

FALLON PAIUTE-SHOSHONE TRIBE



LAW AND ORDER CODE

Title 15

Water Code

Title 15 – Water Code
FBC Resolution No.: 18-F-114; Effective June 12, 2018

Fallon Paiute-Shoshone Tribe

Law & Order Code

LAW & ORDER CODE TITLE 15 WATER CODE

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TITLE 15
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**Amended Title 15 Approved by FBC June 12, 2018
Resolution No. 18-F-114
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15-10 GENERAL PROVISIONS

15-10-010 Findings and Purposes

- (a) The Fallon Business Council finds that the effective and efficient management of water resources on the Fallon Indian Reservation is necessary to ensure the long-term economic security and well-being of the Fallon Paiute-Shoshone Tribe and its members.
- (b) The initial purposes of this Code are: (a) to ensure that Newlands Project water on the Reservation is used efficiently and for the benefit of the Tribe and its members; (b) to provide an orderly system for the allocation and use of Newlands Project water on the Reservation; (c) to ensure that the Tribe and its members are able to obtain quantities of Newlands Project water to which they are entitled under applicable laws and decrees; and (d) to ensure that the Reservation can be used for the purposes for which it was established, including to serve as a permanent homeland for the Tribe and its members.

15-10-020 Jurisdiction and Authority

The Tribe possesses inherent authority to regulate the use of water on the Reservation. This Code is adopted pursuant to the authorities reserved to the Fallon Business Council in Article VI, Sections 1(c), (h) and (i) of the Constitution of the Fallon Paiute-Shoshone Tribe, as amended (2010). The Code applies to all persons on the Reservation, including members and non-members, to the fullest extent permitted by law.

15-10-030 Definitions

As used in this Code:

- (a) “Business Council” means the Fallon Business Council of the Fallon Paiute-Shoshone Tribe.
- (b) “Code” means this FPST Water Code.
- (c) “Department” means the FPST Land and Water Resources Department.
- (d) “Director” means the Director of the FPST Land and Water Resources Department.

- (e) “District” means the Truckee Carson Irrigation District, which currently operates the Project pursuant to a contract with Reclamation, and includes any successor organization that operates the Project pursuant to such a contract.
- (f) “FPST” means the Fallon Paiute-Shoshone Tribe.
- (g) “Indian” means any person of Indian descent who is a member or eligible to be a member of any presently or previously recognized Indian Tribe presently or previously under Federal jurisdiction.
- (h) “Member” means any person who is enrolled in accordance with Article II of the FPST Constitution as a member of FPST.
- (i) “Non-member” means any person who is not an enrolled member of FPST.
- (j) “Person” means any individual, corporation, partnership, association, organization, or government including but not limited to the United States and any state, tribe, municipality and any political subdivision or instrumentality thereof.
- (k) “Project” means the Newlands Project.
- (l) “Project water” means water conveyed to the Reservation by infrastructure owned by the United States Bureau of Reclamation and operated as the Newlands Project.
- (m) “Reclamation” means the United States Bureau of Reclamation.
- (n) “Reservation” means the Fallon Indian Reservation, the Fallon Indian Colony, and all lands owned by the United States and held in trust for FPST.
- (o) “Tribe” means and “Tribal” refers to the Fallon Paiute-Shoshone Tribe.
- (p) “Tribal Court” means the Tribal Court for the Fallon Paiute-Shoshone Tribe.
- (q) “Water-short year” means a year in which the District determines that there is insufficient water to meet the maximum headgate entitlements for all Project water rights in the Carson Division of the Newlands Project.

15-10-040 Sovereign Immunity

Nothing in this Code waives or abrogates FPST’s sovereign immunity or authorizes any person to waive or abrogate FPST’s sovereign immunity.

15-10-050 Severability

The provisions of this Code are severable. If any provision of this Code, or application of any provision of this Code to any person or circumstance, is held invalid, all other provisions of this Code shall remain in effect.

15-20 ADMINISTRATION AND ENFORCEMENT

15-20-010 FPST Department of Land and Water Resources

The Director of the FPST Land and Water Resources Department is responsible for the implementation and enforcement of this Code, as specified herein. The Director is authorized to delegate his or her duties and authorities in this Code to other qualified Department staff or to directors of other Tribal departments. The Director is authorized to retain contractors to provide technical support in implementing and enforcing this Code, *provided* that the Director shall comply with applicable Tribal procurement policies and laws and obtain Business Council approval prior to retaining any such contractor.

15-20-020 Enforcement Orders

- (a) Any time the Director has determined that a violation of this Code has occurred, the Director may issue a written enforcement order to any person who is believed to have caused the violation. An enforcement order issued pursuant to this paragraph shall specify the nature of the suspected violation, evidence relied on by the Director in determining that a violation has occurred, measures required to achieve compliance, and deadlines by which compliance must be achieved. The Director shall forward a copy of any enforcement order issued pursuant to this Section to Tribal law enforcement.
- (b) The Director may include in an enforcement order issued pursuant this Section an assessment of costs and penalties against the violator identified in the enforcement order. Any assessed costs shall be calculated to reasonably reflect the actual costs to the Department incurred as a result of the violations identified in the enforcement order. Any assessed penalties must be reasonable considering the nature and severity of the violation, the willingness of the violator to cooperate with the Department in resolving the violation, whether the violator has a history of non-compliance with the Code, and the violator's ability to pay any assessed penalties, but shall not exceed \$1,000 per day per violation.

15-20-030 Appeals

- (a) Any person aggrieved by an order issued by the Director pursuant to this Code may seek review of such order by submitting a petition for review to the Tribal Secretary within 14 calendar days of the date on which the order was issued. Any petition for review submitted to the Business Council shall describe with specificity the reasons why the petitioner believed the Director's order subject to the petition was erroneous.
- (b) Any person may commence a civil action in the Tribal Court challenging the Business Council's decision on a petition for review submitted in accordance with Subsection 15-20-030(a) of this Code. Any such civil action shall be commenced in accordance with applicable Tribal court rules and procedures.

- (c) Except as provided in this Section, orders issued by the Director pursuant to this Code are final and not subject to review.

15-20-040 Enforcement

- (a) An enforcement order issued by the Director pursuant to Section 15-20-020 of this Code shall take immediate effect notwithstanding the filing of a petition for review or civil action pursuant to Section 15-20-030 of this Code and shall remain in effect until withdrawn by the Director or overturned on appeal. Tribal law enforcement is authorized and instructed to enforce any order issued by the Director that is in effect.
- (b) The Director is authorized to commence a civil action in the Tribal Court to enforce an order issued pursuant to this Code, including any assessment of costs and penalties included in an enforcement order issued pursuant to Subsection 15-20-020(b) of this Code, provided that the Director shall obtain approval of the Business Council prior to commencement of a civil action pursuant to this paragraph. A request for Tribal Court enforcement shall be filed as a civil complaint in accordance with the Tribal Court's rules of civil procedure or in a response to an action filed under Section 15-20-030 of this Code.
- (c) All actions to enforce the provisions of this Code or an order issued pursuant to this Code shall be civil in nature, except that the Tribal prosecutor is authorized to criminally prosecute Indians who are suspected of violating this Code or an order issued pursuant to this Code. Any civil or criminal enforcement action shall be prosecuted in accordance with applicable provisions of the FPST Law and Order Code. A criminal prosecution for a violation of this Code shall be prosecuted as a Class B offense pursuant to Section 5-90 of the FPST Law and Order Code.
- (d) The Director shall refer any suspected violations of state or federal law relating to the use or distribution of Project water by a non-Indian on the Reservation to the appropriate state or federal entity for criminal prosecution.

15-20-050 Conflicts of Interest

No Tribal officer, employee, or agent shall participate in the enforcement of this Code or the review of appeals filed pursuant to Section 15-20-020 of this Code if he or she has a direct interest in the outcome of such enforcement action or appeal or is related by blood or marriage as husband, wife, brother, sister, father, mother, grandfather, grandmother, grandson, granddaughter, son, daughter, uncle, aunt, nephew, niece, or first cousin to the subject of the enforcement action or the petitioner in an appeal. Any person may raise the issue of conflict of interest at any time during the enforcement and appeals process. If the Director is prohibited from participating in an enforcement action pursuant to this Section, he or she shall delegate his or her responsibilities for implementing and enforcing this Code to a subordinate Department employee or a director of another Tribal department who does not have a conflict of interest. If a Business Council member is prohibited from participating in review of a petition submitted pursuant to Section 15-20-030, such Business Council member shall recuse himself in accordance with applicable bylaws and customs for the Business Council.

15-30 PROJECT WATER

15-30-010 Beneficial Use Required

- (a) All Project water delivered to the Reservation must be put to beneficial use, which may include, but is not limited to, use for irrigation, wetlands, pasture, fish and wildlife, watering livestock, municipal, industrial, recreation, and water quality purposes.
- (b) Project water used for irrigation purposes shall not be used at a rate exceeding 3.5 acre feet per irrigated acre per year. For purposes of this Code, the amount of water used for irrigation on a parcel shall be based on the best available evidence of the amount of water passing through the head gate or turnout to the parcel.
- (c) Project water used for any purpose other than irrigation shall not be used in an amount that exceeds the amount of water that can be beneficially used for such purpose.

15-30-020 Unlawful Acts and Waste

- (a) It is unlawful for any person to willfully open, close, alter, or otherwise interfere with any Project facilities without permission of the Director and the District.
- (b) It is unlawful for any person to harass or interfere with Tribal or District personnel who are engaged in the implementation of this Code or the operation or maintenance of Project facilities.
- (c) It is unlawful for any person to use Project water on the Reservation in a manner that violates any provision of this Code or an order issued pursuant to this Code.
- (d) Waste of Project water on the Reservation is prohibited. Waste of Project water includes, but is not limited to: (1) the diversion of Project water into any slough, dam, or pond and retention of water therein without making beneficial use of the water; (2) application of Project water on sagebrush or greasewood land; (3) the use of Project water for any purpose other than a beneficial use as defined in this Chapter; or (4) other water uses deemed to be wasteful by the Director in consultation with the Business Council. The irrigation of unimproved pasture in accordance with Subsection 15-30-010(c) shall not be deemed to be a waste of water.

15-30-030 Drainage Water

No person may use Project drainage water located on the Reservation unless the Director has issued a written order authorizing the use of such water for a specified beneficial use and for a specified duration of one irrigation season or less. The Director shall only authorize the use of Project drainage water located on the Reservation after determining that the proposed use of such water is a beneficial use and will not harm other Reservation water users. Any proposed off-

Reservation use of Project drainage water located on the Reservation must be approved by the Business Council. Nothing in this Section shall prevent or otherwise restrict a Reservation land owner or his or her authorized representative from recapturing Project water used on his or her property and reusing such recaptured water before it has left his or her property for domestic outdoor watering or watering of livestock, provided that the quantity of water recaptured and reused for such purposes shall not exceed 1,000 gallons per day.

15-30-040 Project Water Orders

- (a) On or before February 14 of each year, the Director shall publish in the Tribal Newsletter and post at designated locations at the Tribal Administration, Senior Center, Housing, Health Center, Education, and Land and Water Resources Department offices a notice of Project water availability and solicitation for submittal of completed Tribal Water Assignment Forms. Uncompleted Tribal Water Assignment Forms shall be made available at the Department office and mailed or delivered in person to the FPST wetlands manager, to all owners of lands within the Reservation that received Project water during the previous irrigation season, and to all Project water users on the Reservation who have notified the Department in writing of their intent to use Project water in the coming irrigation season. Land owners or their authorized representatives are responsible for notifying their respective lessees of the availability of Tribal Water Assignment Forms and the deadlines for submitting such forms to the Department. Tribal Water Assignment Forms for Tribal parcels shall be completed by the Director. Complete Tribal Water Assignment Forms shall be submitted to the Department on or before March 1 of each calendar year, except that supplemental Tribal Water Assignment Forms submitted pursuant to Subsection 15-30-070(a) of this Code shall be submitted by the deadline specified by the Director.
- (b) Tribal Water Assignment Forms shall collect the following information from land owners or their authorized representatives who seek delivery of Project water within the Reservation during the upcoming irrigation season: contact information for the water user, allotment numbers and acreage for the lands to receive the water, identification of the Project laterals to be used to deliver the water, identification of the takeouts to be used to deliver the water, quantity of water ordered, and any other information deemed necessary by the Director in order to effectively manage Project deliveries to the Reservation.
- (c) Any person seeking delivery of Project water for a use other than irrigation, wetlands, or pasture shall include with a Tribal Water Assignment Form submitted pursuant to this Section a copy of an order issued pursuant to Section 15-30-060 authorizing the use.
- (d) Only Project water users whose Tribal Water Assignment Forms are accepted by the Director are entitled to receive or use Project water. The Director shall accept all complete and timely Tribal Water Assignment Forms submitted to the Department unless the Director determines in accordance with Subsection 15-30-040(e) of this Code that the use described in a Tribal Water Assignment Form

would violate the Code or other applicable law. The Director has discretion to accept incomplete or untimely Tribal Water Assignment Forms and to assist Project water users in developing complete Tribal Water Assignment Forms and otherwise complying with the requirements of this Code.

- (e) Within 14 calendar days of receipt of a complete Tribal Water Assignment Form submitted to the Department, the Director may issue a written order rejecting the proposed Project water use described in the Tribal Water Assignment Form because it is not a beneficial use as defined in Section 15-30-010 of this Code or would otherwise violate this Code or other applicable law including any applicable court decrees relating to the Newlands Project. The Department shall promptly notify the proposed user, the District, and Reclamation of any order issued pursuant to this Section, and shall request that the District refrain from delivering Project water in violation of an order issued pursuant to this Section. Any party adversely affected by an order issued pursuant to this Section may appeal such order in accordance with Section 15-20-030 of this Code; however, the Director's order shall remain in effect pending any appeal.
- (f) Project water users on the Reservation are responsible for submitting orders for deliveries of Project water directly to the District. Any such orders submitted to the District must be consistent with associated Tribal Water Assignment Form submitted to the Department.
- (g) Prior to the commencement of the Project irrigation season, the Director shall convene an annual meeting to discuss the annual Reservation-wide Project water allocation, any anticipated flood stage or precautionary drawdowns, any anticipated water shortages or reductions in allocations, anticipated deliveries to the Tribal wetlands, Project operations and maintenance issues, and other issues deemed appropriate by the Director.

15-30-050 Annual Use Limitation

- (a) Total annual use of water rights appurtenant to the Reservation that are served by the Project is subject to the limitation set forth in Section 103(C)(1) of Public Law 101-618.
- (b) In any year in which the sum of all water orders reflected in Tribal Water Assignment Forms accepted by the Director under Subsection 15-30-040(d) of this Code exceeds the limitation in Section 103(C)(1) of Public Law 101-618, the Director shall first reduce the quantity of water allocated to Tribal lands so that all water orders for individual landowners can be filled to the maximum extent allowable. The Director shall report any reductions made pursuant to this Section to the District and Reclamation.
- (c) If the Director anticipates that Reservation water orders in future years will exceed the limitation in Section 103(C)(1) of Public Law 101-618, the Director shall recommend to the Business Council the acquisition of water rights under Section

103(C)(1)(b) of Public Law 101-618 to prevent such water orders from exceeding that limitation.

15-30-060 Changes in Use of Project Water

- (a) Project water may not be used for any purpose other than irrigation, wetlands, or pasture, except pursuant to an order authorizing a change in use issued by the Director pursuant to this Section. However, an order authorizing a change in use shall not be required for the recapture and reuse of Project drainage water in accordance with Section 15-30-030 of this Code.
- (b) Any person seeking to use Project water for a purpose other than irrigation, wetlands, or pasture, shall submit a change in use application to the Director. A change in use application shall contain the following information: contact information for the water user, allotment numbers for the lands to which the water to be utilized is appurtenant, acreage of the subject lands, description of the proposed change in use, description of whether the proposed change in use is temporary or permanent, description of the duration of any proposed temporary change in use, identification of the Project laterals to be used to deliver the water, identification of the takeouts to be used to deliver the water, a description of the quantity of water subject to the change in use application, and any other information deemed necessary by the Director.
- (c) Within 30 calendar days of receipt of a complete application for a change in use submitted in accordance with this Section, the Director shall issue an order approving or denying the requested change in use. The Director may deny a requested change in use if he or she determines that the proposed use would not be a beneficial use as defined in Section 15-30-010 of this Code, would impair other water rights, or would violate applicable law including court decrees relating to the Newlands Project. The Director shall include in an order denying a change in use a written summary of the Director's reasons for denying the change in use request.
- (d) Any party adversely affected by an order issued pursuant to this Section may appeal such order in accordance with Section 15-20-030 of this Code; however, the Director's order shall remain in effect pending any appeal.

15-30-070 Changes in Water Availability

- (a) If during the Project irrigation season the Director determines that the Reservation-wide allocation of Project water is larger than was previously anticipated, the Director shall notify the FPST wetlands manager and all other Project water users on the Reservation of the opportunity to submit supplemental water orders to the District. Any person who submits a supplemental water order to the District for a water delivery on the Reservation shall submit to the Department a completed Tribal Water Assignment Form pursuant to Section 15-30-040 of this Code, and any supplemental orders submitted to the District must be consistent with the associated Tribal Water Assignment Form. In no case shall the delivery of surplus Project water result in the use of more than 3.5 acre feet of Project water per acre

per year to a parcel for irrigation or more than the amount that can be beneficially used for another purpose.

- (b) If prior to the Project irrigation season the Director determines that the Reservation-wide allocation of Project water is insufficient to satisfy water demand on the Reservation as reflected in completed Tribal Water Assignment Forms submitted to the Department, or if during the Project irrigation season the Director determines that the Reservation-wide allocation of Project water is less than previously anticipated, the Director shall notify Project water users on the Reservation of the water shortage and shall reduce, on a pro rata basis, the quantity of Project water to be delivered to each Reservation parcel subject to a pending order; provided that the Director may make additional reductions to the quantity of water to be delivered to Tribally-owned Reservation parcels to maximize deliveries to non-Tribally owned Reservation parcels subject to a pending order. The Director shall provide prompt notice of such reductions to the District and Reclamation.

15-30-080 On-Reservation Transfers

Any person who seeks to transfer water from one on-Reservation parcel to another on-Reservation parcel, including the Reservation Wetlands, shall provide notice to the Director of such transfer. The Department shall promptly notify the District of the transfer. Under no circumstances may a transfer result in the delivery of more than 3.5 acre feet of Project water per acre per year to a parcel for irrigation or more than the amount that can be beneficially used for another purpose.

15-30-090 Off-Reservation Transfers

No person may transfer or convey Project water allocated to land within the Reservation for off-Reservation use unless authorized by the Business Council in consultation with the Director. The Business Council shall not authorize an off-Reservation transfer pursuant to this Section unless the Business Council determines in consultation with the Director that such transfer is limited in duration to a single irrigation season or less, is conducted in compliance with all applicable laws, is consistent with FPST's annual agricultural plan, and is in the best interests of the Tribe.

15-30-100 FPST Project Water Bank

- (a) There is hereby established an FPST Project Water Bank, which shall be utilized to maximize the quantity of Project water available for beneficial use in water-short years by Reservation irrigators, the Reservation Wetlands, and other Project water users on the Reservation. The Director shall be responsible for the implementation and operation of the FPST Water Bank in accordance with this Section.
- (b) All Project waters appurtenant to lands within the Reservation that are not subject to a complete Tribal Water Assignment Form shall be included in the FPST Project Water Bank on an annual basis.
- (c) In a water-short year, the Director shall allocate Project waters in the FPST Project Water Bank to lands subject to a complete Tribal Water Assignment Form so as to

maximize the availability of water to fulfill the water orders for those lands. The Director shall promptly notify the District of any allocations or re-allocations of Project water to or from the FPST Project Water Bank.

- (d) Under no circumstances may an allocation of water from the FPST Water Bank result in the delivery of more than 3.5 acre feet of Project water per acre per year to a parcel for irrigation or more than the amount that can be beneficially used for another purpose.

15-40 NON-PROJECT SURFACE WATER [Reserved]

15-50 GROUNDWATER [Reserved]