Tribal Engagement in Delta Conveyance

California Water Commission, February 19, 2020

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Ancestral Land

Nisenan
Maidu
Miwok
Costanoan
Northern Valley Yokuts
Patwin
Overview

DWR will consult with Tribes pursuant to State Policies

- E.O. B-10-11 (Brown)
- CNRA Tribal Consultation Policy (2012)
- DWR’s Tribal Engagement Policy (2016)
- Assembly Bill 52 (2014) effective July 1, 2015
- E.O. N-10-19 (Newsom)
- E.O. N-15-19 (Newsom)

DWR will work with expected lead federal agencies to support Section 106 consultation with Tribes

Tribal Engagement Committee development
Executive Order B-10-11

California recognizes Tribal sovereignty

Every state agency under Executive Branch control shall encourage communication and consultation with California Tribes

Respective of Federally AND non-federally recognized Tribes

The Executive will engage with Tribes on a “Government-to-Government” basis
Executive Order N-10-19

Orders the California Natural Resources Agency, the California Environmental Protection Agency, and the California Department of Food and Agriculture

• Prepare a water resilience portfolio and reassess priorities
• Shall list inventory and assess (2.f) current planning to modernize conveyance through the Bay Delta with a single tunnel project

The Water Resilience Portfolio shall embody the following principles:

• (3.g) Strengthen partnerships with local, federal and tribal governments, water agencies and irrigation districts and other stakeholders
• (4.) These agencies shall conduct extensive outreach to inform this process, including to other state agencies, sovereign tribes, federal and local government, local water agencies, agricultural groups, environmental justice and environmental conservation organizations, local and statewide business leaders, academic experts and other stakeholders
Executive Order N-15-19

The State of California

• Recognizes and acknowledges the century of prejudicial policies against California Native Americans
• Commends and honors California Native Americans… for stewarding and protecting this land we now share
• Apologizes on behalf of the citizens of the State of California to all California Native Americans for the many instances of violence, maltreatment and neglect inflicted on Tribes
• Reaffirms and incorporates by reference and principles outlined in E.O. B-10-11, which requires the Administration to engage in government-to-government consultation with California Native American Tribes regarding policies that may affect Tribal communities.
• Establish the Truth and Healing Council.
Federal Partners

DWR will work with expected lead federal agencies to support Section 106 under the National Historic Preservation Act

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

*Federal agencies listed for example purposes only. A federal lead agency has not yet been identified.*
AB 52 – CEQA Amendment

Prerequisites for AB 52 Tribal Consultation

Applies to any project for which a Notice of Preparation, Notice of Mitigated Negative Declaration or Notice of Negative Declaration is filed on or after July 1, 2015.

A Tribe that is traditionally and culturally affiliated to the geographic area where a project is located must have requested that the lead agency in question provide notification to the Tribe of projects in the Tribe’s area of traditional and cultural affiliation.
Protection Of 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
As Lead agency under CEQA for the Delta Conveyance Project, DWR initiated broad pre-AB 52 Tribal outreach over the past six months and is supporting Tribal efforts toward forming a Tribal Advisory Committee.

DWR held the first of a series of seven public scoping meetings beginning on February 3, 2020. That meeting had significant Tribal participation.

DWR issued a CEQA Notice of Preparation for Delta Conveyance Project on January 15, 2020, formally beginning AB 52 Tribal engagement.
Tribal Informational Meetings

- Pre AB 52 Meetings
  - September 11, 2019
  - November 12, 2019
- Tribal Engagement Committee meetings
  - January 22, 2020
  - February 25, 2020
- Scoping meeting involvement. Due to community interest and request DWR is adding a scoping meeting for Northern California.
  - Potential scoping meeting in early March 2, 2020 (TBD)
  - Opportunity for additional public comments from the community at large and from Tribal community
Delta Conveyance Design and Construction Authority (DCA) Stakeholder Engagement Committee (SEC)

Recognizing the importance of Tribal representation

DWR advocated for Tribal representation on this committee and recommended an alternate be appointed
  – Malissa Tayaba (Shingle Springs) has been appointed a standing member
  – Jesus Tarango (Wilton Rancheria) has been appointed an alternate

DCA-SEC Committee provides critical input for design processes, engineering, construction effects
Development of Tribal Engagement Committee

• DWR has a positive history of working closely with various Tribal advisory and engagement committees
  Examples:
  1. SGMA Tribal Advisory Group
  2. California Water Plan Tribal Advisory Committee
  3. Tribal Water Summit Planning Committee
• Opportunity for information sharing, updates and facilitation of communication
• Sharing Tribal expertise

Participation in the Tribal Engagement Committee does not waive any Tribe’s ability to meet individually with DWR and does not replace government-to-government consultation
Tribal Consultation

Pursuant to AB52 and State consultation policies, DWR mailed a formal **AB52 Notification for the Delta Conveyance Project** on January 14, 2020.

The letter attached the Notice of Preparation for the Environmental Impact Report

- Informed the Tribes of the opportunities for public comment at the scoping meetings
- Invitation for formal consultation under AB52
- Tribes have 30 days from the date of receipt to provide written request for consultation.

Tribes who were not on the DWR AB52 consultation list at the time of the release of the NOP were also mailed a Notification of the Delta Conveyance Project on the same date, and consistent with CNRA policy and DWR policy, informing them they are able to submit information regarding significance of any Tribal Cultural Resources, or any appropriate mitigation measures through the general CEQA process.
Role of California Water Commission

Strategic Plan Goal 2

The Commission will carry out its statutory responsibilities associated with the State Water Project

Goal 2 Objectives

2. Coordinate with the Department to enhance public engagement for the new Delta Conveyance Project
Resources

Delta Conveyance Tribal Engagement Website
https://water.ca.gov/Programs/State-Water-Project/Delta-Conveyance/Tribal-Engagement

- AB52 list
- Delta Conveyance Tribal Meeting
  - Notes
  - Agenda
  - Meeting Materials
- FAQs
Additional Resources

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

DWR Tribal Policy (2016)
https://water.ca.gov/About/Tribal-Policy

Native American Heritage Commission
www.nahc.ca.gov

Protecting Cultural Resources

Local Government and Tribal Intergovernmental Consultation SB 18 (2005)
SB 18 (Chapter 905, Statutes of 2004)
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