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**Pyramid Lake Negotiated Settlement: Overview and Perspectives**

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**Innovation in Western Water Law and Management**

**Natural Resources Law Center  
University of Colorado School of Law  
June 5-7, 1991**

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## Pyramid Lake Negotiated Settlement: Overview and Perspectives

### I. Introduction: Overview.

#### A. Location and People.

The Pyramid Lake Tribe is located on the Pyramid Lake Indian Reservation. The Reservation is located 36 miles northeast of Reno, Nevada and occupies 475,000 acres. Pyramid Lake is 115,000 acres in size, located totally within the boundaries of the Reservation.

Pyramid Lake receives its water via the Truckee River which originates at Lake Tahoe in California and flows through the City of Reno and on to Pyramid Lake.

Pyramid Lake is a terminal body of water with no outlet and with only the Truckee River as its supply of inflow.

The Tribe derives most of its livelihood from the Lahontan Cutthroat Trout fishery by selling use permits for fishing, boating and camping. Many families residing on the Reservation are employed by the fisheries, with the balance employed in tribal administration, private enterprise, cattle operations

and off-Reservation employment in nearby Reno. The Tribe has a total membership of about 1,850 people, of which approximately 1,500 reside on the Reservation.

B. Cultural Significance of Water.

To understand the cultural significance of water to the Tribe and specifically the importance of the Truckee River water, one must go back to the Tribe's origins. The legend of the Stone Mother tells of the origin of the Tribe. It tells of the settlement of the Tribe, Cui-ui Tuccatta (Cui-ui eaters), the Lake's origin, Cui-ui Pah (Cui-ui Lake) and the origin of its fish, the Cui-ui. It tells us that all of this creation was simultaneous. The son of the Stone Mother became the Tribe's ancestor. The tears of the Stone Mother became its lake. The Lake's shore became the Tribe's home and the Lake's depths became the home of the Tribe's name sake, the Cui-ui. This legend sets the Tribe's identity and forever fixes the components that make up the Tribe's way of life.

When one talks of water, it must be understood that it is a major component of the Tribe's identity and way of life. These components are the people (Cui-ui Tuccatta), the Lake (Cui-ui Pah) and the fish (Cui-ui).

From the Tribe's perspective, these components are inseparable and one does not exist without the other.

For nearly 10,000 years the Tribe has lived near the Lake's shore and has drawn its sustenance from its abundant supply. The Tribe was once a prosperous people, their main sustenance being the Cui-ui fish found only at Pyramid Lake and to a lesser degree, the large Lahontan Cutthroat Trout which also inhabited the Lake. Most of their lives were spent gathering food and partaking in various festivals and ceremonies associated with those gatherings. There were rabbit drives, deer hunts, pine-nut gatherings, mudhen and duck harvests at adjoining Winnemucca Lake, trout fishing and many other forms of harvesting ventures. But none were like the annual harvesting of the Cui-ui.

The Cui-ui would run in mid-Spring, which would allow for about a two or three week harvest. The remainder of the year, the Cui-ui would stay in the Lake's depths and would be unavailable for capture. As the run developed, word was spread and the Tribe made up of scattered bands, would come together to re-new friendships and aid in the long, but happy work of the harvest.

Excitement and festivity would fill the air as many Cui-ui were caught, dried and stored for the coming year. The fish were abundant and could be caught by hand. Stories are told of the water turning black with the fish and of small children climbing on the many backs of the fish as they moved into the shallows on their journey up-river to their spawning grounds. This was a time like no other, and the animation and excitement in the eyes of the elders as they tell these stories only give a glimpse of the actual excitement. This way of life continued for many, many generations.

C. Problem.

In 1902, during the Theodore Roosevelt Administration and under the infant Bureau of Reclamation, Congress authorized the Bureau's first reclamation project. The plan was to direct water from the Truckee River upstream of Pyramid Lake to what was then a large desert basin, and turn the sand into green fields and farmland. This project is known as the Newlands Project. It has proven to be of limited success as an agricultural project, although dealing a tremendous blow to the Tribe's fisheries and significantly harming most wildlife affected by its operation.

To accomplish the project's goals, Derby Dam was completed in 1905 and water was diverted away from Pyramid Lake to prospective farmland. As a result, within the next 40 years the elevation of the Lake dropped 70 feet, creating an impassible delta and barrier between it and the River. The Lahontan Cutthroat Trout became extinct in Pyramid Lake and the Cui-ui numbers shrunk to such a point that harvesting became impossible. Pyramid Lake's sister lake, Lake Winnemucca dried completely, taking with it its wildlife and wetlands habitat.

In 1944, the Federal Government dealt what should have been the coup de grace to the fisheries, when the Bureau of Indian Affairs (BIA) negotiated on the Tribe's behalf in the Orr Ditch Decree (United States vs. Orr Water Ditch Company, et al, No. A-3, 1944). The Decree was to put in writing, the various water allocations on the Truckee River. It was the BIA's task to use the Winter's Doctrine (Winters vs. United States, 207 U.S. 564, 1908) and protect the Tribe's water to preserve the Tribe's purpose as a people. But early on in the forming of the Decree, the BIA made an error. It was an error that would begin many years of litigation and hardship for the people of Pyramid Lake.

The BIA determined that it was the purpose of the Tribe to be farmers. Even though the Tribe continued to explain their status as fishermen, the BIA went into negotiations stating the Tribe's rights only as farmers and not as fishermen. The result came after the final gavel fell and the Orr Ditch Decree was set. The Tribe was to receive a water right of 31,000 acre-feet total from the Truckee River to be used only for agricultural irrigation purposes. Pyramid Lake and the fisheries were given no right of any kind and would only receive what was leftover after the Newlands Project and all other water rights were taken.

So it went from an inflow to Pyramid Lake before the turn of the century of 450,000 acre-feet of water annually (it takes at least 400,000 acre-feet annually just to replace evaporation losses and maintain the Lake's level), to a water right of only 31,000 acre-feet for agricultural irrigation and zero water right for fisheries after the Orr Ditch Decree.

D. Significant Actions Leading to Settlement.

1. U. S. Supreme Court Decision. Nevada vs. United States, 463 U.S. 110, 1983.

In 1973 the Pyramid Lake Paiute Tribe sued the Truckee-Carson Irrigation District (TCID) in an attempt to revisit the Orr Ditch Case and attain its Winter's Doctrine water rights on behalf of the fisheries.

The case was first brought before the Federal District Court in Nevada under the same name. In 1977, the Court decided against the Tribe. The Tribe appealed this decision in front of the Ninth Circuit Court of Appeals, which later ruled in partial favor of the Tribe.

TCID, unhappy with the Ninth Circuit Court's decision, brought its grievance to the U.S. Supreme Court on October 12, 1982. The U.S. Supreme Court ruled that the case had already been decided - regardless of the Federal Government's misrepresentation of the Tribe in the Orr Ditch Case. The Tribe had lost what appeared to be its last chance at securing water for the fisheries.

2. U.S. Congress Approves the Endangered Species Act in 1973 (16 U.S.C.S.S. 1531 - Et. Seq.) and the Cui-ui Fish of Pyramid Lake is Put on the List of Endangered Species.

It may not have seemed very significant at the time, but as time progressed and with the loss of the Tribe vs. TCID case in the U.S. Supreme Court, this Act would provide the vehicle leading toward the settlement and preservation of the Cui-ui.

3. U.S. Supreme Court Decides Not to Hear a Case Brought by the State of Nevada and Other State Interests to Compel Department of Interior to Sell Stampede Reservoir Water (470 U.S., 1983).

The result of this decision was to uphold the two lower court decisions (741 F. 2D 257, Ninth Circuit, 1984 and 549 F. Supp., 704 District D, Nevada, 1982), which decided under the Endangered Species Act, the Federal Government was first obligated to use that Reservoir and its water to preserve and enhance the Cui-ui.

4. The Elimination of the California-Nevada  
Interstate Compact, 1986.

The California-Nevada Interstate Compact was adopted by both California and Nevada Legislatures in 1970 - 1971. Although several attempts were made for U.S. Congressional ratification, the Compact was never accepted.

The Compact had remained since its adoption by the two State Legislatures, a major barrier to any equitable settlement. The Tribe could never accept it, because of provisions that would allow the further taking of water from Pyramid Lake and its subjection of Federal water to State jurisdiction. As long as the two States had a chance at ratifying the Compact, as a take-it or leave-it proposition of any settlement, there simply would be no chance for successful negotiations.

In 1986, U.S. Senator Laxalt of Nevada made a final, major attempt to strong-arm the Compact through Congress. The Tribe countered this effort

and the Compact went down to a final defeat. After this effort the negotiating playing field became level.

5. The Strengthening of OCAP (Operating Criteria and Procedures) for the Newlands Project.

Through extensive efforts by the Tribe, the Department of Interior was convinced it had the power and obligation to comply with its Trust responsibility and with the Endangered Species Act by strengthening and enforcing the OCAP.

This led to the realization that water that was needed from the Newlands Project to make a settlement work (TCID, which represented the Project were the most reluctant to settle), could now be acquired through OCAP regulations. This eliminated the final barrier to settlement.

## II. Settlement: Overview.

### A. Tribe Adopts Negotiating Position.

The Tribe, suffering from a public perception of being unstable and indecisive, comes forward with a negotiating position supported by Tribal Referendum and Tribal Council approval.

The negotiating position is delivered to all interested and affected parties with the Tribe's promise to sit down and negotiate with whomever, whenever.

The Tribe goes public with the negotiating position, utilizing press and other media to convince the public of its willingness to settle the water issue.

### B. Sierra Pacific Power Company Steps Forward to Negotiate, 1987.

Prior to this date, when the issue of water arose, it was a situation in which the Tribe stood alone and took on everyone else. This was true even when other interests could have benefitted by either siding with the Tribe or remaining neutral.

The significance of Sierra Pacific Power Company's (SPPCO is the main water purveyor for the Cities of Reno and Sparks, Nevada) move against local tradition and its willingness to talk with the Tribe proved to be the starting point leading to the successful conclusion of these negotiations.

C. U.S. Senator Harry Reid Facilitates the Negotiations.

To insure the negotiating playing field remained level and to provide the necessary incentive with the promise of Congressional action, Senator Reid provided the staff to both broker and motivate overall negotiations.

D. Through Senator Reid, All Affected Parties Are Brought into the Negotiations.

All affected parties are brought into the negotiations.

First, only the main parties were brought in to negotiate, keeping the negotiator numbers down and only dealing with the major issues before expanding.

Using accumulated agreements as a springboard to other unsolved issues proved to be a successful method of negotiations.

Necessary parties were brought in as agreements were made and their particular issue discussed.

Finally, all of the affected parties were brought into the process after major issues were settled and the threat of a lesser issue derailing the process was lessened.

E. Truckee-Carson Irrigation District Leaves Negotiations.

The Tribe and TCID both unable to settle the issue of OCAP, agreed to cease negotiations on this issue. Both agreed this issue would be resolved by other means.

The negotiating parties, including the Tribe and TCID, agreed significant progress had been made in regard to other issues and decided negotiations on those issues should continue.

F. The Public is Given High Expectations of a Successful Settlement.

Cautious optimism was maintained throughout negotiations regardless of setbacks or delays.

G. Local Barriers to Settlement Are Addressed in State Legislature.

The State Legislature repealed a ban on the mandatory installation of water meters in the Cities of Reno and Sparks, Nevada.

H. Senator Reid Introduces S. 1554 August 1989, in the 100th Congress.

The Bill went through its usual mutations while parties struggled to maintain its original purpose.

Negotiations continued until the Bill is finally accepted by all parties. It is passed by Congress and signed into law by President Bush in November, 1990.

III. Perspectives.

A. People Make Settlements. Parties Have to Want to Settle.

The Pyramid Lake issue, which everyone agreed had a very complicated history and was burdened by the weight of antiquated decrees, was still solvable by the

numbers. What remained unsolvable were the attitudes of the parties involved. When those attitudes changed, a solution was possible.

B. The Negotiating Playing Field Must be Level.

Either through litigation, regulation, political alliance, or circumstance and concessions, all parties have to have an equal amount to gain or lose before negotiations can be successful.

If the field is not level, then actions have to be taken to make it level.

C. There is No Formula or Model Settlement. Each Settlement Needs Flexibility to be Successful.

Many times during the Pyramid Lake settlement process, someone or some agency would try to impose a formula. This imposition only slowed down the process and in some instances, almost destroyed the prospects for success.

D. A Good Faith Effort is Required by All Participants.

If the negotiating table is surrounded by a dozen participants and one participant decides to exercise bad faith or an unwillingness to seek solutions, the whole process is in jeopardy.

Bad faith participants have to either be converted or removed from the process.

E. Positive Media Coverage is Important. Public Relations.

How to handle the media needs to be decided early in the process to insure the public's optimistic anticipation and support of the negotiations.

F. Participant Stability and Consistency is Necessary.

The negotiating parties need to trust the judgement and authority of each other.

Inconsistency and indecision will break down the group's good faith.

The use of experts to provide sound information is important.

G. Do Not Underestimate the Ability of What May Be Considered a Fringe Group or Issue to Substantially Harm the Negotiation Process or Prospects for its Success.

H. Do Not Count on the Federal Government to Provide Positive Support for the Negotiations.

Although the Federal Government can be very helpful, continued wariness and vigilance is required when dealing with this entity.

I. Strong Political Support Must be Acquired Early to Insure Success.

Political support from the Local, State and Federal levels is necessary to not only achieve the settlement, but to guide the process through the maze of the U.S. Congress.

Administrative support is important also.

J. It's Not Over When the Bill is Introduced into Congress.

Hard work and effort is required to insure the Bill passes and that it passes in close resemblance to the way it was introduced. Washington, D.C. public relations firms can be helpful.

K. Victory is Sweet. Never Take Your Focus Off the Goal.

Plan before you start to commit yourself to a lot of work and a great expenditure of time.

Only accomplishment is due credit. Trying is not good enough.