

**DRY CREEK RANCHERIA
BAND OF POMO INDIANS**

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TERO Code

Tribal Employment Rights Ordinance

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Be it enacted by the Tribal Council of the Dry Creek Rancheria Band of Pomo Indians:

CHAPTER 1: TITLE

This Ordinance shall be known as the Dry Creek Tribal Employment Rights Ordinance or "TERO."

CHAPTER 2: AUTHORITY, PURPOSE, AND FINDINGS

This Ordinance is adopted by the Dry Creek Rancheria Band of Pomo Indians Tribal Council, pursuant to its authority under Article IV of the Dry Creek Rancheria Band of Pomo Indians' Articles of Association, for the purpose of codifying existing practices and policies of the Tribe as a sovereign government to offer employment to tribal members, their families and other Indian people through a tribal preference program.

2.1 Article VII of the Dry Creek Rancheria Band of Pomo Indians' Articles of Association authorizes the Tribe's Board of Directors to take such actions as are necessary to carry into effect the ordinances, resolutions, or other directions of the Tribal Council, this includes enforcement of tribal ordinances and regulation of the procedures of agencies and officials of the Tribe.

2.2 The Tribal Council finds that it is in the best interest of the Tribe to enact this Tribal Employment Rights Ordinance for the benefit of its members, their families, and other Indian people, and to document its commitment to provide for the economic welfare of its own members and the surrounding tribal community. Consistent with that commitment, the Tribe desires to create employment, business, and training opportunities for members of the Tribe, their families, and for other Indian people. By providing such an employment preference, the Tribe is helping combat the harmful effects of years of past unemployment of Indian people, thereby helping to reduce poverty and economic dependency and to promote economic self-sufficiency.

2.3 To attain this goal, the Tribal Council shall require as a matter of Tribal law that all Tribal Businesses, Covered Employers, and Covered Contractors provide an employment preference first to qualified enrolled Dry Creek members, then to other Indian people, then to a Non-Indian spouse of a Tribal member living in the same household, and then to other qualified applicants as set forth in Chapter 5 below.

CHAPTER 3: DEFINITIONS

Unless otherwise required by the context, the following words and phrases shall be defined as follows:

3.1 "**Covered Contracts**" shall mean any contract that is subject to the requirements of this ordinance, as further described in Chapter 6.2.

3.2 "**Covered Employer**" shall mean the Tribe, acting in its Tribal government capacity, including its agencies, subdivisions and departments; all tribally-owned enterprises and business entities.

3.3 "**Covered Contractor**" shall mean all individuals and business entities engaging in employment or business activity on Tribal lands or with tribally-owned enterprises and business entities, other than Covered Employers.

3.4 "**Employee**" shall mean any person employed by the Tribe, or an agency of the Tribe.

3.5 "**Human Resources Department**" shall mean the department charged with the responsibility of overseeing the management of human resources of the Tribe, any Tribal agency or any Tribal Business, as applicable.

3.6 "**Indian**" shall mean any member of a federally recognized Indian tribe, band, or other organized group or community, including any Alaska Native village or unit defined or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and any other Indian persons who are recognized as eligible for the special programs and services provided by the United States or the State of California to Indians because of their status as Indians.

3.7 **"Qualified"** shall mean to have a skill or attribute necessary for an activity to perform the basic requirements and obligations of a job or project.

3.8 **"Qualified Indian"** shall mean a Dry Creek tribal member, a member of a federally-recognized tribe who meets the threshold requirements for such position, and such person shall be accorded the preference to which they are entitled under this Ordinance. No employer may utilize any employment criteria that are not legitimately related to the performance of the position.

3.9 **"TERO Officer"** shall mean the person hired to serve as the Tribal Employment Rights Officer pursuant to this Ordinance.

3.10 **"Tribal Board of Directors" or "Board of Directors"** shall mean the governing entity that the Tribal Council may delegate powers to as defined in Article IV of the Articles of Association with duties defined in Article VII of the Articles of Association.

3.11 **"Tribal Business"** shall mean any tribal business enterprise owned and operated by the Tribe on tribal lands.

3.12 **"Tribal Council"** shall mean the governing body of the Tribe established under the Tribe's Articles of Association.

3.13 **"Tribal Court"** shall mean the Tribal Court established by the Dry Creek Rancheria's Judicial Code, that is the Court of first impression.

3.14 **"Tribal Lands"** shall mean those lands, either held in trust for, owned by, or that are otherwise subject to the jurisdiction of the Tribe.

3.15 **"Tribe"** shall mean the Dry Creek Rancheria Band of Pomo Indians of the Dry Creek Rancheria, California, a federally recognized Indian tribe.

CHAPTER 4: DISSEMINATION

The Human Resources Department shall make good faith efforts, through direct contact and general public information, to inform all covered employers, contractors and any other entity on or near Tribal Lands of the requirements of this TERO. All bid announcements issued by any Tribal, Federal, State, or other private or public entity for work within the exterior boundaries of the Rancheria or Tribal Lands shall contain a statement that the successful bidder will be obligated to comply with this Ordinance and that a bidder shall contact the TERO Officer to obtain information regarding their obligation to comply with this Ordinance. It shall not be a defense in any enforcement action for a covered employer, contractor or other entity to allege that the Tribe failed to notify the covered entity of the requirements of this Ordinance.

CHAPTER 5: INDIAN PREFERENCE REQUIREMENTS

5.1 Any Tribal Business, Covered Employer, and Covered Contractors are hereby required to give preference to qualified applicants in hiring, promotion, training, retention, recall, contracting and subcontracting in the following order:

1. Enrolled members of the Tribe;
2. Other Indian people as defined in Section 3.6 above;
3. Non-Indian spouse of a Tribal member living in the same household;
4. All other applicants.

5.2 This Ordinance shall not be interpreted to exempt any qualified applicant hired pursuant to this Ordinance from compliance with the employment policies and procedures of the Tribal Business, Covered Employer, or Covered Contractor. Qualified applicants hired pursuant to this Ordinance shall be expected to comply with the employment policies and procedures of the Tribal Business, Covered Employer and Covered Contractor.

CHAPTER 6: APPLICATION

6.1 Covered Employers and Contractors

Each Covered Employer and Covered Contractor is subject to the provisions of this Ordinance.

6.2 Covered Contracts

The following contracts, whether for goods or services (including without limitation construction services), are subject to the provisions of this Ordinance: any contract with a total value in excess of \$25,000 entered into by the Tribe, any agency, subdivision or department of the Tribe, a Tribal Business, or any other entity engaging in business activity on Tribal Lands.

6.3 Compliance Plans

Each Covered Contractor who is awarded a Covered Contract that involves employment, contracting, or subcontracting is required to submit and obtain approval of a Compliance Plan indicating how it intends to comply with the Indian Preference provisions as outlined above in Chapter 5. The Compliance Plan is to be submitted to the TERO Officer in advance of the date on which hiring is to occur under the terms of the Covered Contract. The Compliance Plan shall describe the manner of solicitation for bids, recruitment of employees, the hiring and evaluation process, the schedule and method of

payment of any fees or taxes imposed under this Ordinance, and the general manner in which the Covered Employer or Covered Contractor intends to implement compliance with this Ordinance. The TERO Officer shall initiate Compliance Plans in cases where it believes that the Covered Employer or Covered Contractor is hiring qualified Indian persons would be beneficial to both the TERO Officer and Covered Contractor. In cases where the TERO Officer requires a Compliance Plan, it shall assist the Covered Contractor in preparation of such document.

CHAPTER 7: TERO FEES

A Tribal Employment Rights or TERO fee will be required of a contractor upon execution of a covered contract with Dry Creek Rancheria

7.1 A fee of 4% will be assessed on each covered contract that meets or exceeds the \$25,000 threshold for compliance. The fee will be assigned to Covered Contractors and must be identified in their bid.

7.2 The proceeds of this fee shall go back to the Tribe's TERO Department and/or Workforce Development Funds.

7.3 The TERO fee shall be due and payable by the Covered Contractor prior to the commencement of work.

7.4 A Covered Contractor failing to pay the fee shall not be considered for such contract.

CHAPTER 8: UNIONS

Prior to entering a collective bargaining agreement with any union, a Covered Employer or Covered Contractor must obtain a written agreement from such union stating that the union shall comply with this Ordinance and other applicable Tribal laws and regulations. Any such agreement shall be subject to the review of the TERO Officer and approval of the Board of Directors. Failure to comply with this requirement shall constitute a violation of this Ordinance.

CHAPTER 9: JOBS/SKILLS BANK

The TERO Officer shall conduct skills surveys of all Dry Creek Rancheria Band of Pomo Indians Tribal Members in, or about to enter the workforce to obtain information about their education, job training, work experience and other factors that may be relevant to their qualifications for employment. The TERO Officer shall update the survey every year.

CHAPTER 10: ENFORCEMENT

The Tribal Council hereby delegates authority to the TERO Officer, subject to oversight by the Board of Directors consistent with the Articles of Association. Such delegation shall include dissemination of regulations or policies necessary to carry out the provisions of this Ordinance. Any regulations or policies disseminated by the TERO Officer must be approved by the Board of Directors before becoming effective.

CHAPTER 11: PENALTIES

If the TERO Officer determines that a violation of this Ordinance has occurred, the penalties imposed upon the violator may include;

- 11.1** Temporary or permanent disqualification from doing business with the Tribe, any Tribal Department or Tribal Entity;
- 11.2** Imposition of a civil forfeiture of no less than \$500.00 but not to exceed \$1,500 for each violation and for each day that such violation continues.
- 11.3** Order such Covered Employer or Covered Contractor to make payment of back pay to complaining party.
- 11.4** Order such Covered Employer or Covered Contractor to dismiss any employees hired in violation of this Ordinance or employment policies adopted pursuant to this Ordinance.
- 11.5** Any other action necessary to ensure compliance with this Ordinance and to remedy any harm caused by a violation of this Ordinance.
- 11.6** Penalties may be appealed to the Tribal Court as a method of due process.

CHAPTER 12: DISPUTE RESOLUTION

All disputes under this Ordinance will be first brought to the TERO Officer. The TERO Officer shall provide person alleged to have violated this TERO (the "respondent") with a copy of all relevant laws, policies and procedures applicable to the dispute. The TERO Officer shall provide notice and opportunity for the respondent to respond and shall report to the Board of Directors his/her recommendation for the Board of Directors to make a final determination. If the respondent is not satisfied with the final determination of the Board of Directors, such party may file an appeal in Tribal Court following the approved Rules and Procedures of the Tribal Court as approved by the Tribe. Pending establishment and operation of the Tribe Court any appeals to a final determination by the Board of Directors shall be brought before the Board of Directors in accordance with dispute provisions provided to the respondent by the TERO Officer. Such dispute provisions shall be adopted in

accordance with the current process for adoption of regulations or policies by the Board of Directors.

CHAPTER 13: SEVERABILITY

If any provision or application of this Ordinance is determined to be invalid, such determination shall not be held to render the remainder of this Ordinance invalid.

CHAPTER 14: AMENDMENTS OR REPEAL

This Ordinance may be amended from time to time by the Tribal Council, and/or repealed by the Tribal Council, consistent with applicable law.

CHAPTER 15: EFFECTIVE DATE

This Ordinance shall be in full force and effect as of the date of the formal approval and adoption hereof by the Tribal Council.

CERTIFICATION

The foregoing ordinance was presented at a Tribal Council Meeting held on April 30, 2022, and was approved with a quorum present and such ordinance has not been rescinded or amended in any way.



Chris Wright
Chairman

4/30/2022

Date



Margie Rojas
Secretary/Treasurer

4/30/2022

Date