

**EMPOWERMENT IN AN ERA OF SELF-DETERMINATION:  
THE CASE OF THE WASHOE TRIBE AND US FOREST SERVICE  
CO-MANAGEMENT AGREEMENT**

by

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## **Abstract**

*Tribes and the U.S. Government have entered into co-management agreements to accommodate tribal interests in regaining access and reasserting traditional practices on ancestral lands that were lost during colonization. While some Native Americans have continued to fight court battles to regain ancestral lands, others have sought negotiated agreements wherein they serve as the principal managers and caretakers of public resources. One such agreement is between the Washoe Tribe and the U.S. Forest Service in the Lake Tahoe basin. The implementation of the co-management agreement allows not only access to ancestral sites but also the restoration of traditional uses, so it is more reflective of the Tribe's own needs and culture. The Tribe's goal is to help preserve its rich cultural heritage and historical relationship with Lake Tahoe, while reintegrating traditional ecological knowledge that evolved with this ecosystem for over 9,000 years. The research provides a multi-dimensional understanding of how the co-management agreement emerged, the negotiation process, and the end result. Further, it explores implementation of the agreement from the tribe's perspective to better understand what the co-management agreement provides to tribal members that they did not already have and how the Forest Service has changed local forest management and consultation practices with the tribe as a result of the agreement. Finally, this research examines what co-management does not change to better understand its limitations in addressing the needs of tribal communities.*

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## 1. INTRODUCTION

Decisions affecting use and allocation of natural resources involve diverse interests and values. Unfortunately, diverse interests and values commonly give rise to conflicts that lead to litigation. Such scenarios become more complex when Native American traditional values and uses conflict with those of the dominant society in the United States. In response to the dilemma, government resource agencies are improving relationships by fostering participation and collaborative decision-making in natural resource management. One approach involves restructuring top-down decision-making and decentralizing power through co-management.

Co-management agreements can be designed to restore or maintain resources that are culturally important to Native Americans. If constructed properly, such agreements can not only be beneficial to Native Americans, whose cultures are endangered due to limited access to sacred sites and gathering areas, but also to other stakeholders impacted by degradation of lands.

The idea of a co-management agreement is not new to the U.S. government (Pinkerton 2003). However, the agreement established between the Washoe Tribe in the Lake Tahoe basin and the U.S. Forest Service was a novel application of this idea to an entire land base. Previous co-management agreements in the United States focused on resources such as fish and wildlife. This distinction is important because of the centrality of land to tribal culture. This research explores implementation of the agreement from the tribe's perspective and whether the tribe has gained a sense of empowerment through the agreement. The research uses a participatory approach by building capacity within the

tribe to evaluate their own levels of empowerment and implement outcomes that further empower the tribal community.

The purpose of this research is to determine the extent to which the co-management agreement between the Washoe tribe and the U.S. Forest Service truly empowers tribal members in ways that lead to the reintegration of traditional practices and sustainable connections to ancestral lands. The research interest stems from a desire to address the lack of tribal trust lands to effectively create and implement tribal conservation programs to address community sustainability, and the lack of representation at the federal level to change this situation. Effective co-management agreements could restore Native American connections to such lands without changing ownership patterns. Also, considering the limited resources available, federal-tribal partnerships can provide a way to leverage limited resources. Finally, understanding empowerment as a developmental process will help the Washoe tribe and others enhance the effectiveness of co-management agreements, as well as help to create a model for tribes and agencies to follow.

### **Methodology**

The research involved a participatory approach. I lived and worked with the tribal community for three months during the summer of 2003. During this time I attended community and governmental meetings, interviewed tribal members, tribal staff, and Forest Service representatives, and participated in restoration efforts and cultural practices. I collected information through semi-structured, personal interviews and field visits. My review of government documents, published materials, and archived



interviews developed a greater historical context and supplemented input received directly from members of the Tribal Government and the community.

### **The Importance of Ancestral Lands to Native Americans**

Native American cultures are strongly tied to the lands from which they have arisen. The significance of land to tribal communities extends beyond an economic value. Foremost, land is important to the physical, emotional, and political well-being of tribal communities and is therefore necessary to ensure a tribe's ability to survive in the future. It is also evident that the attachment extends beyond reservation boundaries onto ancestral lands that are not officially recognized or federally protected in the interest of tribal needs. Loss of ancestral lands has had devastating impacts on tribal identity because essentially the land defines the people. As noted by Native American activist Vine Deloria:

Traditional life with its ceremonial and ritual richness is partially dependent upon the continued strengthening of tribal governments since without a protective shield (tribal trust land) preventing intrusions, many Indian communities would not be able to practice their customs on terms satisfactory to them (Deloria and Lytle 1983: 78-79).

Modern Native American identities hinge on their retention or reconstruction of a home base, perhaps because displacement was so common and so devastating. Whether a tribe has a reservation is a distinguishing feature among contemporary Native Americans (Blu 1996). Native Americans that maintain access to and control of ancestral lands have a stronger cultural identity than those who do not. Native Americans that have lost connection have been, more or less, absorbed by the dominant culture. Also, a land base provides the means for tribes to exert their sovereign authority to determine and

implement the policy priorities of their communities. To ensure cultural survival, today Native Americans more and more are striving to place land in trust (McCoy 2002).

Most Native Americans relinquished claims to their ancestral lands when they entered treaties with the United States government. As part of the treaties, Native Americans also gave up their semi-nomadic, subsistence lifestyles and tried to adopt Euro-American agrarian practices. The adoption of foreign practices has often resulted in the loss of native customs that were tied to the land (Lewis 1994). While some tribes are contesting violated treaty agreements, others have entered stewardship and co-management agreements with the federal government. In trying to reassert cultural practices, many tribes have approached the federal government regarding access to public land. By focusing on access and management rather than ownership, some tribes have begun to reclaim ancestral use of lands.

## 2. HOW WE GOT HERE – A BRIEF HISTORY OF AMERICAN INDIAN POLICY

Three Supreme Court decisions known as the “Marshall Trilogy,” named after presiding Chief Justice John Marshall, have formed a foundation for federal Indian law. The first of these cases, *Johnson v. McIntosh* 8 Wheat. 543 (1823) held that the U.S. Congress had plenary power over Indian affairs based upon “the Doctrine of Discovery”. Under this legal theory, indigenous people lost their rights to “complete sovereignty as independent nations,” surrendered their aboriginal title to the United States, and retained only a right of “occupancy” of their former ancestral lands (Getches 1998). The federal government took this to mean that treaties made with Indian nations did not recognize Indian nations as free of U.S. control. According to the U.S. government, Indian nations were “domestic dependent nations” subject to the government's absolute legislative authority (Getches 1998). Federal-Indian relations evolved from the doctrine, which has restricted tribal participation in decision-making, especially in self-determination. The second case, *Cherokee Nation v. Georgia* 30 US 1 (1831), established a trust relationship in which the U.S. has a duty to provide certain benefits and services for tribes and people. In the third case, *Worcester v Georgia* 31 US 515 (1832), the Supreme Court ruled that tribes were under the protection of the federal government and that Congress, and not the states, had plenary, or overriding power, regarding tribes (Getches 1998). Decided during a bitter period when non-Natives were trying to seize Cherokee lands, these three cases were built upon racist stereotypes invoked to justify the dispossession of indigenous peoples (Williams 2005).

Over the past 180 years, through colonialism and gradual encroachment by non-Natives, Native Americans have lost access to sacred sites and areas of ancestral use. The worst assault in recent times occurred between 1887 and 1934 when Indian trust lands were reduced from 138 million acres to 48 million acres (McCoy 2002: 422). Today, almost half of the lands in tribal trust are “desert or semiarid and virtually useless for agriculture, pastoral and other subsistence purposes” (McCoy 2002: 422). Such realities have led to the loss of many indigenous cultures throughout North America. One scholar has described the impacts of colonialism and cultural genocide as “self-debasement, alienation, loss of cultural identity, dependency, and internally directed hostility” (Serrano-Garcia 1984: 175). These injustices occurred initially through broken agreements but have been perpetuated through federal land management policies and procedures that fail to recognize or adapt to Native American cultural norms.

### **What to Do with the Indian – Eras of U.S. Indian Policy**

The tribal-federal relationship that exists today has evolved over a long period of time. The legal framework for this relationship originated in the early years of the founding of the United States as a nation. The Indian Commerce Clause, (Article I, Section 8, Clause 3) of the U.S. Constitution provided Congress with the power to regulate Indian commerce (Mitchell 1997: 17). Through the passage of the Indian Trade and Intercourse Act of 1790, Congress authorized the Federal government to negotiate treaties with Indian Nations. Under this act, Native American land could not be sold or relinquished without federal approval. The tribal-federal relationship can be tracked along approximately five more periods: the Removal Era, the Era of Allotment and Assimilation, the Reorganization Era, the Termination Era, and the Era of Self-

determination (Mitchell 1997). Each period will be described below along with its effect on Native Americans and their ancestral lands.

### *The Removal Era*

The Removal Era began in the 1830's and consisted of relocating Native Americans to confined reservations (Mitchell 1997: 19). In some cases Native Americans were forced westward in order to avoid conflicts with an ever-growing stream of settlers that wanted land to cultivate. As a result, many Native Americans were forced to move great distances from their ancestral lands or live in fragmented areas of their former territories. In addition, some Native Americans were forced to share reservations with other tribes. In most cases, Native Americans were shunted into arid, rugged, and unproductive regions. Many tribal efforts at repatriation attempted to remedy harms that were induced by the removals.

The U.S. initiated treaty agreements with tribal nations in order to maintain peace while pursuing a policy of expansion. War with Native Americans was very costly to the U.S., as some Native Americans were relentless and refused to surrender (Getches 1998). Whenever possible the U.S. would offer a treaty in exchange for peace. In the process, Native Americans granted or forfeited large tracts of land and natural resources to the government in exchange for guaranteed property and resources. The 389 treaties entered between the United States and tribes recognized tribes as sovereign entities separate from states and committed the U.S. to trust obligations (Fixico 1998: 176). As part of most treaties, the federal government reserved land for Native Americans to maintain their customs and traditions apart from Euro-Americans. Most tribes entered into treaties in exchange for protection from encroaching settlers and to secure land rights to continue

their life-ways. Other tribes were forced to sign treaties under the threat of death, while still others eventually surrendered after losing much of their land, lives, and resources to white settlers.

Treaties were signed under the assumption that the U.S. would honor them, allowing Native Americans to survive in perpetuity and continue to practice their traditions in peace. For example, one treaty promised that, “the land on which you live will be your own and when you die it will be your children’s...” (McCoy 2002: 433). Unfortunately, many treaties were broken as the desire for land and resources became insatiable. The U.S. Congress assumed plenary power over Indian affairs, meaning that it could eliminate treaty rights and other established documents at will. Treaties were the only recourse for Native Americans to maintain access to land during this period. Tribes that refused to sign treaties with the U.S. government remained unrecognized, even today. Although treaties extinguished tribal land rights and provided minimal benefits, those benefits would later prove to be critical to sustaining Native American culture (Getches 1998). For the most part, treaties continue to be contested in courts today, with tribes seeking interpretations based on how Native Americans would have understood them at the time of signing (Getches 1998).

### *The Era of Allotment and Assimilation*

The Era of Allotment and Assimilation that occurred from 1871 to 1928 continued the erosion of tribal land claims (Mitchell 1997: 22). The Removal Era ended in 1871 when Congress passed legislation that declared tribes were no longer regarded as independent nations (16 Stat. 544, 25 U.S.C. 71). Under the Dawes Act of 1887, the first legislation passed during the era, reservation lands were divided and allotted to Native

American families in order to assimilate into the new agrarian culture that was quickly overtaking the continent. Under the Act, the male head of every household was to receive 160 acres and any male over the age of 18 was to receive 60 acres. The land was to remain in trust for a period of 25 years before states would be allowed to tax the land. While small parcels remained in trust for Native Americans, land in excess was sold to settlers, and was no longer considered Indian Country.

Even more devastating than the loss of land were the social impacts of allotment on the communal structure of Native American societies. Allotment had deleterious and cumulative impacts on the social well-being of Native Americans due to communal dependence on land. As recognized by Native American scholars,

“The blow was less economic than psychological and even spiritual. A way of life had been smashed; a value system destroyed. Indian poverty, ignorance, and ill health were the results. The admired order and the sense of community often observed in early Indian communities were replaced by the easily caricatured features of rootless, shiftless, drunken outcasts.” (McCoy 2002: 449)

Because Native Americans are culturally dependent on common land, private allotments destroyed communal living. The allotments required tribal members to adopt an individualist perspective with self-interest in one’s own share of land. Also, much of the land that was allotted to Native Americans was marginally productive and difficult to support even a subsistence lifestyle. As a result, tribal members who were unable to make a living sold much of their land (Lewis 1994). In addition, inherent flaws in the policy required land to be passed equally to heirs. With each generation, the allotted land became further fractionalized among descendants. Eventually the land’s value to each descendant was worth pennies (Getches 1998). Allotment was the federal government’s attempt to assimilate Native Americans into Anglo culture by privatizing and diminishing

the Native American land base. In addition, allotment led to a chaotic checkerboard ownership pattern that violated Native American rights to live separate from Anglo society. During the period of Allotment, Native American landholdings decreased from 138 million acres to 48 million (Mitchell 1997).

During this Era, Congress's solution to the "Indian problem" was to "introduce among the Native Americans the customs and pursuits of civilized life and gradually to absorb them into the mass of our citizens" (McCoy 2002: 447). Programs initiated during the allotment era were designed to convert Native Americans into farmers, in hopes that Native Americans could earn a living according to European standards. Missionaries were also hired by the government to Christianize Native Americans and teach "proper" beliefs. During this period, Native American children were removed from the home and placed in boarding schools in hopes that they would forget their cultures and traditions, and eventually move to the cities to seek jobs (Adams 1995).

### *The Reorganization Era*

In 1934, the Indian Reorganization Act (IRA) repealed the Dawes Act and marshaled in the Reorganization Era (USDA, 2000). Although it was purported to allow for tribal self-determination, it essentially asked Native Americans to forfeit many sovereign rights in return for land that was lost during Allotment. In order to be classified as an IRA tribe, tribes were required to adopt appropriate constitutions and bylaws. Once organized, a tribe would have vested powers to regulate its affairs and operate its own governmental system. Not all tribes strictly followed the provision; hence the diverse tribal government structures in place today. Ultimately, the Act was not a pathway to self-determination. The Secretary of Interior still retained discretion over Native



American affairs. Many Native Americans felt that it gave the illusion of self-governance, since federal officials handpicked favored tribal leaders. Also, many Native Americans felt the Act was disguised as assimilation since it ultimately led to the political integration of Native American communities. As such, many traditional Native Americans resented the IRA for substituting tribal traditions for “white man’s law” and Anglo government structures (Getches 1998: 199).

Unlike immigrants, most Native Americans were still unwilling to integrate into Anglo society, or accept Anglo forms of government. Ironically, the federal government felt previous programs to assimilate Native Americans had failed by allowing them to maintain a special relationship as sovereign nations (Getches 1998). In addition, social and cultural isolation on reservations enabled tribal communities to maintain their traditional lifestyles apart from the surrounding white culture. Despite past failures, the federal government was still determined to integrate tribal communities into mainstream society.

### *The Termination Era*

The end of the Reorganization Era in 1945 gave rise to the Termination Era. During this era Congress intended to terminate the special relationship established with tribes by ending federal trusteeship. In reference to Native Americans, U.S. Senator Arthur V. Watkins, Chairman of the Indian Subcommittee expressed that:

“We have arrived at the point where we do not recognize now within the confines of the United States any foreign nations. You have become citizens of the one nation. Ordinarily the United States does not enter into treaties \*\*\* between any of its citizens and the Federal Government. \*\*\* So it is doubtful now that from here on treaties are going to be recognized where the Indians themselves have gone to the point where they have accepted citizenship in the United States and have taken advantage of its opportunities. So that the question of treaties, I think, is going to largely disappear.”

Under provisions of the Termination Act of 1953, tribes would fall under state jurisdiction, thereby allowing state taxation and criminal prosecution. Federal health and education programs were also ended. Initially, Congress passed HCR 108, which terminated Native American rights for 109 tribes. Public Law 280, passed in 1953, allowed various states to assume responsibility for tribes within their boundaries. Initially, the states were limited to California, Minnesota, Nebraska, Oregon, and Wisconsin. However, once states attained jurisdiction, it became apparent the costs of maintaining tribal communities did not meet the expected benefits of taxation, especially those tribes that occupied remote areas (Getches 1998). Other states joined the original five but under limited state jurisdiction and at the approval of both the state and tribes. During this era, hundreds of tribes lost sovereignty, which reminded many tribal nations of the reality of Congress's plenary power.

### *The Era of Self-Determination*

During the eras of removal, allotment and assimilation, reorganization, and termination, tribal communities suffered from severe social and economic depletion. Federal policies undermined tribal self-determination by fostering dependency on the federal government. Beginning in the 1950s, Pan-Indian efforts were organized to reclaim Indian sovereignty and self-determination. By the early 1960's, efforts marked the beginnings of the period that became known as the Era of Self-Determination, which continues today (Mitchell 1997). For many Native Americans, self-determination focuses on recovering lost land and controlling resources set forth in the body of original treaties. For others, self-determination centers on the individual and collective struggle for Native Americans to be recognized by the larger society as culturally distinct and capable.

In many cases, tribal issues were raised through radical protest and outright defiance in order to raise awareness. Eventually, public sympathy placed pressure on Congress and the President to push legislation that would favor Indian self-determination.

In 1970, President Nixon sent a message to Congress, stating:

“It is long past time that the Indian policies of the Federal Government began to recognize and build upon the capacities and insights of the Indian People. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what Indians themselves have been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and decisions” (Mitchell 1997).

Since the end of termination, tribes have worked diligently towards self-determination. Efforts focus on a broad spectrum of issues such as reforming the Bureau of Indian Affairs, establishing tribal courts, preserving language and culture, assuming control of state programs, establishing ordinances and tribal codes, developing economic and educational opportunities, and rebuilding tribal land bases (Mitchell 1997: 30-31). Native Americans continue to develop the knowledge and technical expertise to utilize their trust status in favor of “protecting their natural resources, preserving their lands, and reminding the federal government of its obligations as established in treaties” (Fixico 1998: 176).

The cumulative impacts of colonization led to the disenfranchisement of tribal communities. Today, conditions on tribal reservations remain extremely poor – similar to formerly colonized countries of the “Third World”. Unemployment rates are extremely high, and many families live well below the poverty line. The term “fourth world country” has been used to describe tribal reservations that lie within but are distinctly separate from the wealthiest nation on the planet (Griggs 1992).

## **Restoring Tribal Self-Determination**

Restoring tribal self-determination has created far more alternatives for Native Americans. No longer are Native Americans on the defensive trying to protect themselves from further erosion of tribal trust lands, instead they are on the offense, proactively seeking rights established by treaties, repatriation of lands and recognition of tribal sovereignty that were never ceded to the United States. Since 1980, 4 million acres have been added to 52.6 million acres of tribal trust lands. Tribal governments are also developing their own tribal programs in order to develop further independence. Native Americans are not waiting for the federal government to provide them with policies. For instance, tribal environmental programs and regulations on trust lands have increased substantially over the past ten years. In fact, some of the regulations are more stringent than federal regulations, and are more accommodating towards tribal customs and traditions. In addition, tribal communities are striving to gain economic sovereignty and security through business ventures, including casinos and resorts. As a result, tribal communities have the financial freedom to assert self-determination, especially to hire the experts to litigate, lobby, and organize. Also, with higher education in the legal and economic systems of the dominant society, Native Americans are positioned today to demand and negotiate better processes as well as outcomes.

Despite progress, there remain many limitations. “Under federal law, tribal sovereignty is not absolute, but rather is subject to certain limits placed on Native Americans by Congress and the federal courts” (National Environmental Justice Advisory Council Indigenous People's Subcommittee 2000: 7). For example, the principal avenue for adjudicating Native American land disputes was the Indian Claims

Commission Act, passed in 1946 to allow tribes to sue the federal government for “past actions considered detrimental to their welfare” (Mitchell 1997: 25). In 1978 the Commission was dissolved with all pending cases transferred to the Court of Claims. As of 1996, out of the 166 claims filed since 1946, 133 cases remained unresolved.

More daunting is Congress’s assertion of plenary power over tribes, which constrains sovereignty. In the past, the Supreme Court has provided support for Native Americans on many issues. However, as that support has appeared to diminish in the Court’s recent decisions, Native American leaders have diversified their strategies for addressing conflicts. Concerns over diminishing their sovereignty has often made it difficult for tribes to collaborate with state and local governments or non-governmental entities, since tribes prefer to maintain a government-to-government relationship with the U.S. through dealings at the federal level.

The right to self-governance allows tribes a full range of rights including the right to regulate land that is held in tribal trust. Without a reservation, however, tribes have “little opportunity to assert their legislative, regulatory, or adjudicatory authority, and little opportunity to maintain an identity as modern nation states” (McCoy 2002: 443). One solution advocated by Native American activists is to place more lands back into tribal trust, especially lands that were subject to early treaties. This approach has had limited success and is often met with considerable resistance from the Anglo culture. For example, in 1980 the Secretary of Interior issued regulations (25 C.F.R. Part 151) to help guide the policy to transfer land into tribal trust. However, despite federal intent to provide land, there still remains a struggle to repatriate what was promised or lost years ago. Acknowledgement of Native American sovereignty by the federal, state, and local

government is critical in order to provide security for tribes to control their own destiny and assure some form of accountability. Likewise, states must be willing to recognize the sovereign status of the tribes. Memoranda of Understanding can be used as tools to define state and Native American interests.

One federal policy driving self-determination today is Presidential Executive Order 13084, *Consultation and Coordination with Indian Tribal Governments*, promulgated under the Clinton administration. This Executive Order requires all federal agencies to develop a consultation process with tribes. To date, Native Americans and federal agencies have interpreted the Executive Order broadly and inconsistently. Native Americans generally interpret consultation to mean “consensus” while federal agencies have interpreted it to mean “coordination” (National Environmental Justice Advisory Council Indigenous People's Subcommittee 2000). In the process of implementing the policy, federal agencies were encouraged to institutionalize the consultation process by developing trust and on-going working relationships with tribes to build a better process of understanding and cultural sensitivity.

One of the challenges of tribal self-determination lies in reconnecting tribal members to traditional sacred sites located on public lands outside of reservations. The American Indian Religious Freedom Act of 1978, the Archeological Resources Protection Act of 1979, the Native American Grave Protection and Repatriation Act (NAGPRA), and Executive Order 13007 were designed to address the protection of and access to Native American Sacred Sites. However, each policy explicitly states that it does not create any right or trust responsibility. E.O. 13007 directs federal public land managers to, “(1) accommodate access to and ceremonial use of Native American sacred

sites by religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.” However there are no teeth behind the policy to ensure full protection of tribal cultural resources (Burton 2002).

Moreover, tribal-federal collaboration to protect sacred sites is often difficult. From the agency’s perspective, many Native Americans refuse to provide information regarding the location or significance of such sites, making them difficult to manage or protect (McKeown 1997). Also, federal agencies sometimes run into separation of church and state contests from user groups whose access is threatened. From a Native American perspective, some information is proprietary according to tribal customs and laws. Because of past abuses of sites, Native Americans are also hesitant to provide information unless confidentiality can be assured, which raises issues under the Federal Freedom of Information Act (Roberts 2001).

Many conflicts exist over land use and the allocation of natural resources. There are unrecognized tribes that are still seeking repatriation of land along with federal recognition. Some of these tribes continue to be unrecognized by the federal government. How these conflicts will be dealt with will largely depend on the attitude of the American public and the continued persistence of Native Americans. The difficult nature of placing land into trust today creates barriers to finding common ground to address the dispossession of native peoples and the resulting social problems. In addition, there are numerous land claims cases, as well as issues focused on access, use, equal protection, and environmental justice. Many of these disputes will only be resolved through years of trust-building in addition to reconciliation of the underlying causes of the mistrust.

Because conflicts are likely to increase between tribes and federal and state governments, alternative strategies should be sought to reach mutually agreeable solutions. Sharing resources and collaboration may serve as a way to overcome strained budgets and staff. The development of innovative institutions, agreements and practices that incorporate the strengths of both management systems can increase the effectiveness of collaboration. Agreements should be sought and negotiated that recognize Native Americans as the original stewards of the land and that value traditional ecological knowledge and customs. Co-management agreements are one example. Agreements can be structured in such a way that will foster trust and enable tribes and federal governments to reach an acceptable solution.



### **3. TRIBES, PUBLIC LANDS AND CO-MANAGEMENT**

Much former tribal ancestral territory is now public land under the jurisdiction and management of the U.S. government. The Bureau of Land Management, National Park Service, Fish and Wildlife Service, and the U.S. Forest Service are charged with managing 632 million acres of public lands, primarily in the West (Loomis 1993). While agencies have changed from single-focused management of natural resources, federal land management agencies still pay greater attention to commodity and recreation-based uses valued by Anglo-Americans. As a result, Native American demands are seen as less important than other demands. The Multiple-use and Sustained Yield Act is an example of a federal policy that negates Native American values by privileging economic and recreational goals. Agencies may have small staffs and budgets to manage tribal issues however the agencies still tend to make decisions that favor resource users who place the greatest demand on the agency, often negating tribal interests (Crow and Sutton 2001). This situation is exacerbated by the recruitment of experts who represent these uses in public agencies, but have limited understanding or experience with Tribal governments and communities (Kennedy and Thomas 1995).

Complicating these pressures, treaty-tribes consider themselves equals with the U.S. government and expect to be consulted on a government-to-government basis, which requires meetings between equivalent governments as well as equivalent ranking officials. In addition, sovereignty issues often make it difficult for tribes to collaborate with state and local governments, or non-governmental entities, since tribes prefer to maintain a nation-to-nation relationship only with the U.S. government (Sutton 2001). Provided this status is honored, tribes are more willing to participate in collaborative

processes. However, many federal agencies still treat tribes as just one of their many publics, especially in conventional public involvement processes required by law.

Because of historical relationships between the federal government, Native Americans have great difficulty trusting most federal agencies (Crow and Sutton 2001). Native Americans particularly have difficulty trusting federal land management agencies that are responsible for managing ancestral lands, especially when such agencies spend only minimal effort at tribal consultation or treat tribes as part of the general public. Most Native Americans respond to this lack of trust by simply not participating – which agencies often wrongly interpret as disinterest. Recent law regarding tribal consultation and sacred site protection has increased dialogue and opportunities for Native Americans to influence local land management decisions. More and more federal agencies are working collaboratively with Native Americans to protect ancestral lands and cultural practices (Yablon 2004).

#### **4. CO-MANAGEMENT POLICY AND TRIBAL EMPOWERMENT**

During the Era of Self-determination, Native Americans have been able to overcome centuries of oppression by successfully asserting sovereign rights and becoming significant participants in federal decision-making process. However, there are different degrees of tribal involvement and successes. One outcome that can help to determine the success of Native American efforts is empowerment. For the purpose of evaluating impacts on communities, empowerment may be defined as, “an intentional ongoing process centered in the local community, involving mutual respect, critical reflection, caring, and group participation, through which people lacking an equal share of valued resources gain greater access to and control over those resources” (Cornell Empowerment Group 1989).

Previous research has identified several conditions, processes, and outcomes that can promote and signify community-level empowerment (Zimmerman 2000). Conditions favoring empowerment include shared responsibilities and leadership, open government structure, tolerance for diversity, opportunities to participate in decision-making, and having access to resources. Processes that help communities to become empowered include learning decision-making skills, managing resources, and working with others. Outcomes of empowerment may include a sense of control, critical awareness, participatory behaviors, effective competition for resources, networking with other organizations, policy influence, organizational coalitions, pluralistic leadership, and enhanced skills in participation (Zimmerman 2000).

When evaluating empowerment, however, it is important to remember that it is subjectively determined. An evaluator cannot determine whether or not empowerment

has occurred based on general outcomes. Instead, it is important for the community to define empowerment on its own terms; hence the need to conduct participatory research. For the purposes of this research, the processes of co-management and the outcomes are examined from a community-level to determine if empowerment has occurred.

Co-management provides tribes with a unique opportunity to potentially re-establish cultural ties and practices on ancestral lands that are currently in public ownership. Co-management is defined as “the sharing of power and responsibility between the government and local resource users” (Berkes et al. 1991: 12). Further, it involves a situation where “two or more social actors negotiate, define and guarantee amongst themselves a fair sharing of the management functions, entitlements and responsibilities for a given territory, area or set of natural resources” (Borrini-Feyerabend et al. 2000: 1). Some define co-management as a political claim to share management right and responsibility with the state (McCoy 2002). In the United States co-management can be used as a mechanism to acknowledge the government-to-government relationship between Native Americans and U.S. federal government. Native Americans can partner with the federal government with “authority”, rather than being treated as equals with other resource users.

Co-management generally includes “a process by which a site is identified, acquired and declared; relevant institutions are built and/or enter into operation; plans are designed and implemented; research is undertaken; and activities and results are monitored and evaluated, as appropriate” (Borrini-Feyerabend 1996: 8). Like most citizen participation processes, the normative goals include: fairness, quality, wisdom, efficiency, and stability. An additional purpose is to increase democracy and efficacy.

Outcome goals include better management decisions and a better management climate. The difference between co-management and other forms of participatory decision-making is that resource users are directly involved in developing the agreement and in producing the outcomes, beyond an advisory role (Raik 2002).

Co-management entails the combination or integration of two separate management systems, usually defined as community level and government level. Generally, community-level management in Indian Country is based primarily on self-regulation. It is decentralized where decisions are consensus-based and resource management is influenced by customary tradition and local knowledge of land (Pomeroy 2001). On the other hand, government-level management is characterized by centralized authority where enforcement is pursued under the authority of laws and regulations and where resource management is based on scientific data. Different worldviews and approaches to management by each system results in conflict. Co-management can serve to find common ground between these systems.

Co-management has been applied to a broad continuum of activities that are collaborative in nature. Reflecting the need to address a variety of contexts, a general model has not been widely instituted (Pinkerton 1989). As a result, many researchers argue that the term is increasingly being misused, which erodes the understanding and value of the term (Pinkerton 1989). Despite numerous attempts to define co-management, the term may be used to describe arrangements across a continuum from a one-way exchange of information, to a formal partnership, to a situation in which the local communities hold all the management power and responsibility (Carlsson 2005: 66)). Other terms commonly used in place of co-management, include, “joint management,”

“joint stewardship,” “participatory management,” “community-based management” and “collaborative management” (Ford 2002: 3). Of the numerous existing co-management agreements, each incorporates the following characteristics (Carlsson 2005: 67):

1. They explicitly associate the concept of co-management with natural resources management;
2. They regard co-management as a partnership between public and private actors; and
3. They stress that co-management is not a fixed state but a process that takes place along a continuum.

With these characteristics in mind, co-management agreements can be constructed to accommodate Native American access, use, and management of ancestral lands. More importantly, it can be used as a mechanism to prepare for Native American land claims. However, before co-management is used in such circumstances, it is critical to understand the fundamental elements of co-management that makes the agreement meaningful to Native Americans. Such elements must be understood and reapplied in order for co-management to be used effectively. For the purposes of this research, the Washoe Tribe - Forest Service co-management agreement is examined because it is an arrangement where there is shared decision-making authority and power (and not a situation that is simply “information sharing”). The remainder of the chapter focuses explicitly on this specific type of “co-management”, which is then analyzed in the Washoe case.

## **Theory of Co-management**

Historically, co-management agreements evolved out of crisis situations that resulted in conflicts between government and local communities. Co-management has been instituted in response to the failure of hierarchical resource management systems to protect common pool resources (Berkes and Folke 1998). Fisheries were among the first to implement such an agreement due to the unsustainable harvest of a common pool resource. To various degrees, fisheries co-managements have been tested worldwide. Pinkerton studied fisheries co-management for over two decades to better understand and define successful common pool arrangements. Through her studies, Pinkerton defined “complete co-management” to provide a useful template to measure “various less complete forms of co-management, and the barriers that limit them” (Pinkerton 2003).

In Canada, co-management agreements have also been examined. In recent years, co-management agreements have been popular between First Nations and the Canadian government (Spielmann and Unger 2001). It is anticipated that once aboriginal land claims are settled, there will be a significant redistribution of resource management authority (Berkes et al. 1991). Recognizing the dilemma, the Canadian government has used co-management arrangements as a precursor to the anticipated redistribution of resources that will result from aboriginal treaties that are still in the process of negotiation (Rusnak 1997: 6). The circumstances in which these co-management arrangements are being negotiated are much different than in the United States, where Native American treaty rights have long been established. In Canada, co-management provides a fair transition to what will eventually be mandated once treaties are resolved. The first co-management agreement in Canada, known as the James Bay and Northern Quebec

Agreement, was signed in 1975. The purpose of the agreement was to protect the environment and the Cree and Inuit subsistence lifestyle. Since this agreement there have been 15 cases of co-management (Notzke 1995).

In the U.S., co-management of wildlife has increased over the past two decades to address increasing citizen participation in public management and increasing interest surrounding human-wildlife interactions occurring across the landscape (Raik 2002). As a result, management strategies tailored to specific communities that require community participation and investment became increasingly popular (Raik 2002: 1). In addition, communities are seeking to reform government institutions that impose national mandates, with little or no regard for local customs. National policies frequently undermine local authorities and efficacy of management systems (Pomeroy 2001).

In recent years co-management agreements between the U.S. government and tribes have emerged over treaty disputes, where title to land or resources is contested. The first federal adoption of co-management arose in the late 1970s from the court case *U.S. v. Washington* 384 F. Supp. 312 (1974), in which appellate Judge George Boldt recognized the right of Western Washington tribes to participate in planning and regulating harvest of anadromous fish (Pinkerton 2003). The courts declared that Washington tribes had the right to half of the fish resources and access to all usual and accustomed fishing places. Furthermore, the tribes were permitted to participate in management decisions about the conduct of the harvest (Pinkerton 2003). This landmark case forced the state of Washington to co-manage salmon with the tribes. While this case demonstrates one form of co-management, it is focused on a wildlife resource rather than being land-based. Other examples of co-management involving indigenous people



include the co-management of caribou and migratory birds in Alaska and Canada. These co-management arrangements involve the management of specific wildlife resources, and are usually defined by subsistent treaty rights or result from the uncertainty of such rights. The Washoe case is unique in that it is focused on ancestral land absent of treaty ties.

### **Elements of Effective Co-management**

Co-management is a relatively new concept that has been the subject of experimentation around the globe for the past decade (Ford 2002: 4). Conceptually, case studies have been done to highlight the key elements that foster effective co-management agreements. Worldwide the majority of these studies examined co-management as an effective way to manage over-depleted resources among multiple parties. However, in Canada co-management agreements have been studied as an interim solution while First Nation treaty rights are negotiated. It is understood that land and resources are an integral part of the treaties. In these case studies, there is pressure and strong incentives for government to co-manage resources with stakeholders (Campbell 1996). This section focuses on the effectiveness of co-management, using previous case studies.

According to previous co-management research, elements of an effective co-management agreement include the devolution of power, a strong presence of social learning, shared expertise, and the legal protection and authority to enter into a co-management agreement (Berkes et al. 1991). The first element of an effective co-management agreement involves the sharing of power, i.e., where “all stakeholders engage in an active and meaningful manner, and hence have some influence over the outcome of the decision making process” (Ford 2002: 5). Determining whether

engagement is active and meaningful may be subjective, but this research assumes that it should include some delegation of power to the community. The effectiveness of co-management largely depends on the process. Effective co-management evolves from strong communication, transparency, and trust at all stages of deliberation and agreement. Most importantly, co-management must be adaptive and an on-going process that not only serves to address current problems, but also develops capacity to address future resource problems (Ford 2002). Co-management arrangements where power is not entirely shared and community involvement is limited, or does not meet community expectations, often result in increased conflict and distrust among parties (Ford 2002).

A second element is the responsibility of government to protect user rights and other legalities established by co-management agreements. If there is no precedent or legal jurisdiction to implement a co-management agreement, then it can and will be challenged. In addition, without the protection of rights, it is impossible for co-managers to be innovative in managing resources for fear of reprimand.

A third element is the provision of shared expertise. A true partnership with a government agency provides avenues where resources can be shared and exchanges can be made, depending on who is best qualified to accomplish the task (Berkes et al. 1991). Information must be shared in both directions in order for decisions to be reached.

A fourth element is the occurrence and maintenance of social learning. Social learning is defined as processes which transform social relations and generate less conflicting ways of addressing difficult joint problems ” (Pinkerton 2003). In many cases, social learning extends beyond the needs of the current agreement, leading to further

exploration of community needs and interests. Ultimately, this could foster future agreements and collaborations.

### **Perceived Benefits of Co-Management**

As detailed in the literature, the perceived benefits of co-management include reduced conflict, enhanced and comprehensive resource management plans, increased productivity of the area, but most importantly, a strengthened system able to adapt and respond to environmental changes (Ford 2002). Conflict is reduced by, “including stakeholders in a participatory process, where in theory, all have equal power” (Ford 2002: p.20). The process itself stresses negotiation rather than litigation. Co-management, as a form of governance, legitimizes representatives to act in the interest of the community. Each system can converge to be more productive and more mindful towards local protocols. Co-management can also serve to institutionalize participatory decision-making, even in the absence of common-pool resources.

Some other benefits that result from co-management include allocation of tasks, shared resources, linking different levels of organization, reduction in transaction costs, risk sharing, and power sharing (Carlsson 2005). Allocating tasks allows co-managers to share expertise, thereby increasing efficiency through specialization. For example, tribes have the historical knowledge of the area that could improve future federal management decisions. Likewise, shared resources reduce the overall costs incurred by one organization. For instance, in the Timber/Fish/Wildlife co-management agreement established in Washington, state agencies, tribes, and environmental groups contributed expertise and resources to the partnership. State agencies had staff and technical expertise to facilitate collaborative decision-making. Tribes had the “clearest legal right to protect

habitat,” which were established by the courts (Pinkerton 1992: 332). As such, tribes have a proprietary right to defend resources. Although environmentalists had the least clearly defined rights, they also had expert knowledge on lobbying, public outreach, and accessing both the media and the courts. Shared resources also build inter-organizational capacity that contributes to better comprehensive planning.

Co-management also has the potential to foster better networks, making agencies more responsive to tribal concerns. Information flows more readily as participants gain access to different levels of government bureaucracies and agency representatives. As a result, community concerns are “addressed at a more appropriate level” within an organization (Carlsson 2005: 72). The improvement of relations between organizations also helps to reduce transaction costs. Transaction costs of co-management refer to the “costs of measuring what is being changed and enforcing of agreements” (North 1997). Once the co-management evolves and matures, “users do not have to dedicate time and resources for solving conflicts,” since mechanisms will be in place, resulting in reduced transaction costs (Carlsson 2005: 72). Inherently, co-management serves as a long-term mechanism to alleviate conflicts. Co-management agreements entail the codification of rights and outline responsibilities of participants to identify and resolve conflicts constructively as they emerge.

Risk sharing is also a potential benefit of co-management. Risks associated with decision-making are distributed among all participants. Management systems that are monolithic, where one organization has sole discretion of the fate of resources, are more vulnerable than are polycentric systems (Low et al. 2003). Diversified decision-making spreads the responsibility to numerous actors to implement a plan, and fosters innovation.

Aside from participation, co-management provides outlets for the incorporation of traditional knowledge into planning. Without having a role in the decision making process, tribes become vulnerable to a non-inclusive imperialistic system that, thus far, has largely ignored tribal concerns. The degree of vulnerability can be determined by the availability of resources and the ability or entitlement of individuals and groups to utilize these resources (Ford 2002). Without access to resources, indigenous people do not have the “capacity to cope with and respond to external stress” (Ford 2002: 18). As a result, restricted access to resources can greatly impair the economic and cultural security of a tribal community. One of the main causes of vulnerability is a top-down management structure that results in political inequality. It not only inhibits access to resources, but also the ability to influence decision-making processes. Co-management has the potential to eliminate or reduce vulnerability by eliminating top-down management structures and incorporating local knowledge. In addition, participation on equal grounds in the decision-making process can “enfranchise those alienated by previous management structures.” (Ford 2002: 18). Increasing access to resources (political, economic, and social) enhances a community’s capability to respond, cope, and adapt therefore empowering local communities.

### **Limitations of Co-management**

Co-management agreements may not be suitable in all situations. In some cases they may actually increase conflict and reduce the likelihood of sustainable management. The limitations of co-managements occur when the conflict goes beyond “the resource in question and touches on fundamental differences in ideology, religion, ethnicity, or historical trust, then it is unlikely co-management will work” (Ford 2002: 24).

One limitation in implementing a co-management agreement is the differences in management styles that could result in decisional conflicts (Stokes 2003). If the co-management agreement has the flexibility to be designed and implemented according to Native American values, then it will empower Native American communities. A co-management agreement has the potential to further erode tribal values by emphasizing western science. Native American scholar Vine Deloria notes the fundamental difference between Western and Indigenous ways of life wherein, “Indians experience and relate to a living universe, whereas Western people, especially scientists, reduce all things, living or not, to objects for you to manipulate and exploit...” (Deloria 2000). If there are restrictions or guidelines on the co-management agreement, then limitations will arise.

A co-management agreement could limit tribal discretion on the design and implementation of management strategies. Further it could set up the Native community as appearing to need assistance or incapable of managing its own affairs. Historically, federal policies were influenced by Anglos’ perception that Native Americans are inferior or weak, hence the need for the established trustee relationship. Today, policies continue to promote such sentiments. Rather than approaching the issue as a proper entitlement, the federal government might initiate an agreement based on a perceived need to “save” the Native Americans. In addition, the co-management agreement could thereby become constrained by the worldviews of the predominantly Anglo land managers who are required to approve the management plans.

Continuing tensions between tribes and non-Native governments over jurisdiction could diminish the value of co-management agreements to tribes by limiting their exercise of sovereign authority. For instance, if a crime occurs in the co-management

area, the tribe would not have jurisdiction. For that reason, tribes have a strong incentive to favor strategies that can bring areas into trust status.

### **Challenges Associated with Co-Management**

One challenge to co-management is for participants to recognize the mutual benefits and strengths that each brings to the table. One challenge that may arise for governments is its mandate to protect resources for the public use (Stevens 1997). On the other hand, Native Americans may have a different use for the land that they wish to manage. It is important that the benefits of co-management are shown to the general public. Another challenge to implementing co-management is that the long history of colonialism and assimilation has induced dependency within tribal communities. These communities need to be empowered to regain authority over local resources. It will require years of trust-building and breaking down of false assumptions for tribes to be willing to co-manage resources.

Another barrier towards the development, implementation, and institutionalization of the agreements is the federal government's interpretation of the term co-management. As previously mentioned, there are various descriptions and definitions of co-management. One co-management agreement could provide tribal discretion, while another may provide very limited tribal involvement (Stevens 1997). As a result, the interpretations and assumptions made by various government officials may create confusion. The expectations may not be apparent to various parties involved. As a result, tribal and federal officials unsure of the boundaries of co-management may be reluctant to initiate one, despite potential benefits. Having examples of various agreements could provide a template for future agreements. Also, it could further identify tribal and federal

needs to create effective agreements by providing additional avenues and alternatives not yet explored. In addition, bureaucracies may seek “co-management” without any intentions of sharing power with tribal communities in order to look favorable in the public eyes. If power remains centralized or power differentials exist, or are perceived to exist, there will be no incentive to implement the agreement.

Limited funding presents a barrier to comprehensive land use planning. For example, in the early 1960’s and 1970s, the U.S. Office of Economic Development encouraged tribal governments to develop a comprehensive plan. Comprehensive planning is based on an inventory approach, that is, “what can you do with the resources that you currently have” (Jojola 2001: 307). Many well-intentioned plans are shortsighted because they rely on the limited resources currently available to tribes. The tribe may therefore develop a plan that is not fully comprehensive, which may ultimately fail to reach tribal and Forest Service objectives. The issue of funding is particularly difficult for tribes to address. On the one hand, they want to participate, but they are limited in staff, time, and resources. For example, an ongoing frustration of the Washoe Tribe is the frequency of agency meetings on various issues in the Tahoe Basin. The decisions will inevitably impact the tribe; however, the tribe cannot represent its interests at every meeting.

The federal government contends that if Native people want to increase their role in decision-making processes then they must also assume responsibility for continued program funding and economic development. However, Native control over programs and economic development are dependent on self-determination and self-governance. In the case of the Washoe Tribe, self-governance and self-determination do not withstand



outside reservation boundaries. So participating in a co-management agreement may create further burdens on the tribal government to increase funding in order to be able to participate, without receiving the benefits available to the tribes if the area were held in tribal trust. These benefits include having access to funds, jurisdiction, and the ability to profit from the resources. In the Washoe case, funding was acquired from the Environmental Protection Agency, however, long-term funding is not guaranteed, which will impact the overall long-term restoration of the watershed.

Another problem that may hamstring co-management is different communication protocols. For instance, tribal proceedings often frustrate “Western observers used to making on-the-spot decisions based on simple majorities. Consensus became the root source of Westerners’ frustration with tradition and deliberation” (Jojola 2001: 307). Federal agencies must accommodate different styles of communication customary to Native Americans. Developing more sensitivity for these communication differences is important to fostering effective relationships. The differences may in fact provide benefits to the Forest Service because it will aid in the long-term restoration of the co-management area.

Agreements between tribal and federal agencies are developed on a government-to-government relationship. The extent of involving members of the tribal community, especially elders, is based on the tribal governments’ values. Essentially it is left to the discretion of the tribal government. It is important for the community to be involved and informed on the developments of the agreement. Ultimately, the area is reserved for their interests and special use. Early involvement will ensure the area will meet community needs. Fortunately, Washoe Tribal Council members’ respect for traditional customs and

elder leadership led to many innovative programs. However, in a situation where the tribal government no longer maintains strong cultural traditions or ties to the traditional tribal community, the co-management agreement may not be seen as empowering.

The long history of mistrust makes it inherently difficult to implement a tribal-federal agreement, especially when either party is unable to trust each other's intentions. The tribe may have every incentive to withhold information on traditional knowledge and sacred sites, due to the historical misuse of information (McKeown 1997). While federal agencies are becoming sensitive to these issues, federal regulations are making it difficult to maintain tribal trustee relationships. A Freedom of Information Act request was recently challenged in court by an organization that believed the public had the right to information that the tribal government disclosed to a federal agency (Roberts 2001). Although the tribe had no intention of making the information public, the federal agency lost the case and the information was released. Due to these developments, it is important for federal agencies to understand and accommodate tribal needs to protect confidential information.

The Forest Service is authorized to provide "Indian gathering, hunting, and similar reserved rights while meeting its land and resource mission" (Mitchell 1997). However, to date there is no policy that mandates, directs, or even encourages the Forest Service to develop co-management or joint management with tribes. Joint and co-management continues to be an issue between the tribes and the Forest Service. "Tribes interpret co-management to mean co-decision making while others interpret it to mean shared management in the sense of sharing information and ideas on management actions. The Forest Service typically does not accept the tribes' interpretations (Ruppert

1997). The difference in interpretations has caused much confusion and frustration for tribes interested in initiating such agreements. The vague nature and the restrictions placed on agencies prevent such agreements from being explored and developed.

### **Empowerment Derived from Co-Management**

Empowerment, in the context of co-management, is defined by Raik as “the process of gaining a sense of democratic participation in one’s community, particularly a sense of ownership about and influence over important events and outcomes in one’s own life” (Raik 2002: 5). Empowerment is a complex concept since it can have various meanings depending on the circumstances and people. If developed and implemented properly, co-management can empower people and local communities to become central in decision-making processes. In order for empowerment to result, the process must be “flexible to cope with and adapt to stress in a responsive manner where local people have a participatory role in management” (Blaike et al. 1994: 16).

Researchers cite empowerment as an outcome of both capacity building and participation in decision-making (Raik 2002: 5). The relevance of co-management for tribal communities is that too often their capacities go unrecognized, unvalued, or unexercised by the dominant society. As a result, tribal communities become disenfranchised. Weak social networks, due to federal policies, limited resources and lack of participation in decision-making inhibit the use of existing capacities. Under the right circumstances, community capacities can be re-established. While there is no guarantee that empowerment will result, the following are characteristics of processes that result in empowerment (Viswanathan et al. 2003: 10).

1. A rethink of the logic for management and subsequently a change in the knowledge base for management.
2. A major restructuring of the institutional and organizational arrangements supporting management.
3. A substantial change in attitudes from both governments and communities towards their role in such arrangements.
4. Aspiration from the community and government to proceed along this avenue.
5. Capacity-building at several levels both within governments and community.

Capacity-building can lead to empowerment. For example, a community can increase its communication capacity, therefore enabling better individual participation, which empowers the community to act accordingly. Importantly, co-management is a cyclical process that requires engagement over time in order for empowerment to occur. As such, “the process has a reinforcing character that provides opportunities for increasing capacity, which leads to empowerment, and in turn enables continued action in co-management” (Raik 2002: 9).

Increasing community capacity has profound effects. Community capacity is developed through collaboration. Collaboration in a community context leads to social learning, which enables people to “share diverse perspectives and experiences to develop a common framework of understanding and basis for joint action” (Raik 2002: 9). In order for social learning to occur there must be “open communication, diverse participation, unrestrained thinking, constructive conflict, democratic structure, multiple

sources of knowledge, extended engagement, and facilitation” (Raik 2002: 9). Increased community capacity results in feeling of ownership in the co-management process, “leading to the development of relationships, social norms, and unity of purpose, all which add to the community’s stock of social capital that empower people” (Raik 2002: 9).

Individual empowerment occurs when “knowledge and skills fosters an individual’s confidence and feelings of competence to participate in collaborative action” (Raik 2002: 10). Increasing individual capacity fosters an individual’s sense of “ownership, community, common purpose, and competence” (Raik 2002: 10). The value of empowerment in the co-management process is tremendous. Characteristics of empowered people greatly enhance the effectiveness and efficacy. Empowered people have a sense of self-determination, have a sense of meaning, have a sense of competence, and finally have a sense of impact (Quinn and Spritzer 1997: 5).

### **Incorporating Traditional Ecological Knowledge**

One of the greatest benefits, yet at the same time, greatest challenges inherent in tribal-federal co-management agreements is the use of traditional ecological knowledge. Traditional ecological knowledge is “a body of knowledge and beliefs transmitted through oral tradition and first hand observation” (Tsuji and Ho 2002). Co-management provides an opportunity for government agencies to gain valuable insights from the centuries-old tribal knowledge of local ecological systems, but there exist many barriers to capitalizing on this opportunity.

The Dene Cultural Institute has defined Traditional Ecological Knowledge as “a body of knowledge and beliefs transmitted through oral tradition and first-hand

observation ... With its roots firmly in the past, TEK is both cumulative and dynamic, building upon the experience of earlier generations and adapting to new technological and socioeconomic changes of the present” (Stevenson 1996: 281). Current land management strategies can benefit greatly from an understanding of the long-term ecological knowledge of aboriginal people. However, traditional ecological knowledge is not acknowledged by western science as valid despite 10,000 years of observation and rigorous testing (Hensel and Morrow 1998). While many of the practices remain undocumented due to tribal confidentiality and trust issues, it remains a valuable source of information for future restoration efforts.

The use and validity of traditional ecological knowledge by western scientists is hindered because of myths and contradictions held by non-Natives. One of these myths, the “ecologically noble savage,” portrays Native Americans and their cultures as living unchanged with time, in “harmony” with the environment. However, today’s reality is that Native Americans are no longer able to live as they once did because of many changes, including confinement on reservations with limited resources.

Another myth that diminishes the value of traditional ecological knowledge is that “primitive” people are “ignorant, superstitious, careless, and backward (Berkes 1999: 145).” As a result, knowledge held by them is not considered as valid by western standards. The third myth is the image of the “noble savage/fallen angel,” in which indigenous people must live primitively or they “become a threat to their environment and to themselves” (Berkes 1999: 146). According to this myth, indigenous people should not adapt or change to meet new circumstances and opportunities. Western

societies often promote this notion when advocating for people-free preserves to sustain biodiversity in ancestral aboriginal territories.

All of these misleading perceptions of indigenous people diminish opportunities for indigenous participation in decision making processes. As such, “it is critical to recognize indigenous resource management systems not as mere traditions but as adaptive responses that have evolved over time” (Berkes 1999: 161). As noted, “conservationists are acting as gatekeepers to a discussion table that does not have a place set for those whose homeland’s future hangs in the balance” (Berkes 1999: 152). Furthermore, “bridging the gap between the two positions in the debate depends on the feasibility of having indigenous peoples as participants and co-managers in conservation, instead of falling into the myth of “Noble Savages or Fallen Angels” (Berkes 1999: 153).

## 5. THE WASHOE TRIBE AND ITS CO-MANAGEMENT AGREEMENT WITH THE FOREST SERVICE

*“The Washoe’s survival in this land has depended upon communication with the environment. This came from extensive travel throughout the territory. Talking to the land, water, plants and animals was a common practice. Although this has been interrupted, the ability still exists. Some of the communication is on a one-on-one basis, but also extends into dreams. Our ability and freedom to travel was limited with the influx of pioneers. The land has been the victim as well as the Washoe People. We no longer can communicate and perpetuate this life as was done in older times. The result is what we now see. Recent history and the best efforts and motivation of the non-Washoe have only mitigated the decline. It is our belief that we need to be on the land.”*

A. Brian Wallace  
Chairman, Washoe Tribe  
April 19, 1999

In 1999, as an outgrowth of the Lake Tahoe Summit, the U.S. Forest Service and the Washoe Tribe signed a historic co-management agreement. This thesis examines implementation of the agreement in light of the unique history and culture of the Washoe people. The research explored the benefits and challenges of the agreement from the Tribe’s perspective, focusing on whether the Tribe has gained a sense of empowerment through the agreement. Relying on a participatory approach enabled the Tribe to define empowerment according to its terms. This research provides a valuable test of whether policies developed in the Era of Self-determination are benefiting tribal communities.

The agreement between the Washoe Tribe and the U.S. Forest Service to co-manage ancestral tribal land is a unique example that warrants analysis. The political setting and context to initiate such an arrangement differs significantly from previous arrangements. First, it is a land-based rather than resource-based agreement. Second, it stems from legitimizing different values and perspectives in land management. Finally, it



allows both parties to focus on restoring the land without addressing the more intractable issue of land ownership.

The idea of a co-management agreement is not new to federal agencies or Native American tribes. Rather, what is new is the idea of a land-based agreement. Further, it allows the Washoe tribe to incorporate traditional ecological knowledge in development of a wetland management plan. This chapter first describes the history of the Washoe people, and then analyzes whether the tribe has gained a sense of empowerment through the co-management agreement.

### **Washoe History**

The Washoe tribe has called the Lake Tahoe basin home for thousands of years, until the Europeans began to arrive in the 1850s. Historically the tribe spent its summers at Lake Tahoe and winters in the Carson Valley region of Nevada. Every summer, Washoe families returned to particular campsites along the lake. Although Washoe were very mobile, family hunting, fishing, and gathering areas were well established throughout the Tahoe basin based on kinship, familial ties through marriage, and lineage. In addition, family groups followed the ripening of vegetation by moving camps to a higher altitude as the season progressed. Families tended and harvested plants for special use to ensure sustainable use of the area. As such, “plants that were repeatedly harvested, dug, thinned, aerated, and even replanted, would be clearly recognized by others (Washoes) as cared for and thus requiring permission to use” (Lindstrom et al. 2000: 23).

The United States was granted sovereignty over Washoe territory in 1848 from Mexico by the treaty of Guadalupe Hidalgo. Although the treaty did not stipulate any former arrangements that Mexico had with the tribes in the territory, the U.S. assumed

title to the land as well as responsibilities to the tribes. White settlement began in Washoe territory when the Mormons arrived in 1849. Beginning in the early 1850's, "the area served as a major Euro American travel corridor containing a wagon road and later a railroad" (Lindstrom et al. 2000: 33). The Gold Rush intensified use of the area as timber was harvested and transported to Virginia City, NV to support gold mining. Washoe family camps were chosen as prime locations for white settlement, further displacing Washoe people.

By 1860, the Washoe tribe was reduced by 80% to a mere 500. Regardless of the intrusion, Washoe "continued their treks to the lake and carried on limited subsistence traditions in the wake of destructive Euro American industries such as logging, grazing, and commercial fishing" (Lindstrom et al. 2000: 35). Indian agents began to witness the demise in the Washoe living conditions as early as 1850. As Joanne Nevers, Washoe Elder, stated, "the Indians having been driven from their lands, and their hunting ground destroyed without compensation therefore – they are in many instances reduced to a state of suffering bordering on starvation" (Nevers 1976: 49).

During these changes, the Washoe attempted to maintain their traditions by working on "the fringe of Euro American settlement" (Lindstrom et al. 2000: p.35). As time passed resort industries moved into the Tahoe Basin further displacing the Washoe. Washoe maintained ties to ancestral land around Lake Tahoe by working as domestic laborer for loggers, dairymen, fisherman, and the resorts (Lindstrom et al. 2000). Washoe families earned labor wages while continuing to camp along Lake Tahoe. By the 1940's, subdivision development displaced most Washoe campsites from the Tahoe Basin, although areas in the vicinity of Incline/Third creeks were still used by Washoe people.

Washoe occupation on the fringe of towns eventually developed into settlements which would later become known as colonies, a name unique to Nevada tribal communities (Rusco: 1). Most non-Natives considered the colonies public domain; however, the Washoe considered the land their territory since it was never ceded. The Washoe requested a treaty in 1861 to observe their rights however the federal government had no need to negotiate a treaty because the Washoe were peaceful. Also the displacement of the Washoe happened so quickly that the federal government presumed that the Washoe tribe would become extinct.

By 1892, the issue had escalated. Supported by non-Natives, Washoe leaders, Captain Jim and Dick Bender, traveled to Washington D.C. to request land. Government officials offered land to the Washoe outside their territory, but nothing developed. Non-Natives were very sympathetic to the Washoe that were barely surviving on the fringes of towns. Under the 1887 Dawes Act, landless Native Americans had a right to establish homesteads. Attempts were made to make claims in Tahoe, but all claims were discounted since land was coveted in this area. Washoe began to file land claims in western Nevada. However, by the time land claims came through most of the productive lands were already taken by white settlers. Consequently, allotments in the pine nut hills were distributed to the Washoe. The Washoe valued these areas due to the reliance on the pine nuts for subsistence; however, it was impossible to live in the area. The allotments awarded to Washoe families had no access to water and were mostly comprised of rocky and mountainous terrain. In addition, white settlers frequently ignored allotment boundaries by cutting down the piñon trees for firewood. As a result, the Washoe continued to live on the fringe of towns.

The Washoe continue to seek reservation land for the tribe. The struggle for land ensued, with support of Nevada citizens. In 1915, the Washoe were awarded \$10,000 to purchase lands and \$5,000 to purchase farm equipment to support an agriculture lifestyle. The following year, an additional \$15,000 was provided to purchase land for the Washoe (Rusco). The funds went towards the establishment of the Carson and the Reno-Sparks Colonies. In addition, the Washoe tribe received 40 acres from the Dressler family, a sympathetic ranching family. In 1938, the Supreme Court ruled in *U.S. v. McGowan* 302 U.S. 535 that the Nevada colonies had status as Indian country. Over the years, the tribe has recovered more than 72,000 acres of its aboriginal lands. Today, the Washoe have five colonies: Carson, Dresslerville, Woodfords, Stewart, and Reno-Sparks.

The Washoe Tribe of the States of Nevada and California was formally organized under a constitution and by-laws ratified by its members December 16, 1935, and approved by the Secretary of Interior February 24, 1937 (U.S. Indian Claims Commission 1969: 1). The Washoe were no longer allowed to gather, hunt, or fish freely and were restricted to the colonies. In addition, the Washoe were prevented from practicing their customs that were described by Anglos as “heathenish,” “savage,” and “barbarous,” Subsequently, Washoe ceremonies, medicine, and games were outlawed. The local agency superintendent declared that, “Indians will never become civilized as long as they are permitted to follow old customs harmful to their advancement” (Nevers 1976: 81).

Today, the Washoe Tribe has four communities, three in Nevada (Stewart, Carson, and Dresslerville), and one in California (Woodfords). The Tribe has jurisdiction over trust allotments in both Nevada and California, with additional tribal trust parcels located in Alpine, Placer, Sierra, Douglas, Carson, and Washoe Counties (Washoe Tribe

2004). The Tribal Council is a “formally constituted governing body of the Tribe, entrusted with the responsibility to protect, preserve, and promote the ceremonial, religious, cultural, governmental and economic interests of the Washoe people” (Appendix C). The Washoe Tribal Council is composed of seven councilmen who shall be elected by secret ballot, three of whom shall be residents of the Dresslerville Colony, the other four represent tribal members at large. One of the Tribal Council members is elected to serve as Council Chair.

In April of 1948 the Washoe Tribal Council hired a lawyer to file a claim against the U.S. for the “uncompensated and unlawful taking of the Tribe’s ancestral land” (U.S. Indian Claims Commission 1969). The case was first heard before the Indian Claims Commission in December of 1954 however it took 20 years before the court ruled (Nevers 1976: 91). The court found that the Washoe tribe of Nevada and California is “entitled to a judgment against the United States for the full value of the lands so taken from it” (U.S. Indian Claims Commission 1969: 23). The court noted that it “was unmistakably clear that this process of exploitation and land seizure which was carried out by emigrants, miners, traders, settlers, railroads, and local and state governments, as well as by agents of the United States government itself, came about with full knowledge, encouragement, approval, and authority of the United States in furtherance of established national policy” (U.S. Indian Claims Commission 1969: 19). Despite the obvious taking of Washoe land and resources, the tribe was only awarded \$5 million. The settlement hardly represented a fair compensation for some of the most valuable land in the West, nor was it enough to address the damage to their culture. The Washoe tribe invested 70

percent of the money for the general welfare of the tribe, including education. The remaining 30 percent was distributed amongst tribal members.

Bob Frank, former Chairman of the Washoe tribe during the 1970's and 1980's had a vision for the Washoe people to return to Lake Tahoe. During this period, Brian Wallace, under Frank's leadership, developed a shared vision to reacquire Washoe aboriginal lands in the Tahoe Basin. Wallace also remembers being told of Washoe stories of Lake Tahoe as a young child. The stories and mentorship of Bob Frank provided Wallace with a strong sense of direction and obligations to move the Washoe agenda forward (Wallace 1997). In 1990, Wallace was elected to Washoe Tribal Council as Tribal Chair.

Until this time, the only opportunity that presented itself to reintegrate Washoe culture at Tahoe was a Washoe Cultural Center on Forest Service land at Lake Tahoe. The idea of a Washoe Cultural Center at Lake Tahoe began in 1951. The Washoe tribe, as Wallace described, had put all its eggs in one basket. In 1986, the Washoe Cultural Foundation, chartered by the Washoe Tribe and run by tribal members was founded to build support for the proposed Washoe Cultural Center (Wallace 1997). Early on, the Washoe people recognized it would be difficult to reemerge as leaders with authority over the use of Tahoe resources. The Washoe Cultural Foundation therefore took on a role in public outreach, and recruited famous and influential non-Native supporters such as comedian Bill Cosby and wealthy and influential Lake Tahoe residents.

In 1975, after President Nixon's pronouncement of Indian self-determination, the Washoe like other Native Americans sought new avenues for economic growth (Wallace 1997). Wallace noted that when non-Natives are writing the rules, "how do we survive?"

Native Americans perceive their job as “taking down the master’s house using the master’s tools.” The tribe became strategic in using the “master’s tools.” The tribe sought numerous agreements with federal, state, and local governments, government funding, particularly from the EPA. According to Wallace, the Washoe became “committed to working with the federal and state governments to protect wildlife habitats, maintain water quality and preserve the scenic value of Lake Tahoe” (Wallace 2002). Through this ongoing pursuit for cooperative partnership, the Washoe developed a stronger relationship with the U.S. Forest Service.

In 1994 the Washoe Tribal Council developed a Comprehensive Land Use Plan that incorporated a vision for “reestablishing a presence within the Lake Tahoe Basin and re-vitalizing Washoe heritage and cultural knowledge, including the protection of traditional properties within the cultural landscape and the harvest and care of traditional plant resources” (Lindstrom et al. 2000: 36). The Tribal Council, under the leadership of Chairman Wallace, proposed four fundamental objectives in the Tahoe Basin. The first was to re-establish a land base for the tribe. The second was to revitalize the cultural heritage of the basin from a native approach. The third was to apply Washoe stewardship of the land. Finally, the fourth was to reignite the Washoe trade and commerce that existed in the Basin before Anglo settlement. The Washoe Tribal Council immediately sought avenues to reach these objectives.

### **History of Land Use at Lake Tahoe**

Sustainability was a core Washoe value throughout its history. Measures were taken to ensure that the livelihood of future generations was not threatened by depletion of resources. For instance, harvesting was performed after seeds had matured. Women

collecting plants would shake the seeds onto the ground before removing them. If a plant or bulb was too small, it would be replanted. Also, as women collected bracken fern they were observed, “pushing budding rhizomes stripped from segments into the rich humus” (Lindstrom et al. 2000: 29). Washoe women acknowledged they were “giving something back” as they performed these functions. There was an unspoken rule of “take one, leave two,” which women abided by as they harvested (Lindstrom et al. 2000: 25). Thinning, removing debris and harvesting, all promoted new and stronger growth that the Washoe desired for making baskets, snowshoes, animal traps, and other utility items. The practices were acknowledged and taught at an early age and embedded in tradition. An imbalance of nature had major repercussions that warranted great respect through prayer:

“Young hunters and fisherman were thoroughly indoctrinated in the importance of leaving ‘seed’ for next year... it was drilled into all providers of food that from one pool with 5 only 2 fish could be killed. A female and two males had to be left as seed for next year. The practice was observed in game. So well established was this rule and so well observed that the white people merely took it for granted that the fish and game were just prolific without any means to perpetuate the source...” -- Manuel Bender, quoted in Wright (1963).

Fire was also used as a management tool to keep the campsites and nearby forest clear. Also, many of the plants on which the Washoe relied for subsistence, such as sand seed, required regular fire to regenerate. Washoe basket makers used fire on willows to kill insects and promote new growth. Inevitably, Washoe stewardship of Lake Tahoe was influenced by white settlers’ negative perception of fire. When settlers arrived in the region, the use of fire by Natives was restricted, which affected the abundance and quality of native plants. As a result, the area became vulnerable to exotic plants and diseases. More so, fire suppression significantly changed the density and size of trees. As one Washoe woman stated, “How could a man have shot an arrow through this? You



can't even see!" (Lindstrom et al. 2000: 2). In addition, fire restrictions prevented Washoe from practicing important rituals. For example, "Washoe traditionally burned the camp and dwelling of someone who had died, a practice quickly outlawed by concerned whites in Carson Valley" (Lindstrom et al. 2000: 28).

Arrival of colonists in the 19<sup>th</sup> century brought severe degradation to Lake Tahoe. Most settlers viewed the region as a source of profit due to its abundance of resources. Under western expansion and development, the pristine water quality of Lake Tahoe has been markedly degraded. Originally, exploitation of the region's vast resources occurred through mining, ranching, and logging, drastically altering the natural hydrologic regimes. Today, both development and soil disturbance is the single greatest cause of declining water quality. Increasing tourism throughout the 20<sup>th</sup> century has had an impact on Lake Tahoe, which many regulatory agencies are trying to mitigate. The introduction of non-native species, timber production, disruption of the natural fire regime, and intensive development has destroyed many habitats that the Washoe depended on for survival.

Today's cost of real estate coupled with limited areas for public access has made it virtually impossible for the tribe to continue traditional practices at Lake Tahoe. Many of the areas are severely fragmented among federal, state, local, and private ownership. Such a predicament makes it difficult to manage Lake Tahoe as an ecosystem. Currently, the Washoe tribe is comprised of approximately 1500 enrolled members living in dispersed colonies along the border of Nevada and California. This fragmentation impedes tribal efforts to manage their aboriginal lands.

## **Loss of Ancestral Territory – The Lake Tahoe Basin**

The Lake Tahoe Basin encompasses 205,000 acres and contains portions of the Eldorado and Tahoe National Forests in California and the Toiyabe National Forest in Nevada. The first public lands in the Lake Tahoe Basin were established in 1899 as the Lake Tahoe Forest Reserve totaling 37,000 acres with no lakefront property. Public acquisitions progressed slowly until the 1960s when large tracts were acquired through land exchanges (Lindstrom et al. 2000). Today, land acquisition continues through various donation, purchase, and exchange authorities.

U.S. Forest Service management practices are focused primarily on timber harvesting, fire suppression, and recreation, rather than on tribal cultural practices. As a result, many traditional plants that tribes relied on for subsistence, basket weaving, medicinal uses, and ceremonial purposes have been and are being lost at an alarming rate (California Indian Basketweavers Association 2002). Native American coalitions are currently fighting to reform U.S. Forest Service management practices that are harmful to indigenous people. For example, the Forest Service uses herbicides to control non-native weed species. Herbicides not only present dangers to people who consume vegetation, but also those that handle plants used for basket weaving and other purposes. In a recent action alert, The California Indian Basketweavers Association criticized the Forest Service for its decision to go forward with “a sweeping new proposal to utilize herbicides on over 5,000 acres of the Eldorado National Forest” (California Indian Basketweavers Association 2002). In addition, habitat destruction through both recreational development and soil disturbance associated with logging is the single greatest cause of native plant

decline and extirpation. Together, these factors and others have destroyed many habitats that the tribes depended on for subsistence and cultural survival.

The National Forest Management Act requires the Forest Service to manage National Forest System resources in a manner that serves the needs of the general public. In addition, the Forest Service relies on resource specific management approaches rather than an ecosystem management approach (Stokes 2003). Specific management approaches usually conflict with tribal values that view an interconnected landscape. Native Americans are often frustrated not only by federal government indifference to Native American values, but also by the lack of tribal involvement in federal decision-making.

### **Lake Tahoe Summit**

The Lake Tahoe Presidential Summit took place in July of 1997. The goal of the summit was to foster collaboration to sustain the environmental and economic health of the lake and surrounding communities. Although Lake Tahoe is intensively managed, limited funding and multi-jurisdictional boundaries that cross federal and state boundaries make it difficult to implement a contiguous and comprehensive plan. For some time, researchers have known what is necessary to improve the quality of Lake Tahoe, but lacked enough political support to attain funding. Before the summit, California, Nevada and the federal government had invested more than \$300 million to restore the Tahoe basin. Despite efforts thus far, the Tahoe Regional Planning Agency (TRPA) estimates that restoration of Tahoe will require an additional \$900 million in project support (Lake Tahoe Advisory Committee 2001). Funding is needed to purchase environmentally

sensitive land, restore the basin's degraded wetlands and construct erosion-control measures to reduce the amount of sediment entering the lake.

Workshops held at the summit focused on partnerships to protect the environmental quality of the Lake Tahoe area. The issues included Water Quality, Forest Ecosystem Restoration, Recreation and Tourism, and Transportation. Due to the broad scope of issues and urgency that the summit created, top officials from various agencies gathered. Attendees included President Clinton, Vice-President Gore, Secretary of Agriculture Dan Glickman, Secretary of Interior Bruce Babbitt, Transportation Secretary Rodney Slater, EPA Administrator Carol Browner, and Assistant Secretary of the Army Martin Lancaster. In addition, California and Nevada congressional representatives and local elected officials were all present. Many living in the Tahoe region had anticipated the summit and expected great results. The importance of the event resulted in heavy media coverage and public attention.

The notion of a federal convention on the protection of Lake Tahoe was on the horizon and actively pursued by Nevada Senator Harry Reid; however, it lacked a Washoe element. As soon as Chairman Wallace learned of the idea, it became a top priority for the tribe. Wallace grasped the opportunity by working with Senators from California and Nevada to lobby for the summit, which was a critical opportunity for the Washoe tribe to gain recognition. The hope was to heighten public awareness of Tahoe's environmental demise, but also remind federal officials of the Washoe people and their place at the lake. Wallace foresaw the summit as an opportunity to press Washoe rights and claims in the Tahoe area. In addition, Washoe participation in the summit would be symbolic of the Washoe peoples' return to Lake Tahoe.

The Washoe tribe strategically attended numerous agency meetings at the lake in preparation for the summit. During the meetings, Washoe representatives would present their issues and concerns to state, federal, and local officials. Wallace recalls that this strategy began to break down barriers, while reminding government officials and the public of a Washoe presence. As Wallace points out, “you can’t talk about Tahoe without talking about the unfinished business with the Washoe Tribe” (Wallace 2002). The tribe was a key participant and organizer of the Tahoe Summit. The tribe helped arrange the meeting room accommodations, invited key people to attend, and provided resources to support the summit. Due to the integral role played by the tribe in planning the Tahoe summit, their issues and concerns were included in the agenda.

Due to the heightened media attention, the tribe was able to gain recognition, not only within the political arena, but also with the residents at Lake Tahoe who assumed that the tribe was extinct. What was disturbing to Wallace and others is how quickly the Washoe had been removed and forgotten. The lack of presence by the tribe seemed to remove any obligation or question of land ownership amongst the Anglos. The Washoe tribe wanted to remedy the situation by raising public awareness. It was critical to gain public support, hoping that by and large the public would sympathize with the tribe. Consequently, a big push for the Lake Tahoe Summit, led by Chairman Wallace, was the main objective for the tribe. The tribe was prepared to not only make its presence known at the Summit, but also request repatriation in a government-to-government meeting with the United States.

At the Lake Tahoe Summit, President Clinton recognized the need and value of reintegrating Washoe values, culture, and traditional ecological knowledge into Tahoe

planning. President Clinton met with Washoe elders at the Lake Tahoe Summit. The elders discussed their grievances, hopes, ambitions, and disappointments. During the meeting, Clinton asked the elders what they wanted and they replied, "Lake Tahoe." Since 1862, the Washoe had requested land from presidents to no avail (Rusco). Clinton was the seventh president to hear Washoe appeals. Although the President was not in a position to give the tribe the lake and its surrounding land, after serious consideration he returned with a positive response that was announced the following day at the summit. The President stated, "It just took 120 years, but I can tell you, from now on, the mail will run more rapidly between Lake Tahoe and Washington, D.C." (Vogel 1997). The summit led to negotiations over a portion of former Washoe territory that was under Forest Service jurisdiction.

U.S. Department of Agriculture Undersecretary Jim Lyons negotiated a co-management agreement with the Washoe Tribe, under the direction of President Clinton (Wallace 1997). The negotiations resulted in a 30 year special use permit that will allow the Washoe tribe to manage a 350 acre meadow near Meeks Creek, on the California side of Lake Tahoe, to revive heritage and cultural knowledge (Appendix E). In addition, a 30-year special use permit was issued to build a Washoe Cultural Center on 90 acres of land, three miles northeast of the town of South Lake Tahoe, CA.

The implementation of the co-management agreement allows not only access to ancestral sites but also the restoration of traditional uses, so it is more reflective of the tribes own needs and culture. The tribe's goal is to help preserve its rich cultural heritage and historical relationship with the lake, while reintegrating traditional ecological knowledge that evolved with this ecosystem for over 9,000 years. The vast traditional

ecological knowledge makes the Washoe well qualified to manage resources within the Tahoe Basin. Under the co-management agreement, the tribe developed a wetland conservation plan. The plan proposes utilizing cultural management practices and western science to restore the wetland function of Meeks Creek Meadow. The tribe plans to build a \$4 million cultural center to share Washoe culture with the public.

To Wallace, the President's announcement was a turning point in Washoe history. The entire Washoe community celebrated the results of the summit. A number of Washoe were working to preserve their culture, language and heritage, but without a land-base, an integral piece was missing. Tribal elders consider the summit part of an awakening. At the end of the summit, Wallace stated, "We look to the future with hope and ambition, and some caution, because this isn't the end. For us this is really, truly a new beginning" (Ragland 1997). Wallace was now driven to pursue something more permanent than a lease agreement so that tribal members would have access to Lake Tahoe forever.

### **Specific Presidential Actions**

At the end of the presidential summit, the following executive actions involving the Washoe Tribe were issued:

- Establish a Tahoe Interagency Partnership Memorandum of Agreement to include the Washoe Tribe of Nevada and California; the Secretaries of Agriculture, Interior, Transportation and Defense; the Administrator of the U.S. Environmental Protection Agency; and the heads of any other federal agencies that are involved in the basin or their representatives. The group was given 90 days to meet with state and local agencies and private interests in the Tahoe Basin before reporting back to the

president with a plan on how to achieve the president's goal of protecting Lake Tahoe's resources.

- A Memorandum of Understanding that Federal Departments and Agencies working to protect the environmental and economic health of the Lake Tahoe Region will support recognition for traditional and customary Washoe use and access to Lake Tahoe.
- A Memorandum of Understanding between the Interagency Partnership, the States of California and Nevada, the Washoe Tribe of California and Nevada, the Tahoe Regional Planning Authority, and other local governments to support a healthy, sustainable economy through their respective programs and policies; commit to the achievement and maintenance of environmental thresholds, cultural and historic values, and economic health for Lake Tahoe; cooperate with each other to pursue implementation; and commit to continuing and expanding the participation of public-private partnerships and consensus-building groups in planning and implementing environmental protection measures for Lake Tahoe.
- A Memorandum of Agreement between the Lake Tahoe Federal Interagency Partnership, States of California and Nevada, the Tahoe Regional Planning Agency, the Washoe Tribe of Nevada and California recognizing the Washoe people as the indigenous people of the Lake Tahoe Basin.

In addition to the above executive orders, deliverables for the Washoe tribe from the Presidential forum included:

- A Memorandum of Understanding between the U.S. Forest Service and the Washoe Tribe, which established a government-to-government relationship (Appendix C).



- A long-term Special Use Permit for Tribal management of Meeks Meadow.
- A thirty-year special use agreement for 12-15 acres for the Washoe Cultural Center with an additional 100 acres to ensure lake access for tribal members.
- An Environmental Impact Statement of Cave Rock Management Options.

Based on the dialogue that took place at the summit, it was clear that the White House was committed to making reparations by dedicating land back to the Washoe. However, at the time it was unclear if the tribe would eventually attain tribal trust land in the Tahoe Basin. The transfer of land had to be an act of Congress. President Clinton did not have the authority to pass land to the Washoe, so co-management was a temporary solution in the eyes of the tribe. The terms of the agreement still needed to be developed and negotiated between the Forest Service and the Washoe Tribe. In addition, it would take quite some time for the Washoe Tribe to raise the money to implement a watershed restoration plan and to build a cultural center.

A project agreement between the Forest Service and the tribe was also signed at the summit. The Forest Service agreed that it intended to issue a 30-year permit for the Washoe Cultural Center and Lake Tahoe Access and a 30-year permit for Meeks Creek Meadow to “establish an area to gather plants, reinforce tradition, and educate their youth and the general public” (Appendix E). The Forest Service also agreed that it would assist the tribe in re-establishing a presence at Lake Tahoe by providing the tribe with the opportunity to operate United States Government-owned facilities as those opportunities become available. In addition the Lake Tahoe Basin Management Unit (LTBMU) will consult with the tribe, and encourage initiatives by the Tribe to acquire authorization and use of Forest Service lands in the Tahoe Basin. The LTBMU also affirmed its

“responsibilities and commitment to comply with the President’s Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments,” and acknowledge that the “long-term goal of the Tribe is to acquire land in the Tahoe Basin in trust; and to the maximum extent possible, the LTBMU will work with the Tribe concerning its land acquisition” (Appendix E).

### **Description of Co-management Area**

Meeks Creek watershed is 6.6 miles long and bisects 350 acres of Meeks Creek Meadow (Appendix A and B). Located on the west side of Lake Tahoe, the area is an important riparian habitat for wildlife. Disturbance from timber harvesting and grazing has taken a significant toll on the watershed. Timber was first harvested in the area between 1875 and 1895 to accommodate mining interests during the Comstock Era (Murphy and Knopp 2000). Following the timber harvests, the area and meadow was converted into a grazing allotment. Subsequently, hay was grown for cattle, which eventually replaced native plants that served as natural habitat and filtered sediments and nutrients.

In addition, the U.S. government’s policy on fire suppression is causing a shift towards fire intolerant plant communities. The shift has compounding impacts on the watershed as lodge pole pine has encroached on the meadow. As the density of lodgepole pine increased, so has the rate of disease and insect infestation. Fire suppression also resulted in the accumulation of woody debris in the meadow, which can cause flooding, bank erosion, and channel instability (Washoe Tribe 1998). Trees also reduce the hydrologic function of the wetland area and compete with native plants. Fire was an important natural component in the regeneration of native wetland plants, such as the

bracken fern that was used extensively by Washoe basket weavers. With fire suppression, it became increasingly difficult for Washoe elders to find quality ferns and willow needed to make baskets.

Recreational pressures have influenced hydrologic processes within the watershed. For example, at the lake's entrance, Meeks Creek has been transformed from a lagoon into a marina with an adjacent campground and resort. The marina serves as a barrier to the flow of water from the creek into Lake Tahoe, resulting in water stagnation and sedimentation. Consequently sediments need to be frequently dredged. In addition, a bridge was built over the creek on Highway 89 to accommodate increased traffic. The portion of Meeks Creek that lies below the bridge is heavily degraded due to the erosion of the stream bank. Impervious surfaces on the road and bridge increase the runoff rate into the lake. In addition, the marina and bridge have compounding effects on native species. Both prevent fish migration and alter plant composition from riparian species such as willow and alder, to conifer and shrub, which have also altered available habitat for wildlife (Wallace 2002). In short, achieving co-management of this important area was a significant accomplishment but also presented a significant challenge in its restoration.

### **Implementation of the Agreement**

At the Presidential Lake Tahoe Summit it was apparent that the working relationship between the Washoe Tribe and the U.S. Forest Service needed to be strengthened. Immediately, a Memorandum of Understanding (MOU) was signed by both parties to formalize a government-to-government relationship (Appendix C). One month later, a Project Agreement was signed to supplement the MOU (Appendix E). The Project

Agreement between the Forest Service and the Washoe Tribe outlined a shared vision to “re-establish a Washoe Tribal presence on the shores of Lake Tahoe.” In the Agreement, the Forest Service agreed to issue a Special Use permit to the Washoe Tribe to manage 350 acres meadow for the care and harvesting of plants used for traditional gathering purposes. A year later, on July 18, 1998, the Washoe Tribe and Forest Service signed another MOU, detailing a plan to execute the previously signed Project Agreement (Appendix F). The MOU established a mutually beneficial strategy for managing wetlands riparian areas and the traditional uses of native plant materials at Meeks Meadow. Over years of negotiations, this series of agreements and MOUs gave rise to the final agreement. After two years, a Cooperative Agreement between the Washoe Tribe and LTBMU was signed on February 26, 1999. The agreement established collaborative wetland conservation planning for Meeks Creek Meadow (Appendix G). Pursuant to the agreement, the tribe would develop the wetland conservation plan, however Forest Service approval was needed before the plan was to be implemented. In addition, the tribe would be responsible for monitoring the plan.

In response to many of the concerns identified in the previous chapter, the Washoe Tribe developed a comprehensive watershed plan. The plan is comprised of four phases. Phase 1 involves clearing the meadow of trash and debris, removing an abandoned building, and thinning dead and diseased lodge pole pine. Phase 2 of the plan calls for the modification of the Highway 89 Bridge to allow fish migration, while preventing further bank erosion. Bridge modification would also involve construction of a floodplain and stabilization and revegetation of eroded stream banks. Phase 3 focuses on the relocation of the existing marina to restore wetland habitat and stream flow. Phase

4 involves restoring a lagoon that was present before the marina. In addition to these four phases, reintroduction of native fishes and historical fire regimes are highlighted in the plan.

The watershed plan also includes project and trend monitoring to ensure that conservation efforts are adequately addressing the issues and concerns identified by the Washoe Tribe. Monitoring has focused on water quality, vegetation, and wildlife and includes biological, chemical, and physical parameters (Washoe Tribe 2001). In addition, the Washoe Tribe is seeking collaborative monitoring opportunities with federal, state and local agencies in order to ensure that information is integrated and available throughout the Tahoe basin. The monitoring will also help initiate adaptive management practices by incorporating information over time.

The Washoe Tribe received an EPA grant for development of a Meeks Meadow Management Plan in the amount of \$95,771. In addition the tribe provided non-federal matching funds of \$40,677, for a total of \$136,448 (Environmental Improvement Program 2001). In 2001, the Washoe Tribe developed a Meeks Meadow Management Plan. During the summer of 2003, the Forest Service and the Washoe Tribe jointly searched and interviewed contractors to implement the plan. Currently, the wetland plan is being implemented.

## 6. TRIBAL MEASURES OF SUCCESS, BENEFITS, AND CHALLENGES

In this chapter I evaluate the Washoe-USFS co-management agreement from three interrelated perspectives. First, I look at the tribe's measures of success with regard to the co-management agreement and whether the agreement is working from the tribe's perspective. Second, I look at principles of empowerment and whether the agreement has met those principles. Third, I look at the benefits and limitations of the agreement and offer recommendations for improving the Washoe agreement, with broader implications for co-management agreements in other public lands contexts.

### **Tribal Measures**

The Washoe Tribe is measuring success in three ways. First, the project will be considered successful if the Washoe increase their traditional wetland management practices within the Lake Tahoe Basin (Washoe Tribe 2001). The traditional knowledge held by the tribe is invaluable because of its long history and evolution with the ecosystem. The second measure of success is the progression of collaboration within the Tahoe Basin that will result in improved relationships between the tribe and other government and non-government organizations (Washoe Tribe 2001). While the co-management agreement was an action proposed by President Clinton, the tribe hopes the agreement will lead to the recognition and acceptance of its sovereignty and legitimate interest in management of Lake Tahoe's resources. The third measure of success, which is a long-term measurement, is the attainment by the tribe of Meeks Creek Meadow, and other areas critical to the preservation of its culture and heritage. Also, recognizing that Meeks Creek Meadow is a small piece of the overall ecosystem, a second component of this measure is the institutionalization of traditional wetland management practices by the

U.S. Forest Service and other resource conservation agencies throughout the Tahoe Basin (Washoe Tribe 2001).

To date, the Washoe Tribe has not conducted an assessment of these measures. However, it is evident that the co-management arrangement is on the path to success. First, wetlands management practices have improved by the reintroduction of traditional ecological knowledge and increased funding capacity. Second, according to the Washoe Tribe, collaboration has improved between the Washoe Tribe and federal, state, and local governments. Also, there is more reception among federal agents for Washoe involvement in the management of the Tahoe Basin. For example, numerous agreements were developed following the principal agreement recognizing the Washoe Tribe as legitimate stewards of Lake Tahoe. As reported by Chairman Wallace in the Lake Tahoe Basin Federal Advisory Committee Report, agreements include:

- An Interagency Partnership Memorandum Agreement to include the Washoe Tribe.
- Agreement of Federal Departments and Agencies on Protection of the Environmental and Economic Health of the Lake Tahoe Region to support recognition for traditional and customary Washoe Tribal use of, and for access to Lake Tahoe.
- Memorandum of Agreement between the Federal Interagency Partnership in the Lake Tahoe Ecosystem, States of California and Nevada, the Washoe Tribe of Nevada and California and the Tahoe Regional Planning Agency Recognizing the Washoe people as the indigenous people of the Lake Tahoe Basin.

Third, and most importantly, in 2003 Congress approved transfer of 23 acres of Lake Tahoe shoreline to the Bureau of Indian Affairs to hold in trust for the Washoe Tribe. Washoe land acquisition in the Tahoe Basin was a critical measure of success toward meeting a long-term objective. Different from the treaties in the 1800s where Native Americans received marginal or even barren land, the tribe received expensive land.

The above measures will help improve water quality and clarity at Lake Tahoe, which is important to future generations of Washoe. Working in unison towards a common vision of water quality and adapting management strategy through monitoring will inherently lead to a more effective solution to the ever growing crises of development at Lake Tahoe.

### **Empowerment Principles**

In addition to the Washoe's own measures of success, it is the intention of this research to determine whether the co-management agreement has led to a "sense of empowerment" among tribal members. Current research suggests that in order for empowerment to occur, co-management must lead to several outcomes (Viswanathan et al. 2003: 10):

- a) A substantial change in governments' and communities' attitudes toward their role in such arrangements,
- b) A rethinking of the logic for management and subsequently a change in the knowledge base for management,
- c) A restructuring of the institutional and organizational arrangements supporting management,



- d) Capacity-building at several levels both within governments and community, and
- e) Aspiration from the community and government to act collaboratively.

Field research among the Washoe during the implementation of the co-management agreement demonstrates that these key components were evident for the Washoe Tribe.

*Changes in governments' and communities' attitudes toward their role in such arrangements*

During the Lake Tahoe Presidential Summit the Washoe tribe was assured a future at Lake Tahoe. After 120 years, Washoe concerns at Lake Tahoe were finally being heard and seriously discussed with the President. Further, Washoe access to the Tahoe Basin was finally addressed through the development of a co-management agreement. While the Washoe had raised this issue on numerous occasions, federal officials largely ignored them until the implementation of the co-management agreement. The tribe had remained absent in the Tahoe Basin for so long that tribal concerns no longer appeared to be relevant or valued by the dominant white culture that now occupied the region. The co-management agreement recognized the Washoe Tribe as the original stewards of the land. In addition, the Washoe tribe was proven capable of developing a comprehensive wetland management plan. The Forest Service attitudes have also changed. Attitudes towards the Washoe Tribe changed due to the elevated recognition for the value of traditional ecological knowledge and need to attain Washoe input on issues affecting the Tahoe Basin. The old logic is “we know better because we are trained professionals.” The new logic is “maybe the tribe can do a better job.”

The co-management agreement has stimulated a resurgence of cultural activity and identity within the Tribe. The two biggest assets of the Washoe tribe are its elders and its youth. Recognizing the disconnection between the two generations, the elders initiated several programs to revitalize Washoe culture at Lake Tahoe. Programs include a language school, a traditional foods class, and a basket-weaving class. Also, in order to ground the youth in their ancestral lands, a cultural camp is sponsored at Meeks Bay Resort. A week of camping along Tahoe shores helps the younger Washoe build an attachment to their ancestral lands, while learning the ways of their ancestors. According to Brian Wallace, “the real reason we’re doing this is to protect our future and allow us to have a responsible role in raising a generation of children to match these mountains, with the understanding that they are a fundamental part of the stewardship of the place they call home.”

Cultural revitalization has developed Washoe pride in community and heritage. As a result there is a demand for traditional knowledge and customs, which leads to further cultural revitalization. Cultural pride can be seen in various aspects of the community. For instance, among the youth, it is active participation in Washoe events. At these functions, the youth are allowed to take the microphone and talk to the community, specifically the elders. The respect they demonstrate for the elders is obvious through their words. This activity also allows the youth to express their concerns and ideas to the community, making them connected to tribal society. As noted earlier, many Native youth suffer from depression, suicide, and alcoholism. Improving identity and providing a place for them to learn and grow increases self-esteem and also builds a connection to Washoe lands.

*Rethinking the logic for management and subsequent change in the knowledge base for management*

Most importantly, the agreement led to the recognition and return of traditional ecological knowledge and practices at the lake. “Wetlands are the interface of the Washoe historic, cultural, and natural relationship to Lake Tahoe. The Washoe people have long known the importance of wetlands, and consequently, their beliefs and practices surrounding the care of wetlands have been transmitted over thousands of years from generation to generation” (Washoe Tribe 2001). The Washoe people wish to use traditional knowledge to transform the meadow to a more natural state that existed prior to colonization. Traditionally, Meeks Meadow was a gathering site for the harvest of utilitarian and medicinal plants. The goal is to reintroduce native plants that act as filters to clean the water and ensure its continued existence for generations to come. It is hoped that by understanding some of the Washoe knowledge regarding resources will help cultivate a productive system in the meadow.

*Restructuring institutional and organizational arrangements that support and accommodate tribal interests*

Among the most important contributors to a sense of empowerment was establishing tribal legitimacy in the land management process. Prior to the co-management agreement, the Washoe were equivalent to “the public” and were required to attain a special use permit in order to use ancestral areas in the Tahoe Basin. In addition, access and use of Lake Tahoe was regulated through Forest Service bureaucracy, which created barriers and feelings of manipulation and control. Those Washoe that continued to pursue their customs at the lake without Forest Service “permission” did so under fear

of being caught and prosecuted. Uncertain of the consequences, elders hid from officials in the forest as they collected plants. To establish legitimacy, the Memorandum of Understanding states that tribal members have “lived upon their aboriginal lands for centuries and were the first stewards of certain lands now managed by the Forest Service” (Appendix C). As the Forest Service acknowledged the Washoe as having a legitimate historical claim to Lake Tahoe Basin, relationships between the two governments improved through enhanced communication and consultation. Numerous small gestures have also acknowledged the tribe’s legitimacy. For instance, there is reserved parking for Washoe tribal members on Forest Service land in order to increase accessibility.

In addition, prior to the co-management agreement, the Washoe tribe had no entitlement or involvement in decisions made over the resources at Lake Tahoe. Many barriers blocked the Washoe tribe’s participation. First, many of the agencies did not invite the tribe to participate in local meetings, or sent only *pro forma* notifications. Second, limited resources made it difficult for the tribe to attend. Third, public meetings generally followed conventional Anglo protocols, which were foreign to traditional tribal members. In contrast, the co-management agreement recognized the Washoe as stewards of the lake with every right to utilize and manage the resources at Lake Tahoe. Essentially the two governments recognized each other as legitimate sovereigns that would remain as permanent forces in the Tahoe Basin. The co-management was seen as a positive turning point for the tribe.

Through improved attitudes towards each other, the Forest Service and the Washoe tribe explored new avenues to improve consultation. The Lake Tahoe Basin Management Unit has become progressive, in terms of its tribal affairs, compared to

other agency offices, due in part to the relationship it maintains to the Washoe Tribe. For instance, recently, the LTBMU initiated their 10-year planning process. For the first time, the Forest Service wants to incorporate Washoe values, interests, and concerns into its 10-year plan. Ideally, an additional staff member will be added to the planning team to represent Washoe interests; however, due to the lack of funding the Forest Service was unable to hire such a person. The Forest Service hopes to have a staff person dedicated to the process in the future as funding permits. In the meantime, the Forest Service plans to consult with the Washoe Tribe throughout the planning process (Barry 2003).

*Capacity-building within governments and community*

In the history of tribal/federal relationships, the federal government perpetuates a paternal image of controlling the allocation of limited resources that will be distributed among the federally recognized tribes. In such scenarios, a tribe that receives more resources will inherently limit the resources available to another tribal community. Therefore, tribal governments tend to see each other as competitors and in some cases, are selective in what they request when foreseeing a balanced distribution. With the co-management agreement this perception of limitations is falsified as the tribe is allowed to contribute its own knowledge and resources, and essentially expand the available resources. Considering the vast ownership of public lands in the Tahoe Basin, it is reasonable for more agreements to emerge that will further enhance Washoe presence at the Lake.

The most critical change that led to a sense of empowerment was the increased tribal and community capacity. With the signing of the co-management agreement, an additional outcome that emerged was leadership. Tribal chairman Brian Wallace stated

that, although a “federal discussion” began in the 1980’s about the health of Lake Tahoe, “it had nothing to do with stewardship,” but rather was “motivated by making money off the Lake” (Wallace 2002). Ultimately, Wallace became a proponent of stewardship. During various meetings Wallace also ripened the environment to push the tribe to the forefront of the Lake Tahoe Summit. At the Summit, Wallace was successful in making Washoe concerns and issues prevalent in the Tahoe region. In addition, Wallace was critical in lobbying Congress to hold the Summit. Prior to the Summit, Wallace was recognized as a Washoe leader; however, his leadership quickly crossed boundaries when the Summit occurred. Today Wallace is the Vice-Chair of the Nevada Democratic Party, and participates actively in politics outside the tribal community. As a result, he engages the tribal community and is able to raise awareness of tribal issues with the larger public.

In addition, co-management had profound effects on both the Washoe Tribe and the Forest Service. Foremost, collaboration with the Forest Service and with each other led to social learning, which enables people to “share diverse perspectives and experiences to develop a common framework of understanding and a basis for joint action” (Raik 2002: 9). The development of the co-management agreement required many of these elements. For example, in lieu of tribal trust lands, an alternative had to be developed which required unrestrained thinking.

Further, the negotiation process entailed multiple sources of knowledge, extended engagement, and facilitation. In addition, increased community capacity resulted in feeling of ownership in the co-management process, “leading to the development of relationships, social norms, and unity of purpose, all which add to the community’s stock of social capital that empower people” (Raik 2002: 9). The co-management agreement is

unique in that it allows the tribe and the Forest Service to exchange information, thereby contributing respect and understanding for one another.

Once the co-management agreement was established, it became imperative to confront and empower the younger generation. Many Washoe youth are unaware of the responsibilities that come with being Washoe. For example, Washoe stewardship and the protection of future generations are values that historically were instilled in younger generations. Many of these values were lost, or are sleeping inside the youth. According to Chairman Wallace, without the commitment of the youth, very little exists to “carry on the fight for Washoe justice and carry on the legacy that the Washoe tribe has struggled to obtain” (Wallace 2002). Chairman Wallace, like many of the Washoe elders, believes that the courage of the Washoe children will be the tribe’s salvation. Tribal elders now feel a stronger sense of responsibility for preparing youth to take on leadership roles and for fostering a sense of commitment to the tribe. This is evident through the development of the Washoe Cultural Camp, language school, and classes that teach basketweaving and preparing traditional foods.

Capacity-building is also apparent at various levels of the tribal community. The tribal council now works to increase tribal access to resources (political, economic, and social). Access to resources enhanced the community’s capability to respond, cope, and adapt therefore empowering local communities. One example is the considerable resources the tribe is acquiring to develop Washoe youth. For example, the Washoe Tribe recently took over the TANF (Tribal Assistance for Needy Families) program from the State of California. The tribe now runs the program for the entire State of California and recently opened offices in Sacramento, the Bay Area, and in Southern California. While

the program was in state control, the Washoe tribe was concerned that the program ignored tribal family values. The program also did not focus on enriching the lives of children. Under Washoe direction the program is focused on child development since they are the central unit of a family.

*Aspirations to continue along the same avenue*

If the co-management agreement were perceived to be an end to meeting tribal needs, then its limitations in meeting tribal aspirations become obvious. Instead, the co-management agreement may be seen as a beginning of a pathway, not only for new and improved relations, but also in repatriation of and increased access to the land. In the Washoe case, the co-management agreement resulted from a presidential mandate. While there was no internal resistance from the local Forest Service office, there had to be ownership of the agreement from the local Forest Service office to ensure effective implementation. As a result, the Washoe Tribe entered into a Memorandum of Understanding with the Forest Service to ensure the agency was committed to working with them (Appendix C). As a result of the MOU, the local Forest Service office had obligations to seek other avenues of partnership with the Washoe Tribe.

While the Forest Service could have perceived the agreement as another partnership with a user group, that was not the case. Instead, the agreement fostered understanding and acknowledged the Washoe tribe as the “original stewards” of Lake Tahoe, therefore entitling them to special use. To the Washoe tribe the agreement had more meaning than merely establishing a partnership with the Forest Service. It provided recognition of Washoe stewardship, acknowledged Washoe presence prior to colonization, and their right to continue their practices and traditions in the Tahoe Basin.



Fortunately, the federal tribal liaison was dedicated to enhancing federal/tribal relationships.

### **Benefits of Co-management**

Besides setting the stage for a new political player in the basin, the co-management agreement provided numerous benefits for the tribe. Benefits apparent from this research include increased legitimacy and credibility, cultural revitalization, expanded possibilities for the Washoe Tribe, sacred site protection, and increased value and respect for traditional ecological knowledge.

#### *Legitimacy and Credibility*

Many non-Natives are threatened by the sovereign status of tribes, especially with the publicity around tribal casinos and many tribes' desire to have casinos. Despite Washoe claims to have no aspiration for a Casino, in addition to state and federal regulations that severely restrict the tribe's ability to do so, perceptions exist that the tribe's primary incentive is to acquire land for profit. Skeptical of tribal management, the co-management agreement helps to alleviate concern and build relationships within the Tahoe community. The co-management agreement is perceived as a pilot project, to test the waters so to speak. If monitoring shows that restoration of Meeks Creek Meadow is successful according to both Forest Service standards as well as Washoe standards, then the arrangement is productive and hence should be developed further in other areas of public domain and perhaps will be more accepted by the larger Tahoe community.

#### *Expanded Possibilities*

As the co-management agreement was being developed the tribe was already looking towards acquiring land in tribal trust and for other economic development

opportunities. A Forest Service permit was already acquired to run Meeks Bay Resort, just prior to the Lake Tahoe Summit. Federal agreements and tribal consensus takes time, so it was no surprise that the Washoe tribe raised several on-going concerns and issues occurring in the Tahoe Basin at the Lake Tahoe Summit.

Two years after the Presidential Summit, Brian Wallace provided a report on behalf of the Lake Tahoe Basin Federal Advisory Committee. Wallace summarizes the list below as supplemental restoration actions initiated by the Washoe Tribe in the Tahoe Basin at the Lake Tahoe Summit. These initiatives were realized by the co-management agreement:

- Development of Wetlands Conservation Plans for Meeks Meadow and Baldwin Beach/Taylor Creek adjacent to Lake Tahoe integrating traditional Washoe stewardship techniques and models and other traditional methods for protection and conservation.
- An inventory of resources within the wetlands using Washoe Elders as experts in determining the resources that, under Washoe stewardship principles must be present for wetlands to be healthy and flourishing.
- Identification of alternative methods for protection and restoration of the project area emphasizing the aboriginal methods of the Washoe Tribe and evaluate mechanisms that are available to provide support for interagency partnerships, funding, and legislation for implementation of identified methods.

- Development of interagency strategies and collaboration that would provide commitments, approvals, and resources necessary for implementing basin wide wetland protection and restoration utilizing Washoe restoration models.
- Development of interagency funding alternatives to supplement financial support for the management of National Forest Lands.
- Development of a Washoe Research and Risk Assessment model to identify and assess cultural losses or conservation scenarios for protection and alternative management partnerships for protection.
- Documentation of the traditional Washoe cultural system and its relationship to Washoe natural resources.
- Documentation of the recent history of the Washoe tribe, focusing on changes in natural resource utilization and associated cultural practices.
- Determination of losses of natural resources and associated cultural practices that have occurred and how these losses have affected the well-being of the Washoe people.
- Development and execution of a Washoe Tribal Consultation model, including procedures for participation in local and regional government meetings and sponsoring federal, state and local conferences to address protection of Tribal resources in the Greater Lake Tahoe Basin (Appendix H).

### *Sacred Site Protection*

The co-management agreement led to a better understanding of Tribal needs by the Forest Service, thereby improving relationships and consultation procedures. As a result, particular members of the Forest Service became very supportive of the tribe and

sought to improve Washoe access to the Lake as well as protection of the tribe's sacred sites. For instance, the use of Cave Rock has always been an issue for the Washoe Tribe due to the sacred nature of the rock. It is considered the heart of Washoe ancestral lands and a potent source of spiritual power. Unfortunately, with the tribe's attention and energy focused on its own survival over the past century, much degradation has occurred at Cave Rock. For instance, in 1931 and 1957 the rock was blasted to extend the Highway to the other side of the lake. In recent years, rock climbing at Cave Rock has become a pressing issue raised by Washoe seeking protection of the rock from further acts of defilement. The Forest Service worked in unison with the tribe to seek common ground on the issue. Upon learning of the sacred meaning of the rock through personal contact with a Washoe elder, Forest Supervisor Bob Harris banned climbing immediately. The ban remained for a short period, until the new Forest Supervisor, Juan Palma, lifted the ban to go through a public comment process. Again the Forest Service worked in favor of the Washoe tribe, with the appointment of Mary Beth Gustafson as Forest Supervisor. To avoid church and state separation issues, in 2002, Gustafson announced a climbing ban based on the site's historical value (USFS 2002). Today, rock climbing is banned on Cave Rock; however, appeals of the ban are still pending.

Co-management between the Washoe Tribe and the Forest Service enhanced consultation by improving tribal-federal relationships. Although a Memorandum of Understanding was signed at the Lake Tahoe Presidential Summit that established government-to-government relationship and protocol, the method had to be developed, tested, and institutionalized (Appendix C). The Washoe Tribe developed a consultation model for the Forest Service to follow, which provided the agency with tribal

expectations (Appendix H). The co-management agreement enabled the tribe to test the working relationship and reinforce areas that needed improvement. Over time, the tribe hopes that its consultation protocol is institutionalized within the LTBMU.

### *Traditional Ecological Knowledge*

Another important benefit that emerged is the protection of sacred knowledge. More and more tribal communities are becoming protective of knowledge, especially in light of past abuses. Through co-management the tribe is able to maintain ownership and control of knowledge, while utilizing the knowledge to manage the land. The location of Traditional Cultural Properties, sacred sites, or the spiritual uses of the area does not have to be disclosed. As a result, the tribe does not have to live in deep regret of disclosing information for fear that it will be abused. At the same time, they are able to incorporate that knowledge into land management practices to the benefit of the entire ecosystem.

### *Additional Funding*

Tribes have special funding sources that are not available to most federal agencies. As a result, the co-management agreement increased capacity and restoration work in the Tahoe basin. For instance, once the co-management agreement was established, the Washoe Environmental Protection Department aggressively pursued funding to restore the area. In 1999 the Washoe Tribe received an EPA grant to develop a Wetland Conservation Plan. The funding supported work that most likely would not have been accomplished under the Forest Service's limited budget.

### **Challenges to Co-management**

A major challenge that surfaced in the Washoe co-management case was the question of authority. As noted by Native scholar Ted Jojola, "land use as applied in

traditional Western planning practice is both temporal and corporal. It gives form and shape to communities by upholding the privileges associated with private property rights” (Jojola 2001: 303). Under such circumstances, empowerment is limited. Essentially, the hostile nature of land acquisition under 19<sup>th</sup> century colonialism continues to raise serious ethical questions. Native Americans contend that much of the land now under private or federal ownership has questionable land title. As a result, it is particularly difficult for any tribe to “ask permission” of the federal government to utilize its former ancestral lands, especially since they occupied the land for thousands of years before European settlement.

Acquiring permission from the federal government continues to demoralize tribal communities. It also creates a dilemma for tribes that need access to ancestral lands to maintain cultural and traditional ties, but refuse to perpetuate paternalism that was established by the federal government. The Washoe tribe’s original request was for tribal trust land. Unfortunately, the President did not have the authority to transfer public land into tribal trust, so co-management was the alternative. The tribe perceived this as a win rather than a loss, which benefited the morale of the community. In addition, it further aided the tribe in proving their management ability so their future request for land could not be denied.

A perception held by some Forest Service employees is that if the tribe wants a co-management agreement all they have to do is ask. Unfortunately, such a request is neither simple nor appropriate. If Chairman Wallace had to ask “permission” for the Washoe tribe to be on their ancestral lands, it would be a major limitation. Instead, Wallace asked for land transference. The agreement developed as a second choice to the

preferred alternative, land transference. At the time, co-management appeared to meet the interests of both parties. However, it was a short-term solution for the Washoe tribe. Land title at Lake Tahoe was the long-term objective of the tribe; therefore, the co-management agreement was a small victory towards reaching their ultimate goal.

It originally appeared that the Tribal Council was empowered from the co-management agreement due to the numerous accomplishments that followed the inception of the agreement. However, it became quite apparent that the co-management agreement empowered individual tribal members more than the Tribal Council, which endured tremendous federal bureaucracy throughout the negotiations. Although the agreement was mandated by President Clinton, it took almost two years for federal and Washoe attorneys to create language for the agreement that was acceptable to the Washoe Tribe while at the same time did not violate any federal policies or laws.

Continual changes in Forest Service leadership hinder the conditions needed to develop a co-management agreement. Since the inception of the Lake Tahoe summit, there have been three Forest Supervisors in the Lake Tahoe Basin Management Unit. In addition, since 1994 the tribal liaison position in the agency has switched hands three times. The highly transient nature of federal service makes it very difficult for tribal communities to build on-going relationships with federal employees. People who represent the tribal communities live and remain in the region their entire lives. They are tied to their ancestral lands. On the other hand, the federal service promotes and rewards those employees that are willing to be flexible and move to different jobs. Developing agreements that will have a long-term standing is problematic. It is questionable whether the agreement would have gone through had there not been continuity with the tribal

leadership. One remedy that the tribal attorney posed was to have the agreement extended from a 10-year agreement to a 30-year agreement, so that despite the frequent changes, the Forest Service would have to observe the agreement for the longest extent possible. In addition, the Forest Service would have to consider the tribe in its long-term planning.

Funding was also an obstacle for the tribe because they were expected to raise funds for implementation and monitoring for the wetland conservation plan. The Tribe was able to secure federal funding and matching funds, which served to supplement financial support for the management of National Forest Lands.



## 7. CONCLUSION

Today there are 300 federally recognized tribes in the lower 48 states, and more than 200 Native groups in Alaska. About 250 tribes are on the list of federally non-recognized tribes, with about 150 of these petitioning for federal recognition. Reservation land in the U.S. is comprised of 56.6 million acres (Mitchell 1997). Many tribes have yet to establish a reservation as stipulated by their treaties. Policies imposed on tribes by the federal government during previous eras left a record of failures. Today, under the Era of Self-determination there is a promise of a better future. Yet, many of the mistakes made by the federal government during the previous eras are likely to be repeated by future leaders who have not learned the valuable lessons of their predecessors.

Native Americans today are working towards self-determination by developing a variety of avenues for participating in federal decision-making. Some tribes refuse to collaborate with federal agencies, or pursue litigation rather than operating under conditions that perpetuate paternalistic sentiments. For Native Americans, the problems stemming from colonialism are not easily erased. Resentment and ill will towards the federal government will continue to exist until past injustices are acknowledged and amendments are made to rectify them. Mistrust and resentment towards the federal government makes it increasingly difficult to improve relationships.

Many present-day tribes do not wait for the federal government to take the lead or represent tribal interests as tribal trustees. Unlike the past, most tribes have lawyers to defend their interests. In addition, tribal members have been educated to better understand the dominant society's processes, laws, and motives. However, many tribes still lack the capacity to address the many ongoing problems that affect their

communities. Some tribes appear reconciled to accept the limitations of current system and its meager results. In such circumstances, tribes are not empowered to act on their own authority or make demands. Despite the overwhelming difference of power in the United States, Native Americans have remained persistent. Native Americans were less willing than most immigrant groups to assimilate into American culture, and they maintained their ties to ancestral territories. There remain many unresolved tribal cases involving land rights in the courts. Due to the long history, and previous court decisions, tribes remain in precarious situations.

The reality for most Native American is that much of their sacred and ancestral gathering sites are located outside reservation boundaries, on federal and state lands that are permitted for other uses. Especially in the West, public lands surround tribal communities. Federal laws involving the protection of Native American religious and sacred sites are very limited. The laws that do exist have limited authority to adequately protect tribal values. Federal agencies also do not have adequate information or understanding of tribal values to manage sacred sites (Jostad et al. 1996). From the agency's perspective, many tribes refuse to provide information regarding the location or significance of sacred sites, making them difficult to manage or protect. From the tribe's perspective, some information is off-limits due to tribal customs and laws that dictate the tribal community as stewards of the site and protectors of their knowledge. The dichotomy makes it difficult to develop a suitable and comprehensive plan to manage resources.

The increasing role of tribal involvement in federal and state politics, especially in those states that have large Native American populations, is forcing public officials to

take notice. Although, tribal communities have long fought for separatism, where tribes can live as separate nations, it is impossible. Under treaties, tribes are entitled and depend on resources that lie outside reservation boundaries, especially since a vast number of cultural resources exist outside of tribal trust lands. Organizing community awareness about the value and impact that state and federal politics has on tribal livelihood is increasing. Once tribal empowerment occurs in the political arena, mobilizing a tribal community and mobilization across the country will become an emergent phenomenon that will require political attention.

By the 1860s, the federal government predicted that the Washoe tribe was on the path of extinction and had no need for land. Those predictions were wrong. Despite the intentional negligence directed towards the Washoe people, they were able to overcome obstacles and seek alternative avenues for recourse. The Washoe Tribe and the Lake Tahoe Basin Management Unit have developed a strong working relationship based on the Forest Service's recognition of tribal sovereignty and the Washoe tribe's cultural significance to the lake. In the co-management agreement, the Forest Service recognizes the tribes' ties to Lake Tahoe, and cultural and management practices prior to European settlement as legitimate interests, just as the Forest Service has interest in the management of the Tahoe Basin.

Furthermore the Washoe tribe recognizes the existence of the USFS and the federal agency charged with management of public lands. As such, both can move forward to explore avenues of collaboration. Co-management is a promising option for reform of governance institutions. In the Washoe case, co-management has led to

numerous benefits, and other federal-tribal partnerships. Among the most important was the increased understanding of tribal values by the Forest Service.

The Washoe Tribe was able to seek co-management with the Forest Service, in part because they recognized the inherent values of collaboration. The tribe's need to have lands transferred into trust could not be immediately met. Instead of focusing solely on the possibility of regaining trust lands, they sought parallel avenues. Co-management was utilized as one mechanism to maintain traditions and ties to the land. It helped them to foster relationships with political officials, to generate more interest and support in Washoe objectives, but most importantly, to build community capacity to manage the land and to teach their traditions to the next generation.

Many conditions made the Washoe case successful, some of which may not be present in other tribes. Foremost, they had consistent leadership that would support the process on behalf of the tribe. Leadership was flexible, recognizing the Forest Service was restricted by federal mandates, but was also persistent in exploring avenues to achieve where federal mandates that could be altered or reconstructed to accommodate the tribe. In addition, by having interest-based dialogues with Forest Service leaders, the Washoe Tribe was able to work on what was possible, all while having ownership in the process and outcomes. Negotiations were long, but nonetheless resulted in something that was important to both the Forest Service and the Washoe Tribe.

This research has also shown that it is increasingly valuable to develop and implement co-management agreements, considering the limited resources of federal agencies to manage public lands. As previously described, transferring land into trust is complicated and requires large investments of time. Sharing resources and collaboration

may serve as a way to overcome strained budgets and staff. There is little research or understanding of traditional management systems. Uncertainty still exists within federal agencies about how to reincorporate this knowledge into planning. Many federal agencies are becoming aware of the benefits of traditional ecological knowledge for prescribed burning and wildlife management. The development of innovative institutions, agreements and practices that incorporate the strengths of both management systems can increase the effectiveness of collaboration. Developing co-management agreements can help improve tribal-federal relationships, while building a foundation of trust for future agreements. If government responses to conflict are based on dialogue and a “politics of difference”, then negotiation between the governments and Native people can lead to a restructuring of power relationships and a redress of grievances (Wondolleck and Yaffee 2000). In addition, co-management enables tribes to build internal capacity that will lead to community empowerment, as in the Washoe case. The co-management agreement was seen as a community initiative, and a victory in their struggle to maintain ties to ancestral lands.

There is more to understand and explore in the development and implementation of co-management agreements. Previous studies have determined that conflict is an important motivator to initiate co-management agreements (Raik 2002: 13). However, in situations of extreme oppression by the dominant white society, it is difficult to seek avenues of collaboration. While co-management may not resolve tribal-federal land conflicts, it could be the interim solution while other recourses are sought. For instance, transferring land into tribal trust must be an act of Congress. Such actions take time and tremendous lobbying efforts to gain support of the public and legislators. In the

meantime, co-management may be used to build tribal capacity, as the Washoe case demonstrates. Co-management can also be one avenue to build relationships and foster trust, as long as both parties are accountable to the agreement. Most importantly, tribes need to build conditions into initiatives that ensure that community empowerment can be fostered and will expand community capacity. A formal agreement should include provisions to guarantee the preservation and enhancement of cultural beliefs, behaviors, and systems. In addition, co-managers must develop management systems that reconcile traditional ecological knowledge with western science where needed, as demonstrated by the Washoe case. Finally, developing co-management models can enable such agreements to be transferred and implemented by other public land agencies, thereby institutionalizing the process.

The federal government cannot progress with the same policies towards Native Americans. History has proven this strategy to be bankrupt. What little is done by the federal government on behalf of tribes will not change unless tribal leadership takes the initiative to make the demands. While land transfers and acknowledgement of rights are established in only a small number of cases and at great cost, co-management, although relatively new, has shown considerable promise. Tribes should utilize co-management and improve on these agreements to accommodate each tribe's interests. Learning what policies exist, what works and what needs to be improved can enable tribes to move forward in an effort to attain empowerment and self-determination for their own community. As noted by one Native American activist, "What we ask of America is not charity, not paternalism, even when benevolence. We ask only that the nature of our situation be recognized and made the basis of policy and action" (Jojola 2001: 303).

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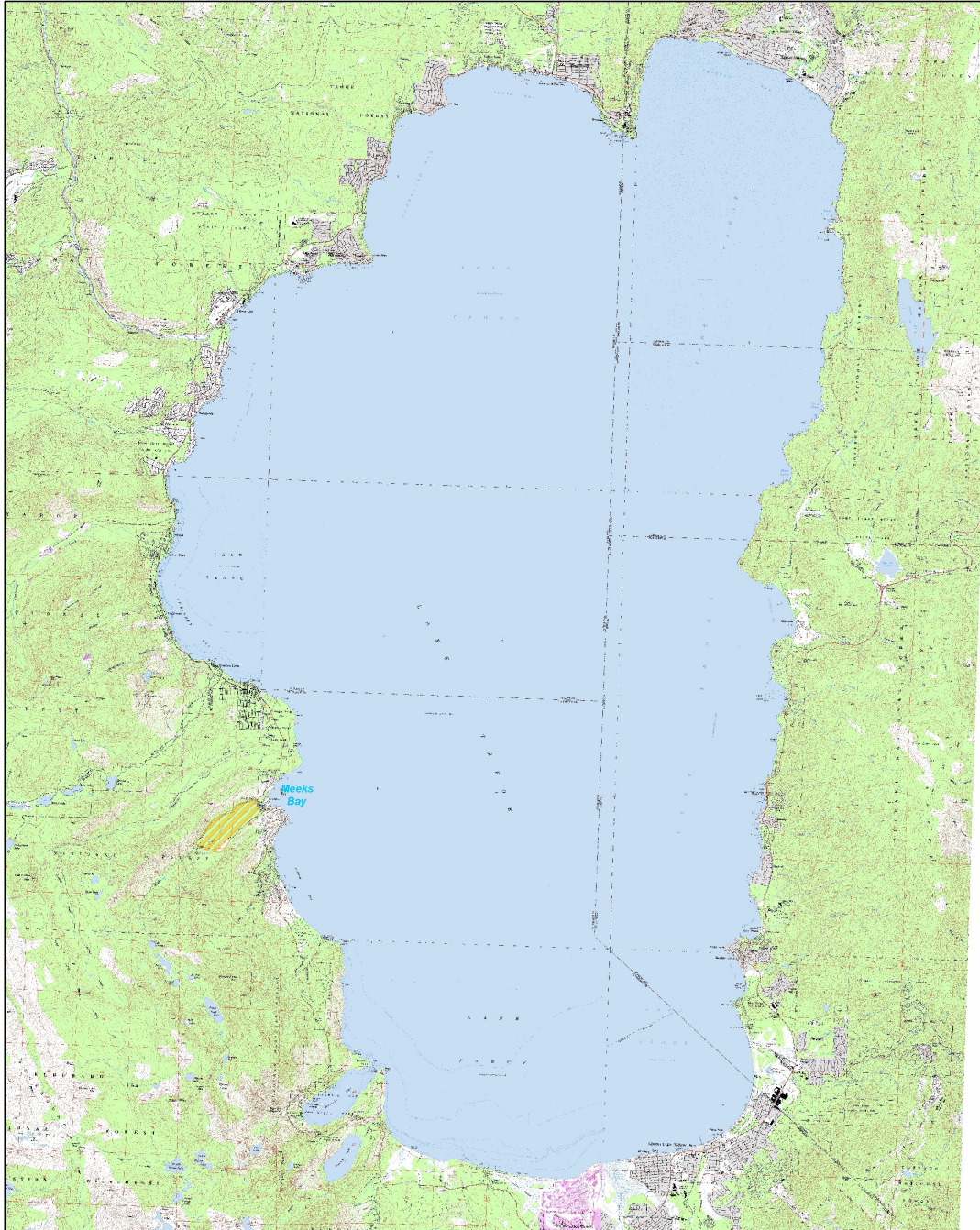
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# Appendix A. Map of Lake Tahoe

## Washoe Tribe / U.S. Forest Service Co-Management Area Meeks Meadow in Relation to Lake Tahoe

Washoe Tribe of Nevada & California  
Environmental Protection Department  
919 U.S. Hwy. 395 N. - Gardnerville, NV 89410  
Telephone: 775.265.8680 - FAX: 775.265.3211  
GIS: Noel Haycock - May 2006



### Map Features

 Meeks Meadow

0 1,375 2,750 5,500 8,250 11,000  
Meters

1 inch equals 9,555 feet  
1:114,665

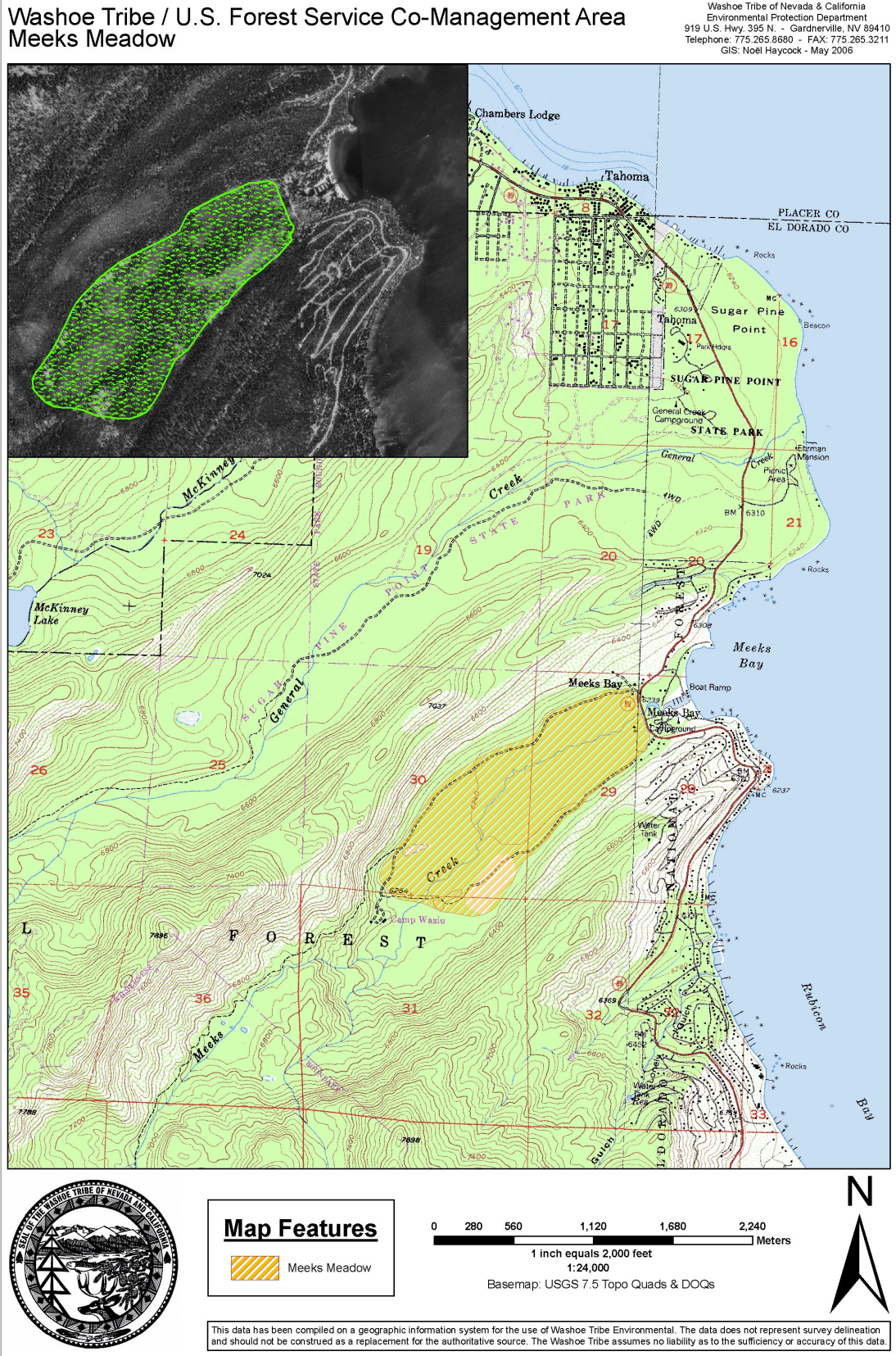
Basemap: USGS 7.5 Topo Quads & DOQs



This data has been compiled on a geographic information system for the use of Washoe Tribe Environmental. The data does not represent survey delineation and should not be construed as a replacement for the authoritative source. The Washoe Tribe assumes no liability as to the sufficiency or accuracy of this data.



## Appendix B. Map of Co-Management Area



**Appendix C. Memorandum of Understanding between Washoe Tribe and Forest Service LTBMU formalizing government-to-government relationship**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
USDA FOREST SERVICE  
LAKE TAHOE BASIN MANAGEMENT UNIT  
AND  
THE WASHOE TRIBE OF NEVADA AND CAUFORNIA**

This Memorandum of Understanding between the Washoe Tribe of Nevada and California ("Tribe"), and the USDA Forest Service, Lake Tahoe Basin Management Unit ("LTBMU"), is effective as of the date at the last signature below.

Whereas, The Tribe and the LTBMU mutually wish to establish and formalize a government to government relationship;

Whereas, the Tribe and the LTBMU mutually recognize tile need and benefit to formalize the processes of communication for land and resource management decision making and for other governmental relations;

Whereas, the Tribe and the LTBMU mutually recognize that improving our relationship is the best course in achieving our common goal of wisely managed and sustainable resources;

Whereas, the Tribe and the LTBMU mutually recognize the need for future additions to this Memorandum of Understanding, specific project agreements will be considered binding to both parties.

Washoe Tribe of Nevada and California

Whereas, The Tribe is a sovereign entity, and its members have lived upon their aboriginal lands for centuries and were the first stewards of certain lands now managed by 1he Forest Service contained within those aboriginal lands;

Whereas, the Tribe is a federally recognized Indian Tribe, to which the federal government owes a trust responsibility, and maintains a government to government relationship with, as acknowledged in the Bureau of Indian Affairs, Department of the Interior and published in the Federal Register listing of federally recognized Indian Tribes on October 21, 1993, and includes the Carson Indian Community, the Stewart Indian Community, the Woodfords Indian Community, the Dresslerville Indian Community, members residing on allotments and off-reservation lands;

Whereas, Article V of the Tribal Constitution states that "The members of the Washoe Tribe hereby delegate, to the Tribal Council the authority to exercise by resolution or the enactment of Tribal laws all the inherent sovereign powers vested in the Tribe as a sovereign aboriginal people"

Whereas, the Tribal Council is the formally constituted governing body of the Tribe, entrusted with the responsibility to protect, preserve and promote the ceremonial, religious, cultural, governmental and economic interests of the Washoe people.

#### USDA Forest Service (Lake Tahoe Basin Management Unit)

Whereas, the policy of the Forest Service, as stated in Forest Service Manual 1563, is to establish and maintain a governmental relationship with the Tribe;

Whereas, the Forest Service has the responsibility for the management of National Forest System lands and resources, including some lands within the aboriginal boundaries of the Tribe;

Whereas, the LTBMU contain Washoe aboriginal lands within its administrative boundaries.

NOW THEREFORE, the Tribe and the LTBMU agree to establish procedures to encourage and facilitate government to government relationship,

#### LTBMU Responsibilities

1. The LTBMU agrees to designate the Forest Supervisor as its primacy contact for initiation of consultation on resource issues and management proposals pertaining to the LTBMU.
2. Coordinate with the Tribe scheduling of formal meetings between the LTBMU and the Tribal Chairman. These formal meetings are for the purpose of providing interactive updates and review of up-coming or on-going projects and to monitor the effectiveness of this agreement. There should be at least two meetings annually. Any party to this agreement may request additional meetings, which shall be held if mutually agreed upon by the parties to this agreement.
3. Include the Tribe whenever possible in resource management programs, in order to focus management actions on balanced goals for the land and resources, the quality of flows of water, the future conditions of the land, the clarity of the air and the diversity of the plants, animals, and biological communities.
4. Seek input from the Tribe so as to manage Forest Service lands for the health and vitality of all people and biological systems on the land, for inspirational and cultural experiences, and to protect the interrelation between habitats, land, water and people.

### Tribe's Responsibilities

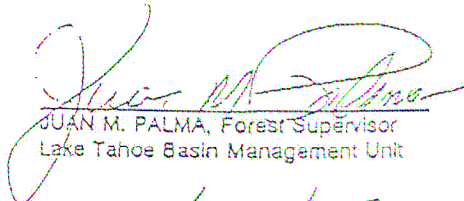
1. Designate the Tribal Chairman as the principal contact for and liaison with the Forest Supervisor of the LTBMU for the initiation of consultation on resource issues and management proposals by the Tribe.
2. Assist the Forest Service to identify opportunities for the Tribe to participate in resource management programs.
3. Share with the Forest Service some of the Tribe's unique knowledge and ideas regarding the use, conservation, and preservation of historical, natural, geographical and cultural resources Important to the parties.

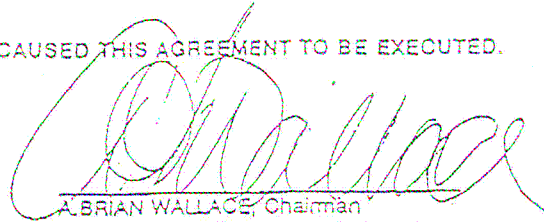
### Responsibilities of Both Parties

1. Share relevant appropriate information pertaining to the inventory and management of National Forest System lands. Research, transfer of technology and technical assistance are all important components of our government to government relationship. Therefore, all parties agree to provide mutual access to technological information, equipment, and technical personnel to the extent authorized by law and to the extent that it aids in the management of the lands of mutual interest.
2. This Memorandum of Understanding is between the LTBMU and the Washoe Tribe of Nevada and California. At this time the parties involved in this MOU do not represent any other Forest Service units or Indian Tribes, other than those Indian communities above mentioned within the Washoe Tribe.
3. Nothing in this Memorandum of Understanding shall abrogate the statutory or regulatory authority or responsibilities of either party.
4. This Memorandum of Understanding may be revised or modified as necessary by mutual consent of both parties through the issuance at a written amendment, signed and dated by all the parties. Either party may terminate this Memorandum upon sixty (60) days written notice of termination to the other party.
5. There shall be no discrimination against any person because of race, creed, color, religion, national origin, handicap, or sex. This does not prohibit the Washoe Tribe from preferential hiring in favor of Indian people to the extent such practices are authorized by federal or Tribal law.



IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED.

  
\_\_\_\_\_  
JUAN M. PALMA, Forest Supervisor  
Lake Tahoe Basin Management Unit  
7/25/97  
Date

  
\_\_\_\_\_  
A. BRIAN WALLACE, Chairman  
Washoe Tribe of Nevada & California  
7/25/97  
Date

**Appendix D. Washoe Tribe of Nevada and California Council Resolution**

Resolution No. 97-WT-52

RESOLUTION OF THE GOVERNING BODY  
OF THE  
WASHOE TRIBE OF NEVADA AND CALIFORNIA

WHEREAS, the Washoe Tribe of Nevada and California is organized under the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 594) as amended to exercise certain rights of home rule and be responsible for the general welfare of its membership; and

WHEREAS, the Tahoe Basin Forest Service has administrative direction to accommodate the Washoe Tribe with 30-years' permits in the Tahoe Basin; and

WHEREAS, under Forest Service jurisdiction there is 470 acres of land known as the Meeks Creek Meadow; and

WHEREAS, the Washoe Tribe desires to obtain a 30-year permit for these lands with the following aliquot legal description:

61 acres in the NW1/2 of Section 31; and 206 acres in the E1/2 of Section 30; and 103 acres in the W1/2 of Section 29; all located in R17E, T14N, MDM.

NOW, THEREFORE, BE IT RESOLVED THAT the Washoe Tribe declares its desire to acquire these 470 acres under USFS permit.



**Appendix E. Project Agreement between Washoe Tribe and Forest Service  
LTBMU to supplement MOU formalizing government-to-  
government relationship**

**REVISED PROJECT AGREEMENT  
DATED SEPTEMBER 10, 1997  
BETWEEN  
USDA - FOREST SERVICE  
LAKE TAHOE BASIN MANAGEMENT UNIT  
AND  
THE WASHOE TRIBE OF NEVADA AND CALIFORNIA**

This Agreement between the Washoe Tribe of Nevada and California ("Tribe"), and the USDA Forest Service, Lake Tahoe Basin Management Unit ("LTBMU"), is intended to supplement the Memorandum of Understanding executed by the parties on July 25, 1997.

Whereas, The Tribe and the LTBMU mutually wish to adopt a goal to re-establish a Washoe Tribal presence on the shores of Lake Tahoe;

Whereas, the Tribe and the LTBMU mutually recognize that the LTBMU, as a federal land manager of significant lands and resources at Lake Tahoe is uniquely able to permit the Tribe to achieve this goal;

Whereas, the LTBMU has the statutory authority to authorize certain uses of federally owned lands and resources by the Tribe;

Whereas, the Tribe and the LTBMU mutually recognize that a Washoe Tribal presence on the shores of Lake Tahoe will foster the achievement of our mutual goals.

Washoe Tribe of Nevada and California

Whereas, The Tribe is a sovereign entity, and Its members have lived upon their aboriginal lands for centuries and were the first stewards of certain lands now managed by the Forest Service contained within that aboriginal territory;

Whereas, the Tribe is a federally recognized Indian Tribe, to which the federal government owes a trust responsibility, and maintains a government to government relationship with, as acknowledged in the Bureau of Indian Affairs, Department of the Interior and published in the Federal Register listing of federally recognized Indian Tribes on October 21, 1993, and includes the Carson Indian Community, the Stewart Indian Community, the Woodfords Indian Community, the Dresslerville Indian Community, members residing on allotments and off reservation lands;

Whereas, Article V of the Tribal Constitution states that “The members of the Washoe Tribe hereby delegate, to the Tribal Council, the authority to exercise by resolution or the enactment of Tribal laws all the inherent sovereign powers vested in the Tribe as a sovereign aboriginal people;”

Whereas, the Tribal Council is the formally constituted governing body of the Tribe, entrusted with the “responsibility to protect, preserve, and promote the ceremonial, religious, cultural, governmental and economic interests of the Washoe people.

USDA Forest Service (Lake Tahoe Basin Management Unit)

Whereas, the policy of the Forest Service, as stated in Forest Service Manual 1563, is to establish and maintain a governmental relationship with the Tribe;

Whereas, the Forest Service has the responsibility for the management of National Forest System lands and resources;

Whereas, the LTBMU contain Washoe aboriginal lands within its administrative boundaries.

NOW THEREFORE, the Tribe and the LTBMU agree to undertake such actions as are necessary to authorize use and management of certain federal lands on the shores of Lake Tahoe by the Washoe Tribe. This covenant shall impose on the parties, to the extent permitted by law, the obligation to proceed in good faith, with diligence, and in accordance with such dates and deadlines as may be specified herein. The lands, properties, facilities, and respective obligations of the parties intended to be included within this agreement are more specifically described as follows:

Description of Projects, Land, Properties and/or Facilities

1. *Washoe Cultural Center and Lake Tahoe Access.* When all applicable legal requirements are met and unless prohibited by law, the LTBMU intends to issue a 30-year special use permit to the Washoe Tribe to establish a Washoe Cultural Center. The permit will allow Washoe Tribal use and management of the subject parcels, and not be limited to construction and operation of the Cultural Center. The parties have identified two parcels for inclusion in the special use permit, as depicted in the map attached as exhibit one hereto. The parcel of land on which the Cultural Center and other interpretive elements are tentatively located is along Taylor Creek south of state highway 89. This area and proposed construction was described and studied in an April 1985 environmental assessment and associated environmental impact review commissioned by the Tribe. An additional parcel of land, across from the cultural center and north of state highway 89 consists of approximately 45 acres and extends to the shore of Lake Tahoe. The lakeshore parcel will satisfy the need of Tribal members to access the water's edge. Establishment of a cultural center open to the general public will also enhance the general

public's full enjoyment of the natural, scenic, recreational, cultural and other aspects of the national forests."

The LTBMU and Tribe have agreed to produce a new NEPA document incorporating much of the earlier information and addressing issues not previously considered. The LTBMU will request all necessary funding to complete that environmental impacts analysis. A preliminary analysis by the LTBMU indicates that - the permit must specifically resolve potential conflicts with a Bald Eagle wintering area located in the general vicinity of the proposed permit area.

2. *Meeks Creek Meadow.* When all applicable legal requirements are met, and unless prohibited by law, the LTBMU intends to issue a 30-year special use permit to the Washoe Tribe to manage an approximately 350 acre meadow for the care and harvesting of plants used for traditional purposes. The area is accessed by foot along a dirt road that is closed to vehicle use by a locked gate; this is one of the major trailheads into the Desolation Wilderness area and public access will be preserved. In addition to the goal of re-establishing a presence at Lake Tahoe, the Washoe wish to revitalize heritage and cultural knowledge, including the care and harvest at traditional plants. Meeks Creek Meadow is a contained landscape where important traditional plants occur and are "accessible to Tribal elders. Through the special use permit, the Washoe people would be provided an established area to gather plants, reinforce tradition, and educate their youth and the general public.

3. *Commercial Opportunities for the Tribe.* The Washoe Tribe has an additional goal of re-establishing a commercial and economic presence at Lake Tahoe. The LTBMU will assist the Tribe in re-establishing that presence. The LTBMU is authorized to permit privately operated, commercial operations on its lands and in its facilities, and will provide the Tribe with the opportunity to operate United States Government-owned facilities as those opportunities become available. In future selection of such permittee(s), the LTBMU will recognize the unique cultural contribution that the Tribe will provide to the Lake Tahoe community.

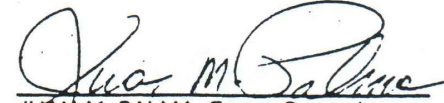
The special use permits for the Meeks Bay Resort and Marina, and adjacent facilities, expire at the end of 1997 and will be reissued. The Tribe has expressed an interest in becoming the permittee to operate the resort. The LTBMU will accept an application from the Tribe for this permit.

4. *Future Projects.* The Tribe intends to seek authorization for use of other LTBMU managed areas. The LTBMU will consult with the Tribe, and encourage initiatives by the Tribe to acquire authorization for management and use of those areas.

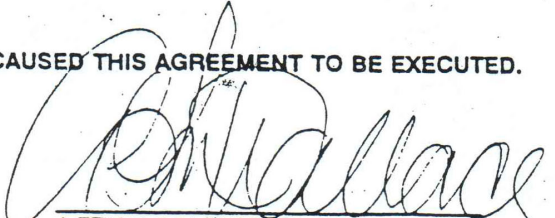
5. *Other.* The LTBMU affirms its responsibilities and commitment to comply with the President's Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments. The LTBMU acknowledges and understands that the long-term goal of the Tribe is to acquire land in the Tahoe Basin in trust; and, to the

maximum extent possible, the LTBMU will work with the Tribe concerning its land acquisition goals.

IN WITNESS HEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED.

  
\_\_\_\_\_  
JUAN M. PALMA, Forest Supervisor  
Lake Tahoe Basin Management Unit

9/11/97  
Date

  
\_\_\_\_\_  
A. BRIAN WALLACE, Chairman  
Washoe Tribe of Nevada & California

9/10/97  
Date

**Appendix F. Memorandum of Understanding between Washoe Tribe and the Forest Service LTBMU for managing Meeks Meadow**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE WASHOE TRIBE OF NEVADA AND CALIFORNIA  
AND  
USDA FOREST SERVICE, LAKE TAHOE BASIN MANAGEMENT UNIT**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between the Washoe Tribe of Nevada and California, hereinafter referred to as TRIBE, and the U.S. Department of Agriculture Forest Service, Lake Tahoe Basin Management Unit, hereinafter referred to as FOREST SERVICE.

**I. PURPOSE:**

The purpose of this MOU is to establish and maintain a mutually beneficial strategy for managing wetlands, riparian areas and the traditional uses of native plant materials at Meeks Meadow as part of the Government to Government relationship between the Tribe and Forest Service.

**II. STATEMENT OF MUTUAL BENEFITS AND INTERESTS:**

The Tribe and Forest Service recognize the need to provide for management of wetland, riparian areas, and native vegetation at Meeks Meadow on a sustainable basis and that each government has a strong interest in cultural, social, and biological aspects of traditional native plant uses. Both parties recognize that close collaboration and cooperation is the best course in achieving their goals of wisely managed resources at Meeks Meadow on a sustainable basis.

The respective governments will agree upon prescriptions, management practices, measures, and actions pertaining to the cultivation and harvest of native plant materials by Tribal members for personal use. These actions and measures are part of an overall management strategy aimed at managing traditional native plant use at Meeks Meadow on a sustainable basis.

In consideration of the above premises, the parties hereto agree as follows:

**III. AS COOPERATOR THE TRIBE SHALL:**

1. Use hand tools to prune and cultivate naturally occurring native plants that have become coarse and overgrown.
2. If mechanical equipment, livestock grazing, prescribed fire or other such activities are proposed in the future, a native plant management plan and NEPA analysis would be developed for approval by the Forest Service.



3. Provide and maintain a lock on the gate. Keys or combinations to this lock will be managed by the tribe.

IV. THE FOREST SERVICE SHALL:

1. Allow the Tribe use of existing roads. Roads should not be used when wet conditions would cause rutting. Forest Service will notify the Tribe each spring and fall when conditions warrant opening and closing the area for the season.

2. Will ensure that law Enforcement and other Regulatory agencies are informed of this instrument.

3. Come before the Tribal Council each year to discuss opportunities to improve this instrument.

V. IT IS MUTUALLY UNDERSTOOD AND AGREED UPON BY AND BETWEEN THE PARTIES THAT:

1. Either party, in writing, may terminate the instrument in whole, or in part, at any time before the date of expiration.

2. This instrument in no way restricts the Forest Service or the Cooperator from participating in similar activities with other public or private agencies, organizations, and individuals.

3. This instrument is executed as of the last date shown below and expires twenty years from the date of execution of this instrument, at which time it will be subject to review, renewal, or expiration.

4. The principal contacts for this instrument are:

Robert McDowell  
USDA Forest Service  
Tribal Relations Liaison  
870 Emerald Bay Road, Suite 1  
South Lake Tahoe, CA 96150  
(530) 573-2623

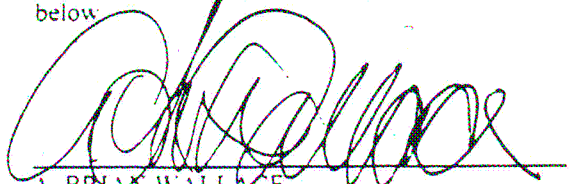
A. Brian Wallace  
Chairman, Washoe Tribe of NV and CA  
919 Highway 395 South  
Gardnerville, NV 89410  
(702) 265-4191

5. This instrument is neither fiscal nor a fund obligation document. Any endeavors involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority


for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

6. Modifications within the scope of this instrument shall be made by the issuance of a bilaterally executed modification prior to any changes being performed.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the last date written below:

  
A. BRIAN WALLACE  
Chairman, Washoe Tribe of Nevada and California

7/18/99  
Date

  
JUAN PALMA, Forest Supervisor  
USDA Forest Service  
Lake Tahoe Basin Management Unit

7/18/99  
Date

The authority and format for this instrument have been reviewed and approved for signature by:

s. Doris Mackey  
DORIS MACKEY  
Agreements Specialist  
USFS - IBET Province

7/17/98  
Date

**Appendix G. Cooperative Agreement between Washoe Tribe and Forest Service  
LTBMU**

**COOPERATIVE AGREEMENT  
BETWEEN THE WASHOE TRIBE OF NEVADA AND CALIFORNIA AND THE  
USDA FOREST SERVICE, LAKE TAHOE BASIN MANAGEMENT UNIT**

THIS COOPERATIVE AGREEMENT (Agreement) is entered into by and between the Washoe Tribe of Nevada and California (Tribe), and the United States Department of Agriculture, Forest Service, Lake Tahoe Basin Management Unit (Forest Service).

Whereas, the Tribe and the Forest Service entered into a Memorandum of Understanding, dated July 27, 1997, by which they established the protocol for their government-to-government relationship.

Whereas, the Tribe desires to restore and enhance wetlands and riparian areas in the Lake Tahoe Basin that contain resources vital to the Tribe's traditions and customs. This Agreement is to enable the Tribe and the Forest Service to cooperate in planning and implementing land management practices that will enhance environmentally sensitive lands and waterways where traditional natural resources should flourish.

Whereas, the Forest Service is responsible for the administration, management and protection of the lands and resources of the National Forest System in the Lake Tahoe Basin under a variety of federal laws and regulations.

Whereas, the Tribe and the Forest Service wish to cooperate in their efforts to enhance the public's enjoyment and the appreciation and the quality of the irreplaceable environmental and ecological resources that are found with the Lake Tahoe Basin, particularly with regard to environmentally sensitive wetlands and riparian areas.

Whereas, the Tribe and the Forest Service share a mutual interest in restoring and enhancing wetlands and riparian areas by the application of the traditional practices of the Tribe and through other environmental restoration activities. The restoration and enhancement of the wetland and riparian areas can also benefit native vegetation, fish and wildlife habitats, and watershed management, and is in the general public interest.

Now, therefore, the Tribe and the Forest Service agree:

**A. Joint Obligations**

1. To identify the specific wetland and riparian areas in the Baldwin Beach Taylor Creek Area and Meeks Bay Wetlands (Areas) that will be the subject of this Agreement.
2. To cooperate in developing a proposed plan of actions (plan) for the Areas that will be the guide for all actions in the Areas, to be implemented

pursuant to this Agreement. The Plan must be consistent with the Land and Resource Management Plan for the Lake Tahoe Basin and with all applicable laws and regulations. When necessary to accomplish the goals and objectives of the Plan, the Tribe will propose and the Forest Service will consider amendments to the Land and Resource Management Plan for the Lake Tahoe Basin.

3. To meet on a quarterly basis to discuss and review development, implementation, and monitoring of this Agreement, the Plan, and other matters relating to the Areas or this Agreement, including, where necessary, modifications to the Plan.

B. The Forest Service agrees that it will take the following actions:

1. In cooperation with the Tribe and others, and after appropriate public involvement, review and, if appropriate, approve the NEPA and other documents prepared by the Tribe on the proposed Plan.
2. After complying with legal requirements, approve the Plan, and authorize the Tribe to undertake the specific actions authorized by the Plan.
3. Share information and technology with the Tribe and assist the Tribe in securing funding for this project and related activities. This is to be accomplished through separate arrangements in compliance with applicable requirements.
4. When appropriate and formally requested by the Tribe, provide technical assistance to the Tribe in the development of information relevant to NEPA documents and implementation of the Plan.

C. The Tribe agrees to:

1. In consultation and in cooperation with the Forest Service, conduct inventories of the resources of the Areas, and prepare the necessary NEPA and any other documents on the proposed Plan and on any other action under this Agreement or under the Plan.
2. In consultation and in cooperation with the Forest Service, develop the proposed Plan, which will, among other things, contain a statement of work and appropriate land use conditions that will incorporate traditional land and water management practices.
3. Upon authorization from the Forest Service, be responsible for implementing and monitoring the Plan.

4. Apply for funding from appropriate private, state and federal sources to implement this Agreement and to implement the Plan.
5. Employ, train, and supervise personnel and others to implement this Agreement.
6. Provide an annual written report to the Forest Service and the public on the progress of the Tribe's actions in implementing and monitoring actions under this Agreement.
7. Provide to the Forest Service NEPA documents, Environmental Assessment documents, letters from citizens, wildlife studies, other federal or state agreements regarding work in the Area and documentation of environmental restoration work carried out pursuant to the Plan. Proprietary tribal research and material regarding internal tribal and traditional cultural information will remain in the possession of the Tribe.
8. Acknowledge the Forest Service in all publications, presentations, and news releases or statements concerning this project.

#### V. PRINCIPAL CONTACTS

- A. The principal contact for the Tribe:

A. Brian Wallace, Chairman  
Washoe Tribe of Nevada and California  
919 Highway 395 South  
Gardnerville, Nevada 89410  
Telephone: (775) 2654191  
Facsimile: (775) 265-6240  
E-mail: washoetribe@satumnet.com

- B. The principal contact for the Forest Service:

Juan Palma, Forest Supervisor USDA Forest Service  
870 Emerald Bay Road  
South Lake Tahoe, California 96150  
Telephone: (530) 573-2641  
Facsimile: (530) 573-2739  
E-mail: Palma\_Juan/r5\_LakeTahoeBasin@fs.fed.us

#### VI. TERMINATION AND MODIFICATION

This Agreement is executed as of the last date shown below. The Agreement expires on September 30, 2018, at which time it may be renewed for an additional twenty year period by mutual agreement of the Forest Service and the Tribe.

This Agreement may be modified or terminated by mutual agreement in writing by the Tribe and the Forest Service.

This Agreement may be terminated by either the Tribe or the Forest Service for breach of the Agreement. If either party believes the other has breached the Agreement, it shall promptly notify the other party in writing of the reasons for the termination. The parties shall meet and confer within thirty days after the date of the notice in an effort to resolve the issues. If resolution is not achieved, the Agreement may be terminated upon thirty days written notice to the other party. If the Agreement is terminated for breach, the parties will meet to agree upon the conditions, date and other matters related to the termination.

#### VII. EFFECT OF THIS AGREEMENT

Under 41 § 22, no Member of Congress may be admitted to any share or part of this Agreement or any benefits that may arise from this Agreement.

This Agreement is not a fiscal nor a funds obligation document. Any proposal for reimbursement by, or contribution of funds from, the Forest Service to the Tribe must be authorized in a separate agreement in accordance with applicable laws, regulations and procedures.

IN WITNESS WHEREOF, the parties have executed this instrument as of the last date written below.

< Signature of A. Brian Wallace >  
A. BRIAN WALLACE  
Chairman, Washoe Tribe of Nevada and California

<February 2, 1999>  
Date

< Signature of Juan Palma >  
JUAN PALMA  
Forest Supervisor  
USDA Forest Service  
Lake Tahoe Basin Management Unit

<February, 2, 1999>  
Date

**Appendix H. Washoe Consultation Model**

**WASHOE TRIBE OF NEVADA AND CALIFORNIA  
CONSULTATION MODEL**

There are several laws, regulations, and executive orders that require federal agencies to engage in a consultation process with Indian tribes. However, this consultation model represents the fundamental consultation principles and process that the Washoe Tribe believes will lead to successful consultation process. Although this model represents the consultation goal that the Tribe will strive for, we recognize that all aspects of this model may not expressly be required under federal law.

**Consultation Principles**

1. Consultation as an Ongoing Process

The Washoe Tribe has been in this area for 10,000 years and consultation with the Washoe Tribe must be viewed as a small point in time on a very long continuum. Consultation is not a process that is initiated, implemented and completed. While projects come and go, the consultation process is a living process that must continue to grow and develop.

Consultation

---

P	P	P	P
R	R	R	R
O	O	O	O
J	J	J	J
E	E	E	E
C	C	C	C
T	T	T	T

vs.

Project

---

P	C	I
L	O	M
A	N	P
N	S	L
N	U	E
I	L	M
N	T	E
G	A	N
	T	T
	I	A
	O	T
	N	I
		O
		N

Projects are a part of the consultation process; the consultation process is NOT a part of a project.

2. Consultation based upon a Government-to-Government Relationship  
Consultation between an Indian tribe and any other government must be based upon a government-to-government relationship. The government-to-government relationship between the Washoe Tribe and the United States is predicated on the United States Constitution. The consultation process established for the general public does not satisfy the government-to-government relationship between Indian tribes and the federal or state governments. For example, public comment periods do not satisfy the consultation requirement.
3. Establishment of Formal Government-to-Government Relationship  
(Institutionalizing Consultation and Cooperation Procedures)

To assure that the relationship between a federal or state agency is not based upon any one individual or personalities, a MOA or MOU between the Washoe Tribe and the government agency should be signed. This agreement or understanding should set forth the general principals of the relationship. The degree of specificity depends upon the agency and the interaction between the Tribe and the agency. For example the agreement between the Regional Office of the USFS and the Tribe would be less detailed than the relationship between the Tribe and the Lake Tahoe Basin Management Unit. These agreements should serve as the structure to which specific project agreements and more specific MOAs will be attached. The agreements between the Washoe Tribe, California and Nevada with the various federal agencies regarding Lake Tahoe are another example, not specific to Indian tribes.

Examples:

Government-to-Government Agreement between the Washoe Tribe and the LTBMU

Under Negotiation:

Government-to-Government Agreement between the Washoe Tribe and Tahoe Regional Planning Agency

Government-to-Government Agreement between the Washoe Tribe and the Carson Ranger District of the Humbolt-Toiyabe National Forest

Government-to-Government Agreement between the Washoe Tribe and the Carson District of the Bureau of Land Management

Government-to-Government Agreement between the Washoe Tribe and the Nevada Department of Transportation



Needed:

So far the Washoe Tribe does not have any agreements with Regional level of an agency. If a Regional Office, for example Region V of the Forest Service, has hundreds of Tribes in its district it may be difficult for the Region to enter into a separate agreement with each Tribe, unless the agreement were some form of cookie cutter or entered into jointly by many tribes. However, such an agreement would at least clarify that Tribes have a direct relationship with the Regional level, and not just the local office. EPA Region IX may be in the best position to explore various possibilities through the R TOC process.

There are still many relationships to be formally established with many different entities, and no general agreements have been entered into with State or local entities. With respect to any state agency, it should be clear that the State does not have jurisdictional authority over the Tribe, and that the agreement is not intended to alter the jurisdictional boundaries. With respect to local entities, it is important to remember that the Tribe has a direct relationship with the State and that local governments are subdivisions of the State. However, this should not preclude general agreements on how the two governing bodies will interact. Hopefully, the TRPA agreement will serve as a model for state and local subdivision agreements. It may be some success with smaller project agreements may establish the trust that will help as a precondition for a general government to government agreement.

#### 4. Identification of Liaison Staff

At state or, national and regional, federal level the establishment of an office or staff dedicated assisting with the coordination of the government-to-government relationship is critical. The establishment of the EPA Region IX Office of Tribal Affairs, the Department of Justice Office of Tribal Justice, and the Office of Tribal Affairs in the California Attorney General Office are successful models. Relationship between Tribes and the U. S. Department of Justice improved significantly after the establishment of the Office of Tribal Justice. These offices help Tribes negotiate through the bureaucracy, learn about the issues relevant to Indian tribes and transmit those issues to the leadership of the agency or department, enhance trust between Tribes and the Department/Agency, transmit agency/department issues to Indian country.

#### 5. Scope of Consultation

- A. Broad Planning (Collaboration)
- B. Project Consultation

1. Project Agreements
  - LTBMU Project Wetland Cooperative Agreement
  - Placer County/Tahoe National Forest Transfer of Sacred Site EPA Superfund Cooperative Agreement
  - BLM Information Sharing Agreement
  - Douglas County Weed Control Project Agreement
2. Consultation through the Life of the Project
3. Meaningful Input Tribal Drafting of Plans

C. Incorporation of Tribal Consultation in Project Planning Costs

Contracting directly with the Tribe, not with consultants who will be paid to talk with the Tribe. With planning funds, the Tribe will contract with necessary consultants, e.g. EPA Superfund Cooperative Agreement.

6. Tribal Comments Treated as Government Comments

Tribal comments must be treated as professional comments of a cooperating government. It is not sufficient to treat tribal comments in the same manner that the agency treats public comments.

### **STEP-BY-STEP GUIDE TO CONSULTATION**

**I. Establish a Government-to-Government Relationship**

- A. Contact Agency Tribal Liaison Officer
- B. Set up meeting between Tribal Chairman and Agency Decision Maker (Note that the agency decision maker will differ for each agency, e.g. in USFS Forest Supervisor's are decision makers with relatively wide latitude, in USDT the State Director of Federal Highways Administration is the decision maker, in EP A the Regional Administrator is the decision maker)
- C. Identify Relationship Goals, Planning Processes, Project Implementation Processes, and Substantive Goals.
- D. Secure meeting with Regional Agency Head if appropriate
- E. Identify Staff Contacts and initiate negotiations on Government to Government Agreement (See LTBMU Agreement)
- F. Execute Protocol Agreement
  1. Establish Joint Goals
  2. Recognize authority of Tribe and Agency, Interests of Tribe and Agency
  3. Recognize Trust Responsibility of Agency
  4. Consultation Procedures
    - a. Primary Contact between Chairman and Agency Decision-Maker

- b. Coordination and Scheduling of Formal Meetings to update and review on-going and up-coming projects and to explore collaborative projects
  - c. Identify Staff Contacts.
  - d. Establish Agency Goal of Including Tribe in Resource Management Programs.
    - i. Cooperative Agreements
    - ii. Contracts
  - e. Establish policy to share technical capacity
  - f. Expressly Provide for Project Agreements
5. Execute confidentiality and information sharing agreements if appropriate (see BLM Information Sharing Agreement).

## **II. Consultation Regarding Planning Documents**

- A. Prior to initiation of Planning Process (e.g. Forest Plan) Agency Decision Maker (e.g. Forest Supervisor) should initiate a meeting Tribal Chairman.
- B. Agency duty to describe the scope of the Planning Document or Amendments and the Process.
- C. Explore Potential Tribal role in producing aspects of the planning document (including agency contract with Tribe to produce portions of document such as the cultural section).
- D. Explore Tribal and Agency issues related to planning document and potential for including future cooperative or collaborative projects for inclusion in the Planning Document.
- E. Agency staff meets with appropriate Tribal staff during the preparation of the draft planning document.
- F. Agency share draft document and solicit Tribal comments prior to public release.
- G. Written Agency response to written Tribal comments.
- H. If necessary formal consultation meeting to discuss comments.

## **III. Project Specific Consultation Planning Process**

- A. Agency Decision Maker initiates meeting with Tribal Chairman prior to initiation of project planning process to discuss scope and nature of project and project planning and implementation process.
- B. Explore potential Tribal role in producing aspects of the Planning Document (including agency contract with Tribe to produce portions of project planning document). If Tribal input is necessary to meet statutory or regulatory requirements (e.g. Superfund Health Risk Assessment of Tribal Resources or resources used by Tribal Members in Culturally Unique Manner or NHPA determination and management of Traditional Cultural Properties) explore agency funding of Tribal effort through

- contract or agreement (e.g. EP A Superfund Cooperative Agency Agreement).
- C. Explore Tribal and Agency concerns related to Project Document and potential for including future cooperative or collaborative implementation of portions of the proposed agency project through agreement or contract.
  - D. Agency staff meets with appropriate Tribal staff during the preparation of the draft project-planning document to inform and solicit Tribal in-put.
  - E. Agency share draft project planning document and solicit Tribal comments prior to public release.
  - F. Written Agency response to written Tribal comments.
  - G. If requested initiate formal consultation process to resolve Tribal concerns with Agency project plan.

#### Implementation Process

- A. Formal consultation meeting prior to initiation of project implementation.
- B. Explore Agency use of Tribal staff or businesses to implement project through cooperative agreement or contract (e.g. Indian Self-Determination Contracts).
- C. Continuous staff level meetings throughout life of project to inform Tribe and solicit comments.
- D. Written responses to written Tribal comments.

#### **IV. Consultation Regarding Collaborative Efforts**

- A. Agency and Tribe explore potential for collaborative or cooperative agreements to implement projects or prepare planning documents especially those that will provide Tribe with opportunity to continue or reintroduce traditional practices including stewardship and allow Tribal members to reconnect with their ancestral homes (e.g. Washoe Tribe Wetlands Cooperative Agreement with LTBMU).
- B. Explore opportunities for delegation of Agency responsibility to Tribe.
- C. Identify objectives of effort and responsibilities of each party.
- D. Identify and provide approval/implementation process.
- E. Explore mechanisms and address technical assistance and information sharing needs.