

Pyramid Lake Paiute Tribal Council

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PYRAMID LAKE PAIUTE TRIBAL COUNCIL WATER TEAM MEETING MINUTES Tribal Chambers ~ Nixon, NV October 21, 2020

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

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.

CALL TO ORDER

Tribal Chairman Anthony Sampson Sr., called the October 21, 2020 Water Team meeting of the Pyramid Lake Paiute Tribal Council to order at 6 p.m.

ROLL CALL

Roll call was taken by Brenda A. Henry, Tribal Secretary. Councilmember Janet Davis joined the meeting at 6:07 p.m. All other Tribal Councilmembers were present at roll call and a quorum was established for this meeting.

APPROVAL OF AGENDA

Chairman Sampson said there is an addition to the Consent Agenda to add Item #5 Approval of Stetson Engineers September 2020 Invoice #1336-2009 and #1336-01-2009.

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

CONSENT AGENDA

The following items are on the Consent Agenda:

1. Approval of Minutes: June 17, 2020 WTM and July 15, 2020 WTM
2. Approval Stetson August 2020 Invoice #1336-2008 and #1336-01-2008

3. Approval Wolf Rifkin Shapiro Schulman & Rabkin LLP July and August 2020 Invoice
4. Approval Stetson Contract (1336 and 1336-01)
5. Approval of Stetson September 2020 Invoice #1336-2009 and #1336-01-2009

Councilmember Smith made a motion to *approve the Consent Agenda*. Councilmember Darrough seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

PRESENTATION

1. **Government to Government Consultation: Bureau of Reclamation (BOR) Canal Extraordinary Maintenance EIS** – Laurie Nicholas and Teri Edwards

(Councilmember Janet Davis joined the meeting at 6:07 p.m.)

Teri Edwards and Laurie Nicholas had a PowerPoint presentation on the Truckee Canal Extraordinary Maintenance Environmental Impact Statement. Ms. Nicholas is the Project Manager and will go through the purpose and need for the project, the alternatives that were considered and any potential impacts.

Ms. Nicholas gave a brief background on the Truckee Canal. The purpose is to allow the TCID to complete Extraordinary Maintenance to restore safe long-term operation of the Canal. The need is to serve Newlands Project water rights under the existing Newlands Project Operating Criteria and Procedures and be in compliance with decrees, contracts, and other applicable laws.

Ms. Nicholas said there are five alternatives that may be considered. First, no action to be taken. Second, line the Canal for six miles, with a full prism geomembrane liner covered with concrete. Third, line 27 miles of the Canal with a full prism geomembrane liner covered with concrete. Fourth, line six miles of the Canal using a combination of lining covers (concrete and soil). Fifth, which is the preferred alternative, line six miles of the Canal with a full prism geomembrane liner covered with concrete. Maps were provided to show the different alternatives. Under all action alternatives, the proposed Canal lining would diminish artificial groundwater recharge from the Canal that currently serves M&I purposes in Fernley. The preferred alternative does not line the entire canal in the Fernley Reach.

Alternative 5 has been identified as the preferable alternative because it provides the highest risk reduction compared to the other alternatives. This alternative reduces risk without introducing new risks and causes the least damage to the physical environment. The total amount of ground disturbance would be less than the other alternatives and is among the least cost alternative to maintain. There is a stretch along the Fernley Reach that would not be lined to allow for some continued artificial groundwater recharge in that area.

The construction schedule was based on a logical sequence of work activities and interdependencies. Ms. Nicholas said funding is available to complete the first phase of design. This phase consists of

lining the priority six miles of the embankment and armoring Pour Point 8. The Bureau of Reclamation is funding the design and TCID will reimburse them under a repayment contract.

Councilmember Mix said the lining of the Canal, mostly all of it – Fernley does get a recharge and they're not complaining because holding ponds will be installed with check structures. Do each of those ponds have a well, because each of those wells will hold water that will eventually seep into the ground. Fernley relies on that recharge and if the Canal is lined and there is no recharge, they will be getting it from somewhere. Ms. Nicholas said those detention ponds will not be constructed under the preferred alternative. Lining the Canal would cut off the seepage and Fernley would have to look at alternative sources. Ms. Edwards said all of the peak sections are lined and the check structures are there now. When it is lined and the check structures replaced, there will be less seepage. Ms. Nicholas said the City of Fernley does not like the preferred alternative.

Councilmember Harry asked what is the timeline for the construction phases and it was mentioned that there were some statutory or regulatory changes that came about. How does this affect the EIS? Ms. Nicholas said it was mostly page limits and organizational guidelines and time limits. Councilmember Harry asked if there were going to be any revisions, as this may be a political move especially a rushed EIS which was only a procedure. Ms. Nicholas said she doesn't believe that in this case. The federal government studies things for long periods of time.

Councilmember Harry said the financial backing has been identified and what is the incentive for TCID to complete this in a timely manner and is there a construction phase and schedule. Ms. Nicholas said they provided to TCID a construction schedule within the engineering and economic feasibility study. She believes it is a 10-year construction schedule but actual implementation will depend on actual funding availability. Motivation could be that if the Canal continues to deteriorate, the risk assessment is routinely updated by Reclamation and look what restrictions are in place on Canal operations and if the Canal continues to deteriorate, those restrictions could change.

Ms. Edwards said there is funding to complete the design and as of now, no funding has been identified for construction and it is TCID's responsibility to find the funding and do the construction. They may be doing the project in sections at a time once funding becomes available. Allen Richards, Stetson Engineers, asked if there is a total cost estimate for implementation and Ms. Nicholas said there is a feasibility cost estimate in the Engineering and Economic feasibility study and it is under \$150 million. The cost estimate will be refined during the design phase.

NATURAL RESOURCES DEPARTMENT – Donna Noel, Natural Resources Director

1. Approval to Survey the Tahoe-Pyramid Trail from Wadsworth to Pyramid Lake – Michael Traynor and Janet Phillips

Mike Traynor said he is a volunteer for the Tahoe-Pyramid Trail and is head of the communications committee in charge of the signage for the trail. They would like to inspect the condition of the signs and the trail. This should take about four to six hours.

Vice Chairwoman Ely-Mendes asked what is the timeline and Mr. Traynor said it is weather-dependent but they are looking at the end of the month or early November. Councilmember Harry asked if there was funding to any repairs they may see and Mr. Traynor said they are funded through donations and grants. Councilmember Smith asked if there is a recommendation from the Tribe's Interdisciplinary Team (IDT) and Councilmember Judith Davis replied yes, they did.

Councilmember Judith Davis made a motion to *approve the request to survey the Tahoe-Pyramid Trail from Wadsworth to Pyramid Lake and as recommended by the Tribe's Interdisciplinary Team*. The motion was seconded by Councilmember Darrough. Votes were five (5) **for**, four (4) **opposed** (Janet Davis, Harry, Mix, Wadsworth), with zero (0) **abstentions**. **Motion carried.**

2. Approval for NV Energy to Access a Site South of Numana Wetlands – Kameron Morgan

Kameron Morgan said he is presenting a request from NV Energy to access a site south of the Numana Wetlands to look at trees that can be removed or trimmed. The concern of NV Energy is the heat. Mr. Morgan said he looked at large cottonwood trees that may provide shelter and if Betty Aleck, Tribal Historic Preservation Officer, had any cultural concerns. NV Energy would send out a crew with two bucket trucks to begin trimming the trees. A map is included in the request and Mr. Morgan said the concern he has is the potential for wild fire but the trucks are equipped with water. The area they want to access has a lot of whitetop and they wouldn't have to remove any native vegetation.

Mr. Morgan said NV Energy would like to know if the Tribe is okay with them leaving the wood on site with limbs being scattered or chipped with a second option of hauling away the trees or chipping the wood and spreading the mulch in the area. The Chairman would have to sign off for any trees that would have to be removed.

Vice Chairwoman Ely-Mendes made a motion to *approve the request authorizing NV Energy to access a site south of the Numana Wetlands*. Motion seconded by Councilmember Smith. Votes were nine (9) **for**, zero (0) **opposed** with no **abstentions**. **Motion carried.**

Councilmember Darrough asked that Emergency Response be notified. Councilmember Janet Davis said notice should be sent out publicly.

3. Update on PLPT Climate Change Research Project – Kameron Morgan

Schuyler Chew is requesting approval to submit his dissertation on climate change to his university. Mr. Morgan said they have been working for several years with Mr. Chew and the University of Arizona on a climate change vulnerability study. They have amended and extended the research agreement several times. Mr. Chew has written his dissertation and is requesting approval from the Tribal Council.

Mr. Chew said he is Mohawk Wolf Clan from Six Nations and is a PhD candidate at the University of Arizona. He has been working with the Tribe's Natural Resource Department on the climate change research project which started with Dr. Carletta Chief. Mr. Chew provided a PowerPoint presentation on his dissertation which explained the climate change project. His request is approval from the

Tribal Council to submit the dissertation to the University of Arizona. The draft final report and draft manuscript will be reviewed by the Tribe's IDT and Tribal Council.

This research focuses on three main questions: how do Tribal staff and stakeholders understand climate change vulnerabilities; what potential strategies do staff and stakeholders envision for adapting to climate change; and, how can indigenous knowledge be integrated into climate change adaptation and planning.

Mr. Chew said his conclusions from this research are intended as a recommendation for the Tribal Council and departments in dealing with climate change. Potential approaches to climate change adaptation, education, outreach, and community education came up multiple times and were top priorities. Participants recommended a "bottom-up approach" that can be initiated by individuals. Action oriented planning should remind Tribal members what can be done; offer tools and build consensus and community buy-in.

Mr. Chew said the submission will only be accessible to the public upon request through himself and ultimately through the Tribal Council. He and his colleague may be drafting manuscripts of the dissertation to emphasize the importance of this research. The manuscripts will be reviewed and approved by the Tribe's IDT and the Tribal Council.

Councilmember Harry asked what his plans are for publishing the project and Mr. Chew replied that he would like to share the research and publish it. Chairman Sampson clarified if the request is for approval to submit the dissertation to the University of Arizona. Mr. Chew said he hopes to continue working with the Tribe to work on a final summary. Councilmember Judith Davis said she would like to follow the recommendation from the IDT to approve the thesis for submission but it will have to come back for approval to publish.

Councilmember Harry made a motion to *approve the request for submittal of the Climate Change Research Project by Edward Schuylar Chew and to follow the recommendation from the IDT to approve the thesis for submission but it will have to come back for approval to publish and to continue working with the Tribe.* The motion was seconded by Vice Chairwoman Ely-Mendes. Votes were nine (9) **for**, zero (0) **opposed** with no **abstentions**. **Motion carried.**

4. Approval BOR Request to use Published Data TROA Model – Donna Noel

Donna Noel, Natural Resources Director, said the Bureau of Reclamation is requesting approval to use already published data from the University of Nevada-Reno and bathymetry data on the Lake to develop the TROA planning model to look at evaporation on Pyramid Lake. The TROA planning model is used by TROA people to manage their water and to see what reservoir can be used. Currently the Lake elevations are put in as a regressive equation. They use the numbers and use a simple linear equation to determine evaporation rate. By getting the bathymetry data and published data, they will be able to pinpoint the evaporation and be able to better predict Lake levels. The IDT is recommending approval but the bathymetry data can only be used for this one application and not be given to anyone else.

Councilmember Mix said as agencies continue to use the data, will it eventually be used against the Tribe. Ms. Noel said it would be beneficial because it would help manage the Lake when we are trying to do planning and if there is an actual number for spawning season it would be easier to know the amount of flows. It would make it more accurate. Vice Chairman Ely-Mendes said an agreement will be signed stating that it would only be used this one time. Ms. Noel said it will be part of the letter and she will ask that Chris Mixson write the agreement.

Vice Chairwoman Ely-Mendes made a motion to *approve the request from the Bureau of Reclamation to use published data from the TROA model*. The motion was seconded by Councilmember Smith. Votes were seven (7) **for**, one (1) **opposed** (Mix) with one (1) **abstention** (Wadsworth). **Motion carried.**

5. Approval Collection of Winter Water Samples at Pyramid Lake by Elizabeth Tattersall, Western Nevada College – Donna Noel

Ms. Noel said Dr. Tattersall has conducted several water samplings at Pyramid Lake but with this request Dr. Tattersall is looking at bacterial diversity in the Lake how it changes in different areas and specifically how it changes during winter. She would be taking samples at four sites. Results from the last sampling done by Dr. Tattersall was provided to the Tribal Council. Ms. Noel said it is interesting work because nitrogen monitoring in the Lake is big and by knowing what bacteria is there, it helps the Tribe understand the nitrogen cycle in the Lake. The request was reviewed by IDT and they recommend approval after the Lake is open.

Councilmember Wadsworth asked how many students will be included and Ms. Noel said there will be up to 10 students. Ms. Noel said they should minimize it to three to four students. Vice Chairwoman Ely-Mendes asked Ms. Noel if there is a staff member that does this type of research or data collection and can updates be provided from them. Ms. Noel said there are no Tribal staff that does bacteriology and the hard part is identifying the bacteria.

Councilmember Wadsworth said on page six of the agreement, the name of the Tribal Chairman will have to be changed. Under Research Protocol on page 4, it states "other sites would be determined" and she would prefer that the sites be named within the agreement.

Vice Chairwoman Ely-Mendes made a motion to *approve the request to collect winter water samples at Pyramid Lake and to follow the Tribe's Interdisciplinary Team recommendations with a final agreement in place*. The motion was seconded by Councilmember Judith Davis. Votes were six (6) **for**, three (3) **opposed** (Janet Davis, Mix, Wadsworth) with zero (0) **abstentions**. **Motion carried.**

6. Approval Pyramid Lake Christmas Bird Count by Dennis Serdehely – Donna Noel

Ms. Noel said the request for the annual Pyramid Lake bird count that is conducted every year on January 1. Results from last year were included with the request.

Councilmember Janet Davis made a motion to *approve the Pyramid Lake Christmas bird count*. The motion was seconded by Councilmember Darrough. Votes were nine (9) **for**, zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

WATER TEAM REPORT

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

a. Endangered Species Act Sec. 7 Consultation

Mr. Mixson said this is the Bureau of Reclamation (Reclamation) consultation under the Endangered Species Act with the Fish & Wildlife Service (FWS) to reinitiate consultation based on any effects on the listed fish because of the 1997 OCAP which governed diversions of the Truckee River water into the Canal. This issue has been ongoing for about a year and Ali Shahroody and Stetson Engineers presented some conservation measures that they proposed to have included in the final biological opinion. At a recent meeting with FWS and Reclamation, Reclamation's response to those conservation measures was they cannot be required to take any conservation or other actions by a biological opinion if we, as a federal agency, don't have the legal authority to do what the conservation measure is asking us to do. It's a question whether they have discretion or not to take some type of action. This is going into legal authority and we have to see if Reclamation is going to say the Tribe doesn't have discretion. Mr. Mixson has contacted the Solicitor's Office and the Department of Justice to try to get more information about this.

b. Truckee Canal XM Environmental Impact Statement

Reclamation provided a presentation on the Final Environmental Impact Statement earlier in the meeting. This issue will be discussed later in the Executive Session.

c. CEMEX Water Operations

Mr. Mixson reported that on September 18, CEMEX finally responded to the Tribe's June 2020 comments on the draft proposed mining plan. Discussion of ongoing concerns with CEMEX are requested in the Executive Session.

d. Recoupment Case

There was a hearing on September 29th to give oral argument to the recoupment judge. The dispute that is being argued was what sorts of categories of TCID's claim of repayment of the recoupment judgment should actually count as credit towards repaying the judgment. In 2016 TCID filed for recoupment repayment and Reclamation issued guidance telling them how they can reopen the Canal in phases similar to the safety limits that were discussed earlier. The Tribe disputed TCID's repayment application saying they should not get repayment credit for items such as breaches of the Canal because when the Canal gets shut down they can't use water they weren't entitled to as repayment to the Tribe. The Court allowed TCID to have repayment credit if it was a planned shutdown of the Canal and which we conceded to. TCID was also allowed credit for when they used to own half of Donner Lake to which they no longer own. TCID will get credit for about 40,000 to 50,000 acre feet of the repayment. There is a meeting next week with the Federal Watermaster to discuss how to calculate how much water TCID should get credit for repayment for planned and voluntary Canal closures.

e. NUMU Inc. / Pyramid Commerce Center

Mr. Mixson said there was a virtual meeting on October 14 with NUMU, Inc. and representatives of the Pyramid Commerce Center. An update on the development project was provided to NUMU. The Water Team is evaluating the cardboard packaging manufacturing company but Mr. Mixson said the amount of water usage is probably not a major concern but a major concern the Water Team discussed is the waste water. The PCC should spend more time figuring out the details of what they are going to do with the waste water.

f. Clean Water Act Sec. 401 Litigation

This case with Earth Justice Law firm complaint has been consolidated with the earlier case filed by several states. The last thing Mr. Mixson heard on the case, was that they are discussing a Joint Common Interest Agreement and in order for all the co-plaintiffs to work together this agreement would have to be signed and agreed so that the Tribe's confidential information can be shared with others of the group without having to worry about the information being leaked out. He wanted to make sure that any waiver of sovereign immunity would be extremely limited. He did work with Wes Williams on the waiver as suggested previously by the Tribal Council.

g. Ormat San Emidio II Geothermal Expansion

As reported last month, Mr. Mixson said the Washoe County Planning Commission denied Ormat's special use permit application. On October 13, notification was received that Ormat appealed that denial to the full Washoe County Commission and a hearing was scheduled for November 10. The Water Team is discussing how the Tribe can provide written comments of Ormat's appeal.

h. OCAP Revision

Reclamation is proposing a large stakeholder process to begin looking at how the OCAP needs to be revised or updated. Mr. Mixson said they were notified and we told Reclamation we were raising concerns with the process because they should not be revising the OCAP for no reason. The Reclamation should not be revising the OCAP because it is a federal regulation and they need to provide an explanation as to why they are proposing changes and they need to provide a process for the need to revise the regulation. Reclamation has agreed to put some reasonable limitations on the stakeholders who participate in the process, but we are still awaiting a final explanation and description of those limitations.

2. Stetson Engineers – Allen Richards

Mr. Richards said his progress report covers work performed in the month of September.

a. Endangered Species Act Sec. 7 Consultation

The Water Team participated in conference calls with Reclamation and the Fish and Wildlife Service (FWS) on September 1, 2020 and September 17, 2020 to discuss the status of the Biological Opinion (BO) being prepared by the FWS regarding on-going Truckee River diversions under the OCAP. They are anticipating on receiving a draft report from the FWS on baseline conditions of the BO and their effects analysis.

b. Ormat's Proposed Geothermal Project in San Emidio Basin

During the conference call with Ormat's geothermal and geology consultants, they presented a proposed monitoring plan that would potentially evaluate potential impacts of their proposed geothermal project. Mr. Richards said that in general, he believes it was lacking in terms of monitoring wells that would be used to determine potential impacts. They only identified two existing wells that they were considering to use as monitoring wells and they couldn't speak to much of the details of those wells. It was a technical presentation on their project. He said they really didn't have, in his opinion, an adequate plan for monitoring potential impact if they are planning to use those two existing wells. It is not clear how the proposed monitoring plans will play into the hearing or if it all. The hearing is scheduled for November 10th.

c. TROA Meetings and Scheduling.

Regular TROA-MOA conference calls were held on September 1 and September 22, 2020.

d. Lower Truckee River and Pyramid Lake

Mr. Richards said Figure 1 shows the updated Truckee River flows at Nixon for the last fourteen months. Flows in the Truckee River averaged about 230 cfs during the month of September 2020. Figure 2 shows Pyramid Lake water levels. The Pyramid Lake elevation at the end of September was about 3,806.5 feet. Table 1 shows Truckee River flows into Pyramid Lake in Water Years 2016, 2017, 2018, 2019, and 2020.

EXECUTIVE SESSION

Councilmember Janet Davis made a motion to *move into Executive Session*. Councilmember Smith seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

The Tribal Council moved into an Executive Session at 8:07 p.m.

Councilmember Harry made a motion to *move out of the Executive Session*. Vice Chairwoman Ely-Mendes seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.** (Councilmember Janet Davis was no longer connected.)

The Tribal Council moved out of the Executive Session at 9:24 p.m.

Councilmember Harry asked if the Tribal Council discussed trick or treating on the Reservation and Secretary Henry said that is on tomorrow's agenda.

ADJOURNMENT

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

Pyramid Lake Paiute Tribal Council

October 21, 2020 – WTM

Page 10

The meeting adjourned at 9:26 p.m.

Minutes were taken by Brenda A. Henry, Tribal Secretary.

Submitted by,

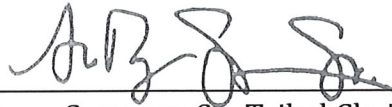


Gina Wadsworth

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 4th day of December 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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