

Pyramid Lake Paiute Tribal Council

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WATER TEAM MEETING MINUTES

Tribal Chambers - Nixon, NV

April 20, 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 April 20, 2022 Water Team meeting of the Pyramid Lake Paiute Tribal Council to order at 6:01 p.m.

ROLL CALL

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

APPROVAL OF AGENDA

Chairwoman Davis requested an addition under Natural Resources #6. Request or Approval Final Report for Publication on the Pyramid Lake – Truckee River Quagga Mussel Survivability Study. Dan Mosley, PL Fisheries

Councilmember Guerrero motioned to *approve the agenda with addition*. Councilmember Ely 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 of Minutes: March 16, 2022, WTM
2. Approval Stetson Engineers Inc. March 2022, Invoice #1336-2203 & #1336-01-2203
3. Approval Kemp Jones LLP Attorneys at Law March 2022 Invoice

Vice Chairman Wadsworth requested to pull #1.

Councilmember Ely motioned to *approve items #2 & #3 on the Consent Agenda*. Councilmember Phoenix seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

Vice Chairman Wadsworth pulled #1 because the minutes were not included on the flash drives and only those who received hard copies had the minutes.

Vice Chairman Wadsworth motioned to *table #1. March 16, 2022 WTM Draft Minutes*. Councilmember Brady seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

PRESENTATION

- 1. Marble Bluff Island Removal Project Update.** Sarah Horgen, Project Manager for the Island Removal, and Scott Schoenfeld, Supervisor, Bureau of Reclamation (BOR), Operations and Maintenance Division, Lahontan Basin Area Office

Ms. Horgen showed Google Earth images of the area from 2004 through 2019 showing the increase in sediment which formed the island located upstream of the Marble Bluff Dam. The purpose of the project is to address fish passage concerns caused by sediment deposition upstream of Marble Bluff Dam and to implement bank stabilization measures to limit future erosion and loss of land. There are two main items, fish passage and bank protection. With fish passage, their goal is to remove the island's sediments to create a pathway for Cui-cui and Lahontan Cutthroat Trout (LCT) to migrate upstream and promote sustainability and sediment movement throughout the site; with bank protection, for which they are going to plan on protecting about 1,000 feet upstream of Marble Bluff Dam. There are five elements to the project: 1. Is the design element for the fish passage, the goal is to remove the island's sediments to create a pathway for Cui-cui and LCT to migrate upstream and promote sustainability and sediment movement throughout the site and for bank protection, they plan on protecting about 1,000 feet upstream of the dam. Further breaking down the fish passage is the island excavation which is the main design element and bank protection which is broken down into five elements: Longitudinal Stone Toe, Upstream & Downstream Keys, Flood Plain Bench, Fabric Encapsulated Soil Lifts and Bank Grading and Geocells and Materials Containment. The first element, fish passage is the island excavation, they will be excavating about 12,000 cubic yards of sediment and extending upstream about 500 feet from the dam. With bank protection there are the five elements. The longitudinal stone toe is a continuous bank protection method that consists of riprap placed near the toe of an eroding bank, this goes hand in hand with the upstream & downstream keys, the keys will connect the toe to the existing stable areas and prevent flanking from future channel migrations. The flood plain bench will provide a natural aesthetic to the project as well as dissipate energy when flows over the tops of the stone toe. The fabric encapsulated soil lifts are fabric wrapped soil layers that include willow cuttings to stabilize the middle part of the bank above the stone toe. The bank grading and geocells, these will provide the stability to the upper part of the bank to minimize future erosion from irrigation. The materials containment portion is the materials upstream of Marble Bluff which is further broken down into three different categories. The first is the vegetation clearing and grubbing, they plan on removing 12,000 square feet of material and hauling it off site. The island channel excavation, which is approximately 11,700 cubic yards and the upper bank portion that will be tapering back to two to one, it's about 4,200 cubic yards. This is about a total of 16,000 cubic yards of total material they will be removing out of the river. The material will be put in what

is called a spoils containment. They will basically be excavating the existing area, adding in the pond liner and then placing the excavated soil cap on top of it to contain all the material. The final portion of the project is the landowner coordination. A portion of the upper bank excavation is going to cut a little into Mike O'Daye's property. They have been working in close coordination with him and he is on board with this project. They wanted to ensure he understood the design elements and the extent of the project. There is a steep grade coming up to his property which is the reason why it's currently unstable and getting worse. The next steps for this project are completion of all the regulatory compliance documents, the permitting, cultural review of the site and biological assessment. Construction is tentatively scheduled for October/November 2023 dependent upon getting the regulatory compliance documents completed.

Councilmember Ely asked how long will the material storage or material spoils be stored. Ms. Horgen said it will be indefinite which is why they are adding in the impervious pond liner, it's not going to spread through the existing layer and will be kept there forever.

Councilmember John asked is the island where they found a little bit of mercury? Ms. Horgen said yes, about a year ago it was presented to Tribal Council and was approved to move forward but they had to ensure they were going to contain the area, they worked with their engineers to make sure when they put in a liner, it was going to stay put in the location. They also picked an area that was far enough away from the river so there was a lower chance of a high flood event happening and washing the material out. Councilmember John asked if they would be putting signage because it is hazardous material. Ms. Horgen said that it's not a part of the project but they can add that element into the project but at this point they will just be covering it.

NATURAL RESOURCES. Donna Noel, Natural Resources Director

1. Request for Approval Farmers Alliance Contract. Stacy Lowery

Ms. Noel said a grant was received from US Fish & Wildlife Service (USFWS) through their fish passage program to look at fish passage paths, the Numana Dam for both LCTand Cui-ui. Stetson Engineers did a design for a full bank to bank ramp with the cost analysis being \$8 million. At the time they didn't have enough funding in the grant to cover the construction of the ramp. The USFWS said they would look for funding for the construction but in the mean time they can do a proper fish screen at the Nixon ditch on the upstream side. They looked at the one at the Derby Dam which was a perfect fit for Nixon ditch because it can be designed for a wide range of flows including up to the allotted amount in the Nixon ditch. Both Farmers Conservation Alliance and Stetson have been working on the design to ensure the two designs match. They will be using existing funding and they did receive \$8.2 million of fish passage funds from the USFWS. It was funding that was given to the western region but the USFWS gave it all to the Tribe for the construction and ramp portion. Should receive the funding in the fall and in the mean time she is writing the environmental assessment for the entire project which includes the screen and ramp.

Councilmember Brady had a question regarding #16 on the contract, the contractor shall be declared in default for failure to complete the project. Ms. Noel said they would request an extension if it ended up past the time allotted.

Councilmember John asked about the sole source and if they followed the procurement process for securing this contractor. Ms. Noel confirmed it is sole source because they have the patent on the screens and are the only vendor who can provide it.

Councilmember Brady motioned to *approve Farmers Alliance Contract for this project*. Councilmember Ely seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

2. Request for Approval to Continue Annual Tui-chub Sampling by Utah State. Dan Mosley, Pyramid Lake Fisheries, Sarah Barnes, Graduate Student and Dr. Phaedra Budy, Utah State.

Ms. Barnes presented before Council a month prior about the experiments with the project and this is the second half of the project where they will be looking at Tui-chub spawning, rearing habitat selection and availability in Pyramid Lake. She will be working with two principal investigators, Dr. Phaedra Budy and Dr. Robert Al-Chokachy, US Geological Survey (USGS) in Montana. The overall study goals of the project are to investigate the factors affecting Tui-chub abundance as they relate to declining lake levels. Today they will be looking at spawning and rearing habitat needs because it is a critical life stage for many fishes and can serve as a bottleneck on their abundance. Tui-chub spawn mostly along the shore, shallower warmer area which is the area of the lake that will be lost when the lake level declines. The area they will be sampling is near the delta near the inflow of the river. The sites will be sampled once a month from May through the end of August. They will use various sampling techniques for both shallow and deeper areas.

Councilmember Brady asked about the impacts from the jet skis. Ms. Barnes said they won't be looking at anything from human impacts but will be mostly looking at total dissolved solids.

Dan Mosley said there was a previous study done by Glen Marin from the University of NV Reno and he didn't find any effects from the emissions from jet skis because of the salinity it would rise to the surface and evaporate.

Councilmember Davis motioned to *approve the Continued Annual Tui-chub Sampling by Utah State*. Councilmember Brady seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

3. Request for Approval for Appointment to Nevada Water Resources Research Institute. Donna Noel

Ms. Noel said she received a letter from the Chairman of the NV Water Resources Research Institute, a national group that has individual groups in each state and they determine where research dollars go in water resources, both nationally and within the state. They have never had anyone who works for a Tribe on the committee. All the funds seem to go to benefit people like TMWA or Southern NV Water Authority. It consists of one meeting a year and it would be good to ensure tribal needs are met or at least their opinion is brought to this committee.

Councilmember Brady motioned to *approve the of Appointment of Donna Noel to the Nevada Water Resources Research Institute*. Councilmember Guerrero seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

4. Request for Approval to Allow Fisheries Director to Continue with Regional Tribal Operations Committee (RTOC) Grant and Northern Nevada Water Planning Commission Appointee. Donna Noel

Ms. Noel said Mervin Wright is moving to the Director position for the Pyramid Lake Fisheries at the end of the month. He is currently responsible for the RTOC grant which is the regional tribal operating committee that works with all tribes in Region Nine. Mr. Wright has been in the position for three years and will finish at the end of four years. It is a position they don't have the capacity or knowledge to take over and it's better to keep the continuity within the group by keeping Mr. Wright as their Chairman. The other item is the Northern Nevada Water Planning Commission which Mr. Wright has been on the committee for at least six years, he was appointed because he is a tribal member and knowledgeable about water issues. She is recommending Mr. Wright be able to stay on these committees while he moves to the Director position at Fisheries. Mr. Wright has agreed with the recommendation.

Councilmember Davis asked in regards to the RTOC does the Fisheries receive any EPA funding? Ms. Noel said no, but he will take the grant with him. Councilmember Davis said it was her understanding that RTOC has always been in Natural Resources because they receive the EPA grants. Ms. Noel said it won't have an effect on the EPA grants, it's his own grant, once he is done being the Chairman of RTOC then a member of her department will become a member and attend the meetings. The Chairman position will then move to either Arizona or California because it rotates among the states. Chairwoman Davis said they would still keep the IDC and the reporting would still come out of the finance department. Councilmember Davis asked if this was approved by the Fisheries Board of Trustees? Mr. Mosley said it was discussed at the last Fisheries Board meeting and there was a consensus with the board. Rebecca Charlies, Fisheries Finance Manager is familiar with managing RTOC funding.

Mr. Wright said he spoke with the grant division at Region Nine and the Grants Accounting Specialist at Tribal Finance about this item. The Fisheries is a subsidiary of the Tribe and all grants received are through the Tribe's Finance Department. He was elected to RTOC in 2015 and is on his second two-year term which ends on September 30, 2023 and he will not be seeking a third term. His priority is Fisheries responsibilities.

Councilmember Guerrero asked if he could provide updates on his RTOC meetings.

It was clarified the IDC will stay with the Tribe and the Finance Department will continue with the reporting of the SF 420 for financial reporting.

Councilmember Dunn motioned to *approve Mervin Wright, PL Fisheries Director, to continue as the representative on the Region 9 RTOC and Northern Nevada Water Planning Commission* Councilmember Brady seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

Councilmember Guerrero requested copies of the RTOC and the NV Water Planning Commission Minutes.

5. Request for Approval for submission of FY22 Proposal for US Fish & Wildlife Services White-nose Syndrome Grants to States and Tribes with Resolution. Emily Hagler, Environmental Specialist

Ms. Hagler said this is the third consecutive application they have submitted to the USFWS for consideration for white nose syndrome funding. The funding is a blanket amount of funding given to both states and tribes to better understand the diversity and distribution of bat species across the United States. Bats are important for not only pollination but for the agriculture industry as well as the economy of Pyramid Lake as they control large amounts of pests in our region. When they started the project in 2021, their first season of sampling, they found 11 different species of bats throughout the grids. The third funding would be to continue the acoustic bat monitoring where they place a piece of equipment in the field for 14 days. The device has educational signage on it that tells tribal members what they are and what it is doing. Last year they did Bat Week with the Natchez Elementary School and the Pyramid Lake High School where they got to monitor the bats overnight and then they processed the data in the classroom. It was a part of their educational outreach. The funding opportunity has full IDC and it helps with the gaps in their lack of funding they have in Natural Resources. The grants are in small amounts of \$50,000 but it helps their department a lot.

Councilmember John asked how many sensors there are. Ms. Hagler said there are four bat grids that are considered a high priority habitat type. One is in San Emidio, one in Smoke Creek area, one on the east side of the northern end of the lake range by Potato Patch Springs, two on the southern portion of the lake, one by Tom Anderson and the other by Diego Bay. There are two to four detectors deployed in those areas. The placement and location of the detectors were approved by the THPO office and Tribal Council in 2021.

Councilmember Davis motioned to *approve the submission of the FY22 Proposal for the US Fish & Wildlife Services White-nose Syndrome Grants to States & Tribes with Resolution*. Councilmember Brady seconded the motion. Votes were eight (8) **for** and zero (0) **opposed** with one (1) **abstention** (John). **Motion carried.**
RESOLUTION NO.: PL 048-22 FY22 US FISH & WILDLIFE SERVICES WHITE-NOSE SYNDROME GRANTS TO STATES AND TRIBES

6. Request for Approval Final Report for Publication on the Pyramid Lake – Truckee River Quagga Mussel Survivability Study. Dan Mosley, PL Fisheries, Dr. Carina Seitz, Dr. Sudeep Chandra and Dr. Facundo Scordo, University of Nevada Reno.

Mr. Mosley is requesting final approval for the report and to request approval for publication. The report was submitted through the Natural Resources Department to the Inter-Disciplinary Team (IDT) and through the PL Fisheries Board for review and comments. Comments received were incorporated into the final report by Dr. Carina Seitz. It was approved by the Fisheries Board of Trustees.

Dr. Seitz explained this project was to assess potential survivor growth and reproduction of biomass in Pyramid Lake and the Truckee River ecosystem. The quagga and zebra mussels are a non-native species, a leading threat to the biodiversity and function of inland waters, which have been exacerbated by the globalization of the economy and trade. These invasive species appeared in the United States in the mid-90s in the east coast, then in 2007 they appeared for the first time in Lake Mead and rapidly spread to the Colorado River. Water was taken from Warrior Point, Popcorn Rock and below Marble Bluff Dam along with water from Lake Mead to use as a positive control. The objective was to determine the risk of invasion of quagga mussels in Pyramid Lake and Truckee River ecosystem and provide knowledge about the quagga mussel tolerance to high pH concentration. The main findings in this work is they observed the mussels can grow, survive and reproduce in the Truckee River but not in Pyramid Lake. The results suggest that salinity

and maybe iron concentration can be the cause of a higher rate of mortality in Pyramid Lake water. They recommend a continuous monitoring of the water characteristics and the control and disinfestation of boats, gear and equipment to the current environmental conditions in Pyramid Lake and the Truckee River.

Councilmember Davis motioned to *approve the Final Report for Publication on the Pyramid Lake – Truckee River Quagga Mussel Survivability Study*. Councilmember Dunn seconded the motion. Votes were nine (9) **for** and zero (0) **opposed** with zero (0) **abstentions**. **Motion carried.**

WATER TEAM

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

Truckee Canal Extraordinary Maintenance Environmental Impact Statement (EIS) – Fernley Lawsuit. The Bureau of Reclamations (BOR) approved the Extraordinary Maintenance Project to line significant portions of the Truckee Canal including where most of it goes through Fernley. The City of Fernley sued the BOR over the approval of the EIS for the project. The Federal District Court Judge dismissed Fernley's case because she found Fernley's claims were economic harm from the lack of seepage and not environmental harm. In the middle of March, Fernley appealed the dismissal to the Ninth Circuit and then to the Ninth Circuit Court of Appeals for this case. There is a pre-mediation conference scheduled for the next Monday, which Don Springmeyer will attend on behalf of the Tribe. He doesn't foresee it going to mediation and the Ninth Circuit will issue a briefing schedule. It's primarily Fernley verses the United States and they had to file a motion to intervene, which was granted and they will primarily be joining in the United States brief. Their role would be mostly providing some context to the Ninth Circuit explaining why the Tribe is interested in this issue of seepage and how will it benefit the Tribe if they line the canal.

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 instead of doing a MOU or an MLA between the Tribe and BOR to try to create a pathway for some conservation measures in the Newlands Project. They have not heard back from BOR or the Department of Interior Solicitors who are supposed to be working on that document.

Recoupment Lawsuit. This is the computer modeling done to determine how much water TCID has repaid to Pyramid Lake based on not diverting water into the Truckee Canal. They were supposed to have a presentation from BOR to TCID, the Tribe and the Water Master but it was moved to May 18th.

CEMEX Paiute Pit Gravel Mine. On March 22nd they received more detailed construction drawings from CEMEX about how they are proposing to repair the pit walls in the Paiute Pit. Allen Richards is reviewing those drawings. Last word from Mr. Richards was he characterized them as still preliminary and not the final construction drawings. What he will be focusing on is the process they are going to use to dewater the pit, how quickly they are going to dewater, what the potential TDs in the water is going to be because they are proposing to discharge it to the Truckee River when they dewater so they can reconstruct the pit walls. On March 28th the Environmental Protection Agency (EPA) sent a letter to CEMEX where they asked them to provide a Clean Water Act discharge permit for dewatering from Paiute Pit but the actual written permit application was requesting continual and ongoing dewatering so they can resume mining in the pit. The EPA said they need to resubmit their application to make it clear what their purpose of the dewater is

because that impacts how EPA evaluates the application if it's going to be temporary dewatering. They met with EPA informally earlier in the week and EPA has not yet received a response from CEMEX.

Truckee Meadows Effluent Pipeline/Tahoe-Reno Industrial Center (TRIC). On February 15th TMWA filed several water rights change applications for this project, the applications basically fall into two categories. For category one, they filed four permits for permission to change the use of the effluent water right so they can pipe it over to TRIC and it can be used for industrial purposes. They also filed six applications for category two for instream flow permits, they have Truckee River surface water rights where they are seeking to change to instream flow to mitigate the removal of the effluent from the Truckee River. As he always said, the Tribe appreciates removing the dirty effluent from the river but they have to understand it is water in the river, particularly in dry periods, is sometimes the only water in the lower Truckee River has been the effluent from TMWF. If they are going to remove it, they need to keep the river whole. It can be tricky especially in dry years, which we are currently in, the Truckee River is going to go on priority which means there are going to be water rights that have junior priorities that are not able to be served with water. This is one of the Tribe's protest grounds. Another issue is that this project is going to have to be managed on a daily basis and how is the Federal Water Master going to ensure there is sufficient mitigation water in the form of these instream flows permits to actually mitigate the loss of effluent which would be a daily accounting which they don't do for the Truckee River. He made a legal protest ground that says there is nothing in the water law statutes that talks about mitigation flows, it's a grey area. They filed written protests for the Chairwoman to sign, copies in Council's packets.

Washoe County Federal Lands Bill. The new name is Truckee Meadows Lands Act. Working with Chairwoman Davis, Richard Frazier, Lands Office and Betty Aleck, THPO and Mervin Wright. They are currently working on a resolution regarding which tribes should be included in the Washoe County Lands bill. Reno Sparks Indian Colony is also working on a similar resolution. They have been trying to schedule a meeting with Senator Rosen's office because her office has taken the lead on the bill and they want to talk to the Tribe about wilderness areas up around the north end of the reservation. They haven't yet scheduled a date.

2. STETSON ENGINEERS LLP. Allan Richards. Report submitted.

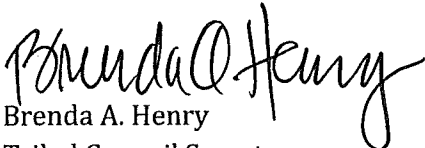
Mr. Richards was not in attendance.

ADJOURNMENT

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

The meeting adjourned at 7:58 p.m.

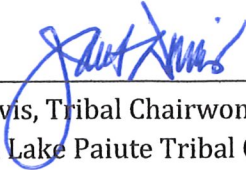
Submitted by,


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 19th day of August 2022, having ten (10) members present, constituting a quorum, by the vote of eight (8) FOR and zero (0) OPPOSED, with one (1) ABSTENTION.

Minutes attested and concurred by: _____


Janet Davis, Tribal Chairwoman
Pyramid Lake Paiute Tribal Council

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