

Washoe Tribe of Nevada and California

Law & Order Code

TITLE 33 – WASHOE SOVEREIGN IMMUNITY CODE

[Enacted 10/30/2014 – Resolution 2014-WTC-81. Effective Date: 11/14/2014. Current Through Date: 11/14/2014]

33-10 AUTHORITY, FINDINGS, & SCOPE

33-10-010 The inherent sovereign immunity of the Washoe Tribe of Nevada and California (“Tribe”) is recognized and established in judicial decisions, legislative enactments, regulations, and administrative decisions. The Washoe Sovereign Immunity Code is enacted pursuant to the Tribe’s inherent sovereignty and in accordance with the powers delegated to the Washoe Tribal Council under Article VI, Section 1 of the Constitution and By-Laws of the Washoe Tribe.

33-10-020 The Tribal Council hereby finds that:

- (1) The Tribe provides governmental services which promote health, safety, welfare and economic security for residents of and visitors to Washoe lands or enterprises. To those ends, the Tribe and Tribal members engage in and benefit from commercial transactions conducted within the stream of local, Tribal, intertribal, interstate and international commerce;
- (2) The Tribal Council recognizes that the Tribe is immune from lawsuit except to the extent such immunity is clearly, explicitly, and unequivocally waived, and that Tribal sovereign immunity serves an important function in preserving limited Tribal resources so the Tribe can provide governmental services that promote health, safety, welfare, and economic security for the residents of and visitors to Washoe lands, and to others who interact or transact with the Tribe or Tribal Entities;
- (3) Tribal sovereign immunity is an important protection for Tribal assets and resources, but it may operate in specific circumstances as an impediment to commercial transactions and economic development. Potential business investors or partners of the Tribe may be reluctant to complete commercial transactions with the Tribe or Tribal Entities unless Tribal sovereign immunity is waived, thereby allowing them recourse in the event of Tribal default or breach of contract;
- (4) The Tribe has the authority to waive its sovereign immunity and the authority to determine when such a waiver is prudent and in the best

business interest of the Tribe in order to further or complete commercial transactions. Any waiver of sovereign immunity made pursuant to this Title is hereby declared to be in the best interest of the Tribe and its members. Such waiver does not infringe upon Tribal sovereignty, but is an affirmative declaration and exercise of such sovereignty;

- (5) The provisions of this Title shall be strictly construed and applied to protect the Tribe's sovereign immunity from lawsuit and to safeguard its limited resources.

33-10-030 The provisions of this Title shall apply to the Washoe Tribe of Nevada and California, its Tribal Council, and any and all Tribal Entities, including those that exist after the adoption of this Title.

33-20 **DEFINITIONS**

For the purposes of this Title, the following definitions apply:

- (1) "Charter" means the charter of a Tribal Entity, and includes any articles of incorporation, operating agreement, or similar document.
- (2) "Claim" means any written demand to recover damages from the Tribe or Tribal Entity, or an officer or employee of the Tribe or Tribal Entity, while engaged in work assigned or controlled by the Tribe or Tribal Entity.
- (3) "Employee" means any person who performs work assigned or controlled by the Tribe or Tribal Entity. The term shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the Tribe or Tribal Entity.
- (4) "Tribal Council" means the Tribe's governing body.
- (5) "Tribal Court" means the Tribal Court(s) established pursuant to the Constitution and By-Laws of the Washoe Tribe of Nevada and California.
- (6) "Tribal Entity" means any Tribal branch, office, department, agency, commission, utility, authority, instrumentality, enterprise, corporation, partnership, limited liability company, or similar corporate entity (whether chartered under Tribal, state or federal law), or other entity of the Tribe.
- (7) "Tribal Law" means the Constitution and By-Laws of the Washoe Tribe of Nevada and California, ordinances, codes, resolutions, and other legislative enactments adopted by the Tribal Council, as well as the common law of the Tribal Court.

- (8) "Tribal resolution or resolution" means the official Tribal resolution considered and adopted by the Tribal Council according to the Constitution and By-Laws of the Washoe Tribe of Nevada and California.
- (9) "Tribe or Tribal" means the Washoe Tribe of Nevada and California.
- (10) "Officer" means a person serving at the request or direction of the Tribe as a director, officer, or manager of a Tribal Entity according to a Charter. Officer shall not mean any member individually or collectively of the Tribal Council.

33-30 SOVEREIGN IMMUNITY & WAIVER

33-30-010 Sovereign Immunity of Tribe. The sovereign immunity of the Tribe shall include but not be limited to any lawsuit, action, claim, controversy or process, in any state, federal, or Tribal court, forum, or tribunal, unless such immunity is clearly, explicitly and unequivocally waived in accordance with this Title.

33-30-020 Sovereign Immunity of Tribal Entities.

- (1) A Tribal Entity possesses all of the privileges, protections, and immunities of the Tribe, including but not limited to taxation, regulatory jurisdiction, and civil jurisdiction, except as specifically limited by the Tribal Entity Charter approved by the Tribal Council, including sovereign immunity from lawsuit, action, claim, controversy or process, in any state, federal or Tribal court, forum or tribunal.
- (2) A "sue and be sued" clause or other authorization for a Tribal Entity to waive its own sovereign immunity shall not constitute a waiver of sovereign immunity nor shall it constitute authorization for waiver of the Tribe's immunity pursuant to this Title or otherwise.
- (3) Nothing in a Tribal Entity Charter shall be deemed, implied, or construed to be a waiver of the immunity of the Tribe or the consent of the Tribe to lawsuit, action, claim, controversy, or process, in any state, federal or Tribal court, forum or tribunal, nor shall it obligate or in any way involve the credit of the Tribe.
- (4) A Tribal Entity shall have only those assets of the Tribe formally assigned to it by the Tribal Council, together with the assets it acquires from other sources. Neither any activity of a Tribal Entity, nor any indebtedness incurred by it, shall implicate or in any way involve any assets of Tribal members or the Tribe that are not officially assigned to the Tribal Entity.

33-30-030 Sovereign Immunity Waiver.

- (1) Nothing in this Title shall be deemed or construed to be a waiver of sovereign immunity of the Tribe or any Tribal Entity from lawsuit, action,

claim, controversy or process, or operate to consent the Tribe or any Tribal Entity, to the jurisdiction of the United States, any State, or the Tribal Court with regard to the business or affairs of the Tribe or any Tribal Entity or to any cause of lawsuit, action, claim, controversy or process.

- (2) The sovereign immunity of the Tribe may be waived only
 - (a) For any contract or agreement valued at less than \$50,000, by approval of the contract or agreement in accordance with the Tribe's Finance Policies and Procedures, Section VI and Procedure No. VI-002 and any amendments thereto; or
 - (b) By express resolution of the Tribal Council.
- (3) The sovereign immunity of a Tribal Entity may be waived only:
 - (a) By express resolution of the Tribal Council; or
 - (b) In accordance with the Tribal Entity's Charter approved by the Tribal Council.
- (4) Generally, waivers of sovereign immunity are disfavored and shall be granted only when essential to secure a substantial advantage or benefit to the Tribe or a Tribal Entity.
- (5) In no case may a sovereign immunity waiver be general or, as it concerns a Tribal Entity, include language that would encompass a waiver of the Tribe's immunity. In order to be effective, a waiver must be limited as to duration, grantee, transaction, property, or funds, if any, of the Tribe or Tribal Entity subject thereto.
- (6) Neither the power to sue and be sued provided in the Charter of any Tribal Entity, nor any express waiver of sovereign immunity by resolution of the Tribal Council, shall be deemed a consent to the levy of any judgment, lien or attachment upon any property of the Tribe or Tribal Entity other than property specifically pledged or assigned.
- (7) No Officer or Employee of the Tribe or any Tribal Entity shall be personally liable to any creditor of the Tribe or Tribal Entity. Nor shall this Title in any way waive the sovereign immunity enjoyed by Tribal or Tribal Entity Officers or Employees. Nor shall this Title in any way waive the sovereign immunity enjoyed by members of the Tribal Council individually or collectively.
- (8) The waiver of sovereign immunity allowable under this Section shall not apply to any claim unless a description of the claim has been presented to the Tribe or Tribal Entity in writing within one-hundred (180) days after such claim accrues, or within ninety (90) days after the claim has been discovered or should have been discovered in the exercise of reasonable

diligence, certified mail, return receipt requested, or by any other courier or delivery service for which a return receipt is obtained. The description shall identify the contract upon which the claim is based, the nature of the claim, and the relief requested. The Tribe reserves sixty (60) days after receipt of the claim(s) in order to respond.

- (9) Under no circumstances shall any waiver of sovereign immunity allowable under this Section apply to:
 - (a) Any claim sounding in tort or that could have been brought pursuant to Title 3 of the Tribe's Law and Order Code;
 - (b) Any claim seeking punitive damages; or
 - (c) Any claim seeking attorneys' fees or litigation costs unless a contract containing a waiver of sovereign immunity allowable under this section specifies clearly and unequivocally that attorneys' fees or litigation costs are available in particular circumstances.
- (10) The provisions of this Section shall not prevent Tribal Council from waiving the application of exhaustion of Tribal remedies or any right of comity, if completed by express resolution of the Tribal Council.
- (11) The provisions of this Section shall not inure to the benefit of any party except for those parties specified in a contract containing a waiver of sovereign immunity allowable under this Section; under no circumstances may a waiver of sovereign immunity allowable under this Section be assigned or inure to the benefit of any third-part beneficiary, except through the manner specified herein for granting such a waiver.

33-40 MISCELLANEOUS

33-40-010 Severability.

If any part of this Title or the application thereof to any person or circumstance is declared to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other provisions or applications of this Title which may be given effect without the invalid provision. To these ends, the provisions of this Title are declared to be severable.

33-40-020 Applicable Law.

Tribal law, and applicable federal law if any, shall apply and shall govern all claims and actions brought under this Title. In no circumstances shall any state law or state court, forum or tribunal, apply or govern any lawsuit, action, claim, controversy or process brought under this Title.