



Santa Ynez Band of Chumash Indians

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July 15, 2012

Mr. John Laird, Secretary
Liane Randolph, General Counsel & Deputy Secretary
California Natural Resources Agency
1416 9th Street, Suite 1311
Sacramento, CA 95814
tribalpolicy@resources.ca.gov

RE: Comments in response to California Natural Resources Agency (CaNRA)
Draft Tribal Consultation Policy ("Policy")
Comment Deadline: July 15, 2012

Dear Secretary Laird & Deputy Secretary Randolph:

The Santa Ynez Band of Chumash Indians ("Tribe" or "Chumash") congratulates CaNRA on its prompt and timely compliance with Executive Order B-10-11, that every state agency and department subject to executive control shall encourage communication and consultation with California Indian Tribes.

The Tribe recognizes that the CaNRA Policy is a necessary first step in the implementation and incremental development of an ongoing and progressive tribal consultation policy. The Policy is a good starting point. However, in its current form, the CaNRA draft Policy is too thin and limited to adequately address all of the future challenges associated with CaNRA tribal consultation. One fundamental concern with the CaNRA Policy is the heavy emphasis it places on "outreach" at the expense of "tribal consultation." Tribal consultation should always occur before, and never after, the proposal of a departmental action with tribal implications.

To test the CaNRA policy we have compared it with the closest federal analogous agency, the Department of the Interior (DOI) Consultation policy. While the DOI offers a more comprehensive plan with a clearer set of guidelines, it also has its own limitations. For example, it may be argued that the DOI consultation policy should ensure that the Tribal Governance Officer has the ability to act independent of DOI department officials to effectively assess compliance with the Policy.

The remainder of our comments will be a section-by-section comparison on the CaNRA and Department of Interior's respective policies on tribal consultation:

Section 1: Outreach

The CaNRA's policy requires the agency and departments to identify Native American tribes to "consult at the earliest possible time." The Department of Interior (DOI) offers a more precise timetable, calling on the Office to "strive to ensure that a notice is given at least 30-days prior to scheduling consultation." The CaNRA's statement is troubling in that it leaves open the possibility that tribes may be consulted AFTER a department action with tribal implications is proposed. DOI's policy allows for a Tribe to request that the Department "initiate consultation when the Indian Tribe believes that a Bureau or Office is considering a Departmental Action with Tribal Implications." Even if an Indian Tribe chooses not to engage the Department to initiate consultation, the office still has an "obligation to engage in consultation" as described by the DOI policy.

The CaNRA's policy requires the agency and department to "allow a reasonable opportunity for tribes to respond and participate." DOI's policy offers a more specific account of what adequate notice entails. They call for "providing a description of the topic(s) to be discussed, a timeline of the process, and possible outcomes." According to the DOI policy, adequate notification of a consultation should include "sufficient detail of the topic to be discussed" so that Tribal leaders are prepared to engage with the Department and have the opportunity to "provide feedback prior to consultation."

The CaNRA's policy gives the department discretion in determining the "decision-makers and staff with an appropriate level of responsibility" to participate in the process and ensure that "tribal concerns will be brought forward." The DOI offers a much more narrow definition of those who can participate in the process. These officials are defined as those who are "knowledgeable about the matters at hand, are authorized to speak for the Department, and exercise delegated authority in the disposition and implementation of an agency action." Regarding the CaNRA's and DOI's respective policies on conducting meetings, outreach and workshops that facilitate tribal participation, both recognize the importance of accommodating Tribal scheduling demands, structure and traditional needs to help facilitate tribal participation in meetings.

Section Two: Tribal Liaisons

The CaNRA calls for each department to create a tribal liaison position, whose purpose is to "serve as the central point of Contact for Indian tribes." The CaNRA offers a very broadly-defined description of the position. The tribal liaison's main responsibility is to "ensure that department outreach and communication efforts are undertaken in a manner consistent with policy." In contrast, DOI calls for the creation of two positions, the Tribal Governance Office (TGO) and Tribal Liaison Officer (TLO), with clearly defined roles. The TGO serves as the Secretary's representative "when requested in matters pertaining to consultation," and always has access to the Secretary or Deputy Secretary to carry out his or her responsibilities. The TLO positions will be designated by "each Bureau or Office." More than one TLO position may exist in each Bureau or Office.

Section Three: Tribal Liaison Committee

The CaNRA's policy calls for the creation of a Tribal Liaison Committee consisting of "department tribal liaisons." The Liaisons will meet on a "regular basis" in the Office of the Secretary. They will "review tribal consultation efforts and opportunities in the departments and share information." The DOI's policy for ensuring accountability and oversight of the consultation policy requires the Bureaus and Offices to report to the Secretary on an "annual basis." In order to determine the result of their efforts to promote consultation with Tribes, the policy recommends reporting "the scope of consultation efforts, the cost of these efforts, and the effectiveness of consultation activities." The Bureaus and Offices will have to provide "a comprehensive listing of the topics on which consultations were held, training, innovations, and the engagement of senior leadership in these efforts." If possible, reports should include "feedback from Indian Tribes with whom the Bureau or Office has consulted." From this information, the Secretary will "provide an annual report to Indian Tribes on implementation of the Department's Consultation Policy." The Department will use its website to report information, where appropriate.

Section 4: Access to Contact Information

The CaNRA will work with the Native American Heritage Commission to "maintain a contact list of tribal representatives from federally-recognized and non-federally recognized California tribes."

Section 5: Training

The CaNRA's policy promises to provide training to tribal liaisons, executive staff, managers, supervisors and employees on the implementation of tribal consultation policy. Unlike the DOI's policy, it does not offer any specific elements of the training program. DOI's training aims to "promote consultation, communication, collaboration, and other interaction with Tribes, outline and reinforce the Department's duties concerning tribal interests, and describe the legal trust obligation of the Federal-Tribal relationship." It will also "highlight and provide the knowledge, skills, and tools necessary for collaborative engagement to Tribal and Departmental staff engaged in the consultative process with attention to the unique distinctions within Indian Country." In order to develop and deliver training, the Department will work through the "Department of the Interior University, in collaboration with Bureaus, Offices, Tribal colleges and universities, and other entities with Indian expertise."

Conclusion

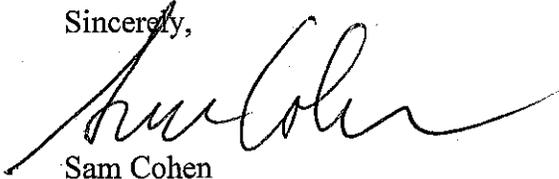
President Obama instructed all federal agencies by Memorandum Dated November 5, 2009, to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. Each

agency head was also directed to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Executive Order B-10-11 was signed by Governor Brown in California almost two years later on September 19, 2011 to establish the position of Governor's Tribal Advisor and to establish that it is the policy of the Brown Administration that every state agency and department subject to executive control shall encourage communication and consultation with California Indian Tribes. Agencies and departments shall permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.

With the implementation of the CaNRA tribal consultation policy, the State of California begins its own incremental implementation process for each California state agency to create its own tribal consultation policy. Please feel free to consider the Chumash as a resource for any and all future refinements of the CaNRA tribal consultation policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Cohen", written in a cursive style.

Sam Cohen
Government and Legal Specialist
Santa Ynez Band of Chumash Indians