TRIBAL ENGAGEMENT UPDATE TO THE CALIFORNIA WATER COMMISSION

Anecita Agustinez, Tribal Policy Advisor

Department of Water Resources

February 19, 2014

CNRA Auditorium

Anecita.Agustinez@water.ca.gov

tribalpolicyadvisor@water.ca.gov

TRIBAL ENGAGEMENT

California's Tribal Governments and Tribal Sovereignty

- *Federally recognized and Non-Federally Recognized Tribal Governments*

Origins of Tribal Engagement in Government-to-Government Consultation

- *The federal Indian trust responsibility is also a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages.*

Current Tribal Engagement in the Department of Water Resources

- *Tribal Consultation in the CWP, BDCP, Drought and Cultural Resources*
- *Executive Order B-10-11*
- *CNRA Tribal Consultation Policy*

WHAT IS A FEDERALLY RECOGNIZED TRIBE?

- A federally recognized tribe is an American Indian or Alaska Native (AI/AN) tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs.

- Federally recognized tribes are recognized as possessing certain inherent rights of self-government (i.e., tribal sovereignty) and are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States.

CALIFORNIA'S NATIVE AMERICAN COMMUNITIES

- 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.
- At the most general level, a tribe is simply a group of Indians that is recognized as constituting a distinct and historically continuous political entity for at least some governmental purposes.
- There are joint bordering tribal nations to California's borders including Tribes in Oregon, Nevada, and Arizona that are impacted by water decisions in California.
- At present, there are 566 federally recognized American Indian and Alaska Native tribes and villages.
- In California there are 114 federally recognized tribes:
  - There are approximately 50-70 tribes with pending applications before the Department of Interior seeking re-recognition of their federally recognized status.
- There were 18 Treaties negotiated with California Tribes that were never ratified by Congress.
- California is home to the second largest Native American population in the United States.

ORIGINS OF LEGAL STATUS & TRIBAL ENGAGEMENT

Article 1, Section 8 of the United States Constitution vests Congress, and by extension the Executive and Judicial branches of our government, with the authority to engage in relations with the tribes, thereby firmly placing tribes within the constitutional fabric of our nation. When the governmental authority of tribes was first challenged in the 1830's, U. S. Supreme Court Chief Justice John Marshall articulated the fundamental principle that has guided the evolution of federal Indian law to the present: *That tribes possess a nationhood status and retain inherent powers of self-government.*

The federal Indian trust responsibility is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes (Seminole Nation v. United States, 1942). This obligation was first discussed by Chief Justice John Marshall in Cherokee Nation v. Georgia (1831). Over the years, the trust doctrine has been at the center of numerous other Supreme Court cases, thus making it one of the most important principles in federal Indian law.

GOVERNMENT-TO- GOVERNMENT RELATIONSHIP BETWEEN TRIBES AND THE UNITED STATES

The relationship between federally recognized tribes and the United States is one between sovereigns, i.e., between a government and a government. This "government-to-government" principle, which is grounded in the United States Constitution, has helped to shape the long history of relations between the federal government and these tribal nations.

RELATIONSHIP BETWEEN THE TRIBES AND THE INDIVIDUAL STATES

Because the Constitution vested the Legislative Branch with plenary power over Indian Affairs, states have no authority over tribal governments unless expressly authorized by Congress. While federally recognized tribes generally are not subordinate to states, they can have a government-to-government relationship with these other sovereigns, as well.

Federally recognized tribes possess both the right and the authority to regulate activities on their lands independently from state government control. They can enact and enforce stricter or more lenient laws and regulations than those of the surrounding or neighboring state(s) wherein they are located. Tribes find it in their best interest to frequently collaborate and cooperate with states through compacts or other agreements on matters of mutual concern such as environmental protection and law enforcement.

TRIBAL ENGAGEMENT AT DEPARTMENT OF WATER RESOURCES

Tribal Consultation in the various areas of work conducted at DWR, including :

- California Water Plan (CWP):
  2009 CWP Update, 2013 CWP Update and 2018 CWP Update

- Bay-Delta Conservation Plan (BDCP)
  Tribal Consultation meetings are currently being scheduled for April for the Delta Region, Northern Region and Bay Area Region

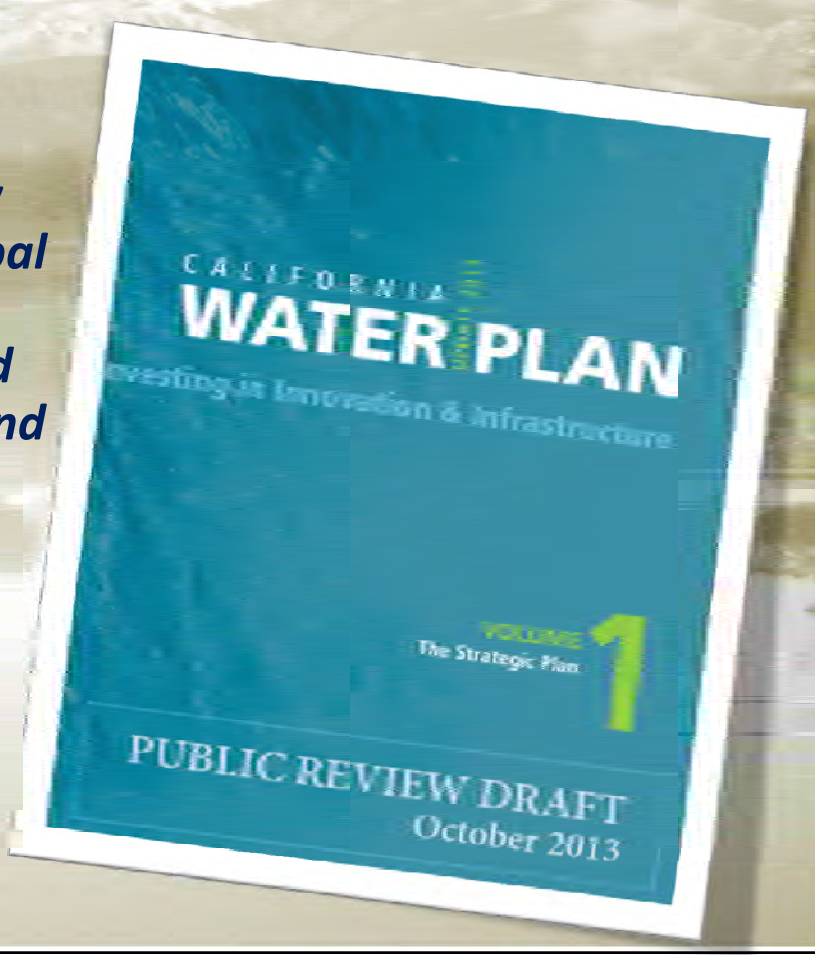
- 2014 Drought Management Team
  Development of tribal consultation strategy

- Cultural Resources Consultation

- Development of Tribal Consultation Policy for DWR

CALIFORNIA WATER PLAN (CWP)
2018 TRIBAL ADVISORY BOARD RECRUITMENT

The Tribal Policy Advisor will work closely with the CWP Tribal Liaison to recruit Tribal membership to the Tribal Advisory Committee to provide a venue for focused discussion on tribal views, perspectives and concerns.



TRIBAL ADVISORY COMMITTEE (TAC) MEMBER

- Assist in Development, Comment, and Review of Water Plan 2013 Materials and Water Plan 2018 Update
- Coordination of tribal involvement in Public AC and Water Plan.
- Continued update of the Tribal Communication Plan.
- Continue the directives of the Tribal Communication Plan (TCP) to communicate appropriately and effectively with all California Native American Tribes about water-related issues that may affect them in their territories and ancestral homelands.
- Convene 2018 Tribal Water Summit which will continue to goals of including the highest level of decision-makers from state, local, federal governments, and water purveyors to interact with the Tribal Communities of California

CURRENT STATE POLICIES TO WORK WITH CALIFORNIA TRIBES

Governor's Executive Order B-10-11

"…it is the policy of this Administration that <u>every state agency and department</u> subject to my 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."

Development of Tribal Consultation

Governor's Executive Order

B-10-11

September 19, 2011

Governor Brown's Executive Order B-10-11

http://gov.ca.gov/news.php?id=17223

The Office of the Tribal Advisor was created by Executive Order B-10-11 in 2011

Governor's Tribal Advisor serves as a direct link and facilitates communication/consultation between the Tribes, Office of the Governor, state agencies, and agency tribal liaisons

Every state agency and department subject to the executive order shall permit elected officials and representatives of tribal government to provide meaningful input into the development of regulations and policies on matters that may affect tribal communities.

CNRA Tribal Consultation Policy

Tribal Consultation Policy
November 20, 2012

http://resources.ca.gov/docs/Final_Tribal_Policy.pdf

Outreach

- Consult at the earliest possible time in the planning process and allow a reasonable opportunity for tribes to respond and participate

Tribal Liaisons

- Each Department should designate a tribal liaison to serve as the central point of contact for Indian tribes

Tribal Liaison Committee

- Designated Tribal Liaison Committee will meet on regular bases to review tribal consultation efforts and opportunities

Access to Contact Information

- Maintain a contact list of tribal representatives

Training

- The Agency will provide training to tribal liaisons and executive staff, managers, supervisors and employees on implementation of this policy

Department of Water Resources

- **Tribal Consultation Policy in Development**

Tribal Engagement Policy (Draft)

This Tribal Engagement Policy will strengthen DWR's commitment to improving communication, collaboration, and consultation with California Tribes and tribal communities consistent with the Tribal Consultation Policy directives in Executive Order B-10-11 and the California Natural Resources Agency Tribal Consultation Policy.

Tribal Engagement Policy
Department of Water Resources

Thank You

Anecita Agustinez, Tribal Policy Advisor

Department of Water Resources, 1416 Ninth Street, Room 1155-C

Sacramento, CA 94236-0001

916.653.8726 office

916.216.8637 mobile

Anecita.Agustinez@water.ca.gov

tribalpolicyadvisor@water.ca.gov