

memorandum

DATE: June 16, 2003

REPLY TO **Acting**

ATTN OF: Superintendent, Western Nevada Agency

SUBJECT: Pyramid Lake Paiute Tribe, Illegal Dumping Ordinance-No. 50

TO: Western Regional Director
Attn: Tribal Government Services

RECEIVED
JUL 16 2003
PYRAMID LAKE TRIBE
SECRETARY'S OFFICE

The Pyramid Lake Paiute Tribe submits an ordinance titled, "Illegal Dumping Ordinance-Ordinance No. 50," which was approved by Tribal Resolution No. PL 54-03 on June 6, 2003 and received at the Western Nevada Agency on June 11, 2003.

The tribe cites Article VI, Section 1 (j) as the authority for this action which is subject to Secretarial Review.

The Illegal Dumping Ordinance establishes procedures prohibiting the disposal of solid waste, authorizes facilities/sites, prevents the unauthorized use of dumpsters, and provides enforcement and regulation of unauthorized disposal of waste on the Pyramid Lake Reservation. Furthermore, the ordinance provides for a mechanism to enforce and regulate the unauthorized disposal of waste on the reservation.

In our review, we find the ordinance to be complete and no inconsistencies with the Tribal Constitution and Bylaws. Illegal Dumping Ordinance - No. 50 is approved this date in accordance with Article VI, Section 2, and is being sent to the Western Regional Office for further legal review. Minor concerns are listed as follows:

- Page 3, Chapter 1, 50-01-010 TITLE: States that this ordinance shall be known and may be cited as the "Pyramid Lake Illegal Dumping Ordinance" or the "Illegal Dumping Ordinance." It would appear that the title should be "**Illegal Dumping Ordinance.**"
- Page 4, Chapter 1, 50-01-040 DEFINITION OF TERMS:
 - (f) A typo in the last sentence and line, "...the potential be become hazardous" should possibly read, "...the potential **to** become hazardous."
 - (n) The reference to "**air**" might be reviewed for consistency with Article I of the Tribal Constitution.
- Page 9, Chapter 4, 50-04-030 CIVIL/CRIMINAL PENALTIES: This provision sanctions civil and criminal penalties, but, there is no clear separation of what is a civil or criminal offense. The jurisdiction under Chapter 1, 50-01-050 applies to any person who violates a rule adopted under this ordinance. If the citation is a criminal offense on a non-Indian, the

tribe would have no jurisdiction. **It would be recommended that this section be reviewed or possibly amended with consideration for this concern.**

- Page 10, Chapter 5, 50-05-010 SOVEREIGN IMMUNITY: The Pyramid Lake Utility Board and Pyramid Lake Utility District, as governmental entities of the Pyramid Lake Paiute Tribe are immune from suit as long as they work within the "scope of their authorities." **This provision should not be construed to mean they cannot be sued.**

If we can be of further assistance, your contact will be the Branch of Tribal Operations at (775) 887-3590.

Attachments

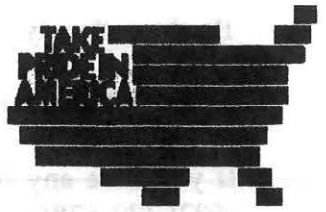
Cc: Tribe
PLT Ordinance File

A handwritten signature in black ink, appearing to read "Paul Miller". The signature is written in a cursive, flowing style.

ACTING SUPERINTENDENT



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WESTERN REGIONAL OFFICE
P.O. BOX 10
PHOENIX, ARIZONA 85001



NOV 04 2003

IN REPLY
REFER TO:

Tribal Government Services
(602) 379-6786

RECEIVED

NOV 13 2003

PYRAMID LAKE TRIBE
SECRETARY'S OFFICE

Through: Superintendent, Western Nevada Agency *WNA*

Honorable Bonnie Akaka Smith

Chairperson, Pyramid Lake Paiute Tribal Council

Dear Chairperson Smith:

On June 6, 2003, the Pyramid Lake Paiute Tribal Council enacted Resolution No. 50. The Resolution is entitled Illegal Dumping which prohibits the disposal of solid waste, authorizes facilities/sites, prevents unauthorized use of dumpsters, and provides regulation enforcement. The ordinance was approved by the Western Nevada Agency Superintendent on June 16, 2003, subject to review by the Secretary of the Interior.

A technical and legal review has been completed and we find the subject ordinance to be legally sufficient within the context of applicable Federal law pursuant to the Tribe's Constitution and Bylaws. There are a few areas surrounding the ordinance that we recommend be considered which are described below.

We have found some concern regarding §50-04-010 that pertains to "Enforcement." It seems to suggest that the only method of enforcement involves the creation of a rebuttable presumption in the law that concerns the identification of a garbage or litter pile with identifying articles contained in it. Though it may be implied, we wonder about the situation in which there were no such identifying articles in a pile illegally dumped garbage, yet there was an eye witness.

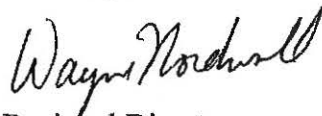
Another minor issue is what appears to be the misnaming of §50-04-020 as "Penalties." We believe it would be more accurate to rename this heading as "Restitution." This may prevent any confusion.

The Tribe may choose to take the recommendations and resubmit the ordinance, which will be processed immediately upon receipt.

By the authority delegated to the Regional Director, I hereby affirm the Western Nevada Agency Superintendents approval of the Pyramid Lake Paiute Tribe Illegal Dumping Ordinance as of June 16, 2003. The said ordinance is in full force and effect as of that date.

If you have any further questions, please contact the Branch of Tribal Government Services, at (602) 379-6786.

Sincerely,

A handwritten signature in cursive script that reads "Wayne Nordwall". The signature is written in dark ink and is positioned above the printed name.

Regional Director

Pyramid Lake Paiute Tribal Council

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WESTERN NEVADA AGENCY

2003 JUN 11 PM 1:45

Post Office Box 256

Nixon, Nevada 89424

Telephone: (775) 574-1000 / 574-1001 / 574-1002

FAX (775) 574-1008

RESOLUTION NO. PL 54-03

RESOLUTION OF THE TRIBAL COUNCIL OF THE PYRAMID LAKE PAIUTE TRIBE NIXON, NEVADA

WHEREAS, the Pyramid Lake Paiute Tribe is organized pursuant to the provisions of Section 16 of the Indian Reorganization Act (25 U.S.C. § 476) and is federally recognized by the United States Government through the Secretary of the Interior and the Bureau of Indian Affairs; and

WHEREAS, the Pyramid Lake Paiute Tribal Council, the duly elected governing body of the Pyramid Lake Paiute Tribe, is responsible for planning and implementation of policies that directly affects the environment on the Pyramid Lake Paiute Indian Reservation (PLIR); and

WHEREAS, the Pyramid Lake Paiute Tribal Council, pursuant to Article VI, Section 1 (j) of the Constitution and By-laws of the Tribe, realizes the importance of health and general welfare of its tribal membership; and

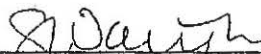
WHEREAS, illegal dumping and littering has a negative effect on public health and safety, environmental health, and the overall appearance of the PLIR landscape.

NOW, THEREFORE BE IT RESOLVED, that the Pyramid Lake Paiute Tribal Council hereby approves the Illegal Dumping Ordinance, Ordinance Number 50, which will act as an enforcement tool for the prevention of illegal dumping and littering on the Pyramid Lake Indian Reservation.

BE IT FINALLY RESOLVED, that the Tribal Council authorizes the Tribal Chairperson to take action as may be necessary to carry out the intent of this Resolution. The Illegal Dumping Ordinance #50 shall become effective July 1, 2003.

CERTIFICATION

It is hereby certified that the foregoing resolution of the Pyramid Lake Paiute Tribal Council, governing body of the Pyramid Lake Paiute Tribe, composed of ten members, of whom 8 constituting a quorum were present at a meeting duly held on the 6th day of June, 2003, was adopted by the affirmative vote of 6 for, 0 against, and 1 abstentions pursuant to the authority contained in the Constitution and By-laws of the Pyramid Lake Paiute Tribe.



Gina Wadsworth, Tribal Secretary
Pyramid Lake Tribal Council

ILLEGAL DUMPING ORDINANCE
PYRAMID LAKE PAIUTE TRIBE

PYRAMID LAKE PAIUTE TRIBE ILLEGAL DUMPING ORDINANCE

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ORDINANCE NO. 50

PYRAMID LAKE PAIUTE TRIBE UTILITY DISTRICT
ILLEGAL DUMPING ORDINANCE

Chapter 1: General Provisions

50-01-010 **TITLE:** This ordinance shall be known and may be cited as the "Pyramid Lake Illegal Dumping Ordinance" or the "Illegal Dumping Ordinance."

50-01-020 **PURPOSES:** The purposes of this Ordinance are:

(a) To prohibit the disposal of solid waste at any location other than at designated and authorized facilities or sites and to prevent the unauthorized use of dumpsters and other solid waste containers to protect the health of the community; and

(b) To provide enforcement of this Ordinance which shall be intended to be an effective deterrent to the illegal dumping of solid waste.

50-01-030 **POLICY:** The policies of this Ordinance are:

(a) To provide a mechanism for the Tribe and the Pyramid Lake Utility District to enforce and regulate the unauthorized disposal of waste on the Reservation; and

(b) To prevent solid waste disposal outside of transfer station sites and to ensure that solid waste is properly disposed.

50-01-040 **DEFINITION OF TERMS:** The following definitions shall apply to the Illegal Dumping Ordinance and its programs:

(a) "Approved solid waste site" means a solid waste site permitted or registered by the Pyramid Lake Paiute Tribe and is a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

(b) "Casual Passerby" is the person who does not have depositing litter in a garbage receptacle as his or her primary reason for traveling to or by the property on which the garbage receptacle is located.

(c) "Commercial vehicle" means a vehicle that is operated by a person for a commercial purpose or that is owned by a business or commercial enterprise.

(d) "Dispose" or "Dispose and Dump" means to abandon, discharge, deposit, inject, dump, spill, leak, or place any substance into or on any land or water or so that such substances or any constituent thereof may enter the environment. The placement of biodegradable material in a properly maintained compost pile is not disposal of solid waste.

(e) "Garbage" means all degradable and non-degradable refuse and solid waste without economic value that is generated through the course of normal living by the residents and organizations in the community.

- (f) "Hazardous waste" means any solid, liquid, or gaseous waste defined as hazardous by any federal, Tribal, or State of Nevada law, rule, ordinance or regulation. Hazardous waste includes but not limited to materials considered to be excessively toxic, poisonous, corrosive, radioactive, biologically infectious, explosive, flammable, or any combination of materials that have the potential to become hazardous.
- (g) "Litter" or "Littering" means the willful and/or negligent throwing, placing, sweeping, dropping, or scattering of small quantities of waste matter left in a place other than a place or container for proper disposal. Litter also includes any waste matter that escapes or is allowed to escape from a container or receptacle by a person on public property, on private property not owned by the person, or in or on waters of the Reservation.
- (h) "Malicious intent" means the intent to do a wrongful act.
- (i) "Person" means any individual, group, corporation, firm, partnership, joint venture, association, social club, estate, trust, or similar such entity, or a governmental entity, unit, or agency whether Tribal, local, State, or Federal.
- (j) "Private property" means any assignment of Tribal land held in trust, and any other trust or non-trust property that is not open to the public.
- (k) "Properly maintained compost pile" refers to a compost pile of less than 25 cubic yards that is maintained and operated in a safe nuisance-free manner, contains no sewage, sludge, or seepage, and follows acceptable methods of composting that minimize odors and produce a useful stable end product.
- (l) "Public highway" means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, right-of-ways, or park on the Pyramid Lake Paiute Reservation not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is open to the public for vehicular traffic.
- (m) "Public property" is any property open to the public for any reasons, including for the conduct of business, the provision of a service, or upon the payment of a fee, but does not include any private property to which the public otherwise does not have a right of access.
- (n) "Reservation" means all air, land, and water, both surface and underground, located within the exterior boundaries of the Reservation and on any acquired properties outside the exterior boundaries;
- (o) "Solid waste" means any garbage, waste matter, wood, plastic, metal, vegetation/debris, trash, paper, ashes, rubbish, refuse, and other discarded materials, including but not limited to solids, liquids, semisolid or contained gaseous material resulting from commercial and community activities which are no longer deemed usable;
- (p) "Tribe" means the Pyramid Lake Paiute Tribe of Nevada.
- (q) "Waste matter" is a discarded, used, or leftover substance including, but not limited to, a lighted or nonlighted cigarette, cigar, match, or any flaming or glowing material, or any garbage, trash, refuse, paper, container, packaging or construction material, carcass of a dead animal, any nauseous or offensive matter of any kind, abandoned automobiles, automobile parts, furniture, or any object likely to injure a person or create a traffic hazard,

50-01-050 JURISDICTION:

This Ordinance shall apply uniformly on the Reservation. It shall be a violation of this Ordinance for any person to violate a rule adopted under this Ordinance or act in any manner inconsistent with the requirements of this Ordinance.

Chapter 2: Littering

50-02-010 GENERAL: It is unlawful and shall subject a person to civil and/or criminal liability to litter or cause to be littered in or upon any public or private property on the Reservation. Any person violating this section is guilty of an infraction. It is no defense that the offender did not intend, or was unaware of, the charged act.

50-02-020 PROHIBITED ACTIVITIES: A person commits the act of littering if he or she engages in any of the following acts:

- (a) Knowingly deposits in any manner litter on any public or private property or in any public or private waters, having no permission to do so;
- (b) Negligently deposits in any manner glass or other dangerously pointed or edged objects on or adjacent to a highway or water to which the public has lawful access or within the right of way thereof;
- (c) Drops or permits to be dropped or thrown upon any public highway or public lands any destructive or injurious materials and does not immediately remove the same or cause it to be removed;
- (d) Waste matter or litter consists of, but is not limited to, the following:
 1. The contents of a litter bag or container of a type and size customarily carried and used in a motor vehicle;
 2. The contents of an ash tray of a type customarily installed or carried and used in a motor vehicle;
 3. Beverage containers, food sacks, wrappings, and containers of a type and in an amount that reasonably may be expected to be generated during routine commuting or business or recreational travel in a motor vehicle; and
 4. Waste matter generated during a routine day by a person and deposited in a garbage receptacle by a casual passerby.

50-02-030 RESTRICTIONS: A private owner is not restricted in the use of his or her own property, unless the littering of waste matter on the property creates a public health or safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department, Tribal Environmental Department, or the Pyramid Lake Utility District.

50-02-040 HIGHWAY LITTERING: No person shall throw or deposit upon any public highway, road or street or public right-of-way any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle. No person shall throw litter or allow litter to be thrown from a motor vehicle onto or upon any public highway, road, street, or public right-of-way. This offense extends to the person who is the owner or the driver of a motor vehicle from which litter is deposited in a public place.

50-02-050 SPILLING LOADS OR LITTER:

- (a) No person shall willfully and knowingly operate, own or cause to be operated on any public highway, road, street, or public right-of-way a motor vehicle loaded with gravel, rock, slag, bricks, or similar objects in such a manner or in such condition that the contents of the vehicle spill out and cause it to be deposited on such public highway.
- (b) No vehicle shall be driven or moved on any public highway unless such vehicle is constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping from the vehicle, except that sand may be dropped for the purpose of securing traction, or water or other substances may be sprinkled on a roadway in cleaning or maintaining such roadway.
- (c) All vehicles transporting solid wastes to and/or entering any Approved Solid Waste Site shall have the solid waste appropriately covered or confined in the vehicle by the use of tarpaulins, nets, or other devices that prevent papers, plastics, litter, waste matter, and other substances from blowing or falling out of the vehicle. Said tarpaulin, net, or cover shall not be removed until said vehicle passes a designated point within the solid waste facility. No person may operate a vehicle without following these requirements.
- (d) Except for a farm vehicle used to transport agricultural production materials or a rubbish vehicle in the process of acquiring its load, no vehicle loaded with garbage, waste matter, swill, cans, bottles, waste paper, ashes, refuse, trash, rubbish, waste, wire, paper, cartons, boxes, glass, solid waste, or any other material of an unsanitary nature that is susceptible to blowing or bouncing from a moving vehicle shall be driven or moved on any highway unless the load is covered with a sufficient cover to prevent the load or any part of the load from spilling.

Chapter 3: Illegal Dumping

50-03-010 GENERAL: No person shall dump or cause to be dumped any waste matter in or upon any public or private highway or road, including any portion of the right-of-way thereof, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than property designated or set aside for that purpose by the Tribal Council.

50-03-020 PROHIBITED ACTIVITIES:

The following activities are prohibited:

- (a) Placing, depositing, or dumping, or causing to be placed, deposited, or dumped, any rocks or dirt in or upon any private highway or road, including any portion of the right-of-way thereof, or any private property, without the consent of the owner, or in or upon any public park or other public property, without the consent of the Tribe or other agency having jurisdiction over the highway, road, or property;
- (b) The disposal or the allowance of a disposal of solid waste at a place that is not an approved solid waste site and no person shall own, operate, or maintain a disposal area that is not authorized;
- (c) Any transportation of solid waste to a place that is not an approved solid waste site for disposal at the site;
- (d) Any acceptance of solid waste for disposal at a place that is not an approved solid waste site, regardless of whether the waste matter or other solid waste or the land on which the waste is disposed is owned or controlled by the person;
- (e) No person, regardless of intent, shall deposit litter or garbage or cause litter or garbage to be deposited on any public property, on private property not owned by him or her, or in or on waters of the Reservation unless one of the following applies:
 - 1. The person is directed to do so by the Tribal Chairperson or officially designated representative as part of a litter collection drive; or
 - 2. The person deposits the garbage in a solid waste receptacle in a manner that prevents it being carried away by the elements;
- (f) No person, without privilege to do so, shall knowingly deposit garbage, or cause garbage to be deposited, in a garbage receptacle located on any public property or on any private property not owned by him or her unless one of the following applies:
 - 1. The garbage was generated or located on the property on which the garbage receptacle is located;
 - 2. The person is directed to do so by the Tribal Chairperson or officially designated representative as part of a litter collection drive; or
 - 3. The person is directed to do so by a person whom he reasonably believes to have the privilege to use the garbage receptacle.
- (g) No person shall knowingly allow the carcass of any dead animal which belonged to him or her at the time of its death to be put, or to remain, within 100 feet of any street, alley, public highway, or road in common use.
- (h) No person may place any solid waste in a dumpster, garbage can, or other solid waste container belonging to another person without the permission of the owner or person legally entitled to use said dumpster, garbage or other solid waste container;

- (i) Each person is strictly liable for ensuring that solid waste he or she generates is properly disposed of. If solid waste generated by a person is illegally disposed of, the person generating said solid waste shall be subject to liability as defined in this Ordinance, in addition to any other fines or penalties that may be applicable.

Chapter 4: Enforcement

50-04-010 GENERAL: This Ordinance is enforceable on the Reservation as follows:

- (a) This Ordinance does not supersede ordinances enacted by the Tribe that regulate the disposal of solid waste. Whenever any waste which is dumped in violation of this Ordinance is discovered to contain any article or articles, including but not limited to letters, bills, publications, or other writings which display the name of a person thereon, addressed to such person or in any other manner indicating that the article belongs or belonged to such person, it shall be a rebuttable presumption that such person has violated this Ordinance;
- (b) No action for littering based on evidence that creates a rebuttable presumption under subsection (a) shall be brought against a person by or on behalf of an enforcement body unless he or she has been given written notice by a designee of the enforcement body that items found in an accumulation of garbage, trash, or other discarded materials contain his or her name, and that, under subsection (a), there is a rebuttable presumption that he or she knowingly deposited the litter;
- (c) Any indicia of ownership, including but not limited to the person's name on some or all of the solid waste, is deemed sufficient proof of ownership of said solid waste.
- (d) Any person who commits a violation of this Ordinance is subject to enforcement procedures.

50-04-020 PENALTIES:

(a) Any person who commits a violation of this Ordinance shall be liable to pay restitution to the Tribe or any other person that incurs costs in collecting, hauling, or properly disposing of solid waste or hazardous waste incurred as a result of the offense. This liability is in addition to the following penalties:

1. Prevention Notice--for less urgent situations or minimal quantities.
 - A prevention notice may be issued to require a person to remove waste that has been dumped and to require the person to dispose of it lawfully.
 - This notice will require that it be done within 2 weeks from receipt of the notice or within a reasonable amount of time depending on the circumstances.
 - The notice may be issued to the person who dumped the waste or to the occupier of the land where the waste has been dumped.

--A person issued with such a notice may appeal the requirements of the notice within the time provided in the notice to remove the waste beginning on the date it was issued.

--If there is no compliance or response, then civil and/or criminal penalties can be imposed in accordance with this Ordinance.

2. Clean up Notice—will be issued where a dumping incident has occurred. A dumping incident is defined to include an incident where waste has been dumped unlawfully.

--This notice should be used where action needs to be taken quickly to avoid further environmental harm.

--The notice may be issued to the dumper or to the person who occupies the place where the waste has been dumped.

--There is no appeal against clean-up notices.

--If there is no compliance or response, then civil and/or criminal penalties can be imposed in accordance with this Ordinance.

3. Compliance Cost Notice---enables the Tribe to recover the costs of any dumping cleanup that was not performed by the person after cleanup and/or prevention notices have been issued.

(b) All notices are to be sent via certified mail or hand delivered to the person(s) addressed. All notices should also include educational material to educate the persons on the regulations and environmental hazards related to illegal dumping and littering.

(c) If the person responds to the notices and presents information or evidence to the designee of the enforcement body that the person is not liable for a violation of this Ordinance, the designee shall review the information or evidence presented and shall make a determination as to whether or not an action should be brought against the person for violation of this Ordinance. The designee shall provide written notice to the person on its determination, and if the intent is to proceed with an action for the violation of this Ordinance, the notice shall be sent before any action is filed.

50-04-030

CIVIL/CRIMINAL PENALTIES:

(a) Any person who commits a violation of Chapter 2 of this Ordinance is subject to civil and/or misdemeanor criminal penalties. If the notification process provided in section 50-04-020 does not create a proper response of the removal of the dumping incident then the penalty phase shall be as follows:

(1) First offense. A finding of liability for a first offense shall be punishable by a civil and/or criminal fine of not less than \$100 nor more than \$500, together with restitution based on avoided disposal fees and costs of collection and hauling.

(2) Second or subsequent offense. A finding of liability for a second or subsequent offense within a year of the first offense shall be

punishable by a civil and/or criminal fine of not less than \$500 nor more than \$1,000 with restitution based on avoided disposal fees and costs of collection and hauling.

- (3) A finding of liability for of any company, partnership, or any entity other than an individual person shall be subject to a fine of not less than \$500 nor more than \$2,500 and/or restitution.

(b) Any person who commits a violation of Chapter 3 of this Ordinance is subject to civil and/or misdemeanor criminal penalties. If the notification process does not create a proper response of the removal of the dumping incident then the penalty phase shall be as follows:

- (1) First offense. A finding of liability for of a first offense shall be punishable by a civil and/or criminal fine of not less than \$500 nor more than \$5,000, together with restitution based on avoided disposal fees and costs of collection and hauling.
- (2) Second or subsequent offense. A finding of liability for a second or subsequent offense within a year of the first offense shall be punishable by a civil and/or criminal fine of not less than \$3,000 nor more than \$20,000 with restitution based on avoided disposal fees and costs of collection and hauling.
- (3) A finding of liability for of any company, partnership, or any entity other than an individual person shall be subject to a civil and/or criminal fine of not less than \$500 nor more than \$20,000 and/or restitution.

(c) Each day during which an offense continues shall be deemed to be a separate offense.

50-04-040 ENFORCEMENT PERSONNEL: Enforcement in accordance with this Ordinance can be provided and effected by:
A. A peace officer or police officer,
B. Tribal Environmental personnel, and/or
C. Pyramid Lake Utility District personnel.

Chapter 5: Miscellaneous Provisions

50-05-010 SOVEREIGN IMMUNITY: The Pyramid Lake Utility Board and Pyramid Lake Utility District, as governmental entities of the Pyramid Lake Paiute Tribe, are immune from suit. Nothing contained herein is intended to waive the Tribe's, the Utility Board's, and the Utility District's sovereign immunity from suit.

50-05-020 SEVERABILITY: The invalidity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part(s).