

**BISHOP PAIUTE TRIBE
BISHOP PAIUTE RESERVATION**

**TRIBAL ENVIRONMENTAL PROTECTION ORDINANCE
NO. 98-02**

Adopted: May 22, 1998

BISHOP PAIUTE TRIBE
TRIBAL ENVIRONMENTAL POLICY ORDINANCE

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BISHOP PAIUTE TRIBE

TRIBAL ENVIRONMENTAL POLICY ORDINANCE

TITLE I

FINDINGS; DECLARATIONS OF POLICY

101. Tribal Council Findings. The Bishop Tribal Council (the "Tribal Council"), after careful review of the quality of the natural environment of Bishop Paiute Reservation (the "Reservation") and the federal laws and policies relating to environmental regulation, finds and declares as follows:

(a) The federal government, through its various agencies and departments, cannot provide adequate protection for the land, air, water and other natural resources of the Bishop Paiute Tribe (the "Tribe").

(b) Current, past, and proposed future uses of the natural resources of the Reservation have created, or may create, a threat to the environment and to the health, safety, and welfare of the residents of the Reservation.

(c) The Tribal Council, pursuant to its inherent sovereignty and federal law, possesses the authority to provide for the comprehensive regulation of environmental quality within the exterior boundaries of the Reservation.

102. Declarations of Policy. It is the policy of the Tribal Environmental Policy Ordinance ("TEPO") to promote the general health, safety, and welfare of all residents of the Reservation and, in furtherance of the sovereign right of self-governance of the Tribe, the Tribal Council declares its commitment to the establishment and maintenance of the highest attainable standards of environmental quality within the exterior boundaries of the Reservation. The provisions of TEPO and of regulations promulgated under TEPO shall apply to all persons residing or doing business on the Reservation and to all property located within the Reservation. To the fullest extent possible, all tribal laws, regulations, and policies shall be interpreted and administered in accordance with TEPO.

TITLE II

TRIBAL ENVIRONMENTAL PROTECTION AGENCY

201. Establishment of Agency. There is hereby established the Tribal Environmental Protection Agency ("TEPA") charged with the responsibility of implementing the goals and objectives of the Tribal Environmental Policy Ordinance.

202. **Governing Body; Appointment; Terms; Vacancies.** TEPA shall be governed by a Board of Commissioners (the "Board"), which shall be composed of three (3) Commissioners, all of whom shall be resident members of the Bishop Paiute Tribe. The Commissioners shall be appointed by the Chairman of the Bishop Tribal Council with the advice and consent of the Tribal Council. Each Commissioner shall serve for a term of four (4) years, provided that, in order to stagger the terms of office, one of the original Commissioners shall be appointed for a term of two (2) years, one for a term of three (3) years, and one for a term of four (4) years. Commissioners may be re-appointed for consecutive terms. A vacancy on the Board, however caused, will be filled by the appointment procedure set forth in this section, provided that any appointment that does not begin coincident with the staggered terms will be shortened as necessary to maintain the staggered terms. Any member of the Board may be removed for cause by a majority vote of Tribal Council Members at a meeting regularly called and after sufficient notice to the Board of such meeting.

203. **Chairman; Quorum; Meetings.** The Commissioners shall elect a Chairman from among themselves. The business of the Board will be conducted at meetings of the Board duly called and noticed and at which a quorum is present. A quorum shall consist of two (2) Commissioners. Any substantive action of the Board must be taken by the affirmative votes of at least two (2) Commissioners and must be recorded in a written resolution of the Board. The Chairman shall be a voting member. The Board shall meet at such places and times as may be necessary for the discharge of its duties. Meetings of the Board may be called by the Chairman or by two (2) of the Commissioners. Meetings of the Board shall be preceded by at least five (5) days notice to the Commissioners. An emergency meeting may be called with less than five (5) days notice provided that all reasonable efforts are made to notify each Commissioner of the emergency meeting.

204. **Duties and Powers of the Board.** The Board is hereby authorized and empowered to:

(a) develop environmental policy through the drafting of ordinances, regulations and procedures to protect the environment and promote the quality of the land, air, water, and other natural resources of the Reservation; to encourage use of Tribal lands in ways that are compatible with Tribal cultural values; to provide a mechanism by which to establish and carry out a Tribal land use and development policy; and, to propose such ordinances, regulations, and procedures for adoption by the Tribal Council where appropriate.

(b) establish a system and guidelines for development and enforcement of programs and activities for mitigation of environmental impacts as required by Environmental Assessments or Environmental Impact Statements issued pursuant to the provisions of NEPA, and TEPO.

(c) serve as the lead Tribal agency for purposes of federal environmental compliance and, with the approval of the Tribal Council, assume primary enforcement responsibility under such laws.

(d) participate as a cooperating agency in the preparation of Environmental Impact Statements pursuant to the National Environmental Policy Act, 42 U. S.C. 884321-370a ("NEPA").

(e) establish rules and procedures to ensure maximum public participation in the decisions of the Board, consistent with applicable Tribal and federal laws.

(f) issue, modify, and revoke permits and establish terms and conditions for any discharge into or upon the land, air, water, or other natural resources of the Reservation.

(g) establish and assess fees and conditions for the issuance, continuance, modification, and revocation of any permit.

(h) subject to the approval of the Tribal Council, establish a system of civil fines, sanctions, and penalties for violations of Tribal environmental laws and regulations, provided however, that no fine or penalty shall exceed the maximum permitted under applicable law, and provided further, that no fine or penalty shall be imposed without notice and an opportunity for a hearing before TEPA.

(i) conduct investigations and hearings and receive testimony and documentary evidence in any form relating to the quality of the environment on the Reservation, and in connection therewith, compel the attendance of witnesses and the production of records.

(j) appoint, as needed, one or more hearing officers and other experts to assist the Board in the resolution of disputes and the acquisition of information.

(k) hire such staff and enter into such contract for services as may be necessary and appropriate for maintaining and enforcing Tribal environmental laws and regulations and for the furtherance of the work of TEPA.

(l) establish rules and procedures for the conduct of the business of the Board.

(m) establish rules and procedures to protect the confidentiality of information that is proprietary in nature.

(n) with the approval of the Tribal Council, apply for and receive financial assistance for the purpose of promoting and protecting the quality of the environment.

(o) prepare an annual budget for the operation of TEPA to be submitted to the Tribal Council for approval.

(p) exercise regulatory jurisdiction over all prior tribal environmental laws.

205. Environmental Management Office. The day to day administrative functions of TEPA shall be under the direction of Tribal Environmental Management Office which shall be

responsible to and shall report directly to the TEPA Board of Commissioners. Unless otherwise provided for, funding for the Environmental Management Office shall be the responsibility of the Bishop Tribal Council.

206. Emergency Abatement of Pollution.

(a) Issuance of Emergency Restraining Orders

(1) Authority of the Chairman of the TEPA Board of Commissioners: Upon receiving evidence that a person is engaged in any on-reservation activity regulated by this Ordinance or any other Tribal ordinance or Federal law, regulation, code, or permit, including but not limited to solid waste management activities, and that the activity may endanger or cause damage to the public health, safety or welfare or the environment, the Chairman of the Board (the "Chairman") may issue an Emergency Restraining Order to restrain any person from engaging in such activity,

(2) Procedures for Issuance of Emergency Temporary Restraining Order:

(A) The emergency temporary restraining order may be issued without prior notice to the owner, operator, agency or other person with apparent or actual authority at the site of the activity ("Adverse Party").

(B) Every emergency temporary restraining order shall:

(i) be written, endorsed with the date and hour of issuance, and filed with the Board of Commissioners within three (3) days of its issuance and entered on record,

(ii) define the injury; shall be specific in terms; and shall describe in clear language the act or acts sought to be enjoined, and

(iii) expire within such time as is specified therein, but not to exceed ten (10) days, unless within that time the Chairman for good cause shown moves the Board for a preliminary or permanent injunction. For good cause shown, the Board may extend the emergency restraining order until a hearing is held on the Chairman's motion for an injunction.

(C) The motion for a preliminary or permanent injunction shall be set for hearing by the Board at the earliest possible time, but no later than fifteen (15) days after the issuance of the temporary restraining order and shall take precedence over all matters except older matters of the same character.

(D) When the motion is heard, the Chairman, or the Adverse Party, may move for the dissolution or modification of the emergency temporary restraining order and, in that event, the Board shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(b) Board Issuance of Preliminary and Permanent Injunction,

(1) Authority. The Board may issue a preliminary or permanent injunction to restrain any person from engaging in any activity regulated by this Ordinance or any other Tribal law, Federal law, order, or permit, which may endanger or cause damage to public health, safety, or welfare or the environment.

(2) Procedures for Issuance of Preliminary or Permanent Injunction:

(A) No preliminary or permanent injunction shall be issued without notice to the Adverse Party and a hearing.

(B) Every order granting an injunction shall be specific in terms, shall describe in reasonable language, and not by reference to the complaint or other document, the act or acts sought to be enjoined, and is binding only upon the parties to the action, their officers, agents, servants, employees, attorney, and advocates, and upon those persons in active consent or participation with them who receive actual notice of the order by personal service or otherwise.

(C) A preliminary or permanent injunction may be granted on the following grounds:

(i) When an emergency temporary restraining order has been issued pursuant to this section, and the Chairman has set a hearing within fifteen (15) days after issuance of a temporary restraining order for a permanent or temporary injunction, and it appears by the pleadings or affidavits on file that the Chairman is entitled to the relief requested and a hearing on these issues has been held after notice to the adverse party;

(ii) When it appears by the pleadings or affidavits on file that the commission or continuance of some act would produce great or irreparable injury to the public health, safety, or welfare or the environment;

(iii) When it appears that the Adverse Party is doing, threatens, or is about to do, or is procuring or suffering to be done, some act in violation of a tribal or federal law, regulation, code, ordinance, order, or permit; or

(iv) In all cases where an injunction would be proper in equity.

(D) Injunctions issued pursuant to this Ordinance may be either mandatory, prohibitive or a combination of both.

TITLE III

MISCELLANEOUS PROVISIONS

301. Review of Commission Actions.

(a) Bishop Tribal Council Review. The Bishop Tribal Council shall hear appeals from final actions and decisions of the Board in accordance with such rules and procedures as TEPA may establish by regulation and as approved by the Bishop Tribal Council. Any affected party may seek review of any final action or decision of the Board by filing an appeal with the Bishop Tribal Council within thirty (30) days of entry of the final action or decision from which the appeal is taken. The Bishop Tribal Council shall hear appeals from the final actions or decisions only after exhaustion of all administrative remedies provided by TEPA.

(b) The Bishop Tribal Council shall, upon the petition of an affected party, conduct a review of the record of the proceeding of TEPA, but shall not take new evidence unless the evidence has first been presented to TEPA for its consideration and action, if any. The Tribal Council may modify or reverse a decision or action of TEPA only where such action or decision is not supported by law or is arbitrary and capricious. TEPA, upon request of the Tribal Council, shall provide to the Tribal Council a certified copy of all documents, records, transcripts, or other information that formed the basis for any action or decision which an affected party seeks review. The action of the Bishop Tribal Council on appeal shall be final.

302. Limited Waiver of Immunity. The Tribal Council hereby waives the sovereign immunity of TEPA for the express and sole purpose of allowing reviews of TEPA actions by the Bishop Tribal Council under §301, provided that any such appeal must be timely and properly filed, and provided further that such waiver is made only to the extent necessary to subject TEPA to suit for the sole purpose of declaring and adjudging rights and obligations under the environmental laws and regulations of the Bishop Paiute Tribe. **This waiver is strictly limited, specifically does not waive TEPA's immunity from suit for monetary damages, and specifically does not waive the sovereign immunity of the Bishop Paiute Tribe, Bishop Tribal Council, or any officer, employee, or agent thereof.**

303. Unlawful Act.

(a) It is prohibited for any person:

(1) to forcibly, or by bribe, threat, or other corrupt practice, to obstruct or impede the activities of TEPA and the Board;

(2) to commit fraud, or knowingly to assist another in the commission of fraud, with the intent to evade or defeat Tribal environmental laws or regulations; or

(3) with knowledge and intent, to falsely verify by written declaration any report, application for permit, or any other document submitted to or requested by TEPA.

(b) Any person who commits any of the above prohibited acts may be subject to certain penalties and also be liable for any civil damage caused by the commission of such acts and may be excluded from the Reservation.



BISHOP TRIBAL COUNCIL

RESOLUTION NO 98-20

SUBJECT: Establishment of the Tribal Environmental Protection Agency, Interim Board of Commissioners.

WHEREAS: the Bishop Indian Tribal Council (the "Tribal Council") is the duly elected governing body of the Bishop Paiute Tribe (the "Tribe"); and,

WHEREAS: in furtherance of the sovereign right of self-governance of the Tribe, the Tribal Council declares its commitment to the establishment and maintenance of the highest attainable standards of environmental quality within the exterior boundaries of the Reservation; and

WHEREAS: the Tribal Council has adopted the Tribal Environmental Policy Ordinance No. 98-02 ("TEPO") to promote the general health, safety, and welfare of all residents of the Reservation; and,

WHEREAS: pursuant to the TEPO, the Tribal Environmental Protection Agency (TEPA) has been established for the purpose of implementing the goals and objectives of the TEPO and said Agency shall be governed by a Board of Commissioners; and

WHEREAS: acting in best interest of the Tribe and its environment, the Tribal Council has determined the need to immediately implement the TEPO and in doing so will require that the Tribal Council act as the TEPA, Interim Board of Commissioners, until such time as regular commissioners are appointed.

THEREFORE, BE IT RESOLVED that the Bishop Indian Tribal Council shall act as the Bishop Tribal Environmental Protection Agency, Interim Board of Commissioners, with all duties and powers as authorized and empowered under the Tribal Environmental Protection Ordinance.

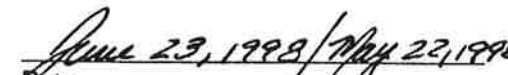
BE IT FURTHER RESOLVED that this Resolution shall remain in effect until such time as the regular Board of Commissioners are duly appointed to office.

CERTIFICATION

The foregoing Resolution No. 98-20 was adopted at a duly called meeting of the Bishop Indian Tribal Council held on the 22 day of May, 1998, with a quorum present and voting 4 AYES, 0 NAYS, 0 ABSTAINING, and 0 ABSENT.



Mervin E. Hess, Tribal Chairman


Date June 23, 1998 / May 23, 1998

(c) Any person who commits any of the above prohibited acts, or whose employees or agents in the course of their employment or agency commit any of the above prohibited acts, may have its rights to engage in activities on the Reservation suspended or terminated.

(d) The damages and sanctions for violation of this Section may be enforced by TEPA or the Bishop Tribal Council under such rules and procedures as TEPA may establish by regulation and approved by the Bishop Tribal Council.

304. Severability. If any provision of this Ordinance, or its application to any person or circumstance is held invalid, the remainder of the Ordinance, or the application of the provision to other persons or circumstances, shall remain unaffected.

305. Amendments. This Ordinance and the procedures promulgated hereunder may be amended or rescinded by the Tribal Council at a duly called regular or special called meeting.

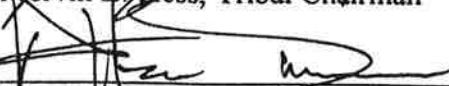
306. Effective Date. This Ordinance shall be effective from the date of its approval by the Tribal Council.

CERTIFICATION

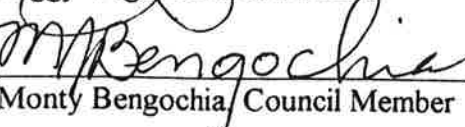
The foregoing Ordinance was passed at a duly called meeting of the Bishop Tribal Council held on the 22 day of May, 1998, with a quorum present and voting 4 AYES, 0 NAYS, 0 ABSTAINING, and 0 ABSENT.

BISHOP INDIAN TRIBAL COUNCIL:


Mervin E. Hess, Tribal Chairman



Allen Summers, Vice-Chairman


Peggy Vega, Council Member


Monty Bengochia, Council Member


William Vega, Council Member

ATTEST:


Secretary

May 22, 1998

Date