National Training Center-Fort Irwin, California

Native American Consultation Meeting at Fort Mojave, Nevada, Held on 2-3 October 2003

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National Training Center-Fort Irwin, California: Native American Consultations Held at Fort Mojave, Nevada, Held on 2-3 October 2003

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ABSTRACT: Many federal laws, regulations, and executive orders promulgated since 1990 specifically require consultation with Native American tribes when a federal agency makes decisions concerning cultural resources and traditional places. Consultation is founded on the Nation-to-Nation relationship between the United States and federally recognized tribes. To meet both the letter and the spirit of the law, the National Training Center-Fort Irwin, California, conducted a meeting as part of the agency’s continuing consultation with tribal governments. The consultation meeting was hosted by the Fort Mojave Indian Tribe, a federally recognized tribe, and held at the AVI Resort and Casino owned by tribe, on 2-3 October 2003. Sixteen tribes were invited to attend. Attendees presented and discussed (1) Comprehensive Agreements (CAs) with individual tribes having a cultural interest in the geographical region, (2) the ethnohistoric and ethno- graphic cultural affiliation study of the mid-Mojave region, (3) Fort Irwin-NTC Programmatic Agreements (PAs) with individual tribes having a cultural interest in the geographical region, and (4) proposed undertakings on Fort Irwin and the current and projected measures for protection/mitigation of cultural resources within these project areas. A transcript of the consultation meeting is included in this report.

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Preface

This study was conducted for the U.S. Army National Training center — Fort Irwin, California, under project 1R00935056, “To Organize, Facilitate, and Moderate a Meeting Between Fort Irwin and the Federally Recognized Indian Groups,” through Military Interdepartmental Purchase Request 2GCERL0019, 29 March 2002. The technical monitor was Mr. William (Mickey) Quillman, Natural and Cultural Resources Manager, NTC-Fort Irwin.

The work was performed by the Land and Heritage Conservation Branch (CN-C) of the Installations Division (CN), Construction Engineering Research Laboratory (CERL). The CERL Principal Investigator was Tad Britt. Compilation of this report was admirably completed by Tatiana Brecht with contributions and materials provided by Paige Peyton, Geomarine Inc. The technical editor was Gloria J. Wienke, Information Technology Laboratory. Dr. Lucy A. Whalley is Chief, CEERD-CN-C, and Dr. John T. Bandy is Chief, CEERD-CN. The associated Technical Director was Dr. William D. Severinghaus, CEERD-CV-T. The Director of CERL is Dr. Alan W. Moore.

CERL is an element of the U.S. Army Engineer Research and Development Center (ERDC), U.S. Army Corps of Engineers. The Commander and Executive Director of ERDC is COL James R. Rowan, and the Director of ERDC is Dr. James R. Houston.
1 Introduction

Background

Many federal laws, regulations, and executive orders promulgated since 1990 specifically require consultation with Native American tribes when a federal agency makes decisions concerning historic properties and archaeological sites. However, this legislation doesn’t specifically define consultation, although the common meaning is to ask advice and share information to make an informed decision. Consultation does not imply mere notification of a pending action; nor is it a method to obtain consent or agreement.

Consultation is founded on the government-to-government relationship between the United States and federally recognized tribes. It provides an invaluable method of obtaining expert advice, ideas, and diverse opinions from Native American constituents regarding control and appropriate treatment of cultural resources.

To meet both the letter and the spirit of the law, the National Training Center-Fort Irwin, California, conducted a consultation meeting as part of the agency’s continuing consultation with tribal governments.

The National Training Center

The National Training Center at Fort Irwin is located 37 miles northeast of Barstow, California, and is a U.S. Army installation (see Figure 1). The base is the home of the U.S. Army National Training Center (NTC) and also includes the National Aeronautics and Space Administration (NASA) Goldstone Deep Space Tracking Station. The installation covers 642,730 acres (260,113 hectares) in the north-central Mojave Desert encompassing over 1,000 square miles (2590 square kilometers).
Objective

The objective of this consultation meeting was to establish an open and constructive dialogue between the U.S. Army and the Native American tribes who have cultural resource interests at NTC-Fort Irwin. This dialogue is conducted on a government-to-government level regarding the military mission of NTC and potential tribal issues with respect to the installation and its Area of Potential Effect (APE).

Meeting Site

The consultation meeting was held at the AVI Resort and Casino owned by the Fort Mojave Indian Tribe, a federally recognized tribe. The AVI Resort is located on the about 14 miles southwest of Laughlin, Nevada; or about 110 miles southeast of Las Vegas, Nevada.

Approach

This meeting occurred on 2-3 October 2003 and was hosted by the Fort Mohave Indian Tribe. The following topics were presented and discussed:

- NTC-Fort Irwin Comprehensive Agreements (CAs) with individual tribes having a cultural interest in the geographical region of the NTC. These CAs would specify mutually agreed-upon procedures in the event of an inadver-
tent discovery of cultural items, per the Native American Graves and Repatriation Act (NAGPRA) of 1990.

- The ethnohistoric and ethnographic cultural affiliation study of the mid-Mojave region (i.e., those federally recognized tribes that claim aboriginal, ancestral, or ceded land ties to the geographic area that now constitutes NTC-Fort Irwin and its APE).
- Fort Irwin-NTC Programmatic Agreements (PAs) with individual tribes having a cultural interest in the geographical region of the NTC, per the National Historic Preservation Act Section 106.
- Proposed construction projects on Fort Irwin and the current and projected measures for protection/mitigation of cultural resources within these project areas.

The NTC-Fort Irwin Cultural Resources Program (CRP), in conjunction with the NTC-Fort Irwin Department of Public Works (DPW) and ERDC-CERL archaeologist, Mr. Tad Britt, developed a schedule and timeline for the meeting:

- Mailing of invitations: Deputy Commander and Chief of Staff Colonel Edward L. Flinn sent meeting invitations (Appendix D) to consulting tribes on 28 August 2002. These invitations were in the form of a letter to the tribal chairperson and/or tribal NAGPRA coordinator. A list of these contacts is in Appendix G. The letter discussed the date and purpose of the meeting, explanation of payment for travel expenses, and travel logistics.
- Telephone follow-ups: One week before the scheduled meeting, follow-up telephone calls were made to the consulting tribes by Ms. Tatiana Brecht of ERDC-CERL. During these telephone calls, Ms. Brecht asked if a tribal representative would be attending the meeting, and asked if there were any additional topics they would like included in the meeting agenda. The results of the telephone effort are included in Appendix F.

The meeting opened at 1300 hours (1:00 PM) on Thursday, 2 October, with presentations and discussions held that afternoon and the following day. On the afternoon of 3 October 2003, tribal representatives and other invited guests were shown several Native American sites located near the AVI Resort.

**Mode of Technology Transfer**

This report will be sent to each tribe invited (listed in Appendix G) as well as to tribes who have since the meeting indicated their interest in receiving a copy. This report will be made accessible through the World Wide Web (WWW) at URL: [http://www.cecer.army.mil](http://www.cecer.army.mil)
2 Tribal Consultation Meeting Schedule

Thursday, 2 October 2003

Guests arrived mid-day and checked in at AVI Resort. A block of rooms had been reserved under Fort Irwin, NTC. Each Tribal representative was responsible for keeping time and trip records and receipts for all of her or his lodging, meals, and travel expenses. A welcome package was waiting at the AVI Resort.

1300 Began meeting at AVI Resort
• Welcome – Deputy Commander and Chief of Staff, Col. Edward L. Flinn
• Pledge of Allegiance
• Native American Prayer
• Group Introductions

1330 Topics for Discussion – Col. Flinn
1. NAGPRA Comprehensive agreements
2. Programmatic agreements
3. NTC Cultural Resources Program
4. Listening Session

1345 NAGPRA Comprehensive Agreement Presentation – Mr. Tad Britt

1400 NAGPRA Comprehensive Agreement – Open Discussion

1445 – 1500 BREAK

1500 Programmatic Agreements Presentation – Ms. Paige Peyton

1600 Listening Session

1630 Concluded for the day

1830 Fort Mojave Tribal Dancers social program
Friday, 3 October 2003

0900  Resumed meeting
•  Pledge of Allegiance
•  Native American Prayer

0915  NTC Cultural Resources Program
•  Land Expansion Results
•  Cultural Affiliation Study

1015 – 1030  BREAK

1030  (NTC Cultural Resources Program Continued)
•  Fiber Optic network

1130 – 1300  LUNCH

1300  (NTC Cultural Resources Program Continued)
•  Railroad Spur
•  Block Surveys
•  Site Evaluations

1315  Listening Session

1415  Meeting adjourned
  Instructions and assistance of completing Travel Vouchers were provided to
  ensure prompt reimbursement for any out-of-pocket expenses.

1500 – 1730  Cultural Site Visits
  Met at AVI hotel lobby for cultural sites visit. Transportation was provided.
  Water, soft drinks, and snacks were also provided.

1730  Returned to AVI Resort and concluded meeting.
3 Meeting/Consultation Results

The Native American consultation Meeting took place at the AVI Resort and Casino, Laughlin, Nevada, 2-3 October 2003. Representatives from six tribes attended the meeting. Representatives from NTC-Fort Irwin, ERDC-CERL, and various Corps of Engineers contractors also attended the meetings.

The following summarizes the key points made at the face-to-face meeting between tribal representatives and Fort Irwin representatives.

Key points from the Fort Irwin Tribal Consultation Meeting

1) Monitoring of construction sites, cultural resource programs 
   3 October
   a) pp.85-87. During excavation of fiber optic trench, need to have either/both a trained archaeologist (as opposed to a biologist with some archaeological training, or simply an observant machine operator) and/or a Native American observer (Chad Smith).
   b) p.101. Should have Native American monitors for activities that could potentially impact cultural resources at Fort Irwin (Kane).
   c) p.126. Should have Native American monitors for cultural resources (Tito Smith).

2) In-kind Compensation to entire tribes 
   3 October
   a) pp.97-98. Possibility of the Army building museums (or other compensatory act) for the Mojave and Chemehuevi as partial compensation for past wrongs and for the contemporary difficulty of accessing important cultural sites on Army lands (Edna Smith).

3) Financial compensation to Native consultants. 
   3 October
   a) p.49. Compensation required to informants who aid in identifying villages for section 106, 110, ethnographic projects (Chad Smith).
b) pp.127-130. Two problems: (1) Native American consultants are not getting paid and (2) This issue was brought up in 2002, and it appears that no action has been taken on it (Ray).

c) p.135. Quillman promised to tell tribes in writing within 90 days what kind of compensation could be made to Native Americans for what kind of activities (90 days from 3 Oct = 1 Jan 2004).

4) Modelling Nellis Air Force Base’s consultation program

2 October

a) pp.107-9. Fort Irwin – NTC should emulate the Native American consultation program at Nellis Air Force Base. This program includes an advisory council of tribal organizations and their representatives that actively participate in ethnographic studies and archaeological monitoring, as well as providing the opportunities for tribal members to go on field visits of important cultural sites on-base (various individuals).

3 October

b) pp.53-54. Fort Irwin should have an expansion-specific study with more “hands-on” participation by the tribes, modeled after Nellis (Chad Smith).

c) p.135. Quillman promised to contact Nellis and get information on their program.

5) Dialog with non-Federally recognized tribes

3 October

a) p.37. While the Army may not see non-Federally recognized tribes as having legitimacy, the Federally-recognized tribes acknowledge non-Federally recognized tribes as legitimate, and they want them included in the process. The Kawaiisu and Pahrump Paiute in particular were mentioned. Britt suggested having a Federally-recognized tribe sponsor the non-recognized tribes as a solution to this issue (Tito Smith, Chavez, Britt).

b) pp.45-46. The Federally-recognized tribes could create a tribal group where they will make decisions among themselves, and they would have the right to recognize Federally unrecognized tribes (Horalek).

c) pp.64-65. Issue of non-Federally recognized tribes and their level of participation (Donald Smith, Chavez, Ray).

d) pp.136-7. NTC should contact Richard Arnold of the Pahrump Paiute, and include him in the consultation process (Chavez).
e) pp.145-6. Federally unrecognized tribes issue – Native Americans recognize all tribes, regardless of federal status (Swain, Chavez).

f) pp.144-9. All information provided to this meeting’s invitees should also go to all branches of the Timbisha Shoshone since they are all interested tribal members, regardless of BIA recognition (various individuals).

6) Changes to Programmatic Agreement
   2 October
   a) pp.73-4. In PA, the word “other” should be stricken from the phrase “Native American groups or other interested parties,” so as to read “Native American groups and interested parties.” The inclusion of the word “other” conflicts with government-to-government consultation requirements (Chad Smith).
   b) p.92. In PA, there should be a clause for the reimplementation of an archaeological survey or other cultural resources project, in the event that such an ongoing project is cut or diminished due to budget concerns (Chad Smith).

7) Other NAGPRA Issues
   2 October
   a) pp.97; 117. In the event of a NAGPRA dispute involving the U.S. Army, to what extent, if any, does the Park Service become involved? (No meeting participant could answer this question.) (Chad Smith).
   b) pp.37-38; 46; 57. Fort Irwin needs information from tribes on how to identify burials so that (1) the CAs may be completed; (2) the troops can be told what to look for when they’re out and about; and (3) any currently unidentified-yet-curated NAGPRA items can be identified as such (Britt, Gundrum, Horalek).
   c) p.103. A letter should be sent out to all tribes indicating specific information needed from them for NAGPRA compliance (see 7b above) (Britt).

8) Determining Eligibility
   3 October
   a) pp.18-19. Reevaluating sites deemed non-eligible, yet where shovel tests were yielding artifacts at 40 cm (Chad Smith).
9) Miscellaneous

3 October

a) pp.19-22. Fort Irwin predictive model and concerns of possible flawed applications of it (Chad Smith, Britt).

b) p.22. Preventing public access to the utility corridor in the California Desert Conservation area (Chad Smith).

c) p.72. Tribes urged to make maps of their past tribal areas for potential future law cases (Barrackman).

d) pp.140-1. Britt proposed visits to cultural sites on Fort Irwin.
4 Post-Meeting Actions

Since the consultation meeting of 2-3 October 2003, NTC-Fort Irwin has taken the following actions in accordance with the key points raised during discussion.

Actions taken as of 31 January 2004

1. Contacted Richard Arnold, Chairperson of the Pahrump Band of Paiutes; sent him a copy of the 2002 consultation meeting compendium; and added the Pahrump Band to the Fort Irwin Native American contact list.

2. Contacted David Laughing Horse Robinson, Chairman of the Kawaiisu Tribe; added the Kawaiisu to the Fort Irwin Native American contact list.

3. Sent letters to all tribes on the contact list indicating specific information needed in order to complete comprehensive agreements (see Appendix I).

4. Communication with Nellis Air Force Base concerning their Native American consultation program has been initiated. Future communication is planned, and the feasibility of incorporating the particular aspects of their program recommended by the Native informants is being studied.

5. A field trip was conducted on 6 January 2004 for interested Native American representatives of cultural sites on Fort Irwin, NTC. Six representatives from four tribes participated. A report of this field visit is included in Appendix I.

Appendix A: Suggested Draft Comprehensive Agreement Between NTC-Fort Irwin and the Native American Tribes

COMPREHENSIVE AGREEMENT BETWEEN
FORT IRWIN, NATIONAL TRAINING CENTER (NTC), CALIFORNIA AND
THE INDIAN TRIBE

Regarding Inadvertent Discovery and Intentional Excavation of Native American Human Remains and Cultural Items over which the Indian Nations May Have Priority of Custody within Lands Owned and Controlled by the U.S. Army at Ft Irwin, NTC, California

WHEREAS, Ft Irwin, NTC, California, is responsible for the identification, protection, and disposition of Native American human remains and other cultural items on lands under its ownership and control pursuant to the Native American Graves Protection and Repatriation Act of 1990 (P.L. 101-601, 104 STAT. 3048, 25 USC 3001-3013; hereafter, NAGPRA) and 43 CFR 10, Native American Graves Protection and Repatriation Act Regulations; and

WHEREAS, Ft Irwin, NTC, must notify and consult with officials of culturally affiliated federally recognized American Indian Tribes concerning the discovery and eventual disposition of such cultural items, per 25 USC 3002 and 43 CFR 10.3 – 10.6; and

WHEREAS, The Indian Tribe is a federally recognized American Indian Tribe who traditionally occupied lands now in the state of California (including lands within Ft Irwin, NTC); and
WHEREAS, The Indian Tribe does claim it is culturally affiliated with and does assert the right of possession and control over any Native American human remains and other cultural items from lands owned or controlled by Ft Irwin, NTC, in accordance with Section 3 (a)(2)(C)(1) of NAGPRA (25 USC 3002); and

WHEREAS, Ft Irwin, NTC, has the need to engage in activities including programs to maintain, rehabilitate, construct, and repair buildings, structures, roads, grounds, bridges, and associated landscaping; training, including, but not limited to, excavation, demolition, and maneuver of heavy equipment; and intentional excavation potentially required for compliance with Sections 106 or 110 of the National Historic Preservation Act, as amended (16 USC 470-470w) or permitted under the Archeological Resources Protection Act (16 USC 470aa-470mm); and

WHEREAS, these on-going activities may lead to the inadvertent discovery of Native American human remains and other cultural items; and

WHEREAS, Ft Irwin, NTC, lands are subject to natural processes that may over the course of time expose Native American human remains and other cultural items; and

WHEREAS, Section 11 of NAGPRA (25 USC 3009) and 43 CFR 10.5(f) permit and encourage specific agency-tribal agreements to ensure the appropriate treatment of Native American human remains and other cultural items;

NOW, THEREFORE, Ft Irwin, NTC, and the Indian Tribe agree that the following stipulations and procedures will be followed for the identification, notification, consultation, treatment, and disposition of all Native American human remains and other cultural items, that are inadvertently discovered or intentionally excavated on lands owned or controlled by Ft Irwin, NTC.

**STIPULATIONS**

1.0 Definitions for special terms used in this agreement, e.g., “human remains” and “cultural items”, are identical to those stated in NAGPRA, 43 CFR 10, and other federal preservation laws and regulations.
2.0 For notification purposes per 43 CFR 10.4(d)(1)(iii), Ft Irwin, NTC, considers the Indian Tribe likely to be culturally affiliated with inadvertently discovered NAGPRA human remains and other cultural items found on Ft Irwin, NTC.

3.0 Ft Irwin, NTC, consulted with the Indian Tribe to seek advice and counsel on treatment of Native American human remains and other cultural items in accordance with their traditions and compliance with NAGPRA. Consequently, Ft Irwin, NTC, will ensure the following measures are carried out.

4.0 Procedures for the Inadvertent Discovery of Native American Human Remains and Other Cultural Items [adapted from 43 CFR 10.4]

4.1 Initial Notification
Discoverer of bone material and/or other potential NAGPRA cultural items notifies Installation Cultural Resource Manager (CRM) immediately.

4.2 Initial Identification
Installation CRM will make all efforts to visit the site within 24 hours of initial notification by the discoverer but this site visit will take place no later than three (3) working days after receipt of written notification. [43 CFR 10.4(d)(iii)]. If activities are occurring in the discovery area, the Installation CRM arranges for their cessation and the protection of the find until identification and follow-on steps are completed, as appropriate.

4.2.1 If bone material is present, the Installation CRM determines if the remains are human*

4.2.2 Installation CRM determines if the remains are recent (i.e., less than 50 years) and, in coordination with installation Security Forces (SF), if a crime scene is involved*

4.2.3 Installation CRM determines if the remains are Native American* 

[* NOTE: Ft Irwin, NTC, shall arrange for a qualified professional, such as a forensic anthropologist, to be on call to perform in situ identifications in assistance to the CRM.]
4.3 **Results of Initial Identification**

The results of these identification procedures will determine whether NAGPRA provisions apply to the discovery situation. With regard to Native American human remains discovered on federal lands, NAGPRA and 43 CFR 10 make no distinction concerning their temporal context (i.e., recent or archeological in nature) or whether a potential crime scene exists. This agreement combines the affirmative provisions of NAGPRA concerning tribal consultation with conventional installation law enforcement mandates.

4.3.1 Result 1: Remains are non-human and no archeological resources are present.

4.3.2 Result 2: Recent human remains are present.

4.3.3 Result 3: Archeological, non-Native American human remains are present.

4.3.4 Result 4: Archeological, Native American human remains and/or other cultural items are present. Initiate NAGPRA notification procedures.

4.4 **Notification, Consultation, Treatment, and Disposition Procedures**

4.4.1 Result 1: Remains are non-human and no archeological resources are present.

Within three (3) working days of this determination, the Installation CRM notifies the Indian Tribe NAGPRA Coordinator via telephone or email that a reported inadvertent discovery of bone was non-human and that no cultural items or other archeological resources were present. After this notification, normal installation activities may resume in the area of discovery.

4.4.2 Result 2: Recent human remains are present

Installation CRM notifies installation Security Forces (SF), which assumes jurisdiction and responsibility. SF ensures that all installation activities cease within a 30-meter
radius of the site and declares the site off limits to everyone except authorized personnel. SF will investigate any potential criminal wrongdoing and carry the case to closure. Forensic examination of the remains will be conducted in accordance with local criminal investigative procedures. If indications are present that the remains are Native American, the Indian Tribe will be notified following appropriate next-of-kin notification. Final disposition of the remains will be arranged by the next-of-kin. Otherwise, final disposition of the remains will be arranged in accordance with 43 CFR 10.5-10.6.

4.4.3 Result 3: Archeological, non-Native American human remains are present

The Installation CRM takes measures to protect the discovery site, including entering the site into the Ft Irwin Cultural Resources Database (FICRD) and Integrated Cultural Resources Management Plan (ICRMP) and informing the California Office of Historic Preservation of the discovery. The Installation CRM shall notify the Indian Tribe NAGPRA Coordinator at least fifteen (15) days prior to moving any remains from the site. If remains are removed from the site, the Installation CRM will ensure their curation per the requirements of 36 CFR 79.

4.4.4 Result 4: Archeological, Native American human remains and/or other cultural items are present
(INITIATE FORMAL NAGPRA COMPLIANCE PROCEDURES)

4.4.4.1 The Installation CRM shall immediately notify the Installation Commander or his/her official designee of the discovery, in writing. Installation CRM shall also notify Installation SF that NAGPRA compliance procedures are in effect per this agreement and 43 CFR 10.

4.4.4.2 The Installation CRM shall protect the site of the remains, stabilizing or covering as necessary. Neither Ft Irwin, NTC, nor the Indian Tribe shall
disclose information concerning the nature and location of the site outside of their respective governmental authorities. However, federally recognized tribes other than the Indian Tribe, which may have a claim of custody to these human remains and/or other cultural items, may be sent documentation under similar comprehensive agreements or upon written request to the Installation CRM.

4.4.4.3 No later than three (3) working days after receipt of written notification of discovery, the Installation Commander or his/her official designee shall certify notification has been received and will forward this certification to higher headquarters, Attn: IMI (Environmental Division).

4.4.4.4 Ft Irwin, NTC, shall notify the official Indian Tribe NAGPRA representative of any inadvertent discovery of Native American human remains or other cultural items on the installation as soon as possible, but no later than three (3) working days after the Installation Commander has received written notification of the discovery of Native American human remains and/or other cultural items. The Installation CRM will keep a list of official tribal contacts and update it annually.

4.4.4.5 The Installation CRM shall write a field evaluation of the circumstances of the discovery, condition, and contents of burials (including any artifacts). The evaluation should state the primary context, antiquity, and significance of human remains and other associated cultural items, if any. This evaluation will require the assistance of a professional archeologist and/or physical anthropologist.

4.4.4.6 The Installation CRM shall provide as soon as practicable in written form to the Installation
Commander or his/her official designee the results of the field evaluation, intended consultation tasks, and possible disposition of discovered remains. The Installation CRM shall also provide a copy of this field evaluation to the Indian Tribe.

4.4.4.7 The Installation CRM shall evaluate human remains and other associated cultural objects in situ unless eroded from their original location or removed by accident or looting. If in situ identification is not possible, the Installation CRM shall conduct consultation with the Indian Tribe and other culturally affiliated tribes to discuss further identification procedures, non-invasive methods of analysis or photography.

4.4.4.8 If the remains can be attributed to lineal descendants, the Installation CRM shall notify potential lineal descendants using the following procedures:

- Telephone and record in a phone log the date, time, and person contacted.
- Document the telephone conversation in a Memorandum for Record.
- Send written notification by certified mail to lineal descendant.
- Make follow-up phone calls to lineal descendants to determine if written notification of discovery was received by the appropriate person and to ascertain how she/he wishes to proceed in determining treatment and disposition of the human remains or other cultural items.

4.4.4.9 The Installation CRM shall ensure that final disposition of Native American human remains and/or other cultural items recovered under this part is carried out in accordance with the provisions in 43 CFR 10.6.
5.0 **Intentional Excavation and Removal of Native American Human Remains and/or Other Cultural Items** [adapted from 43 CFR 10.3]

5.1 If leaving Native American human remains and other cultural items *in situ* is determined, after consultation with lineal descendants, or *the Indian Tribe* and other culturally affiliated tribes, not prudent or feasible because erosion or activities in an area might damage them, excavation and removal shall be undertaken by Ft Irwin, NTC, in accordance with the requirements of the Archaeological Resources Protection Act (ARPA), the National Historic Preservation Act (NHPA), NAGPRA, and current professional standards for archeological data recovery. The Installation CRM shall arrange for the presence of an *Indian Tribe* representative during mitigation, if possible.

5.2 The Ft Irwin, CRM, may deem NRHP site evaluations necessary, based on archeological survey results and/or a mission need. The Installation CRM shall notify *the Indian Tribe* NAGPRA Coordinator, the Tribal Historic Preservation Officer and the California Office of Historic Preservation of this determination and the planned fieldwork. The Installation CRM shall arrange for the presence of an *Indian Tribe* representative during site evaluation work, if possible.

5.3 If Ft Irwin, NTC, proposes to undertake a planned activity that has a high probability to result in the discovery of Native American human remains and/or other cultural items, the Installation CRM shall notify the NAGPRA and Historic Preservation Office points of contact for *the Indian Tribe*. Ft Irwin, NTC, will then consult with the Indian Tribe, other culturally affiliated tribes, and other appropriate agencies to ensure that the work plan for such investigations meets all requirements of Federal and state laws and regulations. Concerns of *the Indian Tribe* regarding discovery, treatment, and disposition of human remains and/or other cultural items will also be discussed.

5.4 The Installation CRM shall provide written notification signed by the Commander or his/her designee to the Indian Tribe of planned excavations describing:
• Their location (including a map showing the area of potential effects and general site area).
• The basis for the determination that Native American human remains and/or other cultural items may be encountered.
• The basis for the determination of likely custody pursuant to 43 CFR 10.6.
• The proposed treatment and disposition of Native American human remains and other cultural items.
• The proposed time and place for meetings or consultation.

5.5 If no response is received from this written notification in 15 days, the Installation CRM shall make a follow-up telephone call to the Indian Tribe.

5.6 Consultation to establish provisions for the identification, treatment, and disposition of Native American human remains and other cultural items recovered by intentional excavations or inadvertent discovery must be conducted according to the provisions of 43 CFR 10.5 and documented by a written plan of action signed by the Installation Commander or his/her designee, which the Indian Tribe has the option to sign. In accordance with 43 CFR 10.5(e), the Action Plan will include:
• Any kinds of material to be considered as cultural items.
• Specific information used to determine custody pursuant to 43 CFR 10.6.
• Treatment, care, and handling of human remains and other cultural items.
• Planned archeological recording of human remains and other cultural items.
• Kinds of analyses planned for identification of human remains and other cultural items.
• Steps to be followed to contact tribal officials before any excavation.
• Steps to incorporate compliance with Section 106 of the National Historic Preservation Act and 36 CFR 800, as appropriate, including contact with California Office of Historic Preservation.
• Kind of traditional treatment to be afforded human remains or other cultural items.
• Nature of reports to be prepared.
5.7 For any Native American human remains and/or other cultural items that are removed from the site of their discovery, Ft Irwin, NTC, will ensure their temporary storage in a repository meeting the curation standards described in 36 CFR 79, until their final disposition is determined through consultation with lineal descendants, the Indian Tribe, or other culturally affiliated tribes. Ft Irwin, NTC, within limits established by Federal laws and regulation, and in consultation with the Indian Tribe, shall accommodate Indian tribal customs and traditions when removing, analyzing, handling, and storing Native American human remains and other cultural items over which the Indian Tribe may have claim of priority of custody.

6.0 Consultation Procedures

6.1 The Indian Tribe will provide Ft Irwin, NTC, with the names, telephone numbers, and addresses of the Executive Council Chairperson, the Tribal NAGPRA Representative, and the Tribal Historic Preservation Officer and notify the installation when tribal Officers and/or contact information change.

6.2 The Indian Tribe may contact the Installation CRM to request information on cultural resources management activities at the installation.

6.3 If a meeting is needed between the Indian Tribe tribal representatives and Ft Irwin, NTC, to discuss cultural resources and related issues, Ft Irwin, NTC, will schedule a meeting at a mutually convenient time and place. Within budgetary constraints, Ft Irwin, NTC, will assist with travel expenses incurred by tribal representatives traveling to Ft Irwin, NTC, for purposes of implementing this agreement. Nothing in this agreement shall be interpreted or construed as a commitment or
requirement that Ft Irwin, NTC, obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §1342, or any other applicable provision of law.

6.4 If federally recognized tribes other than the Indian Tribe claim affiliation with any Native American human remains and/or other cultural items from Ft Irwin, NTC, the installation shall follow dispute resolution procedures as stated in NAGPRA and 43 CFR 10.17, as required.

6.5 Either signatory may terminate their participation in this MOA* upon 30 days written notice to the other signatory, provided that the parties consult prior to termination to seek agreement on amendments or other actions that would avoid termination.

6.6 Nothing in this MOA shall prevent the governing body of the Indian Tribe from relinquishing control over any Native American human remains, or title to or control over any funerary object or sacred object recovered from Ft Irwin, NTC.

This agreement shall become effective upon the signature of both authorized parties.

__________________________________________________________________________  ____________
Chairperson, Indian Tribe       Date

__________________________________________________________________________  ____________
Commander, Ft Irwin, NTC       Date

* The term “MOA” (memorandum of agreement) is an error that was not detected before sending this document to the tribes. The term “comprehensive agreement” should have been used.
Appendix B: NAGPRA Standard Operating Procedures

DRAFT
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT
STANDARD OPERATING PROCEDURES FOR
THE NATIONAL TRAINING CENTER (NTC),
FORT IRWIN, CA

Inadvertent Discovery of Native American Human remains and Associated Funerary
Objects, Sacred Objects, or Objects of Cultural Patrimony

3002-3013, 43 C.F.R. 10]

I. INTRODUCTION

Fort Irwin, NTC, is engaged in a continuing archaeological survey and inventory of
the cultural resources within its boundaries. As inventory is an ongoing process,
areas may remain on the installation where ground-disturbing activity has the poten-
tial for uncovering unreported archaeological deposits, which may contain buri-
als. In accordance with the Native American Graves Protection and Repatriation
Act (NAGPRA), such human remains and cultural objects must be identified, if pos-
sible, as to lineal descendants or culturally affiliated contemporary tribes, treated in
a manner deemed appropriate by the lineal descendants or culturally affiliated
tribes, and repatriated if claims are justified by a preponderance of evidence.

This document outlines procedures to be followed in the event of an inadvertent dis-
covery of Native American human remains, funerary objects, sacred objects, or ob-
jects of cultural patrimony and dealing with the treatment and disposition of Native
American human remains and cultural objects. This SOP (Standard Operating Pro-
II. DEFINITIONS

1. Burial site means “any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited, and includes rock cairns or pyres which do not fall within the ordinary definition of grave site” [43 C.F.R. 10.2(d)(2)].

2. Cultural affiliation means “that there is a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe and an identifiable earlier group” [43 C.F.R. 10.2(e)].

3. Funerary objects means “items that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains. Funerary objects must be identified by a preponderance of evidence as having been removed from a specific burial site of an individual affiliated with a particular Indian tribe or as being related to specific individuals or families or to known human remains” [43 C.F.R. 10.2(d)(2)].

4. Sacred objects means “items that are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents. While many items, from ancient pottery sherds to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony” [43 C.F.R. 10.2(d)(3)].

5. Objects of cultural patrimony means “items having ongoing historical, traditional, or cultural importance central to the Indian tribe rather than property owned by an individual tribal or organization member. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual tribal or organization member. Such objects must have been consid-
ered inalienable by the culturally affiliated Indian tribe at the time the object was separated from the group” [43 C.F.R. 10.2(d)(4)].

6. Indian tribe means “any tribe, band, nation, or other organized group or community of Indians which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians” [43 C.F.R. 10.2(b)(2)].

7. Inadvertent discovery means “the unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3(d)” of NAGPRA [43 C.F.R. 10.2(g)(4)]. According to this definition, if an object is recovered that is not recognized as defined under NAGPRA when found, but is subsequently identified during laboratory analysis, this qualifies as “detection” and therefore constitutes inadvertent discovery.

8. For the purposes of this section, the term “cultural objects” specifically refers to funerary objects, sacred objects, and objects of cultural patrimony.

III. POLICY

The intent of NAGPRA is to protect, identify proper ownership, and to ensure the rightful disposition of Native American human remains and cultural objects that are discovered on federal or tribal lands. NAGPRA requires that certain procedures be followed when there is inadvertent discovery of Native American human remains and cultural objects. In the event of a discovery of Native American human remains or cultural objects, the installation commander will ensure compliance with NAGPRA [25 U.S.C. 3001-3013, 43 C.F.R. 10] and any applicable statutory and regulatory requirements of the American Indian Religious Freedom Act [42 U.S.C. 1996-1996a], Archaeological Resources Protection Act [16 U.S.C. 470aa-470ll], National Environmental Policy Act [42 U.S.C. 4321-4370c], and National Historic Preservation Act [16 U.S.C. 470-470w] as well as White House Memorandum, 29 April 1994. Each statute mandates compliance with independent requirements. Compliance with one statutory requirement therefore may not satisfy other applicable requirements.

The Fort Irwin, NTC, Cultural Resources Manager will coordinate with the Staff Judge Advocate (SJA), Criminal Investigation Directorate (CID), Provost Marshal’s
Office (PMO), Directorate of Training (G3), Operations Group 11th Armored Cavalry Regiment (ACR), Range Control, Master Planning, and Department of Public Works (DPW) to ensure that the Cultural Resources Manager (1) is included in the planning of training and construction to assess the potential for the discovery of Native American burials and archaeological sites, and (2) is identified as the point-of-contact to be notified immediately if a Native American burial or archaeological site is inadvertently discovered on installation property.

In addition to ground disturbing activities such as training operations, construction, and archaeological excavations, erosion by wind or water may result in the discovery of human remains and cultural objects. If Native American remains and cultural objects are discovered, any work within a 50-meter radius of the site shall be halted and the Fort Irwin, NTC, Cultural Resources Manager (telephone number 760-380-3740) shall be notified immediately. The site will be protected and stabilized. Any removal of material is prohibited and constitutes a violation of NAGPRA and the Archaeological Resources Protection Act (ARPA). The Natural and Cultural Resources Manager, in consultation with qualified professionals as necessary, will initially evaluate the site and report the finding to the installation commander and the potentially culturally affiliated Indian tribes, the State Historic Preservation Officer, and the County Sheriff when appropriate. Any subsequent treatment of the remains and objects or stabilization of the site will be carried out only after consultation with the potentially affiliated tribes.

IV. PROCEDURE


IV.A. PRELIMINARY ASSESSMENT, PROTECTION, AND VERIFICATION

1. When notified of the possible inadvertent discovery of buried human remains or cultural objects, the Fort Irwin, NTC, Cultural Resources Manager will make all efforts to visit the site within twenty-four (24) hours of initial notification by the discoverer of the human remains or cultural objects, but this site visit will take place no later than three (3) working days after receipt of written notification. [43 CFR 10.4(d)(iii)]. If activities are occurring in the discovery area, the Installation CRM arranges for their cessation and the protection of the find until identification and follow-on steps are completed, as appropriate.
2. If, upon examination, the remains are identified as non-human, the Fort Irwin, NTC, Cultural Resources Manager will determine if archaeological contexts are present that need to be evaluated pursuant to Section 106 [36 C.F.R. 800] of the National Historic Preservation Act [16 U.S.C. 470-470w].

3. If, upon examination, the remains appear to be human and associated with a crime scene of 50 years old or less, the Fort Irwin, NTC, Cultural Resources Manager will notify the Provost Marshal’s Office (PMO) and the Criminal Investigation Division (CID) on post and the County Sheriff’s Department. All activities will cease within the area of the inadvertent discovery. The site will be protected and declared off limits to everyone except authorized personnel. The area of protection should cover no less than a 50-meter radius around the site. The CID will assume custody of the remains and notify the proper authorities.

4. If, upon examination, the remains appear to be human, but are not associated with a crime scene, or if all law enforcement officials contacted have determined that the remains will not be involved in a legal investigation, contact the State Historic Preservation Officer (SHPO). The site will be entered into the Fort Irwin Cultural Resources Database (FICRD) and Integrated Cultural Resources Management Plan (ICRMP). This procedure applies whether or not the remains are Native American.

5. If after consultation with the SHPO, the remains are determined to be Native American and not associated with a crime, the Fort Irwin, NTC, Cultural Resources Manager must make a written field evaluation of the circumstances of the discovery, the condition and contents of the burial, including any artifacts, the primary context of the remains and any artifacts, and their antiquity and significance. The human remains and cultural objects will be evaluated in situ. Destructive analysis is prohibited. If an in situ identification of the remains cannot be made, the potential culturally affiliated tribes will be consulted pursuant to 43 C.F.R. 10.3(b) and further identification procedures will be discussed.

The Fort Irwin, NTC, Cultural Resources Manager may consult with the CID or a qualified physical or forensic anthropologist if necessary. The site will be protected according to standard installation practice for archaeological discoveries. Stabilization or covering may be employed if necessary. Removal of material shall not resume until compliance with these rules regarding resumption of activity is completed.
6. Additionally, if the remains are determined to be Native American and not associated with a crime, the Fort Irwin, NTC, Cultural Resources Manager will immediately upon such determination notify the installation commander or his/her official designee of the discovery in writing and by telephone. No later than three (3) working days after receipt of written notification of discovery, the installation commander or his/her official designee will certify that notification has been received and will forward this certification to higher headquarters, Attn: Installation Management Agency (IMA), Southwest Region, Environmental Division.

7. Note that a preliminary assessment of whether NAGPRA applies to a discovery of human remains may take considerable time and coordination with qualified professionals. Therefore, the Fort Irwin, NTC, Cultural Resources Manager should make arrangements with qualified professionals, such as physical or forensic anthropologists, who are willing to aid in situ identifications before an inadvertent discovery of human remains occurs.

IV.B. NOTIFICATION OF THE RESPONSIBLE FEDERAL AGENCY OFFICIAL (INSTALLATION COMMANDER) [43 C.F.R. 10.4]

1. When the Fort Irwin, NTC, Cultural Resources Manager receives notification of an inadvertent discovery of Native American human remains and cultural objects, immediate telephone and email notification must be provided to the installation commander or his/her official designee. This telephone and email notification will be followed immediately by written notification that contains the results of the field evaluation and a plan of action to inform the commander of the intended consultation tasks and disposition of the discovered objects.

2. No later than 48 hours after receipt of written confirmation from the Fort Irwin, NTC, Cultural Resources Manager, the installation commander or his/her official designee will forward to the Cultural Resources Manager the certification that the Memorandum of Notification has been received.

3. All contracts that require any type of excavation on installation lands will include the requirement to notify the Fort Irwin, NTC, Cultural Resources Manager immediately upon discovery of human remains or cultural objects. Directorate of Training (G3) and Range Control will be provided guidance to notify the Cultural Resources Manager immediately upon discovery of human remains or cultural objects.
IV.C. NOTIFICATION OF NATIVE AMERICANS

1. The Fort Irwin, NTC, Cultural Resources Manager will notify potential culturally affiliated tribes using the following procedures:

   a. No later than three working days after receipt of written notification by the installation commander of the discovery of Native American human remains and/or cultural objects, the Fort Irwin, NTC, Cultural Resources Manager shall notify possible lineal descendants and Indian tribes who may potentially claim custody of remains and cultural objects. Notification shall occur (1) by telephone and (2) by written notification that includes the Memorandum of Notification of the Installation Commander, signed by the installation commander.

   b. Telephone notification, the date, time, and person contacted, will be recorded in a phone log and the conversation documented in a Memorandum for Record.

   c. Notices will be sent by certified mail to the official NAGPRA contact person designated by the tribe. If the official NAGPRA contact person is the tribal chairperson, the letter will be sent to him/her via certified mail and a copy furnished to the NAGPRA coordinator.

   d. Follow-up phone calls will be made to the NAGPRA coordinators of the Indian tribes contacted to determine if written notification of the discovery was received by the appropriate person and to ascertain how the tribe wishes to proceed in determining cultural affiliation, treatment, and disposition of the human remains or cultural objects.

2. Decisions on which tribes to notify will be based on order of priority of ownership described in 25 U.S.C. 3002, Sec. 3(2) and 43 C.F.R. 10.6 and the List of Tribal Contacts maintained by the Fort Irwin, NTC, Cultural Resources Manager.

3. Priority of ownership or control of Native American human remains and cultural objects is briefly: [For details, see 25 U.S.C. 3002(a), 43 C.F.R. 10.6]

   a. Lineal descendants, as determined pursuant to 43 C.F.R. 10.14(b),

   b. Indian tribe holding tribal lands as defined in 43 C.F.R. 10.2(f)(2),
c. Culturally affiliated Indian tribe as defined in 43 C.F.R. 10.14,

d. Indian tribe recognized as the aboriginal owners of the land by a final judgment of the Indian Claims Commission or the United States Court of Claims,

e. Indian tribes aboriginally occupying the land,

f. Indian tribe with the strongest demonstrated cultural relationship,

g. Unclaimed.

4. The List of Tribal Contacts will be kept by the Fort Irwin, NTC, Cultural Resources Manager and will be verified and/or updated annually in coordination with tribal election schedules.

IV.D. IDENTIFICATION OF NATIVE AMERICAN HUMAN REMAINS

1. Identification of Native American human remains and cultural objects will be made in situ unless they have already eroded from their original location or have been removed from their original resting place by accident or as a result of looting. If an in situ identification of the remains cannot be made, the potential culturally affiliated tribes will be consulted pursuant to 43 C.F.R. 10.3(b) and further identification procedures will be discussed.

2. If necessary, the Fort Irwin, NTC, Cultural Resources Manager will coordinate the identification of Native American human remains and cultural objects with qualified archaeologists, forensic or physical anthropologists, or cultural anthropologists who will record their recommendations and all data necessary to make the identification, including any additional information that can contribute to the determination of lineal descendants or cultural affiliation. The Fort Irwin, NTC, Cultural Resources Manager may use recommendations of experts along with any additional comparative physical anthropological data and archaeological, ethnographic, and historical information to determine lineal descendants or Indian tribes that have the closest affiliation according to priority of ownership as defined in 25 U.S.C. 3002(a) and 43 C.F.R. 10.6.

3. Cultural affiliation is determined by a preponderance of evidence based on geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral tradition, historical, or other relevant information or expert opinion [25 U.S.C.
Criteria for determining cultural affiliation are listed in 43 C.F.R. 10.14(c). Regulations caution that a finding of cultural affiliation based on a preponderance of evidence should take into consideration “the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record” [43 C.F.R. 10.14(d)]. Cultural affiliation does not have to be established by the claimants with scientific certainty [43 C.F.R. 10.14(f)].

4. Preliminary determination of lineal descendants or closest affiliation will be sent to the previously notified tribes for review. The tribes may have additional information to contribute to the identification of lineal descendants or cultural affiliation. Representatives of tribes may decide to visit the site to verify the identification. A list of all Indian tribes consulted regarding the particular human remains and cultural items will also be provided to each consulting tribe.

5. Consultation must result in a written plan of action in accordance with 43 C.F.R. 10.5(e)] or Comprehensive Agreement (CA) in accordance with 43 C.F.R. 10.5(f) between the appropriate tribes and the installation commander or his/her designee. Development, review, and signature of the CA follow Army protocol specified in AR 200-4. The Fort Irwin, NTC, Cultural Resources Manager, acting on behalf of the installation commander, may prepare the written plan of action or CA. The installation commander approves and signs all NAGPRA documents. Copies of the written plan of action are provided to the consulting lineal descendants and Indian tribes. Parties covered in a CA must agree to be signatories.

6. Information to be gained during the consultation that should be included in the written Action Plan or Comprehensive Agreement (CA):

   a. Kinds of material to be considered as cultural objects as defined 43 C.F.R. 10.2(d);
   b. Specific information used to determine custody pursuant to 43 C.F.R. 10.6;
   c. Treatment, care, and handling of human remains and cultural objects;
   d. Planned archaeological recording of the human remains and cultural objects;
   e. Kinds of analyses for identification of human remains and cultural objects;
f. Procedure for contacting Indian Tribe officials before (1) any excavation and (2) at the time of any inadvertent discovery of human remains or cultural objects;

g. Steps to incorporate compliance with Section 106 of the National Historic Preservation Act and 36 CFR 800, as appropriate, including contact with California Office of Historic Preservation;

h. Kind of traditional treatment to be afforded the human remains or other cultural objects;

i. Nature of the reports to be prepared;

j. Disposition of human remains and other cultural items in accordance with 43 CFR 10.6;

k. Possible involvement of an Indian representative during excavation; and

l. Issuance of a permit pursuant to ARPA and 32 CFR 229, if applicable.

IV.E. INTENTIONAL EXCAVATION AND REMOVAL OF NATIVE AMERICAN HUMAN REMAINS AND/OR OTHER CULTURAL ITEMS [adapted from 43 CFR 10.3]

1. If leaving Native American human remains and other cultural items in situ is determined, after consultation with lineal descendents or culturally affiliated Tribes, not prudent or feasible because erosion or activities in an area might damage them, excavation and removal shall be undertaken by Ft Irwin, NTC, in accordance with the requirements of the National Historic Preservation Act (NHPA), NAGPRA, and current professional standards for archeological data recovery. The Fort Irwin, NTC, Cultural Resource Manager will arrange for the presence of an Indian Tribe representative during mitigation, if possible.

2. The Ft Irwin, CRM, may deem NRHP (National Register of Historic Places) site evaluations necessary, based on archeological survey results and/or a mission need. The Fort Irwin, NTC, Cultural Resource Manager shall notify the Indian Tribes’ NAGPRA Coordinators, the Tribal Historic Preservation Officer and the California Office of Historic Preservation of this determination and the planned fieldwork. The Fort Irwin, NTC, Cultural Resource Manager will arrange for the presence of an Indian Tribe representative during site evaluation work, if possible.
IV.F. TREATMENT AND DISPOSITION

1. The treatment and disposition of any Native American human remains and cultural objects recovered inadvertently from Fort Irwin, NTC, lands shall be determined in consultation with lineal descendants or Indian tribes that can demonstrate priority of ownership as outlined in NAGPRA.

2. A tribe that wishes to make a claim of ownership of human remains or cultural objects must be able to demonstrate an affiliation by a preponderance of evidence according to the criteria for the priority of custody specified in 25 U.S.C. 3002 and 43 C.F.R. 10.6. Guidelines for determining the preponderance of evidence are found in 43 C.F.R. 10.14.

3. If a single, legitimate claimant cannot be identified, continue consultation with the previously consulted tribes to consider possible alternatives for affiliation, treatment, and disposition. Notify Forces Command (FORSCOM) regarding the details of the case. Fort Irwin, NTC, must retain the material in a safe and secure manner agreeable to the consulting parties as required by 43 C.F.R. 10.6(c) and 10.15 until a plan for the treatment and disposition of the Native American human remains and cultural objects pursuant to 43 C.F.R. 10 can be specified.

For any Native American human remains and/or other cultural items that are removed from the site of their discovery, Ft Irwin, NTC, will ensure their temporary storage in a repository meeting the curation standards described in 36 CFR 79, until their final disposition is determined through consultation with lineal descendants, the Indian Tribe, or other culturally affiliated tribes. Ft Irwin, NTC, within limits established by Federal laws and regulation, and in consultation with the Indian Tribe, shall accommodate Indian tribal customs and traditions when removing, analyzing, handling, and storing Native American human remains and other cultural items over which the Indian Tribe may have claim of priority of custody.

4. If no agreement can be reached, refer to dispute resolution below.

5. For inadvertent discoveries of Native American human remains and cultural objects, endeavor to specify treatment within thirty (30) days after the certification of notification has been issued.

6. If it is determined by the consulting parties that the in situ restoration of a burial site is not feasible, the contents of the burial shall, upon the identification of the lineal descendants or tribe(s) determined to be culturally affiliated, be repatriated.
to the lineal descendants or appropriate tribe/s, if a legitimate claim is made. Procedures for repatriation will be made in consultation with the appropriate descendants and/or tribe/s pursuant to 43 C.F.R. 10.6.

7. Each restoration and re-interment shall require that Fort Irwin provide an opportunity for appropriate tribal religious ceremony or ceremonies pursuant to the American Indian Religious Freedom Act (AIRFA) [42 U.S.C. 1996-1996a] and Executive Order 13007.

8. Following 43 C.F.R. 10.6(c), prior to the disposition of human remains and cultural objects, the installation commander or his/her official designee must publish notices of the proposed disposition in a newspaper of general circulation in the area in which the human remains and cultural objects were discovered and in which the lineal descendants or affiliated Indian tribe/s currently reside.

   a. The notice must provide information as to the nature and affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony and solicit further claims to custody. The consulting tribes may review the content of the notice before its publication. Privileged information should not be included in the notice.

   b. The notices must be published twice at least a week apart. A copy of the notice and information on when and in what newspaper/s the notice was published must be sent to the Departmental Consulting Archaeologist, Archaeological Assistance Division, National Park Service.

   c. The return of human remains and cultural objects must not take place until at least thirty days after the publication of the second notice to allow time for any additional claimants to come forward. If additional claimants do come forward and the installation commander or his/her designee cannot clearly determine which claimant is entitled to custody, the federal agency must not transfer custody of the human remains and cultural objects until the proper recipient is determined pursuant to 43 C.F.R. 10.

9. If a claim is made for human remains and cultural objects, all of the tribes that were involved in the consultations regarding their disposition will be notified.
10. Unclaimed Native American human remains and cultural objects shall be re-
turned in accordance with the regulations developed by the NAGPRA Review Com-
mittee.

11. The Fort Irwin, NTC, Cultural Resources Manager shall ensure that final dis-
position of Native American human remains and/or other cultural items recovered
under this part is carried out in accordance with the provisions in 43 CFR 10.6.

IV.G. TIME CONFLICTS

1. On those rare occasions when Fort Irwin or the tribe(s) is/are unable to meet its
commitments pertaining to time schedules for any activity specified herein, the
party that is unable to meet the schedule will notify the other party as soon as
physically possible to reschedule the activities to the mutual satisfaction of both
parties. Emergency actions will be coordinated by telephone or FAX.

V. DISPUTE RESOLUTION

1. All disputes regarding the cultural affiliation of discovered human remains
and/or cultural objects shall be resolved in accordance with Sections 3 and 7(e) of
NAGPRA and the implementing regulations 43 C.F.R. 10.

2. Fort Irwin shall follow the procedures set forth in this document regarding con-
sultation with the interested tribes. Should any interested tribe make a conflicting
claim of cultural affiliation or dispute the methods of treatment or disposition of
human remains and/or cultural objects as delineated herein, the installation com-
mander shall notify Installation Management Agency (IMA), Southwest Region,
Fort Sam Houston.

3. Fort Irwin will continue consultation with the disputing parties, suggest that the
disputing parties seek resolution among themselves, and, if the disputing parties
concur, go before the NAGPRA Review Committee which is given the authority un-
der 25 U.S.C 3006(c)(4) and 43 C.F.R. 10.16 and 10.17 to make recommendations on
the resolution of disputes.

4. If, upon receipt of the recommendations of the Review Committee, the most ap-
propriate claimant still cannot be determined, Fort Irwin shall retain the disputed
remains or cultural objects until the question of custody is resolved, as stated in 43 C.F.R. 10.15(a)(2).

VI. ADDITIONAL PARTIES

1. Interested tribes claiming lineal descent or cultural affiliation may join these procedures at any time should they express a desire to do so.

2. However, in accordance with 43 C.F.R. 10.15 (a)(1), if an interested party fails to make a written claim prior to the time human remains and cultural objects are duly repatriated or disposed of to a claimant in accordance with 43 C.F.R. 10, the interested party is deemed to have irrevocably waived any right to claim such items pursuant to these regulations.

VII. RESUMPTION OF ACTIVITY

1. 43 C.F.R. 10.4(d)(2) specifies:

   a. The activity that resulted in the inadvertent discovery of Native American human remains or cultural objects may resume thirty (30) days after certification by the installation commander of the receipt of the notification sent by the Fort Irwin, NTC, Cultural Resources Manager, if otherwise lawful. Any impacts to the site must be evaluated pursuant to Section 106 [36 C.F.R. 800] of the National Historic Preservation Act [16 U.S.C. 470-470w]. Environment consideration under the National Environmental Policy Act (NEPA) may be required prior to continuing the activity. This may be a supplement to the NEPA analysis which was done prior to initiating the activity, and should consider the effect of the activity on the “find” in question, as well as the effect, if any, on any other “finds” in the vicinity. Removal or excavation of Native American human remains and cultural objects must also be carried out in accordance with 43 C.F.R. 10.3.

   b. Or, activity may resume if the treatment is documented in a written binding agreement between the installation and the affiliated Indian tribes that follows 43 C.F.R. 10.3 and 43 C.F.R. 10.6.
c. In no event may activity resume until the SHPO or, if involved, local law enforcement officials approve.

REFERENCES

FEDERAL STATUTES


FEDERAL REGULATIONS

1. 32 C.F.R. 229, Protection of Archaeological Resources

2. 36 C.F.R. 60, National Register of Historic Places

3. 36 C.F.R. 63, Determinations of Eligibility for Inclusion in the National Register of Historic Places

4. 36 C.F.R. 78, Waiver of Federal Agency Responsibility under Section 110 of the National Historic Preservation Act

5. 36 C.F.R. 800, Protection of Historic Properties

6. 40 C.F.R. 1500-1508, Regulations Implementing the National Environmental Policy Act

7. 43 C.F.R. 7, Protection of Archaeological Resources
8. 43 C.F.R. 10, Native American Graves Protection and Repatriation Act Regulations

EXECUTIVE ORDERS

1. E.O. 11593, Protection and Enhancement of the Cultural Environment
2. E.O. 13007, Indian Sacred Sites
3. E.O. 13084, Consultation and Coordination with Indian Tribal Governments

PRESIDENTIAL MEMORANDA

Appendix C: Power Point Presentations

Ft. Irwin, NTC – Native American Tribal Meeting

Ft. Mojave AVI Resort Laughlin, NV

2-4 October 2003

Hosted By:
The Fort Mojave Indian Tribe
And
Ft. Irwin, National Training Center

Ft. Irwin, NTC – Native American Tribal Meeting
2-4 October 2003
Ft. Mojave AVI Resort Laughlin, NV
Agenda

1:00 p.m. Opening Session
Mr. Todd Britell

1:15 p.m. NAIPRA Comprehensive Agreement
4:00 p.m. NAIPRA Comprehensive Agreement — Open Discussion
4:30 p.m. recess
4:30 p.m. Programmatic Agreement Presentation — Ms. Paige Payne
5:00 p.m. Lighting Session
6:30 p.m. Conclude Formal Meeting for the day
7:00 p.m. Ft. Mojave Hosted Social Event

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Mr. Todd Britell

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Appendix C
Presentations
Standard Operating Procedures and Programmatic Agreements

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT
Inadvertent Discovery of Native American Human Remains and Associated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony

STANDARD OPERATING PROCEDURES and COMPREHENSIVE AGREEMENTS

Legislative Drivers for Consultation

- National Environmental Policy Act
- Native American Graves Protection and Repatriation Act
- National Historic Preservation Act
- American Indian Religious Freedom Act
- Archaeological Resources Protection Act
- Presidential Memorandum, 1994, Government to Government Relations
- EO 13007, Access to Sacred Sites
- EO 13081, Consultation and Coordination with Indian Tribal Governments
- EO 12898, Environmental Justice
- DoD American Indian and Alaska Native Policy
- AR 200-4
- DA PAM 200-4

Federally Recognized Tribes Invited to Participate

- Colorado River Indians
- Fort Mojave Indian Tribe
- Chemehuevi Tribal Council
- San Manuel Band of Mission Indians
- Timbisha-Shoshone Tribe
- Moapa Band of Paiute Indians
- Twenty-Nine Palms Band of Mission Indians
- Bishop Paiute Tribe
- Morongo Band of Mission Indians
- Big Pine Paiute Tribe of Owens Valley
- Lone Pine Paiute Shoshone Tribe
- Fort Independence Community of Paiute
- Kaibab Band of Paiute Indians
- Las Vegas Tribe of Paiute Indians

NAGPRA CA and SOP Outline:

- Introduction
- Definitions
- Policy/Procedures
- Notifications
- Identifications
- Treatment and Disposition
- Time Conflicts/Dispute Resolution
- Additional Parties
- Resumption of Activity

Definitions:

- Burial Site
- Cultural Affiliation
- Funerary Object
- Sacred Object
- Object of Cultural Patrimony
- Indian Tribe
- Inadvertent Discovery
- Cultural Objects
Policy
• To Protect
• To Identify Proper Ownership
• To Ensure Rightful Treatment and Disposition

Procedures:
Preliminary Assessment, Protection and Verification
• CRM must make a site visit within 24 hours of discovery
  • If non-human, determine archeological association and whether or not Section 106 procedures apply
  • Determine if remains are associated with a recent crime scene
  • If so, contact installation PMO(CID) and County Sheriff, activity will cease within 50 m radius and CID takes lead as investigating party
  • If not associated w/ crime scene w/ authorities concurring, notify CA SHPO

Procedures:
Preliminary Assessment, Protection and Verification
• Continued:
  • Are they Native American? If so, CRM will prepare a report of finding, noting all circumstances including content and context of the discovery, their antiquity and significance
  • Evaluates will be conducted as site
  • Demolitive analysis is prohibited
  • CRM/CID will consult with forensic/physical anthropologists as appropriate
  • Site will be protected, stabilized and monitored
  • No removal of items until compliance with these rules regarding resumption of activity is completed
  • NAGPRA investigations take time and CRM/CID should have a Plan of Action including procedures identified and available to conduct field analysis

Notification of Installation Commander
• Immediate telephone notification to Commander or designee.
• Immediately followed by written report which contains results of field evaluation and Plan of Action—consultation tasks and disposition of discovered objects
• Commander will notify CRM that the Memorandum of Notification has been received within 48 hours.
• All contracts that involve any ground disturbance activities will be required to notify the CRM immediately should an inadvertent discovery be made.
• G3 and Range Control shall have procedures in place to notify the CRM should an inadvertent discovery occur

Notification of Native Americans
• The Installation Commander has three (3) working days after written receipt of an inadvertent discovery of Native American remains or funerary items to notify all possible related descendants and other Indian tribes that may claim custody of the objects.
• Decisions on which tribes to notify will be based on priority of ownership described in 25 U.S.C. 3002 and 43 C.F.R. 10.6 and the List of Tribal Contacts.
  • Telephone calls shall be logged
  • Certified mail including written reports

Notification of Native Americans
Continued
• Priority of ownership or control of Native American remains and cultural objects is briefly:
  • Legal descendants, as determined pursuant to 43 C.F.R. 10.14(b)
  • Indian tribe holding tribal lands as defined in 43 C.F.R. 10.2(b)(2)
  • Culturally affiliated Indian tribes as defined in 43 C.F.R. 10.14
  • Indian tribe recognized as the aboriginal owners of the land by a final judgment of the Indian Claims Commission or the United States Court of Claims
  • Indian tribe with the strongest demonstrated cultural relationship
  • Unclaimed
• The List of Tribal Contacts will be kept by the Natural and Cultural Resources Manager and will be verified and/or updated annually in coordination with tribal election schedules.
Identification of Native American Human Remains

- In situ analysis is the preferred method. If site consultation shall occur and further identification methods discussed
- CRM will employ specialist as appropriate (e.g., forensic, physical anthropologists, ethnographers, tribal consultants)
- Cultural affiliation shall be determined by a preponderance of evidence (e.g., geography, kinship, biological, archeological, folklore, etc.)
- Lineal descent will be determined with potential lineal descendants

Identification of Native American Human Remains continued

- Consultation must result in either a Plan of Action and/or a Comprehensive Agreement. Parties covered in a CA must agree to be signatories.
- Information to be gained during the consultation that should be included in the written plan of action or CA:
  - Kind of material to be considered as cultural objects
  - Specific information used to determine antiquity
  - Treatment, care, and handling of human remains and cultural objects;
  - Archeological recording of the human remains and cultural objects;
  - Kinds of analysis for identification of human remains and cultural objects;
  - Steps to be followed to contact Indian Tribe officials at the time of an inadvertent discovery of human remains or cultural objects;
  - Kind of treatment to be afforded the human remains or cultural objects;
  - Nature of the reports to be prepared; and
  - Disposition of human remains and cultural objects

Treatment and Disposition

- Treatment and disposition shall be determined in consultation with lineal descendants or Tribes that demonstrate priority of ownership per NAGPRA
- Tribes must demonstrate affiliation by a preponderance of evidence
- If a single claimant can not be identified, continue consultations
- If an agreement can be reached refer to dispute resolution procedures below
- Make every attempt to specify treatment for inadvertent discoveries within thirty (30) days after certified notification has been sent
- If air preservation is not possible, reparations with tribes of lineal descent of cultural affiliation should be undertaken

Treatment and Disposition continued

- Each restoration or re-interment shall require Ft Irwin an opportunity for tribal religious participation, as per AIRFA
- Prior to the disposition of NAGPRA objects public notice shall be published of the proposed disposition in the area of lineal and culturally affiliated tribes
  - The notice must provide information as to the nature and affiliation of the human remains, objects, including any effects of cultural patrimony and seek further claims to custody. The consulting tribes may review the content of the notice before its publication. Proposed information should be submitted to the notice.
  - The notice must be published twice at least a week apart, a copy of the notice and information on when and in what newspaper the notice was published must be sent to the Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service.
  - The return of human remains and cultural objects must not take place until at least thirty days after the publication of the notice notice to allow time for any additional claims to come forward. If additional claims to come forward and the consultation committee or tribes wishes to consider fully disinterred claimant is entitled to custody, the federal agency must not return custody of the human remains and cultural objects until the proper recipient is determined pursuant to 41 C.F.R. 11

Treatment and Disposition continued

- If a claim is made for human remains and cultural objects, all of the tribes that were involved in the consultations regarding their disposition will be notified.
- Unclaimed Native American human remains and cultural objects shall be returned in accordance with the regulations developed by the NAGPRA Review Committee

Time Conflicts

- On those rare occasions when Ft Irwin or the tribe(s) is unable to meet its commitments pertaining to time schedules for any activity specified herein, the party that is unable to meet the schedule will notify the other party as soon as physically possible to reschedule the activities to the mutual satisfaction of both parties. Emergency actions will be coordinated by telephone or FAX

Appendix C

Presentations
Dispute Resolution

- All disputes regarding the cultural affiliation of discovered human remains and/or cultural objects shall be resolved in accordance with Sections 3 and 7(o) of NAGPRA and the implementing regulations 43 C.F.R. 10.

- Fort Irwin shall follow the procedures set forth in this document regarding consultation with the interested tribes. Should any interested tribe make a contributing claim of cultural affiliation or dispute the methods of treatment or disposition of human remains and/or cultural objects as delineated herein, the installation commander shall notify FORT IRWIN NAGPRA.

- Fort Irwin will continue consultation with the disputing parties, suggest that the disputing parties seek resolution among themselves, and, if the disputing parties concur, go before the NAGPRA Review Committee which is given the authority under 25 U.S.C. 3006(a)(4) and 43 C.F.R. 10.16 and 10.17 to make recommendations on the resolution of disputes.

- If upon receipt of the recommendations of the Review Committee, the most appropriate claimant still cannot be determined, Fort Irwin shall return the disputed remains or cultural objects until the question of ownership is resolved, as stated in 43 C.F.R. 10.1.4(a)(2).

Additional Parties

- Interested tribes claiming lineal descent or cultural affiliation may join these procedures at any time should they express a desire to do so.

- If an interested party fails to make a written claim prior to the time human remains and cultural objects are duly repatriated or disposed of to a claimant, the interested party is deemed to have irrevocably waived any right to claim such items pursuant to these regulations.

Resumption of Activities

NAGPRA specifies:

- The activity that resulted in the inadvertent discovery of Native American human remains or cultural objects may resume thirty (30) days after certification by the installation commander of the receipt of the notification sent by the Cultural Resources Manager.

- Or, activity may resume if the treatment is documented in a written binding agreement between the installation and the affiliated Indian tribes, as per NAGPRA.

- In no event may activity resume until the SHPO or, if involved, local law enforcement officials approve.

Summary

- Why Sign a Comprehensive Agreement?
  - Army Requirement
  - Facilitates Decisions
  - Enhances Partnersing

Listening Session

Break

2:45 till 3:00
Cultural Resource Program Status
September 2003

- Ft. Irwin, NTC, comprises 752,730 acres
- 30% has been inventoried for cultural resources.
- A total of 1,047 cultural sites have been documented (618-Ft Irwin, 429-Land Expansion)
- 351 sites have been evaluated
- 58 have been determined/treated eligible for the National Register of Historic Places (NRHP).
- The remaining 538 sites are “considered eligible;” that is, they are protected (i.e., off limits to training exercises) until a formal evaluation has been determined.
Programmatic Agreement Presentation

Programmatic Agreements

What they are... What they are not
What they are...
- An alternative to the Section 106 process for:
  - Similar, repetitive, or routine activities
  - Potential effects on historic properties that cannot be fully determined prior to the Undertaking
- Other circumstances that warrant a departure from the normal Section 106 process

What they are not...
- An agreement document for complying with NAGPRA

Programmatic Agreements

The difference...

Comprehensive Agreements (CAs)
- Circumstances specific to NAGPRA
  - Registration of:
    - Human objects (associated and unassociated)
    - Sites/objects
  - Place of Action (POA)
  - Focus is consultation with the Tribe

Programmatic Agreements (PAs)
- Circumstances specific to Section 106, ARPA, AIRFA, NEPA
  - Everything that is not specific to NAGPRA
  - SSOPs or Protocols
  - Focus is consultation with the SHPO

Programmatic Agreements

What they contain...

- Title and Date
- WHEREAS clauses
- NOW THEREFORE clause
- Program/Project-specific stipulations
  - Exemptions
  - Archeological Resource Protection (Technical requirements)
  - Provisions for monitoring and documentation
  - Inventory requirements
  - Administrative stipulations
  - Protection/Protection and Renewal
  - Monitoring and Reporting requirements
  - Discretion
  - Amendment
  - Termination
  - Anti-Deficiency Act
  - Executive/legislative actions
  - Applicable appendices

Programmatic Agreements

What they contain... (Title and Date)

Example Title and Date

PROGRAMMATIC AGREEMENT
AMONG THE UNITED STATES ARMY,
FORT ROCKY ROAD, TEXAS,
AND THE TEXAS STATE HISTORIC PRESERVATION OFFICER
REGARDING
OPERATION, MAINTENANCE, AND DEVELOPMENT
UNDERTAKINGS
AT FORT ROCKY ROAD, TEXAS

October 2, 2003

Programmatic Agreements

What they contain... (WHEREAS clauses)

Example WHEREAS Clauses

WHEREAS, the United States Army (Army) has determined that operation, maintenance, and development of Historic Property (HP), which may have cultural properties that are eligible for inclusion in the National Register of Historic Places (National Register), or that are of importance to American Indian and native Hawaiian cultures, and significant to the understanding of the history, culture, and traditions of American Indian and native Hawaiian peoples, and to the development of a more complete picture of the development of the Nation's history, the Army desires to enter into an agreement with the Texas State Historic Preservation Officer (SHPO) to define the terms and conditions of the Army's operations, maintenance, and development undertakings at Fort Rocky Road, Texas, and the Texas SHPO desires to enter into a programmatic agreement with the Army to ensure that the operations, maintenance, and development undertakings at Fort Rocky Road, Texas, be conducted in accordance with the terms and conditions set forth in this Agreement

WHEREAS, the Army has conducted the identification and evaluation of cultural resources at Fort Rocky Road under Section 201 of the National Historic Preservation Act (NHPA), and that the statement has been submitted to the National Park Service in accordance with the 1966, and the Texas SHPO has conducted the identification and evaluation of cultural resources at Fort Rocky Road, and that the Army desires to enter into a programmatic agreement with the Texas SHPO to ensure that the operations, maintenance, and development undertakings at Fort Rocky Road, Texas, be conducted in accordance with the terms and conditions set forth in this Agreement.
Programmatic Agreements
What they contain... (NOW THEREFORE clause)

Example NOW THEREFORE Clause

NOW, THEREFORE, The Army, Fort Rocky Road, and the Texas SHPO agree that operation, maintenance, and development Undertakings shall be administered in accordance with the following stipulations to satisfy the Army’s Section 106 responsibilities for such Undertakings:

Programmatic Agreements
What they contain... (Exemptions)
Example Project/Program Stipulations

STIPULATIONS

The Army shall ensure that the following measures are carried out:

I. Exemptions (Undertakings that do not require review)
   IA. Any Undertaking that will not alter Building 49
   IA.1. Undertakings that will have no effect on Building 49 and require no additional review:
       - Maintenance of, or complete replacement of, any non-original interior or exterior finishes.
       - Application of compatible paint coatings following proper surface preparation.
       - Removal or maintenance of any custom landscape features (e.g., shrubs, trees).

Programmatic Agreements
What they contain... (Mitigation Measures)
Example Project/Program Stipulations (cont.)

II. Mitigation Measures

II.A. Fort Rocky Road has developed an Integrated Cultural Resources Management Plan (ICRMP) in accordance with Army Regulation 200-3. Specific procedures for archaeological survey and the demolition of historic buildings are outlined in this ICRMP and are incorporated into this FA by reference.

II.B. Building 40 has been determined eligible for inclusion in the National Register. To meet the requirements for the construction of a new water treatment plant, the water tower requires demolition. To ensure that Fort Rocky Road will ensure that Building 40 is documented using Level I, II, and III American Historical Engineering Record (HAER/HABS) standards.

Programmatic Agreements
What they contain... (Unanticipated Discoveries)
Example Project/Program Stipulations (cont.)

III. Unanticipated Discoveries

III.A. If during the performance of any Undertaking archaeological materials or unanticipated effects are found, Fort Rocky Road will take all reasonable steps to avoid or minimize harm to the property until it completes consultation with the Texas SHPO and any other interested parties.

III.B. Fort Rocky Road will immediately notify the Texas SHPO and develop an action plan that will take into account the effect of the unanticipated discovery.

Programmatic Agreements
What they contain... (Interim Protection)
Example Project/Program Stipulations (cont.)

IV. Interim Protection

Building 40 is scheduled for demolition in Fiscal Year 2004. Until the documentation for Building 40 is complete, Fort Rocky Road will ensure that the building is protected from harm. This shall include, but not be limited to: weather damage; rain or other precipitation; weather damage; and damage from surrounding demolition and construction activities.
Programmatic Agreements
What they contain... (Duration)

Example Administrative Stipulations (cont.)

V. Duration

This PA shall be null and void if its terms are not carried out within five (5) years from the date of its execution. Before the end of the 5th year, the PA shall be reviewed by the Army, Fort Rocky Road, and the Texas SHPO for possible modification, termination, or extension.

Programmatic Agreements
What they contain... (Monitoring and Reporting)

Example Administrative Stipulations (cont.)

VI. Monitoring and Reporting

Each year following the execution of this agreement or until it expires, is terminated, or the objectives are completed, Fort Rocky Road shall provide all parties to this PA a written report detailing work undertaken pursuant to its terms. The report shall include any scheduling changes proposed, any problems encountered, and any disputes or objections received regarding Fort Rocky Road’s efforts to carry out the terms of the PA. Failure to provide a summary report may be considered noncompliance with the terms of this PA pursuant to Stipulation VI.

Programmatic Agreements
What they contain... (Amendments/Noncompliance)

Example Administrative Stipulations (cont.)

VII. Amendments and Noncompliance

If any party to this PA determines that its terms will not, or cannot, be carried out, or that an amendment to its terms must be made, the other party shall immediately consult with the other parties to develop an amendment to this agreement pursuant to 36 CFR 800-600 and 800-600-98. The amendment will be effective on the date a copy signed by all of the original signatories is exchanged. If the signatories cannot agree on appropriate terms to amend the PA, any signatory may terminate the agreement in accordance with Stipulation IX.

Programmatic Agreements
What they contain... (Dispute Resolution)

Example Administrative Stipulations (cont.)

VIII. Dispute Resolution

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the Army shall consult with the objecting party to resolve the objection.

Programmatic Agreements
What they contain... (Termination)

Example Administrative Stipulations (cont.)

IX. Termination

If this PA is not amended following the consultation set out in Stipulation VII, it may be terminated by any signatory. Within 30 days following termination, the Army shall notify the signatories if it will initiate consultation to execute an amended or new agreement.

Programmatic Agreements
What they contain... (Anti-Deficiency Act)

Example Administrative Stipulations (cont.)

X. Anti-Deficiency Act

X. A. All requirements set forth in this agreement regarding the expenditure of Fort Rocky Road’s funds are subject to the availability of appropriations and the requirements of the anti-deficiency act. Notwithstanding any solicitation by Fort Rocky Road to extend the terms of the PA, such request must be approved by the Congress for a particular purpose.

X. B. If Fort Rocky Road cannot perform any obligations set forth in this PA due to the insufficiency of funds, the Army, Fort Rocky Road, and the Texas SHPO intend for the remainder of the parties to be excused. Any obligations under this agreement which cannot be performed due to the non-availability of funds must be renegotiated between the signatories.
Programmatic Agreements
What they contain... (Execution Clause)

Example Execution Clause

XI. Execution

Execution of this PA by the Army, Fort Rocky Road, and the Texas SHPO prior to the approval of this Undertaking and implementation of its terms, evidence that the Army and Fort Rocky Road have taken into account the effects of this Undertaking on historic properties and afforded the Council and opportunity to comment.

Programmatic Agreements
What they contain... (Signature Blocks)

Example Signature Blocks

Fort Rocky Road
By: _____________________________
Commander, Fort Rocky Road

United States Army
By: _____________________________
Federal Preservation Officer

Texas Historical Commission
By: _____________________________
Texas State Historic Preservation Officer

Programmatic Agreements
Why develop PAs

- 3 Choices
  - Case-by-case process
  - PAs
  - Army’s Alternative Procedures
- Serves as an alternative for certain types of Section 106 actions
- Encourages Partnering
- Coordinate with CAs for consistency

Programmatic Agreements
Where to find additional information...

- Advisory Council on Historic Preservation
  - http://www.achp.gov
- U.S. Army Corps of Engineers-ERDC-CERL
  - http://www.ercer.army.mil
- California SHPO
  - http://ohp.parks.ca.gov
- National Preservation Institute
  - http://www.npi.org
Fort Irwin Cultural Resource Program – Land Expansion Results

Ft Irwin, NTC
Cultural Resources Program
Land Expansion Results

Study Areas

- Avawatz
  - 19 study blocks x 124 acres = 2,356 acres
  - 25%

- Power Line
  - 4 study blocks x 124 acres = 496 acres
  - 25%

- Superior Valley
  - 178 study blocks x 124 acres = 22,072 acres
  - 25%

Total: 24,924 acres

Superior Valley
Shoreline Site with Beach Ridge

*Photo courtesy of TRC

Superior Valley Sand Sheet Site

*Photo courtesy of TRC

Basalt Quarry

*Photo courtesy of TRC
Desert Pavement - Avawatz

*Photo courtesy of TBC*
Model Performance

<table>
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<th>Site Type</th>
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<th>% of Area</th>
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<td>48%</td>
<td>7%</td>
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<tr>
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<tr>
<td>Historic</td>
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</tr>
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- Goal is to reduce the amount of area to survey so that it includes only those areas where sites are most likely
- Areas already surveyed, expected military impact, and potential for buried sites are also considered

Ongoing Improvements

- Redesign of FICRD
  - more efficient database design
  - more flexible and sustainable data updates and access
- Land Disturbance Analysis

FICRD Relational Database
Fort Irwin Cultural Resource Program – Land Expansion Results

Ft Irwin, NTC
Cultural Resources Program
Cultural Affiliation Study

Topics
- Mojave Desert Environment
- Social Organization at Spanish Contact
- Major Indigenous Groups
  - Serrano
  - Chemehuevi/Southern Paiute
  - Mojaves
  - Kawaiisu
  - Panamint/Timbisha Shoshone

Topics
- Native Places and Traits:
  - Kaviti—Avawatz Mountains
  - Cave Springs
  - Turantika—Grinnell Mountains
  - Xanijav—Soda Mountains
  - Mamukwai—Soda Mountain Region
  - Leach Springs—Owl Hole Springs Valley Region
  - Pigment Quarry—Owl Head Mountains
  - Bitter Springs
  - Avi-Kitskilyke—Calico/Paradise? Mountains
  - Ava-su'ore—Cady-Cave Mountains

Topics
- Environmental Resources
  - Plants
  - Animals
  - Salt/minerals
- Seasonal Subsistence Practices
- Populations and carrying capacity
- Tribal Populations

Topics
- Tribal Interactions Post 1820
- Extra-Tribal Conflicts
- Impact of the Horse on Subsistence and Political Practices
  - Stock Appropriations (raids)
  - Tribal Movements and Relocations

Topics
- 1840-1850s
  - Impact of “American Emigrants”
- 1860-1870s
  - Mining and Military Confrontations
    - Native American Interactions
    - Development of Reservation Communities
Topics

- Earle discusses the problems of Socio-Political dynamics and the concepts of Tribal, Anthropological and Federal Recognition
- Indian “Groups” at the beginning of the Twentieth-century:
  - Chemehuevi
  - Desert Kawaiisu
  - Vanyume Serrano
  - Desert Mojave

Federally Recognized Tribes
October 2003

- Colorado River Indians
- Fort Mojave Indian Tribe
- Chemehuevi Tribal Council
- San Manuel Band of Mission Indians
- Timbisha Shoshone Tribe
- Moapa Band of Paiute Indians
- Twenty-Nine Palms Band of Mission Indians
- *Bishop Paiute Tribe
- Morongo Band of Mission Indians
- Big Pine Paiute Tribe of Owens Valley
- Lone Pine Paiute Shoshone Tribe
- Fort Independence Community of Paiute
- Kaibab Band of Paiute Indians
- Las Vegas Tribe of Paiute Indians

Ft Irwin Tribal Interactions

- Ft Irwin began Nation-to-Nation Consultation in 2000
- Currently Consulting with 14 Federally Recognized Tribes
- Tribes who have expressed an interest in consulting to date:
  - Timbisha Shoshone
  - Fort Mojave
  - Moapa Paiute
  - San Manuel Band of Mission Indians
  - Colorado River
  - Chemehuevi
  - Las Vegas Paiute
  - *Kaibab

Status

- None of the Tribes consulted have identified any village settlements within Ft Irwin, to date, but do consider the area within their traditional cultural realm (Timbisha and Mojave)
- Traditional Sacred Places
  - Avawatz Mountains
    - Salt Deposits
    - Supernatural Events
  - Cave Springs
  - Mojave River
    - Travel corridor
    - Rock Shelters
    - Numerous Petroglyph sites
NTC-Fort Irwin Fiber Optic Network and Rail Spur Presentation

Ft Irwin, NTC
Cultural Resources Program
Fiber Optic Network
and
Rail Spur

National Training Center
Fiber Optic Network
Presented to
Ft Irwin—Native American Meeting
4-6 October 2003

PURPOSE:
• To provide information to Ops group on proposed land expansion systems integration to:
• Obtain input to meet Ops group requirement
• Use technology to our benefit
• Explore long-term, smart approach techniques

Progress To Date
• Completed second preliminary site survey
• Began flagging adjusted route
• Identified Langford Lake path adjustment
• Submitted Environmental Review Forms and Fiber Initiative DOC to DPW
• Obtained installation estimates for 156” and 72” cover for friction areas
• Generated Cantonment Duct Manhole Spreadsheet

Fiber Optic Network Route
Fiber Optic Network CRM Results:

- 37 cultural sites were identified
  - 3 Historic/Military
  - 34 Lithic reduction sites consisting of debitage
- Stone tools:
  - 3 hammerstones
  - 3 cores
  - 1 flint

None of the sites appear to have any characteristics that would qualify them eligible for inclusion in the NRHP

NTC Prepositioned Fleet Implementation Plan

National Training Center Rail Upgrade

NTC Prepo Implementation Plan: Rail Upgrade

Rail Spur Design Initiative

- Updated Rail Spur Design Assumptions
  - Army Transformation of force structure and equipment will continue.
  - Rotations from FY 03 and beyond will require estimated 400 railcars, growing to 700 railcars per rotation over time.
  - Current Land Expansion will be implemented. Land has been withdrawn from public use.
  - Environmental restrictions in Coyote Basin will remain. Manix Trail must be minimized, due to desert tortoise critical habitat and the dust pollution and damage caused by vehicle movement.
  - California road prohibitions on Army HMTs and restricted use of HETS (commercial at Army) during designated traffic times will continue.
  - Any rail spur decision will take 3-6 years to implement; transition operations at Yermo Railhead will be required regardless of decision.
  - Trails length will not exceed 60 cars; average train weight 5,583 tons
  - Heaviest train not to exceed 19,000 tons (weight includes car weight)

Rail Spur Design Initiative

- Requirements:
  - 100-200 railcar/day capacity (supports 2-3 day throughput)
  - Storage track for 300 railcars
  - 24hr/7 day railroad operation with simultaneous in/outbound ops.
  - Railhead handles: heavy/light trucks, heavy/light wheels, containers, PLS trucks, bi-level RR cars; simultaneous off/on-load for three trains
  - Staging area for 200 vehicles
  - Central rail control (tower, camera, remote switching, communications)
  - Security and access control facilities
- Planning Factors and Goals:
  - Safety is paramount
  - Minimize use of Manix Trail and Foot Trench Road
  - Minimize or eliminate intermodal operations
  - Rail crossing maneuver area has minimal impact on training
  - Minimize vehicle OPTEMPO to and from railhead
NTC Prepo Implementation Plan: Rail Upgrade

**ANALYSIS RESULTS: Rail Spur Options**

- NTC Preferred Option: Railhead on Main Post
  - Reduces movement times and minimizes intermodal support requirements
  - Best supports training requirements
  - Best provides for security of the rail facility and resources
  - Minimizes environmental conflicts: encroachment sensitive to include Main Post
  - Most cost effective, near and long term; ensures future throughput capability

Yermo to Ft Irwin Rail Spur

Rail Spur CRM

- Fieldwork will begin in Mid-October 2003
- Systematic survey involving inventory and NRHP evaluation
- Results and recommendations will be coordinated with all tribes and CA SHPO

Lunch

11:30 till 1:00

Listening Session
Break

3:00 till 3:30
Appendix D: Sample Invitation Letter

DEPARTMENT OF THE ARMY
HEADQUARTERS, NATIONAL TRAINING CENTER AND FORT IRWIN
FORT IRWIN, CA 92210-5000

RIPLY TO ATTENTION OF:
Directorate of Public Works

Dear :

On behalf of the National Training Center (NTC), Fort Irwin, California, you are invited to attend a Nation-to-Nation consultation meeting at The Fort Mojave’s AVI Resort and Casino, October 29th to 4th, 2003. The purpose of the meeting is to continue consultation with your tribe regarding the NTC and your tribal concerns.

We hope this year’s meeting to be a continuation of the dialog established last September. Even if you were unable to attend last year, we hope that you are able to participate in October and bring to this year’s forum issues important to your Nation. You should have received a copy of the compendium of last year’s meeting, “National Training Center – Fort Irwin, California: Tribal Consultations Held on 3-5 September 2002.” We hope it will serve as a valuable reference for all consulting parties.

Please find enclosed a draft agenda of the topics we would like to discuss. We have allowed ample time to discuss topics that you may bring to the table as well as time to visit Fort Mohave cultural sites.

Also included are draft copies of (1) the Native American Graves Protection and Repatriation Act Standard Operating Procedures for the NTC (SOP) and (2) a potential Comprehensive Agreement (CA) between Ft. Irwin and your tribe. The SOP details the procedures that Ft. Irwin will take should human remains or Native American cultural items be found within the NTC. The CA is a legally binding agreement that you and the NTC will have the option to sign. It would be an agreement between you and the NTC about the steps the NTC should take when such remains or cultural items are found on the installation, including how and when to notify your tribe. Both the SOP and the CA are lengthy, but we hope you can take the time to read them carefully and bring your comments and suggestions about their content and wording to the consultation meeting.

If you would like to attend, the NTC will pay for all reasonable expenses (e.g., mileage, lodging, meals) for up to three Tribal representatives. Please contact us if you wish to attend and we will send you a detailed agenda. Please include the names of those that will attend and their addresses so we may process invitational travel orders for them.
In the spirit of our Nation-to-Nation relationship, we look forward to meeting with you. You may write me at the above address or contact Mr. William Quillman, Natural and Cultural Resource Manager, of my staff at 760-380-3740.

Sincerely,

[Signature]

[Name]
Lieutenant Colonel, U.S. Army
Director of Public Works

CC: Tribal Cultural Resource Manager
## Appendix E: Summary of Tribal Consultation Efforts

<table>
<thead>
<tr>
<th>Tribe</th>
<th>Contact Persons</th>
<th>Result</th>
</tr>
</thead>
</table>
| Big Pine Paiute Tribe of Owens Valley     | Jessica Baco, Chairperson Tracy Vowers-Stidham, Tribal Administrator | 23/9 – called, no answer  
25/9 – emailed Tracy Vowers-Stidham  
25/9 – received email indicating no one would be attending |
| Bishop Paiute Tribe                        | Douglas Vega, Chairperson Lee K. Chavez, TERO Director Allen Spoonhunter, Historic Preservation Officer | 23/9 – called, left message with secretary  
25/9 – responded to Gaylene Mills’ voicemail; she indicated Mr. Vega couldn’t come, but other council members might  
26/9 – called twice, no contact  
30/9 – left voice mail for Gaylene |
| Chemehuevi Indian Tribe                   | Edward D. Smith, Chairperson                         | 23/9 – called, no answer  
25/9 – Mr. Smith said he would attend |
| Colorado River Indian Tribes              | Daniel Eddy, Chairperson Betty Cornelius, NAGPRA Coordinator | 23/9 – called, left message with secretary  
25/29 – Mr. Eddy’s assistant said that he would not attend. Said other potential attendees were handling their own affairs and she had no information. Asked her who specifically might be considering attending so that they could be contacted, she said she didn’t know. Ms. Cornelius could not be reached. |
| Fort Independence Community of Paiute Indians | Richard Wilder, Chairperson                         | 23/9 – called, promised Mr. Wilder to fax invitation and draft agenda  
26/9 – faxed invitation and agenda  
30/9 – Mr. Wilder said no one would be attending |
| Fort Mojave Indian Tribe                  | Nora McDowell, Chairperson Elroy Jackson, Vice Chairperson Elda Butler, Director AhaMaKav Cultural Society Chad Smith, Tribal Archaeologist | As hosts of the event, constant communication occurred with the Fort Mojave Tribe |
| Kaibab Band of Paiute Indians             | Carmen Bradley, Chairperson Ilia Bullets, Cultural Resources Director | 23/9 – called, no answer  
25/9 – Ms. Bradley not attending; left voicemail with environmental officer Brenda  
26/9 – called twice, no contact  
30/9 – spoke with Ms. Bullets, she |
<table>
<thead>
<tr>
<th>Tribe</th>
<th>Contact Persons</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Las Vegas Tribe of Paiute Indians</td>
<td>Gloria Hernandez, Chairperson</td>
<td>promised to call back with more info</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1/10 – received voicemail from Ms. Bullets; she indicated that no one would be attending</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2/10 – called Ms. Bullets indicating receipt of voicemail</td>
</tr>
<tr>
<td>Lone Pine Paiute Shoshone Tribe</td>
<td>Rachel Joseph, Chairperson Wilfred Nabahe, Environmental Division</td>
<td>23/9 – called, left message with secretary</td>
</tr>
<tr>
<td></td>
<td></td>
<td>25/9 – neither Ms. Joseph nor Mr. Nabahe in today; emailed Mr. Nabahe</td>
</tr>
<tr>
<td></td>
<td></td>
<td>30/9 – called twice, left voicemail</td>
</tr>
<tr>
<td>Moapa Band of Paiute Indians</td>
<td>Philbert Swain, Chairperson</td>
<td>23/9 – Mr. Swain said representatives may attend, please call him back in a couple of days</td>
</tr>
<tr>
<td></td>
<td></td>
<td>25/9 – no answer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>26/9 – called twice, no contact</td>
</tr>
<tr>
<td></td>
<td></td>
<td>30/9 – secretary indicated 3 members would attend; faxed them additional copies of the agenda</td>
</tr>
<tr>
<td>Morongo Band of Cahuilla Mission Indians</td>
<td>Maurice Lyons, Chairperson Nicole King, Executive Assistant</td>
<td>23/9 – called, no answer</td>
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<tr>
<td></td>
<td></td>
<td>25/9 – left message with Lyons’ assistant Nicole King</td>
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<tr>
<td></td>
<td></td>
<td>26/9 – office closed</td>
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<tr>
<td></td>
<td></td>
<td>30/9 – left voicemail for Ms. King; no response received</td>
</tr>
<tr>
<td>San Manuel Band of Serrano Mission Indians</td>
<td>Deron Marquez, Chairperson Ann Brierty, Environmental Division</td>
<td>23/9 – called, no answer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>25/9 – secretary indicated that Mr. Marquez would not be coming. Left message for Ms. Brierty</td>
</tr>
<tr>
<td></td>
<td></td>
<td>26/9 – called three times, no contact</td>
</tr>
<tr>
<td></td>
<td></td>
<td>30/9 – called twice, left voicemail</td>
</tr>
<tr>
<td></td>
<td></td>
<td>30/9 – received voicemail from Ms. Brierty; indicated no one would be attending</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2/10 – left voicemail for Ms. Brierty confirming voicemail receipt</td>
</tr>
<tr>
<td>Timbisha Shoshone Tribe</td>
<td>Georgia Kennedy, Chairperson</td>
<td>26/9 – left voicemail; no response received</td>
</tr>
<tr>
<td>Twenty-Nine Palms Band of Mission Indians</td>
<td>Dean Mike, Chairperson</td>
<td>23/9 – called, promised Mr. Mike to fax invitation and draft agenda</td>
</tr>
<tr>
<td></td>
<td></td>
<td>26/9 – faxed invitation and agenda</td>
</tr>
<tr>
<td></td>
<td></td>
<td>30/9 – spoke with Leanna Thomas; no one attending</td>
</tr>
</tbody>
</table>
Appendix F: List of Meeting Attendees

**Fort Mojave Tribe**
Elda Butler, former director of the AhaMaKav Cultural Society
Betty Barrackman
Llewellyn Barrackman, former vice chair of the Fort Mojave Tribe
Felton Binter, Tribal Elder
Chad Smith, Tribal Archaeologist/CR Manager
Linda Otero, Director AhaMaKav Cultural Society

**Bishop Paiute Tribe**
Lee Chavez, cultural representative
Gerald Kane, tribal council member

**Chemehuevi Indian Tribe**
Donald Smith, tribal representative
Edith Smith, tribal representative
Edward Tito Smith, Chairperson

**Colorado River Indian Tribes**
Gaye Ray, tribal representative
Phil Smith, tribal representative

**Las Vegas Paiute Tribe**
Kenny Anderson, tribal representative
Gloria Hernandez, Chairperson

**Moapa Band of Paiutes**
Lalovi Miller, cultural committee member
Raphella Spute, cultural committee member
Philbert Swain, Chairperson

**NTC-Fort Irwin**
Muhammad Bari, Environmental Division Chief – DPW
Tad Britt, Archaeologist, ERDC-CERL
Colonel Edward L. Flinn, Duputy Commander and Chief of Staff
Susan Enscore, Cultural Geographer, ERDC-CERL
Darrell Gundrum, Archaeologist
Bob Horalek, Environmental Attorney
Lt. Col. Jeffrey S. Ogden, Director of Public Works
Mickey Quillman, Natural and Cultural Resources Manager
Consultants/Contractors for Ft. Irwin
Gina Foringer, logistics coordinator, Versar Inc.
Jennifer Shore, logistics coordinator, Versar Inc.
Paige Peyton, Senior Cultural Resources Manager, Geo-Marine Inc.
Appendix G: Native American Consultation List

Big Pine Paiute Tribe of Owens Valley
• Tribal elections: June 2004
• Ms. Bacoch is rarely in her office. The receptionist recommends Ms. Tracy Vowers-Stidham as a telephone contact.

Ms. Jessica Bacoch  Ms. Tracy Vowers-Stidham
Chairperson  Tribal Administrator
Big Pine Paiute Tribe of Owens Valley  Big Pine Paiute Tribe of Owens Valley
P.O. Box 700  P.O. Box 700
Big Pine CA 93513  Big Pine CA 93513
Tel: 760-938-2003  Tel: 760-938-2003
Fax: 760-938-2942  Fax: 760-938-294

Bishop Paiute Tribe
Tribal elections: 2004

Mr. Douglas Vega  Lee K. Chavez, TERO Director
Chairperson and NAGPRA Coordinator  Tribal Employment Rights Office (TERO)
Bishop Paiute Tribe  Bishop Paiute Tribe
50 Tu Su Lane  52 Tu Su Lane
Bishop CA 93514  Bishop, CA 93514

Mr. Allen Spoonhunter  Tel: 760 873-3338
Historic Preservation Officer  Cell 760 937-9073
Bishop Paiute Tribe  Fax: 760 873-4143
e-mail: tero@paiute.com
50 Tu Su Lane
Bishop CA 93514

Tel: 760-873-3584
Fax: 760-873-8255
► Shared email address: tcscc@paiute.com
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California

Tribal elections: April 2004

Mr. Edward D. Smith
Chairperson
Chemehuevi Tribal Council
Havasu Lake CA 92363
Tel: 760-858-4301
Fax: 760-858-5400

Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California

Mr. Daniel Eddy
Chairperson
Colorado River Indian Tribes
Route 1, Box 23-B
Parker, AZ 85344
Phone: 928-669-9211
Fax: 928-669-5675
Ms. Betty Cornelius
NAGPRA Coordinator
Colorado River Indian Tribes
Route 1, Box 23-B
Parker, AZ 85344
Phone: 928-669-1339
Fax: 928-669-5675

Fort Independence Community of Paiute Indians

Tribal elections: January 2004

Mr. Richard Wilder
Chairperson
Fort Independence Community of Paiute Indians
P.O. Box 67
Independence CA 93526
Tel: 760-878-2126
Fax: 760-878-2311

Fort Mojave Indian Tribe

Tribal elections: 2004

Ms. Nora McDowell
Chairperson and NAGPRA Coordinator
Fort Mohave Indian Tribe
500 Merriman Ave
Needles CA 92363
Tel: 760-629-4591
Fax: 760-629-5767
Mr. Elroy Jackson
Vice Chairperson
Fort Mohave Indian Tribe
500 Merriman Ave
Mr. Chad Smith
Tribal Archaeologist
Fort Mohave Indian Tribe
500 Merriman Ave
Appendix G
Tribal Consultation List

Needles CA  92363
Tel: 928-768-4475
Fax: 760-768-7996
Ms. Elda Butler
Director
AhaMaKav Cultural Society
500 Merriman Ave
Needles CA  92363
Tel: 928-768-4475
Fax: 928-768-7996

Kaibab Band of Paiute Indians – Kaibab Indian Reservation, Arizona
Tribal elections: October 2003
Ms. Carmen Bradley
Chairperson and NAGPRA Coordinator
Kaibab Paiute Tribal Council
Tribal Affairs Building
HC65, Box 2
Fredonia AZ  86022
Tel: 928-643-7245
Fax: 928-643-7260
Ila Bullets
Cultural Resources
Tribal Affairs Building
HC65, Box 2
Fredonia AZ  86022
Tel: 928-643-7245
Fax: 928-643-7260

Las Vegas Tribe of Paiute Indians – Las Vegas Indian Colony, Nevada
Tribal elections: July 2004
Ms. Gloria Hernandez
Chairperson and NAGPRA Coordinator
Las Vegas Colony Tribal Council
One Paiute Drive
Las Vegas NV  89106
Tel: 702-386-3926
Fax: 702-383-4019

Lone Pine Paiute Shoshone Tribe
Tribal elections: Summer 2004
Rachel Joseph
Chairperson
Lone Pine Paiute Shoshone Tribe
1103 South Main St.
Lone Pine CA  93545
Tel: 760-876-1034
Fax: 760-876-8302
Wilfred Nabahe
Environmental Division
Lone Pine Paiute Shoshone Tribe
P.O. Box 747
Lone Pine CA  93545
Tel: 760-876-4690
WJNabahe@lppsr.org

Appendix G
Tribal Consultation List
Moapa Band of Paiute Indians – Moapa River Indian Reservation, Nevada

Mr. Philbert Swain
Chairperson and NAGPRA Coordinator
Moapa Business Council
P.O. Box 340
Moapa NV 89025-0340
Tel: 702-865-2787 x 201
Fax: 702-865-2875

Morongo Band of Cahuilla Mission Indians – Morongo Indian Reservation

Tribal elections: June 2004 (yearly elections)
Mr. Maurice Lyons
Chairperson and NAGPRA Coordinator
Morongo Band of Cahuilla Mission Indians
11581 Potrero Rd.
Banning CA 92220
Tel: 909-849-4697
Fax: 909-849-5307
Ms. Nicole King
Executive Assistant
Morongo Band of Cahuilla Mission Indians
11581 Potrero Rd.
Banning CA 92220
Tel: 909-849-4697
Fax: 909-849-5307

San Manuel Band of Serrano Mission Indians

www.sanmanuel.com/tribal.html
Mr. Deron Marquez
Chairperson
San Manuel Band of Mission Indians
P.O. Box 266
Patton CA 92369
Tel: 909-864-8933
Fax: 909-864-3370
Ms. Ann Brierty
Environmental Division
San Manuel Band of Mission Indians
P.O. Box 266
Patton CA 92369
Tel: 909-864-8933 x 2203
Fax: 909-862-5152
Timbisha Shoshone Tribe

*Tribal elections: 2 August 2003?

*Note: Tribe split into Big Pine and Death Valley groups in August 2003; situation currently under review by BIA. On August 21, the tribal office said that Ms. Shirley Summers was elected on 2 Aug; however, calls to the BIA on 25 Aug indicated that Ms. Kennedy is still recognized as the chairperson by the Feds. Internet searches suggest that the Death Valley group recognizes Richard Bolland as chairperson. For more info, contact the Bureau of Indian Affairs - Pacific Region - Central California Agency - Sacramento, CA 916-930-3680; ask for Tribal Operations.

Ms. Georgia Kennedy
Chairperson
Timbisha Shoshone Tribe
P.O. Box 459
Big Pine CA 93510-0459
Tel: 760-786-2374
Fax: 760-786-2376

Tribal Historic Preservation Officer
Timbisha Shoshone Tribe
P.O. Box 206
Death Valley CA 92328-0206
Tel: 760-786-2374
Fax: 760-786-2376

Twenty-Nine Palms Band of Mission Indians

*Tribal elections: November 2004

Mr. Dean Mike
Chairperson and NAGPRA Coordinator
Twenty-Nine Palms Band of Mission Indians
46-200 Harrison Place
Coachella CA 92236
Tel: 760-775-5566
Fax: 760-775-2449
The following tribes have been added to the Fort Irwin Native American Tribes Consultation List as federally unrecognized tribes:

**The Kawaiisu Tribe of the Tejon Indian Reservation**
- *State-recognized tribe*
- *Next tribal election is Fall 2007*
- *Mr. Robinson has indicated that he wishes to be contacted solely by email and letter*

David Laughing Horse Robinson  
Chairman  
The Kawaiisu Tribe  
P.O. Box 20849  
Bakersfield, CA 93390  
horserobinson@hotmail.com  
http://home.att.net/~write2kate/artbyhorseindex.html

**The Pahrump Band of Paiutes**
- *Mr. Arnold is the executive director of the Las Vegas Indian Council; the work number below reaches him at this office*
- *The Pahrump receive funds from the BIA, including funds for education*

Mr. Richard W. Arnold  
Chairperson  
Pahrump Band of Paiutes  
P.O. Box 3411  
Pahrump, NV 89041  
rwarnold@hotmail.com  
Work Tel: 702-647-5842 x 225  
Home Tel: 702-727-6559  
Cell: 702-339-7200
Appendix H: Meeting Notes

0001
1
2
3 FT. IRWIN, NTC - NATIVE AMERICAN TRIBAL MEETING
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5
6
7 2 OCTOBER, 2003
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11
12
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15
16
17
18
19
20
21 REPORTED BY: DENNIS D. STEINER, CSR #6, RMR
22 BONANZA REPORTING - 2320 PASSEO DEL PRADO, B-106
23 Las Vegas, NEVADA
24 (702) 360-3206
0002
1 oOo
2 IN ATTENDANCE:
3 Tad Britt
4 Paige Peyton
5 Susan Enscore
6 Darrell Gundrum
7 Raphella Spute
8 Lalovi Miller
9 Gerald Kane
10 Jennifer Shore
11 Lee Chavez
12 Col. Flinn
13 Lt. Col. Jeffrey Ogden
14 Mickey Quillman
15 Felton Binter
16 Bob Horalek*
17 Muhammad Bari
18 Elda Butler
19 Linda Otero
20 Gloria Hernandez
21 Kenny Anderson
22 Gaye Ray
23 Phil Smith
24 oOo
0003
1
2 oOo
3 FT. MOHAVE, AVI RESORT, LAUGHLIN, NEVADA
4 THURSDAY, 2 OCTOBER, 2003, 1:00 P.M.
5 oOo
6 MR. CHAD SMITH: I already know most of the people here.
7 I'm Chad Smith, tribal archeologist and Fort Resource Manager with Ft. Mojave Tribe, and I want to welcome you to Mojave Land and the facility here. And we appreciate the opportunity to consult and discuss matters with Army, and the many aspects of what the meetings will entail. And with that I'll turn it over to Col. Flinn from NTC, Ft. Irwin.
8 COL. FLINN: Thanks, Chad. I guess I can work from right here. Well, it's our pleasure from Ft. Irwin to be present at this meeting. We hosted last year's, and that one, General Phil, the commanding officer of Ft. Irwin and unfortunately was unable to attend; I'm his deputy, so I'll be here, and I'm proud to represent him, and he does want me to convey to you that he wishes that he could be here, but we've got units in training right now, and that's where his responsibilities lie, basic training. But we're honored to be with you so we can talk about some of these issues that we are working in order to come to some agreements on how we're going to handle the archaeological and cultural sites that we find out at Ft. Irwin.
9 The Indians have a prophetization of the warrior spirit, and that's what we try to embed in our soldiers that come through, and that is the warrior spirit. A little bit different, but when we send young Americans off to harm's way as we've done recently, we want to know that they've had the best training, and that they have this feeling of the nation and a feeling of pride in their unit and confidence in that what we've done out at Ft. Irwin is going to prepare them for combat operations. Many of those lessons that we incorporate into our training, you can follow history and you can find many of those same kinds of tough conditions and hard training that Native Americans had when they were at war with the United States of America, as it were. And recently we've been blessed, I think,
as a nation working with some of the multi-cultural
issues that we're working through of having learned
about Native Americans who had fought for the freedoms
that this nation enjoys, some of the historical events
of World War II and some of the great Native Americans
that fought for our nation and hold the highest honor,
that was bestowed upon them, and for that from a soldier
to those Native Americans, or fought in the Navy for
this nation, we are indebted to their sacrifices to help
this nation stay free.

And so why are we here for today? Well,
we know -- we have a pretty large piece of terrain here
in the middle of the Mojave Desert called Ft. Irwin, we
call it; Ft. Irwin is the place, the National Training
Center is what it is, it trains Army units to go into
combat operations, and we use a good portion of that
land for real estate combat training, firing live
bullets; we know that there is a rich history of Native
American presence on that land, and we know it's our
responsibility and it is our privilege to be able to, as
we find those, to appropriately record and take care of
those sites or artifacts that we find out there, and
that's one of the things we want to sort out as we have
these discussions, to make sure we have appropriate
procedures in place to honor those things that we find
that are on the grounds of Ft. Irwin.

The agenda is out there in front of us, I
see we have lots of different topics that we want to
talk about today. The important thing is one, to
dialogue with each other, understand what we want to get
out of here and find some common ground where we can
agree and hopefully look forward to a good bond and a
lasting relationship, and operating procedures and how
we're going to handle artifacts and sites at Ft. Irwin
that satisfies the Army's needs and the needs of people
who have blessed us with their presence across these
lands.

So as for Chad and the tribe here that's
hosting this conference, thank you.

I appreciate you taking time out to do
this for us.

As I look around this conference room, I
notice a stark difference between the one we had, where
we held ours last year; this one has got a lot of
interesting displays, and so for those of you from Ft.
Irwin, you can get out there and take a look at them
during the break.

I wish we had such a fine facility,
I know that some of you people have come from a far distance, and we pray that you protect and see them safely home and that you will help us in any future meetings. Amen.

MR. BRITT: As everybody has noted, I've got the dates wrong except for here. I changed them this afternoon, they will be corrected in the report that goes out. I do apologize; it's an oversight on my part, but basically we'll follow the times today, the topics we'll discuss this afternoon will be Native American Protection and Repatriation Act, standard operating procedures and comprehensive agreements, and we'll also talk about Programmatic Agreements, agreements between the nations and the Army, break at 2:45 to 3:00.

The restrooms are downstairs in the main lobby. We'll have refreshments back here any time during today you're here, if you need to get up and get something to drink, please feel free. We'd like to keep these meetings informal.

We like to stick to the schedule, but any time you have a question please do not hesitate to ask, or if something needs to be repeated or a further explanation, please do not hesitate.

After Paige's talk at 3:00, at 4:00 o'clock we'll have what we call a listening session, so again if there are some issues that aren't on the agenda that you'd like to raise, please feel free to produce, bring them up at that time.

And then tonight we're going to have the occasion of -- the occasion to have some Ft. Mojave dancers come and perform for us.

The schedule says 6:30, but it's actually going to be at 7:00, so if you would make a note of that, we'll meet back up here in this room, we'll have refreshments. We won't have any food per se, so I'll encourage you to get supper on your own and to be back here at 7:00.

I'm going to let you add a couple words before we get started -- and then we'll go on to 8:00, 8:30 or so, it will be an informal social mixer. Jennifer made a good point. If I could turn it over to her, the Army is reimbursing you for your travel time and expenses, I'm going to let her tell you what you need to keep and how you need to coordinate with her.

Moapa Band of Paiutes. I'm a cultural committee member.

MS. SPUTE: I'm Raphael Spute from Moapa, and I'm also a culturalist.

MR. GUNDRUM: My name is Darrel Gundrum, and I'm an archaeologist and a civilian contractor at Ft. Irwin and NTC.

MS. ENSCORE: Susan Enscore, I'm a cultural geographer, I'm the head of the cultural resources team at CERL, so I work with that.

MS. PEYTON: My name is Paige Peyton, I'm a cultural resources manager, and I work with Geo-Marine, and the folks at Ft. Irwin have asked me to comment and talk to you a little bit today about the Programmatic Agreements, what they are, what they look like and why we do them.

MS. SHORE: I'm Jennifer Shore, I'm a contractor and I'm coordinating the logistics of the meeting, so if you have any questions or concerns or needs, just let me know, I'll do my best to take care of it.

MR. BRITT: Thank you all.

Before we get started I would like to have a blessing and would like to, if we could, all stand and say the pledge of allegiance.

(Pledge of Allegiance)

MS. BUTLER: We pray, Rich Spirit, that thou wilt be with us and help us to see our way clear.

I know that some of you people have come from a far distance, and we pray that you protect and see them safely home and that you will help us in any future meetings. Amen.
procedures that we have implemented at Ft. Irwin. These are what we are following until we get the comprehensive agreements signed between your respective nations and Ft. Irwin.

What I'll do today is briefly go over what these are, and the benefits of actually having an agreement as well as your input on that agreement. Would you pass these out?

MS. HERNANDEZ: I have a question. Only because I'm not familiar with it, how the land base for Ft. Irwin, how big is it and does it only encompasses California or does it go into other areas?

MR. BRITT: Correct.

COL. FLINN: There are ongoing surveys.

MR. BRITT: That's a good question, Colonel?

COL. FLINN: The original boundaries of Ft. Irwin which was established in 1941 as an anti-aircraft artillery training site, 640,000 acres, all in the State of California, I believe all that's in the county of San Bernardino.

Two years ago the Congress enacted legislation which would withdraw an additional 110,000 acres of federal lands, and basically decreed those lands to the Department of the Army and to Ft. Irwin for us to expand the area that we're able to train on, so that takes us up to about 760,000 acres or so by the time we get all of those lands incorporated into the training department.

MS. HERNANDEZ: So the additional lands that you have they have studies already been looked at to find out whether or not -- the additional lands, have they already been looked at?

COL. FLINN: There are ongoing surveys.

MR. BRITT: Correct.

I'll address that, land expansion I'll do that tomorrow. But briefly, yes, we have, we've looked, systematically we've sampled 50 to 25 percent of those areas, depending on what type of usage is going to be done there, what type of training.

MS. HERNANDEZ: I was just wondering because I had talked to some people that were -- and they were going to come here and they made a call and they said that it did not really include them per se, that it was just the tribes that were affected in this area, and I don't understand.

MR. BRITT: I'm not familiar with that tribe, but maybe at the break or something I can get that information and we can see if they have an interest in being here.

MS. HERNANDEZ: I was wondering if you were just including certain tribes that were in the location.

MR. BRITT: There are 14 tribes that we're consulting.

MS. HERNANDEZ: Do we have a list here?

MR. BRITT: I'll get to that, if you can wait.

MS. HERNANDEZ: I'll wait.

MR. BRITT: I'll get on to that on the
Additionally, if you have competing claims, you may have additional parties, and you may have unrecognized federal -- or federally unrecognized tribes, state tribes, tribes that are -- have applied for federal recognition.

A lot of times they'll partner with an existing tribe and we'll try to work with them to get the remains back; and then finally, the resumption of activities, if it's a training activity or construction activity, all that work ceases until a plan of action is implemented so that there's no further disturbance to that area and all of this is outlined in these documents.

This is kind of a general notice, Ft. Irwin is engaged in continual cultural resource management via inventory, evaluation, protection and preservation in place; also, we've got an active program for interpretation and public outreach.

The potential, the nature of the activities that go on, the training nature's, they're using these vehicles, they're moving to lighter, faster vehicles; they're needing to use more land. There's over a thousand square miles.

The nature of the training mission is that they're impacting more land. Prior to that they were doing inventory and evaluations but there's always a potential for inadvertent discovery.

I will interject at this point that there are no identified NAGPRA items at Ft. Irwin that have been documented, so I just want to make sure that you understand that now.

Ft. Irwin has no inventory of NAGPRA items or cultural items. If human remains or funerary items are discovered, there's a process that we follow.

Basically we try to determine by following NAGPRA lineal descent, cultural affiliation and finally repatriation of those items.

The definitions that are covered, they're spelled out in the law, what a burial site is, what is cultural affiliation, funerary items, sacred objects, objects of the ultimate patrimony, what is an Indian tribe, what is an inadvertent discovery, cultural objects. They're all spelled out in the law. We don't have the opportunity to change those, they're legal definitions.

Ft. Irwin's policy in following NAGPRA is to protect, to identify proper ownership and to ensure rightful treatment and ultimately repatriation of those items.

Initially, if an inadvertent discovery is found, the cultural resource manager has 24 hours to go out and make a site visit and determine whether or not there are human remains, also to determine whether or not it's a recent crime scene.

If that's the case, CID the Criminal Investigation Division of Ft. Irwin is brought in, San Bernardino County Sheriff is brought in; it's treated as a crime scene, it's not a NAGPRA scene.

Basically, all work ceases in that area until it's been determined "Is it an ancient NAGPRA site or is it a modern crime scene?" Notify the California State Historic Preservation office.

If it is determined that it is Native American, if they are Native American remains or items of cultural patrimony, Ft. Irwin will bring in the necessary specialists, whether they be forensic anthropologists, physical anthropologists, tribal elders, tribal archeological cultural resource specialists, whatever is needed to determine lineal descent or cultural affiliation. No destructive analysis will be done.

All of the remains would be examined in place if at all possible. The site will be protected, stabilized and monitored until the proper disposition; no items will be removed.

And then finally the cultural resource manager will develop and implement a plan of action which the commander will sign.

The notification process, immediately, Darrell will notify the commander, the commander then has thirty days to respond back in writing that he has received the notice and that -- basically it's documented to the record that this notice has been filed and that he has to respond.

A plan of action will be written. The memorandum of notification -- Well, Darrell has 48 hours to get that in. Range control is notified. Basically the word gets out to Ft. Irwin, we've got a sensitive area, no further activity in that area, a plan of action is written.

Then the installation commander has three days to notify the federally-recognized tribes. We have this issue, the decision on which tribe is -- again based on the law. As of today we're doing -- we're notifying 14 tribes.

All telephone calls involved, all mailings are certified return receipt so that everybody knows exactly when the notification was sent and what was sent.

Determining ownership or control of Native American human remains and cultural objects is first done by lineal descent that is what is -- lineal descent is your ancestors descent, through the direct lineage, was it attributed to Indian tribes who were recognized.

Having traditional cultural area, that occupied that area. Cultural affiliated tribes, it's very similar to that, and then aboriginal owners of the land
which were determined by the courts. Basically we're talking about three concepts: Ancestral, aboriginal and ceded lands. That's the way the law looks at this. The cultural resource manager keeps a list of all of these tribes as well as telephone numbers, you'll see here in a minute. We've got election dates, who the tribal chairperson is, who the NAGPRA person is, the date on the size of the tribe, when the tribal elections are held so we can notify, these are constantly updated so that they know who to contact, should something like this occur. Again, I've mentioned that if something was found I'll make every effort to not disturb it, examine it in place, not do a destructive analysis, but bring in the appropriate specialists as necessary. Plan of action, ultimately the plan of action takes some interaction between the US Army and your respective nations. These are documented and memorialized in the comprehensive agreements. The information that we need from each of the tribes are these items that are highlighted in this bold yellow here, and I want to go over these. And ultimately a comprehensive agreement, the Army is required to have it, all of the tribes, it's an Army requirement, okay, and it takes a signatory on both parties, the commander for Ft. Irwin and the chairperson for the tribe. But we've got to be able to share information, and some of that information has to come from each of the respective tribes, and those types of information need to be included in the comprehensive agreements are what kinds of materials are considered to be cultural objects, specific information that you can share with installation to determine custody, specific treatment, care and handling of human remains, cultural objects, the archeological and recordation of the human remains and cultural objects. The types -- any types of analysis for identification of human remains and cultural objects. What types of analysis we've allowed; steps to be followed to contact any tribal officials at the time of an inadvertent discovery; the kinds of traditional treatment that should be afforded to the human remains or cultural objects. The nature and types of reports that your tribe would like to receive, and finally and ultimately the disposition of these human remains and cultural objects. All of those are input that we need to get from the tribes to get that into the comprehensive agreement so that we can have a legally-binding document. Again, I've kind of gone over treatment and disposition. It's done through consultation, done with priority of ownership. The tribes -- again, this comes -- tribes must demonstrate affiliation by preponderance of evidence; single claim cannot be identified, done by consultation, if you cannot agree to -- if you cannot agree to agree it goes to the NAGPRA dispute resolution committee; make every effort to get everything taken care of within thirty days. If you cannot protect -- typically the preferred alternative -- Well, I'll say as a general example, if human remains are found and they can be preserved and protected in place, it's generally the preferred alternative by the Army and motion of the Native American nations. That's always the preferred alternative.

The Army sees it that way and any effort we can to do that, the Army would like to do that. If not, the procedures would be outlined in those, would be repatriated and moved if necessary. Again, some more of the law, it basically says that we will consult with your tribe to respect your religious and cultural practices under ARFA. Again, that will come in under the treatment and disposition. If they do have NAGPRA objects, this doesn't really apply to Ft. Irwin but public notices will be published in the appropriate -- in the regional newspapers, at least two notices two weeks apart; follows the law so that everybody is afforded the same equal rights to comment or to make a claim. So basically it's an informational -- besides the telephone calls and certified mail, to make everybody aware that these items may be out there. Again, Ft. Irwin does not possess any Native American NAGPRA items at this point. It doesn't plan to. Again, this is -- I've kind of gone over this, claims are made, disposition will be -- ultimately will follow NAGPRA, we'll go through, everything will be -- if there's a problem, look to NAGPRA -- and again, these don't apply to Ft. Irwin at this point. We talked about time conflicts, I know that Ft. Irwin knows what it has to do. If you're not able to respond, if your tribe for some reason is unable to respond, basically you could make a good faith effort to notify somebody, that will suffice. And again, this can be written into the comprehensive agreement, if for instance, if your tribe only meets once a month and you don't get the letter until after you meet and then it's another thirty days, we can put provisions in there so that these things -- you all will be given an ample amount of time. Again, we'll go through the dispute resolution, that's pretty much set forth, it follows the law. I'm not going to read all of this, but again, it will be in the handout. Additionally, parties can join in at any time, as I mentioned earlier. Unrecognized tribes, if they feel like they have a claim, they can partner with a recognized
tribe to get those remains. That’s worked in many
instances, and it’s typically not a problem. However,
there is something here that’s important, if an
interested party fails to make a claim within the
time limits, objects have been repatriated, they basically
waive their rights to those items. We try to be
informed as much as we can.
finally, the provisions allow for the
activities after everything -- all of the paperwork is
done, concentration is over with in thirty days, if
everything has worked out, we resume activities.
Why sign a comprehensive agreement? As I
told you, it’s an Army requirement, the Army is required
to have this.

The benefits to your nations, I guess as
the Army sees it, is a sharing of information.
We have a document, we have procedures, we
know exactly what to do; we know exactly what you want
us to do; we’ve agreed to it and we can do it.
I call it insurance. It’s insurance for
the Army, it’s also insurance for the Native American
tribe because you know that you’re going to share
information, you know the exact procedures you’re going
to do, you know that your wishes and rights will be
respected and implemented. Those are the benefits of
the comprehensive agreement.
And it enhances the partner, it -- it’s
just one aspect of consultation, but when we get this
document signed we know exactly what we need to do. It
builds trust and it strengthens the relationship.
It’s really -- an agreement like that,
it’s really best for both parties and I really want to
stress that.
And I would like to maybe discuss before
the end of this meeting when we could get some of this
information we need to get from your tribe so that we
can get an agreement signed.
Again, it will protect both parties in
case something should happen at Ft. Irwin.
In lieu of that, until we get a
comprehensive agreement signed we will be following the
standard operating procedures. Those are the same thing
as the comprehensive agreement. All of the steps are
the same except we don’t have that information that we
need from the tribes for treatment.
So we’d really like to get that
information from you.
I’ll be working with Ft. Irwin to collect
that information so that we can get this agreement
signed.
MS. HERNANDEZ: I have a question, are
there provisions -- I don’t know maybe you’re going to
address this later on -- but I just have a real quick
question.
Do you have -- what if there’s like an
issue between like two tribes, as to who -- who the
remains belong to, would the Army make the decision?

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MR. BINTER: You always look at people forget, in most military establishments, no matter where they're set up, there were strategic points. Mojaves were there too.

MR. BRITT: Let me clarify something, because I think I know what you're going at. We're talking about NAGPRA items, not -- MR. BINTER: You may put it lightly, what you say, but we don't take it lightly. That's what I'm saying.

MR. BRITT: Okay.

MR. BRITT: I would like to clarify for the record, what I'm talking about here are just NAGPRA items, and those are human remains and associated funerary items. There are many, many, many; we've got a thousand of sites documented at Ft. Irwin, archeological sites or cultural sites. I want to make sure that's clear for the record.

MR. BRITT: About five miles south of the powerline expansion area, Cronies Lake there are numerous Mojave cremations, some of which were dug up by Malcolm Rogers, even back in the twenty's and thirty's, and the nature of the funerary practices are such that often the remains don't stay intact, but items within the playa, in particular the small stone beads that now are at The Museum Of Man will, of course, be NAGPRA items.

And it's hard to separate out within the culture the importance within the culture certain other items that archeologists may say are everyday utilitarian items, broken pottery, yet the pottery was broken, or corn grinder, metate or mortar were broken at the time of the demise of the person who it belonged to, and threw in the fire with them. And so -- then the other thing is on the undetermined cultural affiliation, most tribes, I think, feel that it had to be related to some present day Indian, and if you follow the NAGPRA, that the oral tradition had to be a line of evidence with equal in my opinion even greater validity than the scientific or archeological determination of cultural affiliation.

when it said within the cultural that that's Mojave land, and once there were Mojave people there, we like to work towards where what is right is done by those ancient people, so we look to see in the comprehensive agreement such things addressed as -- I don't want to say like tie goes to the runner or to the Indian tribe it concerns, but it's really a nationwide issue both on and off military establishments about these identifiable human remains.

MR. CHAD SMITH: And I, too, have some concerns about the expansion proximity to known cremation grounds and Cronese.

And to me it seems strange that within the thousand square miles there has not been encountered human remains present or -- I think that some of the sites quite possibly that have or would be considered thermal affected rock, and that's all that's left now a thousand years or more after a cremation took place, and in some way some of the tribes I think were more fortunate that their funerary practices are such that there's not intact graves like up in the Anasazi area where looters can get in there and get pottery out that's intact because the on-purpose destruction through the cremation process of the belongings of the individual were such that it doesn't leave a trace -- like the old saying, the Spaniards didn't see the Indians when they came through the countryside so there were no Indians there.

But our ancestors were up on top of the mountain watching them come through.

I think that there is natural stuff out there aplenty.

MR. BRITT: I don't dispute that, but just what has been done to date is they have not recovered -- I do -- I think both of you gentlemen made some very good points.

Those are the types of information that we want to include in the comprehensive report. The things that aren't listed explicitly in NAGPRA.

And all they are are legal definitions in law, and that's what the government and the Army is -- they have to follow this.

If we can expand upon those, the types of treatment, what are items that you consider significant, what are funerary items, what are NAGPRA items, what are, you know, these other types of items, if we can get those and put those into the Comprehensive Agreement it strengthens it for both parties because then we know what to look for or what may not have been potentially identified as a NAGPRA item, now it can be.

So it's, you know, it's a good situation and those are some good comments, and I appreciate it.

Yes, sir?

MR. HORALEK: If I could follow up on what you said, we have a handful of archaeologists that have done a fair amount of work so far, but we have thousands of troops going through there, literally daily, and at this point we have nothing to show them that would give them an indication, if they saw something what they were looking at.

Anything that you could provide us would...
help us to be able to train our soldiers and so forth to
be able to identify items of this type, would help us as
well as you.

MR. BRITT: Good point.

MR. BARI: The surveys we have done is we
have not gone, even from the tribal point of view, is
areas more than 50 percent slope, I guess.

MR. BRITT: That's a good point.

MR. BARI: so the slope up to thirty
percent and higher, everything, whatever is there, is
intact.

MR. BRITT: Sure.

MR. BARI: Nobody has gone there, so maybe
that's where we have not seen anything, and we would
like to, if we don't have a business we will not
include it.

MR. BRITT: That's a good point. Most of
the training is constrained to the valley floors.

Much of the upper, higher elevations that
may have been exploited by your ancestors previously
would have been maybe higher elevations, another good,
key point to understand is that not just anybody can
come out to Ft. Irwin.

They're soldiers, they are briefed when
they come in about what cultural resources are. Last
year we did -- showed a video of the briefing of what
they're exposed to, the proper notification process.

A key point is that if you compare Ft.
Irwin to BLM land where anybody can come down there at
any time, we're much better stewards of the land there,
so that's -- that's something to keep in mind too; it's
all kind of relative.

Air Force bases are probably the best,
they have landing strips and they have big buffer areas,
and they're restricted areas, nobody can go out there.
But, you know, we're -- we're doing --
somewhere in between, probably a little bit higher, so
it's something to consider.

We can pause for a minute. Do you have
any more questions? And then we'll turn it over to
Paige, and she'll talk about comprehensive agreements.

Can we do that?

MS. PEYTON: Sure.

MR. BRITT: Why don't we stretch our legs
and get something to drink? Thank you.

(Recess)

MR. BRITT: Folks, if we can get you all
to take a seat we'll resume our meeting.

Folks, we've got some ice tea back here
that they all brought in if you would like to help
yourself. We've got plenty of time.

Before I turn it back over to Paige, who
is going to talk about Programmatic Agreements, just a
couple of housekeeping things.

In the morning we'll have breakfast
provided in here and a full lunch provided in here.
So keep that in mind. I think they bring
it in like 8:30.

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10 currated within the cultural resources curation facility
11 at Ft. Irwin.
12 What we were talking about earlier is
13 we've not found any traditional NAGPRA, human remains or
14 funerary objects that we know of.
15 MR. KANE: Okay.
16 MR. BRITT: But there are many, many
17 cultural sites out there. The big difference is are
18 they related to a human burial or a funeral practice or
19 are they just a cultural site? So I want to make sure
20 of that distinction. They can be one and the same, but
21 they're treated differently if they are a funeral site.
22 MR. BINTER: I heard that, treated
differently, they are -- this man said we identify. How
does one interpret that, then?
23 MR. CHAVEZ: Those artifacts that you
24 possess at this time, I understand that it was -- they
25 were removed from areas that were disturbed or were
26 potentially going to be disturbed? Is that what you
MR. GUNDRUM: It would vary.

MR. CHAVEZ: I have two questions. First of all, what is a significant collection from a specific area? How much is that?

MR. CHAVEZ: That's -- what is it? You're not telling us. Is it a hundred pieces, twenty pieces, one piece?

MR. GUNDRUM: It would vary.

MR. CHAVEZ: Okay. The second point, it sounds like when these troops come in you're using different terrain every time they come out.

LT. COL OGDEN: Not necessarily true.

MR. CHAVEZ: That could vary from actual tools to lithic scatter, right?

MR. GUNDRUM: Yes, you could have projectile points, you could have bifaces, but mostly the kinds of artifacts you're finding on these sites are the debitage, the waste rock that are produced in stone toolmaking. And it depends on the research.

MR. CHAVEZ: I'm still a little vague on that, because you say reductions, a core rock is still part of a toolmaking.

MR. GUNDRUM: Sure.

MR. CHAVEZ: It's part of a culturally significant piece of rock, so what determines whether it is an actual site versus that -- I mean in that 46 percent? What kind of tools are you talking about?

MR. GUNDRUM: Two different questions, I guess, what constitutes a site?

MR. CHAVEZ: Right. In your way of thinking.

MR. GUNDRUM: Our site definition criteria were established by Claude Warren in the mid-1980's and this is what we found effective in the Mojave Desert, where Ft. Irwin occupies is basically twenty artifacts within a ten meter radius.

MR. CHAVEZ: What kind of Indian was he?

MR. GUNDRUM: I know the point you're making, that's why we're here to work with you.

MR. GUNDRUM: Two different -- two different processes are happening at those. One is we have an ongoing, sort of section 110 responsibility, to inventory our installation.

MR. BRITT: The entire installation.

MR. GUNDRUM: For cultural resources. The other aspect of that is Section 106, is we are responding to a specific undertaking such as the installation of a fiber optic cable line, that specific projection project, so we're doing both, we contract that work out.

MR. CHAVEZ: That's civilian, right?

MR. GUNDRUM: The staff -- Mickey is the GS employee and the archaeologists are both civilian contractors and we do contract out large scale projects at Ft. Irwin and the staff that I work with and the
MR. BRITT: Well, there's a lot of types of analysis. The Army still trains on that land, and we are operating under a 1981 MOA with the California SHPO advisory council to operate as an installation, to conduct military training on that land. It doesn't require Ft. Irwin to have all of that surveyed. That is our goal, to survey that as quickly as possible, so we know what we have. There are areas out there that we train on every year that we don't know if there's cultural sites there or not.

MR. CHAVEZ: Okay. On that, you say you need -- you guys don't do in-field analysis. Well, you have already done laboratory; I assume, analysis of some artifacts.

MR. BRITT: Well, there are lots of types of analysis. The Army still trains on that land, and we are operating under a 1981 MOA with the California SHPO advisory council to operate as an installation, to conduct military training on that land. It doesn't require Ft. Irwin to have all of that surveyed. That is our goal, to survey that as quickly as possible, so we know what we have. There are areas out there that we train on every year that we don't know if there's cultural sites there or not.

MR. CHAVEZ: Okay. On that, you say you need -- you guys don't do in-field analysis. Well, you have already done laboratory; I assume, analysis of some artifacts.

What difference would it make to do an in-field versus a lab once you have already done a lab and the artifacts are pretty much the same out there across the land, why would you want to go and keep doing those?

MR. BRITT: Well, there are lots of types of analysis.

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MR. BRITT: Well, there are lots of types of analysis.

MR. CHAVEZ: When you have already data core of such artifacts in your data bank, and you could compare out there and do a field analysis?

MR. BRITT: Well, there's a lot of specialized analysis that we're doing now, for instance obsidian, hydration, a lot of scientific analysis, X-ray diffraction, so that we can determine the elemental compositions of these stone tools and see where they were traded from. You can't do that in the field. You couldn't do that ten or five years ago because the technology wasn't there.

MR. CHAVEZ: I know, but you don't need a large amount.

MR. BRITT: I understand, but again, you're bringing up some very good points. What I want to do is get back and let Paige have her presentation and we'll come back and revisit this collection practice later this afternoon.

MR. CHAVEZ: Okay.

MR. BRITT: If we could do that. Thank you. Sir?

MR. CHAD SMITH: Tad, one other key point, that some of these sites, when they are encountered and a few of the items are collected from the site, make a representative sample from that site and there's hardly anything left, is what we call -- what archeologists call artifact regeneration that as time goes by, a year later, and a sand dune blows away a little bit and new artifacts come to the surface of the site over time.

MR. BRITT: Sure.

MR. CHAD SMITH: Also, when people walk across that site and break the crust with a vehicle you're going to see artifacts on sites that have been picked clean five years later or two years later, so there is an ongoing regeneration which some of us think points to a more plentiful amount of artifacts and even cultural strata within some of these sites, as I'll get into later, that might be determined not eligible for the national register based upon a few shovel tests or what is on the surface.

MR. BRITT: Those are good points.

MR. CHAVEZ: Another point could be added to that, in the event weather changes and environmental changes and erosion of property and land -- I mean land and soil, and troops marching across it, can eventually expose an item which you would not see in an initial survey.

MR. BRITT: That's called an inadvertent discovery.

That's why we have the standard operating procedures for ceasing activity at that location, everything that's outlined in that handout and having a comprehensive agreement signed between the two nations so that we know -- so that not only the Army addresses it in the best manner it knows how, but through consultation with the native Indian tribes we're respecting their lives and property as well.

MR. GUNDRUN: And I might add that's where you need to work closely, identify those NAGPRA items, you know, and in all of our infinite wisdom and training say what is an item and what isn't.

MR. BRITT: Beads.

MR. GUNDRUN: Beads, things, the historic...
Consultation with the State Historic Preservation offices.

Cultural resource managers have lots of tools. So many tools sometimes even we get confused. I'm sure some of you are familiar with the statutes and regulations that we deal with on a daily basis. They're really confused about what all these different pieces are.

We have comprehensive agreements, we have memorandums of agreements, we have programmatic agreements. What's the difference between all of these things? And there are definitely differences.

The comprehensive agreement which Tad has just described to you, are specific to NAGPRA. That's a very specific law.

It has very specific implications, it has very specific drivers, it has very specific authorities, and in general NAGPRA, the consultation with NAGPRA and the agreements that go along with NAGPRA are focused on consultation with Native American groups, tribal nation.

Programmatic Agreements, on the other hand, the focus for when the law was written back in 1966, is focused more on the consultation with 106 in 0060 consultation with the State Historic Preservation offices.

So there's a different driver kind of between these two.
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During the archeological excavations up. Then during construction -- Well, back archeological excavation. within the site boundaries there's going to be all of those sites where the line's going to go through between Nevada and Santa Barbara," or wherever, and for survey and do their research. when they go to install that, the archeologists do their pipeline, like Kern River pipeline, part of which now is is site specific or project specific, that like a gas or consent of the advisory council and historic preservation. And under the new regulations of section 106, the advisory council can opt out of being an active signatory, a party to these Programmatic Agreements, and often there's two types: There's one for procedural matters, the paperwork shuffle, like federal highways will delegate to California Department of Transportation, some discussions on this are coming up.

next week at Temecula, that instead of when the archeological survey report is prepared, it being sent to the federal lead agency for its review and comments coming back to Cal Trans about a highway project, and then Cal Trans three months later sending that archeological report after review and approval by the feds on to the state historic preservation office, that it's done simultaneously, that they send it to federal highways and to SHPO at the same time. The other type of Programmatic Agreement is site specific or project specific, that like a gas pipeline, like Kern River pipeline, part of which now is going to become part of Ft. Irwin in the land expansion, when they go to install that, the archeologists do their survey and do their research. They say "Okay, we've got 114 sites between Nevada and Santa Barbara," or wherever, and for all of those sites where the line's going to go through within the site boundaries there's going to be archeological excavation. Then during construction -- Well, back up. During the archeological excavations there will be Native American monitoring under the California Native American Heritage Commission guidelines, and then during the ground disturbing activities besides that that are constructed related, the construction itself, there will be Native American monitoring. And it's really key that advisory council be included because nationwide there have been several instances, primarily under the Bureau of Land Management Nationwide Programmatic Agreement that the advisory council has been blind-sided on these P A's, we call them, that have been negotiated with the state historic preservation office, primarily in Nevada, and not have the opportunity to comment. And like I say, under the more streamlined new section 106 regulations, then the advisory council can say, "Well, we don't need to be a signatory to this Programmatic Agreement," and usually tribes on the last days on the concuring parties which give you all of the weight and authority of a piece of furniture, really, because in the new regulations it says that for a Programmatic Agreements where sites could be affected, or where tribes would have concerns, specific to those sites, tribes could be a signatory party to the Programmatic Agreements, not a concurring party, I mean they could be a concurring party if they don't want to be a signatory party. And then when these various government entities and tribes and others that are into this Programmatic Agreement, if there's a problem, they can go on into dispute resolution or even terminate if the dispute resolution doesn't work, the Programmatic Agreement which really only throws it back into site specific 106 consultations, which do take a lot of time. And the way it's often expressed is "Why do a thousand different SHPO consultations when you could do one overall consultation, you negotiate the Programmatic Agreement, it's going to address all of these issues for a program," like the management that the military facility and cultural resource management. And so it does speed things up, but I think that in some ways people think it can be a cure-all to projects and get them out of doing section 106, when really, I don't look at it as an alternative to 106, it's a way to address adverse effect. MS. PEYTON: Yes. It's kind of both. I mean it is -- it's one of the tools that can be an alternative to the 106 process, and that was the intent of it, was to try to streamline some of the repetitive kinds of things that happened over and over and over, so that there didn't have to be so many so you didn't have to bog the process down, the council -- You're right, and the recent provisions with 106, or C F R 800, the council has kind of backed away from so much hands-on participation with some of these types of consultations, so they have kind of opted to -- You know Appendix H

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-- you can invite them to be a participant in the
Programmatic Agreement.

MR. CHAD SMITH: You have to invite them.

MS. PEYTON: Yes, I'm sorry, you have to
invite them, but they don't have to be a participant,
and depending on what the circumstances are, they
typically will be a participant if it involves a very
large program kind of issue, or if it involves something
to do with national historic landmark, very typically
they get involved with those.

If it's a day-to-day basis small kind of
issue, they typically will not be a concurring party.
And what I have done here is I have --
because these documents are difficult to understand
unless you can see one, so on the back of your handouts
I've made up one, and please remember that Paige just
made this up, it's a made-up story. It's not specific
to any installation or any specific type of issue, but
so that you could see what a Programmatic Agreement
looks like, and I'm going to show it to you on the
slides also, but it's easier to see when it's laid out
all together.

So you will see some of the things Chad
was talking about.

I purposely had the council decide not to
participate in this one, and there was no particular
reason for that, it was just Paige's made-up story, and
so it made the slide fit better, so the council wasn't a
participant, but the council certainly can be a
participant. Certain governments can be participants,
state historical societies can be participants, and most
assuredly Native American groups can participate.

So all in all, Programmatic Agreements
have -- can have a wide range of stipulations on a wide
range of components but they all will have the -- some
similar ones.

And so this slide shows what you're going
to typically see in a Programmatic Agreement.
You may see more things, but the chances
are we will not see less.

And the obvious lines are title and date.
That may sound intuitive, but believe it or not, I've
seen Programmatic Agreement that don't have a title that
matches what the contents are, so when you put
Programmatic Agreements together you try to be cognizant
of exactly what it is you're trying to present and who
it is you are representing.

So in this particular example, and we'll
go through the example a little bit in detail just so
that you remember now it's made up, just so that you can
see how Programmatic Agreements lay out.

So this one I have made up is the US Army,
Ft. Rocky Road, Texas, which, of course, is made up.
You can see I was hungry and thinking
about ice cream. That's where that came from, and the
Texas State Historic Preservation Officer and in
addition here the Programmatic Agreement is about
routine operation maintenance and development, types of
undertakings at Ft. Rocky Road.

All Programmatic Agreements have what we
call "whereas" clauses.

And these are the things that people just
understand from the beginning and everybody agrees to.

You can have as many as -- Well, you'll
have as few as three in this example, but you can have
as many as twenty, whatever it takes to set out what the
original ground rules are.

This particular example "Whereas, US Army
has determined that the operation, maintenance and
development undertakings at Ft. Rocky Road may have an
effect on properties that are eligible for inclusion on
the National Register of Historic Places, or known or
unknown archeological sites that may be eligible for
inclusion in the National Register, and Whereas the Army
has completed the identification requirements for all
class of cultural resources at Ft. Rocky Road under
sections 106 and 110 that the inventory has resulted in
specific places of historic properties.

Remember, this is made up -- two
buildings, building 39 and 40, nine archeological sites
and an archeological sensitive area, all of these could
be potentially eligible for inclusion on the national
historic register, everybody is agreed on that.

MR. CHAD SMITH: You should define section
110 for some of the folks here.

That section 106 is where there's going to
be a ground disturbing activity or licensing or
regulation involved, and there could be an effect of
some action on a cultural resource, and section 110 is
the obligation of the land managing agency to know and
maintain what cultural resources are on the lands that
they manage.

And often a Programmatic Agreement only
addresses section 106.

MR. BRITT: Very good.

MS. PEYTON: Thank you.

And the last "whereas" is where I opted
just the -- my particular example is to present the
Programmatic Agreement to the advisory council. The
advisory council has opted because of what we're doing
not to participate, so their name is not in the title
and they are not a signatory.

Now, after everybody has agreed on the
"whereas" now therefore, the people, who will be the
signatories, in this case, the Army, Ft. Rocky Road and
Texas SHPO, all agree that the operation, maintenance
and development undertakings shall be administered in
accordance with the following stipulations to satisfy
the Army's responsibilities under section 106.

This is kind of a segue between what
everybody has agreed upon and what the stipulations
would be.

Most Programmatic Agreements will have
some sort of exemption.

This is part of the streamline process,
and exemptions include a wide range of things, but in
this particular case if you’re not doing an undertaking
that’s going to have any effect whatsoever on building
39, then there’s no need to consult on.

So if you’re going to build a building on
the north side of the base and building 39 is on the
south side of the base, even if it’s a historic building
you’re not going to have an impact on the building
whenever, so it’s an exception.

On the other hand, if you’re going to do
something to building 39 and you know it’s historic,
there are certain kinds of exemptions that would
indicate that there’s a point that you still don’t need
to do any consultation, and these would be if you have a
historic building that has been renovated over the years
and there might be some elements in that building, maybe
the windows, maybe the roof, who knows what the element
is, but it’s been changed out, it’s not original, so
there would be no need to consult, you could change that
if you needed to, but there would be none because it
would not be original to it.

Or routine kinds of things, maintenance,
you might have to paint it every three or four years and
you don’t want to consult every time you want to paint
it, so you put a stipulation in there that we’re going
to paint it, prepare the siding on the building, we’re
going to use the same colors, and therefore we don’t
need to consult every time.

Exterior landscaping is another good
example, these are just examples of the kind of things
that you can use to help streamline the process.

Okay. The same with archeological sites,
archeological areas, you could certainly most assuredly
be exempt if everybody had surveyed X area and everybody
agreed that there was no archeological sites there, then
there would be no reason for you to have to consult on
it again, if everybody had -- if everybody concurred, of
the concurring parties said that there is no archeology
and they agreed.

And similar to the building ones, you know
that there are sites there but everybody has determined
that they’re not eligible.

MR. CHAD SMITH: If we were reviewing a
Programmatic Agreement that had this wording in it, I
definitely would insist that the word “Other” after
1

"Native American groups,” or “Other interested parties,”
the word “other” should be stricken because it relegates
tribes in the section 106 process to the status of
interested persons, the legal phrase, for interested
parties, and that’s something we specifically commented
on in a Programmatic Agreement that Vegas BLM had
recently.

And so it should read “Native American
groups or interested parties,” not “Or other interested
parties,” because that conflicts with the
government-to-government consultation requirements.
That’s often something that more and more you’re
starting to see that, and it’s really difficult.

MR. BRITT: I think that’s actually in the
examples they give out.

MS. PEYTON: It is.

MR. BRITT: And you made a good point.

MS. PEYTON: Yes.

MR. CHAD SMITH: Does that come from ACHP?

MS. PEYTON: It does.

MR. CHAD SMITH: I’ll have to talk to Alan
Stone and Phil about that.

MS. PEYTON: So now we have our exemption
0075

Now we need the technical -- the technical
elements of it. What exactly is the Programmatic
Agreement going to do specifically? And there’s only a
couple of examples here, and I’m not going to use many,
but there would be many more I could use as an example,
but I just picked two.

One is that you -- Ft. Rocky Road has
already developed their ICRMP, and they laid out very
clearly very specific procedures, how they’re going to
do the archeology, and we’re going to go incorporate
those specifics by reference.

The second one is we know that building 40
is determined eligible, we stated that in our
"whereases,” and we know it needs to be demolished, but
the stipulation of this Programmatic Agreement is before
you can demolish the buildings you have to make sure
that you have it appropriately recorded, documented and
used Secretary of Interior standards.

So that’s a very specific stipulation of
this particular Programmatic Agreement.

There’s always a stipulation, Programmatic
Agreement, that are unanticipated discoveries.
We talked about these unanticipated
discoveries on the macro; these could be unanticipated
archeological discoveries that are not NAGPRA specific.
That’s the difference.

So there’s always some sort of
unanticipated discovery stipulation in here.

There’s almost -- Well, it depends on the
circumstance.

In this particular sample, an interim
protection statement, I’ve created an interim protection
stipulation, and it could be applied to a wide range of
circumstances, but I picked the building because we know
the building is going to be demolished, but until the
building is recorded, according to the standards and
according to our technical stipulation, we need to make
sure the building is protected because if we don’t
protect it before it gets documented, then we’ve lost it
and lost the documentation, so an example of an interim
protection measure is that you have to make sure it’s
water-sealed and keep the heat on in the wintertime, the
pipes don’t freeze and that sort of thing, so the
building is inadvertently damaged.

Then there’s always a series of
administrative-type stipulations.

You always want some kind of sunset

Appendix H
Meeting Transcript
Meeting Transcript

1. MR. BRITT: Okay.
2. MS. PEYTON: If for some reason this was
3. in the issue of protocol, an issue of whatever, then any
4. party also has a right to step forward and say, you
5. know, "We don't think that this is going like the way we
6. want it to," so we would either need to terminate it or
7. amend it or consult, so we can get it resolved.
8. MR. BRITT: Let me rephrase my question.
9. Does it stop the 106 process? Or does it put the 106
10. process on hold?
11. MS. PEYTON: It would really be specific
12. to whatever the issue would be.
13. MR. CHAD SMITH: It would really be specific
14. to the SHPO?
15. MS. PEYTON: I think it would be up to all
16. of the parties. I don't think any party could say "You
17. need to stop the project."
18. MR. CHAD SMITH: If the SHPO said "We need
19. to hold off on this until this dispute is settled," and
20. the lead agency terminates consultation with the SHPO
21. per 36 CFR, as people had to do in the past, or have
22. done in the past for various reasons, then that lead
23. agency consults directly with the advisory council,
24. which -- can you back it up to eight?
25. MS. PEYTON: How do I do that?
26. MR. BRITT: Go up.
27. MS. PEYTON: Thank you.
28. MR. CHAD SMITH: It brings up that -- Yes, in a
29. Texas Historical Commission?
30. MS. PEYTON: Right.
31. MR. CHAD SMITH: And Army.
32. MS. PEYTON: Right. And Ft. Rocky Road.
33. MR. CHAD SMITH: The particular Army
34. installation itself, which could turn into like with
35. Nevada a mutual admiration society where the SHPO says
36. "Well, we won't compel the federal agency to do
37. anything," and so -- and it's pretty standard in

Programmatic Agreements that the advisory council
has opted out of being a participant or signatory, that in
this clause here that would say after what it says
there, if -- I don't know what the legal wording would
be, but if it's at loggerheads and the dispute cannot be
resolved between the parties, then it goes to the
advisory council to attempt to get the parties together
to resolve the dispute, and then it terminates, see,
which is -- some of the amendments to the regulations,
some of us have said -- if you will excuse the
wording -- that it neutered the advisory council on
historic preservation to a certain extent. It removed
much of its authority, and that was at the behest of the
national council of SHPO's, of the State Historic
Preservation Offices.

And it's still in the regs that the
advisory council can come back in at any time and take
this more active role, and all of the dispute

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Appendix H

Meeting Transcript
resolutions where the advisory council has opted out of
that P A should still include the wording that the
advisory council can come in if the parties cannot
resolve the dispute amongst themselves.
So I think right there it should have
reference to ACHP, being an arbiter, some arbitration
or that, and again it would only put it back to the reg,
section 106.
MS. PEYTON: That's right. That's what
would happen if you terminate and the parties can't
agree, the council can try to help resolve the issues.
Otherwise it's terminated.
MR. CHAD SMITH: They're going to see it
anyways.
But also perhaps in the annual summaries,
the progress under the PA summaries, those are supposed
to go to the advisory council, as well as an update.
MS. PEYTON: Yes.
So it can terminate, as Chad said, and if
it can't be resolved, then the signatories notify all of
the parties, and then they try to consult to decide
whether they need to create another Programmatic
Agreement or amend the one that you already have,
whether you need an arbiter to come in and help you
resolve the issue. Basically that's it. I thought that
would help.
MR. CHAD SMITH: Yes. As she said, very
few Programmatic Agreements ever terminate or even reach
amendment or dispute resolution stage.
And a lot of these environmental impact
statements, in a way the alternatives of the don't build
or don't expand the installation, they have to be in
there because of the way the National Environmental
Policy Act is made up or this the way the National
Historic Preservation Act is set up, but a lot of it is
legal wording that's in there that never really kicks
in.
But nationwide, there have been nationwide
Programmatic Agreements that have been terminated,
almost always by the advisory council, and historic
preservation, National Resource Conservation Service
Programmatic Agreement is one and I think soon to be the
Bureau of Land Management Nationwide Programmatic
Agreement that sets up the statewide protocols, kind of
like the MOA that Ft. Irwin has in place with the IPRP,
that can have excluded activities in it that --
Well, really Soil Conservation is pushing the envelope,
and going on ahead and doing and the archaeologists
worked out there surveying where the ground disturbance
happened, it was a nightmare.
And that's not what a Programmatic
Agreement should end up as.
MS. PEYTON: Programmatic Agreements truly
are, there truly was to help the process, you know,
they're a selectable way to look at Section 106.
What you have to look at is when you
concrete a Programmatic Agreement you have to be careful
about what you say because you are basically
circumventing the 106 process.
You're not going on that case by case
standard procedure that you're used to. You have now
kind of created a new 106 process that is a little
different from what you standardly do.
You're doing that for a good reason,
you're doing that to try to minimize the amount of
consultation that you have, you're trying to make the
process move a little bit smoother, but you have to be
very careful about the stipulations.
You have to be very clear about what your
intent is with a Comprehensive Agreement, sometimes they
get too broad and that makes them very difficult to
enforce, to monitor, it makes it difficult.
MR. CHAD SMITH: Now Army and the advisory
council, and even some of us ourselves that have
invested, me a minimal amount of time and effort in
consulting, and working towards a nationwide alternative
procedure to the Section 106 document, Fort -- Army or
installation specific, the installation can opt in to
the alternative procedures, which to me really is a
glorified Programmatic Agreement and a restatement of 36
CFR, and in the Army's cases 43 CFR, there's an Army
DOD equivalent that has the 43.
MS. PEYTON: 43 is NAGPRA. I don't think
there's another element of 43 that's the Army, but the
Army alternative procedure, though, I was going to talk
about in my next to last slide just a little bit.
MR. CHAD SMITH: It's more comprehensive,
and I think it's really a good way to go, and it has
flexibility.
MS. PEYTON: It is, I'll just jump to that
slide.
There's really three ways that you can go
with Section 106. You can either go case by case, which
we all know is cumbersome and can take a lot of time and
is repetitive; you have your Programmatic Agreement
which is what we're talking about right here, which is
kind of the streamlining process, and then the Army has
now developed the Army's alternative procedures, and
that basically becomes historic preservation component
of the I group.
There are two currently that I know of
Army installations that have adopted the Army's
alternative procedures, Ft. Stewart in Georgia, and they
are actively pursuing that process and they're pretty
well on their way, and they're kind of like pilots which
would eliminate the case by case section of 106 and also
eliminates the need for the Programmatic Agreement if
you install within the ICRM the historic preservation
component that outlines all these stipulations. It's
kind of new, innovative, the concept is not new, but the
Army is leading the forefront here with adopting these
procedures.
And I think ultimately it may be the way
that many Army installations go. It's cleaner, it's
right there, I mean it's tailored to exactly what the
particular installation is doing, and it takes out some of the ambiguities and some of the complexities of the case-by-case situation and eliminates having to create Programmatic Agreements.

MR. CHAD SMITH: I see a lot of similarity there to the SHPO substitutions by tribes who become tribal historic preservation offices, and, you know, to have a tribal version of Section 106 themselves, and it's not by accident that both places are called reservations, you know.

And the people at Ft. Dietrich, Lee Foster 0087 and then Dave Herwith with the advisory council, they're -- they're really good at what they do, and I think they -- if you went by weight, the alternative procedures is --

MS. PEYTON: The winner.

MR. CHAD SMITH: -- very comprehensive, I mean it's legalese, and that, and I think it does streamline things as far as SHPO. SHPO reviews one time the alternate procedures, and then they give a summary, I think every year.

MS. PEYTON: Every year.

MR. CHAD SMITH: Just like the Secretary of Defense and the Secretary of Interior on 106, 110 projects within the year and then the couple of meetings that I've been to with them, they're quite open to greater involvement by tribes in the process as well, and they've got the wording right in there too, and then it references NAGPRA as well.

MS. PEYTON: Exactly. And then usually because of the component, a certain component of your ICRM, then every five years it gets a real hard review and if things change you update.

So you have it all encapsulated, so I think and that's probably more a way a lot of our 0088 installations will go.

If you're interested you can look at Ft. Sam Houston website, they actually have it posted on the Website.

MR. CHAD SMITH: Now, installation, mid-level managers and the grunt right down there in the field and uses the ICRM as a working document rather than first this Programmatic Agreement thing that we have for this and that, and it becomes more -- in their opinion and my opinion -- of a living, working tool.

MS. PEYTON: It does. As a matter of fact, a lot of the installations apart from what we're discussing here, but a lot of installations are now going through -- I think it is; also, anybody can tap into that web base and see what culture resources are all about, all of the way from ICRM coming into one particular mission to people who work on installations on a daily basis, they are frequently interactive, click on an archeological site you might be able to determine what it's made up of or what the architecture is.

MR. CHAD SMITH: And a specific project or specific undertaking, like on the anti-terrorism, it's not convenient or feasible, and a regular 106 would work 0089 better, the installation can pop back out of the alternate procedures undertaking specific, you know, particularly if it's something like changing radios in Humvees or something like that, you know, that's an exclusion, and you just go back to 106 and say, "This is -- this does not have any potential to affect cultural resource," it's not an undertaking.

MS. PEYTON: Though there'll probably always be occasions to continue to use the cumbersome 106 process, I hate to say it's cumbersome, but it is because we don't know what's going to happen, we don't know what kind of new missiles, weapons whatever that's going to come in that might have none of these stipulations will fit, so the Section 106 process is always our fallback.

What we're trying to do is for things we know are going to happen repetitive, or things that we do on a routine basis, these Programmatic Agreements, these procedures, help us get through them, this is what it's about.

Just a word about the antideficiency act. Everybody has the intention of going on some of these projects, but the bottom line is that the Army doesn't have the money to fund them.

Ft. Rocky Road can't do it and so I'm 0090 trying to stick with Ft. Rocky Road here and so there's times when even in your best intentions you have things laid out and you have planned it and you get your funding stream all set up and you think this is what you're going to do, but you can't always do it because of things that happen in the outside world.

Funding may be withdrawn or diverted, good example are national disasters, like FEMA. The Northridge earthquake, those kind of things divert funds that you had anticipated, and what the antideficiency act says is that if we don't have the money we simply can't fund it.

That doesn't mean we can't implement some of the other elements of our Programmatic Agreement, and we will endeavor to do that as best we can, and when the funding comes back we'll rethink how we're going to get some of these Programmatic Agreement stipulations, but the bottom line is the cumbersome approach, the reason that this stipulation is typically seen in a Programmatic Agreement, is just so that everyone understands, sometimes you just don't -- you can't foresee what's going to happen.

And then after we've said all of these things and we've all agreed on these things, then we 0091 have the little stipulation that separates into the signature blocks, which is we've all agreed which is what the stipulations are, what our sunset clause is all about, we understand what the antideficiency act is all about, and when we sign this, the Ft. Rocky Road, the Army has taken into account.

It's Section 106 responsibility, and at 8 the bottom it has the signatories and the signatories
are different. It depends on the circumstance. In this particular example I have Ft. Rocky Road and the Army's federal preservation and then historical commission, it could be certified by the government and who, depending on the situation, participates in this particular Programmatic Agreement, and Chad is right, you can have parties and talk, have invited parties and all of that depends on the circumstances also and this could be totally irrelevant. It could be the SHPO, at Ft. Rocky Road and at Ft. Mojave, it could be -- just -- it depends on how you set it up.

MR. CHAD SMITH: Did you say that everyone understands the antideficiency acts? I don't think people understand.

MS. PEYTON: We kind of have to accept what the antideficiency act says to us.

MR. CHAD SMITH: I've worked with a federal agency where they've had an indirect effects program to conduct archeological survey and damage assessments and 300 or so thousand acres, and it didn't work through the deficiency act, and funding was cut, and the program that one of the tribes was administering dwindled down to where it ran on a shoestring. It withered on the vine, is what actually happened, and there was no clause in that Programmatic Agreement for reimplementation, you know, that, "Hey, if the funding dwindles this will have to go into cold storage and when we achieve further funding it kicks back in," you know, so that's what sometimes the lawyers understand these things more, but with -- with at least one, the lawyers go back across -- the solicitors for the advisory council go back across to the archeologist, what does this expletive mean?

You know, and they get real arcane, and even Machiavellian on some of these documents, it can really bury them, when lawyers don't understand them, you know, it's weird.

MS. PEYTON: Well, they are a legal document and, you know, people are signing up to it.

MR. CHAD SMITH: It's like a contract.

MS. PEYTON: It's like a contract, you know, people are signing up to this, so that's why it's important to be clear about what it is you intend this document to be about.

Not being too ambiguous, being very specific, and you make the stipulations fit the particular issue.

So in the end why develop PA's? We only have three choices. You've either got to Section 106, which is the cumbersome one, or you go with the PA's or which is -- typically has been going on until the Army established the Army's alternative procedures.

It's kind of the only choices that you have to help streamline the process.

MR. CHAD SMITH: There's sort of a joke, the guy says "I lost my 'as' at about the third "whereas."

(Laughter)

MS. PEYTON: And, of course, you know, we already know that it's surfaced, certain kinds of specific actions, and with -- the encouraging partnering, and my last point would be to, because we do have two totally different kinds of agreements, they look very much alike, they have very similar kind of formats, but we're talking about two totally separate clauses and issues here, but you need to make sure that they are complimentary to one another. You don't want to have conflicting documents, so like an unanticipated discovery, you want the language to be similar, to coordinate.

MR. CHAD SMITH: On the Comprehensive Agreements for NAGPRA where would the oversight and review at the federal level equivalent to the advisory council be with that, Park Service?

And not the NAGPRA committee, because this has come up, the NAGPRA committee is like a concurring party, and it has no authority to Park Service that actually publishes in the federal register, the notices that attempt to repatriate so these CA's when negotiated, they're going to go on to D.C., to Park Service, NAGPRA division to review?

MR. BRITT: Okay, and I'm going to tell you I don't know. I can tell you what I think, but I will find out.

They go up the chain of command through the Army. I know they go to the Army region and they go to the Army Federal Historic Preservation Officer.

Bob, help me out if you know.

MR. HORALEK: I'll see if I can find your answer.

MR. BRITT: Okay.

While he's looking that up I'm going to make a couple of points.

What we've tried to present here today are some documents to be used as tools to facilitate information sharing, partnering and stewardship of heritage and cultural assets that we all hold dear.

That's the main point I want to make, and by signing these documents is that it is -- it's a contract, it's a binding document.

There are provisions that you know what's going to happen, you know what the procedures are, you are able to address these situations that may be very time sensitive or culturally sensitive in a much more expedited manner. It's a win-win situation.

A couple of other key points. Comprehensive Agreements we are required to have, the Army is required to have it. Programmatic Agreements, we're not. We either do the 106 process, we do Programmatic Agreements, or we follow the Army alternative procedures.

We would like to have a Programmatic Agreement so that we can expedite the process, again for the same reasons; we share information, we can address
I'm sorry.

I want to thank you, Paige, I appreciate really is.

I want to make sure that if you are not aware of it, you are today, it's the same as this document here.

In fact, we took "draft," out of it -- No, we added "draft" to it, so we really would like to again move along that path to get this Comprehensive Agreement signed so we can have that in place as a mechanism for dealing with inadvertent discoveries, should they occur.

And, Bob, do you have an answer?

MR. HORALEK: Actually, they have nothing to do with Park Service.

MR. CHAD SMITH: Well, they're the ones that administer NAGPRA.

MR. HORALEK: That doesn't matter. They have no control whatsoever over NAGPRA.

MR. BRITT: Our chain of command is different than -- the Army's chain of command is different from the National Park Service. It doesn't mean we don't follow the same rules, but the chain of command is different.

MR. HORALEK: DOI and DOD both have to follow the same rules. Each has its own system, how we're going to do that.

MR. BRITT: They don't fund us to do NAGPRA. The Army is funded, on their appropriation --

MR. CHAD SMITH: Well, no, in the event of a dispute it would go before the NAGPRA committee.

MR. BRITT: A dispute goes before the NAGPRA committee, correct.

MR. CHAD SMITH: But the NAGPRA committee can only recommend and only to Park Service as to what -- what the process is. There's a disconnect here.

MR. BRITT: There is a disconnect, and I will do my best to get an answer for you, but I've done the best I can today.

MR. BARI: I hope we never have to go there.

(Laughter)

MR. BRITT: I think we all -- and again, that's why these Comprehensive Agreements are an essential tool to stave off incidents like that. It really is.

I want to thank you, Paige, I appreciate it.

MS. PEYTON: Sure, I had one last thing.

MR. BRITT: I'm sorry.
MR. CHAD SMITH: And it’s greatly appreciated. It really is.

MR. BRITT: It’s great to hear. They’re still telling those stories.

What I’d like to do now is we’ve got what we call a listening session, if anybody wants to talk about or discuss anything we said today, or wants to bring up a new topic, we’d like to keep it general in nature.

I would like not to talk about specific projects other than in a general way, so that we don’t get bogged down.

But the floor is open, I’ll be happy to revisit some of your questions earlier, Lee, if you would like to.

We’ve got a lot of people here, a lot of knowledgeable people here.

The more some of us talk, I think the better we’ll all be.

MR. BARI: I want to, I think, pay more attention and I would ask you all to maybe pitch in to this one, the one that the agreements that we have put forward to be signed, maybe give your comments on from your nation’s side, how you feel about this document.

This was sent to all of the nations.

MR. CHAD SMITH: It’s a lot smaller print at the same time; so each tribe, it’s a matter of consideration.

Just as a reminder, I’ll be happy to send that out next week, and we’ll ask if you could indicate when a date would be good to have a signing ceremony so we can sign that.

And obviously we don’t have to do it all at the same time; so each tribe, it’s a matter of the tribes that were researched in there.

I know that some people will not be able to stay here Saturday, and I just want to propose this idea.

If we get finished early, Chad, could we visit a couple of cultural sites in case some people aren’t going to be able to be here Saturday?

Mr. CHAD SMITH: Yes.

MR. BRITT: We don’t want to impose. I know that there are some really neat intaglios around here, I’m anxious to see them.

MR. CHAD SMITH: Right across the river a place called The Twins that’s protectedly fenced, and it’s anthropomorphologic figures of rocks laid in place of the ancient Mojave, and it’s known of and within a built-up area.

And then the other location is up at the Inscription Rock at Davis Camp where tomorrow at noon I have a meeting during the lunch.

MR. BRITT: Okay.

MR. CHAD SMITH: With Bureau of Inscription Rock at Davis Camp where tomorrow at noon I have a meeting during the lunch.

MR. BRITT: Okay.
MR. BRITT: But our policy in general is to not have some visitsation at these important cultural locations, but these are -- as I say, within a development area and population centers, and on numerous maps and active management by these federal agencies, this one across the river not so much as the one up at Davis Camp, so it's -- it's a touchy subject.

MR. BRITT: Thank you, we appreciate your being flexible. If we get finished, we certainly don't want to cut into our time for some good consulting going on, we certainly want to keep that up.

And at this time I want to open up the floor to any kind of discussion, any topics, any questions or concerns.

MR. BRITT: I'm sure you all would be honored to have people come out and visit.

MR. BRITT: But on behalf of Ft. Irwin, I'm sure you all would be honored to have people come out and visit.

MR. BRITT: Yes.

MR. BRITT: On behalf of Ft. Irwin, I'm sure you all would be honored to have people come out and visit.

MR. BRITT: We would -- I think -- be glad to have -- if we have consolidated groups, like certain nations has a participation, and they all come together, yes, who want to visit we've got no problem with that.

MR. BRITT: It's just a matter of coordinating with the training schedule. I'm sure they all would be honored to have them.

MR. BRITT: I would like to have a team approach even signing this comprehensive document after, and it's really do-able and it's not burdensome money-wise, and it's not a security risk at all because any installation that has private sector archaeologists working on it can have tribe sector Native Americans working on it, and not just as crew members on surveys, but running a program, and that's at the direction it's gone on at Nellis with Mr. Bricker and Mr. Tarot's participation, and Lee, Darrell, many of the others who have participated, and it makes everyone look good, and it's a lot of work, you know, too, but it's work that these Indian people take on voluntarily.

And so we can gather up information about how it's done by Air Force, and surely Army can't let Air Force get a one-up on it.

(Laughter)

MR. BRITT: They do have a very good program. I'm familiar with Keith and his program there, they've got -- of course, they have a unique, quite a different situation there. It's the nature of their activities.

MR. CHAD SMITH: Yes.

MR. BRITT: But on behalf of Ft. Irwin, I'm sure you all would be honored to have people come out and visit.

MR. QUILLMAN: Absolutely.

MR. CHAD SMITH: Because it is a sacred site.

MR. BRITT: I don't think that's disputed.

We'll talk about a lot of those things tomorrow.

MR. BARI: We would -- I think -- be glad to have -- if we have consolidated groups, like certain nations has a participation, and they all come together, yes, who want to visit we've got no problem with that.

MR. BRITT: It's just a matter of coordinating with the training schedule. I'm sure they all would be honored to have them.

MR. BARI: I would like to have a team approach even signing this comprehensive document after,
and the Army can all come together "Yes, we want to do this and we will do this."

MR. QULLMAN: The weather is cooling off, maybe we could have the signing ceremony in about 90 days, I think that would be appropriate.

MR. BRITT: That's a good idea.

MR. CHAD SMITH: Many of us in the tribal side of things, we have to communicate this information from these meetings to the elders, and also to the tribal chair, if upon reviewing all of this information, if we feel -- or the tribe should enter a Programmatic Agreement or comprehensive agreement, or there's a venue in there in the alternate procedures for tribal signature as well.

And then, of course, the chair, when they sign on behalf of the tribe that's after they get the advice and consent of the tribal council itself, so we've got our level of command.

MR. BRITT: If you could collaborate.

MR. CHAD SMITH: Chain of command.

MR. BRITT: Each has its own set of procedures and protocols.

For your tribe could you tell me or explain to all of us, give us some idea of what the procedures are and the timeline.

MR. CHAD SMITH: well, for my tribe, which is the Apache tribe, they get together in the council chamber and yell around a lot, the Apache way.

But for the people for whom I work, for the Mojave people, it is as I described it. We're just the facilitators in the cultural office.

MR. BRITT: Sure.

MR. CHAD SMITH: And we work with Mrs. Butler and Mr. Bricker and many of the other knowledgeable tribe members, respected members of the community, and if we're ever contrary to what they think is good, then we're going the wrong way.

MR. BRITT: Sure.

MR. CHAD SMITH: And its only after that, that we would recommend to the chairperson based on their go-ahead on something like this, and the difficult part with any cultural resource manager is to explain to people that aren't archaeologists or -- I hate to say -- bureaucrats, you know.

The intricacies of some of what is being talked about and that, you know, we're still wondering who these battalions are that are referred to in the reports, where they talk about the ancient people, when we know it's the Mojave ancestors mostly that are referred to out in the Ft. Irwin area.

And, of course, the last thing I want to say, because I'm just dragging on, and you guys are going to have to speed me up on some of this or we won't make that early time tomorrow, I'll still be sitting here talking, that none of the policies that we express from our office exclude any other tribe's presence at any time in the past, or the validity of any other claims, and I've seen it personally with other tribes.

that where there can be disagreements that can affect NAGPRA to where some -- even human remains are still in the museums that could have been put back in the ground because there was between Hopi and the four southern tribes a dispute in the past, you know.

And the nature of this big desert out there is that the culture areas weren't straight lines on the maps like in the archeological reports.

There was overlap, both simultaneously where different peoples could be in the area at peace, gathering pinions, fishing or whatever, and sequentially in time as well, and it changed back and forth over time.

So it's really complicated, and we will work constructively and cooperatively with all parties.

MR. BRITT: That's a major point that's brought out in these cultural affiliation studies. What the tribes were called 50 or 150 years ago, the social, political structure is totally different today. That's something that we have to understand the social and political dynamics and take all of that into account when we try to work with you to determine cultural affiliation.

MR. CHAD SMITH: In NAGPRA, the oral tradition of the tribe carries equal weight and, of course, to me and others much more weight than determinations by archaeologists of what ancient pottery or arrowheads go to, or are ancestor to what the present day group is and that goes right down to -- even to the human genome project, and DNA testing, whenever it has been done, and sometimes not even with the knowledge of tribes or even over the objection of tribes, and it's like with the traditional cultural properties trying to apply the eligibility of criteria, the criteria of eligibility for the national register who has developed for archeological sites sacred springs, plant gathering in areas and other places important to the Indians, the way I explained it long ago at a meeting was that if an Indian Tribe, a knowledgeable elder says it's important in the culture, then it's eligible, and we don't see that much superseding of the other lines of evidence in the National Historic Preservation Act.

But NAGPRA goes with preponderance of evidence, and the evidence can be one line of evidence, the oral tradition that the history that the people carry with them themselves in their culture, and that one line alone can be the preponderance of evidence.

It doesn't have to be like in a criminal case, beyond a shadow of a doubt.

And then lastly, in issues where Indian tribes have gone to court, often there is the doctrine of sympathetic interpretation, sympathetic consideration, that when it's 50-50 over whether a tribe should get the land that it claims under the land commission, the Land Claims Act, and it didn't work out this way in reality, it should have, that it goes to the
And, of course, the first law passed by the US, the northwest ordinance that when an installation of the military is no longer being used and is being BRAC'd as you would say nowadays, Based on Reauthorization Of Closer, that it reverts to the Indian tribe upon whose lands it was at the time that it was taken from the Indian people. And people that worked, negotiate with Indian tribes, can keep that in mind. Again, I fall back on the jargon the tie goes to the runner, and these Mojaves are great runners and still are, so the benefit of the doubt, but there shouldn't be that because when they say it's important, their stories about the past, which really is a recorded history handed down through generations, and even in places written on these rocks and on the sticks that keep the time and all of that, it's real, it's history, and the absence of evidence of presence of people living in sites on Ft. Irwin and burying those who passed there, cremating those who passed there, is not evidence of absence. They just haven't been found yet. It's there, believe me.

MR. BRITT: I believe that's the tactic Ft. Irwin is taking. That's why we want to get this done so we can treat them properly.

MR. CHAD SMITH: Meaning “disposed of.”

MR. BRITT: I don't like that word either.

MR. RAY: Do you have a list of that notified of this?

MR. BRITT: 14.

MR. RAY: 14?

MR. BRITT: Yes.

MR. RAY: Do you have a list of that?

MR. BRITT: Yes. I can -- I’ll give you a personal copy. Yes, it's on the slide.

MR. CHAD SMITH: I reviewed the draft comprehensive agreements and have comments that I will provide. I don't have them right here with me. And I am interested in where DOD articulates with Interior and Park Service on the top phase through the act itself because it specifically refers into the act that it's administered by Park Service. And the advisory role of the NAGPRA committee is something that really rubs a lot of tribes the wrong way because they have made cold, hard recommendations that responsibilities and authority for NAGPRA that lies ultimately with National Park Service right now be removed from Interior and from National Park Service and placed in a special commission like the Federal Communications Commission or something else because there's a conflict of interest where Park Service has museums with NAGPRA items in it, and you even have Park Service archaeologists going contrary to Native American interests as expressed by a majority of the tribe over the Kennewick situation and some of their more esoteric theories about the greatness that's evident in the early flakestone technology came from European in boats, and in the back of their minds is something like "Well, an Indian couldn't have done this." Well, the Indian invented the jack knife, the pocket knife and potato chips, all kinds of other things, the Mayas had the zero, and even in some of the words used by archaeologists like "The New World," for the western hemisphere automatically implies it's not as good as the old world, it was all developed in that civilization, and then the word prehistoric, which refers to Indians maybe not having history, well, that's qualified, you say "prehistoric" means before written history, yet the Maya had written history at a thousand B.C., and before them God himself only knows what time the Olmecs developed writing and they invented the zero. So it's kind of backwards or looking at things through a dirty windowpane or something of what really took place in the past, and the only ultimate proof for archaeologists would be to have a time machine and tape recorder and a camcorder, and to me the ultimate proof is what the Indian people say in their and tape recorder and a camcorder, and to me the ultimate proof is what the Indian people say in their cultural because they're the ones who were living here when it happened. And the unidentifiable, indeterminant cultural affiliation of human remains, they absolutely have to be ancestral to many of the Indians living today. I mean if you think about it, how could one group of people have lived in a vacuum with, no intermarriage and somebody leaving that group to go marry over here and they go with that other tribe, and even if very minutely they are related to the present day living people, this tribe when they started out over in this tribe and intermarried like that over the years, it -- it's a real issue.

And in the long run if it goes the way that Park Service has been going on these unidentified, unaffiliated human remains, the museums get to keep them as objects of scientific curiosity and for further study in the future and even include destructive analysis and other such things. And there might be several opportunities in working with DOD on things like this comprehensive agreement where that land managing agency could say "No, by gosh, any human remains that are non-European that are considered to be Native Americans that ever are found on Ft. Irwin will be" -- and I hate the word "Disposition,"

MR. BRITT: I don't like that word either.

MR. CHAD SMITH: Meaning "disposed of."

MR. BRITT: Right.
MR. CHAD SMITH: But what will be done with those human remains will be contingent to tribal approval and recommendation, and, of course, the tribe is going to recommend put those bones or those ashes, burnt bones back into the ground as close as possible as where they were found, yet out of harm's way. Again, on Nellis there have been numerous reburials of remains that were found on that facility with tribal participation and ceremonial blessing, and it's easy, you go by what would the deceased want, what would that person want? And it works.

MR. BRITT: I think that's Ft. Irwin's intent, to be respectful and afford proper treatment. We're lucky we don't have a lot of those situations that we have to deal with, but we want to be prepared, should they occur.

MR. HORALEK: Can I ask a question on that? I like what you're thinking, and I don't think we're stuck with any given formula with how we do this. My question would be, would the 14 tribes who were identified and obviously from the conversations who were identified and obviously from the conversations that the 14 tribes, is there some way that if we had an agreement that were remains found we could go to a group of those tribes, tribe members that they have put together where they make that determination, but how do we -- how do we find that group?

MR. CHAD SMITH: Well, you request each tribe to appoint a representative to a Native American programs group of Ft. Irwin itself.

MR. HORALEK: Okay.

MR. CHAD SMITH: And you use the model at Nellis Air Force Base, right off the shelf, it works perfectly, maybe -- nothing is perfect, you know, but I'll qualify that, but it works, and like I say, it's going above and beyond Section 106, they have to.

And I think it's a good way to go, I really do. And some of the same individuals or perhaps all the same individuals that would work with the tribes working at Nellis, it's an extra -- than extra little load to carry with another installation too, but I look for an opportunity, on the part of the tribes themselves, and the individuals too, they -- it never reaches the stage of archaeology budget, and as I tell developers on projects all over the west "Look, to do right by the Indians," and if it means putting in a few extra culverts in a road you're building or something like that, it costs -- Well, the PR aspects shouldn't really be a consideration, you know, but it is. It's good intertribal relations, I'll put it that way.

MR. GUNDERUM: I might say it is in our ICBM it is in one of our recommendations to go along those lines and I guess what we need to put into play is specific procedures how we would follow that and here again, you know, it's bringing up Nellis, I don't know if you can provide us with the details of how they do that, we can track that down.

MR. QUILLMAN: We can make that effort to have that in our system.

MR. CHAD SMITH: This gentleman sitting right here.

MR. BINTER: I would tell you as a Mojave, full blooded Mojaves say, "Hey, they were good to me, they treated me like I was a person. My biggest beef with military all over the world, no matter where you're at, Native Americans, until 1924 we were not considered human beings, by an Act of Congress we were declared.

I was seven years old at the time, put it in there, I learned to respect you people, and, you know, this man did what any Indian would do. He turned and looked at you to talk to you because that's -- they told him to look. No, you said let this man continue, talk to him, and he was talking to him. That was respect.

MR. BRITT: I didn't mean to disrespect him.

MR. BINTER: But we have people also, you know, and things you want to go ahead and sign something you remember we got to go home and talk about it too, we have to discuss it amongst us, we have different tribes here.

It's sort of like a pushing match and, you know, Mr. Chad Smith told his story about how the Army saved the Mojaves, but, you know, that same Army person gave a gun to another good Indian people, saying get these Indians out of here.

We're still here. We're going to be here, I like the story, I agree with it because that's partly right, and as they often said, that's how you Army -- the person, he got a gun and gave it to the other tribe so they could get rid of us.

But we are still here, we'll remain here and everything you see about us now, we all know this story; we've always known this, but, you know, to try to push it into doing something we have to discuss it amongst ourselves. This is not just one tribe; there's a number of other tribes, so give us that opportunity to let us think this through, you know.

MR. QUILLMAN: Our intent this week, sir, is only to open the lines of communication.

MR. BINTER: We're well aware of that, I understood what you said, and I understand it well. You've got to realize, you know, I joined the military, I became a white head, Caucasian, and I got out so there's a lot of hurt here for me certainly because the same wars that you guys fought, I have relatives in the South Pacific, I have them in Germany, Vietnam, why can we be equal like you said? We're not, we seem like we have to prove something. We don't have to. That's the biggest issue that I have about this type of thing. You see it, you knew it, not you, but your family here, you know, but we certainly have respect for religion, you know.

If you find bones of a person. You look
24 at the land as Native American it's something sacred to
0125
1 us, the wind blows, the mountains look good.
2 I mean to have archaeologists that I know
3 and speak of this. You know you'll never get away with
4 it. I can get away with it because some think
5 I'm stupid. I'm not, you know, that's my belief, I
6 really enjoy it.
7 I don't mean to be down, just things being
8 said, you know, but you've got to understand, you know.
9 MR. BRITT: That's why we're here.
10 MR. RAY: He talks about the rocks or
11 something like that, we worship the rocks, you know, you
12 talk about areas where there is writing, things like
13 that we worship that, that's our church.
14 MR. QUILLMAN: Yes.
15 MR. RAY: Like your Bible says, Jesus
16 building a church on the rocks, that's why we go to the
17 rocks, way before the Bible came out, we had our belief
18 in our collections, but these are things that you don't
19 understand.
20 MR. QUILLMAN: I understand that.
21 MR. RAY: And the only respect I can think
22 of is Jim Thorpe, because he won the gold medal, but he
23 was not a citizen of the United States.
0126
1 MR. CHAD SMITH: So many Native Americans
2 are patriotic and go into the service, and one old man
3 says "White guy says why do the Indians go and fight?"
4 Because look what they did to them," and my grandpa told
5 him, he said, "Well, the Indian knows if the US goes
6 down to these Japanese, all of the Indians are going to
7 have another guy come in and take more land away and
8 treat them worse."
9 So, you know, we're citizens of the tribe
10 and the culture and citizens of the US and very
11 patriotic as well.
12 MR. BINTER: You give some of the land
13 back to Japan, some of the islands back to them, when
14 are you going to give a little piece of ours back? I'm
15 sorry, I'm just --
16 MR. QUILLMAN: I understand your
17 frustration.
18 MR. BINTER: That's the way it is, though.
19 MR. RAY: There is frustration because we
20 don't go out in the area of Ft. Irwin.
21 I remember the area. I went, when I got
22 older and grew up and heard about it, I went out there,
23 set out like he does, he sits out there, and sitting out
24 there, you know, like the Mojave National Park reserve
0127
1 came out at that time, he was out there he didn't know
2 the history.
3 I was telling him. He didn't know nothing
4 about it, my way of thinking, our way of thinking, they
do have record, but that wasn't the way I knew it.
5 MR. BINTER: Some of the old people tell
6 you to go down to Death Valley, you know, they was
7 telling me there's a group of white guys and they all
8 speak Mojave and I said, "Oh, really."
9 I don't know if it's true or not, but then
10 these are people that have been there and seen it, who
11 knows? You know.
12 When you look at some of the oriental
13 people, you know, being blue-eyed, it makes you wonder,
14 could it be, did it happen here also?
15 Today you have blonde haired Indians
16 walking around, you know, that's kind of -
17 MR. RAY: Our kids are -- dark, my
18 daughter was like that, part Navajo, she had reddish
19 hair until she grew older.
20 MR. BINTER: I didn't mean to take you
guys off the subject.
21 MR. QUILLMAN: That's fine.
22 MR. BINTER: I need to say it.
0128
1 MR. QUILLMAN: We appreciate that.
2 MR. BARI: What was said to Lee, what was
3 happening, we have a stenographer sitting over there who
4 is recording all of the conversation, so the only thing
5 he asked was please, if he can talk seeing him.
6 MR. BINTER: I understood that, but the
7 whole thing, the whole thing is he could have said
8 "Excuse me, sir, we have stenographer there." he didn't
9 say that, you know, that's what we were taught in
10 boarding school, to be more pleasant, and me, you
11 were whipped if you didn't act accordingly, so I felt
12 offended because this is Indian, you've got to remember
13 that, this is Indian, respect us, you came here to talk
14 to us about something, we're listening to you. We will
15 agree with you, but I say, give us time to think this
16 through, give us time to talk amongst ourselves, you
17 know, because this is not just one tribe.
18 That's like if you go to -- Okay, let me
19 tell you straight up. Iran, Iraq go to their places and
20 see how they treat each other, you know.
21 You know, I make light of this, you know,
22 when they say go ahead and bomb this place over here and
23 when you die and go to heaven you're going to get seven
24 virgins. I don't want a virgin, I want somebody that
0129
1 has experience. You know?
2 Thank you. I have a conviction about it.
3 COL. FLINN: We're looking for people who
4 can help us through this process. Looks like we found
5 the right person.
6 MR. BARI: This is the most thing we're
7 getting out of this, this is the openness that's what we
8 want, to have it, so say what you feel and we say what
9 we feel.
10 MR. CHAVEZ: I have one question on that.
11 Why is it that you can see this on any
12 documentary, documented movie or educational movie on TV
13 or whatever about all of these other people that commit
14 genocide on their people, and we're the big saviors that
15 go protect them, and that's the reason we go to war, but
16 the United States itself will never admit to the
17 holocaust that they committed on our people here. Why
18 is that?
MR. HORALEK: The winner always writes the history.

MR. CHAVEZ: The winner?

MR. HORALEK: The winner.

MR. CHAVEZ: I don’t perceive it as being a won battle.

MR. HORALEK: I don’t disagree with you.

What I’m trying to say is unfortunately history as I know it from every culture, has basically been written by the one side, and it’s always going to reflect good on the person writing it. It’s not true history, in other words.

MR. CHAVEZ: The United States wants to appreciate, should they tell the truth?

MR. HORALEK: Like President Clinton?

MR. CHAVEZ: But we’ll still use them.

MR. RAY: Cortez, he won the big battle but there’s not a statue down there in Mexico. He wrote the history, I guess, but not the final.

MR. BARI: I think we had planes on the other side -- we have -- the boss is here.

MR. CHAVEZ: Correct. He said go ahead and vent it. I do feel better, having said that, because it’s never said.

I never learned that in my history going through school.

MR. CHAD SMITH: There has been the national apology for slavery to the African-American, the apology for internment to the Japanese people.

MR. CHAVEZ: We paid them a great deal of money.

MR. CHAD SMITH: But you haven’t seen a US president, based on the advice of consent of the Congress get up there and say “I apologize to the American Indian from what was done.”

MR. CHAVEZ: But we’ll still use them.

MR. CHAD SMITH: About ten years ago at Ft. Huachuca we had a meeting like a celebration there, the Apache people, for the unveiling of the statue to commemorate the Apache scouts, and it has the lieutenant up on horseback and Victor modeled for the Apache scout, and he’s standing next to him holding onto the stirrup, you know, and we often were on foot in that capacity, often on horseback, but the installation commander got kind of choked up in the speech he gave and he said, “You know, this is now, that was then, I guarantee you Apaches that if then was now it wouldn’t turn out like it did then,” that in many ways where we are sitting had a -- right here is on the map within the State of Nevada, but I have to tell the state historic preservation officers when they go and trying to boss tribes around, that it’s only an accident of politics, geography and attempted genocide that the state has its boundaries around where the tribe lands are that are but a remnant of the original lands, and how could it be other than that truth, because who was here first? The tribes, of course.

I think the US has come a long ways towards what we call a multiethnic society, but so much of these non-Indian Americans is really Indian, in their architecture, their language, and maybe some of the spirit, the soul of this country rubs off on them in their culture and as individuals too, because they can’t go back to Europe, they’re Americans.

MR. CHAVEZ: Hell, we got baseball teams named after us. What more could we want?

(Laughter)

MR. CHAD SMITH: And as guests and fellow Americans in the Indian land which will always be spiritually in so many ways Native American regardless of the fact that it’s off reservation.

Like I keep coming back to that place, I would look at form Kern River pipeline between Baker and Barstow, right across the fence, I’ll talk a little more about excursions from the post into important Mojave cultural areas, inadvertent units straying outside the boundaries, on a project that we did with Darrell and BLM out there with them several years back.

And you think about had it turned out different there would have been, as in China, a civilization, continent wide, or area wide of those native peoples who have taken on so many of the European ways that they have the weapons of mass destruction, the military, the technologies, most of our TV’s are made over there too.

And it’s a problem, but the multiethnic society in which we live is more and more becoming real instead of just one, and this man’s Army that is all of our Army, it’s got people of all background, and Indians too.

MR. CHAVEZ: The United States Army has people of the world within their forces.

MR. CHAD SMITH: Yes.

And the Mojaves, I guess, used to know in ancient times various roots of other people, perhaps even the scouts or Irish gangs who had came long before Columbus, and they would get out in the middle of this desert and be barely making it, and they would render humanitarian assistance to these people, and later in time even to other tribes, fellow tribes, and people would rest up and stay and replenish their dehydrated bodies and eat food, and almost always, then, they would move on and if they didn’t, I’m told they would be told
after a while you work with a white guy, you know, close, and, you know, even you go to school in Needles, relationship from one tribe to another tribe was so say, you know, because of what we do here, the partied together, you know, and there's one thing I did people that have maybe seven or eight in a group. We fortunate to have gone there and talked to some of those acceptable to them.

But again, we're kind of constrained, anybody can provide any assistance with who to talk to. Heritage Commission in Sacramento. They're trying to go anywhere, and I talked to the Native American Heritage Commission in Sacramento. They're trying to watch over the USA, or the USA confederacy and I think that whatever God you speak of, or define power, watches over the USA, or the USA wouldn't still be.

Okay, Chad, time's up. One more question. This list here you have, is that recognized Native American, the list, don't you think that you have some that are not federally recognized on there?

We checked them, unless they got delisted.

I think Phil means about tribes that are not federally recognized, and they have said that in much of this, or all of this, a group of Indians, a tribal community that is not federally recognized can partner with one of the tribes that is federally recognized in all of this. There's a part to play, a part in it for any tribal group of Native Americans.

There are groups that respect all groups, like the Kawaiisu, we've actually tried to consult on on some level, at one point and it didn't go anywhere, and I talked to the Native American Heritage Commission in Sacramento. They're trying to update a tribal member list and things like that, so if anybody can provide any assistance with who to talk to. But again, we're kind of constrained, being a federal installation, dealing with federal recognized rights, that we're trying to open it, you know, we can work on these, invite these groups in as informal partners or to have them partner with a federally recognized group, I think that would be acceptable to them.

Sacramento, Ft. Mojave was fortunate to have gone there and talked to some of those people that have maybe seven or eight in a group. We parted together, you know, and there's one thing I did say, you know, because of what we do here, the relationship from one tribe to another tribe was so close, and, you know, even you go to school in Needles, after a while you work with a white guy, you know, you're talking like a Mojave after a bit, you know, you see something wrong you say "Ahhhh," you say at him, "Look at him, you know, he's talking funny," they're talking like us.

We've been through this to a point, you know, after a while, you know, that goal, you know, of being prejudice with another American Indian person has gone away. Some of us are married to white women, you know, some of us don't have kids, some of us do have kids, you know, they grew up, they're more Indian now, and that's the way it goes, you know.

But, you know, up there! I did tell them we did this, but, you know, you guys are with another group of Indians over here, you guys are cousins in there already, why can't you just be a part of that, you know, and make that a bigger group and call it something within your -- their names, their tribes, that will work.

I heard, you know, they were working on it. I don't know if they really succeeded, but I do know that some of their stuff down in Nevada, they were doing that also and I said "Well, you know, if nobody else is taking the credit, I will."

(Laughter.) But, you know, it's just an idea and thought, and it's been working, how could you put that, more understanding of the fact that they, they work, they were, people at one time with a great number, but they've all died because of something. What have you guys brought? Alcoholism, diabetes and all of that type of stuff, you know, I'm sorry, but this is the way it is, you know.

Bomb fallout in Nevada.

Sometimes, you know, you would be -- it's really how you talk to a Native American to get his attention, sympathize with him, understand his problem, but in order to do that you have to be a part of that group, get with him, talk to us, you know, don't sit back and say we'll get back to you another date, learn about our culture. Isn't that what archaeologists do? Learn the culture, get with the people, understand them.

A different process.

Anthropologists first, archeologists second.

Exactly. You know we're talking with you people hoping we'll get that same type of response, I see it, but don't tell us, do this, do that, some of us, some of us will rebel, you know, we still haven't lost that Indian thing, you know, we are going to do what we want to. I'm a process, you know, continuous dialogue, and getting to know and trust each other over a period of time, that this will move forward, and I think everybody here understands that, you know, we're asking, we want to get these sort of things in place, we think it's beneficial to both. We know it's going to take time. We know some groups may...
I, DENNIS D. STEINER, CSR #6, hereby certify that:

1. I was present for the purposes of acting as notary public and certified shorthand reporter;
2. That the transcript that appears hereinbefore was transcribed by me as herein appears to the best of my knowledge, skill and ability.

________________________________________
Dennis D. Steiner

FT. IRWIN, NTC - NATIVE AMERICAN TRIBAL MEETING
3 OCTOBER, 2003

REPORTED BY: DENNIS D. STEINER, CSR #6, RMR
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Appendix H
Meeting Transcript
MR. CHAD SMITH: I'd like to have a good Mohave blessing.

I'm not a tribal member, but that sacred mountain up there says a lot to me, and when I first came here in 1999 on one of my trips over, moving over

SUPERNATURAL BEINGS THAT HELPED THE APACHE PEOPLE OVER THE THOUSANDS OF YEARS CAME THIS WAY, ONLY THAT FAR BECAUSE ALL OF THIS IS OF THE POWER OF THE MOHAVE CULTURE, RELIGION AND SPIRIT.

AND I ONLY KNOW THAT MANY OF THE TRIBES THAT LIVE FAR FROM HERE TRACE THEIR ORIGINS AND HOLD IN RELIGIOUS REVERENCE THIS MOUNTAIN CALLED ABIQUAMAY, WHERE THE MOHAVE CREATOR LIVED, AND WENT TO ANOTHER PLANE OF EXISTENCE, AND HIS BROTHER, MATAVELIA, HELPED THE MOHAVE PEOPLE IN THOSE TIMES BEYOND MEMORY, TIME IMMORAL.

BUT I'LL SAY JUST IN ENGLISH A FEW WORDS, AND WE USE THE CAT-TAIL POLLEN FOR OUR BLESSING IN THE APACHE WAY, AS I WILL DO, BUT THIS IS SOMewhat GENERIC OUT OF RESPECT FOR MOHAVE RELIGION WHICH IS VERY REAL AND VERY STRONG, EVEN IN APACHE CULTURE, IT'S HIGHLY RESPECTED, AND AS AN ANTHROPOLOGIST YOU CAN EITHER BE OBJECTIVE AND BELIEVE IN NO RELIGIONS OR YOU CAN BELIEVE IN ALL RELIGIONS, WHICH I DO.

MOTHER EARTH, FATHER SKY, CONTINUE TO BLESS AND PROTECT ALL OF US, ALL OF THE NATIVE PEOPLE AND THE ARMY REPRESENTATIVES AND OUR COUNTRY IN THESE TIMES OF WHICH WE'RE ALL A PART, WITH THE GOOD AND THE UNPLEASANT FROM THE PAST, AND WATCH OVER OUR COUNTRY AND ALL OF OUR PEOPLE AND PARTICULARLY HELP THOSE WHO TRAIN IN HARM'S WAY TO BE LUCKY, AND TO COME BACK, AND AS WE TRY TO BLEND THE CONCERNS FOR THE ANCIENT PLACES AND THE LANDS OF THE INDIAN PEOPLE WITH WHAT ARMY HAS TO DO; LET US, ALL OF US, KEEP IN MIND THAT THE INDIAN PEOPLE ARE THE SPIRITUAL STEWARDS OF THESE LANDS. OKAY.

MR. BRITT: Thank you, Mr. Smith.

We've got a seat up here. Sir, you can sit up here.

What I'd like to do now is to bring, give you an update on the land expansion results, particularly the cultural resource surveys that have been conducted in preparation for the proposed land expansion.

But to begin with, I've just got to give you an overall status of the Ft. Irwin and the cultural resource management program. This is a snapshot of what they have at this moment.

Ft. Irwin comprises over 750,000 acres. That's over a thousand square miles.

Approximately thirty percent of the installation has been inventoried for cultural resources, and that involves systematic pedestrian surveys, archeologists, cultural resource managers going out into the field documenting sites, recording sites.

Making site revisits and updates.

A little over a thousand sites have been...
recorded at Ft. Irwin.

A little over 600 have been recorded within Ft. Irwin proper, and then the last year -- Well, last year we did a sample survey of the expansion areas, and we recorded 245 sites, but much of this property had been in BLM lands and they had recorded sites, so in the two expansion areas the Avawatz and Superior we have about 417 sites recorded, or 429. Of all of these thousand sites a little over 350 have been evaluated for their significance under the four criteria for inclusion in the national register of historic places.

58 of those have been determined significant. They meet one of those criteria of eligibility, and they have contributions on the local, state and national level, or one of those or all of those, to be significant in our heritage, those sites are protected.

What's important to realize is all of the sites that have not been evaluated, the remaining 538 sites, those are protected as if they were eligible. They're afforded the same amount of protection. There's no impacts allowed at those sites.

Ft. Irwin has an active program now of going back and revisiting those sites to evaluate them and see what, you know, what kind of information they contain, how can they contribute to a better understanding of the past.

Last year about 110,000 acres were withdrawn from the Bureau of Land Management; the large majority of it was withdrawn from what -- what we refer to as the Superior Basin over here, and then on the east is what we call the Avawatz region.

What we've got is a map of the Ft. Irwin and the training areas, the areas that are delineated in the dark blue have been evaluated for having high impacts to training; the areas in light blue have medium impacts, and then the areas in white have no training whatsoever, and those are typically in sensitive areas, whether it be cultural resources, Lane Mountain milk vetch, other types of environmental resources.

There's no training allowed on the playas out there, a lot of environmental restrictions.

But in the proposed date of 2006 they want to open this up and train in these expansion areas, primarily the superior, the powerline corridor and in the Avawatz.

Give him a minute to get settled. Okay. We'll move right along.

Basically we're looking at about -- the Avawatz 2000 acres, we did a 25 percent sample survey; powerline, we did 124 acres, another 25 percent surveyed, and then in the Superior Valley when we were -- initially we were going to do a 50 percent survey, but because of the restrictions of Lane mountain milk vetch and some other concerns we reduced our area to 35 percent.

We ended up looking at a little over almost 25,000 acres last year. These are some pictures that were taken during the survey to document some of the types of sites.

Here's a small lithic site right here located on a beach ridge next to a playa, I believe that's Superior Lake.

What's important to note is that the Superior Basin on the west and the Avawatz on the east are geomorphically very diverse.

The Superior Basin is much more dynamic. There's a lot more natural environmental processes going on there.

We have what we call the sand sheets because the wind is coming from the west, it's going to cross the lakebeds picking up sediment and redepositing it to the east of the lake; and the Avawatz, let's see, in the Avawatz it's much older, more dynamic, and I'll show you some features that characterize that.

This is a typical basalt quarry. Ft. Irwin has a lot of lithic resources, a lot of basalt, basically two types, fine-grained and coarse. Coarse is used for mannos and metates, and fine-grain is used for chip tools.

Here we are in Avawatz, a much older, much more stable geomorphic setting.

These surfaces here, this is what we call the desert pavement. You've got finely sorted rocks embedded, just like a pavement. Many of these surfaces are at least ten thousand years old or older.

They predate human existence as we know it.

So -- and we could look at things to date the surfaces such as the amount of -- the rind on the rocks, how dark they are, minerals collect on these rocks at a slow rate and they can measure those and date the ages of these surfaces.

What I'd like to do today is to talk about two different types of sites that are probably the two most significant types of sites at Ft. Irwin prehistorically. Those are lithic and habitation sites.

And what we did kind of as an aside to determine where we were going to survey during the land expansion is we worked with Darrell and the California State Historic Preservation Office, and we developed a plan to devise a predictive model for finding sites, and basically the model, the purpose of the model was to determine where sites are, where sites aren't, and what methods we should use to recover information where the sites are likely to be found.

And what we started off to build this model is we took all of the archeology sites and then we subdivided them into separate groups, and what we're looking at Lithic reduction sites, chipping stations, quarry stations, and what we did is we plotted those as...
their own little entity.
And these are the amount of sites that we recorded prior to our survey last year. Do you see they're scattered across, they're clustered in some areas across the landscape.
We used this data to prepare a favorability map.

The favorability map is basically telling us -- it's ranked from very low to very high favorability, with a very high favorability on this map being depicted in dark red.

It's a color scale, gradation.
The areas with high probability are clustered around the sites that we've already identified. That makes sense. We know that's where sites are, that's where we're going to find. We took into account a lot of variables into account, the geomorphology, distance to water, elevation, slope, aspect, soil moisture content.

This is what I was talking to Lee -- we worked with some geomorphologists out of the Desert Research Institute, and some geographers to prepare this model, it's not just archeologists who are having their input in here.
So we developed these maps, and then we went out and actually did our survey, and we found these new sites that are marked in black.
As you can see, they don't always fall in the high probability areas, so what we did is we took the data from this survey, put it in our model, reran the numbers, and what we have here is a new favorability map.

And there's a couple of things I want to point out here that are pretty significant, is that -- one is that lithic sites tend to occur in very specific locations. The areas that are marked in dark red, or light red.
There's some transition, like in here, so you basically go from yellow to dark red.
What that means is that we as archeologists can target these areas to go and study there. We can actually exclude some areas from study.
What this means for the Army is that this frees up more land for them.
Again, it excludes area for study that they have to spend money on, with a certain level of probability statistically that can be proven that they can open up these areas for training. It's important for those two reasons.

What I'll do is I'll talk back and forth, and what I'd like to do is show you by illustration, look at the difference in red on this map and the red on this map, there's much more high probability area here and as we collected more data, ran the model, we reduced that.

So again we can be more specific in targeting sites as well as opening up areads of training.
Now, we'll look at habitation sites, these are probably the most significant types of sites culturally at Ft. Irwin. These are prehistoric habitation sites. There's not near as many of these as lithic sites. Again, they're scattered across the landscape.
We took the same approach, we took the original data, ran the computer models, generated these favorability maps, again the same color scheme; dark green is low; dark red is high probability.
We ran this map, we went out and we surveyed our areas last year, and it's important to note that there's very little probability in Avawatz, and we've only got two sites here.
Our model did extremely well, because you look here, and these are our new sites; found them right where we thought we would around the playas; found a few more up in the uplands in these areas -- a little red in here where we had some high probability areas.
We've got these new sites, and again we ran our models, and again it allows us to focus on specific geomorphic land forms or landscapes out there that would be more likely to contain these types of sites than others.

Again, it's the same thing, we can clear more land quickly for training purposes and as well as protect the more sensitive areas for archeological and cultural resource sites, so it's a great tool for evaluating, for finding and evaluating sites.
I'll just go back and forth again to show you the difference.
What this chart means is kind of what I said, but it quantifies it.
It puts numbers in and backs it up. Half the habitation site, 48 percent occur in a very small portion of Ft. Irwin, less than -- or seven percent of the property.
The same thing with rock art. Lithic sites as you can tell were a little bit more scattered.
And we also looked at historic sites. We looked at mining and ranching sites and, again they're confined to very specific land forms at Ft. Irwin.
This helps us a lot. It's a very useful tool in determining where sites are and where they're not likely to be.

We've also continued to improve the model, FICRD is the Ft. Irwin Cultural Resource Data Base.
When we were preparing the model to get into a spreadsheet form, we wanted to get to more of a relational data base, not a data base for a developer, but this is what our geographer did, and basically makes the tool much more flexible and allows us to ask and address many more different types of research questions as well as management questions.
And this is a schematic of the way we redesigned the data base. What it is now, it's a web based format so that researchers from not only within...
16 buried cultural stratum there, and on survey you may
15 this with, including from Geo-Marine, that there's a
14 centimeters below surface with artifacts, and it seems
13 twelve of them came up hot to down below forty
12 lands under the state karadeps [caretakers] approach were small
11 And these are different types of questions
23 lithic scatters or sites where lithics are encountered,
22 that when you shovel test and come up with subsurface
21 metro.test excavation units or even backhoe trenches,
20 fiberoptic, sometimes it's not possible, yet with
19 fiberoptic it can go to an aerial segment that spans the
18 railroad is going to go through where a road or
17 expedite the possibility of site locations and
16 eligibility and non-eligibility through the archeological
15 predictive model, every predictive model I've ever dealt
14 meter test excavation units or even backhoe trenches,
13 eligibility or non-eligibility through the archeological
12 Ft. Irwin but those that have been given access outside
11 and alternatively as I've expressed to Darrell,
10 such as our contractors can go in and do queries, they
9 I spoke with Mickey, and he said that
8 I don't want to go into any
7 you all should have gotten them, and any
6 you can -- or information that you could add, different
5 activity, and when maneuvers or other activities are
4 predetermining the possibility of site locations and
3 meter test excavation units or even backhoe trenches,
2 you can -- or information that you could add, different
1 artifacts, and this is what I'm in an uncomfortable
0017 shovel test units and came up with subsurface artifacts
0016 analysis that have been conducted. That's it for the
0015 would take a minute and see if you
0014 have any questions. I know that we did send out a copy
0013 of the survey report, a draft survey report to all of
0012 the tribes.
0011 you can -- or information that you could add, different
0010 site types, different types of risk, try to quantify
0009 risk of different types of impacts, whether it be
0008 training or natural.
0007 Again, this just gives you an example of
0006 the different types of categories, different types of
0005 eligibility and extent as well to find how far under the
0004 sand these things go, and/or data recovery.
0003 Preferably avoidance, even down to
0002 protective fencing and those things.
0001 I know when a new development like a
0000 railroad is going to go through where a road or
0001 fiberoptic, sometimes it's not possible, yet with
0002 fiberoptic it can go to an aerial segment that spans the
0001 site rather than going through the site. I've done that
0000 times elsewhere.
0001 So we do have extensive comments which we
0000 had not provided yet to CERL, your office back east
0001 there, and to Darrell out there, and but I think that
0000 some of the sites in the fiberoptic were in the
0019 expansion area as well, or at least the approach was
0018 similar to that of T R C Mariah in the report itself,
0017 and I really don't like a geomorphologist determining --
0016 predetermining the possibility of site locations and
0015 eligibility or non-eligibility through the archeological
0014 predictive model, every predictive model I've ever dealt
0013 with blows up in the face of the one developing it in
0012 with a good test excavation unit, and on survey you may
0011 buried cultural stratum there, and on survey you may
0010 are masked by the veneer of the wind-blown sands and
0009 that -- You know -- we've got some big problems with --
0008 with the approach, since off the installation on BLM
0007 lands under the state karadeps [caretakers] approach were small
0006 that-- -- we've got some big problems with --
0005 lands under the state karadeps [caretakers] approach were small
0004 and alternatively as I've expressed to Darrell,
0003 eligibility could be revisited, and those sites could be
0002 considered eligible for the register, and determined
0001 eligible for the register by Army, and the undertaking
0000 at hand of the land expansion is not a ground-disturbing
0001 activity, and when maneuvers or other activities are
0000 proposed in the area where those sites are, then the
0001 decision could be made whether to do further testing for
0000 eligibility and extent as well to find how far under the
0001 sand these things go, and/or data recovery.
0000 preferably avoidance, even down to
0001 protective fencing and those things.
0000 I know when a new development like a
0001 railroad is going to go through where a road or
0000 fiber optic, sometimes it's not possible, yet with
0001 fiber optic it can go to an aerial segment that spans the
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0013 predictive model, every predictive model I've ever dealt
0012 with blows up in the face of the one developing it in
0011 with a good test excavation unit, and on survey you may
0010 are masked by the veneer of the wind-blown sands and
0009 that -- You know -- we've got some big problems with --
0008 with the approach, since off the installation on BLM
Again, these were done by archaeologists. There was no knowledge of the geomorphology, or, you know, other types of disciplines that we've integrated into this approach. What we've implemented is a more systematic, more thorough multiple-discipline approach to a better understanding. I'm not saying it's perfect by any means, but what we've tried to do is -- I do want to make a point, the geomorphologists, they're telling us areas that have the potential to contain buried deposits. They're also telling us areas that have the potential to contain buried deposits that have been bioturbated, that is, they've been blown and blown and rolled. That's what happens a lot up here. That doesn't mean that every site is not eligible or every site that is not eligible.

What we've done, to paraphrase, is typically we'll work with -- we'll have a group meeting, the archaeologists and the geomorphologists, the geographer. The geomorphologist and the archaeologists will conduct reconnaissance, look at aerial maps, go out and make some spot checks in some areas. Then the archaeologist will go out following a research design that is specific for that project. It may consist of pedestrian walkover with selective shovel testing on desert pavements to confirm there is no potential for having buried deposits, or it may be a systematic, every fifteen meters we dig shovel test pits, we dig trenches. We did all of this in the study last year.

We had a variety of methods. Once the sites have been identified, then once again the team of the geomorphologists and the archeologists go back out there to collect their own respective data, the archaeologists, and then they work together and they share their data, and sometimes it consists of test units, shovel tests or backhoe trenches, and we did all of this at Ft. Irwin. I guess that's the point I'm trying to make, is that we've thought about these things and we're trying to implement those, and we will continue to do that, but it is an iterative process and we're trying to improve that, so maybe that clears it up.

But by no means if the site has deposits, we have to look if there's some buried artifacts, we have to look at each site on a case by case basis to determine its significance, so I just wanted to make that point clear. And if it's not clear in the report we'll make sure that it gets clear.

MR. CHAD SMITH: And a couple of other issues, primarily on powerline proposed expansion areas.

MR. BRITT: Yes.

MR. CHAD SMITH: First, the utility corridor in the California Desert Conservation area, through there where the gas lines are and power lines, you know, it's -- it was decided quite a while back to have those developments within one straight line corridor rather than a crazy quilt where it goes on the engineer's determination, shortest distance between two points is a straight line.

And there's a lot of public access that takes place along that powerline, and, you know, rockhounding, not so much looting of archeological sites because many of the sites don't lend themselves to people going and digging them up and finding things and taking them.

But I don't know myself whether -- whether there would be a new perimeter fencing at the edge of powerline expansion and exclusion of people that are used to driving their ATV's and dirt bikes back and forth up and down that powerline, really from Barstow all of the way to Baker or from Yermo all of the way to Baker.
MR. BRITT: Okay.
MR. CHAD SMITH: The yellow line is the exterior boundary and right in there the yellow line is also the utility's corridor, and there is yet another gas line that's more than just proposed that would be Kern River Three, and Kern River expansion and the original Kern River gas line had actually gone on the east side of Red Pass across a small portion of Ft. Irwin itself. It's -- it's sort of a history of archeologists, it's not really well-known and doesn't really have to go beyond the room itself, but in the '70's when Doctor Claude Warren (phonetic) was doing surveys in that area, some of his crew was moonlighting as scavengers.
And in that -- in the mountain, the little hills that are pretty substantial hills right southwest of the pass along that yellow line, there's a dry lake masonry within the corridor that I went up and looked at when I was out there on that Kern River pipeline, you know, at first it looked like something like a hunting blind or wind shelter or lookout post that the Mojaves often have for their sentries to see if others were coming into an area where their people were, and I got up there and it was obviously recent, historic, maybe from, you know, I thought at first from the forty's a patent or something like that because there is a rock alignment that spells out the name "Joe, J-o-e," and there is also a .50 caliber round, expended, brass that I left in situ there, and these guys were coming back out on weekends when the archeologists, the real archeologists were gone, and going onto the post, and they had connections with personnel that would leave M-16's or C 4 or other items, and they'd load them up and take them back there where they had the Jeep, they'd go out on dirt bikes and they were trading these weapons for drugs at San Diego, and some of them got caught; some of them didn't.
And it would be actually included within the post where this archeological site is. It's, you know, to me even if it's less than 50 years old it's the result of human activity.
MR. BRITT: That's right.
MR. CHAD SMITH: And there's still the possibility of latent prints, I didn't touch the brass scavenging and that that can be an ongoing problem.
MR. QUILLMAN: Sure.
Let me jump in for a second. I'm Mickey Quillman, I'm a Natural and Cultural Resources Manager out at Ft. Irwin.
A lot of these young men who come out of training at Ft. Irwin are accountants from New York City, they get out here at Ft. Irwin and they have never seen so far in their whole life. I mean in New York City you can probably see less than two blocks. Out here they can see fifty miles, and it's easy for these guys to get lost, so what we're going to do is put in this double tank ditch 500 yards north of the power corridor because we don't want to knock out power, we don't want these soldiers out there hitting power lines or breaking gaslines, getting killed, and we don't want somebody inadvertently straying onto Ft. Irwin and getting involved in military maneuvers. So that's what's going to happen around the entire expansion area. That's what we've proposed.
I'm not sure how we'll address the areas really high up over the hills, but we're going to make every effort to keep folks from doing that and keep the people who are training at Ft. Irwin within the confines of the installation itself.
MR. CHAD SMITH: Okay.
COL. FLINN: I'll add onto that. I'm Col. Flinn, I'm the Deputy Chief of Staff at Ft. Irwin. The -- the unfortunate incident that happened out there where they strayed off of the installation, it's a little bit reminiscent of what happened to that maintenance company in Iraq.
These were a bunch of soldiers who were trying to do the Lord's work in the middle of the night, in adverse weather conditions, and they got lost, pure and simple.
Our -- our goal was to keep all of our soldiers on Ft. Irwin, because that's where we have set up the facilities to give them the opportunity to do what they're supposed to be able to do. It's where we have our observer controllers, who are the teachers that help these units in their training, and look at what's going on to help them improve.
Our fiberoptic network that we're proposing is designed to move information because what we ultimately want is we want every vehicle to have instrumentation package on it that has a GPS device, a
radio transmitter that transmits its location about
every three seconds back to our command and control
command center, using the instrumentation and information that
comes with libriform net.

Our goal is to have one hundred percent
track of everybody and then if somebody begins to stray
outside the exercise area we can alert one of our active
duty soldiers assigned to Ft. Irwin to go out there and
drag them back into the game, if you will, and so this
all has an effect here in order to, one, improve the
realism of our training, and two, keep the training in
the corporate sandbox, if you will, of Ft. Irwin.

MR. BRITT: Thank you.

What I’d like to do now, do you want me
to go and proceed with my next talk, or do we want to
cover something?

MR. CHAD SMITH: I don’t know if any of
the other tribal representatives have any questions or
comments

MR. BRITT: What I’d do is I’ll talk
about the cultural affiliation study, take a break and
we have some very honored guests here, we’re honored to
0030
have these very distinguished guests here to talk a
little bit about the Mohave culture and tell us some
more. So bear with me just a second.

Would you pass out those reports? If you
could.

Mr. Gundrum is going to pass out a copy of
this cultural affiliation study that we had conducted
for the installation last year, it’s a draft report,
just so as to give us a tool to begin to help facilitate
nation to nation consultation.

We feel like this is a good objective
synopsis contact period up to the present, by no means
does it include everything.

It’s a great starting point. We’ll be
glad to have you read it, provide us with comments, it’s
not a 106 document, it doesn’t go to the SHPO, we’ll
probably send a copy so that, you know, they would
10 appreciated it, but it’s not a requirement document,
11 it’s an independent study that we did for Ft. Irwin, so
what I’d like to do today is just go over it very
briefly, talk about some of the topics, it was prepared
by David Earle, he lives on the coast, not back -- I
can’t remember exactly what town he lives in, but he’s a
native Californian.

And some of the topics he discusses is the
0031
Mohave desert environment, the social organization of
the different tribes and Spanish contact. Then he lists
the major indigenous groups at the time of the Spanish
contact. Those were the Serrano, the Chemehuevi,
Southern Paiute, the Mojaves, the Kawasu, and the Panet
or Timbisha Shoshone.

Do we have enough copies?
He talks about native places and trails.
I’m not going to try to pronounce the Indian names, the
tones I don’t know how.
I’ll say the Avawatz Mountain, Cave

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archeologists, how do they define tribes. It's
certainly not the way that the tribes as you all see it
defined what their tribe is.
It's a very good point he brings out, that
these interpretations that have been written down
throughout the years are not necessarily accurate or even

1 close to being accurate, and he brings that out, and I
2 think that's one of the strong points of this report, is
3 that it's an objective report.
4 It raises a lot of questions and makes us
5 rethink the way -- or at least as anthropologists and
6 archeologists rethink the way that history has been
7 written.

8 He also talks about the group dynamics and
9 from what they were at the 20th Century, and I kind of
10 alluded a little bit to what they are today.
11 Basically four main groups at the
12 beginning of the 20th Century; the Chemehuevi, the
13 Kawaiisu, Serrano and Mohave. As we know today there
14 are many different tribes and federally recognized,
15 there's Paiute, Shoshone, Chemehuevi, Kawaiisu, many of
16 you are represented today, but if you can -- a little
17 over a hundred years ago there were four main groups,
18 and now we have many more than that.
19 The politics have changed, these cultures
20 are vibrant and very dynamic and very real today, as we
21 all know.
22 Again, this is a list of the tribes that
23 Ft. Irwin consults with.
24 Again, it's not -- it's not a final list,
25 it's not an exclusive list.

0035

1 We want to be inclusive, in fact, just
2 about a month or two ago we heard about the Bishop
3 Paiute, and he wanted to make sure they were at this
4 meeting and here at the table to hear what they had to
5 say.
6 But these are the 14 tribes that we are
7 actively consulting with now.
8 Yes, sir?
9 MR. TITO SMITH: The Kawaiisu is not a
10 federally recognized tribe. They are a tribe of
11 existence, a group living in Bakersfield-Tehachapi
12 area. They do have a chairman.
13 Did you make contact with them?
14 MR. BRITT: We've had contact -- Darrell
15 has had contact with them in the past.
16 We -- our relationship with non-federally
17 -- Well, on behalf of Ft. Irwin, as a Department of
18 Defense agency, the relationships you have with
19 federally recognized tribes and those that are
20 non-federally recognized is quite different, and to
21 invite a non-federally recognized tribe here, and I know
22 this can be interpreted many different ways, could be
23 viewed as unfair to basically bring a state recognized
24 tribe up to the same status as a federally recognized
25 tribe, and we wanted -- we want to consult with them,
0036
1 don't get me wrong, but we want to make sure that it's
2 fair and we're doing it within the laws that we have to
3 follow.
4 It's not to say we're not going to consult
5 with them or that we will not consider all of their
6 wishes.
7 It's just that it's done at a different
8 level.
9 I hope I made myself clear. We don't want
to discriminate, but we also want to be extremely fair
in the way that we consult on a nation to nation level,
and the federal -- basically the US government does not
recognize that as a -- as the same needs the definition
of a tribe as the legal definition.
15 MR. TITO SMITH: The fact that they give
16 meals on the 1934 act, a lot of us -- to us they're
recognized people. They still exist, they still have --
18 You know -- there's five people in their tribe that
19 still speak the language, but they are people.
20 MR. BRITT: We realize that.
21 MR. TITO SMITH: They are people and
22 they're within their area, we know the Kawaiisu are in
23 that area, and to be left out is to me --
24 MR. BRITT: They're not being left out,
25 don't get me wrong, they're not being left out, we are

0037

1 just negotiating on a nation to nation level
2 MR. TITO SMITH: They do nation to
3 nation, they just refused to organize under the United
4 States system. They're recognized by us, recognized by
5 them
6 MR. BRITT: We understand that, but the
7 laws don't allow us to -- the government to recognize
8 them on a nation to nation level.
9 They don't meet the criteria, it's not my
decision, it's what the law says and that's what we have
10 to do, as you know.
11 MR. CHAVEZ: You know who makes the law
12 MR. TITO SMITH: We recognize Kawaiisu
13 people
14 MR. BRITT: We understand that we
15 recognize them as well, they're just a little strong,
16 they refused to knuckle under
17 MR. TITO SMITH: They refused to buckle
18 under.
19 MR. BRITT: We respect them for that. We
20 also have to follow the law. We can't make special
21 exceptions that would be unfair to you, to every other
22 tribe in this room if we brought them up to the same
23 status. Our government won't allow us to do that.
25 That's the bottom line

0038

1 MR. GUNDRUM: We talked previously about
2 the situation and one way that can be sort of
3 circumvented or reconciled, is to have one of the
4 federally-recognized tribes basically sponsor them at a
5 meeting
6 MR. BRITT: Sure.
7 MR. GUNDRUM: And if anybody's willing to
8 do that I think on Ft. Irwin's behalf I don't think we
9 would have any problems interacting with Kawaiisu on a
Our hands are tied, and we hope that you can appreciate or at least understand it, but we do, we do make efforts along different lines of communication to get their -- We treat them -- I hate this term -- but as other interested parties.

MR. TITO SMITH: I've got a question on that. If they're not recognized by the United States Government, how did they get there? Were they there when the government was negotiating?

MR. BRITT: I don't know.

MR. TITO SMITH: Then you have to do your homework. I mean some tribes are recognized.

MR. BRITT: Sure.

MR. DONALD SMITH: Some are organized.

You got to be organized to be recognized by the United States government.

MR. BRITT: Sure.

MR. BINTER: If you look back in history we'll remember the non-Indian person, there was no question, wars and stuff, nameless and homeless, look at Vietnam; left a lot of Vietnam, American -- that --

MR. DONALD SMITH: World War II, a lot of displaced people there.

MR. BINTER: That's exactly where we're at again.

MR. DONALD SMITH: They're recognized, they had to get citizenship somewhere.

MR. GUNDRUN: I think even on some of these non-federally recognized tribes, we addressed those and we have certain current addresses listed for some of these tribes, and it's just a matter of figuring out the process of how we need to deal with them on a federal level, and there's ways to work that out, and that certainly can be done.

They can be sponsored, we can invite them in to the NEPA process, the interested parties group, there's lots of ways to get them involved in the process.

MR. TITO SMITH: Thank you.

MR. DONALD SMITH: We're interested in hearing the voices of all of the people who have a constituent interest in what's going on.
on at Ft. Irwin

MR. CHAD SMITH: The Air Force at Nellis has the Pahrump tribe, which is not federally recognized as an equal partner at the table.

The federally recognized tribes in the Native American program involvement, and it’s really sad the way some of these California tribes weren’t federally recognized in treaties that were signed, not put in the false bottom of a statue in the basement of a capitol building and never ratified by the senate. And I mean in some situations under NAGPRA, under the repatriation law, some of the tribes that are federally recognized that have partnered with tribes that are non-federally recognized tribes at a higher level, whether it’s above the minimum involvement, to where for all practical purposes they can be recognized by DOD with a place at the table and full involvement the same as the other tribes, because it doesn’t really get into things that the Interior deals with.

And then you have the difference between state recognized and federally recognized, and to the extent that SEQA comes into play on the installations, often it will be an environmental under the National Environmental Policy Act where a state or Indian tribe has more stringent regulations on the lands within that overall jurisdiction, the federal government including DOD goes with the highest common denominator, not the lowest common denominator.

So I think that it will work, and again you go with Nellis as the model, it works there and nobody is, including their Solicitor or Adjutant General office has raised the issue but we won’t include Pahrump. Because it’s one of the main drivers of the program.

And so it works.

MR. GUNDRUM: I think this is, you know, where we would ask for your assistance, if you can give us the correct contact, personnel for the tribal leaders and numbers, we could certainly do that, and I think we can all agree that the Kawaiisu are one of the major groups, particularly in the Ft. Irwin area.

MR. BRITT: No doubt.

MR. GUNDRUM: And they would even argue and they might be correct, that they were federally recognized.

I think that would be the Kawaiisu decision, is that they probably feel that they were federally recognized at one time and that information has simply been lost.

And I think we can all agree that it’s sort of a crazy system how tribes become federally recognized, and some are not federally recognized.

MR. HORALEK: Let me clarify, Chad, you reminded me.

There is one limited time when that federal recognition does come into play for us, and you mentioned it, that’s when you have a NAGPRA issue.

We’re only authorized to deal with recognized tribes to try to resolve how those remains should be turned over and to whom.

That’s why I was thinking yesterday if we can get a tribal group together organized under our agreement where they will make that decision amongst themselves, they will certainly have the right to recognize these other so far not-recognized federal tribes and deal with that.

We’re not interested in keeping remains and creating museums or doing anything. We want them to go to the right people.

But we can’t take that liability of bringing in non-federally recognized to make that decision; but we can work with agreements where you can.

MR. BRITT: Thank you all.

What I’d like to do now is bring you up to status on consultations between Ft. Irwin and nation-to-nation since, it’s basically been going on since the year 2000.

Some additional efforts were done back in the late ’90’s but it’s actively consistently been pursued since 2000.

We’re currently consulting with 14 federally recognized tribes. The tribes who have responded of those 14 or who have expressed an interest in consulting to date include the Timbisha Shoshone, the Ft. Mojave, Moapa Paiute, San Manuel Band of Mission Indians, Colorado Indians, Chemehuevi, Las Vegas Paiute and Kaibab.

MR. RAY: “Kaibab.”

MR. BRITT: Excuse me. “Kaibab.”

Thank you.

So we’ve got a little over half, half of the tribes responding back, but that doesn’t mean that we don’t send, call -- send all information, all of the information that you’ll get today, the same information was sent to these other tribes; for some reason they weren’t able to attend.

I understand that -- they may have had other things that were more important, that’s certainly -- We respect them, but we also want to make sure they’re not left out of the consulting process.

In this study that David Earle, he contacted all of the tribes and found and we’re basically asking them “Are you aware of any village where we would consider positively working with those locations and other things in them, and I’m sure that you might receive some without site copies of reports.

We don’t send, call -- send all information, all of the information that you’ll get today, the same information was sent to these other tribes; for some reason they weren’t able to attend.

I understand that -- they may have had other things that were more important, that’s certainly -- We respect them, but we also want to make sure they’re not left out of the consulting process.

In this study that David Earle, he contacted all of the tribes and found and we’re basically asking them “Are you aware of any village
sites, are you aware of any sacred places?"
11 know it's been a long time since you've
12 had access to Ft. Irwin, but can you share with us any
13 information that you hold that's culturally significant
14 about Ft. Irwin from your tribe with us?
15 We basically have heard back from the
16 Timbisha and the Mojave, and some of the sacred places
17 that they did acknowledge that they weren't aware at
18 this time, and that's important to remember, because not
19 everybody was consulted, there may be elders in the
20 tribe that have knowledge or information or stories,
21 recollections about parts or components of Ft. Irwin.
22 The important thing is to note at this
23 time we have no indication that the Timbisha or the
24 Mojave have any specific village site areas there.
25
26 MR. CHAD SMITH: Well --
27 MR. BRITT: We're not saying they aren't
28 out there. Don't get me wrong
29 MR. CHAD SMITH: There are numerous
30 places on the installation that are known and named in
31 the culture and the importance in the culture and many
32 of them are archeological sites like the lithic sites.
33 MR. BRITT: Sure.
34 MR. CHAD SMITH: The lakes themselves
35 being said to have been full of water and fish with
36 villages alongside the lakes, and travel in the lakes
37 and the river by canoe.
38 And as times have changed, we've seen many
39 letters from many agencies that are the standard
40 consultation letter that we're having such an such an
41 archeological survey done at such and such an area, if
42 your tribe knows of any important traditional cultural
43 places, sacred sites or other -- has other concerns,
44 please let us know and communicate this information to
45 us, many of us have a policy like at Nellis as well, 0049
46 that these ethnographic investigations have to have the
47 active involvement of knowledgeable tribal members as
48 consultants, and all -- much of the cultural offices do
49 is facilitate the people with the knowledge to
50 participate in the ethnographic studies.
51 But something we've come up against in the
52 past is where the information is requested, and it's not
53 on the reservation, it's not an activity of the tribe
54 that generates the need for this information because of
55 the Section 106 project, or Section 110 project, and we
56 require arrangements for adequate compensation for the
57 time and effort involved of the knowledgeable tribal
58 members who are mostly tribal elders to participate in
59 the process, and that doesn't come cheap.
60 The going rate amongst many tribes is
61 around $50 an hour for those with the knowledge to go to
62 the area, to look at the place, the area of potential
63 effect of the undertaking, and apart from studying maps
64 and reports with the people in the tribal cultural
65 offices, it really puts it together to be at the place,
66 and then the old songs come back and there's keys in the
67 landscape as to where the place is in relation to the
68 proposed undertaking.

20050  And as the chairperson of the Camp Verdi,
20 Apache Yavapai Nation expressed to S W C A archeological
21 consultants, and at that time, fortunately for us, the
22 owner of the company, Steven W Carruthers, had been a
23 roommate of Vincent Randall back in the '60's at the
24 University of Arizona.
25 And he said, "Steve, your company and
26 these federal agencies pay somebody with a degree that
27 has the specialized knowledge, skills and abilities to
28 come out and do the pollen study, or the
29 geomorphological study or the geology study or hydrology
30 study, and no one else in the world has this special
31 knowledge but mostly these tribal elders.
32 And we've heard from some of these federal
33 agencies, "Well, we can't pay for information," and it's
34 not the information that they're paying for, they're
35 compensating these people adequately for their time and
36 effort to participate in the process, and respecting
37 them as consultants on the same level with other fields
38 that have this special knowledge that they've acquired
39 in the non-Indian university system through the western
40 way of learning, which can never approach the knowledge
41 that many of these Indian people have, and so I think
42 it's really key.
43 And not having read David Earle's report
44 yet, I'm sure that we'll have extensive comments and
45 probably recommend such things as further contacts with
46 knowledgeable Ft. Mojave tribal members through our
47 office.
48 MR. BRITT: Sure.
49 MR. CHAD SMITH: And field visits with
50 them
51 MR. BRITT: Sure.
52 MR. CHAD SMITH: And sometimes the
53 information given in these in-field interviews and
54 office interviews is, "Yes, there's something important
55 out there, and I can't tell you anything more about
56 it."
57 MR. BRITT: We understand that and
58 respect that
59 MR. CHAD SMITH: And other times it can
60 be that there's -- like on Kern River pipeline over
61 there by Yermo.
62 There's these important trails and
63 intaglios, and other special places, important in Mohave
64 culture that weren't right within the right-of-way of
65 where the pipeline was going to go, and not even where
66 they were blading, but the viewshed aspect comes into
67 play, some of them you could throw a rock from the
68 right-of-way and it would land at the important cultural
69 site.
70 And we had to refer to "Well, between
71 station such and such and such within that
72 square mile, within a quarter of a mile on the south
73 side or the north side there's this important cultural
74 place," and it all sort of came together out there at
75 the one big -- all lithic quarrying, lithic manufacture

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6 sites on the powerline that actually has the basalt of the hill, the butte that is the Whale, that's got 7 numerous petroglyph locations on the fort, but yet off the fort it doesn't. 8 It just catches about a couple hundred feet of that basalt at the very southern end of the land 9 form itself. 10 And that study for that Kern River pipeline didn't even consider that, and so it was dozed through and trenched through and, of course, in Kern River One, back in I believe the 80's. 11 So when the expansion came through it had to be brought to their attention that "You're going right through a sacred site," and it is previously disturbed and never should have been. 12 And again this is -- with those things there's some innovative ways that they could have put a dogleg in the line, or drilled under it, but there's only like 75 feet east-west by a couple hundred more south, so they could have bored under it, which still would have been an impact. 13 MR. BRITT: You're bringing up a good point. 14 MR. CHAD SMITH: But a lot of the information has not been gathered yet. 15 MR. BRITT: You're bringing up a good point. 16 It's about planning. This whole 106 process is intended to be a proactive planning tool so that you can minimize, you can identify and then minimize or mitigate impacts, and that's a wonderful point, and again, that's what Ft. Irwin is trying to do. 17 And again this is -- this is -- it's not a required, it's not a 106 or 110 required. It's Ft. Irwin wanted to learn more about where to start with consultation, and this is what we call our baseline study. 18 It's not meant to be inclusive, it's meant to be a starting point. It's meant to elicit comments, and we'd love to work with each of the tribes to learn more about and share information. It's a -- You know -- it's a two-way street here. 19 MR. CHAD SMITH: Would there be consideration of a more land expansion specific ethnographic study involving -- I hate to say hands-on, but active participation, like there is at Nellis, with some of these -- with all of these tribes? 20 MR. BRITT: Certainly, I don't see any reason why that couldn't be considered. 21 MR. BARI: See, what the Army's policies are and we would have to call -- also our main goal is, as Col. Flinn says, that training the troops is our mission and to meet that requirement we go through all of these requirements and all that are required and the laws, and also if there are minimum, we try to go above and beyond minimum requirements and we will keep on doing that, but we will -- if we are going by some resolution of the laws which we cannot I think violate then we will certainly consult with you guys, and all the tribes and everybody, but to make a certain decision that we need to involve activity, and personnel in that -- in the investigations in these things, we certainly will consult with all of them, we will go from there. 22 MR. BRITT: Go ahead. 23 MR. DONALD SMITH: The problem is that putting the input in here, you know you guys took us off those areas in 1860, you know, put us down in Ft. Mojave, down in Sherman. I mean we don't -- then down to Parker.

Appendix H
have to move out, so this is what happened.

We come to Lake Havasu a lot of our people
settled in there, some of them didn’t, and just a few
short lightyears later they decide in Los Angeles and
Phoenix they needed our water, and they condemned our
reservation.

So our people went out, they went to the
cities, and they assimilated like the government wants
us to.

They send our parents to school to get
educated, but ours was a forced assimilation, by
condemning our reservation, what you have now are a lot
of our people who grew up in the cities are coming back
to the reservation, and they don’t know their culture.

They don’t know their religion, our people’s religion.

They accept christianity, but they don’t know our
people’s religion. They don’t know how to speak the
language.

So we’re trying to bring that back, and
some of these areas like Ft. Irwin, we know what the
story is about, we’ve never been there, but so anything
getting taken away, we need to have it recorded, but
they were forced as a assimilation, by
condemning our reservation, what you have now are a lot
of our people who grew up in the cities are coming back
to the reservation, and they don’t know their culture.

They don’t know their religion, our people’s religion.

They accept christianity, but they don’t know our
people’s religion. They don’t know how to speak the
language.

We could feed the whole world, the United
States, and there’s other people that want this, I know
that we have to protect what we have, there’s always
going to be somebody trying to take what you have, but
before you do all of this, we’re probably going to want
more site visits.

We do have cultural resource people
because we can’t afford to pay people -- it was hard for
me to be here today. I couldn’t be here yesterday.

MR. BRITT: One of the things we
discussed yesterday was organizing a visit to Ft. Irwin
to visit some of the sacred sites, some of the
petroglyphs and we’ll get that organized and make
sure that you’re --

MR. TITO SMITH: we’re losing by force,
we’re losing. Some of us understand, we grew up and we
were told our parents and grandparents drove it home,
but the other ones that got forced out, they have no
idea who they are.

They know they’re Chemeheuvi by blood.

Now they want to come home. We’re bringing them home
and while we’re educating we’re losing valuable
resources.

MR. BRITT: And we do.

MR. RAY: I’d like to comment.

MR. BRITT: Sure.

MR. RAY: He’s saying that we kind of
lost, a year ago I met a Chu Wa’ave from the San
Bernardino area Bloomington. He doesn’t know his roots,
all he remembers is that his grandmother went to Sherman
Institute.

He doesn’t know he’s Chu Wa’ave but he
found a record he comes out and talked to me now and
then actually trying to find out now he’s related to us;
probably, yeah.

A lot of this is trying to say is that
they are lost, and not too long ago, I know Ft. Mojave
knows this too, there was a woman Chu Wa’ave, Paiute
whatever you want to call her, we don’t really know.

There was no type of record of her. She couldn’t get
medical benefits from the Indian Health Services, no
place, no kind of benefits because there’s just no
records.

Ft. Mojave tried to help her, tried to
find out who is she, where is she from, Chu Wa’ave
tribe, tried the same thing, Colorado River tried the
same thing. Who is she? Never did know.

One time I heard an elder lady, says "I
know her, but not by her marriage name," he was married
to a Navajo, so we were going by the Navajo name, we
didn’t know.

So it took her to Las Vegas Paiutes and
from there they sent us to Moapa. This old man, you
probably remember who he is, but I forgot his name, and
asked him "Do you know this woman or do you recognize
this woman?"

"Oh, yeah, I was raised in the same family
in Barstow."

This is what he’s trying to say. We lost
a lot of this. They lost who they are.

MR. BRITT: I understand.

MR. RAY: We’re trying to find out, like
I say Ft. Irwin or anyplace else, things that are not
recorded, not on record

MR. BRITT: Sure.

MR. RAY: These are our family, brothers
right there.

We just heard -- Well, our father and his
brothers, his sisters never tell us about it, you know,
they’re mostly like their past with the grandfather --
who was their father -- our grandfather, never talked
about it.

It took us about twenty years -- twenty
years or longer to find out who he was.

Then we learned that we have a family
cemetery in the desert.

Very scary, the things you’re doing is
digging around these areas trying to find things, this
is not recorded.

The only ones that knows I think is my
brother over here, myself, but we have other relatives
in that same family, big family, they don't even know,
they don't know anything about that part, but this is
what we're trying to grab back.

MR. BRITT: Sure.
MR. RAY: And extend ourselves to where
we were, where we came from.

We have a picture of our home, mud house,
old mud house, an area there, and I think this is some
of the things that we're trying to say, that we're not
-- we're not really from out here.

MR. BRITT: I understand.
MR. RAY: Where they put us.

MR. BRITT: The purpose of this meeting
is to hear this, we want to hear what you have to say.
We also -- because of the way the laws have been written
over the past ten, twelve, fifteen years, we have the
NAGPRA, we have the American Indian Freedom of Religion
Act that obligates the government to allow you access
onto these properties.

I know that no one was allowed out there
for 50 years.

Now the law has been changed, it's trying
to correct some of the wrongs, and what we'd like to do
is organize a trip to visit some of these sites, talk
with your elders, learn more about your culture, share
the knowledge that we have.

And we realize that as archeologists we
cannot go out and identify traditional and cultural
properties.

That's how the predictive model is an
archeological predictive model, it's not a culture site
predictive model. That's why we need the tribal input
to help us identify and manage and protect these
areas.

MR. RAY: Sometimes we have the elders,
they can't travel, you have to go to them
MR. BRITT: Right, I understand that, I
understand that's a big -- a big problem.

Because access, it's rugged terrain, it's
hard to get out there, probably at least an hour and a
half drive to get to the Whale in a Jeep.

MR. BARI: That's why we were talking
about, we have the Programmatic Agreement, it's a
win-win situation for both sides, we provide you
information, you provide us with information and we
compile that and then that makes our mission easy, and
that provides, too, the wealth of knowledge and
information about the sites.

MR. BRITT: So I can finish this slide,
but we do know while there may not be any recorded
village sites, we do know that there are indeed many,
many sacred and traditional properties on Ft. Irwin and
nearby, and we haven't begun to identify them all.

We do know that we have -- that the
Avawatz Mountains are extremely powerful. You have
basalt deposits, also have a big supernatural event
there, Cave Springs, Bitter Springs, the Mohave River
was extremely important to the Mohave people as a
travel corridor.

We also have numerous rock shelters and
petroglyphs, just to name a few.

We've got vision quest sites, a lot of
things that are -- that are places that to the trained
archeologist because there's -- it looks like a natural
place, we cannot identify that, and again that's why we
want to solicit the Native American input to help us
identify and protect these places.

That's it.

We're certainly open for more comments.

MR. CHAVEZ: I have one comment.
MR. BRITT: Sure.
MR. CHAVEZ: It's been bothering me. In
fact, all of my life, why is it that some Native
American people or bands of major tribes are not
recognized by the US government but at the time when
they were trying to exterminate them, they recognized
all tribes, they had them all on the list, the hit list,
but now they don't recognize them?

MR. BRITT: That's a good question, I
can't answer that.

MR. GUNDRUM: A lot of the people --
MR. CHAVEZ: That kind of goes against
what they're saying today, they did recognize it.
MR. BRITT: That's true, but I'm not --
MR. DONALD SMITH: Recognized, but
they're not organized, you know, you've got to get
organized to make a plan.

This is a plan, you always have a Native
organization to make a plan.

MR. CHAVEZ: That kind of goes against
those Indians? What are they?
MR. CHAVEZ: So they're not in existence
or aliens, or what are they?

MR. RAY: They're still aliens.
MR. GUNDRUM: I think we'd all agree
there are a lot of Indian people out there that aren't
part of the federally-recognized tribes

MR. CHAVEZ: I just get tired of hearing
that. Why do they have to be recognized by the US
government?

MR. BRITT: Because the US government,
and, Bob, correct me, there are tribes that are
recognized by the government have special entitlements,
recognition in entitlements

MR. CHAVEZ: We're all the same people
MR. BRITT: I don't -- that's just the
way the legal definitions are. They've been in place
for some time.

And I want to -- You know -- my role here
is to facilitate.
I think the Kickapoo Tribe, and the Fort Mojave Tribe were selected, and there was two tribes from there -- Native Americans. So you recognized everyone. We know who attacked Charleston.

So the Piquat Tribe said they wanted a point. They said, many years, there are several stories, but this is our mountain and we say that we north on a clear day, well, you can see the highest Mountain, or Newberry Mountain, they call it, it's in the State of Nevada, right up here, when you look up.

I don't know how you want to do it is we're going to have our guest, let's take a break and then we'll have our guest give us -- tell us about the Ft. Mojave peoples, and then we'll resume our meeting.

Thank you all. We've got about fifteen, twenty minutes. (Recess.)

Thank you all. We've got about fifteen, twenty minutes.

Mr. Carlton Barrackman and semi-retired former vice chair of the Ft. Mojave tribe, and former chairman many years as well, and Mrs. Betty Barrackman are going to give us some information and show us a brief video that they've prepared about some of the history and culture of the Mojave people, and we extend them our warm welcome, and they'll take it from here.

Mr. Barrackman: My name is Llewellyn Barrackman, a member of the Ft. Mojave Tribe. My wife Betty, a member of the Ft. Mojave tribe also.

We're going to show you about nine hours of tape here.

Mr. Barrackman: No, five minutes, that's all. I don't know how you want to do this.

This is -- we were asked by the Piquat Tribe in the late 1990's, and we went up to our culture sacred Mountain there, Avi K'wayne, or Spirit Mountain, or Newberry Mountain, they call it, it's in the State of Nevada, right up here, when you look up north on a clear day, well, you can see the highest point. This is our mountain and we say that we are told, many years, there are several stories, but what I get is that I was told that we were created from that area.

So the Piquat Tribe said they wanted a tribe that was their creations, so we were picked as one of the five.

There were five tribes in the United States that were selected, and there was two tribes from New York, one themselves, the Piquat, one from Oklahoma, I think the Kickapoo Tribe, and the Fort Mojave Tribe for the Southwest.

So this will show about two days of work cut down to five minutes. Okay. This tells a lot of story, it's very short.

(Videotape played)

BETTY BARRACKMAN: I had to sing that song nine times before they were satisfied.

MR. BARRACKMAN: That's it.

( Applause)

MR. BARRACKMAN: That tells us about Mojave, our Mojave. M-o-j-a-v-e.

Yes, we were taught, we were told that God gave us our language, from the area, told us how to live, what to use, in it's hot, where to go under the shade when it's hot, where to go, when it's cold put something over ourselves, and he asked names, some of the area on the east side of the river and the west side of the river.

This is some of the map that I made here, a cultural map, we call it, I and Betty, we made this, and this has been in courts already because of this blue thing coming down, the water, today. Not oil, not gas, but water.

I remember reading a letter that was written way back in 1862 by a person by the name of Colonel Hoffman who was stationed over here at Ft. Mojave Post, a garrison they had here years ago.

In parts he said, "This land is worthless, bare land, nothing here to think about coming in this area," I guess but it's good for the hostile Indians, which is the Mojaves, whoever lived around here at that time.

But today this thing is better than gold or oil. We need water, always, and the reason why I had this put together, and I try to have our neighboring tribes along the river, that's four of our type besides us, there are five of us, including us, to put something together and take it all of the way down to the Mexican border, but no one has done it yet.

But I did that because we needed that. Some day we're going to use it, which we did use it.

In time immemorial days, I guess we numbered many, many thousands of us. It was so crowded in this area because in those days lands wasn't up here, so when the river flooded the snow melt up above us and came down, it just engulfed land and trees, whatever, but it settled on the east side of the reservation, which is Arizona, it was all under water, so that didn't give us any kind of a vacant -- to settle in that area, I guess.

For that reason, well, some of us had to move.

When we moved out of here we went west, we went west. I don't know how many of us, but nobody knows.

We settled -- when we got to what we call Barstow, California today, the Mojave River, that's where we settled.

There were other people there, the Serrano.
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That, just using this map.

This map up and said, "This is the oldest map now."

Instead of just getting a group of us

together and just walking, we started a song, a song

from the mountain called Elephant Mountain. Elephant

1. Mountain I think is right next to Daggett, California,
2. between Barstow -- and they sang song, four songs on top
3. of that mountain coming this way.

That's what you hear from her, that's her

song. We call it the Monk 'a Maya Coyote song, we call

it today, Mojaves, and that's still going on. It was

gone for about thirty, forty years, and all at once she

learned it from her mother as a child.

Now, she's teaching that song, it's been

revived, so it's been sung again, that song, so we told

back and forth.

What they also told us, that from the

river center of the going west into the San Gabriel area

we own up to the San Jacinto Mountains, and going

eastward, we go to the Hasyampa River, which is the area

of Wickenberg, Arizona.

We say we own 60 million acres there, but

somehow they said, the federal government said "No, you

don't own that much, you own at least a million five

hundred acres," so we came back, and the claims, we

claimed a million and a half.

But to this day it's dwindled down to

24,500 acres in three states, California, Arizona and

24 Nevada.

We call ourselves Day One. Day One Tribe.

1. When you pick up the book of Native
2. Americans, they say, "Well, all Native Americans crossed
3. the Bering Straits, from Hawaii, or Mongolia or other
4. areas and come into this area," but we, the Mojaves, Day
5. One, we were created right here, this great mountain,
6. that's the reason why we named all of this area here.

But I urge some of the tribes here, if you

know your area, put something together like this because

you're going to need it one day, this has to go to court

some day and it makes it much easier to do that, to have

a map of your own to show where you come from, because

we had to go against the State of California, there's

one area that we got in here, in -- it started around
1960's, and then we went to court in 1971 in Riverside,

a hearing, a federal hearing, and that's when I made

this on the California side only because we weren't

ready for this yet, but from the California side.

California came in with a map, a Mexico

map, and they said "Well, this is the oldest map in this

room, nothing older." Ours is older.

So I had this in my hand about two or

three days later, well, our turn came up. So we put

this map up and said, "This is the oldest map now."

And we won our case. We won our case on

that, just using this map.

0073

1. But you know, I'm 85 years old. My
2. birthday is July the 4th, July Explosive person, I
3. guess.

(Laughter)

MR. BARRACKMAN: But when I came in this

area from getting off the military, came back to the

reservation in 1958, we hardly had anything, the tribe

didn't have nothing at all.

It was more like begging and begging and

begging, all the time, and at that time -- Well, before

that it was a novice to be taken over to Colorado in the

reservation, CRIT reservation, and whatever we tried to

do here, to develop, the federal government says "No,

no. Cut this down," until one day there was five --

we had three areas on -- to police, one was this area,

and this is the Bureau -- it's not federal, it's the

Bureau of Indian Affairs that I'm talking about.

They didn't tell us how -- what steps to

follow to get this thing going and all that, we had

people from Palm Springs that wanted to lease the land,

we had some from Chicago, we had some from different

areas, I think about four or five prospective lessees,

and they had good leases and all that, we thought, and

then we selected one.

We took that to Washington D.C. There had

0074

1. to be -- the only thing that we didn't have was
2. long-term build with it, only had twenty-five year
3. leases at that time. It was an agricultural lease. And
4. then we found out that we had to have 99, or more than
5. twenty-five years, so if you're going to put a lot of
6. money into a land, well, you're going to have to get
7. years of time so that you can get your money back, which
8. we didn't know because nobody had told us. We didn't
9. have enough money to buy -- I mean get a -- hire an
10. attorney for it or anything.
11. But anyway, the congressman from
12. California by the name of Harry Shepard was the insular
13. chairman of Indian Affairs.
14. He said, "I'll put that together for you,
15. and it's going to be approved."
16. So the next day, I guess, when they went
17. -- we all didn't go, I was in the council then, I just
18. started, then, but there was a chairperson by the name
19. of Francis Dillman and Mr. Clark Lewis, they are not
20. with us any more, but these two were sent ahead, and one
21. had a pass, the chairperson, she can go from Needles to
22. Chicago only, that's it.
23. From there on, well, she's going to have
24. to thumb her way or what.
25. Mr. Lewis didn't have nothing so the City

0075

1. of Needles pooled their money together and gave him some
2. money to be there and return, and Francis Dillman also
3. was given money from Chicago to Washington and back to
4. Chicago, and then use her pass back again.
5. And this highway got going, and when that
6. was approved, the 99 year lease approved, it was a house
7. resolution 2635 that was approved. That's our own,
16  Okay, well, nice to have you all here.
17         (Applause)
18  MR. BRITT:  I would like to add,
19  Mrs. Barrackman made a lot of the displays, and
20  contributed the displays and the Native American photos
21  here.  I encourage you to ask them while they're here,
22  if you have any questions about any of the items or
23  pictures.
24  I think what we'll do is we're -- it's 11
25  twenty-five, we'll just -- we're supposed to break at
26  11:30 for lunch.  Have we heard from -- lunch is in
27  here.
28  MR. BARRACKMAN:  By the way, I didn't know
29  there was going to be so many of you here, I didn't
30  bring enough maps.  I only brought about ten, but if you
31  need a copy, or want one, leave your address and we'll
32  send one.
33  MR. BRITT:  Thank you both again.  We
34  really do appreciate it.  There's a lot of insight into
35  the cause.
36  We've got thirty more minutes, so if it's
37  okay with everybody I will continue.
38  And we'll talk about a couple of the
39  projects that we've got either going on, concluding or
40  about to begin.  Give me just a minute here to get this
41  out of the way.
42  At this time I'd like to reintroduce
43  Mr. Mickey Quillman, Natural and Environmental Culture
44  Manager.
45  He's going to give a little background on
46  the fiberoptic network and the rail spur and I'll talk
47  more about the archeology and cultural resources, when
48  he's done.
49  MR. QUILLMAN:  Hi.  I appreciate your
50  attention, and I appreciate your presence here today.
51  As you know, Ft. Irwin is a very, very
52  busy place.  There's a lot of things happening out
53  there.
54  Col. Flinn alluded to the Fiberoptics line
55  earlier this morning, about some of the things that are
56  going to happen in the future with equipment.
57  All of our tanks, for instance, and
58  Humvees are going to have computers in them so we can
59  figure out where they're at.
60  In order for us to provide communications
61  back to the control center, back to the main combat
62  information center, more or less -- that's a Navy term
63  there's a different term for that in the Army -- but
64  back to the Star Wars, whatever you want to call that,
65  all of that information from every vehicle is going to
66  be sent back via fiberoptics.
67  So this little machine, every -- every
68  vehicle, every tank is going to have its computer
69  equipment in it.  It's going to send a radio signal
70  halfway up the mountains, it's going to hit a
71  Fiberoptics node and be sent back to the Star Wars
72  building.
73  What we do now is we have antennas all

Appendix H
Meeting Transcript
Of course, there is the fiberoptic lines Nellis. this project in Las Vegas we just approved one from MS. HERNANDEZ: I said when you're doing Vegas from Nellis -- you're doing a fiberoptic line, we just approved Las project.

MS. HERNANDEZ: I have a question. When of '04, and probably about six months to complete the project.

MR. BRITT: Yes. These are some of the sites that we found along the route, these little numbers, dots here.

As you can see, this doesn't match exactly along the road, but it is -- it's proposed and the alignment itself is actually ten to fifteen meters off the existing road, following existing trails.

We've got these sites and we basically have two clusters, lithic reduction stations, chipping stations. Here's another cluster we see, what's this lake here, Darrell?

MR. GUNDRUN: That would be Nelson lake 0083

MR. BRITT: Nelson Lake, yes. And again, you can see them clustered along there.

The work was supposed to have been concluded yesterday.

Prior to the day before yesterday they had already done the inventory and they knew how many sites they found. They found 37 cultural sites. Of those three were historic or military, the remaining were lithic reduction sites, consisting mainly of chip stone or what archeologists refer to as debitage. The only types of tools that were identified were three hammer stones, three cores and one bi-face.

It's important to note all of these sites were found on desert pavements, had no deposit -- they were systematically shovel tested.

Again, we used the same routine of doing reconnaissance with the geomorphologists and archeologists following back up with the archeological inventory, and then when they came back, then they evaluated the sites by doing systematic shovel testing, and none of these sites appeared to have any characteristics that would qualify them to be historic places.

That's the status as of day before yesterday, and as far as I know it probably will not change.

So our basic report will be coming out, I know your tribes have already been notified by letter that the work will be being done. A report will be issued in about three months; we'll get that out to your tribes for comments and finalize the report again, this is part of the planning process, and as Mickey said, they hope to begin construction next year.

MR. BRITT: Somewhere in the late spring.

MR. GUNDRUN: Okay.

Yes, sir. Mr. Smith?
MR. BRITT: I'll give you --

MR. CHAD SMITH: He's higher up than me.

MR. BRITT: You're going to have archaeologists monitoring the ground disturbance within sight boundaries.

MR. BRITT: No, sir, these sites are recommended.

If they are indeed -- once the process is complete and sites have been evaluated and they're determined insignificant, then no, there will not be any monitoring.

MR. BRITT: I stand corrected, so will you or you will not be monitoring this project?

MR. GUNDRUM: I think it needs -- the project needs to see how the cable is going to be installed in different sections on the project.

MR. GUNDRUM: Let me make a quick correction.

It's our general policy and it's outlined that for ground disturbing projects like this where there is an opportunity to monitor where the machine is laying the cable directly then we do that internally, we have six archaeologists on staff where we monitor those projects.

MR. BRITT: Monitoring would not be a call of duty to identify what's out there.

MR. QUILLMAN: It depends.

MR. BARI: SEQA does not apply.

MR. BRITT: The SEQA -- is that --

MR. CHAD SMITH: To know that they're going through something that's subsurface, then we probably definitely will recommend monitoring.

MR. BRITT: We appreciate your comments.

MR. CHAD SMITH: And Native American monitoring as per SEQA.

MR. BRITT: The SEQA -- is that --

MR. BARI: SEQA does not apply. NEPA applies.

MR. BRITT: We appreciate your comments and we'll certainly take them under consideration.

The nature of this undertaking, and correct me if I'm wrong, but as it was explained to me there's a machine that digs a trench about half a foot wide, lays the pipe, covers it up and just moves along; a 3450 is that correct?

MR. GUNDRUM: You'd have to ask Mickey.

MR. QUILLMAN: It depends.

MR. BRITT: Monitoring would not be a very good approach to doing that.

What we've done to ensure that there are no sites at these locations is the geomorphology, the visual inspections, the subsurface inspections, we feel like we've made a very, you know -- above and beyond the call of duty to identify what's out there. And I believe it's documented in your reports, the exact methods, of course.

MR. GUNDRUM: Let me make a quick correction.

It's our general policy and it's outlined that for ground disturbing projects like this where there is an opportunity to monitor where the machine is laying the cable directly then we do that internally, we have six archaeologists on staff where we monitor those projects.

MR. BRITT: I stand corrected, so will...
So that's some of what we would be looking at. And, of course, it all depends, we may get the report and say "Yeah, they're right."

MR. BRITT: Sure.

But I think both of you gentlemen brought a very good point to the table, that significance is not a static concept. It's a dynamic concept that changes through time.

I agree with you completely, McLewell Warren looked at maybe -- looked at these sites or whoever, twenty years ago, they didn't have the technology that we have today, there are different types of analysis; we can extract a lot more information and use that information for a lot different purposes than we could twenty years ago.

And that's something that we look at every time we do a survey, is we're trying to implement state-of-the-art techniques for extracting information and using that information to interpret the sites.

MR. CHAD SMITH: Another concern that I have is that once the site is determined not to be eligible for the register, any subsequent ground disturbing activity undertaking that comes along can doze right through it.

MR. BRITT: That's the law.

MR. CHAVEZ: I have an addition to that. I agree fully with these gentlemen over here. The situation I have is the subcontractors doing the project, and they are -- they're under contract, right?

MR. BRITT: Yes, sir.

MR. CHAVEZ: There's a lot of time to finish this, right? Of course every contract --

MR. QUILLMAN: Sure, you have a start and end date.

MR. BRITT: A lot of time, I'm sorry.
MR. CHAVEZ: You tell me contractor that is going to hold up the progress of their day-to-day job to finish that, to meet that contract by discovering inadvertently some human remains are culturally sensitive material.

Who is going to report that? Believe me, I've known this from the past by roads being built, by power lines being put in, that they've picked the stuff up and taken it home.

MR. BRITT: Darrell can address this.

MR. CHAVEZ: Right

MR. CHAD SMITH: There's the visual inspection by the monitor to see if ashy soil or artifacts are showing up. There's also the fact that negative information is still information, and if you monitor and nothing turns up, you're still there monitoring, and kind of a third aspect is again, it adequately addresses concerns of the tribes to an acceptable level in this thing, and a group of sites would have impacts to them to the effect that there's an overall impact, an overall adverse effect that isn't being addressed, and at the very least that should be considered to be an indirect effect, a program implemented to address that both ethnographic and monitoring.

And, you know, it's pretty standard off installation, and it's really standard on Nellis and it's standard on China Lake.

And then at the survey side of it, both of the other installations in the general area, not 29 Palms yet, but hopefully soon, have implemented Native American monitoring, which is done on the base, they are assigned a monitor.

And Darrell and his group just spent three weeks solid working with these crews every single day, so there is some oversight at the local level.

Yes, ma'am?

MS. EDNA SMITH: Edna Smith, I'm not an Indian tribe from this area, but I'm married into a family.

But when I was younger the Army Engineers did come in and relocate my family on the Sioux Indian Reservation, and when we were in the process of doing all of the building and so forth my dad, they asked -- the Army engineers asked my father if there was something that he wanted done, they could do something.

So my dad said, "Well, my daughter, that's my daughter, has 160 acres of land up on top with no water," he said, "I want you to build a dam for her," so they built the dam for me.

So with the Mojave and the Chemehuevi's, I don't know if they have a museum at Ft. Mojave, but you're finding all of these artifacts, and I don't know if they have a museum or not. Would you be in a position to build Ft. Mojave a museum and Chemehuevi Tribe a museum?

MR. BRITT: We've definitely seen that orientation among some archeological consultants, on projects to where they go on the side of who signs the paycheck on these things.
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MR. BRITT: I understand, but at this point in time we don't know how to identify a Mojave artifact or a Chemehuevi artifact. That's why we need tribal input to do that.

Can you understand that? We certainly wouldn't want to give artifacts away to a tribe that they didn't belong to.

Many of the artifacts out there, to my knowledge, it would be extremely difficult to assign a cultural affiliation because of a chipped stone or fragment of a mano or metate, that -- they're tools that all of the tribes would have used.

I'm not saying it's impossible, but it would be hard to do. That's a good idea.

MR. CHAD SMITH: Tribes can identify what came from their people by unconventional means.

MR. BRITT: Those would certainly be considered.

MR. CHAD SMITH: And that's where you go, kind of, to under NAGPRA, the oral tradition but at times medicine people of tribes have actually been able to not only identify which tribe it goes to, but what the concerns are of who made the objects or whose remains it is.

And it's universally -- this stuff shouldn't be in here, it should be back where it came out of the ground, and then, of course, there is the possibility of collaborative studies and collaborative ventures in the future.

MR. BRITT: Sure.

MR. CHAD SMITH: And working together.

Nellis, they've done the posters that have actually won at S A A's, at the Society of American Archeologists, meetings, they fund tribal members to attend, and more to the point, they have implemented these ethnohistoric and ethnographic studies done by the Native Americans, but never reached the level of cost of the archeological survey projects that are ongoing either, but of course money -- I don't know what it's about --

MR. BRITT: The big difference is Nellis.

MR. CHAD SMITH: We're nudging 29 Palms in the direction of these more active management issues.

MR. BRITT: We're nudging 29 Palms in the direction of these more active management issues.

MR. BRITT: And I think they're -- I think they're great initiatives, don't get me wrong, I really do, I think the more interaction, the more sharing of information, the better the trust is, and it just builds a better relationship.
MR. BRITT: Basically they can dig that.

MR. CHAVEZ: I know that. The way you
were putting it --

MR. BRITT: You were asking me how they
were going to dig the ditch

MR. CHAVEZ: That's eluding the point

MR. BRITT: Basically they can dig that
ditch anywhere between this point, and 45 meters away,

they may need to move it.

We look at that entire area.

MR. KANE: There's disturbance within an
area you're talking about.

MR. QUILLMAN: Of course, but if you look
at the mission of Ft. Irwin, which is driving tanks on
the ground, there's pretty much disturbance wherever the
slope is less than twenty percent

MR. CHAVEZ: That was my point yesterday.
I believe be when I said to you how many times are you
going to go out and redo the survey, because there's
always going to be ground disturbance, and from what I
got, the feedback I received was "It's already done, we
don't need to do that unless somebody reports
something."

MR. QUILLMAN: We have surveyed. Darrell
told us about thirty percent of the installation has
been completely surveyed.

We concentrated our surveys in areas where
they, where it's relatively flat, so we can -- a large
portion of what we have surveyed is in the actual
training areas.

When you go up above twenty degrees slope
into the hills and things, we haven't done much up there
because the Army doesn't spend much time. There's going
to be less ground disturbance up there.

MR. GUNDRUM: When there's a 106
undertaking like this, portions of the project sometimes
are previously surveyed, portions are not; we generally
resurvey them.

MR. CHAVEZ: Then I guess I was unclear
with your answer yesterday, because, you did at one time
and then --

MR. GUNDRUM: I think I was
misunderstanding your question

MR. CHAVEZ: No, I heard it perfectly

clear. You said that if somebody inadvertently came
across an object, then it would be surveyed.

MR. GUNDRUM: We surveyed thirty percent
of the base, specific 106 undertaking, cable, building a
road or doing something like that, it's our general
policy to survey that area.

But if you have a survey that's been done

twenty years ago just out in the middle of the training
area, then, there's no one undertaking the whole area on
that specific piece of ground.

MR. BRITT: I'll show an example of this
this afternoon that shows an area that has been
previously surveyed, and then how we're going to
actually resurvey that again, because the message twenty
years ago, the techniques are not up to standard on what
Ft. Irwin adheres to today, and I'll illustrate some
ten examples.

MR. CHAVEZ: That's my point, see, since
time how many years has that been?

MR. BRITT: It depends

MR. CHAVEZ: It's been turned, turned,
24 floor back over to Mr. Quillman. He's going to tell us
25 about the proposed rail spur from Yermo to Ft. Irwin,
26 and I'll briefly talk about the planned cultural
27 resource activities, and then we'll open up the floor
28 for discussion.
29 Mickey?
30 MR. QUILLMAN: Thank you.
31 The next project that we want to talk
32 about this afternoon is in fact the rail spur, and let
33 me take a second and explain how this works.
34 We train tank units, battalions, actually,
35 from different parts of the country, so somebody from
36 Ft. Stewart or Ft. Bragg or Ft. Hood in Texas will load
37 up all of their tanks and related vehicles onto a
38 railcar.
39 And currently they rail them from their
40 home station, wherever that might be, to Yermo,
41 California, which is about thirty miles from Ft. Irwin.
42 They then -- and a typical unit will bring
43 about 400 boxcars or 400 train cars from home station to
44 Ft. Irwin.
45 We offload that equipment down there and
46 load it onto trucks.
47 The tracked vehicles are put on heavy
48 equipment transports and taken up 22 miles of dirt road
49 from Yermo up to Ft. Irwin, and the other, the other
50 equipment, the lighter stuff is actually carried up Ft.
51 Irwin.
52 And the short pole in the tent is in fact
53 the actual trucks from Yermo to Ft. Irwin.
54 So what we intend to do is build a rail
55 spur from Yermo near the managed trail and run it up
56 along the Alhorns into Ft. Irwin.
57 That would probably save about two days
58 per rotation, and maybe three, depending on how they
59 configure the rail spur, so what we need to do is go out
60 and do cultural resources surveys on the proposed rail
61 spur up to Ft. Irwin.
62 We have anticipated we will start that
63 rail spur survey sometime next year, spring, summer, I
64 don't anticipate construction to start for another three
65 to four years, it's a very expensive project and it's
66 going to take us a long time to get funding, but you
67 need to plan ahead and we'll go out and get the cultural
68 resources survey started this year and then we expect,
69 or we would like to have your input on what's out there,
70 how we can best deal with the cultural resources issues
71 that I'm sure it's going to impact and go from there,
72 but the intended construction start date will be
73 sometime in -- probably -- gosh, '06, maybe even '07,
74 depending on funding, and with the unrest around the
75 world, it's very difficult to say what our budget is
Basically my training is as a biologist,
Mr. Quillman: Let me jump in here for a
our plans are
Mr. Britt: This is what
Mr. Britt: This is the proposed
Mr. Britt: This is the alignment, there's a big -- it's a marine base, marine
depot there.
Mr. Quillman: Right.
Mr. Britt: This is -- you can actually
Mr. Gundrum: Looks like the areas in
blue -- Yes.
Mr. Britt: Green or blue, this little
loop here, this little loop, this area, and this area,
we propose to resurvey this entire stretch, that's what
our plans are
Mr. Quillman: Let me jump in here for a
second and look at the map.
Basically my training is as a biologist,
but I'm learning about all kinds of stuff here this past
couple of years.
They tell me that a rail -- an engine
pulling 400 cars can't exceed one and a half percent
slope, so as we come up past here we gain elevation to
get over the saddle, but this loop here is needed to
maintain the same kind of elevation up there so we don't
have to have five or six engines pulling with what we
can do with two or three.
So basically that's why the configuration
looks like that.
It's because of the elevation we need to
gain or the one and a half percent slope to go up with a
train.
Mr. Flinn: I note, too, about two-thirds
of the line, proposed line, is off post, private
property.
I think some BLM in there, and then you
will see where it crosses into the post boundary.
Mr. Britt: Right here, this is the
southern edge now
Mr. Quillman: The way they currently
bring equipment from Ft. Irwin, Yermo MCA is down
here, they'll truck this along the frontage road of the
I-15, cross over or go under I-15 and come up the
managed trail, and this is a dirt road, and it is all
from this point here south, it's all desert tortoise
critical habitat, so we have to take all of those issues
in from a tortoise perspective and from an environmental
perspective by eliminating the dirt or dust from this
road, it's going to be an environmental win, the people
out there watching, the watchdogs are basically in
favor of this particular concept, and so we would like
to have your input as well.
Mr. Britt: All told, it's a little over
3,000 acres, the rights of way that we're going to
survey and inventory and evaluate for cultural resources
is thirty miles long and 400 feet wide.
And then additionally there's going to be
a little over a thousand acres up in the staging area.
This work is scheduled to begin in the
middle of this month. We'll inventory and evaluate, and
then, of course, all of the recommendations, the
findings will be disseminated with draft and ultimately
the consultation process and then ultimately the final
report.
Mr. Ray: That critical habitat area,
desert tortoise, how are you protecting that?
Mr. Quillman: As we put the rail spur
together there's going to be a couple of features for
the project.
First of all, there's probably going to
have desert tortoise fence along both sides of the rail
spur.
There will be several areas where we're
going to put an actual desert tortoise crossings, but
there will also be some stream beds that we need to
ford, so build bridges or something like that, so we
don't -- so we can continue the gene flow continuity.
You're not going to fragment the habitat.
MR. BRITT: Questions? Comments?
Yes, sir?
MR. CHAVEZ: How many turtles are around there, do you know?
MR. QUILLMAN: How many desert tortoise are in that area?
MR. CHAVEZ: Per square or whatever.
MR. QUILLMAN: If you look at -- put the map back up, we can give you a ballpark number here. Again, this is the managed trail, all of this critical habitat from here south, all of the way to the I-15.
In this neck of the woods over here and Ft. Irwin road comes kind of up over this way. There are probably twenty to thirty square mile, relatively dense population. Further down here it's probably less than ten square mile. And certainly that number is, the ten per square mile is an average of the Superior, Cronese delima (phonetic) this is a relatively hot spot, and then there's another spot where there's twenty to thirty over here by the Muddy Hills just due north of Barstow.
MR. RAY: Is that a critical area?
MR. QUILLMAN: It's designated as official desert tortoise critical area.
Every five years you're supposed to rewrite your desert tortoise recovery plan, and the Fish and Wildlife is currently doing that, and they could designate the -- they could change the listing status from threatened to endangered, they're considering doing that on the west Mojave.
MR. CHAVEZ: Who determines how many tortoise crossings you need in this area?
MR. GUNDURM: Fish and Wildlife will mandate and they agree with it or disagree, and then they'll come back and say "No, you need more than that." And I've had them tell me we're doing overkill, "We don't need to put that many in there based upon the density of the tortoise." MR. BRITT: They'll actually have a hatchery out there as well.
MR. QUILLMAN: Gosh, it's been ten or eleven years or so now, over on the southeast corner of the installation we initiated a desert tortoise hatching program, and the reason for that was we really didn't know how desert tortoise hatchlings behaved. All of the scientists go out and look, they go out in April and look for these guys as they come out of hibernation. So we put these pens in and the first year the tortoise biologists went out and opened up the pens to see what was out there. These pens are almost an acre, and there's tortoise proof fence around the bottom so nothing can dig in to get the tortoises, chicken wire to keep Ravens out, so.
It's a static area of about an acre, and we got three of those pens out there now.
When they, the biologist, went out there the first spring the tortoises had been moving around for three months because the tortoise, the hatchling is about this big and the surface-to-volume ratio of a tortoise is relatively low when they're little like that, so they can heat up on a warm day in January and cruise around and start eating, whereas the bigger guys, they take a whole lot longer to warm up, so they have to wait until the weather is a lot warmer, so over the past ten years we've released back to the wild about 250 tortoises that we've reared.
MR. QUILLMAN: They're doing well, and we've now expanded this over to Edwards Air Force Base funded by Ft. Irwin because we started this program.
Fish and Wildlife said, "Now you can look someplace else," so we went over to Edwards where there was an area where there was absolutely no tortoises, and we put up mobile pens, so we put gravetini (phonetic) in there, they laid the eggs, and some of the pens we were going to go pull up right after they hatch, some of the pens we were going to leave for a year, and another pen we pulled up after the female laid their eggs, so when the little guys come up out of the ground, they're home, they're hatched, that's where they want to be.
We're looking at that program to increase populations of the tortoise in -- in places where they're gone.
One of the demise of the desert tortoise is there's a disease among the population called the upper respiratory tract disease. It started up way up north in the West Mojave in the Desert Tortoise Management Area, and it's pretty much decimated the Superior -- I mean the Fremont Kramer edwima (phonetic), at least to the north, and eventually Fish and Wildlife will let us take females from over here in Las Vegas, put them in those pens, let them lay eggs, put them back where they came from, you know, Las Vegas has got this tortoise nursery where they build casinos and whatnot, you know, bring tortoises into that place, they'll test them for upper respiratory tract disease, and if they're healthy, they'll relocate them between Jean and Primm on the north side of that freeway, there's a huge area out there where they probably put out 5,000 tortoises in the last ten years. The down side of that is they've also euthanized a number of tortoises in that holding facility in Las Vegas, and we could use those animals as breeding stock for this hatching program because we've proven through research funded by Ft. Irwin that U R T, upper respiratory tract disease is not vertically transmitted, in other words, a female could have R T D and lay perfectly healthy hatchlings, and as long as the hatchlings and adults are separated and they don't rub...
noses, that's how that disease is vectored between them,  
13 it's exchange of bodily fluids, so if you take a  
14 diseased female, she can lay healthy eggs, and we can go  
15 out and repopulate the desert.  
16 We had to do this very slowly to make sure  
17 we don't create something called Typhoid Mary where you  
18 decimate the adult population, but it's based on sound  
19 scientific research, and we're at the leading edge of  
20 doing that.  
21 MR. RAY: It's interesting because I  
22 attended one of those, and they talk about hatchlings,  
23 but they don't know if it would work because when they  
24 put them out -- back out in the desert, they'd have  
25 their own territory area, they don't know what's going  
0122 to happen.  
2 MR. QULLMAN: That's the advantage of  
3 this program here is when you go out and put a female  
4 out there, she lays eggs; now the little guy comes out  
5 of the ground, that's where he was born and that's where  
6 he wants to be and that's where he's going to establish  
7 his territory.  
8 So I think there's nothing but positive  
9 coming out of the territory,  
10 MR. RAY: This guy has studied, do they go  
11 way far back, I don't know, I would say eight years ago,  
12 and they still didn't understand the difficulties.  
13 MR. QULLMAN: We don't, we can't figure  
14 out how to best count them, so there's a whole lot of  
15 difference of opinions, but we're making effort to go  
16 out and help in the recovery  
17 MR. BRITT: Thank you, Mickey  
18 MR. QULLMAN: Thank you  
19 MR. BRITT: At this time the floor is  
20 open for discussion on any topic, almost any topic you'd  
21 like to talk about. I've got to qualify that.  
22 Do you have any questions, concerns or  
23 comments? We'd love to hear them.  
24 MR. CHAVEZ: This is your second draft?  
25 Or is this the first?  
0123  
1 MR. BRITT: What are you asking?  
2 MR. CHAVEZ: This one, are we supposed to  
3 comment back on this, review it?  
4 MR. BRITT: Yes, sir.  
5 MR. CHAVEZ: Come back with our comments?  
6 I mean is there a deadline on this.  
7 MR. BRITT: We'd like to get your  
8 comments, you know, as soon as possible.  
9 It's not -- it's not a requirement that we  
10 did this study.  
11 Ft. Irwin took this study on so that they  
12 could better manage their resources.  
13 The problem is it's a contracted study,  
14 and eventually I've got to pay these people and we've  
15 got to get the report finalized.  
16 What I've discussed doing is at some point  
17 in the future we will finalize it, but that doesn't mean  
18 it's going to be a static document.  
19 We'll probably do annual updates to this  
20 report; we'll probably do further ethnographic studies  
21 with each tribe, so this is really a baseline study.  
22 It's mainly provided for your information.  
23 We'd love to have your comments on it. I  
24 don't want to give you a definite date, but eventually I  
25 have a contract, I have to fulfill my obligations, but  
0124  
1 that will not foreclose on your opportunity to add  
2 comments, just put in a later edition.  
3 Well, I know if Chad was here he would  
4 have something to say  
5 MR. KANE: I don't want to start a big  
6 argument  
7 MR. BRITT: You don't think Chad would  
8 have things to say?  
9 We truly value everybody's opinion. We  
10 understand we don't see eye to eye, but that's the  
11 purpose of these meetings. My job is a moderator. I  
12 don't work at Ft. Irwin. I'm a facilitator and  
13 moderator; my job is to help them understand your  
14 perspective as well as, you know, understand their  
15 perspective as well, so that's my role in all of this.  
16 MR. RAY: I understand -- I'll just put  
17 it in words about the eligible artifact, stuff like that  
18 MR. BRITT: Yes  
19 MR. RAY: Is -- one comes to me, in my  
20 mind, anyhow, to me I think anybody -- nobody would  
21 think are in fact, the shell of the desert tortoise.  
22 MR. BRITT: The shell of a desert  
23 tortoise.  
24 MR. RAY: If they're trying to find out  
25 who lives in the area, Ft. Irwin that's what they're  
0125  
1 familiar with because that would be thrown away because  
2 it's not in evidence that it was there.  
3 MR. BRITT: Right.  
4 That's a big dilemma that archeologists  
5 have to deal with, is 90 percent of the material that  
6 they use, skins, rope, twine, clothes, you know, all of  
7 that's gone, it's perished.  
8 It's the rocks and the fired ceramics and  
9 petroglyphs, rock chips. Very little of the material  
10 culture from the prehistoric peoples is left today, and  
11 we're trying to put together those pieces of the puzzle  
12 to better understand the past.  
13 And, you know, significance is indeed a  
14 dynamic concept, it's not what they said on this day,  
15 therefore, it's always going to be. This is what is  
16 significant or not, because it changes and we share and  
17 change information.  
18 Their interpretation of what we need to  
19 protect at Ft. Irwin is certainly going to change, and  
20 that's the big thing I want to make a point of here is  
21 if we don't know what's important or what types of  
22 resources are important, we can't effectively manage  
23 them.  
24 MR. RAY: It's interesting, we talked  
25 about the desert tortoise. I know if there's some  
0126  
1 there, if there was a lot of them, I know who lived
Elders are getting old, you know. In fact, we have to continue to take from the Indians, and never give anything back for their experience? You know, that's worth a lot of money, you know, and like somebody made mention that our elders are getting old, you know. In fact, we have to pay someone to drive them down here, and that's coming out of their own pocket to have extra, because we don't have, you know, that person here at the meetings. But that was our point, and we expressed a long time ago at the meeting, almost a year ago to date. We were saying that we as archeologists know about archeology, and to be perfectly honest with you I heard a different set of facts at that time from what we've learned this time, and those set of facts are significantly different from our viewpoint and what we learned last year. And I think that's the resentment I feel, you know, because you're going to put us in this big book and everything you put in here other than paying for my -- which was a beautiful luncheon -- will go into this book, and it may go into the archives in Washington D.C. You know, and they'll say, "Hey, we pulled another fast one over those Indians, we didn't pay them again, look what they gave us," you know, and I think that's the feeling, we do every time, because we know everyone else is getting paid except us. This lady had to take time off from her work to come down here. I've got to pay her for that time she's down here. You guys should be paying her. You know, and that's what I feel, you know, I mean. Myself, I'm on a salary, no big deal.

MR. HOARALEK: Obviously, if I can add a little light to that, I was at the meeting last year, and to be perfectly honest with you I heard a different set of facts at that time from what we've learned this time, and those set of facts are significantly different from our viewpoint and what we may be able to do going down the line. Last year the primary concern that I was hearing at that time was we were asking you to look at a lot of the documents that we have sent out to you for consultation, and asking you for your comments and responses, and we basically said we couldn't pay you for that, and that was still true then, and it's still true now. And let me explain that there is a limitation on these two issues. When we are doing a MICA process and that's really what the land expansion the cultural resource documentation and so forth issues are, we are required by law to go out to all of you and give you an opportunity to comment. There's no requirement that you do so, nor is there a requirement for us to get comments from you if you don't feel like it.

And so that, because of the nature of that process, we can't compensate you. It's just simply giving you that opportunity. But we've talked about two things in the last day or so that are significantly different from that. One particularly with the study that they...
presented you with, where we're trying to put together
your history so that we can have a better cultural
resources program, the idea of being able to come out to
your tribes and ask you to be consultants on helping us
gather the most accurate history there possible, I believe
is in fact compensatable and we can probably work that,
that shouldn't be difficult.
0131
1 MR. KANE: Also, we aren't taking from
2 you in that regard without getting anything back.
3 If we're in fact able at the end of that
4 process to give you a document and ourselves a document
5 that very accurately describes your people's history,
6 and all of the information that concerns that history in
7 this area, like the map that you're looking at there,
8 that will be extremely beneficial to you for a number of
9 other purposes, so you will get something besides what
10 I'm talking about, being able compensate you to help
11 us put that together to where we both get a benefit from
12 it.
13 MR. KANE: And that's a classic example,
14 you know, that's a classic example, you know, the
gentleman, he did it himself, he handed it to you, it
15 didn't cost you a penny to get that thing, but it will
16 become part of your informational.
17 MR. HORALEK: Absolutely. As I say,
18 walking into federal court, which I've done many
19 times --
20 MR. KANE: I would keep it for myself and
21 say "Until you pay me you're not getting it."
22 MR. HORALEK: Bear in mind, as I say,
23 having said -- having spent a lot of time in federal
court, if you ever happen to be in that federal court
24 again on issues like this, and you have this book that
25 we have both put together and worked on as a very
accurate document, and the first thing that it says on
the top of it is that it's a federal document, that's
0132
1 going to carry an awful lot of weight for you.
2 So there is a benefit for you.
3 MR. KANE: You've talked about being in
4 federal court, you know, I've been an Indian all my
5 life, and I know what it's like to be an Indian to know
6 it's been taken to the cleaners.
7 MR. KANE: You've talked about being in
8 federal court, you know, I've been an Indian all my
9 life, and I know what it's like to be an Indian to know
10 it's been taken to the cleaners.
11 So, you know, don't give me anything like
12 that. The other -- if it's a question of money, I'll
13 tell these two people "Don't submit your darn billing
14 because the Army can't afford it."
15 MR. HORALEK: There are days when that's
16 true.
17 (Laughter)
18 MR. KANE: If that's the problem, but I'm
19 just speaking because it seemed like, you know, we're
20 talking about the same thing we talked about last year,
21 that we were going to look into the issue.
22 MR. HORALEK: That's what I'm saying,
23 actually they are different.
24 MR. KANE: What were the results?
25 MR. HORALEK: I still can't pay you for
0133
1 making comments. I can perhaps, based on what we've
2 discussed in the last two days, be able to come out and
3 pay you when we want to develop history and so forth.
4 MR. KANE: Because we said the same thing
5 last year, we used the example -- the gentleman that was
6 here, what was his name? Chad, said the same thing last
7 year. He brought up the Neils thing, you know, and
8 here we're talking about you say it's different
9 MR. BRITT: That's what -- you're making
10 a good point, if you really want to know what everybody
11 said, look in that report right there, and it will tell
12 you.
13 But the point is, I think Bob is making a
14 good point, is that we can't pay you to review our
15 documents and comment on them.
16 But he thinks it is feasible to pay tribal
17 elders and tribal experts to work with us to develop
18 histories.
19 MR. HORALEK: And we're looking now --
20 based on that --
21 MR. BRITT: To possibly monitor sites on
22 a case-by-case basis.
23 MR. SWAIN: Let the record show again that
24 when you meet again next year they'll say the same
25 thing.
and let Mickey converse with Nellis and let him see how they set up their program.

MR. QUILLMAN: I will get you a response, I will get you a response from what I found at Nellis within 90 days. I will also answer the question as to what we can contract for and what we can't, and I'll put that in writing to you.

MR. DONALD SMITH: What Tito was trying to say, I don't know if he's trying to say this, but he don't trust you guys, and I don't neither, because one time they was having a survey, BLM for a racetrack for Parker, on the California side, and they only found three sites, or three things where archeological -- I went out there within eight miles I found three. And that thing was a forty-mile stretch.

MR. CHAVEZ: Unfortunately people that they found a lot more, and they used someone else. Our mission at Ft. Irwin, it's much better. It's much more cost-effective and planning-effective to know exactly what you got, and that's why they spend probably a lot more money than the BLM does when they're contracting cultural resources, it's not just archeologists, we've got ethnographers, we've got geomorphologists, we've got geographers and some -- and it's a multi-discipline approach, and the bottom line is oftentimes you get what you pay for.

MR. DONALD SMITH: Looks like you were at a library getting all of this, you know, I mean I read some of it.

MR. KANE: You get what you pay for.

MR. DONALD SMITH: I read some of this, I read Garza's Trip From The River, from Yuma down east to Los Angeles, I believe, or Santa Barbara, I forgot which, but that's what you guys got in this report, when you say you -- I always think "Oh, he's in the library, getting these," boy.

MR. CHAVEZ: I'd suggest Mickey get ahold of Richard Arnold, who's been working with Nellis Air Force Base and at the Yucca Mountain test site.

MR. BRITT: Keith Meyer is --

MR. CHAVEZ: Unfortunately people that should be here that was probably not consulted because they're not a recognized tribe, but he's been working closely with all of us out there on the Nellis Air Force Range and knows the working dynamics of this whole project, this whole project from the beginning.

MR. QUILLMAN: What's his name?

MR. CHAVEZ: Richard Arnold

MR. BRITT: Keith Myer is the cultural resource manager at Nellis as well. I can get you his number if you need it.

MR. RAY: He went to a different area

MR. CHAVEZ: Exactly, and I would suggest maybe you might want to meet with him, he works at the Las Vegas Indian Center, and probably take him out with you when you go out there.

MR. QUILLMAN: Okay.

MR. RAY: He wants to be part of this, he's already told me that, just that he has a lot of pertinent information which we're concerned about which he should be at this table today.

MR. TITO SMITH: Kenny said he did, he'll talk with him.

MR. ANDERSON: I'll talk with him.

MR. KANE: But neither one will get paid

MR. BRITT: Everybody wants to get paid.

Everybody wants to get paid.

(Laughter)

MR. QUILLMAN: That's no doubt about that.

MR. QUILLMAN: I feel I have a lot of research to do.

MR. BRITT: I think Ft. Irwin has demonstrated a willingness to explore all avenues so that they can come up with an answer.

MR. CHAVEZ: Let's be realistic, if we can spend billions on rebuilding Iraq and other countries, I'm sure we can fork out a couple pennies to have a consultant out there.

MR. BRITT: Yes, as far as priorities, that's what I do, Lee, you know I don't do that.

MR. DONALD SMITH: Neither do I, but I pay for it.

MR. BRITT: Yes. Exactly. We all have something in common.

MR. RAY: Where I used to work at, the casino up there, we had students come from Korea, Poland, I don't remember, elsewhere, and I talked to some of the Polish people how do they like it here in the United States. They didn't like it. Why? Because America is all about money, and that's I guess that's why we're asking to pay us too.

MR. TITO SMITH: Kenny said he did, he'll talk with him.

(Laughter)

MR. RAY: I used to work at, the casino up there, we had students come from Korea, Poland, I don't remember, elsewhere, and I talked to some of the Polish people how do they like it here in the United States. They didn't like it. Why? Because America is all about money, and that's I guess that's why we're asking to pay us too.

MR. RAY: Did he go check on the Bureau of that Reclamation?

MR. QUILLMAN: That's where Chad went.

MR. BRITT: He said he would be back at 1:30, but we'll give him a few more minutes

MR. BARI: Chad told me I think we have, but I will still want to bring that back on this -- on this getting together and actually last year, we have to have something so that in case of any -- any discovery of human remains, we have set procedures, and we know

Appendix H
MR. BRITT: We could even have a
more than welcome to come over there to see what we have the sites, and that's why we are offering that, you are the room here need to take this back and consider it and dates. 
Mr. Quillman: I will get Chad a list of dates.
Mr. Britt: Okay. 
Mr. Quillman: That we can, even before Mac's leave, because we typically have a rotation that goes into thirty days, the first week, taking their equipment off their train, getting everything ready to go out in the field, and then they go out and fight a real war, go two weeks and then come back. So typically I have about two weeks where I can go anywhere I want downrange, within reason, and even before December I'll give Chad a list of dates.
Mr. Britt: We'll send them out
Mr. Quillman: We'll send them out and that way we'll know when we can do that, and I'll make every effort to make your dates match with ours, and we can get you out there. At the same time, we can even drive the fiber optics route and look at some of those 23 sites or whatever it was, 38.
Mr. Ray: Send Chad some money, too
Mr. Bari: I thought you wanted to see the sites, and that's why we are offering that, you are more than welcome to come over there to see what we have
Mr. Quillman: Right
Mr. Bari: I'm sure most of you --
Mr. Britt: We could even have
follow-up meeting then, if we had enough participation to have a day of meetings and a day of site visit. Maybe we'll have some answers then
MR. BARI: Let us know who is interested and wants to come over here. The minutes are supposed to be in here.
LT. COL. OGDEN: This document
MR. BRITT: We sent those out several months ago, the Colorado Indian tribe should have a copy of that. It was sent to the tribal chairman
MR. SWAIN: I'm not from Colorado River
Mr. Britt: I know I was answering a question. Your tribe should have one, every tribe, all 14 tribes, one has been sent to each tribal office, maybe two or three copies
Mr. Ray: It wouldn't hurt to have more, Colorado Indian tribes, you have four tribes there. Sometimes I can't get access to anything. I've never seen that book you're talking about
Mr. Britt: That's right, sure. We're here to share information, we've got information
Mr. Gundrym: I've got an extra copy in my bag.
Mr. Britt: Okay. He can give you one
Mr. Ray: Thank you
Mr. Britt: I wanted to make sure Lee had one because he wasn't invited last year and he's part of the process now, so I brought one copy and --
Mr. Ray: I wasn't here last here neither
Mr. Britt: But your tribe was sent one because the Colorado Indians were there. Every tribe -- The point I was making they weren't invited last year, all of the tribes, thirteen tribes were invited last year.
Mr. Chaez: Remember, what I told you about that process, sometimes it doesn't work, try to get the names of the individual people and address. That way you make sure
Mr. Britt: Do you have that list that I gave you yesterday, a list of all of the tribes? Let me show you what we're doing now.
LT. COL. OGDEN: Are you talking about this one?
Mr. Britt: Is that a list of all of the tribes? Yes.
MR. CHAVEZ: See, what we do here, Lee, is we got tribal elections, who the contacts are, different tribes have varying numbers of contacts, and we date it because with the Timbisha Shoshone, the tribe is in a state of flux right now.
MR. CHAVEZ: Yes, it is.
Mr. Britt: You know, we tried to get our letters to them. I don't know if our letters were received.
Mr. Chaverz: That's what I'm talking about. Sometimes, depending on who's in council at the time, it's not necessary, it don't work through the chains.
MR. BRITT: We do the best we can. I mean it would be very improper, Georgia Kennedy is still just -- just as an example -- Georgia Kennedy is still the recognized chair for Shoshone, at this point as of the 26th.

MR. CHAVEZ: I understand, they have three councils.

MR. BRITT: Exactly. And it would be improper for the US government to send letters to these other persons that were not federally recognized, so we have to be sensitive and fair and not discriminate.

MR. CHAVEZ: That's one of the issues, that's one of the issues where we disagree, where a lot of people disagree with as far as BIA and stuff, managing, overseeing tribal governments, because of this situation right here alone, they won't recognize anyone per se at this point other than --

MR. BRITT: They recognized --

MR. CHAVEZ: No, no, other than -- excuse me, let me finish, sir.

The council that was in there prior to the election, that's what they're sticking with, but they had an election and then they had another election. That's what I'm getting at. The BIA is not resolving this.

MR. BRITT: Well, I understand that and I appreciate that, but if you could -- understand the government's perspective, it would be very unfair to recognize a group and discriminate against the group that is recognized, and so by law we have to do that.

MR. CHAVEZ: But then in a sense you're discriminating against a group that are probably people recognized.

MR. BRITT: That's the law. If we start acting outside the law --

MR. CHAVEZ: That's government relations.

MR. BRITT: -- we're going to get in a lot of trouble.

MR. SWAIN: Didn't we discuss that this morning and they were going to look into it again, that issue, about the un-federally recognized types?

MR. BRITT: We can -- Bob, you answer that.

MR. CHAVEZ: I'm going to let you answer that.

LT. COL. OGDEN: That way they can be invited, they could be.

MR. HORALEK: You have two issues. One is the federally recognized tribe. Other than the limited NAGPRA issue we don't care, if we have three groups right now that potentially are equal, we can send the information to all three.

MR. CHAVEZ: That's the way we view it.

MR. BRITT: I would disagree with you on that. On the 106. They define what a tribe is.

MR. HORALEK: They can define whatever they want. I'm telling you, you can send it out to all three if you have a point of contact and, they won't violate anything.
MR. BARI: Then whatever the BIA has given us a list, these are the recognized chairpersons, these are the tribes that are recognized. We can only send to those.

MR. CHAVEZ: Okay

MR. BARI: Any -- any information we can provide to anybody, that is no problem.

MR. CHAVEZ: I think that's what we're getting at, instead of dragging this out forever, let's try to get it to all of the interested parties that are concerned, even the ones that are non-federally recognized, like a person who could help us here today should have been here. That's what I'm talking about.

MR. HORALEK: Part of that, though, is you can provide us with -- when situations like this, if you will give us the contact, we'll make sure we get it to them. That's what we really want to do.

MR. CHAVEZ: Very good

MR. BRITT: Yes. Chad?

MR. CHAVEZ: No

MR. CHAVEZ: Okay

MR. BRITT: Would you like to say something?

MR. CHAVEZ: Okay

MR. CHAVEZ: Well, it seems to me that BIA intercedes when it's not wanted to intercede, and does the Pontius Pilot routine of "This is purely an internal matter of the Apache, you'll have to settle it amongst yourselves."

And I think there's already been the meeting at Las Vegas at the office of special trustee, and there's one more meeting that they're having with tribes that I'm pretty sure it was on the 30th of September in Vegas, and that office of special trustee would assume the environmental and cultural resource management responsibilities that BIA presently mismanages, in my opinion, or manages.

There's a lot to be said for what they do, but -- and then there's 638 programs and compacting programs as well with Interior Department and Indian Health Service, where a tribe can replace a federal agency on the reservation with what it does with tribal resources.

And so some tribes are under the mistaken impression that they're not a treaty tribe when really they are.

And we got into it with Yuma Proving Grounds on their cooperative NAGPRA agreement, but the base commander and the JAG, Judge Advocate General, would not let the document go forward for signature by tribes, so that Yuma proving ground could address its tribes because of the two words, "trust responsibility," that were in the document.

And those individuals for some reason thought that there's only a trust responsibility on the reservations and it's been proven, it's been held true that Forest Service, Bureau of Land Management, Bureau of Reclamation, Census Office, all have a trust responsibility to tribes, some more clear-cut than others, some that stem directly from the treaties like others, being able to go onto the ancestral lands and visit sacred sites and do such things, and others that are more embedded in the agency itself.

And to me that trust responsibility is quite flexible in favor of the tribes through the doctrine of sympathetic interpretation of the laws, or when there's things about to become disputed or something like that, the agencies should kind of back off a little bit and think it through and think "Well, how can we first be culturally sensitive to the concerns of the Native Americans."

Second, fulfill our trust responsibility.

And when I told my grandfather I was interested in the ancient cultures and Apache tradition and wanted to become an anthropologist and specialize in archaeology, he made me promise to never work for the BIA.

He just sends their boss Indian around or burn Indians, or you know what.

And I've been a fed, but I've never been a BIA employee, and I can't negotiate with him for him to let me out of that promise because he's on the other side now, in another realm of existence, you know.

It's -- and it has come down to between Army or other federal agencies advocating on behalf of Indian tribes in the past times against BIA for...
and third, do everything we can to accommodate the
wishes of the Native Americans on this issue.
And it's -- it's getting there, you know,
sometimes we get setbacks, lately more in the
Supreme Court than anywhere else where there seems to be
an anti-Indian attitude.

Some non-Indians have told me, and it's
quite common that in the outside society there's this
attitude that "We, by God, gave those Indians the
reservations they're on now, and Congress, or we could
take it away any time we want."
So you think that through, there were
treaties and I got into an argument with a solicitor --
not the solicitor general, but a person from Interior
Solicitor's office where he said the United States
government owns the Indian reservations where the
Indians reside.

And I said, "Now back up," the tribes
entered into treaties where they gave up large amount
of the predominant amount and in some cases all of the
amounts of their ancestral lands and retained tiny
amounts that were guaranteed to them that would be
theirs as long as the grass grows and as long as the
wind blows.

And if the United States were to back out
of these treaties, to abrogate these treaties, whether
officially on paper or by its actions, and attempt to
get the Apache people off of their lands, they would
have a state of war which existed before the treaty was
signed.
And all an Indian tribe has to do, like
Germany or Japan or the Mouse that Roared is
successfully lose a tribe -- lose -- excuse the
misstatement -- lose a war with the United States and
get -- Well, we could use 87 billion dollars, you know,
for rebuilding and future entering back into the
national stage setup very nicely, and have tribal
museums, and some of these things are guaranteed in
perpetuity for the Indian people.

And people gripe about native gaming, the
Indian have their casino. One person right here at this
casino out there on the lawn was griping to me about the
Indians having their casinos and getting a check, and I
said, "Well, I've never got one," you know, but our
tribe doesn't give the per capita. But you're griping
about Indians having a casino here? My God, man,
you're standing in Nevada.

"Anybody with the wherewithal in Nevada
and a clean background can set up a casino, so what's
your gripe?"
"Well, the Indians get this, the Indians
get that," I said, "Listen, isn't it a small price to
pay for an entire continent?"
And now we see where tribal members that
are employed break his leg, go into Indian Health
Service down at Parker, and they're? Going to go after
his health? Care that his employer in my opinion?

Mistakenly provides because tribal members? Should have
this health care as? Like veterans, as a quality of
life issue that's guaranteed to them by the federal
government for all generations for all-time.
And it's just not right that they go after
the health insurance as well.

And as Peterson Zawd, one of the past
presidents of the Navajo nations said, the Navajos have
paid their doctor bills at all times by entering into
that treaty, and one of the prime requirements under
that treaty was to no longer be at war with the United
States.

So -- and now some -- they're no longer at
war, but they're still -- a lady from Gila River
Reservation referred to it as the Cultural Warriors,
those who fight with computers and pens and Programmatic
Agreement critiques, and the rest of this, and either
way, whether it's Sitting Bull, Geronimo, Tecopa or
others fighting for the preservation of their people
through all of time, you know, it's -- it's real, and
it's very crucial, crucial and important to the Indian
people.

MR. CHAVEZ: On that definition, I
believe you left out one thing, and the other right of

Native American people as far as people in this nation,
when those treaties and whatnot came to be was the
opportunity for self government, and now that's even
being intruded upon, that's being pulled away here like
the California, we're facing the issues about them
wanting the casinos to pay off their debt.

And now you got a clown in there, Arnold
Swartzenegger that's never been to war, that's a big
hero, and everybody on the screen is vowing to take all
of that money and shut down casinos if he has to.

That's ridiculous, any little thing they tell all of the
Native American -- first of all, the United States
created a third world country within the United States,
a lot of them, we are a third world countries.

We don't have to go to Iraq, anywhere else
find a third world country, we have people starving
in the United States.

But once we get the opportunity to better
ourselves and improve ourselves, we always get this,
"Quit being a drunk, get off welfare, go to work create
something for yourself."
Well, we created, and then you try to take
it away.

When is it never going to stop?

MR. SWAIN: It's not

MR. CHAVEZ: I mean we are a third world
country

MR. SWAIN: It's not going to stop
because you know sometimes like what the gentleman said
here, you know, you look at the federal government, you
look at the BIA, I look at all of the federal agencies,
whether BLM, or Army or whatever, they all have the same
attitude towards Indians.

When you go to the capitol, you know, they
Imagine to learn about greenery around it and the ducks look at Ft. Irwin, you know, I look at the water over to say we have all of this in common, you know, I mean I was doing," you know, and unless we could get together, resources, then we might have something. But then if we were to get together to pool our area and then we're all descendants of that, you know, this is, again, just what you hear from people, that, was in up in the Pahrump area, and history says -- and that when he talked somebody mentioned Tecopa, the man reservation that have descendents from down in here, or that they didn't. much about our own culture to say whether that they did or that they didn't. The cultural issues, we look at that. I look at my tribal standpoint, because my tribe. I try to get people interested in the cultural aspect of it and there's no one there. And I try to say, "Read this," you know, "Take your time, go back and study this." I look at stuff in here that I've never even seen before. Now, where in hell did they get this information? The man becomes smarter than us because he does all of the research.

MR. CHAD SMITH: He's the expert on the Indian

MR. SWAIN: And he's becoming the expert on the Indians because we're losing all of our own expertise, you know. And we're talking about, you know -- we're talking about our -- I'm talking about the Southern Paiutes I mean in here we're as far as Los Angeles, it never in my mind did I imagine that, unless they were in a '64 Cadillac heading down the highway, but here they say they went down in that area. And then I look at this area, were we really down in this area? You know, I don't know that much about our own culture to say whether that they did or that they didn't.

We have people living on the Moapa reservation that have descendents from down in here, that when he talked somebody mentioned Tecopa, the man was in up in the Pahrump area, and history says -- and this is, again, just what you hear from people, that, you know, he was the last great chief from up in that area and then we're all descendants of that, you know, but then if we were to get together to pool our resources, then we might have something. But we're all in our own little area saying, "This is where we're from, and this is what we've done," you know, and unless we could get together to say we have all of this in common, you know, I mean I look at Ft. Irwin, you know, I look at the water over there, that had to be one magnificent stream of water coming out of that and into that desert, and can you imagine to learn about greenery around it and the ducks and the fish and everything else? You know -- you know that somebody, one of the Indians had to be camped near that spot or sharing it with everybody else as the spot to traverse to and go to, you know, going across the desert, and it's the same way, all the way up.

We look at Las Vegas, if you look at Las Vegas Wash, you look at all of the waste flowing down that, and it's bigger than our little river we have on the reservation. And that's what, almost forty feet wide and ten feet deep, and it's flowing into the lake, you know, and it's hard to imagine how these places looked at that time, you know, and that's what we're trying to create. I speak for my tribe because I know what we have up there, I know that our people are passing away. The young man here was 85 year old. He had a wealth of information, but how many people are really attacking his knowledge, how many are really sitting down and talking to that guy and saying "Tell me my oral history," you know, how many people really know that? We've lost -- my mom was 90 years old when she died. She took a wealth of information. Just because she was from my side of the family the leaders at that time didn't want to interview her to get that information. That's our fault, and we do that with everybody. I only talk about my own tribe because you guys have your own, you know, you may have up-to-date, you know, governments that are running, solving your problems you've got money invested all over, you're taking care of the health, we're doing that here because we know, like what you said, yes, we are entitled to that, but yet when it comes to the responsibility for our tribe we have health care and medical benefits for our people, and then we provide them the income so they can have a life in this community.

We can't go back to the way it was, so we try to improve that, and that's what we're doing, and that's why I'm saying it's hard for us to understand some of those things.

The government said, you know, they work differently and say that we'll pay you, I always -- in fact, I think you were there last year when we mentioned Doctor Stovall, how he was doing it, paying the Indians up there, you know. I can remember working for him twenty years ago, and he was giving me one hundred dollars an
And, you know, if you were sitting up the way up and down the coast, do you know what I'm saying?

MR. SWAIN: Here, you know, they said the Spanish traders coming through here and they stole our children, you know, and they sold them down in this area. For all we know we probably have Paiutes all of the way up and down the coast, do you know what I'm saying?

And, you know, if you were sitting up one hour as a consultant.

Well, the issue was always different, you know. Well, how can he do it and nobody else can? You know.

But that being said and done, you know, because we were talking about the same thing, we talked -- you and I were here last year, and you remember we talked about Richard Arnold. We talked about some base in Texas, you mentioned where they were doing something like this. We would check it out, here it is a year later. We're talking about the same thing and nothing has happened.

MR. CHAD SMITH: Yes.

MR. SWAIN: You know, so I'm saying, but I always look at ourselves as our own worst enemy because we're always fighting amongst ourselves instead of getting together.

You talked about the trust funds, you know, the government has the mechanism already in place, they're having a meeting in Las Vegas in October, like you say, on the 29th or 30th, and everything is already done.

All you have to do is sit there and listen. You know, because you can't change it. It's already been done. Ross Wimmer is sitting in that office of Indian affairs; they say Indian preference, it's supposed to take precedence, all of these things.

He's hiring the white people up there, you know. Since when could the government do that? You know, the government is losing out on those things, you know, that again is a right given to Indians. That's why it was there, you know.

MR. CHAVEZ: I'd say like to dwell on that a little bit. What created that, though, before this time, I mean even up to a hundred years ago was the government itself, United States Government, which again I'll say is divided and conquered, which had us fighting over little pieces of land now where the whole country was the people's land. That's what created that.

Then they start taking the children and breaking them away from their family, divide the people up, not permitting them to speak the language, to tell these stories on to the younger people. That's what happened.

That's part of our -- Yes. It is part of our fault, right to today, but a lot of is the government's fault by taking that away and dividing us.

There was a purpose for that, that's why we are where we're at right now, but trying to come back together, we should.

MR. SWAIN: Here, you know, they said the Spanish traders came through here and they stole our children, you know, and they sold them down in this area. For all we know we probably have Paiutes all of the way up and down the coast, do you know what I'm saying?

And, you know, if you were sitting up there on the hill watching us beating down the trail, at least you could have said "There's a group of Indians, they're not from us, but they're Indians, let's help them out," but if you sat up on the hill you're just as guilty as the Spanish traders taking the people down the trail and that's one of the stories the people talk about, and that happens all throughout history.

MR. CHAVEZ: I'll tell you a story that actually happened, it's a big story, I won't name the place, it might offend some people, but there was this wagon train going through, they got caught in a snowstorm and they were starving, so the Indian people went down to help them but they kept shooting at them so they went up and they them starve, and ate each other.

That's a true story. That's how people felt. We felt for other people, we tried to help them but yet they'd shoot at you because you're a heathen.

MR. SWAIN: They still shoot at you today, like the guy said, not with bullets, but by this, you know, this is what they shoot you at you with now, you know, don't come and ask me for help.

MR. CHAVEZ: But these people would rather eat each other than eat food. That's why -- go ahead.

MR. SWAIN: Eat our own people, that's what scares me.

MR. CHAD SMITH: The Apaches really don't fight anyone else, they make peace, so they fight each other.

MR. BRITT: Well, thank you all.

Chad, while you were away we made the quick decision to take you up, if we could go visit some sites today.

MR. CHAD SMITH: That's what we'll do.

MR. BRITT: It's 2:15. We have -- go ahead, Jennifer.

MS. SHORE: I've got the forms for your travel reimbursement. Be sure to attach copies of your receipts for your meals and your lodging, and you can either fill it out here and give it to me, or you can send it in to the address.

I would, just to be on the safe side, I would make photocopies of your receipts, just to make sure if something happens to it in the mail, then you've got a copy of it, and I'll give you my business card, if you -- if something happens and you do not get payment you can give me a call, and I'll track it down for you.

MR. BRITT: What we will do is we will take a series of cars, carpool, caravan to these sites; is that right, Chad?

MR. CHAD SMITH: Yes.

Going right across the bridge to The Twins intaglio, and then up to Davis Camp. Davis Camp is on up through Bullhead City north of the Laughlin Bridge about a mile.

MR. BRITT: How far?

MR. CHAD SMITH: I'd say twelve miles.
MR. BRITT: Okay.

MR. CHAD SMITH: It's easiest to come back across the bridge after we go across to The Twins, come back across and go up this highway through Laughlin. That way we avoid about eleven stoplights.

MR. BRITT: Let's do it the easiest way.

Can I get a show of hands? If you're not going, what I'd like to do is meet at 3:00 o'clock, be ready to go at 3:00 o'clock, that's 45 minutes from now at the lobby, we'll have several cars. I have a car, we have a car, you can ride with us.

If you're not going, could you let us know so that we don't leave you? I certainly don't want to leave anybody.

(The hearing adjourned at 2:15 p.m.)

I, DENNIS D. STEINER, CSR #6, hereby certify that:

I was present for the purposes of acting as notary public and certified shorthand reporter;

That the transcript that appears hereinbefore was transcribed by me as herein appears to the best of my knowledge, skill and ability.

Dennis D. Steiner
Appendix I: Post-meeting Action
Documents

Letter to tribe requesting CA Info

DEPARTMENT OF THE ARMY
HEADQUARTERS, NATIONAL TRAINING CENTER AND FORT IRWIN
FORT IRWIN, CA 92210-5000

REPLY TO
ATTENTION OF:

Directorate of Public Works

Dear :

On behalf of Fort Irwin, National Training Center (NTC), we are contacting you regarding our request to collect information from your tribe regarding our efforts to complete a requirement of the Army to implement NAGPRA Comprehensive Agreements. We included a sample Comprehensive Agreement in your invitation letter of 28 August 2003, to the Nation-to-Nation conference held at the Ft Mohave, AVI Resort, Laughlin, NV on 2-3 October 2003.

A Comprehensive Agreement is an agreement between your tribe and the NTC. Its purpose is to clearly outline the types of materials to be considered for treatment under NAGPRA and states the steps to be taken whenever Native American human remains or related funerary/cultural items are found on the installation. Examples of some of the provisions include how and when to notify your tribe, as well as the protective measures to be taken during the interim period.

In the spirit of Nation-to-Nation consultation, we need you to provide us with the information listed below to complete our Comprehensive Agreement. Specifically, we ask that you provide the information that addresses:

1. What kind of materials should be considered “cultural objects? (Could you give us examples?)
2. We need specific information in order to determine custody of cultural objects and possible Native American remains. (How do we determine if objects belong to your tribe, or to another tribe in the Fort Irwin area?)
3. How would you prefer the NTC to treat, care for, and handle cultural objects and the possible remains of your ancestors?
4. How would you prefer the archaeologists to record information about cultural objects and the possible remains of your ancestors?
5. What kind of analysis would you prefer be used to identify cultural objects and possible remains of your ancestors?
6. What steps should we take if we inadvertently discover cultural objects or human remains? (For example, who should we contact in your tribe?)
7. What kind of traditional treatment should cultural objects or the possible remains of your ancestors receive?

8. What kind of reports would you like prepared regarding the finding of cultural objects and possible remains of your ancestors?

9. What would you prefer the NTC to ultimately do with cultural objects and the possible remains of your ancestors? (In the legal language of NAGPRA, how would you prefer for the NTC to dispose of them?)

The enclosed sample Comprehensive Agreement is based on similar agreements made between branches of the U.S. Government and other Native American tribes. The NTC realizes that each tribe has different traditions, values, and preferences, and so your tribe may wish to make changes to this proposed Agreement. We hope representatives and your tribe will review this Agreement, and work with us to create a document that is mutually beneficial to both your tribe and the NTC. We look forward to working with you; if you have any questions, please do not hesitate to contact Mr. Mickey Quillman at (760) 380-3740.

Sincerely,

[Signature]

Jeffrey A. Vandezight
Lieutenant Colonel
Director of Public Works
Trip Report from Field Visit

CA-SBR-5383 (WADI), CA-SBR-8268 (LITTLE WADI),
CASBR-5384 (FOSSIL BED SITE), CA-SBR-5349 (BITTER SPRING),
AND CA-SBR-5249 (PETROGLYPH SITE),
ON FORT IRWIN & NTC

6 January 2004
INTRODUCTION

On January 06, 2004, six representatives from four federally recognized Native American Tribes, Fort Mojave Tribe, Chemehuevi Indian Tribe, Morongo Band of Mission Indians, and the San Manuel Band of Mission Indians (Table 1) visited five cultural resource sites at Fort Irwin, CA-SBR-5383 (Wadi), CA-SBR-8268 (Little Wadi), CASBR-5384 (Fossil Bed Site), CA-SBR-5349 (Bitter Spring), and CA-SBR-5249 (Petroglyph). These sites are located in the south eastern part of Fort Irwin & NTC. The purpose of the field tour was to foster budding relations with federally recognized Native American Tribes affiliated with the Fort Irwin and NTC area by providing them with an opportunity to visit some the installation’s cultural resource sites.

Table 1. List of Participants

**Morongo Band of Mission Indians**
Mr. Britt Wilson, Project Manager, Planning and Economic Development Department

**Chemehuevi Indian Tribe**
Mr. Edward D. Smith, Chairman
Mr. Daryl King, Councilmen

**San Manuel Band of Mission Indians**
Ms. Ann Brierty, GIS Coordinator
Mr. Tony Mejia

**Fort Mojave Tribe**
Mr. Chad Smith, Tribal Archaeologist/Cultural Resources Manager

**Fort Irwin & NTC**
Mr. Darrell S. Gundrum, Archeologist
Mr. Harold Brewer, Archeologist
Mr. Brian Flynn, Archeologist
Mr. Shannon Freeman, Archeologist
Ms. Mary Hastings, Compliance, Environmental Protection Specialist
Mrs. Lisa Gundrum, Air Quality, Environmental Protection Specialist

**Background:**

The idea for the cultural resources field tour was proposed by Mr. Muhammad Bari (Chief, DPW Environmental Division) at the Nation-to-Nation meeting held at the Ft. Mohave, Avi Resort, Laughlin, NV on 2-3 October, 2003. At this meeting, many tribal representatives noted that few, if any, of their tribal members had ever visited the installation and its cultural resource sites.
Cultural Resources Tour

The morning, 6 January 2004, invited guest began to arrive at the Archaeological Curation Facility at 1000 hours for the cultural resources tour, where they were greeted by Fort Irwin Cultural Resources Program staff members and DPW Environmental personnel serving as vehicle drivers (Ms. Mary Hastings, Mrs. Lisa Gundrum). Mr. Gundrum showed the Tribal representatives around the facility, providing a brief overview of the cultural resources program and discussing various environmental displays and building components (Collection Room). Mr. Gundrum then provided a very short range briefing for the guest prior to tour initiation.

The ground tour of cultural resource sites began at approximately 1100 hours. Eleven personnel (6 Native American, 5 Fort Irwin) boarded four vehicles and departed for two petroglyph sites CA-SBR-5383 (Wadi) and CA-SBR-8268 (Little Wadi) located at the “Whale”. One DPW Cultural resources staff member and a vehicle remained at the Archaeological Curation Facility in case any invited guest arrived late for the tour. The ground tour, following the Langford Lake MSR, arrived at the Whale at approximately 1140 hours.

The group proceeded to examine the numerous petroglyphs throughout the “Wadi” site. The entire group examined all of the petroglyphs in the “lower” part of the site (approximately the first 150 meters of the Wadi). One Tribal representative, however, decided to return to the vehicles instead of climbing the Wadi due to a previously existing foot/leg injury.
Viewing petroglyphs at the “Wadi”.

This individual was accompanied by two Fort Irwin personnel, where they took the opportunity to view the petroglyphs at the mouth of the “Little Wadi” site near the vehicles. The remainder of the group continued to hike 700 meters up the Wadi to examine the last petroglyph panel at the site (the petroglyph containing two Bighorn Sheep). After viewing the panel, the group returned to the vehicles near the Wadi entrance, rejoining the other members who returned previously.

Tribal representatives were interested in the “recent” graffiti at the “Wadi” site. Mr. Gun-drum informed them that it had occurred
approximately 1 -1.5 years ago and that the Cultural Resources Program had pointed this out to the Fort Irwin and NTC Commander, Brigadier General Joseph F. Fil, Jr. (CG) during a recent cultural resources tour. They were pleased to hear that the CG was extremely displeased with the graffiti and was making sure that troops under his command knew that it was not permissible.

At approximately 1200 hours the group ate lunch (provided by DPW Environmental).

At approximately 1245 hours the group departed the Whale and proceeded to site CA-SBR-5384 (Fossil Bed Site) located adjacent to the Langford Lake MSR. The group walked over the site examining its abundant cultural artifacts (ceramic shards, ground stone, and lithic artifacts). The “Fossil Bed Site” is an important cultural resources site as it contains evidence of nearly the entire cultural chronological sequence for the Mojave Desert region. While listed as Off-limits on installation training maps, a large tank position was noted recently to have been excavated into the site. Site CA-SBR-5250 (Rodgers Ridge) was pointed out to the group but was not visited.
The group departed the “Fossil Bed Site” at approximately 1320 hours and headed towards Bitter Spring. The group stopped on the bluff along the northeastern edge of the spring to provide a nice overview of the spring area, before proceeding to the south side of the spring where vehicles were parked. Upon arrival, the group walked up to view the military redoubt that was built in 1860 as part of Native American-Euro American tension in the region at that time. Group members then walked throughout the spring area, viewing the water in the spring and examining some of the numerous cultural artifacts that are found throughout the area. Mr. Chad Smith, Fort Mojave Tribal Archaeologist, noted several areas which appeared to contain “ashy” soils, fire cracked rock, and burnt bone, some of which may be human. Nineteenth century historic accounts confirm that the spring is the location of human remains (Euro American and Native American); the presence of earlier Native American graves and/or cremation areas is highly likely. The fragment of an Eastgate projectile point type was observed in the area.

The group then departed Bitter Spring and drove to site CA-SBR-5249, a single panel petroglyph site located on the Whale. The group then departed this site at 1515 hours and returned to Garrison, arriving at the Archaeological Curation Facility at 1600 hours.

Conclusion
A brief wrap-up session was then held at the Archaeological Curation Facility. This session was attended by all six Native American Tribal representatives whom attended the cultural resources tour, LTC Jeffrey S. Ogden, Muhammad Bari, William “Mickey” Quillman, and Mr. Darrell S. Gundrum.

Dialog was opened and Native American questions and comments were solicited, particularly regarding the cultural resources tour and the installation’s Cultural Resources Program. All Native American Tribal representatives noted that they had a great time at the installation and thanked Fort Irwin personnel for the opportunity to visit the installation and view some of its cultural resource sites.
Ms. Brierty also asked whether other Tribal members would have the opportunity to visit the installation and its cultural resources sites. Ms. Brierty was informed by Fort Irwin personnel that cultural resources tours/visits could be arranged for any tribal members who wanted to do so, provided the training schedule permitted access, and tours were properly coordinated to maximize tribal attendance per any given installation visit.
Many federal laws, regulations, and executive orders promulgated since 1990 specifically require consultation with Native American tribes when a federal agency makes decisions concerning cultural resources and traditional places. Consultation is founded on the Nation-to-Nation relationship between the United States and federally recognized tribes. To meet both the letter and the spirit of the law, the National Training Center-Fort Irwin, California, conducted a meeting as part of the agency’s continuing consultation with tribal governments. The consultation meeting was hosted by the Fort Mojave Indian Tribe, a federally recognized tribe, and held at the AVI Resort and Casino owned by tribe, on 2-3 October 2003. Sixteen tribes were invited to attend. Attendees presented and discussed (1) Comprehensive Agreements (CA) with individual tribes having a cultural interest in the geographical region, (2) the ethnohistoric and ethno-graphic cultural affiliation study of the mid-Mojave region, (3) Fort Irwin-NTC Programmatic Agreements (PA) with individual tribes having a cultural interest in the geographical region, and (4) proposed undertakings on Fort Irwin and the current and projected measures for protection/mitigation of cultural resources within these project areas. A transcript of the consultation meeting is included in this report.