

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Liquor Ordinance of the Susanville Indian Rancheria**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. SU-BC-19-97, approving Ordinance No. 97-3, the Liquor Ordinance of the Susanville Indian Rancheria, was duly adopted and certified by the General Council of the Susanville Indian Rancheria on May 5, 1997. The Ordinance provides for the regulation of the sale, possession and consumption of liquor in the area of the Susanville Indian Rancheria, under the jurisdiction of the Susanville Indian Rancheria, and is in conformity with the laws of the State of California.

DATES: This Ordinance is effective August 25, 1997.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street NW, MS 4603-MIB, Washington, DC 20240-4001; telephone (202) 208-3463.

SUPPLEMENTARY INFORMATION: The Liquor Ordinance of the Susanville Indian Rancheria is to read as follows:

Liquor Ordinance of the Susanville Indian Rancheria*Introduction*

101. *Title.* This Ordinance shall be known as the "Liquor Ordinance of the Susanville Indian Rancheria."

102. *Authority.* This Liquor Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83-277, and 67 Stat. 586, 18 U.S.C. 1161) and the Constitution of the Susanville Indian Rancheria adopted on October 10, 1996, and applicable laws.

103. *Purpose.* The purpose of this Liquor Ordinance is to regulate and to control the possession and sale of liquor to and on the Susanville Indian Rancheria. The enactment of a tribal ordinance governing liquor possession and sale on the Reservation will increase the ability of the tribal government to control Reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening

of the tribal government and the delivery of tribal government services.

104. *Tribal Jurisdiction.* This ordinance applies to all lands in which the Susanville Indian Rancheria holds an ownership interest and which are defined as Indian country under 18 U.S.C. 1151. At the time of enacting this ordinance, the Rancheria does not have an ownership interest in any lands defined by 18 U.S.C. 1154(c) as fee-patented land in a non-Indian community or rights-of-ways which run through the Rancheria's lands. This ordinance is in conformity with California State alcohol laws as required by 18 U.S.C. 1161.

Definitions

201. As used in this Liquor Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

202. *Alcohol* means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

203. *Alcoholic Beverage* is synonymous with the term "Liquor" as defined in section 208 of this chapter.

204. *Bar* means any establishment with special space and accommodations for sale by the glass and for consumption on the premises of any liquor or alcoholic beverage, as herein defined.

205. *Beer* means any beverage obtained by the alcoholic fermentation of an infusion or concoction of pure hops, or pure extract of hops and pure barley malt, or other wholesome grain of cereal in pure water containing not more than four percent of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than four percent of alcohol by weight shall be referred to as "Strong Beer."

206. *The Tribal Business Council* as used herein means the body authorized by the Susanville Indian Rancheria constitution to promulgate all tribal ordinances and regulations.

207. *General Council* means the general council of the Susanville Indian Rancheria which is composed of the voting membership of the Tribe as a whole.

208. *Liquor* includes the four varieties of liquor herein defined (Alcohol, Spirits, Wine, and Beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating; and every liquid or solid or semisolid or

other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substance, which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

209. *Liquor Store* means any store at which liquor is sold and, for the purposes of this Liquor Ordinance, includes stores only a portion of which are devoted to sale of liquor or beer.

210. *Malt Liquor* means Beer, Strong Beer, ale, stout, and porter.

211. *Package* means any container or receptacle used for holding liquor.

212. *Public Place* includes state or county or Tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishment; public buildings; public meeting halls; lobbies, halls and dining rooms of hotels, restaurants, theater, gaming facilities, entertainment centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purpose of this Liquor Ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

213. *Reservation* means land held in trust by the United States Government for the benefit of the Susanville Indian Rancheria (see also Tribal Land).

214. *Sale and Sell* include exchange, barter, and traffic and also include the selling or supplying or distributing by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.

215. *Spirits* means any beverage which contains alcohol obtained by distillation including wines exceeding seventeen percent of alcohol by weight.

216. *Tribe* means the Susanville Indian Rancheria.

217. *Tribal Land* means any land within the exterior boundaries of the Reservation which is held in trust by the United States for the Tribe as a whole including any such land leased to other parties.

218. *Trust Account* means the account designated by the Tribal Business Council for deposit of proceeds from

any tax or fee levied by the Tribal Business Council and relating to the sale of alcoholic beverages.

219. *Trust Agent* means the Tribal Chairperson or his or her designee.

220. *Wine* means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

Powers of Enforcement

301. *Powers*. The Tribal Business Council, in furtherance of this Liquor Ordinance, shall have the following powers and duties:

a. To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of Alcoholic Beverages on the Reservation;

b. To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Tribal Business Council to perform its functions; all such employees shall be Tribal employees;

c. To issue licenses permitting the sale or manufacture or distribution of liquor on the Reservation;

d. To hold hearings on violations of this Liquor Ordinance or for the issuance or revocation of licenses hereunder pursuant to sections 501 through 506 ;

e. To bring suit in the appropriate court to enforce this Liquor Ordinance as necessary;

f. To determine and seek damages for violation of this Liquor Ordinance;

g. To make such reports as may be required by the General Council;

h. To collect taxes and fees levied or set by the Tribal Business Council, and to keep accurate records, books and accounts; and

i. To exercise such other powers as are delegated by the General Council.

302. *Limitation on Powers*. In the exercise of its powers and duties under this Liquor Ordinance, the Tribal Business Council and its individual members shall not accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee.

303. *Inspection Rights*. The premises on which Liquor is sold or distributed shall be open for inspection by the Tribal Business Council or its designee at all reasonable times, which includes

the hours the business is open to the public, for the purposes of ascertaining whether the rules and regulations of this Liquor Ordinance are being followed.

Sales of Liquor

401. *Tribal Liquor License Required; Tribally Owned Businesses*. No sales of Alcoholic Beverages shall be made within the exterior boundaries of the Reservation, except at a tribally-licensed or tribally-owned business operated on tribal land within the exterior boundaries of the Reservation. Nothing in this section shall prohibit a tribal licensee or the Tribe from purchasing liquor from an off-reservation source for resale on the Reservation or the delivery to the Tribe for a tribal licensee of liquor purchased from off-reservation sources for resale on the Reservation.

402. *Sale only on Tribal Land*. All Liquor sales within the exterior boundaries of the Reservation shall be on Tribal Land, including leases thereon.

403. *Sales for Cash*. All Liquor sales within the Reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of ATM cards, debit cards, or major credit cards such as MasterCard, Visa, American Express, etc.

404. *Sale for Personal Consumption*. All sales shall be for the personal use and consumption of the purchaser. Resale of any Alcoholic Beverage purchased within the exterior boundaries of the Reservation is prohibited. Any person who is not licensed pursuant to this Liquor Ordinance who purchases an Alcoholic Beverage within the boundaries of the Reservation and sells it, whether in the original container or not, shall be guilty of a violation of this Liquor Ordinance and shall be subject to paying damages to the Tribe as set forth herein.

Licensing

501. *Applicable for Tribal Liquor License Requirements*. No Tribal license shall be issued under this Liquor Ordinance except upon a sworn application filed with the Tribal Business Council containing a full and complete showing of the following:

a. Satisfactory proof that the applicant is or will be duly licensed by the State of California to sell Alcoholic Beverages;

b. Satisfactory proof that the applicant is of good character and reputation among the people of the Reservation and that the applicant is financially responsible;

c. The description of the premises in which the Alcoholic Beverages are to be

sold and proof that the applicant is the owner of such premises or the lessee of such premises for at least the term of the license;

d. Agreement by the applicant to accept and abide by all conditions of the Tribal license.

e. Payment of a fee established from time to time by the Tribal Business Council. Said fee is established initially at \$250.00 but can be changed by Tribal Business Council resolution at any time;

f. Satisfactory proof that neither the applicant, nor the applicant's spouse, nor any principal owner, officer, shareholder, or director of the applicant, if an entity, has ever been convicted of a felony or a crime of moral turpitude as defined by the laws of the State of California;

g. Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where Alcoholic Beverages are to be sold for at least 30 days prior to consideration by the Tribal Business Council and has been published at least twice in such local newspaper serving the community that may be affected by the license as the Tribal Business Council may authorize. The notice shall state the date, time, and place when the application shall be considered by the Tribal Business Council pursuant to section 502 of this ordinance.

502. *Hearing on Application for Tribal Liquor License*. All applications for a Tribal liquor license shall be considered by the Tribal Business Council in open session at which the applicant, his, her or its attorney, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Tribal Business Council, by secret ballot, shall determine whether to grant or deny the application based on: (1) Whether the requirements of section 501 have been met; and (2) whether the Tribal Business Council, in its discretion, determines that granting the license is in the best interest of the Tribe. In the event that the applicant is a member of the Tribal Business Council, or the applicant is a member of the immediate family of a Tribal Business Council member, such Tribal Business Council member shall not vote on the application or participate in the hearings as a Tribal Business Council member.

503. *Temporary Permits*. The Tribal Business Council or its designee may grant a temporary permit for the sale of Liquor for a period not to exceed three (3) days to any person applying to the same in connection with a Tribal or community activity, provided that the

conditions prescribed in section 504 of this Liquor Ordinance shall be observed by the permittee. Each permit issued shall specify the types of Alcoholic Beverages to be sold. Further, a fee of \$50.00 will be assessed on temporary permits.

504. *Conditions of a Tribal Liquor License.* Any Tribal liquor license issued under this Liquor Ordinance shall be subject to such reasonable conditions as the Tribal Business Council shall fix including but not limited to the following:

a. The license shall be for a term not to exceed one (1) year.

b. The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.

c. The licensed premises shall be subject to patrol by Tribal law enforcement personnel and such other law enforcement officials as may be authorized under federal, California, or Tribal law.

d. The licensed premises shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours.

e. Subject to the provisions of subsection "g" of this section, no Liquor or Alcoholic Beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of California, and in accordance with the hours fixed by the Tribal Business Council, provided that the licensed premises shall not operate or open earlier, or operate or close later, than is permitted by the laws of the State of California.

f. No liquor shall be sold within 200 feet of a polling place on Tribal election days, or when a referendum is held of the people of the Tribe, and including special days of observation as designated by the Tribal Business Council.

g. All acts and transactions under authority of the Tribal liquor license shall be in conformity with the laws of the State of California, with this Liquor Ordinance, and with any Tribal liquor license issued pursuant to this Liquor Ordinance.

h. No person under the age permitted under the laws of the State of California shall be sold, served, delivered, given, or allowed to consume Alcoholic Beverages in the licensed establishment or area.

i. There shall be no discrimination in the operations under the tribal license by reason of race, color, or creed.

505. *License Not a Property Right.* Notwithstanding any other provision of

this Liquor Ordinance, a Tribal liquor license is a mere permit for a fixed duration of time. A Tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a Tribal liquor license give rise to a presumption of legal entitlement to a license/permit in a subsequent time period.

506. *Assignment or Transfer.* No Tribal license issued under this Liquor Ordinance shall be assigned or transferred without the prior written approval of the Tribal Business Council expressed by formal resolution.

Rules, Regulations, and Enforcement

601. *Sale or Possession With Intent to Sell Without a Permit.* Any person who shall sell or offer for sale or distribute or transport in any manner, any Liquor in violation of this Liquor Ordinance, or who shall operate or shall have Liquor in his possession with intent to sell or distribute without a license or permit, shall be guilty of a violation of this Liquor Ordinance.

602. *Purchases From Other Than Licensed or Allowed Facilities.* Any person who, within the boundaries of the Reservation, buys Liquor from any person other than at a properly licensed or allowed facility shall be guilty of a violation of this Liquor Ordinance.

603. *Sales to Persons Under the Influence of Liquor.* Any person who sells Liquor to a person apparently under the influence of Liquor shall be guilty of a violation of this Liquor Ordinance.

604. *Consuming Liquor in Public Conveyance.* Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee of such person who shall knowingly permit any person to drink any Liquor in any public conveyances shall be guilty of an offense. Any person who shall drink any Liquor in a public conveyance shall be guilty of a violation of this Liquor Ordinance.

605. *Consumption or Possession of Liquor by Persons Under 21 Years of Age.* No person under the age of 21 years shall consume, acquire or have in his possession any Alcoholic Beverage. No person shall permit any other person under the age of 21 years to consume Liquor on his premises or any premises under his control except in those situations set out in this Section. Any person violating this Section shall be guilty of a separate violation of this Liquor Ordinance for each and every drink so consumed.

606. *Sales of Liquor to Persons Under 21 Years of Age.* Any person who shall sell or provide Liquor to any person

under the age of 21 years shall be guilty of a violation of this Liquor Ordinance for each sale or drink provided.

607. *Transfer of Identification to Minor.* Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain Liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this Liquor Ordinance.

608. *Use of False or Altered Identification.* Any person who attempts to purchase an Alcoholic Beverage through the use of a false or altered identification shall be guilty of violating this Liquor Ordinance.

609. *Acceptable Identification.* Where there may be a question of a person's right to purchase Liquor by reason of his or her age, such person shall be required to present any one of the following cards of identification which shows his or her correct age and bears his or her signature and photograph: (1) A driver's license of any state or identification card issued by any state department of motor vehicles; (2) United States active duty military; or (3) a passport.

610. *Violations of this Liquor Ordinance.* Any person guilty of a violation of this Ordinance shall be liable to pay the Tribe a civil fine not to exceed \$500 per violation as civil damages to defray the Tribe's cost of enforcement of this Liquor Ordinance. In addition to any penalties so imposed, any license or permit issued hereunder may be suspended or canceled by the Tribal Business Council for the violation of any of the provisions of this Liquor Ordinance, or of the Tribal license or permit, upon hearing before the Tribal Business Council after 10 days notice to the licensee. The decision of the Tribal Business Council shall be final and no appeal therefrom allowed. The Tribal Business Council shall grant all persons in any hearing regarding violations, penalties, or license suspensions under this Ordinance all the rights and due process granted by the Indian Civil Rights Act, 25 U.S.C. 1302, *et seq.* Notice of a Tribal Business Council hearing regarding an alleged violation of this Ordinance shall be given to the affected individual(s) or entity(ies) at least 10 days in advance of the hearing. The notice will be delivered in person or by certified mail with The Tribal Business Council retaining proof of service. The notice will set out the right of the alleged violator to be represented by counsel retained by the alleged violator, the right to speak and to present witnesses and to cross-examine any witnesses against them.

611. *Possession of Liquor Contrary to This Liquor Ordinance.* Alcoholic Beverages which are possessed contrary to the terms of this Liquor Ordinance are declared to be contraband. Any Tribal agent, employee, or officer who is authorized by the Tribal Business Council to enforce this Section shall have the authority to, and shall, seize all contraband.

612. *Disposition of Seized Contraband.* Any officer seizing contraband shall preserve the contraband in accordance with the appropriate California law code. Upon being found in violation of this Liquor Ordinance by the Tribal Business Council, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

Taxes

701. *Sales Tax.* There is hereby levied and shall be collected a tax on each sale of Alcoholic Beverages on the Reservation in the amount of one percent (1%) of the amount actually collected. The tax imposed by this section shall apply to all retail sales of Liquor on the Reservation and shall preempt any tax imposed on such liquor sales by the State of California.

702. *Payment of Taxes to Tribe.* All taxes from the sale of Alcoholic Beverages on the Reservation shall be paid over to the Trust Agent of the Tribe.

703. *Taxes Due.* All taxes from the sale of Alcoholic Beverages on the Reservation are due within thirty (30) days of the end of the calendar quarter for which the taxes are due.

704. *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of Alcoholic Beverages as well as for the taxes collected.

705. *Audit.* As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of Alcoholic Beverages on the Reservation. Said review or audit may be done annually by the Tribe through its agents or employees whenever, in the opinion of the Tribal Business Council, such a

review or audit is necessary to verify the accuracy of reports.

Profits

801. *Disposition of Proceeds.* The gross proceeds collected by the Tribal Business Council from all licensing provided under this Liquor Ordinance, or the imposition of civil penalties for violating this Ordinance, or from the taxation of the sales of Alcoholic Beverages on the Reservation, shall be distributed as follows:

a. For the payment of all necessary personnel, administrative costs, and legal fees for the operation and its activities.

b. The remainder shall be turned over to the Trust Account of the Tribe.

Severability and Miscellaneous

901. *Severability.* If any provision or application of this Liquor Ordinance is determined upon review by a court of competent jurisdiction to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

902. *Prior Enactments.* Any and all prior ordinances, resolutions or enactments of the Tribal Business Council which are inconsistent with the provisions of this Liquor Ordinance are hereby rescinded.

903. *Conformance with Tribal, State and Federal Law.* This Ordinance conforms with all Rancheria tribal law and governing documents such as the Constitution and By-Laws. All provisions and transactions under this Ordinance shall be in conformity with California State law regarding alcohol to the extent required by 19 U.S.C. 1161 and with all federal laws regarding alcohol in Indian country.

904. *Enforcement.* All actions brought by the Tribal Business Council to enforce the provisions of this Ordinance shall be filed in the Tribal Court of the Susanville Indian Rancheria. In the absence of a tribal court, said actions shall be filed in Federal court in the Eastern District of California and be appealable in the federal court system. If the federal court should determine that it lacks jurisdiction over said

action, it shall be filed in the California state court in Lassen County with the subject matter jurisdiction and venue over the action. The first court system to have jurisdiction over an enforcement action, analyzing first, tribal court; second, Federal court; and third, state courts shall have exclusive jurisdiction over such actions.

905. *Effective Date.* This Liquor Ordinance shall be effective after the Secretary of the Interior certifies the Ordinance and publishes it in the **Federal Register**.

Amendment

1001. *Amendment or Repeal.* This Ordinance may be amended or repealed by a majority vote of the Tribal Business Council or by the General Council at a properly held meeting. Amendments of this Ordinance need not be published in the **Federal Register** to become effective.

Sovereign Immunity.

1101. Nothing contained in this Liquor Ordinance is intended to nor does in anyway limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action.

Dated: August 18, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97-22534 Filed 8-22-97; 8:45 am]

BILLING CODE 4310-02-U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance Rate Adjustment: Crow Irrigation Project, Montana

ACTION: Notice of proposed Irrigation Operation and Maintenance (O&M) Rate Adjustment.

SUMMARY: The Bureau of Indian Affairs proposes to change the assessment rates for operating and maintaining the Crow Irrigation Project for 1998, 1999, 2000, 2001, and subsequent years from the current rate of \$11.60 per acre. The following table illustrates the impact of the rate adjustment:

CROW IRRIGATION PROJECT

[Irrigation rate per assessable acre]

Year	Present 1997	Proposed 1998	Proposed 1999	Proposed 2000	Proposed 2001
Rate	\$11.60	\$14.50	\$15.00	\$15.50	\$16.00