

SQUAXIN ISLAND TRIBE

WEST 81 HIGHWAY 108
SHELTON, WASHINGTON 98584
(206) 426-9781

RESOLUTION NO. 83 - 33

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe of Indians by the authority of the Constitution and By-Laws of the Squaxin Island Tribe as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965, and

WHEREAS, the Squaxin Island Tribe has an ongoing need to protect the water resources of Squaxin Island, other Tribal properties, and to deal with other Tribal needs vis-a-vis water resources;

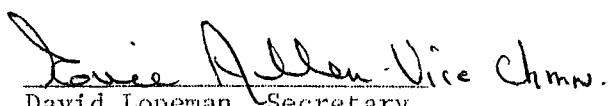
NOW THEREFORE BE IT RESOLVED that the Squaxin Island Tribal Council approves the Water Code which accompanies this Resolution.

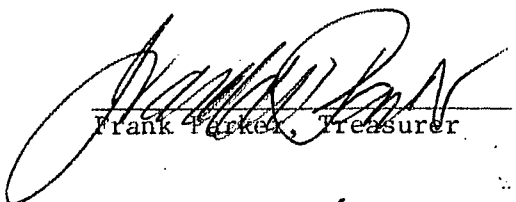
BE IT FURTHER RESOLVED that all water uses on Squaxin Island and other Tribal properties are subject to the Water Code.

CERTIFICATION

The Squaxin Island Tribal Council does hereby certify that the above Resolution was adopted at a regular meeting of the Squaxin Island Tribal Council held on this 7th day of July, 198 at which time a quorum was present and passed by a vote of 3 for and 0 against.


Dave Whitener, Chairman

ATTESTED BY:  Vice Chmn.
David Lopeman, Secretary


Frank Parker, Treasurer

None

4/21/83

SEVENTH DRAFT

SQUAXIN ISLAND TRIBAL WATER CODE

1.0. Authority

The authority of the Squaxin Island Tribe to regulate the use of water on all reservation lands predates written history, and is based on the inherent sovereignty of the Squaxin Island Tribe, the Medicine Creek Treaty, and the Constitution and laws of the Squaxin Island Tribe and of the United States of America.

2.0. Applicability

The Code is limited to regulation of the use, right to appropriation, and amount of appropriation of reserved waters. As the right to reserved water is a Tribal right and not an individual right of Tribal members, the governing body of the Tribe is entitled to allocate the resource within the guidelines detailed in this Water Code, for the purpose of achieving the greatest good for the greatest number of Tribal members.

3.0. Nature of Ownership

3.1. The Squaxin Island Tribe owns the water on the Reservation by virtue of the Treaty of Medicine Creek of December 26, 1854. By that treaty, the Tribe ceded certain rights and property to the United States, and retained Squaxin Island and the natural resources thereon as a dwelling place and resource base for the Tribe. In so doing, according to a later interpretation in U.S. v. Winters (1908), the rights to sufficient water to carry out the purposes of the reservation were reserved to the Tribe. The terms of the Treaty allowed the reservation to be subdivided and lots assigned to individual heads-of-household, and this was carried out during the late 1800's. Nothing in that division of property indicated that the Tribal water rights were similarly subdivided: the Tribe retained and continues to retain reserved water rights on Squaxin Island.

3.2. On August 1, 1977 additional tribal properties were granted reservation status by the Secretary of the Interior. Specifically, Tract Nos. 130-T 1115, 130-T 1109, and 121-8 1000 were made part of the Squaxin Island Indian Reservation and receive the same benefits and protection as other trust lands on the reservation. The Tribe has reserved water rights on these lands.

3.3 The Tribe will reserve water rights for any lands granted reservation status by the Secretary of the Interior in the future.

3.4. Any landowner or group of landowners who wish to appropriate water on their property and apply it to a beneficial use must apply to the Squaxin Island Tribe for a permit to do so. A permit grants ownership of water to a particular person for a specific use and time period, subject to certain terms and conditions. Water use permits are discussed in Section 5.0.

4.0. - Definitions

4.1. Reserved waters: those waters reserved by the Tribe to carry out the purposes of the Reservation, while ceding other territory and natural resources to the U.S. government by the Treaty of Medicine Creek.

The purposes of the Squaxin Island Indian Reservation include, but are not limited to, the following:

4.1.1. To provide a land and natural resource base to be managed for the benefit of the Squaxin Island Tribe. The Tribe currently exploits the following resources on the Island;

(a) The salmon which are reared in net pens in a cove of the island, and subsequently home on the reservation and are harvested by Squaxin fishermen.

(b) Clams and oysters grown on the Reservation tidelands.

(c) Timber, mainly Douglas fir managed on a 70-year harvest cycle.

(d) Deer, hunted by Tribal members.

(e) Large Western red cedar trees, the roots and bark of which are used in basketry and other cultural activities.

(f) The function that the island serves of being a cultural focus for Tribal members.

(g) Between 1855 and roughly 1965, Squaxin Island was home to many Tribal members. In the future, the Tribe may again choose to provide housing on the island for Tribal members.

4.1.2. To provide the Squaxin descendants of original recipients of Reservation lot assignments (assignees) with those property rights that do not interfere with Tribal management of resources for the benefit of the Tribe as a whole.

The amount of water required to fill the above-mentioned purposes of the Reservation is reserved to the Tribe.

4.2. Assignment: plot of Reservation land originally assigned to one of 23 Squaxin Island Tribal members pursuant to the terms in Article 6 of the Treaty of Medicine Creek.

4.3. Alien: landowner not a member of the Squaxin Island Tribe, including private individuals, corporate entities or public agencies.

4.4. Continuous pumping: pumping from a well for 18 hours or more continuously.

5.0. Administration of the Code

5.1. Governing Body: The Squaxin Island Tribal Council shall be the ultimate governing body in administering the Water Code. The Tribal Council will be called upon to interpret the Code.

5.2. Staff: The staff of the Natural Resource Department of the Squaxin Island Tribe will administer the code on a day-to-day basis.

5.3. Guidelines for Administration and General Policy:

5.3.1 Priorities.

First priority in management of the water resource will be assigned to protecting and promoting tribal interests as a whole.

Second priority will go to satisfying needs for water on assignments of which the majority of landowners are Squaxin Island tribal members, to allow them to apply a specified amount of water to a beneficial use.

Third priority will go to assignments on which Squaxin Island tribal members are the minority.

Fourth priority will go to satisfying requests of alien landowners to divert or withdraw water for use on their property.

5.3.2. Permit and Hearing Procedures.

5.3.2.1. Applying for a Permit

Any person or group desiring to divert or withdraw fresh water from any stream, spring or aquifer on Squaxin Island must apply to the Natural Resource Department (NRD) of the Squaxin Island Tribe for a permit to carry out the project. The applicant will be provided with a form to describe the proposed diversion or withdrawal, and will be expected to get professional assistance if necessary to make a complete description of the proposed project. The Natural Resource Manager (NRM) or a staff member designated by the NRM will accompany the applicant to the site of the proposed project, prepare a site visit report, and make a recommendation to the Tribal Council that the permit be granted or denied on the basis of the merits of the project alone.

If the NRM finds that the permit should be granted, an announcement of the proposed diversion or withdrawal will be published in the Squaxin Island Tribal Newsletter, and comments/complaints concerning the project will be invited to be directed to the NRD. After a period of no less than two weeks and no more than six weeks from the date of publication of the proposed project, the file on the project consisting of project description, site visit report, recommendation of the NRM and public comments, will be presented to the Tribal Council for their final determination on the project. Applications for water use permits shall then be granted, unless the Tribal Council finds that granting the permit threatens the interests of a higher priority user group.

5.3.2.2. Terms of the Permit

A permit will grant the right to divert or withdraw a specific amount of water for a specific purpose, and it will be assigned to an individual, even when the use of the water may be to the benefit of a group. In the case of a permit granted on tribal land, the permit will be assigned to "Chairman, Squaxin Island Tribal Council", and the individual occupying

that position will assume responsibility for meeting the terms of the permit.

A permit will be issued for fifteen years, to allow for periodic adjustments to the amount of withdrawal allowed, in order to prevent over-appropriation of the resource and to preclude the island's water from being locked up by those with "grandfather rights".

After fifteen years, the permit-holder will have an option to renew the permit with the understanding that the amount of water allowed to be withdrawn or diverted may be reduced by up to 20 percent, in order to accommodate demands for water by other landowners, particularly those needs in a higher priority class as defined in 5.3.1. Water allocations will not be reduced below the minimum levels established in section 6.2.

5.3.2.3. Exception

In the case where a water allocation is needed to protect and promote tribal interests and there is not sufficient unallocated water, the Tribal Council reserves the right to reduce permit allocations below minimum levels. Reductions will begin with permits in the fourth priority class and in chronological order within the class, i.e. the newest fourth priority class permit will be reduced first.

5.3.2.4. Grievance Procedures

If the NRM finds that a permit should not be granted, or it is necessary to reduce an allocation, the applicant or permit holder may demand a hearing by the Tribal Council, to be held no less than two weeks and no more than three months from the date on which the NRM's written decision was issued. If the Tribal Council supports the decision of the NRM, the applicant may further appeal the decision to the Tribal Court.

Any person aggrieved by the approval or disapproval of an application or notification to divert or withdraw water, may appeal the decision of the Tribal Council to the Tribal Court.

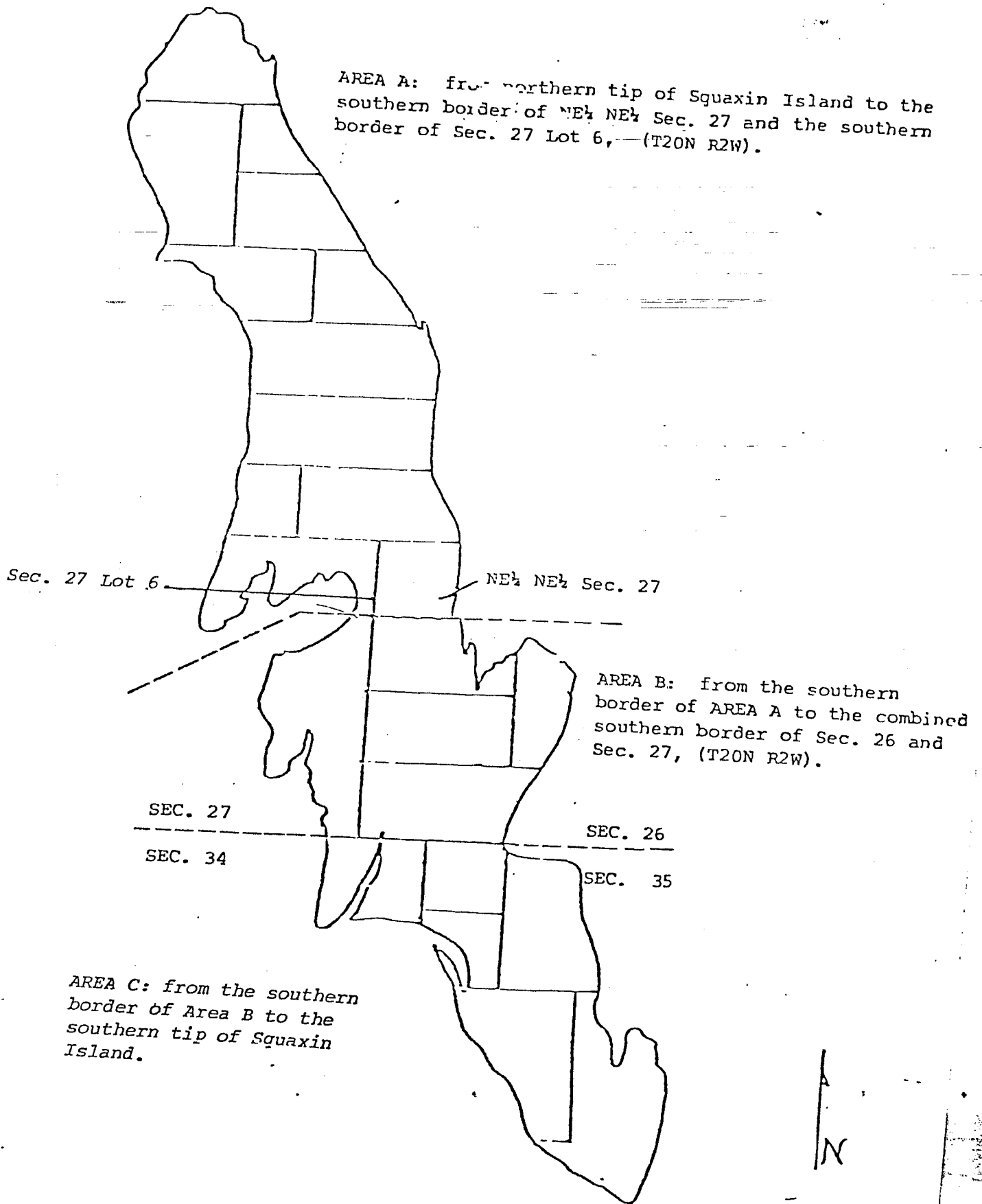
5.3.3 Permit Fees

The Tribal Council may establish permit fees if deemed necessary for permit administration by joint resolution. The fee system will be equitable for both tribal members and aliens.

5.3.4. Transfer and Loss of Rights

The water use permit may not be transferred under any circumstances, nor may the terms of the permit be changed. If it is found that a permit-holder is selling water to a non-permit holder, or has abrogated the terms of the permit by increasing the quantity of withdrawal or diversion and/or the place and type of use, the permit may be revoked at the discretion of the NRM. If anyone feels that damage has occurred as a result of misuse of the water use permit, they may bring the permit-holder before Tribal Court for a hearing. Any permit which has not been exercised within one year of being issued, shall be revoked, unless the permit-holder can justify the delay to the Tribal Council. However, previous revocation of a water use permit shall not be grounds for denial of an application for another water use permit.

FIGURE, SQUAXIN ISLAND RESERVATION
GROUNDWATER SUBREGIONS



6.0. Prohibited and Allowed Actions

6.1. Protection of recharge areas and control of excessive runoff

6.1.1. Delineation of Groundwater Subregions

The island is divided into three groundwater subregions, based on soil and geological characteristics influencing recharge to aquifers. These subregions were initially proposed in Lum and Walters, 1976. Refer to the map in Figure 1 for a graphical representation of these sub-regions.

Area A: extends from the northern tip of Squaxin Island to the southern border of NE-1/4 NE 1/4 Sec. 27, T20 N R2W and the southern border of Sec. 27 Lot 6, T20 N R2W.

Area B: extends from the southern border of Area A to the combined southern border of Sec. 26 and 27, T20 N R2W.

Area C: extends from the southern border of Area B to the southern tip of Squaxin Island.

6.1.2. Excessive Runoff

Construction or forest activities which will result in compaction or paving of areas larger than half an acre in Area B or C, or larger than a quarter-acre in Area A, have the potential to substantially increase runoff and/or reduce recharge in those areas, constituting damage to the natural resources of Squaxin Island. Landowners will be held responsible for mitigating such potential impacts. The streamflow measurements made on most watersheds of the island (data in files of the NRD) shall be used as indicators of the runoff regime at various points on the island under undisturbed conditions. Runoff that is double the maximum measurement for a given watershed, or flowing in excess of 20 gallons per minute where no wet-season flow previously existed, shall be considered excessive.

There are means for estimating the change in runoff regime produced by a change in land management, chiefly the Soil Conservation Service Runoff Estimation Procedure. The NRD shall assess the potential for increased runoff from a given activity at the request of a landowner planning the activity. The NRD may also prescribe mitigating measures to be taken by the landowner to prevent excessive runoff. Consultation with the NRD prior to commencement of a given activity is required; and if it is later

found that the change in land use has resulted in excessive runoff, the Tribal Council may bring civil action against the landowner. If the NRD has been consulted and the NRD's recommendations for mitigative measures adhered to and runoff from a particular site is still excessive, the NRD will take the steps necessary to reduce runoff to acceptable levels.

6.2. Regulation of Pumping

Safe pumping levels for Squaxin Island have been discussed in Lum and Walters, 1976, and Grant, 1981. With reference to Figure 1, the cumulative continuous pumping level for all wells in Area A shall be maintained at or below 210 gallons per minute (gpm), with no more than 52 gpm pumped from a single well. In Area B the continuous pumping level shall be maintained at or below 55 gpm, with no single well pumping more than 14 gpm; and in Area C the figures are 13 gpm collectively and 3 gpm from a single well. Pumps shall be fitted with a flow restrictor and a sealed meter. The flow restrictor will be set to permit pumping at a rate 20 percent higher than the rate permitted for a single well in any given area, to allow for intermittent pumping at rates higher than that permitted for continuous pumping. Meters will be checked periodically by a Squaxin Island Tribal NRD staff member, to determine the average pumping rate for the period.

Applications for permits to pump groundwater up to the above-listed maximum rates for a single well in any given area shall be granted by the Squaxin Island Tribal Council so long as they are consistent with tribal priorities discussed under 5.3.1. of this code, and so long as the maximum continuous pumping level for the given area of the island has not been reached. When that limit is reached, the pumping limits specified in previously issued permits shall be reassessed by the Natural Resource Department, and as old permits come up for renewal they shall be reduced by no more than 20 percent at a time, to accommodate new demands on the resource. However, no permit shall be reduced below 10 gpm continuous in Area A, 8 gpm continuous in Area B, and 3 gpm continuous in Area C. When permits have been issued to fully appropriate the renewable groundwater at the minimum pumping rate per pump, no further permits will be issued.

6.3. Protection of Quality

It shall be the responsibility of a property owner to maintain his/her well or pond and storage tank in a sanitary condition. The NRD will guard against contamination of the sources of surface and ground water, principally by limiting the use of forest chemicals on Squaxin Island (see Forest Management Plan and Forest Practice Act), by the sanctions against excessive runoff (see Section 6.1.2.), and by the provisions outlined below (Sections 6.3.1 - 6.3.3.).

6.3.1. A landowner who wishes to construct a septic tank leach field must contact the NRD for approval of the site of the facility. As a minimum requirement, the most shoreward side of the leach field must be set back 150 feet from the line of higher high water. If it is found that a leach field is contaminating a neighbour's well or pond, or any tideland areas, the leach field will be condemned by the NRD.

6.3.2. Non-flammable, solid waste and toxic fluid waste shall not be disposed of on the island. Landowners are responsible for disposal of such waste in proper facilities on the mainland. Flammable solid waste may be burned at a site 100 feet from standing timber and cleared of brush to a distance of 20 feet in all directions from the burning site.

6.3.3. Any well that is pumped at the maximum allowable rate will be checked bi-weekly for chloride content. If the chloride levels rise, indicating that there is seawater intrusion into the aquifer, pumping in that area will be stopped until chloride levels are reduced to acceptable levels (less than 250 mg/liter), and then resumed at a diminished rate to be determined by a hydrologist retained by the NRD. The pumping rate which is prescribed to protect the aquifer from seawater intrusion overrides any previous amount granted in a permit.

7.0. Enforcement

7.1. Compliance with Tribal Council orders

All persons undertaking any activities regulated by this code shall comply in all respects with the orders of the Tribal Council issued pursuant hereto.

7.2. Failure to comply with Tribal Council orders

If any person shall fail to comply with any Tribal Council order issued pursuant to this code, the Tribal Council may move in Tribal court to enjoin such person from the activities allegedly in violation of said order.

7.3. Injunction

The Squaxin Island Tribal Court shall issue a temporary injunction notice enjoining a defendant from the pursuit of any and all activities pursuant to a motion filed under this section by the Squaxin Island Tribal Council, without notice, if the Tribal Council shows to the Tribal Court, by testimony or affidavit, the following:

7.3.1. That the Tribal Council has issued an order with respect to the activities complained of; and

7.3.2. That the person is in violation of that order; and/or

7.3.3. That an emergency exists requiring immediate action and notice is not feasible.

7.4. Hearing

At the time of the issuance of an injunction pursuant to this section, the Court shall set a hearing on the matter for a date and time specified, not to be later than five days after the injunction is entered, unless otherwise stipulated by all parties. At the hearing which is to be governed by and in accordance with the Tribal Rules of Civil Procedure, the Tribal Council shall first be required to prove by preponderance of the evidence that it has issued an order that is applicable to the activities complained of, and that the activities complained of

did in fact continue after said order and actual notice of said order. The person responsible for the activities may offer proof as to either of those issues, but may not contest the appropriateness of the original order as issued by the Tribal Council.

7.5. Findings

At the close of the hearing, the court shall decide whether an order controlling the activities complained of was issued, and whether the activities complained of were in violation of said order. If the Court so finds, it may issue appropriate permanent injunctive relief. It may also set a further hearing if the Tribe alleges that damages have been caused by the activities of said person.

Where appropriate, and necessary for the effectuation of any orders of the Court, the Court may also order that the tidelands access permit of the person be revoked.

7.6. Damage Hearing

The Tribal Council may bring a civil action against any person or entity who has caused damage to the resources of Squaxin Island by failure to comply with any Tribal Council order issued pursuant to these regulations, or failure to comply with said regulations. The Tribal Council may bring such suit on its own behalf as trustee of the Tribal rights to the water resource of the Island and/or as representative of individual landowners affected. Such landowners may also bring suit on their own behalf.

All judgments recovered by the Tribal Council shall be used first, for reparations of damage to the Island, and second, for enhancement of the natural resources of the Island.

8.0. Notice of Enactment

The Resolution of the Council of the Squaxin Island Tribe which accompanies this water code shall serve as Notice of Enactment.