

NATIVE AMERICAN HERITAGE COMMISSION
M E M O R A N D U M
January 19, 2018

To: Native American Heritage Commission Members

From: Samantha Cypret, Associate Government Program Analyst *SC*

CC: Debbie Pilas-Treadway, Executive Secretary (Acting)
Terrie L. Robinson, General Counsel

Re: Owens Lake – Request for Investigation and Public Hearing Under
Public Resources Code 5097.9 and 5097.94(g) (Action Item)

INTRODUCTION

This item has been placed as an Action Item on the agenda as a result of two request letters received from the leadership of the Big Pine Paiute Tribe of the Owens Valley and the Lone Pine Paiute-Shoshone Reservation. Both letters request that the Commission an investigation and hearing under California Public Resources Code 5097.94(g) and 5097.97 with the intention of preventing any additional future damage to the sacred sites within Owens Lake (Lake).

The action requested of the Commission is for the Commission to:

- 1. Direct Native American Heritage Commission (NAHC) staff to commence in the investigation and hearing under California Public Resources Code 5097.94(g) and 5097.97.**

PROCEDURE

California Public Resources Code 5097.94(g) states that, “[i]n an action to enforce this subdivision the commission shall introduce evidence showing that a cemetery, place, site, or shrine had been historically regarded as a sacred or sanctified place by Native American people and represents a place of unique historical and cultural significance to an Indian tribe or community.”

Further, California Public Resources Code 5097.97 states that, “[i]n the event that any Native American organization, tribe, group, or individual advises the commission that a proposed action by a public agency may cause severe or irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, or may bar appropriate access thereto by Native Americans, the commission shall conduct an investigation as to the effect of the proposed action. Where the commission finds, after a public hearing, that the proposed action would result in such damage or interference, the commission may recommend mitigation

measures for consideration by the public agency proposing to take such action. If the public agency fails to accept the mitigation measures, and if the commission finds that the proposed action would do severe and irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, the commission may ask the Attorney General to take appropriate legal action pursuant to subdivision (g) of Section 5097.94.”

HISTORY

Owens Lake is located in southwest Inyo County, approximately 200 miles north of Los Angeles. The Lake was a natural and navigable waterway at the time of California’s statehood and is thus sovereign land of the State. The Lake covered approximately 110 square miles and was 50 feet deep in places. Wildlife, waterfowl, and the nearby residents depended on and benefited from the Lake. In the modern era, settlers diverted water from the Owens River to grow crops and irrigate pasture for livestock, and steamboats carried cargo across the Lake.

The Lake is also important to the local Native American Tribes, who have occupied the Lake and surrounding areas for thousands of years, shifting their residency, resource use, and land use patterns as Lake levels rose and fell over time, and experiencing displacement and tragedy at the hands of settlers arriving to occupy the Owens Valley area. These Tribes include the Big Pine Paiute Tribe, the Bishop Paiute Tribe, the Fort Independence Paiute Tribe, the Lone Pine Paiute-Shoshone Reservation, and the Timbisha-Shoshone Tribe. To this day, culturally significant resources and sites remain on the Lake, some known due to archaeological surveys or local Tribal knowledge, but others still undiscovered. The landscape includes ceremonial areas, massacre sites, grinding rocks, figurines, arrowheads, rock features, and other artifacts.

Beginning in 1913, the City of Los Angeles Department of Water and Power (LADWP) began diverting water from the Lake and transporting the water southwest to Los Angeles through a City-constructed aqueduct system. The Lake level rapidly declined and, by the mid-1920s, the Lake was essentially dry. Since then, dust storms have carried away as much as four million tons (3.6 million metric tons) of dust from the lakebed each year, causing respiratory problems for residents in the Owens Valley. As a result of the air quality standard violations caused by the dust, the U.S. EPA, through the Great Basin Air Pollution Control District (GBUAPCD), ordered LADWP to implement dust mitigation actions, consisting of shallow flooding, vegetation planting, and placement of gravel cover, to control blowing dust and meet air quality standards. The State Lands Commission issued a 20-year lease to LADWP in 1999 and has subsequently issued 18 amendments to the lease to allow implementation of dust control measures on additional areas of the Lake. Implementation of the dust mitigation program has been evaluated under the California Environmental Quality Act

(CEQA) by either LADWP or GBUAPCD to assess the effect of proposed implementation on the environment, including on cultural resources.¹

More recently, NAHC staff has traveled to Inyo County multiple times over the last three years to participate in the Cultural Resources Task Force which brought the Owens Valley tribes together with LADWP and GBUAPCD with the goal of protecting tribal cultural resources and/or mitigating damage to tribal cultural resources during the dust mitigation program. This participation has included NAHC staff-led training on CEQA and, specifically, Assembly Bill 52.

REASON FOR REQUEST

In early December of 2017, numerous phone calls and emails were exchanged between LADWP, GBUAQD, the Big Pine Tribe, the Lone Pine Tribe, and the NAHC regarding several culturally sensitive sites with rock cairns on the lake. There was a concern that dust mitigation measures proposed by LADWP would irreparably damage the sites. What appeared to have been an understanding in principle was reached between allowing for a 100 foot buffer zone around the sites for the purpose of dust mitigation measures. Additionally, monitors that had been dismissed from the project were to be rehired per the direction of LADWP's legal counsel. The NAHC was subsequently informed that the protections that were to have taken place did not, and that damage to the cairns did occur. A January 4, 2018 letter from Big Pine Tribal Chairwoman Genevieve Jones informs us that more rock cairns are in danger of being destroyed as part of the dust mitigation efforts.

The reason for investigation and public hearing is to allow Commission staff to establish: 1) The boundaries of LADWP's lease on Owens Lake; 2) The sacred and ceremonial sites within the boundaries; and 3) Whether and the degree to which any sacred or ceremonial sites have been damaged or are in danger of severe or irreparable damage.

CONCLUSION

Please find the two request letters received from the leadership of the Big Pine Paiute Tribe of the Owens Valley and the Lone Pine Paiute-Shoshone Reservation attached.

¹ California State Lands Commission Staff Report dated June 22, 2017 regarding Owens Lake Historical District Nomination.



BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY

Big Pine Paiute Indian Reservation

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GENEVIEVE JONES
TRIBAL COUNCIL CHAIRWOMAN

January 4, 2018

California Native American Heritage Commission
1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691

Subject: Request initiation of Investigation and Hearing with regard to Public Resources
Code 5097.94(g) and 5097.97 as it applies to Patsiata – Owens Lake.

Dear Commissioners:

The Big Pine Paiute Tribe of the Owens Valley (Tribe) respectfully requests that your Commission initiate an investigation and hearing with regard to California Public Resources Code 5097.94(g) and 5097.97, with the goal of providing the information needed to recognize Patsiata as a Sacred Site.

Recently, it came to the Tribe's attention that the cairns located on the shorelines of Patsiata are in danger of being destroyed. These cairns are of high cultural importance to the Tribe. The cairns represent traditional ways and were hand-placed and utilized as ceremonial sacred shrines. Our traditions were orally passed down and are not available for archeological textbooks. The archeologist reports will never understand the true essence of our Tribe's traditional ways.

We understand that the Tribes and agencies have been working together to achieve the important goal of dust mitigation at the lake. However, it appears that Tribal identification of cultural resources and sites are not being fully acknowledged. The implementation of dividing Patsiata into various "phases" has not broken the traditional ties between sites. By designating these as phases, the sites are now documented as insignificant – and having no relation to the site next to it. This has resulted in severe and irreparable damage to sacred areas, cultural resources, and the history of the people of Payahuunadu, Owens Valley.

The Tribe understands the investigation may take some time and offers its assistance, as needed.

Thank you for your consideration of this important matter.

Respectfully,

Genevieve Jones
Tribal Chairwoman

attachment

Excerpt from:

NATIVE AMERICAN HISTORIC RESOURCE PROTECTION ACT
ARCHAEOLOGICAL, PALEONTOLOGICAL, AND HISTORICAL SITES
NATIVE AMERICAN HISTORICAL, CULTURAL, AND SACRED SITES

PUBLIC RESOURCES CODE
SECTION 5097-5097.993

5097.94. (g) To bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, pursuant to Section 5097.97. If the court finds that severe and irreparable damage will occur or that appropriate access will be denied, and appropriate mitigation measures are not available, it shall issue an injunction, unless it finds, on clear and convincing evidence, that the public interest and necessity require otherwise. The Attorney General shall represent the commission and the state in litigation concerning affairs of the commission, unless the Attorney General has determined to represent the agency against whom the commission's action is directed, in which case the commission shall be authorized to employ other counsel. In any action to enforce the provisions of this subdivision the commission shall introduce evidence showing that such cemetery, place, site, or shrine has been historically regarded as a sacred or sanctified place by Native American people and represents a place of unique historical and cultural significance to an Indian tribe or community.

5097.97. In the event that any Native American organization, tribe, group, or individual advises the commission that a proposed action by a public agency may cause severe or irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, or may bar appropriate access thereto by Native Americans, the commission shall conduct an investigation as to the effect of the proposed action. Where the commission finds, after a public hearing, that the proposed action would result in such damage or interference, the commission may recommend mitigation measures for consideration by the public agency proposing to take such action. If the public agency fails to accept the mitigation measures, and if the commission finds that the proposed action would do severe and irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, the commission may ask the Attorney General to take appropriate legal action pursuant to subdivision (g) of Section 5097.94.