

**Meeting of the Central Valley Flood Protection Board
March 25, 2016**

Adoption of Board Tribal Consultation Policy

Jit Dua, Board General Counsel

Background

On September 19, 2011, Governor Edmund G. Brown Jr. issued Executive Order B-10-11 (Order), which provides, among other things, that it is the policy of the administration that every state agency and department subject to executive control develop and adopt a Tribal Consultation Policy (Policy). The purpose of the Policy is to ensure effective government-to-government consultation with California Indian tribes. California Indian Tribe is defined in the Order to include all Federally Recognized Tribes and other California Native Americans. Policies adopted under the Order are not a regulation, and do not create any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

In compliance with the Order, on November 20, 2012, the California Natural Resources Agency (CNRA) adopted its Policy. The CNRA has left it to the discretion of each department under it to either adopt the CNRA's Policy, or develop and adopt its own. Department is defined by the CNRA as any department, board, commission, council or conservancy subject to executive control. Board staff was only recently made aware of the requirement to formally adopt a Policy. The CNRA has further requested that departments post the Policy, or a link to the CNRA's Policy if adopted, on the department's website. Most departments, including the Department of Water Resources, have adopted the CNRA's Policy. A copy of the CNRA's Policy is attached. (Attachment A)

Following his Order in 2011, on September 25, 2014, Governor Brown signed Assembly Bill 52 (AB 52), which created the new category; Tribal Cultural Resources (TCR) that must be considered under the California Environmental Quality Act (CEQA). AB 52 adds TCR to the categories of cultural resources in CEQA, which had formerly been limited to historic, archaeological, and paleontological resources.

While the Board has not yet adopted a Policy as required by the Order, Board staff, or DWR staff working on behalf of the Board as a CEQA lead agency, has consistently complied with AB 52 by conducting AB 52 tribal consultations prior to the release of initial studies, or environmental impact reports for a project. California Native American Tribes are sent a notification for proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe. Consultations are also conducted with the lead contact person as designated by the California Native American tribe.

CEQA Analysis

This action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and thus is not a “project” for purposes of the California Environmental Quality Act (Public Res.Code § 21065; Guidelines § 15378(a)).

Analysis and Recommendation

Board Counsel and staff have reviewed the CNRA’s Policy and recommend that the Board:

Adopt: The California Natural Resources Agency’s Tribal Consultation Policy;

Direct: The Executive Officer to take the necessary actions to post the Policy on the Board’s website.

Attachments

A. The California Natural Resources Agency’s Tribal Consultation Policy



CALIFORNIA NATURAL RESOURCES AGENCY
ADOPTION OF FINAL TRIBAL CONSULTATION POLICY

November 20, 2012

Pursuant to Executive Order B-10-11 dated September 19, 2011, the California Natural Resources Agency hereby adopts the attached Final Tribal Consultation Policy, Exhibit A.

Date: 11/20/12



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California Natural Resources Agency Tribal Consultation Policy

Purpose of the Policy

The mission of the California Natural Resources Agency is to restore, protect and manage the state's natural, historical and cultural resources for current and future generations using creative approaches and solutions based on science, collaboration and respect for all the communities and interests involved. California Native American Tribes and tribal communities have sovereign authority over their members and territory and a unique relationship with California's resources. All California Tribes and tribal communities, whether federally recognized or not, have distinct cultural, spiritual, environmental, economic and public health interests and unique traditional cultural knowledge about California resources.

On September 19, 2011, Governor Edmund G. Brown, Jr. issued Executive Order B-10-11, which provides, among other things, that it is the policy of the administration that every state agency and Department subject to executive control to implement effective government-to-government consultation with California Indian Tribes.

The purpose of this policy is to ensure effective government-to-government consultation between the Natural Resources Agency, its Departments of the Natural Resources Agency and Indian tribes and tribal communities to further this mission and to provide meaningful input into the development of regulations, rules, policies, programs, projects, plans, property decisions and activities that may affect tribal communities. It is only by engaging in open, inclusive and regular communication efforts that the interests of California's Tribes and tribal communities will be recognized and understood in the larger context of complex decision-making. The goal of the policy is to engage in the timely and active process of respectfully seeking, discussing and considering the views of California Indian Tribes, Tribal communities and Tribal Consortia in an effort to resolve concerns of as many parties as possible.

Each Department in the Natural Resources Agency has a different statutory mandate and, in some cases, may have consultation, communication, collaboration or interaction requirements imposed on it by other laws or regulations. For instance, Departments may have requirements under federal law to engage in consultation with Tribal governments. This policy is not intended to replace or supplant obligations mandated by federal law. This policy defines provisions for improving Natural Resources Agency consultation, communication and collaboration with tribes to the extent that a conflict does not exist with applicable law or regulations. Department is defined as any department, board, commission, council or conservancy subject to executive control.

This policy anticipates a deliberate process that aims to create effective collaboration and informed decision making where all parties share a goal of reaching a decision together. All parties in the process should promote respect, shared responsibility and an open and free

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exchange of information. The inclusion of tribes and tribal communities throughout the decision-making process will promote positive, achievable, durable outcomes.

This policy is intended solely for the guidance of employees of the Natural Resources Agency and its Departments and does not extend to other governmental entities, although the Natural Resources Agency encourages cooperation, education and communication on the part of all governmental entities. This policy is not intended, and should not be construed, to define the legal relationship between the Natural Resources Agency and its Departments and California tribes and tribal communities. This policy is not a regulation, and it does not create, expand, limit, waive, or interpret any legal rights or obligations.

The Secretary of the Natural Resources Agency hereby directs the Agency staff and Departments to undertake implementation of the policy as set forth below.



Implementation of the Tribal Consultation Policy

1. Outreach. The Agency and Departments must identify the Native American tribes to consult at the earliest possible time in the planning process and allow a reasonable opportunity for tribes to respond and participate. Each Department is responsible for meaningful consultation with Native American tribes that promote regular and early consultation through communication and collaboration. Each Department will identify participants in the process - including the decision-makers and staff with an appropriate level of responsibility - that can ensure that tribal concerns will be brought forward.

Each Department shall disseminate public documents, notices and information to California Indian Tribes, tribal communities and tribal consortia, minimally by contacting tribal government officials. The documents, regarding the topic for consultation, shall be made readily accessible to tribes and be provided at the earliest opportunity. Notification should include sufficient detail of the topic to be discussed to allow tribal leaders an opportunity to fully engage in a substantive dialogue. In the event the Department makes an attempt to initiate contact and does not receive a response, the Department should make reasonable and periodic efforts throughout the process to repeat the invitation.

Each Department should conduct meetings, outreach and workshops at times and locations that facilitate tribal participation as much as possible. The Departments will be open to communication opportunities initiated by Tribes and seek opportunities for collaboration by communicating regularly with tribes. Each Department should establish a mechanism to request relevant and available information, studies and data from tribes when conducting research or studies that relate to, or could impact, tribal lands or cultural resources. The Department should seek to protect any confidential information provided to the fullest extent allowed by the law, recognizing that the Departments are subject to the California Public Records Act.

2. Tribal Liaisons. Each Department should designate a tribal liaison, or liaisons, to serve as the central point of contact for Indian tribes. The role of the tribal liaison will be to ensure that Department outreach and communication efforts are undertaken in a manner consistent with this policy. Tribal liaisons should be encouraged and empowered to



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develop ongoing and regular communication with tribal representatives. Where possible and where consistent with Administration policy and guidance, tribal liaisons should use these ongoing relationships to inform tribes of issues of interest that may not necessitate consultation, such as legislative proposals that may affect tribal communities. Tribal liaisons should make an effort to provide feedback to the tribes on how information obtained from a consultation informed the Department's decision making process.

3. Tribal Liaison Committee. The Agency hereby designates the CNRA Tribal Liaison Committee consisting of Department tribal liaisons that will meet on a regular basis in the Office of the Secretary to review tribal consultation efforts and opportunities in the Departments and share information.
4. Access to Contact Information. The Agency shall work with the Native American Heritage Commission to maintain a contact list of tribal representatives from federally-recognized and non-federally recognized California Indian Tribes.
5. Training. The Agency will provide training to tribal liaisons and executive staff, managers, supervisors and employees on implementation of this policy.

