National Training Center-Fort Irwin, California

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

Presented by: Tad Britt and Paige Peyton
Compiled by: Tatiana Brecht

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

Presented by:
Tad Britt
Construction Engineering Research Laboratory
PO Box 9005
Champaign, IL 61826-9005

Paige Peyton
Geomarine Inc.
550 East Fifteenth St
Plano, TX 75074

Compiled by
Tatiana Brecht
Construction Engineering Research Laboratory
PO Box 9005
Champaign, IL 61826-9005

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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 ethnographic 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.cecercer.army.mil](http://www.cecercer.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.
• Disposition of human remains and other cultural items in accordance with 43 CFR 10.6.
• Possible involvement of an Indian representative during excavation.
• Issuance of a permit pursuant to ARPA and 32 CFR 229, if applicable.

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


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 potential for uncovering unreported archaeological deposits, which may contain burials. In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), such human remains and cultural objects must be identified, if possible, 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 discovery of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony and dealing with the treatment and disposition of Native American human remains and cultural objects. This SOP (Standard Operating Pro-
Appendix B

DRAFT NAGPRA SOP

procedure) is an internal document only. As such it is intended solely to improve the internal workings of the Fort Irwin, NTC, staff, and does not in any way create any right or cause of action to any party.

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 \textit{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 \textit{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.
3005(a)(4), 43 C.F.R. 10.14(e) and (f)]. 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 a 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 returned in accordance with the regulations developed by the NAGPRA Review Committee.

11. The Fort Irwin, NTC, Cultural Resources Manager 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.

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 consultation 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 commander 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 under 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 appropriate 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

Agenda

1:00 p.m. Welcome
1. Site Introduction
2. Welcome to Ft. Mojave Indian Tribe
3. Opening Remarks – Col. Hun
4. Pledge of Allegiance
5. Greet Introductions
6. Adjourn

3:00 p.m. Native American Tribal Meeting
1. NAGPRA Comprehensive Agreement
2. Programmatic Agreement
3. NTC Cultural Resource Program
4. Listening Session
5. NAGPRA Comprehensive Agreement Presentation – Ms. Tal Britt
6. Adjourn
7. Opening Session
8. NAGPRA Comprehensive Agreement – Open Discussion
9. Adjourn
10. Programmatic Agreement Presentation – Ms. Paige Payne
11. Adjourn
12. Adjourn

4:00 p.m. Adjourn
5:00 p.m. Executive Briefing
6:00 p.m. Native American Tribal Meeting
7:00 p.m. Ft. Mojave Resort Social Event
8:00 p.m. Ft. Mojave Resort Social Event
9:00 p.m. Ft. Mojave Resort Social Event
10:00 p.m. Ft. Mojave Resort Social Event
11:00 p.m. Ft. Mojave Resort Social Event
12:00 p.m. Ft. Mojave Resort Social Event
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 13084, 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 Conflict/Dispute Resolution
- Additional Parties
- Resumption of Activity

DRAFT
NAGPRA- CA and SOP
Inadvertent Discovery of Native American Human Remains and Associated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony

- Ft Irwin is engaged in a continuing cultural resource inventory and evaluation of their holdings
- The training mission of Ft Irwin has the potential to uncover previously unidentified archaeological/cultural deposits and possibly Native American burials
- If human remains or funerary items are discovered, compliance with NAGPRA is required
  - Legal descent
  - Cultural affiliation
  - Repatriation

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 context and context of the discovery, their antiquity and significance
  - Evaluations will be conducted as site
  - Destructive 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 species list 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 lineal 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

- Priority of ownership or control of Native American human remains and cultural objects is briefly:
  - Lineal descendants, as determined pursuant to 43 C.F.R. 10.14(a)
  - Indian tribe holding tribal lands as defined in 43 C.F.R. 10.2(b)(2)
  - Culturally affiliated Indian tribe 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 updated annually in coordination with tribal election schedules
Identification of Native American Human Remains

- **In situ** analysis is the preferred method. If not 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, archaeological, 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:
  - Kinds of material to be considered as cultural objects
  - Specific information used to determine ancestry
  - Treatment, care, and handling of human remains and cultural objects
  - Archaeological 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 of cultural objects
  - Nature of the report 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 consultation.
- If no 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 site preservation is not possible, repatriate 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 notices 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, cultural objects, specific items of cultural property and solicit further claims to custody. The consulting tribes may review the content of the notice before its publication. Disputed information should not be included in 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 Archaeologist, Archaeological 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 in order to allow time for any additional claims to come forward. If additional claims do come forward and the situation remains unresolved, the decision remains with the tribe whose claimant is entitled to custody, the federal agency must not remove custody of the human remains and cultural objects until the proper recipient is determined pursuant to 36 C.F.R. 19.

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.
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(a) 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 contributory 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 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(c)(7) 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 retain the disputed remains or cultural objects until the question of precedence is resolved, as stated in 43 C.F.R. 10.1(a)(7).

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 Partnering

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
    - living objects (associated and unassociated)
    - sacred objects
    - Objects of cultural priority
  - Place of Action (POAs)
  - Focus is consultation with the Tribe

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

Programmatic Agreements

What they contain...
- Title and Date
- WHEREAS clauses
- WHEREFORE clauses
- Purpose
- Program-specific stipulations
- Prescriptions
- Mitigation
- Monitoring and Reporting requirements
- Cultural Resource Protection
- Final Environmental Impact Statement
- Environmental impact review
- Consideration
- Anti-Deficiency Act
- Executive Order 12833
- Applicable appendices

Programmatic Agreements

Example WHEREAS Clauses

WHEREAS, the United States Army (‘Army’) has determined that operation, maintenance, and development of Class I facilities, as defined in 10 C.F.R. §7400, at the property will trigger a review of properties that are eligible for inclusion in the National Register of Historic Places (‘National Register’), or are known or unknown archaeological sites that may be eligible for inclusion in the National Register, and
WHEREAS, the Army has complied with the identification requirements for all classes of cultural resources at Fort Rocky Road under sections 106 and 110 of the National Historic Preservation Act (‘NHPA’), and that the property has immediately adjacent or abutting historic structures, buildings, structures, buildings, and/or structures, and/or archaeological sites, all of which are eligible, or potentially eligible for inclusion in the National Register, and
WHEREAS, the Army has consulted with the Advisory Council on Historic Preservation (‘ACHP’), and the Texas Historical Commission (‘THC’), the Texas State Historic Preservation Office (‘SHPO’), to develop a Programmatic Agreement (‘PA’) regarding review of operation, maintenance, and development undertakings at Fort Rocky Road and the Central Basin drainage system.

Programmatic Agreement Presentation

Programmatic Agreement Presentation

Programmatic Agreement Presentation

Programmatic Agreement Presentation

Programmatic Agreement Presentation

Appendix C
Presentations
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:
1. Exemptions (Undertakings that do not require review)

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

II. Mitigation Measures

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 measures to avoid or minimize harm to the property until it concludes 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, damage from plumbing or other utility deficiencies, poor weather proofing, 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 Oddfellows are completed, Fort Rocky Road shall provide all parties to this PA an annual 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 lead to noncompliance with the terms of this PA pursuant to Stipulation VII.

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, this party shall immediately consult with the other parties to develop an amendment to this agreement pursuant to 36 U.S.C. § 231 and 36 C.F.R. 3620. The amendment will be effective on the date a copy signed by all of the original signatories is exchanged. If the signatories cannot agree to 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 action 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 requiring the expenditure of Fort Rocky Road funds are expressly subject to the availability of appropriations and the requirements of the anti-deficiency act. No obligations undertaken by Fort Rocky Road are intended to obligate funds not appropriated by the Congress for a particular purpose.

X. B. If Fort Rocky Road is unable to fulfill 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 program to be maintained. Any obligation under this agreement which cannot be performed due to the insufficiency 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

- 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 TNC”
Ongoing Improvements

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

Model Performance

<table>
<thead>
<tr>
<th>Site Type</th>
<th>% of Sites</th>
<th>% of Area</th>
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<tbody>
<tr>
<td>Habitation</td>
<td>48%</td>
<td>7%</td>
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<tr>
<td>Rock Art</td>
<td>44%</td>
<td>7%</td>
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<tr>
<td>Lithic</td>
<td>32%</td>
<td>11%</td>
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<tr>
<td>Historic</td>
<td>54%</td>
<td>7%</td>
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</tbody>
</table>

- 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
Appendix C
Presentations
# 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:  
  - Kaiwita—Avaavut Mountains  
  - Cave Springs  
  - Turantika—Granite Mountains  
  - Xaani—Soda Mountains  
  - Mamakwa—Soda Mountain Region  
  - Leach Springs—Owl Hole Springs Valley Region  
  - Pigment Quarry—Owl Head Mountains  
  - Bitter Springs  
  - Ava-Kitsiklyke—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
  - Yavapai Serrano
  - Desert Mohave

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
  - Awawatz 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 Cantonnement 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 limestone

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

REPLY 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 28th 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 human 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>
<tbody>
<tr>
<td>Big Pine Paiute Tribe of Owens Valley</td>
<td>Jessica Bacoch, Chairperson</td>
<td>23/9 – called, no answer</td>
</tr>
<tr>
<td></td>
<td>Tracy Vowers-Stidham, Tribal Administrator</td>
<td>25/9 – emailed Tracy Vowers-Stidham</td>
</tr>
<tr>
<td></td>
<td></td>
<td>25/9 – received email indicating no one would be attending</td>
</tr>
<tr>
<td></td>
<td>Douglas Vega, Chairperson</td>
<td>23/9 – called, left message with secretary</td>
</tr>
<tr>
<td>Bishop Paiute Tribe</td>
<td>Lee K. Chavez, TERO Director</td>
<td>25/9 – responded to Gaylene Mills’ voicemail; she indicated Mr. Vega</td>
</tr>
<tr>
<td></td>
<td>Allen Spoonhunter, Historic Preservation Officer</td>
<td>couldn’t come, but other council members might</td>
</tr>
<tr>
<td></td>
<td></td>
<td>26/9 – called twice, no contact</td>
</tr>
<tr>
<td></td>
<td></td>
<td>30/9 – left voice mail for Gaylene</td>
</tr>
<tr>
<td>Chemehuevi Indian Tribe</td>
<td>Edward D. Smith, Chairperson</td>
<td>23/9 – called, no answer</td>
</tr>
<tr>
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<td>25/9 – Mr. Smith said he would attend</td>
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<tr>
<td>Colorado River Indian Tribes</td>
<td>Daniel Eddy, Chairperson</td>
<td>23/9 – called, left message with secretary</td>
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<td>Betty Cornelius, NAGPRA Coordinator</td>
<td>25/9 – Mr. Eddy’s assistant said that he would not attend. Said other</td>
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<td></td>
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<td>potential attendees were handling their own affairs and she had no</td>
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<td></td>
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<td>information. Asked her who specifically might be considering</td>
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<td>attending so that they could be contacted, she said she didn’t know.</td>
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<td></td>
<td>Ms. Cornelius could not be reached.</td>
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<tr>
<td>Fort Independence Community of Paiute Indians</td>
<td>Richard Wilder, Chairperson</td>
<td>23/9 – called, promised Mr. Wilder to fax invitation and draft agenda</td>
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<td></td>
<td></td>
<td>26/9 – faxed invitation and agenda</td>
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<tr>
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<td>30/9 – Mr. Wilder said no one would be attending</td>
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<tr>
<td>Fort Mojave Indian Tribe</td>
<td>Nora McDowell, Chairperson</td>
<td>As hosts of the event, constant communication occurred with the Fort</td>
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<td>Elroy Jackson, Vice Chairperson</td>
<td>Mojave Tribe</td>
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<td>Elda Butler, Director AhaMaKav Cultural Society</td>
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<td>Chad Smith, Tribal Archaeologist</td>
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<tr>
<td>Kaibab Band of Paiute Indians</td>
<td>Carmen Bradley, Chairperson</td>
<td>23/9 – called, no answer</td>
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<tr>
<td></td>
<td>Ilia Bullets, Cultural Resources Director</td>
<td>25/9 – Ms. Bradley not attending; left voicemail with environmental officer Brenda</td>
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<td>26/9 – called twice, no contact</td>
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<td>30/9 – spoke with Ms. Bullets, she</td>
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<tr>
<td>Tribe</td>
<td>Contact Persons</td>
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<tr>
<td>Las Vegas Tribe of Paiute Indians</td>
<td>Gloria Hernandez, Chairperson</td>
<td>23/9 – indicated that they would be sending two representatives</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 Nabahe in today; emailed Mr. Nabahe 25/9 – neither Ms. Joseph nor Mr. Nabahe 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 25/9 – no answer 26/9 – called twice, no contact 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 25/9 – left message with Lyons’ assistant Nicole King 26/9 – office closed 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 25/9 – secretary indicated that Mr. Marquez would not be coming. Left message for Ms. Brierty 26/9 – called three times, no contact 30/9 – called twice, left voicemail 30/9 – received voicemail from Ms. Brierty; indicated no one would be attending 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 26/9 – faxed invitation and agenda 30/9 – spoke with Leanna Thomas; no one attending</td>
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</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
Chairperson
Big Pine Paiute Tribe of Owens Valley
P.O. Box 700
Big Pine, CA 93513
Tel: 760-938-2003
Fax: 760-938-2942

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

Bishop Paiute Tribe
Tribal elections: 2004

Mr. Douglas Vega
Chairperson and NAGPRA Coordinator
Bishop Paiute Tribe
50 Tu Su Lane
Bishop, CA 93514

Mr. Allen Spoonhunter
Historic Preservation Officer
Bishop Paiute Tribe
50 Tu Su Lane
Bishop, CA 93514

Lee K. Chavez, TERO Director
Tribal Employment Rights Office (TERO)
Bishop Paiute Tribe
52 Tu Su Lane
Bishop, CA 93514
Tel: 760-873-3338
Cell 760-937-9073
Fax: 760-873-4143
e-mail: tero@paiute.com

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
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

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

Tel: 702-386-3926  
Fax: 702-383-4019

Las Vegas Colony Tribal Council  
One Paiute Drive  
Las Vegas NV  89106

Lone Pine Paiute Shoshone Tribe

Tribal elections: Summer 2004

Rachel Joseph  
Chairperson

Wilfred Nabahe  
Environmental Division  
Lone Pine Paiute Shoshone Tribe  
P.O. Box 747  
Lone Pine CA  93545

Tel: 760-876-1034  
Fax: 760-876-8302

WJNabahe@lppsr.org
<table>
<thead>
<tr>
<th>Tribe</th>
<th>Address</th>
<th>Phone</th>
<th>Fax</th>
</tr>
</thead>
</table>
| Moapa Band of Paiute Indians – Moapa River Indian Reservation, Nevada | Mr. Philbert Swain  
Chairperson and NAGPRA  
Cooperator  
Moapa Business Council  
P.O. Box 340 | Moapa NV 89025-0340  
Tel: 702-865-2787 x 201  
Fax: 702-865-2875 | 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 |
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
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

0002

0003

0004

* The original transcript of the meeting has misspelled this name as Horcek. It has been corrected to Horalek throughout this transcript.
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 it 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,
but, again, thanks, Mr. Smith and your team, and for
setting this up.
MR. CHAD SMITH: Perhaps next we should
do introductions.
MR. BRITT: Okay.
My name is Tad Britt, I am an
archeologist and cultural resource manager. I work for
the Army Corps of Engineers based in Champaign,
Illinois.
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.

Before you leave you'll need to get a travel reimbursement from me. It's a basic form. All you have to do is put in your own mileage to come to the meeting and you need to save any receipts that you have for meals that you need to be reimbursed for, but that's it.

It's got an address on it where you mail it in, and you should be getting a check within two weeks.

And any questions, she's the one.

(Papers were handed out.)

MR. BRITT: What I'm passing out here are (Pledge of Allegiance)

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

I know that some of you people have come from a far

Appendix H
Meeting Transcript
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 deeded 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
claims or there’s a difference, there are provisions to address those issues as well.

Additionally, if you have competing claims, you may have additional parties, 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 as having traditional cultural area, that occupied that area.

Cultural affiliated tribes, it's very similar to that, and then aboriginal owners of the land.
The tribes -- again, this comes -- tribes with priority of ownership.

Again, I've kind of gone over treatment document.

agreement so that we can have a legally-binding from the tribes to get that into the comprehensive disposition of these human remains and cultural objects.

All of those are input that we need to get 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 archaeological 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 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

Appendix H
MR. BRITT: No, that goes to the
NAGPRA Review Committee. There's a NAGPRA dispute --
No, the Army has no business -- our mission is to
preserve and protect, not to show favoritism to one
tribe or the other.
MS. HERNANDEZ: The other question, what
if the tribes decide that they want to leave the remains
there?
MR. BRITT: If that is the preferred Army
alternative, if it can be done so that it doesn't affect
the mission of training at Ft. Irwin.
MS. HERNANDEZ: What about setting up some
land base on the base. Could that be done?
MR. BRITT: That has been done at other
bases.

At Ft. Irwin, as much as it's been
studied, thirty percent of a thousand -- think about
this a lot, you know, a lot of area has been surveyed
and there's not been a single instance of a known NAGPRA
site.
There's one instance of a possible
cremation site, but we just -- it's -- we want to plan
for this. That's the purpose of these documents, is to
plan for something, should that occur.
Back East I've done some work where we've
actually -- I've worked with the Army where we actually
set aside some land and created a Native American
Cemetery where there were -- they were doing some
projects that had -- there was a waterway project, Corps
of Engineers, and they had to disturb this area, there
was no way around it, and they basically had ceremonies,
removed the remains and re-interred them.
At this point I don't think there's a need
for Ft. Irwin to have that, but I'm sure they would
be willing to consider it.
I'll back up. They've actually got two or
three burials, historic miner or ranchers, burials at
Ft. Irwin and they are protected. But no Native
Americans that we're aware of. Muhammad?

MR. BARI: That's okay.
MR. BRITT: With that said. We've got
some people -- could you all introduce yourselves?
MR. RAYE: George Raye of the Colorado
River Indian Tribe.
MR. BILL SMITH: Bill Smith, I'm a member
of the Colorado River Indian Tribe.
MR. BINTER: My name is Felton Binter.
I'd like to make a statement. When you
said there was nothing found on the Ft. Irwin, I think
back to the time when the Mojave were Mojaves, but there
were several other tribes also included.
All of those thousands of people, and you
constantly go look into California and you find Mojave
pottery. You find it.
At the time of the mountains, you know,
when the trees were there, in that area there was
Mojaves.
MR. BRITT: We don't -- do not dispute
that.


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

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1 MR. BRITT: Sure.
2 MR. BINTER: So I say if you put something
3 on Ft. Irwin because you think it's safe from the enemy,
4 we've also been there at one point in time. Maybe it's
5 under the gun, but I truly believe there is.
6 I've been in the Ft. Irwin area -- not Ft.
7 Irwin, but Barstow area -- and I've worked for Howard
8 Pump Company for several years, so I've been out there,
9 so I kind of have a little difference of opinion from
10 yours.

11 MR. BRITT: Let me clarify something,
12 because I think I know what you're going at.
13 We're talking about NAGPRA items, not --
14 MR. BINTER: You may put it lightly, what
15 you say, but we don't take it lightly. That's what I'm
16 saying.
17 MR. BRITT: Okay.
18 I would like to clarify for the record,
19 what I'm talking about here are just NAGPRA items, and
20 those are human remains and associated funerary items.
21 There are many, many, many; we've got a
22 thousand of sites documented at Ft. Irwin, archeological
23 sites or cultural sites. I want to make sure that's
24 clear for the record.

0035

1 Yes?
2 MR. CHAD SMITH: About five miles south
3 of the powerline expansion area, Cronies Lake there are
4 numerous Mojave cremations, some of which were dug up by
5 Malcolm Rogers, even back in the twenty's and thirty's,
6 and the nature of the funerary practices are such that
7 often the remains don't stay intact, but items within
8 the playa, in particular the small stone beads that now
9 are at The Museum Of Man will, of course, be NAGPRA
10 items.
11 And it's hard to separate out within the
12 culture the importance within the culture certain other
13 items that archeologists may say are every-day
14 utilitarian items, broken pottery, yet the pottery was
15 broken, or corn grinder, metate or mortar were broken at
16 the time of the demise of the person who it belonged to,
17 and threw in the fire with them.
18 And so -- then the other thing is on the
19 undetermined cultural affiliation, most tribes, I think,
20 feel that it had to be related to some present day
21 Indian, and if you follow the NAGPRA, that the oral
22 tradition had to be a line of evidence with equal in my
23 opinion even greater validity than the scientific or
24 archeological determination of cultural affiliation,

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1 when it said within the cultural that's Mojave
2 land, and once there were Mojave people there, we like
3 to work towards where what is right is done by those
4 ancient people, so we look to see in the comprehensive
5 agreement such things addressed as -- I don't want to
6 say like tie goes to the runner or to the Indian tribe
7 it concerns, but it's really a nationwide issue both on
8 and off military establishments about these
9 unidentifiable human remains.
10 MR. BRITT: Sure.
11 MR. CHAD SMITH: And I, too, have some
12 concerns about the expansion proximity to known
13 cremation grounds and Cronese.
14 And to me it seems strange that within the
15 thousand square miles there has not been encountered
16 human remains present or -- I think that some of the
17 sites quite possibly that have or would be considered
18 thermal affected rock, and that's all that's left now a
19 thousand years or more after a cremation took place, and
20 in some way some of the tribes I think were more
21 fortunate that their funerary practices are such that
22 there's not intact graves like up in the Anasazai area
23 where looters can get in there and get pottery out
24 that's intact because the on-purpose destruction through

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1 the cremation process of the belongings of the
2 individual were such that it doesn't leave a trace --
3 like the old saying, the Spaniards didn't see the
4 Indians when they came through the countryside so there
5 were no Indians there.
6 But our ancestors were up on top of the
7 mountain watching them come through.
8 So I think that there is natural stuff out
9 there aplenty.
10 MR. BRITT: I don't dispute that, but just
11 what has been done to date is they have not recovered --
12 I do -- I think both of you gentlemen made some very
13 good points.
14 Those are the types of information that we
15 want to include in the comprehensive report. The things
16 that aren't listed explicitly in NAGPRA.
17 And, all they are are legal definitions in law,
18 and that's what the government and the Army is -- they
19 have to follow this.
20 If we can expand upon those, the types of
21 treatment, what are items that you consider significant,
22 what are funerary items, what are NAGPRA items, what
23 are, you know, these other types of items, if we can get
24 those and put those into the Comprehensive Agreement it

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1 strengthens it for both parties because then we know
2 what to look for or what may not have been potentially
3 identified as a NAGPRA item, now it can be.
4 So it's, you know, it's a good situation
5 and those are some good comments, and I appreciate it.
6 Yes, sir?
7 MR. HORALEK: If I could follow up on
8 what you said, we have a handful of archaeologists that
9 have done a fair amount of work so far, but we have
10 thousands of troops going through there, literally
11 daily, and at this point we have nothing to show them
12 that would give them an indication, if they saw
13 something what they were looking at.
14 Anything that you could provide us would

Appendix H
Meeting Transcript
new agenda is going to talk about Programmatic Agreements, just a couple of housekeeping things.

In the morning we'll have breakfast and get something to drink. Thank you.

MR. BRITT: Folks, we've got some ice tea back here and get something to drink? Thank you.

(MR. BRITT: Good point.

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.

Appendix H
Meeting Transcript

0041
1  MS. SHORE: 8:15, I think.
2  MR. BRITT: 8:15, they'll be ready.
3  We'll resume our meetings at 9:00, and at 11:30 we'll take a break for lunch, lunch will be provided here --
4  I would like to bring to your attention, you know, the agenda that's given out and, you know, what the Army wants to talk about here, but I really want you, if you could take a minute and think about what issues are we not bringing up that you really want to discuss, we don't have to bring it up today; just think about it, and if there is something, we certainly have plenty of time, either later this afternoon or tomorrow to discuss those issues, because we really want to hear what you have to say.
5  So think about that. Yes, sir?
6  MR. KANE: I'd like to know if you have been out in the field working. Or, you know.
7  MR. BRITT: Yes, sir, I've been to Ft. Irwin, I've been out in the field.
8  MR. KANE: And you haven't identified anything, or you haven't looked? Or --
9  MR. BRITT: I'm -- let me, let me kind of clarify what my role is in here.
10  I just assist Ft. Irwin in providing archeological, cultural resource contractors to go out and do these investigations.
11  MR. KANE: Okay.
12  MR. BRITT: My role is to make sure that they do what they're supposed to do, so yes, I get out there in the field, but I'm not out there on a day-to-day basis.
13  I do review the reports and make sure that they are sent out to everybody for review I guess I'm kind of a manager.
14  MR. QUILLMAN: I'm Mickey Quillman, I'm the Natural and Cultural Resource Manager. We do have an archeological staff on-site, we just completed, I think three years ago, Bari now, we completed a state-of-the-art curation facility. We have gone out and recorded close to a thousand different sites, be they chipping stations or rock quarrying sites or --
15  MR. BRITT: Rock shelter.
16  MR. QUILLMAN: Rock shelter.
17  MR. BRITT: Rock art.
18  MR. QUILLMAN: Petroglyph sites, there's a whole myriad of things that we've gone out and identified, and we continue to look.
19  MR. KANE: So you picked some items out of some?
20  MR. QUILLMAN: It depends on what we see. Our preferred alternative, preferred option would be to record what's there and leave them in place, but if the Army is going to out there conducting missions or where they're actually doing live fire or something like that or if they're going to construct a building, we'll clear the sites, we'll document them according to the federal regulations according to A 106, and those items are then...
curated within the cultural resources curation facility at Ft. Irwin. What we were talking about earlier is we've not found any traditional NAGPRA, human remains or funerary objects that we know of. 

MR. KANE: Okay. 

MR. BRITT: But there are many, many cultural sites out there. The big difference is are they related to a human burial or a funeral practice or are they just a cultural site? So I want to make sure of that distinction. They can be one and the same, but they're treated differently if they are a funeral site. 

MR. BINTER: I heard that, treated differently, they are -- this man said we identify. How does one interpret that, then?

0044 1  MR. BRITT: Sir?
2  MR. QUILLMAN: We identify the type of sites. We don't try to pay attention -- 
3  MR. BRITT: There's probably forty different types of sites that we try to categorize what we find, we -- what we want to do is characterize and understand the nature and extent of the site so that appropriate consultation and protection can be implemented. 

MR. BINTER: Okay. 

Another question is: How does one, after they've identified, how does one start to identify, do you see what I'm saying? 

MR. BRITT: How does one identify a site? 

MR. FELTON: I know you're wearing brown shoes because I saw you wearing brown shoes. How do I know it's you? 

MR. BRITT: I understand. 

We follow the guidance and the legal requirements that the Army is mandated to follow. The purpose, again, of these meetings, is to partner with the nations so that if we're not doing something -- I'll be the first to admit, I could not go out and identify a traditional cultural property. I'm not trained in the ways of the Mojave or any other group to recognize a special place and its significance. I'm trained as an archeologist to look for artifacts and material and cultural features that are left by prehistoric and historic peoples.

I don't presume to be a specialist in those items that aren't -- that I'm not trained for. That's why we want to work with the Indian communities to help us identify those sites and places so that they can be protected and preserved. That is our purpose here, is to work with the tribes. 

MR. BINTER: I understand that, okay. 

Now, another question. When you do find and you do identify, you identify with the nearest tribe, what tribe would that be in your immediate area? 

MR. BRITT: We don't identify with the nearest tribe, we identify with a growing list of tribes. There are 14 that I mentioned earlier that are federally recognized. And we don't show preference or deference to any one particular tribe.

All of the reports -- last year we invited thirteen tribes; we had three tribes show up, but they didn't only get this report. Every single tribe that we invited got a copy of this report, got a copy of the transcripts, got letters of invitation, so that no tribe is left out. For some reason they couldn't attend, that's not our fault, you know, that's not their fault. they still should be afforded the opportunity to comment on what we said and what we're going to do. We will continue to do that.

There are eight or so tribes that aren't represented here today. They will be -- That's why we have the stenographers here, they're going to share that information with those tribes. 

MR. BINTER: Okay. 

MR. BARI: Would you -- can we go see those objects or do we keep them, and we do follow A-106 process, and send letters to the tribes and everybody. 

MR. GUNDROM: Sure. We do follow section 106, if we have an undertaking, a survey. One thing I wanted to say before that we're talking NAGPRA items, we do not feel at Ft. Irwin that we have NAGPRA items in our collection right now, but, really, we need the cooperation and participation of the tribes here in the room and tribes that are affiliated, and to identify those items.

So it's not Ft. Irwin's policy to collect a large quantity of artifacts and amass a large collection, you know. That's -- that's one of the things, we have our facility, and our artifacts, this list should be made available to the tribes to see what items we have in our facility to see if they feel that there are any NAGPRA items in our facility, and then we can go about repatriating those items that need be. I just wanted to clarify that.

I mean that's one of the things, you know, of this meeting, is to find out what items you feel fall under NAGPRA.

We cannot say that, you know, as an archeologist I cannot, and that's what Tad is saying, we cannot say for sure what is a NAGPRA item and what is not. That's where we need your assistance, and we appreciate that. 

MR. BRITT: Our training is limited to a certain degree, and that's why we're coming to you to help us understand our collections and what we're looking at.

MR. CHAVEZ: Those artifacts that you possess at this time, I understand that it was -- they were removed from areas that were disturbed or were potentially going to be disturbed? Is that what you
MR. GUNDRUM: It would vary.

Is it a hundred pieces, twenty pieces, one piece? How much is that? It depends on the research.

MR. CHAVEZ: I'm talking to him. Everything from debitage to pottery shards, if they do their job and they find something, they're obligated to notify.

MR. BRITT: Darrell, I don't mean to put the contractors on the spot, but it's a collection policy. Because they're training all over this area, and if every time you get a rotate -- troops come from all over the US to train here, and every time the troops come in, they're briefed on what a cultural resource is.

MR. STEINER: I'm sorry, I can't hear him.

MR. GUNDRUM: The general policy is that Ft. Irwin occupies is basically twenty artifacts where Ft. Irwin occupies. That could vary from actual project, project, project, project.

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: 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: 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 questions, I guess, what constitutes a site?

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

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. CHAVEZ: That's civilian, right?

MR. GUNDRUM: The staff -- Mickey is the GS employee and the archeologists are both civilian contractors and we do contract out large scale projects at Ft. Irwin and the staff that I work with and the
staff that we have in-house, we do smaller projects
because they are a limited number of people.
MR. CHAVEZ: I can understand that part
about it, when it involves contracts and subcontractors
and whatever, when you're doing a specific project,
construction, but my point is: When the troops come in
it seems to me if these artifacts are going to continue
to come in from troop activity, that you guys are
utilizing different terrain, because if troop activity
is mentions specific terrain that would have already
been mapped, and if somebody calls you up and says,
"Hey, look at this tool out here," you would already
have that cleared, why would you go back out?
MR. BRITT: Well, because they don't pick
up a hundred percent of the artifacts.
MR. CHAVEZ: That's where I'm
misunderstanding, you would have already collected from
a specific area, why would you want to go back out and
collect again?
MR. GUNDRUNM: Two different things. One
is of all the area at Ft. Irwin, right now we have
about thirty percent of the area inventoried for
cultural resources.
That leaves 70 percent of the base that
has not been surveyed for cultural resources.
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 that 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.
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.
counts that would tell you might be trade goods, but that's sort of the insider knowledge that you have. That would be we need to know, to see what other items are there, and that's where we hope these sort of meetings and comprehensive agreements can help.

So there's a different driver kind of offices. So there's a different driver kind of consultation with the State Historic Preservation Agreement that deals only with Native American graves, the NAGPRA finds that its funeral -- burials and funerary items and everything else would be subsumed under this Programmatic Agreement. That's a key point. There are two separate documents. They're both -- in both parties best interest to be able to agree on these things. With that I'll turn it over to Paige.

Thank you. MS. PEYTON: Thank you. Well, I don't have that wonderful resonant voice that Tad has, so if you don't understand me or hear me, just let me know and I'll slow down or repeat myself. I am here to describe to you what Programmatic Agreements are and what they aren't, what they look like, kind of walk you through what one looks like, and hopefully describe the difference between Comprehensive Agreements and Programmatic Agreements. 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 the normal 106 process, the normal case-by-case process, then we have a little caveat in there saying we can use Programmatic Agreements for those too as long as all of the parties agree.

What Programmatic Agreements are, is they're an alternative process to section 106, they're kind of a short circuit. The section 106 process, everybody in this room probably knows it can get rather complicated sometimes. It can -- if you go on a step-by-step bases, it can be confusing, it can be protracted, it can take a while to understand it and what's going on, so the formulators of the National Historic Preservation Act came up with the concept of an agreement document, Memorandum of Agreement and Programmatic Agreement, and Programmatic Agreements are used for very specific circumstances. They're used for things that happen a lot, over and over and over and over, and as an example, if you had a big historic district and you had lots of buildings in it and you lived in Tornado Alley, well, you may frequently have windows break in that building, so instead of consulting with SHPO every single time you had a window break you would develop a Programmatic Agreement, and then any time the window broke you wouldn't have to go back to SHOP and consult, which would be a case-by-case basis. The Programmatic Agreement helps streamline the process, so you can use some force similar to repetitive or routine types of activities, you can use them for a potential effect from historic properties that you can't really know about until the project gets started.

Some of those are more often than not vague, really, really large projects that you want to test a new airplane and the airplane was going to fly with a new speed at a new altitude and create noise that you weren't -- noise levels that you weren't used to and it was going to cover a multi-state area, it would be very difficult in a multi-state area to identify every single site within it. So you come up with Programmatic Agreements or stipulations within the Programmatic Agreement that help you figure out exactly what you're going to do if in fact something happens. So circumstances that you can't really fully understand before the undertaking takes place is another good place to use Programmatic Agreements. There's probably thousands of other circumstances that Programmatic Agreements would be appropriate for, so they put the other caveat in there if there's other -- some sort of other departure from the normal 106 process, the normal case-by-case process, then we have a little caveat in there saying we can use Programmatic Agreements for those too as long as all of the parties agree.

What Programmatic Agreements are not, they're not the same as Comprehensive Agreements as we just discussed.

The Comprehensive Agreement is specific to
NAGPRA. The Programmatic Agreements are specific to section 106 and the other regulations that we so frequently come upon.

We just discussed Comprehensive Agreements. Tad just described to us what their drivers are: Specific objects, sacred objects, typically they are -- they have plans of action that are associated with them.

The Programmatic Agreements, which typically have what I'll say are standard operating procedures and protocols, the same thing as kind of like augmenting the hard part of the document.

Once again the focus for the Comprehensive Agreement is consultation with you, the Native American groups, those typically with Programmatic Agreements under SHPO.

This doesn't mean that consultation -- when the Programmatic Agreements -- this doesn't mean that consultation doesn't occur with the tribes, it does, but under NAGPRA there is no consultation with the SHPO, only the advisory council, that's the strong difference.

MR. CHAD SMITH: I want to emphasize with the advisory council, only the historic preservation because recently Nevada BLM and some other places have snuck Programmatic Agreements through without the advice 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 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
-- 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'll 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.
8  So if you're going to build a building on
9 the north side of the base and building 39 is on the
10 south side of the base, even if it's a historic building
11 you're not going to have an impact on the building
12 whatsoever, so it's an exception.
13  On the other hand, if you're going to do
14 something to building 39 and you know it's historic,
15 there are certain kinds of exemptions that would
16 indicate that there's a point that you still don't need
17 to do any consultation, and these would be if you have a
18 historic building that has been renovated over the years
19 and there might be some elements in that building, maybe
20 the windows, maybe the roof, who knows what the element
21 is, but it's been changed out, it's not original, so
22 there would be no need to consult, you could change that
23 if you needed to, but there would be none because it
24 would not be original to it.

0073

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.

8  Exterior landscaping is another good
9 example, these are just examples of the kind of things
10 that you can use to help streamline the process.
11 Okay. The same with archeological sites,
12 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.
19  And similar to the building ones, you know
20 that there are sites there but everybody has determined
21 that they're not eligible.

22  MR. CHAD SMITH: If we were reviewing a
23 Programmatic Agreement that had this wording in it, I
24 definitely would insist that the word "Other" after
0074

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

And so it should read "Native American
9 groups or interested parties," not "Or other interested
10 parties," because that conflicts with the
11 government-to-government consultation requirements.
12 That's often something that more and more you're
13 starting to see that, and it's really difficult.

14  MR. BRITT: I think that's actually in the
15 examples they give out.
16  MS. PEYTON: It is.
17  MR. BRITT: And you made a good point.
18  MS. PEYTON: Yes.
19  MR. CHAD SMITH: Does that come from ACHP?
20  MS. PEYTON: It does.
21  MR. CHAD SMITH: I'll have to talk to Alan
22 Stone and Phil about that.
23  MS. PEYTON: So now we have our exemption
0075

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

7  One is that you -- Ft. Rocky Road has
8 already developed their ICRMP, and they laid out very
9 clearly very specific procedures, how they're going to
do the archeology, and we're going to do incorporate
10 those specifics by reference.
11  The second one is we know that building 40
12 is determined eligible, we stated that in our
13 "whereases," and we know it needs to be demolished, but
14 the stipulation of this Programmatic Agreement is before
15 you can demolish the buildings you have to make sure
16 that you have it appropriately recorded, documented and
17 used Secretary of Interior standards.
18  So that's a very specific stipulation of
19 this particular Programmatic Agreement.
20  There's always a stipulation, Programmatic
21 Agreement, that are unanticipated discoveries.
22  We talked about these unanticipated
23 discoveries on the macro; these could be unanticipated
0076

1 archeological discoveries that are not NAGPRA specific.
2 That's the difference.
3  So there's always some sort of
4 unanticipated discovery stipulation in here.
5  There's almost -- Well, it depends on the
6 circumstance.
7  In this particular sample, an interim
8 protection statement, I've created an interim protection
9 stipulation, and it could be applied to a wide range of
10 circumstances, but I picked the building because we know
11 the building is going to be demolished, but until the
12 building is recorded, according to the standards and
13 according to our technical stipulation, we need to make
14 sure the building is protected because if we don't
15 protect it before it gets documented, then we've lost it
16 and lost the documentation, so an example of an interim
17 protection measure is that you have to make sure it's
18 water-sealed and keep the heat on in the wintertime, the
19 pipes don't freeze and that sort of thing, so the
20 building is inadvertently damaged.
21  Then there's always a series of
22 administrative-type stipulations.
23  You always want some kind of sunset

Appendix H
Meeting Transcript
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Appendix H

1. be contact with the advisory council?
2. it for some time.
3. of your obligations are fulfilled, or you want to extend
4. decide whether you want to modify it, terminate it, all
5. typically about five years before you relook at them and
6. you could agree on, six years, four years, three years,
7. Programmatic Agreement is, it's typically five years,
8. how you are doing, what the progress of your
9. clause. Because you need -- you need to keep track of
10. Programmatic Agreement situation that they have opted
11. out of being involved in, which really makes you wonder
12. why they never had the opportunity to review the
13. original Programmatic Agreement and decide whether they
14. want it in or out.
15. Nevada BLM, for instance, they can take interest in a
16. Programmatic Agreement that there would be amendments to the Programmatic
17. wording -- that it neutered the advisory council on
18. some of us have said -- if you will excuse the
19. historic preservation to a certain extent. It removed
20. the lead agency terminates consultation with the SHPO
21. per 36 CFR, as people had to do in the past, or have
22. it in the issue of protocol, an issue of whatever, then any
23. party also has a right to step forward and say, you
24. know, "We don't think that this is going like the way we
25. want it to," so we would either need to terminate it or
26. amend it or consult, so we can get it resolved.
27. Let me rephrase my question.
28. Does it stop the 106 process? Or does it put the 106
29. process on hold?
30. I'll tell you, BLM is in hot water on this
31. transmission line. It's really a touchy subject, but
32. continue.
33. -- that they're having problems with
34. noise and reporting.
35. This is also important to make sure that
36. everything is going on like you want it to go along, so
37. there's typically a clause for a yearly report, it comes
38. out towards the end of the calendar year and the report
39. goes out to everybody and lets everybody know how things
40. have been going with the carrying out of the
41. stipulations throughout the year.
42. And non-compliance, at any time any
43. signatory has the right to say, "You know what? I don't
44. think Ft. Rocky Road is doing what they're supposed to
45. be doing, and I think we need to amend the Programmatic
46. Agreement, or we need to have discussions," and at any
47. point a signatory can step forth and offer or suggest
48. that there would be amendments to the Programmatic
49. Agreement
50. MR. BRITT: One of the ramifications of
51. doing that, say, if there was a large-scale survey going
52. on, would that cease the survey, the inventory?
53. MS. PEYTON: Not necessarily. It could.
54. MR. BRITT: Okay.
55. MS. PEYTON: It could, especially if it
56. became a dispute resolution.
57. MR. BRITT: Okay.
58. MS. PEYTON: If for some reason this was
59. in the issue of protocol, an issue of whatever, then any
60. party also has a right to step forward and say, you
61. know, "We don't think that this is going like the way we
62. want it to," so we would either need to terminate it or
63. amend it or consult, so we can get it resolved.
64. MR. BRITT: Let me rephrase my question.
65. Does it stop the 106 process? Or does it put the 106
66. process on hold?
67. MS. PEYTON: It would really be specific
68. to whatever the issue would be.
69. MR. CHAD SMITH: In a way it would be up
70. to the SHPO?
71. MS. PEYTON: I think it would be up to all
72. of the parties. I don't think any party could say "You
73. need to stop the project."
74. MR. CHAD SMITH: If the SHPO said "We need
75. to hold off on this until this dispute is settled," and
76. in this stage, the dispute resolution under eight would
77. be just between the signatories, which I think are what,
78. the Texas Historical Commission?
79. MS. PEYTON: Right.
80. MR. CHAD SMITH: And Army.
81. MS. PEYTON: Right. And Ft. Rocky Road.
82. MR. CHAD SMITH: The particular Army
83. installation itself, which could turn into like with
84. Nevada a mutual admiration society where the SHPO says
85. "Well, we won't compel the federal agency to do
86. anything," and so -- and it's pretty standard in
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 they 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 the Army's cases 43 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 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.
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 --

MR. CHAD SMITH: The winner.

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 way a lot of our 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 resource is 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 better, the installation can pop back out of the

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

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MR. CHAD SMITH: The winner.

MS. PEYTON: The winner.

MR. CHAD SMITH: -- very comprehensive, I mean it's legalense, 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.

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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 better, the installation can pop back out of the

0089

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 have the money to fund them.

It's Section 106 responsibility, and at 0091 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, participate 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 understand that everyone understands the antideficiency acts? I don't think people understand.

MR. CHAD SMITH: I've worked with a federal agency where they've had an indirect effect on 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, 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, that and that's what the lawyers understand that 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?

MR. BRITT: Okay.

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 is 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 go 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)

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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.

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

(Laughter)
Meeting Transcript

Appendix H

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

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

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 their own system, how we're going to do that.

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.
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, right?

MR. BRITT: Do you know when that was sent? It's been about a month ago.

Mr. CHAD SMITH: We would like to have your comments and also your feelings on becoming a signatory on this one, and if we can get the comments maybe in the near future within a couple of months, and we can set a date for signatory ceremony for this one.

I’ll open the floor and let’s discuss it, if we have some feelings.

MR. BRITT: We need some feedback, that’s what we need, particularly those items -- the list of items that I had mentioned earlier.

We can send that back out as a letter asking for you to consider these items in any more areas 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 nation-to-nation.

MR. CHAD SMITH: It's a lot smaller print than the copies that were sent to us.

MR. BRITT: Okay. That was intentional.

Chad.

(Laughter)

MR. BRITT: But that is -- Muhammad's got a good point.

The national training center really does want to get that document signed. They're expanding, they want to be prepared to know what to do, should an inadvertent discovery occur so that they can address it properly and respectfully and give it the proper treatment.

So it would be to everybody's advantage that we could get your input. And again, I'll send out a letter -- I'll prepare a letter and send it out on behalf of Ft. Irwin or through Ft. Irwin on specific items that we would like you to contribute.

What I'd like to do now before we turn it up for open discussion is in case you may be asking about what are we going to be talking about tomorrow, we will talk about an update on the land expansion. 24,000 acres were inventoried and evaluated last year. I gave you -- in September I gave you some early data on that, how many sites were found. I'd like to give you an update on that.

I would also like to give you an overview of the cultural affiliation study that was conducted by David Earle last year. We've got that study in, that's more of an internal document to help Ft. Irwin -- it's not a 106 document, is what I'm trying to say, it's not a required document.

I will be handing out copies. We certainly encourage you to comment on them. There's no -- there's no requirement to comment on it, but I feel like it's a very good document that provides a lot of useful information not only for Ft. Irwin but for all the tribes that were researched in there.

Then later in the morning Mickey and I will be talking about a listening session.

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 intangibles 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 anthropomorphic figures of rocks laid in place of the ancient Mojave, and it's known of and within a built-up area.

And basically we have all afternoon tomorrow for a listening session.

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

Appendix H

Meeting Transcript
21 Reclamation and some of their proposed interpretive
trail and fencing and the rest of that, and it's what's
called Davis Camp, right the other side of the bridge
that goes across from Laughlin, the next bridge up from
this one.
24 But our policy in general is to not have
0106
visited 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.
7 MR. BRITT:  Sure. We want to be
8 respectful.
9 MR. CHAD SMITH:  But given the nature of
this meeting, that it is appropriate.
10  And also, you may notice, and Darrell may
notice some similarities in some of the glyphs at Davis
Camps with glyphs at Ft. Irwin and other places out
there.
15  You may not notice some similarities with
16 this type of intaglio with The Twins as compared with
the long, linear rock alignments and that, cleared
earth, but yet there may be some that are even smaller
of the quartzite cobbles that are laid in place that are
an anomaly, unexplained on the post itself too.
19 MR. BRITT:  Thank you, we appreciate your
22 being flexible. If we get finished, we certainly don't
23 want to cut into our time for some good consulting going
24 on, we certainly want to keep that up.
0107
1 And at this time I want to open up the
floor to any kind of discussion, any topics, any
questions or concerns.
4 MR. CHAD SMITH:  Well, many of us on the
tribal side here have, even today, mentioned the
difference between installations, in particular China
Lake, perhaps at an all-time low of interaction with
native peoples, and active involvement of tribes in
cultural resource management, and the Nellis
installation at an all-time high of the Native American
program that it has there.
12 And Nellis, for various reasons on the
range itself, has some exclusions from National Historic
Preservation Act, some of which are even secret and only
come into play when lawyers try to file lawsuits for
people getting toxic contamination for some of what goes
on at an airfield that the Air Force had to deny for
national security reasons even existed; an airfield that
does conduct operations at Leach Lake on Ft. Irwin.
20 And for years Nellis has had the Native
American Program that kind of goes Section 106
consultation and participation by tribes one better.
23 And what many of us think should be considered by Army
is emulating the programs that Air Force has at Nellis
0108
1 where you have a consolidated group of tribal
organizations and their representatives, that even take
3 on some projects related to the ethnographic studies and
4 field visits of important cultural sites, and one way or
5 the other I'd like most of the people here to be able at
6 some time to go to the large site, what's called the
7 Whale on Ft. Irwin, it's immediately adjacent to the
8 proposed powerline expansion area, and especially the
9 Mojave people, knowing that there's the important
cremation grounds and other Mojave sites right to the
10 south there at the Mojave River itself, right there,
11 that even a thousand years ago had water running in it,
12 and at the time of the ancient lake, some of these
13 Mojave elders that have recently gone to the other side
14 of existence told me that their people would go there,
15 and they could scoop up water and drink it from these
16 vast lakes that were up there that had fish in them, and
17 they could go in canoes from one to the other where the
18 Mojave River looped out through Silver Lake, and on to
19 Ft. Irwin itself too, and it is -- to me it's
20 ethnography and cultural resource management real time
22 by the native peoples whose ancestors lived in these
23 places.
24 And it's really do-able and it's not
0109
1 burdensome money-wise, and it's not a security risk at
2 all because any installation that has private sector
archaeologists working on it can have tribe sector
3 Native Americans working on it, and not just as crew
members on surveys, but running a program, and that's at
6 the direction it's gone on at Nellis with Mr. Bricker
7 and Mr. Tarot's participation, and Lee, Darrell, many of
8 the others who have participated, and it makes everyone
9 look good, and it's a lot of work, you know, too, but
10 it's work that these Indian people take on voluntarily.
11 And so we can gather up information about
12 how it's done by Air Force, and surely Army can't let
13 Air Force get a one-up on it.
14 (Laughter)
15 MR. BRITT: They do have a very good
16 program. I'm familiar with Keith and his program there,
17 they've got -- of course, they have a unique, quite a
18 different situation there. It's the nature of their
19 activities.
20 MR. CHAD SMITH: Yes.
21 MR. BRITT: But on behalf of Ft. Irwin,
22 I'm sure you all would be honored to have people come
23 out and visit.
24 MR. QUILLMAN: Absolutely.
0110
1 MR. CHAD SMITH: Because it is a sacred
2 site.
3 MR. BRITT: I don't think that's disputed.
4 We'll talk about a lot of those things tomorrow.
5 MR. BARI: We would -- I think -- be glad
6 to have -- if we have consolidated groups, like certain
7 nations has a participation, and they all come together,
8 yes, who want to visit we've got no problem with that.
9 MR. BRITT: It's just a matter of
10 coordinating with the training schedule. I'm sure they
11 all would be honored to have them.
12 MR. BARI: I would like to have a team
13 approach even signing this comprehensive document after,
Meeting Transcript

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.

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 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 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
Indian tribes, sympathetic interpretation, and that goes back to the constitution itself.

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. KANE: Chad, on our reservation up there in Bishop, there must be some Apaches because that's what we do when we get together, we tell a lot. We had a lot of these.

MR. CHAD SMITH: Then go have a barbecue.

(Laughter.)

MR. BRITT: How many Indian tribes have been 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 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.

1. I've heard, we aren't even certain that's all of the right 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 do it -- how do we find that group?

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

3. MR. HORALEK: Okay.

4. 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.

5. 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 -- 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.

6. It's good intertribal relations, I'll put it that way.

7. MR. GUNDURUM: I might say it is in our ICBM with 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.

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

9. MR. CHAD SMITH: This gentleman sitting right here.

10. 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.

11. 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.

12. 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 that 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.

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

14. 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.

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

16. 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.

17. 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.

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

19. 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't 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.

20. If you find bones of a person. You look
at the land as Native American it's something sacred to
tell me there's a group of white guys and they all
MR. BINTER: Some of the old people tell
you to go down to Death Valley, you know, they was
telling me there's a group of white guys and they all
I don't mean to be down, just things being
said, you know, but you've got to understand, you know.
MR. BRITT: That's why we're here.
MR. BINTER: I didn't mean to take you
guys off the subject.
MR. QUILLMAN: That's fine.
MR. BINTER: I need to say it.
0128
MR. CHAD SMITH: So many Native Americans
are patriotic and go into the service, and one old man
says "White guy says why do the Indians go and fight?"
Because look what they did to them," and my grandpa told
him, he said, "Well, the Indian knows if the US goes
down to these Japanese, all of the Indians are going to
have another guy come in and take more land away and
9

MR. QUILLMAN: I understand that.
MR. BINTER: I understand your
frustration.
MR. BINTER: That's the way it is, though.
MR. BINTER: Give some of the land
back to Japan, some of the islands back to them, when
are you going to give a little piece of ours back? I'm
sorry, I'm just --
MR. QUILLMAN: I understand your
frustration.
I remember the area. I went, when I got
older and grew up and heard about it, I went out there,
set out like he does, he sits out there, and sitting out
there, you know, like the Mojave National Park reserve
0127
came out at that time, he was out there he didn't know
the history.
I was telling him. He didn't know nothing
about it, my way of thinking, our way of thinking, they
do have record, but that wasn't the way I knew it.
MR. BINTER: Some of the old people tell
you to go down to Death Valley, you know, they was
telling me there's a group of white guys and they all
0125
us, the wind blows, the mountains look good.
I mean to have archaeologists that I know
and speak of this. You know you'll never get away with
it.
I can get away with it because some think
I'm stupid, I'm not, you know, that's my belief, I
really enjoy it.
I don't mean to be down, just things being
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.

[Laughter]

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. 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 we 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 would there 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 to move on.

"You know you have been here a couple of months now, what are you going to do?" You know, it's about time to move on.

Well, then here came the Euro Americans, after the Spaniards, the Americans, and they didn't keep going. They stayed.

They brought the railroad. And then I 40, you know. And -- but --

MR. CHAVEZ: I heard that that's why there wasn't such a great resistance as it was, they said "Don't worry about it, they'll move on."

MR. BINTER: Mojave thought that. They fed them, they let them stay, rest and that, "There's Appendix H

Meeting Transcript
another waterhole down the road, do you want to see it?"
they would take them and leave them there.
MR. CHAD SMITH: Where did our scouts go?
Oops.
MR. BARI: This is a great land that
involves everybody. I came from seven seas, across from
India and this is a great country who have everybody
here, and this is a United Nations in itself. That's
the way I understand, and I come to this country, and I
think this is a great country, and it is to the land
itself.
0135
MR. CHAVEZ: Let's keep it that way and
go Arnold off the bandwagon. He's going to take
everything we have away from us.
MR. CHAD SMITH: They liked the Indian --
the Iroquois form of government so much they made a
large part of the US Constitution based on the Iroquois
confederacy and I think that whatever God you speak of,
or define power, watches over the USA, or the USA
wouldn't still be.
MR. CHAVEZ: Okay, Chad, time's up.
MR. RAY: 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?
MR. BRITT: They're all listed on the BIA,
they're all listed with the BIA. We checked them,
unless they got delisted.
MR. CHAD SMITH: 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.
0136
MR. GUNDRUM: 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 up, 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.
MR. BINTER: 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
partied 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,
24 after a while you work with a white guy, you know,
0137
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.)
MR. BINTER: 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.
MR. RAY: Bomb fallout in Nevada.
MR. BINTER: 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.
MR. GUNDRUM: A different process.
Archaeologists first, archeologists second.
MR. BINTER: 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
0139
going to do what we want to.
MR. GUNDRUM: It's 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

FT. MOHAVE AVI RESORT
LAUGHLIN, NEVADA

REPORTED BY: DENNIS D. STEINER, CSR #6, RMR
BONANZA REPORTING - 2320 PASEO DEL PRADO, B-106
Las Vegas, NEVADA
(702) 360-3206
came here in 1999 on one of my trips over, moving over
mountain up there says a lot to me, and when I first
I'm not a tribal member, but that sacred
came here in 1999 on one of my trips over, moving over

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.

and have to go 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.

But to begin with, I've just got to give
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

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.

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,

A little over a thousand sites have been

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. Now, let's talk about the land expansion.

Ft. Irwin is this area in black. It's composed of the center, Leach Lake, Gurney Range and also the NASA Goldstone site. 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.

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 archaeology sites and then we subdivided them into separate groups, and what we're looking at is how the reduction sites, chipping stations, quarry stations, and what we did is we plotted those as:

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\text{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 manos 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 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.

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And what we started off to build this model is we took all of the archaeology sites and then we subdivided them into separate groups, and what we're looking at is how the 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
-- the total amount of lithic sites that were 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 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
...
Buried cultural stratum there, and on survey you may find with, including from Geo-Marine, that there's a centimeters below surface with artifacts, and it seems twelve of them came up hot to down below forty. One of the sites numerous subsurface artifacts were had similar interpretations of non-eligibility when in letter about the fiberoptic line where some of the sites processes have mixed these things. And these are different types of questions you can -- or information that you could add, different site types, different types of risk, try to quantify risk of different types of impacts, whether it be training or natural. Again, this just gives you an example of the different types of categories, different types of analysis that have been conducted. That's it for the land expansion. I'd like to take a minute and see if you have any questions. I know that we did send out a copy of the survey report, a draft survey report to all of the tribes. You all should have gotten them, and any kind of general questions. I don't want to go into any specifics about that one report, but I'd be happy to answer any questions at this time.

MR. CHAD SMITH: I passed around a copy of the news update from the San Bernardino Sun front page two days ago, that the draft EIS is being revised and is expected to be released December 1st. I spoke with Mickey, and he said that we're going to get a copy pretty soon of some changes that are expected to be released December 1st.

MR. BRITT: Right. Let me tell you about our approach. Prior to two or three years ago, when Darrell came to Ft. Irwin, most of the archeological surveys that were done were done solely by archeologists looking for archeological sites. But elsewhere within that site there may well be roasting pits and other habitation features that are masked by the veneer of the wind-blown sands and that -- you know -- we've got some big problems with -- with the approach, since off the installation on BLM lands under the state karadeps [caretakers] approach were small.

Lithic scatters or sites where lithics are encountered, and I included a copy of the June 13th letter about the fiberoptic line where some of the sites had similar interpretations of non-eligibility when in one of the sites numerous subsurface artifacts were encountered, and I think sixteen shovel test units, twelve of them came up hot to down below forty centimeters below surface with artifacts, and it seems to me and several other archeologists I've discussed this with, including from Geo-Marine, that there's a buried cultural stratum there, and on survey you may only see the results of lithic manufacture. But elsewhere within that site there may be Las Vegas or Redlands or somewhere. And these are different types of questions you can -- or information that you could add, different site types, different types of risk, try to quantify risk of different types of impacts, whether it be training or natural. Again, this just gives you an example of the different types of categories, different types of analysis that have been conducted. That's it for the land expansion. I'd like to take a minute and see if you have any questions. I know that we did send out a copy of the survey report, a draft survey report to all of the tribes. You all should have gotten them, and any kind of general questions. I don't want to go into any specifics about that one report, but I'd be happy to answer any questions at this time.

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Again, these were done by archeologists. 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 archeologists and the geomorphologists, the geographer. The geomorphologist and the archeologists will conduct reconnaissance, look at aerial maps, go out and make some spot checks in some areas. Then the archeologist 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 that 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 archeologists, 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 the way to Baker.

And, you know, to me personally it would be great if they were excluded from being able to use that and, you know, we commented on the antiterrorism protective fence project, that that was positive, but felt that it should even be run up over the topography that would make it difficult for people to penetrate the facility, and as much to keep Army units in as to keep others out, because another issue several years ago, we went to where a detachment had exited the fort and gone out onto the wet Cronies Lake and got stuck and inadvertently strayed outside the post by over ten miles.

And as we get down into that area that's where there are known and documented Mohave cultural resources including cremations, and I know that Mr. Barrickman and Minerva Jenkins and others of the tribe where there are known and documented Mohave cultural resources including cremations, and I know that Mr. Barrickman and Minerva Jenkins and others of the tribe in past years have gone to that area with BLM to look at some of the sites and even to do some traditional activities to help those whose remains were there to rest peacefully and to look over these things.

And that's such a sensitive area that we do have major concerns right there, and as we talked yesterday, there's the big petroglyph site at the Whale landform that's adjacent to there which I'm absolutely certain is sacred to more than one of the tribes present here today.
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 real 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 some sort of 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 M16'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 being on that. It's even something that CID might need to look into.

And shortly after this pretty small scale scavenging of that nature the determined Wilson incident took place at China Lake where Sidewinder missiles were acquired and taken to Libya. So it's kind of more something for a history book or a novel or something like that, but Doctor Warren says it really -- he fired the people when he got an inkling of what was going on. It was back in the '70's and that, but it gives our profession a bad name that I just spread around myself, you know.

But it's something that people should know, and a good reason for the protective fence and patrols and that besides terrorism, there's the scavaging 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.

The way we're going to address the fence, the boundaries of the expansion area, our intention is to go along the powerline corridor, we're going to go in 750 yards from that, and we're going to put in a double tank ditch and three-strand barbed-wire fence, similar to what they've done at China Lake and that is to keep people out, but it's also to keep the Army in.

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 gas lines, 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 observers, 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
Mr. Britt: What I'll do is I'll talk the other tribal representatives have any questions or 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'll do is I'll talk about the corporate sandbox, if you will, of Ft. Irwin.

Our goal is to have one hundred percent realism of our training, and two, keep the training in place soldiers assigned to Ft. Irwin to go out there and bring 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

Mr. Britt: What I'll do is I'll talk about the corporate affiliation study, take a break and we have some very honored guests here, we're honored to have these very distinguished guests here to talk 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.

I'm 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 appreciated it, but it's not a requirement document, 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 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 Chemeheuvi, 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 ones I don't know how.

I'll say the Avawatz Mountain, Cave Springs some of those are on or extremely close to Ft. Irwin, or certainly within the area, area of potential effect encompasses parts of Ft. Irwin, the Granite Mountains, Soda Mountains, the whole Soda Mountain region, Owl Hole Springs in the valley, Owl Head Mountains, Bitter Springs, the Calico Mountains or the Paradise Mountains, and then the Cave Ciga Mountains.

He also gets into detail talking about the substance level, the plants, the animals, the salt -- the salt deposits around the Avawatz Mountains, those are very important to the indigenous groups.

He talks about the seasonal changes and the way that the groups moved around different times of years to collect pinon nuts, bighorn sheep, whatever, different seasonal -- what archeologists or anthropologists call seasonal rounds.

He also looks at the environment and comes up with some estimates of given these different scenarios of the vegetation and the plant life and animal life, how -- what is the carrying capacity of the environment, how many people could that -- could the plants and animals support at one given time or during one season.

And from that he extrapolates potential tribal population estimates.

Then he moves on into the more of the historic period, the tribal interactions after 1820, begins to discuss intertribal conflicts.

He mentions -- of course, he talks about the linguistics, the common shared languages, the different languages, marriage practices, customs, the whole social implications and ramifications of different tribes living and moving about in this environment.

Then he talks about the impact upon the horse as its existence as well as politics, some tribes got the horse before other tribes, and, of course, that was -- it created an imbalance of power politically, and it also had implications to other tribes.

And, of course, once the cattle were moved in there was a practice of stock raiding or we what call stock appropriations.

And then again the horse again affected the way the movements and tribal movements and relocation.

Moving on to the 1840's and 50's, the impact of the American immigrants moving to California to the east and from California -- to the east and from the eastern states to the west.

Then we'll get into post civil war, we talk about the mining and military confrontations, the interactions with the Native Americans. There's a lot of ranching, a lot of Native Americans became cowboys and ranchers, and then finally the development of the reservation communities.

He gets into very detailed discussions about the social, political dynamics and the concepts of what is a tribe, how have they changed through time, what have anthropologists and particularly
We want to be inclusive, in fact, just about a month or two ago we heard about the Bishop Paiute, and he wanted to make sure they were at this meeting and here at the table to hear what they had to say. But these are the 14 tribes that we are actively consulting with now. Yes, sir?

MR. TITO SMITH: The Kawaiisu is not a federally recognized tribe. They are a tribe of existence, a group living in Bakersfield-Tehachapi area. They do have a chairman. Did you make contact with them?

MR. BRITT: We've had contact -- Darrell has had contact with them in the past. We -- our relationship with non-federally -- Well, on behalf of Ft. Irwin, as a Department of Defense agency, the relationships you have with federally recognized tribes and those that are non-federally recognized is quite different, and to invite a non-federally recognized tribe here, and I know this can be interpreted many different ways, could be viewed as unfair to basically bring a state recognized tribe up to the same status as a federally recognized tribe, and we wanted -- we want to consult with them, don't get me wrong, but we want to make sure that it's fair and we're doing it within the laws that we have to follow.

It's not to say we're not going to consult with them or that we will not consider all of their wishes. It's just that it's done at a different level. 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.

MR. TITO SMITH: The fact that they give meals on the 1934 act, a lot of us -- to us they're recognized people. They still exist, they still have -- You know -- there's five people in their tribe that still speak the language, but they are people.

MR. BRITT: We realize that. MR. TITO SMITH: They are people and they're within their area, we know the Kawaiisu are in that area, and to be left out is to me --

MR. BRITT: They're not being left out, don't get me wrong, they're not being left out, we are just negotiating on a nation to nation level MR. TITO SMITH: They do nation to nation, they just refused to organize under the United States system. They're recognized by us, recognized by them.

MR. BRITT: We understand that, but the laws don't allow us to -- the government to recognize them on a nation to nation level. They don't meet the criteria, it's not my decision, it's what the law says and that's what we have to do, as you know.

MR. CHAVEZ: You know who makes the law MR. TITO SMITH: We recognize Kawaiisu people MR. BRITT: We understand that we recognize them as well, they're just a little strong, they refused to knuckle under MR. TITO SMITH: They refused to buckle under.

MR. BRITT: We respect them for that. We also have to follow the law. We can't make special exceptions that would be unfair to you, to every other tribe in this room if we brought them up to the same status. Our government won't allow us to do that.

That's the bottom line

MR. GUNDROM: We talked previously about the situation and one way that can be sort of circumvented or reconciled, is to have one of the federally-recognized tribes basically sponsor them at a meeting

MR. BRITT: Sure. MR. GUNDROM: And if anybody's willing to do that I think on Ft. Irwin's behalf I don't think we would have any problems interacting with Kawaiisu on a
there's lots of ways to get them involved in the
process.

MR. TITO SMITH: Thank you.

MR. RAY: I don't see the Pahrump Paiutes
here. They're not federally recognized.

MR. GUNDREUM: I'm not sure that they're a
federally-recognized tribe or not

MR. RAY: They're not.

MR. BRITT: But our intentions are
honorable, but we have to do what the law tells us to
do.

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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: They're not recognized by
the government, United States government, how could 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. GUNDREUM: 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

Appendix H
Meeting Transcript

corporation and I believe we need to work together to do
that.

MR. BRITT: Yes, ma'am? Oh, I'm sorry.

Gerald --

MR. DONALD SMITH: See, they don't even
recognize you.

(Laughter)

MR. KANE: So what you're saying, then,
is they can be brought in and they can communicate
whatever in regards to this, is that what I'm hearing?

Because --

MR. BRITT: They cannot be brought into
this level of meeting.

The law does not permit us.

MR. HORALEK: That's not true. Let me
kind of clarify, if I can a little bit.

We are in a limited scope of what we're
doing with Indian tribes, and when I say limited in
scope, the Army's interest is obviously what we've been
discussing yesterday and today.

Most of that is the cultural natural
affairs that we're dealing with as we're working with
Ft. Irwin, and obviously within that process we
recognize anybody that has an interest in that process.

Now, let's go back to this federally
recognized Indian Tribe. That's a whole different
concept.

First of all, that starts out with DOI
determining what they're going to deal with on their
Indian programs and all of the things that that means.

Now, if you go back a ways, that had to
do with reservations, payments, it had a lot of things
that created rights for recognized tribes and no rights
for non-recognized tribes.

We're not dealing with any of that in this
process. That's purely outside our limit or concern.

The only -- the only right that we deal
with when we say federally recognized tribe is that at a
requirement level, at minimum we have to consult with
all recognized federal tribes involved with our land.

That's our minimum standard.

There is no maximum standard. We are
perfectly welcoming every other interested group,
tribes, however you wish to call them, and want them to
participate and desire them to do so, and they are
welcome at this level meeting. Does that make any sense
at all?

MR. BINTER: It makes a whole lot of
sense, but who are the people saying it? You know, do
we trust them? I think that's where it's at this
point in time

MR. HORALEK: People saying that, whether
we would do that or not, the deputy commander I believe
would agree with me a hundred percent on this one, sir.

COL. FLINN: We're trying to be as
transparent as possible in the process, so we'll --
we're interested in hearing the voices of all of the
people who have a constituent interest in what's going
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 have partnered with tribes that are not to put into effect some return of human remains and sacred objects, in coordination of those tribes.

So when you get into the interested party, “interested person,” is the legal phrase, even though it’s an organization, status in Section 106, it’s often secondary, and you won’t receive copies of reports, full copies of reports. You might receive some without site locations and other things in them, and I’m sure that Ft. Irwin would consider positively working with those 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. GUNDURM: 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. GUNDURM: 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 to and 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..."
sites, are you aware of any sacred places?"
17 I know it's been a long time since you've had access to Ft. Irwin, but can you share with us any information that you hold that's culturally significant about Ft. Irwin from your tribe with us?
18 We basically have heard back from the Timbisha and the Mojave, and some of the sacred places that they did acknowledge that they weren't aware at this time, and that's important to remember, because not everybody was consulted, there may be elders in the tribe that have knowledge or information or stories, recollections about parts or components of Ft. Irwin.
19 The important thing is to note at this time we have no indication that the Timbisha or the Mojave have any specific village site areas there.
20 MR. CHAD SMITH: Well --
21 MR. BRITT: We're not saying they aren't out there. Don't get me wrong.
22 MR. CHAD SMITH: There are numerous places on the installation that are known and named in the culture and the importance in the culture and many of them are archeological sites like the lithic sites.
23 MR. BRITT: Sure.
24 MR. CHAD SMITH: The lakes themselves being said to have been full of water and fish with villages alongside the lakes, and travel in the lakes and the river by canoe.
25 And as times have changed, we've seen many letters from many agencies that are the standard archeological survey done at such and such an area, if your tribe knows of any important traditional cultural places, sacred sites or other -- has other concerns, please let us know and communicate this information to us, many of us have a policy like at Nellis as well, that these ethnographic investigations have to have the active involvement of knowledgeable tribal members as consultants, and all -- much of the cultural offices do.
26 That's the purpose of the office interviews is, "Yes, there's something important out there, and I can't tell you anything more about it." MR. BRITT: We understand that and respect that.
27 MR. CHAD SMITH: And other times it can be that there's -- like on Kern River pipeline over there by Yermo.
28 There's these important trails and intaglios, and other special places, important in Mohave culture that weren't right within the right-of-way of the pipeline being built, even though we were blading, but the viewshed aspect comes into play, some of them you could throw a rock from the right-of-way and it would land at the important cultural site.
29 And we had to refer to "Well, between station such and such and such within that square mile, within a quarter of a mile on the south side or the north side there's this important cultural place," and it all sort of came together out there at the one big -- all litic quarrying, litic manufacture of them as consultants on the same level with other fields that have this special knowledge that they've acquired in the non-Indian university system through the western way of learning, which can never approach the knowledge that many of these Indian people have, and so I think it's really key.
And not having read David Earle's report yet, I'm sure that we'll have extensive comments and probably recommend such things as further contacts with knowledgeable Ft. Mojave tribal members through our office.
30 MR. BRITT: Sure.
31 MR. CHAD SMITH: And field visits with them.
32 MR. BRITT: Sure.
33 MR. CHAD SMITH: And sometimes the information given in these in-field interviews and office interviews is, "Yes, there's something important out there, and I can't tell you anything more about it."
sites on the powerline that actually has the basalt of the hill, the butte that is the Whale, that's got numerous petroglyph locations on the fort, but yet off the fort it doesn't. It just catches about a couple hundred feet of that basalt at the very southern end of the land form itself.

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.

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. And there's -- 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.

"Hands-on," but active participation, like there is at Nellis, with some of these -- with all of these tribes?

MR. BRITT: Certainly, I don't see any reason why that couldn't be considered.

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.

MR. BRITT: Go ahead.

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.

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MR. BRITT: I understand that's the history, yes, sir. I wasn't here.

MR. DONALD SMITH: That's over 120 years ago.

MR. BRITT: Sure.

MR. DONALD SMITH: Let's see, 140 years

MR. BRITT: Yes.

MR. DONALD SMITH: You know, we start going down to some reservation or something and then expect us to know our home? Oh, man, leave me your home and come back, it's going to be all torn down.

MR. BRITT: Sure. I couldn't go back to England and tell you where I'm from. I know exactly

MR. TITO SMITH: But you have the right to go back. We've been moved from areas where we don't have the right to go back. We can't go back to Yucca Mountain area any more, we could go back to Ft. Irwin any more, we can't go back to 29 Palms, the marine base any more.

MR. BRITT: Sure.

MR. TITO SMITH: The division of our people, now, we don't have part of our people here, the Pahrump Pahute, because we're all one people. I was doing a survey once because we've been divided for so long that we are all related.

MR. BRITT: Sure.

MR. TITO SMITH: We're all one chief. I attended a meeting at 29 Palms, which Nu Wave, they wouldn't speak to me. They were the same people.

I finally said "Who was you guys's last chief?"

The last chief, and they said "Chief Tacoma."

I said, "No, he couldn't have been, he was our chief," but that opened the dialogue, but we are one people.

Try to go to Las Vegas, I ask the same, "Who was your last Chief?"

They say "Chief Dakota." Went to Pahrump.

So we're all related. Now we've been divided. Our tribe in particular is Lake Havasu.

At Lake Havasu we were moved from the desert and at the turn of the century our people were still there in 1907, were living -- in 1907 they set a reservation outside of Lake Havasu, the Chemehuevi. You can't live in the Barstow, you can't live in the whole desert area, you
3 and while we're educating we're losing valuable
2 Now they want to come home.  We're bringing them home
1                 They know they're Chemeheuvi by blood.
25   idea who they are.
24   but the other ones that got forced out, they have no
22   we're losing.  Some of us understand, we grew up and we
21                  MR. TITO SMITH:  we're losing by force,
20   sure that you're --
19   petroglyphs and we'll get that organized and make
18   discussing yesterday was organizing a visit to Ft. Irwin
17   to visit some of the sacred sites, some of the
16   We do have cultural resource people
15   because we can't afford to pay people -- it was hard for
14   We could feed the whole world, the United
13                 We could feed the whole world, the United
12   States, and there's other people that want this, I know
11   that we have to protect what we have, there's always
10   going to be somebody trying to take what you have, but
9   before you do all of this, we're probably going to want
8   some more site visits.
7   We do have cultural resource people
6   because we can't afford to pay people -- it was hard for
5   me to be here today.  I couldn't be here yesterday.
4   MR. BRITT:  One of the things we
3 discussed yesterday was organizing a visit to Ft. Irwin
2 to visit some of the sacred sites, some of the
1   They know they're Chemeheuvi by blood.
2 Now they want to come home.  We're bringing them home
3 and while we're educating we're losing valuable
4 resources.
5   MR. BRITT:  And we do.
6   MR. RAY:  I'd like to comment.
7   MR. BRITT:  Sure.
8   MR. RAY:  He's saying that we kind of
9   lost, a year ago I met a Chu Wa'ave from the San
10 Bernardino area Bloomington.  He doesn't know his roots,
11 all he remembers is that his grandmother went to Sherman
12 Institute.
13                 He doesn't know he's Chu Wa'ave but he
14 found a record he comes out and talked to me now and
15 then actually trying to find out now he's related to us;
16 probably, yeah.
17                 A lot of this is trying to say is that
18 they are lost, and not too long ago, I know Ft. Mojave
19 knows this too, there was a woman Chu Wa'ave, Paiute
20 whatever you want to call her, we don't really know.
21 There was no type of record of her. She couldn't get
22 medical benefits from the Indian Health Services, no
23 place, no kind of benefits because there's just no
24 records.
25                 Ft. Mojave tried to help her, tried to
0060
1 find out who is she, where is she from, Chu Wa'ave
2 tribe, tried the same thing, Colorado River tried the
3 same thing. Who is she?  Never did know.
4 One time I heard an elder lady, says "I
5 know her, but not by her marriage name," he was married
6 to a Navajo, so we were going by the Navajo name, we
7 didn't know.
8 So it took her to Las Vegas Paiutes and
9 from there they sent us to Moapa. This old man, you
10 probably remember who he is, but I forgot his name, and
11 asked him "Do you know this woman or do you recognize
12 this woman?"
13                 "Oh, yeah, I was raised in the same family
14 in Barstow."
15       This is what he's trying to say. We lost
16 a lot of this. They lost who they are.
17                 MR. BRITT:  I understand.
18                 MR. RAY:  We're trying to find out, like
19 I say Ft. Irwin or anyplace else, things that are not
20 recorded, not on record
21                 MR. BRITT:  Sure.
22                 MR. RAY:  These are our family, brothers
23 right there.
24       We just heard -- Well, our father and his
25 brothers, his sisters never tell us about it, you know,
0061
1 they're mostly like their past with the grandfather --
2 who was their father -- our grandfather, never talked
3 about it.
4 It took us about twenty years -- twenty
5 years or longer to find out who he was.
6 Then we learned that we have a family
7 cemetery in the desert.
8 Very scary, the things you're doing is
9 digging around these areas trying to find things, this
10 is not recorded.
11                 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
archaeological 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
Avaawatz 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
American thing, administration plans, so if you're not
organized, recognized or anything it don't mean a thing.

Seemed like the government up
here is like the Mexican government, that they don't
recognize Indians. But we recognize -- but what are
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.
certain tribes to negotiate with
MR. BRITT: I don't have the authority to
recognize that. I'm just a monitor.
COL. FLINN: We don't have the power to
change those definitions
MR. DONALD SMITH: The brochures that,
Charleston got attacked by a native -- see, what does it
say here -- Native Americans. So you recognized
everyone. We know who attacked Charleston
MR. CHAD SMITH: Carlton
MR. DONALD SMITH: Carlton, I mean. We
know who that was, that was our bunch right here. I
mean we got killed, but at least we got a treaty out of
it
MR. BRITT: Folks, why don't we take a
break and we can resume these conversations.
Actually, I think what we're going to do
is we're going to have our guest, let's take a break and
then we'll have our guests 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.)
MR. CHAD SMITH: As we start back up here
0067
1 Mr. Llewellyn Barrackman and semi-retired former vice
certain to the Ft. Mojave tribe, and former chairman many
3 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.
8 MR. BARRACKMAN: My name is Llewellyn
9 Barrackman, a member of the Ft. Mojave tribe. My wife
10 Betty, a member of the Ft. Mojave tribe also.
11 We're going to show you about nine hours
of tape here.
13 (Laughter.)
14 MR. BARRACKMAN: No, five minutes, that's
all. I don't know how you want to do this.
16 This is -- we were asked by the Piquat
17 Tribe in the late 1990's, and we went up to our culture
18 -- Sacred Mountain there, Avi K'wame, or Spirit
19 Mountain, or Newberry Mountain, they call it, it's in
20 the State of Nevada, right up here, when you look up
north on a clear day, well, you can see the highest
22 point.
23 This is our mountain and we say that we
24 are told, many years, there are several stories, but
what I get is that I was told that we were created from
0068
1 that area.
2 So the Piquat Tribe said they wanted a
3 tribe that was their creations, so we were picked as one
4 of the five.
5 There were five tribes in the United
6 States that were selected, and there was two tribes from
7 New York, one themselves, the Piquat, one from Oklahoma,
8 I think the Kickapoo Tribe, and the Fort Mojave Tribe
9 for the Southwest.
10 So this will show about two days of work
11 cut down to five minutes. Okay. This tells a lot of
12 story, it's very short.
13 (Videotape played)
14 BETTY BARRACKMAN: I had to sing that song
15 nine times before they were satisfied.
16 MR. BARRACKMAN: That's it.
17 (Applause)
18 MR. BARRACKMAN: That tells us about
19 Mojave, our Mojave. M-o-j-a-v-e.
20 Yes, we were taught, we were told that God
21 gave us our language, from the area, told us how to
22 live, what to use, in it's hot, where to go under the
23 shade when it's hot, where to go, when it's cold put
24 something over ourselves, and he asked names, some of
the area on the east side of the river and the west side
0069
1 of the river.
2 This is some of the map that I made here,
3 a cultural map, we call it, I and Betty, we made this,
4 and this has been in courts already because of this blue
5 thing coming down, the water, today. Not oil, not gas,
6 but water.
7 I remember reading a letter that was
8 written way back in 1862 by a person by the name of
9 Colonel Hoffman who was stationed over here at Ft.
10 Mojave Post, a garrison they had here years ago.
11 In parts he said, "This land is worthless,
12 bare land, nothing here to think about coming in this
13 area," I guess but it's good for the hostile Indians,
14 which is the Mojaves, whoever lived around here at that
time.
15 But today this thing is better than gold
16 or oil. Water. We need water, always, and the reason
17 why I had this put together, and I try to have our
18 neighboring tribes along the river, that's four of our
19 type besides us, there are five of us, including us, to
20 put something together and take it all of the way down
22 to the Mexican border, but no one has done it yet.
23 But I did that because we needed that.
24 Some day we're going to use it, which we did use it.
25 In time immemorial days, I guess we
0070
1 numbered many, many thousands of us. It was so crowded
2 in this area because in those days lands weren't up
3 here, so when the river flooded the snow melt up above
4 us and came down, it just engulfed land and trees,
5 whatever, but it settled on the east side of the
6 reservation, which is Arizona, it was all under water,
7 so that didn't give us any kind of a vacant -- to settle
8 in that area, I guess.
9 For that reason, well, some of us had to
10 move.
11 When we moved out of here we went west, we
12 went west. I don't know how many of us, but nobody
13 knows.
14 We settled -- when we got to what we call
15 Barstow, California today, the Mojave River, that's
16 where we settled.
17 There were other people there, the Serrano
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Mr. Barrackman: But when I came in this area from getting off the military, came back to the reservation in 1956, 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 novel 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, 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 to be -- the only thing that we didn't have was long-term build with it, only had twenty-five year leases at that time. It was an agricultural lease. And then we found out that we had to have 99, or more than twenty-five years, so if you're going to put a lot of money into a land, well, you're going to have to get years of time so that you can get your money back, which we didn't know because nobody had told us. We didn't have enough money to buy -- I mean get a -- hire an attorney for it or anything. But anyway, the congressman from California by the name of Harry Shepard was the insular chairman of Indian Affairs. He said, "I'll put that together for you, and it's going to be approved." So the next day, I guess, when they went -- we all didn't go, I was in the council then, I just started, then, but there was a chairperson by the name of Francis Dillman and Mr. Clark Lewis, they are not with us any more, but these two were sent ahead, and one had a pass, the chairperson, she can go from Needles to Chicago only, that's it. From there on, well, she's going to have to thumb her way or what. Mr. Lewis didn't have nothing so the City of Needles pooled their money together and gave him some money to be there and return, and Francis Dillman also was given money from Chicago to Washington and back to Chicago, and then use her pass back again. And this highway got going, and when that was approved, the 99 year lease approved, it was a house resolution 2635 that was approved. That's our own,
Mr. Barrackman: Any questions? Anybody.

I think I've said enough.

That's the reason why it's named.

because there's a lot of other stuff in this area

towards that mountain, all of this is full of culture

I've heard that story ever since I was

Mr. Mickey Quillman, Natural and Environmental Culture

Manager.

He's going to give a little background on

the fiberoptic network and the rail spur and I'll talk

more about the archeology and cultural resources, when

he's done.

MR. Quillman: Hi. I appreciate your

attention, and I appreciate your presence here today.

As you know, Ft. Irwin is a very, very

busy place. There's a lot of things happening out

there.

Col. Flinn alluded to the Fiberoptics line

earlier this morning, about some of the things that are

going to happen in the future with equipment.

All of our tanks, for instance, and

Humvees are going to have computers in them so we can

figure out where they're at.

In order for us to provide communications

back to the control center, back to the main combat

information center, more or less -- that's a Navy term

there's a different term for that in the Army -- but

back to the Star Wars, whatever you want to call that,

all of that information from every vehicle is going to

be sent back via fiberoptics.

So this little machine, every -- every

vehicle, every tank is going to have its computer

equipment in it. It's going to send a radio signal

halfway up the mountains, it's going to hit a

Fiberoptics node and be sent back to the Star Wars

building.

What we do now is we have antennas all
over the installation and it's gone back by radio, but there are some problems with frequency. People have a lot of cell phones which takes up frequency. I've got two of these in my pocket, so there's a lot of communications with a lot of competition for the band width, so in order for us to communicate and train the Army the way we need to train, we need to put in this fiberoptic network. Okay, this is to provide information to the ops group so they can know what's happening out there on the land to meet the requirements, more technology, and how do we -- how can we train smarter.

What we've done is we've just completed the cultural resources survey for the first two loops of this fiberoptic network, and I guess you have some basic information as to what's there. 

MR. BRITT: Yes. 

MR. QUILLMAN: We've adjusted the path as we need to adjust it and we're going to install all of these fiberoptics. What it is, it's going to be buried four feet deep along the major tank trails and so we're surveying so we don't impact any. This is basically the network itself, it's going to start here at the containment area out this way back up like this, and then back up around here so we can have communications throughout the installation. It will be done in two phases. The first phase, we completed our surveys, we anticipate completion starting this construction in the spring of '04, and probably about six months to complete the project.

MS. HERNANDEZ: I have a question. When you're doing a fiberoptic line, we just approved Las Vegas from Nellis --

MR. BRITT: Can you talk louder?

MS. HERNANDEZ: I said when you're doing a fiberoptic line, we just approved Las Vegas from Nellis --

MR. BRITT: Okay.

MR. QUILLMAN: This is -- we're going to do -- there's two phases that we're going to do, the first phase starts here, goes like this and up into here, and then a second phasing will expand out to that way and further out into the expansion areas to the west.

Those -- those are further down the road, we're only going to do the first phase, first two loops, and that will be next year, and then probably two or three years from now; depending upon available funds we'll go ahead and do the rest. Okay. Tad?

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. GUNDRUM: That would be Nelson lake.

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 evaluated the sites by doing systematic shovel testing, and then when they came back, then they 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 significant under criteria for national register of historic places.

That's the status as of day before yesterday, 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. QUILLMAN: Somewhere in the late spring.

MR. BRITT: Okay.

Yes, sir. Mr. Smith?
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20 You're going to have archeologists
19 internally, we have six archeologists on staff where we
21 monitored the ground disturbance within sight
18 boundaries.
17 if they are indeed -- once the process is
20 complete and sites have been evaluated and they're
24 determined insignificant, then no, there will not be any
25 monitoring.
0085
That doesn't mean that there won't be an
2 inadvertent discovery and we'll react appropriately, but
3 the practice at Ft. Irwin is not to do monitoring on
4 sites that are not eligible or considered eligible for
5 listing on the national registry.
6 MR. CHAD SMITH: We might differ with
7 that, and also depending on the good faith of the
8 construction crew to -- not only to report a discovery,
9 but the visual skills of the operator
10 MR. BRITT: Sure
11 MR. CHAD SMITH: To know that they're
12 going through something that's subsurface, then we
13 probably definitely will recommend monitoring
14 MR. BRITT: We appreciate your comments
15 MR. CHAD SMITH: And Native American
16 monitoring as per SEQA.
17 MR. BRITT: The SEQA -- is that --
18 MR. BARI: SEQA does not apply. NEPA
19 applies.
20 MR. BRITT: We appreciate your comments
21 and we'll certainly take them under consideration.
22 The nature of this undertaking, and
23 correct me if I'm wrong, but as it was explained to me
24 there's a machine that digs a trench about half a foot
25 wide, lays the pipe, covers it up and just moves along; 
0086
1 is that correct?
2 MR. GUNDRUM: You'd have to ask Mickey
3 MR. QUILLMAN: It depends
4 MR. BRITT: Monitoring would not be a
5 very good approach to doing that.
6 What we've done to ensure that there are
7 no sites at these locations is the geomorphology, the
8 visual inspections, the subsurface inspections, we feel
9 like we've made a very, you know -- above and beyond the
call of duty to identify what's out there.
10 And I believe it's documented in your
11 reports, the exact methods, of course.
13 MR. GUNDRUM: Let me make a quick
14 correction.
15 It's our general policy and it's outlined
16 that for ground disturbing projects like this where
17 there is an opportunity to monitor where the machine is
18 not laying the cable directly then we do that
19 internally, we have six archeologists on staff where we
20 monitor those projects.
21 MR. BRITT: I stand corrected, so will
22 you or will you not be monitoring this project?
23 MR. GUNDRUM: I think it needs -- the
24 project needs to see how the cable is going to be
25 installed in different sections on the project.
0087
1 MR. QUILLMAN: Certain areas, where the
2 potential sites we only have one archeologist out there,
3 we have a biologist out there who have minimal
4 background training in archaeology as well
5 MR. BRITT: Okay
6 I guess I was responding to what the law
7 requires. This demonstrates a good faith effort above
8 and beyond the minimal requirements of the law, so that
9 should be --
10 MR. TITO SMITH: I agree with Chad for
11 monitoring prehistoric military sites. What is that --
12 what constitutes the historic portion of it?
13 MR. BRITT: Historic is those types of
14 sites that are related to mining and ranching that have
15 metal, glass, iron, typically items that we would
16 associate with the introduction of western culture,
17 European culture.
18 Most of these -- Well, I think one is a
19 foundation, one is a foundation of a 1950's military
20 house, I think cinder block; one is a fireplace, and the
21 third is a .50 caliber cartridge, something like that.
22 MR. BINTER: Versus something native
23 Native American over a thousand years? How is that?
24 MR. BRITT: I'm not understanding your
25 question. Let's let him finish first, please
0088
1 MR. TITO SMITH: Then you have 3450
2 reduction sites, and to us that maybe could be historic
3 military because we might have been out there chipping
4 tools for war
5 MR. BRITT: Sure, sure. It's also
6 labeling -- for archeological conventions for these
7 sites, they're called lithic production stations
8 MR. TITO SMITH: In the military is that
9 eligible for the register?
10 MR. BRITT: Presently, no, sir, it's not,
11 but that's not a definitive answer.
12 The process involves, if we make -- the
13 contractor makes recommendations, we review the report,
14 we send it out for comment to the Native American tribes
15 as well as the California SHPO, we take those comments
16 into consideration and a determination is made, if
17 there's a conflict it gets elevated -- or we try to
18 resolve it at the level -- whatever level, at the lowest
19 level. If it's not resolved, then there's a process
20 that elevates it to the keeper of the register and, they
21 make a determination.
22 MR. TITO SMITH: And then the other
23 portion, you say it's watched over by you, have
24 archeologists working on it, but they're working for the
25 government, protecting the government's -- we have a
0089
1 concern is we want it monitored, to make sure they're
2 monitored, right.
3 For instance, you know, I know the
government don't like SHPO, I can go out and say what's
-- I just did this a while back -- we're going to do a
sewer project, right?
We had to do a cultural resource. We went
and looked at it, wrote it all down, what was all there
and SHPO wouldn't accept it because I'm not an
archaeologist.
So I had to call Chad. "Chad, would you
come and do it?"
Chad just wrote, found everything I found
except in terms that-- our terminology was different,
and--
MR. BRITT: And that's a good point. We
don't make the rules; we just follow the rules
because some of us know what we're looking for.
And we-- I'm-- I'll just say it we doubt
what some of the archaeologists do or how they do it or
are they going to get correct information, you know, and
we want to protect what we have.
Like I say, I couldn't even write a report
out, right, because I use it for my writing for
0090
convenience.
Chad come out there and did a report and
identified the same thing. I didn't show him, and so
that's the reason why we want monitors. We want our own
monitors, some other people might give us-- someone
else didn't find everything that was there.
MR. CHAD SMITH: We probably would
request a field visit to look at the sites, and in the
report itself if they are at all extensive and I know
some of them are not, even the size of this area right
here--
MR. BRITT: There's one area out there
that's over a kilometer long
MR. CHAD SMITH: That's where we would
differ on eligibility under criterion D, for information
potential, and differ with Doctor Warren's assessments
that are built into the integrated cultural resource
management plan, and all this is based on ineligibility,
and then also as a suite of sites as a group, there may
be overall eligibility of four or five sites that aren't
individually eligible, kind of like the mining district
aspect of things, and even some of these 1948 C ration
and .50 caliber brass and military locations too, and
when we have the differences on eligibility, and then
looking at it statistically, if 37 sites were found in
0091
the survey, how are none, even if the 34 are eligible,
that it is possible that with-- not a large
ethnographic study, like for a land expansion, but a
component of the study that is ethnographic in nature
that we may have other concerns that those sites are
related to or part of, and that the preparation of the
ethnographic study and the monitoring by representatives
involved concerned tribes would adequately reduce
adverse effect to an acceptable level from our
perspective.
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, is 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
whenever, 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
0092
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. CHAD SMITH: Well, yes, but some of
those sites, there's a different sensitivity to, the
preservation of those places and further impacts on
those places on the part of tribes.
And basically they get written off, and
it's of great concern to us in the land expansion
project because it's not necessary that these sites be
written off, that the mission can take place with the
sites being preserved, and everyone comes out getting
part of what they need to do.
MR. BRITT: That's the intent
MR. CHAD SMITH: Because the overall
cumulative--
MR. BRITT: Sure
0093
MR. CHAD SMITH: -- effect on these
sites would be determination of these sites, which is a
dirty word
MR. BRITT: Neglect is an adverse effect,
we all know that. Just because you have a site and
you're not actively manning that site, neglecting it
that's an adverse effect, and that has to be mitigated,
we understand that
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,
allotted

Appendix H
Meeting Transcript
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. GUNDRUM: That's why we're there necessarily you would be there all the time.

MR. CHAVEZ: Depending, see?

MR. GUNDRUM: Depending on the --

MR. CHAVEZ:Depending, see?

MR. GUNDRUM: Depending on the methodology used, it doesn't matter if you have a monitor that's Native American or if it's me, if you cannot see the trench being dug

MR. CHAVEZ: That's my point, but you can see what comes out of it.

MR. CHAD SMITH: I am kind of begging to differ because on the fiberoptic installation and the utility corridor next to the gas pipe lines there was monitoring, albeit national register eligible sites and there were discoveries. You do only see the back dirt, the foot that they drag behind the cat disrupts the berm, which is small.

MR. CHAVEZ: Right

MR. CHAD SMITH: But there's two factors involved in 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, we’re there as much to 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.

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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 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 with Ft. Irwin by the various tribes.

MR. BRITT: Sure.

MR. CHAD SMITH: And working together. Nellis, they've done the posters that have actually won at SAA'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.

And China Lake have totally different mission, and there are a lot of differences with the way -- I guess in a way you have to prioritize the way you manage your cultural resources.

For Nellis it may be to their advantage to invest their money into ethnographic. Ft. Irwin is trying to get a basic handle at this point on what their inventory is.

I'm not saying what's right or wrong, but the point I'm trying to make is that there are big differences in the way that these -- what's Navy, what's Air Force, they're all different.

So it's kind of hard to compare those and say they're doing this and they're doing this, because the mission is different.

I think Ft. Irwin has demonstrated that they're willing and trying to improve the way that they do business.

MR. CHAD SMITH: 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. KANE: I don't understand, if you want to build a better relationship, why Native Americans monitors can't be involved.

Because I guess it comes down to the point of, you know, we don't trust the government.

MR. BRITT: I appreciate that.

MR. KANE: We don't trust you, if you keep on talking the way you're talking.

MR. BRITT: That's your prerogative, and I appreciate that, but I think there's some legal --

Bob, I don't know if the government can pay for monitors? I'm not sure.

MR. BARI: Ft. Irwin is looking into whether we are required to do surveys and we are required to hire certified archeologists, and the companies who do things we are required to do the contracting, we will look into it and see if there are any options where we can bring or collaborative workforce to do the surveys and to monitor.

I don't think I can just say, "Hey, I can bring my brother over here to do this," no, we have to do a competition, contracted, that's what we do, but we will look into the Army regulations, if we have some ways of making you partnership with a contractors to bring it on board to do the surveys and to monitor the 0101 sites, we will look into that.

MR. CHAVEZ: I don't think there's any problem with that as far as amending budgets and amending contracts, it's done all the time, it's forced upon us as tribal people. Your governments are always forced to amend their budgets and contracts due to the fact to the shortcoming of the government, and I think there's no difference with you that you could amend by saying, "Hey, we need a consultant in this matter, build that into the budget."

MR. BARI: There are certain regulations and there are certain --

MR. CHAVEZ: You don't use consultants at all?

MR. BARI: A lot of it is required.

MR. CHAVEZ: I just want my question answered, you don't use any consultancy?

MR. BARI: We do use a consultancy, yes.

MR. CHAVEZ: There you go.

MR. BARI: But do we have a company which we can consider hiring or something, who can compete with other contractors, that's what we are looking for.

MR. QUILLMAN: There is a possibility we have to look into the issue.

COL. FLINN: We will take the issue on
1 and take a look at it. We are a highly regulated organization, and laws and regulations are at work here, and we have to just take a look at it.

2 MR. CHAVEZ: I understand.

3 COL. FLINN: To make that happen

4 they're a consultant, right?

5 MR. CHAVEZ: Sure

6 COL. FLINN: Yes

7 MR. BRITT: The other thing, when you're going through this with a machine, whenever -- how deep is the ditch going to be?

8 MR. KANE: Four feet in some instances and in other instances it's going to be five feet deep

9 MR. KANE: That ditch isn't always going to be this wide, it's going to be spread out

10 MR. QUILLMAN: If we get into a sandy area and we have to go five feet deep and it could be ten feet wide.

11 MR. KANE: What might be fine if the bank caves in

12 MR. CHAVEZ: There's a lot of things that you've got to take into consideration, the underground plants, maybe boulders underneath, unforeseen, you could open up a hole as big as this room

13 MR. QUILLMAN: Exactly, right

14 MR. BRITT: That's why we try to do an extremely wide right-of-way, 45 meters for this project, when the actual is going to be six inches

15 MR. CHAVEZ: You're asking right-of-way, so you're talking more than half a foot

16 MR. BRITT: We want to take into consideration if there's going to be tracked vehicles going out there, we want to make sure if there's any land disturbing activities related to this undertaking of this fiberoptic network. We want to make sure staging areas, access roads, all of the areas related to this undertaking are properly inventoried and evaluated.

17 MR. CHAVEZ: You said 45 feet?

18 MR. BRITT: 45 meters

19 MR. CHAVEZ: Meters, that's a pretty good size, you're talking about any kind of vehicles going up and down there, people walking through there, materials being -- laying on the side, the roles and whatever, whatever you're going to use going to be drug, moved, lifted, there's going to be tons of ground disturbance out there. You're not talking about a half foot

20 MR. BRITT: That's why we have a 45 meter right-of-way

21 MR. CHAVEZ: I know that. The way you were putting it --

22 MR. BRITT: You were asking me how they were going to dig the ditch

23 MR. CHAVEZ: That's eluding the point

24 MR. BRITT: Basically they can dig that ditch anywhere between this point, and 45 meters away, they may need to move it.

25 We look at that entire area.

26 MR. KANE: There's disturbance within an area you're talking about.

27 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

28 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."

29 MR. QUILLMAN: We have surveyed. Darrell told us about thirty percent of the installation has been completely surveyed.

30 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.

31 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.

32 MR. GUNDROM: When there's a 106 undertaking like this, portions of the project sometimes are previously surveyed, portions are not; we generally resurvey them.

33 MR. CHAVEZ: Then I guess I was unclear with your answer yesterday, because, you did at one time and then --

34 MR. GUNDROM: I think I was misunderstanding your question.

35 MR. CHAVEZ: No, I heard it perfectly clear. You said that if somebody inadvertently came across an object, then it would be surveyed.

36 MR. GUNDROM: 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.

37 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.

38 MR. BRITT: I'll show an example of 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 examples.

39 MR. CHAVEZ: That's my point, see, since that time how many years has that been?

40 MR. BRITT: It depends

41 MR. CHAVEZ: It's been turned, turned, turned
MR. BRITT: We have some that were fiberoptics that were surveyed three months ago, some of them twenty years ago.

MR. CHAVEZ: Things that were on the surface are probably underneath.

MR. QUILLMAN: That happens, and things underneath, depending on the weather, rain, whatever, they could be coming to the surface.

MR. CHAVEZ: Right.

MR. BRITT: At this time let's take a break.

The food is ready. Let's eat. And then we'll wrap up our last presentation, and then the whole afternoon will be open for discussion. Thank you.

(Hearing resumed at 1:00 p.m.)

MR. BRITT: Before we talk about our last project for the day, we'd like to make announcements.

One is we're passing around a signup sheet, and basically it's a record of who has been here and their affiliation.

That way we can go into the report and so if you could take a minute and sign that, and if somebody has left and their name is not on that, please add that.

We've got Col. Flinn and we've got the Barrackmans, did we get Felton to sign it?

MR. QUILLMAN: Yes, we did.

MR. BRITT: Which brings me to the next event.

What we had originally planned was to have the listening session go all afternoon today, but several people have come up to me and said they're not going to be able to be here tomorrow.

Is there a chance that we could cut our listening session short and go out and visit some of the cultural sites this afternoon?

I mentioned this to Chad yesterday and he said that would be possible.

I don't want to make a unilateral decision. I want to see what the group feels about that, if that's okay, if we leave about 3:00 o'clock, we've got some more -- carpool and go out and visit some sites. You all let me know how you feel. Do you want to vote on it.

Raise your hand. Today? Opposed?

Do you want to go today? Okay, anybody did not want to wait and go in the morning. One vote. Okay.

When Chad gets back, which he'll probably get back about the time that Mickey and I wrap up, I don't want to rush you, so if we need to talk about stuff, we've got until -- we've probably got about two hours, unless we agree that we're done, and, of course, we can always carry on conversations.

We're going to stop at 3:00 o'clock, there may be things that spark some further dialogue. So what I would like to do now is turn the floor back over to Mr. Quillman. He's going to tell us about the proposed rail spur from Yermo to Ft. Irwin, and I'll briefly talk about the planned cultural resource activities, and then we'll open up the floor for discussion.

Mickey?

MR. QUILLMAN: Thank you.

The next project that we want to talk about this afternoon is in fact the rail spur, and let me take a second and explain how this works.

We train tank units, battalions, actually, from different parts of the country, so somebody from Ft. Stewart or Ft. Bragg or Ft. Hood in Texas will load up all of their tanks and related vehicles onto a railcar.

And currently they rail them from their home station, wherever that might be, to Yermo, California, which is about thirty miles from Ft. Irwin.

They then -- and a typical unit will bring about 400 boxcars or 400 train cars from home station to Ft. Irwin.

We offload that equipment down there and load it onto trucks.

The tracked vehicles are put on heavy equipment, the lighter stuff is actually carried up Ft. Irwin road, the same road that everybody -- that everybody that works at Ft. Irwin drives every day.

That is a two-lane road with two foot wide blacktop shoulders, so our intention is, it takes about three days to offload a train of that magnitude and truck it to Ft. Irwin.

And the short pole in the tent is in fact the rail spur, and let me take a second and explain how this works.

The next project that we want to talk about is we've got Col. Flinn and we've got the tracked up 22 miles of dirt road from Yermo up to Ft. Irwin, and the other, the other equipment, the lighter stuff is actually carried up Ft. Irwin.

We offload that equipment down there and load it onto trucks.

The tracked vehicles are put on heavy equipment transports and taken up 22 miles of dirt road from Yermo up to Ft. Irwin, and the other, the other equipment, the lighter stuff is actually carried up Ft. Irwin.

And currently they rail them from their railcar.

For discussion.

And that's probably about two days per rotation, and maybe three, depending on how they configure the rail spur, so what we need to do is go out and do cultural resources surveys on the proposed rail spur up to Ft. Irwin.

We have anticipated we will start that rail spur survey sometime next year, spring, summer, I don't anticipate construction to start for another three to four years, it's a very expensive project and it's going to take us a long time to get funding, but you need to plan ahead and we'll go out and get the cultural resources survey started this year and then we expect, or we would like to have your input on what's out there, how we can best deal with the cultural resources issues.

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Basically my training is as a biologist, second and look at the map.

MR. QUILLMAN: Let me jump in here for a second and look at the map. We propose to resurvey this entire stretch, that's what we've been doing over there, this little loop, this area, and this area. Green or blue, this little area, critical habitat area where you can't even go in there?

MR. BRITT: Right here, this is the southern edge now. This is the proposed alignment, there's a big -- it's a marine base, marine depot there.

MR. QUILLMAN: Green or blue, this little area, has been surveyed? You can actually see it right here. What they want to do is have a staging area, an offloading area, come around and then there's a big -- a little over a thousand acres staging area.

So what -- this is the area that we propose to survey, beginning here and ending up here. Some of this area has been surveyed before, as we mentioned earlier.

I could read that, is it the areas in green, Darrell, that have been surveyed?

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 limit 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.

COL. 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. 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 are 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. 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 be a staging area, 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.

So it's much better from an environmental perspective, they have the trains running on the track as opposed to having the Humvees running up and down the road, because we can control the speed. We can control the dust and provide protection to the tortoise.

MR. QUILLMAN: We will have to deal with that. This particular area, we're going to put the rail spur, we will have to get a biological opinion from Fish and Wildlife. We will probably have to buy some mitigation lands.

There are some private lands, and we'll have to buy mitigation lands to offset the thousand acres, whatever they're going to take from tortoise habitat, Fish and Wildlife could make us mitigation it three to one, but we can't project that, we tell the Fish and Wildlife what we want to do and they will tell us the terms and conditions of getting that permit.

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MR. QUILLMAN: Thank you
MR. GUNDERM: The four hundred foot rights of way corridor is 200 foot on either side of the center line, so its 400 foot across, which is pretty standard for a project of this scope.

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 is 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 per square mile, relatively dense population.

Further down here it's probably less than ten per 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. GUNDERM: 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. RAY: Are they doing okay?

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 demises of the desert tortoise is there's a disease among the population called 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

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It's exchange of bodily fluids, so if you take a diseased female, she can lay healthy eggs, and we can go out and repopulate the desert. We had to do this very slowly to make sure we don't create something called Typhoid Mary where you decimate the adult population, but it's based on sound scientific research, and we're at the leading edge of doing that.

MR. RAY: It's interesting because I attended one of those, and they talk about hatchlings, but they don't know if it would work because when they put them out -- back out in the desert, they'd have their own territory area, they don't know what's going to happen.

MR. QUILLMAN: That's the advantage of this program here is when you go out and put a female out there, she lays eggs; now the little guy comes out of the ground, that's where he was born and that's where he wants to be and that's where he's going to establish his territory.

So I think there's nothing but positive coming out of the territory.

MR. RAY: This guy has studied, do they go way far back, I don't know, I would say eight years ago, and they still didn't understand the difficulties.

MR. QUILLMAN: We don't, we can't figure out how to best count them, so there's a whole lot of difference of opinions, but we're making effort to go out and help in the recovery.

MR. BRITT: Thank you, Mickey.

MR. QUILLMAN: Thank you.

MR. BRITT: At this time the floor is open for discussion on any topic, almost any topic you'd like to talk about. I've got to qualify that.

Do you have any questions, concerns or comments? We'd love to hear them.

MR. CHAVEZ: This is your second draft?

Or is this the first?

MR. BRITT: What are you asking?

MR. CHAVEZ: This one, are we supposed to comment back on this, review it?

MR. BRITT: Yes, sir.

MR. CHAVEZ: Come back with our comments?

I mean is there a deadline on this.

MR. BRITT: We'd like to get your comments, you know, as soon as possible.

It's not -- it's not a requirement that we did this study.

If Ft. Irwin took this study on so that they could better manage their resources.

The problem is it's a contracted study, and eventually I've got to pay these people and we've got to get the report finalized.

What I've discussed doing is at some point in the future we will finalize it, but that doesn't mean it's going to be a static document.

We'll probably do annual updates to this report; we'll probably do further ethnographic studies with each tribe, so this is really a baseline study.

It's mainly provided for your information.

We'd love to have your comments on it. I don't want to give you a definite date, but eventually I have a contract, I have to fulfill my obligations, but that will not foreclose on your opportunity to add comments, just put in a later edition.

Well, I know if Chad was here he would have something to say.

MR. KANE: I don't want to start a big argument.

MR. BRITT: You don't think Chad would have things to say?

We truly value everybody's opinion. We understand we don't see eye to eye, but that's the purpose of these meetings. My job is a moderator. I don't work at Ft. Irwin. I'm a facilitator and moderator; my job is to help them understand your perspective as well as, you know, understand their perspective as well, so that's my role in all of this.

MR. RAY: I understand -- I'll just put it in words about the eligible artifact, stuff like that.

MR. BRITT: Yes.

MR. RAY: Is -- one comes to me, in my mind, anyhow, to me I think anybody -- nobody would think are in fact, the shell of the desert tortoise.

MR. BRITT: The shell of a desert tortoise.

MR. RAY: If they're trying to find out who lives in the area, Ft. Irwin that's what they're familiar with because that would be thrown away because it's not in evidence that it was there.

MR. BRITT: Right.

That's a big dilemma that archeologists have to deal with, is 90 percent of the material that they use, skins, rope, twine, clothes, you know, all of that's gone, it's perished.

It's the rocks and the fired ceramics and petroglyphs, rock chips. Very little of the material culture from the prehistoric peoples is left today, and we're trying to put together those pieces of the puzzle to better understand the past.

And, you know, significance is indeed a dynamic concept, it's not what they said on this day, therefore, it's always going to be. This is what is significant or not, because it changes and we share and change information.

Their interpretation of what we need to protect at Ft. Irwin is certainly going to change, and that's the big thing I want to make a point of here is if we don't know what's important or what types of resources are important, we can't effectively manage them.

MR. RAY: It's interesting, we talked about the desert tortoise. I know if there's some there, if there was a lot of them, I know who lived
there, that's my prime thing
MR. BRITT: Sure.
Yes, sir?
MR. TITO SMITH: I think the concern that we all have here is we still have the monitor situation, I think that we want to pursue.
MR. BRITT: That is --
MR. TITO SMITH: The facility, I think this is a concern of all of us, you know, we don't -- We don't possess that piece of sheepskin that says we're archeologists or we are consultants.
MR. BRITT: We understand.
MR. TITO SMITH: We want to monitor our own resources, and we don't have the documentation that we are.
And we're saying when you do this, you get proper --
MR. BRITT: I made the point yesterday saying that we as archeologists know about archeology, we don't know about tribal histories. And again, that's one of the reasons why we're here.
Whether or not Ft. Irwin is authorized to compensate tribal elders for their participation, I'm not -- I don't have the knowledge to address that.
I know that's something that I think they hear very clearly on that, that is something that you all would like to see Ft. Irwin pursue that and see what they could work out.
I think Mickey is committed to checking into those, into those avenues of ways we can work together better.
MR. QUILLMAN: One of the first things I'm going to do is get over to Nellis and look at their cultural resources program, find out how they've actually gone through the contractual situations to hire Native American consultants for their projects, and I will make every effort that I can to insure that we comply with your wishes along those regards, if I can contractually find a way to do that we will do that.
MR. RAY: Well, you know at the first meeting we had at Ft. Irwin I thought we brought that issue up. And somebody was supposed to look in to see if that could be done because, we were saying the same thing that's being said here today, archeologists get paid a hundred bucks an hour, two hundred bucks an hour.
MR. QUILLMAN: Wait a minute.
(Laughter)
MR. BRITT: None that I know.
MR. RAY: We as Indians that are affected in this area, we get nothing, and you're trying to extract information from us for nothing, and whoever is doing the planning, you know, should have given it some forethought to say, "Hey, you know, are we going to continue to take from the Indians," and never give anything back for their experience?
You know, that's -- 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.
MR. BRITT: Sure.
MR. RAY: You know, we talked about that same-o same-o, and here we are talking about the same old thing, and it seemed like whoever is making the decisions to do those kind of things would say "Well, my gosh, shouldn't we be paying those people with that knowledge?" You know, and we're not doing it.
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 that 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. HORALEK: 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 get the most accurate history there possible, I believe it is in fact compensatable and we can probably work that shouldn't be difficult.

MR. KANE: That's what I thought.

MR. HORALEK: Also, we aren't taking from you in that regard without getting anything back.

If we're in fact able at the end of that process to give you a document and ourselves a document that very accurately describes your people's history, and all of the information that concerns that history in this area, like the map that you're looking at there, that will be extremely beneficial to you for a number of other purposes, so you will get something besides what I'm talking about, being able compensate you to help us put that together to where we both get a benefit from it.

MR. HORALEK: Absolutely. As I say, walking into federal court, which I've done many times --

MR. KANE: I would keep it for myself and say "Until you pay me you're not getting it."

MR. HORALEK: Bear in mind, as I say, having said -- having spent a lot of time in federal court, if you ever happen to be in that federal court again on issues like this, and you have this book that 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 going to carry an awful lot of weight for you.

So there is a benefit for you.

MR. KANE: You've talked about being in federal court, you know, I've been an Indian all my life, and I know what it's like to be an Indian to know it's been taken to the cleaners.

So, you know, don't give me anything like that. The other -- if it's a question of money, I'll tell these two people "Don't submit your darn billing because the Army can't afford it."

MR. HORALEK: There are days when that's true.

(Laughter)

MR. KANE: If that's the problem, but I'm just speaking because it seemed like, you know, we're talking about the same thing we talked about last year, that we were going to look into the issue.

MR. HORALEK: That's what I'm saying, actually they are different.

MR. KANE: What were the results?

MR. HORALEK: I still can't pay you for making comments. I can perhaps, based on what we've discussed in the last two days, be able to come out and pay you when we want to develop history and so forth.

MR. KANE: Because we said the same thing last year, we used the example -- the gentleman that was here, what was his name? Chad, said the same thing last year. He brought up the Nellis thing, you know, and here we're talking about you say it's different.

MR. BRITT: That's what -- you're making a good point, if you really want to know what everybody said, look in that report right there, and it will tell you.

But the point is, I think Bob is making a good point, is that we can't pay you to review our documents and comment on them.

But he thinks it is feasible to pay tribal elders and tribal experts to work with us to develop histories.

MR. HORALEK: And we're looking now -- based on that --

MR. BRITT: To possibly monitor sites on a case-by-case basis.

MR. SWAIN: Let the record show again that when you meet again next year they'll say the same thing.

MR. KANE: I don't think that we said we want payment for comments or review your work.

MR. BRITT: We're mixing apples and oranges here. What we're talking about is a conversation that you weren't here last year that was brought up in our first meeting about --

MR. KANE: I'm not going to back to last year. I know I wasn't here. I'm just staying that he made a comment about paying us for comments and reviewing the book or whatever. We're not asking that, you know, we take that on ourselves when the book comes to our tribe, you know, to review it and look it over.

MR. CHAVEZ: That's our responsibility.

MR. KANE: But if we don't want to make any comments, then we don't.

MR. HORALEK: That you have a perfect right to do.

MR. KANE: We figured out why we don't want to make no comments, but the subject here is the monitor out in the field.

MR. BRITT: And again, they're making every effort to --

MR. KANE: Just like that railroad spur, okay? I mean what are we going to do there? You know, I mean because we've been all over this country, there ain't any place you can go that we haven't been already, you know, we don't know what lies underneath the ground when you start digging up that railroad spur.

MR. HORALEK: You're actually doing yourselves some good and ourselves some good in that regards.

MR. CHAVEZ: Let's cut short the argument.
Mr. Quillman: I will get you a response, 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. Britt: So when they went back, they found a lot more, and they used someone else.

Mr. Britt: Sure.

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, they didn't like it. Why? Because America is all about money, and that's I guess that's some of the Polish people how do they like it here in the United States. They didn't like it. Why? Because they set up their program.

Mr. Quillman: Okay.

Mr. Ray: He wants to be part of this, he 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.

Mr. Britt: I think Ft. Irwin has demonstrated a willingness to explore all avenues so that they can come up with an answer.

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Mr. Ray: Where I used to work at, the 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. Britt: Everybody wants to get paid.

Mr. Anderson: I'll talk with him.

Mr. Tito Smith: Kenny said he did, he'll talk with him.

Mr. Britt: I understand.

Mr. Quillman: I have a lot of expertise to know exactly what you got, and why we're asking to pay us too.

Mr. Britt: I'll agree.

Mr. Donlad Smith: We forgot about the bead.

Mr. Britt: That's right, I'll agree.

Mr. Quillman: We forgot about the bead.

Mr. Britt: 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 one, 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. Quillman: Okay.

Mr. Ray: 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

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Meeting Transcript
MR. BRITT: We could even have a 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. BARI: 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 about the room here need to take this back and consider it and make sure we will basically follow the standard operating procedure.

MR. GUNDRUM: And I know the people in the room here need to take this back and consider it and read it and talk to their tribal council.

MR. BRITT: Sure, we're obligated to do that.

MR. BARI: Yes.

MR. GUNDRUM: And I know the people in the room here need to take this back and consider it and read it and talk to their tribal council.

MR. BRITT: Sure. We need to get vital information from the tribes.

MR. GUNDRUM: Right.

MR. BRITT: One thing, Muhammad did mention, this is kind of related but on a different subject, is during Mac's leave in December of this year we would like to take some site visits, the Native Americans out to the Whale to look at some of the sacred sites.

It's about a three-week open period, it's in December, it's cool, but it's near Christmas, but I know people have travel and families coming in, but if we could do it possibly early in December, we could make some field trips out to the Whale.

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 comes 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 optic 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 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 a
MR. BRITT: We do the best we can. I mean it would be very improper, Georgia Kennedy is still 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.

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: No, no, no, you can go beyond that you can meet that requirement but you can also submit it to people, interested parties, right?

Didn't we say that?

MR. BARI: On the NEPA and other things, but the ones which are legally required things, then we will follow only the letter of law.

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. CHAD SMITH: Yes

MR. BRITT: Would you like to say something?

MR. CHAD SMITH: 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 personnel under a contract or in compacting, assume those duties at the present day funding level, unfortunately, because it doesn't factor in inflation and decreasing dollar values, so if you went after a chunk of BIA's budget for ropes, maintenance on the reservation right now, ten or twenty years from now you wouldn't have enough to even pave a driveway or something like that, you know.

It's -- to me it's the biggest dinosaur in the United States government, it's an inverted Pyramid.

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.

something that's inappropriate to be done, and then some agencies using BIA as a front in order to go after billions of dollars in individual Indian money accounts to finance black programs and other things in Nicaragua and places like that. So don't get me started on BIA.

But there is something about trust responsibility that is recognized in the treaties themselves, and really any tribe that is a federally recognized tribe has a treaty, and any tribe that's not a federally recognized tribe has a treaty that when one government agrees with another reservation, internationally are recognized to have a treaty that when one government agrees with another government to do something, that's a treaty.

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 trust responsibility and its NAGPRA responsibility to 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 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 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, and 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 grieve 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?

Meeting Transcript

21   get that," I said, "Listen, isn't it a small price to
19   your gripe?"
18   and a clean background can set up a casino, so what's
17                 "Anybody with the wherewithal in Nevada
16   you're standing in Nevada.
15   about Indians having a casino here?   My God, man,
14   tribe doesn't give the per capita.  But you're griping
12   Indians having their casinos and getting a check, and I
11   casino out there on the lawn was griping to me about the
9                 And people gripe about native gaming, the
8   perpetuity for the Indian people.
7   for rebuilding and future entering back into the
4   get -- Well, we could use 87 billion dollars, you know,
3   misstatement -- lose a war with the United States and
2   successfully lose a tribe -- lose -- excuse the
1   Germany or Japan or the Mouse that Roared is
0154
25                 And all an Indian tribe has to do, like
24   have a state of war which existed before the treaty was
23   signed.
22                 When is it never going to stop?
21   it away.
20                 Well, we created, and then you try to take
18   something for yourself."
16                 MR. CHAVEZ:  I mean we are a third world
15   created a third world country within the United States,
14                 So -- and now some -- they're no longer at
13   a lot of them, we are a third world countries.
12   That's ridiculous, any little thing they tell all of the
11   of that money and shut down casinos if he has to.
10   presidents of the Navajo nations said, the Navajos have
9                 And as Peterson Zawd, one of the past
8   Reservation referred to it as the Cultural Warriors,
7   those who fight with computers and pens and Programmatic
6   Agreement critiques, and the rest of this, and either
5   way, whether it's Sitting Bull, Geronimo, Tecopa or
4   others fighting for the preservation of their people
3   through all of time, you know, it's -- it's real, and
2   it's very crucial, crucial and important to the Indian
1   people.
0155
25                  MR. CHAVEZ:  On that definition, I
24   believe you left out one thing, and the other right of
23   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.
11   That's ridiculous, any little thing they tell all of the Native American -- first of all, the United States
12   created a third world country within the United States, for the Apache people off of their lands, they would have a state of war which existed before the treaty was signed.
13   But once we get the opportunity to better the Apache people off of their lands, they would have a state of war which existed before the treaty was signed.
14   And now some -- they're no longer at war with the United States.
15   the California, we're facing the issues about them wanting the casinos to pay off their debt.
16   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.
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16   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.
look at you as "Who in hell are you?"
You're like an invisible person walking around there and they walk right by you without acknowledging you.
And when we -- when we talk about sovereignty and all of these other things as tribes, we can't even take care of our own problems within our own governments, and then we wonder why we have three tribal councils trying to set something up. Where are the people?
You know, but no, you don't work that way, you don't base on the person's rhetoric and how smart he is -- you look at his family first and say "Oh, I don't want him, because he's not from my side of the family," and that's where we start, when he look at all of these things.
We have people living on the Moapa
reservation that have descendents from down in here, and you know, the Indians had to be camped near that spot or sharing  the same way, all the way up.
We look at Las Vegas, if you look at Las Vegas Meadows when the Indians and Paiutes were campe
there, you know, the white man came along and he took over those springs, chased the Indians away. We didn't have anything to fight him with, so he took over those springs all of the way up.
Then we try to go back and recreate what had happened, you go down -- Kenny and I went to 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 it'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
hour as a consultant. Well, the issue was always different, you know. Well, how can it 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 into it, here it is a year later. We're talking about the same thing and nothing has happened. MR. CHAVEZ: 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, so the Indians are 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 theythem starve, and they 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.

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, so the Indians are 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: They still shoot at you today, like the guy said, not with bullets, but by this, you know, this is what they shoot 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. CHAVEZ: That's what we'll do. MR. BRITT: It's 2:15. We have -- go ahead, Jennifer.

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: No.

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 G. Oglesby
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 see 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” grafitti at the “Wadi” site. Mr. Gundrum 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 graffitti 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.
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 (CAs) with individual tribes having a cultural interest in the geographical region, (2) the ethnohistoric and ethnographic 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.