

## **TITLE 25 - WATER**

### **CHAPTER 3 - TOHONO O'ODHAM NATION WATER CODE**

*Legislative History: The "Tohono O'odham Nation Water Code" was enacted and codified by Resolution No. 11-198 as Tohono O'odham Code Title 25, Chapter 3, effective July 1, 2011. The Tohono O'odham Nation Water Code repeals and supersedes the previous 25 T.O.C. Chapter 3, the "Interim Allottee Water Rights Code." Resolution No. 11-198 retains Tohono O'odham Code Title 25, Chapter 4, "Implementation Provisions Regarding SAWRSA" and amends Section 4102. Resolution No. 12-177, effective May 21, 2012, amended Section 3304 and Section 3602 of 25 Tohono O'odham Code Chapter 3 to extend the Declaration of Existing Use filing deadline and registration of Existing Wells deadline from June 1, 2012 to June 1, 2013.*

*Related Legislation: The repealed Interim Allottee Water Rights Code, was enacted and codified by Resolution No. 07-257 as Tohono O'odham Code Title 25, Chapter 3. Conforming amendments to Title I of the Interim Allottee Water Rights Code were adopted by Resolution No. 07-485 on July 25, 2007 and the Code became effective December 14, 2007.*

**TOHONO O'ODHAM NATION**

**WATER CODE**

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**TITLE 25 -- WATER**

**CHAPTER 3 – NATION’S WATER CODE**

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# **TOHONO O'ODHAM CODE**

## **TITLE 25 -- WATER**

### **CHAPTER 3 – NATION'S WATER CODE**

#### **TOHONO O'ODHAM NATION WATER CODE**

##### **PREAMBLE**

All waters which originate in or flow in, into or through the Tohono O'odham Nation, or which are stored in or by the Tohono O'odham Nation, whether found on the surface or underground, are a sacred and valuable public resource of the Tohono O'odham Nation to be protected for the present and future use of the Tohono O'odham Nation as a whole.

##### **ARTICLE 1 - GENERAL PROVISIONS**

###### **Section 3101 Findings**

The Legislative Council finds and declares that:

- (A) The Nation's Water is a life giving public resource and is vital to the cultural, spiritual, economic, and political interests of the O'odham.
- (B) All rights of the Nation to its water resources, whether founded on federal, state or international law or the Nation's law shall be protected and preserved. Nothing in this Code shall be construed to be a waiver or limitation on these rights of the Nation.
- (C) The Nation has inherent sovereign power to control and manage the Nation's Water and to regulate the use of the Nation's Water subject to the Constitution, laws, ordinances, and customs of the Nation, and applicable federal law.
- (D) The development of education and training opportunities for tribal members in water and related land resources management is essential to protect the economic well-being and self governance of the Nation.
- (E) Groundwater and surface water exist in a natural interrelationship and shall be managed as an integrated hydrologic system to promote the protection of both water quantity and quality.
- (F) The water resources described in clauses (i) and (ii) of Section 307(a)(1)(G) of the SAWRSA Amendments shall be subject to any federal water use rights of Persons who

have a legal interest in land pursuant to the Indian General Allotment Act of February 8, 1887, Ch. 119, 24 Stat. 390, and shall be apportioned pursuant to clauses (i) and (ii) of Section 307(a)(1)(G) of the SAWRSA Amendments and shall be protected by the Nation's laws.

- (G) Through the adoption and implementation of this Code, the Legislative Council will fulfill and comply with the provisions of Section 308 of Title III of the Arizona Water Settlements Act, Pub. L. 108-451, the Southern Arizona Water Rights Settlement Amendments Act of 2004.
- (H) This Code shall not be construed or applied in any manner inconsistent with the provisions of the Southern Arizona Water Rights Settlement Amendments Act of 2004, Title III of Pub. L. 108-451, 118 Stat. 3478 et seq.
- (I) Rights to use SAWRSA Water acquired pursuant to the Interim Allottee Water Rights Code are fully recognized, protected and confirmed by this Code. All actions taken, approvals issued, decisions made, and regulations promulgated by the Department pursuant to and in accordance with the Interim Allottee Water Rights Code shall remain in effect under the terms of this Code. All applications, Declarations, proceedings and processes pending before the Department pursuant to the Interim Allottee Water Rights Code on the Effective Date as set forth in Section 31004, shall be transferred for administration under this Code. No Person shall be prejudiced as a result of the transfer of administration.

### **Section 3102            Purposes**

The purposes of this Code are to:

- (A) provide for and define the manner in which the Nation's Water shall be allocated, developed, used and preserved;
- (B) protect and promote the health, safety, and welfare of the Nation and its members;
- (C) provide for the fair and orderly resolution of disputes over the Nation's Water;
- (D) govern the administration and management of the Nation's Water;
- (E) implement the provisions of the Southern Arizona Water Rights Settlement Act of 1982, Pub. L. 97-293, as amended by Title III of the Arizona Water Settlements Act, Pub. L. 108-451, the Southern Arizona Water Rights Settlement Amendments Act of 2004, with respect to the use of SAWRSA Water within the San Xavier Reservation;
- (F) establish procedures and methods whereby a Person may use the Nation's Water;
- (G) establish procedures and methods whereby the Nation, Allottees, the San Xavier District and other Persons within the San Xavier Reservation may acquire rights to use SAWRSA

Water as is provided for in this Code and the SAWRSA Amendments, and provide for the protection of the rights to use SAWRSA Water as permitted under the terms of this Code and the SAWRSA Amendments.

### **Section 3103            Definitions**

In this Code, unless the context otherwise requires:

“Acre” means an area of land equal to 160 square rods, 4,840 square yards, or 43,560 square feet.

“Acre-Foot” means the quantity of water required to cover one Acre to a depth of one foot. One Acre-Foot equals 43,560 cubic feet or 325,851 gallons.

“Additional Groundwater” means Groundwater that may be pumped within the San Xavier Reservation or eastern Schuk Toak District as authorized in Section 308(h) of the SAWRSA Amendments and in accordance with Section 8.7 of the Tohono O’odham Settlement Agreement.

“Affected Person” means any Person directly affected by a Final Decision of the Director pursuant to this Code.

“Allottee” means an individual who holds a beneficial real property interest in an Indian allotment that is located within the San Xavier Reservation and held in trust by the United States.

“Aquifer” means a water-bearing rock or any unconsolidated or semi-consolidated water-bearing sediment.

“A.R.S.” means the Arizona Revised Statutes.

“Attorney General” means the Tohono O’odham Nation’s Attorney General.

“Beneficial Use” means the use, storage, or impoundment of the Nation’s Water in such quantity, not to exceed any established Duty of Water, as is necessary for productive and efficient use. Beneficial Use includes, but is not limited to, domestic use, municipal use, agricultural use, stock watering use, industrial use, in stream flow and riparian use, mining-related uses, water marketing, recreational use, cultural use, religious use, power generation, pollution control and environmental compliance, resource development, wildlife habitat management, underground storage, and commercial use. No presumption of preferences shall be given to the order in which Beneficial Uses are listed above.

“Catchment” or “Charco” means a manmade structure primarily created to impound water.

“Central Arizona Project” or “CAP” means the project by that name authorized under Title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. § 1521, et seq.).

“Chairperson” means the Chairman or Chairwoman of the Tohono O’odham Nation.

“Code” means the Tohono O’odham Nation Water Code.

“Community” means a group of people residing in the same locality and under the same governmental subdivision of a District.

“Constitution” means the Constitution of the Tohono O’odham Nation approved on March 6, 1986 by the Acting Deputy Assistant Secretary-Indian Affairs (Operations).

“Declaration of Existing Use” or “Declaration” means a statement filed pursuant to Section 3304(A) of this Code.

“Deferred Pumping Storage Credit” means a pumping credit recoverable as authorized by the SAWRSA Amendments § 308(f)(1)(B) and 308(f)(2)(B).

“Deficiency Year” means a year in which the Secretary is unable to fulfill the water delivery obligations of the Secretary under Sections 304(a), 305 and 306(a) of the SAWRSA Amendments.

“Department” means the Water Resources Department of the Nation.

“Direct Storage Credit” means a storage credit resulting from a project authorized in Section 308(e) of the SAWRSA Amendments that cannot be lawfully transferred or otherwise disposed of to Persons for recovery outside the Nation’s Lands.

“Director” means the Director of the Water Resources Department.

“District” means any one of the eleven governmental subdivisions of the Nation established under the Constitution of the Nation.

“District Water Advisory Committee” means the Advisory Committee referred to in Section 3204 of this Code.

“District Council” means the governing body of a District.

“Diversion” means the use of any Surface Water for a Beneficial Use by means other than by a Charco or Catchment.

“Drilling Permit” means an authorization issued by the Director after compliance with all applicable provisions of Article 6 to drill and construct a Well on the Nation’s Lands.

“Duty of Water” means the maximum annual quantity of water reasonably required for the production of irrigated crops considering the water needs of the plants, the nature of the soils, the location of the irrigated lands and other relevant factors, all as determined by the Director.

“Effective Date” means the date set forth in Section 31004 of this Code.



“eastern Schuk Toak District” means that portion of the Schuk Toak District that is located in the Tucson Active Management Area as established in A.R.S. § 45-411 and as modified by A.R.S. § 45-411.02.

“Effluent” means water that has been used for any purpose and thereafter collected and treated to a quality that complies with applicable water quality standards. Such water remains Effluent until it acquires the characteristic of Groundwater or Surface Water.

“Emergency” means an occurrence or condition calling for immediate action to avert imminent danger to water quantity or quality, or to public health, safety or welfare, crops, livestock, or other cultural or natural resources.

“Exempt Catchment” or “Exempt Charco” means a Catchment or Charco with a design storage capacity of 15 Acre-Feet or less and used primarily for domestic, livestock or agricultural purposes.

“Exempt Well” means a well equipped with a pump with a rated capacity of 35 gallons per minute or less, which is used to withdraw no more than 20 Acre-Feet of Groundwater per year.

“Existing Well” means a well drilled on the Nation’s Lands prior to the Effective Date that is in use or capable of use on the Effective Date.

“Existing Use” means the Beneficial Use of water that existed on the Effective Date. Existing Use also means the maximum entitlement held by a Person pursuant to a contract between the Nation and that Person notwithstanding that Person has not used the maximum contractual entitlement as of the Effective Date.

“Final Decision” means any decision, order or action by the Director in which a Person’s legal rights, duties, or privileges are affected and for which no further administrative relief is available.

“Groundwater” means all recoverable water naturally occurring below the surface of the ground.

“Groundwater Basin” means an area which, as determined by the Director based on known facts, encloses a hydrologically distinct body or related bodies of Groundwater and which is described horizontally by surface description.

“Identified Actual Use” means the quantity of SAWRSA CAP Water ordered for delivery in any calendar year for uses made pursuant to Permits or licenses to perfect Permits within the San Xavier Reservation.

“Judicial Court” means the Tohono O’odham Judicial Court.

“Legislative Council” means the Tohono O’odham Legislative Council.

“Marketable Long-Term Storage Credit” means a long-term storage credit acquired by the Nation pursuant to Title 45, Chapter 3.1, A.R.S.

“Nation” means the Tohono O’odham Nation.

“Nation’s Lands” means all land within the exterior boundaries of:

- (a) the Sells Tohono O’odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267);
- (b) the San Xavier Reservation established by the Executive Order of July 1, 1874;
- (c) the Gila Bend Indian Reservation established by the Executive Order of December 12, 1882, and modified by the Executive Order of June 17, 1909;
- (d) the Florence Village established by Public Law 95-361 (92 Stat. 595); and
- (e) such other lands as may have been or may hereafter be added thereto by purchase, gift, act of Congress or otherwise.

“Nation’s Water” means: (1) all waters which originate in or flow in, into or through the Nation’s Lands, or which are stored within the Nation’s Lands, whether found on the surface or underground; (2) Effluent existing on the Nation’s Lands; and (3) all Central Arizona Project water to which the Nation has a right, whether or not located within the Nation’s Lands.

“Nonexempt Catchment” or “Nonexempt Charco” means a Catchment or Charco (a) with a design capacity greater than 15 Acre-Feet; or (b) with a design capacity of 15 Acre-Feet or less and used primarily for other than domestic, livestock or agricultural purposes.

“Nonexempt Well” means a Well equipped with a pump with a rated capacity of more than 35 gallons per minute and which is used to withdraw Groundwater.

“Permit” means an authorization issued by the Director pursuant to Sections 3304 or 3305 of this Code to make use of, store or impound any amount of the Nation’s Water.

“Permitted Use” means any water use for which a Permit has been issued.

“Person” means any individual, governmental body, corporation, or other entity, including but not limited to any tribal member, community, livestock association, Allottee, firm, association, organization, partnership, business trust, corporation, company, the United States of America and all agencies thereof, the State of Arizona and all political subdivisions, municipal corporations, organizations and agencies thereof, and the Nation and all Districts, political subdivisions, enterprises, organizations, and agencies thereof.

“Priority” means the order of preference of Permitted Uses from a common source of supply in times of shortage.

“Recusal” means being removed as a decision-maker in a particular adjudicative proceeding.

“San Xavier District” means the District of that name, one of eleven political subdivisions of the Nation established under the Constitution of the Nation.

“San Xavier Reservation” means the San Xavier Indian Reservation established by the Executive Order of July 1, 1874 encompassing the ancient Community of Wa:k O’odham and which comprises the San Xavier District of the Tohono O’odham Nation.

“SAWRSA” means the Southern Arizona Water Rights Settlement Act of 1982, Pub. L. 97-293.

“SAWRSA Amendments” means Title III of the Arizona Water Settlements Act, Pub. L. 108-451, the Southern Arizona Water Rights Settlement Amendments Act of 2004.

“SAWRSA CAP Water” means SAWRSA Water delivered through the main project works of the Central Arizona Project.

“SAWRSA Exempt Well” means a Well located within the San Xavier Reservation or the eastern Schuk Toak District with a maximum pumping capacity of not more than 35 gallons per minute, which water is used for supply, services or activities of households or private residences; landscaping; livestock watering; or the irrigation of not more than two Acres where agricultural or other commodities are produced either for sale, human consumption or livestock or poultry feed.

“SAWRSA Groundwater” means the Groundwater that may be withdrawn within the San Xavier Reservation and the eastern Schuk Toak District pursuant to the SAWRSA Amendments § 308(f)(1)(A) and § 308(f)(2)(A).

“SAWRSA Water” means (a) water to be delivered by the Secretary pursuant to Sections 304(a) and 306(a) of the SAWRSA Amendments; (b) water to be delivered by the Secretary under Sections 305(a) and 305(b) of the SAWRSA Amendments; (c) SAWRSA Groundwater; (d) Direct Storage Credits; (e) Deferred Pumping Storage Credits; and (f) Additional Groundwater.

“SAWRSA Well” means any Well located within the San Xavier Reservation or the eastern Schuk Toak District that is not a SAWRSA Exempt Well.

“Secretary” means the Secretary of the United States Department of the Interior.

“Stream” means a distinct body of water flowing on the surface in a well defined natural channel, with a bed and banks, whether perennial, intermittent or ephemeral.

“Substantial Evidence” means such evidence as a reasonable person would accept as adequate to support a conclusion.

“Surface Water” means water on the surface of the ground from all sources, flowing or occurring

in Streams, springs, lakes, Catchments or Charcos, but does not include SAWRSA CAP Water.

“Tohono O’odham Settlement Agreement” means the agreement, restated from the Agreement dated April 30, 2003 and revised to eliminate any conflicts with Public Law 108-451, 118 stat. 3478 (including all the exhibits of and attachments to the Agreement).

“Water Management Area” means an area within the Nation’s Lands defined by the Director in accordance with this Code.

“Water Management Plan” means a plan developed pursuant to this Code to regulate, monitor or protect the Nation’s Water within an established Water Management Area.

“Water Resources Committee” means the standing committee of the Legislative Council.

“Well” means a man-made opening in the earth created or constructed primarily to withdraw, monitor, test or access Groundwater or other subsurface water.

“Well Permit” means documentation issued by the Director to a Person who owns or controls a Well within the Nation’s Lands that confirms the Well was drilled and constructed according to the requirements of Article 6 of this Code or properly registered as an Existing Well according to the requirements of Article 6 of this Code.

## **ARTICLE 2 – ADMINISTRATION**

### **Section 3201 Water Resources Department and Director**

- (A) The Water Resources Department was created in the Interim Allottees Water Rights Code and is a distinct Department of the Nation, which shall be funded with monies from the trust fund reauthorized by § 315 of the SAWRSA Amendments for so long as such funds are available. The Department shall be subject to executive oversight by the Nation’s Chairperson and to legislative oversight by the Water Resources Committee.
- (B) The Department shall be under the direction, supervision and control of the Director. The Director shall be appointed in accordance with Section 2(e) of Article VII of the Constitution. The Director’s conditions of employment and rate of compensation shall be determined in accordance with personnel policies and wage scales of the Nation. The Director must submit to and pass a background check of character, experience, and qualifications, and must be able to carry out the duties of the office. Subject to applicable personnel policies, the Director may appoint an Assistant Director who shall have the powers and duties of the Director in the Director’s absence.

### **Section 3202 Duties and Responsibilities of Director**

- (A) The Director is authorized and directed to manage and supervise the use of the Nation’s Water in accordance with the provisions of this Code, regulations adopted pursuant to the Code and other applicable law. The Director is authorized to:

- (1) issue Permits authorizing the continuation of Existing Uses or use of the Nation's Water for which no prior Permit has been issued;
  - (2) adopt such regulations as may be necessary to administer the provisions of this Code;
  - (3) conduct such administrative proceedings as are necessary and appropriate in the implementation, enforcement and administration of this Code;
  - (4) manage, supervise and administer the Department and its employees and contractors, to include the preparation and control of budgets for the Department and development and implementation of internal policies and procedures;
  - (5) carry out data collection activities, water sampling, surveys, research, and investigations into all aspects of water, including but not limited to water availability, use, quality, and quantity;
  - (6) prepare plans and establish programs for the development, management, conservation, protection, and use of the Nation's Water;
  - (7) act in an Emergency to avert imminent danger to water quantity or quality, or to public health, safety or welfare, including crops, livestock, or other cultural or natural resources.
  - (8) subject to applicable personnel policies, hire such employees as the Director deems necessary to make the operation of the Department efficient and effective, including persons to monitor and implement the Nation's water management plans including those authorized pursuant to § 308(d) of the SAWRSA Amendments;
  - (9) develop and negotiate agreements, memoranda of understanding, or contracts with any Person or Persons to carry out the provisions and purposes of this Code;
  - (10) establish a Duty of Water applicable to Permitted Uses for irrigation purposes;
  - (11) establish a fee structure for the administration of Permits, Declarations and applications that authorize or seek to use, store or impound in excess of 20 Acre-Feet per year of the Nation's Water; and
  - (12) consult and cooperate with, advise or negotiate with any federal, state, or local jurisdictional authority regarding matters related to the Nation's Water.
- (B) In addition to other duties required to be performed by the Director, the Director shall:
- (1) maintain a primary office and establish other offices as the Director deems

necessary;

- (2) prepare Water Management Plans for each Water Management Area established pursuant to this Code and submit each plan to the Chairperson and the Water Resources Committee;
- (3) develop an educational program, provide training on the provisions of and implementation of this Code and the SAWRSA Amendments and on other water and related land resources management;
- (4) administer this Code in a cooperative and positive manner that recognizes and respects the traditional knowledge, customs, and beliefs of the Tohono O'odham and assist Persons to comply with the provisions of the Code;
- (5) provide technical and administrative assistance, in both English and the O'odham language, to any person concerning the requirements of and compliance with the Code including for the preparation of Declarations of Existing Use and all Permit applications;
- (6) inventory and keep current data on all Permitted Uses within the Nation's Lands;
- (7) administer the ordering, receipt of deliveries and use of SAWRSA CAP Water;
- (8) monitor and require the annual reporting of withdrawals of SAWRSA Groundwater and withdrawals from Non-Exempt Wells located within the Nation's Lands;
- (9) assert claims for, collect and disburse compensation payable by the Secretary on account of the non-delivery of SAWRSA CAP Water ordered but which the Secretary is unable to acquire and deliver, all in accordance with § 305(d) of the SAWRSA Amendments;
- (10) maintain separate accounts for the San Xavier Reservation and the Schuk Toak District reflecting the accrual and use through recovery of Deferred Pumping Storage Credits and Direct Storage Credits within the Reservation and the District. The Director shall provide a report to the San Xavier District, the San Xavier Cooperative Association, San Xavier Allottees Association, and the Schuk Toak District, on a semi-annual basis, of the balances of each type of credit in the San Xavier Reservation or the Schuk Toak District account together with a summary of the activity in the account during the preceding six-month period;
- (11) include in every Final Decision a statement that the Final Decision may be appealed as provided in Section 31002 by filing a notice of an appeal with the Judicial Court not later than 30 days from the date of the Final Decision; and
- (12) develop an administrative policy, subject to the Water Resources Committee's

review and the Chairperson's approval, concerning the dissemination of data or other information in the Department's possession that was developed or received as a result of the Department's activities, including applications submitted pursuant to Sections 3304 or 3306 and other information collected or prepared in accordance with subsection 3202(A)(5), 3202(A)(6), or Article 7 of this Code or otherwise collected or prepared in relation to the Nation's Water.

- (C) To carry out the provisions of the Code, the Director may:
- (1) inspect books, records, meters, gauges, well logs, Wells, water delivery facilities or any other relevant information or physical condition that may affect the Nation's Waters;
  - (2) obtain testimony or the production of relevant information by request or by a subpoena issued by the Judicial Court if the Director reasonably believes the information is necessary to carry out the provisions of the Code;
  - (3) enter upon lands and other property within the Nation's Lands in accordance with Section 3901 or, if necessary, obtain an appropriate order from the Judicial Court to permit such entry for the purpose of conducting investigations, studies or monitoring activities, and ensuring compliance with the Code and any regulations promulgated hereunder;
  - (4) install or require the installation of measuring devices and conduct tests including but not limited to tests or measurements of capacity, output, water quality or other parameters of any Charco, Catchment, Diversion, Well or water delivery system.
  - (5) issue, deny, revoke, and suspend Permitted Uses pursuant to the provisions of the Code; and
  - (6) take such actions as are authorized in Article 9 of this Code that may be necessary to enforce the provisions of the Code, any rule or regulation promulgated pursuant to the Code, any condition or limitation applicable to any Permitted Use and any order, plan, determination, policy or guideline developed or issued pursuant to the Code.
- (D) The Director shall not participate in making any decision in which the Director has a direct economic interest or other conflict of interest. If the Director enters a Recusal in a matter due to a conflict, the Director's designee shall act in the Director's place for the purpose of making the decision on that matter.

**Section 3203                      Regulations; Notice, Public Comment and Adoption**

- (A) Before adoption of any regulations, the Director shall provide notice and a brief summary of the proposed regulations. The notice shall be mailed or e-mailed to the Chairperson, to each member of the Water Resources Committee, to each District, and to each Person

registered on the records of the Department to receive such notices of regulations.

- (B) The notice of the proposed regulations required by subsection (A) shall generally describe the subject matter of the proposed regulations and state that copies of the proposed regulations are available for review at the Department, and at each District office. The notice shall invite written comments and give a deadline for their submission of not less than 30 days after the date of the notice. The Director may hold public hearings on proposed regulations to take additional public comment on the proposed regulations. Regulations shall become effective on the date as ordered by the Director but in no event sooner than 30 days after the final date for submission of comments or 30 days following any public hearing unless the date is extended by the Director. Copies of all final regulations shall be filed and made available for public inspection in the Director's office and at each District office. Copies of any regulations may be obtained at no cost.
- (C) If the Director finds that immediate adoption of a regulation is necessary to address an Emergency and that complying with the notice and comment requirements of this Code would be contrary to the public interest of the Nation, the Director may dispense with such requirements and immediately adopt the regulation as an Emergency regulation. The Director's finding of an Emergency and a brief explanation of the finding shall be incorporated in the Emergency regulation. An Emergency regulation shall be effective upon the date of its adoption by the Director. Notice of the Emergency regulation may be published, but such publication is solely to inform the public of its adoption, and nothing in this Code shall be construed to prevent the implementation of the Emergency regulation upon its adoption by the Director. An Emergency regulation shall not remain in effect more than 180 days after adoption unless reissued by the Director in compliance with Section 3203(A) and (B).

#### **Section 3204            District Water Advisory Committee**

A District Water Advisory Committee has been established pursuant to Bylaws approved by the Legislative Council. The Bylaws authorize the District Water Advisory Committee to provide advice and recommendations to the Water Resources Committee and to the Department.

### **ARTICLE 3 - RIGHTS TO USE THE NATION'S WATER**

#### **Section 3301            Nation's Control of Water**

The Nation's Water is subject to the control, management and regulation by the Nation, subject to applicable federal law. All rights to use or to undertake activities that affect the Nation's Water by any Person may be obtained and continued only through compliance with the provisions of this Code. All rights to use the Nation's Water as provided for in this Code are revocable and subject to limitation and revision by the Nation. The right to use the Nation's Water shall not be interpreted or construed to constitute a private property interest of the Person holding the right to use the Nation's Water.



**Section 3302                      Reserved or Withdrawn Water**

- (A) Subject to subsection (C), the Legislative Council may reserve or withdraw from Beneficial Use any of the Nation’s Water for which no Permitted Use exists pursuant to Article 3 of this Code. Water may be reserved or withdrawn upon a finding of the Legislative Council that such reservation or withdrawal is necessary for purposes that include, but are not limited to:
  - (1) preserving the integrity of the Nation’s Water through the prevention of uses of the Nation’s Water from any distinct source in amounts that exceed the natural or artificial replenishment of that source;
  - (2) protecting riparian habitat;
  - (3) preventing interference with or diminution of any Permitted Use authorized pursuant to the Code;
  - (4) preventing or mitigating the degradation or alteration of the quality of any of the Nation’s Water;
  - (5) promoting the economic well being of the Nation;
  - (6) leasing, exchanging, or otherwise disposing of the Nation’s Water, including any Marketable Long-Term Storage Credits; and
  - (7) any other purpose necessary to protect water quantity or quality, public health, safety or welfare, crops, livestock, or other cultural or natural resources.
- (B) Any of the Nation’s Water reserved or withdrawn by the Legislative Council shall not be available for Beneficial Uses except pursuant to such conditions, restrictions or limitations as established by the Legislative Council.
- (C) Notwithstanding the provisions of subsection (A), the Legislative Council may not reserve or withdraw from Beneficial Use any of the water subject to the first right of beneficial use set forth in Section 307(a)(1)(G)(i) of the SAWRSA Amendments which water is allocated in Section 3401(A) of this Code to the San Xavier District, Allottees, and other Persons within the San Xavier Reservation.

**Section 3303                      Water Use**

- (A) Persons may make Beneficial Use of the Nation’s Water only in the quantities and at times set forth in a Permit issued by the Director. Permits are subject to adjustments that may be imposed during declared water shortages or Emergencies.

- (B) Beneficial Use shall not exceed any Duty of Water established by the Director for the particular type and location of use.
- (C) The Director shall create and maintain a registry of Permits that sets forth the number assigned to each Permit, the name of the Permit holder, the source of the Nation's Water to which the Permit applies, the quantity of the Nation's Water that may be used pursuant to the Permit, the use or uses to which the Nation's Water may be applied pursuant to the Permit, and the location of the lands on which the Nation's Water will be used under the Permit. The Director shall create and maintain separate registries of Permits to withdraw and use SAWRSA Groundwater within the San Xavier Reservation and the eastern Schuk Toak District and Permits to use SAWRSA CAP Water.
- (D) Except as specifically provided for in a Permit, no amount of the Nation's Water may be used outside the Nation's Lands for any purpose. No amount of the Nation's Water for which a Permit has been issued may be used on any lands or for any use not authorized and approved in the Permit.
- (E) No provision of this Code shall prevent the Nation, pursuant to binding action of the Legislative Council, from making any use of the Nation's Water for which no Permitted Use has previously been issued without compliance with this Code; provided, however, that
  - (1) any such Legislative Council action shall be consistent with the allocations set forth in Section 307(a)(1)(G)(i) and (ii) of the SAWRSA Amendments; and
  - (2) to the extent the Nation uses any unused portion of the 35,000 Acre-Feet per year of SAWRSA CAP water allocated in Section 3401(A)(1) of this Code, such uses shall terminate to the extent necessary to fulfill Identified Actual Uses of any portion of the 35,000 Acre-Feet per year within the San Xavier Reservation.

**Section 3304                      Permits for Existing Uses**

- (A) A Person who, on the Effective Date, is using any of the Nation's Water shall file a Declaration of Existing Use with the Director. If a Declaration of Existing Use has been filed for a use pursuant to the Interim Allottee Water Rights Code, no Declaration of Existing Use for that same use is required or permitted pursuant to this section. Declarations of Existing Use shall set forth, to the extent such information is reasonably available:
  - (1) the name and address of the Person filing the Declaration of Existing Use;
  - (2) the location of any Well, Catchment, Charco, Diversion, or any other existing works to make Beneficial Use of the Nation's Water;

- (3) the purpose or purposes for which the Nation's Water is used;
  - (4) the location or legal description of the land on which the Nation's Water is used, together with a statement that the applicant has a right to use the land for the stated use;
  - (5) if the Existing Use is on an allotment, the allotment number;
  - (6) the depth, diameter and pumping capacity of any Well used to withdraw Groundwater;
  - (7) whether any metering device or other method exists to measure withdrawals from the Well;
  - (8) the date the Well was drilled and the date Groundwater was first withdrawn from that Well;
  - (9) the capacity, width, length and depth of any Charco or Catchment and the date the Charco or Catchment was constructed;
  - (10) a description of the constructed works and capacity of any Diversion, the capacity and location of any delivery system utilized to put the diverted water to use, the date on which the Diversion and delivery system were constructed, and the date on which Surface Water was first diverted for Beneficial Use;
  - (11) a description of any delivery system constructed to put SAWRSA CAP Water to use, the capacity and location of the delivery system and the date SAWRSA CAP Water was first delivered through the system;
  - (12) the maximum quantity of the Nation's Water used by the applicant for the claimed Existing Use during the five years predating the Effective Date; and
  - (13) any other information the Director deems is reasonably necessary to fully evaluate the Declaration of Existing Use.
- (B) All information set forth in a Declaration of Existing Use shall be verified upon the oath of the applicant under penalty of perjury that the matters set forth in the application are true and correct to the best knowledge and belief of the applicant, and must be filed with the Director not later than June 1, 2013. An individual signing a Declaration of Existing Use on behalf of another Person shall certify that the signer has authority to represent the Person in whose name the Permit will be issued.
- (C) Not later than June 1, 2011, the Director shall give notice of the deadline for filing Declarations of Existing Use. The notice shall be broadcast three times per week for four

consecutive weeks on a radio station broadcast within the Nation's Lands and published at least twice during the same four consecutive week period in a local newspaper circulated within the Nation's Lands. The notice shall state that each Person making any Existing Use of any of the Nation's Water shall file a Declaration of Existing Use with the Director on or before June 1, 2013. The Director shall also provide the notice to each District, to the Chairperson, to each member of the Legislative Council, the San Xavier Cooperative Association, and to each Person who has filed a request with the Director to receive such notice. The Director may give and provide the notice by other means designed to give reasonable notice to all Persons within the Nation's Lands, including the posting of the notice in Communities and other locations where residents of the Nation's Lands can be found.

- (D) The notice shall include a statement that failure to file a Declaration of Existing Use pursuant to the Code will result in the loss of any right to continue an Existing Use for which no Declaration is filed.
- (E) Any Person who files a Declaration of Existing Use in accordance with this section shall have a conditional right to continue such water use pending a decision by the Director on the Declaration of Existing Use as provided for in Section 3304(I) or Section 3304(J).
- (F) Any Person who fails to file a Declaration of Existing Use within the time period set forth in Section 3304(B) shall have no right to continue any Existing Use for which no Declaration is filed. Any such continued water use shall be a violation of this Code.
- (G) Upon receipt of a Declaration of Existing Use, the Director shall endorse on the Declaration the date of receipt and keep a record of the Declaration. Within 30 calendar days after receipt of the Declaration, the Director shall determine whether the Declaration sets forth all information required by Section 3304(A). If the Director determines that all required information is not on the Declaration, the Director shall make a written request that the Person that filed the Declaration submit the information not provided. In the event the required information is not submitted within 30 days of the Director's request, or within such greater time as the Director may allow, the Director may deny the Declaration and notify the Person that filed the Declaration of the denial by letter sent certified mail, return receipt requested, to the address set forth on the application. Such denial shall constitute a Final Decision of the Director.
- (H) Upon a finding by the Director that the Declaration of Existing Use sets forth the information required by Section 3304(A), except for any such information the Director determines is not reasonably available, the Director shall note on the Declaration that it is complete and assign a number to the Declaration. The Director, on a monthly basis, commencing ten days following the end of the month during which the first Declaration is filed, shall give notice of those Declarations found to be complete in the preceding month. The notice shall describe each complete Declaration in summary fashion to include the number assigned to the Declaration, the name of the Person that submitted the

Declaration, the quantity of water claimed, the purpose and location of the claimed use, and the source of the water claimed. The notice shall be mailed or e-mailed to the Chairperson, to each member of the Water Resources Committee, to each District, and to each Person registered on the records of the Department to receive notices of Declarations of Existing Use. Copies of Declarations for which a notice has been issued shall be available for inspection and copying at the Department in accordance with the administrative policy adopted by the Director pursuant to 3202(B)(12). The notice shall state that within 30 days of the date of the notice, the Nation or an Affected Person, including any directly affected District, may file objections to the Declaration with the Director.

- (I) The Director shall investigate each Declaration of Existing Use including objections filed to the Declaration. In the event one or more objections to the Declaration are filed, or the Director otherwise orders, the Director may conduct a hearing to consider evidence on whether the Declaration should be granted or denied. Notice of a hearing shall be mailed not less than 30 days prior to the date of the hearing to the Person that filed the Declaration and to any Person that has filed an objection to the Declaration. The Director may continue the hearing for good cause shown and provide notice of the new hearing date to each Person that was provided notice of the initial hearing date. A notice of hearing shall state the date, time and location of the hearing, and indicate that the Director shall consider testimony under oath and documentary evidence on whether the Declaration shall be approved or denied. At the conclusion of the Director's investigation, including any hearing conducted, the Director shall render a decision on the Declaration. Upon finding that the Declaration sets forth the required information that is reasonably available, and that the Existing Use has been made, the Director shall issue and approve a Permit for that Existing Use. Except as provided in subsection 3304(L), Permits for Existing Uses shall be issued in the name of the Person that was the applicant on the Declaration of Existing Use. Upon finding that the information in the Declaration is not accurate or that the Existing Use has not been made, the Director shall deny a Permit for the Existing Use. The Director may issue a Permit for an Existing Use in an amount less than set forth in a Declaration upon a finding that an Existing Use was for less than the amount set forth in the Declaration. The Director may issue a Permit for an Existing Use in an amount greater than set forth in a Declaration upon a finding that the applicant holds a contractual entitlement from the Nation for an amount greater than the quantity set forth in the Declaration. The Director's decision with respect to the Declaration shall constitute a Final Decision of the Director. The Director shall send a notice of the Final Decision to each Person that was provided notice of a hearing date.
- (J) If the Director determines that a Permit should issue for an irrigation use and that the irrigation use occurred on lands irrigated as a unit, then, notwithstanding any other provision of the Code, the Director may issue one Permit for the farm unit as a whole. If the Director issues a Permit for a farm unit, the maximum Permitted Use on the farm unit shall be the number of irrigated acres in the farm unit multiplied by the Duty of Water as determined by the Director for crops likely to be grown within the farm unit.

- (K) Notwithstanding any other provision of Section 3304, the Director shall issue a Permit for an Existing Use from an Exempt Well, Exempt Charco or Exempt Catchment unless the Director finds there is Substantial Evidence that any matter set forth in the Declaration is not accurate. If the Director makes such a finding, the Declaration shall become subject to all provisions of Section 3304.
- (L) Notwithstanding any other provision of Section 3304: (1) if the Director determines that a Permit should issue for an Existing Use being made on an allotment, the Permit shall identify the allotment number and state that the Permit is issued to all Persons holding a beneficial interest in the allotment so identified; or (2) if the allotment on which the Existing Use is made is subject to a lease, the Permit shall be issued in the name of the lessee for the benefit of the Allottees having a beneficial interest in that allotment. If the lease expires or is otherwise terminated, any interest of the lessee in the Permit terminates and the Permit shall be reissued in accordance with subsection (1) or to a subsequent lessee in accordance with subsection (2).

**Section 3305            Permits**

- (A) Except as provided in Section 3304(E) and provided that the Nation is not required to obtain a Permit to use Nation's Water, no Person may use any amount of the Nation's Water without first obtaining a Permit in accordance with this Code. A Permit is required to undertake any of the following activities:
  - (1) to withdraw and use Groundwater;
  - (2) to use, impound or store any Surface Water, including through Diversions, Charcos, or Catchments;
  - (3) to use, impound or store underground SAWRSA Water; or
  - (4) to dedicate or use the Nation's Water for instream flows or riparian habitat enhancement or maintenance.
- (B) The Director may issue Permits only for uses of the Nation's Water that are Beneficial Uses. Beneficial Use shall constitute the measure and limit of any Permitted Use. The Director shall not issue a Permit that authorizes the use of the Nation's Water in an amount that exceeds Beneficial Use under the circumstances.

**Section 3306            Permit Applications and Procedures**

- (A) Applications for Permits shall be submitted on forms developed by the Director and shall be verified upon the oath of the applicant under penalty of perjury, that the matters set forth in the application are true and correct to the best knowledge of the applicant. The

forms shall require, in addition to any other information deemed necessary by the Director, the following information:

- (1) the name and address of the applicant;
  - (2) the quantity and type of the Nation's Water for which a Permit is sought;
  - (3) the purpose or purposes for which the applicant intends to use the Nation's Water;
  - (4) a description of the location of any lands upon which the proposed use of the Nation's Water will be made, together with a statement that the applicant has a right to use the land for the proposed use;
  - (5) if the land is within an allotment, the allotment number;
  - (6) a description and the location of any works, including Wells, existing or to be constructed that are necessary to put the Nation's Water to the proposed use;
  - (7) a general schedule and plan of how the Nation's Water will be put to a Beneficial Use; and
  - (8) any other information the Director deems is reasonably necessary to fully evaluate the application for a Permit.
- (B) Upon receipt of an application, the Director shall endorse on the application the date of receipt and keep a record of the application. Within 15 working days after receipt of the application, the Director shall determine whether the application sets forth all required information. If the Director determines that the application does not contain all the information required, the Director may request additional information from the applicant. In the event the applicant fails to submit the required information within 30 days of the Director's request or within such greater time as the Director may allow, the Director may deny the application and notify the applicant of the denial by letter sent certified mail, return receipt requested, to the address listed on the application. Such denial shall constitute a Final Decision of the Director. The denial shall not prevent the applicant from filing a new Permit application.
- (C) Within 15 working days after the Director finds that an application sets forth all required information except for any such information the Director determines is not reasonably available, the Director shall give notice of the application. The notice shall describe each application in summary fashion to include the source of water, the quantity, purpose and location of the proposed use and the name of the applicant. The notice shall be mailed or e-mailed to the Chairperson, to each member of the Water Resources Committee, to each District, and to each Person registered on the records of the Department to receive notices of Permit applications. The Director may also require the posting of a notice on the land

upon which the proposed water use is to be made. Applications for which notice has been issued shall be available for inspection and copying at the Department in accordance with the administrative policy adopted by the Director pursuant to 3202(B)(12). The notice shall state that within 30 days following the date of the notice, the Nation or an Affected Person, including any directly affected District, may file objections to the application with the Director.

- (D) In the event one or more objections are filed to the Permit application, or the Director otherwise orders, the Director may conduct a hearing to consider evidence on whether the Permit application should be granted or denied. Notice of a hearing shall be mailed not less than 30 days prior to the date of the hearing to the applicant and to any Person that filed an objection to the application. The Director may continue the hearing for good cause shown and provide notice to the applicant and to each Person that filed an objection of the new hearing date. A notice of hearing shall state the date, time and location of the hearing and indicate that the Director shall consider testimony under oath and documentary evidence relevant to whether the Permit application should be approved or denied. Not later than 30 days following the conclusion of any hearing, or if no hearing is conducted, not later than 30 days following the expiration of the period within which to file objections, the Director shall render a decision on the Permit application. The decision shall be in writing and shall set forth the factual findings and any legal conclusions in support of the decision. Notice of the decision shall be mailed to the applicant and to each Person that filed an objection. The decision shall specifically state that it constitutes a Final Decision of the Director.

**Section 3307                      Approval of Permit Applications; Licenses to Perfect**

- (A) The Director may approve Permit applications only upon finding that:
- (1) the proposed use does not include the use of any of the Nation's Water that has been reserved or withdrawn pursuant to Section 3302;
  - (2) the proposed use of the Nation's Water is a Beneficial Use;
  - (3) except in the case of SAWRSA Water, the proposed use will not, when considered together with existing Permitted Uses, deplete a distinct source of the Nation's Water in an amount or at a rate that exceeds the amount or the rate at which the distinct source is naturally or artificially replenished;
  - (4) the proposed use will not unreasonably interfere with or prevent the exercise of an existing Permitted Use;
  - (5) the applicant has a schedule and plan to take such actions as are necessary to put the Nation's Water to a Beneficial Use;



- (6) the applicant is authorized to use the land on which the Nation's Water will be used for the purpose or purposes stated in the application;
  - (7) the applicant has the intent and ability to use the Nation's Water;
  - (8) the proposed use will not significantly threaten wildlife, riparian habitat or other natural resources or interfere with public recreational opportunities;
  - (9) the proposed use will not endanger public health; and
  - (10) the applicant has paid all applicable fees.
- (B) If a Permit application is approved, the Director shall issue to the applicant a license to perfect the proposed use of the Nation's Water. Except as provided in subsection 3307(D), licenses to perfect shall be issued in the name of the Person that was the applicant on the Permit application. The license to perfect may vary from the quantities or other conditions set forth in the Permit application if the Director's decision so provides. The license to perfect authorizes the applicant to construct any works or perform any other necessary actions to put the Nation's Water to an actual Beneficial Use in accordance with the license to perfect. A license to perfect a Permit application shall be valid for five years from the date issued. The Director, upon a showing of good cause by the applicant, may extend this initial five-year effective period for a term not to exceed one additional year. Any application to extend the initial five-year period shall be made not later than 180 days prior to the expiration of the initial five-year period. If the Nation's Water is not put to an actual Beneficial Use during the period within which the license to perfect is effective, the Permit application and license to perfect lapse and are of no further force and effect.
- (C) If the Director determines that a license to perfect should issue for an irrigation use and that the irrigation use occurred on lands irrigated as a unit, then, notwithstanding any other provision of the Code, the Director may issue one license to perfect for the farm unit as a whole. If the Director issues a license to perfect for a farm unit, the maximum irrigation use on the farm unit shall be the number of irrigated acres in the farm unit multiplied by the Duty of Water as determined by the Director for crops likely to be grown within the farm unit.
- D) Notwithstanding any other provision of Section 3307: (1) if the Director determines that a license to perfect should issue for a proposed use of the Nation's Water on an allotment, the license to perfect shall identify the allotment number and state that the license to perfect is issued to all Persons holding a beneficial interest in the allotment so identified; or (2) if the allotment on (which the proposed use of the Nation's Water is to be made is subject to a lease, the license to perfect shall be issued in the name of the lessee for the benefit of the Allottees having a beneficial interest in that allotment. If the lease expires or is otherwise terminated, any interest of the lessee in the license to perfect terminates

and the license to perfect shall be reissued in accordance with subsection (1) or to a subsequent lessee in accordance with subsection (2).

**Section 3308                    Issuance of Permits**

- (A) When the Nation's Water has been put to an actual Beneficial Use in accordance with the license to perfect, the holder of the license to perfect shall file with the Director an affidavit stating that the Nation's Water referred to in the license to perfect has been put to an actual Beneficial Use.
- (B) Upon receipt of an affidavit referred to in Section 3308(A), the Director shall perform the necessary investigation to determine if the matters in the affidavit are correct. Upon finding that the Nation's Water referred to in the license to perfect has been put to a Beneficial Use in accordance with the license to perfect, the Director shall issue to the applicant a Permit to use the amount of the Nation's Water the applicant has put to an actual Beneficial Use. The Director may issue a Permit subject to appropriate terms, conditions, restrictions and limitations as determined by the Director. Except as provided in subsection 3308(D), Permits for new uses shall be issued in the name of the Person that was the applicant on the Permit application.
- (C) Any Permit issued by the Director to authorize the use of any unused portion of the 35,000 Acre-feet per year of SAWRSA CAP Water described in subsection 3401(A) to any Person not described in that subsection shall contain a condition, stated on the face of the Permit, that the use authorized by the Permit shall terminate to the extent necessary to fulfill Identified Actual Uses of any portion of the 35,000 Acre-feet per year within the San Xavier Reservation.
- (D) Notwithstanding any other provision of Section 3308: (1) if the Director determines that a Permit should issue for a new use being made on an allotment, the Permit shall identify the allotment number and state that the Permit is issued to all Persons holding a beneficial interest in the allotment so identified; or (2) if the allotment on which the new use is being made is subject to a lease, the Permit shall be issued in the name of the lessee for the benefit of the Allottees having a beneficial interest in that allotment. If the lease expires or is otherwise terminated, any interest in the lessee in the Permit terminates and the Permit shall be reissued in accordance with subsection (1) or to a subsequent lessee in accordance with subsection (2).

**Section 3309                    Transfers of Permits, Well Permits, or Licenses to Perfect**

- (A) Permits, Well Permits, and licenses to perfect may be transferred to other Persons only in accordance with the requirements of this section. No transfer of any Permit, Well Permit, or license to perfect, or any interest therein, shall be valid except to a Person or Persons:
  - (1) that intends to devote the Nation's Water described in the Permit, Well Permit, or

license to perfect to the use or uses and to the land for which the Permit or license to perfect was originally issued; and

- (2) that meet all requirements of the original Permit, Well Permit, or License to Perfect; and
  - (3) that have received written approval of the transfer from the Director.
- (B) The holder of a Permit may allow another Person to use the water authorized for use under the Permit without compliance with the transfer provisions of this section as long as the water use is for the same purpose and on the same land as authorized in the Permit and the use by the other Person is not on a permanent basis. The holder of the Permit shall provide written notice to the Department of any authorized use of a Permit by a Person other than the holder of the Permit. The written notice shall state the name and address of the Person authorized to use the Permit and the duration of that authorization.
- (C) The Director shall approve a transfer of a Permit, Well Permit or license to perfect that was held by a Person who is deceased upon submission of a request for such a transfer together with an appropriate order from the probate court or other court of competent jurisdiction setting out the distribution of the decedent's property. The Director shall approve transfers only in accordance with the applicable court order.

**Section 3310                      Modifications of Permits or Licenses to Perfect**

- (A) The Director may approve applications to modify Permits or licenses to perfect in order to change the use, the point of use, the method of application, or location of Diversion of any of the Nation's Water covered by an existing Permit or license to perfect only upon finding that:
- (1) the proposed modification does not increase the amount of the Nation's Water that may be used under the existing Permit or license to perfect;
  - (2) the modification of the Permit or license to perfect will result in a Beneficial Use of the Nation's Water;
  - (3) except in the case of SAWRSA Water, that the proposed modification will not, when considered together with existing Permitted Uses and licenses to perfect, deplete a distinct source of the Nation's Water in an amount or at a rate that exceeds the amount or the rate at which the distinct source is replenished either naturally or by artificial means;
  - (4) the proposed modification will not unreasonably interfere with or prevent the exercise of existing Permitted Uses or licenses to perfect;

- (5) the applicant has a schedule and plan to take such actions as are necessary to make the proposed modifications in the use of the Nation's Water;
  - (6) the applicant is authorized to use the land on which the modified use of the Nation's Water will be used for the purpose or purposes stated in the application;
  - (7) the applicant has the intent and ability to make the modification in the use of the Nation's Water and to put such water to a Beneficial Use; and
  - (8) the proposed modification in the use of the Nation's Water will not significantly threaten wildlife, riparian habitat or other natural resources or interfere with public recreational opportunities or endanger the public health.
- (B) In the event the Director approves an application to modify a Permit or license to perfect pursuant to this section, the Director shall issue to the applicant a new Permit or license to perfect to reflect the modification in the existing Permit or license to perfect and in conjunction with the issuance of the modified Permit or license to perfect the Director shall set forth the time frame within which the change of use, the point of use, the method of application, or location of Diversion are to be implemented. Upon completing any necessary work to make the change in use, point of use, method of application, or location of Diversion of the Nation's Water, the applicant shall give notice to the Director that all modification work has been accomplished. Upon confirmation that the modification has been made, the Director shall notify the applicant, in writing, that the modified Permit or license to perfect is thereafter effective, that the original Permit or license to perfect is of no further force and effect and that the necessary changes in the records of the Department reflect that the modification has been made.

**Section 3311                    Revocation or Suspension of Permits or Licenses to Perfect**

- (A) The Director may revoke or suspend a Permit or license to perfect, in whole or in part, permanently or temporarily, as follows:
- (1) for any materially false statement in an application to obtain or modify the Permit;
  - (2) for any materially false statement in any affidavit filed pursuant to Section 3308;
  - (3) for a material violation by the Permit or license to perfect holder of any provision of the Code, any regulation promulgated pursuant to the Code, any order issued by the Director, or any condition set forth in the Permit or license to perfect;
  - (4) for nonuse of the Nation's Water described in the Permit for a period of five consecutive years, unless there is a showing of good cause by the Permit holder why the water described in the Permit has not been used and that the water described in the Permit will again be put to use in a reasonable period of time;

- (5) for material damage to the quality of the Nation's Water arising out of the activities of the Permit or license to perfect holder; provided that any chemical or biological degradation of surface or groundwater quality caused by the lawful use of SAWRSA CAP water shall not be a basis for the revocation or suspension of any Permit or license to perfect; or
  - (6) upon the written consent of the Permit or license to perfect holder.
- (B) The Director shall provide written notice of intent to revoke or suspend a Permit or license to perfect by certified mail, return receipt requested, to the last known address of the Permit or license to perfect holder and to the District in which the use of water described in the Permit or license to perfect is or will be located. Such notice shall provide a detailed statement and explanation of the basis and justification for the proposed revocation or suspension. If the Permit or license to perfect holder cannot be served with notice, the Permit or license to perfect holder may be served by publication in a newspaper of general circulation in the Nation's Lands. The Permit or license to perfect holder shall have 30 days from the day the notice is delivered, or from the date of the publication, to request a hearing before the Director. If a hearing is requested, the Director shall schedule a hearing within 30 days of the request unless the Permit or license to perfect holder requests an extension not to exceed 30 days absent compelling circumstances shown by the Permit or license to perfect holder. At the hearing, the Permit or license to perfect holder may present witnesses and other evidence to rebut the basis and justification of the Director's proposed action. Within 15 days of the completion of the hearing the Director shall issue a Final Decision concerning the proposed action. A Permit or license to perfect may be revoked or suspended only if the Director finds that the Permit or license to perfect holder has failed to present Substantial Evidence in the record to rebut the basis set forth in the Director's written notice justifying the revocation or suspension of the Permit or license to perfect. Within five working days of the date of the Final Decision, the Director shall give notice of the Final Decision to the Permit or license to perfect holder and any other Person who was a party to the proceeding.
- (C) The Director may, in the event of an Emergency, temporarily suspend a Permit or license to perfect without prior notice. As soon as practicable following the suspension of any Permit or license to perfect under this subsection, the Director shall comply with the provisions of Section 3311(B) on an expedited basis.

## **ARTICLE 4 - ALLOCATION AND USES OF SAWRSA WATER**

### **Section 3401 Allocation of SAWRSA Water**

- (A) Pursuant to subsection 307(a)(1)(G)(i) of the SAWRSA Amendments, a first right of Beneficial Use is hereby allocated to the San Xavier District and Allottees and other

Persons within the San Xavier Reservation for the following water:

- (1) 35,000 Acre-Feet per year of SAWRSA CAP Water deliverable under subsections 304(a)(1) and 306(a)(1) of the SAWRSA Amendments including the use of the allocation as specified in subsection 307(a)(1)(G)(i)(I)(aa) and (bb);
  - (2) 10,000 Acre-Feet per year of SAWRSA Groundwater withdrawn within the San Xavier Reservation;
  - (3) all Groundwater withdrawn from SAWRSA Exempt Wells within the San Xavier Reservation;
  - (4) all Deferred Pumping Storage Credits accrued within the San Xavier Reservation; and
  - (5) all Direct Storage Credits accrued within the San Xavier Reservation.
- (B) Pursuant to subsection 307(a)(1)(G)(ii) of the SAWRSA Amendments and in accordance with subsection 309(b)(2) of the SAWRSA Amendments, the Nation hereby reserves:
- (1) the right to use or provide for the use by any Person of any portion of the 35,000 Acre-Feet per year described in subsection (A)(1) for any period during which there is no Identified Actual Use within the San Xavier Reservation. Any use of any portion of this 35,000 Acre-Feet per year for which there is no Identified Actual Use within the San Xavier Reservation, whether such use is by the Nation or by any Person authorized by the Nation, shall be terminated by the Nation to the extent additional Permitted Identified Actual Uses of the 35,000 Acre-Feet per year are made within the San Xavier Reservation, that displace uses made by the Nation or any Person of that SAWRSA CAP Water;
  - (2) a first right to use or provide for the use of the remaining 15,000 Acre-Feet of SAWRSA CAP Water deliverable under subsections 304(a)(1) and 306(a)(1) of the SAWRSA Amendments for any purpose and duration authorized by the SAWRSA Amendments within or outside the Nation's Lands; and
  - (3) the exclusive right, subject to subsection 308(e) of the SAWRSA Amendments, to transfer or otherwise dispose of all Marketable Long-Term Storage Credits that may be lawfully transferred or otherwise disposed of to Persons for recovery outside the Nation's Reservation.
- (C) The Nation acknowledges and agrees that the first right of Beneficial Use as provided in subsection 307(a)(1)(G)(i) of the SAWRSA Amendments to Allottees, the San Xavier District and other Persons within the San Xavier Reservation exists. The Nation shall not take any action or adopt any legislation that would in any way deny this first right of

Beneficial Use.

**Section 3402            Uses of SAWRSA Water**

- (A) Except as otherwise provided in this Code, all uses of SAWRSA Water are subject to the requirements, provisions and conditions of this Code applicable to other water uses within the Nation's Lands.
- (B) The Director shall not issue Permits to withdraw and use SAWRSA Groundwater from SAWRSA Wells in a quantity that exceeds 10,000 Acre-Feet per year within the San Xavier Reservation. The Director shall not issue Permits to withdraw and use SAWRSA Groundwater from SAWRSA Wells in a quantity that exceeds 3,200 Acre-Feet per year within the eastern Schuk Toak District. Provided, notwithstanding the limitation on the pumping of SAWRSA Groundwater within the San Xavier Reservation and eastern Schuk Toak District, the Director may issue Permits to pump Deferred Pumping Storage Credits or Direct Storage Credits within the San Xavier Reservation or the eastern Schuk Toak District in accordance with subsection 3402(C). The Director may also issue permits to withdraw Additional Groundwater but only in accordance with the applicable provisions of Article 5.
- (C) The Director may issue Permits to withdraw Deferred Pumping Storage Credits or Direct Storage Credits only within the San Xavier Reservation or the eastern Schuk Toak District. Permits authorizing the withdrawal of Deferred Pumping Storage Credits or Direct Storage Credits shall be subject to annual adjustment by the Director with respect to the quantity that may be withdrawn pursuant to each Permit. No later than November 15th of each year, a Person holding a Permit to withdraw Deferred Pumping Storage Credits or Direct Storage Credits shall notify the Director, in writing, of the quantity and type of credit the Person requests to withdraw in the ensuing year. Upon receipt of the written requests, the Director shall determine whether the written requests exceed the quantity available for withdrawal in each District's Deferred Pumping Storage Credit account or Direct Storage Credit account. If the written requests exceed the quantity available for withdrawal in any account, the Director shall meet with the Persons that filed requests to withdraw credits from such account and adjust the quantities of credits that may be withdrawn from the account so that its credit balance will not be exceeded in the ensuing year. The Director shall notify each Person, by certified mail, of any adjustment made to the Person's written request. The notification shall advise the Person that it constitutes a Final Decision of the Director.
- (D) The Director shall establish separate Deferred Pumping Storage Credit accounts for the San Xavier Reservation and the eastern Schuk Toak District. To initiate the account in the San Xavier Reservation, the Director shall credit 50,000 Acre-Feet to the San Xavier account. To initiate the account in the eastern Schuk Toak, the Director shall credit 16,000 Acre-Feet to the eastern Schuk Toak District account. At the end of each year commencing with the year 2007, the Director shall record a credit or a debit, in Acre-

Feet, to each Deferred Pumping Storage Credit account. The Director shall credit the San Xavier account with the difference between 10,000 Acre-Feet and the number of Acre-Feet of SAWRSA Groundwater withdrawn from SAWRSA Wells within the San Xavier Reservation that year that was less than 10,000. The Director shall debit the San Xavier account with the number of Acre-Feet of SAWRSA Groundwater in excess of 10,000 that is withdrawn from SAWRSA Wells within the San Xavier Reservation during that year. The total quantity of water permitted to be recovered as Deferred Pumping Storage Credits within the San Xavier Reservation shall not exceed 50,000 Acre-Feet for any 10-year period or 10,000 Acre-Feet in any one year. The Director shall credit the eastern Schuk Toak account with the difference between 3,200 Acre-Feet and the number of Acre-Feet of SAWRSA Groundwater withdrawn from the SAWRSA Wells within the eastern Schuk Toak District that year that was less than 3,200. The Director shall debit the eastern Schuk Toak account with the number of Acre-Feet of SAWRSA Groundwater in excess of 3,200 that is withdrawn from SAWRSA Wells within the eastern Schuk Toak District during that year. The total quantity of water permitted to be recovered as Deferred Pumping Storage Credits within the eastern Schuk Toak District shall not exceed 16,000 Acre-Feet for any 10-year period or 3,200 Acre-Feet in any year.

- (E) The Director shall establish separate Direct Storage Credit accounts for the San Xavier Reservation and the eastern Schuk Toak District. Beginning with the year 2007, and for each year thereafter, the Director shall credit the San Xavier Reservation or the eastern Schuk Toak District account with the quantity of SAWRSA CAP water stored underground within the San Xavier Reservation or the eastern Schuk Toak District at underground storage and recovery projects established in the San Xavier Reservation or the eastern Schuk Toak District pursuant to Section 308(e) of the SAWRSA Amendments. The Director shall debit the San Xavier Reservation or eastern Schuk Toak District account, beginning with the year 2007, and for each year thereafter, with the number of Direct Storage Credits withdrawn from within the San Xavier Reservation or the eastern Schuk Toak District during the year.
- (F) Compensation payable by the Secretary due to shortages in deliveries of SAWRSA CAP Water shall be disbursed to the San Xavier Cooperative Association, the Nation, or any other Person consistent with subsection 305(d) of the SAWRSA Amendments. Provided, however, that any compensation payable for the non-delivery of SAWRSA CAP Water to Asarco shall be paid to the San Xavier District. The Director, together with a representative of the San Xavier Cooperative Association, shall confer and consult with the Secretary in the calculation and disbursement of any compensation to be paid pursuant to subsection 305(d) of the SAWRSA Amendments. Except for SAWRSA CAP Water ordered by Asarco, payments of compensation under subsection 305(d) of the SAWRSA Amendments shall be made, in accordance with this section, to the Person, including the Nation and the San Xavier District, that ordered the water to the extent the ordered amount is not delivered by the Secretary.
- (G) A Person holding a Permit to use a SAWRSA Well shall install a device or develop a



means whereby withdrawals from the SAWRSA Well are measured with reasonable accuracy. The means utilized or the device installed for such measurements are subject to the approval of the Director as to the accuracy of the measurements of the withdrawals. Not later than March 1st of each year, the holder of a Permit to use a SAWRSA Well shall report to the Director, on forms developed by the Director, the quantities of SAWRSA Groundwater, Direct Storage Credits, Deferred Storage Credits, or Additional Groundwater withdrawn from the SAWRSA Well in the preceding calendar year.

- (H) No water metering devices or other means shall be required to measure withdrawals from SAWRSA Exempt Wells.
- (I) No SAWRSA Water under a Permit or license to perfect may be used outside the Nation's Lands. SAWRSA Water for which a Permit has been issued may not be used on any lands or for any use not authorized and approved by the Permit.

## **ARTICLE 5 - WATER SHORTAGES**

### **Section 3501 SAWRSA CAP Water Shortages**

- (A) This article applies to shortages in the deliveries of SAWRSA CAP Water to the Nation by the Secretary during Deficiency Years.
- (B) The Director, upon receiving notice from the Secretary that a future year will be a Deficiency Year, shall, within 15 days of receipt of the Secretarial notice, forward the Secretarial notice to all Persons that use or have a right to use any of the Nation's SAWRSA CAP Water. The Director shall include with the Secretarial notice a statement as to whether the shortage described by the Secretary will impact deliveries of SAWRSA CAP Water to the Nation and, if so, the extent and nature of those impacts. Within 60 days of receipt of the Secretarial notice, the Director shall schedule a meeting with users of the Nation's SAWRSA CAP Water to discuss the Secretarial notice and the procedures the Director will employ to reach the allocation of SAWRSA CAP Water provided for in this section 3501.
- (C) Uses of SAWRSA CAP Water within the San Xavier Reservation and eastern Schuk Toak District shall have absolute priority over all other uses of the Nation's SAWRSA CAP Water during a Deficiency Year.
- (D) In the event the quantity of SAWRSA CAP Water available to the Nation in a Deficiency Year is insufficient to fulfill all demands for SAWRSA CAP Water within the San Xavier Reservation and eastern Schuk Toak District, the Director shall allocate the available quantity of SAWRSA CAP Water for use within the San Xavier Reservation and eastern Schuk Toak District prorata based on the quantities of SAWRSA CAP Water used on the San Xavier Reservation and eastern Schuk Toak District in the last year when all such uses within the San Xavier Reservation and eastern Schuk Toak District were met.

- (E) For purposes of the allocation of SAWRSA CAP Water in a Deficiency Year, the use of any SAWRSA CAP Water by Asarco in accordance with the Tohono O'odham Settlement Agreement shall be deemed to have been made on the San Xavier Reservation.
- (F) In the event the quantity of SAWRSA CAP Water available to the Nation during a Deficiency Year is sufficient to meet all demands for SAWRSA CAP Water within the San Xavier Reservation and eastern Schuk Toak District, the Director shall first allocate any remaining SAWRSA CAP Water to meet demands within the Nation's Lands and, second, for uses by the Nation outside the Nation's Lands.
- (G) In the event, the SAWRSA CAP Water available to the Nation in a Deficiency Year is insufficient to meet all demands for SAWRSA CAP Water use within the Nation's Lands under the provisions of subsection (F), the Director shall allocate SAWRSA CAP Water pro rata among those demands within the Nation's Lands based on the quantities used in the last year when all such uses within the Nation's Lands were met.
- (H) SAWRSA CAP Water available for use within the San Xavier Reservation during a Deficiency Year shall be allocated by the Director pursuant to the provisions of the San Xavier Water Management Plan. Provided, however, unless Asarco otherwise agrees, the percentage of the total quantity of SAWRSA CAP Water available for use within the San Xavier Reservation and allocated to Asarco pursuant to this subsection, shall not be less than the percentage that the Asarco use was to the total SAWRSA CAP Water use within the San Xavier Reservation during the last year when all SAWRSA CAP Water demands within the San Xavier Reservation were met.
- (I) When the available SAWRSA CAP Water supply is insufficient to meet all demands for such water within the San Xavier Reservation and eastern Schuk Toak District, the Director may allocate for use within the San Xavier Reservation and eastern Schuk Toak District any available SAWRSA Groundwater, Deferred Pumping Storage Credits, Direct Storage Credits, or Additional Groundwater in lieu of the use of SAWRSA CAP Water; provided, however, the Director may not require a Person to use any of the alternative water supplies if that Person is otherwise entitled to an allocation of SAWRSA CAP Water pursuant to the provisions of this section.

### **Section 3502 Allocation Order; Judicial Review**

- (A) Upon determining the allocations of SAWRSA CAP Water available during a Deficiency Year in accordance with section 3501, the Director shall give notice of the allocations and of a meeting scheduled to discuss and receive comments on the allocations. The meeting shall not take place less than 10 days following the date of the notice. At the meeting the Director shall solicit comments with respect to the allocations and whether the Director's allocations are in accordance with the provisions of section 3501.

- (B) The Director shall provide written notice of the meeting required in subsection 3502(A) to the San Xavier District, Schuk Toak District, San Xavier Cooperative Association, San Xavier Allottees Association, Tohono O’odham Farming Authority, all users of the Nation’s SAWRSA CAP Water, the Chairperson, Water Resources Committee, and any other Person the Director believes may be an Affected Person in relation to shortages in the delivery of SAWRSA CAP Water. The written notice of the meeting required in subsection 3502(A) shall state the allocations determined by the Director pursuant to section 3501 and also set forth the time and place of the meeting.
- (C) Following the meeting required by subsection 3502(A), the Director may revise the allocations to the extent they are found not to be in compliance with the requirements of section 3501. Final notice of the allocations developed by the Director pursuant to this section shall be given to the same persons and entities that received notice pursuant to subsection 3502(B). This final notice shall constitute a Final Decision of the Director subject to review by the Judicial Court.

## **ARTICLE 6 – WELLS**

### **Section 3601            Regulation of Wells**

- (A) No Person may drill, construct, deepen, replace, or otherwise modify a Well in the Nation’s Lands without a Drilling Permit issued by the Director pursuant to this Article. Provided, however, a Drilling Permit is not required for any work that does not alter the specifications of the Well or any installed equipment as reflected in the records of the Department.
- (B) A Person required by subsection 3601(A) to obtain a Drilling Permit shall make application to the Director for a Drilling Permit before commencing any work to drill, construct, deepen, replace or otherwise modify a well. Applications for a Drilling Permit shall be verified upon the oath of the applicant under penalty of perjury that the matters set forth in the application are true and correct to the best knowledge of the applicant and shall include, as applicable:
  - (1) the name and mailing address of the Person filing the application;
  - (2) the legal description or general location of the land upon which the Well or proposed Well is to be drilled, constructed, deepened, replaced, or otherwise modified and the name and mailing address of the owner, beneficial owner, lessee, or land assignment holder for that land;
  - (3) the legal description or specific location of the Well or proposed Well referred to in the application and if the location is on an allotment, the allotment number;

- (4) the planned drilling method, depth, diameter, type of casing, sanitary seal, and screen interval information of the proposed new Well;
  - (5) the legal description or general location of any land upon which the Groundwater to be withdrawn from the Well or proposed Well is to be used and the proposed uses to which the Groundwater will be applied;
  - (6) the date upon which the work on the Well or proposed Well is to commence and the projected date upon which the work will be completed;
  - (7) the name and license number of the licensed Well driller that will do the work described in the application;
  - (8) the drilling, completion, and pump specifications of the Well to be deepened, or modified, to the extent such information is reasonably available;
  - (9) a description of the modifications to be made to the Well, including a description of the methods or work to be employed to make such modifications; and
  - (10) such other relevant information as the Director may require.
- (C) Upon receipt of an application for a Drilling Permit, the Director shall note the time of receipt and determine if the application contains all information required by Section 3601(B). If the application does not set forth the information required, the Director shall request that the applicant submit the required information within 20 days of the Director's request. If the applicant fails to submit the required information within the 20-day period or such longer period as the Director may allow, the Director may deny the application and shall notify the applicant of the denial within 14 days. If the Director determines that an application contains all required information and that the applicant has been issued a license to perfect pursuant to Section 3307 or a Permit issued pursuant to Section 3304 or Section 3308 to use the Groundwater to be withdrawn from the Well, the Director, within 14 days of making the findings required in this sentence, shall issue to the applicant a Drilling Permit to drill, construct, deepen, replace or modify the Well as described in the application. Notwithstanding any other provision of Section 3601: (1) if the Director determines that a Drilling Permit should issue for a Well on an allotment, the Drilling Permit shall identify the allotment number and state that the Drilling Permit is issued to all Persons holding a beneficial interest in the allotment so identified; or (2) if the allotment on which the Well exists is subject to a lease, the Drilling Permit shall be issued in the name of the lessee for the benefit of the Allottees having a beneficial interest in that allotment. If the lease expires or is otherwise terminated, any interest of the lessee in the Drilling Permit terminates and the Drilling Permit shall be reissued in accordance with subsection (1) or to a subsequent lessee in accordance with subsection (2).

- (D) Upon issuance of a Drilling Permit, the applicant may commence the work authorized in the Drilling Permit. All work authorized under the Drilling Permit shall be performed by a Well driller licensed pursuant to Section 3603(D) and shall be completed within one year of the date of the Drilling Permit or within such longer period as the Director may allow upon request by the holder of the Drilling Permit.
- (E) The licensed Well driller shall maintain a complete and accurate log of a Well drilled or deepened. Within 14 days of the completion of the work authorized in the Drilling Permit, the licensed Well driller shall file with the Director a report to include the information in the drilling log, and a description of the casing and screen installed in the Well, and any other relevant information as required by the Director. The Director shall develop the form of report to be utilized by licensed Well drillers for this purpose.
- (F) Within 14 days of installing pumping equipment, the licensed Well driller or other Person responsible for the installation shall file a report with the Director, on a form provided by the Director, setting forth:
  - (1) a description of the equipment installed in the Well;
  - (2) the test pumping capacity of the Well measured through a method approved by the Director;
  - (3) the static water level in the Well prior to any pumping capacity test on the Well;
  - (4) the extent of drawdown of the water level in the Well immediately after completion of the pumping capacity test on the Well; and
  - (5) such other relevant information as the Director may require.
- (G) If the Drilling Permit authorized the modification of a Well, the licensed Well driller, or the Person responsible for the modification of equipment in the Well, within 14 days of the completion of the work, shall file a report with the Director describing the specific work performed to modify the Well. The report shall include the information required by subsections 3601(E) or (F) to the extent applicable to the modification.
- (H) Upon the filing of the report or reports required by this section and a determination by the Director that the work performed on the Well was as required in the Drilling Permit, the Director shall assign a registration number to the Well if it has no such number, and issue a Well Permit or modified Well Permit to the Person that was issued the Drilling Permit.
- (I) The Director shall create and maintain a registry of Wells for which Well Permits have been issued. The registry shall include such information as the Director determines is necessary to develop and maintain a thorough and accurate compilation of data concerning the location, characteristics and capacity of all Wells within the Nation's

Lands.

- (J) Any Person intending to permanently discontinue use of a Well within the Nation's Lands shall comply with the requirements established in regulations adopted by the Director pursuant to Section 3603. The Director shall maintain a list of Wells within the Nation's Lands, the use of which has been permanently discontinued and remove such Wells from the registry of Wells maintained by the Director pursuant to Section 3601(I).
- (K) The Director may order the owner of a Well to secure a Well that has been determined by the Director to pose a risk to health, safety, or water quality. For purposes of this section, the term secure means to eliminate or reduce to the maximum extent reasonably possible, the health, safety, or water quality risk posed by the Well. The Director is further authorized, after providing a Well owner with advance written notice, to secure any such Well in the event the Well owner is unknown or the owner fails to comply with the Director's order to secure the Well. The regulations adopted by the Director shall provide the owner with notice and an opportunity to be heard concerning any order to secure a Well.

**Section 3602                      Registration of Existing Wells**

- (A) On or before June 1, 2013 a Person that owns or controls an Existing Well within the Nation's Lands shall register the Well on a form provided by the Director. Information submitted on the registration form shall be verified upon the oath of the Person submitting the form under penalty of perjury, that the information submitted is true and correct to the best knowledge of the Person submitting the application.
- (B) The form for the registration of an Existing Well shall require the following information, to the extent such information is reasonably available:
  - (1) the legal description or specific location of the Existing Well and the name and mailing address of the owner, beneficial owner, lessee, or land assignment holder of the land upon which the Existing Well is located;
  - (2) the depth, diameter, pumping capacity, type of casing, sanitary seal, and screen interval information of the Existing well;
  - (3) the legal description or general location of the land upon which the Groundwater withdrawn from the Existing Well is used and a description of the uses of that Groundwater;
  - (4) the date upon which the Existing Well was drilled;
  - (5) any well log and other drilling information concerning the Existing Well; and

- (6) any additional relevant information as the Director may require.
- (C) If the Director determines that the Existing Well registration sets forth the required information to the extent that it is reasonably available, the Director shall assign a registration number to each Existing Well registered in accordance with this section. Upon the assignment of the registration number, the Director shall issue a Well Permit to the Person that filed the Existing Well registration. The Director shall include all Existing Wells for which a Well Permit is issued in the registry of Wells provided for in subsection 3601(I).
- (D) Not later than June 1, 2011, the Director shall give notice of the deadline for the registration of Existing Wells. The notice to register Existing Wells shall be given in the same manner and in conjunction with the notice provided for in the case of Declarations of Existing Use as set forth in subsection 3304(C). The notice shall include a statement that failure to register an Existing Well pursuant to the Code may result in the issuance of an Order directing that the Existing Well shall not be used for any purpose until such time as it has been registered in accordance with this section.

**Section 3603                      Well Construction Standards and Regulation of Well Drillers**

- (A) The Director, pursuant to Section 3203, shall adopt rules and regulations that establish standards for the drilling and construction of new Wells, replacement Wells and the deepening of Wells. These rules and regulations shall also establish standards for the installation of equipment in any Well, and the methods to be utilized in securing, sealing or capping Wells that are open and not in use.
- (B) All work in relation to the drilling, construction, replacement, deepening, securing, sealing, capping and equipping of Wells shall comply with the rules and regulations adopted by the Director.
- (C) The rules and regulations adopted by the Director concerning Wells shall also set forth penalties that may be imposed on any Person that violates any provision of those rules and regulations.
- (D) No Person may drill, construct, replace, deepen, or modify a Well unless that Person has obtained a Well driller's license from the Director. The Director shall establish rules and regulations setting forth the qualifications to be met before a Person may obtain a Well driller's license. The Director may require a licensed Well driller to post a bond or other adequate security to assure compliance with all applicable laws, rules, regulations and standards concerning the drilling, constructing, replacing, deepening, or modifying of any Well by a licensed Well driller.

## **ARTICLE 7 – WATER MANAGEMENT**

### **Section 3701            Water Management Areas**

The Director shall divide the Nation's Lands into Water Management Areas based on hydrologic considerations including Surface Water drainage areas and designated Groundwater Basins. Water Management Areas may be created on the basis of existing data and redrawn as appropriate based on new hydrologic data or to more effectively implement the water management objectives of this Code.

### **Section 3702            Water Management Plans**

- (A) Except as provided in subsection 3702(D), the Director shall prepare, in consultation with each affected District, a proposed Water Management Plan for each Water Management Area established pursuant to this Code. When two or more Districts are within a single Water Management Area, the Water Management Plan shall, to the extent permissible under this Code, accommodate each District's preferences.
- (B) A Water Management Plan shall become effective upon its approval by the Legislative Council and may be amended through a process that complies with the procedural requirements of this section.
- (C) Each Water Management Plan shall be consistent with this Code and other laws of the Nation, and may include the following provisions for each Water Management Area:
  - (1) inventorying the existing quantity and quality of the water resources available for use;
  - (2) inventorying the existing uses of water;
  - (3) developing water conservation programs;
  - (4) developing procedures and methods to protect water quality;
  - (5) developing and instituting restrictions on the use of water to prevent the overuse of a source or sources of water; and
  - (6) other relevant matters the Director deems necessary.
- (D) The San Xavier Reservation shall be and is declared a Water Management Area. The San Xavier District, with oversight from the Director, shall prepare a Water Management Plan for the San Xavier Water Management Area, as required by SAWRSA Amendments Section 308(d)(2), that shall comply with the provisions of this Code and with the provisions of the SAWRSA Amendments.



- (E) The eastern Schuk Toak District shall be and is declared a Water Management Area. The Director shall prepare a Water Management Plan for the eastern Schuk Toak Water Management Area, as required by SAWRSA Amendments Section 308(d)(2), that shall comply with the provisions of this Code and with the provisions of the SAWRSA Amendments.

**ARTICLE 8 – UNDERGROUND STORAGE AND RECOVERY OF CENTRAL ARIZONA PROJECT WATER**

**Section 3801                      Underground Storage and Recovery of CAP Water Within the Nation**

- (A) Except as provided in subsection 3802, the Nation shall have the exclusive right to construct and operate, or authorize the construction and operation of facilities or projects:
  - (1) to store CAP water underground within the Nation’s Lands; or
  - (2) to recover CAP water stored within the Nation’s Lands.
- (B) Any facility or project proposed for the underground storage or recovery of stored CAP water within the Nation’s Lands shall be evaluated by the Director in consultation with the Attorney General. Upon completion of the evaluation, the Director and the Attorney General shall report and make recommendations to the Legislative Council and the Chairperson in relation to the financial, technical, legal and other relevant factors concerning the proposed facility or project. No such proposed project or facility may be constructed or in any way implemented absent approval by the Legislative Council.
- (C) The Attorney General, with technical assistance from the Director, may negotiate agreements with the Secretary to permit the Secretary to construct or utilize facilities or projects within the Nation’s Lands to store underground or recover stored CAP water to which the United States has a right in order to fulfill the obligations of the Secretary:
  - (1) to deliver CAP water to which the Nation is entitled pursuant to Sections 304(a) and 306(a) of the SAWRSA Amendments during times of declared shortages on the Colorado River or other occurrences affecting water deliveries to the Nation as described in Section 305(a)(2) of the SAWRSA Amendments, or
  - (2) during times of scheduled or other outages in the CAP delivery system.
- (D) The Nation shall consult with any affected District before an agreement negotiated with the Secretary pursuant to this section is presented to the Legislative Council for final approval by resolution.

**Section 3802                      Underground Storage of CAP Water Within the San Xavier Reservation**

- (A) The San Xavier District, Allottees or other Persons within the San Xavier Reservation may apply to the Director for a permit to store CAP water underground within the San Xavier Reservation as provided for in subsection 307(a)(1)(G)(i)(I)(bb) of the SAWRSA Amendments.
  
- (B) Applications to store CAP water underground pursuant to this section shall set forth:
  - (1) a description of the purpose or purposes for which the CAP water is to be stored;
  - (2) the location and a description of the facility or project at which the storage will occur;
  - (3) the method by which the CAP water will be delivered to the site of the proposed storage, the quantity of CAP water to be stored on an annual basis and the total amount of CAP water to be stored over the life of the proposed facility or project;
  - (4) the estimated cost of developing or constructing the facility or project to be used to store the CAP water and the estimated time necessary to develop or construct the facility or project;
  - (5) a description of the area projected to be impacted by the stored CAP water, both laterally and vertically, and the qualitative impacts of the stored CAP water on the land and water resources within such area;
  - (6) a statement that the San Xavier District Development Review process has been completed, that the project has been approved, and the date of approval; and
  - (7) any other information deemed relevant by the Director to enable the Director to fully evaluate the application.
  
- (C) Upon receipt of an application submitted pursuant to subsection 3802(B), the Director shall meet with the applicant to review and discuss the application and any conditions that might be imposed on the construction, development or operation of the proposed facility or project. The Director may request that the applicant provide further information regarding the application either before or at the meeting so that the application contains sufficient information to permit the Director to make a fully informed decision concerning the application.
  
- (D) When the Director determines that the application contains sufficient information to permit the Director to make a fully informed decision concerning the application, the Director shall provide notice of and a complete copy of the application to the San Xavier

District through the San Xavier District Chairman and Council, to the San Xavier District Water Rights Office, and to the San Xavier Allottees Association. The San Xavier District, the San Xavier Allottees Association, any allottee, or other Persons within the San Xavier Reservation may present comments, questions or objections concerning the application to the Director within 30 days of the date of the notice. The Director, upon receipt of any such comments, questions or objections, shall conduct a meeting with the applicant and those that submitted comments, questions or objections. The Director, following the meeting provided for in this subsection, shall complete the review of the application and either approve or reject it.

- (E) The Director may approve an application submitted under subsection 3802(B) if the Director determines that:
  - (1) the applicant has the financial and technical resources to develop, construct and operate the facility or project described in the application;
  - (2) the applicant has the right and means to obtain, deliver and use the CAP water for storage at the facility or project described in the application;
  - (3) the storage of the CAP water as described in the application will benefit the applicant or the San Xavier Reservation in general;
  - (4) the storage will not cause unreasonable harm to existing land or water resources that will be impacted by the storage of the CAP water; and
  - (5) the applicant has or will comply with any other regulatory requirements or limitations that apply to the development, construction or operation of the facility or project where the storage of CAP water is to occur.
- (F) The Director may reject the application upon finding that one or more of the requirements set forth in subsection 3802(E) cannot or have not been met. If the application is rejected the Director shall issue an order listing the reason or reasons for the rejection. If the application is approved, the Director shall issue an order listing any conditions to be met by the applicant in developing, constructing and operating the facility or project to store the water. An order rejecting or approving an application shall be a Final Decision of the Director. Notice of the Director's order shall be mailed to the applicant and any other Person that submitted written comments, questions or objections to the application.

**Section 3803                      Underground Water Storage and Savings Under Arizona State Law**

- (A) The Nation shall have the exclusive right to use CAP water for underground storage or groundwater savings under Arizona state law as set forth in Chapter 3.1, Title 45, A.R.S., as amended, both within and outside the Nation's Lands.

- (B) The Nation shall have the exclusive right to all Marketable Long Term Storage Credits that accrue from CAP water used for underground storage or groundwater savings under Arizona state law described in subsection 3803(A). The Nation shall also have the exclusive right to recover any CAP water stored by the Nation whether the recovery is within or outside the Nation's Lands.
- (C) The Nation may not use CAP water for underground storage, groundwater savings or accrue, market, recover, or otherwise dispose of Marketable Long Term Storage Credits under Arizona law unless such action is approved by a resolution of the Legislative Council.
- (D) The Nation, as authorized by the Legislative Council, may develop, construct and operate facilities or projects within the Nation's Lands for the storage of CAP water. Subject to approval by the Legislative Council, the Director may apply to the Arizona Department of Water Resources for one or more facilities permits issued under Arizona state law for any facility or project existing or to be developed and constructed on the Nation's Lands for the underground storage of CAP water by either the Nation or by any Person, subject to such conditions and limitations as may be imposed by the Legislative Council.

## **ARTICLE 9 – INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT**

### **Section 3901            Inspections and Investigations**

- (A) The Director or authorized representatives of the Director may conduct inspections and investigations of any lands upon which any of the Nation's Water is used together with any facilities, including, but not limited to, Wells, Diversions, Catchments or Charcos that are used to put the Nation's Water to a Beneficial Use.
- (B) To conduct inspections or investigations, the Director or authorized representatives of the Director may enter upon any land within the Nation's Lands after giving reasonable notice to the Person that controls or holds a beneficial interest in the lands upon which the inspection or investigation is to be conducted. Notice of any inspection or investigation shall also be given to any Person with a Permitted Use on the lands upon which the inspection or investigation is to be conducted if that Person is not the Person that controls or holds a beneficial interest in the lands to be inspected or investigated.
- (C) Inspections and investigations may be conducted to obtain data concerning characteristics and specifications of facilities utilized to effect a Permitted Use including, but not limited to:
  - (1) the size, nature and configuration of any structure that impounds any of the Nation's Water in a Catchment or Charco;
  - (2) the size, nature and configuration of any works utilized to effect a Diversion

including the capacity of any structure to convey water to any point of use; and

- (3) the depth, diameter and type of casing, the maximum pumping capacity and the static and pumping water levels of any Well.
- (D) The Director or authorized representatives of the Director may enter upon any lands within the Nation's Lands without notice if the Director determines that an Emergency exists or that a violation of the Code is occurring on the lands to be entered.

### **Section 3902            Orders to Comply**

- (A) If the Director determines that any Person is or may be in violation or has violated any provision of the Code or any Permit, license to perfect, rule, regulation or order of the Director issued pursuant to the Code, the Director may issue an order to any Person believed to be or have been in violation directing that the Person appear before the Director and demonstrate that no violation exists or has existed.
- (B) If the Director determines, after providing the Person that received the order an opportunity to be heard, that the Person is in violation of the Code or any Permit, license to perfect, rule, regulation or order of the Director issued pursuant to the Code, the Director shall issue an order that the Person cease any violation and comply with the Code, Permit, license to perfect, rule, regulation or prior order of the Director. The Director's order shall specifically set forth what action the Person shall take to comply with the order and the timeframe within which compliance is required. An order issued pursuant to this subsection is a Final Decision of the Director.
- (C) If the Person that is issued a Final Decision pursuant to subsection (B) continues the violation referred to in the Final Decision, the Director may seek a temporary restraining order or preliminary or permanent injunctive relief from the Judicial Court to enforce the Final Decision.

### **Section 3903            Penalties for Violations**

- (A) Except as provided in subsection (B), any Person found to be in violation of the Code or any Permit, license to perfect, rule, regulation or order of the Director issued pursuant to the Code, as provided in subsection 3902(B), may be assessed a civil penalty of up to \$1,000.00 for each day the violation continues following the issuance of a Final Decision by the Director pursuant to that section.
- (B) If the Director determines, pursuant to subsection 3902(B), that the violation was willful or that the violation constitutes an illegal use or disposition of any of the Nation's Water, a civil penalty of up to \$10,000.00 per day may be assessed by the Director for each day the violation continues following the issuance of a Final Decision by the Director pursuant to that subsection.

- (C) The Director may bring an action in Judicial Court against any Person assessed a civil penalty to obtain an enforceable judgment in the amount of the civil penalty assessed by the Director. A Final Decision of the Director finding a violation pursuant to subsection 3902(B) shall be conclusive evidence of the violation unless judicial review of the Final Decision remains pending.

## **ARTICLE 10 – APPEALS, SOVEREIGN IMMUNITY, AND EFFECTIVE DATE**

### **Section 31001 Limited Waiver of Sovereign Immunity**

- (A) The Nation hereby waives its sovereign immunity only for the express and sole purpose of complying with clause (iii) of Section 308(b)(4)(D) of the SAWRSA Amendments and solely for claims of declaratory and injunctive relief, judicial review by the Judicial Court of Final Decisions of the Director pursuant to Section 31002, and for actions seeking only declaratory or injunctive relief with respect to disputes arising out of this Code.
- (B) This waiver of sovereign immunity does not apply to any actions or remedies against the Nation not expressly authorized in this section; the Nation’s immunity is not waived with regard to the award of any damages, costs of suit, including attorney’s fees, or other monetary relief. In all such cases the immunity of the Nation is expressly preserved.

### **Section 31002 Appeals**

- (A) Any Affected Person may obtain judicial review of a Final Decision of the Director by filing a notice of appeal in the Judicial Court not later than 30 days from the date of the Final Decision. To the extent not inconsistent with this Section, the Rules of Appellate Procedure of the Judicial Court shall apply to appeals.
- (B) The Judicial Court shall uphold the Director unless the Judicial Court determines the Final Decision was:
  - (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (2) contrary to constitutional right, power, privilege, or immunity;
  - (3) in excess of jurisdiction, authority, or limitations set forth in applicable law, or of a right established by law;
  - (4) substantially without observance of procedure required by law; or
  - (5) unsupported by Substantial Evidence in a case based on the Department’s record.

- (C) In making the foregoing determinations, the Judicial Court shall review the whole record of the Department or those parts of it cited by a party. The Judicial Court may allow the parties to supplement the record but shall not permit trial de novo.

**Section 31003            Repeal of Title I of the Interim Allottee Water Rights Code**

Title I of the Interim Allottee Water Rights Code, as codified at 25 T.O.C. Chapter 3, is repealed and superseded by this Code as of the Effective Date; provided that 25 T.O.C. Chapter 4, Implementation Provisions Regarding SAWRSA, shall remain in effect.

**Section 31004            Effective Date**

This Code shall become effective on the first date of the month following enactment by the Legislative Council in accordance with the Nation's Constitution.