

Pyramid Lake Paiute Tribal Council

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WATER TEAM MEETING MINUTES

Tribal Chambers

May 19, 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

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 May 19, 2021, 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 Mix connected at 6:36 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 the agenda.

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

CONSENT AGENDA

Following items were on the Consent Agenda:

1. Approval Minutes: February 17, 2021, WTM
2. Approval Payment Stetson Engineers LLP April 2021 Invoice #1336-2104, #1336-01-2104
3. Approval Kemp Jones April 2021 Invoice

Councilmember Brady requested to pull #1. Approval of Minutes February 17, 2021, WTM

Councilmember Dunn made a motion to *approve #2 & #3 on the consent agenda*. Councilmember Ely seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

Councilmember Brady had one correction on Page 2, 2nd to last paragraph, change spelling of “their to there”.

Councilmember Harry made a motion to *approve the February 17, 2021, WTM minutes*. Councilmember Dunn seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

NEW BUSINESS

1. Approval Regulations Workgroup Recommendations:

a. Approval to Increase Fishing Guide and Boat Charter fee 1010% from \$1600 to \$3200.

Dan Mosley said the Regulations Workgroup was recommending an increase of the Fishing Guide and Boat Charters from \$1600 to \$3200, doubling the fee amount.

Councilmember Brady asked if the group considered comments made regarding raising fees about making improvements to the sani-huts and making them accessible or expand them. Chairwoman Davis said her and Benjamin John met with Judith Davis, Lake Maintenance and she had a breakdown of all sani-huts and trash receptacles in preparation for Memorial Weekend. You must look at as a business and these guides are making a considerable amount of money off the Tribe.

Brenda Henry, Tribal Secretary, noted they currently have 29 fishing guide and boat charters combined. There was a motion previously made by Council that the fees from the guides would go to the Rangers. She will start accepting applications on June 1st through July 31st, then all applications will go before Council on August 6th for approval.

There was further discussion on how much the guides charge and how much they are making providing guiding services on the lake. It was noted there is no limit for tribal members, they are not charged the fee and can apply anytime.

There was discussion of raising the fee to \$10,000 but Council came to a consensus and decided on \$7500. with the possibility of raising the next season.

Councilmember Harry made a motion to *increase the Fishing Guide and Boat Charter fee to \$7500*. Councilmember Phoenix seconded the motion. Votes were six (6) **for** and one (1) **opposed** (Wadsworth) with one (1) **abstention** (Steven Wadsworth). **Motion carried.**

b. Approval for Fishing Guide and Boat Charter Limit to 28 (combination of both).

The Regulations Workgroup recommended a limit of 28 fishing guides and boat charters combined for every season.

Councilmember Mix connected to the meeting at 6:36 p.m.

Councilmember Ely made a motion to *approve the limit to 28 Fishing Guides and Boat Charters combined per year*. Councilmember Dunn seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

c. Approval Day-Use Seasonal Permits for only 65 and older 100% from \$90 to \$180.

The Regulations Workgroup recommended Day-Use Seasonal Permits for 65 years and older from \$90 to \$180.

There was discussion and Council came to a consensus for \$125 for 65 years and older because they are a fixed income.

Councilmember Ely made a motion to *approve Day-Use Seasonal for 65 years and older for a flat rate of \$125*. Councilmember Dunn seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with one (1) **abstention** (Mix). **Motion carried.**

d. Approval to Designate the Regulations Workgroup as a Committee.

Councilmember Harry was disconnected from the meeting at 6:48 p.m.

There was discussion on who will serve on the committee, budget for stipends and putting it all in a resolution. Consensus was to table and bring back to Council after researching with tribal policy, checking with finance on the budget and providing a resolution.

Councilmember Brady made a motion to *table the request until research how a committee is formed, along with budget and resolution*. Councilmember Wadsworth seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

NATURAL RESOURCES. Donna Noe, Natural Resources (NR) Director

1. Approval Great Basin Bird Observatory (GBBO) Survey Request. Elisabeth Ammon, Executive Director GBBO

Ms. Ammon is requesting permission to resume their annual riparian bird surveys along the lower Truckee River for 2020 and future years. GBBO is a local 501 (c) 3 non-profit who has been monitoring the birds along the Truckee River including on the reservation for the last 20 years. The program's main interest is monitoring birds across the State of Nevada to determine their conservation status and responses to conservation actions. Surveys will take place in the early morning hours, sunrise to 10am between May 25th and July 15th. They will abide by all tribal laws and regulations and will be fully vaccinated against COVID-19.

Ms. Noel said the Inter-Disciplinary Team (IDT) recommended approval.

Councilmember Harry reconnected to the meeting at 6:52 p.m.

Councilmember Harry made a motion to *approve the Great Basin Bird Observatory Survey*. Councilmember Ely seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

2. Approval US Department of Interior (USDOI) Roadside Bird Survey Request. Nancy Hoffman, US Geological Survey, USDOI

Ms. Hoffman is requesting to conduct roadside bird surveys along portions of the reservation. The area of interest is circumscribed by the Nixon Nevada North American Breeding Bird Survey route. The Nixon route was established as part of the North American Breeding Bird Survey (BBS) Program in the early 1990s and has been sampled each year. USDOI is requesting permission for Ms. Hoffman to access the route approximately 2 mornings between May 15th and June 15th. She will start 30 minutes before sunrise and complete the route in approximate 5 hours. The route starts north of Nixon and ends at Olinghouse. Her sampling consists of conducting roadside point counts for 3 minutes at each of the 50 stops located along the route. Once completed she will send the data back to the USGS Office for processing and release. The bird survey is an annual survey the USDOI conducts and is requesting the Tribe consider granting permission for more than one year to streamline the process.

Ms. Noel said IDT recommended approval with the standard stipulations. All information will be review by Tribal Council prior to any publications.

Councilmember Ely made a motion to *approve the USDOI Roadside Bird Survey*. Councilmember Dunn seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

3. Approval Attorney Fee Grant for Settlement Negotiations and Legal Protection of Groundwater Rights with Resolution. Donna Noel, NR Director

Ms. Noel said this grant comes up almost every year, but the funds aren't given out every year. They did put in for the grant last year but didn't receive it. This grant is through the Bureau of Indian Affairs (BIA) and it's only for attorney fees. It covers the groundwater issues and federal reserve water rights.

Councilmember Harry made a motion to *approve the submission of the Attorney Fee Grant with Resolution*. Councilmember Wadsworth seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.** **RESOLUTION NO.: PL 052-21 ATTORNEY FEE GRANT**

4. Approval US Fish and Wildlife Service (USFWS) Tribal Wildlife Grant for Aquatic Invasive (AI) Species Prevention and Management Grant with Resolution. Adrienne Juby, Aquatic Invasive Species Specialist

Ms. Juby said the grant will allow the program to continue and expand on what the aquatic invasive species program is already doing. This grant will go towards monitoring for aquatic invasive species in Pyramid Lake and the lower Truckee River. They will be looking for new infestations so they can jump on it right away and eradicate them. They will be preventing the spread of AI by opening the watercraft inspection and decontamination station in Sutcliffe. They will also provide public outreach and education on how people can clean, drain and dry their boats and equipment.

Councilmember Dunn made a motion to *approve the USFWS Tribal Wildlife Grant for Aquatic Invasive Species Prevention and Management Grant with Resolution*. Councilmember Wadsworth seconded the motion. Votes

were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried**. **RESOLUTION NO.: PL 053-21 USFWS TRIBAL WILDLIFE GRANT FOR AQUATIC INVASIVE SPECIES PREVENTION & MANAGEMENT**

5. Approval USFWS Implementation of the Quagga & Zebra Mussel Action Plan in the Western US Grant with Resolution. Adrienne Juby, Aquatic Invasive Species Specialist

Ms. Juby said this grant is going to focus on preventing the spread through the inspection station. They are hoping to hire another full-time tech and seasonal tech to increase the hours of operation. It will also fund the purchase of a heater and insulation of the connex box because now the station can't run during the winter.

Councilmember Brady said her only comment is about the wages, they are low.

Councilmember Harry made a motion to *approve the USFW Implementation of the Quagga & Zebra Mussel Action Plan in the Western US Grant with Resolution*. Councilmember Dunn seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried**. **RESOLUTION NO.: PL 054-21 USFWS IMPLEMENTATION QUAGGA & ZEBRA MUSSEL ACTION PLAN GRANT**

6. Approval USFWS Pyramid Lake Bat Inventory and Monitoring Project. Emily Hagler, Environmental Specialist

Ms. Hagler said this is the second consecutive grant that they would receive from the USFW to support the inventory and monitoring on the reservation. Bats are important to the ecosystem; they are not only good pollinators for the range land but are also good for seed dispersal and are important prey species for the wildlife such as hawks and owls. It's important to understand what the species composition looks like across the landscape. Included in the grant is necessary equipment, staff time and public outreach. As a part of this grant, they want to work with the Pyramid Lake High School and public outreach so members can know what is in their backyards.

Councilmember Wadsworth made a motion to *approve the USFWS Pyramid Lake Bat Inventory and Monitoring Project*. Councilmember Brady seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried**.

7. Approval Environmental Protection Agency (EPA) Tribal Environmental Plan (ETEP) Posting. Donna Noel, NR Director

Ms. Noel said they developed the document 5 years ago to use as a strategic plan for their department, to give them direction on what grants to write and puts a timeline on items the programs are doing in the Natural Resources Department. This report is a part of their GAP Grant. She is requesting to post for membership input on what the department is doing and to provide input on items they would like to see their department doing. They provided a copy to the Cattleman's Association for their input and comments which they provided.

Councilmember Dunn made a motion to *approve the posting of the EPA Tribal Environmental Plan (ETEP)*. Councilmember Phoenix seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried**.

8. Approval Utah State Request to Continue the Tui-Chub Larval Sampling and to Reset Temperature Data Loggers. Dan Mosley, Pyramid Lake Fisheries Director

Mr. Mosley said this is an annual request from Utah State to monitor the tui-chub larvae which is an important primary food source for the Lahontan Cutthroat Trout (LCT). Based on the numbers, it determines how many trout they plant in the lake every year. The tui-chub larvae are dependent on freshwater flows from heavy snowpack and runoff that goes into the lake. When they go into extended periods of drought, the tui-chub larvae go down, so they don't want to put too many trout in when there's an extended drought. When they have a wet year, that's when they can plant more in the lake. This is documenting how many tui-chub there are. They will be out on June 14th to the 16th and in the fall from September 27th and October 22nd. That is when they do the hydric acoustic surveys, it's like a sonar on the lake. They will be conducting larval fish tows at 8 locations on the lake. They will be resetting the temperature loggers out at the Fisheries spawning channel.

Ms. Noel said IDT recommended approval.

Councilmember Harry made a motion to *approve the Request from Utah State to Continue the Tui-Chub Larval Sampling and to Reset Temperature Data Loggers*. Councilmember Brady seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

WATER TEAM

1. Kemp Jones Report. Chris Mixson. Report Submitted.

- a. **Endangered Species Act Section 7 Consultation.** This is where the Bureau of Reclamation (BOR) initiated formal consultation under Section 7 of the ESA with the USFWS to analyze the impact of ongoing Truckee River diversions to the Newlands Project at Derby Dam. At the last Council meeting they discussed where BOR was proposing to essentially pause, if not entirely forego, the preparation of the final biological opinion. Instead, do a memorandum of understanding (MOU) to have TCID voluntarily conserve measures in the Newlands Projects instead of having them be required by the biological opinion. There is a lot of complicated technical problems they are running into with how OCAP works and how the ESA interacts with the OCAP. It was the consensus of Council that they were not ready to proceed with that alternative proposal. They reported back to the BOR and to USFWS, and it was also the consensus of Council that because one of the primary issues that is causing BOR and USFWS so much trouble is the bounds of BOR's discretion and forcing TCID to do conservation measures to reduce diversions. BOR has verbally said many times, they lacked discretion to require TCID to do conservation measures to reduce the burdens to help the fish. And if they lack discretion, that means the USFWS can't include those conservation measures as part of the biological opinion. So, Council decided, with the Water Teams advice to ask BOR to put in writing its concerns and its understanding of its discretion with respect to these conservation measures and efficiencies in the Newlands Project. The last they heard was they were vetting it with their solicitors which are the lawyers for the Department of Interior, but they have begun the process of describing their discretion in writing. Which is something they have been asking them for a couple years now. Once they get it in writing they will bring it back to Council for discussion.

BOR brings a team with them to their meetings, it's always the area manager, which is the top BOR employee in Carson City, her name is Terry Edwards, their senior hydrologist, Dan Lottie and other staffers.

- b. **Ormat Geothermal Project or San Emidio Project.** There is the local land use permitting by the County and the Regional Planning Agency and there is the Federal Permitting by the Bureau of Land Management (BLM) for the rights of way that Ormat needs for the project. With the local land use planning, they filed an appeal to the Nevada Supreme Court, when Washoe County granted Ormat's Special Use Permit, the Tribe took issue with the reliance of Washoe County on the BLM's draft EA. Their legal argument is Washoe County has to, under their land use regulations, make affirmative factual determinations that the project won't harm the Tribe's resources or harm the natural areas surrounding the project. If they are going to make those findings, it's the Tribe's argument they can't rely on the BLM draft EA because at the time, Washoe County made the decision, the draft EA was still under revision, it wasn't even a final draft. They filed the petition and the Supreme Court sat on it for several weeks, then they received a notice in late April, directing the Tribe to file a supplemental brief to further discuss whether the Supreme Court has jurisdiction over the case. It also says once the Tribe files the supplemental brief, then Washoe County and Ormat, has to file their briefs. Then the Tribe gets to file a reply brief. Once the Supreme Court issued the order, Ormat contacted Ms. Noel and appeared to be ready to start talking about a monitoring program to make sure their project doesn't impact the Tribe's water resources, primarily on the reservation, the spring and other geothermal resources. Ms. Noel is now speaking with them, but he can only speak with their attorneys. They have now filed a stipulation with the Supreme Court asking for 5 weeks before they file their supplemental brief hoping to settle within that time period. The Court granted it so they don't have to file until June 21st for the supplemental brief. Ms. Noel is now working with Ormat on the monitoring plan. They did receive a call from Truckee Meadows Regional Planning Commission saying they heard BLM was going to issue the EA on that Friday and they were going to have the land use permit on their agenda. Ms. Noel contacted BLM and asked them how they could issue the EA without the monitoring plan. BLM said they are issuing the EA without the monitor plan and will have a requirement that Ormat cannot operate their project unless they have a monitoring plan that the Tribe's agrees to.
- c. **TROA Navy Water.** Under the 1990 Settlement Act, the Navy Station at Fallon was required to reduce their irrigation practices in order to essential free up water. If that water can be used to benefit Pyramid Lake fishes it is required to be and if it can't be used to benefit, then it can go to Stillwater Wildlife Refuge. They have been negotiating with the Stillwater Fish and Wildlife Service on and off for several years. Last year they filed a change application to change the Navy water rights from the Naval Station permanently to Stillwater and because the Tribe didn't have an agreement yet with USFWS about how to manage the water for the benefit of the Tribe and the fish. They protested the change application, and the State Engineer issued a notice of a pre-hearing conference and informed them they were ready to have a formal hearing on the USFWS change application and the Tribe's protest. After speaking with the USFWS solicitor, they agreed there are federal issues, issues with the Settlement Act and issues about endangered fish and the relationship between the Tribe and USFWS that it wasn't in the best interest to have the State Engineer resolving the disputes, they needed to do it one-on-one. They filed a stipulation

with the State Engineer to pause the State Engineer hearing on the protested change application so they can negotiate the MOU between the Tribe and USFWS. They will start negotiating with USFWS in June.

- d. **Truckee Canal XM EIS/ City of Fernley Lawsuit.** This item was discussed in closed session at the last meeting. It wasn't a formal vote, but the consensus of Council was that he proceed to prepare a motion to intervene in Fernley's lawsuit. They will be intervening as a defendant, on the side of the United States to try to fight back against Fernley's legal claim they have a right to force BOR to allow water to seep out of the canal to recharge the groundwater aquifer.

Councilmember Gonzales made a motion to *approve the resolution for a Motion to Intervene in the City of Fernley's lawsuit against the Bureau of Reclamation regarding the ROD and EIS for the Truckee Canal XM Project.* Councilmember Brady seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions.** **Motion carried.** **RESOLUTION NO.: PL 055-21 MOTION TO INTERVENE IN FERNLEY'S LAWSUIT**

- e. **Smoke Creek Basin Groundwater Rights.** The Smoke Creek Groundwater Basin is in the northwest corner of the reservation. It is partly the boundaries of the basin are partly within the reservation and partly outside of it. Maybe about 10 years ago, the State Engineer's office initiated an adjudication of all the water rights in the Smoke Creek Basin. It meant that everyone who had claims to have a water right in the basin has to file a formal proof of their claim. A proof of claim is like for example, you have been irrigating some pasture for 50 years and use so much water a year. On behalf of the Tribe, Stetson Engineers did an extensive investigation and survey of the reservation portions of the Smoke Creek Basin and prepared and filed a proof of claim that said the Tribe is claiming a Federal Reserve Groundwater Right to the full extent for all the available water. It is based on historically, federal reserved Indian water rights based on a standard called practically irrigable acreage. They also made claims for geothermal water. The Tribe is saying the Federal Reserve Groundwater Right is for the whole basin which is justified in his opinion. Because these adjudications are complicated and take a long time, the State Engineer put it on the shelf and hasn't done anything on it for the last 10 years. Several weeks ago, Chairwoman Davis received a letter from an attorney named David Rigdon, representing a company called Jack Rabbit Properties that owns property and water rights in the Small Creek Basin, outside of the reservation boundary. They are opposed to them in the adjudication proceeding. They are approaching the Tribe to see if there is any way to resolve the dispute over the water rights. They are hoping to make sure of their water rights from Smoke Creek by selling to someone in Reno which would presumably require some sort of pipeline through the reservation. They wanted to let Council know that these people have reached out to the Tribe.

2. Stetson Engineers LLP. Allan Richards. Report Submitted.

Mr. Richards said his report includes meetings with Ormat but Mr. Mixson covered most it already and he doesn't have more to add. His report also covers the meetings with the USFWS and BOR on the Section 7 Consultation on ongoing OCAP. He doesn't have more to add other than what Mr. Mixson covered.

They had a meeting with CEMEX and USEPA in April to hear about the status on CEMEX's work to get bids from contractors to stabilize the west wall of the pit lake. They said they requested bids from contractors

and they are waiting to receive those bids. They had asked for costs to stabilize the west wall by two methods. One method involved having to complete dewatering the lake and then stabilize the bank wall with compacted fill. The other method would not require dewatering the lake and would involve injecting grout under pressure into the soil. They have not heard back on if they received any bids, so there is no update. With the Smoke Creek Groundwater Basin, he showed a map to Council identifying areas and explaining their work in providing the proof of claim which most of the claim was for future use of groundwater for irrigation, domestic commercial uses, industrial including gravel mining, and future geothermal water wells totaling 32,000-acre feet. The whole claim was for a little under 45,000-acre feet.

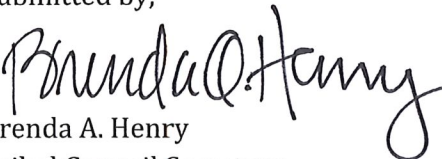
In his hydrology report, the Truckee River flows through Nixon are in a critically dry year now. They are trying to maintain a dry year flow regime target primarily water releases from Stamped and Prosser Creek reservoirs. Flows in the Truckee River averaged about 250 cubic feet per second (CFS) during the month of April. The Pyramid Lake elevation at the end of April was about 3805.2 feet.

ADJOURNMENT

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

The meeting adjourned at 10:49 p.m.

Submitted by,


Brenda A. Henry
Tribal Council 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 15th day of September, 2021, having ten (10) members present, constituting a quorum, by the vote of nine (9) 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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