

Public Notice

This is official public notice that the Rincon Band is adopting amendments to the Rincon Water Resources Protection Ordinance. The Ordinance and Proposed Amendments are available on the official Rincon Band website at www.RinconTribe.org/Government, and are also available in a viewable hard copy at the Rincon Band Tribal Administration Office.

To review the hard copy of the document, please go to: Rincon Band Tribal Administration Office located on the Rincon Indian Reservation at the Rincon Government Center building located off Valley Center road at One Government Center Lane, Valley Center, CA 92082.

Please contact Ms. Laurel McKee at (760) 297-2313 with questions.

The Ordinance and Proposed Amendments are available for public review at the Rincon Band Tribal Administration Office from 9 am to 4 pm, Monday through Friday, except for Federal and Tribal Holidays. Protocol for viewing the document is available at the Administration Office.

Public comments may be submitted in person to the Rincon Band of Luiseno Indians at the Rincon Government Center or mailed to the attention of: Denise Turner-Walsh, Rincon Band Attorney General, at One Government Center Lane, Valley Center, California 92082.

Comments must be received by the Rincon Band prior to the close of Public Comments. The public comment period for this Ordinance and Proposed Amendments ends March 13, 2020.

**RINCON BAND OF LUISEÑO MISSION INDIANS
RINCON INDIAN RESERVATION, CALIFORNIA**



RINCON WATER RESOURCES PROTECTION ORDINANCE

Rincon Tribal Code § 8.900



RINCON WATER RESOURCES PROTECTION ORDINANCE
RINCON TRIBAL CODE § 8.900

Original Enactment Date: January 30, 2013
Subject: Protection of Tribal Water Resources

RINCON WATER RESOURCES PROTECTION ORDINANCE

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Adopted ~~on~~ January 30, 2013

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General Provisions

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§ 8.901—~~Findings~~ **FINDINGS**

The Rincon Band of Luiseño Mission Indians is a federally recognized Indian tribe which exercises jurisdiction over the lands within the external boundaries of the Rincon Reservation, consistent with its Articles of Association and Tribal Laws and the Constitution and laws of the United States and finds as follows:

- (a) All Rincon Band tribal reserved water rights are held by it in trust to fulfill the purposes of the Rincon Reservation as a permanent, economically productive homeland for the Rincon people and for certain inalienable public and cultural uses.
- (b) The rights of the Rincon Band to water reserved pursuant to the Executive Order of the President issued on March 2, 1881, the Mission Indian Relief Act, 26 Stat. 712 (1891), the trust patent issued by the President on September 13, 1892, the Act of Congress of August 16, 1941, 55 Stat. 622, the February 12, 1968 Order setting aside land for the Rincon Band and the trust patent issued on January 20, 1971, which established and added to the Rincon Reservation, shall be protected and preserved, and nothing in this Ordinance shall be deemed to be a waiver or limitation on these rights.
- (c) The reserved water rights of the Rincon Band apply as a matter of law to both surface and ground water to the extent needed to accomplish the purposes of the Rincon Reservation.
- (d) The ground water resources of the Rincon Reservation are insufficient to fulfill the present and future homeland purposes of the Rincon Reservation.
- (e) The power to determine, control, and manage the proper uses of all Rincon Reservation Water, including all tribal reserved water rights, is an essential attribute of sovereignty and belongs to the Rincon Band.
- (f) Adequate supplies of clean water are vital to the health and welfare of the Rincon Band and its members, other Rincon Reservation residents, and to the vitality of the Rincon Reservation economy.
- (g) Protection of the public interest in surface and ground water resources of adequate quantity and quality requires the development and effective implementation of integrated land and water resource management programs and coordination of this

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Ordinance with other environmental and resource protection laws, including, but not limited to, the Utilities Ordinance, the Environmental Enforcement Ordinance, Rincon land use and zoning ordinances, Rincon Business Leasing Regulations, the U.S. Clean Water Act, Safe Drinking Water Act, National Environmental Policy Act, Endangered Species Act, and other applicable Tribal Laws and federal laws.

§ 8.902—~~Purposes~~ **PURPOSES**

The purposes of this Ordinance are:

- (a) to protect the health and welfare of all members of the Rincon Band and other Rincon Reservation residents;
- (b) to support and help achieve the Rincon Band’s spiritual, cultural, and economic goals through the protection, enhancement, and restoration of Rincon Reservation Water;
- (c) to protect the political integrity and economic security of the Rincon Band through an effective, orderly system for the administration, use, conservation, and management of all Rincon Reservation Water, including all Rincon Band tribal reserved water rights;
- (d) to protect Rincon Reservation Water from over-appropriation, Degradation, Contamination, and any acts injurious to the quantity, quality, or integrity of the water;
- (e) to promote optimal use, recharge, and protection of Aquifers to supply beneficial uses;
- (f) to ensure that the Rincon people have sufficient water quantity and quality for cultural, domestic, economic development, navigation, agricultural, stock, ecological flow, municipal, industrial, and other uses; to ensure that the Rincon Band has sufficient water quantity and quality for Rincon Reservation uses now and for generations to come; and to ensure equitable and culturally appropriate water allocation at all times including during times of low water availability;
- (g) to encourage planned development and multiple use of the Rincon Reservation Water resources, promote stability of investment in water use and delivery systems, and permit all reasonable beneficial uses;

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(h) to provide for the orderly resolution of disputes over the management, administration, and permitting of Rincon Reservation Water under this Ordinance;

(i) to coordinate the administration and environmental protection of Rincon Reservation Water with other governmental agencies or bodies performing related duties and responsibilities affecting Rincon Reservation Water, such as the Rincon Tribal Administration, the Rincon Environmental Department, the Rincon General Services, the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the California State Water Resources Control Board, the California Department of Health, and local governmental agencies.

§ 8.903 **DEFINITIONS**

The following terms have the following meanings in this Ordinance:

(a) **“Acre-foot”** means the quantity of water required to cover one acre to a depth of one foot; one acre-foot of water equals 43,560 cubic feet or 325,851 gallons of water.

(b) **“Adjacent Wetlands”** means wetlands bordering, contiguous, or neighboring “waters of the United States” as defined by 33 C.F.R. part 328, as amended from time to time.

(c) **“Affected person”** means any Person directly affected by a final decision, order, or action issued or taken by the Manager or Tribal Council under this Ordinance.

(d) **“Agriculture”** means activity related to the production of horticultural, silvicultural, viticultural, foricultural, dairy, apiary, vegetable, or animal products; or of berries, grain, hay, straw, turf, seed, Christmas trees, hybrid poplar trees, or livestock.

(e) **“Aquifer”** means an underground geological formation, or group of formations, containing usable amounts of ground water that can supply wells and springs.

(f) **“Aquifer Storage Volume”** means a quantitative estimate of the volume of ground water in an Aquifer based on the best available technical information and sound scientific principles.

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(g) **“Beneficial use”** means the use of water for purposes that include, but are not limited to, the following: aesthetics; agricultural use; aquaculture and fish propagation; commercial use; cultural, religious and spiritual uses; domestic use; fire protection; ground water recharge; hydropower generation; industrial use; ecological flow uses; mineral resource development; municipal use; navigation; Pollution control; recreational use; resource development; stock water use; storage, transfer, and marketing; water quality; and wildlife Habitat.

(h) **“Best Management Practices (BMPs)”** means the state of the art, recommended physical, structural, and/or managerial actions that, when used singly or in combination, prevent or reduce Degradation or Contamination of the environment.

(i) **“Buffer”** means the area around a stream or wetland that is required to protect and maintain the functions and stability of the stream and/or wetland, generally between twenty-five (25) and one-hundred (100) feet wide.

(j) **“Contaminant”** means any chemical, physical, biological, thermal, or radiological substance or matter that has an adverse effect on air, water, or soil.

(k) **“Contamination”** means the presence of any harmful or deleterious substance that may pose a threat to the quality, purity, or safety of a water supply.

(l) **“Contiguous Wetlands”** means wetlands that are connected to waters of the Rincon Reservation or other geographic features (e.g., open space) by any of the following criteria:

(1) All or part of the wetland lies within the 100-year floodplain of waters of the Rincon Reservation;

(2) Hydric soil and Hydrophytic vegetation extend continuously to waters of the Rincon Reservation or other pertinent geographic features; or

(3) Sufficient evidence exists to conclude the wetland is hydrologically connected and is immediately adjacent to waters of the Rincon Reservation or other pertinent geographic features.

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(m) **“Cultural instream uses”** means use of water in a stream to fulfill cultural, traditional, spiritual, or religious needs of the Rincon Band, as approved by the Tribal Council.

(n) **“Cumulative impact”** means the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or Person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

(o) **“Degradation”** means the lowering of, or threat of lowering, water quality or the quality of the natural environment by an increase in Contaminants or Pollution or by a decrease in the ecological quality of the environment (e.g., vegetative community changes via harvest activity or invasion of non-native plants).

(p) **“Delineation”** means a formal, on-site process to identify the boundary between a wetland and the surrounding upland or plume and surrounding groundwater. The Delineation may be based on the methodology in the currently and federally accepted edition of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," as amended from time to time, and any other applicable Tribal Law, including, but not limited to, the Rincon Hazardous Material Control Ordinance, RTC § 8.600, as the same may be amended from time to time.

(q) **“Discharge”** means the volume of water that passes a point per a given unit of time and is commonly expressed in units of cubic feet per second, cubic meters per second, gallons per minute, gallons per day, or millions of gallons per day.

(r) **“Drainage”** means the collection, conveyance, containment, and/or discharge of surface or ground water, including storm water runoff.

(s) **“Drainage facility”** means a system of collecting, conveying, containing, storing, and/or discharging surface water, ground water, or storm water runoff, including, but not limited to, all conveyance and containment facilities such as streams, pipelines, channels, ditches, swamps, lakes, wetlands, closed depressions, infiltration facilities, retention/detention facilities, erosion/sedimentation control facilities, and other similar structures and appurtenances, both natural and man-made.

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(t) **“Draining”** means artificially changing ground or surface water wetland hydrology by constructing or enhancing drainage (i.e., making the site/area less wet), including widening streams, constructing or widening ditches, or installing drains (e.g., tiles).

(u) **“Ecological flow regime”** means the combination of instream flow levels needed over various time periods to preserve, protect, and restore the physical, biological, and chemical aspects of water. The ecological flow regime can be divided into five functional categories as applicable: 1) Water Quality Maintenance, 2) Fisheries Baseflow, 3) Channel Maintenance, 4) Riparian Maintenance, and 5) Valley Maintenance.

(1) The Water Quality Maintenance flow is the quantity of water needed to assimilate wastewater and still achieve compliance with applicable water quality standards.

(2) The Fisheries Baseflow is the minimum instream flow needed to support fish populations during different life stages.

(3) The Channel Maintenance flow is the minimum amount of water needed to perform processes such as sediment transport. Channel Maintenance flows impact the long-term characteristics of aquatic Habitat such as the quantity and quality of pools and riffles.

(4) Riparian Maintenance flows are the flows needed to maintain a productive plant and animal community along the stream corridor.

(5) Valley Maintenance flows are catastrophic flood events and are generally not quantified.

(v) **“Emergency”** means an occurrence or condition calling for immediate action to avert imminent danger or harm to life, health, property, or environment.

(w) **“Enhancement”** means actions performed to improve the condition of existing degraded or naturally impaired streams, wetlands, or Buffers so that they provide more functions and/or functions of higher quality.

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(x) **“Filling”** means the depositing of any material on a site that raises the surface level of the land or the bed of a body of water above its prior or natural elevation.

(y) **“Functions”** means the roles that a natural area performs within the ecosystem. Stream, wetland, and/or Buffer functions are attributes that contribute to the ecological, hydrological, social, cultural, and/or economic systems that surround and include the natural area. Stream, wetland, and/or Buffer functions include, but are not limited to, the following features:

- (1) Erosion control, soil conservation, and shoreline stabilization, especially along shorelines and streambanks where wetland vegetation reduces water velocity;
- (2) Surface and ground water storage and recharge, storm-water management, flood storage, and stream base-flow contribution;
- (3) Water-quality improvement via filtration and settling of sediment, turbidity reduction, re-oxygenation, chemical and biological ~~nutrient-cycling~~nutrient cycling, Contaminant reduction, and moderation of water temperature;
- (4) Micro-climatic influence on temperature and moisture;
- (5) Flora and fauna Habitat for numerous species, including plants of cultural importance, fish, frogs and other amphibians, songbirds, waterfowl, raptors, and various mammals, many of which are directly dependent on wetlands and streams for survival during at least part of their life cycle;
- (6) Tribal cultural uses;
- (7) Recreational opportunities, such as swimming, boating, fishing, nature-watching, walking along interpretive trails, and enjoying view overlooks; and
- (8) Open space, backdrops, and natural borders, which help separate various land uses and provide Buffers from incompatible uses. Open space relieves overcrowding and often is aesthetically pleasing.

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(z) **“Ground water”** means all water that exists beneath the earth surface or beneath any surface water body, regardless of the geological formation or structure in which such water stands, flows, percolates, or otherwise moves.

(aa) **“Ground water recharge area”** means the land surface area where precipitation infiltrates through surface soil materials and into the ground. Recharge may also occur from surface waters, including lakes, streams, and wetlands. Ground water recharge areas are called “aquifer recharge areas” when the ground water contributes to an Aquifer.

(bb) **“Habitat”** means the specific area or environment in which specified plants or animals live.

(cc) **“Hazardous Material”** means:

(1) Any "dangerous waste", defined as any discarded, useless, unwanted, or abandoned substances disposed of in such quantity or concentration as to pose a present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

(A) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(B) Are corrosive, explosive, flammable, or may generate pressure throughout decomposition or other means.

(2) Any "hazardous waste," defined as any waste which:

(A) Will persist in a hazardous form for three (3) years or more at a disposal site; and

(B) While in its persistent form:

(i) Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic makeup of people or wildlife; or

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(ii) Is toxic to people or wildlife; or

(iii) Adversely affects living organisms in soil, sediment, and water, or air; or

(C) If disposed of at a disposal site in such quantities or concentrations as might present a hazard to people or the environment.

(3) Any substance included as a “listed waste” under 40 CFR §261.30 through 261.33.

(4) Any substance classified as a “characteristic waste” defined in the 40 CFR §261.20 through §261.24 as exhibiting one of four hazardous characteristics: Ignitable; Corrosive; Reactive (or explosive); or, Toxic.

(5) Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the hazardous characteristics: Ignitable; Corrosive; Reactive (or explosive); or, Toxic.

(6) Any substance that is a hazardous substance pursuant to 42 U.S.C. § 9601(14).

(7) Petroleum or petroleum products.

~~(D)~~(A)_____ The term Hazardous Material does not include crude oil or any fraction thereof or petroleum when contained in an underground or aboveground storage tank from which there is not a release, if the tank is in compliance with all applicable federal and Tribal laws.

(8) Any substance or category of substances, including solid waste decomposition products, determined by the RED to present a threat to human health or the environment if released into the environment.

(dd) “**Hydraulic head**” means the height of water above any plane of reference; “Hydraulic head” also means the energy, either kinetic or potential, possessed by each unit

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weight of a liquid, expressed as the vertical height through which a unit weight would have to fall to release the average energy possessed.

(ee) **“Hydric soil”** means a soil that, if in an undrained condition, is saturated, flooded, or ponded long enough during the growing season to develop anaerobic (oxygen-lacking) conditions that favor the growth and regeneration of wetland (Hydrophytic) vegetation. Identification of hydric soils shall be based on the methodology in the current and federally accepted edition of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

(ff) **“Hydrologist”** means a Person professionally qualified by education and experience in the science of hydrology, or the science of water that is concerned with the organ, circulation, distribution, and properties of waters of the earth.

(gg) **“Hydroperiod”** means the seasonal timing, frequency, and duration of the water level in a wetland.

(hh) **“Hydrophytic vegetation”** means plants that are adapted to growth in water or in a substrate that is at least periodically lacking in oxygen as a result of excessive water content. Identification of Hydrophytic vegetation shall be based on the methodology in the current and federally accepted edition of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

(ii) **“Illicit discharges”** mean any non-storm water discharges to storm water drainage systems that could cause or contribute to a Degradation of water quality, sediment quality, or ground water quality, including, but not limited to, sanitary sewer connections, industrial processwater, interior floor drains, car washing, and iron grate systems.

(jj) **“Impervious surface”** means a hard surface area that either prevents or retards the entry of water into the soil compared to conditions before development, and/or a hard surface area that causes water to run off the surface in greater quantities or at an increased rate of flow relative to conditions before development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam, or other surfaces which similarly impede the infiltration of storm water. Open, uncovered retention/detention facilities shall not be considered impervious surfaces.

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(kk) “**Individual on-site waste treatment sewage disposal system**” means an on-site system for sewage disposal from an individual structure including residential home, school, library, tribal administration building, other administrative building or similar type structure or building that does not include any waste from any industrial process.

(ll) “**Industrial process**” means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category of “Division D—Manufacturing” and such other classes of significant Hazardous Material or waste producers as the Tribal Council or RED designates.

(mm) “**Isolated Wetlands**” means non-tidal wetlands not part of a surface tributary system to intrastate or navigable waters of the United States and are no adjacent to such tributary waterbodies.

(nn) “**Land-disturbing activity**” means any activity resulting in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land-disturbing activities include, but are not limited to, demolition, ~~construction~~, clearing, grading, filling, and excavation.

(oo) “**Manager**” means the Manager of the Rincon Environmental Department (RED).

(pp) “**Mitigation**” means, in the following order of preference:

(1) avoiding adverse impacts on the environment and Rincon Reservation Water altogether by not acting or failing to act;

(2) minimizing adverse impacts on the environment and Rincon Reservation Water by limiting the degree or magnitude of the action and its implementation, by using appropriate technology or by taking affirmative steps to avoid or reduce adverse impacts;

(3) rectifying the adverse impacts on the environment or Rincon Reservation Water by repairing, rehabilitating, or restoring the affected environment or water resource;

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(4) reducing or eliminating the adverse impacts on the environment or Rincon Reservation Water over time by Preservation and maintenance operations during the action; and

(5) compensating for the adverse impacts on the environment and Rincon Reservation Water by replacing, enhancing, or providing substitute water resources or environments.

(qq) “**Mitigation bank**” means a system or arrangement in which a property or properties are protected in perpetuity and approved by appropriate tribal and federal agencies expressly for the purpose of providing compensatory Mitigation in advance of authorized impacts to other areas through restoration, creation, and/or enhancement of wetlands and, in exceptional circumstances, through Preservation of wetlands, wetland Buffers, and/or other aquatic resources.

(rr) “**Native vegetation**” means plant species, other than noxious weeds, that are indigenous to similar environments within Southern California (i.e., plants that occur (or occurred) naturally in the area and that reasonably could have been expected to naturally occur on the site).

(ss) “**New development**” means the following activities: land-disturbing activities, structural development (including construction, installation, or expansion of a building or other structure), creation of impervious surfaces, general forest practices that are conversions from timber land to other uses, and subdivision and short subdivision of land. All other forest practices and commercial agriculture are not considered new development.

~~(tt)~~**(1)** “**Nonpoint-source pollution**” means pollution that, in response to precipitation, enters the surface water, ground water, or other elements of the natural environment from diffuse (e.g., automobiles, pesticides, applications, construction sites, animal waste, and Habitat alteration) sources and not from a specific point source.

~~(uu)~~**(A)** “**Ongoing agricultural activity**” means agricultural activities (including grazing, tilling, planting, and other activities) that are ongoing as long as the area on which they are conducted has not been converted to another use or has lain idle so long that modifications to the

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hydrology are necessary to resume operation. Any lands that have been idle for five years or longer will no longer be considered as lands with "ongoing" agricultural activities. This definition should be interpreted in line with that of the U.S. Department of Agriculture and shall not be interpreted in any way to regulate any adjudicated water right or interest of an allottee, or allotment in trust status, on the Rincon Reservation.

~~(vv)~~(tt) **“Ordinance”** means this Rincon Water Resources Protection Ordinance, as amended from time to time.

~~(ww)~~(uu) **“Ordinary high water mark”** means the mark on the shores of all surface waters that is found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation (i.e., the vegetation line), provided that, in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the elevation of the vegetation line determined from a sample of nearby sites where the vegetation line can be ascertained.

~~(xx)~~(vv) **“Person”** means any Person or entity, natural or artificial, including, but not limited to, any tribal member, assignee, individual, firm, association, organization, partnership, business trust, corporation, company, the United States of America and all agencies thereof, the State of California and all political subdivisions, municipal corporations, organizations, and public agencies thereof, and the Rincon Band and all political subdivisions, organizations, and public agencies thereof.

~~(yy)~~(ww) **“Point-source pollution”** means pollution that enters the surface water, ground water, or other elements of the natural environment from a stationary location or single identifiable source (e.g., the end of a pipe).

~~(zz)~~(xx) **“Pollution”** means the presence of matter, energy, Contamination, or other alteration of the physical, chemical, or biological properties of water or land whose nature, location, or quantity produces undesired environmental effects, including, but not limited to, changes in aesthetics, temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters as will or threatens to render such waters harmful, detrimental, or injurious to the public

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health, safety, or welfare, or to cultural, spiritual, domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wildlife, birds, fish, or other aquatic life.

~~(aaa)~~(yy) **“Precipitation”** means water that falls from the atmosphere and reaches the earth in the form of fog, drizzle, rain, sleet, snow, or hail.

~~(bbb)~~(zz) **“Preservation”** means to provide legal protection to natural areas that would otherwise be lost to lawful activities.

~~(eee)~~(aaa) **“Public water-supply well”** means a well that supplies two or more separate residential connections.

~~(ddd)~~(bbb) **“Reconnaissance”** means an examination of a project area by qualified Band staff and/or by a qualified wetland specialist to determine the presence, approximate boundaries, and probable functions of wetlands and/or streams. A reconnaissance is not a legal wetland Delineation, but may be substituted for a Delineation at the discretion of the Rincon Band for the purposes of this Ordinance.

~~(eee)~~(ccc) **“Re-development”** means the following activities: substantial additional development on an already developed site; the creation or addition of impervious surfaces; additional structural development, including construction, installation, or expansion of a building or other structure; replacement of impervious surface that is not part of routine maintenance activity; and land-disturbing activities associated with structural or impervious redevelopment.

~~(fff)~~(ddd) **“Regulations”** shall mean the regulations adopted pursuant to the requirements of this Ordinance.

~~(ggg)~~(eee) **“Reservation”** means all lands within the boundaries of the Rincon Reservation, including, but not limited to:

- (1) all lands within the territorial boundaries of the Rincon Indian Reservation as established by the Executive Order of the President issued on March 2, 1881, the Mission Indian Relief Act, 26 Stat. 712 (1891), the trust patent issued by the President on September 13, 1892, the Act of Congress of August 16, 1941, 55 Stat. 622, the February 12, 1968 Order setting aside land for the Rincon Band

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and the trust patent issued on January 20, 1971, which established and added to the Rincon Reservation, and any fee land acquired in trust pursuant to 25 U.S.C. 461 and its implementing regulations, and such other lands as may thereafter be added thereto or made a part thereof; and

(2) all other trust, restricted, or tribally owned lands, regardless of whether they have been formally added to or made part of the Rincon Reservation.

~~(hhh)~~(fff) **“Restoration”** means actions performed to reestablish a stream, wetland, or Buffer and its functions within an area that no longer meets the definition of a stream, wetland, or Buffer because of alterations, activities, or catastrophic events, and actions performed to return an existing stream, wetland, or Buffer to a state in which its functions and values approach the state that existed before disturbance or Degradation.

~~(iii)~~(ggg) **“Rincon Band”** means the Rincon Band of Luiseño Indians, a sovereign Indian Band which is recognized as such by the federal government of the United States of America. Reference to "Tribe" or “Band” in this Ordinance, or any existing or future ordinance shall mean the "Rincon Band";."

~~(jjj)~~(hhh) **“Rincon Reservation Water”** means all fresh waters that originate or flow in, into, or through the Rincon Reservation, or that are stored on the Rincon Reservation, whether found on the surface of the earth or underground, and all Rincon Band tribal reserved water rights.

~~(kkk)~~(iii) **“Rincon Environmental Department”** or **“RED”**, is a department of the Rincon Band that is responsible for the implementation of the Rincon Band's environmental ordinances and management of the Rincon Band’s natural resources unless otherwise specified.

~~(lll)~~(jjj) **“Runoff”** means water originating from precipitation or ground water that is found in overland flow or in features, including, but not limited to, drainage facilities, rivers, streams, springs, seeps, ponds, lakes, and wetlands. **“Source-control BMP”** means a Best Management Practice (BMP) that is intended to prevent pollutants from entering storm water. A few examples of source control BMPs are erosion control practices, maintenance of storm water facilities, constructing roads over storage and working areas,

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and directing wash water and similar discharges to a sanitary sewer or an appropriately designed dead-end sump.

~~(mmm)~~(kkk) **“Storm water”** means that portion of precipitation that does not percolate into the ground or evaporate, but moves via overland flow, interflow, channels, or pipes into a defined surface water channel or a constructed drainage facility.

~~(nnn)~~(lll) **“Stream”** means those areas where surface water flows sufficiently to produce a defined channel or bed, indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water, provided that a channel or bed need not contain water year-round; provided further that “stream” does not include irrigation ditches, canals, storm water runoff facilities, or other entirely artificial watercourses unless they are used to convey streams naturally occurring before construction.

~~(ooo)~~(mmm) **“Stream bank”** means that portion of the land surface extending from the stream water surface to the ordinary high water mark recognized by the Rincon Environmental Department and thence to fifty (50) feet upland of the ordinary high water mark.

~~(ppp)~~(nnn) **“Surface water”** means any or all water originating from precipitation or ground water Discharge that is found at the surface of the earth, primarily in rivers, streams, springs, seeps, ponds, wetlands, lakes, and storm water drainage facilities.

~~(qqq)~~(ooo) **“Treatment BMP”** means a Best Management Practice (BMP) that is intended to remove pollutants from storm water. A few examples of treatment BMPs are detention ponds, oil/water separators, biofiltration swales, and constructed wetlands.

~~(rrr)~~(ppp) **“Tribal Council”** is the five-member Business Committee established under Section 3 (a) of the Articles of Association. "Tribal Council" shall be synonymous with “Business Committee” or “Rincon Business Committee” as used in this Ordinance or any existing or future Tribal ordinance.

~~(sss)~~(qqq) **“Tribal Court”** means the Intertribal Court of Southern California or other tribal forum designated by the Tribal Council to hear and decide violations of Tribal environmental ordinances.

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~~(ttt)~~~~(rrr)~~ **“Tribal reserved water rights”** means those rights to use, divert, or affect Rincon Reservation Water reserved by or for the Rincon Band under federal law, including, but not limited to, treaty, executive order, aboriginal doctrine, or case law, and any and all other water rights derived from the foregoing.

~~(uuu)~~~~(sss)~~ **“Values”** means the intangible benefits a natural area provides to the society/culture; some of these benefits overlap with or are included in those listed above in the definition of functions.

~~(vvv)~~~~(ttt)~~ **“Water”** means Rincon Band ground water and surface water.

~~(www)~~~~(uuu)~~ **“Water body”** means surface waters, including, but not limited to, rivers, streams, lakes, wetlands, and reservoirs.

~~(xxx)~~~~(vvv)~~ **“Water quality”** means the chemical, physical, and biological characteristics of water, usually in respect to its suitability for a particular purpose or other designated beneficial use.

~~(yyy)~~~~(www)~~ **“Water quality standards”** means numeric and narrative standards adopted by the Rincon Band for Rincon Reservation Water that prescribe the use of a water body and establish the water quality criteria that must be met to protect designated uses.

~~(xxx)~~ **“Waters of the Reservation”** means any surface water or groundwater, including saline waters, within the boundaries of the Reservation.

~~(zzz)~~~~(vvv)~~ **“Watershed”** means a topographically delineated area that is drained by a stream system, that is, total land area above some point on a stream or river that drains past that point.

~~(aaa)~~~~(zzz)~~ **“Wetland classification”** means descriptive categories of the taxonomic classification system for wetlands developed by the U.S. Fish and Wildlife Service in the document classification of ~~wetlands~~Wetlands and ~~deepwater~~Deepwater Habitats of the United States.

~~(bbb)~~~~(aaa)~~ **“Wetland complex”** means areas where wetlands and uplands form a highly interspersed mosaic, often with a number of small, hydrologically interconnected

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(either through ground water or surface water) wetlands as commonly found in hummock and swale topography.

~~(eeee)~~(bbbb) **“Wetland creation”** means a human activity to bring a wetland or portion of a wetland into existence where one previously did not exist (e.g., in an upland or shallow aquatic environment).

~~(dddd)~~(cccc) **“Wetland edge”** means the boundary of a wetland as identified using the methodology in the current and federally accepted edition of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

~~(eeee)~~(dddd) **“Wetland hydrology”** means to have the substrate saturated to the surface or inundated at some point in time during an average rainfall year, sufficient to meet the criteria in the current and federally accepted edition of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

~~(ffff)~~(eeee) **“Wetlands”** means those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

~~(gggg)~~(ffff) **“Wet Weather Criteria”** means the criteria by which the RED shall determine wet weather testing periods.

(1) The RED shall determine wet weather testing periods on a geographic base. The following criteria shall be followed:

(A) Between January 1 and April 30; and

(B) Following 10 inches of rain in a 30-day period or after one-half of the seasonal normal precipitation has fallen. Extension of wet weather testing beyond the limits of above criteria may be made in accordance with a program of groundwater level monitoring approved by the Tribal Council and conducted by the RED.

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§ 8.904 — ~~Applicability~~ **APPLICABILITY**

(a) Except as provided in subsection (b) below, this Ordinance applies to all Persons using or desiring to use Rincon Reservation Water or undertaking activities or desiring to undertake activities that affect Rincon Reservation Water, including, but not limited to, surface and ground waters in, on, or underlying all lands within the boundaries of the Rincon Reservation.

(b) Nothing in this Ordinance shall be construed as restricting the rights of Indians residing on the Rincon Reservation to the just and equal distribution of water for use for agricultural purposes or to conflict with the reserved water rights held by the owners of allotments within the Rincon Reservation.

(c) No Person may make private agreements regarding uses of Rincon Reservation Water that are inconsistent with the provisions of this Ordinance.

(d) Applicability of Ordinance to non-Indian activities occurring on non-Indian owned fee lands located within the exterior boundaries of the Rincon Reservation is as follows:

(1) In *Montana v. United States*, the Supreme Court held that tribes generally do not have jurisdiction over non-Indian activities occurring on Rincon Reservation fee lands, subject to two important exceptions:

(A) A tribe may regulate the activities of non-members who enter consensual relationships with the Rincon Band or its members, through commercial dealings, contracts, leases, or other arrangements; and

(B) A tribe may also retain inherent power to exercise civil authority over conduct that threatens or has some direct effect on the political integrity, the economic security or the health and welfare of the Rincon Band.

(2) Prior to applying Ordinance to non-Indian activities occurring on fee lands located within the Rincon Reservation, the Rincon Environmental Department must first determine that the non-Indian activities seeking to be regulated fall within one of the exceptions set forth in Section 8.904(d)(1).

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(A) The Rincon Environmental Department shall include a written determination under Section 8.904(d)(1) within any Notice of Violation in which non-Indian activities occurring on fee lands located within the Rincon Reservation are the basis for the violation.

(B) The recipient of any such Notice of Violation shall be entitled to a preliminary jurisdictional hearing before the Tribal Court.

(C) If the recipient objects to tribal jurisdiction and requests a jurisdictional hearing, the burden shall be on the Rincon Band to establish tribal jurisdiction pursuant to federal common law.

Wellhead Protection

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WELLHEAD PROTECTION

§ 8.905 ~~Findings and Purpose~~ FINDINGS AND PURPOSE

(a) Contamination of wellhead areas and ground water resources of the Rincon Reservation has a direct, serious, and substantial detrimental effect on the cultural, political, and economic integrity of the Rincon Band and on the health and welfare of its members and all Persons present on the Rincon Reservation.

(b) The Rincon Reservation ground water resources are vulnerable to Contamination, which could lead to the loss of the primary water supply source of the Rincon Band.

(c) Alternate water sources to serve the needs of the Rincon Reservation are expensive and may not be available in amounts sufficient to replace existing supplies and to provide for future anticipated tribal economic and residential growth. Moreover, alternative water sources would require substantial amounts of capital expenditure for the infrastructure upgrades that would be necessary to import larger volumes of water onto the Rincon Reservation. Finally, alternative water sources may be subject to service interruptions over the long term due to natural or human generated disasters.

(d) This Ordinance provides guidelines to determine appropriate conditions to be included in permits issued by the RED for the protection of wellhead areas and ground water resources of the Rincon Band.

§ 8.906 ~~Establishment of Wellhead Protection Areas~~ ESTABLISHMENT OF WELLHEAD PROTECTION AREAS

(a) A Wellhead Protection Area is a geographic area delineated around wells and/or wellfields within which land uses are regulated to protect the quality and quantity of the ground water resource. A Wellhead Protection Area is an overlay of a zoning area that imposes additional requirements and restrictions to those of the underlying zoning area. In all cases, the most restrictive requirements apply.

(b) A wellhead is a physical structure, facility, or device at the land surface from or through which ground water flows or is pumped from water-bearing formations. A

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wellhead can be a developed spring or groundwater well that was hand dug or constructed by a machine.

(c) Wellhead protection areas are to be calculated using the Calculated Fixed Radius Method (or more sophisticated method approved by RED) as described below and are centered on the wellhead.

(1) The equation for the calculated fixed radius is:

(2)

$$R_t = \sqrt{\frac{Qt}{\pi\eta H}} \text{ OR } R_t = \sqrt{\frac{Q \times t}{\pi \times \eta \times H}}$$

(A) ~~$R_t = \sqrt{\frac{Qt}{\pi\eta H}}$~~ $R_t = \sqrt{\frac{Q \times t}{\pi \times \eta \times H}}$ —Equation 8.906-1

where:

R_t = radius of zone (feet) for time period t

Q = pumping capacity of well in cubic feet per year (ft^3/year), where
 $\text{ft}^3/\text{year} = \text{gallons per minute (gpm)} \times 70,267$

t = travel time (years) (2, 5, or 10 years, as discussed below)

$\pi = 3.1416$ $\eta = \text{effective porosity (decimal percent)}$

$\eta = \text{effective porosity (decimal percent)}$

H = screened interval of well (feet)

(2)(3) The pumping capacity to be used is the maximum rate the well can be pumped, in gallons per minute converted to the equivalent in cubic feet per year. Pumping capacity of the well should be known by the water purveyor. If the capacity is unknown, the purveyor may conduct a pumping test to determine the appropriate value. If that is not possible, an estimate can be made if justification is provided. If there are no references to use to estimate the

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pumping rate, the RED should be consulted for assistance in determining the appropriate value to use in the Delineation.

~~(3)~~**(4)** For wells that are used intermittently, using the maximum pumping rate of the well may result in extremely large zones which do not correspond to the actual production of the well, particularly at the 5 and 10-year travel times. In this case, with the concurrence of the RED, a water supplier may use the total annual production of the well (in ft³/year) in the highest of the previous three to five years. Water suppliers are encouraged to consider future production levels if significant growth is expected to occur in the service area.

~~(4)~~**(5)** Travel time is used to provide different protection areas for different types of threats to a well. The three travel times are discussed below:

(A) **Area R₂**. The purpose of the R₂ area is to protect the drinking water supply from viral, microbial, and direct chemical Contamination. The area is defined by the surface area overlying the portion of the Aquifer that contributes water to the well within a **two-year time-of-travel**. Existing research indicates that bacteria and viruses survive less than two years in soil and ground water. This area provides only a limited time for responding to serious microbiological Contamination or chemical spills.

(B) The purpose of the R₅ and R₁₀ areas is to prevent chemical Contamination of the water supply, and to protect the drinking water source for the long term. These zones are used to focus attention on possible chemical Contamination that may exist near the well but at a greater distance than the R₂ area.

(C) **Area R₅** encompasses the area between the two- and ~~five-year~~**fiveyear time-of-travel**. This area provides for more response time for chemical spills than the R₂ area.

(D) **Area R₁₀** encompasses the area between the five- and ~~ten-year~~**tenyear time-of-travel**. The primary purpose of this area is to encourage decision-makers and planners to recognize long-term aspects of the drinking water source. The ten-year time-of-travel allows for some

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attenuation or remediation of Contaminant sites, or if necessary, time to develop alternate sources of water supply.

(E) The minimum allowable radius is 1,000 feet for area R₅ and 1,500 feet for area R₁₀, for porous media Aquifers, and 1,500 and 2,250 feet, respectively, for fractured rock Aquifers.

~~(5)~~**(6)** The length of screened interval to be used in the equation should be based on well construction information. If the actual value is unknown, an initial conservative estimate can be made equal to 10% of the pumping capacity of the well in gallons per minute (gpm), with a minimum of 10 feet. For example, the estimated screened interval for a well that pumps at 400 gpm is 40 feet.

~~(6)~~**(7)** Effective porosity should be estimated using available information for the Aquifer. However, if a value is not known, a value of 0.2 can be used for an initial calculation. The estimated value of 0.2 for effective porosity is reasonably conservative for most Aquifers in California based on available information.

(d) Operations and activities that are prohibited within the R₂, R₅, and R₁₀ Areas are described using the Standard Industrial Classification (SIC) System Codes, and are listed in Resolution No. []. Where existing land use conflicts with the prohibited operations and activities within zones R₂, R₅, and R₁₀, Property Owner and Tenant must have adequate protective and warning measures in-place and prove to the satisfaction of the RED that said measures are adequate to protect groundwater resources.

(e) Wellhead protection areas consist of Aquifers and/or groundwater recharge zones with minimum radii of 600 feet for R₂ areas, 1,000 feet for R₅ areas, and 1,500 feet for R₁₀ areas.

(f) If the location of the wellhead protection area in relation to a suspected prohibited use is in doubt, resolution of boundary disputes shall be through the Rincon Tribal Council. Disputants shall be afforded notice and an opportunity to be heard after prima facie showing by the Rincon Band as to the prohibited activities occurring in the

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wellhead protection zone, the burden of proof shall be upon the owner(s) of the land in question to show where the boundary should properly be located.

(g) The Rincon Band may engage a professional engineer (civil or sanitary), Hydrologist, geologist, or surveyor to determine more accurately the boundaries of the wellhead protection area with respect to individual parcels of land, and may charge the owner(s) for all or part of the cost of the investigation.

~~§ 8.907 — Policy on the Control of Water Quality with Respect to On-Site Waste~~

§ 8.907 POLICY ON THE CONTROL OF WATER QUALITY WITH RESPECT TO ON-SITE WASTE

(a) **Establishment of Sanitary Control Area.** A Sanitary Control Area is an area within a Wellhead Protection Area that is required to protect a well or spring from existing and potential Contamination sources.

(1) A Sanitary Control Area shall be maintained around all wells and springs for the purpose of protecting them from existing and potential Contamination sources. The following policy shall be implemented with respect to discharges from individual waste treatment and disposal systems. This policy sets forth uniform Rincon Reservation wide criteria and guidelines to protect water quality and to preclude health hazards and nuisance conditions arising from the subsurface discharges of waste from on-site waste treatment and disposal systems.

(b) **Site Evaluation Criteria and Methods**

(1) **Criteria.** The following site criteria are considered necessary for the protection of water quality and the prevention of health hazards and nuisance conditions arising from the on-site discharge of wastes.

(A) **Subsurface Disposal.** Individual on-site waste treatment sewage disposal systems shall be located, designed, constructed and operated in a manner to ensure that effluent does not surface at any time, and that

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percolation of effluent shall not adversely affect waters of the Rincon Reservation.

(B) Ground Slope and Stability. Natural ground slope in all areas to be used for effluent disposal shall not be greater than twenty five (25) percent. Natural ground slope criteria for mounds shall be as follows: for percolation rates slower than 60 minutes per inch the maximum allowable slope is six (6) percent and for percolation rates faster than 60 minutes per inch the maximum allowable slope is twelve (12) percent. In addition, steeper ground slopes may be allowed for experimental systems approved by the RED. All soils to be utilized for effluent disposal shall be stable.

(C) Soil Depth. Soil depth is measured vertically to the point where bedrock, hardpan, impermeable soils or saturated soils are encountered. Minimum soil depth below the bottom of the leaching trench shall be determined according to percolation rates as shown in Table 1.

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Rincon Tribal Code § 8.900**Table 1** – Minimum Depth of Soil ~~below~~Below Leaching Trench

Percolation Rate (minutes per inch – MPI)	Depth of Soil Below Leaching Trench (feet)
6 OR LESS	20
6 TO 30	8
Greater than 30	5

(D) Depth to Groundwater. Minimum depth to anticipated highest level of groundwater below the bottom of the leaching trench shall be determined according to percolation rates as shown in Table 2.

Table 2 – Minimum Depth of Groundwater ~~below~~Below Leaching Trench

Percolation Rate (minutes per inch – MPI)	Depth to Groundwater Below Leaching Trench (feet)
6 OR LESS	20
6 TO 30	8
Greater than 30	5

(E) Percolation Rates. If percolation test results in the effluent disposal area are slower than 60 minutes per inch (MPI), or faster than 6 MPI, only engineered waste treatment and disposal systems may be used. Engineered waste treatment and disposal systems must be prepared by or under the direct supervision of a California Licensed Civil Engineer or California Certified Engineering Geologist and the RED. Percolation test results shall not be faster than 1 MPI or slower than 120 MPI in the effluent disposal area.

(F) Replacement Area. An adequate replacement area equivalent to and separate from the initial effluent disposal area shall be identified at the time of site approval. Incompatible uses of the replacement area shall be prohibited.

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(G) Setbacks: Minimum horizontal setbacks from any waste treatment and disposal system shall be as follows, unless an alternative setback is approved by RED:

- (i)** 5 feet from parcel property lines and structures;
- (ii)** 10 feet from the edge of public road easements;
- (iii)** 25 feet from the edge of public water line easements;
- (iv)** 100 feet from water wells and monitoring wells, unless regulatory or legitimate data requirements necessitate that monitoring wells be located closer;
- (v)** 100 feet from any unstable land mass or any areas subject to earth slides identified by a California Licensed Civil Engineer or California Licensed Geologist; other setback distance may be allowed, if recommended by a geotechnical report prepared by a qualified professional;
- (vi)** 100 feet from springs and flowing surface water bodies where the edge of that water body is the natural or levied bank for creeks and rivers, or may be less where site conditions prevent migration of wastewater to the water body;
- (vii)** 200 feet from vernal pools, wetlands, lakes, ponds, or other surface water bodies where the edge of that water body is the high water mark for lakes and reservoirs;
- (viii)** 150 feet from a public water well where the depth of the effluent dispersal system does not exceed 10 feet;
- (ix)** Where the effluent dispersal system is within 1,200 feet from a public water systems' surface water intake point, within the catchment of the drainage, and located such that it may impact water quality at the intake point such as upstream of the intake point for flowing water bodies, the dispersal system shall be no less than 400

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feet from the high water mark of the reservoir, lake or flowing water body; and,

(x) Where the effluent dispersal system is located more than 1,200 feet but less than 2,500 feet from a public water systems' surface water intake point, within the catchment of the drainage, and located such that it may impact water quality at the intake point such as upstream of the intake point for flowing water bodies, the dispersal system shall be no less than 200 feet from the high water mark of the reservoir, lake or flowing water body.

(2) Methods of Site Evaluation. Site evaluations are required in all instances to allow proper system design and to determine compliance with proceeding site suitability criteria prior to approving the use of on-site waste treatment and disposal systems. The RED will be notified prior to conduct of site evaluations since verification by the RED may be required. Site evaluation methods shall be in accordance with the following guidelines:

(A) General Site Features: Site features to be determined by inspection shall include:

(i) Land area available for primary disposal system and replacement area.

(ii) Ground slope soil type and soil depth in the effluent disposal and replacement area.

(iii) Location of cut banks, natural bluffs sharp changes in slope and unstable land forms within fifty feet of the disposal and replacement area.

(iv) Location of all objects that may impose setback limitations on the waste treatment and disposal system.

(B) Soil Profiles. Soil characteristics shall be evaluated by soil profile analysis. A minimum of one backhoe excavation in the primary disposal field and one in the replacement area shall be required for this purpose. A

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third profile shall be required if the initial two profiles show dissimilar conditions. Augered test holes may be an acceptable alternative, upon determination of the RED: (a) where use of a backhoe is impractical because of access, (b) when necessary only to verify conditions expected on the basis of prior soil investigations, or (c) when done in connection with geologic investigations. Where this method is employed, a minimum of three test holes in the primary disposal field and three in the replacement area shall be required. In evaluation of new subdivisions, an adequate number of soil profile excavations shall be made to identify a suitable disposal and replacement area on each proposed parcel. The following factors shall be observed and reported from ground surface to a depth of at least five to twenty feet below the proposed leachfield system (as required by the percolation test results in the effluent disposal area):

- (i) Thickness and coloring of soil layers and apparent United States Department of Agriculture classification.
- (ii) Depth to and type of bedrock, hardpan, or impermeable soil layer.
- (iii) Depth to observed groundwater.
- (iv) Depth to soil mottling.
- (v) Other prominent soil features such as structure, gravel content, roots and porosity, water holding capacity, etc.

(C) Depth to Groundwater Determinations. The anticipated highest level of groundwater shall be estimated:

- (i) As the highest extent of soil mottling observed in the examination of soil profiles; or
- (ii) By direct observation of groundwater levels during wet weather conditions.

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(iii) Where a conflict, in the above methods of examination exists, the direct observation shall govern. In those areas, which, because of parent materials, the soils lack the necessary iron compounds to exhibit mottling, direct observation during wet weather conditions shall be required. Guidance in defining such areas shall be provided by the RED.

(D) Soil Percolation Suitability. A site's suitability for percolation of effluent shall be determined by both of the following methods, unless this requirement is waived by the RED:

(i) Percolation Testing. Percolation testing shall be in accordance with methods specified by the RED. Percolation testing of soils shall be conducted during wet weather, or in non-wet weather conditions provided presoaking of the test hole is accomplished with (a) a continuous 12 hour presoaking, or (b) a minimum of four complete re-fillings beginning during the day prior to the day the test is conducted.

(ii) Soil Analysis. Soil from the limiting soil layer observed within the excavated soil profile shall be obtained and analyzed for composition (particle size and properties analysis) and bulk density according to methods prescribed by the RED.

a. Wet Weather Criteria: The RED shall determine Wet weather testing periods on a geographic base. The following criteria shall be followed:

1. Between January 1 and April 30; and
2. Following 10 inches of rain in a 30-day period or after one-half of the seasonal normal precipitation has fallen. Extension of wet weather testing beyond the limits of above criteria may be made in accordance with a program of groundwater level monitoring conducted by the RED.

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(E) The following are the requirements for a Sanitary Control Area.

(i) Size of the area:

a. Unless engineering justification supports a smaller area, the minimum sanitary control area around a public water supply well shall be a radius of 100 feet and the minimum sanitary control area around a spring shall be a radius of 200 feet. Any engineering justification in support of a smaller area must address geological and hydrological data, well construction details, and other relevant factors necessary to ensure adequate sanitary control;

b. The minimum sanitary control area around a single-family, domestic water supply well shall be determined on a case-by-case basis but shall not be less than fifty (50) feet unless engineering justification supports a smaller area; and

c. The RED may require a larger sanitary control area than that specified in subsections (a) and (b) if geological and hydrological data support such a decision.

(ii) No source of Contamination may be constructed, stored, disposed of, or applied within the sanitary control area without the approval of the RED.

(iii) Water purveyors shall demonstrate that they have the legal right to exercise complete sanitary control of the land within the sanitary control area applicable to their water source.

§ 8.908 ~~Permit for Use Required~~ PERMIT FOR USE REQUIRED

No Person may engage in any use or activity that is within a Wellhead Protection Area on the Rincon Reservation without obtaining a land use permit from the Rincon Tribal Administration pursuant to applicable Tribal Law.

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~~§ 8.909 — Prohibited Uses and/or Activities in Wellhead Protection Areas~~

§ 8.909 PROHIBITED USES AND/OR ACTIVITIES IN WELLHEAD PROTECTION AREAS

The following uses, development, and/or activities are prohibited in a Wellhead Protection Area:

- (a) landfills containing either solid or Hazardous Material;
- (b) salvage yards, junk yards, stockyards, feedlots, or similar sites containing discarded material having the potential to adversely affect ground water; and
- (c) industrial on-site waste treatment sewage disposal systems or individual onsite waste treatment sewage disposal systems containing industrial waste.

~~§ 8.910 — Conditional Uses or Activities~~ **CONDITIONAL USES OR ACTIVITIES**

The following uses or activities may be conditionally allowed in a designated Wellhead Protection Area pursuant to a land use permit issued by Rincon Tribal Administration:

- (a) agriculture;
- (b) horticulture;
- (c) parks, greenways, or recreation areas;
- (d) necessary public utilities or facilities designed so as to prevent Contamination of ground water;
- (e) industrial and commercial land uses not otherwise prohibited by applicable Tribal Law;
- (f) single family residential housing; and
- (g) multiple family residential developments.

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~~§ 8.911—Approval of Permits for Conditional Uses or Activities~~

~~§ 8.911 APPROVAL OF PERMITS FOR CONDITIONAL USES OR ACTIVITIES~~

The Rincon Tribal Administration will grant approval for conditional uses in Wellhead Protection Areas only after the RED has certified that:

- (a) the proposed use complies with all other applicable water quality standards; and
- (b) the applicant has prepared and submitted for approval an acceptable pollution prevention and spill response plan for the facility or activity for the monitoring, prevention, and cleanup of ground water Contamination due to flood, fire, natural catastrophes, equipment failure, and/or human error.
- (c) All permits shall contain a condition that the permittee agrees to be subject to inspection by the RED or other designated agent of the Rincon Band. The purpose of the inspection is to ensure continued compliance with the conditions under which the permit approval was granted.

~~§ 8.912—Requirements for Wells-REQUIREMENTS FOR WELLS~~

Any Person proposing a new well or expansion of an existing well must obtain a permit from the RED, pursuant to Section 8.908. The RED must be satisfied that the following requirements are met:

- (a) Every well contractor must be duly licensed and bonded under the laws of the Rincon Band and/or the State of California.
- (b) The permit application must contain, at a minimum, the well owner's name, and contact information; the well driller's contact information, license, insurance, and bonding information; well location; proposed well construction details; land status; proposed use; and approximate start and completion dates.

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(c) Every well driller must submit a complete record on the construction or alteration of the well to the RED within thirty (30) days of completion of the well. Such record will include:

- (1) well location,
- (2) method of drilling and stratum information including depth, thickness, and type;
- (3) water information including initial and static water levels, the tested capacity of the well, and any other water quality information; and,
- (4) type and length of well casing, screen, filter pack, and sanitary seal.

(d) The contractor shall meet all requirements for design required by the RED to ensure ground water quantity and quality. In constructing, developing, redeveloping, or conditioning a well, care shall be taken to preserve the natural barriers to ground water movement between Aquifers and to seal Aquifers or strata penetrated during drilling operations which might impair water quality. In addition to any design requirements set by the RED, the following design requirements shall be met:

(1) For Monitoring Wells:

(A) Monitoring wells shall be located at an adequate distance from known potential pollutants unless regulatory or legitimate data requirements necessitate that monitoring wells be located closer. The minimum horizontal distances from potential pollutants are shown in Table 3.

Table 3 – *Minimum Horizontal Distance Between Potential Pollutant and Monitoring Well*

Potential Pollutant	Minimum Distance to Monitoring Well (feet)
Any sewer (sanitary, industrial, storm)	50
Septic tank or sewage leaching field	100
Cesspool or seepage pit	150
Animal or fowl enclosure	100

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(B) The top of the monitoring well shall be above any known flood elevation, and surface drainage shall be away from the well, when possible.

(C) Drill cutting and wastewater from monitoring well or exploration hole installations shall be disposed of in accordance with RED Guidelines.

(D) The annular space of all monitoring wells shall be sealed to prevent the well from becoming a preferential pathway for surface Contamination. A minimum of two inches is required around the casing and the wall of the borehole. A seal thick enough to prevent surface infiltration is necessary and will be determined by the depth of the borehole.

(i) Surface Seal: The sealing material shall consist of neat cement, sand-cement, or bentonite clay. Potable water shall be used in sealing mixtures. Tremie pipe shall be used for installation if the transition seal is at a depth greater than 5 feet or extends below the groundwater surface.

(ii) Transition Seal: A bentonite-based or fine grain sand shall be used between the filter pack and the surface seal. This transition seal prevents the surface seal material from infiltrating the filter pack. The transition seal is generally less than two feet. Transition seal shall be installed with a tremie pipe.

(iii) Filter Pack: The filter pack is placed from the bottom of the borehole up to above the top of screen. Filter pack material shall be installed with a tremie pipe. The filter pack material shall consist of clean, nonreactive, smooth, rounded, spherical, granular material of highly uniform size and composition. The grain-size of the filter pack shall be sized to properly match the slot size of the well screen.

(E) The top of a monitoring well casing shall be fitted with a cap and "sanitary seal" to prevent surface water and Contaminants from entering

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the well. A well box or vault shall be installed around the monitoring well casing. The well box or vault shall be set in a concrete pad at least four inches thick and shall slope away from the well to drain. The concrete pad shall be free of cracks and voids.

(F) Following installation, all monitoring wells shall be developed per RED guidelines.

(G) Rehabilitation and Repair of Monitoring Wells: This section refers to the treatment of a well to recover loss in yield caused by intrusion or clogging of the screen, filter packer, and/or water bearing strata adjoining the well. Rehabilitation methods may include mechanical surging, backwashing, surging with air, water jetting, sonic cleaning, chemical treatment or any combination. Any chemicals used to rehabilitate the well are to be approved by the RED prior to use and immediately removed from the well, filter pack, and water bearing strata following completion. All chemicals, water, and other wastes used to rehabilitate the well shall be disposed of in accordance with RED guidelines.

(2) For All Other Well Types:

(A) Water wells shall be located at an adequate distance from known potential pollutants. The minimum horizontal distances from potential pollutants are shown in Table 4. Water wells shall be placed upgradient from potential Pollution sources, when possible.

Table 4 - Minimum Horizontal Distance Between Potential Pollutant and Water Well

Potential Pollutant	Minimum Distance to Water Well (feet)
Any sewer (sanitary, industrial, storm)	50
Septic tank or sewage leaching field	100
Cesspool or seepage pit	150
Animal or fowl enclosure	100
Feedlot	100

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Solid waste disposal site	500
Petroleum of chemical storage areas	500

(B) The top of the water well shall be above any known flood elevation, and surface drainage shall be away from the well, when possible.

(C) The annular space of all water wells shall be sealed to prevent the well from becoming a preferential pathway for surface Contamination. A minimum of two inches is required around the casing and the wall of the borehole. A seal thick enough to prevent surface infiltration is necessary and will be determined by the depth of the borehole.

(i) A concrete base or pad shall be constructed at ground surface around the top of the well casing/vault. This concrete base or pad will create a water tight seal with the surface seal. The concrete base or pad must extend at least two feet laterally in all directions from the outside of the well borehole. The base shall be a minimum of four inches thick and slope away from the well.

(ii) The surface seal shall extend at least 50 feet below ground surface for community water supply and industrial wells, and at least 20 feet for all other types of water wells.

a. Shallow Groundwater: Exceptions to the minimum depth can be made for shallow wells with approval from the RED when the water is at a depth of less than 20 feet. No annular seal shall be less than 10 feet below ground surface.

b. Encroachment on Known Potential Pollution Sources: At the approval of the RED, when a water well is located closer to a known potential Pollution source, the surface seal shall extend from ground surface to the first impervious stratum, if possible, at a minimum depth of 50 feet.

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c. Adversely situated wells: For wells situated in adverse conditions, approval from the RED may be required for completion details.

d. Converted wells: Wells being converted from one use to another, with no surface seal, shall have surface seals installed to the proper depth.

e. Wells that penetrate zones containing poor -quality water: If Aquifers known or may have poor-quality water are penetrated during drilling, and the possibility exists that the poor-quality water could move through the borehole during drilling and well construction operations and significantly degrade groundwater quality in other units before sealing material can be installed, then precautions shall be taken to seal off the poor-quality water zones during these activities.

(iii) Surface Seal: The sealing material shall consist of neat cement, sand-cement, concrete, or bentonite. Potable water shall be used in sealing mixtures. Tremie pipe shall be used for installation if the surface seal is at a depth greater than 5 feet or extends below the groundwater surface.

(iv) Foundation and Transition Seal: A packer or similar retaining device, or a small amount of sealant can be placed at the bottom of the interval to be sealed before final sealing operations begin to form a foundation for the seal.

a. A transition seal, up to five (5) feet in length, consisting of bentonite or fine grain sand shall be used between the filter pack and the surface seal. This transition seal prevents the surface seal material from infiltrating the filter pack. Sometimes an interval of fine grained sand, usually less than two feet, is placed between the filter pack and the transition seal. Transition seal shall be installed with a tremie pipe. Bentonite can be placed in dry form or a slurry for use in

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transition seals. Once the bentonite is in the borehole, water should be added, at a ratio of 1 gallon of water for every 2 pounds of bentonite, prior to the placement of the surface seal.

(v) Timing and Method of Placement: The annular space shall be sealed as soon as practical following drilling. In no case shall the annular space be left unsealed longer than 14 days following the installation of the casing.

a. Sealing material shall be placed in one continuous operation from the bottom of the borehole to the top. When the seal is greater than 100 feet, the deepest portion may be installed and allowed to set prior to the installation of the remaining seal.

b. Sealing material shall be installed with the use of the tremie pipe, or equivalent, to prevent freefall, bridging, or dilution of the sealing material. Sealing material shall not be installed by freefall unless the interval is less than 30 feet below ground surface and is dry. Tremie pipe shall be used for installation if the surface seal is at a depth greater than 5 feet or extends below the groundwater surface.

(vi) Groundwater Flow: Special care shall be used to restrict the flow of groundwater into the borehole while placing sealing material.

(vii) Verification: The volume of sealing material placed shall be verified to at least equal the volume to be sealed.

(viii) Pressure: Pressure required for placement of sealing material shall be maintained long enough for the cement based material to set.

(D) Any opening at the surface level shall be sealed, to prevent surface infiltration into the groundwater supply.

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(E) In community water supply wells, the well and pump shall be located in a locked enclosure to exclude access by unauthorized Persons.

(F) All wells producing water for domestic use shall be disinfected following construction, repair, or when work is done on the pump, before the well is placed in service per RED guidelines.

(G) In areas where a well penetrates more than one Aquifer, and one or more of the Aquifers contain poor-quality water, the strata producing such poor-quality water shall be sealed off to prevent entrance of the water into the well or its migration to other Aquifer(s).

(i) Strata producing the poor-quality water shall be sealed off by placing impervious material opposite the strata and opposite the confining formation(s). The seal shall extend above and below the strata at least 10 feet. In the event of "bottom" waters, the seal shall extend 10 feet in the upward direction. The sealing material shall fill the annular space between the casing and the wall of the borehole in the interval to be sealed. The sealing material shall be placed from the bottom to the top of the interval.

(ii) In some cases, a "sleeve" or "slip joint" in the casing may be required.

(iii) Sealing material shall consist of neat cement, cement grout, or bentonite clay.

(iv) Sealing shall be accomplished by a method approved by the RED.

(H) Rehabilitation, Repair, and Deepening of Wells: Rehabilitation is the treatment of a well by chemical or mechanical means (or both) to recover lost production caused by incrustation or clogging of the screens or the formation immediately surrounding the well. The following methods are acceptable: introduction of chemicals, surging by use of compressed air, backwashing or surging by starting and stopping the

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pump, jetting the water, sonic cleaning, vibratory explosives, or any combinations of these. In the cases where chemicals or explosives are used, prior approval from the RED is required and the well shall be pumped until all traces of them have been removed.

(i) In the repair of wells, materials used for casing shall be approved by the RED.

(ii) When wells are to be deepened, the standards for well installation are to be followed.

§ ~~8.913~~ ~~Abandoned Wells~~ **ABANDONED WELLS**

(a) An abandoned well is a well that:

(1) is other than a monitoring well, has been out of service continuously for one (1) year or more;

(2) is a monitoring well from which no measurement or sample has been taken for a period of three (3) years;

(3) is in such a state of disrepair that it cannot be made operational for its intended purpose;

(4) is a test hole or exploratory boring twenty-four (24) hours after construction and testing work has been completed;

(5) is a cathodic protection well that is no longer functional for its original purpose; or

(6) is any boring that cannot be satisfactorily completed as a well.

(b) Any landowner who has drilled a well that has been closed or is abandoned must ensure proper closure to prevent Contamination of the Wellhead Protection Area. The following information must be submitted to the RED for all well closures:

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- (1) proof of a plan identifying that the well was or will be sealed using appropriate methods within thirty (30) days of abandonment; and
 - (2) a map identifying the location of the closed or abandoned well.
- (c) Any Person proposing to abandon a well must obtain a permit from the RED, pursuant to Section 8.908. The RED must be satisfied that the following requirements are met:
 - (1) Every well contractor must be duly licensed and bonded under the laws of the Rincon Band and/or the State of California.
 - (2) The permit application must contain, at a minimum, the well owner's name and contact information; the well driller's contact information, license, insurance, and bonding information; well location; proposed well destruction procedure; and approximate start and completion dates.
 - (3) Every well driller must submit a complete record on the destruction of the well to the RED within thirty (30) days of abandonment of the well. Such record will include: i) well location, ii) method of abandonment, and iii) date of abandonment.
- (d) The contractor shall meet all abandonment requirements required by the RED to ensure ground water quantity and quality. In abandoning a well, care shall be taken to preserve the natural barriers to ground water movement between Aquifers and to seal Aquifers or strata penetrated during drilling operations which might impair water quality. In addition to any abandonment requirements set by the RED, the following abandonment requirements shall be met:
 - (1) For monitoring and water wells:
 - (A) If a well is located in an area of known potential Pollution or if the well was not constructed using the current guidelines, then the well shall be destroyed by removing all material within the original borehole (this includes well casing, filter pack, and annular seal). Once all material is out, the hole is to be filled with an appropriate sealing material, using a tremie pipe.

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(B) In all cases the well shall be i) sealed with impervious material (neat cement, sand-cement, concrete, or bentonite) from its total depth to within 5 feet of ground surface using a tremie pipe or ii) by a method approved by the RED.

(C) Well Penetrating Multiple Aquifers: The well shall be filled and sealed to prevent interchange. To prevent the vertical movement of water from the producing formation, impervious material must be placed opposite confining formations above and below the producing formations for a distance of at least 10 feet. The formation producing the deleterious water shall be sealed by placing impervious material opposite the formation, and opposite the confining formations for at least 10 feet in both directions, or in the case of "bottom" waters, in the upward direction.

(D) Well Penetrating Fractured Rock: If fractured rock formations are encountered just below the surface, the portions of the well opposite this formation shall be sealed with neat cement, sand-cement grout, or concrete. If these formations extend a considerable depth, alternate layers of coarse stone and cement grout or concrete may be used to fill the well.

(E) When well casing is not removed during abandonment, the top five feet must be removed. In urban areas, the sealing material shall end at a depth of 5 feet below ground surface, and a material, matching its surroundings, will be used to ground surface.

~~**(E)(F)**~~ **Destruction Requirements for Exploration Borings:** Exploration boring shall be completely filled with appropriate sealing material from the bottom to top, using a tremie pipe. In urban areas, the sealing material shall end at a depth of 5 feet below ground surface, and a material, matching its surroundings, will be used to ground surface.

~~**(F)(A)**~~ **Destruction Requirements for Exploration Borings:** Exploration boring shall be completely filled with appropriate sealing material from the bottom to top, using a tremie pipe. ~~In urban areas, the~~

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~~sealing material shall end at a depth of 5 feet below ground surface, and a material, matching its surroundings, will be used to ground surface.~~

(G) If not previously stated, the sealing material shall consist of neat cement, sand-cement, concrete, or bentonite. Potable water shall be used in sealing mixtures. Tremie pipe shall be used for installation if the transition seal is at a depth greater than 5 feet or extends below the groundwater surface.

(e) Abandoned wells that have not been properly closed may be closed and sealed by the RED, with the cost of such closure or sealing to be paid by the property owner.

§ 8.914 ~~Existing Nonconforming Uses~~ **EXISTING NONCONFORMING USES**

Any use that is lawfully existing on the effective date of this Ordinance and that does not conform with all the provisions of this Ordinance may remain in use under the following conditions:

(a) no prohibited use in a Wellhead Protection Area may be expanded if it increases the non-conformity of the activity; and

(b) abandonment of a use or a permit will result in the loss of the non-conforming use status.

(c) Notwithstanding subsections (a) and (b) of this section, where the ~~non-conforming~~nonconforming use is deemed a substantial threat to public health or the physical environment, the RED may require an appropriate modification to the activity or use to conform to the requirements for wellhead protection.

Stream and Wetland Management

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STREAM AND WETLAND MANAGEMENT

§ 8.915—~~Findings and Purpose~~ FINDINGS AND PURPOSE

(a) Streams and wetlands provide a number of benefits to the Rincon Band, including ~~Habitat~~habitat for migratory birds, amphibians such as frogs and salamanders, and other wildlife; cultural plants and other cultural practices and properties; providing recharge water to ground-water Aquifers; improving water quality; providing water to streams during summer low flows; holding flood and storm waters; and recreational and educational opportunities.

(b) It is the intent of the Rincon Band to achieve no net loss of streams, wetlands, and their functions and, in the long term, to achieve a net gain of stream and wetland functions within the boundary of the Rincon Reservation. These goals will be achieved by measures such as requiring site planning to avoid or minimize damage to streams and wetlands wherever possible and by requiring restoration or enhancement of degraded streams and wetlands to offset losses that are unavoidable. It is also the intent of the Rincon Band to pursue a policy of actively encouraging the restoration or enhancement of streams and wetlands with a high potential to provide wildlife, cultural, water-quality, or Aquifer-recharge functions.

(c) The purposes of Rincon Band Stream and Wetland Management are:

- (1) To protect the functions and values of Rincon Reservation streams and wetlands from the impacts of development activities and other land uses;
- (2) To encourage appropriate residential development and land-use practices by and for tribal members and non-tribal members as well as commercial and business growth on the Rincon Reservation for tribal employment opportunities by providing defined stream and wetland management standards, requirements, and Mitigation alternatives for effective project planning;
- (3) To protect and enhance wildlife resources, cultural resources, and the quantity and quality of Rincon Reservation ground water; and
- (4) To protect surface-water quality and enhance storm-water management.

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~~§ 8.916 — Tribal Jurisdiction over Streams and Wetlands on the Rincon Reservation~~

§ 8.916 TRIBAL JURISDICTION OVER STREAMS AND WETLANDS ON THE RINCON RESERVATION

The Rincon Band, a federally recognized Indian Tribe, hereby enacts these provisions for protection of Rincon Reservation Water pursuant to 33 USC §1377 of the Clean Water Act, “Indian tribes shall be treated as States for purposes of section 1251 (g) of this title.” Pursuant to 33 USC §1377(h)(1) “Federal Indian reservation” means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and 33 USC §1377(h)(2) “Indian tribe” means any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

The criteria in this Ordinance are consistent with § 101(a)(2) of the Clean Water Act (33 U.S.C. § 1251(a)(2)), which declares that “it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shell fish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.” This Ordinance is adopted to protect all authorized uses of Rincon Reservation Waters. Contamination that may result from such uses shall not lower the quality of the water below what is required for public health, domestic water uses, recreation and other uses designated by the Rincon Band.

Consistent with the Clean Water Act, 33 USC §1377, the Rincon Band has been delegated authority for §401 Protection of Wetlands. Rincon adopts procedures for Certification of an application for a dredge and fill permit that may impact any the waters of the Reservation. Procedures for reviewing certification applications are contained in Appendix E.

§ 8.917 [RESERVED]

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~~Water Quality Standards~~

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WATER QUALITY STANDARDS

§ 8.918—~~Findings and Purpose~~ FINDINGS AND PURPOSE

(a) All water that flows through or falls onto the Rincon Reservation is precious and contributes to ~~Aquifer~~aquifer recharge on the Rincon Reservation. The waters of the Rincon Reservation support a diverse assemblage of flora, fauna, and ~~Habitats~~habitats. The quality of these water resources affects the political integrity, economic security, health, and welfare of the Rincon Band as well as subsistence, cultural, commercial, and other uses by tribal and non-tribal members.

(b) Over 100% of the residential water supply for the Rincon Reservation is currently pumped from ground water wells on the Rincon Reservation. Recharge of the ~~Aquifers~~aquifers is primarily from local precipitation (i.e., that which falls on or near the Rincon Reservation). Where surface waters contribute to ~~Aquifer~~aquifer recharge, ground water is susceptible to Contamination.

(c) Activities occurring on all lands within the Rincon Reservation have the potential to impair the quality of Rincon Reservation Waters; impairment of the quality of waters of the Rincon Reservation threatens the economic security, health, and welfare of the Rincon Band.

(d) The purpose of the water quality standards program is to protect Rincon Reservation waters from Contaminants which may (1) have an adverse effect on the health of all Persons present on the Rincon Reservation and/or (2) degrade the integrity of the Rincon Reservation Waters.

(e) The Rincon Band, acting through the RED, pursuant to the Quality Assurance Project Plan for Groundwater and Surface Water Sampling, dated September 23, 2009^[CM1], has been developed for the monitoring of surface and groundwater sources within the Rincon Reservation.

(f) The purposes of this Ordinance are to establish water quality standards for Rincon Reservation Waters consistent with all beneficial uses, including public health and public enjoyment; the propagation, protection, and restoration of wildlife ~~Habitats~~; and the

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protection of Rincon Reservation waters as cultural, economic and spiritual resources of the Rincon people.

(g) All waters of the Rincon Reservation shall maintain a level of water quality that provides for the attainment and maintenance of the water quality standards of downstream waters, including the downstream waters of a state or another federally-recognized tribe.

~~§ 8.919—Non-Point Source Management Program~~ **NON-POINT SOURCE
MANAGEMENT PROGRAM**

(a) Identification of Best Management Practices. Best Management Practices (“BMP’s”) are those practices determined to be practical, acceptable to the public, and effective in preventing water Pollution or reducing the amount of Pollution generated by non-point sources. Best Management Practices include information and education programs, technical and financial assistance, technology transfer, demonstration projects, monitoring/evaluation systems, and regulation and enforcement. The Rincon Environmental Department and other departments within the Rincon Band will develop and present BMP’s to the Tribal Council for approval in accordance with Tribal Law.

(b) Reservation Wide Program Objectives. Reservation wide program objectives include current as well as proposed programs and identify activities, products, responsible agencies, and funding. The Tribal Government, acting by and through, Tribal Administration and the RED, is responsible for water and natural resource management activities, such as, herbicide use, wellhead protection, residential and commercial building, utility and road building which will require the adoption of approved BMPs. The following non-exhaustive list of BMP’s will need to be approved by the Tribal Council upon recommendation by Tribal Administration and the RED:

- (1) Land Assignment and Lease Ordinance;
- (2) Habitat Conservation Ordinance;
- (3) Pollution Discharge Prohibition Ordinance;
- (4) Land Use, Development Standards and Zoning Plan;
- (5) Pesticides Ordinance; and

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(6) Road Construction

§ 8.920—~~Rule Making Authority~~ RULE-MAKING AUTHORITY

(a) The RED shall have the authority to, and shall promulgate, amend, or rescind regulations relating to standards of quality for waters of the Rincon Reservation and for substances discharged therein in order to maintain the highest possible standards in accordance with the public policy of the Rincon Band as declared in Section 8.901 & 8.902. The regulations, which shall not be effective until approved by the Tribal Council, shall be structured according to requirements under the federal Clean Water Act, 33 U.S.C.A. §§ 1251-1387 (CWA) as amended from time to time, and shall specifically include:

- (1) use designations consistent with the requirements of the Clean Water Act;
- (2) methods used and analyses conducted to support the water quality standards;
- (3) water quality criteria sufficient to protect the designated uses, including criteria for priority toxic pollutants and biological criteria;
- (4) an ~~antidegradation~~anti-degradation policy and implementation methods consistent with Federal Water Quality Standards Regulations;
- (5) general information supporting the adequacy of the scientific basis of the standards, as well as information on general policies applicable to Rincon Band standards that may affect their application and implementation; and
- (6) certification that the regulations for water quality standards have been adopted pursuant to the requirements of this Ordinance; and
- (7) ensure that water quality sampling and monitoring activities comply with the Rincon Reservation Quality Assurance Project Plan.

~~Prohibited Acts, Enforcement, Review, and Appeals~~

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PROHIBITED ACTS, ENFORCEMENT, REVIEW, AND APPEALS

§ 8.921 NOTICE OF VIOLATION; EMERGENCY ORDERS

This Ordinance shall be considered a Rincon Environmental Ordinance for purposes of the Rincon Environmental Enforcement Ordinance. For any violations of this Ordinance, the RED shall have authority to issue Notices of Violation and Emergency Orders pursuant to § 8.308 of the Rincon Environmental Enforcement Ordinance.

(a) Hearing and Hearing Process. Any Person served with a Notice of Violation for a violation of this Ordinance may file a “Request for Hearing” with the Tribal Court within five (5) working days from receipt of the “Notice of Violation” pursuant to Rincon Environmental Enforcement Ordinance § 8.309. Upon receipt of a properly filed “Request for Hearing~~,”~~[”] the Tribal Court shall schedule and conduct a hearing pursuant to Rincon Environmental Enforcement Ordinance § 8.309 (b).

(b) Remedies; Civil Penalties; Enforcement of Tribal Court Orders.

(1) Remedies available to the Rincon Band for violations of this Ordinance shall be governed by the Rincon Environmental Enforcement Ordinance § 8.310.

(2) Civil Penalties which may be imposed against Persons determined to have violated this Ordinance shall be governed by the Rincon Environmental Enforcement Ordinance § 8.311.

(3) Rincon Environmental Enforcement Ordinance § 8.312 shall apply to any orders issued by the Tribal Court that arise from violations of this Ordinance.

(c) Any Person who in violation of this Ordinance discharges any pollutant into the waters of the Rincon Reservation shall be liable for all costs associated with or necessary to clean up, abate, or remove said pollutants from the waters of the Rincon Reservation and restore the quality of the waters of the Rincon Reservation to their condition as they existed immediately prior to the discharge.

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MISCELLANEOUS

§ 8.922 NO WAIVER OF ~~Sovereign Immunity~~ SOVEREIGN IMMUNITY

All inherent sovereign rights of the Rincon Band as a federally recognized Indian tribe with respect to provisions authorized in this Ordinance are hereby expressly reserved, including sovereign immunity from unconsented suit. Nothing in this Ordinance shall be deemed or construed to be a waiver of the Rincon Band's sovereign immunity from unconsented suit.

§ 8.923 ~~Severability~~ SEVERABILITY

If any provision of this Ordinance or the application thereof to any Person or circumstance shall be held unconstitutional or invalid by the Tribal Council, only the invalid provision shall be severed and the remaining provision and language of this Ordinance shall remain in full force and effect.

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RINCON WATER RESOURCES PROTECTION ORDINANCE

Appendix A ~~---~~ RINCON WATER QUALITY STANDARDS

These Water Quality Standards (WQS) are regulations promulgated in accordance with §17.06.030 of the Rincon Water Resources Code under the authority of the Natural Resources Commission of the Rincon Band of Luiseno Indians for the waters of the Rincon Reservation. These WQS establish standards of quality for waters of the Reservation and for substances discharged therein to maintain the highest possible standards in accordance with the public policy of the Rincon Band as declared in §17.07.010 of the Rincon Water Resources Code. These regulations have been structured according to requirements under the federal Clean Water Act, 33 U.S.C.A. §§ 1251-1387 (CWA) as amended, and include:

- (a) use designations consistent with the requirements of the Clean Water Act;
- (b) methods used and analyses conducted to support the water quality standards;
- (c) water quality criteria sufficient to protect the designated uses, including criteria for priority toxic pollutants and biological criteria;
- (d) an antidegradation policy and implementation methods consistent with Federal Water Quality Standards Regulations;
- (e) general information supporting the adequacy of the scientific basis of the standards, as well as information on general policies applicable to Rincon Band standards that may affect their application and implementation; and
- (f) certification that the regulations for water quality standards have been adopted pursuant to the requirements of this Code.

Water quality standards are intended to protect public health and aquatic life, and to maintain or enhance water quality in relation to the beneficial uses of the water. It is with this intention that these water quality standards were devised in accordance with the Rincon Band of Luiseno Indians (Rincon Band) Water Resources Protection Code (RTC) §17.06.030 and U.S. Environmental Protection Agency guidelines.

Water quality standards are expressed in both narrative and numeric forms. The standards, when compared to water quality data from water samples, will provide the basis for detecting any future trend toward degradation of Reservation waters. Through regular water sampling and monitoring, the Rincon Band will have the requisite information to make a determination on the short and long term trends of the water quality of the waters of the Rincon Reservation.

RINCON WATER RESOURCES PROTECTION ORDINANCE
APPENDIX A – RINCON WATER QUALITY STANDARDS

These standards are based on the federal water quality standards as established by the U.S. Environmental Protection Agency and those water quality standards established by the California State Regional Water Quality Board, San Diego District, for the San Luis Rey River watershed. This provides the basis for a regulatory program administered by the Rincon Band to protect its water resources presently and in the future.

Stakeholders have been notified of the contents of this document and have been given an opportunity to comment. A triennial review of the standards is required and the process is described in this document. It is critical that standards are kept up to date for the most stringent protection of the high water quality that currently exists on the Rincon Reservation.

I. PURPOSE

The federal Clean Water Act designates authority to Indian Tribes to manage water resources for the health and benefit of Tribal members. As part of this effort, the Rincon Band is establishing water quality standards within the boundaries of the Rincon Indian Reservation. Beneficial uses for all surface waters and ground water on the Rincon Reservation, as well as water quality objectives in both narrative and numeric forms are designated within this document and in the Quality Assurance Protection Plan included as an Appendix to this document.

Water quality standards are intended to protect the public health and welfare, and to maintain or enhance water quality in relation to the existing and/or potential beneficial uses of the water. "Water quality objectives" are the allowable "limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area." The objectives, when compared to future water quality data, will also provide the basis for detecting any future trend toward degradation or enhancement of Reservation waters.

The federal Clean Water Act defines "water quality standards" to include both beneficial uses (i.e., current or potential uses) and "water quality criteria" (i.e., water quality objectives). Thus, the beneficial uses designated herein and the water quality objectives comprise the Tribe's water quality standards.

II. METHODOLOGY FOR ESTABLISHING WATER QUALITY STANDARDS

Water quality objectives ~~are numerical or narrative. Numerical use both numeric~~ and narrative criteria. The numeric water quality objectives define the upper concentration or other limits that the Rincon Band considers protective of beneficial uses. The water quality objectives have been ~~reviewed~~reviewed and approved by U.S. ~~EWPA~~EPA as part of the QAPP for water quality.

The general methodology used in establishing water quality objectives involves, first, designating beneficial water uses; second, selecting and quantifying the water quality parameters necessary to protect the most vulnerable (sensitive) beneficial uses; and third, a narrative description of physical characteristics that should or should not be present. To comply with the

RINCON WATER RESOURCES PROTECTION ORDINANCE
APPENDIX A – RINCON WATER QUALITY STANDARDS

Antidegradation Policy (see below), water quality objectives may be established at levels better than that necessary to protect the most vulnerable beneficial use.

In establishing water quality objectives, factors in addition to designated beneficial uses and the Antidegradation Policy are considered. These factors include environmental and economic considerations, as well as the level of water quality which could be achieved through coordinated control of all factors which affect water quality in an area. Controllable water quality factors are those actions, conditions, or circumstances resulting from human activities that may influence the quality of the waters of the Reservation, and that may be reasonably controlled.

III. TRIENNIAL REVIEW

Public participation from the Rincon Band General Council and other stakeholders is an integral part in establishing these standards, and the promulgation of these standards has been approved by the Tribal Council through resolution. Water quality standards shall be reviewed, and if necessary, revised, at a minimum of every three years by the Rincon Environmental Department (RED), General Council, and other stakeholders. Upon approval of the Tribal Council and the US EPA, revised water quality objectives will then be adopted as part of these standards by amendment.

As part of the review process, the Rincon Band shall notify stakeholders who will have an opportunity to comment on current or proposed standards. Updated state and federal standards shall also be reviewed at this time, and if appropriate, adopted into the Tribe's water quality standards. RED shall make recommendations to the Tribal Council regarding the proposed changes, and if adopted by Tribal Council, shall be sent to the EPA for review and approval and incorporated into the standards.

As a component of the Rincon Band's continuing planning process, data may be collected and numerical water quality objectives may be developed for additional water bodies and/or constituents where sufficient information is presently not available for the establishment of such objectives.

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Appendix B – Beneficial Uses

(a) Designated Beneficial Uses -- Rincon Reservation Waters

Currently all waters of the Reservation have the following Beneficial Uses. A designation of 'X' is an existing or potential use. Potential use = "probable future" use.

Beneficial Uses	Inland-Surface-Water	Reservoirs-and-Lakes	Ground-Water
Municipal-and-Domestic-Supply			X
Agricultural-Supply	X	X	X
Industrial-Service-Supply	X	X	X
Industrial-Process-Supply	X	X	X
Freshwater-Replenishment	X	X	X
Contact-Water-Recreation	X	X	-
Non-Contact-Water-Recreation	X	X	-
	<u>Inland Surface Water</u>	<u>Reservoirs and Lakes</u>	<u>Ground Water</u>

Warm-Freshwater-Habitat	*	*	-			
Cold-Freshwater-Habitat	*	-	-			
Wildlife-Habitat	*	*	-			
Rare, Threatened, or Endangered	*	*	-			
<u>Beneficial Uses</u>						
<u>Municipal and Domestic Supply</u>		<u>X</u>		<u>X</u>		<u>X</u>
<u>Agricultural Supply</u>		<u>X</u>		<u>X</u>		<u>X</u>
<u>Industrial Service Supply</u>		<u>X</u>		<u>X</u>		<u>X</u>
<u>Industrial Process Supply</u>		<u>X</u>		<u>X</u>		<u>X</u>
<u>Freshwater Replenishment</u>		<u>X</u>		<u>X</u>		<u>X</u>
<u>Contact Water Recreation</u>		<u>X</u>		<u>X</u>		
<u>Non-Contact Water Recreation</u>		<u>X</u>		<u>X</u>		
<u>Warm Freshwater Habitat</u>		<u>X</u>		<u>X</u>		
<u>Cold Freshwater Habitat</u>		<u>X</u>		<u>X</u>		
<u>Wildlife Habitat</u>		<u>X</u>		<u>X</u>		
<u>Rare, Threatened, or Endangered Species</u>		<u>X</u>		<u>X</u>		

(b) Summary of Beneficial Use Designations

Beneficial Use	Abbreviation	Definition
Municipal and Domestic Supply	MUN	Community, military, or individual water supply systems including, but not limited to, drinking water supply
Agricultural Supply	AGR	Farming, horticulture, or ranching including, but not limited to, irrigation, stock watering, or support of vegetation for range grazing
Industrial Process Supply	PROC	Industrial activities that depend primarily on water quality
Industrial Service Supply	IND	Industrial activities that do not depend primarily on water quality including, but not limited to, mining, cooling water supply, hydraulic conveyance, gravel washing, fire protection, or oil well re-pressurization
Ground Water Recharge	GWR	Natural or artificial recharge of ground water for purposes of future extraction, maintenance of water quality, or halting of saltwater intrusion into freshwater aquifers
Freshwater Replenishment	FRSH	Natural or artificial maintenance of surface water quantity or quality (e.g. salinity)
Contact Water Recreation	REC-1	Recreational activities involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, swimming, wading, water skiing, skin and SCUBA diving, surfing, white water activities, fishing, or use of natural hot springs
Non-contact Water Recreation	REC-2	Recreational activities involving proximity to water, but not normally involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities

Beneficial Use	Abbreviation	Definition
<u>Municipal and Domestic Supply</u>	<u>MUN</u>	<u>Community, military, or individual water supply systems including, but not limited to, drinking water supply</u>
<u>Agricultural Supply</u>	<u>AGR</u>	<u>Farming, horticulture, or ranching including, but not limited to, irrigation, stock watering, or support of vegetation for range grazing</u>
<u>Industrial Process Supply</u>	<u>PROC</u>	<u>Industrial activities that depend primarily on water quality</u>
<u>Industrial Service Supply</u>	<u>IND</u>	<u>Industrial activities that do not depend primarily on water quality including, but not limited to mining, cooling water supply, hydraulic conveyance, gravel washing, fire protection, or oil well re-pressurization</u>
<u>Ground Water Recharge</u>	<u>GWR</u>	<u>Natural or artificial recharge of ground water for purposes of future extraction, maintenance of water quality, or halting of saltwater intrusion into freshwater aquifers</u>
<u>Freshwater Replenishment</u>	<u>FRSH</u>	<u>Natural or artificial maintenance of surface water quantity or quality (e.g. salinity)</u>
<u>Contact Water Recreation</u>	<u>REC-1</u>	<u>Recreational activities involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, swimming, wading, water-skiing, skin and SCUBA diving, surfing, white water activities, fishing, or use of natural hot springs</u>

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APPENDIX B – BENEFICIAL USES

<u>Non-contact Water Recreation</u>	<u>REC-2</u>	<u>Recreational activities involving proximity to water, but not normally involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities</u>
Warm Freshwater Habitat	WARM	Warm water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish or wildlife, including invertebrates
Cold Freshwater Habitat	COLD	Cold water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish or wildlife, including invertebrates
Wildlife Habitat	WILD	Terrestrial ecosystems including, but not limited to, preservation and enhancement of terrestrial habitats, vegetation, wildlife (e.g. mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food resources
Rare, Threatened, or Endangered Species	RARE	Habitats necessary, at least in part, for the survival and successful maintenance of plant and animal species established under state or federal law as rare, threatened, or endangered

RINCON WATER RESOURCES PROTECTION ORDINANCE

RINCON WATER RESOURCES PROTECTION ORDINANCE

APPENDIX C -- ~~Numerical~~ NUMERIC AND NARRATIVE CRITERIA

These standards are based on the federal water quality standards as established by the U.S. Environmental Protection Agency (EPA), and those water quality standards established by the California State Regional Water Quality Control Board, (RWQCB), San Francisco District, as well as the RWQCB San Diego District, ~~for standards specific to~~ the San Luis Rey River ~~watershed~~ Watershed, adopted and modified as appropriate ~~specific to~~ for the Rincon Indian Reservation. ~~This provides~~ These standards provide the basis for a regulatory program administered by the Rincon Band to protect its water resources presently and in the future. These criteria apply to all Beneficial Uses of all waters of the Rincon Reservation.

~~Table 1. Analytical Parameters and Project Action Limits~~

(a) **Numeric Criteria** -- Where available data were sufficient to define existing ambient levels of constituents, these levels were used in developing the numeric criteria objectives for specific water bodies. By utilizing annual mean, 90th percentile values and flow-weighted values, the objectives are intended to be realistic within the variable conditions imposed by nature. This approach provides an opportunity to detect changes in water quality as a function of time through comparison of annual means, while still accommodating variations in the measured constituents. Specific numeric criteria are organized in a tabular format (Table 1).

Table 1. Analytical Parameters and Project Action Limits

General minerals and physical parameters	Reference method	Preparation	Type of analysis	Method detection limit	Precision objective	Accuracy objective	Water Quality Objective / project action level <u>Project Action Level (AL)</u>
Total dissolved solids <u>Dissolved Solids (TDS)</u>	<u>EPA 160.1</u>	None	gravimetric	1.0 mg/ <u>4L</u>	20%		500 mg <u>mg/L</u>
Turbidity	EPA 180.1	None	Nephelometric	0.1 NTU	20%		20
pH	Epa <u>EPA 180.1</u>	None	Electrode		20%		6.5-8.5 units
Boron	EPA 212.3	None	Colorimetric	0.1 mg/ <u>4L</u>	20%	75-125%	
Chloride	EPA 300	None	Ion Chematography	0.1 mg/ <u>4L</u>	20%	75-125%	250 mg/ <u>4L</u>
Flouride	EPA 300	None	Ion Chematography	0.5 mg/ <u>4L</u>	20%	75-125%	1.0 mg/ <u>4L</u>
Ammonia-N	<u>EPA 350.1</u>	None	Colorimetric	0.1 mg/ <u>4L</u>	20%	75-125%	0.025 mg/ <u>4L</u>

Nitrate-N	EPA 300	None	Ion Chromatography	0.1 mg/L	20%	75-125%	10 mg/L
Phosphate-P	EPA 300	None	Ion Chromatography	0.1 mg/L	20%	75-125%	
Orthophosphate	EPA 300	None				75-125%	
Sulfate	EPA 300	None	Ion Chromatography	0.5 mg/L	20%	75-125%	250 mg/L
Surfactants Surfactants (MBAS)	EPA 425.1	Chloroform extraction	Spectrophotometer	0.05 mg/L	20%	75-125%	0.5 mg/L
Total Organic Carbon	EPA 415.2	Combustion	Infrared Analyzer	0.5 mg/L	20%	75-125%	2.0 mg/L

Metals	Reference method	Preparation	Type of analysis	Method detection limit	Precision objective	Accuracy objective	Water Quality Objective / project action level Project Action Level (AL)
Aluminum	EPA 6010	Nitric Acid Digestion	Inductively Coupled Plasma (ICP)	10 ug/l	20 %	75-125%	1.0 mg/L
Arsenic	EPA 6010	Nitric Acid Digestion	Plasma (ICP)	5 ug/l	20 %	75-125%	0.05
Cadmium	EPA 6010	Nitric Acid Digestion	ICP	10 ug/l	20 %	75-125%	0.010 mg/L
Chromium	EPA 6010	Nitric Acid Digestion	ICP	10 ug/l	20 %	75-125%	0.05mg/L
Copper	EPA 6010	Nitric Acid Digestion	ICP	20 ug/l	20 %	75-125%	1.0 mg/L
Iron	EPA 6010	Nitric Acid Digestion	ICP	10 ug/l	20 %	75-125%	0.3 mg/l
Lead	EPA 6010	Nitric Acid Digestion	ICP	5 ug/l	20 %	75-125%	0.05 mg/l
Manganese	EPA 6010	Nitric Acid Digestion	ICP	10 ug/l	20 %	75-125%	0.05 mg/l
Mercury	EPA 7471	Nitric Acid Digestion	Cold Vapor AA	0.5 ug/l	20 %	75-125%	0.002 mg/l
Sodium	EPA 6010	Nitric Acid Digestion	ICP	0.1 mg/l	20 %	75-125%	0.004 mg/l
Selenium	EPA 6010	Nitric Acid Digestion	ICP	8 ug/l	20 %	75-125%	0.01 mg/l
Other Parameters	Reference method	Preparation	Type of analysis	Method detection limit	Precision objective	Accuracy objective	Water Quality Objective / project action level Project Action Level (AL)
Cyanide	EPA335.2		Spectrometric	0.05 mg/l	23	75-125%	0.2 mg/l
Perchlorate	EPA M300.0		Ion Chromatography	0.004 mg/l	20	75-125%	
Total Coliform	SM 8223	None	Multiple Tube	1.1 MPN	-	-	<2.2 MPN
Fecal Coliform	SM 8223	None	Multiple Tube	1.1 MPN	-	-	<2.2 MPN
Heterotrophic Plate Count	SM 8215	None	Plate Count	5.0 CFU	-	-	-
Gross Gross α Activity	EPA 900.0	None	Low Level	3pCi/L	-	90-110%	15pCi/L
Gross Gross β Activity	EPA 900.0	None	Proportional	4 pCi/L	-	90-110%	50pCi/L

N-Methylcarbamate Pesticides	Reference method	Preparation	Type of analysis	Method detection limit	Precision objective	Accuracy objective	Water Quality Objective / project action level Project Action Level (AL)
Hydroxycarbofuran	A 8140531.2	Extraction of Chlorinated Organics	Gas Chromatograph	0.35ug/l	50%	40-140%	-
Aldicarb	-	-	-	0.36ug/l	50%	40-140%	-
Methomyl	-	-	-	0.52ug/l	30%	50-135%	-
Propoxur	-	-	-	0.34ug/l	30%	50-135%	-
Carbofuran	-	-	-	0.75ug/l	-	-	0.18mg/l
Carbaryl	-	-	-	0.56ug/l	-	-	-
Methiocarb	-	-	-	0.74ug/l	-	-	-
Thiobencarb	-	-	-				0.07mg/l

Organochlorine Pesticides	Reference method	Preparation	Type of analysis	Method detection limit	Precision objective	Accuracy objective	Water Quality Objective / project action <u>Project Action Level (AL)</u>
Alpha-BHC	EPA 8080	Extraction of Chlorinated Organics	Gas Chromatograph	0.0013ug/l			
Gamma-BHC	-	-	-	0.0016ug/l	38%	41-120%	0.002mg/l
Beta-BHC	-	-	-	0.0034ug/l	-	-	-
Aldrin	-	-	-	0.0037ug/l	-	-	-
Dieldrin	-	-	-	0.0018ug/l	-	-	-
4,4-DDE	-	-	-	0.0086ug/l	-	-	-
4,4-DDD	-	-	-	0.0013ug/l	-	-	-
4,4-DDT	-	-	-	0.029ug/l	49%	41-139%	-
Endrin	-	-	-	0.0012ug/l	40%	45-125%	0.0002mg/l
EndrinAldehydy	-	-	-	0.0014ug/l	-	-	-
Endrin Ketone	-	-	-	0.0023ug/l	-	-	-
Endosulfan I	-	-	-	0.0046ug/l	-	-	-
Endosulfan II	-	-	-	0.0016ug/l	-	-	-
Endosulfan Sulfate	-	-	-	0.0015ug/l	-	-	-
Heptachlor	-	-	-	0.0022ug/l	43%	40-126%	0.00001mg/l
Heptachlor Epoxide	-	-	-	0.13ug/l	-	-	-
Methoxychlor	-	-	-	0.080ug/l	-	-	0.04mg/l
Toxaphene	-	-	-	0.88ug/l	-	-	0.003mg/l

(a)

Organophosphorus Pesticides	Reference method	Preparation	Type of analysis	Method detection limit	Precision objective	Accuracy objective	Water Quality Objective / project action level <u>Project Action Level (AL)</u>
Dichlorvos	EPA8140	Extraction of Chlorinated Organics	Gas Chromatograph	0.32ug/l	-	-	-
Mevinphos	-	-	-	0.16ug/l	-	-	-
Ethoprop	-	-	-	0.37ug/l	50%	40-140%	-
Naled (dibrom)	-	-	-	0.035ug/l	-	-	-
Phorate	-	-	-	0.38ug/l	50%	40-140%	-
Diazinon	-	-	-	0.33ug/l	-	-	-
Methyl Parathion	-	-	-	0.34ug/l	-	-	-
Ronnel	-	-	-	0.35ug/l	50%	40-140%	-
Chloropyrifos	-	-	-	0.34ug/l	-	-	-
Bolstar	-	-	-	0.19ug/l	50%	40-140%	-

(b)

Acetone	EPA 624	Low Level Purge & Trap (LLPT)	Gas Chromatography / Mass Spectrometer	100 ug/l	-	-	-
Benzene	-	-	-	0.5ug/l	23%	67-126%	0.001 mg/l
Bromodichloromathane Bromodichloromathane	-	-	-	0.5 ug/l	-	-	0.1 mg/l
Bromoform	-	-	-	1.0 ug/l	-	-	0.1 mg/l
Bromomethane	-	-	-	10 ug/l	-	-	
Carbon Disulfide	-	-	-	1.0 ug/l	-	-	

Carbon Tetrachloride	-	-	-	0.5 ug/l	-	-	0.0005 mg/l
Chlorobenzene	-	-	-	1.0 ug/l	23%	74-120%	0.070 mg/l
Chloroethane	-	-	-	5.0 ug/l	-	-	
Chloroform	-	-	-	1.0 ug/l	-	-	01 mg/l
Chloromethane	-	-	-	10 ug/l	-	-	
Ca-1,2-Dichloroethene	-	-	-	1.0 ug/l	-	-	0.006 mg/l
Ca-1,3Dichloropropene	-	-	-	0.5 ug/l	-	-	0.0005 mg/l
Dibromochloromethane	-	-	-	1.0 ug/l	-	-	0.1 mg/l
Dichlorodiflouromethane	-	-	-	0.5 mg/l	30%	68-123%	0.005 mg/l
Ethylbenzene	-	-	-	1.0 ug/l	-	-	0.68 mg/l
Methylene Chloride	-	-	-	2.0 ug/	-	-	0.005 mg/l
Styrene	-	-	-	1.0 ug/l	-	-	0.1 mg/l
Tetrachloroethene	-	-	-	1.0 ug/l	18 %	80-120%	0.005 mg/l
Toluene	-	-	-	1.0 ug/l	-	-	1.0 mg/l
Total Xylenes	-	-	-	1.0 ug/l	-	-	1.75 mg/l
Trans-1,2Dichloroethene	-	-	-	1.0 ug/l	-	-	0.01 mg/l
Trans-1,3-Dichloropropene	-	-	-	0.5 ug/l	-	-	0.0005 mg/l
Trichloroethene	-	-	-	1.0 ug/l	-	-	0.005 mg/l
Trichloroflouromethane	-	-	-	1.0 ug/l	-	-	0.15 mg/l
Trichlorotriflouroethane	-	-	-	1.0 ug/l	-	-	1.2 mg/l
Vinyl Chloride	-	-	-	0.5 ug/l	-	-	0.0005 mg/l
1,1,1-Trichloroethane	-	-	-	1.0 ug/l	-	-	0.200 mg/l
1,1,2-Trichloroethane	-	-	-	1.0 ug/l	-	-	0.005 mg/l
1,1,2,2-Tetrachloroethane	-	-	-	0.5 ug/l	-	-	0.001 mg/l
1,1-Dichloroethane	-	-	-	1.0 ug/l	-	-	0.005 mg/l
1,1-Dichloroethene	-	-	-	1.0 ug/l	24%	57-113%	0.006 mg/l
1,2-Dichlorobenzene	-	-	-	1.0 ug/l	-	-	0.6 mg/l
1,2-Dichloroethane	-	-	-	0.5 ug/l	-	-	0.0005 mg/l
Volatile Organics	Reference method	Preparation	Type of analysis	Method detection limit	Precision objective	Accuracy objective	Water Quality Objective / project action level
1,2-Dichloropropane	EPA 624	Low Level Purge & Trap (LLPT)	Gas Chromatography / Mass Spectrometer	1.0 ug/l	-	-	0.005 mg/l
1,3-Dichlorobenzene	-	-	-	1.0 ug/l	-	-	0.13 mg/l
1,4-Dichlorobenzene	-	-	-	1.0 ug/l	-	-	0.005 mg/l
2-Butanone (MEK)	-	-	-	100 ug/l	-	-	-
2-Hexanoone	-	-	-	50 ug/l	-	-	-
4-methyl-2-Pentanone	-	-	-	50 ug/l	-	-	-

Table 2. Sampling Design and Locations

SITE ID	LOCATION	DESCRIPTION OF LOCATION	RATIONAL
GWWNS#1		North side of reservation	Baseline data
GWWNS#2	Approximately 1,300 feet from northwestern edge of San Luis Rey River This would be by Tribal Ballfield	This area is developed with tribal community homes; Private enterprises and is downgradient of wastewater treatment plant.	To determine if water quality could be affected by ongoing practices in wellhead-recharge area. All development in this area uses underground septic systems. Baseline data
GWWNS#3	Approximately 850 feet from northwestern edge of San Luis Rey river	This area is developed with tribal community homes; Private enterprises and is downgradient of wastewater treatment plant.	To determine if water quality could be affected by ongoing practices in wellhead-recharge area. All development in this area uses underground septic systems. Baseline data
GWWPC#1		South side of reservation in Paradise Creek basin	Baseline data
GWWPC#2		South side of reservation in Paradise Creek basin	Baseline data
GWWPC#3	Approximately 150 feet from eastern edge of Paradise Creek and 300 feet from southern edge of San Luis Rey River	This area has minimal development of tribal homes; historic practices would have been mainly agriculture.	To determine if surface practices influence ground water. Baseline data
GWWPC#4	Approximately 500 feet from western edge of Paradise Creek and 1,150 feet from southern edge of San Luis Rey River	This area has minimal development of tribal homes; historic practices would have been mainly agriculture.	To determine if surface practices influence ground water. Baseline data
SITE ID	LOCATION	DESCRIPTION OF LOCATION	RATIONAL
SWWRRSLRE	100 feet west eastern boundary of reservation	San Luis Rey River, eastern boundary. river enters reservation from	To determine water quality as it enters reservation, historical agriculture activities upstream Baseline data.
SWWRRSLRC	100 feet downstream of Paradise Creek / San Luis Rey River Confluence	This is where Paradise Creek effluent discharges into the San Luis Rey River	To determine if Paradise Creek surface water affects The San Luis Rey River. Determine water quality after confluence. Baseline data
SWWRRSLRB	Western side of state hwy bridge, San Luis Rey river	State highway bridge crosses San Luis Rey River. Downgradient of historic landfill	To determine if surface water runoff affects the San Luis Rey River water quality. Baseline data
SWWRRSLRW	100 feet upgradient of western boundary	Where San Luis Rey River exits reservation onto adjacent property.	To determine water quality as it leaves reservation. Baseline data
SWRRPCS	Approximately 1000 feet downstream of southern reservation boundary	Uppermost sampling point on Paradise Creek, reservation boundary	To determine water quality as it enters reservation. Upgradient is horse ranch and Valley Center community Baseline data
SWRRPCM	Mid section of paradise creek	This sampling point will be southeast of fire station at Mazzetti Road crossing	To determine water quality in mid section of paradise creek. Tribal housing and minimal agriculture area upgradient to the west. Baseline data
SWRRPCN	100—1000 feet upgradient of San Luis Rey River / Paradise creek confluence.	This sampling point is to be located before water is allowed to enter the San Luis Rey River	To determine water quality before it enters The San Luis Rey River confluence in the Paradise Creek. Baseline data

(c) NUMERICAL OBJECTIVES

Where available data were sufficient to define existing ambient levels of constituents, these levels were used in developing the numerical objectives for specific water bodies. By utilizing annual mean, 90th percentile values and flow weighted values, the objectives are intended to be realistic within the variable conditions imposed by nature. This approach provides an opportunity to detect changes in water quality as a function of time through comparison of annual means, while still accommodating variations in the measured constituents. Specific numerical criteria are organized in a tabular format (Table 1).

Table 1. Analytical Parameters and Project Action Limits

General minerals and physical parameters	Reference method	Preparation	Type of analysis	Method detection limit	Precision objective	Accuracy objective
Total dissolved solids		None	gravimetric	1.0 mg/l	20%	
Turbidity	EPA 180.1	None	Nephelometric	0.1 NTU	20%	
pH	EPA 180.1	None	Electrode		20%	
Boron	EPA 212.3	None	Colorimetric	0.1 mg/l	20%	75-125%
Chloride	EPA 300	None	Ion Chromatography	0.1 mg/l	20%	75-125%
Fluoride	EPA 300	None	Ion Chromatography	0.5 mg/l	20%	75-125%
Ammonia-N		None	Colorimetric	0.1 mg/l	20%	75-125%
Nitrate-N	EPA 300	None	Ion Chromatography	0.1 mg/l	20%	75-125%
Phosphate-P	EPA 300	None	Ion Chromatography	0.1 mg/l	20%	75-125%
Orthophosphate	EPA 300	None				75-125%
Sulfate	EPA 300	None	Ion Chromatography	0.5 mg/l	20%	75-125%
Surfactants (MBAS)	EPA 425.1	Chloroform extraction	Spectrophotometer	0.05 mg/l	20%	75-125%
Total Organic Carbon	EPA 415.2	Combustion	Infrared Analyzer	0.5 mg/l	20%	75-125%

Metals	Reference method	Preparation	Type of analysis	Method detection limit	Precision objective	Accuracy objective	Water Quality Objective / project action level
Aluminum	EPA 6010	Nitric Acid Digestion	Inductively Coupled	10 ug/l	20%	75-125%	1.0 mg/l
Arsenic	EPA 6010	Nitric Acid Digestion	Plasma (ICP)	5 ug/l	20%	75-125%	0.05
Cadmium	EPA 6010	Nitric Acid Digestion	ICP	10 ug/l	20%	75-125%	0.010 mg/l
Chromium	EPA 6010	Nitric Acid Digestion	ICP	10 ug/l	20%	75-125%	0.05 mg/l
Copper	EPA 6010	Nitric Acid Digestion	ICP	20 ug/l	20%	75-125%	1.0 mg/l
Iron	EPA 6010	Nitric Acid Digestion	ICP	10 ug/l	20%	75-125%	0.3 mg/l
Lead	EPA 6010	Nitric Acid Digestion	ICP	5 ug/l	20%	75-125%	0.05 mg/l

Manganese	EPA-6010	Nitric-Acid Digestion	ICP	10-ug/l	20-%	75-125%	0.05-mg/l
Mercury	EPA-7471	Nitric-Acid Digestion	Cold-Vapor-AA	0.5-ug/l	20-%	75-125%	0.002-mg/l
Sodium	EPA-6010	Nitric-Acid Digestion	ICP	0.1-mg/l	20-%	75-125%	0.004-mg/l
Selenium	EPA-6010	Nitric-Acid Digestion	ICP	8-ug/l	20-%	75-125%	0.01-mg/l
Other Parameters	Reference method	Preparation	Type-of analysis	Method detection limit	Precision objective	Accuracy objective	Water Quality Objective/ project action level
Cyanide	EPA335.2		Spectrometric	0.05-mg/l	23	75-125%	0.2-mg/l
Perechlorate	EPA M300.0		Ion Chromatography	0.004 mg/l	20	75-125%	
Total-Coliform	SM-8223	None	Multiple-Tube	1.1-MPN	-	-	<2.2-MPN
Fecal Coliform	SM-8223	None	Multiple-Tube	1.1-MPN	-	-	<2.2-MPN
Heterotrophoie Plate Count	SM-8215	None	Plate-Count	5.0-CFU	-	-	-
Gross-alpha Activity	EPA 900.0	None	Low-Level	3pCi/L	-	90-110%	15pCi/L
Gross-Beta Activity	EPA 900.0	None	Proportional	4 pCi/L	-	90-110%	50pCi/L

N-Methylcarbamate Pesticides	Reference method	Preparation	Type-of analysis	Method detection limit	Precision objective	Accuracy objective	Water Quality Objective/ project action level
Hydroxycarbofuran	EPA-8140	Extraction of Chlorinated Organics	Gas Chromatograph	0.35ug/l	50%	40-140%	-
Aldicarb	-	-	-	0.36ug/l	50%	40-140%	-
Methomyl	-	-	-	0.52ug/l	30%	50-135%	-
Propoxur	-	-	-	0.34ug/l	30%	50-135%	-
Carbofuran	-	-	-	0.75ug/l	-	-	0.18mg/l
Carbaryl	-	-	-	0.56ug/l	-	-	-
Methiocarb	-	-	-	0.74ug/l	-	-	-
Thiobencarb	-	-	-				0.07mg/l

Organochlorine Pesticides	Reference method	Preparation	Type-of analysis	Method detection limit	Precision-objective	Accuracy-obj
Alpha-BHC	EPA-8080	Extraction of Chlorinated Organics	Gas Chromatograph	0.0013ug/l		
Gamma-BHC	-	-	-	0.0016ug/l	38%	41-120%
Beta-BHC	-	-	-	0.0034ug/l	-	-

Aldrin	-	-	-	0.0037ug/l	-	-
Dieldrin	-	-	-	0.0018ug/l	-	-
4,4-DDE	-	-	-	0.0086ug/l	-	-
4,4-DDD	-	-	-	0.0013ug/l	-	-
4,4-DDT	-	-	-	0.029ug/l	49%	41-139%
Endrin	-	-	-	0.0012ug/l	40%	45-125%
EndrinAldehydy	-	-	-	0.0014ug/l	-	-
Endrin Ketone	-	-	-	0.0023ug/l	-	-
Endosulfan-I	-	-	-	0.0046ug/l	-	-
Endosulfan-II	-	-	-	0.0016ug/l	-	-
Endosulfan Sulfate	-	-	-	0.0015ug/l	-	-
Heptachlor	-	-	-	0.0022ug/l	43%	40-126%
Heptachlor Epoxide	-	-	-	00.13ug/l	-	-
Methoxychlor	-	-	-	00.80ug/l	-	-
Toxaphene	-	-	-	0.88ug/l	-	-

Organophosphorus Pesticides	Reference method	Preparation	Type of analysis	Method detection limit	Precision objective	Accuracy
Dichlorvos	EPA8140	Extraction of Chlorinated Organics	Gas Chromatograph	0.32ug/l	-	-
Mevinphos	-	-	-	0.16ug/l	-	-
Ethoprop	-	-	-	0.37ug/l	50%	40-
Naled (dibrom)	-	-	-	0.035ug/l	-	-
Phorate	-	-	-	0.38ug/l	50%	40-
Diazinon	-	-	-	0.33ug/l	-	-
Methyl Parathion	-	-	-	0.34ug/l	-	-
Ronnel	-	-	-	0.35ug/l	50%	40-
Chloropyrifos	-	-	-	0.34ug/l	-	-
Bolstar	-	-	-	0.19ug/l	50%	40-

Acetone	EPA-624	Low Level Purge & Trap (LLPT)	Gas Chromatography/ Mass Spectrometer	100 ug/l	-	-
Benzene	-	-	-	0.5ug/l	23%	67-126%
Bromodichloromathane	-	-	-	0.5 ug/l	-	-
Bromoform	-	-	-	1.0 ug/l	-	-
Bromomethane	-	-	-	10 ug/l	-	-
Carbon Disulfide	-	-	-	1.0 ug/l	-	-
Carbon Tetrachloride	-	-	-	0.5 ug/l	-	-
Chlorobenzene	-	-	-	1.0 ug/l	23%	74-120%
Chloroethane	-	-	-	5.0 ug/l	-	-
Chloroform	-	-	-	1.0 ug/l	-	-
Chloromethane	-	-	-	10 ug/l	-	-
Ca-1,2-Dichloroethene	-	-	-	1.0 ug/l	-	-
Ca-1,3-Dichloropropene	-	-	-	0.5 ug/l	-	-
Dibromochloromethane	-	-	-	1.0 ug/l	-	-
Dichlorodiflouromethane	-	-	-	0.5 mg/l	30%	68-123%
Ethylbenzene	-	-	-	1.0 ug/l	-	-
Methylene Chloride	-	-	-	2.0 ug/	-	-
Styrene	-	-	-	1.0 ug/l	-	-
Tetrachloroethene	-	-	-	1.0 ug/l	18%	80-120%
Toluene	-	-	-	1.0 ug/l	-	-
Total Xylenes	-	-	-	1.0 ug/l	-	-
Trans-1,2-Dichloroethene	-	-	-	1.0 ug/l	-	-

Trans-1,3-Dichloropropene	-	-	-	0.5 ug/l	-	-
Trichloroethene	-	-	-	1.0 ug/l	-	-
Trichlorofluoromethane	-	-	-	1.0 ug/l	-	-
Trichlorotrifluoroethane	-	-	-	1.0 ug/l	-	-
Vinyl Chloride	-	-	-	0.5 ug/l	-	-
1,1,1-Trichloroethane	-	-	-	1.0 ug/l	-	-
1,1,2-Trichloroethane	-	-	-	1.0 ug/l	-	-
1,1,2,2-Tetrachloroethane	-	-	-	0.5 ug/l	-	-
1,1-Dichloroethane	-	-	-	1.0 ug/l	-	-
1,1-Dichloroethene	-	-	-	1.0 ug/l	24%	57-113%
1,2-Dichlorobenzene	-	-	-	1.0 ug/l	-	-
1,2-Dichloroethane	-	-	-	0.5 ug/l	-	-
Volatile Organics	Reference method	Preparation	Type of analysis	Method detection limit	Precision objective	Accuracy objective
1,2-Dichloropropane	EPA-624	Low Level Purge & Trap (LLPT)	Gas Chromatography-/ Mass Spectrometer	1.0 ug/l	-	-
1,3-Dichlorobenzene	-	-	-	1.0 ug/l	-	-
1,4-Dichlorobenzene	-	-	-	1.0 ug/l	-	-
2-Butanone (MEK)	-	-	-	100 ug/l	-	-
2-Hexanone	-	-	-	50 ug/l	-	-
4-methyl-2-Pentanone	-	-	-	50 ug/l	-	-

Table 2. Sampling Design and Locations

SITE ID	LOCATION	DESCRIPTION OF LOCATION	RATIONALE
GWWNS#1	<u>North side of Reservation</u>	<u>North side of reservation A location representative of waters exiting the Reservation</u>	Baseline data
GWWNS#2	Approximately 1,300 feet from northwestern edge of San Luis Rey River This would be by Tribal Ballfield	This area is developed with tribal community homes, Private enterprises and is downgradient of wastewater treatment plant.	To determine if water quality could be affected by ongoing practices in <u>the approximate</u> wellhead recharge area. All development in this area uses underground septic systems. Baseline data
GWWNS#3	Approximately 850 feet from northwestern edge of San Luis Rey river	This area is developed with tribal community homes, Private enterprises and is downgradient of wastewater treatment plant.	To determine if water quality could be affected by ongoing practices in <u>the approximate</u> wellhead recharge area. All development in this area uses underground septic systems. Baseline data

WATER QUALITY OBJECTIVES-NARRATIVE CRITERIA

The <u>GWWPC#1</u>	<u>South side of reservation in Paradise Creek basin</u>	<u>Representative of water entering the Reservation</u>	<u>Baseline data</u>
<u>GWWPC#2</u>	<u>South side of reservation in Paradise Creek basin</u>	<u>Representative of water entering the Reservation</u>	<u>Baseline data</u>
<u>GWWPC#3</u>	<u>Approximately 150 feet from eastern edge of Paradise Creek and 300 feet from southern edge of San Luis Rey River</u>	<u>This area has minimal development of tribal homes, historic practices would have been mainly agriculture.</u>	<u>To determine if surface practices influence ground water. Baseline data</u>

<u>GWWPC#4</u>	<u>Approximately 500 feet from western edge of Paradise Creek and 1,150 feet from southern edge of San Luis Rey River</u>	<u>This area has minimal development of tribal homes, historic practices would have been mainly agriculture.</u>	<u>To determine if surface practices influence ground water. Baseline data</u>
<u>SWWRRSLRE</u>	<u>100 feet west eastern boundary of Reservation</u>	<u>San Luis Rey River, eastern boundary of the Reservation, where the river enters reservation from</u>	<u>To determine water quality as it enters Reservation, historical agriculture activities upstream Baseline data.</u>
<u>SWWRRSLRC</u>	<u>100 feet downstream of Paradise Creek / San Luis Rey River Confluence</u>	<u>This is where Paradise Creek effluent discharges into the San Luis Rey River</u>	<u>To determine if Paradise Creek surface water affects The San Luis Rey River. Determine water quality after confluence. Baseline data</u>
<u>SWWRRSLRB</u>	<u>Western side of state hwy bridge, San Luis Rey River</u>	<u>State highway bridge crosses San Luis Rey River. Downgradient of historic landfill</u>	<u>To determine if surface water runoff affects the San Luis Rey River water quality. Baseline data</u>
<u>SWWRRSLRW</u>	<u>100 feet up gradient of western Reservation boundary</u>	<u>Where San Luis Rey River exits Reservation onto adjacent property.</u>	<u>To determine water quality as it leaves reservation. Baseline data</u>
<u>SWRRPCS</u>	<u>Approximately 1000 feet downstream of southern Reservation boundary</u>	<u>Uppermost sampling point on Paradise Creek, at the Reservation boundary</u>	<u>To determine water quality as it enters Reservation. Upgradient is horse ranch and Valley Center community Baseline data</u>
<u>SWRRPCM</u>	<u>Mid-section of Paradise Creek</u>	<u>This sampling point will be southeast of fire station at Mazzetti Road crossing</u>	<u>To determine water quality in mid section of Paradise Creek. Tribal housing and minimal agriculture area upgradient to the west. Baseline data</u>
<u>SWRRPCN</u>	<u>100 – 1000 feet up gradient of San Luis Rey River / Paradise creek confluence.</u>	<u>This sampling point is to be located before water is allowed to enter the San Luis Rey River</u>	<u>To determine water quality before it enters The San Luis Rey River confluence in the Paradise Creek. Baseline data</u>

Narrative Criteria

A. General requirements

All waters included in paragraph (a) of this section shall be free from toxic, radioactive, conventional, non-conventional, deleterious or other polluting substances in amounts that will prevent attainment of the designated uses specified in paragraph (b) of this section, as modified in paragraph (k) of this section. The narrative water quality objectives which follow are directed toward protection of both surface waters and ground waters within the Rincon Reservation.

a.-(1) Aesthetic qualities. All waters included in paragraph (a) of this section shall be free from substances, attributable to wastewater discharges or any other pollutant sources, that:

- (a) Settle to form objectionable deposits;
- (b) Float as debris, scum, oil, or other matter forming nuisances;

- (c) Produce objectionable color, odor, taste, or turbidity;
- (d) Cause injury to, are toxic to, or produce adverse physiological responses in humans, animals, or plants; and/or
- (e) Produce undesirable or nuisance aquatic life.

(2) Protection of cultural and traditional uses. All waters with the cultural and traditional designated use specified in paragraph (b)(3) of this section, as modified by paragraph (k) of this section, shall be free from contaminants at levels that cause or contribute to an impairment in water-based activities essential to maintaining the Tribe's cultural and traditional practices.

(3) Downstream protection. All waters designated in paragraph (a) of this section shall maintain a level of water quality that provides for the attainment and maintenance of the water quality standards of downstream waters, including the downstream waters of a state or another federally-recognized tribe.

B. Ammonia

The neutral, unionized ammonia species (NH_3°) is highly toxic to freshwater fish. The fraction of toxic NH_3° to total ammonia species ($\text{NH}_4 + + \text{NH}_3^\circ$) is a function of temperature and pH. Tables 2 and 3 were derived from USEPA ammonia criteria for freshwater. ~~Ammonia concentrations shall not exceed the values listed for the corresponding conditions in these tables.~~ For temperature and pH values not explicitly in these tables, the most conservative value neighboring the actual value may be used or criteria can be calculated from numerical formulas developed by the USEPA. ~~For one-hour (1h-NH3) and four-day (4d-NH3) unionized ammonia criteria, the following equations apply:~~

C. ~~b.~~ Bacteria, Coliform

Waters shall not contain concentrations of coliform organisms attributable to anthropogenic sources, including human and livestock wastes. Based on a statistically sufficient number of samples (generally not less than 5 samples equally spaced within a 30-day period), the geometric mean of the E. coli density should not exceed 126 coliform units per 100 mi.

No sample should exceed a one sided confidence limit (C.L.) calculated using the following as a guidance:

Designated bathing	75% C.L.
beach Moderate use for	82% C.L.
bathing Light use for	90% C.L.
bathing Infrequent use	95% C.L.
for bathing	

~~based on a site-specific log standard deviation, or if site data are insufficient to establish a log standard deviation, then using 0.4 as the log standard deviation.~~

~~e.~~

<u>Designated bathing/beach</u>	<u>75% C.L.</u>
<u>Moderate use for bathing</u>	<u>82% C.L.</u>
<u>Light use for bathing</u>	<u>90% C.L.</u>
<u>Infrequent use for bathing</u>	<u>95% C.L.</u>

D. ~~e.~~ Biostimulatory Substances

Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect the water for beneficial uses.

E. ~~d.~~ Chemical Constituents

Waters designated as MUN shall not contain concentrations of chemical constituents in excess of the maximum contaminant level (MCL) or secondary maximum contaminant level (SMCL) based upon drinking water standards specified in the following provisions: Table 4 (Inorganic Chemicals), Table 5 (Fluoride), Tables 6 and 7 (Organic Chemicals), Table 8 (Secondary Maximum Contaminant Levels-Consumer Acceptance Limits), and Table 9 (Secondary Maximum Contaminant Levels-Ranges). Waters designated as AGR shall not contain concentrations of chemical constituents in amounts that adversely affect the water for beneficial uses.

F. ~~e.~~ Chlorine, Total Residual

For the protection of aquatic life, total chlorine residual shall not exceed either a median value of 0.002 mg/L or a maximum value ~~of 0.003~~ mg/L. Median values shall be based on daily measurements taken within any six-month period.

G. ~~f.~~ Color

Waters shall be free of coloration that causes nuisance or adversely affects the water for beneficial uses.

H. ~~g.~~ Dissolved Oxygen

The dissolved oxygen concentration, as percent saturation, shall not be depressed by more than 10 percent, nor shall the minimum dissolved oxygen concentration be less than 10 percent of

saturation, the minimum dissolved oxygen concentration shall not be less than that specified in Table 10.

~~h.~~I. Floating Material

Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect the water for beneficial uses. For natural high quality waters, the concentrations of floating material shall not be altered to the extent that such alterations are discernible at the 10 percent significance level.

J. ~~i.~~ Oil and Grease

Waters shall not contain oils, greases, waxes or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water that cause nuisance, or that otherwise adversely affect the water for beneficial uses. For natural high quality waters, the concentration of oils, greases, or other film or coat generating substances shall not be altered.

~~K. ~~j.~~ Nondegradation of Aquatic Communities and Populations~~

All wetlands shall be free from substances attributable to wastewater or other discharges that produce adverse physiological responses in humans, animals, or plants; or which lead to the presence of undesirable or nuisance aquatic life. All wetlands shall be free from activities that would substantially impair the biological community as it naturally occurs due to physical, chemical and hydrologic processes.

L. ~~k.~~ Pesticides

For the purposes of this document, pesticides are defined to include insecticides, herbicides, rodenticides, fungicides, piscicides and all other economic poisons. An economic poison is any substance ~~intended to prevent, repel, destroy, or mitigate the damage from insects, rodents, predatory animals, bacteria, fungi~~mixture of substances (such as an insecticide, fungicide, rodenticide, or weeds-capable herbicide) for control of infesting plants or harming vegetation, humans~~animals that have economic significance as pests (as in agriculture, industry, or animals:households).~~

Pesticide concentrations, individually or collectively, shall not exceed the lowest detectable levels, using the most recent detection procedures available. There shall not be an increase in pesticide concentrations found in bottom sediments. There shall be no detectable increase in bioaccumulation of pesticides in aquatic life. Waters designated as MUN shall not contain concentrations of pesticides or herbicides in excess of the limiting concentrations specified in Tables 6 and 7 (Organic Chemicals).

M. ~~1.~~ pH

In waters with designated beneficial uses of MUN or REC, changes in normal ambient pH levels shall not exceed 0.5 pH units. For all other waters on the Reservation, the pH shall not be depressed below 6.5 nor raised above 8.5.

N. ~~m.~~ Radioactivity

Radionuclides shall not be present in concentrations which are deleterious to human, plant, animal, or aquatic life, nor which result in the accumulation of radionuclides in the food web to an extent which presents a hazard to human, plant, animal, or aquatic life. Waters designated as MUN shall not contain concentrations ~~of radionuclides~~ of radionuclides in excess of the limits specified in U.S. EPA standards.

O. ~~n.~~ Sediment

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect the water for beneficial uses.

(1) ~~o.~~ Settleable Materials.

Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or that adversely affects the water for beneficial uses. For natural high quality waters, the concentration of settleable materials shall not be raised by more ~~that~~ than 0.1 milliliter per liter.

~~p.~~ (2) Suspended Materials – Total Suspended Solids.

Waters shall not contain suspended materials (Total Suspended Solids) in concentrations that cause nuisance or that adversely affects the water for beneficial uses. For natural high quality waters, the concentration of ~~total~~ suspended materials shall not be altered to the extent that such alterations are discernible at the ~~1-010%~~ (ten percent) significance level.

P. ~~q.~~ Taste and Odor

Waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish or other edible products of aquatic origin, that cause nuisance, or that adversely affect the water for beneficial uses. For naturally high quality waters, the taste and odor shall not be altered.

Q. ~~f.~~ Temperature

The natural receiving water temperature of all waters shall not be altered unless it can be demonstrated to the satisfaction of the Rincon Band Tribal Council that such an alteration in temperature does not adversely affect the water for beneficial uses.

R. ~~s.~~ Toxicity

All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life. ~~Compliance~~If bioassays are conducted, then compliance with this objective will be determined by use of indicator organisms, analyses of species diversity, population density, growth anomalies, bioassays of appropriate duration and/or other appropriate methods as specified by the Rincon Band Tribal Council. The survival of aquatic life in surface waters subjected to a waste discharge, or other controllable water quality factors, shall not be less than that for the same water body in areas unaffected by the waste discharge, or when necessary, for other control water that is consistent with the requirements for "experimental water" as defined in Standard Methods for the Examination of Water and Wastewater (American Public Health Association, etc. 1992).

The Rincon Band adopts the National Recommended Water Quality Criteria: ~~2002~~ for national priority pollutants and Human Health Criteria (2003)~~),~~ updated 2013, incorporated herein by reference, and all amendments forthcoming, consistent with Section 303(c)(2)(b) of the U.S. Clean Water Act; except the Rincon Tribal Council reserves the right to impose more stringent standards based on relevant state or tribal standards as they deem necessary.

S. ~~t.~~ Turbidity

Waters shall be free of changes in turbidity that cause nuisance or adversely affect the water for beneficial uses. Increases in turbidity shall not exceed natural levels by more than 10% (10 percent) except for immediately after a rainfall event.

RINCON WATER RESOURCES PROTECTION ORDINANCE

Appendix D -- Antidegradation Policy

Discharges which cause a violation of the Antidegradation Policy or any narrative or numerical water quality objective are prohibited. After application of reasonable control measures, ambient water quality shall conform to the narrative and numerical water quality objectives included in this document. When other factors result in the degradation of water quality beyond the limits established by these water quality objectives, human activities shall not cause further degradation of water quality in either surface or ground waters.

In some cases, the Tribal Council may allow limited degradation of existing water quality to benefit the Tribe for economic, developmental, or cultural reasons. The conditions upon which this may be allowed will be fully disclosed by the Tribal Council and will follow an application process and public participation. The level of water quality to protect existing beneficial uses shall be fully protected. All reasonable and cost-effective strategies shall be implemented ~~for~~ to control nonpoint source releases.

Where the Antidegradation Policy applies, it does not absolutely prohibit any changes in water quality. The policy requires that any reduction in water quality be consistent with the three-part test established by the policy, as described below. If it is determined that some degradation is in the best interest ~~of the~~ of the members of the Rincon ~~Band Tribe~~ Band, some increase in pollutant level may be appropriate. However, in no case may such increases cause adverse impacts to existing or probable future beneficial uses of waters of the Tribe.

(a) ~~a.~~ **Part One---Instream Uses**

The first part of the test establishes that existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Reductions in water quality should not be permitted if the change in water quality would seriously harm any species found in the water (other than an aberrational species). Waters of this type are generally referred to as "Tier I" waters.

(b) ~~b.~~ **Part Two-Public Interest Balancing**

The second part of the test applies where water quality is higher than necessary to protect existing instream beneficial uses. This part of the test allows reductions in water quality if the Tribe finds "that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located" and existing beneficial uses are protected. Waters of this type are generally referred to as "Tier II" waters.

(a) ~~c.~~ **Part Three--Outstanding National Resource Waters (ONRWs)**

RINCON WATER RESOURCES PROTECTION ORDINANCE
APPENDIX D – ANTIDegradation POLICY

The third part of the test requires that the water quality of the waters which constitute an outstanding national resource be maintained and protected. No permanent or long-term reduction in water quality is ~~allowable~~allowed in areas given special protection as Outstanding National Resource Waters (48 Fed. Reg. 51402). Waters which potentially could qualify for ONRW designation are generally classified as "Tier III" waters.

Examples of such waters include, but are not limited to, waters of National and State Parks and wildlife refuges, waters of exceptional recreational or ecological significance, and state and federally designated wild and scenic rivers.

(b) ~~d.~~ Implementation

Any one or a number of activities may trigger the Antidegradation Policy analysis. Activities may include a scheduled water quality standards review, issuance of NPDES permits, or development activity.

If the Antidegradation Policy is triggered, public participation is required and opportunity for comment must be given. This can be done by holding a public meeting, filing public notice, and/or allowing opportunity for the public to request a hearing.

(c) ~~e.~~ Actions and Determinations needed to conduct an ~~Antidegradation~~Anti-degradation review

If a proposed action has the possibility to adversely affect the water quality of waters of the Rincon ~~Band Creek~~Reservation, an application must be filed with the RED. The application must describe the action proposed and its effects on Reservation waters, how this information was derived, and a justification for the action. Upon satisfying these requirements, the RED will recommend or not recommend this proposal ~~to~~ be considered by the Tribal Council. Tribal Council will make a determination whether to consider the proposal further. If the Tribal Council wishes to consider the application further, the public participation process will take place. The Tribal Council has the sole authority in permitting degradation to waters of the Rincon Reservation. If the Tribal Council makes the decision to allow degradation, they will submit their decision to the U.S. EPA for review and approval.

VIII. POLICIES FOR IMPLEMENTATION

(a) ~~a.~~ Control Actions under Rincon Band Authority for Point and Nonpoint Sources

It is within the discretion of the Rincon Band Tribal Council to establish direction on compliance with Tribal water quality standards. Control measures implemented by the Rincon Band Tribal Council must provide for the attainment of beneficial uses and water quality objectives as established herein. The Rincon Band Tribal Council regulates the sources of water quality

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related problems which could result in actual or potential impairments of beneficial uses or degradation of water quality.

The Rincon Band Tribal Council can regulate both point and nonpoint source discharge activities within the Reservation boundaries. A point source discharge generally originates from a single, identifiable source, while a nonpoint source discharge comes from diffuse sources. To regulate the point and nonpoint sources, control actions are required for effective water quality protection and management. Such control actions are set forth for implementation by the Rincon Band Tribal Council and specific measures for nonpoint sources are addressed in the Tribe's Nonpoint Source Management Plan.

To prevent water quality problems, waste discharge restrictions are often used. The waste discharge restrictions can be implemented through Water Quality Certification, National Pollutant Discharge Elimination System (NPDES) permits, waste discharge requirements/permits (WDRs), discharge prohibitions, enforcement actions, special designations, and/or "Best Management Practices" (BMPs). Generally, WDRs and NPDES permits are used to regulate point sources of waste, with BMPs used to control nonpoint sources of waste.

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Appendix E – Process for Review of CWA §401 Certification

Consistent with the Clean Water Act, 33 USC §1377, the Rincon Band has been delegated authority by the US EPA for §401 Certification. Rincon adopts the following procedures for Certification of an application for a dredge and fill permit that may impact any the waters of the Reservation.

I. Purpose and Review.

The requirements of this section will be triggered by all new or expanded regulated activities. Regulated activities include, but are not limited to, any activity that requires a permit, license or water quality certification pursuant to §§ 401, 402 and/or 404 of the Clean Water Act.

The term “waters of the Reservation” broadly includes “any surface water or groundwater, including saline waters, within the boundaries of the Reservation.” The Band has developed these procedures for issuing federal Clean Water Act § 401 Water Quality Certifications (“Certification”) and/or waste discharge requirements under the Rincon Water Resources Protection Ordinance (RTC §8.900, *et seq.*) to applicants that condition the discharge of dredge or fill material to waters of the Reservation. Applicants are expected to avoid deliberate discharges of materials into waters and then to minimize discharges that cannot be avoided. When impacts are unavoidable, applicants are required to provide "compensatory mitigation" to offset the impacts as a condition of the Certification. Compensatory mitigation includes attempts to recreate the structure and functions of the impacted waters through creation, re-creation, rehabilitation, and enhancement either on- or off-site.

II. Definitions.

The following terms, as used in this Chapter, supplement the Definitions listed above under RTC §8.903, and shall have the meaning hereafter ascribed to them for purposes of §401 Certifications unless the context of their use clearly requires a different meaning.

(a) “Activity,” when used in reference to water quality Certification, means any action, undertaking, or project including, but not limited to, construction, operation, maintenance, repair, modification, and/or restoration which may result in any discharge to waters of the Reservation.

(b) “Application” means a written request for Certification, including accompanying materials.

(c) “Applicant” means any individual, entity, district, organization, group, or agency submitting an application, subject to the following caveats:

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- (1) When a professional agent or firm submits an application on behalf of a client, the client is the applicant.
- (2) The person or group financially responsible for an activity seeking a federal license or permit which may result in a discharge to waters of the Reservation is normally the applicant for water quality Certification, but
- (3) the federal agency is the applicant when the federal agency requests water quality Certification for any discharge which may result from activities to be allowed by that agency under a general license or permit.
- (d) To take a “Certification action” means to issue an order, signed by the proper approving official, granting or denying Certification within the time period allowed for Certification by the federal agency’s rules.
- (e) “Complete application” means an application that Band deems complete because it includes all information and items required for Band review and the fee deposit required to perform the review pursuant to §401 of the CWA;
- (f) “CFR” means the Code of Federal Regulations.
- (g) “Denial without prejudice” means an inability to grant Certification for procedural rather than substantive reasons. This form of denial carries with it no judgment on the technical merits of the activity or compliance of any discharge with water quality standards. RED may reconsider a revised application package which corrects the procedural problems that caused the original denial without prejudice.
- (h) “EPA” means the United States Environmental Protection Agency.
- (i) “Federal agency” means, for purposes of Certification:

 - (1) the federal agency responsible for issuing a license or permit for an activity resulting in a possible discharge for which an application for Certification is submitted, or
 - (2) a federal agency applying for Certification (see definition of “applicant”).
- (j) “FERC” means the Federal Energy Regulatory Commission.
- (k) “Standard Certification” means a water quality Certification subject only to the conditions specified in this Ordinance.
- (l) “Water Quality Certification” means a Certification that any discharge or discharges to waters of the Reservation, resulting from an activity that requires a federal license or permit, will comply with the Rincon Water Resources Protection Ordinance and other appropriate requirements.

(m) “Water of the Reservation” means any surface water or ground water deemed to be waters of the United States that are within the boundaries of the Reservation or beneath the Reservation.

(n) “Waters of the United States” means surface water and water bodies as defined by EPA regulations (e.g., 40 CFR Section 122.2). All waters of the United States on the Reservation are also “waters of the Reservation.”

III. Number of Copies.

Two copies of each application shall be submitted to the RED.

IV. Application Fees and Refunds.

(a) Each application for a Water Quality Certification shall be accompanied by a fee deposit of \$750 for processing the application. Processing the application includes evaluating the activity proposed in the application and determining whether the Certification should be issued and what conditions, if any, should be imposed on the Certification.

(1) If the activity subject to Certification includes, or involves construction or modification of facilities for the purpose of, producing hydroelectric power, and the activity or facilities require the issuance or amendment of a FERC license, a deposit in the amount of any annual fees due that have not yet been paid shall accompany the application.

(2) An initial deposit shall accompany the application, and subsequent deposits shall be required as necessary to cover RED’s reasonable costs of processing the application.

(3) If RED’s costs exceed \$600, the applicant shall provide an additional deposit amount of \$500, or an amount estimated by RED to be necessary to complete processing the application.

(4) Red may require additional deposits when RED’s reasonable costs exceed the total amount previously deposited. RED shall notify the applicant by certified mail of any deposits required under this section, and the deposit shall be due to the Rincon Band within fourteen (14) days from receipt of the notice.

(5) After RED acts on the application, or if the applicant withdraws the application, the applicant shall make a final payment so that the total fee paid by the applicant equals the reasonable costs incurred by RED in processing the application. RED shall notify the applicant by certified mail if the applicant owes a

final payment on the application fee, and the final payment shall be due within sixty (60) days from receipt of the notice. If the deposit(s) exceed RED's reasonable costs, RED shall refund the excess amount to the applicant within sixty (60) days of final action on the application.

(6) Denial of Certification shall not be grounds for refund of any part of a Certification application fee.

V. Amendments to Applications.

An amendment to an application prior to a Certification action being taken shall be submitted in the same manner as the original application and shall be considered a part of the application it amends. No additional fee shall be required for an amendment to an application prior to a Certification action unless the activity's size, design, scope, or potential for adverse impact has changed significantly, prompting the need for further technical or administrative review or otherwise triggering a larger fee.

VI. Complete, Incomplete, and Valid Applications.

(a) Upon receipt of an application, it shall be reviewed by RED to determine if it is complete. If the application is incomplete, the applicant shall be notified in writing no later than 30 days after receipt of the application, of any additional information or action needed.

(b) If an application is determined to be incomplete by RED, if an extension of the federal period for Certification cannot be obtained because the federal period for Certification will expire before RED can receive and properly review the missing information, RED shall deny without prejudice Certification for any discharge resulting from the proposed activity unless the applicant in writing withdraws the request for Certification.

(c) When RED deems an application complete, the applicant, the federal agency, and EPA shall be notified no later than 30 days after receipt of the application.

(d) A request for Certification shall be considered valid if and only if a complete application is received by RED.

VII. Additional Information.

(a) Once RED determines that an application is complete, during its review process RED may request further information from the applicant. Such information must clarify, amplify, correct, or otherwise supplement the contents of a complete application in order for RED to determine whether a Certification should be issued. Supplemental information may include evidence of compliance with appropriate requirements of the Ordinance.

(b) If an application is determined to be complete by RED but the Rincon Business Leasing Regulations (RTC § 7.600) requires that the applicant submit a TEIR to the Rincon Band for review a final environmental document, then before RED can take a Certification action, if an extension of the federal period for Certification cannot be obtained, and the federal period for Certification will expire before RED can receive and properly review the necessary environmental documentation, RED shall deny without prejudice Certification for any discharge resulting from the proposed activity unless the applicant in writing withdraws the request for Certification.

VIII. Denial of Certification.

(a) If Certification is denied, RED shall notify the applicant in writing of the denial and the reasons for the denial. Written notification of the denial shall be sent to the applicant, the federal agency, EPA, and other persons and agencies known to be interested no later than seven (7) days after RED takes the Certification (denial) action.

(b) RED may deny an application for water quality Certification when:

(1) the activity requiring a federal license or permit will result in a discharge which will not comply with the Ordinance and other appropriate requirements; or

(2) compliance with the Ordinance and other appropriate requirements is not yet necessarily determined, but the application suffers from some procedural inadequacy (e.g., failure to provide a complete fee or to meet TEIR requirements). In this case denial shall be without prejudice.

IX. Consultation with the Office of the Attorney General

(a) RED shall forward notice of the receipt of an application to the the Office of the Rincon Attorney General (AG) as soon as the application is received.

(b) Before issuing a final decision, RED shall forward it's proposed final action to the AG's Office for review and approval.

(c) RED, in consultation with the AG's Office, is authorized to take all actions connected with applications for Certification, including issuance and denial of Certification, which shall be copied to the Rincon Tribal Council.

X. Contents of a Complete Application.

A complete application shall include all of the following information and items:

(a) The name, address, and telephone number of:

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- (1) the applicant, and
 - (2) the applicant's agent (if an agent is submitting the application).
- (b) A full, technically accurate description, including the purpose and final goal, of the entire activity.
- (c) Complete identification of all federal licenses/permits being sought for or applying to the proposed activity, including the:
 - (1) federal agency action for the application;
 - (2) type (e.g., individual license, regional general permit, nationwide permit, etc.);
 - (3) license/permit number(s) (e.g., nationwide permit number), if applicable; and
 - (4) file number(s) assigned by the federal agency(ies), if available.
- (d) Complete copies of either:
 - (1) the application(s) for federal license(s)/permit(s) being sought for the activity, or,
 - (2) if no federal applications are required, any notification(s) concerning the proposed activity issued by the federal agency(ies), or,
 - (3) if no federal notifications are issued, any correspondence between the applicant and the federal agency(ies) describing or discussing the proposed activity.
- (e) Copies of any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.
- (f) If the federal licenses or permits required for the activity include a FERC license or amendment to a FERC license, a complete copy of a draft application for the FERC license or amendment of the FERC license meeting the requirements of Subsection 4.38(c)(4) of Title 18 of the Code of Federal Regulations is required.
- (g) A copy of any draft or final NEPA compliance document(s), if available, prepared for the activity. The applicant shall submit to RED and the AG's Office all environmental analysis and assessment documents. The Band shall be provided with and have ample time to properly review a final copy of valid environmental compliance documentation before

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taking a Certification action.

- (h) The correct fee deposit.
- (i) A complete project description, including:
 - (1) Name(s) of any receiving water body(ies) that may receive a discharge.
 - (2) Type(s) of receiving water body(ies) (e.g., at a minimum: river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, or wetland type).
 - (3) Location of the activity area in latitude and longitude, in township/range, or clearly indicated on a published map of suitable detail, quality, and scale to allow the certifying agency to easily identify the area and water body(ies) receiving any discharge.
 - (4) For each water body type, the total estimated quantity of waters that may be adversely impacted temporarily or permanently by a discharge or by dredging. The estimated quantity of waters to be adversely impacted by any discharge shall be reported in acres and (for channels, shorelines, riparian corridors, and other linear habitat) linear feet, except that dredging estimates shall be reported in cubic yards.
 - (5) The total estimated quantity (in acres and, where appropriate, linear feet) of waters, by type proposed to be created, restored, enhanced, purchased from a mitigation or conservation bank, set aside for protection, or otherwise identified as compensatory mitigation for any anticipated adverse impacts. If compensatory mitigation is to be provided in some other form, that shall be explained.
 - (6) A description of any other steps that have been or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of waters of the Reservation.
 - (7) The total size (in acres), length (in feet) where appropriate, type, and description of the entire project area, including areas outside of the project area and including waters outside the jurisdictional waters of the United States.
 - (8) A brief list/description, including estimated adverse impacts of any projects implemented by the applicant within the last five years or planned for implementation by the applicant within the next five years that are in any way related to the proposed activity or that may impact the waters as the proposed activity.
 - (9) A complete application for water quality Certification need not contain unnecessarily duplicative information. If the copy of a federal application contains information requested in this Section, that specific information need not be

provided elsewhere in the application provided that the application clearly indicates where all required information and items are to be found.

XI. Public Notice and Hearings.

(a) RED shall provide public notice of an application at least twenty-one (21) days before taking Certification action on the application, unless the public notice requirement has been adequately satisfied by the applicant or federal agency. If the applicant or federal agency provides public notice, it shall be in a manner and to an extent fully equivalent to that normally provided by RED. If an emergency requires that Certification be issued in less than 21 days, public notice shall be provided as much in advance of issuance as possible, but no later than simultaneously with issuance of Certification.

XII. Action on an Application.

(a) After review of the application, all relevant data, and any recommendations of the Rincon AG, state and federal agencies, and any interested person, RED shall issue Certification or deny Certification for any discharge resulting from a pertinent activity. Conditions shall be added to any Certification, if necessary, to ensure that all activities will comply with the Ordinance and other appropriate requirements. Copies of any Certification or denial of Certification issued shall be sent to the applicant, EPA, the federal agency, and all other parties known to be interested no later than three (3) days, after taking the Certification action. A written Certification or denial shall include:

- (1) the name(s) of the receiving water body(ies) and the number(s) of the hydrologic unit(s) that contain(s) the receiving water body(ies), if available;
- (2) the Certification action being taken and a complete list of any conditions; and
- (3) a suitable summary of the information provided by the applicant for the project.

(b) After such review, if it is clear that all proposed activity(ies) will comply with the Ordinance may issue a standard Certification.

XIII. Standard Conditions.

The following shall be included as conditions of all §401 Certification actions:

(a) Every Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Ordinance and all other tribal statutes and ordinances.

(b) Certification is conditioned upon total payment of any fee required under these procedures and owed by the applicant.

XIV. Petitions for Re-Consideration.

(a) An aggrieved person may petition RED to reconsider an action or failure to act by RED.

(1) If such reconsideration is initiated more than thirty (30) days after the Certification action in question, any rescission or amendment of the Certification action resulting from such reconsideration shall not apply to any activities subject to a federal license or permit that:

(A) was issued in reliance on that Certification action, and

(B) was issued before the federal agency was notified that such reconsideration had been initiated.

(2) Nothing in Subsection (b) of this Section is intended to limit the authority of a federal agency to issue a new or amended license or permit that incorporates any changes ordered by the Rincon Band following reconsideration of a Certification action.

(b) A petition for reconsideration shall be submitted in writing to RED within 30 days of any action or failure to act taken by RED

(c) A petition shall contain:

(1) the name, address, and telephone number of the petitioner;

(2) the specific action or failure to act which RED is requested to reconsider and a copy of any document issuing or denying Certification that is referred to in the petition;

(3) the date on which the Certification action or failure to act occurred;

(4) a full and complete statement of reasons why the action or failure to act was inappropriate or improper;

(5) the manner in which the petitioner is aggrieved;

(6) the specific action by RED which the petitioner requests;

(7) a list of persons, if any, other than the petitioner and applicant, if not the petitioner, known to have an interest in the subject matter of the petition;

- (8) A summary of the manner in which and to what extent the petitioner participated in any process (e.g., public hearing testimony, discussion with agency personnel, correspondence), if available, leading to the action or failure to act in question. If a process for participation was available, but the applicant did not participate, the petition shall include an explanation for the petitioner's failure to participate.

XV. Response to Complete Petitions.

After receipt of a petition that complies with this section, RED, shall provide written notification to the petitioner, applicant (if not the petitioner), Rincon AG, and other interested persons that they shall have 20 days from the date of mailing the notice to file a response to the petition with RED. Respondents to petitions shall also send copies of their responses to the petitioner and the applicant.

XVI. Defective Petitions.

After receipt of a petition that does not comply with the requirements of these procedures, RED shall notify the petitioner with details about why the petition is defective and the time within which an amended petition may be filed. If a properly amended petition is not received by RED within the time allowed, the petition shall be dismissed unless good cause is shown for an extension of time.

XVII. Action on a Petition.

- (a) Following examination of the petition and any necessary portion of the record, RED may:
- (1) refuse to reconsider the action or failure to act of RED, if the petition fails to raise substantial issues that are appropriate for reconsideration;
 - (2) deny the petition upon a finding that the original action or failure to act was appropriate and proper;
 - (3) set aside or modify, if possible, the previous action or take new appropriate action; or
 - (4) request additional information from the applicant.