

Pyramid Lake Paiute Tribe

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PUBLIC COMMENT

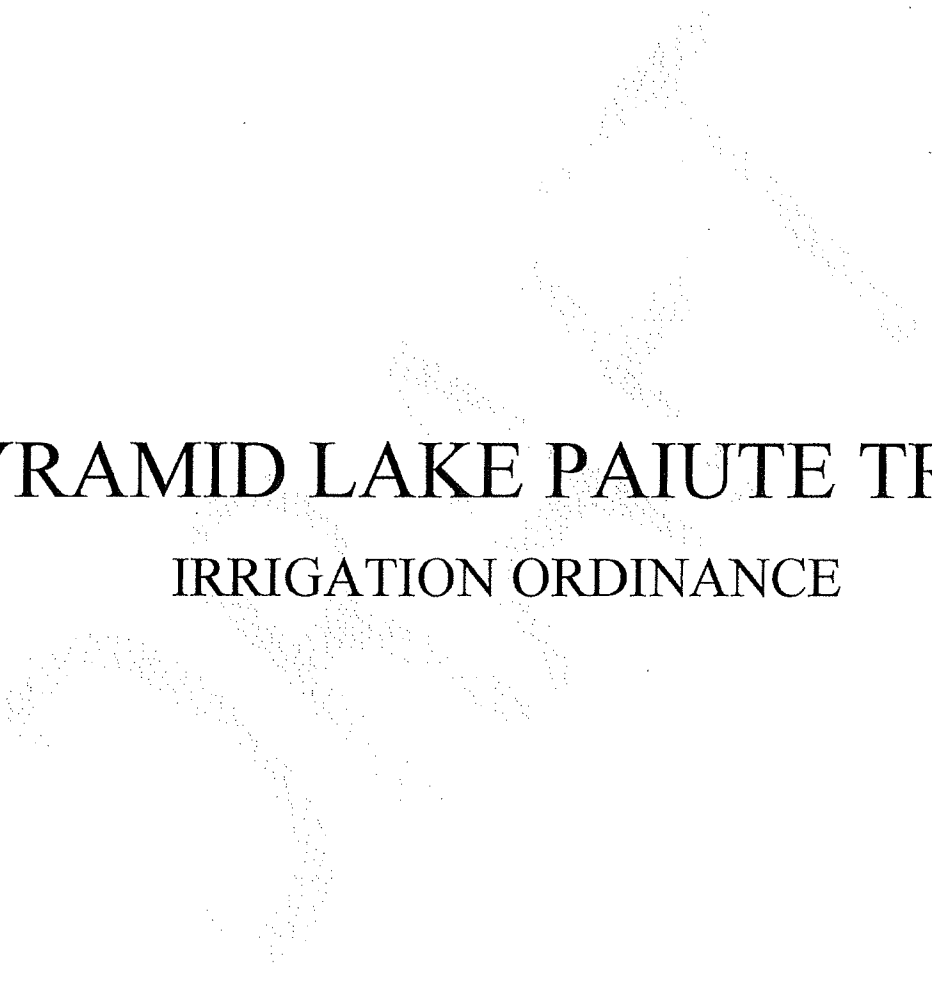
The Pyramid Lake Paiute Tribe is posting for Public Comment:

PYRAMID LAKE PAIUTE TRIBE IRRIGATION ORDINANCE

If you would like to receive a copy of the PLPT Irrigation Ordinance, contact the Tribal Secretary's Office at the numbers listed above.

**Submit comments to:
Pyramid Lake Paiute Tribe
ATTN: Tribal Secretary
PO Box 256
Nixon, NV 89424**

Comments will be accepted through October 15, 2021 by 4:30 p.m.



PYRAMID LAKE PAIUTE TRIBE
IRRIGATION ORDINANCE

Draft Ordinance Posted: September 16, 2021

ORDINANCE NUMBER: XX
PYRAMID LAKE PAIUTE TRIBE
IRRIGATION ORDINANCE

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Chapter 1: General Provisions

XX-01-010 Title

This Ordinance shall be known as the Pyramid Lake Paiute Tribe Irrigation Ordinance.

XX-01-020 Purpose

The purpose of this Ordinance is to:

- a. Set forth standard operating procedures for the irrigation operations, services, and maintenance of the Tribal irrigation systems on the Pyramid Lake Paiute Reservation.
- b. Deliver irrigation water to irrigable crop productive lands in a fair, consistent, and efficient manner to all Tribal irrigators of the Pyramid Lake Paiute Reservation (PLPR).

XX-01-030 Authority

This Ordinance is established and adopted by the Pyramid Lake Paiute Tribal Council pursuant to Article VI., Section 1(i) and (j) of the Pyramid Lake Paiute Tribe Constitution, and Article V. of the By-Laws of the Pyramid Lake Paiute Tribe (hereinafter, Tribe).

- a. In accordance with §171.120 of the U.S. Code of Federal Regulations (25 CFR) the Tribe is legally established to make rules, policies, and procedures to administer activities associated with the Tribal Irrigation Program that are consistent with the 25 CFR.

XX-01-040 Policy

It shall be the policy of the Tribe that the Administrator shall manage the operations of the Tribal Irrigation Program on the PLPR in a manner that Tribal irrigators are delivered irrigation water in a fair, consistent, and with efficiency; and that the operation and maintenance of the Tribal Irrigation Program be conducted in a manner that is financially responsible and cost effective.

XX-01-050 Definitions

- a. "Administrator" means the Tribal staff person authorized the responsibility of managing the Tribal Irrigation Program.
- b. "Annual Water Right Allocation" means the calculation of the total irrigable acres on the PLPR multiplied by the crop duty (4.0 to 4.5 acre-feet per acre) plus an additional 10% for new seed acreage for the respective primary ditch.
- c. "Irrigable Crop Productive Lands" means lands that are crop producing, that includes alfalfa, oats, barley, triticale, winter wheat, and grass hay.
- d. "Irrigation Fee" means the assessment applied to the irrigable acreage of a Tribal land assignment.

- e. "Orr Ditch Decree" means the 1944 federal district court Truckee River water right adjudication decree that establishes all Truckee River water right entitlements.
- f. "Primary Ditch" means the primary ditches receiving a direct diversion from the Truckee River, which include the Herman, Pierson, Proctor, Olinghouse #1 pump, Fellnagle, Gardella, Olinghouse #3 pump, and the Indian Ditch.
- g. "Pyramid Lake Paiute Reservation" means the lands within the exterior boundary of the PLPR, including all acquired properties within the exterior boundary of the PLPR whether in trust status or in fee status.
- h. "Rotation Schedule" means the planned schedule to deliver irrigation water to a Tribal irrigator's headgate on a rotational basis.
- i. "Tribal Irrigation Program" means the management, administration, operation, maintenance, and services involved with delivering irrigation water Tribal lands on the PLPR
- j. "Tribal Irrigator" is the individual assigned a Tribal land assignment or their designee in terms of a sublease of a Tribal land assignment.
- k. "Water Right Entitlement" means water right entitlement Claims #1 and #2 of the 1944 Orr Ditch Decree, adjudicated for the purpose of agriculture use and has and 1859 priority date on the Truckee River.
- l. "Water Waste" means the overuse of water when water overflows the borders of an irrigable crop producing area; it shall also include a Tribal irrigator not managing their irrigation water delivery on an irrigable crop producing area; and when there is a failure to communicate with the Irrigation Ditchrider or the next scheduled irrigator and the water is not being diverted or used.

Chapter 2: Pyramid Lake Paiute Tribe Irrigation Program

XX-02-010 Irrigation Program

- a. The Tribal Irrigation Program has been in continual operation in Nixon since 1917 when the Numana Dam construction was completed for irrigation diversion. The Indian ditch was then constructed serving the Tribal land assignments in the Nixon area. In 1951, the Tribe acquired the properties in Wadsworth along Hill Ranch Road, at James Ranch Road, and at West Truckee River Ranch Road. These properties are served by the Proctor ditch, the Olinghouse #1 pump, the Fellnagle ditch, and the Olinghouse #3 pump.
- b. In 1993, the Tribe acquired the former DePoali, Urrutia, Creen, and Crosby properties in Wadsworth. These properties are served by the Herman ditch and the Pierson ditch. The Crosby property (Big Bend) and the northern most property of the DePoali were irrigated with groundwater wells. The groundwater wells at the Big Bend Ranch and at the northern most property of the

Depaoli property and the Pierson ditch are no longer in operation. In 2011, the Tribe acquired the S-S Ranch which is served by the Gardella ditch. The Gardella ditch was washed out by high Truckee River flows, and it is no longer functional. In 2012, the Tribe acquired the Horgan Ranch which is located above the town of Sutcliffe at the Hardscrabble Creek drainage basin. In 2016, the Tribe acquired the Ceresola property located in Wadsworth and would be served by the Fellnagle ditch.

- c. The Orr Ditch Decree claim #1 water right has been used to irrigate the Tribal lands through the listed primary ditches. Claim #1 is adjudicated to serve the bottom lands or those lands that are served by the Truckee River diversions. Claim #2 is adjudicated to serve the bench lands on the reservation which are those lands above the Truckee River corridor, primarily Dodge Flat and the Nixon bench which is west of State Route (SR) 447 and south of SR 446. The Tribe has completed a temporary transfer of the unused portion of the Tribe's water rights claims #1 and #2 for instream flows in the lower Truckee River on the PLPR during less than and low flow water years. Ultimately, utilizing the entire Orr Ditch Decree water right entitlement claims #1 and #2 for agriculture purposes is a goal of the Tribal Irrigation Program.
- d. Groundwater rights for the Tribe exists. The purpose for use of groundwater rights include agriculture, municipal, industrial, and quasi-municipal (landscaping). A recent federal 9th Circuit Court of Appeals decision established that tribes maintain and possess reserved groundwater rights. To access groundwater on the PLPR, an aquifer must be identified, and an analysis conducted to determine the reliability of the aquifer to sustain the well depth with the pumping rate of the well at the well location. A groundwater model is a common method to determine the availability of groundwater for a certain location, its purpose, and development of the area. The well location will determine the extent of any impact to the groundwater resources distinct to the well head and aquifer source.
- e. The Tribal Irrigation Program has functioned for many years by receiving Bureau of Indian Affairs contract funding. The BIA funding for the Irrigation O&M contract in 1993. The Tribal Irrigation Program has since been funded by the Tribal General Fund. The Tribal Irrigation Program will continue to function as funding is available to support its operation. To become self-sustaining would mean increasing the irrigation assessment fee for all Tribal irrigators to an amount that provides the revenue necessary to support the seasonal operation of the Tribal Irrigation Program.
- f. An annual preseason Tribal irrigators meeting will be scheduled in March of each year and a post season Tribal irrigators meeting will be scheduled in October of each year.

The Tribe shall maintain its jurisdiction over all the functions and operations of the Tribal Irrigation Program. The Tribal Irrigation Program shall operate exclusive within the exterior boundary of the PLPR.

XX-02-030 Authority

The authority that exists on the PLPR for the operation of the Tribal Irrigation Program are the Orr Ditch Decree, federal laws and regulations, Tribal laws, Tribal regulations, and Tribal policies. The Tribe maintains its inherent sovereign authority over the lands within the exterior boundary of the PLPR. In order to manage the Tribal Irrigation Program, it shall utilize the necessary authority to enforce compliance with the terms and conditions of this Ordinance.

XX-02-040 Irrigation Assessment Fee

- a. The Tribal Council shall adopt regulations or policies that are needed to support the enforcement of the provisions contained in this Ordinance. The Tribe operates the Tribal Finance Department that manages the collection of the Tribal Irrigation Program assessment fees, which includes billing.
- b. The Irrigation Assessment Fee is exclusive to the Tribal Irrigation Program. Nothing shall be admitted from outside of the Tribal Irrigation Program. The Irrigation Assessment Fee is a direct transaction between the Tribal irrigator and the Tribal Irrigation Program.
- c. Fee Schedule: the current fee schedule is set at \$3.00 per acre of irrigable crop productive land for each Tribal irrigator. No headgate water delivery shall be made if payment is not received or that a payment arrangement is not completed with the Tribe.
- d. Billing: each spring prior to the designated irrigation season, Tribal Finance shall issue to each Tribal irrigator an irrigation assessment. It is expected that each Tribal irrigator shall pay or make arrangements to pay the irrigation assessment prior to being placed on the rotation schedule to receive a headgate water delivery. A receipt shall be provided to the Tribal irrigator for each Tribal irrigation assessment payment.
- e. Payment: notice of payment will be verified to assure the rotation schedule is established. Arrangements for payment may be made by a Tribal irrigator if full payment cannot be made. Any payment that is received over the amount due, a credit will be applied to subsequent billing adjusting any future amount that may be owed. Payment is required from each Tribal irrigator.
- f. Whenever there is a change proposed to the irrigation fee a public hearing shall be scheduled. All Tribal irrigators shall be notified of any proposed change to the irrigation fee. The public hearing will be scheduled not less than 30 days of the notice to Tribal irrigators, and all verbal and written comments shall be recorded, and each comment will be addressed. If the proposed change is continued, it shall be submitted to the Tribal Council for approval.

Chapter 3: Administrative Duties

XX-03-010 Tribal Council

The Tribal Council is the governing body of the Tribe in accordance with the authority of its Constitution and By-Laws and it that possesses the sovereign authority over all activities within the exterior boundary of the PLPR.

XX-03-020 Tribal Chairperson

The Tribal Chairperson acts as the chief executive officer of the Tribe and is expected to enforce compliance with laws, regulations, and policies enforceable and adopted by the Tribal Council.

XX-03-030 Administrator

The Administrator shall be responsible for confirming the irrigated acreage and that the irrigation assessment is issued to each Tribal irrigator with irrigable crop productive lands; shall be responsible to provide a Tribal irrigator roster and the acreage associated with each Tribal land assignment in the Tribal Irrigation Program; and shall be responsible for the management of the Tribal Irrigation Program assuring compliance with the terms and conditions of this Ordinance.

XX-03-040 Committee

The Tribal Council shall appoint a five (5) member Committee consisting of four (4) Tribal irrigators and one (1) at large Tribal member of the Tribe; it shall be responsible with an oversight function for the management of the Tribal Irrigation Program; it will provide advisement and guidance to the Tribal Irrigation Program and shall from time to time submit recommendations to the Tribal Council for necessary irrigation related action items; It shall meet monthly beginning in February and ending in October of each year; it may provide direction and recommendations for the management of the Tribal Irrigation Program; and it shall act in accordance with duties and responsibilities of this Ordinance.

XX-03-050 Irrigation Ditchrider

The Irrigation Ditchrider shall be responsible to manage the daily operation and maintenance of the Tribal irrigation systems on the PLPR during the designated annual irrigation season; will plan and schedule for irrigation water deliveries to Tribal irrigators; will be responsible for routine inspection of the irrigation systems and where it is necessary make repairs to the primary irrigation system ditches; and shall conduct an inspection of the Tribal irrigation systems prior to the beginning of the designated irrigation season.

XX-03-060 Tribal Irrigator

A Tribal irrigator shall be responsible to irrigate their irrigable crop productive land in an efficient and cost-effective manner in accordance with the rotation schedule established by the Irrigation Ditchrider;

the rotation schedule may be developed in coordination between the Irrigation Ditchrider and the Tribal irrigators; will be responsible for operation and maintenance of their ditches, from the primary ditch to their ditch and to their irrigable fields; must perform the necessary actions upon the irrigable crop producing land that advances conservation measures promoting water use efficiency; must confirm the acreages listed in their irrigation assessment fee as issued; and shall be responsible to pay the irrigation assessment issued to them prior to the delivery of any irrigation water to their respective headgate. Any dispute complaint shall be conducted and completed in accordance with Chapter 5.

Chapter 4: Management

XX-04-010 Irrigation Services

Irrigation services include:

- a. It is a goal of the Tribal Irrigation Program to maximize the use of the annual water right allocation by minimizing the use of primary ditch drainages back to the Truckee River; it shall manage the water delivery to prevent any waste of water by overuse and by the failure to physically manage an irrigation water delivery; tail water can be used by a Tribal irrigator to complete their irrigation or to charge their ditch with anticipation to receiving their irrigation water delivery.
- b. The delivery of irrigation water to a Tribal irrigator headgate in a timely manner in accordance with established rotation scheduling. Rotational scheduling may involve scheduling not less than 48 hours prior to any headgate delivery.
- c. Rotational schedules are based upon a Tribal irrigator being prepared to receive a water delivery to their headgate. When an irrigation water delivery is scheduled, the Tribal irrigator is expected to take their water in succession after the previous irrigator releases the water from completing their respective irrigating.
- d. The irrigation fee assessment is necessary to provide revenue to the Tribal Irrigation Program to offset costs associated with providing irrigation services to Tribal irrigators. The assessment fee also provides confirmation that a Tribal irrigator's irrigable crop producing lands will receive their headgate entitlement for the irrigation season.
- e. If a Tribal irrigator requires assistance from the Tribal Irrigation Program, a request must be made to the Irrigation Ditchrider or to the Administrator. Any material items such as headgates, jackgates, pipes, concrete, rock, or other items needed, the Tribal Irrigation Program will assess its inventory to determine if any material item can be provided to the Tribal irrigator.
- f. The Tribal Irrigation Program may inquire with purchasing any material item needed by a Tribal Irrigator and any inquiry shall obtain approval from the Administrator. The Tribal irrigator shall reimburse the Tribal Irrigation Program for any purchase made on their behalf for any material item.

- g. If Tribal Irrigation Program equipment is needed to complete the request for services, the request will be scheduled based on the equipment availability. If the equipment intends to be used by a Tribal irrigator, the equipment will be checked out after the equipment is serviced and inspected. The equipment shall be returned with a full fuel tank, and that the equipment shall be released to the Tribal irrigator with a full fuel tank. Any damage to the equipment shall be the operator responsibility and shall be responsible for the equipment repair or for the replacement of damaged parts.
- h. The primary ditches will be cleaned and cleared of debris. During extended periods of high winds, the primary ditches will be checked to assure debris is not causing any blockage of water flows in the primary ditches.
- i. The treatment of noxious weeds shall be conducted by the Tribal Natural Resources Department. Where it is permitted, the treatment may be conducted on a Tribal land assignment where the infested area can increase the infestation of noxious weeds. All areas of treatment shall be authorized by the Administrator.

XX-04-020 Equipment Use Fee

The equipment use fee shall be established at \$60 per hour of use for the backhoe and any large equipment. Any operator of the Tribal Irrigation Program equipment must be qualified to operate any such equipment. A standard equipment use form shall be signed by any person requesting use of the Tribal Irrigation Program equipment.

XX-04-030 The U.S. Federal Water Master

The United States Federal Water Master (FWM) is appointed by the federal district court to administer the court adjudicated 1944 Orr Ditch Decree and the 2008 Truckee River Operating Agreement. The FWM is responsible with issuing the annual water allocation the Tribe based upon the total irrigable acreage submitted. The total acreage is reported for each primary ditch and the diversion report reflects the current use and anticipated conclusion of the respective irrigation season.

XX-04-040 Irrigation Scheduling

Based upon the annual water allocation and decreed entitlement, the amount of water is sufficient to provide enough water for two irrigations for each crop harvest (cut). The amount of crop harvests is established at three cuttings per year with a final irrigation at the conclusion of the season for pasture.

- a. New seed shall be scheduled for irrigation each 10 days after the planting of the new seed. The additional 10% of water allocated amounts to receiving three irrigations for the new seed planting, after which the irrigation scheduling will be applied with regular irrigation scheduling.

- b. Regular irrigation scheduling shall be conducted maintaining not less than 21 days between irrigations. When a crop is harvested, the scheduling of water delivery shall be dependent upon the harvest completion. As the rotation schedule is developed and as a harvest is completed, irrigation scheduling will be completed in a fair and reasonable manner. Water delivery will not begin unless there is not less than three (3) irrigation deliveries scheduled on a primary ditch with more than 3 Tribal irrigators.
- c. Taking water when it is not on the schedule will subject the Tribal irrigator to be moved to bottom or to the end of the schedule.
- d. When it is discovered that a Tribal irrigator is wasting water, the water delivery shall be ended immediately, and water shall be delivered to the next Tribal irrigator on the schedule. All events where water is wasted it shall be documented.
- e. At no time should a Tribal irrigator experience a reduction or a stoppage of their water delivery. In the case of an emergency shut down, will the water turned off or shall the water be turned into another headgate. The Tribal irrigator subject to the shut off shall be notified of the emergency.

XX-04-050 Inspection

The Tribal Irrigation Program may inspect the use of water where extended irrigation time is experienced; it will offer recommendations to a Tribal irrigator when the irrigation operation may be causing a waste of water or a delay with the delivery of irrigation water to their irrigable crop producing lands; it may use its resources to assist where it can provide an improvement for increasing water use efficiency.

XX-04-060 Tampering

There shall be no tampering with irrigation facilities by any unauthorized person. This includes opening a headgate without being scheduled or without notifying anyone and closing a headgate or adjusting a headgate without notifying anyone. This Ordinance authorizes the use of the Pyramid Lake Paiute Tribe Law & Order Code §3.4.714. A.1. under Tampering with Public Property after an investigation of the circumstances is completed.

XX-04-070 Conservation

Conservation will be always encouraged for all Tribal irrigators. The maximum use of the water right entitlement is the target for use during each irrigation season. As the irrigable crop producing lands are reported, the annual water allocation is directly connected to each irrigable crop producing acre.

XX-04-080 Construction

All construction activity shall be authorized by the Administrator. All Tribal Irrigation Program construction shall be made to the primary ditches. Construction includes concrete repair and replacement,

headgate box structure installation, headgate installation or replacement, dam reconstruction, and ditch clearing. All construction is completed to increase efficiency of water delivery.

XX-04-090 Ditch Burning

All ditch burning within a primary ditch shall be conducted by the Tribal Irrigation Program. Any scheduled burning of the primary ditches shall include notifying the Tribal Emergency Response Program (EMS) if standby services may be required. All burning shall be conducted during times of the day when the weather is calm, and there will be no burning during windy conditions.

- a. All Tribal irrigators shall notify the EMS when the burning includes large areas for clearing and when standby services are needed.

XX-04-100 Harvest Services

This section is reserved in the event that the Tribe develops a harvest service program for harvesting purposes to assist tribal irrigators.

Chapter 5: Dispute Resolution

XX-05-010 Administrative Procedure

All disputes shall be coordinated with the Administrator. A dispute resolution is an opportunity to exchange information between a Tribal irrigator and the management of the Tribal Irrigation Program. Participants that are disruptive of the process (e.g. using threatening behavior) or refuse to abide by the process in this Ordinance, will forfeit their opportunity to participate in this process.

XX-05-020 Dispute Resolution Procedure

- a. Any dispute with the management of Tribal Irrigation Program shall be communicated with the Administrator either verbally or in writing. The dispute issue will be recorded by documenting the communication or receiving the written dispute complaint. Within 5 days of receiving a dispute complaint, the Administrator and complainant shall meet to resolve the dispute complaint. If it is not resolved, it will be submitted to the Committee for action.
- b. The Committee will be notified of the dispute complaint and it will be placed upon the next scheduled meeting agenda. The Committee will be provided with the information submitted to the Administrator and the information supporting the Administrator decision. No further information shall be provided to the Committee.
- c. The Committee will hear testimony from both the complainant and the Administrator at a scheduled Committee meeting. It shall deliberate the facts of the dispute complaint and render a decision. The decision of the Committee shall be final.

Chapter 6: Miscellaneous Provisions

XX-06-010 Sovereign Immunity

Nothing in this Ordinance shall be construed as a waiver of the sovereign immunity of the Tribal Irrigation Program or the Tribe. In the event that a limited waiver of sovereign immunity is necessary for a contractual agreement of services provided to the Tribal Irrigation Program, any such contract agreement shall be approved by the Tribal Council.

XX-06-020 Severability

In case any provision in this Irrigation Ordinance shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

XX-06-030 Amendments

Any amendment(s) to this Ordinance shall be reviewed by the Committee and upon receiving Committee approval, the proposed amendment shall be submitted to the Tribal Council for approval to post the proposed amendment(s). The proposed amendment shall be posted for not less than 30 days. All comments shall be addressed. If the proposed amendment(s) is continued, it will be submitted to the Tribal Council for approval.

Effective Date:

This ordinance shall become effective by adoption of the Tribal Council on this date _____, 202__.