

# Discussion Paper

## Definition of Tribal Law

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*Sustainable Groundwater Management Tribal Advisory Group  
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### 1.0 PURPOSE

#### DEFINITION OF TRIBAL LAW

*“To the extent authorized under federal or **tribal law**, this part applies to an Indian tribe...” SGMA, California Water Code §10720.3(b)*

Tribal Law should be broadly defined to include all forms of formal expressions of a tribe’s sovereign will. It should include, but not be limited to:

1. Written constitutions. Note: While many tribes have written constitutions, not all do, and there is no requirement that any tribe have one. The U.S. Supreme Court has noted that “The Navajo Government has been called ‘probably the most elaborate’ among tribes.... The legitimacy of the Navajo Tribal Council, the freely elected government of the Navajos, is beyond question.” And yet the Navajo Nation has no written constitution. *Kerr-Magee Corp. v. Navajo Tribe of Indians*, 471 U.S. 195, 197-199 (1985).
2. Articles of Association and equivalent documents.
3. Ordinances of the General Council, Tribal Council, or similar governing body.
4. Resolutions of the General Council, Tribal Council, or similar governing body.  
Custom and tradition, written and unwritten. Note: In 1953 Congress enacted Public Law 280, which extended the civil jurisdiction of California’s courts over individual reservation Indians (but not tribes) for ordinary civil matters (divorce, contract disputes, car accidents, child custody, etc.). P.L. 280 also preserved the role of written and unwritten tribal custom and tradition in resolving such disputes, in the absence of applicable state law: “Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in determination of civil causes of action pursuant to this section.” 28 U.S.C §1360(c).
5. Delegated federal authority that supplements tribal authority. Note: For example, Treatment as a State under the Clean Water Act.