

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 WATER TEAM MEETING MINUTES Tribal Chambers February 20, 2019

Members Present:

Anthony Sampson Sr., Tribal Chairman

Alan Mandel, Vice Chairman

Janet Davis

John Guerrero

Judith Davis

William Miller

Nathan Dunn

Sharon Shaw-Keever

Sherry Ely-Mendes

Michele Smith

Chairman Sampson Sr., called the February 20, 2019 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 Secretary. Councilmember Dunn arrived at 6:06 p.m. All other Tribal Councilmembers were present at roll call and a quorum was established for this meeting.

APPROVAL OF AGENDA

There were no changes to the agenda.

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

CONSENT AGENDA

Following items were approved on the consent agenda:

1. Approval of Minutes: January 16, 2019 (WTM)
2. Approval Stetson Engineering December 2018 Invoice #1336-1812 & #1336-01-1812
3. Approval Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP November 2018 Invoice

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

NATURAL RESOURCES DEPARTMENT. *Donna Noel, Director, Natural Resources (NR)*

1. Approval Film Request Autumn Harry.

Ms. Noel stated Autumn Harry wants to do a film on Women Fly Fishing and trying to get them involved in fly fishing on February 23-25, 2019. Filming is at her house, Pyramid Lake Marina and north nets, Pelican, and Popcorn Beach. Since there have been issues in the past with film requests where they've been approved and with the requester filming outside the boundaries, a recommendation from Inter-Disciplinary Team (IDT), a paragraph will be added to the permission letter that says it's unlawful to film in closed areas and outside of the recommendations of the permission letter. So if the Rangers stop them, the letter will tell them exactly where they are authorized to be filming.

Councilmember Dunn arrived at 6:06 p.m.

Brenda Henry, Tribal Secretary, said that when Tribal Council approves film requests and it's requested they come back for Council review, none has come back for Council review before being put it out to the public. Councilmember Janet Davis confirmed that yes when they approve film requests they haven't gotten anything back for review. Councilmember Guerrero said that the last one misspelled Paiute. Councilmember Janet Davis suggested putting it in the application as a stipulation.

Ms. Henry mentioned they are also starting up the regulations meetings again and will include all the permits and waivers for review. Councilmember Janet Davis stated yes they need review for consistency. Councilmember Ely-Mendes suggested these requests go through IDT first before being presented to Tribal Council because they don't know if they're ready. She also doesn't think it's appropriate or should be allowed to film in closed areas because the closed area viewing by the public may be misconstrued by the public that the area is now open and available to the public. There was one done by Autumn, she is a Tribal member and her goal was to educate, until we figure out what we're doing with those closed areas and how we're going to allow access they should not allow them to go there. When they're filming, we're opening a can of worms to the public if it gets posted on-line, it will be interpreted as being open. They have the right as Tribal Council to restrict access or imagery. Ms. Noel stated that she will be at Pelican Beach, Popcorn Beach and the area between the north nets and her house.

Councilmember Smith made a motion to *approve the film request by Autumn Harry with IDT stipulations*. Councilmember Judith Davis seconded the motion. Votes were **eight (8)** for and **zero (0)** opposed with **one (1)** abstention (Dunn). **Motion carried.**

2. Approval Field Trip Request to the Needles. David Boden

Ms. Noel stated David Boden from Truckee Meadows Community College (TMCC) wants to bring his geothermal class to the Needles to do some basic water testing and instruction on geothermal systems. They have gone out there many years, but haven't been out there the last couple years because of the road being closed. Stipulations recommended by the IDT include no video or filming allowed, stay on the main roads, do not pick up remove anything from the reservation, and they will be escorted by someone from the Natural Resources department

Ms. Noel stated this was recommended for approval by IDT. Mr. Boden provided hand-outs of the material provided to his students.

Councilmember Dunn made a motion to *approve the Field Trip Request to the Needles by David Boden*. Councilmember Janet Davis seconded the motion. Votes were **eight (8)** for and **zero (0)** opposed with **one (1)** abstention (Ely-Mendes). **Motion carried.**

3. Approval Benthic Macro-Invertebrate Sampling in Pyramid Lake. Ken Davis

Ms. Noel said Mr. Davis is a wildlife photojournalist and an aquatic biologist. He is writing a book on bio-assessment bugs that are found in rivers and lakes in the west. He would like to sample the lake bottom, the muck, for macro invertebrates. The water quality group already tests the river for macro invertebrates. What they are looking for is certain types of macro invertebrates that are conducive to fresher water and as the water quality gets worse, you see more of the bad bugs show up. They don't test the lake because they're not sure where to go. This guy is an expert on the bugs and he also takes pictures of them. He would like to test over the next two years, testing 2-3 times a year to get the different cycles of the bugs. IDT was really excited about this testing. IDT's stipulations are: 1) note where the sampling locations are, 2) identify any aquatic invasive species found in the samples which help in the Tribe's aquatic invasive species program so they can monitor for them, 3) work with the Tribe's water quality program who will accompany him and get the results and pictures of all the bugs on the reservation which he agreed to.

Councilmember Ely-Mendes asked if he was making a book and if it's going to be specific to Pyramid Lake. Ms. Noel answered that yes he will be making a book but it will be of the waters of the west. He won't make the determination of either bugs being good or bad, he will just list the type of bugs found in the river or lake with a picture.

Councilmember Judith Davis made a motion to *approve the Benthic Macro-Invertebrate Sampling in Pyramid Lake with IDT recommendations*. Councilmember Janet Davis seconded the motion. Votes were **nine (9)** for and **zero (0)** opposed with **zero (0)** abstentions. **Motion carried.**

4. Approval Request to use S-Bar-S for Youth Camp, June 18-20, 2019.

Ms. Noel made a request for the annual Youth Camp for this year to be held at the S-Bar-S Ranch on June 18-20, 2019.

Councilmember Janet Davis made a motion to *approve the request to use the S-Bar-S Ranch for the 2019 Youth Camp June 18-20, 2019*. Councilmember Shaw-Keever seconded the motion. Votes were **nine (9)** for and **zero (0)** opposed with **zero (0)** abstentions. **Motion carried.**

Ms. Noel commented about the Wadsworth water system. She will be working with Stetson, PUD, Fisheries and Water Quality to put together a report on the Wadsworth water system including water quality, aquifer hydrology, impacts to fishery, and Wadsworth drinking water and the effects from dewatering at Paiute Pit.

WATER TEAM REPORT

1. WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN (WRSSR), LLP. Christopher Mixson. Report Submitted.

Truckee Canal Environmental Impact Statement (EIS).

Mr. Mixson commented on the Truckee Canal EIS which the Bureau of Reclamations (BOR) has been preparing for the Truckee-Carson Irrigation District (TCID) to do repairs to the canal after the canal breach in January 2008. He is in possession of the draft EIS which has not been released to the public yet. They have the option to provide comments on the draft EIS by the end of February or until they open it up to the public for comments but no date on when they'll release it to the public. Unfortunately, they have not seen any changes when comments were submitted on anything. Vice Chairman Mandell asked when they're talking about the recovery plan and the necessity of the draft recovery plan to be completed. His concern is the impact of the Lahontan Cutthroat Trout (LCT) being in the river in the Wadsworth area and if this is being considered in the EIS. Mr. Mixson said he's still reviewing the draft EIS and hasn't gotten to the part where they talk about it. In the process of the EIS, they brought to BORs attention the fact there are LCT in the lower river and the existing documentation from 1997 doesn't state that, so there's a new condition in the river, the LCT they need to consider in the EIS. That information caused them to go the US Fish and Wildlife Service (USFWS), which initiated the Section 7 Consultation under the Endangered Species Act (ESA). They were to get a new biological assessment under the ESA which would give them data on the LCT which they can use for purposes for the EIS. He doesn't think they will have the new biological assessment ready in time for their expedited EIS deadline. That will be one of the comments they will make, how can they take the hard look, that a NEPA is supposed to take, of these canal repairs that has potential to increase diversions. How are they going to analyze the impacts on the LCT in the EIS when they don't have the new data? That will be one of the Tribe's comments. It's a legal exposure that their EIS is going to have to deal with. He doesn't expect a final EIS until spring or summer.

Truckee River Operating Agreement (TROA)

- a. **Navy Water.** The USFWS at Stillwater Refuge has reached out to them, they want to schedule a meeting to continue their discussion on how they want to operate the Navy water. This is where the Naval Air Station had water rights to irrigate around the Naval Station to create a buffer zone for their airplanes. When the Pyramid Lake fish were listed, the Tribe said you're taking water from the Truckee River to grow hay at the

Naval Air Station. The ESA says the United States is supposed to be first protecting the fish so find another way to have a buffer zone. They were to stop irrigating. When hydrological conditions occur that are favorable to Pyramid Lake, they won't call for that water, but they still need to work that out with Stillwater Refuge in determining the criteria.

Recoupment.

- a. **Repayment of the Current Judgement.** TCID owes the Tribe 334, 208 acre feet of water that was stolen from the Tribe in the 70-80's. They claimed in 2016 to have repaid 627,000 acre feet. The Tribe has been fighting with them for a couple of years over this issue. The Water Master certifies what was repaid to the Tribe. The Water Master will be submitting a status report to the court asking the court to resolve the parties' disputes before the water master certifies the amount of water TCID has repaid to the Tribe.
- b. In March 2018, TCID file a motion in the federal district court claiming that a recent US Supreme Court case provides new legal grounds for dismissing the entire Recoupment case. TCID claimed that a catch-all 5-year statute of limitations applies to the case and even through TCID tried and failed to dismiss the recoupment case on the same theory, the Supreme Court case makes the 5-year statute of limitations applicable now. The Tribe and US filed separate oppositions to the motion. The court held a hearing on February 4th, after hearing the arguments, Judge Du announced she was going to deny TCID's motion. This is a victory for the Tribe because if TCID prevailed it would have put an end to their obligation to repay over 300,000 acre feet of water to Pyramid Lake.

City of Fernley

- a. They have 10,000 acre feet of Truckee River water rights that they are legally allowed to use for their municipal purposes under the settlement act under TROA but in order to use that water they have to get it from the Truckee River to their treatment plant. A settlement was reached with BOR where they have to submit an application to BOR for permission to use the Truckee Canal to deliver their surface water because federal reclamation projects were only intended for irrigation use not municipal water. In December Fernley filed the application with BOR, BOR supplied a copy to the Tribe for review, the water team will prepare a letter for the Chairman to sign to BOR requesting formal government to government consultation as BOR considers the application. There is no deadline for the request, so not sure how quickly they need to get the letter to the Chairman but possibly before the next water team meeting.

Fee to Trust Land Applications. The Tribe has four pending applications with the Bureau of Indian Affairs (BIA) to transfer fee lands to trust status. The one was filed in 2014 for 7,324.49 acres (TH Ranch, Fagundes, NV Land & Resource Co, and Ceresola). BIA informed the Tribe in 2016 that it was ready for a final signature, but it was never signed. In April 2017, the Department of Interior issued a new policy document that required all fee to trust applications to be signed by the Assistant Secretary of Interior for Indian Affairs, and removing the authority for BIA Regional

Directors to approve applications. These need to be processed so the Tribe can stop paying taxes on these properties.

Senator Cortez-Masto's office has offered to help, by providing a letter from the Senator (who sits on the Indian Affairs Committee) to the Department of Interior. A draft letter for the Senator's signature to be sent to the Assistant Secretary of Indian Affairs was provided to the Senator's office in mid-January.

Councilmember Judith Davis requested clarification for consensus on the letter to the City of Fernley. Chairman Sampson Sr. will request consensus when he gets the letter.

2. STETSON ENGINEERING INC. Alan Richards

Mr. Richards reported for Stetson Engineering Inc., for the month of January 2019.

BOR's ESA Consultation for OCAP. The Tribe is working for the USFWS to draft conservation measures that are within BORs authority to carry out under the Newlands Project Operating Criteria and Procedures (OCAP). Ali Shahroody has been assisting USFWS in drafting the measures. Their next meeting is scheduled for March 20th to share thinking on conservation measures.

TROA Meetings and Scheduling. Stetson hosted and prepared discussion materials for the monthly TROA-MOA conference call on January 15th. Stetson worked with the Tribe on reviewing Truckee River flows and forecasts, reservoir operations, and participated in the monthly TROA scheduling meeting with the Federal Water Masters and other TROA parties held in Reno on January 17th. The Tribe's monthly TROA scheduling request form required by the Federal Water Master was prepared and submitted in January.

Lower Truckee River and Pyramid Lake

Figure 1 is an updated Truckee River flows at Nixon for the last thirteen months. Flows in the Truckee River have been maintained at a rate of 280 cubic feet per second (cfs) in January 2019. The river peaked at around 6,000 cfs on February 15th and then it's been on a recession curve. Figure 2 is a picture of lake elevation, as of February the lake is up to 3,803 and should be increasing. Figure 3, is a historical lake elevation dating back to 1906 to 1967 when first OCAP was issued. Since then it has been an upward trend, today the lake elevation is at 3,803.

Vice Chairman Mandell asked if he knew when the Winnemucca Lake dried up. He thinks it was in the 30s. Mr. Richards doesn't know what the answer is but will research it.

Mr. Richards said he just received an update on the Truckee River Inflow to Pyramid Lake table, for February 2019 there were 33,500 acre feet at the Nixon gage with half of it occurring during the last week. The hydrology outlook for 2019 looks to be an above normal year, of course, these can change. Lake Tahoe is going to be spilling either late tonight or early tomorrow. Its currently about a foot below the spill elevation, the water master is going to start precautionary releases.

Initially at a rate 200 cfs and then ramp up to 500 cfs, all that water will eventually make it to the lake. Truckee Canal is off and will remain off until at least the next month or longer which will have increased flows to the lake. Councilmember Shaw-Keever asked if there is a potential for flooding. Mr. Richards said it's a flood flow, not the peak flow that was experience last month but it will be an increased flow. Newlands Project Credit water will spill out of Tahoe first, all the credit water will spill from Tahoe in priority and flow to Pyramid Lake.

Overview Truckee Meadows Flood Control Project. Donna Noel

Ms. Noel stated the Army Corps of Engineers put out a plan that was a 100-year flood plan and that plan included a bunch of levees in town, restoration projects along the main stem, 102 Ranch, McCarran Ranch and restoration projects along the lower river. When it went to Congress to get funding, Congress, after looking at the cost benefit ratio said no way are they going to spend this much money for such a small population and decided to let them have a 50-year flood plan. The plan was cut down which included not opening the Vista narrows, keeping the down town area flood free but didn't worry about Sparks and other areas. It went back to Congress and they were funded. There was a match that had to be provided by the local government, the local government (after the 1997 flood which was a 117-year flood) said no, they don't want a 50-year flood plan they want one that will protect them from what they just had. The Truckee River Flood Management Authority(TRFMA) ended up doing their own plan which included terracing out the Vista Narrows, preventing the flooding in Sparks Industrial area, putting in high flood walls but they wanted the Army Corps to fund projects that were mutual to both plans. There was only one project that was mutual to both plans and the Army Corps still had the funding. In the mean-time the Truckee Meadows Flood Project said they will just get the funds from bonds and tax increase, unfortunately the tax increase didn't pass because it only helps the people in the industrial area and the people in Lemon Valley are swimming in Swan Lake. Now they're going back to the Army Corps to ask them to endorse their plan and make the funds they have set aside for a 50-year plan available. TRFMA is trying to get them to approve the use of the Army Corps funding. Army Corps came over yesterday and met with the Tribe (THPO, NR, Vice Chairman and others) and they are just starting to evaluate the TRFMA plan which is just like the old Army Corps 100-year plan except it's a little more deluxe. The Tribe told the Army Corps they need to assess the resources all the way to the lake for impacts of the plan. TRFMA is saying it's only a little higher flows for a short duration and it's already eroded down the lower river so the impacts are not significant. TRFMA are only going to look at the small change it's going to make by opening the narrows. The Tribe is saying the erosion is bad, why do they want it worse, because they are going to make it worse. They have four criteria that they will base their decision on, which was given to the Tribe and they will get together with Stetson, the Flood people and Mr. Mixson to write up what they think the criteria should be and get the Tribe's concerns injected in the criteria and hopefully will be used in their decision for the Truckee Meadows plan. Councilmember Ely-Mendes asked don't they already have a plan for the Tribe and they nixed it. Ms. Noel responded it was the 100-year plan but TRFMA took that same plan and took out the restoration of the lower Truckee River on the reservation and used restoration at the 102 Ranch and McCarren Ranch in their plan as lower river restoration. One big problem in using these projects as lower river restoration is that there is no base line information to compare to so they won't be able to quantify what improvements were measured to qualify the restoration as flood mitigation. The Tribe mention to Army Corps

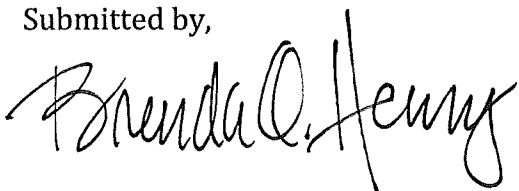
that it wouldn't count unless they can quantify it. Vice Chairman Mandell announced that for the new Councilmembers, this has been a long time running for the Flood Control project, the whole purpose for Washoe County Flood Control plan is to push as much water out of the Reno-Sparks area as fast as possible so they don't have any impacts and very little is being done here to mitigate those flood issues. Councilmember Ely-Mendes stated they admitted that it would impact the Tribe down here, we were the community of least casualty. The Army Corps of Engineers need to get their act together because it's not appropriate when they know we'll have impacts of loss of property, and potential for erosion to the lake. Ms. Noel stated that TRFMA is driving the bus now and is trying to get the Army Corps to join them. Vice Chairman Mandell said this will be talking point for them to approach the Tribe's federal delegates and representatives to get funds for a study and do a flood project for downstream for the Tribe. Ms. Noel stated the burns are making it 10 times worse because we now have not only the river but the streams. Councilmember Janet Davis asked what about the ditches in Little Nixon. Ms. Noel said she just heard that A&K are proposing to add culverts and pipes underneath the ditch when they cement the ditch, she still hasn't seen a cost. Councilmember Ely-Mendes asked if there is anything to diverting the run-off to another channel using the impact of that because it's going to come through the area again. With the fields covered in silt who is going to be cleaning it up and is it going to need to be reseeded. This issue will be possibly happening again in a few months, and there was ash that came down, do we need to get the BAER up there again to deal with the potential risk areas. Ms. Noel said the BAER looks at infrastructure, they don't really look at fields as a infrastructure. Councilmember Ely-Mendes said maybe they can divert it to some of the dry bed areas. Councilmember Guerrero said that Roads Department used to keep the dykes cleared, updated and filled in. There's burns up by Secret Canyon that have dykes in there, all we need to do is go in there and back fill to lessen the run-off that will fill up those dry lakes. There is a dyke between 447 and Little Nixon that could be built back also to lessen the run-off. He was going to write an email to Benjamin John and the Chairman and to whomever is in charge of the flood projects at FEMA because a lot of those projects are engineered already instead of having other contractors look at the work (as seen in the Realty report) which there is already engineering for these projects. He would help show them these can be mitigated. The roads department used to take care of these and there are mitigation funds available from FEMA for some of the projects. Councilmember Ely-Mendes stated we don't have any funds from FEMA yet. Councilmember Guerrero stated that why we need to get the accounting and budgets in some of the accounts that Don Pelt has. Councilmember Ely-Mendes said she would like to see budgets to see what we have and where instead of spending a bunch of money and not getting it back.

ADJOURNMENT

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

The meeting adjourned at 7:20 p.m.

Submitted by,



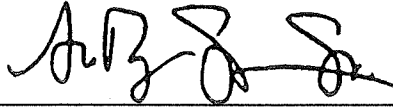
Brenda A. Henry

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 20th day of March, 2019, having ten (10) members present, constituting a quorum, by the vote of seven (7) FOR and zero (0) OPPOSED with zero (0) ABSTENTION.

Minutes attested and concurred by: _____



Anthony Sampson Sr., Tribal Chairman
Pyramid Lake Paiute Tribal Council

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