

Reclaiming the Sierra 2017: Headwater Resiliency

Ethical Gold Policy Panel

# Understanding the Goals of Meaningful Tribal Consultation

ANECITA AGUSTINEZ  
Tribal Policy Advisor  
Department of Water Resources



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# DISCUSSION OUTLINE

- I. California Native American Tribes
- II. Tribal Consultation
- III. Protocols with Tribal Governments
- IV. Protection of Tribal Cultural Resources

Resources and Useful Links for Engagement



# California Indian Pre-contact Tribal Territories



California Indian Library Collections

At the time of contact California had an estimated 310,000 Native people, making it one of the most densely populated regions in Native North America.



# I. CALIFORNIA NATIVE AMERICAN TRIBES

## **California's Tribal Governments and Tribal Sovereignty**

- *Federally recognized and Non-Federally Recognized Tribal Governments*

## **Origins of Tribal Engagement in Government-to-Government Consultation**

- *The federal Indian trust responsibility is a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages*



# I. CALIFORNIA NATIVE AMERICAN TRIBES

(continued)

- Sovereign Status of Tribes
- Trust Relationship
- Termination and Relocation
- Tribal Governance

*Source: National Indian Justice Center (2010) Tribal Training*



# II. TRIBAL CONSULTATION

## **Tribal Consultation Requirement**

- California Executive Order B-10-11
- State Agency Tribal Policy Consultation
- Local Government Agency SB18
- AB 52

## **Federal Lead Agencies (*partial list*)**

- Bureau of Reclamation (BOR)
- Fish and Wildlife Service (USFWS)
- National Marine Fisheries Service (NMFS)
- Army Corps of Engineers (USACE)
- Environmental Protection Agency (EPA)



## II. TRIBAL CONSULTATION (continued)

### **Federal and State Statutes /Environmental Protection Laws that protect California Native American cultural resources (*partial list*)**

- Antiquities Act of 1906
- Archaeological Resources Protection Act of 1979 (ARPA)
- Clean Air Act (CAA)
- California Environmental Quality Act (CEQA)
- Clean Water Act (CWA)
- Endangered Species Act (ESA)
- National Environmental Policy Act (NEPA)
- National Historic Preservation Act (NHPA)
- Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)
- Rivers and Harbor Act (RHA)



## II. TRIBAL CONSULTATION (continued)

### Consultation

“The meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party’s sovereignty. Consultation shall also recognize the tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural significance.” PRC §21080.3.1(b) citing Gov’t Code § 65352.4



# III. PROTOCOLS WITH TRIBAL GOVERNMENTS

## Ask yourself / Your Organization Do You.....

Have a Tribal engagement or communication protocol of how to engage with Tribal Governments in your jurisdictional area?

Have within your mission to recognize the sovereign status of Tribal Governments?

Have a commitment to establishing a conversation with Tribes in your area of jurisdiction?

What steps have you undertaken to provide an opportunity for meaningful consultation in the development of regulations and policies on matters that may affect Tribal communities?

- *As a public agency, non-profit, local agency or authority, determine which Tribal Governments are within your jurisdictional area*
- *Understand that difference between Tribal Sovereigns and "stakeholders" within your public policy noticing requirements*
- *Take time to provide opportunities to meet and introduce your organization to Tribes in your jurisdictional area*



# III. PROTOCOLS WITH TRIBAL GOVERNMENTS (continued)

- Consultation Process
  - FOREMOST: Respect Tribal sovereignty and confidentiality
  - Introductions at beginning of meeting – recognize leaders in the room.
  - Protocol for requesting input should be formal:
    - First - Tribal leaders
    - Second - Tribal designees
    - Third – open forum
- Note takers are important
  - Document all areas where agreement was and was not reached
- Solidify agreements for action and deadlines
- Identify follow the appropriate persons to continue dialog
- Schedule follow up meeting(s) and determine who will need to be in at the discussion table for continued input



# Hydraulic Mining in Nevada and Plumas County 1880-1890



Hydraulic mining, North Bloomfield, Nevada  
County, California, circa 1880s



Hydraulic mining next to a forested hillside in Plumas  
County, California, circa 1890-1895

# IV. PROTECTION OF CULTURAL RESOURCES

## WHAT ARE CULTURAL RESOURCES

Cultural resources are past and current evidence of past peoples affiliations to a particular area

Other sources of information may include archaeological sites recorded in the California Historical Resources Information System (CHRIS) and the NAHC Sacred Lands Inventory

All elements of the natural landscape that have a traditional cultural significance, now a legally defined term in AB52 as Tribal Cultural Resource

*Source: Native American Heritage Commission*



# IV. PROTECTION OF CULTURAL RESOURCES

## WHY CULTURAL RESOURCES MATTER

- Significant to local Native Americans and represent their tribal cultural values
- Reflect the indigenous human history of California documenting over 10,000 plus years of existence pre-European contact
- Provide a factual explanation and illustration of human habitation and life prior to European contact
- A bond exists between present-day descendants and their sacred places and sites, no matter how old or small in nature.
- These cultural sites and resources continue have religious and ceremonial significance and are still in use by Native American communities

*Source: Native American Heritage Commission*



# IV. PROTECTION OF CULTURAL RESOURCES

## TRIBAL CULTURAL RESOURCES UNDER AB52

### Tribal Cultural Resources (TCRs):

- A site, feature, place, cultural landscape, sacred place or object with cultural value to a “California Native American tribe,” that is either on, or eligible for inclusion in, the California Historic Register or a local historic register, or is a resource that the lead agency, at its discretion and supported by substantial evidence, determines should be treated as a Tribal Cultural Resource. PRC § 21074(a)(1-2)

### Tribes:

- In the Native American Heritage Commission (NAHC) “contact list.”  
PRC § 21073



# IV. PROTECTION OF CULTURAL RESOURCES

## CONFIDENTIALITY

Whether or not a Tribe requests consultation, a public agency has the duty to keep certain information it may discover during the CEQA process confidential, unless it receives the prior consent of the Tribe that provided the information.

Maintaining confidential information

- the location, description and use of TCRs, as required by PRC § 6254 regarding grave sites and sacred places maintained by NAHC, and PRC § 6254.10 regarding archeological sites.



# RESOURCES TO BEGIN TRIBAL ENGAGEMENT

Executive Order B-10-11 (2011)

<http://gov.ca.gov/news.php?id=17223>

CNRA Tribal Consultation Policy (2012)

[http://resources.ca.gov/docs/Final Tribal Policy.pdf](http://resources.ca.gov/docs/Final_Tribal_Policy.pdf)

Native American Heritage Commission

[www.nahc.ca.gov](http://www.nahc.ca.gov)

Protecting Cultural Resources

<http://nahc.ca.gov/wp-content/uploads/2017/03/Protecting-CA-NA-Sites-During-Drought-Wild-Land-Fire-and-Flood-Emergencies.pdf>

Local Government and Tribal Intergovernmental Consultation SB 18  
(2005)

[SB 18 \(Chapter 905, Statutes of 2004\)](#)



# TRIBAL CONSULTATION DEVELOPMENT

Governor's Executive Order B-10-11 executed on September 19, 2011

<http://gov.ca.gov/news.php?id=17223>



*Every state agency and department subject to the executive order shall permit elected officials and representatives of tribal governments to provide meaningful input into the development of regulations and policies on matters that may affect tribal communities.*





# CALIFORNIA NATURAL RESOURCES AGENCY TRIBAL CONSULTATION POLICY

[http://resources.ca.gov/docs/Final Tribal Policy.pdf](http://resources.ca.gov/docs/Final_Tribal_Policy.pdf)

*The Natural Resources Agency's consultation policy recognizes tribal governments have sovereign authority over its membership and territory; that tribal governments have a unique relationship with its natural and cultural resources.*



# NATIVE AMERICAN HERITAGE COMMISSION

Established in 1977, composed of all Native American Commissioners appointed by Governor.

- Created in response to California Native American Tribes demanding protection of their cultural resources, specifically burials and sacred sites from vandalism, development, scientific research and destruction
- Administers the application of the Public Resources Code 5097.9 et.al, and Health and Safety Code 7060.5
- Designates “Most Likely Descendants” for inadvertent discovery of Native American human remains and associated grave and items
- Mediates disputes between landowners and MLDs regarding the treatment and disposition of Native American human remain and associated grave items
- Administers the Sacred Lands File program
- Provides “Tribal Consultation Lists” to local governments pursuant to SB 18 and AB52 Lead Agency Lists

*Source: Native American Heritage Commission*



# LOCAL AND TRIBAL INTERGOVERNMENTAL CONSULTATION

State planning law requires cities and counties to consult with California Native American tribes during the local planning process for the purpose of protecting Traditional Tribal Cultural Places. OPR's consultation guidelines, background information, and training session information are all available online

- [SB 18 \(Chapter 905, Statutes of 2004\)](#) requires cities and counties to contact, and consult with California Native American tribes prior to amending or adopting any general plan or specific plan, or designating land as open space.
- [OPR's Tribal Consultation Guidelines \(November 2005\)](#) contains information on how and when to conduct consultation with California Native American Tribes.
- For purposes of consultation with tribes, as required by Government Code Sections 65352.3 and 65562.5, the Native American Heritage Commission (NAHC) maintains a list of California Native American Tribes with whom local governments must consult. The NAHC's "California Tribal Consultation List" provides the name, address, and contact name for of each of these tribes; and telephone, fax and email information if available. The tribal contact list is developed and maintained by the NAHC, under authority granted in Government Code Sections 65092, 65352 and 65352.3. Prior to initiating consultation with a Tribe, the city/county must contact the NAHC for a list of Tribes to consult with. For questions about the list, please contact the NAHC at [www.nahc.ca.gov](http://www.nahc.ca.gov).

[NAHC's Tribal Consultation List Request Form](#)

- For more information [contact the State Clearinghouse](#)

Source: Office of Planning and Research



# FINAL THOUGHTS

*Respect the sovereign status of Tribal Governments*

*Understand the footprint of your organization and jurisdiction  
and recognize that Tribal communities lived and existed in  
those areas before you*



# *THANK YOU*

**Ancita Agustinez  
Tribal Policy Advisor  
Department of Water Resources  
1416 Ninth Street, Room 1148-2  
Sacramento, CA 94236-0001**

**916.653.8726 office  
916.216.8637 mobile**

**[Ancita.Agustinez@water.ca.gov](mailto:Ancita.Agustinez@water.ca.gov)  
[tribalpolicyadvisor@water.ca.gov](mailto:tribalpolicyadvisor@water.ca.gov)  
<http://www.water.ca.gov/tribal/>**

