

## Application For Clean Water Act Eligibility To Administer A Water Quality Standards Program and a Water Quality Certification Program

The Winnebago Tribe of Nebraska hereby applies under section 518 of the Clean Water Act (CWA) to the U.S. Environmental Protection Agency to become eligible to be treated in a similar manner as a state (TAS) to administer a CWA section 303(c) Water Quality Standards Program and CWA section 401 Water Quality Certification Program.

### **1. BACKGROUND**

The Winnebago Tribe of Nebraska Reservation is located in the northern half of Thurston County and small portion in southeastern Dixon County in northeastern Nebraska and in the southwestern corner of Woodbury County in northwestern Iowa. The Reservation covers approximately 113,000 acres in Nebraska and 1800 acres in Iowa.

The Winnebago Tribe of Nebraska's jurisdiction has recently expanded with the acquisition of new lands under the Winnebago Land Transfer Act of 2023. This Act transfers approximately 1600 acres of land into trust for the Winnebago Tribe, located on the Iowa side of the Missouri River. These lands are now recognized as part of the Tribe's trust lands and are integral to the Tribe's environmental management and protection efforts. With the addition of these lands, the Tribe's jurisdiction and responsibility for water quality and environmental stewardship have increased, necessitating the extension of Clean Water Act (CWA) authority to these areas.

The Reservation is bordered by the Omaha Indian Reservation to the south and the Dakota-Thurston County line to the north. The western boundary parallels State Highway 16 about 2 miles to its east and is intersected by the Missouri River. The closest large urban centers are Sioux City, Iowa located about 20 miles north and Omaha, NE located about 80 miles to the south. (See Figure 1: Winnebago Tribe of Nebraska Vicinity Map)

**Figure 1: Winnebago Tribe of Nebraska Vicinity Map**

Updated map added 11-15-2024

According to the 2000 Census, approximately 2,600 people live on the Reservation. Approximately one third of the Reservation acreage is owned by the Tribe and individual tribal members. Non-tribal members, however, farm much of the land. The largest community on the Reservation is the Village of Winnebago, located on the eastern side of the Reservation, Winnebago is home to most Winnebago tribal members and accounts for almost thirty percent of the Reservation's resident population. Important sectors of employment include health and education services, manufacturing, agriculture, public administration and retail trade.

The Winnebago Tribe of Nebraska is very concerned about the condition of the natural environment and how that condition affects human health and ecosystems. The Tribe has major concerns about the misuse of pesticides, land application of animal and other waste, bank erosion, nutrient runoff from fertilizer application and livestock grazing. All which can potentially

degrade the quality of surface water and ground water on the Reservation. Ceremonial water is drawn from natural springs and individuals, both young and old, enjoy fishing from the major streams and ponds.

The overall goal of the Winnebago Tribe is to determine the condition of the natural environment and protect the health and welfare of tribal members and other individuals residing within the exterior boundaries of the Reservation. A primary objective to achieve this goal is through the development of EPA approved Tribal Water Quality Standards.

## **2. FEDERAL RECOGNITION (40 C.F.R. § 131.8(a)(1) and (b)(1))**

The Tribe is recognized by the Secretary of the Interior, by virtue of its being on the list of recognized Tribes promulgated by the Secretary, Federal Register, Volume 79, page 4752 (2014) and by agreement with the United States, Act of March 8, 1865 (14 Stat. 671) and Act of June 22, 1874 (18 Stat. 170). (See Appendix1: Federal Register)

## **3. AUTHORITY OVER A FEDERAL INDIAN RESERVATION (40 C.F.R. § 131.8 (a)(1) and 131.3(1))**

The Winnebago Tribe of Nebraska exercises governmental authority over a federal Indian reservation, which includes lands held by the United States in trust for the tribal government that are not located within the boundaries of the formal reservation. The tribe's jurisdictions now extends to include newly acquired lands under the Winnebago Land Transfer Act of 2023 (See Appendix 2: Winnebago Land Transfer Act of 2023). Refer to section 5 of the application for more information about the description of the Tribe's reservation lands.

## **4. TRIBAL GOVERNANCE (40 C.F.R. § 131.8(a)(2) and (b)(2))**

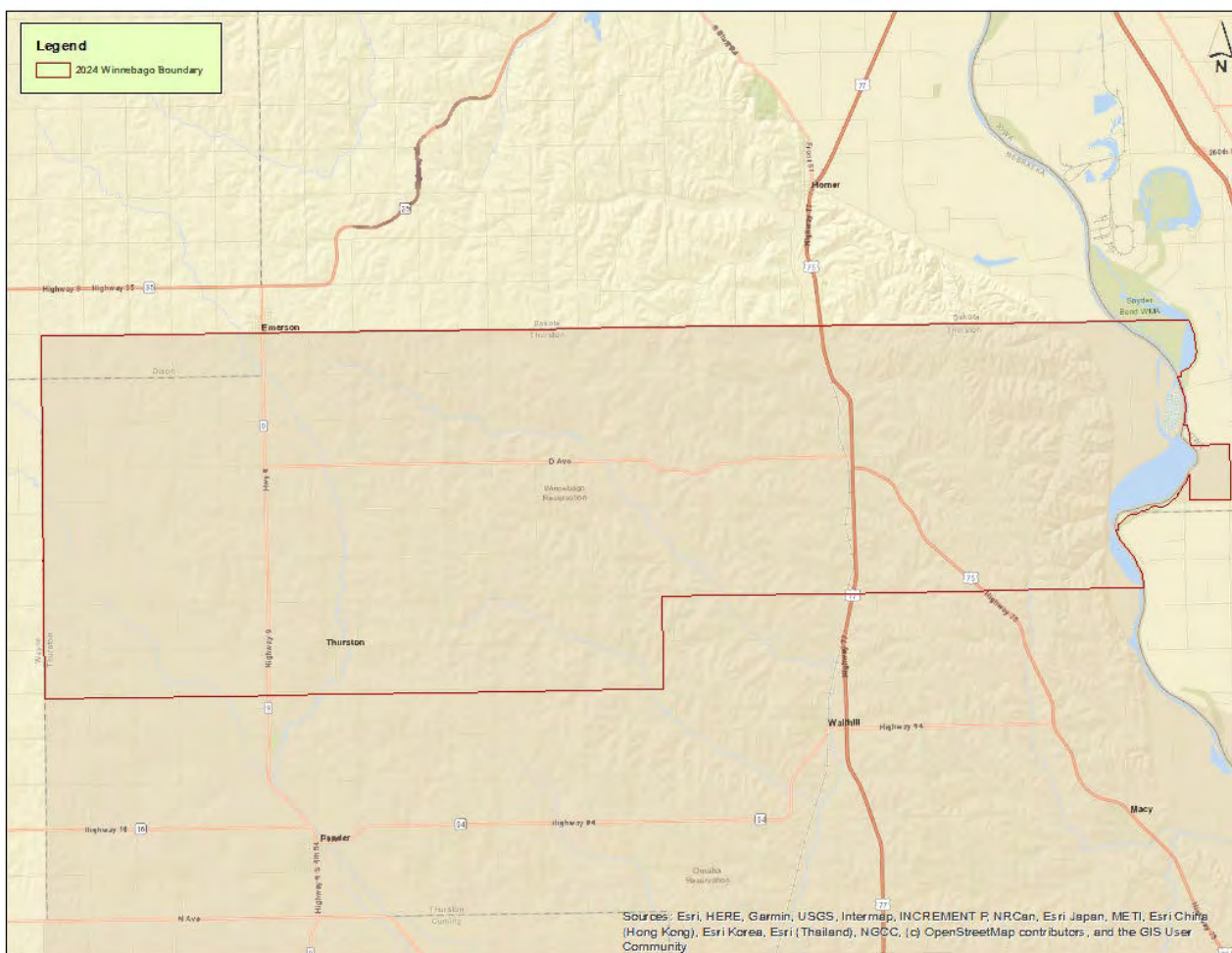
The Winnebago Tribe of Nebraska has a governing body carrying out substantial governmental duties and powers. See the Tribe's previous TAS application for the Nonpoint Source Pollution Program submitted to EPA Region 7 on December 9, 2016 and approved by EPA Region 7 February 27, 2017.

## **5. MANAGEMENT AND PROTECTION OF WATER RESOURCES OF THE WINNEBAGO RESERVATION (40 C.F.R. § 131.8(a)(3) and (b)(3))**

The water quality standards and water quality certification programs to be administered by the Tribe will assist in managing and protecting water resources within the exterior boundaries of the Winnebago Reservation. Stated under the Winnebago Tribal Code Title 8 Article 2 Water Management Section 8-203 Definitions: "Waters of the reservation and reservation waters means all water that lies, flows, arises, or otherwise occurs on or under the reservation". (See Appendix 3: Winnebago Tribal Code Title 8 Article 2)

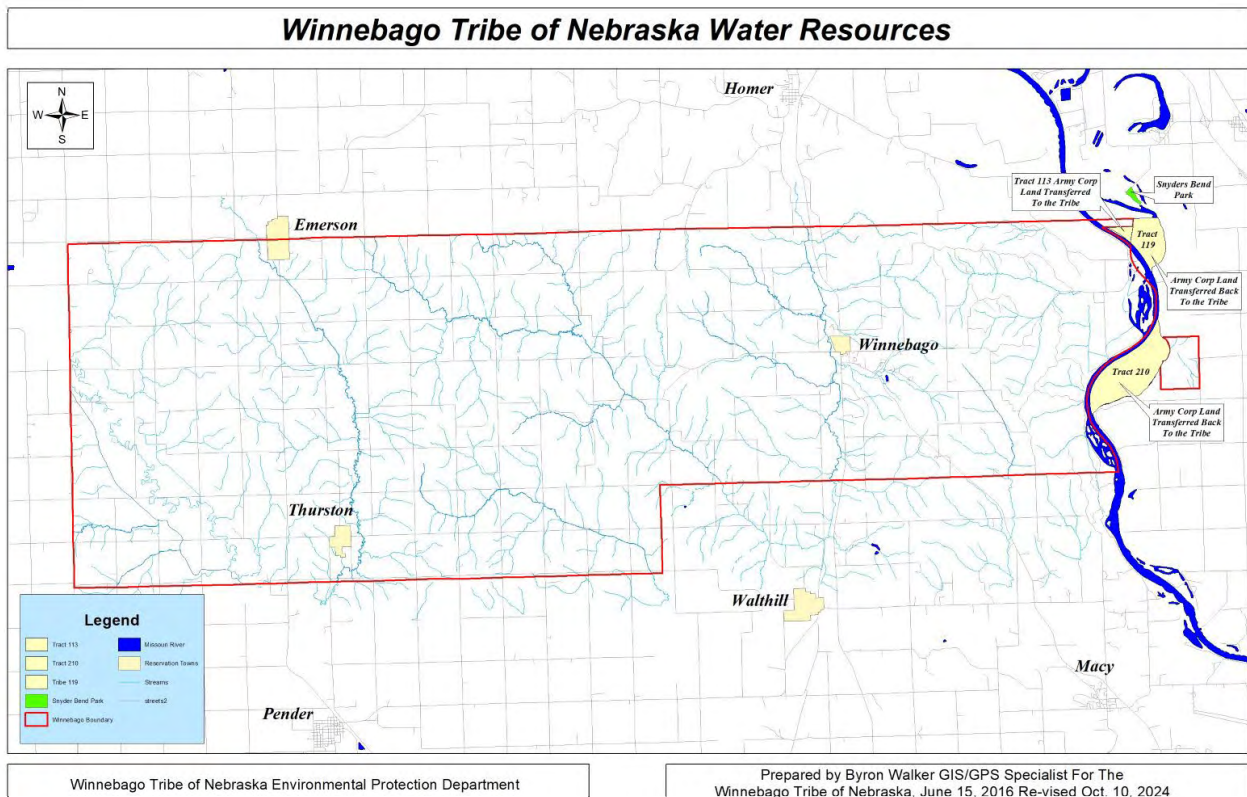
The boundaries of the Winnebago Reservation areas for which the Tribe is seeking authority to administer the water quality standards and water quality certification programs are identified in Figure 2: Winnebago Reservation Map.

**Figure 2: Winnebago Reservation Map**



Updated map added 11-15-2024

The surface waters for which the Tribe proposes to establish water quality standards are those surface waters that occur on the Winnebago Reservation areas described in Figure 3: Map of Winnebago Reservation Surface Waters. These include waterbodies that lie within the Missouri River Basin and Elkhorn River Basin. The Missouri River Basin contains the Blackbird-Soldier Watershed (HUC: 10230001) along the eastern side of the Reservation and the Elkhorn River Basin contains the Logan Watershed (HUC: 10220004) along the west side.

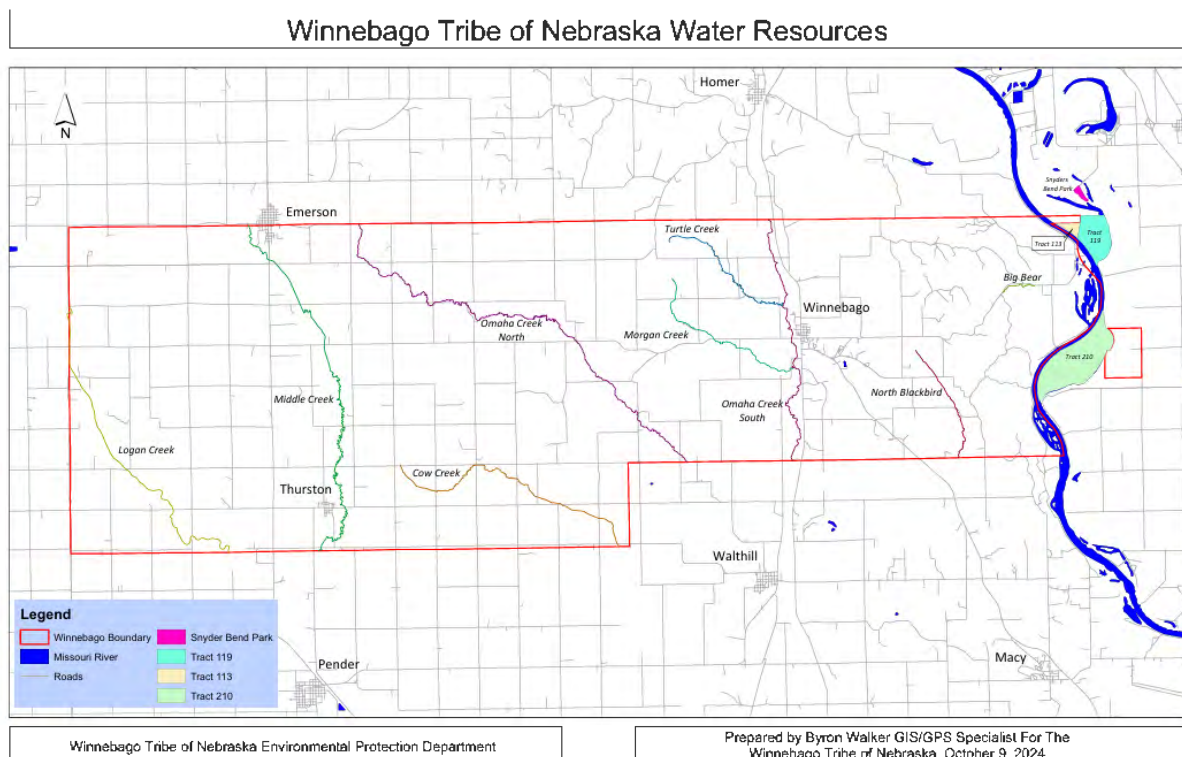
**Figure 3: Map of Winnebago Reservation Surface Waters**

Updated Water Resources Map to include new lands 11-14-24

The major Winnebago Reservation waterbodies contained in the Blackbird-Soldier Watershed include the Missouri River, Cow Creek, North Omaha Creek, Omaha Creek, North Blackbird Creek, Big Bear Creek, Turtle Creek, Morgan Creek, Kelly Pond, Ross Pond and H-Lake.

The major Winnebago Reservation waterbodies contained in the Logan Watershed include Logan Creek and Middle Creek.

Figure 4: Map of Major Creeks on Winnebago Reservation demonstrates location of major surface waterbodies within the Blackbird-Soldier Watershed and Logan Watershed.

**Figure 4: Map of Major Creeks on Winnebago Reservation**

Updated Major Creeks Map to include new lands 11-14-2024

## 6. TRIBAL LEGAL COUNSEL STATEMENT (40 C.F.R. § 131.8(b)(3)(ii))

A statement by the Tribe's legal counsel providing references to the documents that established the Tribe's reservation lands, and describing the basis of the Tribe's assertion of authority, is provided separately.

The Winnebago Tribe of Nebraska ("Tribe") is organized under the Indian Reorganization Act of 1934 and has adopted a Tribal Constitution and By-Laws. The Tribe's Constitution and By-Laws were established according to the Act of Congress, dated June 18, 1934 (48 Stat. 984). The Constitution applies to the territory embraced in the Winnebago Reservation in Nebraska, as the same as described by the Treaty of March 8, 1865 (14 Stat. 671) and twenty sections included in the strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat. 170, June 22, 1874) and such lands as may be added thereto by Congress or by the Tribe or affirmation of the title to lands through the courts to the Tribe, except as otherwise provided by law. All lands identified by the Treaty of March 8, 1865 (14 Stat. 671) and strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat. 170, June 22, 1874) are contained within the exterior boundaries of the Reservation (Refer to Figure 2). The Tribe's Constitution and By-Laws demonstrate the Tribe's exercise of authority in general over the Winnebago Reservation. (See Appendix 4: Winnebago Constitution and By-Laws)

The basis for the Tribe's assertion of authority under this application is the express congressional delegation of authority to eligible Indian tribes to administer regulatory programs over their reservation contained in section 518 of the Clean Water Act. This authority is described in the U.S. Environmental Protection Agency's final interpretive rule, *Revised Interpretation of the Clean Water Act Tribal Provisions*, 81 FR 30183, May 16, 2016.

There are no limitations or impediments to the Tribe's authority or ability to effectuate the delegation of authority from Congress as described in this application.

## **7. TRIBAL CAPABILITY**

The Winnebago Tribe is capable of administering effective water quality standards and water quality certification programs, as described below.

The overall organization of the Tribe's government and experience in managing programs, such as environmental or public health programs, is described in the Nonpoint Source Pollution Program Treatment as Similar to a State, V. Tribe Is Capable of Administering an Effective CWA 319 Nonpoint Source Program.

The Tribe administers a wide variety of programs under the areas of land, water and natural resources. These programs serve not only the environment (land, water and air) but also ensure the welfare of the communities within the exterior boundaries of the Reservation. These programs often work closely with technical consultants, State and Federal agencies, non-Indian corporations, national advocacy organizations, municipalities, local communities, other Tribes and elected officials in all levels of government. The responsibilities to establish, review, implement and revise water quality standards will be assigned to Clean Water Act Section 106 Water Quality Planning and Management Program, Environmental Protection Department of the Physical Resources Department.

The Tribal entity that will be responsible for conducting water quality certifications under CWA section 401 is Clean Water Act Section 106 Water Quality Planning and Management Program, Environmental Protection Department of the Physical Resources Department.

Currently, a staff member is employed in the Water Quality Planning and Management Program, Environmental Protection Department of the Physical Resources Department and trained to administer the water quality standards and certification programs. The Water Quality Specialist employed by the Winnebago Tribe plays a crucial role in the administration of water quality standards and certification programs. Given the responsibilities outlined, the Water Quality Specialist has access to legal advice to navigate the complexities of environmental regulations and ensure compliance with both tribal and federal laws.

**Key Responsibilities of the Water Quality Specialist:**

- **Administrative Activities:** The Specialist manages day-to-day operations of the Water Quality Planning and Management Program.
- **Liaison Role:** Acts as a bridge between the Tribe, state and federal agencies, and private citizens, facilitating communication and collaboration on environmental issues.
- **Training and Workshops:** Attends relevant workshops and training sessions to stay updated on environmental regulations and best practices.
- **Work Plans and Budgets:** Prepares and submits work plans and budgets to secure funding and ensure the program's viability.
- **Monitoring Activities:** Conducts physical, chemical, and biological monitoring of surface water and fish tissue to assess environmental health.

**Legal Considerations:**

- **Compliance with Environmental Regulations:** Understanding and adhering to the Clean Water Act and other relevant environmental laws is vital for the Specialist's work.
- **Tribal Code:** Familiarity with the Winnebago Tribal Code, particularly sections related to environmental protection and public health, is necessary to ensure that all activities align with tribal regulations.
- **Collaboration with Legal Counsel:** The Tribe's representation by Big Fire Law indicates that legal counsel is available for clarifications and guidance on legal matters affecting the Water Quality Specialist's duties as well as State and Federal agencies.

The Water Quality Specialist's role is integral to the Winnebago Tribe's environmental protection efforts. Access to legal advice ensures that the Specialist can effectively navigate the regulatory landscape, maintain compliance, and protect the Winnebago Tribe's natural resources.

The Tribe was granted treatment in a manner similar to a state (TAS) over their reservation on January 19, 2021. Subsequent to the approval of the Winnebago Tribe's application for TAS, the Tribe's jurisdiction was expanded with the acquisition of new lands under the Winnebago Land Transfer Act of 2023, Public Law 118-68. Signed into law on July 12, 2024, this Act transferred approximately 1600 acres of land located on the Iowa side of the Missouri River into trust for the Winnebago Tribe. These lands were part of the original reservation of land identified in the Treaty of March 8, 1865. As a result of the return of these lands to the Winnebago Tribe, the Reservation now covers approximately 113,000 acres in Nebraska and 3,400 acres in Iowa. With the addition of these lands, the Tribe's jurisdiction and responsibility for water quality and environmental stewardship have increased, necessitating the extension of Clean Water Act (CWA) authority to this area.

The Tribe is a federally recognized tribe as provided in the most recent printing in the Federal Register, Volume 89, No. 5, page 947 (2024) of all tribes currently recognized by the Federal government. Further, the Winnebago Tribe of Nebraska was organized under the Indian Reorganization Act of 1934 (48 Stat. 984), and through such Act, the Tribe developed a Constitution and By-laws.

The Constitution of the Winnebago Tribe of Nebraska provides in Article I that “the Constitution shall apply to the territory embraced in the Winnebago Reservation in Nebraska, as the same is described by the Treaty of March 8, 1865 (14 Stat. 671) and the twenty (20) sections included in the strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat. 170, June 22, 1874) and such lands as may be added thereto by Congress or by the Tribe or reaffirmation of the title to lands through the courts to the Tribe except as otherwise provided by law.”

The Tribe’s Constitution in Articles III and IV provides for a governing body, the Tribal Council, with certain powers. The Tribal Council has the following pertinent authority, as stated in Article IV (not all provisions from this section are provided below):

- To negotiate with the federal, state and local governments on behalf of the Tribe, and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Winnebago Reservation. “Reservation”, as used herein, shall include the Winnebago Reservation and all other Indian Country subject to the jurisdiction of the Tribe.
- To safeguard and promote the peace, safety, morals and general welfare of the Tribe.
- To manage all economic affairs and enterprises of the Tribe.
- To regulate the conduct of trade and the use and disposition of property upon the Reservation.
- To protect and preserve the property, wildlife and natural resources of the Tribe.
- To promulgate and enforce statutes governing the conduct of persons located within or passing through the Reservation and providing for the maintenance of law and order and the administration of justice.
- To delegate to subordinate boards, or to tribal officials, or to cooperative associations which are open to all members of the Tribe, any of the foregoing powers reserving the right to review any actions taken by virtue of such delegated powers.
- To manage and lease or otherwise deal with tribal land and communal resources in accordance with law. (Article VIII).

The Tribal government conducts substantial governmental duties and effectively exercises governmental powers within the exterior boundaries of the Winnebago Reservation, including land contiguous to the returned lands. In the exercise of these powers, the Tribe has adopted a water management law in order to promote the protection and use of the waters of the reservation in a manner consistent with Tribal goals and policies. Further, the water management law is also designed to assert the inherent powers of self-government and sovereign authority of the Winnebago Tribe of Nebraska over all actions taken within the reservation that may affect the use or quality of reservation waters. In addition, the Winnebago Tribe exercises police powers and employs both Tribal Police officers and certified Tribal Conservation Officers who are authorized to enforce both civil and criminal laws.

Under the Water Management law, Title 8, Article 2 of the Winnebago Tribal Code, the Tribe seeks to provide an effective and coordinated management of regional water supplies with Tribal, state, federal and local governments by initiating an integrated approach by the Tribe to managing the waters, forests, wildlife, land and other natural resources of the reservation.

Based on the structure of the government of the Winnebago Tribe of Nebraska and those persons and subjects to which they can assert statutory jurisdiction, combined with the Tribe's ability to develop laws, there is no impediment to the Tribe's authority or ability to effectuate the delegation of authority to exercise TAS authority upon both their original lands and the returned lands.

## **Appendix 1: Federal Register**

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs [167 A2100DD/AAKC001030/ A0A501010.999900]

Federal Register/ Vol 81, No. 19/ Friday, January 29, 2016/ Notices

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the current list of 566 Tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian Tribes. The list is updated from the notice published on January 14, 2015.

INDIAN TRIBAL ENTITIES WITHIN THE CONTIGUOUS 48 STATES RECOGNIZED AND ELIGIBLE TO RECEIVE SERVICES FROM THE UNITED STATES BUREAU OF INDIAN AFFAIRS

Winnebago Tribe of Nebraska

[FR Doc. 2016-01769 Filed 1-28-16; 8:45 am]  
BILLING CODE 4337-15-P

## **Appendix 2: Winnebago Land Transfer Act of 2023**

Public Law 118-68  
118th Congress

An Act

To transfer administrative jurisdiction of certain Federal lands from the Army Corps of Engineers to the Bureau of Indian Affairs, to take such lands into trust for the Winnebago Tribe of Nebraska, and for other

purposes. <<NOTE: July 12, 2024 - [H.R. 1240]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Winnebago Land Transfer Act of 2023.>>

#### SECTION 1. SHORT TITLE.

This Act may be cited as the ``Winnebago Land Transfer Act of 2023''.

#### SEC. 2. LAND TO BE TAKEN INTO TRUST.

(a) In General.--Subject to all valid existing rights, all right, title, and interest (including improvements and appurtenances) of the United States in and to the Federal lands described in subsection (b), those Federal lands--

(1) are declared to be part of the Winnebago Reservation created by the Treaty between the United States and the Winnebago Tribe in 1865; and

(2) shall be held in trust by the United States for the benefit of the Winnebago Tribe of Nebraska subject to the same terms and conditions as those lands described in the Treaty with the Winnebago Tribe, 1865 (14 Stat. 671).

(b) Federal Lands Described.--The Federal lands described in this subsection are the following:

(1) That portion of Tract No. 119, the description of which is filed in the United States District Court for the Northern District of Iowa (Western Division), Civil Case No. 70-C-3015-W, executed May 11, 1973, said tract being situated in Section 8 and the accretion land thereto, the Southwest Quarter of Section 9, the West Half of Section 16, the East Half of Section 17, Township 86 North, Range 47 West of the Fifth Principal Meridian, Woodbury County, Iowa, lying Easterly of the Nebraska/Iowa State Line and Southerly of the Easterly extension of the North line of the Winnebago Reservation.

(2) Tract No. 210, as described in Schedule ``A'' of the ``Declaration of Taking, Legal Description of Tract 210 and Judgment on Stipulation and Order of Distribution'', filed in the United States District Court for the Northern District of Iowa (Western Division), Civil Case No. 70-C-3015-W.

(3) Tract No. 113, as described in the ``Judgment on Declaration of Taking and Legal Description of Tract 113'', filed in the United States District Court for the District of Nebraska, Civ. No. 03498.

(c) Gaming Prohibition.--Class II and class III gaming under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not be allowed at any time on the land taken into trust under subsection (a).

Approved July 12, 2024.

#### LEGISLATIVE HISTORY--H.R. 1240:

HOUSE REPORTS: No. 118-369 (Comm. on Natural Resources).  
SENATE REPORTS: No. 118-180 (Comm. on Indian Affairs).  
CONGRESSIONAL RECORD, Vol. 170 (2024):

Feb. 5, considered and passed House.  
June 20, considered and passed Senate.

## Appendix 3: Winnebago Tribal Code Title 8 Article 2

### TITLE 8 ARTICLE 2 WATER- MANAGAMET (Revised January 23, 2025)

8-201	Purposes.	8-209	Committee Member Provisions.
8-202	Major Actions.	8-210	Listing of Current Uses.
8-203	Definitions.	8-211	Water Resource Information.
8-204	Severability.	8-212	Public Cooperation.
8-205	Composition of the Committee.	8-213	Declarations of New Water Use.
8-206	Committee Chairperson.	8-214	Inventory Update.
8-207	Committee Meetings.	8-215	Committee and Administrator Responsibilities.
8-208	Duties.		

**8-201 Purposes.** The purposes of this Article shall be:

1. To promote the protection and use of the waters of the reservation in a manner consistent with Tribal goals and policies;
2. To protect the health, welfare, economic strength, and cultural heritage of the Tribe and its members;
3. To maintain water quality, free-flowing streams, and a healthy environment associated with waters of the reservation;
4. To assert the inherent powers of self-government and sovereign authority of the Winnebago Tribe of Nebraska over all actions taken within the reservation that may affect the use or quality of reservation waters;
5. To provide for effective and coordinated management of regional water supplies with Tribal, state, federal and local governments; and
6. To initiate an integrated approach by the Tribe to managing the waters, forests, wildlife, land, and other natural resources of the reservation. [TCR 87-82]

**8-202 Major Actions.** In order to effectuate the policies in section 8-201, this Article shall:

1. Establish a water resource committee;
2. Initiate a water use inventory;
3. Require that all future water uses be registered with the Tribe; and
4. Lay the groundwork for developing water quality control programs, water regulatory Codes, and integrated resource management strategies. [TCR 87-82]

**8-203 Definitions.** The following words and terms shall be defined as follows when used in this Article:

1. "Administrator" means the water administrator of the Tribe appointed and supervised by the

- water resource committee.
2. "Committee" means the water resource committee established under this Article.
  3. "Person" includes any individual corporation, association, unit of government, organization, or other legal entity.
  4. "Reservation" means all territory within the boundaries of the Winnebago reservation regardless of ownership.
  5. "Tribe" means the Winnebago Tribe of Nebraska.
  6. "Waters of the reservation" and "reservation waters" means all water that lies, flows, arises, or otherwise occurs on or under the reservation.
  7. "Water use" means any withdrawal diversion, pumping, or impoundment of water for any purpose by means of well, ditch, hose, pipe, dam, or other structural device. [TCR 87-82, 25-94]

**8-204 Severability.** If any provision of this Article is held to be legally invalid, the remainder of this Article shall retain full force and effect under law. [TCR 87-82]

**8-205 Composition of the Committee.** The committee, as appointed by the Tribal Council, shall consist of five members normally serving staggered terms of three years. [TCR 87-82, 25-94]

**8-206 Organizational Meeting.** The Committee shall hold an organizational meeting annually in November or at the first meeting held following thereafter. A Chairperson and Vice Chairperson shall be elected at the Organizational Meeting. [TCR 25-94]

**8-207 Committee Chairperson.** The Committee Chairperson shall be in charge of running the meetings of the committee and reporting to the Tribal Council regarding committee actions. [TCR 87-82, 25-94]

**8-208 Committee Vice Chairperson.** The Committee Vice Chairperson shall be in charge of running meetings in event of Chairperson's absence. [TCR 25-94]

**8-209 Committee Meetings.** The committee shall meet once every two months, or with such greater frequency as determined by the committee members. Decisions of the committee must be made by a majority vote of the members. A written summary of each meeting shall be compiled by the chairperson, reviewed by the other committee members, and submitted to the Tribal Council. A majority of the number of committee members shall constitute a quorum. A quorum including the Chairperson, or the Vice Chairperson acting in the Chairperson's absence, must be in attendance at all times for the conduct of business at committee meetings. [TCR 87-82, 10-17, 25-94]

**8-210 Duties.** The committee shall:

1. Implement the provisions and policies of this Article;
2. Appoint and supervise the water administrator;
3. Make recommendations to the Tribal Council regarding future water policies and regulations; and
4. Submit a budget request in accordance with tribal budget procedures if funds are needed for implementing future water programs. [TCR 87-82, 25-94]

**8-211 Committee Member Provisions.**

1. Committee members shall serve their full term unless they submit a written resignation to the Tribal Council or are removed by the affirmative vote of two-thirds of the Tribal Council membership because of incompetency, neglect of duty, or misconduct.
2. Vacancies on the committee shall be filled for the remainder of the unexpired term through interim appointment of a new member the Tribal Council.
3. Compensation of committee members, if any, shall be fixed by the Tribal Council.
4. Members of the committee must be over twenty years of age and enrolled in the Tribe. The committee shall recommend to the Tribal Council persons to fill committee vacancies.
5. At least one Member of the Committee shall be a member of the Water Spirit Clan of the Winnebago Tribe of Nebraska.
6. One member of the Committee shall be a current member of the Winnebago Tribal Council. [TCR 87-82, 25-94]

**8-212 Omitted due to irrelevance**

**8-213 Omitted due to irrelevance**

**8-214 Omitted due to irrelevance**

**8-215 Omitted due to irrelevance**

**8-216 Omitted due to irrelevance**

**8-217 Committee and Administrator Responsibilities.** The committee and administrator shall:

1. Coordinate with other governmental entities to protect regional water quality;
2. Assess and recommend to the Tribal Council the extent to which the Tribe should participate in programs under the federal Safe Drinking Water Act; and
3. Assess and recommend to the Tribal Council the extent to which the Tribe should participate in programs under the federal Clean Water Act; and
4. Implement the provisions of Resolution 87-79 to oppose any dump sites on or near the reservation based on potential contamination of Indian Tribal drinking water sources and all reservation waters. [TCR 87-82, 25-94]

## **Appendix 4: Winnebago Constitution and By-Laws**

### **CONSTITUTION AND BYLAWS OF THE WINNEBAGO TRIBE WINNEBAGO RESERVATION IN THE STATE OF NEBRASKA**

We, the Winnebago Tribe of the Winnebago Reservation in the State of Nebraska, in order to reestablish our tribal organization; to conserve and develop our natural resources; to form business and other organizations; to enjoy certain rights of home rule; to provide education in schools of higher learning, including vocational, trade, high schools, and colleges for our people;

do ordain and establish this Constitution and Bylaws according to the Act of Congress, dated June 18, 1934 (48 Stat. 984).

## **ARTICLE I - TERRITORIAL JURISDICTION**

SECTION 1. This Constitution shall apply to the territory embraced in the Winnebago Reservation in Nebraska, as the same is described by the Treaty of March 8, 1865 (14 Stat. 671) and the twenty (20) sections included in the strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat. 170, June 22, 1874) and such lands as may be added thereto by Congress or the Tribe or reaffirmation of the title to lands through the courts to the Tribe, except as otherwise provided by law.

## **ARTICLE II - MEMBERSHIP**

SECTION 1. The membership of the Winnebago Tribe of Nebraska shall consist as follows:

(a) All persons of Indian blood whose names appear, or are entitled to appear, on the April 1, 1934 official census roll of the Winnebago Tribe of Nebraska, or the January 1, 1935, supplement thereto: provided that those persons who possess Winnebago Indian blood and blood of another tribe have not elected to be enrolled with the other tribe; and provided further that those persons of Indian blood of tribes other than Nebraska Winnebago, whose names appear on the basic roll as "N. E." shall not be considered as members of the Winnebago Tribe of Nebraska; and provided further that persons of Winnebago Indian blood after the date of the basic roll and prior to the date of this amendment, may be enrolled if by January 1, 1967, they submit to the Tribal Council a request, in writing, accompanied by such evidence as is necessary to determine their qualifications for enrollment; and provided further that any Indian who may be eligible for membership in the Winnebago Tribe of Nebraska, who has received an allotment of land, or received financial benefits as a member of another tribe, shall not be enrolled. *[As changed by Amendment No. I, effective April 18, 1963]*

(b) All persons who have been validly adopted as members of the Winnebago Tribe of Nebraska prior to the date of this amendment is approved by the Secretary of the Interior. *[As changed by Amendment No. I, effective April 18, 1963]*

(c) All children born to an enrolled member of the Winnebago Tribe of Nebraska, provided such children possess at least one-fourth (1/4) degree Indian blood, including both Winnebago Indian blood and blood of another federally recognized Indian tribe. *[As changed by Amendment, effective March 10, 2009 and replacing the prior Subsection (c) modified by Amendment No. I, effective April 18, 1963]*

(d) Persons who are descendants of an enrolled Winnebago tribal member and who have one-fourth (1/4) or more degree Indian blood, including both Winnebago Indian blood and blood of another federally recognized Indian tribe, may be enrolled in tribal membership upon approval by a majority vote of the tribal membership, provided application is first made in writing to the Tribal Council or its designee. The Tribal Council, after proper investigation, shall submit to a

vote of the tribal members at the next tribal election the names of all applicants for enrollment determined to be a descendant of a Winnebago tribal member and have at least one-fourth (1/4) degree Indian blood, including both Winnebago Indian blood and blood of another federally recognized Indian tribe. Those applicants approved by a majority vote of the tribal membership voting in the election shall be accepted as members of the tribe. *[As changed by Amendment, effective March 10, 2009 and replacing prior Subsection (d) added by Amendment No. VIII, effective April 11, 1968]*

SECTION 2. Any person who has been rejected as a member of the Winnebago Tribe of Nebraska, except those rejected under Section I (b), shall have the right to appeal his case to the Secretary of the Interior within sixty (60) days from the date written notice of the rejection is issued to him, and the decision of the Secretary of the Interior shall be final. *[As changed by Amendment No. 1, effective April 18, 1963]*

SECTION 3. Nothing contained in this Article shall be construed to deprive any Winnebago Indian of any vested property right. *[As changed by Amendment No. 1, effective April 18, 1963]*

### **ARTICLE III -THE GOVERNING BODY**

SECTION 1. The governing body of this Tribe shall be the Tribal Council, composed of nine members, who shall be elected at large by secret ballot at an election hereinafter provided for by the qualified voters of the Tribe; such members to be chosen from the membership of the Tribe. *[As changed by Amendment No. II, effective April 18, 1963]*

SECTION 2. At the election held in October 1963, nine (9) members shall be elected. The three (3) receiving the highest number of votes shall be declared elected for a term of three (3) years. The three (3) receiving the next highest number of votes shall be declared elected for a term of two (2) years, and the three (3) receiving the next highest number of votes shall be declared elected for a term of one (1) year. In October 1964, and each year thereafter, there shall be elected three (3) members to the Council, whose terms of office shall be three (3) years. *[As changed by Amendment No. II, effective April 18, 1963]*

SECTION 3. The Tribal Council, in their first meeting after the election, shall elect from their membership a Chairman, a Vice Chairman, and a Secretary. A Treasurer shall be appointed from their membership, or the Council may appoint one from the tribal membership. All Officers shall serve for a term of one (1) year, or until their successors are elected or appointed. *[As changed by Amendment No. II, effective April 18, 1963]*

SECTION 4. The Tribal Council shall appoint all necessary subordinate Officers, Boards and Committees.

## ARTICLE IV - POWERS

SECTION 1. Enumerated Powers. The Tribal Council shall exercise the following powers subject to any limitations imposed by the Constitution or Statutes of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and the attached Bylaws. *[Amendment III deletes subsections (c) and (I), effective April 18, 1963.*

*Subsection (r) was added by Amendment IX, effective May 28, 1981. Amendment III deleted Sections 1 (c) and (I) entirely and re-designated the subsections (a) through (q). Amendment IX added Section 1 (r). Amendment X in Section 1 deleted the words, "the State of Nebraska", in subsection (a), added language; in subsections (c) through (r) deleted existing language and inserted new language. Subsection (s) was deleted. In Section 2, deleted existing language and inserted new language. In Section 3, deleted existing language and inserted new language. In Section 4, deleted existing language and inserted new language]*

- (a) To negotiate with the federal, state and local governments on behalf of the Tribe, and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Winnebago Reservation. "Reservation", as used herein, shall include the Winnebago Reservation and all other Indian Country subject to the jurisdiction of the Tribe.
- (b) To employ counsel for the protection and advancement of the rights of the Tribe and its members, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.
- (c) To safeguard and promote the peace, safety, morals and general welfare of the Tribe.
- (d) To make assignments of tribal land and to regulate the leasing, use and disposition of assignments in conformity with Article VIII of this Constitution.
- (e) To manage all economic affairs and enterprises of the Tribe.
- (f) To appropriate for public purposes of the Winnebago Tribe of Nebraska, available funds within the exclusive control of the Tribal Council.
- (g) To levy and collect taxes and license fees upon persons residing on or doing business within the reservation, and upon property actually or constructively located within the Reservation.
- (h) To purchase lands within the Reservation for public purposes, under condemnation proceeding in courts of competent jurisdiction.
- (i) To regulate the conduct of trade and the use and disposition of property upon the Reservation.
- (j) To regulate the inheritance of property, real and personal, within the territory of the Winnebago Reservation.
- (k) To regulate the manner of making nominations and holding elections for tribal office.

(l) To adopt resolutions regulating the procedure of the Tribal Council, tribal officials and other tribal agencies.

(m) To encourage and foster the arts, crafts, traditions and culture of the Winnebago Tribe of Nebraska.

(n) To encourage the commerce of the community and discover markets for the sale of all products of the tribal members.

(o) To charter subordinate organizations for economic or political purposes and to regulate the activities of cooperative associations.

(p) To protect and preserve the property, wildlife and natural resources of the Tribe.

(q) To promulgate and enforce statutes governing the conduct of persons located within or passing through the Reservation and providing for maintenance of law and order and the administration of justice.

(r) To delegate to subordinate boards, or to tribal officials, or to cooperative associations which are open to all members of the Tribe, any of the foregoing powers reserving the right to review any actions taken by virtue of such delegated powers.

SECTION 2. Subject to the express limitations in this Constitution, or in the federal law, to legislate or act upon any subject upon which the Tribe is empowered to act, now or in the future.  
*[New subsection added by Amendment X, effective June 23, 1987]*

SECTION 3. The Winnebago Tribe of Nebraska in exercising its powers of self-government shall not: *[New section added by Amendment X, effective June 23, 1987]*

(a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances.

(b) Violate the rights of the people to be secure in their persons, houses, papers and effects against unreasonable search and neither seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

(c) Subject any person for the same offense to be twice put in jeopardy.

(d) Compel any person in any criminal case to be a witness against himself.

(e) Take any private property for a public use without compensation.

(f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense.

(g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than that permitted by applicable law.

(h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

(i) Pass any bill of attainder or ex post facto law.

(j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

SECTION 4. These powers of self-government shall include all governmental powers possessed by the Winnebago Tribe of Nebraska; legislative, executive and judicial, and all offices, bodies and tribunals by through which they are executed. *[New section added by Amendment X, effective June 23, 1987]*

## **ARTICLE V - ELECTIONS AND QUALIFICATIONS FOR VOTING**

SECTION 1. The first election under this amended Constitution shall be called, held and conducted as provided for under Section 3 of this Article. The election officials shall certify to each newly elected member of the Council of his or her election. It shall be the duty of the newly elected Council to meet within ten days of the receipt of such certification and proceed to organize as herein provided. *[As changed by Amendment IV, effective April 18, 1963]*

SECTION 2. All elections held under and by virtue of this Constitution shall be held under the supervision of the Tribal Council, who shall provide all necessary equipment, appoint election officials, and furnish police protection and all other necessary things that pertain to an election.

SECTION 3. All regular elections shall be held on the first Tuesday after the first Monday in October of each year, at such place or places as may be determined by the Tribal Council.

SECTION 4. All elections shall be by secret ballot.

SECTION 5. Any recognized member of the Winnebago Tribe eighteen (18) years of age and over who has maintained residence within the reservation for a period of six (6) months prior to the date of election shall be a qualified voter. *[As changed by Amendment No. IV, effective April 18, 1963, and by amendment No. XIV, effective July 15, 1994] (TCR 94-129)*

**ARTICLE VI - VACANCIES AND REMOVAL FROM OFFICE**

SECTION 1. If an Officer, Councilman, or appointed official shall be removed from office, die or resign; the Tribal Council by a two thirds (2/3) affirmative vote shall declare the position vacant and shall appoint by a two thirds (2/3) affirmative vote a qualified individual to fill the position until the next general election at which time the qualified voters shall vote to fill such position for the unexpired term.

**SECTION 2.**

(a) The Tribal Council may by a two thirds (2/3) affirmative vote of the Council expel any member, including any Officer, for gross neglect of duty or gross misconduct. The Secretary (or the Vice Chairman in the event the Secretary is the subject of the removal) shall deliver to the Member a written notice of the alleged violation and stating the time and place of hearing before the Council. The Member shall have a reasonable opportunity to present his or her defense of the allegations. Following a vote in favor of removal, the removed Member may, within fifteen (15) calendar days of removal, submit the decision to the Tribal Court for an advisory opinion regarding the procedural integrity of the removal process. The Judge shall then conduct a hearing and based on testimony and record evidence, shall issue an advisory opinion as to whether the Tribal Council followed proper procedures in implementing the removal. Following consideration of such opinion, the Tribal Council may in its discretion, reinstate the removed Member and/or reinstate the removal process correcting any procedural improprieties.

(b) From the time of receipt of the notice of removal hearing, the affected Member shall be suspended from his/her duties as a Council Member. Such suspension shall remain in effect until (i) an affirmative vote for removal has occurred, or (ii) the Member has been reinstated by a vote of the Tribal Council following consideration of an advisory opinion.

**SECTION 3.**

(a) Any appointed or elected official may be recalled by petition, initiated by a qualified voter, alleging specific instances of gross neglect of duty or gross misconduct. Said petition shall set forth specific signatures of no less than forty (40) percent of the qualified voters voting in the last regular tribal election. The Tribal Court shall certify the voters on the petition and forward the petition to the Tribal Council within thirty (30) days.

(b) Upon receipt of a certified petition for recall, the Tribal Council shall call a special election on the recall petition.

(c) In an election for removal, sixty (60) percent of the voters voting in the last tribal election shall authorize such removal or retention. If the official is recalled by an election, the Tribal Council shall declare the position vacant and fill in accordance with Section I of this article.

**SECTION 4.**

(a) Gross neglect of duty is evidenced by the following:

1. Gross incompetency - unable or unwilling to perform the duties of the office.
2. Abandonment of office - not attending three (3) consecutive Tribal Council meetings without a good cause, or moving away and making a home off the Winnebago Reservation for a period in excess of three (3) consecutive months.

(b) Gross misconduct is evidenced by the following:

1. Any Class I offense conviction in Tribal Court, or its equivalent in courts of other jurisdictions in any one calendar year.
2. Three (3) Class II offense convictions in Tribal Court, or its equivalent in court of other jurisdictions in any one calendar year.
3. Conviction of a felony.

*[This article amended generally by Amendment XII, effective June 23, 1987, and changed substantially again by Amendment XV, effective July 15, 1994] (TCR 94-129)*

## **ARTICLE VII - REFERENDUM**

SECTION I. Any exercise of the enumerated powers lodged in the Tribal Council shall be subject to a referendum vote of the people upon a written petition signed by not less than twenty-five (25) percent of the total number of voters in the last annual election, provided that not less than thirty (30) percent of the eligible voters shall vote in any such referendum.

## **ARTICLE VIII - LAND**

The Tribal Council shall have the following authorities:

SECTION 1. To manage and lease or otherwise deal with tribal land and communal resources in accordance with law. To prevent the sale, disposition, lease or encumbrance of tribal lands, interest in lands, or other tribal assets.

SECTION 2. Tribal Lands. The unallotted lands of the Winnebago Tribe, and all lands which may hereafter be acquired by the Winnebago Tribe, shall be held as tribal lands, and no part of such land shall be mortgaged, sold, or ceded, except as permitted by law, and then only with the consent and approval of the Secretary of Interior. Tribal lands shall not be allotted to individual Indians, but may be assigned to a member of the Winnebago Tribe, or leased, or otherwise used by the Tribe, as hereinafter provided.

SECTION 3.

(a) Tribal lands may be leased by the Tribal Council with the approval of the Secretary of Interior, for such periods of time as permitted by law.

(b) Grazing permits covering tribal lands may be issued by the Tribal Council with the approval of the Secretary of the Interior, for such periods of time as permitted by law.

#### SECTION 4. Assignments of tribal land.

(a) The Tribal Council may, by statute, provide for the granting, tenure and disposition of assignments of tribal land.

(b) Any member of the Tribe who owns an allotment, or any share of heirship or patent-in-fee land may voluntarily transfer his interest in such land to the Tribe in exchange for an assignment to the same land, or for other land, or a proportionate share in other tribal assets.

SECTION 5. Use of unassigned tribal land. Tribal land, which is not leased or assigned, including tribal timberlands, shall be managed by the Tribal Council.

SECTION 6. Acquisition of land by Tribe. The Tribal Council of the Winnebago Tribe is hereby authorized and empowered to acquire by purchase, exchange of tribal land, relinquishment or otherwise, any lands or interest in lands, for or on behalf of the Winnebago Tribe, under such terms as may be agreed upon, provided the acquisition is approved by the Secretary of the Interior. *[This article changed in its entirety by Amendment V; effective April 18, 1963. Section 4 (a) and Section 5 were changed by Amendment XII, effective June 23, 1987]*

### ARTICLE IX - AMENDMENTS

This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Winnebago Tribe voting at an election called for that purpose by the Secretary of the Interior; provided that at least thirty (30) percent of those entitled to vote shall vote in such election, but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon receipt of a written resolution of the Council, signed by at least five (5) members of the Tribal Council. *[As changed by Amendment No. VI, effective April 18, 1963]*

### ARTICLE X - JUDICIAL

SECTION 1. Judicial Powers. The court system shall consist of one Chief Judge and Associate Judges appointed by the Tribal Council. The term of the Chief Judge shall be six (6) years with the terms of Associate Judges to be provided by Statutes of the Tribal Council. A Judge may be removed for just cause by a petition of forty (40) percent of the voters voting in the last tribal election, filed with the Superintendent, Bureau of Indian Affairs, who shall call an election for removal. In an election for removal, sixty (60) percent of the voters voting in the last tribal election voting affirmative shall authorize such removal. Before the removal election is called,

the Judge will be provided a hearing to answer all charges. The qualifications of the Judges of the Winnebago Tribal Court shall be established by Statutes enacted by the Tribal Council. *[The judicial powers Article was added by Amendment IX, effective May 28, 1981. It was changed by Amendment XI, effective June 23, 1987]*

**BYLAWS  
OF THE  
WINNEBAGO TRIBE, WINNEBAGO RESERVATION,  
IN THE STATE OF NEBRASKA**

**ARTICLE I - DUTIES OF OFFICERS.**

SECTION 1. The duties of the Tribal Officers shall be as follows:

- (a) The Chairman of the Tribal Council shall preside at all meetings of the Council. He shall also be the Presiding Officer of any General Council meeting. He shall at all times have general supervision of the affairs of the Tribal Council, and such matters as naturally pertain to the general welfare of the community. He shall execute all the rules, regulations and orders of the Council, and shall have power to call to his assistance any official or member of this Tribe whenever he deems it necessary for the proper enforcement of any orders of the Tribal Council; he shall perform all other duties that may be provided by the Council and such other duties that pertain to the Presiding Officer of the Tribe.
- (b) The Vice Chairman shall preside over the Tribal Council meeting when the Chairman is absent. He shall also perform any other duties that the Council shall determine that he perform in conformity with the Constitution and Bylaws of this Tribe.
- (c) The Secretary shall be the custodian of the official records, books, papers and documents of the Tribe. He shall keep a minute record of all the proceedings, resolutions and all the activities of the Council, shall handle all correspondence, and shall provide copies of all Regular and Special Meetings for the Council, the Superintendent and the Commissioner of Indian Affairs, and shall perform all other duties required of his office by the Tribal Council.
- (d) The Treasurer shall be the custodian of the funds of the Tribe, received from any source whatever. He shall give bond with some corporate surety bonding company in such an amount as the Tribal Council shall fix, such surety bonding company and the bond thus given to be subject to the approval of the Secretary of Interior. He shall keep an accurate record of all funds received and disbursed by him; he shall make a monthly report to the Tribal Council of all such receipts and disbursements, such report to be made under oath, and copies of all reports shall be provided for the Council, Superintendent and Commissioner of Indian Affairs. His records shall be open to

inspection at any and all times by the Council and any member of this Tribe. He shall perform any additional duties provided by the Council that pertain to the office of Treasurer.

SECTION 2. The Tribal Council may call to its aid any member of this Tribe in the carrying out of any of the provisions of this Constitution and Bylaws at any time that the said Council shall deem it necessary and conditions warrant.

SECTION 3. The Tribal Council may cause the records and books of the Treasurer and other officials to be audited by a competent auditing committee whenever the Tribal Council deems it necessary, such committee to make their report under oath and the same shall comprise an itemized statement of all receipts and disbursements, and for what purposes, and they shall be compensated for such service in such amount as the Tribal Council shall by resolution provide, subject to the approval of the Secretary of the Interior.

## **ARTICLE II - QUALIFICATIONS OF OFFICERS**

SECTION 1. Members of the Council must be twenty-five (25) years of age or over, bona fide residents of the Winnebago Reservation of Nebraska; it is provided further that the Tribal Council shall be the judge of the qualifications of its own members. *[As changed by Amendment No. VII, effective April 18, 1963]*

## **ARTICLE III - OATH OF OFFICE**

SECTION 1. All Officers when elected shall be duly installed and subscribed to an oath of office to support the Constitution of the United States and this Constitution. Such Officers may be sworn in by any Officer qualified to administer an oath.

## **ARTICLE IV - SALARIES AND EXPENDITURES OF TRIBAL MONEY**

SECTION 1. Salaries may be paid to Tribal Council Officers and Members from tribal funds as approved by a vote of the Tribal Council following, with respect to each such salary payment, a determination as to the level of compensation and justification therefore, the specific services to be provided for the duration of the salary period.

SECTION 2. The Members of the Tribal Council, Boards and Committees may be paid for expenses incurred in the interest of the Tribe from tribal funds with authorization by the Tribal Council.

SECTION 3. The Treasurer shall prepare and submit an annual operating budget to the Tribal Council no later than forty-five (45) days prior to the first day of each fiscal year. The Tribal Council shall review, modify as necessary and approve each such budget no later than thirty (30) days prior to the beginning of each fiscal year.

SECTION 4. Except for expenditures of funds approved pursuant to the budget process set forth above, additional expenditures of funds belonging to the Tribe must first be approved by a majority vote of the Tribal Council at a Regular Meeting. *[Sections 1, 2 and 3 changed; and Section 4 added; by Amendment XVI, effective July 15, 1994] (TCR 94-129)*

## **ARTICLE V - MEETINGS**

SECTION 1. The Tribal Council shall convene Regular Meetings on the first and third Mondays of each month.

### **SECTION 2.**

- (a) The meetings of the Council shall be public, except all executive sessions.
- (b) All meetings of the Tribal Council shall be governed by Robert's Rules of Order, as revised.

SECTION 3. Special Meetings of the Tribal Council may be called at any time by the Chairman as deemed necessary. A majority of the Council, by petition, may call a Special Meeting with three (3) days' notice thereof, giving the reason for such meeting and the nature of the business to be transacted. *[Sections 1, 2 and 3 changed and Section 4 repealed by Amendment XVII, effective July 15, 1994] (TCR 94-129)*

## **ARTICLE VI - COOPERATION**

SECTION 1. The Tribal Council shall work in very close cooperation with the Indian Service and various Departments of the State of Nebraska in matters of charity, education, recreation, social work and public health, and on land assignments with the Superintendent of the jurisdiction.

## **ARTICLE VII - ADOPTION OF CONSTITUTION AND BYLAWS**

This Constitution and Bylaws, when ratified by a majority of the qualified voters of the Winnebago Tribe of Nebraska, voting at a special election called for the purpose by the Secretary of the Interior, provided that at least thirty (30) percent of those entitled to vote shall vote in such election, shall be submitted to the Secretary of the Interior, and if approved, shall be effective from the date of approval.