

NATIVE AMERICAN HERITAGE COMMISSION
M E M O R A N D U M
October 9, 2018

To: Chairman Ramos and NAHC Commissioners

From: Terrie L. Robinson, General Counsel

Cc: Christina Snider, Executive Secretary

Re: United Auburn Indian Community/UC Davis CalNAGPRA Matter 2018-CalNAGPRA-1, Accession 32 (Auburn Dam), **Action Item/Information Item**

In this ongoing matter regarding the repatriation of cultural items taken from the Auburn Dam project and possessed by UC Davis as a collection called Accession 32, and after numerous discussing with UC Davis and UC System Counsel, NAHC staff reached the conclusion that, in order to expedite the repatriation process for Accession 32 under CalNAGPRA without any potential procedural obstacles, the NAHC will, in accordance with Health and Safety Code sections 8012(j) and 8013 (c), publish the list of California Native American tribes eligible to participate in CalNAGPRA repatriation as a prerequisite for all entities subject to CalNAGPRA filing their CalNAGPRA inventories and summaries. **There is no recommendation for any Commission action at this time, but NAHC staff wanted to allow for the possibility that Commissioners may wish to take additional action with respect to this matter.**

Health and Safety Code section 8012 (j) defines the term “California Indian tribe” to mean any tribe located in California to which any of the following applies:

- (1) It meets the definition of Indian tribe under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).
- (2) It is not recognized by the federal government, but is indigenous to the territory that is now known as the State of California, and both of the following apply:
 - a. It is listed in the Bureau of Indian Affairs Branch of Acknowledgement and Research petitioner list pursuant to Section 82.1 of Title 25 of the Federal Code of Regulations.
 - b. It is determined by the commission to be a tribe that is eligible to participate in the repatriation process set forth in this chapter. The commission shall publish a document that lists California tribes meeting these criteria, as we as authorized representatives to act on behalf of the tribe in consultations required under paragraph (3) of subdivision (a) of Section 8013 and in matters pertaining to repatriation under this chapter.

Criteria that shall guide the commission in making the determination of eligibility shall include, but not be limited to, the following:

- i. A continuous identity as an autonomous and separate tribal government.
- ii. Holding itself out as a tribe.
- iii. The tribe as a whole has demonstrated aboriginal ties to the territory now known as the State of California and its members can demonstrate lineal descent from the identifiable earlier groups that inhabited a particular tribal territory.
- iv. Recognition by the Indian community and non-Indian entities as a tribe.
- v. Demonstrated membership criteria.

Health and Safety Code section 8013 (c) provides that each agency or museum shall complete the inventories and summaries required by subdivisions (a) and (b) of Section 8013 by January 1, 2003, or within one year of the date on which the commission issues the list of California Indian tribes provided for under paragraph (2) of subdivision (i)¹ of section 8012, whichever is later. (Emphasis added).

Publication of the list of tribes that meet the definition of “California Indian tribe” under CalNAGPRA will trigger the one-year period for all entities subject to CalNAGPRA to file their inventories and summaries.

Although UC Davis has filed its inventory for Accession 32 with the NAHC that it completed for compliance with federal NAGPRA, the issue has been raised repeatedly whether UC or any entity is required to comply with CalNAGPRA until the list of tribes required by Health and Safety Code sections 8012 (j) and 8013 (c) has been published. In order to eliminate any procedural questions or barriers to CalNAGPRA enforcement and compliance, the NAHC’s Environmental and Cultural Department is preparing the required list of tribes that meet the definition of “California Indian tribe” under Section 8012 (j). All federally recognized tribes meet the definition. Non-federally recognized tribes on the Commission’s SB 18/AB 52 list should meet the criterion in Section 8012(j)(2)(b), but the Environmental and Cultural Department will have to verify if they meet the criterion in Section 8012(j)(2)(a), i.e., they are listed on the BIA’s Branch of Acknowledgement and Research’s petitioner list pursuant to Section 82.1 of Title 25 of the Federal Code of Regulations.

¹ This appears to be a typo, meant to be “subdivision (j).”