

APPENDIX D

Tribal Consultation

D.1 INTRODUCTION

Western recognizes the unique legal relationship between the United States and American Indian Tribes. The framework of this special relationship is based on the U.S. Constitution, treaties, Supreme Court decisions, EOs, statutes, existing Federal policies, tribal laws, and the dynamic political relationship between Indian Tribes and the Federal government. The most important doctrine derived from this relationship is the trust responsibility of the U.S. to protect tribal sovereignty and self-determination, tribal lands, assets, resources, and treaty and other federally recognized and reserved rights. In preparing the Draft EIS, Western has worked to fulfill its trust obligations and other responsibilities arising from this activity through meaningful consultation and coordination conducted through a government-to-government process.

D.2 GOVERNMENT-TO-GOVERNMENT RELATIONSHIP

The U.S. recognizes the ongoing right of Indian tribes to self-government and supports tribal sovereignty and self-determination. In conjunction with this special status, Federal agencies have a duty to consult with tribal governments on agency activities or decisions that may impact the interests or resources of a Tribe. As previously noted, the historic development of Federal relations with tribes is based on many important legal concepts and congressional actions that now form the basis of modern government-to-government relations. All interactions with Federally recognized Tribes must be conducted on a government-to-government basis.

These interactions go well beyond standard public involvement and community outreach efforts. Government-to-government consultation occurs between designated Federal agency representatives and elected Tribal officials or designated Tribal representatives. Consultation and coordination with individual tribal members, traditional/spiritual leaders, tribally-affiliated organizations and interests do not completely satisfy Western's consultation obligation, but are often necessary components to fully appreciate and better understand the perspectives and issues identified through the consultation process. The relationships developed within the entire consultation and coordination process are often invaluable to successfully completing meaningful and effective government-to-government consultation. Other associated groups or individual members of Tribes or tribally affiliated groups

should also be identified and included in the discussion, coordination, and consultation process.

D.3 FEDERAL LAWS AND STATUTES RELATING TO TRIBAL INTERESTS

There is an extensive history of Federal laws, EOs, memoranda, regulations, and policies that define legal responsibilities on Federal executive branch agencies, including Western. Collectively, these legally binding authorities, which continue to form the basis of consultation requirements, have had a profound impact on Federal-Tribal relations. The primary authorities for conducting consultation with Tribes are as follows.

- NEPA establishes a framework of public and Tribal involvement in land management planning and actions. NEPA provides for consideration of historic, cultural, and natural aspects of our environment that may be important to American Indian Tribes.
- NHPA, as amended, along with new implementing regulations, explicitly directs Federal agencies to involve Tribes in the process of identifying historic properties. Specifically, places of traditional cultural significance to Tribes are to be considered by Federal agencies in policy and project planning.
- AIRFA establishes the policy of the United States to preserve and protect American Indians' rights to exercise their traditional religions. AIRFA requires consultation with American Indian tribes to determine the potential for Federal actions or policies to impact these rights.
- NAGPRA requires consultation with Tribes to determine affiliation with human remains, funerary objects, and objects of cultural patrimony discovered on or recovered from Federal lands.
- EO 13007, *Indian Sacred Sites of 1996*, requires Federal agencies to accommodate access to and ceremonial use of sacred sites on Federal lands. Identification of these sites and the accommodation of access require consultation with Tribes.
- The Executive Memorandum on *Government-to-Government Relations with Native American Tribal Governments of 1994* sets forth principles to be followed by Federal agencies in their consultations with Tribes. These principles are intended to reinforce the government-to-government relationships with Tribes, to ensure that Federal activities are implemented in a manner that is respectful of Tribal

sovereignty, and to build a more effective working relationship with Tribes.

- EO 13175, *Consultation and Coordination with Indian Tribal Governments of 2000*, establishes regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies. It also requires each Federal agency to have an accountability process to ensure meaningful and timely input by Tribal officials in the development of Federal policies and other activities that have Tribal implications.

D.3.1 WESTERN POLICY GUIDANCE ON TRIBAL CONSULTATION

Western is guided in its consultation and coordination with Indian tribal governments not only by the Federal statutes, regulations, and policies previously noted, but also by principles set forth in the DOE *American Indian & Alaska Native Government Policy*, as revised and published in October 2000. The Policy provides direction to all DOE officials, staff, and contractors regarding fulfillment of trust obligations and responsibilities arising from DOE actions which may impact American Indians and Alaska Native traditional, cultural and religious values and practices, natural resources, treaty, and other Federally recognized and reserved rights. In October 2001, DOE Secretary Spencer Abraham reaffirmed the DOE's policy noting "We must include tribal participation in the decision-making process where our action may impact their environment and cultural interests."

D.4 SACRAMENTO AREA VOLTAGE SUPPORT ENVIRONMENTAL IMPACT STATEMENT CONSULTATION AND COORDINATION PROCESS

The consultation and coordination process was initiated by Western in August 2000 with a letter to the California NAHC requesting assistance in identifying tribal governments and individuals who should be consulted regarding the Proposed action and Alternatives. In response, Western received a listing of 92 contacts for a general study area within a 100-mile radius surrounding Sacramento, California. Letters were sent to all 92 contacts in November 2000, describing the upcoming SVS EIS process, and providing information and various means for contacting Western staff and submitting scoping comments.

Following the scoping period, alternatives for the proposed SVS project were identified and the study area was further refined to include only six counties. Based on these changes, the American Indian contact list was revised in June 2001 in consultation with the NAHC and other sources. The list included three Federally recog-

nized tribes (Shingle Springs Band of Miwok Indians, the Ione Band of Miwok Indians, and the United Auburn Indian Community of the Auburn Rancheria). Contacts also included groups that have petitioned for acknowledgment and Federal recognition status. These include the Muwekma Indian Tribe, the Miwok Indian Community of the Wilton Rancheria, and the Indian Canyon Mutsun Band of Costanoan. In addition, the contact list included four tribal-interest groups/organizations and 23 individual contacts.

A letter describing the alternatives and the refined study area was sent by Western to the 33 contacts in December 2001. The letter also contained background information on the proposed SVS project, the current project status, and schedule information. Indian tribal governments, organizations, and individuals were all invited to fully participate in the process of evaluating and commenting on the Proposed Action and Alternatives. Letter recipients were notified that Western would initiate government-to-government consultation with any Federally recognized Tribal government expressing an interest. Again, multiple means were provided for informing Western of the Tribal governments, organizations, or individuals had an interest in the SVS EIS process.

On April 3, 2002, Western sent a follow-up letter to the Federally recognized Tribal governments and others on the Native American contact list as a continuation of the consultation and coordination efforts. In addition to an update on the status of the project, Western provided a copy of the draft PA for review. Federally recognized Tribal governments and other parties were invited to become signatories to the agreement, if interested. All contacts were encouraged to provide comments.

The Ione Band of Miwok Indians contacted Western and indicated an interest in learning more about the SVS EIS. Western representatives met with tribal representatives on May 6, 2002. Western representatives provided information packets and details on proposed project alternatives. In return, tribal representatives assisted in the EIS process and development by indicating their areas of interest.

D.5 AFFECTED TRIBES AND BANDS

There are several Native American tribes and bands whose interests, rights, or resources may be impacted by the Proposed action and Alternatives identified in the Draft EIS. The Federally recognized Tribes include:

- Ione Band of Miwok Indians
- United Auburn Indian Community of the Auburn Rancheria
- Shingle Springs Band of Miwok Indians

Groups petitioning the BIA for acknowledgment but not receiving Federal recognition status include:

- Muwekma Indian Tribe
- Miwok Indian Community of the Wilton Rancheria
- Indian Canyon Mutsun Band of Costanoan

D.6 NATIVE AMERICAN ISSUES AND CONCERNS

No specific Native American issues have been identified through the consultation process thus far. Specific issues identified during the review and comment period of the Draft EIS and during the development of the PA will be addressed in the Final EIS.