

Pyramid Lake Paiute Tribal Council

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WATER TEAM MEETING MINUTES

Tribal Chambers

March 16, 2022

Members Present

Janet Davis, Chairwoman
Harriet Brady, Councilmember
Judith Davis, Councilmember
Nathan Dunn, Councilmember
Edward Ely III, Councilmember

Steven Wadsworth, Vice-Chairman
Natalia Gonzales, Councilmember
John Guerrero, Councilmember
Della John, Councilmember
James Phoenix, 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 March 16, 2022, 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 Gonzales connected at 6:04 pm and Councilmember Dunn connected at 6:18 p.m. All other Tribal Councilmembers were present at roll call and a quorum was established for this meeting.

APPROVAL OF AGENDA

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

CONSENT AGENDA

Following items were on the Consent Agenda:

1. Approval of Minutes: February 16, 2022, WTM
2. Approval Stetson Engineers Inc. January 2022, Invoice #1336-2201 & #1336-01-2201
3. Approval Kemp Jones LLP Attorneys at Law February 2022 Invoice
4. Approval Stetson Engineers Inc. February 2022, Invoice #1336-2202 & #1336-01-2202

Councilmember Brady requested to pull item #1 for discussion.

Councilmember Gonzales connected at 6:04 p.m.

Councilmember Phoenix made a motion to *approve items #2-4 on the Consent Agenda*. Councilmember Davis

seconded the motion. Votes were seven (7) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

Councilmember Brady said the only correction is in the last paragraph of the minutes to add the conversation Councilmember Ely and she had regarding streamlining the items placed on the agenda that may not have dealt with water. Other Councilmembers had voiced their concerns also and it should be added.

Councilmember Brady made a motion to *approve items #1 February 16, 2022, WTM minutes with the addition of the conversation*. Councilmember Phoenix seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

NATURAL RESOURCES. Donna Noel, Natural Resources Director

1. Request for Approval Drought Mitigation Grant Approval with Resolution.

Ms. Noel said they usually received their water management funds through the Bureau of Indian Affairs (BIA) but in 2020 it was taken out of their budget and BIA did not inform them. They did not get their 2021 funds until December and found out in January their budget is \$150,000 less than what they usually operate on. To cover the deficiency, they came across a Native American Affairs Drought Mitigation Program grant. They wrote the grant to cover the Water Engineer on some the projects. The first is the declining groundwater levels in Wadsworth which covers the CEMEX items or any pumping from other entities around the Wadsworth area. The second is associated plans to remove flows from the lower river like diversions and their storage and how they are going to release it. The last one is the actual implementation of the TROA operating agreement, the different mechanisms like storage and exchanges to ensure they are optimizing the water and not taking tribal water. The grant is due in April and the total budget amount is \$215,000. They are anticipating two years to spend the funds and it will be for consulting services.

Councilmember Davis made a motion to *approve the Drought Mitigation Grant Approval with Resolution*. Councilmember Gonzales seconded the motion. Votes were seven (7) **for** and zero (0) **opposed** with one (1) **abstention** (John). **Motion carried.** **RESOLUTION NO.: PL 029-22 FY22 NATIVE AMERICAN AFFAIRS DROUGHT MITIGATION PROGRAM**

2. Request for Approval Herman Ditch Fish Passage Design Contract.

Ms. Noel explained this is the Fish Passage Project that was started about five years ago with John Guerrero. A previous grants manager put in a proposal to use the fish passage funds to a pump in the river for the Herman ditch and have it moved closer to on the reservation. A proposal or RFP was advertised, and they received one bid. It was \$60,000 over budget to put the pump in the river. The problem with it is the permitting for installing in the river is extensive because a 408 permit is required which takes a long time to get through the Army Corps of Engineers. They wanted to look at using an induction well put outside the river with an intake in the river or intake right beside the river so its surface water moving through the ground and into the well. She discussed it with the US Fish and Wildlife Service (USFWS) to investigate it and make sure it was what they wanted. It was, so she initiated a contract and then a sole source

justification. Attached is an email from the USFWS approving the Stetson Engineers Contract and once approved she will start the design of the project.

Councilmember Brady asked if TERO was not included because it is just the design. Ms. Noels confirmed it was the design and testing and when they get into the construction then TERO, Tax and the Business License will be added.

Councilmember Guerrero said he was looking at the specifications for the well, the pump and the scope of work. Can they work with NRCS for the design? Ms. Noel said NRCS could not find any of the designs and most of the people who used to be there are retired or gone. They would like to work with Mr. Guerrero and do a field trip to make sure they are looking at the right area.

Councilmember Ely asked the number of assignments is this project going to service? There is going to be a well for Herman and Pearson Ditch?

Councilmember Guerrero responded Pearson is off the grid, it is the Pearson Dam where they are building the other structure for the Herman Ditch. It supplies the North and South Deopali fields and the Urrutia fields. They did this for the fish passage because they were putting in approximately \$15,000 a year for the Herman Dam and that was at their cost when Ralph Dunn and he were covering it. Councilmember Ely asked if the Herman Ditch and the Pearson Dam are tied together. Councilmember Guerrero said they were not; Pearson Dam is on the other side and feeds the Big Bend Ranch.

Councilmember Brady asked what the acronym NRCS stands for? Councilmember Guerrero said it stands for Natural Resource Conservation Service.

Councilmember Dunn connected at 6:18 p.m.

Councilmember Davis made a motion to *approve Herman Ditch Fish Passage Design Contract*. Councilmember Phoenix seconded the motion. Votes were six (6) **for** and zero (0) **opposed** with three (3) **abstentions** (Dunn, Guerrero, John). **Motion carried.**

Councilmember Brady asked if anything is put in #16 on the contract for the late fees, it is marked zero if it is time sensitive? Ms. Noel said yes but this is not time sensitive, and they can always do extensions which she has a feeling they will have to do since there is not going to be enough funding when it is time for construction with the price of gas and construction equipment & supplies.

Councilmember Gonzales asked about #13 on the contract, how is the Lower River Restoration Project going? Ms. Noel said they received all the preliminary engineering plans and just finalizing the report. Now they must get a FEMA grant to start the work. If Council remembers, they heard a presentation on the Marble Bluff Project, which will only go so far. On the O'Daye erosion issue, it will only repair up 1,000 feet up the bank, BOR gave them funding to cover the whole area to make it stable. They will be getting funding from TROA because the FEMA grant requires a 25% match on their grants. If they get the grant this year they will get the funding for next year, then they will do the planning and permitting, so actually work will not start until a year and half to two years. They will keep moving along as far as the funding will take them.

Councilmember Brady asked if the program that was trying to tap in with the Tribe on the restoration of the flooding areas, could that be a funding source. Ms. Noel said once they get the funding, they would write more FEMA grants to try and double their funds. One of the things they brought up was to bring the fields in the Wadsworth area in connection with the floodplain so that would lessen the flooding downstream.

WATER TEAM

1. Kemp Jones LLP Monthly Report. Chris Mixson, Kemp Jones LLP

Truckee Canal Extraordinary maintenance EIS – Fernley Lawsuit. In mid-December 2021, the federal district court dismissed Fernley's lawsuit on the basis that Fernley's claim that the elimination of seepage from the Truckee Canal is an economic harm and not an environmental harm, and therefore Fernley's lawsuit does not fall under the national Environmental Policy Act (NEPA). In January, Fernley filed a motion to alter the final judgment to give them an opportunity to amend their complaint to claim environmental harm. In February, the Tribe and the United States filed oppositions. Fernley filed its reply on February 22nd, a copy of the filing is attached to his report. The previous day, the judge, without having oral arguments or hearing, denied Fernley's motion which makes it final that their lawsuit is dismissed. Fernley then filed their notice of appeal to the Ninth Circuit. As with the Ninth Circuit it is typically a 2–3-year process and may be filing an appellate brief by next winter.

Bureau of Reclamation (BOR), Endangered Species Act Sec, 7 Consultation. BOR was asked to prepare a rationale document to describe the reasoning behind shifting from preparing a biological opinion under the Endangered Species Act and instead doing a MOU or an MLA between the Tribe and BOR to try to create a pathway for conservation measures in the Newlands Project. They have not heard back from BOR, or it is the Department of Interior Solicitors who is supposed to be working on that document.

Recoupment Lawsuit. This is the ongoing lawsuit with TCID over how much water they have paid or not repaid to Pyramid Lake as they are required to do under the recoupment judgment. There has been an extensive hydrologic modeling effort done primarily by BOR, but the Tribe has been deeply involved with Ms. Noel, Mr. Richards and Stetson Engineering doing the work. BOR finally concluded their modeling efforts to quantify the amount of water repaid. There is a meeting scheduled with BOR, the Tribe, the Water Master and TCID on April 22nd, where BOR is to present their technical modeling to all stakeholders and then there will be another round of comments. Under this process what is supposed to happen is TCID repays water each year and then they file an application for certification of the amount that they repaid then the Water Master reviews the application, then the Tribe and United States provides comments, and the Water Master certifies some number as being repaid, then gets reported to the District Court. We are still in the Water Master certification process for the period from 2008 through 2016. We are six years lagging on TCID providing a repayment and the Water Master providing a certification. Hopefully within the next few months the Water Master will be certifying some water actually paid, at least in his opinion, then there will be a proceeding in front of the District Court for the District Court to give final approval to summon an overpayment. It has been a long frustrating process and it is at 85-85% through at this point, then we will gear up for more disputes for the 2016 to present repayment periods.

CEMEX Paiute Pit Gravel Mine. On March 1st, the Water Team met with representatives from the BIA's Department of Minerals Management to discuss CEMEX's reclamation and pit wall repair. The BIA representatives have agreed to provide technical assistance to the Tribe for review of CEMEX's pit wall

repair plan when CEMEX provides it to the Tribe. He emailed CEMEX's lawyer a couple of weeks ago to get an update and was told within 60-90 days they hope to have what he calls final construction bid ready designed planned for that repair. Included in the plan is their plan and timeline for dewatering the pit so they can do the pit wall repairs. Which is important because they want to know how quickly they are going to dewater the pit and importantly, in one of their prior engineering reports, they referenced the fact that at least in the engineer's opinion, the pit walls are more stable with the pit full of water than they will be with the pit dewater. They are interested in how they propose to address that fact.

Councilmember Davis wants reassurance from Mr. Mixson regarding CEMEX that their plans are going to be ready within 60-90 days prior to them being ready and starting construction, the walls and dewatering. Wants to be sure the Water Team can review the plans first. Mr. Mixson responded that they would be reviewing first.

Truckee meadows Effluent Pipeline/Tahoe-Reno Industrial Center. They met in December of last year to discuss the draft water rights applications. It was recognized if they are going to remove the effluent from the Truckee River, they are going to have to replace it with some other water rights to keep the river whole. They have identified the first batch of those water rights and they filed change applications with the Nevada State Engineer to change those water rights to instream flows. When they presented the draft applications, they had questions and comments. The meeting in December was to ask the questions but they did not provide any answers. They assumed there would be more communication but in February they just filed their applications and notified the Tribe they done that after the fact. Currently, Mr. Richards and Stetson are in the process of preparing formal protests of those applications, which they will recommend the Tribal Council file. Not sure of the timeline yet because the State Engineer will have to provide public notice of the applications which means it will be posted in the local paper for four weeks. When that is done, there is a 30-day deadline to file written protests which might be before April 20th. This is not something they will have to bring to Council for a formal approval and resolution, but once they file it will be in his next report. There will be two different types of protests they will be filing. The effluent itself is subject to water rights permits because it is usable water and they have filed application to change the use of the effluent to allow them to send it over to the Tahoe-Reno Industrial Center through this pipeline. The other is the instream flow applications.

Councilmember Gonzales asked where they were getting the water for the lake, they call it Esmeralda Lake up on USA Parkway. Mr. Mixson said he did not hear of that lake but knows they have a pond where they are currently putting the effluent from the all the industrial uses of groundwater up there. Councilmember Gonzales said they are building two more areas also. Mr. Mixson said that is from their industrial uses of groundwater but under the effluent pipeline they are going to use those ponds as reservoirs to hold the effluent from the Sparks Plant as well. Mr. Mixson said the Tahoe-Reno Industrial Center does have some Truckee River water rights and they have an induction well next to the river where they are pumping water from a well but it's close enough to the river that they are pumping their surface water from that pump, but he is not sure if they are exercising those water rights and pumping from that. He thinks it is primarily groundwater.

Councilmember Ely wanted to know what they will be doing with the water once they are done using it. Mr. Mixson said he does not have a complete understanding of the lifecycle of the effluent, but they are building a pipe from TMWF in Sparks to pump it to a tank. Learned recently they are building a storage tank

somewhere along the route from TMWF out to TRIC on high ground somewhere and then they will use it for whatever industrial purposes they can find for it. The water is proposed to be used for cooling, they do evaporative cooling out there and he assumes they have a process to clean the water enough to use it for evaporative cooling because it is blowing humidified air into places where people breathe.

Water Management Grant. On February 25th, they learned that BIA had discontinued grant funding to the Tribe related to the Settlement Act and TROA implementation. They were told that in 2020, the Department of Interior determined that the Settlement Act has been fully implemented, and TROA requires ongoing implementation that requires significant resources. They are preparing a letter for the Tribe to send to the Department of Interior to dispute the determination that the Settlement Act and TROA are fully implemented and to request the resumption of the grant funding. He had a discussion with a local staffer in Senator Rosen's office about it to give them a heads up, that they would be cc'd, they are not going to get a whole lot out of Senator Rosen's office because she is not as engaged in environmental and tribal issues. He will be meeting with Senator Cortez-Masto's Northern Nevada Director to raise the issue with her, will get more support out of her office, since she sits on the Indian Affairs Committee in the Senate in DC. In the past, the Tribe has had good relationships with people within the Department of Interior, within the Solicitor's office and had great contacts with Senator Reid's office. His suggestion is the Tribe consider potentially hiring a lobbyist in Washington DC, to get things done and if it is okay with the Tribal Council, he can get a list of potential lobbyists together. Chairwoman Davis said it would be favorable for the Tribe to seek someone over in DC.

Washoe County Federal Lands Bill. Mr. Mixson is collaborating with Chairwoman Davis and Senator Rosen's office in heading up this recent renewed effort for a Washoe County lands bill. The template for a county lands bill is what they call a Southern Nevada Public Lands Management Act (SNPLMA) from the mid-nineties. It was a Harry Reid creation and what it basically did was it assigned federal public lands in Southern Nevada that were owned by the BLM or by the federal government as potential disposal lands and it assigns new conservation areas, wilderness areas, etc., and that was the kind of the trade off because the disposal lands would be eligible for nomination by for developers to book to buy at auction from the federal government so they could basically develop homes and businesses. That is why you see so much sprawl creeping outside of Las Vegas is the SNPLMA freed up a bunch of federal land all around Las Vegas so that the developers could buy it at auction from the federal government and develop homes and businesses and let Las Vegas grow outward. The template is being applied to the Washoe County lands bill proposal and Washoe County is collaborating with the local developers have identified lands within Washoe County that are owned by the federal government that they would like to be eligible for disposal which means for them to buy at auction. Those lands are along the I80 corridor between Sparks and Wadsworth and to the north of I80 and north of the river. Included in the lands bill is conservation areas for the environmentalists, wilderness areas, for the environmental groups and tribal lands. They initially reached out to Pyramid Lake, Reno-Sparks Indian Colony, and Washoe Tribe to ask they put together requests for lands that each tribe would like to have conveyed to them from the BLM, as part of the Washoe County lands bill. Senator Rosen's office is taking the lead and heading this up. They said if the Tribe has any problems with the disposal lands that are being proposed by Washoe County to be auctioned for development, then to let them know with a reason on why the Tribe opposes to certain pieces of those disposal lands, then they will remove them from the map and not make them a part of the disposal lands. That is a new position for Tribes to be in. Collaborating with Chairwoman Davis, Richard Frazier, and

Mervin Wright to start discussion. The Washoe Tribe has been asked to participate which seems a little unusual because their reservation is not in Washoe County and that has caused strife among the tribes. He was told by Senator Rosen's office that they invited the Washoe Tribe to the process because they took over from Washoe County and in the past the Washoe Tribe had been invited to participate and they assumed they should be invited to participate. He asked what would happen if other stakeholders did not think the Washoe Tribe should be included in this process because they are not in Washoe County. They said they were surprised at the amount of land the Washoe Tribe was requesting, but they would not be surprised there would be reasons to whittle down the Washoe Tribe's request. There is land in the southern portion of Washoe County that they think Washoe Tribe may have a good faith reason to get the land. Speaking to Chairwoman Davis, he thinks Pyramid Lake and Reno-Sparks should be adamant about where they are going to be about the Washoe Tribe being included in this process because he is concerned if the position is they get nothing that could derail everyone's efforts.

Councilmember Brady said there is a map at the museum that was created through the University of Nevada by Catherine Fowler that shows the traditional homelands of all the Great Basin tribes.

Councilmember Guerrero asked why other tribes were not involved like Walker River. There are traditional lands north of Patrick to Sparks that were lands where Walker River natives along with the petroglyphs. There federal land bills in Washington for Las Vegas and Southern California, the Tribe should be looking at those also.

Councilmember Brady said the Washoe Tribe will get land through the Reno-Sparks Indian Colony because they have members there. Chairwoman Davis said Chairman Melendez was adamant that their Washoe members were only the Washoe members from their tribe and not included with the Washoe Tribe. He made a strong statement that they were going to fight it and they were supposed to have a meeting on Tuesday with the Washoe Tribe, but Reno-Sparks cancelled and were urging the Pyramid Lake Tribe to do a resolution opposing any other tribe other than those that actually live within the Washoe County area to be involved because it is not a land grab. Once they do a resolution, she thinks the Tribe needs to do a resolution as well. It was fine until they saw the map because it included major land including land that the Tribe originally asked for.

Councilmember Guerrero said they need to look at the wilderness area also, the northern Pyramid Lake area. Look at the roads, which ones are they going to certify as being open or close them off. Chairwoman Davis said the land team will meet with Senator Rosen's office regarding that land specifically.

Mr. Mixson said Senator Cortez-Masto's office is taking the lead on the Southern Nevada lands bill in Clark County and Senator Rosen's office is taking a lead in Washoe County. They are looking at other lands bills, but he is not sure who is taking the lead on those.

Councilmember John asked if there is a clause in the land bill where it is open to the public. The Tribe's problem is encroachment, and the Tribe has no criminal jurisdiction over non-Indians. Chairwoman Davis said they have people requesting all the way up to the reservation line. Mr. Mixson said any land that the Pyramid Lake Tribe would get would come as trust lands then they do not have to make it open to the public but if it comes as fee land then he is not sure. Councilmember Phoenix said regarding the Reno-

Sparks Colony getting lands in Hungry Valley, it was BLM land but then the Tribe closed it off, same concept.

2. STETSON ENGINEERS LLP. Allan Richards.

Mr. Richards had a date for the Truckee Canal tour offered by BOR set for May 19th at 10am meeting at Derby Dam and a roll was taken of Councilmembers who could attend.

Truckee River Instream Water Right Change Application. In March, every year they decide whether they think they need to file temporary transfers of the Tribes Claims one and three Orr Ditch Decree Water Rights, temporary transfers to instream flows for use during the summer months. Because of the current conditions, looks like they will need to have the water in the river this year. They filed temporary transfers of the Claims one and two Water Rights in February for use in June, July, August, and September of the coming season. They will be in addition to all the other Water Quality Settlement Agreement Water Right Acquisitions and transfers.

Reclamation Endangered Species Act Sec. 7 Consultation. Mr. Mixson covered this topic during his brief. They had a meeting on February 3rd, talked about the MOA that BOR is proposing in lieu of a biological opinion. Nothing more to add.

Truckee Meadows Effluent Pipeline/Tahoe-Reno Industrial Center. As Mr. Mixson stated, a change application was filed in late January or early February and Stetson Engineering is working on protests to those applications. They want to support the project in one sense that it is removing effluent from the Truckee River, but they need to be assured the replacement water they are proposing to transfer to the river will be real water and not paper water, which is the primary concern for the protests. Then there is the other issue that they are filing secondary applications along with these primary applications. These applications look more like they have mitigation as the proposed manner of use as opposed to instream flow.

Water Management Options Pilot Project. The Tribe and Stetson have been engaged with BOR on a pilot project that BOR refers to as a Water Management Operations Pilot Project which is looking at improving regional water system or water system reliability in the Truckee River Basin and looking at ways to reduce flood risk in the basin. One of the key components of that study is looking at modifications to the Army Corps rules for Prosser Creek Reservoir and specifically their rules for providing flood control with that reservoir. Their current rules require that Prosser Creek Reservoir be drawn down, unsure of the number, but it is a significant drawdown by November of each so the reservoir can handle flood flow and peak runoff. The problem is the rules are so restrictive that even in very wet years like in 2017, the reservoir did not fill back up the storage space that was allocated for flood control purposes. They are looking to have the Army Corps modify those rules so that the Tribe can take better advantage of storage for the fish and water.

They had their regular TROA-MOA conference call and scheduling calls on February 8th and 10th.

Summarizing the attached reports. Figure 1 showed the Truckee River flow at Nixon during the month of February, flows were about 118 CFS at the Nixon gauge, well above the fish flow regime target. Figure 2

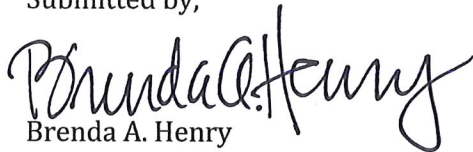
shows the chart of the Pyramid Lake elevation, and it has been holding constant for the past three months, dropping a little then flattening at elevation 3803. Figure 3 shows the precipitation for various basins in Nevada including the Truckee River Basin and it shows year to date, precipitation has dropped to 107% of the median, still above February 1st, it was still 132% of the median. Figure 4 shows four figures, snowpack, soil moisture, precipitation, and reservoir storage. Snowpack for the Truckee River Basin is now only 85% of median as of March. The final figure shows the Truckee River flows to Pyramid Lake at the Nixon gauge for the water years 2015 through current year 2022. For the first months of the current year there was only 61,000-acre feet of water that went by the Nixon gauge to Pyramid Lake, which is more than 2021 which was very dry. Tracking to have a repeat of last year and can expect the lake to drop another two and a half to three feet by the end of 2022.

ADJOURNMENT

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

The meeting adjourned at 7:42 p.m.

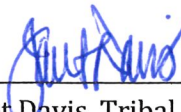
Submitted by,


Brenda A. Henry
Tribal Secretary

CERTIFICATION

The foregoing minutes were adopted by the Pyramid Lake Tribal Council, governing body of the Pyramid Lake Paiute Tribe, at a meeting duly held on the **18th** day of **May 2022**, 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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