

# 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 November 18, 2020

### Members Present

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

Members Absent      Cassandra Darrough, 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.*

Chairman Sampson Sr., called the November 18, 2020 Water Team meeting of the Pyramid Lake Paiute Tribal Council to order at 6:05 p.m.

### **ROLL CALL**

Roll call was taken by Brenda A. Henry, Tribal Secretary. Councilmember Darrough was absent. 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.

Vice Chairwoman Ely-Mendes and Councilmember Harry stepped out of the meeting.

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

### **CONSENT AGENDA**

Councilmember Harry returned to the meeting at 6:06 pm.

Following item was on the consent agenda.

1. Approval Stetson Engineers Inc. October 2020 Invoice #2751-009

Councilmember Wadsworth made a motion to *approve the agenda*. Councilmember Janet Davis seconded the motion. Votes were seven (7) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

**NATURAL RESOURCES** Donna Noel, Natural Resources Director

**1. Approval Request and Presentation to Collect Lidar and Magnetic Data over the Reservation.**  
USGS/UNR/DOE

Ms. Noel explained this request was forwarded from the Inter-Disciplinary Team (IDT) to Council for consideration. The IDT recommended this item be sent to Council with the stipulation the data be reviewed by the Tribe for determination on what is to be released to the public. This information would also be useful to the Tribe since the adjacent lands will be surveyed. Ms. Noel explained the request for a LIDAR survey and magnetic survey over the reservation through a collaboration between USGS Department of Energy and University of Nevada Reno. Geology and the Nevada State geologist. There were members in attendance to brief the request.

Councilmember Judith Davis made a motion to *approve the request by USGS/UNR and DOE to Collect Lidar and Magnetic Data over the Reservation with the recommendation of IDT to include the stipulations plus the information will not be published until it is brought back to the Tribe for review*. Councilmember Wadsworth seconded the motion. Votes were four (4) **for** and one (1) **opposed** (Janet Davis) with zero (0) **abstentions**. **Motion carried.**

NOTE: Vice Chairwoman Ely-Mendes, Councilmembers Harry and Mix lost connection with the meeting. Issues with Verizon WiFi. Councilmember Wadsworth said there are six Councilmembers present including the Chairman which makes a quorum, he does not have to vote.

Councilmember Janet Davis opposed because of the THPO's concerns.

**2. Approval Film Request Polish Embassy Las Vegas.**

Ms. Noel explained the Polish Embassy from Las Vegas has requested to take pictures at the lake for a tourist book to promote tourism to members of their Polish organization. They did not ask to waive the fee. The IDT felt there was not any natural resources or cultural items involved. Dan Mosely felt they should keep them in the public areas. THPO was against it because she felt there was no benefit to it. Karen Shaw, Cattleman's Association was opposed on behalf of the association to protect the reservation and sovereignty. The recommendation from the IDT was to approve if they take pictures only in the open areas along State Route 446 and they are to bring back the pictures for Council approval that they would like to include in their book.

Kameron Morgan, Water Quality Manager, further explained they have a lot of different Polish immigrants inside the State of Nevada. Since the headquarters, the embassy is located in Las Vegas where there are a lot of Polish people, they get a lot of requests about unique places in Nevada and are interested in the desert environment because it's so different from Poland.

Vice Chairwoman Ely-Mendes, Councilmember Harry and Irwin reconnected at 6:58 pm.

Councilmember Judith Davis made a motion to *approve the Film Request from the Polish Embassy with the IDT recommendation and stipulations*. Councilmember Wadsworth seconded the motion. Votes were six (6) **for** and one (1) **opposed** (Janet Davis) with one (1) **abstention** (Mix). **Motion carried.**

**3. Approval Water Quality Governance Article and Extension to Research Project Deadline.** Kate Berry, UNR

Ms. Berry said they have been working with the Tribe on a research project on tribal water quality governance that has a focus on time and space and how it influences that. She has two things to address. The first is a research agreement that was signed on September 25, 2017 and expired on February 28 of this year. She is asking for an extension to collect and analyze data under the Clean Water Act. They are conducting a webinar, an online Symposium on tribal water quality governance amongst not just this tribe, but several other tribes. Third, to prepare a report and other documents for submission of the findings to the council at the end of the project. She would like to extend for the same period as National Science Foundation, who is funded this project. She believes it goes until February of 2022. That is the first request. The second request is they produced the first paper from the research, and she is requesting permission to present and publish it. It has gone through the team review process. It is based on data that was collected and analyzed for this project between 2018 and this year 2020 and includes surveys, interviews, and field trips which included tribal members, representatives from tribal government, and then others associated with the community. They have drawn off historic and contemporary documents that are publicly available that are related to water quality governance by the Tribe.

Ms. Berry provided a technical review of her project.

Councilmember Wadsworth said she was on tribal council when the agreement/ the proposal was originally approved in 2017. She would like to know what her ultimate goal is in writing this paper.

Ms. Berry said her goal is to publish a paper as part of a special issue that deals with imaginaries and environmental governance. It is going to take cases from around the world. From the Tribe's standpoint, this is one that deals with indigenous water issues which is one of two in the United States.

It was reviewed by THPO, Betty Aleck and she was good with it.

Ms. Berry said the deadline on this agreement is February 28 2020., it occurred right before the pandemic started, and they are requesting an extension to January or February of 2022.

Councilmember Judith Davis made a motion to *approve the request Kate Berry for an Extension for the Research Project with the recommendation of the IDT to include the request to publish with IDT with IDT stipulations*. Councilmember Janet Davis seconded the motion. Votes were four (4) **for** and two (2) **opposed** (Mix, Wadsworth) with two (2) **abstentions** (Ely-Mendes, Harry). **Motion carried.**

**4. Approval Request Permission to Conduct a Phase II Assessment on the Smith Site.** Rueben Avina, Brownfield Specialist

Mr. Avina explained the Smith site consists of two parcels of land which are in Wadsworth, across from the Wadsworth Justice Court. Both parcels are currently are owned by Mr. Bernie Smith, who would like to donate the properties to the Tribe. The brownfields program obtained permission from Council back in June to assist the Tribe in performing the proper due diligence by conducting a phase one assessment on these properties. A phase one assessment is used to gather sufficient information to develop an independent professional opinion about the environmental condition of a property and also to identify actual or potential environmental contamination on the property. With the help of a brownfield contractor, we conducted the phase one assessment, and a part of the task is for the contractors to review historical records. They also interviewed the current property owner investigated historical maps and also conducted a site visit to determine whether further investigation would be needed. Based on the results of the phase one assessment, a phase two assessment is needed to further investigate potential environmental issues they found on the properties. One of the parcels, the current property owner said about 25 years ago, they removed an underground storage tank. It was a gasoline underground storage tank. However, the contractor did not find any records of such a removal. With the other parcel, there might still exist an underground storage tank used for heating oil. The current owner's grandfather from whom he inherited the properties said he reportedly use contaminated soil from the adjacent railroad properties to grade off parts of the properties. And as well as several septic tanks that are located throughout the property, the soil and the groundwater beneath these tanks has not been fully assessed. The other issue that we found is there is a domestic well located on the property. When they dug the well, it indicated there was poor water quality. There was also indication of oil being observed. This is what was found during the phase one assessment. In phase two assessment they will collect soil and groundwater samples from areas within the areas within the site with potential environmental contamination, as well as samples from the buildings located on site as they potentially contain lead-based paint based on the date of construction. Those samples would then be sent to the lab to obtain analytical results. The results will be compared with EPA cleanup standards. If those results exceed EPA cleanup standards, then cleanup would be recommended. As he said in his request in in June, the Tribe could still acquire the properties, and they would then be able to apply for a cleanup grant through the brownfields program. Obviously, he would come back again to present the results of the phase two assessment and based on Council's decision could move forward with the acquisition process. The phase two assessment would cost approximately \$52,000, which the brownfields program does currently have, however, they are holding on to that funding for the potential cleanup of the Urrutia site, which is also located in Wadsworth. He attended a Water Team meeting in October 2019 to what the Tribe wanted to do with that property. Council at that time advised him to talk to the Executive Team as they would be more suitable to determine future use for the site. He contacted the Executive Team a few times so they can deliberate on the site but has yet to receive an answer.

Vice Chairwoman Ely-Mendes made a motion to *approve the request to conduct phase two assessment*. Councilmember Judith Davis seconded the motion. Votes were seven (7) **for** and one (1) **opposed** (Mix) with zero (0) **abstentions**. **Motion carried.**

Councilmember Mix said he opposed because they will need more funding to clean up all the hazardous waste and \$52,000 is not going to cover it.

express waiver of sovereign immunity in this document. It means is they would have to basically either sue you in tribal court or potentially federal district court. He is comfortable with that and he provided it to Wes Williams, and he told him he is satisfied with it as well. He is asking for a motion to approve the confidentiality agreement and to allow the Earth Justice lawyers to sign it on your behalf as your attorneys.

Councilmember Harry made a motion to approve *the Confidentiality Agreement and to allow the Earth Justice lawyers to sign on behalf of the Tribe*. Councilmember Janet Davis seconded the motion. Vote was six (6) **for**, one (1) **opposed** (Wadsworth) with one (1) **abstention**. **MOTION PASSED.**

**Ormat San Emidio II Geothermal Expansion.** This is Ormat's proposal to expand their geothermal plant that is located off reservation to the north east, in the San Emidio basin. With work done by Ms. Noel, they were able to get the Washoe County Planning Commission to deny the special use permit that Ormat needs for this project. Ormat appealed to the full Washoe County Commission, who on November 10th, held a hearing and in about five minutes, they gave unanimous approval to the special use permit. They reversed the Planning Commission denial for the special use permit. He provided the link to the comments that he provided, setting forth the legal and factual reasons why the Tribe wanted to commission, and the full commission to approve the denial. He provided the legal theory, should the Tribe want to proceed with some sort of legal appeal of the Washoe County Commission. He has an associate at his firm doing a legal research because he has never done land use law like this, he only does water law, although he does do other stuff as it comes up. The reason he has an associate helping him figure out what the appeal process would be should the Tribe want to appeal that decision. He will report back on that to Council. The preliminary research provided said the appeal would take the form of the Tribe filing a special petition in Washoe County District Court, basically suing the Washoe County Commission and an administrative way asking the court to reverse the Washoe County Commission. It would basically be a new lawsuit. The Water Team has not had an opportunity to really discuss this since November 10th. It is an internal decision on whether the Tribe should appeal. The reason he is bringing this up is because Ormat has a long road to go to build this project. They must go to the Truckee Meadows Regional Board, which is a land use authority that has joint powers through Washoe County, City of Sparks and City of Reno. We may have some leverage there. Ormat's project is on federal land, they must go through the BLM, plus there will have to be a final environmental assessment and the Tribe will have a say in the environmental impact statement. There could be potential NEPA lawsuit that the tribe could file. If we want to continue to pursue claims that Ormat is going to harm the Tribe's resources. There is lots of different approvals that Ormat needs.

Mr. Mixson said fighting these in the early stages can have some benefit, because Ormat needs their special use permit to proceed. Since the Washoe County Planning Commission denied their special use permit, it brought Ormat to the table and the Tribe had a meeting with them They started talking about monitoring and potential mitigation activities, and that is still active. Their monitoring plan is going to be part of the BLM. Environmental documents under NEPA, which they do not have the details of that yet. He does not want to give up on the special use permit part because of what Councilwoman Harry said that it does, show them fighting them every step of the way the Pyramid Lake Paiute Tribe is serious, and the Tribe has real concerns about the project.

Mr. Avina confirmed the \$52,000 is just to do the phase two assessment. There will be other potential sources of funding if cleanup is recommended. There is going to be a lot of cleanup. As stated, there was oil on the property plus asbestos which means the house has to be cleaned by a professional, not just anybody can clean that up. It is going to be expensive especially since the Tribe may want to acquire the land, the Tribe will be responsible and will end up paying to get it cleaned.

Mr. Avina asked about the Urrutia property, if they would like to demolish the 2 buildings or to renovate them. Vice Chairwoman Ely-Mendes said they are beyond repair; they probably should be demolished.

Mr. Avina asked if the Tribe ended up acquiring the properties would they want to demolish the buildings located at the site? Or would they want to renovate them? The reason he asked is if the buildings do contain lead-based paint, and especially as materials, that would help them determine the scope of work for potential cleanup. Say for example, cleanup to prepare for renovation is typically more conservative as opposed to clean up to prepare for demolition, since they would have to involve various types of contractors and environmental health professionals to ensure that any future occupants would not be exposed to hazardous materials.

It was recommended Mr. Avina plan for the worse and they will see what happens.

## **WATER TEAM**

### **1. Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP. Chris Mixson,**

Mr. Mixson said due to time constraints, he is going to forgo his report and start with #6 on his report, Clean Water Act Section 401 Litigation. He is requesting a motion and a vote. Number six is the Clean Water Act section 401 litigation. This is where the Tribe hired the Earth Justice National Environmental Law Firm, to join in a lawsuit against the Trump administration's section 401 regulations. The case was consolidated with a similar case filed by several states. The Tribe is now functionally co-plaintiffs with the other states. And to proceed with the case, all the co-plaintiffs are being asked to sign a confidentiality agreement. They call it a common interest and confidentiality agreement and appointed is so the other co-planners can share information among each other, and it can stay confidential and not be subject to be turned over to the defendant, which is the United States in this case. In your packet, attachment number six, is the confidentiality agreement. He does not have any problems with it at this point, that the big issue, which held it up before was tribal sovereign immunity, because the point of the agreement is, like all contracts, if somebody breaches the contract, you need to have a way to enforce it. He informed the Earth Justice folks he was not going to allow the Pyramid Lake Paiute Tribe to waive its sovereign immunity in any enforcement provision with a confidentiality agreement with the states and with environmental groups. What they have now is on page five of the agreement, section 12, is enforcement. What it says is that the parties agree that a breach of the provision may cause harm to the other parties and therefore agreed injunctive relief filed in a court of competent jurisdiction is the appropriate means to enforce this. And what that means is, the only way that you can get sued is if they file the lawsuit in a court of competent jurisdiction. You are not waiving your sovereign immunity; you can only waive it expressly and there is no

There was nothing to report on the ESA Section seven consultation, nothing to report on the Truckee Canal XM Environmental Impact Statement, with CEMEX, it would be good reading for all of you to read the CPAs administrative order on consent, which is in your packet. The Tribe alerted EPA, or Donna's office alerted EPA, to the unpermitted discharges to the Truckee River because of CEMEX is dewatering, and CEMEX agreed with the EPA to be subject to what we call an AOC or administrative order on consent. In the AOC CEMEX has agreed to do an emergency engineering plan for potential overtopping of the pit that has been filling up. They also agreed to do water quality assessments and sampling, and they have agreed to file for applications for both which is a discharge permit and a stormwater permit, and they have to provide monthly status reports. They have to copy Donna Noel on everything they provide to the EPA. Ms. Noel's office is going to be fully in the loop on everything going on between CEMEX and the EPA. They are meeting with CEMEX on Monday to hear from them about their own analysis and impacts of their pumping on the Tribes groundwater resources. Recoupment case, there is not a lot to report. They had a meeting with the Water Master about how they are going to calculate their prior repayment for quote, plan and voluntary tricky canal maintenance closures, and also Donner lake. That is all part of a judgement order that was in the Tribe's favor that they reported last month. The Fallon Tribe filed a motion to reconsider a judgement to a specific part of a judgement order regarding something that has always been a part of this recoupment case, which is if TCID has to repay the Tribe water, how is TCID at the same time going to fulfill its obligation to serve the water rights of all the entities in the Newlands project, including the Fallon Tribe. That motion is still pending before a judge. We found a joint response to that motion with the United States Department of Justice, where we basically said, Look, this issue isn't right. If, in the future, TCID makes repayment to the Pyramid Lake Paiute Tribe and the harm it brings, then they need to pipe up at that time right now. They will let the Tribe know what to do about that. NUMU Inc, Pyramid Commerce Center, he has no updates, he has a redline version of the confidentiality and non-disclosure agreement that they have been working on. The red lines are from Dan Ray Bear, he forwarded the documents to him last week and he will try to get a response to him this week. The last thing on his report is the OCAP provision. This is a project initiated by the Bureau of Reclamation, to look at potential revisions to the OCAP. They had a stakeholder's meetings in October. There is documentation provided to Council which is a bunch of brainstormed ideas in a bulleted format list about ways that all the stakeholders think they might revise the OCAP in the future. The process is going to take a long time. They had a one-on-one meeting with the Bureau of Reclamation that morning, which was good. They made it clear that the Pyramid Lake Paiute Tribe's going to fight to the death, any proposed revisions that will get the good result and increasing the diversions of Truckee River water to Newlands project. The Bureau of Reclamations is working with the Tribe, for now in good faith, to make sure the revisions don't have that effect.

## **2. Stetson Engineering Inc. Allan Richards**

Mr. Richards said with limited time before the internet disconnects, he wanted to let Council know they have done a lot in October. It is all in his progress report, Mr. Mixson covered a good part of it.

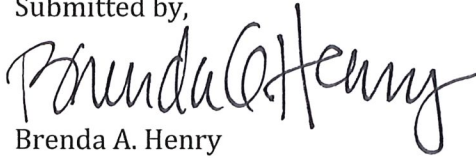
Mr. Richards said the OCAP revision is super important, it governs how water is diverted from Truckee River to the Newlands project. Opening this up for possible OCAP revision is something we really need to track closely, and it will probably drag on for many years.

**ADJOURNMENT**

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

The meeting adjourned at 7:58 p.m.

Submitted by,



Brenda A. Henry


Tribal 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 **20<sup>th</sup>** day of **January 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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