



United States Department of the Interior

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To: All CA District Managers, All CA Field Managers

From: Deputy State Director, Natural Resources

Subject: Financial Compensation to Native American Tribes

Program Area: Cultural Resources

This IB addresses the issue of providing financial compensation to Native American Tribes for Tribal Consultation by consolidating current authorities and outlining the policy for California.

This IB continues to stress the importance of tribal relations and partnerships for the BLM and the Department of the Interior while clarifying the specific issue of financial compensation. On February 12, 2009, at a hearing before the Senate Committee on Indian Affairs on the Priorities for Indian Affairs, Secretary of the Interior Ken Salazar said, “During his campaign for the Presidency, President Obama spoke out in support of empowering Indian people in the development of the national agenda. As President, he recognizes that federally recognized Indian tribes are sovereign, self-governing political entities that enjoy a government-to-government relationship with the United States (U.S.) government, as expressly recognized in the U.S. Constitution. I, too, am a strong supporter of the principle of tribal self-determination and will work to fully enable tribal self-governance.”

Background:

The BLM Handbook H-8120 defines general policy and guidelines concerning financial compensation for Native American Consultation.

As specified in Appendix 1 of the Consultation Handbook H-8120-1: *Guidelines for Conducting Tribal Consultation*, the “BLM does not compensate any entity, including Indian tribes, for consultation required by law, regulation, or other authorities, where the consultation is part of

BLM administrative processes designed to protect the interests of the consulting entity.” The information that Native Americans choose to provide may benefit their particular interests relative to future BLM actions or decisions. As with other participants, Native American contributions to the BLM administrative process are a form of voluntary participation.

The policy does point out that, “Nothing prevents BLM from contracting for the services of qualified Native American individuals, firms, or organizations, through BLM acquisition and procurement procedures, to produce in-depth ethnographic reports, National Register nominations, or other specific products for proactive management uses that are not considered BLM administrative processes designed to protect tribal interests.”

Authorities: The Bureau of Land Management (BLM) Manual Series 8100: *The Foundations for Managing Cultural Resources* including Manual Series 8110: *Identifying and Evaluating Cultural Resources*; 36 CFR Part 800: *Protection of Historic Properties*; 36CFR: *Protection of Archaeological Resources*; and Manual 8120: *Tribal Consultation Under Cultural Resource Authorities*; Executive Order 13175: *Consultation and Coordination with Indian Tribal Governments*; Handbook H-8120-1: *Guidelines for Conducting Tribal Consultation*; Executive Order 13007: *Indian Sacred Sites*; Secretary of the Interior’s Director’s Order #71A: *Government-to-Government Relationships with Tribal Governments*; the Native American Graves Protection and Repatriation Act of 1990; the National Historic Preservation Act of 1966; the National Environmental Policy Act of 1969, as amended; and BLM Manual Series 8150: *Permitting Uses of Cultural Resources*. Each of the following authorities requires a review to determine if proposed work would have potentially harmful effects on or would result in limiting access to locations of religious or cultural importance to Indian tribes.

California Compensation Policy:

1. During normal consultation (letter exchanges, phone contact, meetings, and field visits at the request of the Tribe), it is reasonable to expect that Tribes can inform the BLM of resource and heritage concerns in sufficient detail so that BLM managers can make reasonable decisions regarding these concerns. Such normal consultation is well within the prohibition on compensation.
2. Within the strong constraints of the national policy, there are situations in which compensation could be appropriate. These are situations when:
 - a. The BLM asks Tribal members for significant additional information to meet the BLM objectives that go beyond including Tribal concerns in the decision making process. Some examples include BLM initiated: (1) National Register nomination forms; (2) compliance evaluation reports; and (3) ethnographic, archaeological or historic reports. Compensation should not be paid for review and comment on reports, agreements, or other products, or activities in the normal consultation process;
 - b. The BLM requests regularly scheduled formal consultation meetings in BLM offices far removed from Tribal offices. Such compensation will be limited to travel expenses for one

Tribal representative per meeting and should not be paid for routine meetings within the scope of normal consultation; and

c. The BLM requests additional field trips to clarify Tribal issues that emerge through the normal consultation process.

3. Compensation Process:

a. Tribal representatives cannot be compensated for time (salary) or for services, such as monitoring. As noted above, the BLM can pay for in-depth ethnographic reports or other specific products and travel expenses in limited circumstances.

b. Tribal compensation must follow BLM acquisition and procurement procedures.

Questions may be directed to Dr. Charlotte Hunter, State Lead for Tribal Relations, Archaeology, and Paleontology, BLM California State Office at 916-978-4648 or Charlotte_Hunter@blm.gov.

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