

Teacher Background for Lessons of Our California Land

North Fork Mono Meadow Restoration, Fire, and Water: The Tribe's Land and Water Rights and Tenure

Just as fire is important in the Great Plains ecosystem (see the “Growing Prairie” activity at <http://pbs.org/saf/1106/teaching/teaching.htm>), fire is a crucial component of the ecosystems throughout North Fork Mono homelands (see the [map of North Fork Mono traditional territory](#)). The dynamics of the forest ecosystem that gold miners, ranchers, and United States military officers, forest rangers, and scientists encountered in the central Sierra Nevada in the nineteenth century were the results of centuries of small, high-frequency fires propagated along a complex network of trails by Native American people. From the Native American perspective, these fires were gifts from the people to the land, and the intentional exclusion of fire since 1900 has reduced the gifts -- the food, medicine, and material or cultural resources -- that the land had offered for centuries in return for the people's gifts.

Prior to the arrival of Europeans, the use of fire by the North Fork Mono and other California Indian people enhanced plant and animal resources and sustained a higher human population density than intensive, seed-crop agriculture could have supported. Recent studies have suggested that Indian people in some areas of California might have once raised corn, but they subsequently abandoned the practice in favor of carefully designed cycles of burning the land (see Jared Aldern's dissertation and the book by Kent Lightfoot and Otis Parrish listed in the resource section below). M. Kat Anderson (2009) interviewed Dan McSwain, a North Fork Mono elder who confirmed that his people's traditional practices included such thoughtfully arranged and timed cycles of fires. According to McSwain:

The Indians used to burn in the fall. They burned in the oaks, chaparral, ponderosa pines, and fir... Different areas were set on fire in the fall, brushy areas, not the same spots every year.... In those times it would seldom get in the crown of trees. It would just burn the grass.... They burned every two or three years. You could ride a horse anywhere without running into the brush. Now you can't even get off the road.

Using wet meadows as fire breaks and carefully steering fires by drawing on their knowledge of slope, prevailing winds, daily weather patterns, and fuel characteristics, North Fork Mono fire tenders varied the frequency and extent of their burns and maintained what Lightfoot and Parrish (2009) call “environmental mosaics – complex quiltlike environments with multifaceted habitats – teeming with varied kinds of food, medicinal, and basketry resources.” Mono people created and enhanced the habitats for these resources with fire, and this is why North Fork Mono Tribal Chairman Ron Goode refers to plants such as oak trees and animals such as deer not as *natural* resources but as *cultural* resources. Without North Fork Mono fires, the oaks, the deer and other cultural resources are not as plentiful or healthy as they were in times past.

In the “[Growing a Prairie](#)” activity, students learn that fire enhances habitat by opening up the canopy -- the trees and shrubs that shade lower-growing plants -- and thus allowing light and energy to reach the forest floor. In addition to this benefit, by thinning the leaves and branches of trees and shrubs and thus allowing more precipitation to reach the ground, regular fires in the Sierra Nevada increase the amount of water that infiltrates the ground during and after storms. This groundwater then moves through the soil and rocky substrate to streams and to the porous soils of meadows. With careful maintenance of these soils and their vegetation, meadows can act as “sponges” that store water and slowly release it into streams during the dry period of the year. Thus the carefully designed North Fork Mono fires put water exactly where people want it to be and can use it. The North Fork Mono fire cycle directs water to basket plants, food plants, and other resources in meadows as surely as would an irrigation ditch.

The North Fork Mono Tribe has several riparian (riverside) and mountain meadow restoration projects underway, from the San Joaquin Valley floor to the higher elevations of the Sierra Nevada. The Tribe’s main goal for the projects is to restore cultural resources, such as basket plants, for the use of tribal members. However, private land owners and government agencies have begun to see the value for the entire watershed of the Tribe’s traditional interactions with the land. For example, the California State Department of Water Resources consulted with members of the Tribe to include a chapter on forest management and meadow restoration in the 2009 Update of the California Water Plan (see <http://www.waterplan.water.ca.gov/strategies/index.cfm>).

By restoring meadows and the traditional fire regime and forest structure throughout North Fork Mono homelands, the Tribe is advocating for a return to its customary land use and land tenure. Tribal Chairman Goode emphasizes that because the United States government has never extinguished North Fork Mono land titles, and the Tribe’s land and water rights have never been abrogated by treaty, tribal members still hold rights to the water that irrigates their cultural resources. In California and other states ceded to the United States by Mexico in the Treaty of Guadalupe Hidalgo, the foundations of land and water law and policy lie in Spanish and Mexican precedents, among them the Spanish Law of the Indies, which states, “We order...that the Indians be left with, above all, what lands shall belong to them... and the waters and places of irrigations... and the lands... shall be reserved in the first place, and in no case can they be sold or alienated.” In addition, the California Assembly’s 1850 Act for the Government and Protection of Indians stipulated that “[p]ersons and proprietors of land on which Indians are residing, shall permit such Indians peaceably to reside on such lands, unmolested in the pursuit of their usual avocations for the maintenance of themselves and their families.”

Based on this legal precedent, and because the 1851-52 treaties with California tribes were never ratified by the United States Senate, Goode and other Native American leaders have asserted that the tribes retain rights to water on their aboriginal homelands. As historian Norris Hundley once stated the case,

[T]he Indians by virtue of their prior presence possess... a so-called right of occupancy which only the national government could extinguish. Thus, the Indian water right... can be traced to 'time immemorial' and is 'prior and paramount' to the rights of all non-Indians. Moreover, their rights would possess the character of a private property right protected by all the guarantees afforded private property in the U.S. Constitution. Then, too, if the Indians themselves had reserved the water, they would have retained all the potential beneficial uses of the water, not just those for agricultural or pastoral purposes.

The North Fork Mono and other indigenous nations express their long-term relationship to land and water -- their land tenure and property rights -- through their stories such as the creation stories considered in this curriculum. These ancient stories are records of the time that Native peoples reserved the land and water rights on all their lands within their aboriginal territory. Other, more recent stories (see Goode's [position paper on tribal water rights](#) and his [writing on the history of the San Joaquin River](#)), are related to the creation stories and they urge us to continue to reciprocate the gifts of the land by offering gifts such as fire or food for animals who live in the tribes' homelands. Fire and ceremonial gifts are essential elements of North Fork Mono irrigation -- the direction of water to cultural resources -- and meadow restoration is an assertion of land and water rights and tenure.

Resources:

1. Jared Aldern's doctoral dissertation, "Native Sustainment: The North Fork Mono Tribe's Stories, History, and Teaching of Its Land and Water Tenure in 1918 and 2009," available at www.jareddahlaldern.net.
2. M. Kat Anderson. (2009). *Historical Native American Resource Use, Harvesting, and Management of California's Oak Communities*. Natural Resource Conservation Service, National Plant Data Center, Department of Plant Sciences, University of California, Davis.
3. The California Water Plan's Forest Management Strategy, available at <http://www.waterplan.water.ca.gov/strategies/index.cfm>.
4. Kent G. Lightfoot and Otis Parrish. (2009). *California Indians and Their Environment: An Introduction*. Berkeley and Los Angeles: University of California Press.
5. The Wild Rivers Teaching American History Project. "Indians of Northern California: A Case Study of Federal, State, and Vigilante Intervention, 1850 - 1860." http://americanindiantah.com/lesson_plans/ml_indians_in_northern_california.html
6. Norris Hundley, Jr. (1982). "The 'Winters' Decision and Indian Water Rights: A Mystery Reexamined." *The Western Historical Quarterly*, 13(1), 17-42. Retrieved from <http://www.jstor.org/pss/969063>

7. Steven Newcomb, “Above All: Kumeyaay Water Rights Affirmed.” <http://kumeyaay.com/kumeyaay-news/news-archive/1423-above-all-kumeyaay-water-rights-affirmed.html>
8. Ron Goode’s [position paper on tribal water rights](#) and his [writing on the history of the San Joaquin River](#)