Environmental Management (2013) 52:1057–1070
DOI 10.1007/s00267-012-9984-5

"Just Another Hoop to Jump Through?" Using Environmental Laws and Processes to Protect Indigenous Rights

Beth Rose Middleton

Received: 3 April 2012 / Accepted: 24 October 2012 / Published online: 12 December 2012

Abstract Protection of culturally important indigenous landscapes has become an increasingly important component of environmental management processes, for both companies and individuals striving to comply with environmental regulations, and for indigenous groups seeking stronger laws to support site protection and cultural/human rights. Given that indigenous stewardship of culturally important sites, species, and practices continues to be threatened or prohibited on lands out of indigenous ownership, this paper examines whether or not indigenous people can meaningfully apply mainstream environmental management laws and processes to achieve protection of traditional sites and associated stewardship activities. While environmental laws can provide a "back door" to protect traditional sites and practices, they are not made for this purpose, and, as such, require specific amendments to become more useful for indigenous practitioners. Acknowledging thoughtful critiques of the cultural incommensurability of environmental law with indigenous environmental stewardship of sacred sites, I interrogate the ability of four specific environmental laws and processes—the Uniform Conservation Easement Act; the National Environmental Policy Act and the California Environmental Quality Act; the Pacific Stewardship Council land divestiture process; and Senate Bill 18 (CA-2004)—to protect culturally important landscapes and practices. I offer suggestions for improving these laws and processes to make them more applicable to indigenous stewardship of traditional landscapes.

B. R. Middleton (✉)
Department of Native American Studies, University of California, Davis, 2401 Hart Hall, 1 Shields Avenue, Davis, CA 95616, USA
e-mail: brmiddleton@ucdavis.edu; bethrosy@gmail.com

Keywords Environmental law · Site protection · Native American · Indigenous · Human rights · Cultural resources

> It should come as little surprise to find out that Indian values and belief systems are not reflected in or accepted by our environmental law…this is precisely what is wrong with our environmental law (Williams 1994).

Introduction

Indigenous cultural and sacred sites are highly diverse—they may be tangible or intangible, shared or kept secret, historic or newly emergent, and actively used or intentionally avoided. They may be part of the foundation of the world, and/or essential to keeping it in balance; they may offer rare habitats for culturally important plants and animals; they may represent historic events that still teach us lessons today (Basso 1996); and/or they may be places of worship that are necessary to the continuation of human life (Deloria 1994; Echo-Hawk 2010). By definition, all sacred/cultural sites are extremely important to Native nations, organizations, families, and/or individuals (King 2003), although they may not be located within what is defined as "Indian Country" under U.S. Federal Indian Law.

The definition of "Indian Country" has been codified as land within reservation boundaries; individual Indian allotments; and dependent Indian communities (18 U.S.C. § 1151). However, tribes and individual Native Americans have indestructible ties to and various forms of jurisdiction (treaty rights, usufruct rights, rights to protect burials, etc.)

over lands outside of this definition (Sutton 1991). Under U.S. law, the 566 tribes (Federal Register 2012) recognized by the federal government are sovereign entities that oversee their internal affairs and interact on a government-to-government basis with federal and state governments. There are also numerous federally unrecognized tribes that continue to petition the U.S. government for federal recognition. Due to non-ratification, alteration, or nullification of treaties, many tribes (federally recognized and unrecognized) have only a fraction of their ancestral lands.

Indigenous groups, including federally recognized and unrecognized tribes, and Native non-profit organizations and family groups, have consistently and persistently been working to regain access, stewardship, and authority over culturally important lands. When indigenous groups cannot achieve outright ownership of sites (perhaps because of cost, or unwilling sellers), they seek a leadership or partnership role in environmental management of those sites. In this context, the concept of "environmental management" encompasses traditional stewardship of culturally important lands and sites. Indigenous groups have marshaled a suite of cultural and environmental legal tools to achieve recognition of their knowledge and authority. While cultural resource protection laws have frequently been used—with mixed success—to protect both tangible and intangible sites, environmental laws may offer more opportunities for indigenous groups to exercise their rights to access, protect, and steward culturally important sites.

Cultural resource protection laws—such as the American Indian Religious Freedom Act, the 1992 amendments to the National Historic Preservation Act considering sites culturally significant to the tribes [NHPA § 101(d)(6)], and the "Traditional Tribal Places Law" (SB-18 CA 2004)—call for consideration of Native perspectives on how sites should be managed, protected, and stewarded, yet they generally lack the teeth to *ensure* that Native human rights are upheld. I use the term "human rights" with reference to the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which mandates that "Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions" (Article 34). However, actual enforcement of both UNDRIP-affirmed rights and American cultural resource protection laws remains a major concern. Even when consultation procedures are followed with tribes (NEJAC 2000), noting a site as eligible for the National Register, recognized as a Traditional Cultural Property under Bulletin 38 (1990), and significant in the Section 106 review process of the National Historic Preservation Act are not enough to protect it from development. While review of potential impact on cultural sites should occur under State Public Resources Codes, including the California Environmental Quality Act (California Office of Historic Preservation 2001), project decisions may not fully protect sites (Larson 2011). Similarly, Senate Bill 18, while admirable, clearly falls short of its earlier iteration, Senate Bill 1828, which mandated that tribal concerns could stop a project, rather than simply calling for consultation on a project and then possibly continuing with it (SB-1828, February 22, 2002). Finally, while President Clinton's Executive Order 13007 calls federal agencies to accommodate Native access to religious sites, and to protect such sites from desecration, this is only

> '...to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions,' and it '...is not intended to, nor does it, create any right, benefit, or trust responsibility...enforceable at law or equity by any party against the United States' (Clinton, William J., Executive Order 13007, May 24, 1996).

Given the frequent ineffectiveness of cultural resource protection policies, as they are currently interpreted and applied, indigenous groups have increasingly been using environmental policies and processes to protect culturally important sites and to gain a role in the management of those sites. Environmental laws to protect particular species can also protect traditional indigenous plants and management practices—that is, if those can be construed within the boundaries of environmental concern for endangered species and key restoration practices. In this paper, I examine four environmental laws and processes to analyze whether these environmental laws can support indigenous control over and stewardship of sacred sites.

The primary methods applied are legal analysis, including review of statutes and court cases, and a literature review of analyses of these cases and statutes; and case studies of the application of relevant statutes in contemporary examples, including interviews, participant observation, and literature review.

Environmental Management Laws and Processes

> Within and beyond Indian Country tribes have viewed access to and exclusive utilization of sacred places as their right, yet time and again tribes have been frustrated in efforts to gain support from law and environmental management (Sutton 2001).

National Environmental Policy Act (NEPA)

The National Environmental Policy Act (NEPA) is a procedural statute, which examines proposed actions that fall

under federal jurisdiction—that is, actions that will take place on federal lands, rely on federal dollars, or require federal permits—to ensure that all parties that could be affected by an action have an opportunity to comment, and that a variety of alternative actions are weighed. The chosen alternative should specifically respond to constituents' diverse concerns and do the least harm. NEPA forces agencies to follow a series of steps, beginning with public scoping, public hearings on proposed projects, determination of categorical exclusion (if a project is clearly determined to have no effect), and then, if the project cannot be categorically excluded, an environmental assessment (EA) analyzing the project and alternatives to assess possible impacts and identify possibly impacted parties. If the EA shows that the project will have significant impacts, a full Environmental Impact Statement (EIS) comprehensively outlining the project, impacts, and the details of each alternative must be prepared (42 U.S.C. §§ 4321–4347). A NEPA process, while generally environmentally-focused, must analyze potential impacts on cultural sites and attempt to mitigate those through selection of the alternative that does the least damage.

Tribes, Native organizations, and Native individuals have several opportunities to utilize NEPA for cultural site protection, access, and stewardship. First, tribes can simply participate aggressively in the process, raising specific concerns and inserting them in the public record through written and oral comment.[1] The permitting federal agency is required by law to specifically respond to and address these concerns and, if it does not, it can be taken to court under the Administrative Procedures Act (APA). Taking an agency to court on an APA claim amounts to an appeal of the agency's NEPA decision and becomes an avenue for forcing the agency to adequately consider concerns and alternative courses of action. A coalition of tribes recently filed a complaint against the US Forest Service in Arizona District Court (Case No. CV09-8163-PCT-MHM, US District Court, District of Arizona, filed September 21, 2009, decided December 1, 2010), alleging that the agency's NEPA analysis regarding using treated wastewater to make snow on sacred peaks for a commercial enterprise located within Forest Service jurisdiction would cause public health impacts inadequately addressed in the Environmental Impact Statement. As Walter Echo-Hawk explained, "...the agency is proposing to pour fecal matter on a tribal holy place in order to make artificial snow from recycled sewer water in order to subsidize a privately owned ski resort" (Echo-Hawk 2010). However, the Arizona District Court ruled that the USFS had adequately studied the issue, and that it was too late for the tribes to call for a revised EIS because the project was close to completion (Indigenous Action Media 2010; Fort 2010).

The over 30 years of San Francisco Peaks litigation exemplify attempts to use a suite of legal avenues—environmental laws, cultural resource protection statutes, the federal trust responsibility, and religious rights protection—to stop a lessee (Snowbowl Ski Resort) from developing public lands that have cultural importance to several Native nations. The US Forest Service, as the leaseholder, has the responsibility to evaluate the proposed action, the range of concerns, the range of alternatives, and to make a choice that causes the least harm and fulfills a compelling government interest. As a government entity, the US Forest Service also has a particular responsibility to tribes; the trust responsibility, which carries:

> ...moral obligations of the highest responsibility and trust. [Federal] conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should...be judged by the most exacting fiduciary standards. The trust responsibility restrains governmental action that affects Indians and therefore is an important source of protection for Indian rights (*Seminole Nation v. U.S.*, 316 U.S. 286, 1942).

In this case, each law or doctrine, including the trust responsibility, failed to ultimately protect tribal interests. This would come as no surprise to California Rural Legal Assistance Foundation (CRLAF) Attorney Luke Cole, who argues that environmental laws do not protect the rights of underrepresented groups; rather, the only way for these groups to achieve their rights is to take political rather than legal action (Cole 1992). However, in the case of the SF Peaks and other similar cases, tribal constituents fought both in the courts and outside of them—working on both legal and political fronts. For the purposes of this section, I focus on the legal front and on the NEPA in particular, examining how it might be applied to cultural resource protection. NEPA claims were part of all of the SF Peaks cases in the 2000s, including the initial claim of lack of agency compliance with NEPA, as mandated by the Administrative Procedures Act, and then the final claim of lack of adequate attention to public health issues. In each of these cases, the court eventually upheld the Forest Service's position of adequately attending to project concerns and alternatives under NEPA. Ultimately, the agency retained its right to allow the resort to expand.

Can NEPA ever be used to achieve site protection? In 2010, *Quechan Tribe of the Fort Yuma Indian Reservation v. US Dept of the Interior* (Case No. 10cv2241-LAB, CAB, US District Court, Southern District of California, December 15, 2010) the Tribe emerged victorious in an attempt to temporarily halt the development of a 6,500-acre

[1] See NEJAC (2000, pp. 30–31) for a specific description of the stages of NEPA in which tribes can participate, consult, and impact the process and outcome.

solar project on Bureau of Land Management (BLM) land designated as a California Desert Conservation Area, within Quechan ancestral territory. The Tribe's claims included accusing the BLM of lack of compliance with NEPA, in terms of inadequate consultation and study of impacts, but the stronger claim in this case revolved around Section 106 of the National Historic Preservation Act (NHPA).

Both NEPA and Section 106 require consultation, but Section 106 is very specific as to the extent of government-to-government consultation when cultural resources are at issue. In the area of focus in *Quechan*, 459 cultural resources had been identified, and the draft Environmental Impact Statement itself noted that the solar project "may wholly or partially destroy all archaeological sites on the surface of the project area" (Quechan 2010). Despite this impact, the BLM did not meet with the Tribe until after the project was approved. The BLM had public meetings and meetings with individual tribal members, but these did not constitute formal consultation under Section 106 (King 2003; Quechan 2010). According to the case narrative, the documents submitted by BLM detailing its contact with the Tribe did not clarify whether the consultation planned was meant to comply with NEPA or Section 106 of the NHPA. As a result, the court firmly ruled that the Agency was out of compliance with the cultural resource protection law (Section 106 of the NHPA), but was less clear on the NEPA claim:

> Extensive environmental review has been conducted, so the chance that this project will harm the flat-tailed horned lizard (under consideration for listing under the Endangered Species Act) appears to be reduced. At the same time, the Tribe was entitled to be consulted under NEPA as under NHPA, and its claims in this respect also raise "serious questions" (Quechan 2010).

In the *Quechan* case, NEPA was part of the final decision, but the procedural requirements of Section 106 of the NHPA proved to be more significant in terms of forwarding the tribe's interest in protecting the site.

California Environmental Quality Act (CEQA)

NEPA's corollary at the state level in California, the California Environmental Quality Act (CEQA) has also been used in attempts to protect indigenous environmental management, particularly cultural resource protection (Section 21000 et seq., CA Public Resources Code; CA Code of Regulations Title 14, Chapter 3, Sections 15000 et seq.). CEQA notes that "a significant effect on the environment" can be defined as "a substantial adverse change in the significance of an historical resource (Section 15064.5)." A historical resource may be listed or eligible for listing in the California Register of Historical Resources. Eligibility is defined as:

> Associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage; Associated with the lives of persons important in our past; Embodying the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or Has yielded, or may be likely to yield, information important in prehistory or history (CA Pub. Res. Code § 5024.1, Title 14, Code of Federal Regulations, Section 4852).

As the following example will show, tribes have endeavored to use this provision to protect sites associated with important historical and contemporary environmental stewardship practices.

Rattlesnake Island in Lake County, CA, is a culturally important Elem Pomo site, described as the "...Elem's cultural and religious center" (Parrish 2011). Like much of the Elem Pomo ancestral territory, Rattlesnake Island is in private, non-Elem ownership. Rattlesnake Island is on the California Register of Historical Resources (since 2008), eligible for the National Register of Historic Places, and contains sites listed on the California Native American Heritage Commission Sacred Lands Inventory (Larson 2011; Donaldson 2011). The owner of the site began developing homes on the land, and the Elem Pomo appealed to CEQA's procedural and statutory requirements to halt construction. The Elem and supporters claimed that, under CEQA, a significant effect would take place on their ancestral island, which contains historic and archaeological resources, including possible sites of human remains. Because of this significant effect, a full-scale Environmental Impact Report would need to be completed, including detailed attention to archaeological and cultural resources, and comprehensive tribal consultation. The landowner disagreed; arguing that a mitigated negative declaration of effect was in order. According to CEQA, a mitigated negative declaration can be declared when:

> ...initial study has identified potentially significant effects on the environment, but...revisions in the project plans or proposals made by, or agreed to by, the applicant...would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur...(California Public Resources Code § 21064.5).

In August 2011, the Lake County Board of Supervisors granted the landowner's appeal of their earlier decision to require an EIR, and declared a mitigated negative

declaration for the project. To the Elem members, this decision was effectively "allow[ing] [the landowner] to destroy forever the main island village of the Elem Nation" (Sacred Lands Alert 2011). In November 2011, they filed a Writ of Mandamus to compel the County to comply with CEQA, note the historic importance of the site, and not allow the landowner to proceed without developing a full Environmental Impact Report.

Even when agencies are in compliance, CEQA has generated disappointment from tribes before. The statute relies on "expert" testimony to prove the value of a site, thereby relying on the opinions of archaeologists, rather than tribal members themselves (King 2003). According to CEQA, if a unique archaeological resource is accidentally discovered during construction, it should be immediately evaluated *by a qualified archaeologist* (§ 15064.5, Section F). No matter that tribal members are often most qualified to understand the context and use of the item, and how it should be treated—a trained archaeologist is perceived as the expert under the law. CEQA further explains how a "unique archaeological resource" is valued and defined:

> As an artifact, object, or site that: "contains information needed to answer important scientific research questions;" "has a special and particular quality such as being the oldest of its type;" or "is directly associated with a scientifically recognized important prehistoric or historic event or person" (§ 21083.2, Section G).

If a project will damage such an archaeological resource, the lead agency "may require reasonable efforts to preserve these resources" (§ 21083.2, Section B), including avoidance, conservation easements, capping of sites, or placing open space areas around sites. Among these alternatives, the agency may choose the most financially feasible (§ 21083.2, Section C). As such, protection of cultural resources and living indigenous environmental stewardship traditions associated with those resources is by no means guaranteed under the CEQA, even when its procedures are followed correctly.

Senate Bill-18 (2004) and its Predecessor, Senate Bill-1828 (2002)

The weak language in CEQA, in terms of empowering indigenous perspectives on site protection, is sharply contrasted with a 2002 attempted amendment to the statute. SB-1828 would have amended Section 21083, and added Sections 21067.5 and 21097 to the California Public Resources Code. This original "Native American Sacred Sites Protection Act," was passed by the California state legislature but vetoed by Governor Gray Davis in 2002. SB-1828 would have expanded the list of findings of significant effect (which force a project to undertake an Environmental Impact Report) to include whether a project adversely affects a sacred site. All tribes would be notified if the project was within one mile of the exterior boundary of either the site or their reservation, and consulted to seek mitigation measures.

Most notably, SB-1828 would have *prohibited* a public agency from issuing a permit for a project if an affected tribe or the California Native American Heritage Commission declared that the project would have an adverse impact on a sacred site. According to proponents of the Bill, "[it was] about giving Native American beliefs the same respect and protection as those of other Californians" (Jones 2002). According to Pechanga Tribal Chairman Mark Macarro, "Current law allows wholesale destruction of tribal sacred sites and cultural resources. We've been trying to deal with this for years, but with the pace of development and the existing law, we're powerless" (Jones 2002). Given this context, SB-1828 was guided by the following philosophy:

> In order to accomplish this goal of preserving and protecting Native American cultural and religious sites, and in recognition of Native American tribal sovereignty and the relationship between the California state government and Native American tribal entities, it is the intent of the Legislature that the California state government should accommodate Native American tribal religious rights, and take action to ensure that Native Americans have the opportunity to practice their religion freely (Senate Bill 1828, Section 1, Part C).

According to a Fall 2004 edition of the *Environmental Assessor*, "...critics portrayed SB 1828 as granting Native American tribes veto power over development projects subject to CEQA" (Rivasplata 2004). Both then-Governor Davis and archaeologist/legal cultural resource protection specialist Thomas King also expressed concerns about SB-1828 in terms of how "sacred site" was defined (Davis 2002; King 2002). The Bill relied on either information from a federally recognized tribe, or the Sacred Lands Inventory maintained by the Native American Heritage Commission. The Inventory is a valuable tool, but it does not include all sites, since tribes and traditionalists may not want to disclose site locations to anyone, even to the Commission. King also noted a tautological aspect of the Bill: the developers of the site cannot know there is a sacred site in the vicinity unless they are told by either a tribe or the NAHC, but, if neither of those entities know of the proposed development action (because they have not been notified, because the developer is not aware of the site) then they cannot inform the developer about the site. Finally, the Governor expressed concern about giving

tribes an unprecedented level of influence over CEQA, although, from an indigenous perspective, tribes should have a high level of influence over permitting processes on their ancestral lands. As Chris Peters, CEO of 7th Generation Indian Development Fund, noted in a 2002 e-mail "Native American Action Request:"

> ...sacred sites have been continually used by our Spiritual Leaders since time immemorial. However, many of these places of prayer have recently been destroyed and many others are facing immediate threats of destruction by "development" or extractive industries...throughout the State many tribal peoples are fighting to protect lands that they hold sacrosanct...For many years we have known that the only way to stop the relentless destruction of our sacred places is with strong statuary protection (Peters 2002).

However, SB-1828's strong deference to Native values has yet to be reflected in a subsequent bill.

In his opposition to the Bill, Thomas King focused specifically on the problems with codifying "sacred" in the law. He suggested that the only sure way to protect indigenous sites was to "turn them back over to the tribes," whether via private ownership, easement, or trust status. As such, King mentioned easements specifically, which had not previously been widely discussed as a method of site protection for tribes. Easements showed up in the next iteration of SB-1828; Senate Bill 18 (Burton 2004).

SB-18 (Burton), the "Traditional Tribal Places Law," does not follow SB-1828's attempt to modify CEQA. Rather, it adds three sections (regarding consultation), and amends five sections (regarding notice) of the California Planning Law/Government Code; and amends one section of the California Civil Code (regarding conservation easements). Senate Bill 18 amends Section 815.3 of the Civil Code, and amends Sections 65040.2, 65092, 65351, 65352, and 65560 of, and adds Sections 65352.3, 65352.4, and 65562.5 to the Government Code (SB-18, 2004). SB-18 mandates that cities and counties consult with tribes when they amend general plans, or embark on a general planning process; enables federally recognized and unrecognized California tribes to hold conservation easements; and specifically notes that the "open space" element of the general plan may be used to protect culturally important sites. Previously, open space lands were limited to: the preservation of natural resources; the managed production of resources; outdoor recreation; public health and safety; and support of the mission of military installations if adjacent to such installations. With SB 18's amendment to California Government Code § 65560, the protection of Native American cultural places was added to this list. As of this publication, SB-18 is still in the initial stages of being meaningfully applied around the state.

SB-18 was the first law in the nation to mandate tribal consultation at the local level. City or county general plans are typically updated every ten years, contain a statement of development policies, and address seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety (California Government Code § 65302). Under SB-18, for the first time in California history, tribes have the opportunity to formally participate in local planning on ancestral lands. While much remains to be done to enforce City and County compliance with SB-18, in terms of notifying tribes, meaningfully consulting, and addressing Native concerns in planning, SB-18 is a significant step in the direction of procedural environmental justice (Middleton 2011).

SB-18 and the Uniform Conservation Easement Act

The impact of SB-18 cannot be fully understood without a discussion of conservation easements (CEs) as an legal tool. CEs are enabled in each state by adoption of a statute modeled upon the 1981 Uniform Conservation Easement Act (UCEA). The UCEA was first drafted by the National Conference of Commissioners on Uniform State Laws at a 1981 conference in Louisiana, and approved by the American Bar Association in Chicago in 1982. Section 1 of the UCEA describes a conservation easement as follows:

> [A] non-possessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

As such, conservation easements are a unique legal tool that allows an approved entity (a state or federal agency, a non-profit land trust/conservancy, or, under SB-18 in CA, a federally recognized or unrecognized tribe) to hold the development rights on a piece of property. This easement holder then enforces a prohibition on development and monitors approved activities that are complementary to conservation, such as restoration or light recreation. The landowner is typically paid the value of a conservation easement, or receives a tax deduction for donating the easement. The value of the easement is calculated by deducting the land value with development restrictions from the land value with no restrictions. The landowner is paid this difference, or accounts for the donation with a tax deduction, which can be significant under the Enhanced Easement Tax Incentive. The Incentive enables landowners making qualified easement donations (for conservation

purposes, in perpetuity) to deduct up to 100 % of their adjusted gross income annually for donating a conservation easement, for up to 16 years. All qualified easement donors receive some tax benefit because the value of their property is reduced, but farmers and ranchers stand to receive increased benefits. Thus far, the Incentive has not been made permanent, and has been renewed at regular intervals (for more information on efforts to make the tax incentive permanent see http://www.lta.org).

The holder of a conservation easement gains a stake in the land in perpetuity, negotiates the terms with the landowner as to what can be done on the parcel of land, by whom, and when, as well as what cannot be done, and has the right to enforce landowner compliance with the easement under state law. Easements may be a useful tool for tribes to protect culturally important sites and associated indigenous environmental management activities. However, it is important to note that the conservation easement tool focuses on conservation, not necessarily on cultural preservation or active use and access. The UCEA lists preserving "...historical...archaeological, or cultural aspects of real property" among its allowable uses, but the tax codes enabling the tax deduction emphasize environmental preservation, and only cultural or historic preservation if the site is a "...historically important land area or a certified historic structure" (see Middleton 2011).

The first example of a tribe holding a cultural conservation easement under SB-18 occurred in 2011, in the City of Vallejo. A recognized sacred site, Glen Cove or Sogorea Te, was slated for development into a City Park, including bathrooms and a picnic area on an area of the site containing cremations (Gould 2012). After a 109-day encampment by Native activists and supporters, two recognized Wintun nations—Cortina Rancheria and the Yocha Dehe Wintun Nation—were able to negotiate a cultural easement and settlement agreement with the City of Vallejo and the Greater Vallejo Recreation District (http://www.protectgelencove.org). The easement and agreement guarantee that the tribes have legal oversight of all activities taking place at Sogorea Te/Glen Cove. According to a statement by Yocha Dehe Chairman Marshall McKay following the successful negotiation of the easement: "California law empowers sovereign tribal governments now to hold in their own names these easements...These easements are allowed specifically for the protection of sacred sites and the burials on ancestral lands" (http://protectglencove.org/2011/easement-finalized/#marshall). This empowering example shows that tribes can protect sites using the easement tool. However, Native activists involved in the encampment have reported subsequent impacts to the site, and preventing desecration may remain an issue (Gould 2012).

There are additional examples of tribes using collaborations with land trusts to purchase lands and then transferring the easements over to the land trusts, but the Sogorea Te case is currently the only example of a tribe holding an easement to protect a site and prevent desecration of it. There are examples of tribal non-profits, individuals, or family groups retaining access easements on private land to be able to ensure access in perpetuity to particular sites, but these are typically localized and not discussed in the literature. These more typical easements do not include rights to prevent development or to mandate certain conservation/restoration activities.

Pacific Forest and Watershed Lands Stewardship Council

Under the Pacific Stewardship Council land divestiture process in California, tribes have an opportunity to hold easements on culturally important lands, or to compete for ownership of those lands. Tribes can also become "conservation partners" if they hold specific expertise on parcels, but will not function as legal easement or land holders. Tribes will have the opportunity to re-integrate indigenous environmental management practices on lands that they either acquire or obtain an interest in through the Stewardship Council process.

The Pacific Forest and Watershed Lands Stewardship Council was formed following a 2001 agreement between PG&E and the California Public Utilities Commission. California's largest private utilities, PG&E and Southern California Edison, had unsuccessfully attempted to comply with required utility deregulation, divesting themselves of certain fossil-fueled power-generating facilities and purchasing electricity wholesale. Rather than increasing profits, the companies were paying for electricity that was not always available, leading to brownouts in California cities in the late 1990s. PG&E asserted that, as a result of the energy crisis beginning in May 2000 and because its retail rates were frozen, it was unable to recover approximately $9 billion of electricity procurement costs from its customers, resulting in billions of dollars of defaulted debt and the downgrading of its credit ratings by all the major credit rating agencies (see CPUC Decision 03-12-035 2003). As a result, PG&E filed for Chapter 11 bankruptcy protection in April 2001. The California Public Utilities Commission and PG&E litigated competing plans of reorganization through the federal bankruptcy proceeding, resulting in the approval of the Land Conservation Commitment, under which PG&E would permanently protect approximately 140,000 acres of watershed lands associated with its hydroelectric generation facilities. A key component of the Settlement Agreement was the creation of the Stewardship Council in 2003, which was charged with

making recommendations for the divestiture of those 140,000 acres.

PG&E would retain various rights to the lands in question, including outright ownership of 67,000 acres essential to their utility operations, which would be preserved by conservation easements held by a second party. PG&E would also retain rights, including certain water rights, to the remaining 75,000 acres, which would be available for divestiture to new owners, subject to conservation easements held by a third party. All of the lands were to be managed for a set of six beneficial public values: protection of fish, wildlife, and plant habitat; preservation of open space; outdoor recreation; sustainable forestry; agriculture; and protection of historic and cultural resources (Pacific Stewardship Council 2007).

The last value indicates that the cultural importance of sites could be taken into consideration. The Settlement Agreement and Stipulation note that the former PG&E lands may be donated to "public entities or qualified conservation organizations," and the Stewardship Council has interpreted the term "public entity" to include Tribes, making tribes eligible for to gain fee title to the lands (Krolick, electronic communication 12/4/12). Under SB-18, federally recognized or unrecognized tribes can hold conservation easements on these lands. However, the Settlement Agreement and Stipulation are completely silent on the history of these lands, their ongoing cultural and environmental importance and use to California Indians in particular, and their potential for restitution to the California Indians that they were directly taken from a century ago. California tribal representatives have repeatedly framed the Stewardship Council divestiture as an environmental justice issue, citing the history of these lands—often surrounding valleys, or along rich river canyons, that were village sites, burials, gathering areas, culturally important places, and/or Indian allotments before they were taken for hydropower development to serve the needs of the expanding state of California (Codding and Goode 2011; Middleton 2009–2010; Scheck 2011; Little 2011a, b). Significant work has been done with members of the Maidu Summit to track and map the history of lands, to make extremely clear their identity as indigenous lands that now have the opportunity to be returned (Middleton 2010b).

The original composition of the Stewardship Council board created contention because, initially, no indigenous people were seated on the board. As outlined in the 2003 Settlement Agreement, the board was to consist of representatives from PG&E, the CPUC, the California Department of Fish and Game, the State Water Resources Control Board, the California Farm Bureau Federation, and three public members named by the CPUC. Following public comments, membership was expanded to include one representative each from the California Resources Agency, the Central Valley Regional Water Quality Control Board, the Association of California Water Agencies, the Regional Council of Rural Counties, the California Hydropower Reform Coalition, the Trust for Public Land, the Office of Ratepayer Advocates, the California Forestry Association, and a joint liaison from the Federal Department of Agriculture-Forest Service and Department of Interior-Bureau of Land Management ("Modified Settlement Agreement," December 18, 2003).

When the Council began holding public meetings around the state in 2004 to get feedback on how to oversee the divestiture, tribal representatives and allies repeatedly stood up and expressed outrage at their lack of representation on the board (Middleton 2008). In response, the Council requested that Larry Myers (Pomo), then-Executive Secretary of the Native American Heritage Commission (NAHC), join the Board. In 2008, the Council also elected Ken Tipon (Pomo) to serve as an alternate for Myers. Although Myers retired from the NAHC in 2010, he continues to serve on the board, with Tipon as alternate.

The Council conducted public outreach and scoping meetings around the state 2004–2007 (Pacific Stewardship Council 2007), organized the land into 11 watersheds and 47 planning units, created a plan to begin with four pilot planning units (Pacific Stewardship Council 2008) and then to move in stages through the remaining lands, and published a Land Conservation Plan in 2007 (Pacific Stewardship Council 2007). The Council's goal is to complete the 140,000-acre divestiture and assignment of conservation easements by 2013, although it is likely that the work will continue until at least 2016 (Krolick, electronic communication 12/4/12). In 2009, the Council formally invited applications for the first round of parcels following the pilots, although the disposition of all of the pilot lands had not been completed. The Round 1 parcels are in the Pit-McCloud, Feather, and Upper Mokulumne river watersheds, or Pit River and Winnemem Wintu, Maidu, and Miwok homelands, respectively. In 2011, the Council invited applications for the second round of parcels, which include Maidu homelands in the Feather River Canyon.

In order to receive a donation of the lands, in some cases tribes were encouraged to either form coalitions with conservation non-profits and/or agencies, or to form their own conservation non-profits. Eligible non-profits, however, were required to have extensive experience with land conservation and management. To ensure that all conservation easements placed on the watershed lands can be enforced in state court, the Council determined that tribal governments receiving land donations would be required to provide a limited waiver of tribal sovereign immunity (Krolick, electronic communication 11/3/2012). The only recommended transfer to a tribe in the Council's process thus far took place in May 2012 and was accompanied by the tribe's agreement to provide a limited waiver of

sovereign immunity on the parcel and an agreement not to petition the federal government to place the lands in trust (Fee Title Recommendation, May 2012). Although this recommended transfer of land is highly significant, in terms of possibly providing a ray of hope for other tribes seeking lands in the Stewardship Council process, it also represents a very small fraction of the total Stewardship Council lands being donated. Out of a total of 33,805 acres recommended for transfer thus far to entities ranging from federal (Bureau of Land Management, US Forest Service) and state agencies (California Dept. of Forestry and Fire Protection) to a local resource conservation district, just 723 acres have been recommended for transfer to a tribal entity, and those have gone to just one tribe, despite the presence of ancestral owners in all of the Stewardship Council's planning units (Krolick 2012).

All applicants in the Stewardship Council process were encouraged to complete formal Land Stewardship Plans (LSP) on parcels of interest. When the Maidu Summit, a consortium of nine Mountain Maidu groups, organizations, and tribes (federally recognized, petitioning, and federally unrecognized), initially submitted its LSP for PG&E lands located in the Maidu homeland in 2007, they were able to write freehand, following some guiding questions. In 2009, two years after the Summit had submitted the LSP for these parcels around Lake Almanor and in Humbug Valley, they were asked to complete a detailed Statement of Qualifications regarding their solvency as an organization and their ability to steward these lands. The Stewardship Council has an application/qualification process for both fee title holders for the lands as well as conservation easement holders. All lands in the Maidu homeland will be subject to a conservation easement held by a third party, possibly the Feather River Land Trust, which supports Summit ownership of the land (Moghaddas 2010).

After responding to follow-up questions on the Statement of Qualifications, the Summit was encouraged in early 2010 to develop a collaborative relationship with a competitor for the Humbug Valley lands, the California Department of Fish and Game (DFG). The DFG has a seat on the Stewardship Council Board; raising concerns among Summit members and allies about possible conflicts of interest inherent in having an organization directly involved in leading the Stewardship Council receiving lands that the Council is charged with making divestiture recommendations for. This question of undue influence remains a concern, even if the particular DFG board representative recuses himself from voting on a particular land transfer. Summit members observed the difficulty of a DFG representative stepping out of the discussion involving his agency at a December 2010 Stewardship Council board meeting in Sacramento, at which the Summit and the DFG both gave presentations on their plans for the land. The Summit focused on cultural survival, restoration, and their own unique history, traditional ecological knowledge, traditional environmental stewardship skills, and ability to steward traditional sites. The DFG focused on its financial solvency as an agency and its track record with managing hundreds of properties around the state for wildlife values. Following these presentations, during the question and answer period, the DFG representative on the Stewardship Council Board noted, in response to a question, that the DFG did not have any written policy on consultation with tribes (PSC Board Meeting, Sacramento, CA, December 2, 2010).

The attempted collaborative relationship between DFG and the Summit seemed off to a rocky start when, at an April 15, 2010 meeting of the two parties and the Stewardship Council, held in Chester, CA, the DFG offered the Maidu a limited access easement onto the land to gather at certain times and places. The Summit rebuffed the offer, which would have required them to tell the agency where culturally important plants and sites were in order to access them, a violation of American Indian Religious Freedom Act, the Religious Freedom Restoration Act, Section 106 of the National Historic Preservation Act, and the United Nations Declaration on the Rights of Indigenous Peoples. When DFG offered to give the Summit approximately 100 acres of the 2,600 acre, culturally important Humbug Valley for a Roundhouse/ceremonial area, the Summit countered with offering DFG an easement along Yellow Creek to steward the fish population. While the groups have not yet come to an agreement, the Summit acknowledges the importance of partnering with federal and state agencies as well as other groups and organizations interested in maintaining healthy fish and wildlife populations. According to Summit Chairman Farrell Cunningham, each of these partners brings a diversity of perspectives that can contribute to mutual learning. The Summit is willing to negotiate as necessary and appropriate with DFG and others to achieve "an amicable solution involving a win–win situation for all sides" (Cunningham 2012).

On August 25, 2011, the Stewardship Council offered the Summit a funded opportunity to conduct projects in Humbug Valley. The Council asked the Summit to develop several project outlines, then full proposals for two to three possible projects in Humbug Valley. Summit members, particularly Beverly Ogle of Tasmam Koyom Cultural Foundation, were already conducting cultural site protection projects on the land, in communication with PG&E, the US Forest Service, the Greenville Indian Rancheria, and neighboring landowners. In response to the call from the Stewardship Council, the Summit proposed a forest health enhancement project involving catastrophic fuels reduction and enhancement of culturally important plants;

a cultural resources protection plan, which included an on-the-ground component of completing a split-rail fence to protect sensitive meadow habitat and cultural resources; and an educational kiosk with information about Maidu and non-Maidu history, ecology of the Valley, and contemporary Maidu land stewardship. The Summit submitted the three proposals to the Council in November 2011, and the Council selected the kiosk project and a modified version of the cultural resources protection plan. The Council then provided funding for the Summit to carry out those projects in 2012. Summit applications for lands at Lake Almanor and in the Feather River Canyon are on hold until the Summit completes these projects in Humbug Valley and is evaluated by the Council.

Although these projects represent a rare and exciting opportunity for an indigenous consortium to conduct enhancement projects on private lands within their homeland, there is a sense of having to prove indigenous organizational and environmental management skills—on indigenous lands. In the eyes of the Council, the Summit may not have the track record of successful land management of a state or federal land management agency, or an established non-profit land trust. Accordingly, it is unclear whether the Council is asking those entities to demonstrate their ability to implement and complete environmental management and public interpretation projects. It is also unclear as whether indigenous groups other than the Summit are being offered the same opportunities as the Summit, and this is of concern to Summit members—why was one indigenous group receiving opportunities not available to others? Despite these concerns, the Summit was grateful and enthusiastic about the opportunity to receive Council support for projects they were already engaged in at Humbug Valley, such as the cultural resources protection work, and tending culturally important plants for forest health enhancement. While cautious about a process that has thus far not foregrounded specific Native land rights, history, and concerns, Summit members want to show their ability to manage Humbug, and hope that such a positive demonstration will bring them confirmed rights to Humbug and other PG&E lands (Cunningham 2012).

In 2009, several tribes around the state shared their experiences working through the Stewardship Council process to try to regain rights to ancestral lands (Middleton 2009–2010). Interviewees expressed concerns with a perceived lack of transparency of the divestiture process, the sense of having to prove indigenous capacity to manage ancestral lands, the Council's lack of interest in parcel history and social justice, PG&E's complex retention of rights on each parcel, the requirements to collaborate with partners insensitive to tribal needs, and the suggested actions (developed in the public meetings that began in 2004) regarding recreational enhancement, specific environmental management, etc., on each parcel. Tribal representatives have previously referred to the entire process of working with the Council (beginning in 2004 with protesting the lack of inclusion of an indigenous representative, and continuing through the ongoing, extensive requirements to show organizational capacity to manage lands) as "jumping through hoops." That phrase speaks to the subject of this article—are indigenous groups working through environmental processes to protect cultural lands and rights simply jumping through a series of hoops to prove themselves and their history? Do environmental groups take indigenous environmental knowledge and land management skills seriously? Is it worth the time of tribal representatives to jump through the hoops/engage in these processes to have a chance to regain ancestral lands?

As of September 2012, the Council had recommended divestiture of 33,805 acres of the 65,240 acres available. The amount of land available was initially 75,069 acres, while 67,763 acres were to remain with PG&E; however, the amount of land remaining with PG&E has steadily increased over the course of the Council's deliberations. Currently, a total of 77,592 acres will be retained by PG&E, all subject to conservation easements held by a third party. The parties holding the conservation easements on lands to be retained by PG&E or transferred to another entity are currently all non-profit conservation groups (land trusts, conservancies, and non-profit conservation organizations such as Ducks Unlimited) or resource conservation districts. Despite applications to serve as easement holders, no tribes or tribal conservation organizations have been selected to hold conservation easements on any of the lands. Of the 43,634 acres recommended for donation or pending a donation recommendation by the Council, 9,829 will be retained by PG&E, 10,407 have been recommended for transfer to federal agencies (3,344 to the US Forest Service and 7063 to the Bureau of Land Management, respectively), 17,407 acres have been recommended for donation to state agencies (12,663 acres to CalFIRE; 4,625 acres to University of California; and 119 to California State Parks), 5,268 acres have been recommended for donation to local entities (counties, a Resource Conservation District, a Community Service District, and a Recreation District), and, as of May 2, 2012, 723 acres have been recommended for donation to one California Indian federally recognized tribe (Pacific Stewardship Council 2012a, b). While this divestiture to a Tribe is a highly significant accomplishment on the part of the Council, it is also true that Native entities (including federally recognized and unrecognized tribes, and Native non-profit organizations) submitted formal statements of qualification and/or full land stewardship proposals on 18 of the 53 land transfers already recommended by the Council, and, thus far, only one has been selected to receive land.

Discussion

> The traditional native relationship with the land is based on reverence, respect, and reciprocity. The only law which will protect this alternative worldview would allow traditional societies to live sustainably on their own terms and give them complete control over the places sacred to them (Cummings 1998).
>
> Effective strategies for sacred lands protection and access are those that identify and reflect on incompatible and hegemonic ideologies and languages in the law and in practice and then take action to transform them (Milholland 2010).

As the above analysis of four environmental laws and processes shows, environmental statutes often create opportunities for tribes, Native non-profits, and Native individuals and families to access, protect, preserve, and regain ownership of ancestral lands that have gone out of tribal ownership. However, such laws also often require indigenous people to "jump through hoops" or respond to environmentally-focused processes and questions that do not pertain to indigenous worldviews, indigenous culture and history, and indigenous cultural resource management and stewardship goals. According to (Milholland 2010):

> ...the legal tools intended to protect sacred sites often conflict with traditional indigenous values relative to land and religious practices, privilege the values of the dominant society, erode tribal identity and sovereignty, and leave sacred lands vulnerable to desecration or destruction.

Given that the legal options are limited for protecting traditional Native places and associated living practices, how might environmental laws be used strategically by indigenous people and their allies? What aspects of these laws can be improved to strengthen their applicability to protecting Native lands? The following discussion will suggest targets for statutory and procedural improvement for each of the environmental laws discussed above.

National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA)

NEPA and CEQA are procedural statutes, meaning that they require permitting agencies to follow a specific set of procedures to determine the impact of a project, consider alternatives, and implement a project design that causes the least harm to the environment and cultural resources. NEPA and CEQA fail particularly when permitting agencies do not adequately consult with tribes or Native representatives, and/or do not apply Native concerns about site protection to determining project alternatives. NEPA and CEQA would be improved by amendments (such as that proposed under 2002 SB-1828) that allow tribes to halt or re-design projects that impact cultural sites or places of ongoing indigenous environmental stewardship. Too often, sites are ignored or mitigated via removal, rather than preserved in situ with projects designed to protect their physical, ecological, cultural, and spiritual integrity. Tribal recourse is limited to litigation under the Administrative Procedures Act and, depending upon the politics surrounding the site, tribal concerns may or may not be addressed by the court (Cummings 1998). NEPA and CEQA could be strengthened for tribes by making addressing tribal concerns an enforceable part of the procedures to be followed before a project is approved. For example, in the Rattlesnake Island case, the tribe's concern, evidence of cultural sites, the listing of the property on the state register, and it's eligibility for the National Register of Historic Places should absolutely prevent the Supervisors from declaring a mitigated negative declaration.

SB-18/Conservation Easements

Senate Bill 18 provides an important opportunity for tribes to consult on City and County general plan amendments, to include indigenous site protection under the "open space" element of general plans, and to hold conservation easements in the state of California. In terms of the consultation aspect, SB-18 is procedural, like NEPA and CEQA above, and would be improved by returning to the original language of SB-1828, which allowed tribes to stop projects that impacted sites. In order to be fully realized for tribes, SB-18's "open space" element requires targeted funding opportunities for tribes to purchase lands and designate them as open space to protect them from development and desecration. Funding is available to purchase lands to protect them for environmental purposes, but not for the protection of cultural sites or locations of ongoing indigenous environmental stewardship. In terms of holding conservation easements, Senate Bill 18 could be strengthened by making explicit the notion that easements can be for cultural as well as environmental protection; by ensuring that donors of easements to tribes could receive a tax deduction; and by providing funding for tribal entities to engage in private conservation acquisition, including purchasing lands for cultural conservation or purchasing cultural conservation easements (Middleton 2011). Funds are available to land trusts for conservation acquisitions, and should similarly be available to tribes and tribal land trusts for cultural conservation acquisitions.

Pacific Stewardship Council

The Pacific Stewardship Council, unlike the above statutory examples of NEPA, CEQA, and SB-18, is a process that is limited in time and for a specific purpose within the

state of California. Despite these parameters, it represents an unprecedented opportunity for tribes to regain ancestral lands that were directly taken from them just a century ago. There are several clear steps the Council could take to substantially improve its ability to address ongoing injustice and return these lands to still landless California tribes.

First, the Council must specifically address the history of these lands and their importance to California tribes in all parcel plans. Second, indigenous representatives should be included on the Council board from each of the different areas of the state in which PG&E lands are available—as opposed to the current condition of a single indigenous board member to represent the diverse interests of tribes around the State of California, which has a total of 108 federally recognized tribes, in addition to many federally unrecognized tribes. Third, as an amendment to their land conservation planning process, the Council could include mandates to involve local and regional tribes and/or tribal coalitions in each land transfer, and to consult specifically with regional tribes on each land transfer. Finally, the funding opportunities for tribal projects that are available to the Maidu Summit could be made available to regional tribes on each parcel of the lands available.

Unfortunately, the majority of the recommended divestitures thus far seem to favor land transfers to entities that are represented on the Board, predominantly Anglo land trusts, or large state or regional conservation landowners. This practice does not achieve equity. California's hydropower industry was built with Indian land and water, and any attempt to benefit ratepayers in a settlement should address this historical and ongoing condition, and provide for restitution of these resources to tribes.

Conclusion

Building on a premise that environmental laws may have more "teeth" or enforceability than cultural resource protection laws, this paper concerns the applicability of certain environmental laws and processes to protect culturally important indigenous lands, and associated indigenous stewardship practices. I examine the ways in which four environmental laws and processes (NEPA/CEQA, SB-18, Conservation Easements, and the Pacific Stewardship Council process) might be improved to both better respect indigenous cultural values, and more effectively achieve site protection. All of these environmental laws and processes partially align with tribal values to exercise indigenous environmental stewardship and to protect culturally important lands, but they also exhibit weaknesses in their ability to actually serve tribes without creating a series of barriers (Williams 1994; Milholland 2010; Welch and others 2009; Cummings 1998; Cummins and Whiteduck 1998).

A key problem with the laws is their ahistorical nature; that is, the focus is on contemporary environmental conservation, often with little or no attention to how the land was degraded, by whom, and whose land it was historically. The ahistoricism and other barriers stem from divergent epistemological and cultural foundations (Peterson and others 2010; Walton 2010). Environmental laws emerge from a European-derived system that institutionally did not value or understand indigenous views of place or indigenous environmental stewardship. Further, even as environmental laws function ideally to protect lands, they do so from a premise of separation between humans and the environment, rather than inter-relatedness. This stems from a neo-colonial vision of humans as having dominion over the environment, rather than being part of it (Echo-Hawk 2010). As indigenous legal scholar Robert Williams explains, environmental law separates the survival of other species as distinct from humans, rather than addressing the survival of humans and the environment together:

> The perversity of this [environmental law] system, which privileges what it labels as "human values" over "environmental values," is its failure to recognize that both sets of values are intimately connected to who and what we are as human beings reliant on, and engaged with, the complete set of forces which give meaning and life to our world...[it] fails to recognize or acknowledge that protecting environmental values is anterior to, and a prerequisite for, protecting all our other core human rights....(Williams 1994).

It is my hope that the brief, concrete recommendations provided above may offer resources to expand environmental laws and processes to enrich the understanding of conservation, with concrete benefits for ensuring the protection of cultural sites and the continuity of indigenous environmental management. We must begin to conceptualize conservation beyond "environment versus human activity" to encompass a respectful, multigenerational form of human-environment interaction embodied in the recognition of indigenous environmental knowledge and practice. Reforming environmental laws and processes to improve their applicability for indigenous stewardship and site protection would be a long overdue and unprecedented act of respect for the first peoples of this land. It would also exemplify great foresight on the part of American society to include in our legal system the greater complexity of human-environment interaction that is already inherent in indigenous views of traditional lands.

Acknowledgments This research was supported by the University of California President's Postdoctoral Fellowship and the University of California Humanities Research Institute. The author is grateful for

the contributions and support of many partners involved in the projects detailed in this paper, particularly Maidu Summit Consortium board and members. The author is also grateful to Pacific Stewardship Council staff for reviewing the piece for factual accuracy, and to PG&E staff for advice on the details of the Settlement Agreement. Any remaining errors are the responsibility of the author. Finally, the author thanks the anonymous reviewers and guest co-editor Laurie Richmond for helpful comments on the manuscript.

References

Basso KH (1996) Wisdom sits in places: landscape and language among the western Apache. University of New Mexico Press, Santa Fe

California Office of Historic Preservation: Dept. of Parks and Recreation (2001) Technical assistance series #1: California Environmental Quality Act (CEQA) and historical resources. Californian Department of Parks and Recreation, Sacramento

California Public Utilities Commission (CPUC) Decision 03-12-035, Opinion Modifying the Proposed Settlement Agreement of Pacific Gas & Electric Company, PG&E Corporation and the Commission Staff, and Approving the Modified Settlement Agreement, December 18, 2003

Codding RF, Goode RW (2011) California Indians could regain ancestral lands. San Francisco Chronicle, San Francisco

Cole Luke (1992) Empowerment as the key to environmental protection: the need for Environmental Poverty Law. Ecol Law Quart 19:619–683

Cummings C (1998) Sacred landscapes from a legal perspective: examples from the United States. In: Oakes J, Rick R, Kathi K (eds) Sacred lands: aboriginal world views, claims, and conflicts. Occasional publication No. 43. Canadian Circumpolar Institute, University of Alberta, Edmonton, pp 277–291

Cummins B, Whiteduck K (1998) Towards a model for the identification and recognition of sacred sites. In: Oakes J, Rick R, Kathi K (eds) Sacred lands: aboriginal world views, claims, and conflicts. Occasional publication No. 43. Canadian Circumpolar Institute, University of Alberta, Edmonton, pp 3–14

Cunningham F (2012) Personal communication

Davis G (2002) Veto of SB-1828. http://www.sacredland.org/PDFs/Davis_veto.pdf. Accessed 3 Dec 2011

Deloria V Jr (1994) God is red: a native view of religion. Fulcrum Publishing, Golden

Donaldson MW (2011) Letter to Emily Minton, Principal Planner, Lake County Community Development Department

Echo-Hawk WR (2010) In the courts of the conqueror. Fulcrum Publishing, Golden

Federal Register (2012) 77(155):47868–47873

Fort K (2010) Order in Save the Peaks vs. US. Turtle talk Indian law blog. http://turtletalk.wordpress.com/2010/12/02/order-in-save-the-peaks-v-usfs/. Accessed 3 Dec 2011

Gould C (2012) An update for friends and supporters of Sogorea Te. http://www.protectglencove.org. Accessed 7 Jan 2012

Horn B (2003) Two lines longer: clash of cultures, religion. San Diego Union-Tribune, San Diego

Indigenous Action Media (2010) District court rules for USFS in Save the Peaks Case, plaintiffs will appeal. Indigenous Action Media, Ottawa

Jones G (2002) Tribes flex power on sacred sites. Los Angeles Times, Los Angeles

King T (2002) 'Sacred Sites' protection: be careful what you ask for. http://www.sacredland.org/PDFs/Thomas_King.pdf. Accessed 3 Dec 2011

King T (2003) Places that count: traditional cultural properties in cultural resource management. AltaMira Press, Walnut Creek

Krolick H (2012) Electronic communication 11/3/2012, 12/4/2012

Larson E (2011) Friends of Rattlesnake Island sue county; suit seeks environmental study for building project. Lake County News, Lake County

Little JB (2011a) Maidu group vies with state to oversee Humbug Valley. The Sacramento Bee, Sacramento

Little JB (2011b) California tribe competes with the state to restore its homeland. High Country News, Paonia

Logan P (2011) Tribes use land conservancies to reclaim ancestral grounds. High Country News, Paonia

Middleton BR (2008) 'We were here, we are here, we will always be here:' a political ecology of healing in Mountain Maidu country. Dissertation, University of California

Middleton BR (2009–2010) Let this all return to us: working to reclaim land through the Pacific forest and watershed lands stewardship council. News from Native California, Berkeley

Middleton BR (2010a) Towards a political ecology of healing. J Political Ecol 17:1–28

Middleton BR (2010b) Seeking spatial representation: mapping Mountain Maidu allotment lands. Ethnohistory 57(3):363–387

Middleton BR (2011) Trust in the land: new directions in tribal conservation. University of Arizona Press, Tucson

Milholland S (2010) In the eyes of the beholder: understanding and resolving incompatible ideologies and languages in US environmental and cultural laws in relationship to Navajo sacred lands. Am Indian Cult Res J 34(2):117

Moghaddas J (2010) Letter of support for the Maidu Summit submitted to Pacific Stewardship Council Executive Director Allene Zanger

National Environmental Justice Advisory Council, Indigenous Peoples Subcommittee (2000) Guide on consultation and collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and tribal members in environmental decision making. http://www.epa.gov/environmentaljustice/resources/publications/nejac/ips-consultation-guide.pdf. Accessed 4 Sep 2012

Pacific Stewardship Council (2007) Land conservation plan, vol 1. http://lcp.stewardshipcouncil.org/Vol_1/toc.htm. Accessed 3 Dec 2011

Pacific Stewardship Council (2008) Volume 3 pilot process. http://stewardshipcouncil.org/documents/Volume%20III%20Pilot%20Process_Adopted%203.26.08.pdf. Accessed 3 Dec 2011

Pacific Stewardship Council (2012a) Summary of fee title Donee recommendations. Pacific Stewardship Council, Foster City

Pacific Stewardship Council (2012b) Summary of watershed lands to be retained by PG&E. Pacific Stewardship Council, Foster City

Parrish W (2011) Cultural genocide in Lake County, CA

Peters C (2002) Native American action request. Electronic communication via Andre Cramblit

Peterson RB, Russell D, West P, Brosius JP (2010) Seeing (and doing) conservation through cultural lenses. Environ Manag 45:5–18

Quechan Tribe of the Fort Yuma Indian Reservation v. US Dept of the Interior (Case No. 10cv2241-LAB, CAB, US District Court, Southern District of California, December 15, 2010)

Rivasplata A (2004) SB-18 (Burton) traditional tribal cultural places. Environ Assess 13(4):1

Sacred Lands Alert (2011) Sacred lands alert and call for tribal and public support to protect the ancient aboriginal homeland village of the Elem people from destruction. http://www.scribd.com/doc/62136309/Rattlesnake-Island-Press-Release-Aug-2011. Accessed 3 Dec 2011

Scheck J (2011) Maidu land claim with strings attached. Wall Street J

Sutton I (1991) Preface to Indian country: geography and law. Am Indian Cult Res J 15(2):3–35

Sutton I (2001) Indian cultural, historical, and sacred resources: how tribes, trustees, and the citizenry have invoked conservation. In: Clow R, Sutton I (eds) Trusteeship in change: toward tribal autonomy in resource management. University of Colorado Press, Boulder, pp 165–194

Walton AA (2010) Conservation through different lenses: reflection, responsibility, and the politics of participation in conservation advocacy. Environ Manag 45:19–25

Welch JR, Riley R, Nixon MV (2009) Discretionary desecration: dzil Nchaa Si An (Mount Graham) and federal agency decisions affecting American Indian sacred sites. Am Indian Cult Res J 33(4):29–68

Williams RA Jr (1994) Large binocular telescopes, red squirrel Piñatas, and Apache sacred mountains: decolonizing environmental law in a multicultural world. West Va Law Rev 96(4):1153