

Colorado River Indian Tribes

Tribal Water Code

Title [XXXX]

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Colorado River Indian Tribes Water Code

TITLE XXXX

Chapter 1: General Provisions

XX-101. DECLARATION OF PURPOSES AND FINDINGS

- (a) The purposes of this Water Code (“Code”) are to –
- (1) recognize the cultural significance of the River, and the inalienable connection that the Colorado River Indian Tribes (“CRIT”) have with its waters;
 - (2) provide for and define the manner in which the CRIT’s water shall be allocated, used, Leased and preserved, and to provide an orderly system for the sustainable use and development of the water resources of the Colorado River Indian Reservation (“Reservation” defined herein);
 - (3) protect the water resources of the Reservation from overDiversion, pollution, contamination, degradation, or other acts injurious to the quantity, quality, or integrity of Tribal Water Resources;
 - (4) contribute to the social and economic advancement of the CRIT and its members;
 - (5) develop, manage, protect, and preserve the waters, wildlife, the lands, and other cultural, spiritual, and natural resources of the Reservation, for current and future generations of the CRIT;
 - (6) to ensure that the CRIT’s water rights are protected and developed to the greatest extent possible for the benefit of current and future generations of tribal members of the CRIT, and that the CRIT retains full management authority over all Tribal Water Rights and Tribal Water Resources to provide for the members of the CRIT;
 - (7) ensure due process and decision-making procedures for Persons seeking to use, withdraw, Divert or take other actions that may affect Tribal Water Resources; and
 - (8) provide for the development of education and training opportunities for tribal members in water and related land resources management that are essential to protect the economic well-being and self-governance of the CRIT.
- (b) In enacting this Code, the Tribal Council finds that –
- (1) the CRIT— comprised of the Mohave, Chemehuevi, Hopi, and Navajo Tribes — by and through the act of March 3, 1865; Executive Order of November 22, 1873; Executive Order of November 16, 1874; Executive Order of May 15, 1876; Executive Order of November 22, 1915; and the “Colorado River Indian Reservation Boundary Correction Act”, Pub. L. No. 109-47, 119 Stat. 451 (2005) have reserved and have had reserved by the United States for their benefit all of the water needed for all uses, and these reserved water rights have never been ceded or extinguished;
 - (2) since time immemorial, the Tribes comprising the Colorado River Indian Tribes and its members have had an inseparable relationship with the Colorado River for CRIT culture, and that ceremonies, spirituality, religion, fisheries, subsistence, economics, residence, and all other lifeways are deeply intertwined with the health of the River, with its ecosystems, and with the multiple species reliant on a thriving Colorado River ecosystem;
 - (3) the sovereignty and political integrity, economic security, and health and welfare of the CRIT Tribe are dependent on the health, existence, flourishing, and natural evolution of Colorado River;
 - (4) the CRIT have protected the health and well-being of the Colorado River, its ecosystems, and its species since time immemorial through unbroken stewardship, through the establishment of

- the CRIT Constitution, and CRIT law. Additionally, CRIT has continuously fought for the health and well-being of the river to ensure the continuance of CRIT traditions for future generations;
- (5) the natural flow of the River has been disrupted by the construction of dams and regulation of releases that have effectively covered sacred sites, and cultural resources and materials that are no longer accessible to CRIT or its members;
 - (6) in the series of cases known as *Arizona v. California* (“Consolidated Decree” as defined herein), the United States Supreme Court decreed the Colorado River Indian Reservation receives from the Colorado River in annual quantities not to exceed (i) 719,248 Acre-Feet of Diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 107,903 acres of land and for the satisfaction of related uses, whichever of (i) or (ii) is less;
 - (7) the United States Congress passed P.L. 117-343, the “Colorado River Indian Tribes Water Resiliency Act of 2022”, permitting the CRIT to enter into an agreement to Lease or exchange, or an option to Lease or exchange, a portion of the CRIT’s consumptive use for a use off the Reservation;
 - (8) the CRIT have sovereign power to control and manage the CRIT’s water and to regulate the use of CRIT’s water;
 - (9) the development and management of sufficient water supplies to fulfill the water needs of the members of the CRIT is necessary in order to maintain the Reservation as a permanent homeland for the Mohave, the Chemehuevi, the Hopi, and the Navajo people; and
 - (10) the CRIT has a sacred responsibility to protect the Colorado River as an essential element to the integrity and survival of CRIT and its members, and the Tribes will continue to protect against any threat to the health of the Colorado River or its right to the use of its waters.

XX-102. AUTHORITY

This Code is enacted pursuant to –

- (a) the CRIT’s inherent authority as a sovereign nation to provide for the health, safety, peace, comfort, convenience, prosperity, and general welfare of the members of the CRIT and other Residents of the Reservation.
- (b) the authority vested in the Tribal Council by the Constitution of the CRIT, as set forth more particularly in –
 - (1) Article VI, Section 1(c), which authorizes Tribal Council to approve or veto any sale, disposition, Lease or encumbrance of tribal lands, interests in lands or other tribal assets or any pledge of income, revenues or receipts therefrom which may be authorized or executed by the Secretary of the Interior or their authorized representative;
 - (2) Article VI, Section 1(e), which authorizes Tribal Council to negotiate and enter into business contracts;
 - (3) Article VI, Section 1(h), which authorizes Tribal Council to administer any funds or property within the control of the CRIT; and
 - (4) Article VI, Section 1(v), which authorizes Tribal Council to promulgate ordinances and resolutions to provide for the administration of the health, education, and welfare of the members of the CRIT.

XX-103. APPLICATION OF THIS CODE

- (a) Existing Uses of Tribal Water Resources –

- (1) upon the Effective Date of this Code, all current and existing uses of Tribal Water Resources by any Person within the exterior boundaries of the Reservation may continue in strict accordance with their historical and authorized use of Tribal Water Resources for a period not to exceed one (1) year from the date of adoption of the ordinance enacting this Code;
 - (2) no later than one (1) year after the Effective Date of this Code, every Person using Tribal Water Resources pursuant to subsection XX-103(a)(1) shall apply for a Water Use Permit in accordance with this Code;
 - (3) one (1) year from the Effective Date of this Code, it shall be unlawful for any Person within the exterior boundaries of the Reservation to impound, Divert, withdraw, otherwise make any use of, or take any action affecting the use of water within the jurisdiction of the CRIT unless the applicable provisions of this Code and regulations and determinations made hereunder have been complied with. No right to use water, from whatever sources, shall be recognized, except use rights obtained under and subject to this Code.
- (b) New Uses of Tribal Water Resources. Upon the Effective Date of this Code, it shall be unlawful for any Person within the exterior boundaries of the Reservation without a current and existing use of Tribal Water Resource to impound, Divert, withdraw, otherwise make any use of, or take any action affecting the use of water within the jurisdiction of the CRIT unless the applicable provisions of this Code and regulations and determinations made hereunder have been complied with. No right to use water, from whatever sources, shall be recognized, except use rights obtained under and subject to this Code.
- (c) De minimis Uses of Tribal Water Resources. Notwithstanding the foregoing, any Person using Tribal Water Resources strictly for Domestic Use shall be exempt from the requirement to apply for and receive a Water Use Permit.

XX-104. WATERS OF THE COLORADO RIVER INDIAN TRIBES DEFINED

The waters of the Colorado River Indian Tribes (“Tribal Water Resources”) are defined as –

- (a) All waters reserved at any time for any purpose to the CRIT, and to the Reservation by the CRIT or by the United States, as trustee for the CRIT, including any waters which, in the course of nature or as the result of artificial works or artificial streamflow enhancement or weather modification methods, flow into or otherwise enhance such waters.
- (b) All waters held by the CRIT through prior or existing use, decree, appropriation, purchase, contract, gift, bequest, or other means of acquisition.
- (c) All surface and groundwaters which are contained within hydrological systems located within or beneath the surface of the lands of the Reservation.

XX-105 NATURE OF THE COLORADO RIVER INDIAN TRIBES’ WATER RIGHTS

- (a) The CRIT are the owner in perpetuity of the full equitable title to the rights to the use of all of the waters of the Reservation, as defined in this Code, and that title resides undiminished in the CRIT. The United States hold only the naked legal title to those waters solely as trustee for the CRIT.
- (b) The CRIT hold its prior, exclusive and supreme rights in, ownership of, and jurisdiction over all waters of the Reservation, defined herein, for all purposes. No right of privilege of any kind, from whatever source, shall be recognized or granted unless the same shall be subject to the overriding, prior and supreme right and interest of the CRIT, and the provisions contained in this Code, amendments hereto, and administrative regulations and determinations hereunder.
- (c) Tribal Water Resources are subject to the control, management and regulation by the CRIT, subject to applicable federal law. All rights to use or to undertake activities that affect Tribal Water Resources by any Person may be obtained and continued only through compliance with the provisions of this Code.

All rights to use Tribal Water Resources as provided in this Code are revocable and subject to limitation and revision by the Tribal Council. The right to use Tribal Water Resources shall not be interpreted or construed to constitute a private property interest of the Person holding the right to use Tribal Water Resources.

- (d) Nothing in this Code shall diminish or limit the authority of the CRIT to Divert, use or transfer any portion of Tribal Water Resources within or outside of the exterior boundaries of the Reservation, as a usufructuary right, provided by law.

XX-106. AMENDMENTS TO THIS CODE

This Water Code may be amended in accordance with any and all procedural requirements provided for in the CRIT Tribal Constitution. The Director shall, in the performance of their duties, note deficiencies or omissions in this Code and recommend amendments thereto or the addition of new articles to the Council as may be necessary for the efficient application of the Code.

XX-107. ALLOTTEE WATER RIGHTS

Any Allottee holding an allotment that was allotted for agricultural purposes, pursuant to the General Allotment Act, Pub. L. No. 49-105, 24 Stat. 388 (codified as amended 25 U.S.C. §§ 331 *et seq.*) (which secures water to Allottees) is entitled to request and be provided an equitable distribution of a portion of Tribal Water Resources to carry out the agricultural purposes of the allotment. In administering and managing this Water Code, the Tribal Department of Water Resources shall ensure that the Allottee's rights are secured as provided under 25 U.S.C. § 381. Section 381, however, does not apply to allotments established for grazing purposes on the Reservation.

Chapter 2: Definitions

- (a) **"2-Party Agreement"** means the agreement, dated May 23, 2024, between the CRIT and the state of Arizona through the Arizona Department of Water Resources, as may be amended, entered to establish a cooperative process to provide notice, share information, and collaborate in advance of the CRIT executing an AZ CRIT Water Agreement.
- (b) **"3-Party Agreement"** means the agreement, dated May 23, 2024, among the CRIT, the state of Arizona through the Arizona Department of Water Resources, and the Secretary of the Interior, as may be amended, entered to satisfy section 10(a) of the Federal Legislation, describing the procedural, technical, and accounting methodologies for CRIT Water Agreements.
- (c) **"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.
- (d) **"ADWR"** means the Arizona Department of Water Resources.
- (e) **"Agreement for Conserved Water"** means an agreement for the creation of System Conservation Water, Storage of conserved water in Lake Mead, or other mechanism for voluntarily leaving a portion of the CRIT reduced consumptive use in Lake Mead.
- (f) **"Allottee"** means an individual who holds a beneficial real property interest in an allotment of Indian land that is —
 - (1) Located within the exterior boundaries of the Reservation; and
 - (2) Held in trust by the United States.
- (g) **"Applicant(s)"** means a Person who files an Application for a Water Use Permit with the WRD.
- (h) **"Application(s)"** means a good-faith submission made by an Applicant to the WRD for a Water Use Permit.

- (i) **“AZ CRIT Water Agreement”** means a negotiated agreement between the CRIT and a Person providing for the Lease or option to Lease, exchange or option to exchange, or for the use and Storage of a portion of the CRIT Consumptive Use off the Reservation in the part of the state of Arizona that is in the Lower Basin and is not located in the counties of Navajo, Apache, or Cochise.
- (j) **“AZ Decreed Allocation”** means the volume of water of the mainstream of the Colorado River allocated to the CRIT that is accounted for as part of the apportionment for the state of Arizona in part I of the Appendix of the Consolidated Decree.
- (k) **“BIA”** means the Colorado River Agency of the Bureau of Indian Affairs of the U.S. Department of the Interior, unless otherwise indicated.
- (l) **“BOR”** means the Lower Colorado Basin Region of the Bureau of Reclamation of the U.S. Department of the Interior, unless otherwise indicated.
- (m) **“CA CRIT Water Agreement”** (Reserved).
- (n) **“CA Decreed Allocation”** means the volume of water of the mainstream of the Colorado River allocated to the CRIT that is accounted for as part of the apportionment for the state of California in part II of the Appendix of the Consolidated Decree.
- (o) **“CAP”** means the Central Arizona Project, authorized under Title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. § 1521, *et seq.*).
- (p) **“Captured Rainwater”** means precipitation that is collected directly from a rooftop or similar surfaces located within the exterior boundaries of the Reservation, and stored in a cistern, barrel, trough or other similarly-sized containment system situated on the same parcel of Tribal Lands where the precipitation falls. Such water shall be used strictly for Domestic Uses, and shall not be transported or applied to any land other than the parcel on which it was originally captured, unless expressly authorized by Tribal Council.
- (q) **“CDWR”** means the California Department of Water Resources.
- (r) **“Chairperson”** means the elected Chairperson of the Colorado River Indian Tribes Tribal Council.
- (s) **“Consolidated Decree”** means the decree entered by the Supreme Court of the United States in *Arizona v. California*, 547 U.S. 150 (2006).
- (t) **“Consumptive Use”** means a portion of the CRIT Decreed Allocation that has a recent history of use within the exterior boundaries of the Reservation. Any verified reduction in Consumptive Use pursuant to a Lease or exchange agreement, Storage agreement, or agreement for conserved water, shall be deemed to be a consumptive use in the year in which the reduction occurred, if the reduction is reflected in the Water Accounting Report.
- (u) **“CRIP”** means the Colorado River Indian Irrigation Project, the federal irrigation project operated by the BIA, including Headgate Rock Dam, that facilitates much of the Colorado River Diversions on the Reservation within the state of Arizona.
- (v) **“CRIT”** means the Colorado River Indian Tribes, a federally recognized tribe.
- (w) **“CRIT Water Agreement(s)”** means AZ CRIT Water Agreements and CA CRIT Water Agreements, collectively.
- (x) **“Department”** or **“WRD”** means the Colorado River Indian Tribes Water Resources Department.
- (y) **“Diversion”** or **“Divert”** means the removal of water from its natural course or location by means of ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other act of man, or the impoundment of water in a reservoir for re-diversion.
- (z) **“Director”** means the principal administrator of the Colorado River Indian Tribes Department of Water Resources, as defined further herein.

- (aa) **“Domestic Use”** means a single appropriative water right serving a residence, or multiple residences up to a maximum of three residential connections, for household purposes with associated irrigation of lawns, gardens or landscape in an amount of not more than one-half acre foot of water per year per residence. Domestic Use does not include the use of water delivered to a residence or multiple residences by a city, town, private water company, or irrigation provider.
- (bb) **“Effective Date”** means the date of adoption by Tribal Council of the ordinance enacting this Code, or the date of approval by eligible voters through the referral process as outlined in the Constitution of the Colorado River Indian Tribes.
- (cc) **“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.
- (dd) **“Exhibit B”** means the exhibit, as may be amended, to the 3-Party Agreement containing the technical methodologies to calculate Consumptive Use reductions from fallowing, partial year fallowing, conversion to lower water use crops, and deficit irrigation.
- (ee) **“Existing Use”** means the Sensible 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 CRIT and that Person, notwithstanding that Person has not used the maximum contractual entitlement as of the Effective Date.
- (ff) **“Farm Unit”** means the area of land that may range from a single field parcel to a group of field parcels (bound together by some common attribute such as ownership) which defines the location and extend of the area of land participating in a Consumptive Use reduction water conservation activity.
- (gg) **“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.
- (hh) **“Lease”** means an agreement between the Colorado River Indian Tribes and another Person that authorizes the use or Storage of Tribal Water Resources outside the exterior boundaries of the Reservation.
- (ii) **“Lessee”** A Person who is a party to an active CRIT Water Agreement that has been approved by the Secretary.
- (jj) **“Lower Basin”** means the term given in article II(g) of the Colorado River Compact of 1922, as approved by Congress in section 13 of the Boulder Canyon Project Act (43 U.S.C. 6171), and by the Presidential Proclamation of June 25, 1929 (46 Stat. 3000).
- (kk) **“Negotiations”** means the formal, structured process initiated after preliminary discussions and receipt of an accepted Proposal, through which CRIT and the Proponent engage in substantive, good-faith exchanges with the objective of reaching a mutually acceptable CRIT Water Agreement.
- (ll) **“Objector(s)”** means a Person who has filed with the Tribal Department of Water Resources and Irrigation opposition to a Water Use Permit Application, according to established Department procedures.
- (mm) **“Permittee”** means a Person possessing a legal right to use Tribal Water Resources pursuant to a duly approved Water Use Permit.
- (nn) **“Permitted Use”** means any water use for which a Water Use Permit has been issued.
- (oo) **“Person(s)”** means an individual, a public or private corporation, a company, a partnership, a joint venture, a firm, an association, a society, and estate or trust, a private organization or enterprise, the United States, any Indian Tribes, a governmental entity, or a political subdivision or municipal corporation organized under, or subject to, the constitution and the laws of the states of Arizona and California.
- (pp) **“Proponent(s)”** means a Person who has submitted to the CRIT a Proposal for evaluation with the good-faith intent to enter into a CRIT Water Agreement.

- (qq) **“Proposal(s)”** means an official request made by a Proponent to the CRIT for evaluation in the hopes of entering into a CRIT Water Agreement.
- (rr) **“Reservation”** means the land set aside in the states of Arizona and California by the United States for the use and benefit of the Colorado River Indian Tribes, whether by statute, Executive Order, federal court decision, or other federal action. This includes all trust lands, restricted fee lands, allotted lands, and other lands within the exterior boundaries of the Reservation, as well as any lands subsequently acquired and held in trust for the CRIT by the United States.
- (ss) **“Resident”** means a Persons who is not a member of the Colorado River Indian Tribes yet resides within the exterior boundaries of the Reservation.
- (tt) **“Return Flow”** means mainstream water that has been Diverted and which flows back to the Colorado River as measured or unmeasured flow and is available for use in the United States or in satisfaction of the Mexican Treaty Obligation.
- (uu) **“Secretary”** means the Secretary of the United States Department of the Interior.
- (vv) **“Sensible Use”** means the use, Storage, or impoundment of Tribal Water Resources in such quantity as is necessary for productive and efficient use. Sensible 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 use, 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 or preferences shall be given to the order in which Sensible Uses are listed above.
- (ww) **“Shortage Declaration”** means the Secretary has determined that insufficient mainstream water is available to satisfy 7.5 million Acre-Feet of annual Consumptive Use in the Lower Basin.
- (xx) **“Store”** or **“Storage”** means the storage, in accordance with applicable state law, of a portion of the Consumptive Use off the Reservation.
- (yy) **“System Conservation Water”** means water that is conserved for Storage in Lake Mead to benefit the Colorado River System through a voluntary, measurable reduction of Consumptive Use of Colorado River water by the CRIT.
- (zz) **“Technical Memoranda”** means the memoranda described by Section 5 of the 3-Party Agreement requiring that the CRIT prepare a technical memorandum, consistent with the methodologies of Exhibit B, to document the quantification of reduced Consumptive Use.
- (aaa) **“Total Decreed Allocation”** means the sum of the volume of water of the mainstream of the Colorado River allocated to the CRIT that is accounted for as part of the combined apportionments for both the states of Arizona and California in part I and part II of the Appendix of the Consolidated Decree.
- (bbb) **“Transfers”** means any change in a point of diversion, place of use, period of use, or purpose of use of water right.
- (ccc) **“Tribal Council”** or **“Council”** means the governing body of the Colorado River Indian Tribes, formed pursuant to the CRIT Constitution.
- (ddd) **“Tribal Lands”** means the territory within the jurisdiction of the Colorado River Indian Tribes, as set forth in Article 1 of the Constitution of the Colorado River Indian Tribes, including territory which may yet be acquired by the Tribes in the future.
- (eee) **“Tribal Water Resources”** means: (i) all water reserved at any time for any purpose to the CRIT, and to the Reservation by the CRIT or by the United States including any waters which, in the course of nature or as the result of artificial works or artificial streamflow enhancement or weather modification methods, flow into or otherwise enhance such waters; (ii) all waters held by the CRIT through prior or Existing Use, appropriation, purchase, contract, gift, bequest, or other means of acquisition; and (iii) all surface and groundwaters which are contained within the hydrological systems located exclusively within or

beneath the surface of the lands of the Reservation. Tribal Water Resources shall not include Captured Rainwater.

(fff) **“Water Accounting Report”** means the annual report of the Bureau of Reclamation entitled the “Colorado River Accounting and Water Use Report: Arizona, California, and Nevada” which includes the compilation of records in accordance with article V of the Consolidated Decree.

(ggg) **“Water Management Plan”** means a five-year, comprehensive plan developed pursuant to this Code to regulate, monitor, and protect the CRIT’s Tribal Water Resources.

(hhh) **“WRD” or “Department”** means the Colorado River Indian Tribes Water Resources Department.

Chapter 3: **Notice of This Code**

XX-301. **NOTICE REQUIRED**

To ensure that all persons and entities affected by this Code are given adequate notice of the enactment and effect of this Code, the Director shall, within thirty (30) days after the Effective Date of this Code, provide for public notice of its enactment and effect in accordance with the provisions of this subsection.

XX-302. **CONTENTS OF NOTICE**

(a) Such public notice shall contain the following statement, prominently displayed and in large boldface type:

NOTICE: AFTER _____, NO PERSON OR PUBLIC OR PRIVATE ENTITY OF ANY KIND SHALL BE ENTITLED TO TAKE ANY ACTION WITHIN THE TERRITORIAL JURISDICTION OF THE COLORADO RIVER INDIAN TRIBES WHICH AFFECTS THE USE OF WATER WITHIN THE COLORADO RIVER INDIAN RESERVATION, UNLESS SUCH ACTION IS STRICTLY AUTHORIZED BY A WATER USE PERMIT, OTHER AGREEMENT, OR OTHER PROVISION AS PROVIDED FOR BY THE COLORADO RIVER INDIAN TRIBES WATER CODE. NO OTHER WATER USE RIGHTS OF ANY KIND, FROM WHATEVER SOURCE, SHALL BE RECOGNIZED. THE NECESSARY FORMS MAY BE PROCURED FROM THE WATER RESOURCES DEPARTMENT, CRIT MAIN CAMPUS, BUILDING H, COLORADO RIVER INDIAN TRIBES, 26600 MOHAVE ROAD, PARKER, ARIZONA 85344. COMPLETE COPIES OF THE COLORADO RIVER INDIAN TRIBES WATER CODE ARE ALSO AVAILABLE AT THE ABOVE ADDRESS.

(b) In addition to the foregoing statement, the Director may include in such public notice additional information deemed necessary to assure adequate notice of the enactment and legal effect of this Code.

XX-303. **PROCEDURE FOR GIVING NOTICE**

(a) The Director shall publish in a generally authorized publication the notice provided above, and in other locations as are deemed necessary or appropriate.

(b) The Director may take any other steps necessary to provide notice of the provisions of this Code.

Chapter 4: **Department of Water Resources and Irrigation**

XX-401. **TRIBAL WATER RESOURCES DEPARTMENT ESTABLISHED**

(a) There is hereby created the Tribal Department of Water Resources and Irrigation, and the position of Director of the Tribal Department of Water Resources and Irrigation. The Director is the executive arm

of the Tribal Council and is responsible directly to the Council for water administration and the administration of the WRD. The Director has the authority to administer the water laws of the CRIT and enforce regulations established pursuant to this Code, and the general instruction of the Tribal Council. The Council may delegate any of its duties and authority to the Director except the duty and authority to—

- (1) hear disputes and conduct hearings in accordance with the procedures set forth in this Code;
 - (2) approve or deny Water Use Permits, Proposals, or CRIT Water Agreements; and
 - (3) adopt regulations to implement this Code.
- (b) The Director shall be of sufficient education, experience, and credentials to competently fulfill his or her mandate.
 - (c) The Director shall have the right to delegate responsibilities to staff, provided that the ultimate responsibility shall remain with the Director.
 - (d) Tribal Water Resources, being the lifeblood of the community and critical to the conservation and enhancement of its resources, the Director shall equitably guard all the interests involved in carrying out the duties and authorities of the Director. The Director shall be issued an official identification for enforcement purposes.
 - (e) The Tribal Council will appropriate from available funds sufficient resources to administer the provisions of this Code.

XX-402. RESPONSIBILITIES AND DUTIES OF THE DIRECTOR

The Director shall have the following duties and authorities:

- (a) Enforcement Functions –
 - (1) to administer Tribal Water Resources, and ensure maximum compliance with this Code and with the conditions of all permits, determinations, orders, regulations, plans, policies, guidelines, and other actions taken by the Council and coordinate such activities with the CRIP Manager and/or Engineer;
 - (2) to accept for filing and review all Applications for a Water Use Permit;
 - (3) to initiate by means provided herein, enforcement proceedings before the Council, the Tribal Court, or other court of competent jurisdiction for violations of this Code, including injunctive relief;
 - (4) to enter upon Reservation lands with reasonable notice to owner or occupant to investigate activities affecting water quality, inspect methods of Diversion and withdrawal, install measuring devices on surface and ground water Diversions for the purpose of enforcing and administering this Code in compliance with federal law, and to monitor water use, water quality, and Diversions;
 - (5) in an Emergency, to remove, render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of Diversion and withdrawal, obstructions to the flow of water, and activities adversely affecting Tribal Water Resources, subject to expedited appeal to the Tribal Court by the affected Person, as provided in Section XX-905 of this Code, provided that this matter is coordinated with the CRIP Manager and/or Engineer where appropriate; and
 - (6) except as otherwise provided, the Director shall ensure that water delivery systems on the Reservation shall Divert only that quantity of water to which they are legally permitted.

(b) Advisory Functions –

- (1) to advise the Tribal Council on all aspects of this Code and Reservation water resources including Off-Reservation use, provided that the Off-Reservation use shall be handled directly by the Tribal Council;
- (2) to advise the Tribal Council on all Tribal Water Resources related planning and development issues consistent with the Water Management Plan adopted by Council, provide the Council with a semiannual report on water quantity and quality and the status of water use on the Reservation, and provide suggestions, alternatives, and recommendations for water management;
- (3) to declare water supply conditions and to prepare alternative water supply scenarios for different climatic trends and conditions for the Council's use in setting priorities and preferred uses during drought;
- (4) to recommend, after coordination with other tribal agencies or departments, designation of certain land areas and water regions on the Reservation for dedication to certain Sensible Uses or as "critical management areas" requiring specialized provisions for management;
- (5) to closely coordinate Reservation water resources activities with the BIA CRIP manager and/or Engineer;
- (6) to recommend to the Council for consideration adoption, modification, or amendment proposed changes to this Code and its regulations; and
- (7) to assist all Applicants for Water Use Permits in assembling and analyzing hydrologic and environmental data required to be submitted with the Application and otherwise to assist in the preparation of the Application, and, if appropriate, to seek assistance from other tribal departments.

(c) Information and Research Functions –

- (1) to study means of developing, managing, conserving, and otherwise protecting Tribal Water Resources;
- (2) to collect, maintain, and analyze, on a continuing basis, information regarding Reservation and basin-wide water resources, including data on water, land, air quality, rangeland, and other factors actually or potentially affecting Tribal Water Resources, after conferring with other tribal departments;
- (3) to perform regular research regarding the overall carrying capacity of the Reservation's water system, with a view in particular to discovering and reporting the levels above or below which specific water use impairs or injures overall water availability and use;
- (4) to coordinate public education programs and develop educational material regarding Tribal Water Resources and administration, irrigation management, water quality, environmental issues, water conservation, and any other pertinent issues as may be determined by the Council;
- (5) to determine the extent of potential effects on existing water users, given hydrologic conditions, from proposed uses of Tribal Water Resources;
- (6) to identify sources of financial support for water management and development;
- (7) to identify promising research areas regarding Tribal Water Resources and to solicit research proposals by government, academic, or private sources;
- (8) to coordinate joint and separate studies with tribal departments, meeting at least quarterly to prevent duplication of services; and
- (9) one (1) month prior to consultation with the commissioner of the BOR pursuant to 43 C.F.R. § 417.5, the Director shall prepare for approval by Tribal Council the annual water order for the

coming water year. The Director will provide updates on hydrologic conditions to the Council as requested.

(d) Administrative Functions –

- (1) to employ, supervise, and terminate Department and technical staff who are employed to enforce and administer this Code, provided that all hiring and firing decisions are subject to the provisions contained within the CRIT's current Personnel Policies and Procedures Manual;
- (2) to prescribe procedures, forms, and requirements for Applications, Water Use Permits, certificates, and claims of existing rights under this Code and prescribe the information to be contained in any Application, claim of existing right, or other document to be filed or maintained with the WRD;
- (3) to develop an administrative policy, subject to the Tribal Council's review and approval, concerning the dissemination of data or other information in the WRD's possession that was developed or received as a result of the WRD's activities, including Applications and Proposals submitted pursuant to Chapters 8 and 11 and other information collected or prepared in accordance with this Code or otherwise collected or prepared in relation to the Tribal Water Resources;
- (4) to develop the internal tribal technical and managerial capabilities to promote the direct involvement of tribal staff that are employed to administer this Code, in the development and construction of water resources supply, distribution, and management facilities and devices; and
- (5) to develop an office budget to submit to the Tribal Council and develop WRD policies and procedures that are consistent with tribal policies, ensuring the orderly operation of the WRD.

XX-403. DEPARTMENT RULEMAKING AUTHORITIES

- (a) The Department may prescribe reasonable fees or service charges commensurate for any public service rendered by the Department under this Water Code, including Application and Proposal filing fees, Water Use Permitting costs, administrative hearing costs, Water Use Permit revocation investigation costs, for field verification of issued and completed Water Use Permits, and for any Water Use Permit changes . Such assessed fees or service charges shall not be waived by the Department.
- (b) The Department shall establish fair and equitable rules, regulations, and procedures necessary for the efficient administration and enforcement of this Code.
- (c) The Department, in coordination with the Tribal Council, shall allow for public participation and comment in the rulemaking process. All administrative rules shall be published with adequate notice as a proposed rule at least thirty (30) days prior to taking effect. The Secretary of the Tribal Council shall be served with a copy simultaneously with public notice. All rules and regulations promulgated by the Department shall be referred for review to the Office of the Attorney General before submittal to the Tribal Council for approval or disapproval. If the Tribal Council does not approve or disapprove within thirty (30) days after receiving Attorney General recommendation, the rules and regulations as promulgated shall be deemed disapproved and shall not become effective.

XX-404. EMERGENCY RULEMAKING

If the Tribal Council 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 CRIT, the Council, in its judgment, may dispense with such requirements and immediately adopt the regulations as an Emergency regulation. The Tribal Council'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 Council. 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 Council. An Emergency regulation shall not remain in effect more than one hundred eighty (180) days after adoption unless reissued by the Council in compliance with the notice requirements of this Section. The Director shall take any and all necessary actions to implement Emergency regulations adopted pursuant to this subsection.

Chapter 5: **General Guidelines for Administration**

XX-501. **GENERAL POLICY PROVISIONS**

- (a) All decisions made hereunder shall be made in accordance with [Personhood Status Resolution/Ordinance], in that the health and welfare of the Colorado River shall be considered at every juncture of each process and determination made.
- (b) Tribal Water Resources may be appropriated for any use deemed a Sensible Use in compliance with this Code and any regulations hereunder. Any use not deemed a Sensible Use shall be considered a waste of water and is prohibited by this Code.
- (c) Existing Uses, established duties of water, and relative priorities concerning the use of Tribal Water Resources are to be protected and preserved to the extent that the Existing Use is congruent with the purposes of this Code and subject to the CRIT's obligations to protect Tribal Water Resources.
- (d) Whenever practicable, actions taken should benefit the CRIT and the members of the CRIT and further the objectives for which the Reservation was created: to provide a permanent home and abiding place of the members of the CRIT, both now and in the future. Alternatives to Existing Uses are to be considered whenever practicable in order to achieve this goal. Included in those alternatives shall be the option to restrict or prohibit entirely any further use of water for the benefit of the CRIT. If there is presented to the Tribal Council or the Director a conflict between water uses for the benefit of the Reservation or any of the members of the CRIT and non-Tribal projects or uses, the Council or the Director may grant such preferences as may be required by this Code, which lie in the best interest of the CRIT and its members.
- (e) In taking any action under this Code which may impose substantial economic hardship on Persons presently using water, or which threatens degradation of other economic, cultural, religious, historic, aesthetic, natural, or environmental values, the Tribal Council or the Director shall, in reaching their decision, carefully consider and weigh –
 - (1) the economic dislocation and hardship which will be imposed by such actions;
 - (2) the contractual obligations borne by the Tribal Council and the CRIT;
 - (3) the investment in time, money, and other resources made by the parties affected in reliance upon any previous system of distribution of water;
 - (4) any other burdens as may be imposed by such action(s); and
 - (5) the nature and extent of degradation of other economic, cultural, religious, historic, aesthetic, natural, or environmental values.
- (f) The Tribal Council and the Director, when considering a proposed action, shall balance the adverse effects against the benefits of the CRIT and other interests which are advanced as justifying the proposed action; shall consider alternatives to the proposed action which will lessen adverse effects and shall shape any final action so that its adverse effects will be minimized to the greatest extent possible, to protect Tribal Water Resources.

Chapter 6: **Existing Uses**

XX-601. **EXISTING USE INVENTORY**

- (a) The Director shall cause an inventory to be created of all current water uses and any existing Diversions and uses of Tribal Water Resources. This inventory will be completed based upon funding capabilities and sufficient technical resources within a reasonable timeframe to ensure compliance with this Code, but in no event to exceed two-hundred-seventy (270) days from the Effective Date of this Code unless extended by a Council Resolution.
- (b) Upon its completion, the Existing Use Inventory shall be published and available for public inspection at the Department.

XX-602. **ISSUANCE OF WATER USE PERMIT FOR EXISTING USES**

- (a) Notwithstanding subsection XX-103(a)(2), the Tribal Council may, in its judgment and by majority vote, affirmatively issue a Water Use Permit to any and all water users on the Existing Uses Inventory list.
- (b) All Existing Uses not issued a Water Use Permit pursuant to this section are subject to all application and permitting requirements of this Code.

Chapter 7: **Water Use Permit System**

XX-701. **PERMIT REQUIRED**

Tribal Water Resources are subject to the control, management, and regulation by the CRIT, subject to applicable law. Upon the Effective Date of this Code, all Persons desiring to initiate new uses of, or take other actions within the jurisdiction of the CRIT affecting the waters therein shall file a Water Use Permit Application as required by this Chapter. After such date, it shall be unlawful for any Person to make any use or take any other action within the jurisdiction of the CRIT affecting the waters therein, except as authorized by this Code.

XX-702. **PERMIT TERM**

Water Use Permits duly issued hereunder shall be valid for a period of five (5) years from the date of issuance. Notwithstanding the foregoing, the Tribal Council may discretionally condition a shorter term for a Water Use Permit if it determines that a shorter term is in the best interest of the CRIT.

XX-703. **CONDITIONS**

Each Water Use Permit issued pursuant to this Code shall contain whatever conditions are necessary to ensure adequate quality and quantity of Tribal Water Resources; to otherwise further the purposes, policies, and guidelines contained within this Code; and to assist in the effective administration of this Code.

XX-704. **COMPLIANCE**

The issuance of a Water Use Permit allows the activity therein described and constitutes an undertaking by the Permittee to comply with the conditions therein stated and all Tribal laws and regulations of general application and applicable federal laws covering such activity.

XX-705. **PERMITS, REVOCATIONS AND ADJUSTMENTS**

- (a) All rights to use Tribal Water Resources as provided for in this Code are revocable and subject to limitation and revision by the Tribal Council.
- (b) Water Use Permits are subject to adjustments that may be imposed during a Shortage Declaration or Emergency.

XX-706. NO ENTITLEMENT CREATED

All Water Use Permits issued under this Code are provisional and shall not be construed to create an entitlement in the water user beyond the provisional period or to allow reliance thereon by Persons other than by the Permittee.

XX-707. OFF-RESERVATION USE PROHIBITED

Except as specifically provided for in a Water Use Permit, no amount of Tribal Water Resources may be used outside the Reservation for any purpose. No amount of Tribal Water Resources for which a Water Use Permit has been issued may be used on any lands or for any use not authorized.

XX-708. RIGHT OF ENTRY

No Person shall be authorized to use or otherwise take any action affecting Tribal Water Resources administered under this Code unless he or she shall consent to reasonable entry upon his or her land by the Director or the Director's designee engaged in the administration of this Code. Every Water Use Permit issued under this Code shall contain the condition that no use or other action affecting the waters in question may be made unless the Applicant consents to such reasonable entry upon his or her land.

XX-709. TRIBAL MEMBER PREFERENCE

In the event that Tribal Water Resource supplies require the Department to choose between approving a Water Use Permit for (i) a non-CRIT enrolled member or (ii) an enrolled CRIT member, a CRIT business venture owned at least fifty-one percent (51%) by CRIT, or a CRIT tribal enterprise organized under 25 U.S.C. § 5124, the Department shall give preference to those entities identified in (ii) of this section.

XX-710. ANNUAL WATER USE PERMIT FEE

- (a) Applicability. This section applies to all Persons holding a valid Water Use Permit issued by the CRIT WRD.
- (b) Annual Fee Requirement. All Permittees shall remit an annual fee to the WRD for the continued validity of their Water Use Permit.
- (c) Purpose of Fee. The fee shall support the WRD's efforts in managing, protecting, and enhancing Tribal Water Resources, including but not limited to –
 - (1) monitoring and enforcement of water use;
 - (2) water conservation and sustainability initiatives;
 - (3) infrastructure development and maintenance; and
 - (4) administrative operations of the WRD.
- (d) Fee Schedule and Assessment. The WRD shall establish a fee schedule, consistent with the requirements of XX-403 and approved by the Tribal Council, taking into account –
 - (1) the volume and type of water use authorized;
 - (2) the nature and purpose of the water use;
 - (3) the administrative burden associated with oversight; and
 - (4) equity and affordability considerations for tribal members and community stakeholders.
- (e) Payment Deadlines and Penalties. The annual fee shall be due no later than [DATE] of each calendar year. Failure to remit the required fee by the deadline may result in –
 - (1) late payment penalties;
 - (2) suspension or revocation of the Water Use Permit; and/or

- (3) other enforcement actions as authorized by this Code.

XX-711. APPROPRIATION BY TRIBAL COUNCIL

- (a) No provision of this Code shall prevent the Director, pursuant to a binding action of the Tribal Council, from making any use of Tribal Water Resources for which no Permitted Use has previously been issued without compliance with this Code.
- (b) Any Tribal Water Resources reserved or withdrawn by the CRIT Tribal Council shall not be available for Sensible Use except under such conditions, restrictions or limitations as established by Council.

Chapter 8: Application for Water Use Permit

XX-801. FORMS, CONTENTS, AND EVALUATION CRITERIA

- (a) Applicants shall file with the Director Applications for Water User Permits on standardized forms developed by the Director and confirmed for use by the Tribal Council, 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.
- (b) The forms shall require, in addition to any other information deemed necessary by the Director, the following information –
 - (1) the name and mailing address of the Applicant;
 - (2) the name of, if available, or a description of, the source or sources from which water is or will be Diverted or withdrawn;
 - (3) a description of the location of any lands upon which the proposed use of Tribal Water Resources will be made, together with a statement that the Applicant has a right to use the land for the proposed use;
 - (4) the maximum quantity of water proposed for use during each month of the year;
 - (5) the purpose or purposes for which the Applicant intends to use Tribal Water Resources;
 - (6) a description of the method or methods of Diversion or withdrawal;
 - (7) a description of how water may be applied or consumed, including acreage and crop if the water is for irrigation, the kind and number of stock if the water is for stock watering;
 - (8) if the land is within an allotment, the allotment number;
 - (9) a description and the location of any works existing or to be constructed that are necessary to put Tribal Water Resources to use for the proposed purpose;
 - (10) a general schedule and plan of how the Tribal Water Resources will be put to Sensible Use; and
 - (11) any other information the Director deems is reasonably necessary to fully evaluate the Application for a Permit.
- (c) A Water Use Permit Application proposing an appropriation of water by a municipal provider for reasonably anticipated future needs shall be accompanied by sufficient information and documentation to establish that the Applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but there must be described with sufficient information to identify the general location where the proposed Permitted Use is to be located and the types and quantity of uses that generally will be made.

- (d) The Director shall adopt rules that are necessary to determine whether an Application is correct and complete, based upon the provisions applicable to the issuance of a Water Use Permit. The rule must be adopted in compliance with Section XX-403.
- (e) Unless exempted by other provisions of this Code, the Applicant shall remit the Application fee established pursuant to Section XX-403, which shall be paid in advance by the Applicant and collected by the WRD. Such fees shall be used in part to defray the cost of reviewing and processing the Application and conducting a hearing where necessary. No Water Use Permit is valid unless and until the WRD has received from the Applicant all required fees identified in this Code.

XX-802. WATER USE PERMIT APPLICATIONS – PROCESS

- (a) The Director, or his or her designee, as consistent with the procedures established herein, shall meet with and assist each Applicant in the collection of data and the preparation of the Application, but only to the extent the Applicant, through lack of resources or technical knowledge, requires such assistance.
- (b) Upon receipt of the Application, the Director –
 - (1) shall endorse on the Application the date of receipt and keep a record of the Application for Water Use Permit;
 - (2) shall assign a number to the Application;
 - (3) shall review the Application for completeness and accuracy, including compliance with this Code, its regulations, and the Water Management Plan in effect;
 - (4) shall perform field or other investigations and request additional information from the Applicant, if necessary; and
 - (5) shall prepare a report for the Tribal Council summarizing the investigations and provide recommendations to (i) approve the Application for Water Use Permit as applied for, (ii) approve the Application with conditions necessary to comply with this Code, or (iii) deny the Application.
- (c) The Director shall notify the Applicant of any defects in an Application within thirty (30) days after receipt. The defects must be identified by reference to the rules adopted under Section XX-403.
- (d) The Director may extend the time period for correcting or completing a defective Application for Water Use Permit Application up to a maximum of sixty (60) days.
- (e) In the event the Applicant fails to correct any deficiencies to the Application within thirty (30) days of the Director's notice, 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 Water Use Permit Application, consistent with this subsection.

XX-803. WATER USE PERMIT APPLICATIONS – NOTICE

- (a) Within thirty (30) days after the Director finds that a Water Use Permit Application is correct and complete, the Director shall prepare a notice containing the pertinent facts of the Application, including the Director's recommendation to the Tribal Council regarding the Application and any proposed conditions.
- (b) The notice shall further state that any Person whose interests are or may be affected by the proposed use described in the Water User Permit Application may file an official objection to the Application with the WRD no later than thirty (30) days after the publication of the notice.
- (c) The Director shall publish the notice in a generally authorized publication.

XX-804.**WATER USE PERMIT APPLICATION – OBJECTIONS**

- (a) An objection to a Water User Permit Application made under this chapter must be filed with the Director within thirty (30) days of the date a notice is published. The objection to an Application must state the name and address of the Objector and facts supporting the basis for the objection.
- (b) A Person, including the CRIT, has standing to file an objection under this section if the property or water rights of the Objector on the Reservation could be adversely affected by the proposed appropriation.
- (c) An Objector to an Application under this subchapter shall file a correct and complete objection on a form prescribed by the Director within the time period stated on the public notice associated with the Application. The Director shall adopt rules in accordance with Section XX-403 delineating the components of a correct and complete objection which will include the name of the Applicant whose Application is objected to, a description of the water use objected to, a short and plain statement of reasons why a Water Use Permit should not be issued or should issue in a form different from that applied for, and any suggested conditions or other provisions which be included in any Water Use Permit granted. The Director shall notify the Objector of any defects in an objection. An objection not corrected or completed within fifteen (15) days from the date of notification of the defects is terminated.
- (d) An objection is valid if the Objector has standing pursuant to subsection (b), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under this section and rules of the WRD.
- (e) In the event that no objections to the subject Water User Permit Application are received by the Director within the prescribed time period, or if all valid objections are unconditionally withdrawn, the Director shall submit to Council, for review and determination, the report compiled pursuant to subsection XX-802(b)(5). The Tribal Council will make its determination on the proposed Water Use Permit in accordance with Section XX-903.
- (f) In the event only one (1) objection is received, the Director may meet informally with the Applicant and the Objector to discuss the Application and possible conditions, limitations, or restraints that would render the Application acceptable to both the Applicant and the Objector. If a consensus is not reached among the Director and the parties, the Director shall schedule an individual public hearing to be conducted and presided over by the Tribal Council. The public hearing shall be in accordance with Section XX-902. The Director shall provide to Council a summary of the discussions between the parties and identify the reason(s) consensus was not achieved.
- (g) In the event that more than one (1) objections are filed to the subject Water Use Permit Application, the Director shall schedule an individual public hearing to be conducted and presided over by the Tribal Council. The public hearing shall be in accordance with Section XX-902.

Chapter 9:**Water Use Permit Hearings; Decisions; Appeals****XX-901.****NOTICE OF PUBLIC HEARING; PRE-HEARING PROCEDURES**

- (a) Notice of a hearing under this Code shall be mailed not less than thirty (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 a new hearing date. A notice of hearing shall state the date, time, and location of the hearing and indicate that the Tribal Council shall consider testimony under oath and documentary evidence relevant to whether the Water Use Permit Application should be approved or denied.
- (b) The Director shall publish the notice in a generally authorized publication.

XX-902. **HEARING PROCEDURES**

- (a) At least five (5) members of the Tribal Council shall be present, and the Chairperson or his or her designee shall preside over the hearing. Any member(s) of the Tribal Council who has filed an objection to a Water Use Permit Application shall not participate as an arbitrator in the hearings described under this chapter, but may participate in a manner consistent with paragraph (b) of this section.
- (b) The Applicant and all Objectors will have the right to participate as parties, to present oral and written testimony of witnesses, and to be represented by legal counsel. The Tribal Council shall have the authority to administer oaths to witnesses, to take evidence under oath, and compel attendance of witnesses or production of documents and other evidence. The Tribal Council shall promulgate regulations for the hearing procedure to ensure that due process requirements are met.
- (c) The CRIT may participate in any hearing as a party and may present testimony of witnesses.
- (d) The Council may, in its discretion, continue any action pending receipt of additional information.
- (e) Hearings concerning Applications within the same area will be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication unless any party files an objection with the Director ten (10) days prior to the scheduled hearing.
- (f) If, in its discretion, the Council determines that the issuance of the Water Use Permit is in the best interest of the CRIT, the permit will be granted. The Tribal Council may issue a Water Use Permit for less than the amount of water requested, but may not issue a Water Use Permit for more water than requested or than can be sensibly used. The Council may issue a permit schedule for terms, conditions, restrictions, and limitations it considers necessary to ensure the interests of the CRIT and Existing Users are not unreasonably harmed.

XX-903. **DECISIONS**

The decision of the Tribal Council shall be made by a majority vote of those Councilmembers overseeing the hearing. It shall be based upon the entire record. The Attorney General or his or her designee shall provide the decision in writing. The written decision shall include findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of each fact found upon each contested issue of fact. The Attorney General shall issue its written decision no later than thirty (30) days from the date of the hearing. The Tribal Council shall notify by certified mail to the Applicant, the Objector, and other interested Persons who appeared at the hearing, of its decision. The Director shall publish the determination in a generally authorized publication. This decision is deemed a Final Decision.

XX-904. **EX PARTE CONTACTS**

Except upon notice and opportunity for all parties to be present, no member of the Tribal Council may consult with any Person or party on any issue of fact or law in the proceedings, including the Tribal Council, excepting other Council members. Furthermore, no Councilmember appearing as an Applicant or Objector will attempt to sway or influence the outcome of any such hearing through their position on the Tribal Council.

XX-905. **RIGHT TO APPEAL**

- (a) The Tribal Court is empowered to hear appeals from any Final Decision or rulings of the Tribal Council and the Director if filed within the time period prescribed in paragraph (b) of this section.
- (b) Appeals of Tribal Council Final Decisions shall be filed with the Tribal Court no later than twenty (20) days from the issuance of such Final Decision or ruling. A notice of appeal shall be served upon the Tribal Council.
- (c) No Person may seek review by the Tribal Court of a Final Decision or ruling of the Tribal Council or the Director, unless such Person has first exhausted all administrative appeal rights provided by this Code.

- (d) Appeals to the Tribal Court shall be limited to review of the record of the Tribal Council's administrative Final Decisions or rulings and shall not be a trial de novo. The Tribal Court may modify, reverse, or remand a decision or ruling of the Council or the Director only where such Final Decision or ruling is without substantial basis in facts, is contrary to tribal law, or is clearly arbitrary or capricious.
- (e) Upon receipt by the Tribal Council of notice that an appeal has been filed with the Tribal Court, the Secretary of the Tribal Council shall certify and transmit to the Clerk of the Tribal Court the administrative record within fourteen (14) days, including all documents, transcripts and other information, which formed the basis for the Final Decision or ruling being appealed.
- (f) Jurisdiction to review the Tribal Council Final Decision shall not extend beyond the Tribal Court to the Tribal Appellate Court.

Chapter 10: **Issuance of Water Use Permit**

XX-1001. **ISSUANCE OF PERMITS**

If in its sole discretion the Tribal Council grants the Water Use Permit Application, the Director shall issue the Water Use Permit in conformity with the Tribal Council's determination as soon as the decision of the Tribal Council becomes a Final Decision.

XX-1002. **INFORMATION CONTAINED**

- (a) Water Use Permits shall be issued on standardized forms, developed by the Director and confirmed for use by the Tribal Council. Each Water Use Permit shall include –
 - (1) the name and mailing address of the Permittee;
 - (2) the name of, if available, or a description of, the source or sources from which water is Diverted or withdrawn, including the turnouts and laterals used for the delivery of the water;
 - (3) the quantity of water which will be used;
 - (4) the legal description, if such is readily available, or other description reasonably describing the point or points of Diversion, withdrawal, or impoundment;
 - (5) a description of the method or methods of Diversion, withdrawal, or impoundment;
 - (6) the purpose or purposes for which water is used;
 - (7) a description of how water may be applied or consumed, including acreage and crop if the water is for irrigation, the kind and number of stock if the water is for stock watering, and the number of people and/or homes to be served if the water is for domestic or municipal use;
 - (8) the approximate date upon which the use or uses permitted began; and
 - (9) any other information that is deemed necessary and appropriate.

XX-1003. **CONDITIONS**

- (a) Each Water Use Permit issued pursuant to this Code shall contain whatever conditions are necessary to ensure adequate quality and quantity of water; to otherwise further the purposes, policies, and guidelines contained within this Code; and to assist in the effective administration of this Code. These may include, but are not limited to, conditions and limitations concerning –
 - (1) the source from which water may be Diverted, withdrawn, or impounded;
 - (2) the quantity of water which may be Diverted, withdrawn or impounded during any particular time;
 - (3) the point or points of Diversion, withdrawal or impoundment;
 - (4) the method or methods of Diversion, withdrawal or impoundment;

- (5) the purposes for which water will be used;
- (6) the method of application;
- (7) the location and purpose of application, including acreage for crops and number of livestock for livestock watering;
- (8) the quantity and quality of Return Flow;
- (9) the time period during which water may be used;
- (10) schedules for Diversion, withdrawal or impoundment, including optional rotation schedules;
- (11) provisions for surface or groundwater Storage of surplus flows;
- (12) provisions for increasing the efficiency of Diversion, withdrawal or impoundment and application;
- (13) provisions for maintaining minimum pools and stream-flows for fish, wildlife, recreation, aesthetic, and the religious values of the CRIT;
- (14) provisions for ensuring minimum pumping and Diversion levels with respect both to surface and underground water;
- (15) provisions designed to maintain head and pressure in groundwater;
- (16) provisions designed to prevent or reduce obstruction of surface water flows;
- (17) provisions designed to minimize point and non-point source pollution, water quality degradation, and thermal degradation;
- (18) provisions designed to enhance recharge of aquifers;
- (19) provisions designed to define and control inter-basin transfers of surface and groundwater;
- (20) provisions for some degree of overdraft from aquifers when short-term recharge is not possible;
- (21) provisions designed to prevent or reduce interference between competing users of water sources whether above or below ground;
- (22) provisions to minimize inter-aquifer communication;
- (23) provisions to ensure long-term water development; or
- (24) any other provisions necessary to ensure conformity with the policies and provisions of this Code and actions taken pursuant to this Code.

XX-1004. LEGAL EFFECT OF WATER USE PERMIT

- (a) A Water Use Permit issued under this Code constitutes nothing more than a revocable permission to use of Tribal Water Resources, subject to the terms and conditions of the Water Use Permit, this Code, and actions taken pursuant to this Code. No Water Use Permit issued hereunder shall ripen into any interest other than such limited permission. Nothing in this Code shall authorize any permanent, vested right to the use of Tribal Water Resources, the power authorizing such use being expressly reserved by the Tribal Council.
- (b) Water Use Permits issued under this Code are revocable and subject to modification in accordance with the policies, purposes, guidelines, and procedures now or hereafter established in this Code.

XX-1005. ACCESS TO RECORDS

- (a) The following materials shall be maintained by the WRD in files that shall be open for public inspection for the CRIT membership, upon approval by Tribal Council –
 - (1) all Water Use Permits issued by the Director pursuant to a Tribal Council Final Decision;
 - (2) all decisions and findings of facts of the Director and/or the Tribal Council; and

- (3) all Applications made for a Water Use Permit.

Chapter 11: Off-Reservation Water Leasing in Arizona

XX-1101. AUTHORITY

- (a) “The Colorado River Indian Tribes Water Resiliency Act of 2022”, Public Law 117-343, 136 Stat. 6186 (Jan. 5, 2023) (“Federal Legislation”), authorizes the CRIT, subject to the approval of the Secretary, to enter Leases or options to Lease, exchanges or options to exchange, or Storage agreements for the use and Storage of a portion of the CRIT Consumptive Use off the Reservation in the part of the state of Arizona that is in the Lower Basin and is not located in the counties of Navajo, Apache, or Chochise.
- (b) Colorado River Indian Tribe Ordinance 01-18, “An Ordinance to Authorize the Transfer of a Limited Portion of the AZ Decreed Allocation of the Colorado River Indian Tribes’ Water for Use Off the Reservation in Order to Provide a Sustainable On-Reservation Economy”, authorizes the CRIT Tribal Council to transfer a limited portion of the AZ Decreed Allocation of the water of the Colorado River Indian Tribes off the Reservation with each Lease, exchange or other agreement approved by Tribal Council majority vote only after a public hearing.

XX-1102. CRIT WATER LEASING POLICY

The Colorado River Indian Tribes, as stewards of the Colorado River, may exercise its sovereign authority to enter into Lease or exchange agreements, storage agreements, and agreements for conserved water for the economic benefit and well-being of its members. In so doing, the CRIT shall remain a predominantly agrarian economy, and retain adequate water resources within the Reservation to protect aquatic and riparian habitats for native wildlife. The CRIT will carry out the policies of this chapter in accordance with the Federal Legislation and the 3-Party Agreement.

XX-1103. LEASING OF TRIBAL WATER RESOURCES

- (a) The CRIT may enter into AZ CRIT Water Agreements Leases or options to Lease, exchanges or options to exchange, or Storage agreements for the use and Storage of a portion of the CRIT Consumptive Use off the Reservation, subject to the approval of the Secretary. The CRIT shall not enter into any agreements that effectively sell or permanently alienate any portion of Tribal Water Resources.
- (b) The CRIT Tribal Council has sole authority to enter an AZ CRIT Water Agreement and any action attempting to enter an AZ CRIT Water Agreement by any Person other than the CRIT Tribal Council shall be null and void.
- (c) No AZ CRIT Water Agreement shall interfere with the CRIT’s or its membership’s current use of Tribal Water Resources for traditional, agricultural, household, industrial, or commercial purposes.

XX-1104. EFFECT OF AN AZ CRIT WATER AGREEMENT

- (a) An AZ CRIT Water Agreement entered pursuant to this Code constitutes authorization by the CRIT for a third-party to divert or store a designated portion of Tribal Water Resources in conformity with the terms and conditions of the AZ CRIT Water Agreement, this Code, and all applicable tribal, Arizona laws, and federal laws.
- (b) All rights granted under an AZ CRIT Water Agreement, issued pursuant to this Code, are provisional and shall not be construed to create an entitlement in the Lessee beyond the provisional period or to allow reliance thereon by Persons other than by the Lessee.
- (c) An AZ CRIT Water Agreement does not take effect unless and until the CRIT have received from the Lessee the required monies as identified within the payment schedule of the AZ CRIT Water Agreement.

- (d) Lessee must at all times remain in compliance with all terms of an AZ CRIT Water Agreement

XX-1105. AZ CRIT WATER AGREEMENT LIMITATIONS

All AZ CRIT Water Agreements shall contain the following terms and limitations –

- (a) Volume Limitations. The CRIT will not enter into any AZ CRIT Water Agreement that may, in the judgment of Tribal Council, endanger its on-Reservation agrarian economy.
- (b) Duration Limitations. The CRIT will not entertain Proposals in excess of ninety-nine (99) years.
- (c) Place of Use Limitations. All AZ CRIT Water Agreements are subject to the conditions that use of the AZ Decreed Allocation off the Reservation is located in the Lower Basin in the state of Arizona and is not located in the counties of Navajo, Apache, or Cochise.
- (d) Prohibition on Subleasing. Lessees are strictly prohibited from assigning, subletting, subleasing, transferring, or otherwise encumbering any portion of Tribal Water Resources.
- (e) Verification. The Lessee affirmatively grants both digital and physical rights of entry to the CRIT sufficient to verify the terms and conditions of the AZ CRIT Water Agreement are complied with.
- (f) Compliance With Applicable Law. The Lessee shall comply with all applicable tribal, state, and federal law regarding the use of Tribal Water Resources.

XX-1106. RECEIPT OF AZ CRIT WATER AGREEMENT PROPOSAL

- (a) Proposals may be submitted to CRIT in response to a Request for Proposal (RFP). All costs associated with a Proposal shall be borne by the Proponent, including any administrative fees assessed.
- (b) The Tribal Council may, in its discretion and by a majority vote, solicit Proposals and enter into AZ CRIT Water Agreements in accordance with this chapter. Such solicitations and negotiations will be coordinated with the Executive Administrator and the Proposal Evaluation Team as provided in Section XX-1108.
- (c) Proposals will be accepted and reviewed on a revolving basis. Proposals may be submitted at any time and will be reviewed in the order received. CRIT reserves the right to evaluate and approve Proposals on a rolling schedule, without the need for a fixed submission deadline. All Proposals must comply with the provisions of this Chapter and any additional requirements identified in any corresponding RFP.

XX-1107. PROPOSAL EVALUATION TEAM

- (a) Prior to consideration by the Tribal Council, Proposals made in compliance with this chapter may be reviewed and evaluated by a team of technical and legal experts, selected by the Tribal Council (hereinafter the “PET”), who will investigate the hydrologic, legal and economic feasibility of the proposed use subject to the Proposal, while ensuring any proposed use complies with applicable Tribal, Arizona state and Federal laws and regulations, and terms of any Request for Proposals.
- (b) The PET is subject to the control and oversight of the Tribal Council.
- (c) Every PET review effort shall be administered by an Executive Administrator, appointed by the Tribal Council, and sufficiently qualified and credentialed to ensure such Proposals are adequately reviewed and submitted to Council in a timely manner.
- (d) The Director shall support the PET to ensure that any potential AZ CRIT Water Agreement will comply with this Code and the current Water Management Plan.
- (e) The PET shall provide to the Tribal Council a report containing all pertinent details and potential impacts of the subject Proposal. Examples of such impacts are legal impediments to the delivery/diversion, transportation losses, and direct on-Reservation impacts. An evaluation of the availability of the water requested in the Lease or exchange shall be included in the report.

- (f) The PET may, with the consent of the Tribal Council, seek additional input and analysis from external experts. Provided, however, that the PET shall be solely responsible for the preparation of the report and any recommendations to the Tribal Council.
- (g) If directed by Council, the PET shall prepare the necessary technical memorandum as described in Section XX-1110 to ensure compliance with the 3-Party Agreement.

XX-1108. PROPOSAL EVALUATION

- (a) The acceptance and approval of any Proposal is subject to the exclusive and sole discretion of the CRIT Tribal Council. As such, no explicit, required evaluation criteria are provided. All Proposals will be weighed and evaluated within the context of –
 - (1) receipt by the CRIT of (i) a sworn statement certifying the Proposal as complete and accurate, and (ii) the full, nonrefundable Proposal Evaluation Fee and any other assessed administrative fees;
 - (2) potential impacts and potential benefits to the CRIT and its membership, including economic, cultural, and environmental considerations;
 - (3) analysis of proposed pricing and comparison to the benefit of other tribal uses of the water;
 - (4) assessment of fallowing options or expiring agricultural or other land use Leases that would be necessary to meet the water quantity in the Proposal;
 - (5) the health and vitality of the Colorado River and its aquatic and riparian habitats; and
 - (6) any other criteria deemed relevant by Council.
- (b) If a Proposal is found to be deficient, or it is determined that more information is required to adequately evaluate the Proposal, the Proponent will be notified of the specific information and/or documentation required. If the Proponent fails to satisfy any such request within a reasonable time period, to be prescribed by the Director, the Tribal Council may, in its sole discretion, terminate the Proposal. A Proposal terminated due to the Proponent's failure to satisfy a request for additional information does not preclude the Proponent from submitting subsequent Proposals.
- (c) The Tribal Council reserves the right to reject any Proposal for any reason.
- (d) Nothing contained herein shall be interpreted to impose upon Tribal Council a time period by which the evaluation of a Proposal must be completed, or a decision regarding a Proposal rendered.
- (e) If, in its sole discretion, the Tribal Council determines that it is in the CRIT's best interest to enter into Negotiations for an AZ CRIT Water Agreement, the Proponent will be notified by mail to the address provided in the Proposal and/or via email ("Acceptance Notification").
- (f) The Acceptance Notification shall be postmarked and submitted no later than forty-five (45) calendar days from the date the Proposal is accepted by Council.

XX-1109. NEGOTIATIONS AND PUBLIC NOTICE

- (a) No later than forty-five (45) calendar days of the Acceptance Notification submittal, the Tribal Council will commence Negotiations on the terms and conditions of the AZ CRIT Water Agreement with the Proponent.
- (b) The Tribal Council may request that the PET provide assistance and guidance during the AZ CRIT Water Agreement Negotiations.
- (c) Prior to the execution of an AZ CRIT Water Agreement, the Tribal Council shall, in accordance with the current tribal meeting procedures, provide notice and host a meeting for enrolled members of the Colorado River Indian Tribes regarding the proposed AZ CRIT Water Agreement.
- (d) No AZ CRIT Water Agreement shall be executed unless approved by Tribal Council majority vote.
- (e) Every AZ CRIT Water Agreement will be executed on standardized forms, developed by the Director and approved for use by the Tribal Council.

XX-1110. TECHNICAL MEMORANDUM

- (a) The PET shall verify that a technical memorandum documents the reduced Consumptive Use in a total volume sufficient to satisfy the requirements of each AZ CRIT Water Agreement in effect for the time period covered by the technical memorandum. The methodologies used within the technical memorandum shall be consistent with those identified in the current Exhibit B to the 3-Party Agreement. Each technical memorandum shall include the following –
- (1) an identification of each Farm Unit or parcel on which Consumptive Use will be reduced and a map showing the location of each Farm Unit or parcel;
 - (2) a record of the recent history of Consumptive Use on the Farm Unit or parcel;
 - (3) a description of the fallowing, partial year fallowing, conservation to lower water use crops, deficit irrigation or other methodology to reduce on-Reservation Consumptive Use for each Farm Unit or parcel;
 - (4) the volume of reduced diversions that correlate to the reduced Consumptive Use;
 - (5) a reporting and verification methodology for the reduced Consumptive Use;
 - (6) actions to be taken by the CRIT to maintain the reduced Consumptive Use during the term of the AZ CRIT Water Agreement, including vegetation control, preventative measures to control the inadvertent delivery of irrigation water, and other measures as set forth in the technical memoranda; and
 - (7) on-Reservation measures for dust, erosion, and weed control.
- (b) The data provided in the technical memorandum will be consistent with the Bureau of Reclamation's current methodology for determining a history of Consumptive Use to calculate the amount of reduced Consumptive Use on the Reservation.
- (c) The CRIT shall provide to ADWR and the Secretary –
- (1) copies of the technical memorandum at least sixty (60) days prior to the execution of an AZ CRIT Water Agreement; and
 - (2) subsequent technical memorandum at least sixty (60) days prior to using the technical memorandum as the basis for the CRIT Part 417 water order.

XX-1111. SECRETARIAL APPROVAL

All AZ CRIT Water Agreements shall be submitted for Secretarial approval, in accordance with the Federal Legislation.

XX-1112. AZ CRIT WATER AGREEMENT REVOCATION

An AZ CRIT Water Agreement may be wholly or partially revoked for the following causes –

- (a) Failure to comply with any terms and conditions of the AZ CRIT Water Agreement, failure to comply with all environmental reviews and applicable law, a provision of this Code, or with any order or decision of the Tribal Council;
- (b) The expiration of the term of the AZ CRIT Water Agreement;
- (c) Any false statement, concealment, or omission of a material fact—a fact that is significant enough to influence the decision-making of a reasonable person—in a Proposal, during Negotiations, or in any other statement made as part of the Proposal process;
- (d) Voluntary relinquishment by a written statement manifesting an intention to relinquish the rights associated with any AZ CRIT Water Agreement, and written acceptance of such relinquishment by the Tribal Council.

XX-1113. ANNUAL REPORTING

On or before April 15th of each year following a year in which an AZ CRIT Water Agreement is in effect, the CRIT shall prepare and provide to ADWR and the Secretary a report that documents the on-Reservation reduction in Consumptive Use sufficient to satisfy the requirements of the AZ CRIT Water Agreements in effect for that year and the reduced diversions from the previous year in the amounts equal to the reductions set forth in the technical memoranda in effect for that year.

XX-1114. ENFORCEMENT

During the term of any AZ CRIT Water Agreement, the Director shall monitor the diversion, impoundment, and use of Tribal Water Resources by a Lessee as necessary to ensure compliance with the terms and conditions of the subject AZ CRIT Water Agreement. If appropriate, the Tribal Council shall initiate proceedings to enforce the terms and conditions of the AZ CRIT Water Agreement.

Chapter 12: Off-Reservation Water Leasing in California

RESERVED

Chapter 13: Shortage Conditions

XX-1301. DECLARATION OF SHORTAGE CONDITIONS

This chapter shall apply in the event the Secretary declares a Shortage pursuant to his or her inherent authority as the water master of the Colorado River.

XX-1302. NOTICE TO WATER USERS

Within thirty (30) days from receiving notice from the Secretary that Shortage conditions will exist in the subsequent water year, the Director shall forward the Secretarial notice to all Persons that use or have a right to use any Tribal Water Resources. The Director shall include with the Secretarial notice a statement as to whether the Shortage declaration will impact deliveries of Tribal Water Resources and the extent and nature of those impacts, if any.

XX-1303. WATER USER MEETING

Within thirty (30) days from the date the Director notifies water users of the Secretarial notice of a Shortage Declaration, the Tribal Council shall schedule a meeting with users of Tribal Water Resources to inform water users of the procedures to be employed to mitigate potential impacts to water deliveries, if any.

XX-1304. PRIORITIES IN SHORTAGE CONDITIONS

- (a) In the event the quantity of water available to CRIT due to a Shortage declaration is less than the full Total Decreed Allocation, the Director shall first allocate Tribal Water Resources to meet demands within the Reservation, and second, for uses outside the Reservation.
- (b) The Director shall allocate Tribal Water Resources on the Reservation according to the following priorities listed in descending order, subject to revision by the Tribal Council –
 - (1) the quantity and quality of water necessary to preserve the health, welfare, and safety of CRIT's members, including water for Domestic Uses, governmental operations, housing, and other critical infrastructure or operations; then
 - (2) the quantity and quality of water necessary to preserve the cultural practices of CRIT's members; then

- (3) the quantity and quality of water necessary to fulfill CRIT's legal obligations to any federal or state agency, where such obligation does not include authority to order a reduction in the use of Tribal Water Resources; then
 - (4) the quantity and quality of water necessary to fulfill CRIT's legal obligations to any Person, where such obligation does not include authority to order a reduction in the use of Tribal Water Resources; then
 - (5) the quantity and quality of water apportioned among all remaining agricultural users including 'Amat Kuhwely; then
 - (6) the quantity and quality of water apportioned among all remaining water users of Tribal Water Resources.
- (c) The Tribal Council may, in its sole discretion, order a Permittee to reduce or cease entirely his or her use of Tribal Water Resources during Shortage conditions. Any such order shall be enforced by the Director and by the Tribal Court as a matter of the highest importance without delay on the motion of the Director or any water user.

Chapter 14: **Transfer and Loss of Rights**

XX-1401. **TRANSFER, ASSIGNMENT, DESCENT, AND DISTRIBUTION**

Water Use Permits issued under this Code shall not be subject to transfer, assignment, descent, or distribution. Heirs and successors in interest of Permittees shall apply for permits in their own names; however, such substitute permits shall be freely granted unless changing hydrological conditions clearly warrant a modification of the prior permits.

XX-1402. **NO LOSS BY ADVERSE POSSESSION, PRESCRIPTION, ESTOPPEL OR ACQUIESCENCE**

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

XX-1403. **OUTSIDE PROCEEDINGS**

No use right granted under this Code may be reduced, taken or otherwise affected in any procedure or determination or adjudication except as provided for in this Code, and in compliance with the Indian Rights Civil Rights Act, 25 U.S.C. §§1301 *et seq.*, and the CRIT Constitution.

Chapter 15: **Revocation and Suspension of Water Use Permits**

XX-1501. **REASONS FOR REVOCATION**

- (a) Unless otherwise indicated, Water Use Permits issued under this Code are revocable by the Director in accordance with the policies, purposes, guidelines, and procedures established in this Code, and in accordance with the Indian Civil Rights Act, 25 U.S.C. §§ 1301 *et seq.*, and the CRIT Constitution. A Water Use Permit may be totally or partially revoked for the following reasons –
- (1) failure to comply with any terms and conditions of the Water Use Permit, a provision of this Code, or with any order or decision of the Director;
 - (2) nonuse of Tribal Water Resources;
 - (3) any misrepresentation of a material fact in a Description of Use and Water Use Permit Applications, or in any other statement made as part of the Application process; or

- (4) voluntary relinquishment by an affirmative action manifesting an intention to relinquish a Water Use Permit or claim of right.

XX-1502. NONUSED DEFINED AND DESCRIBED

- (a) Any right to use or otherwise affect in any way Tribal Water Resources, regardless of its origin, in the discretion of Tribal Council may be deemed void and lapse if the holder of such right voluntarily fails, without sufficient cause, to put water to actual use within two (2) years after a Water Use Permit is granted or to use all or a portion of the water available under such right for a period of five (5) consecutive years.
- (b) “Sufficient Cause” may include –
 - (1) drought or other unavailability of water;
 - (2) active service in the armed forces of the United States
 - (3) the operation of legal proceedings restraining water use;
 - (4) the application of any laws restricting water use;
 - (5) incarceration in penal institution;
 - (6) confinement in a mental institution, whether voluntary or not;
 - (7) incompetence by reason of age or mental incapacity;
 - (8) provisions for future use as provided in this Code;
 - (9) other causes of nonuse beyond the control of the holder or holders of right claimed; or
 - (10) other agreement accepted by Tribal Council.

XX-1503. PROCEDURE FOR SUSPENSION AND REVOCATION HEARINGS

- (a) The Director shall provide written notice of intent to revoke or suspend a Permit by registered mail return receipt requested at the Permittee’s last known address, scheduling a revocation hearing at least forty-five (45) days from the date of the notice. Such notice shall provide a detailed statement and explanation of the basis and justification for the proposed revocation or suspension and state that any affected Person may participate in the revocation hearing. The Director shall publish such notice in a generally authorized publication.
- (b) A public hearing shall be held on the proposed revocation in accordance with Chapter 17 of this Code.
- (c) Within fifteen (15) days of the completion of the hearing, the Director shall issue a Final Decision concerning the proposed action. A Water Use Permit may be revoked or suspended only if the Director finds that the Permittee 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. Within five (5) working days of the date of the Final Decision, the Director shall give notice of the Final Decision to the Permittee and any other Person who was a party to the proceeding.

Chapter 16: Enforcement

XX-1601. PROHIBITED ACTS

- (a) No Person shall –
 - (1) forcibly, or through bribery, attempted bribery, threat, or other corrupt practice, obstruct, interfere or impede the due administration of this Code;
 - (2) commit fraud, or knowingly assist another in the commission of fraud, with the intent to evade or defeat the administration of this Code or costs imposed or assessed;

- (3) falsely verify by written declaration any Permit, form, or other document, or to intentionally withhold data required to be submitted by law;
- (4) violate the conditions or stipulations of his or her Permit including taking more water than is allowed by Permit;
- (5) willfully take, waste, alter or damage the Tribal Water Resources or the CRIT's water rights;
- (6) knowingly make use or take action affecting the use of the Tribal Water Resources within the Reservation without the authorization required; or
- (7) willfully obstruct or interfere with Tribal employees performing their lawful duties under this Code.

XX-1602. INSPECTIONS AND INVESTIGATIONS

- (a) The Director or authorized representatives of the Director may conduct inspections and investigations of any lands upon which any Tribal Water Resources are used together with any facilities, including, but not limited to, Diversion, withdrawal, or impoundment structures that are used to put Tribal Water Resources to a Sensible Use.
- (b) To conduct inspections or investigations, the Director or authorized representatives of the Director may enter upon any land within the Reservation 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 does not control or hold a beneficial interest in the lands.
- (c) Inspections and investigations may be conducted to obtain data concerning characteristics and specifications of facilities utilized to affect a Permitted Use including, but not limited to –
 - (1) forcibly, or through bribery, attempted bribery, threat, or other corrupt practice, obstruct, interfere or impede the due administration of this Code;
 - (2) commit fraud, or knowingly assist another in the commission of fraud, with the intent to evade or defeat the administration of this Code or costs imposed or assessed;
 - (3) falsely verify by written declaration any Permit, form, or other document, or to intentionally withhold data required to be submitted by law;
- (d) The Director or authorized representatives of the Director may enter upon any lands within the Reservation 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.

XX-1603. 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, 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 Person appear before the Director and demonstrate that no violation exists or has existed.
- (b) If the Director determines, after providing that Person that received the order an opportunity to be heard, that the Person is in violation of the Code or any Permit, 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, 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 paragraph (b) of this section 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 Tribal Court to enforce the Final Decision.

XX-1604. PENALTIES FOR VIOLATIONS; DAMAGES

- (a) Except as provided in paragraph (b) of this section, any Person found to be in violation of the Code or any Permit, regulation, or order of the Director issued pursuant to the Code, as provided in Section XX-1603, 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. Civil penalties may be increased at future dates by Tribal Council Resolution without amendment to this Code.
- (b) If the Director determines, pursuant to Section XX-1603, that the violation was willful or that the violation constitutes an illegal use or disposition of any Tribal Water Resources, 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. Civil penalties may be increased at future dates by Tribal Council Resolution without amendment to this Code.
- (c) The Director may bring an action by citation or complaint in Tribal 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 Section XX-1603 shall be conclusive evidence of the violation unless judicial review of the Final Decision remained pending.

Chapter 17: General Hearing Provisions

XX-1701. APPLICABILITY

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

XX-1702. NOTICE

- (a) All parties who will or may be directly affected by a proposed action shall be given notice by mail of any hearings held under this subchapter. In addition, notice of hearings shall be published in a generally authorized publication.
- (b) Every attempt shall be made to give each party who will or may be directly affected by any action actual notice of that action and fair and adequate opportunity to be heard.

XX-1703. PLACE OF HEARING

Hearings shall be held on the CRIR.

XX-1704. CONTINUANCES

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

XX-1705. TRIBAL COUNCIL

The Tribal Council shall preside over the hearings provided for in this Chapter. No less than five (5) members of Council shall be present at all hearings.

XX-1706. FORMS OF EVIDENCE

Evidence may be submitted in any practical form, including oral testimony, written evidence, and descriptive evidence. The ordinary rules of evidence shall not apply, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfairly admitted, may be excluded or admitted only under special conditions or stipulations.

XX-1707. RECORDINGS

All proceedings of the hearing shall be recorded, and, if an appeal is sought, the Applicant or any other affected party, at their sole cost and expense, may request a transcript of the hearing.

XX-1708. DECISION

Whenever a Final Decision is required in accordance with the provisions of this Code following a public hearing, the Attorney General shall prepare findings of fact and conclusions of law and shall recommend a proposed decision to the Tribal Council. The Tribal Council may make such modifications as are clearly warranted by the evidence and applicable law and shall issue a Final Decision, including an explanation for any changes made to any recommendation of the Director, within thirty (30) days of such recommendation. Such decision shall be published in a generally authorized publication.

Chapter 18: Well Permitting and Drilling

RESERVED

Chapter 19: Water Quality

RESERVED

Chapter 20: Establishment of the Colorado River Trust

XX-2001. COLORADO RIVER TRUST CREATED

- (a) This chapter establishes a trust for the benefit of the Colorado River.
- (b) The CRIT Tribal Council is to serve as a trustee of the Colorado River trust, and it has legal and fiduciary obligations to collect, protect, defend, and administer the monetary property solely for the purposes of ensuring the rights of the Colorado River are exercised and protected to the fullest extent possible.
- (c) CRIT shall have the responsibility, pursuant to this chapter, to defend those sections and portions of the Colorado River that flow through the Reservation, and to ensure the Colorado River's rights. The Tribal Council shall use its discretion in performing its fiduciary responsibility to the Colorado River.

XX-2002. COLORADO RIVER TRUST MANAGEMENT

- (a) CRIT shall open and maintain an account dedicated for the Colorado River trust.
 - (1) It is not the intent of this chapter to declare funds received by the CRIT through grants, income, or other funding opportunities for work, projects, or programs related to the Colorado River to automatically become trust funds
 - (2) Unless mandated through this chapter, Tribal Council may elect to dedicate funds to the Colorado River trust account through the Tribal Council regular decision-making process.
- (b) The Director shall designate on behalf of Tribal Council funds to be deposited into the Colorado River trust account. Such funds shall be equal to a percentage of the revenues, administrative fees, penalties,

and damages collected pursuant to this Code, not to exceed seven percent (7%). Monies designated for deposit into the Colorado River trust account are separate and distinct, and are assessed in addition to any revenues, administrative fees, penalties, or damages.

- (c) The Tribal Council shall deposit into the Colorado River trust account all monies designated by the Director under this section.
- (d) The Tribal Council shall have the authority to use the funds in the Colorado River trust only for the benefit of the Colorado River, its associated River banks and ecosystems, and the Tribes' traditional cultural and religious landscape, including, but not limited to, cleanup, restoration, enforcement, legal advocacy of the Colorado River, increased connectivity of CRIT members to the Colorado River, and environmental studies for the benefit of the Colorado River or its associated River banks and ecosystems.
- (e) The Tribal Council shall report annually and make publicly available an accounting of the Colorado River trust funds and expenditures. The Tribal Council shall redact confidential information from its annual report.

Chapter 21: Miscellaneous Provisions

XX-2101. SEVERABILITY

If any provision of this Code or the application thereof to any Person or circumstance are held invalid, and the Code can be given effect without the invalid provision or specific application held invalid, such provision or application of this Code is declared to be severable, this Code shall continue in full force and effect as severed.

XX-2102. CONSTRUCTION

This Code shall be liberally construed to effectuate its objectives, policies, guidelines, purposes, and provisions. However, any provision or application of this Code that would affect in any manner the CRIT's sovereignty or water rights shall be strictly construed for the benefit of the CRIT.

XX-2103. EXTENSION OF TIME LIMITS

The time limits provided for in various places of this Code may be extended by either the Director or the Tribal Council, or any of its designated agents, for good cause shown, when the ends of justice so require unless otherwise specified.

XX-2104. REPRESENTATION

Parties appearing at hearings and other proceedings provided for by this Code may represent themselves or may be represented by Counsel, if they so desire.

XX-2105. REPEAL

Notwithstanding [Personhood Resolution / Ordinance], any act, ordinance, resolution, rules or regulation, or provisions of law of the CRIT in conflict with the provisions of this Code on the Effective Date are hereby repealed to the extent that they are inconsistent with, conflict with, or are contrary to, the purpose of this Code. Those acts, ordinances, resolutions, rules or regulations, or provisions of law that do no conflict shall remain in effect.

XX-2106. SOVEREIGN IMMUNITY

Nothing in this Code shall be construed as a waiver of the sovereign immunity of the Colorado River Indian Tribes, its agencies, agents, officials, or employees. This Water Code is adopted pursuant to the inherent sovereign authority of the CRIT and shall not be interpreted to subject the CRIT to the jurisdiction of any federal,

state, or local court or agency, or any legal process, except as may be expressly authorized by a duly enacted resolution or ordinance of the Tribal Council that specifically and unequivocally waives such immunity.

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