

DRAFT
**REVISED NORTHERN CHEYENNE LAW &
ORDER CODE**

TITLE 12
WATER CODE

NORTHERN CHEYENNE WATER CODE
Adopted and approved by the
Northern Cheyenne Tribal Council
on December 20, 1999, Resolution 304(95)

Amended on December 18, 2000, Resolution No. DOI-031 (01)
and on May 22, 2001, Resolution No. DOI-009(01)

TITLE 12

WATER CODE

TABLE OF CONTENTS

Chapter 1	GENERAL PROVISIONS
	A. Short Title
	B. Findings
	C. Declaration of Policies
	D. Definitions
Chapter 2	ESTABLISHMENT OF WATER MANAGEMENT ORGANIZATION: TRIBAL WATER RESOURCES BOARD AND TRIBAL WATER ADMINISTRATOR
	A. Tribal Water Resources Board
	B. Tribal Water Administrator
	1. Establishment
	2. Standard for Carrying out Duties
	3. Duties and Authorities
	a. Administrative and Enforcement Functions
	b. Advisory Functions
	c. Fact-finding and Information Functions
Chapter 3	WATER MANAGEMENT
	A. Purpose
	B. Comprehensive Water Management Plan

- C. Surface Water Resources
 - 1. Use and Transfer
 - 2. Declaration of Hydrologic Conditions
 - 3. Notice of Supplemental Water Availability
 - 4. Surface Water Allocation Procedures
- D. Ground Water Resources
 - 1. Declaration of Aquifer Conditions
 - 2. Ground Water Allocation Procedures

Chapter 4

PERMIT SYSTEM

- A. Permit Required
- B. Applications for Permits; Information Required
- C. Application Not Required for Protected Uses; Inventory of Protected Uses
- D. Application Procedures
- E. Permit Hearings
- F. Disputes Among Permit Holders

Chapter 5

ENFORCEMENT

- A. Prohibited Acts
- B. Penalties

Chapter 6

HEARING AND APPEALS

- A. Review of Initial Permit Decisions of the Board
- B. TWA Designation as Expert Witness

Chapter 7

GENERAL PROVISIONS

- A. Transfers
- B. Security Interests
- C. Deferral Agreements
- D. Voluntary Relinquishment
- E. No Loss by Adverse Possession
- F. Abandonment
- G. Reversion to Tribe

Chapter 8

MISCELLANEOUS PROVISIONS

- A. Funding
- B. Limited Waiver of Sovereign Immunity
- C. Records of the TWA or Board
- D. Severability
- E. Amendments

F. Effective Date

TITLE 12 WATER CODE

**CHAPTER 1.
GENERAL PROVISIONS**

12-1-1. Short Title

This act may be cited as the “Northern Cheyenne Water Code.”

12-1-2. Findings

The Tribe finds and declares that:

1. The management and protections of water is a central attribute of tribal sovereignty and is vital to the health and welfare of Reservation residents and to the vitality of the Reservation economy and environment.

2. The water resource has cultural, spiritual, social, environmental and economic values that require protections and must guide the appropriate use and management of all resources in the watershed and drainage basins of the Reservation.

3. All the waters reserved to the Tribe by Executive Orders of November 26, 1884, and March 19, 1990, as confirmed by the Northern Cheyenne-Montana Water Rights Compact of June 11, 1991 and the Northern Cheyenne Water Rights Settlement Act of September 30, 1992 (P.L 102-374), and decreed by the Montana Water Court on September 26, 1995, and all-alluvial groundwater underlying the Reservation to which the Tribe may establish a right under the terms of the Compact, are owned by the Northern Cheyenne Tribe and held in trust by the United States for the benefit of the Tribe.

4. 25 U.S.C. Sec.381 is applicable to the water rights governed by this Code. Any allottee holding an allotment subject to Sec. 381 is entitled to request and be provided an equitable distribution of a portion of the Tribal Water Right to carry out the agricultural purposes of the allotment. [Added September 2000]

12-1-3. Declaration of Policies

It shall be the policy of the Tribe to:

1. Preserve and protect in perpetuity the quantity and quality of tribal water resources and to exercise the self-determination of the Tribe through the wise use, administration, protections and management of tribal water resources.
2. Establish an orderly system for the use and management of tribal water resources in accordance with tribal priorities and with the principles established by the Compact and the Act.
3. Ensure that to the greatest extent possible all tribal members, and their future generations, have sufficient water for their use.
4. Ensure that a process exists to permit the Tribal and Tribal members to use Tribal water.
5. Protect tribal water from over appropriation, exploitation, and act injurious to the quantity, quality or integrity of the water resource.
6. Encourage, within the limits of the resource base and subject to the Tribe's obligations to protect the water resource, optimal development and multiple use of the resource.
7. Promote the stability of investment in water use and delivery systems and facilitate long-term planning of the Tribe and individual water users.
8. Protect the priority of tribal water in relation to other competing uses.
9. Manage surface water resources according to watershed and sub-watershed and with due regard to interaction with alluvial ground water systems.
10. Manage ground water resources according to aquifer system and with due regard to surface water interactions, deep aquifer systems or processes affecting ground water yield or quality.

12-1-4. Definitions

For the purposes of this Code, all terms otherwise not defined below shall be given their ordinary meaning, unless the term is specifically defined with the Act of the Compact, in which case it shall be given the meaning defined in the Act or Compact.

“Act” shall mean the Northern Cheyenne Water Rights Settlement Act of September 30, 1992, P.L. 102-374.

“Allottee” means an individual who holds a trust allotment on the Northern Cheyenne Reservation under the authority of the General Allotment, and subject to the terms and conditions of that Act. [**Added December 2000**]

"Alluvial ground water" shall mean water located below the land surface within the Quaternary hydrostratigraphic unit that borders or underlies major perennial and intermittent

streams in the Tongue River and Rosebud Creek basins. This unit is composed of unconsolidated alluvial deposits of clay, silt, sand, and gravel. All other water below the land surface will be deemed nonalluvial groundwater.

"Board" shall refer to the Water Resources Board of the Northern Cheyenne Tribe.

"Compact" shall mean the Water Rights Compact entered into by the Northern Cheyenne Tribe and the State of Montana on June 11, 1991, and approved by Congress in the Northern Cheyenne Water Rights Settlement Act of September 30, 1992, P.L. 102-374.

"Compact protected water use" shall mean a water use recognized and protected under Article II.A.1 of the Compact.

"Non-alluvial ground water" shall mean all other ground water beneath the land surface that is not alluvial ground water.

"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 or 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; and including the Northern Cheyenne Tribe, its departments, agencies and programs.

"Reservation lands" shall mean all lands within the limits or exterior bounds of the Reservation as delimited in the Executive Orders of November 26, 1884 and March 19, 1900, and all lands which may hereafter be added to or made a part of the Reservation.

"Reservation water" shall mean any and all waters arising on, underlying, flowing through, or otherwise occurring on or contained within the Reservation, including waters associated with mineral deposits.

"Tribal law" shall mean all ordinances passed by the Northern Cheyenne Tribal Council and all regulations adopted to implement such ordinances.

"Tribal Water Administrator" (TWA) shall refer to the water resources administrator of the Northern Cheyenne Tribe, as described in Chapter II of this Code.

"Tribal Water Right" or "Tribal Water" shall mean the right to divert or use water as described in Articles II and III of the Compact and decreed by the Montana Water Court on September 26, 1995.

"Tribe" shall mean the Northern Cheyenne Tribe of the Northern Cheyenne Reservation.

CHAPTER II

**TRIBAL WATER RESOURCES BOARD AND
TRIBAL WATER ADMINSTRATOR**

12-2-1. Tribal Water Resources Board

1. There is hereby created the Northern Cheyenne Water Resources Board ("the Board") which shall be the primary agency responsible for administering water resources of the Tribe and for implementing the provisions of this Code, the Compact and the Act.
2. The Board shall be composed of the members of the Northern Cheyenne Tribal Council Natural Resources Board.
3. The powers, duties and responsibilities of the Board are to:
 - a. Oversee the implementation of this Code.
 - b. Adopt regulations implementing the provisions of this Code, subject to approval thereof by the Tribal Council.
 - c. Adopt at least once every five years a comprehensive water management plan, subject to the approval of the Tribal Council.
 - d. Adopt such forms, internal rules and additional materials as the Board may consider advisable.
 - e. Approve or disapprove permits under the provisions of this Code.
 - f. Provide such information, give such notice and make such reports to the State of Montana and to the United States as are contemplated by the Compact and the Act.
 - g. Declare critical management areas and water supply conditions, such determinations to be made on the basis of recommendations of the TWA and in consideration of existing demands for water.
 - h. Develop and regularly present recommendations to the Tribal Council for long-term sources of funds to support tribal water management.
 - i. Insure the establishment of a technical staff qualified by training and experience to administer and enforce this Code within the budget approved by the Tribal Council.
 - j. Provide an annual report to the Tribal Council and tribal members on the status of tribal water resources.

- k. Recommend to the Tribal Council contracts, within budget and funding limitations, with consultants, public agencies, or any other public or private entity for the provision of services necessary or advisable to assist the Board in its responsibilities.
- l. Recommend for adoption by the Tribal council such cooperative agreements with the State of Montana and any federal agency that may be beneficial for the collection and sharing of data regarding water resources and other purposes.
- m. Prioritize the duties and authorities of the TWA as set forth in section B below in accordance with the budget and the needs of the Tribe.
- n. Delegate any of its duties and authorities to the Tribal Water Administrator except the duty or authority:
 - i. To hear disputes regarding the actions of the Tribal Water Administrator and/or water management staff in accordance with the procedures set forth in this Code;
 - ii. To approve or disapprove water use permits in accordance with the principles and procedures set forth in this Code; and
 - iii. To adopt regulations and water management plans, subject to approval of the Tribal Council.

4. A Board member who is materially, financially, or otherwise directly affected in a particular substantive action of the Board shall be disqualified from participating in any discussion or decision relating to the substantive action.

12-2-2. Tribal Water Administrator

1. Establishment. There is hereby created the office and position of Tribal Water Administrator ("TWA"). The TWA is the executive arm of the Board for water management, is responsible directly to the Director of the Natural Resources Department, and has the authority to administer the water laws of the Tribe according to this Code, its regulations, and the general instructions of the Board and the Director of the Natural Resources Department. The TWA shall be qualified by training or experience in the fields of hydrology, water rights engineering, irrigation, water development, watershed management, water supply.

2. Standard for Carrying Out Duties. Regulation of water being the lifeblood of the Tribe and critical to the conservation and enhancement of its resources, the TWA shall equally guard all interests involved in carrying out the duties and authorities of his office.

3. Duties and Authorities. The TWA shall have the following duties and authorities:

a. Administrative and Enforcement Functions

- i. To administer Tribal water rights, and ensure maximum compliance with this 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 lands within the Reservation to inspect methods of diversion, withdrawal, and other activities affecting Reservation waters, to install measuring devices for the purpose of enforcing and administering this Code, and to monitor water use on the Reservation or that may affect the Reservation.
- 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 Reservation waters, subject to expedited appeal by the affected person as provided in Chapter VI of this Code.
- iv. To initiate, by citation and other lawful means, enforcement proceedings before the Board or in Tribal Court or other court of competent jurisdiction for violations of this Code, including injunctive relief.
- v. To monitor and report all uses of Tribal water and to provide an annual report to the Board on the status and use of tribal resources.
- vi. To give notice to the State of new uses of the Tribal water right as provided in Article III.A.3 of the Compact, and to give notice to the State of any off-reservation use, transfer, or change of use of the Tribal water right as provided in Article III.B.4 of the Compact, and to appear on behalf of the Tribe in any proceedings involving such use.

b. Advisory Functions

- i. To advise the Board on all water resource related development planning issues, provide the Board with an annual report on water quantity and the status of water use on the Reservation, and provide suggestions, alternatives, and recommendations for water management.
- ii. To recommend to the Board changes to this Code and to its regulations.

- iii. To develop and submit an annual budget and office policies and procedures to the Board for approval.
- iv. To recommend certain land areas and waters on the Reservation to the Board as suitable for dedication to certain permitted uses.
- v. To recommend designation of surface and groundwater regions on the Reservation as "critical management areas," and to propose specialized provisions for management within those areas.

c. Fact-Finding and Information Functions

- i. To research and determine water supply characteristics and development possibilities by hydrologic basin.
- ii. To collect all data and to prepare all reports as required by the Compact or the Act.
- iii. To perform ongoing research regarding the overall capacity of the Reservation's watercourses and aquifers, with a view in particular to discovering and reporting the levels above or below which specific water use impairs or affects overall water availability and use, and to determine the extent of potential effects on existing water uses, given hydrologic conditions, from proposed uses of Reservation water.
- iv. To conduct public educational programs and materials regarding water and water rights.
- v. To determine watershed-wide rotation schedules for water diversion to meet demands in water short years.
- vi. To recommend appropriate water duties for adoption by the Board for Reservation lands and watersheds and to recommend technological changes or modifications to improve water use and efficiency.
- vii. To coordinate with other tribal departments regarding water quality issues.

**CHAPTER III
WATER MANAGEMENT**

12-3-1. Purpose

The purpose of this Chapter is to set forth the primary physical, hydrologic and engineering principles guiding the management of surface and ground water resources on the

Reservation. Such procedures are required to effectively manage, fully utilize and protect the water rights of the Northern Cheyenne Tribe, and to assure compliance with applicable laws and requirements of the Northern Cheyenne Montana Compact of 1991 and the Northern Cheyenne Water Rights Settlement Act of 1992. Management and administration of existing and proposed uses of water will be through a permit system, administered by the Board and the TWA's office. The permit system for water use is set forth in Chapter Four.

12-3-2. Comprehensive Water Management Plan

1. The Tribal Water Resources Board shall adopt, at least once every five years, a comprehensive water management plan which shall guide water resource decisions, permitting and management for the specified period.
2. The Comprehensive Management Plan shall include, at minimum, a basin by basin and reservation-wide description of the following:
 - a. Surface and ground water users, water uses, diversion points, and places of use;
 - b. A statement of the hydrologic condition of surface water resources (drought, surplus, normal), and ground water resources (overdraft conditions, steady state, recharge water balance);
 - c. A statement of water availability, including a projection of hydrologic conditions, and identified needs and planned development;
 - d. A statement of use planned for any excess, surplus or unused Tribal Water, pursuant to the Tribe's obligation to protect and manage the Tribal Water Right;
 - e. A statement of critical resource issues which affect overall resource uses within each watershed and ground water system;
 - f. Other information which the Board deems necessary to inform the public and promote the use of Tribal water for the benefit of the Tribe.
3. Proposed uses of water will be evaluated in relation to the Comprehensive Management Plan.

C. Surface Water Resources

1. Use and Transfer
 - a. In evaluation of a new use or transfer of surface water use within the reservation or off the reservation, the TWA shall consider:

- i. The impact of the surface diversion on other existing surface water users;
 - ii. The impact of the surface diversion on ground water recharge and the overall water balance, including return flow, in the immediate and relevant area;
 - iii. The impact of the surface water use upon the capture zone of any existing well in the immediate and relevant area, the size of the capture zone being determined by regulation;
 - iv. The impact on the surface water use and return flow upon surface or alluvial ground water quality.
- b. In evaluation of the use or transfer of alluvial ground water, within the reservation or off the reservation, the TWA shall consider:
- i. The impact of the ground water pumping upon surface water resources;
 - ii. Overall proposed use in comparison to hydrologic availability and need;
 - iii. The impact of the proposed use on the overall allocation of water for each watershed as prescribed in the Compact;
 - iv. The impact of the proposed alluvial groundwater use upon surface or ground water quality.
- c. Any use of surface or ground water off the Reservation must be approved by the Tribal Council.

2. Declaration of Hydrologic Condition. No later than March 1 of each year, the TWA shall prepare a water supply forecast to the Board for the declaration of the existence of surplus, normal and drought conditions, and the approximate time of occurrence of such condition will exist in the coming year. As a result of the differences between watersheds, the TWA may recommend and the Board may designate one portion of the Reservation in one condition and another part of the Reservation in another condition. The Declaration of Hydrologic Condition shall be based on hydrologic evidence and in consideration of total demand, as follows:

- a. Normal Condition: a condition in which the mean annual flow for a watershed is achieved and current and proposed demand is satisfied on the stream.

- b. **Surplus Condition:** a condition on a perennial stream or river in which the mean annual flow of the watershed is exceeded and there is excess water above demand on an entire stream.
- 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 a stream.

3. Notice of Supplemental Water Availability. Pursuant to the Declaration of Hydrologic Conditions for surface water resources, notice of supplemental water availability through ground water development, water exchange, transfer and purchase shall be issued. If no additional supplemental water exists, water allocation procedures proceed according to this Code and any applicable regulations.

4. Surface Water Allocation Procedures.

- a. For Compact protected water uses, water is to be allocated in accordance with historic practices.
- b. New uses of Tribal Water are granted pursuant to procedures and conditions outlined in this Chapter and by regulations adopted by the Board only if existing permit uses are satisfied given hydrologic conditions.
- c. Water delivery systems on the Reservation shall divert only that quantity of water to which they are legally entitled except as modified during surplus and drought conditions as specified in this Chapter.
- d. In surplus conditions, water shall be allocated among new users in accordance with the permit system in Chapter IV and the Comprehensive Management Plan provided for in this Chapter.
- e. In drought conditions, every effort will be made to find supplemental water through water development or exchange as a first measure to meet water demands. Thereafter, water will be allocated on a priority use basis in accordance with the following priorities from first to last: individual personal use; essential health and safety functions; other domestic and municipal use; stock water; instream flows for, among other things, fish and wildlife; agriculture; and industrial uses. Within each use, shortages shall be shared on an equal basis. The Board may also require water conservation measures as necessary within the various uses.
- f. In drought conditions, the Board may order permit holders to reduce or cease water use. Prior to any such order, the Board shall give notice of its intent to require reductions through publication in a Reservation newspaper of general circulation and posting in at least four places on the Reservation. A public

hearing shall be held at which public comment may be given. Decisions to require water use reductions may be appealed in accordance with Chapter VI.

D. Ground Water Resources

1. Declaration of Aquifer Conditions

- a. No later than March 1 of each year, the TWA shall determine and report on the condition of the alluvial and non-alluvial ground water resources of the reservation, including but not limited to, water levels, water use, amount of water in storage, water availability, artesian pressures and water levels, water quality, and other characteristics.
- b. An annual declaration of ground water development level goals, including but not limited to existing permitted uses, desired pumping rates, number of new wells allowed, and special seasonal pumping goals establishes the number of new wells allowed each year and specifies desired pumping rates.
- c. The waste of ground water is strictly prohibited by this Code. The Board shall require all flowing wells to be capped or equipped with valves to control the loss of artesian pressure. The Board shall have the authority to close, shut, seal or render inoperative any well which contaminates another. The Board shall develop regulations for the prevention of waste, contamination or pollution of ground water through leaky casings, pipes, fittings, valves or pumps either above or below the land surface, provided that in the following cases the withdrawal or use of ground water shall not be construed as waste:
 - i. The withdrawal of ground water in connection with the construction, development, testing or repair of a well or other means of withdrawing ground water;
 - ii. the inadvertent loss of ground water owing to breakage of a pump valve, pipe or fitting, if reasonable diligence is shown by the person in effecting the necessary repair;
 - iii. withdrawal of water for drainage purposes to increase the productivity of agricultural lands;
 - iv. the use of ground water to develop wetlands, sustain instream flows, or otherwise enhance cultural values or fish and wildlife;
 - v. the use of a spring or ground water resources for cultural, religious or traditional purposes including but not limited to the conduct of ceremonies, and the gathering of herbs, soils, rocks; and

- vi. the disposal of water in connection with the refining, production, reducing, smelting and milling of ores, coal, petroleum, gas and other industrial minerals, provided, however, that such waters meet all Tribal and federal guidelines for water quality.

2. Ground Water Allocation Procedures

- a. Compact protected ground water uses, if any, are to be protected according to historic practices of use.
- b. New and proposed uses of alluvial ground water shall be permitted if consistent with the Comprehensive Management Plan and other conditions or policies established by the Board for alluvial ground water use.
- c. Where hydrologic research determines that an existing or proposed use must be conditioned in order to protect the resource, lands, Compact-protected uses, or other waters affected by such use, the Board shall have the authority to modify or condition such uses.
- d. Non-alluvial groundwater may be used in accordance with the provisions of this Chapter, provided that the total surface and ground water (alluvial and non-alluvial) use does not exceed the Tribal Water Right or affect the Compact protected uses. Use of non-alluvial ground water that causes the Tribal Water Right to be exceeded must comply with state law in effect at the time of the use, to the extent of such exceedance. If the Tribe establishes a separate right to non-alluvial ground water in accordance with Article VII.B of the Compact, allocation of such water shall be in accordance with the provisions of this Chapter.

**CHAPTER IV.
PERMIT SYSTEM**

12-4-1. Permit Required

- 1. No person, from and after the effective date of this Code, shall divert, or undertake any activity affecting or involving, tribal water without first obtaining a permit under this Chapter. Except when such diversion or activity is preemptively allowed by federal law, a permit is required for any of the following activities.
 - a. Diversion of water from any stream course, spring, or well.
 - b. Discharge, injection or deposition of any waste, wastewater, or other contaminant into Reservation water.

- c. Change in the point or method of diversion, the use of water, the place of use, or season of use.
- d. Transfer of tribal water outside the watershed of origin or off the reservation.
- e. Alteration of any stream course or stream bank for any purpose, including without limitation, road construction and repair.
- f. Recharge of groundwater.
- g. Hydropower generation.
- h. Storage or impoundment of water.
- i. Dedication of water to instream flow.

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

3. Any person proposing to undertake an activity which may affect tribal water, may apply to the TWA for a Statement of No Permit Required, and the TWA may issue such Statement if he finds the activity will have a minimal impact on tribal water quality or quantity, or that the activity is preemptively allowed by federal law. The Statement shall be limited to the facts verified by the applicant.

4. Except as otherwise provided in this Code, all permits issued under this Code are (1) personal to the permittee, (2) non-transferable, (3) limited by the conditions therein imposed, and (4) not intended to create an entitlement in the user beyond the period specified in the permit.

5. An existing permit for tribal or individual land within the Reservation may be assigned to a lessee when the land included within the permit is leased, subject to the approval of the Board. Where there is no existing permit, the lessee may apply for a permit. A permit issued to a lessee shall be valid only as long as the lease is valid.

6. Members of the Northern Cheyenne Tribe shall have preference to the use of Tribal Water, the methods and procedures for exercise of such preference to be established by the Board by regulation, ~~taking into account~~ **subject to** the requirements of 25 U.S.C. Sec. 381. **[Added December 2000; amended May 2001]**

12-4-2. Applications for Permits; Information Required

1. All applications for permits shall include the following information, in addition to any other information deemed necessary by the TWA, verified under oath by the applicant.
 - a. The name and mailing address of the applicant, and whether or not the applicant is a tribal member, allottee, department or agency.
 - b. The basin of origin and the name of or a description of the source from which water is or will be diverted, used, or affected, including, in the case of surface water, whether the source of water is direct flow or stored water, or in the case of groundwater, whether the water is alluvial or non-alluvial.
 - c. The quantity of water which is or will be used or affected and the period or periods during which the water will be used.
 - d. A legal or other sufficient description reasonably setting forth the point or points of diversion, withdrawal or place of use, including whether the use is on or off reservation, and whether the use is within or outside the basin of origin.
 - e. A description of the method or methods of diversion or use.
 - f. The purpose or purposes for which water is or will be used.
 - g. The date on which the use or uses were or will be commenced.
 - h. The date by which all water requested will be put to full use.
 - i. A description of the applicant's plan for conservation of the water used or sought to be used.
 - j. For applications for the right to store water, the location and design of the dam, evidence that the dam was designed by a licensed engineer; the location and capacity of the reservoir; the amount of water sought to be stored; and the periods during the year when water will be diverted, impounded and withdrawn.
 - k. For proposed uses undertaken pursuant to a transfer by the Tribe, evidence of the Tribe's consent to transfer.

1. For a proposed use off-Reservation, but within the Tongue River or Rosebud Creek Basins, proof that the use will not violate any provision(s) of Article III, Section 4 of the Compact and will be in compliance with Montana law, if applicable. For a proposed use off-Reservation outside the Tongue River and Rosebud Creek Basins, proof that the requirements of Article II, Section 5 have been, or will be met. In addition, such off-Reservation uses shall be subject to Tribal Council approval.

12-4-3. Application Not Required For Protected Uses; Inventory of Protected Uses

1. The Board shall cause an inventory of all Compact protected water uses provided for in Article II.A.1 of the Compact and any other existing diversions and uses. The inventory shall be completed within six months of the adoption of this Code. For each such diversion and use, the inventory shall identify the person making the diversion or use, the water source, the point of diversion or use, the period of use, the place of use, the quantity of water being used annually, and the purposes for which the water is used.

2. The inventory list shall be published once each week for three weeks in a Reservation newspaper of general circulation and shall be posted in at least four public places on the Reservation. Any person appearing on the list may within 30 days of the last published notice, file an objection to the description or quantity of his or her water use. The Board shall consider and decide all objections, and shall hold hearings if necessary. Requests for reconsideration of the Board's decision and appeals may be filed in accordance with Chapter IV.E.9-10 and Chapter V.

3. The Board shall thereafter issue a permit to each person on the inventory list as modified by any Board decisions. No application for a permit shall be required for any use listed on the inventory.

12-4-4. Applications Procedures

1. Applications for permits or licenses shall be filed with the TWA on forms established by the Board and accompanied by the fee established by regulations promulgated hereunder. The application shall be endorsed with the date upon which it is received by the TWA.

2. As soon as practicable after receipt of the application, the TWA shall:

- a. Assign a number to the application;
- b. Review the application for completeness and adequacy, including compliance with this Code, any regulations and the water management plan in effect;

- c. Perform field or other investigations and request additional information from the applicant, if necessary;
- d. Prepare a service list, which shall include the applicant, the Tribe, and all persons whose existing lawful use of water may be substantially affected by the proposed use;
- e. Prepare a report for the Board which summarizes the investigation and recommendations regarding the application.

3. On receipt of the completed application and TWA's report, the Board shall schedule a hearing on the application to determine the use to be permitted and to establish the terms and conditions thereof. The Board shall notify the applicant of the hearing date, which shall be at least 30 days but not more than 60 days from the date of the notice.

4. After a hearing is scheduled, the applicant shall cause to be published, at his cost, a notice of hearing on the application, in a form established by regulation, in one regularly published newspaper of general circulation on the Reservation, at least once each week for three successive weeks and shall submit satisfactory proof of publication to the Board. The Board shall also post public notice of all scheduled hearings at each district's public facilities and other public places as it shall deem appropriate. All notices shall state the date by which objections are due.

5. Any person or entity, including the Tribe, whose interests are or may be adversely affected by a water use applied for, may, within 30 days of the date of the third publication of the notice, file a formal objection to the issuance of the permit applied for.

6. Objections may be made on forms prepared and made available by the Board, shall be verified under oath, and shall include the name and address of the objector, the number of the application objected to, a description of the objector's interest, a short and plain statement of the reasons why a permit should not be issued or should issue in a form different from that applied for, and any suggested conditions or other provision which should be included in any permit granted.

7. The objector shall file the objection with the Board, serve it personally or by mail upon all persons on the service list, and provide proof of such service in a manner satisfactory to the Board.

8. The applicant shall, within 30 days of receipt of the objection, respond in writing in the same manner as provided for objection.

9. Any person may comment to the Board in writing upon any application for a permit under this Code and shall serve any written comment on all persons on the service list.

12-4-5. Permit Hearings

1. A public hearing shall be held on each application unless:
 - a. There has been no objection to the application and the applicant agrees to accept conditions imposed by the Board; or
 - b. The TWA has determined that the proposed use will have a de minimis effect under the standards of the existing water management plan.
2. At least 3 members of the Board shall be present and shall preside over the hearing. The applicant and all objectors shall have the right to participate as parties, to present oral and written testimony of witnesses under oath, and to be represented by counsel or other advocate. The Board shall have the power to administer oaths to witnesses, to take evidence under oath, and to compel attendance of witnesses or production of documents and other evidence. The Tribal Court shall enforce any subpoena issued by the Board in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the Board only under special conditions or stipulations.
3. The Tribe may participate in any hearing as a party and may present testimony of witnesses under oath.
4. The Board may, in its discretion, request or permit the parties to submit additional materials after the hearing.
5. Hearings concerning applications within the same hydrologic basin or area may be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication unless any party files a timely objection.
6. Decisions of the Board shall be based solely on matters of record, provided, however, that the Board, in its discretion, may rely upon public information and such of its own expertise as it deems necessary to assist it in making the decision, so long as those bases are clearly reflected in the record.
7. The applicant shall be required to prove by a preponderance of the evidence that all the information in the application is complete and correct, and to respond to the satisfaction of the Board to all objections and to all concerns expressed by the Board regarding the application. If these requirements are met and if the Board in its discretion determines that the issuance of the permit is in the best interests of the Reservation community, the permit shall be granted.

8. The members of the Board present at the hearing shall issue a written decision setting forth pertinent findings of fact and an ultimate determination as to whether the application shall be granted or denied. The decision shall be adopted by a majority vote of the Board and delivered to all parties by certified mail.

9. Within fourteen (14) days after the decision, any party may request the Board to reconsider the decision. A petition for reconsideration shall be in writing and shall state concisely the error in the decision the petitioner claims should be reconsidered. The petition shall be served on all other parties and any party wishing to respond thereto shall do so within fourteen (14) days of the service of the petition, serving a copy of his response on all other parties.

10. If the Board in its discretion determines to reconsider its decision, it shall schedule an additional hearing with proper notice to all parties. At least three members of the Board must be present at the hearing. On reconsideration, a majority of the Board may affirm, nullify, or revise its earlier decision. Any revised decision shall comply with this Chapter and shall be a final Board decision for purposes of appeal.

11. The decision of the Board shall become final and take effect unless stayed on appeal when (a) the time for filing a petition for reconsideration has passed and no such petition has been filed, or (b) the Board has ruled on a petition for reconsideration.

12. As soon as the decision of the Board becomes final, the TWA shall issue the appropriate permit in conformity with the Board's decision.

13. Decisions of the Board pursuant shall be appealable as provided in Chapter VI of this Code.

12-4-6. Disputes Among Permit Holders

Any person who holds a water permit may file a petition with the Board if another person is using water in a manner that infringes upon the permit holder's use. The Board shall immediately serve a copy of the petition on the person named in the petition, and shall hold a hearing in the manner provided for in Section E. of this Chapter. At the conclusion of the hearing, the Board may grant temporary or preliminary relief. Decisions of the Board may be appealed in accordance with Chapter VI. Disputes between Northern Cheyenne permit holders and persons claiming the right to use water under state law are within the jurisdiction of the Northern Cheyenne - Montana Compact Board.

CHAPTER V. ENFORCEMENT

12-5-1. Prohibited Acts

No person shall:

1. Forcibly, or by bribery, attempted bribery, threat, or other corrupt practice, obstruct or impede the due administration of this Code;
2. 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;
3. Falsely verify by written declaration any permit, application, form or other document, or to intentionally withhold data required by law to be submitted;
4. Violate the conditions or stipulations of his permit or license;
5. Willfully take, alter or damage tribal water without first obtaining a permit or license to do so as herein provided.

12-5-2. Penalties

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 TWA. On a finding of violation, the Board may impose any of the following sanctions, or any combination thereof.

1. Money damages and/or a civil fine not to exceed \$5000 per violation.
2. Restitution.
3. Cancellation of the holder's lease, if the lands to which the permit applies or on which the violation occurred are tribal lands.
4. Injunctive relief.
5. Affirmative remedial action.
6. Additional conditions or limitations upon the holder's permit or license.
7. Suspension of the permit or license for a certain term.
8. Exclusion from the territory of the Reservation, if the violator is subject to exclusion under federal law.
9. Forfeiture of any permit or license.
10. Temporary or permanent disqualification from eligibility for any permit or license.

11. Costs.

CHAPTER VI. HEARINGS AND APPEALS

12-6-1. Review of Initial Permit Decisions of the Board

1. All decisions of the Board shall be appealable directly and exclusively to the Tribal Courts.
2. Proceedings for review of Board decisions shall be initiated by filing a petition for review with the Clerk of Tribal Court no later than thirty (30) days from issuance of the decision being appealed, with a copy served on the Board. If no petition for review is filed within the time allowed, the decision of the Board shall be final.
3. Within ten (10) days of receipt by the Board of the notice of appeal, the Board shall certify and transmit to the Clerk of Tribal Court the complete administrative record, including all documents, things, transcripts, and other information, in whatever form, which formed the basis for the decision being appealed. By stipulation of all parties to the appeal, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be charged by the Tribal Court for the additional costs.
4. The petition for review shall include a concise statement of the relief sought by the petitioner and the grounds therefore.
5. The filing of a notice of appeal or petition for review shall not automatically stay the decision of the Board pending the appeal; however, the Tribal Court may issue such temporary restraining orders or preliminary injunctions as are otherwise lawful and appropriate.
6. Appeals under this section shall be limited to review of the record of the Board's decision unless petitioner alleges the Board refused to include in the record information or argument properly offered and relevant to the matter. In that event, the Tribal Court may hear and consider the additional information or argument alleged to have been improperly excluded from the record by the Board. Nothing in this section shall alter the rules of evidence applicable in the Tribal Court.
7. The Tribal Court shall not substitute its opinion for that of the Board's unless substantive rights of the petitioner have been prejudiced because the decision of the Board is:
 - a. in violation of applicable law;
 - b. in excess of its authority;
 - c. made upon unlawful procedure;

- d. clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- e. clearly arbitrary and capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

A. TWA Designation as Expert Witness

The Tribal Court(s) shall qualify the TWA as an expert witness in all matters within the scope of his duties, provided the TWA meets the minimum education or experience required by this Code.

**CHAPTER VII.
GENERAL PROVISIONS**

12-7-1. Transfers

1. No Transfers Except in Accordance with this Section. No permit granted under this Code may be transferred, exchanged, sold, or otherwise conveyed except as provided by this Code.

2. Transfers Between Tribal Members. A water permit may be transferred from one tribal member to another tribal member for agricultural purposes only upon the transfer of land on the Reservation from one Tribal member to another Tribal member. ~~A request for transfer shall be filed with the TWA on forms established by the Board, together with any fee set by the Board, within 60 days of the land transfer. Failure to file a request for transfer may result in the loss of the water permit.~~ **[Amended December 2000]**

3. Transfer of Water Permit Upon Transfer of Agricultural Allotment Out of Trust. A water permit held by an allottee may be transferred to the initial purchaser in fee of an agricultural trust allotment, provided that the quantity of water transferred under the permit does not exceed the amount of water being validly used by the allottee at the time of the transfer, and does not exceed an equitable distribution of the Tribal Water Right as provided for in 25 U.S.C. Sec. 381. The initial purchaser in fee of the allotment may also file an application for and be granted additional water not to exceed a quantity which, together with the transferred right, is necessary to fulfill the agricultural purposes of the allotment and does not exceed an equitable distribution of the Tribal Water Right as provided for in 25 U.S.C. Sec. 381, provided that such application is filed within five years of the date of transfer. **[Added December 2000]**

12-7-2. Security Interests

No person may create a security interest, or authorize the creation of a security interest, in a water permit without the consent of the Board. Upon foreclosure of Reservation land, a permit may be transferred to a mortgage lender or his assignee only for use of water on the land described in the permit, and only for the purpose designated in the permit. A request for transfer shall be filed with the TWA prior to completion of the foreclosure proceeding and before any use

of water by the mortgage lender or his assignee. Failure to file a request for transfer will result in the loss of the water permit.

12-7-3. Deferral Agreements

The Tribe may enter into a water deferral agreement in accordance with Article II.G of the Compact. A permit shall be applied for in the same manner as for an actual water use.

12-7-4. Voluntary Relinquishment

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 Tribe by any affirmative action indicating an intent to relinquish.

12-7-5. No Loss by Adverse Possession

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

12-7-6. Abandonment

1. A permit or license, including a permit for a Compact protected use, shall become null and void in whole or in part and the water shall revert to the Tribe, if the water user fails to use all or a portion of the water for a period of five consecutive years, without sufficient cause, Provided, that an allottee may request and be granted reinstatement of all or a portion of his or her permit, for irrigation purposes on his or her agricultural trust allotment without re-application or compliance with the procedures of Chapter IV, subject to a pro rata modification of the allottee's equitable share of the Tribal Water Right if the available water supply is insufficient to irrigate all irrigable lands on agricultural trust allotments. Sufficient cause shall include: **[Added December 2000; amended May 2001]**

- a. Unavailability of water due to shortage, drought, or use by others.
- b. Active service in the armed forces of the United States.
- c. Pendency of legal proceedings.
- d. Incarceration in a penal institution or confinement in a mental institution.
- e. Incompetence by reason of age or mental capacity.

2. The TWA shall serve notice of abandonment on the permit holder. A hearing to show cause why such permit should not be deemed null and void shall be held before the Board not less than 30 days or more than 60 days from the date of the notice. Any decision of the Board may be appealed in accordance with Chapter VI.

12-7-7. Reversion to Tribe

If any permitted use is voluntarily terminated or is abandoned before the term of the permit expires, or is terminated for reasons of permit violation(s) or violations of this Code, the subject water use right shall revert to the Tribe, including Compact protected uses.

**CHAPTER VIII.
MISCELLANEOUS PROVISIONS**

12-8-1. Funding

The Tribe shall appropriate from available funds sufficient resources to administer the provisions of this Code.

12-8-2. Limited Waiver of Sovereign Immunity

The Tribe waives any sovereign immunity from suit which may inure to the benefit of the TWA or the Board, provided that any suit against the TWA or the Board must be brought in the Tribal Court and further provided that such waiver is limited to the extent necessary to subject the TWA or the Board to suit for the sole purposes of declaring, adjudicating or enforcing the parties' rights and duties as set forth in this Code and any regulations hereunder. The Tribe does not waive the TWA's or Board's immunity from suits for monetary damages and does not waive any sovereign immunity of the Tribal Council or the Tribe itself for any purpose.

12-8-3. Records of the TWA or the Board

1. All records required or allowed to be maintained by the TWA or the Board shall be public records, provided, however, that the TWA or the Board 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:

- a. Investigatory files compiled for any law enforcement or prosecution purposes;
- b. Interagency or intra-agency records or documents which would not be available by law to a private party in litigation with the TWA, the Board or the Tribe;
- c. Records protected from disclosure by order of federal or Tribal Court;
- d. Personnel files and letters of reference, except that these shall be available to duly elected, appointed or employed officials who supervise the work of the individual whose records are sought;

- e. Trade secrets, privileged information, and proprietary commercial, financial, geological, geophysical or other data furnished by or obtained from any person.

2. Any person denied the right to inspect any record(s) described above may apply to the Tribal Court for an order directing the custodian of the record(s) to show cause why he should not permit the inspection. Notwithstanding that the record might otherwise be available to public inspection, any person, including the TWA, may apply to the Board for an order restricting disclosure of the particular record. The Board may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. The Board's decision shall be reviewable de novo by the Tribal Court pursuant to the procedures set forth in this Code for appeals of initial decisions by the Board issuing or denying permits or licenses.

12-8-4. Severability

In the event that 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.

12-8-5. Amendments

This Code may be amended only by two-thirds vote of the Northern Cheyenne Tribal Council.

12-8-6. Effective Date

The provisions of this Code shall be effective upon enactment by the Northern Cheyenne Tribal Council, and shall remain in effect until repealed or amended.