

WHITE MOUNTAIN APACHE TRIBE
ENVIRONMENTAL CODE

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WHITE MOUNTAIN APACHE ENVIRONMENTAL CODE

CHAPTER ONE ESTABLISHMENT OF A TRIBAL HAZARDOUS SUBSTANCES EMERGENCY PLAN

[NOTE: Chapter One was derived from Ordinance No. 194, enacted November 7, 1994, which repealed Chapter Seven of the Government Code, Hazardous Materials Commission.]

SECTION 1.1 PURPOSE

This Chapter establishes a Tribal program for improved hazardous chemicals management in order to maintain a clean, health, and safe environment on the Fort Apache Indian Reservation. This Chapter establishes a Tribal Emergency Response Commission and a Local Emergency Planning Committee. This Chapter also sets forth facility notification requirements necessary for the development and implementation of a Tribal Emergency Response Plan. Additionally, the Chapter contains reporting requirements which provide the Tribal community with important information on the nature, location, and quantity of hazardous chemicals in their community.

SECTION 1.2 DEFINITIONS

In this Ordinance, unless otherwise provided:

- A. **“Commission”** means the Tribal Emergency Response Commission.
- B. **“Committee”** means a Local Emergency Planning Committee appointed by the Commission.
- C. **“Extremely Hazardous Substance,” “Hazardous Chemical,”** and **“Toxic Chemical”** have the meaning set forth in Section 329 of Title III, 42 U.S.C. §11049, and regulations promulgated under Title III, currently found at 40 CFR §355 *et seq.*
- D. **“Emergency Response Organization”** means any Tribal, other governmental, or private entity equipped or created for responding to environmental, health, or other emergencies. This definition includes, among other things, federal agencies and their departments, police departments, hospitals, fire departments, emergency airlift or other medical response entities, and environmental clean-up or containment crews or companies.
- E. **“Facility”** means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned and operated by the same person (or by any person which controls, is controlled by, or under common control with such person). *Facility* shall include manmade structures as well as all natural structures in which chemicals are purposely placed or

removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

F. **“Person”** means any individual, trust, firm, joint stock company, corporation (including government and tribal corporations), partnership, association, State, Federal Government or Division or Agency thereof, Tribe, municipality, commission, political subdivision of a State or Tribe, or interstate body. However, nothing in this Chapter shall constitute of waiver of Tribal Sovereign Immunity.

G. **“Release”** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, toxic chemical, or CERCLA hazardous substance.

H. **“CERCLA Hazardous Substance”** means a substance on the list defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (P.L. 96-510; 94 Stat. 2767), as amended by SARA, and regulations promulgated under CERCLA, currently located at 40 CFR §302.4.

I. **“SARA”** means the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499).

J. **“Title III”** means Title III of SARA, the federal Emergency Planning and Community Right-to-Know Act of 1986, as amended, found at 42 U.S.C. §11001.

K. **“Reservation”** means the Fort Apache Indian Reservation.

SECTION 1.3 RELATIONSHIP TO OTHER LAW

This article does not:

A. Affect or modify the obligations or liabilities of any person under federal law.

SECTION 1.4 TRIBAL EMERGENCY REPOSE COMMISSION; POWERS AND DUTIES

A. The Tribal Emergency Response Commission of the White Mountain Apache Tribe shall be immediately established.

B. The Commission shall be composed of seven (7) members: the director, manager, or chief, or their respective designees, of the (1) Tribal Police Department, (2) White Mountain Apache Tribal Fire and Rescue - Whiteriver (Tribal Fire and Rescue), (3) Tribal Emergency Medical Services, (4) Tribal Safety Department, (5) Tribal Planning Department (or other named Tribal department with primary responsibility for environmental protection and natural resources on the Reservation), (6) Tribal Legal

Department, and (7) the Tribal Health Authority and may include two (2) additional persons selected from the categories listed at Section 1.6B. The Chairperson of the Commission shall be the Chief of Tribal Fire and Rescue - Whiteriver, unless otherwise appointed by the Chairperson of the Tribal Council, by and with the advice and consent of the Tribal Council, from among the members of the Commission. The Chairperson of the Commission shall also appoint a coordinator for the Commission, who shall serve as the central contact for the regulated facilities.

C. Any member of the Commission may be removed by the Tribal Council upon the recommendation of a quorum of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office. A commission member may also be removed voluntarily upon request and approval by a quorum of the Commission and approval of the Tribal Council. Members of the Commission and the Chairperson of the Commission shall serve until so removed.

D. The members of the Commission shall serve without compensation but are eligible for reimbursement or prepayment for travel and other expenses incurred while fulfilling duties of the Commission.

E. The Commission shall meet as often as necessary and may organize itself into such support committees as necessary to implement this Chapter and Title III on this Reservation. The full Commission shall meet at least semi-annually, but preferably, on a quarterly basis. The Commission may adopt internal operating rules.

F. A majority of the Commission shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining commissioners may exercise all the powers of the Commission until the vacancy is filled. The Commission shall annually elect a Vice-Chairperson to act in the absence or disability of the Chairperson or in case of vacancy in the office of Chairperson.

G. The Commission may maintain offices and hold regularly scheduled meetings in any place within the exterior boundaries of the Reservation. Sessions of the Commission shall be public, with notice provided through local media, including radio or news publication. The Commission shall develop rules providing for such reasonable notice, including provisions for emergency or other not regularly scheduled meetings. All proceedings of the Commission shall be shown on its record, which shall be a public record. The vote of each member shall be recorded. The Commission shall develop rules for maintaining such public record.

H. The Commission shall administer this Chapter and rules adopted under this Chapter. The Commission shall administer Title III on the Reservation and may conduct whatever activities are necessary to implement this article and Title III on the Reservation. The Commission possesses all the authority and responsibilities of a Tribal Emergency Response Commission for purposes of Title III, as set forth in this Chapter.

SECTION 1.5 COMMISSION; GENERAL POWERS

A. The Commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules, regulations and forms for affecting the purposes of this Chapter. The authority to adopt rules includes establishing:
 - a. Procedures for handling public information requests.
 - b. Procedures and implementing programs for chemical emergency planning and preparedness.
 - c. Community right-to-know program reporting requirements.
 - d. Release reporting requirements, which may include reporting requirements in addition to those required by Federal law.
 - e. Means for supervising the activities of a Local Emergency Response Committee (LERC) if one is established under Section 1.6 of this Ordinance.
2. Procure by contract the temporary or intermittent services of experts or consultants if such services are to be performed on a part-time or fee-for-services basis and do not involve the performance of administrative duties.
3. Prepare and coordinate proposals for federal grants available under Title III and any other relevant programs. The Commission may accept on behalf of the Tribe any reimbursement, grant, or gift, that may become available for purposes of this Chapter. The Commission shall transmit any such monies to the Tribal treasurer for deposit in an account set up for the specific use of the Commission in fulfilling its duties.
4. Establish standard operating procedures for hazardous materials management and emergency response for members of the Commission and any department, enterprise, business, contractor or private party operating within the exterior boundaries of the Reservation.
5. Collect, collate and publish statistical and other information relating to hazardous materials within the exterior boundaries of the Reservation. The Commission shall prepare an annual report on hazardous materials management and emergency response for submission to the Tribal Council by December 31st of the reporting year. Tribal Fire and Rescue - Whiteriver shall provide computer support to implement and perform Commission duties and shall maintain a Centralized Hazardous Materials Database.
6. Conduct or participate in investigations of causes, origins, and circumstances of hazardous materials incidents within the exterior boundaries of the Reservation or affecting the Reservation populace or environment.
7. Provide training, and seek funding for such training, in the control, containment, transportation, and handling of hazardous materials and cooperate

with other governments (local, state and federal), institutions and groups to provide and further such training.

8. Employ specialized testing services to evaluate evidence and conditions involved in hazardous materials incidents subject to the availability of funding for said purposes.

9. Any action taken by the Commission pursuant to Section 1.5 A1, 2, 3, and 4 shall be taken only upon approval by the Tribal Council.

SECTION 1.6 LOCAL EMERGENCY PLANNING COMMITTEE

A. The Reservation is designated as one emergency planning district for the purposes of preparing and implementing an Emergency Response Plan.

B. The Commission shall appoint members of a Local Emergency Planning Committee for the district. The Committee may include in addition to the Commission members, one or more representative from each of the following enumerated groups or organizations:

1. Elected Tribal officials
2. Law enforcement, civil defense, fire fighting, first aid, health, local environmental, hospital and transportation personnel.
3. Broadcast and print media.
4. Community groups.
5. Owners or operators of facilities subject to the requirements of this article.

C. The Committee shall appoint a chairperson and shall adopt procedural rules by which the Committee shall function including the requirements set forth in § 301 of Title III. Such rules shall be effective upon approval by the Tribal Council.

D. The Commission, as it deems appropriate, may modify the designation of emergency planning districts in part A of this Section. The Commission may also modify its appointments to the Local Emergency Planning Committee(s). Members of the public may petition the Commission to modify the membership of the Local Emergency Planning Committee(s).

E. The Commission shall, for the purposes of organizational simplicity and efficiency, serve as the Committee, unless 2 or more emergency planning districts are created for the Reservation at which time two separate committees will be created pursuant to the provisions of this code.

SECTION 1.7

COMPREHENSIVE EMERGENCY RESPONSE PLANS

A. The Committee shall comply with § 303 of Title III.

B. Based on information from the Commission and Tribal Departments, as well as information obtained from facilities subject to this Chapter and Title III, the Committee shall prepare and annually review an Emergency Response Plan in order to address emergencies due to releases from facilities and transportation vehicles in its emergency planning district. After completing the Emergency Response Plan, the Committee shall provide a copy of the plan to the Tribal Council and submit a copy to the Commission. The Commission shall review the plan and make recommendations to the Committee on revisions that may be necessary to ensure that it meets the requirements of this Chapter or any rules adopted under this Chapter. The Commission shall further ensure that the plan is coordinated with the emergency response plans of adjoining emergency planning districts, as applicable.

C. The Committee shall evaluate the need for resources necessary to develop, implement, and exercise the Emergency Response Plan in its district and shall make recommendations to the Commission with respect to the need for additional resources that may be required and the means for providing such additional resources.

D. The Emergency Response Plan shall include the provisions listed in § 303C of Title III, such as a Hazards Analysis, and, in addition, shall include:

1. The identification of emergency response organizations (ERO) in, adjacent to, or otherwise available to the district. The EROs shall work with the Commission in making determinations necessary to implement the Emergency Response Plan.

2. A description of specialized equipment, facilities, personnel and emergency response organizations available in the district to respond to releases subject to this Section.

3. Mutual aid agreements with other jurisdictions, and any allocation of emergency response resources for responding to releases subject to this Section, if applicable.

SECTION 1.8

EXTREMELY HAZARDOUS SUBSTANCES

Unless otherwise provided in this Chapter, a substance is subject to the requirements of this code if it is an extremely hazardous substance as listed and published by the administrator of the United States Environmental Protection Agency, or its successor, and it is held in quantities at or above the threshold planning quantity as established pursuant to § 302 of Title III, currently found at 40 CFR § 355, Appendix A and B, or as that Section may be amended or revised in the future.

SECTION 1.9

FACILITIES SUBJECT TO EMERGENCY PLANNING; FACILITY EMERGENCY RESPONSE PLANS

A. A facility is subject to emergency planning requirements if a substance identified under Section 1.8 is present at the facility in an amount at or in excess of the threshold planning quantity for that substance.

B. The owner or operator of a facility subject to this Section shall notify the Commission that such facility is subject to the requirements of this Chapter pursuant to § 302 of Title III.

C. The Commission may designate additional facilities which are subject to this Chapter. The designation shall be accomplished after notification to the facility of the proposed designation.

D. The owner or operator of a facility subject to this Chapter shall provide to the Committee the identity of a facility representative who will participate in the emergency planning process as the facility emergency coordinator pursuant to § 303 of Title III.

E. Upon request, the owner or operator of a facility subject to this Chapter shall provide to the Committee any information necessary for developing and implementing the emergency plan. Such information may include:

1. Names, addresses and emergency telephone numbers of facility emergency coordinator and alternate.
2. Description of employee emergency response training and facility emergency preparedness programs.
3. Description of appropriate emergency equipment necessary to respond to a release.
4. Description of emergency response procedures including notification procedures and evacuation plans in the event of a release.
5. Identification of transport routes and transportation methods used to transport extremely hazardous substances to and from the facility.
6. Identification of hazardous substances or hazardous chemicals present at the facility, including submittal of Material Safety Data Sheets or other information as provided for in this Chapter.

F. Facilities shall work with the Commission and Committee to reduce, to the maximum extent practicable, inventories of Extremely Hazardous Substances, hazardous chemicals, and toxic chemicals.

SECTION 1.10 EMERGENCY NOTIFICATIONS OF REPORTABLE RELEASES

A. If a release of a reportable quantity of an extremely hazardous substance or CERCLA hazardous substance occurs from a facility or transportation vehicle, the owner or operator of the facility or transportation vehicle or unit, except as excluded under 40 CFR § 355.40, shall immediately notify Tribal Fire and Rescue (1st) and the White River Police Department (2nd). Such notification shall be in accordance with § 304 of Title III and regulations promulgated thereunder, which are currently found at 40 CFR § 355.

B. The notification shall occur immediately after the facility emergency coordinator or designee, or operator or owner of the transportation vehicle has knowledge of the reportable release, unless impracticable under the circumstances. The notice of the reportable release shall include the following to the extent known at the time of the notice and as long as no delay in responding to the emergency results:

1. The specific location of the release.
2. The chemical name or identity of substances released and a description of the container or vessel from which the release occurred.
3. An estimate of the quantity of substances which were released into the environment.
4. The time and duration of the release.
5. The medium or media into which the release occurred.
6. Any known or anticipated acute or chronic health risks associated with the release and, where appropriate, advice regarding medical attention necessary for exposed individuals.
7. Proper precautions to take as a result of the release, including evacuation and other proposed response actions.
8. The name and telephone number of the person or persons to be contacted for further information.

C. Within thirty (30) days after a reportable release, the owner or operator of a facility where a release occurred requiring notification pursuant to this Section shall submit to the Committee and to the Commission a written follow-up emergency notice, in accordance with Section 304 of Title III, stating and updating the information originally provided pursuant to Subsection A of this Section and including the following additional information:

1. Actions taken to respond to and contain the release.
2. Any known or anticipated acute or chronic health risks associated with the release.

3. If appropriate, advice regarding medical attention necessary for exposed individuals.

4. Measures which have been or will be taken at the facility to avoid a reoccurrence of similar releases.

D. After any additional information becomes known, the owner or operator shall update the notice in writing within seven (7) calendar days.

SECTION 1.11 LISTS OF HAZARDOUS CHEMICALS; MATERIAL SAFETY DATA SHEETS

A. For the purposes of this Chapter only, the Tribe references the standards set forth in 29 CFR § 1910.1200 [Hazard Communication] regarding hazardous chemicals and Material Data Safety Sheets ("MSDS"), derived from the Occupational Health and Safety Act of 1970 (P.L. 91-593; 84 Stat. 1590).

B. A person who owns or operates a facility which is subject to emergency planning under this Chapter, shall submit to the Committee, the Commission, and the fire department with jurisdiction over the facility a MSDS for each chemical, or a list of hazardous chemicals stored, handled, or processed at the facility pursuant to § 311 of Title III and regulations establishing minimum threshold levels adopted under that Act, currently found at 40 CFR § 370.

C. If a list of hazardous chemicals is submitted under this Section it shall include:

1. Information prescribed by § 311 of Title III.

2. The chemical abstract service registry number applicable to each such chemical and substance, if available.

3. An indication of whether the owner elects to withhold information about the hazardous chemical or extremely hazardous substance from disclosure as a trade secret.

D. On request of the Committee, the Commission, or the fire department with jurisdiction over the facility, an owner or operator of a facility who has submitted a list pursuant to this Section shall also submit the MSDS for any chemical on the list to the requesting agency. On request by any person, the Committee may make available a MSDS or transmit the request to the Commission which shall make the MSDS available, subject to the trade secret provisions and regulations adopted under Title III. If the Committee or Commission does not have the requested MSDS, the Committee or Commission shall request the MSDS from the facility owner or operator. The facility owner or operator shall make the MSDS available within thirty (30) days after receiving the request to the Committee or Commission and the Committee or Commission shall make the MSDS available to the requesting person subject to the trade secret provisions

and regulations adopted under Title III.

E. Within three months after discovery by an owner or operator of a facility of significant new information concerning an aspect of a hazardous chemical for which a list or MSDS was submitted, or within three (3) months of after a facility obtains a new hazardous chemical subject to the reporting requirements of this Section, the owner or operator shall update and submit a revised list or MSDS to the Committee, the Commission and the fire department with jurisdiction over the facility.

SECTION 1.12 EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORM

A. A person who owns or operates a facility which is required to provide a MSDS or chemical listing under Section 1.11 shall submit to the Committee, the Commission, and the fire department with jurisdiction over the facility, an emergency and hazardous chemical inventory form prepared by the commission and in substantial conformance with that developed by EPA pursuant to § 312 of Title III as well as comply with § 312 of Title III and regulations adopted under that Act, currently found at 40 CFR § 370.40.

B. The inventory form shall be submitted on or before March 1 of each year, and shall contain data on hazardous chemicals present at the facility during the preceding calendar year above minimum thresholds established in regulations under § 312 of Title III. The owner or operator shall submit a "tier II form."

C. The tier II inventory form shall contain the following information:

1. The chemical name or the common name of the chemical as provided on the material safety data sheet and the CAS number.
2. An estimate, in ranges, of the maximum amount of the hazardous chemical present at the facility at any time during the preceding year.
3. An estimate, in ranges, of the average daily amount of the hazardous chemical present at the facility during the previous year.
4. A brief description of the manner of storage of hazardous chemical.
5. The location of the hazardous chemical at the facility.
6. An indication of whether the owner elects to withhold location information or other information about a specific hazardous chemical from disclosure to the public as a trade secret.

D. An owner or operator of a facility subject to this Section shall submit the information required by this Section on the inventory form provided by the Administrator of the United States Environmental Protection Agency unless the Commission establishes its own form which prescribes identical content as prescribed by 40 CFR § 370.40.

E. For purposes of this Section, Tier II forms are the forms established under 40 CFR § 370.

SECTION 1.13 TOXIC CHEMICAL RELEASE FORMS; DEFINITIONS

A. For purposes of this Section:

1. "**Administrator**" means the Administrator of the United States Environmental Protection Agency.

2. "**Manufacture**" means to produce, prepare, import or compound a toxic chemical.

3. "**Process**" means the preparation of a toxic chemical after its manufacture for distribution in commerce either:

a. In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance, or

b. As part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product.

B. In order to implement § 313 of Title III the owner or operator of a facility subject to the requirements of this Section and § 313 of Title III and regulations adopted under that Act shall complete a toxic chemical release form as supplied by the Administrator, pursuant to § 313 of Title III, or as supplied by the Commission, for each toxic chemical listed by the Administrator pursuant to § 313 of Title III that was manufactured, processed or otherwise used in quantities exceeding the toxic chemical threshold quantity as established in § 313 of Title III and regulations promulgated under that Act during the preceding calendar year at that facility. The regulations are currently found at 40 CFR § 372. The form shall be submitted to the Administrator and to the Commission on or before July 1 of each year and shall contain data reflecting releases during the preceding calendar year.

C. The release forms required under this Section are intended to provide information to the Tribe and to the public, including citizens of communities surrounding facilities covered by this Section. The release form shall be available consistent with the trade secret provisions of Title III to inform persons about releases of toxic chemicals to the environment and to assist Tribal agencies in reducing chemical releases.

SECTION 1.14 INSPECTIONS BY TRIBAL FIRE AND RESCUE OR TRIBAL SAFETY OFFICER

A. For the purposes of this Chapter, upon reasonable notice, Tribal Fire and Rescue or the Tribal Safety Officer may enter and inspect facilities in order to determine

compliance with this Chapter and for gathering information on hazardous chemicals for the purposes of emergency planning. Facilities over which Tribal Fire and Rescue has jurisdiction, shall allow on-site inspection and shall provide to the department specific location information on hazardous chemicals at the facility.

B. Tribal Fire and Rescue, and any other authorized officer, may execute a search warrant issued by the Tribal Court in matters arising under this Chapter. Such warrant shall issue with or without a showing of probable cause that an offense has been or is being committed. If issued without probable cause, the applicant Tribal Fire and Rescue must show that the inspection is a part of a neutral scheme of inspection and review pursuant to this Ordinance.

C. The Tribal Court of the White Mountain Apache Tribe has jurisdiction upon the filing of a verified complaint by the Tribal Fire and Rescue to issue a warrant for the inspection of a facility subject to this Chapter. If necessary, the warrant shall be executed with the assistance of the White Mountain Apache Tribal Police.

D. At the time of such inspection, the manager or the manager's designee shall, upon inquiry, advise Tribal Fire and Rescue of the existence and location of any substance whose character is unknown, but which is suspected of being subject to regulation under this Ordinance. Tribal Fire and Rescue shall be allowed access to such substance and, if it is subject to such regulation, Tribal Fire and Rescue may assist the inspected party to undertake proper storage and handling, or disposal. Tribal Fire and Rescue shall not, however, be responsible for such disposal, and that responsibility shall remain at all times with the facility and its manager(s).

SECTION 1.15 VIOLATION; PENALTIES AND INJUNCTIVE RELIEF

A. ***Civil penalties.*** Any person, excluding tribal entities or tribal corporations, who fails to comply with the provisions of this Ordinance shall be subject to civil penalties of up to \$25,000 per day for each day during which the violation continues. In the case of a second or subsequent violation, any such person may be subject to civil penalties of up to \$75,000 for each day the violation continues.

B. ***Criminal penalties.*** Any person subject to the criminal jurisdiction of the White Mountain Apache Tribe who knowingly and willfully fails to comply with the provisions of this Ordinance shall, upon conviction, be fined not more than \$5,000 or imprisoned for not more than one (1) year, or both for each violation.

C. ***Injunctive relief.*** Upon proper application to the Tribal Court through the Tribal Attorney's Office, an injunction may be issued to compel action or to prohibit action in order to achieve compliance with this Ordinance.

SECTION 1.16 IMMINENT DANGERS

A. The Tribal Court of the White Mountain Apache Tribe has jurisdiction upon the filing of a verified complaint by the Commission through the Tribal Attorney's Office to restrain any hazardous materials, conditions, practices, or transportation in any place

within the exterior boundaries of the Fort Apache Indian Reservation which could reasonably be expected to cause death or serious physical harm. Such authority may be immediately utilized where it does not reasonably appear that the imminence of such danger cannot be eliminated through other lawful available means. Any order issued under this Section may require such steps to be taken as may be necessary to avoid, correct or remove the imminent danger and may prohibit the presence of any individual in locations or under conditions where such imminent danger exists; except, however, that individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations or where a cessation of operations is necessary to permit such to be accomplished in a safe and orderly manner shall not be so restrained.

B. Upon filing of any such complaint the Tribal Court of the White Mountain Apache Tribe has jurisdiction to grant such injunctive relief or temporary restraining order pending final order pursuant to this Chapter. The proceeding shall be as provided by the White Mountain Apache Rules of Civil Procedure.

C. Whenever and as soon as the Commission or its authorized representative concludes the conditions or practices described in Subsection A exist in any place within the exterior boundaries of the Fort Apache Indian Reservation, it shall inform the general public or specific population affected of the relief being requested.

SECTION 1.17 NOT A CONSENT TO BE SUED OR WAIVER OF SOVEREIGN IMMUNITY

The establishment of the Commission and the Committee and the authority granted to it by this Chapter shall not constitute consent to be sued nor a waiver of the sovereign immunity of the White Mountain Apache Tribe, its agents, or representatives in any manner whatsoever.

SECTION 1.18 SEVERABILITY

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

CHAPTER TWO
TRIBAL SOLID WASTE PERMITTING PROGRAM

[Note: Chapter Two was derived from Ordinance No. 202, enacted September 27, 1995.]

SECTION 2.1 **AUTHORITY**

A. This Chapter, "White Mountain Apache Tribal Solid Waste Ordinance" shall be governed by the Constitution of the White Mountain Apache Tribe of the Fort Apache Indian Reservation and shall extend to all persons and subjects, to all lands and other property including natural resources, and to all waters and air space within the exterior boundaries of the Fort Apache Indian Reservation ("Reservation"), including any lands which may be later added to the Reservation by any law. White Mountain Apache tribal authority shall extend outside the boundaries of the Reservation to any persons, subjects, or real property which are, or may hereafter be, included within the jurisdiction of the Tribe under any law of the United States. The purpose of this Ordinance is to regulate the disposal of solid waste on the Reservation in order to provide for the health, safety, and welfare of the Reservation environment and its populace, including temporary visitors and persons who may pass through the reservation.

B. Any person who violates any provision of this Chapter or enforceable regulation adopted pursuant to this Chapter shall be prosecuted under tribal law pursuant to the authority of the Tribe as set forth in the Constitution and such other laws, Ordinances and authorities as have or may be adopted by the White Mountain Apache Tribe of the Fort Apache Indian Reservation. The Tribal Judiciary shall be vested with all judicial powers of the Tribe, including the power to decide cases in which any person, as defined in Article II, Section 2.2 of this Chapter, is accused by the Tribal Permitting Authority of committing an offense against the laws of the Tribe. However, certain determinations regarding compliance with this Chapter may be initially made by the Tribal Permitting Authority as set forth in this Article. The powers granted to the judiciary by this Section shall include judicial powers of inherent sovereign authority or other powers which are or may later be granted or delegated by the Federal Government to the Tribe.

SECTION 2.2 **SCOPE AND DEFINITIONS**

A. Scope.

1. No TSWLF shall be constructed or operated at any location which is within the jurisdiction, or hereafter comes within the jurisdiction, of the White Mountain Apache Tribe except as it is in compliance with this Chapter. The TPA may impose more stringent requirements or standards than may be minimally required or authorized by this Chapter.

B. Definitions.

1. The definitions in Article II apply to all subparts of this Article. For purposes of this Article:

a. **"Permit"** or **"prior approval and conditions"** means any authorization, license, or equivalent control document issued under the authority of this Chapter regulating the location, operation, design, ground-water monitoring, corrective action, closure, post-closure care, and financial assurance of tribal solid waste landfills.

b. **"Permit documents"** means permit applications, draft and final TSWLF permits, or other documents that include applicable design and management conditions in accordance with Article II of this Chapter and the technical and administrative information used to explain the basis of the permit conditions.

c. **"Regional Administrator"** means the Regional Administrator from Region 9 of the U.S. Environmental Protection Agency ("EPA").

d. **"Regulations"** means those provisions duly adopted or approved by the Tribal Council to implement the Tribal Solid Waste Landfill permit program, to undertake compliance monitoring activities, to initiate and prosecute enforcement actions in the Tribal Court and to undertake such other actions or activities as are authorized by this Chapter. Any such regulation adopted shall not contradict or otherwise be inconsistent with the provisions of this Chapter.

e. **"Reservation"** means the Fort Apache Indian Reservation of the White Mountain Apache Tribe.

f. **"Tribe"** means the White Mountain Apache Tribe of the Fort Apache Indian Reservation.

g. **"Tribal Council of the White Mountain Apache Tribe"** or **"Tribal Council"** means the recognized governing body of the White Mountain Apache Tribe of the Fort Apache Indian Reservation.

h. **"Tribal Permitting Authority"** or **"TPA"** means the person or entity authorized by the Tribal Council of the White Mountain Apache Tribe of the Fort Apache Indian Reservation to implement the Tribal Solid Waste Landfill permit program, to undertake compliance monitoring activities, to initiate court actions and to undertake other actions as authorized by this Chapter.

i. **"Tribal Solid Waste Landfill"** unit or **"TSWLF"** means Tribal solid waste landfill as defined in Article II Section 2.2 of this Chapter.

j. **"Tribal program"** or **"Tribal permit program"** means all the authorities, activities, and procedures that comprise the Tribe's system

of prior approval and conditions for regulating the location, operation, design, ground-water monitoring, corrective action, closure, post-closure and financial assurance of Tribal solid waste landfills.

SECTION 2.3 RESTRICTIONS ON CONSTRUCTION

A. Until and unless this Chapter is amended, only a branch of the Tribe may engage in the management and operation of a TSWLF.

SECTION 2.4 AUTHORITY OF TRIBAL PERMITTING AUTHORITY TO PROMULGATE REGULATIONS

A. The TPA may promulgate such regulations as are necessary to implement the requirements of this Chapter. Such regulations shall have the effect of Tribal law upon approval by the Tribal Council in the same manner as Ordinances are approved pursuant to Article XV of the Constitution of the White Mountain Apache Tribe. Any such regulation adopted shall not contradict or otherwise be inconsistent with the provisions of this Chapter.

SECTION 2.5 [RESERVED]

SECTION 2.6 PERMITTING REQUIREMENTS

A. No TSWLF shall be constructed or operated at any location which is within the jurisdiction, or hereafter comes within the jurisdiction, of the White Mountain Apache Tribe except as it is in compliance with this Chapter. The TPA may impose more stringent requirements or standards than may be minimally required or authorized as in its judgment may be necessary to carry out the provisions of this Chapter. Compliance with permitting requirements means that all facilities must meet the requirements contained in this Article.

1. All TSWLF permit documents for permit determinations shall be made available for public review and comment except those which are claimed and verified by the TPA as being those which would be subject to protection under federal Freedom of Information Act, 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. §552a or other applicable law. Challenges, if any, to a determination that such information is subject to this or other protections shall be heard in the White Mountain Apache Tribal Court.

2. All final permit determinations on TSWLF permit applications shall be made known to the public. Such determinations shall be available for review at the office of the TPA. Notice of such availability shall be published or otherwise publicly acknowledged by the TPA.

B. Public comments on permit determinations shall be considered. A thirty (30) day written comment period may be provided for public review of proposed operating permits. Only written comments clearly identifying the concerns or issues will be considered by the office of the TPA. Any such comments shall be provided in letter form

and must clearly identify the commentor. The TPA may respond in writing to appropriately submitted comments within thirty (30) days of the expiration of the comment period and such responses and summary of whatever comments are actually responded to shall be available for public review at the offices of the TPA.

Public hearings shall be provided for by the TPA prior to final approval of a permit. Notice of each hearing shall be well publicized and shall also be mailed to persons who may have a particular interest in the solid waste permitting decision. A list of such persons shall be compiled and maintained. Such persons shall also be made aware of the availability of materials including policy, program, and technical information regarding the permitting decision. Notice of such public hearing shall be publicized no less than thirty (30) days prior to the date of the hearing. The notice shall identify the matters to be discussed at the hearing and shall include or be accompanied by a discussion of the TPA's tentative determination on major issues and procedures for obtaining further information. Reports, documents and data relevant to the discussion at the public hearing shall be available to the public at least thirty (30) days before the hearing.

The hearing(s) shall be held at times and places which, to the maximum extent feasible, facilitate attendance by the public. In cases of actions with broad interest, holding more than one hearing should be considered. The TPA shall schedule witnesses in advance, when necessary, to ensure maximum participation and allotment of adequate time for all speakers. Additional time shall be reserved for unscheduled testimony.

The TPA shall initiate the hearing by advising the audience of the issues involved in the decision to be made, the considerations the department will take into account, the department's tentative determinations (if any) and the information which is particularly solicited from the public. The TPA shall prepare a complete record of the hearing proceedings and make it available at no cost to anyone who requests it. Such record may consist of a transcript, a recording or other complete record. A copy of the record shall be available for public review.

C. The TPA has the authority to collect all information necessary to issue permits that are adequate to ensure compliance with Article II of this Chapter. The TPA may promulgate such regulations as are necessary to further implement or clarify this Section. Such regulations, if any, shall be promulgated pursuant to Section 2.4 of this Article.

D. 1. Prior to construction and operation a TSWLF must first obtain a permit through the tribal permit program incorporating the conditions identified in Section 2.6(d)(3) of this Article. Any such permit issued must be drafted or approved by the TPA and will not become effective until the expiration of any applicable comment period and final approval by the Tribal Council.

2. All existing TSWLFs must obtain a permit incorporating the conditions identified in Section 2.6(d)(3) of this Article. Any such permit issued must be drafted or approved by the TPA and will not become effective until the expiration of any applicable comment period and final approval by the Tribal Council. If no permit is issued for an existing TSWLF, the TPA shall set forth a

schedule providing for the final closure of the existing TSWLF mandating closure of the facility within a period of 6 months.

3. The TPA shall, at a minimum, incorporate into every permit authorizing the construction and/or operation of any TSWLF requirements adequate to ensure compliance with Article II of this Chapter. The requirements include:

a. General standards which achieve compliance with Article II Subpart A.

b. Location restrictions for TSWLF which achieve compliance with Article II Subpart B.

c. Operating criteria for TSWLF which achieve compliance with Article II Subpart C.

d. Design criteria for TSWLF which achieve compliance with Article II Subpart D.

e. Ground-water monitoring and corrective action standards for TSWLF which achieve compliance with Article II Subpart E.

f. Closure and post closure care standards for TSWLF which achieve compliance with Article II Subpart F.

g. Financial assurance standards for TSWLF which achieve compliance with Article II Subpart G.

h. Acknowledgment that the TPA may conduct any inspections, perform any tests (at the facility or on materials or samples gathered at the facility), require responses to requests for information, or take any other action reasonably calculated to assert the TPA's authority to carry out its duties pursuant to Section 2.7 of this Article and the rest of this Chapter.

SECTION 2.7 COMPLIANCE MONITORING AUTHORITY

A. The TPA is empowered to:

1. Obtain any and all information, including records and reports, from an owner or operator of a TSWLF necessary to determine whether the owner/operator is in compliance with the Tribal permitting program requirements;

2. Conduct monitoring, testing, or inspection calculated to ensure that owners/operators are in compliance with the Tribal permitting program requirements. The owner or operator shall maintain such operating and other records as the TPA may reasonably require pursuant to either a validly issued

permit or as may be directed by a validly adopted regulation.

3. Enter on or into any site or premises subject to the permit program or in which records relevant to the operation of regulated facilities or activities are kept. In the event that entry is denied, the TPA or an authorized representative(s) may execute a search warrant issued by the Tribal Court in matters arising under this Chapter. Such warrant shall issue with or without a showing of probable cause that a violation has been or is being committed. If issued without probable cause, the applicant TPA must show that the inspection is a part of a neutral scheme of inspection and review pursuant to this Chapter.

B. Any information lawfully gathered by the TPA as a result of these or other lawful activities under this or other applicable laws may be used in enforcement proceedings brought by the TPA. However, information which may be proprietary or otherwise protected information of the White Mountain Apache Tribe may only be admitted to the Tribal Court *in camera* and shall not otherwise be discoverable or releasable for public purposes. However, any information gathered which is or would be inadmissible in Tribal Court pursuant to Tribal or other applicable rules of evidence or law shall not be admissible in such enforcement proceedings.

In order to ensure that the TPA's compliance monitoring activities are adequate to ensure compliance with the permit program, the TPA may:

1. Verify the accuracy of information submitted by owners or operators of TSWLFs by accompanying any permittee to take samples and to review the results of the testing of such samples either independently or with the permittee. The TPA is authorized to conduct independent inspections, testing and monitoring, at the discretion of the TPA, to ensure that all conditions of the permit are being complied with.

2. Verify the adequacy of methods (including sampling) used by owners or operators in developing information submitted to the TPA. To this end, the TPA is authorized to review the methods used by the permittee either independently, or through the assistance of retained third parties who, in the TPA's judgment, possess adequate expertise to evaluate such methods.

3. Obtain evidence admissible in an enforcement proceeding as set forth in Subsection b, above.

4. Receive and ensure proper consideration of information submitted by the public. To this end, the TPA shall accept written comments or information submitted by the public addressing the compliance of persons, or lack thereof, with the provisions of this Chapter. The TPA shall consider such information within a reasonable period of time. The TPA shall act upon such information within its discretion and may provide an oral or written response to the commentor. It shall not be required that a public commentor provide his or her identity for purposes of this Subsection. The TPA may promulgate such regulations pursuant to Section 2.4 of this Article as may be necessary to further implement this Subsection.

SECTION 2.8 ENFORCEMENT AUTHORITY

The TPA is authorized, to the extent necessary, to employ independent counsel to prosecute enforcement and other actions addressed in this Section. Where no actual or apparent conflict of interest is present, enforcement actions may be referred to the Office of the Tribal Attorney. The Tribal Court, in an appropriately initiated action by the TPA under the Tribal Judicial Code, and the TPA are empowered and authorized to and may impose the following remedies and mandates for violation(s) of the tribal permitting program requirements and this Chapter generally:

A. Upon TPA's adequately showing to the Tribal Court that any particular activity subject to regulation by this Chapter poses a risk of, or may currently endanger or cause damage to human health or the environment, the Tribal Court may issue an order to restrain immediately and effectively any person from engaging in the complained of activity. Actions brought under this Subsection shall be conducted in accordance with the provisions of the White Mountain Apache Tribal Court Formal Rules of Civil Procedure;

B. Upon TPA's adequately showing to the Tribal Court that any person is engaging in, threatening to engage in, or continuing any activity which violates the provisions of this Chapter, Tribal Council approved regulations adopted thereunder, TPA or Tribal Court order, or permit issued pursuant to the Tribal permit program, the Tribal Court may issue an injunction to enjoin such activity. Actions brought under this Subsection shall be conducted in accordance with the provisions of the White Mountain Apache Tribal Court Formal Rules of Civil Procedure;

C. The TPA may sue in the White Mountain Apache Tribal Court to recover civil penalties for violations of the provisions of this Chapter, Tribal Council approved regulations adopted thereunder, order, or permit issued pursuant to the Tribal permit program. Such penalties shall be in the amount of up to one-thousand dollars (\$1,000) per violation per day, to a maximum of ten-thousand dollars (\$10,000) per day. Further, costs may be awarded in accordance with the provisions of the Tribal Tort Claims Act Section 3.13 as it exists or is hereafter amended. Actions brought under this Subsection shall be conducted in accordance with the provisions of the White Mountain Apache Tribal Court Formal Rules of Civil Procedure;

D. The TPA may issue compliance orders requiring any person to undertake certain activities to come into compliance with the law or conditions of its permit; it may issue requests for information to which any person must respond regarding its operations or otherwise having to do with ensuring that such person is complying with the law or conditions of its permit; it may issue a compliance schedule to any person where the TPA determines that any person is not in compliance with the law or conditions of a permit.

E. A person's failure to file a response to a request for information within fifteen (15) working days of the request shall constitute a civil violation of this Chapter. A person's failure to meet the terms of a compliance order or to meet the terms of a compliance schedule shall also constitute a civil violation of this Chapter.

F. Except for an arm or branch of the White Mountain Apache Tribe or any person acting within the official and lawful scope of their duties, it shall be a criminal offense for any person to intentionally or willfully violate the provisions of this Chapter. Persons are conclusively presumed to be aware of the requirements of this Chapter upon its adopted date. It shall not be a defense that a person was acting at the direction of a superior or supervisor. Such offenses shall be punishable to the maximum extent of the law, restricted only by the limitations set forth in the Indian Civil Rights Act of 1968, 25 U.S.C. §1302. Such matters shall be referred to the Office of the Tribal Prosecutor for consideration of filing such criminal charges. If the White Mountain Apache Tribe lacks criminal jurisdiction over the person(s) for purposes of this Chapter, the matter may be civilly prosecuted and/or referred to the appropriate federal agency or authority for criminal and/or civil prosecution.

G. No person shall dump or otherwise dispose of any household solid waste on any lands or at any place within the jurisdiction of the White Mountain Apache Tribe other than at a TSWLF unit permitted by the TPA, or otherwise in a manner not in accordance with such permits or regulations that the TPA may issue or promulgate in order to serve the purposes and intent of this Chapter. No person shall burn household wastes. No person shall dump or otherwise dispose of any other waste, including construction debris, at any place within the jurisdiction of the White Mountain Apache Tribe other than at a site, location, or disposal unit authorized by the Tribal Council or other appropriate tribal authority.

Any person who violates these conditions or regulations shall be in violation of this Chapter and shall be subject to all enforcement actions and other provisions of this Chapter. This provision is applicable regardless of whether the activity occurs on assigned or unassigned land within the meaning of the White Mountain Apache Land Code, whether the land is leased or occupied by a tribal or non-tribal entity, and regardless of the nature of any other manner in which such lands may be held or be subject to a legal interest. Additionally, such person may be required to pay for the clean-up and other impacts (including groundwater, soil or other damage or contamination) of the illegally deposited waste. It shall be within the TPA's discretion as to whether such waste shall be removed and the area remediated by tribal or non-tribal entities not related to such person, or whether such person shall be authorized to conduct such clean-up and remediation directly. The TPA shall consider authorizing such person to complete clean-up and remediation within fourteen (14) days, or within such additional time as the TPA determines is appropriate, after the person is notified in writing of the unlawful dumping. Additional costs may be recovered in accordance with the provisions of the Tribal Tort Claims Act Section 3.13 as it exists or is hereafter amended.

H. The TPA is authorized to issue written orders and take such other action in accordance with Subsection (c) of this Section compelling the owner, assignee, or occupant of buildings, grounds, or lots or assigned lands to remove rubbish, trash, weeds, wrecked auto bodies or other accumulations of filth or debris which constitutes a hazard to the public health and safety or welfare from buildings, grounds, lots, or other places which such persons may own or control. Notice shall be provided to such person not less than thirty (30) days before the day set for compliance. The notice shall either be personally served or mailed to the owner, assignee or person in control of the site at his or her last

known address. If such person does not comply with an order validly issued by the TPA, the TPA may make arrangements for the removal of such filth or debris and may assess the person the costs of removal and proper disposal of such material. If necessary, the TPA may bring an action in Tribal Court to recover the costs and may recover such other costs as are provided for in accordance with the provisions of the Tribal Tort Claims Act Section 3.13 as it exists or is hereafter amended.

SECTION 2.9 INTERVENTION IN CIVIL PROCEEDINGS

A. The TPA shall:

1. Provide notice and opportunity for public involvement in all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment);
2. Investigate and provide responses to citizen complaints about violations as set forth in Section 2.7(c)(4) of this Article; and
3. Will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

SECTION 2.10 SEVERABILITY

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

CHAPTER THREE
WATER QUALITY PROTECTION

PREAMBLE

Tú, water, is one of the gifts of the Creator that is essential to the survival of the White Mountain Apache People. Water is inseparable from our land and culture. Our homeland has always been blessed with a great number of springs, streams, and meadows to sustain a diverse and vibrant community of plants, wildlife, and people. We have always sought to protect our precious natural resources and special places. We recognize that we must assert full authority over all the lands and waters of our Reservation to protect them from abuse. The standards for water quality in this Tribal Ordinance will guide the protection of our waters for present and future generations.

*It's good we have that water. We need it to live. It's good we have that spring too.
We need it to live right.*

-- Apache Elder Nick Thompson speaking on the significance of a spring in Cibecue,
tú nchaa hal íí¹

Dził Łigai Si'áń Ndee bi Tú diyini

Water is sacred. Water for the Apache people comes from the White Mountain.

Ramon Riley, on behalf of the Apache Culture Advisory Group

1

Quoted in Western Apache Language and Culture, by Keith H. Basso, Tucson: University of Arizona Press, 1990.

SECTION 3.1

INTRODUCTION, AUTHORITY AND APPLICABILITY

A. **PURPOSES.** Pursuant to the inherent and aboriginal sovereign authority of the White Mountain Apache Tribe, and as authorized by and recognized in Section 518 of the Clean Water Act, 33 U.S.C. § 1377, (February 4, 1987), the Tribal Council of the White Mountain Apache Tribe, a federally-recognized Indian tribe, hereby enacts this Water Quality Ordinance ("Ordinance") for all waters within exterior boundaries of the Fort Apache Indian Reservation ("Reservation").

The purposes of this Ordinance and the standards contained herein are as follows:

1. To promote the health of tribal waters and the people, plants, and wildlife that depend on them through holistic management and sustainable use;
2. To designate the existing and attainable uses for which the surface water of the White Mountain Apache Tribe shall be protected;
3. To prescribe water quality standards to sustain the designated uses;
and
4. To assure that degradation of existing water quality does not occur.

The standards contained herein are intended and shall be construed to be consistent with the Clean Water Act, which declares its objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." The Tribe shares that objective for its waters, and further adds the objective of restoring and maintaining the *cultural* and *spiritual* integrity of its waters.

The Clean Water Act 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. Irrigation, primary contact, domestic water supply (including municipal and industrial), groundwater recharge, plant gathering, fish culture, and respect for culturally or religiously significant areas are other beneficial uses of the Tribal waters intended to be protected by this Ordinance. Any contamination that may result from such uses shall not lower the quality of the water below what is needed for life, including human recreation and protection and propagation of fish and wildlife that depend on Tribal waters.

B. **APPLICABILITY.** Except as specifically provided herein, this Ordinance applies to all waters within the exterior boundaries of the Reservation, including water situated wholly or partly within, or bordering upon the Reservation, including but not limited to all waters reserved by the White Mountain Apache Tribe since time immemorial. Waters which are not in immediate hydrologic connection with other surface or subsurface waters, such as some stock tanks, constructed wetlands, and treatment lagoons are excluded from this Ordinance. 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. The specified criteria apply to substances attributable to point source discharges, nonpoint sources, or instream activities.

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

C. **GENERAL STANDARDS.** The general standards in Section 3.5 of this Ordinance shall be maintained at all times and apply to all perennial, ephemeral, and intermittent streams, and to all ponds, lakes, standing waters, sub-surface waters, wetlands, and springs. The most stringent numerical criteria applicable to any perennial stream shall be maintained any time the flow equals or exceeds the lowest four-day mean flow in a three-year period (define as 4Q3). Human Health Criteria shall be implemented through the harmonic mean flow. When ephemeral and intermittent streams have a low flow value of zero, all discharges shall meet standards for the designated uses. The criteria assigned to a water body are the ones required to sustain all designated uses of the water body. When a Tribal water has more than a single existing attainable or designated use, the applicable numeric standards shall be the most stringent of those established for such a water body. The Tribal Council of the White Mountain Apache Tribe shall approve and issue surface water designations for Tribal waters and shall determine the suitability of bodies of water for primary contact purposes. The numeric and narrative criteria contained in this Ordinance will be part of the permitting and management process for all dischargers who are subject to regulation by the White Mountain Apache Tribe and/or the Federal Government. The standards shall be used in existing permitting and management processes, or new processes that may be created, in order to determine when a designated use is threatened. If standards are exceeded, and if it is determined that such exceedance would impair a designated 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.

D. **ANTI-DEGRADATION POLICY.** The anti-degradation policy for Tribal waters is set forth in Section 3.2 of this Ordinance.

E. **IMPLEMENTATION PLAN.** The plan for implementing the anti-degradation policy and other aspects of this Ordinance is set forth in Section 3.3 of this Ordinance.

F. **ENVIRONMENTAL PLANNING OFFICE.** The Tribe's Environmental Planning Office (EPO), or other designated Tribal Environmental Office or department shall work in cooperation with other Tribal entities, the U.S. Environmental Protection Agency ("EPA") and other appropriate agencies to implement this Ordinance. The responsibilities of the EPO are detailed in the Implementation Plan of Section 3.3 in this Ordinance.

G. **ADOPTION AND REVISIONS.** The Tribal Council has exclusive authority to adopt and modify this Ordinance. The Tribal Council also may revise the standards from time to time if deemed necessary through use attainability analysis or as the need arises or as a result of updated scientific information.

H. **PUBLIC HEARINGS.** Pursuant to Section 303(c) of the Clean Water Act, 33 U.S.C. § 1313(c), the White Mountain Apache Tribe shall hold public hearings at least once each three-year period for the purpose of reviewing and, as appropriate, modifying and adopting water quality standards. Revisions shall incorporate relevant

scientific and engineering advances with respect to water quality and waste water treatment. The Tribe shall hold public hearings before modifying or amending this Ordinance or incorporating, by reference, any regulations into this Ordinance. Errors resulting from inadequate or erroneous data, human or clerical oversight will be subject to correction by the Tribal Council. The discovery of such errors does not render the remaining and unaffected standards invalid. Public hearings will be held in accordance with White Mountain Apache Tribal law, as well as 40 C.F.R. Part 130 (EPA's Water Quality Management Regulation), and 40 C.F.R. Part 25 (EPA's Public Participation Regulation).

I. USE ATTAINABILITY ANALYSIS. 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 designated use, provided that the designated use is not an actual existing use, the standards may be modified to reflect attainability. Such modifications shall be carried out in accordance with use attainability analysis procedures set forth in 40 C.F.R. § 131.10 or other appropriate methods. To remove a designated use, the use attainability analysis must demonstrate that attaining the designated use is not feasible for any of the following reasons:

1. Naturally occurring pollutant concentrations prevent the attainment of the use;
2. 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;
3. 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;
4. 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;
5. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or
6. 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 and economic and social impact.

J. SEPARABILITY. If any provision of this Ordinance or the application of any provision of this Ordinance should be held to be invalid, the application of such provision to other persons or circumstances and the remainder of this Ordinance shall not

be affected thereby.

K. **SCHEDULES.** It shall be the policy of the White Mountain Apache Tribe to allow on a case-by-case basis the inclusion of a compliance schedule in a National Pollutant Discharge Elimination System ("NPDES") permit issued to an existing facility. Such a schedule of compliance will be for the purpose of providing a permittee with adequate time to make treatment facility modifications necessary to comply with water-quality based permit limitations determined to be necessary to achieve stream standards. Compliance schedules may be included in NPDES permits at the time of permit reissuance or modification and shall require compliance at the earliest practicable time, not to exceed three years. Compliance schedules also shall specify milestone dates so as to measure progress towards final project completion.

L. **VARIANCES.** The Tribal Council may allow variances from this Ordinance and the standards herein on a case-by-case basis. A variance may be allowed in certain cases where the appropriateness of specific criteria is questionable. The variance provides a period of time during which issues concerning the appropriateness of the criteria may be resolved. A variance shall be valid for no more than three years. Variances are not renewable but may be reissued again upon adequate justification. A variance shall be granted only after appropriate public participation. Variances will be allowed for anticipated non-attainment of water quality standards due to one or more of the reasons listed in 40 C.F.R. § 131.10(g). Variances shall be for specific pollutants, time-limited, and shall not forego the current designated use. Where a designated use for a water body is not now attainable but can be expected to make reasonable progress towards water quality, variances are to be issued rather than removing the designated use for that water body.

M. **SHORT TERM EXCEEDANCES.** The Tribal Environmental Planning Office or other authorized Tribal Office or department with consent from the Tribal Council, may authorize short-term activities that may cause temporary violations of the water quality standards if the White Mountain Apache Tribe determines that such activities are necessary to accommodate legitimate uses or emergencies or to protect public health and welfare. 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, tracers used in hydrological studies or activities which result in overall enhancement or maintenance of beneficial uses. Such authorization shall not be granted for activities which could result in the adverse impact on any species designated as sensitive by the Tribe. The Environmental Planning Office shall specify the degree of variance, the time limit and restoration procedures where applicable. Nothing herein shall be intended to supersede existing White Mountain Apache Tribe and federal permitting processes or requirements.

N. **DISPUTE RESOLUTION MECHANISM.** Should a dispute due to differing water quality standards arise between the White Mountain Apache Tribe and the State of Arizona, the Tribe shall follow the Dispute Resolution Mechanism set forth in 40 C.F.R. § 131.7. 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.

SECTION 3.2 ANTI-DEGRADATION POLICY

The anti-degradation policy of the White Mountain Apache Tribe is as follows:

A. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

B. Where existing water quality is better than necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Tribal Council finds, after full satisfaction of intergovernmental coordination and public participation provisions of this Ordinance, that:

1. Allowing lower water quality is necessary to accommodate important economic or social development in an area where the waters are located,

2. Water quality adequate to protect existing uses is fully protected,

3. The highest statutory and regulatory requirements for all new and existing point sources are achieved, and

4. All cost effective and reasonable best management practices for non-point source control are implemented.

C. In those cases where potential water quality impairments associated with thermal discharge is involved, the anti-degradation policy and implementing methods shall be consistent with Section 316 of the Act, 33 U.S.C. § 1326.

D. UNIQUE WATER DESIGNATIONS.

1. HIGH QUALITY WATERS.

a. Where water quality exceeds the levels necessary to support basic uses such as propagation of fish, and wildlife and recreation in and on the water, the Tribal Council may designate those waters as **high quality waters**.

b. Water quality and stream ecosystem health in high quality waters shall be maintained to protect:

- culturally or religiously significant areas
- archaeological and historical sites
- natural flow regimes
- natural flood retention capacity

- instream habitats for fish and other aquatic life
- water-dependent wildlife, including plants and wildlife designated as sensitive by the Tribe
- native riparian vegetation, including plants traditionally gathered for cultural and medicinal purposes

2. **SENSITIVE WATERS.**

a. The Tribal Council may designate a water body as a **sensitive water** and such waters shall be maintained to protect water quality and stream ecosystem health in the same manner as high quality water. In many cases, these waters have been substantially degraded from their historical condition. This state of degradation may prevent many of the uses, including recreation and support of the full assemblage of native aquatic life, that were once provided by these streams. It may not be known to what extent those uses may be restored in the future. Nevertheless, it is the Tribe's policy that these waters should be protected to encourage natural restoration to occur, and to engage in active restoration measures on a priority basis.

b. In permitting any activity that could impact in sensitive water bodies, the Tribe shall require the most stringent statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for non-point source control.

3. **OUTSTANDING TRIBAL RESOURCE WATERS.**

a. The Tribal Council may designate a water body as an **Outstanding Tribal Resource Water** due to cultural value, the presence of archeological or historic sites, ecological or biological features, scenic beauty, or other exceptional qualities of importance to the Tribe.

b. No degradation of Outstanding Tribal Resource Waters shall be permitted (i.e. their high quality shall be maintained and protected).

SECTION 3.3 IMPLEMENTATION

A. **IMPLEMENTATION PROCEDURES.** Implementation procedures are as follows:

1. The Environmental Planning Office shall implement and enforce this Ordinance, including but not limited to the water quality standards and anti-degradation policy, by establishing and maintaining controls on the discharge of pollutants to surface waters. The White Mountain Apache Tribe may adopt additional regulations and Ordinances for enforcement of the Water Quality Standards. Unless and until the White Mountain Apache Tribe asserts primary responsibility for NPDES permitting, the EPA shall work together with the Tribe to

develop, issue and enforce permits for dischargers within the Reservation in accordance with standards set forth in this Ordinance.

2. To the extent required to ensure compliance with this Ordinance, the Environmental Planning Office and other Tribal offices and departments, including, but not limited to the Watershed Planning Program, Utility Authority, Wildlife and Outdoor Recreation Division, and outside agencies as requested by the Tribe shall:

a. Monitor water quality (chemical, physical, and biological) to assess the effectiveness of pollution controls and to determine whether water quality standards are being attained;

b. Obtain and assess information pertinent to the actual environmental effect of any effluent discharge, using data that accurately represents the quality and quantity of the effluent and receiving water, with due consideration of all factors that bear on the actual or attainable use of a receiving water;

c. Advise any prospective discharger in writing, as needed, of requirements for obtaining a permit to discharge, including any additional permit requirements that the White Mountain Apache Tribe may enact;

d. Maintain and review the adequacy of existing data bases and obtain additional data when required;

e. Assess the probable impact of effluent discharges on receiving waters with regard to designated uses, anti-degradation policy, and numeric and narrative standards;

f. Require the degree of wastewater treatment that is practicable, cost-effective and commensurate with protecting and maintaining designated uses and the existing water quality of the receiving water, with consideration of the long-term Tribal objectives for the economy and environment;

g. Follow EPA-approved procedures to develop water quality-based effluent limitations and comment on technology-based effluent limitations, as appropriate, for inclusion in any Tribal or federal permit issued to a discharger;

h. Require that effluent limitations developed by the White Mountain Apache Tribe be included in any such permit as a condition for Tribal certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1341, provided that a reasonable time, not to exceed three years, for compliance shall be duly considered in determining whether certification shall be granted, and provided further that effluent discharge limitations more stringent than those contained in existing NPDES permits shall not be imposed without providing an applicant an opportunity to demonstrate that existing permit limitations are adequate to protect existing

and designated uses of receiving waters;

i. Institute and coordinate water pollution control activities with other Tribal entities, including other departments, enterprises, livestock associations, and communities as appropriate;

j. Coordinate water pollution control activities with the San Carlos Apache Tribe, State of Arizona, and federal agencies, as appropriate and in consultation with the Tribal Council;

k. Develop and pursue inspection and enforcement programs to ensure that:

(1) Dischargers comply with requirements of this Ordinance;

(2) Satisfy the requirements of any regulations the White Mountain Apache Tribe enact subsequent to the adoption of this Ordinance;

(3) Enforce federal permits with assistance from the Environmental Protection Agency; and

l. Assist the Tribal Utility Authority in providing continuing technical training for wastewater treatment facility operators through training and certification programs;

m. Encourage in conjunction with other Tribal entities and outside agencies, the development and implementation of best management practices to control nonpoint sources of pollutants to achieve compliance with this Ordinance;

n. Ensure that the provisions for public participation required by Tribal law and applicable provisions of the Clean Water Act are followed;

o. Subject to the approval of the Tribal Council, designate streams as perennial, intermittent, or ephemeral in accordance with this Ordinance and with appropriate hydrologic technical support; and

p. Provide technical support as is required to accomplish the objectives of this Ordinance, including recommendations to the Tribal Council of any permitting or management regulations which would be consistent with the purposes of this Ordinance.

B. PUBLIC NOTIFICATION.

1. Any proposed amendments of these standards must be carried out according to Tribal laws regarding public review of Tribal Ordinances.

2. Amendments of these standards shall also comply with applicable

requirements of the federal Clean Water Act.

SECTION 3.4 ENFORCEMENT & PENALTIES

A. **JURISDICTION.** Except as otherwise provided by this Code, the White Mountain Apache Tribe, through its Tribal Council, Tribal Court, and such other Tribal entities as are designated by Tribal law, shall have absolute, original, and exclusive jurisdiction to regulate and adjudicate all matters pertaining to water quality within the boundaries of the Fort Apache Indian Reservation. The Tribal Court may exercise absolute original and exclusive jurisdiction over all individuals, whether members of the White Mountain Apache Tribe, non-member Indians or non-Indians, who violate any provision described herein. This Section shall not profit federal prosecution, whether civil or criminal.

B. **NOTICE.** Signs shall be posted conspicuously at the northern and southern points of entry onto the Reservation along Arizona State Route 260 and the northern and eastern points of entry onto the Reservation along Arizona State Route 260, putting the public on notice of Tribal jurisdiction over Tribal lands. The notice shall be in a form similar to the following, to the effect that:

1. Visitors consent to Tribal jurisdiction; and
2. Persons who violate any Tribal law are trespassers and shall be subject to Tribal and Federal prosecution.

C. **PROCEDURE.** Except as otherwise provided in this Code, or as the interests of justice may require, the White Mountain Apache Formal Rules of Civil Procedure shall govern all questions of procedure arising as a result of the enforcement of this Code.

D. FEDERAL PROSECUTION.

1. Nothing in this Code shall be deemed to preclude federal prosecution of Nonmembers who trespass on the Reservation. Federal prosecution may be pursued in addition to, or in lieu of, other enforcement procedures provided by this Code.

2. Any use of Reservation waters contrary to the terms of this Code constitutes theft of Tribal assets. Accordingly, nothing in this Code shall be deemed to preclude federal prosecution under 18 U.S.C. § 1163 for theft of Tribal property. Federal prosecution may be pursued in addition to or in lieu of other enforcement procedures provided by this Code.

E. WARRANTS, SUBPOENAS, AND SERVICE OF PROCESS.

Any Authorized Officer may, in addition to exercising any of the powers granted by this Code:

1. Execute search warrants issued by the Tribal Court in matters arising under this Code;

2. Serve subpoenas or other legal documents issued in matters arising under this Code;

3. Issue citations for violations of this Code.

F. IDENTIFICATION OF SUSPECTED VIOLATORS.

1. Any Authorized Officer who has reasonable grounds to believe that a person has violated this Code, either in or out of the Officer's presence, shall identify himself or herself to such person and promptly determine whether the person is a Member or Nonmember. If the individual is a Nonmember, the Officer shall determine whether the person is Indian or non-Indian. In making such determination, the officer may demand identification and ask such questions as the Officer reasonably believes are necessary to make the determination.

2. Any person, who an Authorized Officer reasonably believes to have violated this Code, may:

a. Be issued a citation pursuant to Section 3.4 G.; or

b. Be issued a complaint regarding the individual to appear in Tribal Court.

3. If the suspected violator refuses to identify himself or herself the Officer shall enter a fictitious name, such John Doe, on the citation. After learning the defendant's true name, the Tribe shall amend the citation or complaint to reflect the defendant's true name.

G. CIVIL CITATIONS.

1. Any Authorized Officer can issue civil citations imposing fines of up to \$500 for violations of this Code. The citation form shall state that the fine can be appealed by submitting a notice of objection to the Tribal Court and that the objecting party will be required to appear at a hearing before a Tribal judge to address the matter.

2. The citation shall be prepared in duplicate and be signed by the person cited. One copy will be given to the person cited, the other copy will be filed with the Tribal Attorney.

3. The citation shall inform the person cited of the violation charged, the location, date, and time of the alleged violation, and the location, date and time of the Initial Appearance, which shall be scheduled not more than fourteen (14) days from the date of the issuance of the citation. The citation shall also inform the person cited that failure to appear at the Initial Appearance will result in the entry of a default judgment against him or her and forfeiture of bond money and/or property.

H. COMPLAINTS.

1. In lieu of issuing a citation, any Authorized Officer can issue a Complaint against any individual suspected of violating this Code. The issuance of a Complaint initiates a civil action against a suspected violator.

2. The Complaint shall be prepared in duplicate and shall be signed by the person cited. One copy will be given to the person cited, the other copy will be filed with the Tribal Legal Department.

3. The Complaint shall inform the person cited of the violation charged, the location, date, and time of the alleged violation, and the location of the Initial Appearance. The complaint shall notify the cited person that notice of their Initial Appearance date will be mailed to them within thirty (30) days of the actual day and that their failure to appear at the Initial Appearance will result in the entry of a default judgment against him or her and forfeiture of bond, money or property.

I. INITIAL APPEARANCE.

1. A person served with a Complaint shall appear at the time and place stated in the Complaint, or prior to that time if so authorized by the Court, and shall, upon the directions contained in the Complaint, admit or deny the allegations stated therein. The defendant may also file a written response to the complaint, provided that the written response is received by the Court prior to the scheduled Initial Appearance.

2. If the defendant admits liability for the cited violation(s), the Court may immediately impose a penalty or set a separate hearing to establish a penalty. If the defendant denies liability, the proceedings used to adjudicate liability shall be in accordance with the White Mountain Apache Tribe Formal Rules of Civil Procedure. Upon a showing of substantial need and in the interests of justice, the Court may order that the proceedings be held in accordance with the White Mountain Apache Tribe Informal Rules of Civil Procedures.

J. TRESPASSING, EXPULSION OF NONMEMBERS.

1. Any Nonmember who violates this Code shall be deemed a trespasser. It shall be unlawful for any Nonmember to trespass on the White Mountain Apache Reservation.

2. Any Authorized Officer may expel Nonmember who violate this Code, in addition to or in lieu of any other enforcement procedure provided for by this Code.

3. Any Nonmember who violates this Code shall also be subject to formal exclusion pursuant to Chapter 5 of the White Mountain Apache Government Code.

K. CONTEMPT.

All defendants to actions brought under this Code, whether Member or Nonmember, shall be subject to the civil contempt power of the White Mountain Apache Tribal Court, and may be sanctioned by any means provided for in the White Mountain Apache Tribal Code for civil contempt.

L. LIQUIDATED DAMAGES PROVISIONS.

1. The Department shall prepare and, at least once per year, shall review and, revise, as necessary a schedule of Liquidated Damages calculated to closely approximate the cost of providing equitable restitution to the Tribe for the damage which would be caused by each violation of each regulation of this Code. In calculating these Liquidated Damages the Department may consider, in addition to any other factors reasonably deemed relevant:

- a. The cost to the Tribe of producing and/or protecting the resource;
- b. The cost of replacing or restoring the resource;
- c. The costs of enforcement including the general overall costs and costs particularized to individual violations where appropriate; and
- d. Damages for trespass.

M. LIQUIDATED DAMAGES PRESUMPTION.

1. Since in most instances the exact amount of damages caused to the Tribe by a particular violation of this Code will be difficult or impossible to determine, it shall be presumed by the court adjudicating a complaint for violation of this Code that the amount fixed by the schedule of Liquidated Damages represents the damages owed to the Tribe as restitution if the defendant is found to be liable. This presumption may be rebutted by showing of clear and convincing evidence that the amount indicated by the schedule of Liquidated Damages is so excessive as to be punitive, or so inadequate in a particular case as to result in a gross deprivation of adequate restitution. In any case in which the presumption is successfully rebutted, the parties may introduce evidence to prove the actual damages as in any other civil case.

2. All persons shall be deemed to have consented to the Liquidated Damages provisions of this Code by their presence and by their impact to Reservation water quality.

N. PUNITIVE DAMAGES.

1. Nothing in this Code shall be deemed to preclude the Tribe, through its counsel, from praying for and being awarded punitive damages in any civil action filed for a violation of this Code wherein it is alleged that the violator has committed the acts constituting the violation with wanton, willful or malicious

disregard for the interests of the Tribe.

2. The Court, in assessing punitive damages, shall determine their amount in the same manner in which it would determine punitive damages in any other civil action. Punitive damages shall not exceed ten times the amount of the civil penalty.

O. COSTS.

1. In addition to civil penalties and liquidated and punitive damages, the Court may award payment of costs associated with damage to Tribal resources not otherwise provided for in this Code, including, but not limited to, rehabilitation, reforestation, loss of future revenue and loss of productivity.

2. The Court may also charge the violator with payment of all reasonable costs associated with the enforcement of these regulations, beginning with detection and including all processes through prosecution and collection of the settlement, such as field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs and attorney's fees.

P. DISPOSITION OF FEES, FORFEITURES, PENALTIES.

1. All fines, costs, monies penalties or damages collected for violation(s) of this Code shall be deposited in the Tribal General Fund and shall be available for expenditure in connection with the conservation and protection of water resources within the exterior bounds of the Fort Apache Indian Reservation.

2. Each Tribal judge or clerk of the Court shall, within twenty (20) days after a judgment has been rendered under the provisions of this Code, remit to the Tribal Treasurer all fines, forfeitures, damages or penalties collected.

SECTION 3.5 NARRATIVE WATER QUALITY STANDARDS

Tribal 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. In addition, the following narrative standards apply to all Tribal Waters, unless stricter standards are imposed.

A. BOTTOM DEPOSITS. The bottoms of all Tribal waters shall be free from water contaminants from other than natural causes that will settle and cause deleterious effects to the aquatic biota, including fish, or significantly alter the physical or chemical properties of the bottom.

B. FLOATING SOLIDS, OIL, AND GREASE. All waters shall be free from visible oils, scum, foam, grease and other floating materials and suspended substances of a persistent nature resulting from other than natural causes.

C. COLOR. Materials producing true color resulting from other than

natural causes shall not create an aesthetically undesirable condition; nor shall color impair the attainable uses of the water or harm aquatic life.

D. **ODOR AND TASTE.** Water contaminants from other than natural causes shall be limited to concentrations that will not impart unpalatable flavor to fish, result in offensive odor or taste arising from the water, or otherwise interfere with the existing and attainable uses of the water, nor shall taste and odor-producing substances of other than natural origin interfere with the production of a potable water supply by modern treatment methods.

E. **NUISANCE CONDITIONS.** Nutrients or other substances stimulating algal growth from other than natural causes shall not be present in concentrations that will produce objectionable algal densities, nuisance aquatic vegetation, result in a dominance of nuisance species instream, or otherwise cause nuisance conditions. When stricter requirements are not established elsewhere in this Ordinance, the minimum dissolved oxygen shall be maintained at or above 2 mg/liter in order to prevent nuisance conditions from other than natural causes. The phosphorus and nitrogen concentrations shall not be increased to levels that result in man-induced eutrophication problems. The Tribal Council may establish nutrient limitations for lakes, reservoirs, and streams and shall incorporate such limitations into appropriate water quality management plans.

F. **PATHOGENS.** Tribal water shall be virtually free from pathogens which include bacteria viruses or parasites. In particular, waters used for irrigation of table crops shall be virtually free of Salmonella and Shigella species.

G. **TURBIDITY.** Turbidity attributable to other than natural causes shall not reduce light transmission to the point that the aquatic biota is inhibited or that will cause an unaesthetic and substantial visible contrast with the natural appearance of the water. Specifically, turbidity shall not exceed 5 NTU over background when background turbidity is 50 NTU or less. When background turbidity is more than 50 NTU, there shall not be more than a 10% increase in turbidity. Background turbidity may be estimated by measuring levels upstream of the human-caused impacts or during zero runoff periods (greater than five (5) days after most recent event).

H. **MIXING ZONES.** In any perennial waters receiving a waste discharge, a continuous zone shall be maintained where the water is of adequate quality to allow the migration of aquatic life with no significant affect on their population. The cross-sectional area of mixing zones shall generally be less than 1/3 of the cross-sectional area at or above 4Q3 conditions of the receiving stream. In intermittent or ephemeral streams, discharges shall meet all applicable numeric and narrative criteria at the point of discharge with no allowance for mixing zones. There shall be no acute toxicity in mixing zones and no chronic toxicity at the edge of the mixing zone. Numeric acute criteria shall be attained at the point of discharge. Mixing zones shall not overlap sites of primary contact. Requirements for mixing zones shall be expressed in terms of specific concentration limits for specific parameters and shall be consistent with those established in the water quality management plans and implementation plans developed by the White Mountain Apache Tribe.

I. **RADIOACTIVE MATERIALS.** The radioactivity of Tribal water shall

not exceed the maximum natural background concentrations in Tribal waters.

J. **TEMPERATURE.** The introduction of heat by other than natural causes shall not increase temperature outside mixing zones by more than 2.0° C (5° F), based upon the monthly average of the maximum daily temperatures measured at mid-depth or three feet (whichever is less) outside the mixing zone. In lakes, the temperature of the water column or epilimnion (if thermal stratification exists) shall not be raised more than 1.7° C (3° F) above that which existed before the addition of heat of artificial origin, based upon the average of temperatures taken from the surface to the bottom, or the surface to the bottom of the epilimnion (if stratified). Normal daily and seasonal variations of temperature that were present before the addition of heat from other than natural sources shall be maintained. In no case shall heat of artificial origin be permitted when the maximum temperature specified for the reach would thereby be exceeded. High water temperatures caused by unusually high ambient air temperature are not violations of these standards. In cases where dissolved oxygen levels are within 0.5 mg/l of the limit, no increases in temperature will be allowed.

K. **SALINITY/MINERAL QUALITY (total dissolved solids, chlorides, and sulfates).** Existing mineral concentrations shall not be altered by municipal, industrial, or instream activities, or other waste discharges that would interfere with established designated uses. No increase exceeding 1/5 of naturally-occurring levels shall be permitted.

L. **pH.** The pH of a stream or a lake shall not fluctuate in excess of 1.0 pH unit over a period of 24 hours for other than natural causes and shall be within a range of 6.5-9.0.

M. **DISSOLVED OXYGEN.** If a surface water body is capable of supporting aquatic life, dissolved oxygen concentration shall be maintained at a minimum of 5.0 mg/l.

N. **DISSOLVED GASES.** Surface water shall be free of nitrogen and other dissolved gases at levels above 110% saturation when this supersaturation is attributable to municipal, industrial, or other discharges.

O. **TOTAL RESIDUAL CHLORINE.** Total chlorine residual, after the allowances for a mixing zone as defined herein, shall not exceed 0.1 mg/l.

P. **TOXIC SUBSTANCES.**

1. Toxic substances, including, but not limited to, pesticides, herbicides, heavy metals, and organic chemicals, shall not be present in Tribal waters above those levels identified in 40 C.F.R. § 131.36 (incorporated herein by reference except as given in Q. below) as toxic to human, animal, plant, or aquatic life, or to interfere with the normal propagation, growth, and survival of the aquatic biota, including fish. There shall be no acute toxicity. At the edge of mixing zones there shall be no chronic toxicity.

2. When appropriate, bio-monitoring evaluations following current EPA test methods may be used to determine compliance with the narrative criteria.

These protocols can be found in EPA's Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, EPA/600/4-89/001: February 1989, or the most current revision thereof. Other references are Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms: EPA/600/4-90/027F, August 1993, or the most current revision thereof; Post Third Round NPDES Permit Implementation Strategy, adopted October 1, 1992, or the most current revision thereof; and Technical Support Document for Water Quality-based Toxics Control, EPA/505/2-90-001, March 1991 or the most current revision thereof. Should the White Mountain Apache Tribe need to derive numeric criteria, without actually conducting toxicity tests, it shall use the AQUIRE (Aquatic Toxicity Information Retrieval) database and EPA's guidance, Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and their Uses, to calculate any criteria. In the event that sufficient data is not available to derive numeric criteria following the above guidance, the White Mountain Apache Tribe may use the results of toxicological studies to calculate criteria based on the following methods:

- a. Concentrations of non-persistent toxic materials that do not exceed concentrations which are chronically toxic (as determined from appropriate chronic toxicity data or- calculated as 10% of LC₅₀ values) to representative, sensitive, aquatic organisms;
- b. Concentrations of persistent toxic materials that do not bio-accumulate and do not exceed concentrations which are chronically toxic (as determined from appropriate chronic toxicity data or calculated as 5% of LC₅₀ values) to representative, sensitive aquatic organisms; and
- c. Concentrations of toxic materials that bio-accumulate and do not exceed concentrations which are chronically toxic (as determined from appropriate chronic toxicity data or calculated as 1% of LC₅₀ values) to representative, sensitive, aquatic organisms.

Toxic substances in Tribal waters known to be persistent, bio-accumulative, carcinogenic, and/or synergistic with other waste stream components may be addressed on a case-by-case basis. If ambient water concentrations of a toxic substance are found to be in excess of levels protective of aquatic and human health, per criteria given in 40 CFR 131.36, the edible portion or whole body of aquatic species of concern shall be analyzed to determine if concentrations exceed EPA or Federal Food and Drug Administration action levels. Should concentrations be exceeded, the Tribal Environmental Planning Office or designee will contact U.S. EPA Region 9 and, if necessary, issue a fish consumption advisory for the affected area.

Q. MERCURY AND ARSENIC.

1. The standard for concentrations of mercury in Tribal waters will be assessed and based on fish tissue analysis and consumption levels in accordance

with current and accepted protocol of the U. S. Environmental Protection Agency and U.S. Fish and Wildlife Service. The fish consumption standard for wildlife is based on U.S. Fish and Wildlife Service criteria and is 0.1 mg/kg (dry weight) of whole fish samples composited from a minimum of four (4) fish of the same species gathered from the same sampling location. The fish consumption standard protective of human health is based on the Federal Food and Drug Administration (FDA) criteria of 1.0 mg/kg (dry weight) of the edible portion of fish samples composited from a minimum of four (4) fish of the same species gathered from the same sampling location. Should results from two separate sampling events show mercury concentrations greater than the FDA criteria, the Tribal Environmental Planning Office or designee will contact U.S. EPA Region 9 and, if necessary, issue a fish consumption advisory for the affected area.

2. The standard for concentrations of arsenic (inorganic) in Tribal waters shall not exceed 5.0 ug/l.

SECTION 3.6 DESIGNATED USES AND SPECIFIC CRITERIA

The Tribe adopts the following water quality standards for the following designated uses for specific Tribal water bodies:

A. **WARMWATER HABITAT.** The following standards are applicable to the protection of warmwater habitat in all streams and perennial lakes, ponds and some tanks of the Reservation.

1. Temperature shall not exceed 32.2 °C (90 °F).
2. Temperature shall not be raised by more than 2.0°C due to human-caused impacts.
3. Dissolved oxygen shall not be less than 5.0 mg/L.
4. pH shall be within the range of 6.5-9.0 with a maximum change of 0.5 due to human-caused activities.
5. Total ammonia standards shall be calculated as a function of pH and temperature, in accordance with the Table for Warmwater Habitat in Appendix A.
6. Selenium concentrations shall be no more than 2.0 µg/l.
7. Toxic substances shall not be present in amounts exceeding the levels set forth in Section IV, Subsection P, of this Ordinance.

B. **MARGINAL COLDWATER HABITAT.** All standards set forth in Subsection A of this Section apply to the protection of marginal coldwater habitat, with the following exceptions:

1. The temperature shall not exceed 25° C (71.6°F).
2. Temperature shall not be raised by more than 2.0°C due to human-caused impacts.

3. Dissolved oxygen shall not be less than 6.0 mg/L.

4. Total ammonia standards shall be calculated as a function of pH and temperature, in accordance with the Table for Coldwater habitat in Appendix A.

C. COLDWATER HABITAT, INCLUDING COLDWATER FISH REARING: All standards set forth in Subsection A of this Section apply to the protection of coldwater habitat, including coldwater fish rearing, with the following exceptions:

1. The temperature shall not be raised by more than 1.0°C due to human-caused impacts.

2. Temperature shall not exceed 23°C.

3. Dissolved oxygen shall not be less than 6.0 mg/L.

4. Total phosphorus (as P) shall be less than 0.1 mg/L.

5. Total organic carbon shall be less than 7.0 mg/L.

6. Total ammonia standards shall be calculated as a function of pH and temperature, in accordance with the Table for Coldwater habitat in Appendix A.

D. HIGH-QUALITY COLDWATER HABITAT, INCLUDING COLD WATER FISH HATCHERY. All standards set forth in Subsection A of this Section apply to the protection of high-quality coldwater habitat and fish hatchery use, with the following exceptions.

1. Dissolved oxygen shall not be less than 8.0 mg/l for a one-day period and not less than 9.5 mg/L for a seven-day mean.

2. Temperature shall not exceed 20°C (68°F).

3. Weekly average temperatures shall not exceed 17 °C.

4. Temperature shall not be raised by more than 1.0°C due to human-caused impacts.

5. pH shall be within the range of 6.6 to 8.8.

6. Total phosphorus (as P) shall be less than 0.1 mg/L.

7. Total organic carbon shall be less than 7.0 mg/L.

8. Turbidity shall be less than 10 NTU, except in certain reaches where natural background conditions prevent attainment of lower turbidity.

9. Total ammonia standards shall be calculated as a function of pH and temperature, in accordance with the Table for Coldwater habitat in Appendix A.

E. **IRRIGATION.** The following numeric standards are applicable in order to protect irrigation water use and shall not be exceeded:

1.	Dissolved aluminum	5.0 mg/L
	Dissolved boron	0.75 mg/L
	Dissolved cadmium	0.01 mg/L
	Dissolved chromium*	0.10 mg/L
	Dissolved cobalt	0.05 mg/L
	Dissolved copper	0.20 mg/L
	Dissolved lead	5.0 mg/L
	Dissolved molybdenum	0.01 mg/L
	Dissolved selenium	0.13 mg/L
	Dissolved vanadium	0.1 mg/L
	Dissolved zinc	2.0 mg/L

*The standards for chromium shall be applied to an analysis which measures both the trivalent and hexavalent.

F. **DOMESTIC/INDUSTRIAL WATER SUPPLY.** The following standards are applicable in order to protect domestic, municipal and industrial (including hydropower generation) water supply uses:

1. The following numeric standards shall not be exceeded:

	Dissolved barium	1.0 mg/L
	Dissolved cadmium	0.01 mg/L
	Dissolved chromium*	0.05 mg/L
	Dissolved cyanide	0.2 mg/l
	Dissolved lead	0.05 mg/L
	Total nitrate	10.0 mg/L
	Dissolved selenium	0.05 mg/L
	Dissolved silver	0.05 mg/L
	Dissolved cyanide	0.2 mg/L
	Dissolved uranium	5.0 mg/L

Radium-226 + radium-228	30.0 pCi/L
Tritium	20,000 pCi/L
Gross alpha	15 pCi/L

*The standards for chromium shall be applied to an analysis which measures both the trivalent and hexavalentions.

G. **GROUNDWATER RECHARGE.** The above standards for domestic water supply are also applicable in order to protect areas designated for groundwater recharge.

H. **UNTREATED DRINKING WATER.** The above standards for domestic water supply are also applicable in order to protect untreated drinking water use. Waters designated for such use will be signed and may be seasonally restricted. In addition, the following standards apply:

1. *E.coli* shall not exceed a geometric mean maximum of 3 colonies/100ml and a single sample maximum of 4 colonies/100ml.
2. Turbidity shall not exceed 10 NTU.
3. The open water shall be free of algae in concentrations causing a nuisance condition or causing gastrointestinal or skin disorders.

I. **LIVESTOCK AND WILDLIFE.** The following standards are applicable to all perennial, intermittent and ephemeral streams, lakes, wetlands, and other standing tribal waters in order to protect livestock and wildlife uses:

Dissolved aluminum	5.0 mg/L
Dissolved boron	5.0 mg/L
Dissolved cadmium	0.05 mg/L
Dissolved chromium*	1.0 mg/L
Dissolved cobalt	1.0 mg/L
Dissolved copper	0.5 mg/L
Dissolved lead	0.1 mg/L
Total selenium	0.002 mg/L
Dissolved vanadium	0.1 mg/L
Dissolved zinc	25.0 mg/L
Radium-226 + radium-228	30.0 pCi/L

*The standards for chromium shall be applied to an analysis which measures both the trivalent and hexavalent ions.

J. **PRIMARY CONTACT.** The following standards are applicable in order to protect primary contact uses. They are applicable to periods when primary contact would reasonably be anticipated:

1. Fecal Coliform.

a. May 1 through September 30. The monthly geometric mean maximum for *E. coli* shall be a maximum of 47 colonies/100ml and the single sample maximum shall be 88 colonies/100ml, in accordance with a illness rate of 4 per 1,000 exposures. If single samples are found to exceed the limit, then compliance with this standard shall be determined based on a minimum of five (5) samples taken over maximum of thirty (30) days.

b. October 1 through April 30. Fecal coliform standards for Secondary Contact Recreational Use apply.

2. In any single sample, pH shall be within the range of 6.5-9.0.

3. Turbidity shall not exceed 25 NTU.

4. The open water shall be free of algae in concentrations causing a nuisance condition or causing gastrointestinal or skin disorders.

K. **SECONDARY CONTACT RECREATIONAL USE.** The following standards are applicable in order to protect secondary contact (recreation) uses:

1. In any single sample, pH shall be within the range of 6.5-9.0.

2. Turbidity shall be less than 50 NTU in river systems and 25 NTU in lakes.

3. The amount of fecal coliform bacteria expressed in colony forming units per 100 ml of water (cfu/100ml) shall not exceed:

30-day geometric mean, 5 sample minimum	1000
10% of samples of a 30-day period	2000
Single sample maximum	4000

L. **CEREMONIAL PRIMARY CONTACT:** The standards for primary contact waters set forth in subparagraph J shall apply to protect ceremonial uses.

M. **GATHERING OF MEDICINAL OR OTHERWISE CULTURALLY SIGNIFICANT PLANTS:** The standards for Secondary Contact Recreation shall be

applied to protect this use. In addition, native riparian and wetland plants shall not be removed without Tribal review and authorization, unless they are being gathered by individual Tribal members for private use.

N. **CULTURAL SIGNIFICANCE.** Actions that disrespect waters of religious significance are prohibited. Potential violations of this standard will be reviewed by the Cultural Advisory Committee. Any actions that may affect these waters must be reviewed and approved under the Tribal Plan and Project Review Process.

O. **FLOOD CONTROL.** This standard is designated for all Tribal wetlands that serve to retain or absorb flood waters. Any actions that may affect the long-term capacity of these areas to retain flood waters must be reviewed and approved under the Tribal Plan and Project Review Process. The water quality, physical, biological and hydrologic characteristics of wetlands shall be maintained. Wetlands shall not be used in lieu of storm water treatment.

SECTION 3.7 WATER QUALITY SAMPLING AND ANALYSIS

A. **METHODOLOGY.** All methods of sample collection, preservation, and analysis used in determining water quality and maintenance of these standards shall be in accordance with procedures prescribed by the latest edition of EPA's "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (40 C.F.R. Part 136) and by approved Tribal quality assurance plans.

B. **BACTERIOLOGICAL SURVEYS.** In conducting such surveys, the monthly geometric mean shall be used in assessing attainment of standards when a minimum of five (5) samples is collected in a thirty day period. No single sample shall exceed the upper limit for bacterial concentration, as set forth in Section V, when less than five (5) samples are collected in a thirty (30) day period.

C. **SAMPLING PROCEDURES.** The following sampling procedures shall be used:

1. Stream monitoring stations below waste discharges shall be located outside the mixing zone.

2. Sampling in lakes, including artificial lakes, shall be located where the attainment of a water quality standard is to be assessed. Water quality measurements shall be taken at intervals in the water column at a sampling station. For toxic substances and nutrients, the entire water column shall be monitored. For dissolved oxygen in stratified lakes, measurements shall be made in the epilimnion after analysis of stratification. In non-stratified lakes, measurement will be made at intervals throughout the entire water column.

3. General assessments of Tribal Water Quality Standards and protection of designated uses may be conducted by sampling below the confluence of connecting river and stream tributaries.

SECTION 3.8 DEFINITIONS

A. The following terms shall have the following definitions when used in this Ordinance:

1. "**ACUTE TOXICITY**": Toxicity that exerts short-term lethal impacts on representative organisms with a duration of exposure generally less than or equal to 48 hours. Acute toxicity shall be determined in accordance with procedures specified in EPA/600/4-90/27, "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms." Other methods may be used as appropriate to determine acute effects other than lethality such as, but not limited to, behavioral changes and immobilization.

2. "**ALGAE**": Simple rootless plants that grow in sunlit waters in relative proportion to the amounts of nutrients available, and which can affect adversely water quality by lowering the dissolved oxygen in the water.

3. "**ANTI-DEGRADATION**": The policy set forth in Section II of this Ordinance whereby existing uses, the level of water quality necessary to protect those uses, and general aquatic and riparian ecosystem health is maintained and protected.

4. "**AQUATIC BIOTA**": Animal and plant life in the water.

5. "**ATTAINABLE USE**": Use of surface water meeting water quality and all other characteristics necessary to support and maintain the use, as specified in Section VI of this Ordinance, or which would support and maintain the use after the implementation of standards set forth in this Ordinance.

6. "**AQUATIC LIFE CRITERIA**": Pollutant concentrations, levels, or narrative statements, representing a quality of water that is protective of aquatic life.

7. "**BEST MANAGEMENT PRACTICES**": Practices 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.

8. "**BIO-ACCUMULATION**": The process of a chemical accumulating in a biological food chain by being passed from one organism to another as the contaminated organism is preyed upon by another organism.

9. "**BIO-CONCENTRATION**": Uptake and retention of a substance by an aquatic organism from the surrounding water only, through gill membranes or other external body surfaces.

10. "**CAS NUMBER**": Chemical abstract service number; each chemical has a specific identification number.

11. **"CARCINOGENIC"**: Cancer causing.
12. **"CEREMONIAL USE"**: Any ceremonial use of the water in which primary contact with the water may occur but the probability of ingesting untreated water is low, including, but not limited to, sweat baths, baptisms and Sunrise ceremonies.
13. **"cfs"**: Cubic feet per second
14. **"CHRONIC TOXICITY"**: Toxicity which exerts sub-lethal effects, such as impairment of growth or reproduction, or which becomes lethal after long term exposure, generally measured in a 7-day test on representative organisms. Chronic toxicity shall be determined in accordance with procedures specified in EPA/600/4-89/001, "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms."
15. **"COLDWATER HABITAT"**: A stream reach, lake, or impoundment where the water temperature and other characteristics are suitable for the support of coldwater fish such as trout.
16. **"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 solution (true color), but also that color due to suspended matter.
17. **"CUMULATIVE"**: Increasing by successive additions.
18. **"DESIGNATED USES"**: Those uses set forth in Section V and Appendix B of this Ordinance.
19. **"DISSOLVED OXYGEN (DO)"**: 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).
20. **"DOMESTIC WATER SUPPLY"**: Water that only requires disinfection in order to be usable for drinking or cooking.
21. **"DRINKING WATER"**: Water that does not require any treatment in order to be usable for drinking or cooking.
22. **"e"**: a transcendental constant equal to 2.7182818 which is used as the base of natural logarithms.
23. **"EFFLUENT"**: Discharge into surface waters from other than natural sources.
24. **"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).

25. **"EPILIMNION"**: The layer of water that overlies the thermocline of a lake and that is subject to the action of wind.

26. **"EUTROPHICATION"**: A natural aging process during which a lake, estuary, or bay evolves into a bog, marsh or wetland and eventually disappears. During the later stages of eutrophication the waterbody is choked by abundant plant life as the result of increased amounts of nutritive compounds such as nitrogen and phosphorus. Human activities, particularly nutrient loading from human or animal wastes, can accelerate the process.

27. **"EXISTING USES"**: Those uses actually attained in a surface water body whether or not they are referred to in this Ordinance.

28. **"FECAL COLIFORM BACTERIA"**: The portion of the coliform group which is present in the gut or the feces of warmblooded animals. Fecal coliform bacteria generally include organisms that are capable of producing gas from lactose broth in a suitable culture medium within 24 hours at $44.5 \pm 0.2^{\circ}\text{C}$.

29. **"FISH HATCHERY"**: Production of fish from eggs.

30. **"FISH REARING"**: Raising of fish (trout) from fingerlings.

31. **"FISHERY"**: A balanced, diverse community of fishes controlled by the water quality, quantity, and habitat of a waterbody.

32. **"FLOOD CONTROL"**: The natural absorption and retention of flood waters by the land adjacent to a stream.

33. **"FLOW"**: Natural discharge of a stream, spring or artesian well, and may include artificial discharge of effluent.

34. **"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.

35. **"GEOMETRIC MEAN"**: A mean calculated by converting all values to logarithms; averaging the logarithms; and determining the antilogarithm of that average.

36. **"GROUNDWATER"**: Subsurface water that occurs beneath the water table (level of water in a well) in soils and geological formations that are fully saturated.

37. **"GROUNDWATER RECHARGE"**: The replenishment of aquifers by seepage of surface runoff through sediments and rock formations.

38. **"HARMONIC MEAN FLOW"**: Is the number of daily flow measurements divided by the sum of the reciprocals of the flow.

39. **"HIGH QUALITY COLDWATER HABITAT"**: A stream reach, lake, or impoundment where the water temperature and other characteristics are suitable for the support and reproduction of native coldwater fish such as Apache Trout.

40. **"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.

41. **"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.

42. **"INDUSTRIAL"**: Human activities for the production of goods or services.

43. **"INTERMITTENT LAKE"**: A type of wetland which may contain standing water for extended periods, but not throughout the year.

44. **"INTERMITTENT STREAM"**: A stream or reach of a stream that flows only at certain times of the year when receiving flow from springs, melting snow, or localized precipitation.

45. **"IRRIGATION USE"**: The use of water, after diversion, to promote the growth of crops.

46. **"LIVESTOCK AND WILDLIFE USE"**: The use of water, by ingestion, by domestic livestock and other vertebrate animals.

47. **"MARGINAL COLDWATER HABITAT"**: A stream reach, lake, or impoundment where water temperature and other characteristics are suitable for support of coldwater fish (such as trout), but where temperature and other characteristics may not always be suitable for propagation of coldwater fish.

48. **"LC-50"**: The concentration of a substance that is lethal to 50% of the test organisms within a defined time period.

49. **"MILLIGRAMS PER LITER (mg/l)"**: Unit of concentration expressed in terms of the number of milligrams is contained in a volume of one

liter; one milligram per liter is equivalent to one part per million (ppm) at unit density.

50. **"MIXING ZONE"**: A three-dimensional zone in which discharged effluent mixes with the receiving water and within which there is an accepted degradation of water quality.

51. **"NARRATIVE STANDARDS"**: A standard or criterion expressed in words rather than numerically.

52. **"NATURAL BACKGROUND"**: Levels of pollutants present in ambient water that are from natural, as opposed to human-induced, sources.

53. **"NON-POINT SOURCE"**: Pollution that is not from a discernible, single source (e.g. sediment runoff from land).

54. **"NTU"**: Nephelometric Turbidity Units; a measure of turbidity in water; see Turbidity.

55. **"NUISANCE CONDITION"**: A condition involving uncontrolled growth of aquatic plants, usually caused by excessive nutrients in water.

56. **"NUTRIENT"**: A chemical element or inorganic compound taken in by green plants and used in organic synthesis (e.g. phosphorous and nitrogen).

57. **"PATHOGENS"**: Microorganisms (bacteria, viruses, or parasites) that can cause disease in humans, animals, and plants, and can be found in sewage, in runoff from farms or rural areas populated with domestic and/or wild animals, and in water used for swimming. Fish and shellfish contaminated by pathogens can cause serious illnesses.

58. **"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.

59. **"PERSISTENT"**: Existing continuously or for a longer time than usual.

60. **"pH"**: The negative logarithm of the effective hydrogen-ion concentration in gram equivalents per liter.

61. **"PICOCURIE (pCi)"**: That quantity of radioactive material producing 2.22 nuclear transformations per minute.

62. **"POINT SOURCE"**: A discernible, confined and discrete pollutant source but not including return flows from irrigated agriculture.

63. **"POLLUTANT"**: (See water contaminant).
64. **"PRIMARY CONTACT"**: Any recreational or other water use in which there is prolonged and intimate contact with the waterbody, such as swimming and wading, involving considerable risk of ingesting water in quantities sufficient to pose a significant health hazard. Primary contact also means any use of waterbodies for traditional or ceremonial purposes in which there is intimate contact with the waterbody that may pose a significant health risk. This contact may include but is not limited to ingestion or immersion.
65. **"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.
66. **"SEGMENT"**: A surface water body that has common hydrologic characteristics or flow regulation regimes, possesses common natural physical, chemical, and biological characteristics, and exhibits common reactions to external stresses such as the discharge of pollutants.
67. **"SENSITIVE SPECIES"**: A plant, animal, or other living organism designated as sensitive by the Tribe or for which special management practices or plans have been developed by the Tribe.
68. **"SUB-SURFACE WATER"**: Water that stands or flows above ground level.
69. **"RELIGIOUS SIGNIFICANCE"**: Water bodies that are exceptionally significant as features in the spiritual landscape of tribal members and require special protections as a result of that status.
70. **"TDS"**: Total dissolved solids.
71. **"TECHNOLOGY-BASED CONTROLS"**: The application of technology-based effluent limitations as required under Section 301(b) of the Clean Water Act.
72. **"THERMAL STRATIFICATION"**: Temperature-caused horizontal layers of different densities produced in a lake.
73. **"TOXIC SUBSTANCES"**: 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.

74. **"TOXICITY"**: The degree of danger posed by a substance to animal or plant life; see "Acute Toxicity" and "Chronic Toxicity."

75. **"TURBIDITY"**: The degree to which water is cloudy or muddy in physical appearance due to suspended silt or organic mater.

76. **"USE ATTAINABILITY ANALYSIS"**: 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 C.F.R. Section 131.10(g).

77. **"WARMWATER HABITAT"**: A stream reach, lake, or impoundment where the water temperature and other characteristics are suitable for the support of warmwater 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.

78. **"WATERS" - "WATERS OF THE WHITE MOUNTAIN APACHE TRIBE"**: means all lakes, rivers, ponds, streams, springs, sub-surface waters, seeps, wetlands, canals, irrigation and drainage ditches, and all other surface and ground waters which arise on, border, transverse or underlie the Fort Apache Reservation or are otherwise within the jurisdiction of the White Mountain Apache Tribe and which contain water at some point in the year and are connected to other waters via surface or below ground flows.

79. **"WATER CONTAMINANT"**: Any substance that alters the physical, chemical, or biological qualities of water.

80. **"WATER QUALITY-BASED CONTROLS"**: Effluent limitations, as provided under Section 301(b)(1)(C) of the Clean Water Act, that are developed and imposed on point-source dischargers in order to protect and maintain applicable water quality standards.

81. **"WETLAND"**: 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 constructed wetlands intentionally constructed from non-wetland sites outside waters of the Fort Apache Indian Reservation.

82. **"ZONE OF PASSAGE"**: The portion of the receiving water outside the mixing zone where water quality is the same as that of the receiving water.

CHAPTER FOUR TRIBAL PLAN AND PROJECT REVIEW

[NOTE: Chapter Four was added by Ordinance No. 273, enacted May 18, 2015.]

SECTION 4.1 INTRODUCTION

In 1996, the Tribal Council implemented an integrated review process to regulate activities that impact Tribal lands and natural resources. Known as the White Mountain Apache Tribal Plan and Project Review, or “TPPR,” the process relies on the collaboration among the Tribe’s professional staff to guide and carry out the policies of the Tribal Council concerning the Tribe’s natural resource base. By this enactment, the Tribal Council incorporates into the Tribal Environmental Code the provisions of prior Council Resolution Nos. 08-96-182 and 02-2003-25, which established the TPPR, as revised and supplemented herein.

SECTION 4.2 DEFINITIONS

In this Code, unless the context otherwise requires:

- A. **“Applicant”** means a person who submits a project proposal.
- B. **“Land”** or **“Tribal lands,”** means the lands of the Fort Apache Indian Reservation.
- C. **“Panel”** means the TPPR Panel established in Section 4.6.
- D. **“Person”** means a natural person, individual, corporation, company, partnership, joint venture, government entity, association, or any other group or combination acting as a unit, and the plural as well as the singular number.
- E. **“Project,”** means any activity or action which occurs on Tribal lands.
- F. **“Project proposal”** means the written proposal to undertake a project, required in Section 4.8.
- G. **“TPPR”** means the White Mountain Apache Tribal Plan and Project Review.
- H. **“TPPR Code”** or **“Code”** means Chapter Four of the White Mountain Apache Tribe Environmental Code.

SECTION 4.3 SCOPE

Unless exempted under Section 4.12, this Code shall govern and is applicable to any project which impacts Tribal lands or the natural resources therein, including but not limited to, any land lease or land use permit, any mining or logging operation, any activity

within a watershed, any construction or other project which results in a disturbance to the earth, or any project which impedes the rightful use of Tribal land or natural resources by others.

SECTION 4.4 COMPLIANCE; REQUIREMENTS

No person shall undertake any project governed by this Code except as authorized through compliance with the review process of Section 4.8. Project authorization under Section 4.8 shall be limited to the terms of the approved project proposal, with any change after approval requiring additional review and approval. The failure to comply with the terms of the project approval shall be grounds for revocation of the approval and may result in enforcement action under Section 4.14. Compliance with the TPPR review and conditions does not excuse compliance with other applicable law.

SECTION 4.5 TPPR COORDINATOR

- A. The Tribe's Environmental Manager shall serve as the TPPR Coordinator.
- B. In addition to performing the duties in Section 4.8, the TPPR Coordinator shall do the following:
 - 1. Receive and process all project proposals;
 - 2. Schedule all meetings of the TPPR Panel;
 - 3. Respond to inquiries and requests for information regarding the TPPR process;
 - 4. Communicate decisions of the TPPR Panel to project applicants;
 - 5. Exercise authority delegated by the TPPR Panel to approve, deny or require pre-conditions for less complex project proposals;
 - 6. Report to the Tribal Council on behalf of the TPPR Panel; and
 - 7. Perform other duties as requested by the TPPR Panel, consistent with this Code.

SECTION 4.6 TPPR PANEL

- A. The TPPR Panel shall be composed of the following persons, or their designees, who hold the following positions.
 - 1. Tribal Cultural Resources Director;
 - 2. Game and Fish Department Biologist;
 - 3. Sensitive Species Coordinator;

4. Tribal Forester;
5. Tribal Land Office Representative;
6. Realty Office Representative;
7. Water Quality Officer;
8. Water Resources Director; and
9. TPPR Coordinator.

B. The TPPR Panel shall carry out the responsibilities assigned to it in Section 4.8. Each Panel member shall be required to participate in the Panel as a condition of holding one of the designated positions. A Panel member who is unable to attend a meeting shall designate an alternate from the absent member's department or program to attend. The alternate member shall hold and exercise the authority of the absent member, including the authority to vote at the meeting.

SECTION 4.7 TPPR ADVISORY PERSONNEL

A. The TPPR Advisory Personnel shall include, but need not be limited to, representatives from the following departments and organizations:

1. Public Works;
2. Tribal Engineering;
3. WMATCO;
4. Land Operations;
5. White Mountain Apache Housing Authority;
6. Tribal Treasurer or Controller's Office;
7. Office of the Attorney General;
8. Tribal Safety Department;
9. Planning Department;
10. Fire Department;
11. Tribal Utility Authority;
12. Cattle Associations;

13. Bureau of Indian Affairs, Fort Apache Agency; and
14. Indian Health Service.

B. The TPPR Panel may consult with the Advisory Personnel on matters relevant to the review process and, in the Panel's discretion, may draw upon the expertise of other personnel as the circumstances may warrant.

SECTION 4.8 REVIEW PROCESS

Any person, prior to undertaking a project governed by this Code, shall first submit a written proposal and comply with the review process and requirements in this Section 4.8 as follows:

A. **Step One: Submittal to TPPR Coordinator.**

The applicant shall submit a written project proposal to the TPPR Coordinator. The proposal shall describe the project in sufficient detail to enable evaluation under the criteria in Section 4.9. The applicant may be required to provide additional information and documentation, and to submit modified terms of the project proposal. For certain projects of limited scope or complexity as determined by the TPPR Coordinator and Panel, the TPPR review may be completed at the conclusion of Step One, without need for pursuing the remaining steps.

B. **Step Two: TPPR Panel Review.**

1. If required as a condition of approval, after completion of Step One, the applicant shall present the project proposal for review by the TPPR Panel. The TPPR Panel shall conduct the review meeting in a manner which permits a full review of the proposal by all Panel members and collaboration with the applicant. The Panel may approve or deny the project proposal, or require additional information or project modifications as a condition of approval.

2. Notice for meetings of the Panel shall be issued not less than two (2) days before the review meeting, unless an emergency requires an immediate meeting without the opportunity for such notice. A majority of Panel members in attendance at the meeting shall constitute a quorum. All decisions of the Panel shall be made by majority vote of those members in attendance. The TPPR Coordinator shall be permitted to vote only in the event of a tie vote of the other Panel members. Meetings of the TPPR Panel shall be open to the public, except that the Panel may conduct a portion of a meeting in executive session to protect confidential or sensitive information from disclosure. The Panel shall designate a secretary from within or without the Panel membership to take minutes at each meeting. All decisions of the Panel shall be reduced to writing.

C. **Step Three: Tribal Council Decision.**

Following review and final decision by the Panel, the applicant shall request Tribal Council review and approval only for those projects for which Tribal Council review and approval is required by law or custom. In any such review by the Tribal Council, the decision of the TPPR Panel is advisory only and shall not be binding on the Tribal Council.

SECTION 4.9 REVIEW AUTHORITY AND CRITERIA

A. The TPPR Coordinator and TPPR Panel shall have the authority to approve, disapprove, or require modifications of a project proposal, based on the following factors:

1. Verification of project authorization under applicable Tribal law and procedures;
2. Conformity of the project with applicable law;
3. The need for review and approval from other Tribal departments;
4. The ability of the Panel or other responsible Tribal entity to effectively monitor a project;
5. The impact upon cultural resources, or conflict with cultural standards or traditions; and
6. The need for additional conditions, time limitations, or project modifications to address impacts to Tribal lands or resources, to address the infringement on use rights of others, or to otherwise carry out the purpose of this Code, including the protection of cultural resources, standards and traditions.

B. The TPPR review is limited to the foregoing factors and is not intended as a means to confirm the economic viability of a project or its economic value to the community.

SECTION 4.10 RECONSIDERATION OF OUTCOME

An applicant who disagrees with the outcome of Step One or Step Two of the review process may request that the decision be reviewed at the next level of review. To further the objective of collaboration, prior to seeking reconsideration of a decision made in the TPPR process, the applicant is encouraged to first discuss the matter directly with the person or persons in the review with the professional expertise most relevant to the review factors at issue for the proposed project.

SECTION 4.11 PROMULGATION, REGULATIONS AND FORMS

The TPPR Panel may develop regulations and forms to manage the TPPR process, including the conduct of meetings.

SECTION 4.12 EXEMPT ACTIVITIES

This Code shall not apply to the following:

1. Decisions by the Tribal Land Board concerning applications for grazing land and farm land assignments;
2. Leases of individual residential units within areas which have previously been developed for residential housing; and
3. Activities undertaken within residential leaseholds or land assignments which are permitted by the terms of the residential lease or land assignment.

SECTION 4.13 RELATION TO OTHER LAWS

The provisions of this Code are procedural only and do not modify any existing law or regulation. It is intended that the procedures of this Code will satisfy the relevant assessments which may be required under the National Environmental Policy Act for certain activities of the United States government, to the extent possible.

SECTION 4.14 ENFORCEMENT

In addition to the enforcement remedies which may be authorized under this Code and other applicable law, violation of this Code shall be deemed a “trespass” as such term is defined under applicable federal and Tribal law, including but not limited to the White Mountain Apache Tribe Land Code, and shall be subject to all enforcement remedies authorized therein.

SECTION 4.15 REPORTS TO THE TRIBAL COUNCIL

The TPPR Coordinator shall prepare and submit periodic reports to the Tribal Council, not less than once every six (6) months on the activities and results of the TPPR review.

APPENDIX A

Total Ammonia (mg/l as N), Warmwater Habitat:

1. Acute Standards

pH

	6.50	6.75	7.00	7.25	7.50	7.75	8.00	8.25	8.50	8.75	9.00
0.00	29.00	26.00	23.00	19.00	14.00	10.00	6.60	3.70	2.10	1.20	0.70
1.00	28.00	26.00	23.00	19.00	14.00	9.90	6.50	3.70	2.10	1.20	0.70
2.00	28.00	26.00	22.00	18.00	14.00	9.70	6.40	3.60	2.10	1.20	0.69
3.00	28.00	25.00	22.00	18.00	14.00	9.60	6.30	3.60	2.00	1.20	0.69
4.00	27.00	25.00	22.00	15.00	14.00	9.50	6.20	3.50	2.00	1.20	0.69
5.00	27.00	25.00	22.00	15.00	13.00	9.40	6.10	3.50	2.00	1.20	0.68
6.00	27.00	24.00	21.00	18.00	13.00	9.30	6.10	3.50	2.00	1.10	0.68
7.00	26.00	24.00	21.00	17.00	13.00	9.20	6.00	3.40	2.00	1.10	0.68
8.00	26.00	24.00	21.00	17.00	13.00	9.10	6.00	3.40	1.90	1.10	0.68
9.00	26.00	24.00	21.00	17.00	13.00	9.00	5.90	3.40	1.90	1.10	0.68
10.00	25.00	23.00	21.00	17.00	13.00	8.90	5.90	3.30	1.90	1.10	0.68
11.00	25.00	23.00	20.00	17.00	13.00	8.90	5.80	3.30	1.90	1.10	0.68
12.00	25.00	23.00	20.00	17.00	13.00	8.80	5.80	3.30	1.90	1.10	0.69
13.00	25.00	23.00	20.00	16.00	12.00	8.70	5.70	3.30	1.90	1.10	0.69
14.00	25.00	23.00	20.00	16.00	12.00	8.70	5.70	3.30	1.90	1.10	0.70
15.00	24.00	23.00	20.00	16.00	12.00	8.60	5.70	3.30	1.90	1.10	0.70
16.00	24.00	22.00	20.00	16.00	12.00	8.60	5.70	3.30	1.90	1.10	0.71
17.00	24.00	22.00	20.00	16.00	12.00	8.50	5.60	3.20	1.90	1.10	0.72
18.00	24.00	22.00	19.00	16.00	12.00	8.50	5.60	3.20	1.90	1.20	0.73
19.00	24.00	22.00	19.00	16.00	12.00	8.50	5.60	3.20	1.90	1.20	0.74
20.00	24.00	22.00	19.00	16.00	12.00	8.50	5.60	3.20	1.90	1.20	0.75
21.00	24.00	22.00	19.00	16.00	12.00	8.40	5.60	3.20	1.90	1.20	0.77
22.00	24.00	22.00	19.00	16.00	12.00	8.40	5.60	3.30	1.90	1.20	0.78
23.00	24.00	22.00	19.00	16.00	12.00	8.40	5.60	3.30	1.90	1.20	0.80
24.00	24.00	22.00	19.00	16.00	12.00	8.40	5.60	3.30	2.00	1.20	0.81
25.00	24.00	22.00	19.00	16.00	12.00	8.40	5.60	3.30	2.00	1.20	0.83
26.00	22.00	20.00	18.00	15.00	11.00	7.90	5.20	3.10	1.90	1.20	0.80
27.00	20.00	19.00	17.00	14.00	10.00	7.30	4.90	2.90	1.80	1.10	0.76
28.00	19.00	18.00	15.00	13.00	9.70	6.90	4.60	2.70	1.70	1.10	0.73
29.00	18.00	16.00	14.00	12.00	9.10	6.40	4.30	2.60	1.60	1.00	0.70
30.00	17.00	15.00	13.00	11.00	8.50	6.00	4.10	2.40	1.50	0.97	0.68

APPENDIX A

Total Ammonia (mg/l as N), Warmwater Habitat:

2. Chronic Standard

pH

	6.50	6.75	7.00	7.25	7.50	7.75	8.00	8.25	8.50	8.75	9.00
0.00	2.50	2.50	2.50	2.50	2.50	2.30	1.50	0.84	0.48	0.28	0.16
1.00	2.50	2.50	2.50	2.50	2.50	2.30	1.50	0.83	0.47	0.27	0.16
2.00	2.40	2.40	2.40	2.40	2.40	2.20	1.50	0.82	0.47	0.27	0.16
3.00	2.40	2.40	2.40	2.40	2.40	2.20	1.40	0.81	0.46	0.27	0.16
4.00	2.40	2.40	2.40	2.40	2.40	2.20	1.40	0.80	0.46	0.27	0.16
5.00	2.30	2.30	2.30	2.30	2.30	2.10	1.40	0.80	0.45	0.26	0.16
6.00	2.30	2.30	2.30	2.30	23.00	2.10	1.40	0.79	0.45	0.26	0.16
7.00	2.30	2.30	2.30	2.30	2.30	2.10	1.40	0.78	0.45	0.26	0.16
8.00	2.30	2.30	2.30	2.30	2.30	2.10	1.40	0.77	0.44	0.26	0.15
9.00	2.20	2.20	2.20	2.20	2.20	2.10	1.30	0.77	0.44	0.26	0.16
10.00	2.20	2.20	2.20	2.20	2.20	2.00	1.30	0.76	0.44	0.26	0.16
11.00	2.20	2.20	2.20	2.20	2.20	2.00	1.30	0.76	0.44	0.26	0.16
12.00	2.20	2.20	2.20	2.20	2.20	2.00	1.30	0.75	0.44	0.26	0.16
13.00	2.20	2.20	2.20	2.20	2.20	2.00	1.30	0.75	0.43	0.26	0.16
14.00	2.10	2.10	2.10	2.10	2.20	2.00	1.30	0.75	0.43	0.26	0.16
15.00	2.10	2.10	2.10	2.10	2.10	2.00	1.30	0.74	0.43	0.26	0.16
16.00	2.10	2.10	2.10	2.10	2.10	2.00	1.30	0.74	0.43	0.26	0.16
17.00	2.10	2.10	2.10	2.10	2.10	1.90	1.30	0.74	0.43	0.26	0.16
18.00	2.10	2.10	2.10	2.10	2.10	1.90	1.30	0.74	0.43	0.26	0.17
19.00	2.10	2.10	2.10	2.10	2.10	1.90	1.30	0.74	0.44	0.26	0.17
20.00	2.10	2.10	2.10	2.10	2.10	1.90	1.30	0.74	0.44	0.27	0.17
21.00	1.90	1.90	1.90	1.90	1.90	1.80	1.20	0.69	0.41	0.25	0.16
22.00	1.80	1.80	1.80	1.80	1.80	1.70	1.10	0.65	0.38	0.24	0.15
23.00	1.70	1.70	1.70	1.70	1.70	1.60	1.00	0.60	0.36	0.22	0.15
24.00	1.60	1.60	1.60	1.60	1.60	1.50	0.97	0.57	0.34	0.21	0.14
25.00	1.40	1.40	1.50	1.50	1.50	1.40	0.91	0.53	0.32	0.20	0.13
26.00	1.30	1.30	1.40	1.40	1.40	1.30	0.85	0.50	0.30	0.19	0.13
27.00	1.30	1.30	1.30	1.30	1.30	1.20	0.79	0.47	0.28	0.18	0.12
28.00	1.20	1.20	1.20	1.20	1.20	1.10	0.74	0.44	0.27	0.17	0.12
29.00	1.10	1.10	1.10	1.10	1.10	1.00	0.70	0.41	0.25	0.16	0.11
30.00	1.00	1.00	1.00	1.00	1.00	0.97	0.65	0.39	0.24	0.16	0.11

APPENDIX A

Total Ammonia (mg/l as N), Coldwater Habitat:

1. Acute Standards

pH

	6.50	6.75	7.00	7.25	7.50	7.75	8.00	8.25	8.50	8.75	9.00
0.00	29.00	26.00	23.00	19.00	14.00	10.00	6.60	3.70	2.10	1.20	0.70
1.00	28.00	26.00	23.00	19.00	14.00	9.90	6.50	3.70	2.10	1.20	0.70
2.00	28.00	26.00	22.00	15.00	14.00	9.70	6.40	3.60	2.10	1.20	0.69
3.00	28.00	25.00	22.00	18.00	14.00	9.60	6.30	3.60	2.00	1.20	0.69
4.00	27.00	25.00	22.00	18.00	14.00	9.50	6.20	3.50	2.00	1.20	0.69
5.00	27.00	25.00	22.00	18.00	13.00	9.40	6.10	3.50	2.00	1.20	0.68
6.00	27.00	24.00	21.00	15.00	13.00	9.30	6.10	3.50	2.00	1.10	0.68
7.00	26.00	24.00	21.00	17.00	13.00	9.20	6.00	3.40	2.00	1.10	0.68
8.00	26.00	24.00	21.00	17.00	13.00	9.10	6.00	3.40	1.90	1.10	0.68
9.00	26.00	24.00	21.00	17.00	13.00	9.00	5.90	3.40	1.90	1.10	0.69
10.00	25.00	23.00	21.00	17.00	13.00	9.90	5.90	3.30	1.90	1.10	0.68
11.00	25.00	23.00	20.00	17.00	13.00	9.90	5.80	3.30	1.90	1.10	0.68
12.00	25.00	23.00	20.00	17.00	13.00	9.80	5.80	3.30	1.90	1.10	0.69
13.00	25.00	23.00	20.00	16.00	12.00	9.70	5.70	3.30	1.90	1.10	0.69
14.00	25.00	23.00	20.00	16.00	12.00	8.7	5.70	3.30	1.90	1.10	0.70
15.00	24.00	23.00	20.00	16.00	12.00	9.60	5.70	3.30	1.90	1.10	0.70
16.00	24.00	22.00	20.00	16.00	12.00	9.60	5.70	3.30	1.90	1.10	0.71
17.00	24.00	22.00	20.00	16.00	12.00	9.50	5.60	3.20	1.90	1.10	0.72
18.00	24.00	22.00	19.00	16.00	12.00	8.50	5.60	3.20	1.90	1.20	0.73
19.00	24.00	22.00	19.00	16.00	12.00	8.50	5.60	32.00	1.90	1.20	0.74
20.00	24.00	22.00	19.00	16.00	12.00	8.50	5.60	3.20	1.90	1.20	0.75
21.00	22.00	20.00	18.00	15.00	11.00	7.90	5.20	3.00	1.80	1.10	0.71
22.00	21.00	19.00	17.00	14.00	10.00	7.30	4.90	2.80	1.70	1.00	0.68
23.00	19.00	18.00	15.00	13.00	9.70	6.80	4.50	2.70	1.60	0.98	0.65
24.00	18.00	16.00	14.00	12.00	9.00	6.40	4.20	2.50	1.50	0.93	0.62
25.00	17.00	15.00	13.00	11.00	9.40	6.00	4.00	2.30	1.40	0.88	0.59
26.00	16.00	14.00	13.00	10.00	7.90	5.60	3.70	2.20	1.30	0.84	0.56
27.00	14.00	13.00	12.00	9.60	7.30	5.20	3.50	2.10	1.20	0.79	0.54
28.00	13.00	12.00	11.00	9.00	6.90	4.90	3.30	1.90	1.20	0.76	0.52
29.00	13.00	12.00	10.00	8.40	6.40	4.60	3.10	1.80	1.10	0.72	0.50
30.00	12.00	11.00	10.00	7.80	6.00	4.30	2.90	1.70	1.10	0.69	0.48

APPENDIX A

Total Ammonia (mg/l as N), Coldwater Habitat:

2. Chronic Standard

pH

	6.50	6.75	7.00	7.25	7.50	7.75	8.00	8.25	8.50	8.75	9.00
0.00	2.50	2.50	2.50	2.50	2.50	2.30	1.50	0.84	0.48	0.28	0.16
1.00	2.50	2.50	2.50	2.50	2.50	2.30	1.50	0.83	0.47	0.27	0.16
2.00	2.40	2.40	2.40	2.40	2.40	2.20	1.50	0.82	0.47	0.27	0.16
3.00	2.40	2.40	2.40	2.40	2.40	2.20	1.40	0.81	0.46	0.27	0.16
4.00	2.40	2.40	2.40	2.40	2.40	2.20	1.40	0.80	0.46	0.27	0.16
5.00	2.30	2.30	2.30	2.30	2.30	2.10	1.40	0.80	0.45	0.26	0.16
6.00	2.30	2.30	2.30	2.30	2.30	2.10	1.40	0.79	0.45	0.26	0.16
7.00	2.30	2.30	2.30	2.30	2.30	2.10	1.40	0.78	0.45	0.26	0.16
8.00	2.30	2.30	2.30	2.30	2.30	2.10	1.40	0.77	0.44	0.26	0.15
9.00	2.20	2.20	2.20	2.20	2.20	2.10	1.30	0.77	0.44	0.26	0.16
10.00	2.20	2.20	2.20	2.20	2.20	2.00	1.30	0.76	0.44	0.26	0.16
11.00	2.20	2.20	2.20	2.20	2.20	2.00	1.30	0.76	0.44	0.26	0.16
12.00	2.20	2.20	2.20	2.20	2.20	2.00	1.30	0.75	0.44	0.26	0.16
13.00	2.20	2.20	2.20	2.20	2.20	2.00	1.30	0.75	0.43	0.26	0.16
14.00	2.10	2.10	2.10	2.10	2.20	2.00	1.30	0.75	0.43	0.26	0.16
15.00	2.10	2.10	2.10	2.10	2.10	2.00	1.30	0.74	0.43	0.26	0.16
16.00	2.00	2.00	2.00	2.00	2.00	1.80	1.20	0.69	0.40	0.24	0.15
17.00	1.80	1.80	1.80	1.80	1.80	1.70	1.10	0.64	0.38	0.23	0.14
18.00	1.70	1.70	1.70	1.70	1.70	1.60	1.00	0.60	0.35	0.21	0.14
19.00	1.60	1.60	1.60	1.60	1.60	1.50	0.97	0.56	0.33	0.20	0.13
20.00	1.50	1.50	1.50	1.50	1.50	1.40	0.90	0.52	0.31	0.19	0.12
21.00	1.40	1.40	1.40	1.40	1.40	1.30	0.84	0.49	0.29	0.18	0.12
22.00	1.30	1.30	1.30	1.30	1.30	1.20	0.79	0.46	0.27	0.17	0.11
23.00	1.20	1.20	1.20	1.20	1.20	1.10	0.73	0.43	0.26	0.16	0.10
24.00	1.10	1.10	1.10	1.10	1.10	1.00	0.69	0.40	0.24	0.15	0.10
25.00	1.00	1.00	1.00	1.00	1.00	0.96	0.64	0.38	0.23	0.14	0.10
26.00	0.95	0.95	0.96	0.96	0.97	0.90	0.60	0.35	0.21	0.13	0.09
27.00	0.89	0.89	0.89	0.90	0.91	0.84	0.56	0.33	0.22	0.13	0.09
28.00	0.83	0.83	0.83	0.84	0.85	0.79	0.53	0.31	0.19	0.12	0.08
29.00	0.77	0.78	0.78	0.78	0.79	0.73	0.49	0.29	0.18	0.12	0.08
30.00	0.72	0.72	0.73	0.73	0.74	0.69	0.46	0.28	0.17	0	

APPENDIX B

WMAT Water Quality Standards

Designated Use

Outstanding Water	Sensitive Water	High Quality Water	Flood Control	Cultural Significance	Gathering of Plants	Ceremonial Primary	Secondary Contact	Primary Contact	Livestock & Wildlife	Untreated Drinking Water	Groundwater Recharge	Domestic/Ind. Water Supply	Irrigation	High Quality Coldwater	Coldwater Habitat	Marginal Coldwater Habitat	Warmwater Habitat
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Waterbody	Type																	
WHITE RIVER WATERSHED:																		
White River	Perennial Stream	X				X	X	X		X	X		X	X	X			
Amos Wash	Intermittent Stream	X								X		X		X				
Priebe Creek	Intermittent Stream	X								X		X		X				
Navajo Bill Tank	Tank	X								X		X		X				
Priebe Creek Tank	Tank	X								X		X		X				
Pit Hole Tank	Tank	X								X		X		X				
East Fork White River below Rock Creek confl.	Perennial Stream		X			X	X	X			X		X	X	X			
Seven Mile Canyon	Intermittent Stream	X										X		X				
Seven Mile Tank	Tank	X										X		X				
Firebox Creek above R30 Crossing	Perennial Stream					X	X					X		X	X			
Firebox Creek below R30 Crossing	Intermittent Stream		X									X		X				
East Fork White River below R52 Road, above Rock Cr.	Perennial Stream			X		X		X			X		X	X	X			X
Williams Canyon	Intermittent Stream			X								X		X				
East Fork White River, above R52 Road	Perennial Stream					X	X		X		X		X	X	X		X	
East Fork White River, in Wilderness Area	Perennial Stream					X	X				X		X	X	X			X
Rock Creek	Perennial Stream			X		X					X		X	X				
Deep Creek	Perennial Stream					X	X				X		X	X				
Elk Canyon	Perennial Stream					X	X				X		X	X				
North Fork White River, below Alch. Spring	Perennial Stream		X			X	X	X		X	X		X	X	X			
North Fork White River, above Alch. Spring	Perennial Stream			X		X	X	X		X	X		X	X	X			
Diamond Creek	Perennial Stream			X		X	X	X		X	X		X	X	X			
Coon Creek	Perennial Stream			X		X				X		X		X	X			

APPENDIX B

WMAT Water Quality Standards

Designated Use

Outstanding Water	Sensitive Water	High Quality Water	Flood Control	Cultural Significance	Gathering of Plants	Ceremonial Primary	Secondary Contact	Primary Contact	Livestock & Wildlife	Untreated Drinking Water	Groundwater Recharge	Domestic/Ind. Water Supply	Irrigation	High Quality Coldwater	Coldwater Habitat	Marginal Coldwater Habitat	Warmwater Habitat
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Waterbody	Type																	
Christmas Tree Lake	Lake				X	X		X		X				X	X	X		
Sun Creek	Perennial Stream				X	X			X		X			X	X			
Moon Creek	Perennial Stream				X	X			X		X			X	X			
North Fork	Perennial Stream			X		X			X		X			X	X			
Little Diamond	Perennial Stream			X		X			X		X			X	X			
Maverick Cienega	Wetland							X	X					X	X	X		
Coyote Creek	Perennial Stream			X		X			X		X			X	X			
Woolsey Lake	Wetland							X	X					X	X	X		
Blue Lake	Lake		X			X		X	X			X		X	X	X		
Bull Cienega Creek	Perennial Stream		X			X			X		X			X	X			
Bull Spring Cienega	Wetland		X					X	X					X	X	X		
Gomez Creek	Perennial Stream		X			X			X		X			X	X			
McNary Mill Ponds	Lake/Wetland		X			X		X	X		X			X	X	X		
Gooseberry Creek	Perennial Stream		X			X			X		X			X	X			
San Juan Lake	Intermittent Lake		X						X		X				X			
Trout Creek	Perennial Stream			X		X			X		X			X	X			
Hawley Lake	Lake			X		X		X	X			X		X	X	X		
Earl Park Lake	Lake			X		X		X	X			X		X	X	X		
Earl Creek	Perennial Stream			X		X			X		X			X	X			
Porcupine Creek	Perennial Stream			X		X			X		X			X	X			
Sand Creek	Perennial Stream			X		X			X		X			X	X			
Cyclone Lake	Lake			X		X		X	X			X		X	X	X		
Sand Take	Perennial Stream			X		X			X		X			X	X			

APPENDIX B

WMAT Water Quality Standards

Designated Use

Outstanding Water	Sensitive Water	High Quality Water	Flood Control	Cultural Significance	Gathering of Plants	Ceremonial Primary	Secondary Contact	Primary Contact	Livestock & Wildlife	Untreated Drinking Water	Groundwater Recharge	Domestic/Ind. Water Supply	Irrigation	High Quality Coldwater	Coldwater Habitat	Marginal Coldwater Habitat	Warmwater Habitat
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Waterbody	Type																	
No Name Tank	Tank		X						X		X			X				
Williams Creek	Perennial Stream			X		X			X		X			X	X			
All Subsurface/groundwaters, springs and seeps within the White River Watershed						X	X	X	X	X				X	X			
BLACK RIVER WATERSHED:																		
Black River	Perennial Stream		X			X		X	X					X	X			
Georges Basin Creek	Intermittent Stream	X							X		X			X				
Georges Basin Tank	Lake	X				X		X	X		X			X	X	X		
Nash Creek	Intermittent	X							X		X			X				
Nash Creek Reservoir	Lake	X				X		X	X		X			X	X	X		
Lone Pine Tank	Tank	X							X		X			X				
Turkey Creek	Intermittent Stream	X				X			X		X			X				
Lower Pasture Tank	Tank	X							X		X			X				
Chino Tank	Tank	X							X		X			X				
7-Mile Tank	Tank	X							X		X			X				
Upper Corn Creek Tank	Tank	X							X		X			X				
Turkey Creek North of Y-70	Perennial Stream	X				X			X		X			X	X			
West Turkey Creek	Intermittent Stream	X							X		X			X				
Weaning Pen Tank	Tank	X							X		X			X				
East Bonito Prairie Tank	Tank	X							X		X			X				
North Bonito Prairie Tank	Tank	X							X		X			X				
Corn Tank	Tank	X							X		X			X				
Bog Creek	Perennial Stream			X		X			X		X			X	X			

APPENDIX B

WMAT Water Quality Standards

Designated Use

Outstanding Water	Sensitive Water	High Quality Water	Flood Control	Cultural Significance	Gathering of Plants	Ceremonial Primary	Secondary Contact	Primary Contact	Livestock & Wildlife	Untreated Drinking Water	Groundwater Recharge	Domestic/Ind. Water Supply	Irrigation	High Quality Coldwater	Coldwater Habitat	Marginal Coldwater Habitat	Warmwater Habitat
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Waterbody	Type																	
McNary Ditch	Ditch	X							X		X			X				
Shash Bitu (Big Bear Lake)	Lake			X		X		X	X		X	X	X	X				
Little Bog Creek	Perennial Stream			X		X			X		X		X	X				
Shash Bizhaazhe (Little Bear Lake)	Lake			X		X		X	X		X	X	X	X				
Bog Tank	Tank			X					X		X			X				
Soldier Creek	Perennial Stream			X		X			X		X		X	X				
Bar H Creek	Perennial Stream		X			X			X		X		X	X				
Horseshoe Lake	Lake			X		X		X	X		X	X	X	X	X			
Horseshoe Ditch	Ditch	X							X		X			X				
No Name Creek	Perennial Stream			X		X			X		X		X	X				
Paradise Creek below Wohlenberg	Perennial Stream			X		X	X		X	X		X	X	X				
Natural Lake	Lake		X			X		X	X		X	X	X	X				
Wohlenberg Draw	Perennial Stream			X		X			X		X		X	X				
Snow Stake	Perennial Stream			X		X			X		X		X	X				
Paradise Creek, above Wohlenberg	Perennial Stream					X	X		X		X		X	X		X		
Bear Cienega Creek	Perennial Stream			X		X			X		X		X	X				
Sheep Cienega	Wetland							X	X			X	X	X				
A-1 Lake	Lake			X		X		X	X		X	X	X	X				
Ord Creek	Perennial Stream					X	X		X		X		X	X		X		
Smith Cienega	Wetland					X		X	X				X	X	X	X		
Bull Cienega	Wetland					X		X	X				X	X	X	X		
Smith Creek	Perennial Stream					X	X		X		X		X	X		X		
Becker Creek	Perennial Stream			X		X			X		X		X	X				

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Outstanding Water	Sensitive Water	High Quality Water	Flood Control	Cultural Significance	Gathering of Plants	Ceremonial Primary	Secondary Contact	Primary Contact	Livestock & Wildlife	Untreated Drinking Water	Groundwater Recharge	Domestic/Ind. Water Supply	Irrigation	High Quality Coldwater	Coldwater Habitat	Marginal Coldwater Habitat	Warmwater Habitat
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Waterbody	Type																	
Snake Creek	Perennial Stream			X		X				X		X		X	X			
Sunrise Lake	Lake			X		X				X		X		X	X			
Big Bonito	Perennial Stream			X		X				X		X		X	X		X	
Tonto Creek, below Y47 Crossing	Perennial Stream			X		X				X		X		X	X		X	
Tonto Creek above Y47 Crossing	Perennial Stream		X			X				X		X		X	X			
Perry Creek	Intermittent Stream		X							X		X			X			
Cienega Creek	Perennial Stream			X		X				X		X		X	X			
Bull Creek	Perennial Stream		X			X				X		X		X	X			
Odart Mountain	Perennial Stream			X		X				X		X		X	X			
Odart Cienega	Wetland								X	X				X	X	X		
Tonto Lake	Lake		X			X		X	X	X				X	X	X		
Willow Cienega	Wetland								X	X				X	X	X		
Sheep Cienega	Wetland								X	X				X	X	X		
Little Bonito Creek, below Y55 Crossing	Perennial Stream		X			X				X		X		X	X			
Marshall Butte Creek	Perennial Stream			X		X				X		X		X	X			
Crooked Creek	Perennial Stream			X		X				X		X		X	X		X	
Lofer Cienega Creek	Perennial Stream			X		X				X		X		X	X			X
Boggy Creek	Perennial Stream			X		X				X		X		X	X		X	
Little Bonito Creek, above Y55 Crossing	Perennial Stream			X		X				X		X		X	X		X	
Flash Creek	Perennial Stream			X		X				X		X		X	X		X	
Long Canyon	Perennial Stream			X		X				X		X		X	X			
Squaw Creek	Perennial stream			X		X				X		X		X	X		X	
Butterfly	Perennial Stream			X		X				X		X		X	X			

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Waterbody	Type																	
Butterfly Cienega	Wetland							X		X					X	X	X	
Bonito Rock Cienega	Wetland							X		X					X	X	X	
Hurricane Lake	Lake			X		X		X		X	X				X	X	X	X
Hurricane Creek	Perennial Stream				X	X				X		X			X	X		X
Hughey Creek	Perennial Stream			X		X				X		X			X	X		X
Bonito Cienega	Wetland				X			X		X					X	X	X	X
Willow Creek	Intermittent Stream		X							X		X			X			
Willow Tank	Tank	X								X		X			X			
Burnt Corral Creek	Intermittent Stream		X							X		X			X			
Oak Tank	Tank	X								X		X			X			
Paddy Creek	Perennial Stream		X			X				X		X			X	X		
Pacheta Creek	Perennial Stream			X		X				X		X			X	X		
Milk Creek	Perennial Stream		X			X				X		X			X	X		
Pair o' Dice Cienega	Wetland							X		X					X	X	X	
Ess Creek	Perennial Stream		X			X				X		X			X	X		
Bluff Cienega Creek	Perennial Stream		X			X				X		X			X	X		
Pacheta Lake	Lake			X		X		X		X	X				X	X	X	
Upper Pacheta Cienega	Wetland			X				X		X					X	X	X	
Drift Fence Lake	Lake			X		X		X		X	X				X	X	X	
Reservation Creek	Perennial Stream			X		X				X		X			X	X		
Bear Cienega	Wetland							X		X					X	X	X	
Deep Cienega	Wetland			X				X		X					X	X	X	
Reservation Lake	Lake			X		X		X		X	X				X	X	X	

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Waterbody	Type																	
Navajo Pit Tank	Tank	X							X		X			X				
West Fork Black River	Perennial Stream				X	X			X		X			X	X		X	
Hall Cienega	Wetland				X			X	X					X	X	X	X	
Purcell Cienega	Wetland				X			X	X					X	X	X	X	
Thompson Creek	Perennial Stream				X	X			X		X			X	X		X	
All Surface/groundwaters, springs and seeps within the Black River Watershed						x	x	x	x	x				x	x	x		
CARRIZO WATERSHED:																		
Carrizo Creek below Corduroy	Perennial Stream	X				X	X	X		X	X			X	X	X		X
Carrizo Creek above Corduroy	Perennial Stream		X			X	X	X		X	X			X	X	X		X
Cedar Creek	Perennial Stream	X				X	X	X		X	X			X	X	X		X
Big Canyon (E. Cedar Creek)	Perennial Stream		X			X				X	X			X	X	X		X
Middle Cedar Creek	Perennial Stream		X			X				X				X	X	X		X
West Cedar Creek	Intermittent Stream	X								X				X	X		X	
Corduroy Creek	Perennial Stream		X			X	X	X		X				X	X	X		
Hop Canyon	Perennial Stream		X			X				X				X	X		X	
Hop Spring	Spring									X	X			X		X		
Cottonwood Canyon	Intermittent Stream	X				X				X				X	X		X	
Forestdale Creek	Intermittent Stream		X			X				X				X		X		
Bootleg Lake	Lake	X				X		X		X	X			X	X		X	
Cooley Lake	Lake		X			X		X		X	X			X	X		X	
Turkey Canyon	Intermittent Stream	X								X				X	X		X	
Blue Spring	Spring		X			X				X	X			X		X		

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Waterbody	Type																	
Mud Creek	Intermittent Stream	X							X		X	X		X				
Skunk Canyon	Intermittent Stream	X							X		X	X		X				
Limestone Canyon	Perennial Stream		X			X			X		X	X	X	X				
Jump Off Canyon	Perennial Stream		X			X			X		X	X	X	X				
Deer Springs Canyon	Perennial Stream		X			X			X		X	X	X	X				
Foot Canyon	Perennial Stream		X			X			X		X	X	X	X				
Twin Lake	Intermittent lake	X						X	X			X		X	X			
West Blue lake	Intermittent Lake	X						X	X		X	X		X	X			
Wild Horse Lake	Intermittent Lake	X							X				X					
All Subsurface/groundwaters, springs and seeps within the Carrizo Watershed						X	X	X	X	X	X		X	X	X			
<i>CIBECUE WATERSHED:</i>																		
Cibecue Creek in Box Canyon to Salt river	Perennial Stream	X				X		X	X	X		X	X	X		X		
Cibecue Creek, Box Canyon up to Confluence with Salt Creek	Perennial Stream	X				X			X		X		X	X			X	
Fox Canyon	Intermittent Stream	X							X		X			X				
Cibecue Canyon	Intermittent Stream	X							X		X			X				
Spring Creek	Intermittent Stream	X				X			X		X			X			X	
Cement Trough Canyon	Intermittent Stream	X							X		X			X				
Indian Canyon	Intermittent Stream	X							X		X			X				
Salt Creek	Intermittent Stream	X				X			X		X			X			X	
Cibecue Creek, from confluence w/Salt Creek to Big Springs	Perennial Stream			X		X	X		X	X		X	X	X			X	
Cibecue Creek, above Big Springs	Perennial Stream		X			X	X		X		X		X	X			X	
Ivins Canyon	Intermittent Stream	X							X		X			X				

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Waterbody	Type																	
Pepper Canyon	Intermittent Stream	X							X		X			X				
Wagon Wheel Lake	Intermittent Lake	X						X	X		X			X				
Louse Lake	Intermittent Lake	X						X	X		X			X				
Donkey Lake	Intermittent Lake	X						X	X		X			X				
Nyce Lake	Intermittent Lake	X						X	X		X			X				
Pumpkin Lake	Lake			X		X		X	X		X	X	X	X	X			X
Chuckbox Lake	Intermittent Lake	X						X	X		X			X				
All Subsurface/groundwaters, springs and seeps within the Cibecue Watershed						X	X	X	X	X	X			X	X	X		
SALT RIVER & SALT DRAW WATERSHED:																		
Salt River	River	X				X		X	X		X	X		X	X	X		
Medicine Creek	Intermittent Stream	X							X		X			X				
Rock Springs Creek	Perennial Stream	X				X			X		X			X	X		X	
Soldier Creek	Intermittent Stream	X							X		X			X				
Salt Draw	Perennial Stream	X				X			X		X			X	X		X	
Lower Canyon Butte Tank	Tank	X							X		X			X				
Canyon Butte Tank	Tank	X							X		X			X				
West Tin House Tank	Tank	X							X		X			X				
Coyote Tank	Tank	X							X		X			X				
Dixon Tank	Tank	X							X		X			X				
Double Tank	Tank	X							X		X			X				
Kelly Draw Tank	Tank	X							X		X			X				
1 Mile Tank	Tank	X							X		X			X				

