

MORONGO BAND OF MISSION INDIANS

ORDINANCE 39

**SURFACE WATER QUALITY PROTECTION
ORDINANCE**

Approved March 15, 2018

MORONGO BAND OF MISSION INDIANS

ORDINANCE NO. ____

SURFACE WATER QUALITY PROTECTION ORDINANCE

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I. **FINDINGS**

The Tribe is a federally recognized Indian Tribe exercising inherent sovereignty and jurisdiction over the Reservation. Acting pursuant to Tribal law, custom and tradition, and in the exercise of its inherent sovereign powers to enact ordinances, rules and regulations, and otherwise govern the Reservation, the Tribe finds that the protection of water quality is essential to the health, welfare, safety, and environment of Tribal Members, other Residents and the public. The Tribe further finds that the federal government, acting primarily through the Environmental Protection Agency, historically has exercised jurisdiction over water quality issues on the Reservation. However, for a variety of reasons including the lack of adequate resources, the Environmental Protection Agency has not always assigned to surface water quality protection on the Reservation the level of priority that the Tribe has desired or deemed appropriate. Therefore, exercising its own inherent sovereignty over the Reservation, the Tribe finds that Tribal efforts and initiatives, in addition to those of state and federal agencies, are essential to protect and improve the quality of surface water on the Reservation and to assure that surface water quality issues on the Reservation, including protection regulations and enforcement, are given the level of priority that the Tribe deems appropriate.

II. **PURPOSE**

The purpose of this Ordinance is to carry out the provisions of the Morongo Environmental Protection Ordinance, Section IV(C)(1), to protect surface water quality on the Reservation. Carrying out this purpose includes, among other things, protecting the health, safety and welfare of Tribal members and all other persons within the exterior boundaries of the Reservation; preventing the deterioration of water quality and other natural resources resulting from surface water pollution; and protecting the cultural, social, and economic stability of the Reservation. The Tribe intends to carry out the purpose of this Ordinance by reducing and/or controlling present and future sources of surface water pollution within the exterior boundaries of the Reservation in a manner that achieves a quality of water that maintains the chemical, physical, and biological integrity of the waters within the jurisdiction of the Tribe in order to preserve and enhance the environment within the Reservation and on the lands immediately surrounding the Reservation.

III. **APPLICABILITY**

To the fullest extent allowed by the law, this Ordinance is applicable to activities that occur anywhere on the Reservation regardless of whether those activities are undertaken by a Tribal Member, a Resident who is not a Tribal Member, a guest, a visitor, an invitee, a trespasser, holder of a Right of Way, or a person or entity that has leased land or space on the Reservation for the purpose of conducting business activities of any kind.

IV. **DEFINITIONS**

A. The terms used in this Ordinance shall be defined as follows:

1. The term “beneficial use” means the use of water for purposes that may include, but are not limited to, the following: aesthetics; agricultural use; aquaculture and fish propagation; commercial use; cultural, religious and spiritual uses; domestic use; fire protection; groundwater recharge; hydropower generation; industrial use; ecological flow uses; mineral resource development; municipal use; navigation;

pollution control; recreational use; resource development; stock water use; storage; water quality; conjunctive use; and wildlife habitat.

2. The term "Clean Water Act" means the Federal Water Pollution Control Act, as amended from time to time, currently codified at United States Code Title 33, Chapter 26, Sections 1251-1388.
3. The term "degradation" means the lowering of, or threat of lowering, water quality or the quality of the natural environment by an increase in contaminants or pollution or by a decrease in the ecological quality of the environment.
4. The term "Manager" means the Manager of the Morongo Environmental Protection Department.
5. The term "discharge" means any addition, regardless of method and regardless of intent, of a pollutant, pollution, or combination of pollutants to Reservation waters from any point source.
6. The term "Environmental Protection Department" means the Morongo Band of Mission Indians Environmental Protection Department.
7. The term "Environmental Protection Ordinance" means Morongo Ordinance # 12, as approved in 2000 and as it may be amended from time to time.
8. The term "Environmental Protection Agency" means the United States Environmental Protection Agency.
9. The term "groundwater" means all water that exists beneath the earth surface or beneath any surface water body, regardless of the geological formation or structure in which such water stands, flows, percolates, or otherwise moves.
10. The term "hazardous substance" or "hazardous material" means any chemical, material, or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substance" or words of similar import under any Environmental Laws and any substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating illness, and any other substance or material with respect to which any federal, state, local or Tribal Environmental Law or any Governmental Authority requires environmental investigation, monitoring, regulation or remediation. Typical hazardous substances are toxic, corrosive, ignitable, explosive or chemically reactive.
11. The term "non-member" means a person who is not an enrolled member of the Morongo Band of Mission Indians.
12. The term "person" means any individual, corporation, partnership, firm, association, agency, municipality, political subdivision, industry, or any other entity whatsoever.

13. The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, culvert, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft.
14. The term “pollutant” means any substance that, when introduced to water, will alter the quality of that water.
15. The term “pollution” means the presence of matter, energy, contamination, or other alteration of the physical, chemical, or biological properties of water or land whose nature, location, or quantity produces undesired environmental effects, including, but not limited to, changes in aesthetics, temperature, taste, color, turbidity, or odor of the waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters that may render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, to cultural, spiritual, domestic, commercial, industrial, agricultural, recreational, or other beneficial uses, or to livestock, wildlife, birds, fish, or other aquatic life.
16. The term “Ordinance” means this Surface Water Quality Ordinance, as it may be amended or revised from time to time.
17. The term “Reservation” means the Morongo Indian Reservation and all lands within the exterior boundaries of the Morongo Indian Reservation.
18. The term “Resident” means a person who owns, has a beneficial interest in, or has a leasehold or rental interest in a place of residence on the Reservation, and who actually resides in that place of residence either on a regular basis or from time to time.
19. The term “stream” means an area where surface water flows sufficiently to produce a defined channel or bed, indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water, regardless of whether that channel or bed contains water on a year-round basis; provided, however, that the term “stream” does not include an irrigation ditch, canal, storm water runoff facility, or other entirely artificial watercourse unless that artificial watercourse is used to convey water from a stream that existed naturally before construction of the artificial watercourse.
20. The term “stream bank” means that portion of the land surface extending from the stream water surface to the point at which water begins to overflow into the floodplain.
21. The term “surface water” means any or all water originating from precipitation or groundwater flow that is found on the surface of the earth, primarily in rivers, streams, springs, seeps, ponds, wetlands, lakes, and storm water drainage facilities.
22. The term "Tribal" when used in connection with any custom, tradition, law, regulation, standard or action shall mean a law, regulation, standard or action of the Tribe.

23. The term "Tribal Council" means the duly elected Morongo Tribal Council.
24. The term "Tribal Member" means a person who is an enrolled member of the Morongo Band of Mission Indians.
25. The term "Tribe" means the Morongo Band of Mission Indians, a federally recognized Indian Tribe.
26. The term "turbidity" means the measure of surface water clarity and indicates to what extent solids, such as soil particles, algae, plankton, and other substances, suspended in the water decreases the passage of light through the water.
27. The term "waste" includes any and all substances, liquid (including wastewater), solid, gaseous, radioactive or 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.
28. The term "wastewater" means water that contains wastes from residential, commercial, and industrial processes. Wastewater may consist of domestic effluent of sewage and/or graywater, water from commercial establishments and institutions, and/or industrial effluent resulting from direct contact with or the production of any raw material, intermediate product, finished product, byproduct, or waste product.
29. The term "water quality" means the chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.
30. The term "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.
31. The term "water quality standards" means numeric standards that prescribe the use of a water body and establish the water quality criteria that must be met to protect designated uses.
32. The term "waters of the Reservation" means any water, surface or underground, contained within, flowing through or bordering upon the Morongo Indian Reservation or any portion thereof over which the Tribe has jurisdiction.
33. The term "wetland" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

V. **GENERAL WATER QUALITY OBJECTIVES**

- A. The following objectives set forth limits or levels of water quality characteristics for surface waters to ensure the reasonable protection of beneficial uses from degradation or unreasonable effect of pollution. Water quality characteristics listed in this ordinance are consistent with the water quality standards used by the California

Regional Water Quality Control Board – Colorado River Basin. In the event that Tribal or federal water quality standards are adopted for surface water within the Morongo Indian Reservation, those standards, beneficial uses, and water quality criteria will supersede these objectives.

1. Aesthetic Qualities. All waters shall be free from substances attributable to wastewater of domestic or industrial origin or other discharges which adversely affect beneficial uses not limited to:
 - (a) Settling to form objectionable deposits;
 - (b) Floating as debris, scum, grease, oil, wax, or other matter that may cause nuisances; and
 - (c) Producing objectionable color, odor, taste, or turbidity.
2. Bacteria. In waters where recreation may occur, the following bacterial objectives apply. Based on a statistically sufficient number of samples (generally not less than five samples equally spaced over a 30-day period), the geometric mean of *Escherichia coli* should not exceed either 126 per 100 milliliters for contact recreation or 630 per 100 milliliters for noncontact recreation. Nor shall any sample exceed 400 per 100 milliliters for contact recreation or 2000 per 100 milliliters for noncontact recreation.
3. Biostimulatory substances. Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.
4. Chemical Pollutants. No individual chemical or combination of chemicals shall be present in sufficient concentration to adversely affect any beneficial use(s). There shall be no increase in hazardous material concentrations found in bottom sediments or aquatic life.
5. Dioxins. No dioxin compounds will be discharged to any water within the Reservation boundaries.
6. Dissolved Oxygen. Discharges shall not decrease the dissolved oxygen of receiving waters below 5.0 milligrams per liter.
7. pH. Discharges shall not cause any changes in pH detrimental to beneficial uses. The pH shall range from 6.5 to 9.0.
8. Radioactivity. Radionuclides shall not be present in waters in concentrations which are deleterious to human, plant, animal or aquatic life or that result in the accumulation of radionuclides in the food web to an extent which presents a hazard to human, plant, animal or aquatic life.
9. Sediment. The suspended sediment load and suspended sediment discharge rate to surface waters shall not be altered in such a manner as to cause nuisance or adversely affect any beneficial use(s).

10. Suspended Solids and Settleable Solids. Discharges shall not contain suspended or settleable solids in concentrations which increase the turbidity of receiving waters unless it can be demonstrated that such alteration does not affect beneficial uses.
11. Tainting Substances. Water shall be free of unnatural materials which individually or in combination produce undesirable flavors in the edible portions of aquatic organisms.
12. Temperature. The natural receiving water temperature of surface waters shall not be altered by discharges unless it can be demonstrated that such alteration in temperature does not adversely affect beneficial uses.
13. Total Dissolved Solids. Discharges shall not increase the total dissolved solids content of receiving waters, unless it can be demonstrated that such an increase in total dissolved solids does not adversely affect beneficial uses of receiving waters.
14. Toxicity. All waters shall be maintained free of toxic substances in concentrations which are toxic to, or produce detrimental physiological responses in human, plant, animal, or indigenous aquatic life. The survival of aquatic life in surface waters subjected to a discharge or other controllable water quality factors shall not be less than that for the same waterbody in areas unaffected by the discharge.
15. Turbidity. Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.

VI. **PROHIBITION OF DISCHARGES**

- A. All discharges that may adversely affect water quality are prohibited without an approved and applicable federal permit, Tribal permit, or a motion approved by the Tribal Council. The discharge shall not cause a violation of any applicable water quality standard or objective for receiving waters as required by this Ordinance and/or the Clean Water Act. Any activity shall not cause substantial alteration of hydroperiod, flows, groundwater or surface water quality, or fish and wildlife habitat. All activities shall comply with all applicable federal and Morongo Band of Mission Indian laws, including those related to sediment control, pollution control, floodplain restrictions, storm water management, and on-site wastewater disposal. All activities that could potentially cause a discharge shall follow all appropriate best management practices associated with that activity or required by the applicable permit.
- B. The use or discharge of recycled water shall not cause the underlying groundwater to exceed water quality objectives, unreasonably affect beneficial uses, or cause a condition of nuisance.
- C. Notice shall be given by the entity responsible (discharger) to the Environmental Protection Department within ninety (90) days, but no less than thirty (30) days, before undertaking any of the following (or similar) activities in a stream, stream bank, or wetland: the removal, excavation, grading, or dredging of soil, sand, organic matter, or material of any kind; the dumping, discharging, or filling with any material; the draining, flooding, or disturbing of the water level or water table; the placing of obstructions or

dams; the destruction or alteration of vegetation (e.g., through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a wetland) which substantially changes the vegetation, topography, or hydrology; or activities that would result in the introduction of sediment, excess nutrients, or pollutants or in a change in the physical or chemical characteristics of wetland water, including quantity.

- D. In the event of an emergency, when there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur without completion of an activity that may cause a discharge, the Environmental Protection Department shall be notified within twenty-four (24) hours of initiating such activity. Emergency work must conform to all applicable permit conditions, including those obtained after the fact, and may be subject to additional requirements, inspection, and/or project modifications to comply with any pertinent laws.
- E. Except as permitted pursuant to this Ordinance, any person that discharges any pollutant into the waters of the Reservation shall notify the Environmental Protection Department of such discharge within twenty-four (24) hours of the discharge and shall fully disclose the information regarding the discharge including the type of pollutant, the amount, the location, and other information required by the Environmental Protection Department. Such notice does not absolve the discharger of responsibility.

VII. **TRIBAL ADMINISTRATION OF ENVIRONMENTAL PROTECTION AGENCY PROGRAMS**

- A. Section 518 of the Clean Water Act authorizes the Environmental Protection Agency to treat eligible Indian Tribes with reservations in a manner similar to the manner in which the Environmental Protection Agency treats a state for a variety of purposes, including administering each of the principal Clean Water Act regulatory programs and receiving grants under several Clean Water Act authorities. The Tribe may be treated in the same manner as a state and implement provisions of the Clean Water Act that the Tribe deems necessary to further improve water quality and strengthen sovereignty over the Tribe's water resources. The Tribe may also develop and administer water quality control programs in instances where the Environmental Protection Agency does not have regulatory authority defined.
- B. If the Tribe finds it beneficial to implement water quality standards under Clean Water Act authority and administer additional Clean Water Act programs, the Manager, with the approval of the Tribal Council, shall apply to the Environmental Protection Agency in accordance to Title 40 of the Code of Federal Regulations Section 131.8. and may seek delegation of federal permitting authority under Clean Water Act Section 303, Clean Water Act Section 401, Clean Water Act Section 402, and/or Clean Water Act Section 404.

VIII. **COMPLIANCE ASSISTANCE**

Under Tribal Council Motion 071407-06, the Environmental Protection Department was granted authorization to implement a compliance assistance component. Under this component, the Environmental Protection Department has the authority to schedule and execute compliance assistance inspections of commercial and industrial developments located on the Reservation with the intent to assist those developments to reach and/or

maintain compliance with federal and Tribal water laws, regulations and rules, including this Ordinance.

IX. **ENFORCEMENT PROVISIONS**

- A. The Environmental Protection Department may utilize the Legal Department for enforcement proceedings. The Legal Department is authorized to commence a civil action in the Morongo Tribal Court seeking appropriate relief, including a permanent or temporary injunction, for a violation of this Ordinance and any regulations, policies or procedures established under this Ordinance.
- B. The Morongo Tribal Court shall have jurisdiction to enforce, including civil contempt powers, the Ordinance within the exterior boundaries of the Morongo Band of Mission Indians' Reservation.
- C. In the event of a violation of this Ordinance, the Morongo Tribal Court may, by written order, take immediate action to abate the problem, with appropriate written notice to the violator, explaining the nature of the violation and, if appropriate under the circumstances, provide the violator with a specific period of time following such immediate action in which to correct the violation.
- D. In the event of an imminent or current action that is likely to endanger or cause damage to the public health, safety, or welfare of the environment, the Tribal Court may issue a preliminary injunction or temporary restraining order, if it finds:
 - 1. irreparable injury is likely to result if equitable action is not taken;
 - 2. the injunction or restraining order is in the public interest;
 - 3. a remedy at law is insufficient to protect from the injury; and
 - 4. the Environmental Protection Department would likely prevail on the merits, if a full hearing were held.
 - (a) Any such order shall be effective immediately upon issuance and shall remain in effect for a period not to exceed sixty (60) days. The Tribal Court, after notice and a hearing, according to the applicable policies and procedures, may issue a permanent injunction or permanent restraining order, if it finds:
 - (i) irreparable harm will result, if the injunction or order is not issued;
 - (ii) considering both sides, a remedy in equity is warranted;
 - (iii) the Environmental Protection Department would prevail on the merits; and
 - (iv) a permanent order is in the public interest.

- E. An injunction issued pursuant to this Ordinance may be either mandatory, prohibitive or a combination of both.
- F. Any civil penalties imposed under Section 10 of this Ordinance shall not limit any other remedies that may be available to the Tribe, including the filing of a civil or criminal action in any court of competent jurisdiction.
- G. The Tribal Council, by written motion, may establish, through policies and procedures, a process for the enforcement of this Ordinance.

X. **PENALTIES FOR VIOLATIONS OF THIS ORDINANCE**

- A. Unless another penalty is specifically later adopted by the Tribal Council, any violation of this Ordinance may result in a civil fine or penalty in an amount determined by the Tribal Court but not to exceed \$5,000 per occurrence, plus the actual costs incurred by the Tribe to remediate and clean up any effects resulting from the violation, plus an added fee of \$500. Each day of the violation constitutes a separate violation. Action under this section does not bar enforcement of this Ordinance or rules or orders issued under it by injunction or other appropriate remedy. All remedies are cumulative.
- B. Specific actions of remediation and/or clean up may be ordered at the Tribal Court's discretion.
- C. Any person found responsible for a violation of this Ordinance may appeal the citation or any fine or penalty imposed by the Environmental Protection Department pursuant to this Ordinance to the Morongo Appellate Court.
- D. Violations of the Federal Clean Water Act regulations under the jurisdiction of the Environmental Protection Agency will be subject to penalties pursuant to Sections 309 and 311 of the Clean Water Act and will be enforced by the Environmental Protection Agency or an Environmental Protection Agency-approved Tribal enforcement policy.
- E. All fines and/or penalties collected under this Ordinance shall be maintained in a separate fund to be utilized by the Environmental Protection Department for the purpose of funding remediation, clean up and the continued monitoring of sites.

XI. **EFFECTIVE DATE**

This Ordinance shall take effect immediately upon approval by the General Membership of the Tribe.

XII. **SAVINGS CLAUSE**

Nothing in this Ordinance shall be deemed to affect, modify, amend or repeal any provisions of any other ordinance of the Tribe.

XIII. **SEVERABILITY**

The provisions of this Ordinance are severable. If any part or provision hereof is ruled to be void or unenforceable by a court of competent jurisdiction, the decision of the court so ruling shall not affect or impair the application of any remaining provisions of this

Ordinance.

XIV. **AMENDMENTS**

- A. In the event that the Tribe receives Environmental Protection Agency approval to administer federally authorized water quality standards, and the rules and regulations developed by the Environmental Protection Agency for those programs are inconsistent or do not have comparable provisions in this Ordinance, the Tribal Council may amend this Ordinance solely to the extent necessary to ensure consistency with applicable federal laws and regulations.
- B. In the event that the Environmental Protection Agency adopts or amends rules or regulations that apply to Tribal lands and which are inconsistent with this Ordinance, the Tribal Council may amend this Ordinance solely to the extent necessary to ensure consistency with applicable federal laws and regulations.
- C. In the event that pursuant to Section 14(a) or (b), the Tribal Council amends this Ordinance or any tribal regulation implementing this Ordinance, the Tribal Council shall ensure the General Membership receives notice of the amendment(s) so made at the next General Membership meeting.
- D. This Ordinance may be amended by the General Membership of the Tribe. The Tribal Council, in a declared emergency may amend provisions of this Ordinance, which amended provisions shall remain in effect for a period not to exceed one-hundred and eighty (180) days, after which time the amended provisions shall be of no force or effect, unless extended for good cause or unless adopted by vote of the General Membership. In the event of any emergency amendment(s), the Tribal Council shall notify Tribal Members of all such amendments at the next regularly scheduled General Membership meeting.

CERTIFICATION