



AGUA CALIENTE BAND OF CAHUILLA INDIANS
TRIBAL COUNCIL

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Ordinance No. 55

AGUA CALIENTE WATER AUTHORITY ORDINANCE

CHAPTER 1 ESTABLISHMENT OF THE AGUA CALIENTE WATER AUTHORITY

I. GENERAL PROVISIONS

- A. Title.** This Ordinance, as amended, shall be officially known and cited as the “Agua Caliente Water Authority Ordinance,” an ordinance of the Agua Caliente Band of Cahuilla Indians. References herein to this Ordinance shall be interpreted as referring to the Agua Caliente Water Authority Ordinance.
- B. Findings and Authority.**
1. The Tribal Council of the Agua Caliente Band of Cahuilla Indians is the legally recognized elected governing body of the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe. This Ordinance is enacted under the inherent sovereign authority of the Tribe and pursuant to sections (a), (b), (d), (e), (f), (g), (i), and (o) of Article V of the Tribe’s Constitution, as well as pursuant to any applicable delegations of federal authority to the Tribe for treatment as a state, or otherwise, under federal law. More specifically, this Ordinance is enacted pursuant to section (o) of Article V of the Tribe’s Constitution for the purpose of creating a subordinate Tribal Entity and Board, both of which will be deemed to be branches of the Tribal government performing Tribal governmental functions.
 2. The Tribe enacts this Ordinance to facilitate the exercise of the Tribe’s authority to protect and preserve the Tribe’s Groundwater to the maximum extent permitted under Tribal law and any federal law that may be applicable. The groundwater underlying the Reservation has been of fundamental importance to the Tribe since time immemorial and the Tribe’s Groundwater must be preserved and protected in perpetuity for the best interests of the Tribe, Tribal Members, Tribal enterprises, and the broader Reservation Community. The Tribe holds the full equitable title to groundwater appurtenant to the Reservation in an amount necessary to fulfill the purpose of the Reservation, as confirmed in *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.*, 849 F.3d 1262 (9th Cir.), *cert. denied*, 138 S. Ct. 468, 199 L. Ed. 2d 356 (2017), and *cert. denied sub nom. Desert Water Agency v. Agua Caliente Band of Cahuilla Indians*, 138 S. Ct. 469, 199 L. Ed. 2d 356 (2017). The United States holds the legal title to the Tribe’s Groundwater solely as trustee for the Tribe.



Nothing in this Ordinance shall be construed as acknowledging that the *Agua Caliente Band of Cahuilla Indians* case restricts the groundwater rights or regulatory authority of the Tribe in any way.

3. The authority to manage and regulate groundwater appurtenant to the Agua Caliente Reservation inherently lies within the retained powers of the Tribe. Unless and until a court of proper jurisdiction declares in a final judgment the amount of the Tribe's federally reserved groundwater right, the Tribe finds that groundwater appurtenant to the Reservation is necessary to fulfill the purpose of the Reservation.
4. The Tribal Members who beneficially own land on the Reservation have a derivative right to a ratable share of the Tribe's Groundwater. It is within the Tribe's sovereign powers to regulate and administer the production of the Tribe's Groundwater to protect Tribal Members' rights to groundwater.
5. In furtherance of its policy of Tribal self-determination, self-governance, and economic self-sufficiency, the Tribe has determined that it is vital to the health, safety, welfare, and economic security of the Tribe and Tribal Members that the amount and quality of the Tribe's Groundwater be preserved and available and accessible to the Tribe, Tribal Members, Tribal enterprises, and the broader Reservation Community. It also has determined and that adequate supplies of clean groundwater are vital to the Reservation economy.
6. This Ordinance is enacted with the recognition that the Tribe is authorized to assert jurisdiction over Tribal Members, and over non-members who have entered into consensual relationships with the Tribe or Tribal Members on the Reservation, or non-members whose conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe. In light of this, the Tribe finds that non-members who produce the Tribe's Groundwater have consented to the jurisdiction of the Tribe and are subject to regulation by the Tribe.
7. The Tribe further finds that, as of the Effective Date, no other government regulates the Tribe's Groundwater to protect it from diminution, degradation, trespass, or injury. In the absence of such governmental regulation, the aquifer underlying the Reservation has been in a state of overdraft, resulting in declining groundwater levels under the Reservation. Because the aquifer is in overdraft, there is no surplus or excess native groundwater available. In addition, due to the overdraft of the aquifer, and Non-Tribal Water Agencies' use of untreated Colorado River water to replenish the aquifer, the quality of the Tribe's Groundwater has been and is continuing to be diminished.



8. The Tribe further finds that the imposition of replenishment fees by Non-Tribal Water Agencies on Producers of the Tribe's Groundwater enables Non-Tribal Water Agencies to derive economic benefits from the production of the Tribe's Groundwater to the economic detriment of the Tribe and Tribal Members; that the Non-Tribal Water Agencies' replenishment fees have the effect of displacing the Tribe's control, regulation, and conservation efforts of the Tribe's Groundwater, a resource fundamental to the Tribe's self-determination, economic security, and well-being.
 9. The Tribe further finds that activities of Tribal Members and non-members alike who produce the Tribe's Groundwater on the Reservation, if left unregulated, pose an imminent threat to the political integrity, economic security, health, welfare, and environment of the Tribe and the Reservation. Finally, pursuant to the Tribe's sovereign powers to exclude non-members, the Tribe enacts this Ordinance to regulate certain non-member activities occurring on land owned by the Tribe and affirms the Tribe's adjudicatory authority over the production of groundwater on the Reservation.
 10. The power to determine, control, and manage the proper uses of the Tribe's Groundwater is an essential attribute of sovereignty. The ability of the Tribe to determine, control, and manage the proper uses of the Tribe's Groundwater will be enhanced by the creation of a governmental instrumentality, which can, among other things, administer well permits, monitor and manage groundwater levels and groundwater quality, and administer the imposition of groundwater production fees on producers of the Tribe's Groundwater.
- C. Purpose.** The purpose of this Ordinance is to create a governmental instrumentality of the Tribe to be known as the "Agua Caliente Water Authority," to protect, manage, and regulate the Tribe's Groundwater, and to promote the public health, safety, welfare, and economic security of the Tribe, Tribal Members, Tribal Entities, and the Reservation Community.
- D. Applicability.**
1. This Ordinance shall apply to all persons or entities, including Non-Tribal Water Agencies, producing or desiring to produce the Tribe's Groundwater.
 2. This Ordinance does not regulate activities outside the Reservation, or the assessment of replenishment fees by Non-Tribal Agencies, except to the extent such fees are imposed on the production of the Tribe's Groundwater.
- E. Definitions.** For purposes of this Ordinance, certain terms are defined in the subsections that follow. If not defined, terms shall be given their ordinary meaning. When not inconsistent with the context, words used in the present



tense include the future, words in the singular include the plural, words in the plural include the singular, and words in one gender include the other gender. The word "shall" is always mandatory and not merely directory.

1. **"Applicant"** means an individual or entity who has submitted a complete and valid application for a groundwater production permit, well drilling permit, or temporary permit with the Water Authority.
2. **"Authority Board"** means the board of directors of the Water Authority as established pursuant to Chapter 1, Part II hereof.
3. **"Authority Facilities, Systems, and Services"** means all facilities, systems, and services of the Water Authority.
4. **"CPDO"** means the Chief Planning and Development Officer of the Tribe.
5. **"Constitution"** means the Constitution and Bylaws of the Tribe as the same now exists or may be amended from time to time hereafter.
6. **"Contract(s)"** means any contract, agreement, account, general intangible, and contract right (including any right to payment thereunder, whether or not earned by performance) of any nature issued or assumed by the Water Authority pursuant to this Ordinance.
7. **"Day(s)"** means calendar days.
8. **"Effective Date"** means the date this Ordinance is adopted by the Tribal Council at a regularly scheduled meeting of the Tribal Council.
9. **"Emergency Meeting"** means any meeting of the Authority Board called for the purpose of dealing with an emergency and held in accordance with this Ordinance. For purposes of this Ordinance, an **"emergency"** is defined as a situation involving injury to persons or injury or damage to public or personal property or immediate financial loss when the time requirements for public notice of a special meeting would make such procedure impractical and increase the likelihood of injury or damage or immediate financial loss.
10. **"Groundwater"** means water that exists beneath the surface of the earth.
11. **"Including"** means including but not limited to.
12. **"Minimal Pumper"** means any producer who produces five (5) or fewer acre-feet of groundwater in any year.



13. **“Monitoring Well”** means a well designed and installed to obtain representative groundwater quality samples and hydrogeological information.
14. **“Non-Tribal Water Agency”** means any organization not established pursuant to this Ordinance or created or controlled by the Tribal Council that provides groundwater service or imposes replenishment fees on the production of groundwater within the Reservation.
15. **“Permittee”** means any individual or entity holding a valid permit or temporary permit granted by the Water Authority.
16. **“Production”** or **“produce”** means the extraction of the Tribe’s Groundwater by pumping or any other method on the Reservation.
17. **“Producer”** means any individual or entity producing the Tribe’s Groundwater on the Reservation.
18. **“Providers”** means all employees, consultants, agents, and attorneys of the Tribe providing services on the Effective Date to the Water Authority on the same terms and conditions as the service that said individuals provide to the Tribe.
19. **“Regular Meeting”** means any periodic meeting of the Authority Board set by Authority Board resolution and held in accordance with this Ordinance.
20. **“Replenishment fee”** means any fee imposed on producers of the Tribe’s Groundwater by Non-Tribal Water Agencies.
21. **“Reservation”** means the Agua Caliente Indian Reservation and includes all lands within the exterior boundaries of the Reservation as established by Presidential Executive Order, federal patent, or deed, and any other lands held in trust by the United States for the Tribe.
22. **“Reservation Community”** means all individuals and entities residing on or occupying the Reservation who use the Tribe’s Groundwater, including, but not limited to, lessees and sublessees of Reservation land.
23. **“Special Meeting”** means any meeting of the Authority Board called for the purpose of dealing with the matters set forth in the public meeting notice and held in accordance with this Ordinance.
24. **“Tribal Council”** means the duly authorized elected governing body of the Agua Caliente Band of Cahuilla Indians established pursuant to Article IV of the Constitution.



25. **“Tribal Entity”** means an entity (i) that is created or owned by the Tribe for economic or governmental purposes; (ii) that is controlled by the Tribal Council; and (iii) whose net revenues, or a substantial portion thereof, inure to the benefit of the Tribe. An entity shall be deemed controlled by the Tribal Council if a majority of persons serving on the body which governs the entity are chosen by or are members of the Tribal Council.
26. **“Tribe’s Groundwater”** means groundwater appurtenant to the Reservation subject to the Tribe’s federally reserved water right.
27. **“Tribal Member”** means a duly enrolled member of the Tribe.
28. **“Tribal Party”** means the Tribe and each agency, division, subdivision, branch, authority, enterprise, board, department, and similar instrumentality or entity of the Tribe.
29. **“Tribe”** means the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe.
30. **“Water Authority”** means the Water Authority established pursuant to Chapter 1, Part II hereof.
31. **“Water Authority Assets”** means (i) any and all real, mixed, and personal property that is reflected on the balance sheet of the Water Authority as an instrumentality of the Tribe; or (ii) all tangible and intangible property associated with, or reasonably related and beneficial to, the Water Authority owned by or on behalf of any Tribal Party; provided that the Water Authority Assets shall not include (a) property that is not used in a trade, business, or other commercial undertaking unless reported as an asset of the Water Authority in accordance with generally accepted accounting principles, and (b) the Reservation lands necessary or incident to the operation of Authority Facilities, Systems, and Services.
32. **“Well”** means any artificial excavation constructed by any method for the purpose of extracting groundwater.

II. AGUA CALIENTE WATER AUTHORITY

A. Establishment of Water Authority; Governmental Status.

1. There is hereby established the Agua Caliente Water Authority.
2. The Water Authority shall exercise the Tribe’s regulation and administration of the Tribe’s Groundwater for the purposes of protecting the public health, safety,



welfare, and economic security of the Tribe, Tribal Members, Tribal Entities, and the Reservation Community.

3. Except as provided in Chapter 1, Parts II.B and II.C of this Ordinance, the Water Authority shall have a legal existence separate and apart from the Tribe. The debts, obligations, liabilities, contracts, notes, receipts, expenditures, accounts, undertakings, and property of the Water Authority, its offices, agents, or employees, shall be deemed to be those of the Water Authority and not the Tribe.
4. The Water Authority shall be subject to all Tribal laws and regulations, including all policies and procedures unless otherwise exempted by the Tribal Council. The Water Authority may solicit the assistance of the Tribe's human resources department, finance department, legal department, and other appropriate departments with respect to its enforcement of such policies and procedures.

B. Relation to Tribe; Allocation of Water Authority Assets.

1. The Water Authority shall be an unincorporated subordinate instrumentality and agency of the Tribe. The Water Authority is subject to this Ordinance and the overall powers of the Tribal Council.
2. This Ordinance constitutes a delegation of powers by the Tribal Council to the Water Authority with direction to the Water Authority to take all actions, upon the Effective Date, that may be necessary to implement the creation of the Water Authority, subject to the limitations set forth herein, and constitutes an authorization by the Tribal Council to the Water Authority to carry out all actions contemplated under and in accordance with this Ordinance.
3. The Water Authority shall exercise the Tribe's ownership, management, and supervision of the Authority Facilities, Systems, and Services, including owning and holding in its name all Water Authority Assets.
4. The Water Authority, Water Authority Assets, and Water Authority activities shall be entitled to all of the privileges and immunities of the Tribe, including the sovereign immunity of the Tribe, to the same extent as the Tribe itself.
5. The Water Authority, Water Authority Assets, and Water Authority activities shall have the same privileges and immunities from federal, state, and local government taxation as the Tribe and the Tribe's assets and activities. The Water Authority is not an entity separate from the Tribe for any federal or state taxation or regulation purposes.



6. On and after the Effective Date, the Tribal Council may allocate and assign to the Water Authority, at the Council's sole discretion, assets constituting personal property necessary for operation of the Authority Facilities, Systems, and Services. Such allocated and assigned assets shall be deemed owned by the Water Authority. Nothing herein is intended to nor shall convey to the Water Authority any right, title, or interest in any land on the Reservation.
7. On the Effective Date, except as the Authority Board may otherwise determine, the Authority Board may designate Providers who shall become employees, consultants, agents, and attorneys of the Water Authority.
8. On the Effective Date, Tribal Council shall have authority to assign any Contracts to the Water Authority as may be necessary for the Water Authority to effectively carry out its functions and activities delegated to it in this Ordinance. Subject to any contrary requirement of federal law, Contracts entered into after the Effective Date may be entered into solely in the name of the Water Authority and not the Tribe.
9. Notwithstanding any other contract, term, or agreement of the Tribe or the Water Authority, no waiver of sovereign immunity by any Tribal Party with respect to any matter, dispute, or claim shall ever permit or allow or be construed or interpreted to permit or allow any enforcement or recourse as against the Water Authority, and no obligation, whether arising from contract, agreement, tort, or otherwise, of any Tribal Party shall ever constitute an obligation of the Water Authority, unless in each case the Authority Board shall by resolution consent to the same in writing.
10. The enactment of this Ordinance shall not affect the ownership of assets located in, on, over, upon, across, under, and through the Reservation that are the personal property of any Non-Tribal Water Agency on the Effective Date.

C. Rights, Powers, and Immunities of the Water Authority.

1. Any exercise by the Water Authority of any rights, powers, immunities, or authority in accordance with this Ordinance shall constitute the performance of a governmental function of the Tribe.
2. Pursuant to and consistent with this Ordinance, the Water Authority shall have the right to enter into contracts and to incur obligations.
3. It is the intent of this Ordinance to authorize the Water Authority to do any and all things necessary or desirable in connection with the protection of the Tribe's Groundwater as to further the governmental interests of the Tribe.



4. In furtherance of these goals, the Water Authority shall have certain powers, including the power to:
- a. purchase, take, receive, lease, obtain by gift or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated;
 - b. sell, convey, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets, including Water Authority Assets;
 - c. employ contractors, consultants, attorneys, accountants, and engineers when such may be needed from time to time and to define their duties and fix their compensation;
 - d. hire, supervise, and terminate employees, and appoint agents, of the Water Authority and define their duties and fix their compensation, provided that all employees shall be governed by the personnel policies of the Tribe;
 - e. review and approve annual Water Authority budgets and any amendments thereto. Each annual budget shall include a report on the prior year's results of operations and a business plan for the year covered by the budget;
 - f. make and alter by-laws, not inconsistent with this Ordinance, or with the laws, ordinances, and regulations of the Tribe and the United States, and subject to Tribal Council approval, for the administration and regulation of the affairs of the Water Authority;
 - g. establish committees of the Authority Board, elect or appoint persons to the committees, and define their duties and fix their compensation in accordance with the personnel policies of the Tribe;
 - h. indemnify to the extent deemed necessary any director or officer or former director or officer, or employee or agent of the Water Authority; and to indemnify any person made a party to any proceeding by reason of the fact that such person is or was a director, officer, employee, or agent of the Water Authority against reasonable expenses actually incurred in connection with such proceeding if the person's conduct was in good faith and the person reasonably believed their conduct to be in the Water Authority's best interests or not opposed to the Water Authority's best interests;
 - i. purchase and maintain insurance, including insurance on behalf of the Water Authority, the Tribe, any business or enterprise in which the Water



Authority has any interest or participation, and of any person who is or was a director, officer, employee, or agent of the Water Authority or serving at the request of the Water Authority;

- j. establish, set, assess, and collect rates, charges, and fees for the production of the Tribe's Groundwater; and
 - k. have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Water Authority is organized.
5. Except with respect to Water Authority Assets or with the consent of the Tribal Council, no activity of the Water Authority nor any indebtedness incurred by it shall encumber, implicate, or in any way involve any asset of the Tribe, another Tribal Entity, nor any Tribal Member, unless such asset has been expressly assigned or leased in writing to the Water Authority along with a delegation of power necessary to so encumber, implicate, or involve it by Authority Board action, provided that Water Authority Assets acquired by the Water Authority pursuant to this Ordinance, although remaining assets of the Tribe, may be pledged, leased, transferred, assigned, encumbered, or otherwise administered by the Water Authority in the ordinary course of its business.
- D. Water Authority Assets.** Water Authority Assets shall consist of all assets allocated and assigned by the Tribe to the Water Authority pursuant to this Ordinance together with other assets it develops or acquires, including real property, by other means as provided in this Ordinance.
- E. Establishment of Authority Board.** There is hereby established an Authority Board, the purpose of which is to carry out the duties and powers of the Water Authority as set forth in this Ordinance.
- 1. Authority Board Membership.**
- a. The Authority Board shall consist of 6 (six) members who shall be appointed by the Tribal Council. The membership of the Authority Board shall be comprised as follows:
 - i. One (1) member of Tribal Council who serves as an ex-officio member.
 - ii. Five (5) individuals who have a range of qualified professional and academic experience related to water, provided that the member is not an officer, employee, director, or agent of a Non-Tribal Water Agency.



- b. The ex-officio member of the Authority Board shall participate in the work of the Board but shall not have a vote in its official actions. The ex-officio member of the Authority Board shall serve as a liaison between the Authority Board and the Tribal Council.
 - c. The Authority Board shall consist of a Chairperson, a Vice-Chairperson, a Secretary/Treasurer, and three (3) other persons, one (1) of which shall be the ex-officio member. The ex-officio member shall not be eligible to hold the office of Chairperson, Vice-Chairperson, or Secretary/Treasurer.
2. **Duties of Officers.** Authority Board members shall assume the following duties:
- a. Chairperson - Shall preside at all meetings of the Authority Board; call and conduct all Authority Board meetings; oversee the general management of the Water Authority's affairs; and perform all duties incidental to the office.
 - b. Vice-Chairperson - Shall perform all of the Chairperson's duties in the absence of the Chairperson; and shall assist the Chairperson as required in the conduct of meetings and in handling the Water Authority's affairs.
 - c. Secretary/Treasurer - Shall faithfully prepare and maintain the official records of the proceedings of all meetings of the Authority Board; shall maintain or cause to be maintained all correspondence, notices, and records of the Authority Board; shall oversee the preparation and maintenance of all financial reports, general ledgers, bank statements and reconciliations, investments, budgets, and audits of the Water Authority.
3. **Appointment; Terms of Office.**
- a. For initial appointments to the Authority Board, the Tribal Council shall:
 - i. Appoint three (3) Authority Board members for a term of one (1) year and two (2) Authority Board members for a term of two (2) years with the term of each member commencing on the date the member is appointed to the Authority Board.
 - ii. Appoint one (1) ex-officio member for a term of one (1) year with the term of the member commencing on the date the member is appointed to the Authority Board.
 - b. For all successive appointments to the Authority Board, the Tribal Council shall:



written notice of the Regular Meeting and one (1) day's written notice of the Special Meeting. Notices of all Regular and Special Meetings shall be promptly filed with the Secretary, who shall post such notices in the offices of the Water Authority, at the Tribal Administrative Plaza, and on the Tribe's website. Emergency Meetings may be held in private and convened without public notice.

- b. **Annual Meeting.** The Authority Board shall hold at least one meeting during each calendar year in a public place where members of the Reservation Community will have an opportunity to comment on the Authority's regulation of the Tribe's Groundwater and the groundwater production fees. The Authority shall provide thirty (30) days' notice of such a meeting, which shall be promptly filed with the Secretary, who shall post such notices in the offices of the Water Authority, at the Tribal Administrative Plaza, and on the Tribe's website.
7. **Parliamentary Procedure and Meeting Agenda.** Meetings of the Authority Board shall be conducted in accordance with Robert's Rules of Order or any other similar rule of procedure adopted by Authority Board resolution.
8. **Record of all Meetings.** The Secretary shall keep complete and accurate minutes of all Regular, Special, and Emergency Meetings and records of all actions taken.
9. **Tribal Council Attendance.** Members of the Tribal Council may attend any meeting of the Authority Board.
10. **Financial Records.** The Authority Board shall keep full and accurate financial records, prepare periodic reports, conduct annual audits, and provide such reports to the Tribal Council, in written form, as required by the provisions of this Ordinance.
11. **Compensation.** Authority Board members may receive compensation for their services as set by the Tribal Council. Authority Board members shall be reimbursed for actual expenses incurred in the discharge of their duties, including necessary travel expenses.
12. **Vacancy.** The Tribal Council shall, by an affirmative vote of no fewer than three (3) of its members, fill any vacancy on the Authority Board, within thirty (30) days of such vacancy, for the balance of the three (3) year term of any member whose position on the Authority Board becomes vacant for any reason.
13. **Removal.** Any Authority Board member may be removed by a majority vote of the Tribal Council for the following reasons: Three (3) consecutive unexcused



absences, misfeasance, malfeasance, nonfeasance, or any other cause deemed justifiable by said Tribal Council.

F. Perpetual Succession. The Water Authority shall have perpetual succession in its name.

G. Ability to Sue and Be Sued.

1. By adopting this Ordinance, the Tribal Council hereby authorizes the Water Authority to take action by a duly adopted resolution at any Regular or Special Meeting: (i) to authorize the Water Authority to sue and to be sued in its name, or to submit to arbitration or alternative dispute resolution any controversy arising under, or upon, any contract, claim or obligation arising out of its activities under this Ordinance; (ii) to waive the exhaustion of tribal remedies; (iii) to agree by contract to waive any of the Water Authority's immunity from suit or other legal process and any or all rights it may have to resolve disputes in a tribal, federal, or state court of competent jurisdiction or other forum, with enforcement arising from such waivers being permitted as against any Water Authority Assets other than real property and not in contravention of federal law; but the Tribe shall not be liable for the debts or obligations of the Water Authority, and the Water Authority shall have no power to pledge or encumber the assets of the Tribe other than Water Authority Assets not constituting real property. This action does not constitute a waiver of any immunity of the Tribe or a delegation to the Water Authority of the power to make any waiver of the immunity of the Tribe, except with respect to Water Authority Assets not constituting real property. The Water Authority's ability to sue and be sued and to waive its immunity from suit or other legal process shall at all times remain with the Authority Board to be granted by duly adopted resolution at a Regular or Special Meeting. Notwithstanding anything herein to the contrary, the grant of power herein to sue and to be sued shall not in and of itself constitute a waiver of immunity whatsoever. Any waiver of immunity by the Water Authority shall be in writing only, limited in scope to the express matters with which to which it is given, and as to the remedies and other conditions set forth therein.

2. Consistent with the foregoing and subject to its limitations, the Water Authority, by a duly adopted resolution at a Regular or Special Meeting, shall have the authority to consent, and may delegate such authority to Director level staff to consent, to the following: (i) the exercise of jurisdiction over any suit or over the Water Authority by the state courts of the State of California or any other state, the federal courts sitting in any state, the tribal courts of the Tribe or any other Indian tribe, or the courts of any United States territory or foreign jurisdiction, and (ii) arbitration or alternative dispute resolution. Such authority shall at all times remain with the Authority Board to be granted by a duly adopted resolution at a Regular or Special Meeting.



3. Except as expressly provided in this Section, the Tribe by the adoption of this Ordinance and the establishment of the Water Authority is not waiving its sovereign immunity in any respect or consenting to the jurisdiction of any court, except, with the Water Authority's agreement to permit enforcement as against Water Authority Assets not constituting real property as permitted by this Ordinance. This Section shall be strictly construed with a view toward protecting tribal assets from the reach of creditors and others, other than Water Authority Assets not constituting real property.

- H. **Annual Groundwater Conditions Report.** By June 1 of each year, the Water Authority Board shall prepare a report regarding groundwater conditions, production, and use within the Reservation. The report shall include the conditions of the groundwater, the costs associated with running the Water Authority, as well as the Tribe's permitting, and groundwater monitoring programs, the market conditions for groundwater in the area, and the groundwater production fees to be levied by any Non-Tribal Water Agencies in the Indio Subbasin for the following fiscal year. The report shall recommend the amount of groundwater production fees to be levied on all production of the Tribe's Groundwater. For fiscal year 2020, the Water Authority Board shall prepare a report within ninety (90) days of the enactment of this Ordinance. The Water Authority shall provide a summary of its report on the Tribe's website for benefit of the Reservation Community and the Producers of Groundwater.

- I. **Annual Fiscal Report of the Authority Board.**
 1. The Authority Board shall prepare and submit to the Tribal Council, within forty-five (45) days after the close of each fiscal year, an annual fiscal report, signed by the Authority Board Chairperson, showing, for the immediately preceding fiscal year:
 - a. a summary of the amount of production of groundwater on the Reservation;
 - b. a summary of the fees collected under this Ordinance;
 - c. any significant problems, concerns, developments, and accomplishments;
 - d. detailed plans for the following year; and
 - e. such other information as the Authority Board or the Tribal Council deems pertinent. The Authority Board shall comply with all information requests by the Tribal Council within fourteen (14) days and may provide information to other individuals and entities at the Authority's discretion.



2. The Authority Board shall make the fiscal report available to the Reservation Community, including Producers of the Tribe's Groundwater, upon written request, within fourteen (14) days.

J. Finances and Accounting.

1. The fiscal year of the Water Authority shall be the fiscal year of the Tribe.
 2. The quarters for Water Authority reporting purposes shall be as follows: October 1 through December 31; January 1 through March 31; April 1 through June 30; and July 1 through September 30.
 3. The Authority Board shall establish and install an accounting system that is (a) in conformity with generally accepted accounting principles, and (b) necessary and advisable, in the reasonable discretion of the Authority Board, in order to manage Water Authority Assets. Such accounting system shall ensure the availability of information as may be necessary to comply with federal, state, and tribal regulatory requirements.
 4. The accounts and records of the Water Authority and each of its Water Authority projects shall be audited at the close of each fiscal year and as otherwise required by law. Copies of such audit reports shall be furnished to the Tribal Council.
 5. All books, records, and property of the Water Authority shall upon request and without notice be available for inspection during normal business hours by the Tribal Council and other authorized representatives of the Tribe.
- K. Water Authority Funds.** The funds accrued by the Water Authority and kept on deposit are for the use of the Water Authority for the necessary operation, management, maintenance, and cash reserves of the Water Authority. The Tribal Council shall provide a thirty (30) day written notice to the Water Authority of its intent to transfer funds in a manner consistent with Tribal Council's direction.

CHAPTER 2 PERMITTING, GROUNDWATER PRODUCTION FEES, ENFORCEMENT, AND APPEAL

I. PERMITS FOR GROUNDWATER PRODUCTION AND WELL DRILLING

A. Permit required.

1. A person or entity producing the Tribe's Groundwater or intending to produce the Tribe's Groundwater or to drill a new well within the Reservation to produce



the Tribe's Groundwater must file an application for a permit as required by this Ordinance.

2. A person or entity who is producing the Tribe's Groundwater on the Reservation on the Effective Date of this Ordinance, or any person who begins such production within 120 days following the Effective Date, shall submit a complete permit application within 120 days of the Effective Date of this Ordinance. Provided that any such person or entity timely submits a permit application, their continued production of the Tribe's Groundwater pending the issuance or denial of a permit pursuant to this Ordinance shall not be considered unlawful. This provision does not create or allow the creation of any vested or permanent right to produce the Tribe's Groundwater by virtue of any production that may occur prior to or during the pendency of a permit application.
3. It is unlawful to produce the Tribe's Groundwater or to drill a new well within the Reservation which produces the Tribe's Groundwater except as authorized by this Ordinance.
4. The Ordinance applies to persons or entities who own or use monitoring wells on the Reservation.
- B. Contents of application for a groundwater production permit.** An application for a permit to produce the Tribe's Groundwater on the Reservation shall provide the following information on a form provided by the Authority Board:
 1. The name and mailing address of the applicant;
 2. The legal description of the land parcel on which the well is or will be located and a description of the location of the pump on the land parcel;
 3. The approximate quantity of groundwater which is being produced or will be produced during each month of the year;
 4. If the applicant seeks to produce groundwater from a new well, then the date on which the production is expected to commence;
 5. For wells producing groundwater on the Effective Date, the estimated date when the production commenced for that particular well;
 6. The specific purpose or purposes for which the groundwater is or will be produced;
 7. The location(s) at which groundwater is or will be used;



8. A description of how groundwater will be applied or consumed, including acreage, if the groundwater is produced for irrigation;
9. If production pre-dates the Effective Date, the history of the production since the date groundwater production commenced, including the names of any predecessors in title and the dates of their ownership and including a description of their uses of water;
10. Any and all contracts, securities, or other agreements involving the groundwater production since the date that groundwater production commenced;
11. All available pumping data for the well since the date that groundwater production commenced;
12. All available groundwater quality data for the well since the date that groundwater production commenced;
13. All available well logs since the date that groundwater production commenced;
14. A list of any violations of state or federal water quality standards or violations of state law, regulations or policies regarding wellheads since the date that groundwater production commenced;
15. A description of any instances in which groundwater produced from the well could not be used for its intended purpose due to its water quality since the date groundwater production commenced;
16. If applicable, the applicant's plan for future development of the groundwater production or uses;
17. The location and description of any existing or proposed groundwater measuring, monitoring, or recording device;
18. The information provided by an applicant shall be up-to-date within fourteen (14) days of submission of the application. Where historical information is requested from the date that groundwater production commenced, the applicant shall provide all available information. If all historical information is not within the control of the applicant, the applicant shall determine whether the information requested exists and shall make reasonable efforts to obtain the historical data requested, wherever it exists. The Water Authority may request that applicants demonstrate efforts made to provide the requested historical data for the purpose of obtaining a groundwater permit.
19. Any other information deemed necessary by the Authority Board.



20. If the permit applicant is a Tribal Member who owns land on the Reservation:
 - a. documentation of the Tribal Member's ownership interest in the land;
 - b. the names of any other individuals with ownership interests in the land;
 - c. a copy of written notice showing that a copy of the application has been sent to other individuals who have ownership interests in the land;
 - d. a statement whether all Tribal Members with ownership interests in the land from which groundwater will be produced consent to groundwater production signed by each aforementioned Tribal Member;
 - e. any contracts, securities or other agreements between the applicant Tribal Member and any other entity relating to the application for a groundwater production permit; and
 - f. Any other information deemed necessary by the Authority Board.
 21. **Trust Land.** With respect to wells located on trust land that the applicant does not beneficially own, the applicant must submit evidence of the requisite consent by the beneficial owner of the trust land and the Secretary of Interior for the construction of the well on trust land.
- C. Permit Application or Renewal Fees.**
1. Every application for a permit or application for renewal of a permit shall be accompanied by a fee in an amount set by the Authority Board by resolution.
 2. The purpose of the fee is to offset the cost of processing permits applications, monitoring permit compliance, and monitoring groundwater supplies and groundwater quality.
 3. Fees shall not be refunded if the permit application is denied.
 4. Fees for a permit application from Tribal Members or Tribal Entities may be waived by the Authority Board.
- D. Review of Application for Permit or Renewal of Permit.** Upon receipt of a permit application, the Authority Board shall:



1. Verify that the application is complete and, if it is, notify the applicant that the application is complete;
 2. Verify information submitted with the application;
 3. Request any further information from the applicant as necessary;
 4. Request any necessary information or comment from other persons or entities regarding groundwater production from the well and parcel;
 5. Determine whether the continued, modified, renewed, or new groundwater production, is in the best interest of the Tribe, Tribal Members, and the broader Reservation Community. Such a determination shall be based on, among other factors:
 - a. The extent to which the requested production will affect groundwater levels under the Reservation;
 - b. The extent to which the requested production may reduce groundwater quality under the Reservation;
 - c. The extent to which the requested production is likely to interfere with other existing groundwater production or surrounding land uses on the Reservation; and
 - d. Any past violations of permit conditions, state or federal law or regulations, or violations of this Ordinance by the applicant.
- E. Issuance or Denial of Permit Applications.**
1. Permits shall be issued or denied within six (6) months of the date that a permit application is determined to be complete.
 2. Notification of the issuance of a permit shall be sent to the applicant by certified mail.
- F. Contents of a Groundwater Production Permit.** Groundwater production permits shall contain at a minimum:
1. Authorization of the production of the Tribe's Groundwater consistent with this Ordinance;
 2. The amount of the Tribe's Groundwater authorized for production;



3. The rate of flow;
 4. The time of day and the time of year at which groundwater is produced;
 5. The date of expiration of the permit;
 6. Permission for the Authority Board, its staff, or affiliated contractors to access the pump, meter, well, and other equipment to monitor groundwater levels, groundwater quality, and compliance with best practices;
 7. An acknowledgement of application or renewal fees paid;
 8. A requirement that the permittee maintain a complete record of groundwater withdrawal and usage, including the amount of groundwater withdrawn, the rate of flow, the location and purpose of production and such other information as shall reasonably be required by the Authority Board. The record shall be up-to-date to date on a monthly basis;
 9. The signature of the permittee specifying that the permittee agrees to be bound by this Ordinance and the terms of the permit;
 10. A requirement that the permittee shall advise the Authority Board of any change in address or contact information;
 11. A requirement that the permittee submit to the jurisdiction of the Tribe with respect to the permittee's production of the Tribe's Groundwater;
 12. A requirement that the permittee's use of the water be lawful under Tribal, federal, and state laws and regulations;
 13. A requirement that the permittee indemnify the Water Authority, the Water Authority Board, the Tribe, the Tribal Council, and all officials, directors, officers, employees, and agents of the Water Authority and Tribe.
 14. A requirement that the permittee pay applicable groundwater production fees, as required by this Ordinance.
 15. Other information as deemed appropriate by the Water Authority.
- G. Permit Conditions for a Groundwater Production Permit.** The Authority Board may establish conditions to any permit to produce groundwater to ensure that groundwater production is consistent with this Ordinance and in the best interest of the Tribe, Tribal Members, and the broader Reservation Community, including:



1. The purpose of producing groundwater;
 2. The location of groundwater production;
 3. Provisions for the frequency, method, and equipment used for metering groundwater pumping;
 4. Provisions for reporting groundwater production to the Authority Board on a monthly basis;
 5. Provisions for reporting levels of groundwater contaminants to the Authority Board on a quarterly basis;
 6. Provisions for increasing the efficiency of production;
 7. Provisions designed to insure optimum recharge of the aquifer as it impacts the Reservation;
 8. Provisions for maintaining or improving groundwater levels under the Reservation;
 9. Provisions for maintaining or improving the quality of the Tribe's Groundwater quality;
 10. Provisions designed to prevent or reduce interference between competing producers or groundwater resources on the Reservation;
 11. Other conditions as may be necessary to ensure that groundwater production is consistent with this Ordinance and the best interest of the Tribe, Tribal Members, and the broader Reservation Community.
- H. Identification of Permitted Groundwater Production or Well Drilling.** Upon issuance of a permit by the Authority Board, permittees shall indicate that their groundwater production has been permitted by the Tribe by applying a sticker issued by the Authority Board on the pump or well, which shall indicate the date that the well was permitted and the date of expiration of the permit.
- I. Well Drilling Permit.**
1. A well drilling permit grants the right to construct a new or modify an existing well to persons meeting requirements for licensure, technical capability, and bonding as defined in and subject to the requirements of this Ordinance or a permit issued under this Ordinance.



2. An application for a well drilling permit shall include:
 - a. a copy of the groundwater well contractor's license as required by California Water Code section 13750.5, as said statute may be amended, renumbered, or restated from time to time;
 - b. demonstration that the contractor has not incurred any reprimand, civil citations or penalties under California or local law in the past eight (8) years;
 - c. construction plans;
 - d. a description of any expected effects on groundwater levels and groundwater quality;
 - e. a description of land use in the vicinity of the well head within three hundred (300) feet and any safeguards currently in place to protect the wellhead from contamination;
 - f. any other information deemed appropriate by the Authority Board.

J. Effect.

1. A groundwater production permit or well drilling permit issued under this Ordinance constitutes the Water Authority's permission to produce the Tribe's Groundwater subject to the terms of the permit and this Ordinance.
2. No permit issued hereunder shall be construed as recognizing any rights to groundwater other than the Water Authority's permission to produce groundwater on the Reservation. Nor shall any permit ripen into any interest other than such permission.

K. Assignment of Permit.

1. No permit granted under this Ordinance may be transferred, exchanged, sold, assigned, devised, inherited, or otherwise conveyed except as provided in this Ordinance and on the terms and conditions of the applicable permit.
2. Any conveyance of a groundwater production permit described in subsection (1) above, shall require written consent of the Authority Board four (4) weeks prior to the anticipated assignment. The Authority Board's consent shall be conditioned upon the assignee's agreement to be bound by all terms and conditions of the permit unless otherwise explicitly approved by the Authority Board.



L. Permit Modification.

1. The Authority Board may modify the conditions of a groundwater production permit or well drilling permit for producing water on the Reservation at any time.
2. The Authority Board shall send the permittee a notice of intent to modify the permit, certified mail, containing a statement with the modified permit and basis for modification.
3. Bases for modifying a groundwater production permit include:
 - a. a reduction in groundwater levels under the Reservation;
 - b. interference in groundwater production by the permittee of another producer on the Reservation; or
 - c. degradation of groundwater quality under the Reservation.
4. A permittee may request a modification of the permit annually.
5. A permittee may appeal the modification a permit pursuant to Chapter 2, Part IV hereof.

M. Abandonment of Rights or Permits.

1. The holder of a groundwater production permit abandons his or her permit by failing to produce the groundwater authorized under the permit for two (2) years or failing to apply for a permit renewal prior to its expiration, absent a showing of unavailability of groundwater or other sufficient cause beyond the control of the permittee.
2. Before permit rights may be deemed lost by abandonment, the Authority Board shall serve notice on permittees to show cause why their permit should not be deemed abandoned. Such notice shall set forth the basis on which a determination of nonuse or abandonment is sought. The permittee shall submit a statement to the Authority Board providing information and any necessary documentation demonstrating why their permit should not be deemed abandoned.
3. A decision by the Authority Board that a groundwater right or permit has been voluntarily relinquished or abandoned may be appealed pursuant to Chapter 2, Part IV hereof.



II. GROUNDWATER PRODUCTION FEES

- A. Power to Levy and Collect.** The Tribe hereby delegates to the Water Authority its inherent authority to assert its sovereign right and to protect and exercise its right to self-government by imposing water production fees on the producers of the Tribe's Groundwater. The Water Authority shall have the power to levy and collect groundwater production fees from groundwater producers on the Reservation, who produce the Tribe's Groundwater, including on Non-Tribal Water Agencies, as provided in this Section, for the purpose of compensating the Tribe for the production of the Tribe's Groundwater and to fund the Water Authority's functions, including the Water Authority's permitting and groundwater monitoring programs.
- B. Hearing, Call, and Notice.** If the Water Authority determines that funds should be raised by a groundwater production fee, it shall call a public hearing to be held during a public meeting, and shall publish notice at least ten (10) days in advance thereof, including on the Tribe's website. Such public hearing may be scheduled to coincide with a Regular Meeting of the Water Authority or set as a Special Meeting, provided in either instance that the notice requirements of this section are met. Notice shall also be mailed by the Water Authority to all producers of groundwater on the Reservation and applicants as disclosed by the records of the Water Authority who may be affected by the recommended assessment. Failure of any affected producers to receive such notice shall not affect the validity of any subsequent groundwater production fee. The notice shall contain the time and place of the hearing, the amount of each recommended groundwater production fee, and an invitation to all interested parties to attend and be heard in support of or in opposition to the proposed groundwater production fee. The notice also shall state that a copy of the report is available for inspection at the office of the Water Authority.
- C. Levy of Groundwater Production Fee and Council Resolution.** Before August 1 of each year, the Water Authority may by resolution levy a groundwater production fee upon all producers of the Tribe's Groundwater within the Reservation during the following fiscal year. The groundwater production fee shall be at a uniform rate per acre foot. The resolution shall also state the time or times at which such groundwater production fees shall be due and payable, which may be in installments as determined by the Water Authority. For fiscal year 2020, the Tribal Council may by resolution levy the groundwater production fee within one hundred twenty (120) days of the Effective Date of this Ordinance.
- D. Amount of the Groundwater Production Fee.** The amount of the groundwater production fees levied upon all producers of the Tribe's Groundwater on the Reservation shall be established in the discretion of the Water Authority, except



that no groundwater production fee shall exceed the replenishment assessment to be levied by any Non-Tribal Water Agencies in the Indio Subbasin for the following fiscal year.

E. Exemptions.

1. For the first twelve (12) months following the enactment of this Ordinance, the Authority Board may, in its discretion, exempt certain producers of the Tribe's Groundwater from paying the groundwater production fee for up to twelve (12) months, provided that the producer can demonstrate that it produced less than 5000 acre-feet of the Tribe's Groundwater the prior twelve (12) months.
2. The Authority Board may, in its discretion, exempt minimal pumpers from the groundwater production fee.
3. The Authority Board may, in its discretion, exempt Tribal Members owning land within the Reservation from the groundwater production fee.

F. Notice to Affected Producers within the Reservation. The Water Authority, after the levying of any groundwater production fees on the producers of the Tribe's Groundwater, shall give notice thereof to all affected producers. The notice shall state the rate of assessment for each acre-foot of production during the fiscal year for which the assessment has been levied, and the dates when the assessment or installments thereof are due and payable. The notice shall be sent by first-class mail with the postage prepaid by the Water Authority.

G. Sworn Statement of Producer. Except as provided in Chapter 2, Parts II.I and II.J hereof, each producer, on or before the dates when the assessment or installments thereof are due and payable, shall file with the Water Authority a sworn statement setting forth the total quantity of groundwater production in acre-feet that is subject to the groundwater production fee. The production shall be reported as of the end of the month immediately preceding the payment date. The statement shall be on a form prepared by the Water Authority and, to the extent practicable, shall identify separately the production from each well or other water-producing facility used by the producer. The statement shall also include a general description or number locating the well or water-producing facility, the method or basis of the measurement or computation of production, and any other information the Water Authority may require.

H. Date of Payment. Any groundwater production fee levied pursuant to this Section shall be due and payable to the Water Authority at the time or times determined by the Water Authority and stated in the notice of levy, and shall accompany the statement required from each producer.



- I. **Statement of Groundwater Production Exemption.** If the Water Authority has an agreement with any producer whereby the Water Authority regularly reads and maintains the water-measuring devices, which record the production of the producer, the producer shall be exempt from the provisions of Chapter 2, Part II.G hereof. In lieu thereof, the Water Authority shall send the producer notice of its production and the amount of the groundwater production fee or installment due.

- J. **Production of Groundwater-Measuring Device, Violations, and Penalties.** Beginning one (1) year after the initial levy of a groundwater production fee, it shall be unlawful to produce groundwater from within the Reservation, unless the well or other water-producing facility producing such groundwater shall have a groundwater measuring device affixed thereto, which is capable of measuring and registering the accumulated amount of groundwater produced. The provisions of this Section shall not be applicable to minimal producers. Nor shall this Section be applicable to others exempted from the groundwater production fee pursuant to Chapter 2, Part II.E of this Ordinance. The Water Authority, at the written request of any producer, may provide, install, maintain, own, and read such water-measuring device.

- K. **Under or Unreported Production, Investigation, Report, Protest, and Hearing.** If the Water Authority has probable cause to believe that the production by any producer of the Tribe's Groundwater is unreported or, if reported, is in excess of that disclosed by the statement filed by such producer, the Water Authority shall cause an investigation and report to be made concerning such production, which shall include the right to inspect the water-producing facility and any water-measuring device used therewith. The Water Authority shall thereupon determine and fix the correct amount of production for any such producer, and give written notice thereof. Any such determination made by the Water Authority shall be binding upon the producer, and the groundwater production fee based thereon together with interest and penalties shall be payable immediately, unless the producer shall file with the Tribal Council within ten (10) days after the mailing of such notice a written protest setting forth the grounds of protest. Upon the filing of such protest the Tribal Council shall hold a hearing at which time the total amount of production and the groundwater fees shall be determined, and the interest and penalties fixed, which action shall be conclusive if based upon substantial evidence. A notice of such hearing shall be mailed to the producer at least ten (10) days before the date fixed for the hearing. Notice of the determination by the Tribal Council shall be mailed to the producer. The producer shall have twenty (20) days from the date of mailing of such notice to pay the groundwater production fee, interest, and penalties so fixed by the Tribal Council.



- L. **Preemption and Preclusion of Replenishment Assessments.** The Tribe's federal reserved right to groundwater preempts and precludes any groundwater replenishment assessment imposed by Non-Tribal Water Agencies on producers of the Tribe's Groundwater on the Reservation.

III. ENFORCEMENT

- A. **Powers.** Generally, the Authority Board shall have all powers necessary and proper to enforce the terms of this Ordinance, including those pertaining to permits and groundwater production fees. This includes the power to enter the premises of producers of the Tribe's Groundwater at a reasonable time, with or without notice, assess penalties, assess late payments, modify or revoke permits, and to cause a producer to cease the production of the Tribe's Groundwater.

- B. **Violations.**

1. If the Authority Board determines that a producer is producing groundwater on the Reservation without a permit in violation or is otherwise in violation of this Ordinance, the Authority Board shall send the producer a notice of violation by certified mail, return receipt requested.
2. If the Authority Board determines that a permittee (for groundwater production or well drilling) is in violation of the permit or this Ordinance, the Authority Board shall send the permittee a notice of violation. The notice shall specify the basis for the violation. The notice of violation shall be provided by certified mail, return receipt requested.
3. Within fourteen (14) days of receipt of the notice of violation, the permittee shall:
 - a. cure the violation and notify the Authority Board in writing that the violation has been cured; or
 - b. dispute the violation in writing and explain why the permit should not be modified or revoked.
4. The Authority Board shall consider on a case-by-case basis requests for additional time to cure a violation.

- C. **Cure.** If the producer or permittee responds to the notice of violation stating that it has cured the violation, the Authority Board shall verify that the violation has been cured and determine whether any penalties still apply or whether the Board waives remaining penalties. Upon verification of cure, the Authority



Board shall issue a notice that the violation has been cured and notify the producer or permittee whether the penalties still apply or whether the penalties are waived.

D. Remedies.

1. If the producer or permittee fails to respond to the notice of violation within fourteen (14) days of receipt, the Authority Board may:
 - a. issue a cease and desist order;
 - b. revoke the permit;
 - c. find the permittee in default; and
 - d. pursue any other remedy set forth in the permit.
2. If the producer or permittee responds to the notice within fourteen (14) days but does not cure the violation, the Authority Board may:
 - a. work with the producer or permittee to identify a reasonable time and steps to cure the violation;
 - b. issue a cease and desist order;
 - c. revoke the permit;
 - d. modify the permit; and
 - e. pursue any other remedy set forth in the permit.
3. If the Authority Board grants an extension of the time to cure a violation, the producer or permittee shall proceed diligently to perform and complete the corrective action within the timeframe permitted.

E. Penalties.

1. **Notice of Violation.** The notice of violation shall specify the penalty and the rate of interest and any late penalties and other fines to be charged if the producer or permittee fails to pay applicable penalties by the time required by the notice of violation.
2. **Failure to Obtain Groundwater Production Permit.** The failure to obtain a groundwater production permit shall be assessed up to two hundred fifty dollars



(\$250.00) per day for each day that the producer or permittee continues producing groundwater after the date that an application for a groundwater permit was required to be submitted.

3. **Failure to Pay Groundwater Production Fee, Interest.** If any producer or permittee subject to a groundwater use fee, after notice has been given pursuant to Chapter 2, Part III.B.2 of this Ordinance, fails to pay a groundwater production fee for the production of the Tribe's Groundwater or installment thereof when due, the producer shall become liable to the Water Authority for interest at the rate of one percent (1%) per month, compounded monthly, on the delinquent amount. If a producer who is not exempt from paying the groundwater production fee under this Ordinance fails to pay the groundwater production fee for a period of six (6) months, the Authority Board may revoke a producer's permit pursuant to Chapter 2, Part III.D hereof and issue a cease and desist order to the producer. Upon receipt of the cease and desist order, the producer shall immediately cease pumping water. The producer may appeal the revocation of its permit with the Authority Board pursuant to Section IV hereof. If the producer continues to produce water following the revocation of its permit, and following the resolution of any appeals properly filed by the producer filed with the Authority Board pursuant to Chapter 2, Part IV hereof, the Authority Board may pursue appropriate remedies, including but not limited to the filing of legal action to obtain injunctive relief requiring the producer to cease production of the Tribe's Groundwater and to pay any damages resulting from the unpermitted pumping and unpaid water production fees.
4. **Failure to File Groundwater Production Statement and Penalty.** If any producer or permittee, subject to a groundwater use fee, knowingly fails to file the groundwater production statement, the producer shall, in addition to the interest as provided in Chapter 2, Part III.E.3 of this Ordinance, become liable to the Water Authority for a penalty of one thousand dollars (\$1000.00). A producer's failure to file a groundwater production statement may be considered as a basis for modifying, denying, or revoking the renewal of a groundwater production permit under Chapter 2, Part III.D hereof.
5. **Violation of Groundwater Metering Agreement.** Violation of any written agreement for groundwater metering entered into pursuant to Chapter 2, Part II.J of this Ordinance shall be punishable by a fine not to exceed one thousand one hundred dollars (\$1100.00).
- F. **Harmful or Threatening Activities.** If a producer, permittee, or a party associated with a producer or permittee causes or threatens to cause immediate and significant harm to the Tribe's Groundwater, or undertakes criminal activity, the Authority Board may take appropriate emergency action including the



immediate revocation of any applicable permits and barring individuals from entering the Reservation.

- G. **Legal Action for Continuing Violation.** If the Authority Board has issued a cease and desist order or a permit has been revoked temporarily or permanently and a producer or permittee continues the activity that it was ordered to cease and desist, the Authority Board may pursue appropriate remedies, including the filing of legal action to obtain injunctive relief requiring the producer to cease production of the Tribe's Groundwater.
- H. **Referral.** The Water Authority may refer serious violations of this Ordinance, permits, state or federal law to the Tribe for consideration for referral of the case to appropriate state or federal authorities for investigation and prosecution.

IV. APPEALS

- A. **Appeals.**
 - 1. A producer or permittee may appeal the following decisions of the Authority Board:
 - a. Denial of a permit;
 - b. Denial of a renewal of a permit;
 - c. A permit condition;
 - d. A determination of abandonment of a right or permit;
 - e. Modification of a permit;
 - f. A notice of violation; and/or
 - g. A penalty assessed by the Authority Board.
- B. **Time for Appeals.** Appeals of decisions of the Authority Board shall be filed with CPDO within ten (10) business days of the determination. Failure to meet this deadline will result in forfeiture of all appeal rights.
- C. **Form of Appeal.**
 - 1. A producer or permittee shall effectuate an appeal by providing a short, written, signed, and notarized statement indicating the nature and circumstances of the appeal, the basis for the appeal, and a statement indicating the remedy sought.



2. The producer or permittee shall append to the appeal the record of the case, which contains:
 - a. a copy of the permit;
 - b. any modifications of the permit;
 - c. a copy of the notice of violation; and
 - d. any documentary or physical evidence relevant to violation or the producer or permittee's purported cure of the violation.

D. Review by the Chief Planning Officer.

1. The CPDO may request the producer or permittee or the Authority Board to provide any additional information in furtherance of a decision.
2. The CPDO shall issue a written decision on the appeal within sixty (60) days of the filing of the appeal. A copy of the decision shall be maintained by the Tribe according to its document retention policy, and another copy of the decision shall be sent to the permittee, certified mail.

E. Appeal to Tribal Council.

1. A producer or permittee or the Water Authority may appeal the decision of the CPDO to the Tribal Council within thirty (30) days of the decision. Failure to meet this deadline will result in forfeiture of all appeal rights.
2. A producer or permittee or the Water Authority shall effectuate an appeal to the Tribal Council by providing, in writing, a short, signed, and notarized statement indicating the nature and circumstances of the appeal, a statement why the initial appeal determination was arbitrary, capricious or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with the law and a statement indicating the remedy sought.
3. The appealing party is responsible for transmitting the contents of the original appeal to the CPDO and any documents subsequently filed with the CPDO to Tribal Council.



F. Review by Tribal Council.

1. Tribal Council may request the producer or permittee, the Authority Board or the CPDO to provide any information, in addition to the contents of the appeal in furtherance of a decision.
2. Tribal Council may request the producer or permittee and the Authority Board to present their case in person by providing notice, certified mail, of a hearing to the permittee within fourteen (14) days in advance of the scheduled hearing.
3. Tribal Council may reverse the decision of the CPDO or any penalty on the basis that the decision was arbitrary, capricious or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with the law.
4. Tribal Council shall issue a written decision on the appeal within one hundred twenty (120) days of the filing of the appeal. A copy of the decision shall be maintained by the Tribe according to its document retention policy, and another copy of the decision shall be sent to the producer or permittee, certified mail. The decision of Tribal Council shall be final for the purpose of exhausting Tribal remedies.

V. MISCELLANEOUS PROVISIONS

- A. Environmental Compliance.** The Tribal Council hereby finds that the adoption of this Ordinance does not constitute a "Major Tribal Action" requiring the preparation of an environmental assessment or an environmental impact statement.
- B. Validity.** If any section, subsection, phrase, or clause of this Ordinance is for any reason held to be unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Tribal Council hereby declares that it would have passed this Ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unlawful or unconstitutional.
- C. Sovereign Immunity.** Nothing contained in this Ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the Agua Caliente Band of Cahuilla Indians' sovereign immunity.
- D. Amendment.** The Tribal Council expressly reserves the right to alter, amend, or repeal this Ordinance if it determines that such action is in the best interest of the Tribe.



- E. Effective Date.** This Ordinance shall become effective immediately upon its adoption by the Tribal Council at a regularly scheduled meeting of the Tribal Council.
- F. Prior Inconsistent Law.** Upon the Effective Date of this Ordinance, any and all prior inconsistent resolutions, policies, ordinances, and/or procedures of the Tribe that pertain to the subject matter hereof are hereby repealed, superseded, and/or amended to comply with this Ordinance.
- G. Publication.** Within fifteen (15) days after adoption, tribal staff shall cause this Ordinance to be published one time in a newspaper of general circulation published and circulated on the Reservation.
- H. Severability.** If any clause, or portion of a clause, in this Ordinance is considered invalid under the rule of law, it shall be regarded as stricken while the remainder of this Ordinance shall continue to be in full effect.



BE IT ADOPTED AND ENACTED by the Tribal Council of the Agua Caliente Band of Cahuilla Indians, this 6th day of August, 2019.



Jeff L. Grubbe, Chairman

Passed Away on July 15, 2019

Larry N. Olinger, Vice-Chairman



Vincent Gonzales III, Secretary/Treasurer



Reid D. Milanovich, Member



Anthony W. Purnel, Member

I, the undersigned, the Secretary-Treasurer of the Agua Caliente Band of Cahuilla Indians, hereby certify that the Tribal Council is composed of five members of whom, 3 constituting a quorum, were present at a meeting whereof, duly called, noticed, convened and held on this 6th day of August 2019; that the foregoing Ordinance was duly adopted at such meeting by the affirmative vote of 3-0-0 and that said Ordinance has not been rescinded or amended in any way.



Vincent Gonzales III, Secretary/Treasurer