

BEAR RIVER BAND of ROHNERVILLE RANCHERIA

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**ACT ESTABLISHING
THE JUDICIARY
BE IT ENACTED BY THE BEAR RIVER TRIBAL COUNCIL**

SECTION 1.0 – TITLE AND CODIFICATION

RESERVED FOR CODIFICATION AT A FUTURE DATE.

SECTION 2.0 – STATUTORY AUTHORIZATION

The aboriginal and inherent sovereign power of the Bear River Band of the Rohnerville Rancheria is vested with the Bear River Tribal Council. The Constitution of the Bear River Band of the Rohnerville Rancheria authorizes the Bear River Tribal Council to safeguard and promote the peace, safety, morals and general welfare of the members of the Bear River Band by regulating the behavior of all persons within the jurisdiction of the Tribe, and to provide for the enactment and enforcement of the laws of the Tribe. This authority includes the authority to establish a Tribal Court and to provide for laws and procedures governing its operation, and the selection of judges.

SECTION 3.0 – PURPOSE AND SCOPE

The purpose of this Chapter is to create a fair and impartial judicial system to interpret and apply the laws and Constitution of the Bear River Band of the Rohnerville Rancheria.

SECTION 4.0 – THE JUDICIARY

The judicial power of the Tribe shall be vested in the judicial branch of Tribal government, which shall consist of a Tribal Court and a Court of Appeals.

SECTION 5.0 - JURISDICTION

(A) Tribal Court.

The Tribal Court may exercise the Tribe's territorial, personal and subject matter jurisdiction to the fullest extent possible on any basis consistent with this Code, the Tribe's laws and Constitution, and federal law.

The jurisdiction of the Court includes:

(a) Territory

- (i) All lands within the exterior boundaries of the Rancheria and all lands owned by, held in trust for, leased, or used by the Tribe, its members, or any other entity established by the Tribe.

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(ii) The Tribe's ancestral lands, as recognized by the Tribe.

(iii) All lands owned by, held in trust for, leased, or used by the Tribe, its members, or any other entity established by the Tribe.

(b) Persons

The Tribal Court shall have jurisdiction over:

(i) All persons that have consented to the jurisdiction of the Tribe.

(ii) All persons engaged in any conduct, activity or business that threatens the health, safety or welfare of the Tribe or the residents of the reservation or the political integrity of the Tribe.

(iii) Over all Bear River tribal members and non-member Indians.

(iv) Any person who is considered an Indian by the tribal community, whether or not considered a Bear River tribal member, based on the traditions, customs, culture and mores of the Tribe.

(c) Subject Matter

(i) All actions, cases, or controversies that the Tribe has authorized, by legislation or Resolution, the Tribal Court to hear and decide.

(B) Court of Appeals. The Court of Appeals shall have jurisdiction to hear all appeals from final decisions of the Tribal Court. Decisions of the Court of Appeals on all matters within its appellate jurisdiction shall be final.

SECTION 6.0 - POWER OF THE COURTS

The Bear River Tribal Courts shall have the power to:

- (a) Interpret, construe and apply the Bear River Tribal Constitution, Bear River Tribal Codes and Laws, and regulations of the Tribe;
- (b) Declare the laws and regulations of the Tribe void if such laws or regulations conflict with the Bear River Tribal Constitution;
- (c) Issue injunctions, attachments, writs of mandamus, quo warranto, review, extradition, certiorari and prohibition, writs of habeas corpus upon petition by, or on behalf of any person held in actual custody; and
- (d) Establish court rules, forms and procedures, and rules of practice for the Tribal Courts, except that the Tribal Council may enact such court rules, forms, procedures and rules of practice through legislative acts.

SECTION 7.0 - COMPOSITION OF THE JUDICIARY

7.1 BEAR RIVER TRIBAL COURT

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The Tribal Court shall consist of a Chief Judge appointed for a term of three (3) years by a majority of the Tribal Council, upon the recommendation and advice from the Tribal Chairman.

7.2 COURT OF APPEALS

The Court of Appeals shall consist of a Chief Judge and two Associate Justices. The Court of Appeals judges shall be appointed by a majority of the Tribal Council, upon the recommendation and advice from the Tribal Chairman.

7.3 TRIBAL PARTICIPATION IN INTERTRIBAL COURT SYSTEM

Until the Tribe is able to establish a separate Bear River Tribal Court system, the Tribe may, upon passage of a resolution by Tribal Council, participate in an established Judicial Conference or Tribal Regional Court of Appeals.

SECTION 8.0 - APPOINTMENT AND QUALIFICATION OF JUDGES

Tribal judges shall be appointed for three (3) year terms. Judges shall be at least thirty (30) years old, of good moral character and not have been convicted of a felony under any laws of the Tribe, the United States, the State of California or any other jurisdiction. Judges shall meet any one or more of the following professional qualifications to be eligible to serve as a tribal judge:

- (a) Graduation from an American law school accredited under the American Bar Association;
- (b) Admission to practice law before any Tribal, State or Federal Court;
- (c) Previous experience as a magistrate or lay judge in any local or tribal court;
- (d) Possession of an advanced degree with substantial law-related experience.

8.1 DISQUALIFICATION

In the event that all of the judges of the Tribal Court are disqualified or unable to hear a case, a judge secured from another Tribal Court or intertribal court system shall sit as judge pro tem of the Bear River Tribal Court, provided the judge pro tem meets the minimum qualification requirements set forth in this section.

8.2 CONFLICT OF INTEREST

No judge shall be qualified to preside in any case in which he or she has any direct or personal interest, or in which any relative, by marriage or blood in the first or second degree, is a party.

8.3 JUDICIAL ETHICS

All Tribal Court judges shall strive to protect and preserve the high standards of the Bear River Tribal judiciary and shall comply with the Model Canons of Judicial Ethics of the American Bar Association as it now exists and as it may be amended in the future.

SECTION 9.0 - REMOVAL OF JUDGES

In accordance with procedural due process that requires notice and opportunity to be heard, a judge may only be removed from office by the Bear River Tribal Council for cause as follows:

- (a) Conviction of a felony or serious misdemeanor (excluding traffic citations) in any court of competent jurisdiction within the United States;
- (b) Neglect of duty or malfeasance in office;
- (c) Commission of acts that call the reputation or integrity of the judicial branch of Tribal government into question;
- (d) Disbarment from the practice of law in any jurisdiction when the appointed judge is also an attorney; and
- (e) Violation of the Model Canons of the Judicial Ethics of the American Bar Association where the penalty for violation is removal from office.

SECTION 10.0 - SOVEREIGN IMMUNITY

The Bear River Band of the Rohnerville Rancheria, the Bear River Tribal Council, and all arms of the Tribe, including but not limited to, all Tribal agencies, committees departments, entities or employees of any kind shall be immune from suit for any acts or omissions done during the performance of Tribal duties. Nothing contained in the Code is a waiver of sovereign immunity. Such consent or waiver must be expressly made by Tribal Council in accordance with Bear River Tribal law.

SECTION 11.0 - CHOICE OF LAW

Bear River Tribal Courts shall apply Bear River Tribal Laws and Codes and Constitution, including the traditions and customs of the indigenous groups of the Bear River Band of the Rohnerville Rancheria. If no Tribal law governs the issues being heard by the Court and there is no choice of law clause applicable to the case, the Court shall apply, in the following order:

- (a) The laws of other Indian tribes;
- (b) Federal statutory law; and
- (c) California State statutory law.

SECTION 12.0 - LONG ARM JURISDICTION

The Tribal Court shall exercise long arm jurisdiction to the extent consistent with the due process requirements set forth in the Indian Civil Rights Act, 25 U.S.C. § 1302(8), and the jurisdictional limitations set forth in section 5.0 of this Chapter. Any person or entity that is not a member or entity of the Bear River Band of the Rohnerville Rancheria and that is not present on Bear River Tribal lands submits to the jurisdiction of the Tribal Court by doing any of the following acts:

- (a) Transacting any business on Bear River Tribal lands;

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- (b) Committing any tortuous act on Bear River Tribal lands;
- (c) Owning, using, possessing or having an interest in any real or personal property situated on Bear River Tribal lands;
- (d) Contracting to insure any person, property or risk located on Bear River Tribal lands at the time of contracting;
- (e) Serving as the parent, custodian or other person with a legal interest in an Indian child subject to the jurisdiction of the Tribe;
- (f) Entering into any consensual relationship with the Tribe or its members, through commercial dealing, contracts, leases, or other arrangements;
- (g) Accepting a privilege from the Tribe, or entering into a consensual relationship or commercial transaction with a member relating to the exercise of fishing, hunting or gathering rights of the indigenous people and groups that comprise the Bear River Band of the Rohnerville Rancheria;
- (h) Engaging in conduct that damages a natural resource of the Tribe or any individual Tribal member;
- (i) Any child custody proceeding as defined under the Indian Child Welfare Act, 25 U.S.C. § 1903(1); or
- (j) Engaging in conduct on Bear River Tribal lands that threatens or has some direct effect on the political integrity, economic security or the health or welfare of the Bear River Band of the Rohnerville Rancheria.

Where jurisdiction is based on an act or omission set forth in this section, the Court may exercise personal jurisdiction over the person who does such act, directly or by an agent, as to any cause of action arising under Tribal law from such act. If the person is an individual, the Court's jurisdiction extends to their personal representative.

SECTION 13.0 - SUBPOENAS & WITNESSES

13.1 AUTHORITY TO ISSUE SUBPOENAS

A Tribal Court judge has the authority to issue subpoenas for the attendance of witnesses and the production of documents, either on his or her own motion, or upon the motion of the Bear River Tribal Police or any contracted Police force serving in that capacity on behalf of the Tribe or any party to the case. The subpoena shall be signed by the Tribal Court judge who issues it. Subpoenas issued pursuant to this section may be issued for the purposes of discovery, for pre-trial hearing, or for a trial or post-trial proceeding.

13.2 SERVICE OF SUBPOENAS

Service of a subpoena issued pursuant to section 14.1 of this Chapter shall be made by a Bear River Tribal Police Officer or Officer of any Police Agency or Service serving in that capacity pursuant to contract or other arrangement with the Tribal Council, any other person appointed by the Court for this purpose, or by

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any competent person over the age of eighteen (18) years old who is not a party to the action. Proof of service of a subpoena shall be filed with the Clerk of the Court by noting on the subpoena the return date, time and place that it was served.

13.3 FAILURE TO OBEY A SUBPOENA

If a witness fails to obey a subpoena, an order to show cause why the witness should not be found in contempt of Court shall issue immediately.

SECTION 14.0 - LEGAL COUNSEL

14.1 RIGHT TO COUNSEL

Any person appearing as a party in Tribal Court shall have the right to legal counsel at their own expense. Legal counsel appearing in Tribal Court need not be an attorney or admitted to practice before the bar of any state.

14.2 COURT APPOINTED COUNSEL

The Tribal Court may appoint counsel to represent any person appearing, if the Court finds the person to be indigent based upon the standards of indigence established by the Court and approved by Tribal Council. Appointed legal counsel may be:

- (a) An attorney admitted to practice before any state bar;
- (b) A student at, or graduate of, any school of law accredited by the American Bar Association;
or
- (c) Lay counsel admitted to practice in the Tribal Court.

The Tribal Court has the authority to adopt rules and fee schedules for the licensing of members to the bar of the Bear River Tribal Court.

SECTION 16.0 - PROCEEDINGS BEFORE THE BEAR RIVER COURT OF APPEALS

16.1 RIGHT TO APPEAL

Any person who believes, in good faith, that the Tribal Court has erred in interpreting or applying the law in their case, or that a procedural infirmity has occurred that has impacted the outcome of the case, has a right to appeal the final decision of the Tribal Court.

16.2 NOTICE OF APPEAL

Any person who wishes to appeal a final decision of the Tribal Court shall, within thirty (30) days of the issuance of the final decision:

- (a) File a written notice of appeal with the Clerk of the Court which includes the following information:
 - (i) The party or parties requesting the appeal;

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- (ii) The judgment, order or other final decision being appealed;
- (iii) A copy of the final decision being appealed; and
- (iv) Proof of service on all parties.

and

- (b) Serve each party of record with a copy of the notice of appeal.

If a party asks for a new trial, rehearing, or reconsideration, and the motion is denied, the thirty (30) day time limit shall be counted from the day when the motion is denied.

16.3 STAY OF EXECUTION OF JUDGMENT

In any case where a party has filed an appeal in accordance with this section, a stay of execution of judgment shall be granted and the Tribal Court judgment will not be carried out unless and until affirmed by the Court of Appeals.

16.4 APPELLATE PROCEDURES

Within forty-five (45) days from the filing of the notice of appeal, the Court of Appeals shall convene to hear the appeal, unless delay is warranted by good cause. At the initial hearing, the Court of Appeals shall review the record, including any briefs filed by the parties, and hear oral argument of counsel to determine whether the appeal should be granted or denied.

SECTION 17.0 - CLERK OF THE COURT

The Bear River Council shall appoint a Clerk of the Bear River Tribal Court, who shall be under the supervision of the Executive Director of Tribal Operations. The Clerk's duties shall include, but are not limited to:

- (a) Render assistance to the Tribal Courts and the Tribal police of complaints, subpoenas, commitments, and any other documents incidental to the lawful function of the Court;
- (b) Attend and keep, or arrange to have kept, a written record of all court proceedings;
- (c) Administer the oath to witnesses;
- (d) Receive, record and disburse all fines, fees and charges imposed by the Court;
- (e) Prepare and make available to parties forms, approved by the Tribal Council, for pleadings and service of process;
- (f) Develop and keep a current docket numbering system and shall preserve and protect the original, official records of all Court proceedings;

- (g) Draft and monitor all budgets for the Tribal Court, including the submissions of reports to the appropriate departments required by grant or contract or Tribal policy;
- (h) Develop and maintain a calendar for all Court cases;
- (i) Maintain a Tribal Court bar roster;
- (j) Assist and/or give the general public information pertaining to Court matters, filing of documents and court procedures, without providing legal advice; and
- (k) Perform any other duties as the judges, Executive Director of Tribal Operations or Tribal Council may assign.

SECTION 18.0 - MAINTENANCE OF COURT RECORDS

The Tribal Court shall maintain a record of all Court proceedings for its own information and purposes and, unless otherwise prohibited under Tribal law, for inspection by the general public. Provided, that the records of Court proceedings involving juveniles, adoptions and proceedings deemed by Court order to be of a sensitive or personal nature to the parties and not of public interest, shall not be open to public inspection without a Court order granting such inspection.

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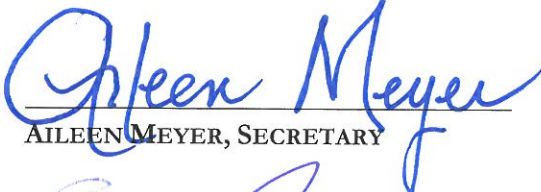
This is to certify that the Bear River Band of the Rohnerville Rancheria Tribal Council duly assembled in Loleta, CA adopted the foregoing ACT on April 25, 2016 by a vote of 6 in FAVOR, 0 OPPOSED, 0 ABSTAINING, and 1 ABSENT.



BARRY BRENARD, CHAIRMAN



DAKOTA MCGINNIS, VICE CHAIRMAN




AILEEN MEYER, SECRETARY



WENDELL FREEMAN, JR., TREASURER



EDWIN SMITH, MEMBER AT LARGE



JOHN MCGINNIS, MEMBER AT LARGE



DELMER KEISNER, MEMBER AT LARGE