

# *Pyramid Lake Paiute Tribal Council*

*Post Office Box 256  
Nixon, Nevada 89424  
Telephone: (775) 574-1000  
Fax (775) 574-1054*

## **PYRAMID LAKE PAIUTE TRIBAL COUNCIL SPECIAL MEETING MINUTES Tribal Chambers ~ Nixon, NV December 13, 2018**

**MEMBERS PRESENT:** Vinton Hawley, Tribal Chairman      Alan Mandell, Vice Chairman  
Cassandra Darrough      William Miller  
Janet Davis      Sharon Shaw-Keever  
Judith Davis      Mervin Wright, Jr.  
John Guerrero

**MEMBERS ABSENT:** Nathan Dunn

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### **CALL TO ORDER**

Tribal Chairman Vinton Hawley called the December 13, 2018 Special meeting of the Pyramid Lake Paiute Tribal Council to order at 5:30 p.m.

### **ROLL CALL**

Roll call was taken by Brenda A. Henry, Tribal Secretary. Councilmember Nathan Dunn was absent from this meeting. All other Tribal Councilmembers were present at roll call and a quorum was established for this meeting.

### **APPROVAL OF AGENDA**

Chairman Hawley stated there are addendums to the agenda. On Items 1 and 2, add "with resolution."

Councilmember Guerrero made a motion to *approve the December 13, 2018 Tribal Council meeting agenda as amended*. Councilmember Judith Davis seconded the motion. Votes were eight (8) **FOR** and zero (0) **OPPOSED** with zero (0) **ABSTENTIONS**. **Motion carried.**

### **UNFINISHED BUSINESS**

#### **1. Approval NextEra Option to Enter into Easement Agreement for Dodge Flat Solar – Casey Steigler and Debra Harry**

Mr. Steigler said a few additional changes were made which he will explain. The option will grant NextEra an option to enter into an easement agreement for a two-year option period in which they will get a permit from the Tribe to do investigations and inspections on the property prior to them exercising the option to enter into an easement agreement. The easement agreement will allow

them to travel from the highway to the property, approximately 1,200 foot stretch of Olinghouse Road that they intend to develop as a solar electric facility. The second page of the Agreement discusses the operative provisions. The initial option fee is in the amount of \$10,000 that will be paid to the Tribe within 15 days of the effective date of the Agreement. The option term will last for a period of two years from the effective date and they will have an option to extend the Agreement for an additional 12 months with an additional \$5,000 option fee. On page 3, there is a possible extension for NextEra if there is a delay due to regulatory review of some kind. The exercise of the option will be provided by giving written notice to the Tribe prior to the expiration of the option term. If NextEra does not exercise their option to enter into the Easement Agreement, this option will terminate. This is to make sure the Tribe does not have any ongoing obligations to NextEra. A Memorandum of Option will be recorded with the Washoe County Recorder's office. When the Option Agreement ends, the Easement Agreement will begin. If NextEra decides the area is not a suitable location and there is no way they can development solar electric facilities, they can provide 30 days notice that will terminate the Agreement. During the option period, NextEra will have the opportunity to go out and do inspections. There is a provision in the Agreement that says pursuant to any Tribal law now or existing or hereafter adopted, they will have to have some sort of access permit.

Mr. Steigler said Section 3.2 states the Tribe will require NextEra to carry insurance. For the approvals period, this is where the Tribe will assist NextEra in getting the grant approved by the BIA. The Conditions Precedent includes all of the requirements NextEra will have to go through to be able to have the easement. The first is negotiation of the Community Benefits Agreement (CBA). A survey and appraisal of the property will have to be done. The third section is the environmental assessment. There had been some concerns of what the environmental impacts may be such as the additional traffic and the construction that will take place. We will be requiring NextEra to adopt mitigation factors in the event there will be more truck traffic out there.

Councilmember Wright asked how NextEra will develop the criteria for the environmental assessment. Mr. Steigler said during the initial discussion, NextEra will have to come up with an estimate of what the additional traffic could be for the inspection and for the construction. This will have to go through the Tribe as well. Ms. Harry said a lot of it will be based off of the Tribe's own standards.

Mr. Steigler said there is an additional parcel of land that NextEra owns and will transfer ownership to the Tribe before they have the opportunity to record that easement. NextEra will have to exercise the option to purchase the property. The transfer parcel states it will be a standard land transfer and the Tribe will take the property in an as is condition.

The Tribe's covenants has a lot of the same items that we are asking of NextEra and that it doesn't violate any agreements or laws. Also that the Tribe will not otherwise option or sell that property prior to or during the option period. It also states the Tribe will maintain that property in its current state. During the option term the Tribe will still be able to carry out any activities that are currently taking place out there.

Section 8 is the Dispute Resolution provision. There is the Law & Order amendment for arbitration provision. Any disputes will have to go through arbitration and the Tribe agrees to that. On page 9

is the limited waiver of sovereign immunity. NextEra had originally asked that the limited waiver not extend to the Tribe's assets and revenues. This came up in both the easement option and the lease option and NextEra agreed to not extend it to the Tribe's assets or revenues. Mr. Steigler said the governing law will be the State of Nevada and the Tribe has agreed to jurisdiction in the Federal District Court or the courts of the Tribe.

Mr. Steigler said the Tribe had concerns with the Assignment provision and who NextEra would be potentially assigning the agreement to. We wanted to make sure that if NextEra were to sell this property and have another solar company run the operation, the Tribe will have prior notice.

Section 9.11 says that NextEra agrees to be subject to the jurisdiction of the Tribe for all purposes including commercial regulation and taxation.

The document will have the legal descriptions added. Mr. Steigler said we have done everything to ensure the easement is for only the use of the solar electric facility. The description of the actual easement will be included. The easement period will be 50 years unless it is terminated sooner than that. In Section 2 it is clarified that NextEra will have the easement for the sole purposes of developing, installing and maintaining solar electric facilities. It will not be allowed for any other purposes including, but not limited to, exporting, removing, selling, or otherwise transferring water, minerals, or any other natural resources. The Tribe will retain the right to use that property and it won't prohibit the Tribe from using that land. Maintenance costs associated with the easement area will be the responsibility of NextEra.

Section 6 is regarding Indemnification and Insurance. NextEra will have to carry insurance the entire time they are out there and they will have to indemnify and hold harmless the Tribe for anything that occurs on the property that is related to their activities.

Councilmember Guerrero made a motion to *approve NextEra Option for Easement for Dodge Flat Solar with Resolution*. Councilmember Darrough seconded the motion. Votes were eight (8) **FOR** and zero (0) **OPPOSED** with zero (0) **ABSTENTIONS**. **Motion carried. RESOLUTION PL 133-18 NextEra Option for Easement for Dodge Flat Solar**

## **2. Approval NextEra Option to Enter into a Lease/Development Agreement – Casey Steigler and Debra Harry**

Mr. Steigler reviewed the changes and important provisions of this Agreement. The recitals outline the general agreement. The Tribe will be giving an option to NextEra to lease a portion of the Reservation property for a solar electric facility. The Option term will be four years and there will be an option to extend for an additional 12 months and if they do so, the payments they make in the fourth year will be attributed to the fifth year. In Year One NextEra is going to provide \$150,000 or about \$15/acre for the property. In Year Two the amount goes up to \$180,000; in Year Three the amount is increased to \$210,000; and in Year Four it is increased to \$240,000. Each year the Tribe will receive compensation for allowing NextEra to have an exclusive option to lease that property. The payment process is listed on Page 3 of the document. Based on the original letter of intent, there was a proposed \$210,000 is the minimum option fee. In order for NextEra to exercise their option, they will have to pay the difference between the \$150,000 they have paid

and the \$210,000 minimum option fee. The Development fees will be paid in semi-annual payments of \$75,000 at the same time as the option fee. It will total, over the period of the Option, \$600,000. Progress payments will also be made which are specifically tied to the progress of the project. NextEra will pay an additional \$150,000 within 30 days of approval of the final solar electric site.

The Conditions Precedent provision has two of the most important provisions. First is the approval of the final electric site. Because NextEra needed to get their RFP done before they were able to identify the exact boundaries of the site and in order for them exercise their option they will have to come to the Tribe and through a survey, identify the exact boundaries of the property they are going to be leasing. The Tribe would have the opportunity to ask NextEra to make changes if the proposed site doesn't work for the Tribe and a relocation request can be made. NextEra would have to adjust accordingly. In the event NextEra were to identify the final electric site in Year 1 and they don't exercise their option, then the Tribe would adjust the payment for the lease option based on the number of acres.

Section 2.4.2 is the negotiation of the form of lease. Mr. Steigler said NextEra wanted to make sure there was a provision in the Option to include the per acre rental fee and the 25-year term for the lease. NextEra will also have to do environmental studies on the property in order to make sure they are complying with NEPA and any other regulatory provisions. The BIA will have to review and approve the lease. NextEra won't be allowed to exercise their option to lease the property until they have a buyer in mind. Also, they have to make all of their payments. They won't be in a position where they can exercise their option unless they've made all of their payments including up to that minimum fee.

There will be a Memorandum of Option that NextEra will have to file with the County Recorder. This will put other people on notice that the Tribe has set aside that portion of property and that NextEra has the exclusive option to develop. There is an additional termination provision that NextEra will have to provide a 30-day notice and any fees they've paid up to that point will not be refundable.

Mr. Steigler said Section 4 is the title review. An LTRO will be done and a preliminary title status report will have to be done. Language was included that if NextEra can't go near certain areas of the property, then the final solar electric site would be adjusted accordingly. On inspections, NextEra will have to come to the Tribe for a temporary access permit during the option period. In addition, they will also have to ensure the property is free from liens or encumbrances. NextEra will have to carry insurance and indemnify the Tribe for any activities out there.

Section 4.3 talks about the Tribe's assistance to NextEra for approvals and the Tribe has the right but not the obligation, at NextEra's expense, to assist with any approvals processing that will be necessary.

Mr. Steigler said Development and Regulatory section is included in Section 5. NextEra wanted some certainty in terms of the potential cost on the Tribe's regulatory assistance. It was agreed that the Tribe would provide a budget with the estimated costs for regulatory assistance. NextEra could request a modification to that budget within 30 days. The Tribe is representing to NextEra

that we don't have any knowledge of anything that would prevent them from doing their development. This was limited that the Tribe has no actual knowledge which will be attributed to the Tribal Chairman or the relevant department director who would be in charge of that information. This will protect the Tribe in the event that there is something that NextEra is unhappy about that turns up on title.

The Tribe's covenants during the term is that the Tribe will maintain the property in its current state and it won't be developed, sold or given to anyone else the option to use the property. Section 8.2 states that during the option term the Tribe is within its rights to continue using that property in whatever way it is being used now so long as it doesn't prevent NextEra from moving forward. Mr. Steigler said Section 11 is the defaults and remedies. If for some reason, either party believes that the opposing side has breached the agreement, they will have 30 days to cure that breach. Section 12 is the dispute resolution provision that is addressed in and similar to the Easement Agreement. The limited waiver does not extend to the Tribe's assets or revenues. Section 12.6 is where the Tribe has agreed to execute a resolution and amend the Law & Order Code to include arbitration so that the arbitration provision in the agreements can be enforceable.

This agreement is under that laws of the State of Nevada and the parties have agreed to submit to either the U.S. District Court of Nevada or the Tribal Court for any potential disputes after arbitration. Mr. Steigler said the assignment provision is stricter than the one in the easement agreement. NextEra's ability to assign their rights to a third party was limited. NextEra would be required to provide notice to the Tribe and there would be a period of 30 days after receiving the notice to investigate the assignment. Section 13.13 says NextEra will be required to submit to the Tribe's jurisdiction for all commercial, regulatory and taxation purposes.

Ms. Harry said under this Agreement, there is the requirement that once it is approved by the Tribal Council, it will start the 90-day clock to develop the lease agreement. Mr. Steigler said NextEra sent a form lease and it had to be fixed because it was a standard form lease agreement which didn't take into account any of the specific Tribal provisions. He revised the lease agreement so that it matches the option agreement. Ninety days should be ample time since we have already come up with the lease term of 25 years and agreed to the commercial terms.

Vice Chairman Mandell said it would be helpful to have a timeline for all of the items that have been done so far. Mr. Steigler said once effective dates for both agreements and have been signed, that will start the clock for all of the requirements in the agreement then they will be able to put together a timeline of the income associated with both agreements. Ms. Harry said the Finance Department will be able to know when to expect payments.

Councilmember Wright said there is an error in the resolution. In the fifth "Whereas" it says, "NextEra Energy Partners LP and a Delaware company, is *interesting*" and should state, "*interested* in developing."

Councilmember Judith Davis made a motion to *approve the NextEra Option to Enter into a Lease/Development Agreement with Resolution with a correction to the fifth "Whereas"*. Councilmember Wright seconded the motion. Votes were eight (8) **FOR** and zero (0) **OPPOSED**

with zero (0) **ABSTENTIONS**. **Motion carried**. **RESOLUTION PL 134-18 Option to Enter into a Lease/Development Agreement**

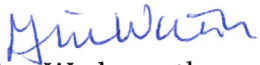
**ADJOURNMENT**

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

The meeting adjourned at 6:31 p.m.

Minutes taken by Brenda A. Henry, Tribal Secretary.

Submitted by,

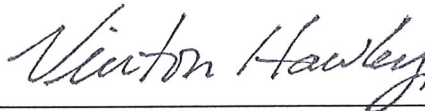


Gina Wadsworth  
Contracted Transcriber

**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 4<sup>th</sup> day of January, 2019, 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:



Vinton Hawley, Tribal Chairman  
Pyramid Lake Tribal Council

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