

SEMINOLE TRIBE OF FLORIDA
SEMINOLE WATER COMMISSION

RULES

**TO CARRY OUT
THE TRIBAL WATER CODE**

Adopted by the Commission on December 14, 1994.

Ratified by the Tribal Council on January 12, 1995.
Resolution C-95-95.

Authority: In the Tribal Water Code, the Tribal Council of the Seminole Tribe has delegated authority to the Seminole Water Commission to issue rules to carry out Tribal law and federal law. The Tribal Water Code consists of two subtitles: Subtitle A -- Beneficial Use and Conservation of Water Resources; and Subtitle B -- Water Quality Code. The Commission's authority to issue rules is based on both Subtitles. In section 3.5 of Subtitle A of the Tribal Water Code, the Tribal Council authorized the Commission to issue rules establishing procedures to carry out the Tribal Water Code, the Water Rights Compact, and the Criteria Manual. In section 12.3 of Subtitle B of the Tribal Water Code, the Tribal Council authorized the Commission to issue rules to establish both procedural and substantive provisions of law relating to water quality under federal law (the Clean Water Act). These procedural rules are based on Subtitle A of the Tribal Water Code, except that Part 19 is based on Part 19 of the Subtitle B of the Tribal Water Code..

SWC Rules, Chapter A
Adopted December, 14, 1994

Effective date: January 12, 1995

CHAPTER A. PROCEDURAL RULES

PART 1. GENERAL

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SECTION 1.1 AUTHORITY OF THE COMMISSION

The Seminole Water Commission (Commission) was established by the Tribal Council of the Seminole Tribe of Florida through the enactment of the Tribal Water Code in 1988. The Commission has been empowered by the Tribal Council to administer and enforce the Tribal Water Code, including the issuance of permits for consumptive water uses and for the construction and operation of surface water management systems. With the enactment of the Tribal Water Quality Code in 1993, the Tribal Council further empowered the Commission to establish regulatory programs to protect the quality of reservation surface waters, including the establishment of water quality standards. Part 19 of the Water Quality Code, enacted in 1994, authorizes the Commission to establish a Transportation Safety permit program to regulate the transportation of wastewater treatment residuals through the Tribe's reservations. The Tribal

Council has delegated to the Commission those powers that are necessary for it to carry out its legislative mandate, including the authority to issue rules to establish procedures for carrying out the Commission's functions and the authority to issue rules to establish substantive provisions of law to protect and restore the quality of the water resources of the Tribe's reservations.

Note: The Tribal Water Code was originally enacted by the Tribal Council on September 20, 1988, through the adoption of Ordinance No. C-03-89. The Tribal Water Quality Code (Subtitle B of the Tribal Water Code) was enacted by the Tribal Council on December 10, 1993, through the adoption of Resolution No. C-95-94. On May 10, 1994, through the adoption of Resolution No. C-216-94, the Tribal Council enacted an amended version of the Tribal Water Code, in which the original Code, as amended, is designated "Subtitle A -- Beneficial Use and Conservation of Water Resources." This Resolution also enacted an amended version of Subtitle B -- Water Quality Code. In addition, on May 10, 1994, the Council adopted Resolution No. C-218-94, enacting a new Part 19 of Subtitle B to require that any transporter of wastewater treatment by-products obtain a "Transportation Safety" permit from the Commission before transporting such by-products through any of the Tribe's reservations. Part 19 of Subtitle B authorizes the Commission to issue rules to establish procedures governing applications for, as well as the issuance or denial of, such Transportation Safety permits. Additional minor amendments to Subtitle A of the Tribal Water Code were enacted by the Tribal Council on January 12, 1995, by Resolution C-91-95.

SECTION 1.2 WATER RIGHTS COMPACT

In 1987 the Seminole Tribe entered into a Water Rights Compact with the State of Florida and the South Florida Water Management District (District). This Compact was ratified by federal and state legislation. Under the Water Rights Compact the Tribe has water rights that are recognized under federal law. In exchange for recognition of these Compact rights the Tribe gave up its federally reserved water rights under the *Winters* doctrine. The Tribe is obligated to comply with the "essential terms and principles" of the system for regulating water use under state law, as the state law was codified in 1986, as reflected in the Compact. This means that the Tribe is bound to comply with those non-procedural provisions of the Florida Water Resources Act of 1972, as

amended and codified in 1986 in Chapter 373 of the Florida Statutes. The Tribe is not, however, subject to the procedural provisions of the Florida Water Resources Act, nor is the Tribe subject to administrative control by the District. Rather, the Tribe exercises regulatory authority over water use and surface water management within the Tribe's reservations under Tribal law.

SECTION 1.3 DEFINITIONS

The term *activities* means consumption or other use of water including, but not limited to, those uses listed in the Manual, or any diversion or storage of water, or any action or inaction which directly or indirectly affects the quality or quantity of water within the jurisdiction of the Tribe, or the fish, shellfish or other wildlife which depend on such water.

The term *applicant* means a person who files an application with the Department for a permit.

The term *director* means the Director of the tribal Water Resource Management Department.

The term *Commission* means the Seminole Water Commission, which is empowered by the Tribal Council to administer and enforce this Code.

The term *Compact* means the Water Rights Compact among the Tribe, the State and the District.

The term *Department* means Water Resource Management Department or its successor, which administers all provisions of this Code as assigned by the Tribal Council or the Commission.

The term *District* means the South Florida Water Management District.

The term ***domestic use*** means consumption in and around the residence of the applicant by the applicant, members of his household, and non-paying guests, and not involving the irrigation of fruits, vegetables or livestock to be held for commercial sale, or other commercial use of water.

The term ***Manual*** means the Evaluation Criteria Manual approved by the Tribe, the State and the District, containing specific technical and procedural criteria.

The term ***major use*** means any activity involving a use of water which is not a minor use. Activities using water for supplemental crop irrigation, public utilities, and commercial and industrial purposes generally considered major uses.

The term ***minor use*** means an activity involving (a) one or more wells, using one or more pipes, none of which have casing diameters in excess of four inches; or (b) a pump or other device for the movement of water provided that the total amount of water used by the activity does not exceed 100,000 gallons per day (gpd). Any other activity is a major use.

The term ***person*** means any individual, whether a member or non-member of the Tribe, and any business entity, whether tribal, corporate or individual, or any combination of persons, including any joint venture, partnership or other enterprise (whether or not the Tribe, or any member thereof, is a party to such entity or enterprise), engaged in activities within the meaning of this Code on lands within the jurisdiction of the Tribe.

The term ***Reservation*** means each of the land areas that has been formally designated by action of the United States government as for the use of the Seminole Tribe, including the Hollywood, Big Cypress, Brighton, Immokalee, and Tampa (Hillsborough County) reservations. As used in these rules, the term ***Reservation*** also means any other land area that is held in trust by the United States for the Seminole Tribe regardless of whether such an area has been

formally proclaimed a reservation by the Bureau of Indian Affairs.

The term ***Reservation Lands*** means all lands within the boundaries of any of the Tribe's Reservations.

The term ***State*** means the State of Florida

The term ***substantially affected third person*** means any person, group, or entity that demonstrates a non-frivolous interest substantially affected by the exercise of the Tribe's rights under the Compact, or under Tribal, state or federal law. The Florida Department of Environmental Protection, the Florida Department of Community Affairs, and the Florida Game and Fresh Water Fish Commission, successor agencies, and owners of lands within the basins affected by the exercise of the Tribe's rights under the Compact are presumed to be substantially affected third parties. This presumption can be rebutted by an affirmative showing that a state agency or landowner does not have an interest that would be substantially affected by the exercise of rights under the Compact. Any tribal member is presumed to be a substantially affected third person for purposes of raising an objection to a permit application or appealing from the issuance of a permit by the Commission.

The term ***Tribal Trust Lands*** means lands held in trust by the United States for the benefit of the Tribe

The term ***Tribe*** means the Seminole Tribe of Florida.

The term ***user*** means any person conducting activities on lands within the jurisdiction of the Tribe.

[NOTE: Most of these definitions are taken from Subtitle A of the Tribal Water Code. The terms "major use," "substantially affected third person" and "Reservation" are new, and the term "Reservation lands" has been revised to use the definition of "Reservation. The definition of "substantially affected third person" is based on the Compact.]

SECTION 1.4 COMPOSITION OF THE COMMISSION

The Commission consists of three voting members, each of whom has been appointed by the Tribal Council for a three year term. In addition, the Director is an *ex officio* non-voting member of the Commission. Once each year the Commissioners elect one voting member to serve as Chairperson.

SECTION 1.5 ROLE OF THE COMMISSION

(a) Permits. The Tribal Council has empowered the Commission to administer and enforce the Tribal Water Code. The Commission regulates the use and management of water resources by issuing permits. Any person who intends to dig a well or to use, drain or divert surface water or groundwater must apply to the Commission for a permit. By including conditions in the permits that it issues, the Commission enforces compliance with the Tribal Water Code, including the Water Quality Code (Subtitle B). Permit conditions also ensure compliance with the Compact and Criteria Manual. This is the main regulatory process used by the Commission -- considering applications for water use and water management permits and including appropriate conditions in the permits that it decides to issue.

(b) Meetings. The Commission meets on a regular basis, usually on the third Wednesday of each month. General meetings are open to the public. In addition to its regular meetings, the Commission may hold special meetings, which may be held without providing notice and which may be held by telephone conference call. The Commission will provide notice of all decisions made at any special meeting (including any decisions made by a telephone conference call meeting). At the request of any substantially affected third person whose interests may be affected by a decision made at a special meeting, the Commission will stay action to carry out its decision and will reconsider the decision at its next regular meeting, at which time the objecting person will be

given the opportunity to make an oral presentation and to submit documents for the Commission's consideration.

(c) Hearings. The Commission serves as the forum for hearings on citations issued by the Director for alleged violations of the Code, Compact, Manual or the Commission's rules. The Commission may appoint a special hearing officer to conduct a hearing and issue a recommended decision. At the conclusion of a hearing, the Commission may issue an Order to enforce compliance with the Code, which may include an order to take corrective action and may assess civil penalties. The Commission also serves as the forum for the administrative review of actions taken by the Director. In addition, pursuant to subsection 12.2.6.8 of the Tribal Water Code, at the request of the General Counsel the Commission serves as the forum for an inquiry hearing to investigate possible violations of the Tribal Water Quality Code or the Federal Clean Water Act.

(d) Cease and Desist Orders. In some cases the Commission's normal enforcement procedure of holding a hearing on a citation issued by the Director may not be adequate to protect the Tribe or its members from harm resulting from violations of the Commission's rules. In such a case, there may be a need for immediate action before a hearing can be held. In any such case, the Chairperson of the Commission is authorized, upon request of the Director, to issue a Cease and Desist Order to any person subject to the Tribe's jurisdiction who is engaged in an activity that: (1) is alleged to be a violation of the Code; and (2) is a serious, ongoing threat to the health or safety of the Tribe or any member of the Tribe. A Cease and Desist Order may be issued in any case in which the Director has issued a Citation for an alleged violation and the person who has been cited has not voluntarily ceased the activity pending a hearing. In addition, at the request of the Director, the Chairperson may issue a Cease and Desist Order to be served on an alleged violator at the same time that a Citation issued by the Director is served.

SECTION 1.6 ROLE OF THE DEPARTMENT

(a) Staff Support to the Commission. The Department provides technical staff support to the Commission and administers the Commission's permit programs. Any application for a permit must be filed with the Department, in accordance with section 2.6 of these rules. The Director reviews each application and makes a report to the Commission, including recommendations for conditions should the Commission decide to issue a permit. The Director's report on a permit application is usually presented orally at a regularly scheduled meeting of the Commission at which the permit application has been included on the agenda for the meeting. In his/her discretion, the Director may submit a written report on a permit application, in which case the written report may be distributed either prior to the meeting or during the meeting. The Commission will not act on an application until it has considered the Director's report. Although the Department provides staff support to the Commission, the Commission does not exercise supervisory authority over the Department; rather, the General Counsel exercises supervisory authority over the Department.

(b) Enforcement. The Director is authorized by the Tribal Water Code to issue a Citation to any person believed to have violated the Code, the Compact, the Manual or the Commission's rules. The Director also may request the Chairperson of the Commission to issue a Cease and Desist Order.

(c) Water Quality. In addition to administering the Commission's water use and surface water management permit programs, the Department has substantial responsibilities for the Commission's water quality program, including the Transportation Safety Permit program. The water quality program is described in Chapter B of the Commission's Rules.

SECTION 1.7 ROLE OF THE GENERAL COUNSEL

The General Counsel, as the chief attorney for the Tribal Council of the Seminole Tribe, shall exercise general supervisory authority over the Department consistent with the provisions of these rules. These Rules do not in any way limit the exercise of authority by the General Counsel.

EXPLANATORY NOTE: The General Counsel performs a number of functions in the administration of the Tribal Water Code and the Compact. Some of the functions of the General Counsel are discussed at appropriate points in the Commission's Rules. It is important to note, however, that the General Counsel's authority under Tribal law is separate and distinct from the authority of the Commission and that the Commission exercises no authority over the General Counsel.

SECTION 1.8 PROCEDURES FOR MEETINGS OF THE COMMISSION

The Commission shall conduct its meetings generally in accordance with *Robert's Rules of Order*. Unless otherwise directed, the Director of the Department shall prepare an agenda for each meeting, including any permit applications pending before the Commission. In considering any permit application, the Director shall make a brief oral presentation summarizing the permit application, the applicant shall be given the opportunity to make a presentation to the Commission, and the Director shall be given the opportunity to respond. Members of the public may also make statements to the Commission. In any matter that comes before the Commission, the Commission may establish a special procedure for the particular matter.

SECTION 1.9 PROCEDURES FOR MAKING DECISIONS

(a) General. In matters that come before the Commission for a decision, the general procedure shall be for any member of the Commission to make a motion, to be seconded, stating a proposed decision by the Commission. The Chairperson may make or second such a motion. In addition, the Director, in his/her capacity as *ex officio* member of the Commission, may make or second such a motion, but may not vote. Once moved and seconded, the Chairperson may allow further discussion or may call for an immediate vote. A vote of two members of the Commission is necessary to pass any such motion. The Chairperson may make, second and vote on any such motion. In any matter that comes before the Commission, the Commission may establish a special procedure for making a decision in that particular matter.

(b) Decisions on Permit Applications. At any meeting of the Commission at which a permit application is scheduled to be considered, the Director will report orally to the Commission on the Department's analysis of the permit application, including recommendations as to whether the permit should

be issued, and, if so, what specific conditions should be included. The Director, in his/her discretion, may submit a written report and/or a recommended written decision to the Commission for consideration. In any case in which the Director recommends that a permit be issued subject to conditions, the Director shall provide the Commission with any written conditions to be included in the permit.

After the Director has made his/her report to the Commission, the applicant will be given the opportunity to make a presentation. If any affected third party objects to the issuance of the permit, such a third party will be given the opportunity to make a presentation. These presentations will be followed by any such questions or statements that the Chairperson and other members of the Commission may choose to make. After a permit has been discussed to the satisfaction of members of the Commission, any member of the Commission or the Director, may offer a motion that the Commission decide the matter in a particular way. The Commission may decide to table the application for further consideration at a subsequent meeting. All decisions on permit applications will be issued in writing, and a copy of the written decision shall be provided to the applicant within forty-five (45) days after the meeting at which the decision is made.

PART 2. WATER USE AND MANAGEMENT PERMITS

SECTION 2.1	PERMIT REQUIREMENTS
SECTION 2.2	TRIBAL WORK PLANS
SECTION 2.3	WATER USE PERMITS
SECTION 2.4	SURFACE WATER MANAGEMENT PERMITS
SECTION 2.5	APPLICATION PROCEDURES
SECTION 2.6	APPLICATION FEES
SECTION 2.7	OBJECTIONS TO APPLICATIONS
SECTION 2.8	PERMIT CONDITIONS
SECTION 2.9	EARLY WORK ORDERS

SECTION 2.1 PERMIT REQUIREMENTS

(a) Permit Required. No person may dig a well on any lands within the boundaries of any of the Tribe's Reservations without first obtaining a water use permit from the Commission. No person may use, drain or divert surface water, or construct or operate any surface water management system, without first obtaining a surface water management permit from the Commission. This Part of the Commission's Rules establish procedures governing the issuance of such permits.

(b) Exemptions. The following activities are exempt from permit requirement specified in paragraph (a) of this section:

- (1) Construction of a new home on an existing lot in an approved subdivision that is served by an approved surface water management system or by a surface water management system that is "grandfathered" under section II.F of the Compact.

(c) Conceptual Permits. The Commission may issue a "conceptual

permit" as a preliminary step in the permitting process in cases in which an applicant has not submitted sufficient information for the Commission to take final action on an application. The issuance of a "conceptual permit" does not exempt an applicant from the permit requirement specified in paragraph (a) of this section.

(d) Special Permits. If the Commission determines that the proposed activity for which a permit application has been filed would not result in any substantial effects on any interest protected by the Tribal Water Code, the Commission may issue a Special Permit exempting the proposed activity from any further procedures required under the Code and the Commission's Rules. The Commission will not issue a Special Permit unless the Director has referred a permit application to the Commission with a recommendation that a Special Permit be issued.

SECTION 2.2 TRIBAL WORK PLANS

Under the Water Rights Compact the Department submits a Work Plan to the District on an annual basis. The Work Plan describes the water use and management activities that the Tribe plans to carry out over the coming year. The purpose of the Work Plan is to inform the District about planned water use and management activities that, if conducted on lands under the District's jurisdiction, would be subject to the District's permitting authority. If the Department's plans change, the Department may submit a Work Plan Amendment to the District. For any activity approved by the Commission through the issuance of a permit under this Part, a description of the permitted activity will be included in the next annual Tribal Work Plan or in a Work Plan amendment, whichever is appropriate as determined by the Department. Under the Compact, an activity covered by a permit issued by the Commission cannot lawfully be commenced before the Tribe has submitted a Work Plan that includes the permitted activity to the District in accordance with Chapter 7 of the Manual. Section 2.9 of these Rules establishes a procedure through which a permittee

may apply for an early work order, in order to obtain authorization to commence certain aspects of the permitted work prior to the submission of the Work Plan to the District.

SECTION 2.3 WATER USE PERMITS

A water use permit is required for any activity that involves the drilling and/or use of one or more wells for the withdrawal of groundwater or for any activity that involves the consumptive use of surface water. An activity requiring a water use permit may be either a major use or a minor use in accordance with the definitions in section 1.3 of these rules.

SECTION 2.4 SURFACE WATER MANAGEMENT PERMITS

A surface water management permit is required for any activity that involves the construction or use of any ditch, pond, pump or control structure, or any other facility used for draining, diverting, storing, or otherwise controlling or managing surface water. An activity requiring a surface water management permit may be either a major use or a minor use in accordance with the definitions in section 1.3 of these rules.

SECTION 2.5 APPLICATION PROCEDURES

(a) Application Forms. Any application for a water use or surface water management permit shall be submitted using the appropriate form, which may be obtained from the Department. The staff of the Department will provide assistance to applicants in understanding the requirements of the Code and the Commission's Rules and determining which applications forms to use.

(b) Required Information. Any application for a permit shall include:

- (1) a completed application form;
- (2) a copy of construction plans and specifications as prepared by a Florida registered architect or engineer;
- (3) a boundary survey and topographical map prepared by a Florida registered land surveyor;
- (4) a sufficient description to locate the site of the proposed activity and related facilities on aerial photographs maintained by the Department;
- (5) basic technical information about the proposed activity, including minimum road and floor levels;
- (6) proposed discharge rate and retention/detention volume, design plans and technical specifications of any irrigation pipe, well or pump, as prepared by a Florida registered architect or engineer; and
- (7) any other information requested by the Director.

(c) Supplemental Information. At any point in the application process, the Director or the Commission may determine that supplemental information will be required from the applicant before the Commission will make a decision on the application. In any such case, the Director or Commission will advise the applicant on the specific nature of the required supplemental information.

(d) Waiver of Requirements. In certain cases, particularly in the case of an application for a minor use, the Director may grant a waiver of one or more

of the requirements for a permit application if the Director determines that such a waiver would be appropriate. In such cases, the Director will provide supplemental written instructions to the applicant explaining the terms of the waiver and giving notice to the applicant that the Commission may overrule the Director and determine that a waiver is not appropriate. In such a case, the Commission will not act upon an application until all the required information has been submitted.

(e) Placing on the Commission's Agenda. Once an application has been reviewed by the Department and determined to be complete, the Director will place the permit on the agenda for the next regularly scheduled meeting of the Commission that is at least thirty (30) days from the date on which the Director determines that the application is complete. If the Director determines that more than thirty (30) days will be required to fully review and evaluate the application, the permit application may be scheduled for the next regularly scheduled Commission meeting that is at least sixty (60) days from the date on which the Director determines that the application is complete. When an application has been placed on the Commission's agenda, the Director shall notify the applicant of the date on which the Commission is scheduled to consider the application.

(f) Publication of Notice. The Department shall publish notice of each application that has been scheduled for consideration by the Commission. Such notice shall include: posting in at least one conspicuous public place on each reservation for a period of not less than one week; and direct mail to every registered major user of water and every other person who has notified the Department in writing of his/her request to receive such notices.

SECTION 2.6 APPLICATION FEES

(a) Filing Fee Required. No application for a permit shall be deemed properly filed with the Department unless accompanied by the appropriate filing

fee, if any, unless the Director has waived the payment of the fee.

EXPLANATORY NOTE: These fees are used by the Department to defray the costs of processing applications, including evaluations, notices, advertising, and mailing.

(b) Fee Schedule. The Permit Application Schedule of Fees has been developed by the Department and approved by the Commission. A copy of the Schedule of Fees is included in this Part of the Commission's Rules as Appendix 2-A. In any case in which the Director determines that the evaluation of a permit application requires outside technical assistance, the Director may assess an additional processing fee, over and above the standard fee schedule, consistent with the expenses that would be incurred to evaluate the application. In any case in which such an additional processing fee is assessed, the permit application shall not be considered by the Commission until the additional fee has been paid by the applicant.

(c) Waiver of Fee. The Director is authorized to waive the filing fee for any applicant for a minor use of water, provided that the application is for an activity involving water exclusively for the domestic use of the applicant, and further provided that waiver of the fee is consistent with the purposes of the Tribal Water Code.

SECTION 2.7 OBJECTIONS TO APPLICATIONS

(a) Right to Object. The Tribal Water Code provides that any substantially affected third person may object to the issuance of a permit. Any such person who objects to a permit must notify the Director not less than fifteen (15) days following the publication of notice as provided in section 2.5 of these Rules. Notice to the Director need not be in writing, but, in order to preserve the right to raise the objection, any person who does not file a written notice with the Director must obtain a dated, written confirmation from the Director that notice of the objection was provided. For good cause shown, the Director may allow an objection to be filed even though the person objecting

failed to notify the Director of the intent to file an objection within the fifteen day time limit.

(b) Written Objection. Any objection to a permit must be submitted to the Department in written form, and must contain sufficient information to enable the Department to understand the nature of the objection. The written objection must be filed with the Department within thirty (30) days after publication of notice of the issuance of the permit which is the subject of the objection.

(c) Resolving the Objection. The Department shall notify the applicant of the objection and, within available resources, will facilitate the resolution of the objection. Oral or written acknowledgement from the objecting person that the objection has been resolved will be sufficient. In the case of oral acknowledgement, the Director will provide both the applicant and the objecting person with written confirmation that the objection has been resolved. The written confirmation will explain that the objecting person will have five (5) days from the receipt of the written confirmation to inform the Director of any inaccuracy or misunderstanding, after which time the written confirmation will be presumed to be accurate and the objection will be considered to have been resolved.

(d) Rescheduling Consideration of the Permit Application. The Director may reschedule consideration of the permit application if he/she determines that the objection to the application may not be resolved before the date of the meeting in which the application is scheduled to be considered. The decision to reschedule is a matter that is solely within the discretion of the Director. If the Director decides to reschedule, he/she shall provide notice of the rescheduled date to the applicant and the objecting person, and shall publish notice in accordance with section 2.5 of these Rules. As provided in section 3.6.7 of the Tribal Water Code, the rescheduled date shall be the next regularly scheduled meeting of the Commission.

(e) Resolution by Commission. If the objection is not resolved before the permit application comes before the Commission for a decision, then the Commission shall decide how the objection will be resolved. The person who filed the objection will be given the opportunity to appear before the Commission.

SECTION 2.8 PERMIT CONDITIONS

In accordance with the Tribal Water Code, the Commission is required to include certain conditions in each permit that it issues. Any violation of a condition included in a permit is a violation of the Code and these Rules. Any permittee who violates a condition of a permit will be subject to sanctions imposed by the Commission, which may include civil penalties and/or revocation of the permit.

SECTION 2.9 EARLY WORK ORDERS

(a) Authority. The authority for promulgating this section of these Rules is section 3.5.10 of the Tribal Water Code and section 7.1.4 of the Manual.

(b) Effect of Early Work Order. Under the Compact, the Tribe is not to commence any activity covered by the Compact until a work plan or work plan amendment which includes the planned activity has been submitted to the District in accordance with the Manual. Thus an activity covered by a permit issued by the Commission is not authorized under the Compact until a work plan or amendment has been submitted. The effect of an early work order is to provide a permittee with authorization to proceed with certain aspects of the permitted work prior to the submission of a work plan or work plan amendment to the District. No construction or alteration of a surface water management system may be commenced until the permittee receives written authorization to proceed from the Department.

(c) Application Procedure. Any person who applies for a surface water management permit may also apply for an early work order for qualifying work related to the construction and/or alteration of a surface water management system and for incidental site work associated with such a system. An application for an early work order may be filed at the same time as an application for a surface water management permit, after such a permit application has been filed but before it has been acted on by the Commission, or after the Commission has issued a permit. The Department shall develop an appropriate application form to ensure that an applicant provides the necessary information and assurances. In addition to whatever other information the Department deems necessary, the applicant shall be required to give reasonable assurances that all of the following conditions will be satisfied:

- (1) The proposed surface water management system must meet the criteria specified in Chapter 4 of the Manual;
- (2) The project or incidental site work must not be located in natural water bodies, viable wetlands habitat, surface waters of the state, or an Outstanding Florida Water as listed in Rule 17-3.041, Fla. Admin. Code; and
- (3) If the project proposes to connect with, place structures in or across, or otherwise make use of works of the District, the permittee must obtain approval from the District for such use before commencing work.

(d) Processing by the Department. The Director shall prepare, or cause to be prepared, a report on each application for an early work order which will enable the Director to make a determination of whether the proposed work qualifies for an early work order and, if conducted as planned, would comply with the Tribal Water Code, the Compact, and all applicable federal and tribal environmental laws and regulations. If the Director determines that the

proposed work so qualifies, the Director shall give notice to the District that, unless the District disapproves the application within ten (10) days as provided in Subsection 7.1.4.3 of the Manual, the Department will issue an early work order.

The Director's notice to the District shall include a copy of the application, the Director's report, and a draft authorization to proceed including all those conditions that the Director intends to impose on the authorized early work.

(e) Objection or Concurrence by District. If, within ten (10) days of receipt of the Director's notice, the District provides notice of objection to the Department stating that, in the District's view, the proposed work does not qualify for an early work order, the Department *shall not* issue an early work order. If the District expressly indicates its concurrence within ten (10) days of receipt of the Director's notice but advises the Department in writing that its concurrence is conditioned on the inclusion of certain specified conditions in the early work order, the Department may issue the early work order only if such conditions are included. If the District does not respond within ten (10) days from receipt of notice, then the District shall be deemed to have given its concurrence for the Department to issue an early work order. (If the tenth day falls on a Saturday, Sunday or holiday, the District shall have until the next working day to respond.)

(f) Authorization to Proceed. Unless the District disapproves the application within 10 days, the Department may issue an early work order, which shall constitute authorization to proceed with the early work specified in the application. The authorization shall include any limiting conditions requested by the District and may include an other reasonable conditions that are appropriate to assure that the permitted work will not be inconsistent with the overall objectives of the Tribe and the District and will not be harmful to water resources protected under the Compact. In addition, each early work order shall also include the following conditions.

- (1) The early work order may be revoked by the Department at any time for violation of: (A) the terms of its conditions; (B) other

applicable Tribal law or regulations; or (C) the Water Rights Compact and Criteria Manual.

- (2) The applicant shall not refuse immediate entry or access to any authorized representative of the Tribe or the District who requests entry for purposes of inspection of the early work and presents appropriate credentials.
- (3) If, in the opinion of the Department or District staff, the incidental site work is the cause of adverse water resource impacts, the Department staff will so notify the applicant and the applicant shall take corrective action specified by the Department.
- (4) The property must be restored to the satisfaction of the Department if the permit under the Tribal Water Code is ultimately denied or the permitted project is otherwise not in accord with the incidental site work authorized in the early work order.
- (5) The applicant agrees to hold and save the District and the Tribe harmless from any and all liability arising from property damage or bodily injury as a result of the work conducted pursuant to early work order.
- (6) Any damage of off-site property which may have been caused by the incidental site work authorized in the early work order must be mitigated or otherwise offset to the satisfaction of the Department.
- (7) The activities are commenced at the applicant's own risk.
- (8) The applicant shall proceed to timely obtain all permits required under the Tribal Water Code.
- (9) This early work order only applies to authorization from the South

Florida Water Management District and the Water Department of the Seminole Tribe; it is possible that additional permits from federal authorities may be necessary, and nothing contained herein relieves the permittee from timely compliance with applicable federal and tribal laws.

(g) Reporting in Next Annual Work Plan. The Department shall include a summary report of all work authorized under early work orders in any year in the next annual work plan submitted to the District. The Manual provides that the District's review of such work and associated planned work included in the proposed work plan shall be on a *de novo* basis -- the fact that certain aspects of the work may have been completed shall not determine whether the remainder of the work will be authorized or whether work that has been completed complies with the requirements of the Compact.

(h) Expiration, Revocation or Suspension. As provided in the Manual:

- (1) Each early work order shall expire on the date of final District action, or federal district court action, whichever is later, on the Tribal Work Plan, which includes the project for which the early work order was issued. Any further work associated with the early work order must thereafter be authorized in a Tribal Work Plan approved under the Compact.
- (2) Violations of this section or of any of the conditions included in an early work order may result in revocation or suspension of the early work order.
- (3) The Director may revoke or suspend an early work order as provided in the Tribal Water Code.

PART 3. GRIEVANCE AND APPEAL PROCEDURE

SECTION 3.1	APPEALS FROM DECISIONS BY THE DIRECTOR
SECTION 3.2	TIME LIMIT FOR APPEALS TO THE COMMISSION
SECTION 3.3	ACTION BY COMMISSION
SECTION 3.4	MAINTENANCE OF RECORDS
SECTION 3.5	APPEALS FROM DECISIONS BY THE COMMISSION
SECTION 3.6	ACTION BY TRIBAL COUNCIL
SECTION 3.7	COMPLAINTS BY AFFECTED THIRD PARTIES

Authority: Part 3 is based on both Subtitle A and Subtitle B. For appeals from actions authorized under Subtitle A, this part becomes effective upon publication. For appeals from actions based on Subtitle B, this part becomes effective upon approval by the Tribal Council, along with the other rules for Subtitle B.

SECTION 3.1 APPEALS FROM DECISIONS BY THE DIRECTOR

Any person aggrieved by a final action of the Director may file a notice of appeal addressed to the Commission, specifying the aggrieved person's name, address, the basis for grievance, and the relief requested. Any such notice of appeal must be mailed or delivered to the Department, which shall provide a copy to each member of the Commission. The Commission shall consider any such appeal at its next regularly scheduled meeting, provided that the notice of appeal is filed at least ten (10) days prior to the next scheduled meeting of the Commission. If the notice is filed less than ten (10) days before the date of a meeting, the appeal shall be considered at the following meeting. The Director may, if he chooses, respond in writing by providing a copy of his response to each Commissioner, and by delivering or mailing by certified mail a copy of his response to the aggrieved person at the address specified. For purposes of this section and sections 3.2, 3.3, and 3.4, an aggrieved person is any person who

objects to any final decision or other final action by the Director, including a final decision by the Director under Part 13 of the Commission's Rules (certification of compliance with Water Quality standards).

SECTION 3.2 TIME LIMIT FOR APPEALS TO COMMISSION

Any person who is aggrieved by an action of the Director and who wishes to appeal such decision to the Commission must do so within thirty (30) days from the date appearing in the notification of the Director's decision. If the grievance is not filed within thirty (30) days from the date of notification, the applicant will be deemed to have waived his/her right to appeal the action. If the applicant mails the notice of appeal to the Department, rather than delivering it in person, the postmark date on the mailing must be no later than thirty (30) days from the date appearing on the Director's notification.

SECTION 3.3 ACTION BY COMMISSION

The Commission shall consider any timely filed notice of appeal at its next regular meeting by reviewing any papers received from aggrieved persons and other interested persons, and any response received from the Director. Upon such consideration, the Commission shall issue a written Order to take one of the following actions:

- (a) Sustain the final decision or action by the Director;
- (b) Grant the relief requested by the aggrieved party, or such other relief as the Commission deems appropriate; or
- (c) Set the matter for hearing on a date certain either before the Commission or before a hearing officer (other than the Director) who shall report findings and recommend action to the Commission. At such

hearing, the aggrieved person and the Director shall have the opportunity to be heard, to present and question witnesses, and to present photographic or documentary evidence. Following a hearing by the Commission, or report by the hearing officer, the Commission shall take action in accordance with Subparagraph (a) or (b) of this Paragraph.

SECTION 3.4 MAINTENANCE OF RECORDS

All notices, papers, responses, reports, orders and documentary or photographic evidence received as a result of a grievance proceeding, shall be retained in a file under the name of the aggrieved person at the Department. A separate file shall be maintained for each activity or grievance for which an aggrieved person may file a grievance or appeal.

SECTION 3.5 APPEALS FROM DECISIONS BY THE COMMISSION

(a) Appeal by Applicant. Any applicant aggrieved by any final action or order of the Commission may file a Notice of Appeal addressed to the Commission, specifying the aggrieved person's name, address, the basis for appeal, and the relief requested, and by mailing or delivering a copy of the Notice of Appeal to the Office of the General Counsel. Any such notice of appeal must be filed with the Office of the General Counsel within ten (10) days of the receipt of the Commission's written decision by the Applicant. The General Counsel shall provide a complete copy of the Notice of Appeal to the Director. The Director shall respond in writing to the General Counsel within fifteen (15) days of receipt of the Notice of Appeal from the General Counsel by providing a copy of the Commission action or order at issue together with any applicable report of the Director, or of a hearing officer, and any other papers, responses, or documentary photographic evidence in the file, and the Director's response to the appeal, and by delivering or mailing a copy of the response to the appellant at the address specified. After having received the Director's response to the

appeal and supporting documentation, the General Counsel will ensure that the matter is noted by name of the aggrieved party on the agenda of the Tribal Council under "new business" and to distribute all papers received from the aggrieved persons and all responses received from the Director to each Member of the Tribal Council with the agenda of the meeting. If the Director's response is received by the General Counsel less than ten (10) days before the next scheduled Tribal Council meeting, the General Counsel may, in his discretion, hold the matter over until the next Tribal Council meeting.

(b) Appeal by Director. The Director may file an appeal from a decision by the Commission. Any such appeal shall be filed with the Office of the General Counsel within fifteen (15) days from the date of the Commission's decision. The Director shall provide each member of the Commission with a copy of any appeal so filed. The General Counsel shall allow the Commission fifteen (15) days in which to submit any additional documentation in support of the Commission's decision. The General Counsel may attempt to resolve the matter through mediation or may refer the matter to the Tribal Council, following substantially the same procedure as for appeals under paragraph (a).

SECTION 3.6 ACTION BY THE TRIBAL COUNCIL

The Tribal Council, in its discretion, may:

- (a) Decline to consider the grievance;
- (b) Consider the grievance based on the papers filed; or
- (c) Provide a limited time for the applicant to be heard on the subject of the grievance, or
- (d) Appoint a referee or mediator to consider the grievance, and report a recommended decision to the Tribal Council at a subsequent

meeting.

SECTION 3.7 COMPLAINTS BY AFFECTED THIRD PERSONS

(a) Procedures under the Compact. The Compact and the Manual provide administrative procedures through which the District will investigate any complaint filed by a substantially affected third person.

(b) Tribal Remedy. In any case in which a substantially affected third person alleges that an action by the Tribe constitutes a violation of the Compact, the affected person may file a request for reconsideration by the Commission. Any matter in which the Commission is requested to reconsider its decision shall be addressed by the Commission following substantially the same procedure as was applicable under these rules for the initial decision. A decision by the Commission on reconsideration may be appealed to the Tribal Council following the procedure set forth in section 3.5.

PART 4. ENFORCEMENT

SECTION 4.1	VIOLATIONS
SECTION 4.2	CITATIONS AND PENALTIES
SECTION 4.3	ORDER TO CEASE AND DESIST
SECTION 4.4	REVOCAION OF PERMITS
SECTION 4.5	DEPARTMENT OF LAW ENFORCEMENT
SECTION 4.6	REQUESTS FOR ENFORCEMENT BY THE DISTRICT
SECTION 4.7	RIGHT TO A HEARING

[**Authority:** Part 4 is based on Subtitle B of the Tribal Water Code. It will become effective upon approval by the Tribal Council.]

SECTION 4.1 VIOLATIONS

The Director is authorized to enforce the Tribal Water Quality Code (Subtitle B) and the Tribe's water quality standards and other provisions of the rules issued by the Commission. Any violation of water quality standards adopted through rules issued by the Commission, and any violation of the conditions imposed by a permit to ensure compliance with the Tribe's water quality standards, shall constitute a violation of the Code.

SECTION 4.2 CITATIONS AND PENALTIES

The Director may issue a citation to any person the Director reasonably believes to have violated the Code. Such citation shall inform the person cited of the range of actions that could be taken by the Commission if it determines after a hearing that a violation has in fact occurred, including:

- (a) assessment of civil penalties;
- (b) referral to EPA for possible enforcement action; and
- (c) in the case of nonmembers of the Tribe, the possibility of exclusion from the Tribe's Reservations.

SECTION 4.3 ORDER TO CEASE AND DESIST

If, prior to the hearing (to be scheduled in accordance with Part 5 below), the person cited does not voluntarily cease the activity that is alleged in the citation to be a violation of the Code and the Director has reason to believe that the alleged violation constitutes a serious and ongoing threat to the health, safety or welfare of the Tribe or any member of the Tribe, the Director may apply (with or without notice to the alleged violator), to the Commission Chairman for a Cease and Desist Order. The Commission Chairman, in his/her discretion, may issue an Order on behalf of the Tribe to Cease and Desist or to modify the activity constituting the alleged violation. A Cease and Desist Order may revoke, pending the hearing, any privileges that the alleged violator may have to make use of and have access to the portion of Tribal land on which the alleged violation occurred. If a Cease and Desist Order does include such a temporary exclusion from the site of the alleged violation, the Order shall describe with particularity the site from which the alleged violator is excluded.

SECTION 4.4 REVOCATION OF PERMIT

(a) Grounds for Revocation. The Commission may enforce the provisions of the Tribal Water Code or these Rules by revoking a permit that has been issued. A permit may be revoked on any of the following grounds:

- (1) The Commission finds that the permittee has violated the

provisions of the Code, the Compact or the Manual; or

(2) The Commission finds that the permittee has violated or failed to comply with the conditions of his/her permit; or

(3) The permit is in force, but the Commission finds that the permittee has not proceeded in a timely fashion to construct facilities authorized under the terms of the permit, if required, and more than one year has elapsed since the permit was issued.

(b) Procedure. The sanction of revocation may be imposed following a hearing pursuant to Part 5 of these Rules. In the alternative, a permit may be revoked at any regularly scheduled meeting of the Commission, provided that, at least thirty (30) days prior to the date of the meeting the permittee has been given written notice that the matter has been placed on the agenda by the Director. If the sanction of revocation is imposed in a decision by the Commission in a regularly scheduled meeting, the permittee may ask the Commission to hold a hearing to reconsider its decision or may appeal the revocation to the Tribal Council. In either case, the permit shall be deemed to have been suspended pending reconsideration or final decision by the Tribal Council. After the initial decision by the Commission to revoke a permit, if the permittee engages in any activity that was formerly authorized by the permit, such activity shall be treated as a violation of the Code.

SECTION 4.5 DEPARTMENT OF LAW ENFORCEMENT

The Director may seek the assistance of the Seminole Department of Law Enforcement to:

(a) deliver a copy of a Cease and Desist or Modification Order, or any order of the Commission, to the alleged violator; and

(b) enforce an Order to Cease and Desist or any Order of the Commission issued after a hearing as specified in Part 5 of these rules, below.

SECTION 4.6 RIGHT TO A HEARING

(a) Notice of Hearing. A citation issued for a violation of the Code, or rules issued pursuant to the Code, shall inform the person cited that he/she is required to appear before the Commission on a date specified in the citation for a hearing on the charge. The citation shall specify the time and place of such hearing and inform the person cited of his/her opportunity to present evidence that the cited activity is consistent with the Code or rules issued pursuant to the Code. The date for the required appearance shall be at least five (5) days and not more than sixty (60) days from the date of the citation, unless the Director and the person cited (or that person's representative) agree to another date or settle the matter, and so inform the Commission prior to its next scheduled meeting.

(b) Waiver of Right to Hearing. A person charged with a violation may waive the right to a hearing by entering into a consent agreement with the Director, provided that any such agreement must be approved by the Commission. If the Commission disapproves of any proposed consent agreement, the Director shall provide notice to the alleged violator informing him/her that the Commission will hold a hearing on the alleged violation.

PART 5. HEARINGS

SECTION 5.1	PROCEDURES FOR HEARINGS
SECTION 5.2	REPRESENTATION
SECTION 5.3	ACTION BY COMMISSION
SECTION 5.4	CIVIL PENALTIES
SECTION 5.5	OTHER SANCTIONS
SECTION 5.6	EXCLUSION FROM RESERVATIONS
SECTION 5.7	SPECIAL RULES FOR INQUIRY HEARINGS

Authority: Part 5 is based on both Subtitle A and Subtitle B. For hearings relating to Subtitle A, this part becomes effective upon publication. For hearings relating to Subtitle B, this part becomes effective upon approval by the Tribal Council, along with the other rules for Subtitle B.

SECTION 5.1 PROCEDURES FOR HEARINGS

(a) Presentation of Alleged Violations. At any hearing, the Director, or his/her designate, will present the case to the Commission to establish that a violation has occurred and that the person cited is responsible for the violation. The Director will also present a recommended Order, including proposed findings of fact, for consideration by the Commission. Such a recommended Order may include the imposition of any sanction authorized by the Commission's Rules, including the assessment of civil penalties. In the discretion of the General Counsel, the General Counsel's office may assume a lead or supporting role in the presentation of the case against an alleged violator.

(b) Rights of the Alleged Violator. At any hearing, the alleged offending party shall be given the opportunity to be heard, to present documentary and photographic evidence, to present witnesses and to question witnesses presented by the Department. The alleged violator has the right to be represented by legal counsel at his/her own expense.

(c) Hearing Officer. The Commission may, in its discretion, designate a hearing officer, other than the Director or a member of the Commission, to conduct the hearing on its behalf and report findings and recommended action to the Commission.

SECTION 5.2 REPRESENTATION

Any person required to appear before the Commission or who receives a citation or an Order to Cease and Desist, or is otherwise required to appear before the Commission at a hearing held pursuant to this Part, may represent him/herself, or appear with legal counsel, or be represented by counsel of his/her choice, at his/her sole expense.

SECTION 5.3 ACTION BY THE COMMISSION

The Commission may, at the conclusion of the hearing, or after receiving the report of the hearing officer:

(a) vacate the citation; or

(b) issue an Order in accordance with the recommendations of the Director or the hearing officer, with or without modification. Any such Order may include civil penalties or other sanctions in accordance with sections 5.4 and 5.5, provided that the possibility of such sanctions being imposed was raised in the hearing and the violator was given the opportunity to be heard regarding such additional sanctions.

SECTION 5.4 CIVIL PENALTIES

In the event that the Commission's Order requires the payment of civil penalties, such penalties shall be assessed in accordance with the schedule of civil penalties in Table 5.4. In assessing civil penalties, the Commission may take into consideration the following factors:

- (a) the seriousness of the violation(s);
- (b) the economic benefit (if any) resulting from the violation(s);
- (c) any history of prior violations;
- (d) any good faith efforts to comply with applicable requirements of the Commission's rules, and with the Tribal Water Code and federal Clean Water Act; and
- (e) the economic impact of the penalty on the violator.

[Note: A schedule of civil penalties has not yet been developed.]

SECTION 5.5 OTHER SANCTIONS

In addition to, or in lieu of, civil penalties, an Order issued by the Commission may:

- (a) Exclude the violator from the area of Tribal lands on which the violation occurred, including revoking any privileges the violator may previously have held to use such Tribal lands; and/or
- (b) Declare personal property left at the site of the violation by the violator to be forfeited to the Tribe.

SECTION 5.6 EXCLUSION FROM RESERVATIONS

In the case of a violator who is not a member of the Tribe, an Order issued by the Commission may prohibit the violator from entering one or more of the Tribe's Reservations for a specified period of time or indefinitely. In any case in which the Commission's Order includes such a prohibition, the violator shall have a right to request reconsideration at a subsequent hearing scheduled by the Commission. The Commission, in its discretion, may suspend the effective date of such an exclusion Order until after the reconsideration hearing.

SECTION 5.7 SPECIAL PROCEDURES FOR INQUIRY HEARINGS

(a) At the request of the Director, the Commission may conduct an "inquiry hearing" to determine whether an alleged violation of the Clean Water Act should be referred to the General Counsel for possible referral to EPA for federal enforcement action.

(b) At the request of the General Counsel, the Commission shall conduct an inquiry hearing to determine whether an alleged violation of the Clean Water Act should be referred to EPA for federal enforcement action.

(c) In its discretion, the Commission may publish notice of any inquiry hearing, if such notice would serve the purposes of the inquiry.

(d) In preparation for any inquiry hearing, the Commission may issue a subpoena to any person subject to the Tribe's jurisdiction requiring the person to appear before the Commission at the hearing, provided that any such subpoena must be issued at least ten (10) days prior to the date of the hearing. Any person so directed to appear may be accompanied by legal counsel, at his/her sole expense.

(e) At any inquiry hearing held at the request of the Director or the General Counsel, the Commission shall ensure that an administrative record is

developed, which may include a transcript of the hearing and the maintenance of all documentation and photographic records presented at the hearing.

(f) The General Counsel may, in his/her discretion, refer an alleged violation directly to EPA without first requesting the Commission to hold an inquiry hearing.