (a) ACQUAVELLA or ACQUAVELLA ADJUDICATION: a final court decree, including any final decisions on appeal, of In the Matter of the Determination of the Rights to the Use of Surface Waters of the Yakima River Drainage Basin, Dept. of Ecology v. Acquavella, et. al., Yakima County Superior Court No. 77-2-01484-5.
- (b) AFFECTED PARTY: any person who can demonstrate a substantial, adverse economic or physical impact on his or her property or other recognized interests by virtue of actions undertaken in accordance with this Code.
- (c) APPEAL: an administrative appeal to the Tribal Council of a decision by the Committee pursuant to this Code.
- (d) BENEFICIAL USE: the purpose or benefit to be derived from any surface water or groundwater under Section 60.01.13.
- (e) CITATION: a notice to a person of violation of this Code.
- (f) CODE: the Yakama Nation Water Code, RYC Title 60, “Choosh Tamanwit.”
- (g) COMMITTEE: the Yakama Nation Roads, Irrigation & Land Committee.
- (h) TRIBAL COURT: the Yakama Nation Tribal Court.
- (i) DEFENDANT: a person against whom a citation is issued or a petition is filed in Tribal Court pursuant to this Code.



- (j) **DIRECTOR:** the Director of the Water Code Administration.
- (k) **ENFORCEMENT PROCEEDING:** a proceeding in Tribal Court by the Director to remedy a violation of this Code.
- (l) **FINAL DECISION:** a final decision by the Director to issue, deny, condition, renew, or revoke a permit pursuant to this Code.
- (m) **FINAL JUDGMENT:** either
 - (1) Issuance of a citation as provided by this Code, unless the citation is contested as provided by this Code; or
 - (2) A final Court order in favor of either the Water Code Administration or the defendant as a result of an enforcement action under this Code.
- (n) **GROUNDWATER:** all fresh water found beneath the earth's surface.
- (o) **MINIMUM INSTREAM FLOWS:** the minimum amount of surface flow in a body of water necessary to support fish and other aquatic life.
- (p) **PERMIT:** a permit issued by the Director pursuant to this Code or any regulation issued thereunder.
- (q) **PERMITTEE:** the holder of a valid permit issued in accordance with this Code or any regulations adopted thereunder.
- (r) **PERSON:** an individual; a business organization, including a corporation, partnership, joint venture, or agent thereof; a public or private entity, group, organization, association, or agent thereof; or any government or agent thereof.
- (s) **PETITION:** a petition by the Director to Tribal Court for injunctive relief to remedy any violation of this Code by any person.
- (t) **PROTEST:** an appeal to the Committee by a permit applicant, permittee, or affected party of a final decision by the Director regarding a permit or permit application.
- (u) **RESERVATION:** those lands and waters reserved by Article II of the Treaty of 1855.
- (v) **SURFACE WATER:** all fresh water found above the earth's surface, whether flowing or stationary, and whether diffused or contained within a defined water course or body of water of any kind.
- (w) **TREATY OF 1855:** The Treaty of June 9, 1855 (12 Stat. 951) between the Yakama Nation and the United States of America.
- (x) **TRIBAL COUNCIL:** the Yakama Nation Tribal Council.



- (y) TRIBAL SURFACE WATER: all surface water reserved by the Yakama Nation under the Treaty of 1855.
- (z) TRIBAL WATER RESOURCES: all surface water and groundwater within, flowing through or located underneath the Reservation, off-reservation on trust land or within Indian Country subject to the Yakama Nation's jurisdiction or otherwise reserved under the Treaty of 1855.
- (aa) TURBIDITY: the clarity of water as measured with a calibrated turbidimeter.
- (bb) VIOLATION: a transgression of this Code or any regulation, rule, order, permit, or certification issued pursuant to this Code, or any part thereof, including both acts and omissions.
- (cc) WATER QUALITY: includes but is not limited to water temperature, stream turbidity and other parameters associated or related to health risks in drinking water and risks to natural resources.
- (dd) WETLAND: an area inundated with water (surface or ground) at a sufficient frequency and duration to support the development of hydric soils and the growth of hydrophytic vegetation. Wetlands include swamps, ponds, bogs, marshes and other similar areas.
- (ee) YAKAMA NATION: the Confederated Tribes and Bands of the Yakama Nation.
[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.01.07: OFF-RESERVATION WATERS AND OTHER RESERVED WATERS.

- (a) The Yakama Nation has an interest in the quantity and quality of waters found at usual and accustomed fishing areas, and that support fish and other aquatic life at usual and accustomed places and which influence habitat conditions of fish collected at such areas. The Yakama Nation has a reserved right to water to fulfill and support all off-reservation reserved hunting, fishing, grazing, food-gathering rights and any other reserved rights.
- (b) Waters and water resources of the Yakama Nation shall be construed to include unquantified future needs of the Yakama Reservation to accommodate population growth, economic and other development, and the physical resources of the Reservation and all other Treaty and federally-reserved water rights.
- (c) The Water Code shall have jurisdiction to the fullest extent allowed under applicable law.



[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.01.09: SOVEREIGN RIGHTS AND DUTIES.

- (a) The Yakama Nation retains primary rights to and is the steward of all tribal water resources reserved by the Treaty of 1855.
- (b) The Yakama Nation holds all tribal water resources in perpetual trust for the use and benefit of the Yakama Reservation and its occupants. Any legal title of the United States to any of said waters is held solely as trustee for the Yakama Nation.
- (c) All rights to the use of tribal water resources are held subject to the prior rights, superior interests, and governmental authority of the Yakama Nation, the policies and provisions contained in this Code, and all administrative regulations and determinations made in accordance with this Code.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.01.11: JURISDICTION.

- (a) This Code applies to all tribal water resources within the jurisdiction of the Yakama Nation. The Tribal Council and Committee shall have original and exclusive jurisdiction to enforce, administer, and adjudicate all matters pertaining to this Code and tribal water resources within the jurisdiction of the Yakama Nation.
- (b) The jurisdiction asserted under this Code is intended to apply to the fullest extent of applicable law as determined by courts of competent jurisdiction.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.01.13: BENEFICIAL USES.

- (a) Unless otherwise noted in this Code, beneficial uses of the water resources of the Yakama Nation include:
 - (1) Religious and cultural uses including, but not limited to, instream flow and habitat



for fisheries and wildlife conservation, and preservation of habitat for berries, roots, medicines, and other vegetation significant to the values of the Yakama People;

- (2) Domestic and municipal uses, for personal household and garden purposes;
 - (3) Stock watering;
 - (4) Agricultural uses, provided that agricultural practices which do not make reasonably efficient use of water, or which waste water, shall not be considered a beneficial use;
 - (5) Aquifer and groundwater recharge, provided that unreasonable capture of water to create an artificial aquifer for private use shall not be considered a beneficial use; and
 - (6) Economic development uses, including timber, industrial, and power needs.
- (b) When two or more proposals for beneficial use of water are in conflict, the Water Code Director shall make an equitable allocation of water between the proposed uses. In making such an allocation, the Director shall consider and apply:
- (1) Principles of conservation and preservation, including impacts to water quality;
 - (2) Best management practices designed for the efficient uses and conservation of water;
 - (3) Collective or public interest in, and need for, water resources; and
 - (4) Economic and other hardship to individuals.
- (c) Where conflict between beneficial uses cannot be resolved, the Water Code Director and the Committee shall, in making water allocation decisions, prioritize water usage according to the order set forth in 60.01.13(a).
- (d) In any location where multiple types of water use create a hardship upon domestic water users, the Director may modify or disallow the non-domestic water uses, whether established prior or subsequent to the adoption of this Code, either temporarily or permanently, in order to alleviate the hardship.
- (e) Other uses of water may be designated beneficial uses by the Director and the Committee. Except in an emergency, as set forth in Chapter 60.25 of this Code, such uses shall be subordinate to the uses enumerated above.



[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.01.15: PROHIBITED ACTIVITY.

The following activities are prohibited and shall each constitute a violation of this Code, subjecting the violator to the penalties provided in Chapters 60.19 and 60.23:

- (a) Use of tribal water resources without a permit as required by Chapter 60.09;
- (b) Waste of tribal water resources that have been withdrawn, diverted or otherwise taken pursuant to a valid permit;
- (c) Obstruction of or interference with the Director or Water Code staff performing their lawful duties under this Code;
- (d) Misrepresentation of any material fact by any person providing information required by this Code.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

CHAPTER 60.03 – ROADS, IRRIGATION AND LAND COMMITTEE

60.03.01: CONFLICTS OF INTEREST.

The Committee and each of its members shall avoid any conflicts of interest, including political and economic interests, in carrying out the duties of the Committee, and shall observe all rules and regulations of the Yakama Nation.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.03.03: GENERAL POWERS AND DUTIES.

The Committee shall be responsible for administering the provisions of the Water Code and may:

- (a) Approve or disapprove of permits issued by the Director in accordance with the procedures set forth in this Code;



- (b) Conduct hearings on protests of permit decisions of the Director, and affirm, deny, modify, or revoke such permit decisions as it deems necessary;
- (c) Approve or disapprove regulations, permit forms, and other materials prepared by the Director to implement this Code;
- (d) Make determinations of availability and need as provided for in this Code;
- (e) Ensure minimum water flows in streams, rivers, and lakes as required for fish and other aquatic life and wildlife conservation and enhancement and other instream needs;
- (f) Propose Code amendments to the Tribal Council as needed to implement its policies and objectives;
- (g) Consistent with existing Tribal Council and General Council Resolutions, exchange information, and otherwise cooperate with other governmental agencies and recommend that Yakama Nation enter into administrative agreements for appropriate purposes, including the administration of irrigation districts and groundwaters;
- (h) Take other actions and enter other appropriate orders as provided for, or required by, this Code.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.03.05: RESERVES.

In connection with a determination of availability and need, or in connection with other actions taken under this Code, the Committee may establish within particular areas dependent upon common supplies, reserve supplies which, although they may be subject to existing uses on an interim basis, are to set aside for future needs.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.03.07: LOCAL MANAGEMENT WATERSHEDS.

The Committee may, upon recommendations of the Director, or of any person, define aquifers or watersheds, in which individual water users are to some degree related by reason of common supply, for specialized administration under this Code.



[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

CHAPTER 60.05 – WATER CODE DIRECTOR

60.05.01: APPOINTMENT.

The Committee shall appoint a Director of the Water Code Administration in accordance with the personnel policies of the Yakama Nation.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.05.03: QUALIFICATIONS.

- (a) The Director of the Water Code Administration shall meet each of the following employment qualifications:
 - (1) A bachelors or graduate degree in hydrology, hydrologic engineering, watershed management or natural resources management; and
 - (2) A minimum of three years' managerial experience in a water resources agency.
- (b) A graduate degree may be substituted for one year's managerial experience.
- (c) The Director must be familiar with and sensitive to the cultural and religious significance of water use by the Yakama Nation and its people.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.05.05: ADMINISTRATIVE DUTIES.

The Director and, under his or her direction, the Water Code staff may:

- (a) Ensure compliance with this Code, and with the conditions of all permits, regulations, plans, and other actions taken under this Code;
- (b) Promulgate regulations governing administration and implementation of this Code;
- (c) Prepare application, investigation, and permit forms for use in administration of this Code;



- (d) Make determinations whether an applicant's proposed use is subject to the permitting requirements of this Code;
- (e) Collect and properly account for permit fees and civil fines, and transmit said fees and fines to Yakama Nation's central accounting office;
- (f) Issue with or without conditions, deny, and revoke permits for surface water diversions, transfers, well construction, and groundwater withdrawals;
- (g) Investigate reports of non-permitted water diversions and withdrawals;
- (h) Collect and maintain statistical records concerning permits applied for and issued, and other administrative activities taken under this Code;
- (i) Coordinate with other programs of the Yakama Nation government to achieve optimum protection, as efficiently as possible, of tribal water resources;
- (j) Supervise office and technical staff necessary to administer this Code, in accordance with the personnel policies of the Yakama Nation; and
- (k) Convene technical advisory committees as necessary to formulate and draft regulations and guidelines for implementation of this Code.
- (l) Administer, regulate and enforce water rights confirmed in *Acquavella* as provided in orders of the *Acquavella* court.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.05.07: ENFORCEMENT POWERS.

- (a) The Water Code Director and under his or her direction, the Water Code staff shall have the authority to:
 - (1) Investigate water uses and other activities affecting the water resources of the Yakama Nation to determine whether such uses and activities are in compliance with this Code, and with other applicable regulations, orders, and permits issued by the Yakama Nation;
 - (2) Enter onto Reservation lands and other trust lands and lands considered to be Indian Country subject to the Yakama Nation's jurisdiction to inspect water diversions and withdrawals for compliance with the permits issued under this Code, including



installation and monitoring of measuring and recording devices in coordination with other Yakama Nation programs;

- (3) Remove, render inoperative, or otherwise control methods of diversions, obstructions to the flow of water, and activities adversely affecting water quantity and quality;
- (4) Collect evidence, testimony, and other materials concerning activities adversely affecting water quantity or quality, including investigations for violations of provisions of this Code;
- (5) Issue warnings, stop work orders, abatement orders, compliance orders, stop use orders, and any other action authorized by this Code;
- (6) Levy civil fines and initiate, by citation and other means, enforcement proceedings in Tribal Court or another court of competent jurisdiction for violations of this Code, including injunctive relief; and
- (7) To administer and regulate all tribal water resources. This authority shall include but not be limited to powers held by the Yakama Nation recognized in orders of the *Acquavella* court.

- (b) When requested by the Director or Water Code staff, the Yakama Nation Police Department shall provide assistance in the enforcement of this Code.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.05.09: ADVISORY RESPONSIBILITIES.

The Water Code Director and staff may, in an advisory capacity, make proposals to the Committee or the Tribal Council concerning the following:

- (a) Recommended amendments to this Code and to regulations and forms approved by the Committee;
- (b) Recommendations on determinations of availability and need, including the timing of irrigation seasons and minimum instream flows;
- (c) Recommendations on the need for reserve supplies or local management watersheds;
- (d) The advisability of entering into administrative agreements and cooperative ventures with agencies outside of the Yakama Nation government;



- (e) The advisability of any changes in other Yakama Nation programs for the protection of waters and watersheds; and
- (f) The advisability of any other action which may further the purposes and increase the effectiveness of this Code.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.05.11: INFORMATION AND FACT-FINDING FUNCTION.

It shall be the duty of the Water Code Director to gather and disseminate information related to the water resources administered under this Code. To this end the Director, and under his or her direction, the Water Code staff shall:

- (a) Collect, organize, and catalogue existing information and studies available from all sources that pertain to the waters of the Reservation;
- (b) Develop additional data and studies pertaining to water resources as necessary to accomplish the objectives of this Code;
- (c) Solicit public comment and obtain expert advice when appropriate; and
- (d) Prepare and disseminate public information and education materials concerning the water resources of the Reservation and the purposes and function of this Code.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.05.13: DELEGATION OF AUTHORITY.

- (a) The Director shall possess authority to promulgate regulations governing administrative functions and implementation of this Code. Such regulations may include, but are not limited to, the following:
 - (1) Well construction and decommission standards;
 - (2) Well driller licensing standards;
 - (3) Water use and hydraulic permit forms and procedures;
 - (4) Minimum instream flows; and
 - (5) Fee schedules.



- (b) All regulations promulgated by the Water Code Director under this authority must be in writing, must adhere to all policies and rules set forth in this Code, and must be reviewed and approved by the Committee.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

CHAPTER 60.07– WATER SUPPLY FORECAST AND ALLOCATION

60.07.01: DECLARATION OF HYDROLOGIC CONDITIONS.

- (a) At the beginning of each irrigation season, the Director shall prepare a water supply forecast based on hydrologic evidence in consultation with the Water Resources Program, Fisheries Resources Management Program, and Cultural Resources Program, and in consideration of total demand.
- (b) The Director may amend or update the water supply forecast, as necessary, based on changes in hydrologic and atmospheric conditions.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.04.03: WATER ALLOCATION.

- (a) Water is to be allocated according to priority date. Water delivery systems on the Reservation shall divert only that quantity of water to which they are legally entitled, subject to Subsection (b) of this Section.
- (b) In drought conditions and other water-short conditions, water with the same priority date shall be allocated on a just and equitable basis. Minimum water flows established for fish and other aquatic species under Chapter 60.11 shall receive first priority for water, and water rights with later priority dates shall be allocated according to priority date and applicable law as supply is available.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]



CHAPTER 60.09 – WATER USE PERMITS

60.09.01: WATER USE PERMIT REQUIRED.

- (a) Any use of tribal water resources must be managed under authority of a water use permit, as set forth in this Chapter except as provided herein.
- (b) Any water use permit issued under authority of this Code constitutes Yakama Nation Approval of the activity as described in the water use permit. Such approval may be revoked, or permit renewal may be refused, for a permittee’s failure to comply with the conditions set forth in the water use permit.
- (c) All permits issued under this Code are provisional, and do not create a property right, nor create an entitlement in the permittee beyond the period stated in the permit, nor create a basis for a claim of reliance by third persons.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.03: ADDITIONAL LICENSES REQUIRED.

Nothing in this Chapter is intended to replace or nullify the applicability of other permits or regulations that may be required by the Yakama Nation, or the applicability of the requirements of other governmental agencies with authority to regulate the use of water resources on the Yakama Reservation.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.05: SURFACE WATER DIVERSION PERMITS.

- (a) Class 1: 1855 Surface Water Permit. Class 1 Permits grant or confirm a right to use a share of tribal surface water to a user, and guides the present and future use and allocation of tribal surface water. All such shares have a priority date of June 9, 1855. There shall be three (3) types of Class 1 Permits as follows:
 - (1) Class 1A. Permit granted to a Yakama Nation member, allottee, or a Yakama Nation entity, enterprise, program, or other political subdivision. An individual Yakama



Nation member or allottee or a Yakama Nation entity, enterprise, program or other political subdivision whose lands formed the basis for the quantification of 1855 tribal surface water rights for trust and fee lands under the *Acquavella* adjudication shall be presumptively entitled to a Class 1A Permit for the use of natural flow. Any Yakama Nation member or allottee who becomes a successor in interest to such lands also is presumptively entitled to a Class 1A Permit on the same terms and conditions, provided that, nothing herein shall grant any surface water right or other right to the delivery of water to any individual beneficial owner of trust land beyond the rights confirmed or recognized by the Court in the *Acquavella* adjudication and other courts of competent jurisdiction. Nothing herein shall grant authority nor impose any duty on the Director to provide a permit nor a right to water from any future storage for future or idle lands. The Director reserves the right to allocate, distribute and redistribute such available water among the eligible tribal fee and trust lands.

- (2) Class 1B. Allottee-derived permits granted to a successor in interest of an allottee who owns land in fee. Any person who receives an award of 1855 allottee-derived water in the *Acquavella* adjudication shall be presumptively entitled to a Class 1B Permit for the quantity awarded by the court.
- (3) Class 1C. Water lease permit granted to a person to use tribal surface water, upon payment to the Yakama Nation.

(b) Class 2: RESERVED

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.07: GROUNDWATER WITHDRAWAL PERMITS.

- (a) Class 3: Groundwater Irrigation and Industrial Permits. Class 3 Permits govern the use, for irrigation and industrial purposes, of groundwater resources. There shall be two (2) types of Class 3 Permits, as follows:
 - (1) Class 3A. Groundwater irrigation permit. Uses shall include the withdrawal of groundwater in any manner for agricultural purposes including, but not limited to, irrigation, frost control, hydrocooling, and stockwatering.



- (2) Class 3B. Industrial groundwater permit. Uses shall include the withdrawal of groundwater in any manner for industrial purposes including, but not limited to gravel mining, manufacturing, fire protection and timber harvesting.
- (b) Class 4: Domestic Use Permit. Class 4 Permits govern the appropriation and use of groundwaters for individual domestic needs, including garden irrigation, not otherwise provided for in this Code. A Class 4 Permit may be issued for water systems serving not more than two housing units.
- (c) Class 5 Resource Protection Permit. Class 5 Permits govern the use of groundwater for the purpose of monitoring of groundwater levels and the collection of other subsurface data including pollutants in the groundwater. This may include a cased well or wells, piezometers, monitoring wells, injection wells, cathodic wells, and remediation wells within the discretion of the Director.
- (d) Class 6: Public Water Supply Permit. Class 6 Permits govern the appropriation and use of groundwaters by a water system serving the domestic needs of the three or more housing units, or commercial or other establishments, including but not limited to longhouses, churches, schools and establishments that serve the public.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.09: MISCELLANEOUS PERMITS.

- (a) Class 7: Storage Permits.
- (1) Class 7A Permits govern the use of both surface and groundwaters, and grant the right to impound said waters for a beneficial use. At the Director's discretion, the applicant may be required to prepare and submit an environmental impact statement or other means of environmental review.
- (2) Class 7B. Any Yakama Nation entity, enterprise, program, or political subdivision may apply for a permit for use of the water quantified for future trust and tribal fee land.
- (b) Class 9: Temporary Permit. Class 9 Permits govern use of the surface or groundwaters for temporary, beneficial purposes.
- (c) Class 10: General Water Permit. Class 10 Permits grant or recognize rights of use of



water not otherwise covered by another permit. Uses shall include well decommissioning, water from artesian wells and springs for purposes other than domestic consumption.

- (d) Class 11: Water Transfer Permit. Class 11 Permits for ground or surface water authorizes the Water Code Administration to change the place of use or purpose of water use, method of application, or method or point of diversion or withdrawal of any otherwise valid water right or right permitted under this Code. Such a transfer shall not occur if there is an impairment of another water right or permit. Such a transfer may only occur to a new place of use or point of diversion or withdrawal within the Reservation or on off-reservation trust land or Indian Country.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.11: APPLICATION FOR PERMIT REQUIRED.

- (a) Any person to make use of tribal water resources shall apply to the Director for a permit governing such use, in accordance with the forms and procedures the Director has created for that purpose.
- (b) Applicants must complete application forms to the best of their ability, provide accurate maps as required by the application process, and cooperate with the Director in the processing of their application. The Director or his or her staff shall assist any applicant, in the collection of data and preparation of the application, who, through lack of financial resources, water use knowledge or language barriers requires such assistance.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.13: WATER USE PERMIT FEES.

- (a) The Director shall establish fees for permits under this Chapter. The Director may set a fee schedule each year at his or her discretion which schedule shall apply to new and existing permits.
- (b) Water use permit fees may be waived by the Committee in cases of financial hardship.



- (c) Water use permit fees shall be used to defray the costs to the Yakama Nation of issuing permits, including costs of inspection and public notice.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.15: APPLICATION FOR PERMIT PROCEDURES.

- (a) Upon receipt of a completed application for a Class 1, 2, 3, 5, 6, 7, 9, or 10 Permit, the Director shall publish a public notice online. This shall be subject to section 60.09.21. The public notice shall contain:
 - (1) Solicitation of public comment;
 - (2) Name of applicant;
 - (3) Legal description and street address of the property where the water use permit will apply;
 - (4) Concise description of the proposed use;
 - (5) Name, address, and phone number of the Water Code Administration; and
 - (6) Date by which public comments must be received.
- (b) The Director shall, within sixty days of receipt of an application for water use permit, review the application, perform investigations, prepare a report, receive and consider public comment, and grant or deny said application, including qualifying an approval on the performance of conditions which the Director deems necessary for protection of the water resources.
- (d) Every determination on an application for a permit must be based on the evaluation criteria set forth in Section 60.09.23 below, and must be consistent with applicable law.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.17: EXTENSION OF TIME.

- (a) The Director may extend the time limits for response to applications for water use permits



if required by the investigation process, scheduling conflicts, need for additional public notice and comment, or for other good cause. In the event of such an extension, the Director must notify the applicant of the new date for issuance of a determination.

- (b) Failure to act on an application within the required time limits shall not be deemed an approval of the application.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.19: APPLICATION FOR PERMIT – PROTEST.

Any applicant, or affected party, aggrieved by a final decision of the Director may protest to the Committee and receive a formal hearing as provided in Chapter 60.17 of this Code.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.21: EXEMPTIONS.

The permit application, approval, fee and renewal provisions of this Chapter shall not apply to Class 1 or Class 10 permits for water rights awarded under the *Acquavella* adjudication.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.23: EVALUATION CRITERIA.

- (a) Upon receipt of a completed application for a water use permit, the Director shall analyze the proposed use to determine its conformity with the policies and laws of the Yakama Nation, including:
 - (1) The Findings set forth in Section 60.01.01 of this Code;
 - (2) The Purposes set forth in Section 60.01.03 of this Code;
 - (3) The Beneficial Uses set forth in Section 60.01.13 of this Code;



- (4) Current hydrologic conditions, the water allocation guidelines established under Chapter 60.07 of this Code, and minimum instream flows established under Chapter 60.11 of this Code;
 - (5) Other policies, guidelines, or directives provided to the Water Code Administration by official action of the Yakama Nation Department of Natural Resources, the Committee, the Tribal Council and the General Council;
 - (6) Evaluation of whether the proposed permit, if granted, will adversely impact the Yakama Nation's Treaty-reserved rights and resources; and
 - (7) Evaluation of whether water is available for the proposed use.
- (b) Upon receipt of a completed application for a water use permit, the Director shall make a factual investigation of the proposed use, which may include:
- (1) Evaluation of impacts under the Yakama Reservation geographic information system and groundwater model;
 - (2) Verification of information provided in the application, including issuance of other permits, and accuracy of maps and property descriptions;
 - (3) Field investigation(s); and
 - (4) Conformity with procedures set forth in this Code and procedures and regulations developed pursuant to and consistent with this Code.
- (c) If it is determined that the issuance of a water use permit will impair or adversely affect the health, welfare, safety, or economic security of Yakama Nation or its members, or its fisheries, wildlife, water resources, or other natural or cultural resources, a permit shall not be issued.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.25: PROGRAM REVIEW.

- (a) The Director shall circulate copies of all applications to Yakama Nation programs, and other interested agencies including the Bureau of Indian Affairs and Wapato Irrigation Project, which regulate or otherwise have an interest in the use of water resources. These programs include, but are not limited to, Environmental Management, Fisheries, Facility



Management, Water Resources, Engineering and Wildlife, Range, Vegetation Resources Management.

- (b) Each of the programs listed above shall evaluate applications for water use permits for conformity with the policies and plans governing program activities, and shall provide any comments on applications within fourteen days of receipt.
- (c) When a program objects to the issuance of a water use permit, the matter may be referred to an inter-disciplinary team, at the discretion of the Director, for review, comment, and recommended permit resolution, including proposed conditions.
- (d) Recommendations from the inter-disciplinary team are not binding on the Director, but shall be given serious consideration in the permit decision process. The Director shall report back to the Inter-Disciplinary Team concerning all permits subject to its review, giving the basis for the Director's decision.
- (e) The Director shall record the information received through the above analysis and investigation, and determine if the proposed use is in violation of the policies or procedures set forth in this Code and the evaluation criteria above.
- (c) Based on the foregoing analysis, the Director shall issue a Final Decision.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.27: PERMIT CONDITIONS.

- (a) Each water use permit issued pursuant to this Code shall contain all conditions necessary to ensure adequate quality and quantities of water, and to otherwise further the findings, purposes, beneficial uses, policies and criteria contained within this Code. Permits may include conditions concerning:
 - (1) The source from which water is diverted or withdrawn;
 - (2) The quantity of water which is diverted or withdrawn, including time limitations or schedules;
 - (3) Location of the point(s) of diversion or withdrawal;
 - (4) Method(s) of diversion or withdrawal;
 - (5) Purposes for which the water is used, including acreage for crops and number of stock for stock watering;



- (6) Place of use and method(s) of application;
 - (7) Quantity and quality of return flow, including provisions to maintain optimum aquifer recharge;
 - (8) Provisions for impoundment or temporary holding ponds;
 - (9) Efficiency and conservation measures, including best management practices and best practicable technology;
 - (10) Provisions for maintaining instream flows;
 - (11) Provisions designed to maintain head and pressure, and to prevent or reduce obstruction of flows, in surface and underground waters;
 - (12) Protections against obstruction of fish runs;
 - (13) Protections against stream quality degradation, including but not limited to, turbidity and thermal degradation;
 - (14) Provisions to define and limit interbasin transfers of water;
 - (15) Provisions to prevent or reduce user conflict;
 - (16) Long-term development measures;
 - (17) Provisions to prevent interference with Water Code Administration;
 - (18) Provisions for Yakama Nation employee access to water use sites for purposes of inspection, monitoring, and research, including access to all other withdrawal or diversion sites on the subject property;
 - (19) Provisions for self-monitoring of permit conditions, including installation of flow meters;
 - (20) Payment of fees, including annual fees, as provided in the fee schedule issued by the Director; and
 - (21) Provisions allowing access to permittees' land at anytime for measuring of water consumption; and
 - (22) Other provisions necessary to ensure conformity with this Code and actions taken hereunder.
- (b) Permits shall require that all diversions and withdrawals of water within the Reservation or on off-Reservation trust land be metered, measured and reported to the Water Code Administration under such time table as the Director may provide in regulations or permit



conditions. All permits shall require all diversions to have a fish screen under such terms and conditions the Director may provide by regulation or permit conditions.

- (c) All permits shall contain provisions for the use of conservation measures, including requirements for implementation prior to issuance of a renewal permit.
- (d) For reasons of water scarcity or to promote more efficient use of water resources, the Director may modify a permit at any time. Such modification may be made with respect to any of the terms or conditions of the permit, including the quantity of permitted water use or the means of diversion. In issuing such modification orders, the Director shall notify an affected user of his or her intention to modify a permit at the earliest possible time, and shall exercise due care to respect the rights of all permittees.
- (e) Subject to the above conditions, it shall be the policy for the Director not to modify a permit absent a pressing need.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.29: DURATION OF PERMITS.

- (a) Water use permits shall be valid in force and effect for no more than ten years from the date of issuance.
- (b) Permits may be issued for a duration of less than ten years if the Director, at his or her discretion, deems a lesser period necessary or desirable.
- (c) In all instances, the expiration date must be noted prominently on the permit form.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.09.31: RENEWAL PROCEDURES.

- (a) During the tenth year that a water use permit is in force, or the last year of a permit, whichever occurs first, a permittee may apply to the Director to review the permit terms and conditions to determine the desirability of granting a renewal of no more than ten years.
- (b) The Director shall provide a renewal application form to the applicant, establish



procedures and time lines for processing renewal applications, and establish a fee schedule for issuance of renewal permits.

- (c) The Director shall consider the following factors in determining whether to renew a water use permit:
 - (1) The guidelines and criteria used in evaluation of new applications for water use permits, as set forth in Section 60.09.23;
 - (2) The renewal applicant's history of water use and adherence to prior permit conditions and applicable law; and
 - (3) The renewal applicant's adoption and use of conservation measures during the duration of the original permit.
- (d) The Director shall, within, sixty days of receipt of a permit renewal application, review the application, perform investigations, prepare a report, and grant or deny said application, including qualifying an approval on the performance of conditions which the Director deems necessary for protection of the water resource. The Director may extend this period.
- (e) Permittees should apply for renewal permits not less than sixty days before expiration of a water use permit. Failure to apply in a timely fashion may result in temporary suspension of water use permits.
- (f) The affected permittee or other interested party may protest the Director's decision with respect to renewal of a permit within thirty days of receipt of notice by certified mail, as provided in Chapter 60.17 of this Water Code. The existing permit shall remain in force until final action is taken on any such protest.
- (g) Permittees who fail to be granted a renewal or a new permit shall be deemed to have relinquished water use privileges, and must immediately cease all diversions or withdrawals and abandon diversion or withdrawal structures.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

CHAPTER 60.11 – MINIMUM INSTREAM FLOWS

60.11.01: ESTABLISHMENT OF MINIMUM INSTREAM FLOWS.



- (a) The Director shall establish annual minimum instream flows in all surface waters, including Ahtanum, within the Yakama Reservation outside of the mainstem of the Yakima River for the purpose of protecting fish and other aquatic species.
- (b) The Director may modify such flows upon receiving a written request from the Fisheries Resource Management Program, setting forth the need for protecting fish and other aquatic life and recommending specific modifications to annual established flows.
[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.11.03: INSTREAM FLOW RECOMMENDATIONS.

When establishing minimum instream flows under this Chapter, the Director shall request the best available scientific and cultural information from the Fisheries Resource Management Program, Water Resources Program, and Cultural Resources Program concerning instream flow requirements for fish and other aquatic species, including a statement recommending specific minimum flows. Based upon receipt of such information and recommendation, the Director shall make a provisional determination of minimum instream flows.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.11.05: COMMITTEE REVIEW.

Upon making a provisional determination of minimum instream flows, the Director shall transmit a report of the provisional determination of instream flows to the Committee for review and the basis therefore. The Committee shall, within fifteen days of transmittal, approve, condition, or disapprove the minimum instream flows through an official Committee Action.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.11.07: REGULATIONS AND NOTICE.

Upon approval by the Committee, minimum instream flows shall be established or modified under this Chapter through the adoption of regulations to be issued by the Director, setting forth



the specific annual or modified minimum flows and any pertinent information relied upon to establish such flows. Such regulations shall be available for public inspection and copying at offices of the Water Code Administration and the Water Resources Program upon request.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

CHAPTER 60.11 60.13 – WELL CONSTRUCTION AND DECOMMISSION STANDARDS

60.13.01: MINIMUM STANDARDS.

All new wells shall be constructed, maintained, altered or decommissioned at a minimum standard of the specifications in Part One of Chapter 173-160 of the Washington Administrative Code. These standards shall be minimum standards, and the Director is authorized to enact regulations under this Chapter providing for additional or different requirements. Nothing herein shall act to grant jurisdiction to the State of Washington on the Yakama Reservation.

Well drillers shall collect cuttings and provide other information and access to Yakama Nation employees as required by the Director.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.13.03: PRIOR NOTICE OF WELL CONSTRUCTION.

- (a) All property owners or their agents or contractors shall notify the Director of his or her intent to begin well construction, alteration, or decommissioning procedures in advance of commencing such work.
- (b) Notice shall be submitted in writing on forms supplied by the Director, containing the name of the well owner, location of the well, proposed use, start date, well driller's name and license number, and other pertinent information required by the Director.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]



60.13.05: WELL DRILLING LICENSE.

All persons who construct or drill wells, whether for personal or commercial use, shall:

- (a) Be licensed by and in good standing with the State of Washington Department of Licensing in accordance with Chapter 173-162 of the Washington Administrative Code; and
- (b) Obtain a Yakama Nation business license in accordance with RYC Chapter 30.02.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.13.07: NOTICE TO WELL DRILLERS.

The Director shall provide notice of the adoption of this Water code to all well drillers licensed by the State of Washington. The Director shall also provide information concerning Yakama Nation business licensing procedures, and shall notify all licensed drillers of periodic amendments to this Code which impact well construction methods and standards.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.13.09: EXISTING WELLS NOT IN COMPLIANCE.

- (a) The Yakama Nation finds that existing wells that are improperly constructed, including unsealed wells or unsealed/uncovered ring wells, constitute a hazard to water resources.
- (b) The Director may order a well driller or well owner to repair, alter, or decommission a well if the Director finds that the well was not constructed in accordance with the standards in effect at the time of construction.
- (c) The Director shall conduct an inventory of all improperly constructed wells within the exterior boundaries of the Reservation, and establish a timetable and program for decommissioning of said wells.
- (d) Any party impacted by an order issued pursuant to this section may protest the order pursuant to Chapter 60.17.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]



60.13.11: ABANDONED OR UNUSABLE WELLS.

- (a) The Director is authorized to require a well owner to decommission any well that is abandoned, unusable, or not intended for future use.
- (b) Decommissioning shall be in accordance with Section 173-160-381 of the Washington Administrative Code, and the Director may require additional procedures as necessary.
[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.13.13: VIOLATIONS.

- (a) It shall be unlawful for any person to construct, alter or decommission a well in violation of this Chapter.
- (b) If any person or entity is found in violation of this Chapter, civil penalties shall apply consistent with 60.23.03.
[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

CHAPTER 60.15 – HYDRAULIC PERMITS

60.15.01: HYDRAULIC PERMITS.

- (a) No person shall construct or perform work that uses, diverts, obstructs or changes the natural flow, or changes the bed or banks of any stream or river or remove water from any river, stream, spring, pond, lake, wetland, or any other body of water located within the boundaries of the Yakama Reservation, including groundwaters, without first complying with Chapter 60.15.
- (b) A hydraulic permit may be issued for a period of no longer than one year. Extensions may be granted at the request of the Director but each such extension shall not be for a period of longer than one year.
- (c) No person may conduct work within 200 feet of a stream, spring, river, lake, pond, wetland, or any other tribal water resource on the Yakama Reservation without first



obtaining a Yakama Nation Water Code Hydraulic Permit except for those activities that are listed as exempt uses in 60.15.07 when the exemption process has been followed.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.15.03: PROHIBITED USES.

- (a) No hydraulic permit shall be issued for the following uses within the Yakama Reservation:
- (1) Storage, handling, and disposal of materials or substances that are hazardous to water quality or living organisms.
 - (2) Any Concentrated Animal Feeding Operations (CAFO) including feedlots and dairies.
 - (3) The placement of mining tailings, spoils, and waste materials except for those associated with the mining of gravels.
 - (4) Solid waste disposal sites.
 - (5) Automobile wrecking yards.
 - (6) Fill for the sole purpose of increasing land area within stream, river, or wetland corridors.
 - (7) Any action in violation of 60.15.01.
- (b) In addition to the requirements of 60.15.01, the following work is prohibited without a hydraulic permit:
- (1) The draining or filling of a wetland, lake, or pond.
 - (2) Excavation to obtain fill material and the removal and transport of fill material outside of the stream corridor.
 - (3) Vehicle and material storage within a floodway.
 - (4) Dwellings and residences within a floodway.
 - (5) New or expanded manufactured home parks.
 - (6) Wastewater treatment facilities.
 - (7) Site runoff storage ponds, manure stockpiles and manure disposal, holding tanks and ponds, and other similar waste disposal facilities.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]



60.15.05: APPLICATION AND PERMIT ISSUANCE PROCEDURE.

- (a) All Hydraulic Permit Applications shall be accompanied by the submission of the Mitigation Plan explaining what steps are proposed to be taken by the applicants to ensure that tribal water resources will not be adversely affected if the permit is granted.
- (b) Upon receipt of a Hydraulic Permit Application, the Water Code Administration shall conduct an investigation in order to determine whether a permit should be issued.
- (c) If it is determined that the issuance of a hydraulic permit will impair or adversely affect the health, welfare, safety, or economic security of Yakama Nation or its members, or its fisheries, wildlife, water resources, or other natural or cultural resources, a permit shall not be issued. This investigation shall include, at a minimum, consultation with Yakama Nation Fisheries Resource Management, Wildlife Resources Management, Water Resources Management Programs, Environmental Management, or any interested or affected persons.
- (d) If the application is in or near a Culturally Sensitive Area, Water Code shall also consult with Yakama Nation Cultural Resources.
- (e) Upon receipt of a completed hydraulic permit application, the Director shall publish a public notice online. The public notice shall contain:
 - (1) Solicitation of public comment;
 - (2) Name of applicant;
 - (3) Legal description and street address of the property where the water use permit will apply;
 - (4) Concise description of the proposed use;
 - (5) Name, address, and phone number of the Water Code Administration; and
 - (6) Date by which public comments must be received.
- (f) The issuance of a Hydraulic Permit may be conditioned upon any of the following:
 - (1) The payment of an administrative fee;
 - (2) The submission of the Mitigation Plan or the payment of a Fisheries or Wildlife mitigation fee;
 - (3) Provision of any other relevant information requested by the Yakama Nation Water Code;



- (4) Agreement by the applicant to allow unlimited inspection by the Yakama Nation Water Code Administration staff and/or other affected Yakama Nation programs;
- (5) The payment of a user fee for the use of Yakama Nation water resources; or
- (6) The contractor performing the work must be licensed with the Yakama Nation.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.15.07: EXEMPT USES NOT REQUIRING A PERMIT.

- (a) An exemption from the need to get a hydraulic permit under 60.15.01 may be obtained if an applicant applies for and obtains an exemption under this section and pursuant to the procedures in 60.15.05. An applicant may request a pre-application review by Water Code Administration staff of their proposed project prior to the start of the project.
- (b) The following is a list of exempted activities that shall not require a Hydraulic Permit if an exemption is obtained:
 - (1) Emergency construction necessary to protect property from damage by the elements.
 - (2) Ordinary practices consistent and necessary for farming, irrigation, and ranching activities for established farms provided the use is not changed from the established use or expanded on to new land. This exemption shall include seeding, cultivating, harvesting, mowing and other similar activities but shall not include a change from unirrigated livestock grazing to irrigated agriculture.
 - (3) Maintenance of existing, lawfully established areas of crop vegetation, landscaping or gardens situated within 200 feet of a stream, river, lake, pond, or wetland. This shall include plowing, cultivating, minor drainage, mowing lawns, weeding, harvesting and planting of garden crops, planting non-invasive ornamental vegetation or indigenous vegetation to maintain condition of such areas.
 - (4) Measurement or installation of water metering devices that do not divert flow or affect the channel in a substantial manner.
 - (5) Emergency removal of solid waste disposal sites (dump sites) that are listed as a prohibited use in 60.15.03.



(6) Emergency removal of vehicles or materials that are listed as a prohibited use
in.60.15.03.

(7) Emergency removal of dwellings and residences that are listed as a prohibited use
in.60.15.03

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and
Superseded by T-027-22]

60.15.09: PROCEDURES FOR DENIED HYDRAULIC PERMIT.

(a) Any party or applicant who has been denied the issuance of a hydraulic permit may,
within thirty days after the denial of the permit, appeal the denial pursuant to the
provisions of Chapter 60.17.

(b) Any program of the Yakama Nation may, within thirty days after the grant of a hydraulic
permit, appeal the granting of the permit pursuant to the provisions of Chapter 60.17.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and
Superseded by T-027-22]

60.15.11: REMEDIES FOR NONCOMPLIANCE.

Any person who fails to comply with this Chapter, or who fails to comply with the terms
contained in any permit issued under this Chapter, shall be subject to permit revocation pursuant
to Chapter 60.19 and penalties and enforcement pursuant to Chapter 60.23.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and
Superseded by T-027-22]

60.15.13: EMERGENCY SITUATIONS.

(a) In case of an emergency arising from the weather, high stream flow conditions,
unforeseen natural events, or an unforeseen emergency which creates the likelihood of
significant detrimental impact on the health, welfare, or safety of Yakama Nation
members or natural resources, the Director may immediately suspend the continuance of
operations by the holder of the permit.



- (b) In the case of an emergency, the Director may authorize emergency work or water use without a permit to alleviate imminent damage or threat of damage from floods, fire, or other unforeseen natural event.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

CHAPTER 60.17– PROTESTS OF PERMIT DECISIONS

60.17.01: WHO MAY PROTEST.

- (a) Any party or applicant who objects to a final decision on his or her application for a water use permit under Chapter 60.09 or hydraulic permit under Chapter 60.15, and who has not previously appeared before the Committee in a hearing or meeting with the Committee on that decision, may file a protest within thirty days of notification of decision on the application.
- (b) Any permittee who objects to the denial of, imposition of conditions on, or non-renewal of a water use or hydraulic permit may file a protest within thirty days of notification of the proposed action.
- (c) Any person directly and adversely affected by a final decision on an application by the Director may file a protest within thirty days of notification to the applicant.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.17.03: CONTENTS OF PROTEST.

All protests shall include a statement of the interest of the protestor in the matter, a statement of material facts, a statement of reasons why the protested decision should be reconsidered, and a verification by the protestor.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]



60.17.05: FILING PROCEDURES.

- (a) The original protest statement shall be sent by certified mail, or delivered in person to the Chairperson of the Committee or his or her secretary, at the Yakama Nation Headquarters in Toppenish, Washington.
- (b) No fee shall be charged for the filing of a protest.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.17.07: WATER CODE DIRECTOR REVIEW.

- (a) The Committee shall transmit a copy of the protest to the Director within seven days following filing.
- (b) The Director shall review the protest, and if needed, conduct an investigation. The protestor shall cooperate fully with the Director in any such investigation.
- (c) Following review, the Director shall submit to the Committee his or her findings of fact, recommended decision, and suggested order. A copy of these materials shall be sent to the protestor by certified mail.
- (d) The Director's review should be completed within fourteen days of receipt of the protest materials from the Committee.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.17.09: PROTEST HEARING – SCHEDULE.

- (a) Following receipt of the Director's review, the Committee shall schedule a date to decide the protest.
- (b) The protestor may request that the Committee hold a formal hearing on the matter. The protestor may be present at and participate in the hearing. The protestor must request a hearing within seven days of receipt of the Director's review.
- (c) The Committee, on its own motion, may schedule a hearing on the protest. If the Committee so moves, it must provide immediate notification to the protestor.



- (d) If scheduled, the protest hearing should be held within fourteen days of the Committee's receipt of the Director's review. The Committee may, at its discretion, decide the protest based on the written documents before it without a hearing with the protestor.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.17.11: PROTEST HEARING – PROCEDURES.

If a protest hearing is held, the following procedures shall be observed:

- (a) The Committee shall conduct hearings sitting as a body. No hearing shall be held with less than three Committee members present.
- (b) The protestor may, at his or her own expense, hire a court reporter to make a transcript of the hearing. If no reporter is present, the Chairperson of the Committee shall direct a qualified person to record and publish minutes of the hearing. A copy of any transcript or minutes produced shall be available to the protestor, the Committee and the Director.
- (c) The protestor and the Director may each present their arguments and material evidence as set forth in Section 60.17.13.
- (d) Members of the Committee may examine and cross-examine the protestor and the Director and any other witnesses called by either side concerning any matter relevant to the protest.
- (e) Members of the Committee may discuss the arguments and evidence among themselves and with the protestor and Director, including negotiating a resolution to the protest, during the protest hearing.
- (f) At the conclusion of the protest hearing, the Chairperson of the Committee may continue the hearing to another date or may set a date for the Committee to issue its decision in the matter.
- (g) The Committee and the Director shall make every reasonable effort to ensure that the protestor receives fair and equitable treatment during the course of the protest proceedings. Principles of due process shall be observed.



- (h) The Committee may, upon a showing of good cause upon notice to all parties, grant an extension of time for any time deadline in this Chapter with the exception of those in RYC 16.17.01.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.17.13: PROTEST HEARING – EVIDENCE AND MATERIALS

- (a) The protestor may present and explain materials supporting his or her protest to the Committee.
- (b) The Director may present and explain materials supporting his or her review concerning the protest.
- (c) Materials not previously provided by the protestor or the Director may only be presented at the hearing if they were not reasonably available at the time the protest or review was transmitted to the Committee. Such materials should be transmitted to the Committee as soon as they become available before the hearing or before a decision is made by the Committee.
- (d) The Committee may direct the protestor or the Director to provide additional materials it deems necessary to resolve the protest.
- (e) The Committee may consider any materials it deems pertinent to resolution of the protest.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.17.15: DECISION BY COMMITTEE.

- (a) Following the hearing, or if no hearing is held, the Committee shall meet in executive session to decide the protest.
- (b) The Committee decision must be made by a majority of the members present at the protest hearing.
- (c) In making its decision, the Committee shall adhere to the findings, purposes, and priorities set forth in Chapter 60.01 of this Code. The Committee shall also adhere to principles of due process in making its decision.



- (d) The Chairperson shall prepare a formal, written decision of the protest. The decision shall state findings of fact, conclusions of law, and clearly indicate the resolution of the protest. The decision shall also state the necessary deadlines and procedures for filing an appeal of the decision.
- (e) The Chairperson shall send a copy of the decision to the protestor by certified mail, and transmit a copy to the Director.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

CHAPTER 60.19 – PERMIT REVOCATION

60.19.01: VIOLATION OF PERMIT.

- (a) Any person who diverts or withdraws water in violation of or inconsistent with any term of his or her permit or otherwise acts in violation of any term or condition of his or her permit is in violation of this Code.
- (b) Such acts may be cause for revocation of the permit as set forth in this Chapter. Permit violations may also be remedied by imposition of a citation, civil fine, warning, or other action by the Director in accordance with Chapter 60.23 of this Code.
- (c) The permit revocation provisions of this Chapter shall not apply to Class 1B or Class 10 permits.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.19.03: WARNING.

- (a) Whenever, on the basis of available information, the Director finds that a permittee is in violation of any terms of his or her permit issued under this Code as provided in Section 60.19.01, the Director may issue a warning requiring such permittee to comply with such terms.



- (b) Such warning shall contain the information required by Section 60.23.07 of this Code, as well as a statement that the permit may be subject to revocation upon further violations.
- (c) Such warning may say that such users are subject to a stop work order if they take water in excess of or in violation of their permit. Any warning issued under this Section shall be served on the permittee by certified mail.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.19.05: COMPLIANCE ORDERS.

- (a) Whenever, on the basis of available information, the Director finds that a permittee is in violation of any terms of a permit issued under this Code, the Director may issue a compliance order by certified mail, to the last known address provided by the permittee, requiring such permittee to comply with such terms.
- (b) If the violation specified in the compliance order is not corrected by the permittee within ten days, the Director shall inform the Committee of the continuing violation and may recommend revocation of the permit.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.19.07: REVOCATION HEARING.

- (a) Following the Director's notification, the Committee shall notify the permittee of the alleged violations, and of the date of a revocation hearing at which the permittee must appear to show cause why the permit should not be canceled.
- (b) Failure of a permittee to appear at a scheduled revocation hearing shall be cause for revocation of a water use permit.
- (c) Revocation hearing procedures shall be identical to protest hearing procedures, as set forth in Section 60.17.11 of this Code.
- (d) Evidence and materials may be submitted at the revocation hearing in accordance with the protest hearing procedures, as set forth in Section 60.17.13 of this Code.
- (e) Upon completion of the revocation hearing the Committee shall issue a written decision



in accordance with the procedures for a decision of a protest, as set forth in Section 60.17.15 of this Code.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

CHAPTER 60.21 – APPEALS OF COMMITTEE DECISIONS

60.21.01: TRIBAL COUNCIL REVIEW.

- (a) The Tribal Council shall hear all appeals of decisions of the Committee concerning protests of the issuance, denial, conditioning, renewal, or revocation of a permit under Chapter 60.17 or Chapter 60.19.
- (b) Members of the Committee shall participate in appeals of Committee decisions before the Tribal Council.
- (c) The following person shall have the right to appeal the decision of the Committee:
 - (1) Permittees whose permits are the subject of a decision; and
 - (2) Persons who are substantially adversely affected by a decision.
- (d) No person may seek Tribal Council review of a decision of the Committee or Director unless he or she has first exhausted all rights of administrative appeal as provided in this Code.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.21.03: APPEAL PROCEDURES.

- (a) Appeals must be filed no later than thirty days following the date of receipt of the certified mailing of the final decision to the affected parties.
- (b) Appeals must be filed in writing with the Chairman of the Tribal Council and the Director.



- (c) An appeal is deemed filed when it is either delivered to the Chairman and the Director or mailed to the Chairman and the Director by certified mail or personal service. An appeal is deemed mailed on the date it is postmarked.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.21.05: STANDARD OF REVIEW.

- (a) Unless otherwise provided by this Code, appeals to the Tribal Council shall be limited to review of the administrative record of the Committee’s final decisions.
- (b) There shall be no *de novo* review of administrative decisions.
- (c) The Tribal Council may modify, reverse, or remand a decision of the Committee only when the decision or ruling is without substantial basis in fact, or is contrary to Yakama Nation policy or law.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.21.07: ADMINISTRATIVE RECORD.

- (a) The Committee shall certify and transmit to the Clerk of the Tribal Council the administrative record, including all documents, minutes, transcripts, materials transmitted by the Director, and other information which forms the basis for the decision under appeal.
- (b) Any doubt concerning the relevance of a particular document or other evidence should be resolved in favor of including the material in the administrative record.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.21.09: FINAL DECISION.

- (a) Any decision by the Tribal Council under this Chapter shall be final for the Yakama Nation.



- (b) Nothing herein shall waive the sovereign immunity of the Yakama Nation in any Court for any appeal from this decision.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

CHAPTER 60.23 – PENALTIES AND ENFORCEMENT

60.23.01: TRIBAL COURT JURISDICTION.

The Tribal Court shall have jurisdiction to enforce the provisions of this Code upon the filing of a citation by the Director. Such jurisdiction shall not include any action by private parties to enforce this Code.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.23.03: CIVIL PENALTIES.

- (a) A violation of this Code shall be a civil offense in which the remedy is a civil fine or penalty.
- (b) The Director shall annually prepare for the approval of the Committee a schedule of civil fines, which shall be dollar determinations calculated to closely approximate the cost of providing equitable restitution for the damage or loss caused by each violation of this Code or regulation adopted under this Code.
- (c) In determining the amount of the penalty to be levied, the Director shall consider:
- (1) The seriousness of the violation;
 - (2) Whether the violation is repeated or continuous after notice of the violation is given;
 - (3) Whether any damage has occurred to human health or property, including, but not limited to, the water rights of any party or Treaty-reserved fish or other aquatic life or other natural resources; and
 - (4) Extraordinary circumstances caused by drought or other emergencies.
- (d) All persons shall be deemed to have consented to the civil penalties authorized in this Code and the jurisdiction of the Yakama Nation by their residence in or entry onto the



Reservation, and where applicable, by their signature on an application for a permit or permits.

- (e) The Director shall annually publish the schedule of civil fines and have it made available to the public at the office of the Water Code Administration.
- (f) The Tribal Court shall have the authority to assess and collect civil penalties as provided in this Section, upon filing of a citation by the Director.
- (g) It shall be presumed by the Court adjudicating any violation of this Code that the amount fixed by the Director represents the damages owed to the Yakama Nation as restitution by a specific defendant if such defendant is found to be liable. This presumption may be rebutted by evidence showing that the amount is excessive, or that special circumstances warrant a reduction of the amount in the particular case.
- (h) If, on a showing of good cause, the defendant is unable to pay the civil fine when due, the Court shall grant an extension, and may grant additional extensions of time in which such fines shall be paid or may allow payment in installments. The Court may, in its discretion, waive, reduce, or suspend the civil fine prescribed for the violation after a hearing.
- (i) Any civil fine assessed and determined due by the Court for which a judgment has been entered or through failure to contest the amount shall be collected in the same manner as any other judgment entered in a civil action.
- (j) All funds resulting from fines or penalties collected for violations of this Code or regulations, permits, or orders issued thereunder shall be deposited in the Water Code Administration fees and fines account.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.23.05: CITATIONS.

- (a) A citation constitutes a notice of civil infraction or violation and shall satisfy all requirements for the filing of a civil complaint under RYC Chapter 7.01. The content of the citation shall include the following:



- (1) A statement that the citation represents a determination that a violation has been committed by the person named in the citation and that such person may contest the determination as provided in this Chapter;
 - (2) A statement that a violation is a non-criminal offense for which imprisonment cannot be imposed as a sanction;
 - (3) A statement of the specific act or omission for which the citation was issued and the specific violation alleged;
 - (4) A statement of the civil fines levied for the violation;
 - (5) A statement of the options provided in this section for responding to the citation and the procedures necessary to exercise those options, including a statement that, at any hearing to contest that a violation took place, the Director has the burden of proving, by a preponderance of the evidence, that the violation was committed;
 - (6) A statement that failure to respond to the citation within the time prescribed or to appear at a hearing requested for the purpose of contesting the citation will result in the imposition of an additional fee representing the added expense incurred by the Director, and the entering of a Tribal Court order against the person named;
 - (7) A statement that an order imposing a fine shall be a debt owed to the Yakama Nation, and the judgment entered on the debt may be enforced in Tribal Court;
 - (8) A statement that the defendant must respond as provided in this Chapter to the citation within twenty days; and
 - (9) A proposed order for the judge's signature in the event a citation is uncontested.
- (b) A civil citation may be issued by:
- (1) The Director or any member of the Water Code staff when a violation is committed in their presence or when the citation is issued subsequent to an investigation and there is probable cause to believe that the defendant has committed a violation of this Code.
 - (2) The Director, Water Code staff or Yakama Nation Police officer may serve a copy of the citation on the defendant by personal delivery to the defendant when the violation is committed in the presence of the Director, Water Code staff or Yakama Nation Police officer.
- (c) Citations issued subsequent to an investigation shall be served on the defendant by certified mail. Certification of service of the citation shall be indicated on the face of the



citation by the issuing officer. One copy of the citation shall be filed by the issuing officer with the Tribal Court.

- (d) Any defendant named in the citation who does not contest the determination that a violation took place as stated in the citation shall within twenty days from the date of the citation respond by completing the appropriate portion of the citation and submitting it either by mail or in person to the Tribal Court. A check or money order in the amount of the civil fine set out in the citation must be submitted with the response.
- (e) When a response under this subsection is received, an appropriate notation shall be entered in the Court's records. No further proceedings for a particular violation shall be initiated against any defendant who pays the civil fine for such violation unless, the Director determines that a temporary restraining order or preliminary injunction under Chapter 60.25 of this Code is necessary to prevent further violations.
- (f) If the defendant named in the citation wishes to contest the determination that a violation took place as stated in the citation, or wishes to explain mitigating circumstances surrounding the violation, the defendant shall, within twenty days of the date of the citation, respond by completing the portion of the citation requesting a hearing for such purpose and shall submit it either by mail or in person to the Tribal Court.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.23.07: WARNINGS.

In any case where the Director or a member of Water Code staff determines that the issuance of a warning instead of a citation as provided in this Chapter is appropriate, he or she may issue such warning. The content of the warning shall include the following:

- (a) A statement that the warning represents a determination that a violation has been committed by the person named in the warning;
- (b) A statement that a violation is a civil offense;
- (c) A statement of the specific act or omission for which the warning was issued and the specific violation alleged; and



- (d) A statement that future or continuing violations may result in the imposition of a civil fine or other remedy as provided by this Code.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.23.09: COURT PROCEEDINGS.

The Tribal Court shall schedule proceedings under this Code as part of its civil caseload and shall hear such proceedings pursuant to the following:

- (a) All proceedings held pursuant to this Code shall be before a judge of the Court without a jury;
- (b) The Director shall have the burden of proving the allegation in the citation by a preponderance of the evidence;
- (c) The Court shall have the authority to exercise any and all of its inherent judicial powers in order to facilitate adjudication of any proceedings under this Code;
- (d) In ruling on violations arising under this Code, the Court shall have the authority to assess and collect civil fines as provided in this Code, and shall have the authority to enjoin or mandate action in the enforcement of this Code.
- (e) In any action brought pursuant to this Code, the Director may recover the reasonable costs incurred, including reasonable attorney fees.
- (f) Any final judgment in favor of the Water Code Administration shall be an obligation of the defendant to the Yakama Nation and is subject to collection, including the issuance of writs of attachment, execution, garnishment or recovery. Such judgment shall become a lien upon any available real, personal or other property of the defendant located within the boundaries of the Reservation.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.23.11: OTHER REMEDIES.

Nothing in this Code shall be deemed to preclude the Tribal Court from:

- (a) Ordering the defendant to perform corrective or remedial work to alleviate the violation;



- (b) Conditioning any permit issued under this Code on terms appropriate to a given situation;
- (c) Ordering the defendant to pay compensation or restitution to an individual or any other entity, including the Yakama Nation, injured by the actions of the defendant, such compensation or restitution shall reflect the actual documented damages or loss suffered as determined by the Court and shall not include compensation for emotional distress, pain and suffering or other special damages; or
- (d) Imposing any other remedy for civil violations to the extent authorized by Yakama Nation law or custom.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

CHAPTER 60.25 – EMERGENCY POWERS.

60.25.01: EMERGENCY POWERS.

Notwithstanding any other provision of this Code, the Director, upon receipt of information concerning an activity or event that constitutes an imminent threat or hazard to the health, safety or welfare of the Yakama Nation, the Yakama Reservation, or its occupants or natural resources may take immediate legal action as he or she deems necessary to prevent or ameliorate said threat or hazard, in accordance with the procedures authorized by this Chapter.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.25.03: STOP WORK ORDERS.

- (a) If the Director, a member of Water Code staff or Yakama Nation Police officer observes a violation that requires immediate remedial action to prevent irreparable harm, injury, loss or damage to Yakama Nation property or resources, or is a threat to human health or safety, the Director may issue a written order directing that any work, action, or use of equipment that is violating this Code, or regulations promulgated pursuant to this Code, stop immediately.



- (b) A stop work order shall specify the person or entity to whom it is being issued, the date and time of issue, and the facts which warrant immediate action. Such order shall be personally served on the person specified in the order, or an agent or officer of the entity specified in the order.
- (c) A stop work order shall remain in effect until the end of the third business day following issuance of the order or until the Tribal Court issues a temporary restraining order upon filing of a citation by the Director as provided in this Chapter. Upon issuance of a stop work order the Director may immediately seek a temporary restraining order under this Code and Tribal Court rules. The scheduling of a hearing shall not prevent enforcement of the order pending the hearing.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.25.05: ENFORCEMENT ORDERS.

- (a) If in the judgment of the Director, any delays in stopping a violation would cause irreparable harm, injury, loss or damage to Yakama Nation property or resources, or would be a threat to human health or safety, the Director may order the owner, operator, or manager of the property, or the person responsible for the violation, to carry out specified remedial actions necessary to abate the hazard or damage.
- (b) An enforcement order shall specify the person or entity to whom it is being issued, the date and time of issue, and the facts which warrant immediate action. Such order shall be personally served on the person specified in the order, or an agent or officer of the entity specified in the order.
- (c) An enforcement order shall remain in effect until the end of the third business day following issuance of the order or until the Tribal Court issues a temporary restraining order upon filing of a citation by the Director as provided in this Chapter. Upon issuance of an enforcement order the Director may immediately seek a temporary restraining order under this Code and Tribal Court rules. The scheduling of a hearing shall not prevent enforcement of the order pending the hearing.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]



60.25.07: COURT ORDERS.

- (a) If in the judgment of the Director, any delays in stopping a violation would cause irreparable harm, injury, loss or damage to Yakama Nation property or resources, or would be a threat to human health or safety, the Director may file a citation in the Tribal Court for a temporary restraining order. The citation must be accompanied by an affidavit with specific facts clearly showing that immediate and irreparable harm, injury, loss or damage will result before a Court hearing can be held.
- (b) The Court may issue a temporary restraining order, a preliminary injunction or other appropriate relief at any time after filing of the petition and before judgment when:
 - (1) It appears that the Yakama Nation is entitled to the relief demanded in the citation under this Code, and the relief, or any part of the relief, seeks to restrain or enjoin the commission or continuance of an act which, if allowed during the litigation, would cause irreparable harm, injury, loss or damage to Yakama Nation property or resources, or would be a threat to human health or safety; and
 - (2) It appears that the defendant is doing, is about to do, is procuring to be done, or threatens to do an act in violation of this Code concerning the subject matter of the action, and which would render the judgment ineffectual or moot.
- (c) Every temporary restraining order or order granting a preliminary injunction shall set forth the reasons for its issuance, shall be specific in terms, shall describe in reasonable detail the act or acts sought to be restrained, and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with any of them who receive actual notice of the order by personal service or otherwise.
- (d) Any violation of the terms of a temporary restraining order or a preliminary injunction is punishable as contempt of court under RYC Section 3.01.35.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]



60.25.09: EX PARTE TEMPORARY RESTRAINING ORDERS.

- (a) The Tribal Court may issue a temporary restraining order under this Chapter at any time after filing of a citation and before judgment without written or oral notice to the defendant or to the defendant's counsel when:
- (1) The Director moves for a temporary restraining order and it clearly appears from specific facts shown by affidavit or by a verified petition that immediate and irreparable harm, injury, loss, or damage to Yakama Nation property or resources will result, or human health or safety would be threatened before the defendant or the defendant's counsel can be heard in opposition;
 - (2) The Director submits an affidavit setting forth the efforts which have been made to notify the defendant or defendant's counsel of the petition, including attempts to provide notice by telephone, and the reasons supporting the claim that notice should not be required; and
 - (3) The temporary restraining order is endorsed with the date and hour of issuance, filed immediately, defines the injury and states why it is irreparable, and states why the order was granted without notice.
- (b) If the Court issues a temporary restraining order without notice, any motion by the Director for a preliminary injunction shall be set for a hearing at the earliest possible time and shall take precedence over all other matters except older proceedings on similar motions. If the Director does not proceed with a motion for a preliminary injunction within three days, the Court shall dissolve the temporary restraining order.
- (c) In such cases where the Director obtains a temporary restraining order without notice to the defendant, upon two days notice to the Director, the defendant may appear and move for dissolution or modification of such restraining order. In such event, the Court shall proceed to hear and determine such motion as expeditiously as time permits.
- (d) A temporary restraining order shall expire by its terms within ten days after entry, or less as the Court may specify. The Court may extend the order for a like period if the Director shows good cause, and shall enter the reasons for the extension into the record.
- [Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]



60.25.11: PRELIMINARY INJUNCTIONS.

- (a) No preliminary injunction shall be issued under this Chapter without notice to the defendant at least five days before the time specified for the hearing, unless a different period is fixed by order of the Court.
- (b) At any time before a hearing on a motion by the Director for a preliminary injunction, the parties may stipulate that the trial of the action on the merits shall be advanced and consolidated with the hearing of the injunction. The parties may also stipulate that any evidence received upon a motion for a preliminary injunction, which would be admissible in a trial on the merits, becomes part of the record on trial and need not be repeated at trial.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

CHAPTER 60.27 – YAKAMA NATION GOVERNMENT SUBDIVISIONS AND ENTERPRISES

60.27.01: APPLICABILITY OF WATER CODE.

Each subdivision and enterprise of the Yakama Nation government shall be subject to, and comply with, all requirements, both substantive and procedural, of this Code in the same manner and to the same extent as any person is subject to such requirements, including but not limited to, payment of permit fees, compliance with all administrative orders, and payment of all civil fines and penalties.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.27.03: LIMITED WAIVER OF SOVEREIGN IMMUNITY.

- (a) The Yakama Nation hereby expressly waives any sovereign immunity for an action in Tribal Court by any Yakama Nation subdivision and enterprise with respect to any substantive or procedural requirement of this Code, including, but not limited to, any citation, civil fine, or administrative order under Chapters 60.23 and 60.25 of this Code.



- (b) Neither the Yakama Nation, nor any agent, employee, nor officer thereof, shall be immune or exempt from any process or sanction of the Tribal Court with respect to the enforcement of any injunctive relief under Chapter 60.25 of this Code brought by any Yakama Nation subdivision or enterprise.
- (c) Nothing herein shall act to grant jurisdiction to any court other than Tribal Court, nor for any damages or relief beyond what is expressly provided herein.
- (d) Nothing herein shall waive Yakama Nation's sovereign immunity for any action by any party other than a Yakama Nation subdivision or enterprise.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.27.05: ENFORCEMENT BY DIRECTOR.

- (a) If the Director finds that a Yakama Nation subdivision or enterprise has violated a provision of this Code or a permit issued under this Code, the Director may take any action authorized by Chapters 60.23 and 60.25 against such subdivision or enterprise, including assessment of a civil fine.
- (b) Before a final judgment on any enforcement proceeding under this Code by the Director against a Yakama Nation subdivision or enterprise, the Director shall provide an opportunity for the subdivision or enterprise to confer with the Director regarding such enforcement proceeding. In the conference the Director shall encourage settlement of the proceeding.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

CHAPTER 60.29 – MISCELLANEOUS PROVISIONS

60.29.01: WATER MANAGEMENT PLAN.

- (a) The Director and the Committee, in consultation with the Yakama Nation Department of Natural Resources, shall engage in a planning process for creation of a comprehensive water plan for the Yakama Nation and Yakama Reservation.



- (b) The water management plan shall include an inventory of existing and proposed uses of water resources, which when completed will constitute a basis for determinations on applications for water use permits.
- (c) The Director and the Committee shall engage in a planning process to have all existing and future diversions and withdrawals of water within the Reservation or on off-Reservation trust land metered, measured and reported to the Water Code Administration under such time table as the Director may provide in regulations and to have all diversions and withdrawals equipped with a fish screen.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.29.03: WATER LEASING.

- (a) The Committee may, following investigation and public notice, institute procedures and fees for assessing Yakama Nation operation and maintenance charges, and for the lease of the tribal water resources to persons using said waters for commercial purposes.
- (b) This Section shall not be interpreted to authorize the sale of water rights.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.29.05: PUBLIC RECORDS.

- (a) The Director and the Committee shall maintain files for all applications, permits, and other activities undertaken in accordance with this Code.
- (b) Copies of applications and permits shall be available for public inspection and copying at the requestor's expense. Nothing herein shall act to make other documents public records.
- (c) Documents which shall not be considered public records include but are not limited to investigative files, preliminary drafts, notes, recommendations, intra-agency documents.
- (d) Public records shall not include any communication with Yakama Nation legal counsel, any communication between Water Code employees and other Yakama Nation staff or elected officials, and any other communication which may be considered privileged.



[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.29.07: EXTENSION OF TIME LIMITS.

All time limits provided for in this Code may be extended by the Director or Committee when the interests of justice so require.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.29.09: NOTICE TO CORPORATIONS.

In any case in which an order, citation, petition or notice of other civil remedy under this Code is issued or brought against a corporation, partnership, or limited liability company, a copy shall be served on any officer or partner of such entity.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.29.11: REPRESENTATION.

Persons appearing at the hearings and other proceedings provided for in this Code may represent themselves, or may, at their own expense, be represented by individuals admitted to practice before the Tribal Court.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.29.13: CONSTRUCTION.

This Water Code shall be liberally construed to effectuate its policies, purposes, and provisions.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.29.15: SEVERABILITY.



Should any provision of this Water Code, or its application to any person, be declared invalid, the remaining provisions of this Code shall remain valid in force and effect, and to this end, the provisions of this Code are severable.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]

60.29.17: SOVEREIGN IMMUNITY.

The Yakama Nation does not waive, alter, or otherwise diminish its inherent rights, privileges, remedies, services, or “sovereign immunity,” whether express or implied, by virtue of adopting this Water Code, as guaranteed by the Treaty of 1855, except as provided in Section 60.27.03.

[Annotation: Enacted by T-79-77, Amended by T-160-92, Amended by T-089-05, Amended and Superseded by T-027-22]



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