



ORDINANCE NO. 13-02

ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE RANCHERIA ESTABLISHING A DEPARTMENT OF ENERGY AND TECHNOLOGIES

The Business Council of the Blue Lake Rancheria hereby ordains as follows.

SECTION ONE: Findings.

1. The Blue Lake Rancheria (“Tribe”) recognizes the need to attain energy independence. The Tribe also recognizes the need to reduce the production of greenhouse gases (“GHG”) in light of the established contributory effect GHGs have on climate change.

2. The Tribe intends to pursue the development of alternative energy technologies, including, without limitation, alternative sources of energy that produce heat, light, electrical energy and power and transportation fuels, in order to advance the Tribe’s goal to attain energy independence and reduce the production of GHG within the Tribe’s jurisdiction.

3. The Tribe also intends to pursue the development of alternative energy technologies and other on-reservation projects to advance the Tribe’s economic and community development goals.

4. The Tribe is establishing a Department of Energy and Technologies (“DET”) in order to consolidate and coordinate these efforts into a single tribal governmental department.

5. The DET may, in the future, also serve as an on-reservation tribal utility to produce and/or distribute utility services within the Tribe’s jurisdiction, including, but not limited to, water, electricity, gas, sanitation services, and telecommunications.

6. The DET is intended by the Tribe to operate under the Tribe’s control as the functional equivalent of a separate governmental entity which does not have access to, ownership of or the right to use any tribally owned property, whether real or personal,

tangible or intangible, unless the Business Council has taken express action by resolution to make specific property available to the DET by license, lease or conveyance.

The DET's assets, whether real or personal, tangible or intangible, shall be used by the DET solely in connection with the development of alternative energy technologies and projects intended to advance the goals of the Tribe established in this Ordinance, and the DET's assets shall not be liable to satisfy any debts or obligations of the Tribe.

SECTION TWO:

A new Article 1, entitled: "Department of Energy and Technologies" is hereby added to Title 4 (Utilities) of the Blue Lake Rancheria Tribal Code to read as follows.

TITLE 4 – UTILITIES

ARTICLE 1 – DEPARTMENT OF ENERGY AND TECHNOLOGIES

§04.01.01 Establishment of Department

There is hereby created a Department of Energy and Technologies ("DET") as a Department of the Tribe.

§04.01.02 Scope of Responsibility

The DET shall be responsible for investigating the feasibility and cost-effectiveness of alternative energy sources, as well as developing feasible and cost-effective programs to fund, develop and operate facilities for the production of alternative energy that produce substantially less GHG than conventional energy sources (such as gasoline and petroleum derived diesel fuel), and move the Tribe toward energy independence. Upon further action by the Business Council, the DET may be delegated authority to operate as a tribal utility or other tribal development project within the Tribe's jurisdiction. Any such authorization shall specify the utility service and other powers and duties required for performing that role.

§04.01.03 Organization and Powers

A. Governing body. The Tribe's Business Council shall be the governing body of the DET with the authority to make policy and oversee or delegate authority for the day-to-day management of the DET. Any powers exercised by the DET that are not expressly delegated by this Ordinance or other action of the Business Council to another officer or employee of the DET or the Tribe shall be exercised by the Business Council.

1. DET business shall be listed as a separate item on Business Council meeting agendas. Minutes of Business Council meetings shall report all decisions of the Business Council in its capacity as the governing body of the DET under a separate heading dedicated to DET business.

2. Rules governing the conduct of Business Council meetings and actions taken by the Business Council shall apply when it acts in its capacity as the governing body of the DET. Actions in such capacity may be reflected as adopted motions in the Business Council minutes and in resolutions adopted by the Business Council. The Business Council may take action by resolution, when a separate record of its action is desired, it sees a need to prepare detailed findings to support its action, or the action itself is detailed or complex.

B. Status of DET and Sovereign Immunity. The DET shall be a separate division of the Tribe which is separately liable for its debts. Any debt or obligation of the DET may only be enforced against income or assets held in the name of the DET or which are specifically pledged as security for that debt or obligation. The DET shall have no liability for a debt or obligation of the Tribe, whether arising before or after the effective date of this Ordinance. The DET shall have the same sovereign immunity as the Tribe. Only the Business Council may waive the DET's sovereign immunity. Any such waiver shall only be valid and effective, if contained in a resolution duly adopted by the Business Council. No waiver of the DET's sovereign immunity shall waive the sovereign immunity of the Tribe, any other tribal department or division, any other entity owned by the Tribe, or any officer or employee of the Tribe, tribal department or tribally owned entity. The DET shall not have the power to consent to the execution or levy of any judgment, lien, garnishment or attachment upon any rights or property of the Tribe. The authority to waive sovereign immunity, as provided herein, shall only become effective, if this provision is approved by the General Council of the Tribe in accordance with Article V, Section 3.h of the Tribe's Constitution.

C. DET Powers. The DET shall have the following powers and any other power delegated to the DET by the Business Council:

1. To enter contracts.
2. To own, use, buy, sell, accept, convey, and lease real and personal property, and hold title in the name of the DET.
3. To enter contracts in the name of the DET.
4. To hire, fire, manage, oversee and direct employees.
5. To delegate authority and responsibility and any conditions, procedures or limitations, for the oversight, administration, and day-to-day management of the DET and its employees and programs to one or more officers or employees of the DET or the Tribe or to a committee, commission or other body established for this purpose by the Business Council.
6. To establish, use, manage, close and transfer accounts with financial institutions, including banks, savings and loan associations, and credit unions.
7. To invest surplus funds.
8. To lend or borrow money and pledge or encumber property to secure a loan or other indebtedness of the DET.
9. To apply for and administer grants.
10. To acquire, use, transfer, license or sell intellectual property rights and Trade names and marks.

11. To exercise all lawful powers incidental, necessary or convenient to perform the DET's Scope of Responsibility.

12. To form in accordance with tribal or other applicable law a wholly owned subsidiary, including, but not limited to, limited liability companies or corporations, to further its purposes as established in this Ordinance, and to establish and operate separate projects and/or energy/technology ventures which will not be liable for the debts or obligations of the Tribe, DET or each other.

D. Limitations on Powers of DET

1. The DET shall have no power:

- a. To enter into any agreement of any kind on behalf of the Tribe, either expressly or by implication;
- b. To pledge the credit of the Tribe;
- c. To dispose of, assign, pledge, or otherwise encumber real or personal property of the Tribe other than the DET's expressly created interests therein; or
- d. To waive any right, privilege or immunity of, or release any obligation owed to, the Tribe.

2. Nothing in this Article, and no action taken by the DET pursuant to it, shall be construed as permitting, recognizing, or granting any state (or political subdivision thereof) any power or regulatory jurisdiction or taxing jurisdiction over the property or activities of the DET or its employees located within the boundaries of the Tribe's trust lands or the Blue Lake Rancheria.

E. Requirements of the DET. The DET shall:

1. Maintain books of account in accordance with generally accepted accounting standards consistently applied which shall be available at all reasonable times for inspection by members of the Business Council.

2. File with the Business Council periodic reports of its business and financial affairs, as directed by the Business Council, which reports shall be available during regular business hours for inspection and copying by members of the Tribe.

3. Maintain a principal place of business on the Blue Lake Rancheria at a site designated by the Business Council, where it shall be deemed domiciled, and designate an agent for service of process, who shall be the only official or employee authorized to accept service on behalf of the DET.

4. Use and expend all income and assets of the DET exclusively to fulfill the DET's scope of responsibility.

§04.01.04 Tribal Court has exclusive jurisdiction

The Blue Lake Tribal Court shall have exclusive jurisdiction over any action or proceeding against the DET or any officer or employee of the DET or the Tribe, for acts or omissions within the scope of his or her office or employment, or relating to, arising under or seeking to enforce any provision of this Article; provided, however, that the sovereign immunity of the DET may only be waived as provided in Section 04.01.03.B.

CERTIFICATION

As the Chairperson of the Blue Lake Rancheria Business Council of the Blue Lake Rancheria Tribe of California, I hereby certify that the Blue Lake Rancheria Tribal Council adopted this Ordinance by a vote of 4 for, with 0 against, with 0 abstaining, with 1 absent on this 25th day of March 2013.

Claudia Brundin
Claudia Brundin, Chairperson

3-25-2013
Date of Approval

ATTEST:

Bonnie L. Mobbs
Bonnie L. Mobbs, Tribal Executive Secretary

3-25-13
Date of Approval