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Traditional Knowledges Guidelines

FREE, PRIOR AND INFORMED CONSENT (FPIC) AND RISK AND
OPPORTUNITY ASSESSMENT FOR ENGAGEMENT WITH TK_s HOLDERS

Emic

good mind

guardianship

customary law

cosmovision

reciprocity

obligations

relations

Etic

information

economics

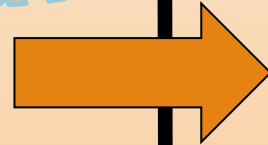
intellectual property

common heritage

public domain

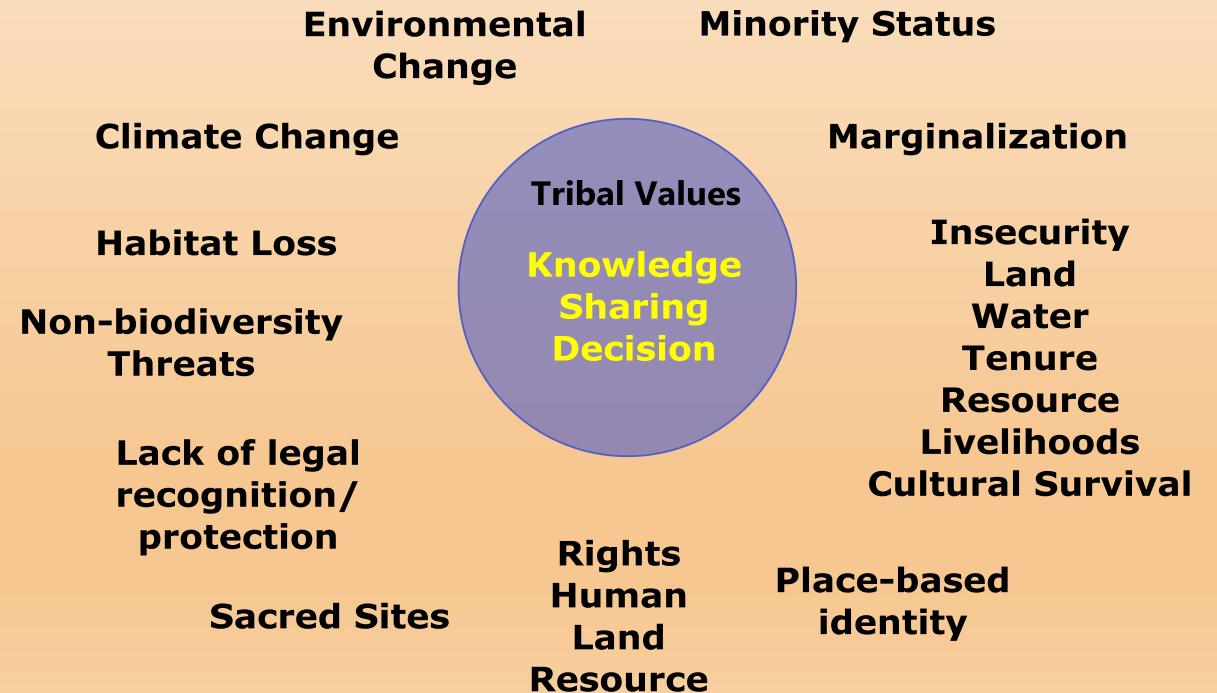
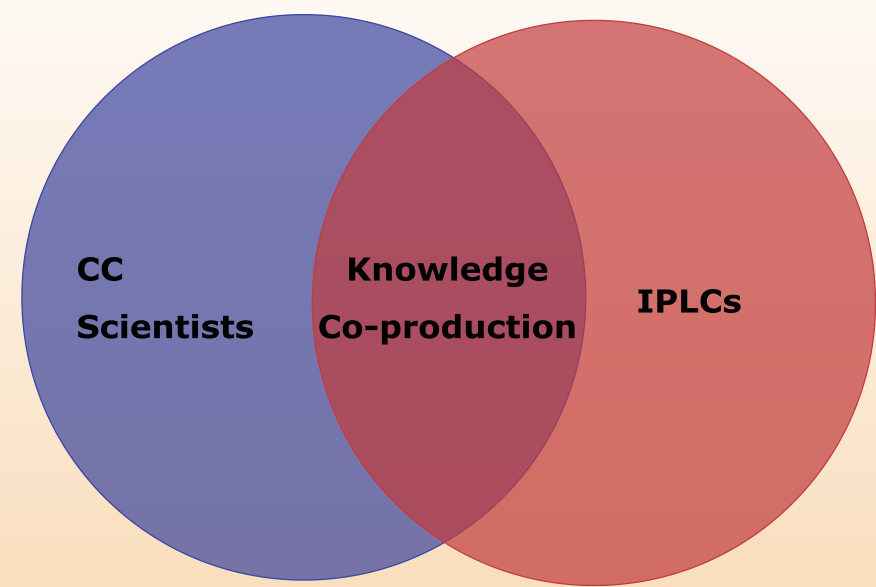
secular knowledge

open knowledge



Problem-Focused
Approach (TEK)

Holistic
Decision Making
(Ecology of TKs)



Traditional Knowledges Guidelines

Why Guidelines?

The hard truth:

Tribes have not substantially contributed to the climate change problems

So called “opportunities” the result of a profound failure to control human desire and impact on the climate system

TKs are now a priority focus in some LCCs, and funding is increasing

Little existing guidance, and what exists doesn't fully reflect indigenous views

Guidance that exists not know or not followed

Traditional Knowledges Guidelines

Why Guidelines?

TKs are now a priority focus in some LCCs, and funding is increasing
Little existing guidance, and what exists doesn't fully reflect indigenous views
Guidance that exists not know or not followed
Therefore, funding occurring in a vacuum

Context of the new demand for access to TKs

Historically TKs dismissed
TKs being asked to solve problems not caused by TK holders
TK holders have the TK, so there need to be value added v. mining operation
Proposals for access to TKs often suffer from “optimism bias”

Traditional Knowledges Guidelines

Why Guidelines?

Regardless of historical context, who caused what, tribes must move on
(forced participation)

Must apply TKs to problems, or values will not show up in the solutions
to direct impacts

Must transfer some kind of information related to TKs to ensure they
are not harmed by solutions (adaptation, mitigation, conservation)

Traditional Knowledges Guidelines

Internal Ecology

Values: Respect, reciprocity, equilibrium, good mind, good heart

Procedures: How to contact the tribes, how they wish to structure free, prior and informed consent, participation

Benefit sharing: economic, capacity-building, technology transfer, acknowledgement

Traditional Knowledges Guidelines

External Ecology

Standing: Power relationships, sovereignty and self-determination,
government-to-government

Nature of Traditional Knowledges: Cultural heritage vs. intellectual property

Ownership of exchanged knowledges

Control over exchanged knowledges

Ownership of products

Control over the publication and distribution of products

Legal issues: No recognition of customary law (public domain), no
recognition of G-2-G sovereign communications (FOIA)

Loss of benefit sharing

Co-protection: TKs and associated cultural resources

Traditional Knowledges Guidelines: Primary Principles

First, Do No Harm

Primum non nocere, non-maleficence, doing No Harm

Hippocratic Oath, Law (liability)

Duty not to cause harm to others through any intervention

Duty to ensure actions benefit all involved

Responsibility for consequences of actions

Duty to do good (beneficence), duty of care

Traditional Knowledges Guidelines: Primary Principles

Tribal Sovereignty

All tribes have sovereign jurisdiction over their traditional knowledges

All tribes have the right to set their own criteria for sharing/not sharing TKs

Guidelines are not a checklist

Traditional Knowledges Guidelines: Primary Principles

Free, prior and informed consent (FPIC)

Free: un-coerced, unbiased, freedom of tribes to set procedure through which consent is given

Prior: Consent prior to access and use, changes in use

Consent: Right to say no: Give or withhold consent

Not necessarily collective consent – collective rules

Risks and opportunities – appropriate and balanced information

Overcome “optimism bias”

Traditional Knowledges Guidelines: Guidelines

Guideline 1. Understand key concepts and definitions related to TKs

Guideline 2. Recognize that indigenous peoples and holders of TKs have a right NOT to participate in federal interactions around TKs

Guideline 3. Understand and communicate risks for indigenous peoples and holders of TKs

Traditional Knowledges Guidelines: Guidelines

Guideline 4. Establish an institutional interface between indigenous peoples, TK holders, and government for clear, transparent and culturally appropriate terms-of-reference, particularly through the development of formal research agreements

Guideline 5. Provide training for federal agency staff working with indigenous peoples on initiatives involving TKs

Guideline 6. Provide specific directions to all agency staff, researchers and non-indigenous entities to ensure that protections for TKs requested by tribes and knowledge holders are upheld

Traditional Knowledges Guidelines: Guidelines

Guideline 7. Recognize the role of multiple knowledge systems

Guideline 8. Develop guidelines for review of grant proposals that recognize the value of TKs, while ensuring protections for TKs, indigenous peoples, and holders of TKs

Traditional Knowledges Guidelines Risks

Misappropriation of traditional knowledge per se

- Moral hazard of cultural offense (customary law/stewardship obligations)

- Third party acquisition of TKs (not bound by ethical guidelines or law)

- Loss of ownership/control over TKs

 - Western IP law and the public domain / FOIA

- Privatization of TKs through derived intellectual property rights

- Loss of benefits/lack of benefit sharing for TKs per se

Misappropriation of cultural resources associated with TKs

- Overharvesting/extirpation (local extinction)

Traditional Knowledges Guidelines Opportunities

Knowledge co-production and co-creation

Novel solutions from combination of scientific knowledge and TKs

Ensure indigenous resource, landscape and other values are reflected

New knowledge in a changing world

Limitations of the ability of TKs to cope with unprecedented change

Increasing unreliability of traditional environmental indicators

Valorization of traditional knowledges

Potential for right relationships

Co-management, self-management, government-to-government

Traditional Knowledges Guidelines

1. How a tribe wishes to be contacted
2. Who owns research outcomes
3. Tribal control over what gets published
4. Recognition and Remuneration to elders
5. Acknowledgement
6. Restrictions on uses
 - customary law, collective ownership
 - “contracting into custom”
7. Restrictions on transfers
8. Checkpoints for changes in use
9. Ongoing responsibilities for consultation, negotiation, monitoring, reporting

Traditional Knowledges Guidelines

11. Reciprocity

- Clarity over benefits to tribes

- Monetary and non-monetary benefit sharing

- Distributive justice

12. Respect

13. Flexibility and responsiveness to community needs

13. Procedures/procedural justice

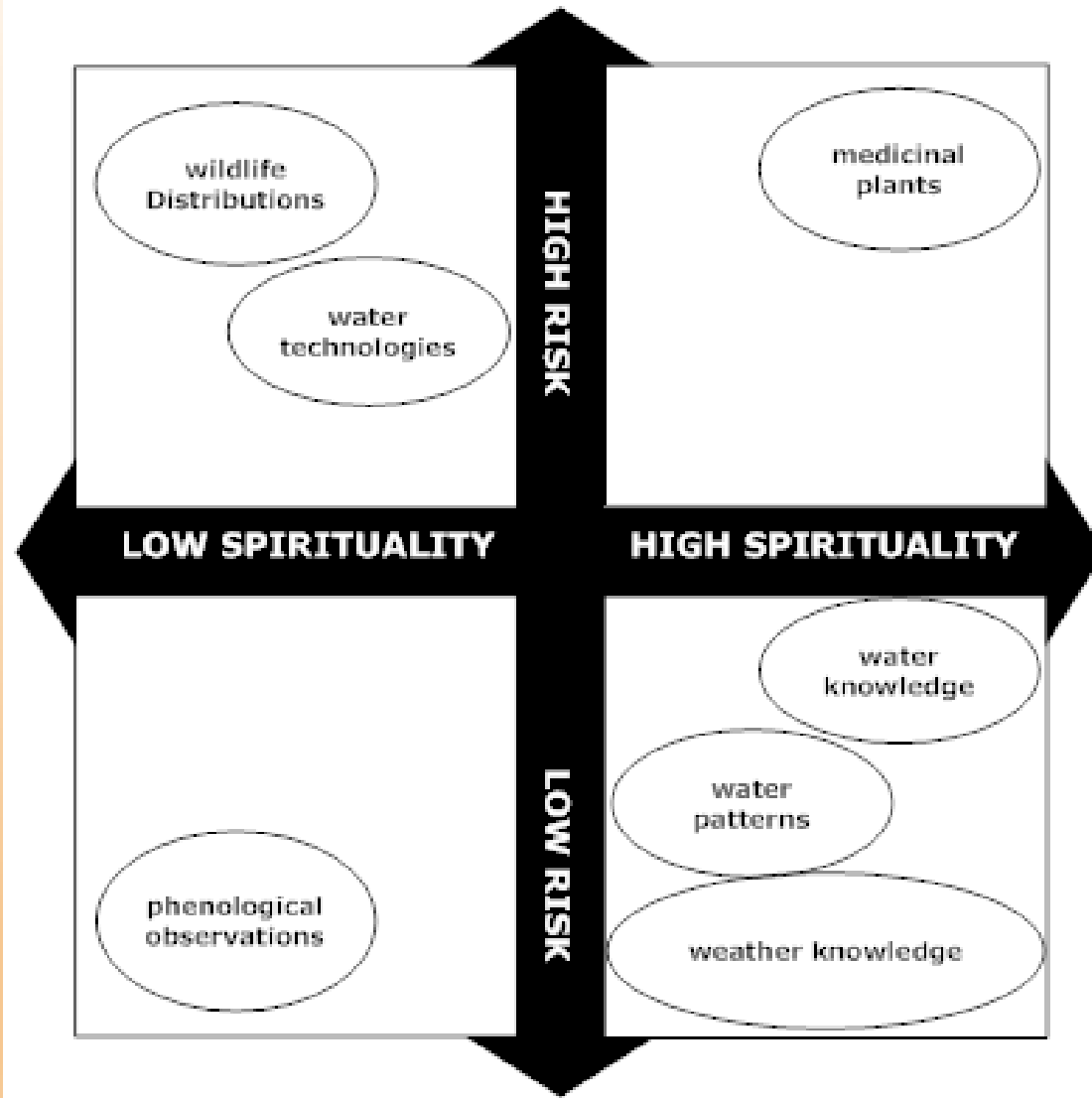
- Full and effective participation

- Traditional decision making

- Gender, youth, elder participation

14. Equilibrium based on tribal worldview, balance among partners and the environment

Risk / Spirituality Matrix



Tribal Law

Good mind
Creator's Gifts
Reciprocity
Stewardship Obligations
Relations

Opportunities for sharing
Risks of Sharing
Free, Prior and Informed
Consent (FPIC)
Opportunity/Risk Assessments

Opportunities/Risks

Western Law

Conflicts of Law
Intellectual Property Rights
Copyrights
Public Domain
Freedom of Information
USPTO Asserts Supremacy

Tribes have Sovereign
Jurisdiction
Knowledge as Sovereign
Property
UNDRIP
Co-Management

TK Governance



Conclusion

Indigenous peoples are generally very generous, and have shared much and often willing to work with their neighbors. But there needs to be caution - risk of disclosing unprotected traditional knowledge associated with unprotected cultural resources

FPIC challenging and will take bridge- and institution-building

Principle of Respect

Principle of co-protection for both TKs and associated resources

Principle of stewardship obligations (protected sharing)

Principle of doing no harm

