

BLUE LAKE RANCHERIA WATER QUALITY ORDINANCE

07-2000

The Business Council of the Blue Lake Rancheria, empowered by the tribal Constitution to enact ordinances, hereby ordains the following:

§1. Findings And Declarations

The Tribe finds and declares that —

- (a) It wishes to eliminate all discharges of pollutants into the waters of the Blue Lake Rancheria and other territory over which the Tribe has jurisdiction.
- (b) Elimination of all discharges of pollutants into the waters of the Blue Lake Rancheria and other territory over which the Tribe has jurisdiction is necessary at this time to maintain water quality for consumption and other domestic purposes by residents of the Blue Lake Rancheria and other territory over which the Tribe has jurisdiction.
- (c) Wetland conservation is a matter of concern to the Tribe, since loss or damage to a wetland may deprive the Tribe, tribal members and other residents of the Rancheria and other territory over which the Tribe has jurisdiction of the many benefits associated with wetlands, including flood and storm control, wildlife habitat, protection of groundwater resources, pollution treatment, erosion control, cultural and historic properties, and recreational enjoyment.

§2. Definitions

For the purposes of this Ordinance, the following words shall have the following meanings:

- (a) The term "Business Council" means the Business Council of the Blue Lake Rancheria.
- (b) The term "fill material" means soil, rocks, sand, waste of any kind, or any other material which displaces soil or water or reduces water retention potential.
- (c) The term "person" means any individual, corporation, firm, partnership, joint venture, association, social club, estate, trust, the United States, Tribe, State, County, City, district or other political subdivision of any state, or any other group or combination acting as a unit.
- (d) The term "pollutant" means any substance that will alter the quality of the waters of the Blue Lake Rancheria or other territory over which the Tribe has jurisdiction.
- (e) The term "quality of the water or waters" means any chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its

use.

- (f) The term "Rancheria" means all land, air, and water located within the exterior boundaries of the Blue Lake Rancheria.
- (g) The term "Tribal EPA" means the Tribal Environmental Protection Agency of the Blue Lake Rancheria.
- (h) The term "water or waters" means any water, surface or underground, located on or running through the Rancheria or other territory over which the Tribe has jurisdiction.
- (i) The term "wetland" means land transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For the purposes of this Ordinance wetlands must have one or more of the following three attributes:
 - (1) at least periodically, the land supports predominantly hydrophytes;
 - (2) the substrate is predominantly undrained hydric soil; and/or
 - (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

The term for wetlands as used in this Ordinance is drawn from a U.S. Fish and Wildlife publication titled "Classification of Wetlands and Deepwater Habitats of the United States," dated December, 1979. Where clarification of the term wetlands is needed, the explanation in this publication, as amended from time to time, shall be controlling.

§3. Jurisdiction

- (a) The applicability of this Ordinance shall extend to all persons who discharge any pollutant into the waters of the Rancheria or other territory over which the Tribe has jurisdiction or who engage in any activity whatsoever in and around a wetland within the Rancheria or other territory over which the Tribe has jurisdiction.
- (b) Any person who enters onto the Rancheria or other territory over which the Tribe has jurisdiction shall become subject to this Ordinance and shall be deemed to have consented to the jurisdiction of the Tribe and to be bound by the lawful enactments of the Tribe.

§4. Prohibited Activities

- (a) No person shall discharge any pollutant into the waters or wetlands of the Rancheria or other territory over which the Tribe has jurisdiction.
- (b) Except as otherwise provided by this Ordinance or a permit obtained from the U.S. Army Corps of Engineers, a person shall not:
 - (1) deposit or permit the placing of fill material in a wetland within the Rancheria or other territory over which the Tribe has jurisdiction;
 - (2) dredge, remove, or permit the removal of soil or minerals from a wetland within the

- Rancheria or other territory over which the Tribe has jurisdiction;
- (3) drain surface water from a wetland;
 - (4) alter in any way the hydrology of, or drainage to, a wetland; or
 - (5) alter in any way the qualities of a wetland that create the conditions that allow the wetland to exist.

- (c) If federal law, including the rules of the U.S. Army Corps of Engineers, would allow for the issuance of a permit for activities described in sub-section (b), the Tribal EPA has the authority to prohibit such activity to protect the health and safety of the wetland, the wetland habitat, and/or any plant life or wildlife relying on the wetland for survival.

§5. Activities Allowed Without Permit

- (a) The following uses shall be allowed in and around a wetland without a permit, subject to any other laws enacted by the Tribe or federal government:
- (1) fishing, trapping, or hunting;
 - (2) swimming or boating;
 - (3) hiking and other recreational activities; and
 - (4) ceremonial activities and tribal customs.

§6. Civil Penalties

Any person discharging any pollutant into the waters of the Rancheria or other territory over which the Tribe has jurisdiction or engaging in any other activity prohibited under this Ordinance shall pay a civil fine in an amount not to exceed \$5,000.00 for each day in which the violation occurs. The civil fine required by this section shall be imposed by any court of competent jurisdiction in accordance with this Ordinance.

§7. Notice to Tribal EPA

- (a) Any person that discharges any pollutant into the waters of the Rancheria or other territory over which the Tribe has jurisdiction shall immediately, but in any case not less than twenty-four (24) hours from the time of the discharge, notify the Tribal EPA of said discharge and shall fully disclose to the Tribal EPA any and all information regarding the discharge, including, but not limited to, the type of pollutant discharged, the amount of pollutant discharged, the location of the discharge, and any other information required by the Tribal EPA.
- (b) Any person who engages in any activity in and around a wetland of the Rancheria or other territory over which the Tribe has jurisdiction which is prohibited under this Ordinance shall immediately, but in any case not less than twenty-four (24) hours from the time of the discharge, notify the Tribal EPA of said prohibited activity and shall fully disclose to the Tribal EPA any and all information regarding the prohibited activity as may be required by the Tribal EPA.

- (c) The initial notice of discharge or other prohibited activity required by sub-sections (a) and (b), may be delivered orally to the Tribal EPA in person or over the phone. However, within three (3) days of providing oral notice of a discharge, written notice of the discharge must be provided to the Tribal EPA. All other information required to be provided to the Tribal EPA under sub-sections (a) and (b) must be delivered to the Tribal EPA in writing or orally, at the Tribal EPA's discretion.

§8. Clean-up and Abatement

- (a) Any person who discharges any pollutant into the waters of the Rancheria or other territory over which the Tribe has jurisdiction shall be liable for all costs associated with or necessary to clean up, abate, or remove said pollutants from the waters of the Rancheria or other territory over which the Tribe has jurisdiction and restore the quality of the waters of the Rancheria or other territory over which the Tribe has jurisdiction to their condition as they existed immediately prior to the discharge.
- (b) Any person who engages in any activity in around a wetland of the Rancheria or other territory over which the Tribe has jurisdiction which is prohibited under this Ordinance shall be liable for all costs associated with or necessary to clean up and restore the quality of the wetland to its condition as it existed immediately prior to the prohibited action.

§9. Court Action and Injunctions

Upon failure of any person to comply with any provisions of this Ordinance, the Tribe or the Tribal EPA, by and through its attorney, shall petition a judicial forum of competent jurisdiction for the issuance of an injunction requiring such person to comply therewith. In any such suit, the court or other judicial forum shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, and to levy such fines in accordance with section 6 of this Ordinance, as the facts may warrant.

§10. No Other Remedies Affected

Nothing in this Ordinance shall in any way limit an individual's right to pursue, in any judicial forum of competent jurisdiction, a private action for damages resulting from actions that would be considered violations of this Ordinance.

§11. Environmental Protection Fund

- (a) All monies collected or received by the Tribe as a result of violations of this Ordinance shall be deposited with the Tribe to be credited to the Environmental Protection Fund.
- (b) The Environmental Protection Fund shall be used for expenses related to protecting human health and the environment within the Rancheria and other territory over which the Tribe has jurisdiction, enforcing the provisions of the various environmental ordinances adopted by the

Tribe, promoting environmental projects, and furthering environmental education for tribal members and residents of the Rancheria and other territory over which the Tribe has jurisdiction.

§12. Effect of Ordinance on Other Tribal Ordinances

This Ordinance supercedes any conflicting or contrary superceding ordinances passed by the Tribe.

§13. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, its invalidity does not affect other provisions or applications of this Ordinance, and to this end the provisions of this Ordinance are severable.

§14. Sovereign Immunity

The sovereign immunity of the Tribe is in no manner waived by this Ordinance or by any action by the Business Council, the Tribal EPA, or other staff of the Tribe acting pursuant to this Ordinance.

§15. Amendments

This Ordinance may be amended at any time by the Business Council.

§16. Effective Date

This Ordinance shall take effect immediately upon passage.

CERTIFICATION

As the Chairperson of the Business Council for the Blue Lake Rancheria, I hereby certify that the Business Council adopted this Ordinance at a duly called meeting at which a quorum was present by a vote of 5 for, with 0 against, with 0 abstaining, with 0 absent, on this 2nd day of January, 2000.

Claudia Brundin
Claudia Brundin, Chairperson

Jan. 2, 2000
Date

Melanie Shelanskey
Melanie Shelanskey, Tribal Secretary

Jan. 2, 2000
Date