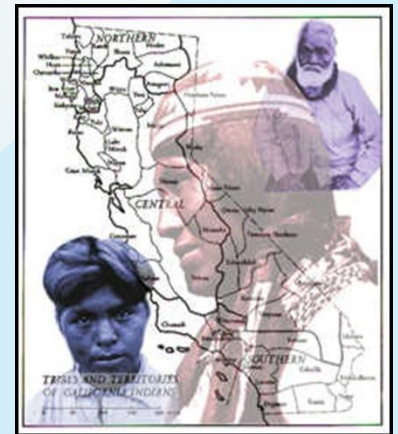


ROOTS OF TRIBAL SOVEREIGNTY IN CALIFORNIA

An Introduction



SOVEREIGNTY - DEFINED

Tribal Sovereignty was initially recognized by the U.S. as a result of having entered into treaties with Tribes.

- The U.S. only negotiates treaties with sovereign entities.

Sovereignty is the Right of Self-Governance. It is the right of an entity to make its own laws and to be governed by them.

It's important to know the difference between Sovereignty and Sovereign Immunity:

- **Sovereign immunity** is the right to be free from suit; the right not be sued in court.
- **“Sovereign”** cannot be sued because the Sovereign's assets are the assets of the community as a whole.

Inherent Tribal Sovereign is Authority by Virtue of Being



INDIAN TRIBES IN CA & NORTH COAST

U.S. Federal Government negotiated 18 Treaties (1850-1851) with California Indians setting aside 7.5 million acres of land

California Land Claims Act of 1851

- 110 federally recognized tribes in California, more than 81 that are not federally recognized
- Resulting in loss of tribal villages and scattered landless Indians in California

Today

- 110 federally recognized tribes in California, more than 81 that are not federally recognized
- 36 Tribes in the North Coast Region

NCRP does not differentiate between recognized and unrecognized Tribes for governance structure representatives or program eligibility

We strive to support equity in access to funding and program support.



MARSHALL TRILOGY CASE LAW

Johson v. McIntosh (1829)

- Applied and adopted the **Discovery Doctrine** into U.S. case law. Gave **the U.S. the exclusive right to extinguish the original tribal right of possession by purchase or conquest** as result of having arrived onto the continent. Left Tribes with the **Right to Use and Occupy the Land.**
- Served to protect federal land grants (federal land patents) which the federal government used to settle the territories.

Cherokee Nation v. Georgia (1831)

- State of Georgia attempted to apply state law over Cherokee Nation to “annihilate the Cherokees as a political society.” Cherokee Nation filed suit as a foreign nation directly in U.S. Supreme Court.
- U.S. Supreme Court held that Cherokee Nation was not a foreign nation but a **Domestic Dependent Nation.**

Worcester v. Georgia (1832)

- Missionaries sentenced by state of Georgia for residing in Cherokee Nation without a license.
- **U.S. Supreme Court held that Indian nations were distinct, independent political communities in which state law has no effect.**



TERMINATION AND RELOCATION

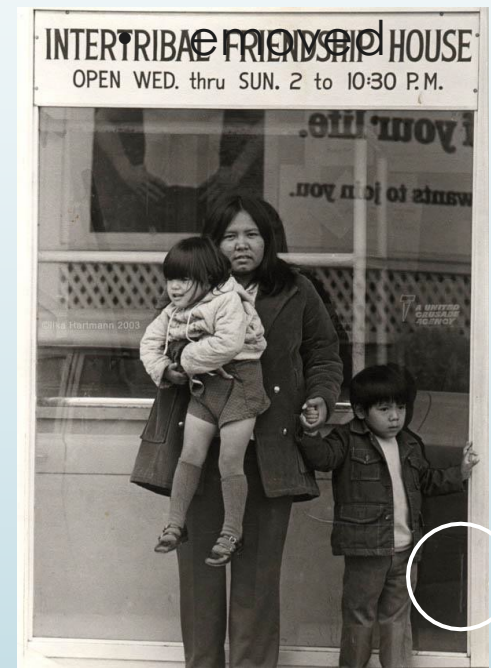
Trust Relationship

The federal government owes a fiduciary duty to the tribes to protect their interests in the lands and resources held for their benefit

- U.S. Government sought to move Indians off of the Reservation into the Urban Centers
- Through P.L. 280 (1953), the U.S. Government sought to end the Federal Trust Relationship
- Granted states criminal and civil jurisdiction in Indian Country
- Removed Tribes from federal recognized status
- Resulted in loss of land and homelessness

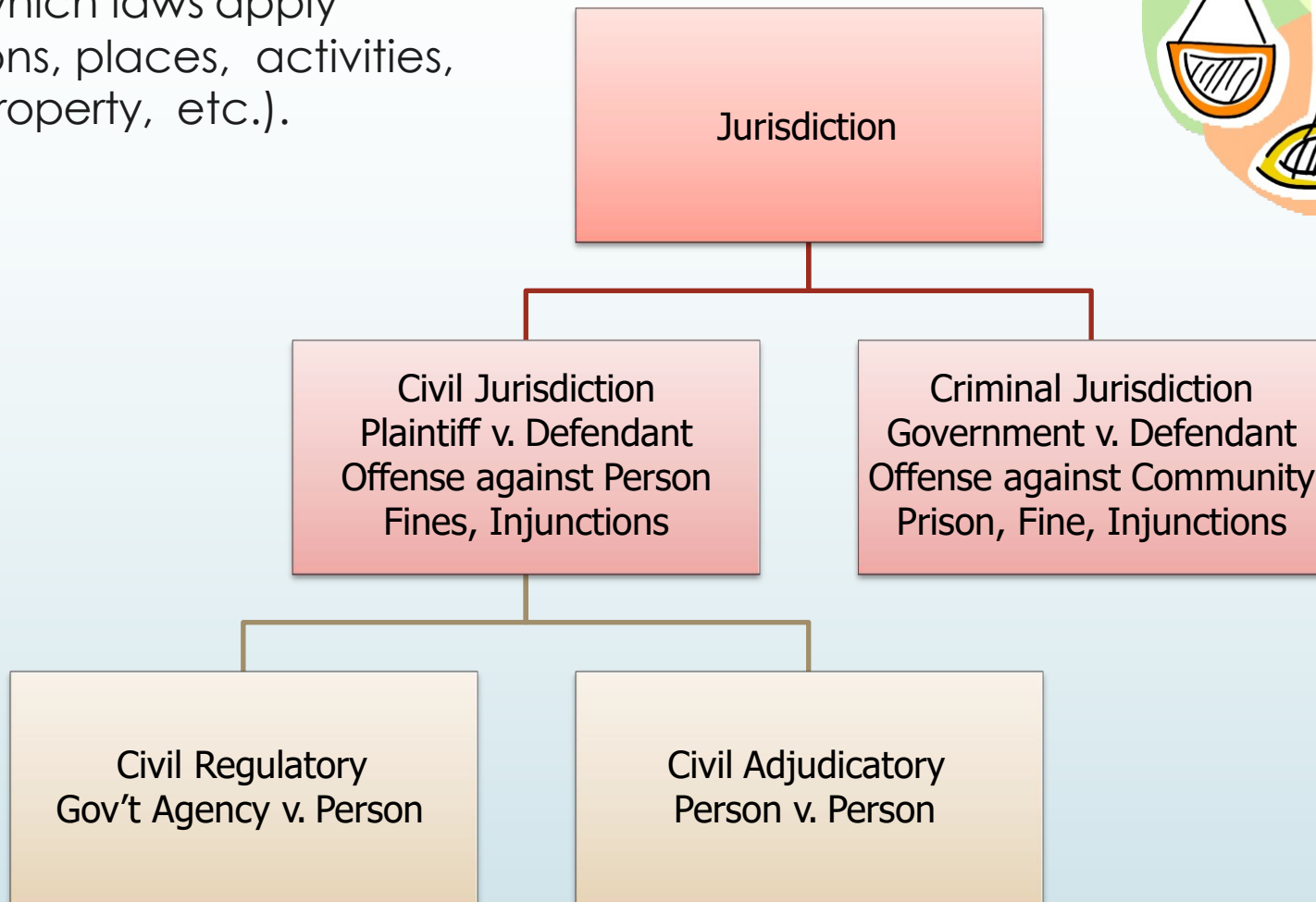
Tillie Hardwick

- 1958 her Tribe was to lose federal recognition in return for infrastructure and job training
- **1979 her lawsuit restored federal recognition status to seventeen of 34 Tribes in Northern CA**



TYPES OF JURISDICTION

Jurisdiction is the scope of that which laws apply (persons, places, activities, real property, etc.).



P.L. 280

CIVIL PROVISIONS: 28 U.S.C. § 1360. **(a) State ... shall have jurisdiction over civil causes of action between Indians or to which Indians are parties [re] private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory.**

CRIMINAL PROVISIONS § 1162. (a) Each of the States or Territories listed in the following table shall have **jurisdiction over offenses committed by or against Indians ...**

§ 1162(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States ...; **or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.**



Water Rights Law: WINTERS V. U.S., 1908

1874 – Creation of the (first large) Ft. Belknap Reservation

1887 – Ft. Belknap Reservation makes diversions from the Milk River

1888 – Agreement to cede land for non-Indian settlement, leaving tribes with smaller Ft. Belknap Reservation & the northern boundary the middle of the Milk River

1889 – Montana Enters the Union

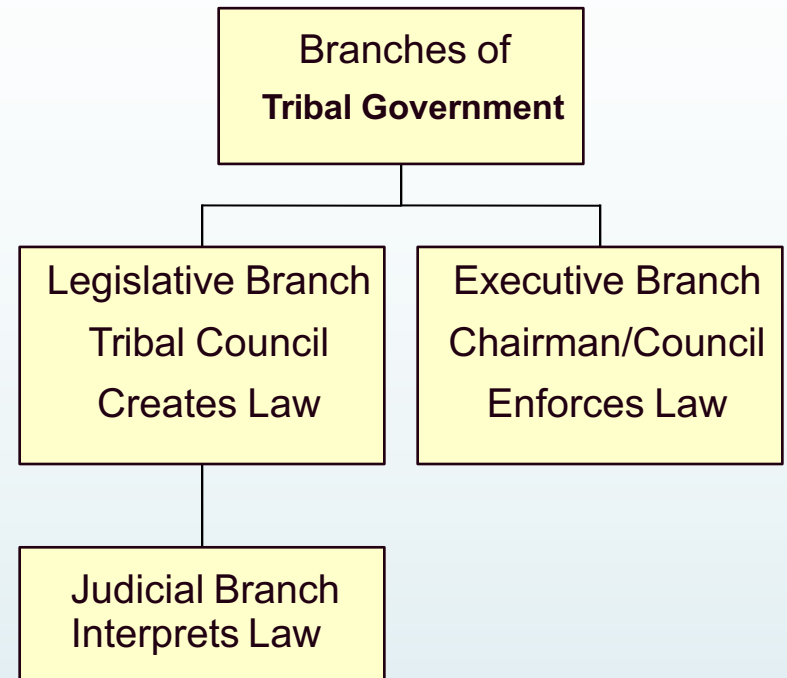
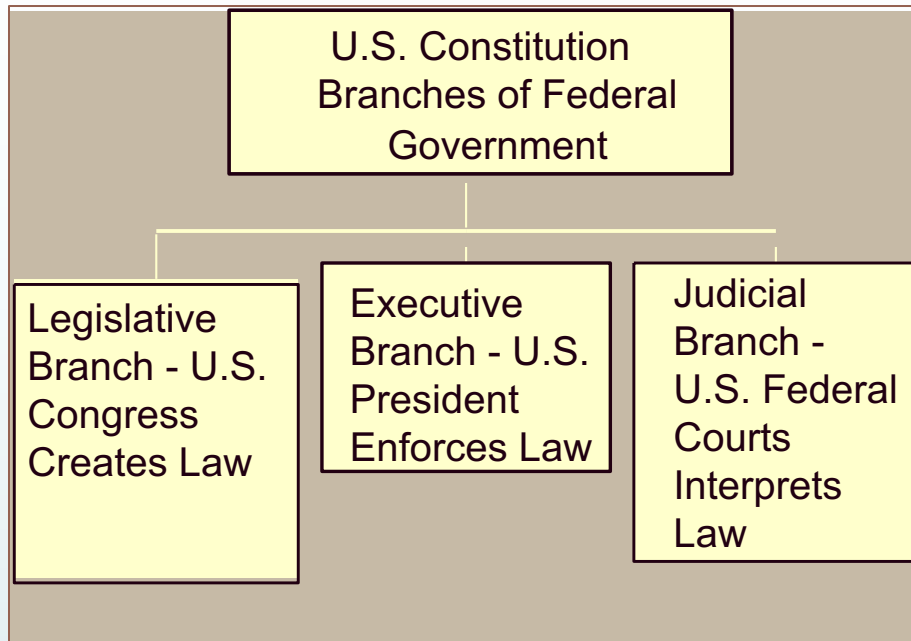
1895 – Settlers begin filing and posting their water claims on the Milk River (only source of water) pursuant to Montana water law

1898 – A government irrigation project on the Ft. Belknap Reservation takes 5,000 miners' inches for irrigation of reservation lands

- In a drought year, upstream users diverted water & deprived the Tribe of water. The U.S. sued on behalf of the Tribe.
- States admitted to the Union on the Equal Footing Doctrine. Ruled that Congress implicitly reserved water for the Reservation as of 1888.



GOVERNMENT-TO-GOVERNMENT



- Tribal Constitution
- Legislative Process and Record
- Code of Laws, Ordinances, Resolutions

- Consistency establishes the community standard
- Cooperation and collaboration



THE GOVERNMENT OF THE UNITED STATES

THE CONSTITUTION

LEGISLATIVE BRANCH

THE CONGRESS
SENATE HOUSE

ARCHITECT OF THE CAPITOL
UNITED STATES BOTANIC GARDEN
GOVERNMENT ACCOUNTABILITY OFFICE
GOVERNMENT PRINTING OFFICE LIBRARY
OF CONGRESS CONGRESSIONAL
BUDGET OFFICE

EXECUTIVE BRANCH

THE PRESIDENT
THE VICE PRESIDENT
EXECUTIVE OFFICE OF THE PRESIDENT

WHITE HOUSE OFFICE	OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF THE VICE PRESIDENT	OFFICE OF NATIONAL DRUG CONTROL POLICY
COUNCIL OF ECONOMIC ADVISERS	OFFICE OF POLICY DEVELOPMENT
COUNCIL ON ENVIRONMENTAL QUALITY	OFFICE OF SCIENCE AND TECHNOLOGY POLICY
NATIONAL SECURITY COUNCIL	OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
OFFICE OF ADMINISTRATION	

JUDICIAL BRANCH

THE SUPREME COURT OF THE
UNITED STATES

UNITED STATES COURTS OF APPEALS
UNITED STATES DISTRICT COURTS
TERRITORIAL COURTS
UNITED STATES COURT OF INTERNATIONAL TRADE
UNITED STATES COURT OF FEDERAL CLAIMS
UNITED STATES COURT OF APPEALS FOR THE
ARMED FORCES
UNITED STATES TAX COURT
UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
FEDERAL JUDICIAL CENTER
UNITED STATES SENTENCING COMMISSION

DEPARTMENT OF
AGRICULTURE

DEPARTMENT OF
COMMERCE

DEPARTMENT OF
DEFENSE

DEPARTMENT OF

DEPARTMENT OF
ENERGY

DEPARTMENT OF
HEALTH AND HUMAN
SERVICES

DEPARTMENT OF
HOMELAND
SECURITY

DEPARTMENT OF
HOUSING AND URBAN
DEVELOPMENT

DEPARTMENT OF
THE INTERIOR

DEPARTMENT OF
JUSTICE

DEPARTMENT OF
LABOR

EDUCATION

DEPARTMENT OF
STATE

DEPARTMENT OF
TRANSPORTATION

DEPARTMENT OF
THE TREASURY

DEPARTMENT OF
VETERANS AFFAIRS

INDEPENDENT ESTABLISHMENTS AND GOVERNMENT CORPORATIONS

AFRICAN DEVELOPMENT FOUNDATION
BROADCASTING BOARD OF GOVERNORS
CENTRAL INTELLIGENCE AGENCY
COMMODITY FUTURES TRADING COMMISSION
CONSUMER PRODUCT SAFETY COMMISSION
CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
DEFENSE NUCLEAR FACILITIES SAFETY BOARD
ENVIRONMENTAL PROTECTION AGENCY
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
EXPORT-IMPORT BANK OF THE UNITED STATES
FARM CREDIT ADMINISTRATION
FEDERAL COMMUNICATIONS COMMISSION
FEDERAL DEPOSIT INSURANCE CORPORATION
FEDERAL ELECTION COMMISSION

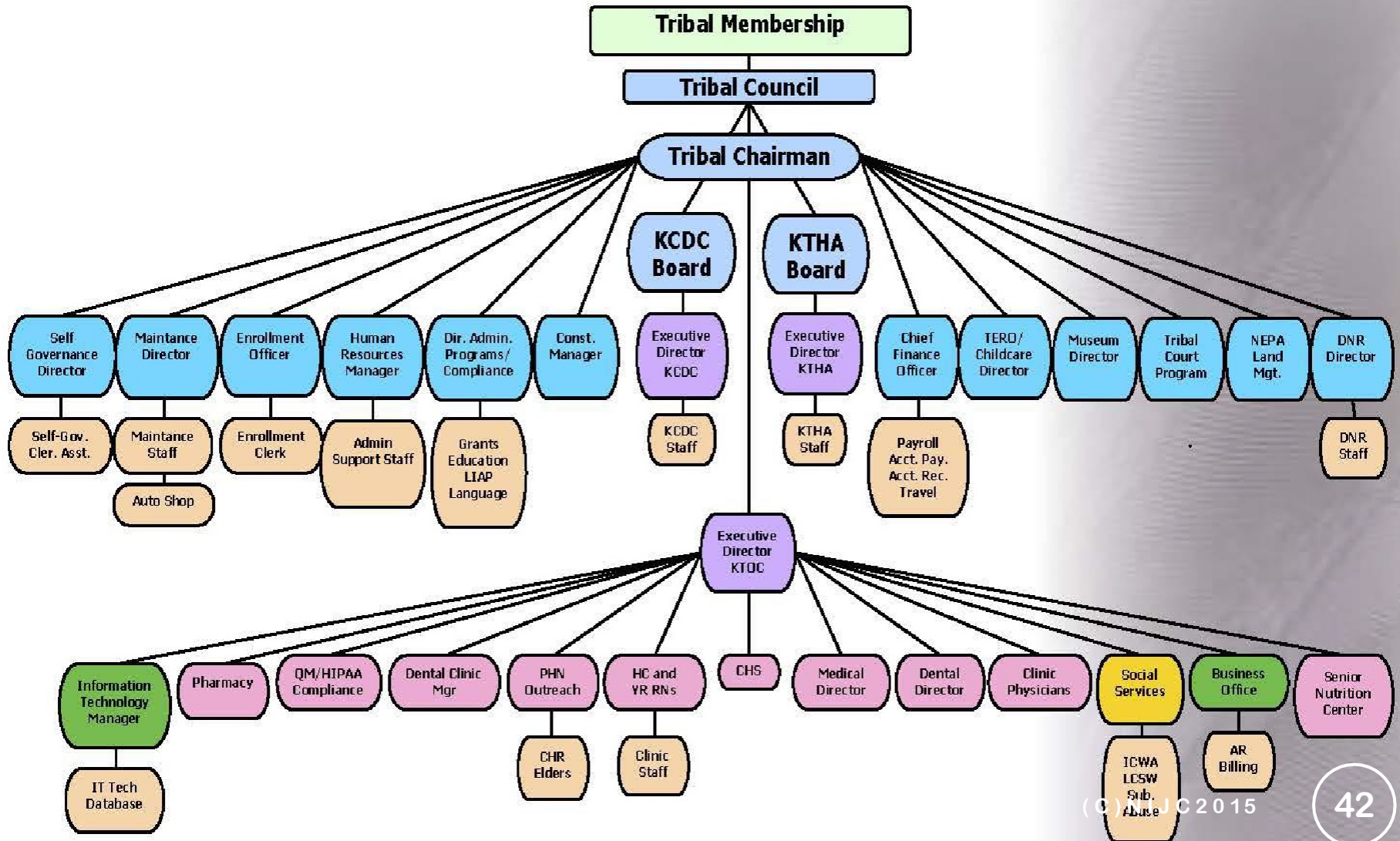
FEDERAL HOUSING FINANCE BOARD
FEDERAL LABOR RELATIONS AUTHORITY
FEDERAL MARITIME COMMISSION
FEDERAL MEDIATION AND CONCILIATION SERVICE
FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
FEDERAL RESERVE SYSTEM
FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
FEDERAL TRADE COMMISSION
GENERAL SERVICES ADMINISTRATION
INTER-AMERICAN FOUNDATION
MERIT SYSTEMS PROTECTION BOARD
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
NATIONAL CAPITAL PLANNING COMMISSION

NATIONAL CREDIT UNION ADMINISTRATION
NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES
NATIONAL LABOR RELATIONS BOARD
NATIONAL MEDIATION BOARD
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
NATIONAL SCIENCE FOUNDATION
NATIONAL TRANSPORTATION SAFETY BOARD
NUCLEAR REGULATORY COMMISSION
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
OFFICE OF GOVERNMENT ETHICS
OFFICE OF PERSONNEL MANAGEMENT
OFFICE OF SPECIAL COUNSEL
OVERSEAS PRIVATE INVESTMENT CORPORATION

PEACE CORPS
PENSION BENEFIT GUARANTY CORPORATION
POSTAL REGULATORY COMMISSION
NATIONAL RAILROAD RETIREMENT BOARD
SECURITIES AND EXCHANGE COMMISSION
SELECTIVE SERVICES SYSTEM
SMALL BUSINESS ADMINISTRATION
SOCIAL SECURITY ADMINISTRATION
TENNESSEE VALLEY AUTHORITY
TRADE AND DEVELOPMENT AGENCY
UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT
UNITED STATES COMMISSION ON CIVIL RIGHTS
UNITED STATES INTERNATIONAL TRADE COMMISSION
UNITED STATES POSTAL SERVICE

Karuk Tribe of California

Organizational Chart



TRIBAL CONSULTATION

State AB52

- Includes Tribal Cultural Resources in CEQA
- Establishes a consultation process w/ all CA Native American Tribes on the Native American Heritage Commission (NAHC) List

State SB 18

- Establishes how and when local governments must consult with Tribes that requested consultation to preserve, or mitigate impacts to, cultural places may be affected by a general plan or specific plan amendment or adoption

U.S. EO 13175

- Mandates Tribal consultation when federal agency policies involve regulations, proposed legislation, or other policy actions that have a “substantial direct effect” on Tribes.
- Requires agencies to develop a process ensuring “meaningful and timely input” by tribes...

CA EO B1011

- Office of the Governor shall meet regularly with elected officials of CA Indian Tribes to discuss state policies that may affect tribal communities...
- Every state agency shall encourage communication and consultation with CA Indian Tribes. ...
- Representatives of Tribal governments provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect Tribal communities.
- Terms “Tribe,” “California Indian Tribe”, and “tribal” include all Federally Recognized Tribes and other CA Native Americans.

OBSERVATIONS IN COMMUNICATION, COLLABORATION & CONSULTATION

- Tribes are Nations
- Each Tribe speaks on their own behalf
- Informational meetings are not the same as Consultation
- Provide materials and establish what decisions are in front of the agency and/or Tribe
- Consultation is not public – maintain confidentiality unless Tribe agrees in writing
- While, government-to-government Consultation is in statute and is mandated, it does not exclude **communication** with Tribal staff and leadership earlier than “Consultation” is required
- “Early and often” begins at the pre-planning or conceptual phase
- Meaningful input may lead to **cooperation** and **collaboration** for the better of all communities.
- Many Tribes have their own Consultation policies to be followed when consulting with that Tribe.

This Presentation was adapted in part from a presentation developed and presented by *Raquel Myers of the National Indian Justice Center* for the NCRP in 2020.

Our deepest gratitude to our friend and colleague. Kelly, thank you!



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