

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401



OFFICE OF ENVIRONMENTAL TRUST

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## Introduction

The Confederated Tribes of the Colville Indian Reservation (“CTCR” or “Tribe”) is a federally recognized Indian Tribe whose Reservation is located in Northeastern Washington State on approximately 1.4 million acres of land. The current reservation is bounded on the east and south by the Columbia River and on the west by the Okanogan River. The Northern Boundary is formed by what is commonly referred to as the “North Half”. The North Half consists of approximately 1.5 million acres of land that were previously part of the Colville Indian Reservation. The Tribe owns fee land outside the Reservation boundaries, and there are lands held in trust for both the tribe and individual tribal members outside of the Reservation boundaries, that fall under tribal jurisdiction. Both the Columbia and Okanogan Rivers are international waters that originate in Canada. These and other trans-boundary river and stream systems are within CTCR’s tribal lands and directly impact the health and safety of tribal members and the Tribe’s natural resources. The northern boundary of our ceded territory is the Canadian border. Two of the Country’s largest generating hydropower dams; Grand Coulee and Chief Joseph are located partially on the reservation. There are approximately 9,000 members of the CTCR, and about half of them live on the reservation. A significant portion of the membership practices subsistence living in some manner. Several thousand non-Indians also reside on or adjacent to the Reservation. Thousands of non-Indians depend on groundwater originating on reservations lands. An unknown number of mainly Hispanic migrant farm workers and their families may be affected by environmental conditions on the Reservation. Over 1.5 million visitor days are spent on the Upper Columbia River each year, a number expected to double in the next few years.

The Confederated Tribes of the Colville Indian Reservation and its members have always valued water because of its impacts on human health, aquatic resources, subsistence purposes, and culture. Waterways were historically very important to the Colville people, and their significance has not diminished. The Tribe places great significance on water’s role in supporting healthy and productive soils, vegetation and animal life throughout the landscape, and aquatic life in rivers, streams, lakes and wetlands. Fisheries in waters on and around the Colville Reservation rely on clean water, and are important for subsistence, cultural, economic, and recreational reasons.

The CTCR first adopted water quality standards in 1984 to protect the existing quality and beneficial uses of waters of the Reservation and to ensure the health, economic, aesthetic and cultural well-being of all people residing upon the Colville Indian Reservation. Beneficial water uses recognized in the standards include water supply (domestic, industrial, agricultural, and stock watering), fish and shellfish (salmonid and other fish migration, rearing, spawning, and harvesting), ceremonial and religious water use, recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment), commerce and navigation, wildlife habitat and natural food chain maintenance.

## Application for Treatment in a Manner Similar to a State

The Confederated Tribes of the Colville Reservation (CTCR) is applying to the U.S. Environmental Protection Agency for Treatment in a Manner Similar to a State authority for water quality standards and certification programs under Clean Water Act Sections 303 and 401. CTCR intends to administer this authority for all waters located within the external boundary of the Colville Indian Reservation.

## Federal Recognition

**The Indian tribe is recognized by the Secretary of the Interior and exercises governmental authority over a reservation.** 40 CFR 131.8(a)(1); 131.3(k) and (l). **An application must include a statement that the tribe is recognized by the Secretary of the Interior.** 40 CFR 131(b)(1).

The Confederated Tribes of the Colville Reservation is an Indian tribe recognized by the Secretary of the Interior. The CTCR appear on the Secretary of the Interior's annual list of officially recognized Indian tribes. See page 1 of 75 Fed. Reg. 60810, October 1, 2010 (Attachment A).

Federal recognition is described in the CTCR Section 106 TAS application approved by the Environmental Protection Agency in 1990.

The Colville Indian Reservation was created by executive order on July 2, 1872 (Attachment B).

## Governing body carrying out substantial governmental duties and powers over a Federal Indian reservation

**The Indian tribe has a governing body carrying out substantial governmental duties and powers.** 40 CFR 131.8(a)(2). **An application must include a descriptive statement demonstrating that the tribal government is carrying out substantial governmental duties and powers over a defined area.** 40 CFR 131.8(b)(2). **The statement should:**

- **Describe the form of the tribal government.** 40 CFR 131.8(b)(2)(i).

The CTCR adopted a Constitution and By-Laws on February 26, 1938, which was approved by the Commissioner of Indian Affairs on April 19, 1938. The Constitution establishes a governing body and a separate and independent judiciary, and includes provisions for amendment.

The governing body of the CTCR is the Colville Business Council which consists of 14 members elected by the Tribal membership. The CTCR by and through the Colville Business Council exercises virtually all traditional governmental powers with regard to the lands, resources, activities, and specifically waters within the Reservation boundaries as funding permits. See Attachment C for an organizational chart of the Tribal government.

- **Describe the types of governmental functions currently performed by the tribal government, such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, or welfare of the affected population, taxation, and the exercise of eminent domain. 40 CFR 131.8(b)(2)(ii).**

Services provided under these governmental powers include:

- A fully developed legal system. The Tribe has a Tribal Police Department. The Tribal police maintain both Federal and State commissions, which allow for Tribal officers to enforce state and federal law. The Tribe also has an adult Correctional Facility; A Tribal Court; A Tribal Court of Appeals; An Office of the Prosecuting Attorney; An Office of the Public Defender; A Tribal Legal Services Office; an Office of the Reservation Attorney; Administrative Procedures and Administrative Law Judges; as well as a large roster of attorneys and attorney firms on contract to assist in the operations and exercising of rights by the Tribal government.
- A Services division which provides a full array of services to the residents of the Reservation, including Reservation-wide Head Start programs; an Education and Johnson O'Malley program; Pascal Sherman Indian School (a Tribal school); a Social Services program; a Children and Family Services program which operates both child protective and child welfare services; a Behavioral Health program with both Mental Health and treatment services for addictions; a Tribal Health program; Tribal Clinics; a Job Services program; Community Centers in each of the Reservations' districts; a Veteran's program; an Area Agency on Aging program; a Vocational Rehabilitation program; along with other programs available to both Tribal and non-Tribal members.
- A Land and Property Division which includes: Roads; Planning; Energy; Resource Inventory/Analysis (GIS/RIA); Fish and Wildlife; Forestry; Fire Control; Range; Environmental Trust; Public Works; History/Archaeology; Weed Control; Water/Waste Water; and other Land and Property departments.
- Accounting services including a Purchasing Program; Accounts Payable; Accounts Receivable; Payroll; Data Processing; Billing; a Human Resources Program; a Tribal Employment Rights Office; a Risk Management department which administers the Tribes Insurance and Retirement programs; a Reservation-wide Information Technology Department; a Reservation-wide Solid Waste program; an Archives and Records program; and an Elections program.
- An economic arm which operates 3 Gaming facilities; several gas stations and stores; other economic development ventures both on- and off- Reservation.

The CTCR currently has Treatment as a State status for Sections 106 and 319 of the Clean Water Act and Section 105 of the Clean Air Act. Please refer to those applications for Treatment as a State submitted by the CTCR for a full discussion on this issue.

Since the mid- 1980's, CTCR has regulated environmental practices on trust lands outside of the boundaries of the Reservation. Tribal codes for water protection and use have been administered to regulate activities conducted on those lands for the protection of water quality. For example, water use, wastewater systems including those for a casino and recreational vehicle resort, forest practices, and hydraulic projects have all been permitted and complied with Tribal codes on trust

lands off-Reservation. CTCR will continue to administer its Tribal water protection codes on these off-Reservation trust lands based on its inherent authority (see following).

- **Identify the source of the tribal government’s authority to carry out the governmental functions currently being performed.** 40 CFR 131.8(b)(2)(iii).

The governmental powers of the Colville Tribes derive from 1, the “inherent powers of a limited sovereignty which has never been extinguished.” F. Cohen, **Handbook of Federal Indian Law**, 206 (2005), citing *United States v. Wheeler*, 435 U.S. 313, 322-323 (1978). These governmental powers predate not only the adoption of the Tribal Constitution, but the development of the United States Constitution, as well, as is evidenced by the inclusion of provisions relating to Indian Tribes as sovereigns in the U.S. Constitution. *See id.* at 206-207.

Further, Article II of the Constitution and Bylaws of the Confederated Tribes of the Colville Reservation established the 14 member Colville Business Council as the governing body of the Colville Tribes (Attachment D) and vests the Colville Business Council with power to protect and preserve the Tribal property, wildlife and natural resources of the Confederated Tribes, to cultivate Indian arts, crafts, and culture; to administer charity, to protect the health, security, and general welfare of the Confederated Tribes.

Substantial governmental duties and powers were described above and in the CTCR Section 106 TAS application approved by the Environmental Protection Agency in 1990.

The current law and order code of CTCR is available at the Tribal website, [www.colvilletribes.com](http://www.colvilletribes.com). The table of contents listing the titles of Tribal codes is presented in Attachment E.

Several additional codes related to water quality protection have been created since the Section 106 TAS application. These include; the Water Resources Use and Permitting Act, Hazardous Substances Control Act, and Shoreline Protection Act. Further, several water quality protection codes have been revised recently. These include the Forest Practices Act (2007), the Hydraulic Projects and On-Site Wastewater Treatment and Disposal Acts (2011). Additionally, in 2010, the Colville Business Council enacted the Colville Environmental Quality Commission Act, creating an environmental appellate body to hear and decide administrative appeals of final water quality decisions for Chapters 4-5 through 4-10 of the Colville Tribal Code.

### Appropriate authority to regulate the quality of reservation waters

**The WQS program to be administered by the Indian tribe pertains to the management and protection of water resources that are within the borders of the tribe’s reservation.** 40 CFR 131.8(a)(3). **An application must include a descriptive statement of the Indian tribe’s authority to regulate water quality.** 40 CFR 131.8(b)(3). **That statement should include:**

- **A map or legal description of the area over which the tribe asserts authority to regulate surface water quality.** 40 CFR 131.8(b)(3)(i).

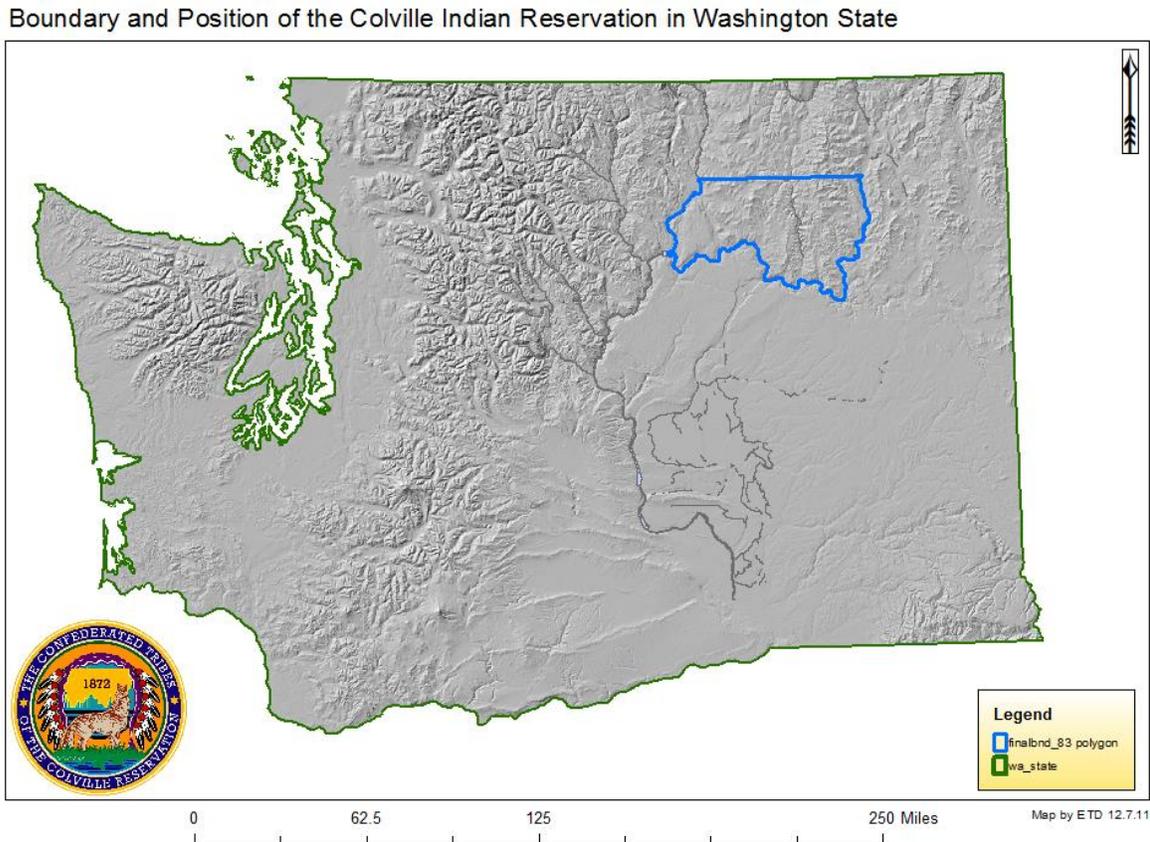
CTCR asserts authority to regulate surface water quality throughout the present Colville Indian Reservation to the midpoint of the Columbia and Okanogan Rivers, where those rivers form the Reservation boundaries. The CTCR Reservation occupies an area bordered by the midpoint of

the Columbia River to the east and south, the midpoint of the Okanogan River to the west, and bounded to the north by the township line separating Township 34 and 35. See Map 1.

Traditional territories of the twelve tribes making up CTCR cover much of the east half of Washington State. This area and prior reservations of the CTCR are shown on maps in Attachment F.

The Reservation area includes approximately 1,397,673 acres and is depicted on Map 1.

**Map 1.**



A Review by historian Richard Hart provides evidence that since its establishment the federal government has consistently recognized the midpoint of the Columbia and Okanogan Rivers as the Reservation boundary (2002).

An opinion by the Department of the Interior Office of the Solicitor (1977) reaffirmed earlier Solicitor opinions that the boundary of the Reservation's east and south sides is the midpoint of the original river channel.

The Act of July 1, 1892 (27 Stat. 62) described the northern boundary of the Reservation remaining after removal of the North Half as "Beginning at a point on the eastern boundary line of the Colville Indian Reservation where the township line between townships thirty-four and thirty-five north, of range thirty-seven east, of the Willamette meridian, if extended west, would

intersect the same, said point being in the middle of the channel of the Columbia River, and running thence west parallel with the forty-ninth parallel of latitude to the western boundary line of the said Colville Indian Reservation in the Okanagon River”.

The Enabling Act for Washington State included the following language upholding ownership of reservation lands by tribes: “That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States”.

• **A statement by the tribe’s legal counsel (or equivalent official) that describes the basis for the tribe’s assertion of authority, and that may include a copy of documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions that support the tribe’s assertion of authority.** 40 CFR 131.8(b)(3)(ii).

Regulatory authority of the CTCR over water pollution sources within the borders of the Colville Indian Reservation was described in Attachment 8 of the Section 106 TAS application approved by the Environmental Protection Agency in 1990. The same document, “Regulatory Authority of the Colville Confederated Tribes Over Water Pollution Sources Within the Borders of the Colville Indian Reservation” (1989), is again enclosed with this application. See Attachment G.

• **An identification of the surface waters for which the tribe proposes to establish water quality standards.** 40 CFR 131.8(b)(3)(iii).

CTCR proposes to establish water quality standards for all surface waters lying within the external boundaries of the Colville Indian Reservation. This includes the Columbia and Okanogan Rivers to the channel midpoint where they run alongside the Reservation.

This section will describe the various waters, the approximate division of land ownership adjoining the water, and characterize its water quality, Tribal water resource use, and environmental sensitivity. It will also describe the various activities occurring throughout the Reservation and in the watershed areas tributary to trust lands that affect, or may potentially affect, water quality.

CTCR needs authority to establish quality standards for these waters for the following reasons:

The waters of the Reservation, boundary waters, and water related resources are of paramount importance to CTCR and its members. Waters of the Reservation, and their quality, are critically important to CTCR for fisheries, ceremonial and religious water use, domestic and community water supply, wildlife habitat, agriculture (including forestry), industry, commerce, recreation, and stock watering.

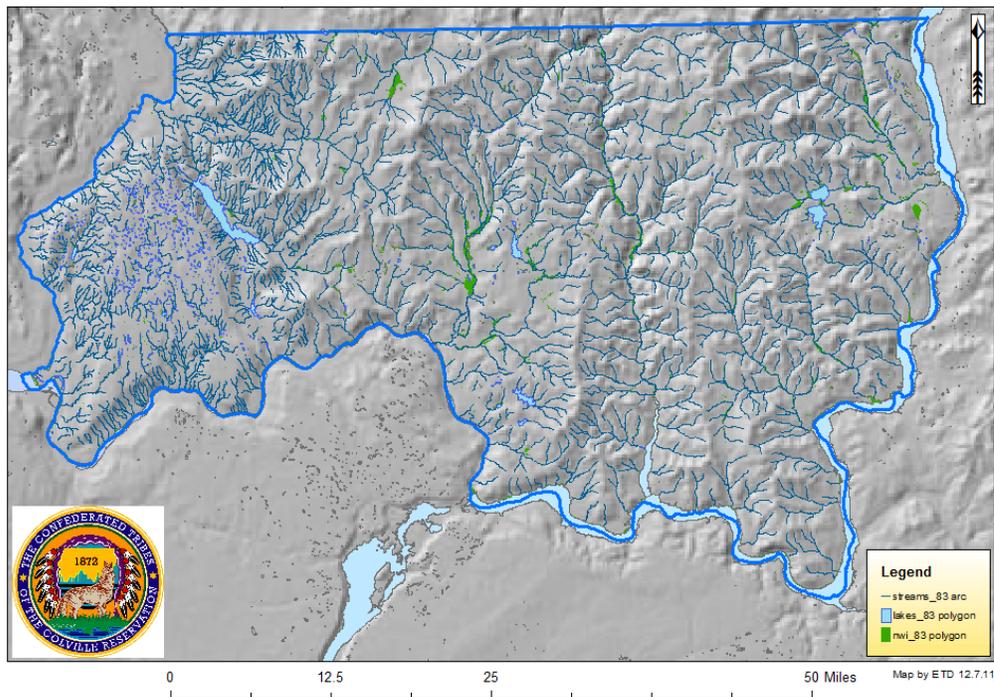
The topography of the Reservation is generally rolling to mountainous, with few level sites. The slopes create surface water drainage patterns where waters flow freely from lands owned by the Tribe or Tribal members to nonmember-owned land or from nonmember-owned land to Tribal lands. Runoff from all the uplands irrespective of ownership drains to Reservation waters.

Many activities that occur on these uplands, whether trust or fee, have the potential to affect water quality of the Reservation waters. Many activities occurring on fee land with potential to affect Reservation waters are considered “non-point source” activities. That is the term used to describe activities occurring at numerous locations which may separately or cumulatively affect water quality. Non-point source pollution results when snowmelt, rain or other runoff moves over or through the ground affected by the non-point source activities, picking up and carrying away natural and human-made pollutants, and finally depositing them into lakes, rivers, wetlands, and ground waters. Non-point source activities occurring within the watersheds of Reservation waters include abandoned mine drainage, agriculture, forestry, hydromodification and habitat alteration, boating, and road, highways, bridge and marina development, as well as development of urban areas, and wetland and riparian management. These activities are representative of every EPA-defined category of non-point source activities, and have affected the water quality of Reservation waters. The specific activities occurring on fee land in each watershed will be described below.

Approximately 2,671 miles of river and stream, 9,535 acres of lakes, 28,496 acres of wetland, and 36,100 acres of Columbia River reservoirs (portions of Lake Roosevelt, Rufus Woods and Pateros) and Okanogan River channel exist within the external boundaries of the Reservation, more or less. The Columbia River and Okanogan River adjoin the Reservation, forming a 202 mile long water boundary. Wetland acreage is based on the National Wetland Inventory and mapping of hydric soils by the Natural Resources Conservation Service Soil Inventory. See Map 2.

**Map 2.**

Surface Water Resources of the Colville Indian Reservation



The Reservation encompasses portions of the following 8-digit hydrologic cataloging units (and corresponding HUC numbers) classified by the National Hydrography Dataset:

<u>Hydrologic Cataloging Unit (HUC)</u>	<u>HUC No.</u>
Okanogan. Washington.	17020006
Franklin D. Roosevelt Lake. Washington.	17020001
Sanpoil. Washington	17020004
Chief Joseph. Washington	17020005

A report by the United States Geological Survey, “Water Resources of the Colville Indian Reservation, Washington” by Harkness, Myers, and Bortleson (1974) describes the water budget for the Reservation. Most water enters the Reservation either as rain or snow, and several streams flow onto the Reservation from the north. Precipitation drains to streams, lakes or wetlands, infiltrates into the groundwater, evaporates or is taken up by vegetation. Streams on the Reservation generally flow to the Okanogan, San Poil and Columbia Rivers, though a few feed lakes or wetlands with no surface outlet. Streams flowing past or across trust lands often originate from fee or government land before reaching the trust parcels.

Groundwater primarily develops from precipitation, seepage from streams, and in irrigated areas from irrigation water. Reservation groundwater provides domestic and public water supply, with some groundwater outflow to the Okanogan and Columbia Rivers.

Waters of the Reservation are divided into 15 watershed areas by CTCR natural resource programs. Following are descriptions of the waters in each watershed area and the boundary waters, their significance to CTCR and its membership, and information about fee lands and activities upon them that have impacted water quality in each area. Beneficial uses of the water for each stream and watershed, established by CTCR Water Quality Standards, are also listed.

Under Section 101(d)(2) of the National Historic Preservation Act (NHPA), and through the 1996 agreement between the National Park Service and the CTCR, the History/Archaeology Program assumed specific state historic preservation office responsibilities, becoming a tribal Historic Preservation Office (THPO). This means that on all lands within the exterior boundaries of the Colville Reservation and on all associated trust and fee lands subject to a restriction of alienation off the Reservation, the Colville THPO is the cultural resource regulatory authority. The Colville THPO retains records of cultural resource sites throughout the Reservation and throughout the traditional territories. The documented cultural values and uses identified in these watershed descriptions are on file with the Colville THPO.

Table 1 summarizes the 15 watersheds and extent of their water features. Following are descriptions of each watershed with the approximate division of ownership in the watershed, description of waters, summary of water quality, value of the waters to the CTCR, and environmental sensitivity of the waters.

**Table 1.**

Reservation Watershed Areas	Total Stream Length (miles)	Length Off Res (miles)	Length On Res Fee Land (miles)	% Stream on Fee or non-
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				tribal Ownership
Hall Creek	144	41	27.5	48%
Twin Lakes	84	0	12	14%
Wilmont Creek	140	0	14	10%
Ninemile Creek	174.5	0	23.6	14%
Hellgate	76.6	0	5.7	7%
W. Fork San Poil R.	189.8	108.3	4.1	59%
Upper San Poil R.	484.7	214	21.2	49%
Lwr. San Poil R.	173	0	13.7	8%
Nespelem R.	162.5	0	89.1	55%
Little Nespelem R.	100.8	0	24.5	24%
Buffalo/Swawilla	103.0	0	56.3	55%
Lost Creek	68.6	0	24.1	35%
Kartar Valley	315.5	0	88.0	28%
Omak Creek	395.8	0	60.6	15%
Southwest Plateau	251.5	0	152.0	60%

### **Hall Creek**

The Hall Creek watershed area is located in the northeast corner of the Reservation and includes Hall, Lynx, and Barnaby Creeks and their tributaries, along with Elbow and Simpson Lakes. These perennial streams flow to Lake Roosevelt and the Columbia River. Hall and Barnaby Creek originate off the Reservation to the north within the Colville National Forest. Much of the watershed has mountainous terrain and forest land cover. Land on gentle slopes near the stream outlets has been developed for farming and residential use. Within the Reservation, 95% of the watershed area is forest land, 5% is farm, residential or urban. The town of Inchelium is located by Hall Creek's outlet to Lake Roosevelt.

Land ownership: Total stream length in the watershed is about 145 miles, of which 102 miles lie within the Reservation. About 48% of the total stream length crosses fee or other land ownership. Watershed area on the Reservation is 115,442 acres; 16,591 acres are fee. About 27 miles of stream cross the fee land. The fee parcels are concentrated along streams and gentle ground upslope of Lake Roosevelt. Activities including logging and aerial chemical application, grazing and farming, road construction, and residential development all occur on fee land within the watershed.

In 2012, timber harvest occurred on fee land along Little Jim Creek, a stream within this watershed. The logging occurred in the stream without regard for buffers that the Tribe would otherwise require. Western red cedar was cut and pushed over in riparian areas which are tribal cedar root gather areas. These areas not only support traditional values, but aesthetic values of tribal residents.

The cumulative effect of these activities has affected the quality of waters in the Hall Creek Watershed area.

Water quality: Water quality impairments have occurred in Hall, Barnaby and Lynx Creek during the last five years. These impairments prevent the waters from fully supporting beneficial

uses. Lower Hall Creek has had exceedances for temperature and fecal coliform bacteria, and high turbidity. Lynx Creek has exceeded criteria for fecal coliform bacteria and high turbidity levels. Barnaby Creek has had exceedances for temperature, fecal coliform bacteria, and dissolved oxygen. Livestock and septic systems on fee lands within the watershed have the potential to increase bacteria in streams. Logging, grazing, agricultural and residential development occur on fee lands within the watershed and have the potential to affect stream temperature and dissolved oxygen, by causing reductions of shade-producing riparian vegetation. Cattle from fee lands also move onto trust lands without permission and have repeatedly impacted Barnaby Creek streambank and riparian condition, and cultural plants growing in Elbow Lake. In addition, a non-member fee land owner in the Barnaby Creek watershed has built an earthen dam without tribal permission, which has threatened the water quality values in the area and blocked fish passage upstream. Runoff from roads, agricultural and other developed areas, and stream bank trampling by livestock on fee lands within the watershed have the potential to increase turbidity in the streams. Forest and agricultural chemical applications applied to fee land in the watershed pose risk to water quality.

Tribal water resource use: EPA and Tribal water quality standards have designated the following beneficial water uses for Hall, Lynx and Barnaby Creeks: water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce and navigation. Because of the exceedances described above, these beneficial uses are not fully supported.

Traditional religious use of sweathouses perpetuate within the Hall Creek watershed, as do harvest of native culturally significant plant species across the landscape. This area is documented as the principle gathering location for at least twenty-one different plant species for consumption, construction, weaving and religious purposes. The riparian areas and wetlands serve as important gathering areas for these traditional cultural materials. The CTCR attribute significant cultural value to two springs documented within this watershed.

Numerous campsites located beside Hall Creek are utilized by CTCR members during hunting, gathering and other traditional activities. Fourteen locations within the watershed have been documented as important areas for water-related resource use. Some of these are associated with Simpson Lakes, Lynx Creek, Hall Creek, and the West Fork of Hall Creek. Tribal members fish these streams for resident trout, and in the past salmon were present. Considerable hunting of various game species by Tribal members occurs. The streams and associated riparian areas provide important aquatic habitat as well as habitat for multiple game species important to the Tribal membership. The highway crossing of Barnaby Creek was rebuilt by CTCR Fish & Wildlife Department in 2012 to improve fish passage for kokanee, rainbow trout and other fish species up the stream.

Environmental sensitivity: Watershed sensitivity for the Hall Creek watershed area is rated extremely high due to loss of riparian vegetation and canopy, and amount of streamside road. Steep slopes and soil instability are present in areas of the watershed, increasing potential threats to streams from logging and road construction. In 2012, the Reservation Wetlands Working Group reviewed an area including Elbow Lake and a segment of Barnaby Creek where a fee landowner's cattle have impacted aquatic and riparian vegetation and associated cultural resources. Non-member stock ranging on fee lands just outside of the reservation boundaries chronically wander onto the reservation grazing and damaging plants including native cultural

plants and medicines in sensitive wetland areas within this management area. According to a recent tribal survey of reservation residents, of those reporting using tules, about 5% were obtained from this area while about 26% of the cattails were gathered from these areas.<sup>1</sup> In spring 2012, approximately one mile of county road adjacent upper Hall Creek washed out damaging water quality of Hall Creek.

### **Twin Lakes**

The Twin Lakes watershed area is located in the eastern side of the Reservation. It includes the watershed area for the Twin Lakes and their outlet stream, Stranger Creek which flows to Lake Roosevelt. Round Lake, also of significance to the Tribal membership, lies in the watershed. The headwaters area is mountainous, with rolling and gentle topography between the Twin Lakes and Lake Roosevelt. Total stream length is 84 miles. 86% of the watershed area has forest cover, 12% of the area is cleared for agricultural and residential or commercial development, and 2% of the watershed area is water.

Land ownership: 12 miles of stream cross fee land. Watershed area within the Reservation is 61,490 acres; 9,769 acres are fee land. The combined acreage of North Twin, South Twin, and Round Lakes is 2044 acres. 1.25 miles of lake shore is in fee ownership. Land use activities occurring on fee land include residential development, forestry including logging and aerial chemical spraying, road construction, farming and grazing.

Water quality: Exceedances of water quality standards for fecal coliform and temperature have occurred in Stranger Creek during the last five years. These impairments prevent the waters from fully supporting beneficial uses. The sources of bacteria are undetermined but possible sources are livestock, failing septic systems, or wildlife. Temperature exceedances may be influenced by loss of shade-producing riparian vegetation due to logging, grazing, agricultural and residential development as well as warm ambient air temperatures and warming of water in the lakes. Forest and agricultural chemical applications have been applied in the watershed, posing risks to water quality. Significant building and residential development are occurring by the lakes with potential for increased runoff, septic fields, and shoreline habitat conversion to affect water quality. The cumulative effect of these activities has affected the quality of waters in the Twin Lakes Watershed area.

Tribal water resource use: EPA and Tribal water quality standards have designated the following beneficial water uses for Twin Lakes and Stranger Creek: water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce, navigation, and natural food chain maintenance. The watershed's Twin Lakes and tributaries are important recreational and fishing waters. The lakes hold great importance to the CTCR because of their cultural, social, and economic value. Fishing, swimming and boating are popular on the lakes, which are a destination for Tribal and non-members, bringing commerce to the Reservation. The CTCR Fish & Wildlife Department stocks the lakes annually with trout. A Tribal resort and campsites are located at Twin Lakes, which depends on high water quality of the lakes. Another camp and ceremonial grounds is located beside Round Lake.

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<sup>1</sup> Resource Use and Practices Data Report, Upper Columbia River Resources Survey, June 2012, Confederated Tribes of the Colville Reservation, by Environment International, Ltd.

Water-based activities occur year-round within this watershed, with the most prevalent use during the fall. Traditional religious use of sweathouses perpetuate within the Twin Lakes watershed, as do harvest of culturally significant plant species across the landscape. This area is documented as a principle gathering location for at least thirty-one native plant species for consumption, construction, weaving and religious purposes. Fourteen locations within the watershed have been documented as important areas for water-related resource use and legendary landscapes. Some of these areas include Twin Lakes, Hall Creek, Camille Lake, Cornstalk Creek, Butler Flat, Apex Lake and Borgeau Lake. There are no springs documented within this watershed.

Environmental sensitivity: Watershed sensitivity of the Twin Lakes watershed area is rated extremely high due to loss of riparian vegetation and canopy, and amount of streamside road. Eutrophication of the Twin Lakes has been a concern since the 1980's. Storm runoff and septic systems have increased with development of subdivisions on fee land beside portions of the lakes, and increase potential to add nutrients which may reduce oxygen levels of the lake. Trout in Twin Lakes experience high levels of disease and limited growth due to poor summertime habitat caused by lake gradients of temperature and oxygen. CTCR Fish & Wildlife Department has installed and operates an oxygenation system to improve summer lake conditions for fish. Many of the land use practices contributing to the nutrient problem are a result of non-tribal developments over the years on fee lands constructed without tribal permits and oversight. The Tribe found itself in a position several years ago of imposing a moratorium by tribal law banning the development of the entire west side of Twin Lakes to protect tribal resource values, a tool of last resort in dealing with fee land ownership and unregulated development.

### **Wilmont Creek**

Wilmont Creek is located on the east side of the Reservation, adjacent the Columbia River. The topography is hilly and includes some steep slopes. 90% of the watershed area has forest cover, 10% is non-forest with agricultural use and rural development. Total stream length is 140 miles. The watershed area includes the Nez Perce, Falls, and Wilmont Creek drainages, each an individual tributary to the Columbia River. The Nez Perce watershed contains Fish Lake, a significant lake and wetland area.

Land ownership: Watershed area is 75,111 acres, of which 10,344 acres are fee land. 14 miles of stream cross fee land. Land use activities on fee land include residential development, forestry including logging and aerial chemical application, road construction, farming and grazing. In the 1990's, a fee landowner with no permits excavated and re-contoured the bed and banks of Wilmont Creek on his property to enhance his short-term management goals for his ranching operation. The operation of heavy equipment in the stream occurred without regard for impacts to the aquatic life, sedimentation and destruction of riparian habitat. This incident, after a lengthy investigation and careful examination of tribal authority eventually resulted in a small fine and resolution of an impending enforcement action to landowner. However, destruction of tribal resource values is costly to mitigate and takes years to recover and monitor. Since then, the landowner has sold his property and moved on while the stream is left to recover and heal over time. The cumulative effect of these activities has affected the quality of waters in the Wilmont Creek Watershed.

Water quality: Exceedances for dissolved oxygen have occurred in Falls and Wilmont Creeks, temperature in Falls Creek, fecal coliform in Falls and Nez Perce Creeks, water quality

parameters that are influenced by activities occurring on fee land within the watershed. These impairments prevent the waters from fully supporting beneficial uses designated by Tribal water quality standards.

Tribal water resource use: EPA and Tribal water quality standards have designated similar beneficial water uses for Wilmont, Falls, and Nez Perce Creeks: water supply (all), stock watering (all), fish and shellfish (all), wildlife habitat (Wilmont and Nez Perce), ceremonial and religious water use (Wilmont and Falls), recreation (all), commerce and navigation (all). A Tribal campground is located at the mouth of Wilmont Creek.

Traditional religious use of sweathouses perpetuate within the Wilmont Creek & Nez Perce Creek watershed, as do harvest of culturally significant plant species across the landscape. This area is documented as the principle gathering location for at least thirteen native plant species for consumption, construction, weaving, and religious purposes. Eighteen locations within the watershed have been documented as important areas for water-related use and legendary landscapes. Some of these areas include Gold Mountain, Wilmont Creek, Wilmont Bay, Wilmont Falls, Monaghan Creek, Kewa, Fall Creek Valley, Nez Perce Creek, Smoke Ranch, and Coyote Creek. No springs have been documented within this watershed.

Eastern Brook and Rainbow Trout are found in all three streams. These streams and other Reservation tributaries to Lake Roosevelt are the focus of the Lake Roosevelt Rainbow Trout Habitat/Passage Improvement Project conducted by the CTCR Fish & Wildlife Department. The streams provide drinking water for livestock and are important for wildlife. Fish Lake is a known tribal plant gathering area for tules and cattails. In 2005, CTCR Environmental Trust decommissioned 1.75 miles of stream adjacent road and replaced two stream crossings in Wilmont Creek.

Environmental sensitivity: Watershed sensitivity of the Wilmont Creek watershed area is rated extremely high due to soils, topography, hydrology and amount of existing road. Fish Lake is eutrophic to ultra-eutrophic.

### **Ninemile Creek**

Ninemile Creek also is wholly contained within the Reservation and flows directly into the Columbia River. Just 3% of the watershed area is non-forest, the land cleared for agriculture and residences. Watershed topography is hilly to mountainous. Total stream length is 174.5 miles.

Land ownership: Watershed area is 80,585 acres, of which 9,719 acres are fee land. 23.6 miles of stream cross or adjoin fee land. Land use on fee lands includes forestry including logging and aerial chemical spraying, roads and road construction, farming, grazing, and residential development. In 2005, a fee landowner and logger violated CTCR codes and damaged water quality and aquatic habitat, driving logging equipment through Ninemile Creek multiple times and removing trees from the riparian area along the creek. Logging elsewhere in the watershed on fee lands has been conducted at times with minimal stream buffers and road construction close to streams. A county road crossing Friedlander Meadows wetlands and South Fork Ninemile Creek is unsurfaced and receives limited maintenance, annually eroding and causing stream siltation. Another county road runs alongside Ninemile Creek and associated wetlands for approximately 11 miles, impacting riparian vegetation and soils and delivering runoff and fine sediment to the creek. The cumulative effect of these activities has affected the quality of waters in the Ninemile Creek Watershed.

Water quality: Lower Ninemile Creek has exceeded temperature and fecal coliform criteria in recent monitoring. Middle Ninemile Creek has undesirably high turbidity levels. Given the exceedances, beneficial water uses including water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce and navigation designated by Tribal water quality standards are not fully supported.

Tribal water resource use: Two large wetland meadows in the watershed have important cultural values. Frosty Meadows, located in the upper watershed is an important traditional area to CTCR members for camping and hunting. In 2001, several Tribal resource departments built range fence and replaced stream crossing culverts with the objective of improving riparian conditions, aquatic habitat, and water quality. Friedlander Meadows also has important cultural resources and has been degraded by a county road, roads and logging on fee land.

The harvest of native culturally significant plant species perpetuates across the landscape within the Ninemile Creek watershed. This area is documented as the principle gathering location for at least four native plant species for consumption, construction and religious purposes. Seven springs within the watershed are documented as possessing significant cultural value. Four locations within the watershed have been documented as important areas for water-related resource use and legendary landscapes. These areas include Friedlander Meadows, Ninemile Creek, and Mitchell Point.

CTCR Fish & Wildlife Department is implementing the Lake Roosevelt Rainbow Trout Habitat/Passage Improvement Project in this watershed. In 2009, CTCR Environmental Trust replaced seven stream crossings, decommissioned 1.4 miles of stream-adjacent road including removal of three stream crossings, and installed cross drainage on three miles of selected roads within the watershed. The stream provides drinking water for livestock and its waters are important for wildlife, fish, recreation and religious and ceremonial use.

Environmental sensitivity: Watershed sensitivity is rated extremely high due to inherent characteristics of the watershed, roads located beside streams, and impacts due to past excessive grazing. A population of native redband rainbow trout is a relatively unique biological resource present in the stream.

## **Hellgate**

The Hellgate watershed area lies wholly within the Reservation and contains a number of small streams flow directly into the Columbia River. 75% of the watershed area has forest cover and 25% is shrub steppe or former agricultural clearings. Topography is hilly to mountainous.

Land ownership: Watershed area is 62,925 acres. 9,296 acres of fee lands are located within the watershed. Forestry including logging and aerial chemical spraying, road construction, recreational activities, and several homesites have been developed on fee land. 5.7 miles of stream cross fee land. Public boating occurs on the Columbia River (Lake Roosevelt) and this use may have water quality effects, as in 2004 when a fire lit by campers at the lake shore burned about 10,000 acres within the watershed. In 2005, a fee landowner sprayed herbicide from a helicopter across 80 acres located 700 feet from the Columbia River. In 2006 an undersized stream crossing on the county Hellgate Loop Road failed delivering fine sediment into Threemile Creek and the Columbia River.

While this area is fairly remote via highway travel, it is within proximity by boat to recreational developments across Lake Roosevelt and lands in this area have been purchased by non-members looking for remote home sites and seasonal hideaways. Several jurisdictional conflicts have occurred in this area. The Hoover case involves a non-member who constructed a home site and lodge within the shoreline zone, and airstrip suspected for use to fly in big game hunters, out of compliance with tribal zoning designations and permitting authorities.

The cumulative effect of these activities has affected the quality of waters in the Hellgate Watershed area.

Water quality: Named streams within the watershed area include Little Ninemile, Sixmile, Threemile, Canteen, Louie, George, Whitestone, and Brody Creeks. Beneficial water uses for the various streams include water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, ceremonial and religious water use, recreation, commerce and navigation. Activities such as logging, chemical application, and roads occurring on fee lands have potential to affect water temperature, clarity and purity.

Tribal water resource use: Much of this watershed area is a Tribal game refuge. Hunting in the refuge is heavily regulated by the CTCR and remains very important for subsistence and recreation purposes for many Tribal members. The harvest of native culturally significant plant species persists throughout the Hellgate watershed. This area is documented as the principle gathering location for at least two plant species for construction and religious purposes. Eight springs within the watershed are documented as possessing significant cultural values. Eleven locations within the watershed have been documented as important areas for water-related resource use or legendary landscapes. Some of these are associated with Whitestone Creek, Ninemile Creek, and Sixmile Creek. This is one of the driest and warmest parts of the Reservation so stream flow, springs and water of the Columbia River are critically important to the wildlife and habitat quality of the game refuge. Some of the streams contain Eastern brook and rainbow trout.

Environmental sensitivity: Watershed sensitivity of Hellgate is rated moderately high. Streamside roads and loss of riparian vegetation canopy from wildfire and past grazing practices have affected water quality. Much of the watershed is susceptible to rain-on-snow runoff and the area has low water infiltration and storage capacity. Soils are shallow and prone to surface erosion.

### **West Fork San Poil River**

The West Fork collects waters from both the Reservation and areas north of the Reservation. It enters the Upper San Poil River within the Reservation. Watershed area on the Reservation is 41,136 acres. Topography is mountainous. The entire watershed area contains 189.8 miles of stream, of which 81.5 miles lie within the Reservation. 99% of the Reservation watershed area is forested and 1% is cleared for agricultural and residential uses. Off Reservation, about 20% of the land within the watershed is non-forest. Gold Lake is located in the headwaters of Gold Creek on the Reservation, a major tributary to the West Fork San Poil River. Silviculture, roads, grazing, farming and residential uses occur within the watershed.

Land ownership: Within the watershed off the Reservation, 108.3 miles of stream cross fee, federal and state land. Numerous rural residences are built within the watershed, many located close to surface water. These residences also keep livestock in small pastures or enclosures

adjacent or including streams. Hay production occurs in cleared land adjacent streams, and cattle grazing occurs throughout most of the forest land. All the forest area is actively managed and is logged from time to time. There is an extensive road system.

Within the watershed on the Reservation, the watershed has 1,162 acres of fee land. 4.1 miles of stream cross fee land. Activities occurring on these fee lands include forestry, road construction, grazing, and residential development. The cumulative effect of these activities has affected the quality of waters in the West Fork San Poil River Watershed.

Water quality: Exceedances of temperature criteria occur in the West Fork, impairing fish production, fish migration, wildlife habitat, and natural food chain maintenance. Temperature impairment may be caused by loss of riparian vegetation or undesirable stream channel effects from logging, roads, farming, grazing and residential development. A county road parallels the stream in its riparian area for several miles, causing loss of riparian vegetation, affecting stream-side soils and introducing road runoff to the stream. Given the water quality exceedances, beneficial uses including fish and shellfish, and wildlife habitat designated by Tribal water quality standards are not fully supported.

Tribal water resource use: CTCR designated beneficial water uses include water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce and navigation. The harvest of culturally significant plant species perpetuates across the landscape. This area is documented as the principle gathering location for at least nine native plant species for consumption, construction, weaving, and religious purposes. Three springs within this watershed are documented as possessing significant cultural value. Two locations within the watershed have been documented as important areas for water-related resource use; these include Central Peak and Strawberry Mountain. Gold Lake is heavily used by CTCR members for traditional and recreational activities such as swimming, boating and fishing, camping, a central location for hunting, collecting foods and other traditional materials, religious and ceremonial uses. The West Fork is significant as a fishery resource. Streams contain Eastern brook trout and rainbow trout. CTCR Fish & Wildlife actively manage kokanee and redband rainbow trout in the watershed. The river provides drinking water for livestock and its waters are important for wildlife.

Environmental sensitivity: Watershed sensitivity of the West Fork San Poil drainage is moderately high. The native redband rainbow trout is a relatively unique biological resource present in the stream. A number of stream draws within the watershed are deep with steep inner canyon slopes. A large escarpment along Gold Creek has very unstable soils and suffered a massive landslide during a rain-on-snow event in 1998.

### **Upper San Poil River**

The Upper San Poil collects waters from both the Reservation and areas north of the Reservation. It also accepts the West Fork San Poil River waters. Watershed area on the Reservation is 151,923 acres. Watershed area outside the Reservation is about 177,611 acres. Topography is mountainous. The entire watershed contains 484.7 miles of stream, of which 270.7 miles lie with the Reservation. Within the Reservation, 95% of the watershed area has forest cover and 5% of the area is cleared for agricultural and residential uses. The watershed area north of the Reservation is mostly forested with lowland areas cleared for agriculture, rural residential, urban, and industrial development. A state highway provides access the length of the San Poil Valley,

crossing numerous tributaries and the river itself. The Valley's outstanding scenic character and river fishing attract recreational users to the Reservation.

Land ownership: 6,667 acres of fee land are in the watershed. 21.2 miles of stream cross fee lands within the Reservation. Roads, farming, grazing, forestry including logging and aerial chemical spraying, road construction, and residential development occur on the fee lands. Most farmland is located on the valley floor, and agricultural clearing on fee land has reduced the extent of riparian vegetation. Roads located on fee land deliver some runoff and silt to streams. The logging conducted on fee lands increases potential for erosion, runoff, and reduced vegetation and associated shading of stream waters. The North Fork North Fork of the San Poil River has a mine ore mill and tailings dump located near the stream, but stream flow is currently diverted north into the Kettle River watershed. A sawmill is also located atop the dewatered river channel east of Republic; currently unused, this industrial site is waiting startup of the mill or redevelopment and is currently the furthest upstream point of the North Fork North Fork.

In the 1990's a non-member landowner (and County Commissioner and County Land Use Board Member for Ferry County) near the confluence of Bridge Creek and the San Poil River wanted to increase the size and yield of his pasture for his ranching operation. Without a tribal permit or even a conversation, the fee landowner scraped with heavy equipment virtually the entire riparian habitat on both sides of the stream for more than 2,000 feet. In addition, he straightened out the stream. This area is an important fish habitat for unique adfluvial trout that use the San Poil and tributaries as their spawning and rearing habitat. Since the incident, CTCR has expended considerable efforts to restore riparian and years getting the habitat suitable for fish.

The cumulative effect of these activities has affected the quality of waters in the Upper San Poil River Watershed.

Water quality: Exceedances of dissolved oxygen, temperature, and fecal coliform criteria have occurred in the San Poil River. High levels of turbidity are also a concern. These water quality parameters are affected by the kinds of activities occurring on fee lands and the watershed area north of the Reservation. Because of these exceedances, designated beneficial water uses including water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, ceremonial and religious water use, recreation, commerce and navigation designated by Tribal water quality standards are not fully supported.

The North Fork San Poil River has a Total Daily Maximum Load plan (TMDL) addressing fecal coliform and thermal pollution upstream of the Reservation within the Colville National Forest.

Tribal water resource use: CTCR sells licenses to fish to Tribal members and the general public, and the San Poil River is an attraction that brings in license fee revenues to the Tribe. CTCR Fish & Wildlife actively manage kokanee and redband rainbow trout in the watershed. Swimming and drifting the river occurs during summer low flows, and ceremonial/religious activities occur along the river, utilizing its waters. The river provides drinking water for livestock and its waters are important for wildlife. The area's riparian habitat is an important source for the collection of willow, Indian hemp and other materials for basketry, sweat houses and other traditional tribal uses.

Traditional religious use of sweathouses perpetuate within the Upper San Poil watershed, as do harvest of culturally significant plant species across the landscape. This area is documented as the principle gathering location for at least ten native plant species for consumption and religious

purposes. Nine springs within this watershed are documented as possessing significant cultural value. Eleven locations within the watershed have been documented as important areas for water-related resource use and legendary landscapes. Some of these areas include West Fork, Twentyonemile Creek, Thirtymile Creek, Devil's Elbow, Central Peak, the San Poil River, and Twentythreemile Creek.

Environmental sensitivity: Watershed sensitivity is high, related to slopes, soil types, and susceptibility to rain on snow runoff, limited infiltration and water storage capacity, and amount of roads along streams. The native redband rainbow trout is a relatively unique biological resource present in the stream system. The river has a significant active floodplain associated with it.

### **Lower San Poil River**

The Lower San Poil carries the Upper and West Fork San Poil River waters as well as those of additional tributaries to the Columbia River (Lake Roosevelt). Watershed area is 95,646 acres. Topography is mountainous. The entire watershed contains 173 miles of stream. 87% of the watershed area has forest cover, and 13% is cleared for agriculture or residential use, or has shrub steppe cover. The community of Keller is located within the watershed. A state highway provides access the length of the San Poil Valley, crossing numerous tributaries and the river itself. The Valley's outstanding scenic character and river fishing attract recreational users to the Reservation.

Land ownership: 11,250 acres of fee lands are located within the watershed, on which residential development, forestry, road construction, farming, and grazing activities occur. 13.7 miles of stream are located on fee lands. In 2008, a non-member drove a log skidder across the river, contaminating the water with oil residues. In 2010, a fee landowner violated CTCR codes, excavating a pond within the floodplain adjacent the river, removing riparian vegetation, and threatening river water quality. The cumulative effect of these activities has affected the quality of waters in the Lower San Poil River Watershed.

Water quality: The Lower San Poil River has exceeded water quality criteria for dissolved oxygen, temperature, and fecal coliform in recent years. Because of these exceedances, beneficial water uses including water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, ceremonial and religious water use, recreation, commerce and navigation designated by Tribal water quality standards are not fully supported.

Tribal water resource use: Water-based activities occur year-round within this watershed, with the most prevalent use during the summer. CTCR sells licenses to fish and the San Poil River is an attraction that brings in license fee revenues to the Tribe. CTCR Fish & Wildlife actively manage kokanee and redband rainbow trout in the watershed. Swimming and drifting the river occurs during summer low flows, and ceremonial/religious activities occur along the river, utilizing its waters. Traditional religious use of sweathouses perpetuate within the Lower Sanpoil watershed, as do harvest of native culturally significant plant species across the landscape. This area is documented as the principle gathering location for at least forty-one native plant species for consumption, construction, weaving and religious purposes. Nine springs within this watershed have been documented as possessing significant cultural value. Fifteen locations within the watershed have been documented as important areas for water-related resource use and legendary landscapes. Some of these areas include Capoose Creek, Cache Creek, Horse

Creek, Alice Creek, Jack Creek, Silver Creek, Manila Creek, and the San Poil River. The river provides drinking water for livestock, and its waters are important for wildlife.

Environmental sensitivity: Watershed sensitivity is very high due to steep slopes, soil types, and susceptibility to rain on snow runoff, limited infiltration and water storage capacity, amount of roads along streams and loss of riparian vegetation.

### **Nespelem River**

The Nespelem River watershed is located centrally in the Reservation and includes the community of Nespelem. The river flows into the Columbia River (Lake Rufus Woods). Watershed area is 84,668 acres. Topography is variable, ranging from gentle to mountainous. The entire watershed contains 162.5 miles of stream. 78% of the watershed has forest cover and 22% is cleared for agriculture or residential/urban use or has shrub steppe cover. The town of Nespelem and the Colville Indian Agency are located within the watershed.

Land ownership: 13,577 acres of fee land exists within the watershed. Residential development, farming, grazing, road construction, and forestry including logging occur on those lands. Past agricultural clearing along the Nespelem River has reduced riparian vegetation and caused stream channel incision with associated higher water turbidity. A fee landowner illegally built a dam and diverted water from Mill Creek, a tributary to the Nespelem River, to irrigate his fields. Grazing conducted on this property also destabilized stream banks and reduced riparian vegetation, causing increased water turbidity and temperature. The cumulative effect of these activities has affected the quality of waters in the Nespelem River Watershed.

Water quality: Exceedances of dissolved oxygen, temperature and fecal coliform criteria have occurred in the Nespelem River. Temperature exceedances have occurred in Kinkaid Creek, a tributary to the river. Fecal coliform exceedances have also occurred in Mill Creek. High turbidity levels occur in the Nespelem River also. Given these water quality conditions, beneficial water uses including water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce and navigation designated by Tribal water quality standards are not fully supported.

Tribal water resource use: Beneficial water uses include water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce and navigation. Traditional family camps are located along the river. Swimming, fishing, gathering cultural materials, ceremonial and religious activities occur in and beside the waters. The waters are a feature critically important for supporting wildlife populations.

Water-based activities occur year-round within this watershed, with the most prevalent use during the winter. The Nespelem River watershed contains the largest amount of water consumption for the traditional religious use of sweathouses. The harvest of native culturally significant plant species across the landscape also perpetuates within this watershed. This area is documented as the principle gathering location for at least thirty-three native plant species for consumption, construction, weaving and religious purposes. Two springs within this watershed are documented as possessing significant cultural value. Nine locations within the watershed have been documented as important areas for water-related resource use and legendary landscapes. Some of these areas include Nespelem falls and the Nespelem River. Concerns are regularly expressed by community members regarding the purity of the water. CTCR finally

purchased the ranch at Mill Creek and is carrying out a plan for restoring the stream across the property.

Environmental sensitivity: Watershed sensitivity is moderately high due to moderate topographic relief, high water storage capacity, high susceptibility to rain on snow runoff, high road density along streams, and loss of riparian vegetation from agricultural conversion. An extensive active floodplain exists along the river.

### **Little Nespelem River**

The Little Nespelem River flows into the Nespelem River a short distance upstream from the Columbia River. Watershed area is 59,211 acres. Topography is variable with gentle to moderate slopes. The entire watershed contains 100.8 miles of stream. 51% of the watershed area has forest cover, 48% is non-forest, a mix of grassland, tilled land, shrub steppe and residential or urban development.

Land ownership: 4,034 acres of fee land exist within the watershed, 8% of the area. One quarter of the total stream length, 24.5 miles, crosses fee land. Activities occurring on fee land include farming, grazing, and forestry including logging, road construction, and residential development. The cumulative effect of these activities has affected the water quality in the Little Nespelem River.

Water quality: Exceedances of dissolved oxygen and temperature occur in the Little Nespelem. Because of these exceedances, beneficial uses including fish and shellfish, wildlife habitat, and natural food chain maintenance designated by Tribal water quality standards are not fully supported.

Tribal water resource use: Beneficial water uses include water supply (domestic, industrial, and agricultural), stock watering, fish, wildlife habitat, ceremonial and religious water use, recreation, commerce and navigation. Owhi Lake is located within this watershed, and holds great importance to the CTCR for ceremonial and religious uses, swimming, fishing, and boating. Several ceremonial sites are located along the lower river so excellent water quality is of high importance. Water-based activities occur year-round within this watershed, with the most prevalent use during the winter. The Little Nespelem River watershed contains the fifth highest amount of water consumption for the traditional religious use of sweathouses on the reservation. The harvest of native culturally significant plant species perpetuates across the landscape. This area is documented as the principle gathering location for at least twenty-seven plant species for consumption, construction, weaving and religious purposes. Thirteen springs within this watershed are documented as possessing significant cultural value. Three locations within the watershed have been documented as important areas for water-related resource or legendary landscapes meaningful to the oral history of the CTCR. Some of these are associated with Owhi Lake and the Little Nespelem River. Fishing and swimming occur in the river. Its waters are important for wildlife including deer, elk and bear.

Environmental sensitivity: Watershed sensitivity is moderately low. Although the watershed is susceptible to rain on snow runoff, water infiltration and storage capacity are high. Owhi Lake is eutrophic and experiences algae blooms. The Tribe has created additional safeguards to protect stream and lake from grazing and to reduce road impacts within the watershed to minimize nutrient inputs to the lake.

## **Buffalo/Swawilla**

The Buffalo/Swawilla watershed area has a number of small streams that flow directly into the Columbia River. Several Tribally significant lakes lie in the watershed area. The watershed has an area of 65,062 acres. 103 miles of stream are located in the watershed area. Topography ranges from gentle to mountainous. 77% of the watershed area has shrub steppe, agricultural, residential and urban development. 22% has forest cover, and 1% of the area is lake water (not including Lake Roosevelt). The communities of Coulee Dam, Elmer City, Seaton's Grove, and Belvedere are located in the watershed. The watershed includes about 33 miles of shoreline along the Columbia River.

Land ownership: 18,525 acres of fee land exist in the watershed, adjoining 56.3 miles of stream. Residential, urban, and commercial development, farming, grazing, road construction, and forestry activities including logging and aerial chemical spraying occur on the fee land, and some irrigated farming also occurs. The cumulative effect of these activities has affected the quality of waters in the Buffalo/Swawilla Watershed area.

Water quality: Two wastewater discharges into the Columbia River occur at Coulee Dam, each having EPA NPDES permits. Occasional point discharge overflows occur. Exceedances of the dissolved oxygen criteria occur in Buffalo, Rebecca Lake and Poker Joe Creeks. Temperature exceedances occur in Rebecca Lake and Poker Joe Creeks. Exceedances of the fecal coliform criteria have occurred in Buffalo Creek. All four of these streams experience undesirable high turbidity levels. Given these exceedances, beneficial water uses including water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce and navigation designated by Tribal water quality standards are not fully supported.

Tribal water resource use: Swimming, boating and fishing occur on Buffalo, McGinnis and Rebecca Lakes, as well as on Lake Roosevelt and Lake Rufus Woods (Columbia River). The lake fisheries are managed by CTCR Fish & Wildlife. Sales of fishing permits are a source of revenue for the Tribe. Overall the recreational activities are important as an economic stimulus for the Reservation, and fishing provides subsistence and ceremonial food for Tribal members. Water-based activities occur year-round within this watershed, with the most prevalent use during the spring. The Buffalo Lake/Swawilla Basin watershed contains the fourth highest amount of water consumption for the traditional religious use of sweathouses on the reservation. The harvest of native culturally significant plant species perpetuates across the landscape. This area is documented as the principle gathering location for at least twenty-two different plant species for consumption, construction, weaving, and religious purposes. Twelve springs within this watershed are documented as possessing significant cultural value. Two legendary landscapes associated with Buffalo Lake and the Seaton's Grove areas remain meaningful components to the oral history record of this watershed. The surface waters have great value in supporting wildlife throughout the arid shrub steppe.

Environmental sensitivity: Watershed sensitivity is moderate to moderately high with high soil sensitivity, low water storage capacity, and significant rain on snow runoff potential.

## **Lost Creek**

The Lost Creek watershed area is a tributary of the West Fork San Poil River, flowing north off the Reservation before reentering the Reservation as part of the West Fork San Poil River. The watershed has an area of 42,123 acres. The topography is gentle to mountainous with a base

elevation of 3,150 feet. 85% of the watershed area is forested, and 15% is cleared agricultural fields. A few home sites are scattered through the watershed, with a concentration of homes located on the shoreline of Crawfish Lake. The watershed has 68.6 miles of stream. Crawfish Lake, approximately 80 acres in total area, straddles the Reservation boundary.

Land ownership: 3,099 acres of fee land exist in the watershed, across which 24.1 miles of stream flow. Residential development, grazing, road construction, and forestry activities including logging occur on the fee lands. Residential development, grazing, logging, and roads on fee land have impacted water quality and riparian condition along Haden Creek, a tributary of Lost Creek. Development of the shoreline of Crawfish Lake has impacted riparian soils and vegetation along the lake shore. The cumulative effect of these activities has affected the quality of waters in the Lost Creek Watershed.

Water quality: Haden Creek experiences exceedances of the fecal coliform criteria, and undesirable turbidity levels. Lost Creek experiences exceedances of the temperature criteria and undesirable turbidity levels. Because of these exceedances, the beneficial water uses of water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce, and navigation are not fully supported.

Tribal water resource use: Water-based activities occur in equal amounts during the fall, spring and summer within this watershed. This area is documented as the principle gathering location for at least eight plant species for consumption, construction and religious purposes. One spring within this watershed is documented as possessing significant cultural value. Four locations within this watershed have been documented as important areas for water-related resource use, legendary landscapes, or spiritual areas. Some of these are associated with the Moses Meadows and Lost Creek. Traditional camps and ceremonial sites along Lost Creek depend on clean water in the stream. Swimming, boating and fishing occur on Crawfish Lake. The streams are used for stock watering and are important for wildlife.

Environmental sensitivity: Watershed sensitivity is moderately low due to the relatively high watershed elevation, good water storage capacity, and coarse textured soils, but impacted from streamside grazing and roads. Crawfish Lake is mesotrophic but vulnerable to effects of vegetation clearing and septic systems along its shoreline.

### **Kartar Valley**

The Kartar Valley watershed area includes Omak Lake, Big Goose Lake, and Coyote Creek, located in the eastern part of the watershed area and which flows directly to the Columbia River. No Name, Nason, and several other small streams feed Omak Lake. Size of the watershed area is 131,381 acres. Topography is variable with level to steep areas. 52% of the watershed area has forest cover; 48% has shrub steppe or agricultural crop fields. 315.5 miles of stream are in the watershed. Omak Lake has an area of 3,340 acres, and Big Goose Lake, 220 acres. The watershed area includes 15 miles of shoreline along Lake Rufus Woods (Columbia River).

Land ownership: 18,448 acres of fee land lie within the watershed area, crossed by 88 miles of stream. Residential development, farming, pesticide application, grazing, road construction and forestry activities including logging occur on these lands. The cumulative effect of these activities has affected the quality of waters in the Kartar Valley Watershed area.

Water quality: Coyote and Nason Creek experience exceedances of dissolved oxygen and temperature criteria. In addition, Coyote and Kartar Creek experience exceedances of fecal coliform criteria, and undesirable levels of turbidity. Given these exceedances, beneficial water uses including water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce, navigation, and natural food chain maintenance are not fully supported.

Tribal water resource use: Omak Lake has a Lahontan Cutthroat trophy fishery and both Tribal and non-members fish, boat, and swim on the lake. Fishing also occurs on Big Goose Lake for largemouth bass. Tribal camping and traditional areas are located along its shoreline. In this semi-arid area, importance of water to wildlife is very high. Water-based activities occur year-round within this watershed, with the most prevalent use during the summer. The Kartar Valley watershed contains the second largest amount of water consumption for the traditional religious use of sweathouses. The harvest of native culturally significant plant species perpetuates across the landscape. This area is documented as the principle gathering location for at least fourteen different plant species for consumption, construction, weaving and religious purposes. Thirty-two springs within the watershed are documented as possessing significant cultural value. Five locations within the watershed have been documented as important areas for water-related resource or legendary landscapes. Some of these are associated with Omak Lake, Goose Lake, No Name Creek and Jensen Spring. In our Tribal Survey, 54% of sage collected and used in tribal cultural practices was gathered from the Coyote Creek area. Coyote Creek was assessed by the Tribe recently and determined to be adequate to support future endangered salmon spawning and rearing as a consideration for fish passage at Chief Joseph Dam, which now blocks the entire upper Columbia system from migrating fish species.

Environmental sensitivity: Watershed sensitivity is moderately low given moderate water storage capacity and moderate susceptibility for rain on snow runoff. Riparian vegetation is limited and vulnerable to loss from grazing, agricultural conversion, and wildfire.

### **Omak Creek**

Omak Creek is a tributary to the Okanogan River. Watershed area is 122,112 acres. Topography is rolling to mountainous. The stream serves a vital role in Tribal efforts to restore salmon and steelhead populations in the Okanogan River. It is the primary stream on the Reservation that anadromous fish can access, possessing flows and habitat that can support salmon. 72% of the watershed area has forest cover; 28% is shrub steppe, farm land, or cleared for residential use. About 1500 acres are tilled agricultural land. The watershed includes about 7 miles of shoreline along the Okanogan River.

Land ownership: 15,945 acres of the watershed are fee land. 60.6 miles of stream cross these fee lands. Activities conducted on the fee land include forestry including logging, farming, grazing, road construction, residential, urban and some industrial uses. City, county and state roads cross the watershed. Clearing of riparian vegetation for agriculture and development has occurred. Runoff from several miles of state highway 155 drains into a tributary to Omak Creek. The cumulative effect of these activities has affected the water quality of Omak Creek.

Water quality: Beneficial water uses include water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce and navigation. Exceedances of dissolved oxygen, temperature, and fecal coliform criteria occur in Omak Creek. Exceedances of temperature criteria also occur in

Mill and Wannacut Creeks. Given the exceedances, the designated beneficial uses are not fully supported.

Tribal water resource use: The waters of Omak Creek have a high importance for supporting salmon restoration on the Reservation. Prior to development of the Columbia River hydroelectric system and West Coast industrial fishery, salmon was a primary food for the Tribes. The waters provide critical support for wildlife on which many Tribal members depend for subsistence. Water-based activities occur year-round within this watershed, with the most prevalent use during the fall. Traditional religious use of sweathouses perpetuate within the Omak Creek watershed, as do harvest of culturally significant plant species across the landscape. This area is documented as the principle gathering location for at least twenty-two native plant species for consumption, construction, weaving and religious purposes. Forty-eight springs within this watershed are documented as possessing significant cultural value. Six locations within the watershed have been documented as important areas for water-related resource use and legendary landscapes. Some of these areas include Omak Creek, No Name Creek and Trail Creek.

Environmental sensitivity: Watershed sensitivity is moderate with mostly moderate slopes, soil sensitivity, and basin water storage capacity. The watershed and water quality has been affected by roads located beside streams and loss of riparian vegetation. Following development of a restoration plan for Omak Creek in 1995, CTCR has spent millions of dollars on range and road improvements to improve riparian conditions and protect water quality of the stream.

### **Southwest Plateau**

The Southwest Plateau is bounded to the west by the Okanogan River and to the south by the Columbia River. The watershed area is 173,776 acres. Much of the Plateau area drains to the rivers through a series of swales, draws and seasonal stream drainages. 93% of this watershed area is agricultural crop fields, fruit orchards, and shrub steppe; 7% has forest cover. This watershed area contains a large portion of the Reservation's non-Tribal fee land. Portions of this area are isolated drainage basins with no outlet to Waters of the U.S. but 251.5 miles of stream are tributary to the Columbia and Okanogan Rivers. The watershed area includes approximately 66 miles of shoreline along the two rivers. Within the watershed area, boating occurs on the Okanogan and Columbia Rivers, and less often on Soap Lake.

Land ownership: 115,194 acres of fee land lie within the watershed area. 152 miles of stream cross fee lands. Farming, grazing, orchard, residential development and forestry activities are conducted on fee lands, including clearing and tilling fields, logging, road construction, agricultural chemical spraying, and residential development.

Water quality: Most water quality issues are associated with the Okanogan and Columbia Rivers which border and drain this watershed area, but most of the small streams of the Southwest Plateau are affected by the non-point source activities occurring within the watershed area.

Tribal water resource use: Beneficial uses include water supply, stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce and navigation. Water-based activities occur during the spring, summer and fall within this watershed, with the most prevalent use during the spring. The Southwest Plateau watershed contains the third highest amount of water consumption for the traditional religious use of sweathouses. The harvest of culturally significant plant species perpetuates across the landscape.

This area is documented as the principle gathering location for at least eighteen native plants species for consumption, construction, weaving and religious purposes. Eighty-two springs, to which the CTCR attribute significant cultural value, are documented within this watershed. Twenty-two locations within the watershed have been documented as important areas for water-related resource use and legendary landscapes. Some of these areas include the Okanogan River, Duley Lake, Coyote Creek, Tumwater Creek and Jensen Spring.

Environmental sensitivity: Watershed sensitivity is low given gentle to moderate slopes, moderate basin infiltration and water storage capacity. Riparian areas alongside streams and wetlands provide materials important to the culture of the Tribes. These areas also provide water and habitat critical to supporting wildlife populations on which the Tribal membership relies.

### **Columbia River**

The Columbia River has a central role in the both history and current culture of CTCR. Prior to development of the hydroelectric system, industrial fishing and other habitat impacts, salmon swam up the Columbia in large numbers, providing a major source of food. Settlements were located alongside and transportation and trade often have depended upon the river. The river and its waters have spiritual significance to the people.

The Upper Columbia River in the U.S. is a place of significance to the Tribe and its members, in both a historical and contemporary context. This river is an archeology area with numerous tribal burials and artifacts. Many places on the river and its tributaries are identified by their tribal name describing the place or by historical significance i.e., “place to catch sturgeon”, “place of the mussels”. This is the tribes’ homeland, our stories and bones of our ancestors are here, embedded in the banks and beds of our water bodies.

The Reservation includes 157 miles of shoreline along the Columbia River, and approximately 36,100 acres of reservoir. Three hydroelectric dams impound water along this reach of the river, including Wells Dam, Chief Joseph Dam, and Grand Coulee Dam. Chief Joseph Dam prevents anadromous fish from migrating further up the Columbia River. A number of additional dams are located upstream in the United States and Canada.

Land ownership: Within the Reservation, approximately 59.6 miles of river front is fee land. All the Reservation land, fee and trust, lies within the watershed and drains to the Columbia River. Upstream of the Reservation the Columbia River drains a vast area, about 47 million acres, extending through parts of Washington, Idaho, Montana, and British Columbia. Millions of acres of non-point source activities including farming, forestry, grazing, roads and others, occur throughout the watershed.

Water quality: A TMDL has been developed for total dissolved gas in the Mid-Columbia and Lake Roosevelt. The Upper Columbia River is also listed as impaired for water temperature and sediment toxicity. In the Upper Columbia River, recent findings by EPA have shown that both sediments and fish pose a potential risk to the general public and tribal subsistence users. Nitrogen saturation is a problem that plagues the Columbia River system in the US and Canada during the spring and early summer in high flow years, caused by hydroelectric dam configuration and operation. In 2011, water spillage from Grand Coulee Dam caused high levels of total dissolved gas leading to significant mortality of fish and other aquatic organisms down the Columbia River.

Major tributaries to the Columbia River at or upstream of the Reservation also have been affected by pollution. The Spokane River has TMDLs addressing dissolved oxygen, dissolved metals, Several TMDLs are under development, addressing biological oxygen demand and polychlorinated biphenyls (PCBs). The Colville River has TMDLs addressing fecal coliform, ammonia, chlorine, and dissolved oxygen. The Kettle River and Middle and Upper Lake Roosevelt watersheds have a TMDL addressing fecal coliform and temperature. The Pend Oreille River has TMDLs addressing fecal coliform, temperature, and total dissolve gas.

Within the Spokane River watershed, Hangman Creek has a TMDL addressing fecal coliform, phosphorus, temperature, and total suspended solids/turbidity. The Little Spokane River has TMDL addressing ammonia-N, total phosphorus, chlorine, fecal coliform, temperature, and turbidity.

Pollution of Lake Roosevelt has also occurred from sources upstream in Canada, such as the Teck Cominco smelter, and City of Trail sewer pipeline. Spills and discharges of mercury, lead, cadmium, arsenic, zinc, and sulfuric acid from the smelter have occurred since the early 1900's. The Trail sewer pipeline ruptured in March 2012, discharging over a million gallons of sewage into the river. In June 2012 a sewage pumping station backed up due to high river flows, again spilling sewage into the river. These sources of contamination have affected fish, fishing and other uses of river water by the Tribe. Fish consumption health advisories have been issued from time to time, and Tribal members have reduced their reliance on fish as an important component of their accustomed diet.

Algal blooms have occurred on the river, and toxin buildup due to cyanobacteria at times exceeds Washington Department of Health standards for safe swimming.

Tribal water resource use: Beneficial water uses include water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce and navigation. Tribal natural resource programs have sophisticated management programs for resident, anadromous fish; wildlife and water management. Former reservation lands and waters and reservation lands and waters are utilized by the tribal membership for subsistence hunting, fishing, gathering, construction of traditional items, camping, recreation and spiritual and cultural places of significance. Anadromous fish runs reach the southwest and west edges of the Reservation coming up the Columbia River as far as Joseph Dam, and up the Okanogan River. Fishing, and restoring, these salmon runs are vitally important both for subsistence and culturally for the Tribe. CTCR has constructed and is operating a new fish hatchery just downstream of Chief Joseph Dam supporting their programs to restore salmon runs in the Columbia and Okanogan Rivers. CTCR also manages a kokanee fishery on Lake Roosevelt. A net pen fish farm operating on Lake Rufus Woods employs Tribal members and makes a significant economic contribution to the Reservation. The fish farm has certain water quality needs. In May 2011, flow releases from Grand Coulee Dam had elevated total dissolved gas levels lethal to fish, causing mortality of millions of farm fish as well as wild fish in Lake Rufus Woods.

Environmental sensitivity: The Columbia River is a massive waterway with the capacity to dilute a certain amount of pollution; nonetheless it receives enough pollutants from numerous sources upriver of the Reservation to exceed various water quality standards. Numerous cities are located within the watershed upstream of the Reservation, contributing storm runoff and treated sewage effluent. Mining districts such as the Coeur d'Alene District and Trail and other upper

Columbia mines have delivered contaminants to the river. Because the river is backed up as a set of impoundments, flows are diminished and nutrient concentrations build up causing algal blooms. Silt and associated pollutants collect within the reservoirs. Dam operations at times cause damaging levels of dissolved gas. Several threatened and endangered salmon species swim up the Columbia River to spawn in tributary streams in and near the Reservation.

### **Okanogan River**

The Okanogan River watershed is a major tributary and forms a subbasin of the Columbia River watershed. Water quality problems also exist in the Okanogan River watershed including DDT, arsenic, and temperature issues. As with the Upper Columbia, the Okanogan River watershed is also an international system that supports ESA species as well as a multitude of tribal uses.

Land ownership: The Okanogan River watershed spans over 5 million acres, with two thirds or more of the watershed area in Canada. Within the Reservation, approximately 24.3 miles of river front is fee land. Activities occurring on fee lands within the Reservation along the Okanogan River were described previously in the Southwest Plateau watershed section.

Water quality: The Okanogan River is polluted by DDT and PCBs. The State has developed a TMDL for persistent pollution due to the long-lived nature of the chemicals. As DDT is transported to streams, it is absorbed by the plant and animal life within the stream system and then moves up the food chain. DDT persists in the environment and biomagnifies at higher levels in each step of the food chain (plants, aquatic biota, fish, and humans). DDT can also be found in ground water, as water infiltrates through contaminated soils into aquifers. PCBs can be toxic to fish and wildlife that use a contaminated water body.

Upstream of the Reservation 35 miles, the Similkameen River joins the Okanogan River, contributing the majority of their combined flow. The Similkameen is polluted with arsenic and has a TMDL for that pollutant. Many nonpoint source activities occur throughout the Okanogan River Watershed including farming, pesticide application, grazing, forestry, and roads. The cumulative impacts of these activities have affected water quality within the watershed.

Tribal water resource use: Beneficial water uses include water supply (domestic, industrial, and agricultural), stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce and navigation. Anadromous fish runs extend up the Okanogan past the Reservation to Canada and up the Similkameen to Enloe Dam 3.5 miles upstream from Oroville. As described for the Columbia River, fishing, and restoring, these salmon runs are vitally important both for subsistence and culturally for the Tribe. CTCR has constructed two acclimation ponds along the Okanogan River that will operate in tandem with the Chief Joseph Fish Hatchery supporting restoration of the salmon runs.

Tribal natural resource programs are developing and implementation projects and plans to provide habitat, harvest and hatchery programs for Columbia River endangered stocks. The Tribes have an active program to provide fish from hatchery surplus and are actively pursuing fee lands that provide critical habitat for salmon restoration. These programs are decommissioning former cattle, irrigation or agricultural uses to restore needed riparian habitat for temperature, flows and other water quality values.

Environmental sensitivity: The Okanogan River watershed has been subject to disruptions to the riverine and rangeland systems, resulting in widespread loss of migratory pathways and access to essential habitats. These have been caused by land use activities, water use and other

development including modification of stream habitat, hydroelectric development, and water diversions. Loss of key ecological function has resulted in alteration of the forage base, reduced overwintering ranges, elevated stream temperature and channel simplification, sedimentation problems, and in insufficient or nonexistent stream flows in many formerly perennial streams (NPCC 2004). While not inherently a sensitive watershed, many stressors have put pressure on the Okanogan River.

**Reservation Population:**

In 2010, the US Census determined that 7,256 people live within the Colville Reservation. 4,645 or 64% are Indian or Native American, and 2,611, 36%, are non-Indian. The Native American portion of the population has increased each decade since 1970, from 35% to 64%. Census population numbers are presented in Table 1.

**Table 1.** US Census population figures.

Annual Growth Rate,%						
Year	Population	10-Year	20-Year	30-Year	40-Year	50-Year
<b>Colville Reservation Total</b>						
1950	6,922	--	--	--	--	--
1960	3,979	-5.39%	--	--	--	--
1970	4,277	0.72%	-2.38%	--	--	--
1980	7,047	5.12%	2.90%	0.06%	--	--
1990	6,957	-0.13%	2.46%	1.88%	0.01%	--
2000	7,582	0.86%	0.37%	1.93%	1.62%	0.18%
2010	7,256	-0.44%	-0.22%	-0.15%	-0.11%	-0.09%
<b>Colville Reservation Indian</b>						
1960	1,626	--	--	--	--	--
1970	1,478	-0.95%	--	--	--	--
1980	3,491	8.98%	3.89%	--	--	--
1990	3,788	0.82%	4.82%	2.86%	--	--
2000	4,528	1.80%	1.31%	3.80%	2.59%	--
2010	4,645	0.26%	1.02%	0.96%	2.90%	0.05%
<b>Colville Reservation Non-Indian</b>						
1960	2,353	--	--	--	--	--
1970	2,799	1.75%	--	--	--	--
1980	3,556	2.42%	2.09%	--	--	--
1990	3,169	-1.15%	0.62%	1.00%	--	--
2000	3,054	-0.37%	-0.76%	0.29%	0.65%	--
2010	2,611	-1.55%	-0.96%	-1.02%	-0.17%	-0.31%
<b>Indian % of Reservation Population</b>						
Year	1960	1970	1980	1990	2000	2010
%	41	35	50	54	60	64

**Land Ownership:** A mix of land ownership exists within the external boundary of the Reservation. 69% of the Reservation is in tribal trust. 7% of the Reservation is allotment trust land. And some 3% of the land within the Reservation is also owned in fee by CTCR. 20% is owned in fee by non-members and Tribal members. 1% of the Reservation is owned by the federal government or is lake bed. CTCR owns the bed of the Columbia and Okanogan Rivers to the center line of the original channel. Although a substantial portion of land has been submerged by the construction and operation of Grand Coulee, Chief Joseph, and Wells Dams, CTCR asserts management authority over these lands in various ways. Map 3 shows the spatial arrangement of different ownership categories. Table 2 summarizes the breakdown of ownership.

The definitions used for land ownership and trust categories are:

Tribal trust- Tribal trust lands that are held in trust by the United States government for the use of the tribe. The United States holds the legal title, and the tribe holds the beneficial interest. Tribal trust land is held communally by the tribe and is managed by the tribal government.

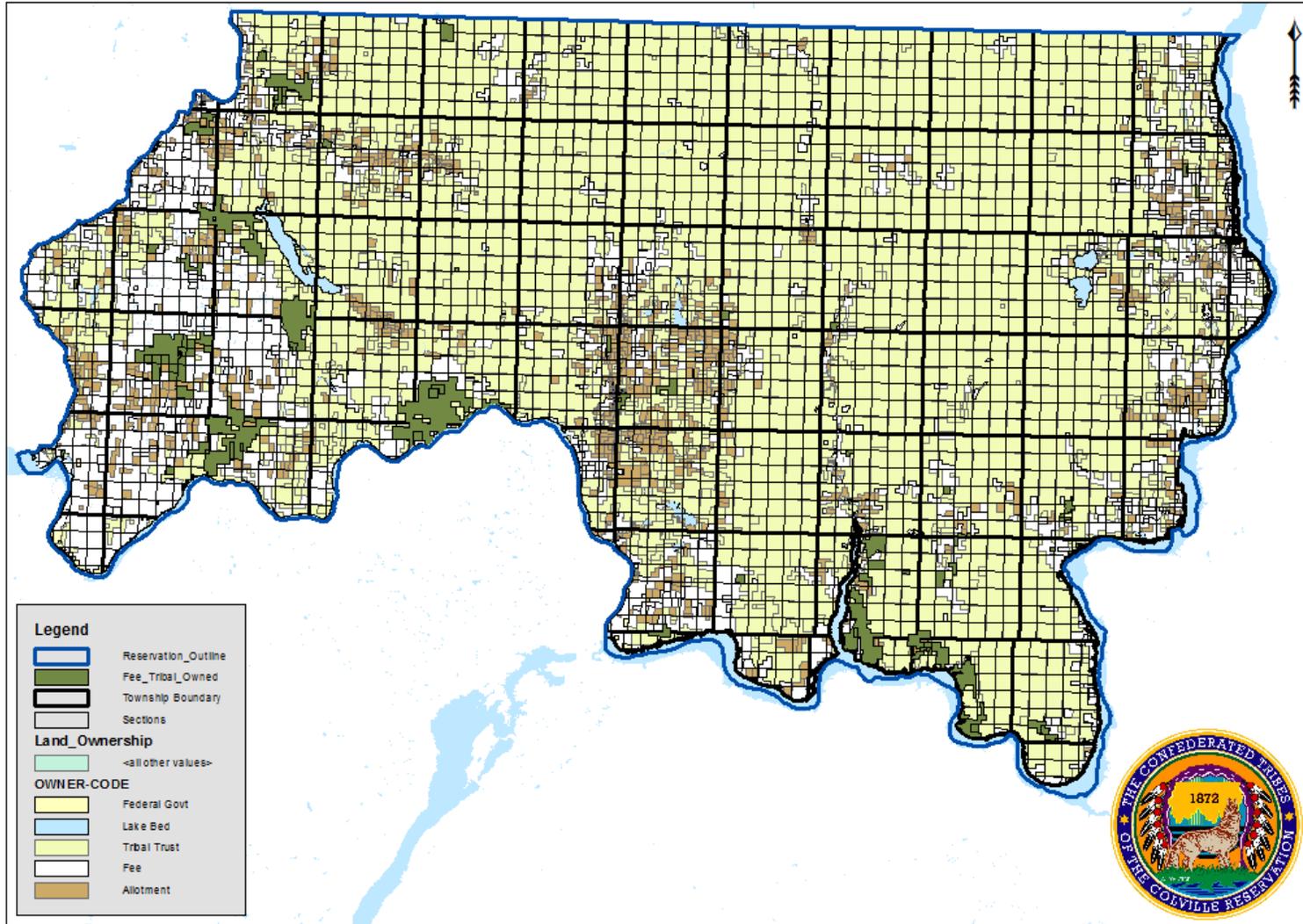
Allotment- Land held in trust by the United States for individual members of CTCR and their descendants who hold title to allotment parcels. The federal government holds the title, and the individual (or heirs) holds the beneficial interest. In some cases, CTCR may own a partial interest. Also non-members may inherit a partial interest- when this occurs they are issued a fee patent for their share, but the entire allotment parcel remains in trust.

Tribal owned fee- Fee (non-trust) land owned by CTCR.

Other fee land- Fee land that may be owned by tribal members or non-members.

Map 3.

Reservation Land Ownership Distribution



**Table 2.** Reservation ownership summary.

Ownership Categories	Acres	% Reservation Area
Fee Tribal-Owned	39,512	3
Federal government	1,404	<1
Lake Beds	6,509	<1
Tribal Trust	968,052	69
Fee Individually Owned	288,418	20
Allotment	93,778	7
<b>Total</b>	<b>1,397,673</b>	<b>100</b>

As mentioned previously in the description of watershed areas, a range of activities occur on lands owned in fee by non-tribal members which have the potential to affect water quality. Activities conducted on fee lands within the Reservation are typically agricultural (orchard, crop farming and ranching) and include forest management activities where the land has timber cover. Roads located on Reservation fee land also have potential to affect surface water quality. Boating is added to the list as fishing and other water sports are popular by Tribal member and non-members on the larger Reservation waters.

Land use activities on fee land are quantified in Table 3 below.

**Table 3.** Extent of activities on individually owned fee land and waters on the Reservation

Land Use Activity	Acreage	Non-point Source Pollution Category
Tilled land	16,615	Agriculture; Wetland & Riparian Management
Grazing	132,530	Agriculture; Wetland & Riparian Management
Orchard	4,958	Agriculture; Wetland & Riparian Management
Timber management	59,852	Forestry; Roads, Highways, and Bridges; Wetland & Riparian Management
Roads	3,466	Roads, Highways, and Bridges
Urban/Industrial Development	1,126	Urban Areas; Wetland & Riparian Management; Roads, Highways, and Bridges
Boating	41,461	Marinas and Boating

All these activities are non-point source activities with potential to deliver pollutants at scattered locations across the landscape. Potential pollutants include fine sediment, bacteria, chemicals delivered in runoff from activity areas, and thermal pollution caused by impacts to riparian vegetation. Water quality standard criteria that may be exceeded include turbidity, bacteria, temperature and dissolved oxygen.

Pathogens (fecal coliform), and turbidity affect whether Tribal goals for water supply are supported. Dissolved oxygen, temperature, and pH affect whether goals for fish, shellfish, and wildlife habitat are supported. Pathogens (total and fecal coliforms, *E. coli*) and turbidity affect whether goals for water quality supporting ceremonial, religious-use, and recreation are supported.

Capability to carry out the functions of an effective water quality standards program

**The tribe is reasonably expected to be capable of administering an effective WQS program. 40 CFR 131.8(a)(4). The application must include a narrative statement describing the tribe's capability to administer an effective program. 40 CFR 131.8(b)(4). The narrative statement should include:**

- **A description of the tribe's previous management experience, which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Indian Mineral Development Act (25 U.S.C. 2101 et seq.), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a). 40 CFR 131.8(b)(4)(i).**

CTCR has managed a tribal water quality program for the Reservation since the 1980's. In 1985, agreement was signed between CTCR, the Washington Department of Ecology, and Washington Department of Natural Resources regarding implementation of a Colville Water Quality Management Plan. The agreement recognized one office as the administrator of environmental laws and regulations within the Reservation. At the time, a system of tribal ordinances came into being, including the Colville On-Site Waste Water Treatment and Disposal Act, Mining Practices Water Quality Act, Forest Practices Act, Water Quality Standards Act, and Administrative Procedure Act.

Reservation water quality standards have been applied in permitting, management, and protection of water quality for these waters since CTCR received Section 106 TAS approval from EPA in 1990. CTCR has a history of working collaboratively with Washington State Department of Ecology and Department of Fish & Wildlife on water quality issues and hydraulic projects within the boundary waters since the promulgation of water quality standards for the Reservation. CTCR issues permits for work conducted in these rivers' waters to the channel midpoint. When both CTCR and Washington State permit a project, the entities typically coordinate efforts to develop requirements consistent with each other. This jurisdictional situation has been in place for about two decades. Collaboration on water protections has been the norm between CTCR and WA agencies, and is expected to continue following TAS approval.

The tribal office administering the various water quality codes is the Office of Environmental Trust. Additional tribal codes addressing water use and protection were written and approved by the Colville Business Council since the late '80's. These include the Hydraulic Projects Act, Water Resources Use and Permitting Act, and Shoreline Management Act. These codes went into effect in 1989, 1990, and 1998 respectively.

WQS Federally Promulgated: The Colville Water Quality Standards Act, written subsequently, was promulgated into the Code of Federal Regulations within Title 40 Chapter I, Part 131, Subpart D- Federally Promulgated Water Quality Standards, Section 131.35 Colville Confederated Tribes Indian Reservation. Promulgation into the CFR occurred July 6, 1989. The Colville Office of Environmental Trust has administered Reservation water quality standards since this time. Attachment H contains 40 CFR 131.35.

TAS for Section 106: In 1990, CTCR applied to EPA for Treatment in a Manner Similar to a State for Clean Water Act Section 106. The Washington Department of Ecology supported TAS for CTCR. This status was awarded by EPA in June of 1990. Attachment I contains the determination of TAS eligibility by EPA.

TAS for Section 319: In 1991, CTCR applied to EPA and received approval for Treatment in a Manner Similar to a State for Clean Water Act Section 319. A Non-point Source (NPS) Pollution Assessment and Management Program were developed for the Reservation. In 2012, CTCR updated its NPS Assessment and Management Plan. Attachment J contains the letter from EPA approving TAS for CWA Section 319 in 1991.

Staffing: Following Section 106 TAS, tribal staffing with water quality-related duties has grown from several full time equivalent staff initially, to a staff of twelve. Most positions in the Office of Environmental Trust have a focus on water quality and management, including Watershed Program Manager, Environmental Planner, Hazardous Waste Manager, Water Administrator, Environmental Regulatory Specialist, Forest Practices Administrator, Watershed Specialist, Water Resource Specialist, Water Operations Supervisory Technician, and two Water Quality Technicians. All water quality programs are overseen by the position of Director for Environmental Trust. The water program work is supported by several administrative staff within the program and from other Tribal departments such as Accounting, Human Resources, Information Technology, and Public Works.

Permitting: Four staff positions have permitting responsibilities within the Office of Environmental Trust. The Environmental Regulatory Specialist conducts wastewater permitting and administers Chapter 4-5 On-Site Waste Water Treatment and Disposal. The Forest Practices Administrator conducts forest practices, hydraulic project and surface mining permitting, administering Chapters 4-6, 4-7, and 4-9 (Mining Practices Water Quality, Forest Practices, and Hydraulic Projects). The Water Administrator conducts water use permitting, administering Reservation water rights and Chapter 4-10 Water Resources Use and Permitting. The Watershed Program Manager conducts any water pollution discharge permitting and coordinates Reservation NPDES, water quality certifications, and stormwater permitting with the Environmental Protection Agency.

#### Compliance and Enforcement:

Examples:

1. Fee landowner and logger operating logging equipment through Ninemile Creek in violation of Forest Practices and Hydraulic Projects codes.
2. Logger driving log skidding machinery through the San Poil River in violation of Hydraulic Projects code.
3. Fee landowner excavating a pond in a floodway adjacent the San Poil River.
4. Illegal diversions of surface waters by fee and trust landowners (Rebecca Lake Ck., Poker Joe Ck., Felix Ck.)

Monitoring: The CTCR Environmental Trust program began monitoring surface water at random sites in the late 1970s. Regularly scheduled monitoring at designated stream sites began in the early 1990s at approximately 120 streamflow and 150 water quality sites.

Water quality monitoring of interior streams is routinely conducted by the Office of Environmental Trust. The purpose of the water quality monitoring and assessment program is to determine whether water quality criteria are being met and beneficial uses are being supported for water bodies across the reservation. Establishing a baseline of water quality condition for all waters and periodically reassessing the baseline water quality to look for changes is also an important program objective. Monitoring also helps identify waters needing restoration. Besides monitoring and assessment conducted by the Environmental Trust Department (ETD), the CTCR Fish & Wildlife Department does substantial monitoring of aquatic habitat including lakes across the Reservation and throughout the Okanogan River watershed. Monitoring is coordinated and results shared between the departments. CTCR water quality monitoring is conducted in accordance with a Water Monitoring Strategy (2014) and Quality Assurance Project Plan (2014).

CTCR has an agreement with the US Geological Survey for operation and maintenance of three gaging stations on the San Poil River. Another agreement exists with the US Natural Resources Conservation Service for operation and maintenance of an automated SNOTEL snow survey site on the Reservation.

Reporting: In 1996, impacted waters, impaired uses, impairment causes, and pollution sources were identified in the IRMP Phase I Hydrology Report. In 1998, a Unified Watershed Assessment Clean Water Action Plan was prepared. Water Quality Assessment and Management Program 305 (b) Reports were published in 2001 and 2006. In 2010, an initial Tribal Assessment Report was written and subsequent water quality assessments have been produced annually.

In 2011, CTCR began entering Reservation water quality data into the Environmental Protection Agency national STORET database. Data was entered going back to 2006. There is considerable archive data yet to enter.

Restoration: Each year, subject to availability of funding, the Environmental Trust program implements watershed restoration projects funded tribally and by CWA 319 competitive grants. The work is aimed at controlling non-point source pollution, typically addressing road runoff and related erosion, installing improved stream crossings, decommissioning stream-adjacent roads, stabilizing eroding stream banks, and reducing livestock related impacts. Carrying out these projects involves watershed resource analysis, work design and specifications, interdisciplinary review, permitting, contract development and administration. Potential project sites are identified and prioritized relying in part on watershed road impact assessments contracted out by Environmental Trust.

CTCR Involvement with Boundary Water Quality: CTCR has long been active in the water quality management of the Columbia and Okanogan Rivers. On the Columbia River, CTCR has established direct working relations with local forums, formalized an Upper Columbia Trustee Council and routinely engaged the state and federal agencies on specific water quality issues. These resources and processes are highly complex due to multiple uses, jurisdiction and international nexus. Through cooperative efforts by CTCR and the Lake Roosevelt Water Quality Council, initial fish tissue work was conducted and report published in 2000 by the USGS on contaminated sediments and fish. CCT began to plan and strategize on a comprehensive approach for a human health and ecological assessment and eventual cleanup of the legacy pollution. CTCR has developed technical and planning responses to draw downs of

Lake Roosevelt lacking adequate environmental assessment for ESA and flood control. CTCR is one of five entities coordinating permitting involving the entirety of Lake Roosevelt. The five party agreement for management of Lake Roosevelt is included in Attachment K.

CCT takes a lead role in the promotion of environmental programs, which address 303 (d) listed water bodies. In 1999 we petitioned EPA under CERCLA to assess areas in the Upper Columbia River Basin. The US EPA and the Responsible Party signed an agreement in 2006 to conduct an RI/FS of which the CCT is not a party though it has been designated as a “participating party” along with the State of Washington, the Dept. of Interior, and the Spokane Tribe of Indians. CCT efforts led to the signing of the Settlement Agreement. CTCR legal and technical research and development of Tribal water quality standards and sediment quality standards have been instrumental in developing a focus and priority for cleanup and restoration of the Columbia River from the local to the highest levels of government.

Sediment Quality Standards in the CTCR Hazardous Substances Control Act were the first fresh water sediment standards in EPA Region 10. In 2008 CTCR developed a Biological Waste Guidance document to assist in regulating and permitting industry (primarily fish farming) on the Reservation.

Tribal consultation with Army Corps and Bureau of Reclamation has supported structural changes to the Chief Joseph Dam, and a power shifting plan between Grand Coulee and Chief Joseph Dams during high spill times to alleviate TDG standard exceedances and protect fish on the reservation.

Consultation has occurred with EPA on stormwater management, NPDES permitting, water quality certification, and associated environmental assessment. For activities conducted on the Reservation side of the river channel midpoint, CTCR issues water quality discharge permits for activities with discharges to the Columbia and Okanogan Rivers, and issues hydraulic project permits for work proposed within the ordinary high water mark.

CTCR has identified actions in the Okanogan and Similkameen River watersheds that will help facilitate a better understanding of the nature and extent and magnitude of contaminants and water quality exceedances in these critical watersheds. We continue efforts to protect critical ESA salmon habitat and have conducted sediment studies to identify areas in the Okanogan and Similkameen where DDT, arsenic and lead exceed Tribal standards. In 2008 CTCR posted a fish advisory for DDT and Mercury in the Okanogan River watershed. These efforts have been in coordination with Okanogan River TMDL efforts by the State of Washington.

**• A list of existing environmental or public health programs administered by the tribal governing body and copies of related tribal laws, policies, and regulations. 40 CFR 131.8(b)(4)(ii).**

As mentioned before, a set of tribal laws and regulations is administered by CTCR Environmental Trust, including CTC 4-5 through CTC 4-10, and CTC 4-16, Hazardous Substance Control. Recently, Environmental Trust developed a new code for the processing of appeals related to decisions related to several of the aforementioned codes. This code, CTC 4-23, Colville Environmental Quality Commission, was approved by the Colville Business Council in 2010. Copies of the codes are provided in Attachment L.

Environmental Trust has developed a Wellhead Protection Plan (2000) and implements a program to eliminate threats to ground water quality in the vicinity of public ground water

systems. Environmental Trust is currently completing a Wetlands Program Plan to provide a comprehensive guide for wetland management and management of activities having potential to degrade wetland condition and wetland water quality.

Boundary Waters and Watershed Management are additional programs implemented by Environmental Trust.

Water quality monitoring results are analyzed and reported by Environmental Trust in annual Tribal Assessment Reports. Any results indicating presence of potential health hazards trigger warnings either to individual well users or the public in the case of surface water conditions.

**• A description of the entity (or entities) that exercise the executive, legislative, and judicial functions of the tribal government. 40 CFR 131.8(b)(4)(iii).**

The Confederated Tribes of the Colville Reservation is organized under a Constitution which creates a Business Council whose responsibility it is to handle the affairs of the Tribes. A later amendment made an explicit distinction in setting up an independent judiciary.

The Reservation is divided into 4 political districts, from which the membership votes. The districts are essentially geographical units which roughly encompass 4 major valleys/watershed areas; Omak, Nespelem, Keller, and Inchelium. Each of these districts has 4 positions on the Colville Business Council, excepting for Keller, which has 2.

The Colville Business Council (CBC) has 14 members, with elections for half of the number being held each year. From within its membership, an Executive Committee is elected, which consists of the Chairman, Vice-Chair, Secretary, and district representative. In addition, there are 10 subcommittees of the CBC, each having a Chair, Vice-, and 2<sup>nd</sup> Vice-chair. Each Tribal Department, along with the Executive Director, reports to one of the Committees (For a full schematic on the “executive” structure, please refer to the organizational chart in Attachment C). The Committees are: Employment and Education; Natural Resources; Management and Budget; Veterans; Elections; Human Services; Community Development; Law and Justice; Tribal Government; Culture.

The Tribes’ Judiciary consists of a Tribal Court and a Colville Tribal Court of Appeals. The Tribal Court is led by a Chief Judge, said position being appointed by the Colville Business Council for a six year term, subject to a vote of confidence by the Tribal membership after 3 years. The Colville Business Council also appoints Associate Judges. The Court system handles both Criminal and Civil matters, and the Tribes’ legal system includes a full array of legal services for both the government and the membership.

The Tribal Court of appeals is led by a Chief Justice. The Court of Appeals also has Associate Justices appointed by the Colville Business Council. The Court of Appeals sits as a 3 Justice panel when hearing appeals from the Tribal Court.

**• A description of the existing, or proposed, agency of the tribe that will assume primary responsibility for establishing, reviewing, implementing, and revising water quality standards. 40 CFR 131.8(b)(4)(iv).**

The Office of Environmental Trust will assume primary responsibility for establishing, reviewing, implementing, and revising water quality standards. The department has a permanent staff of 17 employees, with twelve staff positions having a focus on water quality standards, and water management and protection. Its offices are based at the Colville Agency campus near Nespalem, WA.

The mission and programs administered by the department include the following:

- To protect and enhance water and soil quality of the Reservation through providing baseline water data and assessments to assist resource planning and management; implementing sediment quality analysis studies; developing reports that describe Reservation water quality and quantity conditions, trends in conditions and management programs designed to address these issues; and evaluating success of programs in achieving desired resource conditions and departmental objectives; assisting state water supply forecasting and Reservation fire management activities by implementing snow survey plan.
- To ensure sustainable and productive Reservation soils by interpreting soils and inventory data and developing best management practices for Reservation soil types and sensitivity classes; assisting Tribal Members and NRD programs by making site-specific soil investigations, evaluations and management recommendations, coordinating with other programs and agencies in soil protection, stabilization and restoration activities.
- To help achieve sustainable ecosystems and integrated natural resources management by overseeing the water, watershed and soil resources portion of the Integrated Resource Management Plan; by developing and implementing management plans and performing activities to facilitate soil/water management and land use planning.
- To revise Tribal water quality standards, perform interior Reservation standards revisions, and establish boundary water standards and TMDLs.
- To protect Tribal water rights, aquatic resources and instream values by overseeing a water use program and the Tribal water code.
- To protect water quality and human/environmental health by overseeing an on-site wastewater program and the Tribal wastewater code.
- To improve accuracy, quantity and availability of water resources data to users and other programs to ensure water resource protection on an integrated watershed basis.
- To protect people, property and resource values by operating a federal dam safety program.
- To help provide for sustainability and high water quality for forest watershed by administering the Tribal Forest Practices Act and Washington State Forest Practices regulations.
- To work with other groups and agencies by assessing quality of boundary waters and making recommendations for policies and actions to protect and enhance boundary waters of the Reservation.
- To protect residents of the Reservation from unhealthy exposure to lead and other contaminants through the Brownfields project.
- To protect the Air Quality of the Reservation by adopting a Tribal air code and building program capacity.

- To reduce exposure of Reservation population to unhealthy environmental risks contributed by hazardous substances from the Reservation through regulation and cleanups.
- To ensure compliance with NEPA and other Federal Environmental Laws and help protect Tribal lands from environmental damage through oversight.
- **A description of the technical and administrative capabilities of the staff to administer and manage an effective water quality standards program or a plan that proposes how the tribe will acquire additional administrative and technical expertise. The plan must address how the tribe will obtain the funds to acquire the administrative and technical expertise. 40 CFR 131.8(b)(4)(v).**

Environmental Trust has the capabilities to administer and manage an effective water quality standards program. Job descriptions and qualifications requirements for water-related positions in the Environmental Trust are provided in Attachment M. In addition to these positions, the department also has coordinators for air quality, response program, and CERCLA, an accountant/office manager, and administrative assistant.

Environmental Trust is supported in carrying out professional, high quality work by other CTCR programs including Human Resources, Accounting, Office of Reservation Attorney, Contracting Office, Information Technology, Resource Inventory & Analysis, and Tribal Employment Rights Office.

The department has considerable successful experience in administering contracts with resource and legal consultants, grant administration, developing and carrying out program work plans, developing and adhering to budgets, and administering regulatory programs.

### **Additional Documentation**

**Additional documentation required by EPA that, in EPA's judgment, is necessary to support a tribal application.**

### **Attachments**

- A.** 75 Fed. Reg. 60810, October 1, 2010 (page 1).
- B.** Executive Order creating the Colville Indian Reservation.
- C.** Colville Tribes Organizational Chart.
- D.** Constitution and Bylaws of the Confederated Tribes of the Colville Reservation.
- E.** Colville Tribal Law and Order Code Table of Contents.
- F.** Maps of Traditional Territories and Former Reservations.
- G.** Regulatory Authority of the Colville Confederated Tribes Over Water Pollution Sources Within the Borders of the Colville Indian Reservation.
- H.** 40 CFR 131.35. Federally Promulgated Water Quality Standards for the Colville Indian Reservation.

- I. EPA Approval of Treatment as a State for CWA Section 106.
- J. EPA Approval of Treatment as a State for CWA Section 319.
- K. Lake Roosevelt Cooperative Management Agreement.
- L. Tribal codes pertaining to water quality protection
- M. Job descriptions and qualifications requirements for water-related positions.

## **References**

**25 U.S. Statutes at Large, c 180 p 676.** Approved February 22, 1889. *Enabling Act.*

**Department of the Interior Office of the Solicitor.** (1977) *Opinion on the Boundaries of and Status of Title to Certain Lands Within the Colville and Spokane Indian Reservations.*

**CTCR Reservation Attorney and The Du Bey Law Firm.** (1989) *Regulatory Authority of the Colville Confederated Tribes Over Water Pollution Sources Within the Borders of the Colville Indian Reservation.* Nespalem, WA.

**Hart, E. Richard.** (2002) *Water Boundaries of the Colville Indian Reservation (Draft).*

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401

ATTACHMENT A

Dated: August 5, 2010.

**Mark J. Musaus,**

*Acting Regional Director.*

[FR Doc. 2010-24668 Filed 9-30-10; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the current list of 564 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. The list is updated from the notice published on August 11, 2009 (74 FR 40218).

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Colliflower, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 4513-MIB, 1849 C Street, NW., Washington, DC 20240. Telephone number: (202) 513-7641.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska.

Amendments to the list include name changes and name corrections. To aid in identifying tribal name changes, the tribe's former name is included with the new tribal name. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name. We will continue to list the tribe's former or previously listed name for several years before dropping the former or previously listed name from the list.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: September 22, 2010.

**Larry Echo Hawk,**

*Assistant Secretary—Indian Affairs.*

#### Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma  
 Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California  
 Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona  
 Alabama-Coushatta Tribes of Texas  
 Alabama-Quassarte Tribal Town, Oklahoma  
 Alturas Indian Rancheria, California  
 Apache Tribe of Oklahoma  
 Arapahoe Tribe of the Wind River Reservation, Wyoming  
 Aroostook Band of Micmac Indians of Maine  
 Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana  
 Augustine Band of Cahuilla Indians, California (formerly the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)  
 Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin  
 Bay Mills Indian Community, Michigan  
 Bear River Band of the Rohnerville Rancheria, California  
 Berry Creek Rancheria of Maidu Indians of California  
 Big Lagoon Rancheria, California  
 Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California  
 Big Sandy Rancheria of Mono Indians of California  
 Big Valley Band of Pomo Indians of the Big Valley Rancheria, California  
 Blackfeet Tribe of the Blackfeet Indian Reservation of Montana  
 Blue Lake Rancheria, California  
 Bridgeport Paiute Indian Colony of California  
 Buena Vista Rancheria of Me-Wuk Indians of California  
 Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon  
 Cabazon Band of Mission Indians, California  
 Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California  
 Caddo Nation of Oklahoma  
 Cahuilla Band of Mission Indians of the Cahuilla Reservation, California  
 Cahto Indian Tribe of the Laytonville Rancheria, California  
 California Valley Miwok Tribe, California  
 Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California

Capitan Grande Band of Diegueno Mission Indians of California:  
 Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California  
 Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California  
 Catawba Indian Nation (aka Catawba Tribe of South Carolina)  
 Cayuga Nation of New York  
 Cedarville Rancheria, California  
 Chemehuevi Indian Tribe of the Chemehuevi Reservation, California  
 Cher-Ae Heights Indian Community of the Trinidad Rancheria, California  
 Cherokee Nation, Oklahoma  
 Cheyenne and Arapaho Tribes, Oklahoma (formerly the Cheyenne-Arapaho Tribes of Oklahoma)  
 Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota  
 Chickasaw Nation, Oklahoma  
 Chicken Ranch Rancheria of Me-Wuk Indians of California  
 Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana  
 Chitimacha Tribe of Louisiana  
 Choctaw Nation of Oklahoma  
 Citizen Potawatomi Nation, Oklahoma  
 Cloverdale Rancheria of Pomo Indians of California  
 Cocopah Tribe of Arizona  
 Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho  
 Cold Springs Rancheria of Mono Indians of California  
 Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California  
 Comanche Nation, Oklahoma  
 Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana  
 Confederated Tribes of the Chehalis Reservation, Washington  
 Confederated Tribes of the Colville Reservation, Washington  
 Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon  
 Confederated Tribes of the Goshute Reservation, Nevada and Utah  
 Confederated Tribes of the Grand Ronde Community of Oregon  
 Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation)  
 Confederated Tribes of the Umatilla Reservation, Oregon  
 Confederated Tribes of the Warm Springs Reservation of Oregon  
 Confederated Tribes and Bands of the Yakama Nation, Washington  
 Coquille Tribe of Oregon  
 Cortina Indian Rancheria of Wintun Indians of California  
 Coushatta Tribe of Louisiana

Cow Creek Band of Umpqua Indians of Oregon	Hoopla Valley Tribe, California	Lower Lake Rancheria, California
Cowlitz Indian Tribe, Washington	Hopi Tribe of Arizona	Los Coyotes Band of Cahuilla and Cupeno Indians, California (formerly the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)
Coyote Valley Band of Pomo Indians of California	Hopland Band of Pomo Indians of the Hopland Rancheria, California	Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Crow Tribe of Montana	Houlton Band of Maliseet Indians of Maine	Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota	Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona	Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Death Valley Timbi-Sha Shoshone Band of California	Iipay Nation of Santa Ysabel, California (formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)	Lower Sioux Indian Community in the State of Minnesota
Delaware Nation, Oklahoma	Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California	Lummi Tribe of the Lummi Reservation, Washington
Delaware Tribe of Indians, Oklahoma	Ione Band of Miwok Indians of California	Lytton Rancheria of California
Dry Creek Rancheria of Pomo Indians of California	Iowa Tribe of Kansas and Nebraska	Makah Indian Tribe of the Makah Indian Reservation, Washington
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada	Iowa Tribe of Oklahoma	Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Eastern Band of Cherokee Indians of North Carolina	Jackson Rancheria of Me-Wuk Indians of California	Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Eastern Shawnee Tribe of Oklahoma	Jamestown S'Klallam Tribe of Washington	Mashantucket Pequot Tribe of Connecticut
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California	Jamul Indian Village of California	Mashpee Wampanoag Tribe, Massachusetts
Elk Valley Rancheria, California	Jena Band of Choctaw Indians, Louisiana	Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Ely Shoshone Tribe of Nevada	Jicarilla Apache Nation, New Mexico	Mechoopda Indian Tribe of Chico Rancheria, California
Enterprise Rancheria of Maidu Indians of California	Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona	Menominee Indian Tribe of Wisconsin
Ewiiapaayp Band of Kumeyaay Indians, California	Kalispel Indian Community of the Kalispel Reservation, Washington	Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Federated Indians of Graton Rancheria, California	Karuk Tribe (formerly the Karuk Tribe of California)	Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Flandreau Santee Sioux Tribe of South Dakota	Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California	Miami Tribe of Oklahoma
Forest County Potawatomi Community, Wisconsin	Kaw Nation, Oklahoma	Miccousukee Tribe of Indians of Florida
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana	Kewa Pueblo, New Mexico (formerly the Pueblo of Santo Domingo)	Middletown Rancheria of Pomo Indians of California
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California	Keweenaw Bay Indian Community, Michigan	Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California	Kialegee Tribal Town, Oklahoma	Mississippi Band of Choctaw Indians, Mississippi
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon	Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Fort McDowell Yavapai Nation, Arizona	Kickapoo Tribe of Oklahoma	Modoc Tribe of Oklahoma
Fort Mojave Indian Tribe of Arizona, California & Nevada	Kickapoo Traditional Tribe of Texas	Mohegan Indian Tribe of Connecticut
Fort Sill Apache Tribe of Oklahoma	Kiowa Indian Tribe of Oklahoma	Mooretown Rancheria of Maidu Indians of California
Gila River Indian Community of the Gila River Indian Reservation, Arizona	Klamath Tribes, Oregon	Morongo Band of Mission Indians, California (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation)
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan	Kootenai Tribe of Idaho	Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Greenville Rancheria of Maidu Indians of California	La Jolla Band of Luiseno Indians, California (formerly the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)	Muscogee (Creek) Nation, Oklahoma
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California	La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California	Narragansett Indian Tribe of Rhode Island
Guidiville Rancheria of California	Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin	
Habematolel Pomo of Upper Lake, California	Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin	
Hannahville Indian Community, Michigan	Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan	
Havasupai Tribe of the Havasupai Reservation, Arizona	Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada	
Ho-Chunk Nation of Wisconsin	Little River Band of Ottawa Indians, Michigan	
Hoh Indian Tribe of the Hoh Indian Reservation, Washington	Little Traverse Bay Bands of Odawa Indians, Michigan	

Navajo Nation, Arizona, New Mexico & Utah

Nez Perce Tribe, Idaho (previously listed as Nez Perce Tribe of Idaho)

Nisqually Indian Tribe of the Nisqually Reservation, Washington

Nooksack Indian Tribe of Washington

Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana

Northfork Rancheria of Mono Indians of California

Northwestern Band of Shoshoni Nation of Utah (Washakie)

Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.)

Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota

Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan)

Omaha Tribe of Nebraska

Oneida Nation of New York

Oneida Tribe of Indians of Wisconsin

Onondaga Nation of New York

Osage Nation, Oklahoma (formerly the Osage Tribe)

Ottawa Tribe of Oklahoma

Otoe-Missouria Tribe of Indians, Oklahoma

Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes))

Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California

Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada

Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California

Pala Band of Luiseno Mission Indians of the Pala Reservation, California

Pascua Yaqui Tribe of Arizona

Paskenta Band of Nomlaki Indians of California

Passamaquoddy Tribe of Maine

Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California

Pawnee Nation of Oklahoma

Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California

Penobscot Tribe of Maine

Peoria Tribe of Indians of Oklahoma

Picayune Rancheria of Chukchansi Indians of California

Pinoleville Pomo Nation, California (formerly the Pinoleville Rancheria of Pomo Indians of California)

Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)

Poarch Band of Creek Indians of Alabama

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Ponca Tribe of Indians of Oklahoma

Ponca Tribe of Nebraska

Port Gamble Indian Community of the Port Gamble Reservation, Washington

Potter Valley Tribe, California

Prairie Band of Potawatomi Nation, Kansas

Prairie Island Indian Community in the State of Minnesota

Pueblo of Acoma, New Mexico

Pueblo of Cochiti, New Mexico

Pueblo of Jemez, New Mexico

Pueblo of Isleta, New Mexico

Pueblo of Laguna, New Mexico

Pueblo of Nambe, New Mexico

Pueblo of Picuris, New Mexico

Pueblo of Pojoaque, New Mexico

Pueblo of San Felipe, New Mexico

Pueblo of San Ildefonso, New Mexico

Pueblo of Sandia, New Mexico

Pueblo of Santa Ana, New Mexico

Pueblo of Santa Clara, New Mexico

Pueblo of Taos, New Mexico

Pueblo of Tesuque, New Mexico

Pueblo of Zia, New Mexico

Puyallup Tribe of the Puyallup Reservation, Washington

Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada

Quapaw Tribe of Indians, Oklahoma

Quartz Valley Indian Community of the Quartz Valley Reservation of California

Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona

Quileute Tribe of the Quileute Reservation, Washington

Quinault Tribe of the Quinault Reservation, Washington

Ramona Band of Cahuilla, California (formerly the Ramona Band or Village of Cahuilla Mission Indians of California)

Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin

Red Lake Band of Chippewa Indians, Minnesota

Redding Rancheria, California

Redwood Valley Rancheria of Pomo Indians of California

Reno-Sparks Indian Colony, Nevada

Resighini Rancheria, California

Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California

Robinson Rancheria of Pomo Indians of California

Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota

Round Valley Indian Tribes of the Round Valley Reservation, California

Sac & Fox Tribe of the Mississippi in Iowa

Sac & Fox Nation of Missouri in Kansas and Nebraska

Sac & Fox Nation, Oklahoma

Saginaw Chippewa Indian Tribe of Michigan

St. Croix Chippewa Indians of Wisconsin

Saint Regis Mohawk Tribe, New York (formerly the St. Regis Band of Mohawk Indians of New York)

Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona

Samish Indian Tribe, Washington

San Carlos Apache Tribe of the San Carlos Reservation, Arizona

San Juan Southern Paiute Tribe of Arizona

San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation)

San Pasqual Band of Diegueno Mission Indians of California

Santa Rosa Indian Community of the Santa Rosa Rancheria, California

Santa Rosa Band of Cahuilla Indians, California (formerly the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)

Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California

Santee Sioux Nation, Nebraska

Sauk-Suiattle Indian Tribe of Washington

Sault Ste. Marie Tribe of Chippewa Indians of Michigan

Scotts Valley Band of Pomo Indians of California

Seminole Nation of Oklahoma

Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)

Seneca Nation of New York

Seneca-Cayuga Tribe of Oklahoma

Shakopee Mdewakanton Sioux Community of Minnesota

Shawnee Tribe, Oklahoma

Sherwood Valley Rancheria of Pomo Indians of California

Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California

Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington

Shoshone Tribe of the Wind River Reservation, Wyoming

Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho

Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada

Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota

Skokomish Indian Tribe of the Skokomish Reservation, Washington

- Skull Valley Band of Goshute Indians of Utah  
Smith River Rancheria, California  
Snoqualmie Tribe, Washington  
Soboba Band of Luiseno Indians, California  
Sokaogon Chippewa Community, Wisconsin  
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado  
Spirit Lake Tribe, North Dakota  
Spokane Tribe of the Spokane Reservation, Washington  
Squaxin Island Tribe of the Squaxin Island Reservation, Washington  
Standing Rock Sioux Tribe of North & South Dakota  
Stockbridge Munsee Community, Wisconsin  
Stillaguamish Tribe of Washington  
Summit Lake Paiute Tribe of Nevada  
Suquamish Indian Tribe of the Port Madison Reservation, Washington  
Susanville Indian Rancheria, California  
Swinomish Indians of the Swinomish Reservation, Washington  
Sycuan Band of the Kumeyaay Nation  
Table Mountain Rancheria of California  
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)  
Thlopthlocco Tribal Town, Oklahoma  
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota  
Tohono O'odham Nation of Arizona  
Tonawanda Band of Seneca Indians of New York  
Tonkawa Tribe of Indians of Oklahoma  
Tonto Apache Tribe of Arizona  
Torres Martinez Desert Cahuilla Indians, California (formerly the Torres-Martinez Band of Cahuilla Mission Indians of California)  
Tule River Indian Tribe of the Tule River Reservation, California  
Tulalip Tribes of the Tulalip Reservation, Washington  
Tunica-Biloxi Indian Tribe of Louisiana  
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California  
Turtle Mountain Band of Chippewa Indians of North Dakota  
Tuscarora Nation of New York  
Twenty-Nine Palms Band of Mission Indians of California  
United Auburn Indian Community of the Auburn Rancheria of California  
United Keetoowah Band of Cherokee Indians in Oklahoma  
Upper Sioux Community, Minnesota  
Upper Skagit Indian Tribe of Washington  
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah  
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah  
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California  
Walker River Paiute Tribe of the Walker River Reservation, Nevada  
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts  
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)  
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona  
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma  
Wilton Rancheria, California  
Winnebago Tribe of Nebraska  
Winnemucca Indian Colony of Nevada  
Wiyot Tribe, California (formerly the Table Bluff Reservation—Wiyot Tribe)  
Wyandotte Nation, Oklahoma  
Yankton Sioux Tribe of South Dakota  
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona  
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona  
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada  
Yocha Dehe Wintun Nation, California (formerly the Rumsey Indian Rancheria of Wintun Indians of California)  
Yomba Shoshone Tribe of the Yomba Reservation, Nevada  
Ysleta Del Sur Pueblo of Texas  
Yurok Tribe of the Yurok Reservation, California  
Zuni Tribe of the Zuni Reservation, New Mexico
- Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs**
- Native Village of Afognak  
Agdaagux Tribe of King Cove  
Native Village of Akhiok  
Akiachak Native Community  
Akiak Native Community  
Native Village of Akutan  
Village of Alakanuk  
Alatna Village  
Native Village of Aleknagik  
Algaaciq Native Village (St. Mary's)  
Allakaket Village  
Native Village of Ambler  
Village of Anaktuvuk Pass  
Yupit of Andreafski  
Angoon Community Association  
Village of Aniak  
Anvik Village  
Arctic Village (See Native Village of Venetie Tribal Government)  
Asa'carsarmiut Tribe  
Native Village of Atka  
Village of Atmautluak  
Atkasuk Village (Atkasook)  
Native Village of Barrow Inupiat Traditional Government  
Beaver Village  
Native Village of Belkofski  
Village of Bill Moore's Slough  
Birch Creek Tribe  
Native Village of Brevig Mission  
Native Village of Buckland  
Native Village of Cantwell  
Native Village of Chenega (aka Chanega)  
Chalkyitsik Village  
Cheesh-Na Tribe (formerly the Native Village of Chistochina)  
Village of Chefornak  
Chevak Native Village  
Chickaloon Native Village  
Chignik Bay Tribal Council (formerly the Native Village of Chignik)  
Native Village of Chignik Lagoon  
Chignik Lake Village  
Chilkat Indian Village (Klukwan)  
Chilkoot Indian Association (Haines)  
Chinik Eskimo Community (Golovin)  
Native Village of Chitina  
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)  
Chuloonawick Native Village  
Circle Native Community  
Village of Clarks Point  
Native Village of Council  
Craig Community Association  
Village of Crooked Creek  
Curyung Tribal Council  
Native Village of Deering  
Native Village of Diomedea (aka Inalik)  
Village of Dot Lake  
Douglas Indian Association  
Native Village of Eagle  
Native Village of Eek  
Egegik Village  
Eklutna Native Village  
Native Village of Ekuk  
Ekwok Village  
Native Village of Elim  
Emmonak Village  
Evansville Village (aka Bettles Field)  
Native Village of Eyak (Cordova)  
Native Village of False Pass  
Native Village of Fort Yukon  
Native Village of Gakona  
Galena Village (aka Louden Village)  
Native Village of Gambell  
Native Village of Georgetown  
Native Village of Goodnews Bay  
Organized Village of Grayling (aka Holikachuk)  
Gulkana Village  
Native Village of Hamilton  
Healy Lake Village  
Holy Cross Village  
Hoonah Indian Association  
Native Village of Hooper Bay  
Hughes Village  
Huslia Village  
Hydaburg Cooperative Association  
Igiugig Village  
Village of Iliamna  
Inupiat Community of the Arctic Slope

Iqurmit Traditional Council  
 Ivanoff Bay Village  
 Kaguyak Village  
 Organized Village of Kake  
 Kaktovik Village (aka Barter Island)  
 Village of Kalskag  
 Village of Kaltag  
 Native Village of Kanatak  
 Native Village of Karluk  
 Organized Village of Kasaan  
 Kasigluk Traditional Elders Council  
 Kenaitze Indian Tribe  
 Ketchikan Indian Corporation  
 Native Village of Kiana  
 King Island Native Community  
 King Salmon Tribe  
 Native Village of Kipnuk  
 Native Village of Kivalina  
 Klawock Cooperative Association  
 Native Village of Kluti Kaah (aka Copper Center)  
 Knik Tribe  
 Native Village of Kobuk  
 Kokhanok Village  
 Native Village of Kongiganak  
 Village of Kotlik  
 Native Village of Kotzebue  
 Native Village of Koyuk  
 Koyukuk Native Village  
 Organized Village of Kwethluk  
 Native Village of Kwigillingok  
 Native Village of Kwinhagak (aka Quinhagak)  
 Native Village of Larsen Bay  
 Levelock Village  
 Lime Village  
 Village of Lower Kalskag  
 Manley Hot Springs Village  
 Manokotak Village  
 Native Village of Marshall (aka Fortuna Ledge)  
 Native Village of Mary's Igloo  
 McGrath Native Village  
 Native Village of Mekoryuk  
 Mentasta Traditional Council  
 Metlakatla Indian Community, Annette Island Reserve  
 Native Village of Minto  
 Naknek Native Village  
 Native Village of Nanwalek (aka English Bay)  
 Native Village of Napaimute  
 Native Village of Napakiak  
 Native Village of Napaskiak  
 Native Village of Nelson Lagoon  
 Nenana Native Association  
 New Koliganek Village Council  
 New Stuyahok Village  
 Newhalen Village  
 Newtok Village  
 Native Village of Nightmute  
 Nikolai Village  
 Native Village of Nikolski  
 Ninilchik Village  
 Native Village of Noatak  
 Nome Eskimo Community  
 Nondalton Village  
 Noorvik Native Community  
 Northway Village

Native Village of Nuiqsut (aka Nooiksut)  
 Nulato Village  
 Nunakauyarmiut Tribe  
 Native Village of Nunam Iqua (formerly the Native Village of Sheldon's Point)  
 Native Village of Nunapitchuk  
 Village of Ohogamiut  
 Village of Old Harbor  
 Orutsararmiut Native Village (aka Bethel)  
 Oscarville Traditional Village  
 Native Village of Ouzinkie  
 Native Village of Paimiut  
 Pauloff Harbor Village  
 Pedro Bay Village  
 Native Village of Perryville  
 Petersburg Indian Association  
 Native Village of Pilot Point  
 Pilot Station Traditional Village  
 Native Village of Pitka's Point  
 Platinum Traditional Village  
 Native Village of Point Hope  
 Native Village of Point Lay  
 Native Village of Port Graham  
 Native Village of Port Heiden  
 Native Village of Port Lions  
 Portage Creek Village (aka Ohgsenakale)  
 Pribilof Islands Aleut Communities of St. Paul & St. George Islands  
 Qagan Tayagungin Tribe of Sand Point Village  
 Qawalangin Tribe of Unalaska  
 Rampart Village  
 Village of Red Devil  
 Native Village of Ruby  
 Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)  
 Native Village of Saint Michael  
 Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)  
 Village of Salamattof  
 Native Village of Savoonga  
 Organized Village of Saxman  
 Native Village of Scammon Bay  
 Native Village of Selawik  
 Seldovia Village Tribe  
 Shageluk Native Village  
 Native Village of Shaktoolik  
 Native Village of Shishmaref  
 Native Village of Shungnak  
 Sitka Tribe of Alaska  
 Skagway Village  
 Village of Sleetmute  
 Village of Solomon  
 South Naknek Village  
 Stebbins Community Association  
 Native Village of Stevens  
 Village of Stony River  
 Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak)  
 Takotna Village  
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 Native Village of Tanana  
 Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island))  
 Native Village of Tatitlek

Native Village of Tazlina  
 Telida Village  
 Native Village of Teller  
 Native Village of Tetlin  
 Central Council of the Tlingit & Haida Indian Tribes  
 Traditional Village of Togiak  
 Tuluksak Native Community  
 Native Village of Tunatuliak  
 Native Village of Tununak  
 Twin Hills Village  
 Native Village of Tyonek  
 Ugashik Village  
 Umkumiut Native Village (previously listed as Umkumiute Native Village)  
 Native Village of Unalakleet  
 Native Village of Unga  
 Village of Venetie (See Native Village of Venetie Tribal Government)  
 Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)  
 Village of Wainwright  
 Native Village of Wales  
 Native Village of White Mountain  
 Wrangell Cooperative Association  
 Yakutat Tlingit Tribe

[FR Doc. 2010-24640 Filed 9-30-10; 8:45 am]

BILLING CODE 4310-4J-P

## INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-308-310, 520, and 521 (Third Review)]

### Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of five-year reviews concerning the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;<sup>1</sup> to be assured of

<sup>1</sup> No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 11-5-224, expiration date June 30, 2011. Public reporting

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401

ATTACHMENT B

**The SECRETARY OF THE INTERIOR.**

DEPARTMENT OF THE INTERIOR,  
*Washington, D. C., April 9, 1872.*

SIR: I have the honor to submit herewith a communication dated the 8th instant, from the Commissioner of Indian Affairs, and accompanying papers, representing the necessity for the setting apart, by Executive order, of a tract of country therein described for certain bands of Indians in Washington Territory not parties to any treaty.

The recommendation of the Commissioner in the premises is approved, and I respectfully request that the President direct that the tract of country designated upon the inclosed map be set apart for the Indians referred to, and such others as this Department may see fit to settle thereon.

I am, sir, very respectfully, your obedient servant,  
**B. R. COWEN**, *Acting Secretary.*

To the **PRESIDENT.**

EXECUTIVE MANSION, *Washington, April 9, 1872.*

It is hereby ordered that the tract of country referred to in the within letter of the Acting Secretary of the Interior, and designated upon the accompanying map, be set apart for the bands of Indians in Washington Territory named in communication of the Commissioner of Indian Affairs dated the 8th instant, and for such other Indians as the Department of the Interior may see fit to locate thereon.

**U. S. GRANT.**

---

EXECUTIVE MANSION, *Washington, July 2, 1872.*

It is hereby ordered that the tract of country referred to in the within letter of the Commissioner of Indian Affairs as having been set apart for the Indians therein named by Executive order of April 9, 1872, be restored to the public domain, and that in lieu thereof the country bounded on the east and south by the Columbia River, on the west by the Okanagan River, and on the north by the British possessions, be, and the same is hereby, set apart as a reservation for said Indians, and for such other Indians as the Department of the Interior may see fit to locate thereon.

**U. S. GRANT.**

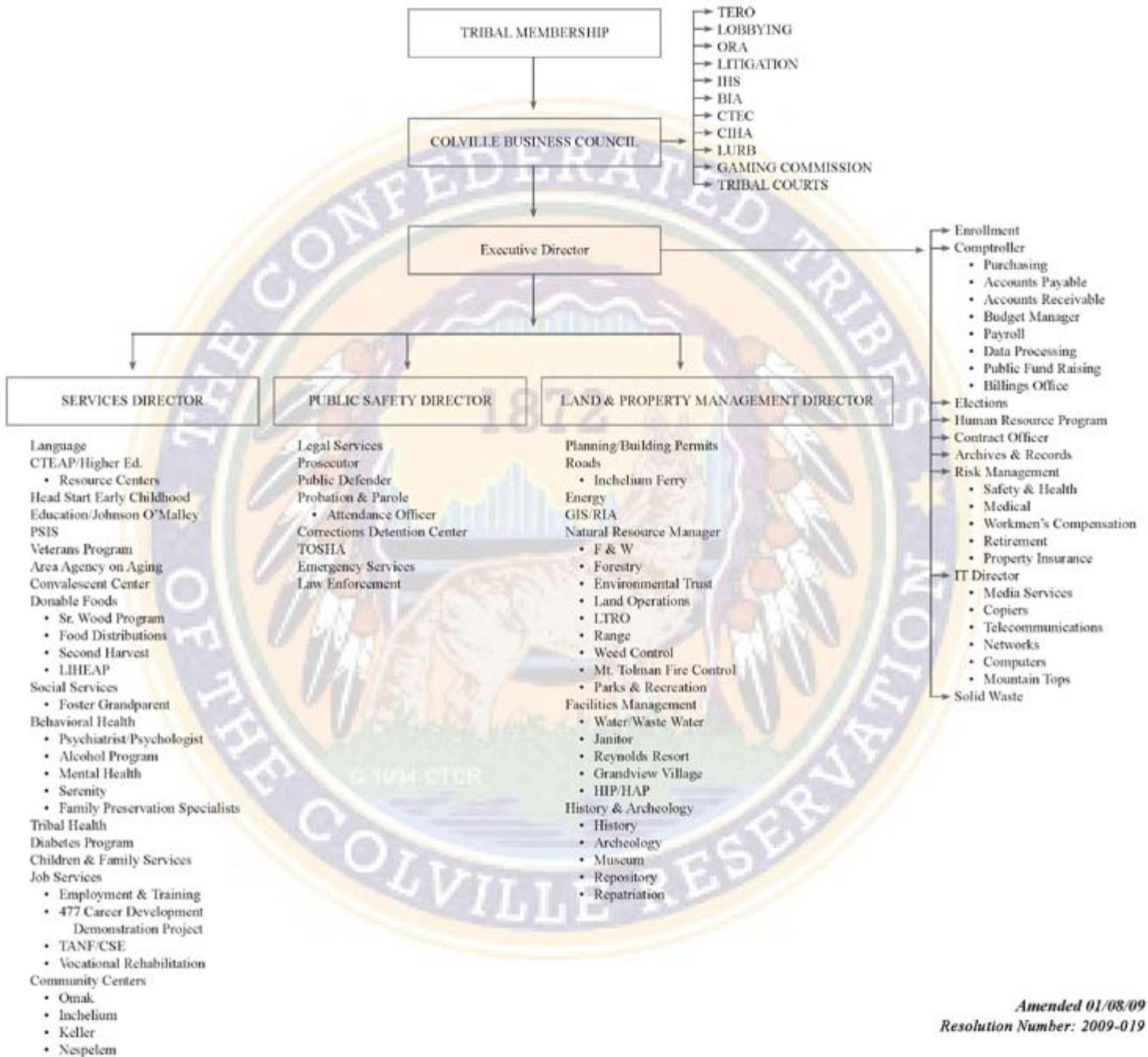
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401

ATTACHMENT C



Amended 01/08/09  
Resolution Number: 2009-019

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401

ATTACHMENT D

**CONSTITUTION OF THE CONFEDERATED TRIBES  
OF THE COVLILLE RESERVATION**

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## CONSTITUTION AND BY-LAWS OF THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

### **Preamble**

We, the people of the Colville Reservation in the State of Washington, in order to form a recognized representative council to handle our Reservation affairs, and in order to improve the economic condition of ourselves and our posterity, do hereby establish this Constitution and By-Laws.

### **Article I—Purpose**

The object and purpose shall be to promote and protect the interests of the Colville Indians and to preserve peaceful and cooperative relations with the Office of Indian Affairs, its officers and appointees.

### **Article II—Governing Body**

**Section 1—Colville Business Council:** The governing body of the Confederated Tribes of the Colville Reservation shall be a council known as the Colville Business Council.

**Section 2—Number of Councilmen:** The Business Council shall consist of fourteen (14) Councilmen to be elected from the districts as set forth hereafter.

**Section 3—Representation Selected by Districts:** The representation from the districts hereby designated shall be as follows: Inchelium district, four councilmen; Nespelem district, four councilmen; Omak district, four councilmen; Keller district, two councilmen.

**Section 4—Power to Change Districts and Representation:** The Business Council shall have the power to change the districts and the representation from each district based upon community organization or otherwise, as deemed advisable, such change to be made by ordinance, but the total number of councilmen shall not be changed, as provided for in Section 2 of Article II of this Constitution.

**Section 5—Officers:** The Business Council so organized shall elect from within its own number (1) a chairman; (2) a vice-chairman; and from within or without its own membership (3) a secretary; and may appoint such other officers and committees as may be deemed necessary.

**Section 6—Residency Requirement and Age of Candidate:** No person shall be a candidate for membership in the Business Council unless he shall be a member of the Confederated Tribes of the Colville Reservation and shall have resided in the district of his candidacy for a period of one year next preceding the election, and be at least twenty-five (25) years of age.

**Section 7—Council Sole Judge of its Members:** The Business Council of the Confederated Tribes of the Colville Reservation shall be the sole judge of the qualifications of its members.

### **Article III—Nominations and Elections**

**Section 1—First Election and Terms of Office:** The first election of the Business Council under this Constitution shall be called, held and supervised by the Superintendent of the Reservation and the delegates who were selected by the districts and who prepared this Constitution, within sixty (60) days after its ratification and approval.

At the first election, the two (2) candidates receiving the highest number of votes in the Inchelium, Nespelem, and Omak districts shall serve two (2) years; the candidate receiving the highest number of votes in the Keller district shall serve two (2) years. The two (2) candidates receiving the next highest number of votes in the Inchelium, Nespelem, and Omak districts shall serve one (1) year; and the candidate receiving the next highest number of votes in the Keller district shall serve one (1) year. Thereafter, elections for the Business Council shall be held every year and shall be called at least fifteen (15) days before expiration of the term of office.

The term of office of a councilman shall be for a period of two (2) years or until his successor is elected and installed.

(This section amended, Constitutional Amendment VI)

(Adopted by the Confederated Tribes, March 4, 1972)

(Approved by the Deputy Commissioner of Indian Affairs, April 3, 1972)

Section 2—Rules for Election: The Business Council, or an election board appointed by the Council, shall determine rules and regulations governing all elections.

Section 3—Candidate Procedures: Any qualified member of the Confederated Tribes may announce his candidacy for the Business Council within the district of his residence, in accordance with Section 6 of Article II.

Section 4—Certification of Election: The Business Council, or a board appointed by the Business Council, assisted by the Superintendent of the Reservation, shall certify to the election of the Business Council members within five (5) days after election returns.

Section 5—Age Requirement to Vote: Any enrolled member of the Confederated Tribes of the Colville Indian Reservation who is eighteen (18) years of age or over shall be entitled to vote in all tribal elections.

(This section amended, Constitutional Amendment VII)

(Adopted by the Confederated Tribes, March 4, 1972)

(Approved by the Deputy Commissioner of Indian Affairs, April 3, 1972)

#### **Article IV—Vacancies and Removal from Office**

Section 1—Regulations to Fill Vacated Position: If a councilman or official shall die, resign, be removed or recalled from office, permanently leave the Reservation, or shall be found guilty of a felony or misdemeanor involving dishonesty in any Indian, State or Federal court, the Business Council shall declare the position vacant and appoint a member from the district affected to fill the unexpired term.

(This section amended, Constitutional Amendment II)

(Adopted by Confederated Tribes, June 15, 1946)

(Approved by Acting Commissioner of Indian Affairs, May 8, 1947)

Section 2—Expulsion of Councilman: The Business Council may by majority vote expel any member for neglect of duty or gross misconduct. Before any vote for expulsion is taken in the matter, such member or official shall be given a written statement of the charges against him at least five (5) days before the meeting of the Business Council before which he is to appear, and he shall be given an opportunity to answer any and all charges at the designated Council meeting. The decisions of the Business Council shall be final.

Section 3—Petition to Recall: By the eligible voters of any district filing with the Colville Business Council a typewritten or printed petition, signed by at least one-third (1/3) the number of those who were eligible to vote in the last preceding election, charging that a council member representing such district has violated his oath of office or committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, a demand may be made for a recall of such Council member provided the act or acts complained of are set forth in concise language and the signature of each petitioner has alongside it those of two witnesses thereto and the petitioner's post office address.

The Council shall, at its next meeting after the filing of such petition, determine whether the petition as filed meets the requirements of this section of the Constitution and if it finds that such requirements have been complied with, shall call a special election on such recall petition, said election to be held not sooner than thirty (30) days after the action of the Council on the petition nor more than sixty (60) days after the date of such Council action.

The ballot to be voted on at such special election shall contain the charging part of the petition hereinabove referred to.

No member may be recalled at any such election unless at least forty percent (40%) of the eligible voters of the district shall have voted at such election and unless a majority of those voting vote in favor of recall.

(This section amended, Constitutional Amendment IV)

(Adopted by Confederated Tribes, May 9, 1959)

(Approved by Acting Commissioner of Indian Affairs, July 2, 1959)

### **Article V—Powers and Duties of the Council**

**Section 1—Powers and Duties:** The Business Council shall have the following powers, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached By-Laws:

(a) To confer with the Commissioner of Indian Affairs or his representatives and recommend regarding the uses and disposition of tribal property; to protect and preserve the Tribal property, wildlife and natural resources of the Confederated Tribes, to cultivate Indian arts, crafts, and culture; to administer charity, to protect the health, security, and general welfare of the Confederated Tribes.

(b) To exclude from the restricted lands of the Reservation persons not legally entitled to reside thereon, under ordinances which may also be subject to review by the Secretary of the Interior.

(c) To recommend and help to regulate the inheritance of real and personal property, other than allotted lands, within the Colville Reservation.

(d) To regulate the domestic relations of members of the Confederated Tribes.

(e) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for assessments or license fees upon non-members doing business within the Reservation, or obtaining special rights or privileges, and the same may be applied to members of the Tribes provided such ordinances have been approved by a referendum of the Confederated Tribes.

### **Article VI—Amendments**

**Section 1—Constitution and By-Laws Amended by Majority Vote:** This Constitution and By-Laws may be amended by a majority of the qualified voters of the Confederated Tribes voting at an election called for that purpose. Provided, that the Tribal Council shall have adopted the amendment by a two-thirds (2/3) vote, but no amendment shall become effective until it shall have been approved by the Commissioner of Indian Affairs.

**Section 2—Petition for Amendment:** The tribal membership is granted the power to cause to be placed upon the General Election ballot for a vote of the membership amendments to the Tribal Constitution and By-Laws by filing with the Colville Business Council a type-written petition stating the exact wording of the proposed amendment, signed with valid signature and enrollment number and date of signature by at least one-third (1/3) of the enrolled tribal members who were eighteen (18) years or older at the last past General Election. The proposed amendment as contained in the petition shall be placed on the ballot at the next General Election if the Business Council finds that there are sufficient verified signatures on the petition as provided in this section.

The petition shall be received by the Business Council at least ninety (90) days prior to the next scheduled General Election. Any petition submitted less than ninety (90) days before the next General Election shall be void for all purposes. Delivery shall be made within normal business hours to the tribal Chairman at Nespelem, or in the absence of the Chairman to any other Business Council member or Business Council staff at Nespelem. Provided, that no signature shall be valid which is dated more than 180 days prior to the submission to the Business Council of a valid petition containing all signatures.

Within sixty (60) days of the adoption and approval of this amendment, the Business Council shall adopt

by ordinance procedures necessary for implementation of this amendment, including procedures for verification of signatures and petitions.

(This section amended, Constitutional Amendment VIII)  
(Approved by the Confederated Tribes, July 3, 1984)  
(Approved by the Secretary of the Interior, August 8, 1984)

**Article VII—Membership of the Confederated Tribes of the Colville Reservation**

**Section 1—Membership:** The membership of the Confederated Tribes of the Colville Reservation shall consist of the following:

(a) All persons of Indian blood whose names appear as members of the Confederated Tribes on the official census of the Indians of the Colville Reservation as of January 1, 1937, provided that, subject to the approval of the Secretary of the Interior corrections may be made in said roll within two (2) years from the adoption and approval of this amendment.

(b) All children possessing one-fourth (1/4) or more Indian blood, born after January 1, 1937, to any member of the Confederated Tribes of the Colville Reservation maintaining a permanent residence on the Colville Indian Reservation.

(c) All children possessing one-fourth (1/4) or more Indian blood, born after January 1, 1937, to any member of the Confederated Tribes of the Colville Reservation maintaining residence elsewhere in the continental United States, provided that the parent or guardian of the child indicate a willingness to maintain tribal relations and to participate in tribal affairs. To indicate such willingness to maintain tribal affiliation, the parent or guardian shall, within six (6) months after the birth of the child submit a written application to have the child enrolled. The application shall be accompanied by the child's birth certificate together with any other evidence as to the eligibility of the child for enrollment in the Confederated Tribes of the Colville Reservation. If the certificate and application are not filed within the designated time, the child will not be enrolled.

**Section 2—Rules and Regulations Governing Membership:** The Business Council of the Confederated Tribes shall have power to prescribe rules and regulations governing future membership in the tribes, including the adoption of members and loss of membership, provided:

(a) That such rules and regulations shall be subject to the approval of the Secretary of Interior.

(b) That no person shall be adopted who possesses less than one-fourth (1/4) degree Indian blood.

(c) That any member who takes up permanent residence or is enrolled with a tribe, band or community of foreign Indians shall lose his membership in the Colville Tribes.

Alien Indians may be deleted from the rolls after they have been given an opportunity to be heard in their own behalf. The tribe shall also take appropriate action to correct the existing tribal roll and, if necessary, delete from the rolls alien Indians whose names appear on the rolls of the Confederated Tribes and who have abandoned tribal relations. The Colville Confederated Tribes shall not deprive anyone of vested property rights, such as allotments or inherited interests.

(This section amended, Constitutional Amendment III)  
(Adopted by Confederated Tribes, May 20, 1949)  
(Approved by Commissioner of Indian Affairs, April 14, 1950)

**Section 3—One-Fourth (1/4) Degree Requirement:** After July 1, 1959, no person shall be admitted to membership in the Confederated Tribes of the Colville Reservation unless such person possesses at least one-fourth (1/4) degree blood of the tribes which constitute the Confederated Tribes of the Colville Reservation.

(This section amended, Constitutional Amendment V)  
(Adopted by the Colville Confederated Tribes, May 9, 1959)  
(Approved by the Acting Commissioner of Indian Affairs, July 2, 1959)

Section 4—Membership of the Confederated Tribes of the Colville Reservation:

All Indian blood identified and stated as being possessed by all persons whose names appear as members of the Confederated Tribes of the Colville Reservation on the official census of the Indians of the Colville Reservation of January 1, 1937, shall be considered Indian blood of the Tribes which constitute the Confederated Tribes of the Colville Reservation: (1) Provided, that no tribal members' blood degree will be decreased as a result of this amendment; and (2) Further provided, that pursuant to procedures which shall be adopted by the Colville Business Council, any:

(a) Applicant for membership; or

(b) Tribal member who is listed on the official census of the Indians of the Colville Reservation of January 1, 1937; or

(c) Tribal member descended from a tribal member whose name appears on the official census of the Indians of the Colville Reservation of January 1, 1937; may petition the Tribes, to officially recognize for enrollment purposes that a tribal member whose name appears on the official census of the Indians of the Colville Reservation of January 1, 1937, possesses Indian blood that is not listed on the official census of the Indians of the Colville Reservation of January 1, 1937, and such Indian blood, when properly authenticated by clear and convincing proof, shall be recognized as blood of the Colville Tribes.

(This section amended, Constitutional Amendment IX)

(Approved by the Confederated Tribes, March 22, 1988)

(Approved by the Secretary of the Interior, May 19, 1988)

Article VIII—Judiciary

Section 1—Separate Branch of Government: There shall be established by the Business Council of the Confederated Tribes of the Colville Reservation a separate branch of government consisting of the Colville Tribal Court of Appeals, the Colville Tribal Court, and such additional Courts as the Business Council may determine appropriate. It shall be the duty of all Courts established under this section to interpret and enforce the laws of the Confederated Tribes of the Colville Reservation as adopted by the governing body of the Tribes.

The Business Council shall determine the scope of the jurisdiction of these Courts and the qualifications of the Judges of these Courts by statute.

Section 2—Court of Appeals: The Colville Tribal Court of Appeals shall consist of a panel of individual Justices appointed by the Business Council, with the recommendation of the Chief Judge, to terms of six (6) years.

Section 3—Tribal Court: The Colville Tribal Court shall consist of a Chief Judge who shall be appointed by the Business Council for a term of six (6) years, subject to a vote of confidence every three (3) years in conjunction with that year's General Election by a majority of the qualified voters of the Confederated Tribes participating in the vote of confidence.

Section 4—Compensation and Term: Except for the terms of the Justices of the Tribal Court of Appeals and the Chief Judge of the Tribal Court, the term of any appointed Judge shall be determined by the Business Council. The compensation for the services provided shall be determined by the Business Council and such compensation shall not be diminished during the respective terms of the Justices and Judges unless removed from office as provided in this Article.

Section 5—Vacancies and Removal from Office:

(a) If a Judge or Justice shall die, resign, be removed under subsection (b) or recalled from office under subsection (c), the Business Council shall appoint a replacement to fill the unexpired term.

(b) A Judge may be removed from office prior to the expiration of a term for good cause pursuant to a Bill of Impeachment filed with the Business Council and approved by a two-thirds (2/3) majority of all of the

members of the Business Council. The Business Council shall convene a Special Session to vote on the Bill of Impeachment after allowing the Judge an opportunity to present a defense to the Bill of Impeachment. The decision of the Business Council shall be final.

(c) A Judge may be removed from office for good cause prior to the expiration of a term by a majority of the voters of the Confederated Tribes of the Colville Reservation at a special election called for that purpose. A special election under this subsection shall be called by the Colville Business Council within ten (10) days after a Petition of Recall naming the specific Judge, setting forth the specific charge or charges and signed by at least one-third (1/3) the number of those eligible to vote in the last preceding election is filed with the Business Council. The results of any election under this subsection shall be final.

Section 6—Discipline: Upon petition of any Colville Tribal Judge or Justice, or by a majority of the Business Council, presenting specific reasons for imposing discipline on any Justice or Judge of any Court established pursuant to this Article, the Colville Tribal Court of Appeals shall be convened to consider, and where necessary, impose discipline upon the Justice or Judge according to Rules of Judicial Conduct to be adopted by the Tribal Court of Appeals that are not inconsistent with the Constitution of the Confederated Tribes of the Colville Reservation.

Section 7—Implementation This Article shall take effect upon the appointment of the Chief Judge by the Business Council after ratification of this Article by the electorate and its approval by the Department of Interior as provided in Article VI.

(This section amended, Constitutional Amendment X)  
(Approved by the Confederated Tribes October 20, 1990)  
(Approved by the Secretary of the Interior April 17, 1991)

## **BY-LAWS OF THE CONFEDERATED TRIBES**

### **Article I—The Business Council**

Section 1—Chairman of the Business Council: The Chairman of the Business Council shall preside over all meetings of the Business Council. He shall perform all duties of the Chairman and exercise authority delegated to him by the Business Council. He shall vote only in the case of a tie.

Section 2—Vice-Chairman of the Business Council: The Vice-Chairman of the Business Council shall assist the Chairman when called upon to do so. In the absence of the Chairman, he shall preside. When so presiding, he shall have the rights, privileges and duties, as well as the responsibilities of the Chairman.

Section 3—Secretary of the Business Council: The Secretary of the Business Council shall conduct all correspondence and keep a complete and accurate record of all matters transacted at Council Meetings. It shall be his duty to submit promptly to the Superintendent of the jurisdiction copies of all minutes of regular and special meetings of the Business Council and the Tribes.

Section 4—Appointive Officers: The duties of all appointive committees and officers appointed by the Colville Business Council shall be clearly defined by resolution of the Business Council at the time of their creation or appointment. Such committees and officers shall report from time to time as required, to the Business Council, and their activities and decisions shall be subject to review by the Business Council upon petition of any person aggrieved.

### **Article II—Time and Place of Meeting and Procedures**

Section 1—Regular Meeting-Special Meeting Schedule: Regular meetings of the Business Council shall be held on the second Thursday of July, October, January and April, at Nespelem, Washington, at a designated building or hall.

Special meetings may be called by written notice signed by the Chairman or by a majority of the Business Council members, and when so called the Business Council shall have power to transact business as in regular meetings.

Section 2—Quorum: No business shall be transacted unless a quorum is present. A quorum shall consist of eight (8) councilmen.

Section 3—Order of Business: The following order of business is established for all meetings:

1. Call to order by the Chairman;
2. Roll call;
3. Ascertainment of a Quorum;
4. Reading of the minutes of the last meeting;
5. Adoption of the minutes by a vote or common consent;
6. Unfinished business;
7. New business;
8. Adjournment.

Section 4—Report of Meetings: It shall be the duty of each member of the Business Council to make reports concerning the proceedings of the Business Council to the members of the district from which he is elected.

**Article III—Ratification of Constitution and By-Laws**

This Constitution and By-Laws shall be in full force and effect whenever a majority of the adult voters of the Confederated Tribes voting at an election called by the Commissioner of Indian Affairs, in which at least thirty percent (30%) of the eligible voters vote, shall have ratified such Constitution and By-Laws and the Commissioner of Indian Affairs shall have approved same.

**CERTIFICATION OF ADOPTION**

**Certification of Adoption**

Pursuant to the request of a majority of the Indians of the Colville Reservation to obtain for themselves a representative organization, this Constitution and By-Laws was duly submitted by the Commissioner of Indian Affairs to the adult Indians living on the Reservation for ratification and was on February 26, 1938, duly ratified by a vote of 503 for, and 76 against in an election in which over thirty percent (30%) of those entitled to vote cast their ballots.

/Signed/ Harvey K. Meyer  
Superintendent, Colville Agency

/Signed/ Gus Whitelaw  
Chairman, Constitutional Committee

**APPROVAL**

This Constitution and By-Laws, having been proposed and duly ratified by the Indians of the Colville Reservation on February 26, 1938, at a referendum called by me, is here with approved.

/Signed/ John Collier  
Commissioner of Indian Affairs

Washington, D.C  
April 19, 1938

## HISTORY OF CONSTITUTIONAL AMENDMENTS—WHAT IT SAID

### **Amendment I**

#### **Article II—Time and Place of Meetings and Procedure**

Section 1: Regular meetings of the Business Council shall be held on the second Friday of July, October, January and April, at Nespelem, Washington, at a designated building or hall.

(Approved by Acting Commissioner of Indian Affairs, May 8, 1947)

### **Amendment II**

#### **Article IV—Vacancies and Removal from Office**

Section 1: If a councilman or official shall die, resign be removed or recalled from office, permanently leave the Reservation or shall be found guilty of a felony or misdemeanor involving dishonesty in any Indian, State, or Federal Court, the Business Council shall declare the position vacant and the district affected shall elect to fill the unexpired term.

### **Amendment III**

#### **Created Article VII, Membership of the Confederated Tribes of the Colville Reservation:**

There shall be added a new provision governing membership of the Confederated Tribes of the Colville Reservation which shall read as follows:

(Adopted by Confederated Tribes, May 20, 1949)

(Approved by Commissioner of Indian Affairs, April 14, 1950)

### **Amendment IV**

Section 3: Upon receipt of a petition signed by one-third (1/3) of the eligible voters in any district calling for the recall of any member of the Council representing said district, it shall be the duty of the Council to call an election on such recall petition.

No members may be recalled in any such election unless at least 40% of the legal voters of the district shall vote in such election.

### **Amendment V**

#### **Article VII, Membership of the Confederated Tribes of the Colville Reservation:**

There shall be added a new provision governing membership of the Confederated Tribes of the Colville Reservation which shall read as follows:

Section 1: The membership of the Confederated Tribes of the Colville Reservation shall consist of the following:

(a) All persons of Indian blood whose names appear as members of the Confederated Tribes on the official census of the Indians of the Colville Reservation as of January 1, 1937, provided that, subject to the approval of the Secretary of the Interior corrections may be made in said roll within two years from the adoption and approval of this amendment.

(b) All children possessing one-fourth or more Indian blood, born after January 1, 1937, to any member of the Confederated Tribes of the Colville Reservation maintaining a permanent residence on the Colville Indian Reservation.

(c) All children possessing one-fourth (1/4) or more Indian blood, born after January 1, 1937, to any member of the Confederated Tribes of the Colville Reservation maintaining residence elsewhere in the continental United States, provided that the parent or guardian of the child indicate a willingness to maintain tribal relations and to participate in tribal affairs. To indicate such willingness to maintain tribal affiliation, the parent or guardian shall, within six months after the birth of the child submit a written application to have the child enrolled. The application shall be accompanied by the child's birth certificate together with any other evidence as to the eligibility of the child for enrollment in the

Confederated Tribes of the Colville Reservation. If the certificate and application are not filed within the designated time, the child will not be enrolled.

Section 2: The Business Council of the Confederated Tribes shall have power to prescribe rules and regulations governing future membership in the tribes, including the adoption of members and loss of membership, provided:

- (a) That such rules and regulations shall be subject to the approval of the Secretary of Interior.
- (b) That no person shall be adopted who possesses Less than one-fourth degree Indian blood.
- (c) That any member who takes up permanent residence or is enrolled with a tribe, band or community of foreign Indians shall lose his membership in the Colville Tribes.

Alien Indians may be deleted from the rolls after they have been given an opportunity to be heard in their own behalf. The tribe shall also take appropriate action to correct the existing tribal roll and, if necessary delete from the rolls alien Indians whose names appear on the rolls of the Confederated Tribes and who have abandoned tribal relations. The Colville Confederated Tribes shall not deprive anyone of vested property rights, such as allotments or inherited interests.

(Adopted by Confederated Tribes, May 20, 1949)  
(Approved by Commissioner of Indian Affairs, April 14, 1950)

#### **Amendment VI**

Section 1: The first election of the Business Council under this Constitution shall be called, held and supervised by the Superintendent of the Reservation and the delegates who were selected by the Districts and who prepared this constitution, within sixty days after its ratification and approval.

At the first election, the two candidates receiving the highest number of votes in the Inchelium, Nespelem, and Omak districts shall serve two years: the candidate receiving the highest number of votes in the Keller district shall serve two years. The two candidates receiving the next highest number of votes in the Inchelium, Nespelem, and Omak districts shall serve one year; and the candidate receiving the next highest number of votes in the Keller district shall serve one year. Thereafter, elections for the Business Council shall be held every year and shall be called at least sixty days before expiration of the terms of office.

The terms of office of a councilman shall be for a period of two years, unless otherwise provided herein.

#### **Amendment VII**

Section 5: Any enrolled member of the Confederated Tribes of the Colville reservation who is twenty-one (21) years of age or over shall be entitled to vote.

#### **Amendment VIII**

This Constitution and By-Laws may be amended by a majority of the qualified voters of the Confederated Tribes voting at an election called for that purpose. Provided, that the Tribal Council shall have adopted the amendment by a two-thirds (2/3) vote, but no amendment shall become effective until it shall have been approved by the Commissioner of Indian Affairs.

#### **Amendment IX**

**Amendment III created Article VII (Sections 1 and 2); and Amendment IV created Section 3. This amendment created section 4 — Membership of the Confederated Tribes of the Colville Reservation:**

Section 4: All Indian blood identified and stated as being possessed by all persons whose names appear as members of the Confederated Tribes of the Colville Reservation on the official census of the Indians of the Colville Reservation of January 1, 1937, shall be considered Indian blood of the Tribes which constitute the Confederated Tribes of the Colville Reservation: (1) Provided, that no tribal members' blood degree will be decreased as a result of this amendment, (2) Further provided, that pursuant to procedures which shall be adopted by the Colville Business Council, any:

(a) Applicant for membership; or

(b) Tribal member who is listed on the official Census of the Indians of the Colville Reservation of January 1, 1937; or

(c) Tribal member descended from a tribal member whose name appears on the official census of the Indians of the Colville Reservation of January 1, 1937; may petition the Tribes, to officially recognize for enrollment purposes that a tribal member whose name appears on the official census of the Indians of the Colville Reservation of January 1, 1937, possesses Indian blood that is not listed on the official census of the Indians of the Colville Reservation of January 1, 1937, and such Indian blood, when properly authenticated by clear and convincing proof, shall be recognized as blood of the Colville Tribes.

(Approved by the Confederated Tribes, March 22, 1988)  
(Approved by the Secretary of the Interior, May 19, 1988.)

### **Amendment X**

#### **Created Article VIII—Judiciary:**

Section 1: There shall be established by the Business Council of the Confederated Tribes of the Colville Reservation a separate branch of government consisting of the Colville Tribal Court of Appeals, the Colville Tribal Court, and such additional Courts as the Business Council may determine appropriate. It shall be the duty of all Courts established under this section to interpret and enforce the laws of the Confederated Tribes of the Colville Reservation as adopted by the governing body of the Tribes.

The Business Council shall determine the scope of the jurisdiction of these courts and the qualifications of the Judges of these Courts by statute.

Section 2—Court of Appeals: The Colville Tribal Court of Appeals shall consist of a panel of individual justices appointed by the Business Council, with the recommendation of the Chief Judge, to terms of six years.

Section 3—Tribal Court: The Colville Tribal Court shall consist of a Chief Judge who shall be appointed by the Business Council for a term of six years, subject to a vote of confidence every three years in conjunction with that year's general election by a majority of the qualified voters of the Confederated Tribes participating in the vote of confidence.

Section 4—Compensation and Term: Except for the terms of the Justices of the Tribal Court of Appeals and the Chief Judge of the Tribal Court, the term of any appointed judge shall be determined by the Business Council. The compensation for the services provided shall be determined by the Business Council and such compensation shall not be diminished during the respective terms of the Justices and Judges unless removed from office as provided in this Article.

#### Section 5—Vacancies and Removal from Office:

(a) If a Judge or Justice shall die, resign, be removed under subsection (b) or recalled from office under subsection (c), the Business Council shall appoint a replacement to fill the unexpired term.

(b) A Judge may be removed from office prior to the expiration of a term for good cause pursuant to a Bill of Impeachment filed with the Business Council and approved by a two-thirds (2/3) majority of all of the members of the Business Council. The Business Council shall convene a Special Session to vote on the Bill of Impeachment after allowing the Judge an opportunity to present a defense to the Bill of Impeachment. The decision of the Business Council shall be final.

(c) A Judge may be removed from office for good cause prior to the expiration of a term by a majority of the voters of the Confederated Tribes of the Colville Reservation at a special election called for that purpose. A special election under this subsection shall be called by the Colville Business Council

within ten (10) days after a Petition of Recall naming the specific Judge, setting forth the specific charge or charges and signed by at least one-third (1/3) the number of those eligible to vote in the last preceding election is filed with the Business Council. The results of any election under this subsection shall be final.

Section 6—Discipline: Upon petition of any Colville Tribal Judge or Justice, or by a majority of the Business Council, presenting specific reasons for imposing discipline on any Justice or Judge of any Court established pursuant to this Article, the Colville Tribal Court of Appeals shall be convened to consider, and where necessary, impose discipline upon the Justice or Judge according to Rules of Judicial Conduct to be adopted by the Tribal Court of Appeals that are not inconsistent with the Constitution of the Confederated Tribes of the Colville Reservation.

Section 7—Implementation This Article shall take effect upon the appointment of the Chief Judge by the Business Council after ratification of this Article by the electorate and its approval by the Department of Interior as provided in Article VI.

(Approved by the Confederated Tribes October 20, 1990)

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401

ATTACHMENT E

# COLVILLE TRIBAL LAW AND ORDER CODE

## Current Edition

### Summarized Table of Content

#### TITLE 1

##### Preliminary Provisions/ Administration of the Court

- 1-1 Administration of Tribal Court
- 1-2 Rules of Court
- 1-3 Tribal Police
- 1-4 Office of the Reservation Attorney
- 1-5 Colville Tribal Civil Rights Act
- 1-6 Revision of the Tribal Code
- 1-7 Coroner Code
- 1-8 Council Code of Professional Responsibility

#### TITLE 2

##### Rules of Procedure

- 2-1 Criminal Actions
- 2-2 Civil Actions
- 2-3 Infractions; Field Bonds; Other Civil Offenses and Forfeitures
- 2-4 Administrative Procedure Act
- 2-5 Debt Set-Off

#### TITLE 3

##### Offenses

- 3-1 Criminal Code
- 3-2 Exclusion and Removal
- 3-3 Motor Vehicles
- 3-4 Central Records Depository
- 3-5 Crime Victim Compensation
- 3-6 Fireworks
- 3-7 Civil Infractions

#### TITLE 4

##### Natural Resources and Environment

- 4-1 Fish, Wildlife and Recreation
- 4-2 Watercraft Registration
- 4-3 Land Use and Development
- 4-4 Cultural Resources Protection
- 4-5 On Site Wastewater Treatment and Disposal
- 4-6 Mining Practices Water Quality
- 4-7 Forest Practices Water Quality

- 4-8 Water Quality Standards
- 4-9 Hydraulics Project Permitting
- 4-10 Water Use and Permitting
- 4-11 Rangeland Management
- 4-12 Forest Protection
- 4-13 Solid Waste
- 4-14 Wild Horses
- 4-15 Shoreline Management
- 4-16 Hazardous Substances Control Act
- 4-17 Public Facilities Financing
- 4-18 Air Emissions Control
- 4-19 Fire Management
- 4-20 FEMA-National Flood Insurance Program
- 4-21 Highway Advertising

#### TITLE 5

##### Domestic Relations

- 5-1 Domestic Relations
- 5-2 Juveniles
- 5-3 Attendance
- 5-4 Abuse of Elders and Vulnerable Adults
- 5-5 Domestic and Family Violence Code

#### TITLE 6

##### Regulatory Provisions

- 6-1 Industrial Safety and Health
- 6-2 Liquor Control
- 6-3 Building Code
- 6-4 (RESERVED)
- 6-5 Gaming
- 6-6 Research Regulations
- 6-7 Sewer
- 6-8 Tobacco
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- 6-10 Water Utilities
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- 6-13 Toxic Lead Program
- 6-14 Vehicle, Manufactured and

##### Mobile Home Removal

#### TITLE 7

##### Corporations

- 7-1 Governmental Corporation
- 7-2 Non-profit Corporations
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#### TITLE 8

##### Enrollment, Referendums and Elections

- 8-1 Membership
- 8-2 Procedures for Proposing Constitutional Amendments by Petition
- 8-3 Elections
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#### TITLE 9

##### Property

- 9-1 Mortgages, Deeds of Trust and Real Estate Contracts
- 9-2 Donated Property
- 9-3 Landlord Tenant Relations
- 9-4 Interference with Tribal and Indian Property
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- 9-6 Leasehold Mortgages

#### TITLE 10

##### Employment and Contracting

- 10-1 Tribal Employment Rights
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- 10-3 Indian Preference in Contracting

#### TITLE 11

##### Health and Human Services

- 11-1 Colville Tribal Health Authority
- 11-2 Colville Indian Health Authority

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

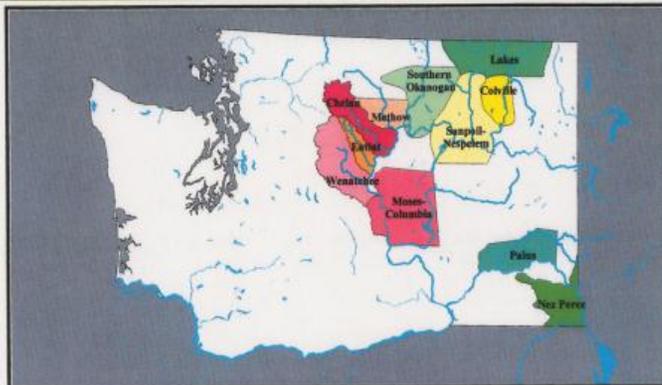
For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401

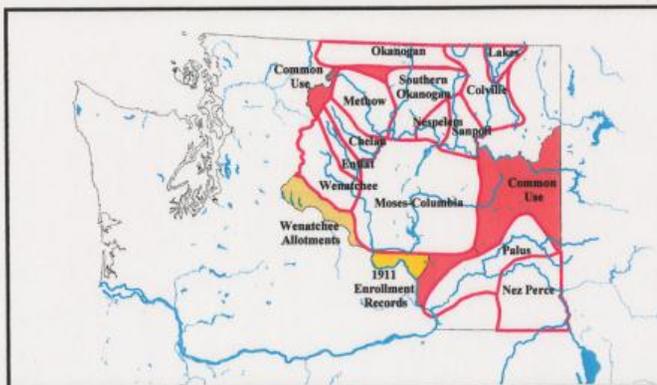
ATTACHMENT F



# Colville Confederated Tribes Traditional Territories In Washington State



Land Areas Judicially Established by the Indian Claims Commission  
( 4 ICC 151; 12 ICC 301; 18 ICC 1 )  
(exclusive use areas only)



Anthropological and Tribal Data Regarding Use Areas  
(anthropological data from the Smithsonian Institution's  
Handbook of North American Indians 1998)

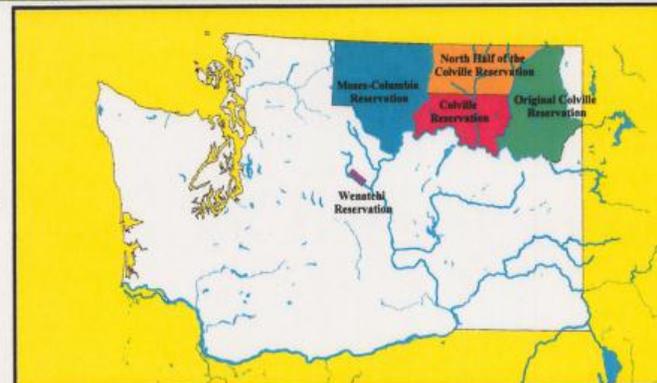
For Reference Use Only.

This map has been produced on the Colville Confederated Tribes' Geographic Information System.  
Data provided herein is derived from sources with varying levels of accuracy.

CCT Resource Inventory & Analysis/CCT History & Archeology, February 2003

## The Twelve Tribes of the Colville Confederated Tribes

- Okanogan
- Methow
- Chelan
- Entiat
- Wenatchee
- Moses-Columbia
- Nespelem
- Sanpoil
- Lakes
- Colville
- Palus
- Chief Joseph Nez Perce



Reservations Established by  
Presidential Executive Orders (Apr. 9, 1872; Apr. 19, 1872; July 2, 1872; Mar. 6, 1880)  
and the Wenatchi Reservation as Marked by Colonel George Wright (1856)



Colville Confederated Tribes Traditional Territory in the State of Washington  
(compilation of other data; county boundaries for reference)

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401

ATTACHMENT G

REGULATORY AUTHORITY OF THE  
COLVILLE CONFEDERATED TRIBES  
OVER WATER POLLUTION SOURCES  
WITHIN THE BORDERS  
OF THE  
COLVILLE INDIAN RESERVATION

December 20, 1989

By

**The Reservation Attorney**  
Confederated Tribes of the Colville Reservation  
P.O. Box 150  
Nespelem, Washington 99155

and

**Special Environmental Counsel**  
THE Du BEY LAW FIRM  
3110 Bank of California Center  
Seattle, Washington 98164

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## I. INTRODUCTION

### A. Background

This analysis is submitted in support of the Section 106 Grant Application submitted to the U.S. Environmental Protection Agency ("EPA") by the Confederated Tribes of the Colville Reservation ("Colville Tribes" or "Tribes"), pursuant to Section 518 of the Clean Water Act ("CWA"). The Colville Tribes has sufficient authority to qualify for treatment as a state under Section 518 of the CWA. The Tribes exercises water quality management and protection functions as a matter of Tribal law within the exterior boundaries of the Colville Reservation, and has authority to implement delegated water quality protection programs under the federal CWA.

The Colville Tribes is dependent on its natural resources for its livelihood. Members of the Tribes have strong cultural ties to the natural environment. Because these valuable resources may be adversely impacted by development activities, the Tribes have a particularly strong interest in environmental protection of the Colville Reservation.

The original Colville Indian Reservation, located in north-central Washington State was established under Executive Order of April 9, 1872 by President U.S. Grant.<sup>1</sup> Three months later, that Reservation was placed into the public domain and the present Reservation established.<sup>2</sup> An 1892 Act of Congress divided the Colville Reservation into a northern half and a southern half.<sup>3</sup> The Colville Tribes retain certain ownership and management rights to fish, game and water in the northern half.<sup>4</sup>

Many lakes, rivers and streams are located on the Reservation. It is bordered on the south and east by Lake Roosevelt and the Columbia River and on the west by the Okanogan River. Approximately eighty-seven percent of the south half of the Reservation is

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<sup>1</sup> I.C. Kappler, Indian Affairs, Laws and Treaties, 915-16 (2d ed. 1904).

<sup>2</sup> Executive Order of July 2, 1872 by President U.S. Grant establishing the later Reservation "in lieu" of the earlier reserve. Id. at 916.

<sup>3</sup> Congress conveyed the northern half to the public domain in the Act of July 1, 1892. 27 Stat. 62.

<sup>4</sup> See e.g. Antoine v. Washington, 420 U.S. 194 (1975). See also 54 Fed. Reg. 28626 (July 6, 1989) (definition of Colville Reservation for purposes of EPA's promulgation of the Tribes' water quality standards).

held in trust by the United States government for the Colville Tribes or Tribal members or is otherwise in Indian ownership. Approximately 20,000 acres of land are held in trust on the north half, and the Colville Tribes retain certain ownership and management rights to fish, game and water in that area as well.

The Colville Tribes, not the State of Washington, has authority to protect the Tribes' water quality on both fee and trust land. As a general rule, unless Congress specifically states otherwise, states may not assert civil regulatory jurisdiction over Indian lands or within the exterior boundaries of Indian reservations for matters such as water pollution that significantly impact tribal resources. The CWA neither provides for state authority over Indian reservations, nor does it delegate federal authority to states over Indian reservations.<sup>5</sup>

Federal common law has long recognized tribal authority to protect tribal interests from significant threats such as water pollution. The U.S. Supreme Court, in its most recent analysis of Indian tribal regulatory authority, provides support for the Colville Tribes' authority to implement water quality regulation on Tribal lands.<sup>6</sup> The lands within the exterior boundaries of the Colville Reservation ("Reservation environment") are exclusively within the jurisdictional scope of federal and tribal water quality control programs. Accordingly, state regulatory programs cannot provide for comprehensive environmental regulation of the Colville Reservation.<sup>7</sup>

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<sup>5</sup> Federal, not state regulatory authority extends to Indian lands. See, Bryan v. Itasca County, 426 U.S. 373 (1976) (articulating standards for construing Congressional grants of power over Indians to states).

<sup>6</sup> See Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation, 109 S.Ct. 2994, 3005, 3007, 3010, 106 L.Ed.2d. 343 (June 29, 1989).

<sup>7</sup> EPA has long recognized the inapplicability of State environmental regulatory jurisdiction over Indian reservations. See EPA General Counsel Opinion No. 77-6 re: State Jurisdiction Over Indians Living On Tribal Lands (May 31, 1977); EPA General Counsel Opinion No. 76-25 re: State Jurisdiction Over Federal Facilities and Indian Tribes under Part B of the Safe Drinking Water Act (Nov. 15, 1976); Furthermore, in its approvals of state program delegations under the Safe Drinking Water Act Underground Injection Control Program in the early 1980s, EPA has taken the following position with regard to a state's assertion of jurisdiction over Indian land: "EPA will assume that a State lacks authority unless the State affirmatively asserts its authority and supports its assertions with an analysis from the State Attorney General..." 47 Fed. Reg. 17578 (April 23, 1982); 48 Fed. Reg. 2938

This does not, however, create a regulatory vacuum, as Indian lands remain subject to comprehensive federal and tribal environmental regulation. Congress, acting in concert with federal Indian policy, amended several key environmental statutes in 1986 and 1987 to provide a role for tribal governments in protecting their reservation environments.<sup>8</sup> The Colville Tribes has adopted Tribal Water Quality Standards that were promulgated as a matter of Federal law.<sup>9</sup> Under the CWA the Colville Tribes seeking recognition for treatment as a state and may subsequently request EPA water quality program delegation and primary regulatory authority ("primacy") for one or more of the CWA programs. This analysis focuses on the Tribes' authority to receive treatment on the same basis as a state under the CWA.

### B. Environmental Protection

The Colville Tribes has a long and successful history of managing and protecting water resources within the exterior boundaries of the Reservation. Activities such as logging, farming, grazing, recreation and construction have been managed by the Tribes, in part to protect the quality of the Tribes' water. The Tribes has developed Tribal Water Quality Standards that were recently adopted as Federal Water Quality Standards for the Reservation environment.<sup>10</sup> The Tribes has established a close working relationship with EPA in the development and implementation

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(Jan. 21, 1983). More recently, EPA denied the State of Washington's application to administer the Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) program on Indian lands, noting that the State had the burden of showing its authority was not preempted or infringing on tribal self-government. 53 Fed. Reg. 43080,43081 (Oct. 25, 1988). See also Final Rule: Water Quality Standards for the Colville Indian Reservation in the State of Washington, (hereinafter "Colville WQS Promulgation") 54 Fed. Reg. 28622 (July 6, 1989).

<sup>8</sup> The trend began in June, 1986, with the passage of the Amendments to the Safe Drinking Water Act ("SDWA") 42 U.S.C. §300(f) et seq., which authorized EPA to treat Indian tribes as states. This trend continued in October, 1986, when Congress extended tribal authority over the environment with the passage of amendments to the Comprehensive Environmental Response, Compensation and Liability Act ("Superfund") 42 U.S.C. §9601 et seq. Finally, in early 1987, Congress amended the Clean Water Act ("CWA") to provide for tribal participation in a manner similar to states. PL 100-4 (February 4, 1987), 33 U.S.C. §1251 et seq.

<sup>9</sup> Colville WQS Promulgation. 54 Fed. Reg. 28622.

<sup>10</sup> Colville WQS Promulgation. 54 Fed. Reg. 28622.

of water quality protection programs within the Reservation environment. A more detailed discussion of the Tribes' environmental protection programs is provided in the Tribes' discussion of CWA §518 Eligibility Requirements.

## II. THE COLVILLE TRIBES' POWER TO REGULATE THE RESERVATION ENVIRONMENT

The Colville Tribes' power to regulate those activities which may pollute Tribal lands, waters or resources is derived from three principal sources. One source is the Tribes' proprietary rights; the Tribes has all rights and powers of a property owner with respect to the Tribes' property. A more fundamental and pervasive source, however, is the Tribes' inherent sovereignty, which includes the power to regulate the use of property over which the Colville Tribes has jurisdiction and control.<sup>11</sup> The third source of the Tribes' authority to protect Reservation water quality and the overall quality of the Reservation is federal program delegation as specifically provided for by Section 518 of the CWA. These sources of power provide the Colville Tribes with the authority to manage and protect the Tribes' surface and groundwater resources. The necessarily comprehensive scope of the Tribes' environmental regulatory authority extends to both fee and trust lands within the exterior boundaries of the Reservation.

### A. Tribal Proprietary Rights

Like any property owner, the Colville Tribes may exercise authority over activities on lands it owns or otherwise controls. The Tribes' proprietary rights allow the protection of the Tribes' resources, and extends to all lands and waters of the Colville Tribes. As a proprietor, the Tribes may condition entry upon its lands on compliance with Tribal law or exclude non-members from Indian lands.<sup>12</sup> Moreover, the Colville Tribes may contractually require that all proposed on-Reservation pollution generating activities comply with the Tribes' environmental regulations.

In addition to its proprietary rights in Tribal lands, the Colville Tribes possesses aboriginal and reserved water rights. In United States v. Winters, the Supreme Court found that the setting aside of an Indian reservation necessarily included the

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<sup>11</sup> See Powers of Indian Tribes, 55 I.D. 14 (1934), reprinted in I Opinions of the Solicitor 445, 467; Dept. of the Interior, Federal Indian Law 440 (1958); see also Merrion v. Jicarilla Apache Tribe, 102 S. Ct. 894, 901-906 (1982).

<sup>12</sup> Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 102 S.Ct. at 905 (1982).

implied reservation of a proprietary water right.<sup>13</sup> This holding was based upon the Court's conclusion that without such a reserved Indian water right, the land of the Fort Belknap Reservation would be valueless.<sup>14</sup> The Winters doctrine has evolved to include tribal claims to both surface and groundwater resources.<sup>15</sup>

The Colville Tribes' implied Indian water rights have been held to exist because water is "essential to the life of the Indian people."<sup>16</sup> In Colville Confederated Tribes v. Walton,<sup>17</sup> the Ninth Circuit applied the reserved water right doctrine to the Colville Reservation and determined that:

As in Winters, the Indians relinquished extensive land and water holdings when the reservation was created. Some gave up valuable tracts with extensive improvements... Congress intended to deal fairly with the Indians by reserving waters without which their lands would be useless... We hold that water was reserved when the Colville Reservation was created.<sup>18</sup>

Thus, the Colville Tribes has sufficient water to make its Reservation livable and a viable homeland for its people.<sup>19</sup>

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<sup>13</sup> 207 U.S. 563 (1908).

<sup>14</sup> Id. at 576 (1908).

<sup>15</sup> See e.g. Cappaert v. United States, 426 U.S. 128 (1976) (protecting subsurface pool of water at Devils Hole National Monument from off-Reservation groundwater pumping); Arizona v. California, 373 U.S. 595-99 (1963) (recognizing tribal claims to water for practically irrigable acres); Joint Board of Control v. United States and Confederated Salish and Kootenai Tribes, (hereinafter "Joint Board of Control"), 832 F.2d 1127 (9th Cir. 1987) (supporting instream flow to protect fishery); In Re the General Adjudication of the Gila River System, 15 Indian Law Rptr. 5099 (Ariz. Super. Ct., Maricopa C'ty, Sept. 9, 1988) (Federal reserve rights apply both to surface and groundwater); see also Parker, "Groundwater Ownership and Control in Indian County," Symposium Proceedings on Indian Water Rights and Water Resources Management, American Water Resources Association (1989).

<sup>16</sup> Arizona v. California, 373 U.S. 546, 599 (1963).

<sup>17</sup> 647 F.2d 42 (9th Cir. 1981), cert. denied, 454 U.S. 1092 (1981).

<sup>18</sup> Id. at 46-47.

<sup>19</sup> See also Arizona v. California, 373 U.S. 546, 599 (1963).

The Court also acknowledged that, "[r]egulation of water on a reservation is critical to the lifestyle of its residents and the development of its resources."<sup>20</sup> A necessary corollary to the Tribes' reserved water right is a Tribal right to water of undiminished quality.<sup>21</sup> The Tribes' water must protect its fishery and the health of Tribal members. Thus, an implied environmental quality right necessarily attaches to this property right.

The Colville Tribes has a right to non-degraded fish and wildlife resources that are critical to the Tribes' cultural, spiritual and economic survival.<sup>22</sup> The Ninth Circuit has consistently recognized tribal reservation of water rights necessary to

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<sup>20</sup> Id. at 52.

<sup>21</sup> See e.g. Colorado v. New Mexico, 103 S. Ct. 539 (1982), (holding that a state's right to water under the equitable apportionment doctrine imposes a duty on sister states to protect water quality); Confederated Salish and Kootenai Tribes v. Namen, 665 F.2d 951,964 (9th Cir. 1982) (recognizing tribal authority to regulate the shoreline of lake when activity threatened to increase water pollution and damage lake's ecology); Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F. Supp. 252 (D.D.C. 1973) (preventing a water diversion that would disrupt the salinity and erosion balance of Pyramid Lake and damage the tribal fishery resource); U.S. v. Anderson, 591 F. Supp. 1,5 (E.D. Wash. 1982), aff'd in relevant part, U.S. v. Anderson, 736 F. 2d 1358 (9th Cir. 1984) (recognizing Spokane Tribe's right to sufficient water to support stream temperature and fishery). See also United States v. Washington, (Phase II) 506 F.Supp. 187 (W.D. Wash. 1980) (finding a reserved environmental right for tribes entitled to salmon in the Pacific Northwest) this decision was appealed to a three judge panel; Washington v. United States, 694 F.2d 1374 (9th Cir. 1982) which was vacated and heard by an en banc panel; the en banc opinion was vacated and a per curium opinion issued at 759 F.2d 1353 (9th Cir. 1985) cert. denied 106 S. Ct. 407 (1985) (basically deciding that questions of reserved environmental right and responsibility of federal government to actively protect that right not yet ripe). See also Comment, "The Environmental Right to Habitat Protection: A Sohappy Solution" 61 Wash. L. Rev. 731 (1986).

<sup>22</sup> See Colville Confederated Tribes v. Walton, 752 F.2d 397, 405 (9th Cir. 1985), cert. denied 106 S.Ct. 1032 (1986). See also Kittitas Reclamation District v. Sunnyside Valley Irrigation District, 763 F.2d 1032 (9th Cir. 1985). cert. denied 474 U.S. 1032 (1985); United States v. Adair, 723 F.2d 1394 (9th Cir. 1983), cert. denied 467 U.S. 1252 (1984); and Joint Board of Control, 832 F.2d 1127 (9th Cir. 1987).

support the hunting and fishing of Indian tribal members.<sup>23</sup> Tribal aboriginal rights to water necessary to support aboriginal and treaty hunting and fishing rights can be protected against later appropriators.<sup>24</sup> For instance, the quality and quantity of instream flows necessary to protect the Tribes' fishery must be protected against any party that threatens the resource.

The value of the Tribes' reserved water right is inextricably intertwined with the quality of such waters. In this sense, there is a nexus between the power which stems from a tribe's proprietary rights and tribal regulatory authority which is a function of tribal sovereignty. The Colville Tribes has sufficient authority to regulate and protect the quality of its ground and surface waters.

#### B. Tribal Sovereignty

In addition to its proprietary rights, the Tribes' sovereignty gives rise to its governmental police powers which may be exercised by means of civil regulatory controls. "Perhaps the most basic principle of all Indian law" is that the powers of Indian tribes are the "inherent powers of a limited sovereignty which has never been extinguished."<sup>25</sup> A tribe's inherent sovereign powers extend to both its members and its territory.<sup>26</sup>

The United States Supreme Court has consistently recognized the governmental authority of Indian tribes to regulate and protect reservation environments to the exclusion of state regulatory authority.<sup>27</sup> Indian tribes and tribal lands have a unique status under federal law. An 1832 Supreme Court decision by Chief Justice Marshall declared that Indian tribes were:

[d]istinct political communities having territorial

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<sup>23</sup> United States v. Adair, 723 F.2d 1395, 1410 (9th Cir. 1983).

<sup>24</sup> See e.g. Joint Board of Control, 832 F.2d at 1132.

<sup>25</sup> Powers of Indian Tribes, I Opinions of the Solicitor at 447. See Washington v. Confederated Tribes of the Colville Reservation, 447 U.S. 134, 152-54 (1980); United States v. Wheeler, 435 U.S. 313, 322-23 (1978); Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 560-61 (1832).

<sup>26</sup> See e.g. White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 142 (1980).

<sup>27</sup> See e.g. Du Bey, Tano and Parker, "Protection of the Reservation Environment: Hazardous Waste Management on Indian Lands." 18 *Envtl. L.* 449 (1988).

boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged but guaranteed by the United States.<sup>28</sup>

Although Chief Justice Marshall's view has given way to a particularized case by case analysis of treaties, statutes and executive orders, the special status of Indian tribes and Indian lands has endured.<sup>29</sup> For instance, in 1981, the United States Court of Appeals for the Ninth Circuit acknowledged that the purpose for which the Colville Indian Reservation was created was to provide "a homeland for the survival and growth of the Indians," and that this purpose must be liberally construed and supported.<sup>30</sup>

Recently, the Supreme Court recognized that an Indian tribe, not the state, could regulate bingo operations on the Cabazon Band of Mission Indian's Reservation in California.<sup>31</sup> The Court recognized the traditional notions of Indian sovereignty and supported the goal of Indian self-government, including the Congressionally recognized "overriding goal of encouraging self-sufficiency and economic development."<sup>32</sup>

The Supreme Court's recent decision concerning tribal and state zoning authority in Brendale v. Confederated Tribes and Bands of Yakima Indian Nation does not limit the Colville Tribes' authority to regulate Tribal water resources.<sup>33</sup> In fact, the plurality expressly recognized Congressional delegation of the power to implement the CWA within Indian country to Indian tribes.<sup>34</sup> The delegated Congressional plenary authority gives additional support to the Colville Tribes' authority to implement CWA programs

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<sup>28</sup> Worcester v. Georgia, 31 U.S. (6 Pet.) at 557.

<sup>29</sup> See Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148 (1973).

<sup>30</sup> Colville Confederated Tribes v. Walton, 647 F.2d at 49 (9th Cir. 1981).

<sup>31</sup> California v. Cabazon Band of Mission Indians, 480 U.S. 202, 107 S.Ct. 1083 (1987) (hereinafter California v. Cabazon).

<sup>32</sup> Id., 107 S.Ct. at 1092.

<sup>33</sup> Brendale v. Confederated Tribes and Bands of Yakima Indian Nation, 109 S.Ct. 2994, 106 L.Ed.2d. 343 (1989).

<sup>34</sup> Id. 109 S.Ct. at 3007.

within the Reservation borders, including any fee lands.<sup>35</sup>

In 1982 the Supreme Court held that a tribe had the power to levy a severance tax on a nonmember. The Court emphasized the territorial component of tribal sovereignty as follows:

The power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management. This power enables a tribal government to raise revenues for its essential services. The power does not derive solely from the Indian tribes' power to exclude non-Indians from tribal lands. Instead, it derives from the tribes' general authority, as sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing governmental services by requiring contributions from persons or enterprises engaged in economic activities within that jurisdiction. [Emphasis added.]<sup>36</sup>

Thus, Indian tribes retain aspects of their sovereignty except those specifically withdrawn by Congress, those inconsistent with overriding Federal interests or those concerning the tribe's external relations that do not threaten the tribe's health and welfare. The Colville Tribes has sovereign powers to protect its health and welfare from the threats of water pollution.<sup>37</sup>

Even prior to the 1987 CWA Amendments, tribal civil jurisdiction over nonmembers was recognized as a matter of federal common law in a variety of contexts. Recent court decisions have upheld the power of tribes to: adjudicate the contractual rights of non-Indians; impose taxes on the activities of non-Indians; apply tribal health and safety codes to non-Indian buildings; and regulate non-Indian self-help remedies.<sup>38</sup> In sum, Indian tribes

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<sup>35</sup> 33 U.S.C. §518(e) and (h)(i).

<sup>36</sup> Merrion v. Jicarilla Apache Tribe, 102 S.Ct. 894, 901 (1982). See also New Mexico v. Mescalero Apache Tribe, 103 S.Ct. 2378, 2385 (1983).

<sup>37</sup> See e.g. Washington v. Confederated Tribes of the Colville Reservation, 447 U.S. at 153-54; Brendale v. Confederated Tribes and Bands of Yakima Indian Nation, 109 S.Ct. at 3006.

<sup>38</sup> See e.g. Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982) (imposition of severance tax); Washington v. Confederated Tribes of Colville Reservation, 447 U.S. 134 (1980) (imposition of sales tax); Williams v. Lee, 358 U.S. 217 (1959) (adjudication of contract disputes); Snow v. Quinault Indian Nation, 709 F.2d 1319 (9th Cir. 1983) (imposition of business activity tax); Cardin v. De La Cruz, 671 F.2d 363 (9th Cir. 1982), cert denied, 459 U.S. 967

retain the inherent sovereign power to exercise civil regulatory jurisdiction to protect water quality from activities involving all persons who reside or do business on Indian lands, including non-members and non-Indians.<sup>39</sup> This power has been interpreted to allow Indian tribes to regulate the conduct of non-members, including the authority to exclude non-members from the reservation for violations of tribal law.<sup>40</sup>

The Supreme Court has held that tribal courts are generally not empowered to exercise criminal jurisdiction over non-Indians.<sup>41</sup> However, this limitation does not apply to the exercise of tribal civil regulatory jurisdiction and tribal environmental programs that are implemented as a matter of tribal civil law.<sup>42</sup>

In a much cited decision, Montana v. United States, the Supreme Court recognized situations favoring the exercise of tribal

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(1982) (application of tribal building code); Babbitt Ford, Inc. v. Navajo Indian Tribe, 710 F.2d 587 (9th Cir. 1983) (regulation of possession of personal property).

<sup>39</sup> See Montana v. United States, 450 U.S. 544, 565-66 (1981).

<sup>40</sup> Hardin v. White Mountain Apache Tribe, 761 F.2d 1285 (9th Cir. 1985).

<sup>41</sup> Oliphant v. Suquamish Tribe of Indians, 435 U.S. 191 (1978). William Canby, formerly professor of law at Arizona State University and now a judge on the United States Court of Appeals for the Ninth Circuit, suggests that some criminal jurisdiction may survive Oliphant. Canby, "The Status of Indian Tribes in American Indian Law Today," 62 Wash. Law Rev. 1,10 (1987) ("an excellent case can be made for the proposition that, in light of the traditional bases of federal Indian law and the current practical situation... Oliphant... [was] wrongly decided").

<sup>42</sup> See Cardin v. De La Cruz, 671 F.2d 363, where the Court refused to apply the Oliphant analogy to civil regulatory program involving the health and welfare of the Tribe. EPA has acknowledged that Indian tribes need not demonstrate criminal enforcement authority to obtain primacy in the NPDES (Section 402) and Dredge and Fill (Section 404) programs under the CWA. The Agency's reasoning is that, after Oliphant, virtually no Indian tribe could demonstrate criminal jurisdiction over non-Indians, and this would render Congress' express provision for primacy null and void if criminal jurisdiction were a prerequisite. CWA §518(e). Draft Proposed Rule for Tribal CWA §404 Primacy (September 12, 1988). Note also that the SDWA amendments expressly recognize that criminal jurisdiction is not required for tribal SDWA primacy. SDWA, Section 1451(b)(2).

civil regulatory jurisdiction by stating as follows:

To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing or other means, the activities of nonmembers who enter consensual relationships with the tribes or its members, through commercial dealing, contracts, leases or other arrangements... A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe. (Emphasis added).<sup>43</sup>

Because water quality regulation is necessary to protect health and welfare and the economic integrity of the Tribes, it clearly is a retained sovereign power.<sup>44</sup>

Several cases decided after Montana explicitly hold that tribes may exercise civil jurisdiction to protect reservation water quality. The Ninth Circuit Court of Appeals, in Colville Confederated Tribes v. Walton,<sup>45</sup> has recognized the Tribes' authority to regulate activities on fee lands, including water related activities, as follows:

A tribe retains the inherent power to exercise civil authority over non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the health and welfare of the tribe... This includes conduct that involves the tribe's water rights.<sup>46</sup>

Similarly, in Confederated Salish and Kootenai Tribes v. Namen, the Court held that conduct causing water pollution was

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<sup>43</sup> Montana v. United States, 450 U.S. at 566.

<sup>44</sup> The Clean Water Act does not act to divest the Tribe of this authority nor does it delegate to states any federal regulatory authority over Indian reservations. See also, Bryan v. Itasca County, 426 U.S. 373. See also, Will, "Indian Lands Environment - Who Should Protect It?" 18 Nat. Res. L. J. 165 (1978).

<sup>45</sup> Colville v. Walton, 647 F.2d, at 52. But cf., United States v. Anderson, 736 F.2d 1358 (1984). (The Court limited the Walton holding to water quantity resources totally confined to the reservation).

<sup>46</sup> Id. citing Montana v. U.S., 450 U.S. 544, n. 15 at 586.

subject to tribal regulation.<sup>47</sup> There, the tribe sought to regulate existing and future structures on the bed and banks of Flathead Lake. The Court held that such tribal regulation was not inconsistent with any overriding Federal interest:

[N]o significant federal interest would be impaired by tribal regulation of the riparian rights of non-Indian land owners on the Flathead Reservation. Indeed, the United States itself entered this lawsuit on the side of the Tribes, contending not only that no federal interest would be injured by the challenged tribal regulation but that the regulation would, in fact, advance federal anti-pollution efforts.<sup>48</sup>

Moreover, the Court found that the use of the bed and banks of the lake was conduct squarely within the scope of tribal civil regulatory jurisdiction because of its potential impact on water quality:

Such conduct, if unregulated, could increase water pollution, damage the ecology of the lake, interfere with treaty fishing rights, or otherwise harm the lake, which is one of the most important tribal resources. Hence, the challenged ordinance falls squarely within the exception recognized in Montana.<sup>49</sup>

Following Namen, the United States District Court for the Western District of Washington, in Lummi Indian Tribe v. Hallauer, held that the Lummi Tribe has the power to construct and operate a reservation-wide sewer system.<sup>50</sup> The Court held that the Lummi Tribe could require nonmembers to connect their dwellings to the Tribal system and could also require such non-members to pay fees assessed to support the system. Finding that the sewer system was designed to remedy unsanitary and unhealthful conditions on the Lummi Indian Reservation, the Court went on to conclude that construction and operation of the system was within the inherent sovereign power of the Tribe.

Federal Indian policy favors tribal self-government and economic self-sufficiency. The presumption in favor of inherent tribal sovereignty forms the backdrop against which courts measure

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<sup>47</sup> 665 F.2d 951 (9th Cir. 1982).

<sup>48</sup> Id. at 963-64 (footnote omitted).

<sup>49</sup> Id. at 964 (footnote omitted).

<sup>50</sup> Lummi Indian Tribe v. Hallauer, No. C 79-682R (W.D. Wash. Feb. 5, 1982), 9 Indian Law Rptr. 3025, (order granting summary judgment motion).

the applicability of vague or ambiguous federal statutes.<sup>51</sup> Historically, the Supreme Court has held that state regulation may not infringe upon the sovereign rights of Indians to control their reservation.<sup>52</sup>

In 1987 the Supreme Court supported tribal regulatory jurisdiction in California v. Cabazon Band of Mission Indians, holding that California's bingo law was preempted and did not apply to the Cabazon Reservation.<sup>53</sup> The Court reasoned that:

[s]tate jurisdiction is preempted... if it interfered or is incompatible with federal and tribal interest reflected in federal law, unless the state interests are sufficient to justify the assertion of state authority... The inquiry is to proceed in light of traditional notions of Indian sovereignty and the 'overriding goal' of encouraging tribal self-sufficiency and economic development. [Citations omitted.]<sup>54</sup>

Shortly after the Cabazon decision, the Ninth Circuit Court of Appeals in Crow Tribe v. Montana, examined the issue of whether a state may apply its civil laws to activities within the exterior boundaries of Indian reservations.<sup>55</sup> The State of Montana had attempted to tax coal mined on ceded lands, and other lands within the exterior boundary of the Crow Reservation. The Court however, held that such state laws were preempted both by federal Indian policy, promoting tribal self-sufficiency and economic development, and by the Crow Tribe's inherent sovereignty to manage the use of its territory and resources.<sup>56</sup>

In 1989, the Supreme Court recognized that Indian tribes have delegated authority to implement programs under the Clean Water Act, as well as inherent authority to protect its political integrity, economic security and their health and welfare from the demonstrably serious threats of activities such as water pollu-

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<sup>51</sup> McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1973).

<sup>52</sup> Williams v. Lee, 358 U.S. 217 (1959).

<sup>53</sup> 480 U.S. 202, 107 S.Ct. 1083 (1987).

<sup>54</sup> Id. 107 S.Ct. at 1097.

<sup>55</sup> Crow Tribe of Indians v. Montana, 819 F.2d 896, 14 Indian L. Rptr. 2097 (9th Cir. 1987), aff'd 108 S.Ct. 685 (1988).

<sup>56</sup> Id. 14 Indian L. Rptr. at 2098, 2100.

tion.<sup>57</sup> Consequently, in activities impacting water quality, Washington State may not utilize its civil regulatory authority to regulate within the Colville Reservation.<sup>58</sup>

In Brendale v. Confederated Tribes and Bands of Yakima Indian Nation, the zoning case decided by the United States Supreme Court in 1989, the Court recognized tribal civil regulatory authority over matters that had "demonstrably serious" impacts, and that "imperil the political integrity, economic security or health and welfare of the tribe."<sup>59</sup> The issue in this case was the respective authority of the Yakima Nation and Yakima County to zone non-Indian owned fee lands within the Yakima Reservation. Two separate parcels of property were involved. Because the effect of the proposed developments on the Yakima Nation were found to be profoundly different for the two parcels, the Court reached opposite conclusions as to which government had the authority to enforce its zoning law, holding in favor of the County on Wilkinson's property and for the Yakima Nation on Brendale's land.<sup>60</sup>

In Brendale, the Court preserved its determination in U.S. v. Montana that Indian tribes retain authority over the activities of non-Indians in certain instances. However, the plurality in Brendale determined that Wilkinson's land use would not significantly imperil the Nation's interest.<sup>61</sup> Whenever water resources are involved, tribal interests are significantly impacted because water pollution could threaten the Tribes' fishery and the health and well-being of people residing within the Reservation. Therefore, even applying Justice White's more restrictive interpretation of the Montana test enunciated in Brendale, the Colville Tribes maintains the authority to protect the health and welfare of the Reservation population and the quality of the Reservation environ-

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<sup>57</sup> Brendale v. Confederated Tribes and Bands of Yakima Indian Nation, 109 S.Ct. at 3006, 3007.

<sup>58</sup> See e.g. Bryan v. Itasca County, 426 U.S. 373 (1976). See also 53 Fed. Reg. 43080,43081 (Oct. 25, 1988) (EPA denial of State of Washington's application to regulate the SDWA UIC program on Indian lands. EPA noted that the State had the burden of demonstrating that its authority to regulate was not preempted and did not infringe on tribal self-government).

<sup>59</sup> 109 S.Ct. at 3008.

<sup>60</sup> 109 S.Ct. at 3015, 3017 (plurality decision).

<sup>61</sup> 109 S.Ct. at 3008, 3015-16.

ment from the adverse effects of water pollution.<sup>62</sup>

The Colville Tribes has sufficient authority to implement civil regulatory environmental programs in the Reservation environment. Therefore, on lands and waters within the Colville Reservation, the Tribes may exercise the full scope of its civil jurisdiction to protect its political integrity, the health and welfare, and the economic security of the tribe. This basic governmental power is now buttressed by the express intent of Congress under the CWA to allow Indian tribes to function in the capacity of states for the purpose of regulating the Reservation environment under federal law.

C. Delegated Authority and Federal Preemption

The inherent governmental authority of the Colville Tribes would be enhanced by EPA delegation of water quality program management authority to the Tribes under the CWA.<sup>63</sup> Congressional enactment of the CWA Indian amendments clarified the authority of Indian tribes and the federal government to implement the CWA in Indian Country unless an Act of Congress specifically provides for state authority. The 1987 CWA Amendments serve as an implicit recognition of tribal authority to regulate activities impacting water quality within the exterior boundaries of Indian reservations.<sup>64</sup> EPA's delegation of environmental program responsibility to Indian tribes preempts the assertion of state water quality management regulatory jurisdiction.<sup>65</sup>

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<sup>62</sup> Compare Justice Blackmun's interpretation of the Montana test. Justice Blackmun stated, "[t]hus, despite Montana's reversal of the usual presumption in favor of inherent sovereignty over reservation activity, the decision may reasonably be read, and, in my view, should be read, to recognize that tribes may regulate the on-reservation conduct of non-Indians whenever a significant tribal interest is threatened or directly affected." 109 S.Ct. at 3021-22.

<sup>63</sup> See Brendale, 109 S.Ct. at 3007.

<sup>64</sup> See e.g. Colville WQS Promulgation, 54 Fed. Reg. at 28623-24 (wherein EPA recognized strong Congressional preferences for tribal control of reservation water quality).

<sup>65</sup> See discussion of preemption in California v. Cabazon Band of Mission Indians, 107 S.Ct. at 1092.

Environmental laws have generally been interpreted by courts to apply to all persons, including Indians.<sup>66</sup> Moreover, federal environmental laws, such as the CWA, are comprehensive in nature and generally occupy the field and leave no room for, or preempt state law.<sup>67</sup> Under the CWA, federal jurisdiction is applicable to the Reservation environment until such time as EPA has delegated such program authority to the Tribes. EPA and tribal governments retain responsibility for environmental program implementation in Indian Country.

Unless Congress specifically provides otherwise, state environmental regulatory authority is generally not applicable to Indian lands.<sup>68</sup> Moreover, the Courts of Appeals in both the Ninth and Tenth Circuits have recently addressed the issue of state environmental jurisdiction over Indian lands and held that state law was preempted. In Phillips Petroleum Co. v. EPA, the Court allowed federal jurisdiction over reservation UIC programs.<sup>69</sup> Similarly, in Washington DOE v. EPA,<sup>70</sup> the Ninth Circuit upheld an EPA decision to deny state jurisdiction over Indian lands under the Resource Conservation and Recovery Act ("RCRA").<sup>71</sup>

In Washington DOE v. EPA, the Agency, acting in accordance with federal Indian policy, refused to approve that part of the Washington State's RCRA program which asserted state regulation over Indian lands. Although RCRA is substantially silent with regard to the question of jurisdiction over Indian lands, the Ninth Circuit upheld EPA's action as consistent with recognized tribal

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<sup>66</sup> Federal Power Commission v. Tuscarora Indian Nation, 362 U.S. 99 (1970), Blue Legs v. United States BIA, 867 F.2d 1094 (8th Cir. 1989).

<sup>67</sup> International Paper Co. v. Ouellette, 107 S.Ct. (1987); Illinois v. Milwaukee, 406 U.S. 91, 92 S.Ct. 1385 (1972) (Milwaukee I); Milwaukee v. Illinois, 451 U.S. 304, 101 S.Ct. 1784 (1981) (Milwaukee II); Illinois v. Milwaukee, 731 F.2d 403 (1984) (Milwaukee III), cert. denied, 469 U.S. 1196, 105 S.Ct. 979 (1985) (Milwaukee III).

<sup>68</sup> See Washington Department of Ecology v. EPA, 752 F.2d 1465 (9th Cir. 1985). See also Du Bey, Tano and Parker, "Protection of the Reservation Environment: Hazardous Waste Management on Indian Lands," 18 *Envtl. L.* 449 (1988).

<sup>69</sup> 803 F.2d 545, 549, (10th Cir. 1986). The State of Oklahoma made no attempt to assert jurisdiction over reservation lands.

<sup>70</sup> 752 F.2d 1465.

<sup>71</sup> 42 U.S.C. §6901 et seq.

sovereignty and in concert with federal Indian policy. After the Ninth Circuit's ruling in Washington DOE v. EPA, the State of Washington amended its RCRA application to assert authority over non-Indian hazardous waste management activities on Indian lands. EPA rejected the State's jurisdictional assertion, asserting Federal regulatory jurisdiction for hazardous waste management activities on Indian lands.<sup>72</sup>

EPA's policy decisions to assert federal, and exclude state jurisdiction in RCRA matters should be followed in CWA programs. The CWA demonstrates no express or implied Congressional intent to extend state jurisdiction over Indian Country. In fact, the express intent of Congress is to allow EPA to treat tribes as states to fulfill the purposes of the CWA. EPA and Indian tribes have regulatory authority to implement federal environmental laws in Indian Country.

The Tenth Circuit specifically addressed the question of whether EPA was empowered to regulate Indian lands under the Safe Drinking Water Act ("SDWA").<sup>73</sup> In supporting EPA's decision to establish federal primacy, the Court found that Congress intended to include Indian lands in the scope of the SDWA.<sup>74</sup> The SDWA and general federal Indian policy clearly establish federal as well as tribal authority to regulate the reservation environment, to the exclusion of state governments.<sup>75</sup>

EPA has established its policy of extending federal authority for Underground Injection Control ("UIC") programs on Indian lands, rather than state jurisdiction, through rulemaking.<sup>76</sup> The State of Washington tried, unsuccessfully, to assert SDWA regulatory jurisdiction under the UIC program, over the Colville Reservation

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<sup>72</sup> Notice of Final Determination on Washington's Application for Final RCRA Authorization. 51 Fed. Reg. 3782, 3783 (Jan. 30, 1986).

<sup>73</sup> In that case, started before the 1986 SDWA Amendments, all parties agreed that "Oklahoma state government has no power to prescribe underground injection control program regulating the Osage Indian Reserve." Phillips v. EPA, 803 F.2d at 554.

<sup>74</sup> Id. at 555, 556.

<sup>75</sup> Of course, tribes can always cooperate with state governments to implement tribal programs, or tribes can adopt and implement state programs on reservation lands.

<sup>76</sup> For example, EPA promulgated technical amendments clarifying that federal UIC programs under the SDWA included Indian lands for states in which EPA had promulgated federal UIC programs. 52 Fed. Reg. 17680 (May 11, 1987).

and other Indian lands within the State of Washington.<sup>77</sup> EPA rejected the State's attempt to receive SDWA program delegation on Tribal lands, finding that:

The Federal interest in tribal management of environmental statutes is especially strong under the Safe Drinking Water Act, in light of the 1986 amendments... In authorizing EPA to treat qualifying Tribes as states for purposes of primary enforcement responsibility, Congress expressed a clear preference for tribal regulation of UIC activities on Indian lands.<sup>78</sup>

The same reasoning applies to the 1987 CWA Indian amendments that demonstrate a clear preference for tribal program development and regulation.

If an Indian tribe does not achieve program primacy, it is the responsibility of EPA, and not the state, to retain on-reservation jurisdiction. Recent lower court decisions have uniformly determined that, absent a specific statutory statement to that effect, federal legislation should not be read to extend state regulatory authority over Indian lands. In People ex rel. Department of Transportation v. Naegele Outdoor Advertising Company of California,<sup>79</sup> the California Supreme Court stated that, "Congressional authorization of state regulation or federal property will be found only where Congress' mandate is explicit."<sup>80</sup> The Court held that the Highway Beautification Act does not authorize state regulation of outdoor advertising on Indian reservation lands.

D. Tribal Authority to Protect Water Quality on Trust Lands

A unitary regulatory scheme to protect water quality is imperative. EPA acknowledged this reasoning in its denial of Washington State's application to regulate UIC program for underground injection wells in Indian Country.<sup>81</sup> Water does not know boundary lines, and the activities that take place on one parcel of land may have environmental consequences on adjacent parcels within the Reservation.

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<sup>77</sup> 52 Fed. Reg. 42080 (Oct. 25, 1988).

<sup>78</sup> 53 Fed. Reg. at 43081.

<sup>79</sup> 213 Cal.Rptr. 247, 38 Cal.3d 509, 698 P.2d 150 (1985).

<sup>80</sup> Id. 213 Cal.Rptr. at 252.

<sup>81</sup> "Notice of Denial," quoting Alan Moomaw, Environmental Coordinator of the Colville Tribes at an EPA Public Hearing on July 11, 1984. 53 Fed. Reg. 43080, 43082 (Oct. 25, 1988).

The Brendale decision, in which the U.S. Supreme Court recognized the authority of Yakima County to extend certain zoning authority over some fee lands within portions of the Yakima Reservation, did not change the law regarding the lack of authority of the state or county to regulate trust land or resources of the Reservation environment.<sup>82</sup> It remains a well established rule of law that, absent express Congressional intent, only Indian tribes or the federal government have authority to regulate activities on trust lands within the exterior borders of Indian reservations.<sup>83</sup> The Colville Tribes' authority to regulate pollution causing activities on trust land is founded in both the Tribes' proprietary and sovereign powers discussed above.

E. Tribal Authority to Protect Water Quality on Fee Lands

The Colville Tribes has authority to regulate activities impacting water quality on fee lands, as well as trust lands, within the Reservation environment. Upon EPA delegation, Section 518(e)(2) of the CWA empowers an Indian tribe to regulate potential sources of water pollution for land owned by Indians, by the U.S. in trust for the Indians or "otherwise within the borders of the reservation". This provision effectively eliminates checkerboard enforcement on Indian reservations when land is owned both by Indians and non-Indians. As discussed above, the U.S. Supreme Court in Brendale recognized this express Congressional declaration that Indian tribes may regulate all lands within the Reservation environment.<sup>84</sup> Thus, the federal government and the Colville Tribes are responsible for regulating water pollution sources on all lands, trust and fee, which comprise the Reservation environment.

The U.S. Supreme Court has long recognized tribal and federal jurisdiction over fee lands. In United States v. Mazurie, Justice Rehnquist held that the Wind River Tribes could deny an application

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<sup>82</sup> Yakima County has never asserted zoning authority over trust lands and the County ordinance specifically excludes trust lands from its scope. 109 S.Ct. at. See also Id. 109 S.Ct. at 3024, 3027 (the Tribe and only the Tribe has authority to zone trust lands within the Reservation).

<sup>83</sup> Bryan v. Itasca County, 426 U.S. 373 (1976) (county lacked authority to impose personal property tax on mobile home located on trust land); Santa Rosa Band v. King county, 532 F.2d 655 (9th Cir. 1975), cert. denied 429 U.S. 1038 (1977) (invalidating local zoning and building code on trust property); Snohomish County v. Seattle Disposal Company, 425 P.2d 22, 70 Wn. 2d 668, cert. denied 389 U.S. 1016 (1967) (holding that state unable to extend zoning authority to trust allotment lands).

<sup>84</sup> Brendale, 109 S.Ct. at 3006-07.

for a liquor license on fee lands within the Reservation.<sup>85</sup> The Court upheld a Congressional scheme that allowed Indian tribes to regulate liquor use in Indian Country, including lands held by non-Indians.<sup>86</sup> The Court has also recognized that Congress has generally disapproved of state jurisdiction over fee lands by disfavoring checkerboard regulatory jurisdiction.<sup>87</sup>

Land within the exterior boundaries of an Indian reservation is considered part of the reservation.<sup>88</sup> All lands in an Indian reservation, including fee patent lands, are part of "Indian Country."<sup>89</sup> Thus, fee lands retain their status as reservation lands. As the U.S. Supreme Court noted in Solem v. Bartlett:

Once a block of land is set aside for an Indian reservation no matter what happens to the title of individual plots within the area, the entire block retains its Reservation status until Congress explicitly indicates otherwise.<sup>90</sup>

The Colville Tribes retains regulatory authority over activities occurring on fee lands that may impact Tribal resources.<sup>91</sup> EPA has recognized the Colville Water Quality Standards apply to all waters within the exterior borders, of the Colville Reservation, regardless of fee ownership, as established by the July 2, 1872 Executive Order.<sup>92</sup>

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<sup>85</sup> 419 U.S. 544 (1974).

<sup>86</sup> Id. at 554-57.

<sup>87</sup> Moe v. Salish & Kootenai Tribes, 425 U.S. 463, 478-79 (1975) (holding that the General Allotment Act did not allow Montana to extend taxing jurisdiction over fee lands because of Congressional and Judicial rejection of checkerboard jurisdiction).

<sup>88</sup> See e.g. Confederated Salish and Kootenai Tribes v. Moe, 425 U.S. 463, 478-79 (1976); United States v. Mazurie, 419 U.S. 544, 553-556 (1974).

<sup>89</sup> 18 U.S.C. §1151. See also Decoteau v. District Court, 420 U.S. 425, 427, n.1 (1975) and Washington DOE v. U.S. EPA, 752 F.2d at 1467, n.1.

<sup>90</sup> 465 U.S. 463, 470 (1974), citing United States v. Celestine, 215 U.S. 278, 285 (1909).

<sup>91</sup> Colville Confederated Tribes v. Walton, 647 F.2d at 52.

<sup>92</sup> Colville WQS Promulgation 54 Fed. Reg. at 28625, 40 CFR §131.35 (b) and (d)(12).

The Clean Water Act expressly provides for tribal regulatory jurisdiction over fee lands. Even without federal preemptive authority, the importance of pure water quality to the Colville Tribes' health, welfare and economic security meets the standards set forth in Montana v. United States and Brendale, in which Indian tribes can regulate the activities of nonmembers.<sup>93</sup> The Tribes has a protectable interest in assuring water of sufficient quality to satisfy the health and spiritual needs of Tribal members, as well as protect the quality of the Reservation environment on which the Colville Tribes depends. Thus, the Colville Tribes has sufficient authority to regulate and manage water quality activities on fee lands within the Reservation environment.

#### F. Tribal Civil Regulatory Jurisdiction

As indicated above, Indian tribes generally retain civil environmental regulatory jurisdiction over the Reservation environment. The U.S. Supreme Court has noted that "tribal sovereignty is dependent on, and subordinate only to the federal government, not the states."<sup>94</sup> Consequently, if Congress expressly provides, state laws may be applicable to Indian lands.<sup>95</sup>

The U.S. Supreme Court held this distinction critical in its finding that Public Law 280 evidenced an intent to allow certain State courts to adjudicate civil controversies, but not to confer general civil regulatory jurisdiction to states. For example, the Court held that a state had insufficient authority to tax a mobile home on trust land.<sup>96</sup> Statutes that limit tribal powers must be express and are to be construed in favor of Indian tribes.<sup>97</sup>

Congressional delegation of limited jurisdiction to certain states, including Washington State, in Public Law 280, does not convey any authority to regulate polluting activities in the Colville Reservation. As the Supreme Court recognized when interpreting Public Law 280:

if the intent of a state law is generally to prohibit

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<sup>93</sup> Montana v. U.S., 450 U.S. at 565-66; Brendale, 109 S.Ct. at 3008.

<sup>94</sup> Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. at 154, cited in California v. Cabazon, 107 S.Ct. at 1087.

<sup>95</sup> Id. California v. Cabazon.

<sup>96</sup> Bryan v. Itasca County, 426 U.S. at 384.

<sup>97</sup> Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918); Bryan v. Itasca County, 426 U.S. at 392.

certain conduct, it falls within Pub.L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation.<sup>98</sup>

Environmental programs are civil/regulatory in nature. Thus, Washington is precluded from unilaterally extending its environmental regulatory programs into the Reservation environment.<sup>99</sup>

Therefore, as supported by the analysis set forth above, the federal government and the Colville Tribes have authority to develop and implement federal/tribal environmental regulatory programs in the Reservation environment.

### III. FEDERAL INDIAN POLICY

The Colville Tribes' assertion of regulatory control over water quality is supported by Indian policies of the United States government. The federal policy supporting the Tribes' authority to protect water quality within the exterior boundaries of the Reservation extends beyond the mandate found in the Clean Water Act. For example, President Reagan in 1983 endorsed the twin themes of tribal self-government and economic self-sufficiency and defined federal Indian policy in the following manner:

Tribal governments, like state and local governments, are more aware of the needs and desires of their citizens than is the Federal Government and should, therefore, have the primary responsibility for meeting those needs... Our policy is to reaffirm dealing with Indian tribes on a government-to-government basis and to pursue the policy of self-government of Indian tribes without threatening termination. (Emphasis added).<sup>100</sup>

In furtherance of this policy, the U.S. EPA, in November, 1984, es-

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<sup>98</sup> California v. Cabazon, 107 S.Ct. at 1088.

<sup>99</sup> See e.g. Yakima Indian Nation v. Whiteside, 828 F.2d 529, 532 (9th Cir. 1987) (holding that zoning was regulatory in nature, and not subject to any limitations of Public Law 280), rev'd on other grounds, \_\_\_ U.S. \_\_\_, 109 S.Ct. 2994, 106 L.Ed.2d. 343 (1989).

<sup>100</sup> President Reagan, Statement of Indian Policy, 19 WEEKLY COMP. PRES. DOC. 98 (January 24, 1983); See also, President Nixon, Statement of Indian Policy, 6 WEEKLY COMP. PRES. DOC., 894 (July 8, 1970) (promoting Indian self-determination and the right of Indian tribes to improve their social and economic well being).

established its Indian environmental policy acknowledging the primary role of tribal governments in the implementation of federal environmental law within the exterior boundaries of their reservations and embarked on a pilot program to assist four tribes to develop environmental regulatory programs for their reservations, and to serve as national models. The Colville Tribes was chosen as one of the four participating Indian tribes. This policy was further developed in November, 1985, when EPA adopted its Interim Indian Policy Strategy.<sup>101</sup>

Congress has codified EPA's Indian policy by specifically providing opportunities for Indian tribes to participate substantially as states in recently amended environmental laws. Like states, Indian tribes are now eligible to qualify for: environmental program delegations under the Clean Water Act ("CWA") and the Safe Drinking Water Act ("SDWA"); and contractual enforcement agreements with EPA under Superfund.<sup>102</sup>

Congressional and Executive expressions of support for tribal activities such as implementing environmental protection programs is consistent with the fiduciary obligation the federal government has to support and protect tribal interests.<sup>103</sup> The Colville Tribes' authority to manage and protect water quality within the exterior boundaries of the Reservation are recognized and supported by this federal Indian policy.

#### IV. CONCLUSION

In light of the analysis set forth above, we conclude that the Colville Tribes has ample legal authority to adopt and enforce water quality management and protection measures applicable to all

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<sup>101</sup> Office of Federal Activities, Office of External Affairs, "Interim Strategy for the Implementation of the EPA Indian Policy," p. 11 (November, 1985).

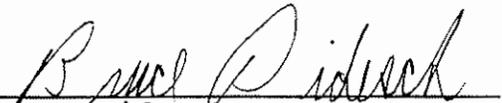
<sup>102</sup> The Clean Water Act, 33 U.S.C.A. §§ 1251-1387 (West 1986 & Supp. 1988); the Safe Drinking Water Act, 42 U.S.C.A. §§ 300f-300j-11 (West 1982 & Supp. 1988); the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), 42 U.S.C.A. §§ 9601-9675 (West 1983 and Supp. 1988). Other federal environmental statutes provide Indian tribes with opportunities to participate in environmental programs. See also the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA, the pesticide act), 7. U.S.C. §136(u); the Clean Air Act, 42 U.S.C.A. §7474(c); and the Surface Mine Control and Reclamation Act, 30 U.S.C.A. §1201 et seq.

<sup>103</sup> See United States v. Kagama, 118 U.S. 375, 383-84 (1886), cited in State of Washington DOE v. EPA, 652 F.2d 1465, 1470, (9th Cir. 1985).

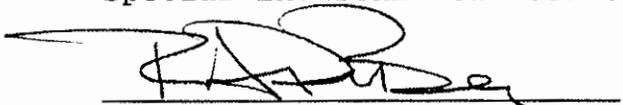
water pollution sources within the exterior boundary of the Colville Reservation. This authority is sufficient to allow EPA to treat the Confederated Colville Tribes on the same basis as a state under the Clean Water Act.

Respectfully submitted this 20th day of December, 1989.

OFFICE OF RESERVATION ATTORNEY

  
Bruce Didesch

THE Du BEY LAW FIRM  
Special Environmental Counsel

  
RICHARD A. Du BEY

File No. 8901  
gdpwkdsk 12-89-3\cwaapp2.901

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401

ATTACHMENT H

[Code of Federal Regulations]  
[Title 40, Volume 19]  
[Revised as of July 1, 2003]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 40CFR131.35]

[Page 388-395]

TITLE 40--PROTECTION OF ENVIRONMENT

CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY (CONTINUED)

PART 131--WATER QUALITY STANDARDS--Table of Contents

Subpart D--Federally Promulgated Water Quality Standards

Sec. 131.35 Colville Confederated Tribes Indian Reservation.

The water quality standards applicable to the waters within the Colville Indian Reservation, located in the State of Washington.

(a) Background. (1) It is the purpose of these Federal water quality standards to prescribe minimum water quality requirements for the surface waters located within the exterior boundaries of the Colville Indian Reservation to ensure compliance with section 303(c) of the Clean Water Act.

(2) The Colville Confederated Tribes have a primary interest in the protection, control, conservation, and utilization of the water resources of the Colville Indian Reservation. Water quality standards have been enacted into tribal law by the Colville Business Council of the Confederated Tribes of the Colville Reservation, as the Colville Water Quality Standards Act, CTC Title 33 (Resolution No. 1984-526 (August 6, 1984) as amended by Resolution No. 1985-20 (January 18, 1985)).

(b) Territory covered. The provisions of these water quality standards shall apply to all surface waters within the exterior boundaries of the Colville Indian Reservation.

(c) Applicability, Administration and Amendment. (1) The water quality standards in this section shall be used by the Regional Administrator for establishing any water quality based National Pollutant Discharge Elimination System Permit (NPDES) for point sources on the Colville Confederated Tribes Reservation.

(2) In conjunction with the issuance of section 402 or section 404 permits,

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the Regional Administrator may designate mixing zones in the waters of the United States on the reservation on a case-by-case basis. The size of such mixing zones and the in-zone water quality in such mixing zones shall be consistent with the applicable procedures and guidelines in EPA's Water Quality Standards Handbook and the Technical Support Document for Water Quality Based Toxics Control.

(3) Amendments to the section at the request of the Tribe shall proceed in the following manner.

(i) The requested amendment shall first be duly approved by the Confederated Tribes of the Colville Reservation (and so certified by the Tribes Legal Counsel) and submitted to the Regional Administrator.

(ii) The requested amendment shall be reviewed by EPA (and by the State of Washington, if the action would affect a boundary water).

(iii) If deemed in compliance with the Clean Water Act, EPA will propose and promulgate an appropriate change to this section.

(4) Amendment of this section at EPA's initiative will follow consultation with the Tribe and other appropriate entities. Such amendments will then follow normal EPA rulemaking procedures.

(5) All other applicable provisions of this part 131 shall apply on the Colville Confederated Tribes Reservation. Special attention should be paid to Secs. 131.6, 131.10, 131.11 and 131.20 for any amendment to these standards to be initiated by the Tribe.

(6) All numeric criteria contained in this section apply at all in-stream flow rates greater than or equal to the flow rate calculated as the minimum 7-consecutive day average flow with a recurrence frequency of once in ten years (7Q10); narrative criteria (Sec. 131.35(e)(3)) apply regardless of flow. The 7Q10 low flow shall be calculated using methods recommended by the U.S. Geological Survey.

(d) Definitions. (1) Acute toxicity means a deleterious response (e.g., mortality, disorientation, immobilization) to a stimulus observed in 96 hours or less.

(2) Background conditions means the biological, chemical, and physical conditions of a water body, upstream from the point or non-point source discharge under consideration. Background sampling location in an enforcement action will be upstream from the point of discharge, but not upstream from other inflows. If several discharges to any water body exist, and an enforcement action is being taken for possible violations to the standards, background sampling will be undertaken immediately upstream from each discharge.

(3) Ceremonial and Religious water use means activities involving traditional Native American spiritual practices which involve, among other things, primary (direct) contact with water.

(4) Chronic toxicity means the lowest concentration of a constituent causing observable effects (i.e., considering lethality, growth, reduced reproduction, etc.) over a relatively long period of time, usually a 28-day test period for small fish test species.

(5) Council or Tribal Council means the Colville Business Council of the Colville Confederated Tribes.

(6) Geometric mean means the  $n$ th root of a product of  $n$  factors.

(7) Mean retention time means the time obtained by dividing a reservoir's mean annual minimum total storage by the non-zero 30-day, ten-year low-flow from the reservoir.

(8) Mixing zone or dilution zone means a limited area or volume of water where initial dilution of a discharge takes place; and where numeric water quality criteria can be exceeded but acutely toxic conditions are prevented from occurring.

(9) pH means the negative logarithm of the hydrogen ion concentration.

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

(11) Regional Administrator means the Administrator of EPA's Region X.

(12) Reservation means all land within the limits of the Colville Indian Reservation, established on July 2, 1872 by Executive Order, presently containing 1,389,000 acres more or less, and under the jurisdiction of the United States

government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

(13) Secondary contact recreation means activities where a person's water contact would be limited to the extent that bacterial infections of eyes, ears, respiratory, or digestive systems or urogenital areas would normally be avoided (such as wading or fishing).

(14) Surface water means all water above the surface of the ground within the exterior boundaries of the Colville Indian Reservation including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs, seeps and wetlands.

(15) Temperature means water temperature expressed in Centigrade degrees (C).

(16) Total dissolved solids (TDS) means the total filterable residue that passes through a standard glass fiber filter disk and remains after evaporation and drying to a constant weight at 180 degrees C. it is considered to be a measure of the dissolved salt content of the water.

(17) Toxicity means acute and/or chronic toxicity.

(18) Tribe or Tribes means the Colville Confederated Tribes.

(19) Turbidity means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

(20) Wildlife habitat means the waters and surrounding land areas of the Reservation used by fish, other aquatic life and wildlife at any stage of their life history or activity.

(e) General considerations. The following general guidelines shall apply to the water quality standards and classifications set forth in the use designation Sections.

(1) Classification boundaries. At the boundary between waters of different classifications, the water quality standards for the higher classification shall prevail.

(2) Antidegradation policy. This antidegradation policy shall be applicable to all surface waters of the Reservation.

(i) Existing in-stream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(ii) Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Regional Administrator finds, after full satisfaction of the inter-governmental coordination and public participation provisions of the Tribes' continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Regional Administrator shall assure water quality adequate to protect existing uses fully. Further, the Regional Administrator shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(iii) Where high quality waters are identified as constituting an outstanding national or reservation resource, such as waters within areas designated as unique water quality management areas and waters otherwise of exceptional recreational or ecological significance, and are designated as special resource waters, that water quality shall be maintained and protected.

(iv) In those cases where potential water quality impairment associated with a thermal discharge is involved, this antidegradation policy's implementing method shall be consistent with section 316 of the Clean Water Act.

(3) Aesthetic qualities. All waters within the Reservation, including those within mixing zones, shall be free from substances, attributable to wastewater discharges or other pollutant sources, that:

- (i) Settle to form objectionable deposits;
- (ii) Float as debris, scum, oil, or other matter forming nuisances;
- (iii) Produce objectionable color, odor, taste, or turbidity;

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(iv) Cause injury to, are toxic to, or produce adverse physiological responses in humans, animals, or plants; or

(v) produce undesirable or nuisance aquatic life.

(4) Analytical methods. (i) The analytical testing methods used to measure or otherwise evaluate compliance with water quality standards shall to the extent practicable, be in accordance with the ``Guidelines Establishing Test Procedures for the Analysis of Pollutants'' (40 CFR part 136). When a testing method is not available for a particular substance, the most recent edition of ``Standard Methods for the Examination of Water and Wastewater'' (published by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation) and other or superseding methods published and/or approved by EPA shall be used.

(f) General water use and criteria classes. The following criteria shall apply to the various classes of surface waters on the Colville Indian Reservation:

(1) Class I (Extraordinary)--(i) Designated uses. The designated uses include, but are not limited to, the following:

- (A) Water supply (domestic, industrial, agricultural).
- (B) Stock watering.
- (C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting.
- (D) Wildlife habitat.
- (E) Ceremonial and religious water use.
- (F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).
- (G) Commerce and navigation.

(ii) Water quality criteria. (A) Bacteriological Criteria. The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 8 per 100 milliliters, nor shall any single sample exceed an enterococci density of 35 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen--The dissolved oxygen shall exceed 9.5 mg/l.

(C) Total dissolved gas--concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature--shall not exceed 16.0 degrees C due to human activities. Temperature increases shall not, at any time, exceed  $t=23/(T+5)$ .

(1) When natural conditions exceed 16.0 degrees C, no temperature increase will be allowed which will raise the receiving water by greater than 0.3 degrees C.

(2) For purposes hereof, ``t'' represents the permissive temperature

change across the dilution zone; and ``T'' represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from nonpoint source activities shall not exceed 2.8 degrees C, and the maximum water temperature shall not exceed 10.3 degrees C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.2 units.

(F) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(2) Class II (Excellent)--(i) Designated uses. The designated uses include but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

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(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) Water quality criteria. (A) Bacteriological Criteria--The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 16/100 ml, nor shall any single sample exceed an enterococci density of 75 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen--The dissolved oxygen shall exceed 8.0 mg/l.

(C) Total dissolved gas--concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature--shall not exceed 18.0 degrees C due to human activities. Temperature increases shall not, at any time, exceed  $t=28/(T+7)$ .

(1) When natural conditions exceed 18 degrees C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3 degrees C.

(2) For purposes hereof, ``t'' represents the permissive temperature change across the dilution zone; and ``T'' represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from non-point source activities shall not exceed 2.8 degrees C, and the maximum water temperature shall not exceed 18.3 degrees C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.

(F) Turbidity shall not exceed 5 NTU over background turbidity when

the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(3) Class III (Good)--(i) Designated uses. The designated uses include but are not limited to, the following:

(A) Water supply (industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(F) Commerce and navigation.

(ii) Water quality criteria. (A) Bacteriological Criteria--The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 ml, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen.

	Early life stages	Other life stages
7 day mean.....	9.5 (6.5)	\3\ NA
1 day minimum \4\.....	8.0 (5.0)	6.5

\1\ These are water column concentrations recommended to achieve the required intergravel dissolved oxygen concentrations shown in parentheses. The 3 mg/L differential is discussed in the dissolved oxygen criteria document (EPA 440/5-86-003, April 1986). For species that have early life stages exposed directly to the water column, the figures in parentheses apply.

\2\ Includes all embryonic and larval stages and all juvenile forms to 30-days following hatching.

\3\ NA (not applicable)

\4\ All minima should be considered as instantaneous concentrations to be achieved at all times.

(C) Total dissolved gas concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature shall not exceed 21.0 degrees C due to human activities. Temperature increases shall not, at any time, exceed  $t=34/(T+9)$ .

(1) When natural conditions exceed 21.0 degrees C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3 degrees C.

(2) For purposes hereof, ``t'' represents the permissive temperature change across the dilution zone; and ``T'' represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from nonpoint source activities shall not exceed 2.8 degrees C, and the maximum water temperature shall not exceed 21.3 degrees C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.

(F) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(4) Class IV (Fair)--(i) Designated uses. The designated uses include but are not limited to, the following:

(A) Water supply (industrial).

(B) Stock watering.

(C) Fish (salmonid and other fish migration).

(D) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(E) Commerce and navigation.

(ii) Water quality criteria. (A) Dissolved oxygen.

	During periods of salmonid and other fish migration	During all other time periods
30 day mean.....	6.5	5.5
7 day mean.....	\1\ NA	\1\ NA
7 day mean minimum.....	5.0	4.0
1 day minimum \2\.....	4.0	3.0

\1\ NA (not applicable).

\2\ All minima should be considered as instantaneous concentrations to be achieved at all times.

(B) Total dissolved gas--concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(C) Temperature shall not exceed 22.0 degrees C due to human activities. Temperature increases shall not, at any time, exceed  $t=20/(T+2)$ .

(1) When natural conditions exceed 22.0 degrees C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3 degrees C.

(2) For purposes hereof, ``t'' represents the permissive temperature change across the dilution zone; and ``T'' represents the highest existing temperature in this water classification outside of any

dilution zone.

(D) pH shall be within the range of 6.5 to 9.0 with a human-caused variation of less than 0.5 units.

(E) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(F) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(5) Lake Class--(i) Designated uses. The designated uses include but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) Water quality criteria. (A) Bacteriological Criteria. The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 ml, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected

[[Page 394]]

samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen--no measurable decrease from natural conditions.

(C) Total dissolved gas concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature--no measurable change from natural conditions.

(E) pH--no measurable change from natural conditions.

(F) Turbidity shall not exceed 5 NTU over natural conditions.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those which may affect public health, the natural aquatic environment, or the desirability of the water for any use.

(6) Special Resource Water Class (SRW)--(i) General characteristics. These are fresh or saline waters which comprise a special and unique resource to the Reservation. Water quality of this class will be varied and unique as determined by the Regional Administrator in cooperation with the Tribes.

(ii) Designated uses. The designated uses include, but are not limited to, the following:

(A) Wildlife habitat.

(B) Natural foodchain maintenance.

(iii) Water quality criteria.

(A) Enterococci bacteria densities shall not exceed natural conditions.

(B) Dissolved oxygen--shall not show any measurable decrease from

natural conditions.

(C) Total dissolved gas shall not vary from natural conditions.

(D) Temperature--shall not show any measurable change from natural conditions.

(E) pH shall not show any measurable change from natural conditions.

(F) Settleable solids shall not show any change from natural conditions.

(G) Turbidity shall not exceed 5 NTU over natural conditions.

(H) Toxic, radioactive, or deleterious material concentrations shall not exceed those found under natural conditions.

(g) General classifications. General classifications applying to various surface waterbodies not specifically classified under Sec. 131.35(h) are as follows:

(1) All surface waters that are tributaries to Class I waters are classified Class I, unless otherwise classified.

(2) Except for those specifically classified otherwise, all lakes with existing average concentrations less than 2000 mg/L TDS and their feeder streams on the Colville Indian Reservation are classified as Lake Class and Class I, respectively.

(3) All lakes on the Colville Indian Reservation with existing average concentrations of TDS equal to or exceeding 2000 mg/L and their feeder streams are classified as Lake Class and Class I respectively unless specifically classified otherwise.

(4) All reservoirs with a mean detention time of greater than 15 days are classified Lake Class.

(5) All reservoirs with a mean detention time of 15 days or less are classified the same as the river section in which they are located.

(6) All reservoirs established on pre-existing lakes are classified as Lake Class.

(7) All wetlands are assigned to the Special Resource Water Class.

(8) All other waters not specifically assigned to a classification of the reservation are classified as Class II.

(h) Specific classifications. Specific classifications for surface waters of the Colville Indian Reservation are as follows:

(1) Streams:

Alice Creek.....	Class III
Anderson Creek.....	Class III
Armstrong Creek.....	Class III
Barnaby Creek.....	Class II
Bear Creek.....	Class III
Beaver Dam Creek.....	Class II
Bridge Creek.....	Class II
Brush Creek.....	Class III
Buckhorn Creek.....	Class III
Cache Creek.....	Class III
Canteen Creek.....	Class I
Capoose Creek.....	Class III
Cobbs Creek.....	Class III
Columbia River from Chief Joseph Dam to Wells Dam.	.....
Columbia River from northern Reservation boundary to Grand Coulee Dam (Roosevelt Lake).	.....
Columbia River from Grand Coulee Dam to Chief Joseph Dam.	.....
Cook Creek.....	Class I

Cooper Creek.....	Class III
Cornstalk Creek.....	Class III
Cougar Creek.....	Class I

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Coyote Creek.....	Class II
Deerhorn Creek.....	Class III
Dick Creek.....	Class III
Dry Creek.....	Class I
Empire Creek.....	Class III
Faye Creek.....	Class I
Forty Mile Creek.....	Class III
Gibson Creek.....	Class I
Gold Creek.....	Class II
Granite Creek.....	Class II
Grizzly Creek.....	Class III
Haley Creek.....	Class III
Hall Creek.....	Class II
Hall Creek, West Fork.....	Class I
Iron Creek.....	Class III
Jack Creek.....	Class III
Jerred Creek.....	Class I
Joe Moses Creek.....	Class III
John Tom Creek.....	Class III
Jones Creek.....	Class I
Kartar Creek.....	Class III
Kincaid Creek.....	Class III
King Creek.....	Class III
Klondyke Creek.....	Class I
Lime Creek.....	Class III
Little Jim Creek.....	Class III
Little Nespelem.....	Class II
Louie Creek.....	Class III
Lynx Creek.....	Class II
Manila Creek.....	Class III
McAllister Creek.....	Class III
Meadow Creek.....	Class III
Mill Creek.....	Class II
Mission Creek.....	Class III
Nespelem River.....	Class II
Nez Perce Creek.....	Class III
Nine Mile Creek.....	Class II
Nineteen Mile Creek.....	Class III
No Name Creek.....	Class II
North Nanamkin Creek.....	Class III
North Star Creek.....	Class III
Okanogan River from Reservation north boundary to Columbia River.	Class II
Olds Creek.....	Class I
Omak Creek.....	Class II
Onion Creek.....	Class II
Parmenter Creek.....	Class III
Peel Creek.....	Class III
Peter Dan Creek.....	Class III
Rock Creek.....	Class I

San Poil River.....	Class I
Sanpoil, River West Fork.....	Class II
Seventeen Mile Creek.....	Class III
Silver Creek.....	Class III
Sitdown Creek.....	Class III
Six Mile Creek.....	Class III
South Nanamkin Creek.....	Class III
Spring Creek.....	Class III
Stapaloop Creek.....	Class III
Stepstone Creek.....	Class III
Stranger Creek.....	Class II
Strawberry Creek.....	Class III
Swimptkin Creek.....	Class III
Three Forks Creek.....	Class I
Three Mile Creek.....	Class III
Thirteen Mile Creek.....	Class II
Thirty Mile Creek.....	Class II
Trail Creek.....	Class III
Twentyfive Mile Creek.....	Class III
Twentyone Mile Creek.....	Class III
Twentythree Mile Creek.....	Class III
Wannacot Creek.....	Class III
Wells Creek.....	Class I
Whitelaw Creek.....	Class III
Wilmont Creek.....	Class II
(2) Lakes:	
Apex Lake.....	LC
Big Goose Lake.....	LC
Bourgeau Lake.....	LC
Buffalo Lake.....	LC
Cody Lake.....	LC
Crawfish Lakes.....	LC
Camille Lake.....	LC
Elbow Lake.....	LC
Fish Lake.....	LC
Gold Lake.....	LC
Great Western Lake.....	LC
Johnson Lake.....	LC
LaFleur Lake.....	LC
Little Goose Lake.....	LC
Little Owhi Lake.....	LC
McGinnis Lake.....	LC
Nicholas Lake.....	LC
Omak Lake.....	SRW
Owhi Lake.....	SRW
Penley Lake.....	SRW
Rebecca Lake.....	LC
Round Lake.....	LC
Simpson Lake.....	LC
Soap Lake.....	LC
Sugar Lake.....	LC
Summit Lake.....	LC
Twin Lakes.....	SRW

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401

ATTACHMENT I



REPLY TO  
ATTN OF: WD-136

Jude Stensgar  
Chairman  
Colville Business Council  
Colville Confederated Tribes  
P.O. Box 150  
Nespelem, WA 99155



JUN 8 1990

Dear Chairman Stensgar:

I am pleased to inform you that the Confederated Tribes of the Colville Reservation have been determined eligible to be treated as a state for the purposes of Section 106 of the Clean Water Act (CWA). Based on our review of your application and the supporting documentation, the Environmental Protection Agency (EPA) concludes that the necessary statutory elements for Treatment as a State set out at 33 U.S.C. Section 1377(e), CWA Section 518(e) are met.

The Washington State Department of Ecology (Ecology), in a letter dated May 30, 1990, supported the treatment of the Confederated Tribes of the Colville Reservation as a state in accordance with Section 518 of the Act. Ecology has requested that EPA facilitate the development of a cooperative agreement between the three entities. Cecil Carroll of our Washington Operations Office will coordinate this effort. Mr. Carroll will also be the Project Officer for the Section 106 Grant. Please submit your grant application to Mr. Carroll as soon as possible. He can be reached at (206) 753-9081 or in his absence, Dave Ragsdale can discuss the grant application process. Mr. Ragsdale may be reached at (206) 753-9080.

We look forward to working with the Confederated Tribes of the Colville Reservation on this Section 106 grant.

Sincerely,

Thomas P. Dunne  
Acting Regional Administrator

cc: Christine O. Gregoire, Ecology  
Gary Passmore, Colville Confederated Tribes

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401

ATTACHMENT J



Reply To  
Attn Of: WD-139

SEP 27 1991

Jude C. Stensgar  
Colville Confederated Tribes  
P.O. Box 150  
Nespelem, Washington 99155

Dear Mr. Stensgar:

I am pleased to approve the Colville Confederated Tribes' Nonpoint Source (NPS) Assessment and Management Program submitted to the Environmental Protection Agency (EPA) as required by § 319 of the Clean Water Act (CWA). The Tribes' application for treatment as a state under § 319 of the CWA is also approved. The report satisfies the statutory requirements and EPA's guidance for approval of § 319 reports.

My approval of the Tribes' NPS Management Program is based upon my understanding that: (1) a detailed work program for the first year's implementation will be prepared to identify watershed specific implementation actions, budgets and timelines and will be submitted to EPA for approval by November 30, 1991, and (2) the work program will be negotiated with EPA to ensure that it is consistent with the Agency's guidance for watershed implementation projects.

The EPA's notice of approval of the Tribes' 319 report is enclosed. The requirements for an approvable report under § 319(a) and 319(b) are summarized. The notice also completes EPA's requirements for approval under § 319(d)(1).

The Tribes' NPS Assessment provides a good basis for the Management Program. The Management Program provides a good framework for implementing NPS controls. The primary objective of § 319 is to apply NPS controls on a watershed basis. This objective should be used in developing the work program for specific projects and activities.

We appreciate the Tribes' commitment to developing and implementing NPS controls, and the expeditious manner in which the § 319 reports were prepared. We look forward to working with the Tribes in implementing the Management Program.

Sincerely,

  
for Robert S. Burd  
Director, Water Division

Enclosure

**U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 SIXTH AVENUE  
SEATTLE, WASHINGTON 98101**

**NOTICE OF THE ENVIRONMENTAL PROTECTION AGENCY'S DECISION OF  
APPROVAL OF ASSESSMENT AND MANAGEMENT PROGRAM SUBMITTED BY  
THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION IN RESPONSE  
TO THE REQUIREMENTS OF SECTION 319 OF THE CLEAN WATER ACT**

DATE OF NOTICE: SEPTEMBER 27, 1991

**DESCRIPTION OF SECTION 319 REQUIREMENTS**

**NONPOINT SOURCE ASSESSMENT**

Section 319(a) of the Act requires each state or tribe treated as a state to prepare and submit to EPA for approval a Nonpoint Source Assessment (NPS) report. The report must identify navigable waters within the state that, without further action to control NPS pollution, will not attain or maintain water quality standards. Major nonpoint sources include, for example, agricultural and silvicultural activities, runoff from mining activities and impacts from failing on site septic systems.

State NPS Assessment Reports must include the following: (a) waters within the state impacted by nonpoint sources; (b) the categories or types of nonpoint sources which contribute pollutants to these waters; (c) the process used for identifying best management practices (BMPs) to control NPS pollution; and (d) the state and local programs for controlling NPS pollution.

The NPS Assessment of the Confederated Tribes of the Colville Reservation indicates that flow, increased stream temperatures, turbidity and bacteria have the greatest impacts on the reservation's rivers and streams. Poor livestock and rangeland management and impacts from silvicultural activities are the major NPS categories causing water quality impairments.

**NONPOINT SOURCE MANAGEMENT PROGRAM**

Section 319(b) of the Act requires each state to prepare and submit to EPA for approval a NPS Management Program. The program must include the following: (a) an identification of the best management practices and measures which will be undertaken to reduce NPS pollutant loadings; (b) programs to achieve implementation of the BMPs; (c) schedules with annual milestones; (d) certification of state or tribal attorney; (e) sources of federal and other assistance and funding; and (f) federal programs and projects the Tribes will review for consistency with its program.

The Tribes' NPS Management Program is presented in three levels with increasing complexity and costs. The highest priority for Level 1 implementation of the Management Program is to strengthen Monitoring, Assessment and Evaluation of priority waters and to implement selected NPS controls in a target watershed. Level 1 implementation also includes a number of activities related to reservation-wide coordination of water quality programs.

The Management Program builds upon the Tribes' EPA approved § 208 plan that was completed in 1985. The Tribes attained Treatment As a State (TAS) status under Sections 518 and 106 of the Clean Water Act in 1990. The approval of this NPS Assessment and Management Program constitutes EPA's approval of the Tribes for TAS under § 319 of the Clean Water Act.

  
\_\_\_\_\_  
Robert S. Burd  
Director, Water Division

9/27/91  
\_\_\_\_\_  
Date

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401

ATTACHMENT K

APPENDIX C: LAKE ROOSEVELT COOPERATIVE MANAGEMENT AGREEMENT

APRIL  
5, 1991  
E Hester  
DAS

LAKE ROOSEVELT  
COOPERATIVE MANAGEMENT AGREEMENT

I. RECITALS

- A. Whereas, the Bureau of Reclamation (hereinafter Reclamation) in connection with its responsibility for the construction, operation, and maintenance of the Columbia Basin Project has withdrawn or acquired lands or the right to use lands and may acquire additional land under the federal reclamation laws, Act of June 1902, 32 Stat. 388, and acts amendatory thereof or supplementary thereto, including the Act of March 10, 1973, 57 Stat. 14, and the Act of August 30, 1935, 49 Stat. 1028, 1039; and
- B. Whereas the parties recognize (1) that some of the land acquired, withdrawn or used by Reclamation is located within the boundaries of the Colville Indian Reservation and the Spokane Indian Reservation; (2) that those reservation boundaries were not changed as a result of the acquisition or use of land within either reservation for the Columbia Basin Project; and, (3) that the Confederated Tribes of the Colville Reservation and the Spokane Tribe retain certain governmental authority and responsibility within the exterior boundaries of their respective reservations; and
- C. Whereas, Congress and the President have each recognized certain sovereign and governmental powers of Indian tribes within their respective reservations, and support the tribal sovereignty of Indian tribes to exercise their full measure of governmental authority within their respective reservations; and
- D. Whereas, on Lake Roosevelt, consistent with the express policies of the United States, the Colville and Spokane tribes have an interest in and certain regulatory authority within their reservations over fish and wildlife harvest and habitat protection, recreation, environmental protection, protection and management of cultural, historical and archaeological resources, and the development and utilization of resources on reservation, including economic development and management thereof; and

- E. Whereas, the parties agree that the recreational and other natural resources of Lake Roosevelt and adjacent lands which through sound coordinated planning, development, and management of the Lake Roosevelt Management Area (LRMA), offer unusual opportunities for recreation and other activities for the people of the nation, and the members of the Confederated Tribes of the Colville Reservation and Spokane Indian Tribe; and
- F. Whereas, lands acquired by Reclamation for Lake Roosevelt within the Colville and Spokane reservations are available for public recreation and other development; however, the management and development of those lands may pose unique and difficult problems because of the cultural, religious, and competing social uses to which the tribes have committed their reservations; and
- G. Whereas, the parties recognize that development in areas of Lake Roosevelt located off the Colville and Spokane Reservations will affect and impact reservation lands and resources, and because the lake area was the ancestral home of the Colville and Spokane Indians, such development could impact off-reservation archaeological, historical or religious sites; likewise, reservation activity will affect similar sites off the reservation within the LRMA; and
- H. Whereas, there is an inter-relationship between the development of recreational and other natural resources of the LRMA; and
- I. Whereas, the Coulee Dam National Recreation Area is an existing unit of the National Park system and subject to all NPS laws, regulations, policies and guidelines; and,
- J. Whereas, the National Park Service has special skills and experience in planning, developing, maintaining and managing areas devoted to recreational uses, and is authorized to coordinate with other federal agencies in developing recreational programs (16 U.S.C. §§ 17j-2(b), 4601-1); and
- K. Whereas, the Confederated Tribes of the Colville Reservation and the Spokane Indian Tribe have significant interests in the use and development of those lands within the LRMA, particularly within their respective reservations, and have demonstrated the willingness, capability and experience to

manage those lands and resources within their reservations for beneficial purposes including public recreational uses, and the conservation of the resources; and

- L. Whereas, the respective parties to this Agreement are in a position to provide the services herein identified and, it has been determined to be in the interest of the United States Government to use such services, and the participation of the Confederated Tribes of the Colville Reservation, and the Spokane Tribe as set out herein is consistent with the Indian Self Determination Act of 1975, P.L. 93-638, as amended; and
- M. Whereas, it is recognized and understood among the parties hereto, that nothing contained herein shall affect the authority of any party to commit federal funds as provided by law; and
- N. Whereas, the protection, curation and ultimate disposition of archeological and historical resources (hereafter collectively resources) located within the LRMA is an important responsibility under this Agreement; and in several areas, investigation or preservation activities have occurred in the past but conditions have since changed; and the parties recognize it is important to learn more about these resources; and
- O. Whereas, there exists a dispute on the extent of the Spokane Indian Reservation on the Spokane River Arm of Lake Roosevelt; and whereas, nothing in this Agreement shall be interpreted to affect that issue; and
- P. Whereas, the Secretary of the Interior has a trust duty to tribes and has an obligation to exercise his/her authority consistent with statutory responsibilities and that trust duty, and to interact with tribes on a government-to-government basis.

NOW THEREFORE, the parties hereto, hereby mutually agree as follows:

## II. AUTHORITY

1. This Agreement is entered into by the Department of the Interior pursuant to the authority of the Act of August 30,

1935, 49 Stat. 1028, 1039, the Act of March 10, 1943, 57 Stat. 14, 43 U.S.C. §§ 373, 485i (1982). Nothing in this Agreement shall be construed to modify or annul the Secretary's authority under these Acts.

2. The Confederated Tribes of the Colville Reservation has authority to enter into this Agreement pursuant to Article V, Section 1, Part (a) of the Colville Constitution, adopted February 26, 1938, and approved by the Secretary on April 19, 1938.
3. The Spokane Tribe has authority to enter into this Agreement pursuant to Article VIII of the Spokane Tribal Constitution, adopted June 27, 1951, as amended.

### III. PURPOSE

The purpose of this Agreement is to allow the parties to coordinate the management of the Lake Roosevelt Management Area (hereinafter referred to as LRMA), and to plan and develop facilities and activities on Lake Roosevelt and its freeboard lands. The parties acknowledge and recognize management of the LRMA is subject to the right of the Bureau of Reclamation to accomplish the purposes of the Columbia Basin Project.

### IV. GENERAL PROVISIONS

#### A. Parties:

The parties to this Agreement shall include as governmental parties the National Park Service (NPS), the Bureau of Reclamation (Reclamation), the Bureau of Indian Affairs (BIA), the Confederated Tribes of the Colville Reservation (Colville Tribes), and the Spokane Indian Tribe (Spokane Tribe). Unless the context of the Agreement requires otherwise, the Colville and Spokane tribes shall be referred to collectively as "tribes."

#### B. Area Subject to Agreement:

This Agreement shall cover the management of the LRMA as depicted in Exhibit 1 attached hereto. The LRMA includes Grand Coulee Dam and its appurtenances on Lake Roosevelt, the surface area of Lake Roosevelt up to elevation 1290 msl

(hereinafter Lake area) and all freeboard lands surrounding Lake Roosevelt above elevation 1290 msl owned by or used by the United States pursuant to any agreement for purposes of the Columbia Basin Project.

C. Management Zones:

For the purpose of coordinating the management of the LRMA, and for allocating the appropriate use of resources available in and around Lake Roosevelt, three management zones shall be established.

1. Reclamation Zone: That part of the LRMA surrounding Grand Coulee Dam as set out in Exhibit 1 and marked in blue.
2. Recreation Zone: That part of the LRMA lying outside of the Reclamation and Reservation Zones as set out in Exhibit 1 and marked in green.
3. Reservation Zone: That part of the LRMA lying within the boundaries of the Colville Indian Reservation or Spokane Indian Reservation all as set out in Exhibit 1 and marked in orange. Provided, that for purposes of management only, in those areas where the Colville Indian Reservation and Spokane Indian Reservation lie across from each other and on the Spokane River arm, there shall be a right of navigational passage. This right shall be defined as the right to pass through that portion of the Reservation Zone defined in this Part to a destination point outside that portion of the Reservation Zone.

D. Management and Regulation of the LRMA:

The parties to this Agreement agree that the management and regulation of the LRMA set out below are not intended to nor shall they interfere with or be inconsistent with the purposes for which the Columbia Basin Project was established, is operated and maintained; those purposes being primarily flood control, improved navigation, streamflow regulation, providing for storage and for the delivery of stored waters thereof for the reclamation of public and private lands and Indian reservations, for the generation of electrical power and for other beneficial uses, nor is it intended to modify or alter any obligations

or authority of the parties. Consistent with the above statement, the management and regulation of the LRMA shall be as follows:

1. Reclamation shall have exclusive operational control of the flow and utilization of water at the Grand Coulee Dam and Project facilities operated by Reclamation, and of all access to the Grand Coulee Dam and Project facilities operated by Reclamation; and complete and exclusive jurisdiction within the Reclamation Zone, including authority over and responsibility for the Grand Coulee Dam and Project facilities operated by Reclamation, and such project lands adjacent thereto as the Commissioner of Reclamation with the approval of the Secretary determines to be necessary for Project purposes. Provided, that the parties shall retain the right to take any action otherwise available to challenge any action undertaken by Reclamation under the authority recognized under this Part, including but not limited to action dealing with irrigation, lake level, flows, and storage.
2. NPS shall manage, plan and regulate all activities, development, and uses that take place in the Recreation Zone in accordance with applicable provisions of federal law and subject to the statutory authorities of Reclamation, and consistent with the provisions of this Agreement subject to Reclamation's right to make use of the Recreation Zone as required to carry out the purposes of the Columbia Basin Project.
3. The tribes shall manage as follows:
  - a. The Colville Tribes shall manage, plan and regulate all activities, development and uses that take place within that portion of the Reservation Zone within the Colville Reservation in accordance with applicable provisions of federal and tribal law, and subject to the statutory authorities of Reclamation, and consistent with the provisions of this Agreement subject to Reclamation's right to make use of such areas of the Reservation Zone as required to carry out the purposes of the Columbia Basin Project.

- b. The Spokane Tribe shall manage, plan and regulate all activities, development, and uses that take place within that portion of the Reservation Zone within the Spokane Reservation in accordance with applicable provisions of federal and tribal law, and subject to the statutory authorities of Reclamation, and consistent with the provisions of this Agreement subject to Reclamation's right to make use of such areas of the Reservation Zone as required to carry out the purposes of the Columbia Basin Project.
  - c. In those portions of the Reservation Zone where the Colville Indian Reservation and Spokane Reservation abut, the tribes shall determine as between themselves the allocation of management responsibility.
4. The BIA shall assist the tribes in carrying out the tribes' management of the Reservation Zone, and undertake such other activities as are authorized by law in support of the tribes.

E. Coordination of LRMA.

- 1. Each party to this Agreement shall designate a representative who will meet periodically with representatives of the other parties to coordinate the independent management of each within the LRMA, consistent with this Agreement.
- 2. The Parties shall:
  - a. Review, coordinate, communicate and standardize the management plans, regulations and policies developed by the tribes and NPS for their respective management areas to manage and regulate (1) recreation activities, (2) commercial and private development, including major new or significantly expanded development, and (3) the protection of the environment of the LRMA, all consistent with the special interests identified by the parties for their respective management areas, to the extent possible.

- b. Develop a method to incorporate the plans developed by the tribes and NPS to provide to the extent practicable uniform management in the LRMA. Implementation of such plans shall be carried out consistent with the purposes of the Columbia Basin Project.
  - c. Review, coordinate, communicate and standardize use permits within the LRMA to the extent practicable, taking into account the cultural and religious interests of the tribes and other parties, and the need to have the standards uniformly applicable in the LRMA.
  - d. Monitor, once per year, compliance with this Agreement.
  - e. Involve and receive the comments from other interested state, local, county or regional governmental entities and private individuals, or citizen groups or entities with respect to activities related to the management of the LRMA.
  - f. Coordinate the development of annual operating budgets and proposals for funding.
  - g. Undertake such other Lake Roosevelt activities that the Parties agree to undertake consistent with applicable law.
3. Dispute Resolution Process:
- a. Any party to this Agreement that is aggrieved by any action of another party related to this Agreement, or the failure of a party to act consistent with this Agreement may request that the issue be resolved under this part.
  - b. Any party shall prior to initiating any procedure under Part c of this Part, request: (1) a meeting of all Area/Regional Directors and tribal council representatives, to see if the problem can be resolved, and (2) if the process under Part (1) of this subpart is not successful any party may request that officials of the next higher level of BIA, NPS and Reclamation and area/regional

Directors meet with tribal council representatives to consider the issue and attempt to resolve it.

- c. The aggrieved party or parties may request that a mediator be appointed to help resolve the issue. The parties shall agree on a mediator, or in the absence of agreement, the presiding Judge of the United States District Court for the Eastern District of Washington shall be requested to appoint a mediator. The parties shall develop procedures to insure that mediation is expeditious.
- d. The dispute resolution process set out in this part shall be in addition to any other rights of a party to seek enforcement or interpretation of this Agreement.

F. Funding:

1. All parties shall cooperate in the development of all budget components and cost data and in the sharing of the necessary technical information so that each party can make realistic budget estimates necessary for that party to adequately manage the LRMA.
2. Each party to the Agreement shall seek funding for its share of this Agreement. The Superintendent of the Coulee Dam National Recreation Area, the Project Manager of Grand Coulee Dam and the Colville and Spokane Agency Superintendents of the Bureau of Indian Affairs will make a good faith effort to request funds needed by them to manage the LRMA. The BIA agency superintendents shall request funds needed by the tribes to adequately carry out their management responsibilities as identified under this Agreement. These requests shall only be developed and proposed consistent with and subject to budgetary practices and procedures of the United States, including, but not limited to the direction and policies of the President, OMB, and the Secretary of the Interior. Except as required under this paragraph or applicable law, parties to this Agreement shall support the need to provide adequate funding to the tribes to allow the tribes to carry out their responsibilities under this Agreement.

3. Upon approval of the requests for submission to the Congress as part of the President's budget, each party shall to the extent practicable, identify these funds in their respective congressional justifications and continue to support their own and each other's funding requests when testifying before Congress to the extent that such requirements are identified in the President's budget.
4. This Agreement shall not create an obligation on the part of any party hereto to expend funds that have not been lawfully appropriated by Congress or the Colville or Spokane tribes. The failure to take action otherwise required because funds were not appropriated shall not constitute a breach of this Agreement.
5. Nothing in this part shall prohibit or limit the right of the tribes to independently seek funding from whatever source is available to carry out their management and regulation within the Reservation Zone.
6. To the extent allowed by law, and consistent with the activity being undertaken and the terms of the Agreement, if additional funds from sources other than congressional appropriation become available to Reclamation, NPS or the BIA for purposes of undertaking any activity addressed by this Agreement, the agencies shall attempt to assure an equitable portion of those funds will be available to the tribes for compliance with this Agreement.
7. When the BIA submits its proposed budget it shall specifically identify for the Colville and Spokane tribes funds to cover the Lake Roosevelt Management Agreement.
8. Funding for the curation of any Indian resources transferred to the Colville and Spokane tribes will be included in the tribes' budget for management of LRMA unless other means become available for curation.

G. Coordination of Recreation:

1. The NPS and tribes shall coordinate their respective activities to the end that in the implementation of

their independent management and regulation of the LRMA they achieve to the extent practicable, a uniform system of recreation management including law enforcement throughout the LRMA taking into account the special needs or circumstances identified by the tribes or the NPS within the Reservation or Recreation Zones, respectively.

2. The NPS and tribes shall develop and implement a procedure that informs the recreating public of all facilities, resources, and concessions located within the LRMA, and the limitations on their use, and further informs the recreating public of the rules applicable in the various Management Areas of the LRMA, including anti-pollution rules.
3. The NPS and tribes shall work with Reclamation in the development of any recreation management or resource plans for the LRMA consistent with Federal law.

H. Development and Utilization of Resources:

1. The tribes shall retain within those parts of the Reservation Zone within their respective reservations the right to beneficially develop and utilize the natural resources and to develop economic enterprises that are compatible within the character of the LRMA, subject to federal statutory requirements. Use of the freeboard lands as allowed under this subpart H.1. shall be with the permission of the United States, which shall not be unreasonably withheld.
2. Should operations of the Columbia Basin Project cause damage to the natural resources on the freeboard lands within the Reservation Zone for which mitigation is required by law, the mitigation shall take place on the Reservation within which the damage took place to the extent practicable. Nothing in this part shall relieve any party from liability for past impacts to the natural resources of any party on either the Colville or Spokane Reservations.

I. Reservation of Rights:

This Agreement shall not be construed as waiving any rights the parties have under any applicable Act of Congress,

Executive Order, treaty, regulation, court decision or other authority.

J. Protection and Retention of Historical, Cultural and Archaeological Resources:

1. The parties to this Agreement shall prepare a Cultural Resources Management Plan that provides for the identification, and protection of Indian archaeological and historical resources (as identified in 16 U.S.C. 470bb(1), and 16 U.S.C. § 470w(5) (hereafter Indian Resources) located within the LRMA, and a procedure for the most expeditious transfer of title and return to the tribes of Indian Resources removed from the LRMA by the United States or with the United States' authority and which are within the United States' possession or under its control, consistent with the tribes' ability to properly curate or provide for the curation of the Indian Resources as required by law.
2. The Cultural Resources Plan shall contain provisions requiring the Federal parties to notify and consult with the tribes during the planning process and prior to authorizing or undertaking any survey, monitoring, or removal of Indian Resources from the LRMA, and shall provide an opportunity for the tribes to participate in, or if consistent with the activity to undertake any such activity.

K. Duty to Comply:

It shall be a violation of this Agreement for any party to take any action or authorize any other person or entity to take any action that is inconsistent with or in violation of the terms and conditions of this Agreement, or to fail to take any action otherwise required by this Agreement.

V. MISCELLANEOUS PROVISIONS

A. Effective Date:

This Agreement shall become effective on the date it is approved by the Secretary of the Interior.

B. Modification of Agreement:

This Agreement may be modified only in writing, signed by all the parties and approved by the Secretary.

C. Termination:

This Agreement shall remain in effect until terminated by the Secretary of the Interior. Any party may request that the Secretary terminate this Agreement. Within 30 days of the receipt of a request to terminate, the Secretary shall establish a mechanism to assist the parties to the Agreement in reconciling differences under this Agreement or to negotiate a new Agreement. The Secretary shall terminate this Agreement 180 days after the mechanism required under this part is established if no agreement between the parties is reached.

D. Judicial Enforcement:

Without regard to any other dispute resolution process set out in this Agreement, any party may seek review of any provision of this Agreement to determine the rights or obligations of the parties under this Agreement or to seek judicial enforcement of any provision of this Agreement or of a party's failure to carry out any duty provided for under this Agreement. Nothing in this Agreement shall be interpreted or construed as a limitation upon any party's right to seek judicial or administrative enforcement or review of any matter based upon treaty, Federal or state law or Executive Order, or to take any other action allowed by law.

E. Implementation of Agreement:

1. The tribes and the NPS shall independently exercise their individual and separate management and regulation of the Reservation and Recreation Zones respectively, consistent with the consultation and coordination responsibilities set out in this Agreement, and consistent with the legislated purposes of the Columbia Basin Project and applicable Reclamation Law.
2. Reclamation, in exercising its statutory oversight authority in the LRMA, shall not interfere with the management and regulation of the tribes or NPS as set

out in Part IV.D of this Agreement except where the actions of either the tribes, the NPS, or both are inconsistent with the legislated purposes of the Columbia Basin Project or interfere with the ability of Reclamation to carry out its legislated responsibility for the Columbia Basin Project.

F. Visitor Center:

Reclamation shall work with the tribes and NPS to incorporate their suggestions into the development of an interpretive program to the extent of available resources, for changes to the visitor's presentations. The resulting program should depict the purpose and operation of the Columbia Basin Project, the Indian history, government, and culture of the area, the impact of the Columbia Basin Project on the tribes, and the available recreational resources and benefits. This may include the display and distribution of literature/information applicable to the LRMA.

G. Contracting:

There are or may be activities carried out by contract by the Federal parties that take place within the LRMA under this Agreement that could be contracted by the tribes. The Federal parties will provide notice to the tribes of all contracting opportunities within the LRMA and will coordinate on contracting options, which may be available to tribes, either directly or through another Federal agency, within the LRMA, prior to the obligation of appropriated funds consistent with their statutory authorities. The parties to this Agreement shall use their best efforts to contract with the tribes consistent with the continued execution of their agency directed duties, to the extent allowed by statutory authority. Likewise, there may be opportunities for the tribes to contract for services or

facilities with the other parties. Nothing in this Part shall limit a party from utilizing bidding procedures.

APPROVED:

APR 20 1990

DATED: APR 20 1990

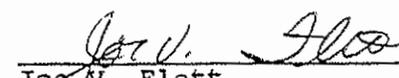
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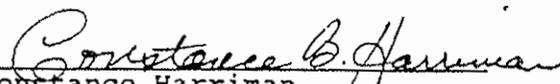
  
Jude C. Stensgar  
Chairperson  
Colville Business Council

  
John M. Sayre  
Assistant Secretary for  
Water and Science

DATED: APR 20 1990

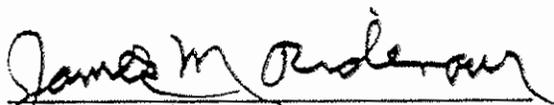
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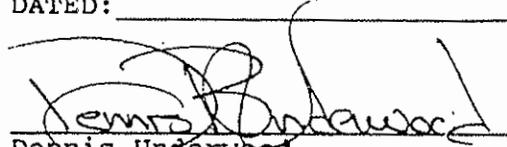
  
Joe N. Flett  
Chairperson  
Spokane Indian Tribe

  
Constance B. Harriman  
Assistant Secretary for  
Fish, Wildlife and Parks

DATED: APR 10 1990

DATED: \_\_\_\_\_

  
James M. Ridenour  
Director  
National Park Service

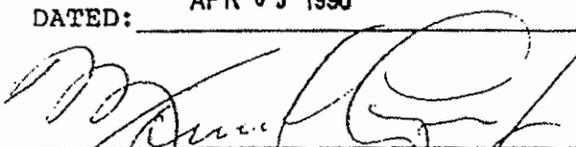
  
Dennis Underwood  
Commissioner  
Bureau of Reclamation

APR 20 1990

DATED: APR 2 1990

  
Eddie F. Brown  
Assistant Secretary for the  
Bureau of Indian Affairs

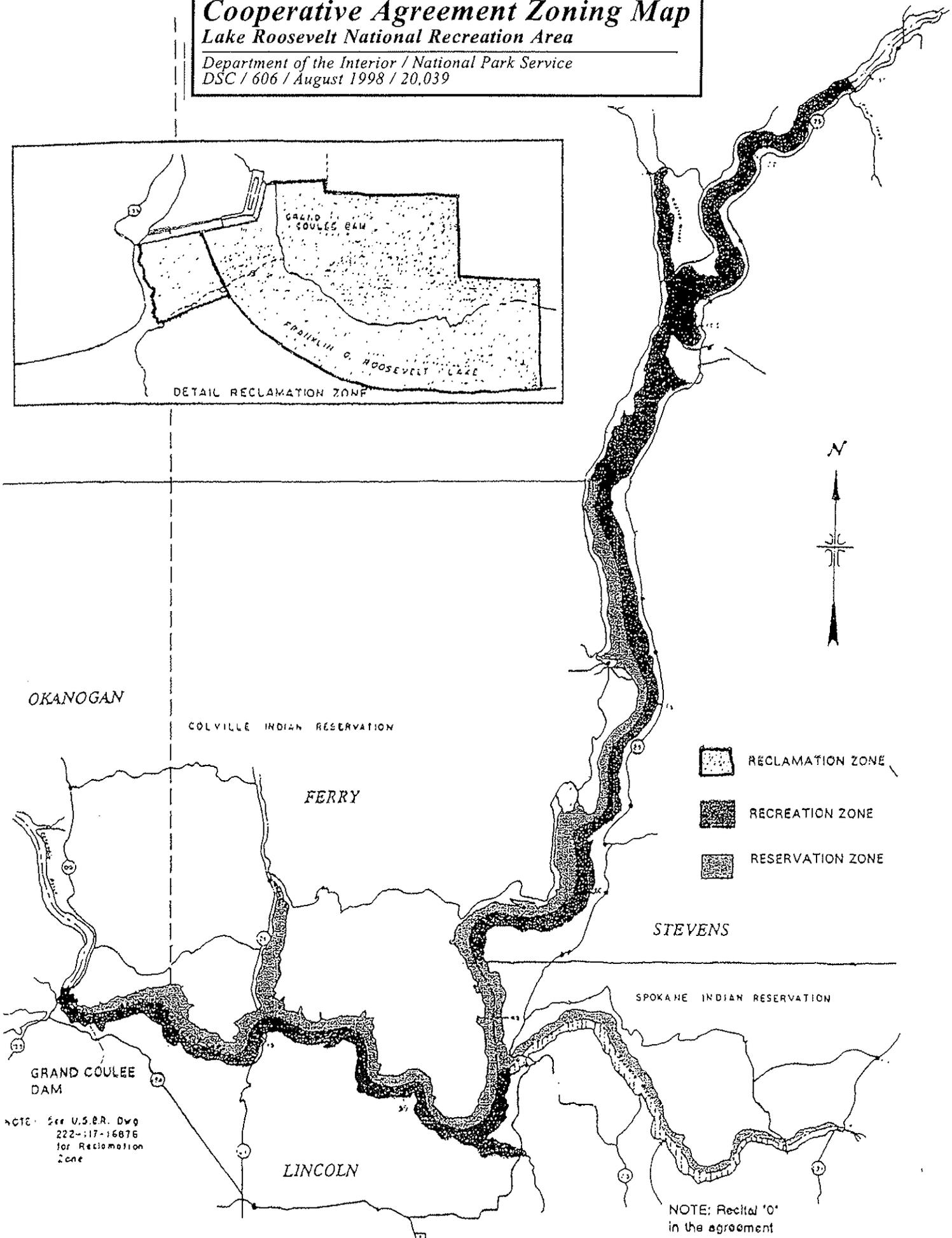
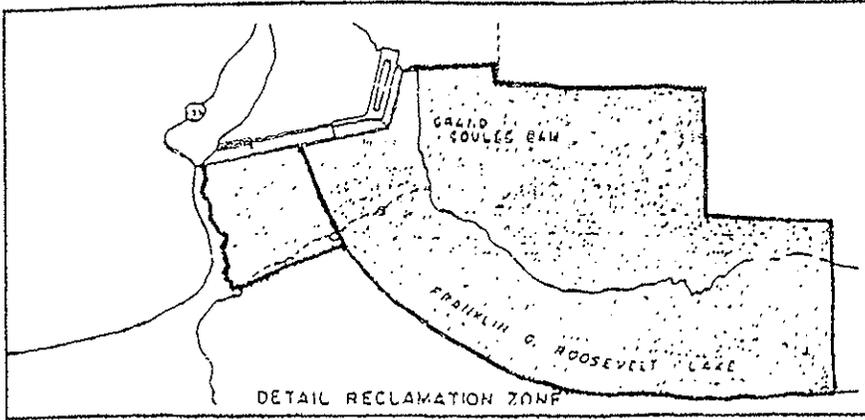
DATED: APR 05 1990

  
Manuel Iujan, Jr., Secretary  
Department of Interior

# Cooperative Agreement Zoning Map

## Lake Roosevelt National Recreation Area

Department of the Interior / National Park Service  
DSC / 606 / August 1998 / 20,039



NOTE: See U.S.B.R. Dwg  
222-17-16876  
for Reclamation  
Zone

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401

ATTACHMENT L

CHAPTER 4-5 ON-SITE WASTEWATER TREATMENT AND DISPOSAL

**4-5-1 Findings**

Construction and utilization of on-site wastewater treatment and disposal systems, also known as septic tank systems, affect water quality on the Colville Indian Reservation. The economy, health, safety and welfare of the people residing and doing business within the Colville Indian Reservation are affected by the construction and utilization of on-site wastewater treatment and disposal systems servicing both Indian and non-Indian people on trust and fee land within the Colville Reservation. Inadequate treatment and disposal of wastewater can contaminate and degrade water resources on which many people depend for domestic, agricultural, industrial, business, recreational and other uses. The existence of shallow groundwater, unacceptable soil percolation rates, steep slopes, shallow bedrock, silt and clay strata throughout much of the Colville Reservation together with anticipated population growth and business development on the Reservation require uniform planning, standards and permitting procedures in order to protect the quality of Reservation waters for current and future intended uses. The Colville Confederated Tribes have jurisdiction to enforce uniform on-site wastewater treatment and disposal system planning, standards and permitting procedures throughout the Colville Reservation in order to protect the economy, health, safety, and welfare of the Reservation population.

**4-5-2 Territory Covered**

The provisions of this Chapter, to be known as the On-Site Wastewater Treatment and Disposal System Chapter, shall apply to all territory and waters of the Colville Indian Reservation. Every residence, place of business, other building or other place where persons congregate, reside, or are employed, in which plumbing fixtures are installed and to which a public sewer or other wastewater treatment and disposal system is not available and connected, shall be provided with an on-site sewage disposal system which shall be constructed, operated and maintained in accordance with this Chapter.

**4-5-3 Administration**

The Water Quality Department of the Colville Confederated Tribes shall administer this Chapter. Fees may be charged for permits and administration services provided under this Chapter in accordance with a Fee Schedule proposed by the Water Quality Department and adopted by the Tribal Council.

(Amended 4/6/06, Certified 4/10/06, Resolution 2006-173)

**4-5-4 Definitions**

For the purpose of this Chapter the following words and phrases shall have the meanings ascribed to them in this section.

(a) "Alternative system" means any on-site sewage system consisting of treatment and/or disposal components other than a septic tank and subsurface soil absorption system (SSAS).

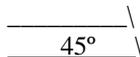
(b) "Approved" means acceptable by the Engineer and/or Department as stated in writing

(c) "Bed" means a soil dispersal component consisting of an excavation with a width greater than three feet.  
(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(d) "Cover" means soil placed over a subsurface disposal area composed predominately of mineral material with no greater than ten percent organic content. Cover material may contain an organic surface layer for establishing a vegetative landscape to reduce soil erosion.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(e) "Cuts and/or banks" means any naturally occurring or man formed slope which is greater than 100% (45°) and extends vertically at least five feet from the toe of the slope to the top of the slope as follows:



(f) "Department" means the Colville Confederated Tribes Water Quality Department.

(Amended 4/6/06, Certified 4/10/06, Resolution 2006-173)

(g) "Design Manual" or "EPA Design Manual" means the document entitled "Onsite Wastewater Treatment System Manual," published by the U.S. Environmental Protection Agency, Report No. EPA/625/R-00/008 (February 2002) as subsequently revised or modified.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(h) "Design flow" means the maximum volume of sewage a residence, structure, or other facility is estimated to generate in a twenty-four hour period. It incorporates both an operating capacity and a surge capacity for the system during periodic heavy use events. The sizing and design of the on-site sewage system components are based on the design flow.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(i) "Drainrock" means clean washed gravel or crushed rock used in a SSAS ranging in size from three-quarters inch to two and one-half inches, and containing no more than two percent by weight passing a US No. 8 sieve and no more than one percent by weight passing a US No. 200 sieve.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(j) "Experimental system" means alternative on-site system for which guidelines have not yet been established by the Water Quality Department.

(Amended 4/6/06, Certified 4/10/06, Resolution 2006-173)

(k) "Expansion" means a change in a residence, facility, site, or use that:

- 1) Causes the sewage quantity or quality to exceed the existing design flow of the on-site system, for example, when a residence is increased from two to three bedrooms or a change in use from an office to a restaurant; or
- 2) Reduces the treatment or dispersal capability of the existing on-site sewage system or the reserve area, for example, when a building is placed over a reserve area.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(l) "Extremely gravelly" means soil with sixty percent or more, but less than ninety percent rock fragments by volume.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(m) "Failure" means a condition of an on-site sewage system or component that threatens the public health by inadequately treating sewage or by creating a potential for direct or indirect contact between sewage and the public. Examples of failure include:

- 1) Sewage on the surface of the ground;
- 2) Sewage backing up into a structure caused by slow soil absorption of septic tank effluent;
- 3) Sewage leaking from a sewage tank, pump chamber, holding tank, collection system, or any other integrated component;
- 4) Cesspools or seepage pits where evidence of ground water or surface water quality degradation exists;
- 5) Inadequately treated effluent contaminating ground water or surface water.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(n) Noncompliance with standards stipulated on the permit.

(o) "Geotextile" means a fabric barrier material covering the gravel trench or bed. The fabric shall be spun-bound (non-woven), free of any chemical treatment or coating which reduces permeability, inert to

chemicals commonly found in soil, free of petroleum products, and have a fabric weight of three to four ounces per square yard, or an apparent opening size (AOS) of 0.212 to 0.300 millimeters.  
(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(p) "Gravelly" means soils with fifteen percent or more, but less than thirty-five percent rock fragments by volume.  
(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(q) Gravity system" means an on-site sewage system consisting of a septic tank and a subsurface soil absorption system with gravity distribution of the effluent.  
(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(r) "Gray water" means sewage from bathtubs, showers, bathroom sinks, washing machines, dishwashers, and kitchen sinks. It includes sewage from any source in a residence or structure that has not come into contact with toilet wastes.  
(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(s) "Groundwater" means subsurface water occupying the zone of saturation, permanently or seasonally (the top surface of which is commonly referred to as the water table), the indication of which may be demonstrated by one or all of the following methods:

- 1) Water seeping into or standing in an open excavation from the soil surrounding the excavation.
- 2) Spots or blotches of different shades of color interspersed with a dominant color in soil, commonly referred to as mottling. This is caused by an intermittent period of saturation and drying and may be indicative of poor aeration and impeded drainage.

(t) "Industrial wastewater" means the water or liquid carried waste from an industrial process. These wastes may result from any process or activity of industry, manufacture, trade or business, from the development of any natural resource, or from animal operations such as feedlots, poultry houses, or dairies. The term includes contaminated storm water and leachate from solid waste facilities.  
(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(u) "Larger on-site sewage system" (LOSS) means any on-site sewage system with design flows, at any common point, greater than 3,500 gallons per day.  
(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(v) "Oils and grease" (formerly referred to as FOG) means oil and grease, a component of sewage typically originating from food stuffs (animal fats or vegetable oils) or consisting of compounds of alcohol or glycerol with fatty acids (soaps and lotions), typically expressed in mg/L.  
(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(x) "On-site sewage system" means any system of piping, treatment devices, or other facilities that convey, store, treat, or dispose of sewage on property where it originates or on adjacent or nearby property under the control of the user where the system is not connected to a public system.

(y) "Ordinary high water mark" means the mark on all lakes, streams, and river waters which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on the effective date of this regulation or as it may naturally change thereafter; Provided, that in any area where the ordinary high water mark shall be the line to mean high water.

(z) "Percolation test" means a soil test performed according to accepted engineering standards and otherwise in accordance with this Chapter at the depth of the bottom of a proposed soil absorption system to estimate the water absorption capability of the soil. The results are normally expressed at the rate in minutes in which one inch of water is absorbed.

(aa) "Person" means any individual, association of individuals, partnership, private, public, tribal or municipal corporation, tribal enterprise, company, business enterprise, or any tribal, federal, state, or local government or governmental entity or enterprise.

(bb) "Proprietary device or method" means any device or method classified as an alternative system or component thereof that is held under a patent, trademark, or copyright.

(cc) "Public sewer system" means a sewage system which is owned or operated by the Colville Confederated Tribes, by the federal government, by the State of Washington or any subdivision thereof, or any other approved ownership consisting of a collection system and necessary trunks, pumping facilities and a means of final treatment and disposal.

(dd) "Repair" means the replacement, addition, alteration or installation of one or more components of a system necessary to eliminate an existing or potential health hazard to the Reservation population or pollution or other damage to the waters of the Reservation or the Reservation environment, which may be caused by either a failure or inadequate system.

(ee) "Reserve area" means an area of land approved for the installation of a conforming system that is protected and maintained for replacement of the OSS upon its failure.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(ff) "Resident Owner" means the property owner of record who is or will be the resident or occupant of the single family residence for a minimum of six consecutive months or other individual approved by the health officer.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(gg) "Residential sewage" means sewage having the constituency and strength typical of wastewater from domestic households.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(hh) "Restrictive layer" means a layer that impedes the movement of water, air, and growth of plant roots. Examples of such layers or conditions are groundwater tables, hardpans, claypans, fragipans, and compacted soil.

(ii) "Septic tank" means watertight pretreatment receptacle which receives the discharge of sewage from a building sewer or sewers and is designed and constructed so as to permit separation of settleable and floating solids from the liquid, detention and digestion of the organic matter, prior to discharge of the liquid portion.

(jj) "Sewage" means the water-carried human or domestic waste from residences, buildings, industrial establishments or other facilities, together with such groundwater infiltration that may be present.

(kk) "Sieve test" means a laboratory test for identifying soil texture and type by quantification of soil particles less than 2 mm. in diameter.

(ll) "Soil log" means an excavation in soil of sufficient size and depth made to allow adequate determinations of the soil's texture, structure, color, bulk density or compaction, water absorption capabilities or permeability, and/or any other characteristics providing information as to the soil's capacity to act as an acceptable treatment and disposal medium for sewage.

(mm) "Subdivision" means a division of land, as defined in the Land Use Chapter under the Colville Law and Order Code, now or as hereafter amended.

(nn) "SSAS" or "Subsurface Soil Absorption System" means a system consisting of trenches (three feet or less in width) or beds (more than three feet in width), together with the piping and gravel, designed and installed in original undisturbed soil for the purpose of receiving effluent from a septic tank or other

pretreatment device and transmitting it into the soil.

(oo) "Surface water" means any body of water, which either flows or is contained in natural or artificial depressions for significant periods of the year, such as, but not limited to, natural and artificial lakes, ponds, unlined canals, rivers, streams, swamps, and marshes.

(pp) "Type 1 Soil" means soil with a texture as noted in Table I-A, section 4-5-15 or other soils where conditions are such that the treatment potential is ineffective in retaining and/or removing substances of public health significance to underground sources of drinking water.

(qq) "Vertical separation" means a depth of unsaturated soil that exists between the bottom of an SSAS and a restrictive layer or water table.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(rr) "Very gravelly" means soil containing thirty-five percent or more, but less than sixty percent rock fragments by volume.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(ss) "Waters of the Reservation" means all lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface water, groundwater and watercourses located within the Colville Indian Reservation.

(tt) All words not define herein shall be defined as commonly utilized in the EPA Design Manual and or Northeast Tri County Health District On-site Sewage Systems Regulation 01-2007.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

#### **4-5-5 Scope**

(a) No person shall occupy any building, dwelling, or other place of habitation unless adequate and sanitary facilities for the disposal of sewage shall have been provided therefore in conformance with the provisions of this Chapter.

(b) Every building in which plumbing fixtures are installed and all premises having drainage piping therein and being located where no public sewer is available, shall be connected to an approved sewage disposal system.

(c) No person shall construct, alter, repair, or extend, or cause to be constructed, altered, or extended, any on-site sewage disposal system contrary to the provisions of this Chapter.

#### **4-5-6 Applicability**

This Chapter shall apply to all on-site sewage systems within the Colville Indian Reservation. Construction permits or other comparable approvals issued by the Indian Health Service, the Colville Confederated Tribes, Okanogan or Ferry Counties or the municipalities of Inchelium, Omak, Okanogan, Nespelem, Elmer City or Coulee Dam prior to the effective date of this Chapter are valid under this Chapter, Provided that this Chapter shall apply where its provisions are more stringent.

#### **4-5-7 Experimental Systems**

(a) Systems listed on the Washington State Department of Health List of Registered On-site Treatment and Distribution Products are considered experimental except for public domain technology with a Recommended Standards and Guidance Document, composting toilets, incinerating toilets, and gravelless chamber products.,

(b) If supportive theory and/or applied research exists, a limited number of specific experimental systems may be permitted. Prior to the installation of such a system, an experimental system permit shall be obtained from the Department. Costs for monitoring and reporting shall be included as part of the experimental system permit fee. The Department in its discretion may establish reporting requirements and a bond for system performance.

(c) The use of an experimental system may be considered when:

(1) The experimental system proposed is attempting to correct a failing system and other conventional or alternative systems are not economically feasible.

(2) The experimental system proposed is for new construction where it has been determined that an on-site sewage system meeting the requirement of this Chapter and regulations could be installed in the event of failure of the experiment. A recorded agreement shall exist stating that in the event of unsatisfactory performance or a failure to adequately monitor the system and submit the records to the Department, the Department may direct that use of the experimental system be discontinued and a new system meeting the requirements of this Chapter be installed at the earliest reasonable time considering the health effects.

(d) The Department shall require monitoring of the performance of experimental systems in a manner and with a frequency as established by the conditional permit, and the costs of such monitoring shall be borne by the applicant.

(e) Financial guarantees of installation and bonding may be required in the discretion of the Department as a condition of permitting for alternative larger and experimental systems.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

**4-5-8 Maintenance**

On-site sewage disposal systems shall be maintained in a manner to ensure compliance with this Chapter, including but not limited to section 4-5-19.

**4-5-9 No Discharge to Waters or Ground Surface**

Untreated waste or effluent from any on-site sewage disposal system shall not be discharged to surface water or upon the surface of the ground or to groundwater by any means, including but not limited to underground injection, unless guidelines allowing such use have been developed and approved by the Department.

**4-5-10 Connection to Public Sewer System**

Connection of any existing dwelling unit or other premises with a failing on-site sewage system shall be made to a public sewer system where there is an adequate public sewer system within two hundred (200) feet of the dwelling or other facility to be served as measured along the usual or most feasible route of access, and such connection is permitted by the sewer utility. As a condition to such connection, pretreatment of such effluent may be required by the Department in compliance with tribal or federal law.

This requirement may be waived if such waiver is consistent with local sewer district regulations and the Department determines that adequate site conditions exist which allow the installation of a replacement on-site sewage system.

**4-5-11 Larger On-Site Sewage Systems**

In cases where the maximum design flow of any on-site disposal system is greater than 3,500 gallons per day, review and approval of plans shall be conducted in substantial compliance with this code and the following additional requirements:

(a) Designed by a Professional Engineer.

(b) Pressure distribution shall be used for effluent distribution.

(c) 36-inch of vertical separation under the SSAS is required.

(d) SSAS shall be constructed with 100 percent of the required SSAS sizing and 50 percent of the required reserve size. The SSAS shall be capable of alternate operation.

- (e) Effluent characteristics to the SSAS system shall be of residential characteristics.
- (f) Septic tanks shall be sized for two times the design daily flow.
- (g) LOSS or onsite systems shall not be utilized for the treatment of industrial wastewater
- (h) LOSS shall not allow the Water Quality Standards to be exceeded in accordance with the Section 4-8 Colville Tribe Codes.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

**4-5-12 Permits**

(a) It is unlawful to construct, install, repair, modify, or alter an on-site sewage disposal system without an on-site sewage disposal permit. The Department may require recertification of existing systems for use with new construction, remodeling or expansion.

(b) On-site disposal permits may be issued to the owner of the property on which the on-site sewage disposal system is built and shall transfer automatically with transfers of ownership of the affected lands.

(c) The Department shall establish a fee for issuance of an on-site sewage disposal permit or other matters. Such fee schedule shall be presented to the Colville Tribal Council for adoption.

(d) Applications for an on-site sewage disposal permit shall be made to the Department, which may deny the application if it finds that the physical features of the property on which it is proposed to locate the system, or the design of the system, may not adequately protect the health and welfare of the Reservation population or the environmental quality of Reservation waters.

(e) The fee for application review shall be stated in the Department's fee schedule.

(f) Applications for an on-site sewage disposal system permit shall be on a form approved by the Department and shall require at least the following:

- (1) Name, address and telephone number of the applicant site owner and builder;
- (2) Legal description of site and lot size;
- (3) Type of facility to be served (including number of bedrooms if a dwelling);
- (4) Preconstruction diagram depicting the location of structures and distance of proposed system to water supplies, surface water, banks, cuts, property lines, structures, and other improvements within two hundred and fifty (250) feet of the proposed system;
- (5) General topography of site;
- (6) Source of potable water;
- (7) Soil information describing nature and depths of soils and site constraints such as shallow bedrock, shallow soil, depth of groundwater at its highest point;
- (8) Percolation test date during periods of highest soil saturation;
- (9) Maximum design flow in gallons per day and if commercial operations, then the expected effluent characteristics;
- (10) Size of septic tank (length, width, depth and number of compartments) and location;
- (11) Location, length, depth of disposal system and field;

(12) Dates of commencement and completion of system construction;

(13) Approximate date for inspection of system in place but before it is covered.

(g) Permits for the construction of an on-site sewage disposal system shall expire one year after the date issued unless the Department has approved the system for operation.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

**4-5-13 Inspections**

(a) All construction done and materials used in on-site sewage disposal systems shall be subject to inspection by the Department at reasonable times in order to determine compliance with this Chapter. It shall be unlawful and it is declared to be a public nuisance endangering the health, safety, welfare and economy of the people of the Colville Reservation to use any system until use of that system has been approved by the Department. The date of permit approval shall appear on the approved permit.

(b) At the time of final inspection, septic tank construction shall be completed and its cover removable so that it inside sections may be inspected, and the absorption trenches or beds must be completed except for backfilling and if any part of the work is covered before it is inspected or approved, the Department may order the system uncovered.

(c) It shall be the duty of the installer or owner to notify the Engineer on completion of the construction and to request an inspection. The Department shall, within five (5) working days or receiving notice, make a final inspection.

(d) If the Department finds the work, material, design or location of the on-site sewage disposal system not to be in compliance with this Chapter and regulations, the Department shall set forth the deficiencies in writing. If the deficiencies are not corrected within the time requested by the Department, the permit shall be revoked and the system's use prohibited as a public nuisance endangering the health, safety or welfare of the population of the Colville Reservation.

(e) The Department may delegate inspection responsibilities through a memorandum of understanding to qualified employees of the Public Health Departments of Okanogan and Ferry Counties or other appropriate public or private representatives.

(f) The Department shall use criteria set forth in the EPA Design Manual and other standard references which the Business Council may adopt as rules to further implementation of this Chapter.

(g) The Department may issue a notice to comply, a stop work order, or revoke a permit when it finds that any provision of this Chapter or any provision of a permit issued pursuant to this Chapter is being violated.

**4-5-14 Minimum Lot Sizes For Subdivisions**

(a) For any development approved after January 31, 1985, including but not limited to subdivisions, mobile home parks, multi-family housing, and commercial establishments where an on-site sewage system is proposed, the minimum land area requirements set forth in Table I shall be used.

**Table I  
SOIL TYPE AND LOT SIZE  
SOIL TYPES\***

Soil Type	1	2	3	4	5	6
Public Water Supply	1	12,500	15,000	18,000	20,000	22,000
	Acre	Sq. ft.				
Private Water Supply	2	1	1	1	2	2
	Acre	Acre	Acre	Acre	Acre	Acre

\* See Table I-A, section 4-5-150, for soil types.

(b) Any portion of a lot which is encumbered by an easement, or road, or canal, or is submerged for a total of ten (10) days per calendar year shall not be considered in computing lot area. Larger lot sizes may be required by the Department on the basis of the information submitted. Factors to be considered when determining lot size include, but are not limited to, the following:

- (1) Soil type and depth;
- (2) Area drainage, lot drainage;
- (3) Proposed method of sewage disposal;
- (4) Slopes;
- (5) Topography, geology, and ground cover;
- (6) Individual and accumulated gross effects on water quality;
- (7) Reserve areas for additional subsurface disposal; and
- (8) Anticipated sewage volume.

(c) If soils within the subdivision are identified as Type 1, the Department may allow a reduction below one acre providing such reduction will not impact an aquifer, and providing such reduction is consistent with regulations approved by the Colville Tribal Council.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

**4-5-15 Determination of Site Characteristics**

(a) Site and soil characteristics shall be determined in accordance with Chapter 5 of the EPA Design Manual except where modified by or in conflict with this Chapter. Use the soil names and particle size limits of the United States Department of Agriculture Natural Resources Conservation Service classification system; Determine texture, structure, compaction and other soil characteristics that affect the treatment and water movement potential of the soil by using normal field and/or laboratory procedures such as particle size analysis; and Classify the soil as in Table I-A.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

**Table I-A  
SOIL TYPE DEFINITIONS FOR MINIMUM LOT SIZE**

<u>Soil Type</u>	<u>Drainage</u>	<u>Percolation Rate*</u>	<u>General Soil Classification</u>
1	Excessive	Less than 1 min./inch	Gravelly and very gravelly coarse sands, all extremely gravelly soils except where soil types 5 and 6 make up the non-gravel component.
2	Good	1 - 4 min./inch	Coarse sands.
3	Fair	5 - 9 min./inch	Medium sands, loamy coarse sands, loamy medium sands.
4	Poor	10 - 19 min./inch	Fine sands, loamy fine sands, sand loams loams.
5	Marginal	20 - 29 min./inch	Very fine sands, loamy very fine sands; or silt loams, sandy clay loams, clay loams and silty clay loams with a moderate or strong structure (excluding platy structure)
6	Slow	30 – 60 min./inch	Other silt loams, sandy clay loams, clay loams, silty clay loams.

7	Unsuitable for treatment or dispersal	> 60 min./inch	Sandy clay, clay, silty clay, strongly cemented or firm soils, soil with a moderate or strong platy structure, any soil with a massive structure, any soil with appreciable amounts of expanding clays.
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(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(b) All site evaluations shall be performed by or under the direct supervision of the Department, Indian Health Service or tribal sanitarian, a registered sanitarian, professional engineer, registered soil scientist(American Registry of Certified Professional in Agronomy, Crops and Soils), or certified designer having knowledge and experience in the areas of soil and wastewater treatment and disposal.

(c) All soil tests shall be conducted using the uniform procedures and terminology in Chapter 5 of the EPA Design Manual

(d) If sufficient information is not available concerning water table conditions, the Department may require that the soils analysis be performed during the months of suspected high water table conditions.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

**4-5-16 Subdivision and Individual Site Review**

(a) Subdivisions: preliminary tests for subdivisions utilizing on-site sewage systems shall include at least one representative soil log per acre or tract or more as required by the Department. A reduced number of soil logs may be allowed if adequate soils information is available.

(b) Individual sites: at least one soil log shall be performed at the site of each disposal area. This requirement may be waived by the Department if adequate soils information is available. Additional soil logs may be required where the soil characteristics vary.

(c) Individuals performing subdivision and individual site reviews shall meet the requirements and use the procedures specified in section 4-5-15.

**4-5-17 Location**

(a) The minimum distances for location of the various component parts of an on-site sewage system are measured horizontally and shall comply with Table II :

**Table II DISTANCE IN FEET FROM SYSTEM COMPONENT**

Items Requiring Setback	From edge of SASS & replacement area	From septic tank & dist. Box	From bldg. sewer collection	* privy
Well or suction line	100	50	50	100
Decommissioned well	10	-	-	10
Public Drinking Water Well	100	100	100	100
Water supply line under pressure	50	10	0	50
Surface Water Measured from ordinary High Water (1 & 3)	100	50	10	100
Public drinking water spring	200	200	100	200

Bldg. Foundation	10	10	-	-
Property lines, easement lines	10	10	-	-
Interceptor/Curtain/Drain drainage ditch up slope from system component	25	25	-	-
-down slope from system component	25	5	-	-
Cuts of banks: -minimum of 5' of original soil above restrictive layer due to structural/texture change	25	--	--	--
less than 5' of original soil above restrictive layer or layer due to structural or textural change and that layer is intersected	50	--	--	--

1 With Type 1 soil and/or other sites where conditions indicate greater potential for ground or surface water contamination or pollution, the distance from any water supply or surface water may be increased by the Department.

2 A reduced separation can be allowed by the Department if it can be demonstrated that the reduction will not have an adverse effect on water quality or the health, safety or welfare of the Reservation population. However, in no case shall the separation be less than seventy-five (75) feet.

3 Setbacks from surface waters shall be measured from the ordinary ranges of slope.

\* Privies will not be approved if water under pressure is supplied to the dwelling unless an approved greywater system is also installed.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

(b) SSAS shall not be permitted in areas where a minimum vertical separation of at least one and half (1.5) feet from bottom of the SSAS to a restrictive layer or water table cannot be maintained.

(c) On-site sewage systems shall not be located on slopes in excess of thirty (30) percent (17°).

(d) The reserve area where the soil and site conditions are acceptable for the installation of a SSAS shall be maintained for the purpose of system replacement. Except where otherwise authorized by the Department, it shall consist of one hundred percent of the normally needed area. Where required by the Department, or requested by the applicant, installation of alternating or dual drain fields may be specified as an alternative to provision of a reserve area. Where required, an alternative device such as a valve or diversion box, will be place between the septic tank and the drain field lines. The alternating device must meet the approval of the Department and shall be of such construction that effluent shall not enter that portion of the drain field which is being rested. Use of the different portions of the drain field shall be on a scheduled basis, normally annually. Because of the alteration of rest and dosing cycles to the drain fields, each line may be reduced in length by up to twenty-five (25) percent from the requirement for a single line, subject to approval by the Department for alternative systems as set forth in section 4-5-7.

(e) The site of the initial and replacement SSAS shall be selected and maintained so that it is free from encroachment by buildings and other structures. The area shall not be covered by an impervious material and shall not be subject to vehicular traffic or other activity which would adversely affect the soil including easements, cover by impervious material, vehicular traffic or other activities adversely affecting the soil or the performance of the SSAS.

(f) Provisions shall be made to prevent flow or accumulation of surface water or stormwater over the area where the on-site sewage system is located.

(g) On-site sewage systems shall not be located on landforms which are unstable as determined by the Department.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

**4-5-18 Design**

(a) The detailed design and construction of all on-site sewage systems shall conform to the EPA Design Manual, except where modified by, or in conflict with, this Chapter. Other acceptable design guidelines include Recommended Standards and Guidance Documents created by the Washington State Department of Health.

(b) The design for an on-site sewage system shall be performed by or under the supervision of a professional engineer, registered sanitarian or certified designer. A resident owner, at the discretion of the Department, may design his or her own system if a minimum vertical separation of four feet can be maintained and the waste is residential sewage.

(c) The system shall be designed to receive all sanitary sewage and domestic waste from the building served unless otherwise approved by the Department. For establishments other than individual residences, the typical values noted in the Design Manual referred to in sections 4-5-4 (f) and 4-5-18 (a) shall be used. Any deviations shall be supported by appropriate water usage information and/or the use of low water use fixtures. Drainage from footing or roof drains or any other type of drain shall neither enter the sewage system nor be directed over the area where the on-site sewage system is located.

(d) All wastes with quality greater than residential sewage shall be pretreated to reduce the waste strength to a quality of residential sewage.

(e) On-site sewage systems shall not be utilized for the treatment or disposal of industrial wastewater.

(f) All food service establishments and or commercial business shall have grease traps and or oil water separators to reduce the oils and grease to the quality of residential sewage.

(g) All onsite systems shall be sited in accordance with existing Colville Tribal Codes including the following:

- 4-3 Land Use and Development
- 4-4 Cultural Protection
- 4-5 On-site Wastewater Treatment and Disposal
- 4-10 Water Use and Permitting
- 4-15 Shoreline Permitting

(h) All septic tanks shall be designed in accordance with section 4-5-18(a). Moreover, where applicable the following additional requirements shall apply:

- (1) All tanks must have a minimum of two compartments with the first compartment consisting of one-half to two-thirds of the required total volume.
- (2) Intercompartmental apparatus shall be sanitary tees, slots, or baffles assuring that effluent only from the clarified zone passes into the next compartment.
- (3) Septic tanks to service single family residences shall have a minimum liquid capacity based on the number of bedrooms in the residence, as follows:

Number of Bedrooms	Required Minimum
up to 4 bedrooms	1000
for each additional bedroom add:	250

(A septic tank designed to service a facility other than one single family residence shall have a minimum liquid capacity equal to two (2) times the projected daily sewage volume with a minimum of 1500 gallons.)

(4) Tanks meeting standards acceptable to the Department shall be approved for use pursuant to this Chapter.

(5) All septic tanks and pump chambers to be located in high water table areas shall be adequately treated to preclude groundwater intrusion.

(6) All tanks shall be water tight.

(7) All access openings shall be extended to the ground surface with water tight extensions.

(h) Effluent shall be disposed of by means of a SSAS except when approval for other disposal system is granted by the Department. The size of the SSAS shall be determined from the results of the site review, soil logs per the Design Manual, and by applying Table IV

**TABLE IV**

The SSAS shall be sized according to the following Table:

Soil Type	EFFLUENT APPLICATION RATE (gallons per day per square foot of absorption area)
1*	1.0
2	1.0
3	0.8
4	0.6
5	0.4
6	0.2
7	Not Allowable

SSAS systems in type 1 soil shall have pretreatment of intermittent sand filter or mound system

(i) SSAS systems shall have the following minimum vertical separation requirements.

Vertical Separation	SSAS System
>36"	Gravity
24-30"	Pressure Distribution
18-24"	Pretreatment by mound or intermittent sand filter and pressure distribution
<18"	Not Acceptable

- (j) The installation and use of cesspools and seepage pits for the disposal of sewage is not permitted.
- (k) The bottom of a SSAS shall not be deeper than three feet below the finished grade except under special conditions approved by the Department. Under no circumstances shall the depth of a system exceed ten feet from finished grade.
- (l) Subsurface absorption beds (see definition of SSAS) may be considered for use only when authorized by the Department and when the soils are Type 1, 2 or 3.
- (m) Piping material shall be approved by the Department.
- (n) Colville Confederated Tribes Design and Construction Standards for Conventional On-site Sewage Disposal Systems” as presently constituted and hereafter amended, are hereby adopted and incorporated by reference in this regulation.
- (o) When sewage holding tank systems are to be used, a management program assuring ongoing operation and maintenance, which shall be approved by the Department, shall be in effect. Sewage holding tanks shall only be used for the following situations.
  - (1) Controlled, part-time, nonresidential usage situations including, but not limited to recreational vehicle parks and trailer dump stations; and
  - (2) On an interim use basis to handle emergency situations or to correct existing problem systems.
- (p) Systems shall be installed in compliance with the permit specifications unless a change is authorized in writing by the Department. Record drawings drawn to scale with measurements (accurate to +/- ½ foot) and directions to all buried components shall be completed after installation of the system. Record drawings shall include initial setting of electrical or mechanical parts.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

**4-5-19 SSAS System Maintenance**

(a) On-site sewage disposal system being used within the Colville Reservation on and after the effective date of this Chapter must be inspected and pumped as required at per the following schedule ~~two~~ years by the septic tank pumper certified to do such work in accordance with this Chapter. It shall be the owner’s responsibility to have such system inspected and pumped as required in accordance with this Chapter. It shall be the owner’s responsibility to notify the Department when pumping and inspection have been completed in accordance with this Chapter. Such notification shall be in writing on a form approved by the Department. It shall be unlawful and it is declared to be a public nuisance endangering the health, safety, welfare and economy of the population of the Colville Reservation to use or operate an on-site septic sewage disposal system that has not been inspected and pumped as required contrary of this Chapter.

Gravity SSAS	Every Three Years
SSAS with pumps or mechanical devices	Every Year
Larger On-site Sewage Disposal System	Twice a Year.

(b) The Department may, upon prior application, grant writing waivers to subsection (1) above. Such waivers may extend the pumping and inspection period to five years when the Department finds that factors such as minimal use or other just cause do not require pumping every two years. If the factors upon which the waiver is granted change, the waiver may be revoked by the Department.

(c) If the inspection called for in this section determines that the system is in need of repairs or is otherwise defective, the Department shall establish in writing the repairs or there changes that must be made together with a reasonable timetable. It shall be unlawful and it is declared to be a public nuisance to operate a system other than in compliance with the Department’s directives.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

**4-5-20 Areas of Special Concern**

(a) The Water Quality Department shall declare a defined area to be an Area Of Special Concern when, in their opinion, there is significant reason to believe that on-site sewage disposal systems create pollution of ground or surface water, or there is significant potential for ground or surface water pollution, or there is significant potential that additional on-site sewage disposal systems will pollute the ground water or surface water.

(b) The Water Quality Department may adopt such requirements as it deems necessary prior to approval of an on-site sewage disposal system in an area of special concern. The Water Quality Department may restrict, or take whatever other action *is* required, to protect the ground and surface water and public health in areas of special concern.

(c) Each permit approval shall be conditioned upon connection to a central public sewage system when one becomes available and connection is required by the Water Quality Department.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

**4-5-21 Construction, Installation or Repair**

(a) All systems except as noted shall be installed by a certified installer.

(b) Nothing in this section shall prohibit owners from installing an individual gravity on-site sewage system or making repairs or alterations on his or her own premises as long as all other requirements of these regulations are satisfied. The owner may not contract or hire a person or concern to perform that work unless that person is a certified installer as set forth in this section.

(c) All on-site sewage disposal systems requiring pumps shall be installed by a certified installer.

(d) It shall be unlawful for any person to engage in the business of installing and /or repairing sewage waste disposal systems within the Colville Indian Reservation who does not possess a valid commercial installer's license. Application for such license shall be made to the Department on forms provided by the Department. Such license may be denied by the Department, if it finds the applicant is not qualified to install and/or repair sewage disposal systems in accordance with this Chapter.

(e) Any commercial installer's license issued pursuant to these rules and regulations may be revoked by the Department for incompetence, negligence, misrepresentation, giving fraudulent information in making application for a license or permit, failure to comply with the requirements of this Chapter or revocation of the bond required herein or upon cancellation of such bond.

(f) Any person feeling aggrieved because of the revocation or denial of this license by the Department may, within thirty (30) days of the revocation or denial appeal to the Colville Environmental Quality Commission from said revocation, and a hearing will be granted.

(g) The Department may require the applicant for a commercial installer's license to submit to a written and/or oral examination on installation regulations and standards.

(h) Commercial Installer's Surety Bond: Prior to the issuance of a commercial installer's license the applicant must post a bond to the Department in a form approved by the Department in the sum of fifty thousand (\$50,000) dollars, executed by a surety company duly authorized to do business in the State of Washington, or by two (2) good and sufficient sureties not connected in business with the applicant and approved by the Department. The said bond is to guarantee the faithful performance of all work undertaken to be done under the provisions of this Chapter. Any person who may be damaged by the wrongful act of the licensee, by the licensee's failure to perform any contracted work, or by the licensee's failure to perform in a workmanlike manner, may sue upon said bond for damages in a sum not exceeding fifty thousand (\$50,000) dollars. This remedy shall be in addition to any other remedies available to such injured person and is not to be construed as an exclusive remedy.

(i) State Bonding of Commercial Installers: Confirmation of the applicant for a Commercial Installer's

License that the applicant is currently bonded by way of "Registration and Bonding: under sections 18.27.010 and 17.27.040, Revised Code of Washington, may be accepted as fulfilling the requirement for a Commercial Installer's Surety Bond under this Chapter, except that where such State laws are inconsistent herewith, this Chapter shall control.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

**4-5-22 Septic Tank Pumpers and Disposal of Septic Tank Wastes**

(a) Permit Required: It shall be unlawful for any person, firm or corporation to clean any septic tank, cesspool, or seepage pit, or other means of disposal without first obtaining a registration permit from the Department.

(b) Applicant: The person shall make application to the Department on a form provided by the Department.

(c) Disposal Site Approval Required: All disposal sites shall be noted on the application form. Only those sites receiving approval by the Department shall be used for dumping of the contents of the pumping tanks. The Department shall note on the permit which sites have been approved.

(d) Any septic tank pumper's license issued pursuant to this Chapter may be revoked by the Department for incompetence, negligence, misrepresentation, giving fraudulent information in making application of filing of reports or failure to comply with the requirements of this Chapter or applicable federal laws and regulations or revocation of the bond as required herein or upon cancellation of such bond.

(e) Equipment Approval Required: The applicant must furnish his equipment for inspection by the Department at reasonable times. The equipment must meet the following minimum requirements.

(1) All hoses and pumping equipment must be stored in a cleanable watertight enclosed area on the truck. (Hoses may be exempt if watertight fitting caps are used.)

(2) Truck equipment must be designed to adequately control effluent disposal from the truck to manholes or other receiving stations.

(3) All equipment must be in good repair and of easily cleanable construction.

(4) The effluent capacity of the truck holding tank(s) must be a minimum of 1,000 gallons.

(5) The name and address of the operating firm shall be conspicuously displayed on both sides of the truck in bold letters not less than three (3) inches high for firm name and not less than two (2) inches high for other information.

(6) All equipment and premises must be maintained and left in a clean and sanitary manner.

(f) Bond Required: Prior to the issuance of a septic tank pumper's permit, the applicant must show proof of a bond in the amount of \$100,000 for said purpose. Performance shall be per bond requirements of commercial installer's license.

(g) Septic tank pumpers shall submit quarterly in writing on a form approved by the Department the following minimum information:

(1) Gallons pumped according to area and site address:

(2) Gallons disposed of at each authorized site;

(3) Statistics on disposal site maintenance;

(A) Dates of cover;

(B) Maintenance problems;

(4) Any additional information required by the Department;

(5) Said report shall be submitted a minimum of fifteen (15) days after each calendar quarter.

(Amended 7/7/11, Certified 7/14/11, Resolution 2011-470)

**4-5-23 Enforcement Policy**

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

**4-5-24 Informal Conferences**

(a) Opportunity Mandatory: The Department shall afford the landowner or his representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the Department determines that there may be either imminent environmental damages to a reservation resource or adverse impact upon the health, safety and welfare of the reservation population. Informal conferences may be used at any stage in enforcement proceedings, except that the Department may refuse to conduct informal conferences with respect to any matter then pending before the Colville Environmental Quality Commission or the Colville Tribal Court.

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

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

**4-5-25 Notice to Comply—Contents—Procedures—Hearing—Final Order—Limitations on Actions**

(a) Where a violation has occurred, and such violation may result in or may cause material damage to a reservation resource or harm to the Reservation population, then the Department may issue and serve upon the landowner a notice which shall clearly set forth:

(1) The specific nature, extent, and time of failure to comply with the approved permit; or identifying the damage or potential damage to a Reservation resource or harm to the Reservation population; and/or

(2) The relevant provisions of this Chapter relating thereto;

(3) The right of the landowner to a hearing before the Department; and

(4) The specific course of action ordered by the Department to be followed by the landowner to correct such failure to comply and to prevent, correct and/or compensate for material damage to Reservation resources or harm to the reservation population which resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a reservation resource; and/or those courses of action necessary to prevent continuing damage to reservation resources or harm to the reservation population where the damage is resulting from any violations, unauthorized deviation, or negligence.

(b) The Department shall mail a copy thereof to the landowner at the addresses on the permit, showing the date of service upon the landowner. The landowner shall undertake the course of action so ordered by the Department unless, within fifteen days after the date of service of such Notice to Comply, the landowner shall request the Department in writing to schedule a hearing. If so requested by the landowner, the Department shall schedule a hearing on a date not more than twenty (20) days after receiving such request. Within ten (10) days after such hearing, the Department shall issue an interim order either withdrawing its Notice to Comply or clearly setting forth the specific course of action to be followed by the landowner. Such interim order shall undertake the course of action so ordered by the Department unless within this ten (10) day period the landowner elects to exhaust his administrative remedies by appealing such interim order to the Colville Environmental Quality Commission. The order of the Colville Environmental Quality Commission shall be final agency action from which there is the right of judicial review.

**4-5-26 Stop Work Order—Grounds—Contents—Procedure—Appeals**

(a) The Department shall have the authority to serve a Stop Work Order upon a landowner if the Department determines that such landowner has violated either the provisions of this Chapter or the approved permit and that immediate action on the part of the Department is necessary to prevent or abate material damage to Reservation resources or harm to the health and welfare of the reservation population.

(b) The Stop Work Order shall set forth:

- (1) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;
- (2) An order to stop all work connection with the violation, deviation, damage, or potential damage;
- (3) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to reservation resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a Reservation resource or potential harm to the reservation population; and/or those courses of action necessary to prevent continuing damage to reservation resources or harm to the Reservation population where the damage is resulting from any violation, unauthorized deviation, or negligence; and
- (4) The right of the landowner to a hearing before the Colville Environmental Quality Commission.

(c) The Department shall immediately file a copy of such order with the Colville Environmental Quality Commission and mail a copy thereof to the landowner at the addresses shown on the permit. The landowner may commence an appeal to the Colville Environmental Quality Commission within fifteen (15) days after service upon the landowner. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the Notice of Appeal were filed with the Colville Environmental Quality Commission. The landowner shall comply with the order of the Department immediately upon being served, but the Colville Environmental Quality Commission, if requested, shall have authority to continue or discontinue in whole or in part the order of the Department under such conditions as it may impose pending the outcome of the proceeding.

**4-5-27 Failure to Take Required Course of Action—Notice of Cost—Department Authorized to Complete Course of Action—Liability for Costs**

If a landowner fails to undertake and complete any course of action as required by a final order of the Department or a final decision of the Colville Environmental Quality Commission, the Department may determine the cost thereof and give written notice of such cost to the landowner. If such landowner fails within thirty (30) days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the Department may expend any funds available to undertake and complete such course of action and such landowner shall be liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the Department, plus attorney fees, investigatory, court and other costs. If not paid within sixty (60) days after the Department

completes such course of action and notifies such landowner in writing of the amount due, the Department may request that the Reservation Attorney take action to enforce this obligation to the extent provided by law.

**4-5-28 Failure to Obey Stop Work Order—Departmental Action Authorized—Liability of Owner or Operator for Costs**

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

**4-5-29 Failure to Comply with Water Quality Protection—Department of Hydrology Authorized to Petition Colville Environmental Quality Commission—Action on Petition**

If the Department of Hydrology determines that a person has failed to comply with this Chapter or any approved permit relating to water quality protection, and that the Department of Water Quality has not issued a Stop Work Order or Notice to Comply, the Department of Hydrology shall inform the Department of Water Quality thereof. If the Department of Water Quality fails to take authorized enforcement action within twenty-four (24) hours under this Chapter, the Department of Hydrology may petition to the Chairman of the Colville Environmental Quality Commission, who shall, within forty-eight (48) hours, initiate negotiations between the Department heads or directors and either deny the petition or direct the Department of Water Quality to immediately issue a Stop Work Order or Notice to Comply or to impose a penalty. This action is in the nature of internal agency deliberations and shall not give rise to administrative or judicial review therefrom.

(Amended 4/6/06, Certified 4/10/06, Resolution 2006-173)

**4-5-30 Civil Remedies**

(a) Every person who fails to comply with the provisions of this Chapter, as now or hereafter amended, shall be required to pay civil monetary damages to the full extent of detecting and repairing any damages done as a result of the violation, plus the cost of enforcement and collection of such damages, including testing, investigatory, expert witness, remedial action costs and reasonable attorneys fees.

(b) In the event a specific monetary value cannot readily be placed on such damages, every such violating person shall be required to pay civil, monetary damages in the minimum liquidated amount of one hundred dollars (\$100.00) per day for each such violation. Each day of such operation shall constitute a separate violation.

(c) The remedial action provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the Department describing the violation with reasonable particularity. Within fifteen (15) days after the notice is received, the person incurring the remedial action may apply in writing to the Department for the remission or mitigation of such remedial action. Upon the receipt of the application, the Department may remit or mitigate the remedial action upon whatever terms the Department in its discretion deems proper: Provided, that the Department deems such mitigation or remission to be in the best interest of carrying out the purposes of this Chapter. The Department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such regulations as they deem proper.

(d) Any person incurring any civil remedial action hereunder may appeal the same to the Colville Environmental Quality Commission. Unless such an appeal is taken, the civil remedial action hereunder shall be final and binding upon the person(s) affected by that civil remedial action. Appeals to the Colville Environmental Quality Commission shall be filed within thirty (30) days of receipt of notice imposing any civil remedy unless an application for remission or mitigation made to the Department is pending under subsection (c) proceeding. When an application for remission or mitigation is made, such an appeal shall be filed within thirty (30) days after receipt of notice from the Department setting forth the disposition of the application. The decision of the Colville Environmental Quality Commission shall be final agency action for the purposes of judicial review.

(e) Any damages or other compensation imposed hereunder shall become due and payable thirty (30) days after receipt of this notice imposing the same unless application for remission or mitigation is made or an appeal is made. When such an application for remission or mitigation is made, any damages or compensation incurred hereunder shall become due and payable thirty (30) days after receipt of the notice setting forth the disposition of such application.

(f) If the amount of any damages or compensation is not paid to the Department within thirty (30) days after it becomes due and payable, the Reservation Attorney, upon request of the Department, shall bring a civil action in the Colville Tribal Court to recover such damages or compensation.

**4-5-31 Enforcement**

The Department, through the Colville Tribal Court, may take any action necessary to enforce any final order or final decision, or to enjoin any person who fails to comply with a final order or final decision.

**4-5-32 Administrative and Judicial Review**

(a) Any person aggrieved by any order, decision, or other action of the Department may obtain administrative appellate review thereof by the submission of a timely petition to the Colville Environmental Quality Commission pursuant to the standards and procedures of the Colville Administrative Procedure Act. Such petition for administrative appellate review shall be filed with the Chairman of the Colville Environmental Quality Commission within thirty (30) days of the date of the order, decision, or other action which is the subject of such appeal. Exhaustion of such administrative appellate review is a jurisdictional requirement to the judicial review.

(b) Any person directly affected by any final order, final decision or other final action of the Colville Environmental Quality Commission may obtain judicial review of such order, decision or action by filing a timely petition with the Colville Tribal Court pursuant to the Colville Administrative Procedure Act. Such petition for judicial review shall be filed with the Court, as a civil matter under the Colville Tribal Code, within twenty (20) days of the decision of the Colville Environmental Quality Commission. Unless declared invalid upon judicial review, a final order, final decision, or other final action of the Colville Environmental Quality Commission shall be binding upon all parties.

**4-5-33 Waiver of Regulations**

Whenever a strict interpretation of this Chapter, or other regulatory program established pursuant to this Chapter, would result in extreme hardship, the Department may waive or modify such regulatory requirements or portion thereof; Provided, that such waiver or modification shall be consistent with the intent of this Chapter and; Provided further, that no such waiver shall be granted where material damage to the reservation resources, or adverse impact upon the health and welfare of the reservation population, shall result therefrom.

**4-5-34 Cooperation With Public Agencies—Grants and Gifts**

Subject to approval of the Colville Business Council, the Department is authorized to accept, receive, disburse and administer grants or other funds or gifts from any source, for the purposes of carrying out the provisions of this Chapter and to consult and cooperate with federal and state agencies in matters pertaining to this Chapter. Subject to approval by the Business Council, the Department is further authorized to negotiate inter-governmental agreements which may create, modify, or change duties established by this Chapter; Provided that no regulatory changes shall be valid unless made in accordance with the Colville Administrative Procedure Act.

**4-5-35 Statutes and Trust Responsibility Not Modified**

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

**4-5-36 Severability**

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

(Chapter 4-5 Adopted 1/18/85, Resolution 1985-20)

## CHAPTER 4-6 MINING PRACTICES WATER QUALITY

### 4-6-1 Findings

The exploration for the mining of minerals and the implementation of Best Management Practices (“BMPs”) are necessary and proper activities to provide for Tribal economic security while protecting Reservation resources and the health, safety and welfare of the Reservation population. The economic goal of providing for the exploration for and mining of minerals is compatible with the environmental goal of providing for reclamation of lands affected by such activities and protection of the Reservation population. Since exploration and mining activities extend over along period of time and may have irreversible impacts, preventative rather than corrective or remedial measures are a more effective and more economical way to control adverse water quality impacts which may be associated with exploration and mining activities. The BMP which requires project proponents to step toward effectively managing non-point sources of water pollution which result from mineral exploration and mining activities. The coordinated management of all mining of minerals on the Colville Reservation through implementation of this Chapter is necessary to protect the economy, health, safety and welfare of the Reservation population and to protect the authority of the Confederated Tribes of the Colville Reservation to effectively govern the Reservation for these purposes.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-620)

### 4-6-2 Definitions

For the purpose of this Chapter the following words and phrases shall have the meaning ascribed to them in this section.

- (a) “Chapter” means the Colville Mining Practices Water Quality Chapter of this Code.
- (b) “Affected Lands” means the surface and subsurface areas on the Colville Indian Reservation where any prospecting, exploration or mining operation is or will be conducted, including, but not limited to: on-site private ways, roads, and railroads, lines appurtenant to any such area; land excavations; prospecting sites; drill sites or workings; refuse banks or spoil piles; evaporation or settling ponds or lagoons; leaching dumps; placer areas; tailings ponds or dumps; work, parking, storage or waste discharge areas; areas in which structures, facilities, equipment, machines, tools or other material, or property which result from or are used to such operations are situated.
- (c) “Borrow pit” means any excavation site outside the limits of construction providing material necessary to that construction, such as fill material for embankments.
- (d) “Chemicals” means substances whether liquid, gaseous or solid which when applied by any person may present hazards to either human health or the Reservation environment.
- (e) “Colville Environmental Quality Commission” or “CEQC” means the environmental administrative appellate body of the Confederated Tribes of the Colville Reservation provided for in Chapter 4-23 of the Colville Tribal Code.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-620)
- (f) “Contamination” means the introducing by any means of any substance in liquid, solid or gaseous form into or upon Reservation resources in sufficient quantities as may be directly or indirectly injurious to the health, safety or welfare of the Reservation population as a result of domestic, commercial, industrial, agricultural or recreational activities or which may be directly or indirectly injurious to livestock, wildlife, fish or aquatic life and their habitat.
- (g) “Department” means the Environmental Trust Department of the Confederated Tribes of the Colville Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-620)
- (h) “End hauling” means the removal and transportation of excavated material, pit or quarry overburden, or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

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- (i) "Erodible soils" means those soils exposed or displaced by mining activities that may be readily moved by water.
- (j) "Exploration" means the act of searching for or investigating a mineral deposit and includes but not limited to sinking shafts, tunneling, drilling core and bore holes, and digging pit or cuts and other works for the purpose of extracting samples prior to commencement of development or extraction operation, and the building of roads, access ways and other facilities related to such work..
- (k) "Flood level-fifty (50) year" shall refer to an additional vertical water height above the ordinary high watermark, such additional water height above the ordinary high watermark, such additional height being 125% of the vertical distance between the average streambed and the ordinary high watermark; and an additional horizontal distance which shall not exceed two (2) times the ordinary channel width as measured between the ordinary high watermarks and added to each side of the channel, unless a different area is specified by the Department based on identifiable topographic or vegetative features.
- (l) "Flood level-twenty-five (25) year" shall refer to a vertical elevation which is the same height measured from the ordinary high watermark, unless a different area is specified by the Department based on identifiable topographic or vegetative features.
- (m) "Key Wildlife Habitat" means the habitat of any wildlife species which depends on maintenance of water quality in the Streamside Management Zone and adjacent areas or any habitat where a wildlife species helps maintain water quality.
- (n) "Limits of roadway construction" means the area occupied by the completed roadway including the cutback, fill slope, and the area cleared for construction of the roadway.
- (o) "Load bearing" means that part of the road which is supportive soil, earth, rock, or other material directly below the working surface and only the associated earth necessary for support.
- (p) "Major tractor road" means a road that involves extensive side casting or similar disturbance of soil which may cause material damage to a Reservation resource or which may cause material damage to the integrity of a Streamside Management Zone.
- (q) "Mineral" means an inanimate constituent of the earth in a solid, liquid or gaseous state which, when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form as a metal, metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material.
- (r) "Mining Operations" means the development or extraction of mineral from its natural occurrence on affected land. The term shall be broadly construed to include open mining, surface mining and surface operation, and a disposal of refuse from underground and insitu mining. Moreover, the term means operations on affected lands including: transportation; mining; concentrating; milling; smelting; refining; cleaning; preparation; evaporation; and other processing.
- (s) "Notice to Comply" means a notice issued by the Department which may, among other things , require initiation and/or completion of action necessary to prevent, correct and/or compensate for present or future damage to Reservation resources, or present or future harm to the Reservation population, which has resulted, or which may in the future result, from mining operations.
- (t) "Open mining" means the mining of minerals by removing the overburden lying above such deposits and mining directly from the deposit thereby exposed. The term includes mining directly from such deposits where there is no overburden, mining by auger method, and the production of surface mining refuse. The term also includes, but is not limited to, the following; open cut mining; open pit mining; strip mining; quarrying; placer operations; and the excavation and removal of sand, gravel, clay, rock or other

minerals for the primary purpose of construction or maintenance of roads. Prospecting and exploration activities shall be included within the meaning of this term when the removal of geologic sample materials exceeds a cumulative total in excess of one ton. Open mining shall not include; excavation or grading conducted for farming; on-site construction, but shall include adjacent or off-site borrow pits.

(u) "Operation" means any person, firm, partnership, association or corporation or any tribal, federal, state, county or municipal government or governmental enterprise engaged in or controlling a mining operation.

(v) "Ordinary high water mark" means the mark on the shores of all waters, which may be found by examining the beds and banks and ascertaining where the presence of and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation.

(w) "Overburden" means materials of any nature, consolidated or unconsolidated, which overlay a natural deposit of useful material or ores and such earth and other materials after removal from their natural state in the process of exploration or mining.

(x) "Perennial stream" means any stream or stream segment which normally maintains a surface flow of water year round.

(y) "Permit" means any authorization, license, or other approval action required by this Chapter before any exploration or mining operations may take place.

(z) "Person" means any: individual; association; business; company; joint venture; partnership private, public, tribal, or municipal corporation; tribal enterprise; tribal, state, local governmental entity; or other association of individuals or persons of whatever nature.

(aa) "Prospecting" means the same as exploration.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-620)

(bb) "Reclamation" means the implementation of procedures, during and after an exploration or mining operation, intended to minimize and/or mitigate the disruption of Reservation resources resulting from the operation and to protect Reservation resources and the health, safety, and welfare of future economic interests of the Reservation population by providing for subsequent beneficial use of affected lands through the rehabilitation of plant cover, soil stability, water resource, and other appropriate measures.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-620)

(cc) "Reclamation plan" means the operator's written proposal, submitted to the Department as part of any notice or permit application required by this Chapter.

(dd) "Refuse" means all waste soil, rock, mineral, liquid, vegetation and other material directly resulting from or displaced by the mining, cleaning or preparation of minerals and included all waste or abandoned materials deposited on affected lands from other sources and shall include, but not be limited to, garbage, trash, leftover cable and abandoned equipment and any other materials which may adversely effect or damage Reservation resources or which pose a threat to the health, safety, or welfare of the Reservation population.

(ee) "Relief Culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive build-up in water volume and velocity.

(ff) "Reservation" means the Colville Indian Reservation.

(gg) "Reservation resource" means air, land, surface, water, groundwater, fish and wildlife, trees and other vegetation, cultural, historic and religious resources and shall also mean capital improvements located within the Colville Indian Reservation.

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(hh) “Reservation population” means all people either residing or otherwise conducting business or other activities on all lands, both trust and fee, within the exterior boundaries of the Colville Indian Reservation.

(ii) “Side casting” means the act of moving excavated material to the side and depositing such material within the limits of road construction or dumping over the side and outside the limits of construction or dumping over the side and outside the limits of construction.

(jj) “Spoil” means any material removed as overburden or mining refuse generated during mining operations, or any excess material removed or generated as overburden or generated during road construction which is not used within the limits of construction.

(kk) “Spoil bank” means a deposit of excavated overburden or mining refuse.

(ll) “Stop Work Order” means the administrative directive issued by the Department pursuant to section 4-6-20 of this Chapter.

(mm) “Streamside Management Zone” means a specified area alongside natural waters where specific attention must be given to the protection of water quality. These zones shall be measured from the ordinary high watermark of the body of water and shall measure one chain (66 feet) in width on each side of Type 1 and Type 2 Waters, and one-half chain (33 feet) in width on each side of Type 3 and Type 4 Waters.

(nn) “Surface mining” means the same as open mining.

(oo) “Temperature Sensitive Waters” means those waters included with water identified on the “Water Type Map,” the temperature of which may be adversely affected by the removal of shade producing vegetation to the extent that the fishery resource, water quality, or the Reservation resources may be damaged.

(pp) “Tribe” means the Confederated Tribes of the Colville Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-620)

(qq) “Walk-on Prospecting” means those casual exploration activities properly authorized by the Department which have the potential for causing little or no surface disturbance and which will not disturb water quality. Examples of such activities are: hand sample collection, geochemical sampling, geologic mapping, geophysical surveys (non-land disturbing), boundary or claim surveying, or location work.

(rr) “Water bar” means a diversion ditch and /or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

(ss) “Water Quality Standard” means one of the several parameters used to measure the quality of all surface and ground waters of the Reservation. Water Quality Standards have been established by the Colville Business Council.

#### **4-6-3 Water Categories**

(a) The Colville Tribes has classified streams, lakes, and ponds located within the exterior boundaries of the Colville Indian Reservation. These waters have been defined as Type 1, 2, 3, or 4 Waters. Type 1 Waters have been identified on the Water Type Map which is available from the Department determines that they constitute a critically sensitive resource requiring maximum protection and management. When requested by landowners, applicants or other affected persons, the Department shall hold informal conferences, which shall include a representative of the Colville Hydrology Department, and those contesting the proposed water type change.

(b) The four water types have been defined as follows:

(1) “Type 1 Water” means all waters, within their ordinary high-water mark, as identified on the Water Type Map. “Type 1 Water” classification shall be applied to lakes, ponds, marshes, bogs, streams, and stream segment which the Colville Tribes have determined to constitute a critically

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sensitive resources. Such resources may be necessary for the management, utilization, or protection of Reservation lands or waters including, but not limited to:

- (A) Lake, pond, and stream bank protection;
- (B) Major domestic water supplies;
- (C) Tribal and /or public recreation;
- (D) Fish spawning, rearing or migration;
- (E) Wildlife habitat and uses;
- (F) Protection of water quality; and
- (G) Capital improvement.

(2) "Type 2 Water" classification shall be applied to segments of natural waters which:

- (A) Are not classified as "Type 1 Water";
- (B) Are perennial or intermittent streams which have a well defined channel eight (8) feet or greater in width between the ordinary high-water marks along the majority of the length of the stream segments; and
- (C) Are impoundments having a surface area greater than 0.5 acre at seasonal low water.

(3) "Type 3 Water" classification shall be applied to segments of natural water which:

- (A) Are not classified as "Type 1 or 2 Waters";
- (B) Are perennial or intermittent streams which have a well defined channel less than eight (8) feet in width and greater than four (4) feet in width, between the ordinary high-water marks along the majority of the length of the stream segment; and
- (C) Are impoundments having a surface area greater than 0.2 acre, and less than 0.5 acres, at seasonal low water.

(4) "Type 4 Water" classification shall be applied to segments of natural water which:

- (A) Are not classified as "Type 1, 2, or 3 Waters"
- (B) Are perennial or intermittent streams which have a well defined channel less than four (4) feet in width between the ordinary high-water marks along the majority of the length of the stream segment;
- (C) Are impoundment having a surface area less than 0.2 acre at seasonal low waters; and
- (D) Are areas of perennial or intermittent seepage, ponds, marshes, bogs, and drainage ways having short periods of seasonal or storm runoff.

(5) For purpose of this section:

- (A) "Natural Waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

(B) “Seasonal Low Flow” and “Seasonal Low Water” means the conditions of the seven-day (7), two-year (2) low water situation, as measured or estimated by accepted hydrological techniques recognized by the Department.

(C) Channel width shall be measured over a representative section of at least five hundred (500) lineal feet with at least ten (10) evenly spaced measurement points along the normal stream channel.

**4-6-4 Administration**

The Colville Tribe Environmental Trust Department shall be responsible for the administration of this Chapter, subject to appellate administrative review by the Colville Environmental Quality Commission (CEQC) as may be provided for by this Chapter, the Colville Administration Procedure Act and Chapter 4-23 of the Colville Tribal Code.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-620)

**4-6-5 Water Quality Permits Required—Duration—Renewal**

(a) Water quality permits for mining, exploration and prospecting operations on all lands within the Colville Indian Reservation are required as specified in this Chapter for all activities commenced, resumed, modified, or expanded after the adoption of this Chapter; providing that water quality permits under this Chapter are not required for walk-on prospecting as defined in this Chapter by landowners on their own trust or fee land, by Colville Tribal members on Colville Tribal lands or by other persons with a Tribal Walk-on Permit so long as those walk-on prospecting activities involve only casual exploration and do not involve surface or water disturbing activities including but not limited to road building, blasting, drilling, excavation, stream diversion or impoundments.

(b) All water quality permits issued pursuant to this Chapter shall be issued for a term not to exceed five (5) years or so long as may be specified in any other mineral permit issued by the Colville Tribes or Bureau of Indian Affairs. Provisions for permit renewal are set forth in section 4-6-8 of this Chapter.

(c) A water quality permit for exploration operations is a limited authorization and shall not authorize mining operations. At the point at which exploration operations become mining operations, it shall be the responsibility of the operator to apply for and obtain a water quality-mining permit before commencing mining operations.

**4-6-6 Special Sand and Gravel Permits—Ten Day Processing**

(a) Any sand, gravel, or quarry aggregate operation which is to be operated for the sole purpose of obtaining materials for highway, road utility, or similar type construction under a tribal, federal, state, county, city, town, or special district contract where the contract calls for work to be commenced within a specifically short time and which will affect ten (10) acres or less shall be subject to this section (4-6-6).

(b) The operation shall make written application to the Department for a special permit on forms provided by the Department. The special permit may authorize the operator to engage in such mining operation until such time as the subject governmental contract has been satisfied. Such application shall consist of the following:

(1) Two application forms;

(2) Two copies of an accurate map of the affected land submitted with each of the applications. The map shall show information sufficient to determine the location of the affected land on the ground, streams and other waters, utilities and existing and proposed roads or access routes to be used in connection with the mining operation.

(3) The application fee of two hundred dollars (\$200.00) plus one dollar (\$1.00) per acre affected, unless an application fee has already been paid to the Department in connection with said

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operations; and

(4) A performance bond in an amount determined by the Department.

(c) Each application form shall include:

(1) The name and address of the general office and the local address or addresses of the operator;

(2) The name and address of the owner of the surface of the affected land;

(3) The name and address of the owner of the subsurface rights of the affected land, and where the owner of the subsurface rights and the operator are not one and the same, evidence that the owner of the subsurface has agreed with the operator for the proposed operation;

(4) The approximate size of the affected land;

(5) Information sufficient to describe or identify the type of mining operation proposed and how it would be conducted;

(6) The measures to be taken to comply with the applicable reclamation provisions of this Chapter;

(7) The terms of the governmental contract which make a special permit necessary;

(8) Evidence of any performance bond required under the governmental contract; and

(9) A certificate of compliance by the Colville Planning Committee, that the mining operation would be in compliance with the applicable zoning and subdivision regulations.

(d) Promptly after the completing of reclamation, the operator shall notify the Department that the land has been reclaimed. Upon receipt of the notice that the affected land or portion of it has been reclaimed, the Department shall cause the land to be inspected and shall release the performance bond or appropriate portions thereof within (30) days or as soon thereafter as the Department finds the reclamation to be satisfactory and in accordance with the plan agreed to by the Department and the operator.

(e) The Department shall promptly act upon those special permits so that they may be issued within ten (10) working days of the date that a complete application is submitted. Such timely review by the Department is dependent upon the application, map, fee and performance bond all being in proper order and submitted in compliance with this section.

(f) In the case where the Government or governmental agency, acting as an operator, requires a permit solely for the purpose of mining construction materials for public roads the government or governmental agency may in the Department's discretion be granted a waiver from the requirements of paragraphs (3) and (4) of 4-6-6(b).

#### **4-6-7 Application for Water Quality Permit—Fee—Notice**

(a) Any operator desiring to engage in exploration or mining operation within the exterior boundaries of the Colville Indian Reservation shall make written application to the Department for a permit in a form approved by the Department. The water quality permit or acceptable renewal of an existing water quality permit, if approved, may authorize the operator to engage in such exploration or mining operation upon the affected lands as described in the application. Such application shall consist of:

(1) The anticipated dates of the commencement and termination of the operations.

(2) Legal description of the area within which the exploration or mining operation are to be conducted.

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- (3) A topographic map of suitable scale upon which the proposed operation are plotted.
- (4) Description of the proposed methods of exploration or mining, support facilities, and required construction, including:
- (A) Proposed location of drilling, trenching, etc.;
  - (B) Equipment to be used;
  - (C) Location of primary support roads, proposed road construction and road design specifications;
  - (D) Location of any buildings, camps and other facilities and sewage disposal system on the affected lands;
  - (E) Name and location of all streams, lakes, known groundwater deposits, water walls, power and communication lines, and building on or with two hundred (200) feet of the affected lands; and
  - (F) List with addresses of owners of record of the affected lands and of lands adjoining the affected lands.
- (5) The reclamation plan required by this Chapter.
- (6) A basic fee of two hundred and fifty dollars (\$250.00) and, in addition, one dollar (\$1.00) per acre of land to be affected by such permit; Provided, that if the permit applicant has already paid the Department this amount in connection with any other permit pertaining to the proposed operations to be covered by the water quality permit, this fee under this Chapter may either be reduced or waived. If the operator is a government or governmental agency no application, renewal or amendment fee may be required, in the discretion of the Department. In no case shall the fee exceed two thousand dollars (\$2,000), unless otherwise required by this Chapter.
- (7) Information provided the Department in an application for a permit relating to the location, size, or nature of the deposit and marked confidential by the operator shall be protected as confidential information by the Department and shall not be a matter of public record in the absence of a written release from the operator or until such mining operation has been terminated, except to the extent disclosure is required by law.
- (8) Upon the filing of the application for a permit with the Department, a copy of such application shall be available for public inspection at the office of the Department. The information exempted by subsection 4-6-7(7) shall be deleted from such file copies.
- (9) Following the Department's approval as to form, the applicant shall cause notice of the filing of its application with the Department to be published in the Tribal Tribune and one other local newspaper of general circulation in the locality of the proposed exploration or mining operation once a week for four (4) consecutive weeks, commencing not more than ten (10) days after the filing of the application with the Department. Such notice shall contain information regarding the identity of the applicant, the location of the proposed exploration or mining operation. If such information does not violate the provision of subsection 4-6-7(7), the proposed dates of commencement and completion of the operation, the proposed future use of the affected land, the location where additional information about the operation may be obtained, and the location and final date for filing objections with the Department.
- (10) In addition, the applicant shall mail a copy of such notice immediately after first publication

to all owners of the surface rights of the affected land, to the owners of record of immediately adjacent lands, and to any other persons who are owners of record that may be designated by the Department whose lands might be affected by the proposed exploration or mining operation. Proof of such notice and mailing, such as certified mail with return receipt requested where possible, shall promptly be provided to the Department and shall become part of the application.

**4-6-8 Renewal or Amendment of Water Quality Permits**

An operator may, within the term of a water quality permit, apply to the Department for a permit renewal, or for an amendment to the permit, increasing the acreage to be affected or otherwise revising the exploration or mining operation. Where applicable, there shall be filed with any application for amendment a map and application. The renewed or amended application shall be accompanied by a basic fee of twenty-five dollars (\$25.00) plus one dollar (\$1.00) for each additional acre; Provided, that if the permit holder has already paid the Department this amount in connection with any other permit renewal or revision pertaining to the proposed operation to be covered by the renewed or revised water quality permit, this fee under this Chapter may either be reduced or waived by the Department. A fraction of an acre shall be considered a full acre for the purpose of computing the fee. In addition, a supplemental performance bond, as determined by the Department, for any additional acreage shall be submitted. If the area of the original application is reduced, the amount of the performance bond, in the discretion of the Department, may be reduced. Renewal applications shall contain the information required in the original application if different from that in the original application or renewal. The renewal permit shall show the area to be explored or mined and the area reclaimed since the original permit or the last renewal. Applications for renewal or amendment of a permit shall be reviewed by the Department in the same manner as applications for new permits; in addition thereto a renewal or amendment application may be denied by the Department for one or more of the following reasons:

- (a) The terms and conditions of the existing permit are not being satisfactorily met;
- (b) The existing exploration or mining operation and reclamation operations are not in compliance with the water quality protection standards of Tribal or federal law;
- (c) The renewal requested substantially jeopardizes the operator's continuing responsibilities on existing permitted areas;
- (d) The operator has not provided evidence that the performance bond will continue in full force and effect for any renewal period requested;
- e) The operator has not provided the Department with any additional revised or updated information requested by the Department.

**4-6-9 Reclamation Plan Requirements**

The reclamation plan required by this Chapter shall be based upon provisions for, or satisfactory explanation of, all general requirements for the type of reclamation proposed to be implemented by the operator. Reclamation shall be required on all the affected land. The reclamation plan shall include the following:

- (a) The statement regarding the condition of the affected lands prior to any exploration or mining including existing uses at the time exploration or mining began; capability of the land prior to any exploration or mining operations to support other uses considering soil characteristics, vegetation, availability of surface and ground water, and topography; and the potential productivity of the land prior to exploration or mining under high levels of management;
- (b) A statement regarding the proposed subsequent use of affected lands after reclamation which is supported by satisfactory evidence that all the owners of a possessory interest in the lands concur with this proposed use;

- (c) Evidence that the proposed subsequent use is lawful under applicable land use and environmental laws;
- (d) A description of the types of reclamation the operator proposed to achieve upon the affected lands and the amount of acreage accorded to each type;
- (e) A description of how the reclamation will be achieved, including a timetable indicating when the reclamation plan will be implemented. The description of how the reclamation plan will be achieved shall include;
  - (1) The engineering techniques to be used in reclamation and a description of the major types of equipment to be used;
  - (2) An estimate of the cost per acre for the reclamation;
  - (3) A description of the manner and type of revegetation on affected lands which shall be sufficient to establish a diverse, long-lasting vegetative cover that is capable of self-regeneration and at least equal in cover to the original on the affected lands;
  - (4) Proposed practices to protect adjacent lands, Reservation resources, and the Reservation population from harmful effects emanating from the effected lands;
  - (5) Specifications for surface gradient restoration to a surface suitable to the proposed subsequent use after reclamation is completed;
  - (6) Plans to prevent disturbance of prevailing hydrologic balance of the affected lands and surrounding area and to prevent disturbance of the quality and quantity of surface and ground water;
  - (7) Methods for control and disposal of contamination from exploration or mining refuse;
  - (8) Where applicable, plans for diversion of surface water around the disturbed lands and for restoration of stream channels and stream banks to a condition minimizing erosion, siltation and other population;
  - (9) Where necessary to remove overburden to explore or mine minerals, plans for removal and segregation of topsoil from other soil. If such topsoil is not to be replaced on a backfill area within a time short enough to prevent deterioration of the topsoil or vegetative cover, other means shall be employed so that the soil is protected from water and wind erosion, remains free of contamination by other acid or toxic materials, and in a useable condition for sustaining vegetation when restored during reclamation. If, in the judgement of the Department, such topsoil is of insufficient quantity or of poor quality for sustaining revegetation, or if other material can be shown to be more suitable for the revegetation requirements, the operator, with the prior approval of the Department, may remove, segregate and preserve in a like manner such other material which is best to support revegetation; and
  - (10) A topographic map of suitable scale portraying the final land use for each portion of the affected lands.

**4-6-10 Protests and Petitions for a hearing**

Any person has the right to submit written comments to the Department with regard to any application made to the Department for a water quality permit under this Chapter. In addition, any person may request in writing that the Department hold a public hearing with regard to such application. In order to be considered timely and thus be considered by the Department, all such written comments and requests for public hearing regarding the proposed issuance of any water quality permit under this Chapter shall be submitted to the Department not more than twenty (20) days after the date of the last notice published by the applicant pursuant to section 4-6-7(9). The applicant shall be notified within ten (10) days of any

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written comments or request for public hearing submitted in response to his application and be supplied with copies of all such documents.

**4-6-11 Approval and Disapproval Policy, Procedures and Administrative Appeal**

(a) Upon receipt of any application for a water quality permit and all fees due from the operator, the Department shall set a date for the consideration of such application not more than ninety (90) days after the date of filing. At that time the Department shall approve, conditionally approve or deny the

application or, for good cause shown, hold a hearing on the question of whether the permit should be granted.

(b) Prior to the holding of any such hearing, the Department shall provide notice to any person who previously submitted either written comments or who requested a hearing regarding the application of the time, date and place of the hearing. A final decision on the application shall be made within one hundred twenty (120) days of the receipt of the completed application. In the event of serious unforeseen circumstances or significant snow cover on the affected land that prevents a necessary on-site inspection, the Department may reasonably extend the date by which it will render its decision.

(c) If action upon the application is not completed within the one hundred twenty (120) day period specified in section 4-6-11(b) the applicant may apply to the Colville Environmental Quality Commission and request that the CEQC direct the Department to act on the application within a time period established by the Commission.

(d) The Department shall grant a permit to an operator if the application complies with the requirement of this Chapter and all applicable Tribal and federal laws. The Department shall not deny or conditionally approve a permit, except for one or more of the following reasons:

- (1) The application is incomplete or the performance bonds have not been provided;
- (2) The applicant has not paid the required fee;
- (3) Any part of the proposed exploration or mining operation or reclamation plan, or the proposed future use of the affected lands is contrary to Tribal or federal law;
- (4) The exploration or mining operation may cause damage to a Reservation resource or may adversely impact the health, safety or welfare of the Reservation population;
- (5) The exploration or mining operation may adversely affect the stability of any significant, valuable, and permanent man-made structure located outside the affected land, except where there is an agreement between the operator and the person having an interest in the structure that damage to the structure is to be compensated for by the operator; or
- (6) The operator is alleged to be in violation of the provisions of this Chapter with respect to any operation within the Colville Indian Reservation. Such an operator shall not be issued a new permit until such other operation is determined to be in compliance with this Chapter.

(e) If the Department denies or conditionally approves a permit submitted by the operator, the Department shall so notify the operator in writing and shall state the reasons for the action and shall list such additional requirements as may be necessary either for the approval of the permit application or conditional approval of the permit. Within thirty (30) days the operator shall either accept such additional requirements as part of the approved permit or file a notice of appeal to the Colville Environmental Quality Commission. If a notice of appeal is filed, the Department may in its discretion grant a provisional permit during the pendency of such appeal, subject to such conditions as the Department believes are reasonable and necessary to effectuate the purpose of this Chapter.

**4-6-12 Permits Subject to Modification**

An approved water quality permit may, after timely notice and opportunity for a hearing, be modified by the Department at any time during the term of such permit for one or more of the following reasons:

- (a) To modify the requirements of the permit so that they do not conflict with existing law;
- (b) The Department determines that the previously approved permit is inconsistent with the intent and purpose of this Chapter;
- (c) The Department determines that the previously approved permit is impossible or impracticable to implement;
- (d) The operator and the Department mutually agree to modify the terms of the permit.

**4-6-13 Duties of the Operator**

(a) Every operator to whom an approved permit is issued pursuant to this Chapter may engage in exploration or mining upon the affected lands in conformity with the terms of that permit and this Chapter.

(b) All reclamation provided for in this Chapter shall, to the extent practicable, be conducted simultaneously with exploration or mining operations and in any case shall be initiated at the earliest possible time after completion or abandonment of exploration or mining activities on any segment of the permit area. Reclamation activities shall be completed not more than two (2) years after completion or abandonment of exploration or mining on each segment of the area for which the permit is requested, unless such period is extended by the Department.

(c) Within forty-five (45) days after completion or abandonment of exploration or mining on an area under permit or within thirty (30) days after each annual anniversary date of the operating permit, whichever is earlier, or at such later date as may be approved by the Department, and each year thereafter until reclamation is completed and approved, the operator shall file a report of activities completed during the preceding year on a form prescribed by the Department, which report shall:

- (1) Identify the operator and permit number;
- (2) Locate the operator by subdivision, section, township, and range, and with relation to the nearest town or other well known geographic feature;
- (3) Estimate acreage to be newly disturbed by exploration or mining in the next twelve-month period;
- (4) Update any maps previously submitted or provide such maps as may be specifically requested by the Department. Such maps shall show:
  - (A) The operating permit area;
  - (B) The unit of affected la©;
  - (C) The area to be explored of mined during the next twelve-month period;
  - (D) If completed, the date of completion of exploration or mining;
  - (E) If not completed, the area that will not be further disturbed by the exploration or mining operations; and
  - (F) The date of beginning, amount, and status of reclamation performed during the previous twelve (12) months. An operator operating under a combined water quality

permit may submit a single annual report, but such report shall include the data required in this section for each operating area.

**4-6-14 [Reserved]**

**4-6-15 Transfer of Permit**

No transfer, sale, or other assignment of the rights granted under any water quality permit issued pursuant to this Chapter shall be made without the written approval of the Department.

**4-6-16 Performance Bonds and Others Security**

(a) Upon receipt of any operating permit an operator shall not commence exploration or mining operations until the operator has deposited with the Department an acceptable performance bond on forms prescribed and furnished by the Department. This performance bond shall be a corporate surety bond executed in favor of the Department by a corporation approved by the Department.

(b) The bond shall be filed and maintained in an amount equal to the estimated cost of completing the reclamation plan for the area to be mined during the next twelve (12) month period and any previously mined area for which a permit has been issued and on which the reclamation has not been satisfactorily completed and approved. If an operator increases the area to be explored or mined during the twelve (12) month period, the Department may increase the amount of the bond to compensate for the increase.

(c) The Department shall have the authority to determine the amount of the bond that shall be required, and may refuse any bond not deemed adequate. The bond shall be conditioned upon the operator's faithful performance of the requirements set forth in this Chapter. In lieu of the surety bond required by this section may file with the Department a cash deposit, negotiable securities acceptable to the Department or an assignment of a saving account or of a savings certificate on an assignment form prescribed by the Department.

(d) Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved reclamation plan unless released prior thereto. Liability under the bond may be released only upon written notification from the Department. Notification shall be given upon completion of compliance or acceptance by the Department of a substitute bond. In no event shall the liability of the surety exceed the amount of the surety bond required by this section.

(e) A public or governmental agency may not be required to post a bond under the terms of this Chapter, in the discretion of the Department.

(f) A blanket performance bond covering two or more exploration or mining operations may be submitted by an operator in lieu of separate bonds for each separate operation.

(g) In the event of any performance bond submitted by the operator to the Bureau of Indian Affairs is deemed adequate for the purpose of this Chapter, compliance with the performance bond requirements of this Chapter may be reduced or waived by the Department.

**4-6-17 Enforcement Policy**

(a) It is the policy of this Chapter to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent present or future damage to Reservation resources or adverse impact on the health, safety or welfare of the Reservation population. It is also the policy of this Chapter, consistent with the principle of due process, to provide effective procedures for enforcement.

(b) The following sections of this Chapter provide the following enforcement procedure: Informal conferences; administrative remedies; injunctions; judicial review and other civil relief. The enforcement procedure used in any particular case shall be appropriate in view of the nature and extent of the violation or the actual or potential damage or risk to Reservation resources or adverse impact on the health, safety or welfare of the Reservation population and in further consideration of the degree of bad

faith or good faith of the persons involved.

**4-6-18 Informal Conferences**

(a) Opportunity mandatory: The Department shall afford the operator or his representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action; Provided, that the Department need not hold such an informal conference where the Department determines that the likelihood of further damage to Reservation resources or further adverse impact on the health, safety, or welfare of the Reservation population does not allow ample time for such an informal conference or conferences. Informal conferences may be used at any stage in enforcement proceedings, except that the Department may refuse to conduct informal conferences with respect to any matter then pending before the Colville Environmental Quality Commission or the Colville Tribal Court.

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

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

**4-6-19 Notice to Comply—Contents—Procedures—Hearing-Final Order Limitations on Action**

(a) If a violation which has or may cause material damage to a Reservation resource or harm to the Reservation population has occurred or may occur then the Department in its discretion may issue and serve upon the operator a notice, which shall clearly set forth:

(1) The specific nature, extent, and time of failure to comply with the approved permit.

(2) The relevant provisions of this Chapter relating thereto;

(3) The right of the operator to a hearing before the Department; and

(4) The specific course of action ordered by the Department to be followed by the operator to correct such failure to comply and prevent, correct and/or compensate for material damage to Reservation resources or harm to the Reservation population which resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a Reservation resource; and/or those courses of action necessary to prevent continuing damage to a Reservation resource or harm to the health, safety or welfare of the Reservation population resulting from any violation, unauthorized deviation, or negligence.

(b) The Department shall mail a copy thereof to the operator at the address shown on the permits, showing the date of service upon the operator. The operator shall undertake the course of action so ordered by the Department unless, within fifteen (15) days after the date of service of such Notice to Comply, the operator shall request the Department in writing to schedule a hearing. If so requested by the operator, the Department shall schedule a hearing on a date not more than twenty (20) days after receiving such request. Within ten (10) days after such hearing, the Department shall issue an interim order either withdrawing its Notice to Comply or clearly setting forth the specific course of action to be followed by such operator. Such interim order shall become final ten (10) days after its issuance and the operator shall undertake the course of action so ordered by the Department unless within this ten (10) day period the operator appeals to the Environmental Quality Commission. The decision or order of the Colville Environmental Quality Commission shall be final agency action from which there is a right of judicial review.

**4-6-20 Stop Work Order—Grounds—Contents—Procedure—Appeals**

(a) The Department shall have authority to serve upon an operator a Stop Work Order if immediate action is necessary to prevent continuation of or to avoid material damage to a Reservation resource or harm to the health, safety and welfare of the Reservation population and:

- (1) There is any violation of this Chapter;
  - (2) There is a deviation from the approved permit; or
  - (3) Circumstances exist which would be a basis for modifying the permit pursuant to section 4-6-12.
- (b) The Stop Work Order shall set forth:
- (1) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;
  - (2) An order to stop all work connected with the violation, deviation, damage or potential damage;
  - (3) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to Reservation resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a Reservation population; and
  - (4) The right of the operator to a hearing before the Colville Environmental Quality Commission. The Department shall immediately file a copy of such order with the Colville Environmental Quality Commission and mail a copy thereof to the operator at the addresses shown on the permit application. The operator has commence an appeal to the Colville Environmental Quality Commission within fifteen (15) days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty (20) days after copies of the notice of appeal were filed with the Colville Environmental Quality Commission. The operator shall comply with the decision or order of the Department immediately upon being served, but the Colville Environmental Quality Commission, if so requested, shall have authority to continue or discontinue in whole or in part of the order of the Department under such conditions as it may impose the outcome of the proceedings.

**4-6-21 Failure to Take Required Course of Action—Notice of Cost—Department Authorization to Complete Course of Action—Liability of Owner for Costs**

If an operator fails to undertake and complete any course of action as required by a final order of the Department or a final decision of the Colville Environmental Quality Commission, the Department may determine the cost thereof and give written notice of such cost to the operator. If such operator fails within thirty (30) days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the Department may expend any funds available to undertake and complete such course of action and such operator shall be liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the Department, plus attorneys fees, expert witness or consultant fees, laboratory and technical costs, investigatory and other actual cost incurred by the Department.

**4-6-22 Failure to Obey Stop Work Order—Department Action—Authorization**

When the operator has failed to Obey a Stop Work Order, the Department may take immediate action to prevent continuation of or avoid material damage to Reservation resources or adverse impact on the health, safety, and welfare of the Reservation population. If a final order or decision fixes liability of the operator, such costs may be collected by the Department in any manner provided for by Tribal law.

**4-6-23 [Reserved]**

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-620)

**4-6-24 Inspection—Right of Entry**

(a) The Department shall make inspection on affected lands, before, during and after conducting the exploration, mining and reclamation operations as necessary for the purpose of insuring compliance with this Chapter and to insure that no material damage occurs to Reservation resources or harm to the health, safety, or welfare of the Reservation population as a result of such operation.

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(b) Any duly authorization representative of the Department, including any consultant or contractor retained by the Department, shall have the right to enter upon affected lands at reasonable times to enforce the provisions of this Chapter. Further, where the Department so requests the Reservation Attorney shall promptly apply to the Colville Tribal Court for a civil administrative search warrant which shall have the authority to issue a search warrant upon reasonable cause.

**4-6-25 Civil Remedial Action—Monetary Compensation Notice—Right to Appeal**

(a) Every person who fails to comply with the provisions of this Chapter, as now of hereafter amended, shall be required to pay civil monetary damages in the full amount of the costs of detecting and mitigating, restoring or repairing any potential or actual damages directly or indirectly resulting from such violations, plus the administrative costs of enforcement including but not limited to investigatory costs, expert witnesses, laboratory and technical analysis, pre and post violation monitoring, collection of such damages, and attorneys' fee.

(b) In the event a specific monetary value cannot be placed on such direct or indirect potential or actual damage, such violating person shall be required to pay civil monetary damages in the minimum liquidated amount of one thousand dollars (\$1,000) per day for each day that such violation takes place. Each day of operation shall constitute a separate violation.

(c) The remedial action provided for by this section shall be initiated by the Department by notice in writing to the alleged violator either by certified mail with return receipt requested or by personal service and such notice shall describe the alleged violation with reasonable particularity. The person alleged to be in violation of this Chapter, who receives such notice for civil damage pursuant to this section, may within thirty (30) days of receipt of such notice apply in writing to the Department for the remission or mitigation of such remedial action. Upon receipt of such application, the Department may remit or mitigate the remedial action upon whatever terms the Department in its discretion deems proper; Provided, that the Department must specifically find and set forth in writing that such remission or mitigation is in the best interests of the Tribes and is consistent with the purpose of this Chapter. Any civil monetary damages imposed hereunder shall become due and payable thirty (30) days after receipt of such notice or thirty (30) days after the conclusion of any administrative or judicial appeal.

(d) Any person subject to any civil remedial action pursuant to section 4-6-25 may appeal to the Colville Environmental Quality Commission. Such appeals shall be filed within thirty (30) days of receipt of notice imposing any civil monetary damages unless an application for remission or mitigation has been timely filed with the Department. Where such an application for remission or mitigation has been made in a timely manner, any appeal to the Colville Environmental Quality Commission from such initial administrative review shall be filed within thirty (30) days of receipt of the Department's disposition of the application. The decision of the Colville Environmental Quality Commission shall be final agency action for purposes of judicial review.

(e) If the full dollar amount of any civil damages or other compensation due under this section is not paid to the Department within thirty (30) days after it becomes due and payable, the Department shall request that the Reservation Attorney bring action in the Colville Tribal Court to recover such compensation.

**4-6-26 Enforcement**

The Department or the Reservation Attorney acting on behalf of the Tribes, may take any necessary action through the Colville Tribal Court to enforce any final order or final decision or to enjoin any person after such person has failed to comply with any final order or final decision.

**4-6-27 Administrative and Judicial Review**

(a) Any person aggrieved by any order, decision, permit, or other action of the Department may obtain administrative appellate review thereof by the submission of a timely petition to the Colville Environmental Quality Commission pursuant to the standards and procedures of the Colville Administrative Procedure Act. Such petition for administrative appellate review shall be filed with the Chairman of the Colville

Environmental Quality Commission within thirty (30) days of the date of the order, decision, permit, or other action which is the subject of such appeal, unless a shorter time for such appeal is set forth in any other section of this Chapter, in which case the shorter time shall apply. Exhaustion of such administrative appellate review is a jurisdictional requirement to judicial review.

(b) Any person directly affected by any final order, final decision or other final action of the Colville Environmental Quality Commission may obtain judicial review of such order, decision or action by filing a timely petition with the Colville Tribal Court pursuant to the Colville Administrative Procedure Act. Such petition for judicial review shall be filed with the Court, as a civil matter under the Colville Tribal Code, within twenty (20) days of the decision of the Colville Environmental Quality Commission. Unless declared invalid upon judicial review, a final order, final decision, or other final action of the Colville Environmental Quality Commission shall be binding upon all parties.

**4-6-28 Cooperation with Public Agencies—Grants and Gifts**

Subject to approval of the Colville Tribal Council the Department is authorized to accept, receive, disburse and administer grants or other funds or gifts from any source, for the purposes of carrying out the provisions of this Chapter and to consult and cooperate with, federal, tribal, state and local agencies in matters pertaining to this Chapter. Subject to approval by the Tribal Council, the Department is further authorized to negotiate intergovernmental agreements which may create, modify, or change duties established by this Chapter; Provided that no regulatory changes shall be valid unless made in accordance with the Colville Administrative Procedure Act.

**4-6-29 Statutes and Trust Responsibility Not Modified**

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

**4-6-30 Waiver of Regulation**

Whenever a strict interpretation of this Chapter or the regulatory program established pursuant to this Chapter, would result in extreme hardship, the Department may waive or modify such regulatory requirements or portion thereof; Provided that such waiver or modification shall be consistent with the intent of this Chapter and; Provided further, that no such waiver shall be granted where material damage to Reservation resources or adverse impact upon the health and welfare of the Reservation population shall result therefrom.

**4-6-31 Severability**

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

**BEST MANAGEMENT PRACTICE**

**4-6-60 Intent and Goal of BMPs**

The Best Management Practices (BMPs) listed in the following section are intended to provide practical guidelines for mineral development activities consistent with goals of protecting the quality of the Reservation environment, in particular the surface and, groundwater resources of the Reservation from nonpoint sources of water pollution. Differing conditions calling for particular solutions may not permit strict compliance with these BMPs, but these BMPs shall be the bases, together with other requirements of this Chapter, for approving, conditionally approving or denying permits required by this Chapter. Departure from those BMPs constitutes a violation of this Chapter unless authorized by an approved permit or otherwise approved in writing by the Department.

**4-6-61 Road Location, Design, Construction and Maintenance**

(a) Roads can be a major contributors to sediment production resulting in water quality degradation in

connection with mining activities. A well designed, soundly constructed and properly maintained road system can significantly reduce water pollution problems. A reasonable amount of latitude in the design, construction and maintenance is allowable consistent with the purposes of this Chapter. Consultation and field reconnaissance of road location by an interdisciplinary team of tribal professionals may be required as a condition to issuance of a permit.

(b) The following standards shall apply to road location:

- (1) Minimize road density by using existing and abandoned roads whenever possible and practical. Keep new road construction at an absolute minimum.
- (2) Locate roads to minimize disturbance to all surface and groundwater resources on the Reservation. Avoid locating roads in narrow canyons, marshes, wet meadows, natural drainage channels, and geological hazard area.
- (3) Locate roads a safe distance from streams or lakes when running parallel to water bodies. At a minimum, do not locate roads within Streamside Management Zones.
- (4) Fit the road to the topography to minimize soil disturbance. Locate roads to take advantage of naturally stable areas, such as natural benches, ridgetops, flatter slopes, etc.
- (5) Keep road grades within eight-ten (8-10%) percent, or less, where possible and practical. Where excessive excavation requirements or topography constraints are present, occasional grades of up to fifteen (15%) percent may be used with prior Department approval. Keep steep segments as short as possible where the grade necessarily exceeds eight-ten (8-10%) percent.
- (6) Avoid long, continuous grades; avoid long, completely flat segments where ponding will occur.
- (7) Avoid headwalls at a tributary drainage source on ridgetop routes. Locate roads slightly off-center on ridgetop routes.
- (8) Avoid locating roads on excessively steep unstable, erosional, or slide prone slopes. Obtain soils and area geophysical information and review sensitive lands maps where available and survey adjacent similar areas for vegetation and topography "indicators" for suspected problem areas.
- (9) Minimize the number of stream crossings. All stream crossings must be approved by the Department in writing in advance.
- (10) Choose crossing locations at right angles to the stream channels.

(c) The following standards apply to road design:

- (1) Build the minimum adequate road for the exploration or mining system used. Design roads which can carry the anticipated traffic load with reasonable safety, accomplishes the mining requirements economically, and minimizes impacts to the other resources available in the area.
- (2) Fit the road to the topography so that alterations of natural features are minimized.
  - (A) Minimize and balance cuts and fills. Use waste excavation in fills to avoid heavy sidecasts whenever feasible.
  - (B) Sacrifice alignment to avoid heavy excavation. Fit the road to the topography so landscape alterations are minimized.

(C) Plan and locate switchbacks on the flattest slope available to avoid heavy excavation.

(D) Avoid sidecasting material on slopes over fifty (50%) percent which are terminated within five hundred (500) feet of a stream or lake.

(E) Fill slope ratios unless otherwise approved by the Department are;

Rock -- 1-1/2:1

Sandy Soil -- 2:1

Common earth -- 1-1/2:1

(F) Cut slope ratios unless otherwise approved by the Department are;

Common earth (on slopes over 70%) - 3/4:1

Common earth (on slopes to 50%) - 1/2:1

Hardpan, broken or soft rock - 1/3:1

Rock - 1/4:1

(3) Design roads to minimize interference with surface and subsurface drainage patterns.

(4) Plan stream crossings with care so that channel and bank disturbance is minimized.

(5) Where necessary to protect fill embankments from stream erosion, a headwall (usually riprap or gabions) is recommended to prevent erosion of the fill.

(6) All roads should be designed with adequate permanent or temporary water management and/or crossing structures so that the road does not become a source of erosion and sedimentation.

(A) All roads should be outsloped or ditched on the uphill side and appropriate surface drainage should be prevented by the use of crowning, ditching, adequate culverts or cross drains, relief culverts, water bars, diversion ditches and bridges as the location, road standard or topography may require.

(B) Cross drains, relief culverts and diversion ditches shall not discharge directly into natural waters or onto erodable soils or fill slopes unless adequate outfall protection is provided which prevents erosion.

(C) Effective drainage structure shall be installed at all low points in the road gradient. Generally, spacing should be no wider than as follows:

<u>Road Gradient</u>	<u>Maximum Drainage Spacing</u>
0 to 8%	1200 feet
8% to 15%	900 feet
15% or over	600 feet

This guide provides only a rule of thumb approximation. Parent material, slope position and drainage area or pattern may dictate wider or closer spacing.

(D) Drainage structures on permanent roads shall be designed to handle a fifty (50) year flood and should be functional at all times. Plugged or damaged structures shall be cleaned or replaced before runoff occurs.

(E) Drainage structures on temporary roads which cross natural watercourses shall be designed to handle a twenty-five (25) year flood and shall be removed upon completion of use, restoring the watercourse to its original water carrying capacity.

(F) Relief culverts shall meet the following minimum specifications:

(i) Be at least eighteen (18) inches in diameter or the equivalent;

(ii) Be installed with adequate headwalls, where needed, and sloping downward toward the outside shoulder of the road at a minimum to keep the culvert clean and at a maximum of four (4%) percent.

(G) Drainage structure of relief culverts shall be installed concurrently as road work progresses.

(H) Design road grades and locate culverts so silt will settle out and not drain into the watercourses.

(d) The following standards apply to road construction:

(1) Merchantable timber removed for right-of-way construction shall be removed or decked at suitable locations where the timber will not be covered by fills or side casts. Fall all trees that lie within the required right-of-way boundary, prior to subgrade construction. Fall all danger tree snags and leaners as directed by the Department which could unpredictably fall and hit the road.

(2) Deposit excess debris, slash and road building materials in stable locations outside of the Streamside Management Zone.

(3) Do not allow the low point of a grade break to occur on deep fills if possible.

(4) All ditches, culverts, cross drains, water bars and diversion ditches shall be installed concurrently with construction of the roadway.

(5) Alter the spacing of surface drainage structure, if necessary, so that water spills on stable areas.

(6) Avoid unnecessary soil and vegetation disturbance.

(7) Do not divert the runoff or streamflow from two or more drainage into one channel.

(8) Do not dredge materials from streams for road construction.

(9) Clear stream channel of all debris and slash generated during operations prior to removal of construction equipment from the vicinity or the winter season, whichever is first.

(10) End haul or overhaul construction is required where sidecast material would be within the Streamside Management Zone of Type 1 through Type 4 Waters.

(11) Material used in road construction shall be free of loose stumps, excessive accumulation of slash, and woody materials of more than three (3) cubic feet.

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(12) During road construction, fills or embankments shall be built up in two foot layers. Each layer shall be compacted by operating the tractor or other equipment over the entire surface of the layer. Chemical compacting agents may be used in accordance with sections 4-7-86 and 4-7-87.

(13) Construction should be accomplished when low flow periods and soil conditions are least likely to result in excessive erosion and/or soil movement.

(14) Spoil and debris shall be deposited outside the Streamside Management Zone. When soil and other debris is deposited in an appropriate location, embankments so formed shall be compacted by layering or so stabilized that the risk of its later entering the Streamside Management Zone is minimal.

(15) When soil exposed by road construction appears to be unstable or erodible and is so located that slides, slips, slumps or washing may reasonably be expected to cause unreasonable damage to a reservation resource, then such exposed soil areas shall be seeded with grass, other cover or be treated by other means acceptable to the Department.

(16) When temporary stream crossings are necessary, pick locations requiring a minimum of bank disturbance and soil displacement. Equipment shall not be used in stream crossing without prior written approval of the Department.

(17) Fully backslope each graded section except where vertical banks are proven to be more stable than sloping ones.

(18) Rough grade a new road only as far as that road can be completely finished during the current construction season. Drain incompleated segments of permanent or temporary roads to be left over winter season or other extended periods, outsloping or ditching with cross drains, water bars, and diversion ditches to minimize soil erosion and stream siltation.

(19) Do not conduct earth moving activities when the soils are saturated. Contract grades through wet soils during dry season.

(20) Use grade changes (concave vertical curve) to turn water off roads, particularly to protect fills at stream crossings.

(21) Shut down construction during periods of heavy rainfall.

(e) The following standards apply to bridges:

(1) A bridge is required for crossing any stream or lake which is regularly used for recreational boating as designated by the Department.

(2) Permanent bridges shall be designed and constructed at the minimum to pass without obstruction the fifty (50) year flood level of the stream it spans. Bridges should be designed by a registered engineer unless the Department authorizes specific exemptions for particular bridge crossings.

(3) One end of each new permanent log or wood stringer bridge should be tied or firmly anchored, if the elevation of the bridge is within ten (10) vertical feet of the fifty (50) year flood level.

(4) Plan all construction activities in the stream to coincide with low seasonal streamflows.

(5) Excavation for placement of bridge sills, piers, abutments or wing walls shall be done from outside the ordinary high water mark, unless such operations are authorized by the Department.

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(6) Construction equipment shall be operated in a manner that will cause the least aggravation to the streambed and banks. Remove any stumps, logs, chunks, branches, etc., that might have been pushed into the streambed during construction.

(7) Bridge approaches shall slope away from the bridge deck to avoid drainage onto the deck and into the water body. This will also extend the life of the bridge.

(8) Bridge approach fills and banks shall be stabilized as necessary to prevent undue or excessive erosion, paying particular attention to proper ditching. Riprap, bulkheads, wing wells or other measures may be required.

(9) Stream bed and bank areas shall be restored as nearly as possible to their original condition upon completion of the project.

(10) When earthen materials are used for bridge surfacing, curbs or guards of adequate size shall be installed which will prevent the surface material from entering the stream.

(11) Temporary bridges shall be installed during low water periods, used or removed before the following peak water flow (spring runoff).

(f) The following standards apply to culverts:

(1) All permanent culverts shall be capable of handling the fifty (50) year flood.

(2) Minimum sizes of permanent culverts are;

(A) Thirty-six (36) inches in diameter for migratory fish streams. Migratory fish stream are those containing a species of fish which must move to another body of water to complete its life cycle. Open bottom culverts may be required.

(B) Twenty-four (24) inches in diameter for resident game fish streams. Open bottomed culverts must be required.

(C) Eighteen (18) inches in diameter for other water.

(3) Culverts constructed for permanent stream crossings should be of galvanized steel, concrete, aluminum or plastic and of sufficient gauge or thickness. Two feet or half the diameter of the culvert, whichever is greater, shall be the minimum overburden.

(4) The alignment and slope of the culvert shall conform to the natural flow of the stream for all streams.

(5) In areas where fish are present, the bottom of the culvert shall be installed slightly below the natural stream bottom at both ends of the culvert.

(6) All culvert installations shall terminate on materials that will not readily erode under full flow of the culvert.

(A) If water is diverted from its natural channel, return the water to its natural channel via culvert, flume spillway or other non-erodible structure.

(B) When flumes, downspouts, downfall culverts, etc., are used to protect erodible soils or return water to its natural stream course, the discharge point must be protected from erosion by: reducing water velocity by catch basins, use of rock spillways or gabions,

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riprapping, or installing permanent splash plates.

(7) Culvert approaches shall be hand-cleared of natural and logging debris for a distance of one hundred (100) feet upstream from the culvert inlet of all material that may reasonably be expected to plug the culvert.

(8) The inlet ends of all ditch culverts shall have adequate catch basins and headwalls to minimize the risks of culvert siltation and “by-pass” of the culvert from erosion of the headwall. Rock headwalls shall be placed on all culverts where annual peak flows exceed 100 cfs; and where headwall erosion is expected on smaller streams, as determined by the Department.

(9) Ditch culverts that may reasonably be expected to carry near capacity water volumes or to encounter some siltation should:

(A) Be skewed at least twenty-five (25) degrees from perpendicular to the roadbed in the direction of the water flow.

(B) Have a smooth gradient drip of not less than two (2) percent.

(10) Fill around culverts, shall be compacted during placement to avoid failure by undercutting and stream bed excavation should be avoided.

(11) All required culverts, ditches, cross drains, drainage dips, water bars and diversion ditches shall be installed concurrently with construction of the roadway.

(g) The following standards apply to temporary water crossing:

(1) “Fording” or limited crossings that utilize the natural stream bed as a road may be conditionally permitted through approval of specific crossings site location(s), frequency and dates of occurrence.

(2) Temporary bridges or culverts, adequate to carry the twenty-five (25) year flow for the operation period can be used when:

(A) A permanent road is not justifiable, and

(B) The temporary structure is installed after spring runoff and removed prior to the possibility of commencement of the following spring runoff.

(3) Install culverts in a manner which will cause the least amount of siltation. Limit tractor or machine activity in bed of stream to the absolute minimum necessary to coincide with low flow periods (late summer and early fall).

(4) Temporary bridges or culverts shall be promptly removed upon completion of use. The removal shall include:

(A) Restoration of the stream channel to its original water carrying capacity.

(B) Efforts to avoid siltation to the stream bed.

(C) Remove or protect approaches to the crossing by riprapping, revegetating, or whatever means necessary to insure the stabilization of the approach below the fifty (50) year flood level.

(h) The following standards apply to road maintenance:

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(1) Maintain roads immediately after logging and whenever necessary by cleaning ditch lines, blading debris from empty landings, trimming damaged culverts ends and chunking out culvert openings.

(2) Place all material obtained during maintenance of ditches, etc., in a safe bench or cove location. Never deposit such materials directly into a streambed or in areas where the material can be washed into a stream during high flow periods.

(3) Retain outslope drainage and remove all berms on the outside edge, except those intentionally constructed for the protection of road grade fills.

(4) Road surfaces shall be maintained to reduce erosion and water quality degradation potential by using water, surface binders, sealers or oilmats. All road surface treatments, except water, shall not be sprayed within the Streamside Management Zone for those existing road segments that are within the established zones. Extreme care should be exercised to avoid excess application of any treatment.

(i) The following standards apply to active roads:

(1) To the extent necessary to protect Reservation resources, the following maintenance shall be conducted on such roads:

(A) Culverts, ditches, water bars and all other drainage structures must be kept open and functional and shall be inspected annually.

(B) The road surface shall be maintained as necessary to minimize erosion of the surface and subgrade:

(i) Roads shall be watered or treated with chemicals to prevent “powdering” of the road surface;

(ii) During and upon completion of the operation, road surfaces shall be crowned, outsloped or water barred and unnecessary berms removed to prevent erosion of the roadbed.

(C) All ditches and drainage structures shall be cleaned of slash, debris, and siltation upon completion of operations. Structures damaged or made less effective as a result of the operation shall be replaced or restored.

(j) The following standards apply to abandoned roads:

(1) No subsequent maintenance of an abandoned road is required after the following procedures are completed:

(A) Road surfaces shall be outsloped, water barred, revegetated or otherwise left in a stable condition suitable to prevent erosion.

(B) Ditches shall be adequate to carry water loads and cleaned on completion of use.

(C) Temporary culverts, bridges or other water crossing structures shall be removed.

(D) The road shall be blocked to vehicular traffic and should be posted “Closed to Vehicular Traffic”.

(k) The following standards shall apply to road ballast and waste disposal areas:

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(1) Road ballast or gravel pits shall be located a safe distance from streamways. At a minimum, do not locate road ballast or gravel pits in the Streamside Management Zone. Pit runoff shall be directed away from the water course. Rock removal from stream beds overflow channels is not permitted.

(2) During construction and operation of rock quarries, gravel pits or borrow pits, runoff water shall either be diverted to the forest floor or passed through one or more settling basins, as approved by the Department.

(3) During operation, surface flows shall be prevented from passing through or out of borrow pit areas.

(4) If rock is to be washed, provision must be made for adequate settling basin(s) to prevent any stream siltation.

(5) Spoil disposal shall be located:

(A) Outside the Streamside Management Zone;

(B) Where the final slopes after completion of the project will be no greater than the fill slope ratios set forth in section 4-6-61(c)(2)(E) for materials where dumped;

(C) On areas having the lowest potential timber productivity, where practical;

(D) On slopes where the erosion or mass soil movement is minimal;

(E) All spoil will be placed to allow drainage without water ponding.

(6) All rock quarries, gravel pits, spoil areas and borrow areas in use when those regulations are adopted shall be reclaimed within two (2) years from the time the rock or gravel source is exhausted or abandoned. Reclamation procedures include:

(A) Remove all deleterious material that has potential for damaging Reservation resources or that would prevent revegetation of an otherwise plantable area.

(B) Grade all cut and fill slopes to the fill slope ratios set forth in section 4-6-61(c)(2)(E) for material present, unless otherwise approved.

(C) Revegetation to the extent practical.

(l) The following standards apply to roadside brush control:

(1) Use mechanical control methods in preference to chemical means where practical.

(2) Chemical control of roadside brush will not be done within Streamside Management Zones.

(m) The following standards apply to road surface treatment:

(1) Apply oil that is not potentially contaminated by any substance that is hazardous to any Reservation resource or to the health, safety or welfare of the Reservation population to the road surface only when the air temperature is above 55° F, when the ground is frost-free, and during the season when there is a minimal chance of rain for the next forty-eight (48) hours.

(2) Water the road surface prior to application of oil to assist in penetration.

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(3) Construct a temporary berm alongside the road shoulder where needed to control runoff of the applied chemical.

(4) Take extreme care to avoid excess application of road chemicals. Shut off the flow at the Streamside Management Zone.

(5) When cleaning out storage tanks or the application equipment tanks used for storage and application of road treatment materials, dispose of the rinse water, other fluids and solids on the road surface or in a place safe from potential contamination of water.

#### **4-6-62 Operations Drainage**

(a) All surface waters which might damage regraded slopes or drain into the exploration of mine operations will be intercepted on the uphill side of the highwall or other operations perimeters by diversion ditches and be conveyed by stable channels or other means to natural or prepared watercourses outside the operations area, unless the Operator determines, with the written concurrence of the Department, that such ditches and channels are unnecessary or would create a serious pollution problem. Such diversion ditches and channels shall be of sufficient size and grade to carry the twenty-five (25) year flow event. If diversion attaches are likely to carry surface water only intermittently, they should be re-topsoiled and revegetated with grasses, forbs and/or legumes. All diversion ditches and channels should be mapped or shown on the aerial photograph submitted with the Permit Application.

(b) No surface waters will be discharged through or permitted to infiltrate onto existing mine workings.

(c) Surface waters and groundwaters will be controlled to prevent their entry into mine working.

(d) All drainage from active exploration or mining operations shall be treated in impoundment or treatment facilities before discharge into a water course. Under no circumstances should water be discharged into highly erodible soil or spoil banks.

(e) Spoil shall not be placed in drainage ways. The lower edge of spoil piles will be placed well outside the Streamside Management Zone.

(f) When cleaning underground sumps or tanks, the sediment shall never be flushed to a water course or deposited where it will wash into a lake or stream.

#### **4-6-63 Drilling of Exploration Operations**

(a) The number and location of drill holes, test pits and other excavation shall be shown on the map or aerial photograph submitted with the Permit application.

(b) Drill sites, test pits, bulldozer work and other excavation shall not be conducted in dry or flowing stream channels. Excavations and bulldozer work should be kept to a minimum and all reasonable efforts should be made to locate drill sites where no bulldozer work will be necessary.

(c) Drilling mud and drill cuttings should be confined to the site. Whenever possible these materials should be replaced in the drill hole as soon as geophysical loggings are completed. All other refuse from drilling operations shall be disposed of by burial or by hauling to an authorized landfill. Drill holes should be plugged with a full clay plug.

(d) Drill holes shall be abandoned in the following manner:

(1) Any artesian flow of groundwater to the surface be eliminated by a plug made of cement or similar material or by a procedure sufficient to prevent such artesian flow unless an agreement is reached with the Department for another use of such water.

(2) Drill holes which have encountered any aquifer shall be sealed, utilizing a sealing procedure that is adequate to prevent fluid communication between aquifers.

(3) Each drill hole shall be securely capped at a minimum depth compatible with local cultivation practices or at a minimum of two feet below either the original land surface or the collar of the hole, whichever is the lower elevation. The cap is to be made of concrete or other material that is satisfactory for such capping. The site shall be back-filled above the cap to the original land surface.

(4) Each drill site shall be reclaimed pursuant to this Chapter including, if necessary, reseeded if grass or any other crop is destroyed.

(e) Abandonment in a manner provided in paragraph (d) of the section shall occur immediately following the drilling of the hole and the probing for minerals in the exploration process. However, a drill hole may be maintained as temporarily abandoned without being plugged, sealed or capped. However, no drill hole which is to be temporarily abandoned without being plugged, sealed or capped shall be left in such a condition as to allow a fluid communication between aquifers. Such temporarily abandoned drill holes shall be securely covered in a manner which will prevent injury to persons or animals.

(f) No later than sixty (60) days after the completion of the abandonment pursuant to paragraph (d) of this section of any drill hole which has artesian flow at the surface, the person conducting the exploration or mining shall submit to the Department a report containing the location of such hole to within two hundred (200) feet of its actual location, the estimated rate of flow of such artesian flow (if such is known), and the facts of the technique used to plug such hole. Such report and all information contained therein shall be confidential in nature and shall not be a matter of public record.

(g) No later than twelve (12) months after the completion of the abandonment of any drill hole pursuant to paragraph (d) of this section, there shall be filed by the person conducting the prospecting with the Department a report containing the location of the hole to the nearest forty-acre legal subdivision, and the facts of the technique used to plug, seal or cap the hole. Such report and all information contained therein shall be confidential in nature and shall not be a matter of public record.

#### **4-6-64 Storage of Fuels and Chemicals**

(a) Large quantities of gasoline, diesel oil, petroleum products and toxic chemicals, either on the surface or underground, will be stored in durable tanks or containers and within an area surrounded by dikes to contain or prevent escape in case of a major spill or leak.

(b) All underground service areas for diesel powered equipment and underground fuel transfer areas must be equipped with sumps that will prevent petroleum waste and spills from gaining access to the mine drainage system.

#### **4-6-65 Water Improvement and Treatment**

(a) Water impoundment and treatment facilities, such as collection basins, water retarding structure or siltation dams, may be created, if authorized in the approved permit. Before such approval may be granted, it must be adequately demonstrated to the satisfaction of the Environmental Trust Department that:

(1) The size of the impoundment is adequate for its intended purpose;

(2) The floor of the water impoundment or treatment facilities must be adequate sealed prior to filling to prevent leakage;

(3) The impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety, including spillway or other devices to protect against washouts during the one hundred (100) year flood event;

(4) The quality of impounded water will be suitable on a permanent basis for its intended uses and that discharges from the impoundment will not degrade water quality below water quality standards established pursuant to applicable Tribal or federal law in the receiving stream;

(5) The level of the water will be reasonably stable;

(6) Final grading will provide safe access for proposed water users; and

(7) Such water impoundments will not result in diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, domestic or other uses.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-620)

(b) The Operator shall also agree, as a condition of the granting of the permit, to establish additional treatment facilities after commencement of the construction or operation of the water impoundment or treatment facilities if conditions arise that were not anticipated or if the treatment facilities are not adequate to maintain water quality or quantity conditions.

(c) The Operator shall also agree, that if feasible, the effluent from water impoundment and treatment facilities will be used as an industrial water supply for milling or other mine uses.

#### **4-6-66 Tailings Ponds**

The following standards shall apply to tailings ponds:

(1) Tailing ponds will be designed, constructed and operated so that there is little or no discharge. The floor of tailings ponds must be adequately sealed to prevent leakage prior to filling.

(2) Tailings ponds dikes or dams will be designed and constructed to prevent leakage, slumping or overtopping, including features such as cut-off walls and the compaction of materials similar to that required in water storage structures. All tailings ponds will be constructed with a spillway or other adequate overflow structure that will prevent overtopping or washouts during the one hundred (100) year flood event. If possible, tailings pond dikes or dams will be constructed of angular waste rock from mining operations rather than rounded or alluvial materials.

(3) If possible, tailing ponds shall be constructed off channel so that surface runoff will bypass the pond. A natural water course shall not be used to transport mine or mill wastes to a tailing pond. Surface drainage that would normally flow into a tailings pond must be diverted around the pond. Conduits carrying surface water shall not be located beneath the tailings pond. Natural precipitation runoff intercepted above the tailings pond must be re-routed around the pond and discharged further downstream into the natural channel.

(4) Boom or dikes shall be used in large tailings ponds to reduce wave action and erosion.

(5) Wood cribs shall not be used as integral parts of tailings ponds, dikes, or dams.

(6) Tailings ponds shall not be used as burial grounds for toxic chemicals.

(7) Tailings ponds shall be designed and constructed so as to provide for their revegetation upon filling or abandonment. To reduce erosion, filled tailings ponds shall be either revegetated or covered with a two (2) foot layer of waste mine rock.

(8) Erosion of tailing ponds located adjacent to stream shall be controlled by the construction of a coarse riprap facing or a dike to prevent stream encroachment.

(9) To reduce leachate problems, the surface of filled tailings ponds will be graded to prevent ponding or the decant system modified to remove precipitation.

(September 2010 version of Chapter 4-6)

**4-6-67 Standard for pH, Alkalinity, Turbidity and Heavy Metals**

(a) The Operator shall treat all waters discharged from the affected lands, where necessary, to prevent waters from leaving the affected lands with a pH of less than 6.0 or greater than 9.0, or with an iron concentration in excess of seven (7) milligrams per liter (m/l). Discharge from the affected lands must register positive alkalinity - total alkalinity must exceed total acidity.

(b) Turbidity of water leaving the affected land shall not exceed 100 Nephelometric Turbidity Units (NTU). The maximum allowable increase to naturally occurring stream turbidity from the affected lands in 10 NTU, except the four hour period following a major precipitation event when the discharge shall not contain suspended sediments in excess of 15 NTU above naturally occurring stream turbidity, and except during the twenty-four (24) hour period following a major precipitation event when waters discharged from the affected lands shall not contain suspended sediments in excess of 25 NTU above naturally occurring turbidity. All analyses for this section shall be performed according to standards set forth in Environmental Protection Agency document entitled, "Standard Methods for Examination of Water and Wastewater."

(c) In accordance with criteria for other materials exhibiting a residual life exceeding thirty (30) days in water, no heavy metals or heavy metal compounds shall be pumped or allowed to flow from affected lands before or after reclamation in concentrations exceeding one-hundredth (1/100th) of the four (4) day median tolerance limit (TIm96) for game fish in the receiving waters.

**4-6-68 Stream Alteration**

Reclamation plans must contain the following provisions where stream channels or banks are to be permanently relocated.

(1) The relocated channel will be of a length equal to or greater than the original channel, unless a variance is granted by the Department.

(2) The relocated channel will contain meanders, riffles and pools similar to those in the original channel.

(3) Stream banks are to be rounded to prevent slumping and sloughing and are to be revegetated in keeping with acceptance agriculture or reforestation practices the first appropriate season following channel relocation.

**4-6-69 Generation of Objectionable Effluents**

Where exploration or mining has left an open pit and the composition of the floor and/or walls of the pit are likely to cause formation of acid, toxic, or other pollution solutions on exposure to moisture, the reclamation plan must provide for:

(1) Insulation of all faces from moisture or water contact by covering to a depth of two (2) feet or more with material or fill not susceptible itself to generation of such objectionable effluents; or

(2) Processing of any such objectionable effluents in the pit before their being allowed to flow or be pumped out, in order to reduce toxic or other objectionable concentrations to a level deemed safe to humans and Reservation resources; and

(3) Drainage of any such objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels deemed safe by the Department before release from the settling basin; or

(4) Absorption and/or evaporation of objectionable effluents in the open pit itself; and

(5) Prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices.

(Chapter 4-6 Adopted 1/18/85, Resolution 1985-20)

(September 2010 version of Chapter 4-6)

## CHAPTER 4-7 FOREST PRACTICES

### 4-7-1 Findings

The Colville Business Council, on behalf of the Confederated Tribes of the Colville Reservation, finds: that there are approximately 811,000 acres of forest lands within the Colville Reservation, of which 729,000 are in Tribal or Indian ownership and 81,000 are in non-Indian fee ownership; that forest land resources are the most important natural resources within the Colville Reservation; that a sustained forest products industry is essential to the economy and welfare of all people of the Colville Reservation; that it is in the public interest that all forest lands be managed based on sound cultural and scientific policies to sustain all Reservation resources and the Reservation population; that promotion of a profitable forest products industry is compatible with sustainable forest management practices that integrate protections for water quality and quantity, fish and wildlife, soils, vegetation, and cultural resources, recreation and scenic beauty; that such management on all forest lands within the exterior boundaries of the Colville Reservation and all other associated Trust lands outside of the boundary lines of the Colville Reservation that are under the jurisdiction of the Colville Tribes is necessary to protect the political integrity, economic security, health, and welfare of the Colville Tribes and the Reservation population and to protect the authority of the Confederated Tribes of the Colville Reservation to effectively govern the Colville Reservation for these purposes; that the Tribes have a holistic goal, which states in pertinent part:

“we want a healthy society, environment and economy;... We are and continue to be self-sustaining sovereign entity; having flourishing enterprises; having healthy productive landscapes including rangelands cropland, forest, riparian areas, streams and lakes... The Reservation remains as a rural life-style and the populations in balance with an effective water, mineral, and energy cycle with biodiversity resulting in an abundance of culture, medicinal and edible plants, clean air and water, springs that flow year round, large trees, wildlife, fish and insects.”

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-623)

### 4-7-2 Authority and Scope

(a) This Chapter is adopted pursuant to the retained inherent sovereignty of the Colville Tribes over the Colville Reservation and Tribal lands and over the conduct of all persons within the Reservation and tribal lands, in order to promote and protect the political integrity, economic security, and health and welfare of the Tribes and the Reservation community, as well as pursuant to any and all authority delegated to the Tribes by the United States.

(b) The provisions of this Chapter shall apply to forest practices on all forest lands and forest roads, within the Colville Reservation as defined in section 1-1-362 of this Code, including lands held in trust or in fee status, and on other Tribal trust lands or allotments of the Confederated Tribes of the Colville Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-623)

### 4-7-3 Definitions

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

(a) “Application” means the forest practices application required pursuant to this Chapter.

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

item is at least fifty (50) years of age.

I “Archeological/Historical site” means any location where an archeological/historical resource is identified. Archeological/historical sites include historic camping and gathering grounds, traditional fishing sites, sweat lodge locations, military forts, old settlers' homes, historic buildings, historic trails, and kitchen middens.

(d) “Basal area” means the total cross-sectional area of trees measured outside the bark at 4 1/2 feet above the ground.

(e) “BIA” means the United States Department of Interior Bureau of Indian Affairs.

(f) “Borrow pit” means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

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

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

(i) “Chapter” means this Forest Practices Chapter of the Colville Tribal Code.

(j) “Chemical” means a substance or substances in liquid, gas or solid form that may be applied to forest lands, roads, or vegetation to accomplish specific purposes and includes pesticides, fertilizers, desiccants, fire retardants when used in controlled burning, repellents, oil, dust-control agents (other than water) and salt. In addition, “chemicals” shall include all other materials that may present hazards to the environment.

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

(Amended 9/2/10, Certified 9/9/10)

(l) “Commercial tree species” means any species which are capable of producing a merchantable stand of timber on the particular site.

(m) “Completion of harvest” means whatever occurs latest of:

(1) Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas, or

(2) Scheduled completion of any slash disposal operations where the Department and the applicant agree within six (6) months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal, or

(3) Scheduled completion of any site preparation or rehabilitation of adjoining lands

approved at the time of approval of the application or receipt of a notification; Provided, That delay of reforestation under this subpart is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

(n) "Contamination" means the introduction into the atmosphere, soil, vegetation, or water, as a result of forest practice activities of any substance, whether in liquid, gas or solid form, in sufficient quantities as may be directly injurious to the health, safety or welfare of the Reservation population or individually injurious to the Reservation population, or which may otherwise pose a threat to Reservation resources, in particular, air quality, water quality, soil, wildlife, fish or other aquatic life and their respective habitat.

Application of forest chemicals in accordance with the chemical label, sections 4-7-86 and 4-7-87 of this Chapter, and the conditions of an approved forest practice application shall not be considered contamination.

(o) "Conversion of forest land" means a bona fide conversion to an active use that is incompatible with timber growing. Reforestation requirements shall apply to portions of the harvested area which is not converted within three years of completion of harvest.

(p) "Cross Drain" means a feature or structure that disperses road surface or ditch runoff to adjacent ground. Cross drains include culverts, ditch diversions, water bars or dips, or other structures demonstrated to be equally effective.

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

(r) "Debris" means garbage, trash, leftover cable and equipment, and other non-wood waste material.

(s) "Department" means the Environmental Trust Department of the Confederated Tribes of the Colville Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-623)

(t) "Detrimental soil conditions" are conditions caused by forest practices that reduce site productivity and include any of the following:

(1) Displacement - movement or removal of topsoil. Topsoil is the surface layer of mineral soil, or A Horizon, that is rich in nutrients, contains partially decomposed organic matter, and is often dark-colored.

(2) Compaction - topsoil is noticeably compressed or flattened, decreasing several inches in depth in contrast to nearby undisturbed soils of similar character.

(3) Fire damage - most of the topsoil is consumed and the top layer of mineral soil has changed color (usually to red).

(u) "Diameter at breast height (dbh)" means the diameter of a tree at 4 ½ feet above the ground measured from the uphill side.

(v) "Dominant trees" means trees that are larger than average for a site with crowns extending above the general level of the crown cover.

(w) "Drainage improvements" means all culverts, ditches, dips, waterbars, cross drains, or other structures or provisions for passing natural waters under roads or collecting and dispersing road runoff.

(x) “End hauling” means the removal and transportation of excavated material, to a deposit site not adjacent to the point of removal.

(y) “Fill” means the placement of earth material or aggregate for road or landing construction or other similar activities.

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

(aa) “Forest land” means all land capable of supporting a merchantable stand of timber that is not being actively used for a use which is incompatible with timber growing. Forest land does not include land within 200 feet of an occupied residence or the right-of-way or easement of paved roads improved and maintained to provide general public transportation.

(bb) “Forest landowner” means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner; Provided, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of “forest landowner” unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(cc) “Forest practice” means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to forest road construction, maintenance, and abandonment; forest products haul; forest vegetation treatments, including timber harvesting, pre-commercial thinning and slashing; application of chemicals; site preparation; prescribed burning; tree planting; and fire suppression and construction of fire trails.

(dd) “Forest Road” means all roads on forest lands and other roads that receive use periodically for log haul, but shall not include paved roads improved and maintained to provide general public transportation nor roads used solely for residential driveways.

(ee) “Ground-based” means forest practice operations carried out using heavy equipment or vehicle-mounted spray equipment off road.

(ff) “Habitat type” means the collective area that now supports, or is capable of supporting, a specific climax plant community or association. Forest habitat types of the Reservation are described in the publication, “Forest Habitat Types of the Colville Indian Reservation,” Washington State University Publication MISC0110.

(gg) “Heavy equipment” means any mobile, track or wheeled machinery used to excavate, perform site preparation, construct fire trail, or fell, bunch, forward, or skid timber.

(hh) “Merchantable stand of timber” means a stand of trees that will yield logs and/or fiber:

(1) Suitable in size and quality for the production of lumber, plywood, pulp or other forest products; and

(2) Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

(ii) “Notice to Comply” means a notice issued by the Department that may require initiation or completion of action necessary to prevent, correct or compensate for material damage to Reservation resources resulting from forest practices.

(jj) "Operator" means any person engaging in forest practices except an employee with wages as his sole compensation.

(kk) "Person" means any individual, partnership, private, public, Tribal or municipal corporation, Tribal enterprise, county, the Department or any Tribal, state or local governmental entity, or association of individuals of whatever nature.

(ll) "Pesticide" means, but is not limited to:

(1) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any pest;

(2) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(3) Any spray adjuvant or similar agent with or without toxic properties of its own intended to be used with any pesticide as an aid to the application, and sold in a container separate from that of the pesticide with which it is to be used.

(mm) "Preferred grass seed mixture" means one of the following mixtures, which shall be weed-free:

(1) For dry habitat types including all ponderosa pine, Douglas-fir/Idaho fescue, Douglas-fir/ninebark/heartleaf arnica phase and all Douglas-fir/snowberry habitat types:

A seed mixture of the following composition:

Bluebunch wheatgrass	30%
Slender wheatgrass or winter wheat	30%
Sherman BigBlue	5%
Thickspike wheatgrass	35%

(2) For other habitat types:

A seed mixture of the following composition:

Mountain Brome	35%
Slender wheatgrass or winter wheat	30%
Sherman Big Blue	10%
Blue Wildrye	25%

(3) Where conditions in section 4-7-64 (d) occur, a preferred alternative seed mixture of the following composition:

Sherman Big Blue	10%
Intermediate wheatgrass	30%
Slender wheatgrass or winter wheat	35%
Siberian wheatgrass	25%

(nn) "Regeneration harvest" means harvests intended to promote growth of regeneration (tree seedlings or saplings) already present or to make new regeneration possible, and which rely upon even-aged cutting methods such as seed tree, shelterwood or regeneration reserve tree.

(oo) "Relief culvert" means a cross drain culvert to relieve surface runoff from roadside ditches to prevent excessive buildup in water volume and velocity.

(pp) “Reserve patch” means unharvested sites located within areas being harvested, comprising at least two contiguous acres, having timber and other vegetation representative of the stand being harvested.

(qq) “Reserve trees” means conifer trees that occupy a dominant or codominant canopy position, have a live crown-to-total height ratio of 30% or more, and which will not infect or infest surrounding understory trees.

(rr) “Reservation population” means all people residing on any lands, whether trust or fee, within the exterior boundaries of the Colville Reservation.

(ss) “Reservation resources” means air, archaeological/historical, cultural, soil, water, plant, fish, and wildlife resources, and in addition shall mean capital improvements on the Colville Reservation.

(tt) “Riparian function” means the combination of stream energy dissipation, sediment filtering, bedload capture, floodplain development, water storage, streambank stabilization, shade, woody debris recruitment, litter fall, wildlife habitat, genetic exchange, and biodiversity provided by riparian management zones.

(uu) “Riparian Management Zone” means a specified area alongside natural waters and wetlands where specific measures are required to protect water quality and riparian function.

(vv) “Road prism” means the components of a road that form its cross section, including the cutslope, ditch, road surface, and load-bearing fill.

(ww) “Road reconstruction” means the maintenance, repair, or re-opening of pre-existing, non-driveable or abandoned road beds.

(xx) “Road surface” means the road’s running surface and shoulders.

(yy) “Salvage” means the removal of snags, down logs, windthrow, or dead and dying material.

(zz) “Scarify” means to loosen the topsoil and disrupt the forest floor (organic material overlying soil) in preparation for regeneration.

(aaa) “Shoreline Regulatory Area” means those lands subject to Chapter 4-15 and the regulations contained in the Shoreline Management Program and shall include any floodways and formally mapped and approved contiguous floodplain areas and all wetlands associated with the streams and lakes which are subject to the provisions of the Chapter. The Shoreline Regulatory Area includes those lands extending landward on a horizontal plane two hundred (200) feet from the ordinary high water mark of Type 1, 2, and 3 waters, and one hundred (100) feet from the ordinary high water mark of Type 4 waters.

(bbb) “Side cast” means the act of moving excavated material to the side and beyond the load bearing road or trail materials, or the material so deposited.

(ccc) “Site preparation” means the mechanical or chemical treatment or prescribed burning of forest floor, logging slash, or vegetation for the purpose of exposing a seed bed or creating plantable spots to enable reforestation.

(ddd) “Skid trail” means a route used by ground-based machinery to move logs to a landing or road.

(eee) “Slash” means non-merchantable woody material resulting from forest practice activities.

(fff) “Spoil” means excess material generated during road, pit, or landing construction which is placed or stored outside the road prism, pit or landing.

(ggg) “Stocking” or “acceptable stocking” means the minimum number of well distributed, vigorous seedlings, saplings or trees per acre of commercial species as approved by the Department or as contained in any approved Forest Practice application.

(hhh) “Stop Work Order” means the order described in section 4-7-16 that may be issued by the Department to stop violations of this Chapter to prevent damage or to correct or compensate for damages to Reservation resources or harm to the health, safety or welfare of the Reservation population resulting from forest practices.

(iii) “Timber” means forest trees, standing or down, of a commercial species.

(jjj) “Timber owner” means any person having all/or any part of the legal interest in timber.

(kkk) “Traditional Cultural Activities” mean any activity by a member of the Confederated Tribes of the Colville Reservation that has been traditionally practiced by the members of this region for the subsistence of body and spirit, such as food gathering practices of root digging, berry picking, hunting, fishing, medicine gathering, the assembly of and use of sweat lodges, the use of spiritual/vision quests areas, and the retrieval of plants, trees, rocks, water, skins/hides and feathers which are within the cultural tradition of the membership.

(lll) “Unstable slopes or landforms” means any areas containing features or landforms which cumulatively indicate the presence of potential slope instability. Such features may include seeps and sag ponds, hummocky ground, jack-strawed or pistol-butted trees, or existing slide escarpments. Landforms may include very steep slopes (65% or more), inner gorges, bedrock hollows, convergent headwalls, deep-seated landslides, valley walls and terrace escarpments mantled with colluvium and glacial deposits, and outer edges of meander bends or high terraces. Unstable slopes or landforms shall be field verified by the Department.

(mmm) “Water bar” means a dip, ditch, hump, or combination thereof cut across a trail, landing, or road for the purpose of dispersing surface water runoff to directed areas and preventing erosion.

(nnn) “Windthrow” means a natural process by which trees are uprooted or sustain severe trunk damage as a result of wind action.

(ooo) “Winter roost” means locations that provide congregations of migrant bald eagles protection from wind, inclement weather, and human disturbance during the winter months beginning in mid-October thru mid-March.

(ppp) “Woody debris” means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities.

#### **4-7-4 Forest Practice Chapter—Administration—Review—Revisions**

(a) This Chapter establishes the minimum standards for forest practices affecting Reservation resources and the Reservation population, and the necessary administrative procedures to achieve the policies and goal of this Chapter.

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

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

subject matters.

**4-7-5 Classes of Forest Practices**

There are four (4) classes of forest practices created by this Chapter. These classes include all forest practice activities conducted on forest land, in groupings that recognize their potential impact on Reservation resources and the health, safety and welfare of the Reservation population. All forest practices, regardless of whether or not they require an application for approval, must be conducted in accordance with this Chapter.

(a) Class I Forest Practices: Operations that are deemed to have no direct potential for damaging a Reservation resource or the health, safety or welfare of the Reservation population. The following operations are Class I forest practices and do not require an application:

- (1) Forestry research studies and tests by a research organization approved by the Colville Tribes.
- (2) The removal of forest products (including live, dead and down material, i.e., firewood, fence posts, poles, fern, etc.) for personal, noncommercial use, provided:
  - (A) Heavy equipment shall not be used; and
  - (B) Removals and operations shall not be conducted within waters or wetlands.
- (3) The removal of trees posing safety hazards;
  - (A) Within 200 feet of developed park areas; or
  - (B) Within 100 feet of county or BIA system roads providing the primary access route to groups of five or more residences.
- (4) Road maintenance including road grading, rocking, and installation of cross drains, except:
  - (A) Replacement of bridges and culverts at crossings of waters or wetlands; or
  - (B) Movement, placement, or replacement of materials which have a direct potential for entering waters or wetlands; or
  - (C) Application of roadside chemicals.
- (5) Emergency fire control and suppression.
- (6) Loading and hauling of forest products.
- (7) Operations such as pre-commercial thinning or slashing conducted outside the Riparian Management Zone.
- (8) Slash burning conducted in accordance with a burn plan approved by BIA Fire Management.
- (9) Tree planting.

(b) Class II Forest Practices: Operations that are deemed to have little potential for damaging a Reservation resource, or the health, safety or welfare of the Reservation population. The following operations are Class II forest practices and require an application:

(1) Renewal of an approved forest practice application where:

(A) No modification of the uncompleted operations is proposed, and

(B) No Notice to Comply, Stop Work Orders, or other Tribal enforcement actions is outstanding with respect to the prior application.

(2) Harvest on sole ownerships of 20 acres or less that lie outside Riparian Management Zones, except as listed as Class IV forest practices.

(c) Class III Forest Practices: Operations that are deemed to have some potential for damaging a Reservation resource, or the health, safety or welfare of the Reservation population. The following operations are Class III forest practices and require an application:

(1) All forest practices except those listed as Class I, II or IV forest practices.

(2) The removal of forest products for commercial purposes, such as logs, firewood, shakes, poles, posts.

(3) Ground-based or hand application of chemicals.

(4) Forest practices utilizing heavy equipment, such as:

(A) Timber harvest;

(B) Road construction and reconstruction;

(C) Development of rock pits;

(D) Construction of fire trails prior to prescribed burning; and

(E) Site preparation.

(5) Road abandonment.

(6) Replacement of water crossing structures, and road maintenance wherein the movement, placement, or replacement of materials has the direct potential for entering waters or wetlands.

(7) Any forest practices application proposing an alternate plan.

(8) Operations such as pre-commercial thinning or slashing if conducted inside the Riparian Management Zone.

(d) Class IV Forest Practices: Operations that are deemed to have potential for a significant effect on Reservation resources or the health, safety or welfare of the Reservation population. Class IV forest practices require an application. It may be determined that additional information or a detailed environmental impact statement is required prior to conducting the forest practices. The responsibility and cost of preparing any assessment, additional information, or statement required by the Department shall be borne by the applicant. At the discretion of the Department, the applicant may be required to pay for costs reasonably incurred in evaluating the environmental information. The following are Class IV forest practices:

(1) Forest practices (except those listed as Class I) on lands identified as follows:

(A) Lands zoned as residential, commercial, tourist, game reserve, wilderness,

or industrial zone pursuant to the Colville Tribes Land Use & Development Code, Chapter 4-3 as it now exists or may be afterward be amended,

(B) Lands being or declared to be converted to a non-forest use, including sites where reforestation will not be achieved within the times specified in section 4-7-77.

(C) Lands within two hundred (200) feet of any park or campground,

(D) Lands containing, or with a high probability of containing, burials, cultural sites, or historically significant resources such as cultural, religious, or archaeological/historical resources under Tribal or federal law.

(E) Lands containing or adjacent to unstable slopes or landforms,

(F) Lands containing habitat of species specified in sections 4-7-84 and 4-7-85,

(2) Any aerial application of chemicals, or use of a pesticide under an experimental use permit granted under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act.

(e) Continuing Review of Forest Practices Classification

(1) Pursuant to this Chapter, forest practices shall be included in each of the four (4) classes.

(2) Further refinement of four (4) classes may be necessary as additional experience develops under this Chapter. The Department shall provide recommendations to the Colville Business Council annually on any categories of forest practice that should be reclassified:

(A) To make the classification better conform to these criteria, and;

(B) To provide greater clarity and certainty for potential applicants and others as to which forest practice activities are in Classes I, II, III and IV forest practices.

(3) The classification of a forest practice shall not be subject to administrative appeal or judicial review.

**4-7-6 Water Categories**

(a) For the purposes of this Chapter, four water types are established for all surface waters, including but not limited to streams, wetlands, lakes, and ponds within the Reservation. All waters are classified as Type 1, 2, 3, or 4 Waters based upon the criteria set forth in subsections (b) through (e) of this section. Prior to commencement of any forest practices, operators and landowners shall verify accurate water types for all waters within and near the practices, based upon the actual characteristics and locations of the waters, provide the appropriate protections required by this Chapter.

(b) "Type 1 Water" means all waters having exceptional resource functions and values, including stream segments with their side channels having mean annual flow exceeding 20 cubic feet per second, lakes having surface areas at mean high water exceeding 20 acres, non-forested wetlands having surface areas exceeding 20 acres, all bogs, and any waters so designated by the Colville Business Council. A water resource of exceptional resource function and value, as determined by the Tribal Council is a water resource that provides values critical to the well-being of the Reservation population and resources, which may include but are not limited to:

- (1) traditional or cultural uses;
- (2) major domestic water supplies;
- (3) Tribal or public recreation;
- (4) fish spawning, rearing or migration;
- (5) wildlife habitat and uses;
- (6) agricultural or industrial uses; and
- (7) capital improvements.

(c) "Type 2 Water" classification shall be applied to segments of natural waters that:

- (1) are not classified as a "Type 1 Water;" and
- (2) have a channel width that averages eight (8) feet or more between ordinary high water marks; or
- (3) are ponds or lakes having a surface area of at least 5 acres but less than 20 acres between ordinary high water marks; or
- (4) are non-forested wetlands having a surface area of at least 5 acres but less than 20 acres, or smaller non-forested wetlands that adjoin Type 2 waters.

(d) "Type 3 Water" classification shall be applied to segments of natural water that:

- (1) are not classified as "Type 1 or 2 Waters;"
- (2) have a channel width that averages four (4) feet or more but less than eight (8) feet between the ordinary high water marks; or
- (3) are ponds or lakes having a surface area of at least 0.5 acres but less than 5 acres between the ordinary high water marks; or
- (4) are non-forested wetlands having a surface area of at least 0.5 acres but less than 5 acres, or smaller non-forested wetlands that adjoin Type 3 waters; or
- (5) are waters having smaller channel width or surface area, that provide fish habitat, as determined by the Department in consultation with the Department of Fish & Wildlife.

(e) "Type 4 Water" classification shall be applied to segments of natural water that:

- (1) are not classified as "Type 1, 2, or 3 Waters" and do not provide fish habitat.
- (2) have a channel width that averages less than four (4) feet between the ordinary high water marks; or
- (3) are ponds or lakes having a surface area less than 0.5 acre between the ordinary high water marks; or
- (4) are non-forested wetlands having a surface area less than 0.5 acres; or
- (5) are areas of perennial or intermittent seepage, forested wetlands, or drainage ways

having short periods of seasonal or storm run-off that show evidence of scour or bedload movement.

(f) The CCT Natural Resources Department maintains a Water Type Map which displays water locations and types based on the criteria in subsections (b) through (e) above. Mapped water locations and water type designations may be corrected, from time to time through a water type change process. Proposed corrections to the Water Type Map shall be submitted in writing to the Department on a Water Type Change form. The form shall identify the water, location, evaluation method, results, and the initiator of the proposed change. Prior to approval of the change, the form shall be distributed to the landowner and affected natural resource programs and 30 days shall be allowed for review and comment

(g) For purposes of this section:

(1) “Bog” means wetlands that commonly exhibit deep, organic-rich, hydric soils and indicator species including sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges. An overstory of spruce, hemlock, lodgepole pine, cedar, crabapple, or aspen may exist. Bogs may be associated with open water.

(2) “Channel width” means the distance between ordinary high water marks measured over a representative section of at least five hundred (500) lineal feet with at least ten (10) evenly spaced measurement points along the normal stream channel.

(3) “Fish habitat” means waters having flow volumes and duration, and physical characteristics that could be expected to provide seasonal or perennial habitat, and that have (or would have if not artificially blocked) connectivity to other fish-bearing waters.

(4) “Forested wetland” means a wetland with an overstory of commercial tree species (more than 50% existing or potential canopy closure from commercial tree species), excluding bogs.

(5) “Natural Waters” means only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

(6) “Non-forested wetland” is a wetland dominated by vegetation other than commercial tree species (generally less than 50% existing or potential canopy closure from commercial tree species).

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

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

(9) “Wetland” means those areas, which under normal conditions exhibit at least two of the following criteria: saturated surface conditions or open water present during a

significant portion of the year; hydric soils; a prevalence of vegetation adapted to saturated soils. Swamps, marshes, bogs, wet meadows, and ponds typically are wetlands. For the purposes of this Chapter, wetlands are considered to be natural waters.

**4-7-7 Applications; Policy**

(a) No Class II, III, or IV forest practices shall be commenced unless the Department has received and approved or conditionally approved an application for forest practices pursuant to this Chapter. Where the time limit for the Department to act on the application has expired and no action thereon has been taken by the Department, and none of the conditions in section 4-7-9 (a) exist, the operation may commence, providing that such operations shall comply in all respects with the requirements of this Chapter and other applicable Tribal and federal laws, and that the operator shall provide written notice to the Department prior to beginning operation.

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

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

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-623)

(d) Applications for operations not converting land to another use shall be signed by the landowner, the timber owner and the operator; or the operator and accompanied by a consent form signed by the timber owner and the landowner. A consent form may be another document if it is signed by the landowner(s) and it contains a statement acknowledging that he is familiar with this Chapter, including the provisions dealing with conversion to another use. Where the application is not signed by the landowner, timber owner or operator may be required by the Department to submit a bond securing compliance with requirements of the Forest Practice Regulations. If an application or notification indicates that the landowner or timber owner is also the operator, or an operator signed the application, no notice need be given regarding any change in subcontractors or similar independent contractors working under the supervision of the operator of record.

(e) Applications must be delivered to the Department at the appropriate office. Delivery should be in person or by registered or certified mail.

(f) Applications shall be considered received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general delivery. Applications that are not complete or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application. If an application is delivered in person or by mail to the Department by the operator or his authorized agent, the Department shall promptly but not later than twenty-four (24) hours provide a dated receipt. In all other cases, the Department shall promptly mail a dated receipt to the applicant. Every receipt will indicate the file number assigned to the notification or application.

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

- (1) Name and address of the forest land owner, timber owner, and operator;
- (2) Description of the proposed forest practice or practices to be conducted;
- (3) Legal description of the land on which the forest practices are to be conducted;
- (4) Specific locations of any lands to be converted.
- (5) Planimetric and topographic maps of adequate size and detail showing location and

type of all wetlands, lakes, streams and other Reservation waters in and immediately adjacent to the operating area and showing all existing and proposed roads, forest practice activities, landings, major tractor roads, rock pits, spoil disposal areas, and fire trails;

(6) Description and locations of all activities to be conducted within or across waters, wetlands, and Riparian Management Zones;

(7) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(8) Proposed plan for reforestation and for any stabilization necessary to reduce erosion potential from road and operating areas as required by the Forest Practices Regulations;

(9) Other environmental documents prepared by the Tribes, government agencies, or consultants; the chemical label; and soil, geological, and hydrological or watershed data relating to the forest practices when required by the Department;

(10) The expected dates of commencement and completion of all forest practices specified in the application;

(11) Assessment of existing roads including haul roads, and provisions for construction, reconstruction, or abandonment of roads needed to achieve the standards set forth in section 4-7-61 and to afford protection to Reservation resources; and

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

(h) The applicant shall indicate whether any land covered by the application will be converted to a use other than commercial timber production within three (3) years after completion of the forest practices described in it. If the application states that any such land will be converted or is intended to be converted:

(1) The reforestation requirements of this Chapter shall not apply if the land in fact is so converted within three (3) years unless applicable alternatives or limitations are provided in forest practices regulations issued under this Chapter as now or hereafter amended;

(2) Conversion to a use other than commercial timber production upon completion of such forest practices without appropriate consent or approval from the Colville Business Council constitutes a violation of those laws for which such consent or approval is required.

(i) As part of an application, an alternate plan may be proposed in variance with certain requirements specified in sections 4-7-60 through 4-7-91. The application shall specify in writing which requirements are proposed to be modified, and how the proposed alternate plan will provide protection to Reservation resources equal to or greater than that provided by the requirement or requirements for which an alternative is sought. During review of the alternate plan, the Department shall conduct a site inspection, consult with other departments or specialists having relevant resource expertise or jurisdiction, and shall approve an alternate plan that provides protection to Reservation resources equal to or greater than provided by the requirements for which an alternative is sought.

Alternate plans proposed with respect to forest practices proposed on Tribal or allotment trust land shall be reviewed by the Department in consultation with a multidisciplinary team to be coordinated by the CCT IRMP Coordinator. If consensus is not achieved, the IRMP Coordinator may provide a recommendation to the CCT Natural Resources Department Managers Team for its concurrence. The Managers Team shall be provided a copy of the proposed alternate plan and written notice of the need for decision at least one week prior to the Managers decision date. The

Department shall determine in writing whether the multidisciplinary process or the Managers Team recommendation provides protection to Reservation resources equal to or greater than that provided by the requirements for which an alternative is sought.

If proposed, an alternate plan shall contain adequate details to allow comparison with the standard provisions, including:

- (1) Standard provisions to be waived and specifications of the alternate practice proposed;
  - (2) General description of site, resource conditions, and special circumstances that support use of an alternate practice;
  - (3) Analysis describing Reservation resources affected, and comparing near- and long-term effects on condition and function of Reservation resources resulting from the alternate practice versus standard practices;
  - (4) Map specifying location and operational details of the alternate practice.
- (j) Before the operator commences any forest practice in a manner significantly different from that described in a previously filed notification or application, there shall be submitted to the Department a new application or notification in the manner set forth in this section.
- (k) The approval given by the Department to conduct a forest practice shall be effective for a term of up to five (5) years as specified by the Department. If a written notice is submitted to the Department thirty (30) days before such term ends, an extension for one year may be granted and no new application shall be required, providing that the forest practices to be employed remain the same and the Department does not believe a new application is needed.
- (Amended 6/7/05, Resolution 2005-326)  
(Certified 7/12/05)
- (l) Notwithstanding any other provision of this section, no prior notification or application shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake or other emergency defined by the Colville Environmental Quality Commission, but the operator shall submit an application or notification, whichever is applicable, to the Department within forty-eight (48) hours after commencement of such practice, provided that the operator shall comply with any Stop Work Order or Notice to Comply the same as if such forest practices were being performed pursuant to an approved application.

**4-7-8 Application Time Limits**

(a) A properly completed application delivered to the Department shall be approved or disapproved within three (3) working days for Class II, fourteen (14) working days for Class III and thirty (30) working days for Class IV forest practices, except:

- (1) To the extent the Department is prohibited from approving the application by this Chapter.
- (2) For “Class IV” applications when the Department has determined that additional information, or an environmental assessment or statement must be prepared, an application received without the information, assessment, or statement shall be considered incomplete.

(b) Where an application covers both Class III and Class IV forest practices, the Department shall have thirty (30) working days to approve or disapprove the application.

(c) If the application indicates that only Class II or III forest practices will occur, and the Department determines it involves some Class IV forest practices, the Department shall notify the applicant and extend the review as in (b) above. If the application is already approved, the Department shall issue a Stop Work Order or take other appropriate action.

(d) If field conditions prevent the Department from being able to properly evaluate the application, the Department may disapprove the application or portions thereof until field conditions allow for an on-site review.

**4-7-9 Approval and Disapproval Policy**

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

(1) The application is incomplete, improperly filed, or inaccurate.

(2) The operator has been enjoined from conducting forest practices by a Colville Tribal Court action under this Chapter.

(3) Conducting the operation(s) in accordance with the application would be inconsistent with this Chapter and no acceptable alternate plan is approved.

(b) If an application is properly filed but portions of it must be disapproved any portions of the proposed operations which can be separately conducted in compliance with this Chapter without reasonable risk to a Reservation resource or the health, safety and welfare of the Reservation population shall be approved, or approved with conditions.

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

(d) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damages to either a Reservation resource or to the health, safety or welfare of the Reservation population, as determined by the Department, the applicant shall, when required by a condition or approval, notify the Department two (2) days before the commencement of actual operations.

(e) The Department may specify application approval conditions when necessary to protect Reservation resources. In the development of such conditions, the Department will rely upon the expertise of qualified specialists regarding the resources at risk. When an alternate plan is approved as part of a forest practice application, the approval shall include a finding of equal or better resource protection.

(f) All approvals are subject to any conditions stipulated on the approved application and to any subsequent additional requirements set forth in a Stop Work Order or a Notice to Comply.

(g) Approval of an application to conduct forest practices under this Chapter does not constitute approval of any other permit that may be required, and except as expressly provided in this Chapter, does not constitute a waiver of any other requirement of this Code. Other permits may also be required for certain practices, such as a Road Use Permit, or permits which may be required by the Hydraulics Project Act, Shoreline Protection Act or other applicable laws.

**4-7-10 Conversion to Non-forest Use**

If an application to harvest signed by the landowner indicates that within three (3) years of application approval the forest land will be converted to an active use which is incompatible with timber growing, the reforestation requirements of these regulations shall not apply to the area proposed for conversion. Information relating to reforestation of the area to be converted need not be supplied. However, if such other use is not implemented within three (3) years after application

approval the reforestation requirements shall apply and such reforestation shall be completed within one (1) additional year. Any conversion of forest land shall comply with Chapters 4-3 and 4-15 of this Colville Tribal Code.

**4-7-11 Supplemental Directives**

(a) Purpose of supplemental directives: The Department may issue supplemental directives to the forest landowner, timber owner and operator, advising them to modify forest practice operations when the Department determines a different course of action or minor changes in the operation will provide greater assurance that the purposes and policies set forth in this Chapter will be met.

(b) Content of supplemental directives: Supplemental directives shall indicate the reason for their issuance specifying:

- (1) the preferred course of action or minor change;
- (2) expected improvements in protection to Reservation resources or population; and
- (3) location the preferred course of action or change will occur.

(c) Form, service: All supplemental directives shall either be in writing or be confirmed in writing. The supplemental directive shall be given to the operator and a copy mailed promptly to the forest landowner and to the timber owner if different from the forest landowner.

(d) Directive constitutes approval: No other approval of the Department shall be necessary to conduct forest practice operations in compliance with the terms of a supplemental directive.

**4-7-12 Enforcement Policy**

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

**4-7-13 Informal Conferences**

(a) Opportunity mandatory: The Department shall afford the operator or his representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the Department determines that there may be either imminent environmental damages to a Reservation resource or adverse impact upon the health, safety and welfare of the Reservation population. Informal conferences may be used at any stage in enforcement proceedings, except that the Department may refuse to conduct informal conferences with respect to any matter then pending before the Colville Environmental Quality Commission or the Colville Tribal Court.

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

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

and be open to public inspection.

**4-7-14 Notice to Comply—Contents—Procedures—Hearing—Final Order—Limitations on Actions**

(a) Where a violation, deviation from an approved application, or material damage to a Reservation resource or harm to the Reservation population has occurred, or the Department determines that a reasonable potential for such material damage or harm exists as a result of a forest practice, and the Department determines that a Stop Work Order is unnecessary then the Department shall issue and serve upon the operator or landowner a Notice to Comply, which shall clearly set forth:

- (1) The specific nature, extent, and time of violation or deviation and the damage or potential damage to a Reservation resource or harm to the Reservation population;
- (2) The relevant provisions of this Chapter relating thereto;
- (3) The right of the operator or landowner to a hearing before the Department; and
- (4) The specific course of action violation or deviation, and to prevent, correct and compensate for material damage to Reservation resources or harm to the Reservation population which resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a Reservation resource; and/or those courses of action necessary to prevent continuing damage to Reservation resources or harm to the Reservation population where the damage is resulting from circumstances that could not be reasonably foreseen at the time of the approval of the application.

(b) The Department shall mail a copy thereof to the forest land owner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. The operator or owner shall undertake the course of action so ordered by the Department unless, within fifteen (15) days after the date of service of such Notice to Comply, the operator, forest landowner, or timber owner, shall request the Department in writing to schedule a hearing. If so requested the Department shall schedule a hearing on a date not more than twenty (20) days after receiving such request. Within ten (10) days after such hearing, the Department shall issue an interim order either withdrawing its Notice to Comply or clearly setting forth the specific course of action to be followed. Such interim order shall become final ten (10) days after its issuance and the operator or owner shall undertake the course of action so ordered by the Department unless within this ten (10) day period the operator, forest landowner, or timber owner elects to exhaust his administrative remedies by appealing such interim order to the Colville Environmental Quality Commission. The order of the Colville Environmental Quality Commission shall be final agency action from which there is the right of judicial review.

**4-7-15 Stop Work Order—Grounds—Contents—Procedure—Appeals**

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

(b) The Stop Work Order shall set forth:

- (1) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;
- (2) An order to stop all work in connection with the violation, deviation, damage, or potential damage;
- (3) The specific course of action required to correct such violation or deviation or to prevent, correct and compensate for damage to Reservation resources which has resulted

from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a Reservation resource or potential harm to the Reservation population; or those courses of action necessary to prevent continuing damage to Reservation resources or harm to the Reservation population where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence; and

(4) The right of the operator to a hearing before the Colville Environmental Quality Commission: The Department shall immediately file a copy of such order with the Colville Environmental Quality Commission and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest landowner may commence an appeal to the Colville Environmental Quality Commission within fifteen (15) days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty (20) days after copies of the notice of appeal were filed with the Colville Environmental Quality Commission. The operator shall comply with the order of the Department immediately upon being served, but the Colville Environmental Quality Commission, if requested, shall have authority to continue or discontinue in whole or in part the order of the Department under such conditions as it may impose pending the outcome of the proceeding.

**4-7-16 Failure to Take Required Course of Action—Notice of Cost—Department Authorized to Complete Course of Action—Liability of Owner for Cost**

If an operator or owner fails to undertake and complete any course of action with respect to a forest practice, as required by final order of the Department or a final decision of the Colville Environmental Quality Commission, the Department may determine the cost thereof and give written notice of such cost to the operator, the timber owner and the owner of the forest land upon or in connection with which such forest practice was being conducted. If such operator, timber owner, or forest land owner fails within thirty (30) days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the Department may expend any funds available to undertake and complete such course of action and such operator, timber owner, and forest land owner shall be jointly and severally liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the Department, plus attorney fees, investigatory, court and other costs. If not paid within sixty (60) days after the Department completes such course of action and notifies such forest land owner in writing of the amount due, such amount shall become an obligation on such forest land and the Reservation Attorney at the Department's direction shall enforce this obligation to the extent provided by law.

**4-7-17 Failure to Obey Stop Work Order—Department Action Authorized—Liability of Owner or Operator for Costs**

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

**4-7-18 Inspection—Right of Entry**

(a) The Department shall inspect forest lands, before, during and after the conducting of forest practices as necessary for the purpose of insuring compliance with this Chapter and to insure that no material damage shall occur to either Reservation resources or the health and welfare of the Reservation population as a result of such practices.

(b) Any duly authorized representative of the Department shall have the right to enter upon forest

land at any reasonable time to enforce the provisions of this Chapter.

(c) In the event a duly authorized representative of the Department is denied access to enter upon any forest lands at reasonable times to enforce the provisions of this Chapter, the Department may apply for administrative civil search warrant to the Colville Tribal Court which shall have authority to issue such search warrant upon reasonable cause.

**4-7-19 Civil Remedial Actions—Monetary Compensation—Notice—Right of Appeal**

Any person who fails to comply with the provision of this Chapter, as it now provides or may hereafter amended, shall be required to pay civil monetary damages in the full amount of the costs of detecting and repairing any damages done as a result of the violation plus the administrative costs of enforcement, including but not limited to investigatory costs, expert witnesses and collection of such damages, including attorney's fees.

(a) In the event a specific monetary value cannot readily be placed on such damages, every such violating person shall be required to pay civil monetary damages in accordance with the liquidated damage schedule of this Chapter. The maximum liquidated amount is one thousand dollars (\$1000) per day for each such violation. Each day of such operation shall constitute a separate violation. In the case of a failure to comply with a written notice from the Department, every day's continuance after serving of the written notice shall be a separate and distinct violation.

(b) Written Notice: The remedial action herein provided for shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the Department, describing the violation with reasonable particularity. The person incurring civil damages pursuant to this section may within thirty (30) days of receipt of notice apply in writing to the Department for the remission or mitigation of such remedial action. Upon receipt of the application, the Department may remit or mitigate the remedial action upon whatever terms the Department, in its discretion, deems proper; Provided, that the Department deems such remission or mitigation to be in the best interests of carrying out the purposes of this Chapter. Any compensation imposed hereunder shall become due and payable thirty (30) days after receipt of such notice or thirty (30) days after the conclusion of any administrative or judicial appeals. The Department shall have authority to ascertain the facts regarding all such applications in a reasonable manner.

(c) Right of Appeal: Any person incurring any civil remedial action hereunder may appeal the same to the Colville Environmental Quality Commission. Unless such an appeal is taken, the civil remedial action hereunder shall be final and binding upon the person(s) affected by that civil remedial action. Such appeals shall be filed within thirty (30) days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the Department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty (30) days of receipt of notice from the Department setting forth the disposition of the application. The decision of the Colville Environmental Quality Commission shall be final agency action for purposes of judicial review.

(d) Enforcement Action: If the amount of any compensation is not paid to the Department within thirty (30) days after it becomes due and payable, the Office of the Reservation Attorney, upon request of the Department, shall bring action in the Colville Tribal Court to recover such compensation.

(e) Balance after costs will be placed into a separate account for rehabilitation purposes related to water quality and administered by the Department.

**4-7-20 Enforcement**

The Colville Tribes, through the Colville Tribal Court, may take any necessary action to enforce any final order or final decision after such person has failed to comply with the final order or the final decision.

**4-7-21 Administrative Appellate and Judicial Review**

(a) Any person aggrieved by any order, decision, or other action of the Department may obtain administrative appellate review thereof by submission of a timely petition to the Colville Environmental Quality Commission pursuant to the standards and procedures of the Colville Administrative Procedure Act, Chapter 2-4. Such petition for administrative appellate review shall be filed with the Chairman of the Colville Environmental Quality Commission within thirty (30) days of the date of the order, decision, or other action that is the subject of such appeal. Exhaustion of such administrative appellate review is a jurisdictional requirement to judicial review.

(b) Any person directly affected by any final order, final decision or other final action of the Colville Environmental Quality Commission may obtain judicial review of such order, decision or action by filing a timely petition with the Colville Tribal Court pursuant to the Colville Administrative Procedure Act. Such petition for judicial review shall be filed with the Court, as a civil matter under the Colville Tribal Code, within twenty (20) days of the decision of the Colville Environmental Quality Commission. Unless declared invalid upon judicial review, a final order, final decision, or other final action of the Colville Environmental Quality Commission shall be binding upon all parties.

**4-7-22 Cooperation with Public Agencies—Grants and Gifts**

Subject to approval of the Colville Business Council the Department is authorized to accept, receive, disburse and administer grants or other funds or gifts from any source, for the purpose of carrying out the provisions of this Chapter and to consult and cooperate with federal and state agencies in matters pertaining to this Chapter. Subject to approval by the Business Council, the Department is further authorized to negotiate inter-governmental agreements which may create, modify, or change duties established by this Chapter; Provided, That no regulatory changes shall be valid unless made in accordance with the Colville Administrative Procedure Act.

**4-7-23 Statutes and Trust Responsibility Not Modified**

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

**4-7-24 Waiver of Regulations**

Whenever a strict interpretation of this Chapter, or the regulatory program established pursuant to this Chapter, would result in extreme hardship, the Department may waive or modify such regulatory requirements or portion thereof; Provided, that such waiver or modification shall be consistent with the intent of this Chapter and; Provided further, that no such waiver shall be granted where material damage to Reservation resources, or adverse impact upon health and welfare of the Reservation population, shall result therefrom. The Department shall report in writing all such waivers to the Natural Resource Director, Natural Resource Managers, and Cultural Preservation Administrator within 90 days of granting the waiver.

**4-7-25 Severability**

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

**BEST MANAGEMENT PRACTICES**

**4-7-60 Roads Location, Design, and Water Crossings**

The Department shall apply these standards considering resource values and function, degree of risk to affected resources, and practicality of alternatives.

(a) Location - road locations shall incorporate the following standards to best protect water quality and Reservation resources. Roads shall only be constructed in locations approved by the Department.

(1) Roads shall be located outside Riparian Management Zones, wetlands, channel migration zones, floodplains, and unstable slopes or landforms unless all other feasible alternatives have been eliminated. When road location within such areas is necessary, the road length used or constructed shall be minimized.

(2) Road density shall be minimized:

(A) Use existing roads whenever practical and where resource protection standards can be accomplished.

(B) Construct new roads only where the existing road system does not allow cable yarding of harvest areas with sustained slopes exceeding 35%, or for other areas does not allow ground-based harvest with maximum skid distances less than 1500 feet.

(C) Abandon roads not needed for future management activities or which cannot be upgraded or maintained to prevent damage to Reservation resources, in accordance with section 4-7-61 (c).

(3) Road locations shall minimize:

(A) The number of water crossings;

(B) Loss of riparian function;

(C) Overall excavation; and

(D) Road length with grades exceeding 10%.

(4) Stream crossings shall be located where the channel is straight and can be crossed at right angles.

(b) Design:

(1) Road width shall be the minimum necessary for the logging system used, to meet safety requirements and minimize impacts to Reservation resources.

(2) Road shall be aligned to:

(A) Minimize excavation and balance cuts and fills. Use waste excavation in fills to minimize sidecast whenever feasible.

(B) Avoid risk of diverting stream flows down the road grade.

(C) Minimize road runoff draining to waters.

(3) Cut and fill slopes shall be designed to prevent further movement or erosion of soil or fill.

(A) Construct fill slopes not exceeding the following ratios unless otherwise approved by the Department:

Excavated material	Fill slope ratio
Common earth	1:1
Rock	1-1/2:1
Sandy Soil	2:1

(B) Construct cut slopes not exceeding the following ratios unless otherwise approved by the Department:

Excavated material	Cut slope ratio
Common earth (on slopes over 70%)	3/4:1
Common earth (on slopes to 50%)	1/2:1
Hardpan, broken or soft-rock	1/2:1
Rock	1/4:1

(C) Provide additional measures if necessary to prevent erosion of cut and fill slopes.

(4) Road drainage shall be provided to maintain natural surface and subsurface drainage patterns, prevent erosion, and minimize delivery of road runoff to waters.

(A) Provide road surface drainage by a combination of outsloping, insloping, or crowning of the road surface, rolling the grade, ditches or cross drainage.

(B) Disperse road runoff and relieve ditches at intervals no greater than the following:

<u>Road Gradient</u>	<u>Maximum Drainage Spacing</u>
0 to 8%	600 feet
9% to 15%	400 feet
15% and over	250

Additional cross drains may be needed due to factors such as soils, topography, precipitation levels, proximity to waters or unstable slopes, and drainage patterns. Less frequent spacing may be approved by the Department.

(C) Relief culverts installed on forest roads shall:

(i) Have culvert diameter of at least eighteen (18) inches in diameter or the equivalent.

(ii) Have adequate catch basins and headwalls to minimize the risks of culvert siltation and "by-pass" of the culvert from erosion of the headwall.

(iii) Slope downward toward the outside shoulder of the road at a minimum gradient of 3% to keep the culvert clean.

(D) Provide adequate outfall protection at all drainage improvements to prevent erosion and sedimentation.

(c) Water Crossings:

(1) All crossings shall have structures installed to keep water within its natural watercourse.

- (2) Crossing structures for permanent roads shall be capable of passing 100 year flows and associated bedload and woody debris during runoff events.
  - (3) Where waters provide fish habitat, crossings shall provide passage for all fish life stages.
  - (4) Ditches and road surface shall be drained away from water crossings at the nearest location feasible to minimize entry of road runoff to waters. Slope approaches away from crossings where possible.
  - (5) Crossing fills and approaches to crossings or water withdrawal sites shall be protected using vegetation, rock or other means to prevent erosion and entry of sediment to streams.
  - (6) Temporary bridges or culverts shall be sized to pass all anticipated flows during their period of installation. Unless installed and removed during a single low flow period, generally between July 15 and October 15, crossings shall be sized in accordance with section 4-7-60 (c)(2).
  - (7) Removal of water crossings shall include stabilization of crossing approaches by resloping and revegetating, or other means if necessary.
- (d) Roads constructed or reconstructed during emergency fire suppression action shall be abandoned in accordance with section 4-7-61(c) upon completion of suppression activities, or upgraded to comply with all standards of sections 4-7-60 and 4-7-61 prior to the first subsequent spring runoff season, subject to approval of the Department.

**4-7-61 Road Construction, Maintenance, Abandonment, Pits and Quarries**

(a) Road Construction:

- (1) Construction activities shall be performed when soil conditions are not likely to result in excessive erosion or soil movement, considering soil types, slopes, and climatic conditions.
- (2) Minimize soil and vegetation disturbance.
- (3) New road construction shall be initiated only as far as that road can be completely finished during the current construction season. When constructing road outside the dry season, install all erosion control and drainage improvements concurrently or closely following pioneering of the road grade.
- (4) Timber harvested within the right-of-way shall be decked at locations where the timber will not support or be covered by fill or sidecast.
- (5) Width of clearing for road construction within the Riparian Management Zone shall be minimized.
- (6) Spoils and woody debris shall be placed in stable locations outside of the Riparian Management Zone and floodplain. Embankments so formed shall drain uniformly without water ponding, and measures shall be provided to prevent subsequent erosion.
- (7) End haul, overhaul, or other special construction methods shall be required where:

- (A) sidecast material would rest within the Riparian Management Zone of Type 1 through 4 Waters; or

(B) sidecast material would rest on slopes over 50% which are terminated within five hundred (500) feet of waters; or

(C) slopes exceed 60%, unless waived by the Department; or

(D) there is a potential for mass slope failure as determined by the Department.

(8) Materials used in road construction shall be free of accumulations of slash or woody debris, and pieces of woody material larger than three (3) cubic feet.

(9) Borrow pits shall be located outside Riparian Management Zones and floodplain. Rock removal from streambeds or overflow channels is not permitted.

(10) During road construction, fills or embankments shall be built up in two-foot layers. Each layer shall be compacted by operating the tractor or other equipment over the entire surface of the layer. Chemical compacting agents may be used in accordance with sections 4-7-63 and 4-7-87.

(11) The amount of material displaced from road location by blasting shall be minimized.

(12) Cut and fill slopes shall be sloped back in accordance with section 4-7-60 (b)(3).

(13) Grade changes (concave vertical curve) shall be used to turn runoff off roads, particularly to protect fills at water crossings.

(14) All drainage improvements shall be installed during road construction and prior to haul. On existing roads, all required erosion control and drainage improvements shall be installed prior to haul. Clear drainage improvements of woody material deposited by construction or logging prior to removal of construction equipment from the vicinity or the winter season, whichever is first.

(15) All exposed soil, fill, spoils and sidecast shall be stabilized using seeding, or if necessary, geotextiles, armoring, or other effective means.

(b) Road Maintenance:

(1) The following maintenance requirements shall apply to forest roads except roads abandoned in accordance with section 4-7-61(c), to:

(A) minimize erosion,

(B) minimize delivery of sediment and road runoff to waters,

(C) maintain water crossings that pass 100 year flows and associated bedload and debris during runoff events,

(D) provide passage for all fish life stages where waters provide fish habitat, and

(E) protect reservation resources.

(2) During harvest or haul operations, perform measures to:

(A) Maintain fully functional drainage improvements.

(B) Maintain shape of the road prism to prevent erosion and minimize concentrations of runoff.

- (i) Maintain outslope, inslope, or crowned shape of road surface.
- (ii) Water the road surface or treat with chemicals to maintain cohesion of road surface material.
- (iii) During grading, pull graded material and berms onto the road surface. Leave berms only where necessary to protect fills.
- (iv) Pull (grade) ditches only when necessary and do not remove the toe of the cutslope.
- (v) Shut down operations temporarily when road shape or drainage improvements cannot otherwise be maintained.

(C) Place all material obtained during maintenance in stable locations that will not erode or compromise drainage improvements.

(D) Control roadside brush if needed to maintain road prism and drainage improvements.

(E) When plowing snow, prevent loss of road surface material. Provide drainage of the plowed roadway in accordance with section 4-7-60 (b)(4).

(3) Upon completion of harvest or haul operations, perform the following:

(A) Clear all drainage improvements of obstructions.

(B) Stabilize or remove unstable material and forest debris with potential to block drainage improvements.

(C) Repair or replace all damaged drainage improvements to fully restore their function.

(D) Leave road surface in a condition that will prevent subsequent erosion, and keep runoff within natural drainages, by outsloping, removing berms from the outside of roads, providing drain dips, waterbars, rolling grade or other methods.

(4) Thereafter, landowner shall strive to maintain drainage improvements as needed to achieve the goals of this section and prevent material damage to Reservation resources.

(A) If material damage to Reservation resources is occurring and the Department determines that additional road maintenance would prevent or reduce further damage from occurring, the Department shall notify the operator or landowner of the need for maintenance.

(B) If the operator or landowner fails to complete maintenance required in accordance with section 4-7-15, the Department is authorized to carry out the work and the landowner shall be liable for the expense, in accordance with section 4-7-17.

(c) Abandoned Roads: A landowner may choose to abandon any road, in accordance with the procedures of this section and conditions of an approved Forest Practice application for abandonment. The Department will determine whether a road has been adequately abandoned, and notify the landowner of its decision in writing. Following notification of adequate abandonment by the Department, no subsequent maintenance shall be required so long as the abandoned road remains blocked to traffic. Re-opening of an abandoned road shall be considered

reconstruction and may occur in accordance with an approved Forest Practice application.

- (1) Road prism shall be left in a stable condition suitable to prevent erosion, through outslipping or water bars, and other means if required by the Department.
- (2) Measures shall be provided to reestablish natural drainage patterns, and to prevent road runoff from entering waters.
- (3) Culverts, bridges, and fills at all water crossings shall be removed, unless otherwise approved by the Department.
- (4) Exposed soils associated with the road and abandonment work shall be reseeded in accordance with section 4-7-64 (d).
- (5) The road shall be permanently blocked to vehicular traffic.

(d) Gravel Pits and Quarries:

- (1) Gravel pits and quarries shall be located outside Riparian Management Zones and floodplains.
- (2) Runoff from gravel pits and quarries shall either be diverted to the forest floor or passed through one or more settling basins, as approved by the Department.
- (3) Cross drainage shall be provided on road approaches to gravel pits and quarries to minimize road runoff entering the sites.
- (4) If rock is to be washed provision shall be made for adequate settling basin(s) to prevent any stream siltation.
- (5) All rock quarries and gravel pits shall be reclaimed within two (2) years from the time the rock or gravel source is exhausted or abandoned. The landowner and/or operator are jointly responsible for reclamation. The Department may require posting of a reclamation bond to secure performance of reclamation work. Reclamation procedures include:
  - (A) Remove all deleterious material that has potential for damaging Reservation resources or that would prevent reforestation of an otherwise plantable area.
  - (B) Grade all cut and fill slopes to the fill slope ratios set forth in section 4-7-60(b) for material present, unless otherwise approved.
  - (C) Reforest to the extent practical.
  - (D) Reseed exposed soil in accordance with section 4-7-64 (d).
  - (E) Grade pit floor to provide uniform natural drainage and to prevent ponding.

**4-7-62 Roadside Vegetation Control**

- (a) Mechanical brush control shall be used if practical.
- (b) Chemicals shall only be used in accordance with sections 4-7-86 and 4-7-87.
- (c) Chemical control of roadside brush or noxious weeds shall not be done where any chemicals will directly enter natural waters, wetlands or runoff water.

**4-7-63 Road Surface Treatment**

(a) Chemicals shall only be used in accordance with sections 4-7-86 and 4-7-87.

(b) Chemicals shall be applied to road surface only. Construct a temporary berm alongside the road shoulder where needed to prevent runoff of the applied chemical.

(c) Chemicals shall not be allowed to enter any waters, or ditches where runoff drains to waters.

(d) Chemical loading, mixing, and tank cleanout shall be conducted outside of Riparian Management Zones. When cleaning out storage tanks or the application equipment tanks used for storage and application of road treatment materials, dispose of the rinse water, other fluids and solids on the road surface or in a place safe from potential contamination of water.

**4-7-64 Site Productivity**

(a) Forest practices shall leave soil and vegetation conditions conducive to sustained soil stability and hydrologic function, site productivity, and timber growth except where the lands are being converted to another use.

(b) Detrimental soil conditions shall not be caused on more than 25% of each practice or treatment area from the cumulative effects of forest practice operations and treatments. No more than 50% of each practice or treatment area shall be scarified, including portions where detrimental soil conditions have been caused. Areas outside the normal road prism including landings and skid trails shall be considered part of the practice or treatment area. Detrimental soil conditions include soil displacement, compaction, and fire damage as defined in section 4-7-3.

(c) When detrimental soil conditions have been caused on more than 25% of a practice or treatment area, the Department may require reclamation such as ripping of compacted soils or other appropriate measures. Additional protective measures or mitigation may be required for subsequent operations having potential to further increase detrimental soil conditions within the same area. If subsequent operations cannot be conducted without causing additional detrimental soil conditions, and a plan for mitigation is not approved by the Department, the operations shall halt.

(d) Preferred grass seed mixtures shall be sown on exposed soils associated with road construction, reconstruction, or abandonment, spoil and borrow areas, landings, skid trails, and fire trails the first sowing season (September to March) following completion of soil disturbing activities. The seed shall be applied at a rate of 28 pounds per acre. Any use of alternative seed mixtures and alternate rates of application shall be approved in writing by the Department. A preferred alternative seed mixture may be used if one or more of the following conditions are present:

(1) In dry habitat types, native bunchgrasses are absent in the surrounding plant communities; or

(2) Noxious weeds are present in significant numbers; or

(3) Heavy livestock grazing is expected.

**4-7-65 Harvest System and Landings**

(a) Logging System: The logging system shall be appropriate to sustain long-term productivity of soils, minimize erosion, and protect water quality and other Reservation resources. The Department may require seasonal restrictions or harvesting system limitations for specific harvest areas based upon soil conditions.

(b) **Landing Locations:** (1) Landings shall be located on stable ground so that all associated fill, sidecast, spoils, slash, and landing operations, remain outside unstable slopes and landforms,

wetlands and Riparian Management Zones and above the floodplain of any stream. Utilize existing landings where feasible. Locate new landings that will be suitable for future use.

(Amended 6/7/05, Resolution 2005-326)

(Certified 7/12/05)

(2) Landings shall be located where runoff coming from the landing and landing activities can be directed away from waters and unstable slopes.

(c) Landing Construction:

(1) Landings shall be no larger than reasonably necessary for safe operation of the equipment expected to be used.

(2) Where the average general slopes exceed fifty (50) percent, fill material used in construction of landings shall be free of accumulations of slash or woody debris, and pieces of woody material larger than three (3) cubic feet, and shall be mechanically compacted in two-to-three (2-3) foot layers where necessary and practical by tractor to prevent soil erosion and mass soil movement.

(3) Roads, skid or fire trails shall be outsloped or cross drained uphill of landings to divert runoff away from landings and away from the toe of any landing fills.

(4) Landings shall be sloped to minimize accumulation of runoff on the landing and direct runoff away from waters and wetlands.

**4-7-66 Harvest Operations**

(a) Felling.

(1) Trees shall not be felled into or across waters or the inner zone of Riparian Management Zones unless approved in writing by the Department.

(2) Reasonable care shall be taken to avoid felling trees into the outer zone of Riparian Management Zones, habitat patches or other areas designated to protect Reservation resources.

(3) Operator shall be required to use tree jacks, cable tree pulling systems or other recognized methods for directional falling when these methods are appropriate and their use would eliminate the need to fell trees into Type 1, 2, 3, or 4 Waters or the inner zone of Riparian Management Zones.

(4) Harvest operations shall be integrated so that:

(A) The amount of area traveled by ground-based equipment is minimized;

(B) Trees are felled to the lead of pre-planned skid trails to minimize the creation of detrimental soil conditions; and

(C) To minimize the number of turns or sets.

(b) Ground-based Harvest Systems.

(1) Ground-based harvest systems shall be used only on ground with sustained slopes not greater than 35% unless otherwise approved by the Department.

(2) Heavy equipment shall not enter the Riparian Management Zone or any waters unless approved by the Department.

(A) If use of heavy equipment within the Riparian Management Zone is approved by the Department, the amount of work within the zone shall be minimized.

(B) If water crossings are approved by the Department, the number of crossings shall be minimized. Crossing and approaches shall be aligned at right angles to the water.

(3) Machine trails shall be located:

(A) Away from low moist ground to avoid interception of subsurface water;

(B) To minimize sidecast; and

(C) To enable installation of cross drainage that will prevent erosion and direct runoff to the forest floor.

(4) Cross drainage of skid trails shall be provided to maintain natural drainage patterns and prevent erosion, using outsloping, waterbars, or other effective measures. Drain trails at fifty (50) foot intervals where trail gradient exceeds 8%.

(5) Operation of ground-based equipment shall stop during periods of high soil moisture or thawing, when excessive soil displacement, puddling or deep rutting would occur.

(c) Cable Yarding Systems

(1) Cable or other aerial yarding shall be used on ground with sustained slopes steeper than 35%, unless otherwise approved by the Department.

(2) The lead end of logs shall be lifted to minimize soil displacement and rutting.

(3) Timber shall not be yarded in or over waters unless approved by the Department.

(4) When yarding parallel to a Riparian Management Zone, reasonable care shall be taken to prevent logs from damaging leave trees within the Riparian Management Zone.

(5) Yarding across culverts, ditch lines, and roads shall be avoided.

**4-7-67 Riparian Management Zones**

(a) Riparian Management Zones (RMZ) shall be required along all waters except forested wetlands. Within Riparian Management Zones, only forest practices that maintain or enhance riparian function and Reservation resources shall be allowed.

(b) Unless approved in writing by the Department, the following activities shall not occur within Riparian Management Zones:

(1) Operation of heavy equipment, such as felling, skidding, site preparation, and fire trail construction;

(2) Landing construction, decking and loading of logs;

(3) Rock pits and quarries, borrow pits, and spoils disposal;

(4) Aerial, broadcast or mist application of chemicals.

(c) Road and skid trail construction and reconstruction shall not occur within Riparian Management Zones, except for water crossings, their approaches, or other road and trail segments that minimize loss of riparian function and provide the best overall protection to Reservation resources that shall be allowed if approved in writing by the Department.

(d) Within Riparian Management Zones, existing road segments causing material damage to Reservation resources shall be maintained, upgraded, closed, or abandoned as needed to prevent further resource damage. Where practical, existing roads within the Riparian Management Zone shall be abandoned, and road length within the zone shall be reduced to minimize loss of riparian function and provide the best overall protection to Reservation resources.

(e) Riparian Management Zones shall be measured horizontally from the ordinary high water mark, or when present, the outer edge of non-forested wetlands, channel migration zone, or associated seeps. The following Riparian Management Zone minimum widths shall be applied to each side of waters:

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

(f) Riparian Management Zones shall be comprised of an inner and outer zone.

(1) The inner zone shall begin at the ordinary high water mark, or outer edge of non-forested wetland, channel migration zone, or associated seep, and shall extend landward for half the minimum Riparian Management Zone distance.

(2) The outer zone shall be comprised of the remaining portion of the Riparian Management Zone, located landward of the inner zone.

Water Type	Inner Zone Width	Outer Zone Width
1	75'	75'
2	62.5'	62.5'
3	50'	50'
4	25'	25'

(g) Timber harvest within the Riparian Management Zone shall be allowed, subject to the following limitations:

(1) Harvest within the inner zone shall only occur if approved in writing by the Department, and:

(A) where necessary to construct road or yarding corridors, or

(B) as approved in an alternate plan according to section 4-7-7 (i).

(2) Harvest operations within the outer zone, if conducted, shall leave well distributed dominant trees from the existing stand comprising not less than the following basal area per acre:

(A) 60 square feet per acre for dry habitat types, which include all ponderosa pine, Douglas-fir/Idaho fescue, Douglas-fir/ninebark/heartleaf arnica phase and all Douglas-fir/snowberry habitat types.

(B) 100 square feet per acre for moist habitat types, which include all forest habitat types of the Reservation not listed as dry.

(C) Habitat type for each site shall be determined based upon field observation, or mapped Reservation habitat types which the Department shall make available.

(3) Harvest operations within the Riparian Management Zone shall be conducted to minimize disturbance to soils, root systems, leave trees and other vegetation.

(4) When roads lie within the Riparian Management Zone, the following changes in Riparian Management Zone requirements shall be made:

(A) Where the road prism occupies part of the outer zone, no harvest shall occur between the road and water, and the Riparian Management Zone shall not extend landward of the road.

(B) Where the road prism occupies part of the inner zone, requirements specified in section 4-7-67 shall apply throughout the total Riparian Management Zone width specified in section 4-7-67 (e).

(5) Salvage harvest within the Riparian Management Zone shall adhere to the requirements of this section. Harvest shall not be conducted within the inner zone. Where no live dominant trees exist in the outer zone, dead trees of the largest size classes present shall be left to achieve basal area requirements. Salvage harvest may alternatively be conducted in accordance with an alternate plan providing equal or higher levels of riparian function, if approved by the Department.

(6) Riparian Management Zones shall not be required for forested wetlands. Harvest within forested wetlands may be conducted in accordance with a plan preventing detrimental impact, rutting of soils and loss of functional wetland acreage, if approved by the Department.

**4-7-68 Reserve Trees**

(a) On all acres harvested outside of riparian management zones, a minimum of two (2) reserve trees per acre, well distributed, shall be left standing.

(b) No point within units of regeneration or overstory removal harvest shall be farther than 600 feet from a reserve patch, Riparian Management Zone, or fully stocked stand of merchantable timber. For the purposes of this section, adjacent land having different ownership shall be considered to be fully stocked with merchantable timber.

(c) Snags (standing dead or highly defective trees) shall be left standing unless they pose a safety hazard to workers or the public; except where salvage harvest is conducted, a minimum of two (2) snags per acre of the largest size classes present shall be left standing.

**4-7-69 [Reserved]**

**4-7-70 [Reserved]**

**4-7-71 Landing Cleanup**

Except as approved by the Department, the following rules shall be met within sixty (60) days after completion of hauling logs from any landing, or sooner if necessary to prevent erosion.

(a) Drainage:

- (1) Clean any ditches and culverts obstructed by dirt or woody debris during operations.
- (2) Establish a slope that will prevent water from accumulating on the landing or running from the landing down any erodible fill.

(b) Other Erosion Control Measures:

- (1) Cut slopes shall be cut back to an angle expected to remain stable.
- (2) Where landing surfaces, fill, sidecast or slash are unstable or erodible they shall be compacted, ripped, water barred, benched or mulched, or be treated by other means approved by the Department.

(Amended 6/7/05, Resolution 2005-326)  
(Certified 7/12/05)

(c) Clean-up:

- (1) Slash accumulations which would prevent reforestation of otherwise plantable fills, sidecast or cut slopes of landings shall be disposed of or be piled on the landing floor for future disposal.
- (2) Slash shall not be buried in any filled portion of the landing in connection with landing cleanup operations.

**4-7-72 Post-Harvest Site Preparation**

Unless the application or notification indicates that the landowner or timber owner specifically agrees to assume responsibility for compliance with this section, the operator shall leave the site in a condition suitable for reforestation following any regeneration harvest or any partial cutting where the site is reduced below its minimum stocking level as determined by the Department. Lands being converted to another use are exempt.

(a) Site preparation shall be required when necessary to establish a condition suitable for reforestation.

(b) Heavy equipment shall not be used for site preparation or rehabilitation work:

- (1) In any water or Riparian Management Zones; or
- (2) On sites with sustained slopes exceeding 35%, unless approved by the Department.

(Amended 6/7/05, Resolution 2005-326)  
(Certified 7/12/05)

(c) Mineral soil exposure following site preparation shall not exceed 50% of the practice or treatment area. Areas outside the normal road prism including landings and skid trails shall be considered part of the practice or treatment area.

(d) At least five pieces per acre of large dead wood, 15 inches in diameter and 10 feet long or larger, shall be left scattered and not piled. Where less than five pieces of large wood exist per

acre, all shall be left scattered and not piled but there is no requirement to create or place additional pieces.

**4-7-73 Slash Disposal**

(a) Slash Disposal Techniques:

(1) Except on sites where the Department determines that a particular method would cause unreasonable risk to either Reservation resources or the health, safety and welfare of the Reservation population, any conventional method of slash disposal may be used.

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

(2) Slash burning may requires a burning permit from the Department or BIA Fire Management. Reasonable care shall be taken to prevent damage to Riparian Management Zones, soil, residual timber, Reservation resources, and other property.

(3) Location of slash piles: Slash shall not be piled or windrowed using heavy equipment within the Riparian Management Zone or in locations from which it could be expected to enter any water.

(b) Slash disposal is required when abatement of extreme fire hazard is required, as determined by the Department or BIA Fire Management.

(c) Slash disposal is required where the forest land owner has applied for and been granted an extension of time for reforestation on the grounds that slash disposal is necessary or desirable before reforestation.

**4-7-74 Fire Trails**

Existing logging roads will be considered as the main fire trail system. However, additional fire trailing may be required to protect the Reservation resources.

(a) Fire trails shall have adequate dips, water bars, cross drainage and ditches to prevent erosion.

(b) Reasonable care shall be taken to minimize excavation. Sidecast and use of heavy equipment to build trail in advance of controlled burning shall not be permitted within the Riparian Management Zone of any waters unless approved by the Department.

(c) Fire trails shall be constructed to a minimum width needed to facilitate burning.

**4-7-75 Housekeeping**

During timber harvest and all other forest practices, contamination of Reservation resources shall be prevented. Refueling and repair work shall be conducted outside of Riparian Management Zones. Fuels, lubricants, coolants and other pollutants shall not be allowed to wash into any water or waterway, seep into the soil, or kill vegetation, fish or wildlife. Forest lands shall be kept clear of all trash, pollutants, and other inorganic refuse resulting from forest practices.

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

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

**4-7-76 Reforestation Policy**

All harvested forest land not being converted to another use shall be regenerated with approved commercial species within specified time periods. The regenerated forest shall be protected and managed to insure optimum productivity of the forest lands.

**4-7-77 Reforestation Requirements**

(a) Unless the harvest application indicates that the land will be converted to another use, or the lands are identified as having a likelihood of conversion to urban uses, reforestation is required for forest lands harvested where the remaining trees do not fully utilize the timber growing capacity of the site as determined by the Department.

(b) Reforestation is not required where:

(1) Individual dead, dying, down or windthrown trees are salvaged, or

(2) A tree or trees not constituting a merchantable stand are removed from lands in actual use for other purposes; for example, removal of individual trees from lands used for farming or grazing.

(3) Trees are harvested from land within 200 feet of an occupied residence or the right-of-way or easement of paved roads improved and maintained to provide general public transportation.

(c) Satisfactory reforestation -regeneration harvests:

(1) Satisfactory reforestation of a regeneration harvest occurs if:

(A) Within four (4) years of completion of initial harvest or subsequent relogging, the site is artificially restocked by seeding or planting alone, or in combination with natural regeneration, such that restocking meets specifications established by the Department.

(B) Within ten (10) years, in the case of a natural regeneration plan, the site is restocked to at least the minimum acceptable stocking established by the Department.

Provided that the regeneration failures from causes beyond the applicant's control will not result in a violation of this paragraph.

(2) In the event that acceptable stocking is not achieved within the time limits specified, site preparation and supplemental planting or seeding may be required.

(3) The Department may grant an extension of time for planting or seeding if suitable seedlings or seeds are not available, or if weather conditions or other circumstances beyond the forest landowner's control require delay in planting or seeding.

(d) Satisfactory Reforestation-Partial Cuts: Where reforestation is required in connection with a partial cut, the harvest application shall include a plan for stocking improvement. The plan shall be approved unless the Department determines that it will not reasonably utilize the timber growing capacity of the site to the extent practical.

(e) Natural Regeneration Standards: A natural regeneration plan may be approved as acceptable reforestation if:

(1) A seed source of well-formed trees of commercial tree species capable of seed production is available.

(2) The owner of the seed source agrees in writing not to harvest the seed source for the time period specified in the plan, or until issuance of a satisfactory reforestation inspection report.

(3) For purposes of this paragraph, a "natural seedling" shall be defined as a thrifty,

vigorous tree firmly rooted in mineral soil or decayed duff, that is at least six (6) inches in height measured to the highest point above the root collar.

(4) The seed source must consist of:

(A) Seed block of sizes and locations shown on the plan and satisfactory to the Department, or

(B) An average of at least five to ten (5 – 10) well distributed, healthy, undamaged, vigorous, windfirm seed trees per acre of plantable area and no inadequately stocked area 32 (July 2005 version of Chapter 4-7) is more than one hundred fifty (150) feet from the nearest seed tree.

(5) Competing vegetation shall be controlled to the extent necessary to allow survival and growth by approved commercial species.

(f) Alternate Plan: Any alternate plan for natural reforestation may be approved if it provides a practical method of achieving acceptable stocking levels as established by the Department within ten (10) years.

#### **4-7-78 Reforestation—Species—Stocking—Standards**

(a) Reforestation Species: The Department may approve the use of species which differ from the removed stand where the reforestation plan reveals that the proposed species is preferable from any of the following standpoints.

(1) Site data indicates better potential production for the proposed species;

(2) Control of forest insects or disease;

(3) Greater economic return;

(4) Development of special environmental, recreational or aesthetic conditions.

(b) Acceptable Stocking: Stocking levels are acceptable if three hundred (300) well-distributed, vigorous seedlings per acre of commercial tree species have survived on the site at least two growing seasons. “Welldistributed” means that more than 20% of the harvested area has from 240 to 300 trees per acre. Lesser number of trees per acre may be acceptable if the Department determines that the timber growing capacity of the site will be fully utilized.

(c) Except as approved by the Department, to qualify as acceptable reforestation:

(1) The seedling and seed must be from an appropriate seed zone

(2) Competing vegetation shall be controlled to the extent necessary to allow survival and growth of the regenerated trees.

#### **4-7-79 Reforestation: Plans—Report—Inspections**

(a) Reforestation Plans: Reforestation plans must be submitted with the application except where no reforestation is required.

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

(b) Reforestation Reports: The landowner, forest landowner or his designee shall file a report with the Department either at the time of completion of planting or at the end of the normal planting seasons. When artificial seeding is used, the report shall be filed two (2) growing seasons after seeding.

(c) The reports in section 4-7-79(b) above, must contain at least the following:

- (1) The original Forest Practice application or notification number.
- (2) Species planted or seeded.
- (3) Age of stock planted and seed zone.
- (4) Description of actual area planted or seeded.

(d) Inspection—Supplemental Planning Directives:

(1) Within twelve (12) months after a reforestation report is received, the Department shall inspect the reforested lands; and within seven (7) years on the case of natural regeneration, the Department shall inspect the reforested lands.

(2) If the inspection shows that acceptable stocking levels have not been achieved, the Department shall direct the forest owner to perform supplemental regeneration in accordance with the Department's reforestation standards.

(A) In lieu of such supplemental planting, the Department and the forest landowners may agree on a supplemental reforestation plan.

(B) Supplemental planting shall not be required if the Department determines that there is little probability of significantly increasing the stocking level.

(C) Except where stocking improvement is necessary to protect Reservation resources and is feasible, further supplementary planting shall not be required where acceptable stocking levels have not been achieved after two (2) properly performed supplemental plantings.

(3) Evidence of compliance: If the Department determines on inspection that acceptable reforestation has been achieved, on the request of the forest landowner the Department shall confirm in writing that no further reforestation obligations remain. If no supplemental planting directive has been issued within thirty (30) days after the deadline for the inspection, reforestation shall be deemed satisfactory unless the Department has informed the landowners prior to the deadline that further inspections by the Department on the area are needed.

(4) Where a natural regeneration plan has been approved by the Department, the Department may allow up to ten (10) years too achieve acceptable stocking levels.

(5) Prior to the sale or transfer of land subject to a reforestation obligation, the seller shall provide written notification of the obligation to the buyer, and the buyer shall sign a notice of reforestation obligation indicating the buyer's knowledge and assumption of the obligation.

**4-7-80 Urban and Other Lands Exempted from the Reforestation Requirements**

(a) Those lands which an applicant has declared are to be converted and are in fact converted within three years, and where:

- (1) The development is for urban or other use incompatible with commercial timber production, and
- (2) The development contemplated would be consistent with any applicable land use plans or ordinances.

(b) Utility Rights-of-Way: Reforestation is not required for initial clearing or reclearing of utility rights-of-way in actual use for utility purposes or scheduled for construction of utility facilities within ten (10) years from the date of completion of harvest, Provided, that if the scheduled facility is not completed, the area shall be reforested within one (1) year.

(c) Other lands: Reforestation is not required on the following lands unless required by regulation of the agency owning or acquiring the lands:

(1) Lands owned in fee by a public agency that has budgeted for construction within ten (10) years a specific project inconsistent with commercial timber production.

(2) Lands being acquired by public agency for construction of a project, within ten (10) years, that is inconsistent with timber, production, if at the time of completion of harvest, the public agency has entered into a binding contract for the purchase of the lands or initiated legal proceedings for the condemnation of the lands.

**4-7-81 Archaeological, Historical, and Cultural Resources**

(a) Within 200 feet of burials or archaeological/historical sites, heavy equipment use, timber falling and yarding, and chemical application shall only be conducted in accordance with a protection plan approved by the Tribal Historic Preservation Officer.

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

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

**4-7-82 Unstable Slopes or Landforms**

(a) Forest practices conducted on or around unstable slopes or landforms shall incorporate measures to avoid increasing the rate and magnitude of soil movement.

(b) The Department may require appropriate measures, including:

(1) Avoiding or minimizing operations on specific sites;

(2) Road and landing construction that minimize excavation and utilize additional drainage and stabilization measures;

(3) Temporary use and subsequent abandonment of roads;

(4) Harvest methods that minimize site disturbance, or maintain specified levels of tree stocking, canopy cover, or rooting strength;

(5) Stabilization of landing woody debris accumulations; or

(6) Restricted use of heavy equipment off roads.

**4-7-83 [Reserved]**

**4-7-84 Threatened, Endangered or Protected Species' Habitats**

(a) The Department may require reasonable constraints on the time and/or method of forest

practice operations, when, in the opinion of the Department, such constraints are necessary to protect listed species consistent with the Federal Endangered Species Act. Forest practices shall be conducted in accordance with such requirements.

(b) Forest practices within one half (1/2) mile of a known nest for one of the following species, or a bald eagle winter roost, shall only be conducted in accordance with a protection plan approved by the Fish & Wildlife Department. The protection plan shall be based on site specific circumstances of individual nest or roost sites, and will typically include specific limitations on harvest and road construction within 1/8 mile of the nest or roost, and seasonal restrictions on operations within 1/2 mile, as needed to protect the integrity and function of the nest or roost site:

- (1) bald eagle;
- (2) golden eagle;
- (3) peregrine falcon;
- (4) osprey;
- (5) great blue heron.

(c) Natural Salt Licks. Operation of heavy equipment off road shall be minimized within 50 feet of natural salt licks.

#### **4-7-85 Threatened and Endangered Plants**

When forest practices are proposed on or around sites containing occurrences of federally listed threatened or endangered plants, the Department may require measures for their protection or enhancement. Such forest practices shall only be conducted in accordance with a protection plan approved by the Tribal Vegetation Specialist/Ecologist.

#### **4-7-86 Forest Chemicals**

(a) Chemicals shall be applied only when soil and climatic conditions favor accurate delivery, infiltration and adsorption. Avoid wet soils or soils with high water table to minimize potential for contamination of surface or ground waters.

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

- (1) Printed on the Environmental Protection Agency container registration label, and
- (2) Established by the Federal Occupational Safety and Health Administration, as they relate to safety and health of operating personnel and the public.

(c) Chemical treatment zone shall be posted by the landowner by signing at all significant points of regular access at least five (5) days prior to treatment. Posting shall remain at least fifteen (15) days after the spraying is complete. Extended posting periods may be required by the Department in areas where human use or consumption of plant materials is probable. The landowner shall be responsible to maintain signs during the required posting periods. Signs shall be made of suitably durable material and contain the name of the product used, identify what was treated, date of treatment, a contact name and telephone number, and any applicable restrictions. The requirement to post signs shall not apply to roadside spraying.

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

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

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

(g) Daily Records

(1) Certified applicators and all persons applying pesticides to forest lands including public entities engaged in roadside spraying shall keep records for each application which shall include the following:

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

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

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

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

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

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

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

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

(J) Apparatus license plate number.

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

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

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

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

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

**4-7-87 Chemical Handling—Storage--Application**

(a) Leakage:

(1) No contamination of water or soil by chemicals is permitted from any equipment used for their transportation, storage, mixing or application.

(2) The Department may suspend further use of any equipment responsible for contamination, until the deficiency has been corrected to the satisfaction of the Department.

(b) Mixing: When water is used in mixing of chemicals:

- (1) Provide an air gap or reservoir between the water source and the mixing tank.
- (2) Use uncontaminated pumps, hoses and screens.

(c) Mixing, Loading and Storage Areas:

- (1) Mix, store, and load chemicals and clean tanks and equipment outside of Riparian Management Zones where any spills would not enter any waters or wetlands.
- (2) If any chemical is spilled, immediate appropriate procedures should be taken to contain or neutralize it.

(d) Aerial Application:

- (1) Chemicals shall not be allowed to enter waters, wetlands, or riparian management zones. To ensure that no entry occurs, additional buffer distances shall be maintained by the operator as needed, taking into account factors such as nozzle type, height of aircraft, and wind.
- (2) The initial application pass adjacent to the untreated zones in (1) above shall be flown parallel to the untreated zones unless otherwise approved by the Department.
- (3) A bucket or spray device capable of immediate shutoff shall be used.
- (4) Shut off application during turns and over open water.
- (5) The landowner shall identify for the operator the units to be sprayed and any untreated areas within the units with appropriately marked aerial photos or detailed maps. Before application begins, an over-flight of the area shall be made. Waters, wetlands, riparian management zones and treatment zone boundaries must be clearly visible from the air, or additional marking shall be required to determine any no spray areas.
- (6) Because aerial application of chemicals is the least discriminate method available, hand application or ground application with power equipment should be evaluated and utilized in whole or in part to the extent feasible.
- (7) Aerial application shall not be conducted when wind conditions will cause drifting into the Riparian Management Zone and other waters or wetlands or where such drifting may damage Reservation resources, harm the health, safety or welfare of the Reservation population, or drift to lands other than those included within the Forest Practices application.
- (8) All access entry points on roads or developed trails shall be posted "No entry-- Chemical Spraying Operation" and blocked during the period of aerial application of restricted use chemicals.

(e) Ground-based Application with Power Equipment:

- (1) Within Riparian Management Zones, power equipment shall not be used for mist applications of chemicals, and application shall be onto specific targets only.
- (2) Keep chemicals out of all waters and wetlands.

(f) Hand Application:

- (1) Within Riparian Management Zones, apply chemical only onto specific targets.
- (2) Keep chemicals out of all water and wetlands.

(g) Container Disposal: Chemical containers shall be either:

- (1) Removed and cleaned for reuse in accordance with any applicable label requirements, regulations of the State Department of Agriculture or the state or local health departments, or
- (2) Disposed of in a landfill certified to receive such materials and in a manner approved on the label and by the State Department of Agriculture.

(h) Reporting of Spills and Misapplications: All potentially damaging chemical spills and misapplications shall be immediately reported to the Department and to the Colville Emergency Services Department. This report shall contain notification of the volume spilled or leaked, the type(s) of chemical(s), the location of the spill, distance from the spill to the nearest water, and when the spill occurred.

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

**4-7-88 Fire Control Policy**

It is the policy of the Department and BIA Fire Management to require all reasonable precautions be taken during forest practices to prevent wildfires or minimize the severity of wildfires.

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

**4-7-89 Fire Plan**

When requested by the Department or BIA Fire Management, the Operator shall prepare, in cooperation with the Department or BIA Fire Management, a plan for the prevention and suppression of fires on the area encompassed by the forest practice. The plan shall fully reflect the Operator's fire protection obligations. Neither the approval of the plan nor anything contained therein shall relieve the Operator from any responsibility under the terms of any contract.

**4-7-90 Fire Precaution**

The Operator shall furnish and maintain in good and serviceable condition such fire fighting tools and equipment, provide such fire protection personnel and take such fire prevention measures as may be required by the Department or BIA Fire Management to meet the fire protection requirements for the existing fire danger.

(a) Definitions Concerning Fire Tools and Equipment:

- (1) "An operation" means the use of equipment and supporting activities that are involved in the process of the management of forest land that may cause a forest fire to start. Such activities may include, but are not limited to, any phase of logging, land clearing, road and utility right-of-way clearing. The operating period shall be that time period when the activity is taking place.
- (2) "Currently with the logging" and "current with the felling of live timber" or "current with logging operation" means during the logging operation on any landing, setting or similar part of the operation unless modified.

(3) “Fire extinguisher” means, unless otherwise stated, a chemical fire extinguisher rated by Underwriters’ Laboratories or Factory Mutual, appropriately mounted and located so as to be readily accessible to the operator. When two fire extinguishers are required, they are to be appropriately mounted, and located so that one is readily accessible to other personnel.

(4) “Any tractor or mobile machine” means any machine that moves under its own power when performing any portion of a logging, land clearing, right-of-way clearing, road construction or road maintenance function, and includes any machine, whether crawler or wheel type, whether such machine be engaged in yarding or loading or in some other function at the time of its inspection by the Department.

(5) “Any fixed position machine” means any machine used for any portion of a logging, earth moving, right-of-way clearing, milling, road maintenance and construction, land clearing operation or other operation that performs its primary function from a fixed position even though said machine is capable of moving under its own power to a different, fixed position.

(6) “An approved exhaust system” means a well-mounted exhaust system, free from leaks and equipped with a spark arrester rated and accepted under U.S.D.A. Forest Service Current Standard, and shall include:

(A) An exhaust-driven supercharger, such as a turbo-charger, is acceptable in lieu of a spark arrester. The entire exhaust must pass through the turbine.

(B) Passenger vehicles and trucks may be equipped with an adequately baffled muffler of a type approved by the Department in lieu of a spark arrester.

(C) Portable power saws purchased after January 1, 1978, and used in forest land must meet the performance levels set forth in the Society of Automotive Engineers “multipositioned small engine exhaust fire ignition standard, SAE recommended practice J 335B.” Requirements to obtain SAE J 335B specifications are as follows:

(i) The spark arrester shall be designed to retain or destroy ninety percent (90%) of the carbon particles having a major diameter greater than 0.023 inches (0.584 mm).

(ii) The exhaust system shall be designed so that the exposed surface temperature shall not exceed 550° F (288° C) where it may come in direct contact with forest fuels.

(iii) The exhaust system shall be designed so that the exhaust gas temperature shall not exceed 475° F (246° C) where the exhaust gas may strike forest fuels.

(iv) The exhaust system shall be designed in such a manner that there are no pockets or corners where flammable material might accumulate. Pockets are permissible only if it can be substantiated by suitable test that material can be prevented from accumulating in the pockets.

(v) The exhaust system must be constructed of durable material and so designed that it will, with normal use and maintenance, provide a reasonable service life. Parts designed for easy replacement as part of routine maintenance shall have a service life of not less than fifty (50) hours. Cleaning of parts shall not be required more frequently than

once for each eight (8) hours of operation. The spark arrester shall be designed so that it may be readily inspected and cleaned.

(vi) Portable power saws will be deemed to be in compliance with the Society of Automotive Engineers J 335B requirements if they are certified by the United States Department of Agriculture, Forest Service, San Dimas Equipment Development Center.

(D) Portable power saws purchased prior to January 1, 1978 that do not meet the Society of Automotive Engineers Standards must meet the following requirements:

(i) The escape outlet of the spark arrester shall be at an angle of at least forty-five degrees (45°) from a line parallel to the bar.

(ii) The configuration of the spark arrester shall be such that it will not collect sawdust, no matter in what position the saw is operated.

(iii) Spark arresters shall be designated and made of material that will not allow shell or exhaust temperature to exceed 850° F.

(iv) The arrester shall have a screen with a maximum opening size of 0.023 inch.

(v) The arrester shall be capable of operating, under normal conditions, a minimum of eight (8) hours before cleaning is needed.

(vi) The screen shall carry a manufacturer's warranty of a minimum 50-hour life when installed and maintained in accordance with the manufacturer's recommendations.

(vii) The arrester shall be of good manufacturer and made so that the arrester housing and screen are close fitting.

(viii) The arrester shall be at least ninety (90%) percent efficient in the destruction, retention or attrition of carbon particles over 0.023 inch.

(ix) Efficiency to be measured as described in Power Saw Manufacturers Association Standard Number S3-65.

(x) Construction of the arrester shall permit easy removal and replacement of the screen for field inspection and cleaning.

(7) "Shovel" means a serviceable long-handled or "D" handled round point shove of at least "0" size with a sharpened, solid and smooth blade, and the handle shall be hung solid, smooth and straight.

(8) "Axe" means a serviceable, double-bitted or single-bitted swamping axe of at least a three pound head and thirty-two (32) inch handle. The blades shall be sharpened, solid and smooth and the handle shall be hung solid, smooth and straight.

(9) "Pulaski" means a serviceable axe and hoe combination tool with not less than 3-1/2 pound head and thirty-two (32) inch handle. The blades shall be sharpened, solid and smooth and the handle shall be hung solid, smooth and straight.

(10) "Adze eye hoe" means a serviceable fire fighting hoe with a blade width of at least 5-3/4 inches and a rectangular eye. The blade shall be sharpened, solid and smooth, and the handle shall be hung solid with no more than 3/4 inch or less than 1/8 inch extending beyond the head, smooth, aligned, and at least thirty-two (32) inches long.

(11) "Fire tool box" means a box or compartment of sound construction, with a waterproof lid, provided with hinges and hasps, and so arranged that the box can be properly sealed. It shall be red in color and marked "Fire Tools" in letters at least an inch high. It shall contain a minimum of:

(A) Two axes or Pulaskis;

(B) Three adze eye hoes, providing that one Pulaski may be substituted for one adze eye hoe; and

(C) Three shovels.

(12) "Pump truck or pump trailer" means a serviceable truck or trailer that must be able to perform its functions efficiently, equipped with a water tank of not less than three hundred (300) gallon capacity, filled with water. The complete pump truck or pump trailer shall be kept ready for instant use for suppressing forest fires. If a trailer is used, it shall be equipped with a hitch to facilitate prompt moving, and a serviceable tow vehicle must be available throughout the operating and watchman periods. The pump may be a portable power pump or a suitable power take-off pump. It shall be plumbed with a bypass or pressure relief valve. The pump shall develop, at pump level, pressure sufficient to discharge a minimum of twenty (20) gallons per minute, using a 1/4 inch nozzle tip, through a fifty (50) foot length of one inch or 1-1/2 inch rubber lined hose. The pump truck or trailer shall be equipped with the following:

(A) A minimum of five hundred (500) feet of one or 1-1/2 inch cotton or synthetic jacket hose;

(B) A fire tool box.

The tank shall be plumbed so that water can be withdrawn by one man by gravity feed. This outlet shall be adapted to accept the hose used and located for easy fitting of pump cans. The pump truck or trailer must be equipped with appropriate tools, fuel, accessories, and fittings to perform its functions for a continuous period of four (4) hours. A recommended list of tools, fittings, and accessories may be obtained from the Department or BIA Fire Management office.

(13) "Fire watch" means an employee(s) who is on site, vigilant, capable and who performs the following described actions for one hour following each time a power-driven, spark-emitting or electric motor ceases operations for the day or any part thereof; moving through areas of the day's activities, constantly looking for and reporting fires, and taking suppression action on any fire detected; and after each cable line road change, an employee in conjunction with his regular duties, shall check line locations and report friction points to the operator or other user.

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

(14) "Loading site" means a place where any product or material (including but not limited to logs, firewood, slash, rock, poles) is placed in or upon a truck or other vehicle.

(b) Fire Protection Equipment: The following tools and equipment are required on all forest practice operations on the Reservation during the "closed" fire season which is from May 1 to November 1, or as amended by the responsible BIA Fire Management official:

- (1) At each logging or forest road construction operation there shall be:
- (A) One pump truck or pump trailer;
- (2) Any tractor or other mobile machine shall have:
- (A) One fire extinguisher of at least a 5 B.C. rating;
  - (B) An approved exhaust system; and
  - (C) An appropriately mounted shovel.
- (3) Any fixed position machine shall have:
- (A) Two fire extinguishers of at least 5 B.C. rating;
  - (B) An approved exhaust system; and
  - (C) An appropriately mounted shovel.
- (4) Any portable power saw shall have:
- (A) One fire extinguisher of at least 1 B.C. rating;
  - (B) An approved exhaust system; and
  - (C) One shovel, one Pulaski, and one fire extinguisher of at least 5 B.C. rating, which shall be kept within two minutes round trip of the operator.
- (5) Any passenger vehicle used for industrial or commercial operations shall have:
- (A) One fire extinguisher of at least a 5 B.C. rating;
  - (B) An approved exhaust system; and
  - (C) One shovel.
- (6) Each tail, corner, or haulback block used during cable yarding shall be equipped with one serviceable five gallon backpack pump can filled with water, one shovel and one Pulaski. Operations with multiple blocks must have this complement of tools and water within one hundred feet of each block.
- (7) Each helicopter used for yarding timber shall comply and be equipped with the following:
- (A) A VHF radio, maintained in operational use, at frequency 122.9 MHz;
  - (B) A portable water bucket of the following capacities, with necessary cargo hooks and tripping mechanism for dropping water on a fire, shall be located at the heliport serving the operation;

<u>External Payload of Helicopter</u>	<u>Minimum Required Bucket Size</u>
780 pounds or less	50 gallons
781 – 1600 pounds	100 gallons

1601 – 3900 pounds	200 gallons
3901 or more	300 gallons

(C) A water source of sufficient capacity readily accessible to allow the bucket to be filled three times without refilling the source. The water source must be located within five minutes round-trip flying time of every part of the operation.

(D) The following sized fire tool kit packaged for ready attachment to the cargo hook and located at the heliport serving the operation:

- (i) Two axes or pulaskis;
- (ii) Three shovels;
- (iii) Three adze eye hoes.

(E) Two fire extinguishers of at least 20 B.C. rating shall be kept with refueling equipment. They shall be appropriately mounted, suitably marked and available for immediate use.

(c) General requirements during the closed season:

(A) When blasting operations are conducted, a fire watch is required at the completion of blasting;

(B) During cable yarding operations:

(i) The operator shall be responsible to identify points of line rub, and shall take immediate action to stop, alleviate or control the line rub in order to prevent fires at these points.

(ii) The area around tail, corner and haul back blocks must be kept clean of all flammable woody debris under four inches in diameter for a distance of six feet in all directions.

(C) Smoking is permitted only on roads, cleared landings, gravel pits or any similar area free of flammable material;

(D) Warming fires are not permitted.

(d) Industrial Fire Precaution Levels

(1) Level One - Closed season: Fire protection equipment requirements are in effect. A fire watch is required at this and all higher precaution levels unless otherwise waived by BIA Fire Management.

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

(2) Level Two - Partial Hoot Owl: The following may operate only between the hours of 8:00 PM and 1:00 PM local time.

- (A) Power saws except at loading sites and landings;
- (B) Cable yarding;
- (C) Blasting;

(D) Welding or cutting of metal.

(3) Level Three- Partial Shutdown:

(A) The following are prohibited except as indicated:

(i) Cable yarding, except that gravity operated logging systems employing non-motorized carriages may operate between 8:00 PM and 1:00 PM when all blocks and moving lines are suspended 10 feet above the ground except the lines between the carriage and the chokers.

(ii) Power saws, except power saws may be used at loading sites and on tractor or skidding operations between the hours of 8:00 PM and 1:00 PM local time.

(B) The following are permitted to operate between the hours of 8:00 PM and 1:00 PM:

(i) Tractor, skidder, feller-buncher, forwarder, shovel or excavator operations where the equipment in use is capable of quickly reaching and effectively attacking a fire start, and constructing fireline;

(ii) Mechanized loading or hauling of any product or material;

(iii) Blasting;

(iv) Welding or cutting of metal;

(v) Any other spark emitting operation not specifically mentioned.

(4) Level Four - General Shutdown: All operations are prohibited.

(5) Where hauling involves transit through more than one shutdown zone/regulated use area, the precaution level at the woods loading site shall govern the level of haul restrictions, unless otherwise prohibited by other than the industrial fire precaution level system.

(6) Waivers amending the precaution requirements for specific operations and locations may be issued by the Department or BIA Fire Management. Requests for waivers shall be received and waivers issued in advance of operations.

#### **4-7-91 Fire Suppression**

The operator shall take immediate and independent initial fire suppression action on all fires in the area encompassed by the forest practice and shall use all necessary manpower and equipment at his disposal, including the employees and equipment of his subcontractors engaged in or near the area. When called upon, the operator shall make available any or all of his manpower and equipment, including that of his subcontractors, for hire by the Bureau of Indian Affairs and to work under the direction of any authorized employees of the Bureau of Indian Affairs in the suppression of any fire on or threatening Reservation lands.

(Chapter 4-7 Amended 6/16/05, Resolution 2005-275)  
(Chapter 4-7 Adopted 1/18/85, Resolution 1985-20)

Legislative History: Pursuant to Resolution 2005-486, the Colville Business Council has stayed the 2005 amendments to Chapter 4-7, Forest Practices Water Quality, which were adopted by Resolution 2005-272 on June 16, 2005 with technical corrections approved by Resolution 2005-

276 on July 16, 2005 until October 1, 2006. All forest practices applications submitted prior to the June 16, 2005 effective date shall be processed in accordance with Chapter 4-7 as adopted by Resolution 1985-20 on January 18, 1985 and Resolution 2005-148 on March 17, 2005. Resolution 2005-148 transferred administration of Chapter 4-7 from Tribal Forestry to the Environmental Trust Department. The October 2005 version of Chapter 4-7 shall reflect administration to Environmental Trust Department. This October 2005 version of Chapter 4-7 shall remain in effect until October 1, 2006.

## CHAPTER 4-8 WATER QUALITY STANDARDS

### 4-8-1 Findings

(a) The Confederated Tribes of the Colville Reservation have a primary interest in the protection, control, conservation, and utilization of the water resources of the Colville Indian Reservation. It is the purpose of this Chapter to establish Tribal Water Quality Standards for the surface waters and ground waters located within the exterior boundaries of the Colville Indian Reservation. The quality of all surface and groundwater on the Reservation shall be protected to insure the health, economic, aesthetic and cultural well being of all people residing upon the Colville Indian Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

(b) The human activities and factors which may adversely affect the quality of surface and ground waters on the Colville Indian Reservation and the natural resources which they support shall be regulated to protect and maintain the high quality of such waters and preserve their continued domestic, agricultural, industrial, recreational, cultural and other beneficial uses. The economy, health, safety and welfare of the people residing and doing business on the Colville Indian Reservation may be adversely affected by human activities carried out by both Indian and non-Indian people on trust and fee land within the Colville Indian Reservation. Inadequate control of such activities can contaminate and degrade surface and groundwater resources on which many people depend for domestic, agricultural, industrial, business, recreational, cultural and other uses.

(c) The Confederated Tribes of the Colville Reservation have jurisdiction to enforce Tribal Water Quality Standards in order to protect the economy, health, safety and welfare of the Reservation community.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

### 4-8-2 Territory Covered

The provisions of this Chapter, known as the Water Quality Standards Chapter of the Colville Law and Order Code, shall apply to all surface and groundwaters of the Colville Indian Reservation. Every human activity taking place on the Colville Indian Reservation which may affect the quality of the surface and groundwater resources of the Reservation shall be subject to the provisions of this Chapter.

### 4-8-3 Administration

The Environmental Trust Department of the Confederated Tribes of the Colville Reservation shall administer this Chapter. From time to time, and as it deems appropriate, the Department may recommend that the Business Council amend this Chapter. The Environmental Trust Department may propose that the Business Council adopt a Fee Schedule for the purpose of establishing fees which may be charged for permits and other administrative services provided by the Department under this Chapter.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

### 4-8-4 Definitions

(a) "Background conditions" means the biological, chemical, and physical conditions of a water body, upstream from the point or non-point source of any discharge under consideration. Background sampling location in an enforcement action would be upstream from the point of discharge, but not upstream from other inflows. If several discharges to any water body exist, and enforcement action is being taken for possible violations to the standards, background sampling would be undertaken immediately upstream from each discharge.

(b) "Best Management Practices" or "BMP's" means a generic term describing minimum acceptable land use practice required to meet applicable Water Quality Standards.

(c) The "Colville Environmental Quality Commission" or "CEQC" means the environmental administrative appellate body of the Confederated Tribes of the Colville Reservation as provided for under Chapter 4-23 of the Colville Tribal Code.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

(d) “Ceremonial and Religious water use” means activities involving traditional Native American spiritual practices which involve, among other things, direct contact with water.

(e) “Council” or “Tribal Council” means the Colville Business Council of the Confederated Tribes of the Colville Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

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

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

(g) “Director” means the Director of the Environmental Trust Department.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

(h) “EPA” means the US Environmental Protection Agency.

(j) “Fecal coliform” means that portion of the coliform group which is present in the intestinal tracts and feces of warm-blooded animals as detected by the product of acid or gas from lactose in a suitable culture medium within twenty-four (24) hours at 44.5 plus or minus 0.2 degrees Celsius.

(k) “Geometric mean” means the nth root of a product of n factors.

(l) “Ground water” means all water occurring below the ground surface within the exterior boundaries of the Colville Indian Reservation including but not limited to unconfined, semi-confined, and confined aquifers and all other water occurring within subsurface geologic formations, rock, and soil.

(m) “Mean detention time” means the time obtained by dividing a reservoir’s mean annual minimum total storage by the thirty (30) day, ten (10) year low-flow from the reservoir.

(n) “Non-point source” means any source contributing to water quality degradation where that degradation cannot be accounted for by any point source, including but not limited to, runoff from agriculture, silviculture, construction, and mining.

(o) “Permit” means a document issued by a public body which specifies waste treatment and control requirements and waste discharge conditions.

(p) “pH” means the negative logarithm of the hydrogen ion concentration.

(q) “Person” means any individual; association of individuals; partnership; private, public, tribal, or municipal corporation; tribal enterprise; company; business enterprise; any county, tribal, federal, state, or local government; or any governmental entity.

(r) “Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discreet fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(s) “Pollutant” includes but is not limited to dredged spoil, soil, slurry, solid waste, incinerator residue, sewage, sewage and industrial sludge, garbage and trash, chemical waste, biological nutrient, biological material, radioactive material, heat, discarded equipment, material and plant matter, rock, sand, gravel, mine tailings, discarded containers, and all other industrial, municipal or agricultural waste.

(t) “Pollution” means artificially made or induced change in the chemical, physical or radiological

characteristics of water.

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

(v) "Reservation" means the Colville Indian Reservation established on July 2, 1872 by Executive Order containing 1,389,000 acres more or less.

(w) "Reservation population" means all persons who reside on or otherwise conduct business or other activities on any lands, whether trust or fee, within the exterior boundaries of the Colville Indian Reservation.

(x) "Reservation resources" or "Reservation environment" means land, surface and ground water, fish, biota, plants, animals, air, wildlife and capital improvements on the Colville Indian Reservation.

(y) "Secondary contact recreation" means activities where a person's water contact would be limited to the extent that bacterial infections of eyes, ears, respiratory or digestive systems or urogenital areas would normally be avoided (such as wading or fishing).

(z) "Surface water" means all water above the surface of the ground within the exterior boundaries of the Colville Indian Reservation including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs and seeps.

(aa) "Temperature" means water temperature expressed in degrees Celsius (°C).

(bb) "Tribe" means the Confederated Tribes of the Colville Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

(bb) "Tribal Water Quality Standards," "Water Quality Criteria," or "Water Quality Standards" means the numerical quantification of specific regulatory parameters to protect ambient surface and ground water quality provided for by this Chapter.

(cc) "Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

(dd) "Wildlife habitat" means the waters and surrounding land areas of the Reservation used by fish, other aquatic life and wildlife at any stage of their life history or activity.

#### **4-8-5 General Considerations**

The following general guidelines shall apply to the Water Quality Standards and classifications set forth in sections 4-8-6 through 4-8-8.

(a) At the boundary between waters of different classifications, the Water Quality Standards for the higher classification shall prevail.

(b) The Water Quality Standards herein established shall not apply within an authorized dilution zone adjacent to or surrounding a wastewater discharge.

(c) Waste discharge permits will not be issued which would allow violations of Tribal Water Quality Standards.

(1) However, persons discharging wastes in compliance with the terms and conditions of permits shall not be subject to civil penalties on the basis that the discharge violated Tribal Water Quality

Standards.

(2) Permits shall be subject to modification by the Department whenever it appears to the Department that the discharge may violate Tribal Water Quality Standards. Modifications of permits, as provided herein, shall be subject to the same administrative review procedures as originally issued permits.

(d) Non-Point Sources and Tribal Water Quality Standards:

(1) It is recognized that many activities not subject to a waste discharge permit system are now taking place within the Reservation and it is further recognized that such activities may be in conflict with applicable Tribal Water Quality Standards until such time as a regulatory program is in place to control such non-permitted activities. Any such regulatory program shall provide methods or means whereby such activities shall comply with Tribal Water Quality Standards. Person conducting non-point source activities for which a regulatory program may be developed may however, not be subject to civil sanctions for violation of Tribal Water Quality Standards if such activities are either:

(A) Conducted in accordance with applicable best management practices set forth by the Tribe; or

(B) Subject to and in compliance with any regulatory order(s) issued by the Department.

(2) Best management practices or regulatory orders described in subsection 4-8-5(d)(1) shall be subject to modification by either the Council or the Department whenever it appears that the discharge may violate Tribal Water Quality Standards. Modification of best management practices or regulatory orders, as provided herein, shall be subject to the same administrative review procedures as the originally issued best management practices or regulatory orders.

(e) The Water Quality Standards herein established for the total dissolved gas shall not apply when the stream flow exceeds the seven (7) day, ten (10) year frequency flood.

(f) The total area and/or volume of a receiving water assigned to a dilution zone shall be as described in a valid discharge permit as needed and shall be limited to that which will:

(1) Not cause acute mortalities or sport, food, or commercial fish and shellfish species of established biological communities within populations or important species to a degree which damages the ecosystem; and

(2) Not diminish aesthetic values or other beneficial uses disproportionately.

(g) The antidegradation policy of the Tribe, which is a regulatory requirement of this Chapter shall be applicable to all surface and ground waters of the Reservation. The antidegradation policy provides that:

(1) Existing beneficial uses shall be maintained and protected and no further degradation which would interfere with or become injurious to existing beneficial uses shall be allowed.

(2) No further degradation of any surface or ground waters lying within areas designated as unique water quality management areas shall be allowed.

(3) Whenever surface or ground waters are in fact of a higher quality than provided for by applicable Water Quality Standards, the existing higher water quality shall be protected. Wastes, other materials, and substances which may reduce the existing quality of such surface or ground

waters shall not be allowed to enter such waters. Except that the Department may allow such wastes, other materials, and substances to be placed in such waters in those instances where:

(A) It is clear that overriding considerations of the public interest will be served thereby, and

(B) All wastes and other materials and substances proposed for discharge into the said waters shall have first been subject to all known, available, and reasonable methods of treatment prior to such discharge.

(4) Whenever the natural conditions of surface or ground waters in their unaltered state and not affected by human activity are of a lower quality than the Water Quality Standards assigned thereto by this Chapter, the natural conditions shall constitute the applicable Water Quality Standards.

(5) The criteria and special conditions established in sections 4-8-6 through 4-8-8 may be modified for a specific water body, on a temporary basis not to exceed sixty (60) days, when necessary to accommodate essential activities, respond to emergencies, or to otherwise protect the public interest. Such modification may for good cause be extended for an additional sixty (60) days. All such modifications shall be issued in writing by the Director or his designee subject to such terms and conditions as he or she may prescribe. The aquatic application of herbicides which may result in water use restrictions shall be considered an activity for which a temporary modification may generally be issued subject to conditions specified by the Department.

(6) No degradation of water quality shall be allowed if such degradation may interfere with or become injurious to existing water uses or may cause long-term or irreparable harm to the Reservation environment.

(7) No waste discharge permit shall be issued for any proposed discharge which may violated established Water Quality Standards, except as provided for under section 4-8-9(c).

(h) In applying Water Quality Standards the Department shall give due consideration to the precision and accuracy of the sampling and analytical methods used as well as existing conditions at the time.

(i) The analytical testing methods used to measure or otherwise evaluate Water Quality Standards shall to the extent practicable, be in accordance with the most recent editions of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation, and "Methods for Chemical Analysis of Water and Wastes," published by the EPA, and other or superseding methods published and/or approved by the Department following consultation with and concurrence of the EPA.

(j) Deleterious concentrations of radioactive materials for all classes shall be as determined by the lowest practicable concentration attainable and in no case shall exceed EPA Drinking Water Regulations for radionuclides, as published in the Federal Register of July 9, 1976, or subsequent revisions thereof.

(k) Deleterious concentrations of toxic, or other non-radio-active materials, shall be determined by the Department in consideration of the "Quality Criteria for Water," published by EPA in 1976, and as revised, as an authoritative source for criteria and/or other relevant information.

(l) Nothing in this Chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with Section 316 of the Federal Clean Water Act (P.L. 95-217 as amended).

**4-8-6 General Water Use and Criteria Classes**

The following criteria shall apply to the various classes of surface waters on the Colville Indian Reservation:

(a) Class I (Extraordinary):

(1) General characteristics: Water quality of this class shall markedly and uniformly exceed the requirements for all or substantially all uses.

(2) Characteristic uses: Characteristic uses may included, but not be limited to, the following:

(A) Water supply (domestic, industrial, and agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting.

(D) Ceremonial and religious water use.

(E) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(F) Commerce and navigation.

(3) Water quality criteria:

(A) Fecal coliform organisms - freshwater: Fecal coliform organisms shall not exceed a geometric mean value of 50 organisms/100 mL, with not more than ten (10%) percent of samples exceeding 100 organisms/100 mL.

(B) Fecal coliform organisms - saline water: Fecal coliform organisms shall not exceed a geometric mean value of 14 organisms/100mL, with not more than ten (10%) percent of samples exceeding 43 organisms/100mL.

(C) Dissolved oxygen - freshwater: Dissolved oxygen shall exceed 9.5 mg/L.

(D) Dissolved oxygen - saline water: Dissolved oxygen shall exceed 7.0 mg/L. When natural conditions, such as upwelling, occur, causing the dissolved oxygen to be depressed near or below 7.0 mg/L, natural dissolved oxygen levels can be degraded by up to 0.2 mg/L by man-caused activities.

(E) Total dissolved gas shall not exceed one hundred-ten (110%) percent of saturation at any point of sample collection.

(F) Temperature shall not exceed 16.0°C (freshwater) and 13.0°C (saline water) due to human activities. Temperature increases shall not, at any time, exceed  $t=23/(T+5)$  (freshwater) or  $t=8/(T-4)$  (saline water).

(i) When natural conditions exceed 16.0°C (freshwater) and 13.0°C (saline water), no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(ii) For purposes hereof, “t” represents the permissive temperature change across the dilution zone; and “T” represents the highest existing temperature in this water classification outside of any dilution zone.

(iii) Provided that temperature increase resulting from non-point source activities shall not exceed 2.8°C, and the maximum water temperature shall not exceed 16.3°C (freshwater).

(G) pH shall be within the range of 6.5 to 8.5 (freshwater) or 7.0 to 8.5 (saline water) with a man-caused variation within a range of less than 0.5 units.

(H) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(I) Toxic, radioactive, or deleterious material concentrations - shall be below those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect any water use.

(J) Aesthetic values shall not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste.

(b) Class II (Excellent):

(1) General characteristics: Water quality of this class shall meet or exceed the requirements for all or substantially all uses.

(2) Characteristic uses: Characteristic uses may include but not be limited to the following:

(A) Water supply (domestic, industrial, and agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation

(3) Water quality criteria:

(A) Fecal coliform organisms - freshwater: Fecal coliform organisms shall not exceed a geometric mean value of 100 organisms/100 mL, with not more than ten (10%) percent of samples exceeding 200 organisms/100 mL.

(B) Fecal coliform organisms - saline water: Fecal coliform organism shall not exceed a geometric mean value of 14 organisms/100 mL, with not more than ten (10%) percent of

samples exceeding 43 organisms/100 mL.

(C) Dissolved oxygen - freshwater: Dissolved oxygen shall exceed 8.0 mg/L.

(D) Dissolved oxygen - saline water: Dissolved oxygen shall exceed 6.0 mg/L. When natural conditions, such as upwelling occur causing the dissolved oxygen to be depressed near or below 6.0 mg/L, natural dissolved oxygen levels can be degraded by up to 0.2 mg/L by man-caused activities.

(E) Total dissolved gas shall not exceed one hundred-ten (110%) percent of saturation at any point of sample collection.

(F) Temperature shall not exceed 18.0°C (freshwater) or 16.0°C (saline water) due to human activities. Temperature increases shall not, at any time, exceed  $t=28 / (T+7)$  (freshwater) or  $t-12 / (T-2)$  (saline water).

(i) When natural conditions exceed 18.0°C (freshwater) and 16.0°C (saline water), no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(ii) For purposes hereof, “t” represents the permissive temperature change across the dilution zone; and “T” represents the highest existing temperature in this water classification outside of any dilution zone.

(iii) Provided that temperature increase resulting from non-point source activities shall not exceed 2.8°C and the maximum water temperature shall not exceed 18.3°C (freshwater).

(G) pH shall be within the range of 6.5 to 8.5 (freshwater) or 7.0 to 8.5 (saline water) with a man-caused variation within a range of less than 0.5 units.

(H) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(I) Toxic, radioactive, or deleterious material concentrations - shall be below those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect any water use.

(J) Aesthetic values shall not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste.

(c) Class III (Good):

(1) General characteristics: Water quality of this class shall meet or exceed the requirements for most uses.

(2) Characteristic uses: Characteristic uses may include but not be limited to, the following:

(A) Water supply (industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(F) Commerce and navigation.

(3) Water quality criteria:

(A) Fecal coliform organisms - freshwater: Fecal coliform organisms shall not exceed a geometric mean value of 200 organisms/100mL, with not more than 10 percent of samples exceeding 400 organisms/100 mL.

(B) Fecal coliform organisms - saline water: Fecal coliform organisms shall not exceed a geometric mean value of 100 organisms/100 mL, with not more than 10 percent of samples exceeding 200 organisms/100 mL.

(C) Dissolved oxygen - freshwater: Dissolved oxygen shall exceed 6.5 mg/L.

(D) Dissolved oxygen - saline water: Dissolved oxygen shall exceed 5.0 mg/L. When natural conditions, such as upwelling, occur, causing the dissolved oxygen to be depressed near or below 5.0 mg/L, natural dissolved oxygen levels can be degraded by up to 0.2 mg/L by man-caused activities.

(E) Total dissolved gas shall not exceed 110 percent of saturation at any point of sample collection.

(F) Temperature shall not exceed 21.0°C (freshwater) or 19.0°C (saline water) due to human activities. Temperature increases shall not, at any time, exceed  $t=34/(T+9)$  (freshwater) or  $t=16/T$  (saline water).

(i) When natural conditions exceed 21.0°C (freshwater) and 19.0°C (saline water), no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(ii) For purposes hereof, “t” represents the permissive temperature change across the dilution zone; and “T” represents the highest existing temperature in this water classification outside of any dilution zone.

(iii) Provided that temperature increase resulting from non-point source activities shall not exceed 2.8°C, and the maximum water temperature shall not exceed 21.3°C (freshwater).

(4) pH shall be within the range of 6.5 to 8.5 (freshwater) or 7.0 to 8.5 (saline water) with a man-caused variation with a range of less than 0.5 units.

(A) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(B) Toxic, radioactive, or deleterious material concentrations shall be below those which adversely affect public health during characteristic uses, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect characteristic water uses.

(C) Aesthetic values shall not be reduced by dissolved, suspended, floating, or submerged matter not attributed to natural causes, so as to affect water use or taint the flesh of edible species.

(d) Class IV (Fair):

(1) General characteristics: Water quality of this class shall meet or exceed the requirements of selected and essential uses.

(2) Characteristic uses: Characteristic uses may include but not be limited to, the following:

(A) Water supply (industrial).

(B) Stock watering.

(C) Fish (salmonid and other fish migration).

(D) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(E) Commerce and navigation.

(3) Water quality criteria:

(A) Fecal coliform organisms shall not exceed a geometric mean value of 200 organism/100 mL, with not more than 10 percent of samples exceeding 400 organisms/100 mL.

(B) Dissolved oxygen shall exceed 4.0 mg/L, natural dissolved oxygen levels can be degraded by up to 0.2 mg/L by man-caused activities.

(C) Temperature shall not exceed 22.0°C due to human activities. Temperature increases shall not, at any time, exceed  $t=20/(T+2)$ .

(i) When natural conditions exceed 22.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(ii) For purposes hereof, “t” represents the permissive temperature change across the dilution zone; and “T” represents the highest existing temperature in this water classification outside of any dilution zone.

(D) pH shall be within the range of 6.5 to 9.0 with a man-caused variation within a range of less than 0.5 units.

(E) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(F) Toxic, radioactive, or deleterious material concentrations shall be below those which adversely affect public health during characteristic uses, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect characteristic water uses.

(G) Aesthetic values shall not be interfered with by the presence of obnoxious wastes, slimes, aquatic growths, or materials which will taint the flesh of edible species.

(e) Lake Class:

(1) General characteristics: Water quality of this class shall meet or exceed the requirements for all or substantially all uses.

(2) Characteristic uses: Characteristic use may include but not be limited to, the following:

(A) Water supply (domestic, industrial, and agricultural);

(B) Stock watering;

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing spawning, and harvesting; crayfish rearing, spawning and harvesting;

(D) Wildlife habitat;

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(3) Water quality criteria:

(A) Fecal coliform organisms shall not exceed a geometric mean value of 50 organisms/100 mL, with not more than 10 percent of samples exceeding 100 organisms/100 mL.

(B) Dissolved oxygen - no measurable decrease from natural conditions.

(C) Total dissolved gas shall not exceed 110 percent of saturation at any point of sample collection.

(D) Temperature - no measurable change from natural conditions.

(E) pH - no measurable change from natural conditions.

(F) Turbidity shall not exceed 5 NTU over background conditions.

(G) Toxic, radioactive, or deleterious material concentrations shall be less than those which may affect public health, the natural aquatic environment, or the desirability of the water for any use.

(H) Aesthetic values shall not be impaired by the presence of materials or their effects,

excluding those of natural origin, which offend the senses of sight, smell, touch, or taste.

(f) Special Resource Water Class (SRW):

(1) General characteristics: Water quality of this class will be varied and unique as determined by the Department. These are fresh or saline waters which comprise a special and unique resource to the Reservation.

(2) Characteristic uses: Characteristic uses may include but not be limited to, the following:

(A) Wildlife habitat.

(B) Natural food chain maintenance.

(3) Water quality criteria:

(A) Fecal coliform organisms shall not exceed natural conditions.

(B) Dissolved oxygen - no measurable decrease from natural conditions.

(C) Total dissolved gas shall not vary from natural conditions.

(D) Temperature - no measurable change from natural conditions.

(E) pH - no measurable change from natural conditions.

(F) Turbidity shall not exceed 5 NTU over background conditions.

(G) Toxic, radioactive, or deleterious material concentrations shall not exceed those found in the state of nature.

(H) Aesthetic values shall not be impaired by the presence of materials of their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste.

**4-8-7 General Classifications**

General classifications applying to various surface water bodies not specifically classified under section 4-8-8 are as follows:

(a) All unclassified surface waters that are tributaries to Class I waters are classified Class I.

(b) Except for those specifically classified otherwise, all lakes of less than 2000 mg/L TADS and their feeder streams on the Colville Indian Reservation are classified as Lake Class and Class I, respectively.

(c) All lakes on the Colville Indian Reservation with average TADS levels equal or exceeding 2000 mg/L and their feeder streams are classified as Class I Saline and Class I respectively unless specifically classified otherwise.

(d) All reservoirs with a mean detention time of greater than fifteen (15) days are classified Lake Class.

(e) All reservoirs with a mean detention time of fifteen (15) days or less are classified the same as the river section in which they are located.

(f) All reservoirs established on preexisting lakes are classified as Lake Class.

(g) All other unclassified waters of the Reservation are classified as Class II.

**4-8-8 Specific Classifications**

Specific classifications for surface waters of the Colville Indian Reservation are as follows:

(a) Streams

Alice Creek.....	Class III
Anderson Creek.....	Class III
Armstrong Creek.....	Class III
Barnaby Creek.....	Class II
Bear Creek.....	Class III
Beaver Dam Creek.....	Class II
Bridge Creek.....	Class II
Brush Creek.....	Class II
Buckhorn Creek.....	Class III
Cache Creek.....	Class III
Canteen Creek.....	Class I
Capoose Creek.....	Class III
Cobbs Creek.....	Class III
Columbia River from Chief Joseph Dam to Wells Dam.....	Class II
Columbia River from northern Reservation boundary to Chief Joseph Dam.....	Class I
Cook Creek.....	Class I
Copper Creek.....	Class III
Cornstalk Creek.....	Class III
Cougar Creek.....	Class I
Coyote Creek.....	Class II
Deerhorn Creek.....	Class IV
Dick Creek.....	Class III
Dry Creek.....	Class I
Empire Creek.....	Class III
Faye Creek.....	Class I
Forty Mile Creek.....	Class III
Gibson Creek.....	Class I
Gold Creek.....	Class II
Granite Creek.....	Class II
Grizzly Creek.....	Class III
Haley Creek.....	Class IV
Hall Creek.....	Class II
Hall Creek, West Fork.....	Class I
Iron Creek.....	Class III
Jack Creek.....	Class III
Jerred Creek.....	Class I
Joe Moses Creek.....	Class IV
John Tom Creek.....	Class III
Jones Creek.....	Class I
Kartar Creek.....	Class III
Kincaid Creek.....	Class IV
King Creek.....	Class IV
Klondyke Creek.....	Class I
Lime Creek.....	Class III
Little Jim Creek.....	Class III

Little Nespelem .....	Class II
Louie Creek .....	Class III
Lynx Creek .....	Class II
Manila Creek .....	Class III
McAllister Creek .....	Class III
Meadow Creek .....	Class III
Mill Creek .....	Class II
Mission Creek .....	Class IV
Nespelem River .....	Class II
Nez Perce Creek .....	Class III
Nine Mile Creek .....	Class II
Nineteen Mile Creek .....	Class III
No Name Creek .....	Class II
North Nanamkin Creek.....	Class III
North Star Creek.....	Class III
Okanogan River from Reservation north boundary to Columbia River.....	Class II
Olds Creek.....	Class I
Omak Creek.....	Class II
Onion Creek .....	Class II
Parmenter Creek .....	Class IV
Peel Creek .....	Class IV
Peter Dan Creek .....	Class IV
Rock Creek.....	Class I
San Poil River.....	Class I
Sanpoil, West Fork .....	Class II
Seventeen Mile Creek .....	Class III
Silver Creek.....	Class III
Sitdown Creek.....	Class II
Six Mile Creek .....	Class IV
South Nanamkin Creek.....	Class III
Spring Creek.....	Class III
Stapaloop Creek .....	Class III
Stepstone Creek.....	Class III
Stranger Creek.....	Class II
Strawberry Creek.....	Class III
Swimptkin Creek.....	Class III
Three Forks Creek.....	Class I
Three Mile Creek.....	Class IV
Thirteen Mile Creek .....	Class II
Thirty Mile Creek.....	Class II
Trail Creek.....	Class III
Twenty-five Mile Creek .....	Class III
Twenty-one Mile Creek.....	Class III
Twenty-three Mile Creek .....	Class III
Wannacot Creek .....	Class III
Wells Creek .....	Class I
Whitelaw Creek.....	Class IV
Wilmont Creek .....	Class II
 (b) Lakes	
Apex Lake .....	LC
Big Goose Lake.....	LC

Bourgeau Lake .....	LC
Buffalo Lake.....	LC
Camille Lake .....	LC
Cody Lake .....	LC
Crawfish Lake .....	LC
Elbow Lake .....	LC
Fish Lake.....	LC
Gold Lake.....	LC
Great Western Lake.....	LC
Johnson Lake.....	LC
LaFleur Lake .....	LC
Little Goose Lake .....	LC
Little Owhi Lake .....	LC
McGinnis Lake.....	LC
Nicholas Lake.....	LC
Omak Lake .....	SRW
Owhi Lake.....	SRW
Penley Lake .....	SRW
Rebecca Lake .....	LC
Round Lake .....	LC
Simpson Lake.....	LC
Soap Lake.....	SRW
Sugar Lake .....	LC
Summit Lake .....	LC
Twin Lakes.....	SRW

**4-8-9 Permits**

- (a) No person shall discharge any waste from a point source into Reservation waters without having first obtained a permit from either the BPA or the Department, as applicable.
  
- (b) The Department may, through the issuance of regulatory permits, directives, and orders, control miscellaneous waste discharge not covered by section 4-8-9(a).
  
- (c) From time to time the Department may authorize certain temporary activities which may temporarily reduce water quality below those set by this Chapter (4-8-5 and 4-8-6) when such activities found to be overriding public benefit, provided that all such temporary authorizations shall be for a thirty (30) day period or less.
  
- (d) The Department may in furtherance of section 4-8-9(b) require any prospective or current discharge to, among other things, perform such water quality monitoring tasks as might be necessary to determine the pre and post discharge conditions, mixing zone requirements, and permit parameters.
  
- (e) To ascertain whether the regulations, waste disposal permits, orders, and directives promulgated and/or issued by the Department, the Council, or EPA are being complied with a continuing surveillance program shall be conducted by the Department. This continuing surveillance program shall include, among other things, the following:
  - (1) Inspecting treatment and control facilities;
  - (2) Monitoring and reporting waste discharge characteristics; and
  - (3) Monitoring receiving water quality.

#### **4-8-10 Violations, Enforcement and Civil Penalties**

(a) The Department shall be notified of all suspected violations and accidental discharges.

(1) Any person may apply in writing to the Department and the Department will initiate an investigation and take action upon any suspected or alleged violation of any provision of this Chapter or of any order, permit, or regulation issued or promulgated under the authority of this Chapter.

(2) Any person engaged in any operation or activity which results in a spill or discharge which may cause pollution of the water of the Reservation contrary to this Chapter shall immediately notify the Department. Any person who fails to notify the Department as soon as he either knows or should have known about the spill or discharge is deemed in violation of this Chapter and, upon an administrative finding thereof after notice and hearing as provided by the Colville Administrative Procedures Act, shall be levied an administrative civil penalty of not more than ten thousand dollars (\$10,000) per day that such violation continues.

(b) Notice of Alleged Violations:

(1) Wherever the Department has reason to believe that there has occurred a violation of an order, permit, or other requirement issued or promulgated under authority of this Chapter, the Director shall cause written notice to be served personally or by certified mail return-receipt requested upon the alleged violator or its agent for service of process. The notice shall state the provision alleged to be violated, the facts alleged to constitute a violation, and may include the nature of any corrective action proposed to be required.

(2) Each cease and desist and clean-up order issued pursuant to sections 4-8-10(d) and 4-8-10(e) shall be accompanied by or have incorporated in it the notice provided for in subsection 4-8-10(b)(1) of this section unless such notice shall have prior thereto been given.

(c) Hearing Procedures for Alleged Violation:

(1) In any notice given under section 4-8-10(b), the Department may require the alleged violator to appear before it for a hearing and to answer each alleged violation. Such hearing shall be held no sooner than fifteen (15) days after service of this notice, except the Department may set an earlier date for hearing if so requested by the alleged violator or if any emergency exists. This hearing shall be conducted in accordance with the Colville Administrative Procedures Act.

(2) If the Department does not require an alleged violator to appear for a hearing, the alleged violator may request the hearing. Such request shall be in writing and shall be filed with the Department no later than thirty (30) days after service of the notice under section 4-8-10(b). If such a request is filed, a hearing shall be held within a reasonable time.

(3) If a hearing is held pursuant to the provisions of this section, it shall be recorded and this record be made available to the public. All parties may respond to the notice served under section 4-8-10(b) and may present evidence and argument on all issues, call witnesses, and conduct cross-examination required for a full disclosure of the facts as provided for in the Colville Administrative Procedures Act.

(d) Hearing Procedures for Alleged Violation: Upon a finding and determination, after hearing, that a violation of a permit provision, Departmental directive or order has occurred, the Department may suspend, modify, or revoke the pertinent permit, or take such other action with respect to the violation as may be authorized by applicable law.

(e) Cease and Desist Orders: If the Department determines, with or without a hearing, that there exists a violation of any provision of this Chapter or of any order, permit, or other requirement of this Chapter, the Department may issue a cease and desist order. Such order shall set forth the provision alleged to be violated, the facts alleged to constitute the violation, and the time by which acts or practices complained of must be terminated.

(f) Clean-Up Orders: The Department may issue orders to any person to clean up material which he, or his employee, or his agent has accidentally or purposely dumped, spilled, or otherwise deposit in or near Reservation waters which may pollute them. The Department may also request that the Tribal attorney proceed and take appropriate action.

(g) Restraining Orders and Injunctions: In the event any person fails to comply with either a cease and desist order or a clean-up order which order or orders are not subject to stay pending administrative or judicial review, the Department may request the Tribal attorney to investigate, and if appropriate, bring suit for temporary injunction to prevent any further or continued violation of such order or orders. In any such suit the findings of the Department based upon evidence in the record, shall be given due difference by any reviewing administrative body or court.

(1) Emergencies shall be given precedence over all other such matters pending in Tribal Court. The institution of such injunction proceedings by the Tribal attorney on behalf of the Department shall confer upon such court exclusive jurisdiction to determine finally the subject matter of the proceedings.

(h) Civil Penalties:

(1) Any person who violates any provision of any permit issued under this Chapter or any final cease and desist order or clean-up order shall be subject to a civil penalty of not more than ten thousand (\$10,000) per day for each day during which such violation occurs.

(2) Penalty amounts shall be determined after hearing and may be collected by the Tribe by action instituted in Tribal Court by the Tribal attorney for collection of such penalty. A stay of any order of the Tribe pending judicial review shall not relieve any person from any liability under subsection 4-8-10(h)(1) of this section, but the reason for the request for judicial review shall be considered in the determination of the amount of the penalty.

(i) Falsification and Tampering: Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Chapter shall be subject to a civil penalty of not more than five hundred dollars (\$500) for each individual instance. Each day that invalid monitoring data is generated as a result of such wrongful action shall constitute a separate violation.

(j) Proceeding by Other Parties:

(1) The factual or legal basis for proceedings or other actions that shall result from a violation of this Chapter inure solely to the benefit of the Tribe is not intended by this Chapter, in any way, to create new private rights or to enlarge existing private rights. A determination that water pollution exists or that any standard has been disregarded or violated, whether or not a proceeding or action may be brought by the Department or the Tribe, shall not create by reason thereof any presumption of law or finding of fact which shall inure to or be for the benefit of any person other than the Tribe.

(2) A permit issued pursuant to this Chapter may be introduced in any court of law as evidence

that the permittee's activity is not a public or private nuisance. Introduction into any evidence of such permit and evidence of compliance with the permit conditions shall constitute a prima facie case that the activity to which the permit pertains is not public or private nuisance.

**4-8-11 Waiver of Regulations**

Whenever a strict interpretation of this Chapter would result in extreme hardships the Department may waive or modify such regulation or portion thereof, provided such waiver or modification is consistent with the intent of this Chapter and no public health hazard will result.

**4-8-12 Cooperation with Public Agencies—Grants and Gifts**

The Department is authorized subject to approval of the Tribal Council, to accept, receive, disburse, and administer grants or other funds or gifts from any source, for the purposes of carrying out the provisions of this Chapter and to consult and cooperate with federal and state agencies in matters pertaining to this Chapter. The Department is authorized to negotiate, subject to approval by the Tribal Council, inter-governmental agreements and other cooperative agreements which may create, modify, or change duties established by this Chapter, providing that creation of new regulatory requirements or changes in existing regulatory requirements must comply with the procedural requirements of the Colville Administrative Procedure Act applicable to rule-making actions before such regulations become effective.

**4-8-13 Statutes and Trust Responsibility Not Modified**

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

**4-8-14 Severability**

Should any part of this Chapter be declared unconstitutional or invalid for any reason such declaration shall not affect the validity of the remainder of this Chapter.

(Chapter 4-8 Adopted 8/6/84, Resolution 1984-526)  
(Amended 1/18/85, Resolution 1985-20)

## CHAPTER 4-9 HYDRAULIC PROJECTS

### 4-9-1 Findings

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

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

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

### 4-9-2 Authority and Scope

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

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

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

### 4-9-3 Definition

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **4-9-4 Policies**

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

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

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

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

#### **4-9-5 Hydraulic Project Application**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**4-9-6 Unavoidable Adverse Impacts to Wetlands**

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

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

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

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

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

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

**4-9-7 Approval and Disapproval Policy**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **4-9-8 Use of Applications**

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

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

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

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

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

#### **4-9-9 Modification of Application**

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

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

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

#### **4-9-10 Emergency Response**

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

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

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

#### **4-9-11 Enforcement Policy**

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

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

#### **4-9-12 Informal Conferences**

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

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

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

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

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

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

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

(b) The Stop Work Order shall set forth:

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

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

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

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

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

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

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

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

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

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

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

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

**4-9-16 Inspection—Right of Entry**

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

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

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

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

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

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

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

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

(July 2011 version of Chapter 4-9)

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

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

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

**4-9-18 Enforcement**

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

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

**4-9-19 Administrative Appellate and Judicial Review**

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

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

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

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

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

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

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

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

**4-9-22 Severability.**

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

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

## TECHNICAL PROVISIONS

### 4-9-48 General Provisions- Policy

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

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

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

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

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

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

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

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

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

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

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

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

#### **4-9-49 Water Crossings**

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

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

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

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

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

(f) Temporary crossings:

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

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

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

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

(g) Bridge Construction:

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

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

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

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

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

(h) Culvert Installation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Fords:

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

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

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

#### **4-9-50 Conduit/Cable/Pipe Crossing**

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

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

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

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

(July 2011 version of Chapter 4-9)

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

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

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

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

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

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

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

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

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

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

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

**4-9-52 Bank Protection**

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

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

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

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

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

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

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

**4-9-53 Fill Placement**

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

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

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

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

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

**4-9-54 Watercourse Change**

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

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

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

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

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

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

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

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

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

**4-9-55 Temporary Water Bypass**

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

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

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

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

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

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

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

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

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

**4-9-56 Logging/Fire Trails**

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

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

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

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

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

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

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

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

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

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

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

(f) Outfall flow shall be by gravity only.

(g) Outfall flows shall not harm fish life.

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

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

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

#### **4-9-58 Woody Debris Removal**

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

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

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

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

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

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

#### **4-9-59 Dredging and Gravel Removal**

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

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

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

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

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

**4-9-60 Bulkheads**

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

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

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

**4-9-61 Aquatic Plants**

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

(July 2011 version of Chapter 4-9)

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

(f) Bottom barriers or screens:

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

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

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

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

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

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

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

#### **4-9-62 Chemicals**

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

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

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

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

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

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

(July 2011 version of Chapter 4-9)

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

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

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

(h) Daily Records

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

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

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

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

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

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

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

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

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

(I) Specific target to which pesticide was applied.

(J) Apparatus license plate number.

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

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

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

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

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

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

**4-9-63 Fish and Wildlife Management**

(a) Fish Relocation, Capture, and Transporting

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

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

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

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

(b) Beaver Dam Removal

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

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

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

(B) maintenance of fish passage;

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

(D) piping water through the dam;

(E) temporary breaching and location of breach; or

(F) dam removal and disposal of debris.

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

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

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

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

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

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

**4-9-65 Housekeeping**

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

(July 2011 version of Chapter 4-9)

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

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

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

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

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

(Certified 10/14/04)

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

## CHAPTER 4-10 WATER RESOURCES USE AND PERMITTING

### GENERAL PROVISIONS

#### 4-10-1 Declaration of Rights and Purpose

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

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

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

#### 4-10-2 Nature of Ownership

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

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

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

#### 4-10-3 Application of Chapter

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

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

The waters of the Colville Reservation consist of:

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

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

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

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

(d) All precipitation and atmospheric water; and

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

1-1-362 of this Chapter.

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

### **WATER ADMINISTRATOR**

#### **4-10-100 Water Administrator—Appointment**

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

#### **4-10-101 Water Administrator—Staff**

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

#### **4-10-102 Water Administrator—General Authority**

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

(a) Enter appropriate orders;

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

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

(d) Make determinations of rights;

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

(f) Initiate proceedings involving penalties;

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

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

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

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

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

**4-10-103 Water Administrator—General Duties**

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

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

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

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

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

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

(f) Issue water permits.

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

**4-10-104 Water Administrator—Enforcement**

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

(a) Remove, render inoperative, shut down, close, seal, cap, modify or otherwise control methods of diversion and withdrawal, obstructions to the flow of water, and activities adversely affecting water quality.

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

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

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

**4-10-105 Water Administrator—Advisory Function**

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

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

**GUIDELINES FOR ADMINISTRATION**

**4-10-130 General Policy Provisions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4-10-131

**Guidelines for Making Most Effective Use of Available Resources**

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

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

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

**4-10-132 Additional Policy Guidelines**

(a) Rivers and streams of the Reservation shall be retained with sufficient flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic, and other environmental values and navigational values. Withdrawals of water that would conflict therewith should be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(b) Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given to means and methods for protection of fishery resources in the planning for and construction of water impoundment structure and other artificial obstructions.

(c) Individuals, corporations, groups, associations and other entities shall be encouraged to carry out practices of conservation and environmental protection as they relate to the use of the water of the Colville Reservation.

**APPLICATIONS FOR PERMITS**

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

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

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

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

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

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

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

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

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

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

**4-10-162 Temporary Permits**

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

**4-10-163 Fees**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**4-10-166 Issuance or Denial of Permits**

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

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

**WATER PERMITS**

**4-10-200 Form**

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

**4-10-201 Information Contained**

Each permit shall include:

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

**4-10-202** **Conditions**

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

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

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

**4-10-203 Effect**

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

**4-10-204 Revocability**

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

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

**4-10-205 Modification**

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

**WELL DRILLING**

**4-10-206 Well Drilling**

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

**4-10-207 Definitions**

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

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

(b) “Constructing a well” or “construct a well” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**4-10-208 Compliance Enjoined**

It is unlawful:

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

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

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

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

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

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

**4-10-209 Powers of Administrator**

The Administrator shall have the power:

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

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

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

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

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

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

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

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

(5) Reporting requirements of operators and well contractors;

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

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

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

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

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

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

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

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

**4-10-211 Modification of construction standards**

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

**4-10-212 Reports of Well Construction or Alteration**

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

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

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

**4-10-213 Fees**

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

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

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

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

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

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

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

**4-10-214 Violations—Cease and Desist Orders**

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

**4-10-215 Remedies for Non-complying Wells**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**4-10-220 Appeals**

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

**4-10-221 Civil penalties—Amount and disposition**

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

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

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

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

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

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

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

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

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

**DETERMINATION OF AVAILABILITY AND NEED**

**4-10-240 When Proceeding Available**

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

**4-10-241 Purposes**

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

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

**4-10-242 Water Administrator—Information Gathering**

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

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

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

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

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

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

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

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

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

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

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

**4-10-247 Implementing Actions**

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

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

- (1) clearly establish goals of water quality and quantity management of surface water, precipitation and atmospheric water, and groundwater;
- (2) provide specific actions for protection, preservation, enhancement and restoration of surface water, precipitation and atmospheric water, and groundwater;
- (3) specify in-stream flows;
- (4) specify surface water and groundwater normally allocable to withdrawal and use;
- (5) identify specific measures to be taken in the management of surface waters and groundwaters to address drought including, but not limited to:
  - (A) limitations on the withdrawal of groundwater to maintain pumping within safe yield;
  - (B) forecasts, annually or as otherwise required, of water available for stream diversion;

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

**4-10-248 Appeal**

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

**TRANSFER AND LOSS OF RIGHTS**

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

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

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

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

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

**4-10-282 Voluntary Relinquishment of Claims or Rights**

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

**4-10-283 Loss by Nonuse**

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

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

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

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

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

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

**4-10-285 Outside Proceedings**

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

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

#### **GENERAL HEARING PROVISIONS**

**4-10-320 Hearings and Notice of Hearings**

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

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

**4-10-321 Time and Place of Hearing**

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

**4-10-322 Continuances**

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

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

**4-10-323 [Reserved]**

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

**4-10-324 [Reserved]**

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

**4-10-325 Consolidation of Hearings**

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

**4-10-326 Recording**

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

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

**4-10-327 Decision**

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

#### **VIOLATIONS, ENFORCEMENT AND CIVIL PENALTIES**

**4-10-360 Civil Penalties**

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

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

**4-10-361 Notice of Violation**

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

**4-10-362 Appeal**

Any person incurring any penalty under this subchapter may appeal the same to the Commission as set forth in the subchapter on Appeals. An appeal shall be filed within thirty (30) days after receipt of a notice imposing any penalty. The penalty imposed shall become due and payable thirty (30) days after receipt of the notice imposing the penalty unless an appeal is filed.

Whenever an appeal of any penalty incurred under this subchapter is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

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

**4-10-363 Public Nuisance**

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

**4-10-364 Action to Collect Penalty**

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

**4-10-365 Liability for Damages**

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

**APPEALS FROM WATER ADMINISTRATOR ACTIONS**

**4-10-400 Filing**

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

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

**4-10-402 Time For Filing**

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

**4-10-402 Transmittal of Record**

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

CEQC.

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

**4-10-403 Stay**

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

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

**4-10-404 Decision**

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

**4-10-405 Procedures**

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

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

**4-10-406 Finality**

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

**JUDICIAL REVIEW**

**4-10-440 Decisions Subject to Review**

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

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

**4-10-441 Contents of Petition**

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

**PROHIBITED ACTS**

**4-10-470 Waste of Water Prohibited**

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

**4-10-471 Additional Penalties**

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

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

to approval of the Colville Business Council.

**4-10-474 Overstatement of Use**

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

**MISCELLANEOUS PROVISIONS**

**4-10-500 Severability**

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

**4-10-501 Construction**

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

**4-10-502 Rules and Regulations**

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

**4-10-503 Review of Authority**

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

**4-10-504 Optional Charge**

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

**4-10-505 Representation**

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

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

**PARTICIPATION BY THE DEPARTMENT OF THE INTERIOR**

**4-10-540 Enforcement Assistance**

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

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

## CHAPTER 4-16 HAZARDOUS SUBSTANCE CONTROL

### GENERAL PROVISION

4-16-1

#### Short Title

This Chapter shall be known as the Colville Hazardous Substances Control Chapter.

4-16-2

#### Declaration of Policy

(a) The beneficial stewardship of the land, air, and waters of the Colville Reservation is a solemn obligation of the present generation for the benefit of future generations.

(b) Each person either residing on or doing business within the exterior boundaries of the Colville Reservation ("Reservation Population") benefits from a healthful environment and each person has a responsibility to preserve and protect the quality of the Reservation Environment.

(c) The Colville Business Council, in enacting this Chapter, is taking action to secure the preservation of life, health, property, and natural resources of the Tribes, its people, and fee and trust lands to protect against the pollution sources that are currently or suspected of contaminating the air, land, surface water and ground water of the Reservation Environment for which existing federal law may not apply.

(d) The main purpose of this Chapter is to provide remedial law for the cleanup of hazardous substances sites and to prevent the creation of future hazards due to improper disposal of hazardous substances on or into the Reservation Environment.

(Amended 6/7/02, Resolution 2007-342)

### DEFINITIONS

4-16-3

#### Definitions

(a) "Attorney" or "Reservation Attorney" means the attorney authorized by the Council to carry out the duties as described in the Chapter.

(b) "Agreed Order" means an order issued by the Department under this Chapter with which the potentially liable person receiving the order agrees to comply.

(c) "Confederated Tribes of the Colville Reservation" means the Tribal government.

(d) "Council" means the Colville Business Council of the Confederated Tribes of the Colville Reservation.

(e) "Department" means the Environmental Trust Department of the Confederated Tribes of the Colville Reservation.

(f) "Facility" means:

(1) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or

(2) Any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(g) "Federal Cleanup Law" means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by Public Law 99-499.

(h) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal

manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(i) "Hazardous Substance" means:

(1) Any "dangerous waste", defined as any discarded, useless, unwanted, or abandoned substances disposed of in such quantity or concentration as to pose a present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

(A) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(B) Are corrosive, explosive, flammable, or may generate pressure throughout decomposition or other means.

(2) Any "hazardous waste," defined as any waste which:

(A) Will persist in a hazardous form for three (3) years or more at a disposal site; and

(B) While in its persistent form:

(i) Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic makeup of people or wildlife; or

(ii) Is toxic to people or wildlife; or

(iii) Adversely affects living organisms in soil, sediment, and water, or air; or

(C) If disposed of at a disposal site in such quantities or concentrations as might present a hazard to people or the environment.

(3) Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics of dangerous waste or extremely hazardous waste.

(4) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. § 9601(14).

(5) Petroleum or petroleum products, and

(6) Any substance or category of substances, including solid waste decomposition products, determined by the director to present a threat to human health or the environment if released into the environment.

(7) The term hazardous substance does not include, any of the following when contained in an underground storage tank from which there is not a release: crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal and Tribal laws.

(j) "Hazardous waste account" means an account of money set aside for uses described in section 4-16-8.

(k) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-

interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator; loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(l) "Independent remedial actions" means remedial actions conducted without Department oversight or approval, and not under an order, agreed order, or consent decree.

(m) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(n) "Operating a facility primarily to protect a security interest" occurs when all of the following are met:

- (1) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement;
- (2) Operating the facility to preserve the value of the facility as an ongoing business;
- (3) The operation is being done in anticipation of a sale, transfer, or assignment of the facility; and
- (4) The operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(o) "Owner" or "operator" means:

- (1) Any person with any ownership interest in the facility or who exercises any control over the facility; or
- (2) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

(3) The term does not include:

(A) The Tribe or any Tribal instrumentality which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the Council involuntarily acquires title. This exclusion does not apply to an instrumentality of the Tribe which is subject to a waiver of sovereign immunity, which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(B) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in section 4-16-3(p), sub-subparts (E) through (G) of this section shall not lose this exemption provided the holder complies with all of the following:

(i) The holder properly maintains the environmental compliance measures already in place at the facility;

(ii) The holder complies with the reporting requirements in the rules adopted under this Chapter;

(iii) The holder complies with any order issued to the holder by the Department to abate an imminent or substantial endangerment;

(iv) The holder allows the Department or potentially liable persons under an order, agreed order, or settlement agreement under this Chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(v) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the Department, or, if the Department has not identified such requirements for the facility, the remedial actions are conducted consistent with this Chapter; and

(vi) The holder does not exacerbate an existing release. The exemption in this section 4-16-3(o), subpart (3)(B) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under section 4-16-5(a), subparts (2), (3), (4), and (5); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this Chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(C) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a non-employee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this Chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(i) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(ii) The fiduciary complies with the reporting requirements in the rules adopted under this Chapter;

(iii) The fiduciary complies with any order issued to the fiduciary by the Department to abate an imminent or substantial endangerment;

(iv) The fiduciary allows the Department or potentially liable persons under an order, agreed order, or settlement agreement under this Chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(v) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the Department, or, if the Department has

not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this Chapter; and

(vi) The fiduciary does not exacerbate an existing release.

The exemption in this section 4-16-3(o), subpart (3)(C) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under section 4-12-5(a), subparts (2), (3), (4), and (5); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this Chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this section 4-16-3(o), subpart (3)(C) also does not apply where the fiduciary's powers to comply with this section 4-16-3(o), subpart (3)(C) are limited by a governing instrument created with the objective purpose of avoiding liability under this Chapter or of avoiding compliance with this Chapter; or

(D) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the ground water from a source off the property, if:

(i) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(ii) The person has not caused or contributed to the release of the hazardous substance;

(iii) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated ground water that has migrated onto the property;

(iv) If requested, the person allows the Department potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the Department. The person may attempt to negotiate an access agreement before allowing access; and

(v) Legal withdrawal of groundwater does not disqualify a person from the exemption in this section 4-16-3(o), subpart (3)(D).

(p) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

(1) The term does not include any of the following:

(A) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations;

(B) A holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held;

(C) A holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held;

(D) A holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment;

(E) A holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility;

(F) A holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment;

(G) A holder who operates a facility primarily to protect a security interest or requires a borrower to continue to operate, a facility primarily to protect a security interest; and

(H) A prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(q) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency or a Tribal instrumentality that is subject to a waiver of sovereign immunity.

(r) "Policing Activities" means actions the holder takes to insure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(s) "Potentially Liable Person" means any person whom the Department finds, based on credible evidence, to be liable under section 4-16-5. The Department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(t) "Prepare a Facility for Sale, Transfer, or Assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to clean up releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one (1) year prior to foreclosure and its equivalents and still stay within the security interest exemption in section 4-16-3(o), subpart (2)(b).

(u) "Primarily to Protect a Security Interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes

other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five (5) years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to the date this Chapter is enacted and adopted by the Council, this five (5) year period shall begin as of the date of enactment and adoption.

(v) "Public Notice" means, adequate notice mailed to all persons who have made timely request of the Department; published in the Tribal Tribune; and may include an opportunity for interested persons to comment.

(w) "Reservation Environment" means the environment within the exterior boundaries of the Colville Indian Reservation and other lands held in trust status by the U.S. Government for the Tribe or its members.

(x) "Reservation Population" means all persons either residing on or doing business within the Reservation Environment.

(y) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(z) "Remedy" or "Remedial Action" means any action or expenditure consistent with the purpose of this Chapter to identify, eliminate, clean up, or minimize any threat of potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(aa) "Sediment" means unconsolidated material eroded from parent rock, including soil and/or any man-made unconsolidated solid material of a particulate nature, which exists below the ordinary high water mark of any water body or wetland.

(bb) "Tribe" means the government of the Confederated Tribes of the Colville Reservation.

(cc) "Tribal Instrumentality" means a unit of Tribal government or a Tribal organization that is ultimately responsible to the Colville Business Council.

(dd) "Tribal Court" means the Tribal Court of the Colville Confederated Tribes as established in Amendment X of the Tribe's Articles and By-Laws.

(Amended 6/7/02, Resolution 2007-342)  
(Amended 3/20/03, Resolution 2003-131)  
(Certified 3/26/03)

## **DEPARTMENT—POWERS AND DUTIES**

**4-16-4**

### **Department's Powers and Duties**

(a) The Department may exercise the following powers in addition to any other powers granted by Tribal or federal law:

(1) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the Department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The Department shall give reasonable notice before entering property unless an emergency prevents such notice. The Department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the

Department deems necessary;

(2) Conduct provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under section 4-16-4(a), subpart (1) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the Department's authorized employees, agents, or contractors may enter upon property. The Department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the Department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(3) Retain contractors and consultants to assist the Department in carrying out investigations and remedial actions;

(4) Carry out all Tribal programs authorized under the federal cleanup law, the Resource Conservation and Recovery Act 42 U. S.C. § 6901 et seq., as amended, and other federal laws;

(5) Classify substances as hazardous substances for purposes of section 4-16-3(10);

(6) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under section 4-16-4(a), subpart (9) that may be conditioned upon, deed restrictions or other appropriate institutional controls as may be necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing a deed restriction or other appropriate institutional control under this subsection, the Department shall notify and seek comment from the Tribal Land Use Planning Department with jurisdiction over the real property subject to such restriction;

(7) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment;

(8) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to section 4-16-3(o), subpart (3), sub-subpart (B)(iii);

(9) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this Chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the Department. As a part of providing this advice and assistance for independent remedial actions, the Department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this Chapter or whether the Department believes further remedial action is necessary at the facility. The Department may collect, from persons requesting advice and assistance, the costs incurred by the Department in providing such advice and assistance; however, the Department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The Tribe, Department, and officers, agents, attorneys, and employees of the Tribe are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance; and

(10) Take any other actions necessary to carry out the provisions of this Chapter, including proposing that the Council amend this Chapter.

(b) The Department shall to the best of its ability implement all provisions of this Chapter, including the cleanup standards further described in section 4-16-11 and to the maximum extent practicable, institute investigative and remedial actions where appropriate; and the Department shall:

(1) Provide for public notice of investigative plans, clean up plans, or remedial plans and other significant actions taken under this Chapter;

(2) Require the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment within ninety (90) days of discovery, including such exemptions from reporting as the Department deems appropriate, however this requirement shall not modify any existing requirements provided for under other laws;

(3) Establish reasonable deadlines for initiating an investigation of a hazardous waste site after the Department receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site; and

(4) Enforce clean-up standards set forth in section 4-16-11; and

(c) The Department may, as available resources permit, establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.

**4-16-5**

**Standard of Liability—Settlement**

(a) Except as provided in section 4-16-5(c), the following persons are liable with respect to a facility:

(1) The owner or operator of the facility;

(2) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;

(3) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;

(4) Any Person:

(A) Who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or

(B) Who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such a facility is not operated in accordance with Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., as amended, and programs appropriately delegated under RCRA; and

(5) Any person who both sells a hazardous substance and is responsible for written instructions for its use if:

(A) The substance is used according to the instructions; and

(B) The use constitutes a release for which remedial action is required at the facility.

(b) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The Department, is empowered to recover all costs and damages from persons liable therefor.

(c) The following persons are not liable under this section:

(1) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

(A) An act of God;

(B) An act of war; or

(C) An act or omission of a third party (including but not limited to a trespasser) other than:

(i) An employee or agent of the person asserting the defense, or

(ii) Any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability.

This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(2) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This section 4-16-5(c), subpart (2) is limited as follows:

(A) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this section 4-16-5(c), subpart (2) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(B) The defense contained in this section 4-16-5(c), subpart (2) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(C) The defense contained in this section 4-16-5(c), subpart (2) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(3) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is:

(A) A resident of the dwelling;

(B) A person who, without compensation, assists the resident in the use of the substance;  
or

(C) A person who is employed by the resident but who is not an independent contractor;

(4) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable Tribal and federal laws and regulations.

(d) There may be no settlement by the Department with any person potentially liable under this Chapter except in accordance with this subsection.

(1) The Department may agree to a settlement with any potentially liable person only if the Department finds that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under section 4-16-11(b), subpart (4) and with any remedial orders issued by the Department. Whenever practicable and in the public interest the Department may expedite such a settlement with a person whose contribution is insignificant in amount and toxicity.

(2) A settlement agreement under this subsection shall be entered as a consent decree issued by the Tribal Court or by a court of competent jurisdiction.

(3) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the Department has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the Tribal Court or a court of competent jurisdiction to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(4) A party who has resolved its liability to the Department under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the Department by the amount of the settlement.

(5) If the Department has entered into a consent decree with an owner or operator under this section, the Department shall not enforce this Chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the Department could enforce against the settling party, if:

(A) The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the Department has entered into a consent decree; and

(B) The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. Such unique circumstances shall be specified in the consent decree.

(6) Any person who is not subject to enforcement by the Department under section 4-16-5(d), subpart (5) is not liable for claims for contribution regarding matters addressed in the settlement.

(e) In addition to the settlement authority provided under section 4-16-5(d), the Department may agree to a settlement with a person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility, provided that:

(1) The settlement will yield substantial new resources to facilitate cleanup;

(2) The settlement will expedite remedial action consistent with this Chapter; and

(3) Based on available information, the Department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the site, or increase health risks to persons at or in the vicinity of the site.

(4) The Department does not have adequate resources to participate in all property transactions involving contaminated property. The primary purpose of this section 4-16-5(e) is to promote the cleanup and reuse of vacant or abandoned commercial or industrial contaminated property. The Department may give priority to settlements that will provide a substantial public benefit, including, but not limited to the reuse of a vacant or abandoned manufacturing or industrial facility, or the development of a facility by a Tribal entity to address an important public purpose.

(f) Nothing in this Chapter affects or modifies in any way any person's right to seek or obtain relief under Tribal law, or other applicable laws, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the Department or remedial action ordered by the Tribal Court, a court of competent jurisdiction or the Department affects any person's right to obtain a remedy under Tribal law, or other applicable laws.

(Amended 6/7/02, Resolution 2007-342)

#### **4-16-6 Enforcement**

(a) With respect to any release, or threatened release, for which the Department does not conduct or contract for conducting remedial action and for which the Department believes remedial action is in the public interest, the Department shall issue orders or agreed orders requiring potentially liable persons to provide the remedial action. Any liable person who refuses, without sufficient cause, to comply with an order or agreed order of the Department is liable in an action brought by the Department for:

(1) Up to three times the amount of any costs incurred by the Department as a result of the party's refusal to comply; and

(2) A civil fine of up to twenty-five thousand (\$25,000) dollars for each day the party refuses to comply.

The treble damages and civil fines under this subsection apply to all recovery actions filed on or after the date this Chapter is enacted and adopted by the Council.

(b) The Department shall seek, by filing an action if necessary, to recover the amounts spent by the Department for investigative and remedial actions and orders, including amounts spent prior to the date this Chapter is enacted and adopted by the Council.

(c) The Department may request that the Office of Reservation Attorney bring an action to secure such relief as is necessary to protect human health and the environment under this Chapter.

(d) Civil actions under this section and section 4-16-7 shall be brought in Tribal Court or in a court of competent jurisdiction.

(Amended 6/7/02, Resolution 2007-342)

#### **4-16-7 Judicial Review**

(a) The Department's investigative and remedial decisions under sections 4-16-4 and 4-16-6 and its decisions regarding liable persons under section 4-16-5 shall be reviewable exclusively in Tribal Court, unless a suit has been filed by the Department in another court of competent jurisdiction, and only at the following times:

(1) In a cost recovery suit under section 4-16-6(b);

(2) In a suit by the Department to enforce an order or an agreed order, or seek a civil penalty under

this Chapter; and

(3) In a suit by the Department to compel investigative or remedial action.

(b) In all such matters where judicial review is sought, the court shall uphold the Department's action unless such action was arbitrary and capricious.

(Amended 6/7/02, Resolution 2007-342)

**4-16-8 Deposits to Hazardous Waste Account**

(a) There shall be established a hazardous waste account to be administered by the Department.

(b) The following moneys shall be deposited into the hazardous waste account:

(1) The costs of remedial actions recovered under this Chapter;

(2) Penalties collected or recovered under this Chapter; and

(3) Any other money appropriated or transferred to the account by the Department. Moneys in the account may be used only to carry out the purposes of this Chapter including but not limited to the following activities:

(A) The hazardous waste cleanup program required under this Chapter;

(B) Matching funds required under any federal law;

(C) Tribal programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(D) Hazardous materials emergency response training; and

(E) Water and environment health protection and monitoring programs;

(c) Moneys in the hazardous waste account may be spent only after approval of a budget by the Council. All earnings from investment of balances in the account shall be credited to the account.

**4-16-9 Private Right of Action—Remedial Action Costs**

(a) A person may bring a private right of action, including a claim for contribution or for declaratory relief against any other person liable under section 4-16-5 for the recovery of remedial action costs, except that no private right of action may be brought against the following:

(1) The Tribe or instrumentalities of the Tribe (except where specifically provided for by waiver of sovereign immunity); or

(2) As provided in section 4-16-5(d), subparts (4) and (6).

(b) Recovery shall be based on such equitable factors as the Tribal Court or a court of competent jurisdiction determines are appropriate. Natural resource damages paid to the Tribe under this Chapter may be recovered. Remedial action costs shall include reasonable attorneys' fees and expenses. Recovery of remedial action costs shall be limited to those remedial actions that, when evaluated as a whole, are the substantial equivalent of a Department-conducted or Department-supervised remedial action. Substantial equivalence shall be determined by the Tribal Court or a court of competent jurisdiction with reference to this Chapter. An action under this section may be brought after remedial action costs are incurred but must be brought within three (3) years from the date remedial action confirms cleanup standards are met. The prevailing party in such an action shall recover its reasonable attorneys' fees and costs.

(Amended 6/7/02, Resolution 2007-342)

**4-16-10 Remedial Actions—Exemption from Procedural Requirements**

(a) A person conducting a remedial action at a facility under a consent decree, order, or agreed order, and the Department when it conducts a remedial action, are exempt from the procedural requirements of all otherwise applicable Tribal laws. The Department shall ensure compliance with the substantive provisions of all otherwise applicable Tribal laws. The Department shall establish procedures for ensuring that such remedial actions comply with the substantive requirements adopted pursuant to such laws. The procedures shall provide an opportunity for comment by the public and by the Tribal agencies that would otherwise implement the laws referenced in this section. Nothing in this section is intended to prohibit implementing agencies from charging a fee to the person conducting the remedial action to defray the costs of services rendered relating to the substantive requirements for the remedial action.

(b) An exemption in this section or in any other applicable Tribal law shall not apply if the Department determines that the exemption would result in loss of approval from a federal agency necessary for the Tribe to administer any federal law, including the Federal Resource Conservation and Recovery Act; the Federal Clean Water Act; the Federal Clean Air Act; and the Federal Coastal Zone Management Act. Such a determination by the Department shall not affect the applicability of the exemptions to other statutes specified in this section.

**4-16-11 Cleanup Standards**

(a) Surface water, groundwater, soil and sediment cleanup standards: The cleanup standards enforced by the Department shall be those set forth in the State of Washington “Model Toxics Control Act” or, where the Tribe has adopted more stringent standards as set forth in Appendix A, Appendix B, and Appendix C to this Chapter, the cleanup standards enforced by the Department shall be those standards set forth in Appendix A, Appendix B, and Appendix C which are incorporated in full herein by this reference.

(b) Application of standards:

(1) Application of standard methods A and B shall be at the sole discretion of the Department.

(2) When using Method C of the State of Washington Model Toxics Control Act the determination of “commercial” or “industrial” land use status shall be at the Department’s discretion in consultation with the Tribal Planning Department. Commercial or industrial land use status shall not be granted in community wellhead protection zones as delineated by the Department nor shall it be granted in cases where in the opinion of the Department contamination from the site in question might be captured by a water source used for human consumption including but not limited to wells and springs.

(3) Background level will be determined by the Department based upon data and tests presented by the site owner operator.

(4) In cases involving multiple chemicals with multiple health effects the Department may use W.A.C. § 173-340 as guidelines to determine aggregate cleanup levels that are protective of human health and the environment.

(5) The Department may consult with state and federal agencies, institutes of higher learning, and other entities with expertise in toxic cleanup and human or environmental toxicology in order to determine clean up levels which are protective of human health and the environment.

(Amended 3/20/03, Resolution 2003-131)  
(Certified 3/26/03)

**4-16-12 Sovereign Immunity**

Nothing in this Chapter shall be construed to constitute a waiver of the sovereign immunity of the Tribe, or of any instrumentality, agent, officer, or employee of the Tribe.

**4-16-13**    **Captions**

As used in this Chapter captions constitute no part of the law.

**4-16-14**    **Construction**

The provisions of this Chapter are to be liberally construed to effectuate the policies and purposes of this Chapter. In the event of conflict between the provisions of this Chapter and any other act, the provisions of this Chapter shall govern.

**4-16-15**    **Effective Date**

The effective date of this Chapter shall be the date this Chapter is enacted and adopted by the Council. This Chapter shall apply retroactively.

**4-16-16**    **Severability**

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances is not affected.

(Chapter 4-16 Adopted 12/9/99, Resolution 1999-828)

**APPENDIX A**

**COLVILLE TRIBAL HAZARDOUS SUBSTANCES CONTROL**

**GROUND WATER CLEANUP LEVELS**

The following chart indicates the minimum cleanup levels for ground water, in terms of amount of individual hazardous substance per unit volume, for the hazardous substances listed. These cleanup levels shall remain in effect until the Environmental Trust Department ("Department") amends them. The Department may also establish more stringent cleanup levels for a specific site, when, based on a site-specific evaluation, the Department determines that such levels are necessary to protect human health and the environment.

For substances not listed below, refer to the state of Washington's current publication on "Model Toxics Control Act Cleanup Levels and Risk Calculations."

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	5.0 ug/liter
Benzene	71-43-2	5.0 ug/liter
Cadmium	7440-43-9	5.0 ug/liter
Chromium (Total)	7440-47-3	50.0 ug/liter
DDT	50-29-3	0.1 ug/liter
1,2 Dichloroethane	107-06-2	5.0 ug/liter
Ethylbenzene	100-41-4	30.0 ug/liter
Ethylene dibromide	106-93-4	0.01 ug/liter
Gross Alpha Particle Activity		15.0 pCi/liter
Gross Beta Particle Activity		4.0 mrem/yr
Lead	7439-92-1	5.0 ug/liter

Hazardous Substance	CAS Number	Cleanup Level
Lindane	58-89-9	0.2 ug/liter
Methylene chloride	75-09-2	5.0 ug/liter
Mercury	7439-97-6	2.0 ug/liter
PAHs (carcinogenic)		0.1 ug/liter
PCB mixtures		0.1 ug/liter
Radium 226 and 228		5.0 pCi/liter
Radium 226		3.0 pCi/liter
Tetrachloroethylene	127-18-4	5.0 ug/liter
Toluene	108-88-3	40.0 ug/liter
Total Petroleum Hydrocarbons		1000.0 ug/liter
1,1,1 Trichloroethane	71-55-6	200.0 ug/liter
Trichloroethylene	79-01-5	5.0 ug/liter
Vinyl chloride	75-01-4	0.2 ug/liter
Xylenes	1330-20-7	20.0 ug/liter

## APPENDIX B

### COLVILLE TRIBAL HAZARDOUS SUBSTANCES CONTROL

#### SOIL CLEANUP LEVELS

The following chart indicates the minimum cleanup levels for soil, in terms of amount of individual hazardous substance per unit mass, for the hazardous substances listed. These cleanup levels shall remain in effect until the Environmental Trust Department ("Department") amends them. The Department may also establish more stringent cleanup levels for a specific site, when, based on a site-specific evaluation, the Department determines that such levels are necessary to protect human health and the environment.

For substances not listed below, refer to the state of Washington's current publication on "Model Toxics Control Act Cleanup Levels and Risk Calculations."

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	20.0 mg/kg
Benzene	71-43-2	0.5 mg/kg
Cadmium	7440-43-9	2.0 mg/kg
Chromium	7440-47-3	100.0 mg/kg
DDT	50-29-3	1.0 mg/kg
Ethylbenzene	100-41-4	20.0 mg/kg
Ethylene dibromide	106-93-4	0.001 mg/kg

Hazardous Substance	CAS Number	Cleanup Level
Lead	7439-92-1	250 mg/kg
Lindane	58-89-9	1.0 mg/kg
Methylene chloride	75-09-2	0.5 mg/kg
Mercury (inorganic)	7439-97-6	1.0 mg/kg
PAHs (carcinogenic)		1.0 mg/kg
PCB Mixtures		1.0 mg/kg
Tetrachloroethylene	127-18-4	0.5 mg/kg
Toluene	108-88-3	40.0 mg/kg
TPH (gasoline)		100.0 mg/kg
TPH (diesel)		200.0 mg/kg
TPH (other)		200.0 mg/kg
1,1,1 Trichloroethane	71-55-6	20.0 mg/kg
Trichloroethylene	79-01-5	0.5 mg/kg
Xylenes	1330-20-7	20.0 mg/kg

## APPENDIX C

### COLVILLE TRIBAL HAZARDOUS SUBSTANCES CONTROL ACT

#### SEDIMENT CLEANUP LEVELS FOR THE PROTECTION OF HUMAN HEALTH AND SEDIMENT-DWELLING ORGANISMS

The following charts: Chart I and Chart II, indicate the minimum numerical cleanup levels for contamination in sediments caused by the listed hazardous substances. Chart I indicates the sediment cleanup levels for the protection of human health. These cleanup levels are given in  $\mu\text{g}$  of contaminant/kg of organic carbon. Chart II indicates the sediment cleanup levels for the protection of sediment-dwelling organisms. The cleanup levels in Chart II are given in the units shown in the chart. To the extent that there are two sediment standards for the same compound the lower standard shall control. Response actions must also comply with the following narrative standards for sediments.

In the case of a substance for which there is no numerical standard in Chart I, the following narrative standard shall apply:

Bioaccumulative substances shall not occur in sediments, either singly or in combination, at concentrations that cause, or can reasonably be expected to cause, injury to human health or biological resources including sediment-dwelling organisms.

In the case of a substance for which there is no numerical standard in Chart II, the following narrative standard shall apply:

Toxic substances shall not occur in sediments, either singly or in combination, at concentrations that cause, or can reasonably be expected to cause, injury to human health or biological resources including sediment-dwelling organisms.

These numerical sediment cleanup levels and narrative sediment cleanup levels shall remain in effect until the Environmental Trust Department ("Department") amends them. The Department may also establish more stringent cleanup levels for a specific site, when, based on a site-specific evaluation, the Department determines that such levels are necessary to protect human health and the environment.

**Chart I. Sediment Cleanup Levels for the Protection of Human Health**

Chemicals of Concern	Sediment Cleanup Levels (µg/kg OC)
<i>Polycyclic Aromatic Hydrocarbons</i>	
Benzo(a)pyrene	21.6
Dibenz[a,h]anthracene	21.6
Benz[a]anthracene	21.6
Chrysene	13.8
Benzo(b)fluoranthene	21.6
Benzo(k)fluoranthene	21.6
Indeno(1,2,3-cd)pyrene	21.6
<i>Polychlorinated Biphenyls</i>	
Aroclor 1016	1.54
Aroclor 1242	0.533
Aroclor 1248	0.533
Aroclor 1254	0.533
Aroclor 1260	0.533
Total PCBs	0.533
<i>Pesticides</i>	
Aldrin	0.0408
Chlordane	0.533
Dieldrin	0.0439
<i>Pesticides (continued)</i>	
P,p-DDD	2.85
P,p-DDE	1.72
P,p-DDT	2.04
Total DDT*	2.54
Endosulfan	11300
Endrin	172
Heptachlor	0.408

Heptachlor epoxide	0.204
Alpha-hexachlorocyclohexane (HCH)	0.295
Beta-HCH	1.00
Technical-HCH	1.03
Lindane (gamma-HCH)	1.44
Mirex*	17.8
Toxaphene*	5.08

***Dioxins and Furans***

1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin	3.76
1,2,3,4,6,7,8-Heptachlorodibenzofuran	3.76
1,2,3,4,7,8,9-Heptachlorodibenzofuran	3.76
1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin	0.0144
1,2,3,4,7,8-Hexachlorodibenzofuran	0.0144
1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin	0.0144
1,2,3,6,7,8-Hexachlorodibenzofuran	0.0144
1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin	0.0144
1,2,3,7,8,9-Hexachlorodibenzofuran	0.0144
1,2,3,7,8-Pentachlorodibenzo-p-dioxin	0.00288
1,2,3,7,8-Pentachlorodibenzofuran	0.00815
2,3,4,6,7,8-Hexachlorodibenzofuran	0.0144
2,3,4,7,8-Pentachlorodibenzofuran	0.000972
2,3,7,8-Tetrachlorodibenzo-p-dioxin	0.0000470
2,3,7,8-Tetrachlorodibenzofuran	0.00408
Octachlorodibenzodioxin	37.6
Octachlorodibenzofuran	37.6

OC = organic carbon; NS = no sediment quality standard is derived. Standards to be developed as more data become available.

**Chart II. Sediment Cleanup Levels for the Protection of Sediment-dwelling Organisms**

Substance	Sediment Cleanup Levels
<b><i>Metals (in mg/kg DW)</i></b>	
Arsenic	9.79
Cadmium	0.99
Chromium	43.4
Copper	31.6
Lead	35.8
Mercury	0.18
Nickel	22.7
Zinc	121

***Polycyclic Aromatic Hydrocarbons (µg/kg DW)***

Anthracene	57.2
Fluorene	77.4
Naphthalene	176
Phenanthrene	204
Benz[a]anthracene	108
Benzo(a)pyrene	150
Chrysene	166
Fluoranthene	423
Pyrene	195
Total PAHs	1610

***Polychlorinated Biphenyls (µg/kg DW)***

Total PCBs	59.8
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***Organochlorine Pesticides (µg/kg DW)***

Chlordane	3.24
Dieldrin	1.90
Sum DDD	4.88
Sum DDE	3.16
Sum DDT	4.16
Total DDTs	5.28
Endrin	2.22
Heptachlor Epoxide	2.47
Lindane (gamma-BHC)	2.37

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DW = dry weight

(Amended 3/20/03, Resolution 2003-131)  
(Certified 3/26/03)

## CHAPTER 4-23 COLVILLE ENVIRONMENTAL QUALITY COMMISSION

### 4-23-1 Establishment of Commission

There is hereby created the Colville Environmental Quality Commission (CEQC). The CEQC shall consist of five voting members, which shall include the Director of the Natural Resources Department, the Director of the Planning Department, the Director of the Fish & Wildlife Department, the Director of the Parks & Recreation Department, and the Director of the History and Archaeology Department. If one of these positions becomes vacant, the acting departmental director shall serve as Commission member on an interim basis.

### 4-23-2 Powers and Duties of Commission

(a) The CEQC is the environmental administrative appellate body of the Confederated Tribes of the Colville Reservation.

(b) The CEQC shall have the authority and jurisdiction to hear and decide administrative appeals of final decisions of the Water Quality Department under Chapter 4-5, decisions of the Department of Geology under Chapter 4-6, final decisions of the Environmental Trust Department under Chapters 4-7 and 4-9, final decisions of the Hydrology Department under Chapter 4-8, and final decisions of the Water Administrator under Chapter 4-10 of the Colville Tribal Code.

(c) The CEQC may adopt additional rules and regulations governing its procedures and operations not inconsistent with the provisions of this Chapter and Chapter 2-4 of the Colville Tribal Code.

### 4-23-3 Chairman of the Commission

(a) Upon its formation, the CEQC shall meet and elect from its members a Chairman, and shall at least biennially thereafter meet and elect such a Chairman.

(b) The Chairman shall have the power to call and preside over all hearings and other meetings of the CEQC. The powers of the Chairman to call and preside over CEQC hearings may be delegated by the CEQC to a hearing officer as provided under Section 4-23-6.

(c) The Chairman or his designee may administer oaths to witnesses coming before the CEQC.

(d) The Chairman may take part in all deliberations and vote on all issues.

### 4-23-4 Meetings and Hearings

(a) The CEQC shall hold meetings and hearings as necessary to fulfill its responsibilities as an administrative appellate body under the Colville Tribal Code.

(b) The CEQC shall provide notice of hearings and conduct such hearings in accordance with the procedures for contested cases set forth in the Sections 2-4-13 through 2-4-18 of the Colville Tribal Code.

(c) All hearings and other meetings of the CEQC shall be open to the public; provided, the Chairman, in his sole discretion, may call a meeting into executive session when he determines it is in the interest of the Confederated Tribes of the Colville Reservation to do so.

### 4-23-5 Voting Procedures

(a) Three members of the CEQC shall constitute a quorum. A quorum is necessary for the CEQC to take official action.

(b) All actions of the CEQC shall be taken by majority vote, a quorum being present.

- (c) A member shall be excused from voting on a particular issue under the following circumstances:
- (1) If the member has a direct financial interest in the outcome of the matter or issue; or
  - (2) If the matter at issue involves the member's own official conduct; or
  - (3) If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.
- (d) If as a result of recusals under Section 4-23-5, the CEQC lacks a quorum to take action in a particular case, the CBC shall appoint additional member(s) to serve on the CEQC on a temporary basis.
- (e) A roll call vote shall be taken upon the request of any member.

**4-23-6 Appointment of Hearing Officer**

- (a) The CEQC, in its sole discretion, may appoint a hearing officer to conduct the hearings on appeals provided for in this Chapter and other applicable law. The hearing officer shall have a demonstrated knowledge of administrative law and shall be admitted to the practice of law in the Colville Tribal Court and the state of Washington.
- (b) The hearing officer shall conduct the hearing in accordance with the provisions of this Chapter and Chapter 2-4 of the Colville Tribal Code and shall submit recommended findings of fact, conclusions and a proposed decision to the CEQC.
- (c) A hearing officer's decision shall not be final or effective until signed by a majority of the CEQC members eligible to decide the case.

**4-23-7 Secretary**

- (a) The CEQC shall appoint a Secretary. The Secretary shall be a Tribal employee selected by the CEQC.
- (b) The Secretary shall be responsible for maintaining the record required under Section 2-4-13(d) of the Colville Tribal Code in all appeals and other matters heard by the CEQC.
- (c) Upon written request, the Secretary shall make the record required under Section 2-4-13(d) available for public inspection at a reasonable time and location.
- (d) The Secretary shall be responsible for transmitting to the Tribal Court the original or a certified copy of the entire record of the CEQC's proceedings in the event of a petition for judicial review under Section 2-4-20 of the Colville Tribal Code.

**4-23-8 Appeals of Departmental Decisions**

- (a) Consistent with the jurisdictional limits provided for in Section 4-23-2 of the Colville Tribal Code, any person having received notice of an final appealable decision made by a Tribal department under Chapters 4-5 through 4-10 of the Colville Tribal Code may appeal to the CEQC within thirty (30) days from the date of receipt of the notice of such decision. The appeal shall be perfected by serving a copy of a Notice of Appeal upon the issuing Tribal department within the time specified herein and by filing the original thereof with proof of service with the Secretary of the CEQC. The time for filing an appeal is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday is included.
- (b) Any appeal must contain the following information: (1) The appellant's name and address; (2) A description of the substance of the decision that is the subject of the appeal; (3) A clear, separate, and concise statement of every error alleged to have been committed; (4) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and (5) A statement setting forth

the relief sought.

(c) An appealable decision shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the CEQC and serving it on the issuing department within thirty days of the date of receipt.

**4-23-9 Stays of Departmental Decisions**

(a) Except as otherwise provided in the Colville Tribal Code, a person appealing to the CEQC an order of a Tribal department, which was not stayed by the issuing department, may obtain a stay of the effectiveness of that order only as set forth in this section.

(b) An appealing party must request a stay by motion. The motion must be accompanied by a statement of grounds for the stay and evidence setting forth the factual basis upon which request is based. The CEQC shall hear the request for a stay as soon as possible. The hearing on the request for stay may be consolidated with the hearing on the merits.

(c) The CEQC may grant a motion for a stay only if the applicant demonstrates a likelihood of success on the merits of the appeal, a probability of irreparable harm, and that the interests of the Tribes or the public will not be harmed by the issuance of a stay.

(d) Any party or other person aggrieved by the grant or denial of a stay by the CEQC may petition the Tribal Court for review of that decision pursuant to Section 2-4-20 pending the appeal on the merits before the CEQC. The Tribal Court shall expedite its review of the decision of the CEQC.

**4-23-10 Conduct of Hearings**

It shall be the duty of the Chairman or a hearing officer appointed by the CEQC to conduct conferences or hearings in cases assigned in an impartial and orderly manner. The Chairman or the hearing officer shall have the authority, subject to the other provisions of these rules:

- (a) To administer oaths and affirmations;
- (b) To issue subpoenas and enter protective orders as provided in Section 2-4-13 of the Colville Tribal Code;
- (c) To rule on all procedural matters, objections and motions;
- (d) To rule on all offers of proof and receive relevant evidence;
- (e) To question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;
- (f) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as deemed necessary to fairly and equitably decide the appeal;
- (g) To take appropriate disciplinary action with respect to representatives of parties appearing before the board;
- (h) To issue orders joining other parties, on motion of any party or in the judgment of the presiding officer, when it appears that such other parties may have an interest in, or may be affected by, the proceedings;
- (i) To consolidate appeals for hearing when such consolidation will expedite disposition of the appeals and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby;
- (j) To hold prehearing conferences and settlement conferences;

- (k) To permit and regulate the taking of discovery;
- (l) To regulate the course of the hearing;
- (m) To take any other action necessary and authorized by the Colville Tribal Code.

**4-23-11 CEQC Decisions**

In all appeals and other contested cases, the CEQC shall make findings of fact and prepare a written decision, and such findings and decisions shall be effective upon being signed by a majority of those CEQC members eligible to decide the case and upon being filed with the Secretary.

**4-23-12 Reconsideration**

(a) After issuance of a final decision, any party may file a petition for reconsideration with the CEQC. Such petition must be filed and served on all parties within ten (10) days of mailing of the final decision. The CEQC may require an answer, or parties may elect to file an answer, to the petition for reconsideration. Any answer to a petition for reconsideration must be filed and served on all parties within five days of the receipt of the petition.

(b) The filing of a petition for reconsideration does not stay the effectiveness of the final decision of the CEQC.

(c) In response to a petition for reconsideration, the CEQC may deny it, or may reverse or modify its decision or may reopen the hearing. The CEQC is deemed to have denied the petition if, within thirty (30) days from the date the petition is filed, the CEQC does not act on the petition or specify a date by which it will act on the petition.

(d) The time for filing a petition for judicial review does not commence until disposition of the petition for reconsideration. However, the filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

(e) The CEQC shall mail copies of the final decision and order and of the CEQC's disposition of any petition for reconsideration to each party to the appeal or to the attorney or representative of record. Service on the representative constitutes service on the party.

**4-23-13 Repeal of Prior Resolutions**

All prior resolutions establishing the CEQC, including Resolutions 1985-464 and 1998-650, are hereby superseded and repealed.

(Chapter 4-23 Adopted 9/2/10, Resolution 2010-618)

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE

For Water Quality Standards and Certification Programs

Clean Water Act Sections 303 and 401

ATTACHMENT M

## **JOB DESCRIPTION**

CLASS TITLE: Environmental Program Manager CLASS CODE: \_\_\_\_\_ PAY RANGE: \_\_\_\_\_

POSITION: Environmental Trust Director DEPT: Land & Property/Environmental Trust REPORTS TO: Director Land & Property

### **BASIC FUNCTIONS OF WORK**

Directs operation of Environmental Trust Program and represents tribal government in all environmental program areas, and is the primary person responsible for environmental policy development and implementation. Functions with no technical supervision and minimal broadly defined policy and administrative supervision. Oversees development of tribal environmental laws and policies for all program areas. Oversees enforcement of tribal environmental laws and implementation of environmental policies. Supervises Environmental Trust program managers and advises them on policy and technical aspects of their work. Serves as the primary advisor to the Colville Business Council (CBC) and key tribal staff on environmental media (air, water, toxic waste, etc.) and water resources (water rights) policy. Serves as the primary tribal representative to State of Washington Dept. of Ecology and U. S. Environmental Protection Agency on technical and policy issues. Serves as policy advisor to the CBC on international environmental and water resource issues (Canada). Oversees, develops and coordinates with staff on writing environmental media and water resources work plans, contracts, grants, reports, intergovernmental agreements, regulations, and outside attorney and consultant services contracts. Works with tribal attorneys on all aspects of environmental issues and water rights.

### **SUPERVISION RECEIVED**

Administrative supervision is received from the Director of Land and Property. Broadly defined policy direction is provided by the CBC or worked out with the CBC. This position serves as the technical and policy authority of the Tribe on environmental and water rights matters and routinely interprets or recommends policies promulgated by authorities (CBC or Executive Director) senior to the immediate supervisor. No technical supervision is received.

### **SUPERVISION EXERCISED**

Supervises 6 to 18 staff. Drafts and tracks training plans for personnel under direct supervision. Responsible for qualifications requirements of program positions, including those not under direct supervision. Ensures personnel hired meet all funding agency special requirements for program positions working with specific environmental media or tasks.

### **SPECIFIC FUNCTIONS OF WORK**

#### **ET Program Operations**

- Supervises ET program managers and coordinates with them on program objectives, policy, funding, and operations.
- Oversees or performs program needs assessments, environmental condition assessments, and seeks funding for programs.
- Oversees and evaluates performance of ET programs, coordinates with Administration on annual program evaluations, and coordinates with funding agencies on program evaluations (generally quarterly).
- Oversees enforcement of environmental media and water use laws (including Colville Tribal Code chapters 4-5, 4-7, 4-8, 4-9, 4-10, 4-12, and 4-16).
- Oversees procurement of outside contract services (including developing contract scopes of work, RFP's, and budgets) and tracks work and progress of outside contractors.
- Develops and implements changes to ET organizational structure, job position classifications, performance evaluations, and job descriptions and minimum qualifications.
- Reviews and oversees all ET program budgets and program quarterly reports.
- Writes quarterly reports for ET and for individual programs as required.
- Presents or oversees presentation of ET issues and reports to the Colville Business Council.
- Presents or oversees presentation of ET budgets to the Colville Business Council.
- Attends Land and Property managers meetings twice per month.
- Participates in Tribal and Land and Property strategic planning sessions, and internal (ET) planning sessions.
- Tracks changes in federal and state environmental and water laws, and notes changes in environmental policies and trends which may affect Tribe or its interests or programs and informs staff and management as necessary.

- Tracks application of 1909 Treaty on Boundary Waters (Canada/U.S.), and negotiating process involved in the Columbia River Treaty (Canada/U.S.), and assists Colville Business Council on policy development.
- Confers with Colville Business Council on overall program direction and develops specific policies for water rights and environmental media (air, water, soil, hazardous waste, etc.).
- Confers with Colville Business Council on strategic planning for environmental issues and makes recommendations regarding allocation of resources to achieve plan objectives.
- Evaluates federal and state grant funding offerings for relevance to program and tribal needs and tribal performance or implementation capacity.

### **Legal and Policy**

- Works with Office of Reservation Attorney (ORA) on environmental policy formulation and implementation and on legal aspects of intergovernmental relations on environmental and water resource issues.
- Advises Office of Reservation Attorney and Colville Business Council on advisability of taking actions or pursuing policies with respect to environmental and water rights issues.
- Works with ORA and contract attorneys on issues such as: lawsuits on environmental issues, drafting and evaluation of environmental laws, evaluation of legal and policy options, intergovernmental relationships and agreements.
- Makes recommendations to the Colville Business Council on adopting or changing laws relating to environmental regulation, water management, and environmental health.
- Works with Colville Business Council and other staff on legislative and regulatory agency lobbying priorities and works/communicates with tribal lobbyists on environmental and water policy issues.
- Uses judgment and ingenuity and exercises broad latitude to interpret new or revised professional standards, federal and state regulations, international treaties (Boundary Waters Treaty and Columbia River Treaty between US and Canada), codes, regulations, and policy statements.

Works with staff and contractors on developing exhibits and testimony for lawsuits and other types of legal regulatory proceedings.

- Testifies as an expert witness in state, tribal, and federal courts or other legal proceedings regarding ET issues, including testifying as “person most knowledgeable”, or presenter of case foundation in international lawsuits (CCT v. Teck Metals). Testifies on behalf of the Tribe as expert of program representative in response to third party lawsuits.
- Confers with state, federal, and other tribal entities on common legal and enforcement issues and drafts agreements and other instruments relating to these.
- Prepares congressional and legislative testimony for Colville Business Council on environmental and related issues, and helps the CBC prepare itinerary and talking points for meetings with elected officials and staff in Washington D.C.
- Makes recommendations to the Colville Business Council to form special project teams to manage and provide policy direction on complex issues.
- Arranges and performs strategic planning session with the Colville Business Council on complex environmental and water rights issues.

### **Liaison Functions**

- Represents tribal interests in inter-tribal, state, federal, and international bodies and consortia on environmental and water issues.
- Represents or oversees representation of tribal interests and programs in intergovernmental environmental forums.
- Serves on intergovernmental boards or commissions as required to represent tribal interests.
- Drafts or oversees drafting of intergovernmental agreements.
- Oversees tribal/staff participation in intergovernmental environmental and water resource functions such as intertribal meetings, workshops, issue forums, etc.
- Responds to inquiries of the public and other governments regarding environmental and water issues.
- Negotiates with other governments and private entities on environmental and water rights issues.
- Designated as lead contact person under Tribal/EPA agreement.
- Oversees coordination of international environmental issues, such as total dissolved gas coming from Canada.
- Tracks federal rule and policy making activities and arranges formal consultation as required by CBC.

### **KNOWLEDGE AND ABILITIES**

- Applied knowledge of strategic planning to program operations including needs assessment, program development, budgeting, implementation, and monitoring.

- Knowledge of applied personnel systems including: supervision, organization, class and job descriptions, personnel evaluations, training, discipline, and recruitment.
- Advanced knowledge of federal, state, and tribal grant, contract, work-plan, and budget development in environmental and water resource program applications.
- Overall knowledge of environmental media programs at different levels of government.
- Advanced knowledge of environmental and water resource program application on Indian lands, particularly as regards EPA Indian policy and programs and the U. S. Dept. of Interior.
- Advanced knowledge of environmental and water resource programs of the State of Washington and the Province of British Columbia, Canada.
- Applied knowledge of environmental regulatory enforcement programs including water rights.
- Applied knowledge of principles of Indian law (both statutory and court decisions) as it relates to environmental and water resource issues.
- Advanced knowledge of federal and state governmental structure; legislative, judicial, and executive; as they relate to environmental and water programs.
- Advanced knowledge of water law on and off of Indian lands.
- Basic knowledge of laws, treaties, processes, and agreements pertaining to environmental and water resource issues appurtenant to the U.S./Canadian border.

Applied knowledge of plant and animal ecology; land use planning; the scientific method, general and organic chemistry, physics, mathematics, statistical analysis, and biological processes; and general knowledge of media specific sampling methods and techniques, characteristics of pollutants; principles, practices, and methods of environmental science, pollution prevention and control; hydrologic systems, water use and measurement, water permitting and regulation; environmental and water resources data acquisition, and data quality assurance and control principles; applications of mapping, remote sensing, GIS, and databases to environmental and water resource programs.

- Ability to: clearly communicate highly complex ideas and concepts orally and in writing; perform highly complex policy level tasks with no technical supervision and minimal policy supervision; use sound professional judgment in performing all tasks; instill teamwork and sense of direction in program staff; organize and prioritize among dozens of complex competing issues and tasks; solve problems among competing interests by negotiation or other means.

MINIMUM QUALIFICATIONS

A master's degree involving study in environmental, physical, health, environmental planning or engineering, or natural resources management

AND

Four years experience at an Environmental Planner III or Environmental Specialist III level.

OR:

A bachelor's degree in the above subject areas plus six years experience at an Environmental Planner III or Environmental Specialist III Level.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Land & Property Director

\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

Personnel Manger

Date

File EnviMgrJD

last revised: September 14, 2010

JOB DESCRIPTION  
(Revised December 6, 2010)

**CLASS TITLE:** ENVIRONMENTAL PLANNER II   **CLASS CODE:**   **PAY RANGE:**                   **GS RATING:**

PROGRAM/DEPARTMENT: Land/Property/Environmental Trust  
REPORTS TO: Environmental Trust Director

BASIC FUNCTIONS OF WORK

This is a high level environmental professional class. The Environmental Planner II stresses intergovernmental coordination, budget and program management competence, and scientific and technical competence. The position places emphasis on complex tribal boundary water issues of the Okanogan and Columbia Rivers both on and off the reservation in the US and in Canada. Position advises Environmental Program Manager regarding a wide range of environmental issues dealing with international waters and the reduction of cross boundary contaminants affecting tribal resources. This program element is essential in the protection and management of important tribal rights, natural resource protection and human health associated risks. It is essential for the Tribes to coordinate with other governments and agencies in the US and Canada on these complex issues and resources. This position is instrumental in building overall tribal environmental capacity for the Tribes providing project administration for grants and contracts; serves a liaison function for program interests with other departments, government agencies, international government entities, and the general public; gathers and analyzes information to assist with developing recommendations and decision-making. This position writes work plans, grants, contracts, and budgets within its area of responsibility.

SUPERVISION EXERCISED

The CERCLA Coordinator is supervised by this position and work is assigned as needed. Tasks assigned are directly related to implementing tasks identified in the EPA Cooperative Agreement Work Plan and Survey Action Plans per deadlines and priorities. Employee performs work as instructed and consults with supervisor only if clarification is necessary. Quarterly progress reports are reviewed, a weekly survey summary is reviewed and any other correspondences that are “official” types of CCT comment documents are reviewed. Work is assigned to tribal contractors through the development of Scopes of Work for their contract and our requirements. In addition, work assignments are given to contractors depending on comment deadlines on RI/FS and litigation related documents and work plans or needs. Drafts and tracks training plans for personnel. Position supervises 1-8 staff.

SUPERVISION RECEIVED

Direct supervision is received from the Department Director who outlines overall program objectives. At the direction of Environmental Program Manager, position

manages all aspects of highly complex projects and assignments at both a policy and technical level with minimal supervision.

#### REPRESENTATIVE EXAMPLES OF WORK

##### ***Planning, developing, strategizing, advising, implementing crucial projects, plans and activities relevant to the reduction of contaminants in Tribal Boundary Waters***

~Investigates impact of internal and external policy, legislation, proposed regulations on environmental media and tribal goals, objectives and environment; formulates responses to such proposals including drafting tribal policy Responses; and takes all measures required for adoption of that response. Routinely deals with external governments at a high level; that is, congressional and regional administrator, district chief, international professionals and elected representatives.

~Keeps abreast of administrative, scientific, legal and other aspects of program area and advises supervisor as needed or required; serves as the Tribes' primary expert on program area and develops policies, procedures, and regulations pertaining to program; performs environmental reviews of documents and proposals in program area; responds to complaints and information requests.

~Analyzes and develops proposals to solve or deal with major environmental problems or issues.

~Serves with broad professional knowledge of the Columbia River system in coordination with a wide array of technical, legal, policy professionals: Serves as a Team Lead and participating member of an "Internal Tribal Team" in the development and implementation of strategic tribal goals and objectives to deal with international pollution and contaminants exceeding tribal and state standards. Interacts with federal and state elected officials, tribal council, technical representatives and attorneys. Determines, oversees, prepares, and implements regular Team meetings and agendas; meetings with elected officials. Assists in litigation-related document review and provides technical guidance to litigation. Updates Team with reports on RI/FS and Trustee related progress. Results facilitate an effective stream-lined process for guidance in litigation decisions and identifying and dealing with pressure points impending trial preparation or other elements of UCR goals.

~Position evaluates and develops comments on scientific studies of various environmental matters of significance to program area. With the assistance of tribal representatives and technical experts, promotes good science, compliance with Tribal standards (CCT Law and Order Code, Hazardous Substance Control Act, State Water Quality Standards, other water quality criteria and guidance to protect aquatic organisms), and determine potential impacts to the environment and tribal people and citizens.

##### ***Plan programs and strategies that impact national and international issues***

~Utilizes a working knowledge while addressing complex system-wide, transboundary water quality issues such as temperature and total dissolved gas. Position develops cooperative working relationships with industry, dam operators and government agency representatives. Utilizes knowledge of dam discharge operations including outlet works, understanding state and tribal standards as they apply to effects on aquatic resources. Position assisted program to induce Canadian and US

interests to create the Dissolved Gas Group who cooperatively works together to reduce high levels of TDG and impacts to tribal and US resources.

~Position is instrumental in designing, strategizing, supporting and evaluating work on nature, distribution, extent and control and/or reduction of transboundary pollution in the US. Position understands the standard pollutants of the Columbia River and sources of those pollutants from industrial facilities in Canada including plant operations and facilities treatment facilities, discharge mechanisms, and historical operations and emissions. Work induced EPA to issue an administrative order against a Canadian company and begin a government lead Remedial Investigation in the US.

~Position serves as a technical and policy authority of the Tribe and represents Tribal interests in international forums as well as regional and local levels including the Transboundary Gas Group, Lake Roosevelt Water Quality Council, and Lead Administrative Trustee (LAT) for the UCR Trustee Council. Position also tracks pollution and contamination issues in other Transboundary waters including the Smilkameen, Kettle and Okanogan Rivers and works with US, State, Canadian and other Tribal representatives on solutions to these complex problems. Position identifies and recommends solutions to data gaps or gaps in monitoring with respect to challenges of the international boundary. Position may write grants or proposals to agencies to address data gaps or coordinate with international efforts/forums to address issues.

~Position often requires creativity and judgment calls to wade through the multi-jurisdictional, co-managed resources of the UCR and Okanogan River in order to assert tribal permit requirements and see that tribal cultural and natural resources are protected from work proposed in the UCR.

### ***Project Management***

~Supervises and/or coordinates with attorneys and contractors/experts on litigation. Drafts contracts and coordinates with tribal staff and contracted entities required for technical and legal assistance as needed.

~Other duties may require the design and implementation of environmental monitoring plans, site inspections, sampling, testing and analysis, data collection and evaluation, implementation and effectiveness monitoring; position description and training plan development; attendance at training workshops and classes.

~Serves as a CCT representative for all the natural resource “trustees” in the UCR (under DOI NRDA regulations) to develop an Injury Assessment Plan and potential damage claim in the UCR. Develops mitigation/restoration plans for natural and cultural resource losses. Coordinates meetings and agendas, oversees injury assessment planning, communicates and strategizes with technical, policy and legal representatives, reviews and comments on technical documents. Has a broad understanding of national guidance under CERCLA. Position requires negotiation skills with responsible parties as to potential settlement agreements or joint funding and participation agreements. When serving as Lead Administrative Trustee must facilitate resolution to disagreements and alternative options with the Trustees and represent tribal interests with both technical, policy and attorney representatives. Provides administrative support to the UCR Trustee Council and interacts with technical experts.

~Position serves as the CCT Project Manager to the Remedial Investigation, overseen by the US EPA. Coordinates and serves as the liaison between the EPA, participating parties (Trustees), Tribal Council, management, tribal staff and Tribal membership. Advises the overall EPA Technical Team. Oversees the overall development and implementation of the largest Tribal Consumption and Use Survey in the nation to determine potential pathway exposures to tribal people. Budgets and work plans are developed for funding and implementation and reporting and monitoring. Oversees tribal experts and contractors. Maintains relations with tribal administration in the implementation of Cooperative Agreements and compliance. Interacts with Tribal membership and local communities.

***Develops and implements program to build environmental program capacity***

~Plans environmental media or related program including: conducting needs assessment and surveys, evaluating existing information on issue status, determine legal/administrative requirements, exploring funding possibilities, working with supervisor and funding entity to determine scope of program and implementation of project or work identified.

~Develops program including writing work plans, contracts, federal grants or other “formal” documents to provide basis for funding; securing funding and infrastructure to operate program, developing budget and clear objectives; developing position descriptions as required; information public and staff regarding program scope and effects, obtaining required approvals to operate program. Work with other tribal programs to identify needs.

~Implements and operates environmental program including: within the scope of the program obtains facilities, personnel, and equipment required for program operation, tracks all phases of program operation, writes reports to supervisor and required reports to funding entity; based on program tracking, replans and reimplements as required to achieve objectives; obtains outside technical expertise as required; complies with all requirements of funding agency and other applicable requirements.

**RECRUITING INDICATORS (Knowledge, Skills and Abilities)**

~Knowledge of tribal history and values, tribal government and the Reservation environment and people for the purposes in all aspects of Environmental Planning work.

~Knowledge of land use planning, strategic planning, environmental/natural resources or environmental media program administration; basic chemistry, physics, mathematics, and biological processes; program financial management; basic supervision and personnel management; and specific knowledge relating to the program area including; sampling methods and techniques; characteristics of pollutants; principles, practices, and methods of environmental science, typical management and program development considerations, pollution prevention and control; and, applicable tribal, state and federal laws.

~Professional knowledge of science of environmental engineering relevant to the investigation and remediation of risk of health and the environment in the Upper Columbia River (UCR).

~Advanced knowledge of intergovernmental relations and policy formation and implementation at a practical level for environmental/natural resource media;

~Position has a broad understanding of the State processes (State Water Quality Standards) regarding reducing exceedences of standards and represents tribal interests in groups such as Total Maximum Daily Load (TMDL) as they apply to tribal waters, such as sediment toxicity, DDT, temperature and TDG.

~Ability to perform highly complex policy level tasks with minimal help or supervision, use sound judgment in performing all tasks; understand and apply environmental regulations and related laws; write clearly and concisely and prepare maps, plans, charts and graphs; communicate effectively with tribal staff, other agencies, and the general public. Position interprets broad government policy statements and mandates or Indian Policy, and often pushes Trustees of Tribal resources for accountability and assistance in the UCR.

**MINIMUM QUALIFICATIONS:**

A master’s degree in involving major study areas in environmental physical health, natural sciences, environmental planning or engineering, public land administration, environmental education, or natural resources.

Or

A bachelor’s degree in the above subject areas plus two years experience at or above the Environmental Planner I level.

**OTHER SPECIAL REQUIREMENTS:**

~Due to the wide range of potential duties and responsibilities of this class qualifications may be modified to suit specific environmental media or other job requirements in including those which might be required by outside funding agencies.

~Washington State Drivers License and ability to obtain Tribal vehicle insurance

~Physically able to perform functions of this job. Work is usually performed in an office or meeting setting. Infrequent days of field observations, field trips that require long period of standing, walking occasionally.

_____	_____
Employee	Date
_____	_____
Program Manager	Date
_____	_____
Personnel Manger	Date

Original: Personnel Office  
cc: Employee  
Program/Department

## **JOB DESCRIPTION**

CLASS TITLE: Environmental Planner II CLASS CODE: \_\_\_\_\_ PAY RANGE:  
POSITION: Watershed Program Manager DEPART: Environmental Trust (ETD) REPTS TO: ETD Director

### JOB SUMMARY

Manages the Watershed Management Branch within ETD, including programs for management of surface and ground water quality for the Colville Indian Reservation, dam safety associated with Owhi Lake and Twin Lake dams, regulatory resource protection through administration of four tribal resource protection codes, watershed monitoring and restoration, and wetland management. Responsible for all operational and technical aspects of ETD Watershed Management Branch. Advises ETD Director and Colville Business Council on water quality and watershed management policy and participates in departmental strategic planning and administrative duties, including budget and grant management and service contract development. Serves as CCT Dam Safety Officer, coordinating with BIA, USBR, and multiple agencies with responsibilities related to dam safety. Represents CCT watershed policy positions both internally and externally, to CCT personnel in and outside ETD, representatives of other governments, resource managers, industrial operators, and landowners. Works with resource managers and specialists within other Tribal and BIA programs to develop solutions to resource conflicts and mitigate impacts, implementing the Integrated Resource Management Plan.

### SUPERVISION RECEIVED

Reports to ETD Director. Performs work with minimal direction and considerable latitude in decision making and without close technical supervision. Work is monitored by supervisor through review of quarterly and other program reports. Independently carries out technical work to accomplish program goals and grant targets based on guidance from funding agencies, and knowledge obtained from training courses, conferences, technical documents, or consultants.

### SUPERVISION EXERCISED

Supervises the following employees working within the Watershed Management Branch, including:

- Forest Practices Administrator;
- Watershed Specialist;
- Water Resource Operations Supervisor (two water resource/dam tender technicians report to this position);
- Trainees and Interns.

### SPECIFIC FUNCTIONS OF WORK (Representative Examples)

#### **A. Reservation Surface and Ground Water Quality Management:**

1. Serves as a primary expert to Tribes on watershed management and water quality; develops policy recommendations for the Business Council; sets program objectives; directs work; assesses performance and reports on accomplishment of objectives. Works with ETD Director, Business Council, and Office of Reservation Attorney to facilitate understanding of and coordination regarding Tribal implementation of federal water quality standard policies and requirements.
2. Works with ETD Director and funding entities to determine scope of programs; writes grants, develops budgets and work plans; keeps abreast of administrative, scientific and other aspects of program and advises ETD Director as needed; writes quarterly, annual, and close out reports on program activities; manages department budgets.
3. Designs monitoring system and directs monitoring for ambient water quality, including quality assurance/quality control.
4. Coordinates field and lab data collection, transfer, and compilation, and entry to US Environmental Protection Agency STORET national database.
5. Manages database for water quality, performs analysis of data, and writes assessment reports.
6. Reviews and revises list of lab water quality analytes as needed during evaluation of data; prepares or coordinates preparation of water quality documents to fulfill program objectives and federal agency grant requirements.
7. Tracks water quality reported by industrial point source and wastewater treatment facilities on the reservation.
8. Directs reservation snow survey program in coordination with the US Natural Resources Conservation Service.

#### **B. Dam Safety Officer:**

1. Oversees dam safety program for Owhi and Twin Lakes, including dam inspections, maintenance, and operations.
2. Develops program budgets, work contracts (incl. structural design and repair, reservoir area + capacity curves, flood inundation mapping and other surveys, standing operating procedures/emergency action plans/early warning systems), directing maintenance activities.
3. Serves as point of contact for US Bureau of Indian Affairs Dam Safety Program, US Bureau of Reclamation dam safety technical support, Early Warning System National Monitoring Center, and coordinates involvement between numerous federal, state, county, and tribal agencies that would respond to a dam safety incident.
4. Writes dam safety standard operating procedures and emergency action plans.

### **C. Regulatory Resource Protection**

1. Oversees administration of Colville Tribal Codes 4-6, 4-7, 4-8, and 4-9 (Surface Mining Water Quality, Forest Practices, Water Quality Standards, and Hydraulic Project Permitting), involving permitting, compliance monitoring and enforcement, stakeholder training, correspondence, maintaining records, and reporting.
2. Evaluates need for code revision, advises the Business Council, involves stakeholders, drafts code language, coordinates with Office of Reservation Attorney the review, scheduling and support for administrative procedures necessary for approval of code revisions.
3. Administers water pollution discharge permits for industrial point source discharges, associated with requirements of the National Pollution Discharge Elimination System and tribal water quality standards.

### **D. Watershed Monitoring and Restoration**

1. Oversees watershed monitoring for soil and watershed condition across the 1.4 million acre reservation, supervising assessment design and implementation, analysis and reporting of monitoring results, development of new resource management strategies to improve environmental results and restore watershed function. Analyzes need for policy changes and guides plans to accomplish adaptive management.
2. Assesses and writes reports on hydrologic impacts due to wildfire, reviews or writes specifications for emergency watershed stabilization practices as member of reservation interdisciplinary Burned Area Emergency Rehabilitation team.
3. Participates in interagency rehabilitation efforts in watersheds, specifically stream corridors; coordinates or performs water / soil data interpretations and report preparation to support these activities.

### **E. Member of NRD Planning Teams:**

1. Participates on IRMP Team; applies technical information gathered through watershed soil and water analysis to interdisciplinary resource planning; participates in integration of desired future conditions of resources through team synthesis; develops water, soil and watershed chapters of the reservation-wide IRMP report (Phase I and II); helps initiate IRMP implementation and monitoring (Phase III); assists with review and revision of IRMP Environmental Impact Statement (EIS).
2. Participates on reservation watershed planning teams (a project proposal and evaluation process); helps develop project level (operational) plans based on resource assessment and synthesis; coordinates or provides training and information on soil and water management issues to CCT programs and staff in a team setting.
3. Performs data and geographic information system analysis to facilitate water, soil and integrated resource management (incl. watershed sensitivity, potential stream impact analyses).
4. Works with NRD programs in restoration planning based on watershed condition surveys; assists with implementation and develops monitoring parameters with other disciplines for stream, riparian and upland areas.
5. Oversees design of special management practices for highly sensitive soils and areas (riparian, stream, wetland) determined by inventory and analysis work.

### **F. Wetland Management**

1. Performs wetland management program planning, develops work plans, writes grant proposals to fund program..
2. Develops tribal wetlands water quality standards and directs monitoring of wetland condition and water quality.
3. Leads reservation interagency wetlands working group.
4. Manages database for wetland assessments and inventory.

### **G. General Duties in Watershed Management, Hydrology:**

1. Develops programs, policies and procedures.
2. Serves as immediate supervisor of personnel and facilities within program; develops position descriptions, delegates assignments and responsibilities; monitors work performance and conducts performance appraisals; provides instruction and works with staff to develop training plans; designs, conducts and monitors training plans for personnel; takes corrective action if needed; reviews and screens job applicants and makes hiring decisions.
3. Develops applications and proposal, including budgets and work plans for grants to fund water resource planning and management activities.
4. Develops and administers contracts for professional services; writes requests for proposals, defines scope of work, selects contractors, evaluates work products, reports project status to funding agencies.
5. Coordinates program activities with other tribal and governmental entities.
5. Presents information on watershed or programs at interagency conferences and workshops, public meetings or to school or other groups to advance CCT programs and engage the public on soil, water and other environmental issues.
6. Regularly serves as Acting Director of ETD in Director's absence.

**KNOWLEDGE, ABILITIES AND SKILLS (Recruiting Indicators)**

**Knowledge**

*Knowledge of:* principles and practices of natural resource management; land use planning, strategic planning, environmental / natural resource program administration; program financial management; basic supervision and personnel management; typical management and program development considerations; intergovernmental relations and policy formation.

*Professional knowledge of:* hydrology, watershed management, geology, soil science, statistics; practices and methods of problem solving in environmental sciences; field investigative techniques, data gathering and analysis, and report writing as pertains to soil and water resource management.

*Working knowledge of:* biological processes, chemistry, physics, forestry, plant ecology, range, wildlife, fisheries; properly functioning conditions (PFC) and processes of wildland ecosystems, with regard to soil and water resources; characteristics of pollutants; pollution prevention control; applicable tribal, state and federal laws; analysis using geographic information systems, field applications incl. soil and water sampling techniques and hydrologic, water quality, stream corridor / watershed condition assessments; use of word processing, spreadsheet and database software.

**Abilities**

Ability to: perform complex policy level tasks with minimal help or supervision; make independent decisions and use sound and professional judgment in performing assigned tasks; assume new responsibilities, self-train and seek instruction as needed to achieve task objectives; work effectively with others in an interdisciplinary team environment; write clearly and concisely; prepare management plans; learn systems and detailed computer software functions quickly; oversee or perform research and complex projects and transfer of resource data; analyze hydrologic or natural resource conditions and problems utilizing field observations/data, computers, and remote sensing; make frequent interpretations and decisions involving management of soil and water resources; understand and administer environmental regulations and related laws.

**Skills**

Skills in: effective communication with tribal staff, other agencies, and the general public (conveys information and instruction clearly, concisely and at level of audience); writing and editing of official technical documentation and reports of the Department; effective time and task management; leading and motivating staff in achieving a common goal through teamwork; influencing subordinates to prioritize objectives and develop organizational virtues.

**MINIMUM QUALIFICATIONS (Education and Training)**

A PhD involving major study in environmental or land use planning, water resources, watershed management or a closely related discipline in natural resources or natural / environmental sciences; and two years experience in watershed or natural resources management planning in a complex multi disciplinary environment (dealing with numerous objectives, often conflicting). College level training in or working knowledge of soil science is highly desirable (incl. soil taxonomy, genesis/morphology, physics, surveying, use/management interpretations).

OR

A M.S. Degree involving major study in one of the above disciplines; and four years experience (incl. soil science) as described above. Must have at least one year supervisory experience.

OR

A B.S. Degree involving major study in one of the above disciplines; and six years experience (incl. soil science) as described above. Must have at least two years supervisory experience.

**SPECIAL REQUIREMENTS**

Must possess and maintain a valid Washington State driver's license and be eligible for the Tribes vehicle insurance.

_____	_____
Employee	Date
_____	_____
Supervisor / Position	Date
_____	_____
Natural Resources Department Director	Date
_____	_____
Personnel Manager	Date

## JOB DESCRIPTION

CLASS TITLE:

CLASS CODE: \_\_\_\_\_

PAY RANGE:

POSITION: Hazardous Waste Manager: (HWM) DEPT: Env. Trust (Land & Property) REPORTS TO: Env. Trust Director (ETD)

### PROGRAM STATEMENT

The HWM is responsible for all aspects of hazardous waste control and clean up activities which affect Tribal lands including: enforcing Title 4-16 of the Tribal Code, Hazardous Substances Control ACL (HSCA), assessing hazardous waste sites, taking actions to assure clean up of these sites, and assisting the ETD Director to develop policies and plans to deal with hazardous waste issues on the; Colville Indian Reservation (CIR), in boundary waters, and other Tribal Lands. The HWM coordinates with state and federal government agencies on hazardous waste and related issues.

### BASIC FUNCTIONS OF WORK

Responsible for all operational aspects of ETD HSCA EPA CERCLA 128(a) and related program elements. Coordinates with EPA on RCRA issues. Develops program objectives, policies and procedures and oversees technical assistance required for program operations. Supervises program personnel, consultants, and contractors as a "team" to accomplish program objectives. Serves as primary advisor to ETD Director on hazardous waste management and clean up issues and ETD strategic planning required in this area. Assesses funding needs for program, obtains funding for program, and manages program budgets.

### SUPERVISION RECEIVED

Functions under the general supervision of the ETD Director who determines overall departmental objectives by annual work plan and monitors progress through reports of completed projects, quarterly reports, and miscellaneous projects status reports. Performs work with general direction, has considerable latitude in decision making, and does not receive close supervision on technical matters. Technical and policy guidance is available from the ETD Director and staff as well as EPA and other agencies.

### SUPERVISION EXERCISED

Directs HSCA program staff, drafts objectives and training plans for all staff in program area and tracks progress on training plans and tasks to meet program objectives.

Supervision is a significant responsibility of this position. Supervises the following positions:

- Public Information and Records Specialist
- Staff Assistant
- This position also supervises consultants and contractors

### SPECIFIC FUNCTIONS OF WORK (Representative Examples)

#### **A. HSCA Enforcement and Management (Source: 4-16-3)**

1. Investigate releases or threatened releases of hazardous substances;
2. Conduct remedial actions to remedy releases or threatened releases of hazardous substances;
3. Retain contractors and consultants to conduct investigations and remedial actions;
4. Carry out all Tribal programs or functions authorized under the Resource Conservation and Recovery Act (RCRA);
5. Classify substances as hazardous substances;
6. Issue orders or enter into consent decrees or agreed orders, and other legal or institutional controls as required;
7. Take other actions specified under 4-16-3 and those required to carry out its provisions including but not limited .to conducting site investigations, developing clean up plans, directing site clean ups, and developing quality assurance plans.
8. Make recommendations to ETD regarding the adoption or new Tribal hazardous waste control laws.

#### **B. Federal, Tribal, and State Program Coordination**

1. Coordinate with EPA and Tribal staff on RCRA issues.
2. Assist EPA with RCRA issues on the Tribal lands.
3. Take actions to obtain direct Tribal enforcement of RCRA on Tribal lands.
4. Coordinate with EPA and Tribal staff on CERCLA (Comprehensive Environmental Response Cleanup and Liability Act) issues.
5. Take actions to obtain funding for Tribal programs under CERCLA and RCRA authorities and BIA through grants, cooperative agreements, and other means. .
6. Coordinate with EPA and Tribal staff on underground storage tank (UST) issues.

7. Coordinate with State of Washington and other entities as required
8. Coordinate ETD interests and agenda with other Tribal departments as it relates to hazardous and solid waste(s) on the CIR
9. Regular participation on CCT Solid Waste Advisory Committee (SWAC)

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#### C. Records Management and Public Participation

1. Develop a public participation process for HSCA, CERCLA, RCRA, and UST activities on Tribal lands
2. Oversee development and maintenance of an official record and repository for documentation related to HSCA, RCRA, CERCLA, UST and related assessments, investigations, clean ups, and site close outs on Tribal lands.
3. Develop policies and procedures and coordinate with EPA and other federal agencies to ensure that HSCA, CERCLA, RCM, UST, and related site activities are brought to documented closure.
4. Develop and maintain acceptable standards for site documentation including: investigation work plans, site investigation reports, site clean up plans, quality assurance project plans, site closure documentation; and develop land use covenants and related documentation as required.
5. Enforces and administers Tribal Special Purpose Landfill law.

#### D. Administrative Duties

1. Coordinate with ETD on program planning issues.
2. Administer all HSCA and CERCLA budgets.
3. Secure funding from EPA and other sources to operate program through grants, contracts, cooperative agreements, etc.
4. Comply with all Tribal, program, and funding agency reporting requirements
5. Supervise personnel and coordinate with ETD to maintain office and document repository facility

#### KNOWLEDGE ABILITIES AND SKILLS (Recruiting Indicators)

##### **Knowledge**

- *Knowledge of:* principles and practices of hazardous substances assessment and clean up; (federal) CERCLA, RCRA, and UST and related laws; and (state) MOTCA; environmental clean up stands for water, soil, and air media; personal protection and safety practices; hazardous substance site documentation;
- *Professional Knowledge of:* general and organic chemistry; chemical and physical characteristics of soil; behavior of pollutants in the vadose zone and below the phreatic surface; STSM requirements for phase I and II site assessments;
- *Working Knowledge of:* Physics; geology; soils; characteristics of pollutants; ground and surface water characteristics; hazardous substances characteristics, classification, handling, and containment; personal protection and safety practices and requirements; hazardous waste site assessment and clean up training requirements; material sampling and documentation including chain of custody requirements; legal documentation for site clean ups and investigations including departmental orders, agreed orders, consent decrees, subpoenas to produce information, etc.

##### **Abilities**

- *Ability to:* perform complex policy level tasks with minimal help or supervision; make independent decisions and use sound and professional judgment in performing assigned tasks; assume new responsibilities and self-train and seek instruction as needed to achieve task objectives; work well and effectively with others; write clearly and concisely and prepare official documentation; learn systems and detailed computer software functions quickly; oversee *or* perform research and complex projects; analyze field conditions at sites and be able to determine where threatened and actual releases of hazardous substances will occur; write detailed technical reports including site assessments, site investigation work plans and reports, QAP plans, MOA's , MOU's, hazardous waste enforcement instruments, and related documentation; and conduct public hearings and meetings.

##### **Skills**

- *Skills in:* effective and precise written communication; clear and *concise* verbal communication; writing and editing of complex technical documentation and reports; effective time and task management; motivating staff to achieve a common goal; tactical and strategic planning and task prioritization.

#### MINIMUM QUALIFICATIONS

A PhD involving major study in environmental engineering, hydrogeology, or a closely related discipline in natural or environmental science AND two years experience in hazardous substance clean up activities. College level training in general and organic chemistry, basic physics, calculus and advanced algebra, and geology are highly desirable.

OR

A Master of Science degree involving major study in the above disciplines AND four years experience as described above. Must have at least two years of supervisory experience.



## **JOB DESCRIPTION**

CLASS TITLE: Environmental Specialist I CLASS CODE: \_\_\_\_\_ PAY RANGE:  
POSITION: Water Administrator DEPT: Environmental Trust REPORTS TO: Watershed Program Manager

### BASIC FUNCTIONS OF WORK

Primary person responsible for administration and enforcement of the Colville Water Code (Chapter 4-10 of Colville Tribal Codes) and assists department in protecting tribal water rights. Collects, organizes and catalogs existing water resource information as required to administer Ch. 4-10 CTC. Operates a water permit system and performs field inspections, surveys and investigations to determine compliance with Ch. 4-10 CTC. Assists the public in understanding and participating in sound water management. Cites violations and takes enforcement action as needed. Analyzes information and provides advice to Environmental Trust Department (ETD) Director and Water Committee regarding issues that affect the administration of Ch. 4-10 CTC and protection of tribal water rights. Assists in development or modification of draft legislation, policies and regulations.

### SUPERVISION RECEIVED

Functions under moderate direction and supervision from the Watershed Program Manager who determines overall program objectives and monitors progress through reports of completed projects and infrequent project status reports. Work is performed with periodic technical supervision and some latitude in decision making. Technical guidance and assistance is available from staff of this and other agencies.

### SUPERVISION EXERCISED

Provides direction and supervision to the Water Resource Specialist, and the Wastewater Administrator. Determines objectives, timelines and training plans for these positions and tracks progress on tasks and training to meet program objectives.

### SPECIFIC FUNCTIONS OF WORK (Representative Examples)

#### **A. Water Rights / Utilization Planning**

1. Works with supervisor to prioritize issues and develop and schedule field tasks.
2. Operates a water permit system; conducts evaluations of applications for permits, including filed examinations and research of historic documents; organizes water permit files and puts water permit forms in electronic format; revises as necessary and places on Intranet system.
3. Develops geobased water resource record keeping system, including standardized permit map forms for GIS application.
4. Coordinates with other agencies on reservation water rights and permitting issues.
5. Interacts with other governments, the state, local and Federal agencies to accomplish tasks and to represent the Colville Confederated Tribes.
6. Makes presentations to the public, professional groups and others on Tribal law, water management and related issues.
7. Acquires theoretical understanding of components of the hydrologic cycle and water balance and the influence of management decisions and land use practices on component interrelationships.
8. Acquires understanding of processes and resource conditions that underlie the hydrologic performance of watersheds and influence watershed functionality; and the effect management practices may have on these conditions and processes.
9. With supervisor applies outputs of hydrologic study models to water resource utilization planning and usage permitting.
10. Develops water supply and water rights plans for major basins (RMUs) of the reservation and integrates these into IRMP.
  - a. Works with supervisor in addressing a balance between instream needs and out-of-stream demands for reservation basins or watersheds; task involves prioritizing out-of-stream uses for each basin.
  - b. Understands (i) the correlation between water quantity and quality as pertains to water resource and rights planning; (ii) instream flow and water quality requirements for designated instream values and potential conflict with out-of-stream needs.
11. Assists programs with development and implementation of integrated resource management plans and monitoring systems; participates in interdisciplinary team activities.
12. Assists water resources operations supervisor with water quality and quantity monitoring activities as needed.

#### **B. Water Code Issues / Enforcement**

1. Acquires working knowledge of the Colville Water Code, Ch. 4-10 CTC in assisting department with water rights protection.
2. Gains familiarity with monitoring types, systems and methods; acquires working knowledge of compliance monitoring.
3. Collects, organizes and catalogs water resource information and studies as required to administer Ch. 4-10 CTC; solicits public comment and obtains advice when appropriate. Gathers information for own use and submission to Water Committee.
4. Performs field-monitoring activities to determine compliance with Tribes water use and permitting chapter of the Water Code. Inspects methods of diversion and withdrawal and investigates water uses and other activities affecting waters of the reservation; utilizes instream flow and water quality water measuring devices as needed, follows QA/QC protocol, and completes record forms in fulfilling data collection activities.

5. Identifies water quality or quantity concerns and recommends solutions; cites violations of Water Code and takes enforcement actions as needed (may include discontinuing any activity adversely impacting the water resource).
6. Sets up and enters all monitoring and approved permit data into system (water and geographic data base).
7. Provides recommendations to department director and Water Committee regarding issues affecting the administration of Ch. 4-10 CTC and protection of tribal water rights; may include proposals regarding the advisability of adopting or participating in other plans, methods or actions and amending certain sections of the Water Code to optimize available water supplies and minimize water quality degradation.

**C. Training**

1. Develops skills in ArcView and extensions to this software.
2. Develops skills in GPS to link water permit sites (and data records) to GIS.
3. Develops organizational and time management skills, with general and project-oriented applications.
4. Acquires an understanding of water rights and environmental jurisdiction on Indian lands; includes a working knowledge of Indian, water and environmental law and of enforcement issues (provisions and procedures).
5. Acquires working knowledge of surface and ground water monitoring techniques.
6. Acquires a working knowledge of the activities of other jurisdictions that may impact the rights of the Colville Confederated Tribes.

KNOWLEDGE, ABILITIES AND SKILLS (Recruiting Indicators)

Knowledge

Knowledge of: field investigative techniques, data gathering and basic research; soil, water, air sampling methods and techniques; principles, practices, and methods of environmental science, natural resource management and plan development, pollution prevention and control; practices and methods of environmental problem solving; applicable tribal, state and federal laws; principles of water law including the doctrine of prior appropriation and Indian reserved water rights. The Colville Reservation: Tribal membership, Tribal government and administrative structure, environmental issues.

General knowledge of: scientific principles of ground and surface water.

Abilities

Ability to: use sound judgement in performing assigned tasks; write clearly and concisely and prepare technical reports, maps, plans, charts and graphs; understand and apply environmental regulations and related laws.

Skills

Skills in: performing field investigations, monitoring activities and enforcement duties; report writing; database management, use of other computer software and GIS; effective communication with tribal staff, other agencies, and the general public.

MINIMUM QUALIFICATIONS (Education and Training)

A master's degree from accredited college or university, involving major study in environmental or natural sciences, environmental planning, engineering, or public relations / business administration.

**OR**

A bachelor's degree in one of the above disciplines plus 2 years experience in environmental or natural resources management, plan development, and implementation and 2 years experience in water rights enforcement.

**ALSO**

1 year direct experience working with administration and enforcement of Chapter 4-10 CTC

SPECIAL REQUIREMENTS

Must possess and maintain a valid Washington State Driver's license and be eligible for the Tribes vehicle insurance.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Supervisor / Position

\_\_\_\_\_  
Personnel Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **JOB DESCRIPTION**

CLASS TITLE: HPA/FPA Administrator CLASS CODE: \_\_\_\_\_ PAY RANGE: \_\_\_\_\_  
POSITION: Forest Practices Administrator DEPT: Environmental Trust (ETD) REPTS TO: ETD Director

### PROGRAM STATEMENT

Responsible for watershed protection and restoration through administration of regulatory programs addressing non-point source and aquatic activities, natural resource project and burned area impact assessment, participation in multidisciplinary planning, implementation of restoration activities, and resource monitoring. Position requires extensive work with landowners, contractors, general public, and natural resource specialists working for other programs, agencies and governments.

### BASIC FUNCTIONS OF WORK

Responsible for administering all provisions of three Tribal codes, and a State code related to water, soil, and habitat protection within the boundaries of the Colville Reservation. Issues and reviews permit applications for code compliance and mitigation of resource impacts. Establishes permitting and review processes coordinated with other agencies and Tribal natural resource programs. Conducts compliance monitoring and performs enforcement in accordance with code requirements. Provides watershed and code training to staff in other programs and contractors. Administers WA State Forest Practices regulations on fee lands, in accordance with the Colville Tribal-State agreement in coordination with the WA Department of Natural Resources.

Implements watershed non-point source pollution control and monitoring projects. Responsible for project design and budget, coordination with other programs in planning and environmental review, forest engineering, permitting, contract preparation, advertisement, contractor selection and contract administration of both construction and consulting type contracts, monitoring, reporting, and information/technology transfer to other programs.

Provides watershed resource review and analysis during Natural Resources Department project planning process; reviews project proposals, conducts site visits, submits written comments, writes watershed resource text for NEPA environmental assessments, comments on code compliance issues.

Serves as a Resource Specialist on the Burned Area Emergency Rehabilitation (BAER) Team: assesses wildfire and suppression impacts to hydrology, soils and reservation infrastructure; develops technical specifications for watershed stabilization treatments and prepares budgets for projects; prepares and administers contracts; supervises work; monitors and writes reports on results.

Carries out Tribal code revision, adhering to Administrative Procedures requirements. Facilitates inter-programmatic, public, and business council review, comment, and negotiations on revised code language. Writes draft code language.

Designs and writes grant proposals to secure additional watershed protection funding; carries out grant administration duties.

### SUPERVISION RECEIVED

Functions under the general supervision of the Watershed Program Manager. Performs work with minimal direction and considerable latitude in decision making and without close technical supervision. Assists with development of program objectives. Work progress is monitored through reports of completed projects, occasional project status reports, and quarterly reports. Policy and regulatory guidance is received from ETD Director, Watershed Program Manager, and Office of Reservation Attorney. Supplemental technical expertise is obtained routinely through consultation with staff of other agencies or technical consultants.

### SUPERVISION EXERCISED

Position provides direction related to compliance with several regulation sets to fee landowners, contractors or operators, consultants, fire resources, and other program managers and staff. Supervises college interns seasonally.

### SPECIFIC FUNCTIONS OF WORK (Representative Examples)

#### **A. Forest Practices Administrator:**

1. Administers four different environmental protection codes, three Tribal and one State.
2. Holds Tribal position established by 1985 agreement between CCT and WA State relating to the Colville Water Quality Management Plan, prescribing jurisdictional coordination for Forest Practices regulation on trust and fee lands within the

reservation. Coordinates permitting with other Tribal, State, or Federal permitting offices as needed.

3. Maintains permitting office for CCT Forest Practices and CCT Hydraulic Project permits. Receives applications, reviews for completion, logs in applications, copies and routes apps to 11 programs, conducts field review with proponents and resource advisors, approves with conditions as needed or denies approval.

4. Conducts compliance inspections of project areas, meets with landowners, operators regarding compliance, investigates violations and takes appropriate enforcement actions ranging from follow-up meetings, regulatory notices to comply or stop work, to assessing monetary penalties.

5. Conducts review of Tribal Mining Practices Water Quality, Forest Practices and Hydraulic Project Permitting codes (CTC 4-6, 4-7, 4-9) and facilitates process of code revision; acts as facilitator of multi-disciplinary Forest Practices Task Force to develop framework incorporating sometimes conflicting IRMP standards within the Forest Practices code revision; drafts code revisions; conducts Natural Resources Dept and public review and comment processes; coordinates with Office of Reservation Attorney to review draft code and assure compliance with Administrative Procedures requirements; introduces revision to Business Council and addresses their concerns.

6. Presents training on code requirements to natural resource staff, programs, and contractors.

#### **B. Restoration or Monitoring Project Implementation:**

1. Initiates project selection based on watershed condition and impacts surveys, watershed analysis, or collaboration with other resource specialists. Restoration projects have included road abandonment, stream crossing reconstruction, and streambank stabilization work. Monitoring projects include surveys of watershed impacts related to roads.

2. Provides initial project design, incorporates input from other resource specialists, determines need for engineering or other consultation. Design of projects includes developing specifications for road, stream, and soil stabilization treatments, and incorporation of watershed and soil erosion models into survey procedures.

3. Writes grant proposals including project budgets, project proposal for 3P review, consultation requests for CCT THPO, obtains required permits, fulfilling any follow-up needs for those processes.

4. Prepares contract, advertises, selects contractor, obtains Business Council approvals necessary to award contract.

5. Administers contract involving work inspections, approval of work changes, contract modification process, payments.

6. Prepares progress reports, monitors work sites and reports performance findings.

#### **C. Member of NRD Planning Team:**

Participates on Project Proposal Planning Team; performs data and geographic information system analysis to facilitate water, soil and integrated resource management (incl. watershed sensitivity, potential stream impact analyses); advises regarding facilitation of the planning process and policies; applies technical information gathered through assessment of past management practices, riparian and channel condition to interdisciplinary resource planning; participates in integration of desired future conditions of resources through team synthesis; initiates IRMP monitoring related to forest practice activities and watershed resource effects; helps develop project level (operational) plans based on resource assessment and synthesis; coordinates or provides training and information on watershed, riparian, forest road management, and Forest Practices code compliance to CCT programs and staff in a team setting. Provides input to other NRD programs doing restoration planning based on watershed and land use patterns; provides information related to roads and their watershed effects; assists with implementation.

#### **D. Fire Management:**

As Resource Advisor on BAER Team, assesses wildfire and fire suppression impacts to reservation waters and infrastructure, especially roads. Applies runoff and soil erosion computer models to evaluate potential for resource damage. Documents findings, writing sections within BAER report issued for large fires. Writes specifications for emergency watershed stabilization practices including cost estimates. For approved treatments, supervises application of the treatment. Post-fire rehabilitation treatments have included installation of culverts on forest and BIA System roads, installation of road drain dips, road grading, log felling and placement, straw wattle installation, and road abandonment.

#### **D. Other Duties in Watershed Management:**

1. Works with Watershed Program Manager (supervisor) and funding entities to determine scope of program; keeps abreast of administrative, scientific and other aspects of program and advises ETD Director as needed; writes quarterly reports of program activities; assists supervisor to develop work plans and reports (quarterly/annual) to funding agencies.

2. Coordinates program activities with other tribal and governmental entities, including CCT Fish & Wildlife, Forestry, RIA and Range, Washington Department of Natural Resources, and Department of Fish & Wildlife.

3. Develops applications and writes proposals for grants to fund water resource planning and management activities.

Responsible for overseeing grant task accomplishment and monitoring grant budget for Wetland Program Development Grant.

4. Participates in interagency rehabilitation efforts in watersheds. Serves on Omak Creek Technical Advisory Committee in selection and design of rehabilitation projects.

5. Presents information related to watershed management at interagency conferences / workshops, such as the EPA Nonpoint

Source Workshop for Tribes, EPA Watershed Central Workshop.

6. Assists with educational outreach programs, forums, and public meetings to inform public on watershed and other environmental issues.

KNOWLEDGE, ABILITIES AND SKILLS (Recruiting Indicators)

Knowledge

*Professional knowledge of:* principles and practices of natural resource management; environmental planning, policy & law; environmental regulatory program administration; strategic planning, typical management and program development considerations; intergovernmental relations, jurisdiction and policy formation; facilitation, supervision and law enforcement skills.

*Technical knowledge of:* forest management and engineering; watershed analysis and management; erosion and runoff models, natural resources planning; statistical analysis; use of geographic information systems, technical and business writing, resource condition assessments, resource impact assessments, resource protection prescriptions, and enforcement investigations; natural resource law enforcement, contract administration, grant writing.

*Working knowledge of:* forest management and hydraulic project operations; forest road location, design, and maintenance; surveying; fire management; applicable tribal, state and federal laws; natural resource field data collection methodologies; use of MS word processing, spreadsheet, database, and GIS computer programs; safety practices necessary to wildland field work such as defensive driving, “woods” and logging site safety, wildfire suppression operations safety.

Abilities

Ability to: perform complex policy level tasks with minimal help or supervision; make independent decisions and use sound and professional judgment in performing assigned tasks; assume new responsibilities and self-train and seek instruction as needed to achieve task objectives; work well and effectively with others in an interdisciplinary team environment; write clearly and concisely and prepare management plans; learn systems and detailed computer software functions quickly; analyze natural resource conditions and enforcement problems utilizing field observations/data, reports from others; make frequent interpretations and decisions involving management of watershed resources; understand and apply environmental regulations and related laws; self-train and seek instruction as needed to achieve task objectives.

Skills

Skills in: effective communication with tribal staff, other agencies, and the general public (conveys information, instruction, and supervision clearly, concisely and at level of audience); writing and editing of Tribal code and technical documentation and reports; effective time and task management; negotiation and facilitation; motivating resource protection through work of others.

MINIMUM QUALIFICATIONS (Education and Training)

A Bachelors degree involving major study in forest management, watershed management or a closely related discipline in natural resources or natural / environmental sciences; and two years experience involving contract administration, environmental regulatory work, watershed or natural resources management and planning in a complex multi disciplinary environment (dealing with numerous objectives, often conflicting), and fire management. College level training in or working knowledge of forest management is highly desirable (incl. logging engineering, surveying, silviculture, forest ecology and pathology, forest policy and laws).

SPECIAL REQUIREMENTS

Must possess and maintain a valid Tribal and Washington State drivers license and be eligible for the Tribes vehicle insurance.

Must be physically able to walk steep, irregular forested terrain.

Requires passing Firefighter’s Pack Test at moderate level.

Requires Basic Enforcement certification from the WA Department of Natural Resources to carry out enforcement of WA Forest Practices regulations on fee land.

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Employee

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Date

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Supervisor / Position

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Date

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Personnel Manager

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Date

## **JOB DESCRIPTION**

CLASS TITLE: Environmentalist  
POSITION: Watershed Specialist  
REPORTS TO: Watershed Program Manager

PAY RANGE:  
DEPARTMENT: Environmental Trust (ETD)

### **BASIC FUNCTIONS OF WORK**

Responsible for promoting long-term productivity and stability of reservation soils, hydrologic function, and high quality of water and other Reservation resources. Performs monitoring of watershed-related resources and project impacts, reporting, project planning and implementation; develops adaptive management alternatives, and conducts watershed outreach. Participates in multidisciplinary planning for natural resource projects, collaborating with various programs to incorporate Best Management Practices for activities affecting Reservation soils or waters. Conducts resource inventory, monitoring, and assessment, creates project maps and GIS datasets, and assesses soil, water and riparian conditions across the Reservation. Plans and implements watershed restoration projects. Distributes NRCS-Soil Survey Geographic Database and published soil survey information to staff and others requesting it. Provides technical assistance to tribal members, tribal/BIA programs, program managers, and the general public by providing soil and watershed information and recommendations. Collaborates and exchanges information with NRCS, government agencies and other professionals involved in soil/water protection and restoration programs on and off the Reservation.

### **SUPERVISION RECEIVED**

Serves as an entry-level natural resource professional supervised by the Forest Practices Administrator. Level of direction and supervision is moderate requiring that the Watershed Specialist work and make certain decisions independently. Supervisor will provide direction and necessary resources to achieve project goals, may collaborate in project completion, or request special projects. Supervisor will monitor work and accomplishments through briefings, review of work products, quarterly and project status reports, providing direction as needed.

### **SUPERVISION EXERCISED**

Supervision of staff is not a normal responsibility of the position due to current staffing levels, though the position may direct contractors or administer contracts during the course of resource inventory, monitoring, watershed restoration, or burned area stabilization work.

### **SPECIFIC FUNCTIONS OF WORK (Representative Examples)**

Monitoring of Resource Management Impacts: Performs resource condition inventory, resource and project monitoring, collects and records field data, develops reports quantifying extent and severity, and presents periodic reports on investigations.

Project Proposal Process (PPP): Participates with interdisciplinary team in resource project planning. Reviews and provides written technical input and NEPA watershed content on project proposals. Presents watershed resource information. In the team context, develops solutions for site-specific problems and best management practices addressing soil and water impacts. Provides effectiveness testing, monitoring and evaluation of implemented projects, and proposals for adaptive management.

Project Implementation: Plans and implements watershed restoration projects as funding is available. Projects may incorporate soil, vegetation, stream channel and road treatments to restore watershed function. Work includes project design, planning, consultation, permitting and contract procedures, and effectiveness monitoring.

GIS: Collects field data using global positioning system receiver and data logger. Creates maps and data analyses using ArcView software for monitoring, project planning, resource reports, and presentations. Creates resource spatial and attribute data to update corporate watershed-related data layers. Position works with RIA staff to keep soil database and GIS files current. Assists in other GIS tasks for program.

IRMP: Provides watershed monitoring results and adaptive management recommendations within the IRMP process. Identifies and prioritizes Reservation areas at the watershed and sub-watershed scale requiring restoration. Applies GIS products, models and current condition/impact evaluation criteria within a framework for assessing land use impacts, hydrologic condition and watershed function.

Fire Management: Assesses soils or watershed impacts from wildfire and suppression operations, recommends rehabilitation treatments, prepares and negotiates treatment contracts, administers treatment contracts, monitors treatment effectiveness, and writes accomplishment or monitoring reports. Performs fire management work in accordance with standard agency procedures and incident-specific safety standards.

Outreach: Maintains a good working relationship with the NRCS. Obtains assistance from this agency with regard to reservation soil and watershed management issues. Assists other staff and the public with interpretation of watershed and soil information for various uses or applications. Prepares presentations and training programs on request.

Equipment: Maintains and secures equipment as assigned.

KNOWLEDGE, ABILITIES AND SKILLS (Recruiting Indicators)

Knowledge of principles, practices and methods of forest and range management, roads, and management operations; field investigative and resource sampling techniques and data gathering; Best Management Practices for soil and water protection.

Skills include effective written and oral communication, problem solving, aerial photography interpretation, data collection and organization, use of computer programs and geographic information systems, travel in rough terrain or during inclement weather, defensive driving, forest and rangeland navigation.

Ability to use sound judgement in performing assigned tasks; communicate effectively with tribal staff, other agencies, landowners, and the general public; write clearly and concisely; prepare maps, plans, charts and graphs; provide technical reports and materials in a form that can be understood by a diverse audience; develop management plans in a team setting with other staff, agencies, and representatives of the general public; understand the IMRP and regulatory standards; utilize computer programs such as word processing, desktop database software, spreadsheets, and GIS.

MINIMUM QUALIFICATIONS (Education and Training)

B.S. Degree in natural resources, environmental, physical or natural sciences, or closely related field; **AND** twenty-four months of progressively responsible work experience equivalent to Environmental Technician

SPECIAL REQUIREMENTS

Must possess and maintain a valid Washington State driver's license and be eligible for the Tribes vehicle insurance. Fire responsibilities require an annual medical physical, successful completion of Arduous or Moderate level firefighter pack test, and completion of other safety-related trainings.

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Employee

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Date

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Supervisor / Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Personnel Manager

\_\_\_\_\_  
Date

## JOB DESCRIPTION

CLASS TITLE: Environmentalist  
POSITION: Water Regulatory Specialist  
REPORTS TO: Water Administrator

CLASS CODE: \_\_\_\_\_

PAY RANGE:  
DEPARTMENT: Environmental Trust

### BASIC FUNCTIONS OF WORK

Primary person responsible for administration and coordination of enforcement of the Colville Wastewater Code (Chapter 4-5 of Colville Tribal Codes) while assisting the Environmental Trust Department (ETD) in protecting tribal environmental concerns. Uses existing onsite wastewater program processes to administer Ch.4-5 CTC. Operates an onsite wastewater permit system and performs and coordinates field inspections and investigations to determine compliance with Ch. 4-5 CTC. Cites violations and takes enforcement action as needed. Provides advice to ETD Director regarding issues that affect the administration of Ch. 4-5 CTC and protection of tribal environmental concerns. Assists in development or modification of legislation, policies, and regulations of the Onsite Wastewater program. Performs water quality surveys regarding domestic and small business water supply and wastewater system concerns. Assists ETD personnel with water use permit processes, other water rights and resource issues or concerns, and routine compliance and enforcement activities. Addresses other special, related environmental matters as needed, including assessment and remediation, for the well being of aquatic resources and resident people of the Reservation.

### SUPERVISION RECEIVED

Functions under moderate direction and minimal supervision from the Water Administrator who, with the Environmental Trust Director, determines program objectives and monitors progress through reports of completed projects and infrequent project status reports. Work is performed with periodic technical supervision and some latitude in decision-making. Technical guidance and assistance will be provided from other staff of this and other agencies.

### SUPERVISION EXERCISED

None.

### SPECIFIC FUNCTIONS OF WORK (Representative Examples)

#### **A. Onsite Wastewater and Water Quality Inspection/Compliance**

1. Operates a wastewater permit system; conducts onsite inspections and evaluates soil and site conditions for wastewater system suitability; organizes onsite files and puts wastewater permit forms in electronic format, revises as necessary, and places on a networking system. Helps structure and compile program database and writes reports from information generated during inspections. Uses GPS to link sites and data records to GIS.
2. Consults and networks with IHS (Indian Health Service) and with septic systems/wastewater personnel of CCT Public Works and other agencies and local governments to administer program goals to fulfill tribal health concerns and needs for safe drinking water and land use.
3. Meets with other department and agency representatives for information exchange on permitting and water-related issues.
4. Makes investigations of domestic, institutional and small business water supply and wastewater systems on request to address water quality concerns. Inspects sites, gathers and analyzes information, and collects surface or ground water samples as needed for lab testing. Makes recommendations to rectify or mitigate adverse situations based on observations and test results.
5. Coordinates with other Tribal personnel on planning and infrastructure issues related to on-site wastewater.

#### **B. Water Resource Management, Other**

1. Assists Program Manager with surface and ground water management programs; assists Water Administrator with water use permits and enforcement of tribal water code and water quality laws.
2. Assists Water Resource Technicians with water quality and quantity monitoring activities, including supporting documentation and QA/QC procedures; identifies potential land use impacts and pollution sources in stream corridors and wellhead protection zones of reservation community wells.
3. Reports water quality and quantity problems to immediate supervisor and Program Manager and assists with developing solutions. Assists with interpretation of water monitoring results.
4. Assists staff with other special investigations; tracks environmental concerns and hotspots within reservation boundaries using standard testing/reporting procedures and equipment.

MINIMUM QUALIFICATIONS

1) Fully Qualified:

o Education and Experience

Four-year degree from accredited college or university, involving major study in environmental, physical or natural sciences, environmental planning or health, public health, engineering, or public relations.

OR

Two-year degree from accredited college or 2 years college level training in one of the above disciplines.

AND

2 years work experience in water resource management plus 2 years work experience in environmental monitoring, inspections and compliance.

o Knowledge, Abilities, Skills

Working knowledge of: on-site waste water systems, hydrologic processes, water management and water quality; soil-water relations, soil properties that influence hydrologic processes, and influence of management decisions and land use practices on soil-water interrelationship; properly functioning water supply and wastewater systems; factors contributing to environmental pollution and degradation and methods of prevention and mitigation; applicable tribal, state, and federal laws; water rights and environmental jurisdiction on Indian lands, including enforcement issues.

Ability to: follow detailed instruction with minimal supervision; make independent decisions, prioritize issues and use sound judgment in performing assigned tasks; perform onsite field investigations, monitoring activities and environmental assessment; use field testing equipment and water/soil sampling and data gathering techniques according to QA/QC protocol; troubleshoot faulty domestic water supply and wastewater systems; write concisely and prepare technical reports and basic GPS/GIS skills; understand and apply environmental regulations and related laws and resolve compliance issues.

Ability to interpret and enforce on-site waste water regulations.

Skills in: effective communication (oral, written) and establishing and maintaining effective working relations with co-workers, tribal staff, other agencies, and the general public on administrative and environmental issues.

SPECIAL REQUIREMENTS

Must possess and maintain a valid Washington State driver’s license and be eligible for the Tribes vehicle insurance.

Must be able to work outdoors in all weather, negotiate difficult terrain, and perform moderate physical activity.

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Employee

\_\_\_\_\_

Date

\_\_\_\_\_

Supervisor / Position

\_\_\_\_\_

Date

\_\_\_\_\_

Personnel Manager

\_\_\_\_\_

Date

## JOB DESCRIPTION

CLASS TITLE: Water Resources Specialist

CLASS CODE: 25B

RANGE:

PROGRAM/DEPARTMENT: Environmental Trust

REPORTS TO: Water Administrator

### BASIC FUNCTIONS OF WORK

The position provides technical services in water resources field including data acquisition, field inspections, water use investigations, enforcement, and data base creation and management. This position is responsible for maintaining permit file systems and related data files, assisting with water resources planning, and for providing general water resource information on the Tribal web site or other media. The position is responsible for determining availability of water for surface and groundwater use on the Colville Indian Reservation and trust land off of the reservation and North Half.

### SUPERVISION RECEIVED

Direct supervision is provided by the Water Administrator who outlines overall objectives and available resources; then consults with incumbent on scope of assignment, approaches, time frames, and execution phases. A wide range of judgment and technical expertise is used in performing day to day tasks.

### SUPERVISION EXERCISED

None.

### REPRESENTATIVE EXAMPLES OF WORK

#### *Water Resources Data, Information, and Planning*

- ~ Acquires water permitting and on-site wastewater permitting information from all sources
- ~ Maintains and improves a relational data base using Arc View software
- ~ Enters water resource information into data base and update water resource data base as needed
- ~ Maintains and improves the water and on-site permit file systems
- ~ Assists Water Administrator in coordinating with the Washington State. Dept. of Ecology and others
- ~ Works with ET staff and consultants to obtaining information for availability and needs and other water planning activities, and makes recommendations for plan implementation
- ~ Responsible for projection of future water demands and quantification of existing water demands
- ~ Assesses water requirements for individual or community water systems including system and requirements for quality and quantity
- ~ Performs water use inventories for watersheds or types of use
- ~ Develops tools such as computer models to investigate water resource issues outlined in the Tribal Water Code
- ~ Contacts well drillers, private citizens, and researches other sources to obtain geologic information, records information from well logs, and prepares and drafts hydrogeologic cross-sections

#### *Field Work*

- ~ Performs water use and permitting field investigations
- ~ Performs GPS field mapping, creates shapefiles, geodatabases, and data filing
- ~ Assists Water Administrator with enforcement and other regulatory actions
- ~ Processes temporary water permits
- ~ Performs field investigations such as measuring stream flows, measuring/estimating water use/water withdrawals, and measuring ground and surface water levels
- ~ Assists Environmental Technicians with water monitoring and dam safety duties as needed
- ~ Assists Water Regulatory Specialist with field investigations as needed

#### *Other Duties*

- ~ Assist general public and permittees with permit forms and requirements
- ~ Post general water resources information on the Tribal web site
- ~ Attend training and workshops as required

### RECRUITING INDICATORS (Knowledge, Skills, & Abilities)

- ~ advanced knowledge of hydrology and hydrogeology
- ~ ability to acquire and use water resource data from the field and other sources and the knowledge to perform water resource regulation, planning, and management activities with that information.

- ~ knowledge of field techniques for surface and ground water measurement
- ~ knowledge and skill in creating data bases
- ~ knowledge and skill in using Arc View software
- ~ knowledge of GPS mapping
- ~ ability to deal with the general public in performance of duties
- ~ basic knowledge of tribal government
- ~ basic knowledge of other natural resources disciplines
- ~ ability to work out of doors in all weather and terrain
- ~ basic web page skills

MINIMUM QUALIFICATIONS (Education & Training)

B.S. in hydrology, hydrogeology, or comparable water resources science discipline plus 36 months experience in water or natural resources field.

A.A.S. in water resources science discipline plus five years experience in water or natural resources field.

SPECIAL REQUIREMENTS

Washington State Drivers License and ability to obtain Tribal vehicle insurance

Physically able to perform functions of this job

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Employee

\_\_\_\_\_

Date

\_\_\_\_\_

Program Manager

\_\_\_\_\_

Date

\_\_\_\_\_

Personnel Manager

\_\_\_\_\_

Date

Original: Personnel Office  
 cc: Employee  
 Program/Department

## **JOB DESCRIPTION**

CLASS TITLE: Environmental Technician III

CLASS CODE: \_\_\_\_\_

PAY RANGE: \_\_\_\_\_

POSITION: Water Resource Operations Supervisor

DEPARTMENT: Environmental Trust (ETD)

REPORTS TO: Watershed Program Manager

### **BASIC FUNCTIONS OF WORK**

Coordinates technical duties in support of reservation-wide water resource and watershed condition monitoring programs. Responsible for overseeing the collection of field data pertaining to water quality and quantity and related data (such as riparian habitat and wetland condition). Collects surface and ground water information in support of water resource and watershed condition monitoring programs. Oversees quality control in data collection. Utilizes and maintains equipment that measures water quality and quantity parameters at established sites. Performs data entry to ETD water quality database and transfer of data to the US Environmental Protection Agency STORET national water quality database. Assists supervisor in development of monitoring plans and interpretation of water data. Participates in development of interdisciplinary watershed plans. Helps coordinate activities associated with other programs, such as dam safety, snow survey, water rights and enforcement investigations, and related environmental monitoring. Supervises two water resource technicians.

### **SUPERVISION RECEIVED**

Functions under the supervision of the Watershed Management Program (WMP) Manager who determines overall program objectives and monitors progress through reports of completed projects and infrequent project status reports. Work is performed with periodic technical supervision and some latitude in decision making. Technical guidance and assistance is available from staff of this and other agencies.

### **SUPERVISION EXERCISED**

Supervises two water resource technicians. Establishes objectives and time lines regarding the collection of data. Tracks progress on tasks to meet program objectives. Develops position descriptions, delegates assignments and responsibilities; monitors work performance and conducts performance appraisals; works with staff to develop training plans; designs, conducts and monitors training plans for personnel; takes corrective action if needed; reviews and screens job applicants and makes hiring decisions.

### **SPECIFIC FUNCTIONS OF WORK (Representative Examples)**

#### **A. Monitoring/Data Collection and Management**

1. Works with immediate supervisor to prioritize issues and develop and schedule field tasks.
2. Supervises water resource technicians on daily, weekly and monthly tasks; organizes the collection of surface water quality and quantity data and assists and instructs technicians as needed regarding field work and operation of monitoring equipment.
3. Assists supervisor and other programs as requested with implementation of different monitoring types or systems; this includes reservation-wide ambient (baseline) monitoring, project implementation monitoring, ecosystem or effectiveness monitoring, and restorative monitoring.
4. Organizes monitoring of vegetation recovery patterns in selected riparian areas in evaluating the success of efforts to restore riparian functionality.
5. Coordinates snow survey activities and sampling activities outlined in the reservation-wide groundwater monitoring plan.
6. Ensures job safety procedures and practices regarding fieldwork and equipment; responsible for maintaining vehicles and equipment.
7. Assists supervisor with training programs for water resource technician trainees.

#### **B. Quality Assurance/Quality Control (QA/QC)**

1. Works with supervisor to develop QA/QC practices and procedures for fieldwork and sample handling.
2. Checks field procedures and data acquisition for compliance with QA/QC practices, including the maintenance and calibration of field instruments; follows available QA/QC plan guidelines and coordinates with lab QA/QC activities.
3. Ensures that field data is reviewed for correctness and entered into data base system.
4. Assists supervisor and data base manager with reduction, cleanup, reorganization and transfer of stored water quality and quantity data.
5. Maintains files and records on field activities and performances, monitoring programs, and permit files.

#### **C. Data Assessment / Water Resource Management**

1. Identifies water quality and quantity problems in the field and recommends solutions.
2. Assists immediate supervisor with interpretation of water monitoring results; presents results of water resource condition investigations and interpretations clearly and concisely in written format as required.
3. Recommends revisions to reservation-wide water quality assessment report and surface and ground water monitoring network

based on data interpretations.

4. Applies outputs of reservation-wide hydrologic system models to water resource utilization planning and permitting, with assistance from supervisor and water administrator.
5. Assists supervisor and Watershed Specialist to perform hydrologic and watershed functionality surveys in selected areas; assesses the influence of land use practices on hydrologic processes and resource conditions.
6. Assists supervisor and natural resources staff with watershed management objectives and development of interdisciplinary watershed plans; represents the program and provides supplemental written material to planning reports as needed.
7. Participates in project planning activities and the design, implementation and monitoring of project-level restoration plans; applies an understanding of passive and active techniques in riparian and upland areas for restoring watershed functionality.
8. Assists supervisor to implement the dam safety program; assists with program budgeting and tribal contracting process for this and other applications.
9. Performs duties as alternate dam tender; inspecting Owhi or Twin Lakes Dams, reviewing dam safety inspection reports, responding to Early Warning System notifications, responding in a dam safety incident.

#### **D. Water and Environmental Law**

1. Displays a working knowledge of water law and environmental jurisdiction on Indian lands; assists Water Administrator with water rights and enforcement investigations and other duties as required.
2. Drafts and files reports and other documents related to environmental ordinance enforcement.

#### **E. General Duties**

1. Presents information on watershed or programs at public meetings or to school or other groups or individuals to advance CCT programs and engage the public on soil, water and other environmental issues.

#### KNOWLEDGE, ABILITIES AND SKILLS (Recruiting Indicators)

##### Knowledge

Knowledge of: hydrology, chemistry, mathematics (through algebra), ecosystem processes; principles and practices of environmental monitoring technology, field investigative techniques, data gathering and analysis, and report writing as pertains to water resource management; principles of electromechanical devices; factors contributing to environmental pollution and ecological degradation, characteristics of pollutants, and pollution prevention control; applicable tribal, state and federal laws; aerial photo/map reading, Geographic Positioning System instruments, field surveying; basic computer software programs.

##### Abilities

Ability to: work outside in all weather and in steep terrain, lift heavy objects; make computations of environmental measurements; make independent decisions and use sound judgment in performing assigned tasks; work in a safe and orderly manner observing QA/QC practices; understand and solve problems; learn new techniques and systems quickly; self-train and seek instruction as needed to achieve task objectives; work well with others in an interdisciplinary team environment; prepare, maps, charts and graphs and write clear and concise reports; use computers and learn software functions; operate, maintain and repair water data acquisition equipment; understand and apply environmental regulations and related laws; travel in remote country using four wheel drive vehicles and snowmobiles.

##### Skills

Skills in: effective communication with tribal staff, other agencies, and the general public; technical documentation and report writing; leading staff in achieving a common goal through teamwork; influencing subordinates in effective time and task management, completion of tasks, and communication.

#### MINIMUM QUALIFICATIONS (Education and Training)

Graduation from high school or GED equivalent

AND

Two years of training plus two years of experience in water resource monitoring; or in an environmental, environmental health, or natural resources position at a similar level. Experience must include at least one year of technical supervision and civil regulatory enforcement.

College level course work in water resources or a closely related environmental, environmental health, physical or natural science field may be substituted year for year for the required experience.

#### SPECIAL REQUIREMENTS

Must possess and maintain a valid Washington State driver's license and be eligible for the Tribes vehicle insurance.

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Employee

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Date

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Supervisor / Position

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Date

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Personnel Manager

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Date

## JOB DESCRIPTION

CLASS TITLE: Environmental Technician II      CLASS CODE: \_\_\_\_\_      PAY RANGE:  
POSITION: Water Resource Technician      DEPARTMENT: Environmental Trust (ETD)  
REPORTS TO: Water Resource Operations Supervisor

### BASIC FUNCTIONS OF WORK

Collects surface and ground water information in support of water resource and watershed condition monitoring programs. Utilizes and maintains equipment that measures water quality and quantity parameters at established sites. Assists with preliminary data assessment and resource planning activities. Performs technical field duties associated with other programs, such as dam safety, snow survey, burned area emergency stabilization, water rights permitting, and related environmental monitoring.

### SUPERVISION RECEIVED

Functions under the supervision of the Water Resource Operations Supervisor who organizes daily field activities, reviews field data sheets, and monitors project status reports. Work is performed with technical supervision and some latitude in decision making. Technical guidance and assistance is available from staff of this and other agencies.

### SUPERVISION EXERCISED

Supervision is not a normal responsibility of this position, although leadership and some supervision may be provided to part-time summer help.

### SPECIFIC FUNCTIONS OF WORK (Representative Examples)

#### **A. Data Collection / Monitoring**

1. Works with immediate supervisor to develop and schedule field tasks.
2. Deploys and installs continuous water level and water quality monitoring instruments in the field.
3. Measures surface and ground water levels, streamflows, and well pumping rates following USGS and other approved methods; performs mathematical calculations as needed and records data on field sheets.
4. Applies understanding of reservation-wide hydrologic system models to data collection activities.
5. Collects and delivers surface and ground water quality samples for lab testing (follows quality assurance / quality control (QA/QC) procedures); performs preliminary water quality analysis.
6. Reviews data sheets with immediate supervisor for correctness and logs data on computer.
7. Performs snow surveys at established snow courses following NRCS procedures; calculates snow depth and water content and ensures transfer of recorded data to NRCS database.
8. Calibrates, services and maintains water quantity, water quality, and snowpack recording devices (including portable and field-installed monitoring equipment).
9. Utilizes, maintains GPS unit for indexing water monitor sites and logging geographic features or data.
10. Assists ETD staff and other programs with resource monitoring as needed; assists with field measurements and investigations and with implementation of different monitoring systems.
11. Assists with field duties of hydrologic and watershed functionality surveys; measures vegetation recovery patterns in selected areas in evaluating efforts to restore riparian functionality.

#### **B. Data Assessment / Water Resource Management**

1. Reports water quality and quantity problems to immediate supervisor and program manager; assists with developing solutions.
2. Assists immediate supervisor with interpretation of water monitoring results and with recommendations to modify water resource reports and monitoring networks.
3. Assists natural resources staff with watershed management objectives; provides supplemental written material to planning reports as needed.
4. Participates in implementation and monitoring of project-level restoration plans.
5. Assists with implementation of dam safety, fire rehabilitation, and other environmental programs by conducting necessary field duties and coordinating with other staff.
6. Participates in training to develop interests and career goals and to enhance employment opportunities in water resources or related field.

**C. Dam Tending**

Performs duties as dam tender; inspecting Owhi or Twin Lakes Dams and filing inspection reports, maintaining dam and associated facilities, calibrating Early Warning System instruments, responding to Early Warning System notifications, responding in a dam safety incident.

**D. General Duties**

1. Presents information on watershed or programs to school or other groups or individuals to advance CCT programs and engage the public on soil, water and other environmental issues.

**KNOWLEDGE, ABILITIES AND SKILLS (Recruiting Indicators)**

Knowledge

Basic knowledge of: hydrology, water management, water resources, and water quality; principles, practices of environmental monitoring technology; data gathering techniques; factors contributing to environmental pollution and degradation; water law and environmental jurisdiction on Indian lands.

Abilities

Ability to: work outside in all weather, in steep terrain, and in safe orderly manner observing QA/QC practices; lift heavy objects; make independent decisions and use sound judgement in performing assigned tasks; self-train and work well with others; learn new techniques and systems quickly; learn hydrographics, read maps and aerial photos, compile survey data, and make computations of environmental measurements; operate Geographic Positioning System instruments, operate basic computer software and perform basic statistics; maintain and repair electrical and mechanical devices using improvised methods in the field; understand tribal administrative processes; travel in remote country using four wheel drive vehicles and snowmobiles.

Skills

Skill in: time management; effective communication with other staff, professional persons and the public; the operation of water flow and level measurement instrument and equipment, documenting inspections.

**MINIMUM QUALIFICATIONS (Education and Training)**

Graduation from high school or GED equivalent.

AND

Two years of training plus two years experience in water resource monitoring; or in an environmental or natural resource position at a similar level.

College level course work in environmental, physical or natural science or closely related field may be substituted year for year for required experience.

**SPECIAL REQUIREMENTS**

Must possess and maintain a valid Washington State drivers license and be eligible for the Tribes vehicle insurance.

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Employee

\_\_\_\_\_  
Date

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Supervisor / Position

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Date

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Personnel Manager

\_\_\_\_\_  
Date