

ORDINANCE NO. 03.03.2011.01

AN ORDINANCE OF THE BIG VALLEY BAND OF POMO INDIANS ADOPTED AS AN URGENCY MEASURE ESTABLISHING A BAN ON THE INSTALLATION OF SMARTMETERS AND RELATED EQUIPMENT WITHIN THE JURISDICTION OF THE BIG VALLEY BAND OF POMO INDIANS TRIBAL GOVERNMENT, AND DECLARING THE URGENCY THEREOF

The Business Committee of the Big Valley Band of Pomo Indians of the Big Valley Rancheria does ordain as follows:

1. Findings:

A. The Big Valley Band of Pomo Indians of the Big Valley Rancheria (the ‘Tribe’), through its governmental powers granted by its Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection of its Tribal membership.

B. In addition, the Tribe reserves its inherent sovereignty on all matters within its jurisdiction.

C. Concerns about the impact and accuracy of Smart Meters have been raised nationwide, leading the Maryland Public Service Commission to deny permission on June 21, 2010 for the deployment of Smart Meters in that state. The CPUC currently has pending before it a petition from the city and county of San Francisco, the Town of Fairfax, and other municipalities, seeking to delay the implementation of Smart Meters until their accuracy can be evaluated.

D. Major problems and deficiencies with Smart Meters in California have been brought to the attention of the Big Valley Band of Pomo Indians Business Committee, including PG&E’s conformation that Smart Meters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges and PG&E’s records outlined “risks” and “issues,” including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors.

E. The ebb and flow of electricity into homes discloses detailed information about the private details of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household’s activities: when people wake up, when they come home, when they go on vacation, and even when they bathe or shower. Smart Meters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by unauthorized persons or entities and as such, pose an unreasonable intrusion of utility customers’ privacy rights and security interests. Indeed, the fact that the California Public Utilities Commission (CPUC) has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme court in *Kyllo v. United States* (2001), 533 U.S. 27.

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F. Significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in Smart Meters, which will be in every house, apartment and business, thereby adding additional man-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles.

G. FCC safety standards exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short-term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc. Because of untested technology, international scientists, environmental agencies, advocacy groups, and doctors are calling for the use of caution in wireless technologies.

H. Because of potential risks to the health, safety and welfare of the people of the Big Valley Rancheria are so great, the Big Valley Band of Pomo Indians Business Committee wishes to adopt a Rancheria wide ban on the installation of Smart Meters and related equipment within the Big Valley Rancheria boundaries and jurisdiction.

I. There is a current and immediate threat to Tribal members health, safety and welfare because, without this urgency ordinance, Smart Meters or supporting equipment will be installed or constructed or modified without PG&E complying with the CPUC process for consultation with the local jurisdiction, the Tribe's Code requirements, and subjecting the Tribal members of the Big Valley Rancheria to the privacy, security, health, accuracy and consumer fraud risks of the unproven Smart Meter technology.

J. The Big Valley Band of Pomo Indians Business Committee hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restriction on such construction and installation in order to protect the public health, safety, and general welfare.

2. Ban of Smart Meters within the boundaries of the Big Valley Rancheria

A. No Smart Meter may be installed in or on any home, apartment, trailer, or business within the boundaries and jurisdiction of the Big Valley Rancheria, and no equipment related to Smart Meters may be installed in, on, under or above any public street or public right of way within the boundaries of the Big Valley Rancheria.

B. Violations of this Ban may be charged as administrative citations, at the discretion of the Big Valley Band of Pomo Indians Business Committee. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by the Business Committee.

C. The Tribal Administrator is hereby authorized to direct all Tribal departments and businesses to facilitate compliance with the purpose and intent of this Ordinance using the enforcement powers deemed necessary by the Business Committee.

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3. Effectiveness

This Ordinance, being adopted as an urgency measure for the immediate protection of public safety, health and general welfare of the Tribal members of the Big Valley Rancheria and containing a declaration of facts constituting the urgency, upon passage by a majority of the Business Committee, shall take effect immediately upon its adoption and shall continue in effect until modified or rescinded at a duly convened meeting of the Big Valley Band of Pomo Indians of the Big Valley Rancheria Business Committee meeting.

4. Severability

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end the provisions of this chapter are severable.

5. Publication

Copies of the foregoing ordinance shall, within fifteen days after its passage and adoption, be posted in public places on the Big Valley Rancheria.

CERTIFICATION

The signatures below certify that the above resolution was adopted at a duly called meeting, at which quorum was established on _____ by a vote of ____ FOR, ____ OPPOSED, and ____ Abstaining.

Valentino Jack, Tribal Chairman

Date

Attested to: Charmaine Mankiller, Tribal Secretary

Date