



April 2, 2014

Keith Wallace  
California Department of Water Resources  
Division of Integrated Regional Water Management  
Financial Assistance Branch  
P.O. Box 942836  
Sacramento, CA 94236  
**RE: Suggested Changes to Prop 84 Guidelines**

Dear Mr. Wallace:

Please accept these written comments made on behalf of the California Indian Environmental Alliance (CIEA).

CIEA was formed in 2006 to address toxins resulting from the Gold Rush legacy. Today we work to increase water quality in partnership with Northern California Tribes on a project by project basis providing technical support and coordination. Our goal is to increase access to healthy traditional fish in California waters.

In relation to the IRWM Program administered by DWR we are the Tribal Engagement Coordinator for both the North Coast (Northern Coast Resource Partnership) and Upper Feather River IRWM Regions and we work to increase the participation over forty Tribes in their regional IRWM. Our comments below are in support of the Tribes we work with in hopes that some of the barriers to the full participation of Tribes can be addressed.

We remain concerned by DWR staff interpretation of Proposition 84 bond, from which both DWR and counties make assumptions that unnecessarily limit Tribal participation and do not honor the unique legal and political relationships between agencies and Tribes. These include pre-existing federal and state responsibilities, requirements and unique relationships set forth in the Constitution of the United States, treaties, statues, Executive Orders, administrative rules and regulations, and judicial decisions. Each of these was developed out of recognition that the sovereignty of Tribal Nations is critical to advancing tribal self-determination and prosperity.

We assert that DWR has the authority respect sovereignty as part of the IRWM program and that the current barriers to Tribal inclusion found within IRWM guidelines are inconsistent with state and federal policies and requirements including federal Executive Order 13175, reaffirmed in 2009 by President Obama and by state Executive Order B-10-11.

One of the most severe barriers to Tribal participation is the perceived requirement that in order to receive IRWM Program funds Tribes are asked to sign limited waivers of sovereign immunity and abide by California regulatory framework. However, federally Recognized Tribes have a unique legal status which stems from the Commerce Clause of the United States Constitution which grants Congress the exclusive power to “regulate commerce” with American Indian tribes. The Supreme Court confirmed this clause recognizing tribes to be distinct nations occupying distinct territory over which the laws of the states have no force {*Worcester v Georgia*, 31 US (6 Pet) 515, 559 (1832)}. This has been reaffirmed on several occasions including in *United States v Wheeler*, 435 US 313, 323 (1978) wherein it was stated that American Indian tribes are “unique aggregations possessing attributes of sovereignty over both their members and their territory”. More recently the Supreme Court has determined that states have no authority to regulate conduct by the tribes unless specifically authorized by Congress {*California v Cabazon Band of Mission Indians*, 480 US 202, 204–207 (1987)}.

Please include the below recommendations in the upcoming program guidance for Prop 84 Funding, changes I are in **bold, underlined font**.

A. Eligible Grant Applicants:

Eligible grant applicants are **Federally Recognized Tribes**, local public agencies and non-profit organizations, as defined in Appendix B (add list of Federally Recognized Tribes).

Labor Code Compliance:

PRC §75075 requires the body awarding a contract for a public works project financed in any part with funds made available by Proposition 84 to adopt and enforce a labor compliance program pursuant to California Labor Code §1771.5(b). Compliance with applicable laws, including California Labor Code provisions, will become an obligation of the grant recipient and sub-recipients (i.e., individual project proponents that will receive grant funds) under the terms of the grant agreement between the grant recipient and the granting agency. California Labor Code §1771.8 states that the grant recipient’s Labor Compliance Program must be in place at the time of awarding of a contract for a public works project by the grant recipient.

**The State of California acknowledges and respects Federally Recognized Tribes’ inherent right and obligation to exercise sovereign authority over Tribal Territory and Tribal Members, thus cannot impose California regulations onto these sovereign entities. Furthermore, the State of California acknowledges Federally Recognized Tribes have established their own Tribal Wage Ordinances and Personnel Policies and Procedures as an exercise of a sovereign entity.**

CEQA Compliance:

**The State of California acknowledges and respects Federally Recognized Tribes in the inherent right and obligation to exercise sovereign authority over Tribal Territory and Tribal Members, thus cannot impose California regulations. The State of California will acknowledge documentation pursuant to The National Environmental Policy Act (NEPA) as sufficient environmental compliance.**

In order to address the issues that Tribes face CIEA recommends that DWR continue to coordinate with and meet in Consultation with Tribes. When doing so we strongly suggest that DWR invite both California Tribal leadership and the Tribes environmental or natural resources department staff, who interface directly with IRWM programs. When meeting in Consultation with CA Tribes or with Tribal staff for coordination we strongly suggest that the agency bring senior staff to these meetings so that Tribal Environmental Directors can meet with agency staff with procedural decision-making authority.

We also suggest that DWR's Tribal Liaison be available to assist Tribes in integrating into their local Regional Water Management Group should the Tribes of the region report they are being kept from full participation.

We finally wish to thank DWR staff for your administration of the IRWM program. We recognize that this is no small task and thank you for all of your efforts.

We look forward to improving watershed management by continuing to work with our regional IRWM regional water management groups and with DWR in the future.

Sincerely,



Sherri Norris  
Executive Director  
California Indian Environmental Alliance  
526 Grand Ave.  
Oakland, CA 94610

Cc: Anecita Agustinez, Tribal Policy Advisor, DWR  
Cynthia Gomez, Governor's Tribal Advisor and Executive Secretary for the Native American Heritage Commission  
John Laird, California Secretary for Natural Resources