

TITLE 30 Water Act

TITLE 30 Tribal Water Act

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"The water spirits are in all water everywhere. Our Creation story states that when Gitchi Manitou breathed life into the water, he placed the water spirits there to help protect it. We are being repeatedly warned about the damage we are inflicting on the water. By banning fracking, the Turtle Mountain Reservation is doing their part to be good stewards of the water." - Bob Shimek, Chippewa leader living on the White Earth Reservation

CHAPTER 30.01

This act constitutes the "Turtle Mountain Chippewa Water Act."

30.0101 Chippewa Water Knowledge

Nibi (water) is sacred and is vital to all life within the environment, including human life and especially to the lives of the Turtle Mountain Band of Chippewa Indians. Gichi Manitou, in our Creation Story, breathed life into Nibi, our water, and gave us the water spirits to guide our actions and to protect the water. Our traditional teachers reveal that the Chippewa women were given the responsibility for protecting the water. To honor that role, the women will lead water ceremonies and to promote tribal water standards outlined in the TMBCI Water Act. These guiding principals have led to the following declarations.

30.0102 Jurisdiction

All waters reserved, including but not limited to, the Treaty at Prairie du Chien between the Chippewa and the Sioux, August 19, 1825, and the Treaty at the Old Crossing of the Red Lake River, between the United States and the Red Lake and Pembina Band of Chippewa, October 2, 1863 and Executive Orders of December 21, 1882, March 29, 1884 and June 3, 1884, Government Document No. 444, Senate Report 693, 56th Cong. 1st Session., are held by the United States in trust, and ownership is held by the Turtle Mountain Band of Chippewa for the inalienable use and benefit of the Tribe and its members.

The Turtle Mountain Band of Chippewa invokes the Winters Doctrine as part of their claim to jurisdiction over tribal waters. The judicially crafted Winters Doctrine (1908) provides water for the needs of Native Americans who reside on federally reserved lands. The decision is one of the Supreme Court's foremost Indian law decisions and a landmark for water law. The Court held that when an Indian reservation is established, water rights accompany creation of the Indian homeland; water rights are reserved for the tribe.

On November 22, 2011, the Turtle Mountain Band of Chippewa Tribal Council unanimously voted to ban Hydraulic Fracturing and was signed into law on the 29th day of November, 2011. (TMBC627-11-11)

The McCumber Agreement of 1892, between the TMBCI and the Federal Government our ancestors, recognized the importance of our natural resources for our future generations.

Article III: The land, woods, and waters above reserved for the Turtle Mountain Band of Chippewa Indians, subject to the stipulations contained in Article II of this treaty and agreement shall be held as common property of the Turtle Mountain Band of Chippewa Indians...by enacting this water act, tribal leaders are upholding the intent of our ancestors.

30.0103 Findings

April 2016

The Tribe finds and declares:

The quality of all waters of the Tribe will be protected for the use and enjoyment by the people of the Tribe.

The management and protection of water is a central attribute of tribal sovereignty and is vital to the well-being of its inhabitants.

Water has cultural, spiritual, social, environmental, health, and economic values that require protection and we must guide the appropriate use and management of all resources affecting the watershed and drainage basins of the Reservation and its allotted lands.

All water is interconnected by the hydrologic cycle of tribal lands and each watershed is consequently a unitary resource, whether occurring as surface water or ground water, spring water or mineral water, soil moisture, precipitation, atmospheric, percolating or non-percolating, recharge, drainage waters, overflow, and waters associated with mineral and/or petroleum resources.

The Turtle Mountain Band of Chippewa are interconnected to the environment and to the integrity of the ecosystem, including but not limited to the fish, wildlife, plants, trees and the environment.

In 1987, the EPA amended the 1972 Clean Water Act to treat tribal governments the same way it treats states. Among other things, this meant that tribal governments were given the power to create their own water quality standards with federal approval. Like the regulations imposed on states, these tribal standards must be equal to or more stringent than federal standards. It is the Tribes intent to exercise its sovereign authority.

It is the right of the Tribe to maintain the quality and composition of the water to sustain life systems and their protection with regards to contamination, for renewal of the life of Mother Earth and all its components.

30.0104 Declaration of Policies

It is the policy of the Tribe to:

1. Preserve and protect in perpetuity the quantity and quality of tribal water resources and to exercise the self-determination of the Tribe through the use, administration, protection and management of tribal water resources.
2. Develop a reservation-wide program for the control of the quality of all the waters of the Tribe; that the Tribe must be prepared to exercise its full power and jurisdiction to protect the quality of waters of the Tribe from degradation originating inside or outside the boundaries of the Tribe and that the reservation-wide program will be most effectively managed locally within the framework of reservation-wide coordination and policy.
3. Ensure that all tribal members and our future generations have clean water.
4. Protect tribal water from any actions injurious to the quantity, quality or integrity of the water.
5. Ensure the long-term planning and investment of the Tribe enables the delivery and use of water to individual water users.
6. Manage surface water resources according to watershed and sub-watershed best management practices, executed by the Tribal Water Resource Commission, with regard to interactions with alluvial and non-alluvial ground water systems.
7. Manage ground water resources according to aquifer system safe yield principles and consider base flow conservation as the standard against to measure groundwater sustainability.

8. In general, the sustainable yield of an aquifer must be considerably less than recharge if adequate amounts of water are to be available to sustain both the quantity and quality of streams, springs, wetlands, and ground-water-dependent ecosystems. To ensure sustainability, it is imperative that water limits be established based on hydrologic principles of mass balance.
9. Control activities and initiation of processes in watersheds (e.g. soil erosion) or ground water systems (e.g. inter-aquifer leakage) tending to degrade the water resource.
10. Encourage a holistic approach to conservation, water reuse, storage, recharge, exchanges, transfers, and wastewater treatment strategies.
11. Protect traditional, religious and cultural uses of water resources and other resources dependent upon water.
12. Keep water local and encourage off-reservation municipalities to address issues from a holistic watershed perspective.

30.0105 Definitions

For the purposes of this Act, all terms otherwise not defined below will be given their ordinary meaning, unless the term is specifically defined within the Act.

1. **"ALLUVIAL GROUND WATER"** will mean water located below the land surface within the Shell Valley Aquifer hydro stratigraphic unit.
2. **"BMP"** will mean Best Management Practices.
3. **"CAPTURE ZONE"** The zone around a water well contributing water to the well; the area on the ground surface from where a well captures water.
4. **"COMMISSION"** will refer to the Tribal Water Resource Commission, or also referred to as TWRC, of the Turtle Mountain Band of Chippewa, organized under this Act for the purpose of water resource management, watershed rehabilitation or enhancement, water development or water quality protection.
5. **"DOMESTIC POTABLE WATER SUPPLIES"** will mean the water used in residences and businesses for consumption by humans.
6. **"EPA"** will mean the United States Environmental Protection Agency.
7. **"INDIAN COUNTRY"** will mean all territory within the boundaries of the Turtle Mountain Band of Chippewa Reservation including, but not limited to, land owned by non-Indians in fee simple and Reservation land opened to settlement by non-Indians.
8. **"MOTHER EARTH"** is the metaphorical expression for the Earth and its biosphere and is the giver and sustainer of life and is a collective subject of public interest.
9. **"NON-ALLUVIAL GROUND WATER"** will mean all other ground water beneath the land surface that is not alluvial ground water.
10. **"NON-POINT SOURCE POLLUTION"** will mean a source of pollution to air or water that is not an obvious conveyance; a diffuse source that flows across natural or manmade surfaces, such as run-off from agricultural, construction, mining, cultural activities, or from urban areas.
11. **"NRCS"** will mean the federal Natural Resources Conservation Service.
12. **"PERSON"** will mean an individually enrolled member of the Turtle Mountain Band of Chippewa. Any organization for profit as a sole proprietorship, receiver, partnership, joint venture, trust estate, firm, unincorporated association, corporation or government, including but not limited to any part, subdivision or agency of any of the foregoing will not be construed as a person.
13. **"POINT SOURCE POLLUTION"** is any apparent and distinct delivery from where pollutants are or may be discharged into a water body.
14. **"TRIBAL LANDS"** will mean any and all lands within the Turtle Mountain Band of Chippewa Jurisdiction and its allotments are defined to include:
 - a. Lands within the exterior bounds of the Reservation as defined in the Executive Orders of December 21, 1882, March 29, 1884, and June 3, 1884.

- b. All lands that may hereafter be added to or made a part of the Reservation.
 - c. All land that is held in trust as allotments for the Tribe or individual tribal members.
15. **"TRIBAL WATER"** will mean any and all waters arising on, underlying, flowing through, located upon or bordering, otherwise occurring and contained within the Reservation, tributary or non-tributary. All waters reserved at any time to the Turtle Mountain Band of Chippewa. All water necessary to make the land habitable and productive, all water sources within or bordering the reservation and its allotments; including any body of water that drains into waters of the Tribe, up to and including but not limited to; small intermittent or ephemeral waters, those that are man-made or man-altered, and those broken by man-made or natural obstacles.
 16. **"TRIBAL WATER ADMINISTRATION (TWA)"** will refer to the Water Management Director of the Turtle Mountain Band of Chippewa, as described in Chapter 30.2 of this Act.
 17. **"TRIBAL WATER RESOURCE COMMISSION (TWRC)"** of the Natural Resource Department will be the primary agency responsible for overseeing water resources of the Tribe and for implementing the provisions.
 18. **"TRIBAL WATER RIGHT(S)"** will mean those rights since "time immemorial".
 19. **"TRIBE"** will mean the Turtle Mountain Band of Chippewa Indians.
 20. **"YEAR"** will be defined as the twelve (12) month period beginning April 1st and ending March 31st.

"We must protect this water. We are told by the elders that someday it will be the only safe drinking water." - Frank Monette, TMBCI Tribal Member, statement to his children in the 1960's about the Holy Spring.

CHAPTER 30.02

Establishment of Water Management Organization; Tribal Water Resource Commission and Tribal Water Administrator

30.0201 Administration by Tribal Water Resource Commission (TWRC)

1. The Commission will be composed of 7 tribally enrolled members, appointed by the Tribal Council. The first Commission being composed of 3 members with term of 3 years; 2 members with a term of 2 years; and, 2 members with a term of 1 year. Following the first Commission, each member will serve a 3 year term.
2. The Commission will have seven (7) members. It is a requirement of this provision that four of the presiding Commissioners be representatives of one (1) an elder, one (1) member from the Public Health sector, one (1) member from Natural Resource Department, one (1) member from the Public Water Department. The other three (3) Commissioners will be chosen at large.
3. Each year, on May 1st, the appointment of staggered Commission members will expire. At that time, the Tribal Water Administrator (TWA) will announce vacancies for the Commission, along with the application process.
4. The powers, duties and responsibilities of the Commission are to:
 - a. Oversee the implementation of this Act.
 - b. Adopt regulations implementing the provisions of this Act, subject to approval thereof by the Tribal Council and in accordance with the process established by tribal act for adoption of regulations.
 - c. Adopt at least once every five (5) years a comprehensive water management plan, under the same process established by tribal law for adoption of regulations.
 - d. Adopt such forms, internal rules and additional materials as the Commission may consider advisable.
 - e. Approve or disapprove permits under the provisions hereof.
 - f. Declare beneficial uses, critical management areas and water supply conditions, such determinations to be made on the basis of hydrologic analysis and other substantial evidence, and in consideration of existing demands for water.
 - g. Oversee the development of integrated water resource information, monitoring and other data for the purpose of informed water resource decision-making.

- h. Develop and regularly present recommendations to the Tribal Council for long-term sources of funds to support tribal water management.
- i. Organize and operate its office in order to discharge its duties and responsibilities effectively.
- j. Establish and maintain a technical staff qualified by training and experience to administer and enforce this Act.
- k. Provide an annual report, June 1st of each year, to the Tribal Council and the Reservation community on the status of tribal water resources and provide general education to tribal members and other Reservation residents in water resource protection and management. The primary sections of this act will provide the outline for this report.
- l. Contract, within budget and funding limitations, with consultants, public agencies, or any other public or private entity for the provision of services necessary or advisable to assist the Commission in its responsibilities.
- m. Delegate any of its duties and authorities to the Tribal Water Administrator except the duty or authority:
 - i. To hear disputes regarding the actions of the Tribal Water Administrator and/or water management staff in accordance with the procedures set forth in this Act;
 - ii. To approve or disapprove water use permits in accordance with the principals and procedures set forth in this Act; and
 - iii. To adopt regulations and water management plans.
- n. Commission members will be compensated for services and will be reimbursed for expenses at a rate commensurate with the approved rate established by Tribal Government for Commission compensation. Commission members have the right to refuse compensation and may use pro-bono status for tax purposes.
- o. Members of the Commission will not hold any other Tribal elective or appointive office, other than their regular Tribal Council seats, during their tenure on the Commission. A Commission member who is materially, financially, or otherwise directly affected in a particular substantive action of the Commission will be disqualified from participating in a decision or action when permitting occurs.

30.0202 Establishment of office of Tribal Water Administrator

There is hereby created the office and position of Tribal Water Administrator (TWA). The TWA is the executive arm of the Commission for water management, is responsible directly to the Commission. The TWA will correlate with the Director of the Natural Resources Department and the Director of the Environmental Protection Program, and has the authority to administer the water acts of the Tribe according to this Act, its regulations, and the general instructions of the Commission. The TWA will collaborate with the Director of the Natural Resource Department, the Director of Environmental Protection Program and all other agencies/departments including but not limited to the Turtle Mountain Housing Authority, Indian Health Service, Forestry, Public Utilities, Transportation, and/or Law Enforcement, et al. When water is concerned, all tribal agencies will adhere to this act.

- 1. The TWA will be qualified by training or experience in the fields of hydrology, water rights engineering or administration, irrigation, water development, watershed management, water supply, or water quality management and culture.
- 2. Regulation of water being the lifeblood of the community and critical to the conservation and enhancement of its resources, the TWA will guard all the interests involved in carrying out the duties and authorities of the office.
- 3. The TWA will have the following duties and authorities:
 - a. Administrative and Enforcement Functions to guarantee that the Culture and Traditional teachings of the Tribe are honored in the Act.
 - b. To administer reservation water rights, and ensure maximum compliance with the Act and with the conditions of all permits, determinations, orders, regulations, plans, policies, guidelines, and other actions taken by the Commission .

- c. To enter upon lands within Tribal Jurisdiction to inspect methods of diversion, withdrawal, and other activities affecting water quality and water quantity, to install measuring devices for the purpose of enforcing and administering this Act, and to monitor water use and water quality, and to develop water quality standards for adoption by the Tribal Council.
 - d. To monitor all Tribal Laws pertaining to water to assure compliance with regulations.
 - e. In an emergency, to remove, render inoperative, shut down, close, seal, and cap, modify, or otherwise control methods of diversion and withdrawal, obstructions to the flow of water, and activities adversely affecting water quality and quantity, subject to expedited appeal by the affected person, as provided in this Act.
 - f. To initiate, by citation and other means, enforcement proceedings before the Commission. In Tribal Court, or other court of competent jurisdiction for violations of this Act, including injunctive relief.
 - g. To hire, supervise, and discharge office and technical staff.
 - h. To monitor and report all uses of Tribal water and to provide an annual report to the Commission on the status and use of tribal resources.
4. Advisory Functions:
 - a. To advise the Commission on all water resource related development planning issues, and provide the Commission with an annual report on water quality and quantity and the status of water use on the Reservation, and provide suggestions, alternatives, and recommendations for water management.
 - b. To recommend to the Commission changes to this Act and to its regulations.
 - c. To develop and submit an annual budget and office policies and procedures to the Commission for approval.
 - d. To recommend certain land areas and waters on the Reservation to the Commission as suitable for dedication to certain beneficial uses.
 - e. To recommend designation of surface and groundwater regions on the Reservation as "critical management areas" and to propose specialized provisions for management within those areas.
 5. Fact-Finding and Information Functions:
 - a. To research and determine water supply and quality characteristics and development possibilities.
 - b. To collect all data and to prepare all reports as required by this Act.
 - c. To collect, maintain and analyze, on a continuing basis, information regarding the integrated use of natural resources and other factors actually or potentially affecting water resources within the Reservation.
 6. To organize or seek resources to develop a computerized database of Reservation water resource information, organized in a form useful to tribal decision makers and Reservation residents, and provide periodic reports describing the overall structure, use and application of the database.
 7. To perform or coordinate ongoing research regarding the overall capacity of the Reservation's watercourses and aquifers, with a view in particular to discovering and reporting the levels above or below where specific water use impairs or affects overall water availability and use, and to determine the extent of potential effects on existing water uses, given hydrologic conditions, from proposed uses of Tribal water.
 8. To conduct public educational programs and develop educational materials regarding water rights and administration, irrigation issues as determined by the Commission and the Director of the Natural Resources Department.
 9. To prepare, at the Commission's request, hydrologic information including alternative scenarios given alternative uses, climatic trends and conditions for the use of the Commission in determining beneficial uses, critical management areas, and water supply conditions.
 10. To assist all applicants for permits in assembling and analyzing all hydrologic, public health, and environmental data required to be submitted with the application and otherwise to assist in the preparation of the application.
 11. To determine the extent of potential effects on existing users of a proposed use of Tribal water.

12. To determine watershed rotation schedules for water diversion to meet demands in water short years.
13. To establish appropriate water duties for Reservation lands and watersheds through hydrologic research and recommend technological changes or modifications to improve water use, water quality or efficiency.
14. To present tribal water information and findings at tribal meetings, workshops and educational functions.

"The Turtle Mountain Chippewa Tribal Council listened to the people and unanimously decided to ban hydraulic fracturing on November 22, 2011. This ban was the greatest gift the Council could have ever given to the next seven generations. Water has now been recognized as our greatest asset, not money."
 - Cedar Gillette

CHAPTER 30.03 Water Management

30.0301 Water Management Purpose.

1. The purpose is to set forth the primary cultural, physical, hydrologic and engineering principles guiding the management of surface and ground water resources of the watershed. Such procedures and ceremonies are required to effectively manage, fully utilize and protect the water rights of the Turtle Mountain Band of Chippewa, and to maintain compliance with applicable laws.
2. Management and administration of existing and proposed uses of water will be through a permit system, administered by the TWRC and the TWA's office. The permit system for water use is set forth in Section 30.4.
3. Adopt BMP's, all Federal, State, Tribal, & Private agencies will comply.
4. "Also to recognize topographical gravel, especially graveled surfaces, as a cleaning process for the water as it runs out of the hills and recharges the Shell Valley Aquifer"

30.0302 Comprehensive Water Management Plan.

1. The TWRC will adopt, at least once every five (5) years, a comprehensive water management plan that will guide water resource decisions, permitting and management during the specified period. The Tribal Water Resource Commission, in conjunction with the Tribal Water Administrator, will develop and adopt guidelines and regulations for water resource use based upon Traditional Tribal teachings and an organized program of water management research.
2. The Comprehensive Management Plan (CMP) will include, at a minimum, a basin by basin and sub-watershed wide description of the following:
 - a. Surface and ground water users and usage, diversion points (**see specific diversion points map, Appendix A**), and water quality (**see Appendix B studies**); **to be added**
 - b. A statement of the hydrologic condition of surface water resources (drought, surplus, normal; water quality, water balance) and alluvial ground water resources (overdraft conditions, steady-state, recharge water balance); **Appendix C to be added**
 - c. A list of prioritized uses, developed in conjunction with water users in each sub-watershed, that will serve to guide allocation decisions during unusual hydrologic conditions;
 - d. A statement of critical resource issues that affect overall resource uses within each sub-watershed and ground water system; **Appendix D to be added**
 - e. Other information that the Commission deems necessary to inform the public and promote the use of Tribal water for the benefit of the Tribe.
3. There is hereby established a permanent "Water Management Fund" that will be used by the TWRC and the TWA to conduct research, provide training, develop Tribal capabilities, develop monitoring systems, and develop projects that permit the development of CMP's and continued monitoring of Tribal water resources.

4. The TWA will analyze investigative research that evaluates the impact of the proposed water use upon critical factors identified in the CMP, natural resource use criteria, hydrologic conditions, and prioritized water uses. The Commission will adopt criteria and guidelines to facilitate the TWA's research and the evaluation of water use. Also to recognize topographical gravel, especially graveled surfaces, as a cleaning process for the water as it runs out of the hills and recharges the Shell Valley Aquifer.

"Someday our water will be like gold!" - Lorne Jay, tribal councilman, at the open public meeting when the Tribe voted to ban hydraulic fracturing on the Turtle Mountain Reservation.

30.0303 Water Supply Management.

Surface Water and Alluvial Ground Water Resources

Surface and alluvial ground water resources are interconnected and the use of surface or ground water will be guided by hydrologic conditions and Tribal law.

1. In evaluation of the use or transfer of surface water, the TWA will consider:
 - a. The impact of the surface diversion on other surface water user.
 - b. The impact of the surface diversion on ground water recharge and the overall water balance, including, return flow, in the immediate and relevant area.
 - c. The impact of the surface water use upon the capture zone of any existing well in the immediate and relevant area, the size of the capture zone being determined by regulation.
 - d. The impact on the surface water use and return flow upon surface or alluvial ground water quality.
 - e. Waste water pits are not permitted.
2. In evaluation of the use or transfer of alluvial ground water, the TWA will consider:
 - a. The impact of ground water pumping upon surface water resources, as identified using appropriate values for aquifer characteristics hydrologic tools such as the Glover method (Glover, 1975).
 - b. The impact of the proposed use on the overall allocation of water for each sub-watershed.
 - c. The impact of the proposed alluvial ground water use upon surface or ground water quality.

Declaration of Hydrologic Conditions

1. Stream gauges will be put in place to monitor ground water flow.
2. No later than March 1 of each year, the TWA will prepare a water supply forecast to the TWRC for the declaration of the existence of drought conditions in the coming year. As a result of the differences between watersheds, the TWA may recommend and the WRB designate one portion of the Reservation in one condition and another part of the Reservation in another condition.
3. The Declaration of Hydrologic Condition will be based on hydrologic evidence and in consideration of total demand, as follows:
 - a. **Normal Condition:** a condition when the mean annual flow for a watershed is achieved and current and proposed demand is satisfied on the stream.
 - b. **Drought Condition:** a condition when the mean annual flow of the watershed is not achieved and insufficient water exists to satisfy the demand on an entire stream or a specified reach of stream, including the needs of downstream users. For the purposes of establishing demand under this paragraph, rights under Tribal law will be determined by the established water duty for drought conditions; the Tribe retains jurisdiction over non-Indians when those matters affect the internal and social relations of the Tribe, its water resources and/or the Shell Valley Aquifer and its tributaries.

Notice of Supplemental Water Availability

Pursuant to the Declaration of Hydrologic Conditions for surface water resources, notice of supplemental water availability through ground water development, water exchange, transfer and purchase will be issued. If no additional supplemental water

exists, water allocation procedures proceed according to formulae determined by the TWA. Commission access to and payment for supplemental water or distribution facilities will be determined by regulations adopted by the Commission.

Surface Water Allocation

1. Guidelines

- a. A Water Allocation Permit is required for the diversion of ground and/or surface water in excess of 50,000 gallons per day for a period of more than 1 day in a 365 consecutive day period.
 - b. A permit for any level of ground water use is required when a "stressed" aquifer is involved.
 - c. New uses of Tribal water resources will be granted pursuant to procedures and conditions outlined in this Act and by regulations adopted by the TWRC, only if existing tribal uses are satisfied given hydrologic conditions.
 - d. Water originating from the Shell Valley Aquifer and its watershed will not be permitted for Hydraulic Fracturing purposes or for the maintenance of Hydraulic Fractured wells.
2. Hydrologic conditions affect water allocation as follows:
- a. Based on the recommendations of the TWA, allocations will be determined by the TWRC, beneficially and efficiently.
 - b. Current users have first priority; new users are then allocated proportionately.
3. In drought conditions, every effort will be made to find supplemental water through water development of exchange as a first measure to meet water demands.

Alluvial Ground Water Resources

1. Declaration of Aquifer Conditions

- a. No later than March 1 of each year, the TWA will determine and report on the condition of the alluvial and non-alluvial ground water resources of the reservation, including but not limited to, water levels, water use, amount of water in storage, water availability, artesian pressures and water levels, water quality, and other characteristics.
- b. An annual declaration of ground water development level goals, including but not limited to existing protected rights, desired pumping rates, number of new wells allowed, and special seasonal pumping goals, establishes the number of new wells allowed each year and specifies desired pumping rates.

2. Waste of Ground Water is Prohibited

- a. The Commission will have the authority to close, shut, and seal or render inoperative any well that contaminates another.
- b. The Commission will develop regulations for the prevention of waste, contamination or pollution of ground water through leaky casings, pipes, fittings, valves or pumps either above or below the land surface, provided that in the following cases the withdrawal or use of ground water will not be construed as waste:
 - 1) The withdrawal of ground water in connection with the construction, development, testing or repair of a well or other means of withdrawing ground water;
 - 2) The inadvertent loss of ground water owing to breakage of a pump valve, pipe or fitting, if reasonable diligence is shown by the person in effecting the necessary repair;
 - 3) The withdrawal of water for drainage purposes to increase the productivity of agricultural lands;
 - 4) The use of ground water to develop wetlands, sustain in-stream flows, or otherwise enhance cultural values for fish and wildlife purposes; the use of a spring or ground water resource for cultural, religious or traditional purposes including but not limited to gathering of herbs, soils, and rocks in the conduct of ceremonies.
- c. Flowing wells will be required to be capped or equipped with valves to control the loss of artesian pressure. Technical assistance or monetary assistance can

- be provided for those people that show a good faith effort but do not have the resources available for correction.
- d. Groundwater will not be used for fracking purposes.

Disposal of Wastes Prohibited

The disposal of water in connection with the refining, production, reducing, smelting and milling of ores, coal, petroleum, gas and other industrial minerals is prohibited.

Ground Water Allocation Procedures

1. Existing non-alluvial and alluvial ground water uses are to be protected according to historic practices of use, in accordance with Tribal and Federal Law, to protect water resources.
2. Reservation Tribal water users, Tribal governments, Tribal organizations or affiliations, will have first right to alluvial ground water resources. New and proposed uses of alluvial ground water will be permitted if such uses comply with this Act.
3. Aggregate impacts to surface water, ground water or water rights will be considered in accordance with this Act, and conditions for use may be established by the TWRC for alluvial ground water use.
4. Where hydrologic and environmental research determines that an existing or proposed use must be regulated in order to protect the resources, lands, or Tribal water rights, or other waters affected by such use, the TWRC will have the authority to determine such uses.

30.0304 Water Quality Management and Protection

Surface and Ground Water Quality

1. The establishment and adoption of Tribal water quality standards as set forth by this act; currently and until otherwise adopted, the water quality standards for this act will follow Water Quality Standards Handbook - Chapter 2: Designation of Uses (40 CFR 131.10).
2. Regulating water uses to achieve water quality standards and with effective management of land and natural resources.

Water Quality Regulation

1. Any proposed use of water, or use of the watershed resources of the Tribe that affects the quality or quantity of Tribal water above a limit of fifty (50) cubic feet per second, one hundred (100) gallons per minute or potentially exceeds or violates a water quality standard will be required to conduct an environmental assessment, or further investigations, as regulated by the Commission.
2. Compliance with such standards will be administered by the TWA and the TWRC in accordance with procedures specified in this Act and pursuant to the development of any future Tribal environmental laws and regulations.

Classification of Reservation Water Resources

1. Reservation surface and ground water resources will be characterized and classified according to a system of community-defined uses, Tribal priorities, and accepted scientific methods. These classifications will be updated every five (5) years and used to guide permitting and water quality management requirements to water users.
2. Compliance with these classifications, and standards adopted for each, will be necessary to obtain water use permits, and will be administered and enforced by the Commission and the TWA in accordance with procedures established in this Act.
3. Opportunities for water quality treatment will be assessed with regard to each classified water source.

Adoption of Best Management Practices (BMP's) in Controlling Non-Point Source Pollution

1. Interim BMP's, following those developed by the NRCS, EPA, and other federal agencies for agricultural, rangeland and soil conservation are hereby adopted by this Act, and will be used to guide and condition water uses so as to protect the Tribal water rights, water supply and quality.
2. Once BMP's are adopted, all Tribal agencies will comply with the BMP's of this act.
3. Non-compliance of adopted BMP's, by other agencies, will be a violation of this act.
4. Water quality assessment and monitoring for non-point sources of pollution will be required as a condition of water permit issuance. The TWA will develop methods for cost effective non-point source water pollution assessment and monitoring.
5. A system that encourages and rewards non-point source pollution control activities that provides real incentives for the landowner or business owner may be identified and adopted by the Commission.

Long-Term Water Quality Monitoring Program

1. In the interests of protecting the long-term quality of Reservation water resources, forecasting trends, and anticipating changes to land or water use, the Commission and TWA hereby establish a long-term water quality monitoring program for reservation resources. Resources to support the program will be coordinated through federal, state and other local sources and agencies.
2. Annual reports on water quality will be prepared in conjunction with annual water supply reports for the Reservation, emphasizing status, trends and concerns.
3. Resources that permit the local analysis of Reservation water quality will be developed as a means of encouraging water quality monitoring.

Management of Domestic Potable Water Supplies

1. The quality of domestic potable water supplies will be managed and protected according to the requirements of the federal Safe Drinking Water Act and is hereby adopted in this Act.
2. The TWA will provide oversight of the management of such systems and will assure compliance with the standards established by the federal government and adopted by the Turtle Mountain Band of Chippewa.
3. Surface water and groundwater diverted or extracted from trust land shall be usable for domestic, agricultural, and light industrial purposes only.
4. No water shall be diverted upon or from lands held in trust for the Tribe or its members without a permit from the Tribe except for on-site domestic, agricultural, and light industrial purposes.
5. No bulk amounts of water shall be diverted from surface waters appurtenant to lands held in trust for the Tribe or its members without a permit from the tribe.
6. No bulk amounts water shall be extracted from groundwater from lands held in trust for the Tribe or its members without a permit from the tribe.
7. No bulk amounts of water shall be transported from trust lands onto non-trust lands for any purposes.

Management of Storm Water Run-off

1. The TWA will assess those areas of the reservation will benefit from Bioretention Islands or rain gardens.
2. An onsite Bioretention Island or rain garden to treat storm water contaminants may be mandated in certain areas and enforced by this Act.

Snow Removal

It is a violation of this act, in the event of snow removal, to dispose of snow in a water source that includes but is not limited to a creek, lake, stream, holding pond, or slough and is considered "illegal dumping".

Agricultural Water Use

1. Agricultural water use is an aspect of reservation surface and groundwater use.
2. As a guide to water use in agriculture, the Commission and TWA will develop BMP's for agricultural practices.

3. Irrigation scheduling, rotation and soil moisture monitoring will be required for new uses of Tribal water. The harvesting of rainwater is encouraged.

"Access to fresh, clean water is one of our most basic human rights granted to us from the Creator, and is an 'inherent' right handed down to us throughout the generations from our Anishinabe ancestors from time immemorial. These inherent rights woven throughout the fabric of Anishinabe culture and life ways, and, told to us through our oral history and legends, our songs and our art are what make us a 'Tribe'. These gifts were acknowledged by our people long before the Europeans came to Turtle Island, and long before we were forced into giving up our traditional homelands under duress, and into making treaties, now considered to be the Supreme Law of the Land. We have a duty, a responsibility to protect this sacred connection to Water, not only for ourselves, but for our future generations to come. Our survival as a Tribe depends on conserving and protecting our Water." Deborah LaVallie

CHAPTER 30.04 Permit Systems

30.0401 Permit Required.

1. No person, organization for profit as a sole proprietorship, receiver, partnership, joint venture, trust estate, firm, unincorporated association, corporation or government, including but not limited to any part, subdivision or agency from and after the adoption of this Act, will divert or undertake any activity affecting or involving tribal water without first obtaining a permit under this Chapter.
2. Discharge, injection or deposition of any waste, wastewater, or other contaminant into Reservation water is not permitted;
3. A permit application is required for any of the following activities:
 - a. Diversion of water from any stream course, spring, or well;
 - b. Change in the point of water diversion, whether of surface or groundwater;
 - c. Change in the use of waters, the place of use, method of diversion, or season of use;
 - d. Transfer of tribal water outside the watershed of origin;
 - e. Alteration of any stream course or stream band for any purpose, including without limitation, road construction and repair;
 - f. Recharge of groundwater;
 - g. Hydropower generation;
 - h. Storage or impoundment of water; and
 - i. Dedication of water to in-stream flow.
4. All permits issued under this Act are (1) exclusive to the permitted. (2) Non-transferable. (3) Limited by the conditions of the permit, and (4) not intended to create an entitlement by the permitted beyond the provisional period.
5. Enrolled members of the Turtle Mountain Band of Chippewa will have preference for the use of reservation water.
6. Any off reservation entity utilizing the Shell Valley Aquifer will be required to obtain a permit from the TWRC. Previously, the State of North Dakota has failed to consult with the Tribe and has failed to recognize the Tribe's reserved water right. Existing permits issued by the State of North Dakota will be renegotiated and reconsidered. The TMBCI has sole jurisdiction over the Shell Valley Aquifer and other tribal waters as defined by, but not limited to, our Treaty agreements with other Tribes, the U.S. Government and/or Foreign entities.
7. US EPA is the Clean Water Act permitting authority in Indian Country.
<http://www.epa.gov/indian/pdf/general-permit-tribal-wq.pdf>
 - a. Construction site owners and operators are required to: implement erosion and sediment controls; stabilize soils; manage dewatering activities; implement pollution prevention measures; provide and maintain buffers around surface waters;

- prohibit certain discharges, such as motor fuel and concrete washout; and utilize surface outlets for discharges from basins and impoundments (40 CFR Part 450).
- b. EPA's regulations require a CWA discharge permit for storm water discharges from construction site disturbances of 1 or more acres.
 - c. Almost all construction sites are permitted under EPA's Construction General Permit or "CGP".
 - d. To be covered under the CGP, the construction operator is required to apply for permit coverage by submitting an "NOI" (Notice of Intent) 7 days prior to conducting earth-disturbing activities.
8. The application of pesticides within 200 feet of waters of the Reservation or recharge areas of the Shell Valley aquifer.
 9. The following persons must file an application to divert or use water within the Tribal Jurisdiction: (a) The Tribe; (b) Any non-Indian successor-in-interest to any allot tee actually using water within the Reservation by virtue of a water right arising under the laws of the United States, which water right was acquired directly or indirectly from an Indian predecessor-in interest; and (c) Any other person or entity wishing to use water within the Reservation under an agreement with the Tribe.

30.0402 Application for Permits; Information required.

All applications for permits will include the following information, in addition to any other information deemed necessary by the TWRC verified by the applicant: (**see attached sample.**)

30.0403 Application not required for protected uses; Inventory thereof.

The Commission will cause an inventory of all existing diversions and uses protected by the Act. This inventory will be completed based upon funding capabilities and sufficient technical resources within a reasonable time-frame to ensure compliance with this Act. For each such diversion and use, the inventory will identify the person making the diversion or use, the water source, the point of diversion or use, the period of use, the place of use, the quantity of water being used annually, and the purposes for water use. The Commission will thereafter issue a permit to each person so identified. No application for a permit will be required for any protected use listed on the inventory.

30.0404 Applications for Permits; Information Required.

The Permit System recognizes four (4) categories of permits. Any two or more categories may be combined into a single permit, as appropriate. Any permit may be subject to such conditions and stipulations, as the Commission may deem necessary, in the best interest to the public.

Categories of Permits include:

1. Diversion Permit. Grants the right to an individual or agency to divert water from ditches for agricultural purposes. When making a decision on a water diversion permit application, the Commission must consider those factors listed in the authorizing statutes and regulations including, but not limited to, the environmental effects of the diversion and whether the proposed diversion:
 - a. is necessary,
 - b. is consistent with long-range water resource management, and
 - c. will not impair proper management and use of the water resources of the Tribe.
2. Water Drillers Permit. Grants a permit to drill, deepen, develop, or rehabilitate a well, associated with any purpose, within the Turtle Mountain Band of Chippewa jurisdiction, to persons meeting Tribal requirements for technical capability, bonding, and insurance. The issuance of a Driller's Permit is contingent upon:
 - a. The applicant's provision of a satisfactory description of his technical competence training, experience, procedures and equipment,
 - b. The applicant's current financial conditions and disclosure of prior or existing claims,
 - c. The applicant's posting and bond and proof of insurance in favor of the Tribe in an amount established pursuant to Commission regulations,

- d. The applicant's written undertaking to faithfully perform and complete all conditions and stipulations of the permit, to comply with Tribal laws and regulations regarding record-keeping, logging, well development and construction, and to allow supervision by the TWA.
3. Stream Zone Alteration Permit. Grants the Right to Alter the Streambed or Banks of the Reservation. The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. A stream zone Alteration permit is required for all persons engaging in activities that affect the bed or banks of Reservation streams, including, but not limited to:
 - a. Construction of temporary diversion structures;
 - b. Road and culvert construction and repair;
 - c. Logging operations; and
 - d. Other activities affecting the stability of the stream channel, provided that such permit is not required during an emergency condition declared by the Commission.
4. Discharge Permits. Permits to dispose of contaminated wastewater into the surface or ground water that exists within the scope of tribal jurisdiction will not be approved.

30.0405 Applications; Procedures.

1. Applications for permits will be filed with the TWA on forms established by the Commission and the fee must be paid upon filing. The application will be endorsed with the date upon which it is received by the TWA.
2. The TWA will assist the applicant in the preparation of the application.
3. Upon receipt of the application, the TWA will:
 - a. Assign a number to the application;
 - b. Review the application for completeness and accuracy, including compliance with this Act, its regulations and the water management plan in effect;
 - c. Perform field or other investigations and request additional information from the applicant, if necessary;
 - d. Prepare a service list that will include: the applicant, the Tribe, and all persons whose existing lawful use of water may be substantially affected by the proposed use.
 - e. Prepare a report for the Commission that summarizes the investigation and recommendations regarding the application.
4. On receipt of the completed application and TWA's report, the Commission will schedule a hearing on the application to determine the use to be permitted and to establish the terms and conditions. The Commission will notify the applicant of the hearing date, which will be within ninety (90) days from the date of the notice. Failure to conduct the hearing within 90 days does not signify approval.
5. After a hearing is scheduled, the applicant will publish, at their own expense, a notice of the hearing in the format provided by the TWA. The notice must be published in the Tribal newspaper of general circulation at least once each week for three (3) consecutive weeks and will submit satisfactory proof of publication to the Commission. The Commission will also post public notice of all scheduled hearings at the Tribal headquarters and other public places.
6. Any person or entity whose interests are or may be adversely affected by the water permit may file a formal objection to the issuance of the permit.
7. Objections will be made on forms prepared and made available by the Commission.
8. The objector will file the objection with the Commission.
9. Any person may comment to the Commission in writing upon any application for a permit under this Act. It is the responsibility of the commenter to serve any written comment on all persons on the service list.
10. Temporary permits upon pending applications will not be issued.
11. Fees. Each application for a permit will be accompanied by a fifty dollar (\$50.00) filing fee, except that any person who applies for or holds permits to use more than 1,000 acre feet of water per year will pay a filing fee of one hundred dollars (\$100.00) for each additional application.

30.0406 Hearings

1. A public hearing will be held on each application unless:
 - a. There has been no objection to the application and the applicant agrees to accept conditions imposed by the Commission , or
 - b. The TWA has determined that the proposed use will have a de minim is "of the least" effect under the standards of the existing water management plan.
2. The Commission will be present and will preside over the hearing. 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 counsel.
3. The Tribe may participate in any hearing as a party and may present testimony of witnesses.
4. The Commission may, in its discretion, request or permit the parties to submit additional materials after the hearing.
5. Hearings concerning application within the same hydrologic basin or area will be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication unless any party files an objection, with the TWRC, (10) days prior to the scheduled hearing.
6. If the Commission in its discretion determines that the issuance of the permit is in the best interests of the community, the permit will be granted.
7. The decision if the Commission will be adopted by a majority vote of the Commission. The members of the Commission present at the hearing will issue a written decision setting forth pertinent findings of fact and an ultimate determination as to whether the application will be granted with specific conditions or denied.
8. Within fourteen (14) days after the decision, any party may request the Commission to reconsider the decision. A petition for reconsideration will be in writing and will state concisely the error in the decision the petitioner claims should be reconsidered.
9. If the Commission determines to reconsider its decision, it will schedule an additional hearing with proper notice to all parties. All members of the Commission must be present at the hearing. On reconsideration, the Commission may affirm, nullify, or revise its earlier decision. Any revised decision will comply with Sec. 30.406 (7) of this Chapter and will be a final Commission decision for purposes of appeal.
10. The decision of the Commission will become final and take effect unless it's in appeal process.
11. As soon as the decision of the Commission becomes final, the TWA will issue the appropriate permit in conformity with the Commission's decision.
12. Decision of the Commission in accordance with this Chapter will be appealable as provided in this Act exclusively to the Tribal Court.
13. The Tribal Court will render their decision in accordance with this Act.

"Ojibwa women are responsible for caring for the water. Our men are responsible for caring for the fire. But, we need each other to support what we do." - Debbie Gourneau, TMBCI teacher.

CHAPTER 30.05 Enforcement

30.0501 Report of Violation

1. If, after examination of a possible violation and the facts surrounding that possible violation, and the TWA concludes that a violation has occurred; the TWA will notify the individual of the violation and/or remedy could be sought in Tribal Court to seek remedial costs for such violation.
2. The TWA will determine if a violation order will be issued to the individual with a notice to address the violation. Depending on the severity of the violation a

remedy must be applied immediately, in order to protect the public from possible water contamination.

3. Any person who fails to comply with any of the above prohibited acts and provisions of this act, upon conviction thereof, will be sentenced to a term of imprisonment of one (1) day and up to but not to exceed one (1) year and/or a fine minimum of one hundred dollars (\$100) and not to exceed five thousand dollars (\$5,000) or both, enforceable by the BIA Tribal Law Enforcement, the Turtle Mountain Tribal Law Enforcement, and the Tribal Court.

"We are guided by visions and dreams, but most of all we are guided by our spirits and spirit helpers." - Josephine Mandamin, Leader of the Chippewa Women Water Walkers who walked around the perimeter of the Great Lakes over a collective period of five years.

CHAPTER 30.06 Responsibility

No loss by adverse possession, prescription, estoppels, or acquiescence; Non-transferability.

- a. No right to use or otherwise affect the quantity, level, flow, pressure, quality or temperature of Tribal water may be acquired by adverse possession, prescription, estoppel, or acquiescence.
- b. No right granted under this Act may be transferred, exchanged, sold, or otherwise conveyed except as provided by this act.

CHAPTER 30.07 Miscellaneous Provisions

30.0701 Funding

In accordance with the Indian Self-Determination Act, the TWRC may solicit funding via grants from the Secretary of the Interior and other agencies.

30.0702 Sovereign Immunity

The Turtle Mountain Band of Chippewa's sovereign immunity will not be waived or limited in any manner by this act.

30.0703 Records of the TWA of the Commission

All records required or allowed to be maintained by the TWA or the Commission will be public records.

30.0704 Severability

In the event that any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of this Act will not be affected thereby.

30.0705 Annual Tribal Water Resource Coalition Conference

All local entities of the Turtle Mountain Band of Chippewa including, but not limited to, the Natural Resource Department, Law Enforcement, TERO, Forestry, Turtle Mountain Housing Authority, Fire Department, Indian Health Service, Turtle Mountain EPA, Public Utilities, Turtle Mountain Community College, Belcourt School District, et al. are the coalition. A yearly water conference will be held in June.

30.0706 Effective Date

The provisions of this Act will be effective date of adoption and will remain in effect until repealed or amended.

It has been taught to the Anishinabe or more commonly known as Chippewa people, that water was the first medicine given to the Anishinabe by our Creator—it is a basic resource, a fundamental form of wealth. No other resource—human, agriculture, or mineral can be developed without it. *Life exists on Mother Earth because there is water here. Water can exist where there is no life to be found. Where water is absent, so is life. Midewiwin teaching. Tom Davis*

Appendix

Sec. 30.0302 Comprehensive Water Management Plan

Appendix A - Diversion Points Map (available at the office of the TWA)

Appendix B - Water Quality (available at the office of the TWA)

Appendix C - Hydrologic Condition of Surface Water (available at the office of the TWA)

Appendix D - Critical Resource Issues (available at the office of the TWA)

Sec. 30.305 BMP's for Agricultural use (will be added)

Sec. 30.403 Application for Permit (available at the office of the TWA)