



Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

Cynthia Gomez, NAHC Executive Secretary and
Tribal Advisor to Governor Edmund G. Brown Jr.
James Ramos, NAHC Chairman
October 16, 2015

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

TABLE OF CONTENTS

Contents.....1

Executive Summary: Changes, Challenges and Growth.....2

The Commissioners of the Native American Heritage Commission.....5

The Native American Heritage Commission’s Powers and Duties.....6

I. Sacred Lands Inventory Searches and Environmental Document Review...10

II. Most Likely Descendant Designations.....10

III. Mediation of Disputes.....11

IV. Policy Formation.....12

V. Tribal Consultation and Commission Meetings.....12

VI. Implementation of AB 52 and the California Native American Graves
Protection and Repatriation Act.....12

VII. Rulemaking.....15

VIII. Strategic Planning and Communications.....16

IX. Enforcement and Compliance.....17

CONCLUSION.....18

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

EXECUTIVE SUMMARY: CHANGES, CHALLENGES, AND GROWTH

The Native American Heritage Commission (NAHC or Commission) has accomplished a great deal while undergoing significant changes and growth during the 2015-2016 fiscal year. The most significant of these changes and challenges include implementing Assembly Bill 52 (AB 52, Gatto, Chapter 532, Statutes of 2014) (AB 52), assuming the powers and duties of the California Native American Graves Protection and Repatriation Act's Repatriation Oversight Commission, responding to increased requests for enforcement of the Native American Historical, Cultural and Sacred Sites Act¹ and the California Environmental Quality Act (CEQA)², and beginning the NAHC's first ever rulemaking process to adopt regulations for the Most Likely Descendant (MLD) designation process. Though challenging, these undertakings will better position the NAHC to protect the Native American cultural resources of California's 164 Native American tribes, 109 federally recognized tribes and 55 non-federally recognized tribes.

The passage of AB 52, which was a significant amendment to CEQA, created a separate category, "tribal cultural resources," (TCR). The impact of TCRs require consideration of the impacts to Native American resources, and accepts tribal history, practices and knowledge, which must be considered separately from impacts to paleontological resources, under CEQA. The NAHC was challenged to ensure that, in advance of the NAHC's July 2016 statutory deadline to implement AB 52, California Native American tribes could participate meaningfully in tribal consultation regarding impacts to tribal cultural resources.

The NAHC's Legal, and Cultural and Environmental Departments committed substantial time and resources to educating tribes and lead agencies about the tribal consultation requirements under AB 52 and providing online resources to assist tribes and lead agencies with complying with the law in the interim. The Legal Department gave or participated in six AB 52 presentations for lead agencies throughout the state. The Cultural and Environmental Department created a data system to map the traditional and culturally affiliated territories of the 164 tribes and the thousands of lead agencies in California. They also consulted with individual tribes throughout the state to ensure accuracy of maps for the tribes' territories. Additionally, the NAHC partnered with the Governor's Office of Planning and Research (OPR) and conducted AB 52 consultation sessions to inform tribes, as well as lead agencies of what the law provides and how it affects tribes, among other measures.

¹ Public Resources Code § 5097.9 et seq.

² Public Resources Code § 21000 et seq.

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

Special thanks to Debbie Treadway, Environmental Scientist and Lead for the Cultural and Environmental Department, responsible for the implementation of AB 52 mapping, the generation of the list of lead agencies, and additional individual consultations with tribes throughout the state. Even with the additional duties, the Cultural and Environmental Department ensured that Most Likely Descendants were designated, searches were made in the Sacred Land File, and other day-to-day operations were carried out.

In an effort to achieve greater efficiency in Native American cultural resources protection, the NAHC has been given the statutory authority to enforce the California Native American Graves Protection and Repatriation Act³ (CalNAGPRA) pursuant to SB 83 (SB 83, Chapter 25, Statutes of 2015). The California Repatriation Oversight Commission (ROC), which previously had the statutory authority to enforce CalNAGPRA, had not met in more than a decade and was dissolved. The NAHC began to implement and enforce CalNAGPRA in the 2015-2016 fiscal year.

As part of a multi-year effort to prepare the NAHC for the future and mitigate the risk of litigation, the NAHC began the process of adopting its own tribal consultation policy as well as regulations for the process of designating Most Likely Descendants (MLD). To date, the NAHC staff, led by Executive Secretary, Cynthia Gomez and Chief Counsel Terri Robinson have held twelve pre-rulemaking public hearings and numerous tribal consultations throughout the state to receive public input on what should be included in the proposed MLD regulations. The proposed MLD regulations are currently in draft form and under review by staff. The MLD regulations are the first chapter of regulation in the history of the NAHC.

The NAHC experienced significant staffing changes with the retirement of longtime employee, Associate Environmental Planner, Rob Wood. Rob's decades of civil service and commitment to the Native American Community were an invaluable asset to the NAHC. The last year also included the addition of several new staff members. Utilizing the increased funding afforded to implement AB 52 the NAHC created and filled seven new positions in January 2016; one Office Technician, one Research Specialist, and five limited term positions (three Associate Governmental Program Analysts and two Staff Services Analysts). With the Cultural and Environmental Department taking the lead, meeting the Commission's AB 52 mandate on July 1, 2016, four employees in the limited term positions were made permanent fulltime employees. Currently, the NAHC has ten staff members: a part time Receptionist (retired annuitant), an Office Assistant, an Office Technician, two Staff Services Analysts, two Associate Governmental Program Analysts, an Associate Environmental Planner, an Environmental Scientist, and Chief

³ Health and Safety Code § 8010 et seq.

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

Counsel. These staff members are all a dedicated and hardworking team. The addition of these permanent, full time staff will provide greater assurances that the NAHC will continue to meet the needs of California tribes, allow for succession planning and satisfy the increased requests for assistance resulting from AB 52 and CALNAGPRA.

This report lists the NAHC's Commissioners and the Commission's powers and duties. Additionally, it addresses the NAHC's achievements across several functions; Sacred Lands Inventory searches, environmental document review, MLD designations, mediation of disputes, policy formation, tribal consultation, Commission meetings, public hearings, implementation of AB 52 and CalNAGPRA, rulemaking, strategic planning, communications, enforcement, and compliance.

As the NAHC prepares for its 40th anniversary in 2016,⁴ the Commissioners and staff of the NAHC are grateful for the benefit these changes and challenges present as well as for the growth and opportunity for the NAHC's improvement and preparation for the future.

Respectfully,



James Ramos
NAHC Chairman



Cynthia Gomez
NAHC Executive Secretary and Tribal Advisor
to Governor Edmund G. Brown Jr.

⁴ The legislation that created the NAHC was enacted in 1976. (Chapter 1332, Statutes of 1976).

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

THE COMMISSIONERS OF THE NATIVE AMERICAN HERITAGE COMMISSION

James Ramos, Chairman
Tribal Affiliation: Serrano/Cahuilla

Laura Miranda, Vice Chairwoman
Tribal Affiliation: Luiseño

Merri Lopez-Keifer, Secretary
Tribal Affiliation: Luiseño

William Mungary, Chairman Emeritus
Tribal Affiliation: Paiute/White Mountain
Apache

Reginald Pagaling, Parliamentarian
Tribal Affiliation: Chumash

Marshal McKay, Commissioner
Tribal Affiliation: Wintun

Russell Attebery, Commissioner
Tribal Affiliation: Karuk

Joseph Myers, Commissioner
Tribal Affiliation: Pomo

Julie Tumamait-Stenslie, Commissioner
Tribal Affiliation: Chumash



(Commissioners Left to Right: Merri Lopez-Keifer, Russell Attebery, Reginald Pagaling, Marshal McKay, Chairman James Ramos, Vice Chairwoman Laura Miranda, Julie Tumamait-Stenslie, William Mungary, Joseph Myers)

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

THE NATIVE AMERICAN HERITAGE COMMISSION'S POWERS AND DUTIES

The powers and duties of the Native American Heritage Commission are set forth in Public Resources Code section 5097.94:

- (a) To identify and catalog places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands. The identification and cataloging of known graves and cemeteries shall be completed on or before January 1, 1984. The commission shall notify landowners on whose property such graves and cemeteries are determined to exist, and shall identify the Native American group most likely descended from those Native Americans who may be interred on the property.
- (b) To make recommendations relative to Native American sacred places that are located on private lands, are inaccessible to Native Americans, and have cultural significance to Native Americans for acquisition by the state or other public agencies for the purpose of facilitating or assuring access thereto by Native Americans.
- (c) To make recommendations to the Legislature relative to procedures that will voluntarily encourage private property owners to preserve and protect sacred places in a natural state and to allow appropriate access to Native American religionists for ceremonial or spiritual activities.
- (d) To appoint necessary clerical staff.
- (e) To accept grants or donations, real or in kind, to carry out the purposes of this chapter and the California Native American Graves Protection and Repatriation Act of 2001.
- (f) To make recommendations to the Director of Parks and Recreation and the California Arts Council relative to the California State Indian Museum and other Indian matters touched upon by department programs.
- (g) To bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, pursuant to Section 5097.97. If the court finds that severe and irreparable damage will occur or that appropriate access will be denied, and appropriate mitigation measures are not available, it shall issue an injunction, unless it finds, on clear and convincing evidence, that the public interest and necessity require otherwise. The Attorney General shall represent the

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

commission and the state in litigation concerning the affairs of the commission, unless the Attorney General has determined to represent the agency against whom the commission's action is directed, in which case the commission shall be authorized to employ other counsel. In an action to enforce this subdivision the commission shall introduce evidence showing that a cemetery, place, site, or shrine has been historically regarded as a sacred or sanctified place by Native American people and represents a place of unique historical and cultural significance to an Indian tribe or community.

- (h) To request and utilize the advice and service of all federal, state, local, and regional agencies, including for purposes of carrying out the California Native American Graves Protection and Repatriation Act of 2001 (Chapter 5 (commencing with Section 8010) of Part 2 of Division 7 of the Health and Safety Code)
- (i) To assist Native Americans in obtaining appropriate access to sacred places that are located on public lands for ceremonial or spiritual activities.
- (j) To assist state agencies in any negotiations with agencies of the federal government for the protection of Native American sacred places that are located on federal lands.
- (k) (1) To mediate, upon application of either of the parties, disputes arising between landowners and known descendants relating to the treatment and disposition of Native American human burials, skeletal remains, and items associated with Native American burials.

(2) The agreements shall provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction and provide for sensitive treatment and disposition of Native American burials, skeletal remains, and associated grave goods consistent with the planned use of, or the approved project on, the land.
- (l) To assist interested landowners in developing agreements with appropriate Native American groups for treating or disposing, with appropriate dignity, of the human remains and any items associated with Native American burials.
- (m) To provide each California Native American tribe, as defined in Section 21073, on or before July 1, 2016, with a list of all public agencies that may be a lead agency pursuant to Division 13 (commencing with Section 21000 of the Public Resources Code) within the geographic area with which the tribe is traditionally and culturally affiliated, the contact information of those public agencies, and

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

information on how the tribe may request the public agency to notify the tribe of projects within the jurisdiction of those public agencies for the purposes of requesting consultation pursuant to Section 21080.3.1 of the Public Resources Code.

- (n) (1) To assume the powers and duties of the former Repatriation Oversight Commission and meet, when necessary and at least quarterly, to perform the following duties:
- (A) Order the repatriation of human remains and cultural items in accordance with the act.
 - (B) Establish mediation procedures and, upon the application of the parties involved, mediate disputes among tribes and museums and agencies relating to the disposition of human remains and cultural items. The commission shall have the power of subpoena for purposes of discovery and may impose civil penalties against any agency or museum that intentionally or willfully fails to comply with the act. Members of the commission and commission staff shall receive training in mediation for purposes of this subparagraph. The commission may delegate its responsibility to mediate disputes to a certified mediator or commission staff.
 - (C) Establish and maintain an Internet Web site for communication among tribes and museums and agencies.
 - (D) Upon the request of tribes or museums and agencies, analyze and make decisions regarding providing financial assistance to aid in specific repatriation activities.
 - (E) Make recommendations to the Legislature to assist tribes in obtaining the dedication of appropriate state lands for the purposes of reinterment of human remains and cultural items.
 - (F) (i) Prepare and submit the Legislature an annual report detailing commission activities, disbursement of funds, and dispute resolutions relating to the repatriation activities of the act.

(ii) A report submitted to the Legislature pursuant to this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

- (G) Refer any known noncompliance with the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) to the United States Attorney General and the Secretary of the Interior.
 - (H) Impose administrative and civil penalties pursuant to Section 8029 of the Health and Safety Code against an agency or museum that is determined by the commission to have violated the act.
 - (I) Establish those rules and regulations the commission determines to be necessary for the administration of the act.
- (2) For purposes of this subdivision, the following terms have the following meanings:
- (A) "Act" means the California Native American Graves Protection and Repatriation Act (Chapter 5 (commencing with Section 8010) of Part 2 of Division 7 of the Health and Safety Code).
 - (B) "Tribe" means a "California Indian Tribe" as that term is used in the act.⁵



⁵ Public Resources Code § 5097.94.

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

The majority of the day-to-day duties of the NAHC fall into the following nine categories discussed below.

I. Sacred Lands Inventory Searches and Environmental Document Review

NAHC staff members comment on CEQA environmental review documents including Notices of Preparation (NOP), Draft Environmental Impact Reports (DEIR), Mitigated Negative Declarations (MND), and Negative Declarations (ND) to inform CEQA lead agencies of their obligation to identify Native American cultural resources within their projects' Areas of Potential Effects (APE) and avoid or mitigate impact to those resources wherever possible. To help state and local lead agencies adequately avoid, assess and mitigate project related impacts on cultural resources, NAHC staff also perform searches of the NAHC's Sacred Lands Inventory. These searches alert lead agencies of the existence, but not the identity or location, of Native American sacred sites in the project's APE. From July 1, 2015 to June 30, 2016, NAHC staff conducted 4,873 searches of the NAHC Sacred Lands Inventory for state, county, city and local agencies preparing CEQA environmental review documents, and for federal agencies preparing documents under the National Environmental Policy Act⁶ (NEPA). CEQA and NEPA lead agencies are also provided a list of Native American tribes that are traditionally and culturally affiliated to the land within an APE.

The NAHC receives all CEQA environmental documents that involve projects that may have a significant effect on Native American cultural resources. These thousands of documents are reviewed by three of the NAHC's ten staff members. The comments provided by NAHC staff serve to inform lead agencies of the tribes they should consult and preserve the NAHC's standing to file suit under CEQA if a lead agency does not comply with the procedural requirements of CEQA. From July 1, 2015 to June 30, 2016, the State Clearinghouse received 10,526 environmental documents. Staff commented on the environmental documents as both staffing levels, and time (due to AB 52 deadline requirements) permitted.

II. Most Likely Descendant (MLD) Designations

One of the statutory duties of the NAHC is the designation of Most Likely Descendants (MLDs) when Native American human remains are discovered on lands subject to the NAHC's jurisdiction. From July 1, 2015 to June 30, 2016, the NAHC made 54 MLD designations.

Native people inhabited the land we now call California for thousands of years prior to their first contact with Europeans. The remains of California Native Americans'

⁶ 42 U.S.C. § 4321 et seq.

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

ancestors and the remnants of their villages and ceremonial sites lay beneath the soil throughout the state. Before the passage of CEQA in 1970, there were no protections for those remains, village sites, or ceremonial sites when development occurred. As a result, development in areas where construction occurred before the enactment of CEQA often unearths Native American burials, villages, and ceremonial sites, many of which may have been damaged by previous unregulated construction.

Under Health and Safety Code section 7050.5, a county coroner must contact the NAHC when Native American human remains are discovered, which often happens as a result of construction. In turn, the NAHC, using various documents including, but not limited to, ethnographic studies, maps of traditional California Native American tribal territories, documents received from tribes and information in the Sacred Lands Inventory assists NAHC staff in determining which tribe is most likely the descendant of the Native American whose remains have been discovered. This tribe is then designated as the "Most Likely Descendant" (MLD), and has the legal obligation to confer with the owner of the property about where the remains were found, and provide recommendations for the treatment and disposition of those remains and any associated funerary, or burial objects. If the MLD and the landowner fail to reach such an agreement, the landowner must reinter, or rebury, the remains and associated funerary objects on the property in an area that will remain undisturbed.

III. Mediation of Disputes

The NAHC mediates disputes between landowners and Most Likely Descendants regarding the treatment and disposition of Native American human remains and associated grave goods. (Public Resources Code section 5097.94 [k]). The NAHC's staff are trained and certified in mediation. The NAHC also facilitates access by Native Americans to Native American sacred sites on public land (Public Resources Code section 5097.94 [b]), and has also worked to help tribes and government entities resolve disputes regarding the development of avoidance or mitigation measures to lessen impacts of projects on Native American cultural resources.

In 2015, the Sutter Butte Flood Control Agency (SBFCA) repatriated Native American human remains found in the project area of the Feather River West Levee Project (FRWLP) to United Auburn Indian Community (UAIC) following an investigative report and public hearing of the NAHC. Both SBFCA and UAIC remained engaged in securing either achievement of the mitigation measures proposed by the NAHC as a precondition to foregoing litigation or measures agreeable to both parties as to burial treatment plans, historic property treatment plans, and other agreements to further protect Native American cultural resources. The parties have reached mutual agreement on these plans.

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

IV. Policy Formation

The NAHC began developing its own tribal consultation policy in 2014 in accordance with the Governor's Executive Order B-10-11. Monthly and ad hoc tribal consultation sessions with tribes regarding the draft policy began in 2014 and concluded in April 2016.

V. Tribal Consultation and Commission Meetings

The NAHC held its quarterly meetings for fiscal year 2015-2016 in July and October of 2015 in San Diego and at the National Indian Justice Center in Santa Rosa, respectively. Commission meetings in 2016 were held, January in Sacramento and April in Bishop. In conjunction with its Commission meetings the Commission also held four public hearings throughout the state. The Cultural and Environmental Department continued to meet with tribes and held 90 consultation meetings during the last fiscal year.

VI. Implementation of AB 52 and the California Native American Graves Repatriation Act

A. Assembly Bill 52 (AB 52, Gatto, 2014, Chapter 532, Statutes of 2014) (AB 52)

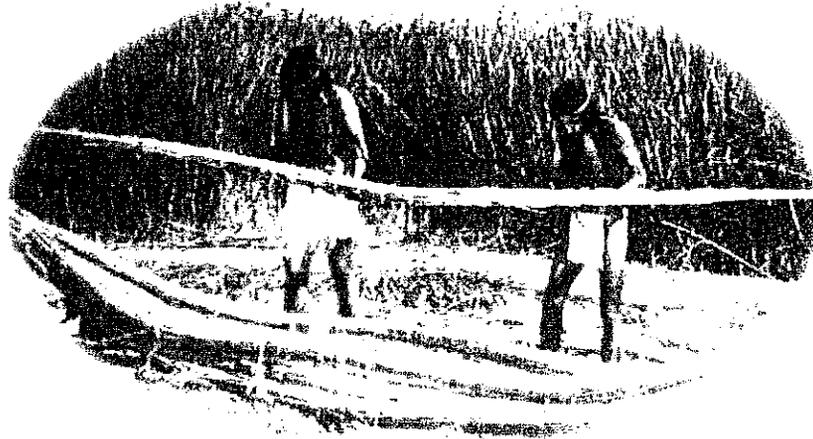
Assembly Bill 52 represents a major change in CEQA. AB 52 creates a separate category of resource, "tribal cultural resources," for consideration under CEQA and provides a tribal consultation process by which California Native American tribes can have input on avoiding or reducing impacts to tribal cultural resources early in the CEQA process. AB 52 applies to any project for which a Notice of Preparation, Notice of Negative Declaration, or a Notice of Mitigated Negative Declaration is filed on or after July 1, 2015.

The NAHC's responsibility under AB 52 included providing all of California's 164 Native American tribes a list of every state and local agency that could be a lead agency under CEQA for projects within each tribe's area of traditional and cultural affiliation by July 1, 2016. This duty required the NAHC to compile a list of contact information for all California lead agencies as well as ascertain each tribe's area of traditional and cultural affiliation and overlay the jurisdictional areas of each state and local agency over each tribe's area of traditional and cultural affiliation.

A problem immediately recognized by the NAHC was a one-year gap that threatened the right for tribes to seek consultation from lead agencies. The AB 52 requirement that lead agencies consult with tribes, when

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

notified by tribes, beginning on July 1, 2015, was one year before NAHC's deadline of July 1, 2016. To make tribal consultation a meaningful right for tribes during the one-year gap, the NAHC worked with OPR to provide tribes lists of known state and local agencies searchable by county. Early in the process it was discovered that the list of lead agency contact information provided to the NAHC was outdated and inaccurate. NAHC staff was then charged with updating the contact information for all 2,721 California lead agencies. To accomplish this task the NAHC's Cultural and Environmental Department were assigned the responsibility of researching and updating lead agency contact information. This information was developed into a database, which was put on the NAHC website and served as an interim tool for the tribes during the one-year gap until the traditional and cultural maps and all lead agencies' jurisdictions could be gathered by the NAHC staff and provided to the tribes by the July 1, 2016 deadline.



Shortly after AB 52 became law, NAHC also developed template letters for tribes to use for requesting notification from lead agencies for projects in the tribes' areas of traditional and cultural affiliation and to request tribal consultation under AB 52. The Legal Department developed a PowerPoint presentation, "Tribal Consultation under AB 52: Requirements and Best Practices," which has been provided to tribes, lead agencies, and investor-owned utilities throughout the state. The templates and the presentation can be found on the NAHC's website, and the PowerPoint presentation can be found on both the NAHC's website as well as on the California Environmental Protection Agency's website. Many state agencies and departments use these tools to train their staff for AB 52 compliance.

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

The NAHC Cultural and Environmental Department was responsible for conducting consultation and AB 52 related outreach. This included a writing campaign and consultations that requested each tribe provide the NAHC with maps detailing their traditional and culturally affiliated geographic area. The information gathered from this process was then digitized into a Graphic Information System (GIS) compatible format. Prior to receiving maps from tribes, the staff created 79 default maps of traditional culturally affiliated areas, utilizing "Volumes 8, 10 and 11" of the Smithsonian's Handbook of North American Indians, to ensure tribes that did not submit maps received a list of lead agencies. Upon digitization, the maps of traditional and cultural tribal territory were then returned to the tribes for editing and correction. In total, the NAHC received maps from 109 of the 164 California tribes.

The maps solicited by the NAHC and approved by the tribes were used to create a confidential GIS mapping system to overlay state and local agencies' areas of jurisdiction over tribes' areas of traditional and cultural affiliation. The Cultural and Environmental Department met with the Natural Resources Agency biweekly to develop the Native American Lands Information System (NALIS), which incorporates a records database, that is being used to better archive and track all requests for assistance and environmental documents received by the NAHC.

The NAHC completed its statutory obligation to provide all of California's 164 Native American tribes a list of every state and local agency that could be a lead agency under CEQA for projects within each tribe's area of traditional and cultural affiliation on June 28, 2016, two days prior to the July 1, 2016 deadline. The Natural Resources Agency and the Governor's Office of Planning and Research (OPR) provided invaluable assistance to help the NAHC meet its deadline and educate tribes regarding AB 52.⁷

⁷ The NAHC is extremely grateful for the assistance of Christopher Calfee, Senior Counsel and Holly Roberson, Land Use Counsel for OPR. Ms. Roberson gave presentations at many of the NAHC's AB 52 tribal consultation sessions and provided greatly appreciated technical assistance.

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

B. California Native American Graves Protection and Repatriation Act
(CalNAGPRA)

In 2014, the authority to implement CalNAGPRA was transferred to the NAHC, although no specific or separate funding allocation was added to the NAHC budget for these duties. In anticipation of the prerequisite rulemaking that will be required to implement CalNAGPRA, the Legal Department collaborated with the Center for Collaborative Policy to create statutorily required mediation training, which was completed by all NAHC Commissioners and staff.

In anticipation of implementing CalNAGPRA, the Legal Department has embarked on a series of meetings with museums and agencies that will be affected by CalNAGPRA's implementation in order to forge positive relationships and increase the possibility of pre-implementation collaboration. Thus far, the Legal Department has met with the Director and staff of the University of California, Berkeley's Phoebe Hearst Museum. The Legal Department has scheduled or anticipates scheduling additional meetings with other museums and agencies.

The Cultural and Environmental Department are in the process of researching prior inventories that were compiled by the former Repatriation Oversight Commission.

VII. Rulemaking

As part of the NAHC's long-term planning, the NAHC Commissioners voted on October 17, 2014 to begin adopting regulations for the NAHC's MLD designation process. Because the NAHC had never adopted regulations, the Commissioners decided to hold consultations and public workshops on the proposed MLD regulations and the rulemaking process.

The NAHC staff have drafted, revised and reviewed proposed regulations for the Most Likely Descendants identification process, as the first of many chapters of regulations the NAHC will undertake. These draft Most Likely Descendants regulations have been forwarded to the Most Likely Descendants Rulemaking Subcommittee, Vice Chairwoman Laura Miranda and Commissioner Julie Tumamait-Stenslie for their review and recommendation to the entire Commission. It is anticipated that these regulations will be adopted by the Commission in January of 2017.

Following adoption of Most Likely Descendent regulations the NAHC will begin the process of developing additional rules and regulations as required by statute.

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

VIII. Strategic Planning and Communications

The NAHC has a strategic plan in place, but an analysis of NAHC's strengths, weaknesses, and opportunities compels its reconsideration. Staff will draft a revised strategic plan for the NAHC's consideration in late 2016 or early 2017.

The NAHC's strengths include the depth of technical expertise of its staff members and their enduring commitment to the NAHC's mission. The NAHC's weaknesses include the small size of its staff in proportion to the breadth of the NAHC's mission and the fact that many of the core staff are retirement-eligible or retired annuitants, all of whom possess a great deal of institutional knowledge. The NAHC was able to address this weakness by securing funding for additional staff. With sufficient staffing and funding, the NAHC will be more capable of positioning staff to play a greater role in protecting Native American cultural resources in the CEQA environmental review process, thus becoming empowered partners with the tribes, local, federal and other state agencies. The ongoing concern to the NAHC is due to greater enforcement and compliance efforts with respect to protecting Native American cultural resources and the effects of those efforts on stakeholders.

NAHC staff will be studying the following goals and objectives as it prepares a revised strategic plan:

- Partnering with high schools, colleges, graduate programs and law schools to provide internship opportunities to increase the pool of qualified applicants for all NAHC positions.
- Securing independent sources of funding for NAHC programs, such as grants and contracts with state and local agencies to provide training on tribal consultation and compliance with the laws administered by the NAHC.
- Partnering with law schools and pro bono legal organizations to provide additional investigatory, compliance and enforcement staffing and expertise at no cost to the NAHC.
- Providing training on how to effectively serve as an MLD and participate in the CEQA environmental review process.
- Using social media and digital communications to educate the public about California's unique laws protecting Native American cultural resources.

The NAHC has increased its communications with the public not only through its public workshops and tribal consultation sessions, but also through the use of Twitter® and

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

direct letters to all of California's coroners and the press regarding protecting the confidentiality of Native American burials and sacred sites. The NAHC staff is studying the feasibility of other forms of social and news media as well as an online quarterly newsletter to ensure consistent education of and outreach to tribes and stakeholders alike.

IX. Enforcement and Compliance

In the last year, the NAHC had the benefit of two interns to assist its staff for the purpose of providing assistance to its general counsel. As a result, the Legal Department is better able to enforce the NAHC's laws protecting Native American cultural resources, and the NAHC is better able to pursue litigation when compliance with state laws protecting Native American cultural resources remains elusive.

Compliance and enforcement actions included being the plaintiff in two ongoing litigation matters, NAHC v. Foothill/Eastern Transportation Corridor Agency, Case Number GIN51370, Superior Court of San Diego County, and NAHC v. Inyo County, Case Number SI CV PT 1557557. The NAHC also had an ongoing investigative matter for the Feather River West Levee Project.

- The NAHC filed suit in 2016 against the Foothill/Eastern Transportation Corridor Agency under Public Resources Code sections 5097.94 and 5097.97 to protect a Native American village site from irreparable damage from a proposed toll road. The matter is still in litigation.
- The NAHC filed suit against Inyo County in 2014 alleging a violation of CEQA due to an inadequate cultural resources assessment for a solar project. In ruling on one of the demurrers filed by Inyo County to challenge the authority of the NAHC to file a CEQA suit, the Inyo County Superior Court ruled that the NAHC had implied legal authority to bring an action under CEQA based on the NAHC's jurisdiction over and responsibility for the protection of Native American cultural remnants, including archaeological sites. The court also concluded that the NAHC had standing to bring this particular action based on the NAHC's consultative role and authority to comment on projects that may affect Native American archaeological sites. The matter is still in litigation.
- The NAHC was instrumental in securing the repatriation of thousands of Native American human remains and associated grave goods from the Feather River West Levee Project (FRWLP) to United Auburn Indian Community (UAIC) following an investigative report and public hearing of the NAHC. Both SBFCA and UAIC remained engaged in securing either achievement of the mitigation measures proposed by the NAHC as a precondition to foregoing litigation or measures agreeable to both parties as to burial treatment plans, historic

Native American Heritage Commission
Report for July 1, 2015 through June 30, 2016

property treatment plans, and other agreements to further protect Native American cultural resources. The parties have reached mutual agreement on these plans.

- NAHC is serving as a participating member of the Los Angeles Department of Water and Power/Great Basin Air Quality District's Cultural Resources Task Force to assist with the adoption of avoidance and mitigation measures along with Inyo County tribes, the federal Bureau of Land Management, the Office of State Historic Preservation, and the State Lands Commission to protect Native American cultural resources affected by the Owens Lake Dust Mitigation Project.

CONCLUSION

The NAHC Commissioners, Executive Secretary and staff remain committed to the NAHC's mission: protecting Native American cultural resources, ensuring Native American access to sacred sites on public property, and repatriating Native American human remains with dignity and respect. We welcome the changes, challenges and opportunities for growth that lie ahead.

