

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****Endangered and Threatened Species Permit Applications**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

*Permit Number:* TE 011301.

*Applicant:* WDH Ecological Services, Benton, Kentucky (William D. Hendricks, P.I.).

The applicant requests a permit to take (capture and release, radio-telemetry) the following endangered bat species: Ozark big-eared bat (*Corynorhinus* (=Plecotus) *townsendii ingens*), Virginia big-eared bat (*Corynorhinus* (=Plecotus) *townsendii virginianus*), Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), Mexican long-nosed bat (*Leptonycteris nivalis*), and Sanborn's long nosed bat (*Leptonycteris curasoae* (=sanborni) *yerbabuena*). Applicant requests authority to conduct activities in the states of Arkansas, Alabama, California, Illinois, Indiana, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Tennessee, Texas, Virginia, and West Virginia. Activities are proposed for the enhancement of survival of the species in the wild.

*Permit Number:* TE 842849.

*Applicant:* Davey Resource Group, Kent, Ohio (Michael Johnson, P.I.).

Applicant requests an amendment to permit number TE 842849 to expand scope of authorized activities. Permit currently authorizes take (capture and release, radio-telemetry) of Indiana bat (*Myotis sodalis*) in Ohio; applicant requests additional Ohio sites and Greenup County, Kentucky, site be added as authorized locations for permitted activities. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who

submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056. Telephone: (612/713-5343); FAX: (612/713-5292).

Dated: May 3, 1999.

**T.J. Miller,**

*Acting Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

[FR Doc. 99-11728 Filed 5-7-99; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Elk Valley Rancheria Liquor Licensing Ordinance**

**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, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983). I certify that the Elk Valley Rancheria Liquor Licensing Ordinance was duly adopted and certified by Resolution No. 97-16 of the Elk Valley Tribal Council on July 9, 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 as of May 10, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jim James, Office of Tribal Services, Division of Tribal Government Services, 1849 C Street, NW, MS 4631 MIB, Washington, DC 20240-4401; telephone (202) 208-4400.

**SUPPLEMENTARY INFORMATION:** The Elk Valley Rancheria Liquor Licensing Ordinance is to read as follows:

**Elk Valley Rancheria Liquor Licensing Ordinance**

An Ordinance of the Tribal Council of the Elk Valley Rancheria Regulating the sale, distribution and control of alcoholic beverages on the Elk Valley Rancheria.

*Chapter 1. General Provisions*

Section 1.1 *Declaration of findings.* The Tribal Council of the Elk Valley Rancheria hereby finds as follows:

A. Under the Constitution of the Tribe, Article V, Section 1(1), the Tribal Council is charged with the duty of protecting the safety and welfare of the Elk Valley Rancheria.

B. The Introduction, possession and sale of alcoholic beverages on the Elk Valley Rancheria is a matter of special concern to the tribe.

C. Federal law leaves to Tribes the decision regarding when and to what extent alcoholic beverage transactions shall be permitted on Indian reservations.

D. Present day circumstances make a complete ban on alcoholic beverages within the Elk Valley Rancheria ineffective and unrealistic. At the same time, a need still exists for strict Tribal regulation and control over alcoholic beverage distribution.

E. The enactment of an Ordinance governing alcoholic beverage sales on the Elk Valley Rancheria and providing for the purchase and sale of alcoholic beverages through Tribally licensed outlets will increase the ability of the Tribal government to control the distribution, sale, and possession of liquor on the Elk Valley Rancheria, and at the same time will provide an important and urgently needed source of revenue for the continued operation of the Tribal government and delivery of Tribal governmental services.

Section 1.2 *Declaration of Policy.* Under the inherent sovereignty of the Tribe, the Elk Valley Rancheria Liquor Licensing Ordinance shall be deemed an exercise of the Tribe's power, for the protection of the welfare, health, peace, morals, and safety of the people of the Tribe, and all its provisions shall be liberally construed for the accomplishment of that purpose, and it is declared to be public policy that the sale and possession of alcoholic beverages affects the public interest of the people, and should be regulated to the extent of prohibiting all sale and possession of acholic beverages, except as provided in this Ordinance. In order to provide for Tribal control over liquor sales and possession within the Reservation, and to provide a source of revenue for the continued operation of the Tribal government and the delivery of Tribal governmental services, the Tribal Council promulgates this Ordinance.

Section 1.3 *Repeal of Prior Liquor Ordinances.* To the extent not previously repealed, either expressly or by implication, any prior Liquor

Ordinance remaining in effect is hereby expressly repealed.

Section 1.4 *Short Title*. This Ordinance shall be known and cited as the "Elk Valley Rancheria Liquor Licensing Ordinance."

Section 1.5 *Purpose*. The purpose of this Ordinance is to prohibit the importation, manufacture, distribution and sale of alcoholic beverages on the Elk Valley Rancheria, except pursuant to a license issued by the Tribal Council under the provisions of this Ordinance.

Section 1.6 *Sovereign Immunity preserved*. Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Elk Valley Rancheria. No officer or employee of the Elk Valley Rancheria is authorized nor shall he/she attempt to waive the immunity of the Tribe under the provisions of this ordinance unless such officer or employee has express, specific written authorization from the Tribal Council.

Section 1.7 *Applicability within the Reservation*. This Ordinance shall apply to all persons within the exterior boundaries of the Elk Valley Rancheria consistent with the applicable federal Indian liquor laws.

Section 1.8 *Interpretation and Findings*. The Tribal Council, in the first instance, may interpret any ambiguities contained in this Ordinance.

Section 1.9 *Application of 18 U.S.C. 1161*. The importation, manufacture, distribution and sale of alcoholic beverages on the Elk Valley Rancheria shall be in conformity with this Ordinance and in conformity with the laws of the State of California as that phrase or term is used in 18 U.S.C. 1161.

Section 1.10 *Severability*. If any part or provision of this Ordinance or the application thereof to any persons or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end the provisions of this Ordinance are severable.

Section 1.11 *Effective Date*. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

## Chapter 2. Definitions

Section 2.1 *Interpretation*. In construing the provisions of this Ordinance, the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise.

Section 2.2 *Alcohol*. "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Section 2.3 *Alcoholic Beverage*. "Alcoholic beverage" includes all alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits wine or beer, and which contains one half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances. It shall be interchangeable in this Ordinance with the term "liquor".

Section 2.4 *Beer*. "Beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer, and also includes sake, otherwise known as Japanese rice wine.

Section 2.5 *Tribal Council*. "Tribal Council" means the governing body of the Elk Valley Rancheria as provided for under article IV, Sect. 1 of the Tribal Constitution.

Section 2.6 *Distilled Spirits*. "Distilled spirits" means any alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

Section 2.7 *Importer*. "Importer" means any person who introduces alcohol or alcoholic beverages into the Elk Valley Rancheria from outside the exterior boundaries thereof for the purpose of sale or distribution within the Rancheria, provided however, the term importer as used herein shall not include a wholesaler licensed by any state or tribal government selling alcoholic beverages to a seller licensed by a state or tribal government to sell at retail.

Section 2.8 *Liquor License*. "Liquor license" means a license issued by the Tribal Council under the provision of this Ordinance authorizing the sale, manufacture, or importation of alcoholic beverages on or within the Rancheria, consistent with federal law.

Section 2.9 *Manufacturer*. "Manufacturer" means any persons engaged in the manufacture of alcohol or alcoholic beverages.

Section 2.10 *Person*. "Person" means any individual, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, corporation,

association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and any other Indian tribe, band or group, whether recognized by the United States Government or otherwise. The term shall also include the business enterprises of the Tribe. It shall be interchangeable in the Ordinance with the term "seller" or "licensee."

Section 2.11 *Rancheria*. "Rancheria" means all lands within the exterior boundaries of the Elk Valley Rancheria and such other lands as may hereafter be acquired by the Tribe, whether within or without said boundaries, under any grant, transfer, purchase, gift, adjudication, executive order, Act of Congress, or other means of acquisition.

Section 2.12 *Sale*. "Sale" means the exchange of property and/or any transfer of the ownership of, title to, or possession of property for a valuable consideration, exchange or barter, in any manner or by any means whatsoever. It includes conditional sales contracts, leases with options to purchase, and any other contract under which possession of property is given to the purchaser, buyer, or consumer but title is retained by the vendor, retailer, manufacturer, or wholesaler, as security for the payment of the purchase price. Specifically, it shall include any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order. The term "sale" shall also specifically include the transfer of alcoholic beverages from one person to another pursuant to a complimentary or free beverage policy, promotion, plan, or scheme of the seller.

Section 2.13 *Seller*. "Seller" means any person who, while within the exterior boundaries of the Rancheria, sells, solicits or receives an order for any alcohol, alcoholic beverages, distilled spirits, beer, or wine.

Section 2.14 *Wine*. "Wine" means the product obtained from the normal alcoholic fermentation of the juice of the grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made, and other rectified wine products.

## Chapter 3. Prohibition of the Unlicensed Sale of Liquor

Section 3.1 *Prohibition of the Unlicensed Sale of Liquor*. No person shall import for sale, manufacture,

distribute or sell alcoholic beverages within the Reservation without first applying for and obtaining a written license from the Tribal Council issued in accordance with the provisions of this Ordinance.

Section 3.2 *Authorization to Sell Liquor*. Any person for and obtaining a liquor license under the provisions of this Ordinance shall have the right to engage only in those liquor transactions expressly authorized by such license and only at those specific places or areas designated in said license.

Section 3.3 *Types of Licenses*. The Tribal Council shall have the authority to issue the following types of liquor licenses within the Reservation:

A. "Retail on-sale general license" means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license.

B. "Retail on-sale beer and wine license" means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license.

C. "Retail off-sale general license" means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer off the premises or at a location other than the one designated in the license.

D. "Retail off-sale beer and wine license" means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer off the premises or at a location other than the one designated in the license.

E. "Manufacturers license" means a license authorizing the applicant to manufacture alcoholic beverages for the purpose of sale on the Rancheria.

#### Chapter 4. Applications for Licenses

Section 4.1 *Application Form and Content*. An application for licensing under this Ordinance shall be made to the Tribal Council and shall contain the following information:

A. The name and address of the applicant. In the case of a corporation, the names and addresses of all of the principal officers, directors and stockholders of the corporation. In the case of a partnership, the name and address of each partner.

B. The specific area, location and/or premises for which the license is applied for.

C. The type of liquor license applied for (i.e. retail on-sale general license, etc.).

D. Whether the applicant has a California state liquor license.

E. A statement by the applicant to the effect that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this Ordinance or any of the provisions of the California Alcoholic Beverage Control Act.

F. The signature and fingerprint of the applicant. In the case of a partnership, the signature and fingerprint of each partner. In the case of a corporation, the signature and fingerprint of each of the officers of the corporation under the seal of the corporation. In the case of a tribal business enterprise, the signature and fingerprint of the officers of the enterprise or any persons maintaining day-to-day control and management of the enterprise, whichever is applicable.

G. The application shall be verified under oath, notarized and accompanied by the license fee required by this Ordinance.

Section 4.2 *Fee Accompany Application*. The Tribal Council shall by resolution establish a fee schedule for the issuance, renewal and transfer of the following types of licenses:

- A. Retail on-sale general license;
- B. Retail on-sale beer and wine license;
- C. Retail off-sale general license;
- D. Retail off-sale beer and wine license; and
- E. Manufacturers license.

Section 4.3 *Investigation*. Upon receipt of an application for the issuance, transfer or renewal of a license and the application fee required herein, the Tribal Council shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of the Ordinance have been complied with, and shall investigate all matters connected therewith which may affect the health, safety and welfare of the Tribe.

Section 4.4 *Denial of Application*. An application shall not be denied, except for good cause. However, the Tribal Council shall deny an application for issuance, renewal, or transfer of a license if either the applicant or the proposed premises:

- A. has not complied with application procedures;
- B. does not meet application requirements;
- C. would tend to create a law enforcement problem;
- D. obtained a license on the basis of false, misleading, or misrepresented information; or
- E. fails to qualify for the issuance of findings of the Tribal required by Section 5.2 of this Ordinance.

#### Chapter 5. Issuance, Renewal and Transfer of Licenses

Section 5.1 *Public Hearing*. Upon receipt of proper application for issuance, renewal or transfer of a license, and the payment of all fees required under this Ordinance, the Secretary of the Tribal Council shall set the matter for a public hearing. Notice of the time and place of the hearing shall be given to the applicant and the public at least ten calendar days before the hearing. Notice shall be given to the applicant by prepaid U.S. mail at the address listed in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on the Rancheria. The notice published in the newspaper shall include the name of the applicant and the type of license applied for and a general description of the area where liquor will be sold. At the hearing, the Tribal Council shall hear from any person who wishes to speak for or against the application. The Tribal Council shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony.

Section 5.2 *Tribal Council Action on the Application*. Within thirty (30) days of the conclusion of the public hearing, the Tribal Council shall act on the matter. The Tribal Council shall have the authority to deny, approve, or approve with conditions the application. Before approving the application, the Tribal Council shall find: (1) that the applicant has met all procedural requirements of the application process; (2) that investigation of the application has not produced any information that would disqualify the applicant from obtaining a license under this Ordinance; (3) that the site for the proposed premises has adequate parking, lighting, security and ingress and egress so as not to adversely affect adjoining properties or businesses; and (4) that the sale of alcoholic beverages at the proposed premises is consistent with the Tribe's Zoning Ordinance.

Upon approval of an application the Tribal Council shall issue a license to the applicant in a form to be approved from time to time by the Tribal Council by resolution. All businesses shall post their Tribal liquor license issued under the Ordinance in a conspicuous place upon the premises where alcoholic beverages are sold, manufactured or offered for sale.

Section 5.3 *Multiple Locations*. Each license shall be issued to a specific person. Separate license shall be issued for each of the premises of any business

establishment having more than one location.

**Section 5.4 Term of License.** Temporary license. All licenses issued by the Tribal Council shall be issued on a calendar year basis and shall be renewed annually; provided, however, that the Tribal Council may issue special licenses for the sale of alcoholic beverages on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering or similar occasion at a fee to be established by the Tribal Council by resolution.

**Section 5.5 Transfer of Licenses.** Each license issued or renewed under this Ordinance is separate and distinct and is transferable from the licensee to another person and/or from one premises to another premises only with the approval of the Tribal Council. The Tribal Council shall have the authority to approve, deny or approve with conditions any application for the transfer of any license. In the case of a transfer to a new person, the application for transfer shall contain all of the information required of an original applicant under Section 4.1 of this Ordinance. In the case of a transfer to a new location, the application shall contain an exact description of the location where the alcoholic beverages are proposed to be sold.

#### **Chapter 6. Revocation of Licenses**

**Section 6.1 Revocation of License.** The Tribal Council shall revoke a license upon any of the following grounds:

A. The misrepresentation of a material fact by an applicant in obtaining a license or a renewal thereof.

B. The violation of any condition imposed by the Tribal Council on the issuance, transfer, or renewal of a license.

C. A plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude under any federal or state law prohibiting or regulating the sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors.

D. The violation of any tribal Ordinance.

E. The failure to take reasonable steps to correct objectionable conditions on the licensee premises or any immediate adjacent area leased, assigned or rented by the licensee constituting a nuisance within a reasonable time after receipt of a notice to make such corrections has been received from the Tribal Council or its authorized representative.

**Section 6.2 Accusations.** The Tribal Council on its own motion, through the adoption of an appropriate resolution

meeting the requirements of this Section, or any person, may initiate revocation proceedings by filing an accusation with the Secretary of the Tribal Council. The accusation shall be in writing and signed by the maker, and shall state facts showing that there are specific grounds under this Ordinance which would authorize the Tribal Council to revoke the license or licenses of the licensee against whom the accusation is made. Upon receipt of any accusation which meets the foregoing requirements, the Secretary shall cause the matter to be set for hearing before the Tribal Council. Thirty days prior to the date set for the hearing, the Secretary shall mail a copy of the accusation along with a notice of the day and time of the hearing before the Tribal Council. The notice shall command the licensee to appear and show cause why the licensee's license should not be revoked. The notice shall state that the licensee has the right to file a written response to the accusation, verified under oath and signed by the licensee ten days prior to the hearing date.

**Section 6.3 Hearing.** Any hearing held on any accusation shall be held before a quorum of the Tribal Council under such rules of procedure as it may adopt. Both the licensee and the person filing the accusation, including the Tribe, shall have the right to present witnesses to testify and to present written documents in support of their positions to the Tribal Council. The Tribal Council shall render its decision within 60 days after the date of the hearing. The decision of the Tribal Council shall be final and non-appealable.

#### **Chapter 7. Enforcement**

**Section 7.1 General Penalties.** Any person adjudged to be in violation of this Ordinance shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500.00) for each such violation. The Tribal Council may adopt by resolution a separate schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of tribal members. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars (\$500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties which may hereafter be imposed in conformity with federal law by separate Chapter, or provision of this Ordinance or by a separate Ordinance adopted by the Tribal Council.

**Section 7.2 Initiation of Action.** Any violation of this Ordinance shall constitute a public nuisance. The Tribal Council may initiate and maintain an action in tribal court or any court of competent jurisdiction to abate and permanently enjoin any nuisance declared under this Ordinance. Any action taken under this Section shall be in addition to any other penalties provided for this Ordinance.

Dated: April 30, 1999.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 99-11593 Filed 5-6-99; 8:45 am]

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## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Indian Affairs**

#### **Pueblo of Taos Liquor Ordinance**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

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**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. 99-04, enacting the Liquor Ordinance of the Pueblo of Taos was duly adopted by the Pueblo of Taos on February 25, 1999. The Ordinance provides for the regulation of the activities of the regulation, manufacture, distribution, possession, sale, and consumption of liquor on the Pueblo of Taos lands under the jurisdiction of the Pueblo of Taos, the provisions for criminal jurisdiction to be exercised in accordance with applicable Federal case law, statutes, and regulations.

**DATES:** This Ordinance is effective as of May 10, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jim D. James, Division of Tribal Government Services, 1849 C Street, NW, MS 4631-MIB, Washington, DC 20240-4001; telephone (202) 208-4400.

**SUPPLEMENTARY INFORMATION:** The Liquor Ordinance of the Pueblo of Taos is to read as follows:

#### **Taos Pueblo Liquor Ordinance**

##### **Section 1. Introduction**

A. **Title.** The title of this ordinance shall be the Taos Pueblo Liquor Ordinance.

B. **Authority.** This Ordinance is enacted in accordance with the inherent governmental powers of the Taos Pueblo, whose traditional law