

TITLE XI
REGULATION OF NATURAL RESOURCES AND LAND

CHAPTER 1 **REGULATIONS OF THE WIND RIVER TAX COMMISSION**

Section 11-1-1 **General Provisions**

(1) **Purpose.** The Wind River Tax Commission is empowered to administer the tax laws of the Shoshone and Arapaho Tribes of the Wind River Reservation and, to that end, to adopt the rules and regulations, substantive and procedural, as may be necessary, proper and efficient to administer such rules and regulations.

(2) **Definitions.** For the purpose of these regulations, the following words and phrases are defined as follows:

a) **Area rate.** The gas price designated by the Commission to be applied for each calendar quarter, calculated from the highest prices paid or offered in a geographic area for the majority of similar production. The Commission will publish the quarterly rate, which may be revised from time to time, as additional data becomes available. The area rate shall be the highest price paid for a majority of like quality production that price at which more than fifty percent (50%) of the current production from the area is sold. When production and sales are diversified, this value will be established as the weighted average value obtained by taking a summation of percentages, in descending price order, that totals more than fifty percent (50%) of the total production from the area;

b) **Commission.** The Wind River Tax Commission;

c) **Entitlements.** The amount of gas that a purchaser is entitled to;

d) **Gas balancing.** The process by which persons having an interest in production from a well, unit or reservoir monitor and adjust their take therefrom to ensure that each such person receives his proportionate share;

e) **Geographic area.** The region in which oil and gas products are characterized by similar quality and economic factors, and which is, to a large extent, market-determined. Unless the Commission otherwise determines, the Wind River and Big Horn basins shall be considered geographic areas;

f) **Joint Business Council.** The Joint Business Council of the Shoshone and Arapaho Tribes;

g) Lease. Any agreement conferring to persons rights to use or possess reservation lands or for severance therefrom, including, but not limited to, a lease, right-of-way, use permit, or joint venture, or operating agreement;

h) Market value - oil. The greater of:

i) the highest posted price in the geographic area after adjustment for oil gravity; and

ii) the gross proceeds received by the taxpayer;

i) Market value - gas. The greatest of:

i) the highest maximum lawful price;

ii) the actual gross proceeds; or

iii) the area rate price;

j) Person. Any individual or group or combination of individuals acting as a unit, however associated; any organization of any kind, whether organized for profit or not, and regardless of the manner of form in which it does business, whether as a sole proprietorship, receiver, partnership, joint venture, trust, estate, firm, unincorporated association, corporation, or government including, but not limited to, any part, subdivision, or agency of any of the foregoing; and any combination of individuals or organizations in whatever form, and the plural as well as the singular number;

k) Operator. The person designated by the U.S. Department of Interior as the lease operator;

l) Product. Oil, natural gas, natural gas liquids, liquid hydrocarbons, or solid hydrocarbons, individually or in any combination thereof, carbon dioxide, or any other mineral;

m) Reservation. The Wind River Reservation as defined in Section VI;

n) Severance. The taking of any product in, on or under the soil, in any manner whatsoever within the reservation;

o) Takes. The amount of production actually taken by a purchaser. The failure of pipelines to take gas in the same ratio as their sellers' interest in the production results in a take imbalance;

p) Tax. The tax, Ordinance No. 39, as amended, imposed by the tribes for the privilege of doing business related to severance;

q) Taxpayer - nonoperator. A party with an economic interest in the well that is not the designated operator of the well. Due to a marketing arrangement separate from the operator's, this party may be required by the Commission to make severance attributable to the marketing arrangement;

r) Taxpayer - operator. The operator of the lease who directly is responsible to pay the taxes;

s) Tribal formation. Any or all geologic subsurface horizons within the reservation; and

t) Tribes. The Shoshone and Arapaho Tribes of the Wind River Reservation;

(3) Liability for Taxes

a) Taxes assessed or due and owing are the liability of the taxpayers;

b) As a matter of policy, the operator is normally responsible for timely filing of the tax returns and submission of one hundred percent (100%) of the taxes due for each well, lease, or production unit that it operates. However, the lessee, operator, producer, and buyer of any severed product, or the owners of interests in a lease, shall be jointly liable for payment of the taxes with respect to the lease and shall be severally liable for such taxes in proportion to their interests in the lease. Such persons are authorized to deduct all taxes paid before making any distribution of the proceeds from the production. The Commission, at its discretion and with the consent of all such owners, may relieve one or more of them from personal liability, if it determines that the taxes are adequately secured by the lease, the personal liability of remaining owners, or any bond it may require to be posted;

c) If a taxpayer is a corporation or a trust or a part thereof, the corporation or trust shall be liable for the taxes. If the taxpayer is an association, joint venture, or partnership, or a part thereof, then all associates, participants, or partners, both general and limited, shall be jointly and severally liable for the taxes;

d) Subject to alteration by agreement between them, any owner, associate, participant, or partner shall have a right of contribution from any other owner, associate, participant, or partner for its proportional share of taxes paid; and

e) With the prior written approval of the Commission, or upon notification by the Commission, a person may be designated as a taxpayer-nonoperator. This designation may be warranted if the nonoperator has negotiated a separate purchase agreement. Once taxpayer-nonoperator status is granted, the taxpayer-nonoperator will be responsible for tax reporting and payment in accordance with these regulations.

Section 11-1-2 Commission Organization

(1) Duties. The Commission will oversee tax policy and administration of tax laws; will present to the tribes its recommendations regarding the revenues and fiscal policy of the tribes; will submit to the Joint Business Council proposed resolutions to lay and collect taxes; will evaluate tax refund requests and make recommendations for resolution by the Joint Business Council; and will adopt such other rules and regulations as it deems necessary to interpret and execute its authority, to interpret and enforce the tax laws, to establish the manner and means for compliance with such laws, and to set forth the requirements for the administration of taxes and the general tasks and responsibilities of the Commission. The Commission shall establish the guidelines and procedures for the exercise of its power to attach and seize assets and for the performance of its other collection duties in an effective manner comporting with due process; for the exercise of investigative authority and for the conduct of inspections, examinations and audits; and for conducting its business, administering the tax laws, organizing and operating its offices, and effectively discharging its duties and responsibilities.

(2) Composition. The Commission is composed of four (4) members, one (1) of whom must be a member of the Shoshone Tribe and one (1) of whom must be a member of the Arapaho Tribe. The Shoshone Business Council and the Arapaho Business Council each shall select two (2) Commissioners, subject to confirmation by the Joint Business Council. Each commissioner shall serve a term of office of four (4) years, provided that, in order to stagger the expiration of terms of office, one of the original Commissioners shall be appointed for a term of one (1) year, one for a term of two (2) years, one for a term of three (3) years, and one for a term of four (4) years.

(3) Vacancy. A vacancy in the Commission, however caused, will be filled by a similar selection and confirmation procedure, provided that any appointment which does not begin coincident with the staggered terms will be shortened as necessary to maintain the pattern of staggered expirations.

(4) Quorum. Business of the Commission will be conducted by a quorum of its members at meetings duly called by its presiding officer. A quorum consists of three (3) commissioners, and any substantive action must be taken by the affirmative votes of at least three (3) commissioners.

(5) Presiding Officer. The commissioners shall select a presiding officer from among themselves. Any substantive action of the Commission must be recorded in a resolution certified by the presiding officer or signed by at least three (3) commissioners voting for that action.

(6) Director of the Tax Office. The Commission hereby creates the position of Director of the Tax Office and delegates to the Director of the Tax Office authority to administer the tax laws of the tribes according to the regulations and general instructions of the Commission. The Director of the Tax Office shall exercise the powers granted to him, shall employ or engage those persons qualified by education and experience necessary to discharge the duties of the office, and shall delegate authority and duties among such persons.

(7) Promulgation of Regulations. Following formal adoption of a proposed regulation by the Commission, the regulations will be promulgated pursuant to these rules:

- a) Regulations will be effective only upon the publication of a notice;
- b) Publication of a notice requires publication in the legal section of the Casper Star Tribune newspaper at least once a week for three (3) consecutive weeks and further requires a mailing of the notice to designated individuals or taxpayers. The notice shall identify or otherwise describe the terms and conditions of the new regulation;
- c) A regulation will become effective thirty (30) days after the first publication of notices or on the date otherwise specified therein;
- d) A copy of the regulations will be filed and made available for public inspection at the Office of the Director of the Tax Office at the following address: P.O. Box 830, Fort Washakie, Wyoming 82514; and
- e) The Commission may, but is not required to, publish proposed regulations in order to provide interested parties an opportunity to comment. Notice of the proposal will be published and the text made available as described herein above. The notice will invite written comments and give a deadline for their submission not less than thirty (30) days after the first publication of notice. The Commission may, but is not obligated to, hold a public hearing; in that event, it will announce the time and place at which oral testimony will be heard.

(8) Confidentiality. It shall be unlawful for an employee or former employee of the Commission to reveal to any individual, other than an employee or legal counsel of the Commission, any information contained in the return of any taxpayer or any other information of any taxpayer acquired as a result of the employee's employment by the Commission, except:

- a) To any authorized representative of the taxpayer;

b) To an employee or representative of the tribes or a member of either tribal council authorized by the Commission to obtain such information for use in connection with the governmental function of said employee, representative or council member, provided that it shall be unlawful for the employee, representative or council member to reveal said information except as permitted herein;

c) To an authorized representative of another Indian tribe or state, provided that the receiving tribe or state has entered into a written agreement with the Commission to use the information for tax purposes only and that the receiving tribe or state has enacted a similar confidentiality rule;

d) To an authorized representative of a federal agency according to the terms of a reciprocal agreement for the exchange of information;

e) In any administrative or judicial proceeding to enforce any act or collect taxes or in any matter in which the taxpayer has put its own liability for taxes at issue;

f) In compliance with an order of any court of competent jurisdiction in which the information sought is material to the inquiry;

g) In recording tax liens on the property of a taxpayer or collecting taxes by levy upon the property or rights to property of a taxpayer;

h) In statistical releases which do not identify a specific taxpayer or otherwise disclose the information therein as being applicable to any single taxpayer;

i) To the extent of revealing whether a taxpayer has made a designation (and, if so, the name and address of that individual) or whether a person is a designee (and, if so, by whom the individual has been designated);

j) To the extent of revealing the amount and basis of unpaid taxes to the purchaser or intended purchaser of the property or business of the taxpayer; or

k) Any employee, representative or council member who violates any of the provisions herein shall be subject to a fine of no less than \$50.00 or suspension for no less than thirty (30) days, or both. The Commission may, by further ruling, restrict the disclosure of information and establish procedures for compliance herewith.

(9) Examination. For the purpose of determining the correctness of any report or payment of taxes or the liability of any person for taxes or the liability of any transferee or fiduciary of any person for taxes, or of collecting any liability, the Commission may make inquiry and may examine any books, records, papers, maps, documents, or other data which may be relevant and material to the inquiry. The Commission may also summon the person liable for

the tax, or any officer, employee, or agent of the person, or any person having possession, custody, or care of books of accounts containing entries related to the business of the person liable for tax, or any other person the Commission may deem proper, to appear before the Commission to produce such books, records, papers, maps, documents, or other data and to give such testimony under oath as may be relevant or material to the inquiry.

(10) Notice. Notice required to be given by the Commission may be effectively given to a taxpayer by mailing the notice to the individual last designated by the taxpayer at the address shown on the designation. Where the taxpayer has not designated an individual, notice may be effectively given by mailing the notice to any owner of an interest in the lease or any other person who is a lessee, permittee, or assignee of property on which the productive activity at issue is conducted, or to a person holding a permit or a license for conduct of such activity.

The foregoing is not intended to exclude the use of other methods of providing notice, including publication, provided that such methods comport with due process. Public notice of a lien will be effective as to all property and rights to property of a taxpayer, business, or person if the description of the taxpayer, business or person is sufficient to put a reasonable person on an inquiry to ascertain the existence of a lien on the property.

Section 11-1-3 Tax, Reports, and Collection

(1) Tax. Any person engaged in the business of severance on the reservation shall be taxed for the privilege of doing business at the rate equal to the rate then imposed by all non-tribal taxing entities within the State of Wyoming (including severance/production, ad valorem and conservation) plus the rate of tax imposed by Ordinance No. 39, as amended, with respect to all product from lands within the boundaries of the reservation except for product meeting the criteria for exemption from taxation as set forth by Section 2 of this part. A credit shall be issued for an amount equal to the amount of state taxes described in Ordinance 39, as amended, herein paid, unless and until such amount is found by a court of competent jurisdiction to be collected unlawfully, in which case, such amount shall be due and owing to the tribes.

(2) Special Computation Provisions. For computation of the tax, the following information applies:

- a) For natural gas, gas reinjected into a tribal formation is exempt from tax;
- b) For natural gas, gas utilized in lease operations is subject to the tax;
- c) In the case of Gas Balancing Arrangements, the volumes utilized will be based on Takes and not Entitlements;

d) Taxes are due on payments received from purchasers in settlement of take or pay obligations, or any other purchase contract modification, by the next due date following the month of receipt;

e) In the case of oil, tax will be calculated for the month the oil is sold or transported off the reservation (versus production). In cases of inventory or production losses, such losses should be treated as a sale in the month of occurrence;

f) The taxes imposed hereby are not applicable to any tribal interests in severed products or to the royalty interest of any Indian under the jurisdiction of the tribes in such products;

g) No tax is due on product lawfully produced in connection with the drill stem test, well potentials and other tests as approved by the Department of Interior authorities. This exemption is valid for up to thirty (30) days from completion or recompletion; and

h) No tax is due on product lost as a result of a natural disaster.

(3) Reports. Any taxpayer-operator or taxpayer-nonoperator engaged in the production of oil and gas on the reservation shall file quarterly reports for the preceding calendar quarter on or before February 15, May 15, August 15, and November 15 of each year. Sample reports are included in Part VI. Those report formats or computer-generated facsimiles must be utilized. In general, the reports shall describe or identify:

a) The lease or contract under which the product is produced and the name and address of the taxpayers;

b) The gross amount of product produced and saved from each well, by month;

c) The price or value base on which royalties were computed by month; and

d) The total amount of production reported and the royalty paid to the United States on behalf of the tribes in accordance with the regulations of the Department of the Interior, or paid to the tribes under contracts with the tribes.

(4) General Information. The Commission may require of any and all persons who own interests in a lease and who are engaged in business activity on the Wind River Reservation or are otherwise subject to the jurisdiction of the Commission such information as the Commission may deem relevant and material. Upon a written request and after adequate opportunity to comply, those persons must provide the information required.

(5) Information and Report Forms. Information and report forms required by the Commission to be filed will be provided by the Commission, and any information to be included in or filed with the reports will be described in instructions and other rules. Additional information may be required sufficient to establish the qualification for any exclusion, sum or deduction claimed, or to disclose the detail of transactions. Each tax return should be accompanied by the following information for the documents for production months reported on:

- a) Bureau of Land Management Form 3160-6 (Monthly Report of Operations);
- b) Minerals Management Service Form 2014 (Report of Sales and Royalty Remittance);
- c) Gas contracts, when approved or amended;
- d) From time to time, additional information may be requested. Specific items include, but are not limited to:
 - i) meter chart integrations;
 - ii) run tickets;
 - iii) plant statements; and
 - iv) remittance advices.

(6) Place and Manner of Filing and Payment

a) All filings must be delivered to the Office of the Director of the Tax Office or be mailed to:

Wind River Tax Office
Office of the Director
Tribal Office Complex
Fort Washakie, Wyoming 82514;

b) All payments must be delivered to the designated financial institution for receipt of such payments. The designated financial institution is currently First Interstate Bank, Riverton, and listed below are the forwarding instructions for wire transfer or mail deposits.

- i) deposits by wire transfer:

Shoshone and Arapaho Tribes
Severance Tax Collection Account
First Interstate Bank of Riverton
P.O. Box 233
Riverton, Wyoming 82501
Attn: Myrna Sammons
ABA#: 1023-0194
Account#: 503-294-1

ii) deposits by mail:

Shoshone and Arapaho Tribes
Severance Tax Collection Account
First Interstate Bank of Riverton, N.A.
P.O. Box 233
Riverton, Wyoming 82501
Attn: Marlys Reddon
Account#: 503-294-1;

c) Taxes shall be paid monthly, on or before thirty (30) days after the end of each production month. For example, the tax for June productions is due on or before July 30. Estimated tax payments are permissible, however, estimates must be adjusted to actual by the time the quarterly report is due and there will be penalty for under payments in excess of ten percent (10%);

i) any check or other remittance must be made payable to the order of the Arapaho and Shoshone Joint Severance Tax Account. Payments received by the Commission will be applied first in satisfaction of any penalty, then in satisfaction of interest, and finally in satisfaction of the tax due. The Commission will report to the taxpayer the application made and the resulting status of the taxpayer's accounts and will issue a notice of assessment for any unpaid tax or interest; and

ii) a taxpayer who believes he has overpaid a tax may, within one (1) year of the overpayment, provide a written request for refund (with proper detail and support) from the Commission. The Commission will review and approve the request, and at its discretion, may issue a refund check or apply the amount to current or future tax liabilities. If an overpayment has been made, the Commission shall credit the amount to any taxes due from the taxpayer for the current period, or refund the overpayment to the extent it is not applied to a tax obligation.

(7) Extension

a) A taxpayer may file a written request for a one (1) month extension of the time for making payment, providing that:

- i) the request identifies the taxpayer, return, and assessment date or period, and includes a statement of cause;
- ii) the request is filed at the place and by the time for filing the return or making the payment; and
- ii) the taxpayer pays, with the request, an amount equal to the tax liability due for the previous period or at least ninety percent (90%) of the tax due with the extended return;

b) The balance of the tax due and the accrued interest must be paid on the extended date for filing the return; and

c) In its discretion and for good cause shown, the Commission may grant additional extensions of time up to three (3) months on the basis of a written request filed before an extended due date. The Commission may require the payment of an estimated amount of tax or condition the grant of an extension of time to pay upon the posting of a bond or provision of other security or the creation of a lien.

(8) Due Dates. The following regulations will apply in the determination of due dates and time determinations:

a) Due dates are those specified herein or in the instructions, forms, and notices of the Commission. If a due date falls on a weekend or a legal holiday, the due date will be extended until the following working day. Tribal holidays are the same as United States federal holidays with the exception that Columbus Day is not recognized; and

b) The date of the action is determined by the date received by the bank.

(9) Interest Rates

a) Interest is imposed at the rate of twelve percent (12%), the per annum uncompounded on any unpaid tax and is computed from the due date (without regard to any extension or stay of time) until the date payment is actually received. The interest will escalate to eighteen percent (18%) per annum uncompounded when an unpaid tax is ninety (90) days overdue; and

- b) Interest will not be remitted to a taxpayer for any overpayment of tax.

(10) Designation of Agent. Each taxpayer must designate and provide the mailing address of a natural person for the purposes of notice, together with such other instructions as may be required by form and instructions:

- a) An owner of an interest in an oil and gas lease, who is not the operator and not a designated taxpayer-nonoperator, must designate the individual designated by the operator; and

- b) A taxpayer may also name a few other individuals, not for the purpose of notice but for information, to receive the tax publications of the Commission. The Director will keep a reasonably current list and will be diligent in mailing to such individuals notices, regulations, rulings, instructions, and other information in a timely manner.

(11) Noncompliance Penalties

- a) Penalties for Failure to File. If a taxpayer fails to file a return by the due date, a penalty of ten percent (10%) of the tax due, but not less than \$100.00, will be assessed against the taxpayer. An additional penalty of one percent (1%) of the tax due, but not less than \$100.00, will be assessed for each full month the return is overdue. The additional penalty will not, except as to the minimum amounts, exceed twenty-four percent (24%) of the tax. A return filed on or before an extended date for filing is considered to be timely filed;

- b) Penalties for Failure to Pay. If a taxpayer fails to pay an amount of tax by the due date, a penalty of five percent (5%) of the amount of the underpayment will be assessed. An additional penalty will be assessed of one-half percent (½%) of the underpayment for each full month payment is overdue, but will not exceed thirty-six percent (36%) of the underpayment. An amount paid on or before an extended date for payment is considered to be timely paid.

- c) Penalties for Attempt to Evade or Defeat Tax

- i) any taxpayer who understates tax owed, either through negligence or intentional disregard of the rules and regulations, but without the intent to defraud, will be assessed a penalty of \$250.00, plus twenty-five percent (25%) of the underpayment of tax;

- ii) if any part of an understatement of tax is shown to be due to fraud, the taxpayer will be subject to a penalty of \$25,000.00 plus three hundred percent (300%) of the underpayment of tax; and

iii) any person who assists a taxpayer in such a fraud will be subject to a penalty of \$1,000.00 plus fifty percent (50%) of the underpayment of tax. Any liability arising under this subparagraph shall be assessed and collected as a tax imposed hereby;

d) Penalties for Failure to Provide Information. If a taxpayer fails to provide information required or requested within sixty (60) days of written notice, a penalty of \$10,000.00 will be assessed against the taxpayer. An additional \$1,000.00 per day will be assessed for each day after sixty (60) days that the request or requirement remains unfulfilled. Extensions of this time period without penalty may be granted by the Commission. An extension for time must be requested in writing stating the reasons for delay;

e) A taxpayer failing to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including attorneys' fees, expert witness fees, and other costs of collection. Upon determining any charges for costs, the Commission will issue a Notice of Assessment to the taxpayer; and

f) Any person obligated to pay a tax, to make a designation, to file a return, to provide information, documents, access thereto or to property, to furnish a surety bond or other security, or to comply with the lawful order of the Commission, and failing to do the same, may have its rights to engage in productive activity on the Wind River Reservation suspended until compliance is made.

(12) Unlawful Acts

a) It is unlawful for any person:

i) forcibly, or by bribe, threat, or other corrupt practice, to obstruct or impede the due administration of any tax;

ii) to commit fraud, or knowingly to assist another in the commission of fraud, with the intent to evade or defeat the assessment or collection of any tax, interest, or cost imposed or assessed; or

iii) with knowledge and intent, falsely to verify by written declaration any return, form, or other document;

b) Any Indian who commits any of the above unlawful acts shall, upon conviction thereof, be sentenced to a term of imprisonment not to exceed one hundred eighty (180) days, or ordered to pay a fine not to exceed \$500.00, or both, in accordance with the provisions of the tribal code;

c) Any non-Indian who commits any of the above unlawful acts may be excluded from the Wind River Reservation; and

d) Any person who commits any of the above unlawful acts, or whose employees or agents in the course of their employment or agency commit any of the above unlawful acts, may have its rights to engage in productive activity on the Wind River Reservation suspended, either temporarily or permanently.

(13) Suspension and Fraud Proceedings. Suspensions and the money penalties for negligence and fraud will be imposed only by resolution of the Commission and upon a notice to the taxpayer, providing a time when the taxpayer may appear before a hearing officer to show cause why suspension or penalties should not be imposed. The time for the hearing shall not be less than fourteen (14) days after the date of the notice. The hearing officer will submit findings of fact, his recommendation, and the hearing record to the Commission. Enforcement or collection is stayed until the Commission makes its determination.

(14) Collection Procedures and Statutes of Limitations

a) The Commission has full power to collect any taxes assessed or owing, including the power to attach and seize the assets of a taxpayer or any property subject to lien, and to exercise any other powers available to the tribes for collection of debts owed them. The Commission may request of the proper authority that a suit or other enforcement proceeding be brought in any court of competent jurisdiction, provided that bringing of suit or an enforcement shall not constitute a waiver of sovereign immunity, and further provided that the Commission shall never be compelled to assert a claim for taxes in litigation by way of counterclaim or otherwise;

b) All taxes, interest, costs, and penalties assessed are a debt due and owing the tribes from the taxpayer or other person. If a debt is not paid when due, the Commission may, in addition to its other remedies, maintain an action for itself against the delinquent party for the collection of the liability, cost, and other lawful charge thereon. In such action, the Commission will have the benefit of all the laws which provide remedies against property or rights to property, real or personal, of the person liable for the debt;

c) Any taxes not paid by the due date and in the absence of a stay are collectible as of that date without further notice; and

d) The assessment and collection of the taxes imposed hereby must proceed within the period of limitation established under the circumstances set forth below:

i) any unpaid tax must be assessed within nine (9) years after the return was filed;

- ii) no period of limitation will apply to false or fraudulent returns filed with the intent to evade tax;
- iii) no period of limitation will apply in cases in which no return has been filed; and
- iv) collection of a tax, whether by action in a court or by levy for the collection, must begin within nine (9) years of the due date of the tax:
 - a. these periods of limitation will apply in a corresponding manner to a collection of related interests and costs; and
 - b. the running of any period of limitation is suspended during any time that the Commission is barred from collection, that said collection is prohibited by any court, that a determination of the Commission is on appeal, or if the taxpayer and the Commission agree to such suspension of the period of limitation.

Section 11-1-4 Administrative Actions and Appeals

(1) Assessment Powers. The Commission is empowered to determine and assert against a taxpayer liability for tax, interest, or costs in the following circumstances:

- a) Deficient Amount of Tax. When it appears that a return filed, or a payment made, does not reflect the amount of tax due, the Commission will issue a notice of assessment of a deficiency, interest, and penalties;
- b) Estimated Amount of Tax. When no return has been filed, the Commission is authorized to estimate the tax due and issue a binding notice of assessment of the tax, interest, and penalties. The assessment may be redetermined only through an appeal pursuant to Paragraph 1 and upon a showing that the assessment clearly is erroneous;
- c) Failure to Provide Information. If a taxpayer fails to provide information within its possession or control which is relevant to a determination of any tax due, and which is required to be provided under these regulations, the Commission is authorized to proceed to make an estimate of the tax due and issue a binding notice of assessment of the tax, interest, and penalties. The Commission will make the estimate on the basis of the best information it finds readily available. Unless for good cause shown that relieves the taxpayer from this subparagraph, the Commission's assessment is binding and may be redetermined only through an appeal and upon a showing that the estimate, on the basis of the Commission's best information when it was made, clearly was erroneous; and

d) Overpayments. When it appears that a taxpayer has made an overpayment, the Commission will issue a notice of determination and remit a refund. A taxpayer may file a claim for refund of an overpayment.

(2) Examination Procedure. Upon completion of the examination of a taxpayer, the Commission will provide the taxpayer with a written statement of findings for any determination which alters a liability for tax, interest, or penalties, and will issue a notice of assessment (or refund) for any amounts due (or overpaid). If no such determination is made, the Commission may issue a letter stating that there is no change for the assessment date or period examined.

(3) Notice Requirements. A notice of assessment (or refund) will require the payment of the amount assessed (or remittance of the refund) not less than sixty (60) days after the date of the notice. The taxpayer must comply with (or accede to) the terms of the notice and, within the time allowed in the notice, may request a redetermination under paragraph 1 5 of this part. Within the same time, a taxpayer also may seek an informal conference under paragraph H 8 of this part.

a) Occasions for Notice. A notice of assessment may arise from an initial assessment of tax, from an estimate of the tax due when a required return has not been filed, from a deficiency in the amount of tax reported or paid determined upon examination of a declaration, or from an application of interest, penalties, or charges for costs;

b) Assessment Binding. These assessments are binding on the taxpayer according to the terms of the notice; and

c) Overpayment. When it appears that a taxpayer has made an overpayment, the Commission will issue a notice of determination and remit a refund.

(4) Security for Payment. Whenever necessary to secure payment of any taxes due or reasonably expected to become due, the Commission is authorized to require the taxpayer to furnish an acceptable surety bond in an appropriate amount, payable to the Commission and conditioned upon the payment of the taxes therein identified, no later than the date on which the liability becomes conclusive, or to furnish other acceptable security in an appropriate amount, and to require the taxpayer to furnish additional security as it becomes necessary.

(5) Procedure for Refunds. Any taxpayer who has made an overpayment may, within one (1) year after the overpayment was made, file a written claim for refund with the Commission, except that no claim for refund need be filed if the basis therefor already has been established under an abatement or asserted in an appeal under this chapter, and provided that an issue determined in such an appeal may not be reopened by filing a claim for refund.

- a) Government Action. If an overpayment arises from an action of a tribal, federal, or state agency, or any court other than in an appeal under this chapter, wherein the action changes the factual basis upon which the tax was determined and paid, the time for filing a claim for refund will be one (1) year from the date of such action;
- b) Amended Return. A claim may take the form of an amended return for the period for which the overpayment was made. The return must contain a clear statement of the amount of the refund being claimed and the facts or other basis for determining an overpayment;
- c) Appeal. The Commission will determine overpayments and claims for refunds according to its procedures. If a claim is denied in whole or part, the taxpayer must appeal pursuant to paragraphs H or I 13 or 14 of this part;
- d) Determination. If the Commission determines, either on a claim for refund under this paragraph or in an appeal on a claim or from an assessment, that the taxpayer has made an overpayment, and no appeal is taken, the Commission shall refund (or credit) the overpayment to the taxpayer, provided, however, that if the basis of the claim is that the taxes were imposed illegally, the decision of the Commission to refund shall be subject to paragraph G 3 of this part;
- e) Order of Joint Business Council. Where the action of the Commission on a claim for refund under this paragraph, or in the appeal on a claim or from an assessment, is then appealed, the Commission shall make a refund of the overpayment determined by the order in that appeal;
- f) Application to Unpaid Taxes. If the taxpayer entitled to a refund owes unpaid taxes, the refund shall be offset and reduced by such unpaid amounts; and
- g) Prohibition Against any Other Manner of Refund. No refund of or credit for taxes paid shall be made or allowed to any person by any court or agency other than as provided in this paragraph.
- (6) Authority to Abate. Before any court acquires jurisdiction in the matter, or at any time when an assessment is found to be incorrect, the Commission may abate any part of an assessment which it determines was incorrectly, erroneously, or illegally made.
- a) Form of Request. The request must be made to the Office of the Director, in accordance with paragraph I 5 of this part, must state the abatement sought, and must contain a complete statement of the facts relied on, together with any information and document necessary to present those facts;

b) Compromise. Subject to paragraph G 3 of this part, upon the compromise of a liability, the Commission will cause abatement of the appropriate amount of the assessment; and

c) Public Record. Abatements in excess of \$1,000.00 will be recorded in the Office of the Director in a form available for public inspection. The record shall be maintained for a minimum of six (6) years after the date of abatement.

(7) Closing Agreements. If, at any time after payment of taxes or a final assessment of taxes, the Commission in good faith is in doubt of the liability of the taxpayer for the payment thereof under existing law, it may compromise the liability by entering into a written closing agreement with the taxpayer that adequately protects the interests of the tribes, provided that the agreement will be subject to approval by the Joint Business Council.

a) Stipulation. If the closing agreement is entered into after a court acquires jurisdiction over the matter, the closing agreement must be made part of a stipulated order or judgment disposing of the case;

b) Security. As a condition for entering into a closing agreement, the Commission may require the provision of security for payment of any taxes due according to the terms of the agreement; and

c) Conclusive. A closing agreement is conclusive as to the liability for nonliability for payment of taxes for the assessment dates or periods referred to in the agreement, except upon a showing of fraud, malfeasance, misrepresentation, or concealment of a material fact.

(8) Informal Conference. Upon a notice of assessment (or denial of a refund), a taxpayer may request in writing an informal conference with the Office of the Director to consider the basis for an abatement or to clarify issues which may form the basis of an appeal under this chapter.

(9) Formal Conference. Upon a notice of assessment (or denial of a refund) to preserve the right to appeal such determinations, a taxpayer must request in writing a formal conference with the Office of the Director to consider the basis for an abatement or to clarify issues which may form the basis of an appeal under this chapter, if the taxpayer elects not to appeal first in accordance with Paragraph H 12 or 13 of this part. The formal conference with the Officer of the Director is an administrative procedure for seeking a review and redetermination of an assessment (or denial of a refund) preliminary to the request for an administrative hearing.

a) Condition Precedent. A conference may proceed upon the basis of a notice of assessment or denial of refund, and a timely request;

b) Time and Manner of Request. The request must be filed within the time allowed by the notice. It should identify the notice, declare the redetermination sought, and must include a complete statement of the facts relied on. The conferee, after an initial inquiry, may deny the request for conference and direct the taxpayer to proceed to a hearing;

c) Stay of Collection. Upon a proper request for and grant of a conference, payment of the amount set forth in a notice of assessment that is in dispute will be stayed until a time not more than thirty (30) days after issuance of a conference decision;

d) Conduct of Conference. The conferee may confer with the taxpayer by phone or in person, or may require the submission of additional written material, and will issue a written conference decision. If the result sought is denied in whole or in part, the decision will state the basis for the denial;

e) Request for Further Hearing. Within thirty (30) days after issuance of the decision, the taxpayer may request the matters in dispute be submitted for a hearing and review before the Commission; and

f) Finality of Decision. If no appeal is made within the time allowed, the decision is final and is not subject to any appeal before the Commission or in any court.

(10) Stay of Payment. After the formal conference, the taxpayer may request a stay of payment on the conference decision; the request must be based upon an intention to request a hearing and must be filed within ten (10) days after issuance of the decision.

(11) Prohibition of Suits. No suit to restrain the assessment and collection of the tax imposed by this chapter shall be maintained in any court by any person, whether or not such person is the one on whom such taxes were assessed.

(12) Administrative Appeal. Appeal from assessments and denials of refund must be made first to the Commission according to its procedures under paragraph I 5 of this part. Appeals from final actions of the Commission, including but not necessarily limited to assessments, denials of refund, and a suspension order, shall be made only to the Joint Business Council.

(13) Procedure for Hearing. After a taxpayer has exhausted its right to appeal in accordance with paragraph I 5 of this part, the taxpayer may appeal the determination made pursuant to paragraph I 13 in a hearing before a hearing officer designated by the Commission in accordance with the procedures set forth below. The hearing officer will conduct a hearing to receive evidence from the taxpayer and the Office of the Director. Any conference decision issued pursuant to paragraph I 13 of this part will be included as part of the record for decision. The decision of the hearing officer will be binding only if adopted by the Commission as a final

decision. Failure to exercise further appeal rights in accordance with paragraph L 14 of this part shall constitute a waiver of any further appeal.

a) Time and Manner of Appeal. Within thirty (30) days after the issuance of a conference decision or a referral hearing by the conferee, the taxpayer may request a formal review of such decision or the matters at issue in the referral pursuant to a procedure involving two steps: administrative hearing and entry of the record, findings, and the recommendations of the hearing officer from which will issue the final action of the Commission; and

b) Stay of Payment of Taxes. Payment of taxes which are being appealed in an administrative hearing may be stayed upon the written request of the appellant. The stay may be conditioned on the posting of a bond or provision of other security, or on the creation of a lien.

(14) Appeal to the Joint Business Council. Upon receipt of a final action of the Commission, the taxpayer may appeal the action to the Joint Business Council.

a) Payment Required. No appeal may be taken or will proceed before the Joint Business Council until the payment of the taxes assessed or determined by the Commission has first been made; and

b) Time for Appeal. The appeal must be filed with the Joint Business Council within thirty (30) days after issuance of the Commission's order.

Section 11-1-5 Miscellaneous

(1) Tax Administration Fund. All monies received by the Commission as taxes shall be deposited immediately in a Shoshone and Arapaho Tax Administration Fund. Monies received will be divided equally between the Shoshone Tribe and the Arapaho Tribe in accordance with Joint Business Council Resolution 5805 dated February 20, 1986.

(2) Director. The director of the Tax Office is authorized and directed to credit all tax monies received by the Commission to the Shoshone and Arapaho Tax Administration Fund and to disburse refunds as directed by the Commission; to keep separate accounts for the fund; and to be accountable to the Commission for the accounts and their disposition, for the regular and timely reconciliations, and for reports to the Joint Business Council on no less than a monthly basis, with quarterly summaries. Such reports will show the amounts deposited and disbursed during each month and will reconcile the beginning and ending fund balances.

(3) Effective Date. The effective date of these regulations is contained in the notice of proposed regulations dated July 1, 1987.

(4) Transition. The Commission has adopted transition rules and procedures to be followed in connection with these regulations. The following analysis indicates whether the regulations promulgated herein are to be applied prospectively (commencing with the effective date described herein), or retrospectively (representing the original intent of the regulations effective April 2, 1979, and accordingly effective from such date). Special transition provisions are described as applicable.

<u>Regulations</u>	<u>Transition Rule</u>
I. General Provisions	Retrospective
II. Commission Organization (all but Section i)	Prospective
I. Examination	Retrospective
III. Tax, Reports, and Collection	
A. Tax	Retrospective (Note B)
B. Special Computation Provisions	Retrospective
C. Reports	Prospective
D. General Information	Retrospective
E. Information and Report Forms	Prospective
F. Place and Manner of Filing and Payment	Prospective
G. Extension	Prospective
H. Due Dates	Retrospective
I. Interest Rates	Prospective (Note A)
J. Designation of Agent	Prospective
K. Noncompliance Penalties	Prospective (Note A)
L. Unlawful Acts	Prospective
M. Suspension and Fraud Proceedings	Prospective

N.	Collection Procedures	Retrospective
IV.	Administrative Appeal	Retrospective
V.	Miscellaneous	Prospective
VI.	Legal Description of Wind River Reservation	Retrospective
VII.	Report Forms and Examples	Prospective

Note A. This note takes precedence over any general rules above that appear to conflict.

The Commission is currently in the process of completing audits of taxes on certain tribal leases. Upon completion of such audits, the Commission will deliver audit reports to the applicable operators, who, at such time, will have sixty (60) days to pay the taxes due, penalty and interest indicated in such audit reports. The penalty and interest in the audit reports will be computed at five percent (5%) and twelve percent (12%) simple, respectively, in accordance with Ordinance 39, as amended. At such time, the operators shall provide any information which they believe will adjust the findings contained in such audit reports. The Commission will then review the information so provided and make any adjustment to the taxes due, penalties and interest as warranted and refund any excess within sixty (60) days of receipt of the information or payment, whichever is received by the Commission at the later date. Failure to pay the taxes, penalties and interest as described in this note will result in retroactive application of the interest rates and noncompliance penalties described with these regulations.

The Commission may adopt additional regulations setting forth transitional rules and procedures to be followed, if deemed necessary by the Joint Business Council.

Note B. For the period from April 2, 1979, to March 31, 1982, the tax rate is the same as in the regulations except that one half of one percent should be substituted for four percent (4%).

(5) Assistance Agreements. The Commission is authorized to negotiate mutual assessment and collection assistance agreements with any other tax jurisdiction. The agreements so negotiated will come into force only upon ratification by the Joint Business Council.

Section 11-1-6 Wind River Reservation

The Wind River Reservation is that area of land described in 18 U.S.C. Section 1151 as follows, as may be circumscribed by Ordinance No. 39, as amended:

Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country,” as used herein means:

a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation,

b) All dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Section 11-1-7 Report Forms and Examples.

Examples marked as exhibits - see at the end of this Title:

Exhibit 1 - Business Tax Quarterly Return Summary (Form XI-1)

Exhibit 2 - Quarterly Report of Oil Production (Form XI-2)

Exhibit 3 - Quarterly Report of Unprocessed Gas Production (Form XI-3)

Exhibit 4 - Quarterly Report of Processed Gas Production (Form XI-4)

Exhibit 5 - Oil Amendment Form (Form XI-5)

Exhibit 6 - Gas Amendment Form (Form XI-6)

Exhibit 7 - Processed Gas Amendment Form (Consists of Three Pages) (Form XI-7)

Exhibit 8 - Monthly Tax Estimate (Form XI-8)

CHAPTER 2 TRIBAL MINERALS DEPARTMENT

Section 11-2-1 Creation

There is hereby established a Tribal Mineral Department composed of such tribal employees as may be employed from time to time by the business councils, or their authorized representatives.

Section 11-2-2 Purpose

The Tribal Mineral Department shall perform all tasks and assignments necessary to protect the mineral resources of the tribes and to insure that the tribes receive the maximum economic benefit from tribal mineral resources.

Section 11-2-3 Duties of the Tribal Mineral Department

The Tribal Mineral Department, under the control of the business councils, shall perform such duties as are assigned to it by the business councils or their authorized representatives, including, but not limited to, the following:

- (1) Assemble and maintain on a current basis records of all tribal mineral leases. The records shall identify the leased land, the lessees and their assigns, the royalty rate, the rental rate, the term, special obligations of the lessees, and such other information as may be appropriate.
- (2) Assemble and maintain oil and gas lease maps of the reservation and vicinity showing the status of development on each lease.
- (3) Maintain records showing by tribal leases and fields the amount of production, the amount paid in royalty and rental.
- (4) Verify that the lessees use the correct price in calculating royalty payments and report any inadequacies to the business councils.
- (5) Follow the progress of oil and gas development on the reservation and vicinity.
- (6) Review proposed unitization and communitization agreements, secondary and tertiary recovery projects and make recommendations to the business councils.
- (7) Report leases not producing in paying quantities, or that are otherwise in violation of the lease and make recommendations to the business councils.
- (8) Maintain communication with contractors, or joint operations, for projects in which the tribes have a financial interest and monitor contract operation in accordance with the terms of the contracts to insure performance of the obligations of the contracts with the tribes.
- (9) Upon request, advise and assist in negotiations of contracts for the development of mineral resources.
- (10) Investigate and report the improper use of land by lessees.

(11) Review reports of oil and gas lease sales in the Rocky Mountain area, by the Department of the Interior, states and other tribes.

(12) Check the availability of lands for leasing and block tract boundaries for prospective lease sales.

(13) Advise prospective lessees as to availability of lands for leasing or for developmental agreements.

(14) Analyze bids received at competitive sales and recommend acceptance or rejection of high bids.

(15) Maintain records of bonus bids and leases awarded at tribal lease sales.

(16) Review and analyze governmental regulations affecting tribal mineral resources and make appropriate recommendations to the business councils.

(17) Administer the collection of tribal taxes measured by oil, gas or other mineral production.

Section 11-2-4 Personnel

The personnel of the Tribal Mineral Department shall be hired and fired by the business councils, or their authorized representatives, and shall be responsible and answerable to the councils in all respects. The qualifications for personnel shall be fixed by the business councils, or their authorized representatives.

(1) Qualifications of the Position of the Director of the Tribal Mineral Department.
This position calls for the following:

- a) High school graduate, or better;
- b) Knowledge of geography of the reservation;
- c) Elementary knowledge of geology;
- d) Experience as a scout or landman or as an assistant to one;
- e) Bookkeeping experience would be helpful;
- f) Ability to prepare reports; and
- g) Ability to meet with people and argue convincingly.

(2) Qualification of the Position of the Record Keeper-Secretary. This position calls for the following:

- a) High school graduate or better;
- b) Bookkeeping skills and ability to handle numbers accurately; and
- c) Ability to type reports.

Section 11-2-5 Inspection of Tribal Leases and Filing of Certain Production Records

In order to ensure that the Shoshone and Arapaho Tribes are receiving the proper royalties on production and sales from their leases, it is resolved that:

(1) The employees of the Tribal Minerals Department shall be permitted to witness all LACT meter readings and tank gauging at the end of the month and all LACT meter provings on tribal leases.

(2) The employees of the Tribal Mineral Department shall, upon notice to the lessee (or operator), be permitted to gauge the sales or bad oil tanks on any tribal lease and to conduct their own samplings for measurement of gravity and BS&W.

(3) The lessee (or operator) and purchaser of crude oil shall each submit to the Tribal Minerals Department, within thirty (30) days after the end of each production month, one copy of all LACT and run tickets, all monthly meter readings, and all LACT meter proving reports.

(4) If either the lessee (or operator) or the purchase of crude oil knowingly fails to comply with the foregoing requirements, the Joint Business Council shall place the lessee (or operator), or purchaser of crude oil on the list of individuals and companies ineligible to do business with the Tribes.

(5) If the lessee fails to comply with the foregoing requirements, the Tribal Minerals Department shall document the lessee's noncompliance with this resolution and shall forward the documentation to the Superintendent of the reservation and the USGS supervisor with a recommendation that regulatory sanctions be taken pursuant to 25 CFR, Sections 171.22 and 184.24.

CHAPTER 3 CIVIL PENALTY REGARDING RUN TICKET

Section 11-3-1 Enforcement

The Bureau of Indian Affairs Police Department, the Tribal Minerals Department and the Tribal Fish and Game Department are authorized to establish random checkpoints anywhere within the exterior boundaries of the Wind River Reservation, at any time of the day or night, and make random stops of all vehicles capable of hauling crude oil, for the purpose of checking the run tickets of haulers of crude oil operating on the reservation. Any such hauler failing to stop at a checkpoint will be subject to a \$10,000.00 civil penalty and barred from further crude oil hauling on the reservation. Any crude oil hauler not having a properly and completely filled out run ticket will subject to a \$10,000.00 civil penalty and debarred from further crude oil hauling on the reservation.

Section 11-3-2 Detention of Truck

If an appropriate authorization cannot be produced by the driver, the truck should be detained and turned over to the appropriate federal authorities.

Section 11-3-3 Impoundment

If any crude oil hauler fails to pay such civil penalty, the equipment of such hauler will be impounded if found on the reservation, and held until such time as the civil penalty is paid.

Section 11-3-4 Continued Hauling

If any crude oil hauler continues to haul crude oil on the reservation after having been barred from such activity, such hauler will be subject to an additional \$10,000.00 civil penalty for each piece of equipment violating the debarment, and such equipment will be impounded until the civil penalty is paid.

Section 11-3-5 Hearing

Any crude oil hauler who wishes to contest the assessment of the civil penalty, or the impoundment of equipment, shall have the opportunity of a hearing before the Shoshone and Arapaho Tribal Court or the Court of Indian Offenses by subjecting himself to the jurisdiction of the court within five (5) days of the assessment of the penalty or the impoundment of the equipment.

CHAPTER 4

CONTROL OF STRAY OR TRESPASSING LIVESTOCK CODE

Section 11-4-1

Definitions as Used in this Code

(1) “Tribes” means the Shoshone and Arapaho Tribes of the Wind River Reservation, Wyoming.

(2) “Reservation” means the Wind River Indian Reservation, Wyoming.

(3) “Joint Business Council” means the Shoshone Business Council and the Arapaho Business Council, the respective governing bodies of the tribes, acting in joint meeting.

(4) “Cooperative Agreement” means the agreement between the Wyoming Stock Growers Association and the Shoshone and Arapaho Tribes.

(5) “Secretary” means the tribal secretary.

(6) “Livestock Officer” means the officer appointed by the Joint Business Council and includes such other persons acting under his authority or otherwise designated by the Joint Business Council to carry out and enforce this ordinance.

(7) “Trespassing livestock” means any bovine animal, sheep or cattle, horse, mule, swine or goat, running on tribal land or land held in trust by the United States for individual Indians, whether fenced or unfenced, within the exterior bounds of the reservation, that falls within one or more of the following classes:

a) The owner of the trespassing livestock is unknown in the locality where the livestock is found or the owner is known but cannot with reasonable diligence be found;

b) The trespassing livestock is unbranded or unmarked except unweaned animals running with their mother who wear a brand or mark;

c) The trespassing livestock is branded with two (2) or more brands and the ownership is disputed; and

d) The owner of the trespassing livestock is known but does not have a valid grazing or crossing permit granted by the tribes for such livestock.

(8) “Service” or “to serve” as used in this code means one or the other of the following:

a) Delivery to the owner or his representative by handing such a person a true and correct copy of a notice or other paper, or by leaving a copy at his dwelling house or usual place of abode with a person of suitable age and discretion then residing therein; the owner of the trespassing livestock has twenty-four (24) hours from receipt of notice to remove his livestock from trespass; or

b) Delivery by certified mail, return receipt requested, to the address, if known, or to the last known address, of the individual to remove his livestock from trespass within twenty-four (24) hours after receipt of a notice. Service shall be made by a person at least eighteen (18) years of age and proof of such service shall be made by such person by filing with the Livestock Officer a statement certifying the date, time, place and manner of service.

If the livestock are not removed within a 24-hour period, the livestock will be impounded without further notification. Once an owner has been in trespass, they will be impounded without further notification.

Section 11-4-2 Impoundment Where the Owner is Not Known

The Livestock Officer may impound trespassing livestock that falls into one or more classes (a), (b), (c), and (d) of Section 11-4-17 of this code. Before taking such action, the Livestock Officer shall inspect the trespassing livestock for brands and other evidence of ownership, and shall make a diligent effort to learn or determine the ownership of such trespassing livestock. In his discretion, the Livestock Officer may hold such trespassing livestock for not more than ten (10) days after his inspection to enable him to complete his investigation of ownership. If the owner is found, the Livestock Officer shall serve the owner with notice as provided in Section 11-4-3 of this code and shall proceed in accordance with Section 11-4-3. If the owner is not found, the trespassing livestock shall be sold in accordance with the provisions of this code.

Section 11-4-3 Impoundment and Notice Where the Owner of Trespassing Livestock is Known

Where the owner of the trespassing livestock is known, after impoundment, the Livestock Officer shall serve the owner in the manner provided in section 11-4-1 (8) of this code with written notice of such impoundment. The notice shall describe the livestock impounded, including any brands or marks, the dates and place of trespass, and the date and place of impoundment. A copy of this code shall accompany the notice and the notice shall specify that the owner may redeem the trespassing livestock upon payment of the accrued costs and expenses and hereinafter defined, not more than ten (10) days after the date of service of the notice, otherwise the trespassing livestock will be sold in accordance with the provisions of this code. The owner may redeem the trespassing livestock within the time allowed upon payment of the costs of feed and care incurred by the tribes, and all other costs and expenses incurred under the

authority of this code, including the costs of the time spent by the Livestock Officer as measured by the compensation paid by the tribes to the Livestock Officer, plus reasonable reimbursable expenses incurred by the Livestock Officer.

Section 11-4-4 Sale of Trespassing Livestock

If there is an unsettled dispute as to the identity of the rightful owner, or if the rightful owner of trespassing livestock is not found, or, when found, refuses or fails within the time allowed to pay the costs and charges specified in Section 11-4-3 of this code, the Livestock Officer either shall send the trespassing livestock to the nearest available open market or licensed sales ring where a Wyoming brand inspection is maintained and shall direct that such livestock be there sold, or at the option of the Livestock Officer shall sell the trespassing livestock at public sale to the highest responsible bidder. The secretary shall execute and deliver a bill of sale from the tribes to the purchaser of such trespassing livestock.

Section 11-4-5 Disposition of Proceeds of Sale

From the proceeds of any sale under Section 11-4-4 of this code, the Tribes shall be reimbursed for all costs and expenses as defined in Section 11-4-3 of this code in carrying out the provisions of this code, and any remaining balance shall be deposited in a Wyoming bank or savings and loan institution, in the name of the Tribes, in a special account identified as "Shoshone and Arapaho Tribes, Trespassing Livestock Account."

Should the proceeds of any sale under this code be insufficient to pay all costs and expenses incurred under this code, the deficit shall be paid by the Tribes.

Section 11-4-6 Payment to Owner upon Proof of Ownership

The remaining balance from the sale of trespassing livestock on deposit in accordance with Section 11-4-5 of this code, together with accrued interest, shall be paid to the rightful owner of such trespassing livestock, provided satisfactory proof of claim for such payment is made within one (1) year from the date of sale; otherwise such balance, together with accrued interest thereon, shall be paid into the general account of the Tribes and any and all claims against such balance shall stand extinguished.

If more than one person claims to be the rightful owner, no payment shall be made except upon resolution of the dispute by the claimants or by adjudication of such disputes. Disputes between enrolled members of the tribes will be held in the Shoshone and Arapaho Tribal Court. Non-Indian disputes will be settled by the laws set forth by the Wyoming Stock Growers Association.

Section 11-4-7 Destruction of Diseased Trespassing Livestock

The Livestock Officer is hereby authorized to destroy any trespassing livestock certified by a licensed veterinarian to have any infections, contagious or communicable disease and that such destruction is necessary to prevent the spread of disease. Neither of the tribes, the Livestock Officer, nor any other tribal employee or agent shall be liable for destroying such trespassing livestock.

Section 11-4-8 Liability for Death or Loss of Trespassing Livestock

Neither of the tribes, the Livestock Officer, nor any other tribal employee or agent shall be liable to the loss of any trespassing livestock by reason of the death of such trespassing livestock while in the possession of the tribes, the Livestock Officer, or any other employee or agent of the tribes.

Section 11-4-9 Reports of Livestock Officer

The Livestock Officer shall file a report with the secretary every thirty (30) days of all trespassing livestock as to which action had been taken under this code. The report shall describe the livestock, identify any brands or other marks, and set out the status of the action under this code. The reports shall be open to the public for inspection.

Section 11-4-10 Notice of this Code

As a convenience to the public, this code shall be conspicuously posted in the Wind River Indian Agency, the Tribal Office building and in such other public places on and adjacent to the reservation as the Joint Business Council may direct, including, if permissible, the post offices in Lander, Riverton, Shoshoni, Thermopolis and Dubois, Wyoming. A classified advertisement shall be published in the newspapers of general publication serving the towns mentioned above describing the nature and purpose of the code, specifying that copies of the code are available on request at the Wind River Indian Agency and the Tribal Office, and identifying the places where the full copy that of the code is posted. Nothing stated in this section and no action or failure to act under this section shall affect the validity of this code.

Section 11-4-11 Notice of Livestock Impoundment

If the owner or owners of impounded livestock cannot be found prior to the livestock being sold, a notice in the local papers will be posted in hopes that the owner or owners may be found. If the owners are found they will be required to pay the impoundment costs to redeem the livestock.

The cooperative agreement entered into between the Shoshone and Arapaho Tribes and the Wyoming Stock Growers Association will be used in conjunction with this code.

CHAPTER 5 ZONING CODE

Section 11-5-1 Purpose

Uncontrollable use and development of land within the Wind River Indian Reservation poses a threat to the use of the reservation as a homeland for the Shoshone and Arapaho Tribes for whom the reservation was established and jeopardizes the value of the land and water, impairs the economic benefits of the natural resources and damages the environment. All residents of the reservation are affected. To protect the interests of the tribes and all persons on the reservation this code is adopted.

Section 11-5-2 General Definitions

- (1) “Agency” means the Wind River Agency.
- (2) “Councils” means the Business Council of the Shoshone Indian Tribe and the Business Council of the Arapaho Indian Tribe.
- (3) “Person or Persons” means any individual, partnership, or corporation, association, or their agents, except Indians trading and selling traditional arts and craft items.
- (4) “Secretary or Secretary of the Interior” means the Secretary of the Interior or his authorized designate.

Section 11-5-3 Lands Affected

This code shall apply to all lands within the exterior boundaries of the Wind River Reservation, whether held in trust by the United States for the benefit of the individual Indians or for the Shoshone and Arapaho Tribes or held in fee by Indians or non-Indians.

Section 11-5-4 Establishment of Zoning Area Categories

Four categories are hereby established, as follows:

- (1) Residential. Subject to the protection of existing uses as provided in Section 11-5-10 of this code, all land subject to this code is hereby zoned as “residential.” The residential designation may be changed pursuant to the procedures set forth in Section 11-5-5 of this code.
- (2) Rural. All land reserved for farming and grazing that is designated “rural” pursuant to the procedures set forth in Section 11-5-5 of this code.

(3) Commercial. All land deemed suitable for the establishment of retail, wholesale, professional, or service businesses, designated “commercial” pursuant to the procedures set forth in Section 11-5-5 of this code.

(4) Industrial. All land deemed suitable for manufacturing, energy production, mineral development, or other industrial pursuits, designated “industrial” pursuant to the procedures set forth in Section 11-5-5 of this code.

Section 11-5-5 Procedures for Designation of Zone Areas Other than Residential

(1) The councils, of their own initiative, or at the request of an applicant, may designate areas in the residential zone for zoning other than residential. Notice of the proposed rezoning shall be posted in conspicuous places in the tribal offices, in the agency, and with the consent of the county, in the Fremont County Courthouse in Riverton. The notice shall be advertised at least once a week for two (2) weeks in at least one newspaper of general circulation within the reservation. The notice shall provide at least twenty (20) days from the date of the first publication within which all interested persons, Indian and non-Indian, may submit their views at a public meeting of the councils to be held at a time, date and place designated in the notice. A transcript of the meeting shall be made, and if the meeting is held at the request of an applicant, the applicant shall have the right to be represented by counsel. After the councils have received the views of interested persons, the councils may take such action as may be appropriate in the premises. Any final zoning order adopted by the councils shall be posted and published. The final order shall take effect ten (10) days after the date to the second publication, unless an emergency requires an earlier effective date. (Form XI-9 and XI-10)

(2) Emergency Situations. Where the councils deem that the interests of the public require emergency action, a rezoning order may be issued without regard to the notice procedures of Section 11-5-5, provided that any order issued in an emergency shall be posted and published in accordance with the provisions of Section 11-5-5.

(3) Amendments. Any zoning order may be amended by the councils, provided that no substantive amendment shall be made except in accordance with the notice provisions of this section.

Section 11-5-6 Restrictions on Use in Residential Zones

(1) No building or structure shall be erected or moved onto a residential zone unless it is:

a) A single family dwelling, or outbuilding (including, barn, stable or the like) used in connection with a family dwelling;

b) A school;

- c) A church or religious institution;
- d) A governmental or public service building; or
- e) For housing a commercial business for the convenience of the residents in the vicinity.

Section 11-5-7 Subdivisions; Trailer Parks

(1) Subdivisions

a) No subdivision or trailer park shall be expanded, enlarged, or established on trust lands without the prior written consent of the councils. No state, county or city approval is needed.

b) No subdivision or trailer park shall be expanded, enlarged or established on fee land without the prior written consent of both councils.

(2) In determining whether to grant such consent, the councils shall consider, among other things, the following:

a) Whether sufficient land will be provided for each structure, mobile or fixed, to assure safety, law and order, and aesthetic use of the land;

b) Whether sufficient park and recreational space will be provided;

c) Whether adequate water, sewer, and other utilities will be provided;

d) Whether adequate police and fire protection are available; and

e) Whether the proposed subdivision will be in conformity with character of the surrounding community and whether it will not unduly infringe on rural or agricultural lands, wildlife or fisheries.

(3) Applications for approval of subdivisions or trailer parks shall be made in the following manner for fee lands not exempted from tribal approval under Section 11-5-3:

a) Prior to submitting an application for a subdivision or trailer park permit to state, county, or city authorities (thereafter if required by circumstances), the developer shall submit to the councils and obtain their conditional approval of his proposal outlining his developmental plan. The developer at a minimum must submit to the councils a map of the proposed subdivision and a written statement of why the subdivision or trailer park should be approved with special attention to the five

considerations listed in Section 11-5-7. Photographs of the site and surrounding area should be attached;

b) The councils will call and hold a public hearing in accordance with the procedures set forth in Section 11-5-5 to consider the application. In addition to the publication required in Section 11-5-5, the applicant, at least fifteen (15) days before the hearing, shall place a notice of his application on the property at a place visible to the public and shall furnish satisfactory proof of such posting at the hearing. The councils may also require that the applicant mail a copy of the notice by registered or certified mail, return receipt requested, to each family unit or business within one-half (½) mile of the premises within the time to notify them of the hearing;

c) Within sixty (60) days after the public hearing, the councils will issue a written decision either granting or denying conditional approval and stating its reasons for so doing; and

d) Upon receipt of conditional approval of the councils, the developer will submit his formal application for a subdivision permit to the state, county or city, whichever are applicable. If the developer does not receive approval from the applicable state, county, or city within six (6) months of tribal conditional approval or if the developer's application is rejected, the tribal conditional approval will be considered revoked. If a subdivision or trailer park permit is granted by the applicable state, county and city authorities, the developer must submit the permit or permits to the councils, who within sixty (60) days after submission, will issue final approval of the subdivision or trailer park, provided all state, county and city approvals are in order and the permits are for development substantially in conformity to the plan initially submitted and conditionally approved by the councils.

(4) Applications for trailer parks and subdivisions on trust land shall be made in the same way and with the same procedural rights as in Subsection (3) (a), (b), and (c) above, except that instead of a conditional approval or rejection, the councils' action shall be final.

(5) Subdivision Defined. A subdivision is any land subject to this code which is divided, or proposed to be divided, into three (3) or more lots for the purpose of sale or lease as part of a common plan.

(6) Trailer Park Defined. A trailer park is any land subject to this code which is used or proposed to be used through sale or lease for the location of three (3) or more trailers or mobile homes.

Section 11-5-8 Restrictions on Use in Zones Other Than Residential

The councils shall establish the standards or zones other than residential by proposed and final orders designating such other zones.

Section 11-5-9 Variances

(1) Application for Variance. No structure not in conformity with this code shall be erected or moved onto land, and subject to Section 11-5-10, no existing structure shall be used for a purpose not permitted by this code without an approved variance from the council. A variance may be requested by filing with the councils an application for variance, setting out all relevant facts including the nature and location of the proposed structure or use and the justification for the requested variance. The councils shall call and hold a public hearing in accordance with the procedures set forth in Section 11-5-5 to consider the applications. In addition to the publication required in Section 11-5-5, the applicant shall, at least fifteen (15) days before the hearing, place a notice of the proposed variance on the property at a place visible to the public and shall furnish proof of such posting. The councils may also require that the applicant mail a copy of the registered or certified mail, return receipt requested, to each family unit or business within one-half (½) mile of the premises within time to notify them of the hearing. (Form XI-11)

(2) Action on Applicant for Variance. The councils shall deny a variance unless the applicant furnishes satisfactory proof:

- a) That the proposed variance would not materially interfere with the purposes of this Code; and
- b) That unless such variance is granted, the applicant will suffer hardship out of proportion to the public gain achieved by denying the variance. The views of persons living in the vicinity who make their views known to the council shall be considered in deciding whether to grant or deny the variance.

Section 11-5-10 Existing Uses Protected

Any lawful use of land existing:

- (1) On November 15, 1978; or
- (2) On any date of a subsequent designation of zones under this Code may be continued, even if such use does not conform with the provisions of this Code or with the subsequent designation of zones. If such nonconforming use is abandoned, discontinued or substantially changed for a total of twelve (12) months or more, and with all subsequent designation of zones.

Section 11-5-11 Oil and Gas Production

Nothing in this Code shall affect exploration, development, production, or transportation of oil and gas under any mineral lease or other contract approved by the Secretary of Interior.

Section 11-5-12 Enforcement

(1) The tribes, or any affected party, may bring suit in any court of competent jurisdiction to obtain damages, removal of the structure and injunctive or other relief to prevent or remedy any violation of this Code. Persons adjudged in violation of this Code in a suit brought by the Tribes shall be subject to liquidation damages of \$250.00, plus all actual damages, and shall be assessed all reasonable attorney's fees and costs of litigation incurred by the Tribes in enforcement of the Code.

(2) The Tribes, in addition to the foregoing, may take such other lawful measures as may be necessary to prevent or remedy a violation of this Code.

CHAPTER 6 CULTURAL RESOURCES MANAGEMENT CODE

Section 11-6-1 Legal Basis

(1) Tribal Governance. This chapter is enacted in accordance with the governance of the Wind River reservation, as established by current legal principles.

(2) Cultural Resource Management Legislation. This chapter is established because of the wishes of the Government and People of the Shoshone and Arapaho Tribes, and to establish compliance with various federal legislative acts, including the National Environmental Policy Act, the Archaeological Resources Protection Act, and the Native American Religious Freedom Act. Of specific concern is the current Department of the Interior Onshore Federal and Indian Oil and Gas Leases operating procedures (NTL1-85 Wyoming) which states that "all operations...must conform to the requirements of this Notice (except where local Indian requirements apply)."

(2) Jurisdiction

a) The Wind River Cultural Resources Protection Program (WRCRPP) shall be under the exclusive jurisdiction of the Joint Business Council of the Shoshone and Arapaho Tribes (JBC). All reports of operations by WRCRPP personnel, and requests for information by other parties, will be made directly to the Joint Business Council. All cultural resource actions on the Wind River Reservation (WRR) will be conducted by WRCRPP personnel.

b) Daily operations will be supervised by the WRCRPP Director, in regular consultation with the JBC, and other tribal, federal, state and company officials as designated by the JBC.

Section 11-6-2 Organizational Basis

(1) General Structure. The Wind River Cultural Resource Protection Program is a Tribal enterprise structured for economic benefit to Tribal members as well as for resource protection. It is currently in a transitional stage, using close cooperation with professional consultants and the University of Wyoming Department of Anthropology for a training program, with the ultimate goal being a small, independent Tribal Cultural Resource Management (CRM) Program.

(2) Personnel. Personnel shall consist of Tribal employees including Director, Supervisory Archaeologists, Field Archaeologists and Resource Interns, as required by workloads. Enrolled members of the Shoshone and Arapaho Tribes shall be preferentially employed.

(3) Qualifications

a) Qualifications, in terms of education and experience, will be those generally recognized for professional archaeologists in cultural resource management positions, since the cultural resources will be archaeological in nature; and

b) Duties of the Director require a graduate degree with a specialization in archaeology, and sufficient experience in the area. Staff members will have adequate relevant classes and degrees at the college level and adequate field experience. However, all field and report work will utilize Tribal members with less than complete qualifications in trainee capacities as needed qualifications and experience levels are developed.

Section 11-6-3 Procedural Basis

(1) Operations Requiring Cultural Resource Protection Procedures. Operations requiring an evaluation of the need for protection procedures shall consist of all operations with a potential for damage to cultural resources, primarily direct impact through ground disturbance activities such as construction or vehicle traffic, and indirect impact such as increasing access to undisturbed areas of the Wind River Reservation.

It is recognized that almost all such impacts are the result of minerals development activities, and most work will be concentrated in minerals development areas.

(2) General Procedures. General procedures shall consist of:

- a) Evaluation of all projects with potential impact on cultural resources by WRCRPP staff, including a search of existing WRR CRM files for known resources in or near the project area;
- b) Recommendation on appropriate action to the JBC, including no action, avoidance, further field work, and other alternatives;
- c) Initiation of action as approved by the JBC. In most previously undisturbed minerals development areas, these procedures will consist of field inspection by WRCRPP staff, to be followed by additional field operations such as more intensive survey and recording as needed;
- d) Final verbal recommendations to the JBC, and consultation with Bureau of Indian Affairs personnel and other parties as designated by the JBC, to establish final procedures for clearance of the proposed project, such as avoidance, monitoring or salvage;
- e) Compilation of a written report outlining the procedures, findings and recommendations, as established in the above steps; and
- f) Final JBC consideration of cultural resource actions, such as clearance, clearance with appropriate further procedures (such as avoidance procedures), or disapproval of the project (done on the basis of either the verbal or written report).

(3) Confidentiality of Information. All detailed information on the nature and location of cultural resources will be kept strictly confidential and housed under security arrangements in the Tribal Complex at Fort Washakie. Outside requests for use of this confidential information will be submitted to the JBC. At their direction, generalized CRM information and/or reports will be submitted to relevant tribal, federal, state or outside parties.

Section 11-6-4 Funding Basis

(1) Minerals Development Projects. The costs of all cultural resource procedures involved with minerals development actions, or other projects requiring review of direct or indirect impact, are the responsibility of the lessee, or state, federal or other party initiating the action. An invoice for all expenses will be submitted by the WCRPP Director to the Joint Business Secretary, and then to the Joint Bookkeeper, for forwarding to the responsibility party.

(2) It is recognized that other internal and external sources of funding can be obtained and applied to program support outside of standard minerals development procedures (e.g., heritage study projects, additional training of Tribal members).

CHAPTER 7 PRIVILEGE OF DOING BUSINESS TAX CODE

Section 11-7-1 Imposition of Tax

Any person or entity engaged in the production of oil and gas from land or minerals held in trust by the United States (hereafter “trust oil and gas”) for the Shoshone Indian Tribe and the Arapaho Indian Tribe (hereafter “Tribes”), or for any individual Indian, located with the exterior boundaries of the Wind River Reservation as described in Title 18, U.S.C., Section 11.51, as follows:

Except as otherwise provided in Sections 11.54 and 11.56 of this title, the term “Indian country” as used herein means:

- a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;
- b) All dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
- c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Shall for the privilege of doing business on the reservation pay an amount equal to the then-current tax rates imposed by the State of Wyoming and its sub-divisions on all severed oil and gas products, plus four percentum of the market value at the well of all oil and natural gas produced, saved and sold or transported from the field where produced (hereafter “trust oil or gas”);

Provided that the tax imposed by this ordinance shall not apply to the following:

- (1) Any interest of the tribes in such trust oil and gas;
- (2) The royalty interest of any Indian under the jurisdiction of the tribes in such trust oil and gas.

Section 11-7-2 Payment Procedures

The tax shall be paid on a quarterly basis by check made payable to the Shoshone and Arapaho Tribes and delivered to the Tribal Office Complex, Fort Washakie, Wyoming, on or before February 15, May 15, August 15 and November 15 of each year.

Section 11-7-3 Delinquency Penalty Plus Interest

A penalty of five percent (5%) shall be charged on any taxes not paid within the time specified in this ordinance, plus interest on the unpaid amount at the rate of one percent (1%) per month from the date of delinquency until paid.

Section 11-7-4 Deduction Prior to Distribution of Proceeds

The lessee, producer, and buyer of the trust oil and gas shall be responsible for payment of the tax on all production subject to tax, provided that every person or entity owning a taxable interest in trust oil or gas, or in the proceeds thereof, shall be liable for that person's proportionate share of the tax. The lessee, producer, or seller is authorized to deduct all taxes paid before making any distribution of the proceeds from the production.

Section 11-7-5 Quarterly Report of Producer

Any person or entity engaged in the production of such trust oil or gas, shall on or before February 15, May 15, August 15 and November 15 of each year file with the tribes a report for the preceding calendar quarter showing by lease the following:

- (1) Identification of the lease or contract under which the trust oil or gas is produced and the name and address of the taxpayer.
- (2) The number of wells on the lease, the number of producing wells, and the number of days of production by month for each well.
- (3) The gross amount of oil or gas produced and sold from each well.
- (4) The price or value base on which royalties were computed.
- (5) The total amount of production of oil or gas reported and the royalty paid to the United States on behalf of the tribes in accordance with the regulations of the Department of Interior, or paid to the tribes under contracts with the tribes.

Section 11-7-6 Refund and Credit for Overpayment; State Taxes

Any person or entity that overpays any tax imposed by this ordinance may, within one (1) year of the overpayment, apply in writing to the tribes for a refund. If the tribes find that an overpayment has occurred, the amount of the overpayment shall be credited to any taxes due from the taxpayer for the current period, or refund the overpayment in full. A credit shall be issued for an amount equal to the amount of the state taxes described in Section 1 herein paid, unless and until such amount is found by a court of competent jurisdiction to be collected unlawfully, in which case such amount shall be due and owing to the tribes.

Section 11-7-7 Regulations

See Chapter I of this Title.

LAW AND ORDER CODE
OF THE
SHOSHONE AND ARAPAHO TRIBES
OF THE WIND RIVER RESERVATION

WIND RIVER WATER CODE

Effective March 18, 1991

CHAPTER 8 WIND RIVER WATER CODE

Section 11-8-1 Part 1 - Findings and General Provisions

Section 11-8-1(A) Findings

(1) The Tribes find that all Reservation natural resources are interconnected, and that the water resource has cultural, spiritual and economic values that guide the appropriate use, management and protection of that resource, and that condition all water and land use activities in the watersheds and drainage basins of the Reservation.

(2) The Tribes find that surface and groundwater are directly interconnected by the hydrologic cycle of the region of and the Reservation, and therefore water is a unitary resource, whether occurring as groundwater, springs, mineral water, soil moisture, precipitation, percolating water, recharge, drainage waters, surface water, or otherwise.

(3) The Tribes recognize that clean water is vital to the health and welfare of Reservation residents and to the vitality of the Reservation economy. Because resource uses may contribute to the degradation of water supply and quality, it is necessary to protect the environmental quality and integrity of all surface and groundwater.

(4) The Tribes find that all waters reserved by treaty are held by them in trust for the benefit of the Reservation public and for certain inalienable public uses and that, as an essential attribute of sovereignty, the power to determine the proper uses of said waters and the management thereof is the Tribes' alone.

Section 11-8-1(B) Definitions

For the purposes of this Code:

(1) “Board” shall mean the Water Resources Control Board of the Wind River Reservation.

(2) “JBC” shall mean the Joint Business Council of the Shoshone and Northern Arapaho Tribes of the Wind River Reservation.

(3) “Person” shall mean any individual or group or combination thereof acting as a unit, however associated; any organization of any kind, whether organized for profit or not, and regardless of the manner of form in which it does business, whether as a sole proprietorship, receiver, partnership, joint venture, trust, estate, firm, unincorporated association, corporation, or government, including but not limited to, any part, subdivision, or agency of any of the foregoing; and any combination of individuals or organizations in whatever form, and the plural as well as the singular number.

(4) “Reservation lands” shall mean all lands within the Wind River Reservation, which Reservation is defined to include:

a) All lands within the limits or exterior bounds of the reservation as delimited in the Treaty of July 3, 1868, 15 Stat. 673, less the portions ceded under the Acts of December 15, 1874, 18 Stat. 291, and June 7, 1897, 30 Stat. 93, notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation; and

b) All lands which may hereafter be added to or made a part of the Reservation.

(5) “Tribal Court” shall mean the Shoshone and Northern Arapaho Tribal Court of the Wind River Reservation.

(6) “Tribes” shall mean the Shoshone and Northern Arapaho Tribes of the Wind River Reservation.

(7) “Tribal water rights” shall mean those rights to divert or affect Reservation water which are granted pursuant to the provisions of this Code.

(8) “Reservation water” shall mean any and all waters underlying, flowing through or otherwise occurring or contained within the Reservation.

(9) “General Adjudication” shall mean the proceeding entitled In re: The General Adjudication of All Rights to Use Water in the Big Horn River System, 753 P. 2d 76 (Wyo. 1988), affirmed 492 U.S. 406 (1989).

(10) “1868 tribal water” shall mean that water reserved by treaty and adjudicated in the General Adjudication and bearing a priority date of 1868.

(11) “1868 allottee derivative water” shall mean that water adjudicated to the use of a successor in interest to an Indian allottee, the right to appropriate and the amount thereof which was determined by the General Adjudication and bearing a priority date of 1868, popularly referred to as “Walton rights.”

(12) “General Councils” shall mean the General Council of the Shoshone Tribe and the General Council of the Northern Arapaho Tribe of the Wind River Reservation.

(13) “Mean annual flow” shall mean that flow which is calculated using historical average annual flow data for the period 1940-1989.

(14) “Treaty-based water” shall mean 1868 tribal water and 1868 allottee derivative water.

(15) “State-held water right” shall mean a water right held pursuant to Wyoming state water law.

Section 11-8-1(C) Purposes

The purposes of the Wind River Water Code are:

(1) To provide an orderly system for the use and management of all 1868 tribal water and 1868 allottee derivative water.

(2) To provide effective guidelines and a mechanism for the administration and protection of tribal and allottee reserved rights, and State-held water rights to Reservation water.

(3) To ensure that Reservation residents have sufficient water for cultural, domestic, agricultural, stock, instream, and other uses, and that the Tribes have sufficient water for Reservation economic development.

(4) To conserve, manage and protect reservation water for future uses by generations to come.

(5) To protect Reservation water from over-appropriation, degradation, contamination, exploitation, and any acts injurious to the quantity, quality or integrity of the water.

(6) Within the limits of the Tribes’ public trust obligations, to encourage optimal development and multiple use of the water resource, to promote stability of investment in water use and delivery systems, and to permit all reasonable uses.

(7) To maintain minimum perennial stream flows and to promote optimal recharge of aquifers to supply beneficial uses.

(8) To protect the health and welfare of Reservation residents, the political integrity of the Tribes, and the economic security of the Reservation through the effective management and protection of the Reservation’s water supply and water quality.

Section 11-8-1(D) Scope

This Code applies to all persons desiring to use or using or undertaking activities on Reservation lands which affect Reservation water.

Section 11-8-1(E) Beneficial Uses of Water

(1) The uses to which water on the Reservation may beneficially be applied include but are not limited to:

- a) Domestic use;
- b) Municipal use;
- c) Agricultural use;
- d) Stock water use;
- e) Industrial use;
- f) Instream flow use, including instream flow for fisheries, wildlife, and pollution control, aesthetic and cultural purposes;
- g) Mineral resource development;
- h) Water storage, marketing and transfer;
- i) Groundwater recharge and supply enhancement;
- j) Recreational use;
- k) Cultural use;
- l) Religious use;
- m) Hydropower generation;
- n) Pollution control; and
- o) Resource development.

No presumption of preference of use shall be given to the order in which beneficial uses are listed above.

Section 11-8-1(F) Policies

The following general policies shall guide the use and management of water on the Reservation:

(1) Existing uses, established duties of water, and relative priorities concerning the use of Reservation water are to be protected and preserved, subject to the Tribes' public trust obligations to protect tribal and allottee derivative water.

(2) Surface water use will be adjusted for the varying water conditions each year, and overall water use allocation decisions will be guided by the declaration of drought, normal, and surplus hydrologic conditions that require different water management strategies. Water development decisions will recognize hydrologic variability and will consider alternative sources of supply, should dry conditions prevail.

(3) Groundwater use will be guided by the overall condition of each aquifer system, the expected long-term yields, and the cumulative impacts of existing and proposed uses on ground and surface water supply and quality.

(4) The planning and development of water and land resources will safeguard against surface and groundwater degradation.

(5) For long-term or carry-over storage, multipurpose impoundment structures are preferred over single purpose structures.

(6) Land use decisions involving or significantly affecting a stream bank, bed or channel, or water storage facility shall seek to maintain and enhance the fishery and wildlife resource.

(7) Drainage strategies will be developed with due consideration for the conjunctive or integrated use of surface and groundwater.

(8) All land, water or other resource strategies, decisions, or regulations shall consider the potential effect on all Reservation natural resources.

(9) Allocation decisions are subject to periodic consideration and review for their net effect on trust resources and values and may require adjustment of existing uses to protect trust purposes where appropriate.

Section 11-8-2 Part 2 - Establishment of the Water Resources Control Board, and the Office of the Tribal Water Engineer

Section 11-8-2 (A) Establishment of the Water Resources Control Board

(1) There is hereby established the Wind River Water Resources Control Board ("Board") as the primary enforcement and management agency responsible for controlling water resources on the Reservation. The Shoshone and Arapaho Tribes each shall appoint six (6) members of the Board. Each Tribe shall designate three (3) members of the initial Board to

serve for a term of two (2) years and three (3) members of the initial Board to serve for a term of one (1) year. Each Board member appointed, or reappointed after serving the initial term, shall serve for a term of two (2) years and until his successor is duly appointed and qualified. The Tribe who appointed the Board member whose term has or is expiring also shall appoint such member's successor. No Board member shall vote on a decision which could have a material financial effect personally or directly upon such member or his business. A member shall disclose to the Board any such financial effect at the time of such vote and may participate in the discussion of the matter without voting upon it. Eight (8) members of the Board shall constitute a quorum, provided at least four (4) members from each Tribe are present.

(2) The duties and authority of the Board are to:

- a) Oversee the development of water resource management plans and supervise the execution and enforcement of Code provisions and regulations thereunder;
- b) Approve or disapprove of water use permits in accordance with the principles and procedures set forth in this Code;
- c) Conduct hearings regarding water permit applications and hear disputes regarding the actions of the Tribal Water Engineer and/or water development/management staff in accordance with the procedures adopted pursuant to Board regulations;
- d) Compel production of documents or other things and compel attendance of witnesses before the Board;
- e) Adopt such rules, regulations, permit forms, and additional materials, and propose amendments to the Code, as necessary to interpret and execute its authority and to implement the objectives and purposes of this Code;
- f) Establish and maintain a technical staff qualified by training and experience to enforce and administer this Code;
- g) Research and define, based on the best available data, the most effective ways of managing, conserving, and protecting Reservation water;
- h) Hire and supervise the Tribal Water Engineer;
- i) Advise the General Councils of the Tribes on all aspects of the Code and Reservation water; and
- j) Organize and operate its offices in order to discharge its duties and responsibilities effectively.

Section 11-8-2 (B) Establishment of the Office of the Tribal Water Engineer

(1) There is hereby created the office and the position of Tribal Water Engineer (“TWE”). The TWE is the executive arm of the Board, is responsible directly to the Board, and has the authority to administer the water laws of the Tribes according to this Code, its regulations, and the general instructions of the Board. The Board may delegate any of its duties and authority to the TWE except the duty and authority:

- a) To hire and supervise the TWE;
- b) To hear disputes regarding the actions of the TWE and/or water development/management staff in accordance with the procedures set forth in this Code;
- c) To approve or disapprove of water use permits in accordance with the principles and procedures set forth in this Code; and
- d) To adopt regulations.

(2) The TWE shall be a qualified hydrologist and water resource manager, with a minimum educational level of a Master’s degree in a water-related field, or with a Bachelor’s degree and not less than four (4) years’ experience or water resource management, water rights administration, or water development or engineering. The TWE will be hired by the JBC.

(3) Regulation of Reservation water being the lifeblood of the community and critical to the conservation and enhancement of its resources, the TWE shall evenhandedly guard all the interests involved in carrying out the duties and authorities of his office.

(4) The TWE shall have the following duties and authorities:

a) Administrative and Enforcement Functions

i) to administer Reservation water rights, and ensure maximum compliance with the Code and with the conditions of all permits, determinations, orders, regulations, plans, policies, guidelines, and other actions taken by the Board;

ii) to enter upon Reservation lands to inspect methods of diversion, withdrawal, and other activities affecting water quality and quantity, to install measuring devices for the purpose of enforcing and administering this Code, and to monitor water use, water quality, and diversions;

iii) in an emergency, to 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 and quantity, subject to expedited appeal to the Board by the affected person, as provided in Part IV of this Code; and

iv) to initiate, by citation and other means, enforcement proceedings before the Board, or in Tribal Court or other court of competent jurisdiction for violations of this Code, including injunctive relief.

b) Advisory Functions

i) to hire, supervise, and fire office and technical staff, provided that all hiring and firing decisions are subject to the approval of the JBC;

ii) to advise the Tribes on all water resource related development planning issues, provide the Board with a semiannual report on water quality and quantity and the status of water use on the Reservation, and provide suggestions, alternatives, and recommendations for water quality management;

iii) to recommend to the Board changes to this Code and to its regulations;

iv) to develop and submit an office budget, and office policies and procedures to the Board for approval;

v) to recommend certain land areas and waters on the Reservation to the Board as suitable for dedication to certain beneficial uses; and

vi) to recommend designation of surface and groundwater regions on the Reservation as “critical management areas” and to propose specialized provisions for management within those regions.

c) Fact-Finding and Information Functions

i) to research and determine water supply and quality characteristics and development possibilities;

ii) to collect, maintain, and analyze, on a continuing basis, information regarding Reservation- and basin-wide water resources and quality, including data on water, land, air quality, rangeland, and other factors actually or potentially affecting Reservation water or tribal water rights;

iii) to organize and develop a computerized database of Reservation water resource information, organized in a form useful to tribal decision makers

and Reservation residents, and provide periodic reports describing the overall structure, use, and application of the database;

iv) to perform regular research regarding the overall carrying capacity of the Reservation's water system, with a view in particular to discovering and reporting the levels above or below which specific water use impairs or injures overall water availability and use;

v) to conduct public educational programs and develop educational material regarding Reservation water rights and administration, irrigation management, water quality, environmental issues, water conservation, and any other pertinent issues as the latter may be determined by the Board;

vi) to declare "surplus" or "drought" water supply conditions, such determination to be made on the basis of hydrologic analysis and other substantial evidence and in consideration of existing demands for water; and to prepare, at the Board's request, alternative scenarios for water supply given different climatic trends and conditions for the use of the Board in setting priorities and preferred uses during drought;

vii) to determine the extent of potential effects on existing water users, given hydrologic conditions, from proposed uses of Reservation water; and

viii) to assist all applicants for permits or licenses in assembling and analyzing all hydrologic and environmental data required to be submitted with the application and otherwise to assist in the preparation of the application.

d) Research and Development Functions

i) to initiate and undertake research and development activities directed toward identifying financial support for water management and development;

ii) to identify new or analyze existing uses and means of developing, managing, conserving, and otherwise protecting tribal water resources;

iii) to identify promising research areas regarding tribal water resources and to solicit research proposals by government, university, or private sources;

iv) to develop the internal tribal technical and managerial capabilities to promote the direct involvement of tribal staff in the development and

construction of water resource supply, distribution, and management facilities and devices.

- v) to conduct hydrologic investigations to determine water needs; and
- vi) to study the feasibility of and make recommendations concerning a Reservation-based water quality laboratory.

Section 11-8-3 Part 3 - Permit System for Water Use on the Wind River Reservation

Section 11-8-3 (A) Permit or License Required

(1) No person shall divert Treaty-based water or undertake an activity affecting or involving such water without first obtaining a permit or license under this Part. Except when such diversion or activity is preemptively allowed by federal law, a permit or license is required for any of the following activities:

- a) Diversion of water from any stream course, spring or well;
- b) Drilling of any new well or modification of any existing well, including domestic, irrigation, industrial, municipal, or oil and gas development-related wells;
- c) Discharging, injecting, or depositing any waste, wastewater, or other contaminant into Reservation water;
- d) Changing the point of water diversion, whether of surface or groundwater;
- e) Changing the use of waters, or the place of use or the method of diversion or application of waters;
- f) Transferring Reservation water outside the watershed of origin;
- g) Altering any stream course or stream bank for any purpose, including but not limited to road construction and repair;
- h) Developing groundwater recharge projects;
- i) Generating hydropower;
- j) Storing or impounding water; and
- k) Dedicating water to instream flow.

(2) The issuance of a permit or license allows the activity therein described and constitutes an undertaking by the permittee or licensee to comply with the conditions therein stated and all tribal laws and regulations of general application covering such activity.

(3) For purposes of this Code, any person possessing appropriate rights under Wyoming law may receive a General Water Permit. Proof of appropriate rights under Wyoming law shall be submitted to the TWE in accordance with regulations of the Board.

(4) Any person proposing to undertake an activity which may affect Reservation water may apply to the TWE for a Statement of No Permit Required, and the TWE may issue such a Statement if he finds the activity will have a minimal impact on Reservation water or that the activity or diversion is preemptively allowed by federal law. The Statement shall be limited to the facts represented by the applicant. No fee shall be required for such application.

(5) All permits and licenses issued under this Code are provisional and shall not be construed to create an entitlement in the user beyond the provisional period nor to allow reliance thereon by any other person.

Section 11-8-3 (B) Permit System

The Permit System recognizes six (6) categories of permits. Any two (2) or more categories may be combined into a single permit, as appropriate. Any permit may be made subject to such conditions and stipulations as the Board may deem necessary in the public interest.

Categories of Permits

(1) 1868 Water Permit. Grants or confirms a right to use a share of 1868 tribal water or 1868 allottee derivative water to a user, and guides the present and future use and appropriation of the 1868 water right. The permit applies to surface water and groundwater. There shall be three (3) types of 1868 Water Permit, as follows:

- a) Type I. 1868 tribal water permit, granted to a tribal member, Indian allottee, or tribal entity, enterprise or political subdivision;
- b) Type II. 1868 allottee derivative water permit, granted to a successor in interest of an allottee; and
- c) Type III. 1868 tribal water lease permit, granted to a person to use 1868 tribal water, upon payment to the Tribes at rates to be established by the JBC, in addition to any applicable O&M charges.

(2) Permit for Changing Place of Method of Use, or Method of Application, or Point of Diversion. Grants the right to change the location or purpose of water use, method of application, or method or point of diversion.

(3) Instream Flow Permit. Grants the right to the Tribes to maintain specified instream flows and/or lake levels in reaches of or for entire streams or reservoirs on the Reservation.

(4) Watershed Transfer Permit. Grants the right to transfer treaty-based water outside the watershed of origin.

(5) Storage Permit. Grants the right to impound surface or groundwater for a beneficial use.

(6) General Water Permit. Grants or recognizes rights of use, appropriation, or development of water not otherwise covered by another permit.

Section 11-8-3 (C) License System

The License System recognizes four (4) categories of licenses. Any two (2) or more categories may be combined into single license, as appropriate. Any license may be made subject to such conditions and stipulations as the Board may deem necessary in the public interest.

Categories of Licenses

(1) Driller's License. Grants a license to drill or cause to be drilled a well within the Reservation to persons meeting tribal requirements for technical capability and bonding. The issuance of a Driller's License is contingent upon the applicant's providing a satisfactory description of his technical competence and financial stability, including a description of relevant training and experience, procedures and equipment, current financial condition, and disclosure of prior or existing claims; upon the posting of a bond in favor of the Tribes in an amount, established pursuant to Board regulations, conditioned upon the faithful performance and completion of all conditions and stipulations of the license; and upon the applicant's written undertaking to comply with tribal laws and regulations regarding record-keeping, logging, well development, supervision and inspection by the TWE.

(2) Stream Zone Alteration License. Grants the right to alter the streambed or banks. A Stream Zone Alteration License is required for all persons engaging in activity that affects the bed or banks of Reservation streams, including but not limited to construction of temporary diversion structures, road and culvert construction and repair, logging operations, grazing activities on the stream bank, and other activities affecting the stability of the stream channel.

(3) Discharge License. Grants the right to discharge waste, wastewater, or other contaminant into the surface or groundwater of the Reservation, through the point discharge of any substance, through the non-point discharge through landfills, septic tanks, or disposal pits, or through injection into groundwater.

(4) Well Construction License. Grants the right to construct a new well or modify an existing well, and requires the submission of specific technical data, including construction plans, effects on aquifer level and water quality, well pump test data, and lithologic logs.

Section 11-8-3 (D) Application Procedure

(1) Applications for any license or permit under this Part shall be made on forms developed by the TWE, including particular information of facts that in the judgment of the TWE are required for the proper processing of such applications.

(2) An application fee for permits and licenses shall be established in the regulations promulgated hereunder and shall be paid in advance to and collected by the Office of the TWE. The fee may be waived by the Board in the case of financial hardship. Such fees shall be used in part to defray the cost of reviewing the application and conducting a hearing.

(3) The TWE shall provide public notice of the requirements of this Part and shall allow continued historic water uses pending processing of the applications.

(4) For purposes of this Code, any existing water use which was proven in the General Adjudication and which formed the basis for a quantification of reserved water under the General Adjudication shall presumptively entitle the applicant to a permit under this Part.

(5) The TWE shall assist each applicant in the collection of data and the preparation of the application to the extent the applicant, through lack of resources or technical knowledge, requires such assistance.

(6) Within sixty (60) days of receipt of the application, the TWE shall review each permit application; perform investigations; prepare a report on each application; and recommend approval or denial to the Board, which shall have the authority to grant or deny the permit. Every decision of the Board must include factual findings which justify the decision, and must be consistent with tribal water and land use laws, and Wyoming state water law when applicable.

(7) The Board shall review all applications to determine whether the proposed use or activity adversely affects tribal resources or other tribal interests, whether the proposed use or activity is technically feasible, and whether the proposed use or activity is consistent with the policies, purposes, and procedures described by this Code, and Wyoming state water law when applicable.

(8) All applicants shall on request receive a hearing before the Board to provide an opportunity for a full factual presentation and for public comment and testimony on the proposed use or activity.

a) Notice of such hearing will be published at the Board's expense in a newspaper of general circulation within the Reservation at least one (1) week prior to the date of hearing. Notice shall also be posted in the tribal and BIA offices and such other areas as may be deemed appropriate by the TWE;

b) After the hearing, the Board shall promptly render a written decision on the application:

i) approving the permit without conditions;

ii) approving the permit with conditions;

iii) denying the permit; or

iv) tabling action pending receipt of additional data or information;

and

c) All proceedings of the hearing shall be recorded, and, if an appeal is sought, a transcript of the hearing may be requested by the applicant or any other affected party at his sole cost and expense.

(9) If the Board approves the application, the TWE shall issue the appropriate permit or license in conformity with the Board's decision.

Section 11-8-3 (E) Relinquishment of Tribal Water Rights: Sole Method of Acquisition

(1) Voluntary Relinquishment of Claims or Rights. Any holder or claimant of any right in or to the waters of the Reservation may voluntarily relinquish all or a portion of such right to the Tribes by any affirmative act indicating an intent to relinquish.

(2) No Loss by Adverse Possession, Prescription, Estoppel, or Acquiescence; Nontransferability

a) No right to use or otherwise affect the quantity, level, flow, pressure, quality, or temperature of water may be acquired by adverse possession, prescription, estoppel, or acquiescence; and

b) No right granted under this Code may be transferred, exchanged, sold, or otherwise conveyed except as provided in this Code.

Section 11-8-3 (F) Prohibited Acts; Violation of Permit Conditions or Code

(1) Prohibited Acts

a) No person shall:

i) forcibly, or by bribery, attempted bribery, threat, or other corrupt practice, obstruct or impede the due administration of this Code;

ii) commit fraud, or knowingly assist another in the commission of fraud, with the intent to evade or defeat the administration of this Code or costs imposed or assessed;

iii) falsely verify by written declaration any permit, form, or other document, or to intentionally withhold data required to be submitted by law;

iv) violate the conditions or stipulations of his permit or license including taking more water than is allowed by permit; or

v) wilfully take, alter or damage treaty-based water quality or water rights;

b) Any Indian who commits any of the above prohibited acts, upon conviction thereof, shall be sentenced to a term of imprisonment not to exceed six (6) months, or be ordered to pay a fine not to exceed \$1,000.00, or both;

c) Any person who commits any of the above-prohibited acts, or whose employees or agents in the course of their employment or agency commit any of the above-prohibited acts, shall be subject to civil proceedings before the Board on citation by the TWE. On a finding of violation, the Board may impose any of the following sanctions, or any combination thereof:

i) money damages;

ii) restitution;

iii) cancellation of the holder's lease, if the lands to which the permit applies or on which the violation occurred are tribal lands;

iv) injunctive relief;

v) affirmative remedial action;

- vi) additional conditions or limitations upon the holder's permit or license, including limitation of the amount of water permitted to be diverted;
- vii) suspension of the permit or license for a certain term;
- viii) exclusion from the territory of the Reservation, if the violator is subject to exclusion under federal law;
- ix) forfeiture of any permit or license;
- x) temporary or permanent disqualification from eligibility for any permit or license; and
- xi) costs.

(2) Appeal from a decision of the Board may be had by the affected person to Tribal Court or Wyoming courts, in accordance with the provisions of Part 6. The interest of the Tribes shall be represented by the TWE or legal counsel of the Tribes.

(3) In the case of criminal prosecutions of any Indian, proceedings for penalties under this Section 11-8-3 (F) shall be brought in the name of the Shoshone and Northern Arapaho Tribes in the Tribal Court, by the tribal prosecutor.

Section 11-8-4 Part 4 - Proceedings on Exercise of TWE's Emergency Enforcement Powers

When in the exercise of his authority under Section 11-8-2 (B)(4)(a)(iii), the TWE removes, renders inoperative, shuts down, closes, seals, caps or otherwise controls any method of diversion or withdrawal, any obstruction to the flow of water, or any activities adversely affecting the quality or quantity of treaty-based or tribally permitted water, the affected person shall have the following appeal rights:

Section 11-8-4 (A)

Upon petition, filed with the Board not later than fourteen (14) days from the date of the TWE's action, the Board, within three (3) days of filing such petition, will conduct a hearing to receive evidence from the person affected adversely by the TWE's action. The TWE shall provide to the Board on its request certified copies of all documents, things or other information which formed the basis for his action. The Board may modify or reverse such action of the TWE only where such action is not supported by hydrologic fact, tribal policy, or law, or is clearly arbitrary and capricious. The Board shall within forty-eight (48) hours issue a written decision stating the grounds therefor.

Section 11-8-4 (B)

If the Board affirms the TWE's action, the affected person may appeal the decision of the Board to the Tribal Court or Wyoming courts pursuant to Part 6 of this Code.

Section 11-8-5 Part 5 - Water Management Procedures

Section 11-8-5 (A) Water Supply Management

(1) Declaration of Hydrologic Conditions. At the beginning of each irrigation season, the TWE shall prepare a water supply forecast, and shall declare the existence of surplus, normal, and drought conditions, and the approximate extent of time in which each condition will exist each year. As a result of widely varying hydrologic conditions, the TWE may designate one portion of the Reservation in surplus and another in drought condition. These designations shall be based on hydrologic evidence, in consideration of total demand, as follows:

a) Normal Condition. A condition in which the mean annual flow for the watershed is achieved;

b) Surplus Condition. A condition in which the mean annual flow of the watershed is exceeded and there is excess water above demand on an entire stream or a specific reach of stream including the needs of downstream users. For purposes of determining demand under this paragraph, appropriative rights under state permits shall be limited to 2 cfs/70 acres; and

c) Drought Condition. A condition in which the mean annual flow of the watershed is not achieved and insufficient water exists to satisfy the demand on an entire stream or a specified reach of stream, including the needs of downstream users. For purposes of determining demand under this paragraph, appropriative rights under state permits shall be limited to 1 cfs/ 70 acres.

(2) Water Allocation

a) Guidelines

i) water is to be allocated according to priority date and in accordance with historic practices of rotation and scheduling; and

ii) water delivery systems on the reservation shall divert only that quantity of water to which they are legally entitled except during surplus and drought conditions as specified in this Part;

b) Surplus. Surplus water that may be used beneficially and efficiently will be allocated by the Board, based on the recommendation of the TWE, ratably among 1868 users first; later priorities are then allocated a proportionate share of the remainder; and

c) Drought. In drought conditions, water will be allocated on a priority basis, unless special agreements between the Tribes and other entities provide for a temporary change of water allocation formulas:

i) 1868 water rights will receive first priority for water, with all later rights honored as supply is available;

ii) all rights later than 1868 are than satisfied; and

iii) if a drought condition prevails such that not enough water exists to satisfy even 1868 claims, all 1868 water users will have water claims met, but at a lesser diversion rate than that specified in the 1868 Water Permit. The diversion rate shall be set according to the specific demands in relation to overall supply. The Board may set temporary use priorities during periods of drought after notice and hearing.

Section 11-8-5 (B) Public Safety Emergencies

To prevent or to cope with an emergency involving water quality, water supply, drought, flood or potentially dangerous environmental conditions, the Board is authorized to take any steps necessary to secure prompt and effective assistance and corrective action to protect the health and welfare of the Tribes and Reservation natural resources. Such action includes, but is not limited to:

(1) Seeking assistance from federal and state emergency management agencies for contamination clean-up, flood, or other emergency situations involving public safety;

(2) Developing the internal tribal capabilities for emergency response teams, including training and equipment purchases;

(3) Developing an emergency communications network for Reservation lands and people for the purpose of flood or other emergency warnings; and

(4) Developing additional groundwater or authorizing additional storage facilities for Reservation residents and activities and establishing specific waste-prevention or conservation incentives for Reservation water users.

Section 11-8-6 (A) Review of TWE Decisions

(1) Request for Hearing. Unless sooner required by other provisions of this Code, within thirty (30) days after issuance of a decision of the TWE, any affected person may file a written request for a hearing before the Board, which shall review and hear the matter.

(2) Finality of TWE Decision. If no request for a hearing before the Board is made with the time allowed, the decision of the TWE shall be final and not be subject to appeal to the Board or to any court.

(3) Hearing Before Board. Upon the proper and timely filing of an appeal, the Board will conduct a recorded hearing to receive evidence from the appellant and the TWE. The Board will issue a written final decision. Appeals from final decisions of the Board shall be made only to the Tribal Court pursuant to Section 11-8-6 (B) of this Part.

(4) Finality of Board Decision. If no appeal to the Tribal Court is filed within the time allowed, any decision or ruling of the Board shall be binding and enforceable and is not subject to review by any court.

Section 11-8-6 (B) Court Appeals

(1) Tribal Court Review. The Tribal Court is empowered to hear appeals from any final decisions or ruling of the Board.

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

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

(4) Standard of Review. Unless otherwise provided by this Code, appeals to the Tribal Court shall be limited to review of the record of the Board's administrative decision or ruling. The Tribal Court may modify, reverse, or remand a decision or ruling of the Board only where such decision or ruling is without substantial basis in fact, is contrary to tribal policy or tribal law, or is clearly arbitrary or capricious.

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

(6) Wyoming Court Review. Decisions of the Board on a State-held water right may, in addition to other remedies provided herein, be appealed to the Wyoming courts pursuant to applicable provisions of Title 41 of the Wyoming statutes.

Section 11-8-7 Part 7 - Miscellaneous Provisions

Section 11-8-7 (A)

The Tribes, through the JBC, will appropriate from available funds sufficient resources to administer the provisions of this Code.

Section 11-8-7 (B)

The General Councils of both Tribes and the JBC hereby waive any sovereign immunity from suit which may inure to the benefit of the Board, or the TWE, provided that any suit against the Board and the TWE must be brought in Tribal Court, or in the case of State-held water rights to the Wyoming courts, and further provided that such waiver is limited to the extent necessary to subject the Board and the TWE to suit for the sole purposes of declaring, adjudicating, and enforcing the parties' rights and duties as more fully described in this Code and any regulations promulgated hereunder. The waiver specifically does not waive the Board's or the TWE's immunity from suits for monetary damages, and specifically does not waive the sovereign immunity of the JBC, of either of the Tribes, or their General Councils.

Section 11-8-7 (C)

Before formal adoption of a proposed regulation, the Board shall publish proposed regulations in order to provide interested parties an opportunity to comment. The notice will invite written comments and give a deadline for their submission of not less than seven (7) days after publication of notice. The Board may, but is not obligated to, hold a public hearing; in that event, it will announce the time and place at which oral testimony will be heard.

(1) A regulation will become effective immediately after the closing date for comments or on the date otherwise specified therein.

(2) A copy of the regulations will be filed and made available for public inspection at the TWE office.

Section 11-8-7 (D)

Any pronoun used herein shall refer to any gender and to any number as the context requires or permits.

Section 11-8-7 (E)

All records required or allowed to be maintained by the TWE or the Board shall be public records, provided however, that the TWE shall deny the right of public inspection of the

following records, unless otherwise provided by law, on the ground that disclosure would be contrary to the public interest:

- (1) Investigatory files compiled for any law enforcement or prosecution purposes.
- (2) Interagency or interagency memoranda or letters which would not be available by law to a private party in litigation with the agency.
- (3) Medical, psychological, and sociological data on individual persons, exclusive of autopsy reports.
- (4) Records that are protected from disclosure by court order or federal or tribal law.
- (5) Personnel files and letters of reference, except those files shall be available to the duly elected and appointed officials who supervise the work of the person in interest.
- (6) Trade secrets, privileged information and proprietary commercial, financial, geological, or geophysical data furnished by or obtained from any person.

Any persons denied the right to inspect any record described above may apply to the Tribal Court for an order directing the custodian of the record to show cause why he should not permit the inspection. Notwithstanding the fact that the record might otherwise be available to public inspection, any persons, including the TWE, may apply to the Board for an order restricting disclosure of the particular record, and the Board, after hearing, may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. The Board's decision shall be review able de novo by the Tribal Court.

Section 11-8-7 (F)

In the event any provision of this Code or the application thereof to any person or circumstances is held invalid, the remainder of this Code shall not be affected thereby and to this end the provisions of this Code are declared to be severable.

Section 11-8-8 Part 8 - Effective Date

The provisions of this Code shall be effective as of March 18, 1991, and shall remain in effect until repealed or amended.

History: Adopted by the Northern Arapaho General Council on March 18, 1991, Resolution No. 6675; by the Shoshone General Council on March 16, 1991, Resolution No. 6680; and by the Joint Business Council on March 28, 1991, Resolution No. 6681. Effective Date: March 18, 1991.

Restated Nov. 1, 2004, by the Shoshone & Arapaho Tribal Court.