



ORDINANCE NO. 13-05

AN ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE RANCHERIA ADOPTING AND ADDING A NEW ARTICLE 2 TO ARTICLE 11 OF TITLE 1 OF THE BLUE LAKE RANCHERIA TRIBAL CODE ENTITLED: VALIDATION ACTION

The Business Council ("Business Council") of the Blue Lake Rancheria ("Tribe") hereby ordains as follows:

SECTION 1. FINDINGS AND PURPOSE

The Business Council finds and declares as follows:

1. For various purposes the Tribe requires the ability to obtain an authoritative determination that actions taken by the tribal agencies and departments, including the General Council and the Business Council, either are or are not within the authority of the agencies and either are or are not valid actions under tribal law.

2. For example, in connection with financing a project or entering into a transaction, the parties with whom the Tribe is dealing may seek assurances that the General Council, the Business Council, tribal agencies and departments and their elected or appointed officials have the authority to approve, sign or agree to specific provisions in the transaction documents or to waive the sovereign immunity of the Tribe or its agencies, departments or officials. As another example, a Tribal Agency may require an interpretation of the Tribe's Constitution with respect to the powers granted by the Constitution and the procedure required for exercising a power.

3. The Tribe has determined that the tribal court is the appropriate institution to decide these questions of authority. Under the Tribal Court Ordinance, the tribal court judges have the independence and the duty to make decisions impartially based on the facts and the law. They are also required to have the training and experience to make these decisions and the tribal court has the expertise to decide issues of tribal law.

4. For these reasons, the Business Council adopts this ordinance to vest the tribal court with the jurisdiction to decide these questions of authority and to validate or invalidate an exercise of authority by the agencies or officials.

SECTION 2. THERE IS HEREBY ADDED A NEW ARTICLE 2 TO ARTICLE 11 OF TITLE 1 OF THE BLUE LAKE RANCHERIA TRIBAL CODE ENTITLED: VALIDATION PROCEEDINGS.

ARTICLE 2

VALIDATION PROCEEDINGS

Sections:

§ 01.11.01.02.010. Tribal Agency Tribal Agency's action

§ 01.11.01.02.020. Jurisdiction of interested parties; Publication of summons; Notice of pendency of proceedings

§ 01.11.01.02.030. Contents of summons

§ 01.11.01.02.040. Completion of jurisdiction; Appearance of interested party

§ 01.11.01.02.050. Tribal member action; Tribal Agency as defendant; Summons, publication, and dismissal

§ 01.11.01.02.060. Required Notice.

§ 01.11.01.02.070. Authorization of bonds, warrants, contracts, obligations, and evidences of indebtedness

§ 01.11.01.02.080. Setting for hearing or trial

§ 01.11.01.02.090. Dismissal of action

§ 01.11.01.02.100. Costs

§ 01.11.01.02.110. Effect of judgment; Notice of appeal

§ 01.11.01.02.010. Tribal Agency's action

The Blue Lake Rancheria (“Tribe”) or any of its departments or political subdivisions and any elected or appointed official of the Tribe (hereafter, collectively, “Tribal Agency”) may bring an action in tribal court to determine the validity of any exercise of the agency’s or official’s authority. The Tribal Agency may take the position that its action was valid or invalid. The action shall be in the nature of a proceeding in rem. The failure of the Tribal Agency to file an action under this Article shall not preclude the Tribal Agency from defending or contesting the exercise of its authority in any other action or proceeding.

§ 01.11.01.02.020. Jurisdiction of interested parties; Publication of summons; Notice of pendency of proceedings

Jurisdiction of all interested parties may be had by publication of summons in the form required by § 01.11.01.02.030 in a newspaper of general circulation designated by the court, published in Humboldt County and in such other counties as may be ordered by the court, and if there be no such newspaper in any such county or counties then in some adjoining county. In addition, prior to completion of such publication, the Tribal Agency shall, to the extent which the court finds reasonably practicable, give notice of the pendency of the proceeding by mail or other means ordered by the court. For purposes of this Article, “interested party” means: (i) any enrolled voting member of the Tribe; and/or (ii) any person or entity whose legal interests may be directly affected by the exercise of authority which is the subject of the action.

§ 01.11.01.02.030. Contents of summons

The summons shall be directed to "all persons interested in the matter of (specifying the matter)," and shall contain a notice to all persons interested in the matter that they may contest or defend the legality or validity of the matter by appearing and filing a written answer to the complaint not later than the date specified in the summons, which date shall be 10 or more days after the completion of publication of the summons. The summons shall provide a detailed summary of the matter the Tribal Agency or other person seeks to validate or invalidate. Except as otherwise specified in this section the summons shall be in the form prescribed by the Tribal Court Rules of Pleading, Practice and Procedure.

§ 01.11.01.02.040. Completion of jurisdiction; Appearance of interested party

Jurisdiction shall be complete after the date specified in the summons. Any interested party may, not later than the date specified in the summons, appear and contest or defend the legality or validity of the matter sought to be determined.

§ 01.11.01.02.050. Interested person's action; Tribal Agency as defendant; Summons, publication, and dismissal

If no proceedings have been brought by the Tribal Agency pursuant to this Article, any enrolled voting member of the Tribe ("Interested Tribal Member") may file an action in Tribal Court to determine the validity of such matter. An action by a Interested Tribal Member relying on this Section 01.11.01.02.050 must be filed within sixty (60) days of the date notice of the Tribal Agency action has been given as required by § 01.11.01.02.060. The Tribal Agency shall be a defendant and shall be served with the summons and complaint in the action in the manner provided by law for the service of a summons in a civil action. In any such action the summons shall be in the form prescribed in Section 01.11.01.02.030 except that in addition to being directed to "all persons interested in the matter of [specifying the matter]," it shall also be directed to the Tribal Agency. If the Interested Tribal Member bringing such action fails to complete the publication and such other notice as may be prescribed by the court in accordance with § 01.11.01.02.020 and to file proof thereof in the action within 30 days from the filing of his complaint, the action shall be forthwith dismissed on the motion of the Tribal Agency unless good cause for such failure is shown by the Interested Tribal Member. By appearing in the action, the Tribal Agency shall not be deemed to have waived its sovereign immunity for any other purpose than to determine the validity or invalidity of the exercise of authority that is the subject of the action.

§ 01.11.01.02.060. Required Notice.

The time limit for filing an action pursuant to Section § 01.11.01.02.050 to validate or invalidate an action taken after the effective date of this Article shall only apply to exercises of authority for which notice is given as provided in this Section.

Notice shall include the action taken, if in the form of an ordinance, resolution or other document or a sufficient summary or description thereof to enable an Interested Tribal Member to know the general content or description of the action. The notice shall state that a copy of the action is available without charge on the Tribe's website and at the tribal office or principal office of the Tribal Agency. It shall state that any action by an Interested Tribal Member to validate or

invalidate the action must be filed in the Tribal Court within sixty (60) days of the date that the notice is published.

The Notice shall be published in a newspaper of general circulation in Humboldt County, posted on the Tribe's website and shall be posted at the tribal office and the principal office of the Tribal Agency.

§ 01.11.01.02.070. Authorization of bonds, warrants, contracts, obligations, and evidences of indebtedness.

For purposes of this Article, bonds, warrants, contracts, obligations, and evidences of indebtedness shall be deemed to be in existence upon their authorization. Bonds and warrants shall be deemed authorized as of the date of adoption by the governing body of the Tribal Agency of a resolution or ordinance authorizing their issuance, and contracts shall be deemed authorized as of the date of adoption by the governing body of the Tribal Agency of a resolution or ordinance approving the contract and authorizing its execution. In the absence of an authorizing resolution or ordinance, the contract shall be deemed authorized on the date the contract or agreement is signed by an officer or agent of the Tribal Agency who was authorized by the governing body of the Tribal Agency to sign the contract on behalf of the Tribal Agency.

§ 01.11.01.02.080. Setting for hearing or trial

Actions brought pursuant to this Article shall be given preference over all other civil actions before the court in the matter of setting the same for hearing or trial, and in hearing the same, to the end that such actions shall be speedily heard and determined.

§ 01.11.01.02.090. Dismissal of action

(a) In the event that an action is brought by a Tribal Agency pursuant to this Article and that Tribal Agency later dismisses the action after an interested party has answered, then, notwithstanding Section 01.11.01.02.050, the party that answered may file an action pursuant to this Article within 30 days after the Tribal Agency's dismissal was filed by the court.

(b) Subdivision (a) is not applicable to a case in which a Tribal Agency has by formal act rescinded the action on the matter subject to validation.

§ 01.11.01.02.100. Costs

The costs, including reasonable attorneys' fees, of any proceeding or action pursuant to this Article may be allowed and apportioned between the parties or taxed to the losing party in the discretion of the court.

§ 01.11.01.02.110. Effect of judgment; Notice of appeal

((a), If no appeal is available, because a tribal appellate court has not been established, no appeal is taken to an established tribal appellate court, or if an appeal is taken and the judgment is affirmed, the judgment shall, thereupon, become and thereafter be forever binding and conclusive, as to all matters therein adjudicated or which at that time could have been adjudicated, against the Tribal Agency and against all other persons, and the judgment shall

permanently enjoin the institution by any person of any action or proceeding raising any issue as to which the judgment is binding and conclusive.

(b) Notwithstanding any other provision of law, no appeal shall be allowed, where an appeal is available, from any judgment entered pursuant to this Article unless a notice of appeal is filed within 30 days after the notice of entry of the judgment, or, within 30 days after the entry of the judgment if there is no answering party. If there is no answering party, only issues related to the jurisdiction of the court to enter a judgment in the action pursuant to this Article may be raised on appeal.

SECTION 3. NO WAIVER OF TRIBAL SOVEREIGNTY.

Except as expressly set forth in Section 01.11.01.02.050 no provision of this Ordinance expressly or impliedly waives the sovereign immunity of the Tribe, any Tribal Agency or their officers and employees or is intended to operate as consent to suit.

SECTION 4. SEVERABILITY.

In the event that any Section or provision of this Ordinance is held or determined to be invalid by any Court of competent jurisdiction, it is the intent of the Council that the remaining Sections or provisions of this Ordinance, and any amendments of this Ordinance, shall continue in full force and effect.

SECTION 5. AMENDMENTS.

This Ordinance may be amended at any time by the Business Council, when such amendment is necessary to promote the general health, safety, and welfare of the Tribe or its members. The Business Council expressly reserves the right to amend this Ordinance subject to the approval of this Ordinance by the Secretary of the Interior, if said approval is required by applicable federal law.

SECTION 6. REPEAL OF PRIOR ORDINANCES.

All prior Ordinances previously enacted by the Business Council, to the extent they are inconsistent with the provisions of this Ordinance, are hereby repealed. If the provisions of this Ordinance conflict with the provisions of any other Ordinance, the provisions of this Ordinance shall control.

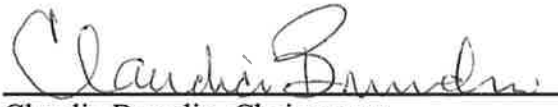
SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect immediately after its adoption by the Business Council.

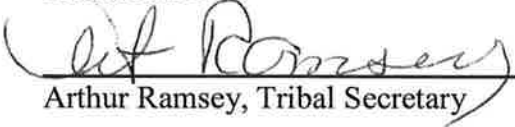
CERTIFICATION

The foregoing Ordinance was adopted at a regular meeting of the Business Council with a quorum present held on August 5, 2013 by the following vote:

AYES: 4
NOES: 0
ABSTAIN: 0
ABSENT: 1



Claudia Brundin, Chairperson

ATTESTED:


Arthur Ramsey, Tribal Secretary