

# WATER LAW

## PREAMBLE

In the belief of the Paiute people, the tribe has been on Mother Earth since the beginning of time.

The vast reaches of the Owens Valley and the surrounding area is the homeland of our people where we once were independent and self-reliant. This land area, inhabited by the Paiute people from time immemorial, has been dramatically reduced to the point where without additional land we will never be able to grow and prosper. In recent decades the ability of our people to remain self-sufficient has been severely tested. The ability of the Tribe to formulate plans and strategies to provide jobs and security for the residents of the reservation paramount.

All future development essential to well-being, cultural development, economic development and social development depends upon the Bishop Paiute people having access to a reliable source of clean water. A restrictive land base coupled with limitations on water rights is tantamount to physical and cultural genocide. Preserving the sovereign authority of the Tribe stands as an important aspect of enhancing and maintaining growth and progress. It is the sincere desire of the Tribal Council to increase self-reliance while decreasing dependence upon other governments.

Water, the most important natural resource, inter-connects with all that will be done in the future for the health, safety, well being and economic security of the Bishop Paiute people. Neither Federal law nor state law can protect water rights in a manner consistent with Tribal belief and custom. The Tribe and its members hold unique cultural attachment to the water, other resources of the reservation and aboriginal homeland, thus making it crucial for the implementation of laws and codes which take into consideration these factors and provide orderly development for the Tribe.

The Tribal Council must develop standards and regulations necessary to encourage sound development for the benefit of the entire region. Water is a natural resource all-important in every aspect of development. Constituents require and deserve the basic infrastructure programs and services provided by all governments. The development of physical and governmental infrastructure increases the capability of Tribal government to meet the needs and demands of the twenty-first century.

Within the boundaries of the Bishop Paiute Reservation and aboriginal homelands, the Tribal Council must be the primary authority regarding management and enforcement of tribal policy and law. This is especially critical in the area of water rights and environmental protection. This law is the first step in that direction. The Tribal Council will always recognize the presence of all residents and strive to allow all voices to be heard throughout the exercise of tribal legislative authority.

# BISHOP PAIUTE TRIBE

## WATER LAW

### TITLE I

#### GENERAL PROVISIONS

##### 101. Water Policy

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

The following general policies shall guide the use and management of water on the Reservation:

- (a) Existing uses, established duties of water, and relative priorities concerning the use of Reservation water are to be protected and preserved, subject to the Tribes' public trust obligations to protect tribal, allotted and aboriginal water.
- (b) Surface water use will be adjusted for the varying water conditions each year, and overall water use allocation decisions will be guided by the declaration of drought, normal, and surplus hydrologic conditions that require different water management strategies. Water development decisions will recognize hydrologic variability and will consider alternative sources of supply, should dry conditions prevail.
- (c) Ground water use will be guided by overall condition of each aquifer system, the expected long term yields, and the cumulative impacts of existing and proposed uses on ground and surface water supply and quality.
- (d) The planning and development of water and land resources will safeguard against surface and ground water degradation.
- (e) Drainage strategies will be developed with due consideration for the conjunctive or integrated use of surface and ground water.
- (f) All land, water, or other resources strategies, decisions, or regulations shall consider the potential affect on all Reservation natural resources.

(g) Allocation decisions are subject to periodic consideration and review for their net effect on aboriginal and trust resources and values and may require adjustments of existing uses to protect trust purposes where appropriate.

102. Findings

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

- (a) The Bishop Paiute people recognize that water is central to life.
- (b) Water is life supporting and provides Tribal members with subsistence, vegetation, fish and wildlife, safety and well-being.
- (c) Water breathes life into Tribal lands, plants, fish, birds, animals and the people.
- (c) Water gives the Bishop Paiute people fish, berries, seeds, wild vegetables and willow and the ability to be self-reliant.

103. Purposes

The purposes of the Water Law shall include but not be limited to:

- (a) To provide an orderly system for the use and management of all Bishop Paiute tribal, allottee and aboriginal water.
- (b) To provide effective guidelines and a mechanism for the administration and protection of aboriginal water and tribal and allottee reserved rights, and State-held water rights to Reservation water.
- (c) To ensure that Reservation residents have sufficient water for cultural, domestic, agricultural, stock, instream, and other uses, and that the tribe has sufficient water for Reservation economic development.
- (d) To conserve, manage and protect reservation water for future uses by generations to come.
- (e) To protect reservation water from over-appropriation, degradation, contamination, exploitation, and any acts injurious to the quantity, quality or integrity of the water.
- (f) Within the limits of the Tribes' public trust obligations, to encourage optimal development and multiple use of the water resource, to promote stability of investment in water use and delivery systems. and to permit all reasonable uses.
- (g) To maintain minimum perennial stream flows and to promote optimal recharge of aquifers to supply beneficial uses.
- (h) To protect the health and welfare of Reservation residents, the political integrity of the Tribes, and the economic security of the Reservation through the effective management and protection of the Reservation's water supply and water quality.

3. "Beneficial Uses" of Bishop Paiute water resources shall include but not be limited to domestic and personal household uses, municipal use, stock watering, instream flows for the protection of fish, fauna and wildlife, agricultural uses, religious and cultural uses, commercial uses such as industrial and power production, aquifer and ground water recharge by the Tribe, storage, transfer of use, hydropower generation, pollution control and commercial leasing.

4. "Indian Country" shall mean formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States.

5. "Law" shall mean the Water Resources Law of the Bishop Paiute Tribe.

6. "Board", shall refer to the Water Resources Control Board of the Bishop Paiute Tribe.

7. "Personal jurisdiction" shall mean those persons who are subject to the authority of the Bishop Paiute Tribal Court.

8. "Subject matter jurisdiction" shall mean the authority to decide certain types of civil cases granted to the Tribal Court by Tribal legislation.

9. "Tribe" shall mean the Bishop Paiute Tribe.

10. "Tribal lands" shall mean all lands in trust for the benefit of the Bishop Paiute Tribe or lands held in fee status owned by the Bishop Paiute Tribe, including those lands obtained for or by the Tribe hereafter.

#### 106. Jurisdiction

##### (a) Subject Matter Jurisdiction

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

##### (b) Personal Jurisdiction

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

#### 107. Water Resources Control Board

##### (a) Creation of the Board

1. The Bishop Paiute Tribe Water Resources Control Board shall be composed of five (5) members appointed by the Council, with appointments made to ensure all segments of the community are represented.

(b) Terms of Board Members

1. For the first appointments to the Board, two will serve for three years, two for two years and one for one year in order to initiate staggered terms.
2. After the first appointments, all new appointees shall serve four (4) year terms.
3. The Water Resources Control Board shall meet on a monthly basis, to be held on the second Tuesday of each month.

(b) Duties of the Board

1. Approve and disapprove water use permits in accordance with the provisions of the Code.
2. Conduct informal hearings on water use decisions which are protested.
3. Conduct formal hearings on water use decisions which are protested.
4. Approve permit forms and/or materials prepared for the regulation of water and the implementation of this law.
5. Ensure optimal water quantity and quality in creeks, rivers and hot springs as required for fish and wildlife habitat, agriculture, recreational use, domestic use, and cultural and religious use of water.
6. Enact amendments to this Law as becomes necessary to best implement the water policies of the Bishop Paiute Tribe.
7. Promulgate regulations necessary to carry out the provisions of this Code.
8. Negotiate and enter into Inter-Governmental Agreements with other jurisdictions to best implement the water policies of the Bishop Paiute Tribe.
9. Take further actions as provided or required by the provisions of this Code.

**108. Water Master**

(a) Appointment

The Bishop Paiute Water Resources Control Board shall appoint a Water Master to administer the provisions of this Law in conjunction with the Board. For one (1) year from the date of this Law, the Water Master shall be \_\_\_\_\_. After the expiration of the first year, the Board shall appoint a qualified person as the Water Master for terms of four (4) years.

(b) Qualifications

The Water Master shall meet the following employment criteria:

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

(c) Duties of the Water Master

The Water Master shall:

1. Insure compliance with the provisions of this Law and with permits issued;
2. Promulgate regulations with the approval of the Board governing basin and groundwater quality standards, to be codified herein;
3. Prepare permit applications and permit forms;
4. Make decisions as to whether an applicant's proposed use is permitted by this Code and if so, issue permits;
5. Collect permit and application fees and account such fees to the Finance Department of the Bishop Paiute Tribal Council;
6. Make recommendations to the Board as to policy changes or amendments to this Law;
7. Make recommendations to the Bishop Paiute Tribal Council as to changes in other Tribal programs for the enhancement and protection of Bishop Paiute water resources.

**109. Water Permits**

(a) Permit Application Process

1. A prospective water user shall submit a permit application to the Water Master on the Bishop Paiute Water Permit Application Form. The permit shall list the point of diversion the method of diversion, the desired place of use, the type of use, the method of application, the quantity and quality of expected return flows and the dates of use. The permit shall also state whether the proposed use impacts a historical, cultural or religious site of the Bishop Paiute Tribe.

2. The Water Master shall post a notice in the Tribal Offices of a water permit application as soon as the application is received. The public shall have the right to submit written comments regarding the proposed water use permit. The Water Master shall



consider these written comments when making a determination as to the feasibility of a water permit.

3. The Water Master shall either deny the permit, grant the permit or request further information from the applicant within thirty (30) days from the date the application was submitted. The applicant shall receive written notice of the Water Master's decision.

(b) Duration of Permits

1. Bishop Paiute water use permits shall be valid and effective for one (1) year from the date of issuance. Upon proof that a longer period of time is warranted, the Water Master may approve permits for longer than one (1) year.

2. A permit may be issued for a shorter period of time if the Water Master determines this is in the best interests of the water resource.

3. The date of expiration shall be stated on the permit in bold letters.

(c) Renewal of Permits

1. An applicant may submit a renewal application to the Water Master three months or less before the expiration of the permit.

2. The Water Master, may renew the permit for another year or for as long is deemed advisable.

3. There is not a limitation on the number of renewals for a water use permit so long as the Water Master continues to determine the issuance of the permit is in the best interest of the Bishop Paiute Water resource.

(d) Protests

1. Any applicant that objects to a final decision of the Water Master on his application for a water use permit may file a written request for a review hearing within thirty (30) days of receiving notice of the final decision.

2. The written request shall include a statement explaining why the decision should be reconsidered. The written request shall be submitted to the Bishop Paiute Water Resources Control Board.

(e) Review Hearings

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

2. The Board shall review the request at its next regularly scheduled meeting.

3. No review hearing shall be held with less than four (4) Board members present.

4. At that time, the applicant may present whatever testimony or other evidence he or she feels is relevant to the application for water use.

5. The Water Board shall issue a final decision on the water use application within thirty (30) days from the review hearing. This decision shall be final and is not subject to Tribal Court or Tribal Council review.

(f) Water Quality: Basin Standards

To be promulgated by the Water Master and the Water Board.

(g) Water Quality: Ground water standards

To be promulgated by the Water Master and the Water Board

110. Violations of Law

(a) Procedures

1. Any entity or person who diverts water without a water use permit or in violation of a water use permit shall receive a written notice from the Water Master to cease and desist the violation or be subject to cancellation of the water use permit.

2. If the entity or person refuses to stop the violation, the Water Master may file a complaint seeking injunctive relief and civil damages in Tribal Court.

111. Water Leasing

(a) Procedures

1. Any person or entity seeking to lease water from the Bishop Paiute Tribe shall file a written application for the leasing of water.

2. The application shall state the amount of water to be leased, the point of diversion, the method of diversion, the desired place of use, the type of use, the method of application, the quantity and quality of expected return flows and dates of use.

3. The Board, during the water year, shall promulgate policies regarding price, quantities and quality to be maintained, which shall be codified herein.

4. The same procedures for water use permits regarding decisions on applications and review hearings apply to water leasing. Nothing herein is intended to authorize a sale of water rights.

112. Emergency Powers

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

113. Severability

If any provision of this Law, or its application to any person or circumstance is held invalid, the remainder of the Law, or the application of the provision to other persons or circumstances, shall remain unaffected.

114. Amendments

This Law and the procedures promulgated hereunder may be amended or rescinded by the Tribal Council at a duly called regular or special called meeting.


115. Effective Date


This Law shall be effective from the date of its approval by the Tribal Council.

C E R T I F I E D

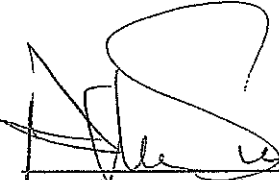
The foregoing Law was passed at a duly called meeting of the Bishop Indian Tribal Council held on the 22nd day of May 1998, with a quorum present and voting 4 AYES, 0 NAYS, 0 ABSTAINING, and 0 ABSENT.

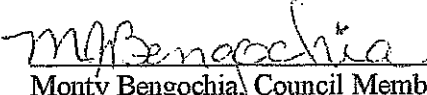
BISHOP INDIAN TRIBAL COUNCIL

  
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Mervin E. Hess, Chairman

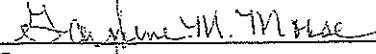
  
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Peggy Vega, Council Member

  
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William Vega, Council Member

  
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Allen Summers, Vice-Chairman

  
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Monty Bengochia, Council Member

ATTEST:

  
\_\_\_\_\_  
Secretary

7/3/98  
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Date