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Tübatulabal Tribe

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May 7, 2012

emailed to: tribalpolicy@resources.ca.gov

Mr. John Laird, Secretary and
Liane Randolph, General Counsel and Deputy Secretary
California Natural Resources Agency
1416 9th Street, Suite 1311
Sacramento, CA 95814

Attached are Tübatulabal Tribal comments to proposed "NATURAL RESOURCES AGENCY TRIBAL CONSULTATION POLICY - DRAFT CIRCULATED FOR PUBLIC COMMENT APRIL 2012". Our Tribe appreciates the opportunity to provide input to the important agency-wide Tribal related policy. We understand that this policy does not impact our sovereignty or existing CA Tribal compacts. We understand that this policy is based on Governor Brown's 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 and tribal communities".

As a non-federally recognized Tribe, we appreciate the inclusion of "non-federally" recognized Tribes in this proposed policy and policy review process. If there are any additional questions regarding our Tribal comments, feel free to contact our Tribal Office (760) 379-4590.

Sincerely,

Dr. Donna Miranda-Begay
"timiwal" Tribal Chairwoman

cc: Tübatulabal Tribal Council and Members
Cynthia Gomez, CA Governor's Indian Affairs Advisor
California Inter-Tribal Council of California
California Native American Heritage Commission

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**Tübatulabal Tribe's Comments to the Proposed
"NATURAL RESOURCES AGENCY TRIBAL CONSULTATION POLICY
DRAFT CIRCULATED FOR PUBLIC COMMENT APRIL 2012".**

Introduction

The Tübatulabal Tribe is located in Kern Valley, California. We have 280 enrolled Tribal Members and 8 Tribal Allotments (160 acres each, lands held in trust by the U.S. Bureau of Indian Affairs). Our allotment lands and traditional territories include lands managed by CA Department of Fish and Game, U.S. Bureau of Land Management, U.S. Forest Services, U.S. Army Corps of Engineers, and Kern Council of Governments, and private ranch lands owners. We have a Tribal Representative on California EPA and California Department of Water Resources – Tribal Advisory Committees. We also have Tribal Members who have worked for CA Natural Resources Agency's Departments and have assisted in providing the following comments to the proposed policy.

Preamble

In 2011, the United States has issued their support for the 2007 United Nations Declaration on the Rights for Indigenous Peoples. In 2011, California Governor Brown issued executive order "B-10-11" that has directed all State Agencies to develop and implement effective government-to-government with California Tribes and Tribal Communities. In the past few years, there was the passage of the Marine Life Protection Act (MLPA), recent proposed planning for changes in California water ways (federal and state water system infrastructures, Shasta and Lake Isabella Dam, Central Valley – Delta Water ways), fast pace approval and development of "green" energy (i.e., wind, geothermal, solar, biomass), and California legislation direction to improve California air quality and becoming less reliant on fossil fuels. Although, these legislative, water planning, and "green" directives appear to have good intent, they have negative impacts on traditional uses and access to Native foods, medicines, cultural life-ways, and other traditional uses. California Natural Resources plays a significant role in understanding the Tribal perspectives and impacts of international, national, tribal, state, and local policies and mandates. In consideration of this preamble context, our Tübatulabal Tribe provides the following tribal comments. We also understand California State's limited funding and challenged resources to fully implement this policy.

Comments

Proposed Policy	Recommended Changes	Tübatulabal Tribal Comments
<p>NATURAL RESOURCES AGENCY TRIBAL CONSULTATION POLICY DRAFT CIRCULATED FOR PUBLIC COMMENT APRIL 2012</p>	<p>Natural Resources Agency – Working Effectively with California Native American Tribes</p>	<p>This policy title change reflects communicating, collaboration, and if necessary, consultation with California Native American Tribes and California Tribal Communities.</p> <p>Include the following definition for “California Native American Tribe” signifies all Indigenous Communities of California, including those that are federally non-recognized and federally recognized, and those with allotment lands, regardless of whether they own those lands.</p> <p>Include definitions listing, goals, and “high level” action plan for implementing this policy (including the establishment of Agency Tribal Liaison position who would report to Natural Resources Agency – Secretary or Executive Level).</p>
<p>Purpose of the Policy</p> <p>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 Tribes and tribal Tribal communities have sovereign authority over their members and territory, and a unique relationship with California’s resources. All California California California Native American tribes Tribes and tribal communities, whether federally recognized or not, have distinct cultural, spiritual, environmental, economic and public health interests.</p> <p>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</p>	<p>..... California Native American tribes Tribes and tribal Tribal communities have sovereign authority over their members and territory, and a unique relationship with California’s resources- natural resources in California. All California Tribes and tribal communities, whether federally recognized or not, have distinct traditions, cultural, spiritual, traditional knowledge, environmental, economic and public health interests.</p> <p>No major changes recommended for this paragraph.</p>	<p>Appreciate “whether federally recognized or not”, in this policy. Our Tribe also understands that there may be Natural Resources Agency federal funded programs or grants that may be specifically for federally recognized Tribes.</p> <p>Upper case “Tribe” and “Tribal” – unique sovereign status.</p> <p>Be consistent on “California Native American” vs. California Indian or other descriptions.</p>

agency and department subject to executive control to implement effective government-to-government consultation with ~~California Indian~~ ~~California~~ ~~California Native American tribes~~ ~~Tribes~~ and ~~tribal communities~~.

The purpose of this policy is to ensure effective government-to-government consultation between the Natural Resources Agency, the departments of the Natural Resources Agency, and ~~Native American~~ ~~California Native American~~ ~~tribes~~ ~~Tribes~~ and tribal communities to further this mission and to provide meaningful input into the development of regulations, rules and policies that may affect tribal communities. It is only by engaging in open, inclusive and regular communication efforts that the interests of ~~California's tribes~~ ~~California Native American~~ ~~Tribes~~ and tribal communities will be recognized and understood in the larger context of complex decision-making. 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. This policy defines provisions for improving Natural Resources Agency consultation, communication and collaboration with ~~California Native American~~ ~~tribes~~ ~~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 exchange of information. The inclusion ~~California Native American tribes~~ ~~Tribes~~ and ~~tribal communities~~ at all stages of the decision-

Recommendation in changing the order of “....This policy defines provisions for improving Natural Resources Agency consultation, communication and collaboration.....” to “...~~This policy defines provisions for improving Natural Resources Agency communication, collaboration, and consultation~~”....

No major changes recommended for this paragraph.

Reflects progressive action order of working with California Native American Tribes.

There will be a need to include federal definition of “consultation” with Federally Recognized Tribes. “In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes” – found at U.S. White House web site: <http://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president>

<p>making process will promote positive, achievable, durable outcomes.</p> <p>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 Native American tribes 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.</p> <p>The Secretary of the Natural Resources Agency hereby directs the agency staff and departments to undertake implementation of the policy as set forth below</p>	<p>No major changes recommended for this paragraph.</p> <p>No major changes recommended for this paragraph.</p>	
<p>Implementation of the Tribal Consultation Policy</p> <p>1. Outreach. The agency and departments must identify the California Native American tribes Tribes to consult at the earliest possible time in the planning process and allow a reasonable opportunity for California Native American tribes Tribes to respond and participate. Each department is responsible for meaningful consultation with California Native American tribes 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.</p> <p>Each department shall disseminate public documents, notices and information to California Native American tribes Tribes. The documents shall be made readily accessible to California Native</p>	<p>Action Plan to Implement Tribal Consultation Policy</p> <p>1. Outreach. <Add> In coordination with CA Governor’s Indian Advisor, California Native American Tribes, and California Native American communities, the Natural Resource Agency will develop and maintain central mailing, listserv, and web based Natural Resources Tribal Affairs web site.</p> <p>No major changes recommended for this paragraph.</p>	<p>Title Change Recommended</p> <p>Expand on Outreach – provide recommended methodology or tool.</p> <p>Web page should include the Tribal perspective and context. Host a Webinar to help build this new web site.</p>

<p>American tribes Tribes. 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.</p> <p>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 California Native American tribes Tribes and seek opportunities for collaboration by communicating regularly with California Native American tribes Tribes. Each department should establish a mechanism to request relevant and available information, studies and data from California Native American tribes Tribes when conducting research or studies that relate to, or could impact, tribal lands or cultural resources.</p> <p>2. Tribal Liaisons. Each department should designate a tribal liaison, or liaisons, to serve as the central point of contact for California Native American Indian tribes Tribes and Tribal Communities. 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.</p> <p>3. Tribal Liaison Committee. The Agency hereby designates the Natural Resources Agency 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.</p> <p>4. Access to Contact Information. The agency</p>	<p>No major changes recommended for this paragraph.</p> <p>No major changes recommended for this paragraph.</p> <p><Insert> Tribal Advisory Committee (vs. Tribal Liaison Committee) shall be established to meet and work with appointed Natural Resources Tribal Liaisons.</p> <p>See inserted text changes.</p>	<p>Our Tribe recommends that Natural Resource Agency create a Tribal Advisory Committee, similar to CalTrans and CalEPA. There is an establish TAC with CA Department of Water Resources who have been helping with CA State Water Planning. However, beyond planning – there needs to be a TAC focus to address current day Natural Resources Agency operational related Tribal issues and solutions.</p> <p>Recommend to work with both Governor’s Tribal Advisor and Native American Heritage Commission to</p>
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<p>shall work with the Governor's Tribal Advisor and Native American Heritage Commission to maintain a contact list of Tribal representatives from federally-recognized and non-federally recognized California Native American tribes Tribes and California Tribal Communities.</p> <p>5. Training. The agency will provide training to Tribal Liaisons and executive staff, managers, supervisors and employees on implementation of this policy.</p>	<p><Add> Training curriculum should be coordinated and developed in collaboration by California Native American Tribes, California Native American Tribal Communities, Natural Resources Agency Tribal Liaison Committee (or Tribal Advisory Committee), Executive, staff, managers, supervisors and employees. Core topics should include CA Native American History, Cultural Competency, Environmental Justice, historical legislation that has impact California Native American Tribes and California Native American Tribal Communities.</p>	<p>maintain contact listings.</p> <p>California Inter-Tribal Council of California, National Indian Justice Center, and California Indian Legal Services can offer great insight and training service to address this required training.</p> <p>Recommendation – Appointed Tribal Liaisons should have changes made to their job descriptions and Tribal Liaison should have access to their Department's Director.</p>
	<p>New Action / Implementation Process</p> <p>6. Accountability and Reporting – Natural Resources Agency will publish executive and department based “Working with California Native American Tribes and Tribal Communities” Annual Report. This report will include the status of the implementation of this policy, challenges and solutions, and recommendations. This report should be co-authored by newly established CA Natural Resources Tribal Liaisons Committee or Tribal Advisory Committee.</p>	<p>Recommend to add the new Action / Implementation Process #6.</p> <p>In CA state government, California Native American Tribes have experienced working with several state agencies and departments – however, there is rarely an annual report that describes the effort, achievements, challenges, solutions, and Tribal perspectives of working with California Native American Tribes and California Tribal Communities.</p>
	<p>Include definitions, disclaimer, guiding principles, and statutory references.</p>	<p>Recommend to review Cal/EPA “Working with California Indian Tribes” policy format – it also includes definitions, disclaimer, guiding principles, and statutory references. Cal/EPA web site: www.calepa.ca.gov/Tribal/Documents/CIT01Policy.pdf</p>

