

YUROK TRIBE WATER POLLUTION CONTROL ORDINANCE

SUBJECT: PROHIBITING THE DISCHARGE OF POLLUTANTS INTO THE WATERS OF THE YUROK INDIAN RESERVATION.

This Ordinance prohibiting the discharge of pollutants into Yurok Indian Reservation (YIR) waters, or within any water bodies draining onto the YIR, is established by the Yurok Tribal Council (Council) under the authority delegated to it by Article IV, Section 5 of the Constitution of the Yurok Tribe (Tribe), as ratified on November 19, 1993.

Article IV, Section 5 states in part "...*the Yurok Tribal Council shall have the authority to enact legislation, rules and regulations not inconsistent with the Constitution to further the objectives of the Yurok Tribe as reflected in the Preamble to this Constitution, [and to] enact civil and criminal laws*".

Under the authority vested in Article IV, Section 5 of the Constitution of the Yurok Tribe the Yurok Tribal Council does hereby ordain as follows:

- A. It wishes to eliminate all discharges of pollutants into the waters of the YIR.
- B. Elimination of all discharge of pollutants into the waters of the YIR is necessary at this time in order to maintain water quality for consumption, cultural, subsistence, and domestic purposes by residents of the Reservation.
- C. This Ordinance is being enacted at this time to maintain the quality of YIR waters in order to comprehensively regulate water quality and the discharge of pollutants on the reservation.

Section 1. SHORT TITLE, FINDINGS, AND PURPOSE

1.1 Short Title: This Ordinance shall be known as the Water Pollution Control Ordinance of the Yurok Tribe.

1.2 Findings: The Council hereby finds as follows:

- 1.2.1 Since time immemorial, the Klamath River, its tributary streams, its estuary, the streambeds thereof, the riparian areas adjacent thereto and the Pacific Ocean, have been natural resources of the most profound significance to the Tribe. Yurok people have always used these resources for cultural, ceremonial, religious, fishery, subsistence, residential and other purposes fundamental to the Tribe's way of life.
- 1.2.2 The people of the Yurok Tribe have a primary interest in the protection, control, and conservation of the water resources which flow into and through the YIR, and the quality of such waters must be protected to insure the health, economic, aesthetic, and cultural well-being of the Yurok People.

- 1.2.3 Various sites along the Klamath River are or may be contaminated with toxic or hazardous materials as a result of previous land use activities, many of which were authorized without adequate review of impacts or without adequate disclosure to the Tribe of the potential for such impacts, and the contamination at these sites may, if not properly contained and abated, pose significant risks to water quality and public health.
- 1.2.4 The Tribal Council hereby finds that wellhead protection is a proactive approach to managing public groundwater supplies and surface water intake, focusing on preventing contaminants from entering recharge areas to public water supply wells. Protecting wellheads and surface water intakes 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 and surface water quality.
- 1.2.5 Pursuant to federal law, the Yurok Tribe possesses inherent sovereign authority to regulate on-YIR pollution discharges that affect fundamental Tribal interests and the public health and safety.
- 1.2.6 Regulation or elimination of all discharges of pollutants into the waters of the YIR is necessary in order to maintain the quality of those waters for their beneficial uses by members of the Yurok Tribe and residents of the Reservation.
- 1.2.7 Such protection of YIR waters is not adequately provided for under existing legislation, and such protection will be furthered by the passage, adoption, and implementation of this Ordinance.

1.3 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, fisheries, subsistence, 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 YIR.

1.4 Scope

Unless otherwise dictated by enacting Tribal Resolution, the provisions of this Ordinance shall apply to all existing and proposed point source and non-point source pollution discharges into surface or ground waters, and to all activities which have the potential to affect cultural, ceremonial, religious, fisheries, subsistence, seasonal residential, public health and safety, water quality, and other fundamental interests of the Tribe. Activities to be regulated hereunder include but are not limited to:

- 1.4.1 Land fills and open dumps;
- 1.4.2 Storage of animal waste;
- 1.4.3 Automobile junkyards;
- 1.4.4 Land filling of sludge or septic system waste;
- 1.4.5 Individual, residential, industrial, commercial, or agricultural sewage treatment facilities;
- 1.4.6 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;
- 1.4.7 Underground and above-ground liquid storage containers;
- 1.4.8 Surface and subsurface removal of mineral resources, overburden, rock, or soil, including quarry operations (borrow pitting) for road surfacing or other uses;
- 1.4.9 All prospecting activities involving removal of soil or rock materials, including operations involving the reopening of existing mine pits, tunnels, or quarries;
- 1.4.10 Sand and gravel operations;
- 1.4.11 Activities such as suction dredging, that have the potential to affect the riparian area, water quality, or channel morphology;
- 1.4.12 Potential non-point source pollution problem areas including agricultural, mining, construction, urban runoff, silviculture, salt water intrusion, hydrological modification, and residential activities;
- 1.4.13 Application of herbicide, insecticide or other pesticide or toxic material or fertilizer for non-domestic use.
- 1.4.14 Unless otherwise dictated by enacting Tribal Resolution, the provisions of this Ordinance shall apply to all wellhead protection areas within the exterior boundaries of the Reservation, to all government actions on the YIR 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 2. DEFINITIONS

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

“Aquifer” means any geologic formation capable of yielding a significant amount of potentially recoverable water.

“Bodies of Water” any surface or groundwater located on or draining into the YIR including: wetlands, ponds, lakes, streams, rivers, creeks, drainage ditches, culverts including seasonal streams and wetlands

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

“Tribe” shall mean the Yurok Tribe.

"Tribal Council" means the Yurok Tribal Council.

“Designated use” means a use that is specified in water quality standards as a goal for a waterbody segment, whether or not it is currently being attained.

“Existing uses” means all uses actually attained in the waterbody on or after November 28, 1975, whether or not they are explicitly stated as designated uses in the water quality standards or presently existing uses.

"Forest management activity" means any activity conducted on or directly pertaining to forest land or relating to growing, harvesting, or processing timber.

"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 named by 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.

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

“Historical uses” means all uses that have historical significance for the Yurok Tribe.

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

“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.

“Mining” means any activities designed for the extraction of minerals.

“Mitigation” means a measure taken to reduce adverse impacts on the environment.

"Non-point source" means 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.

"Person" means any individual, corporation, partnership, joint venture, association, social club, estate, trust, the United States, Tribe, State, County, City, district, agency, municipality, commission, district or other political subdivision of any state, or any other group or combination acting as a unit.

"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.

"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.

"Pollutant" means any substance that will alter the quality of the waters of the Reservation.

“Potential uses” means all uses attainable in the waterbody, whether or not they are explicitly stated as designated uses in the water quality standards or presently potential uses.

"Quality of the water or waters" means any chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.

"Reservation" means all land, air, and water located within the exterior boundaries of the YIR.

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

“Recharge Area” means any areas that collects precipitation or surface water and carries it to aquifers. Recharge areas may include areas designated as wellhead protection areas.

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

"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.

"Waters of the Reservation" or "YIR waters" means any water, surface or underground, contained within, flowing through or bordering upon the Yurok Indian Reservation or any portion thereof.

"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.

"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.

"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 reasonable likely to move toward and reach such water well or well field.

Section 3. ESTABLISHMENT OF DUTIES, FUNCTIONS, AND AUTHORITIES

3.1 Yurok Tribe Environmental Program (YTEP): shall be responsible for:

- 3.1.1 The designation of beneficial uses for the waters of the YIR;
- 3.1.2 Developing a Water Quality Control Plan (WQCP) for the waters of the Reservation. The WQCP shall contain sections pertaining to beneficial uses, water quality criteria, and anti degradation policy.
- 3.1.3 Identifying water bodies or sections of water bodies which do not support beneficial uses;
- 3.1.4 Establishing and overseeing the Tribe's water quality monitoring, enforcement, and compliance programs;
- 3.1.5 Establishing and overseeing the Tribe's point and non-point source permit review system;
- 3.1.6 Conducting tri-annual assessments of the Tribe's WQCP for review by the Tribal Council.
- 3.1.7 Developing regulation to further the purposes of this Ordinance
- 3.1.8 Specifying document submission and record keeping requirements to be adhered to by all potential dischargers or applicants for permits.
- 3.1.9 Issuing permits, as required by the WQCP.

3.1.10 Entering and inspecting any property, premises, or facility involved in any activity which may affect water quality on any lands within the exterior boundaries of the YIR. Permission for inspection must be approved by the Tribal Council Chairperson or their designee, the Tribal Legal Counsel, and the Director of the Yurok Tribe Public Safety Department. In substitution, a warrant may be obtained from the Yurok Tribal Court. Such inspections may include but are not limited to:

- 3.1.10.1 Obtaining samples of soil, rock, vegetation, air, water or other substances deemed necessary;
- 3.1.10.2 Setting up and maintaining monitoring equipment for the purpose of assessing compliance with beneficial uses, water quality criteria, anti degradation policy, applicable regulations, best management practices, or health or safety hazards;
- 3.1.10.3 Reviewing and recommending regulation for Tribal Council approval to further the purposes of this Ordinance; following notice and hearings or written opportunity for public comment.

3.2 YTEP and Department of Public Safety and Emergency Services

YTEP and Public Safety staff are authorized and directed to conduct the following activities to enforce the provisions of this Ordinance:

- 3.2.1 Issue citations or notices of violation under section 3.3.3 and 3.3.4 of this Ordinance.
- 3.2.2 Enter at reasonable times into, on, or through any public or private property to conduct routine inspections to monitor compliance with the provisions of this Ordinance, and any rules or regulations promulgated pursuant to this Ordinance.
- 3.2.3 Coordinate with Tribal and local land management agencies, as needed, to enforce the provisions of this Ordinance.
- 3.2.4 After providing for comment as necessary, promulgate rules and regulations as may be necessary to carry out the spirit and letter of this Ordinance, including imposing restrictions, requirements, controls, and prohibitions regarding regulated activities.
- 3.2.5 Work cooperatively with other tribes and federal, state, county and municipal governments to:
 - 3.2.5.1 Coordinate activities and cooperate with such other governments as have similar or related responsibilities within their respective jurisdictions;

3.2.5.2 Develop intergovernmental agreements as appropriate for optimal coordination, cooperation, enforcement and assistance in carrying out this Ordinance and protecting the health and safety of the residents and the environment of the Reservation, provided that the Tribal Council shall have the ultimate authority to execute and enter into any such intergovernmental agreements.

3.3 Enforcement Process

3.3.1 YTEP are charged with conducting investigations, including inspections of relevant properties, of violations of this Ordinance or any conditions of a permit, with the help of Yurok Public Safety as needed.

3.3.2 Investigations of such violations by YTEP and Public Safety shall be initiated upon the filing of a written complaint, signed under penalty of perjury, by tribal members, Tribal Council members, Tribal Environmental Programs Office staff, Tribal Police Officers, other staff of the Tribe, or residents of the Reservation.

3.3.2.1 The written complaint shall be submitted on a form developed by YTEP and shall include, at a minimum, the following information:

- name of the complainant;
- date and time of the alleged violation;
- location of the alleged violation; and
- a brief description of the factual basis for the complaint.

3.3.2.2 The written complaint must be submitted to YTEP, during normal business hours, within six (6) months of the alleged violation.

3.3.2.3 YTEP or Public Safety shall initiate an investigation of the complaint within ten (10) days of receiving the complaint, upon a finding that the complaint sets forth a reasonable basis for believing that a violation has occurred.

3.3.3 Following an investigation, if YTEP determines that a violation has occurred, YTEP and Public Safety (if applicable) may take any one of the following actions which it deems most appropriate considering the gravity of the offense, any harm to human health or the environment resulting from the violation, and the circumstances of the person committing the violation:

3.3.3.1 Informally contact any alleged violator about possible violations of this Ordinance, or practices which may result in violations of this Ordinance, to assist the alleged violator in adhering to practices which protect water quality and comply with this Ordinance or the WQCP;

- 3.3.3.2 Issue a warning of violation, in the form of a letter from YTEP to the alleged violator, explaining the basis for the warning; possible measures which the alleged violator may take to mitigate the basis of the warning; and an explanation of the steps YTEP may take if the alleged violator does not take positive corrective action;
 - 3.3.3.3 YTEP may assess a civil fine or penalty as described in section 7, against the alleged violator, following the procedures set out in section 3.3.4, below; and/or
 - 3.3.3.4 Upon a finding that a violation is taking place or appears imminent, and that such activity if allowed to proceed will present an immediate hazard or cause irreparable damage, may issue an order to the person responsible for such activity to cease and desist from further commission of such violation, following the procedures set out in section 3.3.4, below.
- 3.3.4 The following procedures shall govern enforcement actions taken pursuant to sections 3.3.2 and 3.3.3, above:
- 3.3.4.1 YTEP shall issue a notice of violation, describing with particularity the violation and the proposed penalty, or other enforcement action, to the person who is charged with the violation.
 - 3.3.4.1.1 The notice of violation shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail or date of receipt.
 - 3.3.4.1.2 The notice shall include a warning that if the person does not respond within thirty (30) days of the date of receipt, the assessed civil penalty or other enforcement action will become permanent, and the person will lose all rights to appeal. The person will be advised they may wish to seek counsel on the matter.
 - 3.3.4.2 Within thirty (30) days of receipt of the notice of violation, the person who is charged with the violation may submit a written request for an administrative hearing before YTEP on the proposed enforcement action described in the notice of violation.
 - 3.3.4.2.1 If a hearing is requested, YTEP must hold an administrative hearing within thirty (30) days of receiving the request. If the person requesting the hearing makes a showing, supported by a declaration or other written documentation, in the request for hearing submitted to YTEP that the proposed enforcement action will result in great financial loss or harm to

the person or property before YTEP is required to hold a hearing, YTEP may hold a hearing immediately, or may delay or reverse any enforcement action until YTEP holds the requested hearing.

- 3.3.4.2.2 If the alleged violator does not request a hearing within thirty (30) days of receipt of the notice of violation, an assessed civil penalty or other enforcement action will become permanent and the person shall lose all rights to appeal.
- 3.3.4.3 At any hearing before YTEP, the alleged violator must come forward with evidence, including declarations, written documents, and statements by witnesses, indicating that the finding of violation is erroneous as described in the notice of violation.
- 3.3.4.4 Within thirty (30) days of the hearing, YTEP shall issue a decision on whether to affirm the proposed penalty, or other enforcement action described in the notice of violation.
- 3.3.4.5 YTEP shall serve a written notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail or date of receipt.
- 3.3.5 The decision of YTEP on appeal may be appealed to the Tribal Court upon written request submitted to the Tribal Council within ten (10) days of the receipt of the notice of decision after the initial hearing. The request for a hearing before the Tribal Court must state the grounds for overturning YTEP's decision.
 - 3.3.5.1 The Tribal Court shall hold a hearing within thirty (30) days of receiving the notice of appeal.
 - 3.3.5.2 The violator and YTEP shall have the opportunity to present oral arguments at the hearing.
 - 3.3.5.3 The written record from the administrative hearing before YTEP, together with all papers and requests filed in the proceeding before YTEP, shall constitute the exclusive record for decision on appeal.
 - 3.3.5.4 The Tribal Court shall set aside YTEP's decision only upon a finding that YTEP's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

3.3.5.5 Within thirty (30) days of the hearing, the Tribal Court shall issue a written decision on the appeal.

3.3.5.5.1 The Tribal Court shall serve a notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested.

3.3.5.6 Decisions of the Tribal Court are final.

3.3.6 YTEP and/or the Tribal Court, or a representative authorized by either body, may institute proceedings in Tribal Court to enforce a penalty issued by YTEP and/or upheld by the Tribal Court on appeal.

Section 4. PERMITTING

4.1 Permits Required

Any person who intends to alter or enlarge an existing activity described in section 1.4 of this Ordinance, or to commence a new such activity, or who intends to cause or direct such alteration, enlargement or commencement of such activities, shall prior to alteration, or enlargement or commencement of such activities, apply for and obtain a valid permit from YTEP. Information specifically regarding the permit process for actions involving wetland may be found in the Wetland Conservation Plan.

4.1.1 A processing and monitoring fee of \$500.00 shall be paid to the Tribe at the time of filing.

4.1.2 Four (4) copies of the application and any proposed mitigation plan shall be furnished by the applicant. Upon receipt of a permit application, YTEP shall transmit one copy to the Planning Department, the Cultural Department and the Council for their written recommendations. Failure of the departments to respond in writing to YTEP within thirty (30) days of receipt shall indicate approval or no desire to comment by the department.

4.1.3 Permit application shall indicate whether activities are proposed within certain wellhead protection areas consisting of aquifers or recharge areas.

4.1.4 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.

- 4.1.5 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.

4.2 Categorical Exclusions

The Tribal Council may by regulation exclude categories of uses, activities or projects from requirements of this Ordinance for substantial and widespread economic and social impacts.

Variances to established water quality objectives may be granted by YTEP after approval by the Tribal Council, only when the applicant satisfactorily demonstrates that:

- 4.2.1 Water quality will not be permanently impaired;
- 4.2.2 Public health will not be threatened;
- 4.2.3 No significant adverse environmental effects will occur due to the limited size or scale of a proposed activity;
- 4.2.4 A mitigation plan approved by YTEP demonstrates that all discharges will be below established water quality standard as set forth in the WQCP before the expiration of the variance;
- 4.2.5 The variance does not exceed one year from the date of issuance; and
- 4.2.6 A 30 day public review period has passed with at least one public meeting.

Section 5. WELLHEAD PROTECTION

5.1 Establishment and Delineation of Wellhead Protection Areas

For the purpose of this Ordinance, there are hereby established within the exterior boundaries of the YIR certain wellhead protection areas, consisting of aquifers and/or recharge areas with minimum zoning radii of 100 feet for groundwater extraction of 1,000 gallons per day (gpd); 200 feet for 5,000 gpd; 300 feet for 20,000 gpd; 400 feet for wells pumping 100,000 gpd or more.

5.2 Wellhead Protection Boundary Disputes

If the location of the wellhead protection area in relation to a suspected prohibited use is in doubt, resolution of boundary disputes shall be through the Yurok Tribe Planning Department. Disputants shall be afforded notice and an opportunity to be heard after prima facie showing by the Tribe as to the prohibited activities occurring in the wellhead protection area; the burden of proof shall be upon

the owner(s) of the land in question to show where the boundary should properly be located. At the request of the owner(s), the Tribe may engage a professional engineer, hydrologist, geologist, or surveyor to determine more accurately the boundaries of the wellhead protection area with respect to individual parcels of land, and may charge the owner(s) for all or part of the cost of the investigation.

5.3 Use Regulation

In the wellhead protection area the following regulations shall apply:

5.3.1 Permitted Uses

The following uses are allowed within the designated wellhead protection area, provided that all necessary permits, orders, or approvals required by the Tribe are obtained:

5.3.1.1 Conservation of soil, water, plants, and wildlife;

5.3.1.2 Outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally allowed;

5.3.1.3 Foot, bicycle and/or horse paths, and bridges;

5.3.1.4 Normal operation and maintenance of existing water bodies and dams. Splash boards, and other water control, supply, and conservation devices;

5.3.1.5 Farming, gardening, nursery, conservation, forestry, harvesting, and grazing;

5.3.1.6 Construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels.

5.3.2 Uses and Activities Requiring a Wellhead Protection Area Use Permit: The following uses and activities are permitted within the wellhead protection area only upon the issuance of a wellhead protection area use permit by YTEP after approval by the Council:

5.3.2.1 Landfills and open dumps;

5.3.2.2 Storage of liquid petroleum products, except when used for normal household use, outdoor maintenance, and the heating of a structure;

5.3.2.3 Landfilling of sludge or septic system waste;

- 5.3.2.4 Storage of chemicals unless such storage, including loading areas, is within a structure designated to fully contain any accidental spills;
- 5.3.2.5 Storage of over 25 cubic yards of animal manure;
- 5.3.2.6 Automobile junkyards;
- 5.3.2.7 Installation of new private or public cesspools or septic tanks or other wastewater disposal system. However, the following activities are allowed:
 - 5.3.2.7.1 The replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
 - 5.3.2.7.2 The replacement of existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s);
- 5.3.2.8 Industrial and commercial uses which discharge processed wastewater directly to septic tanks;
- 5.3.2.9 Storage of commercial fertilizers, as defined in the Yurok Tribal Code, unless such storage is within a structure designed to fully contain any accidental spills;
- 5.3.2.10 The use of septic system cleaners which contain toxic or hazardous chemicals, as defined by EPA guidelines;
- 5.3.2.11 The application of pesticides, including herbicides, insecticides, fertilizers, fungicides, and rodenticides, for non-domestic or non-agricultural uses.
- 5.3.2.12 Enlargement or alteration of existing uses that do not conform to this Ordinance;
- 5.3.2.13 Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use;
- 5.3.2.14 The construction of ponds, pools or other water control devices.
- 5.3.2.15 The construction of sewage disposal system that do not meet septic tank sizing, leachfield sizing and soil percolation requirements as will be established in the WQCP.

5.4 Procedures for Issuance of Wellhead Protection Area Use Permits:

The applicant shall file five (5) copies of environmental documents, site plans, and all other attachments required by YTEP. The site plan shall be drawn of professional quality and at a proper scale as determined by YTEP. All additional submittals shall be prepared by qualified professionals. The site plan and all attachments shall at a minimum include the following information where pertinent:

- 5.4.1 A complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored within the wellhead protection area;
- 5.4.2 For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the hazardous materials coordinator of the local Fire Department, fire chief of the Fire Department, and YTEP. The plan shall include:
 - 5.4.2.1 Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean up procedures;
 - 5.4.2.2 Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces.
- 5.4.3 Proposed down-gradient location(s) for groundwater monitoring well(s), should YTEP deem the activity a potential groundwater threat.

Section 6. GENERAL WATER QUALITY CRITERIA

Refer to the WQCP for a comprehensive list of criteria limits of water quality characteristics for YIR waters.

Section 7. CIVIL PENALTIES

Any person discharging any pollutant into the waters of the YIR shall pay a civil fine in an amount not to exceed five thousand dollars (\$5,000) for each day in which the violation occurs. The civil fine required by this section shall be imposed by any court of competent jurisdiction in accordance with sections 3, 8, and 9 of this Ordinance.

Section 8. CLEAN-UP AND ABATEMENT

Except as permitted pursuant to this Ordinance, any person that discharges any pollutant into the waters of the YIR shall immediately notify YTEP 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 YTEP. Any person who discharges any pollutant into the waters of the YIR shall be liable for all costs associated with or necessary to clean up, abate or remove said pollutants from the waters of the YIR to their conditions that existed immediately prior to the discharge.

Section 9. COURT ACTION AND INJUNCTIONS

Upon failure of any person to comply with any provisions of this Ordinance, and after exhaustion of YTEP's administrative authority, the Council, by and through its attorney, shall petition a court of competent jurisdiction for the issuance of an injunction requiring such person to comply therewith. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, and to levy such fines in accordance, as the facts may warrant up to the maximum penalties as stated in section 7 of this Ordinance.

Section 10. SEVERABILITY

If any part of this Ordinance or its application to any person or circumstance is held to be invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Ordinance are severable.

Section 11. 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.

Section 12. EFFECTIVE DATE

This Ordinance shall take effect immediately upon passage.