

Pyramid Lake Paiute Tribal Council

Post Office⁺ Box 256
Nixon, Nevada 89424
Telephone: (775) 574-1000
Fax (775) 574-1054

PYRAMID LAKE PAIUTE TRIBAL COUNCIL WATER TEAM MEETING MINUTES Tribal Chambers June 17, 2020

Members Present

Anthony Sampson Sr., Tribal Chairman	Sherry Ely-Mendes, Vice Chairwoman
Janet Davis, Councilmember	William Miller, Councilmember
Judith Davis, Councilmember	Irwin Mix, Councilmember
Cassandra Darrough, Councilmember	Michele Smith, Councilmember
Carolyn Harry, Councilmember	Georgina Wadsworth, Councilmember

Note: Due to COVID-19 Tribal Council meetings are closed to the public to ensure the health and safety of attendees. Councilmembers attended in person, keeping to 6-foot distancing, and via audio conferencing.

Chairman Sampson Sr., called the June 17, 2020 Water Team meeting of the Pyramid Lake Paiute Tribal Council to order at 6:00 p.m.

ROLL CALL

Roll call was taken by Brenda A. Henry, Tribal Secretary. Councilmember Harry arrived at 6:05 p.m. and Councilmember Smith arrived at 6:08 p.m. All other Tribal Councilmembers were present at roll call and a quorum was established for this meeting.

APPROVAL OF AGENDA

No changes to agenda.

Councilmember Janet Davis made a motion to *approve the agenda*. Councilmember Judith Davis seconded the motion. Votes were **six (6)** for and **zero (0)** opposed with **zero (0)** abstentions. **Motion carried.**

CONSENT AGENDA

Following items were approved on the consent agenda:

1. Approval Minutes: March 18, 2020 WTM and April 15, 2020 WTM
2. Approval Stetson Engineers Inc., April 2020 Invoice #1336-2004 & 1336-01-2004
3. Approval Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP April 2020 Invoice

Councilmember Wadsworth made a motion to *approve the consent agenda*. Councilmember Miller seconded the motion. Votes were **six (6)** for and **zero (0)** opposed with **zero (0)** abstentions. **Motion carried.**

NEW BUSINESS

Councilmember Harry arrived at 6:05 p.m.

1. Approval US Fish & Wildlife Service (USFWS) Request to Continue Sampling through August 30, 2020. Dan Mosley, PL Fisheries Director

Mr. Mosley, explained as in previous years, USFWS is requesting permission to continue sampling through August 30, 2020. Dates will be intermittent depending on USFWS crew's availability/schedule. They will be checking on their temperature data loggers, obtaining data, then re-installing them along their sample sites on the lower Truckee River. They will also be checking and obtaining data on their acoustic receivers which track Lahontan Cutthroat Trout (LCT) migration up/down the lower Truckee River. USFWS has COVID-19 protocols they will be following when in the field. Working in teams of two, driving separate vehicles, etc.

Councilmember Wadsworth said the dates state they will be intermittent; how will they know they will be here. Mr. Mosely said they will inform him when they will be coming out and he will inform the Rangers.

Vice Chairwoman Ely-Mendes made a motion to *approve the USFWS Request to Continue Sampling through August 30, 2020*. Councilmember Judith Davis seconded the motion. Votes were **seven (7)** for and **zero (0)** opposed with **zero (0)** abstentions. **Motion carried.**

NATURAL RESOURCES DEPARTMENT. Donna Noel, Director, Natural Resources (NR)

Councilmember Smith arrived at 6:08 p.m.

1. Approval Bighorn Sheep Augmentation Request and Proposal. Emily Hagler, Natural Resources Department

Ms. Hagler stated this is to request for the Bighorn Sheep Project, they are getting ready for additional sheep to be released in the lake range. This request is to request addition sheep to the current population. This request was tabled at the last meeting until they could meet and coordinate with the Cattleman's Association. They met on June 10th.

Councilmember Harry asked if Mr. Hagler received the comments submitted by the Cattleman's Association and. THPO's recommendation was to not approve and the Cattleman's Association had more questions and concerns. Ms. Hagler stated ultimately the Bureau of Indian Affairs address their concerns regarding AUMs. It was stated during their meeting that this would not affect AUMs because their already taken out for wildlife.

Chairman Sampson Sr. asked if this project need to be moved forward quickly. He is asking because he did ask if someone from the Cattlemen's Association can call in or be present. Councilmember Janet Davis offered to call someone from the Cattleman's Association, but Councilmember Harry moved to make a motion to table.

Councilmember Harry made a motion to *table the request until the respond with the Cattleman Association's concern*. Vice Chairwoman Ely-Mendes seconded the motion.

Vice Chairwoman Ely-Mendes commented she had a conversation with the Cattleman's Association president and there was an interesting claim that she was not aware of, a fact the bighorn sheep in several areas in other states are endangered. It may be wise not to get too zealous about bringing more onto the reservation, on-line it does say the California Bighorn are endangered, and in 2018 there an article from California they were dying of a respiratory disease and almost wiping them out. There is an indication they are a species that may be endangered and when that happens the federal government takes the areas where the animals may be grazing and turn them into protected areas. For her, she would like further clarification and she is asked Chairman Sampson Sr. to have legal look into it and ensure them they are not an endangered species because that may infringe on the land, they are on now or in the future. She knows the USFWS has a document that says they all hands are off tribal sovereign land, but tribal lands are federal land. Need to be careful with moving forward because the Tribes hands would be tired where these animals are. And it has been observed the bighorn are mingling with the cattle on the Pyramid side of the lake where they are at.

Chairman Sampson Sr. said he did reach out to legal and that is the reason why he is asked Ms. Hagler to hold off on this subject until they get further clarification.

Councilmember Mix also reminded the Chairman that it is illegal for non-tribal members to have weapons on the reservation regarding having hunters come onto the reservation to hunt these bighorn sheep.

Votes were **eight (8)** for and **zero (0)** opposed with **zero (0)** abstentions. **Motion carried.**

2. Approval Request for an Assessment on Potentially Contaminated Land in Wadsworth.

Ruben Avina, Brownsfield Specialist

Mr. Avina explained Mr. Brian Smith owns two properties that he has been trying to donate to the Tribe for several years. However, the Tribe has been reportedly hesitant to acquire the properties since they could potentially be contaminated with hazardous substances.

Tribal Response Program staff conducted a site visit on March 6. The properties are located at 319 and 385 Main Street in Wadsworth, NV. They have been reportedly used for residential purposes as well as to house an antique shop. Mr. Smith's grandfather (from whom he inherited the properties) reportedly used contaminated dirt from the former railroad station properties in the area to level parts of the sites. According to Mr. Smith, there is potentially a heating oil underground storage tank (UST) at the site. Previously, a gasoline aboveground storage tank at the site existed.

After researching the properties, Tribal Response Program staff determined that environmental site assessments (i.e., Phase I and Phase II environmental site assessments) have never been conducted on these. Therefore, Tribal Response Program staff concludes that it is in the Tribe's best interest to first conduct environmental site assessments if it truly wishes to acquire the properties. The Tribal Response Program has funding to begin conducting environmental site assessments.

A Phase I environmental site assessment is conducted for a real estate holding that identifies potential or existing environmental contamination liabilities. If potential or existing environmental contamination liabilities are found, a Phase II environmental site assessment can be conducted to determine the actuality and extent of environmental contamination by collecting soil (surface and subsurface), groundwater, air, and/or building material samples. Per federal regulations, appropriate due diligence can protect a prospective owner from federal Comprehensive, Environmental, Response, Compensation and Liability Act (CERCLA) liabilities. Even if an appropriately conducted Phase I environmental site assessment does not identify environmental concerns associated with a property, the fact that an appropriate Phase I environmental site assessment was conducted may provide the property owner with protection from federal liabilities if it is later found that the property was contaminated.

Prior to conducting the environmental site assessments, the current property owner will be asked to sign a site access agreement (permission to enter property).

Vice Chairwoman Ely-Mendes made a motion *approve the request for an assessment on the potentially contaminated land in Wadsworth*. Councilmember Judith Davis seconded the motion.

Councilmember Wadsworth asked why the Environmental Protection Agency (EPA) wants to know what the Tribe is going to do with the land. Mr. Avina said it is their funding and a question they typically ask.

Mr. Rueben will have the owner sign a site access agreement that gives him access to the property and for liability issues. He is also working with Wes Williams regarding the hazardous site management guide.

Votes were **eight (8)** for and **zero (0)** opposed with **zero (0)** abstentions. **Motion carried.**

WATER TEAM REPORT

Chris Mixson, Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP. Report submitted.

Mr. Mixson is requesting an Executive Session after the Stetson presentation.

1. Endangered Species Act (ESA) Sec. 7 Consultation. Mr. Mixson said in May they learned the Bureau of Reclamation (BOR) was developing a position that, based on their interpretation of new ESA regulations, they may not need to complete the Biological Opinion regarding Derby Dam diversions, and that USFWS was considering shifting focus from the BiOp to a negotiated agreement for future water conservation measures for the Newlands Project. Because the Water Team disagrees with that shift in focus, they pushed back. On June 4th, the Water Team received an email from BOR explaining they were going to continue to focus on the BiOp and maybe

consider the negotiated agreement on a parallel track. There is a 3-way conference between the Tribe, Reclamation and USFWS scheduled for June 18 to discuss getting the BiOp process back on track.

2. Truckee Canal XM Environmental Impact Statement. Mr. Mixson said there are no new developments.

3. CEMEX Water Operations. Mr. Mixson said on May 28th, Natural Resources and the Water Team participated in a site visit to the CEMEX operations in Wadsworth. They observed the Paiute Pit dewatering operation, the three installed but not functioning meters on the three 12” pipes that convey pumped groundwater from the active mining area to the adjacent pit lake, and the discharge from the pit lake into a ditch that conveys the water to the Truckee River. We were not able to observe the discharge of point of the water from the ditch into the Truckee River because CEMEX has blocked the access point. The Water Team would like to discuss this matter in executive session. The Tribe’s business counsel Pilar Thomas will also join the executive session on this topic.

4. Federal Reserved Groundwater. Mr. Mixson will talk more about this in Executive Session.

5. Recoupment Case. Mr. Mixson said the district court judge had not acted on the Federal Water master’s February 2018 status report in which the Water master explained that he is unable to determine whether TCID should receive repayment credits toward the 335,000 acre-feet of water owed to Pyramid Lake for various times when water was not diverted into the Truckee Canal (through 2016). TCID claims it has paid over 650,000 acre-feet, even nearly twice what it owes. The Tribe and United States say TCID has only repaid 20,000 acre-feet. The new Department of Justice environmental attorney, Eve McDonald, assigned to this case is getting up to speed and they will be jointly requesting the judge hold a status conference to get this matter back on track.

Allan Richards, Stetson Engineers Inc. Report submitted.

1. Reclamation’s OCAP BA/BO Project. Mr. Richards said the Water Team had a conference call with the U.S. Fish and Wildlife Service on May 13th to discuss BOR’s Biological Assessment for the on-going OCAP. The discussion focused on the Tribe’s issues/concerns associated with BOR potentially taking up a position that they do not need to consult with the USFWS based on a claim BOR does not have discretion over Truckee River diversions into the Truckee Canal.

2. CEMEX 2020 Mining Plan. Mr. Richards said on May 15th, Stetson participated in an extensive conference call with the Tribe and its attorneys regarding CEMEX’s March 2020 Mining and Reclamation Plan of Operations for the Paiute Pit, the mine pit dewatering operations, the declining water table in Wadsworth wells, and the Tribe’s on-going requests for CEMEX to install functioning water meters and provide pumping data. On May 28th, the Water Team was provided a tour of CEMEX’s mining operations at the Paiute Pit.

3. TROA Meetings and Scheduling. Mr. Richards said Stetson hosted and prepared discussion materials for the TROA-MOA conference calls on May 7 and May 26, 2020. The group coordinated

operations and received updates on the flows, storage and lake levels, weather outlook, and fish facilities' operations. Stetson worked with the Tribe on reviewing Truckee River flows and forecasts, and reservoir operations, and participated in the monthly TROA scheduling meeting with the Federal Water Master and other TROA parties during May. The Tribe's monthly TROA Scheduling Request form required by the Federal Water Master was prepared and submitted in May. Stetson also participated in a conference call on May 14, 2020 to coordinate with California on plans to use Joint Program Fish Credit Water.

4. 2020 Call for Instream Flow Deliveries. Mr. Richards said the Water Team finalized the Tribe's 2020 Call for Instream Flows Deliveries below Derby Dam and sent a request to the Federal Water Master on May 29th to begin delivering Truckee River water for the Tribe's Claims 1 and 2 temporary instream flow permits on June 1st and begin delivering Truckee River water for the Tribe's remaining instream flow permits on July 1st.

5. Lower Truckee River and Pyramid Lake. Mr. Richards said flows in the Truckee River averaged about 745 cubic feet per second (cfs) during the month of May 2020. The Pyramid Lake elevation at the end of May was about 3807.6 feet.

6. Other Work (Numana Dam Fish Passage Project). Mr. Richards said they are working under a separate project (contract) Stetson is working with the Tribe's Natural Resources Director and the Lahontan National Fish Hatchery Complex (Tim Loux) on the Numana Dam Fish Passage Project. On May 6, 2020, three (3) soil borings were drilled along the Nixon Ditch roadway for the purpose of analyzing the soils properties and determining criteria for constructing a sheetpile flood wall required as part of the roughened ramp design. During the month of May 2020, Stetson also generated a grading plan in AutoCAD for the roughened ramp design and then ran HEC-RAS modeling with the grading plan to simulate the depth and flow (velocity) of water that would flow over the Numana Dam and down the proposed fish ramp. Several design iterations have been made to the roughened ramp to refine and achieve acceptable water depths and velocities that will accommodate fish passage for the Lahontan cutthroat trout and the cui-ui.

Councilmember Harry made a motion to *move into Executive Session*. Councilmember Smith seconded the motion. Votes were **eight (8)** for and **zero (0)** opposed with **zero (0)** abstentions. **Motion carried.** *Tribal Council moved into Executive Session at 7:09 p.m.*

Councilmember Harry made a motion to *move out of Executive Session*. Councilmember Smith seconded the motion. Votes were **eight (8)** for and **zero (0)** opposed with **zero (0)** abstentions. **Motion carried.** *Tribal Council moved out of Executive Session at 8:17 p.m.*

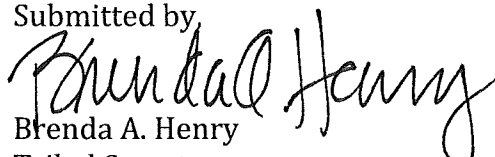
Councilmember Judith Davis made a motion to *approve the Water Team to work with Chris Mixson and Pilar Thomas regarding a letter to CEMEX for the dewatering*. Councilmember Judith Davis seconded the motion. Votes were **seven (7)** for and **zero (0)** opposed with **zero (0)** abstentions. **Motion carried.**

ADJOURNMENT

With no further business before the Tribal Council, Councilmember Smith made a motion to adjourn the meeting. The motion was seconded by Councilmember Wadsworth. Votes taken were all in favor, **motion carried.**

The meeting adjourned at 8:22 p.m.


Submitted by,


Brenda A. Henry
Tribal Secretary

CERTIFICATION

The foregoing minutes were adopted by the Pyramid Lake Tribal Council, governing body of the Pyramid Lake Paiute Tribe, at a meeting duly held on the **21st** day of **October 2020**, having **nine (9)** members present, constituting a quorum, by the vote of **eight (8)** FOR and **zero (0)** OPPOSED with **zero (0)** ABSTENTION.

Minutes attested and concurred by:



Anthony Sampson Sr., Tribal Chairman
Pyramid Lake Paiute Tribal Council

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