



FALLON PAIUTE-SHOSHONE TRIBE
WELLHEAD PROTECTION ORDINANCE

Approved by the Fallon Business Council on _____
Through Resolution No.: _____

RESOLUTION

DRAFT

FALLON PAIUTE-SHOSHONE TRIBE

WELLHEAD PROTECTION ORDINANCE

Section 1 Purpose

The purpose of the Wellhead Protection Ordinance is to protect public health and welfare of the Fallon Paiute-Shoshone Tribe by minimizing contamination of its drinking water source. The Fallon Paiute-Shoshone Tribe depends exclusively on groundwater for a safe drinking water supply source. Certain land use practices and activities can seriously threaten or degrade groundwater quality and quantity.

Section 2 Authority

Pursuant to the provisions of Article VI – Powers and Duties of the Business Council, Section 1. (h), of the Constitution and Bylaws of the Fallon Paiute-Shoshone Tribe, “To promulgate and enforce ordinances governing the conduct of all people within the territorial boundaries of the Tribe, as provided by Federal Law; and to provide for the maintenance of law and order and establishment of a tribal court”.

Section 3 Jurisdiction

This Ordinance shall apply to all areas within the exterior boundaries of Fallon Paiute-Shoshone Tribal Colony.

Section 4 Definitions

(A) “Aquifer” is a saturated, permeable, geologic formation of soil or rock that contains and will yield groundwater.

(B) “Best Management Practices” (BMPs) refers to measures, either managerial or structural, that are determined to be the most effective, practical means of preventing or reducing pollution.

(C) “Community Water Supply Well” is a public water supply well that serves 15 or more service connections used by year-round residents or regularly serves at least 25 year-round residents.

(D) “Groundwater” is the water that exists beneath the land surface, but more commonly is the water in an aquifer.

(E) “Person” refers to any and all persons and parties, including individuals, other organizations or governmental entities.

(F) “Public Water Supply Well” provides drinking water for human consumption to the community.

(G) “Recharge Area” means the areas or features that supply groundwater to a well through the surface infiltration of water.

(H) “Safe Drinking Water Act” (SDWA) refers to the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f *et seq.*, and the regulations adopted under the SDWA.

(I) “Time of Travel” (TOT) is the distance that groundwater will travel in a specified time. In this Ordinance, it refers to the time that it takes groundwater and potential contaminants to reach a pumping well(s) from an area within the aquifer that is up-gradient from the well(s).

(O) “Well” means any drill hole or other excavation or opening that is deeper than it is wide and extends more than 10 feet below the ground surface for the purpose of obtaining groundwater.

(P) “Wellhead Protection Area” (WHPA) is the surface and subsurface area surrounding a well, supplying a public water system, through which contaminants are reasonably likely to move toward and reach that well within a given time frame.

Section 5 Protection of Groundwater Quality and Quantity

- (A) The quality of groundwater shall be maintained at such a level that it is available for use as drinking water, as well as for other reasonable uses.
- (B) Groundwater may not be used in such quantities that the use is detrimental to others.

Section 6 Groundwater Protection Best Management Practices (BMPs)

The following BMPs shall be adopted, as applicable, to help protect the quality of the groundwater.

- (A) Handle and store chemical materials that could contaminate groundwater in a secure location.
- (B) Properly dispose of waste materials, unused or unwanted chemicals, and used batteries in a timely fashion.

Section 7 Wellhead Protection -- General

- (A) Wellhead protection provides communities with a way to safeguard water supplies by controlling land use around wells so as to prevent contaminants from entering groundwater.
- (B) Wellhead protection has a goal of identifying and mitigating potential sources of groundwater contamination. It protects groundwater from three main sources of contaminants: the direct introduction of contaminants into the well from improper well casing, road runoff, spills and accidents; microbial contamination such as bacteria and viruses; and chemical contaminants.
- (C) Lands around a well, which receive protection from possible sources of contamination, are called Wellhead Protection Areas (WHPA). WHPA can be all or a portion of land that supplies water to a well and that contaminants are reasonably likely to move through to reach a well over a period of time.
 - (1) WHPA are determined using geologic and hydrologic criteria, such as the physical characteristics of the aquifer and the effect that pumping has on groundwater movement.
 - (2) The delineation of WHPA allow resources to be focused on protecting the locations where groundwater is most likely to be polluted.
- (D) The two (2) tribal primary community water supply wells are situated within the Colony housing area, and are located off of Breckenridge and Rio Vista Drive.
 - (1) The WHPA is described as those colony lands that lie within the twenty-five (25), ten (10), five (5) year and two (2) time of travel (TOT) areas, as reflected in Attachment A, FPST Wellhead Protection Area Map.

Section 7.1 Permitted Uses in Wellhead Protection Area

- (A) The following uses of land are permitted within the WHPA:
 - (1) Parks and playgrounds, provided there are no on-site waste disposal facilities.
 - (2) Housing, tribal facilities and churches that are connected to the community sewer system.
 - (3) Roads that service homes on the community sewer system.
 - (5) Non-motorized trails, such as biking, nature and fitness trails.

Section 7.2 Standards and Prohibited Uses in the Wellhead Protection Area

- (A) The following uses of land are prohibited in the Wellhead Protection Area. These uses are prohibited based on the high probability that activities routinely associated with these uses will cause groundwater contamination.
 - (1) Animal confinement facilities and land spreading of animal waste.
 - (2) Junk yards and auto salvage yards.
 - (3) Maintenance and repair establishments, including vehicle maintenance and repair, body repair, and tire and battery services.

Section 8 Community Water Supply Well Best Management Practices

The following BMPs apply to the community drinking water supply wells in the Colony to prevent or minimize groundwater contamination. These BMPs shall be followed, unless they are superseded by more stringent requirements under this Ordinance or other tribal laws.

- (A) Maintain vegetation 20 feet around well casing unless surface is impermeable and drains away from well.
- (B) Prevent contaminants of any kind from entering the well directly and the soil in the vicinity of the well.
- (C) Maintain the casing and well cap in good condition and ensure that the well has adequate backflow protection.
- (D) Locate any livestock corrals, feeding areas and waste storage downslope and far enough from wells to prevent leachate from reaching groundwater.
- (E) Maintain a distance of at least 150 feet from wells when mixing substances that could contaminate groundwater.
- (G) Reduce any fertilizer use and limit the use of pesticides.

Section 9 Reports of Suspected Violations

Any person who engages in any operation or activity that causes groundwater pollution in violation of this Ordinance and, upon a judicial finding thereof, shall be levied a civil penalty of not more than Five-hundred dollars (\$500.00).

Section 10 Enforcement Proceedings

- (A) If, upon investigation, the Fallon Business Council determines that a violation of this Ordinance has occurred, is occurring or is likely to occur, Tribal Law Enforcement shall provide written Notice of the violation to the alleged violator and file a copy of this Notice with the Tribal Prosecutor.
 - (1) The Notice shall contain a description of the alleged violation as well as any corrective action that may be required.
 - (2) The Notice shall be provided to the person that Tribal Law Enforcement determines is responsible for the violation. If unable to determine the person responsible, the Notice shall be provided to the person responsible for the land, who for purposes of this Ordinance, is the assignee of the land.
- (B) After receiving a copy of such a Notice from Tribal Law Enforcement, the Tribal Prosecutor shall discuss the violation and its potential consequences with the Environmental Protection Department. If it is determined that judicial action is needed, the Tribal Prosecutor may:
 - (1) have a citation issued by the Tribal Law Enforcement personnel to the alleged violator under tribal law; or
 - (2) file a complaint seeking a remedy under this Ordinance in Tribal Court.
- (C) Hearings on alleged violations shall be conducted in the Fallon Paiute-Shoshone Tribal Court in accordance with normal court procedures.

Section 11 Remedies

If the Tribal Court finds that there has been a violation of this Ordinance, the Court may issue the following remedies.

- (A) Cease and Desist Order. A Cease and Desist Order sets forth the acts or practices that violate the Ordinance and the time by which the violation must be terminated.
- (B) Clean-up Order. A Clean-Up Order requires a person to clean up any material that could contaminate groundwater and take actions to remediate groundwater that has been contaminated.
- (C) Restraining Order or Injunction. A Temporary Restraining Order, Preliminary Injunction or

Permanent Injunction may be issued to prevent any further or continued violation during court proceedings or in the event any person fails to comply with a Cease and Desist Order or a Clean-Up Order, which is not subject to a stay pending review.

(D) Civil Penalties.

(1) Any person who violates the terms of this Ordinance shall be subject to a forfeiture, for each day the violation occurs, as follows:

(a) If the violation is committed with negligence or recklessly, the maximum forfeiture shall be Two-hundred fifty dollars (\$250.00) per day.

(b) If the violation is committed knowingly or intentionally, the maximum forfeiture shall be Five-hundred dollars (\$500.00) per day.

(c) If two separate offenses under this Ordinance, occur in two separate episodes during a period of two years, the maximum forfeiture for the second offense shall be double the amounts specified above.

(2) Any person who violates a Final Cease and Desist Order or Clean-Up Order shall be subject to a civil penalty of not more than Five hundred dollars (\$500.00) per day for each day during which such violation occurs.

(3) These penalties shall in no way limit the Court's ability to use other judicial remedies, such as exercising its contempt power, in response to a violation of this Ordinance.

(E) Alternative Dispositions. The Court shall have the discretion to tailor a disposition that will be the most effective in addressing the defendant's violation, the needs of the Community and any harm resulting from the violation. Such alternative remedies may be issued in addition to those remedies described in this Ordinance.