

No. 19-131

In the
Supreme Court of the United States

DUANNA KNIGHTON,
Petitioner,

v.

CEDARVILLE RANCHERIA OF
NORTHERN PAIUTE INDIANS, ET AL.,
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioner, Duanna Knighton’s Petition for Writ of Certiorari takes issue with over one hundred years of Indian tribal Supreme Court precedent and requests the Court turn a blind eye on legal principals that have been relied on by United States Courts for generations. Petitioner begins with a striking proposal, that “Tribal Courts at no time have jurisdiction over non-members.” Further yet, that Indian tribal sovereignty, and the principals upon which these Court precedents have relied and which the Court has supported for decades, are merely illusory. This is not the law.

This Court’s decision in *Montana v. United States*, 450 U.S. 544 (1981), has been settled law for nearly 40 years. Montana allows tribal-court civil jurisdiction over nonmembers in two circumstances: (1) where the nonmember entered a consensual relationship with the tribe through commercial dealings or other arrangements, or (2) where the nonmember’s conduct has some direct effect on the political integrity, economic security, or welfare of the tribe. Montana is fully applicable to Petitioner Knighton as she was an employee of the tribe for 17 years, and held the position of Tribal Administrator—the top nonmember position—for more than 10 years, overseeing daily operations and finances. It was discovered that she misappropriated tribal funds, acted with financial conflicts, and negligently invested more than \$3 million in tribal funds, \$1.2 million of which were lost. The question presented is whether tribal jurisdiction exists when she had this consensual relationship and her

misconduct put the economic security and welfare of the tribe at risk.

The Court should deny Certiorari, because the principals on which this case was decided comports with Supreme Court precedent and there exists no circuit court split implicating *Montana v. United States*, 450 U.S. 544 (1981); *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 814 (9th Cir. 2011), *Plains Commerce Bank v.*, 554 U.S. 316 (2008) or for that matter *Dollar General v. Mississippi Band of Choctaw Indians*, 579 U.S. ___ (2016). The question of “Whether Indian Tribal Courts have jurisdiction over non-members” and “What due process rights are required” are well settled Supreme Court precedent under the facts and law applied warrant tribal court jurisdiction. Appellant’s petition should be denied and the lower court’s decision AFFIRMED.

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INTRODUCTION

Petitioner, Duanna Knighton, seeks review of a question that is well settled law. It asks the Court to re-decide the depth and breadth of Tribal Court Jurisdiction over a non-member in a fact pattern that is not unique and of which no due process issue arises under the application of well- established Indian law principals. The Ninth Circuit Court of Appeals found that the Respondents, Cedarville Rancheria of Northern Paiute Indians and Cedarville Tribal Court, retained jurisdiction over Petitioner under two separate well-reasoned Indian law precedents: (1) *Montana v. United States*, 450 U.S. 544 (1981) two-prong analysis and (2) *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 814 (9th Cir. 2011), land based inherent sovereignty principals. The application of both precedents has been utilized throughout the nations District and Appellate Courts for decades. The Court also found that the Tribe's regulatory authority did not exceed its adjudicative authority under the facts of the case.

In granting Petitioner's writ, the Court must reverse not just one case, but multiple cases and ignore the most important and well-reasoned Indian law cases the Court has previously decided. These cases, as applied by the Appellate Court to reach its reasoned decision, do not result in the slightest due process issue or a conflict within the Circuit courts. Certiorari should be denied.

STATEMENT OF THE CASE

I. Factual Background

The Cedarville Rancheria is a federally recognized Indian Tribe. The Tribe's Rancheria, seventeen acres of federal trust lands, are located in Cedarville, Modoc County, California. The Tribe's Administrative Offices are located in Alturas, California, approximately twenty-three (23) miles from its land base and held in fee simple. The Tribe operates pursuant to a Constitution, duly authorized by the Secretary of the Interior and receives federal funds pursuant to its government to government relationship with the United States. The Tribe is governed by its Community Council, all eligible voting tribal members eighteen years or over and in good standing with the Tribe. The Tribe's day to day operations are performed by an Executive Committee, which consists of a three (3) member council, Chairperson, Vice Chair and Secretary. (Pet App. 35a)

Petitioner, Duanna Knighton, a non-member, served the Tribe as an employee for 17 years. Petitioner started her tenure with the Tribe in 1994 as office help and worked her way up to the position of Tribal Administrator, the Tribe's top non-member post, for over ten years. As Tribal Administrator, Petitioner oversaw the daily operations of the Tribe, was responsible for the Tribe's finances, federal grants (HUD housing, EPA, Department of Energy, Water), oversaw member benefits, housing and investments. Petitioner's involvement with the Tribe over the course of her tribal employment touched literally every facet of the Tribe, its members and its federal lands.

Petitioner's employment responsibilities with the Tribe occurred within the Tribe's federal trust lands in Cedarville, California and on lands held in fee by the Tribe, its Administrative Headquarters, currently in the process of being placed in trust with the United States, located in Alturas, Modoc County, California, twenty-three miles from the Rancheria. (Pet App.6-7a)

In March of 2013, Petitioner abruptly resigned as Tribal Administrator. Subsequent to her resignation the Tribe authorized a forensic audit of the Tribe's books and records. What the audit uncovered was shocking, it showed that Petitioner had inflated her salary by siphoning federal grant money from tribal programs, had lost \$1.2 million dollars of the Tribe's investment funds, including funds for the Tribe's children, had encouraged the Tribe to purchase an Administration office, without an appraisal, and without disclosing she was an officer of the property sellers corporation. Petitioner created a tribally funded retirement account for herself, the account balance inflated by overpayments by the Tribe, failed to disclose to the Tribe several years of financial audits that recommended stronger fiscal policies and internal controls and upon resigning cashed out \$29,000 in sick leave and overtime pay against Tribal policy. (Pet App. 10-11a)

During the period in which Petitioner defrauded the tribe, her employment was subject to the Tribe's Personnel Policies and Procedures Handbook. (Br. in Opp. App.31) Petitioner herself authored the Handbook for the Tribe's adoption as updated in 2011. The Handbook placed Petitioner squarely under the

supervision and jurisdiction of the Tribe for disciplinary purposes. (Pet App. 6-7a)

In September 2014, the Tribe filed suit against Petitioner in its newly operating Tribal Court. The Tribal Court's formation had been in process shortly after Petitioner's resignation and was in full operation within nine (9) months after Petitioner's resignation. The Tribal Court operates pursuant to tribal law and has adopted the Federal Rules of Civil Procedure. The Tribe has an Appellate Court comprised of three (3) appellate judges for those cases requiring appellate review. The Court is funded by U.S. Department of Justice, BIA and Tribal funds. (Pet. App. 9-10a)

II. Procedural History

As a threshold matter, all courts, tribal, tribal appellate, federal district Eastern District of California and the Ninth Circuit, applying both *Montana* and *Waterwheel* have upheld tribal court jurisdiction against Petitioner.

Upon receipt of the Tribe's summons and complaint, Petitioner filed a Motion to Dismiss, which was denied, the trial court having found jurisdiction under both prongs of *Montana v. U.S.*, 450 U.S. 544 (1981) (consensual contact and special effects). Petitioner then appealed to the Tribal Appellate Court, which affirmed the Tribal Court's decision on jurisdiction. Petitioner then appealed the issue of co-Defendant R.I.S.E. Inc's dismissal from the original lawsuit for lack of jurisdiction, which was remanded to the Trial Court for decision. The trial court found R.I.S.E. was not a necessary or indispensable party. Thereafter,

Petitioner entered a stipulation with the Tribe to pursue jurisdictional review via the Eastern District of California Federal District Court. The Eastern District dismissed her complaint finding jurisdiction under *Waterwheel v. LaRance*, 642 F.3d 802, 814 (9th Cir. 2011). Petitioner appealed to the Ninth Circuit Court of Appeals, which denied her appeal finding jurisdiction could be found under either *Montana* or *Waterwheel*. Petitioner's Writ of Certiorari followed. (Pet App. 11-13a).

REASONS FOR DENYING THE WRIT

There are four (4) independently sufficient reasons for denying Petitioner's Writ. First, Petitioner's Question concerning "Whether Tribal Courts have Jurisdiction over Non-Tribal Members" has been answered in the affirmative, with limitations, on numerous occasions by the Court. Additionally, "What Due Process is required" has also been previously decided. Second, the Circuit split on which Petitioner relies is illusory. Third, the Court of Appeals faithfully applied basic principles of federal Indian precedent from which Petitioner now seeks to depart and finally, Fourth, this case is a bad vehicle for resolving Petitioner's claimed circuit split and revisiting *Dollar General*.

I. Tribal court jurisdiction over nonmembers is well-settled law and all courts have held or assumed that jurisdiction exists for qualifying tort claims

Petitioner asks this court to again decide whether Indian Tribal Courts have jurisdiction over non-tribal

members. The Court has answered this question in the affirmative on numerous previous occasions.

The Ninth Circuit Appellate panel held that the Tribe retained jurisdiction under its right to exclude nonmembers from tribal land and from the tribe's inherent sovereign power to protect self-government and control internal relations. *Waterwheel*, 642 F.3d 802, 814 (9th Cir. 2011) The panel held that the Tribe had the authority to regulate the non-member conduct through its exclusionary power.

The panel also found jurisdiction was applicable and the tribe had regulatory authority over Petitioner under both *Montana* exceptions, which allow a tribe: (1) to regulate the activities of nonmembers who enter consensual relationships with the tribe or its members and (2) to exercise civil authority over the conduct of nonmembers on fee lands within its reservation when that conduct threatens or directly affects the political integrity, the economic security, or the health or welfare of the tribe. Given the existence of regulatory authority, the sovereign interests at stake, and the congressional interest in promoting self-government, the tribal court has jurisdiction over the tribe's tort claims. So as to not denigrate an already well reasoned decision the Panel stated as follows as to the law of the case:

A. Legal Precedent

Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978), the Supreme Court holds that Indian Tribes do not have criminal jurisdiction over non-members.

Montana v. United States, 450 U.S. 544 (1981), the Supreme Court holds that tribal civil jurisdiction exists over non-members under two conditions: (1) where there exists consensual relations between the Tribe and non-member; and (2) when the non-member conduct creates a Special Effect in that it threatens the political integrity and financial security of the Tribe.

Strate v. A-1 Contractors, 520 U.S. 438 (1997) The Supreme Court holds that Where Tribe's have authority over non-members civil jurisdiction presumably lies with the Tribal Courts.

United States v. Hicks, 533 U.S. 353 (2001), the Supreme Court clarifies *Montana* and holds that the first *Montana* exception "consensual relations", is about private relationships, as in Petitioner's case, and does not apply when an overriding state interest exists.

Water Wheel v. LaRance, 642 F.3d 802, 814 (9th Cir. 2011). The Ninth Circuit holds that tribal regulatory authority over non-members exists under a tribe's exclusionary powers.

Plains Commerce Bank v. Long Family Cattle Co., 554 U.S. 316 (2008). The Supreme Court holds that the sale of former trust land is not non-member conduct that can be regulated. Here, Petitioner's conduct was on the Tribe's reservation and she was a 17-year, high level, tribal employee.

Attorney's Process & Investigative Services, Inc., v. Sac & Fox Tribe of the Mississippi in Iowa, 609 F.3d 927 (8th Cir. 2010), Eighth Circuit applying *Montana* finds jurisdiction over non-member defendants under the Second *Montana* exception and finds use of tribal

court set up *after* facts giving rise to tribal tort claims arose does not implicate due process concerns.

Dollar General v. Mississippi Band of Choctaw Indians, 579 U.S. ___ (2016). The Supreme Court on a 4-4 vote, upholds the 5th Circuit's finding that civil tribal court jurisdiction exists over a non-member company tortfeasor employee. Footnote 3 of the 5th Circuit's *Dollar General* opinion, explains that all circuits have held or assumed that there can be tribal jurisdiction for tort claims under Montana exceptions.

B. Petitioners' Arguments

i. Petitioner's On-Reservation Conduct

Petitioner argues that treating land ownership as a dispositive factor in upholding a tribe's power to regulate nonmember conduct on tribal land (unless, as in *Hicks*, there are significant state interests present) is contrary to prior court rulings in *McDonald v. Means*, 309 F.3d 530 (9th Cir. 2002), and *Smith v. Salish Kootenai College*, 434 F.3d 1127 (9th Cir. 2006). Petitioner is incorrect. In *McDonald*, the Court recognized that a tribe's jurisdiction over civil claims against nonmembers arising on tribal land is limited under *Hicks* only in cases where significant state interests are present. *See* 309 F.3d at 540. And in *Window Rock Unified School District v. Reeves*, 861 F.3d 894, 902 n.9 (9th Cir. 2017), the Court held that *Smith* did not limit a tribe's jurisdiction over civil claims against nonmembers bearing a direct connection to tribal land. The Court concluded that *Smith* was distinguishable because it involved a nonmember

plaintiff, as opposed to a nonmember defendant, who had entered into a consensual relationship with the tribe by filing his action in tribal court. *Id.*

Petitioner’s argument that a tribe’s regulatory power over nonmember conduct on tribal land is limited to conduct that *directly* interferes with a tribe’s inherent powers to exclude and manage its own lands is also unavailing. In *Window Rock*, the Ninth Circuit concluded that the tribal court’s jurisdiction over employment-related claims that did not involve access to tribal land was plausible; accordingly, it held that the nonmember defendants were required to exhaust their tribal court remedies before proceeding in federal court. *Id.* at 896, 906. Moreover, limiting a tribe’s regulatory power over nonmember conduct to that which directly interferes with a tribe’s inherent powers to exclude and manage its own lands, as Petitioner suggests, would restrict tribal sovereignty absent explicit authorization from Congress—an approach we specifically rejected in *Water Wheel*. See 642 F.3d at 812 (stating that the tribe’s right to exclude nonmembers from tribal land includes the power to regulate them “unless Congress has said otherwise, or unless the Supreme Court has recognized that such power conflicts with federal interests promoting tribal self-government”). (Pet App. 19-20a)

ii. Petitioner’s Off-Reservation Conduct

Petitioner also argues that *Water Wheel*’s right-to-exclude framework is inapplicable here because some of her alleged misconduct occurred *off* tribal land, after the tribal administrative offices were relocated to fee

land owned by the Tribe. Although the Tribe's complaint does not allege precisely where the conduct at issue occurred, most of the claims alleged against Petitioner involve conduct that took place on tribal land, before the Tribe's administrative offices were moved in mid-2009 to the RISE building in Alturas, California. Moreover, the facts of this case are unique in that any claims that may have arisen outside tribal land are based on alleged misconduct and misrepresentations made by Petitioner on tribal land. *See Smith*, 434 F.3d at 1135 (stating that jurisdictional inquiry is not limited to deciding precisely when and where the claim arose, but whether it bears some direct connection to tribal lands). For example, the \$29,925 overpayment for unused vacation and sick leave that the Tribe seeks to recover stems from misrepresentations that Petitioner allegedly made throughout the course of her employment, before the Tribe's administrative offices relocated. In addition, the relocation of the Tribe's administrative offices from tribal land to the RISE building on tribal fee land was allegedly due to misrepresentations by Petitioner.

iii. Petitioner's Due Process Argument

Petitioner further argues that even if the Tribe had the power to regulate her conduct on tribal land during the course of her employment under *Water Wheel's* right-to-exclude framework, the Tribe's authority is limited to the regulations that were in place during her employment—which is to say, those provided for in the Personnel Manual. Petitioner contends that the Tribe is attempting to impose new regulations on her through

tort law after she left her employment with the Tribe. This is not the case.

A tribe's power to exclude nonmembers from tribal lands permits a tribe to condition a nonmember's entry or continued presence on tribal land, *see Merrion v. Jacarilla Apache Tribe*, 455 U.S. 130, 144–45 (1992), but this inherent power does not permit the Tribe to impose new regulations upon Petitioner's conduct retroactively when she is no longer present on tribal land. Both the District and Appellate Court held that Petitioner's alleged conduct violated the Tribe's regulations that were in place *at* the time of her employment. The Personnel Manual regulated employee conduct including, but not limited to, Misfeasance or malfeasance in the performance of duty, incompetency in the performance of job duties, theft, carelessness or negligence with the monies or property of the Rancheria, inducement of an employee to act in violation of Rancheria regulations, and violation of personnel rules—all conduct that forms the basis of the Tribe's claims against Petitioner. Further, Petitioner had notice of these regulations because she, herself, was responsible for drafting the Personnel Policy Handbook adopted by the Tribe.

Petitioner's due process argument fails because the law and potential damages applied to her was the law in effect at the time of her employment. The only change is the forum, from the Tribe's Community Council to an independent third-party judge, has changed. Ironically, by the Tribe changing its adjudicative forum from tribal member adjudicated to

a professional tribal court, Petitioner does not have to face, and be judged, by the members she defrauded.

iv. *Dollar General* is factually distinguishable from this case.

Petitioner, for the first time in five (5) years of litigation now makes the claim that the Court should Grant the petition because of the Court's 4-4 split in *Dollar General v. Mississippi Band of Choctaw Indians*, 579 U.S. ___ (2016). *Dollar General* is neither factually similar nor relevant to Petitioners' Questions Presented. Although both involve tort claims, their similarity dramatically diverges from there. *Dollar General* concerned a tribal lessee's employee who was haled into tribal court by the Tribe for alleged torts against a tribal member minor intern. *Dollar General* alleges there was no lease agreement between Dollar General and the Tribe conferring court jurisdiction and that the Dollar General manager accused of the assault lacked authority to bind Dollar General to the Tribe's jurisdiction.

By contrast, Petitioner Knighton was a tribal employee for seventeen (17) years, employed by the Tribe as its Tribal Administrator, the highest-level non-member position within the Tribe. Petitioner oversaw the Tribe's finances, business and land base. Petitioner, herself, wrote the Personnel Policies and Procedures that the District Court, as affirmed by the Ninth Circuit, found applicable to her. The procedures also provided Petitioner the appropriate notice of the Tribe's power that could be used against her for claims of malfeasance of duty. Petitioner was also aware of the Tribe's power and herself utilized it first-hand, having

disciplined and terminated tribal employees and vendors, some tribal members, on behalf of the Tribe. Any inference by Petitioner that she was *oblivious* to the Tribe's power to exclude is disingenuous.

In the tribal and federal district and appellate courts *Dollar General* argued that under *Plains Commerce Bank*, jurisdiction was lacking because the tort claims did not implicate tribal governance or internal relations. *DolgenCorp. v. Mississippi Band of Choctaw Indians*, 846 F. Supp. 2d 646, 650–51 (2011). The district court explained:

“The parties disagree as to the meaning and import of Plains Commerce Bank with respect to the first Montana exception. Plaintiffs submit that under the Court's interpretation of the exception in Plains Commerce Bank, no longer will every consensual relationship between a nonmember and a tribal member occurring on the reservation be sufficient to establish tribal jurisdiction over claims with a nexus to that relationship; rather, only those consensual relationships that are evaluated and determined to have an impact on tribal self-governance or internal relations will trigger tribal jurisdiction. Plaintiffs contend that since the consensual relationship here involved does not implicate tribal self-governance or internal relations, then the exception does not apply and there can be no basis for tribal jurisdiction. Defendants, on the other hand, maintain that nothing in Plains Commerce Bank altered the basic Montana framework and that to establish applicability of the consensual relationship exception, no showing is required to be made beyond the existence of the

consensual relationship which supports a finding of consent to tribal jurisdiction, and the nexus between the consensual relationship and exertion of tribal authority. According to defendants, it is implicit in Montana and its progeny that the right of Indian tribes to self-governance includes the right to adjudicate civil disputes arising from voluntary consensual relationships between tribes and their members and nonmembers. That is, disputes arising from member-nonmember or tribe-nonmember consensual relationships are deemed as a matter of law to impact tribal rights of self-government sufficient to permit the exercise of tribal court jurisdiction to adjudicate such disputes. *Id.* at 652-53 (footnote omitted). The district court agreed with the tribal defendants' position, stating that "although a number of post-*Plains Commerce Bank* cases have considered the consensual relationship exception, none has identified the additional showing advocated by plaintiffs as a prerequisite to its application." *Id.* at 653-54 & n. 3." Accordingly, the district court concluded that tribal court jurisdiction was permitted under the first *Montana* exception. *Id.* at 654.

Here, in contrast to the facts in *Dollar General*, Petitioner was the highest-level non-member employee of the Tribe and as Tribal Administrator Petitioner oversaw every aspect of tribal life. Even if *Plains Commerce Bank* altered *Montana* to requires conduct implicating *tribal governance and internal relations* to establish jurisdiction, such conduct could easily be found. Petitioner's malfeasance touched every aspect of the tribe, from its government, its federal funding, members, housing and tribal lands. (See Cedarville

Rancheria Personnel Policies and Procedures, Sec.1 Positions Tribal Administrator –“Tribal Administrator is responsible for overall supervision and management of the Cedarville Rancheria. . .”(Br. in Opp. App.31)). Petitioner as a *tribal insider* had the opportunity to *manipulate* the Tribe and its policies and procedures to her benefit, unlike the employment of a tribal custodian who lacks high level insider influence. Because the facts of the instant case are easily distinguishable from *Dollar General*, and the Tribe would meet any *tribal governance and internal relations* nexus if in fact such a requirement exists, the Petition should be denied.

Finally, there is unanimity among the Circuits which have addressed the issue that this Court’s ruling in *Plains Commerce* did not change anything about the consensual relationship exception or the nexus test. Pet.App., pp.15-18; *Evans v. Shoshone-Bannock Land Use Policy Commission*, 736 F.3d 1298, 1303 (9th Cir. 2013) (citing *Plains Commerce* and applying *Montana’s* consensual relationship exception without change); accord, *Grand Canyon Skywalk Development, LLC v. SA’NYU WA Incorporated*, 715 F.3d 1196, 1205-1206 (9th Cir. 2013); *Water Wheel*, supra at 810-820 and n.6 (affirming tribal court jurisdiction over contract and tort claims under Montana exceptions as regards on-reservation lease and post-lease disputes between tribe and non-Indian parties, rejecting arguments that *Plains Commerce* changed the rules regarding the consensual relationship exception); *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140 (10th Cir. 2011) (affirming district court’s application of the consensual relationship test after *Plains Commerce*; affirming that

the Montana test is satisfied by proof of a consensual relationship and “a sufficient ‘nexus’ between that relationship” and the subject tribal court claim, without any suggestion that any separate proof of special harm to the tribe’s right of self-governance or internal affairs was required); *Attorney’s Process*, supra at 936, 937-946 (8th Cir. 2010) (recognizing that Plains Commerce left intact the basic Montana framework and its two exceptions); *Phillip Morris USA, Inc. v. King Mountain Tobacco*, 509 F.3d 932, 937, 940-942 (9th Cir. 2009) (“Montana, Strate, and Hicks. . .are affirmed in important respects by the Court’s most recent tribal jurisdiction decision in Plains Commerce;” expressly rejecting the argument that a special showing of significant harm to the tribe’s political existence or internal relations is required to invoke the consensual relationship exception). In sum, Plains Commerce did not alter the Court’s Montana analysis and the Petition should be denied.

II. The circuit split on which petitioner relies is illusory.

Petitioner encourages the Court to review what she perceives is a jurisdictional split over the Ninth Circuit’s decision in *Nevada v. Hicks*, 533 U.S. 353 (2001) contrasted with those of the Tenth Circuit in *MacArthur v. San Juan Cty.*, 497 F.3d 1057 (2007), Eighth circuit (*Nord v. Kelly*, 474 F. Supp. 2d 1088 (2008).). Moreover, Petitioner conflates the *Montana* test and the land-based analysis of *Water Wheel v. LaRance*, to arrive at her conclusion. The split is pure fantasy.

i. ***Montana* as Applied in the Tenth and Eight Circuits**

The *MacArthur* Court applied *Montana's* two-prong approach to find jurisdiction over a County run medical facility, located on tribal land. The court held that because the clinic was located on tribal land and a contract existed for medical services between the Tribe and County, a “consensual relationship” existed satisfying *Montana's* first prong. This case is analogous to the facts in the instant case. Petitioner performed acts within the Tribe’s jurisdiction and the Appellate Court found that the consensual relationship between the Tribe and Petitioner satisfied *Montana's* first prong. The Court then looked at Petitioner’s position within the Tribe, Tribal Administrator, her responsibilities, and the alleged tortious acts to conclude *Montana's* second prong, “special effects” had also been met. Hence, *McArthur (Eighth Circuit)* and *Montana (Ninth Circuit)* are not adverse, they are in perfect harmony.

By contrast, the Eighth Circuit decision in *Nord v. Kelly* did not even apply *Montana*, the case was decided using *Strate v. A-1 Contractors*, 520 U.S. 438 (1997) because the auto accident giving rise to the claims occurred on a highway running through a reservation and there existed no treaty between the State and Tribe to permit tribal court jurisdiction. See *Nord, supra*, at 1093 citing *Strate v. A-1 contractors* “This case is controlled by the Supreme Court’s decision in *Strate*, holding that “tribal courts may not entertain claims against nonmembers arising out of accidents on state highways, absent a statute or treaty authorizing

the tribe to govern the conduct of nonmembers on the highway in question.” 520 U.S. at 442, 117 S. Ct. 1404.).

Respondent Tribe’s lands on which Petitioner’s acts occurred are not the “no mans” land of a state highway as found in *Strate*. They are federal trust lands, of which Petitioner concedes she visited numerous times over the course of her 17-year employment with the Tribe and fee lands containing the Tribe’s Administrative Office, lands preparing to be placed in federal trust. The Tribe’s Constitution, passed while Petitioner was in the Tribe’s employ, enumerates both trust lands and lands in fee are subject to the Tribe’s regulatory jurisdiction. APPX 3, App. 87, “Territory”.

Petitioner’s purported “split” is based on a single statement referenced in the *dissent* in *Window Rock Unified School District v. Reeves*, 871 F.3d 894 (9th Cir. 2017), citing another case *Nevada v. Hicks*. Petitioners *split* is the belief that the Appellate Court did not apply Montana’s two -prong approach in finding Tribal Court jurisdiction was appropriate as against Petitioner, because no competing state interest existed - this did not happen. A review of the appellate opinion demonstrates the Appellate Court went to great lengths in its jurisdictional analysis in applying both prongs of *Montana* to find jurisdiction over Petitioner under *Montana*. The Court then analyzed the case under the *Water Wheel* analysis and found that jurisdiction could be found there as well. Thus, the Ninth Circuit held jurisdiction proper under either *Montana*, as held by the Tribal Courts or *Water wheel*, as held by the Eastern District of California.

Petitioner's invocation of *Hicks*, is completely baseless and inapplicable to this case. Although *Hick*'s is important to the overall *Montana* analysis when a court is faced with competing government interests, it is inapplicable here because the facts do not involve State officers enforcing state criminal laws upon a reservation to create such a conflict. This case is a civil matter between an Indian tribe and its 17-year employee who committed malfeasance while performing her employment duties on the Tribe's Reservation and fee lands. The State does not have a scintilla of an interest, compelling or otherwise, in the Tribe's claims against Petitioner or the outcome. Further, any due process concerns with Tribal Courts such as perceived bias and incompetence, etc., were previously decided as frivolous in *Iowa Mutual Insurance, Company v. LaPlante*, 480 U.S. 9, 18 (1987) (See "(d) Petitioner's contention that local bias and incompetence on the part of tribal courts justify the exercise of federal jurisdiction is without merit, since incompetence is not among National Farmers Union's exceptions to the exhaustion requirement, and would be contrary to the congressional policy promoting tribal courts' development, and since the Indian Civil Rights Act, 25 U.S.C. §1302, protects non-Indians against unfair treatment in tribal courts. Pp. 480 U.S. 18-19.")

It is clear that in the absence of a competing state interest tribal court jurisdiction is proper as against Petitioner. "Tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty. See *Montana v. United States*, 450 U.S. 544, 450 U.S. 565-566 (1981); *Washington v. Confederated Tribes of Colville Indian Reservation*, 447

U.S. 134, 152-153 (1980); *Fisher v. District Court*, 424 U.S. 382, 387-389 (1976). Civil jurisdiction over such activities presumptively lies in the tribal courts, unless affirmatively limited by a specific treaty provision or federal statute. *Id.* at Pp. 480 U.S. 18-19.

III. The Ninth Circuit faithfully applied basic principles of federal Indian precedent from which petitioner now seeks to depart.

The Ninth Circuit applied the principals of federal Indian law correctly to the facts presented in this case. Petitioner's arguments are contrary to established law. Petitioner repeatedly states throughout the Petition that "Tribal Courts do not have jurisdiction to adjudicate non-member private tort claims" - this is not the law. While Tribal Court jurisdiction is not to be *presumed*, under the *Montana* two prong approach and *Waterwheel's* land - based formula, these tests set forth the analysis utilized to determine when Court jurisdiction is proper.

Montana's first prong, "consensual relations" seeks to analyze whether relations between the Tribe and non-member are such that jurisdiction would not result in a violation of "fair play and substantial justice". Hence, under the first prong, contractual based relations are usually sufficient to hale the non-member into the tribes' forum. The second prong of the *Montana* analysis "special effects", requires that the act "imperil the Tribe and have some effect on the Tribe's political and economic security or the health and welfare of the Tribe." *Plains Commerce Bank* citing *Montana*. The acts Petitioner is accused of easily meet these requirements.

The Ninth Circuit held that Petitioners tortious acts were such that they satisfied both prongs of the Montana test. The Court applied the first prong and held that Petitioner's 17-year employment with the Tribe, performed both on and off the reservation, provided the requisite "contacts" with the Tribe such that fair play and substantial justice would not be offended. Petitioner having drafted the Tribe's policies herself, which placed jurisdiction and discipline of tribal employees, including herself, under the purview of the Tribe, Petitioner had the requisite notice to support due process. *Attorney's Process*, 609 F.3d 927 (8th Cir. 2010) cited by Petitioner does not support Petitioners cause. In fact, the precedent supports Respondent's opposition and the case facts are eerily similar to the facts of the instant case.

In *Attorney's Process* a rival tribal faction attempted to take over the Sac & Fox tribes tribal casino. The faction, employed non-members to storm the Casino. Although the attempted take-over failed the aftermath resulted in a lawsuit before the Tribal court in which the non-members were subject to tribal penalties. The Tribe's Tribal Court, as in the instant case, was *not* in operation at the time of the take-over attempt. Appellant's made the same due process arguments Petitioner makes here as to the tribes' assertion of jurisdiction. In upholding the Tribal Court's finding of jurisdiction the Eighth Circuit stated as follows:

"Although the issue in the Montana case was about tribal regulatory authority over nonmember fee land within the reservation, *Montana*, 450 U.S. at 547, Montana's analytic framework now sets the outer

limits of tribal civil jurisdiction-both regulatory and adjudicatory-over nonmember activities on tribal and nonmember land. . . . Because “efforts by a tribe to regulate nonmembers are presumptively invalid,” the Tribe bears the burden of showing that its assertion of jurisdiction falls within one of the Montana exceptions. *Plains Commerce Bank*, 128 S. Ct. at 2720 (quotation marks omitted). Those exceptions are narrow ones and “cannot be construed in a manner that would ‘swallow the rule.’” *Id.* (quoting *Atkinson Trading Co.*, 532 U.S. at 655). The Ninth Circuit court determined that the tribal courts could exercise jurisdiction over the Tribe’s claims under both Montana exceptions.

i. First *Montana* Exception

The Ninth Circuit held that *Montana*’s “consensual relationship exception recognizes that tribes have jurisdiction to regulate consensual relations “through taxation, licensing, or other means.” 450 U.S. at 565. Courts have recognized that tort law, under which the Tribe’s claims against Knighton arise, constitutes a form of regulation. *See Attorney’s Process*, 609 F.3d at 938 (stating that if a tribe retains the power under *Montana* to regulate nonmember conduct, it does not make any difference whether it does so through precisely tailored regulations or through tort claims). However, *Montana*’s consensual relationship exception requires that “the regulation imposed by the Indian tribe have a nexus to the consensual relationship itself.” *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 656 (2001). “A nonmember’s consensual relationship in one area thus does not trigger tribal civil authority in another.” *Id.*

In examining the facts of the case, the Court concluded that the Tribe had regulatory authority over Knighton's conduct. The conduct that the Tribe sought to regulate through tort law arose directly out of the consensual employment relationship between the Tribe and Knighton. Moreover, given the circumstances, Knighton should have reasonably anticipated that her conduct might "trigger" tribal authority. *Water Wheel*, 642 F.3d at 818 (quoting *Plains Commerce Bank*, 554 U.S. at 338). Knighton was no stranger to the Tribe's governance and laws. She had been an employee of the Tribe for approximately sixteen years and, as Tribal Administrator, was responsible for the overall supervision and management of tribal operations and carrying out tribal projects consistent with the Tribal Constitution. The Tribal Constitution, a subsequent revision adopted approximately two years before Knighton resigned as Tribal Administrator, specifically provided that the "jurisdiction of [the Tribe] shall extend to land now within the confines of the [Rancheria] and to such other lands as may thereafter be added thereto." (Br. in Opp. App.87) The Ninth Circuit concluded that given the circumstances, Knighton should reasonably have anticipated that her conduct on tribal land would fall within the Tribe's regulatory jurisdiction.

ii. **Second *Montana* Exception**

Montana's Second exception provides that tribal courts have authority over nonmember conduct which "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Montana*, 450 U.S. at 566. In *Attorney's*

Process the district court concluded that by attempting to seize control of the casino and government offices during an intratribal governance dispute, defendant API directly affected both the political integrity and the economic security of the Tribe.

The Court in API stated that “the starting point for the jurisdictional analysis is to examine the specific conduct the Tribe's legal claims would seek to regulate. The Montana exceptions focus on “ ‘the activities of nonmembers’ or ‘the conduct of non-Indians.’ ” *Plains Commerce Bank*, 128 S. Ct. at 2720 (quoting *Montana*, 450 U.S. at 565-66) (emphasis in original). Each claim must be analyzed individually in terms of the Montana principles to determine whether the tribal court has subject matter jurisdiction over it. See *Hicks*, 533 U.S. at 367 n. 8 (limitations on tribal jurisdiction “pertain[] to subject-matter, rather than merely personal, jurisdiction”); *Plains Commerce Bank*, 128 S. Ct. at 2724-25 & n. 2; cf. *Myers v. Richland County*, 429 F.3d 740, 747-48 (8th Cir. 2005) (examining federal court subject matter jurisdiction claim by claim).

In analyzing the jurisdictional issue we rely on the record developed in the tribal courts and the allegations in the Tribe's complaint. Questions of subject matter jurisdiction often require resolution of factual issues before the court may proceed, see, e.g., *Osborn v. United States*, 918 F.2d 724, 728-30 (8th Cir. 1990), and that is particularly true of inquiries into tribal jurisdiction. It is therefore both necessary and appropriate for the parties and the tribal court to ensure that “a full record [is] developed in the Tribal

Court.” *Nat’l Farmers Union Inc. Cos. v. Crow Tribe*, 471 U.S. 845, 856 (1985)

Here, neither Petitioner Knighton or the Tribe requested discovery in the tribal or district court forums. Petitioner Knighton has also *not* contested any of the material allegations made by the Tribe against her in its complaint. Thus, all courts took the facts in the complaint, as true, for determining tribal court jurisdiction.

The Ninth Circuit found that Petitioner’s conduct in mismanaging \$3 million in tribal funds, manipulating her pay and retirement, failing to inform the tribe of audit reports recommending stronger fiscal polices and recommending the purchase of an Administration office in which she had a conflict, all supported jurisdiction under the Second Montana exception.

The Montana exceptions recognize that the Indian tribes “retain inherent sovereign power,” *Montana*, 450 U.S. at 565, and our task in applying the exceptions is to outline the boundaries of that retained power. Those boundaries are established by federal law, a source of law external to the tribes. See, e.g., *Nat’l Farmers Union*, 471 U.S. at 852. Positive tribal law, in contrast, is internal to the tribes. It is a manifestation of tribal power, and as such it does not contribute to the external limitations which concern us here. Once it is determined that certain conduct is within the scope of a tribe’s power as a matter of federal law, our inquiry is at an end.”

iii. Tribal Adjudicative Authority

Concerning the Court's Adjudicative authority the Ninth Circuit Court held that the Tribe's adjudicative authority did not exceed its regulatory authority. The Tribe's Personnel Manual regulated the conduct that formed the basis of the Tribe's claims against Knighton, and permitted her to be regulated as Tribal Administrator by the Tribe's Community Council. Moreover, the Ninth held that the fact the Tribe now sought to adjudicate the claims in tribal court did not undermine its jurisdiction over the claims.

iv. Use of a Tribal Court Created After Petitioner Knighton's departure from tribal employment does not Undermine Due Process

The Ninth Circuit also held that due process was not undermined by the jurisdiction being found over Petitioner after leaving tribal employment. The Ninth again looked upon the Eighth Circuit's *Attorney's Process* case which has facts analogues to this case. In *Attorney's Process*, the tribal court system was established after the tort claims against API arose. 609 F.3d at 933. API argued that the tribe lacked jurisdiction over its claims because there were no written regulations in place at the time which prohibited the tortious conduct that API was alleged to have committed. *Id.* at 938. The court stated that "[i]f the Tribe retains the power under *Montana* to regulate such conduct, we fail to see how it makes any difference whether it does so through precisely tailored regulations or through tort claims such as those at issue [in the case]." *Id.* The court concluded that

because API's intervention onto tribal land threatened the "political integrity, the economic security, [and] the health [and] welfare' of the Tribe," the tribe had the authority to regulate and adjudicate such conduct under *Montana*, as well as incident to its sovereign right to exclude nonmembers from tribal land. *Id.* at 940 (alterations in original) (quoting *Montana*, 450 U.S. at 566).

The Ninth Circuit held that "the Tribe's authority to regulate Petitioner's conduct derived not only from its sovereign power to exclude nonmembers from tribal lands, but also from its inherent sovereign power to regulate consensual relations with nonmembers "through taxation, licensing, or other means," and to protect the "political integrity, the economic security, [and] the health [and] welfare" of the Tribe. *Montana*, 450 U.S. at 565–66."

As held by the Ninth Circuit, the Court applied an identical analysis as the Eighth Circuit did in *Attorney's Process* to determine that in finding jurisdiction the Tribe's regulatory authority did not exceed its adjudicative authority. The only distinction was that the Eight Circuit did not also apply *Water Wheel* in its analysis. And it need not do so because the lower Court in *Attorney's Process* did not apply *Water Wheel*, as the Eastern District Court did in upholding the Tribe's finding of jurisdiction over Petitioner. In granting Petitioners Writ the Court would need to overturn the Eighth and Ninth Circuit's harmonious application of *Montana* and unnecessarily uproot decades of rationally applied federal Indian law precedent.

Finally, all the federal circuits which have addressed on reservation employment relationships have held they are the kind of consensual relationships which can satisfy Montana's first exception and trigger tribal regulatory and adjudicatory jurisdiction--when the nexus test is also satisfied. See, pp.8-9, *supra*. Given the absence of a split in the Circuits this case is not a proper vehicle for addressing the question presented. *McCray v. New York*, 461 U.S. 961, 963 (1983) (Stevens, J.). These cases are directly in line with this Court's recognition in *El Paso Natural Gas Co. v. Neztosie*, 526 U.S. 473, 482 (1999) that unless Congressional intent clearly intends to convert state law claims to federal claims for purposes of federal court jurisdiction (even for tort claims arising on-reservation) "there was little doubt that the tribal court had jurisdiction over such tort claims." This point was reiterated in *Hicks*, *supra* at 369.

IV. This case is a bad vehicle for resolving Petitioner's Claimed Circuit Split and Revisiting *Dollar General*

This case is a bad vehicle to address the Petitioner's claimed circuit split because, as noted above, there is no such split. The Petition paints the Ninth Circuit as rejecting *Montana* in many situations, but the decision below made explicitly clear that the *Montana* exceptions apply. Therefore, even if the Court held that the sovereign exclusion source is somehow problematic, it would not affect the outcome.

Second, this case is a bad vehicle to revisit the question posed in *Dollar General*. As noted, the *Dollar General* petition contended that the first Montana

exception should not be used to justify tribal jurisdiction for tort claims because it opens the floodgates to sue any entity that has done business with the tribe. But even the *Dollar General* petition concedes that the second Montana exception provides a more limited and legitimate basis to justify tort jurisdiction—i.e., where the conduct is so extreme that it affects the integrity and economic stability of the tribe itself. This is that extreme case—it’s hard to imagine a nonmember more enmeshed in tribal decisions and finances than Petitioner, Respondent Tribe’s former Tribal Administrator. Petitioner put over \$3 million of tribal funds at risk, stole from the tribe, and entered various financial arrangements with a conflict. Thus, even if the Court took on the question presented in *Dollar General* and limited the applicability of the first Montana exception, it would similarly not affect the outcome in this case. Accordingly, this case is a bad vehicle for addressing Petitioner’s questions.

CONCLUSION

For the forgoing reasons Petitioners Writ should be denied.

Respectfully Submitted,

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APPENDIX

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APPENDIX 1

EXHIBIT “1”

[Filed October 10, 2016]

**CEDARVILLE RANCHERIA
JUDICIAL CODE**

PREAMBLE

This Code of the Cedarville Rancheria is enacted for the purpose of protecting and promoting tribal sovereignty, strengthening tribal self-government, providing for the judicial needs of the Cedarville Rancheria, and thereby assuring the protection of tribal resources and the rights of the members of the Cedarville Rancheria and all others within its jurisdiction.

TITLE I: COURTS

**PART I: ESTABLISHMENT AND OPERATION
OF THE CEDARVILLE RANCHERIA
TRIBAL COURT**

Section 101. Establishment of Tribal Court.

There is hereby established a tribal court of general jurisdiction as a Court of record. The Cedarville Rancheria Tribal Court “Tribal Court” or “Court” shall consist of a Trial Division and an Appellate Division.

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Section 102. Tribal Designation.

Wherever the formal designation “Tribe,” “Tribal” or “Rancheria” appears in this Code, such designation shall refer to the Cedarville Rancheria unless specifically designated otherwise.

Section 103. Appropriations and Funding.

- A. The Community Council of the Rancheria shall appropriate and authorize the expenditure of tribal funds for the operation of the Tribal Court. The amounts to be appropriated shall be consistent with the needs of the Tribal Court for proper administration of justice within the Reservation and for the Rancheria as determined by the Community Council.
- B. To assist the Community Council in making appropriations for operation of the Court, the Tribal Administrator, in consultation with the Chief Judge shall submit proposed budgets and reports of expenses and expenditures at such intervals and in such form as may be prescribed by the Community Council.
- C. The Community Council may prescribe a system of accounting for funds received from any source by the court and the Tribal Administrator.

Section 104. Conflict with Other Laws.

A. Tribal Laws.

To the extent that this Code may conflict with tribal laws or ordinances which have been enacted to comply with statutes or regulations of

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any agency of the United States, such tribal laws or ordinances shall govern over the provisions of this Code if they have specific applicability and are clearly in conflict with the provisions of this Code.

B. Federal Laws.

Where a conflict may appear between this Code and any statute, regulation or agreement of the United States, the federal law shall govern if it has specific applicability and if it clearly is in conflict with the provisions of this Code.

C. State Laws.

To the extent that the laws of any state may be applicable to the subject matter of this Code, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.

PART II: JURISDICTION

Section 201. Cedarville Rancheria Tribal Court Jurisdiction

A. Territory.

The jurisdiction of the Tribal Court and the effective area of this Code shall extend to disputes arising within or concerning all territory within the Cedarville Rancheria boundaries, including, but not limited to, trust lands, fee patent lands, allotments, assignments, roads, waters, bridges and existing and future lands outside the boundaries owned or controlled

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by the Rancheria for its benefit, the benefit of its members and the benefit of other Indian persons.

B. Subject Matter.

The jurisdiction of the Tribal Court shall extend to:

1. All persons who reside or are found within the territorial jurisdiction of the Rancheria and are: Tribal members or eligible for membership in the Rancheria; members of other federally recognized Indian tribes; or Indians who are recognized as such by an Indian community or by the federal government for any purpose.
2. All persons described in Subdivision B.1., wherever located, while exercising tribal rights pursuant to federal, state or tribal law.
3. All persons outside the exterior boundaries of the Cedarville Rancheria Reservation, as defined herein, within the jurisdiction of the Rancheria pursuant to federal or tribal law, including all persons whose activity on or off reservation threatens the Rancheria, government or its membership.
4. All other persons whose actions involve or affect the Rancheria, or its members, through commercial dealings, contracts, leases or other arrangements. For purposes of this Code, person shall mean all natural persons, corporations, joint ventures, partnerships,

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trust, trust funds, public or private organizations or any business entity of whatever kind.

C. Actions.

The judicial power of the Tribal Court shall extend to:

1. All matters and actions within the power and authority of the Cedarville Rancheria including controversies arising out of the Constitution and By-Laws of the Cedarville Rancheria, statutes, ordinances, resolutions and codes enacted by the Cedarville Rancheria; and such other matters arising under enactments of the Cedarville Rancheria or the customs and traditions of the Cedarville Rancheria.
2. All civil causes of action arising at common law including, without limitation, all contract claims (whether the contract at issue is written or oral or existing at law), all tort claims (regardless of the nature), all property claims (regardless of the nature), all insurance claims, and all claims based on commercial dealing with the Band, its agencies, sub-entities, and corporations chartered pursuant to its laws, and all nuisance claims. The court shall have original jurisdiction whether the common law cause of action is one which has been defined as Band common law, or is one which exists at common law in another jurisdiction and

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which is brought before the Tribal Court based upon reference to the law of that other jurisdiction. For the purposes of this Code, “common law” shall mean the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from the usages and customs, or from the judgments and decrees of courts recognizing and affirming such usages and customs, and as is generally distinguished from statutory law.

3. Other actions arising under the laws of the Rancheria as provided in those laws.
4. Limitation of Actions.

No complaint shall be filed in a civil action unless the events shall have occurred within a six (6) year period prior to the date of filing the complaint; provided, that this general statute of limitations shall not apply to suits filed to recover public money or public property intentionally or erroneously misspent, misappropriated or misused in any way; and further provided that this general statute of limitations shall not apply to any debt owed the Rancheria or any of its agencies, arms or instrumentalities, whether organized or not under tribal law.

D. Concurrent Jurisdiction.

The jurisdiction invoked by this Code over any person, cause of action or subject shall be

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concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided, however, this code does not recognize, grant, or cede jurisdiction to any state or other political or governmental entity which jurisdiction does not otherwise exist in law.

Inclusion of language, definitions, procedure or other statutory or administrative provisions of the state of California or other state or federal entities in this Code shall not be deemed an adoption of that law by the Cedarville Rancheria and shall not be deemed an action deferring to state or federal jurisdiction within the Cedarville Rancheria where such state or federal jurisdiction may be concurrent or does not otherwise exist.

Section 202. Suits Against the Band.

A. Sovereign Immunity of Band.

The sovereign immunity from suit of the Band and every elected Executive Council member or tribal official with respect to any action taken in an official capacity or in the exercise of the official powers of any such office, in any court, federal, state or tribal is hereby affirmed; nothing in this Code shall constitute a waiver of the Rancheria's sovereign immunity. The Tribal Court shall have no jurisdiction over any suit brought against the Rancheria in the absence of unequivocally expressed waiver of that immunity of the Community Council.

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B. Tribal Action Not a Waiver of Sovereign Immunity.

No enforcement action taken pursuant to this Code, including the filing of an action by the Rancheria or any agency of the Rancheria in the Tribal Court, shall constitute a waiver of sovereign immunity from suit of the Rancheria, or any elected Executive Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, either as to any counterclaim, regardless of whether the counterclaim arises out of the same transaction or occurrence, or in any other respect.

C. Resolution Required for Waiver of Sovereign Immunity.

The sovereign immunity of the Rancheria and any elected Executive Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, in any action filed in the Tribal Court with respect thereto, may only be waived by a formal resolution of the Community Council of the Cedarville Rancheria. All waivers shall be unequivocally expressed in such resolution. No waiver of the Rancheria's sovereign immunity from suit may be implied from any action or document. Waivers of sovereign immunity shall not be general, but shall be specific and limited as to the jurisdiction or forum within which an action may be heard, duration, grantee, action and property or funds, if any of the Rancheria or any agency, subdivision or governmental or commercial entity of

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the Rancheria subject thereto. No express waiver of sovereign immunity by resolution of the Community Council of the Cedarville Rancheria shall be deemed consent to the levy of any judgment, lien or attachment upon property of the Rancheria or any agency, subdivision or governmental or commercial entity of the Rancheria other than property specifically pledged or assigned therein.

Section 203. Amendments and Revisions.

This Code may be amended by action of the Executive Committee or Community Council of the Cedarville Rancheria. Amendments, additions and deletions to this Code shall become a part hereof for all purposes and shall be codified and incorporated herein in a manner consistent with its numbering and organization. Other than actions regarding procedural issues, no enactment, ordinance, resolution, or otherwise, shall apply to any pending cases before the Tribal Court at the time action is taken by the Community Council of the Cedarville Rancheria.

Section 204. Code Revisor.

A. Appointment.

The Tribal Administrator is hereby appointed Code Revisor for the Cedarville Rancheria. The Community Council, Executive Committee, tribal officials or the Chief Judge may submit for review and approval all codes, ordinances and statutory law contemplated for application and use by the Court. The Community Council shall review and vote on the Ordinance. The Ordinance shall be effective upon an affirmative vote of the Community

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Council. All Court Ordinances are subject to periodic revision and amendment with the consent of the Executive Committee or Community Council. Court operation policies and procedures are not subject to Community Council review and approval. However, any policies and procedures shall be provided to the Executive Committee for review and comment. Court policies and procedures shall also be made available upon request.

B. Duties of Reviser.

The Reviser shall carry out all duties assigned under this Section, including, but not limited to:

1. Certify, by signature and date, any and all amendments, corrections, revisions, updates, and expansions to this Code, and other Codes, ordinances and statutory laws enacted by the Community Council of the Cedarville Rancheria. Provided however, the Reviser's actions shall be ministerial in nature and the Reviser shall not be empowered to determine whether an action is necessary or sufficient for the lawful enactment into law of any amendment, correction, revision, update or expansion of this Code or other tribal laws.
2. Keep an official indexed and written record, which shall be public, of all Certifications made by the Reviser under this section.
3. Provide copies of all certified revisions of the Code to any person or agency requesting such copies. The Reviser may establish a reasonable cost for such copies.

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C. Certification to Code Reviser.

Upon adoption of any and all amendments, corrections, revisions, updates or expansions of the Code by the Executive Committee or the Community Council of the Cedarville Rancheria, the Secretary of the Executive Committee shall convey a copy of the amendment, correction, revision, update or expansion of the Code, together with a copy of the resolution adopting it, to the Reviser.

D. Effective Date of Revisions.

Upon receipt of all the necessary documents from the Secretary of the Executive Committee, the Reviser shall make a written and dated Certification of Amendment, which shall be permanently attached to the said documents and kept in the permanent files of the Reviser. All revisions of the Code shall be effective on the date of the written certification required by this Section, and not before.

E. Distribution.

Distribution of the new Code provisions shall be at the discretion of the Reviser and may be at a cost established by him/her.

PART III: JUDGES

Section 301. Trial Division.

The judiciary of the Tribal Court, Trial Division, shall consist of a Chief Judge and may also include one or more Associate Judges.

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The Executive Committee of the Cedarville Rancheria, or the Chief Judge by order, may appoint additional persons to serve as deputy/special judges or justices. Each such appointment of a deputy/special judge or justice shall be personal and shall not create an office which survives the death, resignation or removal or the appointee. The appointment of a deputy/special judge or justice may be for the performance of such specific duties or cases as may be assigned him/her by the Chief Judge or by the Executive Committee of the Cedarville Rancheria, and she/he shall serve until the cases or duties specifically assigned have been completed, or pursuant to the terms of any contract.

A deputy judge shall perform the duties and functions of a judge of the Tribal Court as may be designated by his/her appointment or contract subject to any restrictions or limitations imposed by law, by resolution of the Community Council of the Cedarville Rancheria, or the Chief Judge, as the case may be. The findings, rulings, opinions and orders of a deputy judge or justice shall be signed "Judge" or "Justice," as appropriate to the case and shall have the same force and effect as if made by a regular judge or justice of the court.

Section 302. Appellate Division.

In any appeal from a final decision of a trial judge, whether Chief, Associate, or Deputy/Special, an appeals tribunal of three justices shall be appointed by the Community Council of the Cedarville Rancheria. Such justices of an appeal tribunal shall serve until cases specially assigned them have been completed. A justice of an appeals tribunal may only be removed

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prior to completion of assigned matters by the Community Council of the Cedarville Rancheria pursuant to the provisions of this Code for the removal of a judge of the Tribal Court.

Section 303. Qualifications.

- A. Any person Twenty-Five (25) years or older shall be eligible to serve as a Judge or Justice of the Tribal Court, except the following:
 - 1. The Tribal Administrator, Assistant Clerks and members of the Executive Council.
 - 2. Those who have been convicted by a court of the United States or of any state of the United States for a felony, as a felony is defined by the laws of that jurisdiction or a gross misdemeanor within one year immediately preceding the proposed appointment as judge or justice.
- B. All judges or justices of the Tribal Court, whether Chief, Associate or Deputy/Special, shall be lawyers experienced in the practice of tribal and federal Indian law and licensed to practice in the highest court of any state.

Section 304. Evaluation and Selection.

Candidates for the positions of the Chief Judge and Justices shall be screened by the Executive Committee and the Tribal Administrator. The Screening Committee shall submit its recommendations for appointments to the Community Council of the Cedarville Rancheria who shall make a final decision.

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Associate Judges shall be selected in the same manner except that the Chief Judge shall participate on the screening committee.

Section 305. Appointment, Terms, Compensation.

The Chief Judge, Associate Judges and Justices shall be appointed by the Community Council of the Cedarville Rancheria to two (2) year terms under written contracts specifying the compensation and other terms and conditions of the employment of the judge. Ninety (90) days prior to the expiration of the term of office of each Judge or Justice, the Community Council of the Cedarville Rancheria shall consider whether to renew the contract of employment of each Judge/Justice for an additional term. If the Community Council of the Cedarville Rancheria determines to not renew the contract, it shall so notify the Judge/Justice, in writing, at least thirty (30) days prior to the expiration of the Judge/Justice's current term. Failure of the Community Council to take affirmative action to non-renew the Judge/Justice's contract as provided herein shall result in an automatic appointment for an additional three (3) year term and renewal of the existing contract of employment. The compensation of any Judge/Justice shall not be reduced during his/her term of office.

Section 306. Removal of Judges/Justice.

The Community Council of the Cedarville Rancheria may remove any Judge or Justice of the Tribal Court during the term of his/her office only for cause based upon any of the following grounds:

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1. Serious misconduct or incompetence in the performance of her/his duties as Judge/Justice.
2. Personal conduct involving moral turpitude, whether or not related to judicial duties, or conduct which brings the prestige of her/his office or that of the Tribe into public disrepute.
3. Habitual neglect of her/his duties as Judge or Justice.
4. Persistent illness or other disability which renders her/him incapable or otherwise unable to regularly perform her/his duties as Judge or Justice.

Such removal shall be by an affirmative vote of two-thirds of the Community Council of the Cedarville Rancheria at a valid meeting called for the purpose of considering such removal, provided that the subject Judge or Justice shall be given a full hearing and fair opportunity to present testimony and evidence in her/his behalf, and to cross-examine and rebut all witness and evidence considered by the Community Council in support of removal. The subject Judge or justice shall be given not less than twenty (20) days written notice in advance of the hearing, which notice shall include an itemization of the charges or grounds for removal which are to be considered. Such notice shall be served by registered or certified mail, or delivered personally to her/him by a party duly authorized by the Community Council of the Cedarville Rancheria.

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Section 307. Conflicts of Interest.

No Judge or Appellate Justice shall officiate in any proceedings in which her/his impartiality might reasonably be questioned, in which she/he has any personal bias or prejudice concerning any party, she/he has any personal knowledge of any disputed evidentiary facts, she/he has any personal interest, or in which any party, witness or counsel is related to her/him by blood, adoption or marriage, within the third degree, or in which any party, witness or counsel stands in relationship to the Judge or Appellate Justice as a current ward, attorney, client, employer, employee, landlord, tenant, business associate, creditor or debtor.

Prior relationship of the sort listed above may constitute a conflict of interest, and parties may raise the issue. The Judge or Appellate Justice may or may not grant the motion for a conflict for prior relationships. For this purpose; however, the service of Judge or Appellate Justice for the Rancheria shall not disqualify the Judge or Appellate Justice by virtue of said employment by the Rancheria.

Any party may bring a motion for disqualification of a judge or appellate justice on the grounds set forth herein or on the grounds of personal bias or prejudice towards any party to the proceeding. A motion for disqualification shall be supported by an affidavit of the party bringing the motion setting forth the grounds therefore. If the judge grants the motion she/he shall appoint another judge to preside over the case. If the judge denies the motion, she/he shall do so by written order setting forth the reasons for denial.

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A conflict of interest may be waived if all parties have entered a waiver, in writing, to the conflict of interest, and agreed to proceed before the Judge or Appellate Justice, irrespective of the conflict of interest.

Section 308. Oath of Office.

Prior to assuming any judicial office of the Tribal Court, the appointee shall take the following oath:

I swear (or affirm" that I will support and defend the Constitution and By-Laws of the Cedarville Rancheria, and the laws of the Cedarville Rancheria, that I will faithfully and diligently perform the duties of (Chief Judge, Associate Judge, Deputy Judge, Appellate Judge, as applicable) of the Tribal Court, to the utmost of my ability, with impartiality and without improper favor, to the end that justice may be fully served.

The Chief Judge and Associate Judge shall take the prescribed oath before the Chairperson of the Cedarville Rancheria. Deputy Judges and Justices may take the prescribed oath by affidavit, before the Chief Judge, or before any member of the Executive Committee of the Cedarville Rancheria.

PART IV: COURT ADMINISTRATOR

Section 401. Appointment.

The Court Administrator shall be Cedarville Rancheria's Tribal Administrator. The Court Administrator may appoint such clerks and assistants that may be needed for operation of the court. Any

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person serving as the clerk or as an assistant may be discharged from that position.

Wherever the formal designation “Clerk” or “Clerk of Court” appears in this Code, such designation shall also refer to the Court Administrator. The terms Clerk of Court and Court Administrator shall be interchangeable.

Section 402. Duties.

The Court Administrator shall be responsible for the administration of the Tribal Court, and for such other administrative and ministerial duties as may be prescribed by this Code or assigned to her/him by the Community Council of the Cedarville Rancheria or the Chief Judge. The duties of the Court Administrator shall include but shall not be limited to the following:

1. Maintaining records of all court proceedings to include identification of the title and nature of all cases; the name of the judge; the names and addresses of the parties, attorneys, lay advocates and witnesses; the substance of the complaints; the dates of hearings and trials; all hearings and trials; all court rulings and decisions, findings, orders and judgments; the preservation of testimony for perpetual memory by electronic recording, or otherwise; and any other facts or circumstances decided by the judges or deemed of importance by the Court Administrator. Unless specifically excepted by this Code, the records of the Court shall be sealed.

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2. Maintaining all pleadings, documents and other materials filed with the Court.
3. Maintaining all evidentiary materials, transcripts and records of testimony filed with the court.
4. Collecting and accounting for fines, fees and other monies and properties taken into custody by the Tribal Court, and transmitting them to the accounting department by the Tribe. Funds received from the office of the Court Administrator by the accounting department shall be designated as Tribal Court funds and shall be used only for expenses incurred by the Tribal Court, or for training of Cedarville Rancheria police officers, at the discretion of the Court Administrator with the approval of the Chief Judge.
5. Preparation of and service of notices, summons, subpoenas, warrants, rulings, findings, opinions and orders as prescribed by this Code and as may be designated by the Judges of the Court.
6. Assisting persons in the drafting and execution of complaints, petitions, answers, motions and other pleadings and documents for Tribal Court proceedings; provided, however, the Clerk and her/his assistants shall not give advice on questions of law, nor shall they appear or act on behalf of any person in any Tribal Court proceedings.

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7. Administering oaths and witnessing execution of documents.
8. Maintaining a supply of blank forms to the prescribed by the Tribal Court for use by all persons having business before the Tribal Court.
9. Other duties necessary to ensure the effective operations of the Tribal Court.

PART V: COUNSEL

Section 501. Legal Representation.

Any person who is a party in any trial or other proceedings before the court may represent himself or herself, or be represented by lay counsel, or a professional attorney, who is licensed to practice law before the Tribal Court.

Section 502. Licensing of Professional Attorneys.

Professional attorneys may appear on behalf of any party in any proceedings before the Tribal Court, provided they are licensed to practice. A license to practice may be issued by the Tribal court upon compliance with the following:

1. Filing with the Court Administrator an affidavit attesting that the applicant is licensed to practice law before the highest court of any state. A photocopy of said license shall be submitted with the affidavit.
2. Filing an affidavit that the applicant has studied and is familiar with the Constitution

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and By-Laws of the Cedarville Rancheria, the Cedarville Rancheria, this Code, all other ordinances or codes of the Tribe, Title 25 of the United States Code and Title 25 of the Code of Federal Regulations.

3. Paying an annual license fee of one hundred dollars (\$100). The annual license fee may be reduced to twenty-five dollars (\$25) in the discretion of the Chief Judge for any attorney who is employed by a not-for-profit legal services program or otherwise seeks to represent clients on a pro-bono or reduced fee basis. The annual license fee shall be waived for any attorney employed by the Cedarville Rancheria.
4. Taking the following oath before the Court Administrator or the Chief Judge, by affidavit or in person:

“I do solemnly swear (or affirm) that I will support the Constitution and By-Laws of the Cedarville Rancheria;

I will maintain the respect due to the Tribal Court and its judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly valid or debatable under the law; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and I will never seek to mislead

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any judge or jury by any artifice, or by false statement or misrepresentation of fact or law;

I will employ in the conduct of my duties the highest degree of ethics and moral standards with which my profession is charged, and I will be guided at all times by the quest for truth in justice;

In the conduct of my duties as an attorney, I will not impugn the morals, character, honesty, good faith, or competence of any person, nor advance any fact prejudicial to the honor or reputation of any person, unless required by the justice of the cause with which I am charged.”

Section 503. Licensing of Advocates.

A member of the Tribe or a member of another Indian Tribe may be licensed to practice in the Tribal Court. To qualify for licensure as an advocate, the applicant must be at least twenty-one (21) years old; of good moral character; have never been convicted of a felony and not had her/his civil rights restored; have never been convicted of a crime against the Tribe or any other Indian tribe; and must be familiar with the Constitution and By-Laws of the Cedarville Rancheria; and the codes, statutes, ordinances of the Cedarville Rancheria.

No fee shall be assessed for licensing as an advocate.

An applicant seeking licensure as an advocate shall subscribe to the oath set forth in Section 2 for

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professional attorneys, substituting the term “advocate” for “attorney” therein.

Section 504. Revocation or Suspension of License.

A license issued pursuant to this Part V may be revoked or suspended by the Tribal Court. Such action may be taken on its own motion or upon sworn complaint by any member of the Cedarville Rancheria or on motion of the Court. Revocation or suspension shall be ordered only after written notice to the licensee of the motion or complaint and after a hearing before all judges of the Court unless a conflict of interest prohibits such participation. Following a hearing, the court may revoke or suspend the license upon a finding that the licensee has been disbarred or suspended from the practice of law by any court of the United States, any state, or a tribal court or has filed a false affidavit to obtain her/his license, or has violated her/his oath, or has engaged in misconduct or unethical behavior in the performance of her/his duties as an attorney or lay advocate or has been found in contempt of court by the Tribal Court.

Section 505. Implied Consent to Jurisdiction of the Court.

Any person who submits an application for licensure as a professional attorney under this Code gives implied consent to the assertion of jurisdiction of the Court over her/him for all purposes relating to her/his practice of law before the Court, whether or not, the Court would otherwise have such jurisdiction.

PART VI: CONTEMPT OF COURT

Section 601. Definition.

Willful behavior by any person which disrupts, obstructs, or otherwise interferes with the conduct of any proceeding by the Court, which obstructs or interferes with the administration of justice, or which constitutes disobedience or resistance to or interference with any lawful summons, subpoena, process, order, rule, decree or command of the Tribal Court shall constitute contempt. The willful failure of a party to comply with the terms of a judgment directed against her/him, with which she/he is able to comply, shall be contempt of court which shall be punished in the manner prescribed by this Code.

Section 602. Contempt in Presence of Court.

When contempt of court is committed in the presence of a Tribal Judge, it may be punished summarily by that judge. In such case, an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment therefore in accordance with Section 604 of this Part. Failure to appear in response to any citation of an enforcement officer of the Tribe on any matter, or to a subpoena, summons, order or other notice, duly issued by the Court, shall constitute contempt in the presence of the court and may be summarily punished by the court without further notice.

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Section 603. Contempt Outside Presence of Court.

When it appears to the Court that a contempt may have been committed out of the presence of the Court, it may issue a summons to the person so charged directing her/him to appear at a time and place designated for a hearing and show cause why she/he should not be held in contempt. If such person served with the summons fails to appear at the time and place so designated, the Tribal Court shall conduct a hearing, and if it finds her/him guilty of contempt, an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment therefore in accord with Section 604 of this Part VI.

Section 604. Punishment for Contempt.

Any person found in contempt of court shall be subject to a fine not to exceed five hundred dollars (\$500) and/or imprisonment not to exceed ninety (90) days, as may be determined by a judge of the court. The person charged or found in contempt shall be notified of the finding of the Court and the prescribed punishment by any means permitted in this Code for service of process and the penalty may be enforced by the means provided in this section or for the execution and enforcement of judgments as provided in Title 2 of this Code.

If the Court determines to impose a penalty of imprisonment, it is authorized to issue a warrant commanding a law enforcement officer of the Cedarville Rancheria to arrest the person and detain her/him pending a hearing before the Tribal Court. The warrant

issued shall provide for release on case bail in an amount set by the Court not to exceed the amount of fines or restitution for any underlying offense(s) together with the contempt penalty which has been or could be imposed.

PART VII: GENERAL COURT PROCEDURES

Section 701. Assignment of Cases.

The Chief Judge shall be responsible for assignment of cases and other matters for determination or disposition to the respective judges or justices of the Court.

Section 702. Court Rules and Procedures.

The Chief Judge of the Court may promulgate rules of procedures for the conduct of its proceedings which are not inconsistent with this Code or other governing and applicable law. Tribal Court proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure and Rules of Evidence.

The Chief Judge shall rule on all matters of law and motion, discovery, and issue minute orders and all other Court documents, unless delegated to a Special Judge or Special Master.

Section 703. Sessions of Court.

The Tribal court may hold such sessions of court as deemed necessary, commencing at such time as designated by the Court Administrator in consultation with presiding judges for a particular case. Special sessions of the Tribal Court may be called by the Chief Judge at any time, or, in her/his presence by an

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Associate/Special Judge. Judges may conduct trials or other proceedings for individual cases assigned to them at such times as they may designate, and such trials or proceedings may be recessed and reconvened from time to time until they are completed.

Section 704. Filing Timelines.

All personal injury or property damage cases shall be filed within one-hundred and eighty (180) days of the alleged injury, occurrence, action or nonfeasance, unless the cause of action is subject to an alternate timeline enumerated in a document executed by the Tribe's Community Council or its authorized representative. Contract cases shall be filed according to appropriate tribal, federal or state timelines. The Court may extend a timeline in the interest of justice.

Section 705. Time for Hearing.

All cases shall be heard within one-hundred and eighty (180) days of the filing date, unless the Court finds, after proper inquiry, and presentation of evidence, justice demands a reasonable extension of time.

Section 706. Jury Trials.

All cases before the Tribal Court shall be tried to a judge sitting without a jury, unless a jury trial is otherwise required by applicable law.

Section 707. Awards.

At the conclusion of hearing, the Court shall issue a written opinion within ninety (90) days.

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If an award is favorable to the Claimant against the Rancheria against the Rancheria, the Rancheria's insurer shall pay the award, if applicable, within ninety (90) days of the publication of the Court's opinion.

Section 708. Limitation on Awards.

- A. All awards are limited to the Rancheria or tribal entities policy limits under their policy of insurance.
- B. Tribal funds or property shall not be subject to any award, encumbrance or liquidation.
- C. The Court shall not issue an award for attorneys or expert witness fees or exemplary or punitive damages.
- D. The Court shall not issue an award based on any theory of strict products liability or strict liability.
- E. The Court shall not issue an award as against the Rancheria or a tribal defendant caused by the negligence of a non-tribal third party.
- F. The Court shall not issue an award based on alleged conduct outside the scope of official conduct, illegal conduct or conduct criminal in nature.
- G. No award shall include damages which are the result of the acts or inactions of a non-tribal third party.

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Section 709. Confidentiality.

All Tribal Court matters shall remain confidential. All pleadings, documents, depositions, etc., shall remain confidential and shall not be used outside the jurisdiction of the Rancheria unless a request for a release of said court documents is presented by a majority of the Rancheria's Community Council. Upon presentation of a request for release, any release shall be made by Court order and subject to any limitations deemed necessary by the Court.

Prior to the release of Court awarded funds, the Court shall approve a "release" executed by the prevailing party, restating the requirement of confidentiality, unless the Court has previously authorized the release of the opinion, award, etc.

Section 710. Court Immunity from Suit.

This Court shall be immune from suit, unless the Rancheria's sovereign immunity is clearly, expressly and properly waived by the Community Council. Nothing in the Code shall be construed as consent of the Court to be sued or authorizes the Court to waive the Rancheria's immunity.

Section 711. Means to Carry Jurisdiction Into Effect.

Where jurisdiction over any matter is vested in the Tribal court, all the means necessary to carry such jurisdiction into effect are also included; and in the exercise of its jurisdiction, if the means are not specified in this Code or the rules promulgated by the Court, the Court may adopt any suitable process or mode of processing which appears to the Court to be

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fair and just and most consistent with the spirit of tribal law.

Section 712. Law Applicable in Civil Actions.

- A. In all civil actions, the Court shall first apply such written laws of the Rancheria which have been enacted by the Cedarville Rancheria Community Council.
- B. Where there are no superseding written laws the Court shall apply tribal customary and traditional law if such exists. Tribal customary or traditional law shall mean those traditional values and practices of the Cedarville Rancheria handed down, through the generations, either orally or through writing. In the event, any doubt arises as to the customs and usages of the Tribe, the Court may request the advice and assistance of elders who are knowledgeable about such matters.
- C. Where an issue arises in an action which is not addressed by written laws or custom and traditional law, the court may apply the laws of any tribe, the federal government, or any state. Application of such law shall not be deemed an adoption of such law or deference to the jurisdiction from which that law originates.

Section 713. Bureau of Indian Affairs Relations.

No employee of the Bureau of Indian Affairs, or the Department of Interior shall obstruct, interfere with, or control the function of the court, nor shall she/he seek to influence such functions in any manner.

APPENDIX 2

EXHIBIT “2”

[Filed October 12, 2016]

ARTICLE XIII

**PERSONNEL POLICIES AND PROCEDURES
MANUAL**

Section 1 GUIDING PRINCIPLES

The purpose of this manual is to establish a system of personnel administration that meets the social, economic, and program needs of the Rancheria. This system provides means to recruit, select, develop, and maintain an effective and responsible work force, and includes policies and procedures for employee hiring and advancement, position classification, salary administration, fringe benefits, discharge, resolution of grievances and other related activities. All appointments and promotions under the provisions of this manual shall be based on merit and fitness. The Tribal Council of the Cedarville Rancheria (CR) shall have the authority to establish Personnel Policies. All references to the Council made herein, means the CR Community Council. The guiding principles for the tribal personnel system shall be:

- a. Recruiting, selecting and advancing employees on the basis of their relative abilities, knowledge, and skills, including open consideration of qualified Indian applicants for initial appointments;

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- b. To facilitate employment of disadvantaged persons, competition for “aide” or similar classes may be limited to such individuals;
- c. To provide equitable and adequate compensation;
- d. To train employees within budgetary limitations, as needed, to assure high-quality performance;
- e. To retain employees on the basis of the adequacy of their performance, correcting inadequate performance and separating employees whose inadequate performance cannot be corrected;
- f. The assurance of fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, family ties, age, race, color, national origin, sex, marital status, religious creed, or other non-merit considerations and with proper regard for their privacy and other constitutional rights as citizens, except that Indian preference, Tribal members first if qualified, shall be provided.
- g. To assure that employees are protected against coercion for partisan political purposes and to prohibit their use of official authority for the purpose of interfering with or affecting the result of an election or nomination for office;
- h. To assure that employees of the Rancheria, whether in regular Tribal employment, programs funded by special grants or other outside funding, be subject to these policies;

i. To require all program directors and officials with the Rancheria service to follow these policies and procedures in all matters pertaining to personnel management and administration, including selection, promotion, separation, disciplinary action, and all other matters covered by these policies. All questions regarding correct procedures to be followed, requests for eligible lists, and other assistance as needed will be referred to the personnel officer or other responsible Tribal officials.

**Section 2 CONDITIONS GOVERNING
EMPLOYMENT**

A. DISCRIMINATION

The CR (1) will not discriminate because of political or religious opinions or affiliations, or because of race, national origin or other non-merit factors. except for Indian preference requirements, Tribal members first if qualified, or as required by specific program guidelines. Discrimination on the basis of age, sex, or physical disability will be prohibited except where specific age, sex, or physical requirements constitute a bona fide occupational qualification necessary for proper and efficient administration; (2) will take affirmative action to ensure that these provisions are carried out.

These requirements shall apply, but not be limited, to the following: recruitment, examination, appointment, promotion, retention, demotion, forms of compensation and selection for training, including apprenticeship, or any other aspects of personnel administration.
*Preferential treatment in employment practice may be

given to Indians as provided for in the Indian Self-Determination and Education Assistance Act, P.L. 93-638, January 4, 1975, Section 7; the Civil Rights Act, amended by P.L. 92-261; Section 703 and other sections.

B. POLITICAL ACTIVITY REGARDING ELECTIONS

Employees shall not:

- 1) Use their official authority or influence for the purpose of interfering with an election or a nomination, or affecting the result thereof.
- 2) Directly or indirectly coerce, command, or advise one another to pay, lend, or contribute salary, compensation, or "anything else of value" for political purposes.
- 3) Engage in any political activity during the scheduled working hours.
- 4) Neglect their assigned duties or responsibilities for political activity.
- 5) Discriminate in favor of or against, a Tribal officer, employee, or applicant because of political affiliation.
- 6) Engage in any permitted political activity directed at other tribal employees while they are on duty.
- 7) Promise or use influence to secure tribal employment or other benefits and/or services as a regard for political activity.

C. GIFT AND GRATUITIES

No employee of the CR may accept consideration(s) from persons receiving benefits from the CR.

D. REQUIREMENTS OF EMPLOYEES

A supervisor or other office employee is responsible for much of the daily work of the Tribal Office and is expected to carry his/her duties with a minimum amount of supervision and direction. The employee often represents the Tribe and the Tribal Office and should, therefore, display good manners with others, accuracy, reliability, efficiency, and the ability to do things independently. Here is a list of some of the more important things that employees will do:

1. Employees will know all of their responsibilities and those of their immediate supervisor.
2. Employees will competently & confidentially carry out Tribal business and necessary office work in the absence of a supervisor. Employees will begin, handle, and follow through on projects, without having to be reminded. For example, a good employee will not have to be reminded to keep the filing system organized and up to date.
3. Employees will help their supervisor organize his/her time, coordinate his/her appointments and schedules, and relay messages promptly and correctly.
4. Employees of the Tribal Office will be courteous and helpful to visitors, government agencies, and business associates.

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5. Employees will try to complete their routine and assigned tasks within a regular working day. Or in the case of part-time employees, in an expeditious manner.
6. Employees will be able to handle routine matters and projects on a day-to-day basis without constant supervision.

E. CONFLICT OF INTEREST AND NEPOTISM

1. No member of the Rancheria shall participate in voting on an applicant who is a member of their immediate family. For the purpose of this Manual, a member of the immediate family shall be limited to the following: Husband, Wife, Son, Daughter, Father, Mother, Brother, Sister.
2. No employee may be assigned to a unit supervised by a member of their immediate family. Discretionary exceptions may be permitted upon approval of the Council when other qualified applicants are not available.
3. Members of the Council or Community Committees shall abstain from personnel actions regarding members of their immediate families.

F. PUBLIC STATEMENTS

1. No employee of the Rancheria may presume to speak for, or on behalf of, the CR without the expressed prior approval of the CR Community Council.
2. Program staff members who make public factual presentations about their program to

others not entitled to know the information, will be subject to disciplinary action.

G. DRESS STANDARDS

Employees are expected to dress in a manner commensurate with their positions and in respect to specific occasions determined by the Administrator.

H. SECONDARY EMPLOYMENT

1. Outside employment may be accepted by a Rancheria employee, provided it does not interfere with on-the-job performance or necessary attendance at any job-related meeting after standard working hours.

2. Notification of outside employment must be provided in writing to the immediate supervisor.

3. Accepting wages or salary while on Rancheria work time is reason for disciplinary action.

ARTICLE XIV
ADMINISTRATION OF THE PERSONNEL
SYSTEM

Section 1 TRIBAL ADMINISTRATION

The council shall be responsible for the implementation and overall administration of CR programs.

Section 2 TRIBAL ADMINISTRATOR

The council shall select a Tribal Administrator to administer the personnel system. The Tribal

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Administrator shall be responsible for the implementation and overall administration of the personnel system approved by the Council.

The Tribal Administrator will perform the following assigned functions:

- a. Screen all applications for positions with the CR.
- b. Screen all applicants for an interview by the Community Council.
- c. In cases of three or less applicants for a position, all applicants shall be presented to the Council, provided the Tribal Administrator determines that the minimum qualifications are met.

Section 3 REVISIONS AND/OR AMENDMENTS TO THE PERSONNEL POLICIES

Any person affiliated with the CR may make recommendations for revisions and changes to the Personnel Policies.

Suggested revisions will be channeled as below:

- a. Submitted in writing to the Tribal Administrator for review.
- b. The Tribal administrator will present any recommendations for final approval by majority vote of the Council at any regularly called meeting, provided written notice of amendment is furnished to Council Members at least fifteen

(15) days before the date of the meeting at which the amendment is to be considered.

Section 4 RANCHERIA COUNCIL AS APPOINTING AUTHORITY

The Council shall make appointments for all Tribal positions.

Section 5 AFFIRMATIVE ACTION PLAN

The Tribal Administrator shall maintain an affirmative action plan, which insures equal opportunity in recruitment and selection, job structure, promotion policies, training, upward mobility, layoff, disciplinary action, and all other related personnel procedures and practices; in accordance with the Indian Self Determination and Education Assistance Act, P.L. 93-638, January 4, 1975, Section 7, and the Civil Rights Act; amended by P.L.-92-261, Section 703.

Section 6 APPOINTMENT AND PROMOTION

A. GENERAL PROVISIONS

1. Before any persons convicted of a felony or gross misdemeanor, the record of which has not been sealed, can be considered for employment, the Tribal Administrator shall conduct an investigation including reviewing the applicants explanation, and reviewing law enforcement and court records. The Tribal Administrator shall report to the persons making the hiring decisions, who may then decide whether the conviction disqualifies the individual from employment.
2. The Tribal Administrator may remove an employee or deny consideration of an applicant, if it is found that

the person misrepresented himself deliberately in the selection process, lied about significant information, used political or other pressures.

3. All vacant positions will be advertised to the general public. Consideration shall be given to enrolled Tribal members who meet all qualifications for the particular vacancy. Selection will be in accordance with the Indian Preference regulations, Tribal Members first if qualified.

B. MINIMUM QUALIFICATIONS

The qualifications for positions should be approved by the Council and be a part of the job description for each position.

Reasonable consideration shall be given to providing employment opportunities to persons who are willing to learn on the job. An appropriate education may be necessary in certain professional positions, ie; teacher, attorneys.

No minimum educational requirements will be prescribed without provisions for substitution of equivalent training and/or experience, except when the duties of a scientific, technical, or professional position cannot be performed by a person who does not have a prescribed minimum education. If the education or experience for a position is not required by law, or is not included as a requirement in a program funding grant, such qualifications will be waived with the approval of the Council. Such waiver shall be made in writing and a copy kept in the employee's personnel file.

Minimum qualification requirements will be knowledge, abilities, licenses, and skills required to perform the job.

C. APPLICATION AND EVALUATIONS

All vacancy announcements shall be posted for ten (10) working days. After ten (10) working days, if there are no qualified applicants, the announcement shall be extended an additional five (5) days, or open until filled, at the request of the Tribal Administrator.

The announcement will describe the job, list the necessary qualifications, education, experience, and will specify when, where, and how to apply. Applicants for employment with the CR will be submitted on a standard form provided by the CR and will be accepted at the location described on the announcement. Applications will be accepted if postmarked on the closing date and mailed before midnight. Announcements shall be posted on the bulletin boards of the CR. Other sources may be used, such as local newspapers, trade publications, and agencies as needed.

The Tribal Administrator will screen all applicants to determine if they meet the minimum requirements as specified in the vacancy.

In consultation with the Council, the Tribal Administrator will determine the type of evaluation to use in evaluating the qualifications of applicants. Evaluations may be interviews, evaluation of training and experience, written tests, background or reference checks, or any combination of these or any other selection devices which validly evaluates the

applicant's on-the-job related factors in their proper importance to the job.

Evaluations for appointments and promotions shall not include any inquiry into religious or political beliefs. Inquiries may be made into the Tribal origin of any applicants to validate that they are an enrolled member or Native American.

Insofar as it is practical and necessary, the applicant's work history, education, and other information on the job application shall be checked. Letters of personal reference will also be provided by the applicant.

Qualified candidates shall be placed on a certification list for the job vacancy. Applicants will be listed alphabetically and the CR may select any candidate listed, as long as Indian Preference is not violated.

D. TYPES OF APPOINTMENT

Temporary appointments up to three (3) may be made by the CR without full competitive recruitment and evaluation procedures for positions that are seasonal or temporary in nature. Applicants for such positions must meet the minimum qualifications for that position.

Temporary appointments may be made up to four (4) months by the CR when a permanent employee is absent temporarily but has a right to return to service, or if a vacancy exists in a critical position.

Section 7. COMPENSATIONS

a. Pay period shall be the 15th and 31st or the last working day of the month. The employee shall be paid

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at an hourly rate for each hour that he/she works, except salaried employees.

b. Employees will not be required to work more than 8 (eight) hours per day. No overtime is allowed; weekend hours shall have prior approval from the Tribal Administrator/Chairperson.

c. Business hours shall be 8:30 a.m. to 5:00 p.m., Monday through Thursday. Youth Group and tutoring hours shall be determined, or as required to meet student's needs through prior arrangement. Employee hours may be adjusted to meet the needs of the Tribe.

d. Full time employees receive an unpaid half hour lunch and two fifteen minute, alternate breaks. Variations from the normal work week shall be scheduled in advance and approved by the employee's immediate supervisor and Tribal Administrator. Any absence forms must be submitted to the Tribal Administrator

e. Vacation and sick leave provisions shall be available on a prorated basis. The immediate supervisor shall be notified as early as possible when an employee is absent due to illness.

f. If an employee is late:

1) Every effort must be made to phone a supervisor within the first hour of a regular work day.

2) Any employee who does not phone and does not show up for work without prior

arrangements, are subject to termination after a 3rd offense with no rights of appeal.

A. COST-OF-LIVING SALARY INCREASES

If applicable, wage step increases will be after January 1st if the employee has worked at least 6 months, depending on the funding sources and Chairperson and Tribal Administrators approval. Cost of living increases as warranted and periodic raises in accordance with the prevailing practice in similar governing agencies. Salary increase shall be approval by the Tribal Administrator and/or Chairperson/Council. The Council may give cost-of-living salary increases as warranted by increased cost-of-living. Such increases will depend on the availability of funds.

B. SALARY ADVANCES

There shall not be any emergency salary advances authorized unless prior approval is given by the Administrator and approved by the CR check signers.

C. BENEFITS

State compensation insurance, social security, medicare, health insurance, unemployment insurance and SIRA shall be the only benefits provided for all employees through Tribal funding. Overtime will not be paid for inservice, workshops, or any meetings related to work.

ARTICLE XV
PERSONNEL POLICY

Confidentiality is vital in all staff positions. Anyone that breaches confidentiality will be terminated immediately.

Section 1 POSITIONS

All paid, employee positions shall require a negative TB test on file, fingerprinting, a drug test, and proof of a CA Driver's License that is current, and once a year, proof of sufficient CA automobile insurance and liability.

a. **Tribal Administrator:** The Tribal Administrator shall be responsible for overall supervision and management of the Cedarville Rancheria, including contract negotiations, wages, and compliance; and supervision of employees according to the salaried job description. Other duties included, but are not limited to:

- 1) Planning, development, management, and supervision of all projects contracted by Cedarville Rancheria including calendar accountability in order to carry out projects objectives consistent with the Tribal Constitution and Annual Funding Agreement.
- 2) Reporting to the Tribal Council (Board) and all funding agencies on a timely and regular basis, and to establish appropriate management systems and procedures for smooth operations of the Cedarville Rancheria.

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- 3) To meet with, and positively represent Cedarville Rancheria to the larger community, including other tribal offices, organizations, projects, institutions, governmental agencies, and programs.
- 4) To maintain, manage, and supervise all operations related to Cedarville Rancheria and develop appropriate training and staff development as requested from time to time by the Board and Bureau of Indian Affairs BIA).
- 5) To perform other duties as assigned by the Board to benefit the Tribe, and the BIA to benefit the Tribal programs.
- 6) If qualified and salaried, the Tribal Administrator is responsible for payroll, taxes, and expenses, financial statements/reports for audit, expenditures, and ledgers under direct supervision of the Chairperson.
- 7) Preparing Community Development Block Grant, Library Grants, Indian Housing Program/Housing Urban Development grants, EPA, CSBD, FS, LIHEAP, all BIA related grants/agreements, reporting requirements and policies.
- 8) Other duties included under the Chairperson's supervision.

b. Administrative Secretary: The Administrative Secretary assists the Tribal Administrator in planning and implementing activities to meet those cultural and goals/objectives of the Annual Funding Agreement between Cedarville Rancheria, BIA, HUD, Library Grant, CDBG and other

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grant opportunities. Must be knowledgeable of office procedures, filing systems and operation of basic office equipment. Other responsibilities are not limited to but include:

- 1) Establish and maintain accurate records for ATTG, ICWA, FIRE, HIP, and General Assistance annual reports, Board actions, appropriate correspondence; and to prepare agendas, reports, minutes, and update Vice Chairperson for Board reports.
- 2) Must be able to type 40WPM, communicate with the service population and maintain confidentiality. Ability to interact in a pleasant manner with the general public.
- 3) Maintain personal log of time and tasks, phone logs, calendar of events, meetings, etc. for staff and business communication.
- 4) Responsible for student educational support through tutoring, coordination of supplies to maintain positive office management.
- 5) Maintenance of confidential records of the Tribal Members and it's employees including contracts, time sheets, vacation and sick leave, and documents, as well as social service and general assistance documentaion for eligibility and assistance, in the principle office of the Rancheria.
- 6) Responsible for keeping informed of Tribal activities, schedule meetings, notify the members as appropriate, correspond with the Board, Committees, and other groups regarding such meetings.

- 7) Knowledge of housing policies and procedures, insurance and maintenance payments.
- 8) Other duties as assigned by the Tribal Administrator/Chairperson.

c. **Youth Leader/Case Worker:** The Youth Leader is under the supervision and direction of the Tribal Administrator and Chairperson to plan and implement activities to directly meet educational and cultural needs of Indian students, and assist in instructional intervention. Other responsibilities as waged in the job description are not limited to but include:

- 1) Working with individual/small groups of Indian students, using methods and materials approved by the Tribal Administrator/Chairperson for educational and cultural programs and providing tutoring services with input from classroom teacher.
- 2) Keep accurate records of the Indian students served, including personal data of achievement, health, and assessment scores by regular school contacts to be included in annual reports.
- 3) Maintain positive relationships and communication with students, parents, members, collaborating agencies, school personnel, Board and Tribal staff.
- 4) Assist in preparation of, and application for, school financial aid, scholarships, oversee youth activities including, but not limited to, tutoring, cultural/community activities, and education trips.

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- 5) Maintain complete personal log of time and tasks for quarterly reports, and update the Tribal album with members events.
- 6) Maintain students progress, travel, and provide accurate student evaluations from school grade and attendance files.
- 7) Home visits as needed for member assistance with children/parent needs. Information to provide services and responsibilities.
- 8) Other duties as assigned by the Tribal Administrator/Chairpersons.

Employees working outside the Tribal Office shall be sure that the office knows their whereabouts and can reach them if necessary. Employees shall complete a time card for all hours during the work month, unless on salary. All employees are expected to work according to contract, observe these policies and procedures of the Cedarville Rancheria

- d. **EPA Coordinator:** The EPA Coordinator is under the supervision of the Tribal Administrator & Chairperson to assist in planning and implementing activities to meet unique environmental educational needs of the Indian community. Oversees the environmental program on the Cedarville Rancheria. Informs the Rancheria of MNFS, BLM and other agencies regarding environment concerns or requests. Monthly newsletter to the CR, attends meetings as required. Attention to detail and be flexible and willing to take direction. Ability to work under pressure. Other responsibilities are not limited to but include:

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- 1) Oversee activities that include, but are not limited to, cultural celebrations, and community activities, Maintain positive relationships and communication with Indian community, national, state and local Collaborating agencies and Rancheria staff/members,
- 2) Establish and maintain accurate records for Board actions, appropriate correspondence and personal log of time and tasks for quarterly reports and wage time cards provided timely to the Tribal Administrator,
- 3) Responsible for filing, typing, and any other correspondence necessary for completion to the EPA program,
- 4) Responsible for the coordination of supplies and regular upkeep of program materials to maintain positive environmental safe community and office,
- 5) Schedules meetings, notifies public as appropriate, corresponds with Board, committee, and other groups regarding such meetings.
- 6) Develop an Environmental Plan (TEP)
Obtain Regional 9 Environmental Planning Guidance documents
Meet with community council to develop priorities for environmental program
Research feasible solutions to environmental concerns
Estimate resource needs
Submit draft plan to EPA and community council for comment
Finalize, Tribal Environmental Plan (One-time Requirement)
- 7) Integrated Solid Waste Management Plan (ISWAP)
Obtain ISWAP template from EPA, Characterize solid

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waste generated on the Rancheria

Assess the current disposal methods, Determine if recycling program is feasible

Present draft ISWMP to community council for comment, Finalize ISWMP

8) Illegal Dumping Ordinance

Obtain sample ordinances from EPA and other tribes. Develop draft ordinance ie; no barrel burning or backyard burning; recycling; plastic/glass/paper/cans. Work with tribal attorney and community council to finalize ordinance

9) Education Program

Develop an education program for the community, focusing on solid and hazardous waste:

Recycling brochure/Household hazardous waste brochure, Monthly calendar including hazardous waste drop-off days, Monthly newsletter, Organize clean-up day

10) Other duties as assigned by the Tribal Administrator/Chairperson.

Employees working outside the Tribal Office shall be sure that the office knows their whereabouts and can reach them if necessary. Employees shall complete a time card for all hours during the work month, unless on salary. All employees are expected to work according to contract, observe these policies and procedures of the Cedarville Rancheria.

e. Economic Development Coordinator: The ED Coordinator is under the supervision of the the Chairperson/Tribal Administrator to research ED options and follow-through with projects.

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- 1) Program development and implementation, Ability to meet with the public in a polite & businesslike manner; ability to establish & maintain effective working relationship with other employees & the public.
- 2) Prepares periodic program reports to funding agencies and Tribal Council. Formulates, prepares, and presents to the Tribal Council for approval all necessary resolutions, policies, manuals, ordinances, etc.
- 3) Consistently analyzes time frames, methods, and procedures for completing program goals and objectives.
- 4) Provides programmatic information to the Tribal Council.
- 5) Develops tribal service programs according to need.
- 6) Grant Writing.
- 7) Attend staff meetings & conferences as schedule allows.
- 8) Schedules meetings, notifies public as appropriate, corresponds with Community Council, Economic Development Committee, and other groups regarding such meetings.
- 9) Other duties as assigned by the Tribal Administrator and/or Direct Supervisor

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- 10) Knowledge of office practices, economics, and business administration, Indian programs & ability to communicate effectively with federal & Tribal officials,
- 11) Knowledge of principles & procedures of research, appraisal of facts, report preparation & ability to make presentations,
- 12) Knowledge of federal/state processes in relation to program grants contracts,
- 13) Must have ability to travel as necessary.

e. Maintenance/Custodian: The Maintenance/Custodian is under the supervision of the EPA Coordinator and the Tribal Administrator to assist in planning and implementing activities to meet unique preservation and sanitation needs of the Cedarville Rancheria.

1) Supervise Hazardous Fuels/Wildland Urban Interface Crew on schedules determined by need and paperwork, removal of sagebrush, rocks, metal, other debris as necessary; rototilling, planting grass, plants, weeding; trimming trees, bushes; mowing, weed eating, weeding around playground, weeding and watering around the Tribal Community Center & Tribal Garage, overall maintaining grounds/houses. Other responsibilities are not limited to but include:

- Notify tribal office & Housing Chair of members in violation of unnecessary debris around their house.
- Remove hazardous fuels and noxious weeds on Rancheria lands
- Develop or maintain a fire line around the rancheria
- Remove sage brush and dry fuel materials

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- Use biomass from trees, grasses and bushes for landscaping improvement
- Respond to road concerns on the Cedarville Rancheria by contacting the Tribal Administrator, EPA Coordinator and/or Chairperson.
- Maintenance of Cedarville Rancheria Roads by mowing or weed eating, removing debris, overall upkeep 6 feet on each side of Rancheria Way Road, two new roads and both sides of Patterson Road from the south rancheria boundary, in front of the rancheria, from rental to rental house by Rancheria Way, and Rancheria side only from Rancheria Way to north Rancheria boundary by 2nd rental house.

Outdoors

- Composting: Household composting, lawn/garden composting, turning compost pile and compost container, and storing
- Red Worms Area: Possibly garden area with compost pile and secured area for redworms
- Recycling Bins: Maintain and take recycling products to recycling center, maintain 2 bins for aluminum and plastic at Scales and Tribal Office in secured area, and at SFHC
- Maintenance Grounds: Mowing/Weeding all Flowerbeds/Weed eating, Watering; grass, trees, flowers, bushes, trimming; trees/bushes, clean up trash and debris on CR, Fire line around 17 acres of CR original area, Fuel line around each residences' property (Dev Fire Prev Prog for CR), Mow/Weed at hillside and CR lots
- Maintenance Buildings/Rentals: Roofs, painting, clean chimney's oiling/maintenance Fences, windows, smoke detectors, clean furnaces/filter, hot water

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heaters/drain, attic insulation/crawl spaces, weatherization houses/buildings

- Roads: Cracks, debris, sweeping sidewalks/roads, plowing roads, shoveling sidewalks, parking lots, elder's driveways and residences
- Scales: Water facet, preparation for grass/flowerbeds, rock border for plants
- Vehicles: Change Oil, recycle oil, wash, wax (April/May and October/November), detail inside of vehicle/equipment, maintenance

Indoors

- Inventory-December: Tools, equipment, supplies, tell Office what supplies are needed for next summer
- Maintenance Buildings/Rentals
- Deep Cleaning at the Scales, Community Center and Tribal Office: Windows, screens, painting, if needed, shampooing, repairs.
- Weekly cleaning Tribal Office and Community Center: Window sills shelves, dust pictures, desks, file cabinets, tables. Mop bathroom floor, clean and disinfect toilets and sink. Vacuum, sweep, mop, hallways/doorways.

Section 2 QUALIFICATIONS

a. American Indian preference will be observed under PL25-638.

b. Minimum qualification requirements will be knowledge, abilities, licenses and skills required to perform the job. Reasonable consideration shall be given to providing employment opportunities to persons who are willing to learn on the job. An

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appropriate education may be necessary in certain professional descriptions.

c. Must be knowledgeable of, and relate positively to, the unique characteristics of the Indian community as approved by the Tribal Administrator and Chairperson.

d. Must be willing to follow directions and function within policies and procedures. Employees shall be trained as needed to assure high-quality performance on the basis of adequacy of their performance.

Section 3 PROBATION

Newly appointed employees shall be subject to a period of probation for six months. Upon successful completion of a probationary period, an employee shall be granted permanent status in the classification in which the probationary period is served according to job description limits.

a. If at any time during the probationary period the Tribal Administrator or immediate supervisor determines that the services of the employee have been unsatisfactory, the employee may be terminated with no rights of appeal. Employee terminated during probationary period will not be eligible for any annual leave accrued.

b. Employment for all positions and job descriptions are subject to Federal funding and approval of the Executive Committee and Tribal Administrator.

Section 4 Employee Rights

- a. New employees shall receive an orientation on job requirements and policies by the immediate supervisor for the position according to the job description.
- b. Employees shall be fully informed of the performance requirements expected of positions they fill and shall receive a current copy of their job descriptions.
- c. Employees shall be informed of location and accessibility of policies and receive clarification on all personnel matters affecting them, such as worker's compensation, fringe benefits, Indian preference, etc. by the Tribal Administrator.
- d. Employees shall be informed of any inadequacies in job performance and shall have the opportunity to improve performance through counseling or coaching from their immediate supervisor, up to three incidents of record prior to termination.
- e. Personnel folders and information shall be available only to the employee and officially authorized personnel or Chairperson. In accordance with federal regulations, personnel records of employees are not public information.
- f. Child labor laws, naturalization and immigration laws, equal rights and all fair employment laws shall be strictly observed.
- g. No employee shall be required to lend money to any member, participant, or other employee of the Tribe, and in fact, such a practice is discouraged.

ARTICLE XVI
PERFORMANCE STANDARDS AND APPRAISAL

Section 1 BASIC POLICY

It shall be the responsibility of the Tribal Administrator to provide performance standards and to evaluate employee performance on an on going basis, and to keep the employee advised as to the adequacy of performance.

A. GOALS OF THE PERFORMANCE STANDARD AND APPRAISAL PROGRAM

The goals of the performance Standard and Appraisal Program are:

1. To ensure that each employee has specific knowledge of the job responsibilities of his unit, of his particular position within the unit, and of his performance in relation to established standards.
2. To promote employee capacity for better job performance and for advancement to more responsible positions.
3. To provide the basis for recommendations for tenure and salary and to identify training needs of individual employees.

B. PROCEDURES

1. FREQUENCY: All employees newly appointed to any position are to be provided immediately with written performance standards and have a formal performance

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appraisal completed not later than three (3) months after appointment. A subsequent formal performance appraisal, based on performance standards, shall be completed at least ten days before the end of the first six month period.

2. This performance appraisal shall be the basis for recommending performance status for employees who are required to serve only a six month probation period. At least ten days before the end of the first year in a position, another performance appraisal based on performance standards shall be completed. Subsequent performance appraisals shall be done annually.

3. A formal performance appraisal may be completed at any time for a permanent employee whose performance is considered to have fallen below standard. Such performance appraisals shall be the basis for remedial action, or to document and justify disciplinary action.

The completion of a formal performance appraisal shall require a face-to-face evaluation conference between the supervisor and employee, except when an employee has terminated and is not available for the evaluation conference.

4. The Tribal Administrator shall maintain a list of the due dates for evaluation of all employees. All evaluations to be done by the Tribal Administrator shall be scheduled for review with the Chairperson.

5. The original of the performance standard and appraisal form shall be filed in the employee's personnel file, a copy shall go to the immediate supervisor, and a copy to the employee.

C. CAUSES FOR DISCIPLINARY ACTION

1. It is the responsibility of all employees to observe the regulations necessary for the proper operation of the Rancheria. Administrative procedures have been established for the handling of disciplinary measures such as reprimand, suspension, demotion, and dismissal.

2. If an employee receives two (2) written reprimand notices for offenses such as the following (for the same or different offenses) within a period of twelve (12) consecutive months, the employee shall, along with the second such notice, receive disciplinary action commensurate with the severity of the accumulated offense.

3. Upon receipt of the third written reprimand notice (for the same or different offenses) within the same consecutive twelve (12) month period, The employee may be dismissed. If a decision is made to dismiss an employee, the employee will be informed in writing of the reasons for their dismissal and of the right and method of appeal. They will be given a minimum of two weeks notice.

4. A copy of each written reprimand will be placed in the employee's personnel folder and given to the employee. Written reprimands will be purged from an employee's file at the end of twelve (12) months from the date of issuance.

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5. The immediate supervisor will sign the first two reprimands. The third reprimand shall also require the signature of the Tribal Administrator.

6. Causes for disciplinary action shall include, but are not limited to:

a. Excessive absenteeism and/or tardiness, abuse of sick leave, insubordination constituting a breach of discipline, which remains uncorrected after warning or is particularly serious in any one instance.

b. Rough or boisterous play or pranks on the job which disrupt work or are minor safety hazards.

c. Violating a safety rule or safety practice.

d. Failure to report to work without notification to the immediate supervisor, unless it is later shown that such notice was impossible to give.

e. Gross neglect of duty or refusal to comply with a lawful instruction, unless such instruction is injurious to the employee's general health or safety.

f. Indulging in offensive language towards others while on the job.

g. Being under the influence of intoxicants or drugs while on duty.

h. Sleeping on duty.

i. Inattentiveness to work, failing to start work at the designated time, quitting work before the designated time, or leaving the work area during

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working hours without authorization from the supervisor.

j. Vending, soliciting, or collecting contributions on CR time or premises without proper authorization; gambling.

k. Misfeasance or malfeasance in the performance of duty.

l. Use of CR personnel, property or other resources (including the employee's own work time) for personal reasons, purposes, or gain without the supervisor's prior approval.

D. CAUSES FOR IMMEDIATE DISCIPLINARY ACTION OR DISMISSAL

1. Immediate disciplinary action may be taken, or the employee may be dismissed immediately only for serious causes such as the following. Supervisors should make every attempt to be fair and match the disciplinary action with the severity of the offense:

a. Using, attempting to use, personal or political influence in an effort to secure special consideration as a Rancheria employee or applicant for employment.

b. Incompetency and/or inefficiency in the performance of job duties which result in not maintaining a satisfactory performance rating, provided that the employee has been counseled and notified in writing that job performance has been satisfactory.

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- c. Absence from work for two consecutive work days without authorization.
- d. Major theft or intentional destruction of CR property.
- e. Intentional falsification of personnel records, time reports, or other Rancheria records.
- f. Being under the influence of intoxicants or drugs while on duty.
- g. Fighting on the job, except in self-defense.
- h. Carelessness or negligence with the monies or property of the Rancheria
- i. Discrimination as defined in the Manual (see Section 2-A).
- j. Inducing or attempting to induce any employee in the service of the CR to commit an unlawful act, or to act in violation of CR regulations, official policy, or departmental orders.
- k. Violation of personnel rules, official policies, or departmental orders.
- l. Major misfeasance or malfeasance in the performance of duty.
- m. Any deliberate action which endangers the health or safety of the employee or others.
- n. Insubordination, constituting a breach of discipline, which remains uncorrected after warning or is particularly serious in any one instance.

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o. Use of Rancheria personnel, property or other resources (including the employee's own work time) for personal reasons, purposes or gain without the supervisor's prior approval.

p. Indecent conduct or notoriety that seriously jeopardizes the effectiveness of Tribal programs.

TYPES OF DISCIPLINARY ACTION THAT WILL BE UTILIZED

The following types of disciplinary action will be utilized as necessary in enforcing CR work rules and standards of conduct. The specific type and degree of disciplinary action will be determined by the nature of the offense.

Before disciplinary actions are taken because of unsatisfactory work performance, counseling training, discussion of work standards voluntary reassignment of duties and other positive action should be considered.

A supervisor may initiate the following disciplinary actions in the order below, however, they may be used selectively as appropriate. The disciplinary actions may be stopped at any step when the work behavior of the employee improves.

a. **VERBAL WARNING** - When an employee's performance falls below standard or any employee's conduct becomes improper, his supervisor shall inform the employee promptly and specifically of such a lapse. If appropriate, a reasonable period for improvement or correction may be allowed before initiating further action.

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b. **WRITTEN REPRIMAND (Corrective Interview)** - An employee should be informed in advance that a scheduled interview is for corrective purposes and the subject matter, so that the employee may prepare. Prior notice of purpose and subject matter is not required where employee dishonesty is involved.

In this interview the employee's supervisor shall discuss clearly and frankly with the employee the reason(s) necessitating the interview. The supervisor, as part of this interview, should offer to the employee specific suggestions for corrective action to be taken by the employee and written standards for expected performance. The reason for this interview and the action recommended should be recorded by the supervisor.

The employee and supervisor should sign the record to acknowledge that the interview occurred. A copy of the record will be retained by the supervisor, a copy given to the employee, and a copy placed in the personnel folder.

c. **SUSPENDED WITHOUT PAY** - The Tribal Administrator or the immediate supervisor may suspend any employee without pay.

d. **DEMOTION (Involuntary)** - The Tribal Administrator or the immediate supervisor may demote an employee who is not satisfactorily performing the duties of that position. The employee must meet the minimum qualifications for the new position.

e. **INVOLUNTARY TERMINATION (Dismissal)** - Any employee may be dismissed by the Tribal

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Administrator for cause in accordance with the provisions of the manual. Causes for dismissal include:

- 1) Incompetence and/or inefficiency in performance of the job duties providing the employee has been counseled and notified in writing 30 days before dismissal of job performance being unsatisfactory;
- 2) Absence from work as stated in Article XV, D;
- 3) Theft or intentional destruction of property; intentional falsification of records, indecent conduct or notoriety that seriously jeopardizes effectiveness of the program;
- 4) Under the influence/possession of any substances while on duty;
- 5) Fighting on the job except in self-defense, or endangering the health or safety of self or others;
- 6) Carelessness/negligence with monies or property, insubordination, use of personnel property or other resources for personal reasons, purposes, or gain without the Tribal Administrators prior approval;
- 7) Violation of personnel rules, office policies, departmental orders, or procedures.

Section 2 TERMINATION OF EMPLOYMENT

A. VOLUNTARY TERMINATION: Any employee desiring to resign shall notify the immediate supervisor in writing by two weeks notice, specifying the effective date. Failure to give at least 2 weeks notice may cause denial of future reinstatement. A resignation may not

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be withdrawn after position has been advertised. Waiver of required notice may be granted by the Chairperson and Tribal Administrator.

An employee that submits a resignation will be required to perform duties until the resignation becomes effective. The Tribal Administrator may terminate an employee prior to the resignation date if the employee is not performing duties as assigned.

B. **LAYOFFS:** A layoff shall be considered as removal from a position because of the abolition of the position, due to lack of work or funds, reorganization, program reduction, or other administrative readjustment.

1) When more than one employee is involved, the immediate supervisor shall establish a list showing the order in which employees are to be laid off on the basis of performance and seniority.

C. **DISABILITY:** An employee may be separated for disability when unable to perform the required duties because of physical or mental impairment. Each employee shall be responsible for those items assigned for his/her use in performing prescribed duties.

1) Upon termination of employment, the employee shall account for all such assigned items. In the event any such items are missing or not accounted for, the employee's final paycheck may be withheld until such time said items have been returned or accounted for.

Death

1. Separation shall be effective as of the date of death.

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2. All compensation and accrued vacation shall be paid to the estate or beneficiary of the employee, except for such sums which by law must be paid directly to the surviving spouse.

ARTICLE XVII
HOLIDAYS

The Tribal Office employees will be given time off with pay for the designated holidays:

NEW YEARS EVE
NEW YEARS DAY
MARTIN LUTHER KING DAY
LINCOLN'S BIRTHDAY
WASHINGTON'S BIRTHDAY
MEMORIAL DAY
AMERICAN INDIAN DAY(2nd Fri. in May
INDEPENDENCE DAY
LABOR DAY
CALIF. AMERICAN INDIAN(4th Fri. in Sept.)
VETERAN'S DAY
THANKSGIVING DAY/NA HERITAGE DAY
CHRISTMAS EVE
CHRISTMAS DAY

a. If any holidays fall on Sunday, it will be observed on the Monday immediately following. If any holiday falls on a Saturday, it will be observed on the Friday immediately preceding. If any holiday falls on an employees days off, it will be observed preceding or following the scheduled day off.

b. Employees working full days schedules, will receive full-time compensation. Part-time employee will be

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compensated in proportion to the number of hours they are normally scheduled to work.

c. An employee will not be charged for approved annual or sick leave days which occur on holidays.

d. In order to be eligible for holiday pay, an employee must have been in paid status the working day prior to or following the recognized holiday. If employee is AWOL for any number of hours on these days he/she will not receive holiday pay.

ARTICLE XVIII
ATTENDANCE AND LEAVE POLICY

Section 1 ATTENDANCE

a. Each employee shall fill out and sign biweekly reports showing all hours worked and leave of absence, as appropriate. The time report shall be submitted on the 15th & 31st.

b. All time reports must be signed by the Tribal Administrator before action can be taken to process a salary payment.

c. If any employee is paid for time not worked, such overpayment will be deducted from their checks for the following pay period.

d. Written permission will be required for anyone picking up an employee's check.

e. No checks will be released without the approval of the Tribal Administrator.

1. GENERAL PROVISIONS FOR LEAVE

Eligibility: For the purpose of determining eligibility for leave allowance, the term “continuous service” shall be that service commencing with initial appointment and continuing until resignation or discharge.

Section 2 GENERAL LEAVE POLICY

As a benefit to its employees and to its own operational effectiveness, the Cedarville Rancheria recognizes and grants various kinds of leave in paid and/or unpaid status. All leave must be authorized. Leave which is not authorized will be cause for disciplinary action. Leave records must be maintained in each employee’s personal file. Annual leave is to be used by employees to assure they are receiving adequate rest and relaxation. Sick leave is to be used to ASSURE THE GOOD HEALTH OF EMPLOYEES.

Section 3 FLEXTIME

As a benefit to employees and for improved organizational effectiveness, the Cedarville Rancheria will adopt flextime in program areas where it is deemed beneficial. Flextime is a system of flexible working hours that allows employees to tailor their workday or workweek to workload patterns and to personal needs.

Section 4 ANNUAL LEAVE

Annual Leave is an employee fringe benefit. An employee is required to make advanced arrangements for annual leave with the Tribal Administrator.

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- a. Employees may not carry over annual leave into next calendar year.
- b. No annual leave benefits will be earned during any period when an employee is AWOL or on leave without pay.
- c. No annual leave can be used within the same pay period it is earned.
- d. Eligible employees shall be paid for their unused annual leave days at their final rate of pay regardless of their reason for termination.

Section 5 ANNUAL LEAVE ACCRUED

Employees will accrue annual leave benefits based upon the number of years of service with the Cedarville Rancheria.

- a. Full-time employees with three years or less creditable service will accrue eight hours of annual leave a month.
- b. Full-time employees with three to twelve years creditable service will accrue sixteen hours of annual leave per month.
- c. Full-time employees with thirteen years and over of creditable service will accrue twenty-four hours of annual leave per month.
- d. Part-time temporary employees who are employed longer than 30 days will accrue annual leave, as stated above but on a pro-

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rated basis to the number of hours worked each month.

e. An employee may not carry any hours into the next calendar year, unless prior approval by the Tribal Administrator/Chairperson is made.

Section 6 ANNUAL LEAVE COMPENSATION

Employees who have accrued an excess of annual leave may request cash payoff in lieu of taking time off from work.

a. Employees payoff will be made only in increments of 40 hours.

b. Employees are encouraged to use at least 80 hours of annual leave per year to insure that they are receiving proper rest and relaxation away from the working environment.

c. Employees must request cash payoff in writing. All requests will be approved by the Tribal Administrator in consultation with the Chairperson.

Section 7 ADVANCED ANNUAL LEAVE

As an employee benefit, advanced annual leave may be granted when justified. Such requests will be subject to Tribal Administrator/Chairperson approval. No employee may have a negative balance.

Section 8 SICK LEAVE

Sick leave is an employee fringe benefit. For medical treatment purposes employees are requested to make advance arrangements for sick leave. Depending on the circumstances, sick leave authorization and use is subject to supervisory approval.

Section 9 HEALTH PRACTICES

Employees are expected to observe health practices that contribute to their work performance and service effectiveness.

- a. Employees who take sick leave are expected to seek treatment and to take care of themselves during that leave. Employees are not to report to work if they are ill. A sick worker performs poorly, prolongs his/her recovery, and endangers the health of others.
- b. Employees who use sick leave in excess of three days may be required to submit medical certification of diagnosis and/or treatment if the supervisor feels there has been abuse of sick leave.
- c. Subject to supervisory approval, sick leave benefits may be used by the employees to care for sick family members.
- d. All employees accrue eight hours of sick leave every month. Part-time will accrue sick leave on a prorated basis to the number of hours worked each month. There is no limit on accumulation of sick leave. Absolutely no payments for accrued sick leave will be made upon separation under any circumstances.

Section 10 MATERNITY LEAVE

The following guidelines will govern maternity leave.

- a. At her request, a woman may take up to 90 days of maternity leave, job compensation and fringe benefits held as is, until her return to duty. The Council is under no obligation to hold a position open during a maternity leave that exceeds 90 days. However, they may elect to do so. In such case, the Council's commitment of the employee must be stated in writing.
- b. During maternity leave, a woman may elect to apply leave credits she has accrued. When such leave benefits are used, the remainder of the maternity leave will be without pay.
- c. Paternal leave will be granted to employees wishing to utilize annual leave or leave without pay.

Section 11 MILITARY LEAVE

In order to help accommodate U.S. national defense needs and to help employees meet their military obligations the Cedarville Rancheria will adhere to the following guidelines on military leave.

- a. A full-time employee who is a member of a reserve component of the U.S. Armed Forces will be allowed leave for required annual military training or duty for a period not to exceed 15 working days a year.
- b. An employee may elect to use annual leave and keep his military compensation, or he may surrender his military pay to Cedarville Rancheria and be granted leave of absence with pay.

Section 12 JURY OR WITNESS DUTY

Upon receipt of a summons to jury duty or testimony in legal or official proceedings, an employee will be granted leave of absence with pay. Official compensation to an employee for such appearance will be surrendered to the Cedarville Rancheria in cash (if paid to the employee in cash) or in the form of a check endorsed payable to the Cedarville Rancheria (if paid to the employee by check).

Section 13 ADMINISTRATION LEAVE (EMERGENCY)

Employee will be granted leave of absence for death in the immediate family, and spouse's immediate family, attendance at funeral of immediate family, and inability to travel to work safely because of 3 unusually severe weather or natural disaster. Absence of more than three days for this purpose will require the employee to request annual leave or LWOP.

- a. It is each employee's responsibility to report emergency leave circumstances to his/her supervisor as soon as he/she becomes aware of such circumstances, with final approval by the Tribal Administrator/ Chairperson.

Section 14 LEAVE OF ABSENSE

The Chairperson may grant an employee leave without pay for a period not to exceed 90 days. Under special circumstances the Tribal Administrator may grant an employee leave without pay for a maximum of 30 days. Any request in excess of 90 days must be presented to the Executive Committee. However, Cedarville

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Rancheria is under no obligation to hold an employee's position or compensation level if the period of leave exceeds the specified number of days granted.

Section 15 RELIGIOUS/ TRADITIONAL LEAVE

To support Indian employees wishing to practice Indian traditions and Indian religion, Religious/Traditional leave is available. Leave must be requested in writing and approved prior to such events. Leave to be approved by the Tribal Administrator in consultation with the Chairperson.

Section 16 EDUCATIONAL LEAVE

Educational Leave is available to Tribal employees as leave without pay not to exceed eight hours per week. Educational leave may be granted, if attendance at an accredited educational institute will benefit the Tribal service, aid the employee's career development, and not jeopardize the quality of service provided by the program. The Tribal Administrator/Chairperson must approve all such leave prior to attendance by the employee.

- a. The Tribal program is under no obligation to pay expenses of employees enrolled in such training,
- b. Educational Leave without pay may be granted up to one year if it will benefit the Tribe. Special approval must be requested by the Tribal Administrator and granted by the Chairperson.

ARTICLE XX
GRIEVANCES, APPEALS AND DISCIPLINE

Section 1

A. GRIEVANCES

A grievance is defined as a circumstance thought to be unjust or injurious and grounds for complaint.

All employees subjected to disciplinary action may file a grievance. Grievances shall be filed and processed in the following manner and within the time-frame specified, unless time limits are waived by written mutual consent of both parties concerned or by the Tribal Administrator.

B. GRIEVANCE STEPS

a. When a complaint cannot be resolved at the level at which the disagreement or dissatisfaction occurred, a written complaint shall be prepared by the aggrieved employee. The written statement will give specific details of the complaint and the action or redress desired by the aggrieved employee. This complaint is to be submitted to the supervisor or administrative staff person at the level at which the cause of the grievance occurred. Written decision shall be given to the aggrieved employee within five (5) working days of the filing of the complaint. If the grievance remains unresolved, the employee may proceed to Step b.

b. Within five (5) working days of the date the written decision in Step a., is received or is due, the aggrieved employee may present the written complaint to the Tribal Administrator, if the cause of grievance occurred

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at or above the level of the Manager, the employee is to submit the written complaint to the next level of supervision or administration above the level of occurrence. The Tribal Administrator or other appropriate level of administration will render a written decision within five (5) working days from the date the complaint was referred to that level. If the grievance remains unresolved, proceed to Step c.

c. Within five (5) working days of the date the decision in Step b., is received or due, the aggrieved employee may present a written request to the Tribal Administrator for review by the Council. Copies of all relevant materials and decisions rendered under previous steps of the grievance process shall be submitted to the Tribal Administrator. The Council shall review all pertinent facts and issue a written decision within ten (10) working days. The review by the Council may include personal interviews with the aggrieved employee and supervisor or administrative staff involved, but such personal interviews are not final, except as otherwise provided for under Appeals.

d. In the case of the Tribal Administrator, the foregoing procedures will be directed to the Tribal Council.

C. APPEALS

a. An appeal is defined as a request from an employee for the Council to review any administrative action or decision which is alleged to violate certain rights of the employee either under applicable law, or the official Personnel Policies of the Rancheria.

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b. The alleged violation of the following rights shall be appealable to the Council, after all other administrative remedies have been exhausted.

1) The right not to be discriminated against in any aspect of employment because of sex, race, national origin, age, political or religious affiliation.

2) The right to due process in the application of personnel policies related to disciplinary action.

c. Due process in the application of personnel policies and generally throughout the operation of the Rancheria, shall mean only the rudiments of due process. That is, notice of the charge or complaint or proposed action and an opportunity to be heard on that subject, not a right of confrontation or cross examination.

d. The following disciplinary action provided forth in CR Personnel Policies shall be appealable to the Council, after all other administrative remedies have been exhausted.

1) Suspension without pay for more than two(2) days.

2) Involuntary demotion

3) Involuntary termination.

D. APPEAL PROCEDURES

a. The employee wishing to appeal shall send a written statement of facts and a request for a hearing to the Tribal Administrator. The written statements must specify the action or decision being appealed and

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the right under law, or the policies, allegedly violated. The Tribal Administrator makes the following determinations:

- 1) Is the matter appealable under CR policy?
- 2) Have all administrative remedies been exhausted?

If the answer to either question is no, refer the matter back to the originator with a written statement as to the grounds upon which it was determined that an appeal was out of order at that point in time. A written decision shall be sent by the Tribal Administrator within five (5) working days after receipt of the written request for a hearing. If the answer to both questions listed above is yes, proceed to Step b.

b. The Tribal Administrator shall refer the request for a hearing to the Council with a written statement that it is an appealable issue under Personnel Policies. The statement shall not express any opinion on the merits of the appeal. The Tribal Administrator will schedule the hearing before the Council at the next meeting. The employee shall be sent a written notice of the date, time, and place of the Council meeting.

c. The Tribal Administrator has the option of reviewing the situation at the point the request for hearing is referred to him, including seeking the opinion of legal counsel, and may resolve the issue to the satisfaction of the appellant employee without proceeding to the hearing before the Council. Such review may not be used to delay a hearing before the Council from one meeting to another. The hearing shall

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be scheduled as provided above. If the matter is resolved, the hearing will be canceled.

E. APPEAL HEARINGS

a. The appeal hearing is subject to the control of the Council. The hearing shall be presided over as other council meetings and the general format will be followed unless the Council decides to vary the procedure.

b. No hearing shall be defective merely because the appealing employee was not present for whatever reason, nor because the person involved in the acts complained about was not present for whatever reason, so long as the Council feels it has been fully informed and has discussed the matter.

c. An employee's appeal shall be heard by the Council in closed session, usually at the end of other business, unless the Council chooses, or the employee has been informed of, another time.

d. The appealing employee has the right to representation by, or assistance from, counsel or any other representative at the employee's expense. The representative may be present during the hearing at any time the employee is present, or would be allowed to be present, and at any other time allowed by the Council.

The employee shall have no right to have the hearing continued, rescheduled, or relocated for the employee's representative's convenience or benefit, although the Council may do so at its discretion,

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e. The hearing will be called to order and the procedures to be followed will be explained to the Council members, the appealing employee, and all personnel involved in, or responsible for, the acts complained of in the appeal.

f. The appealing employee and other staff involved in the matter, shall leave the hearing. The Council shall hear a synopsis and introduction of the matter from the Tribal Administrator, Council member, or other appropriate person, the Council shall then hear the respective sides of the matter.

g. Personnel involved in the matter on appeal, or someone on their behalf, shall present all of the facts and issues surrounding the disciplinary action or alleged violation. Personnel shall then leave the hearing.

h. The appealing employee, either in person or through representatives, shall next present the employee's side of the matter. The Council may hear witnesses or presentations in the order above or any other order. All witnesses may be called more than once by the Council to answer further questions. Aside from the right to present the employees version of the matter to the Council, the appealing employee has no right to confront other witnesses, either for or against the employee, except at the discretion of the Council. An employee will normally be allowed to be present during the presentation by any witness the employee has called on in the employee's favor.

i. During the hearing, any Council member may ask any appropriate questions, present further information,

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or comment. After the Council has heard all of the evidence that persons involved wish to present, and pursued all further questions of its own that the members desire, the Council shall fully deliberate the matter.

j. After full deliberation, a motion may be made to either uphold or overturn the actions complained of, or to provide other or no relief to the appealing employee. If any motion fails, further motions may be made. If no motion is made and seconded, the presiding officer shall make a motion, requiring no second, that the action complained of shall be upheld and no further or other relief be granted to the appealing employee.

h. After the final votes on the motions, all persons involved should be invited back to the hearing to hear an oral announcement of the decision. In any event, the Tribal Administrator shall inform the appealing employee in writing of the Council's decision within five (5) days.

l. The decision of the Council shall be final, and a matter once heard and decided shall not be reconsidered except upon a majority vote of the Council after a written application for reconsideration from the employee to the Tribal Administrator. A motion for reconsideration may be made at any time, but the sooner the better. State matters cannot be pursued unless new evidence or issues have arisen.

APPENDIX 3

Exhibit "3"

[Dated March 18, 2011]

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

**CONSTITUTION AND BYLAWS
OF THE
CEDARVILLE RANCHERIA
MODOC COUNTY
CEDARVILLE, CALIFORNIA**

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to an election authorized by the Regional Director, Pacific Region, Bureau of Indian Affairs, as delegated to the Regional Directors by Memorandum dated October 11, 2006, on FEB 24, 2011, the attached proposed CONSTITUTION AND BYLAWS OF THE CEDARVILLE RANCHERIA, was submitted to the qualified voters of the Tribe and was on FEB 24, 2011, duly **adopted/rejected** by a vote of 5 for and 0 against, and 0 cast ballots found to be spoiled or mutilated, in an election in which at least thirty percent (30%) of the 8 entitled to vote cast their votes in accordance with Section 16 of the Indian

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

CERTIFICATE OF APPROVAL

The Constitution and Bylaws of the Cedarville Rancheria, Modoc County, Cedarville, California which was adopted by the qualified voters of the Tribe on February 24, 2011, is hereby approved pursuant to the authority delegated to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat 984), as amended and delegated to me by the Director, Bureau of Indian Affairs. This approval is effective as of this date; provided that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal Law.

_____/s/_____
Regional Director

_____3/18/11_____
Date

**CONSTITUTION AND BYLAWS
OF THE
CEDARVILLE RANCHERIA
MODOC COUNTY
CEDARVILLE, CALIFORNIA**

The CONSTITUTION OF THE CEDARVILLE RANCHERIA MODOC COUNTY CEDARVILLE, CALIFORNIA, shall be amended in its entirety to read as follows:

PREAMBLE

We, the adult members of the Cedarville Rancheria, in Modoc County, California, in order to establish a formal organization and to secure the privileges and powers provided for by the Indian Reorganization Act of June 18, 1934 (48 Stat .984), do hereby ordain and establish this Constitution and Bylaws.

ARTICLE I – NAME

The name of this Organization shall be the Cedarville Rancheria hereafter referred to as the Rancheria.

ARTICLE II – TERRITORY

The jurisdiction of this Organization shall extend to the land now within the confines of the Cedarville Rancheria and to such other lands as may hereafter be added thereto.

ARTICLE III – MEMBERSHIP

Section 1. The membership of the Rancheria shall consist of:

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- (a) All persons of the Rancheria whose names appear on or are entitled to appear on the Official Census Roll, dated July 18, 1954;
- (b) All persons of California Indian descent who reside on the Cedarville Rancheria, California, and have resided there continuously for a period of at least two (2) years, at the time of adoption of this Constitution, provided they make application for enrollment and provided further they receive a majority vote of the Community Council;
- (c) All lineal descendants of enrolled members.

Section 2. No persons shall be a member of the Rancheria if he:

- (a) Was a member of any tribe or band of Indians when its trust relationship with the Federal Government was terminated except those persons listed as dependent members on final rolls of California Rancheria or whose tribal status has been reinstated by the courts;
- (b) Has been allotted on another reservation or on the public domain;
- (c) Is officially enrolled with or is recognized as a member of another tribe or band. A “recognized” member of another tribe or band of Indians is a person who has received a land-use assignment or

payments by reason of membership in another tribe or Rancheria, except through inheritance;
or

- (d) Has relinquished, in writing, his membership in the Rancheria.

Section 3. The governing body shall adopt an enrollment ordinance, subject to the approval of the Secretary of the Interior, governing future membership, loss of membership, and the adoption of new members, and prescribe rules and procedures by which the membership roll shall be prepared and thereafter kept current; provided, that the Executive Committee reserves the right to periodically close the rolls from time to time upon a majority vote of the Executive Committee.

ARTICLE IV – GOVERNING BODY

Section 1. The governing body of the Rancheria shall be the Community Council composed of all qualified voters of the Rancheria who are eighteen (18) years of age or older.

Section 2. The Community Council shall elect from its members, who are active qualified voters, by secret ballot, an Executive Committee of a Chairperson, a Secretary, and a Vice Chairperson, who shall hold office for three years or until their successors are duly elected and installed.

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Such other committees may be appointed or elected as from time to time may be deemed necessary.

ARTICLE V – MEETINGS

Section 1. Regular meetings of the Community Council shall be held on the first (1st) Saturday in Jan ~~April~~ of each year at 2:00pm 1:00 p.m., at a place designated by the Executive Committee. Special meetings may be called at any time by the Chairperson and shall be called promptly upon receipt of petitions signed by a majority of the active qualified voters requesting such meetings.

Section 2. A majority of the active qualified voters shall constitute a quorum at all meetings of the Community Council. Notices of all Community Council meetings shall be given in writing at least two (2) weeks in advance of the meetings to all qualified voters.

Section 3. The term “qualified voter” refers to any member of the Rancheria who will be at least eighteen (18) years of age on the day of any regular or special meeting.

Section 4. The term “active qualified voter” refers to those qualified voters that have been active in at least eighty (80) percent of all tribal events in the six (6) months preceding an election or Community Council meeting. Tribal events shall

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include but are not limited to: holidays, ceremonies, tribal meetings, conferences, and community functions. The absence of a member may be excused due to medical or unforeseen circumstances upon written request to the Secretary of the Executive Committee within ten (10) days of the tribal event and subject to the approval of a majority of the Executive Committee.

Section 5. Meetings of the Executive Committee may be called by the Chairperson, or in his absence, by the Secretary or Vice Chairperson when deemed necessary. Two (2) members of the Executive Committee shall constitute a quorum for the conduct of its business.

ARTICLE VI – ELECTIONS

Section 1. The Executive Committee in existence on the effective date of this Constitution and Bylaws shall continue to function until those officials elected at the next scheduled election, pursuant to this Constitution, are duly installed in office.

Section 2. All elections officers shall be by secret ballot. Regular elections of officers shall be conducted at the January meetings of the Community Council each third (3) year in accordance with an election ordinance adopted by the Executive Committee.

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Section 3. To serve as an officer, a person must be an active qualified voter.

Section 4. Any enrolled member of the Rancheria who is eighteen (18) years of age or older shall be entitled to vote in tribal elections.

ARTICLE VII – VACANCIES AND REMOVAL

Section 1. If an officer shall die, resign, be recalled from his office, relinquish tribal membership in writing or shall be found guilty in any Tribal, State or Federal Court of a felony while in office, the Community Council shall declare the position vacant and shall proceed to nominate candidates and elect a replacement officer who shall serve the unexpired term of office.

Section 2. Upon receipt of a petition signed by thirty (30) percent of the active qualified voters requesting the recall of an officer, the Executive Committee shall call a special Community Council meeting to hear the charges against the officer. Before any vote for recall is taken such officer shall be given a written statement of the charges against him at least one (1) week before the meeting of the Community Council at which the matter of recall is to be decided and of the date, hour and place of the Community Council meetings at which time he may appear and answer any and all charges. Such Community

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Council meeting shall be held within two (2) weeks of the date that a valid petition for removal action is filed with the Executive Committee. After the accused has had an opportunity to be heard by the Community Council, a secret ballot vote for or against recall will be conducted. The decision of a majority of those present and voting shall govern, provided that a majority of the active qualified voters shall vote. If the majority vote is for recall of the accused officer, his office shall automatically be vacated and the Community Council shall proceed to nominate candidates and elect a replacement officer who shall serve the unexpired term of office.

Section 3. In the event that a recall vote is unsuccessful, the subject of the unsuccessful recall election shall not be subject to another recall election which is based upon the same or similar grounds for at least one year from the date of the recall election.

**ARTICLE VIII – POWERS OF THE
GOVERNING BODY**

Section 1. The Community Council of the Rancheria shall exercise the following powers subject to any limitations imposed by the Constitution, Federal Law and the Constitution of the United States;

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- (a) To negotiate with Tribal, Federal, State and local governments;
- (b) To retain legal counsel;
- (c) To veto any proposed sale, disposition, lease or encumbrance of tribal lands, interest in lands or other tribal assets of the Rancheria;
- (d) To establish such housing and other authorities as are necessary to promote the welfare of the Rancheria;
- (e) To control future membership, loss of membership and the adoption of members; and
- (f) To waive the sovereign immunity of the Tribe.

Section 2. The Executive Committee shall have the following powers, but shall not commit the Rancheria to any contract, lease or other transaction unless it is authorized in advance by duly enacted ordinance or resolution of the Community Council:

- (a) Carry out all ordinances, resolutions or other enactments of the Community Council; and
- (b) Represent the Cedarville Community Council in all negotiations with Tribal, Federal, State, and local governments and advise the Community Council of the results of all such negotiations.

Section 3. Any rights or powers heretofore vested in the Rancheria, but not expressly referred to in this Constitution, shall not be lost by their omission but may be exercised by the adoption of appropriate amendments to this Constitution.

ARTICLE IX – BILL OF RIGHTS

Section 1. Subject to the limitations imposed by this Constitution, all members of the Rancheria shall enjoy equal political rights and opportunities to participate in the Community Council; Rancheria economic resources, Rancheria assets, and all the rights that are conferred upon a member of the Rancheria.

Section 2. The Rancheria in exercising its powers of self-government, in accordance with Title II of the Indian Civil Rights Act of 1968 (82 Stat. 77), shall not:

- (a) Make or enforce any law prohibiting the full exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (b) Violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizure, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing

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the place to be searched and the person or thing to be seized;

- (c) Subject any person for the same offense to be twice put in jeopardy;
- (d) Compel any person in any criminal case to be a witness against himself;
- (e) Take any private property for a public use without just compensation;
- (f) Deny to any person in a criminal proceeding the right to a speedy trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, at his own expense, to have the assistance of counsel for his defense;
- (g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one (1) year or a fine of \$5000 or both;
- (h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of laws;

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- (i) Pass any bill of attainder or ex post facto law; or
- (j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

ARTICLE X – SOVEREIGN IMMUNITY

Section 1. The sovereign immunity of the Rancheria or any of its programs or business ventures is hereby preserved.

Section 2. The Community Council may provide an explicit written waiver of tribal sovereign immunity upon the approval of a majority vote of voters voting at a meeting of the Community Council duly called and conducted in accordance with Article V of this Constitution. The waiver must state the extent and purposes for which the waiver is granted.

ARTICLE XI – AMENDMENT

Section 1. This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Community Council at an election authorized for that purpose by the Secretary of the Interior, provided that at least thirty (30) percent of those entitled to vote shall vote in such election.

Section 2. Amendments, in writing, may be proposed by any two (2) members of the Community Council. The proposal shall be referred to a committee appointed by the Chairperson. The committee shall report upon the proposal at the next meeting of the Community Council at which time a vote shall be taken as to its submission to the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon receipt of a petition by one third (1/3) of the qualified voters of the community, or upon the submission of a resolution duly adopted by a majority of the Community Council. No amendment shall become effective until it has been adopted in an election called by the Secretary of the Interior and approved by him.

**BY-LAWS OF THE CEDARVILLE RANCHERIA
MODOC COUNTY, CALIFORNIA**

ARTICLE I – DUTIES OF OFFICERS

Section 1. Tribal Chairperson

- The Chairperson shall preside at all meetings of the Community Council and of the Executive Committee. He/She may appoint another member of the Executive Committee to preside temporarily when it is necessary for him/her to be absent from a meeting.

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- The Chairperson shall be the chief executive officer of the community and exercise any authority delegated to him by the Community Council.
- The Chairperson shall attend meetings, including, but not limited to, meetings with Federal and State departments and contacts, meetings regarding Economic Development ventures, Tribal Leadership conferences, and any other events that are determined to be pertinent to the Tribe's self-government.
- The Chairperson shall oversee all Cedarville Rancheria matters, including concerns, conflicts and any other issues, as well as signing checks on behalf of the Cedarville Rancheria for various Tribal expenses.
- The Chairperson shall be the authorized point-of-contact, along with the Tribal Secretary or Tribal Administrator, to sign Tribal documentation, including grant applications, MOUs, supply orders, trip requests, etc.
- The Chairperson shall be knowledgeable in the Constitution, By-laws, policies and rules of the Tribe, including overall rules and any rules pertaining to specific committees.
- The Chairperson shall be in constant communication with Tribal members.
- The Chairperson shall show impartiality with all Tribal members.
- The Chairperson shall demonstrate business professionalism.
- The Chairperson shall promote the participation of all Tribal members.

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- Any member interested in the position of Chairperson shall attend trainings deemed appropriate to the position.

Section 2. Vice Chairperson

- The Vice Chairperson shall assist the Tribal Chairperson in meetings and daily business and shall preside over meetings of the Community Council and Executive Committee in the absence of the Chairperson, and when so presiding shall have the privileges, duties, and responsibilities of the Chair.
- The Vice Chairperson shall attend meetings and conferences on the Chairperson's behalf when the Chairperson is unavailable to attend.
- The Vice Chairperson shall assist as necessary in overseeing the financial issues of the Cedarville Rancheria, including confirmation that the Financial Report is done accurately and in a timely manner.
- The Vice Chairperson shall be responsible, along with the Tribal Chairperson, for signing checks on behalf of the Cedarville Rancheria for various Tribal expenses.
- The Vice Chairperson shall be knowledgeable in the Constitution, By-laws, policies and rules of the Tribe, including overall rules and any rules pertaining to specific committees.
- The Vice Chairperson shall actively communicate with the Chairperson and

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Tribal members regarding task updates.

- The Vice Chairperson shall show impartiality to all Tribal members.
- The Vice Chairperson shall review the monthly newsletter.

Section 3. Tribal Secretary

- The Secretary shall be sure all correspondence affecting the Rancheria is properly distributed and handled by the Staff.
- The Secretary shall confirm accuracy in Community Council and Executive Committee meeting minutes, as well as ensure they are completed in a timely manner.
- The Secretary shall work closely with the Chairperson to ensure meeting minutes and correspondence accuracy.
- The Secretary shall oversee meeting preparation, including creating of the agenda and additional attachments.
- The Secretary shall be the authorized point-of-contact, along with the Tribal Chairperson, to sign Tribal documentation, including grant applications, MOUs, meeting minutes, etc.
- The Secretary shall be knowledgeable in the Constitution, By-laws, policies and rules of the Tribe, including overall rules and any rules pertaining to specific committees.

ARTICLE II – OATH OF OFFICE

Section 1. Each officer, elected or appointed hereunder, shall take an oath of office prior to assuming the duties thereof, by which oath he shall pledge himself to support and defend the Constitution of the United States and this Constitution and Bylaws. Oath: I, _____, do solemnly swear that I will support and defend the Constitution of the United States against all enemies; that I will carry out, faithfully and impartially, the duties of my office to the best of my ability; that I will promote and protect the best interest of my Rancheria in accordance with the Constitution and Bylaws of the Cedarville Rancheria.

ARTICLE III – ORDER OF BUSINESS

Section 1. The following order of business is hereby established for all meetings:

1. Call to order by the Chairperson.
2. Roll call.
3. Ascertainment of a quorum.
4. Reading of the minutes of the last meeting.
5. Adoption of the minutes by voice vote.
6. Budget report.
7. Unfinished business.
8. Reports.
9. New Business.
10. Adjournment.

ARTICLE III – ADOPTION

This Constitution and Bylaws, when adopted by a majority of vote of the qualified voters, voting at an election authorized for that purpose by Secretary of the Interior, provided that at least thirty (30) percent of those entitled to vote in such election, shall be submitted to the Secretary of the Interior for approval, and if approved, shall be effective from the date of such approval.