

**WHITE EARTH RESERVATION BUSINESS COMMITTEE
WHITE EARTH BAND OF CHIPPEWA INDIANS**

Resolution No. - 057-22-017

Whereas, the White Earth Reservation Business Committee is the duly elected governing body of the White Earth Reservation pursuant to Article VI, Section 1, of the revised constitution of the Minnesota Chippewa Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984), and

Whereas, the White Earth Reservation Business Committee is the duly authorized governing body of the White Earth Band, and

Whereas, the White Earth Reservation Business Committee adopted the White Earth Reservation, Environmental Code (Resolution number 057-11-001) for the protection, management, restoration, enforcement and enhancement of the Band's natural resources, including ground and surface waters, and

Whereas, with the establishment of the White Earth Reservation, the Band obtained federally protected property rights to a sufficient quantity and quality of water to fulfill the purposes of the Reservation now and into the future, *United States v. Winans*, 198 U.S. 371 (1905); *Winters v. United States*, 207 U.S. 564, 577 (1908), and

Whereas, the Band is entitled to sufficient quantity and quality of water in order to make the Reservation livable, enable tribal members to maintain customary ways of life, including hunting, fishing and gathering, and permit tribal members to change and adopt to new ways of life, *Arizona v. California*, 373 U.S. 546, 599 (1963); *Menominee Tribe v. United States*, 391 U.S. 404, 406 (1968); *Winters v. United States*, 207 U.S. 564, 577 (1908), and

Whereas, the White Earth Reservation Business Committee established the White Earth Natural Resources Department to protect, restore and regulate the natural resources of the Band, in order to ensure environmental and human health and spiritual, cultural and economic sustainability of the Band, and

Whereas, the White Earth Natural Resources Department working with relevant scientific and community experts has identified significant threats to the Band's health and welfare, spiritual subsistence, water rights and other treaty rights and treaty-protected natural resources from the individual and cumulative operation of high-capacity wells and high-capacity surface water pumps on the White Earth Reservation and in the five-mile buffer area immediately surrounding the White Earth Reservation, and

Whereas, the Band possesses "inherent powers of a limited sovereignty which has never been extinguished" and has plenary and exclusive power over its members and territory subject only to limitations imposed by federal law, *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978); *Worcester v. Georgia*, 31 U.S. 515, 555 (1832), and

Whereas, the Band “retain[s] inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” *Montana v. United States*, 450 U.S. 544, 565-66 (1981).

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated herein by reference, the White Earth Reservation Business Committee pursuant to the above referenced authority, scientific and cultural review and recommendation of the White Earth Natural Resources Department, ordains as follows:

Section 1- Title and Purpose:

1.1 Title. The title of this Ordinance is the **White Earth Reservation Groundwater and Surface Water Protection Ordinance**.

1.2 Purpose. The purpose of this Ordinance is to establish standards and a process for high-capacity well and high-capacity pump permitting, high-capacity well and high-capacity pump operations and high-capacity well and high-capacity pump regulation on the White Earth Reservation and in the appurtenant five-mile buffer area around the White Earth Reservation in the 1855 Treaty Territory.

Section 2- Authority:

2.1 The White Earth Reservation Business Committee relies on the authorities set forth in the above Recitals in enacting the Ordinance.

Section 3- Applicability and Scope:

3.1 This Ordinance shall apply to all high-capacity wells and high-capacity pumps within the exterior boundaries of the White Earth Reservation and the appurtenant five-mile buffer area around the White Earth Reservation in the 1855 Treaty Territory. The geographic area covered by this Ordinance is displayed in the map included in Appendix A of this Ordinance.

Section 4- Definitions:

4.1 **Appropriate** means withdrawal, removal, or transfer of water from its source regardless of how it is used.

4.2 **Pesticide** means any substance or mixture of substances intended to prevent, destroy, repel or mitigate any pest or any substance, or mixture of substances, intended for use as a plant regulator, defoliant or desiccant.

4.3 **Existing Source** means High-capacity wells or High-capacity pumps located on the White Earth Reservation or in the appurtenant five-mile buffer area surrounding the White Earth Reservation in the 1855 Treaty Territory, which were in existence and operating on or before the effective date of this Ordinance.

- 4.4 **Fertilizer** means a substance containing one or more recognized plant nutrients that is used for its plant nutrient content and designed for use or claimed to have value in promoting plant growth.
- 4.5 **High-capacity well** means any groundwater well capable of pumping more than 10,000 gallons per day or one million gallons per year.
- 4.6 **High-capacity pump** means any surface water pump capable of pumping more than 10,000 gallons per day or one million gallons per year.
- 4.7 **Irrigation** means the act of supplying water for agricultural and horticultural purposes to land, crops, or plants by means of pipes, hoses, sprinklers, drippers, ditches, furrows, or other devices that are connected directly to a source of ground or surface water.
- 4.8 **Landowner** means any person holding fee title, an easement or other interest in property, which enables the person to undertake groundwater or surface water pumping activities.
- 4.9 **New Source** means High-capacity wells or High-capacity pumps located on the White Earth Reservation or in the appurtenant five-mile buffer surrounding the White Earth Reservation in the 1855 Treaty Territory, which were not in existence on or before the effective date of this Ordinance.
- 4.10 **Operation** means the land on which a High-capacity well or High-capacity pump is located as well as the land on which water from a High-capacity well or High-capacity pump is applied.
- 4.11 **Operator** means Persons, other than a Landowner, applying for or operating under a Permit and having possession or control of a site on which groundwater or surface water pumping activities are proposed.
- 4.12 **Ordinance** means the White Earth Reservation Groundwater and Surface Water Protection Ordinance.
- 4.13 **Permit** means a permit to Appropriate ground or surface water issued under and in accordance with the standards of this Ordinance.
- 4.14 **Persons** means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not, including a person acting in fiduciary or representative capacity, and further including any governmental agency.
- 4.15 **Retained Expert** means professional consultants including but not limited to engineers, attorneys, planners, environmental specialists, and other consultants with skills relevant to reviewing, processing and acting upon Permit applications or to issues associated with the inspection, monitoring and enforcing of approvals arising under this Ordinance.
- 4.16 **Sustainable Yield** means the rate an aquifer can be pumped on a long-term basis without adverse consequences to aquifers, groundwater, surface water, aquatic resources, water-dependent resources or human health and welfare.
- 4.17 **White Earth Band or Band** means the government incorporated into the Minnesota Chippewa Tribe through the revised constitution and bylaws enacted pursuant to Section 16 of the Indian Reorganization Act of 1934.
- 4.18 **White Earth Natural Resources Department or WEDNR** means the expert agency within the White Earth Band with the delegated authority to protect, restore and regulate the natural resources of the Band, in order to ensure environmental and human health and spiritual, cultural and economic sustainability of the Band.

4.19 **White Earth Reservation** means the White Earth Reservation as established by an Act of March 19, 1867, 16 Stat. 719.

4.20 **White Earth Reservation Business Committee** means the duly elected Governing body of White Earth Reservation and Band, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984, as amended and pursuant to the revised Constitution and By-Laws of the MN Chippewa Tribe.

Section 5- New and Existing Source Permits Required:

5.1 **New Source Permit Requirement.** New Sources are not permitted on the White Earth Reservation or within the appurtenant five-mile buffer area depicted in Appendix A of this Ordinance, without a permit from the WEDNR.

5.2 **Existing Source Permit Requirement.** Existing Sources are not permitted on the White Earth Reservation or within the appurtenant five-mile buffer area depicted in Appendix A of this Ordinance, without a permit from the WEDNR.

a. **Extended Time for Submission of Existing Source Permits.** Unless due to concerns regarding public health and safety or significant harm to natural resources, another timeline is specified by the WEDNR, all Landowners and Operators of Existing Sources on the White Earth Reservation or within the appurtenant five-mile buffer area shall submit Permit applications to the WEDNR within one year after the effective date of this Ordinance.

b. **Time for Approval of Existing Source Permits.** WEDNR shall take final action approving or denying Permit applications for Existing Sources under this Ordinance within three years of the effective date of this Ordinance. WEDNR shall take final action approving or denying at least one-third of all Existing Source Permit applications each year after the effective date of this ordinance. Any Existing Source may continue operation in accordance with its Permit application until WEDNR requests additional information required to determine compliance with this Ordinance or takes final action approving or denying the Permit application.

5.3 **Permit Term.** The term of a Permit issued under this Ordinance is five years.

5.4 **Permit Amendment.** If the WEDNR has issued a Permit, the Operator may request an amendment to that Permit during the Permit term, using the same process as the original Permit application.

5.5 **Permit Transfer.** A Permit may not be assigned or transferred to any other Person without the express written consent of the WEDNR.

5.6 **Permit Revocation.** A Permit may be revoked under the procedures in Section 9.

Section 6- Permit Application Process:

6.1 Application. An applicant for a Permit shall submit one paper copy and one electronic copy of a Permit application on the form provided by the WEDNR that contains all the documentation required under Section 7. Paper copies of applications shall be mailed to WEDNR at the department address provided at https://whiteearth.com/divisions/natural_resources/contact and electronic copies of applications shall be emailed to waterpermit@whiteearth-nsn.gov.

6.2 Reimbursement of Fees and Costs.

a. Reimbursable Costs. The WEDNR may expend time reviewing, processing and acting upon a Permit. The WEDNR may also retain the services of a Retained Expert for the purpose of reviewing, processing, and acting upon a Permit. Permit applicants shall reimburse the WEDNR for staff time and Retained Expert time spent reviewing, processing and acting upon Permits.

b. Application and Initial Review Fee. At the time a Permit application is filed with the WEDNR, the applicant shall provide an application and initial review fee of \$5,000 to allow for initial review. Costs expended by WEDNR and Retained Experts in conducting initial review will be debited against the application and initial review fee and any unused amounts shall be returned within 30 days of completion of initial review.

c. Cost Reimbursement Agreement for Completion of Permit Review. Within 60 days of receipt of a Permit application and Initial Review fee, the WEDNR or a Retained Expert shall review a Permit application to determine if additional information is necessary to complete a Permit application review or determine a proposed Operation's conformance with the Ordinance. The Permit applicant is responsible for any additional costs necessary to complete Permit review. WEDNR shall not continue to process a Permit application until the Permit applicant enters a cost reimbursement agreement with the Band and agrees to reimburse necessary costs for completion of Permit application review.

6.3 Permit Review Process

a. Additional Information. The WEDNR or a Retained Expert may request a Permit applicant to submit additional information if the WEDNR or Retained Expert determines that the application is incomplete or fails to provide sufficient information to enable the WEDNR or Retained Expert to determine whether a proposed High-capacity well or High-capacity pump meets the standards of this Ordinance.

b. Permit Review. If no additional information is deemed necessary, the WEDNR or a Retained Expert shall proceed to review a Permit application to determine whether the proposed High-capacity well or High-capacity pump meets the standards of this Ordinance.

c. Decision on Permit. After receipt of a complete Permit application, including all necessary additional information and appropriate fees, the WEDNR shall make findings of fact and either deny or grant a Permit with or without conditions within 90 days. Conditions may include pumping rate limitations, pumping timing or duration restrictions, limits on amount of water withdrawn during a given period, apportionment among multiple Permit holders in a geographic area and monitoring requirements. WEDNR shall provide written notice of the same to the Permit applicant.

Section 7- Permit Application Contents

- 7.1 All Permit applicants shall submit the information required in this Section.
- 7.2 Ownership Information.
- a. Contact information. The name, address, phone number, and e-mail address of the Operator and Landowner, provided the Landowner is a Person other than the Operator.
- b. Operation information. Description of the purposes for which water Appropriation will be used and any other permits or licenses that the Permit applicant will apply for or has already acquired.
- 7.3 Site Information and Surrounding Area Information.
- a. Parcel identification numbers. Parcel identification numbers for all Operation parcels.
- b. Aerial photo. An aerial photo of the proposed Operation at a scale of not less than 1-inch equals 660 feet. Additional photos or photos at a different scale may be required as part of the Permit application if such additional photos are necessary to discern and assess potential environmental impacts associated with the proposed Appropriation.
- c. Five-mile well map. A map, at a scale of not less than 1-inch equals 660 feet, on which all residences as well as all residential, agricultural and municipal wells within five miles of the boundaries of the proposed High-capacity well or High-capacity pump are marked and labeled with locational coordinates. All surrounding, existing High-capacity Wells and High-Capacity Pumps must be clearly noted on the map. Appropriation amounts for all identified High-capacity wells should accompany the map or be included therein.
- d. Five-mile Surface Water Map. A map showing the location and name of all surface waters, including lakes, private or public ponds, rivers, streams (including intermittent streams and headwaters), drainage ditches, wetlands, and other relevant water features within five miles of the proposed High-capacity well or High-capacity pump.

7.4 Operation Plan.

a. Commencement and Cessation. Dates of proposed commencement and cessation of the Operation.

b. Annual Pumping Plan. Dates of proposed Appropriation and Appropriation volumes on an annual basis.

c. Fertilizer and Pesticide Application. Plans to utilize Appropriation for Irrigation purposes. Specify whether Irrigation will include application of Fertilizer or Pesticides.

d. Monitoring. Equipment to be used to monitor and report annual pumping volumes to WEDNR and maintenance plan for the same.

7.5 Information Demonstrating Compliance with Minimum Standards. All information necessary to determine whether a proposed High-capacity well or High-capacity pump and accompanying Operation will comply with the minimum standards in Section 8.

7.6. Special Exceptions. A Permit applicant may request a special exception from the Permit application requirements of this Section if it can demonstrate that the information required can be provided by alternative means or is not necessary for an evaluation of the particular Operation, and that the public health, safety and welfare of White Earth Tribal Members and natural resources on the White Earth Reservation will not be adversely affected by the proposed Appropriation.

Section 8- Minimum Standards of Operation

8.1 Required Demonstration. All Permit applicants must demonstrate that the following minimum standards of operation will be met.

8.2 General Standard. Compliance with all provisions of this Ordinance and other applicable Band Regulations.

8.3 Standards Regarding Groundwater.

a. Impacts to Other Wells. Operations, when evaluated individually or cumulatively, shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current groundwater users within 5 miles. A significant reduction includes a drop in the water table that results in a substantial adverse impact on a private or municipal well including but not limited to the inability of a well to provide water on a continuous basis.

b. Sustainable Yield. Operations, when evaluated individually or cumulatively, shall not exceed the Sustainable Yield of an aquifer.

8.4 Standards Regarding Surface Water. Operations, when evaluated individually or cumulatively, shall not cause adverse effects on surface waters within 5 miles. Adverse effects include but are not limited to, reductions in base flows or water levels of surface waterbodies that negatively impact aquatic life or alter water chemistry, water quality or water temperature in a manner that negatively impacts ecosystem health and sustainability.

8.5 Standards Regarding Monitoring. Operators shall conduct all monitoring and testing necessary to comply with this Ordinance.

Section 9- Reporting, Annual Report and Permit Renewal

9.1 On-going Reporting Requirements.

a. Notice of Violations, Citations or Enforcement Actions. The Operator shall provide notice to the WEDNR of any notices of violations, citations, or other enforcement actions taken by any other governmental authority against the Operator, Landowner or Operation within ten days after receiving such notice.

b. Monitoring Data. All monitoring data, sampling results and any other test results required by WEDNR to ensure compliance with this Ordinance shall be undertaken at the Operator's expense and provided to the WEDNR. All monitoring data, sampling results and any other test results shall be provided to the WEDNR within fifteen days of receipt and included in the Operation's annual report as provided below.

9.2 Annual Report. No later than November 30th of each calendar year, the Operator shall submit an annual report to the WEDNR for all active Operations for which the Operator has a Permit. The reporting period shall be from the date of the issuance of the first Permit to November 30th, and thereafter from January 1st to November 30th.

a. Contents of the Annual Report. The annual report shall include the following information: (1) An identification of the Operator and Operation; (2) A description of activities including the total amount of water appropriated during the reporting period; (3) A written report demonstrating how the Operator has been in compliance with all terms and conditions of its Permit and this Ordinance, including a discussion of all groundwater, surface water, and other monitoring results required by WEDNR; (4) Copies of any required monitoring data specified in the Permit; and (5) A summary of any non-compliance and remedial action or a plan for addressing the same.

9.3 Permit Renewal.

a. Written Request. The Operator shall make written request to the WEDNR for a renewal of a Permit no later than June 1 of the year in which the Permit will expire.

b. Fee. A written request for Permit renewal shall be accompanied by the payment of a non-refundable \$1000 renewal fee in addition to any amount in accordance with the reimbursement provisions set forth in Section 6.

c. Contents of Permit Renewal Application. The written request for Permit renewal shall incorporate by reference the annual report from the previous calendar year. The WEDNR or a Retained Expert may request a Permit renewal applicant to submit additional information if the WEDNR or Retained Expert determines that the Permit renewal application is incomplete or fails to provide sufficient information to enable the WEDNR or Retained Expert to determine whether a proposed High-capacity well or High-capacity pump meets the standards of this Ordinance.

d. Permit Renewal Application Review. The WEDNR shall grant the request for Permit renewal if it finds:

- i. The Permit renewal application meets the standards of this Ordinance;
- ii. There have not been multiple or recurring violations of the Ordinance or Permit;
- iii. There have been no material violations of the Ordinance or Permit which have not been appropriately remedied or for which a remedial plan is not in place;
- iv. All additional information necessary to ensure compliance with this Ordinance has been submitted and reviewed; and
- iv. All applicable fees as provided for herein have been paid.

Section 10- Inspection, Enforcement, Procedures and Penalties

10.1 **Inspection.** After reasonable notice, the WEDNR or a Retained Expert may make inspections of an Operation to determine Permit compliance and to safeguard the health and safety of the public. If, as a result of any inspections or investigations, the WEDNR or a Retained Expert determines that a Retained Expert should undertake further inspection or investigation, the WEDNR may hire a Retained Expert, which expense shall be paid by the Operator. If the Operator fails to provide access or reimbursement, the WEDNR may take enforcement action under Section 10.3.

10.2 **Violations.** The following are violations under this Ordinance:

a. Operating Without a Permit. Engaging in High-capacity well or High-capacity pump operations within the exterior boundaries of the White Earth Reservation or the appurtenant five-mile buffer area without a Permit granted by the WEDNR.

b. Non-compliance. Failure to comply with the applicable minimum standards or other terms of this Ordinance.

c. Providing False Information. Making an incorrect or false statement in the information and documentation submitted during the Permitting process, annual reporting or during an Operation inspection by the WEDNR or a Retained Expert.

d. Failure to Submit Required Information. Failure to timely provide a notice, annual report or monitoring data required to be submitted to WEDNR.

e. Failure to Remedy Violations. Failure to take appropriate and timely action in response to a notice of violation, citation, or other order issued by the WEDNR.

10.3. **Enforcement Actions.** The WEDNR may take any appropriate enforcement action against any Landowner or Operator in violation of this Ordinance. The remedies provided herein shall not be exclusive of other remedies. Possible enforcement actions for violations of this Ordinance include: Issuance of a notice of violation and remedial action order; Suspension or revocation of a Permit; Issuance of a monetary penalty of not more than \$5,000 per violation, with each day a violation exists constituting a separate violation; Referral of a violation to legal counsel for consideration and commencement of legal action, with any Landowner or Operator adjudicated for violation of this Ordinance being held responsible for court costs and reasonable attorney's fees.

a. Non-Waiver. A failure by the WEDNR to take action on any past violation(s) shall not constitute a waiver of the WEDNR's right to take action on any present or future violation(s).

10.4 Judicial Review.

a. Right to Judicial Review. Any Person affected by a Permit decision, notice, order or other final action taken pursuant to this Ordinance may request and shall be granted an evidentiary hearing on the matter before the White Earth Tribal Court. Such person shall file with the Court, a written petition requesting the hearing including name, address, telephone number and a brief statement of the grounds for the hearing. Such petition shall be filed within thirty days of the date a Permit decision, notice, order or other final action is taken. Parties to the hearing include the petitioner and the WEDNR. Parties may present evidence, cross examine witnesses, and submit post-hearing briefs. A record of oral proceedings shall be made.

b. Decision. After the hearing, the White Earth Tribal Court shall sustain, modify, or reverse a Permit decision, notice, order or other final action taken pursuant to this Ordinance based on the evidence provided at the hearing. The decision shall include findings of fact and conclusions of law and shall be issued in writing.


Section 11- Effective Date

11.1 This Ordinance shall take effect on the date of passage by the White Earth Reservation Business Committee.

Section 12- Severability

12.1 If any part or provision of this Code is held invalid, the remainder of this Code shall remain in effect.

We do hereby certify that the foregoing resolution was adopted by a vote of 3 for, 0 against, 0 silent, a quorum being present at a regular meeting of the White Earth Reservation Business Committee held on May 5, 2023 in Mahnomen, Minnesota.



Michael Fairbanks, Chairman



Michael LaRoque, Secretary/Treasurer

