

WORKING WITH AMERICAN INDIAN TRIBES ON WILDLAND FIRES: PROTECTING CULTURAL HERITAGE SITES IN NORTHWESTERN CALIFORNIA



Frank K. Lake

Federal agencies have a responsibility to American Indian tribes and tribal communities for the management and protection of tribal trust resources for reservation and public lands within tribes' ancestral lands and territories (Pevar 2002, Wilkinson and The American Indian Resources Institute 2004). The Indian Self Determination and Education Assistance Act (1975: Public Law 93-638) also provides mechanisms for establishing working relationships regarding the management of Federal programs (e.g., compact or cooperative agreements). The Federal Land Policy and Management Act (1976: Public Law 94-579) requires coordination with approved tribal management plans for the purposes of development and revisions of such plans and is inclusive of programs or projects. Federal Government consultation, such as government-to-government protocol agreements with federally recognized tribes (Executive Order 13175, 2000), provides one mechanism for raising concerns and understanding potential impacts to cultural resources and related tribal trust resources resulting from Federal fire management activities. Memoranda of Understanding (MOUs) and fire management

agreements between tribes and Federal agencies provide a framework for clarifying the agencies' and tribes' roles in collaborative and cooperative fire management for the protection, security, and mitigation of impacts to tribal trust and cultural and heritage resources.

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A New Structure of Cooperation

Because the nature of cooperation between Federal agencies and tribal entities is different than cooperation among Federal, State, and local fire management agencies, a different set of agreements and a whole new set of positions are necessary to ensure proper and timely communication and efficient action. MOUs and fire management agreements allow for the identification of agency and tribal representatives who have the authority and are responsible for making decisions pertaining to wildland fire management actions.

In the Pacific Northwest and California, such MOUs introduce a

number of positions specific to the unique relationship. These positions include special representatives for both the Federal agencies and for the tribes at various levels of operations involvement. Heritage resource advisors (Federal: Forest Service) and heritage consultants (tribal: Karuk), for example, are field personnel who coordinate and work with agency fire incident management teams (IMTs) to prevent, reduce, or mitigate impacts to cultural heritage and natural resources during wildfire management and burned area emergency response (BAER) operations and activities. The agency heritage resource advisor directs the work of the heritage consultant coordinator and heritage consultants. The agency heritage resource advisor is responsible for requesting heritage consultant(s) assistance when and where it is needed. These heritage consultant coordinators and level I heritage consultants are, at a minimum, light-duty fireline qualified (National Fire Equipment System [NFES] 2724, 2010) and may have additional training, credentials, knowledge, or expertise related to archaeological, cultural, or natural resources of tribal significance (NFES 1831, 2004).

Consultation and Collaborative Wildland Fire Planning

The Forest Service is committed to consulting with federally recognized American Indian tribes

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regarding Federal management activities. The government-to-government protocol agreement sets the foundation for agency and tribal consultation. Other agreements and plans of various types define the cooperation between Federal agencies and tribes. The MOUs tier to the government-to-government protocol agreement, and provisions are made for cooperation in land and resource management plans (LRMPs) or related fire management plans (FMPs) that specify goals, objectives, and desired management actions for reservation or public lands.

Tribal concerns can be addressed in various planning documents, including LRMPs and FMPs, affording national forest staff various ways to incorporate those concerns into fire response. The development of LRMPs and FMPs requires tribal consultation but not collaborative development; LRMPs may identify designated management areas of cultural significance to tribes, detail area-specific management objectives, and include clarification of responsibilities for these areas. When wildland fires on public lands occur within a tribe's ancestral lands or territory or within these LRMP-designated areas of cultural significance, MOUs and fire management agreements provide opportunities for further consultation and potential collaboration with tribes or tribal community members.

The Framework of Response

An MOU and fire management agreement can be combined in the same document. These agreements specify the purpose of the agreement, the statement of mutual benefits and interest to the agency and the tribe, the responsibilities of

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the agency and the tribe, and what is mutually agreed and understood between the parties regarding their roles in protection of resources. Additionally, and specific to wildland fire management, these agreements state who is involved in initial response for wildfires and fire complexes, the actions or activities for which they are responsible, and what guidelines apply to incident management and post-wildfire activities, such as BAER activities. Furthermore, these documents describe the specifics of positions, duties, and organizational structure for wildland fire management.

For example, in the MOU between the Karuk Tribe and the Six Rivers and Klamath National Forests, the stated purpose of the agreement is to continue the governmental cooperation between parties concerning wildland fire and fire management activities. The document further states that such cooperation "provides for the protection of significant cultural resources important to the Tribe, Forest Service, and the public." The document also includes direction for rates of pay that are commensurate with the complexity of incident management organizational roles and responsibilities outlined in attachments to the MOU.

Incident Roles

Official positions within the tribe specified in the MOU or fire management agreement ensure that cultural resource considerations are observed. Federal representatives are designated to communicate

with those tribal representatives at all levels with planning and operations. During operations, provisions are made to include representatives of the tribe in site-specific actions to preserve or restore cultural heritage sites and related tribal trust resources. Figure 1 presents one possible organization of roles for Federal and tribal interaction.

Tribal Duty Officer and Designated Tribal Government Representatives

Before the fire season, during development or renewal of agreements, the tribal council compiles a list of authorized tribal wildland fire staff to represent the tribe's interests pertaining to incident activities. This list includes: a tribal duty officer, designated tribal government representative(s), heritage consultant coordinator(s), and heritage consultant(s). The designated tribal government representative serves as agencies' primary point of contact within the tribe for wildland fire notification. The tribal duty officer or designated tribal governmental representative ensures that individuals identified by the tribe to be hired by the agency have necessary qualifications, certifications, and requirements. During multiple wildland fire incidents, the tribal duty officer or designated tribal governmental representative identifies and directs each incident-specific designated tribal government representative to coordinate efforts with incident commander(s) (ICs) and IMTs. As appropriate and necessary, the designated tribal government representatives can complete

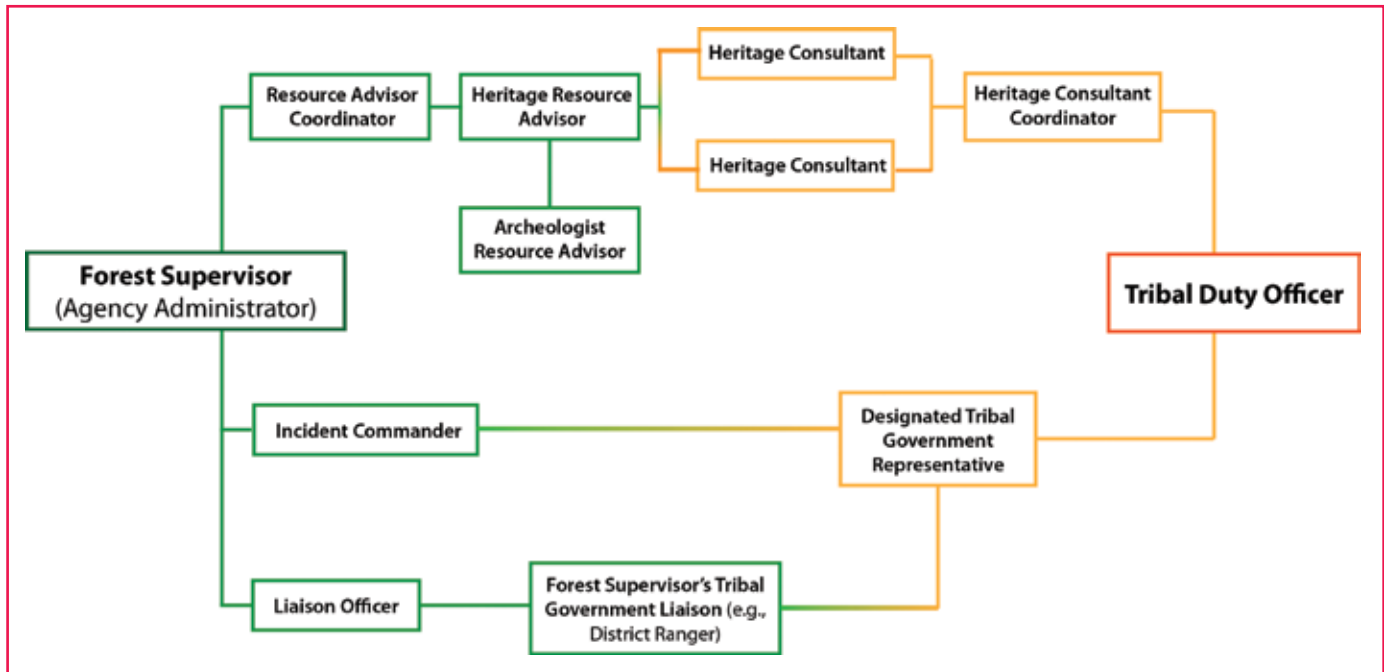


Figure 1—The Forest Service and tribal governments establish positions and roles to facilitate fire management interaction on lands of mutual interest. Exact roles are defined in the memorandum of understanding generated for the specific tribal area; the depicted positions represent one possible configuration. Organization of Federal positions is given in the Forest Service qualifications handbook (Forest Service 2005).

the qualification requirements of the Interagency Standards for Fire and Aviation Operations (NFES 2724, 2010: the “Red Book”) or Department of the Interior, Bureau of Indian Affairs (BIA) (National Interagency Fire Center 2010: the “Blue Book”).

Tribal Government Liaison and Heritage Resource Advisor

The forest supervisor or line officer identifies and appoints a heritage resource advisor and a tribal government liaison to work with the tribal duty officer and designated tribal government representatives for the incident. Depending on the size and complexity of the incident(s), the forest supervisor or

designated Forest Service agency administrator representative (e.g., a district ranger), in consultation with the heritage resource advisor and designated tribal government representatives, will determine whether to hire heritage consultants from the tribe(s) to address specific cultural and related tribal trust resources potentially at risk.

The agency heritage resource advisor serves in a critically important position, coordinating with the Federal resource advisor coordinator on tribal or cultural issues. The heritage resource advisor is selected for his or her familiarity with the cooperative agreements; fire and archaeological qualifications; and

knowledge of and experience with local tribal customs, beliefs, and practices. The heritage resource advisor is assigned to the IMT planning section chief and directs the work of the tribe’s heritage consultant coordinator and, if employed, the heritage consultants.

Heritage Consultant Coordinator and Heritage Consultants

The heritage consultant coordinator is a tribal representative who may be hired by Federal agencies as needed on incidents potentially involving American Indian cultural resources. In conjunction with the designated tribal government representatives, the heritage consultant coordinator coordinates activities and input from the heritage consultants and works with the heritage resource advisor or planning section chief.

As specialists hired for incidents, heritage consultants serve as the bridge between tribal concerns and fire management operations. The

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type of involvement and responsibilities of heritage consultants are determined by their level: I or II.

Level I heritage consultants work for and are directed by the heritage resource advisor. Level I heritage consultants are usually tribal members (or descendants) who have cultural and personal knowledge of the local landscape, vegetation, cultural resources, and tribally significant areas or sites and are assigned to work in specific locations (e.g., branches or divisions) of the incident. Level I heritage consultants may work with IMT branch chief(s), division supervisor(s), fire observer(s), resource advisor(s), or type I or II fire crew leader(s). Their work involves planning for reconnaissance of proposed firelines or the construction of selected contingency firelines or related fire operations (e.g., establishing safety zones or drop sites).

Level II heritage consultants are often tribal elders, practitioners, ceremonial leaders, or others who have significant knowledge of specific areas where incident management activities are proposed or are taking place. Level II heritage consultants can and may participate with nonfireline activities such as contingency planning and planning incident activities to prevent, reduce, or mitigate impacts to cultural resources, archaeological areas and sites, and culturally significant habitats or areas. The duties and responsibilities of level II heritage consultants are to provide local cultural knowledge and recommendations applicable to specific areas for incident planning and operations to lessen or mitigate potential undesired impacts to cultural and tribal trust resources. For example, a tribal spiritual leader may evaluate planned actions to

construct fireline near a sacred site and propose changes to incident operations to reduce impacts to site quality and use.

How It Works: Handling an Incident

In late June 2008, lightning storms in northwestern California ignited wildfires on the Klamath and Six Rivers National Forests. These incidents spread to encompass areas within the Karuk and Yurok

Tribes' ancestral territories. As individual wildfires spread, some were managed as separate fires and some merged into complexes. For example, the Blue 2 and Siskiyou fires merged to form the Siskiyou Complex, which spanned the two national forests and two tribal territories (fig. 2). Incident management organization varied in scale, from type III, II, and I to national incident management organization teams.

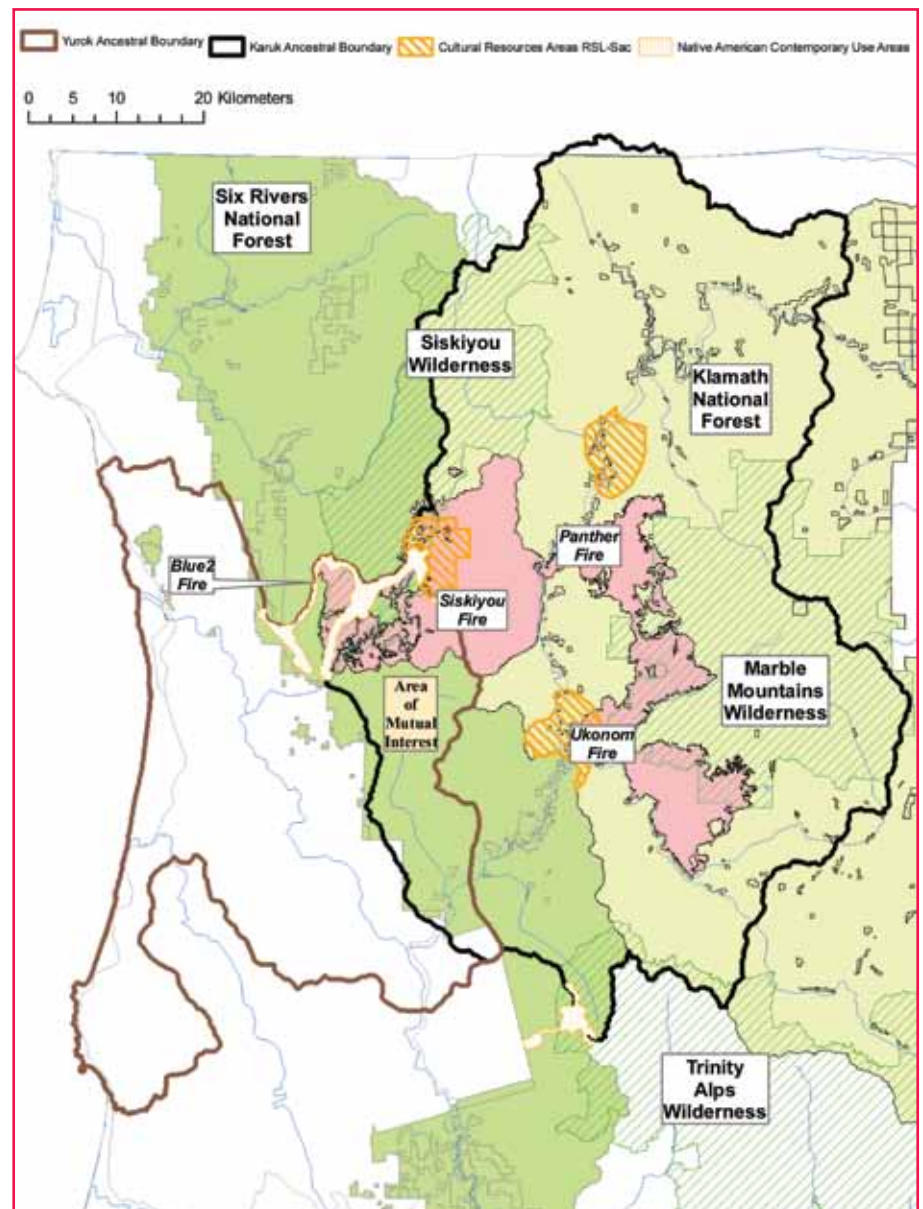


Figure 2—Yurok and Karuk ancestral tribal territories, national forests, Native American contemporary use area, and 2008 wildfire perimeters. Map: Janet Werren, Forest Service, Pacific Southwest Research Station.

The Six Rivers National Forest LRMP recognizes and has designated Native American contemporary use areas as culturally significant areas containing ceremonial districts, ancient and contemporary village and camp sites, numerous sacred areas, and other recorded and potential archaeological sites. The Klamath National Forest designates Cultural Management Areas in their LRMP. Due to tribal sensitivity and wildfire management concerns in these culturally significant areas, the two national forests utilized MOUs with the Yurok and Karuk Tribes to make use of the expertise of designated tribal government representatives and level I and II heritage consultants. In addition, numerous archaeologist resource advisors were assigned to work with the heritage consultant coordinators and level I heritage consultants.

Agency administrators' (e.g., line officers) briefing and delegation of authority documents followed the MOUs' roles for agency and tribal positions (NFES 2724, 2010, Appendices D and H). (The resource advisor coordinator and heritage resource advisor were, in this case, involved in the drafting of these documents.) Most IMTs lack familiarity with such agreements involving American Indian tribes, in part due to the recent development of such agreements and because the qualifications, duties, and supervisory roles of tribal heritage consultants must be defined for each IMT and incident.

At times, the lack of agency and contractor knowledge of—and sometimes lack of sensitivity to—American Indian customs, beliefs, practices, sacred areas, or sites strained working relationships between Indians and non-Indians. Other times, ineffective communica-

tion, human misunderstandings, and other errors resulted in undesired consequences. Larger incidents and longer tours (e.g., cycles of 14 days on/2 days rest, for up to 3 months) resulted in a greater duration of stress and cumulative fatigue for firefighting personnel.

Historical and political differences between the two tribal governments and appointed tribal representatives regarding acceptable activities or actions within shared tribal "mutual areas of interest" presented additional challenges to collaborative wildland fire management. In remote and limited-access areas (e.g., wilderness), specific challenges arose when two wildfire incidents (Blue 2 and Siskiyou) occurred within the two tribes' ancestral territories and a designated cultural resource management area (similar to a Native American contemporary use area). Differences between IMTs and tribe representatives over how and where contingency firelines should be located and constructed and the use of burnout or firing operations increased the complexity of management options. The Karuk Tribe's fire crew is a type 2 initial attack hand crew, an interagency resource made available through a cooperative agreement with the BIA. In some situations, the crew worked with resource advisors and level I heritage consultants when both tribes desired to limit the amount of nontribal fire personnel within particularly sensitive or sacred areas.

Many IMTs worked with tribes, respecting local tribal beliefs and spiritual sites. Overall, use of MOUs for heritage consultant coordinators and level I or II heritage consultants increased tribal participation and improved tribal input

to wildland fire management and BAER operations.

Outcome Assessment

The use of MOUs with components of fire management agreements between American Indian tribes and Federal agencies can significantly improve consultation and collaboration regarding wildland fire management. In the 2008 fires, localized collaborative decision-making promoted results that were generally consistent with tribal values and agency goals and objectives. Increased tribal participation with incident operations facilitated protection or reduced potential impacts to culturally significant resources, areas, and sites.

The complexity and size of incidents allowed for scaling of the level of participation or positions by tribes. Designated tribal government representatives, heritage consultant coordinators, and level I or II heritage consultants were able to work with agency fire personnel during incident and BAER activities. In addition to and separate from wildland fire MOUs, other opportunities exist for tribal participation and involvement with incidents, such as the U.S. Department of the Interior, BIA administratively determined hires for tribal fire crews (type II or I), fallers, and equipment operators (e.g., for chainsaws, water trucks, chippers, or excavators).

Recommendations

Because of the recent development and utilization of wildland fire management MOUs, IMTs and wildland fire personnel need to be familiarized with positions and duties of all tribal parties involved. Several recommendations, if implemented, could improve the

effectiveness of wildland fire MOUs with tribes:

1. Enhance programmatic tribal capacities and assumption of leadership roles (see Indian Self Determination and Education Assistance Act).
2. Develop, review, modify, and approve agreements prior to each wildfire season.
3. Have agency and tribal personnel complete all necessary qualifications and trainings prior to the beginning of the upcoming wildfire season.
4. Standardize resource advisor training sessions, certification task books, and other materials to promote familiarity with and renewal or revision of agreements with tribes.
5. Include local tribal issues in regional or local unit-specific training. For example, address tribal customs and protocols in local prefire season training with tribal representatives and agency personnel, or address cultural and heritage resources and sensitivity to tribal issues in regional firefighter refresher training sessions.
6. Ensure that BIA-sponsored tribal personnel have records or certificates of qualifications that adequately comply with NWCG or Interagency standards. Perceived differences in training standards between the BIA and the Forest Service can complicate or hamper tribe member participation.
7. Include copies of the current wildland fire management MOU for each tribe in line officer briefings and delegation of authority documents and in IMT information packets.
8. Review and clarify positions, roles, responsibilities, and duties among IMTs, agency line officers, and tribal personnel per agreements.

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9. Compile and organize all tribally significant data pertaining to tribal ancestral territories, areas of mutual interest, special cultural management areas (e.g., Native American contemporary use areas or other cultural management areas) or other geospatially referenced information for areas where wildland fires or management of fires could impact cultural and heritage resources. This data should include information from LRMPs specific to tribes, cultural resources, heritage or historic areas, and archaeological sites. This data can be helpful for assessing tribal concerns and values at risk for Wildland Fire Decision Support System–Rapid Assessment of Values-at-Risk planning. If desired by tribes, provide site record information from agencies (e.g., heritage programs and archaeologists) with the appropriate level of sensitivity to the IC operations chief. Site records are confidential, but designated tribal government representative(s) and heritage resource advisors should be able to work directly with information centers and tribal heritage preservation officers to ensure they have the proper information on site records to protect the archaeological resources and sacred sites.
10. At incident briefings, describe and clarify roles, qualifications, and planning and operations coordination with tribal person-

nel. This can provide opportunities for updating each other regarding emerging issues and operational strategies.

11. If tribe-owned equipment or operators are hired in administratively determined crews, have documentation for rates of pay, proof of insurance, and required certificates.
12. Make hardcopy and digital forms of all necessary documents available to agency and tribal leadership for incident planning.

Additional information about wildland fire management MOUs with tribes can be obtained from the Forest Service, Pacific Southwest Region, Klamath and Six Rivers National Forests; the Karuk Tribe; or the Yurok Tribe. Contact Frank K. Lake regarding his experience working as a resource advisor coordinator and research ecologist with tribes on wildland fires, forestry, ethnobotany, and fire management in northwestern California.

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Fire Management Operations: Tribal Perspective

According to Bob McConnell, a member of the Yurok Tribe and the cultural resources coordinator, who served as a designated tribal representative on the Blue 2 Fire in 2008, “It is important for other tribes to know about and be able to utilize tribal fire management MOUs.” McConnell has been requested by other tribes nationally to share the example of the Yurok tribe fire management MOU with the Six Rivers and Klamath National Forests.

According to McConnell, the agreements facilitate the inclusion of tribal desires, concerns, and perspectives in wildland fire management within their ancestral territory. “Some incident management teams are not very familiar with the agreements. There can be some resistance to incorporation of tribal values and personnel recommendations if incident commanders are not familiar with tribal consultation or agreements.”

In particular, the agreements familiarize incident management teams (IMTs) with the inclusion of tribal values in incident planning and operational efforts. McConnell relates, “In north-western California, tribes are [politically] active and voice their concerns and interest regarding

management of their ancestral territory. Many IC [incident command] teams may not be accustomed to having to work with tribes.” He goes on, “The agreement worked as well as it could given the complexity of the incident. Multiple wildfires involving different levels of IMTs and a long fire season increased the challenges. When tribal perspectives were shared, and the adoption or recognition of these values by IMT personnel happened, relations improved.”

In addition to incident management teams, many firefighters at all

levels—from branch chief and division supervisors to type II crews—were not accustomed to having to work with tribal heritage resource advisors. At morning briefings, tribal designated representatives were able to address the fire personnel and crews. McConnell recalls how this really helped people new to working with tribes. “Daily communication was important to inform the fire crews of [tribal] issues. Incident coordination and working relationships improved when tribal representatives could directly address firefighters about issues, concerns, and particular tribal



Reconnaissance of a contingency fireline by a Yurok heritage consultant and an archeologist resource advisor in a tribal sacred area of the Siskiyou Wilderness, Blue 2–Siskiyou Complex, 2008. Photo: Bob McConnell, Yurok Tribe.

geographic information systems specialist, for map development; to Robert (Bob) McConnell, Yurok Tribe, for his sidebar and photo contribution; Bill Tripp, Karuk Tribe for his comments and review; and to the Yurok and Karuk Tribes’ fire management personnel for knowledge shared.

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values. Fire crews began to understand why tribes desired certain actions and bought into mitigation strategies—for example, regarding the culturally and ecologically important tree, Port Orford cedar, strategies to prevent cedar root disease and protect sacred sites and areas.

At times, McConnell had to address the various ways some fire personnel did not recognize the contemporary living cultures of tribal people. For example, the approach of non-native archaeologist resource advisors, based on their training, was to record everything concerning cultural use sites, while the preference of many tribal heritage consultants was to not record site specifics out of deference for ongoing use. With this in mind, McConnell worked with archaeologist resource advisors to scout potential contingency lines during construction of firelines. “This is different from the agency perspective and approach to archaeological site documentation. Nonlocal archaeologist resource advisors had philosophical differences with how to address prehistoric use versus continued site use by contemporary tribal practitioners.”

Communication challenges were ongoing, as each operational shift, new IMT, creation of new wild-fire complex, and influx of new

firefighters posed challenges to tribal representatives. In particular, McConnell recounts, “Planning meetings with IC went fair to okay most of the time. At least one time, both tribes [Yurok and Karuk] agreed to a plan of action, but the IC changed fire management actions despite the tribal desires. The tribes maintained their ‘No’ position to the proposed action.” In this situation, the IC chose a different course of action than what was desired by the tribes.

Another challenge stemmed from separate tribal recommendations for the same area in establishing precomplex unified control to the merging of the Blue 2 and Siskiyou fires. Working with the Blue 2 Fire IMT, McConnell was shown a map of the Siskiyou Wilderness with the fire containment boundary drawn through Elk Valley, an area held sacred to both tribes. He consulted with Yurok tribal leaders and elders about the proposed actions. The Yurok Tribe suggested using a recreational trail as the fireline versus a natural feature, the ridge. “This recreational wilderness trail was recon’ed and flagged, and then nothing was done for a while.” During this time, the Karuk Tribe, independently addressing the southwestern boundary of the Siskiyou Fire, proposed a different fireline location through the same area. “The lack of coordina-

tion between the IMTs for the two incidents resulted in overlapping searches for suitable contingency lines.”

Furthermore, “Tradeoffs also had to be made regarding recreational backpacker versus tribal spiritual use, as well as whether the trail could be made into a fireline.” Conflicting opinions arose as to whether to mark the trail with flagging and open it for use as a fireline or to maintain the tribal practitioners’ spiritual seclusion, privacy, and use. Differences arose in tribal preferences as to where to put the fireline.

Despite these day-to-day challenges, overall tribal fire management agreements facilitated more effective consultation, coordination, and collaborative wildfire incident planning with tribes. The Yurok Tribe, for instance, was able to have representatives involved with incident planning and operations at all levels. McConnell hopes that other tribes and fire managers who work with or will have to work with tribes on wildland fires can learn from the Yurok Tribe’s experience.

For more information on tribal MOUs and fire planning, contact Bob McConnell at <rmcconnell@yuroktribe.nsn.us>.

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