

Jackson Advisory Group Tribal Relations Subgroup
Management Plan Review and Recommendations

May 18, 2022

Overview

At the September 22, 2021 Board of Forestry (Board) meeting, the Director requested the Board review the Jackson Demonstration State Demonstration Forest (JDSF) Management Plan in light of the recent Executive Orders directing State Agencies to support tribal access and co-management of state-owned lands. Board staff encouraged JDSF staff to conduct an internal review and bring recommendations to a future Board meeting for public discussion.

A subcommittee of the Jackson Advisory Group (JAG) was formed at the November 16, 2021 JAG meeting to gather the relevant background materials, review current interactions with California Native American Tribes (tribes) in relation to the current Management Plan goals, and evaluate the adequacy of the current JDSF Management Plan to meet the objectives of the recent Executive Orders. The JAG Tribal Relations Subgroup will advise CAL FIRE and the Board on actions to better meet the objectives of the recent Executive Orders and if any deficiencies exist in the current Management Plan relative to those Executive Orders.

This document summarizes the JAG Tribal Relations Subgroup's efforts and provides recommendations to the Board and Director. This document is advisory in nature and does not represent legal advice to the Board, nor is it meant to diminish or impede negotiations between sovereign nations which take precedence over JAG recommendations. These recommendations have not been endorsed or recommended by any Tribe or tribal advocacy organization and merely represent a good faith effort on the part of the JAG members to fulfill the request of the Director.

Background Materials and Summary

In 2019 Governor Newsom signed executive order N-15-19 which apologizes for the State's historically sanctioned depredations and prejudicial policies against California Native Americans, reaffirming and incorporating by reference the principles of government-to-government engagement outlined in Executive Order B-10-11 and establishing a Truth and Healing Council. Executive Order B-10-11 (Governor Brown, 2011) states that "Every state agency and department shall encourage communication and consultation with California Indian Tribes".

In a further Statement of Administration Policy (2020), the Governor states that "... it is the policy of this administration to encourage every State agency, department, board and commission... subject to my executive control to seek opportunities to support California tribes' co-management of and access to natural lands¹ that are within a California tribe's ancestral land and under the ownership or control of the State of California." The Policy further states that "any action taken in accordance with this Policy shall: (i) comply with all applicable laws and regulations..."

Additionally Executive Order N-82-20, acknowledges that "since time immemorial, California Native Americans have stewarded, managed and lived interdependently with the lands that now make up the State of California."

¹ PRC § 9001.5(d)(2) Defines "Natural Lands" as "lands consisting of forests, grasslands, deserts, freshwater and riparian systems, wetlands, coastal and estuarine areas, watersheds, wildlands, or wildlife habitat, or lands used for recreational purposes such as parks, urban and community forests, trails, greenbelts, and other similar open-space land..." PRC 9001.5(d)(1) Defines "Working Lands" as "lands used for farming, grazing, or the production of forest products." For to purposes of this report, we assume JDSF contains both types of land.

Evaluation of existing JDSF Management Plan relative to tribal consultation, access, and co-management

In evaluating the existing JDSF Management Plan, it is first necessary to contemplate the most recent direction from the Governor that state agencies support “tribal access and co-management” as these terms come in addition to encouraging agencies to “communicate and consult” under Executive Order B-10-11. It is our opinion that this direction asks agencies to make proactive efforts and expend resources to cooperatively include Tribes in management decisions if tribes choose to participate. We interpret this direction as promoting additional interaction between the State and tribes than was considered during the drafting of the current Management Plan or the CAL FIRE Native American Tribal Communities Relations Policy. As a result, we are recommending updates to the Management Plan to accommodate this direction.

Berkey et al.² note in a recent synthesis of tribal co-management policies that co-management agreements are “limited only by the creativity of the parties.” The California Fish and Game Commission has defined co-management as “A collaborative effort established through an agreement in which two or more sovereigns mutually negotiate, define, and allocate amongst themselves the sharing of management functions and responsibilities for a given territory, area or set of natural resources.”³ Because Co-management agreements in California are relatively new and limited examples exist, it is our belief that the JDSF Management Plan should not preclude any management actions or inactions a tribe entering into a co-management agreement may wish to pursue. For the Management Plan to truly support co-management and tribal self-determination, it must allow for sufficient leeway to accommodate management and access functions negotiated and mutually agreed upon by sovereign nations entering into a co-management or other form of agreement.

The existing JDSF Management Plan notes that, “statutory direction indicates that the management of Jackson Demonstration State Forest is primarily for sustainable timber production with the primary purpose of education and research relating to economical timber management.”⁴ While this issue is outside of the scope of the JAG, it raises an important question related to the legislative intent of the state forest system and the ability of the Board of Forestry and CAL FIRE to adequately meet potential tribal co-management goals under existing statute if tribal co-management goals conflict with the Board’s interpretation and administration of the law. It is only through collaboration between sovereigns that this question can be answered. The Board and CAL FIRE may wish to suggest legislative or policy changes to better support relations with Native American Tribes as an outcome of government-to-government negotiations. We encourage CAL FIRE and the State of California to continue to engage in Government-to-Government negotiations with affected tribes.

² Berkey C., Costa E., and Simon A., Revitalizing Stewardship and Use of Tribal Traditional Territories: Option for Improving California Policy and Law in State-Managed Lands and Waters. Berkey Williams LLP. 2021

³ <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=184474>

⁴ JDSF Management Plan 2016 Update P.15

For the purpose of this report, our subgroup has based the below recommendations on the following line of reasoning:

- 1) That “opportunities to support California tribes’ co-management of and access to natural lands that are within a California tribe’s ancestral land and under the ownership or control of the State of California” shall “comply with all applicable laws and regulations”⁵
- 2) That applicable laws and regulations indicate that JDSF “must demonstrate sustainable timber production, and that timber production must be managed primarily to provide research and educational values”
- 3) That the “laws and regulations” that provide direction for the management of JDSF are broad and allow for high levels of management discretion by the Board and CAL FIRE. As a result, access and co-management opportunities could likely be satisfied by updating the existing Management Plan, however, it is, ultimately up to Tribes to make this determination based on their access and co-management objectives.

Recommendations

1. CAL FIRE should, in consultation with Native American Tribes, consider adopting a co-management vision statement or updating the existing CAL FIRE Native American Tribal Communities Relations Policy to include a formal definition of co-management to help guide future Management Plan review and further guide the agency.
2. CAL FIRE’s Native American Tribal Communities Relations Policy should be updated to reflect the latest Executive Orders and Administration Policy, specifically in respect to access and co-management.
3. In consultation with Native American Tribes, the JDSF Management Plan should be updated to include reference to the protection of Native American cultural values in addition to other values currently listed in the Management Plan and statute (recreation, watershed, wildlife, etc.)⁶. Critically, protection of *cultural values* may be more expansive than existing protections for *cultural resources* and may include tribal traditions, practices, and lifeways; activities that may include management of resources on the forest. An example critical to this discussion could be land management activities informed by traditional ecological knowledge such as the use of cultural fire, pruning or coppicing. These activities may require a co-management or easement agreement between CAL FIRE and a Tribe.
4. The Board should contemplate updating Board policy to consider Native American cultural values in addition to other values already listed in the JDSF Management Plan and statute (recreation, watershed, wildlife, etc.)⁷
5. The existing JDSF Management Plan features nine goals and objectives that should be revisited and updated in partnership with interested tribes.⁸ Tribes may wish to include their goals and objectives in existing goals or create additional goals and objectives. These changes may or may not need to be bound by a co-management or other type of agreement.
6. Chapter three of the Management Plan discusses the desired forest conditions for JDSF that evolve out of the nine goals and objectives noted above and provide direction to staff. It is impossible for the Tribal Relations Subgroup’s to predict what priorities tribes may have for

⁵ As described in Governor Newsom’s Statement of Administration Policy (2020)

⁶ See PRC § 4639

⁷ See PRC § 4639

⁸ JDSF Management Plan 2016 Update P.18-22

future forest conditions, or what potential co-management or other agreements may include. As a result, we can only recommend that revisions to this section may be necessary pending consultation, government-to-government negotiations, and agreements.

7. The section entitled “Public Concerns Regarding the Management of JDSF” (p. 26) should include a sub-section that conveys Native American perspectives on forest management. JDSF staff should make every effort to engage directly with Native Americans in addition to tribal governments, recognizing that tribal governments may lack the resources or capacity to engage in formal consultation.
8. If preferred by local Native Americans, and in consultation with them, the “Setting” section in chapter 2 should be redrafted to include more information on traditional use, and management of the land JDSF now occupies.
9. The Heritage Resources sections (p.52 and 89) of the Management Plan should be reassessed in consultation with tribes to develop a satisfactory process for managing heritage resources of interest to tribes.
10. As a component of the management of heritage resources, JDSF should maintain an on-site staff person with experience and/or training in working with Native American communities who will serve as the point of contact for Native Americans and Native American Tribes⁹. This person should work to proactively develop relationships with the Native American community and seek opportunities to facilitate access and co-management of JDSF above and beyond the required consultation and communication policies in the CAL FIRE Native American Tribal Communities Relations Policy. This staff position is recommended in the existing Management Plan but is not currently filled.
11. If tribes so choose, a section in chapter two could be added that addresses the cultural importance of the JDSF property to Native Americans.
12. Special Concern Areas¹⁰ should include cultural resource sites.
13. The Recreation Management Plan¹¹ should be updated with input from tribes. Changes to the Recreation Management Plan may impact other sections of the JDSF Management Plan.
14. As part of the Recreation Management Plan, CAL FIRE should provide resources to support Native American led interpretation and education programming in JDSF. Native American culture and history is currently listed as a theme.
15. The Research Plan¹² and research priorities section of the Management Plan¹³ should be updated with input from tribes to include their research and demonstration priorities and traditional ecological knowledge. Changes to research priorities may impact other sections of the Management Plan. Input should include local and regional perspectives.
16. The JDSF Management Plan should remove references to past interim management conditions and instead include these as an addendum to clarify the policies that are currently in place.

Additionally:

1. CAL FIRE and the Board may wish to consider legislative changes that could strengthen future co-management agreements. State law and Board policy provide direction for how JDSF is managed, the existing statute does not include any reference to tribal or cultural values or

⁹ JDSF Management Plan 2016 Update P.89 (2)

¹⁰ JDSF Management Plan 2016 Update P. 83

¹¹ JDSF Management Plan 2016 Update Appendix XI

¹² JDSF Management Plan 2016 Update Appendix X

¹³ JDSF Management Plan 2016 Update P. 139

traditional ecological knowledge. This is reflected throughout Board policy the JDSF Management Plan where statute and Board policy are referenced (as noted in above in #4). The Board and CAL FIRE, in consultation with Native American Tribes and the Governors Tribal Advisor, may consider recommending changes to state legislation.

2. The Board should recommend, and the Governor should consider the appointment of tribal representatives on the Board of Forestry.

Finally, the JAG Tribal Relations Subgroup acknowledges the above recommended changes and the development of potential co-management or other stewardship agreements with tribes may be a lengthy process given their novelty. For JDSF to continue its mission while negotiations take place, CAL FIRE may consider, in partnership with interested tribes, the public, and the JAG, the implementation of an interim Management Plan and short-term harvest schedule as demonstrated during the 2008 Management Plan update.

The JAG Tribal Relations Subgroup will bring the above recommendations to JDSF staff and the full JAG for discussion at a future meeting.

JAG Tribal Relations Subgroup Members,

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