

**RESOLUTION OF THE SUMMIT LAKE PAIUTE COUNCIL  
SUMMIT LAKE PAIUTE TRIBE  
OF THE  
SUMMIT LAKE PAIUTE RESERVATION, NEVADA**

**RESOLUTION NO.: SL- 33 -2008**

**TITLE:       Application for Treatment as a State and 401 Certification to the Environmental Protection Agency for the Purposes of the Clean Water Act**

**WHEREAS,** the Summit Lake Paiute Tribe is organized pursuant to Section 16 of Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended, with the Articles of Association, and approved by the Secretary of the Interior on January 08, 1965, granting certain powers to the Summit Lake Paiute Council; and

**WHEREAS,** the Summit Lake Paiute Council has the responsibility for the general welfare of its tribal membership including planning and implementing environmental policies and regulations; and

**WHEREAS,** the Summit Lake Paiute Council is the duly constituted governing body within the boundaries of the Summit Lake Paiute Reservation; and

**WHEREAS,** the Summit Lake Paiute Council has been organized to represent, develop, protect and advance the views, interests, education, resources, and general welfare of the Summit Lake Paiute Tribe membership; and

**WHEREAS,** the Summit Lake Paiute Council has organized a Natural Resource Department and Environmental Protection Department to provide technical expertise and services to manage, improve, and protect quality of air, water, soil, fish, wildlife, and plants within the Summit Lake Paiute Reservation and off-reservation areas considered the aboriginal homeland of the Summit Lake Paiute Tribe; and

**WHEREAS,** the Summit Lake Paiute Council supports management and protection of the environment to preserve natural resources of the Summit Lake Paiute Reservation and surrounding watershed to continue traditional and cultural ways of life; and

**WHEREAS,** the Environmental Protection Agency (EPA) has requested an application from the Summit Lake Paiute Tribe for Treatment as a State and 401 Certification pursuant to the Clean Water Act.

**NOW THEREFORE BE IT RESOLVED** that the Summit Lake Paiute Council supports and approves the application to EPA for Treatment as a State and 401 Certification pursuant to the Clean Water Act.

**C-E-R-T-I-F-I-C-A-T-I-O-N**

I, **JERRI LYNN BARLESE, Secretary/Treasurer**, of the Summit Lake Paiute Council, hereby certify that the above Resolution No.: **SL-33-2008** was brought before the Summit Lake Paiute Tribal Council at a duly held meeting on the **27th** day of **July, 2008**, with **4** members of the Tribal Council present, constituting a quorum, with the following votes to enact Resolution No. **SL-33-2008**; **3** FOR, **0** AGAINST, and **1** ABSTAIN; with the Tribal Chairman presiding and not voting, this Resolution has not been rescinded, revoked or amended.

07.27.08

Date

  
Jerri Lynn Barlese, Secretary/Treasurer  
Summit Lake Tribal Council



SUMMIT LAKE PAIUTE TRIBE  
1708 H Street, Sparks, Nevada 89431  
(775) 827-9670 (775) 827-9678 (fax)

SUMMIT LAKE PAIUTE COUNCIL

Tribal Chairman: Warner Barlese • Vice-Chairperson: Lorraine Watson  
Secretary/Treasurer: Jerri Lynn Barlese • Council Member: Jesse Strout • Council Member: Ernie Barlese

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July 28, 2008

Mr. Wayne Nastri  
Regional Administrator  
USEPA Region IX  
75 Hawthorne Street  
San Francisco, CA. 94105-3901

Re: Request by Summit Lake Paiute Tribe for CWA Treatment as a "State" Status and 401 Certification

Dear Regional Administrator Nastri:

The Water Quality Act of 1987 (Public Law 100-4) authorized the Administrator of the U.S. Environmental Protection Agency (EPA) to treat an Indian Tribe as a "State" for purposes of Title II and portions of Titles I, III, and IV of the Clean Water Act. This letter and the attachments constitute the Summit Lake Paiute Tribe's application to EPA for treatment as a "State" and 401 Certification under provisions of the Clean Water Act.

We would appreciate it if EPA would process this application timely. If you have questions or need further information, please contact William Cowan of the Tribe's Natural Resource Department at (775) 827-9670. We look forward to EPA's approval of the Tribe's application.

Respectfully submitted,

Warner Barlese  
Tribal Chairman

Enclosure  
Attn: Wendell Smith, EPA Region 9

**APPLICATION OF SUMMIT LAKE PAIUTE TRIBE  
FOR TREATMENT AS A STATE AND 401 CERTIFICATION  
PURSUANT TO THE WATER QUALITY ACT OF 1987**

**I. General Information**

- A. Applicant. The applicant is the Summit Lake Paiute Tribe of the Summit Lake Reservation, Nevada.

*2008 Tribal Council*

Warner Barlese, Chairman

Lorraine Watson, Vice-Chairwoman

Jerri Lynn Barlese, Secretary/Treasurer

Jesse Strout, Councilmember

Ernie Barlese, Councilmember

- B. Applicant's Address. The address of the Summit Lake Paiute Tribe is: 1708 H Street, Sparks, Nevada, 89431.

- C. Applicant's Telephone Number. The general telephone number for the Summit Lake Paiute Tribe is: (775) 827-9670.

- D. Applicant's Fax Number. The fax number for the Summit Lake Paiute Tribe is: (775) 827-9678.

- E. Applicant's Representatives. Representatives of the Summit Lake Paiute Tribe with regard to this application are as follows:

Mr. Warner Barlese, Chairman, Summit Lake Paiute Council, (775) 827-9670.

Mr. William Cowan, Natural Resource Department Director, (775) 827-9670.

Mr. Ron Johnny, Environmental Coordinator, (775) 827-9670.

Mr. Kent Bloomer, Resource Technician, (775) 827-9670.

- F. Purpose of Application. The purpose of this application is to gain qualification of the Summit Lake Paiute Tribe for program approval for administration of programs under Section 303 (c) (Water Quality Standards) and section 401 (Water Quality Certifications) of the Water Quality Act (also known as the Clean Water Act (CWA)), 33 U.S.C. § 1250 *et seq.*, as amended pursuant to Section 518 (e) of the CWA, 33 U.S.C. § 1377 (e).

This Application has been approved by the Summit Lake Paiute Council (Attachment 1).

G. Date of Application. The date of this application is July 28, 2008.

## **II. Federal Recognition**

The Summit Lake Paiute Tribe of Nevada is a federally recognized Indian tribe. 72 Fed. Reg. 13648, 13650 (Mar. 22, 2007) (Attachment 2).

## **III. Tribal Government**

### **A. Substantial Governmental Duties and Powers**

The Summit Lake Paiute Tribe is governed according to its Articles of Association, approved by the Secretary of the Interior on July 15, 1964, as amended (Attachment 3). The Summit Lake Paiute Council (Council) is composed of five tribal members, elected by the tribal membership for three year terms. Once Council members are elected, the council selects who will fill the chairman, vice-chairman, and secretary-treasurer positions. Any member of the Summit Lake Paiute Tribe 21 years or older shall be entitled to vote in elections. Summit Lake Paiute Council members shall not be guilty of a felony or misdemeanor involving dishonesty in any Indian, State or Federal court.

The Summit Lake Paiute Council has express constitutional authority to regulate water quality within the Summit Lake watershed and exterior boundaries of the Summit Lake Reservation, as water which terminates in Summit Lake or is contained on the Reservation constitutes a tribal asset. The Summit Lake Paiute Council (Council) has the following powers and duties, subject to any limitations imposed by the applicable statutes of the United States and the regulations of the Secretary of the Interior, made pursuant thereto and published in the Code of Federal Regulations:

- To represent the Summit Lake Paiute Tribe in negotiations with Federal, State, and local governments, and other corporations, associations, partnerships or individuals, and to cooperate with the Bureau of Indian Affairs, Department of Public Health, and various departments and agencies of the State of Nevada in matters of welfare, education, recreation, and social services.
- To acquire, manage, lease, or otherwise deal with tribal assets.
- To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of Interior.
- To veto any sale, disposition, lease, or encumbrance of tribal lands, interest in lands or other tribal assets, without the consent of the tribe.
- To make assignments of Summit Lake Reservation lands or interest therein and property improvements thereon.
- To regulate inheritance of assignments.

- To establish a membership roll, enact regulations governing the loss of membership, future membership, and the adoption of members into the Summit Lake Paiute Tribe, but any member by written instrument may resign from the Summit Lake Reservation without prejudice to any action of the Summit Lake Paiute Council theretofore duly taken affecting his interest.
- To assess fees on the members of the Summit Lake Paiute Tribe for payment of tribal expenses, or to finance any project which it deems beneficial to the interest of the Summit Lake Reservation as a whole.
- To determine its own rules of procedure.
- To take such actions as are necessary to carry into effect any of the foregoing powers and duties.

Additionally, the Council has authority to promulgate ordinances for the purpose of safeguarding the peace and safety of residents of the Summit Lake Reservation (Reservation).

The current Chairman of the Summit Lake Paiute Council is Warner Barlese. This is his first term. He previously served as a member of the Council. Several of the current Council members have been reelected several times.

The Summit Lake Paiute Tribe is a multi-governing organization and is currently administering numerous programs for the benefit of their members. Programs include, but are not limited to, Indian Child Welfare Program, Enrollment Program, Higher Education Program, Fisheries Management Program, Roads Maintenance Program, Range Improvement Program, Water Quality Program, Environmental Protection Program, and Non-Point Source Pollution Control Program. Tribal organization of these programs is depicted on the organizational chart (Attachment 4).

The Tribe's authority to conduct the foregoing programs is unquestioned. It stems from the Tribe's constitution and bylaws. The authority also stems from ordinances enacted by the Council and approved by the Department of the Interior listed below. Finally, the Tribe retains inherent sovereignty to take such actions as are necessary to safeguard the health, welfare and safety of tribal members and acquire, manage, lease or otherwise deal with assets of the Summit Lake Paiute Tribe.

Tribal law is set forth by ordinances of the Council. The following ordinances are currently in effect:

**ORDINANCE NO. II: An Ordinance Regulating the Hunting and Fishing on the Summit Lake Paiute Indian Reservation.**

**ORDINANCE NO. III: An Ordinance Regulating the Hunting and Fishing of the Summit Lake Paiute Tribe.**

ORDINANCE NO. IV: An Ordinance Governing land assignments on the Summit Lake Paiute Reservation.

ORDINANCE NO. V: An Ordinance Governing hunting, trapping, taking of any animal, and fishing within the boundaries of the Summit Lake Indian Reservation.

ORDINANCE NO. VI: An Ordinance Governing elections of the Summit Lake Paiute Tribe. Summit Lake Tribal Code Title 3 Elections.

ORDINANCE NO. VII: Summit Lake Paiute Tribe Enrollment Procedures Ordinance.

ORDINANCE NO VIII: An Ordinance of the Tribal Council of the Summit Lake Paiute Tribe Prohibiting Discharge of any Pollutant Into the Waters of the Summit Lake Indian Reservation.

A copy of the Summit Lake Paiute Tribe's Ordinances details more thoroughly the Tribe's authority over its resources (Attachment 5). The foregoing ordinances of the Summit Lake Paiute Tribe have been approved by the Department of the Interior and are currently enforced by the Summit Lake Paiute Tribe.

## **B. General Tribal Authority**

Through this application, the Summit Lake Paiute Tribe respectfully seeks authority and 401 Certification pursuant to the Clean Water Act to manage and protect water quality within the exterior boundaries of the Summit Lake Reservation, including Summit Lake, Mahogany and Snow Creeks, and unnamed springs and wetlands within the Reservation. Attached is a map of the Summit Lake Reservation over which the Tribe asserts its authority, including the surface waters covered by this application (Attachment 6).

The Summit Lake Reservation contains approximately 12,573 acres. Of this, approximately 700 acres encompass the surface of Summit Lake. The size of Summit Lake varies, dependent on climate. Summit Lake is the focal point of the Reservation and a terminal desert lake. The Summit Lake Paiute Tribe has the authority to administer a water quality standards program within Reservation boundaries pursuant to its inherent sovereign authority and federal law. The Tribe has a significant interest in protecting Reservation resources and is the beneficial owner of the vast majority of lands within the Reservation.

The Summit Lake Paiute Council has the authority to take immediate action to protect the integrity of water resources on the Summit Lake Reservation comparable to the authority of the Administrator EPA under Section 504 of the Clean Water Act. The Council is equipped to be in immediate contact with

County, State, and Federal authorities for assistance. The Council can also take appropriate enforcement action through state or federal court.

In the event of a threat to the integrity of water resources on the Summit Lake Reservation representatives of the Tribe could apply to the Tribal Council to restrain any person causing or contributing to the threat. In addition, the Council could make such application to the courts of the State of Nevada or to the United States District Court.

### **C. General Capability**

The Summit Lake Paiute Council (Council) and its officials and employees are capable of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Water Act and all applicable regulations. The Summit Lake Tribe has a long history of implementing tribal programs and programs funded by the Federal Government. EPA can be assured that the Tribe can administer a water quality and environmental protection program effectively and in compliance with all regulations.

The Tribe's financial officers are highly capable to monitor the Tribe's annual budget according to its Financial Management System Manual (Attachment 7). The Tribe's Personnel Manual facilitates the hiring and personnel management of the Tribe's employees (Attachment 8). Tribal property is properly controlled, used and maintained pursuant to its Property Management System Manual (Attachment 9). Purchasing authority is managed, monitored, and regulated through its Procurement Procedure Manual (Attachment 10). The Tribe's Land Use Plan is a document to guide and plan the future development of the Reservation while maintaining and enhancing the environment and quality of life of residents and others who use the Reservation (Attachment 11).

## **IV. Tribe's Authority to Regulate Water Quality**

### **A. General Authority to Protect Water Resources**

Protection and enhancement of water quality is critical to the health and welfare of the members of the Summit Lake Paiute Tribe. The Tribe's members and their ancestors have depended upon Summit Lake for food, clothing and shelter materials, and cultural and spiritual health since time immemorial. Upstream land use has degraded the resources of the Reservation, including water quality. Illegal or unmanaged cattle grazing, non-point pollution, and invasive plant species have greatly affected water quality of the Reservation.

The surface waters for which the Summit Lake Paiute Tribe proposes to establish water quality standards are as follows:

Summit Lake

Mahogany Creek  
Snow Creek

No one disputes that Summit Lake belongs to the Tribe. The State of Nevada has not attempted to establish water quality standards for Summit Lake and the Tribe exercises unchallenged dominion over Reservation waters. Water quality standards for Summit Lake are similar to the State of Nevada's except where necessary to protect the Tribe's fisheries and resources, as discussed below.

### **B. Specific Tribal Capability to Administer Water Quality Standards Program**

The Tribe has consistently demonstrated its commitment to water and related resources on the Summit Lake Reservation. The Summit Lake Paiute Tribe is progressive and has the in-house expertise and ability to monitor, manage, and protect water quality for surface waters on the Summit Lake Reservation. Some water quality processing will require assistance from the Nevada State Public Health Laboratory. Because of the federal threatened species status of Lahonton cutthroat trout inhabiting the Summit Lake watershed, degradation of instream habitat, diversion of water for agriculture, loss of riparian habitat and related problems, the Tribe has had to develop the ability to protect its resources, including but not limited to developing advanced monitoring and management systems and plans.

The Tribe's Environmental Protection and Natural Resource Departments were established to protect the environment and natural resources on the Reservation. The staff is highly qualified to implement a water quality standards program. The Environmental Protection and Natural Resource Departments are actively working on the following programs and projects:

- **Water.** The Tribe is focused on sustaining sufficient instream flows to improve water quality and fish habitat in Summit Lake, and Mahogany and Snow Creeks in cooperation with federal, state and local entities. Currently the Tribe cooperates with US Geological Survey (USGS) to operate and maintain a continuous monitoring stream flow gage station. Real time data collected from this gage station is integrated in the National Water Information System data base maintained by USGS.
- **Water Quality and Monitoring.** The Tribe received funding under Section 319 of the Clean Water Act to implement measures to minimize non-point source discharges and protect water and land resources. The Tribe also conducts water quality monitoring for Summit Lake, Mahogany and Snow Creeks. Water quality certification applications will be processed by the Natural Resource Department and through the Nevada State Public Health Laboratory.
- **Fisheries.** The Tribe's Fisheries Management Program has received funding through a BIA Self Determination Act (Public Law 93-638)

Fisheries Contract to manage and study the threatened Lahontan cutthroat trout.

- Drinking and Source Water. The Tribe has received funding through EPA General Assistance Program to hire a qualified and reliable water well contractor meeting the regulation of the local and/or state government to install a new well. The reclamation of existing well site is a consideration.
- Solid Waste. The Tribe is in the process of developing an integrated solid waste management plan for the Reservation and will be coordinating the clean up of three, closed, open pit dump sites.
- Weed Management. The Tribe is addressing several species of noxious weeds on the Reservation, including weeds in and near Reservation surface waters. The Tribe has received funding through a BIA Self Determination Act Range Improvement Contract. The staff is using mechanical, biological and chemical controls to help stop and reverse the damage done by the weeds.
- Restoration. The Tribe is working to restore the Mahogany and Snow Creek ecosystems by installing livestock grazing exclosure fences and removing defunct irrigation diversion structures.
- Fence Construction. The Tribe has received funding through BIA Self Determination Act Range Improvement Contract and recently a competitive EAP non-point source grant to construct fencing to improve the management of critical water resources. Livestock encroachment on riparian areas has been identified as the primary concern.
- GIS. The Tribe has an advanced mapping and tracking system by which it can manage and protect its lands and waters and the impacts to both.
- Emergency Response. The Tribe is in the process of incorporating a plan for emergencies and incidents involving hazardous materials or other disasters. The Tribe also has a Safety Manual for emergency response and planning, including facilitating training programs (Attachment 12).
- Education. The Tribe promotes environmental education to help increase community awareness. The Tribe has received funding from a BIA Self Determination Act Higher Education Contract to award education assistance to tribal members seeking advance learning in colleges and universities; and, to provide for other educational opportunities.
- Child Welfare. The Tribe has received funding through a BIA Self Determination Act Indian Child Welfare Contract for the intent to improve the lives of children and families.

If this application is approved, responsibility for the water quality standards and water certification programs will be in accordance with EPA water quality guidelines. The Tribe's Environmental Protection Department and Natural Resource Department will cooperate to ensure that water quality standards within the Summit Lake watershed, including off- and on- Reservation waters are maintained according to Quality Assurance Project Plan guidelines.

The Tribe's commitment to the water and related resources on the Reservation has been demonstrated for many years. The projects and programs described above illustrate the Tribe's dedication to protecting its natural resources. The Tribe has spent the last decade or more working to enhance the water resources by focusing on water quality to restore Summit Lake and related resources. The Tribe, as is outlined in the 106 Application, started several programs for purposes of protecting and promoting recovery of the Lahontan cutthroat trout.

The Tribe is absolutely committed to protecting and enhancing water quality on the Summit Lake Reservation and surrounding watershed and has the authority and capability to implement a water quality standards program.

**V. Request for Approval**

Based upon the above, Summit Lake Paiute Tribe respectfully requests that the Environmental Protection Agency approve the Tribe's Application for program approval for water quality standards and water quality certification programs pursuant to Sections 303 and 401 of the Clean Water Act, 33 U.S.C. §§ 1250 *et seq.* as amended.

## A List of Attachments for TAS Application

*Attachment 1:* Council Resolution approving TAS Application

*Attachment 2:* Federally recognized tribe document (Federal Register)

*Attachment 3:* Articles of Association

*Attachment 4:* Organizational Chart

*Attachment 5:* Summit Lake Paiute Tribe Ordinances

*Attachment 6:* Summit Lake Reservation Surface Waters

*Attachment 7:* Financial Management System Manual

*Attachment 8:* Personnel Manual

*Attachment 9:* Property Management System Manual

*Attachment 10:* Procurement Procedure Manual

*Attachment 11:* Land Use Plan

*Attachment 12:* Safety Manual