

Tribal Collaboration in IRWM: Challenges, Solutions and Recommendations



UNIVERSITY OF CALIFORNIA, DAVIS

WITH SUPPORT FROM THE UC CENTER FOR COLLABORATIVE
RESEARCH FOR AN EQUITABLE CALIFORNIA

*Official Report of the Integrated Regional Water
Management (IRWM) Tribal Collaboration Effectiveness Study
to the Department of Water Resources, IRWM Division*

IRWM Grant Program: Recommendations & Best Practices for Improved Tribal Collaboration

**Official Report of the Integrated Regional Water Management (IRWM)
Tribal Collaboration Effectiveness Study to the Department of Water Resources,
IRWM Division**

**With support from the UC Center for Collaborative Research
for an Equitable California**

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University of California, Davis

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**Integrated Regional Water Management Tribal Collaboration Effectiveness Study****Letter of Understanding Between****Danielle V. Dolan, Student Researcher,****and****Kamyar Guivetchi, Manager,****Regarding Research Results and Project Outcomes**

In accordance with the expectations set out in the initial funding application to the Center for Collaborative Research for an Equitable California, and the associated Letter of Support from former Department of Water Resources (DWR) Tribal Liaison and Policy Advisor Kimberly Johnston-Dodds (attached), we do hereby agree to the following statements:

Results from the IRWM Tribal Collaboration Effectiveness Study, including best practices for DWR IRWM project plans, will be published in a formal report and provided electronically to all project major partners, participating agencies, and other participants. Project partners and related UC departments will archive the report on their respective websites. Hard copies of all publications will be provided (upon request) to participants lacking internet access.

DWR did not fund or solicit this research to be conducted. DWR is not responsible for any associated costs or liable for any potential outcomes. DWR will provide support to the student in acquiring necessary and relevant public information, as well as internal non-confidential information when appropriate, to further the research initiative. In order to maintain the efficacy and reliability of the research being conducted, DWR will have no role in informing or shaping research outcomes. DWR will serve in a "recipient client" relationship with the student researcher and the project as a whole.

It is understood between all parties that the student and research team are conducting this research at will and independently. The research findings and final recommendations report are being provided to DWR in good faith to support the public review process of policy initiatives. It is understood that DWR will have no ownership rights to the final report. DWR and all other agencies are welcome to distribute and use the information freely, with proper citation.

DWR will consider the final report findings to inform the California Water Plan Update 2013, future IRWM grant guidelines, the IRWM Strategic Plan, the Water 360 initiative, and other related planning efforts. It is the hope of the student and the research team that project outcomes will help shape public policy in California by improving Tribal collaboration across agencies.

On this 19 Day of the Month of August, 2013 we do hereby agree to the above statements.

Kamyar Guivetchi, Recipient Client
Manager, Statewide Integrated Water Management
California Department of Water Resources

Sign

Date

Danielle V. Dolan, Student Researcher
M.S. Candidate, Community Development Graduate Group
University of California, Davis

Sign

Date

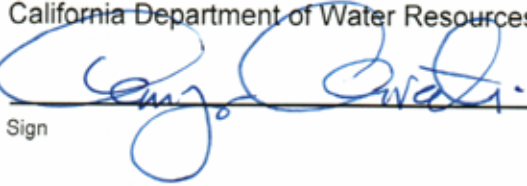
Beth Rose Middleton, Principal Investigator and Student Advisor
Assistant Professor, Department of Native American Studies
University of California, Davis

Sign

Date

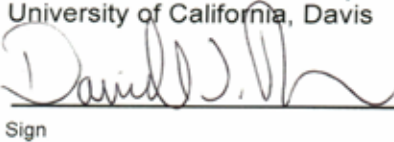
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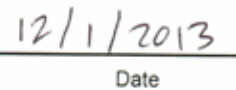
Kamyar Guivetchi, Recipient Client
Manager, Statewide Integrated Water Management
California Department of Water Resources


Sign

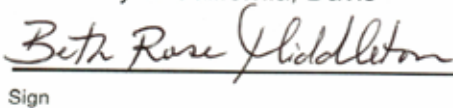

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Thank you to everyone that completed a survey, attended a focus-group meeting, participated in an interview, and submitted comments. Your contributions are greatly appreciated.

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- Jeff Loux, Ph.D., Director, Land Use and Natural Resources Program, UC Davis Extension
- Kimberly Johnston-Dodds, M.P.A., M.A.

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We would also like to thank Ms. Emily Alejandrino, and the Tribal Advisory Committee to the California Water Plan for their continued support, encouragement, and guidance in our work, and the California Indian Water Commission for their extensive review and constructive feedback on this report.

Distribution curves courtesy Sophie Castleton.

We thank the Creator for providing our precious waters and lands, and the many generations who have come before us that laid the foundations for our success.

Executive Summary

Study Purpose

The Integrated Regional Water Management (IRWM) Tribal Collaborative Effectiveness Study evaluates Tribal participation in the Department of Water Resources' (DWR) Integrated Regional Water Management (IRWM) grant program. The Department administers the overall IRWM program, and individual regions form Regional Water Management Groups (RWMG) develop IRWM plans and submit specific water management projects for funding consideration by DWR. Following indigenous collaborative research protocols, we conducted surveys, interviews and focus-group meetings with Tribal representatives throughout the state. While we collected data from Tribes statewide, our efforts were focused in five specific IRWM regions. The aim of our research is to identify strengths, weaknesses, and opportunities for Tribal participation in the IRWM program.

Critical Issues

From the beginning, Tribal participation in the IRWM program has been hampered because the original IRWM-enabling legislation (SB 1672) did not mention Tribes. The first set of guidelines developed by DWR and the State Water Board for Proposition 50 planning grants, released in 2004,¹ also did not mention Tribes. Yet IRWM is seen as the future of CA water management, involves waters encumbered with unresolved Native claims, involves lands and resources under Native jurisdiction, and proposes projects and programs that impact Native communities and governments (thus requiring consultation and collaboration with Tribes by federal executive order).

Tribes are specifically addressed in subsequent IRWM legislation (SB 732 (2008): PRC § 75102, AB 685 (2011-2012): CWC § 10540 and Guidelines revisions (RAP 2009, Planning & Implementation 2012). Since then, RWMGs have been more actively engaging Tribes. However, the initial exclusion

of Tribes has caused lasting challenges for Tribal engagement in IRWM. Key challenges identified through our research include lack of understanding of Tribal sovereignty and government-to-government relationships on the part of RWMGs; lack of meaningful and sustained outreach to Tribes; and established mechanisms of IRWM participation that are perceived by Tribes as infringing on Tribal sovereignty, thus reducing Tribes' desire and ability to participate in IRWM.

Research Outcomes

In some regions, and with some strong partnerships, Tribes have effectively engaged in the IRWM process from the outset. Others found ways to overcome barriers to participation, by applying via respected Tribal nonprofits or establishing Joint Powers Authorities, for example, so that they could be lead applicants for funds. The establishment of strong communicative and mutually respectful relationships with RWMGs seems to be a major factor in successful Tribal engagement in IRWM. To enable more positive outcomes such as these, we recommend key legislative and policy changes to the IRWM program. We also provide recommended best practices for agencies and RWMGs to improve Tribal engagement. Some changes require amending IRWM-related water code (e.g., CWC § 10530 & § 10540 et seq.) and/or revising the IRWM guidelines, to:

- (1) Mandate Tribal seats on RWMG governing boards;
- (2) Develop a Tribally-led process for selecting representatives to fill Tribal seats;
- (3) Draft MoU/MoAs for Tribes that do not imply waivers of sovereignty;
- (4) Name Tribes among eligible lead applicants; and
- (5) Absolve Tribes of CEQA compliance.

This report is a comprehensive starting point to consider how to improve and enhance effective participation, collaboration, and leadership by California's First Peoples in state integrated water management initiatives. We offer socio-political/ cultural context,

¹ It is important to note that Proposition 50 proposals must be CEQA compliant, and CEQA includes a Native American Tribes notification requirement.

survey data and quotes from interviews with Tribal representatives, DWR staff, and others to illustrate both the scope of challenges Tribes face in meaningful participation in IRWM and possible solutions to resolving identified concerns. The IRWM program is in many ways broadly representative of several emerging water policy initiatives with similar challenges for Tribal involvement. To this end, we briefly discuss the issues with Tribal participation in these initiatives as well as broader potential actions to improve Tribal engagement.

Principal Recommendations

The two highest-level policy recommendations from Tribes are:

- (1) The State of California, and all its agencies, must conduct true government-to-government consultation with Tribes; and
- (2) The Integrated Regional Water Management (IRWM) program must include requirements that Tribes be allowed to participate in the governance structure of their respective RWMG(s).

Specific policy action-items to support these two key recommendations are outlined in the following section.

(1) The State of California, and all its agencies, should conduct true government-to-government consultation with Tribes

- In collaboration with California Tribal representatives, the California State Legislature should amend SB 18 to require consultation with California Native American Tribes prior to adopting or changing any IRWMP (as is currently required for city and county regional or specific plans).
- The California Natural Resources Agency, and its Departments, should work with Tribes in developing intergovernmental summits to address Tribal issues and potential collaborative efforts.
 - » Ensure Tribal leadership and executive-level agency staff members are present so action-items can be determined and decisions can be made.
 - » Facilitate summits at various scales: statewide, by hydrologic region, and by watershed or IRWMP region.
- The Department of Water Resources (DWR) and the State Water Resources Control Board (State Water Board) should work directly with Tribes to revise all program documentation (Guidelines, Proposal Solicitation Packages (PSP), Proposal Review Processes (PRP), etc.) prior to any future grant rounds or other funding mechanisms, to ensure consultation between Regional Water Management Groups (RWMG) and Tribes.
 - » Develop an addendum to the Proposal Review Process (PRP) specifically addressing Tribal Issues (in addition to Appendix H - Plan Review Process recently released for Round 3 Funding).
 - » Develop Tribal consultation protocols and requirements for Regional Water Management Groups (RWMG) as a precursor to eligibility for all future funding mechanisms.
- The Department of Water Resources (DWR) should work with Tribes in each hydrologic region to identify preferred consultants, outreach personnel, and Tribal Liaisons.
 - » This list should be developed in collaboration with Tribal representatives. Suggested qualifications include: being educated in the Tribal communities in which liaisons/ outreach personnel/ consultants are going to work; making personal contacts in those communities; and understanding the cultural/ political landscape(s) of Indian Country, particularly in California.

- » Direct RWMGs to select consultants and liaisons from the Tribal-recommended list.
- » Pursue funding allocations to improve resources and support available to DWR Tribal Liaisons.
- » Provide mandatory, region-specific cultural awareness training for all Tribal liaisons.
 - *Each region has specific water, ecology, language, and traditions, making it necessary to offer training on a region-specific level. Engaging California Indian traditionalists in offering these trainings for Tribal liaisons is especially encouraged. Traditionalists are not necessarily Tribal political representatives, but are cultural practitioners and knowledge holders. Trainings should be structured with appropriate deference to Tribal intellectual property rights.*

(2) The IRWM program should include requirements that Tribes be allowed to participate in the governance structure of their respective IRWM region(s).

- The California State Legislature should amend CWC § 10540 to require Tribal inclusion in RWMG governance structures.
- The Department of Water Resources (DWR) and the State Water Resources Control Board should work directly with Tribes to revise all program documentation (Guidelines, Proposal Solicitation Packages (PSP), Proposal Review Processes (PRP), etc.) prior to any future grant rounds or other funding mechanisms, to ensure respective Tribes are included in all RWMG governance structures as a precursor to eligibility for all future funding mechanisms.
 - » The governance structure (including all decision-making committees) of each Regional Water Management Group (RWMG) should provide the appropriate number of seats for Tribal government representatives on each body (as determined through consultation with Tribes in that region).
 - » The RWMG should create an open period of at least two months in which interested Tribes in their region may submit a Letter of Interest on behalf of their Tribal Council for a governing body or Committee seat. A call for submissions should be sent out to all Tribes in the area, disseminated via Tribal networks, and posted on the DWR website, and on each IRWMP website.
 - » Interested Tribes should determine among themselves which Tribal representatives will fill those seats, in the event that there are more applicants than designated seats. Independent supporting agencies, regional organizations and Tribes could help facilitate the call for Letters of Interest and collection of responses.
- The Department of Water Resources (DWR) should provide guidance and technical assistance to all Regional Water Management Groups (RWMG) in adapting their IRWMPs to fully incorporate Tribes.
 - » DWR should consult with Tribes and RWMGs with successful Tribal participation (e.g., North Coast, Inyo-Mono, Tuolumne-Stanislaus) to develop effective models for other regions to follow.
 - » DWR should provide model revisions for all IRWMP documents to fully incorporate Tribes.

In addition to the two critical policy recommendations addressed above, Tribal representatives have recommended a wide range of other actions to better facilitate Tribal collaboration in IRWM. Many of the issues and recommendations identified stem from the initial IRWM Guidelines' failure to include Tribes. DWR staff continue to assert that the Guidelines are limited by what is included in the legislative code, including grant eligibility. However, There is nothing in the legislative lan-

guage or subsequent code that explicitly limits funding applicants to local agencies and non-profit organizations. Further, DWR has full authority under the legislative code to revise the guidelines (and expand eligibility requirements) as necessary.

§ 10541 (a): The department shall develop project solicitation and evaluation guidelines for the application of funds made available pursuant to Section 75026 of the Public Resources Code, to enable broad and diverse participation in integrated regional water management plan development and refinement.”

§ 10541 (i) The guidelines shall provide for a process for the development, periodic review, updating, and amending of integrated regional water management plans. The department shall establish eligibility requirements for the project funding, that provide sufficient time for the updating of plans as necessary to reflect changes in the guidelines.

As illustrated by the language in CWC § 10540 and § 10541 (see Appendix C-5), the current statutory interpretation that excludes Tribes is a policy decision, not a legislated mandate, and thus can be changed by DWR without legislative action. We strongly urge the Department to revise the current IRWM program Guidelines, to address issues identified by California Tribal communities, prior to Proposal Solicitation for Round 3 funding.

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Acronyms and Abbreviations

Acronyms and Abbreviations

AB	Assembly Bill
BLM	U.S. Bureau of Land Management
BMPs	best management practices
CABY	Cosumnes, American, Bear, Yuba (watershed)
Cal EPA	California Environmental Protection Agency
CEQA	California Environmental Quality Act
CIEA	California Indian Environmental Alliance
CNAC	California Native American Heritage Commission
CNAT	California Native American Tribe
CNRA	California Natural Resources Agency
CCREC	Center for Collaborative Research for an Equitable California
CWC	California Water Code
CWP	California Water Plan
DAC	Disadvantaged Community
DOI	U.S. Department of the Interior
DWR	Department of Water Resources
EJ	Environmental Justice
EO	Executive Order
EPA	U.S. Environmental Protection Agency
FAN	Water Plan Federal Agency Network
GIS	Geographic Information System
Guidelines	IRWM Guidelines
HUD	Federal Office of Housing and Urban Development
IRWM	integrated regional water management
IRWMP	Integrated Regional Water Management Plan
IITC	International Indian Treaty Council
ITCC	Inter Tribal Council of California
IWM	integrated water management
JPA	Joint Powers of Authority
MoA	Memorandum of Agreement
MoMU	Memorandum of Mutual Understanding
MoU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NRCS	Natural Resources Conservation Service
PAC	Public Advisory Committee to the California Water Plan

PL-280	Public Law 280
PRC	Public Resources Code
PSP	Proposal Solicitation Package
PUC	Public Utilities Code
RAP	Regional Acceptance Process
Region 9 RTOC	United States Environmental Protection Agency Region 9, Regional Tribal Operations Committee
RWMG	Regional Water Management Group
RWQCB	Regional Water Quality Control Board
SASC	State Agency Steering Committee to the California Water Plan
SB	Senate Bill
SWRCB	State Water Resources Control Board
SWWG	Sierra Water Work Group
TAC or Tribal AC	Tribal Advisory Committee to the California Water Plan
TAS	Treatment as States
TEK	Traditional Ecological Knowledge
TWS	Tribal Water Summit
UC Davis	University of California, Davis
UNDRIP	United Nations Declarations of the Rights of Indigenous People
Update 2005	California Water Plan Update 2005
Update 2009	California Water Plan Update 2009
Update 2013	California Water Plan Update 2013
USBR	U.S. Bureau of Reclamation
US Forest Service	U.S. Department of Agriculture Forest Service

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1 - Project Overview

1 Project Overview

1.1 Research Impetus

The purpose of our study is to evaluate current efforts under the Department of Water Resources' Integrated Regional Water Management Program to collaborate with Tribes on IRWM planning and project grants. Integrated Regional Water Management (IRWM) in California is meant to be a collaborative process between agencies and stakeholders in each of California's 48 designated regions (CA DWR 2009). Many Tribes have expressed dissatisfaction with the current IRWM process. The Department of Water Resources (DWR) recognizes the need to identify and address possible issues before IRWM planning and resulting projects can be truly effective for Native communities (California Tribal Water Summit 2009). Through our focused investigation of Tribal participation in DWR's IRWM Grant Program, we have identified current challenges and potential solutions, as expressed by California Tribes and Tribal organizations. We hope our recommendations to DWR, Regional Water Management Groups (RWMGs), and IRWM practitioners will inform future IRWM policy and practices, grant guideline revisions, and IRWM plan updates, leading to improved collaboration with California Native American Tribes.

1.2 Research Questions

The objective of our research is to evaluate the opportunities for and levels of Tribal participation in the IRWM Program. Specifically, we address three IRWM needs identified by California Tribes:

- (1) Greater Tribal participation in the development of IRWM Plans and Plan revisions,
- (2) Tribal participation in the governance structure of Regional Water Management Groups, and
- (3) Funding and successful implementation of Tribally-led IRWM projects.

Previous work conducted by the California Indian Environmental Alliance (CIEA) and Tribes in the Cosumnes, American, Bear, Yuba (CABY) IRWM region guided the early development of our research questions. Shingle Springs Rancheria hosted a meeting of CABY Tribes in 2012, at which the Tribes proposed 13 issues that needed to be

addressed for Tribes to effectively participate in the CABY IRWMP (see Appendix A-2). Two of our other collaborative partners (Stephanie Lucero, Tribal Facilitator for the California Water Plan, and Kimberly Johnston-Dodds, M.P.A., M.A.) recognized similarities between the issues expressed by Tribes in the CABY IRWM region and concerns they had heard expressed by Tribes in other regions. Thus, we identified the above three overarching needs for further investigation.

Our goal is that these recommendations will be implemented through state legislative directives and revisions to the IRWM Program documents (Guidelines and Proposal Solicitation Package (PSP)) prior to the Round 3 Funding cycle for IRWM Implementation Grants funded by Proposition 84. By its inclusion in the California Water Plan Update 2013, we hope this report further influences IRWM management practices and decisions, as well as the Strategic Plan for the future of IRWM, the potential 2014 Water Bond, and any future grants funded through state bond measures. Additionally, we intend our suggested best practices to better equip RWMGs, IRWM consultants, and other stakeholders to more respectfully and effectively collaborate with Tribes.

Common questions raised by non-native IRWM practitioners regarding Tribal engagement in IRWM include: (1) what is the preferred method of engagement by Tribes, (2) what is effective in engaging Tribes, and (3) what is detrimental to Tribal engagement efforts? There are no absolute answers to these questions; each Tribe will have its own specific answers. We hope that the recommendations and best practices presented in this report provide additional motivation and guidance for addressing these questions through appropriate, respectful Tribal engagement.

1.3 Background

In 2002, the State Legislature enacted the Integrated Regional Water Management Planning Act to:

...facilitate the development of integrated regional water management plans, thereby maximizing the quality and quantity of water available to meet the state's water needs by providing

a framework for local agencies to integrate programs and projects that protect and enhance regional water supplies. (California SB 1672)

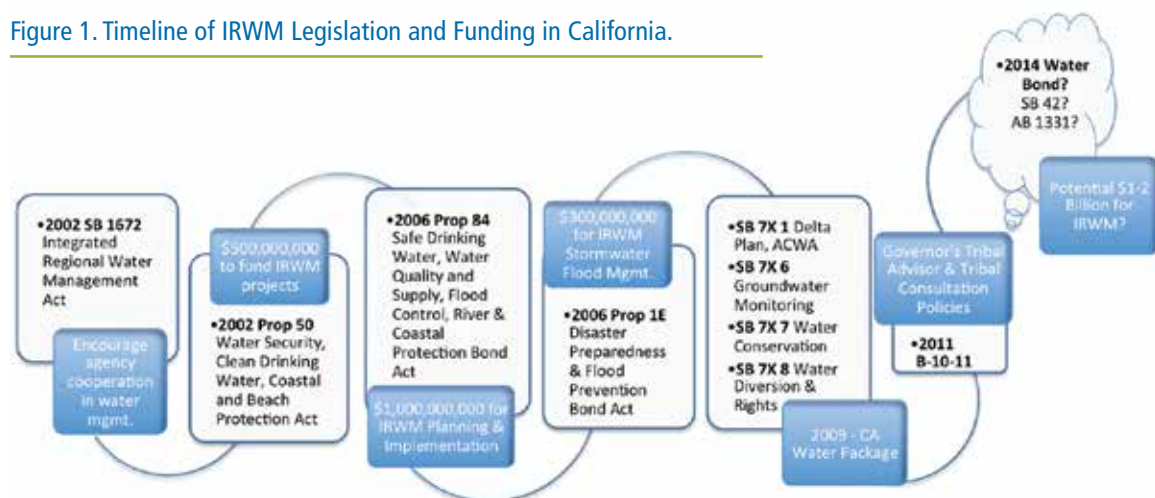
According to DWR, “Integrated Regional Water Management (IRWM) is a collaborative effort to manage all aspects of water resources in a region. IRWM crosses jurisdictional, watershed, and political boundaries; involves multiple agencies, stakeholders, individuals, and groups; and attempts to address the issues and differing perspectives of all the entities involved through mutually beneficial solutions” (California Department of Water Resources 2012). IRWM is the California’s chosen mechanism for collaborative water management. The legislature has backed this initiative with \$1.8 billion in various appropriations and bond measures, most notably the IRWM Grant Program administered by the Department of Water Resources under Proposition 50 and Proposition 84 (see Figure 1).

Integrated Regional Water Management is of significant interest to Tribes. All of California, now subdivided into 48 IRWM regions, is Tribal ancestral land (see map, Appendix E-1). California Indians maintain important cultural and spiritual ties to these lands, and continue to fulfill their traditional stewardship responsibilities to them, whether or not they are held in trust status. Natural resources decisions raise highly sensitive concerns regarding Tribal rights, jurisdiction, identity, and livelihoods. IRWM provides an opportunity for Tribes to participate in the water management planning process.

The level and success of Tribal engagement, inclusion, and participation in IRWM has varied widely across the state. In some regions, Tribes have been actively involved from the beginning. In others, Regional Water Management Groups (RWMGs) have been very successful in incorporating Tribes into the process, even after the process has begun. However, many regions have not shared this success. In our five focal regions, for example, Tribes were generally dissatisfied with the level of inclusion. Many felt the program language “essentially excluded Tribes from the planning and decision-making process,” (S. Norris, Personal Communication, March 15, 2012) and that RWMGs were not doing enough to include Tribes. In fact, the original legislation establishing IRWM, SB 1672 (2002), did not mention Tribes. Nor did the first set of guidelines developed conjunctively by DWR and the State Water Board for Proposition 50 planning grants, released in 2004². Tribes were not specifically addressed in IRWM until subsequent IRWM legislation (SB 732 (2008): PRC § 75102, AB 685 (2011-2012): CWC § 10540 and Guidelines revisions (RAP 2009, Planning & Implementation 2012). To apply for funds, grant applicants and/or recipients must be “a local agency or public utility,” defined as “any city, county, city and county, special district, joint powers authority, or other political subdivision of the state” (CWC § 10535). As Tribes do not easily fit into any of these categories, they are deemed ineligible for direct IRWM funds.

² It is important to note that Proposition 50 proposals must be CEQA compliant, and CEQA includes a Native American Tribes notification requirement.

Figure 1. Timeline of IRWM Legislation and Funding in California.



The California Water Plan (CWP) and IRWM are two distinct programs, administered by separate divisions within the Department of Water Resources. However, the CWP incorporates IRWM concepts and makes general recommendations regarding IRWM. Indeed, the theme of Update 2009 was Integrated Water Management: “Update 2009 builds on the framework and resource management strategies outlined in Update 2005 as it continues to promote two major initiatives: integrated regional water management and improved statewide water and flood management systems” (Update 2009).

As part of the 2009 CWP update, the Department of Water Resources co-sponsored the first Tribal Water Summit (TWS), which brought together “leaders, members, and representatives from 66 Tribes, 15 Tribal organizations, 13 State agencies, and 8 Federal agencies,” to “address a decades-long need for Tribal involvement in California water planning” and “ensure that California will be able to better manage its water resources for the benefit of California Native American Tribes and all California citizens well into the future” (Proceedings, 2009 Tribal Water Summit).

The Proceedings of the 2009 Tribal Water Summit included 70 Recommended Action items for DWR and other state agencies to address Tribal water issues. From these action items, two common themes emerged: (1) the need for the highest level of communication and collaboration between Tribal leaders and governmental agencies, and (2) the need for greater acceptance, acknowledgement, and incorporation of Traditional Ecological Knowledge in California’s natural resources planning and management. One of the highest priority items repeatedly mentioned within these action items was to increase Tribal participation in IRWM planning and access to IRWM grant funds—for example, general obligation bonds should include language explicitly articulating their availability to Tribes and Tribal non-profits. Six of the 70 recommendations from the Tribal Water Summit 2009 directly address IRWM, and 17 additional recommendations are closely related to IRWM (California Tribal Water Summit 2009).

Following additional legislation elevating Tribal participation as a priority (SB 732), the 2009 Tribal Water Summit, and other state initiatives, DWR included a section on “Tribal history and consultation”

in Volume Four (Reference Guide) of the CWP Update 2009 (CWP Update 2009, see Appendix D-9). This section includes the 2009 Tribal Water Summit Proceedings. Based in part on feedback from the Tribal AC, Update 2013 includes “water-dependent cultural resources” as a new Resources Management Strategy (see section 3.4, CWP Update 2013, below). Subsequently revised IRWM guidelines incentivized RWMGs to pursue Tribal participation. In the 2009 guidelines, applicants could receive two additional points on their implementation grant proposals if Tribes were participants in their RWMG. Our interviewees felt that this incentive could be stronger, and that it should be specified that Tribal “participation” means active, ongoing engagement by Tribal representatives. The 2010 PSP, in the Work Plan Content section, requires proposals to “explain how the proposed tasks support involvement and participation of Native American Tribal communities in the IRWM planning effort” (PSP 2010). However, there were no specific planning criteria associated with this requirement. The 2012 IRWM Plan Standards, under section 14, specifically list Native American Tribes as one of the 13 “appropriate local agencies and stakeholders” that the IRWM plan must provide outreach to and extend an opportunity to participate. Section 14 also requires “a discussion of how the RWMG will endeavor to involve Disadvantaged Communities (DACs) and Native American Tribal communities in the IRWM planning effort.” The 2012 PSP includes in its seven Review and Scoring Criteria a potential five points for “whether the Proposal will implement one or more of the specified IRWM Grant Program Preferences” (i.e., Statewide Priorities). One of these Statewide Priorities is to “Improve Tribal Water and Natural Resources” (Section F, Table 1, Guidelines 2012).

In addition to the strides being made in California in the late 2000s to increase Tribal involvement in statewide water policy, Tribal concerns were gaining greater attention both nationally and internationally. The United Nations adopted the Declaration of the Rights of Indigenous People (UNDRIP) in 2007, and the US followed in 2010. Relevant to IRWM, the UNDRIP states that “Indigenous peoples have the right to the...resources which they have traditionally owned, occupied or otherwise used” (Article 26), and “Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands...and other

resources” (Article 32). In 2009, President Obama signed a Memorandum on Tribal Consultation affirming his administration’s commitment to “regular and meaningful consultation and collaboration with Tribal officials,” and directing each agency to formulate specific plans to implement Executive Order 13175 (2000). Executive Order 13175 requires agencies to engage in meaningful and timely consultation with Tribes before promulgating any policies or projects that affect Tribes. Similarly, Governor Brown authored Executive Order B-10-11 (effective 2012), which established the position of Governor’s Tribal Advisor and requires all California state agencies to “encourage communication and consultation with California Indian Tribes,” along with other directives (see Appendix D-1 for a complete copy of the Order). The California Natural Resources Agency was the first CA state agency to develop a Tribal Consultation Policy following B-10-11 (Secretary Laird, Personal Communication, February 25, 2013).

Eleven years after the initial IRWM Act passed, and four years after the first Tribal Water Summit, some improvements have been made to the IRWM program. Official program documents (Guidelines and Proposal Solicitation Package (PSP)) now explicitly address the importance of collaborating with Tribes, and some RWMGs now include specific positions on their governance structures for Tribes. However, this is only in a handful of cases, and many Tribes continue to report barriers to full participation in IRWM. Tribal representatives we interviewed asserted that the IRWM program model possesses qualities that are inherently problematic for Tribal collaboration. For example, many Tribes find it difficult to become signatories (thus formalizing their participation) to the IRWM plans. Becoming signatory often involves signing Memorandums of Agreement (MoA) or Understanding (MoU) with RWMGs. Most Tribal Councils have been hesitant to sign these because of concerns of direct or indirect infringement on Tribal sovereignty.³ Tribes are often barred from sitting on the decision-making bodies of their RWMGs, simply because no seat(s) were designated for them at the time of the group’s formation. If Tribes want to have a representative on the governing body and a seat is created for them,

most IRWMPs require all participants (including Tribes) to “adopt” the IRWM plan and/or sign on to the MoA/MoU (again, these documents are sometimes viewed by Tribes as potential waivers of sovereignty). Some Tribes do not take issue with signing on to the MoA/MoU, but then face challenges with grant funding: “For the North Coast IRWMP, all we had to sign is the [Memorandum of Mutual Understanding]. While on the other hand the funding agreement ‘requires’ a partial waiver of sovereign immunity, which is wrong on many levels” (E. Crosby, Personal Communication, October 8, 2013).

The IRWM Tribal Collaboration Effectiveness Study evaluates these and other challenges, as well as strengths of the current IRWM Program, regarding productive and respectful engagement with California Native American Tribes.

1.4 Methods

This project began in February of 2012, with initial discussions between the project PI, graduate student researcher, and collaborative partners. In March of 2012, the research team secured primary funding from the UC Center for Collaborative Research for an Equitable California (CCREC), through the “Planning and Development Grants for Collaborative Research Projects” program. Additional funding sources and project associates are outlined below. The entire project was completed with countless volunteer hours, and on a budget of less than \$20,000.

Funders:

- Center for Collaborative Research for an Equitable California (CCREC)
- Consortium of Women in Research (CWR)
- UC Davis Cross-Cultural Center
- Environmental Justice Project White Family Foundation
- Orville Thompson Fellowship

³ We have not been privy to discussions between Tribal staff, RWMG representatives and Tribal Councils regarding MOAs/MOUs and, as such, are unable to comment on the exact nature of the potential or direct infringement on Tribal sovereignty.

IRWM Tribal Collaboration Effectiveness Study, Research Team:

- Professor Beth Rose Middleton, Principal Investigator and Student Advisor, University of California, Davis
- Danielle V. Dolan, Graduate Student Researcher & Project Lead, University of California, Davis
- Sherri Norris, Executive Director, California Indian Environmental Alliance, Osage Nation
- Stephanie Lucero, J.D., LL.M., Tribal Facilitator, CA Water Plan Update 2013, Program Specialist at National Indian Justice Center

IRWM Tribal Collaboration Effectiveness Study, Advisory Committee:

- Joyce Gutstein, John Muir Institute of the Environment; University of California, Davis
- Tom Biolsi, Professor, Native American Studies; Chair, Ethnic Studies Department, UC Berkeley
- Dr. Robin DeLugan, Assistant Professor of Anthropology, Center for Participatory Research, UC Merced
- Jeff Loux, Ph.D., Director, Land Use and Natural Resource Program, UC Davis Extension Chair, Department of Science, Agriculture and Natural Resources, UC Davis Extension
- Kimberly Johnston-Dodds, M.P.A., M.A.

The IRWM Tribal Collaboration Effectiveness Study research methods followed an indigenous participa-

tory action model, in which the research questions, process, and goals were developed with Native California Tribal members and organizations. Participation was open to all California Native American Tribes, regardless of federal recognition status or level of involvement in IRWM to date. We purposefully included all perspectives in our research: that of both federally and non-federally recognized Tribes, those that have and those that have not participated in IRWM, and both those with a positive and those with a negative perspective on or experience with IRWM. In this way, we were able to maximize the examples and suggestions collected, and have a wider context from which to identify key challenges and effective recommendations.

Data were collected in three formats: formal surveys, semi-structured interviews, and strategic focus groups. We collected responses from Tribes throughout the state, representing approximately 1/4 of Tribes statewide; 1/3 of all federally recognized Tribes, and just over 1/10 of non-federally recognized Tribes. Table 1 below displays Tribal participation by recognition status statewide; the number of Tribes in each of our five IRWM focal regions is outlined in Table 2. For more specific information on Tribal participation by IRWM region, see Appendix A-6.

We conducted targeted data-collection in five IRWM regions that represent different stages in the IRWM process: The North Coast; The Upper Feath-

Table 1. All identified Tribal research participants statewide; representing at least 19 IRWM regions.

Tribal designation	Number of Tribes in the state	Number of Tribes that Participated ^a	Percentage of Tribes that participated
All Tribes in the state	160	42	26%
Federally recognized Tribes	109 (68%) ^b	35	32%
Non-federally recognized Tribes	49 (31%) ^c	6	12%
Terminated Tribes	Unknown	1	Unknown

a Number represents identified participants. We collected 29 anonymous surveys; there is no way to determine from which IRWM region or Tribe these were submitted.

b 109 California Tribes are listed on the notice, "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs" (Federal Register 78 (87): May 6, 2013. However, knowledgeable California Tribal leaders and representatives asserted that the notice was out-of-date and 111 tribes are now federally recognized in California.

c 49 Tribes are currently listed on the Native American Heritage Commission's list of "Non-federally Recognized California Tribal Governments." However, this number is often disputed.

er River; The Upper Pit River; Cosumnes, American, Bear, Yuba (CABY); and WestSide Sacramento. These regions were strategically selected in collaboration with our partners, including California Indian Environmental Alliance, which has been organizing Tribal participation in IRWM, and Stephanie Lucero, the Tribal Facilitator for the California Water Plan. Within each of these five regions, we ensured the input (in at least one of our three formats) of at least 1/3 of the federally recognized Tribes and 1/3 of the non-federally recognized Tribes. We identified which Tribes to consider as part of a region using a “wide-net” approach, based on the following criteria:

- Tribes with land-holdings within the IRWM region boundaries (reservations, Rancherias, designated Indian communities, Tribal land trusts, private land-holdings, etc.)
- Tribes with traditional territory within the IRWM region boundaries (identified by the Native American Heritage Commission’s map of Native California Languages and Tribes; see Appendix E-1)
- Tribes with territory (current land holdings as well as ancestral lands) within the watershed of, or adjacent to the boundaries of, the IRWM region.

Table 2. Number of Tribes by IRWM region, including percentages of the total for each category.

	Statewide	North Coast	West Side	CABY	UPR	UFR
All Tribes	160	38	24	22	5	7
Federally recognized Tribes	109 (68%)	33 (87%)	21 (87%)	14 (64%)	5 (100%)	6 (86%)
Non-federally recognized Tribes	49 (31%)	5 (13%)	3 (13%)	8 (36%)	0 (0%)	1 (14%)

Table 3. Research participants by identified group and participation category.

Participating Group	Surveys	Interviews	Focus Group Participants	Submitted Comment	^d Total Participants
Federally Recognized Tribes	23	11	16	7	35
Non-Federally Recognized ^e Tribes	6	1	3	0	7
Other/ Tribal Organization ^f	4	8	11	6	20
Non-disclosed	29	n/a	n/a	0	29
Total for each category	62	20	30	13	62-91 ^g

^d We adjusted the totals column to represent actual individual representation by eliminating overlap of participating in multiple categories.

^e Identified by the California Native American Heritage Commission list, as of December 2012

^f “Other” includes representatives of Tribal non-profits that participated (in a survey, interview, or focus group). Despite our best efforts at inclusion, there may be Tribal communities that are not federally or state recognized, or Native American Heritage Commission contact lists, and were thereby left out of our sample.

^g Total representation must be displayed as a range, because we cannot identify whether or not the 29 non-disclosed surveys are from Tribes/ groups already represented in other participation categories.

Our survey tool was developed, field-tested and validated following the Rea and Parker model (Rea and Parker 1992). See Appendix A-4 for a copy of the survey instrument and A-5 for the validation process. Prior to releasing our official survey tool, we sent introductory email letters to the Tribal Chair, environmental department director, and cultural resources representative (as applicable) to each of the 165⁴ Tribes in California (109 federally-recognized and 49 non-federally recognized). To increase the likelihood of reaching our target populations we performed the exhaustive task of collating and cross-referencing Tribal contact lists from multiple state and federal sources, including the Office of the Governor's Tribal Advisor, the California Native American Heritage Commission, and EPA Region 9 Regional Tribal Operations Committee (RTOC). For Tribal contact information that could not be verified, we used multiple sources for individual Tribes. All told, over 500 individuals were contacted, informed of our research goals, and notified of the forthcoming survey.

The survey was converted into online format using Survey Monkey, and the web link was emailed to 259 listed Tribal Chairs and 258 listed Tribal environmental contacts.⁵ Included in the e-mail with the web link was an option to download the survey

instrument (as a .pdf file) to be completed and then mailed or scanned and e-mailed for return. We also provided the option to conduct the survey in person or over the phone during an interview. Additionally, paper copies of the survey instrument were mailed to 33 Tribal contacts (within our five target IRWM regions) for which we only had mailing addresses. Along with the mailed survey, we provided a pre-addressed, stamped envelope in which to return the survey, as well as information on how to complete the survey online, over the phone, in person or via email, if preferred. Two weeks after initial surveys were sent, we began follow-up with survey invitees. We sent an email reminder to all invitees, post-card reminders to those without email addresses, and conducted follow-up phone-calls to Tribal contacts in our target IRWM regions (102 Tribes from our 5 regions).

We received 62 survey responses (hard-copy and online web surveys combined). Additionally, we conducted 20 interviews and five focus groups, representing 30 Tribes & Tribal organizations. Table 3 below outlines participation by recognition status and participation method. We have included relevant survey data throughout the report as it pertains to specific issues and solutions. For a more thorough analysis of our survey data, please see Appendix 8.

4 According to the May 6, 2013 Federal Register, Department of the Interior, Bureau of Indian Affairs, "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs" and the December 2012 Native American Heritage Commission contact list.

5 Disparity in numbers due to unverified contact information, thus multiple contacts for individual Tribes.

2 - Key Challenges & Proposed Solutions

2 Key Challenges & Proposed Solutions

The 109* federally recognized Tribes and 49 non-federally recognized Tribes in California are all sovereign entities (although the sovereignty of non-federally recognized Tribes is not recognized by the federal government). Each Tribe has its own history, culture, political structure, priorities, and concerns. Each Tribe possesses strong relationships with, detailed traditional knowledge of, and abiding responsibilities to their ancestral lands and waters.

California's 48 IRWM regions are self-identified regional cooperatives with a wide range of governance structures and regional priorities. One of the stated benefits of the Integrated Regional Water Management (IRWM) Program is the flexibility and autonomy of Regional Water Management Groups (RWMGs) to self-define their regional boundaries, priorities, and structures. This self-definition took place during the Regional Acceptance Process (RAP) in 2009 and 2011 (IRWM Grants). Since many Tribes were not involved in the initial formation of RWMGs and the RAP, they may have significant interests in multiple IRWM regions. This may be problematic in several ways, including the time required of a single Tribe to participate in multiple, distinct RWMG decision-making processes.

Some RWMGs and their IRWM plans have been very effective in terms of inclusion of multiple parties, and implementation of successful projects to

meet local and regional water management needs. Other RWMGs and their plans have faced significant challenges, including lack of meaningful participation by Tribes and others, and stalled projects. Tribal participation within individual RWMGs and their planning processes has also varied significantly. A prime example is the Upper Sacramento River RWMG: Each of the four Tribes within this region has a different level of involvement with the RWMG, and perspectives expressed by the Tribes regarding the RWMG and the planning process included: "great opportunity," "wary of the process," and "complete distrust." According to the region's Project Development Coordinator, some Tribes are enthusiastic participants, while others do not want to participate at all (D. Olstein, Interview, February 26, 2013). Still other Tribes desire to be part of the process, but also have multiple existing governance responsibilities and initiatives, and lack sufficient resources to fund personnel time to participate in IRWM.

Despite the variation of Tribal-IRWM relationships, even within a single region, a closer investigation reveals certain similarities in Tribal-IRWM relationships, as well as systemic issues in State-Tribal relations that go far beyond the context of IRWM alone. Tribes that have participated in this research unanimously agree that:

- (1) The State of California, and all its agencies, should conduct true government-to-government consultation with Tribes; and,
- (2) The IRWM program should include requirements that Tribes be allowed to participate in the governance structure of their respective IRWM region(s).

During our investigation of Tribal collaboration in IRWM, certain key topics emerged. We have grouped these topics into three general categories: "Engagement," "Sovereignty," and "Structure." Specific challenges and recommendations are presented in the context of each category. "Engagement" topics include outreach, support, and communication efforts. Topics grouped under "Sovereignty" include jurisdictional issues, waivers of sovereign immunity, and government-to-government consultation.

Each Tribe has its own history, culture, political structure, priorities, and concerns. Each Tribe possesses strong relationships with, detailed traditional knowledge of, and abiding responsibilities to their ancestral lands and waters.

* 109 California Tribes are listed on the notice, "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs" (Federal Register 78 (87): May 6, 2013). However, knowledgeable California Tribal leaders and representatives asserted that the notice was out-of-date and 111 tribes are now federally recognized in California.

Issues regarding “Structure” include IRWM governance, funding mechanisms, projects, and program documents. At the beginning of each section, the specific categories and topics are discussed in further detail.

Within each section, we include analyses and summaries of survey data relevant to each specific topic. Simple descriptive statistics are used only to provide a clearer view of survey responses (e.g., response rates, distributions of responses, rankings). The results are not meant to be extrapolated to the general public, or even the entire Tribal population; nor is any evaluation made of the statistical significance of the analysis. For general reference, a “normal distribution” of any set of data points reflects a bell-shaped curve (see Figure 2 below). This reflects that there are no significant similarities or differences in responses. When the distribution of responses is not a normal bell-shaped curve, inferences can be made into why responses were not “normally distributed.” For a more thorough discussion of survey data analysis, refer to Appendix A-5 and A-6.

Overall Perception of IRWM, based on survey data results

Question 14 asked respondents to select ways in which their Tribe would consider participating in the IRWM process. In regard to general interest and participation, only 2% of respondents would *not* consider participating in IRWM. However, the response rate for “we are satisfied with current participation” was also quite low (15%). This illustrates

the need for greater Tribal engagement in IRWM overall. See Appendix A-6 for source data.

Question 15 asked respondents to rate their level of agreement or disagreement (on a scale of 1 to 5) with a series of statements regarding their participation and experience in IRWM. Figure 3 below displays the percentage of responses to each of the eleven elements, as: agreement, neither agree nor disagree, and disagreement. See Appendix A-6 for distribution curves of all eleven statements and source data. Of note, the responses for statements (D), (F), (G); agreement responses are twice that of those in disagreement. Thus, according to our survey research, these are areas in which IRWM is successful:

- (D) “Our local IRWM is making progress.”
- (F) “I am adequately informed of the IRWM meetings in my area (i.e. dates, times, locations).”
- (G) “I am familiar with some of the other people or groups involved with my regional IRWM (for example the participants, stakeholders, etc.).”

Also of note are statements (J) and (K):

- (J) Two thirds of respondents agree: “The creation of a regional “Tribal Issues” workgroup would result in Tribal concerns being included in the final IRWMP.” In interviews, some respondents articulated the need for travel support to enable participation in such a workgroup.
- (K) Nearly three quarters of respondents agree: “Additional mandates from IRWM funding managers are necessary to ensure Tribal concerns are addressed.”

Figure 2. Representation of the Normal Distribution Curve.



Figure 3. Summary of responses to survey Question 15: "On a scale of 1–5, please rate how much you agree or disagree with the following statements." See Appendix A-6 for source data.

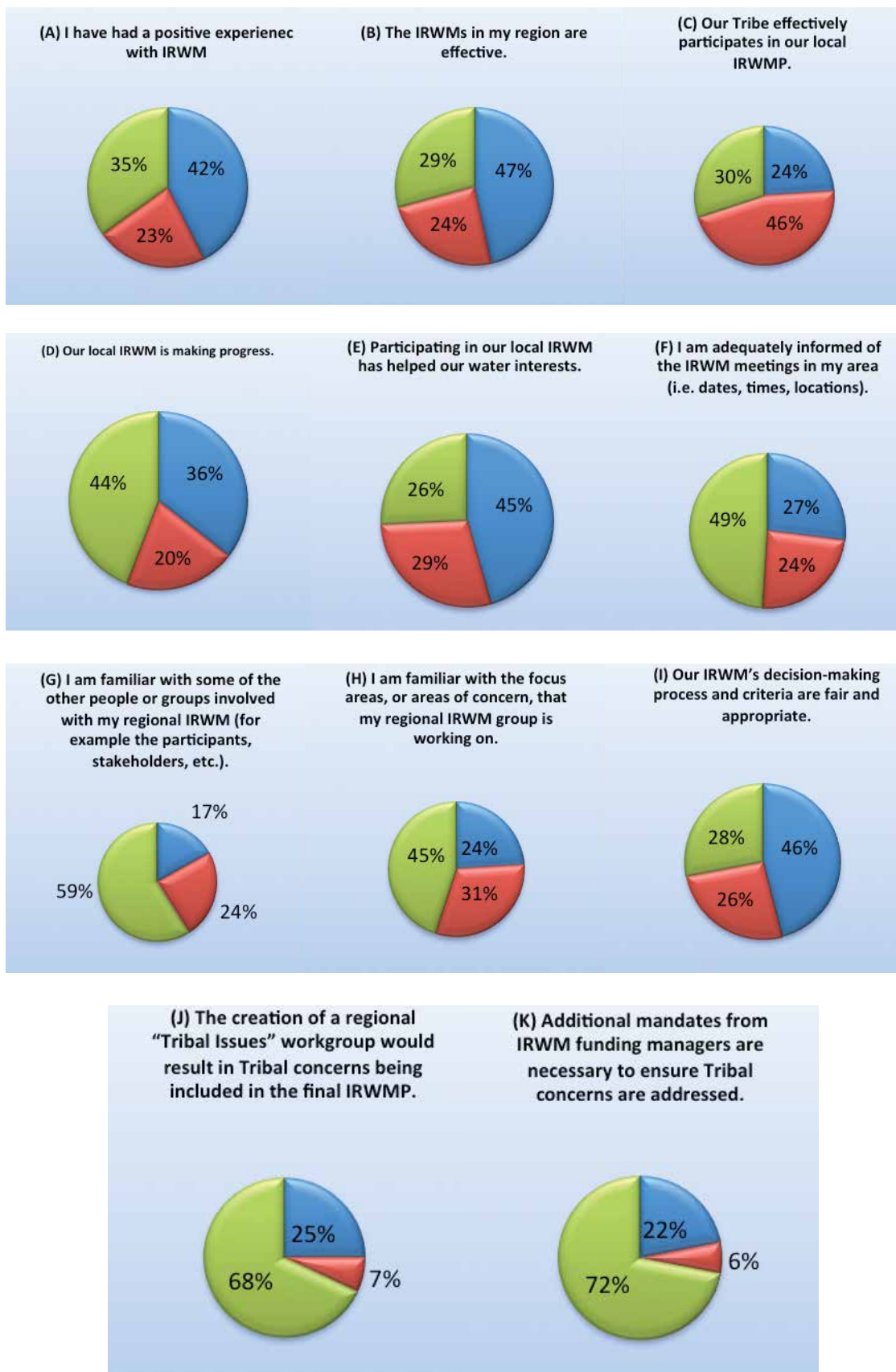


Figure 4. Distribution of responses to Question 15, Statement (J): The creation of a regional "Tribal Issues" work-group would result in Tribal concerns being included in the final IRWMP. See Appendix A-6 for source data.

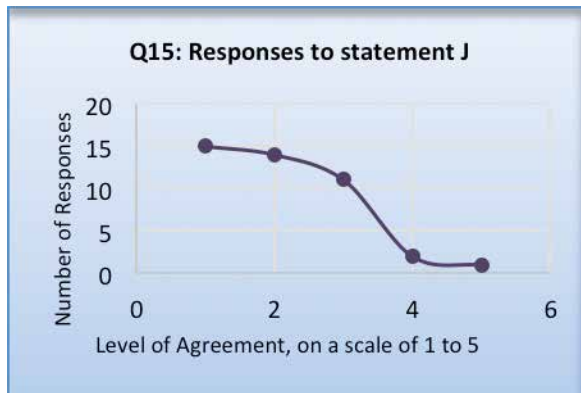


Figure 5. Distribution of responses to Question 15, Statement (K): Additional mandates from IRWM funding managers are necessary to ensure Tribal concerns are addressed. See Appendix A-6 for source data.

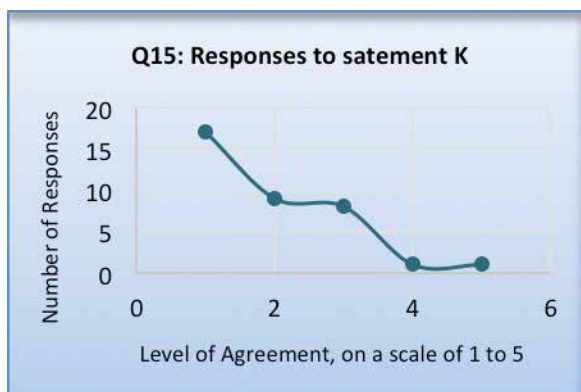


Figure 6. Distribution of responses to Question 16: "Regarding influence and involvement, please rate the following on a scale of 1 to 5." See Appendix A-6 for source data.

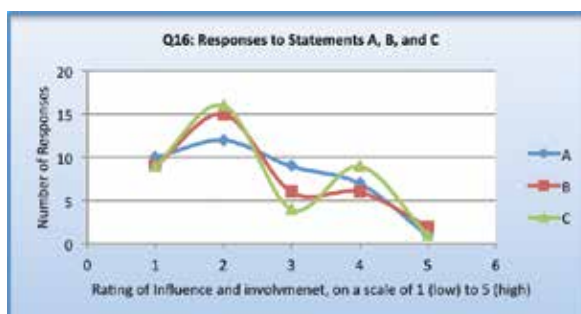


Figure 4 and Figure 5 below display the distribution curves for these two statements. Note the positively skewed (tail elongated to the right) distribution, as opposed to the expected normal distribution curve. That is, more respondents rated higher levels of agreement than disagreement with statements (J) and (K). These results represent key priorities in addressing Tribal concerns and increasing Tribal collaboration in IRWM.

Question 16 asks respondents to rate their level of influence and involvement on a scale of 1 to 5 (1 = None, 2 = Minimal, 3 = Average, 4 = Above Average, 5 = Optimal) for three aspects of IRWM participation:

- (A) The level of influence that you feel Tribes have in your region's IRWM overall.
- (B) The level to which Tribe's suggestions and concerns are integrated into your local IRWMP.
- (C) The level of inclusion, involvement and support of Tribal projects overall.

As is to be expected, the distribution of respondent ratings is, for the most part, normal (trending toward the middle). However, as can be seen from the distribution curves presented in Figure 6 below, there is a slight positive skew (tail elongated to the right), which in this case illustrates that survey respondents feel that Tribes' influence and involvement in IRWM is less than average.

The calculated percentages of respondents reporting below average (red), average (blue), and above average (green) influence and involvement are illustrated below. In all three instances, more than half of respondents rated their level of influence and involvement as either minimal or none. Thus, there is significant room for improvement in regard to increasing the level and effectiveness of Tribal collaboration in IRWM.

Question 19 asks respondents to rate how positive or negative (on a scale of 1 to 5; 1=Very Positive, 2=Somewhat Positive, 3=Neither Positive nor Negative, 4=Somewhat Negative, 5=Very Negative) their experience has been in their local IRWM, in relation to eleven specific aspects of participation. As expected, responses to most of the aspects were evenly distributed (trending toward the middle). Two aspects, though, have a strong positive (right) skew:

- (E) Structure of project development and submission process.
- (K) General communications between IRWM group representatives, Tribal members, and other stakeholders.

Figure 8 and Figure 9 below display distribution curves for these two aspects.

Question 23 asks simply “Has IRWM benefited your Tribe/ Organization?” Less than 1/4 of respondents answered “yes.”

Results from questions 19 and 23 imply that experience with IRWM ranges widely and is dependent upon individual circumstances. These results also illustrate one area in which IRWM is generally perceived as effective: sharing and providing information to participants.

Figure 7. Summary of responses to survey Question 16: “Regarding Influence and Involvement, Please rate the following on a scale of 1 – 5.” Percent of responses above average (green), average (blue), and below average (red). See Appendix A-6 for source data.

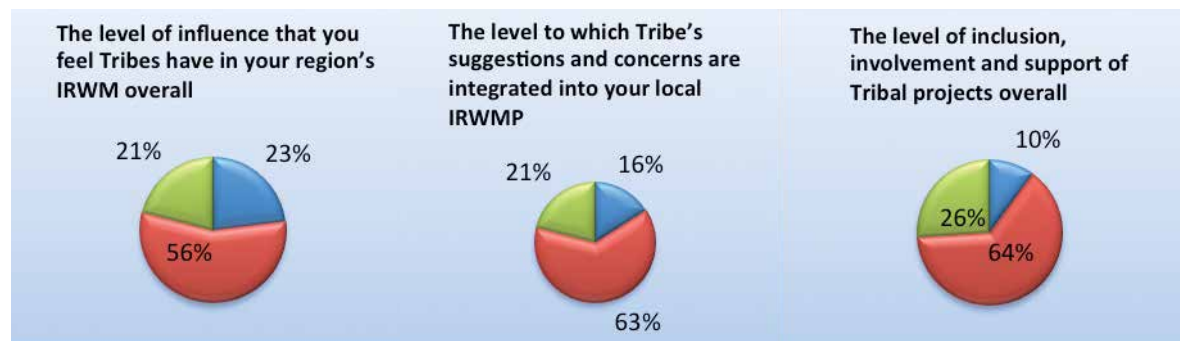


Figure 8. Distribution of responses to survey Question 19: “Please rate how positive or negative your experience has been with the following aspects of participation in your local IRWM,” Aspect (E): “Structure of project development and submission process.” See Appendix A-6 for source data.

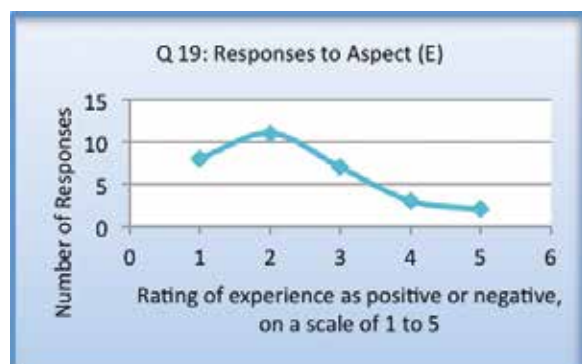
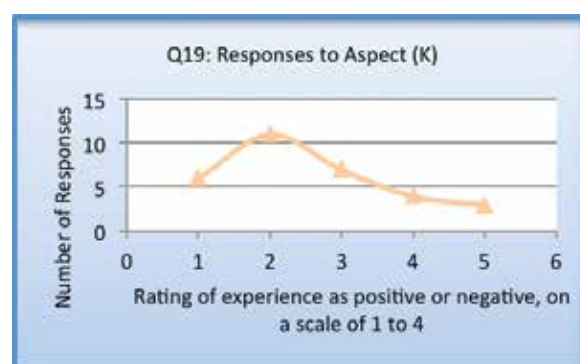


Figure 9. Distribution of responses to survey Question 19: “Please rate how positive or negative your experience has been with the following aspects of participation in your local IRWM,” Aspect (K): “General communications between IRWM group representatives, Tribal members, and other stakeholders.” See Appendix A-6 for source data.



2.1 Engagement

Engagement is a crucial part of any collaborative, stakeholder process. Generally the onus is on the lead party to keep all participants fully involved and effectively contributing to the program; however there is some level of expectation from the participants to remain engaged as well. According to one highly active IRWM Tribal coordinator, “If Tribes want the IRWM regions to be more responsive to Tribes, they need to be at the table talking to them or at meetings...Tribes need to want to participate as much as the regional groups want them to participate” (C. Peters, Interview, June 11, 2013). In this section, we discuss challenges and potential solutions related to IRWM outreach efforts, program support for Tribal involvement, and communication efficacy.

Outreach

Concerns regarding outreach include the format, method, frequency, and cultural sensitivity of soliciting Tribal participation in integrated regional water management planning and implementation. The lack of effective outreach to Tribes is a critical issue across state agencies and departments—cer-

tainly not limited to DWR or IRWM groups. Two common issues cited by Tribal representatives are: 1) the lack of expertise and skills among state employees (at all levels) to work effectively with Tribes and 2) the lack of formal, individual duty statements to guide the state employees working with Tribes. Individual duty statements would also serve to formalize institutional support and recognition for agency personnel that are already implementing effective outreach and collaboration with Tribes. Executive Order B-10-11 and subsequent policies elevated the importance of State consultation with Tribes (see Section 1.3 Background and Section 3.6 Executive Order). However, the Order and related individual agency Tribal consultation policies can only be fully implemented if individual agencies and departments commit institutional support (including resources, protocols, and staff) to effective Tribal outreach and engagement.

Question 4 of our survey asks respondents whether or not they are familiar with DWR’s IRWM planning and funding program. Roughly two thirds (2/3) of survey respondents reported that they are indeed familiar with the program (see Figure 11 below).

Figure 10. Responses to Question 23: “Has IRWM benefited your Tribe?” See Appendix A-6 for source data.

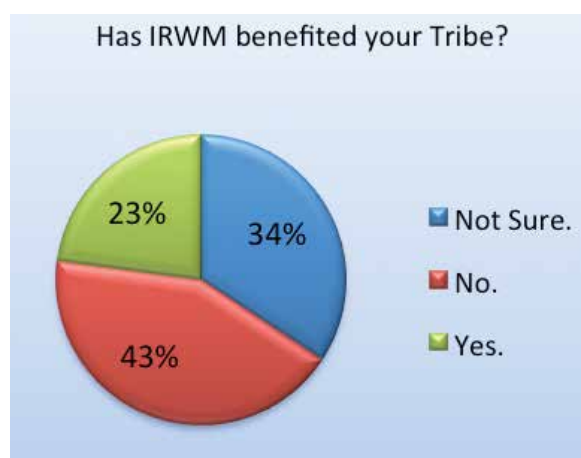


Figure 11 Responses to survey question 4. Of 48 total responses, 32 responded “Yes” and 16 responded “No.” See Appendix A-6 for data.



Question 5 of our survey referred to reasons for which Tribes may be interested in participating in IRWM. Of the seven proposed options, two in particular relate to Engagement: (f) “Fact finding” and (g) “Learn about IRWMs, regional stakeholders and their agendas.” However, these two options appear to be of slightly less important than other interests. Roughly 25% fewer Tribal representatives chose response (f) or response (g) than all other responses (see Figure 12 below; refer to Appendix A-6 for full data-set).

Question 10 asks respondents to describe their activities with their IRWM group, by selecting from a number of options. The most frequently identified option, representing nearly 60% of all respondents, was (A) - “Receives regular updates from the local IRWM group.” This reflects the effectiveness of IRWMs to share information with Tribes and other participants. Nearly 60% of respondents identified this as one of their activities. See Figure 13 below.



Figure 12. Responses to survey question 5. Percentages calculated based on 52 total responses. See Appendix A-6 for data.

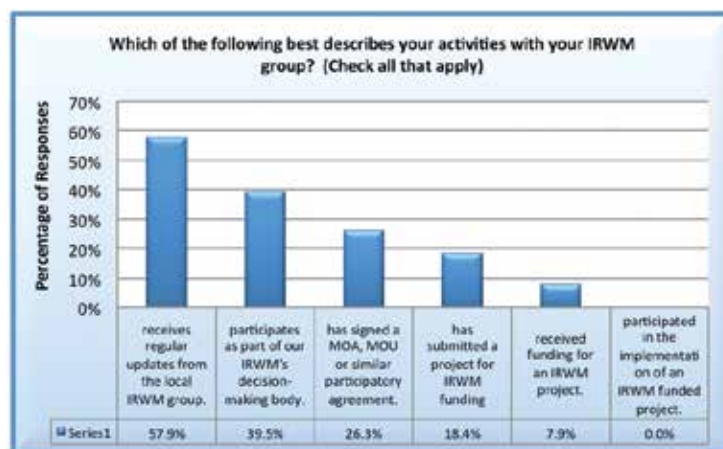


Figure 13. Responses to survey question 10. Percentages calculated based on 38 total responses. See Appendix A-6 for source data.

Question 11 asks respondents whether or not they participated in the creation of their regional IRWM. The vast majority, more than 65%, did not (See Figure 14 below). This potentially illustrates a lack of Tribal engagement in the early phase of IRWM.

Question 15 asks respondents to rate their level of agreement or disagreement (on a scale of 1 (strongly agree) to 5 (strongly disagree)) with a series of statements regarding their participation and experience in IRWM. The distribution curves of the following six options, directly relevant to the effectiveness of engagement efforts, are displayed in Figure 15:

- (C) Our Tribe effectively participates in our local IRWMP.
- (D) Our local IRWM is making progress.
- (F) I am adequately informed of the IRWM meetings in my area (i.e. dates, times, locations).
- (G) I am familiar with some of the other people or groups involved with my regional IRWM (for example the participants, stakeholders, etc.).
- (J) The creation of a regional “Tribal Issues” work-group would result in Tribal concerns being included in the final IRWMP.
- (K) Additional mandates from IRWM funding managers are necessary to ensure Tribal concerns are addressed.

Figure 14. Responses to survey question 11. Percentages calculated based on 44 total responses. See Appendix A-6 for source data.

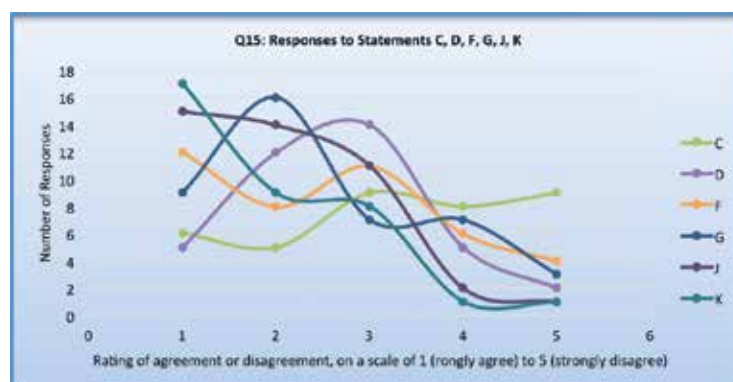


Figure 15. Distribution of responses to Statements C, D, F, G, J, and K, of Question 15: "On a scale of 1 to 5, please rate how much you agree or disagree with the following statements." See Appendix A-6 for source data.

Question 19 asks respondents to rate how positive or negative (on a scale of 1 to 5) their experience has been with a variety of aspects in their local IRWM. Of particular relevance engagement are aspects (D) and (K). These two aspects had the lowest scores (i.e., most positive) of the ten aspects identified; 2.35 and 2.58, respectively; illustrating these two aspects of participation have been slightly more positive than other aspects.

Aspect (D) “Access to important and relevant IRWM information (i.e., group contacts, deadlines, documents for review, revision process).”

Aspect (K) “General communications between IRWM group representatives, Tribal members, and other stakeholders.”

Aspect (D), although having the lowest (most positive) rating, had a normal distribution. However, the distribution of responses to Aspect (K) shows a strong right (positive) skew (see Figure 16 below).

Question 26 refers to a variety of elements that could be included in a signatory document, and asks respondents to rank them in order of importance to their Tribe (on a scale of 1 to 8, 1 being most important and 8 being least important).

Four of the eight identified elements are directly related to engagement efforts:

- (A) Provisions for Tribal participation.
- (D) Mechanisms in place to implement protections for sacred sites/ areas of cultural significance, and respect for distinct Tribal philosophies, values and systems.

Executive Order B-10-11 requires:
“every state agency and department subject to executive control is to encourage communication and consultation with California Native American Tribes”
(California Executive Order B-10-11).

(E) Recognition and provisions to protect Tribal sovereignty (including Tribes with federal, state or non-recognized status).

(F) Provisions to address “competing interests” of parties that previously had been adversarial with Tribes.

Of these four, Element (D) was ranked most important (average rating of 2.87). Element (A) was ranked second-most important (average rating 2.90), and third most important was Element (E) (average rating 2.97). Although Element (F) was identified as a concern by Tribes in the CABY IRWM region (which led in part to the development of our research questions), our survey results indicate that this element is the least important to our research participants (average rating 5.32). Figure 17 on the following page displays the distribution of ranks for these four elements.

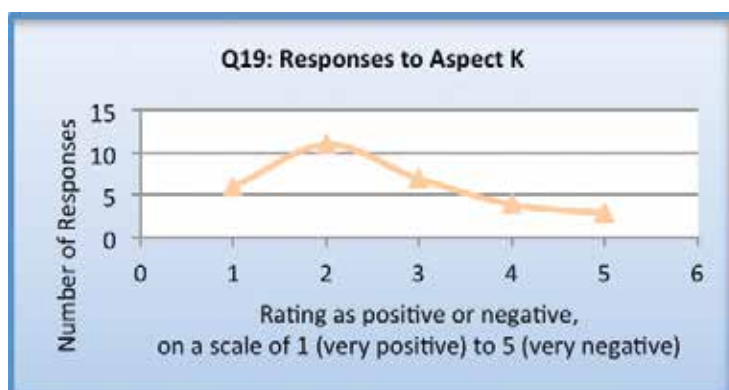


Figure 16. Distribution of responses to Aspect (K), Question 19: “On a scale of 1 to 5, please rate how positive or negative your experience has been with the following aspects of participation in your local IRWM.” See Appendix A-6 for source data.

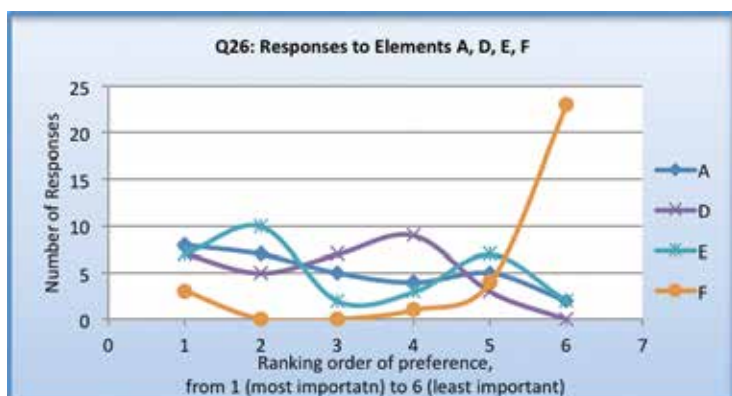


Figure 17. Distribution of responses to Elements A, D, E, F of Question 26: "The following is a list of elements that could be included in an IRWM signatory document. Please rank them in order of importance to your Tribe/ organization, with 1 being most important and 6 being least important." See Appendix A-6 for source data.



Issue: Efficacy of outreach efforts from DWR and RWMGs

Challenges:

DWR Tribal Liaisons

The Department of Water Resources (DWR) has long had a commitment to engaging the Tribal community, with a position created as Government and Community Liaison⁶, commonly referred to as Tribal coordinator or Tribal liaison. Following the 2011 Executive Order B-10-11, the Department designated Tribal Liaisons in each of its four regional offices. These Liaisons serve as the direct contact with Tribes and work to improve Tribal outreach and engagement. The title of regional Tribal liaison in DWR is not an actual staff position, but rather a role accepted voluntarily by existing personnel (Regional Service Coordinators, for example). Tribal Liaisons serve as the face of DWR at Tribal meetings, and respond to Tribal needs as they arise.

Tribal Liaisons we interviewed were quite passionate about their additional responsibilities, and were striving to provide adequate support to Tribes within their region. While some Tribal liaisons did not have a specific background or specialized skill set in engaging Tribes, they underwent rigorous “on the job training” working directly with Tribes.

Despite the strong commitments of the liaisons themselves, the structure of DWR’s Tribal Liaison role can be frustrating for Tribes. Liaisons’ individual duty statements often do not formalize their responsibilities to Tribes. Further, supervisory staff determines the latitude liaisons have to meet the needs expressed by Tribes (former DWR staff, personal communication, October 24, 2013). Finally, as is common in public service, liaisons are stretched between competing demands, and do not always have the institutional support or resources necessary to respond to Tribes’ concerns. Such internal constraints may not be obvious to Tribal partners, and Tribes may experience disillusionment with the liaison or agency’s commitment to working with Tribes when liaisons are unable to respond to Tribal needs.

⁶ Most recently, this position has been created as Tribal Policy Advisor, with the role of developing a formal Tribal consultation policy.

Outreach from RWMGs

Some Tribes reported that they had received no outreach or contact from their RWMG. Given that IRWM is “no longer just a project or program, but our way of doing business” in water management throughout the state (M. Cowin, Integrated Water Management (IWM) Summit, April 3, 2013), this is a significant concern. However, lack of broad, sustained, adequate outreach to Tribes is not unique to IRWM; it is a systemic, state-wide issue.

Most Tribes expressed a desire to participate in IRWM, once they were aware of the opportunity. The Pit River Tribe has been very actively engaged in IRWM (their territory overlaps four separate IRWM regions), but until quite recently, were unaware that they were considered part of North Coast IRWMP, because representatives never came to present to the Pit River Tribal Council (B. Brown, Interview, June 11, 2013).

Tribes report receiving information late, insufficient notice of meetings (including meeting times, dates, and locations), and inadequate time to review documents. This gives Tribal staff the impression that “there’s a lack of genuine reaching out/ wanting us to be there” (M. Fuller, Interview, June 26, 2013). As a participant-driven initiative, the onus is generally on “the People” to engage in the process, and seek out information. However, the 2012 Guidelines require IRWMPs to provide:

a public process that provides outreach and an opportunity to participate in IRWM Plan development and implementation to the appropriate local agencies and stakeholders, as applicable to the region, including the following:

- Wholesale and retail water purveyors
- Wastewater agencies
- Flood control agencies
- Municipal and county governments and special districts
- Electrical corporations

- Native American tribes
- Self-supplied water users
- Environmental stewardship organizations
- Community organizations
- Industry organizations
- State, federal, and regional agencies or universities
- DAC members
- Any other interested group appropriate to the region

As aboriginal sovereign governments, Tribes are far more than “stakeholders.” Further, they note that even the requirement to conduct genuine outreach to “stakeholders” is not occurring in all regions. Tribes in some regions have been very persistent in their efforts to engage with their RWMG, and after some time their requests have been accommodated. This takes significant effort that not all Tribes can commit, and should not have to. According to Federal Executive Order 13084 of May 14, 1998 and Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments of November 6, 2000, all agencies must conduct meaningful and timely consultation with Indian Tribes on policies that have Tribal implications or projects that affect Tribal communities. While RWMGs are not agencies, they are composed of agencies with these responsibilities, and they are charged with implementing a program administered by a state agency.

The purpose of IRWM is to improve the process and outcomes of California water management through inclusive collaborative decision-making. Data from our surveys and interviews with Tribal representatives, however, indicated that some Tribes view IRWM to be “just business as usual, repackaged.” Participating in “yet another group” was not perceived to have any real impact at the watershed-level, and is thus considered by some as “a waste of time.” One Tribal chairman felt strongly that regional water management groups have little interest in collaborating with Tribes, or in how projects impact Tribes. Rather, they are more interested in having a “token Indian” participate on their projects (R. Goode, Interview, February 13, 2013). Such perspectives are troubling to the RWMGs that are sincerely trying to collaborate with Tribes. Many IRWM practitioners simply do not know how to effectively engage Tribes, or are reluctant to do so out of fear of doing some-

thing wrong (i.e., afraid of “insulting” the Tribe (C. Peters, Interview, June 11, 2013).

Solution: The State of California, DWR, RWMGs, and other IRWM practitioners should prioritize effective outreach to Tribes

All California state agencies and staff should consciously invest in culturally appropriate and genuine improvement of their outreach efforts to Tribes. Regarding IRWM, DWR and RWMGs should clearly communicate the purpose and potential benefits of participating in IRWM, and provide ongoing information and opportunities to participate. These opportunities should involve meaningful Tribal participation and leadership in IRWM processes, projects, and programs, including RWMGs. According to one Maidu participant, “I’ll be there, but I don’t just want to be a face at the table—if we don’t find a way for it to be meaningful and for it to address these issues, then I don’t need to be there” (T. Cunningham, Interview, June 11, 2013).

DWR specifically could assist all IRWM participants (including, for example, RWMGs, DWR staff, and county governments) in improving collaboration with Tribes by clearly communicating the mission, goals, and outcomes of IRWM. This would help ease frustrations caused by misinformation and misunderstanding of the scope, purpose and authority of the IRWM program. DWR should then hold RWMGs accountable to fulfilling the IRWM mission. We recommend that DWR also collaborate with Tribes and Tribal organizations to organize and provide inter-departmental training on Tribal governance and culturally-appropriate engagement for non-Tribal IRWM participants.

Additional steps toward improved outreach to Tribes include: hiring and/or enlisting qualified personnel with experience working with Tribes, making Tribal outreach a specific priority, and recognizing the necessary timetable of working with Tribes (accommodating Tribal Council schedules, recognizing chain of command, and noting the high Tribal workload). Tribal representatives that we interviewed felt that qualified, local Tribal people would best fill Tribal liaison positions. “You have to find somebody to facilitate these processes who actually knows the community. Knows the People, the stakeholders, knows who they should have at

the table” (B. Brown, Interview, June 11, 2013). In order to make Tribal outreach more of a priority, one Tribal interviewee suggested that DWR invest in bringing regional and statewide liaisons together to specifically strategize on how to best implement Tribal outreach and collaboration:

Can we get the Tribal Liaisons together? Let’s do some conversations with them, if they’re going to continue in that position. Is there any rational thinking about how we approach Tribes systematically to get this information out? (C. Peters, Interview, June 11, 2013).

Further, within each region, DWR could provide additional training and resources to support their Tribal Liaisons in fulfilling their job duties. Our interviewees recommended specifically that DWR provide mandatory cultural training to employees, including but not limited to liaisons and agency leaders. This is especially important now that Federal Executive Order 13084 as of May 14, 1998 and Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments as of November 6, 2000, require agencies to conduct meaningful and timely consultation with Indian Tribes on policies that have Tribal implications or projects that affect Tribal communities. This could be funded using remaining or future allocations of program administration and/or interregional coordination funds, such as those provided in PRC § 75027⁷ (round 2 interregional coordination funds have been exhausted). It is imperative that future funding

⁷ PRC § 75027. (b) The interregional and unallocated funds provided in subdivision (a) may be expended directly or granted by the department to address multi--regional needs or issues of statewide significance.

“It’s like we’re trying to hop on this train that’s already going down the tracks, and we’re running, ...that’s what it feels like. It’s like we’re hopping on a moving train that’s already going almost full speed”
(B. Brown, Interview, June 11, 2013).

allocations are specifically designated for Tribal outreach, training and engagement, to prevent funds from being absorbed into other programs.

Email list-serves and newsletters are the most common outreach methods used by RWMGs. However, this is possibly the least effective method of engaging Tribes. According to one Tribal person who has long been involved in state-federal-Tribal processes, “Ultimately the best way, and nobody can afford it, is to go out and sit down and say, ‘Hey, can I meet with you, and we’ll talk about it.’” (C. Peters, Interview, June 11, 2013)

IRWM staff and consultants can follow the outreach methods used by RWMGs that have successfully engaged Tribes (See Section 4 – Tribal Collaboration Best Practices). For example, Project Development Coordinator for the Upper Pit River region, Todd Sloat attended Tribal meetings, developed relationships with the Tribal Council and the environmental coordinator, provided information on the IRWM process and program, explained the ways in which IRWM projects could be opportunities for the Tribe, and encouraged the Tribe to submit projects to the RWMG to be considered for inclusion in the final IRWM plan and Project Solicitation Package (PSP) submitted to DWR for potential grant funding. In the southern Sierra, a Tribal representative was pleased that their local IRWMP lead agency representatives reached out to Tribes in the beginning of the process, to get Tribal input on the vision for integrated regional water management. Then, the emerging RWMG hosted community meetings throughout the region, even travelling to remote areas with low populations: “...they really made a concerted effort to reach out to all the different communities” (A. Bacock, Interview, January 6, 2013).

Currently, RWMGs are only encouraged to enlist Tribal participation. The CA Water Code states that the IRWM Guidelines:

...shall require that the development and implementation of an integrated regional water management plan include a public process that provides outreach and an opportunity to participate in plan development and implementation to appropriate local agencies and stakeholders, as applicable to the region, including ...Native American Tribes that have lands within the region.

According to DWR regional staff, “If there was a Tribe in the region that was not participating in the local IRWM process, then it would be a good idea for the RWMG to do outreach and ask the Tribe if they would like to participate. But the water code and the law do not mandate that there be Tribal participation in every RWMG,” (DWR staff, Interview, April 19, 2013). Most Tribes agree that RWMGs should be required to outreach to all California Native American Tribes in their region, as would be expected by any other sovereign entity, such as federal agencies with jurisdiction within an IRWM region. Additionally, Executive Order B-10-11 requires: “every state agency and department subject to executive control is to encourage communication and consultation with California Native American Tribes” (California Executive Order B-10-11). Articulating this specifically would require changes to the IRWM Guidelines and Proposal Solicitation Package (see section 2.3). In some cases, Tribal organizations and consortia can assist with coordinating outreach efforts to individual Tribes. For example, the Maidu Summit Consortium, which includes nine Mountain Maidu entities, has had a representative on the Upper Feather River IRWM since its inception. However, consortia participation in the RWMG is not equivalent to government-to-government consultation with each individual Tribe within the IRWM region.

Tribes are sovereign government entities, with all the same responsibilities as a state or even the federal government; they are not merely an interest group or organization. This point cannot be overstressed. RWMG representatives sometimes assume that a Tribe is not interested in participating in the IRWM, if they do not receive an immediate response from an e-mail newsletter or single phone message. Agency personnel often fail to recognize the elevated demands on a Tribe’s time; as governments, Tribes may require more respectful and persistent outreach than other IRWM participants. An RWMG would not send an email directly to Secretary Laird or the Governor’s office and expect an immediate response; no more should they expect an immediate response from a Tribal chairperson, or even a Tribal Environmental Director. Lack of understanding of

Tribal sovereignty is unfortunately common among agencies and NGOs. To combat this, Tribal liaisons in many agencies are engaged in developing training programs to increase understanding of Tribal sovereignty among agency staff. One notable example is the “Working Effectively with Tribal Governments” Workshop for Natural Resources Conservation Service (NRCS) staff designed and implemented by Regina Rogers, NRCS-California Tribal Liaison. Similarly effective programs could be implemented in DWR and for RWMGs.

DWR staff emphasize that the IRWM program is driven by individual entities, and requires each participant to take responsibility for their level of engagement and participation. However, “Improving Tribal Water and Natural Resources” is a State-wide Priority (identified in the CWP Update 2009, and included in Section F, Program Preferences, of the 2012 IRWM Guidelines (see Appendix B-2)). If Tribal Councils are to prioritize participation in IRWM, it must be expressed by the Governor’s office itself as a critical issue. Outreach should reflect the high-level of IRWM as a policy and management process.

Some Tribal facilitators and outreach coordinators working for RWMGs suggest prioritizing the most important information regarding IRWM, and presenting it to Tribal Councils in the context of its relevance to the Tribe, as an effective strategy for garnering more Tribal support. However, as other Tribal representatives caution, “having DWR decide what may or may not be relevant to Tribes is a recipe for disaster” (Earl Crosby, Personal Communication, October 9, 2013). This calls for a close partnership between DWR’s IRWM staff, IRWM practitioners and Tribal representatives knowledgeable about IRWM, to develop effective Tribal outreach strategies. It is generally agreed that information must be presented to Tribal Councils, as well as to Tribal environmental staff. This ensures consultation with both the highest levels of authority, and those who are most likely to implement Tribal participation in IRWM. Continuous outreach and engagement efforts are needed to ensure institutional memory and support of IRWM.

Recommendations:

- All state agencies should allocate adequate resources for Tribal Liaisons to prioritize their responsibilities to Tribes; liaisons should not be split between multiple constituencies and responsibilities. This could be implemented by establishing a Tribal liaison job classification within the civil service system.
- A Network of Tribal Liaisons (State of CA employees) from across agencies and departments should be established to strategize, in direct consultation with Tribes, how best to implement EO B-10-11 and other agency/ department directives relevant to Tribes.
- Since DWR and the RWMGs hire consultants to facilitate many levels of the IRWM program, DWR and the RWMGs should work with Tribes to develop and maintain a list of consultants preferred by the Tribes.
- DWR should create a specific IRWM Tribal Workgroup (regionally and/or State-wide), and develop a process (including clearly defined roles and responsibilities) for increasing meaningful Tribal engagement.
- RWMGs should hire a Tribal consultant to work with Tribes, as the North Coast Resource Partnership has done. Tribes within the region should choose the Tribal consultant.
- Consultants/ liaisons/ IRWM representatives should travel to Tribal offices to meet with personnel and/or Tribal Council, at least once during each outreach cycle, if they truly want to establish working relationships with Tribes.



Issue: Timeliness of integrating Tribes into the IRWM planning process

Challenges:

Tribal governments should have been included since the inception of IRWM, but were not. Very few Tribes “were at the table when the regions were drawn [Regional Acceptance Process (RAP)], and this has caused a level of mistrust” (Earl Crosby, Personal Communication, October 9, 2013). Some IRWM regions are outreaching to Tribes after a formal group has been created and is already far into the planning process. For example, one Tribal Council member active in IRWM related the difficulty of integrating Tribes into a pre-existing IRWM plan as: “It’s like we’re trying to hop on this train that’s already going down the tracks, and we’re running, ...that’s what it feels like. It’s like we’re hopping on a moving train that’s already going almost full speed” (B. Brown, Interview, June 11, 2013).

Solution: Facilitate IRWMP revisions to incorporate Tribal input, and establish trust & assurance that Tribal participation will guide the process moving forward.

Where Tribal governments were not included in the development of their local IRWMP, DWR & RWMGs should facilitate meaningful and sustained efforts to integrate Tribes now, and revise IRWMPs as necessary, based on Tribal input. While changing the IRWMP boundaries may not be possible, “acknowledging the error [of excluding Tribes] would be the proper thing to do at least” (Earl Crosby, *ibid.*).

Recommendations:

- The State Legislature should revise the California Water Code 10530 to include Tribal participation as one of the minimum requirements for IRWM plans.
- DWR should, within the authority and flexibility granted through CWC § 10540, revise the IRWM Guidelines and Proposal Solicitation Package (PSP) for all future funding cycles, to ensure that Tribes are fully integrated into the IRWM process (see section 2.3, Funding Mechanisms).
- Tribes, if they were not involved during the IRWMP development phase, should be granted the opportunity to revise all IRWM Plans and signatory documents (MoA, MoU, etc.). The North Coast Resource Partnership can serve as a model for doing so (see Appendix B-6, B-8).
- RWMGs and DWR should work diligently to bring Tribes into discussions and decision-making on all future management plan development and implementation.

Support

Support-related issues include considerations for varying levels of capacity, technical assistance, and financial resources provided by DWR, RWMGs, and other IRWM practitioners.



Issue: Capacity and Resource Requirements for full participation in IRWM

Challenges:

Many Tribes do not have the resources to participate in IRWM at the level necessary to have any significant impact. Attending multiple, frequent meetings requires excessive travel, staff-time, and financial resources: “Even within our NCRP the Tribal staff is spread so thin we also encounter the issue of lack of dedicated or discretionary funds to fully participate” (Earl Crosby, Personal Communication, October 9, 2013).

Numerous Tribal representatives have also expressed that IRWM paperwork and processes are overly demanding, inhibiting some Tribes from applying. DWR offers technical assistance for putting plans together, but most Tribes do not know how to access this support. According to a former IRWM program coordinator, “the IRWM process, plan, projects—is very intimidating. It’s supposed to serve disadvantaged communities, but it’s actually hurting them. They don’t have the resources. They need an entity to take the lead” (T. Sloat, Interview, December 28, 2012). In one instance, the Scotts Valley Band of Pomo Indians submitted a project through the West Side IRWMP. The RWMG erroneously assumed that a cost-benefit analysis was not necessary for the project, so the Tribe did not include it with their submission. The project was rejected by DWR because the cost-benefit analysis was not present (I. Quitiquit, Personal Communication, September 23, 2013).

Some Tribes’ territory (traditional homeland and/or current trust land-holdings) falls in multiple IRWM regions. Many Tribes do not have the staff required to fully participate in multiple RWMGs, and meet all other daily needs. The Pit River Tribe, previously mentioned, is a prime example. “This causes their staff to be spread thin, and not have the capacity to fully participate in any one IRWMP” (D. Olstein, Interview, February 26, 2013).

Solution: Provide guidance, resources, technical support, and alternatives more conducive to Tribal participation.

Tribal representatives, DWR staff, and IRWM practitioners all agree that DWR needs to improve current Tribal engagement and develop a mechanism specifically to facilitate greater Tribal participation. Tribal representatives recommended instituting high-level policy meetings between state agencies, Tribal Councils, and Tribal elders. One regional Tribal coordinator recommended that DWR allocate funds to hire Tribal coordinators for each of the regions. This model has worked well for the North Coast IRWM, and has been supported by many other Tribes. This could easily be replicated elsewhere. Some Tribes also recommend allocating funds for travel reimbursement, especially for those on the various governing boards to attend meetings. Funds could be allocated through the IRWM program (from future potential allocations) or directly from the RWMGs directly. A needs-based consideration could be used. Finally, given that many IRWM practitioners agree that the IRWM grant program should be simplified or streamlined, DWR could provide greater technical support throughout all stages of the IRWM grant program.

2

Key Challenges & Proposed Solutions

Recommendations:

- A portion of future interregional coordination funds should be directed toward Tribes with territories overlapping multiple IRWM regions. This should be specified in future Water Bond measures and/or as a priority within DWR's current flexibility and authority.
- CNRA should allocate resources agency-wide to Tribal liaisons for working with Tribes in their region to identify needs and provide necessary support.
- DWR should, within the authority and flexibility granted through CWC § 10530 & § 10540, revise the Project Solicitation Package (PSP) to simplify and/or streamline the project submission process. This should include a short form pre-screening project application and a submission checklist for applicants to ensure all necessary requirements are fulfilled.
- DWR should direct a portion of future appropriated IRWM "interregional/unallocated" funds to Tribes with territories that overlap multiple IRWM regions, in accordance with PRC § 75027.⁸
- RWMGs should work with their members to allocate funds in their finance plan for need-based travel reimbursement for governance board members.
- RWMGs should alternate meeting locations, to accommodate members and stakeholders throughout their entire region.

⁸ PRC § 75027(a), (b) states: "The interregional and unallocated funds provided in subdivision (a) may be expended directly or granted by the department to address multi-regional needs or issues of statewide significance."

Communication

In many cases, Tribes have responded favorably to IRWM, and have been able to fully participate. In an equal number of cases, Tribes have been entirely left out of the process and there has been little to no communication. Proper protocols, respectful practices, and effective media can greatly improve the communication between Tribes and DWR staff, RWMG representatives, and other IRWM practitioners. Three questions from our survey research pertain to communication: questions 8, 15, and 19. Before discussing the various issues and solutions related to communication, we will first present relevant survey data results from these three questions.

Question 8 asks survey respondents to select which of six potential IRWM activities they currently participate in. Directly relevant to Communication, nearly 60% of respondents reported Activity (A): "Receives regular updates from the local IRWM group" (see Appendix A-6 for source data). This

illustrates that the majority of IRWM groups represented in our research are effective in mass communication and providing information to their participants.

Similarly, Question 15 distributions also illustrate that in general, respondents are receiving effective communication from IRWM. Question 15 asks respondents to rate their level of agreement or disagreement (on a scale of 1 to 5) with a series of statements regarding their participation and experience in IRWM. Options (F), (G), and (H) refer to communication:

- (F) I am adequately informed of the IRWM meetings in my area (i.e. dates, times, locations).
- (G) I am familiar with some of the other people or groups involved with my regional IRWM (for example the participants, stakeholders, etc.).
- (H) I am familiar with the focus areas, or areas of concern, that my regional IRWM group is working on.

Figure 18 below displays the distribution curves for each of these three options. See Appendix A-6 for source data.

Question 19 also asks respondents to rate (on a scale of 1 to 5) a variety of aspects of participation in IRWM; specifically, how positive or negative their experience has been. Aspects regarding communication were the two most positively rated items:

- (D) “Access to important and relevant IRWM information (i.e., group contacts, deadlines, documents for review, revision process.” (average rating 2.35)

- (K) “General communications between IRWM group representatives, Tribal members, and other stakeholders.” (average rating 2.58)

See Figure 19 for distribution curves for responses to these two aspects of IRWM participation. It can be inferred from these findings that, according to survey respondents, RWMGs are generally good at providing information to their participants.

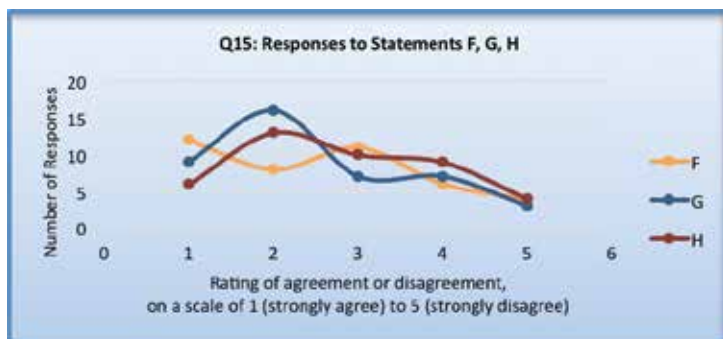


Figure 18. Distribution of responses to Question 15: “On a scale of 1 to 5, please rate how much you agree or disagree with the following statements (1 = Strongly Agree, 5 = Strongly Disagree). See Appendix A-6 for source data.

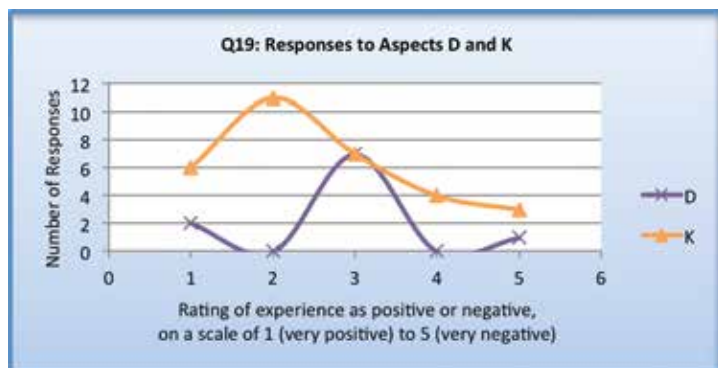


Figure 19. Distribution of responses to Aspects D and K, Question 19: “On a scale of 1 to 5, please rate how positive or negative your experience has been with the following aspects of participating in your local IRWM.” See Appendix A-6 for source data.



Issue: Historically poor relationships and General lack of trust between parties

Challenges:

Some regions have historically adversarial relationships, making IRWM collaboration difficult. These adversarial relationships may have long roots in historically discriminatory policies promulgated by local jurisdictions (cities, counties, service districts, etc.) with negative consequences for Tribes. They may also result from more recent conflicts over land use, economic development, and planning. One Tribal EPA Director for a North Coast region Tribe felt that county governments expressed “prevalent negative attitude(s) about Tribes” in both offhand comments during meetings as well as in formal, institutionalized processes. A representative of a Tribe in the Upper Feather River region lamented: “For the most part, we want to be good neighbors; we want to work with everybody. But [other stakeholders in the region] come at it very adversarial...that doesn’t accomplish anything. Your goals aren’t met, ours aren’t met. It doesn’t make any sense” (G. Taylor, Interview, June 7, 2013). One long-time Tribal

environmental director felt strongly that specific state and federal agencies, including DWR, had not offered resources or support, but had only approached the Tribes for information and endorsements. In regions where Tribes experience and/or perceive these adversarial attitudes, they substantially inhibit the collaborative process.

Solution: All parties should make strides to improving relationships and building trust.

Some regions have made tremendous strides in this direction. In the Upper Sacramento River IRWMP, there was initially a lack of trust between the Tribe and some of the other watershed stakeholders, but the region’s facilitator was able to overcome this by building a strong trust relationship directly with some of the Tribes. Similar efforts to more actively engage Tribes through improved outreach and communication should be replicated in all regions.

Recommendations:

- The Governor’s Office should ensure that all state agencies comply with Executive Order B-10-11, and implement specific Tribal communication protocols (see Section 3.6 Executive Order B-10-11).
- Where applicable, the RWMG and/or DWR staff should facilitate a dialogue with parties that have been adversarial with Tribes. If professional facilitators are engaged, they must be familiar with working with Tribes. Tribal representatives should also have the opportunity to suggest appropriate facilitators.
- Each RWMG should designate a Tribal liaison to develop strong, effective working relationships between the Tribes and other IRWMP participants. This liaison should be appropriately trained in cultural protocols and respect.
- RWMGs should follow the example set by regions that have successfully engaged Tribes (refer to Appendix B-6). This includes working diligently to increase Tribal participation, following respectful engagement protocols, eagerly listening to Tribal viewpoints, and willingly working with Tribes to accommodate their interests.



Issue: Adequacy of information-exchange regarding IRWM processes

Challenges:

In our survey, one of the most negatively-ranked aspects of Tribes' experience with IRWM was lack of meaningful participation. Tribal representatives interviewed and/or surveyed felt that some RWMGs are unfairly benefiting from listing Tribes as participants on their proposals. These representatives noted that, if a Tribal representative attended a meeting, the Tribe would be listed as a participant, despite the Tribe's lack of participation in, or support of, the IRWMP. RWMGs have the opportunity for earning 0.5 point if their plan might "improve Tribal water and natural resources" (PSP 2011).

Generally, Tribal interviewees felt that RWMG staff do not adequately inform members and participants of IRWM processes and timelines, such as the status of project proposals and next steps. During an in-person survey, one respondent jibed in response to the statement: *'I am adequately informed'—"I don't know if anybody can answer positively on that question, even the people working in it!"* (C. Peters, Interview, June 11, 2013). Some RWMG staff limit the information they provide to Tribes because they erroneously assume the Tribe is not interested. This was especially common with IRWM plan revisions and project proposal status, and was met with frustration by Tribal representatives trying to fully engage in the process: "Nobody's communicated that [the North Coast received some IRWMP funding] to us, even though we're supposed to be a part of that consortium" (B. Brown, Interview, June 11, 2013).

Tribal staff from the CABY region expressed frustration that IRWMP documents were provided piecemeal, rather than in their entirety, and that the overall process was very "start-and-stop"—the review schedule often changed, making it difficult to track which sections were being reviewed at which times. In this case, Tribal staff preferred to receive entire documents to review. Otherwise, sections were easily missed, and staff could not dedicate the necessary time to review each section separately.

Solution: Establish effective protocols for transmitting information between IRWMP parties.

Tribes need assurance that Tribal participation in any redevelopment or IRWMP update will not be construed as Tribal "participation," unless their involvement is operative and effective. For example, Federal Housing and Urban Development (HUD) grants require a written Letter of Commitment or Tribal Resolution before funds will be released for projects listed with Tribal participation (see Appendix D-7).

Regional water management groups should develop more effective methods of determining what information is relevant to participants, and share that information in an effective and timely manner.

2

Key Challenges & Proposed Solutions

Recommendations:

- DWR should require a formal letter or written agreement from the Tribe stating their participation status (accept or decline invitation to participate/ be listed as participant in IRWMP) before any IRWM proposal is reviewed for funding eligibility.
- DWR should provide, in a timely fashion, schedules for IRWM document revisions, governance body, status of project proposals and next steps (updating project submission, integrating proposal into other projects, etc.).
- RWMG staff should follow-up with Tribes and other interested parties that submitted projects or proposals during previous funding rounds.
- RWMGs should provide contacts, deadlines and links to relevant documents for all IRWMP revision workgroups currently underway (note: All topics may of interest to Tribes, and should not be excluded).
- RWMGs should strive to provide documents for review in their entirety, rather than piecemeal, and maintain consistent review schedules.

“When you go to Indian country, you need to listen. And then you need to put what they said in writing, and then go back to them and verify it’s what they said & meant”
(B. Goodwin, SWWG Summit, June 13, 2013).



Issue: Level of Tribal understanding and cultural sensitivity within RWMGs and agencies

Challenges:

A general lack of Tribal understanding and cultural sensitivity is a systemic issue across all agencies and all levels of government.

According to our interviews and survey results, RWMGs, DWR Staff, and Consultants do not generally understand Tribal cultures, perspectives, interests, concerns, responsibilities, socio-political structure, and/or time horizons. This lack of understanding results in a failure to follow proper protocols for respectful communication and engagement with Tribes. For example, Tribal staff may not be able move forward on proposals and projects without first bringing issues before the Tribal Council. According to one Tribal interviewee, RWMG representatives consulted with Tribal representatives on a project, the representatives will tell RWMGs that they must first bring the issue to Tribal Council before they can make a decision, and when the Tribal representative returns with an answer from Council, the RWMG responds “Oh, well, we already went ahead with that,” without waiting for the Tribe’s response (Anonymous Tribal EPA Director, Interview, May 10, 2013).

Solution: RWMGs, DWR Staff, Tribal Liaisons, and Consultants should work directly with Tribes in their region(s) to gain understanding of proper protocols for respectful, appropriate communication.

According to Bob Goodwin, Karuk Tribal member and US Forest Service Region 5 Tribal Relations Coordinator, respectful and appropriate communication with Tribes can be quite simple: “When you go to Indian country, you need to listen. And then you need to put what they said in writing, and then go back to them and verify it’s what they said & meant” (B. Goodwin, SWWG Summit, June 13, 2013).

Recommendations:

- The Office of the Governor’s Tribal Advisor should require every state agency and department, including RWMGs which implement a State agency (DWR) program (IRWM), to undergo regular (at least annual) “cultural competency” training, including information on Tribal history, governance, cultures, and current issues. Agencies and departments should work with Tribes in their region(s) to develop and provide such training.
- State agencies should develop specific protocols in accordance with their ordered Tribal consultation and communication policies (under Executive Order B-10-11).

2

Key Challenges & Proposed Solutions

2.2 Sovereignty

As Chief Justice John Marshall articulated the Doctrine of Tribal Sovereignty in the 1832 Supreme Court case *Worcester v. Georgia*, “The Indian Nations had always been considered as distinct, independent political communities, retaining their natural rights, as the undisputed possessors of the soil, from time immemorial...” (31 U.S. 515). This definition encompasses the inherent and pre-existing self-determination, self-definition, and self-governance possessed by Native American Tribes (see also Wilkins & Lomawaima 2001). One key aspect of Tribal sovereignty is the continual development, protection and application of traditional life-ways and knowledge. Within the context of IRWM, recognizing and respecting the sovereignty of California Native American Tribes is critical for effective collaboration to take place. In this section, we address issues of jurisdiction, waivers of sovereign immunity (in the context of Memorandums of Understanding/ Agreement (MoU/MoA)), and government-to-government consultation.

Jurisdiction

The definition of “Indian Country” has been codified as land within reservation boundaries; individual Indian allotments; and dependent Indian communities (18 U.S.C. § 1151). RWMGs may not be aware of this definition, of whether their region includes Indian Country, whose Indian Country (which Tribe(s)), and of whose ancestral land (which Tribe(s)) their region encompasses. Tribes and individual Native Americans have in-destructible ties to, responsibilities to care for, and various forms of jurisdiction (including usufruct⁹ rights cultural resource protection rights, gathering rights, etc.), over lands outside of the federal definition of Indian Country (Sutton 1991, Middleton 2012).

Integrated regional water management, by the nature of the program and the nature of water itself, crosses jurisdictional boundaries. Tribes’ water interests also cross boundaries of currently designated Tribal lands to areas throughout their traditional

⁹ “Usufruct” rights are non-ownership rights of use, similar to an easement.

lands. When Tribes are engaged in projects on their aboriginal indigenous lands yet off of their currently recognized lands, there are questions of overlapping jurisdiction—Tribes' traditional jurisdictions, overlapping with the politically recognized jurisdiction of federal and state agencies, private landowners, and other parties. As one Tribal representative explained:

If [a Tribe] wants to do something around [a river within their ancestral homeland], but [they] don't have any trust land there, can they do a stream restoration or a wetlands project that is technically in [the surrounding County], or one of the other counties, and would the county raise issue around jurisdiction? ... and the Tribes are saying "...we have this as a historic area, we've always protected it," you know, whatever their traditional rationalization may be. Then the issue of practical jurisdiction comes up (C. Peters, Interview, June 11, 2013).

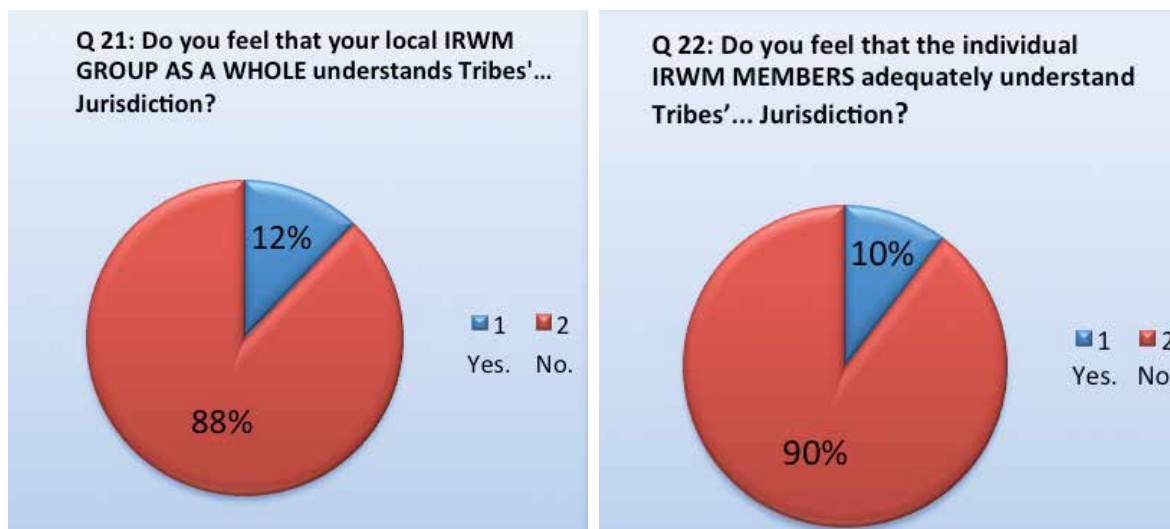
An additional layer of complexity arises from the distinction between federally recognized Tribes and non-federally recognized Tribes. Non-federally recognized Tribes can participate in Integrated Region-

al Water Management but, unless they have private land, they don't have political jurisdiction over a land base on which to implement projects.

The perceived and actual differences between traditional jurisdiction and political jurisdiction are particularly challenging in Indian Country. Whether recognized or unrecognized, Tribes have traditional jurisdiction over their homelands, but this traditional jurisdiction often overlaps with political jurisdiction of non-Tribal (federal, state, private) landowners. Parties may not agree on who should be or should not be responsible for particular aspects of a project or plan.

Four of our survey questions refer to Tribal jurisdiction: Question 5, 21, 22, and 26. Question 5 asks respondents to select which of seven reasons their Tribe may be interested in IRWM. 80% of respondents selected Item (E): "secure/protect Tribe's jurisdiction" (see Appendix A-6 for source data). Questions 21 and 22 refer to general understanding of Tribes' socio-political status, including jurisdiction. Overwhelmingly, the majority of responses to these two questions were "No." See Figure 20 below.

Figure 20: Percent of responses to Questions 21 and 22. See Appendix A-6 for source data.





Issue: Potential impacts of IRWM planning to ancestral lands, cultural resources and sacred sites

Challenges:

IRWM planning may affect Tribal ancestral lands, cultural resources and sacred sites, but decisions are often made without Tribal input (especially because there currently is no *requirement* to include Tribes in IRWM planning and decision-making).

Currently recognized Tribal jurisdiction is often not even represented in IRWM plans. For example, “there is no mention in the [Upper Pit River] IRWMP of the BIA [Bureau of Indian Affairs] or the

10,000 acres that we have on our reservation, with adjudicated water rights. We weren’t represented as a public agency...If you don’t even recognize the Pit River Tribe, at least recognize the BIA as the public agency” (B. Brown, Interview, June 11, 2013).

Solution: Establish assurances and protocols for the respect of Tribal jurisdiction and acknowledgment of Tribal values.

Recommendations:

- All state agencies and departments should implement specific protocols for right engagement, in accordance with Tribal consultation and communication policies ordered under EO B-10-11. The Governor’s Office of the Tribal Adviser, Tribal representatives, and Tribal liaisons can provide assistance and guidance in this process.
- RWMGs should work directly with Tribes to develop appropriate mechanisms for protecting sacred sites and areas of cultural significance within or adjacent to IRWM boundaries.
- All state agencies and departments, as well as groups involved in implementing State programs (like the RWMGs) should undergo regular training in the history, operation, and context of Tribal governments; the ancestral and recognized boundaries of “Indian Country,” or Tribal jurisdiction (which often differ); the government-to-government relationship; and basic general protocols for working respectfully and effectively with Tribes (‘cultural competency’).



Issue: Consistently identifying Tribes, Tribal regions, and Tribal jurisdiction within IRWMPs

Challenges:

RWMGs may be unfamiliar with and/or uneducated about Tribal traditional territories and contemporary jurisdiction.

RWMGS also may not know how to identify which Tribes are in their region, and thus how to determine which Tribes to consult.

Solution: Provide support and consistent guidance to RWMGs to identify Tribes within their regions

2

Key Challenges
& Proposed
Solutions

Recommendations:

- The Governor's Office of the Tribal Advisor could develop and maintain a database of GIS data layers and maps for consultation and planning purposes.
 - » Layers should include traditional territory of both federally recognized and non-federally recognized Tribes, and both historical and contemporary land-holdings (un-ratified treaty land, allotments, Rancherias, reservations, and individual trust lands).
 - » Much of this information is held by the federal Bureau of Indian Affairs (BIA) but may not be widely available. Perhaps the Governor's Office could develop an agreement with BIA to share some of the information. Many Tribes also have their own GIS information, which, with the proper permissions, could be included as well.
- DWR should actively facilitate connections between RWMGs and Tribes with interests in each IRWM region.



Issue: Varying levels of authority and jurisdictional overlap between Tribes, agencies and stakeholders

Challenges:

Because IRWM is a voluntary, ad-hoc collaborative effort, RWMGs often lack institutional continuity. RWMGs are essentially planning groups, and have no authority or jurisdiction. The agencies that comprise the RWMG (counties, water districts, flood control boards, federal agencies, etc.), though, have their own individual (often overlapping) authority and jurisdiction. Most participants are non-elected, and lack delegated decision-making authority from the bodies they represent. Where jurisdiction and authority is unclear, agency representatives are especially reluctant to assume responsibility for necessary actions. The collaborative decision-making process is delayed when actions cannot move forward until parties with limited authority receive approval from higher up.

Solution: Develop a planning process that includes adequate authority and accommodates jurisdictional overlap.

Some IRWMP governance structures have experienced success by requiring stronger commitments from RWMG representatives. Especially in collabora-

tions with Tribes, consultation must take place at equivalent levels of authority. “If somebody sits across the table from my Tribal leader or [a staff member] with a delegated authority, they better have the authority to sign that document, as a federal agency or as a senior executive of a state agency with that authority” (M. DeSpain, Interview, May 10, 2013). Agencies and organizations participating in IRWM should allocate resources to ensure continuity in representation, and should delegate appropriate decision-making authority to those representatives. This was done successfully in the Upper Sacramento River IRWM, in which “the revised MoU lays out clearer requirements for participation, to make it a more formalized process” (D. Olstein, Interview, February 26, 2013).

Jurisdictional conflicts can often be resolved by fostering agreement through multiple-beneficiary projects. This approach was successful in the North Coast IRWMP, in resolving a dispute over whether a Tribe could complete a project on County lands (within County jurisdiction). The Tribe and the local community worked together to develop a water system that would serve all of their needs, and the county effectively recognized a broader concept of shared jurisdiction, and allowed the mutually beneficial project to move forward (C. Peters, Interview, June 11, 2013).

Recommendations:

- RWMGs should revise signatory documents (MoU, MoA, etc.) to ensure greater institutional continuity, and to require that representatives are delegated a certain level of necessary decision-making authority by their parent entity (Tribal Council, agency, etc.).
- RWMGs should develop projects with multiple beneficiaries to overcome jurisdictional conflicts; DWR should provide greater incentives for such projects through revisions to the Review and Scoring Criteria.



Issue: CEQA requirement for state grant-funded projects

Challenges:

A common refrain in IRWM meetings is that “all projects funded by the state are subject to CEQA compliance” (IRWM conference, April 5, 2013). However, there is no code provision that explicitly requires all state funded projects to be CEQA-compliant. California Public Resources Code 21001 (g) provides that it is the statutorily mandated policy of the state to, “Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.” This infers compliance with CEQA but does not explicitly require it.¹⁰

According to California Water Code § 79506, “every proposed activity to be financed pursuant to this division shall be in compliance with the California Environmental Quality Act (Division 13 (com-

mencing with Section 21000)) of the Public Resources Code (CWC § 79506, PRC § 21000 et seq.). Pursuant to CEQA (PRC § 21000) it is the policy of the state to require all governmental agencies to consider projects effects on the environment consistent with CEQA. As such, state agencies and departments require any state-funded project to comply with CEQA requirements. Therefore, any IRWM project funded by Proposition 50 or 84 is subject to the CEQA, regardless of the project sponsor’s jurisdictional authority. However, the federal trust status of Tribes generally precludes them from CEQA compliance for projects completed under Tribal jurisdiction. Additionally, many Tribes have their own environmental laws and ordinances. Tribes view the CEQA-compliance requirement, for projects executed under Tribal jurisdiction, as an infringement on Tribal sovereignty.

Solution: Provide an alternative compliance mechanism for Tribes.

¹⁰ See generally: <http://ceres.ca.gov/ceqa/more/faq.html>.

Recommendations:

- The State Legislature and the Natural Resources Agency (and its subordinate agencies) should work with Tribes to develop a mutually agreeable alternative mechanism for Tribal projects to qualify for state grant funding.
 - » State program legislation and documents should be revised or amended to include an alternative, equivalent agreement between the state and Tribes to “meet or exceed” the standards set forth in the CEQA process.
 - » The state should waive the CEQA compliance process for projects executed under Tribal jurisdiction with complementary environmental regulations.



Issue: Unresolved questions of water rights and jurisdiction

Challenges:

Although addressing Tribal jurisdiction and water rights are outside of the specific scope of IRWM (and not under the authority of DWR), these unresolved issues often frustrate IRWM efforts. A Central Valley Regional Water Quality Control Board employee relayed an account from a routine RWMG meeting, in which issues of unresolved Tribal water rights were raised: “It got sort of ugly, with lots of finger pointing, some shouting, and name-calling...It puts DWR staff and the facilitators in a terribly awkward position to not have a definitive answer on that particular issue and still be expected to keep the meetings and process moving forward” (B. Letton, Personal Communication, June 6, 2013). While IRWM may not be the appropriate avenue for addressing these broader issues, if they are not being addressed by the State, they continue to create confusion and gaps in water planning and management.

Solution: Clarify the scope of IRWM and identify an appropriate mechanism for addressing broader issues.

Unresolved questions of Tribal jurisdiction and water rights should be addressed at the state level: starting with the Governor’s office, and working through all state agencies. DWR needs to work with Tribes to identify the proper mechanisms for addressing concerns of water rights and jurisdiction. The Department of Water Resources should also explicitly recognize that IRWM does indeed interface with these greater compounding issues. DWR may also need to firmly and publicly define the scope and purpose of IRWM so that it is not expected that it be the correct forum in which to resolve Tribal water rights.

Recommendations:

- The governor’s office should make an official statement regarding the state’s recognition and support of Tribal sovereignty, jurisdiction, and water rights.
 - » The State of California should work in full consultation with Tribes to develop a mechanism for addressing these issues on a large scale.
- DWR leadership should make a formal statement to clarify how Tribal sovereignty and government-to-government consultation manifests in Tribal IRWM participation.
- DWR should work closely with Tribes to develop guidance for RWMGs for addressing these issues.

Waivers of Sovereignty/ Sovereign Immunity

Many IRWM governance structures include MOUs/ MOAs, which the various agencies and municipalities are required to sign in order to be part of the RWMG, or to “adopt” the IRWMP. The most common template used, as provided by DWR (see Appendix B-5), includes language requiring all participants, including Tribes, to comply with all state laws. While this is not by definition a “waiver of sovereign immunity,” many Tribal Councils interpret it as an infringement on Tribal sovereignty. Due to historical (and often contemporary) lack of full recognition of and respect for Tribal sovereignty, any infringement on Tribal sovereignty, even if limited and voluntary, is of great concern to Tribes.

Four of our 28 survey questions are relevant to the waivers of sovereignty issue. These are 14, 21, 22 and 26. Results of each are presented below.

Question 14 asks respondents to select ways in which their Tribe would consider participating in the IRWM process. Of the seven options provided, (G) is most relevant to Tribal sovereignty: “To revise the local IRWMP by changing participatory documents to improve language for better Tribal partici-

pation and greater protection of Tribal sovereignty.” Slightly more than half of respondents selected option (G) as a way in which they would consider participating; this was the second-highest response rate for all seven options, second only to (E), “As part of a workgroup to address DWR’s mandated “Tribal Issues” area of concern” (see A-6 for source data).

The results from Questions 21 and 22 are already presented above, under “Jurisdiction.” Please refer Figure 20 above.

Question 26 refers to a variety of elements that could be included in a signatory document, and asks respondents to rank them in order of importance to their Tribe (on a scale of 1 to 6, 1 being most important and 8 being least important). The one element that is related to sovereignty, Element (D), “Mechanisms in place to implement protections for sacred sites, areas of cultural significance, validity of Tribal philosophies, values and systems,” was the highest ranked of all six elements. The overall rank for Element D was 2.87. Figure 21 below displays the distribution of ranks assigned to Element (D), and Figure 22 shows the distributions for all six elements. Figure 23 displays the average rating for each of the six elements. See Appendix A-6 for source data.

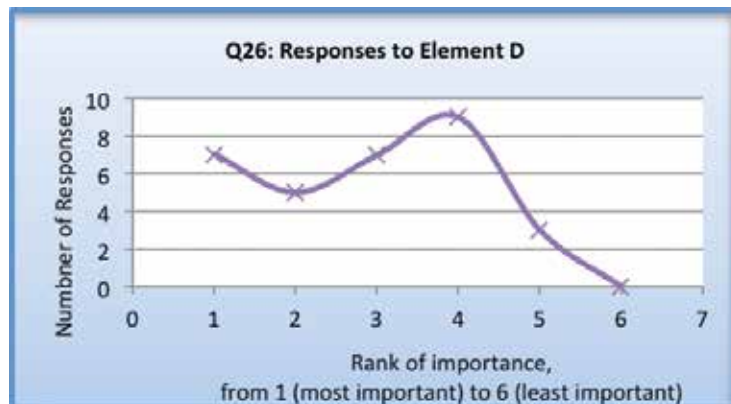


Figure 21. Distribution of responses to Element (D), Question 26: “The following is a list of elements that could be included in an IRWM signatory document. Please rank them in order of importance to your Tribe/ organization, with 1 being most important and 6 being least important.” See Appendix A-6 for source data.

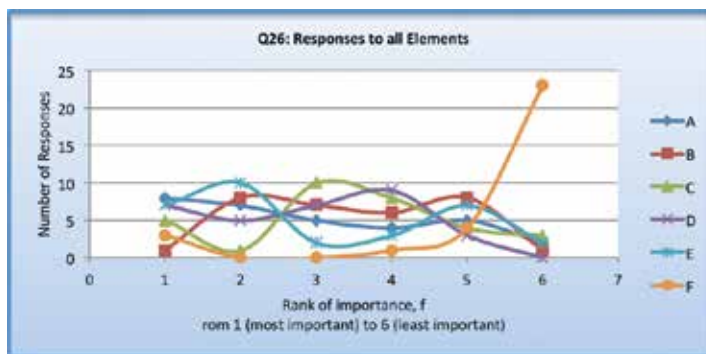


Figure 22. Distribution of responses to Question 26: "The following is a list of elements that could be included in an IRWM signatory document. Please rank them in order of importance to your Tribe/ organization, with 1 being most important and 6 being least important." See Appendix A-6 for source data.

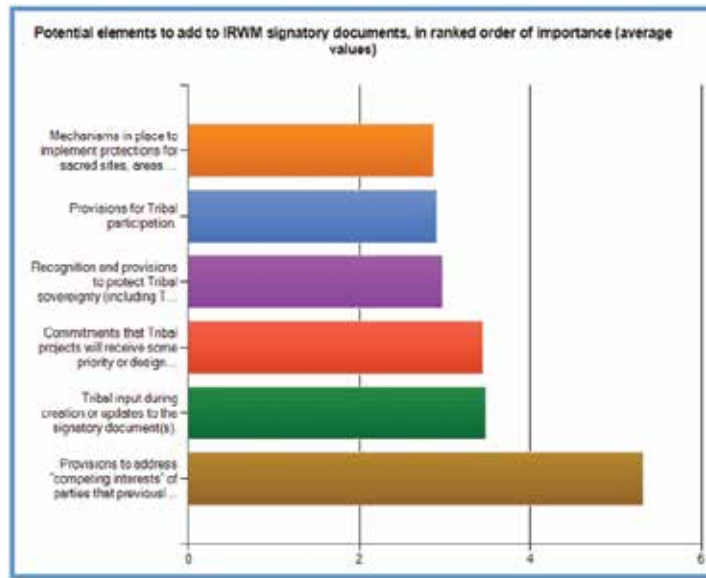


Figure 23. Average ratings of all elements, Question 26: "The following is a list of elements that could be included in an IRWM signatory document. Please rank them in order of importance to your Tribe/ organization, with 1 being most important and 6 being least important." See Appendix A-6 for source data.



Issue: Many IRWM governance documents and contracts contain or imply language that infringes on Tribal sovereignty.

Challenges:

A common concern we encountered in our research was MoUs/MoA language that (explicitly or implicitly) included “waivers of sovereignty/ sovereign immunity.” We have been unable to identify such specific language, and DWR staff told us that the department does not require waivers in its contracts. However, most MoAs/MoUs follow the DWR template, which includes a general requirement to comply with state law. This is indeed an infringement on Tribal sovereignty, as Tribes have the right to make and be ruled by their own laws, independent of the states. Stakeholders and other participants cannot “sign on” to or “adopt” the IRWMP or join the RWMG without completing required documents. This requirement inhibits Tribes from fully participating in IRWM.

Solution: Provide an alternative mechanism for agreements with Tribes that does not imply an infringement on Tribal sovereignty.

RWMGs should work with Tribes in their regions to revise current signatory documents to be acceptable to Tribal Councils (i.e., required documentation to “sign on” to an IRWMP and become a full participant in the RWMG; usually an MoU/ MoA). Alternately, RWMGs and Tribes could develop alternative

agreements with Tribes that do not imply waivers of sovereignty. DWR should work with Tribes regionally and individually to determine acceptable alternatives to current signatory documents and contracts. This was successfully accomplished in the North Coast region, providing a model for other regions: “We had to convince the entire group to sign a new MoU...Tribal lawyers came up with language that Tribes could support and agree to” (L. Hillman, Interview, June 21, 2013). The North Coast RWMG was able to make all necessary changes and receive approval within two weeks. (See Appendix B-6 for a copy of the NCIRWMP MoU). An alternative approach, currently being pursued in the Tuolumne-Stanislaus IRWMP, is to form a Joint Powers of Authority (JPA). In this particular instance, the Tribe was unwilling to sign the MoU because “it could have been seen as a waiver of sovereign immunity.” The RWMG, wanting the Tribe’s participation, was amiable to pursuing alternatives. By forming a JPA (see GC § 6500) which includes public agencies and federally-recognized Tribes, the Tribe felt assured that it could define specific actions and abilities without implying a waiver of sovereign immunity (S. Suess, SWWG Summit, June 13, 2013).

Recommendations:

- The State Legislature and the Natural Resources Agency (and its subordinate agencies) should work with Tribes to develop a mutually agreeable alternative contract agreement that does not include Waivers of Sovereign Immunity.
- RWMGs should revise their governance documents and contractual requirements to include an acceptable alternative agreement for Tribes.

2

Key Challenges & Proposed Solutions

Government-to-Government Consultation

The Federal Trust status of Native American Tribes requires any agency (federal or state) conducting planning or development (such as IRWMP) that may have an impact to Tribal lands and/or cultural resources to conduct formal, government-to-government consultation with the Tribes (ADM 1072.1. See Appendix D for a list of other relevant federal statutes). Additionally, CEQA compliance (required for IRWM grant-funded projects), requires Tribal notification:

Before the adoption of a negative declaration or environmental impact report required under Section 75070, the lead agency shall notify the proposed action to a California Native American Tribe, which is on the contact list maintained by the Native American Heritage Commission, if that Tribe has traditional lands located within the area of the proposed project (PRC § 75102).

Issues arise both when this obligation is not adequately fulfilled, and when the requirement to “notify” or “consult” does not meaningfully address Tribal concerns.

Survey Results

Six questions from our survey are associated with government-to-government consultation. These are Questions 14, 15, 21, 22, and 26.

Question 14 asks respondents to select ways in which their Tribe would consider participating in the IRWM process. The option with the highest response rate (69%) was (E) “As part of a workgroup to address DWR’s mandated ‘Tribal Issues’ area of concern.” This high response rate illustrates Tribes’ desire for increased consultation (see Appendix A-6 for source data).

Two options from Question 15 distributions also illustrate that in general, respondents are receiving effective communication from IRWM. Question 15 asks respondents to rate their level of agreement or disagreement (on a scale of 1 to 5) with a series of statements regarding their participation and experience in IRWM. Options (J) and (K) refer to consultation:

- (J) 67% of respondents agreed “the creation of a regional ‘Tribal Issues’ workgroup would result in Tribal concerns being included in the final IRWMP.”
- (K) 72% of respondents agree “additional mandates from IRWM funding managers are necessary to ensure Tribal concerns are addressed.”

Figure 24. Distribution of responses to Statements J and K, Question 15: “Please select the ways in which your Tribe would consider participating in the IRWM process.” See Appendix A-6 for source data.

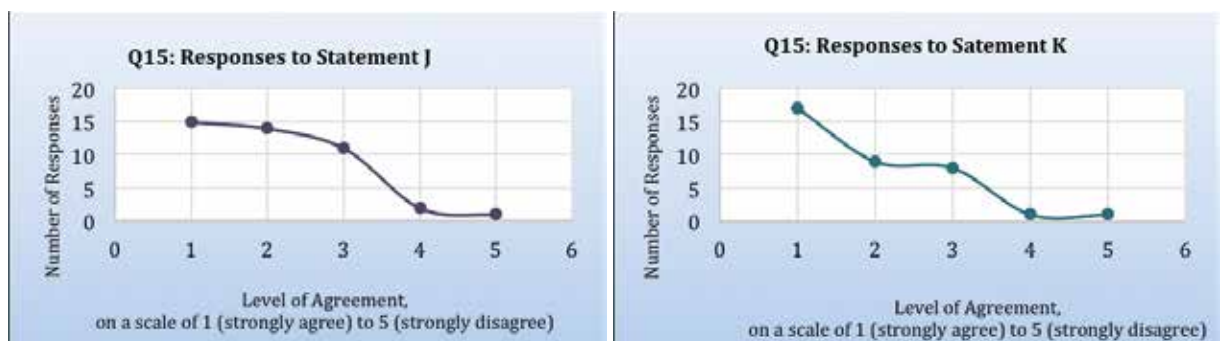


Figure 24 displays the distribution curves for these two options; note the strong positive (right) skew of the distributions. This illustrates the much higher than average response rate for these two options.

As stated earlier in regard to sovereignty and jurisdiction, the vast majority of respondents to Questions 21 and 22 feel that IRWM groups and mem-

bers do not understand the unique socio-political status of Tribes (see Figure 19 above). Figure 25 and Figure 26 display the results to all four statements from Questions 21 and 22, implying the same conclusion: greater government-to-government consultation is needed within IRWM groups, members, and Tribes.

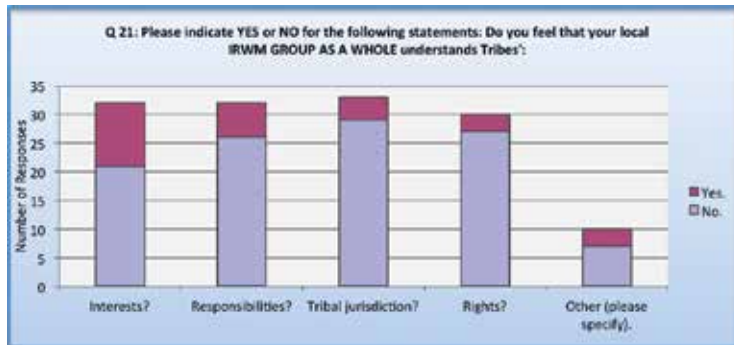


Figure 25. Summary of responses to Question 21: "Please indicate YES or NO for the following statements: Do you feel that your local IRWM GROUP AS A WHOLE understands Tribes'..."^h See Appendix A-6 for source data.

^h Please note that "other" provides a general category in which Tribal representatives completing the survey could note other aspects (aside from Tribal interests, Tribal responsibilities, Tribal jurisdiction, and Tribal rights) that individual IRWM members did not understand about Tribes.

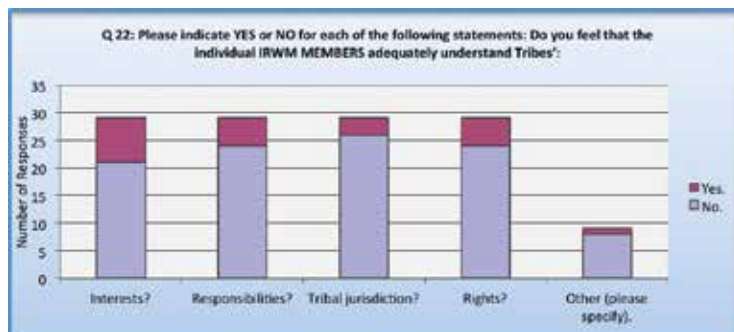


Figure 26. Summary of responses to Question 22. "Please indicate YES or NO for each of the following statements: Do you feel that the individual IRWM MEMBERS adequately understand Tribes'..." See Appendix A-6 for source data.

Element (A) of Question 26, “Provisions for Tribal participation,” is the second-highest rated element to include in signatory documents (see Section 2.2 Sovereignty). With an average rating of 2.90, the only element identified as more important is (D), “Mechanisms for protections.” Figure 27 below displays the distribution of ranks assigned to Elements (A) and (D). For comparison, Figure 22 is copied below.

You can see from the distribution curves that Element (A) has a strong positive (right) skew, illustrating that Tribes place a high level of importance on including “provisions for Tribal participation” in IRWM signatory documents. While the distribution for Element (D) is not as strongly skewed, the high number of respondents ranking Element (D) as the most important element increases the average rating. Thus, it can be inferred that these two elements are the most important of the six options provided.

Figure 27. Distribution of responses to Elements (A) and (D), Question 26: “The following is a list of elements that could be included in an IRWM signatory document. Please rank them in order of importance to your Tribe, with 1 being most important and 6 being least important.” See Appendix A-6 for source data.

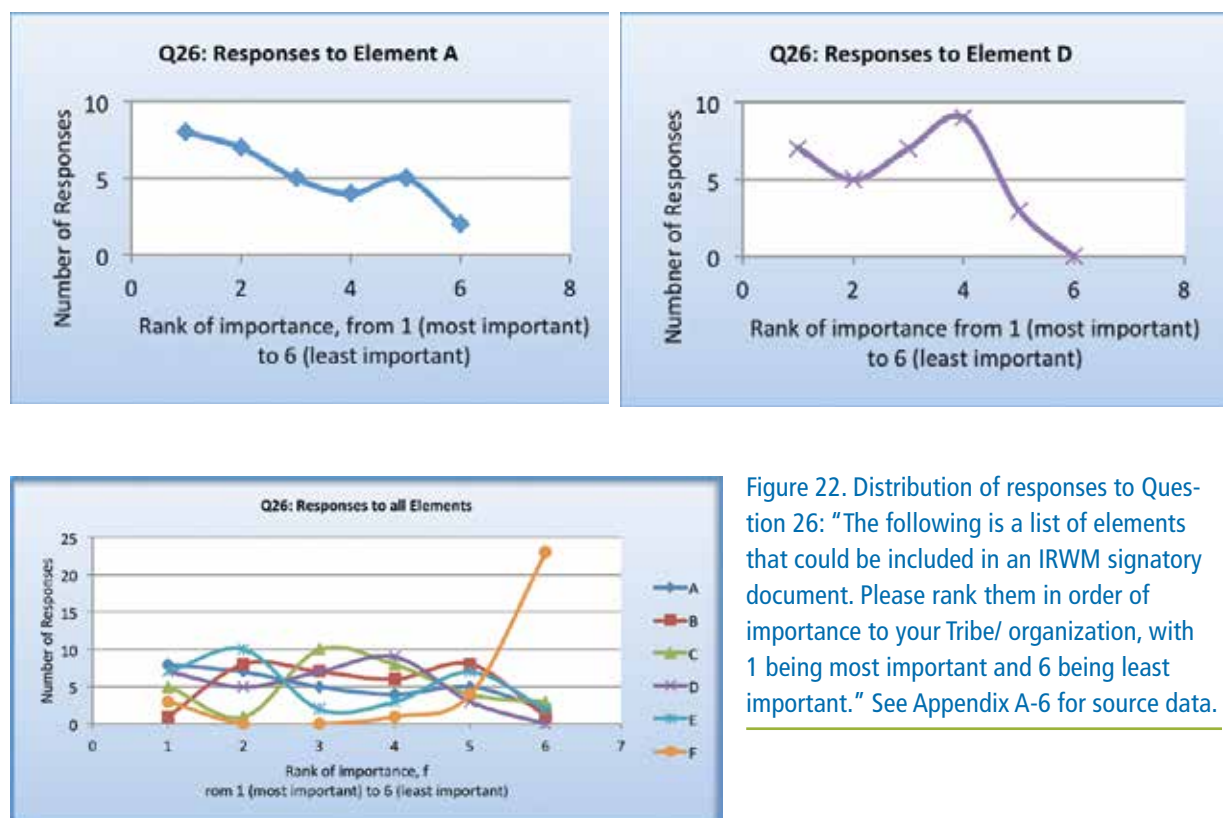


Figure 22. Distribution of responses to Question 26: “The following is a list of elements that could be included in an IRWM signatory document. Please rank them in order of importance to your Tribe/ organization, with 1 being most important and 6 being least important.” See Appendix A-6 for source data.



Issue: Understanding of Tribal structure, governance, concerns and interests, across all levels of government

Challenges:

Federally recognized Tribes are sovereign nations with a government-to-government relationship with the federal and state governments. However, this relationship is not always well-understood or recognized within local governments and agencies. One Tribal member active in IRWM explained that, although “Tribal sovereignty is at least equal to that of the state, ...counties do not see Tribes as equals. They are still woefully ignorant” (L. Hillman, Interview, June 21, 2013). Counties are not the only entities in dire need of increased Tribal understanding; there is a general perception by Tribal representatives that most IRWM members, “unless they know a Tribal government, or somebody within a Tribal government...really don’t understand it” (M. DeSpain, Interview, May 10, 2013). IRWMP groups and members also may not understand that some Tribes are not federally recognized, meaning that the federal government does not currently recognize those Tribes as sovereign entities.

Solution: State and local agencies should make a concerted effort to educate and train all of their personnel in Tribal socio-political structure and proper Tribal consultation.

All state agencies, regional, and local governments require training on Tribal socio-political structure and proper Tribal consultation. IRWM practitioners in particular should recognize the unique position and relationship between Tribes and the federal and

state governments. RWMGs should facilitate education to its members on proper Tribal protocol. This sentiment is perhaps the single most commonly identified issue throughout our entire research process. One Tribal Council-member, highly experienced in working with state and federal government agencies, expresses the following desire:

I really hope that we can educate everyone, including Tribal governments and state governments and local governments, to actually include us as full partners in the IRWMP process. That they don’t look at us as disadvantaged communities, or minorities, or special interest or simply another stakeholder. That there’s education and the inherent sovereignty of Tribal nations and that if included, we can actually be an asset for some of these counties and regions” (B. Brown, Interview, June 11, 2013).

In accordance with Executive Order B-10-11, all state, regional, and local agencies should develop and implement specific protocol for Tribal consultation across all programs and departments. This also applies to RWMGs. Because signing onto an IRWMP or related MoU is a commitment between entities, the document must recognize Tribes’ status (as federally recognized, non-federally recognized, state-listed, or other Tribal organizations). All IRWM funding mechanisms and program documents should acknowledge that Tribes are not state subsidiaries (CWC § 10535), and provide an alternative mechanism for Tribes to receive funding directly (similar to local and regional offices of federal agencies).

2

Key Challenges & Proposed Solutions

Recommendations:

- The State of California should officially define “California Indian Tribes,” as stated in EO B-10-11. The definition used in Appendix B of the 2012 IRWM Grant Program Guidelines could serve as a model.
- The State should clearly define and distinguish between “communication,” “consultation” and “collaboration” in all State policies. One interviewee noted that these terms are all problematic for Tribes, as they have been misused and actually resulted in decreased opportunities for Tribal participation. Agency staff who use these terms should be attentive to their history and context.
- The Governor’s office of the Tribal Advisor should release an official guidance document and/or statement on how agencies are expected to fulfill the requirements of EO B-10-11.
- All State agencies, particularly DWR staff, should allocate resources for training in basic Tribal government structure and proper, culturally competent Tribal consultation. If possible, local, qualified Tribal professionals should provide this training.
- The California Natural Resources Agency and its appropriate departments should provide an alternative mechanism for Tribes to receive funding directly, just as other local agencies and regional offices of federal agencies can directly receive funds from the state.
- All IRWM practitioners should recognize that communication with Tribes may follow culturally specific protocols. Cultural training by qualified (preferably Native) educators would improve relationships between IRWM practitioners, liaisons, staff, and the Native community.



Issue: Formal Consultation with Tribes

Challenges:

In 2011, Governor Brown proclaimed Executive Order B-10-11, requiring all state agencies to engage Tribes in government-to-government consultation, and directing each agency to develop specific Tribal communication plans (see Section 3.6 Executive Order B-10-11). This order has yet to be fulfilled or enforced, and the state has not provided guidance to regional or local agencies on how to develop and implement these Tribal consultation policies.

While a major step in the right direction, EO B-10-11 was passed nine years after the IRWM act. Tribes should have been consulted in the original development of the IRWM program, (from the legislative act to the guidelines and proposal solicitation packet drafted jointly by DWR and the State Water Board), but they were not. Because IRWM is a voluntary ad-hoc collaborative process (rather than a state agency or formal coalition), RWMGs have not been required to consult with Tribes. According to one DWR staff member, “If there was a Tribe in the region that was not participating, then it would be a question, but regional water management groups are not bound by law to reach out to anybody” (DWR staff, Interview, April 19, 2013).

In many regions, Tribes were not consulted in the initial development of RWMGs and the Region Acceptance Process (RAP). Numerous Tribes are

frustrated that they have “not been included in any IRWMP process that was conducive or collaborative or integrative of what our needs were at the table” (B. Brown, Interview, June 11, 2013). In the words of one research participant, “government-to-government consultation with Tribes is not happening right now. Otherwise, we wouldn’t be doing this [research]” (M. DeSpain, Interview, May 10, 2013).

One IRWM project manager expressed “understandable frustration with...the lack of guidance on how to engage Tribes; what’s required vs. what’s suggested?” and identifies this issue as “an obstacle to effective participation in an opportunity for benefits to all parties” (D. Olstein, Interview, February 26, 2013). Regional Water Management Groups have been told repeatedly to be patient because, “the State is developing guidelines.” Diverse IRWM practitioners agree that the state “needs to get it done and provide it to the regional water management groups.” RWMGs should work directly with DWR Tribal Liaisons and Tribes in their region to provide training in basic Tribal government structure (“Tribal Government 101”) and “Cultural Competency Training” for all of their RWMG members.

Solution: The state should prioritize and ensure effective government-to-government Tribal consultation is occurring across all levels of government.

2

Key Challenges & Proposed Solutions

Recommendations:

- The State of California should clearly define and distinguish between “consultation” and “collaboration” with Tribes in all state policies, and develop state-wide protocols for both; the Office of the Governor’s Tribal Advisor could be responsible for ensuring that the protocols are followed within each agency.
- The Office of the Governor’s Tribal Advisor should develop a mechanism and allocate resources for the state to work directly with Tribes; collectively, individually and regionally.
- DWR, within the authority and flexibility granted in CWC § 10541, should revise the IRWM guidelines and PSPs to require RWMGs to follow proper consultation protocols with Tribes in their region. DWR Tribal Liaisons should be responsible for verifying that this is taking place within each region.

2.3 Structure

By structure, we are referring to the underlying framework and tangible aspects of the IRWM program. These include program documents (such as Guidelines and Proposal Solicitation Packets, IRWM Plans, supporting documents (contracts, agreements, etc.), governance and decision-making methods, and funding mechanisms.

IRWM Governance

In California, IRWM regions are self-identified, and participating in IRWM is completely voluntary. This can often lead to exclusion and/ or lack of dedication and follow-through. Most Regional Water Management Groups (RWMGs) require participants with any decision-making or governance power within the group to sign on to some form of agreement. Generally, these take the form of a Memorandum of Understanding (MoU), Memorandum of Mutual Understanding (MoMU), or Memorandum of Agreement (MoA). These agreements provide some level of expectation, and varying levels of flexibility, as determined by the language of the agreement. However, these agreements sometimes lack enforcement of accountability (i.e., there is no recourse or sanction for member-agencies to fulfill their commitments). As is common in many collaborative processes, Tribal representatives we spoke with, that were indeed committed to the IRWMP, became frustrated by the varying degrees of commitment and dedication by other members. Some participants expressed a desire for a mechanism to hold one another accountable.

An alternative, and sometimes preferable form of agreement, is the “Joint Powers of Authority” (JPA). The benefits to the JPA over any “memorandum” agreement are two-fold: a JPA holds considerable accountability and requires no waiver of sovereign immunity. RWMGs that form JPAs have additional access to resources to support their collective projects, and additional authority in water-management decisions. This is especially important for Tribes, as it puts them on equal footing with other entities, and provides an avenue for exercising greater sovereignty and project leadership. Additionally, both federally recognized and non-federally recognized Tribes can use the JPA mechanism. As of this writing, the Tuolumne Band of Me-Wuk Indians is in the process of forming a JPA with Tuolumne-Stanislaus IRWM group, and is quite pleased with their experience of the process thus far.

Survey results

Questions 13 and 14 are the only items on our survey that refer to IRWM governance. Question 13 asks respondents to identify their Tribe’s role or placement in the local IRWM structure. Based on the open-ended responses, we have identified nine categories of Tribal placement in the IRWM governance structure.

Table 4 provides a summary and tally of responses according to these categories. Refer to Appendix A-6 for a complete list of actual responses submitted.

Question 14 asks respondents to select ways in which their Tribe would consider participating in the IRWM process. Of the seven options provided, (C), (F), and (G) are related to IRWM. Responses to these options are outlined in Table 5. For comparison, Figure 28 illustrates the responses to all options.

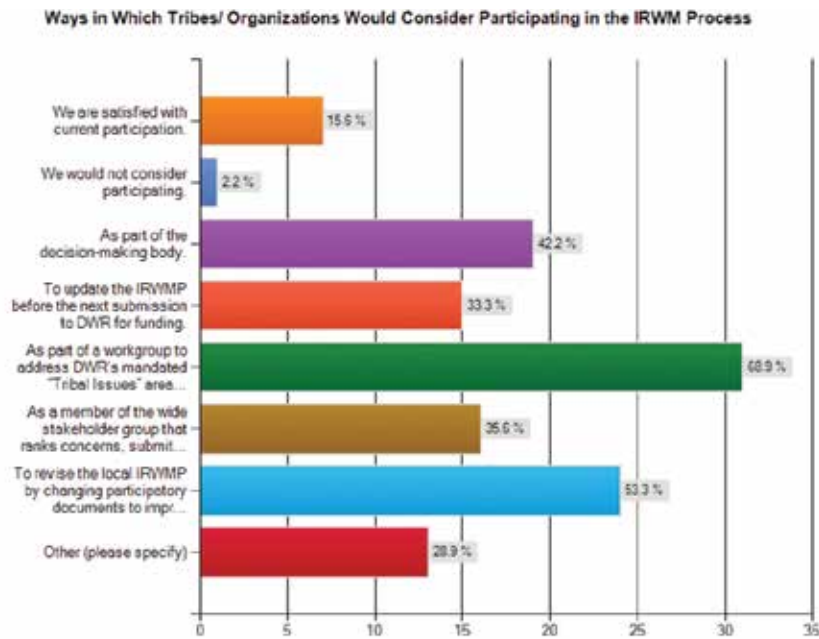
Table 4. Summary of responses to survey Question 13: "What is your Tribe/ Organization's role or placement in your local IRWM Structure?" See Appendix A-6 for source data.

Response Category	Tally
None	10
Have tried to be involved, but unsuccessful	2
Minimal contact, negotiations/ consultation	4
Seat on other local/ regional boards that interact with IRWM, but not specifically on RWMG governance structure	2
Stakeholders/ Regional Stakeholders	9
Representative attends meetings & participates in group decision-making	2
Tribal collective or workgroup/ Tribal Advisory Committee	6
Seat on Policy Review Panel/ Policy Advisory Committee	2
Seat on Technical Review Panel/ Technical Advisory Committee	5

Table 5. Summary of responses to survey Question 14: "Please select the ways in which your Tribe/ Organization would consider participating in the IRWM process." See Appendix A-6 for source data.

Answer Options	Response Percent	Response Count
C As part of the decision-making body.	42.2%	19
F As a member of the wide stakeholder group that ranks concerns, submits projects and seeks to integrate related projects with one another.	35.6%	16
G To revise the local IRWMP by changing participatory documents to improve language for better Tribal participation and greater protection of Tribal sovereignty.	53.3%	24

Figure 28. Summary of responses to Question 14: "Please select the ways in which your Tribe would consider participating in the IRWM process." See Appendix A-6 for source data.





Issue: Tribal participation discouraged or undermined by the RWMG

Challenges:

Because many IRWM plans included no mention of Tribes, and RWMGs largely formed without Tribal participation,¹¹ Tribes often feel institutionally excluded from impacting the process and projects. Some Tribal representatives have reported feeling “unwelcome” at meetings and being discouraged from pursuing governance board membership for their RWMG. For example, Tribal representatives felt that they were excluded from the Upper Sacramento River IRWM plan, despite the fact that they “had been trying to be included for two years.” In this instance, frustrations ran so high that Tribes in the region actually shut down a RWMG meeting (B. Brown, Interview, June 11, 2013).

There is a general perception among Tribal representatives that they have very little influence on IRWM decision-making. Members who have already adopted the plan (become signatory) and are able to attend a majority of the meetings determine RWMG leadership; this has the effect of excluding Tribes (who face specific barriers to becoming signatory and may not be able to attend all of the meet-

ings) from joining and becoming fully engaged in the IRWM process.

Solution: Require RWMGs to include Tribal representatives on all governance structures.

All IRWM staff should implement policies, procedures and actions that mandate Tribal inclusion. This should include seats for Tribal representation on all decision-making bodies within the IRWMP. Once RWMGs and Tribes come to an agreement on the number of Tribal representatives, Tribes should be allowed to determine among themselves how Tribal seats will be chosen and allocated. DWR should consult with RWMGs in which Tribal collaboration has been effective (North Coast, Upper Sacramento River, Tuolumne-Stanislaus, and Inyo-Mono all have strong reputations), in order to develop recommendations and models for other regions. DWR should provide guidance to RWMGs on implementing necessary changes to fully incorporate Tribal participation.

¹¹ Some IRWMPs did include Tribes from the beginning, despite the fact that the legislation and the guidelines completely excluded Tribes.

Recommendations:

- The state legislature should amend CWC § 10541(e) to add Tribal consultation in the IRWM process as one of the minimum guideline requirements for IRWMPs.
- DWR, within the authority and flexibility granted in CWC § 10541(d), should revise the IRWM Guidelines and Proposal Solicitation Package to require RWMGs to include Tribal seats in their governance structure, in order for the RWMG to be eligible for Prop 84 Round 3 implementation funds, as well as all subsequent funding allocations.
 - » A mechanism should be put in place for Tribes to express their decision not to participate, and the onus placed on the RWMG to demonstrate that all efforts were taken to engage the Tribe, as is required for federal Housing and Urban Development (HUD) Grants (see section 2.1 Engagement and Appendix D-7).
- DWR should provide support and recommendations to RWMGs on how best to incorporate Tribes into their governance structure.
- RWMGs should enable Tribes to determine the selection of Tribal seats.



Issue: IRWM Institutional Capacity

Challenges:

Because Regional Water Management Groups are voluntary, ad-hoc collaboratives, they lack external authority and internal accountability. This threatens the institutional capacity of RWMGs and the long-term efficacy of the IRWM program.

Solution: Develop a governance structure for IRWM with greater authority and stronger commitments from parties.

Tribes active in IRWM have suggested JPAs or compacts as a method of increasing the authority of and commitment to the RWMG. This would not only increase Tribes' ability to engage in a greater leadership capacity, but also hold other RWMG members

accountable to long-term collaboration. Stephanie Suess, Tribal Advisory Committee representative to the IRWM Strategic Plan Focus Group, and former Environmental Director for the Tuolumne Band of Me-Wuk Indians, articulated the following:

“We need to come up with a governance structure—considering JPA, joint powers of authority, that would be a stronger commitment than an MoU. We need something solid; we need a leader. A JPA would be a real governance structure; a contract that has teeth. It would be a legal formation, keeping us at the table. Under state water code, Tribes can be there, recognized as a leader” (S. Suess, Interview, May 3, 2013).

Recommendations:

- The California Legislature should take steps to make IRWM a permanent structure (similar to special districts), with required participation from state agencies, and resource these structures accordingly.
- The Natural Resources Agency and DWR should develop continuous incentives for RWMGs to maintain their structure and impact.
- RWMGs should follow the example of other successful IRWMPs by forming a JPA or Resource Partnership, rather than simply signing on to an MoA/MoU.

2

Key Challenges & Proposed Solutions

Funding Mechanisms & Projects

IRWM in California is predominantly a grant-funding program, to facilitate collaborative decision-making and provide resources for water management projects. Certain structural aspects of the funding and project mechanisms deter or even prohibit Tribes from full access to funds for planning and/or project implementation.

Survey results

Four of our survey questions address funding mechanisms and projects: Questions 5, 7, 10, and 18.

Question 5 refers to reasons why Tribes may be interested in participating in IRWM. 75% of respondents selected Option (D) “Potential funding for water-related projects” as a reason for their interest in IRWM (see Figure 12; refer to Appendix A-6 for source data).

Question 7 asks respondents to select from a variety of phases of the IRWM process in which their Tribe would be interested in participating. Options referring to projects & funding, along with their response rates, are illustrated in Table 6 below. Of note, 62% of respondents report interest in (E) “developing projects for funding in the IRWM plan submission and (J) “to be informed of project outcomes.” Responses to all four of these phases are outlined in Table 6 below.

Table 6. Summary of responses to survey Question 7: “Integrated Regional Water Management Planning (IRWMP or IRWM Plan) has many phases. Please check which of the following phases you would like to be informed of and/or are interested in participating in.” See Appendix A-6 for source data.

Answer Options		Response Percent	Response Count
E	Developing projects for funding in the IRWM Plan submission.	62.0%	31
F	Ranking and/ or consolidating projects to be included in the IRWM Plan submission.	48.0%	24
I	Project partners in funded project implementation.	56.0%	28
J	To be informed of project outcomes.	62.0%	31

Question 10 asks respondents to describe their activities with their IRWM group, by selecting from a number of options. Activities (D), (E) and (F) refer to project submission, funding, and implementation. At the time of survey (December 2012/January 2013), nearly 20% of respondents (7/38) had submitted projects. Of those, 8% (3/38) had been funded, but no respondents had yet participated in implementation of a funded project. See Table 7 below for response rates.

Question 18 specifically addresses Tribally-led projects. Of the 41 respondents that answered the question, 14 (34%) had submitted projects to their IRWM, 10 (24% of total) of which were included in proposal to DWR, 3 (7% of total) of which have had funds released to Tribes. Response rates for all four options are outlined in Table 8, and displayed graphically in Figure 29, below.

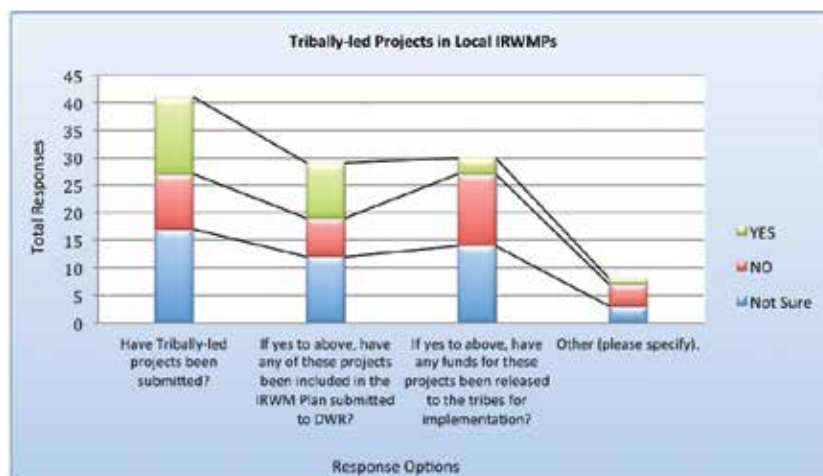
Table 7. Summary of responses to survey Question 10: “Which of the following best describes your activities with your IRWM group?” as relevant to projects and funding. See Appendix A-6 for source data.

Answer Options	Response Percent	Response Count
D has submitted a project for IRWM funding	18.4%	7
E received funding for an IRWM project.	7.9%	3
F participated in the implementation of an IRWM funded project.	0.0%	0

Table 8. Summary of responses to survey Question 18:
 “Regarding Tribally-led projects in your IRWM region.”
 See Appendix A-6 for source data.

Answer Options	YES	NO	Not Sure	Response Count
A Have Tribally-led projects been submitted?	14	10	17	41
B If yes to above, have any of these projects been included in the IRWM Plan submitted to DWR?	10	7	12	29
C If yes to above, have any funds for these projects been released to the Tribes for implementation?	3	13	14	30
D Other (please specify).	1	4	3	8

Figure 29. Summary of responses to survey Question 18: “Regarding Tribally-led projects in your IRWM region.”
 See Appendix A-6 for source data.





Issue: IRWM Institutional Capacity

Challenges:

The reimbursement structure of IRWM grant funding is extremely problematic for Tribes. The IRWM grant process is often protracted, and sometimes requires additional proposal amendments or revisions after funding has already been promised. One project applicant received confirmation of funding for the project, but had to revise the scope of work at least three times, over the course of three years. Twice, the release of Proposition 84 funds was delayed because state budget was not approved (M. Maruffo, Interview, July 22, 2013). This particular project had fortunately not yet started, but often projects are already underway when such issues arise. In such instances, project proponents should pay out-of-pocket, as funding is not released until after projects are completed and all invoices submitted.

“We had a project that was going forward and... we realized...the funding mechanism of the Prop 84 bonds,...if there was any state freezing of the bonds or money we could have the whole project fund out and possibly not get reimbursed for two years or more...We could have \$200,000 into a project and not get reimbursed for long period of time; the Tribal Council decided it was too much of a risk and we pulled our project off the table” (B. Brown, Interview, June 11, 2013).

According to DWR staff, grant reimbursement claims are reviewed very carefully. Groups sometimes submit items which they thought were reimbursable, but in actuality are not. “All the work a group is claiming has to be within the scope of work in the work-plan of the grant agreement...” This extensive review process “... is possibly partially-responsible for the time-lag in reimbursements” (DWR staff, Interview, April 19, 2013).

Solution: Establish an alternative Project Review Process and reimbursement structure more conducive to Tribal participation.

Recommendations:

- A mechanism should be put in place to fast-track funding for qualifying Tribes, in order to enable earlier release of funds and/ or release of partial funding in stages throughout the project time-line.
- DWR should modify the project proposal process to include a short-form pre-screening application to provide Tribes early notification of whether their project will be considered for funding, so Tribes can more effectively allocate their staff time and resources to further develop project proposals.
- » Note; the Addendum to the 2012 IRWM Guidelines—Draft, August 2013, Appendix H, Plan Review Process, was released for public review on August 30th, 2013. This is a step toward achieving a similar outcome. DWR is pre-screening Plans to ensure compliance with 2012 Guidelines in order to be eligible for Round 3 Proposition 84 funding. However, Tribes have expressed significant issues with this Addendum (see Appendix D-12), and assert that the 2012 Guidelines are still in dire need of revisions in order to address issues repeatedly expressed by Tribes. Revisions are addressed in the following section, Program Process & Documents.



Issue: Lead applicant and project sponsor eligibility

Challenges:

In order to apply for IRWM funding, the lead applicant must be “a local agency or public utility district” (as defined in CWC § 10535) or a 501(c)(3) non-profit corporation. Therefore, Tribes cannot apply as the sole or lead applicant on a project, unless the Tribe qualifies for DAC status. According to a former IRWM program coordinator, “If Tribes want to submit a project, they need to decide how to participate: either become signatory to the IRWMP, adopt the plan, or submit their project through another entity as the project sponsor” (T. Sloat, Interview, December 28, 2012). Many Tribal interviewees expressed frustration with DWR for not including Tribes among the listed potential lead applicants. In some cases, this exclusion has led to a perception of unfairness. As one interviewee said:

...somewhere or other, there’s this interpretation [that Tribes cannot be lead applicants]. But why is there that interpretation? [The legislation] never said that. That was somebody’s decision at the state level, you know? That’s how they want it. They want control of it. All the way down. (R. Goode, Interview, February 13, 2013).

DWR representatives responded that they did not, in fact, capriciously exclude Tribes, but are bound by legislation. According to one interviewee:

The IRWM program was not crafted in a vacuum by DWR—the program is the result of and the product of the CA Water Code sections that were written to implement IRWM from Prop 50 and 84. To change the program, you have to change the CA Water Code as it pertains to IRWM... Further, if a Tribe wants to be considered a “local agency” then you must change the definition of “local agency” in the CA Public Utilities Code. DWR can’t change California law; only the legislature and the Governor have the power to do that.” (DWR staff, Interview, April 19, 2013).

However, as is discussed in detail below under *Guidelines*, there is some debate as to how much latitude DWR has within the legislation to develop the IRWM guidelines and requirements.

Solution: Develop a mechanism that enables Tribes to apply for funds as the “lead applicant” or “project sponsor.”

Possible solutions include revising the guidelines to explicitly state that all California Native American Tribes be granted Treatment as States (TAS) status for IRWM, for example, or at least equal footing with entities authorized to serve as lead applicants. According to one Tribal Chairman: “...once you build it into it, then it’s harder to deny. I don’t know why it’s so easy to deny now, but it is. But we’ve brought this to the table numerous times. It says Tribes are to be included in here.” (R. Goode, Interview, February 13, 2013)

Recommendations:

- DWR, within the authority and flexibility granted in CWC § 10541(d), should revise the IRWM Guidelines and Proposal Solicitation Package for all future funding mechanisms to include Tribes as potential lead applicants or project sponsors (alongside those already identified in the guidelines; local agencies, utility districts, and 501(c)(3) not-for-profit organizations).



Issue: Prevailing Wage and/or Davis-Bacon Wage Requirements for IRWM Grant-funded Projects

Challenges:

Many Tribes have their own Tribally adopted wage rates, and generally complete project work with their own staff, rather than hiring outside contractors. However, state-funded grant projects require grantees to follow federal prevailing wage rates, under the Davis-Bacon act, for work completed under state grant agreements. One interviewee views this as “an affront to Tribal sovereignty” (E. Crosby, Personal Communication, October 9, 2013).

Solution: The State of California should waive the Davis-Bacon/ prevailing wage requirement for Tribal IRWM projects.

Recommendations:

- The State of California should respect Tribal sovereignty and pre-established Tribal protocols by waiving the Davis Bacon/ prevailing wage requirement for Tribally-led projects implemented by Tribal staff on Tribal lands.

Program Process & Documents

While many of the concerns already addressed stem from issues with the program process or documents themselves, it is necessary to specifically address the language and specifications within IRWM documents, whether originating from DWR or from individual IRWM regions. Program documents include the IRWM Guidelines, Regional Acceptance

Process (RAP), Proposal Solicitation Packet (PSP) IRWM Plans and project applications, Project Review Process (PRP), and Memorandums of Understanding/Agreement (MoU/MoA). Because all of these documents can be revised or amended as needed, concerns about their content may be readily addressed. The appropriate lead agency need only revise the language within the document so as to enable full Tribal collaboration. The only exception is the specific legislative code relevant to IRWM (see Appendix C). That too can be changed, but requires legislative action to do so.

Survey results

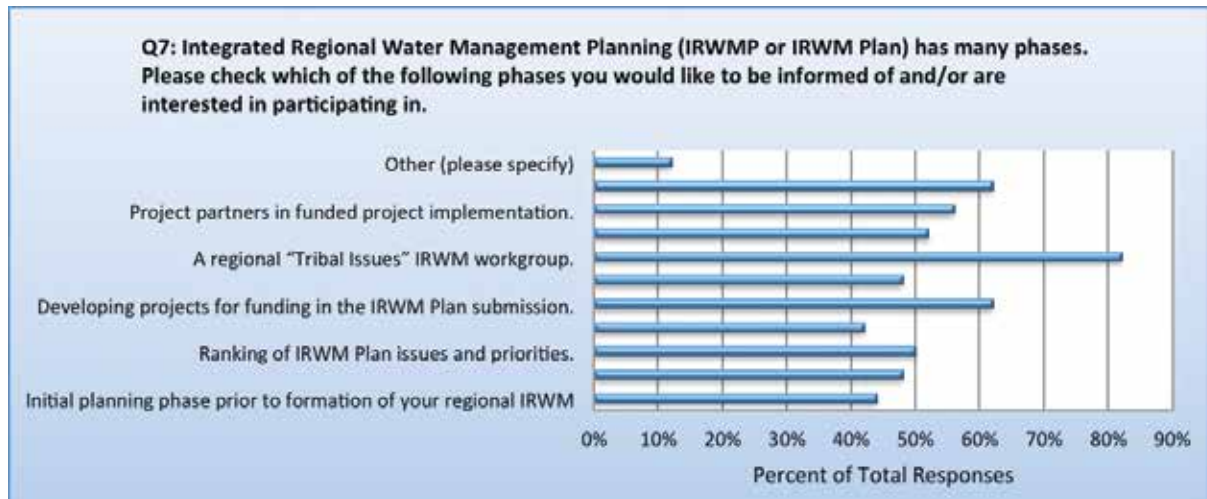
Regarding IRWM processes and documents, four of our survey questions provide relevant information: Questions 7, 10, 19, and 26.

Question 7 asks respondents to select from a variety of phases of the IRWM process in which their Tribe would be interested in participating. Options referring to process & documents, along with their response rates, are illustrated in Table 9 below. Of note, 82% of respondents are interested in phase (G) “A regional “Tribal Issues” IRWM workgroup.” This same information is displayed graphically in Figure 30.

Table 9. Summary of responses to survey Question 7: “Integrated Regional Water Management Planning (IRWMP or IRWM Plan) has many phases. Please check which of the following phases you would like to be informed of and/or are interested in participating in” as relevant to process and documents. See Appendix A-6 for source data.

Answer Options	Response Percent	Response Count
E Developing projects for funding in the IRWM Plan submission.	62.0%	31
G A regional “Tribal Issues” IRWM workgroup.	82.0%	41
J To be informed of project outcomes.	62.0%	31

Figure 30. Summary of responses to survey Question 7: "Integrated Regional Water Management Planning (IRWMP or IRWM Plan) has many phases. Please check which of the following phases you would like to be informed of and/or are interested in participating in" as relevant to process and documents. See Appendix A-6 for source data.



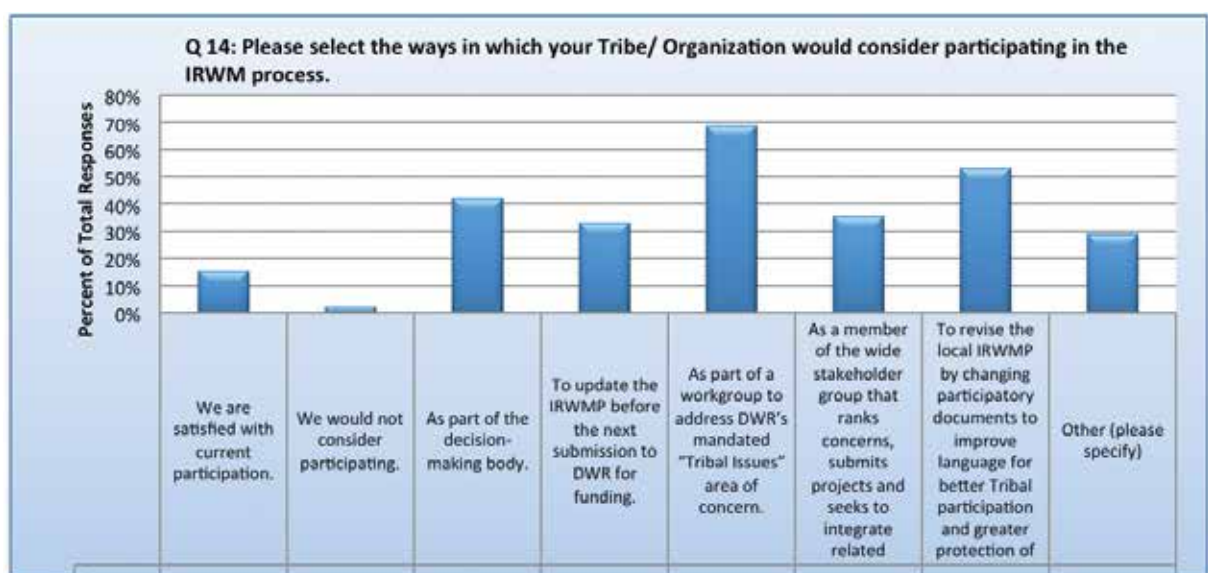
Question 10 asks respondents to describe their activities with their IRWM group, by selecting from a number of options. In regard to IRWM process and documents, less than half of respondents participate as part of their IRWM's decision-making body (activity B), and only ¼ of respondents have signed a MoA, MoU or similar participatory agreement. Refer to Figure 13 above and Appendix A-6 for all response rates.

Question 14 asks respondents to select ways in which their Tribe would consider participating in the IRWM process. Roughly half of respondents (53%) would consider participating "to revise the local IRWMP by changing participatory documents to improve language for better Tribal participation and greater protection of Tribal sovereignty" (option G). Table 10 and Figure 31 below display response rates to all seven options.

Table 10. Summary of responses to survey Question 14: "Please select the ways in which your Tribe/ Organization would consider participating in the IRWM process." See Appendix A-6 for source data.

Answer Options	Response Percent	Response Count
A We are satisfied with current participation.	15.6%	7
B We would not consider participating.	2.2%	1
C As part of the decision-making body.	42.2%	19
D To update the IRWMP before the next submission to DWR for funding.	33.3%	15
E As part of a workgroup to address DWR's mandated "Tribal Issues" area of concern.	68.9%	31
F As a member of the wide stakeholder group that ranks concerns, submits projects and seeks to integrate related projects with one another.	35.6%	16
G To revise the local IRWMP by changing participatory documents to improve language for better Tribal participation and greater protection of Tribal sovereignty.	53.3%	24

Figure 31. Summary of responses to survey Question 14: "Please select the ways in which your Tribe/ Organization would consider participating in the IRWM process." See Appendix A-6 for source data.



Question 19 asks respondents to rate how positive or negative (on a scale of 1 to 5) their experience has been with a variety of aspects in their local IRWM. Of particular relevance to IRWM process and documents, (E) “Structure of project development and submission process” and (J) “Ability to integrate changes to PSP (Proposal Solicitation Package) into project proposal.” See Figure 32 below for distribution curves of these two aspects: Aspect (J) has a very normal distribution, but Aspect (E) is skewed right, implying that respondents have generally had a more positive experience with the “project and development and submission process” than other aspects of IRWM.

Question 26 refers to a variety of elements that could be included in a signatory document, and asks respondents to rank them in order of importance to their Tribe (on a scale of 1 to 8, 1 being most important and 8 being least important). Element (D) was ranked most important (average rating 2.87) of the six options. Figure 22 is copied again below, displaying the distribution of ranks for each of the six elements. See Appendix A-6 for source data.

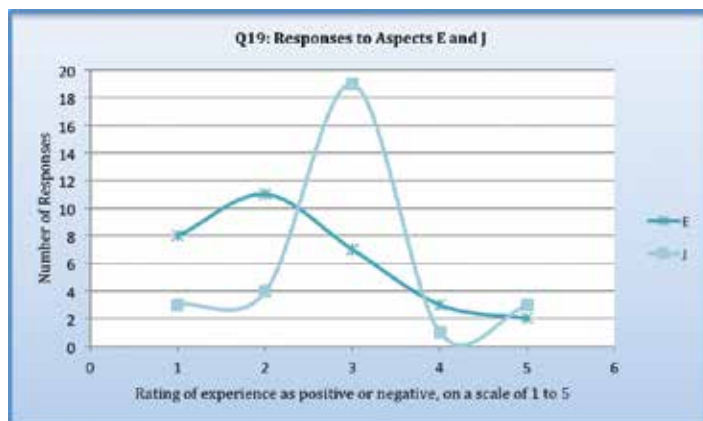


Figure 32. Distribution of responses to Aspect (E) and (J), Question 19: “On a scale of 1 to 5, please rate how positive or negative your experience has been with the following aspects of participation in your local IRWM.” See Appendix A-6 for source data.

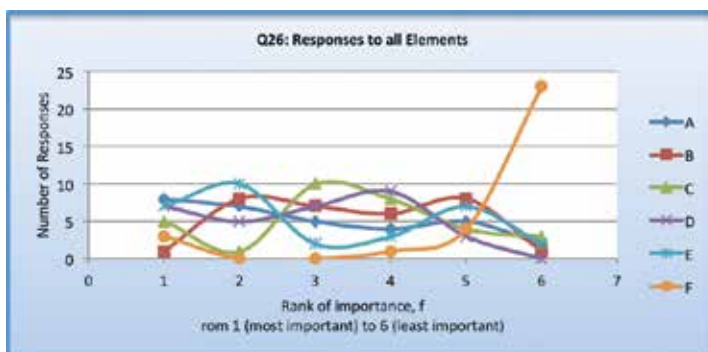


Figure 22. Distribution of responses to Question 26: “The following is a list of elements that could be included in an IRWM signatory document. Please rank them in order of importance to your Tribe/ organization, with 1 being most important and 6 being least important.” See Appendix A-6 for source data.

Guidelines

For each funding source, The Department of Water Resources and the State Water Board develop guidelines to “establish the general process, procedures, and criteria that DWR will use to implement” the program funded by that source, such as bond appropriations and legislative acts (2012 Guidelines). It is important to note that the various facets of the overall IRWM program (regional acceptance, planning, project implementation, etc.) may be funded from different sources, and thus be subject to different sets of guidelines. The legislative directive for developing the guidelines comes from the initial IRWM Planning Act; CWC § 10530 *et seq.* and AB 685; CWC § 10540.

CWC § 10541 states: “(a) The department shall develop project solicitation and evaluation guidelines for the application of funds made available pursuant to § 75026 of the Public Resources Code, to enable broad and diverse participation in integrated regional water management plan development and refinement.” In Section (d), DWR is granted the authority to revise the guidelines and PSP as needed:

The department may periodically review and update the guidelines to accommodate changes in funding sources, statutory requirements, new commonly accepted management practices, and changes in state water management policy. Any guideline changes shall be made with appropriate consultation with other state agencies and public review pursuant to subdivisions (b) and (c).

Section (e) lays out 14 items which “the guidelines shall require that integrated regional water management plans include,” the last of which is: “Any other matters identified by the department.” This provides considerable flexibility for the Department to address issues that arise through the IRWM process. It is our hope that DWR will exercise this authority to revise the guidelines and PSP to better accommodate Tribal collaboration.

Issues

The IRWM Guidelines established and administered by DWR require each Regional Water Management Group (RWMG) to have a steering committee of at least three entities. Two of the three members must be “local agencies...that have some statutory authority over water supply or water management, as

well as those persons who may be necessary for the development and implementation of an IRWM Plan (Guidelines 2012, emphasis added). CWC § 10535 defines “Local agency” as “any city, county, city and county, special district, joint powers authority, or other political subdivision of the state, a public utility as defined in Section 216 of the Public Utilities Code, or a mutual water company as defined in Section 2725 of the Public Utilities Code.” California Native American Tribes are not considered subdivisions of the state and thus do not qualify as “local agencies.”

However, under the requirements of CWC § 10540 and § 10541, California Native American Tribes clearly qualify as “persons necessary for the development and implementation of an IRWM Plan.” Additionally, under this definition, Tribes with US EPA-recognized “Treatment as States” status and enacted Tribal Water Codes qualify as regulatory agencies. A Tribe with “Treatment as States” status under the Clean Water Act, for example, is delegated authority to manage its water resources, and may in turn contract for various functions to be performed by state and local agencies, such as through IRWM plans and projects (Getches 198:539). However, DWR has interpreted CWC § 10540 and § 10541 to include only local public agencies *to the exclusion of*, rather than “*as well as* those persons who may be necessary for the development and implementation of an IRWM Plan.” While it is understandable to require projects funded with state funds to be consistent with State laws and authority, it goes against the primary purpose of IRWM (local, regional water management) to exclude local authorities such as Tribes. Under the requirements of CWC § 10540 and § 10541, California Native American Tribes clearly qualify as “persons necessary for the development and implementation of an IRWM Plan.”

Tribes and Tribal organizations engaged in IRWM have identified multiple issues with the program documents (Guidelines and PSP) that effectually block Tribes from fully participating in their RWMGs. Tribal representatives that we interviewed explained that they have expressed their concerns to DWR repeatedly, and have asked when the most appropriate time to suggest revisions to the guidelines would be. IRWM division staff responded to these requests by providing a rough timeline of potential guideline revisions, aligned with the anticipated Proposition 84 Round 3 funding cycle. This

timeline identifies Summer 2014 as the Target Date for the release of Draft Program Guidelines and PSP for Round 3 funding (see Figure 33 below). Tribal IRWM practitioners were told that the DWR would begin working on guideline revisions in December of 2013, so Tribes could submit recommendations and proposed revisions at that time.

However, in September of 2013, DWR released the Draft Addendum to the 2012 Guidelines–Appendix H–IRWM Plan Review Process. On more than one occasion, Financial Assistance Branch Chief Tracie Billington expressed that DWR does not intend to revise the guidelines after all, unless they are required to do so by future legislation (IRWM Conference, April 5, 2013, DWR PRP Public Meeting, October 7, 2013). DWR's Appendix H is a means to avoid having to revise the guidelines in their entirety. This is of significant concern to Tribes, many of which have been asking repeatedly for DWR to address their IRWM concerns by revising the guidelines. An ad-hoc collaborative of Tribal governments and organizations active in IRWM have developed a referendum in response to the Addendum, calling on DWR yet again to respond to their request for Guidelines revisions (see Appendix D-12).

Solutions

There is nothing in the legislative language or subsequent code that explicitly limits funding applicants to local agencies or non-profit organizations; this was a policy decision made by DWR and the State Water Board when developing the guidelines.

§ 10541 (a): The department shall develop project solicitation and evaluation guidelines for the application of funds made available pursuant to Section 75026 of the Public Resources Code, to enable broad and diverse participation in integrated regional water management plan development and refinement.”

§ 10541 (i) The guidelines shall provide for a process for the development, periodic review, updating, and amending of integrated regional water management plans. The department shall establish eligibility requirements for the project funding, that provide sufficient time for the updating of plans as necessary to reflect changes in the guidelines.

2 Key Challenges & Proposed Solutions

Figure 33. Anticipated schedule of future IRWM grant solicitations. Source: DWR, July 17, 2013.

Activities	Target Date
Local Groundwater Assistance Grants	
Announce Final Awards	June 2013
Round 2 Stormwater Flood Management Grant	
Announce Draft Recommendations for Public Review & Comment	June 2013
Announce Final Awards	August 2013
Round 2 Implementation Grant	
Announce Draft Recommendations for Public Review & Comment	August 2013
Announce Final Awards	October 2013
IRWM Plan Review Process	
Draft Process for Public Review & Comment	August 2013
Round 3 Implementation Grant (Pending Appropriation; no earlier than FY 14 15)	
Release Draft Program Guidelines & PSP	Summer 2014
Release Final Program Guidelines & PSP	Fall 2014
Applications Due	Winter 2014/2015
Announce Draft Recommendations for Public Review & Comment	Spring 2015
Announce Final Awards	Summer 2015

As illustrated by the language in CWC § 10540 and § 10541 (see Appendix C-5), the current statutory interpretation that excludes Tribes is a policy decision, not a legislated mandate, and thus can be changed by DWR without legislative action.

The current IRWM Bond Language and Guidelines includes Tribes in the list of potential “stakeholders.” CWC § 10541(g) identifies the following as potential stakeholders in a region:

- (1) Wholesale and retail water purveyors, including a local agency, mutual water company, or a water corporation as defined in Section 241 of the Public Utilities Code.
- (2) Wastewater agencies.
- (3) Flood control agencies.
- (4) Municipal and county governments and special districts.
- (5) Electrical corporations, as defined in Section 218 of the Public Utilities Code.
- (6) Native American tribes that have lands within the region.**
- (7) Self-supplied water users, including agricultural, industrial, residential, park districts, school districts, colleges and universities, and others.
- (8) Environmental stewardship organizations, including watershed groups, fishing groups, land conservancies, and environmental groups.
- (9) Community organizations, including landowner organizations, taxpayer groups, and recreational interests.
- (10) Industry organizations representing agriculture, developers, and other industries appropriate to the region.
- (11) State, federal, and regional agencies or universities, with specific responsibilities or knowledge within the region.
- (12) Disadvantaged community members and representatives, including environmental justice organizations, neighborhood councils, and social justice organizations.
- (13) Any other interested groups appropriate to the region.

A stakeholder is defined as “an individual, group, coalition, agency, or others who are involved in, af-

ected by, or have an interest in the implementation of a specific program or project” (Guidelines 2012). By this definition, Tribes may be considered stakeholders, in the same way that a federal agency might be considered a stakeholder. However, Tribes are far more than stakeholders; they are governmental entities with jurisdictional authority over water resources, aboriginal landholders and sovereign governments. There is a federally mandated responsibility for Tribes to be consulted as governments. As such, the IRWM Bond Language and Guidelines should be changed to read: “... agencies, California Native American Tribes, and other stakeholders, as defined in CWC § 10541.”

Whether IRWM guidelines are revised as recommended or not, Tribes can still fully participate in IRWM. Some Tribes have even successfully submitted grants as the lead applicant. The current IRWM guidelines (2012) require the “applicant” to “be a local agency or non-profit organization” (Guidelines 2012). Joint Powers of Authority (JPAs) are included in the definition of “local agency.” Some Tribes have had success with IRWM by forming JPAs, rather than a MoA/ MoU. Once formed, Tribes can apply for grants and enter into contracts with the state, as part of the JPA. Any non-profit corporation can also qualify as lead applicant. Many Tribes, especially non-federally recognized Tribes, already have non-profit corporations. Those that do not could form them, if they desired to enter into a grant contract with the state as a lead applicant.

Some RWMGs have raised questions regarding which Tribes they need to include and how to identify Tribes within their regions. RWMGs and IRWM Plans do not always differentiate between federally recognized Tribes, non-federally recognized Tribes, and Tribal organizations. Federally-recognized Tribes are political entities, specifically-defined by the Federal Bureau of Indian Affairs, with which government-to-government consultation is required. Although not federally mandated, it is in the best interest of RWMGs to consult with non-recognized Tribes and Tribal organizations as well for consistency with State Executive Order B-10-11. In fact, Tribes are defined in the IRWM Guidelines to include “all Indigenous Communities of California” (see Appendix B-2). Consultation or collaboration with any one Tribe, though, by no means precludes legitimate consultation with *all* federally-recognized Tribes in a region.

Recommendations:

- DWR and the State Water Board can and should interpret CWC § 10530, from which they established the IRWM guidelines, to include Tribes among the list of potential project applicants.
 - » DWR, within the authority and flexibility granted in CWC § 10540, should revise the IRWM Guidelines and other program documents, in accordance with the recommendations made in this report, to better facilitate Tribal participation in IRWM.
- DWR should work directly with Tribes to identify what specific language changes and revisions are required.
- DWR, as well as all state agencies, should formally recognize and empower the important role that Tribes (recognized and non-recognized) play in water management in California, in part by following the above recommendation.

Signatory Documents (MoU/ MOA/ MoMU etc.)

Issues

Some Tribes have approached signatory documents with hesitation and numerous concerns (T. Sloat, Interview, December 28, 2013). Generally, signatory documents are viewed as an infringement on Tribal sovereignty (see Section 2.2 Sovereignty). In the CABY region, for example, Tribes were required to sign onto the IRWMP in order to be a RWMG member. However, the IRWMP did not explicitly state that Tribes are separate from stakeholders. Some Tribal representatives view this as a failure to recognize the status of Tribes as governments.

Many Tribes prefer formal government-to-government consultation, rather than entering into an informal agreement with the Regional Water Management Group (see Section 2.2, Government-to-Government Consultation). Research participants expressed frustration that RWMG representatives sometimes lack adequate delegated authority to make decisions for their agencies. This is a common factor of stakeholder-driven planning processes.

Solutions

In some instances, concerns have been sufficiently addressed by working with the Tribes in a region to amend the signatory document(s). This was successful in the North Coast region, where a coalition of Tribes proposed amendments to signatory documents to established mutual understandings of “North Coast area agencies, Tribes and stakehold-

ers” (Refer to the full MoU in Appendix B-6). Contracts with the state can also be revised, as is similarly done for federal agencies. For example, Madera County was able to work with DWR to draft a contract for one federal agency to receive state funds for an IRWM project (K. Bankman, SWWG Summit, June 12, 2013). These accommodations can, and should be made for Tribes, but it often takes persistence. In one instance, a Tribe with a funded project went back and forth with DWR nearly half a dozen times with different document versions, before they agreed upon a limited waiver of sovereign immunity that only referred to the specific grant and specific monetary amount (Interview, M. Maruffo, July 22, 2013).

Some RWMGs have overcome the continuity/authority issue through their signatory documents. Agreements can be crafted to require a degree of continuity, and to ensure that representatives are delegated necessary decision-making authority by their entity (Tribal Council, agency, etc.). For example, the Upper Sacramento River IRWMP is developing a new MoU that “will lay out clearer requirements for participation, to make it a more formalized process” (D. Olstein, Interview, February 26, 2013). Other RWMGs have formed JPAs to gain that same level of continuity (see section).

Our survey research revealed additional recommendations for Signatory Documents. Of the 31 respondents that answered question 26, “Rank in order of importance to your Tribe; the following list of elements that could be included in an IRWM signatory document,” two items tied for highest rank (i.e., lowest number = most important). “Provisions

for Tribal Participation” and “Mechanisms put in place for protection of sacred sites, areas of cultural significance, validity of Tribal philosophies, and value systems” both had an average rank of 2.87 out of 6. Nearly half of all respondents ranked these items

either first or second in importance. “Recognition and provisions to protect Tribal sovereignty” was also identified as highly important (average rank 2.97); with 56% of respondents identifying it as first or second in importance. See Appendix A-6 for source data.

Recommendations:

- DWR should create and maintain an online archive of successfully agreed upon signatory documents that have successfully been agreed upon with Tribes, as reference and models for other RWMGs.
- RWMGs should revise signatory documents as-needed to address the concerns and meet the needs of individual Tribes within their region.
- RWMGs should develop and apply agreements such as MoUs/MoAs and structures such as JPAs, that respect Tribal sovereignty and meet the needs of individual Tribes in their region.



Issue: Tribes defined as “stakeholders” in IRWM documents

Challenges:

IRWM documents define Tribes as “stakeholders.” This is a major infringement on Tribal sovereignty. Foundational decisions in Federal Indian law, such as *Worcester v. Georgia* (1832) describe Indian Nations as “distinct, independent political communities...the undisputed possessors of the soil” (31 U.S. 515). In *Talton v. Mayes* 1896, the Court recognized that “...the powers of local self government enjoyed by the Cherokee nation existed prior to the constitution...” (163 U.S. 376). Defining Tribes as “stakeholders” also infringes on the government-to-government relationship Tribal governments have with the federal government, which has its foundations in the Indian Commerce Clause of the US Constitution: “The Congress shall have Power...to regulate Commerce with foreign nations, and among the several states, and with the Indian tribes” (Article 1 § 8, clause 3). While Tribes’ primary relationship is with the federal government, it is both neces-

sary and beneficial for Tribes to sometimes work directly with the State (e.g., with IRWM and other State natural resources management policies and programs).¹² As such, interactions between tribes and states should reflect the principles of the federal-tribal government-to-government relationship.

Given that we are focused here on the relationships between a California State agency and California Indian Tribes, the government-to-government relationship between the State and Tribes should be comparable to the government-to-government relationship between Tribes and the Federal government.

Solution: Ensure programmatic language recognizes Tribal socio-political status

The definition of “California Native American Tribes” should be standardized and included in all state policy.

¹² See also Wilkinson, with reference to the 1978 Hearings Before the Senate Select Committee on Indian Affairs on S. 2502, The Tribal Compact Act, “Negotiated agreements between Indian tribes and states or their political subdivisions are recognized as worth objectives by political leaders of both governments for the purpose of addressing practical needs and difficulties” (Wilkinson 2004: 49).

Recommendations:

- DWR should ensure that RWMGs recognize Tribes (as defined by the State) as sovereign governments, and not only as “stakeholders.”
- RWMGs should revise all IRWMP documents to reflect the sovereignty of Tribal governments as defined by the State of California.



Issue: Complexity of IRWM grant application process

Challenges:

Many research participants (survey respondents and interviewees) expressed that the IRWM grant application process is overly complex. Even DWR staff recognize that, although the Proposal Solicitation Packet (PSP) is “formulaic and you just follow the directions, ...you really need a lead agency and someone to put it all together; it takes a lot of work and time” (DWR staff, Interview, April 19, 2013). The Implementation grants are even more demanding, requiring an economic plan and full cost-benefit analysis (see PSP 2012). Most RWMGs hire professional consultants, at high cost, to lead the process (IRWM Round Table of Regions, September 18, 2013). Even these contracted IRWM project coordinators recognize that the process “is very intimidating” and while “it’s supposed to serve disadvantaged communities...it’s actually hurting them [because] they don’t have the resources. They need an entity to take the lead” (T. Sloat, Interview, December 28, 2012). According to one Tribe, “often these costs, with engineering costs, result in planning costs that far exceed, (sometimes double or triple) the actual implementation costs” (Potter Valley Tribe, Personal Communication, October 10, 2013).

Through our research, including participants from 19 different IRWMPs, we have heard of only one RWMG that put together a successful Implementation Grant application entirely “in-house,” after firing their facilitation contractor.

Solution: Revise all IRWM program documents and application requirements to simplify and streamline the process without diluting program efficacy.

Many of the aforementioned recommendations work toward a more simplified and streamlined IRWM process, without impacting the efficacy of the overall program. These solutions should be pursued by DWR and RWMGs.

One Tribe recommends “a process for templates from similar projects to be used to satisfy cost/benefit, environmental and engineering study requirements.” This could help streamline planning documents and grant applications by reducing duplicity; “similar projects in different areas should not have to have the same studies repeated. (Potter Valley Tribe, Personal Communication, October 10, 2013).

Recommendations:

- Within the authority and flexibility of CWC § 10540 and § 10541, DWR should work with Tribes and other IRWM practitioners to identify and implement mechanisms for streamlining and simplifying the IRWM program. Special attention should be paid to ensure continued program efficacy.
- All of the recommendations in this report should be implemented to better facilitate Tribal collaboration in all aspects of IRWM.

2.4 Broader Compounding Issues

We cannot provide recommendations to the Department of Water Resources (DWR) based on our research findings, without addressing some major, over-arching concerns reported by Tribes. Although a complete discussion of any one of these complex issues is outside the scope of this report, we will briefly outline some of the key issues, and how they relate to Integrated Regional Water Management (IRWM). We acknowledge that DWR, and especially the IRWM program, does not have the authority, jurisdiction, or capacity to resolve these issues. However, specific programs such as IRWM provide an avenue for identifying and articulating broader, deep-seated concerns, and providing mechanisms to address them in part.

Tribal Sovereignty and Jurisdiction

Tribes have sovereign authority over their lands, waters, and Tribal members, within the contours of federal, and, in some cases (Public Law 280) state law. Tribes also have a type of sovereignty over their ancestral lands, although those may not be in Tribal ownership and that sovereignty may not be politically recognized. The latter sovereignty is cultural and spiritual as well as political, as Tribes have strong traditional rights and responsibilities, as well as varying degrees of limited yet politically recognized rights to protect, access, and steward particular resources and places on culturally important lands. Tribal jurisdiction may extend beyond Tribal lands if impacts on resources (such as water quality in rivers and streams) stand to affect Tribal lands (see, for example, *Albuquerque v. Browner* 1996, 97 F.3d 415). As such, Tribes are involved as sovereign entities in any management actions affecting lands under their jurisdiction, and affecting resources that

are affirmed as necessary for their continued survival and well-being.

Tribes differ in the many ways in which they exercise their sovereignty; that is, how they organize government structure and functions; how they frame the laws and codes that govern their actions; whether they invest in and empower Tribal court systems; and how they structure the scope and operation of their natural resource protection and planning departments. According to one Tribal EPA director, “Sovereignty is that mechanism by which a Tribe has the ability and the right to self-govern. As many Tribes as there are, they have the ability to self-govern however they choose to. One is not the same as another. In regard to IRWM, it’s the same” (S. Suess, SWWG Summit, June 13, 2013).

Some of our interviewees felt that the IRWM program exemplified the ways in which Tribal sovereignty needs to be further understood and engaged with at the state level:

You know, the history of Tribal sovereignty and the government-to-government relationship has always been with the federal government...it’s never been with the state [with the exception of gaming compacts]... if we want something done, we have to go to D.C...you talk to Tribes, and they don’t say, ‘Well, if I want something done then I’m gonna go to Sacramento.’ It’s just not there yet (C. Peters, Interview, June 11, 2013).

With Governor Brown’s Executive Order B-10-11 and similar legislation, the state is making strides toward improving its understanding of, respect for, and formal relationships with Tribal governments. Another Tribal representative interviewed—an environmental director for a North Coast Tribe—argued that further “institutional change” in gov-

“Sovereignty is that mechanism by which a Tribe has the ability and the right to self-govern.”

(S. Suess, SWWG Summit, June 13, 2013).

ernment is still needed, “especially in regard to agreements between sovereign entities, which require mutual respect between sovereigns (L. Hillman, Interview, June 21, 2013). IRWM has served as an avenue to raising these overarching issues, because it brings multiple layers of government together, interacting with one another face-to-face. Slowly, this institution change may be taking place.

Government-to-Government Consultation

Jurisdictionally, Tribal Consultation should occur at the highest level of the state—the Governor’s office. However, this is not always the most effective or appropriate level for getting things done. Tribes are quite accustomed to working directly with multiple agencies and levels of governance. In all cases, though, it should be recognized that the highest-ranking representative of a given agency should be the one to conduct formal consultation with a Tribe. Unfortunately, most agencies do not have formalized Tribal consultation protocols, and high-ranking staff may not know how to properly engage Tribes in consultation. One Tribe tried to pursue consultation as a solution to a debate within IRWM about trying to change a stream’s 303(d) designation¹³, and sought assistance from a division of the Federal EPA: “...I thought I could go to EPA and get an answer. But they were just irritated that we were having consultation. They’ve never been asked to [do] consultation” (B. Brown, Interview, June 11, 2013). This one experience is disconcerting, as EPA is generally perceived to be a leader in implementing policy for working with Tribes.

When Tribes do not receive the necessary representation in a given project or issue, they have no recourse but to elevate the issue to the Governor’s office. This occurred when the four Tribes within the Upper Sacramento River IRWM were not receiving adequate representation. This past June, Tribal representatives demanded an audience with the Governor’s Office of the Tribal Liaison and Secretary Laird of the Natural Resources Agency to address their specific concerns with the Upper Sacramento River RWMG, as well as other water related consultation issues (C. Reitman, SWWG Summit, June 13, 2013).

¹³ 303(d) is a section of the Clean Water Act referring to the US EPA’s list of impaired waters and total maximum daily load (TMDL) regulations. Although a federal regulation, the 303(d) designation process is administered in California by the State Water Resources Control Board.

Water Rights

According to the Federal Water Commission, conflicts between competing goals and objectives of federal, state, and local agencies and private users are particularly acute in the nineteen western states (Olinger 1997), and nowhere are water rights more complex than in California. Add to that the over 160 Tribes in the state that have inherent reserved water rights, and the federal government’s trust responsibilities to protect Indian water rights, and it becomes evident why this issue has yet to be resolved. A well-respected Tribal member and long-time Tribal EPA staff refers to Tribes’ reserved rights (see *Winters v. US* 1908) as “like having a brand new car in your garage, but no keys. You got it, it’s [yours], but you can never drive it.” This analogy clearly depicts the frustrations caused by a failure to “acknowledge that Native Americans definitely have water rights from day one” and to compensate Tribes for those inherent rights (Anonymous, Interview, June 7, 2013).

California is one of only two states in the nation with no statewide groundwater regulation (the other is Texas), further frustrating questions of Tribal water rights (Hanak et al. 2011). Many Tribes share the viewpoint of Chairman R. Goode of the R. Goode Tribe: “[groundwater under Tribal lands] is under our jurisdiction. We didn’t say we own it, but we have authority to use it, and we have the right to fix it, play with it, do what we need to do with it.” (R. Goode, Interview, February 13, 2013). As water resources become more and more scarce, this issue is only going to escalate in importance. The state of California and California Native American Tribes should find a way to systematically resolve the question of water rights, either individually by Tribe or collectively state-wide.

The CEQA Debate

A controversy has arisen in IRWMP implementation with Tribal projects, as to whether Tribal partners must comply with the California Environmental Quality Act (CEQA). CEQA was enacted in 1970 to ensure that state and local agencies consider the environmental impact of their decisions when approving a public or private project, and is generally viewed as the state equivalent to the National Environmental Protection Act (NEPA) (Bowker 2013). According to the 2012 guidelines, “activities

funded under the IRWM Grant program regardless of funding source must be in compliance with the California Environmental Quality Act (CEQA) (PRC § 21000 et seq.) (Guidelines 2012). Also included in the guidelines is a mandated notification requirement to California Native American Tribes for projects funded with Proposition 84 funds (PRC § 75102). The guidelines state that: “While IRWM planning efforts may have Tribal involvement... This requirement does not relieve the responsibilities of a lead agency of other cultural resource notification and preservation obligations” (Guidelines 2012). The guidelines say nothing, however, about Tribes as the lead agency, and whether or not they are subject to CEQA.

Tribes assert that, as political entities within the contours of federal jurisdiction, they are only subject to NEPA, and are exempt from CEQA compliance (just as a federal agency would be exempt from CEQA if their project was solely on federal lands within California). IRWM practitioners (RWMG members, lead agencies, consultants, Tribes, and DWR staff) are currently debating this (Tribal Water Summit 2013). One Tribal EPA director expressed

concerns that Tribes participating in IRWM might still be excluded from projects “because of state government policies [such as CEQA] stepping on Tribal sovereignty” (L. Hillman, Interview, June 21, 2013). A key component of Tribal sovereignty is the right to make and be ruled by [Tribal] laws (Wilkins & Lomawaima 2001). Requiring Tribes that participate in IRWM projects to become subject to CEQA (or any other state regulation that otherwise would not apply to Tribes) is considered by some survey respondents and interviewees as a distinct infringement on this right. Tribal IRWM projects will continue to be hindered until this issue is resolved.

2.5 Conclusion

These critical and complex issues are rooted in a fraught history of strained Tribal-state relations. The aforementioned issues directly and consistently impact Tribal participation in IRWM. We believe that IRWM will be far more successful if the state prioritizes resolution of these critical issues, working directly with Tribal leadership to identify mutually-agreeable solutions.

3. Application to Other Policy Initiatives

By definition, the holistic approach of Integrated Regional Water Management (IRWM) has implications for all natural resources management and policy initiatives in the state. Similar to the “broader compounding issues” discussed above, it is our hope that the progress in Tribal collaboration made through IRWM will serve as a springboard for including Tribes in all other planning and policy efforts throughout the state. Many of the recommendations and best practices presented in this report are applicable to Tribal engagement at any level, and thus can be applied to other key initiatives. Below, we highlight the most salient avenues for integrating our research findings with other policy initiatives.

3.1 Overall IRWM Program

In addition to the specific issues and recommendations presented in this report, Tribes have expressed general comments on the overall Integrated Regional Water Management (IRWM) program, relevant to all IRWM participants, not only Tribes. Like any planning or policy program, IRWM is not intended to address every potential need and interest related to water. Likewise, any program is going to have its share of pros and cons. The comments below represent general concerns and recommendations to improving the IRWM program in general.

IRWM Projects and Plans

Tribes question the relationship of IRWM projects to the overarching goals of their regional plans. Especially in the earlier years of the IRWM program, Regional Water Management Groups (RWMG) members approached planning from the perspective of “I have this project I want to do, and it fits these guidelines, and I’m going to do it” regardless of how the projects and the plan all fit together. According to one Tribal coordinator, grasping the entire concept of IRWM and envisioning system-wide water use is quite difficult: “You talk to any DWR person here, I don’t know if they understand that idea conceptually” (C. Peters, Interview, June 11, 2013).

Many of the recommendations and best practices presented in this report are applicable to Tribal engagement at any level.

Fortunately, the “business-as-usual” perception of IRWM is beginning to change. This is due in part to more stringent requirements, greater competition for grant funding, and increased outreach efforts by the Department of Water Resources (DWR). Paula Landis, Chief of the Division of IRWM, addressed this particular issue during the IRWM conference held last April:

The initial legislation says ‘you have to have a plan by a certain date.’ So they check a box, say ‘we have a plan.’ Now that the program is in maturity, we are going to evaluate each plan to see if it is meeting the objectives, if it is indeed integrating...For Round 3, we are taking a different approach—we’re not looking to see whether you have a complete plan, but ‘does your plan meet the objectives?’ (P. Landis, IRWM Conference, April 4, 2013).

Outreach and Institutionalization

To ensure the efficacy of IRWM moving forward, DWR should make a concerted effort to share its mission and purpose. In order for IRWM to really take place, the entire state should understand “why we’re doing this, and how everything fits together, and how this is going to work for now, and into the future” (C. Peters, Interview, June 11, 2013)” This requires extensive and ongoing outreach, especially to “groups that are changing as rapidly as board of supervisors for the county and Tribal governments are” (ibid.).

3 Application to Other Policy Initiatives

According to Secretary Laird of the California Natural Resources Agency, “IWM is somewhat institutionalized, but the future is going to be determined now” (J. Laird, IWM Summit, April 3, 2013). Based on the findings of our research, we are not as convinced as Secretary Laird that integrated water management is fully accepted in California. Survey and interview data reveal that many Tribes are still unfamiliar with the IRWM program. Additionally, other water management practitioners we have engaged with through the process question the future of IRWM in California, especially wondering, “What’s going to happen when the money dries up?” (J. Lund, personal communication). The state still has a long way to go in building institutional memory and buy-in to the IRWM approach.

Similarly, with the final round of Proposition 84 grant funds fast approaching, many RWMGs “are not worrying about project funding, but programmatic funding—how do we keep that base program going?” (H. Alpert, Sierra Water Workgroup Summit, June 12, 2013). Many IRWM practitioners, including Tribes, are looking to DWR for guidance in developing long-term financing strategies to maintain the momentum of their IRWMPs.

The Role of Consultants

A common concern among Tribes and other IRWM practitioners is the excessive reliance on consulting agencies to prepare IRWM plans and submit project

proposals. IRWM is intended to be a collaborative effort between multiple agencies and stakeholders, to address local needs and priorities. In regions where consultants have been granted carte blanche over the entire process, there is a perception that “they’ve lost sight of what the proposition is about, what’s supposed to be done” (R. Goode, Interview, February 13, 2013).

Consultants can be a vital asset to RWMGs as objective third-party facilitators of the collaborative process and overall project managers. However, they should not replace the active involvement of RWMG stakeholders. Many Tribes feel that “consultants have gotten in the way; they don’t know the community, but are funded to do the work” (C. Rietman-Solas, Tribal IRWM Strategy Group, June 13, 2013). If DWR desires to increase continuity and long-term local engagement in IRWM, the process should be locally driven.

Some RWMGs report ineffective and disingenuous efforts by their IRWMP consultants, most notably a failure to engage key stakeholders, the use of “canned responses/ content applied to multiple regions,” and drawing too close to important deadlines without providing adequate review and comment periods. (S. Suess, Interview, May 3, 2013).

Indeed, putting together an effective IRWM Plan or grant proposal should by no means necessitate hiring a consultant. Above all other opinions of IRWM, the most common criticism is that the process is far too complex, and the most common recommendation is that it needs to be simplified. One experienced program coordinator remarked, “the IRWM process happened so fast...the specific guidelines and requirements are very ‘cookbook.’ It’s hard to understand all the details. Nobody has time to do it” (T. Sloat, Interview, December 28, 2013). One recommended solution to this issue is to reduce or eliminate “the clearly defined connection to natural resources projects,” as it is especially burdensome for rural socio-economic groups.

The Department of Water Resources would be wise to keep these perspectives in mind as they revise program guidelines and determine the future of IRWM in California.

In order for IRWM to really take place, the entire state should understand “why we’re doing this, and how everything fits together, and how this is going to work for now, and into the future”

(C. Peters, Interview, June 11, 2013)

3.2 Strategic Plan for the Future of IRWM

Many of the Tribal concerns stated above can be addressed through the Integrated Regional Water Management (IRWM) strategic planning process, which is currently underway within the Department of Water Resources' (DWR) Integrated Regional Water Management division. Although this effort is encouraging, the timeline for this process is lengthy. DWR staff cannot rely on this mechanism alone for necessary changes to be made. The Strategic Plan for the Future of IRWM is "a long-term future oriented plan to build on current & past successes of IRWM, further enable, empower, and support Regional Water Management Groups, to better align state and federal programs to support IRWM, to inform and influence future water management policies, and invest in the future" (M. Floyd, SWGG Summit, June 12, 2013).

The IRWM Strategic Plan team hosted a series of vision & goal setting workshops, from which 50 goal statements were developed: According to the Project Manager for the IRWM Strategic Plan, the team is working to "increase education, decrease barriers, and reach out to Tribes in a way that they are part of the focus group" (M. Floyd, *ibid.*). One participating Tribal representative recommended that agencies better align programs with IRWM, especially in regard to those governed by CEQA (S. Norris, report back, May 15, 2013).

Research participants generally support the principles of IRWM, and commend the state's efforts toward a more holistic, integrated approach to natural resources management. However, they have expressed concerns about the level of inclusion of Tribal representatives in the IRWM Strategic Planning process, and skepticism as to whether DWR truly understands Tribal perspectives. In a classic example of inadvertent, perhaps institutional, Tribal exclusion, the Water Education Foundation failed to include Tribes in the IWM Summit (referred to as the Water 360 "coming out party") Water and IRWM workshop they hosted last April. The event was not widely publicized to outside key agencies and industry stakeholders; Tribes were not invited or even notified. California Indian Environmental Alliance heard about the event last-minute, and en-

couraged Tribes to attend. This effort spurred additional Tribal engagement in IRWM, as one Tribal representative noted: "...We realized that we had very little Tribal representation at that...and so we've basically taken it upon ourselves to impose ourselves into these types of meetings so we can have a voice" (B. Brown, Interview, June 11, 2013).

The Strategic Planning process has made efforts to engage Tribes in the process. Of the 10 seats on the Strategic Plan Focus Group, one is designated for a CWP Tribal AC member. This seat was filled by a non-Native staff member of a Tribal environmental department. While including Tribal staff on the focus group is a step in the right direction, many Tribal representatives we spoke with felt that a Tribal member should fill this position, and that one seat was not near enough to represent California's diverse Tribes. Some research participants expressed the concern that by including a representative from the Tribal AC on the strategic plan focus group, DWR would erroneously assume this action fulfilled Tribal consultation requirements. However, consultation obligations must be fulfilled directly with each individual Tribe impacted (see generally Executive Orders 13084 and 13175, and Obama memo 2009). Overcoming Tribal skepticism requires reversing the systemic exclusion of Tribes in state-wide policy planning. This can be accomplished through greater education and outreach from DWR to adequately establish the mission, goals & outcomes of IRWM, to hold IRWM groups accountable to fulfilling that mission, and to better incorporating Tribal perspective and concerns into the strategic plan vision.

Overcoming Tribal skepticism requires reversing the systemic exclusion of Tribes in state-wide policy planning.

3.3 Water 360

The California Natural Resources Agency and its departments are “doubling down on integrated water management...to invest in innovation and infrastructure” (K. Guivetchi, IWM Summit, April 3, 2013). The Natural Resources Agency is trying to move the state beyond its historical single-objective focus toward “multi-benefit, long-range, fiscally responsible solutions” (G. Lippner, IWM Summit, April 3, 2013).

The Water 360 campaign is an effort by the California Natural Resources Agency to “take a holistic view of water management; to improve alignment of regulatory responsibility and encourage cooperation among water managers, [IRWM] practitioners, and stakeholders” (G. Lippner, *ibid.*). The campaign’s desired result, or goal, is to achieve the ‘triple bottom line’ (to improve public safety, foster environmental stewardship, and support economic stability). If the state truly intends to follow through on this campaign, it needs to do a much better job of including Tribal governments in that vision. It is yet to be seen how the Water 360 campaign will incorporate Tribal interests.

This past April, the Department of Water Resources (DWR) hosted the first Integrated Water Management (IWM) Summit, in partnership with the Water Education Foundation and the California Water Commission. The summit was essentially “a Water 360 coming out party” (R. Schmidt Sudman, IWM

Summit, April 3, 2013). Attendees included executive and upper-management level staff from virtually every state and federal agency in California, as well as many consultants and water management practitioners. California Native American Tribes, however, were not invited. A Tribal organization heard about the event last minute, and encouraged Tribes to attend. This was a devastating oversight by Summit organizers as well as the Water 360 team, who’s stated goal was “to bring together water leaders from myriad agencies and organizations to share experiences and ideas on how we can effectively align to provide sustainable water resources services in the State” (Proceedings, IWM Summit, April 2013).

When questioned about the event, Summit organizers discouraged Tribes from attending, and recommended they attend the IRWM Conference being held the following days (which Tribes also had not been notified about previously). In the Summit and conference proceedings, entitled “Perspectives from California’s First Integrated Water Management Summit,” the only mention of Tribes is within a long list of conference attendees (Water 360, 2013:11). There is no inclusion of Tribal perspectives. Significant efforts must be made to better incorporate Tribal perspectives and fully engage California’s Native American communities in state policy initiatives. The default approach of repeating history is unacceptable.

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3.4 California Water Plan – Update 2013

Both the Water 360 Campaign and the IRWM Strategic Plan initiatives fit within the framework of the California Water Plan Update 2013; Water 360 as the overarching theme for the Plan and the Strategic Plan for the Future of IRWM as a Companion Plan to Update 2013.

The California Water Plan (CWP) is the flagship example of collaborative natural resource management in the state. Over the years, each water plan update has become increasingly comprehensive and inclusive. The Department of Water Resources (DWR) Strategic Water Planning Branch has been especially responsive to Tribal issues and concerns within the most recent iterations of the California Water Plan.

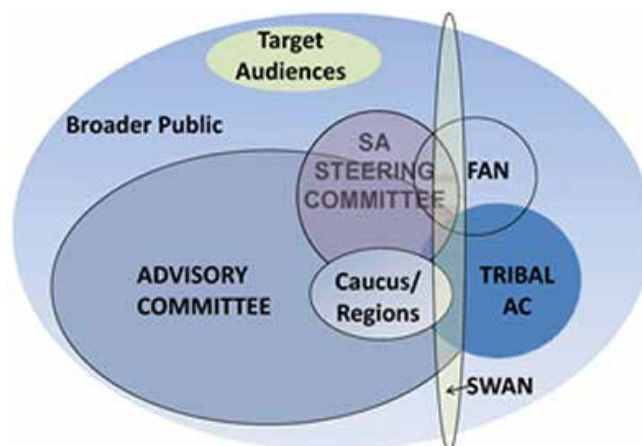
Tribal participation in the Water Plan Update process was originally limited to either the Disadvantaged Communities Caucus or the Public Advisory Committee. In response to concerns expressed by Tribes, the then-Tribal Communication Committee (now Tribal Advisory Committee to the State Water Plan) conceived of the idea for the first Tribal Water Summit (TWS). The group garnered support from Tribes and other entities, and, later, co-sponsorship from DWR. The TWS brought together Tribal leaders from across the state with agency leaders and decision-makers. One of the outcomes of the 2009

TWS was the November 2010 formation of a Tribal Advisory Committee (Tribal AC) to the California Water Plan. Now, at least structurally, Tribes are no longer considered just another public interest group.

The Water Plan is defined as “a statewide initiative that provides a collaborative planning framework for elected officials, agencies, Tribes, water and resource managers, businesses, academia, stakeholders, and the public to develop findings and recommendations and make informed decisions for California’s water future” (California Department of Water Resources 2012). Structurally, the CWP Collaborative Structure consists of DWR Executive Advisory Committee, a Federal Agencies Networks (FAN), State Agency Steering Committee (SASC), Regional and Topic-Based Caucuses (finance, disadvantaged communities/ environmental justice, flood, groundwater, land use, water quality, water technology), and a Public Advisory Committee (PAC) (see Figure 33, below).

An attempt to address all of California’s complex and interrelated water issues in one comprehensive planning document, the CWP undergoes a comprehensive update every five years. This allows the plan to respond to changing needs and priorities throughout the state. There are four emerging themes for Update 2013: “doubling down on water

Figure 34. California Water Plan Collaborative Structure



management, integrated water management, government agency alignment, and investment in innovation & infrastructure” (L. Moeller, Sierra Water Workgroup Summit, June 12, 2013). This iteration of the Water Plan adds three new Resource Management Strategies (to the 27 from the 2009 Update), one of which is of specific interest to Tribes: “water-dependent cultural resources.” This additional strategy was added in direct response to the recommendations provided at the first Tribal Water Summit, in 2009.

Just as they did for the 2009 update, the Tribal Advisory Committee (Tribal AC) to Update 2013 has developed a “Tribal Objective to Improve Tribal/State Relations and Natural Resources Management” (see Appendix D-11 for the entire document). Nearly all of the twelve resolutions correlate directly with the results presented in this report. We strongly encourage the State of California and all its agencies, as well as regional and local governments, to adopt these 12 resolutions. RWMGs, facilitators and consultants should, as applicable, use these actions as guidelines for effective Tribal engagement. Action-items especially pertinent to IRWM are numbers 2, 4, 5, 8, 10, 11, and 12.

In addition to the 12 resolutions developed by the Tribal AC, an ad-hoc Tribal IRWM Strategy Group identified the following recommendations to the California Water Plan Update 2013 Process:

- Ensure that the California Water Plan fully integrates Tribal perspectives and needs within its main body, including within its guidelines and policies.
- Ensure that the Tribal AC is fully engaged in every phase of the Update Process, but do not rely solely on the Tribal AC. Perform due diligence in notifying all California Native American Tribes of opportunities to review and provide comment on Plan content.
- Explicitly clarify that all federal, state, regional and local governments/ agencies are required to perform formal consultation with applicable Tribes, and to gain Prior Informed Consent before planning-decisions are made or implemented.

A common criticism of all natural resource planning efforts, and the California Water Plan specifically, is that it has no regulatory authority. The Water Plan, while comprehensive, is only a recommendation:

Update 2013 does not create mandates, prioritize actions, or allocate funding. Instead, it provides a roadmap that informs legislative action, as well as planning and decision-making, at all levels of government (CWP Draft Update 2013).

There is no guarantee that agencies will follow through with Plan directives. For example, item number 13 of the 2009 Update Tribal Objective was to address Tribal operations in government-to-government consultation. According to one Tribal EPA director, “that’s not happening right now. Otherwise, we wouldn’t be [conducting this research or having this discussion]” (M. DeSpain, Interview, May 10, 2013). A recurring recommendation from Tribes and others, is for the state to tie some level of regulatory authority to the California Water Plan, which would require agencies to implement Plan directives. This would require legislative action, but could potentially be accomplished through the 2014 Water Bond, which is currently in development.

3.5 Water Bond 2014

Since the \$11 Billion Water Bond first proposed in 2009, and then again in 2012 (as the Safe, Clean and Reliable Drinking Water Supply Act) did not pass, there has been continuous discussion of a future water bond measure. It is imperative that Tribes and Tribal representatives be involved in these conversations. Language is currently being drafted for a potential 2014 Water Bond (SB 42 (Wolk) and AB 1331; see Appendix C-7, C-8, C-9). Although there is some discussion about delaying the measure to 2016, the bills continue to move forward. In September 2013, both bills were amended and discussed at a joint hearing of the Senate Natural Resources and Environmental Quality committees, entitled “Setting the Stage for the 2014 Water Bond: Where are we going and where do we need to go?” According to a September 11, 2013 press release from the 2014 Water Bond Working Group, the bond calls for \$6.5 billion to address: drinking water quality, protecting rivers & watersheds, regional climate change response projects, integrated regional water management, protecting the Delta, and water storage for climate change.

Both bills are very similar (see Appendix C-7 for a detailed comparison). Each includes allocations for Integrated Regional Water Management:

- Senate Bill 42, “Safe Drinking Water, Water Quality, and Flood Protection Act of 2014,” provides \$1.4 billion to safe drinking water projects (chapter 3).
- Assembly bill 1331, “Climate Change Response for Clean and Safe Drinking Water Act of 2014,” provides \$1.5 billion toward “climate change preparedness for regional water security.”

Neither of the bills includes any mention of California Native American Tribes or Tribal issues (although AB 1331 does address DACs). Tribes have

not been fully engaged in this process for multiple reasons. Though state executive branch agencies and departments are encouraged to engage in consultation with Tribes pursuant to Executive Order B-10-11, there is not a similar requirement on the State legislature. To the extent that executive level agencies and departments are involved in the development of Water Bond 2014, arguably, the state has not followed the priorities and mandates by fully engaging Tribes in formal government-to-government consultation regarding the Water Bond.

Based on our results, we would expect Tribes to request or propose the following through lobbying mechanisms:

- Explicitly state that Tribes are sovereign entities with a government-to-government relationship with the federal and state governments.
- Allocate funding specifically for assisting Tribal collaboration in IRWM (e.g., capacity, planning, liaisons).
- Ensure that (consistent with AB 307) federally recognized Indian Tribes may be included as public agencies pursuant to a Joint Powers Authority.

If the next water bond includes funding allocations for IRWM, and DWR stands by its assertion that the Department cannot address IRWM concerns expressed by Tribes without legislative directives to do so (see section 2.3, Program Process and Documents), then this bond measure is a critical opportunity. Specific language should be included in the IRWM sections of the bond measure that address the issues outlined in this report. DWR should work with the Tribal AC and other Tribes to propose specific language to the legislature that would enable DWR to address current concerns with the IRWM program.

3.6 Executive Order B-10-11

In 2011, Governor Jerry Brown proclaimed an Executive Order recognizing the important role of Tribes in California and the state's responsibility to ensure Tribal rights. The Order states that: "it is the policy of the administration that every state agency and department subject to executive control is to encourage communication and consultation with California Native American Tribes" (California Executive Order B-10-11).

In addition to the governor's ordered consultation policies, the Executive Order establishes a cabinet-level position of Tribal Advisor to the Governor (fulfilling a key request from the 2009 Tribal Water Summit), acknowledges the value of traditional ecological knowledge, and solidifies the government-to-government relationship between the state of California and California Tribes. According to EO B-10-11:

"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" (California Executive Order B-10-11). It is significant that this consultation requirement does not apply to federally-recognized Tribes only, but to all California Tribes. This is a substantial advance in California Tribal-state relations.

Governor Brown's Executive Order ensures that Tribes be included in all major policy processes by mandating that each California agency develop a Tribal Consultation Plan. The California Natural Resources Agency was the first of the state agencies to directly respond to the governor's mandate, by adopting a Tribal Consultation Policy in 2012. In its Purpose of the Policy statement, The Natural Resources Agency acknowledges that:

It is only by engaging in open, inclusive and regular communication efforts that the interests of California's Tribes and Tribal communities will be recognized and understood in the larger context of complex decision-making" (California Natural Resources Agency 2012).

For the directives of EO B-10-11 to truly be fulfilled, agencies will also need to develop specific protocol for implementing their new consultation policies. According to one Tribal interviewee, the Executive Order is at "...the 50,000 foot level; we don't know how to bring the reality of government-to-government consultation to the ground" (B. Brown, Interview, June 11, 2013). As the implementation of these policies and protocols become more widely expected, consultants and IRWM practitioners will no longer be able to use the common excuse of not being responsible for, or knowing how to, engage in consultation with Tribes.

"It is only by engaging in open, inclusive and regular communication efforts that the interests of California's Tribes and Tribal communities will be recognized and understood in the larger context of complex decision-making."

(California Natural Resources Agency 2012).

4 - Tribal Collaboration Best Practices

4.1 Key Techniques & Attributes for Success

While there is no single step-by-step process for effectively collaborating with Tribes, there are several elements that should be included in any Tribal involvement process. Regional Water Management Groups (RWMG) should perform due diligence in learning about the Tribes in their specific regions, reaching out to each Tribe individually, and engaging them in developing an appropriate collaborative model specific to their needs and interests. The Upper Sacramento Integrated Regional Water Management Plan (IRWMP) did so, by “casting a broad net and defining ‘interest’ broadly” (D. Olstein, Interview, February 26, 2013). One of the Tribes provided the RWMG with recommendations of who specifically to contact, and the group reached out to every Tribe in their region.

Much trial-and-error and duplication in collaborative efforts can be saved with a bit of homework and strategizing. Capable leadership, trust between parties, and examples of existing successes can be helpful to emerging efforts. We hope that our recommendations and findings will provide helpful examples and contribute to developing successful collaboratives. Through our investigation, Tribes have identified a number of key strategies for improving collaboration in watershed management efforts.

First and foremost, it is incredibly important to follow cultural protocols for right engagement in order to build strong trust relationships (see Menzies 2006, Wilson 2008, Smith 1999, Middleton 2011, and others.). These protocols should be established with direct guidance from local Tribes. Without this initial step, collaborative partnerships will not succeed. According to one Tribal chairperson, “it’s a gentle process; It’s something that you can’t just force...it’s like a relationship...take a little bit of time, and let’s build this so that it’s right, correct, and everybody is okay with it” (B. Brown, Interview, June 11, 2013).

Cross-cultural partnerships, especially those with Tribal communities, should exhibit mutual understanding of one another’s perspective. It is not necessary to accept or agree with an alternative

Real, integrated problem-solving requires true respect and government-to-government coordination among the various sovereign entities involved.

viewpoint, but you must at least respect it (Menzies 2006:218). This is critical for incorporating Tribal perspectives into IRWM plans and projects:

“...we’re not going to please everybody, we’re not going to make everybody happy, but we certainly can have a facilitated planning process that everybody can walk away knowing that they had a voice. Even though their project might not be funded, at least they had a voice in that planning process, and in that planning document” (B. Brown, Interview, June 11, 2013).

This can be difficult, though, because “TEK and Western science provide partially different information, based on different sets of observations and procedures, and sometimes on different knowledge claims.” (Usher 2000). As the inclusion of Tribal perspectives gains acknowledgement and acceptance in policy circles (see Section 1.3 - Background, Section 3 – Application to Other Policy Initiatives, and Appendix D, EO B-10-11), agency representatives and practitioners often expect Tribes to freely contribute such information. However, specific Tribal knowledge is not easily translatable and often not transferable to non-Native individuals (Smith 1999). This raises delicate issues around intellectual property rights and compensation for proprietary information. According to Villalba’s study of intellectual property rights and National Park Management in California, “...Listening to local concerns allows for the development and inclusion of...systems for the protection of traditional resource rights and traditional knowledge” (Villalba 2010).

Real, integrated problem-solving requires true respect and government-to-government coordination among the various sovereign entities involved. No solution will work unless and until the significant Tribal interests are recognized and fully integrated into any system or process for dealing with these issues. (Goodman 2000). One central California county earned a reputation of working really well with Tribes, simply because “they set down and bargain in good faith” (Anonymous, Tribal Interview, June 7, 2013). Respect goes a long way.

- (1) Thus far, IRWM has been more *consultative* than *collaborative*. For Tribal collaboration in IRWM to be most effective, it should take on the form of true cooperative co-management. One possible model for incorporating Tribal perspectives in co-management (adapted from Menzies 2006) applies three components to fostering cooperative stewardship:
- (2) Develop a general understanding of Tribal history, cultures, and depth of responsibilities to steward the land/ water/ resources, to inform culturally competent interactions
- (3) Develop and evaluate (in this case, sustainable water management) policy to reflect Tribal values, rights and needs

Develop and offer public education activities designed to facilitate mutual respect, effective communication, and knowledge-sharing between Tribes and other watershed stakeholders

Developing strong, personal relationships with collaborative partners is crucial to effective co-management efforts, such as IRWM. According to one active IRWM representative, success or failure often “comes down to personalities and one-on-one interactions...I have personal history and background with many people in the area—that has helped...” (S. Suess, Interview, May 3, 2013). Regional Water Management Groups should utilize existing relationships among their stakeholders to facilitate this process. One Tribal IRWM facilitator admonishes RWMGs to “get to know the Indians that belong in [their] area...getting to know the subtleties of our Tribal governments; relationships and structure, and how it could affect the IRWM process is an extremely important piece” (S. Warlick, SWWG Summit, June 13, 2013).

4.2 IRWM Benefits & Successes

The 48 IRWM regions cover virtually every corner of California, all of which is traditional Tribal land. Water management decisions affecting these lands are thus of great interest to Tribes. Therefore, Tribes have an inherent right to be part of resource decision-making processes. IRWM provides another avenue for Tribes to exercise their sovereignty in water management efforts, and can also be a source of important funding or infrastructure resources to the Tribe.

While our research was initiated by Tribes’ expressed dissatisfaction with the Integrated Regional Water Management (IRWM) Program, we were pleased to also find many success stories in which Tribes were indeed engaged in meaningful participation with their Regional Water Management Group (RWMG). One Tribal IRWM participant relayed at the SWWG Summit that in her region, participants “built common language, relationships and networking that has gone far beyond IRWM to impact [their] community” (T. Cunningham, SWWG Summit, June 12, 2013). This section highlights some of the ways in which Tribes have benefited from participating in IRWM, and ways in which RWMGs have effectively engaged Tribes. The purpose of this section is to encourage greater Tribal participation in IRWM by highlighting examples of successful engagement from both Tribes and RWMGs. These successes provide a model for improved collaboration between RWMGs and Tribes.

Benefits to Tribes of participation in IRWM

IRWM participation provides access to funding for project development and implementation.

In the North Coast IRWMP (Now the NC Resource Partnership), eight to ten Tribes are actively participating. All eight Tribal projects submitted were funded, in excess of \$3 Million going to Tribes (C. Peters, Interview, June 11, 2013). According to a Tribal member involved in the IRWM process, “[IRWM]-funded projects meet major infrastructure needs that benefit the entire community, not just the Tribes or DACs” (L. Hillman, Interview, June 21, 2013). IRWM project funding is also a specific opportunity to improve critical conditions in Tribal communities, where needs “are typically greater and

more dire than in non-Tribal communities, even than DACs...[and] resources to do that are rare” (L. Hillman, Interview, June 21, 2013). Appendices B-6 and B-8 include documentation from the North Coast IRWMP, reflecting how Tribes were able to gain seats on the governance structure and receive funds. This can serve as a model for other RWMGs to replicate elsewhere.

Participation in IRWM provides access to information, planning initiatives, and networking opportunities.

M. Fuller, EPA Director for M. Fuller, identifies “the benefit to inside knowledge, being at the table, in water processes. Also networking with other Tribal people & watershed-based planning” as a key driver for participating in IRWM (M. Fuller, Interview, June 26, 2013).

Despite conflicts between stakeholders, the Upper Sacramento River IRWMP has achieved success in engaging three of the four Tribes in their region: “The fact that they’ve been able to get representatives of all the Tribes in the region at the table, actively participating, is a huge success.” According to Upper Sac IRWMP Coordinator D. Olstein, they developed a governance structure that Tribes are satisfied with, because Tribes are on equal footing and have equal participation with other stakeholders: “the chairperson of one of the Tribes expressed that this was the best structure for participation and Tribes she has seen” (D. Olstein, Interview, February 26, 2013)

According to (former) Tuolumne Me-Wuk Tribal EPA Director Stephanie Suess, the Tribe’s participation in the Tuolumne-Stanislaus IRWMP has been very effective, despite not being involved early on:

It’s a shame that some Tribes are experiencing racism issues. But we are not. IRWM is important to our Tribe... Everyone has given what they can, and worked together. We’re working for free, hoping this will go forward, for the protection of our watershed...We are working together—everyone’s issues are on the table... That’s what IRWM is doing for us. Everyone is there at the table working together...The Tribe’s comments have been taken very seriously...

“[IRWM]-funded projects meet major infrastructure needs that benefit the entire community, not just the Tribes or DACs”

(L. Hillman, Interview, June 21, 2013)

Overall, our experience has been very positive; we didn’t miss out not being involved during the first 2 years – there were real growing pains among the districts early on.” (S. Suess, Interview, May 3, 2013)

Former RWMG Coordinator for the Upper Pit River IRWMP, Todd Sloat, acknowledges the benefit of IRWM, especially with Tribal participation, to “create opportunities for more interaction across project types...particularly for infrastructure to get the project work done” (T. Sloat, Interview, December 28, 2012).

A former Pit River Tribal Councilmember recognizes IRWM as one method to “...work together as governments, and as governing agencies state-to-state so that we can protect and preserve our water and not allow it to get degraded and polluted any more than it already has” (B. Brown, Interview, June 11, 2013). A stakeholder from the Tuolumne–Stanislaus IRWM expressed similar sentiments when she contacted the Tuolumne Me-Wuk Tribe, and said “You really need to be a part of this; we’re dealing with the watershed, Tribes have to be at the table.” (S. Suess, Interview, May 3, 2013)

Benefits to RWMGs of Tribal participation

Although not currently required or mandated to do so, there is some incentive for RWMGs to include Tribes in the planning process. During the Proposal Review Process (PRP) for Proposition 84 funds, there are seven criteria on which the application is scored, each of which earns the applicant a range of points. Tribal participation in the RWM group earns an additional point. The Tuolumne-Stanislaus IRWMP recognized the potential for scoring preference of Tribal involvement, and asked the EPA Director

of the Tuolumne Me-Wuk Tribe, “Please come, if you are part of this, then we have a better chance of getting this” (S. Suess, Interview, May 3, 2013).

Many Tribes qualify as “disadvantaged communities” (defined as communities with an annual MHI that is less than 80 percent of the Statewide annual median household income (PRC § 75005(g)). If a qualifying Tribe chose to participate in the IRWMP as a DAC, their involvement in the grant application would not only earn the application an additional point as a Tribe, but would also exempt the application from the 25% matching-funds requirement.

Furthermore, under Executive Order B-10-11, all state agencies are required to create Tribal Communication Plans, and are encouraged to further collaborate with Tribes in all planning efforts. This provides additional impetus for RWMGs to engage Tribes, some of which are realizing the benefits. For instance, Chairman Jake Mackenzie, Chairman of the North Coast IRWMP, has been quite pleased with Tribal contributions to their IRWM program: “Tribes are contributing to the process in a very real, beneficial way.” (L. Hillman, Interview, June 21, 2013). Other RWMGs would be wise to recognize the potential benefits of Tribal participation and make greater efforts to engage them. Some specific benefits are further discussed below.

“We must not lose sight of the importance of remembering why we do this work; for our ancestors and future generations”

(T. Cunningham, SWWG Summit, June 12, 2013)

Tribes can contribute technical expertise, human and financial capacity, and integrated human/ecological perspectives to the IRWM process.

California Native American Tribes are by far the longest-term residents of any particular IRWM region. They have a history of stewardship within the land-base, and often a deep desire to maintain its ecological health for future generations. Most Tribes have a genuine desire to participate in the IRWM process in the hope of achieving that goal. One Maidu Tribal member told IRWM practitioners “we must not lose sight of the importance of remembering why we do this work; for our ancestors and future generations” (T. Cunningham, SWWG Summit, June 12, 2013). Tribes also bring key technical expertise to the table, in the form of traditional knowledge/science and Tribal staff trained in Western science methods. “[W]e’re not just here begging for money, we’re here ready, willing, able to truly collaborate, to negotiate, to educate your people as well as ours, and to be able to do the long-term monitoring that needs to be done on all of these projects” (B. Brown, Interview, June 11, 2013).

Multiple interviewees recalled instances in which the project(s) would not have moved forward without Tribal leadership. In one instance, “The Tribe didn’t submit any projects, but contributed by paying for the training to do the cost-benefit analysis” for a Central California IRWMP (S. Suess, Interview, May 3, 2013). In the North Coast region, one Native interviewee recalled an instance in which a Tribal staff member wrote a proposal, which “happens to be, by and large, one of the better proposals that was reviewed in the North Coast Region, and is touted as being the example of a project.” (C. Peters, Interview, June 11, 2013)

In general, indigenous people tend to have a very broad, integrated view of ecosystem functions, especially in regard to how ecosystems interact with one another and with humans (see, for example, Cunningham 2005 and Anderson 2005). As such, Tribes can provide a more holistic perspective on project development. According to one representative of a North Coast Tribe, “The Benefit of Tribes to IRWM is figuring out how to put pieces together; Tribes are very skilled in this” (L. Hillman, Interview, June 21, 2013).

Additionally, some Tribes have been successful in building unity within adversarial groups. Parties that disagree with one another but support the Tribe, or agree with the Tribes' methods or perspectives, are more willing to come to a resolution if the Tribe is in support. In one IRWMP, "The Tribe has been the tiebreaker, the glue, the ray of light in some of these rooms. It's worked really well." (S. Suess, Interview, May 3, 2013).

As such, where Tribes have been able to productively participate, Tribal participation in IRWM has helped to improve IRWM process and products for all IRWM participants. The challenges continue to be minimizing the barriers to Tribal participation, sharing the inspiring successes involved when there is meaningful Tribal participation, and encouraging both Tribes and other IRWM parties to begin to communicate. As Leaf Hillman, Karuk Tribal EPA Director, explained at the April 2013 IRWM conference in Sacramento:

It's a two-way street. Tribes need to be better and more aggressive at engaging local and regional partners, regional partners need to do a way better job than they are now of not seeing Tribes as a threat, but seeing Tribes as strong partners in water resources planning.

As the above examples show, not only can this be done, but some RWMGs and Tribes are doing it very well, and can provide strong examples for other regions.

4.3 Recommendations

As stated in Section 2 - Key Challenges & Proposed Solutions, the two highest-level policy recommendations from Tribes are:

- (1) The State of California, and all its agencies, should conduct true government-to-government consultation with Tribes (as per federal Executive Order 13175 (2000), and state Executive Order B-10-11); and
- (2) The Integrated Regional Water Management (IRWM) program should include requirements that Tribes be allowed to participate in the governance structure of their respective IRWM region(s). Specific policy action-items to support these two key recommendations are outlined below.

(1) The State of California, and all its agencies, should conduct true government-to-government consultation with Tribes.

- The "Traditional Tribal Places Law" (SB-18; Burton 2004) requires that cities and counties consult on any general or specific plan amendments with Native American Tribes. We argue that the California State Legislature should amend SB 18 to include IRWMPs, requiring consultation with California Native American Tribes prior to adopting or changing any IRWMP.
- Further, the California Natural Resources Agency, and its Departments, should work with Tribes in developing intergovernmental summits to address Tribal issues and potential collaborative efforts. These Summits should only take place when Tribal leadership and executive-level agency staff members are present, so that action-items and decisions can be made. These Summits should also take place at multiple scales: statewide, by hydrologic region, and by watershed or IRWMP region.
- We believe that the Department of Water Resources (DWR) and the State Water Resources Control Board should work directly with Tribes to revise all program documentation (Guidelines, Proposal Solicitation Packages (PSP), Proposal Review Processes (PRP), etc.) prior to any future grant rounds or other funding mechanisms, to ensure consultation between Regional Water Management Groups (RWMG) and Tribes. This includes developing an addendum to the Proposal Review Process (PRP) specifically addressing Tribal Issues (in addition to the Appendix H, Addendum to the 2012 Guidelines for Round 3 funding released in September 2013; see Appendix D-12), and developing Tribal consultation protocols and requirements for Regional Water Management Groups (RWMG) as a precursor to eligibility for all future funding mechanisms.
- Based on data from our surveys and interviews with Tribal representatives, we strongly encourage the Department of Water Resources (DWR) to work with Tribes in each hydrologic region to identify preferred consultants, outreach personnel, and Tribal Liaisons. DWR could develop and maintain a list of preferred Tribal consul-

tants and liaisons. This list should be regularly updated and maintained by DWR, in collaboration with Tribal representatives and the Governor's Office of the Tribal Liaison. DWR could direct RWMGs to select consultants and liaisons from the Tribal-recommended list. DWR should also aggressively pursue funding allocations to improve and enhance the resources and support available to DWR Tribal Liaisons.

(2) The IRWM program should include requirements that Tribes be allowed to participate in the governance structure of their respective IRWM region(s).

- The California State Legislature should amend CWC § 10530 & § 10540 to require Tribal inclusion in RWMG governance structures.
 - The Department of Water Resources (DWR) and the State Water Resources Control Board should work directly with Tribes to revise all program documentation (Guidelines, Proposal Solicitation Packages (PSP), Proposal Review Processes (PRP), etc.) prior to any future grant rounds or other funding mechanisms, to ensure Tribes are included in all RWMG governance structures as a precursor to eligibility for all future funding mechanisms.
 - The governance structure (including all decision-making committees) of each Regional Water Management Group (RWMG) should provide the appropriate number of seats for Tribal government representatives on each body.
- » The RWMG should create an open period of two months in which interested Tribes in their region may submit a Letter of Interest on behalf of their Tribal Council for a governing body or Committee seat. A call for submissions would be sent out to all Tribes in the area, disseminated via Tribal networks, and posted on the DWR website, and on each IRWMP website.
 - » Interested Tribes should determine among themselves which Tribal representatives will fill those seats, in the event that there are more applicants than designated seats. Independent supporting agencies, regional organizations and Tribes can help facilitate the call for Letters of Interest and collection of responses.
- The Department of Water Resources (DWR) should provide guidance and technical assistance to all Regional Water Management Groups (RWMG) in adapting their IRWMPs to fully incorporate Tribes.
 - DWR should consult with Tribes and IRWMPs with successful Tribal participation (e.g., North Coast, Inyo-Mono, Tuolumne-Stanislaus) to develop effective models for other regions to follow.
 - DWR should provide model revisions for all IRWMP documents to fully incorporate Tribes.

In addition to the critical policy recommendations addressed above, Tribes have identified a wide range of other issues and policy solutions, so as to better facilitate Tribal collaboration in IRWM. These are presented in Appendix A-7.

The Department of Water Resources and the State Water Resources Control Board should work directly with Tribes to revise all program documentation prior to any funding mechanisms, to ensure consultation between Regional Water Management Groups and Tribes.

5 - Closing Remarks

5.1 Research Limitations

The original vision for our research was to conduct a complete statewide analysis of Tribal participation in every Integrated Regional Water Management (IRWM) region. This would include not only the perspective of Tribes in each region, but also that of Regional Water Management Group (RWMG) members and staff, consultants, and Department of Water Resources (DWR) representatives. Capacity limitations (time, financial, and human resources) forced us to restrict our focus to the Tribal perspective only, and to focus our efforts in five target IRWM regions.

Even with this more focused investigation, we would have liked to gather data from every Tribe in our five target regions. We were able to include the perspective of a minimum 1/3 of Tribes in each region, but would have preferred to gain the perspective of *all* Tribes in those regions. However, we were unsuccessful in making contact with some Tribes, with others we were not able to schedule meetings within the project period due to mutual time constraints, and still other Tribes chose not to participate.

A limitation in our survey research is the small dataset. We were working with a small target population to begin with, and one that has been shown to have a general skepticism of scientific and/or educational research (Tuhiwai-Smith 1999). Many Tribes have substantial responsibilities and demands on their time, which contributes to further diminishing response rates. Additionally, many Tribes are located in rural areas, and some are less connected to the internet. All of these factors contributed to the difficulty we faced in acquiring survey responses.

Tribal research protocol relies heavily on person-to-person communication and trust relationships. For these reasons, it is extremely difficult to acquire survey research data in a timely manner. To gather more data, our research team would need additional time to travel throughout the state and conduct more in-person interviews. Conducting and transcribing interviews is an extremely time-consuming and labor-intensive process. Thus, we had to close our survey and interview period once the minimum 1/3 responses were received.

While the limitations of our research prevent our findings from being extrapolated to the entire population of California Native American Tribes, or all IRWM regions throughout the state, we are confident that our results depict a well-rounded representation of key issues with Tribal collaboration in IRWM, and offer a useful suite of recommendations.

5.2 Further Questions

One Department of Water Resources (DWR) staff member began an informal survey of Integrated Regional Water Management (IRWM) regions to identify which regions had Tribal participation, and which did not. She was unable to complete the evaluation due to time and resource constraints, but felt strongly that DWR has to invest in supporting such an important endeavor (“that really needs to come from higher up than me,” DWR staff, Interview, April 19, 2013). A comprehensive state-wide analysis of Tribal participation in IRWM is still needed to fully evaluate the effectiveness of Tribal collaboration in IRWM. This would potentially address the following important questions:

- ? Is Tribal collaboration in IRWM consistent across the state, or are there regional differences in:
 - » The level of Tribal participation?
 - » Experience of specific successes and issues?
 - » Overall perception of IRWM as positive or negative?
- ? Are there differences between parties’ experiences or perception of Tribal participation (e.g., do IRWMP representatives report positive Tribal involvement while Tribes report negative involvement? What about DWR staff?).

Answering these remaining questions would provide greater insight into specific challenges and successes of IRWM throughout the state, thus generating a more robust set of recommendations and models for successful Tribal collaboration in IRWM.

5.3 Final Conclusions

For Indigenous communities, water and land are sacred. The protection of natural resources in harmony with Native values and lifestyles is one of the defining issues of policy development among Indian nations (Hankins 2010, California Tribal Water Summit 2009). Tribes in the United States are challenged to manage their water-related problems and solutions in a complex, multi-jurisdictional policy context with federal, state, and local partners. Because watersheds are interconnected, caring for them requires productive partnerships with neighboring communities and jurisdictions. Despite the challenges presented by history and jurisdictional complexity, Tribes have built and are building the internal capacities to develop, implement, monitor, and enforce their own environmental standards within an indigenous cultural framework (Shupe 1986). This is an ongoing challenge, assisted by various federal programs under the USEPA, BIA, and other agencies (Potter Valley Tribe, Personal Communication, October 10, 2013).

Integrated Regional Water Management (IRWM) is the state of California's chosen mechanism for collaborative water management. According to DWR Director Mark Cowin, "IRWM is no longer just a project or a program, but our way of doing business" (IWM Summit, April 3, 2013). Tribes were initially dissatisfied with the IRWM grant program guidelines because the bond language essentially excluded Tribes from the planning and decision-making pro-

cesses (S. Norris, Personal Communication, March 15, 2012). In response, the Department of Water Resources (DWR) revised the IRWM guidelines to encourage Tribal collaboration and incentivize IRWM groups to pursue Tribal participation. This has led to limited improvements in the overall IRWM program. Tribes have participated in their local IRWM revisions, and some IRWM regions include specific positions on the governance structure for Tribes. Yet still more needs to be done; additional changes are required before significant results can be realized. More research is required to determine precisely how many Regional Water Management Groups (RWMG) currently have Tribal participation, and what that participation entails.

Our research indicates a wide range of perspectives regarding the effectiveness of Tribal collaboration. Some Tribes feel IRWM is having a positive impact on their water management goals, while others remain dissatisfied with the IRWM process and the level of Tribal inclusion. An underlying factor contributing to this dissatisfaction, overwhelmingly expressed by Tribes, is that agencies and stakeholders do not adequately understand Tribes' unique interests and do not respect or acknowledge the value of Traditional Ecological Knowledge. Specific, regionally-centered and culturally-sensitive training in Tribal socio-political structure (or "cultural competency training") is the primary suggestion for improving Tribal collaboration in the IRWM processes.

Due to the painful history of Native American genocide and survival in California, Tribes and local agency representatives often lack trust in one another (See generally: Thorson et al. 2006, Grossman 2005, Tuhiwai-Smith 1999, Olinger 1997,). However, trust and mutual respect are crucial to effective collaborative management (Innes & Booher 2010, Mander 1991). The most effective way to generate this necessary trust is through building mutually respectful relationships. These relationships take time to develop, and require a commitment from both parties. The IRWM process provides a venue for collaboration and a timeline for building trust through increased engagement and eventually working together on actual project implementation. Indigenous researchers propose four fundamental rules for effective collaboration with Tribes in natural resources management efforts (From Goodman 2000):

Tribes in the United States are challenged to manage their water-related problems and solutions in a complex, multi-jurisdictional policy context with federal, state, and local partners.

- (1) Tribal status as governmental entities and responsibility must be recognized.
- (2) Tribes must be made an integral part of the decision making process.
- (3) Tribes must be treated as experts, and given the requisite level of respect and deference.
- (4) Mechanisms for resolving disputes and differences in opinion must be in place.

Especially in light of the unique Tribal history in California, some Tribes also recommend a fifth principle: ‘Respect for limitations in capacity, expertise, and capital’ (Potter Valley Tribe, Personal Communication, October 10, 2013).’ While Tribes are indeed fully capable of managing their wide range of affairs and responsibilities, it should be recognized that Tribes, as small governments, face multiple and high demands on often limited financial and human resources.

These 4-5 principles can serve as a guide to more equitable and efficient Tribal collaboration in IRWM. Working to build these trust relationships and collaborative partnerships now will lay the foundation for long-term sustainability in co-management of water resources.

For truly sustainable long-term watershed management, legislators and agencies should remain cognizant of and sensitive to the past. Former policies have not only created the complex resource management structure we have today, but also shaped the inter-governmental relationships that persist. Maintaining a millennial view of California’s ecological and human history will help ensure that we include and respect the perspective of our longest-standing residents. Native Californians are still here. They are still stewarding ecosystems within the constraints of the state and federal regulations imposed upon them. California Tribal people still depend on the land, air and water for their spiritual and cultural renewal. Shortsighted, one-sided policies infringe on Tribes’ inherent rights to self-determination. Tribal people need to be seated at the table with state and federal entities, as equal partners in achieving shared goals. Otherwise, California is just practicing business-as-usual politics under the guise of comprehensive collaborative stewardship.

Tribal people need to be seated at the table with state and federal entities, as equal partners in achieving shared goals. Otherwise, California is just practicing business-as-usual politics under the guise of comprehensive collaborative stewardship.

Literature Cited

Anderson, M. Kat. *Tending the Wild* (Introduction, pgs. 55-61, 91-93, 108-110, 112-121, 155-160). UC Press 2005.

Cunningham, Farrell. "Take Care of the Land and the Land Will Take Care of You: Traditional Ecology in Native California," *News from Native California* 18, no. 4 (2005);

Floyd, Mike. Sierra Water Work Group Summit, June 12, 2013.

Goodman, Edmund J. 2000. Indian Tribal Sovereignty and Water Resources: Watersheds, Ecosystems and Tribal Co-Management. *Journal of Land Resources & Environmental Law* 20:185

IRWM Grant Program Guidelines—Proposition 84 and 1E. November 2012.

IRWM Grant Program – Proposal Solicitation Package for Planning Grants. August 2010.

Moeller, Lew. Project Manager, California Water Plan Update 2013. Sierra Water Work Group Summit, June 12, 2013.

Norris, Sherri. California Indian Environmental Alliance. Report back to Red Deer Consulting, on participation in IRWM Strategic Plan Workshop. May 15, 2013

Ryser, Rudolph C. 2011. US Consultation Policy and "Free, Prior and Informed Consent:" *Fourth World Journal* 10 (no. 1) pp. 95-111

Wilkins, David E., and K. Tsianina Lomawaima. *Uneven Ground: American Indian Sovereignty and Federal Law*. University of Oklahoma Press: Norman. 2001.

Wilkinson, Charles, and American Indian Resources Institute. *Indian Tribes as Sovereign Governments* (2nd Edition). American Indian Lawyer Training Program, Inc.: Oakland. 2004.

Appendices

Please note: Because the appendices and reference material for this report are over 800 pages they are only available in electronic format (CD). The following is a complete list of all documents included in the Appendices.

Appendix A. Research Process, Findings, & Participation

- A-1. IRWM Tribal Collaboration Effectiveness Study – Project Budget
- A-1. IRWM Tribal Collaboration Effectiveness Study – Letter of Understanding with the Department of Water Resources
- A-2. Suggestions to Increase Tribal Participation in CABY
(Excerpts from CABY Governance Meeting Minutes 1-12-12)
- A-3. IRWM Tribal Collaboration Effectiveness Study – Code of Ethics
- A-4. IRWM Tribal Collaboration Effectiveness Study – Survey Instrument
- A-5. Survey Instrument Development & Validation Process
- A-6. IRWM Tribal Collaboration Effectiveness Study – Survey Results & Source Data
- A-7. Identified Issues & Proposed Solutions
- A-8. Research Participants

Appendix B. IRWM Documents

- B-1. IRWM Regions Map
- B-2. IRWM Guidelines
- B-3. Proposal Solicitation Package
- B-4. Addendum to the 2012 IRWM Proposal Review Process - Appendix H
- B-5. DWR IRWM Contract Template
- B-6. NC IRWMP MoU
- B-7. Other IRWMP Signatory Document Examples
- B-8. North Coast IRWMP Implementation Proposal

Appendix C. IRWM Legislation & Regulatory Code

- C-1. SB 1672
- C-2. Proposition 50
- C-3. Proposition 84
- C-4. Proposition 1-E. Disaster Preparedness and Flood Prevention Bond Act of 2006
- C-5. California Water Code (CWC)
- C-6. Public Resources Code (PRC)
- C-7. SB 42/ AB 1331 Comparison
- C-8. SB 42 Draft Language
- C-9. AB 1331 Draft Language

Appendix D. Other Policy Documents & References

- D-1. EO B-10-11
- D-2. Senate Bill 18, 2004: Traditional Tribal Cultural Places
- D-3. Governor's Office of Planning and Research, State of California Tribal Consultation Policy, 2005
- D-4. California Natural Resources Agency Tribal Consultation Policy
- D-5. CalEPA Policy for Working with California Indian Tribes
- D-6. US Tribal Consultation Policy
- D-7. HUD Tribal Consultation Policy
- D-8. Obama, 2009: Memorandum on Tribal Consultation
- D-9. California Water Plan, Most Recent Updates (web links)
- D-10. CEQA Legislation
- D-11. Tribal Advisory Committee: Objective 12 -- Improve Tribal/ State Relations and Natural Resources. CWP Update 2013; Public Review Draft Version
- D-12. Tribal Nations Ad-hoc IRWM Strategy Group Referendum

Appendix E. Other Tribal Reference Information

- E-1. CA Traditional Languages & Territories Map
- E-2. Native American Heritage Commission List of California Native American Tribes
- E-3. *Winters v. United States* 1908

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