

**Dry Creek Rancheria
Band of Pomo Indians**

Tax Code

(Recodified as previously adopted by the Tribe on 05/19/07)

TITLE 2. TRIBAL FEE-FOR-SERVICE CODE

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CHAPTER 1. TITLE AND PURPOSE

SECTION 1. Short Title.

This Ordinance shall be known as the “**Dry Creek Tribal Fee-for-Service Code of 2007**”

SECTION 2. Statement of Purpose

This Ordinance is adopted by the Dry Creek Rancheria Band of Pomo Indians, pursuant to its inherent powers as a sovereign, federally recognized Indian tribe. This Ordinance does not constitute a general waiver of tribal sovereign immunity. The Ordinance shall be strictly construed to provide the exclusive process for the imposition and collection of tribal fees for service.

CHAPTER 2. DEFINITIONS

The following Definitions shall apply to all sections of this Ordinance unless explicitly stated otherwise.

(A) “Board of Directors” means the body elected by the General Membership from its membership and in which all powers and responsibilities that are vested in the General Membership may be delegated pursuant to Article IV of the Tribe’s Articles of Association.

(B) “Business” means any Person engaged in an activity with the object or result of gain, benefit, or, advantage for the Person so engaged, either directly or indirectly and, where appropriate to the context in which the term is used, the activity itself.

(C) “City” means the city in which the Rancheria or Other Tribal Indian Country is located.

(D) “County” means the county in which the Rancheria or the lands over which the Tribe exercises or is entitled or empowered to exercise sovereignty is located.

(E) “Other Tribal Indian Country” means lands legally held by the United States of America in trust for the benefit of the Tribe and land owned by the Tribe that otherwise satisfies the definition of “Indian Country” under 18 U.S. Code Section 1151.

(F) “Person” includes but is not limited to any individual, firm, limited liability company, partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, the State of California, any county, city and county, municipality, district, or other political subdivision of the State of California, joint powers authority, another state or its political subdivisions, the Tribe, or any of its political subdivisions, or any other group or combination acting as a unit.

(G) “Rancheria” means the Indian lands near Geyserville, California legally held by the United States of America in trust for the benefit of the Tribe and commonly known as the Dry Creek Rancheria.

(H) “Tribal Council” means Tribe’s voting members.

(I) “Tribal Taxing Authority” means the Dry Creek Rancheria Taxing Authority, which shall consist of three (3) persons who shall be appointed by the Board of Directors to serve terms of three (3) years.

(J) “Tribe” means the Dry Creek Rancheria Band of Pomo Indians, a federally recognized Indian Tribe.

CHAPTER 3. WASTEWATER TREATMENT FEE

SECTION 1. Definitions

(A) “Sewage” means the waterborne wastes received from human habitation and use of premises for residential, business, institutional, and industrial purposes.

(B) “Sewer” means a pipe or conduit which carries sewage and/or industrial wastes. Unless otherwise qualified, the word “sewer” when used in this Ordinance shall be taken to mean any sewer located within the Rancheria (or Other Tribal Indian Country) and which is maintained by the Tribe.

(C) “User” means any person or business that releases sewage and/or wastewater into any sewer located on the Rancheria.

(D) “Wastewater” means any waste and water, whether treated or untreated, discharged into or permitted to enter a sewer.

(E) “Water Meter” means a device that measures the volume of water, or the rate of flow of water.

SECTION 2. Wastewater Treatment Fee

(A) A Wastewater Treatment Fee is hereby imposed on any person or business that releases sewage and/or wastewater into any sewer located on the Rancheria or Other Tribal Indian Country.

(B) Each user shall be assessed a percentage of the operating costs of the Wastewater Treatment plant and wastewater infrastructure equal to the percentage volume of water used from all sources. In addition, a fifteen percent (15%) administration fee will be added to the total.

(C) At least annually the Tribal Taxing Authority will review and adjust the rate.

SECTION 3. Wastewater Volume Determination

(A) “Metered Water Supply” means the total amount of water used from all sources shall, at the request of the Tribal Tax Authority, be determined by means of a water meter, installed and maintained at the expense of the user and approved by the Tribal Tax Authority.

(B) “Estimated Wastewater Volume for Users Without Source Meters” means for users where, in the opinion of the Tribal Tax Authority, it is unnecessary or impractical to install water meters, the quantity of wastewater shall be based upon an estimate prepared by an engineer engaged by the Tribal Tax Authority. This estimate shall be based upon a rational determination of the wastewater discharged and may consider such factors as the seating capacity, population equivalent, annual production of goods and services, etc. If the user is dissatisfied with the Tribal Tax Authority’s estimated wastewater volume, then he or she may present his/her objection in writing and the user may install a meter or meters of a type and at a location approved by the Tribal Tax Authority and at the user’s expense. Such meters shall be tested for accuracy at the expense of the user when deemed necessary by the Tribal Tax Authority.

SECTION 4. Account Adjustments

In those cases where it can be shown to the satisfaction of the Tribal Tax Authority, that a portion of the water measured by all meters of the user does not enter the sewage system of the Tribe, and if it is impractical or uneconomical, in the eyes of the Tribal Tax Authority, to require the user to install a sewage flow meter, the Tribal Tax Authority may estimate the quantity of water that does not enter the sewage system of the Tribe and deduct this amount from the total quantity of water indicated to be used by meters on all sources, and the resulting quantity of water shall be used to determine the wastewater treatment fee.

SECTION 5. Billing Frequency

Bills for wastewater treatment service will normally be issued for monthly, bi-monthly, or quarterly periods of service unless the Tribal Tax Authority specifically requires or permits individual premises to be billed for different periods of service.

SECTION 6. Delinquencies.

Charges rendered for any period of service become delinquent thirty (30) days after billing date.

CHAPTER 4. WATER FEE

SECTION 1. Definitions

(A) “Water” means any water furnished by the Tribe for consumption, and human habitation.

(B) "Pipelines" means a pipe or conduit which carries water.

(C) "User" means any person or business that uses water on the Rancheria (or Other Tribal Indian Country).

(D) "Water Meter" means a device that measures the volume of water, or the rate of flow of water.

SECTION 2. Water Fee

(A) A water fee is hereby imposed on a person or business that consumes water on the Rancheria (or Other Tribal Indian Country).

(B) Each user shall be assessed a percentage of the operating costs of the water infrastructure equal to the percentage volume of water used from all sources. In addition, a fifteen percent (15%) administration fee will be added to the total.

(C) At least annually the Tribal Taxing Authority will review and adjust the rate.

SECTION 3. Water Volume Determination

(A) Meter water supply. The total of water used from all sources shall, at the request of the Tribal Tax Authority, be determined by means of a water meter, installed, and maintained at the expense of the user and approved by the Tribal Tax Authority.

(B) Estimated water volume for users without source meters. For users where, in the opinion of the Tribal Tax Authority, it is unnecessary or impractical to install water meters, the quantity of water shall be based upon an estimate prepared by an engineer engaged by the Tribal Tax Authority. This estimate shall be based upon a rational determination of the water discharged and may consider such factors as the seating capacity, population equivalent, annual production of goods and services, etc. If the user is dissatisfied with the Tribal Tax Authority's estimated water volume, then he or she may present his/her objection in writing and the user may install a meter or meters of a type and at a location approved by the Tribal Tax Authority and at the user's expense. Such meters shall be tested for accuracy at the expense of the user when deemed necessary by the Tribal Tax Authority.

SECTION 4. Account Adjustments

In those cases where it can be shown to the satisfaction of the Tribal Tax Authority that a portion of the water measured by all meters of the user does not enter the pipeline system of the Tribe, and if it is impractical or uneconomical, in the eyes of the Tribal Tax Authority, to require the user to install a pipeline flow meter, the Tribal Tax Authority may estimate the quantity of water that does not enter the pipeline system of the Tribe and deduct this amount from the total quantity of water indicated to be used by

meters on all sources, and the resulting quantity of water shall be used to determine the wastewater treatment fee.

SECTION 5. Billing Frequency

Bills for water will normally be issued for monthly, bi-monthly, or quarterly periods of service unless the Tribal Tax Authority specifically requires or permits individual premises to be billed for different periods of service.

SECTION 6. Delinquencies

Charges rendered for any period of service becomes delinquent thirty (30) days after the billing date.

CHAPTER 5. CASINO ROAD USE FEE

SECTION 1. Casino Road Use Fee

There is hereby imposed on the River Rock Casino an annual flat fee to be determined by the Tribal Taxing Authority for use of Rancheria roads.

CHAPTER 6. CASINO GAS LINE USE FEE

SECTION 1. Casino Gas Line Use Fee

There is hereby imposed on the Casino an annual flat fee to be determined by the Tribal Taxing Authority for use of the Tribe's gas line and accompanying infrastructure.

CHAPTER 7. PAYMENT AND PROCEDURAL MATTERS

SECTION 1. Payment

Each Person and Business shall pay fees as required under this Ordinance. Failure to pay fees as required herein shall render such Person or Business liable to the Tribal Taxing Authority.

SECTION 2. Civil Action for Fee and Penalty

In any case of failure of any Person or Business to pay the fee or penalty when due under this Ordinance, after a demand for payment by the Tribal Taxing Authority, the amount of such fee penalty may be recovered in a civil action of debt, and the Tribal Taxing Authority is hereby authorized to bring such an action on behalf of the Tribe in Tribal Court and/or in any court of competent jurisdiction against any such Person or Business.

Any Business or Person subject to a fee under this Ordinance who fails to pay the fee when due shall be subject to a penalty of ten percent (10%) for the first year or part thereof, and six percent (6%) for each additional year or part thereof.

The rate of penalties and interest may be adjusted by the Tribal Taxing Authority.

SECTION 3. Preservation of Records

Every person subject to a fee under this Ordinance shall maintain books and records in connection with such fee for three (3) years from date of payment. Such three (3) year period shall constitute thirty-six (36) consecutive months, beginning with the month including the date on which the fee becomes due.

The burden to maintain books and records is upon the Person or Business. If the Person or Business does not maintain books and records, or does not maintain adequate books and records, the Tribal Taxing Authority may use other methods to reconstruct any fee. The Tribal Taxing Authority shall not act in an arbitrary and capricious manner in so doing.

In the absence of books and records, or if such books and records are inadequate, the determination of the fee by the Tribal Taxing Authority shall be presumed correct.

SECTION 4. Overpayment

If it shall appear subsequent to the receipt of a fee by the Tribal Taxing Authority that an amount of fee penalty or interest has been paid which was not due or was greater than that required to be paid under the provisions of this Ordinance, whether as a result of a mistake of fact or of law, then such amount shall be credited against any additional fee due, or to become due, under this Ordinance from the Person who made the overpayment, or such amount shall be refunded to such Person by the Tribal Taxing Authority, provided that a claim for refund shall be filed with the Tribal Taxing Authority within three (3) years of collection of the overpayment by the Tribal Taxing Authority or said claim shall be forever barred. Such three (3) year period shall constitute thirty-six (36) consecutive months, beginning with the month including the date on which the fee becomes due.

SECTION 5. Tribal Taxing Authority

(A) Authority. The Tribal Taxing Authority shall administer and enforce provisions of this Ordinance. The Tribal Taxing Authority shall act as a branch of the Tribe's government for this purpose and shall exercise all the powers of the Tribe's government necessary or convenient to the administration and enforcement of this Ordinance.

(B) Powers. In order to administer and enforce the provisions of this Ordinance, the Tribal Taxing Authority shall have the following powers:

(1) To appoint one or more officials to act as service fee officials and to specify that said officials have the right to assess and collect fees according to regulations adopted by the Tribal Taxing Authority and approved by the Tribe in accordance with its Articles of Association.

(2) To adopt regulations governing fee-payer reporting responsibilities, procedures for enforcing compliance with reporting responsibilities, procedures for assessing fee liability, procedures for collecting fees that are due but unpaid, and procedures for remitting collected fees to the Tribe. Said regulations shall only become effective thirty (30) days after the Tribal Taxing Authority provides a copy of the proposed regulations to the Board of Directors, and the Board of Directors reviews and approves the regulations. If the Board of Directors disapproves any portion of the proposed regulations, it shall specify its objections and explain how the regulation can be changed to meet its approval. If the Tribal Taxing Authority makes the requested changes, the regulations shall become effective thirty (30) days after a copy of the revised regulations are provided to the Board of Directors and the Board of Directors reviews and approves the regulations.

(a) Such regulations shall, at a minimum, provide the fee-payer with prior notice of assessed fee liability and an opportunity for a hearing before the Tribal Taxing Authority. All hearing decisions of the Tribal Taxing Authority shall be final for the Tribe.

(b) Such regulations shall protect the fee-payer from paying both state or local fees with respect to the same services, if any such fee is demanded, by providing a procedure whereby fee-payer can establish to the satisfaction of the Tribal Taxing Authority that it has done everything legally required under state and local law to exempt its use of such services from state and local fees and that the State authorities nevertheless have assessed and demanded payment of the fee with respect to the service. If the taxpayer makes such a showing within reasonable time limits established by the Tribal Taxing Authority's regulations, the Tribal Taxing Authority, at its option, shall waive the fee, refund the fee if already collected or enter an agreement with the fee-payer under which the fee-payer assigns its rights to the Tribal Taxing Authority and the Tribal Taxing Authority agrees to indemnify and hold the fee-payer harmless from any costs associated with opposing the state or local authorities in order that the Tribal Taxing Authority can legally challenge the state's or local authority's jurisdiction to impose its fee with respect to the services.

(c) One means of collecting fees that are due but unpaid is to set off the uncollected fees against any debts owed by the Tribal Taxing Authority or the Tribe or any branch of the Tribe's government to the fee-payer. The Tribal Tax Authority will adopt regulations that

include procedures for implementing such a set off. For purposes of collecting such fees only and only to the extent necessary for that purpose, the Tribe assigns to the Tribal Taxing Authority any debts that it now owes or may incur in the future to any fee-payer.

(3) To take any other action necessary to administer or enforce this Ordinance, including filing in its own name or the Tribe's name in any court of competent jurisdiction to collect fees that are due but unpaid; provided that this power does not expressly or impliedly waive the Tribe's or the Tribal Taxing Authority's sovereign immunity from suit or subject the Tribal Taxing Authority or the Tribe to any cross-claim, counter-claim, third party claim, or other countersuit.

CHAPTER 8. EFFECTIVE DATE AND REPEALER

This Ordinance shall become effective as of May 1, 2007, upon approval of the Tribe in accordance with its Articles of Association and shall remain in effect until repealed by the Tribe.

CERTIFICATION

The undersigned hereby certify that the foregoing ordinance was duly enacted at a duly held Regular General Meeting of the Tribal Council on May 19, 2007, by the vote of the Tribal Council of the Dry Creek Rancheria Band of Pomo Indians. The motion carried unanimously and this ordinance has not been amended in any manner.

ATTEST

Harney Hopkins, Chairman

Date

Margie Rojas, Secretary/Treasurer

Date