

**Dry Creek Rancheria  
Band of Pomo Indians**

Environmental Code

(Recodified as previously adopted by the Tribe on 08/03/03)

**TITLE 2. WATER QUALITY ORDINANCE**

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**CHAPTER 1. SHORT TITLE, FINDINGS, AND PURPOSE**

**SECTION 1. Short Title**

This Ordinance shall be known as the **Tribal Water Quality Ordinance of the Dry Creek Rancheria Band of Pomo Indians.**

**SECTION 2. Findings**

The Dry Creek Rancheria Board of Directors hereby finds as follows:

(A) Since time immemorial, the creek informally known as Rancheria Creek, its tributary streams, the streambeds thereof and the riparian areas adjacent thereto, have been natural resources of profound significance to the Dry Creek Rancheria Band of Pomo Indians and the Dry Creek Rancheria Pomo people have used these resources for cultural, ceremonial, religious, fishery, seasonal residential, and other purposes fundamental to the Tribe's way of life.

(B) The people of Dry Creek Rancheria have a primary interest in the protection, control, and conservation of the water resources which flow into and through the Dry

Creek Rancheria and the quality of such waters must be protected to insure the health, economic, aesthetic, and cultural well-being of the Dry Creek Rancheria Pomo People.

(C) Various sites along the creek known informally as Rancheria Creek are or may be contaminated with toxic or hazardous materials as a result of previous land use activities, and the contamination at these sites may pose significant risks to water quality and public health if not properly contained and cleaned up.

(D) The Dry Creek Rancheria Board of Directors hereby finds that wellhead protection is a proactive approach to managing public groundwater supplies focusing on preventing contaminants from entering recharge areas to public water supply well. Protecting wellheads involves: knowing the location and boundaries of the recharge area; identifying any potential sources of contamination in the recharge area; controlling those potential sources to prevent the release of contaminants; and controlling future land use in the recharge area to prevent activities which are known to threaten groundwater quality.

(E) Pursuant to Federal law as determined by the U.S. Supreme Court in such cases as *Montana v. United States*, 450 U.S. 544 (1981) and reaffirmed in *Strate v. A-1 Contractors* 117 S.Ct. 1404 (1997), the Dry Creek Rancheria Band of Pomo Indians possesses inherent sovereign authority to regulate on-Rancheria pollution discharges that affect fundamental Tribal interests and public health and safety, including when such activities are conducted by nonmembers of the Tribe on privately owned land within the Rancheria.

(F) Under 1988 amendments to the Clean Water Act, 33 U.S.C. §1377, Indian Tribes are entitled to be certified by the U.S. Environmental Protection Agency ("EPA") as authorized to exercise exclusive jurisdiction (Tribal primacy) over all on-Rancheria surface and ground water quality matters, including over on-Rancheria portions of waters, such as those of the creek informally known as Rancheria Creek, that flow through other jurisdictions.

(G) Regulation or elimination of all discharges of pollutants into the waters of the Dry Creek Rancheria is necessary at this time in order to maintain the quality of those waters for their beneficial use by member of the Dry Creek Rancheria Band of Pomo Indians and residents of the Rancheria.

(H) Such protection of Rancheria waters is not adequately provided for under existing legislation and such protection will be furthered by the passage, adoption, and implementation of this Ordinance.

### **SECTION 3. Purpose**

The purpose of this Ordinance is to exercise comprehensive tribal regulatory authority over all surface and groundwater matters, and to protect fundamental Tribal cultural, ceremonial, religious, fishery, seasonal residential, public health and safety, and water

quality issues by ensuring adequate drinking water, protecting beneficial uses, prohibiting all point source discharges, and restricting non-point source discharges of pollutants within the exterior boundaries of the Dry Creek Rancheria.

### **SECTION 4. Authority and Scope**

Authority. This Tribal Water Quality Ordinance is hereby adopted by Dry Creek Rancheria Tribal Council pursuant to Article VII of the Tribe's Articles of Association authorizing the Tribal Council to undertake such actions.

Scope. The provisions of this Ordinance shall apply to all existing and proposed point and non-point pollution discharges into surface or ground waters, and to all activities which have the potential to affect cultural, ceremonial, religious, fishery, seasonal residential, public health and safety, water quality, and other fundamental interests of the Tribe, including such activities conducted by non-members of the Tribe or on privately owned lands. Activities to be regulated hereunder include but are not limited to:

(A) Landfills and open dumps;

(B) Storage of animal waste;

(C) Automobile graveyards and junkyards;

(D) Land filling of sludge or septic system waste;

(E) Individual, residential, industrial, commercial, or agricultural sewage treatment facilities;

(F) Individual, residential, industrial, commercial, fire protection, or agricultural water control devices including but not limited to treatment facilities or systems, dams, reservoirs, ponds, pools, tanks, wells, pipelines, flumes, canals, and intake or diversion systems;

(G) Underground and above-ground liquid storage containers;

(H) Surface and subsurface removal of mineral resources, overburden, rock, or soil, including quarry operations (borrow pitting) for road surfacing or other uses.

(I) All prospecting activities involving removal of soil or rock materials, including operations involving the reopening of existing mine pits, tunnels, or quarries.

(J) Sand and gravel operations.

(K) Activities such as suction dredging, that have the potential to affect the riparian area, water quality, or channel morphology;

(L) Potential non-point source pollution problem areas including agricultural, mining, construction, urban runoff, silviculture, salt water intrusion, hydrological modification, and residential activities;

(M) Any current or future identified point source pollution problem areas; and

(N) Application of herbicide, insecticide, or other pesticide or toxic materials, or fertilizer for non-domestic use.

The provision of this Ordinance shall apply to all wellhead protection areas within the exterior boundaries of the Rancheria, to all persons and businesses on the Dry Creek Rancheria, to all land, trust, or fee, and to all activities in areas with the potential to affect water quality, public health and safety, and other fundamental interests of the Tribe.

**SECTION 5. Consensual Relations Among Non-members, the Tribe, and Tribal Members:**

Any non-member who uses land anywhere within the exterior boundaries of the Rancheria, whether trust or non-trust land, or enters into consensual relationships with the Tribe or its members, through commercial dealings, contracts leases, or other arrangements, shall be required to comply with this Ordinance. Such person's discharge of pollutants into or other activities which affect the water quality of surface or ground waters within the exterior boundaries of the Rancheria will have demonstrably serious impact upon the environment, natural resources, public health, and safety of the Tribe and its members, unless such use is in compliance with the provisions of this Ordinance and any regulations promulgated hereunder.

**CHAPTER 2. DEFINITIONS**

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

(A) "Aquifer" means any geologic formation capable of yielding a significant amount of potentially recoverable water.

(B) "Beneficial Uses" means all lawful uses of waters identified in the Tribal Water Quality Control Plan. Uses may include, but are not limited to, domestic, commercial, industrial, agricultural, traditional, cultural, and recreational, and uses by fish and wildlife for habitat or propagation.

(C) "Board of Directors" means the Dry Creek Rancheria Band of Pomo Indians Board of Directors.

(D) "Designated Use" means a use that is specified in water quality standards as a goal for a water body segment, whether or not it is currently being attained.

(E) "Existing Uses" means all uses actually attained in the water body on or after \_\_\_\_\_ [date], whether or not they are explicitly stated as designated uses in the water quality standards or presently existing uses.

(F) "Hazardous Materials" means: (1) any substance that poses a threat to human health or the environment. Typical hazardous substances are toxic, corrosive, ignitable, explosive, or chemically reactive; (2) Any substance name by the EPA to be reported if a designated quantity of the substance is spilled in the waters of the United States or if otherwise emitted into the environment.

(G) "Herbicide" means any chemical compound designed to control or destroy plants, weeds, or grasses.

(H) "Historical Uses" means all uses that have historical significance for the Dry Creek Rancheria Band of Pomo Indians.

(I) "Insecticide" means any compound designed or used to kill or control the growth of insects.

(J) "Impervious Barrier" means any material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the underlying surface.

(K) "Mining" means any activities designed for the extraction of minerals.

(L) "Mitigation" means a measure taken to reduce adverse impacts on the environment.

(M) "Nonpoint Source" means any pollution sources which are diffuse and do not have single point of origin or are not introduced into a receiving stream from a specific outlet.

(N) "Person" means any individual, corporation, partnership, association, agency, municipality, commission, or department, including the Dry Creek Rancheria Band of Pomo Indians or other federally-recognized Tribal government.

(O) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Also, any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(P) "Point Source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, culvert, well,

discrete fissures, containers, rolling stock, concentration animal feeding operation, vessel, or other floating craft.

(Q) "Pollutant" means any substance that will alter the quality of the waters of the Rancheria.

(R) "Potential Uses" means all uses attainable in the water body, whether or not they are explicitly stated as designated uses in the water quality standards or presently potential uses.

(S) "Quality of the Water or Waters" means any chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.

(T) "Rancheria" means all land, air, and water located within the exterior boundaries of the Dry Creek Rancheria.

(U) "Riparian" refers to land on the banks of a body of water, such as a lake, river, or stream.

(V) "Recharge Area" means any area that collects precipitation or surface water and carries it to aquifers. Recharge areas may include areas designated as wellhead protection areas.

(W) "Tribal Council" is the voting membership of the Dry Creek Rancheria Band of Pomo Indians.

(X) "Toxic Materials" means any chemical or mixture that presents an unreasonable risk or injury to human health or the environment.

(Y) "Variance" means an authorized written permission for a delay or exception in the application of a given law, ordinance, or regulation.

(Z) "Waste" includes waste water and any and all other substances, liquid, solid, gaseous, radioactive, heat laden, associated with human habitation, or of human or animal origin, or from any of man's activities including producing, manufacturing or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

(AA) "Waters of the Rancheria" or "Rancheria waters" means any water, surface or underground, contained within, flowing through or bordering upon the Dry Creek Rancheria or any portion thereof.

(BB) "Water Quality Control Plan" is a document designating or establishing for the waters within a specified area: (1) beneficial uses to be protected; (2) water quality

objectives; and (3) a program of implementation needed for achieving and maintaining water quality objectives.

(CC) "Water Quality Criteria" means specific levels of water quality which, if reached, are expected to render a body of water suitable for its beneficial use.

(DD) "Wellhead Protection Area" means the surface and subsurface area surrounding a water well or well field, supplying a domestic water system, through which contaminants are reasonably likely to move toward and reach, such water well or well field.

### **CHAPTER 3. TRIBAL ENVIRONMENTAL PROTECTION DEPARTMENT**

#### **SECTION 1. Designation as Lead Tribal Agency**

The Department of Environmental Protection shall be the lead department for implementing this Tribal Water Quality Ordinance.

#### **SECTION 2. Creation of Position of Tribal Water Quality Control Officer**

There is hereby created the position of Tribal Water Quality Control Officer. The Tribal Water Quality Control Officer shall serve under the direction of the Environmental Protection Director and shall be hired in accordance with the Tribe's administration Personnel Policies and Procedures. The Tribal Water Quality Control Officer shall cooperate with the U.S. EPA and other agencies of the federal government or the State of California, as necessary to carry out the intent of this Ordinance and implement the Tribal Water Quality Control Plan.

#### **SECTION 3. Powers and Duties of Tribal Water Quality Control Officer**

The Tribal Water Quality Control Officer shall be responsible for:

(A) Designating beneficial uses for the waters of the Rancheria;

(B) Developing a Water Quality Control Plan for the waters of the Rancheria. The Water Quality Control Plan shall set out water quality standards and contain sections pertaining to beneficial uses, water quality criteria, and antidegradation policy;

(C) Identifying water bodies or sections of water bodies which do not support beneficial uses;

(D) Establishing and overseeing the Tribe's point and non-point source permit review system;

(E) Conducting biannual assessments of the Tribe's Water Quality Control Plan for review by the Board of Directors;

(F) Developing regulations to further the purpose of this Ordinance;

(G) Reviewing the Biannual Water Quality Assessment, National Pollution Discharge Elimination System Permits, and other permits and review procedures, as set forth in this Ordinance;

(H) Specifying document submission and record keeping requirements to be adhered to by all potential dischargers or applicants for permits;

(I) Establishing criteria for the assessment of application and processing fees;

(J) Issuing permits, as required by this Ordinance, after approval by the Board of Directors. The Water Quality Control Officer shall provide a recommendation with proposed findings on each permit for Board of Directors approval;

(K) Entering and inspecting any property, premises, or facility involved in any activity that may affect water quality on any lands within the exterior boundaries of the Rancheria. Such inspections may include, but are not limited to:

(1) Obtaining samples of soil, rock, vegetable, air, water, or other substances deemed necessary; and

(2) Setting up and maintaining monitoring equipment for the purpose of assessing compliance with beneficial uses, water quality criteria, antidegradation policy, applicable regulations, best management practices, or health or safety hazards;

(L) Obtaining from the Tribal Court a warrant or other order which may be necessary to carry out his or her responsibilities under this Ordinance: and

(M) Reviewing and recommending regulations for Board of Directors approval to further the purposes of this Ordinance, following notice and hearings or written opportunity for public comment.

#### **SECTION 4. Enforcement**

The provisions of this Ordinance shall be enforced by the Department of Environmental Protection. Any Tribal Law Enforcement Officer, or any person officially appointed to the Board of Directors in consultation with the Department of Environmental Protection may issue the following for violations:

(A) Cease and Desist Orders or Notices of Violation: Upon a determination pursuant to an investigation as outlined in Chapter 9, Section 3 of this Ordinance that any person is discharging or causing to be discharged or is about to be discharged into any Rancheria waters, directly or indirectly, any pollutant which constitutes a violation of

this Ordinance, a Cease and Desist Order or Notice of Violation will be served upon the responsible parties and the landowner.

(B) It shall be a civil offense, for which a fine of not less than \$5,000 shall be assessed, to obstruct or otherwise interfere with investigative or other activities of any agent or officer of the Tribe carrying out this Ordinance.

### **CHAPTER 4. ANTIDegradation Policy and Implementation Plan**

#### **SECTION 1. Antidegradation Policy**

(A) Existing uses shall be protected. The level of water quality necessary to protect existing uses shall be maintained.

(B) Where existing water quality exceeds levels necessary to support propagation of fish and wildlife and recreation in and on the water, that level of water quality shall nonetheless be maintained and protected unless it is found, after full satisfaction of governmental and public participation requirements, that a lower level of water quality is acceptable in order to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation of water quality, the Tribe shall impose the highest statutory and regulatory requirements for point sources and shall impose best management practices for non-point sources.

(C) Where high quality waters constitute an outstanding national or Tribal resource, or waters of exceptional recreational or ecological significance, the water quality, and uses of those water bodies shall be maintained and protected.

(D) In those cases where potential water quality impairments associated with thermal discharge are involved, the antidegradation policy and implementation method shall be consistent with Section 316 of the Clean Water Act, as amended (33 U.S.C. § 1326).

#### **SECTION 2. Implementation Plan**

Acting under authority delegated by Board of Directors, the Tribal Water Quality Control Officer shall implement the Tribe's Water Quality Control Plan, including the antidegradation policy, by establishing and maintaining controls on the introduction of pollutants into surface waters. More particularly, the Tribal Water Quality Control Officer shall do the following:

(A) Establish and maintain controls on the introduction of pollutants in surface waters of the Rancheria;

(B) Monitor water quality to assess the effectiveness of pollution controls and to determine whether water quality standards are being attained;

- (C) Obtain information as to the impact of effluents on receiving waters;
- (D) Review the adequacy of the existing data base and obtain additional data when required;
- (E) Assess the probable impact of effluents on receiving waters in light of designated uses and numeric and narrative standards;
- (F) Require the highest and best degree of wastewater treatment practicable and commensurate with protecting and maintaining designated uses and existing water quality:
- (G) Develop water quality based effluent limitations and comments on technology-based effluent limitations, as appropriate, for inclusion in any federal permit issued to a discharger pursuant to Section 402 of the Clean Water Act (33 U.S.C. §1342);
- (H) Require that these effluent limitations be included in any such permit as a condition for Tribal certification pursuant to Section 401 of the Clean Water Act (33 U.S.C. §1341).
- (I) Coordinate water pollution control activities with other constituent agencies and other local, state, and federal agencies, as appropriate;
- (J) Develop and pursue inspection and enforcement programs in order to ensure that dischargers comply with requirements of the Water Quality Control Plan and any requirements promulgated thereunder, and in order to support the enforcement of federal permits by the U.S. EPA;
- (K) Provide continuing technical training for wastewater treatment facility operators through training and certification programs;
- (L) Provide funds to assist in the construction of publicly owned wastewater treatment facilities through the construction grants and revolving funds program authorized by the Clean Water Act (33 U.S.C. §1281), and other federal funds available for such purpose; and
- (M) Encourage, in conjunction with other agencies, voluntary implementation of best management practices to control non-point sources of pollutants to achieve compliance with the standards set out in the Water Quality Control Plan.

## **CHAPTER 5. SURFACE WATER QUALITY STANDARDS**

The water quality standards described in this Section apply to all waters of the Rancheria. Water quality standards described in this Section designate beneficial uses and water quality for waters of the Rancheria. Any subsequent standards that may be

described in the Water Quality Control Plan must be at least as stringent as the standards provided below.

### **SECTION 1. Designated Uses**

For the purposes of this Code, there are hereby established the following designated uses for the waters of the Rancheria. A water body that is not listed in Chapter 5, Section 2 but that is a tributary to a listed water body shall be protected by the water quality standards that have been established for the nearest downstream water body listed in Section 2. Water bodies within the Rancheria which do not have beneficial uses designated for them are assigned wildlife habitat designations. These wildlife habitat designations in no way affect the presence or absence of other beneficial use designations in these water bodies. Further classification will be based on the size of the water body and its historic and environmental significance. Further, if a water body has more than one designated use listed in Section 2, applicable water quality criterion for a pollutant is the most stringent of those prescribed to protect the designated uses of the water body.

The codes used in Chapter 5, Section 2 are as follows:

- (A) Municipal and Domestic Supply (“MUN”) includes usual uses in community water systems and domestic uses from individual water supply systems.
- (B) Agricultural Supply (“AGR”) includes crop, orchard, and pasture irrigation, stock watering, support of vegetation for range grazing, and all uses in support of farming and ranching operations.
- (C) Industrial Service Supply (“IND”) includes uses that do not depend primarily on water quality such as mining, cooling water supply, hydraulic conveyance, gravel washing, and fire protection.
- (D) Industrial Process Supply (“PROC”) includes process water supply and all uses related to the manufacturing of products.
- (E) Groundwater Recharge (“GWR”) includes natural or artificial recharge for future extraction for beneficial uses.
- (F) Hydropower Generation (“POW”) means used for hydropower generation.
- (G) Cold Freshwater Habitat (“COLD”) includes uses of water that support cold water ecosystems including but not limited to preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
- (H) Water Contact Recreation (“REC-1”) includes all recreational uses involving actual body contact with water, such as swimming, wading, water-skiing, skin-diving,

surfing, sport fishing, uses in therapeutic spas, and other uses where ingestion of water is reasonably possible.

(I) Non-Contact Water Recreation (“REC-2”) includes recreational uses which involve the presence of water but do not require contact with water, such as picnicking, sunbathing, hiking, beach combing, camping, pleasure boating, hunting, and aesthetic enjoyment.

(J) Preservation of Areas of Special Biological Significance (“BIOL”) includes aquatic and wildlife refuges, ecological reserves, and designated areas of special biological significance.

(K) Wild Life Habitat (“WILD”) includes water bodies that provide a water supply and vegetation habitat for the maintenance of wildlife.

(L) Preservation of Threatened and Endangered Species (“T&E”) provides an aquatic habitat necessary, at least in part, for the survival of certain species established as being threatened and endangered species.

(M) Fish Migration (“MGR”) provides a migration route and temporary aquatic environment for anadromous or other fish species.

(N) Fish Spawning (“SPWN”) provides a high quality aquatic habitat especially suitable for fish spawning.

(O) Cultural (“CUL”) has religious, ceremonial, or subsistence significance or provides a role in Dry Creek Rancheria Band of Pomo Indians Tribal culture.

**SECTION 2. Use Classification Key**

The use classification key is as follows:

- P = Potential Use
- E = Existing Use
- H = Historical Use
- N/A = Not Applicable

Full protection will be afforded to existing, potential, and historical uses of the Rancheria waters.

Unit	Inter-State?	MUN	AGR	IND	PROC	GWR	POW	COLD	REC-1
[Name of Water Body]	[Y/N]	[P,E,H or N/A]							

Unit	Inter-State?	REC-2	BIOL	WILD	T&E	MGR	SPWN	CUL
[Name of Water Body]	[Y/N]	[P,E,H or N/A]						

**SECTION 3. General Water Quality Criteria**

The following criteria set forth limits or levels of water quality characteristics for surface waters to ensure the reasonable protection of beneficial uses from degradation or unreasonable effect of point and non-point pollution which may be a result of any cause including agricultural, mining, construction, urban runoff, silviculture, salt water intrusion, hydrological modification, and residential activities. The water quality standards included in this Ordinance are developed on a Rancheria-wide basis.

(A) Color. Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.

(B) Tastes and Odors. Waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin that cause nuisance or adversely affect beneficial uses.

(C) Floating Material. Waters shall not contain floating material including solids, liquids, foams, and scum in concentrations that cause nuisance, adversely affect beneficial uses, or degrade water quality.

(D) Suspended Material. Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

(E) Settleable Material: Waters shall not contain substances in concentrations that result in deposition of materials, which cause nuisance or adversely affect beneficial uses.

(F) Oil and Grease. Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance or that otherwise adversely affect beneficial uses.

(G) Biostimulatory Substances. Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.

(H) Sediment. The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

(I) Turbidity. Turbidity shall not be increased more than Twenty Percent (20%) above naturally occurring background levels.

(J) pH. The pH shall not be depressed below 6.5 nor raised above 8.5.

(K) Dissolved Oxygen. Dissolved concentrations shall not be reduced below the following minimum levels at any time.

(1) Waters designated COLD 6.0 mg/l

(2) Waters designated SPWN 7.0 mg/l

(3) Waters designated SPWN during critical spawning and egg incubation periods 9.0 mg/l

(L) Bacteria. The bacteriological, quality of waters of the Rancheria shall not be degraded beyond natural background levels. In waters designated for contact recreation (REC-1), the median fecal coliform concentration based on a minimum of not less than five samples for any 30-day period shall not exceed 50/100 ml., nor shall it exceed more than ten percent (10%) of total samples during any 30-day period exceed 400/1 00 ml.

(M) Temperature. The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Board of Directors that such alteration in temperature does not adversely affect beneficial uses. At no time or place shall the temperature of any water be increased by more than 5 degrees Fahrenheit above natural receiving water temperature.

(N) Toxicity. All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life. Compliance with this objective will be determined by use of indicator organisms, analyses of species diversity, population density, growth

anomalies, bioassays of appropriate duration, or other appropriate methods as specified by the Tribal Water Quality Control Officer.

(1) The survival of aquatic life in surface waters subjected to waste discharge or other controllable water quality factors shall not be less than that for the same water body in areas unaffected by the waste discharge, or when necessary for other control water that is consistent with the requirements for "experimental water" as described in Standard Methods for the Examination of Water and Waste Water, latest edition. At a minimum compliance with this objective as stated in the previous sentence shall be evaluated with a 96-hour bioassay.

(2) Effluent limits based upon acute bioassays of effluents will be prescribed where appropriate, additional numerical receiving water standards for specific toxicants will be established as sufficient data become available, and source control toxic substances will be encouraged.

(O) Pesticides. No individual pesticide or combination of pesticides shall be present in concentrations that adversely affect beneficial uses. There shall be no bioaccumulation in pesticide concentrations found in bottom sediments or aquatic life.

(P) Radioactivity. Radionuclides shall not be present in concentrations which are deleterious to human, plant, animal, or aquatic life nor which result in the accumulation of radionuclides in the food web to extents which present a hazard to human, plant, animal, or indigenous aquatic life.

Constituent Maximum Contaminant Level, pCi/l

Combined Radium-226 and Radium-228	5
Gross Alpha particle activity (Including Radium-226 but excluding Radon and Uranium)	15
Tritium	20,000
Strontium-90	8
Gross Beta particle activity	50
Uranium	20

**SECTION 4. Managing Discharges Attributable to Point and Non-point Sources**

Water quality standards shall be the basis for managing discharges attributable to point and nonpoint sources of pollution. Water quality standards are not used to control, and are not invalidated by, natural background phenomena, or acts of God.

**SECTION 5. Water Quality Criteria for Toxic Pollutants**

The potential benefits to human health of establishing toxic criteria include: (1) reducing the fish contaminated with toxic pollutants; (2) reducing the potential health



risks to persons drinking contaminated drinking water; and (3) reducing the potential health risks to swimmers from dermal exposure to contaminated surface waters. The criteria listed below consist of two measures. The "Water and Organisms" measure represents the maximum ambient water concentration for consumption of both contaminated water and fish or aquatic organisms and to all water designated MUN. The "Organisms Only" measure represents the maximum ambient water concentration for consumption of fish or other aquatic organisms and applies to all waters without a MUN designation. Specific Water Quality standards shall be developed by the Tribe and approved by EPA.

#### **SECTION 6. Biological Criteria**

The following biological criteria shall apply to the waters of the Rancheria.

(A) All surface waters shall be of sufficient quality to support aquatic biota without detrimental changes in the resident aquatic communities.

(B) Waters of the Rancheria shall be free from substances, whether attributable to point source discharges, nonpoint sources, or instream activities, in concentrations or combinations which would impair the structure or limit the function of the resident aquatic community as it naturally occurs.

(C) The structure and function of the resident aquatic community shall be measured by biological assessment methods.

(D) Determination of impairment or limitation of the resident aquatic community may be based on comparison with the aquatic community found at an appropriate reference site or region.

#### **SECTION 7. Wildlife Criteria**

All surface waters shall be of sufficient quality to protect and support all life stages of resident or migratory wildlife species which lie in, on, or near the waters of the Rancheria.

#### **SECTION 8. Wetlands Criteria**

The following wetlands criteria shall apply to all waters of the Rancheria:

(A) Water quality in wetlands shall be maintained at naturally occurring levels, within the natural range of variation for individual wetlands.

(B) Physical and biological characteristics shall be maintained and protected by:

(1) Maintaining hydrological conditions, including hydroperiod, hydrodynamics, and natural water temperature variations;

(2) Maintaining the natural hydrophytic vegetation; and

(3) Maintaining substrate characteristics necessary to support existing and characteristic uses.

#### **SECTION 9. Modification of Standards to Reflect Attainability**

In the event that monitoring of water quality identifies areas where attainable water quality is less than what is required by the standards set out in the Tribal Water Quality Control Plan, then the Dry Creek Rancheria Band of Pomo Indians may modify the Tribal Water Quality Control Plan to reflect attainability. Modification thereof shall be within the sole discretion of the Dry Creek Rancheria Band of Pomo Indians, but shall be subject to the provisions of the Clean Water Act, and shall be carried out in accordance with the use attainability analysis procedures set forth in the Clean Water Act.

#### **SECTION 10. Revision of Standards and Errors**

(A) Revisions. The Tribal Water Quality Control Plan and standards promulgated there under may be revised, from time to time, or as the need arises, or as the result of updated scientific information.

(B) Errors. Errors resulting from inadequate and erroneous data or human or clerical oversight will be subject to correction by the Dry Creek Rancheria Band of Pomo Indians. The discovery of such errors does not render the remaining and unaffected provisions of the Tribal Water Quality Control Plan and standards set forth in the Plan invalid. If any provision of the Tribal Water Quality Control Plan, or the application of any provision of the Plan including any standards set out in the Plan, to any person or circumstance, should be held to be invalid, the application of such provision to other persons and circumstances and the remainder of the Tribal Water Quality Control Plan shall not be affected thereby.

### **CHAPTER 6. SAMPLING AND ANALYSIS**

#### **SECTION 1. Sample Collection, Preservation, and Analysis to Determine Water Quality and Maintain Standards**

Sample collection, preservation, and analysis used to determine water quality and to maintain the standards set forth in the Water Quality Control Plan shall be performed in accordance with procedures prescribed by the latest EPA authoritative analytical reference, including but not limited to the latest editions of any of the following authorities: (1) American Public Health Association, *Standard Methods for the Examination of Water and Wastewater*; (2) "Methods for Chemical Analysis of Water and Wastes"; or (3) "EPA Guidelines Establishing Test Procedures for the Analysis of Pollutants."

## SECTION 2. Bacteriological Surveys

The monthly geometric mean used in assessing attainment of standards when a minimum of five (5) samples is collected in a 30-day period. When less than five samples are collected in a 30-day period, no single sample shall exceed the applicable upper limit for bacterial density set forth in Chapter 5, Section 3(L).

## SECTION 3. Sampling Procedures

(A) Streams. Stream monitoring stations below waste discharges shall be located a sufficient distance downstream to ensure adequate vertical and lateral mixing.

(B) Reservoirs. Sampling stations in reservoirs shall be located at least 250 feet from a waste discharge, and otherwise, where the attainment of a water quality standard is to be assessed. Water quality measurements shall be taken at intervals in the water column at a sampling station. For toxic substances and nutrients, the entire water column shall be made in the epilimnion. In nonstratified lakes, measurements will be made at intervals throughout the entire water column.

## CHAPTER 7. NOTICE OF DISCHARGES

### SECTION 1. Notice of Discharge

Except as permitted pursuant to this Ordinance, any person that discharges any pollutant into the waters of the Rancheria shall immediately notify the Water Quality Control Officer of such discharge and shall fully disclose the information regarding the discharge including the type of pollutant, the amount, the location and other information required by the Water Quality Control Officer.

## CHAPTER 8. PERMIT AND INSPECTION PROGRAM

### SECTION 1. Permits Required

No person shall discharge any pollutant into any Rancheria water from a point source or conduct dredge and fill activities in any designated wetland area of the Rancheria without first having applied for and obtained a permit from the Department of Environmental Protection after approval by the Dry Creek Rancheria Board of Directors. Any person who intends to alter or enlarge an existing activity described in Chapter 1, Section 4 of this Ordinance, or who intends to cause or direct such alteration or enlargement of such activities, shall, prior to alteration, or enlargement of such activities, apply for and obtain a valid permit from the Department of Environmental Protection after approval by the Board of Directors.  
**[See Appendix A for a sample application form.]**

(A) Contents of Application. Permit applications will include the following information:

- (1) Identification and address of the owner and operator of the activity, facility, or process from which the discharge is to be permitted;
- (2) Location, quantity, and quality characteristics of the permitted discharge;
- (3) Effluent limitations and requirements for treatment prior to discharge;
- (4) Equipment and procedures required for mandatory monitoring as well as record-keeping and reporting requirements;
- (5) Schedules of compliance;
- (6) Procedures to be followed by tribal personnel for entering and inspecting the premises;
- (7) Submission of pertinent plans and specifications for the facility, process, or activity which is the source of the discharge;
- (8) Restrictions on transfer of the permit;
- (9) Procedures to be followed in the event of expansion or modification of the facility, process, or activity from which the discharge occurs or the quantity, quality, or frequency of the discharge; and
- (10) Duration of the permit and renewal procedures.

(B) Application Under Oath. Each applicant shall sign the permit application under oath, certifying the truth and accuracy of the information contained in the permit application, in a form approved by the Environmental Protection Director.

(C) Fees. A processing and monitoring fee, as established by the Department of Environmental Protection and approved by the Board of Directors, shall be paid to the Tribe at the time of filing. These fees shall be used for costs associated with administering the Water Quality Control Plan.

(D) Review of Application by Tribal Departments. Four (4) copies of the application and any proposed mitigation plan shall be furnished by the applicant. Upon receipt of a permit application, the Department of Environmental Protection shall transmit one copy to the Dry Creek Rancheria Board of Directors and Tribal Historic Preservation Office, Department of Public Works, for their written recommendations. Failure of the departments to respond in writing to the Department of Environmental Protection within thirty (30) days of receipt shall indicate approval or no desire to comment by the department.

(E) Except as otherwise provided in this Ordinance, permit applicants shall demonstrate that the proposed alteration, enlargement, or new regulated activity will

not adversely affect water quality and is designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water related natural characteristics of the site.

(F) Public Notice and Hearing on Permit Application. Public notice of every complete application for a discharge permit shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue or deny a permit. Procedures for the circulation of public notice shall be established by the Tribe and shall include at least the following:

- (1) Notice shall be circulated within the geographical areas of the proposed discharge.
- (2) Notice shall be mailed to any person or group upon request.
- (3) Upon request, the Tribe shall add the name of any person or group to a mailing list to receive copies of notices for all discharge applications within the Rancheria or within a certain geographic area.
- (4) The Tribe shall promulgate such regulations as are necessary and appropriate to provide an opportunity for public hearing, when appropriate, prior to granting or denying a discharge permit.

(G) Permit applications, any required environmental documents, and mitigation plan proposals must demonstrate compliance with applicable Tribal regulations including but not limited to those pertaining to water quality, hazardous substances, environmental impact evaluations, and riparian protection.

(H) Nothing in any permit shall ever be construed to prevent or limit the application of any emergency power of the Tribe.

### **SECTION 2. Categorical Exclusions and Variances**

The Dry Creek Rancheria Board of Directors may by regulation exclude categories of uses, activities, or projects from requirements of this Ordinance for one or more of the following reasons:

- (A) Naturally occurring pollution;
- (B) Natural low-flow conditions;
- (C) Irretrievable human-caused conditions; and/or
- (D) Substantial and widespread economic and social impacts.

A variance to establish water quality objectives may be granted by the Water Quality

Control Officer after approval by the Board of Directors, only when the applicant satisfactorily demonstrates that:

- (A) Water quality will not be permanently impaired;
- (B) Public health will not be threatened;
- (C) No significant adverse environmental effects will occur due to the limited size or scale of a proposed activity;
- (D) A mitigation plan approved by the Water Quality Control Officer demonstrates that all discharges will be below established water quality standards as set forth in the Water Quality Control Plan before the expiration of the variance;
- (E) The variance does not exceed one year from the date of issuance; and
- (F) A 30-day public review period has passed with at least one public meeting.

### **SECTION 3. Issuance of Permit; Final Environmental Determination**

(A) Upon compliance with this Ordinance, the Water Quality Control Officer may make findings and issue the permit as provided in this Ordinance. The permit shall specify the person authorized to operate the facility and the boundaries of the facility. The permit shall contain such conditions as are necessary to protect the public health, safety, and the environment.

(B) Copies of the permit (including conditions specified therein), findings, and any documents setting forth the Water Quality Control Officer's final environmental determination shall be made available for inspection and copying to any person so requesting.

(C) Denial of Permit. The Water Quality Control Officer shall deny the permit when any of the following occur:

- (1) The Water Quality Control Officer determines that the proposed discharge is not consistent with this Ordinance or other applicable tribal or federal laws.
- (2) The Water Quality Control Officer determines that it will be impossible to propose a permit that will be mutually satisfactory to the Committee and the discharger.
- (3) Any other circumstances provided by law.

(D) Upon denial of a permit, the Water Quality Control Officer shall give written notice of the denial to the discharger and any other person who has requested in

writing that such notice be given. Notice to the operator shall be accompanied by a form request for re-hearing.

(E) An operator who desires an appeal of the denial of a permit shall file with the Department of Environmental Protection a written request for a re-hearing before the Committee within fifteen (15) days after receiving notice of the denial of the permit. The hearing procedures will be the same as the administrative process set out herein.

#### **SECTION 4. Monitoring and Records; Inspections**

(A) Monitoring and Records. The permittee shall monitor the discharge pursuant to the conditions of the permit. Sampling and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The permittee shall retain records of all monitoring information, including calibration, and maintenance records and copies of all reports required by the permit. The permittee shall submit duplicate copies of monitoring information to the Department of Environmental Protection. Records for monitoring shall include:

- (1) The date, exact place, and time of sampling or measurement;
- (2) The individual(s) who performed the sampling or monitoring;
- (3) The date analysis was performed;
- (4) The analytical techniques or methods used;
- (5) The results of such analysis; and
- (6) Chain-of-custody for all samples.

(B) Inspections and Entry. The permittee shall allow an authorized agent of the Tribal Environmental Protection Department or its designated enforcement officer, upon presentation of credential to:

- (1) Enter upon the permittee's premises where a regulated facility, activity, or process is located, or where records must be kept under the conditions of the permit;
- (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
- (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

- (4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the appropriate Tribal ordinance, any substances or parameters at any location.

### **CHAPTER 9. ENFORCEMENT PROGRAM/ADMINISTRATIVE PROCEDURES**

#### **SECTION 1. Enforcement Policy**

It is the policy of the Department of Environmental Protection to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent damage to Rancheria resources or harm to the health, safety, or welfare of the Rancheria population. It is also the policy of the Department of Environmental Protection, consistent with the principles of due process, to provide effective procedures for enforcement.

#### **SECTION 2. Enforcement Agency**

The Department of Environmental Protection shall be responsible for enforcing the provisions of this Code. Specifically, the Department of Environmental Protection shall conduct investigations when a complaint is received by the Tribal Water Quality Control Officer, or where the Tribal Water Quality Control Officer or other Tribal department believes that a violation of this Ordinance has occurred.

#### **SECTION 3. Enforcement Activities**

Where a written and verified complaint shall be filed with the Tribal Water Quality Control Officer and reviewed by the Department of Environmental Protection alleging that, or where the Tribal Water Quality Control Officer shall have cause to believe that, any person is violating any discharge regulation or permit condition, the Department of Environmental Protection shall cause a prompt investigation to be made.

#### **SECTION 4. Notice of Violation; Cease and Desist Order**

If the Department of Environmental Protection finds, after an investigation pursuant to Chapter 9 Section 3 of this Ordinance, that a violation of any regulation or permit condition exists, the Department of Environmental Protection shall promptly notify both the alleged violator and the Board of Directors in writing.

In the case of an apparent violation of this Ordinance, the Department of Environmental Protection is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation, and, if the apparent violation occurred on property owned by a person other than the alleged violator, a Notice of Violation shall also be issued to the landowner.

In the case of a continuing violation or a threatened violation, the Department of Environmental Protection is authorized to issue a Cease and Desist Order to prevent the violation from continuing or occurring.

Failure to comply with a Cease and Desist Order shall constitute a violation of this Ordinance. Both a Notice of Violation and Cease and Desist Order may be issued for a single incident. A Notice of Violation will include a Summons to appear before the Board of Directors at an enforcement hearing at a specified date and time, and shall advise the alleged violator that failure to appear may result in the imposition of civil penalties.

If a Cease and Desist Order is issued without an accompanying Notice of Violation, the Order will inform the recipient that failure to comply with the Order will constitute a violation of this Ordinance which will result in the issuance of a Notice of Violation and may result in the imposition of civil penalties.

#### **SECTION 5. Informal Conferences**

The Department of Environmental Protection shall afford the landowner or his or her representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the Department of Environmental Protection determines that there may be either imminent environmental damage to a Rancheria resource or adverse impact upon the health, safety, and welfare of the Rancheria population. Informal conferences may be used at any stage in the enforcement proceedings, except that the Department of Environmental Protection may refuse to conduct informal conferences with respect to any matter then pending before the Board of Directors.

#### **SECTION 6. Reports Required**

The Department of Environmental Protection shall keep written notes of the date and place of the conference, the persons in attendance, the subject matter discussed, and any decisions reached with respect to further enforcement action.

#### **SECTION 7. Enforcement Hearings**

If the landowner and the Department of Environmental Protection are unable to resolve the matter via an informal conference, the Board of Directors is authorized to conduct adjudicatory hearings to determine if a violation of this Ordinance has occurred. In such a hearing the Director of Environmental Protection, in cooperation with the Tribal Quality Control Officer, shall present the case to the Board of Directors to establish that the person(s) charged has (have) committed a violation of this Ordinance. Any person so charged shall be entitled, at his or her own expense, to be represented by an attorney or other representative.

(A) Burden of Proof. The Department of Environmental Protection shall have the burden of proving that a violation of this Ordinance has occurred and that a person charged was responsible for the violation. The Board of Directors shall rule that a violation of this Ordinance has occurred if it finds that the charges are supported by substantial evidence and that a preponderance of the credible evidence supports a finding that a violation has occurred.

(B) Enforcement Orders. Within thirty (30) days after the date of any enforcement hearing, the Board of Directors shall issue a written decision. If the Board determines that a violation has occurred and that the person(s) charged was (were) responsible for the violation, the Board's decision shall include an Enforcement Order.

#### **SECTION 8. Civil Penalties and Corrective Action**

An Enforcement Order shall direct any person(s) found to have committed a violation of this Ordinance to take whatever corrective action the Board of Directors deems appropriate under the circumstances. An Enforcement Order may impose civil penalties in accordance with a schedule of civil penalties prescribed in the Board's rules. Alternatively, an Enforcement Order may impose civil penalties in the event that a person found to have committed a violation of this Ordinance does not take corrective action in accordance with the Order within a prescribed time frame. If a person who has been found to have committed a violation does not take corrective action within the prescribed time frame, an appropriate department or agency of the Tribal government may take the necessary corrective action, in which case, the amount of any civil penalty shall be increased by twice the amount of the cost incurred by the Tribal department or agency in taking the corrective action.

(A) Emergency Orders. Notwithstanding any other provision of this Ordinance, if the Board of Directors determines that noncompliance with this Ordinance is presenting an imminent and substantial threat to the public health, welfare, or environment and determines, in consultation with the Tribe's attorneys, that it is not practicable to assure prompt protection of the public health, welfare, or environment of an administrative or judicial enforcement action under this Part, the Board may issue such orders as may be necessary to protect the public health, welfare, or environment. Any such order shall be effective immediately upon issuance and shall remain in effect for a period not to exceed sixty (60) days.

(B) Revocation of Permit. Failure of any person to comply with any Enforcement Orders will result in an immediate revocation of his or her permit. In order to obtain a reinstatement of such permit, the person(s) against whom the Enforcement Order was issued must first demonstrate compliance with the Order and pay all outstanding penalties and then petition for reinstatement of the permit with the Department of Environmental Protection.

**SECTION 9. Judicial Enforcement**

The Tribal Court shall have jurisdiction of all cases and controversies arising under this Ordinance.

(A) The Department of Environmental Protection may request the Board of Director’s to authorize the Department of Environmental Protection to file an action in Tribal Court pursuant to this Ordinance for a temporary restraining order, a preliminary injunction, a permanent injunction, or any other relief provided by law, including the assessment and recovery of civil penalties and clean up and administrative costs associated with the enforcement of this Ordinance (except that any suit against the Tribe, a tribal department, or agency shall be for injunctive relief only and not for penalties or other money damages), in any of the following instances:

- (1) Whenever a person has violated, or is in violation of, any provision of this Ordinance, including but not limited to a regulation, permit, or order issued pursuant to this Ordinance;
- (2) Whenever a person submits false information under this Ordinance or regulations promulgated under this Ordinance; or
- (3) Whenever a person is creating an imminent and substantial endangerment to the public health, welfare, environment, or cultural resources of the Tribe, in which case the Board of Directors shall request the Department of Environmental Protection to pursue injunctive relief but not the assessment of penalties, unless the endangerment is caused by a violation, as specified in paragraphs (1) and (2) above.

(B) Any person who in violation of this Ordinance discharges any pollutant into the waters of the Rancheria shall be liable for all costs associated with or necessary to clean up, abate, or remove said pollutants from the waters of the Rancheria and restore the quality of the waters of the Rancheria to their condition as they existed immediately prior to the discharge.

(C) Any person who violates this Ordinance shall be liable for all costs associated with judicial enforcement of this Ordinance, including, but not limited to, court costs.

**SECTION 10. Special Provisions for Tribal Departments and Agencies**

In any case in which the Board of Directors or any Tribal agency or department is alleged to have violated the terms and conditions of a discharge permit, or to have conducted discharge activities without a permit, the Chairperson of the Board of Directors shall bring the matter to the attention of the Board of Directors who shall consider taking action to ensure compliance with this Ordinance. If the matter cannot be resolved informally, the Board of Directors shall conduct an enforcement hearing

for the purpose of making factual determinations and issuing a decision recommending a course of corrective action if necessary.

**CHAPTER 10. APPEALS**

**SECTION 1. Judicial Review**

Any person, who is aggrieved by the issuance or denial of a discharge permit without respect to whether that person, corporation, or other entity is a party to such permit application, or who is the subject of an Enforcement Order, may file an appeal with the Tribal Court. The Court is authorized to hear such appeal.

**CHAPTER 11. OTHER PROVISIONS**

**SECTION 1. Severability**

If any provision of this Ordinance, or the application thereof, is held invalid, the remainder of this Ordinance, or applications of such provisions, shall not be affected.

**SECTION 2. Sovereign Immunity Preserved**

Nothing in this Ordinance is intended to, nor should be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages from the Tribe.

**APPENDIX A**

**PERMIT APPLICATION FORM**

(Request Application from the Dry Creek Rancheria Department of Environmental Protection)

**APPENDIX B**

**DRY CREEK RANCHERIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**