

# Pyramid Lake Paiute Tribal Council

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## WATER TEAM MEETING MINUTES

Tribal Chambers

March 17, 2021

### Members Present

Janet Davis, Chairwoman  
Harriet Brady, Councilmember  
Edward Ely III, Councilmember  
Carolyn Harry, Councilmember  
James Phoenix Councilmember

Steven Wadsworth, Vice Chairman  
Nathan Dunn, Councilmember  
Natalia Gonzales, Councilmember  
Irwin Mix, Councilmember  
Georgina Wadsworth, Councilmember

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*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.*

Chairwoman Davis called the March 17, 2021 Water Team meeting of the Pyramid Lake Paiute Tribal Council to order at 6:03 p.m.

### **ROLL CALL**

Roll call was taken by Brenda A. Henry, Tribal Secretary. Councilmember Dunn connected at 6:15 p.m. All other Tribal Councilmembers were present at roll call and a quorum was established for this meeting.

### **APPROVAL OF AGENDA**

There were no changes to the agenda.

Councilmember Brady made a motion to *approve the agenda*. Councilmember Wadsworth seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

### **CONSENT AGENDA**

Following items on the consent agenda:

1. Approval payment Kemp Jones LLP February 2021 Invoice
2. Approval payment Stetson Engineers LLP January & February 2021 Invoice #1336-2101, 1336-01-2101, #1336-2102 and #1336-01-2102

Councilmember Harry made a motion to *approve the consent agenda*. Councilmember Ely seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

### **PRESENTATION**

**1. Bureau of Land Management (BLM) Revised Environmental Assessment (EA) Government to Government Consultation.** Mark Hall, Field Manager, Black Rock Field Office & Line Officer for the San Emidio North Valley Project, Tye Subia, Project Lead, Shannon Deep, Native American Coordinator, Winnemucca District Office and Peter Gower, EMPSI, Official Notetaker.

Mr. Hall introduced staff that will be presenting with him. He explained they are present due to concerns expressed by the Tribe with the San Emidio Project. When last they met with Donna Noel, Natural Resources Director and the Tribe's contractors, they came up with a monitoring plan which BLM has reviewed and considered and felt parts of the plan can be done. On March 2<sup>nd</sup>, they had another meeting with Ms. Noel and the Water Team to present a response to the monitoring plan. From that meeting, a modified plan was drafted and forwarded to Cemex on March 5<sup>th</sup>.

Tye Subia listed the wells that would be monitored: Stag and San Emidio monitoring well both of which Ormat agreed to, as well as monitoring Moses Rock Spring, San Emidio Spring, Stags Spring, Sheep Pass Spring, Summit Spring, Jackass and Bull Basin Springs. The five that are on tribal lands are contingent monitoring, these are contingent on access. They will also be monitoring the Gollum monitoring well, it is at the southern edge of the project area and is to catch any negative potential impact before they reach further south where it could potentially take longer for the resources impacted to recover. Sage Flat well will to be monitored annually. Surface water is monitored quarterly which includes the Serna Media well and Gollum monitoring well. Wedge Flat and other wells up north including the Empire Farms area will be monitored annually.

Mr. Hall said the data, which is put together by a third party will be shared with the Tribe. The Tribe proposed drilling three wells into the geothermal reservoir inside the reservation but it is problematic for BLM to put into a decision record without some sort of agreement between the Tribe and Ormat. The State Office hydrologist and the hydrologist in their office felt the monitoring wells outside the reservation would provide the opportunity to catch any problems before the Tribes resources would be impacted. They are open to comments from the Tribe and if the Tribe would like to submit a comment letter they still have time. They would like to sign a decision record for the project sometime in April.

Councilmember Brady asked the wells that Ms. Subia was talking about to be put in a written document. When she was speaking about the wells between the Gollum and the Stag and the one's in between, she wanted to confirm the reason BLM couldn't adhere to the Tribe's requirements, was that the inside drilling.

Ms. Subia responded she was talking about the springs located in the northeastern area of the reservation, the surface water springs.

Mr. Hall said if the Tribe provided them with an email, he will provide the list of the wells. In answer to Councilmember Brady's question regarding inside drilling, that is something he couldn't order. In speaking with their solicitor, the only way it could work is if the Tribe and Ormat came to an agreement, then they would memorialize it in the decision record. Part of it has to do with the Tribe's sovereignty and he doesn't have the authority to order a proponent if there is no agreement in place.

Councilmember Brady commented it looks like the ones monitored quarterly are wells closer to the reservation and ones that are further are monitored annually.

Ms. Subia said that's correct, wells on private land in the north are required to report to NDWR and that data is available to the public. The monitoring wells within the project area and the two at the southern edge near the canyons plus the springs on the reservation, they are monitored quarterly.

Chairwoman Davis commented that if it's only yearly, it seems that it would be a concern because a whole year would go by before they would get any data.

Mr. Hall explained anything put in the decision record, Ormat is required to do and if they don't complete it and they don't deliver a report, they get a phone from his office asking why it's not being done. If they don't have a reason why they are not completing what is stated in the decision record then they get a warning letter, then non-compliance which is legally binding, after which they have a timeframe in the non-compliance to either take it to court. Just to note the private wells in the north are part of Scandinavian basin, like the Empire Farms, they are required by state regulations to report their data. They will provide the Tribe with a letter in response to all the questions in writing or in the comment section of the EA and they will also work with Ms. Noel on the issues.

Councilmember Harry asked what it meant by acknowledging the Tribe's concerns in writing, does that give the Tribe any way to stop the project or put a halt to the project knowing the impacts that have already been determined by the Tribe's hydrologist, that it is going to impact Pyramid Lake because it still needs to be taken into consideration.

Mr. Hall said it will be taken into consideration. The BLM hydrologist, even though they see the situation differently, they will go into more depth in the letter. Some of the comments and criticisms from the Pyramid Lake hydrologist and specialists have been put into the second version of the draft EA and in the second version of the hydrology report.

Councilmember Harry asked if the Tribe will receive an updated copy of the BLM hydrologist report because the report they saw didn't have any supporting data or numbers, it was generalized statements.

Mr. Hall said the Tribe currently has access to everything that is released to the public. They have also provided copies and it's also available through the e-planning website. Currently, in terms of new well development and plant construction, Ormat is operating under the old EA. They are producing about 11.6 megawatts of electricity. For new developments, they have no authorizations, that is what this new document is for.

Allan Richards, Stetson Engineers, Consultant for the Tribe, said he remembered BLM saying there would be a second revised draft EA and maybe a second revised hydrology report. He wanted to confirm if there will be another draft or if the next report is a final.

Mr. Hall said the second draft was available since the end of December, the next version will be the final. The issues brought up in the second round will be addressed in either the hydrology report or the EA.

Ms. Noel asked what is the timeline for them to comment on the monitoring plan. Mr. Hall said he would like those comments before April 15<sup>th</sup>.

## **2. Ormat Project Review. Scott Nichols, Regulator Affairs Manager**

Mr. Nichols apologized on behalf of Ormat for not having a conversation with the Tribe months ago which should have been ongoing throughout the existence of the previous San Emidio project. They worked with members of the Tribe when they were looking at different avenues for power transmission and opportunities for development of tribal resources but due to changes in the operations and staff that did not happen. He is asking for the Council's consideration on two items. One is to an ongoing dialogue with Ms. Noel and the Water Team to discuss opportunities on a neighborly working relationship. Not on a government to government relationship but working directly with the Tribe's staff regarding ideas and concerns so they can address items quickly and efficiently.

The second request or a comment, for the record, since they don't know what the BLM has proposed regarding the water monitoring plan. They are committed to resolving any outstanding issues regarding the geothermal proposal that the Tribe may have in the North Valley.

Councilmember Harry wanted to know why they just now contacted Ms. Noel a month ago when the Washoe County Regional Planning Commission meeting was held a year ago and the Tribe had comments with their concerns against the project.

Mr. Nichols said he was just brought on from the Northwest region where he worked for 10+ years and was asked to come back to work in the business development section and one of his first tasks was to reach out to Ms. Noel. He doesn't have a full understanding of the history but he believes the Truckee Meadows Regional Planning Council meeting was held in late January or early February and that's when they received a letter from Stetson Engineering that outlined a number of concerns the Tribe had with regards to the North Valley Geothermal Development. He has read through the comments and based on their extensive testing, there is scientific evidence, measured data, measured water information, and measured chemistry that would show along with hydrologic understanding of the area there is probably no opportunity for the development of additional geothermal in that area. He would be comfortable sitting down with Mr. Richards and their hydrogeologist to talk about the points and address the concerns. The important part through ongoing monitoring and documentation of the outcome, is there is an early warning system for an opportunity or a response if they see an impact or drawdown of a spring system located in Pyramid Lake.

## **3. United States Environmental Protection Agency (USEPA) EPA Action Overview Government to Government Consultation.** Amy Miller, Director of Enforcement and Compliance Assurance Division USEPA Region 9 San Francisco

Ms. Miller is providing an update on the status of USEPA's oversight of the CEMEX facility. She introduced Fran Berg, Assistant Director for Water Compliance Issues and Eric Magnum, who oversees Wastewater Compliance and John Tinger, lead inspector, Enforcement and Compliance Assurance Division.

Mr. Tinger said the clean water act regulates the discharge of pollutants into waters of the United States, and the Tribe has treatment as a state for implementing and developing water quality standards for all water bodies within the tribal boundaries. USEPA Region 9 has the authority for issuing MPDES permits, which authorize the discharge of pollutants in wastewater into those waters. The primary issue that they have had is that CEMEX did not have the authorization to discharge, they didn't have a MPDES permit. There are two types of wastewater, Industrial Stormwater and the other is the mine pit dewatering. These two types of wastewaters have separate permitting schematics. Some overarching concerns are for the discharges from CEMEX in terms of water quality, the unpermitted discharge. The facility did have discharge permit from 2010-2015 but they failed to reapply for that permit, so they been discharging for over five years with the authorization. 13 million gallons per day which is high volume of water being discharged. The Truckee River, at this point, is impaired for both temperature and total dissolved solids. Impaired, meaning it's not meeting what the standards that the Tribe identifies as necessary to properly support all the aquatic organisms in the beneficial uses of that water body. In addition, to not meeting standards, there is concern with high value threatened and endangered species. Another concern is CEMEX has not sampled their effluent at all during this time. The Tribe has done their own sampling of the effluent for a certain limited number of parameters, but the facility never sampled what the wastewater was going into the river. There are unknowns there and there's potential concerns or impacts on the water quality and supporting the aquatic life of Truckee and downstream to Pyramid. Since the Tribe contacted them back in June and looking at the issues with the drinking water volumes the Tribe was having at that point, they realized the facility didn't have an MPDES Permit either. They were able to do an inspection with the Tribe in October and have an administrative order on consent in November. Because of some of the unique circumstances to the discharge this was a quick timeframe. Since that timeframe they have gone back a couple of times on some of their responses to the administrative order on consent that was issued. The administrative order on consent means the CEMEX company agreed with proposals on how to address the situation and they seem to be responsive to the concerns and comments. The mission of the order is to focus on four specific areas, one was to immediately cease all discharges to the Truckee River. Even though they stopped dewatering their pit there was still an ongoing discharge of unauthorized water. They fixed it and stopped the discharge. The second is to get sampling data because of the unknown of what potential pollutants may be in there with one concern being a naturally occurring arsenic in the groundwater which is common in that area. Luckily, when the pit sampling data came back there wasn't any indication of any contamination or other pollutants to be too concerned with that they didn't previously know about. The Tribe has conducted their own sampling over the past number of years where they have identified problems with nitrates with total dissolved solids and temperatures which are some of the real issues to be concerned with due to the impact downstream on Pyramid Lake and in the Truckee River. When they are looking at low flows, during August, they need to be concerned about fish passage and any potential impact on aquatic organisms due to the temperature differential. They completed the sampling and didn't find any specific issues they didn't previously know about, it was priority pollutants of about 126 pollutants. The

third area, they were supposed to apply for an MPDES permit due to concerns related to potential water quality impacts and aging species they wanted it to go through a rigorous review process. They requested they apply for an individual and PDS permit, a specific permit for potential effluent limitations for discharge. They did submit the application and it's in the process of being reviewed. The fourth area is to conduct an emergency engineering plan to prevent the uncontrolled discharge since the mine pit is filling with water they want to know to what extent will it continue to fill and at what point it would overflow. CEMEX had a two-phase approach. The first phase was to install three-foot berm around the pit for freeboard to prevent any unauthorized discharge from overflowing or overtopping the pit. Phase two was to see if the water level continues to rise and to see what happens on how to increase the free board to prevent the additional discharge. Lastly, they are in the process of reviewing the emergency engineering plan before it can be approved and the application for the MPDES permit is on-going.

Councilmember Brady asked I the water was safe to swim in.

Mr. Tinger said he did not think it was a good idea, it's an active industrial site and the berms are not stable.

Ms. Miller said that in the reclamation plan they will talk about what steps to take including if they plan on making the pit a recreational lake which will take a lot of different things to happen. Once concern now would be the unconsolidated material being used for the berm. She will talk to CEMEX about the long-term plan for the well.

Councilmember Brady said it seems like common sense to fence it off and educate people in the surrounding area to not use it.

Mr. Tinger said that issue was identified in the phase two. If they were constructing additional berms, what slope would they be and at what compaction ratio to make them safe. He believes the other berms aren't constructed as safely and some of them are quite steep. He thinks CEMEX should be highly concerned if kids are getting on their site for reliability reasons.

Chairwoman Davis said they can make an announcement from the Tribe to let the membership know.

Councilmember Harry asked how will they enforce them. Can CEMEX close it off or can USEPA direct them to construct fence combs or orange tape because the kids are getting in somewhere.

Councilmember Ely asked to confirm that they have been dewatering for five years now.

Mr. Tinger said they have been dewatering for over 15 years. The min plan that was approved by Tribal Council allowed them to go about 60 feet until about 3-4 years ago. Then they went down to 100 feet. Currently at 60 feet, that is 13 million gallons per day for the last 3-4 years.

Councilmember Harry asked about the 12 priority pollutants.

Mr. Tinger said there are 129 priority pollutants. It's a full scan, an USEPA Standard protocol which includes most pollutants that would be considered toxic which includes herbicides, pesticides, metals, organic compounds, dioxins, and PCBs. They had CEMEX sample both the old pit lake as well as the new pit lake that just filled up.

Councilmember Ely asked Ms. Noel if they had knowledge CEMEX was dewatering for 15 years and for 5 years at a high volume. Did they have permission or did the Tribe stumble upon it.

Ms. Noel responded they knew about it for 3 years and brought it to the Council's attention. That is also when the municipal wells started going down. They consulted with the Indian Health Services (IHS) and Kameron Morgan also wrote a white paper on it. They asked CEMEX for data and to measure the discharge coming out of the pit. They finally did put meters on but they didn't put any data loggers and so no data was collected. It wasn't until June, when the municipal wells were so low, they put a new variable speed pump on

And to reduce the speed down as low as they could. When it continued to go down, they went to Council again and involved the water team. They asked Council to shut them down because they were mining the water out of the groundwater. CEMEX did have a permit previously for it.

Mr. Tinger said when Ms. Noel brought it to their attention, they did an official request for information under their regulatory authority, they were able to get information and data. It helped their understanding of the situation. Their previous permit was under a separate mechanism which may have not addressed all the issues, that is why they are trying to put them on a new individual permit so they can evaluate any potential impacts. They will continue to work with Ms. Noel and Kameron Morgan, they will need their expertise when evaluating potential impacts on the endangered species. Then when they issue a permit, it will be under the water quality standards of the Tribe. The Tribe has to approve what they write in the permit. Unsure of the timeline since this is an extraordinarily complex permit because of the salts and dissolved solids issues with the endangered species which will require consultation with the US Fish and Wildlife Service (USFWS). Working on a target date of 6 months.

Councilmember Mix asked if fish can survive in the water.

Mr. Tinger said that's something he'll need to speak with Ms. Noel, Kameron Morgan and USFWS about but during the winter runoffs, it's probably not going to have that much of an effect. But during the summer when temperature becomes an issue which lowers the dissolved oxygen.

## **NEW BUSINESS**

**1. Approval Resolution to join the Native American Fish & Wildlife Society.** Dan Mosley, Pyramid Lake Fisheries

Mr. Mosley explained they received a letter from the Native American Fish & Wildlife Society to become a member tribe. There are various tribes across the US that are members. The cost for membership is \$250 a year and it requires submission of an application with resolution. The Fisheries will be paying the membership fee. This could benefit the Tribe with knowledge through their website regarding regulations,

current issues going through Congress, the House and Senate for anything related to fisheries or wildlife programs for funding and basically information sharing. Joining this organization would also be good for the Tribe in showcasing the fish and the lake in Indian Country.

Councilmember Harry made a motion to *approve the Resolution to Joint the Native American Fish & Wildlife Society*.

Mr. Mosley confirmed the Fisheries will cover the cost of the membership.

Councilmember Dunn seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried**. **RESOLUTION NO.: PL**

## **NATURAL RESOURCES**

### **1. Approval Request to be a Cooperating Agency for the Ormat Juniper Geothermal Development Project.**

Ms. Noel said they received notice from the Bureau of Land Management (BLM) there is going to be another geothermal plant on the border of the reservation. It's located by Black Warrior Point. She spoke to Betty Aleck (THPO) about it and she agreed they should be at the table from the beginning, making sure the Tribe gets the information needed and to get the Tribe's concerns in early and hopefully not end up like the San Emidio Project.

Councilmember Ely made a motion to *approve the request to become a cooperating agency for the Ormat Juniper Geothermal Development Project at Black Warrior Peak*. Councilmember Brady seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with one (1) **abstention** (Mix). **Motion carried**.

Councilmember Harry asked if Ms. Noel served on a cooperating agency before and what were some of the projects and benefits.

Ms. Noel said she has, one of the projects was the Canal EIS. The benefit is the Tribe can see the engineering reports, know what is going on from the beginning of the project and can have input in every meeting.

### **2. Approval to allow CEMEX to build a ramp to access Pit A through Tribal Lands.**

Ms. Noel said this request is to allow CEMEX to build a ramp to access Pit A through tribal lands. EPA did a structural analysis of the berms and they sent the request to build the ramp to access the western and northern walls, but the inspection report came back and it wasn't stable. She requested the report but hasn't receive it yet. She informed them she couldn't give them authorization. She did speak to Richard James and Betty Aleck (THPO) about it and sent the reports for their input. Ms. Aleck was very concerned and she would like to have a cultural observer present the whole time, where they get the dirt for the berm and when building the ramp. Richard James would like to see the field across the street from CEMEX leveled and to use that excess dirt used for the berm.

The Water Team is meeting with the Environmental Protection Agency (EPA) and CEMEX on Friday to see how they plan to do it. They are talking about dewatering the whole thing again but don't know where they



will put the water because EPA is the only one that can let them discharge. It may take up to a year but that's not acceptable. It's a temporary ramp which they said would be removed when they get the berms stabilized.

Richard James, who lives near the CEMEX facility said they should put the slope on there because that is where it's coming back into the river. Then when the river gets high, the river goes back into the pit. It has been doing that for a long time and eh doesn't know why they didn't finish it right below his house. They could use dirt on his property to level it. They will also be using the road next to his home which will be making a lot of noise. When they are digging it's like an earthquake, it shakes his home. It is a dangerous place and the ground is soft and it should be fenced. When asked if he wants to have them continue, he said he would like for them to repair the road because it is sinking.

Councilmember Brady asked if there is a potential for it to develop into a sink hole, even after it's fixed.

Mr. Richards said he is waiting to see the engineering report, as Ms. Noel mentioned CEMEX has the issue of slope stability and a report has been recently prepared but they are waiting to see it. He feels they should be given access or limited access to repair the west pit wall which was cut deep. On his first field visit they parked on James Ranch Road where the river bend migrates towards the pit, the west pit wall. This was while they were still dewatering, the pit was empty of water because they were continuously pumping. He climbed up the berm and it was nearly vertical. He would be concerned about giving them access to the northwest corner because that would require them to go through Mr. James property. Giving them access to the southwest would help them implement some type of a repair to the west pit wall which is not fenced. Would think that since you're required to stop at their office for a series of safety tests they don't have fencing around the pit. It's very concerning to hear kids are swimming in the pit lake and it's not fenced. It's such a big liability for them not to fence it off. Need to also address the settlement that been occurring over the years, it's unfortunate they cut it so close to the river and it's such a steep slope. They will be meeting with them on Friday to discuss this and hopefully will have the engineering report by then. An option they have been discussing is to ask the Tribe to allow dewatering of the entire mining pit and the south holding pond and letting them dry for 18 months so they can repair the pit walls. He would like to hear more about it and including the option of grouting.

Councilmember Mix said he did mention to not shut the water off because they needed to get that wall on the westside repaired before they shut the water but it didn't happen.

Mr. Richards said it was a difficult decision, they were facing the town of Wadsworth losing its water supply, the Tribe's water was critically low.

Councilmember Ely suggest with irrigation season coming is there a possibility they could put the water in the irrigation ditch. He knows Councilmember Gonzales and John Guerrero are concerned about their wells when they dewater. But right now, they can't dewater into the river according to the USEPA.

Ms. Noels said that was a good point, she will discuss it at their meeting on Friday. Maybe they can put the water into the Guerreros field instead of discharging into the river.

Councilmember Harry reminded them it would be full of toxin and would have to be tested.

Councilmember Brady asked about compensation regarding the wells and for Richard James getting cracks in his house. It may require a class action suit.

Ms. Noel said once the water issues are resolved or released, it will go to Pilar Thomas, legal counsel, to look at the contract. That would be the time to look into damages.

Councilmember Harry said the John's were having the same issue as Richard James. Along with the Road, constant trucks going back and forth.

Ms. Noel said she recommended approval but with Stetson Engineering oversight, it's needs to be done properly with an inspection afterwards. The pit wall stability will be the topic for the meeting on Friday.

Councilmember Brady made a motion to *table until they receive more information and to put on the agenda for Friday*. Councilmember Dunn seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with one (1) **abstention** (Mix). **Motion carried.**

## **WATER TEAM**

**KEMP JONES.** Chris Mixson

**1. Endangered Species Action Section 7 Consultation.** This is where the USFWS is consulting with the Bureau of Reclamations (BOR) about the ongoing effects of diverting Truckee River water into Derby Dam, the ongoing effects being on the fish. The Tribe is not formally a cooperating agency but has been invited to participate so they go to most of the meetings between the USFWS and BOR. The end result of the Section 7 Consultation is the biological opinion which governs the agency's action. Their hope was when they started the process the result would be a biological opinion with good conservation measure for the Newlands project. The issue they have come across is that BOR has said to the USWS, you can make them force TCID to do any actions that the BOR lacks the discretion to force them to do. The Tribe has asked what they can do to enforce conservation measures, but their response was weak. Currently the USFWS is ready to push back against BOR based on a meeting held on March 5<sup>th</sup>. The USFWS said since they won't tell them what their limits of discretion are, USFWS will write a biological opinion based on assumed limits. They will be having a meeting on this. There is a deadline in mid-April for the USFWS but thinks they will ask for an extension. He's had a preliminary discussion with the Chairwoman about making a wish list from the Pyramid lake Paiute Tribe to the new Secretary of Interior, but need to be careful. Instead of making the request directly from the Tribe, can word it so it's on behalf of all Tribes.

**2. Recoupment.** In 2019-2020 there was a fight that got elevated to the federal district court over the categories of water that TCID should be entitled to claim recoupment repayment, credit for the Canal breach in 2008. Water during that time they weren't allowed to take and flowed to Pyramid Lake, they argued that should count toward their obligation to repay Pyramid Lake 344,000-acre feet of water. Along with the United States, the Tribe took the position that no, they are not entitled to take that water. It's not

water they can use to repay. The Tribe won that judgement in 2020. TCID only gets recoupment credit for planned and voluntary reductions of diversions. There are currently letters going back and forth between TCID and the court.

**3. CEMEX.** Mr. Mixson said he thinks everything has already been said about this topic but he is in full agreement with Mr. Richards and Ms. Noel that the Tribe should allow CEMEX some kind of access to the western pit slop walls so they can shore them up and repair them. Whether they can that with water in the ponds or whether they are going to have to move the water, he is hoping for more information on this.

**4. ORMAT.** There are two things going on with the San Emidio project. The first one is the local governmental permitting the land use permit. That is where the Tribe filed an appeal to the Nevada Supreme Court of the Washoe County Board of County Commissioners decision to grant a special use permit to Ormat. The real argument in the petition is Washoe County granted a special use permit erroneously because they were required to make these affirmative findings that the project wouldn't harm the Tribes resources and wouldn't harm the environment. Washoe County said the BLM has a draft EA that say there is going to be no harm to the Tribe which was good enough for them. The issue is it being a "draft" EA, if it was a final document and the Tribe had no issues with it maybe the Tribe wouldn't have fought so hard but it was a draft document. He thinks the Tribe has a good case with the State Supreme Court. The Tribe went directly to the State Supreme Court instead of the County District Court first. The primary defendant is Washoe County but named Ormat as a real part of interest. The other part of the San Emidio project is the federal permitting which is the BLM EA. He doesn't necessarily agree with the BLM that they can't require Ormat to monitor geothermal resources within the reservation boundary but if you can get a memo with Ormat to agree to monitoring the geothermal resources on the reservation then BLM can write that into the final EA. That's what he thinks the Tribe needs to focus on.

**5. Ormat Juniper Geothermal Project.** Mr. Mixson said he agrees with the decision of the Tribe to accept the invitation to be a cooperating agency and is looking forward to receiving more information that otherwise is not provided to the public.

Councilmember Harry asked if the Tribe can comment on the permitting process for CEMEX and the Clean Water Act.

Mr. Mixson said yes part of the EPA process, particularly because the Tribe has its own water quality standards for the Truckee River and Pyramid lake. EPA process is to consult directly with the Tribe and allow the Tribe to comment. It's built into the process. In a prior meeting, EPA brought up Supplemental Environmental Projects (SCP). An SCP is when USEPA determines that someone has violated the Clean Water Act, usually if they have either violated their MPDES permit by discharging more than the limits allowed in the permit or discharging without a permit which isn't the case with CEMEX. There can be a settlement with the harmed party. It's a way for the USEPA to force a violator to come up with money to do an environmentally beneficial project. The money stays local and doesn't go into the United States Treasury general fund. It's something the Tribe is going to be exploring. The USEPA can't instigate the SCP, it's on the Tribe to request it from USEPA and CEMEX.

**STETSON ENGINEERS.** Allan Richards

In regard to CEMEX he wanted to note that the meeting on Friday was called by USEPA and CEMEX and they request urgency for a meeting with the Tribe's Water Team. They will be talking about options for repairing the pit walls and the levees around the pit plus there will probably be discussions about the option to completely dewater the pits again. If that is to occur, CEMEX will have to get the permit from USEPA. There may have to be some sort of compromise where the pond doesn't have to be completely dewatered but maybe the water level can be lowered 1015 feet or to better help accommodate the repairs to the walls and in the levees. In regard to Ormat, it seemed strange that BLM is preparing and issuing EA and preparing a monitoring plan for Ormat to comply. They don't understand what the Tribe's concerns are and admitted they haven't even seen the proposed monitoring plan that BLM is creating. It's strange there is a disconnect between the project proponent and BLM who is writing the EA and drawing conclusions about potential impacts or no potential impacts. They will prepare comments and get them back to BLM before the April 15<sup>th</sup> deadline.

Chairwoman Davis asked if it was okay for the Tribe to speak directly with Ormat to see if they can work out an agreement.

Mr. Mixson said the writ petition to the Supreme Court hasn't put anything on hold, because they didn't seek a stay. It's okay for everyone except him to talk to Ormat. The rules about talking to people that you are in litigation with apply to lawyers only. For their presentation earlier, he could attend because it is a public meeting and he didn't say anything. But if the Tribe wishes to initiate an MOA with Ormat, legal from both sides can attend.

Mr. Richards said it's important that they continue to comment on the monitoring plan.

Ms. Noels said under their Wildlife grant they added spring monitoring at Sweetwater and the San Emidio spring and are going to put monitoring data loggers on both of those springs. Her hope is that Ormat will reimburse them so they can use the funds to monitor other springs in the area. They will be installed in the next couple of months.

Mr. Richards concluded his report by answering a couple questions that were raised in previous meetings. One question was who signed the 1990 settlement agreement? He looked it up and it was President George WH Bush and Vice President Quale who signed the 1990 settlement agreement. Another question was asked by Councilmember Mix when he was describing the work they were doing with trying to modify the US Army Corps Flood Control rules for Prosser Reservoir and Stampede Reservoir, they have to be drawn down to a certain level for flood control during the winter and spring runoff season. The question was how much do they have to drawdown. Stampede Reservoir has a total capacity of 226,500-acre feet and the rules require that it be drawn down to 204,500-acre feet by November 1<sup>st</sup> of each year to create some flood control storage space. Prosser Creek Reservoir is much smaller at 29,800-acre feet total capacity and flood control rules require the reservoir be evacuated to provide for 20,000-acre feet of storage space for flood control also by November 1<sup>st</sup>.

Councilmember Mix asked when they do the drawdown, does that give somebody the opportunity to put their water in there, can the Tribe put back water to its capacity again and should the Tribe try to keep the water in there if possible.

Mr. Richards said that's what they try to do. They operate that reservoir to optimize it for the use of fish storage.

Chairwoman Davis asked if they want to entertain sending a letter to the governor or someone regarding the Innovation Zone.

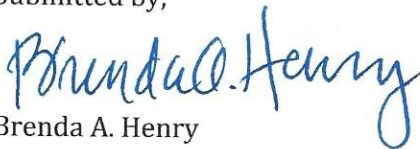
Mr. Mixson said the real impact for the Tribe is don't impact the Tribe's water rights or the Tribe's water resources. A letter to the governor couldn't hurt asking to sit down and discuss it with the Tribe. He's waiting for the actual legislation to be introduced. They haven't even introduced a bill.

#### ADJOURNMENT

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

The meeting adjourned at 8:45 p.m.

Submitted by,




Brenda A. Henry  
Tribal Council Secretary

## CERTIFICATION

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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 18<sup>th</sup> day of August, 2021, having nine (9) members present, constituting a quorum, by the vote of eight (8) FOR and zero (0) OPPOSED, with zero (0) ABSTENTIONS.

Minutes attested and concurred by: \_\_\_\_\_



Janet Davis, Tribal Chairwoman  
Pyramid Lake Paiute Tribal Council

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