

CA Department of Water Resources

FLOODPLAIN MANAGEMENT ASSOCIATION

Tribal Engagement in Emergency Actions

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CA Department of Water Resources

Introduction of Panelists

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CA Department of Water Resources

CA DWR Programs and Projects

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Outline

- Tribal Engagement Process and Tribal Outreach
- DWR Programs and Projects
 - Proposition 1 Water Bond
 - Central Valley Flood Protection Plan (CVFPP)
 - Lower Elkhorn Basin Levee Setback (LEBLS)
 - Environmental Permitting and Operations and Maintenance (EPOM)
 - 2017 Storm Damage DWR Emergency Rehabilitation (SDDER)
 - Drought Emergencies
 - East Porterville / Tule River Tribe drought emergency
- Lessons Learned

Tribal Consultation - Local

Senate Bill 18

Senate Bill 18 –

- Passed into Law in 2005 with the intention to encourage more collaborative and comprehensive land use planning at the local, regional, and statewide levels
- SB 18 provides Tribal Consultation Guidelines for advisory guidance to cities and counties on the process for consulting with Native American Indian tribes during the adoption or amendment of local general plans or specific plans
- SB 18 reflects recent changes to the California Public Records Act which will facilitate this consultation process
- Mandates local elected officials, planning consultants, landowners, and tribal members to consult with interested Tribes and Tribal members
- SB 18 requires notice to and consultation with “California Native American Tribes that are on the contact list maintained by the California Native American Heritage Commission”.

Tribal Consultation – State

Governor’s Executive Order B-10-11

- **Governor’s Executive Order B-10-11 executed Sept. 19, 2011**
- **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.**

Legislation

Assembly Bill 52

- Assembly Bill 52 – Signed in 2014, effective on July 1, 2015
- State or lead agency is required to consult with Native American Tribes for protection of Tribal Cultural Resources (TCR's)
- Allows Tribes to actively participate in the CEQA process
- Clarifies role of tribes in the CEQA process, and the tribes are best viewed as sovereign entities with the right to consultation
- Creates a new category for CEQA (TCR's) and impact analysis
- First time Unrecognized Tribes are included in CEQA legislation

Tribal Outreach Plan

1. Tribal outreach to Tribes who are affected by your Project
 - a. Native American Heritage Commission List
 - b. Outreach to local Tribes for updated list of Tribes
 - c. Outreach to other Tribes including non-recognized Tribes, Rancherias, and allotments
 - d. Develop database for points of contacts for Tribal representatives

Tribal Outreach Plan – cont'd

2. Provide Tribal Outreach for each affected Tribe
 - a. Meet with each Tribe to introduce the project and provide information on project components
 - b. Determine the amount of interest and involvement desired by each Tribe
 - c. Determine number of Tribal representatives involved in the process
 - d. Provide follow-up meeting to address questions or comments

Tribal Outreach Plan

3. Develop Tribal Advisory Committee

- a. Recruit interested Tribal representatives from outreach process
- b. Provide technical and scientific experts to explain project analysis
- c. Provide opportunity for Tribes to contribute their Tribal Ecological Knowledge
- d. Collect Tribal comments for incorporation into environmental analysis
- e. Meet the Governor's Executive Order for meaningful and timely consultation
- f. Direct interaction with project managers ,planners, and consultants

Tribal Outreach Planb – cont'd

4. Government –to-Government Consultation

- a. The Federal Government agencies are required and will consult with the federally recognized Tribes on a government-to- government level
- b. The State of California seeks to establish government-to-government relationships with all Tribes, and the State will take the lead with federally unrecognized Tribes
- c. Ensure Tribal governments have information early in the process to avoid conflicts and disturbance of sacred archaeological, cultural, spiritual, and ceremonial places.
- d. Enable the Tribes to participate, monitor, and serve as caretakers of the designated cultural sites during all phases of the proposed project

Tribal Outreach Plan – cont'd

5. Follow-up coordination and actions

- a. Facilitate workshops directly focused on Tribal interest and concerns
- b. Informational meetings with Tribes with briefing on status, schedule, and any changes
- c. Maintain Tribal engagement throughout the planning process
- d. Maintain and build working relationships with the Tribes

Tribal Outreach Plan – cont'd

6. Tribal Outreach Plan Objectives

- a. Guidelines to meet the Governor's Executive Order B-10-11, California Natural Resources Agency and CA DWR Tribal consultation policies
- b. Outreach to interested Tribes for timely and meaningful consultation
- c. Continuous consultation throughout the project timeline
- d. Build foundation of Tribal communication and Tribal relationships
- e. Ultimate goal – Provide Tribes the opportunity to consult, monitor, and repatriate the Tribal Cultural Resources found in construction
- f. Template for Tribal consultation for not only reaching out Tribes, but the importance of meeting Tribal representatives face-to-face to get results

CA DWR's Updates on Program and Projects

Water Quality, Supply, and Infrastructure Improvement Act of 2014

- 1. Also called the Prop.1 Water Bond of 2014 (Prop. 1)**
 - a. The Water Bond authorizes infrastructure improvements to safe drinking water, watersheds, flood management, water reliability, storage, water recycling, and groundwater sustainability

CA DWR's Updates on Program and Projects

Prop. 1 allocation

**Figure 1
Uses of Proposition 1 Bond Funds**

(In Millions)

Water Supply	\$4,235
<ul style="list-style-type: none"> • Dams and groundwater storage—cost share associated with public benefits. • Regional projects to achieve multiple water-related improvements (includes conservation and capturing rainwater). • Water recycling, including desalination. 	<p>\$2,700</p> <p>810</p> <p>725</p>
Watershed Protection and Restoration	\$1,495
<ul style="list-style-type: none"> • Watershed restoration and habitat protection in designated areas around the state. • Certain state commitments for environmental restorations. • Restoration programs available to applicants statewide. • Projects to increase water flowing in rivers and streams. 	<p>\$515</p> <p>475</p> <p>305</p> <p>200</p>
Improvements to Groundwater and Surface Water Quality	\$1,420
<ul style="list-style-type: none"> • Prevention and cleanup of groundwater pollution. • Drinking water projects for disadvantaged communities. • Wastewater treatment in small communities. • Local plans and projects to manage groundwater. 	<p>\$800</p> <p>260</p> <p>260</p> <p>100</p>
Flood Protection	\$395
<ul style="list-style-type: none"> • Repairs and improvements to levees in the Delta. • Flood protection around the state. 	<p>\$295</p> <p>100</p>
Total	\$7,545

CA DWR's Updates on Program and Projects

1. Central Valley Flood Protection Plan (CVFPP)
 - a. CVFPP is a strategic and long-range plan for improving flood risk management in the Central Valley
 - b. Guides the State's participation in managing flood risk in areas protected by the State Plan of Flood Control (SPFC)
 - c. Includes recommendations on policies and financing to support comprehensive flood-risk management actions locally, regionally, and system wide, rather than promoting specific projects
 - d. CVFPP is an umbrella program containing current projects - Lower Elkhorn Basin Levee Setback (LEBLS) and Environmental Permitting for Operations and Maintenance (EPOM) with other projects coming

CA DWR's Updates on Program and Projects

2. Lower Elkhorn Basin Levee Setback (LEBLS)

- a. The first multi-benefit flood management project implemented by CA DWR in the Yolo Bypass, as part of the Central Valley Flood Protection Plan
- b. LEBLS begins the process of improving public safety by upgrading an aging flood management system to manage major floods
- c. Includes recommendations on policies and financing to support flood-risk management actions locally, regionally, and system wide, rather than specific projects
- d. The Yolo Bypass is an area of Traditional Cultural Affiliation for many tribes and tribal political organizations.
- e. CA DWR is coordinating extensively Tribes during planning, design, and construction phases.
- f. Consulting Tribes are participating in field monitoring to ensure proper treatment of Tribal Cultural Resources

CA DWR's Updates on Program and Projects

3. Environmental Permitting for Operations and Maintenance (EPOM)
 - a. EPOM is necessary to provide the operations and maintenance (O&M) to facilities of the State-Federal flood control projects within the Central Valley of California
 - b. DWR maintains certain levees, channels, and on appurtenant structures of the SRFCP along the Sacramento River and tributaries
 - c. Includes recommendations on policies and financing to support flood-risk management actions locally, regionally, and system wide, rather than specific projects
 - d. The maintenance responsibilities include, but are not limited to: (1) levee maintenance, channel maintenance, flood control structure maintenance and repair for regular maintenance, and data collection
 - e. CA DWR is in consultation with Tribes who provided comments for the EIR/EIS resulting in changes to the Cultural Resources section to reflect Tribal perspectives
 - f. Great example of Tribal consultation and how Tribes can clarify documents, help protect TCR's, and direct future Tribal engagement protocols

CA DWR's Updates on Program and Projects

4. 2017 Storm Damage DWR Emergency Rehabilitation (SDDER)
 - a. The winter storms of 2017 were severe and damaged many segments of levee system that we rely on to protect people and property from flooding
 - b. The SDDER project prioritizes the most serious damage and DWR has rehabilitated 30 sites before the 2017 flood season, and the last 9 critical sites in 2018
 - c. Under the 2017 Governor's Emergency Declaration, DWR Tribal consultation for the SDDER project reached out to affected Tribes for determination of Tribal interest
 - d. Under DWR's Tribal Engagement Policy, DWR has committed to consult with tribal entities to identify and protect TCR's where feasible.
 - e. CA DWR coordinated Tribal outreach efforts with informational meetings and site visits
 - f. Consulting Tribes stepped up to work together to provide coverage of Tribal monitors
 - g. DWR worked with GEI to provide the Tribal Sensitivity Training for construction crews
 - h. Discoveries or finds of cultural items were collected and the Tribes repatriated the artifacts and put the items to rest traditionally.

CA DWR's Updates on Program and Projects

5. East Porterville Drought Emergency Actions

- a. The Tule River Tribe issued a Declaration of Emergency Drought due to drought conditions of historic low flows and decreasing capacity of water supply wells
- b. DWR and the Indian Health Service (IHS) worked together to provide technical assistance, and short term and long term solutions for the Tule River Reservation
- c. One short-term solution was to install a supplemental well and pipe water to the Water Treatment Plant to help meet the Tribal water demands
- d. Other solutions included, tanking water from nearby ponds, large domestic water tanks, and bringing in water bottles for the emergency situation
- e. CA DWR accessed State Emergency Funds to provide \$200,000 in a cost share agreement for the supplemental well and its infrastructure
- f. Although the short-term solution helped increase water supply, the Tule River reservation still anticipates a water shortage this next water year

CA DWR's TRIBAL LESSONS LEARNED

TRIBAL LESSONS LEARNED

1. After filing the Notice of Intent or Notice of Preparation
 - a. Initial consultation is needed to find out if Tribes have an interest in the project area
 - b. Tribes need to honor the time lines for protection under AB 52 and to send ancestral maps to all potential local and state agencies requesting consultation
 - c. During initial consultation, provide the project information, timelines, and engineering drawings
 - d. DWR needs to know the most proactive tribes to handle the demands of Tribal consultation

CA DWR's TRIBAL LESSONS LEARNED

TRIBAL LESSONS LEARNED

2. Pre-Construction Activities

- a. Cultural training needs to be comprehensive to emphasize the importance of TCR's to the tribes and the respect needed when working with tribes in the construction zones
- b. Some consultants and construction people view tribal as a nuisance, and don't respect Indian Culture
- c. Emphasize the importance of initial surveys to construction crews before equipment hits the ground

CA DWR's TRIBAL LESSONS LEARNED

3. Contract Administration

- a. Need to add language to construction contracts and change orders that adversely affect TCR's
- b. Understand the contract process, especially the people administering the contract who have direct contact with field personnel for coordination of Tribal monitoring activities
- c. Need to contract directly with Tribes to eliminate overhead and expedite payments to Tribes
- d. Need to separate archeology from Tribal as Tribal monitors are the TCR experts for their land
- e. Contracts need to hold the contractor accountable for operations in the field that adversely affect TCR's, the environment and the protection from fines and additional mitigation

CA DWR's TRIBAL LESSONS LEARNED

4. Construction Phase

- a. Construction site supervisor needs to communicate expected work for the next week; changes in work schedule needs communication with Tribal monitoring lead before the work begins
- b. Construction crews and Tribes can work together to coordinate the day's work efficiently
- c. Tribal monitors need to identify the monitoring work (excavation, spoils piles, haul roads, etc.)
- d. Side agreements with landowners and contractors moving material where the landowner wants has adverse effects for TCR's, and Tribe needs permission to gain access to cultural material
- e. Some construction crews are great and work well with Tribes, while the others need to respect TCR's

CA DWR's TRIBAL LESSONS LEARNED

5. Overall Observations

- a. DWR, consultants and contractors are making progress towards understanding the Tribe's mission
- b. Tribes share their history and stories to protect TCR'S in their Tribal areas
- c. For SDDER, Tribes stepped up to the challenge of providing the necessary Tribal monitors for construction sites, and tribes worked with the crews to keep the project on schedule
- d. Tribes can work together on projects for the necessary Tribal monitoring to protect TCR's
- e. DWR, consultants and contractors need to understand the changing Tribal policies, requirements, and the implementation of these items through the phases of project management.
- f. Tribal Monitors find more TCR's because they have a stake in protecting their ancestors
- g. Archeologists should not represent the Tribal interests in the field

CALIFORNIA DEPARTMENT OF WATER RESOURCES

Thank You