Tribal Water Quality Standards

RINCON BAND OF LUISEÑO INDIANS
1 Government Center Lane
Valley Center, California 92082

October 2021

APPROVAL SIGNATURES

The signatures of the individuals below indicate concurrence with, and agreement to operate compliance with, procedures specified in this document.

REVISION HISTORY

Version	Date	Revision Highlights
1.0		Original version of Rincon WQS

TABLE OF CONTENTS

Figures

Tables

Appendices

I. INTRODUCTION

The Rincon Band of Luiseño Indians ("Rincon Band" or "Tribe"), as a sovereign nation and a federally recognized Indian Tribe, is establishing water quality standards for the protection of its water resources. Rincon Waters include, but are not limited to, streams, rivers, and wetlands, that support a diverse array of environmental, cultural, and economic values. The Tribe recognizes the need to assert full authority over all the lands and waters of the Rincon Band of Luiseño Indians Reservation in order to ensure the continued support of existing and proposed beneficial uses of the Tribe's water resources.

The Rincon Band of Luiseño Indians Tribal Council Resolution No. 2021-62, approved October 7, 2021, documents the decision of the Tribal Council to use their authority, when approved by the U.S. Environmental Protection Agency ("EPA") as described in Section 518 of the Federal Water Pollution Control Act (hereafter referred to as the "Clean Water Act"), to administer a Water Quality Standards program. The standards for water quality in this document will guide the protection of Rincon Waters for present and future generations.

II. AUTHORITY, PURPOSES, AND APPLICABILITY

A. Authority

The Tribal Council of the Rincon Band of Luiseño Indians has the following authority to enact these Water Quality Standards ("Standards" or "WQS") for all waters within the exterior boundaries of the Rincon Band of Luiseño Indians Reservation ("Reservation"), as illustrated in *Figure 1* and *Figure 2,* or otherwise subject to the jurisdiction of the Tribe.

1. Inherent and aboriginal sovereign authority

Under the U.S. Constitution, Indian Tribes possess a nationhood status and retain inherent sovereign authority. Inherent in this sovereign authority is the power to make and enforce laws, administer justice, manage and control Indian lands, exercise tribal rights and protect Tribal trust resources.

The Rincon Band of Luiseño Indians is a federally recognized Indian Tribe. As a federally recognized Tribe, the Tribe has inherent and aboriginal sovereign authority to protect and preserve natural resources on its lands including Rincon Waters.

2. The Water Quality Standards regulation at 40 CFR Part 131 establishes the requirements and procedures for states and tribes to develop, adopt, review, revise and submit Water Quality Standards. It also establishes the procedures for the EPA to review, approve, disapprove and promulgate Water Quality Standards pursuant to Section 303(c) of the Clean Water Act.

3. Clean Water Act ("CWA")

Section 303(c) of the federal Clean Water Act requires states to adopt Water Quality Standards.

Section 518 of the Clean Water Act authorizes the EPA to treat tribes in a manner similar to states ("TAS") for the purposes of administering certain CWA programs, including Section 303 water quality standards, and describes basic definitions and requirements tribes must meet for TAS eligibility.

The Rincon Band was granted TAS on April 3, 2018.

The 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.

4. Rincon Water Resources Code

The Rincon WQS establish standards of quality for Rincon Waters 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.

B. Purpose

The purposes of the WQS contained herein is as follows:

1. To protect public health, social welfare, aquatic life, wildlife, and the economic well-being of the Rincon Band and restore, maintain or enhance water quality in relation to the beneficial uses of Rincon Waters.

2. To support and help achieve the Rincon Band's spiritual, cultural, and economic goals through the protection, enhancement, and restoration of Rincon Waters.

3. To provide the Tribe a scientific and legal basis to protect its waters.

4. To designate the existing and attainable uses for which the surface and ground Rincon Waters shall be protected.

5. To establish numeric and narrative water quality criteria sufficient to protect the beneficial uses and provide a legal basis for water pollution control.

6. To assure that degradation of existing water quality does not occur by defining an Antidegradation Policy and implementation methods consistent with federal Water Quality Standards regulations.

7. To establish CWA Section 401 Certification Authority for federal permits.

8. To be consistent with §17.07.010 of the Rincon Water Resources Code and the U.S. Environmental Protection Agency Clean Water Act, 33 U.S.C.A. §§ 1251-1387, ("CWA"), as amended.

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.

C. Location

Established in 1875, the Rincon Band of Luiseño Indians is a federally recognized Indian Tribe that occupies a 4,688-acre (7.3 square mile) reservation located in north central San Diego County, California, approximately 45 miles northeast of the City of San Diego, California (see *Figure 1*). The Reservation is situated within the Rodriguez Mountain and Boucher Hill U.S. Geological Survey 1:24,000 quadrangles, northeast of the unincorporated community of Valley Center and south of the intersection of State Route 76.

Approximately one-third of the total area is located within a valley running roughly north-south through the middle of the Reservation. County Route S6, also known as Valley Center Road, runs through the valley, providing access to the nearby communities of Pauma Valley, Valley Center and Escondido, as well as to State Route 76 and Interstate Highway 15.

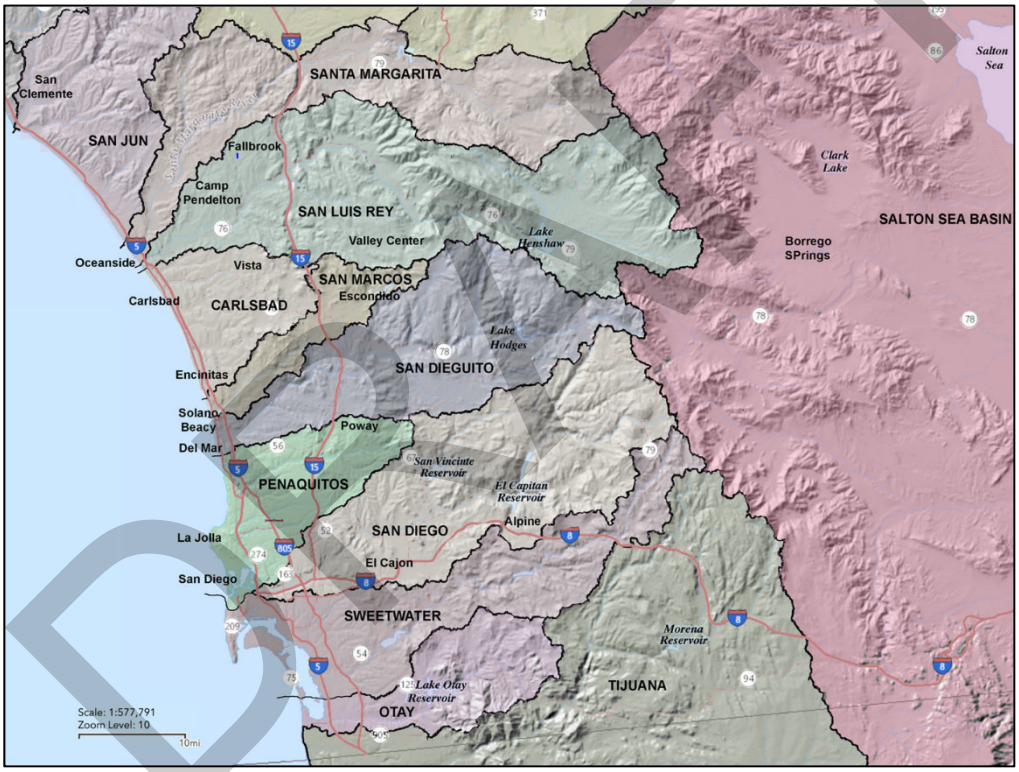
Figure 1: General Location

Sources: ESRI ArcGIS Data, BIA (2016)

D. Watershed

At approximately 562 square miles (360,000 acres), the San Luis Rey watershed is located along the northern border of San Diego County. It is bordered to the north by the Santa Margarita River Watershed and to the south by the Carlsbad and San Dieguito River Watersheds. The San Luis Rey River is the main water body in this watershed, originating in the Palomar and Hot Springs Mountains, both over 6,000 feet above mean sea level, and extending over 55 miles westward to discharge into the Pacific Ocean at the western boundary of the City of Oceanside. Of the nine major watersheds in the San Diego region, the San Luis Rey Watershed is the second largest in terms of land area (SANDAG 1998).

Figure 2: Watershed Map of the San Diego County Region



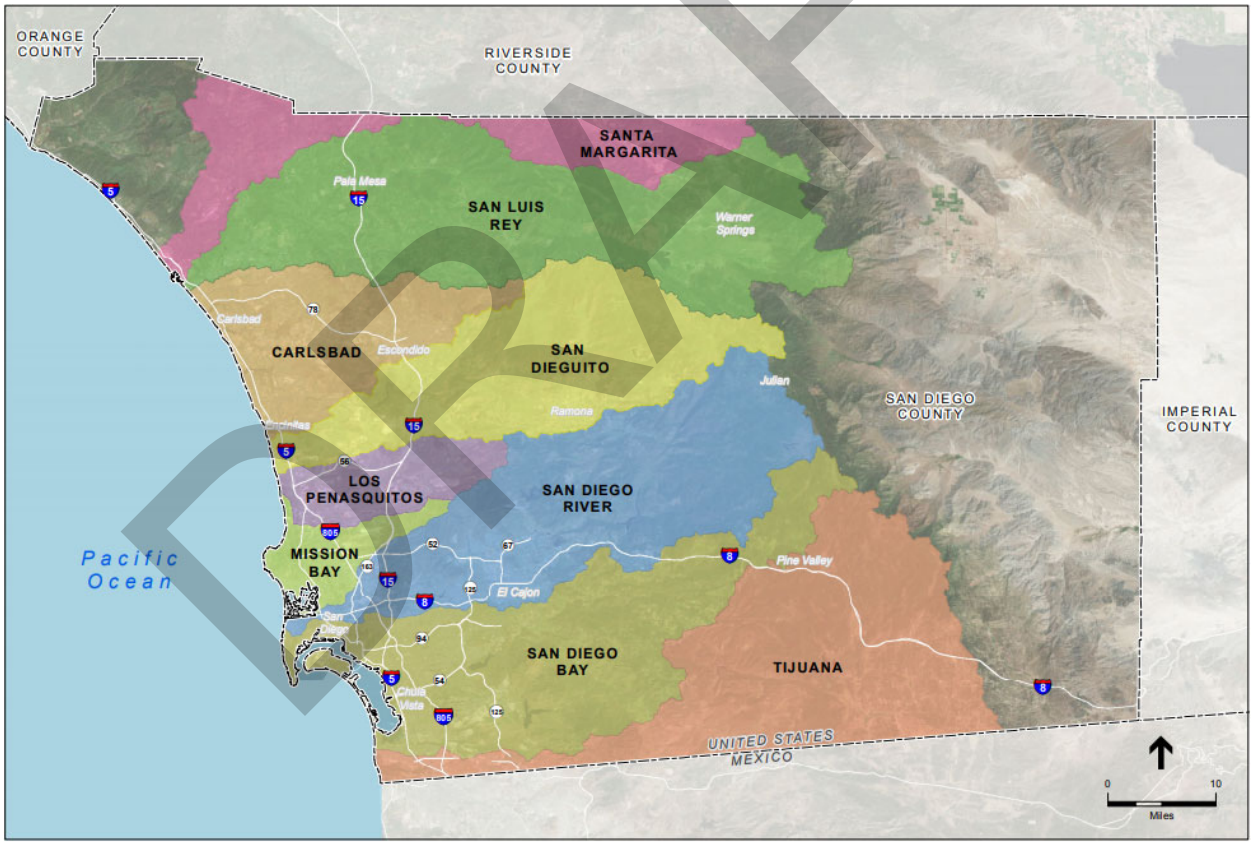
The Rincon Reservation is located within the USGS-designated watersheds as indicated below in *Table 1*.

Table 1: 8, 10, and 12 Digit HUC Watersheds

HUC 8	HUC10	HUC 12
San Luis Rey-Escondido 18070303	Middle San Luis Rey River 1807030302	Paradise Creek-San Luis Rey River 180703030201

Within San Diego County there are 9 Watershed Management Areas (WMAs), as illustrated below in *Figure 3, San Diego County Watershed Management Areas*.

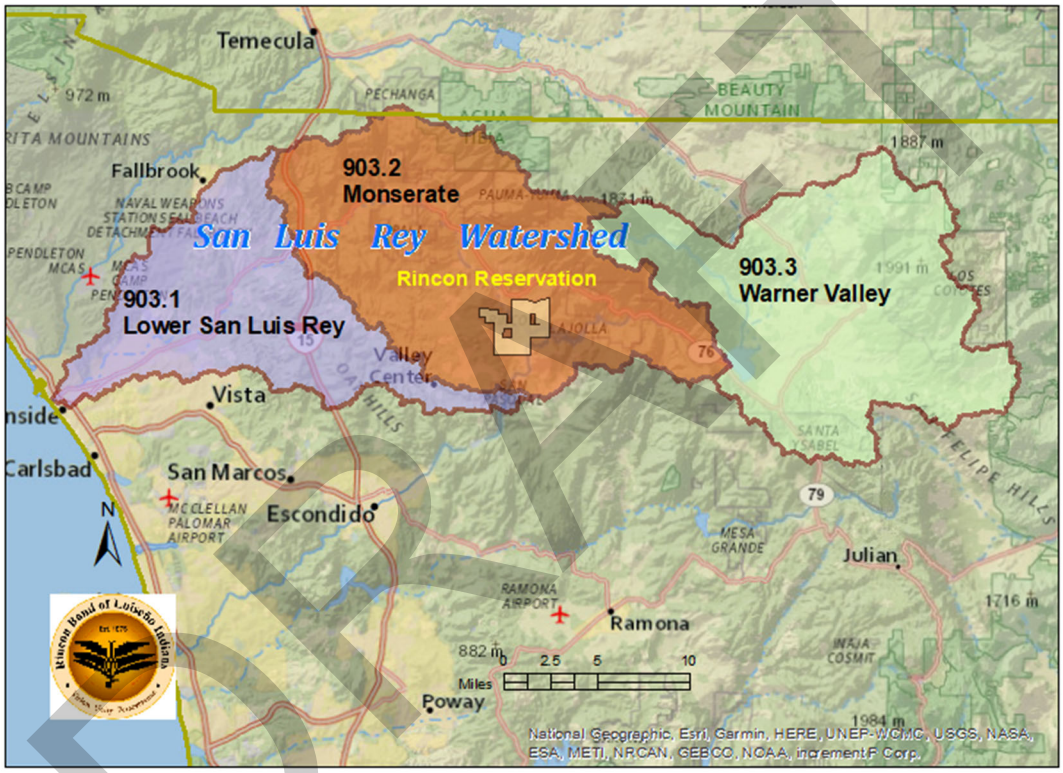
Figure 3: San Diego County Watershed Management Areas



SOURCE: ESRI, 2016; SanGIS, 2016

As illustrated below in *Figure 4, San Luis Rey Watershed*, there are three hydrologic areas within the San Luis Rey watershed (HUC: 903.00). Henshaw Dam, built in 1922, controls 36% of the watershed. The Rincon Reservation is located within the San Luis Rey watershed and the Monserate hydrologic area (HA 903.2). The Rincon Reservation's main water body is the San Luis Rey River, which runs through the Reservation from east to west, and terminates eventually at the Pacific Ocean. The Rincon Reservation has a series of intermittent drainages that drain into the San Luis Rey River, including Paradise Creek.

Figure 4: San Luis Rey Watershed

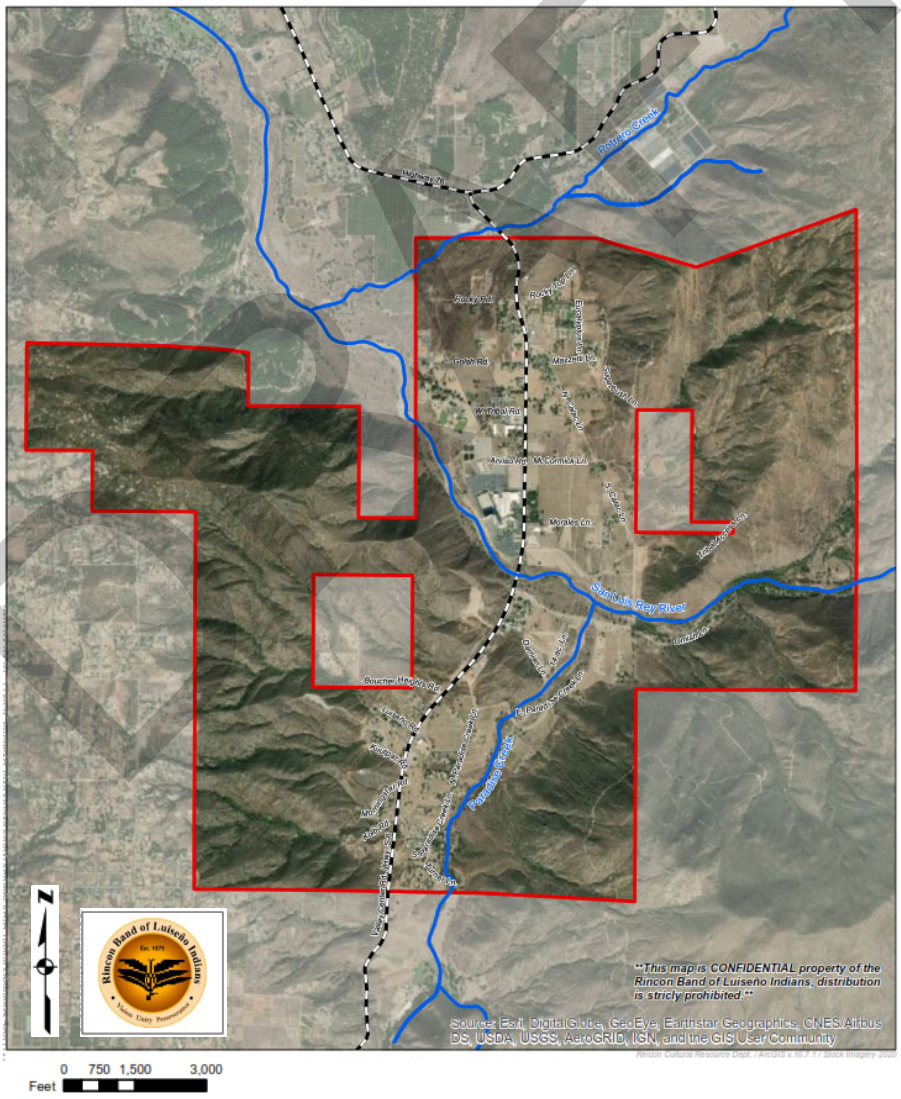


On the Rincon Reservation, as illustrated in *Figure 5*, the San Luis Rey River flows out of a canyon on the east side of the valley and continues north beyond the Reservation boundary. Paradise Creek, a tributary of the San Luis Rey River, flows northward, roughly parallel to Valley Center Road, and joins the San Luis Rey River near the center of the Reservation. The San Luis Rey River has riparian habitat, and flows intermittently during the wet months of the year, with heavier flow during spring runoff or heavy precipitation events. The length of each stream on the Reservation is as indicated in *Table 2, Surface Waters*, below:

Table 2: Surface Waters

Stream	Hydrologic Area (HUC Code/Description)	Length of Stream on the Reservation
San Luis Rey River	903.2 / Monserate	13,444.40 ft. / 2.54 miles
Paradise Creek	903.2 / Monserate	8,350.78 ft. / 1.58 miles
Potrero Creek	903.2 / Monserate	1,353.26 ft. / 0.25 miles

Figure 5: Rincon Reservation Surface Water Resources



E. Applicability

These Rincon Tribal WQS include general information supporting the adequacy of the scientific basis of the standards, as well as information on general policies that may affect the application and implementation of these standards.

1. Clean Water Act

These regulations have been structured according to requirements under the federal Clean Water Act, 33 U.S.C.A. §§ 1251-1387 ("CWA"), as amended. The CWA defines "water quality standards" to include both beneficial uses (i.e., current or potential uses) and water quality criteria. Thus, the beneficial uses designated herein and the water quality criteria comprise the Tribal Water Quality Standards.

a) The standards contained herein are intended and shall be construed to be consistent with the CWA, which declares its objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

b) The CWA also states that "it is the national goal that, wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983."

c) These regulations include:

(1) Use designations consistent with the requirements of the CWA;

(2) Methods used and analyses conducted to support the Water Quality Standards;

(3) Water quality criteria sufficient to protect the beneficial uses, including criteria for priority toxic pollutants and biological criteria;

(4) An Antidegradation 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 the Tribe's WQS.

2. State of California Water Quality Standards

a) Pursuant to the CWA, California water quality standards are "provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act." See 40 CFR 131.3(i).

b) "Water quality objectives," as defined in the California Water Code ("CWC") Section 13050(h), are "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."

3. Rincon Tribal 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 Tribal Council of the Rincon Band of Luiseño Indians for the waters of the Rincon Reservation. These WQS establish standards of quality for Rincon Waters 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.

a) Except as specifically provided herein, the Rincon WQS Program applies to all waters within the exterior boundaries of the Reservation, including water situated wholly or partly within, or bordering upon the Reservation.

b) Rincon WQS 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.

c) Rincon WQS are intended to protect the public health and welfare, 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 Water Resources Code §17.06.030 and U.S. Environmental Protection Agency guidelines.

d) "Water quality criteria" 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 water quality criteria, when compared to future water quality data, will also provide the basis for detecting any future trend toward degradation or enhancement of Rincon Waters.

e) WQS 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 Rincon 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.

4. Exemptions

a) Waters which are not in immediate hydrologic/hydraulic connection with other surface or subsurface waters, such as some water troughs, constructed wetlands, and treatment lagoons, are excluded from these WQS.

b) Irrigation and drainage ditches and subsurface drainage systems are subject to exemptions under the CWA 40 CFR 122.3 (e), (f).

c) Artificially created conveyance systems such as irrigation ditches are also excluded; however, the standards do apply to the receiving bodies of water impacted by the effluent from such sources.

(1) The specified criteria apply to substances attributable to discharges, non-point sources, or instream activities.

(2) The criteria shall not apply to natural phenomena not brought about by human activity.

F. Methodology

1. Water quality criteria use both numeric and narrative criteria. The numeric water quality criteria define the upper concentration or other limits that the Rincon Band considers protective of beneficial uses. The water quality monitoring methodologies have been reviewed and approved by U.S. EPA as part of the Quality Assurance Project Plan ("QAPP") for water quality.

2. The general methodology used in establishing water quality criteria involves:

a) Designating beneficial water uses

b) Selecting and quantifying the water quality parameters necessary to protect the most vulnerable (sensitive) beneficial uses

c) A narrative description of physical characteristics that should or should not be present.

To comply with the Antidegradation Policy (see Section V.A.), water quality criteria may be established at levels better than that necessary to protect the most vulnerable beneficial use.

3. In establishing water quality criteria, factors in addition to 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 Rincon Waters, and that may be reasonably controlled.

G. Triennial Review

1. Public participation from the Rincon Band General Membership 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 (i.e., on a triennial basis) by the Rincon Environmental Department ("RED"), General Membership, and other stakeholders. Upon approval of the Tribal Council and the U.S. EPA, revised water quality criteria will then be adopted as part of these standards by amendment.

2. 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 Rincon Band's Water Quality Standards. RED shall make recommendations to the Tribal Council regarding the proposed changes, and if adopted by Tribal Council, the proposed changes shall be sent to the U.S. EPA for review and approval and incorporated into the standards.

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

4. The triennial review process shall meet the requirements of Clean Water Act Section 303(c). For the San Luis Rey River section on the Rincon Reservation and all other Rincon Waters, any water quality standards that do not include the goal uses specified in CWA Section 101(a)(2) shall be reexamined every three years to determine if any new information has become available

5. Public hearings will be held in accordance with Tribal laws and U.S. EPA requirements.

H. Acronyms & Definition of Terms

Acute toxicity	The ability of a substance to cause severe biological harm, adverse health effects, or death from a single exposure or dose.
Algae	Simple rootless plants that grow in sunlit waters in relative proportion to the amounts of nutrients available, and which can adversely affect water quality by lowering the dissolved oxygen in the water.
Antidegradation	The policy set forth in Section V of these WQS whereby existing and beneficial uses, the level of water quality necessary to protect those uses, and general aquatic and riparian ecosystem health is maintained and protected.
Assemblage	An association of aquatic organisms of similar taxonomic classification living in the same area. Examples of assemblages include, but are not limited to, fish, macroinvertebrates, algae, and vascular plants.
Attainable Use	The use of surface water, which meets water quality standards and all other characteristics necessary to support and maintain the use, as specified in Section III of these WQS, or which would support and maintain the use after the implementation of these WQS.
Attainment	To meet the goal or standard. Attainment means that the water body is of sufficient quality chemically, biologically, and physically, to support the uses for which it is designated and to otherwise achieve the applicable water quality standards.
Beneficial Uses	Those water uses identified in the Rincon Band's Water Quality Standards for each water body, whether or not they are being attained.

Best Management Practice(s) ("BMP" or "BMPs")	A practice undertaken to control, restrict, and diminish non-point sources of pollution, which are determined to be the most effective and practical means of preventing or reducing pollution of water bodies from non-point sources.
Bioaccumulative	Substances that increase in concentration in living organisms (that are slowly metabolized or excreted) as they breathe contaminated air, drink contaminated water, or ear contaminated food.
Biological Condition	The taxonomic composition, richness, and functional organization of an assemblage of aquatic organisms at a site or with a water body.
CFR	Code of Federal Regulations
Chronic toxicity	The capacity of a substance to cause long-term poisonous health effects.
Conveyance	A route of transfer, for example, a pipe.
Criteria	Elements of water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the beneficial use.
Clean Water Act ("CWA")	A federal law that was originally enacted in 1948 as the Federal Water Pollution Control Act, and subsequently reorganized, expanded, and amended as the Clean Water Act ("CWA"), 33 U.SC. §1251 et seq. The CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.
Color	Color as used herein means true color as well as apparent color. True color is the color of the water from which turbidity has been removed. Apparent color includes not only the color due to substances in the water (true color), but also the color due to suspended matter.
Cyanotoxins	Toxins produced by cyanobacteria ("blue-green algae") that can result in acute or chronic toxicity to humans and animals as a consequence of primary contact including recreational activities (e.g., swimming and fishing) and other activities involving direct water contact, ingestion of water, or integration into source waters used for drinking water and/or irrigation.

Dissolved Oxygen ("D.O.")	The amount of oxygen dissolved in water or the amount of oxygen available for biochemical activity in water, commonly expressed as a concentration in milligrams per liter (mg/L).
Domestic Water Supply	Water that only requires disinfection in order to be usable for drinking or cooking.
Drinking Water	Water that does not require any treatment in order to be usable for drinking or cooking.
Ecology	The relationship of living things to one another and their environment, or the study of such relationships.
Effluent	Discharge into surface waters from other than natural sources.
Environment	The sum of all external conditions affecting the life, development, and survival of an organism.
Ephemeral Stream	A reach of a stream that flows temporarily in direct response to precipitation or snowmelt, the channel bed of which is above the water table (examples are washes and arroyos).
Existing Uses	Uses actually attained in a surface water body on or after November 28, 1975, whether or not they are referred to in these WQS.
Fecal Coliform Bacteria	The portion of the coliform group that is present in the gut or the feces of warm-blooded animals. Their presence serves as an indication of sewage or fecal contamination in water.
Flow	Natural discharge of a stream, spring, or artesian well; may include artificial discharge of effluent.
Gathering of Medicinal or otherwise Culturally Significant Plants	Collecting of plants by individual Tribal members for private use (in the home or as a cottage industry); specific plants may be recognized as significant by the Tribal Cultural Advisory Committee.
Geometric Mean	A mean calculated by converting all values to logarithms, averaging the logarithms, and determining the antilogarithm of that average.
Groundwater	Subsurface water that occurs beneath the water table (level of water in a well) in soils and geological formations that are fully saturated.

Groundwater Recharge	The replenishment of aquifers by seepage of surface runoff through sediments and rock formations.
Harmful Algal Bloom ("HAB")	Occurs when colonies of algae and cyanobacteria grow out of control in a waterbody and produce harmful compounds, such as toxins and taste and odor compounds, that cause health risks to humans and animals.
HUC	Hydrologic Unit Code
Human Health Criteria	Criteria guidance published under Section 304 (a) of the Clean Water Act and periodically updated based on the latest scientific information on the effect a pollutant concentration has on human health from consumption of fish and/or ingestion of water.
Impaired	A physical, biological, or chemical condition, in which a water body is not attaining the applicable water quality standards and beneficial uses for which it is designated.
Implementation	The act of giving practical effect to and ensuring of actual fulfillment by concrete measures.
Indigenous	Produced, growing, or living naturally in a particular region or environment according to current or historical records, including oral histories, compiled by Tribal, federal, or state agencies or published scientific literature.
Industrial	Human activities for the production of goods or services.
Intermittent Water(s)	A stream or wetland that flows or contains water in response to both surface run-off and groundwater discharge with at least part of its channel or wetland bottom below the adjacent water table for some part of the year, which does not have a perennial flow or contain water perennially.
Irrigation Use	The use of water, after diversion, to promote the growth of crops.
Livestock and Wildlife Use	The use of water, by ingestion, by domestic livestock and other vertebrate animals.
Metric	An expression of biological community composition, richness, or function that displays a predictable, measurable change in value along a gradient of pollution or other anthropogenic disturbance.

Milligrams Per Liter (mg/L)	Unit of concentration expressed in terms of the number of milligrams contained in a volume of one liter; one milligram per liter is equivalent to one part per million (ppm) at unit density.
Mixing Zone	A designated area or location of a receiving water where waste waters and receiving waters mix and certain ambient water quality criteria do not need to be met.
MPN	Most Probable Number
Municipal Water Supply	Water system which supplies potable water to residents, tribal departments and businesses.
Narrative Standards	A standard or criterion expressed in words rather than numerically.
NEPA	National Environmental Policy Act
NIST	National Institute of Standards and Technology
NPDES	National Pollutant Discharge Elimination System
NPS	Nonpoint Source (Pollution)
Non-attainment	To not meet the goal or standard assigned to a water body or segment. Non-attainment means that the water body is not of sufficient quality either chemically, biologically, or physically, to support the uses for which it is designated or to otherwise fail to achieve the applicable water quality standards.
Nuisance (species)	Non-indigenous or undesired species that negatively affect an ecosystem. Some introduced species may be non-indigenous, but may be desirable and therefore protected by these standards.
Nonpoint Source	Pollution that is not from a discernible, single source (e.g., stormwater runoff from land).
NTU	Nephelometric Turbidity Units; a measure of turbidity in water; see Turbidity.
Nutrient	A chemical element or inorganic compound taken in by green plants and used in organic synthesis (e.g., phosphorous and nitrogen).
Objectionable	Undesirable, offensive.

Organoleptic	Pertaining to taste and odor, as opposed to health effects.
Outstanding Tribal Resource Water	A tribal water body designated for protection under Tier 3 of the Tribe's Antidegradation Policy (see Section V.A).
PAH	Polynuclear Aromatic Hydrocarbon
Pathogens	Microorganisms (bacteria, viruses, or parasites) that can cause disease in humans, animals, and plants, and can be found in sewage, runoff from farms or rural areas populated with domestic and/or wild animals, and in water used for swimming.
Perennial Stream	A stream or reach of a stream that flows continuously throughout the year, the upper surface of which is generally lower than the water table of the region adjoining the stream.
Persistent	Existing continuously or for a longer time than usual.
pH	The negative logarithm of the effective hydrogen-ion concentration in gram equivalents per liter.
Picocurie (pCi)	That quantity of radioactive material producing 2.22 nuclear transformations per minute.
Point Source	A discernible, confined, and discrete pollutant source, but not including return flows from irrigated agriculture.
Primary Contact	Any recreational or other water use in which there is prolonged and intimate contact with the water body, such as swimming and wading, involving considerable risk of ingesting water in quantities sufficient enough to pose a significant health hazard. Primary contact also means any use of water bodies for traditional or ceremonial purposes in which there is intimate contact with the water body that may pose a significant health risk. This contact may include, but is not limited to, ingestion or immersion.
Priority Pollutant	Those toxic pollutants listed by the U.S. EPA as required in Section 307(a) of the Clean Water Act.
RED	Rincon Environmental Department

Reference condition	A physical, biological, and chemical condition that is determined by the Tribe to be characteristic of minimally impaired conditions with respect to habitat, water quality, watershed land use, and riparian and biological condition in lieu of an unimpaired reference site.
Reference site	A site or water body which is determined by the Tribe to be representative of sites or waterbodies of similar type, and are least impaired with respect to habitat, water quality, watershed land use, and riparian and biological condition.
Reservation	Refers to all lands over which the Rincon Band of Luiseño Indians has jurisdiction, including all land within the exterior boundaries of the Rincon Reservation whether such land is held in trust or fee status.
Richness Stream Descriptor	The absolute number of taxa in an assemblage at a site or within a water body. A descriptive identifier for a water body used to distinguish conditions in addition to its beneficial use. For example-- an ephemeral water body.
Rincon Waters	Refers to all waters over which the Rincon Band of Luiseño Indians has jurisdiction, including all waters within the exterior boundaries of the Rincon Reservation.
Secondary Contact Recreational Use	Any recreational use of the water in which contact with the water need not occur and in which the probability of ingesting water is minimal, such as wading and boating.
Standards	See Water Quality Standards.
Stream Segment	Any part, portion or subsection of a lotic surface water body. Stream segments include the entire width of a stream from one specified point at its upstream end to one specific point at its downstream end, unless specifically defined otherwise.
Surface Water	Water that stands or flows above ground level.
Surface Water Body	Any river, stream, lake, reservoir, spring, wetland or other natural conveyance that holds a quantity of water at some time.
TDS	Total Dissolved Solids
Technology-Based Controls	The application of technology-based effluent limitations as required under Section 301(b) of the Clean Water Act.

TMDL	Total Maximum Daily Load
Toxic	Harmful to living organisms.
Toxic Pollutants	Those pollutants or combinations of pollutants, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including but not limited to malfunctions in reproduction), or physical deformations in such organisms or their offspring.
Treatment Lagoon	An impound for liquid wastes designed to accomplish some degree of biochemical treatment.
Tribe	Rincon Band of Luiseño Indians
Turbidity	The degree to which water is cloudy or muddy in physical appearance due to suspended silt or organic matter.
Use Attainability Analysis ("UAA")	A structured scientific assessment of the factors affecting attainment of a use for a body of water, which may include physical, chemical, biological, and economic factors as referred to in 40 CFR 131.10 (g).
Violation (of water quality standards)	An action, or negligent lack thereof, by an individual, business or government that causes water pollution of Rincon Waters in excess of the criteria set forth in these standards, including damaging effects on the biological criteria of these standards.
Warm Water Habitat	A stream reach, lake, or impoundment where the water temperature and other characteristics are suitable for the support of warm water fish such as, but not limited to, indigenous fishes including Desert-Mountain Sucker, Sonoran Sucker, Speckled Dace, as well as non - natives such as Largemouth Bass, Smallmouth Bass, Channel Catfish, and Flathead Catfish.
Wastewater	Water that has been adversely affected in quality by human activities.
Water Contaminant	Any substance that alters the physical, chemical, or biological qualities of water.
Waterfowl	A swimming bird or a bird that frequents water.

Water Quality Standards ("WQS")	The water quality goals of a water body (or portion of the water body) designating the use or uses to be made of the water and establishing criteria necessary to protect those uses.
Watershed	The land area that drains into a stream, lake, or wetland.
Wetland(s)	Any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, marshes, bogs, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include wetlands intentionally constructed from non-wetland sites outside of Rincon Waters.
Wildlife	Living things and especially mammals, birds, and fishes which are neither human nor domesticated.

I. General Standards

1. The general standards in this document shall be maintained at all times and apply to all Rincon Waters including perennial, ephemeral, and intermittent streams, and to all ponds, lakes, standing waters, sub-surface waters, wetlands, and springs on the Rincon Reservation.

2. The criteria assigned are the ones required to sustain all beneficial uses of the Rincon Waters.

3. The Tribal Council of the Rincon Band of Luiseño Indians shall approve and issue surface water designations for all Rincon Waters and shall determine the suitability of tribal surface waters for primary contact purposes.

4. The numeric and narrative criteria contained in this document will be part of the permitting and management process for all dischargers who are subject to regulation by the Rincon Band and/or Federal government.

5. The standards shall be used in existing permitting and management processes, or new processes that may be created, in order to determine when a beneficial use is threatened.

6. If standards are exceeded, and if it is determined that such exceedance would impair a beneficial use, then the permitting or management processes will be expected to require treatment technologies for regulated point sources and to implement such best management practices as are applicable for regulated non- point sources.

J. Rincon Environmental Department

1. Rincon's Environmental Department ("RED") shall work in cooperation with other Tribal entities, the U.S. Environmental Protection Agency ("U.S. EPA"), and other appropriate agencies to implement these Water Quality Standards.

2. The responsibilities of RED are detailed in the Implementation Plan section of this document.

K. Adoption and Revision

1. The Tribal Council has exclusive authority to adopt and modify these Standards, subject to U.S. EPA review and approval.

2. The Tribal Council also may revise the Standards from time to time:

a) If deemed necessary through use attainability analysis; or

b) As the need arises; or

c) As a result of updated scientific information.

3. The Tribe shall hold public hearings before modifying or amending these Tribal WQS or incorporating, by reference, any regulations into the Tribal WQS.

4. Revisions shall incorporate relevant scientific and engineering advances with respect to water quality and waste water treatment.

a) Errors resulting from inadequate or erroneous data, human or clerical oversight will be subject to correction by the Tribal Council.

b) The discovery of such errors does not render the remaining and unaffected standards invalid.

L. Use Attainability Analyses

1. In the event that monitoring of water quality identifies waters where attainable water quality is less than existing water quality standards, or the Tribal Council wishes to

remove a beneficial use, provided that the beneficial use is not an actual existing use, the standards may be modified to reflect attainability.

2. Such modifications shall be carried out in accordance with use attainability analysis procedures set forth in 40 CFR 131.10 or other appropriate methods.

3. To remove a beneficial use, the use attainability analysis must demonstrate that attaining the beneficial use is not feasible for any of the following reasons:

a) Naturally occurring pollutant concentrations prevent the attainment of the use.

b) Natural ephemeral, intermittent or low-flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of a sufficient volume of effluent discharges without violating water conservation or other applicable requirements to enable uses to be met.

c) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.

d) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in attainment of the use.

e) Physical conditions related to the natural features of the water body, such as the lack of proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses.

f) Controls more stringent than those required by Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. § 1311(b) & 1316, would result in substantial economic and social impact.

M. Separability

If any provision of the Rincon WQS or the application of any provisions of the Rincon WQS should be determined to be invalid, the application of such provision to other persons or circumstances and the remainder of the Rincon WQS shall not be affected thereby.

N. Variances

The Tribal Council may allow variances from Rincon WQS on a case-by-case basis.

1. A variance may be allowed in certain cases where the appropriateness of specific criteria is questionable.

2. The variance provides a period of time during which issues concerning the appropriateness of the criteria may be resolved.

3. A variance shall be valid for no more than three years.

4. Variances are not renewable but may be reissued again upon adequate justification.

5. A variance shall be granted only after appropriate public participation.

6. Variances will be allowed by anticipated non-attainment of water quality standards due to one or more of the reasons listed in 40 CFR 131.10(g).

7. Variances shall be for specific pollutants, time-limited, and shall not forego the current beneficial use and shall not forego the current beneficial use, and must reflect the highest attainable condition during the term of the variance. Where a beneficial use for a waterbody is not now attainable but can be expected to make reasonable progress towards water quality, variances are to be issued rather than removing the beneficial use for that water body.

O. Short Term Variances

1. The Rincon Environmental Department ("RED") may authorize short-term activities that may cause temporary violations of the water quality standards if the Rincon Band determines that such activities are necessary to accommodate legitimate uses or emergencies or to protect public health and welfare.

2. A short term exceedance will only be allowed for activities that are not likely to cause permanent or long-term impairment of beneficial uses, such as, but not limited to, riparian restoration activities, bank stabilization, mosquito abatement, algae and weed control, or activities which result in overall enhancement or maintenance of beneficial uses.

3. Such authorization shall not be granted for activities that could result in the adverse impact on any species designated as sensitive by the Tribe.

4. RED shall specify the degree of variance, the time limit and restoration procedures where applicable.

5. Nothing herein shall be intended to supersede existing Rincon Band of Luiseño Indians and federal permitting processes or requirements.

P. Alternative Dispute Resolution

1. Should a dispute due to differing water quality standards arise between the Rincon Band of Luiseño Indians and the State of California, the Tribe shall follow the alternative dispute resolution as set forth in 40 CFR 131.7.

1. Should a dispute due to differing water quality standards arise between the Tribe and a neighboring Indian Tribe, the Tribe shall seek to resolve the dispute through inter-tribal discussions, mediation, or non-binding arbitration.

III. DESIGNATED BENEFICIAL USES

For each of the major surface water sources protected it is essential to designate beneficial uses. The codes used are defined as below, in *Table 3: Description of Beneficial Water Use Categories*.

Table 3: Description of Beneficial Water Use Categories

Type	Code	Description
Municipal Domestic Supply	MUN	Community, military, or individual water supply systems including, but not limited to, drinking water supply
Agricultural Supply	AGR	Uses of water include pasture and crop irrigation, stock watering, horticulture, and support of vegetation for range grazing, as well as other miscellaneous uses in support of farming and ranching
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

Type	Code	Description
Groundwater 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-I	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 Recreation	REC-II	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
Warm Freshwater Habitat	WARM	Uses of water include those which support 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
Culturally Significant	CUL	Uses of water include the traditional use of a stream/spring for cultural purposes by members of the Tribe. This may involve body contact with the water and provision of adequate flow for ceremonial purposes. Other activities may

Type	Code	Description
		include plant gathering in or around water bodies, with limited or no direct contact with water
Wildlife and Livestock Habitat	WILD	Uses of water include those that support terrestrial ecosystems including, but not limited to, the 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

Following the format presented in *Water Quality Control Plan For the San Diego Basin 1994 (Amended 2016),* these beneficial use designations were used to help designate and assess the degree of support for beneficial uses, in conjunction with the following:

- Local water quality criteria;
- Historical water quality data; and
- *Water Quality Control Plan For the San Francisco Bay Basin 1994 (Amended 2019).*

Water quality criteria are narrative and numeric criteria developed to ensure the continued support of existing and proposed beneficial uses of water resources. Use designations outlined in these Water Quality Standards apply to all waters of the Rincon Band of Luiseño Indians' Reservation.

Beneficial uses for the San Luis Rey River, Paradise Creek, and Potrero Creek are shown below in *Table 4: Surface Water Beneficial Use Designations;* however, the same beneficial uses will apply to ephemeral streams such as Potrero Creek.

Table 4: Surface Water Beneficial Use Designations

Water Body	MUN	AGR	PROC	IND	GWR	FRSH	REC-I	REC-II	WARM	COLD	CUL	WILD	RARE
San Luis Rey River	X	X	X	X	X	X	X	X	X	X	X	X	X
Paradise Creek	X	X	X	X	X	X	X	X	X	X	X	X	X
Potrero Creek	X	X	X	X	X	X	X	X	X	X	X	X	X

In contrast, the following are San Diego Regional Water Quality Control Board beneficial uses for the surface waters located outside of Reservation boundaries.

Inland Surface Waters [1, 2]	Hydrologic Unit Basin Number	BENEFICIAL USE														
		MUN	AGR	IND	PROC	GWR	FRSH	POW	REC1	REC2	BIOL	WARM	COLD	WILD	RARE	SPWN
San Luis Rey River Watershed - continued																
San Luis Rey River	3.22	●	●	●				●	●	●		●	●	●		
Bee Canyon	3.22	●	●	●				●	●	●		●	●	●		
Paradise Creek	3.22	●	●	●				●	●	●		●	●	●		
Hell Creek	3.22	●	●	●				●	●	●		●	●	●		
Horsethief Canyon	3.22	●	●	●				●	●	●		●	●	●		
Potrero Creek	3.22	●	●	●				●	●	●		●	●	●		

[Citation needed]

IV. WATER QUALITY CRITERIA

The Water Quality Standards below have been based on:

- Federal water quality standards as established by the U.S. Environmental Protection Agency ("EPA");
- Water quality standards established by the California Regional Water Quality Control Board ("RWQCB") in the Water Quality Control Plan For the San Francisco Bay Basin 1994 (Amended 2019); and
- Plan For the San Diego Basin 1994 (Amended 2016), which were adopted and modified as appropriate for the Rincon Reservation.

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, as indicated in *Table 4*.

A. General Criteria

All Rincon Waters shall be free from toxic, radioactive, conventional, non-conventional, deleterious or other polluting substances in amounts that will prevent attainment of the beneficial uses specified in Section III of this document. Rincon Waters shall be free of contaminants in such quantity and duration as may, with reasonable probability, injure human health, animal or plant life, or property, or unreasonably interfere with the public welfare, or the use of property.

1. All surface waters, including those within the mixing zone, must be capable of supporting aquatic life and shall be free from:

a) Substances that settle to form objectionable deposits or sediments;

b) Floating debris, scum, oil, and other floating materials that form a nuisance or interfere with designated water uses;

c) Material or practices that produce objectionable color, odor, taste, or turbidity that interferes with the attainment of beneficial uses;

d) Substances which are acutely toxic or produce adverse physiological or behavioral responses in humans, animals, plants, fish and other aquatic life; and

e) Substances which produce undesirable aquatic life or result in the dominance of nuisance species.

2. When multiple criteria for the same parameter are assigned to a waterbody, the most stringent criterion shall be the applicable criterion.

3. Unless otherwise specified, parameters which are naturally variable constituents (e.g., pH, temperature, turbidity) should not be exceeded in more than 10% of samples.

4. All toxics criteria found in *Appendices A through F* should not exceed the magnitude listed more than once in a three-year period.

5. On occasion, there will be natural events, such as floods or other extreme weather events that may cause a temporary exceedance(s) of the criteria values. When

caused by natural events, such exceedances shall not be viewed as adverse to the beneficial use.

B. Surface Water Criteria

All surface waters shall meet the following criteria:

1. Flow

Natural daily, seasonal, annual, and inter-annual fluctuations of flow shall be maintained to support the naturally balanced indigenous biological community including those species most sensitive to alterations in flow.

2. Nutrients Criteria

Except as due to natural conditions, nutrients shall not be allowed in concentrations that render the waters unsuitable for the existing or beneficial uses due to objectionable algal or cyanobacterial densities, nuisance aquatic vegetation, diurnal fluctuations in dissolved oxygen, or pH indicative of excessive photosynthetic activity, detrimental changes to the composition of aquatic ecosystems or other indicators of use impairment caused by nutrients.

3. pH

The normal pH of the water shall range from 6.0 to 9.0. Discharges shall not cause any changes in pH detrimental to designated water uses.

4. Temperature

The natural receiving water temperature of surface waters shall not be altered by discharges of wastewater unless it can be demonstrated to the satisfaction of the Rincon Band's Tribal Council that such alteration in temperature does not adversely affect beneficial uses.

5. Downstream Protection

All waters designated in Section III of this document 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.

6. Toxic Substances

a) Aquatic Life Criteria

The concentration of toxic substances shall not result in chronic or acute toxicity or impairment of the uses of aquatic life and shall not exceed the chronic or acute criteria in *Table 1* of *Appendix A*, unless within a mixing zone or a site-specific criterion is developed consistent with the documented procedures.

b) Human Health Criteria

The concentration of toxic substances shall not exceed the level necessary to protect human health through exposure routes of water consumption, or other routes identified as appropriate for the particular body of water, as presented in *Table 1* of *Appendix B*.

c) Applying Toxic Substance Criteria

When applying acute or chronic toxicity or human health criteria, the following shall apply:

1) For evaluating human health effects, all waters must comply only with the "Organisms Only" criteria, except for water designated as public water supply. Stream segments and tributaries designated as public water supply shall comply with the "Water and Organisms" criteria.

2) In developing effluent limitations using toxicity or human health criteria the stream flows found in *Appendix F* shall be used.

d) Parameters with No Established Numeric Criteria

For those aquatic life and human health parameters for which no numeric criteria have been established, limitations shall be determined using available references which shall include, but not be limited to, Quality Criteria for Water (Section 304(a) of the Federal Water Pollution Act), federal regulations under Section 307 of the Clean Water Act, and federal regulations under Section 1412 of the Public Health Service Act as amended by the Safe Drinking Water Act (Pub. 93-523).

1) Numeric aquatic life criteria shall be developed consistent with EPA's Guidelines for Deriving Numerical National Water Quality

Criteria for the Protection of Aquatic Organisms and Their Uses, 1985, PB85-227049

2) Human health non-carcinogen concentrations will be determined using the more recent value of a Reference Dose (RfD) as published by the EPA pursuant to Section 304(a) of the Federal Water Pollution Act as amended or a RfD issued by the EPA as listed in the Integrated Risk Information Systems (IRIS) file. Water quality standards or criteria used to calculate water quality-based assessments, 401 certifications, and effluent limitations to protect human health through the different exposure routes are determined as follows:

- Fish Tissue Consumption: WQS = $\frac{RfD \times Body\ Weight \times RSC}{FCR \times BAF}$, where WQS is the water quality standard, RfD is the reference dose, RSC is the relative source contribution, WCR is the water consumption rate (assumed to be 2.4 L/day for adults), FCR is the fish consumption rate (22.0 grams/day), and BAF is the bioaccumulation factor.
- Water and Fish Tissue Consumption: WQS = $\frac{RfD \times Body\ Weight \times RSC}{WCR + (FCR \times BAF)}$, where WQS is the water quality standard, RfD is the reference dose, RSC is the relative source contribution, WCR is the water consumption rate (assumed to be 2.4 L/day for adults), FCR is the fish consumption rate (22.0 grams/day), and BAF is the bioaccumulation factor.

3) Human health carcinogen concentrations will not result in unacceptable health risk and will be based on a Carcinogenic Potency Factor (CPF). The CPF is a measure of the cancer-causing potency of a substance. Water quality standards or criteria used to calculate water quality- based effluent limitations (and for all other purposes of water quality criteria under Section 303(c) of the Clean Water Act) to protect human health through the different exposure routes are determined as follows:

- Water and Fish Tissue Consumption: WQS = $\frac{Risk \times Body\ Weight}{CPF \times FCR \times BAF}$, where WQS is the water quality standard, Risk is the risk factor (10-6), CPF is the cancer potency factor, FCR is the fish consumption rate (22.0 grams/day), and BAF is the bioaccumulation factor.

- Water and Fish Tissue Consumption: WQS = $\frac{Risk \times Body\ Weight}{CPF \times (WCR + (FCR \times BAF))}$ where WQS is the water quality standard, Risk is the risk factor (10-6), CPF is the cancer potency factor, WCR is the water consumption rate (assumed to be 2.4 L/day for adults), FCR is the fish consumption rate (22.0 grams/day), and BAF is the bioaccumulation factor.

4) Site-specific aquatic life criteria may be established based on natural background conditions, the recalculation procedure, or other scientifically defensible methods. The procedure for developing a site-specific criterion using the recalculation procedure must be consistent with the procedure found in the EPA's Water Quality Standards Handbook, Chapter 3: Water Quality Criteria, EPA No. 823-B-17-001 (2017), available at https://www.epa.gov/sites/production/files/2014-10/documents/handbook-chapter3.pdf (see page 16), and the EPA's Revised Deletion Process for the Site-Specific Recalculation Procedure for Aquatic Life Criteria, EPA No. 823-R-13-001 (April 2013), available at https://www.epa.gov/sites/default/files/2015-08/documents/revised_deletion_process_for_the_site-specific_recalculation_procedure_for_aquatic_life_criteria.pdf, as may be updated by EPA from time-to-time.

5) Discharger specific alternative criteria for existing discharges may be established based on the water effect ratio (WER) procedure, the recalculation procedure, or other scientifically defensible methods. The procedure for developing WER must be consistent with EPA's *Interim Guidance on Determination and Use of Water Effects Ratios for Metals*, February 1994, EPA No. 823-B-94-001 or the most recent edition of this document. The procedure for developing a discharger specific criterion using the recalculation procedure must be consistent with the procedure found in *Appendix B* of EPA's *Interim Guidance on Determination and Use of Water Effects Ratios for Metals*, February 1994, EPA No. 823-B-94-001. The discharger must satisfy the following conditions:

   a) The discharge existed prior to the adoption of the published standards;

b) The discharger performs acute and or chronic bioassay and instream biological assessments and other evaluations as deemed appropriate by the Tribe;

c) The beneficial use of the waters is maintained; and

d) The water quality standards of downstream waters are attained and maintained

6) All site-specific alternative criteria, as described in point 4 of this section will be subject to the public participation requirement for revisions to water quality standards and will be subject to review and action by the EPA. Discharger-specific criteria developed using the WER procedure described in point 5 of this section are translation of a criterion, EPA review, concurrence and public participation is conducted as a part of the NPDES permitting process.

C. Water Quality Criteria For Specific Uses

The general water quality criteria described in Section IV.A apply to all Rincon Waters. This section describes additional criteria that protects specific beneficial uses. Unless otherwise specified, parameters which are naturally variable constituents (e.g., temperature, dissolved oxygen, solids) should not be exceeded in more than 10% of samples. On occasion, there will be natural events, such as floods or other extreme weather events, that may cause a temporary exceedance(s) of the criteria values. When caused by natural events, such exceedances shall not be viewed as adverse to the beneficial use.

1. Municipal Domestic Supply Use (MUN)

Water in this use is for use as a source of raw water supply for drinking and food processing purposes. The raw water supply shall be such that after the treatment process, it will satisfy the regulations established pursuant to Section 1412 of the Public Health Service Act as amended by the Safe Drinking Water Act (Pub.L.93-523). Criteria specific to the use are:

a) **Bacteria**

Escherichia coli concentrations shall be less than a geometric mean of 50 colonies per 100 mL, as prescribed in 40 CFR 141.701 – Source Water Monitoring.

c) **Specific Conductance**

No substances shall be added to increase the conductivity above 500 microhms/cm.

d) **Dissolved Solids**

No substance shall be added to the waters which will cause the dissolved solids to exceed 500 mg/L.

e) **Turbidity**

No substances shall be added to increase the turbidity above 10 NTU.

f) **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 or mixture of substances (such as an insecticide, fungicide, rodenticide, or herbicide) for control of plants or animals that have economic significance as pests (as in agriculture, industry, or households). All waters designated in Section III of this document as MUN shall not contain concentrations of pesticides or herbicides in excess of the limiting concentrations.

g) **Specific Chemical Constituents**

In addition to the provisions in *Table 1 of Appendix B: Toxic Substances Criteria For the Protection of Human Health*, and *Table 1 of Appendix E: Organoleptic Effects*, the following concentrations shall not be exceeded at any time:

Constituent	Concentration (mg/L)
Barium[1]	1.0
2,4 Dichlorophenoxy acetic acid[1]	0.7
Fluoride[2]	2.0
Nitrate (NO_3-N)	10.0
Sulfate[2]	250.0
Total Trihalomethanes[1]	0.0807
1,1,1-trichloroethane[1]	0.2
Trichloroethylene[1]	0.005
2,4,5-Trichlorophenoxy propionic acid (Silvex) [1]	0.05

[1] Maximum contaminant levels (MCLs)
[2]Secondary Drinking Water Requirements

2. Cultural Use (CUL)

The water in this use is suitable for traditional purposes by members of the Rincon Band of Luiseño Indians that involve immersion and intentional or incidental ingestion of water. Unique aspects of the waters designated for the Cultural Use such as aquatic life, water quality or quantity, riparian habitat or other unique qualities shall be protected. All waters with the cultural and traditional beneficial use (CUL) specified in Section III of this document, 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. Riparian buffers may be designated for Cultural Use if determine necessary by the Tribe. Criteria specific to the use are as follows:

a) **Bacteria**

Escherichia coli (*E. coli*) shall not exceed a geometric mean of 126 colonies per 100 mL nor shall more than ten percent of the samples examined during any month exceed 410 colonies per 100mL.

b) **Cyanobacterial ('blue-green algae') toxins (cyanotoxins)**

The following cyanotoxins shall not exceed the following values in any single water sample:

- 0.8 µg/L for total microcystins;
- Values above the detection limit for anatoxin-a (≈0.15 µg/L); nor
- 1 µg/L for cylindrospermopsin.

These values were chosen based on evaluation of various recommended criteria for recreational water use (U.S. EPA, the World Health Organization, California, Oregon, and Washington). All states, federal and international agencies are struggling with how to grapple with rapidly emerging awareness on the occurrences of cyanotoxins, and how to make recommendations for concentrations deemed safe for direct contact and recreational exposure of humans and animals. Presently, standards vary among these sources.

The values proposed here are the same as the standards adopted by the California Cyanobacteria and Harmful Algal Bloom Network ("CCHAB")

under the California Water Monitoring Council in 2016 as the trigger for posting a "Caution" advisory sign in order to protect human and animal (dogs and livestock) health from Harmful Algal Blooms ("HABs"). The CCHAB guidelines were developed for PLANKTONIC (water column) HABs by a number of participating state agencies in California: the State Water Resources Control Board, the Office of Environmental Health Hazard and Assessment ("OEHHA"), and the California Department of Public Health. See https://mywaterquality.ca.gov/habs/resources/habs_response.html#advisory_signs_guidance

3. Contact Recreational Use (REC-1)

Waters in this use are suitable for recreational purposes involving prolonged contact and the risk of ingesting water in quantities sufficient to pose a health hazard such as swimming and splashing. The waters may also be suitable for other uses not listed. In addition to the substances listed in *Table 1 of Appendix E: Organoleptic Effects*, criteria specific to the use are as follows:

a) **Bacteria**

Escherichia coli (*E. coli*) shall not exceed a geometric mean of 126 colonies per 100 mL nor shall more than ten percent of the samples examined during any month exceed 410 colonies per 100mL.

b) **Cyanobacterial ('blue-green algae') toxins (cyanotoxins)**

The following cyanotoxins shall not exceed the following values in any single water sample:

- 0.8 µg/L for total microcystins;
- values above the detection limit for anatoxin-a (≈0.15 µg/L); nor
- 1 µg/L for cylindrospermopsin

4. Cold Water Aquatic Habitat Use (COLD)

Waters in this use are intended for the propagation of bird life, aquatic life and wildlife. The following parameters and associated criteria shall apply for the protection of productive cold water aquatic communities, amphibian communities, birds, and wildlife. Criteria specific to this seasonal use are as follows:

b) **Dissolved Oxygen**

A minimum concentration of 6.5 mg/L as a daily average and 5 mg/L as an instantaneous minimum shall be maintained at all times.

c) **Temperature**

Water temperature shall not be increased by more than 0.5 °C as a result of discharge.

d) **Turbidity**

The turbidity in the receiving water shall not exceed 10 NTU as a result of discharge.

e) **Phenolic Compounds**

No substances shall be added which will cause the phenolic content to exceed 300 µg/L (expressed as phenol).

f) **Ammonia**

Ammonia criteria shall be in accordance with EPA recommendations as expressed on pages 40, 41, 42, 44, 45, 46, and 49 of Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater 2013 (April 2013, EPA-822-R-13-001). Such information is hereby incorporated by reference. Where cold water species are absent at a site, ammonia criteria may be calculated on a site-specific basis. Any such site-specific criteria shall be in accordance with the equations and tables expressed on pages 228, 229, 231, 235, 236, 239, and 240 in Appendix N of the document referenced above.

5. Warm Water Aquatic Habitat Use (WARM)

Waters in this use are intended for the propagation of bird life, aquatic life and wildlife. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, amphibian communities, birds, and wildlife. Criteria specific to this seasonal use are as follows:

a) **Dissolved Oxygen**

A minimum concentration of 5.0 mg/L as a daily average and 4 mg/L as an instantaneous minimum shall be maintained at all times.

b) **Turbidity**

The turbidity in the receiving water shall not exceed 10 NTU as a result of discharge.

c) **Phenolic Compounds**

No substances shall be added which will cause the phenolic content to exceed 300 µg/L (expressed as phenol).

d) **Ammonia**

Ammonia criteria shall be in accordance with EPA recommendations as expressed on pages 40, 41, 42, 44, 45, 46, and 49 of *Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater 2013* (April 2013, EPA-822-R-13-001). Such information is hereby incorporated by reference. Where warm water species are absent at a site, ammonia criteria may be calculated on a site-specific basis. Any such site-specific criteria shall be in accordance with the equations and tables expressed on pages 228, 229, 231, 235, 236, 239, and 240 in Appendix N of the document referenced above.

V. ANTIDEGRADATION POLICY AND IMPLEMENTATION PLAN

A. Antidegradation Policy

The Antidegradation Policy of the Rincon Band of Luiseño Indians is as follows:

1. Existing in-stream water uses and the level of water quality and quantity necessary to protect the existing uses shall be maintained and protected.

2. Where the quality and quantity of waters exceeds levels established by Sections II, III, and IV of this document necessary to support their uses — including the protection and propagation of aquatic, amphibian, bird, and wildlife, as well as recreation in and on the water — that quality and quantity shall be maintained and protected, unless the Tribe finds, after full satisfaction of the intergovernmental coordination and public participation provisions, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Tribe shall assure water quality adequate to protect existing uses fully. Further, the Tribe shall assure that there shall be achieved the highest statutory and

regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control. All Antidegradation Reviews will be conducted on a parameter-by- parameter basis.

3. In those cases where potential water quality impairment associated with a thermal discharge is involved, the Antidegradation Policy and implementing method shall be consistent with Section 316 of the federal Clean Water Act.

4. All waterbodies on Tribal Lands shall be considered Tribal Resource Waters ("TRW"). The TRW classification dictates that water quality or quantity shall be maintained and protected. New point or nonpoint source discharges or expansion of existing point source discharges shall not be allowed unless the permit applicant has demonstrated to the satisfaction of the RED (acting under authority delegated by the Rincon Band of Luiseño Indians Tribal Council) that no significant adverse effect to water quality will occur.

5. Where high quality waters are classified as Outstanding Reservation Resource Waters ("ORRW"), the existing water quality or quantity shall be maintained and protected, and no discharges shall be allowed.

B. Antidegradation Implementation Plan

Acting under authority delegated by the Rincon Band of Luiseño Indians Tribal Council, the RED shall implement the Water Quality Standards, including the Antidegradation Policy, by establishing and maintaining controls on the introduction of pollutants in Rincon Waters.

1. Definition of Water Body Tiers

The Antidegradation Policy will be implemented utilizing tiers of water quality protection. All Rincon Waters are classified into the appropriate protection tier, as determined by the RED.

a) **Tier 1 Waters**

Tier 1 waters are those waters that are known to be impaired by pollution for a given parameter and in which the existing water quality or quantity does not support beneficial uses. For other pollutants or pollution, the water will be classified pursuant to Section V.B.3 below.

b) **Tier 2 Waters**

1) Tier 2 waters are those waters in which the water quality meets or exceeds the mandatory minimum levels to support the Clean Water Act goal of propagation of aquatic, amphibian, bird, and wildlife, and recreation in and on such waters.

2) All Rincon Waters are considered Tier 2 waters unless the water is classified as an ORRW (Tier 3) or TRW (Tier 2.5).

c) **Tier 2.5 Waters**

Tier 2.5 waters are high-quality waters supporting exceptional levels of biodiversity and are classified as TRWs, as defined in Section V.A.

d) **Tier 3 Waters**

Tier 3 waters are high quality waters that constitute ORRWs, as identified in Section V.A. Tier 3 water bodies will not be allowed to experience any degradation.

2. Responsibility

It is the responsibility of any individual, business, or Tribal program that proposes a discharge from a point source to Rincon Waters, including Tribal Resource Waters, to contact the RED and to apply for an Antidegradation Review pursuant to this section. An Antidegradation Review Report is required for all proposed new or expanding discharges into Tier 2 and Tier 2.5 waters. The Antidegradation Review will include the potential impact on water quality from a proposed activity, considering factors such as the type of activity and magnitude of the discharge, as described in the implementation Sections V.B.3 through V.B.7.

3. Activities Subject to Antidegradation Review

a) **Point Source Pollution**

The Tribal Water Quality Standards and Antidegradation Policy and Implementation methods contained herein shall be applied to all Rincon Waters and all discharges that require a federal permit or license and are subject to Tribal certification under Section 401 of the CWA (e.g., CWA Section 402 permits, CWA Section 404 permits, and Federal Energy Regulatory Commission licenses). Such activities include, but are not limited to, wastewater discharges, industrial discharges, and other discharges from pipes or other discreet conveyances that may affect the quality of Rincon Waters. Coverage under any nationwide permit for an

activity that could degrade receiving waters shall not remove that activity from compliance with this document.

b) **Non-Point Source Pollution**

Non-point source pollution activities in which an Antidegradation Review will be conducted include, but are not limited to, large earth-disturbing activities which fall outside the requirements of needing an EPA NPDES construction storm water permit, water management system design, wastewater management system design, and solid waste management system design of infrastructure that may convey pollution to Rincon Waters.

4. Tier 1 Antidegradation Reviews

Tier 1 waters are those waterbodies that are known to be impaired by a pollutant based on the results of the Tribe's monitoring data record. Where these waters are subject to a Pollution Minimization Plan ("PMP"), the Tier 1 level of protection is implemented through the NPDES permit issuance process. New or expanding discharges are not allowed in Tier 1 waters if there is no assimilative capacity for the pollutant(s) for which the waterbody is listed. Tier 1 waterbodies are pollutant specific, and this designation does not relieve a permit applicant from the requirements of an Antidegradation Review Report for this and other non-listed pollutants proposed to be discharged.

5. Tier 2 Antidegradation Reviews

For activities covered by Section V.B.3 and within Tier 2 waters, the following describes the process for a Tier 2 Antidegradation Review Report. If an application for a new or expanded discharge for a NPDES permit is submitted for a Tier 2 water or a nonpoint source activity affecting a Tier 2 water is proposed, and if verification is made by the Tribe that the waterbody has water quality values greater than that defined by all of the beneficial uses in the standards such that available assimilative capacity for the parameter(s) of concern does exist, then the following additional Antidegradation Review would be initiated.

a) To verify that a waterbody is a high-quality water for a parameter of concern to initiate a Tier 2 Antidegradation Review, the Tribe must evaluate:

1) If and to what degree water quality exceeds the level necessary to protect beneficial uses;

2) If and to what degree water quality will be lowered; and

3) If beneficial uses will be maintained and protected by applying the standards outlined in Sections III and IV of this document.

In multiple discharge situations, the aggregate predicted lowering of water quality must be allocated among the dischargers.

b) An alternatives analysis must be conducted by the applicant to determine whether alternatives (e.g., water recycle or reuse, use of other discharge locations, connection to other wastewater treatment facilities, or any treatment options) would minimize or eliminate the lowering of water quality in a technologically feasible and economically viable manner. The conclusion will either be that no practicable alternatives exist or at least one practicable alternative exists. A socio-economic analysis, as described in Section V.B.5.c, will be conducted for any alternatives selected that utilize some of the assimilative capacity. If the alternative utilizes no assimilative capacity, no socio-economic analysis is needed.

c) The Tribe will evaluate whether a proposed discharge that will lower water quality and for which there are no practicable alternatives is necessary for important economic or social development. For this to be determined, several economic and social factors must be considered. These factors include, but are not limited to, increased production for greater Tribal economic gain, housing, and correction of environmental or public health concern. The Tribe will use the review procedures prescribed in the EPA's Interim Economic Guidance for Water Quality Standards Workbook, EPA No. 823-B-95-002 (March 1995), available at https://www.epa.gov/sites/default/files/2016-03/documents/econworkbook-complete.pdf, as may be updated from time-to-time. If the RED deems that the socio-economic value is not of sufficient value to warrant a degradation of water quality, the degradation will not be approved. If, after review and response to public comments regarding the proposed activity, the Tribe determines that activity is socially and/or economically important, lowering of the water quality will be allowed. If no socioeconomic value can be attributed to the proposed activity, it shall not be approved.

d) If after the Tribe reviews the analysis of alternatives and determines that the lowering of water quality can be minimized or eliminated, the applicant can either implement one of the practicable alternatives and determine whether a lowering is necessary for important social and economic development, or proceed without an analysis of important social or economic development if a non-degrading alternative is selected for implementation. If the analysis

identifies affordable treatment options that would prevent the discharge from occurring, the request to discharge will be denied. If the proposed discharge does support important social and economic development, either when a practicable alternative is implemented or absent, then the Tribe may decide to grant the request for lowering of water quality provided water quality sufficient to protect beneficial uses is maintained and provided the decision is subject to public participation and comment.

e) A public review shall be conducted of the application, the proposed activity that will lower water quality, and the Tribe's draft Antidegradation Review. Public notice shall be made using reasonably available outreach tools such as tribal and/or local newspaper legal notices, and/or web-based media. Comments shall be sought to guide a final review decision. Following an appropriate public review period as required by applicable law, the review period will close. Response to each comment shall occur prior to the approval or disapproval of a permit or license application to discharge, and these responses shall be documented with the final Antidegradation Review Report.

f) In addition to providing the opportunity to comment during public review, the Tribe shall coordinate as needed with other tribal departments and governments, and federal agencies such as U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and U.S. Environmental Protection Agency.

g) Once the Tier 2 Antidegradation Review is completed, documentation of its final decision will either be included in the rationale for the point-source permit and/or tribal administrative record related to the non-point source activity. The Tribe will maintain records of the evaluation and decision of all activities that have been reviewed under these conditions.

6. Tier 2.5 Antidegradation Reviews

Tier 2.5 level of protection applies to waters defined in Section V.B.1.c. Storm water and other nonpoint source runoff including that from agriculture or permitted discharge is allowed in the waters provided there will be no adverse water quality effects deemed significant by the Tribe, as determined through consultation with the EPA.

a) The Tribe, in cooperation with the EPA, will review an application for a proposed discharge to Tribal Resource Waters to determine the impact on water quality and ensure that the discharge can be considered.

b) Once it has been determined that the discharge can be considered, it must be determined whether the discharge will result in a discernable change in water quality. If the proposed discharge would cause degradation, then the discharge must be denied. Since only discharges that would result in the maintenance and protection of existing water quality are permitted, no further Antidegradation Review is necessary. Any allowable permit would then proceed through the permitting process and allow for public participation, as described in the Tier 2 Antidegradation Review Section (V.B.5)

c) Once it has been determined that the nonpoint source activity can be considered, it must be determined whether the activity will result in a discernable change in water quality. If the proposed activity would cause degradation, then the activity must be denied. Since only activities that would result in the maintenance and protection of existing water quality are allowed, no further Antidegradation Review is necessary. Any allowable activity would then proceed through the Antidegradation Review process and allow for public participation, as described in Section V.B.5.

d) Once the Tier 2.5 Antidegradation Review is completed, documentation of its final decision will either be included in the rationale for the permit and/or tribal administrative record. The Tribe will maintain records of the evaluation and decision of all activities that have been reviewed under these conditions.

7. Tier 3 Antidegradation Reviews

The Tier 3 level of protection applies to waterbodies classified as ORRWs. ORRW waters are protected by applying the standards of the Tribal Resource Waters which require maintenance of existing water quality and additionally by not allowing any point-source discharges. No permanent permitted discharges of any kind shall be allowed in these waters, however a discharge may be allowed on a short-term and temporary basis as long as there is no associated degradation of water quality.

VI. SAMPLING AND ANALYSES

Sample collection and preservation used to determine water quality and to maintain the standards set forth in these Water Quality Standards shall be performed in accordance with procedures prescribed by the latest EPA authoritative analytical reference, including but not limited to the latest editions of any of the following authorities: (1) American Public Health Association, "Standard Methods for the Examination of Water and Wastewater"; (2) "Methods for Chemical

Analyses for Water and Wastes"; (3) "EPA Guidelines Establishing Test Procedures for the Analysis of Pollutants"; (4) "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, EPA/600/491/002"; (5) "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms, EPA/600/4- 90/027F"; and (6) protocols for algal/cyanobacterial sampling presently outlined in the "California Voluntary Guidance for Response to HABs in Recreational Waters," (https://mywaterquality.ca.gov/habs/resources/habs_response.html).

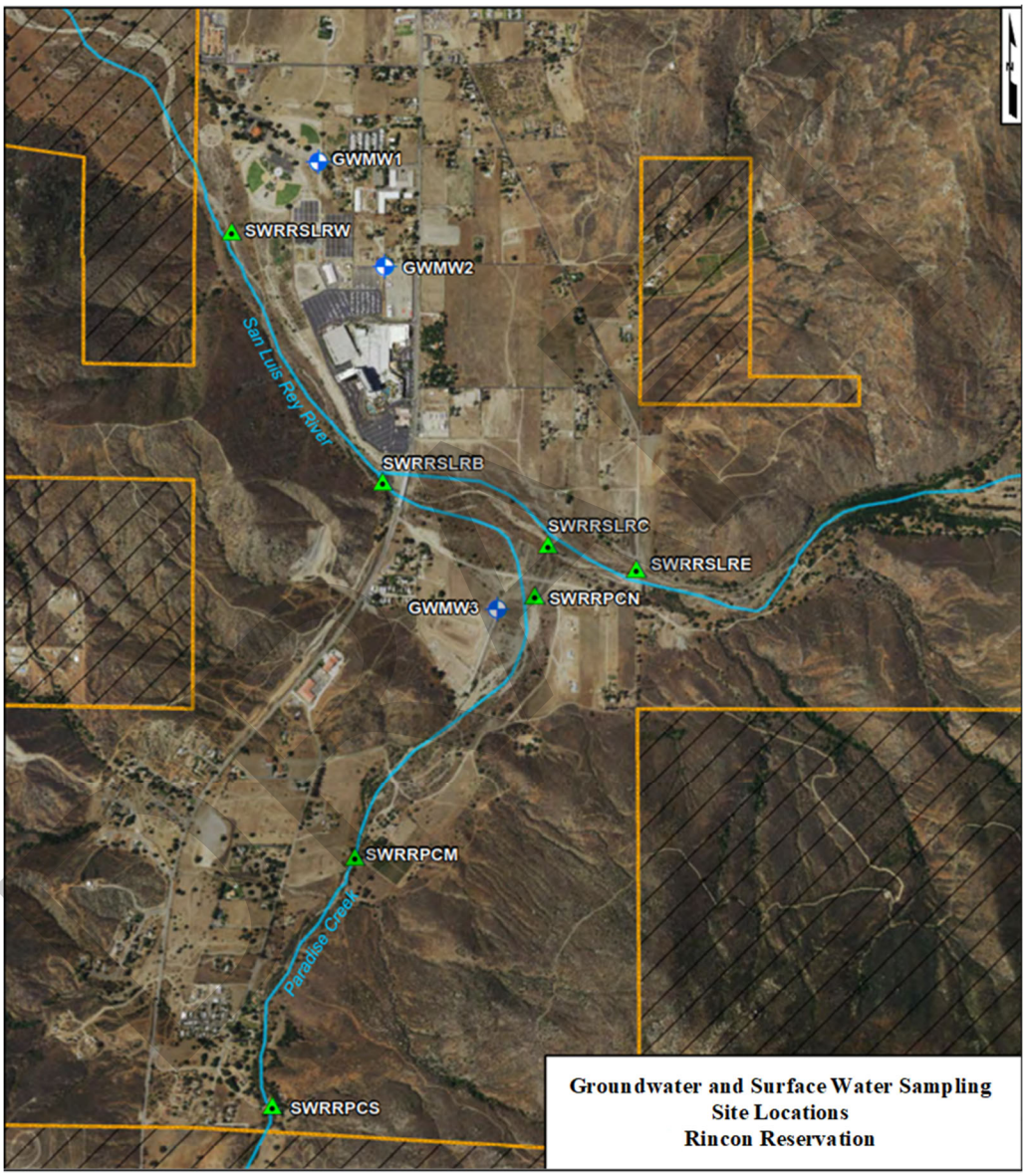
All methods of analysis used in measuring the quality of surface water for purposes of determining compliance with these standards shall be in accordance with procedures prescribed in the current version of 40 CFR Part 136 or other methods approved in writing by the EPA.

Table 5: Sampling Locations and Rationale

SITE ID	LOCATION DESCRIPTION	LOCATION DETAILS	RATIONALE
Groundwater Sample Sites			
GWMW1	Northwest section of the Reservation near the Tribal Ballfield area.	This area is a ground water recharge area from annual precipitation, located adjacent to the Tribal Community.	To determine water quality and identify trends over time.
GWMW2	Central portion of the Reservation on Arviso Rd.	Adjacent to State Hwy S6.	To determine surface/storm water runoff influence upon groundwater.
GWMW3	Adjacent to Paradise Creek	This area is developed with tribal community homes, private enterprises, and is down gradient of the Harrah's Southern California wastewater treatment plant. This area is a ground water recharge area for Paradise Creek from annual precipitation.	To identify trends and determine if surface water influences ground water via recharge.
Surface Water Sample Sites			
SWWRRSLRE	100 feet west of eastern boundary of Reservation	San Luis Rey River at eastern boundary of the Reservation, where the river enters the Reservation	To determine water quality as water 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 Valley Center Rd bridge, San Luis Rey River	Where Valley Center Rd bridge crosses San Luis Rey River. Down gradient of historic landfill	To determine if surface water runoff affects San Luis Rey River water quality. Baseline data
SWWRRSLRW	100 feet up gradient of western Reservation boundary in San Luis Rey River	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, at the Reservation boundary	To determine water quality as water enters Reservation. Up gradient is horse ranch and Valley Center community Baseline data
SWRRPCM	Mid-section of Paradise Creek	This sampling point will be southeast of Rincon Fire Station at E. Paradise Creek Ln. crossing	To determine water quality in mid-section of Paradise Creek. Tribal housing and minimal agriculture area up gradient to the west. Baseline data

SWRRPCN	100 – 1000 feet up gradient 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 water enters The San Luis Rey River confluence in Paradise Creek. Baseline data

Figure 6: Sampling Locations



VII. MIXING ZONES

In order to provide a reasonable opportunity for the mixture of discharges and receiving waters, mixing zones may be established in the area of the discharge. Any designated mixing zone shall be approved by the Tribe in consultation with the EPA. When a mixing zone is established, the mixing zone shall not be an area of waste treatment, nor shall it interfere with or impair the existing uses of the waterbody. The size of the mixing zone shall be minimized, as determined by the Tribe, and shall be based upon applicable critical flow conditions. The chronic water quality criterion for the mixing zone parameters of concern will not apply in these regions, except that the zone will be subject to the conditions established in accordance with this section. Mixing zone limits will be defined on a case-by-case basis upon consideration of the magnitude and character of the waste discharge, and the size and character of the receiving waters. Methods and guidelines for mixing zone policies are prescribed in accordance with the EPA's Water Quality Standards Handbook, Second Edition (1993) and the EPA's Technical Support Document for Water Quality-based Toxics Control, March 1991, EPA/505/2-90-001. For the protection of the receiving waters uses and to maintain conformity with NPDES permit requirements the following guidelines and restrictions are followed to protect the beneficial uses of Rincon Waters.

A. In order to protect human health, mixing zones are not allowed when they would endanger public health and welfare or not meet water quality criteria for a pollutant (e.g., *E. coli*).

B. In order to protect aquatic life, mixing zones would not be permitted when they would result in the following:

1. Impair the integrity of the aquatic community, including interfering with successful egg incubation, rearing, or passage of wildlife.

2. Cause lethal effects to aquatic, bird, amphibian, or wildlife passing through the mixing zone.

3. Heat or cool the discharge such that it may cause thermal shock, lethality, or loss of habitat or may attract wildlife to a toxic discharge.

4. Generate bioaccumulative pollutants in the discharge.

5. Generate pollutant concentrations that exceed maximum contaminant levels for waters designated as MUN.

6. Cause conditions that impede or prohibit recreation in or on the waterbody.

7. Attract undesirable aquatic organisms or enable a dominance of nuisance species outside of the mixing zone.

8. Adversely affect a federally-listed endangered or threatened aquatic species, its habitat, or a proposed or designated critical habitat.

9. Not allow safe passage of aquatic organisms when passage would otherwise be unobstructed.

10. Not allow for the protection and propagation of a balanced native aquatic community in and on the water body.

11. Overlap with another mixing zone.

C. In order to protect both human health and aquatic life, mixing zones would not be permitted when a discharge would not be predicted to, or does not produce, adequate mixing at the point of discharge, or a discharge would be to a waterbody where multiple discharges interact if the combined mixing zone would impair the waterbody outside the mixing zone. The Tribe may prohibit or limit mixing zones in Rincon Waters that may be considered a significant nursery habitat for resident species.

D. The size of the mixing zone shall be kept to a minimum and may be determined on an individual project basis considering biological, chemical, engineering, hydrological, and physical factors. The factors include, but are not limited to, the type and character of receiving waters, outfall configuration, effluent characteristics, extent of mixing/dilution, specific aquatic resource concerns (e.g., sensitive areas or species, ceremonial uses). Federal resource agencies shall be consulted as appropriate.

VIII. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

A. Point-source water quality discharge permits may be granted by the EPA, in consultation with the Tribe, to dischargers for pollutant-specific contamination through the National Pollutant Discharge Elimination System (NPDES) program (https://www.epa.gov/npdes). These permits are granted with the goal of meeting the applicable criteria rather than lowering the water quality standards or changing the beneficial use of the stream.

B. A NPDES permit may be approved for a permittee(s) or water body/water body segment, but only applies to the permittee(s) or water body/water body segment specified in the permit.

C. The Tribe may use the approved permit when issuing certifications under Section 401 of the CWA.

D. The underlying beneficial use and criteria addressed by the NPDES permit will remain unless the Tribe adopts revisions to the beneficial use or criteria. All other applicable standards not specifically addressed by the NPDES permit remain applicable.

E. Application materials and instructions can be found on the EPA's NPDES website (https://www.epa.gov/npdes/npdes-application-forms).

IX. CLEAN WATER ACT SECTION 401 CERTIFICATION

The CWA Section 401 (Water Quality Certification) gives the Tribe broad authority to review proposed activities requiring certification of a federal permit or license when those activities are on Tribal lands and/or have the potential to affect Rincon Waters. The Tribe can recommend to the permitting agency that it grant, deny, or condition certification of federal permits or licenses that may result in a discharge to waters to achieve compliance with the Tribe's Water Quality Standards. For waters and activities within Tribal lands, the Tribe shall have full authority to grant, deny, or condition certification.

A completed application for water quality certification will be submitted to the Rincon Environmental Department (RED). The application will be reviewed by the RED for compliance with Tribal Water Quality Standards. The application form is found in *Appendix B*. After thorough review by the RED, the application will be granted, denied, or conditioned. The complete certification process can be found in this document in *Appendix G: CWA Section 401 Certification Process*.

X. STORMWATER CONTROLS

Stormwater controls are important to protect Rincon Waters from runoff containing sediments and pollutants. Stormwater controls will be based on performance standards designed to:

A. Protect life and property from dangers associated with flooding;

B. Protect Rincon lands, public and private, from damage resulting from runoff, erosion and sedimentation, and increased flooding;

C. Protect water quality from nutrients, pathogens, toxic matter, debris and other contaminants;

D. Ensure that annual runoff rates and volumes from post-development site conditions mimic the annual runoff rates and volumes from pre-development site conditions;

E. Promote infiltration and groundwater recharge;

F. Protect functional values of natural water courses and wetlands;

G. Provide plant and animal habitat and support riparian ecosystems;

H. Require the implementation of stormwater BMPs to minimize the discharge of pollutants into streams, rivers, lakes, other bodies of water and infrastructure, while maximizing areas for stormwater treatment.

XI. SOURCE WATER PROTECTION

Any water that could potentially be the source of drinking water is called source water. Source water provides water for public drinking water supplies and private water wells. The Rincon Waters with the MUN use designation are considered Tribal source water. In order to preserve existing sources of drinking water to meet present and future Tribal needs, management actions are required to eliminate and/or reduce the risk of contamination to water supply sources.

A. Protective Management Actions

The Tribe shall engage in a variety of activities with the goal of eliminating and/or reducing the risk of contamination within Rincon Reservation boundaries. These activities include:

1. Promoting awareness and protection of Rincon Waters through public outreach activities, including signs, pamphlets, and community meetings as needed.

2. Promoting preservation of Rincon Waters in all permitting activities by considering impacts to source water when conducting Section 401 Water Quality Certification reviews, as described in Section IX.

3. Conducting rigorous water quality monitoring. These monitoring activities include, but are not limited to, quarterly physical sample collection and analysis.

In addition, Rincon Waters receive appropriate levels of antidegradation protection (either Tier 2 or Tier 2.5, as determined by the Tribe), as described in Section V of this document, taken into account during the review of permit and Section 401 Certification applications.

XII. EPHEMERAL WATERS AND INTERMITTENT WATERS

Ephemeral and intermittent waters shall be required to meet the numeric criteria established to support existing and beneficial uses when there is an existing surface stream flow from any source, however minimal and narrative criteria must be met at all times.

Ephemeral waters that receive a continuous discharge that enhances habitat by causing a perennial flow shall be protected in the same manner as other perennial waters. In these cases, beneficial uses and criteria shall be evaluated for revision to a more stringent standard, unless a Use Attainability Analysis has been performed and approved by the Tribe.

APPENDIX A

AQUATIC LIFE CRITERIA

Table 1: Aquatic Life Criteria

		B Freshwater	
Compound	CAS Number	Criterion Maximum Concentration (CMC) (µg/L) B1	Criterion Continuous Concentration (CCC) (µg/L) B2
Acrolein (P)	107028	3	3
Aesthetic Qualities[a]	-	-	-
Aldrin[a1]	309002	3.0	-
Alkalinity[b]	-	-	20,000
alpha-Endosulfan[a1]	959988	0.22	0.056
Aluminum pH 5.0 – 10.5[d]	7429905	Acute (CMC) and chronic (CCC) freshwater aluminum criteria values for a site shall be calculated using the 2018 Aluminum Criteria Calculator (*Aluminum Criteria Calculator V.2.0.xlsx*, or a calculator in R or other software package using the same 1985 Guidelines calculation approach and underlying model equations as in the *Aluminum Criteria Calculator V.2.0.xlsx*) as established in EPA's Final Aquatic Life Ambient Water Quality Criteria for Aluminum 2018 (EPA 822–R–18–001). *To apply the aluminum criteria for Clean Water Act purposes, criteria values based on ambient water chemistry conditions must protect the water body over the full range of variability, including during conditions when aluminum is most toxic.*	
Ammonia[e]	7664417	See Table 4	See Table 4
Arsenic[e1,f]	7440382	340	150
beta-Endosulfan[a1,c]	33213659	0.22	0.056
Cadmium[f]	7440439	See Table 1b	

		B Freshwater	
Compound	CAS Number	Criterion Maximum Concentration (CMC) (µg/L) B1	Criterion Continuous Concentration (CCC) (µg/L) B2
Carbaryl	63252	2.1	2.1
Chlordane[a1]	57749	2.4	0.0043
Chloride	16887006	860,000	230,000
Chlorine	7782505	19	11
Chlorpyrifos	2921882	0.083	0.041
Chromium (III)[f, f1]	16065831	570	74
Chromium (VI)[f]	18540299	16	11
Copper[f]	7440508	See Table 2	
Cyanide[h]	57125	22	5.2
Demeton	8065483	-	0.1
Diazinon	333415	0.17	0.17
Dieldrin	60571	0.24	0.056[a1]
Endrin	72208	0.086	0.036[i]
gamma-BHC (Lindane)	58899	0.95	-
Guthion	86500	-	0.01
Heptachlor[a1]	76448	0.52	0.0038
Heptachlor Epoxide[a,j]	1024573	0.52	0.0038
Iron	7439896	-	1,000
Lead[f]	7439921	See Table 1b	
Malathion	121755	-	0.1
Methoxychlor	72435	-	0.03
Mirex	2385855	-	0.001
Nickel[f]	7440020	See Table 1b	
Nonylphenol	84852153	28	6.6
Oxygen, Dissolved[l]	7782447		
Parathion	56382	0.065	0.013
Pentachlorophenol	87865	19[m]	15[m]
pH[n]		-	6.5 – 9

		B Freshwater	
Compound	CAS Number	Criterion Maximum Concentration (CMC) (µg/L) B1	Criterion Continuous Concentration (CCC) (µg/L) B2
Polychlorinated Biphenyls (PCBs) (P)			0.014
Selenium	7782492	See Table 3	
Silver (P)[a1,f]	7440224	See Table 1b	
Sulfide-Hydrogen Sulfide	7783064	-	2.0
Temperature[o]		-	-
Toxaphene	8001352	0.73	0.0002
Tributyltin (TBT)		0.46	0.072
Zinc[f]	7440666	See Table 1b	
4,4'-DDT[a]	50293	1.1	0.001

Footnotes to Table 1:

a. All waters shall be free from substances attributable to wastewater or other discharges that: (1) settle to form objectionable deposits; (2) float as debris, scum, oil, or other matter to form nuisances; (3) produce objectionable color, odor, taste, or turbidity: (4) injure or are toxic or produce adverse physiological responses in humans, animals or plants:; (5) produce undesirable or nuisance aquatic life; and (6) produce toxins of algal or cyanobacterial origin (in particular anatoxin-a and microcystins).

a1. These criteria are based on the 1980 criteria, which used different Minimum Data Requirements and derivation procedures from the 1985 Guidelines. If evaluation is to be done using an averaging period, the acute criteria values given are not to be exceeded and should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.

b. The CCC of 20mg/L is a minimum value except where alkalinity is naturally lower, in which case the criterion cannot be lower than 25% of the natural level.

c. This value was derived from data for endosulfan and is most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan.

d. The criteria is based on the water chemistry data (for pH, hardness and DOC) entered into the criteria calculator for a given location. Criteria calculator is located at https://www.epa.gov/sites/production/files/2018-12/aluminum-criteria-calculator-v20.xlsm

d1. Values are recommended not to be exceeded more than once every three years on average. Values will be different under differing water chemistry conditions.

e. Freshwater criteria are pH, temperature and life-stage dependent.

e1. This recommended water quality criterion was derived from data for arsenic (III), but is applied here to total arsenic.

f. Freshwater and saltwater criteria for metals are expressed in terms of the dissolved metal in the water column. See Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria. See Table 1a for conversion factors. The freshwater criterion for this metal is expressed as a function of hardness (mg/L).

f1. The values given here correspond to a hardness of 100 mg/L.

g. Saltwater criteria for copper is reserved for new values under development. Criteria will be added once available.

h. These recommended water quality criteria are expressed as µg free cyanide (CN/L).

i. The derivation of the CCC for this pollutant did not consider exposure through the diet, which is probably important for aquatic life occupying upper trophic levels.

j. This value was derived from data for heptachlor and there was insufficient data to determine relative toxicities of heptachlor and heptachlor epoxide.

k. This recommended water quality criterion was derived from data for inorganic mercury (II), but is applied here to total dissolved mercury. If a substantial portion of the mercury in the water column is methylmercury, this criterion will probably be under protective. In addition, even though inorganic mercury is converted to methylmercury and methylmercury bioaccumulates to a great extent, this criterion does not account for uptake via the food chain because sufficient data were not available when the criterion was derived.

l. For fresh waters, see Quality Criteria for Water, 1986 ("Gold Book").

m. Freshwater aquatic life values for pentachlorophenol are expressed as a function of pH and values displayed in table correspond to a pH of 7.8. CCC = $e^{1.005(pH) - 5.134}$, CMC = $e^{1.005\ (pH) - 4.869}$

n. For open ocean waters where the depth is substantially greater than the euphotic zone, the pH should not be changed more than 0.2 units from the naturally occurring variation or any case outside the range of 6.5 to 8.5. For shallow, highly productive coastal and estuarine areas where naturally occurring pH variations approach the lethal limits of some species, changes in pH should be avoided but in any case should not exceed the limits established for fresh water, *i.e.*, 6.5-9.0.

o. Criteria are species dependent. See Quality Criteria for Water, 1986 ("Gold Book").

Notes:

1. Freshwater aquatic life criteria apply.
2. Because of variations in chemical nomenclature systems, this listing of toxic pollutants does not duplicate the listing in Appendix A to 40 CFR Part 423 - 126 Priority Pollutants. EPA has added the Chemical Abstracts Services (CAS) registry numbers, which provide a unique identification for each chemical.

Table 1a: Conversion Factors For Dissolved Metals

Metal	Freshwater CMC	Freshwater CCC
Arsenic	1.000	1.000
Cadmium	1.136672-[(ln hardness)(0.041838)]	1.101672-[(ln hardness)(0.041838)]
Chromium III	0.316	0.860
Chromium VI	0.982	0.962
Copper	0.960	0.960
Lead	1.46203-[(ln hardness)(0.145712)]	1.46203-[(ln hardness)(0.145712)]
Mercury	0.85	0.85
Nickel	0.998	0.997
Silver	0.85	—
Zinc	0.978	0.986

Table 1b: Parameters for Calculating Hardness-Dependent Freshwater Dissolved Metals Criteria

Chemical	mA	bA	mC	bC	Freshwater Conversion Factors (CF)	
					CMC[1]	CCC[2]
Cadmium	0.9789	-3.866	0.7977	-3.909	1.136672-[(*ln*hardness)(0.041838)]	1.101672-[(*ln*hardness)(0.041838)]
Chromium III	0.8190	3.7256	0.8190	0.6848	0.316	0.860
Lead	1.273	-1.460	1.273	-4.705	1.46203-[(*ln*hardness)(0.145712)]	1.46203-[(*ln*hardness)(0.145712)]
Nickel	0.8460	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	-6.59	—	—	0.85	—
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

[1] CMC: Criterion Maximum Concentration
[2] CCC: Criterion Continuous Concentration

Hardness-dependent metals criteria may be calculated from the following:

CMC (dissolved) = exp{mA [ln(hardness)]+ bA} (CF)
CCC (dissolved) = exp{mC [ln(hardness)]+ bC} (CF)

Table 2: Copper Aquatic Life Criteria For Fresh Waters

Metal	CAS No.	Criterion Maximum Concentration (CMC) [a] (µg/L)	Criterion Continuous Concentration (CCC) [b] (µg/L)
Copper	7440508	Acute (CMC) and chronic (CCC) freshwater copper criteria shall be developed using EPA's 2007 *Aquatic Life Ambient Freshwater Quality Criteria—Copper* (EPA–822–R–07–001), which incorporates use of the copper biotic ligand model (BLM). Where sufficiently representative ambient data for DOC, calcium, magnesium, sodium, potassium, sulfate, chloride, or alkalinity are not available, the Tribe shall use the 10th percentile values from publicly available peer-reviewed datasets such as the US Geological Survey National Waters Information System (NWIS) and EPA's Storage and Retrieval Data Warehouse.	

[a] The CMC is the highest allowable one-hour average instream concentration of copper. The CMC is not to be exceeded more than once every three years.
[b] The CCC is the highest allowable four-day average instream concentration of copper. The CCC is not to be exceeded more than once every three years.

Table 3: Selenium Aquatic Life Criteria for Fresh Waters

Criterion Element	Magnitude	Duration	Frequency
Fish Tissue[a] (Egg-Ovary)[b]	15.1 mg/kg dw	Instantaneous measurement[c]	Not to be exceeded
Fish Tissue[a] (Whole Body or Muscle)[d]	8.5 mg/kg dw or 11.3 mg/kg dw muscle (skinless, boneless filet)	Instantaneous measurement[c]	Not to be exceeded
Water Column[e] (Monthly Average Exposure)	1.5 µg/L in lentic aquatic systems 3.1 µg/L in lotic aquatic systems	30 days	Not more than once in three years on average
Water Column[e] (Intermittent Exposure)[f]	$WQC_{int} = \frac{WQC_{30\text{-day}} - C_{bkgrnd}(1 - f_{int})}{f_{int}}$	Number of days/month with an elevated concentration	Not more than once in three years on average

[a] Fish tissue elements are expressed as steady-state.
[b] Egg/ovary supersedes any whole-body, muscle, or water column element when fish egg/ovary concentrations are measured, except as noted in footnote e below.
[c] Fish tissue data provide point measurements that reflect integrative accumulation of selenium over time and space in fish population(s) at a given site.
[d] Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured, except as noted in footnote e below.
[e] Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. When selenium inputs are increasing, water column values are the applicable criterion element in the absence of steady-state condition fish tissue data.
[f] Where $WQC_{30\text{-day}}$ is the water column monthly element, for either a lentic or lotic waters; C_{bkgrnd} is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥0.033 (corresponding to 1 day).

Ammonia is a form of nitrogen which exists in aquatic environments and causes direct toxic effects on aquatic life. Some potential sources of ammonia include municipal effluent discharges, animal waste, and agricultural runoff. No discharge of ammonia to any water within the Reservation shall be permitted. Waters of the Rincon Reservation shall not exceed standards outlined in the U.S. EPA 2013 Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater (See Table 4, below).

Table 4. Ammonia Aquatic Life Criteria for Fresh Waters

mg TAN/L	
Acute (CMC) equation (1 hour average)	$CMC = MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}}+\frac{39.0}{1+10^{pH-7.204}}\right), \left(0.7249\times\left(\frac{0.0114}{1+10^{7.204-pH}}+\frac{1.6181}{1+10^{pH-7.204}}\right)\times\left(23.12\times 10^{0.036\times(20-T)}\right)\right)\right)$
Chronic (CCC) equation (30-day rolling average)*	$CCC = 0.8876\times\left(\frac{0.0278}{1+10^{7.688-pH}}+\frac{1.1994}{1+10^{pH-7.688}}\right)\times\left(2.126\times 10^{0.028\times(20-MAX(T,7))}\right)$
Note: Ammonia criteria are a function of pH and temperature. At the standard normalized pH of 7.0 and temperature of 20 °C, the acute criterion would be 17 mg TAN/L and the chronic criterion would be 1.9 mg TAN/L. Criteria duration: the acute criterion is a one-hour average and the chronic criterion is a thirty-day rolling average. Criteria frequency: Not to be exceeded more than once in 3 years. * Not to exceed 2.5 times the CCC as a 4-day average within the 30-days, *i.e.* 4.8 mg TAN/L at pH 7 and 20 °C more than once in 3 years on average.	

Note: Acute (CMC) and chronic (CCC) freshwater ammonia criteria were developed using EPA's 2013 *Aquatic Life Ambient Water Quality Criteria for Ammonia - Freshwater* (EPA–822–R–13–001), which is hereby incorporated by reference.

APPENDIX B

HUMAN HEALTH CRITERIA

Table 1: Toxic Substances Criteria For the Protection of Human Health

Compound	CAS No.	Ingestion of Water and Organisms (µg/L)	Ingestion of Organisms Only (µg/L)
Antimony	7440360	5.3	580
Arsenic	7440382	0.014	0.047
Copper	7440508	1300	-
Nickel	7440020	470	1500
Thallium	7440280	0.22	0.43
Cyanide	57125	4	400
Asbestos	1332214	7,000,000 fibers/L	-
2,3,7,8-TCDD-Dioxin	1746016	4.6e-9	4.7e-9
Acrolein	107028	3	400
Acrylonitrile	107131	0.061	6.7
Benzene	71432	0.58	15
Bromoform	75252	7	110
Carbon Tetrachloride	56235	0.4	5
Chlorobenzene	108907	100	800
Chlorodibromomethane Dibromochloromethane	124481	0.8	20
Chloroform	67663	60	2,000
Dichlorobromomethane Bromodichloromethane	75274	0.94	26
1,2-Dichloroethane	107062	9.9	630
1,1-Dichloroethylene	75354	300	20,000
Trans-1,2-Dichloroethylene (DCE)	156605	100	4,000
1,2-Dichloropropane	78875	0.9	30
1,3-Dichloropropene	542756	0.27	11
Ethylbenzene	100414	67	120
Methyl Bromide	74839	100	10,000
Methylene Chloride	75092	20	1,000
1,1,1-Trichloroethane	71556	10,000	200,000
1,1,2-Trichloroethane	79005	0.55	8.6
1,1,2,2-Tetrachloroethane	79345	0.2	3
Tetrachloroethylene	127184	10	28
Toluene	108883	57	500
Trichloroethylene (TCE)	79016	0.6	7
Selenium	7782492	160	3,800
Zinc	7440666	7,000	23,000
Benzidine	92875	0.00014	0.01
Benzo(a) Anthracene	56553	0.0012	0.0013
Benzo(a) Pyrene	50328	0.00012	0.00013
Benzo(b) Fluoranthene	205992	0.0012	0.0013

Compound	CAS No.	Water and Organisms (µg/L)	Organisms Only (µg/L)
Benzo(k) Fluoranthene	207089	0.012	0.013
Bis 2-Ethylhexyl Phthalate	117817	0.32	0.37
Butylbenzyl Phthalate	85687	0.1	0.1
2-Chloronaphthalene	91587	800	1000
Chrysene	218019	0.12	0.13
Dibenzo(a),(h) Anthracene	53703	0.00012	0.00013
1,2-Dichlorobenzene	95501	1000	3000
1,3-Dichlorobenzene	541731	7	10
1,4-Dichlorobenzene	106467	300	900
1,2,4,5-Tetrachlorobenzene	95943	0.03	0.03
Pentachlorobenzene	608935	0.1	0.1
3,3-Dichlorobenzidine	91941	0.049	0.14
Methoxchlor	72435	0.02	0.02
Diethyl Phthalate	84662	600	600
Dimethyl Phthalate	131113	2000	2000
Di-n-Butyl Phthlatate	84742	20	30
2,4-Dinitrotoluene	121142	0.048	1.6
1,2-Diphenylhydrazine	122667	0.03	0.2
Fluoranthene	206440	20	20
Fluorene	86737	50	70
Hexachlorobenzene	118741	0.000076	0.000077
Hexachlorobutadiene	87683	0.009	0.009
1,2,4-Trichlororbenzene	120821	0.069	0.073
Toxaphene	8001352	0.00068	0.00069
Indeno (1,2,3-cd) Pyrene	193395	0.0012	0.0013
Isophorone	78591	34	1800
Chlordane	57749	0.0003	0.00031
a-Endosulfan	959988	20	30
b-Endosulfan	33213659	20	40
Endosulfan Sulfate	1031078	20	40
Polychlorinated Biphenyls (PCBs)	1336363	0.000058	0.000058
Vinyl Chloride	75014	0.022	1.6
2-Chlorophenol	95578	30	800
2,4-Dichlorophenol	120832	10	60
2,4-Dimethylphenol	105679	100	2000
2-Methyl-4,6-Dinitrophenol	534521	2	30
Dintrophenols	25550587	10	1000
2,4-Dinitrophenol	51285	10	300
3-Methyl-4-Chlorophenol	59507	500	2000
Pentachlorophenol	87865	0.02	0.04

Compound	CAS No.	Water and Organisms (µg/L)	Organisms Only (µg/L)
Phenol	108952	4000	300000
2,4,5-Trichlorophenol	95954	300	600
2,4,6-Trichlorophenol	88062	1.4	2.7
Acenaphthene	83329	70	90
Anthracene	120127	300	400
Bis(2-Chloroethyl) Ether	111444	0.03	2.1
Bis(2-Chloro-1-Methylethyl) Ether	108601	200	3000
Bis(Chloromethyl) Ether	542881	0.00015	0.017
Hexachlorocyclopentadiene	77474	3	4
Hexachloroethane	67721	0.1	0.1
Nitrobenzene	98953	10	500
N-Nitrosodimethylamine	62759	0.00065	2.7
N-Nitrosodi-n-Propylamine	621647	0.0047	0.46
N-Nitrosodiphenylamine	86306	3	5.5
Pyrene	129000	20	30
Aldrin	309002	7.4e-7	7.4e-7
Alpha-Hexchlorochyclohexane (HCH)	319846	0.00035	0.00038
Beta-Hexchlorocyclohexane (HCH)	319857	0.0079	0.014
Gamma-Hexachlorocyclohexane gamma-BHC (Lindane)	58899	4.1	4.3
Hexchlorocyclohexane (HCH)-Technical	608731	0.0064	0.0098
DDT p,p'-Dichlorodiphenyltrichlorethane	50293	0.00003	0.00003
DDE p,p'-Dichlorodiphenyldichloroethylene	72559	0.000017	0.000017
DDD p,p'-Dichlorodiphenyldichloroethane	72548	0.00012	0.00012
Dieldrin	60571	0.0000012	0.0000012
Endrin	72208	0.03	0.03
Endrin Aldehyde	7421934	1	1
Heptachlor	76448	0.0000057	0.0000057
Heptachlor Epoxide	1024573	0.000031	0.000031
Chlorophenoxy Herbicide (2,4-D)	94757	1300	12000
Chlorophenoxy Herbicide (2,4,5-TP) [Chlorophenoxy]	93721	100	400
Anatoxin-a	64285-06-9	>0.15[a]	-
Cylindrospermopsin	143545-90-8	1.0	-
Microcystins-LRk1[b]	101043-37-2	0.8	-

Footnotes to Table 1:

[a] Detection determined by Enzyme-Linked ImmunoSorbent Assay (ELISA); approximate limit of detection is 0.15 µg/L. (criterion from Cal WB Recreational Level).

[b] Other microcystin congeners may not have assigned CAS numbers. CMC criteria from Cal WB Recreational Level.

APPENDIX C

METHYL MERCURY CRITERIA

Table 1: Methyl Mercury Criteria

Beneficial Use	*Water Quality Objective: Magnitude (wet weight) Methylmercury in Tissue*	*Frequency*	*Duration*
Human Health Uses: ***Tribal Tradition & Culture (CUL).*** ***Water Contact Recreation (REC-1)*** **Aquatic Life and Wildlife Uses:** ***Wildlife Habitat (WILD);*** ***Warm Freshwater Habitat (WARM);*** ***Cold Freshwater Habitat (COLD);*** ***Preservation of Rare & Endangered Species (RARE).***	***0.2 mg/kg in highest trophic (TL) level fish, skinless fillet;*** ***If TL 3 fish, 150 – 500 millimeters (mm) total length;*** ***If TL 4 fish, 200 – 500 mm total length.***	***Not to be exceeded***	***Average in a Calendar year***
Aquatic life and Wildlife Uses: ***WILD;*** ***WARM;*** ***COLD;*** ***RARE;***	***0.05 mg/kg in whole fish 50-150 mm total length.***	***Not to be exceeded***	***Average in a breeding season.*** ***Breeding season is Feb 1 through July 31, unless specific information indicates another appropriate breeding period.***

Municipal Wastewater and Industrial Discharges

a. Applicability

This section applies to dischargers issued individual non-storm water National Pollutant Discharge Elimination System (NPDES) permits for municipal wastewater or industrial

discharges. The permitting authority shall incorporate the following requirements, as applicable, into NPDES permits during every permit issuance or renewal.

b. Water Column Translations

Because the Mercury Water Quality Objectives are fish tissue based and not water column based, fish tissue based water quality objectives were converted to water column values (denoted as "C") to be used for reasonable potential analysis and development of effluent limitations. The applicable value of C that corresponds with the water body/beneficial use designations in Table 1 shall be used to determine a discharger's reasonable potential and any applicable effluent limitation. The permitting authority shall use its best judgment to assign the most appropriate water body type (in Table 1) based on the receiving water's potential for methylation during the period of discharge(s).

Table 1. Values for C (water column concentration) based on water body type and beneficial use.

BeneficialUse of theReceiving Water	**REC-1, CUL, WARM, COLD, WILD,RARE**	**REC-1, CUL, WARM, COLD, WILD,RARE**
Water body type	Flowing water bodies (generally, rivers, creeks, streams)	Slow moving water bodies** (generally, lagoons, and marshes)
Value for "C"	12 ng/L totalmercury	4 ng/L totalmercury

**slow moving water bodies are stationary or relatively still water bodies that are expected to have higher potential to methylate mercury than flowing water bodies.

Reference: California's Final Part 2: of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California – Tribal and Subsistence Fish Beneficial Uses and Mercury Provisions at:
https://www.waterboards.ca.gov/water_issues/programs/mercury/docs/hg_prov_final.pdf.

APPENDIX D

RECREATIONAL WATER QUALITY CRITERIA

Table 1. Recreational Water Quality Criteria

The following criteria are for waters designated for primary contact recreation (REC-I):

	A **Recommendation 1**		**B** **Recommendation 2**	
	Estimated Illiness Rate (NGI): 32 per 1,000 primary contact recreators		Estimated Illiness Rate (NGI): 36 per 1,000 primary contact recreators	
Criteria Element	Magnitude		Magnitude	
Indicator	GM (cfu/100 mL)[a]	STV (cfu/100 mL)	GM (cfu/100 mL)[a]	STV (cfu/100 mL)
E. coli (fresh)	100	320	126	410
[a] EPA recommends using *EPA Method 1600* (U.S. EPA, 2002a) to measure culturable enterococci, or another equivalent method that measures culturable enterococci. EPA recommends using *EPA Method 1603* (U.S. EPA, 2002b), or any other equivalent method that measures culturable *E. coli.*				
Duration and Frequency: The water body GM should not be greater than the selected GM magnitude in any 30-day interval. There should not be greater than a ten percent excursion frequency of the selected STV magnitude in the same 30-day interval.				
Office of Water 820-F-12-058, *Recreational Water Quality Criteria*				

APPENDIX E

ORGANOLEPTIC EFFECTS

Organoleptic properties are the aspects of water that create an individual experience via the senses – including taste and odor.

The following criteria are required for waters designated for primary contact recreation (REC-I) and municipal domestic supply (MUN):

Table 1. Organoleptic Effects

Pollutant	CAS No.	Organoleptic Effect Criteria (µg/L)
Acenaphthene	83329	206
Color	---	NP
Iron	7439896	300
Monochlorobenzene	108907	20
Tainting Substance	---	NP
3-Chlorophenol	---	0.1
4-Chlorophenol	106489	0.1
2,3-Dichlorophenol	---	0.04
2,5-Dichlorophenol	---	0.5
2,6-Dichlorophenol	---	0.2
3,4-Dichlorophenol	---	0.3
2,4,5-Trichlorophenol	95954	1
2,4,6-Trichlorophenol	88062	2
2,3,4,6-Tetrachlorophenol		1
2-Methyl-4-Chlorophenol	---	1,800
3-Methyl-4-Chlorophenol	59507	3,000
3-Methyl-6-Chlorophenol	---	20
2-Chlorophenol	95578	0.1
Copper	7440508	1,000
2,4-Dichlorophenol	120832	0.3
2,4-Dimethylphenol	105679	400
Hexachlorocyclopentadiene	77474	1
Manganese	7439965	
Nitrobenzene	98953	30
Pentachloropenol	87865	30
Phenol	108952	300
Zinc	7440666	5,000

These criteria are based on organoleptic (taste and odor) effects. Because of variations in chemical nomenclature systems, this listing of pollutants does not duplicated the listing in Appendix A of 40 CFR Part 423 (9pp, 222K).

Source: Quality Criteria for Water (1986 ("Gold Book").

APPENDIX F

DESIGN FLOWS

Table 1. Design Flows

Criteria	Design Flow
Aquatic Life Acute Criteria (CMC)	1 Q 10 or 1 B 3
Aquatic Life Chronic Criteria (CCC)	7 Q 10 or 4 B 3
Human Health Criteria	Harmonic Mean Flow

Notes to Table 1:

1. CMC (Criteria Maximum Concentration) is the water quality criterion to protect against acute effects in aquatic life and is the highest instream concentration of a priority toxic pollutant consisting of a short term- average not to be exceeded more than once every three years on the average;
2. CCC (Continuous Criteria Concentration) is the water quality criterion to protect against chronic effects in aquatic life and is the highest in stream concentration of a priority toxic pollutant consisting of a 4-day average not to be exceeded more than once every three years on the average;
3. 1 Q 10 is the lowest one-day flow with an average recurrence frequency of once in 10 years determined hydrologically;
4. 1 B 3 is biologically based and indicates an allowable exceedance of once every 3 years. It is determined by EPA's computerized method (DFLOW model);
5. 7 Q 10 is the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically;
6. 4 B 3 is biologically based and indicates an allowable exceedance for 4 consecutive days once every 3 years. It is determined by EPA's computerized method (DFLOW model).

APPENDIX G

CWA SECTION 401 CERTIFICATION PROCESS

Section 401 of the Clean Water Act (CWA), 33 USC §1377 requires that any applicant for a federal license or permit which may result in a discharge into water of the United States must obtain a water quality certification from the certification authority that the discharge complies with all applicable water quality requirements. Executive Order 13868 was introduced to update EPA's "Clean Water Act Section 401 Certification rule." The updated legislation became effective on September 11, 2020.

Consistent with the CWA, the Rincon Band has been delegated authority by the US EPA for CWA§401 Certification. A project proponent must request Section 401 certification from the Rincon Band when there is the potential for a federally licensed or permitted activity to result in a discharge from a point source into waters that may impact the Rincon Reservation. A certification request is a written, signed, and dated communication from a project proponent to the Tribe. [*See Rincon Environmental Department Section 401 Water Quality Certification Application,* attached at end of this appendix].

The Rincon Band of Luiseño Indians adopts the following procedures for Section 401 certification requests. [*See Figure 1: Process for Rincon Environmental Department Section 401 Water Quality Certification*, found at end of this appendix].

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 federal action that requires a permit, license or water quality certification pursuant to §§ 401, 402 and/or 404 of the Clean Water Act.

The term "Rincon Waters" broadly includes "any surface water or groundwater, including saline waters, within the boundaries 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.

All project proponents must submit a request for a pre-application meeting with the Rincon Environmental Department (RED) in writing at least 30 days prior to submitting a Certification Request. The meeting request provides advance notification to the RED that a certification request may be forthcoming. Pre-filing meetings may be accepted by the RED at its discretion and may be conducted in-person or remotely, as deemed appropriate by the RED. Documentation of the pre-filing meeting request must be included in any certification request filed with the RED. *If a*

Certification Request does not include documentation of a request for a pre-application meeting at least 30 days prior to submitting the Certification Request, the Certification Request will be deemed to be incomplete and not processed.

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 federal action, undertaking, or project including, but not limited to, construction, operation, maintenance, repair, modification, and/or restoration which may result in any discharge to Rincon Waters.

(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:

(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 Rincon Waters 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) The "Certifying authority" is the agency responsible for certifying compliance with applicable water quality requirements in accordance with Clean Water Act Section 401.

(f) "Complete application" means an application that Rincon 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.

(g) "CFR" means the Code of Federal Regulations.

(h) "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.

(i) "EPA" means the United States Environmental Protection Agency.

(j) "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").

(k) "FERC" means the Federal Energy Regulatory Commission.

(l) "Project Proponent" is the applicant for a federal license or permit or the entity seeking certification.

(m) "Standard Certification" means a water quality Certification subject only to the conditions specified in this Ordinance.

(n) "Water Quality Certification" means a Certification that any discharge or discharges to Rincon Waters, resulting from an activity that requires a federal license or permit, will comply with the Rincon Water Resources Protection Ordinance and other appropriate requirements.

(o) "Rincon Waters" 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.

(p) "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 "Rincon Waters."

III. Number of Copies.

Two copies of each Certification Request shall be submitted to the RED.

IV. Application Fees and Refunds.

Each Certification Request shall be accompanied by a fee deposit of $750 for processing the application. Processing the Certification Request 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.

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

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

V. Timeline for Action on Section 401 Certification.

The timeline for action on a Section 401 Certification Request begins after the date that a hard copy Certification Request is documented as received by the RED. The RED may act on a certification request within a reasonable period of time, as determined by the federal licensing or permitting agency, but that time period shall not in any case exceed 1 year. If the reasonable period of time is not indicated by the federal licensing or permitting agency, the standard processing time will be 90 days. The federal agency may extend (but not shorten) the reasonable period of time, as long as it is reasonable and does not exceed one year from original receipt of the request for certification. The reasonable period of time does not stop or pause for any reason once the

Certification Request is received. Project proponents can voluntarily withdraw requests of their own accord during the reasonable period of time. In such cases the RED no longer is obligated to act on that request. Any resubmitted requests will be treated as a new certification request and the processing timeline for the new request will start anew from the beginning.

VI. Amendments to Applications.

If certain elements of the proposed project change materially after a project proponent submits a Certification Request, it may be reasonable to submit a new Certification Request; however, administrative changes and minor changes should not warrant the submission of a new certification request. 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.

VII. Certification Actions.

When RED receives a certification request, it make one of four recommendations to the submitting federal agency pursuant to its Section 401 Authority: grant certification, grant certification with conditions, deny certification, or waive its opportunity to provide certification.

(a) **Granting of Certification** shall be in writing and include a statement that the discharge will comply with water quality requirements. In this case, the federal agency will proceed with issuing the license or permit.

(b) **Granting of Certification with Conditions** shall be in writing. For Certification Conditions, each condition must be incorporated into the federal license or permit in its entirety. Each condition shall include two factors:

(1) A statement explaining why the condition is necessary to assure that the discharge from the proposed project will comply with water quality requirements; and

(2) Citation to federal, state or tribal law that authorizes the Condition.

(c) **Denial of Certification** shall be in writing and include the specific water quality requirements with which discharges will not comply. If the denial is due to insufficient information, the denial shall describe the specific water quality data or information, if any, that would be needed to assure that the range of discharges from potential projects will comply with water quality requirements. If the Certification is denied, the federal agency may not issue a license or permit for the proposed project. A project proponent may submit a new Certification Request if a previous Certification Request is denied.

(d) **Waive its opportunity to provide certification** by waiving certification expressly or by failing or refusing to act within the reasonable period of time.

Federal agency review of Section 401 Certification is limited to determining whether the certification action was taken in accordance with procedural requirements. If Section 401 Certification is granted in writing and includes a statement that the discharge from the proposed project will comply with water quality requirements, the federal license or permit may be issued. If a denial is in writing and includes the required information, the federal license or permit shall not be issued.

VIII. Complete, Incomplete, and Valid Certification Requests.

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

(b) If an application is determined to be incomplete by RED, and 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 a Certification Request complete, the federal agency applicant 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, inclusive of application fee, is received by RED.

IX. 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.

(b) If an application is determined to be complete by RED but the Rincon Business Leasing Regulations (RTC § 7.600) require 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.

X. **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 water quality requirements; or

(2) Compliance with water quality requirements is not yet 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.

XI. **Consultation with the Office of the Attorney General.**

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

(b) Before issuing a final decision, RED shall forward its' 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.

XII. **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 the applicant and the applicant's agent (if an agent is submitting the application).

(b) A full, technically accurate narrative description of the project, including the purpose and final goal, of the entire proposed activity/project.

(c) A copy of project design drawings.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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 Rincon Band shall be provided with and have ample time to properly review a final copy of valid environmental compliance documentation before taking a Certification action.

(i) The correct fee deposit.

(j) 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 Rincon Waters.

(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.

(10) Documentation that a pre-filing meeting request was submitted to the RED at least 30 days prior to submitting the certification request.

(11) The application must contain the following statement: "[*The project proponent*] hereby certifies that all information contained herein is true, accurate, and complete, to the best of my knowledge and belief." If this statement is not included, the application will be deemed to be incomplete.

XIII. Public Notice and Hearings.

RED shall provide public notice of an application at least thirty (30) 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 30 days, public notice shall be provided as much in advance of issuance as possible, but no later than simultaneously with issuance of Certification.

XIV. Action on an Application.

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 Rincon Water Quality Standards. Copies of any Certification or denial of Certification issued shall be sent to the applicant, EPA, the federal agency no later than three (3) days, after taking the Certification action. A written Certification or denial shall include:

(a) 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;

(b) The Certification action being taken and a complete list of any conditions; and

(c) A suitable summary of the information provided by the applicant for the project.

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

XV. 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 is owed by the applicant.

XVI. Petitions for Re-Consideration.

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

(a) 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:

(1) Was issued in reliance on that Certification action, and

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

(b) 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.

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

(d) A petition shall contain:

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

(2) The specific procedural 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 procedural action or failure to act occurred;

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

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

(6) The specific procedural 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.

XVII. **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.

XVIII. **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 denied without prejudice.

XIX. **Action on a Petition.**

Following examination of the petition and any necessary portion of the record, RED may:

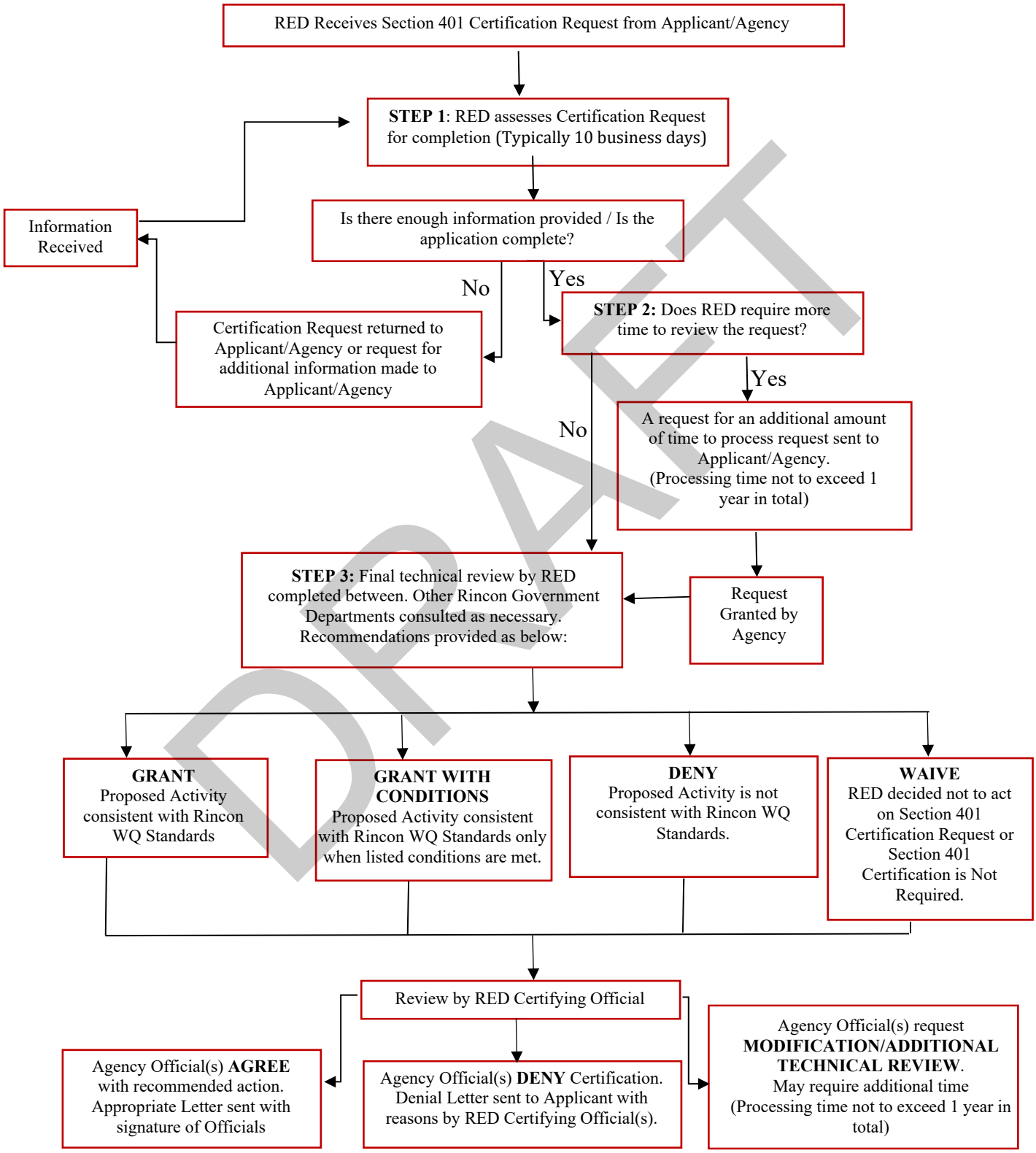
(a) Refuse to reconsider the action or failure to act of RED, if the petition fails to raise substantial issues that are appropriate for reconsideration;

(b) Deny the petition upon a finding that the original action or failure to act was appropriate and proper;

(c) Set aside or modify, if possible, the previous action or take new appropriate action; or

(d) Request additional information from the applicant.

Process for Rincon Environmental Department (RED)
Section 401 Water Quality Certification



RINCON ENVIRONMENTAL DEPARTMENT
SECTION 401 WATER QUALITY CERTIFICATION APPLICATION

[TO BE INSERTED]