III.9 NATIVE AMERICAN INTERESTS

This chapter addresses both the contemporary and traditional concerns of Native Americans and organized tribal governments. It focuses on concerns specific to Native Americans within the Desert Renewable Energy Conservation Plan (DRECP or Plan) boundaries, and to which Native Americans bring distinct perspectives. This section also identifies federal and state laws and regulations that govern Native American interests on land traditionally occupied or used by Native Americans. Also included is a discussion of local planning goals and policies related to the protection of Native American interests.

Central to understanding both the contemporary and traditional concerns of Native American tribes within the DRECP boundaries is an understanding of what each tribe ascribes "traditional cultural values." According to Parker and King, "Traditional cultural values are often central to the way a community or group defines itself, and maintaining such values is often vital to maintaining the group's sense of identity and self-respect" (1998).

Of particular cultural value to tribes are Traditional Cultural Properties (TCPs), sacred sites, and cultural landscapes. These terms are defined in more detail in the beginning of Chapter III.8, and examples are provided in Section III.9.4.2 of this chapter. Recent ethnographic studies associated with renewable energy and transmission development have identified several TCPs and cultural landscapes of importance to Native Americans in the California Desert (Braun and Gates 2013; Gates 2012;Braun et al. 2013). Also of importance to Native Americans are archaeological objects and sites, such as habitation sites, camps, lithic reduction features (quarries), trail segments, rock rings, and so on. Plants, animals, and minerals are also thought to hold cultural and spiritual significance as they were used for food, medicine, ceremony, and/or for manufacturing items. Additional Native American concerns relate to the extensive level of planning and participation involved in renewable energy projects. Specifically, tribes have expressed concern over the following issues, which are discussed in more detail in Section III.9.4.1 of this chapter: (1) consultation; (2) ethnography; (3) document review; (4) confidentiality; (5) monitoring; (6) repatriation; (7) access; and (8) environmental justice.

III.9.1 Regulatory Environment

Federal, state, and local regulations relevant to the protection of Native Americans are listed below. Many of these regulations also apply to the protection of cultural resources and are described in more detail in Section III.8.1 Federal legislation, regulations, and policies specific to projects on Native American reservation land are not included. With the exception of local planning ordinances which are listed alphabetically by county, regulations in this section are generally organized in the following manner: acts, executive

orders, secretarial orders, bills, and codes. Within each of these categories, individual laws and regulations are organized by date of enactment.

III.9.1.1 Federal

Antiquities Act of 1906 (16 U.S.C. 431-433). See Chapter III, Section III.8.1.1 for details.

Bald and Golden Eagle Protection Act of 1940 (Eagle Act) (16 U.S.C. 668-668[d]) allows the Secretary of the Department of the Interior (DOI) to permit the taking, possession, and transportation of bald eagle or golden eagle specimens for the religious purposes of Indian tribes, as well as other scientific or exhibition purposes (Section 668(a]). In 2009, the U.S. Fish and Wildlife Service (USFWS) promulgated a new permit rule under the Eagle Act that provides a mechanism to authorize unintentional take of eagles at 50 CFR 22.26 (74 FR 46836). As described in Section I.2.2.4 of the draft DRECP EIR/EIS, under this new rule, the USFWS can issue permits that authorize individual instances of take of bald and golden eagles when the take is associated with, but not the purpose of, an otherwise lawful activity, and cannot practicably be avoided.

The final regulation ensures that requests by Native Americans to take eagles from the wild are given first priority over all other take, except as necessary to alleviate safety emergencies. This criteria applies where the take of live, wild eagles is absolutely necessary to meet the religious purposes of the tribe, as opposed to the use of feathers and parts that may be obtained from the National Eagle Repository.

Permit regulations governing take and possession of eagles by Native Americans are set forth in 50 CFR 22.22. Even if not on reservation land, eagles, eagle nests, and other sites have cultural significance to many Native American tribes and tribal members. Therefore, before issuing a permit under the Eagle Act or before issuing an Endangered Species Act Section 10(a)(1)(B) incidental take permit for golden eagles as a Covered Species under the General Conservation Plan (GCP), the USFWS will consult with federally recognized tribes to determine if issuance of the permit would (1) adversely affect their traditional tribal activities, practices, or beliefs; or (2) adversely affect the tribe's ability to regulate, protect, provide services to, or otherwise govern their tribal membership, lands, and resources.

National Historic Preservation Act of 1966 (NHPA) (Public Law [PL] 89-665; 16 U.S.C. 470-1). See Chapter III, Section III.8.1.1 for details.

National Trails System Act of 1968 (**16 U.S.C. 1241 et seq.**). See Chapter III, Section III.8.1.1 for details.

National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). See Chapter III, Section III.8.1.1 for details.

Federal Land Policy Management Act (FLPMA) of 1976 (43 U.S.C. 1701 et seq.) Section 601 of FLPMA defines the CDCA and provides guidelines for the creation of a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the CDCA.

Appendix VIII of the CDCA FEIS describes the Native American Element (NAE) of the CDCA (see Figure III.9-1) and attempts to address both the contemporary and traditional concerns of Native Americans and organized tribal governments. The focus is on traditional heritage and religious concerns and long-range goals and planning efforts. The Native American Element includes the CDCA landscape; wildlife species; prehistoric and historic occupation, worship, and domestic activities sites; and plant and animal resources. These resources are important because of their respective roles in ritual or in the origin accounts of a Native American group. Other goals of this element include (1) the identification of Native American values through consultation, (2) the full consideration of these values in land use planning and management decisions, and (3) the management and protection of these values.

This element also addresses BLM's approach to legislation that directs the degree and types of Native American consultation and involvement in cultural resource management programs. Some of these include providing access to sacred sites for worship, preserving the confidentiality of Native American information submitted to BLM, restricting public access to field inventory data, developing procedures for identifying concerns, and following procedures for Native American contact and consultation.

Four key issues were identified in this element. First, it acknowledges the difficulties in identifying, protecting, and mitigating impacts to Native American resources. A key observation relevant to the current study is that the "accurate evaluation of potential impacts on cultural values can only be made within the cultural context from which those values are derived" (BLM 1980, Native American Element). In other words, the identification of an impact and the design of appropriate mitigation, if any, must be made in consultation with concerned Native American representatives. Second, the element identifies the need and provides specific guidelines for incorporating formal comments from tribal governments into BLM's environmental review process. Third, this element states that conflicts between Native American values and other activities (such as mining or grazing) can best be identified and resolved through consultation and detailed management plans. Finally, the element acknowledges that many impacts on Native American values are not amenable to mitigation. Nonetheless, "these substantial potential and often irreversible impacts on cultural values will be carefully considered in all actions of the Plan" (BLM 1980, Native American Element).

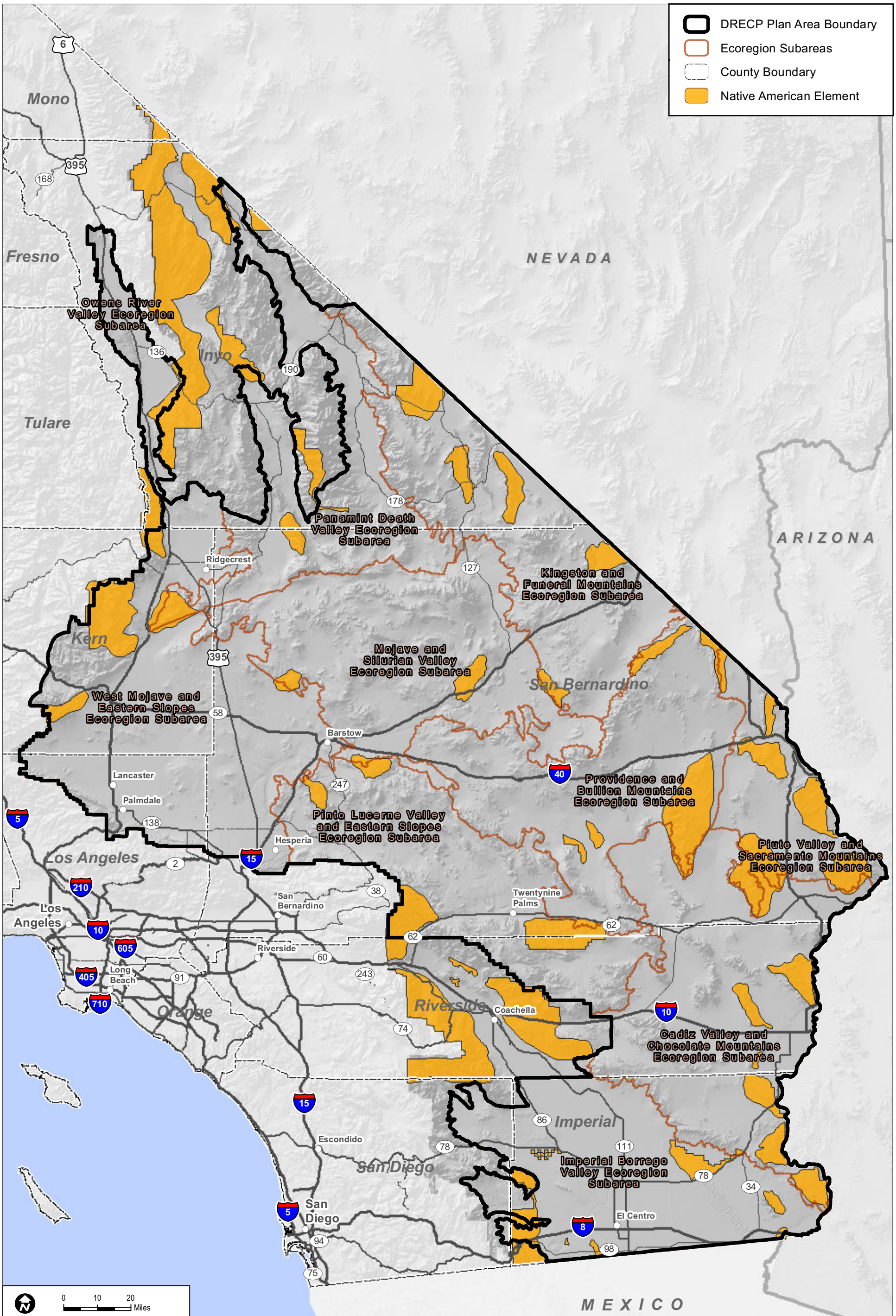
Some of the management tools identified include (1) multiple-use classes drafted to incorporate Native American concerns, (2) incorporation of concerns into general Plan guidelines and other Plan elements, (3) the designation of ACECs, and (4) the development of guidelines for management of heritage values and formal tribal consultation.

The priorities for implementation of this element emphasize the protection of resources in ACECs and areas of extensive, diverse, and sensitive cultural values, as illustrated by a map of these key locations (BLM 1980, Cultural Resources Element Map).The element map is now three decades old and is a substantial baseline reflection of Native American heritage values in the DRECP plan area.

American Indian Religious Freedom Act of 1978(42 U.S.C. 1996). AIRFA was passed to prevent Federal agency encroachment on Native American religious places (and Native American access thereof) and related practices that are located or conducted on federal land or where federal actions would otherwise infringe on Native American's constitutional rights to freedom of religion. AIRFA also recognized the rights of Native Americans to possess religious objects. Native Americans were provided special recognition due to the federal government's attempt to reverse some of its previous Indian policies that forbade the expression of Native American religion. A Forest Service decision to build a road (the "Gasquet to Orleans" or "G-O" Road) through a sacred landscape in Northwestern California in order to provide access between coastal mills and inland forests was litigated by environmental groups and an Intertribal non-profit in the 1980s. The case eventually was accepted by the Supreme Court who ruled that the constitutional right to the freedom of religion is only hampered by the federal government when the government takes actions intended to directly suppress religion. It was reasoned by the Supreme Court majority opinion that the sole mission and intent of the Forest Service's desire to build the GO Road was to connect forests with mills and thereby increase timber production and employment and it was not the intent of the Forest Service to infringe on Native American religious expression. Since that decision, AIRFA has been considered to have little relevance for environmental regulatory practice and further meaningful utilization of the law has been sparse.

Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-mm). See Chapter III, Section III.8.1.1 for details.

Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001-13). See Chapter III, Section III.8.1.1 for details.



Sources: ESRI (2014); CEC (2013); BLM (2013); CDFW (2013); USFWS (2013)

FIGURE III.9-1

Native American Elements within the Plan Area

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Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-2000bb-4). Efforts to regain what the Supreme Court AIRFA decision had limited led Congress to enact RFRA. The Act essentially amended AIRFA by establishing that Native American religious access, worship and object possession were similarly harmed by the government whether or not the action was done with intent to harm Native American religion or to carry forth an agency's mission. RFRA further provides that should the government wish to go forward with an action that would impact Native American religious freedom then the action must be of a compelling governmental interest. However, subsequent case law clearly established that RFRA did not apply to the state or local government jurisdictions and authorities. That is to say, AIRFA and RFRA are only applicable on federal lands and for federal agencies.

Omnibus Public Lands Management Act of 2009 (P.L. 111-11). See Chapter III, Section III.8.1.1 for details.

Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (1994). This EO requires federal agencies to adopt strategies that address environmental justice concerns within agency operations. Existing laws should provide opportunities for federal agencies to address environmental hazards in minority and low-income communities. It also establishes agency-wide goals for American Indian, Alaska Native, and other indigenous peoples (e.g., Native Hawaiians) (59 Federal Register [FR] 7929). Specific guidance regarding Native Americans and Environmental Justice is currently being developed by the Environmental Protection Agency (EPA) (EPA 2014).

Council on Environmental Quality's Environmental Justice Guidance Under the National Environmental Policy Act. To ensure that environmental justice concerns are effectively identified and addressed according to EO 12898, the Council on Environmental Quality (CEQ), in consultation with the Environmental Protection Agency (EPA), developed guidance to assist federal agencies to implement procedures. According to the CEQ's "Environmental Justice Guidance Under NEPA," agencies should consider the composition of affected areas to determine whether minority or low-income populations are affected by a proposed action, and, if so, whether those environmental effects may be disproportionately high or adverse (CEQ 1997).

According to the CEQ environmental justice guidelines, minority populations should be identified if:

- A minority population percentage either exceeds 50% of the population of the affected area, or
- If the minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis (e.g., a governing body's jurisdiction, neighborhood census tract, or other similar unit).

Environmental Protection Agency Final Guidance for Incorporating Environmental Justice Concerns in EPA's Compliance Analyses. EPA's "Final Guidance for Incorporating Environmental Justice Concerns in EPA's Compliance Analyses" defines how EPA will ensure that disproportionately high and adverse human health or environmental effects on minority communities and low-income communities are identified and addressed. It establishes agency-wide goals for engaging American Indian, Alaska Native, and other indigenous peoples (e.g., Native Hawaiian). It also establishes agency-wide goals for environmental protection and lists actions the EPA would take to incorporate environmental justice into its mission (EPA 1998).

Environmental Protection Agency Plan Environmental Justice 2014. EPA's Plan Environmental Justice (EJ) 2014 is a strategy to help the agency integrate environmental justice into its programs, policies, and activities. Plan EJ 2014 identifies Cross-Agency Focus Areas, Tools Development, and Program Initiatives as the three essential elements that will advance environmental justice across the EPA and other agencies of the federal government. Plan EJ 2014 is not yet a rule or regulation and is currently under development (EPA 2011).

National Policy Issuance 94-10 USFWS Native American Policy (1994). As a result of the 1994 Memorandum on Government-to-Government Relations with Native American Tribal Governments, the USFWS, on June 28, 1994, issued its Native American Policy (Policy), which set forth the principles that will guide the government-to-government relationship with Tribes in matters relative to fish and wildlife resources. The USFWS Native American Policy contains 10 principles that provide the framework within which the Service will cooperate with Tribes to conserve fish and wildlife resources. In the Policy, each of the following principles is addressed with appropriate action items to further the implementation process: (1) sovereignty, (2) conservation, (3) government-to-government relations, (4) self-determination, (5) communication, (6) funding, (7) culture/religion, (8) law enforcement, (9) technical assistance, and (10) training and education.

Executive Order 13007 Indian Sacred Sites (1996). See Chapter III, Section III.8.1.1 for details.

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments (2000). In formulating or implementing policies that have tribal implications, agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the federal government and Indian tribal governments. The Executive Memorandum of April 29, 1994, outlines the principles that agencies are to follow in their interactions with Native American tribal governments.

Executive Order 13287 Preserve America (2003). See Chapter III, Section III.8.1.1 for details.

Secretarial Order 3206 American Indian Tribal Rights and the Endangered Species Act (1997). This order was issued by the Secretary of DOI and the Secretary of Commerce, pursuant to the Federal Endangered Species Act, the federal-tribal trust relationship, and other applicable laws. It requires that federal agencies be sensitive to Native American cultures, religions, and spirituality, and recognizes that these traditional activities often involve the ceremonial and medicinal uses of plants, animals, and specific geographic locations. In partnership with the tribes, the agencies must promote the conservation of sensitive species and the health of the ecosystems in which they live. Federal agencies shall make available to Indian Tribes information related to Tribal resources and Indian lands and to facilitate the mutual exchange of information. Sensitive tribal information shall be protected by federal agencies (SO 3206).

Secretarial Order No. 3317 Policy on Consultation with Indian Tribes (2011). This Order updates, expands, and clarifies DOI's policy on consultation with American Indian and Alaska Native tribes; and to acknowledge that the provisions for conducting consultation in compliance with EO 13175 and applicable statutes or administrative actions are expressed in the Department of the Interior Policy on Consultation with Indian Tribes.

Secretarial Order No. 3330 Improving Mitigation Policies and Practices of the Department of the Interior (2013). See Chapter III, Section III.8.1.1 for details.

BLM State Protocol Agreement with the California State Historic Preservation Officer and the Nevada State Historic Preservation Officer (2014). See Chapter III, Section III.8.1.1 for details.

BLM National Programmatic Agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers (2012). See Chapter III, Section III.8.1.1 for details.

III.9.1.2 State

California Public Records Act (California Government Code §§ 6250 through 6276.48) (1968). See Chapter III, Section III.8.1.2 for details.

California Environmental Quality Act (California Public Resources Code § 21000 et seq) (1970). See Chapter III, Section III.8.1.2 for details.

California Energy Commission Certified Regulatory Program. See Chapter III, Section III.8.1.2 for details.

California Senate Bill 18 (SB18) (2004). California Senate Bill 18 (SB18) requires cities and counties to consult with potentially affected Native American tribes and groups when adopting and amending general and specific plans. The purpose of SB18 is to provide a structured consultation relationship ensuring that appropriate tribal groups are consulted, that deadlines are coordinated for all parties, and that guidelines are created to describe how consultations will be carried out. The goal of SB18 is to (1) ensure that Native American communities are fully informed about projects and their potential impacts to traditional resources, (2) have a recognized position in the environmental review process, (3) can comment on proposed investigation, management and mitigation of resources, (4) can seek meaningful responses from concerned cities and counties and can participate in the implementation of mitigation measures including the obtaining and holding of conservation easements. (SB 18 2004).

California Executive Order B-10-11 (2011). This EO establishes the position of the Governor's Tribal Advisor, who is responsible for the oversight and effective implementation of government-to-government consultation between the Governor's administration and Native American tribes on policies that affect tribal communities. The Tribal Advisor (1) serves as a direct link between sovereign tribes living within California's borders and the Governor, (2) facilitates communication and consultation between tribes and state agencies, and (3) reviews and makes recommendations on state legislation and regulations that could affect tribes. This EO further requires that every state agency and department encourage communication and consultation with Indian tribes located in California (EO B-10-11 2011).

California Civil Code, Section 815.3 (1979). This section allows California Native American tribes (whether federally recognized or not) who are on the "contact list for the Native American Heritage Commission to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place" to acquire and hold conservation easements, if the conservation easement is voluntarily conveyed (California Civil Code, Section 815.3, et seq.).

Public Resources Code (PRC), Section 5097.9 (1982). This section establishes that both public agencies and private entities using, occupying or operating on state property under public permit, shall not interfere with the free expression or exercise of Native American religion and shall not cause severe or irreparable damage to Native American sacred sites, except under special, determined circumstances of public interest and necessity (Public Resources Code [PRC], Section 5097.9 et seq.).

Public Resources Code (PRC), Section 5097.91-5097.94. See Chapter III, Section III.8.1.2 for details.

Public Resources Code (PRC), Section 5097.95. See Chapter III, Section III.8.1.2 for details.

Public Resources Code (PRC), Section 5097.96. See Chapter III, Section III.8.1.2 for details.

Public Resources Code (PRC), Section 5097.97. See Chapter III, Section III.8.1.2 for details.

Public Resources Code (PRC), Section 5097.98(b) and (e) (1982). See Chapter III, Section III.8.1.2 for details.

Public Resources Code (PRC), Sections 5097.99 (1982). See Chapter III, Section III.8.1.2 for details.

Public Resources Code (PRC), Sections 5097.991. See Chapter III, Section III.8.1.2 for details.

Health and Safety Code (HSC), Section 8010-8011 California Native American Graves Protection and Repatriation Act (2001). See Chapter III, Section III.8.1.2 for details.

California Government Code, Section 65560, 65562.5 Consultation with Native Americans on Open Space (2005). See Chapter III, Section III.8.1.2 for details.

III.9.1.3 Local

The following section lists goals and policies for the protection of Native American interests, outlined in county general plans in the Plan Area. Section III.8.1.3 contains a full description of these goals and policies. Per Senate Bill 18 all local governments have a requirement to conduct consultations with tribes during the process of amending general plans.

Imperial County General Plan, Conservation and Open Space Element, Section III, Goals and Objectives, Goal 3. See Chapter III, Section III.8.1.3 for details.

Inyo County General Plan, Chapter 6, Conservation/Open Space Element, Section 6.6, Cultural Resources, Goal CUL-1. See Chapter III, Section III.8.1.3 for details.

Kern County General Plan, Chapter 1, Land Use, Open Space, and Conservation Element, Section 1.10.3, Archaeological, Paleontological, Cultural, and Historic Preservation, Policy. See Chapter III, Section III.8.1.3 for details.

Los Angeles County General Plan 2035, Chapter 9, Conservation and Natural Resources Element, Section VIII, Historic, Cultural and Paleontological Resources. See Chapter III, Section III.8.1.3 for details.

County of Riverside General Plan (Update), Chapter 5: Multipurpose Open Space Element. See Chapter III, Section III.8.1.3 for details.

County of San Bernardino 2007 General Plan, Chapter V, Conservation Element, Section C, Countywide Goals and Policies of the Conservation Element, Goal CO 3. See Chapter III, Section III.8.1.3 for details.

San Diego County General Plan, Chapter 5, Conservation and Open Space Element, Section 5-16, Cultural Resources, Goal COS-7. See Chapter III, Section III.8.1.3 for details.

III.9.2 Tribes with Interests in the Plan Area

This section defines and describes the study area, tribal communities, and the kinds of impacts relevant to these places and people. The methods used combine cultural resources and environmental justice methods. Cultural resources methods identify modern communities that have historical connections to particular places. Please see Section III.8.2.3 for a detailed discussion of the history of the Plan Area. Environmental justice analyses identify environmental and human health conditions that disproportionately impact minority communities and low-income communities. An approach that is consistent across the nation for identifying environmental justice areas and populations has been challenging to develop and implement. The EPA's primary screening tool, the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT), is still in draft form despite years of work. Some have argued that a uniform tool is not appropriate for measuring impacts to our diverse populations, and advocate multiple approaches designed for specific places and populations instead (Holifield 2014). As such, the current document addresses environmental justice concerns for tribal communities in two ways.

First, in Section III.23, Native Americans are included in a larger group of minorities which also include individuals who are Alaskan Natives, Asian or Pacific Islanders, Black (not of Hispanic origin), or Hispanic (CEQ 1997). Using demographic information from 2010 census tracts in the Plan Area, an environmental justice population is identified when the minority population of the potentially affected area is greater than 50%. CEQ guidance also defines "low-income populations" as populations with mean annual incomes below the annual statistical poverty level. As shown in Table R1.23-1, 120 Census Tracts contain a low-income population equal to or greater than their respective county and 136 Census Tracts within the Plan Area have a minority population percentage greater than 50%. While the proportion of Native Americans in these Census Tracts and specialized Tribal Census Tracts are not identified, they are included in the overall analysis.

Second, this section focuses on the tribal communities potentially impacted by the proposed project. These are only those tribal communities with traditional affiliations in the Plan Area. As discussed in Chapter III.8, Cultural Resources, a number of Native American groups traditionally inhabited the Plan Area, including the Kumeyaay, Cocopah, Quechan, Halchidoma, Mojave, Cahuilla, Serrano, Kitanemuk, Kawaiisu, Southern Paiute (Pahrump, Moapa and Chemehuevi), Western Shoshone, and Owens Valley Paiute (Kroeber

1925; Figure III.8-2). The territorial boundaries of tribes who inhabited the Plan Area changed over time and overlapped, so that resources could be accessed and procured by different groups.

According to the NAHC, there are 44 federally recognized tribes and 9 unrecognized tribal communities with traditional affiliations in the Plan Area (NAHC 2011). These communities, listed in Table III.9-1, are the focus of the analysis in this section. Many of these communities are regularly asked by state and federal agencies to participate in NEPA, CEQA, and Section 106 activities associated with the Plan Area. Members of these communities may or may not live within the Plan Area. Therefore, the relative percentage of Native American individuals living within the Plan Area is not relevant. Instead, community membership is used as a proxy for the number of individuals who might be disproportionally impacted by the DRECP regardless of residence. These analytical groups are considered more appropriate for the current analysis than Census Tracts because they include people who may not participate in the census, allow for change through time, and allow for groups in multiple states.

A federally recognized tribe can be defined as "an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs" (BIA 2014). Federally recognized tribes possess the right to self-determination and governance and are afforded various federal benefits, services, and protections because of their unique relationship with the United States. Public Law 103-454, the Federally Recognized Indian Tribe List Act, established three ways in which an Indian group can achieve federal recognition: (1) By an act of Congress; (2) By the administrative procedures under 25 C.F.R. Part 83, Procedures for Establishing that an American Indian Group Exists as an Indian Tribe; and (3) By decision of a United States court. Currently, there are 566 federally recognized tribes in the United States (BIA 2014).

As self-governing entities, federally recognized tribes possess the right to form their own governments; to make and enforce laws; to tax; to establish and determine membership; to license and regulate activities within their jurisdiction; to zone; and to exclude persons from reservation land (BIA 2014). Several federal and state laws and regulations (Sections III.8.1, III.9.1) require agencies to conduct government-to-government consultation with tribes affected by proposed projects. While the federal government only consults on a government-to-government basis with federally recognized tribes, the California state government consults equally with federally recognized and unrecognized tribes (Vol. V.4). In addition, under Section 106 of the NHPA, federal agencies can consult with unrecognized tribes as additional consulting parties (36 CFR 800.2 (c)(5)).

Incomes among the tribal communities analyzed here appear to be variable. Rather than focusing on identifying low-income groups, this study emphasizes the financial stress that the participation in NEPA, CEQA, and Section 106 process can put on the local tribal governments that provide these services. While some communities have paid staff, well-equipped offices, and training in these regulatory processes – others do not.

Table III.9-1 lists all tribes with traditional affiliations to the Plan Area and identifies both federally and non-federally recognized tribes. In addition, the table identifies which groups have paid staff that are able to participate in NEPA, CEQA and Section 106 document review, government-to-government consultation and other related tasks.

Table III.9-1
Tribes with Traditional Ties to Plan Area

Name of Tribe*	Tribal Enrollment[1]	Cultural Affiliation	Environmental Staff?[7]
Agua Caliente Band of Cahuilla Indians	418	Cahuilla	Yes
Augustine Band of Cahuilla Indians	8	Cahuilla	Unknown
Barona Band of Mission Indians	455	Kumeyaay	Yes
Big Pine Paiute Tribe of the Owens Valley	398	Paiute	Yes
Bishop Paiute Tribe	1,323	Paiute	Yes
Cabazon Band of Mission Indians	30	Cahuilla	Yes
Cahuilla Band of Mission Indians	307	Cahuilla	Yes
Campo Band of Diegueno Mission Indians	302	Kumeyaay	Yes
Chemehuevi Indian Tribe	928	Chemehuevi	Yes
Cocopah Tribe	940	Cocopah	Yes
Colorado River Indian Tribes	3,705	Mojave, Chemehuevi, Hopi, and Navajo	Yes
Ewiiaapaayp Band of Kumeyaay Indians	7	Kumeyaay	Unknown
Fort Independence Indian Community of Paiute Indians	101	Paiute	Yes
Fort Mojave Indian Tribe	497 (CA) 699 (AZ)	Mojave	Yes
Iipay Nation of San Ysabel	922[6]	Kumeyaay	Yes
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation	19	Kumeyaay	Unknown
Jamul Indian Village	63	Kumeyaay	Unknown

Table III.9-1
Tribes with Traditional Ties to Plan Area

Name of Tribe*	Tribal Enrollment[1]	Cultural Affiliation	Environmental Staff?[7]
Kaiwaiisu*	200-300[2]	Kaiwaiisu	Unknown
Kern River Indian Community*	NA	Kaiwaiisu, Tubatulabal	Unknown
Kern Valley Indian Council*	NA	Tubatulabal	Unknown
Kern Valley Paiute Council*	NA	Paiute	Unknown
La Jolla Band of Luiseño Indians	604	Luiseño	Unknown
La Posta Band of Diegueno Mission Indians	16	Kumeyaay	Unknown
Las Vegas Tribe of Paiute Indians	54	Paiute	Yes
Lone Pine Paiute-Shoshone Tribe	295	Paiute, Shoshone	Yes
Los Coyotes Band of Cahuilla and Cupeño Indians	288	Cahuilla, Cupeño	Unknown
Manzanita Band of Diegueno Mission Indians	105	Kumeyaay	Unknown
Mesa Grande Band of Diegueno Mission Indians	690	Kumeyaay	Unknown
Moapa Band of Paiute Indians	304	Paiute	Yes
Monache Intertribal Council*	NA	Northfork Mono, Wobonuch, Estimbich, Michahay, Waksachi, Patwisha	Unknown
Morongo Band of Mission Indians	1,015	Cahuilla, Serrano, Chemehuevi	Yes
Pahrump Paiute Tribe*	70[4]	Paiute	Yes
Pala Band of Luiseño Mission Indians	906	Cupeño, Luiseño	Yes
Pauma/Yuima Band of Luiseño Mission Indians	189	Luiseño	Unknown
Pechanga Band of Luiseno Mission Indians	1,342	Luiseño	Yes
Quechan Tribe	2,668	Yuma	Unknown
Ramona Band of Cahuilla Mission Indians	7	Cahuilla	Unknown
Rincon Band of Luiseño Mission Indians	575	Luiseño	Yes
San Manuel Band of Mission Indians	178	Serrano	Yes
San Pasqual Band of Diegueno Mission Indians	429	Kumeyaay	Unknown
Santa Rosa Band of Cahuilla Indians	141	Cahuilla	Yes

Table III.9-1
Tribes with Traditional Ties to Plan Area

Name of Tribe*	Tribal Enrollment[1]	Cultural Affiliation	Environmental Staff?[7]
Santa Ynez Band of Chumash Mission Indians	213[2]	Kumeyaay	Unknown
Soboba Band of Luiseño Indians	963	Luiseño	Yes
Sycuan Band of the Kumeyaay Nation	73	Kumeyaay	Unknown
Timbisha Shoshone Tribe	331	Shoshone	Yes
Torres-Martinez Desert Cahuilla Indians	573	Cahuilla	Yes
Tubatulabal Tribe*	280[5]	Tubatulabal	Yes
Twenty-Nine Palms Band of Mission Indians	13	Chemehuevi	Yes
Utu Utu Gwaitu Paiute Tribe	50[2]	Paiute	Unknown
Viejas Band of Kumeyaay Indians	268	Kumeyaay	Unknown

Notes:
* Non-federally recognized.
1 BIA 2005.
2 San Diego State University 2011a.
3 San Diego State University 2011b. Members of the Kumeyaay Nation have already been counted under tribes listed in this table, including Barona, Campo, Inaja-Cosmit, La Posta, Manzanita, Mesa Grande, San Pasqual, Santa Ysabel, Sycuan, Viejas (Baron Long), and the Jamul Indian Village. About 1,200 living on reservations, with 2,000 more off-reservation.
4 Pritzer 2000. Enrolled membership in 1992.
5 Walker 2012. Enrolled membership in Kern Valley.
6 BusinessWire 2013.
7 The information provided in this column is derived from reviewing various tribal websites.

III.9.3 Native American Meetings

III.9.3.1 Previous Dialogues Related to Renewable Energy Development

Shortly prior to the initiation of consultation efforts for DRECP, two summits were held to discuss the increasing development of energy resources on traditional use areas. These summits highlighted longstanding concerns of Native Americans regarding impacts to Native American lands and cultural values from energy development.

2011 Tribal Summit on Renewable Energy

The 2011 Tribal Summit on Renewable Energy, held in Palm Springs from January 11-13, brought together over 150 tribal representatives and officials from federal, state, and local government and the private sector. The summit included an overview of upcoming federal renewable energy projects and highlighted issues of tribal concern related to past and proposed renewable energy development. Issues of key importance related to: (1) the

inability of tribes to effectively participate in the Section 106 process; (2) ensuring effective and appropriate consultation; (3) resource identification and evaluation; (4) improving communication between tribes and agencies; (5) stricter enforcement of agreement documents; and (5) consideration of mitigation as a last resort (ACHP 2011).

2011 Department of Energy Tribal Summit

The 2011 Department of Energy Tribal Summit, held in Washington, D.C., from May 4-5, brought together over 350 people, including representatives from 54 tribes across the United States and agency leaders active in Indian energy. Summit attendees discussed a broad range of critical energy and environmental issues on Indian lands. U.S. Secretary of Energy Steven Chu announced two new energy initiatives at the summit: (1) the formation of an Indian clean energy and infrastructure working group which will provide a forum to survey, analyze, and provide viewpoints on real-time obstacles that tribes face in using clean energy; (2) developing guidance that will direct the Department of Energy to, when possible, purchase renewable energy generated by tribal governments (DOE 2014).

III.9.3.2 Consultation for DRECP

In accordance with both federal and state requirements, all of the groups identified in Table III.9-1 were contacted by the BLM. The federal government-to-government consultation was initiated in 2011 by DOI, including BLM and USFWS, and several agencies for the DRECP under EO 13175 and other authorities. A meeting was also held on November 15, 2011, where BLM and tribal staff discussed creating maps for incorporation in the DRECP. Consultation continues and a record of the consultation, coordination, and outreach, occurring before release of the Draft DRECP from 2011 through February 2014, is summarized here and in Vol. 5, Consultation, Coordination, and Outreach; Appendix V-1, Table 1; and Appendix V-2, Update to Tribal Consultation, Coordination and Outreach.

Tribal Federal Leadership Conference

DOI and BLM, through the Tribal Federal Leadership Conference (Conference),with the participation of the USFWS and the Bureau of Indian Affairs (BIA), solicited tribal input for renewable energy land use planning in the CDCA Plan. The amended CDCA Plan will be included in the DRECP. Seven Conferences were held between September 2011 and February 2014, one pre-meeting, numerous technical meetings, and individual meetings with the 40 federally recognized tribes. Tribes were provided with information, maps, technical assistance, presentations, access to executive-level federal management, funding sources, and other specialized services.

The California Energy Commission initiated tribal consultations in 2012 for multiple project actions as required by Executive Order B-10-11. Therefore, the state tribal

consultation efforts are not as robust as the federal consultation efforts. Because state consultation requires government to government with federally recognized and unrecognized tribes, it was only at the last Conference meeting (held February 4, 2014), at the request of state agencies that unrecognized tribes were invited to attend. The February 2014 Conference involved the additional participation of the California Energy Commission and the California Department of Fish and Wildlife (CDFW).

The goals of these meetings were to solicit tribal input for the DRECP and incorporate tribal issues into future development planning in the Plan Area. More information on the Federal Tribal Leadership Conference is included in Section V.4, Government-to-Government Consultation. Appendix V-1, Table 1, lists both the dates and methods of government-to-government communications. These communications with BLM, USFWS, the California Energy Commission (CEC), and other agencies created a deeper understanding of and appreciation for tribal concerns that will help BLM and other federal and state land managing agencies manage lands in an informed and fair manner. BLM provided technical support to tribes that requested it for mapping the areas they deemed significant in the Plan Area.

Identification of Sensitive and Non-sensitive Locations in the Plan Area

In 2012, BLM geographic information system specialists worked with Native American tribes to create maps identifying sensitive and nonsensitive locations in the Plan Area. Information submitted by the tribes was embedded into data layers and included in alternative design but cannot be specifically expressed due to confidentiality concerns raised during consultation. This technical assistance was offered to all participating tribes.

On July 9, 2012, the following cultural data were sent to tribes: cultural resources documents for lands in the Bishop and Bakersfield Field Offices that are included within the DRECP planning boundary, the CDCA Plan Cultural Resources Element and Native American Element planning maps, and a collection of 24 cultural resources studies. The cultural resources studies represent the analysis and summary of the cultural resources identification efforts carried out to support the CDCA Plan, and further represent the baseline foundational documents for the CDCA Plan, subsequent plan amendments, program planning, and project review. Many of these studies were commissioned during the CDCA planning effort in the late 1970s and finalized and published in the early 1980s.

BLM Workshops

On December 17, 2012, the Description and Comparative Evaluation of Draft DRECP Alternatives was released. This document contained a preliminary description of the affected environment and existing environmental conditions in the Plan Area, an overview of some of the possible project alternatives that agencies are considering for inclusion in the draft

EIS, and a discussion and tentative analysis of the potential impacts of those alternatives. Workshops were held in the five BLM field offices in the California Desert District so that tribal representatives could meet with BLM managers to learn about the document, review DRECP maps by field office, and provide comments on the planning effort.

USFWS Section 106 Responsibilities

The USFWS's issuance of ESA section 10(a)(1)(B) incidental take permits for activities covered in a HCP constitutes an undertaking under Section 106 of the NHPA.

The USFWS considers the joint BLM-USFWS Tribal Leadership Meetings described above as part of ongoing government-to-government coordination and communication with Tribes on the USFWS's ESA and NHPA responsibilities. The USFWS will conduct meetings, in some cases jointly with BLM, with individual Tribes to initiate government-to-government consultation for the GCP, and to initiate government-to-government and section 106 consultation on Eagle Act permits.

Tribal Response Summary to Date

The BLM and DOI have met with most of the federally recognized tribes in face-to-face meetings, and have also contacted other potential consulting parties. This outreach has led to the exchange of information and discussion of concerns that have shaped the development of the DRECP. Please refer to Vol. 5, Section V.4; Appendix V-1, Table; and Appendix V-2, Update to Tribal Consultation, Coordination, and Outreach; for a more detailed summary of tribal participation in the DRECP planning process and tribal responses and concerns regarding the Plan. Consultation among the BLM, USFWS, tribes, and other consulting parties is ongoing and will continue after release of the DRECP. Because of this on-going consultation process and the required consultation for future projects under the DRECP, Native American tribes will be able to add areas of concern to current knowledge.

III.9.4 Native American Concerns

Review of earlier documents, ethnographic studies conducted for renewable energy projects in the boundaries of the Plan, and government-government consultation to date, have identified two broad areas of concern to those tribes potentially affected by decisions in DRECP:

- The process of environmental review, permitting, and mitigation under the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), and the role of Native Americans in that process. Process concerns appear in Section III.9.4.1.

- Impacts to the physical world: cultural resources (including traditional cultural properties and landscapes), human remains, natural resources, and landscapes. Physical concerns appear in Section III.9.4.2.

III.9.4.1 Process Concerns

Key tribal planning process concerns include, but are not limited to, the following thematic topics.

- **Consultation.** Consultation should be conducted early, often, and in an ongoing manner that is respectful of tribal sovereignty, heritage values, and that strives for meaningful dialogue. Tribes have been provided early access to meetings outside the public forum. Some tribes feel that the dialogue has been less than meaningful and are concerned that they are afforded additional consultation opportunities as the NHPA Section 106 process continues. Unrecognized tribes have only recently been invited to consult on the plan and related environmental documents at the request of State agencies.
- **Ethnography.** Tribes feel that their heritage values are not fully considered by cultural resources analysis that weighs heavily on archaeological expertise and methods. Some believe that mitigation also tends to ensue from these more narrow non-native perspectives.
- **Document Review.** Tribes want access to cultural resources and other data sets to determine for themselves to what extent tribally valued resources are present, absent, or are being considered, during the planning process. Tribes also find that they are underfunded, understaffed and overwhelmed with various project document review workloads.
- **Confidentiality.** Tribes want a high level of assurance that protocols for keeping sensitive cultural resources and heritage value information out of the public purview. Tribes are also adamant that confidentiality requirements are not used to keep important information from tribal review.
- **Monitoring.** Tribal Monitoring is asserted by tribes to be used as a last effort to protect cultural resources otherwise damaged by construction activities. Tribes want assurances that tribal monitoring is routinely required for approved projects and that the monitoring protocols provide Native American monitors sufficient authority to adequately protect cultural resources of tribal value. There is also a secondary issue with the level of tribal monitor training not being consistent across all tribes and with the need to balance tribal monitoring experience with monitors that are most closely affiliated to particular project areas.

- **Repatriation.** Tribes want avoidance of archaeological materials to be the primary method for mitigating these types of cultural resources. If avoidance cannot be achieved, then some tribes may prefer repatriation over long term curation.
- **Access.** Tribal traditional practitioners wish to maintain access, to the extent feasible, to sacred places to conduct cultural and religious practices.
- **Environmental Justice.** Tribes affiliated to project areas through ancestral or traditional use claims constitute environmental justice populations because tribal people maintain long-standing ancestral and traditional use practices and concepts connected to the environment and to their identities as Indian people, unlike other populations that do not have territories linked to their collective identities. Tribes are requesting that environmental justice studies are conducted that link tribal resources with tribal cultural practices and the need to perpetuate traditional cultures that rely upon intact landscapes.

III.9.4.2 Physical World Concerns

Given the programmatic nature of this document, specific locations of concern to Native Americans in the Plan Area are not addressed. However, the Native American Element Map of the 1980 CDCA identified ACECs and areas of high sensitivity. These places continue to be considered sensitive. However, some tribes do not think that the areas of sensitivity reflected in the 1980 Cultural Element Map fully represent what is known today as culturally sensitive. Indeed, specific renewable energy projects undergoing licensing in 2013 and 2014 have produced cultural landscapes documentation in areas that are not identified as culturally sensitive on the 1980 Cultural Element Map. Concerns related to the physical world include, but are not limited to, impacts to cultural resources and natural resources.

- **Cultural Resources.** Cultural resources are defined in Volume III.8. In the following discussion, types of cultural resources present in the Plan Area are listed with examples of Native American interest in some of these resource types.
    - **Archaeological objects and sites.** Some of the archaeological resources that have been identified in the Plan Area and associated with Native Americans include, but are not limited to: habitation sites, camps, human remains, lithic reduction features (quarries), thermal features, trail segments, pot drops, cairns, cleared circles, rock rings, quartz shatter concentrations, rock art, and earth figures.
    - **Traditional Cultural Properties.** Examples of TCPs for Native American communities may include natural landscape features, trail systems, places used for ceremonies and worship, places where plants are gathered for use in traditional medicines and ceremonies, places where artisan materials are found, and places and features of traditional subsistence systems, such as hunting

areas. Given the nature of these resources, they may not necessarily be identified during conventional archeological, historical, or architectural surveys. As a result, the existence or significance of such locations often requires ethnographic input from the tribes that view them as significant

- **Cultural landscapes.** Tribes are particularly concerned with cultural landscapes because landscape analysis can consider culture in holistic ways that move beyond discrete objects and bounded sites. The California Office of Historic Preservation's (OHP) Statewide Historic Preservation Plan, 2013-2017, recommends that archaeological and ethnographic information be analyzed together in the identification and evaluation phases of cultural landscape documentation. The OHP has further identified the need for cultural resources professionals working on renewable energy projects to shift their focus from a site-level to a landscape-level assessment (OHP 2013). OHPs advice is partially echoed by Secretary of the Interior Order No. 3330. The following three examples illustrate that cultural landscapes of importance to tribes do exist in areas considered non-sensitive per the 1980 Cultural Element Map.
  - The Salt Song Trail is a Southern Paiute sacred trail corridor that crosses several states and makes a circuit between the Mojave Desert and the southern portion of the Wasatch Range. It closely follows the Colorado River and passes out of the Plan Area. It is a trail system believed to be traveled by the deceased, with the aid of traditional practitioners who, through song, story, and prayer, usher the deceased along the path on their post-burial journey to the afterlife. The trail consists of physical marks on the land, both trail marks and natural land patterns, wayside locations where specific songs and other ceremonies are sung or conducted, and a corridor along the trail system, as well as existing in the world of dreams and spirits.
  - The Keruk Xam Kwatcan/Earth Figures Landscape is a Yuman sacred trail corridor that parallels the Colorado River between Spirit Mountain in the north (near Laughlin, Nevada) and Pilot Knob in the south (near Yuma, Arizona). A significant third sacred mountain located in the approximate mid-portion of the trail corridor is Palo Verde Peak. It is a trail system that the deceased are believed to follow after the cremation ceremony, as they make their way to the afterlife, and where living people travel to assist the departure of their deceased ancestors. It is also a trail that traditional Yumans take as a pilgrimage of return to the place of creation. For those who have proper training, the trail can also be travelled in dreams. The trail is a physical mark on the land (in some places consisting of parallel trails and trails on both sides of the river) with numerous wayside locations, which include many earth figures. The earth figures also have many contributing

features such as cleared circles, rock cairns, altars, cul-de-sac trails, altars, and lithics, including shattered quartz. The Mule Mountains and immediate surrounding environs are believed to be a place where souls may go to wait out the year of mourning between the cremation ceremony and the final journey to the afterlife.

- The Pacific to Rio Grande Trail Landscape (PRGTL), a cultural landscape that reflects a major trail corridor that connects the Southern California Pacific Coastline to the northern Rio Grande Valley and includes three prominent trail corridors: the Northern (I-40/I-15) corridor, the Central (I-10) corridor and the Southern (I-8) corridor. The landscape is bounded on the North (and listed from west to east) by the Santa Barbara Mountains, the Garlock faultline, the Spring Mountains, the Colorado Plateau and the Northern Rio Grande Valley (Santa Fe, New Mexico). The landscape is bounded on its southern extent by the northern terminus of the Sea of Cortez and the Gila River watershed in its entirety. This broad landscape is uniquely positioned and bounded because it provides the area that most likely and most readily provides the greatest potential for understanding coastal-interior migrations between the two most viable routes for entry, population and settlement of North America and within which viable indigenous cultures exist that maintain intimate and intact knowledge of origins, migrations and homeland ecological knowledge. This broad landscape is treated as a thematic context within which the Chuckwalla Valley portion of the cultural landscape is articulated. The Chuckwalla Valley portion of the PRGTL has been identified by CEC staff as a cultural landscape and historical resource under CEQA that has both archaeological and ethnographic contributing elements. The landscape appears to date from a presently undetermined point in prehistory through 1936 and includes archaeological sites and features, Traditional Cultural Properties, a complex trail system, springs, tanks, and wells, and culturally important plant and animal species. The combination of cultural and natural features that make up this composite resource qualify the resource as a type of cultural landscape.

- **Natural Resources.** Some natural resources of interest to Native Americans include but are not limited to: plants, animals, minerals, water, and natural settings. Natural resources can be used for food, medicine, totem, aesthetic or spiritual purposes. Ensuring the spiritual efficacy of plant, animal, or mineral products requires adherence to proper traditional techniques that are critical for the perpetuation of indigenous cultures.

- **Plants.** Any native plant population may be of cultural interest to Native Americans. Culturally significant plants are often used for medicine, food, clothing, basketry, structures, totems, aesthetic or ritual purposes.
- **Animals.** Similarly, any native animal population may be of cultural interest to Native Americans, but they tend to be those that were traditionally used for medicine, food, clothing, totems, or ritual purposes.
- **Minerals.** The kinds of mineral resources that might be of interest to Native Americans include clay (for pottery), salt, turquoise, obsidian, quartz crystals, and mineral pigments.
- **Water.** Water is critical to all life forms, and is especially critical in the desert. This is a fact not lost on indigenous peoples of the desert; places with water are often also culturally important places. Water also plays an important role in the creation stories and histories of Indian tribes in the desert. Key issues associated with water include access, amounts available, quality, and plants and animals supported by the water. Some of the sources of water in the Plan Area include springs, seeps, tanks, lakes (wet and dry), and rivers. The Colorado River is considered especially important. In Native American understandings, the Colorado River is an earthly manifestation mirroring the great river in the night sky known as the Milky Way. Both the Colorado River and the Milky Way are also representations of the north–south orientation of the first migrations of the people, first from the world beyond, and second, into the physical world as the Creator led people to the various new homelands of each group in Pai (Yuman) country.
- **Natural Setting.** An important component of Native American natural aesthetics is the relation between landforms, skies and traditional practitioners. Local, intermediate, and distant horizons provide a palpable context within which natural and cultural resources are understood in culturally integrated ways.