

NAVAJO NATION WATER CODE (1984)

[Official copy found at Title 22 N.N.C. §§ 1101 et seq.]

SUBCHAPTER 1: GENERAL PROVISIONS

1101 Declaration of Purposes; Assertion of Authority

In order to provide for a permanent homeland for the Navajo People; to protect the health, the welfare and the economic security of the citizens of the Navajo Nation; to develop, manage, and preserve the water resources of the Navajo Nation; to secure a just and equitable distribution of the use of water within the Navajo Nation through a uniform and coherent system of regulation; and to provide for the exercise of the inherent sovereign powers of self-government by the Navajo Nation, the Navajo Nation hereby asserts its sovereign authority over all actions taken within the territorial jurisdiction of the Navajo Nation which affect the use of water within the Navajo Nation.

1102 Application of the Code

Upon the effective date of this Code, it shall be unlawful for any person within the territorial jurisdiction of the Navajo Nation, as defined in 7 N.N.C. §254, to impound, divert, withdraw, otherwise make any use of, or take any action of whatever kind affecting the use of water within the territorial jurisdiction of the Navajo Nation unless the applicable provisions of this Code and regulations and determinations made hereunder have been complied with. No right to use water, from whatever sources, shall be recognized, except use rights obtained under and subject to this Code.

1103 Nature of Ownership

- (a) The Navajo Nation is the owner of the full equitable title to all of the waters of the Navajo Nation as defined in section 1104 of this subchapter, and that title resides undiminished in the Navajo Nation; the United States holds the legal title to those waters solely as trustee for the Navajo Nation.
- (b) All rights to the use of the waters of the Navajo Nation are held subject to the overriding, prior and supreme rights, interests and governmental authority of the Navajo Nation, and the policy and provisions contained in this Code, amendments hereto, and administrative regulations and determinations hereunder.

1104 Waters of the Navajo Nation Defined

The waters of the Navajo Nation are defined as: (1) all waters reserved at any time for any purpose to the Navajo Nation, and to Navajo Indian lands by the Navajo Nation or by the United States including any waters which, in the course of nature or as the result of artificial works or artificial streamflow enhancement or weather modification methods, flow into or otherwise enhance such waters; (2) all waters held by the Navajo Nation through prior or existing use, appropriation, purchase, contract, gift, bequest, or other means of acquisition; (3) all surface and groundwaters which are contained within hydrologic systems located exclusively within the lands of the Navajo Nation; and (4) all groundwaters located beneath the surface of the lands held in trust by the United States of America for the Navajo Nation.

SUBCHAPTER 2: NOTICE OF ENACTMENT AND EFFECT

1201 Notice Required

To insure that all persons and entities affected by this Code are given adequate notice of the enactment and effect of this Code, the Director of the Division of Natural Resources shall, within 30 days after the effective date of this Code, provide for public notice of its enactment and effect in accordance with the provisions of this subchapter.

1202 Contents of Notice

- A. Such public notice shall contain the following statement, prominently displayed and in large, boldface type:

NOTICE: AFTER AUG. 02, 1984, NO PERSON OR PUBLIC OR PRIVATE ENTITY OF ANY KIND SHALL BE ENTITLED TO TAKE ANY ACTION WITHIN THE TERRITORIAL JURISDICTION OF THE NAVAJO NATION WHICH AFFECTS THE USE OF WATER WITHIN THE NAVAJO NATION, UNLESS SUCH ACTION IS AUTHORIZED BY A PERMIT AS PROVIDED FOR BY THE NAVAJO NATION WATER CODE. NO OTHER WATER USE RIGHTS OF ANY KIND, FROM WHATEVER SOURCE, SHALL BE RECOGNIZED. THE NECESSARY FORMS MAY BE PROCURED FROM THE WATER CODE ADMINISTRATION, POST OFFICE DRAWER 678, FT. DEFIANCE, (NAVAJO NATION). ARIZONA 86504, (520) 729-4132.

- B. In addition to the foregoing statement, the Director of the Division of Natural Resources may include in such public notice additional information deemed necessary in order to assure adequate notice of the enactment and legal effect of this Code.

1203 Notice – How Given

- A. The Director of the Division of Natural Resources shall give notice of the provisions of this Code as follows:
 - 1. The notice provided above shall be placed in the Navajo Times at least once each week over a six-week period.
 - 2. The notice provided above shall be placed in a prominent and conspicuous location at the Chapter Houses, the Navajo Nation Government Offices, the Bureau of Indian Affairs Offices, U.S. Post Offices, Indian Health Service Hospitals and Clinics, and in such other locations as are deemed necessary or appropriate.
 - 3. The Director of the Division of Natural Resources may take any other steps and post any other notices as is deemed necessary to provide notice of the provisions of this Code.

SUBCHAPTER 3: RESOURCES COMMITTEE OF THE NAVAJO NATION COUNCIL

1301 Resources Committee – General Powers

- A. In administering this Code, the Resources Committee may, in addition to other actions:
 - 1. Enter appropriate orders;
 - 2. Recommend to the Navajo Nation Council for consideration, adoption, modification, or amendment such regulations as are deemed necessary to implement this Code;
 - 3. File or intervene in any lawsuit, at the direction of the Navajo Nation Council, or the President of the Navajo Nation;
 - 4. Receive regular reports from the Director of the Division of Natural Resources;
 - 5. Make determinations of availability and need as provided for in subchapter 8 of the Code;
 - 6. In cooperation with the Office of Navajo Land Administration, negotiate for and propose to the Navajo

Nation Council the purchase or sale of real or personal property or other interests;

7. With the consent of the appropriate committees of the Navajo Nation Council and/or the Navajo Nation Council, enter into administrative agreements, exchange information, and otherwise cooperate with governmental agencies both on and off the Navajo Nation lands, for appropriate purposes including the administration of interstate streams and groundwaters;
8. In cooperation with the other standing committees of the Navajo Nation Council, determine existing and foreseeable uses of and needs for water and other related resources; and
9. Take other actions as provided for in this Code.

1302 Disqualification

Any member of the Resources Committee may be disqualified either on his/her own motion or upon a majority vote of the Resources Committee whenever he/she is unable, because of a direct economic interest or other conflict of interest, to serve impartially with respect to any matter.

1303 Water Reserves

In connection with a determination of availability and need as provided for in subchapter 8 or in connection with other actions taken under this Code, the Resources Committee may establish within particular areas dependent on common water supplies, reserve water supplies which, although subject to existing uses on an interim basis, are set aside for a definite or indefinite term of years for future Navajo Nation and other needs.

1304 Water Assessments

Whenever the Resources Committee of the Navajo Nation Council determines that water not presently available is necessary for purposes and projects beneficial to a part or all of the Navajo Nation and the inhabitants thereof, the Resources Committee may assess individual water users a fair share of water, in predetermined units for such purposes, according to the relative priorities of the classes of uses.

1305 Designations of Local Management Areas

The Resources Committee may, upon the recommendation of the Director of the Division of Natural Resources, Navajo Nation Departments or any person, isolate and define, within the surface and groundwater systems in which individual water uses are to some degree related by reason of common supply, "local management areas", such as municipal water districts or irrigation districts, for specialized administration under regulations adopted pursuant to this Code.

1306 Large User Water Permits

The Resources Committee may, at its option or upon application, recommend for consideration by the Navajo Nation Council the granting of water use permits for amounts in excess of 1000 acre-feet per year and/or for uses which require assurance of long-term supply. Such permits may be conditioned upon payment of consideration and contain other contractual terms including but not limited to, limited periods of times of use, differing conditions of revocability or terminability; and other conditions providing varying degrees of permanence.

1307 Charges for Water Uses

Reasonable charges may be imposed by regulations of the Resources Committee for the use of the waters of the Navajo Nation. Such charges shall not apply to domestic uses, stockwatering uses, fish and wildlife uses and irrigated agriculture uses. Additional charges may be imposed on users by regulations of the Resources Committee for the operation and maintenance of water delivery systems. Waivers of Charges may be granted by the Resources Committee, if the use is shown to be of benefit to the Navajo Nation.

1308 Resources Committee – Method of Operation

In performing its duties under this Code, the Resources Committee is a Standing Committee of the Navajo Nation Council subject to the oversight and control of the Navajo Nation Council.

SUBCHAPTER 4: DIVISION OF NATURAL RESOURCES

1401 Information Function

It is the duty of the Director of the Division of Natural Resources to gather for Navajo Nation use and for submission to the Resources Committee

information related to the waters administered under this Code. To this end the Director of the Division of Natural Resources shall:

- A. Collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the waters within the Navajo Nation;
- B. Develop such additional data and supplies pertaining to water availability, quality, and uses as are necessary to accomplish the objectives of this Code;
- C. Solicit public comment, consult the Chapters and obtain expert advice when appropriate;
- D. Investigate water uses and other activities affecting the waters within the Navajo Nation to determine compliance with this Code and with applicable regulations, orders, determinations, permits, water quality standards, etc. issued pursuant to this Code.
- E. Investigate water quality when appropriate; and
- F. Develop standards and regulations concerning water quality and water allocation and submit them for recommendation by the Resources Committee and for consideration and approval by the Navajo Nation Council.

1402 Enforcement Function

It shall be the duty of the Director of the Division of Natural Resources to insure compliance with this Code, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken under this Code, as well as the policies and guidelines expressed throughout the Code. To this end the Director of the Division of Natural Resources may:

- A. Remove, render inoperative, shut down, close, seal, cap, modify or otherwise control methods of diversion, withdrawal, and impoundment, obstructions to the flow of water and other activities adversely affecting water quantity or quality;
- B. Initiate by means provided herein, proceedings for violations of this Code and the actions taken under this Code; and
- C. Enter upon land to inspect methods of diversion, withdrawal and impoundment, inspect other activities affecting water quality and quantity, install and monitor measuring and recording devices when

necessary, and compel testimony and data, by the Navajo Nation Court subpoena, if necessary, concerning actions affecting the quality or quantity of the waters administered under this Code.

- D. All enforcement actions shall be subject to the limitations imposed by the Indian Civil Rights Act, 25 U.S.C. §1301 et seq., and the Navajo Bill of Rights, 1 N.N.C. §1 et seq.

1403 Advisory Function

The Director of the Division of Natural Resources may, from time to time, make proposals to the Resources Committee concerning the following:

- A. The advisability of establishing local management areas as provided for in subchapter 3 of this Code;
- B. The advisability of making determinations of availability and need as provided for in subchapter 8 of this Code.
- C. The advisability of taking other actions and adopting other plans and methods in order to optimize available water supplies and to minimize pollution and thermal degradation;
- D. The advisability, in cooperation with the Office of Navajo Land Administration, of purchasing, selling, exchanging and acquiring any interest in real or personal property;
- E. The advisability of participating in administrative proceedings, law suits and other legal proceedings;
- F. The advisability of entering into administrative agreements and other cooperative ventures with Tribal, local, state or federal agencies outside of the Navajo Nation Council and the Resources Committee, for appropriate purposes including the administration of interstate streams and groundwaters;
- G. The advisability of amending or otherwise changing sections of this Code or adding new sections; and
- H. The advisability of taking other actions which will further the policies and purposes contained herein and increase the effectiveness of this Code.

1404 Administrative Function

In administering this Code, the Director of the Division of Natural Resources may:

- A. Grant, deny, modify and revoke water use permits;
- B. Make determinations of water use rights;
- C. Initiate proceedings to enforce this Code;
- D. Insure, in coordination with other appropriate agencies, adequate water levels in streams, rivers, ponds, and lakes to protect Navajo traditional religious practices, wildlife conservation and other values; and
- E. Enter appropriate orders.

SUBCHAPTER 5: GUIDELINES FOR ADMINISTRATION

1501 General Policy Provisions

In taking any action under this Code, the Resources Committee and the Director of the Division of Natural Resources shall be guided by the following basic policy guidelines:

- A. Whenever practicable, actions taken should benefit the Navajo Nation and the members of the Navajo Nation and further the objective for which the Navajo Nation was created: to provide a permanent home and abiding place for the members of the Navajo Tribe of Indians, both now and in the future. Alternatives to existing and proposed uses are to be considered whenever practicable in order to achieve this goal. Included in those alternatives shall be the option to restrict or prohibit entirely any further use of water for the benefit of the Navajo Nation. If there is presented to the Resources Committee or the Director of the Division of Natural Resources a conflict between water uses for the benefit of the Navajo Nation or any of the members of the Navajo Nation and non-Navajo Nation projects or uses, the Resources Committee or the Director of the Division of Natural Resources may grant such preference as may be required by this Code, which lie in the best interests of the Navajo Nation and its members.
- B. In taking any action under this Code which may impose substantial economic hardship on persons or entities presently using water, or which threatens degradation of other economic, cultural, religious,

historic, aesthetic, natural or environmental values, the Resources Committee, or the Director of the Division of Natural Resources shall, in reaching their decision, carefully consider and weigh:

1. The economic dislocation and hardship which will be imposed by such actions;
 2. The investment in time, money and other resources made by the parties affected in reliance upon any previous system of distribution and use of water;
 3. Any other burdens as may be imposed by such actions;
 4. The nature and extent of degradation of other economic, cultural, religious, historic, aesthetic, natural or environmental values;
- C. The Resources Committee or the Director of the Division of Natural Resources, when considering a proposed action, shall balance the adverse effects against the benefits to the Navajo Nation and other interests which are advanced as justifying the proposed action; shall consider alternatives to the proposed action which will lessen adverse effects, and shall shape any final action so that its adverse effects will be minimized to the greatest extent possible, to protect the water resources.
- D. When insufficient water supplies are present for whatever reason or term, the following priority of uses shall be considered in the order in which they are listed:
1. Domestic and Municipal Uses
 2. Stock Watering Uses
 3. Agricultural Uses
 4. Instream Needs, for Fish, Wildlife Conservation and Recreational Uses
 5. Economic Development Uses including Industrial and Power Uses
 6. Other Uses

1502 Guidelines for Making Most Effective Use of Available Resources

In addition to the policy guidelines contained in the previous section, the Resources Committee and the Director of the Division of the Natural Resources shall take appropriate actions to:

- A. Insure adequate water supplies;
- B. Maintain water levels for diversion and withdrawal systems;
- C. Maintain head and pressure in groundwaters;
- D. Prevent or reduce obstruction of surface water flows;
- E. Increase efficiency of conveyance systems; increase efficiency in water application; increase return flow; prevent waste and maximize use of the available supply;
- F. Create and enhance the efficiency of natural and artificial surface and underground storage;
- G. Enhance natural and artificial recharge of aquifers;
- H. Define and control interbasin transfers of both surface and groundwaters;
- I. Provide for some degree of overdraft from aquifers when short-term recharge is not possible;
- J. Minimize interference between competing users of water sources, whether above or below ground;
- K. Minimize water quality degradation and the adverse effects of water pollution whether from point sources or non-point sources;
- L. Minimize thermal degradation or the adverse effects of thermal degradation;
- M. Minimize interaquifer communication;
- N. Plan for long-term water development;
- O. Penalize misuse; and
- P. Otherwise insure conformity with the policies and provisions of this Code.

1503 Additional Policy Guidelines

- A. Rivers, streams, lakes and ponds within the Navajo Nation are to be retained substantially in their natural conditions, with the base flows and water levels necessary to provide for preservation of traditional and religious, recreation, wildlife, fish, scenic, aesthetic, and other environmental values, to the extent possible. Withdrawals of water which would conflict with these interests should be authorized only where it is clear that overriding considerations of the public interest and welfare will be served.
- B. Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given to means and methods for protection of recreation, fish and wildlife resources in the planning for and construction of water impoundment structures and other artificial obstructions.
- C. Individuals, corporations, groups, associations and other entities shall be required to carry out reasonable practices of water and resource conservation and environmental protection as they relate to the use of waters within the Navajo Nation.

SUBCHAPTER 6: DESCRIPTIONS OF USE AND APPLICATIONS FOR PERMIT

1601 Existing Use Inventory

In order to determine existing uses of water within the Navajo Nation, the Division of Natural Resources shall cause an inventory of existing water uses to be made and completed within two (2) years following the effective date of this Code. The inventory shall be based upon the information contained in §1602, "Description of Use".

1602 Description of Use – Required

All persons desiring to continue to operate existing uses must file a Description of Use, as required by this subchapter, within one year of the effective date of this Code. After such date, it shall be unlawful to continue to operate any use or to continue any other action within the jurisdiction of the Navajo Nation which affects the waters therein except as authorized by this subchapter. Individuals or groups making use of a well or other water source operated by another need not file a Description of Use unless the operator fails to do so.

1603 Application for Permit – Required

Upon the effective date of this Code, all persons desiring to initiate new uses of, or take other actions within the jurisdiction of the Navajo Nation affecting the waters therein shall file an Application for Permit as required by this subchapter. After such date, it shall be unlawful for any person to make any new use or take any other action within the jurisdiction of the Navajo Nation affecting the waters therein except as authorized by this Code.

1604 Description of Use and Application for Permit – Contents

“Descriptions of Use” and “Applications for Permit” shall be on forms provided by the Director of the Division of Natural Resources and shall include the following information:

- A. The name and mailing address of the claimant;
- B. The name, if available or a description of the source or sources from which water is or will be diverted or withdrawn;
- C. The purpose or purposes for which water is or will be used;
- D. The quantity of water which is or will be used;
- E. A legal description, if such is readily available, and other descriptions reasonably describing the point or points of diversion, withdrawal or impoundment;
- F. A description of the method or methods of diversion, withdrawal or impoundment. The description of the method or methods of groundwater withdrawals shall be by a Drilling Permit on a form approved by the Resources Committee;
- G. A description of how water is or will be applied or consumed, including acreage and crop if the water is for irrigation; the kind and number of stock if the water is for stock watering; and the number of people and/or homes to be served if the water is for domestic or municipal use;
- H. The best estimate reasonably possible of return flow to the source or sources, including how, when, at what point or points, and with what changes in quality and temperatures;

- I. The estimate date on which the use or uses began or will be commenced;
- J. If any pre-existing use is claimed, a description of any documents or programs upon which it is based; any statute or statutes or legal doctrine upon which the use is based; and any pertinent litigation creating or affecting the use;
- K. The water user's plan for future development of the water use or uses and related activities; and
- L. Any other information deemed necessary by the Resources Committee.

1605 Interim Permits

A Description of Use which is made with respect to a use existing prior to the effective date of this Code shall, until a permit is issued or denied, serve as an interim permit authorizing the use of a reasonable quantity of water for the uses described and actually made while the application is pending. Additional uses planned but not commenced prior to the effective date of this Code may be made on an interim basis upon Emergency Certification by the Director of the Division of Natural Resources until a permit covering such uses is issued or until other action is taken under this Code.

1606 Fees

Each Application for Permit shall be accompanied by a \$25.00 filing fee. Provided, however, that the Director of the Division of Natural Resources may waive payment of such filing fee in cases of demonstrated financial hardship.

1607 Public Notice of Descriptions of Use and Applications for Permit – Initial Notice

As soon as possible and no more than two years after the effective date of this Code, the Director of the Division of Natural Resources shall divide the Navajo Nation into hydrologic basins or watersheds in which water uses are to some degree interrelated and prepare:

- A. A map of the Navajo Nation showing such basins or watersheds;

- B. A listing for each basin or watershed of each use described and permit applied for, which listing shall include names and addresses of applicants, descriptions of water sources, quantities applied for, points of diversion, withdrawal or impoundment, methods of diversion, withdrawal or impoundment and descriptions of the uses to be made;
- C. A statement that the applicants described in the listing have applied for permits under the Navajo Nation Water Code and that any persons claiming that their uses may be adversely affected by the issuance of such permits may object to their issuance in accordance with the provisions for objection, notice and hearing provided for in this Code;
- D. A brief description of the objection, notice and hearing provisions of this Code and information which will assist the objecting parties in procuring the necessary forms and commencing an objection;
- E. A statement that any person may comment either orally or in writing on the issuance of any permit; and
- F. A brief description of the public comment and investigation sections of this chapter.
- G. The map, listings, statements and descriptions prepared under the preceding paragraphs shall forthwith be published and posted in the same manner as provided in section 1203 "Notice-How Given", subject to the following exceptions: (1) maps and descriptions of objection procedures may be omitted if deemed impractical; (2) newspaper publications may be limited to four weekly notices; and (3) listings need be published and distributed only in the hydrologic basins or watersheds affected by proposed or existing uses.

1608 Public Notice of Applications for Permit-Continuing Operation

When additional Applications for Permit are received during the course of the administration of this Code, the Director of the Division of Natural Resources shall, in conformance with the preceding section:

- A. Include in the listing provided for in section 1607 (b) the necessary information concerning the new use or action.

- B. Prepare a statement that one or more new Applications for Permit have been made and objections may be made to them in accordance with section 1607 (c).
- C. Prepare the descriptions and statements provided in sections 1607(d), 1607(e) and 1607(f).
- D. The revised listing, statements and descriptions provided for in the preceding paragraphs shall forthwith be published, posted and mailed in the affected area in the same manner as provided for in section 1607, in order to assure adequate notice and an opportunity for hearing to persons who may be adversely affected by the proposed uses or actions.

1609 Objections Affecting Descriptions of Use and Applications for Permit

Any person or entity whose interests are or may be affected by a water use described and/or applied for may, within 30 days from the date of publishing, and posting of notice that such use has been described and/or applied for, file a formal objection to the issuance of the permit applied for.

1610 Form and Contents of Objections

- A. Objections may be made on forms prepared and made available by the Director of the Division of Natural Resources and shall include the name and mailing address of the party objecting; the name of the applicant whose application is objected to; a description of the water use objected to; a short and plain statement of reasons why a permit should not be issued or should be issued in a form different from that applied for; and any suggested conditions or other provisions which should be included in any permit granted.
- B. Oral objections may be made to the Director of the Division of Natural Resources when it is determined by the Director that the circumstances permit an oral objection. Such oral objections shall be reduced to writing on the proper forms by the Director of the Division of the Natural Resources.

1611 Reply by Applicant

Any applicant for a permit whose use is objected to may reply in writing or orally in the same manner as provided herein for objections.

1612 Hearing Regarding Issuance of Permits

Any applicant directly affected or any party objecting in accordance with this subchapter may request and obtain as a matter of right a hearing on such objection. In addition, the Director of the Division of Natural Resources or the Resources Committee may schedule a hearing concerning the issuance of a permit or permits on their own motion whenever they determine that such hearings are needed. Provided, that whenever possible hearings concerning proposed or existing uses in a particular basin or area shall be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication. Unless otherwise provided for in this subchapter, notice of such hearings shall be as provided for in subchapter 10, and shall be given to: the applicants whose uses are objected to; the objecting parties; other persons designated by the objecting parties and applicants; all other persons affected by the proposed use in question and all other persons requesting notice. Unless otherwise provided for in this subchapter, hearings shall be conducted as provided for in subchapter 10.

1613 Public Comment

Any person or entity may comment orally or in writing upon the proposed issuance of any permit under this Code. It is the policy of the Navajo Nation that all interested parties be given the opportunity to participate in the decision making process as set forth in this Code.

1614 Investigation and Review of Permit Issuance

In addition to gathering information from the objections, comments, and hearings as provided for above, the Director of the Division of Natural Resources may make any reasonable investigation of the facts and circumstances surrounding the permit application; may solicit comments and information from the public and from appropriate governmental agencies; and may otherwise gather information which will assist in making the decision to issue or deny a permit in accordance with the provisions of this subchapter.

1615 Issuance or Denial of Permits

As soon as possible after application, hearing, if any, and a reasonable period for public comment shall have passed, and no more than 90 days after the date of the application, if uncontested, or the hearing, if a hearing is held, the Director of the Division of Natural Resources shall review the comments and information gathered with respect to a specific

application and either deny a permit or issue a permit in the form provided for in subchapter 7.

SUBCHAPTER 7: WATER USE PERMITS

1701 Form

Water use permits issued in accordance with this Code shall be on a form approved by the Resources Committee.

1702 Information Contained

Each permit shall include:

- A. The name and mailing address of the permittee;
- B. The name of, if available, or a description of, the source or sources from which water is or will be diverted, withdrawn or impounded.
- C. The quantity of water which will be used;
- D. The legal description, if such is readily available, or other description reasonably describing the point or points of diversion, withdrawal or impoundment;
- E. A description of the method or methods of diversion, withdrawal or impoundment;
- F. The purpose or purposes for which water is or will be used;
- G. A description of how water may be applied or consumed, including acreage and crop if the water is for irrigation, the kind and number of stock if the water is for stock watering, and the number of people and/or homes to be served if the water is for domestic or municipal use;
- H. The approximate date upon which the use or uses permitted began or will be commenced; and
- I. Any other information as is deemed necessary and appropriate.

1703 Conditions

Each water use permit issued pursuant to this Code shall contain whatever conditions are necessary to insure adequate quality and quantities of water; to otherwise further the purposes, policies and guidelines contained within this Code; and to assist in the effective administration of this Code. These may include, but are not limited to, conditions and limitations concerning:

- A. The source from which water may be diverted, withdrawn or impounded;
- B. The quantity of water which may be diverted, withdrawn or impounded during any particular time;
- C. The point or points of diversion, withdrawal or impoundment;
- D. The method or methods of diversion, withdrawal or impoundment;
- E. The purposes for which water will be used;
- F. The method of application;
- G. The location and purpose of application, including acreage for crops and number of livestock for livestock watering;
- H. The quantity and quality of return flow;
- I. The time period during which water may be used;
- J. Schedules for diversion, withdrawal or impoundment, including optional rotation schedules;
- K. Provisions for surface or groundwater storage of surplus flows;
- L. Provisions for increasing the efficiency of diversion, withdrawal or impoundment and application;
- M. Provisions for maintaining minimum pools and streamflows for fish, wildlife, recreation, aesthetic and Navajo religious value;
- N. Provisions for insuring minimum pumping and diversion levels with respect both to surface and underground water;
- O. Provisions designed to maintain head and pressure in groundwaters;

- P. Provisions designed to prevent or reduce obstruction of surface water flows;
- Q. Provisions designed to minimize point and non-point source pollution, water quality degradation and thermal degradation;
- R. Provisions designed to enhance recharge of aquifers;
- S. Provisions designed to define and control interbasin transfers of surface and groundwaters;
- T. Provisions for some degree of overdraft from aquifers when short-term recharge is not possible;
- U. Provisions designed to prevent or reduce interference between competing users or water sources whether above or below ground;
- V. Provisions to minimize interaquifer communication;
- W. Provisions to insure long-term water development;
- X. Any other provisions necessary to insure conformity with the policies and provisions of this Code and actions taken pursuant to this Code.

1704 Entry on Land

No person shall be authorized to use or otherwise take any action affecting the waters administered under this Code unless he shall consent to reasonable entry upon his land by Navajo Nation employees engaged in the administration of this Code. Every permit issued under this Code shall contain the condition that no use or other action affecting the waters in question may be made unless the applicant consents to such reasonable entry upon his land.

1705 Effect

A water use permit issued under this Code constitutes nothing more than Navajo Nation permission to use the water within the territorial jurisdiction of the Navajo Nation, subject to the terms and conditions of the permit, to this Code, and to actions taken pursuant to this Code. No water use permit issued hereunder shall be construed as creating or recognizing any right other than Navajo Nation permission to use water, nor shall any

water use permit ripen into any interest other than such limited permission.

1706 Revocability

Unless otherwise indicated, water permits issued under this Code are revocable by the Director of the Division of Natural Resources in accordance with the policies, purposes, guidelines and procedures established in this Code, and in accordance with the Indian Civil Rights Act, 25 U.S.C. §1301 et seq., and the Navajo Bill of Rights 1 N.N.C. §1 et seq.

1707 Modification

Water permits are modifiable in accordance with the procedures provided in this Code, and in accordance with the Indian Civil Rights Act, 25 U.S.C. §1301 et seq., and the Navajo Bill of Rights 1 N.N.C. §1 et seq.

SUBCHAPTER 8: DETERMINATION OF AVAILABILITY AND NEED

1801 When Proceeding Available

Whenever at any time after the Existing Use Inventory is completed an application for a permit covering a new or changed use of, or other action affecting water is made; or a complaint concerning an existing or proposed use, or other action affecting the water is made; or a request is made by the Resources Committee; and it appears probable to the Director of the Division of Natural Resources that a water supply common to a particular area is or will be used beyond its capacity, or otherwise adversely affected.

The Director of the Division of Natural Resources may initiate a proceeding to determine the availability of and need for water in accordance with the provisions of this subchapter.

1802 Purposes

The purposes of a proceeding to determine availability of and need for water under this subchapter shall be: to evaluate existing and future needs dependent upon a particular supply; to compute with reasonable certainty the characteristics of a particular supply, including quantity,

surface and groundwater levels, rates and directions of flow, rate of recharge, out-of-basin sources, pollution, thermal degradation, and other characteristics, at particular locations and times; to explore various methods for increasing supply such as artificial recharge, storage, increased efficiency, alternatives to present uses, alternatives to activities presently requiring the consumption of water; to assist in land use planning in accordance with the policies and actions of the Navajo Nation; and to make available to other Navajo Nation, local, state, and federal agencies and to members of the public information concerning the waters in question.

1803 Notice of Proceeding

- A. Whenever a proceeding is initiated under section 1801 of this subchapter, the Director of the Division of Natural Resources shall provide notice of such proceeding in the same manner as provided in section 2002 to all parties who are using or will use or otherwise affect or rely upon the water supply in question, or will otherwise be directly affected by such proceeding.
- B. Such notice shall state in plain and simple language the reason for initiation of the proceeding; the nature of the proceeding; the geographic area covered by the proceeding; and, as nearly as many be determined, the possible effects of such a proceeding on individual water uses.
- C. The Director of the Division of Natural Resources shall make every reasonable effort to ensure that all persons or entities whose interests are or will be affected by the proceeding have reasonable notice of the nature, scope and possible effects of the proceeding and a reasonable opportunity to prepare for and participate in the proceeding.

1804 Division of Natural Resources – Investigation Initiation

As soon as the Director of the Division of Natural Resources determines that a proceeding shall be initiated under this subchapter, he shall define as accurately as possible the area covered by the proceeding and commence an investigation as provided herein.

1805 Division of Natural Resources – Information Gathering

The Director of the Division of Natural Resources shall initiate an investigation to gather and evaluate all available, pertinent data from

whatever sources concerning the water supply and needs for water in question; to formulate proposals concerning the use of the water in question; and to provide other information, alternatives, and recommendations to assist the Resources Committee. Such information, alternatives, and recommendations shall be contained in the report of the Director of the Division of Natural Resources provided for in section 1806 of this Code.

1806 Division of Natural Resources – Report

Upon completion of the investigation provided for in section 1805, and no more than 90 days after the initiation of the investigation, the Director of the Division of Natural Resources shall transmit to the Resources Committee the report concerning the availability of and need for water in the particular area to which the proceeding applies. The report shall include the following:

- A. A geographic and geologic description of the area studied, setting out as precisely as possible the boundaries of the area;
- B. A general description of the water supply in that area, from all sources;
- C. A description of the various characteristics of the water supply which are relevant to present and proposed uses and other actions;
- D. A computation of the water supply available at particular times and places;
- E. A description of present and proposed uses of and other actions affecting the water supply in question;
- F. A description and evaluation of the need for each such present or proposed use or other action;
- G. A description of possible methods for increasing available water supply;
- H. A description of economic and technical methods which may be implemented to increase the efficiency of use;
- I. Alternatives for present uses which will minimize the impacts described in section 1501 of this Code;

- J. Amounts of water within the particular supply which shall be subject to a reserve as provided in section 1303 of this Code;
- K. Proposals for assessing varying amounts of water as provided for in section 1304 of this Code; and
- L. Any additional information and recommendations which the Director of the Division of Natural Resources deems is necessary for inclusion.

1807 Proposed Determination of Availability and Need

As soon as possible and no more than 30 days after receipt of the report of the Director of the Division of Natural Resources, the Resources Committee shall cause to be prepared a proposed Determination of Availability and Need in accordance with the provisions of this subchapter.

1808 Determination of Availability and Need – Contents

A Determination of Availability and Need may include the following, either as recommendations or mandatory provisions:

- A. A description and map of the affected area;
- B. A description of the water supply in the affected area, including a description of the various characteristics of the supply which are especially pertinent to present and proposed water uses within that area;
- C. A description of the various present and future needs for using or affecting the water supply in the area;
- D. A list of priorities to be observed within the affected area;
- E. A list of storage methods which are or may be proposed and implemented;
- F. A description of methods for increasing efficiency;
- G. A description of possible interbasin transfer; and
- H. Other information, provisions and recommendations or requirements reasonably calculated to inform the affected parties concerning the future management of the water supply in question.

1809 Notice of Hearing

As soon as possible and no more than 30 days after the drafting of a proposed Determination of Availability and Need, the Director of the Division of Natural Resources shall provide notice, in the manner provided for in section 1803, of a public hearing at which interested persons may present oral or written comments concerning the proposed Determination of Availability and Need. Included in the notice shall be a description and map of the affected area; a description of the proceeding to date and a clear statement that copies of the proposed Determination of Availability and Need shall be made reasonably available to interested persons. The notice shall state the date, time and place for a hearing, to be held not less than 30 nor more than 60 days after the date notice is completed.

1810 Hearing

A hearing shall be held with respect to every proposed Determination of Availability and Need. Whenever possible, such hearing shall be held in the affected area, at a date, time and place which is reasonably convenient to a major portion of the parties affected. At such hearings, the Resources Committee or its designees shall provide a brief oral statement of the purpose of the hearing and a description of the proceeding to date, including the proposed Determination. At least one member of the Resources Committee shall be present and shall preside over the hearing. After the presentation is made by the Resources Committee or its designees, public comment shall be allowed. Public comment may be limited by reasonable rules adopted by the Resources Committee to insure an opportunity for full comment. Hearings may be continued if necessary to such times and places as are deemed appropriate upon adequate notice.

1811 Final Determination of Availability and Need

As soon as possible, and no more than 60 days after the public hearing provided for in section 1810, the Resources Committee shall cause to be prepared a final Determination of Availability and Need. Notice of this final Determination shall be made in the same manner as provided for in section 1803 and shall indicate that copies of the Determination are reasonably available for public review.

1812 Subsequent Action

Upon completion of the above proceedings, the Director of the Division of Natural Resources shall make copies of the Determination of Availability and Need made under the provisions of this subchapter reasonably available to parties requesting the same; shall grant, revoke, deny or modify permits in accordance with such Determination; shall enter appropriate orders and take other actions authorized by this Code to prevent overuse and/or pollution in accordance with such Determination; and shall take whatever other actions are necessary and authorized by this Code to assist in the implementation of the Determination and of the policies, provisions and guidelines set forth in this Code.

1813 Appeal

Appeals from the final Determination of the Availability and Need shall be taken in the same manner as provided for in subchapter 11 of this Code.

SUBCHAPTER 9: TRANSFER AND LOSS OF RIGHTS

1901 Transfer, Assignment, Descent, Distribution and Creation of Security Interest

Permits issued under this Code shall not be subject to transfer, assignment, descent, distribution or creation of any security interest without the express written consent of the Director of the Division of Natural Resources. Applications for transfer, assignment, or creation of a security interest shall be made on forms prepared and made available by the Director of the Division of Natural Resources. Such forms shall be designed to solicit information concerning any substantial changes which will or may occur as a result of the transfer, assignment or creation of a security interest in a water use permit. Every attempt should be made to conform with the purposes of subchapter 6, governing Descriptions of Use and Applications for Permit. Heirs and successors in interests of permittees shall apply for permits in their own names; however, such substitute permits shall be freely granted unless changing hydrological conditions clearly warrant a modification of the prior permits.

1902 Loss by Nonuse

- A. Any right to use or otherwise affect in any way water within the territorial jurisdiction of the Navajo Nation, regardless of its origin, shall become void and revert, to the extent of the abandonment or nonuse, to the Navajo Nation when the holder of such use right wholly or partially abandons the same, or voluntarily fails without sufficient cause to use all or a portion of the water available under such use right for a period of five consecutive years.

B. "Sufficient cause" shall include:

1. Drought or other unavailability of water;
2. Active service in the armed forces of the United States;
3. The operation of legal proceedings;
4. The application of any laws restricting water use;
5. Incarceration in a penal institution;
6. Confinement in a mental institution, whether voluntary or involuntary;
7. Incompetence by reason of age or mental incapacity;
8. Provisions for future use as provided in this Code; or
9. Other causes of nonuse beyond the control of the holder or holders of the use right claimed.

Before such rights to use water may be deemed lost by nonuse or abandonment, the Director of the Division of Natural Resources shall serve notice on the holders of such use rights to appear at a hearing to be held before the Resources Committee not less than 30 days after the mailing or personal service of such notice and show cause why their use rights should not be deemed void. Such notice and hearing shall be in the manner provided for in subchapter 10 of this Code governing notice and hearing.

1903 Loss by Adverse Possession, Prescription, Estoppel or Acquiescence

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.

1904 Outside Proceedings

No use right granted under this Code may be reduced or taken or otherwise affected in any procedure or determination or adjudication except as provided for in this Code, and in compliance with the Indian

Civil Rights Act, 25 U.S.C. §1301 et seq., and the Navajo Bill of Rights, 1 N.N.C. § et seq.

SUBCHAPTER 10: GENERAL HEARING PROVISIONS

2001 Applicability

Unless otherwise provided for in this Code, hearings shall be held in accordance with the provisions of this subchapter.

2002 Notice

All parties who will or may be directly affected by a proposed action shall be given notice by mail of any hearings held under this subchapter. In addition, notice of hearings shall be published in one paper having general circulation in the affected area and notice of hearings shall be posted in prominent places in the affected area, as set forth in subchapter 2 of the Code.

Every attempt shall be made to give each party who will or may be directly affected by any action actual notice of that action and fair and adequate opportunity to be heard.

2003 Time and Place of Hearing

Whenever possible hearings shall be held in the affected area, at a date, time and place which is convenient for a major portion of the parties affected.

2004 Continuances

Continuances shall be freely granted when the ends of justice so require and in order to assure adequate notice and opportunity to be heard.

2005 Presiding Officer

The Resources Committee shall designate a qualified and impartial hearing officer to preside over hearings provided for in this subchapter.

2006 Forms of Evidence

Evidence may be submitted in any practical form including oral testimony, written evidence, and description evidence. The ordinary rules of

evidence shall not apply but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfairly admitted, may be excluded or admitted only under special conditions or stipulations.

2007 Consolidation of Hearings

Whenever possible, hearings concerning proposed or existing actions in a particular watershed or area shall be consolidated to promote efficiency, minimize expense or hardship, and to prevent duplication.

2008 Recording

Hearings shall be recorded by mechanical means, provided, that any person may provide at his own expense for a stenographic record.

2009 Decision

Whenever a decision is required in accordance with the provisions of this Code following a public hearing, the Hearing Officer shall prepare findings of fact and conclusions of law and shall recommend a proposed decision to the Director of the Division of Natural Resources. The Director may make such modifications as are clearly warranted by the evidence and applicable law and shall issue a final decision, including an explanation for any changes made in any recommendation of the Hearing Officer, within thirty days of such recommendation. Such decision shall be published and served upon the parties in the same manner as provided in section 2002 governing notice of hearings.

SUBCHAPTER 11: APPEALS

2101 Appeals Provided For

There shall be no appeal from actions taken under this Code except as provided herein. Appeals shall be to the Supreme Court of the Navajo Nation.

2102 Notice of Appeal – Jurisdiction

Any party aggrieved by any final action taken under this Code may, be filing a Notice of Appeal with the Supreme Court of the Navajo Nation, obtain review of such final action. The Supreme Court shall have no jurisdiction to hear any appeal initiated pursuant to this subchapter unless the Notice of Appeal is filed with the Supreme Court within 30 days after the date of the final action. "Final action" means any action taken under

this Code for which no further consideration by the Director of the Division of Natural Resources or the Resources Committee is required.

2103 Notice of Appeal – Service

Upon filing of the Notice of Appeal the party appealing the final action shall forthwith, and no more than 10 days after filing of the Notice of Appeal, cause the Notice of Appeal to be served on all parties to the proceeding being appealed from, on the Director of the Division of Natural Resources, and on the Chairman of the Resources Committee.

2104 Transmittal of Record

- A. Upon receipt of the Notice of Appeal, the Director of the Division of Natural Resources and the Resources Committee shall cause all pertinent documents in their possession, and any other articles of evidence in their possession, to be transmitted to the Court of Appeals.
- B. Any party to an appeal may, at his own expense, cause a transcript of any hearings or other proceedings below to be prepared and transmitted to the Court of Appeals. Provided, that the Director of the Division of Natural Resources in his discretion shall bear the final financial burden of preparing such transcript when it appears, after good cause shown, that a party is financially unable to do so.

2105 Oral Argument

Upon receipt of the Notice of Appeal, the Court of Appeals shall, as soon as possible and no more than 15 days after receipt thereof, notify the Resources Committee, the Director of the Division of Natural Resources, the appealing party, and the other parties to the proceedings, of a date certain for full hearing before the Court of Appeals.

2106 Briefs

Parties may at their own option or shall when requested to do so by the Court of Appeals file briefs in support of their appeal. Briefs shall be due on dates set by the Court of Appeals and no less than 30 days after receipt of the notice provided for in section 2105 of this subchapter.

2107 Scope of Review

The Court of Appeals, in reviewing the final action appealed from, shall limit its review to the issues and the evidence which were before the Director of the Division of Natural Resources or the Resources Committee at the time of the final action appealed from. The Court of Appeals may affirm, reverse, modify in whole or in part, or remand for further consideration, any final action appealed from. Provided, final actions appealed from may only be reversed, modified or remanded when they are arbitrary, capricious unsupported by substantial evidence, not in substantial conformity with this Code or otherwise contrary to law.

2108 The Supreme Court – Additional Powers

- A. The Supreme Court of the Navajo Nation may on its own motion or upon motion of any party dismiss an appeal for want of prosecution, gross procedural irregularity, or mootness when the ends of justice so require.
- B. In addition, the Supreme Court may stay the operation of final actions appealed from, in whole or in part, and may, when the ends of justice require, provide for a supersedeas bond or other security from the parties to the appeal.

SUBCHAPTER 12: DEFINITIONS

2201 Director of the Division of Natural Resources

Director of the Division of Natural Resources means the Executive Director of the Division of Natural Resources of the Navajo Nation Government, his designated representative or agent, or his successor in responsibility, as determined by the President of the Navajo Nation.

2202 Domestic Use

“Domestic Use” means any use of water for individual personal needs or for household purposes such as drinking, bathing, heating, cooking, or sanitation.

2203 Effective Date

The “effective date” referred to herein shall be the date of the resolution of the Navajo Nation Council approving adoption of this Code.

2204 Municipal Use

“Municipal Use” means all reasonable water uses necessary in carrying out the functions of municipal government, local Chapter government and growth centers or towns.

2205 Person

“Person” includes an individual; a partnership; a corporation, whether public and private; and a governmental entity, unit or agency, whether Tribal, local, state or federal.

SUBCHAPTER 13: PROHIBITED ACTS

2301 Waste of Water Prohibited

No waters that have been withdrawn, diverted, impounded or otherwise taken pursuant to a valid permit of otherwise shall be wasted. The withdrawal of reasonable quantities of water in connection with construction, development, testing or repair of diversion, withdrawal and impoundment works shall not be construed as waste. In the event of inadvertent loss of water owing to defects in equipment for diversions, withdrawals and impoundments such shall not be construed as waste if reasonable diligence is shown by the permittee in effecting necessary repairs.

2302 Unauthorized Actions Affecting Water Prohibited

Whenever any use of other action affecting the use of waters within the territorial jurisdiction of the Navajo Nation is required by this Code to be authorized under the provisions of this Code, it shall be a violation of this Code to knowingly make such use or take such other action without the authorization required.

2303 Obstruction of Navajo Nation Employees

The willful obstruction of or interference with Navajo Nation employees performing their lawful duties under this Code shall be a violation of this Code.

2304 Misstatement of Material Facts

The knowing misstatement of any material fact by any person or entity when providing information required by this Code, with respect to

Descriptions of Use and Applications for Permit or otherwise, shall be a violation of this Code.

2305 Sanctions for Code Violations

Violations of this chapter may subject the person(s) or entity(ies) responsible to forfeiture or suspension of rights to the use of water administered under this Code. Sanctions may also include the requirement of payment for water improperly used or adversely affected by the improper use; payment of the costs for all associated remedial actions taken, including the replacement of lost water; payment of associated administrative costs incurred by the Navajo Nation as a result of the violation; and payment of such other costs as are necessary to render the Navajo Nation and its inhabitants whole. Sanctions shall be imposed by the Director of the Division of Natural Resources subject to the limitations imposed by the Indian Civil Rights Act, 25 U.S.C. §1303 et seq., and the Navajo Bill of Rights, 1 N.N.C. §1 et seq.

SUBCHAPTER 14: MISCELLANEOUS PROVISIONS

2401 Severability

If any provisions of this Code or the application thereof to any person or circumstances is held invalid, the Code can be given effect without the invalid provision or application; and to this end the provisions of this Code are declared to be severable.

2402 Construction

This code shall be liberally construed to effectuate its objectives, policies, guidelines, purposes, and provisions.

2403 Review of Authority

The Resources Committee and the Director of the Division of Natural Resources shall, from time to time, review the authority granted to them under this Code and propose amendments and additions thereto to the Navajo Nation Council in order to improve administration under this Code.

2404 Extension of Time Limits

The time limits provided for in various places of this Code may be extended, for good cause shown, by the agency before whom the proceeding is pending when the ends of justice so require.

2405 Representation

Parties appearing at hearings and other proceedings provided for by this Code may represent themselves or may be represented by individuals licensed to practice before the Courts of the Navajo Nation if they so desire.