

Washoe Tribe of Nevada and California

Law & Order Code

TITLE 19 – WATER CODE

[Last Amended: 3/13/98. Issue Date: 7/13/06.]

19-10 GENERAL PROVISIONS

19-10-10 Water Policy

The Washoe Tribe of Nevada and California recognizes that its lands are endowed with water resources of excellent quality and quantity and that it is necessary to promote the conservation, development, and beneficial use of Washoe water resources to secure maximum economic and social prosperity for the Washoe People. Because of the Tribal concern and interest in protecting the quality, integrity and use of Washoe water resources so as to effect full utilization, conservation, and protection of those resources, consistent with Washoe cultural values, for present and future generations, the Tribe finds it necessary to have the ability to call persons who so impact those resources to account for their acts or omissions in Tribal Court. The Tribe therefore intends the following ordinance to provide the means by which the Tribe may exercise Tribal Court jurisdiction over such persons.

[Enacted 12/9/94, Resolution No. 94-WTC-58.]

19-10-20 Findings

In accordance with the beliefs of the Washoe people with respect to water, the Washoe Tribal Council makes the following findings:

The Washoe people acknowledge that water is central to life. Water is life supporting and provides Tribal members with vegetation, fish and game. Water breathes life into Tribal lands, plants, fish, birds, animals and seeds, wild vegetables and willow.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-10-30 Purposes

The purposes of the Water Code shall include, but not be limited to the maintenance and improvement of water quality and quantity, the preservation of

fish and wildlife habitats, the promotion of conservation regarding water use, the encouragement of the cultural values of the Washoe people related to water, providing guidance to all persons concerning the use of Washoe water and the provision of guidelines for water permits and well construction standards.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-10-40 Choice of Law

1. Nothing in this Code is intended to alter the provisions of previous water adjudications involving Washoe water resources. The Washoe Tribe shall administer the decrees resulting from those adjudications as they relate to Washoe water resources.
2. This Code shall be interpreted in accordance with Tribal law and Tribal custom. If this Code fails to address an issue, federal law may be consulted for guidance purposes. Only if federal law and Tribal law are not instructive on a point of law shall state law be consulted for guidance purposes only.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-20 DEFINITIONS

19-20-10 Waters Defined

The water resources of the Washoe Tribe are defined as follows:

1. All surface waters arising on, bordering or traversing Washoe Tribal lands held in trust by the United States for the Washoe Tribe, including allotted lands held in trust;
2. All groundwaters within hydrologic connection or underlying Washoe Tribal lands, including allotted lands held in trust;
3. All waters held by the Washoe Tribe by use, appropriation, purchase, gift, bequest, contract, adjudication or other means of acquisition;
4. All surface and ground waters reserved to the Washoe Tribe and its members for Washoe Tribal lands and allotments, which assist to provide a homeland for Tribal members and which fosters and encourages Washoe cultural and spiritual life. Water resources of the Washoe Tribe shall include unquantified needs of the Washoe people to accommodate physical growth and development of Tribal lands;

5. Waters in which the Washoe people have an interest in the quality and quantity to protect and encourage wildlife and fishing habitats in order to fulfill the Washoe people's aboriginal right to hunt and fish in Washoe territory.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-20-20 General Definitions

1. "Allotments" shall include all lands held in trust for the benefit of individual Tribal members, including those allotments held in trust for the benefit of the Washoe Tribe.
2. "Beneficial Uses" of Washoe water resources shall include but not be limited to domestic and personal household uses, stock watering, in-stream flows for the protection of fish, fauna and wildlife, agricultural uses, religious and cultural uses, commercial uses such as industrial and power production, aquifer and groundwater recharge by the Tribe, and commercial leasing.
2. "Code" shall mean the Water Resources Code of the Washoe Tribe of Nevada and California.
3. "Commission" shall refer to the Water Commission of the Washoe Tribe of Nevada and California.
4. "Personal Jurisdiction" shall mean those persons who are subject to the authority of the Washoe Tribal Court.
5. "Subject Matter Jurisdiction" shall mean the authority to decide certain types of civil cases granted to the Tribal Court by Tribal legislation.
6. "Tribe" shall mean the Washoe Tribe of Nevada and California.
7. "Tribal Lands" shall mean all lands held in trust for the benefit of the Washoe Tribe or lands in fee status owned by the Washoe Tribe of Nevada and California, including those lands obtained for or by the Tribe hereafter.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-30 JURISDICTION

19-30-10 Subject Matter Jurisdiction

The Washoe Tribal Court shall have subject matter jurisdiction over all civil water matters, regardless of the amount in controversy.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-30-20 Personal Jurisdiction

The Washoe Tribal Court shall have personal jurisdiction over any person who enters the territory of the Tribe and over any person or entity for claims related to water disputes on Tribal lands or effecting the health, safety and welfare of Tribal members on Tribal lands.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-40 WATER COMMISSION

19-40-10 Creation of the Commission

1. The Washoe Tribe of Nevada and California Water Commission shall be composed of one (1) Tribal Council members and six (6) members appointed by the Council, with one representative for each of the Stewart Community, the Carson Community, the Dresslerville Community, the Woodfords Community, allotment interest holders and Off-Reservation Members.
2. The Tribal Council member shall not vote in Commission actions unless necessary to break a tie vote.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-40-20 Terms of Commission Members

1. Water Commission members shall serve on the Commission for four (4) year terms.
2. For the first appointments to the Commission, three members shall serve for (6) years and three shall serve for four (4) years, in order to initiate staggered terms. The Tribal Council shall designate which members shall serve the six (6) year terms.

3. After the first appointments, all new appointees shall serve four (4) year terms. The first Tribal Council member appointee shall serve for the remainder of their Council term, and thereafter for four (4) year terms.
4. The Water Commission shall meet on a quarterly basis, to be held on the second Tuesday in March, the second Tuesday in June, the second Tuesday in September and the second Tuesday in December.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-40-30 Duties of the Commission

The Washoe Water Commission shall be responsible for administering the provisions of the Water Code and shall:

1. Approve and disapprove water use permits in accordance with the provisions of this Code;
2. Conduct informal hearings on water use decisions which are protested;
3. Approve permit forms and or materials prepared for the regulation of water and the implementation of this Code;
4. Ensure optimal water quantity and quality in creeks, rivers and hot springs as required for fish and wildlife habit, agriculture, recreational use, domestic use, and cultural and religious use of water;
5. Propose and recommend to the Washoe Tribal Council amendments to this Code when necessary to best implement the water policies of the Washoe Tribe;
6. Negotiate and enter agreements or Memorandums of Understanding with other jurisdictions to best implement the water policies of the Washoe Tribe, with the approval of the Washoe Tribal Council;
7. Take further actions as provided for or required by the provisions of this Code.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-50 WATER MASTER

19-50-10 Appointment

The Washoe Tribal Council shall appoint a Water Master to administer the provisions of this Code in conjunction with the Water Commission. For one (1) year from the effective date of this Code, the Water Master shall be the Tribal Land Use Planner. After the expiration of the first year, the Tribal Council shall appoint a qualified person as the Water Master for terms of two (2) years. If the Water Master is not the Land Use Planner, the Land Use Planner shall be a voting member of the Water Commission.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-50-20 Qualifications

The Water Master shall meet the following employment criteria:

1. The Water Master shall be sensitive to the historical, cultural and religious importance of water to the Washoe people;
2. The Water Master shall have either a bachelor's degree or a graduate degree in hydrology, natural resources management or hydrologic engineering;
3. The Water Master shall have at least one (1) year experience as a manager in natural resource or hydrology resources management.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-50-30 Duties of the Water Master

The Water Master shall:

1. Insure compliance with the provisions of this Code, and with permits issued;
2. Promulgate regulations with the approval of the Water Commission governing basin and groundwater quality standards, to be codified herein;
3. Prepare permit applications and permit forms;
4. Make decisions as to whether an applicant's proposed use is permitted by this Code and if so, issue permits;

5. Collect permit and application fees and account such fees to the Financial Resources Department of the Washoe Tribe;
6. Make recommendations to the Water Commission as to policy changes or amendments to this Code;
7. Make recommendations to the Washoe Tribal Council as to changes in other Tribal programs for the enhancement and protection of Washoe water resources.

19-50-40 Authority of the Water Master

The Water Master is hereby designated as the Tribal enforcement officer and is authorized to take all actions necessary or appropriate to carry out the provisions of this Code.

1. The Water Master is authorized to issue corrective action in order to enforce the regulations and standards in this Code.
2. The Water Master is authorized to issue civil citations for violations of the regulations and standards in this Code on a citation form that shall be developed by the Water Master and approved by the Tribal Council.

[Enacted 3/13/98, Resolution 98-WTC-12.]

19-60 WATER PERMITS

19-60-10 Permit Application Process

1. A prospective water user shall submit a permit application to the Water Master on the Washoe Water Permit Application Form. The permit shall list the point of diversion, the method of diversion, the desired place of use, the type of use, the method of application, the quantity and quality of expected return flows and the dates of use. The permit shall also state whether the proposed use impacts a historical, cultural or religious site of the Washoe Tribe.
2. The Water Master shall post a notice in the Tribal Offices of a water permit application as soon as the application is received. The public shall have the right to submit written comments regarding the proposed water use permit. The Water Master shall consider these written comments when making a determination as to the feasibility of a water permit.
3. The Water Master shall either deny the permit, grant the permit or request further information from the applicant within thirty (30) days from the

state the application was submitted. The applicant shall receive written notice of the Water Master's decision.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-60-20 Duration of Permits

1. Washoe Tribe water use permits shall be valid and effective for eight (8) years from the date of issuance.
2. A permit may be issued for a shorter period of time if the Water Master determines this is in the best interests of the water resource.
3. The date of expiration shall be stated on the permit in bold letters.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-60-30 Renewal of Permits

1. An applicant may submit a renewal application to the Water Master three months or less before the expiration of the permit.
2. The Water Master may renew the permit for another eight (8) year term.
3. There is not a limitation on the number of renewals for a water use permit so long as the Water Master continues to determine the issuance of the permit is in the best interests of the Washoe water resource.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-60-40 Protests

1. Any applicant that objects to a final decision of the Water Master on his or application for a water use permit may file a written request for a review hearing within thirty (30) days of receiving notice of the final decision.
2. The written request shall include a statement explaining why the decision should be reconsidered. The written request shall be submitted to the Washoe Tribe Land Use Planning Office.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-60-50 Review Hearings

1. The Water Master shall transmit a copy of the request for a review hearing to the Water Commission within five (5) days following receipt.

2. The Water Commission shall review the request at its next regularly scheduled meeting.
3. No review hearing shall be held with less than four (4) Commissioners present.
4. At that time, the applicant may present whatever testimony or other evidence he or she feels is relevant to the application for water use.
5. The Water Commission shall issue a final decision on the water use application within thirty (30) days from the review hearing. This decision shall be final and is not subject to Tribal Court or Tribal Council review.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-70 WATER QUALITY; BASIN STANDARDS

(To be promulgated by the Water Master and Water Commission)

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-80 WATER QUALITY; GROUNDWATER STANDARDS

(To be promulgated by the Water Master and Water Commission)

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-90 VIOLATIONS OF CODE

19-90-10 Procedures

1. Any entity or person who diverts water without a water use permit or in violation of a water use permit shall receive a written notice from the Water Master to cease and desist the violation or be subject to cancellation of the water use permit.
2. If the entity or person refuses to stop the violation, the Water Master may file a complaint seeking injunctive relief and civil damages in Tribal Court.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-100 WATER LEASING

19-100-10 Procedures

1. Any person or entity seeking to lease water from the Washoe Tribe shall file a written application for the leasing of water.
2. The application shall state the amount of water to be leased, the point of diversion, the method of diversion, the desired place of use, the type of use, the method of application, the quantity and quality of expected return flows and the dates of use.
3. The Water Commission, during the water year, shall promulgate policies regarding price, quantities and quality to be maintained, which shall be codified herein.
4. The same procedures for water sue permits regarding decisions on applications and review hearings apply to water leasing. Nothing herein is intended to authorize a sale of water rights.

[Enacted 3/14/97, Resolution 97-WTC-05.]

19-110 EMERGENCY POWERS

Notwithstanding any other provision of the Tribal Code, in the event of an imminent or current danger to the health, safety and welfare of the Washoe Tribe, Tribal and Allotment lands, Tribal members or occupants of Tribal or allotment lands, the Water Master may take any immediate legal action he or she determines is necessary to prevent or mitigate the potential danger. If possible, the Water Master shall consult with members of the Water Commission prior to taking emergency action. Following the emergency action, the Water Master shall report to the Water Commission and the Tribal Council.