

**Summit Lake Paiute Tribe
Special Council Meeting
Friday, October 1, 2021
Primary Administrative Office, Sparks, Nevada**

CALL TO ORDER: Chairwoman Randi Lone Eagle called the Special Council Meeting of Friday, October 1, 2021 to order at 7:00 am.

ROLL CALL: Secretary/Treasurer Eugene Mace, Sr. called the roll: Chairwoman Randi Lone Eagle, present; Vice-Chairwoman Nedra Crane, present; Secretary/Treasurer Eugene Mace, Sr. present; Council Member Philip Frank, absent; and Council Member Steven Crane, present.

STAFF: James Simmons, Natural Resources Director

GUESTS: Jamie Pinkum, Acting Assistant Secretary of the Army for Civil Works; Stacy Jensen, Assistant for Regulatory and Tribal Affairs; Elliott Carman, Advisor in the Office of the Assistant Secretary of the Army Civil Works; Matt Wilson, US Army Corp. of Engineers Headquarters, Program Lead for Jurisdiction; Silvia Kost, Regional Council for Region 9; Brian Frazer, Director of Oceans, Wetlands and Community Division and Office of Wetlands, Oceans and Watersheds; Russ Kaiser, Chief of Program and Development and Jurisdiction Branch; Rose Klokan, EPA Tribe Consultation and Coordination; Libby Warrow, RICE participant; Karen Drudd, Tribal Program Coordinator EPS Office of Water, Cory-Office of General Council; Alissa Day, Attorney, EPA Water Office; Region 9 Staff including Sariah Keller, Wetland Section Manager; and Joe Morgan, Temporarily detailed to Region 9 Environmental Review Branch

The Summit Lake Paiute Tribal Council members and Mr. Simmons introduced themselves.

The representatives of the Army and EPA introduced themselves.

Ms. Klokan presented the structure of the meeting:

- Opening Remarks from the EPA, Army, and SLPT Council
- Brief presentation of the Waters of the United States and current rule making efforts.
- Questions and Answers
- Closing Remarks

Ms. Kost started the opening remarks.

She thanked the Council for allowing them to talk about forthcoming ruling making to revise the definition of waters of the United States. It is important to obtain proposal

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input from the Tribe on the revised definition of the waters of the United States and how it would affect the Tribe. They look forward to any comment at the meeting and any formal comments submitted during the consultation process.

She stated that, as people of Northwestern Nevada, clean water is essential to life. Water holds cultural significance to many tribes. The EPA and the Army intend to pursue a new rule creating a new and durable definition of the waters of the US. With everyone working together they can create this definition of waters based in science, which helps tribes protect vital resources while supporting key regional economic activity which can only be achieved together.

Jamie Pinkum continued. He knows how important water is to tribal communities. It has roles in spiritual, cultural, physical and economic well-being in tribal society. This has been integrated into the rules meant to protect it including the Clean Water Act definitions of the waters of the US. The Department of the Army is working closely with the EPA on this rule making an effort to clarify which waters constitute waters of the US. A clear definition is needed. They need the Tribe's feedback and welcome that feedback because it is important as a co-regulator and beneficiary of clean waters.

Chairwoman Lone Eagle thanked the guests and Mr. Simmons for setting up the meeting. Having the continued relationship can be difficult within Indian country, to coordinate to have the open communication and have these meetings. She wants to continue the relationship and partnership and know what is coming down the pipeline with the everchanging things with Indian Country, EPA and the White House. It is good that they can come together to collaborate and work together.

Mr. Simmons said that he agrees with Ms. Lone Eagle. He is grateful to have everyone here on the call and is looking forward to the presentation and learning more about the rule change and how it will impact tribal waters.

Brain Frazer presented a slideshow on the proposed ruling. He talked about the importance of defining the scope of waters in the United States. He discussed the Clean Water Act and the various rulings regarding US waters.

Russ Kaiser explained Executive Order 13990 which directs the federal agencies to review certain agency actions promulgated, issued or adopted by the previous administration. The Navigable Waters Protection Rules was reviewed and it was decided to initiate a new rule making to revise the definition of the waters of the United States. He listed the things the agencies considered during the review.

The rationale for WOTUS (Waters of the United States) rule making were expressed in the agencies' public documents. The agencies have substantial concerns regarding whether the Navigable Waters Protection rule adequately considers the Clean Water

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Act statutory objective to protect, restore and maintain the integrity of the nation's waters. It was determined it was inconsistent with well-established science. The Agency intentions were explained. Currently, while in the process of the new rule making, the agencies have gone back to using the rules and regulations in place before the previous administration or the 1986 regulations. Mr. Kaiser detailed the definitions of the concerned waters. The agencies are committed to crafting a durable definition of Waters of the United States that is formed with diverse perspectives and based on an inclusive foundation.

The agencies are committed to consultation and significant stakeholder engagement. He informed the Council of the procedures and extent of the current consultation engagement and the plan for more in the future. They know how important tribal perspectives and experiences are. They want to hear the Tribe's experience of the effects of the previous definitions, both what works and does not. They want the Tribe's insights while they develop a new durable rule.

They showed the process of how to submit comments. The deadline is October 4, 2021. They will hold virtual meetings with the tribes. The meeting for SLPT's area is Wednesday, October 27, 2021 from 10:00 am to 12:00 pm Pacific Time. Registration is limited if the Tribe wishes to attend. Mr. Kaiser asked for any questions from the Council.

Vice-Chairwoman Nedra Crane asked who the stakeholders are when it comes to tribal waters. Mr. Frazer answered that, in his opinion, the tribes themselves are the stakeholders. Mr. Pinkum added that in this process they recognize the tribes as autonomous, independent sovereigns. It is up to the Tribe to define who the stakeholders are if there are co-regulators, the citizens, neighbors under the Clean Water Act.

Council Member Steve Crane wondered if they had any information regarding trespass cattle and wild horses which is an ongoing problem at SLPT. Ms. Kost said that there is BLM land around the reservation. Wild horses are something the BLM could help with. She knows that trespass cattle are also a big issue having dealt with that in the Attorney General's Office while in Sacramento, California. It is more an issue for the Attorney General and not for the Region 9 EPA Waters office. It is not part of rules making. Mr. Crane stated it was a big ongoing problem.

It was mentioned there were two rule making projects. They will be dealing with them separately and they will be dealt with in two different consultations. The first rule is the only one they are discussing here.

There was a question asking if the Tribe had any concerns with downstream impacts from a neighboring jurisdiction that the Council had and want them to know about. Mr.

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Simmons responded that SLPT was fairly fortunate that their watershed is very remote and is also a closed watershed in terms of surface water. Summit Lake and its tributaries are a closed system. The lake's location does not have a lot of industry or populace with presence near-by. Also, the State of Nevada is working on their own special waters program as mandated by the Clean Waters Act—the Ecological and Aesthetic Waters program. SLPT is proposing to nominate the tributary waters which flow outside of the reservation for pollution protection.

It was asked if the Tribe was authorized to act as a state for purposes of the Clean Water Act. Mr. Simmons explained that SLPT is in the beginning of the process of getting together what is necessary to submit for that.

Mr. Simmons was asked if SLPT was looking at the impact of climate change on the water. Mr. Simmons stated that the Natural Resources Department (NRD) currently has a study ongoing with the University of Nevada Reno (UNR). They are doing a full multi-year comprehensive study on trying to forecast what the climate will be in this area and watershed and what the impacts will be to hydrology and the riparian vegetation on the reservation. There are two more years of data collections. Any early findings would be of help with the rule making.

Mr. Simmons stated he was a little unclear. He thinks it is trying to get back to the rule and implementation that was in place prior to the end of NWPR with the 1986 rulings. He would like to know what are the differences, what was undesirable about the rules they want to replace.

Russ Kaiser replied that the objective of the Clean Water Act which is to restore and protect the integrity of the nation's biological, chemical, physical integrity. The Navigable Waters Protection Rule (NWPR) act threw out the ephemeral waters as a category. Protections were lost. The NWPR was inconsistent with the objective of the Clean Water Act. They also mentioned the Rapanos Guidance. They want to make it legally defensible. Joe Morgan also stated the NWPR also excluded most of the wetlands under the waters of the US. Rose Klokkan also stated that NWPR also eliminated, as an independent category, interstate waters. They would be interested in feedback on how to appropriately consider tribal boundaries in the section on interstate waters. There are more differences, but these are the ones that more regard tribal waters.

They discussed how to determine if ephemeral waters are defined to be protected under the new rulings. SLPT does have a few ephemeral water creeks.

Mr. Simmons asked what each of the rules were. Mr. Kaiser said the first is the Restoration rule, restoring the 1986 rulings. The second rule is building on the first rule with stakeholder participation. Ms. Kost explained the first rule is getting back to a

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stable, familiar set of rules. The second rule continues to make the first rule better with input from the stakeholders.

Mr. Simmons said it seemed that this is administration based. He asked if it would be consistent through the different administrations. Ms. Kost said they are working on making it durable and to make it last. They want to try to make it consistent.

Mr. Simmons says that ground water is not in this. He asked if it will be in the second rule. Water is a big issue with drought and using ground water aquifers. The group answered that legally it is a challenging area. There are a lot of concerns, but they are in the middle of sorting it out. There are a lot of people that are concerned.

Ms. Kost thanked everyone for their input. The guests signed off.

Next meetings will be October 5, 2021 at 10:30 am with Tribal Minds and at 6:00 pm with Nevada Department of Environmental Protection.

MOTION: Vice-Chairwoman Nedra Crane moved to adjourn. Council Member Steven Crane seconded the motion. The vote: 3 FOR. 0 AGAINST, 0 ABSTAINED. Meeting adjourned at 8:04 am.

CERTIFICATION

I, **Eugene Mace, Sr.**, Secretary/Treasurer of the Summit Lake Paiute Tribal Council, hereby certify that the Minutes of the October 1, 2021 Special Council Meeting were approved by the Council during a duly held meeting November 20, 2021 at which there was a quorum present and the Council voted: **3 – FOR; 0- AGAINST; 0-ABSTAIN;** Vice- Chairwoman Nedra Crane did not vote because there was not a tie vote.

10/23/2021
Date

Eugene Mace, Sr.
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Secretary/Treasurer
Summit Lake Tribal Council