

California Environmental Protection Agency 2013 Tribal Consultative Listening Sessions July 2013

The California Environmental Protection Agency (Cal/EPA) hosted two listening sessions with tribal leaders and representatives gather input on what should be considered in Cal/EPA's revision of its 2009 Policy for Working with California Indian Tribes (Tribal Policy). The listening sessions were facilitated by Cal/EPA Assistant Secretary for Environmental Justice and Tribal Affairs, Arsenio Mataka, on behalf of Agency Secretary Matthew Rodriguez.

The two-hour listening sessions began with a presentation by Assistant Secretary Mataka on the Tribal Policy update process, core elements of the policy, and key areas highlighted for revision. The presentation emphasized the direction Governor Jerry Brown has provided Cal/EPA and other state agencies under Executive Order B-10-11, the executive order that directs state agencies to work and consult with California Indian Tribes and the tribal community. Assistant Secretary Mataka stressed that tribal input is critical to define consultation, update action items, and develop a communication and consultation protocols. Assistant Secretary Mataka also asked session participants the following questions:

- What factors should be considered to define a successful communication and a successful consultation?
- What are examples of missed opportunities for communication or consultation?
- Should the scope of this policy be broad and include all types of actions or narrowly limited to identified issues or actions most important to tribes?

Webinar conference to each session was coordinated by Special Assistant for Environmental Justice and Tribal Affairs, Malinda Dumisani, and was provided for those participants who wanted to listen and participate in the sessions remotely. There were 14 participants (6 participants via webinar) in the June 25th Santa Rosa listening session and 20 participants (10 participants via webinar) in the June 27th Valley Center listening session. In total, there were 34 participants to the June 2013 Cal/EPA Tribal Consultative Listening Sessions.

The Cal/EPA Tribal Consultative Listening Sessions were held at the following locations:

- Northern California- California Department of Industrial Relations, Santa Rosa District Office, June 25, 2013
- Southern California-Rincon Band of Luiseno Indians EPA Conference Room, June 27, 2013

The June 25th Listening Session included the following participants from the following tribal governments and organizations: Cold Springs Rancheria, Coyote Valley Band of Pomo Indians, Federated Indians of Graton Rancheria, Kashia Band of Pomo Indians – Stewarts Point Rancheria,

Karuk Tribe, National Indian Justice Center, California Department of Resources Recycling and Recovery, California Department of Toxic Substances Control, California Department of Transportation Native American Liaison Branch, California Department of Water Resources, Maricopa County Air Quality Department, and Governmental Associates, Incorporated.

The June 27th Listening Session included participants from the following tribal governments and organizations: Campo Kumeyaay Nation, Ewiiapaayp Band of Kumeyaay Indians of the Cuyapaipe Reservation, Juaneño Band of Mission Indians, Acjachemen Nation, Kwaaymii Laguna Band of Mission Indians, Morongo Band of Cahuilla Mission Indians, Pala Band of Mission Indians, Pechanga Band of Luiseño Indians, Scotts Valley Band of Pomo Indians, Soboba Band of Luiseño Indians, Viejas Band of Kumeyaay Indians, California Indian Legal Services, California Department of Resources Recycling and Recovery, California Department of Toxic Substances Control, and Cal/EPA Office of Environmental Health Hazard Assessment, State Water Resources Control Board.

Feedback from the participants attending the June 25th Session:

- Consultation is defined as folks at the table who are those who can actually make decisions at the policy level – that is effective consultation.
- Consultation documentation is NOT sign-up sheets with tribal staff names on them.
- Need to do better job on training and technical assistance to Tribes upon request.
- Must be clear in distinguishing between communication versus consultation.
Communication is an event and consultation is a process.
- Consultation can take up quite a bit of time, however effective communication is over time (e.g., Metropolitan Transportation Commission (MTC) took 3 years before open discussion; Tribes genuinely felt MTC was serious about working with them).
- Must have consistent communication protocol and ensure the protocol is implemented properly or the State will not get tribal input or participation.
- The key elements of a consultation are what is said during the consultation, what is agreed upon, what is not agreed upon, and the points of contention.
- If state agencies ask Tribes to reveal sensitivities, it is important for state agencies to negotiate or agree to what protections would be in place to guard against divulging information inappropriately.
- Sending a new person every time to consultation is frustrating and leads to lack of trust from the Tribes.
- Most Tribes know state agencies and state department have to consult with Tribes now because of Governor's Executive Order B-10-11.
- There is the issue of consistency in the implementation of the Executive Order and respective policies generated by the Executive Order.
- Consultation will take time.

- Tribal people need to know how state government works, how specific agencies and state departments work.
- Does the term "regional" to tribal governments mean ancestral lands? What context does an agency or department use to decide the parameters of "regional-ness"?
- Tribes will not come into the process until sure consultation is real and will be acted upon.
- Better communication practices are needed by those who communicate with the Tribes.
- Front line communication staff must be familiar with Tribal policy and processes.
- Tribes take into account those staffers that do not respond well or in a timely fashion. Tribes also take in account those staffers who appear to be not interested in spending the time to educate Tribes on state policies and or processes.
- The United Nations Declarations of Rights of Indigenous Peoples Resolutions 18 and 19 should be considered in a consultation policy that will affect Tribes.
- Agencies and departments need to state in the notification that it will not ask specifics until consultation is underway because Tribes will not reveal information anyway until they trust the process.
- Need to dispense with the geographic delineation of county as there are different connotations for Tribes for county. The word county equates to local concerns and some counties are hostile to Tribes.
- The area of the coast is significant for all tribes in California, not just tribes that are located on the coast.
- Tribal lands equal aboriginal lands.
- Co-management of lands in the Tribal policy should include tribal to tribal co-management examples.
- Do not equate no response from Tribes as representing a lack of interest from Tribes.
- Think about tribal concerns in terms of as a resource issue. Think more in terms of taking away boundary issues as there is a cultural interest that will be beyond county boundaries and it may be 150 miles away (i.e., gathering of native plants for basket making for medicinal purposes). Look to see how far a Tribe is willing to travel to maintain a particular resource.
- Concept of boundaries is foreign to the Tribes.
- The state frontline state staffs do not need to know exact place of the cultural resource, they just need to trust that the Tribes will be interested in general about a particular issue or topic.
- Do not assume what a Tribe is or is not interested in.
- Tribes know their interests.
- State agency front line staff is so used to dealing with local agencies and there is a comfort level in working with local agencies than with Tribes. If the door is closed to Tribes, or rather an unwillingness to work with Tribes, they will understand that and will not waste their time attending and/or educating folks not willing to venture out of their comfort level.
- From tribal perspective there is a need for legislation beyond an Executive Order.
- Consistency is a key factor in working with Tribes.

- Consultation processes that work not only benefit the agency but actually benefit all parties including the Tribes.
- Successful collaborative processes result in something positive for all parties involved.
- To change or support a process, there needs to be a characterization in terms of cost savings, project delivery, resource protection, input, influence, consistency in working with Tribes.
- Pre-release a policy to everyone is the expectation, however, that approach could cause some unintended negative consequences.
- The State and Tribes both need to understand their roles better in these processes.
- When contacting Tribes, ask what area of interest do you have?
- The goal in notification is to over notify, rather than be too narrow.
- In regard to general notification, quarterly communications are appropriate. In regard to specific notifications (i.e., in detailing the details of a project), seek to have Tribes self-identify their interest (i.e., response from a Tribe in a particular topic or issue).
- If you are able to do early enough notice (i.e., when a project or issue hits planning stage), it may be appropriate to do notification by region and or topic. If you wait to be more specific in noticing it is considered too late by the Tribes because you didn't let Tribes know in general at the earlier broader planning stages.
- Tribes need to deal with state agency and department tribal liaisons that have or have the desire to learn an understanding of how tribal governments work.
- If a tribal liaison and Tribe relationship does not work well, there should be a mechanism to ensure a way to let higher agency managers know that the Tribe-State relationship or liaison is not working out with that person. Tribes should have the power to have input on their tribal liaison to help build the best working relationship.
- Need a pipeline internally at state agencies and departments of well-trained tribal liaisons to come on board with training and education.
- Need Tribal input on the staff training.
- When an action has been determined, then there is a need for consultation.
- An agency needs to collaborate before proposed action so Tribes understand what is being contemplated.
- Some Tribes may not have capacity to respond, but that doesn't mean or translate to Tribes not being interested in a particular issue or topic.
- Should train state agency first line staff to understand collaboration, consultation, and new set of definitions that will likely and frequently be used in that relationship (i.e., tribal sovereignty, cultural resource, sacred site, Tribal leader or chairperson, etc.).
- The state-tribal collaboration relationship is built over time in the Tribe's perspective, it's generational.

Feedback from the participants attending the June 27th Session:

- Implementation of the Tribal Policy will be very important.

- Tribes need more time to digest information.
- Implementation will be very important.
- Tribes have to be able to see what is going on, i.e., the draft documents, and not just get the final information. Communications cannot just be notification to the Cal/EPA Tribal Advisory Committee (TAC) members about issues or topics, especially about topics such as consultation.
- The Tribal Advisory Committee's job is to help shape the Tribal Policy and make the policy clear.
- Make sure that the meeting minutes are up on the Cal/EPA Tribal Affairs Program website.
- Establish a strong Cal/EPA Tribal Advisory Committee.
- Why should Tribes coordinate with Cal/EPA? What benefit would it be for Tribes?
- A lot of interaction between the State of California and Tribal governments does not occur but should.
- Do not come to Tribes after the fact on projects or issues.
- Local air quality issues in San Diego are being addressed unbeknownst to Tribes (e.g., the federal climate registry data is being submitted, however there is no consultation or notice that the process is occurring to the Tribes).
- Cal/EPA should ensure that its Boards, Departments, and Office make Tribal Governments aware of what state agencies are doing.
- Non-federally recognized Tribes are sometimes not considered as highly as federally recognized Tribes but they should. We are still a sovereign nation. Non-federally recognized Tribes still have tremendous value and respect for the land. Should always make sure non-federally recognized Tribes are always included in processes.
- Who are the liaisons on the Tribal Advisory Committee?
- During the consultation process, memorialization of what was said should be one of the steps.
- Policy should state that even though one or more Tribes are aware of particular issues or activities, that does not represent that another Tribe knows. All Tribes are different.
- Respect Tribal sovereignty.
- Should establish full time Tribal liaisons, preferably that are Native American.
- Tribes need to have access to meeting minutes and drafts. It cannot just be a committee meeting without Tribes and coming back and telling the Tribes how consultation is going to work.
- Unsatisfied with the development process of the last tribal communication policy.
- Continuity is key to any successful organization.
- Concern with green energy projects in San Diego County. Supposedly government-to-government consultation happened, but the decision was already made. How do we ensure that protocols are followed?
- Projects seem to be mandated from a higher authority whether Tribes want them or not. Archaeology biological surveys need to be done before work starts on a process.

- We should not be using the terms “environmental justice”. Tribes assume you are taking care of the animals and you are not.
- List of tribes can be over-inclusive. Use caution when deciding who to invite to a meeting.
- The policy needs specific information about conducting a consultation.
- Technical studies for the projects need to be brought forth to final draft form.
- General tools for consultation need to be made available.
- For cultural resources issues, it is unacceptable to say that studies will be completed after the project starts.
- In a recent ARB process, ARB was modeling for an entire county when they did not know that US EPA had already designated tribal areas. Consultation was not conducted, notification was not conducted. Tribes requested monitoring equipment.
- Some Tribes have trouble with the California Environmental Quality Act in relation to Tribal lands.

Cal/EPA will make these comments available on its website at www.calepa.ca.gov/Tribal.