

Title 20

ENVIRONMENTAL PROTECTION

CHAPTER 7

HOPLAND TRIBE WATER QUALITY MANAGEMENT AND PROTECTION CODE

**(“PROHIBITING THE UNAUTHORIZED USE, ALTERATION, IMPAIRMENT, OR
DESTRUCTION OF WATER RESOURCES”)**

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Section 1. Short Title.

- 1.1 This Code shall be known as the “Water Quality Management and Protection Code”.

Section 2. Purpose.

2.1. The purpose of this Code is to exercise comprehensive Tribal regulatory authority over all water resources within the exterior boundaries of the Hopland Reservation, and to protect Tribal cultural, ceremonial, religious, fishery, seasonal, residential, and all other beneficial uses of water resources, including public health and safety and water quality, by ensuring adequate drinking water, protecting the beneficial uses of water resources, and restricting non-

point and point source discharges of pollutants within the exterior boundaries of the Hopland Reservation. The unauthorized alteration, impairment or destruction of water resources within the Hopland Reservation shows disrespect for the natural resources of the Reservation, and for the Reservation community; it causes irreparable damage to the land and the environment; it is a threat to the health and safety of Hopland residents. Therefore, the unauthorized alteration, impairment, or destruction of such water resources is prohibited within the boundaries of the Hopland Reservation.

Section 3. Definitions.

3.1. “Nonpoint Source” is defined as any pollution sources which are diffuse and do not have a single point of origin or are not introduced into a receiving stream from a specific outlet.

3.2. “Point Source” is defined as any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, culvert, well, discrete fissure, containers, rolling stock, or vessel.

3.3. “Water Pollutant” or “Pollutant” is defined as any substance that may alter the quality of the water resources of the Reservation. This includes a pollutant that is released into a seasonal waterway, regardless of whether such waterway is dry.

3.4. “Water Resources” are defined as any water, surface or underground, contained within, flowing through, or bordering the Hopland Reservation, including water bodies, tributary streams, streambeds, riparian areas adjacent to water bodies and streams, ponds, and seasonal waterways, regardless of whether such waterways are dry.

Section 4. Declarations and Findings.

4.1. The Hopland Band of Pomo Indians is recognized by the people and outside governments as a sovereign government. The Tribe has the inherent authority within the exterior boundaries of its Reservation to conserve, manage, protect and regulate its water resources in a manner which best protects the Hopland Reservation, its natural resources, and the health, welfare and economic security of this generation of Hopland people, and the generations to follow.

4.2. This Code is enacted pursuant to the sovereign power of the Hopland Tribal Council (Council), as a recognized law-making body, to deal with Tribal lands, natural resources, and property; to promulgate and enforce codes providing for the health, safety and welfare of the

Tribe and its members; to maintain law and order on Hopland land; and to protect the Hopland environment.

4.3. The Tribe retains the inherent sovereign power to exercise civil authority and jurisdiction over the conduct of both Tribal and non-Tribal members on all lands within the original boundaries of the Hopland Reservation, as necessary to protect the political integrity, economic security, and health and welfare of the Tribe, and, accordingly, to maintain the environment and protect the natural resources of the Tribe.

4.4. It is necessary to adopt this Code to protect water resources within the Hopland Reservation. Specifically, this Code addresses the conservation, management, protection and regulation of water resources on and near the Tribe's lands.

4.5. This Code adopts a permitting scheme, including the assessment of civil fines and damages for non-compliance with the permitting process. This Code is enacted to protect these significant water resources for future use and conservation, ensuring that future generations will benefit from the continued existence of such water resources.

4.6. In addition to conserving, managing, protecting and regulating the Reservation's water resources to ensure their survival and use for future generations, this Code is also adopted to sample, analyze, and inventory all significant water resources on the Reservation to determine whether such water resources are impaired and in need of further protection or restoration. The EPA will monitor such significant water resources as necessary to ensure that water quality standards have been, and continue to be, maintained.

Section 5. Designation of Authority to the Tribal Environmental Protection Agency.

5.1. The Hopland Tribe is entrusted to protect the land, air, water, vegetation and animal life for the current residents of the Hopland Reservation and for the generations of Hopland people to come. To accomplish this mission as it relates to the conservation, protection and management of water resources, the Hopland Tribe hereby appoints the Hopland Tribal Environmental Protection Agency as the lead Tribal agency to ensure the proper management and protection of Hopland water resources. The Tribal EPA (EPA) shall have the powers, duties and responsibilities provided for here, and shall work in conjunction with the Tribal Council and other Tribal Departments in carrying out this Code.

5.2. The EPA shall develop and manage the Tribe's comprehensive Water Quality Management and Protection Program; shall communicate to the community information about the

Tribe's Program; and shall make reports in a manner, and containing such information, as the Tribe approves regarding the development and management of this Program.

5.3. Duties of the Hopland EPA. The EPA is entrusted to protect the land, air, water, vegetation and animal life for future generations from the detrimental effects of the improper management and protection of the Reservation's water resources. The EPA's specific duties necessary to accomplish this task shall include the following:

- A. Develop and implement the Tribe's Water Quality Management and Protection Program in accordance with the Tribe's Environmental Master Plan.
- B. Develop processes which incorporate both technical environmental cataloguing standards for water resource conservation, management, protection and restoration and the customs and traditions of the Hopland people.
- C. Perform comprehensive assessments of water resources on the Hopland Reservation, including groundwater and surface waters, to determine water quality levels.
- D. Document the water quality of the Reservation's water resources.
- E. Inventory and map water resources, and, in particular, any environmentally sensitive or impaired water resources on the Hopland Reservation.
- F. Provide further protection, and implement water restoration programs, for any environmentally sensitive or impaired water resources on the Reservation.
- G. Draft point source and non-point source management plans.
- H. Establish working relationships with upstream and downstream neighbors to encourage joint water stewardship efforts.
- I. Prepare environmental reports regarding water resources as needed.
- J. Develop a mechanism to ensure continued community involvement and input in the Tribe's Water Quality Management and Protection Program. Specifically, those Tribal members with cultural knowledge regarding the identification and use of traditional or culturally significant water resources, such as traditional fishing areas, will be consulted.
- K. Approach the appropriate water conservation nonprofit groups or agencies for assistance in water assessment, inventory, monitoring, and restoration. Cultivate partnerships with such groups or agencies in order to better address water conservation, management, protection and restoration.

- L. Identify, investigate, and apply for private funds, federal or state grants, and financial and technical assistance, so as to further implement the Tribe's Environmental Master Plan for water quality management and protection.
- M. Develop a permitting process for the alteration, impairment or destruction of the Reservation's water resources.

Section 6. Assessment of Water Resources.

6.1. The EPA, in conjunction with such other agencies, nonprofit groups, and community members as they see fit, will assess, inventory, and monitor the Reservation's water resources through water sampling and analysis, soil sampling and analysis, and such other sampling, measurements, and analysis as is necessary.

6.2. The EPA will inventory all water resources on the Reservation. A copy of the final list will be maintained at the Tribal EPA Office.

6.3. The EPA will map the locations of such inventoried water resources that need to be protected or restored. These maps will also be maintained at the Tribal EPA Office.

6.4. If necessary, the EPA will create water resource restoration or rehabilitation programs for any environmentally sensitive, threatened, or impaired water resources.

6.5. The EPA will coordinate the establishment of a community outreach program to promote the environmental health of the Reservation's water resources and to establish anti-water pollution practices on the Reservation.

Section 7. Alteration, Impairment, or Destruction of Water Resources.

7.1. Any alteration, impairment, or destruction of water resources within the exterior boundaries of the Hopland Reservation must be done in accordance with the regulations established by the Hopland EPA's Water Quality Management and Protection Program.

7.2. The EPA may authorize, by permit, the alteration, impairment, or destruction of water resources for approved uses at established levels, including the discharge of pollutants from both non-point and point sources.

7.3. No person shall discharge any pollutant into a Reservation water resource without an EPA permit. The discharge of any pollutant, and the alteration, impairment, or destruction of

any water resource within the Hopland Reservation without an EPA permit, is prohibited, unless a person has received a variance in accordance with section 7.6.

7.4. Any person who alters, impairs, or destroys water resources without an EPA permit or a variance, including the discharge of both non-point and point source pollutants, is subject to civil fines and damages in accordance with this Code.

7.5. Notice: If a person discharges any pollutant into any Reservation water resource without a permit or variance, regardless of whether the pollutant's discharge was intentional or accidental, that person shall immediately notify the EPA of such a discharge and shall fully disclose the information regarding the discharge, including the type of the pollutant, the amount, the location, and any other relevant information.

7.6. Variations: The EPA may exempt a person from the permit requirements associated with the alteration or impairment of a water resource by granting a variance. In order to obtain a variance, the person must request a variance in writing from the EPA. This request will be approved or denied by the EPA in its sole discretion. The applicant must demonstrate that:

- A. The water resource will not be permanently altered or impaired;
- B. Public health and safety will not be threatened;
- C. No significant adverse environmental effects will occur;
- D. A mitigation plan will be implemented to offset the alteration or impairment of the water resource.

A variance may only be granted for a specific period of time, not to exceed one (1) calendar year. At no time shall a person who has obtained a variance be subject to civil fines and damages for the alteration or impairment of water resources on the Hopland Reservation in accordance with the terms of the variance. However, the EPA reserves the right to verify that a person is acting in accordance with the terms of the variance through inspection and monitoring.

7.7. Duty to Investigate: The EPA has a duty to investigate the unauthorized alteration, impairment, or destruction of water resources under this Code. Upon receiving a credible complaint or report, the EPA shall, on its own initiative, or in conjunction with Tribal law enforcement or other cooperating groups or agencies, perform a thorough investigation of any alleged violations.

7.8. Inspections and Entry: The EPA, and any authorized Tribal representative of the EPA, shall be allowed to enter and inspect any water resource which has obtained an EPA permit. Sampling and monitoring will be done at reasonable times for the purposes of assuring

permit compliance, or as is otherwise determined necessary by the EPA. The EPA reserves the right to sample and monitor all water resources on the Reservation, regardless of whether a permit has been requested, a permit has been formally granted, is pending, or has been denied.

Section 8. Administrative Remedies.

8.1. If appropriate, the EPA, in its sole discretion, will attempt to resolve any unauthorized alteration, impairment, or destruction of water resources, including the discharge of pollutants, through its administrative process, as outlined below. The EPA reserves the right to bypass the administrative process and immediately file a civil action.

8.2. Written Warning (“Cease and Desist Order”): If appropriate, and at its sole discretion, the EPA will issue a written warning to the alleged offender that he or she has violated this Code. The written warning will explain in plain terms what conduct has violated the Code, and will require that the individual “cease and desist” from any conduct that results in the alteration, impairment, or destruction of Reservation water resources. The written notice should include the following information:

- A. The purpose of the Code.
- B. The specific conduct that violated the Code.
- C. The date(s) the conduct occurred.
- D. The section of the Code that has been violated, including its contents.
- E. That the individual must “cease and desist” from engaging in any conduct that may result in the alteration, impairment, or destruction of water resources on the Hopland Reservation.
- F. If applicable, that an individual is in violation of his or her EPA permit.
- G. What steps must be taken to address the violation.
- H. The date by which the person must come into compliance with the Code or the permit to avoid the imposition of further penalties and fines and, if applicable, the revocation of the permit.
- I. The penalties that may be imposed if the offender continues to violate the Code or the permit, including the filing of a civil action and the revocation of the permit.
- J. The contact information for the Tribal EPA, and that an “informal conference” may be requested to discuss the alleged violation.
- K. That the offender may administratively appeal, in writing, the EPA’s finding that a violation has occurred, and the date by which this appeal must be received by the EPA.

8.3. A record of all warnings will be maintained. If a warning has already been issued to the offender within the calendar year, subsequent warnings may increase in seriousness; for example, subsequent citations may impose fines for non-compliance, or may require that the offender take specific remedial steps, as determined by the EPA, to avoid further action being taken against the person. The EPA may, in its sole discretion, proceed at any time to revoke a permit, file a civil action or injunction against the offender, or take any other action, as it deems necessary.

8.4. Administrative Appeal: If, after receiving a written warning, the alleged offender believes that he or she has not violated the terms of the Code or his or her permit, he or she may appeal the EPA's finding in writing to the EPA Director. This appeal must be received by the EPA within two (2) weeks of the date of the written warning. The appeal must clearly state why the person believes that he or she has not violated the Code or his or her permit, and should include supporting documentation. The EPA will include a copy of the appeal in that person's file. Within two (2) weeks of receiving such an appeal, the EPA will either:

- A. Schedule a formal meeting with the Director, the offender, and any other interested parties regarding the appeal; or,
- B. The Director will affirm or deny the appeal in writing without scheduling a meeting.

If a formal meeting is scheduled, a formal decision will be provided in writing within two (2) weeks of the meeting. The EPA will attempt to use a shared decision-making process during this process whenever possible. A copy of the decision will be sent to the offender and placed in his or her file. The decision of the EPA regarding the administrative appeal shall be final.

Section 9. Civil Damages.

9.1. Any person who violates any of the provisions of this Code is subject to an assessment of civil fines and damages for such unlawful activities. The Director of the EPA is authorized to file a civil action against such person on behalf of the Tribe in Tribal Court, or another court of competent jurisdiction, seeking recovery for damages incurred by the unlawful conduct, including reasonable attorney's fee and costs. Any person who is found by the court to have committed the alleged violations shall be subject to an obligation to reimburse the Tribe for all costs associated with such violations, including the costs of clean-up, abatement, water resource restoration, and the administrative costs associated with the enforcement of this Code, in addition to, at the court's discretion, a civil penalty in an amount up to \$500.00 for each day of each violation.

9.2. All civil damages shall be paid to the Tribe. Reasonable attorney's fees and costs shall be paid to the Tribe.

9.3. Any person who is not a member of the Hopland Tribe who is found by a court to have violated any provision of this Code may be excluded from the Reservation, and may have his or her rights to engage in commercial transactions or consensual dealings on the Reservation suspended or terminated.

9.4. Civil damages, civil penalties, fees, costs, and related recoveries do not limit any other remedies which may be available to the Tribe, including the filing of an action for an injunction in a court of competent jurisdiction.

Section 10. Traditional Dispute Resolution (“PeaceKeeping Court”).

10.1. The Hopland Tribal Council may, at its discretion, and in accordance with its sovereign power as a recognized law-making body, create a traditional dispute resolution process in accordance with the Tribe's traditional laws and customs. The forum for this traditional dispute resolution process shall be known and referred to as the “PeaceKeeping Court”.

10.2. Any person over whom the Tribe retains the inherent sovereign power to exercise civil jurisdiction, and over whom the Tribe chooses to exercise such jurisdiction in accordance with any alleged violation of this Code, may elect to use the Tribe's “PeaceKeeping Court” as an alternative to the Tribal Court, unless the EPA demonstrates that extenuating circumstances indicate that a referral to the “PeaceKeeping Court” is not in the Tribe's best interests. Such extenuating circumstances may include, but are not limited to: the offender's recidivism, as demonstrated by previous offenses; previous referrals to the “PeaceKeeping Court” where the offender demonstrated a failure to fully cooperate with the traditional dispute resolution process; a demonstrated lack of good faith in the offender's request to transfer the action to the “PeaceKeeping Court”.

10.3. If an action is filed in the Hopland Tribal Court by the EPA against any person over whom the Tribe has civil jurisdiction, Notice of such a pending action will be provided to the alleged offender. This Notice will inform the alleged offender that he or she, in accordance with the policies and procedures of the Tribal Court, may affirmatively request in writing to proceed in the “PeaceKeeping Court”, as an alternative to the Tribal Court, within thirty (30) days of receipt of Notice of the pending action.

10.4. If the Tribal Court receives a request to proceed in the “PeaceKeeping Court” within the thirty (30) days allotted for responding to the Notice, the Court shall approve such a

request, unless the EPA demonstrates that it is not in the best interests of the Tribe, in accordance with section 10.2. The Tribal Court will then provide Notice to all relevant parties that the request to transfer to the “PeaceKeeping Court”, as established by the Tribal Council, has, or has not, been approved.

10.5. If the Tribal Court approves such a request to transfer a matter to the “PeaceKeeping Court”, the Tribal Court will forward all associated documentation to the “PeaceKeeping Court”. Once the “PeaceKeeping Court” receives the transferred file from the Tribal Court, it will provide notice to the alleged offender, in accordance with its policies and procedures, regarding the traditional dispute resolution process. If the offender elects to participate in the Tribe’s traditional dispute resolution process, the process will be governed by the traditional laws and customs of the Tribe.

10.6. The Tribal Court will retain continuing jurisdiction over any matter transferred to the “PeaceKeeping Court”.

Section 11. Arbitration and Mediation.

11.1. The EPA reserves the right to use arbitration or mediation to resolve any conflicts that arise from alleged violations of this Code. The EPA may initiate arbitration or mediation proceedings instead of filing a civil action in the Tribal Court, PeaceKeeping Court, or any other court of competent jurisdiction, in its sole discretion.

11.2. Any person who is alleged to have violated the terms of this Code, and who has had a civil action filed against them in the Tribal Court, PeaceKeeping Court, or any other court of competent jurisdiction, may request arbitration or mediation by requesting this in writing within two (2) weeks of the date of notice regarding the civil action. The written request must be filed with the appropriate court, as well as with the EPA. If the EPA does not object, the court shall grant such a request at its own discretion. The person will receive written notice regarding whether his or her request to proceed in arbitration or mediation has been approved or denied by the EPA within two (2) weeks of the date of such a request.

Section 12. Severability.

12.1. If any section, provision, or portion of this Code is determined by a court of competent jurisdiction to be invalid, such a determination shall not affect, impair, or invalidate any other section, provision, or portion of this Code, nor shall a determination by a court of competent jurisdiction that a section, provision, or portion of this Code is invalid as applied render such section, provision, or portion inapplicable to other persons or other circumstances.

