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July 14, 2012

Liane Randolph
General Counsel and Deputy Secretary
CA Natural Resource Agency
1416 9th St. Suite 1311
Sacramento, CA 95814

RE: Written comments pertaining to the proposed Tribal Consultation Policy

Dear Ms. Randolph:

This letter reiterates some of the comments that were given by the Habematolel Pomo of Upper Lake's Environmental Director at the June 26, 2012 meeting convened by Secretary Laird.

The Tribe stated that the term meaningful consultation under this policy needs to be defined. The Tribal suggestion is to follow the federal definition of meaningful consultation as described in Executive Order 13175 and President Obama's November 5, 2009 memorandum on Tribal consultation. Executive Order 13175 defines consultation under Section 5 and accountability under Sec. 7.

In your agency's policy under outreach, the Tribe suggests better defined sections on timelines and notifications. Under the Wisconsin Department of Natural Resources Tribal consultation policy there are two sections that are pertinent. One is the requirement of an annual action plan by which the agency's policy is implemented and the second is the Resolution of Issues section. Both are worthy of emulation.

Upon further consideration of the policy, the Tribe suggests that the legal status of CA Tribes as defined by the State of CA laws be reviewed for the legal implications of allowing all Tribes equal status under this policy. Under SB18 non-federally recognized Tribes are allowed consultation for purposes of "protection of traditional tribal cultural places". In certain situations or planning workgroups, it is possible for the State to consider non-federally recognized



Tribes comments as those of federally recognized Tribes and to mistakenly consider those comments as consultation. This is counterproductive to the legal rights of federally recognized Tribes.

Federally recognized Tribes have governmental considerations, obligations, and responsibilities beyond most non-federally recognized Tribes. Consultation policies need to recognize these differences and be aware that allowing the State of CA to accept non-federally recognized Tribal comments on issues beyond cultural considerations and those rights as state citizens have legal implications under the definitions in CA law as defined by governmental code, Section 11019.8. This code recognizes the States cooperation with federally recognized Tribes and outlines the services to be provided to federally recognized Tribes.

To allow non-federally recognized Tribes comments to guide policy on matters which are not cultural concerns are limiting and circumventing the authority and sovereignty given to federally recognized Tribes.

In the case of non-federally recognized Tribes, there are no assurances that true elections are held and that there is oversight of activities by the federal government. Most federally recognized Tribes (but not all) are responsible for larger land bases, populations, and federal funding than many of the non-federally recognized Tribes and they have formal constitutions that provide for the governance of that Tribe. These constitutions are also federally approved.

The Tribe by no means wishes to silence the non-federally recognized Tribes in matters that pertain to their well-being; however, to allow their comments to dictate policy that pertains primarily to federally recognized Tribes is not prudent or legally defensible.

Federally recognized Tribes have a responsibility to their membership first and foremost and secondly to that of other federally recognized Tribes. The long standing legal battles and subsequent protection of federally recognized Tribes legal rights have been arduous and these legal rights need to be continually guarded as precedence is set by policies such as the one that is being commented upon.

Thank you for the opportunity to comment. If you have any questions please contact me at (707) 275-0737.

Sincerely,



Sherry Treppa
Tribal Chairperson