

Document Abstract of Appendix Items

Risling California Indian Status and Identity Memo

March 19, 2024

I. History of California Indians

1) ***Connecting Land, Water and History in Native California (Timeline)***

The Timeline was curated by Dr. Cutcha Risling Baldy and Brittani Orona in 2021. It is included in the appendix, along with a document containing current web addresses for all the referenced links. The timeline covers events from 1542 to 2020.

Because the timeline included in the appendix is a scanned version, links are not active. A separate Links document provides live links. It is included as document 1_a in the appendix.

2) ***We Are the Land: A History of Native California***, Damon B. Akins and William J. Bauer Jr. (Available on Amazon or from other book sellers, not included in the Appendix)

The book has been described as follows:

“Before there was such a thing as ‘California’, there were the People and the Land. Manifest Destiny, the Gold Rush, and settler colonial society drew maps, displaced Indigenous People, and reshaped the land, but they did not make California. Rather, the lives and legacies of the people native to the land shaped the creation of California. *We Are the Land* is the first and most comprehensive text of its kind, centering the long history of California around the lives and legacies of the Indigenous people who shaped it. Beginning with the ethnogenesis of California Indians, *We Are the Land* recounts the centrality of the Native presence from before European colonization through statehood—paying particularly close attention to the persistence and activism of California Indians in the late twentieth and early twenty-first centuries. The book deftly contextualizes the first encounters with Europeans, Spanish missions, Mexican secularization, the devastation of the Gold Rush and statehood, genocide, efforts to reclaim land, and the organization and activism for sovereignty that built today’s casino economy. A text designed to fill the glaring need for an accessible overview of California Indian history . . . “

3) ***2002 - Early California Laws and Policies Related to California Indians***, Kimberly Johnston-Dodds https://digitalcommons.csumb.edu/hornbeck_usa_3_d/34/

This report is a response to the question: Did the State of California enact laws that prohibited California Indians from practicing their religion, speaking their languages, or practicing traditional ceremonies and customs? Four examples of early California laws and policies that significantly impacted California Indians’ way of life are discussed: 1850 Act for the Government and Protection of Indians and related amendments; California militia

policies and “Expeditions against the Indians” during 1851 to 1859; the State of California’s official response to federal treaties negotiated with California Indians during 1851 to 1852; and early and current state fish protection laws that exempt California Indians from related prohibitions.

- 4) **The California Indian History website** is an informational website that may be accessed online at calindianhistory.org. (links are included below.) The site strives to acknowledge and expose the acts, name the perpetrators, and provide access to the evidence of the 19th century events that occurred in what is now known as California. [California Indian History \(calindianhistory.org\)](http://calindianhistory.org) It makes available online, in one place, [primary sources](#) from various [archival and historical collections](#) that were authored or reported by non-Indian witnesses, and oftentimes perpetrators, who documented Euro-American violence against California Indigenous people. This site provides a link to the 2002 Johnston-Dobbs report and acknowledges that since completing the report, Kimberly continued “investigating and researching the early California laws and policies related to state militia, volunteers and independent companies and related financial records to identify the high-level state and federal decision makers, along with local perpetrators who benefited financially and otherwise by implementing the ‘Expeditions against the Indians’ during 1851 to 1859 and beyond.”

A 2006 map of *California Indian Culture Areas, Unratified Treaty Lands & State of California County Boundaries* may be accessed at [California Unratified Treaties Map « California Indian History \(calindianhistory.org\)](http://calindianhistory.org); <https://calindianhistory.org/california-unratified-treaties-map/>

II. **The basic framework of state and federal law and what is possible within that framework.**

- 5) **Indian Child Welfare Act Desk Reference, A Framework and Quick Reference Resource for the Practitioner.** CDSS Office of Tribal Affairs, 2020.

https://www.cdss.ca.gov/Portals/9/Additional-Resources/ICWA/ICWA%20Desk%20Reference_whb_9-30-20.pdf

a) Excerpts from section II: Basic Principles of Federal Indian Law; Factual Orientation: American Indians in California; Indian Programs and Services; The “Special Case of California”; Non-Federally Recognized Tribes and the Spirit of ICWA.”

b) FAQs

- i. What are some important terms to be aware of and how to know which term(s) to use.
- ii. Why is it so hard to know if someone is an “Indian” for ICWA purposes?”
- iii. Do Indian children have other special rights social workers should know about?

c) ICWA Glossary excerpt: definitions for Indian, and Indian Tribe.
These two definitions define terms in the context of the Indian Child Welfare Act and provide a striking example of how complicated the definition issue can be and how important it is to be precise in the use of terminology.

- 6) ***Laughing Coyote V. United States Fish and Wildlife Service, et al***, Case No. F-93-5055, U.S. District Court, Eastern District of California.

Federal case addressing right of California Indians to receive eagle permits.

Plaintiff was denied a permit because the BIA refused to certify his Indian status. The court notes the BIA “recognizes Plaintiff as an Indian for other purposes” citing his enrollment in the California Judgment Fund Rolls as 11/16 Mono/Yokut. “[T]he fact of federal recognition of an applicant’s tribe is, at best, only one indicia of whether or not the issuance of an Eagle Feather Permit is appropriate. . .” (pp.8)

- 7) ***Bureau of Indian Affairs, Indian Child Welfare Act; Receipt of Designated Tribal Agents for Service of Notice***. 74 Federal Register 74, 19326 (April 28, 2009)

The BIA is required to publish in the Federal Register on an annual basis the names and addresses of the designated Tribal agents for service of ICWA notice. This notice presents the information in two different formats. The first format lists designated Tribal agents by region and alphabetically by Tribe within each region. The second format (at page 19344) is a table that lists designated Tribal agents alphabetically by (historic) Tribal affiliation.

The BIA published in this dual format because ICWA requires the BIA to assist in identifying a child’s tribe and many tribal names do not refer to any historic tribe. For example, under the historic “Miwok” 11 BIA tribes are listed. (Wilton Rancheria had not yet been un-terminated.) Most Indian people commonly identify to an historic tribal affiliation. For example, when asked to identify their tribe California Indians would likely answer Miwok, rather than Chicken Ranch. If they cannot name a BIA tribe they are enrolled in, all 11 Miwok affiliated tribes listed in the Federal Register would need to be sent notice of a child custody case.

III. The Special Case of California.

- 8) **Briefing Paper: An Overview of the Historical Factors Which Have Contributed to the Special Status Problems of California Indians**, California Indian Legal Services, 1993

Paper provides an overview of the laws specifically addressing California Indians and discusses how they have been implemented by the Bureau of Indian Affairs to the detriment of California Indians.

- 9) ***Aboriginal Title, the Special Case of California***, Flushman and Barbieri, 17 Pac.L.J. 391 (1986) Pages 397 – 415 discuss in detail with citations:
- b) The 18 Treaties negotiated with various tribes in California.
 - c) The role of the state in opposing ratification and securing the secreting away of the treaties.
 - d) The subsequent and eventual response to the unmasked injustice and immorality of this history.
 - e) The resulting development of the California Claims cases involving all Indians living in the State of California as of June 1, 1852, and their living descendants.
- 10) ***BIA history of Award to California Indians.***
- b) The BIA, Pacific Region, uses the California Judgment Rolls for preparing a Certificate of Degree of Indian Blood (CDIB) or a Verification of California Indian Descent because they represent an official and comprehensive historic process deemed the best and most reliable information BIA has. The Original Roll of California Indians specifically asked which ancestor was residing in California on June 1, 1852.
- 11) ***Sample – Bureau of Indian Affairs, Pacific Region - Verification of California Indian Descent.***¹
- 12) ***Interior Board of Indian Appeals (IBIA), Morgan Underwood, Sr. v. Deputy Assistant Secretary – Indian Affairs (Operations), 1986***
- b) Administrative appeal from a Bureau of Indian Affairs decision regarding issuance of a CDIB card.
 - c) IBIA decision reversing a BIA change to Underwood’s CDIB blood quantum.
 - d) Holds BIA standards for determining Indian blood quantum are “rules” that must be promulgated as federal regulations in accord with federal law. (14 IBIA 18.)²

¹ NOTE: Today, in addition to verifications, individuals claiming eligibility for services as California Indians could, in support of eligibility, produce a card or a certificate on letterhead issued by the BIA. The BIA issued a Certificate of Degree of Indian Blood (CDIB) laminated card in the 70s and 80s that verified if someone is listed on or a descendant of someone listed on an approved Judgment Roll. The BIA also issued CDIBs on letterhead for every California Indian until 2015 when the CDIB instructions changed. That change is currently the subject of legal challenges. The BIA Pacific Region now provides individuals who are not enrolled in federally recognized California Tribes with Verifications of California Indian Descent.

²Note: Even though this appeal was decided in 1986, the BIA procedures, aka “hidden regulations,” have never been published as regulations, continue to be periodically and arbitrarily altered by BIA bureaucrats,

- e) Discusses the legal significance of CDIBs.
- f) “Indian blood quantum and its corollary, Indian status, are legal concepts from which individual rights and privileges arise. Many Federal statutes refer to and grant special privileges based upon Indian status or degree of Indian blood . . .” (14 IBIA 14.)
- g) “A BIA determination of Indian blood quantum is a prerequisite for acceptable proof of degree of Indian blood. BIA has chosen to memorialize its genealogic research through the issuance of a CDIB showing its determination of a person’s degree of Indian blood. This CDIB is accepted as proof in determining eligibility or ineligibility for services and benefits available to Indians. BIA’s practice of issuing CDIBs is thus an integral part of the process by which legal rights and privileges of Indians arise.” (14 IBIA 16.)
- h) Citing a U.S. Supreme Court case, the decision acknowledges the authority of administrative agencies to administer legislatively created programs, including creation of *reasonable* classifications and eligibility requirements so long as done *consistent with controlling law*. (14 IBIA 19.)

13) ***Malone v. BIA, (1993) Case No. 93-15011, U.S. Court of Appeals for the 9th Circuit.***

Amicus brief opposing a BIA change to education grant eligibility without complying with the federal Administrative Procedures Act. Sets forth a detailed account of the early history of federal relations with the California Indians.

IV. Challenges and Opportunities for California Indians and Tribes.

14) **California Executive Order B-10-11, reaffirmed and incorporated by reference in California Executive Order N-15-19 (creating the CTHC)**

- a) Creates the position of Governors Tribal Advisor to oversee and implement effective government-to-government consultation between the Administration and Tribes on policies that affect California tribal Communities.
- b) Declares as administrative policy communication and consultation by every state agency and department with California Indian Tribes on matters that may affect tribal communities. Representatives of tribal governments to provide meaningful input into the development of law and policy affecting tribal communities.
- c) Provides that “For purposes of this Order, the terms ‘Tribe,’ ‘California Indian Tribe,’ and ‘tribal’ include all Federally Recognized Tribes and **other California Native Americans.**”

15) **Native American Heritage Commission (NAHC) Tribal Consultation Policy, 2016**

and are the subject of litigation.

The policy:

- references 164 Native American tribes comprised of 109 federally recognized tribes and 55 non-federally recognized tribes documented by the NAHC;³
- states the NAHC's beginning were the result of demands by California Native Americans for protection of sacred places, burials, and other cultural places. "Since it's beginnings the mission of the NAHC has remained the protection of Native American cultural places and providing access to those places on public property for ceremonial purposes."⁴
- References the NACH authorizing statute, Public Resource Code §5097.94
- Defines California Native American Tribe as "a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 Statutes of 2004."⁵

16) ***The California Reparations Report, California Task Force to Study and Develop Reparation Proposals for African Americans Final Report, 2023***

[Full Report - The California Reparations Report - Final Report - AB 3121 - California Department of Justice; https://oag.ca.gov/system/files/media/full-ca-reparations.pdf](https://oag.ca.gov/system/files/media/full-ca-reparations.pdf)

This report is over one thousand pages long. It may be viewed online at the link provided above. It is not included as an Appendix document.

The report crafted by the Task Force to Study and Develop Reparation Proposals for African Americans summarizes recounts the historical atrocities and them summarizes the harms caused by slavery and the lingering negative effects of the institution of slavery on descendants of persons enslaved in the United States, and more broadly society in California and the United States. The identified harms: racial terror; political disenfranchisement; housing segregation; unequal education; racism in environment and infrastructure; pathologizing the family; control over creative, cultural, and Intellectual life; stolen labor and hindered opportunity; an unjust legal system; mental and physical harm and neglect; and the wealth gap. Although manifesting differently and in some instances much more systematically, California Indians suffered all of these harms. The report sets out examples of other reparations frameworks. As one example it discusses the Indian Claims Commission established in 1946 and terminated in 1978, with remaining matters transferred to the Court of Claims as follows:

³ Presumably the referenced 55 non-federally recognized tribes are (or were) the groups listed as California Native American Tribes on the Contact List maintained by the NAHC pursuant to CA Government Code 65352. That list has been summarily withdrawn by the NAHC which is now engaged in development of regulations for inclusion on the list.

⁴ While this was the original purpose, extension of the purpose has broadened with increased emphasis on government to government consultation on land use and environmental planning in a manner that may significantly compromise the original purpose of the NAHC.

⁵ Government Code 65092 defines a California Native American tribe that is on the contact list maintained by the NAHC as a person entitled to be noticed by local governments for land use planning purposes.

“Historians and legal scholars have argued that the Commission did not go nearly far enough to address the centuries-long slaughter, displacement, and oppression of Native Americans. The Commission was not empowered to convey land back to tribes, yet its rulings have barred all subsequent claims, including those to repossess land. Nor did the Commission address issues such as the suppression of Native languages, religions, and forms of government. And even where a tribe was able to secure a financial award, the amounts were significantly reduced in various ways.” (Report, p. 29.)

17) **Examples of California Codes** that address needs of California Indians and non-federally recognized California Tribes:

a) **California Government Code §186**

Grants specified privileges to Indians defined as “persons listed on the California Indian Roll whose ancestors originated in the areas adjacent to” designated portion of public domain. The specified areas are within the aboriginal territory of the Yurok, Karuk, and Hupa Tribes.

b) **2023-2024 Supplemental Sport Fishing Regulations**

Regulations impose a fishing closure with an exception for “members of the Karuk Tribe listed on the current Karuk Tribal Roll.

c) **California Welfare and Institutions Code §306.6**

In the spirit of ICWA, a court may authorize a non-federally recognized tribe to participate in an otherwise closed juvenile dependency case to advance the tribal interests of the child’s.

d) **California Welfare and Institutions Code §16001.9**

The Foster Child Bill of Rights sets forth rights that all children of native heritage, regardless of membership in a federally recognized tribe enjoy, such as the right:

- To receive adequate clothing and grooming and hygiene products that respect the child’s culture and ethnicity.
- To be placed with a relative or nonrelative extended family member if an appropriate and willing individual is available. (This is also the first order of placement in the ICWA placement preferences).
- To participate in extracurricular, cultural, racial, ethnic, personal enrichment, and social activities.
- To attend religious services, activities, and ceremonies of the child’s choice, including, but not limited to, engaging in traditional Native American religious practices.

In addition, the Foster Child Bill of Rights sets forth a host of additional ICWA rights that apply when it is known or there is reason to know the child is an Indian child, that is, a member or eligible for membership in a federally recognized tribe and the child of a member of a federally recognized tribe.

18) *Summary Report, California Consultation Meeting, 1991*

Summary of a 1991 statewide consultation meeting with California Indian tribes and organizations convened by The National Indian Policy Center Planning Office. The report summarizes the major California issues identified and is only one of many such efforts that repeatedly highlight numerous continuing issues and problems faced by California Indians.

19) *ICWA Inquiry Chart*

An example of how comparatively subtle but precise language can impose significantly different legal rights and duties.