

SCANNED

**HUALAPAI TRIBAL COUNCIL
RESOLUTION NO. 13-2009
OF THE GOVERNING BODY OF THE
HUALAPAI TRIBE OF THE HUALAPAI RESERVATION**

WHEREAS, the Hualapai Tribe is a federally recognized Indian Tribe located on the Hualapai Indian Reservation in Northwestern Arizona; and

WHEREAS, the Tribal Council finds and declares that development activities within the Reservation and other lands within the Tribe's jurisdiction have a direct effect on or may threaten the political integrity, the economic security, and the health, welfare and safety of the Tribe and its members, including the environmental and cultural resources of the Tribe; and

WHEREAS, the ground water resources (aquifers) of the Tribe are the primary sources of drinking water and are an invaluable resource that needs protection for current and future consumptive use; and an invaluable resource for the future potential economic development of the Hualapai Tribe and;

WHEREAS, the Hualapai Department of Natural Resources has developed a Ground Water Protection Overlay Ordinance to assist the Hualapai Tribe in the protection of all ground water resources that supply drinking water to tribal communities and facilities and;


WHEREAS, the Ground Water Protection Overlay Ordinance has undergone legal review to ensure consistency with the Hualapai Environmental Review Code, and has been distributed for public review and comment periods through the past six years, with the final review period published in the Gumyu (Hualapai Tribal Newsletter) Issue #19, September 19, 2008 and public notice postings throughout the community, beginning September 19, 2008 and ending October 19, 2008; where no additional comments were received and;

WHEREAS, the adoption of the Ground Water Protection Overlay Ordinance will assist the Hualapai Tribe in their efforts to protect ground water resources for current and future generations and asserts tribal jurisdiction to any reservation activities that may threaten the quality and quantity of ground water designated for drinking water supplies.


NOW THEREFORE BE IT RESOLVED, the Hualapai Tribal Council, governing body of the Hualapai Tribe pursuant to its constitution hereby enacts the Hualapai Ground Water Protection Overlay Ordinance, Subtitle P, Hualapai Environmental Review Code, into Law sixty (60) days from the passage of this resolution.

C E R T I F I C A T I O N

I, the undersigned as Chairman of the Hualapai Tribal Council, hereby certify that the Hualapai Tribal Council of the Hualapai Tribe is composed of nine (9) members of whom **8** constituting a quorum were present at a **Regular Council Meeting** held this **9th day of March, 2009**; and that the foregoing resolution was duly adopted by a vote of **5 for, 0 oppose, 3 not voting, and 1 excused**, pursuant to authority of Article V, Section (a) of the Constitution of the Hualapai Tribe approved March 13, 1991.


Wilfred Whatoname, Sr., Chairman
HUALAPAI TRIBAL COUNCIL

ATTEST:


Adeline Crozier, Assist. Secretary
HUALAPAI TRIBAL COUNCIL

Subtitle P, Hualapai Environmental Review Code

HUALAPAI GROUNDWATER PROTECTION
OVERLAY ORDINANCE

PART 1. GENERAL PROVISIONS

101. FINDINGS AND PURPOSES

(a) The Tribal Council of the Hualapai Tribe recognizes the need to preserve, protect, and maintain the physical, chemical, and biological integrity of the Tribe's waters and to ensure adequate groundwater supplies for the Tribe. The Tribal Council also recognizes the need to preserve, protect and maintain groundwater as a safe drinking water supply, and that certain land uses can contaminate groundwater. To ensure the preservation and protection of the Tribe's waters, including its drinking water supplies, this Ordinance, to be known as the Groundwater Protection Overlay Ordinance, establishes a groundwater protection overlay area within which certain standards and restrictions apply to activities affecting groundwater.

(b) The purpose of the Groundwater Protection Overlay Ordinance is to protect public health and safety and the environment, as well as the political integrity and economic welfare of the Tribe, by minimizing contamination of aquifers and preserving and protecting existing and potential sources of drinking water supplies. It is the intent to accomplish this through both public education and public cooperation, as well as by designating zones in the groundwater protection overlay area that specify appropriate land uses and requirements in addition to existing laws and regulations.

(c) The Groundwater Protection Overlay Ordinance imposes conditions on current land use practices and shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses within the groundwater protection overlay area. It may also apply to some existing uses and structures, if they are not otherwise exempt.

102. APPLICABILITY

(a) The provisions of this Ordinance and of regulations issued pursuant to this Ordinance shall apply to all persons residing or doing business on Hualapai tribal lands and to all property located within Hualapai tribal lands.

(b) The provisions of this Ordinance shall apply to all waters, whether surface water or groundwater, within Hualapai tribal lands.

(c) The Board of Commissioners of the Tribal Environmental Review Commission may, by rule, exempt specified traditional uses and practices from regulation under this Ordinance.

103. SEVERABILITY

If any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the remainder of this Ordinance and the application of such provision to other persons or circumstances shall remain unaffected. A determination that any provision of this Ordinance is invalid shall not invalidate any special permit previously issued under this Ordinance.

PART 2. DEFINITIONS

For the purposes of this Ordinance, the following terms are defined below:

- (a) **AQUIFER.** A geological formation, group of formations or part of a formation composed of rock, sand or gravel containing water and yielding groundwater to wells and springs.
- (b) **AUTHORIZED OFFICER.** The Director of Public Works or his or her designee; the Water Resources Program Manager or his or her designee; or any officer of the Hualapai Tribal Police.
- (c) **CONTAMINATION.** An impairment of water quality by chemicals, radionuclides, biologic organisms, or other extraneous matter whether or not it affects the potential or intended beneficial use of water.
- (d) **DEVELOPMENT.** The carrying out of any construction, reconstruction, alteration of surface or structure or change of land use or intensity of use.
- (e) **DEVICE.** Any equipment that is used to take, consume, or degrade water resources, including but not limited to pipes, pumps, motors, drilling equipment, and water trucks.
- (f) **FACILITY.** Any structure, installation, plant, source, or building.
- (g) **GREY WATER.** All domestic wastewater except toilet discharge water.
- (h) **GROUNDWATER PROTECTION OVERLAY AREA:** The area defined to encompass Hualapai tribal lands where development and other activities may have significant impacts on groundwater. This overlay area may include specifically designated recharge areas that collect precipitation or surface water and carry it to aquifers.
- (i) **HAZARDOUS MATERIAL.** A material that comes within one or more of the following categories:

Ignitable: A gas, liquid or solid which may cause fires through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.

Carcinogenic: A gas, liquid, or solid which is normally considered to be cancer-causing or mutagenic. Examples: PCB's in some waste oils.

Explosive: A reactive gas, liquid or solid, which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.

Highly Toxic: A gas, liquid, or solid so dangerous to man as to present an unusual hazard to life. Example: chlorine gas.

Moderately Toxic: A gas, liquid or solid, which through repeated exposure or in a single large dose can be hazardous to man.

Corrosive: Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy containers of other hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.

(j) **HUALAPAI TRIBAL LANDS.** All lands over which the Hualapai Tribe has jurisdiction, including all land within the exterior boundaries of the Hualapai Reservation and all other Hualapai Indian country, as that term is defined in 18 U.S.C. § 1151.

(k) **POLLUTANT.** Dredged spoil, solid waste, hazardous material, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste.

(l) **PRIMARY CONTAINMENT FACILITY.** A tank, pit, container, pipe or vessel providing the first adage of containment for a liquid or chemical.

(m) **RELEASE.** Any unplanned or improper discharge, leak, or spill of a potential contaminant, including a hazardous material.

(n) **SECONDARY CONTAINMENT FACILITY.** A second tank, catchment pit, pipe, or vessel that limits and contains liquid or chemical leaking or leaching from a primary containment area.

(o) **SHALLOW/SURFICIAL AQUIFER.** An aquifer in which the permeable (sand and gravel) layer starts at the land surface or immediately below the soil profile.

(p) **SPILL RESPONSE PLANS.** Detailed plans for control, containment, recovery, and clean-up of hazardous material releases.

(q) **STORMWATER TREATMENT PRACTICES (STPs).** Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or non-point source pollution inputs to storm water runoff and water bodies.

(r) **TIME-OF-TRAVEL DISTANCE.** The distance that groundwater will travel in a specified time. This distance is generally a function of the permeability and slope of the aquifer.

(s) TRIBAL ENVIRONMENTAL REVIEW COMMISSION (“TERC”) The permitting, investigative, regulatory and enforcement body established in Subtitle A of the Hualapai Environmental Review Code.

PART 3. REQUIREMENTS FOR ACTIVITIES WITHIN THE GROUNDWATER PROTECTION OVERLAY AREA

301. ZONE 1 - DRINKING WATER CRITICAL IMPACT ZONE

(a) **Designation.** Zone 1 is the area within the 5-year time-of-travel distance mapped around public water supply wells, and comprises a 1000 foot radius around each public water supply well.

(b) **Encouraged Uses.** The following uses are encouraged within Zone 1 provided they meet the appropriate performance standards outlined in § 303 below and are designed so as to prevent any groundwater contamination.

- (1) Natural Resource and Wildlife Conservation Area, which, for purposes of this Ordinance, shall include the existing endangered fish-rearing facility located on the Hualapai Reservation;
- (2) necessary public utilities and/or facilities, including the construction, maintenance, repair, and enlargement of drinking water supply-related facilities such as, but not limited to, wells, pipelines, and aqueducts;
- (3) parks, greenways, or publicly-owned recreational areas such as foot, bicycle and/or horse paths; and
- (4) bridges.

(c) **Prohibited Uses and Practices.**

(1) Any activity on or around Hualapai tribal lands that affects the normal delivery and availability of water throughout Hualapai tribal lands, except where a special permit or exception has been authorized by the TERC .

(2) The following uses, unless granted a special permit or exception, are prohibited within Zone 1:

- (A) Automobile body/repair shop;
- (B) Gas station;
- (C) Fleet/trucking/bus terminal;

- (D) Dry cleaner;
- (E) Electrical/electronic manufacturing facility;
- (F) Machine shop;
- (G) Metal plating/finishing/fabricating facility;
- (H) Chemical processing/storage facility;
- (I) Wood preserving/treating facility;
- (J) Junk/scrap/salvage yard;
- (K) Mines/gravel pit
- (L) Irrigated nursery/greenhouse stock
- (M) Confined animal feeding operations
- (N) Land divisions resulting in high density (>1 unit/acre) septic systems;
- (O) Equipment maintenance/fueling areas;
- (P) Injection wells/dry wells/sumps, except for single-family residences directing gutter downspouts to a drywell;
- (Q) Underground storage tanks, (except those with spill, overfill, and corrosion protection requirements in place); and
- (R) All other facilities involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste having potentially harmful impact on groundwater quality.

302. ZONE 2 - DRINKING WATER POTENTIAL IMPACT ZONE

(a) Zone 2 is the area within the 15-year time-of-travel distance mapped around public water supply wells, which comprises a 1000-foot radius around Zone 1. Zone 2 consists of the remainder of the Groundwater Protection Overlay area not included in Zone 1, but deemed necessary to ensure adequate protection of public drinking water supplies.

(b) Prohibited Uses and Practices.

(1) Any activity on or around Hualapai tribal lands that affects the normal delivery and availability of water throughout Hualapai tribal lands, except where a special permit or exception has been authorized by the TERC.

(2) Any activity or use that violates the performance standards set forth in § 303.

303. PERFORMANCE STANDARDS

The following standards shall apply to uses in Zones 1 and 2 of a Groundwater Protection Overlay area:

(a) Unless granted an exemption under another Ordinance,

(1) Any facility involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or wastes must have a secondary containment system that is easily inspected and that is designed to intercept any leak or release from the primary containment vessel or structure.

(2) Underground tanks or buried pipes storing or carrying such materials must have double walls and inspectable sumps.

(b) Storage of petroleum products in quantities exceeding 25 gallons at one locality in one tank or series of tanks must be in elevated tanks; such tanks must have a secondary containment system described in item (1) above. Petroleum storage tanks also must have a secondary containment system when it is deemed necessary by the TERC or its designee or the Hualapai Tribal Council.

(c) All permitted facilities must adhere to appropriate federal and state standards for storage, handling and disposal of any hazardous waste materials.

(d) An acceptable contingency plan for all permitted facilities must be prepared for preventing hazardous materials from contaminating the shallow/surficial aquifer should floods, fire, or other natural catastrophes, equipment failure, or releases occur.

(1) For flood control, all underground facilities shall include but not be limited to a monitoring system and secondary standpipe above the 100-year flood control level, for monitoring and recovery. For above-ground facilities, an impervious dike, above the 100-year flood level and capable of containing 100 percent of the largest volume of storage, will be provided with an overflow recovery catchment area (sump).

(2) For fire control, plans shall include but not be limited to a safe fire-fighting procedure, a fire-retarding system, effective containment of any liquid runoff, and provide for dealing safely with any other health and technical hazards that may be encountered by disaster control personnel in combating fire. Hazards to be considered are pipes, liquids, chemicals, or open flames in the immediate vicinity.

(3) For equipment failures, plans shall include but not be limited to:

(A) Below ground level, removal and replacement of leaking parts, a leak detection system with monitoring, and an overfill protection system.

(B) Above ground level, liquid and leaching monitoring of primary containment systems, the replacement or repair and cleanup and/or repair of the impervious surface.

(3) For any other release, the owner and/or operator shall report all incidents involving liquid or chemical material release to the groundwater protection coordinator designated by the Hualapai Tribal Council.

(e) Since it is known that improperly abandoned wells can become a direct conduit for contamination of groundwater by surface water, all abandoned wells should be properly sealed or destroyed to ensure no pollutants can be introduced into the aquifer(s).

304. SPECIAL EXEMPTIONS

(a) An existing nonconforming use may be allowed in a Groundwater Protection Overlay area only if it receives a special exemption from the TERC and if it conforms to the provisions of the exemption and to the performance standards set forth in § 303.

(b) An applicant for a special exemption may consult with the Director of Public Works or the Water Resources Manager to determine whether a particular use is a nonconforming use.

(c) The TERC shall not grant a special exemption unless it is ensured that the water resources in question will be adequately protected.

(d) As a condition of the special exemption, the TERC may require groundwater monitoring and other similar activities to safeguard drinking water sources.

305. CHEMICAL TRESPASS

In addition to the requirements established in this Ordinance for the Groundwater Protection Overlay area, it shall be unlawful to allow a pollutant to enter or pose a threat of entering any surface or groundwater in quantities that pose a threat to human health and the environment.

306. LIABILITY

Nothing in this Ordinance shall be construed to imply that the Hualapai Tribe has accepted any of an owner/developer's liability if a permitted facility or use contaminates groundwater in any aquifer.

307. GROUNDWATER PROTECTION OVERLAY BOUNDARY DISPUTES

If the location of the boundary of the Groundwater Protection Overlay or zone is in doubt in relation to a particular parcel, the boundary dispute shall be resolved through the following process: The dispute shall be submitted to the TERC or its designee. The burden of proof shall be upon the lessee(s) of the land to demonstrate where the boundaries of the Groundwater Protection Overlay area or zone should be located with respect to their individual parcel(s) of land. If the lessee(s) request that the boundaries of a particular overlay area or zone be

determined more precisely with respect to individual parcels of land, the TERC or its designee may engage a professional engineer, hydrologist, geologist, or soil scientist and charge the lessee(s) for the cost of the investigation.

PART 4. COMMUNITY ENFORCEMENT

401. COMMUNITY ENFORCEMENT PROCEDURES

- (a) Any person may submit a verbal or written complaint alleging a violation of this Ordinance.
- (b) Upon receipt of a complaint, the TERC or its designee shall conduct a brief investigation of the complaint, including a meeting with the landowner involved, if needed.
- (c) If there is a determination that there is a violation of this Ordinance, the TERC or its designee shall conduct an informal reconciliation with the violator or mediation in accordance with the Hualapai Law and Order Code. As part of such informal reconciliation or mediation, the TERC or its designee shall:
 - (1) Notify the violator by certified mail of the violation of this Ordinance and of the desire of the TERC or its designee to have the violation corrected through informal reconciliation or mediation. The notice shall also indicate that should the violator refuse to perform the recommended corrective actions within the time set forth by the Tribe, action may be taken to correct the violation and the violator will be billed for the cost of taking the corrective action.
 - (2) Make a good faith effort to meet the violator and achieve a resolution or correction of the violation.
- (d) If after taking the steps above and after a period of 10 days following the mailing of the notice of the violation, the TERC or its designee in good faith determines that the violator is unwilling to participate in informal reconciliation or mediation and take the corrective actions prescribed, the TERC or its designee shall notify the violator by mail of the termination of the informal reconciliation or mediation.
- (e) The TERC or its designee may take corrective actions deemed necessary following 5 days after notifying the violator by mail of the notice of termination of the informal reconciliation or mediation, and may bill the violator for the reasonable cost of such action.

PART 5. GENERAL ENFORCEMENT PROVISIONS

501. CIVIL ACTIONS

Except as otherwise provided in this Ordinance, all actions arising under this Ordinance shall be adjudicated in the Tribal Court, following the filing of a civil complaint naming the Hualapai Tribe as plaintiff, by the authorized officer alleging the violation or by legal counsel for the Tribe.

502. PROCEDURES

Except as otherwise provided in this Ordinance, the Civil Procedure Code of the Hualapai Tribe shall govern all enforcement actions arising under this Ordinance.

503. ENFORCEMENT OFFICERS

All Authorized Officers as defined in this Ordinance shall enforce all provisions of this Ordinance. The office of Public Works staff or TERC or its appointed monitor shall ensure that the provisions of this Ordinance are enforced through monitoring efforts in cooperation and coordination with Authorized Officers.

504. WARRANTS, SUBPOENAS, AND SERVICE OF PROCESS

(a) Authorized Officers may, in addition to exercising any other powers granted by this Ordinance:

- (1) Execute warrants issued for the arrest of violators of this Ordinance.
- (2-) Execute search warrants issued by the Tribal Court in matters arising under this Ordinance.
- (3-) Serve subpoenas and other legal documents issued in matters arising under this Ordinance.

505. REPRESENTATION OF THE TRIBE

Counsel for the Tribe, as designated by the Tribal Council, shall represent the Tribe in all actions arising under this Ordinance to which the Tribe is a party, whether such action is civil or criminal.

506. CONTEMPT

All defendants to actions brought under this Ordinance, whether members or non-members, shall be subject to the civil contempt power of the Hualapai Tribal Court, and may be sanctioned by any means provided for in the Hualapai Tribal Law and Order Code for civil

contempt, including but not limited to fine and imprisonment to compel compliance with a lawful court order.

507. FEDERAL PROSECUTION

- (a) Nothing in this Ordinance shall be deemed to preclude the federal prosecution under 18 U.S.C. § 1165 of non-members who trespass and/or cause chemical trespass on Hualapai tribal lands. Any authorized officer or other complainant may follow the procedure provided by tribal law to initiate federal prosecution in addition to or in lieu of any enforcement procedure provided for by this ordinance.
- (b) This Ordinance has been enacted to protect the resources of the Hualapai Tribe, and depleting or degrading Tribal property (including water, wetland habitats or any portion thereof) and other activities contrary to the terms of this Ordinance constitute theft of tribal assets. Nothing in this Ordinance shall be deemed to preclude federal prosecution of violators under 18 U.S. C. § 1163 for theft of tribal assets. Any authorized officer may follow the procedure provided by Tribal law to initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this Ordinance.

508. EXPULSION

Nothing in this Ordinance shall be deemed to preclude the use of the remedy of expulsion of non-members for depleting or polluting water and/or for any other violation of this Ordinance, and any authorized officer may follow the procedure provided by Tribal Law to initiate an action for expulsion in addition to or in lieu of any other enforcement procedure provided for by this Ordinance.

509. LIQUIDATED DAMAGES

(a) The TERC shall determine, through rulemaking pursuant to Subtitle A of the Hualapai Environmental Review Code, Liquidated Damage amounts calculated to closely approximate the cost of providing equitable restitution to the Tribe for the damage that would be caused by each violation of this Ordinance. In calculating these Liquidated Damage Amounts, the TERC will consider the following, in addition to any other factors it reasonably deems relevant:

- (1) The cost to the Tribe of producing and/or protecting the resource.
- (2) The cost of replacing or restoring the resource.

- (3) The cost of enforcement, including the general overall costs and costs particularized to individual violations where appropriate.
- (4) The loss to the Tribe of permit revenue of the resource.
- (5) Any damages due to trespass.
- (6) Other costs as deemed appropriate on a case-by-case basis, for example: wildlife mortality or personal revenue loss associated with livestock health or mortality.
- (7) Whether the acts that constitute the violation or the circumstances that surround the violation are especially harmful or offensive to the people or the customs of the Hualapai Tribe,

(b) Since in most instances the exact amount of damages caused to the Tribe or tribal individual by a particular violation of this Ordinance will be difficult or impossible to determine precisely, it shall be presumed by the court adjudicating a complaint for violation of this Ordinance that the amount fixed by the schedule of Liquidated Damage Amounts established by the TERC pursuant to § 509 represents the damages owed to the Tribe as restitution if the defendant is found to be liable. This presumption may be rebutted by evidence which shows, to a substantial certainty, that the amount indicated by the schedule of Liquidated Damage Amounts is either so excessive in a particular case as to be punitive or is inadequate to provide full restitution.

(c) All persons shall be deemed to have consented to the liquidated damages provisions of this Ordinance by their entry onto Hualapai tribal lands, and/or where applicable by their signature on a Tribal permit or permits.

510. PUNITIVE DAMAGES

- (a) Nothing in this Ordinance shall be deemed to preclude the Tribe from alleging and being awarded punitive damages in any action filed for a violation of this Ordinance wherein it is alleged that the violator has committed the acts constituting the violation wantonly, willfully, or maliciously.
- (b) The court, in assessing punitive damages, shall determine the amount in the same manner as it would determine punitive damages in any other civil action.

511. CRIMINAL ACTIONS

In any case in which an Indian is alleged to have violated this Ordinance willfully, wantonly, or maliciously, the Tribe may bring a criminal enforcement action in addition to or in lieu of a civil action under § 501. The violation may be charged as a misdemeanor and may be punished by imprisonment of not more than 180 days or imposition of a fine of not more than \$5,000, or both.

PART 6. SPECIAL ENFORCEMENT PROCEDURES

601. SEARCHES AND SEIZURES

- (a) Any authorized officer may, without a search warrant, search any aircraft, water craft, vehicle, camper, camper shell, trailer or other container or package, if the officer has probable cause to believe that the search is necessary to determine whether there has been a violation of this Ordinance.
- (b) This section shall not be construed to permit the warrantless search of any non-mobile dwelling house or any outbuilding within the enclosed land surrounding it.
- (c) Any authorized officer may inspect any container that may have contributed to a chemical trespass on Hualapai tribal lands, and may seize as evidence any object that such officer has probable cause to believe has been taken, possessed, or transported in violation of this Ordinance, and in addition may seize as evidence any object which the officer has probable cause to believe has been used as the instrumentality of such illegal taking, possession, or transportation.

602. DETERMINATION OF MEMBERSHIP

Any authorized officer who has reasonable suspicion to believe that a person has violated a provision of this Ordinance, 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 non-member, and if a non-member, whether the person is Indian or non-Indian or whether married to a member. In making such determination, the officer may demand identification and ask such questions as the officer reasonably believes are necessary to making the determination.

603. FAILURE TO IDENTIFY

- (a) It shall be unlawful for any person reasonably suspected of violating this Ordinance who is able to offer proof of his identity to willfully refuse to do so to an authorized officer who, after identifying himself as such, demands such identification.

- (b) Any person who an authorized officer reasonably believes to have violated this Ordinance and who refuses to or cannot identify himself may, if the officer has reasonable grounds to believe he is an Indian, be arrested and transported to the detention facility pursuant to Tribal law governing the arrest of persons for citable offenses or may be subject to the Field Bond Procedures in § 607 of this Ordinance. The complaining officer shall issue and file a Citation according to tribal procedures, substituting for the suspected violator's name a fictitious name such as John Doe.
- (c) Any person arrested pursuant to § 603(b) who an authorized officer has reasonable grounds to believe is an Indian, but not a Tribal member, may be arrested and, in lieu of being transported to the detention facility, may be transported according to the procedures provided by Tribal law for the initiation of federal prosecution and/or expulsion. The complaining officer shall issue and file a Citation according to the procedures of this ordinance, substituting for the suspected violator's name a fictitious name such as John Doe.
- (d) Upon determination of the true name of any defendant designated by a fictitious name in a complaint, counsel for the Tribe or individual shall amend the complaint to reflect defendant's true name.

604. ENFORCEMENT PROCEDURES: INDIANS

- (a) Tribal members
 - (1) If the suspected violator is determined to be a tribal member the authorized officer shall issue to him a Citation and release him unless:
 - (A) The Field Bond Procedures of this ordinance are applicable, in which case they shall be instituted before his release, or
 - (B) The specific offense with which he is charged provides for his arrest, or he is otherwise subject to arrest according to tribal laws governing the arrest of persons on citable offenses, in which case the officer shall arrest him and transport him to the detention facility.
- (b) Non member Indians
 - (1) If the suspected violator is determined to be a non- member Indian, the authorized officer shall issue to him a Citation for the violations alleged,

and, if appropriate, implement the Field Bond Procedures of this Ordinance.

- (2) The authorized officer may also arrest and transport the suspected violator for federal prosecution and/or provide investigative information to initiate expulsion procedures as provided by Tribal law.
- (3) If the specific offense with which the suspected violator is charged provides for his arrest, or if he is otherwise subject to arrest according to the Tribal laws governing the arrest of persons on citable offenses, the suspected violator shall be arrested and transported to the detention facility.
- (4) If the suspected violator signs the Citation, and is not arrested pursuant to this section, the suspected violator shall be released.

605. ENFORCEMENT PROCEDURES: NON-INDIANS

- (a) If the authorized officer determines that the suspected violator is not an Indian, the officer shall issue to him a Citation for the violations alleged and, if appropriate, implement the Field Bond Procedures of this Ordinance. The officer may also arrest and transport the suspected violator for federal prosecution and/or provide investigative information to initiate expulsion procedures as provided by Tribal law.
- (b) The suspected violator shall sign the Citation and, if not arrested for expulsion or federal prosecution, shall be released.

606. CITATIONS AND NOTICES TO APPEAR

- (a) One copy of the Citation shall be filed by the issuing officer with counsel for the Tribe, who shall prepare and file the corresponding complaint with the Tribal Court.
- (b) All hearings to adjudicate civil actions shall be held within ten business days of the issuance of the Citation unless defendant waives his right to a timely hearing.
- (c) A Citation shall inform the suspected violator of the violation charged, the alleged location, date, and time of the violation, and the location, date, and time of the hearing set to determine his liability for the acts charged.

- (d) If the person issued a Citation is to be cited and released he must sign the Promise to Appear located on the Citation. Any member who fails to sign the Promise to Appear shall be arrested and transported to the detention facility pursuant to Tribal law governing the arrest of suspects on citable offenses, or shall be subject to the Field Bond procedures of this Ordinance. Any person determined not to be a member who fails to sign the Promise to Appear shall be subject to the Field Bond Procedures of this Ordinance.
- (e) Notices to Appear shall inform the person cited that failure to appear at the hearing set for adjudication of the complaint against him will result in the entry of a default judgment against him and forfeiture of bond money or property, and as to Indians will result in the issuance of an arrest warrant for failure to appear, which shall be a separate offense under this Ordinance.

607. FIELD BOND PROCEDURES

- (a) If a suspected violator:
 - (1) Refuses to sign a Promise to Appear, or
 - (2) Cannot be, or refuses to be, identified or
 - (3) Is not a member and is not a permanent resident of the reservation, and the officer determines that:
 - (A) Seizure of the suspected violator's property is necessary to guarantee the presence within Tribal jurisdiction of sufficient assets of the suspected violator to secure payment to the Tribe for any damages determined by the court to have resulted from violation of this ordinance, and
 - (B) There is a special need for prompt action because it is likely that the suspected violator will leave Hualapai tribal lands and the jurisdiction of the Hualapai Tribe with his property and not return,

then the officer may demand that the suspected violator post a bond in an amount equal to the sum of the Liquidated Damage Amounts for which he could be found liable by the Tribal Court for the violations the officer has alleged in the Citation.

608. BOND NOTICES

- (a) In all cases where it is feasible, the authorized officer shall prepare and issue a Bond Notice to a suspected violator, and shall have him sign the Bond Notice before the officer takes possession of any bond property.

- (b) The Bond Notice shall inform the suspected violator of:
 - (1) The authorized officer's authority under this Ordinance to demand and, if necessary, seize bond property;
 - (2) The violations alleged and the Liquidated Damage Amount for each, and the total amount;
 - (3) The alternative methods of posting bond as set forth in the Ordinance;
 - (4) The fact that failure to appear at the hearing will result in entry of a default judgment and forfeiture of bond money or property; and
 - (5) The fact that a property bond may be redeemed at any time during normal business hours at the tribal court by the posting of a cash bond, or payment of damages, but that post-judgment redemption must occur, if at all, within 30 days of the entry of judgment unless an appeal is filed.
- (c) Bond Notices shall be prepared in duplicate and a copy signed by the suspected violator shall be filed in Tribal Court by the authorized officer with a copy of the Citation.
- (d) Bond Notices shall contain the name and address of the suspected violator, the serial number of the Citation which has been issued, the date, and the signature and identification number of the issuing officer, and such other information deemed necessary.
- (e) In any case in which the authorized officer has reasonable grounds to believe that the delay caused by the above Bond Notice Procedure could:
 - (1) Jeopardize the safety of the officer,
 - (2) Lead to a breach of the peace,
 - (3) Cause the officer to lose the opportunity to seize bond property, or
 - (4) Give the suspected violator the opportunity to flee the jurisdiction of the Tribe,

the authorized officer may seize bond property first and then issue a Bond Notice.

609. BOND ALTERNATIVES

(a) Cash Method

(1) The suspected violator may post a cash bond in the specified amount with the Officer.

(2) Upon receipt of the cash bond, the authorized officer shall prepare a Bond Receipt for the amount received, on the official form provided by the Tribal Environmental Review Commission or its designee for that purpose, which shall contain the name of the suspected violator, the serial number of the Citation issued to him, the date, the bond amount, and the signature and I.D. number of the issuing officer. One copy of the bond receipt shall be issued to the suspected violator.

(3) The suspected violator shall sign the Bond Receipt and the officer shall retain and file a signed copy with the filed copy of the Citation.

(4) The authorized officer may accept a personal check or any other non-cash form of payment in accordance with this Ordinance and approved by the TERC or its designee.

(5) Within two business days of being posted, all cash bonds shall be deposited in a designated interest-bearing trust account established by the Tribal Court for that purpose.

(6) If the suspected violator is found to be not liable to the Tribe after a trial or a hearing, the bond amount shall be returned in full, together with any interest that has accrued. If he is found liable after a trial or a hearing, or by default due to failure to appear, the bond plus any accrued interest shall be applied in satisfaction of the judgment, and any excess shall be returned to him.

(b) Property Method

(1) The suspected violator may post as bond with the authorized officer any property that the officer reasonably believes is valued at an amount at least equal to the required bond amount. All bond property shall be deposited in the keeping of the Tribal Court for secured storage within 24 hours of being posted. The secured storage will be located at the BIA Law Enforcement facility and/or BIA Land Operations facility, or any other appropriate facility.

(2) Upon receipt of bond property, the authorized officer shall give to the person from whom he received it a Bond Receipt as provided by §609(a)(2) above, except that instead of the cash amount received the receipt shall contain a complete description of the property including all serial and model numbers or other identifying factors. The bond receipt shall also contain the officer's estimate of the value of the property. The owner may also estimate the value of the property.

(3) The suspected violator may redeem his property at any time during normal business hours at the BIA Law Enforcement facility and/or BIA Land Operations facility, or other applicable facility, by posting a cash bond in an amount equal to the sum of the liquidated Damage amounts for the violations with which he is charged, or by paying damages as determined by the court. Redemption must occur, if at all, within 30 days of the entry of judgment unless an appeal is filed.

610. SUMMARY SEIZURE OF BOND PROPERTY

Any authorized officer who has followed the procedures of the Ordinance may use any reasonable non-deadly force necessary to seize bond property from a suspected violator who refuses to comply with the bond.

611. PROHIBITED DEVICES

- (a) Any device that is believed by an authorized officer to belong to a non-member, that the officer has seen being used in violation of the provisions of this Ordinance, may be summarily seized by the officer if:
- (1) Seizure of the suspected violator's property is directly necessary to prevent irreparable injury to the Tribe's property or resources, and
 - (2) There is a special need for prompt action because it is likely that the person may flee with or conceal the offending property or continue the prohibited use of such property during any enforcement delay.
- (b) Any authorized officer seizing property under this section shall issue to the person from whom it is seized a receipt for the property describing it in detail. The officer shall then deliver the property to the BIA Law Enforcement or BIA Land Operations facility for safe-keeping pending the outcome of all hearings on the

seizure and the underlying violations, which shall be adjudicated pursuant to the general procedures of this Ordinance.

- (c) In addition to filing any other complaints for the illegal use or possession of the seized property, counsel for the Tribe may apply to the court for an injunction prohibiting the continued use or possession of the property on Hualapai tribal lands.
- (d) In addition to adjudicating the underlying complaints of illegal possession or use, the court shall make a special finding as to the ownership of the seized property. If the property is found to belong to a non-member, the court shall return the property to its owner, unless it determines that continued retention of the seized property is necessary to secure payment of a judgment as provided by the Bond Procedures of this Ordinance.
- (e) The court shall advise the owner of the terms of any injunctions which have been issued against his continued use or possession of the property on Hualapai tribal lands, and shall further advise that violation of the injunction is considered contempt of court and may subject the violator to further civil liability.
- (f) If, after considering the evidence, the court determines that the seized property belongs to a member or that ownership is unknown, it shall follow the procedures established in this section for the disposition of seized prohibited devices owned by members or unknown persons.
- (g) Any device, the ownership of which is unknown, or that is believed by an authorized officer to belong to a member, and that the authorized officer has seen being used in violation of the provisions of this Ordinance; may be summarily seized by the officer. Notice of intent to confiscate the seized device, on a form provided for the purpose, and a Citation for illegal use and/or possession shall be either personally delivered or sent by registered mail to the last known address of the person who owns the property, if the identity of the owner is known.
- (h) If the owner of seized property cannot be determined, the complaining officer shall prepare a Notice of Intent to Confiscate and a Citation designating the defendant by a fictitious name following the procedures of § 603, and shall include a complete description of the property, the date of seizure and the location of seizure. The officer shall file these notices with counsel for the Tribe, who shall then prepare a complaint and file the complaint and the Notice of Intent to Confiscate with the Court Clerk. The Court Clerk shall cause them to be posted in the Court and published in the Gamyu or other local newspaper for four consecutive issues. The hearing on the matter shall be set for the first available

date after the publication period has ended, and the date of the hearing shall be included in the posted and published notices.

- (1) If at the trial or hearing on the Citation the judge finds that the property belongs to a member, or if the owner does not appear, and if the property is found to have been used illegally, the judge may order, in addition to any other sanction imposed for the violation, that the property be forfeited to the Tribe. In the case of such forfeiture, the Tribal Council shall dispose of the property within 30 days of the finding, in the manner which it determines to be the most consistent with the goals of the Tribe, choosing between destruction of the property, sale for the benefit of the Tribe at public auction, or retention of the property for Tribal uses. The Tribal Council may transfer property at its discretion.

612. REPORT ON ADJUDICATION

Each Tribal Judge or clerk of the court shall, within twenty days after a judgment has been rendered under the provisions of this Ordinance, report in writing to the TERC or its designee the results of the adjudication, the amount of fines, forfeitures, damages or penalties collected, and the disposition thereof.

613. DISPOSITION OF SEIZED PROPERTY

The TERC or its designee and the Hualapai Tribal Police shall prepare a report of all property and devices seized by authorized officers, including a description of the items. This report shall be presented to the Tribal Council annually and kept by the Tribal Secretary. All money derived from the sale of any seized property shall be deposited in an account, to be utilized for purposes listed in Section 4.12, or for other purposes as determined by the Tribal Council.