

RESOLUTION NO. 9987

WHEREAS, On the 29th day of April 1992, the Tribal Council approved the Integrated Resource Management Plan for the Forested Area of the Reservation for the management period January 1st, 1992 to December 31st, 2001 as Ordinance 74; and,

WHEREAS, The period of effectiveness for this plan is almost complete and a new authorization is necessary; and,

WHEREAS, The United States Government is required under its trust responsibilities, laws and regulations, to manage and protect the physical, biological, social, and cultural resources of Native Americans. In the case of the Confederated Tribes of Warm Springs Reservation of Oregon, those obligations are based on the Treaty of June 25th, 1855, with the Tribes and Bands of Middle Oregon and other applicable statutes, regulations and case law. Those obligations are unimpaired by this plan. Therefore, the Confederated Tribes of Warm Springs and the Bureau of Indian Affairs, Warm Springs Agency prepared a revision of the Integrated Resource Management Plan for the Forested Area of the Warm Springs Reservation; and,

WHEREAS, The purpose of the Integrated Resources Management Plan (IRMP) is to provide management direction for the use and or protection of the natural resources, as the case may be, within the forested area of the Reservation and is in the best interest of the Confederated Tribes of the Warm Springs Reservation and is in conformance with the Constitution and By-Laws and Corporate Charter of the Confederated Tribes; and,

WHEREAS, The Tribal Comprehensive Plan, Tribal Water Code, Tribal Land Use Code and other existing ordinances are recognized to be law and have been accommodated by and through the plan; and,

WHEREAS, The implementation of an integrated approach to project planning to develop and incorporate changes to goals, objectives, management zones, standards and best management practices listed in the revised IRMP provides improved protection necessary for the resources within the forested area; and,

WHEREAS, The continued implementation of monitoring and evaluation programs will ensure that this plan is carried out; and,

WHEREAS, The Tribal Council now desires to amend Ordinance 74 to incorporate those changes to provide permanent status for the IRMP; now, therefore

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BE IT RESOLVED, By the (Twenty-First) Tribal Council, pursuant to Article V, Section 1(a), (k), (i), (l), and (u) of the Constitution and By-Laws, that the Tribal Council approves and adopts the revised Integrated Resources Management Plan for the Forested Area attached hereto as "Exhibit A", and the revised management zones representing the Balanced Approach to resource management attached hereto as "Exhibit B" as amended Ordinance 74, as permanent plan without expiration date; and,

BE IT FURTHER RESOLVED, By the Tribal Council that the Resource Management Interdisciplinary Team will conduct a formal review of the IRMP at least once every five years. The results of this review and recommendations for changes to this Ordinance will be presented to Tribal Council in a timely manner; and,

BE IT FURTHER RESOLVED, That the Tribal Council Decision Document, attached hereto as "Exhibit C", provides the direction necessary to implement this plan; and,

BE IT FURTHER RESOLVED, By the Tribal Council that in order to enforce the provisions of the IRMP, Chapter 200 of the Tribal Law and Order Code, "Courts", is hereby amended by adding the following sections:

ENFORCEMENT OF TRIBAL INTEGRATED RESOURCES MANAGEMENT PLAN

200.820 **Responsibility for Enforcement of Integrated Resource Management Plans.** The General Manager of the Natural Resources Department (hereinafter "General Manager") shall have primary responsibility for enforcement of the provisions of the Integrated Resources Management Plans ("IRMP") adopted by the Tribal Council. The Integrated Resources Management Plan for Forested Lands was originally adopted by Tribal Council Ordinance No. 74 on 29th of April 1992. The Integrated Resources Management Plan for Range Lands was adopted by the Tribal Council by Resolution No. 9723 on the 15th of June 1999. The Warm Springs tribal police and the Tribal Prosecutor shall provide assistance to the General Manager of the Natural Resources Department as needed to enforce the terms of the IRMP. The General Manager shall initiate this process through the filing of a complaint with the Warm Springs Police Department.

200.821 **Inspection and Monitoring.** The General Manager and his designees shall have the authority to enter, inspect and monitor all tribal lands and premises on tribal lands within the Reservation to ensure

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compliance with the IRMP. Entrance on allotted and fee lands in which the Tribe has no interest may only be had pursuant to the consent of the appropriate person or pursuant to a search warrant.

200.822 **Education and Voluntary Compliance.** The primary means for carrying out the provisions of the IRMP shall be education and voluntary compliance. The General Manager shall endeavor to resolve violations through education and verbal recommendations for mitigation necessary to correct the violation.

200.823 **Issuance of Compliance Orders.** In appropriate cases, where less restrictive means have been ineffective or are inappropriate, the General Manager, in consultation with the appropriate committee, shall have authority to issue a written order to anyone within the jurisdiction of the Tribes to correct a violation. The order may include required mitigation, monitoring and reporting.

200.824 **Enforcement of Compliance Orders.** The General Manager, through the Tribal Prosecutor, shall be entitled to seek injunctive and/or declaratory relief in connection with compliance orders. In addition to injunctive or declaratory relief, the tribal Court may award damages which include, but are not limited to, the cost of investigations, inspections or monitoring surveys which lead to the establishment of violation; expenses incurred by the Tribes in removing, correcting, or terminating any adverse effects upon human health and the environment resulting from the violative activity, whether or not accidental; and compensation for loss or destruction of wildlife, fish or aquatic life, or their habitat, or for any other damage caused by the violative activity, either to the Tribes or to any residents of the Reservation where directly aggrieved by the violative activity, or both. In any action brought under this section, the Court may also award the Tribe its reasonable costs incurred in enforcing the provision of the IRMP, including its reasonable attorney fees. The General

Manager is authorized to commence an action under this section in the District Court for the United States if jurisdictional grounds are satisfied.

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200.825 **Civil Penalties.** Violation of any compliance order by any person subject to the jurisdiction of the Tribal Court shall be punishable by a fine not to exceed \$5,000 for each day that such violation continues. The Tribal Council hereby finds that such civil penalties are reasonably related to the administrative expenditures necessary to maintain the Tribes' health, welfare, and economic security, through the management, protection and development of natural resources on the Reservation. In determining the amount of a civil penalty, the Tribal Court shall consider the nature, circumstances, extent and gravity of the violation or violations, and, with respect to the violator, the economic benefit (if any) resulting from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty, and such other matters as justice may require. A single operational upset (any incident or activity which deviates from the normal operation of a permitted activity) which leads to simultaneous violations of more than one standard shall be treated as a single violation. The General Manager is authorized to commence an action under this section in the District Court for the United States if jurisdictional grounds are satisfied.

200.826 **Criminal Penalties.** Any person subject to the criminal jurisdiction of the Warm Springs Tribal Court who knowingly violates any compliance order issued pursuant to WSTC200.823, shall be deemed guilty of Knowing Violation of Compliance Order, and, upon conviction, may be punished by a fine not to exceed \$5,000 or by imprisonment for a period not to exceed one year, or by both such fine and imprisonment.

200.827 **Exclusion.** A knowing violation of a compliance order shall subject the violator to exclusion pursuant to the provisions of Warm Springs Tribal Code Chapter 300 "Exclusion of Persons Not Legally Entitled to Reside on the Reservation."

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200.828 Seizure and Disposition of Security. In cases in which the General Manager deems that there is a substantial risk of nonappearance in Tribal Court enforcement proceedings, the personal property of violators may be seized to secure payment of any fines which may be levied in the Tribal Court. Seizure and disposition of personal property shall be conducted in accordance with the provisions of WSTC200.700 et.seq.; and,

BE IT FURTHER RESOLVED, That in response to monitoring and evaluation program or after an analysis of objectives, standards or best management practices it may be apparent that changes to standards and best management practices established in the IRMP are necessary. In that event the Natural Resources General Manager, after consultation with the Resource Management Interdisciplinary Team, and determining that such waiver is consistent with the overall guidelines of the IRMP, may on a temporary basis waive the application of the relevant current standards and best management practices so long as it does not result in significant harm to the resource. The Natural Resources General Manager shall in such cases recommend appropriate amendments to the IRMP at the next regularly scheduled review of the IRMP with the Tribal Council; and,

BE IT FURTHER RESOLVED, That the Secretary-Treasurer and BIA Agency Superintendent shall be designated and authorized to implement this management plan recognizing that it may need to be amended to meet changing tribal demands, and changing forest technology. Therefore, the plan may be amended by Tribal Council resolution to meet changing Tribal direction; and,

BE IT FURTHER RESOLVED, That the General Manager of the Natural Resources Department is hereby directed to coordinate with adjoining land managers, including but not limited to, the Bureau of Land Management and the U.S. Forest Service, in accordance with existing federal and tribal law, to ensure that plans of adjoining land managers, complement to the extent possible, the IRMP.

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CERTIFICATION

The undersigned as Secretary-Treasurer of the Confederated Tribes of the Warm Springs Reservation of Oregon, hereby certifies that the Tribal Council is composed of 11 members of whom 7, constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and held this 14th day of March 2001; and that the foregoing resolution was passed by the affirmative vote of 6 members, the Chairman not voting; and that said resolution has not been rescinded or amended in any way.

NOTED:

Charles V. Jackson
Secretary-Treasurer

Gordon E. Cannon
Superintendent

ATTACHMENT

cc: Secretary-Treasurer
Superintendent
Administrative Services Center