

DOUBLE ISSUE

C O M M O N

Ground

ARCHEOLOGY AND ETHNOGRAPHY IN THE PUBLIC INTEREST

Speaking Nation to Nation

FULFILLING OUR PROMISE
TO NATIVE AMERICANS

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Why Consult?

FRANCIS P. McMANAMON

For over a decade, federal laws, regulations, and executive orders have required the involvement of Indian tribes when federal agencies make decisions concerning historic properties and archeological sites.

Of course, compliance with these laws is a means, not an end. The desired outcomes are better decisions and broader perspectives in the management of America's cultural heritage. This is to be accomplished by providing American Indians with opportunities to express their opinions about important public decisions before they are made.

Archeological investigations on federal land must be preceded by consultation with Indian tribes that are likely to have a cultural affiliation with the sites that will be investigated. Furthermore, after the excavation or analysis is completed, any Native American human remains and cultural items (as defined by NAGPRA) must be repatriated to the appropriate tribe, if requested.

The laws and regulations require consultation with Indian tribes. Except on tribal land, the consent of the tribe is not required. This is an important, although sometimes overlooked, point. Except on their own lands, Native Americans cannot dictate how archeological excavations or reporting are carried out. Existing laws, regulations, and standards require careful, systematic reporting. These requirements ensure that the information is obtained for public benefit. In many cases, careful excavation and analysis also are necessary to establish the cultural affiliation of remains and other items covered by NAGPRA.

In the past, notification of a project was often via certified letter, rather than through personal contact between the agency and representatives of Indian tribes. More recently, with the consultation required under NAGPRA, the importance of person-to-person meetings has been recognized and recommended strongly whenever possible.

In consultation, effective communication is crucial, and both sides should commit to working together for the long term. Relationships must extend beyond any particular situation and not be overcome by one disagreement.

Archeologists and Native Americans must clearly and calmly articulate the value of their different approaches to understanding the past. They each should consider how one way of understanding might inform the other. Archeologists should offer the benefits of the archeological perspective, with an

awareness that other ways of knowing about the past are likely to be espoused by Native Americans.

Archeologists should learn how to incorporate information from Native American oral histories into their interpretations. Native Americans ought to consider how these interpretations support their traditional histories. Perhaps more challenging is describing archeological interpretations in ways meaningful to Indians. Another challenge is that many Native Americans are outspoken about archeology's irrelevance to them and their histories. Sometimes these statements are made for effect. However, the shorthand of archeological jargon and densely written professional material makes poor fare for reaching out to anyone, including Native Americans.

"In consultation, effective communication is crucial, and both sides should commit to working together for the long term. Relationships must extend beyond any particular situation and not be overcome by one disagreement."

Cooperation of this sort would bring a fuller understanding of ancient America. The complimentary combination of Indian knowledge based upon oral histories and tradition with scientific interpretations holds the promise of rich stories about the ancient past. There will be disagreements to be sure, but more exploration of complementary interpretations is likely to be fruitful. Native Americans might benefit from a greater public appreciation of their peoples' histories through legitimization in terms of "Western" understanding of ancient Indian history in the Americas. The key word in this paragraph, however, is promise, for there are few examples of this kind of combined ancient history to point to.

Archeologists and Indians both would benefit from enhanced public understanding of the great temporal depth of human history in America: thousands of years, not hundreds, and millions of archeological sites, not only those associated with Africans, Europeans, and subsequent immigrants.

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DIGGINGS

News, Views, and Recently Noted

Rethinking Preservation

SEEKING TO STREAMLINE, BLM FINDS SUPPORT, RESISTANCE

The Bureau of Land Management plans to change how it implements the National Historic Preservation Act, which could have implications for archeological sites on 320 million acres of federal land—a substantial portion of the western states. Under an agreement with the National Conference of State Historic Preservation Officers and the President's Advisory Council on Historic Preservation, the bureau, in most cases, will have sole authority to determine the need for archeological surveys and

excavations in advance of petroleum, ranching, and logging-related development, as well as whether sites are eligible for the National Register of Historic Places.

The structure of the national preservation program, established by the act, assumes a check-and-balance relationship among three players: federal agencies, state preservation officers, and the Advisory Council, which reviewed over 3,000 projects in 1996. This agreement, says BLM preservation officer John Douglas, would allow the bureau to devote more time to proactive work—such as analyzing the information that has been gathered over decades of compliance with preservation laws and identifying areas where more information is needed—rather than generating a paper trail for “routine”

projects.

The goal is “excellent management,” not “excellent paper,” says Douglas. “It’s real hard for a manager to understand the resources themselves if the whole focus is having evidence in the file that you [complied with the act]. We’re reorienting away from the process and more toward the product.”

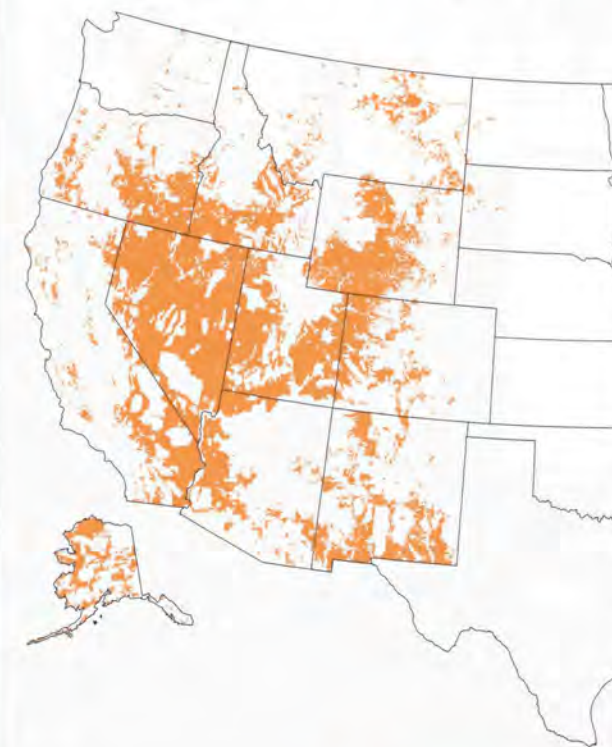
Ninety five percent of the time, the states and the Advisory Council have agreed with the bureau’s decisions to survey, test, or excavate, says Douglas. The BLM “has enough accumulated experience to know what the outcome will be” in these cases, he says. Under the new agreement, the states and the council will only be involved in nonroutine cases such as interstate or interagency projects, undertakings that would

affect National Historic Landmarks or nationally significant National Register-eligible properties, and controversial projects in which review is requested by the BLM, a state historic preservation office, or an Indian tribe.

In New Mexico, the bureau has a good record, says SHPO Lynne Sebastian. But, she says, “if managers are told that the old checks and balances no longer exist, some may take advantage of the situation.” Claiming that some managers “already push the envelope for not spending scarce dollars on surveys,” she is concerned that more projects will be done without the adequate safeguards. Previously, according to Sebastian, the BLM would confer with the state on all stages of a project. Now, she says, the agency will only be

required to contact her office if it has discovered an important site that will be affected by the work. Wyoming’s deputy SHPO Judy Wolf is concerned that agencies without the BLM’s record will attempt to

that aren’t defined. It’s very ambiguous in places.” The BLM is not the only agency to request a measure of flexibility with which not all parties are comfortable. The National Park Service has an agreement that



BLM land holdings.

secure similar agreements. Karen Hardy, Colorado’s preservation officer, says that when her office commented on the draft agreement, “there was concern about consultation with SHPOs for determination of eligibility [for the National Register].” The BLM, she says, is assuring the states that it will take care of the process in-house, but “it is our feeling,” says Hardy, “that there will be little opportunity for the SHPO to provide an advocacy role.” Of the agreement, she says, “There are just terms

nearly finished negotiating a statewide arrangement when the nationwide agreement came out. The state will craft its individual protocol along the lines of what they had been working on. Arizona SHPO James Garrison sums it up by saying that some states are more interested in controlling the process than others. His state, he says, is more concerned with the final product.

Douglas says that his agency wouldn’t be doing anything radically different from what has been done in the past under statewide agreements. “This is very new,” says Marilyn Nickels, the head of the BLM’s cultural heritage program. “It’s much more far-reaching . . . There’s been a high level of anxiety over change.” The National Conference of State Historic Preservation Officers is led by a 16-member board of directors which votes on issues such as pro-

tner, a draft of the agreement was sent to member states. There was ample opportunity, she says, for them to make their views known. Karen Hardy says that though her state’s comments were requested, the final agreement did not reflect all of Colorado’s concerns.

As the BLM works out protocols with the individual states, it will also be revising its procedural manuals to reflect the new way of doing business. These two processes have given rise to another controversy: who can and can not participate as interested parties. When the New Mexico Archeological Council, a 200-member non-governmental group, asked to participate in developing the state’s protocols, it was turned down. NMAC’s president claimed that the BLM was “slamming the door on public involvement.” There followed a flurry of e-mail crit-

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allows it to do its own review for certain kinds of projects, mostly maintenance and repair. NCSHPO has received complaints that some superintendents are interpreting “maintenance” to include major work.

For the most part, other states are variously optimistic that their concerns about the BLM agreement will be addressed. Idaho was

grammatic agreements. A task force of preservation officers from Nevada, Arizona, Montana, New Mexico, Oregon, Wyoming, and the Navajo tribe negotiated the agreement with the BLM and the Advisory Council. Other member states were asked to comment to the board. According to conference president, Alaska SHPO Judith Bit-

ical of the BLM’s perceived reluctance to let anyone in on the dialogue. Nickels contends that the protest came from a minority. E-mail traffic, she observes, can sometimes give the impression of a wide concern.

The nationwide agreement appeared for public comment in the *Federal Register* in December 1996, and was



LAKE CHAMPLAIN MARITIME MUSEUM

An Ex-Hero's Forgotten Legacy

Revolutionary War Vessel May Be from Benedict Arnold's Fleet

The replica above, of one of Benedict Arnold's gunboats, the Philadelphia, resembles the one recently found at the bottom of Lake Champlain. Both ships were sunk by the British in 1776.

A wooden gunboat believed to be from a fleet commanded by Benedict Arnold has been found on the floor of Lake Champlain. The vessel was discovered by researchers studying the effect of zebra mussels on shipwrecks in the lake. The 54-foot gunboat is in excellent condition, sitting upright with its 50-foot-high mast intact and a large cannon on the bow.

In October 1776, Arnold's fleet met the British in an attempt to stop a southward thrust into the colonies. The British were victorious, but the delay proved critical, setting the stage for an American victory the following year at Saratoga.

The Lake Champlain Maritime Museum, the Navy, and the states of Vermont and New York are developing a plan to protect the vessel. The Navy is involved because of its extensive experience managing its own historic wrecks. The Army has also joined the discussions, since the ship was built and manned by the Continental Army. Following the discovery, Vermont Senator Patrick Leahy held a press conference at the museum, stressing the importance of preserving the lake's historic wrecks.

The lakewide survey—budgeted at about \$200,000 annually by the Lake Champlain Basin Program, the National Park Service, the Environmental Protection Agency, and the Lintilhac Foundation—will take five to seven years.

posted on the American Cultural Resources Association's website (<http://www.mindspring.com/~wheaton/ACRA.html>). The BLM, Nickels says, sent two letters out to hundreds

public participation . . . with parties outside the BLM when revising policy and procedures." Elsewhere, it says, "BLM will provide Indian tribes . . . appropriate opportunities for involve-

sory Committee Act" (which acts as a safeguard against any one interest having undue influence over government actions). The states, he says, are free to elicit whatever public

expertise in the appropriate places. The BLM also plans an ambitious effort to establish a state-compatible database with GIS mapping technology and retrieval capability on the internet.



New Head of Advisory Council

Fowler Leads Streamlining of Procedures

The Advisory Council on Historic Preservation has named John M. Fowler as its new executive director. Fowler has filled the position in an acting capacity since October of last year.

Fowler, who joined the agency in 1972, became general counsel in 1980 and four years later assumed the additional responsibilities of deputy executive director. His work has ranged from advocating national preservation legislation and policy to reviewing federal projects affecting significant historic sites. Under his leadership, the council has been working to streamline procedures under section 106 of the National Historic Preservation Act. He was a long-time member of the U.S. National Committee for the International Council of Monuments and Sites, most recently serving as its chairman.

of recipients. The first went out to tribes and other interested parties at the time the agreement appeared in the *Federal Register*. A second was mailed to the same groups announcing the BLM's intent to revise its procedural manuals. Nickels says that tribes were asked to comment on sections of the manual that deal with consultation and coordination with Native American groups. The response to both letters, according to Nickels, was meager. Alan Stanfill, an historic preservation specialist with the Advisory Council, says that sending a letter out telling tribes and the public what an agency plans to do is not adequate consultation, and that one should not assume that a minimal response indicates little concern.

The agreement states "the BLM will ensure adequate

ment." The document says that this will be done based on provisions for public and tribal involvement spelled out in the NHPA and the National Environmental Protection Act.

Douglas and others in the BLM claim that the protest is misguided. The state-specific protocols and the manual revisions are considered by the BLM to be "internal administrative documents" pertaining only to SHPOs and the BLM. In an August 8 e-mail message to NMAC's Phillips, Douglas wrote that his agency "welcomes an ongoing exchange" with the council, but continued that "public participation is inapplicable from our point of view . . . More troublesome, it is virtually impossible for us to do less than full public participation without running into conflict with the Federal Advi-

involvement they deem necessary. Colorado has posted a draft of its agreement with the BLM on the internet (<http://www.aclin.org/other/historic/chs/index.html>). New Mexico SHPO Sebastian plans to give her state's agreement similar exposure. At this point, revision of the BLM's procedural manuals will include only the BLM and the SHPOs.

The BLM, for its part, is doing its best to make the agreement work, says Douglas. The bureau is implementing some far-reaching internal changes as well. Aside from revising its procedural manuals, it is also establishing a preservation board that will advise on policy, ensure consistent performance, and monitor preservation training. The agency is currently doing a skill inventory to make sure it has the right level of

SAA to Give Scholarships, Awards for Educational Excellence

SOCIETY FUNDS
TRAINING FOR NATIVE
AMERICANS

The Society for American Archaeology has established a scholarship program to train Native Americans and Native Hawaiians in archeological methods. Candidates must be enrolled in high school or college or work in native culture preservation programs. Awards are up to \$1,500.



Candidates may apply individually or be nominated by a professor or supervisor. January 15 is the deadline. For more information, contact the Society for American Archaeology, Arthur C. Parker Scholarship Program, 900 Second St., NE, #12, Washington, DC 20002-3557, (202) 789-8200, fax (202) 789-0284, e-mail info@saa.org.

The society is also accepting nominations for its 1988 Excellence in Public Education Award. Eligibility is open to individuals such as teachers, museum educators, and park interpreters who have made or facilitated contributions through writing, speaking, or other presentations. Archeologists are not eligible. Nominations should describe the nominee's creativity, leadership,

and public impact. The deadline is December 1.

Send nominations to Amy A. Douglass, Tempe Historical Museum, 809 E. Southern Ave., Tempe, AZ 85282, (602) 350-5105, e-mail amy_douglass@tempe.gov.

Call for Grant Proposals

NPS AWARDS TO FOSTER PRESERVATION SKILLS

The NPS National Center for Preservation Technology and Training announces its 1998 historic preservation grants. The center is an NPS initiative to advance historic preservation in the fields of archeology, architecture, landscape architec-



KEN ABBOTT, UNIVERSITY OF COLORADO

Collecting data from ground penetrating radar at the Bluff Great House archaeological site in Utah, a project conducted by the University of Colorado with a grant from NCPTT.

ture, materials conservation, and interpretation. Grants will be awarded on a competitive basis.

The deadline for proposals is December 19. The complete 1998 grants announcement, including the request for proposals and instructions on how to prepare and submit applications, is available via NCPTT's fax-on-demand computer, its web

site, Internet gopher, and e-mail. Contact (318) 357-3214 (fax-on-demand), e-mail pttgrants@alpha.nsula.edu (leave the subject and message line empty), web address www.cr.nps.gov/ncptt/, via gopher, <gopher://gopher.ncptt.nps.gov> (the grants are posted under the heading, "About the National Center . . . /Announcements/").

Site Watch

Protecting the Nation's Archeological Heritage

Supreme Court Will Decide Historic Shipwreck Case

RULING COULD ALTER COURSE OF WRECK PRESERVATION

The Supreme Court will review the case of the historic shipwreck *Brother Jonathan* this fall (sub nom. *State of California State Lands Commission v. Deep Sea Research, Inc.*, No. 96-1400), a decision that will have a major impact on states' abilities to protect their historic shipwrecks. This decision will also have repercussions on the legal efficacy of the Abandoned Shipwreck Act

(43 U.S.C. 2101-2106).

The *Brother Jonathan*, a 220 foot long paddle steamer, sank off the California coast on July 30, 1865. Of nearly 250 people aboard, only 16 survived, and the ship was rumored to have been carrying a large cargo of gold. The salvage firm Deep Sea Research, Inc., challenged California's legal right to claim ownership of the vessel under the Abandoned Shipwreck Act. The Secretary of the Interior has determined that the California registered landmark is eligible for listing in the National Register of Historic Places.

According to the act, a state may assert ownership if it can make a "colorable claim"; that is, demonstrate that the vessel is within the state's submerged lands and that it is abandoned. In 1995, Deep Sea Research—

which bought out an insurance company that claimed part of the cargo in the 19th century—challenged the California State Lands Commission in federal district court, arguing that the *Brother Jonathan* was not abandoned.

The court ruled in favor of Deep Sea Research, deciding that California had not made a colorable claim. Since the court also ruled that the ASA preempts state law in such cases, California could not assert title using its own preservation statutes (883 F. Supp. 1343 [N.D. Calif. 1995]).

In 1996, the Ninth Circuit Court of Appeals upheld the ruling (*Deep Sea Research, Inc. v. The Brother Jonathan*, 89 F.3d 680, rehearing denied and amended opinion, 102 F.3d 379 [9th Cir. 1996]).

Congress passed the ASA

in 1987, recognizing that historic wrecks needed greater protection than federal law could provide and that the states had the responsibility to manage wrecks in their waters. Under the act, the United States assumed title to all abandoned shipwrecks in state waters that are either embedded in land belonging to the state or are on (or eligible to be on) the National Register of Historic Places, or both. Then, with a few exceptions, Congress immediately transferred ownership to the respective state. Congress intended to eliminate the assumption that there are ownerless shipwrecks in state waters. It also meant to establish that shipwrecks that fall under the ASA are outside of the admiralty law of salvage and finds ("finders-keepers" law).

Cave Looters Brought to Justice

CASE YIELDS
RECORD NUMBER
OF CONVICTIONS

Nine people have received felony sentences for looting a cave on Forest Service land in Utah that held evidence of human activity going back 8,000 years. It is the largest number of defendants and felony convictions in one case since the Archaeological Resources Protection Act was passed in 1979.

The nine visited Polar Mesa Cave in eastern Utah's Manti-La Sal National Forest periodically from 1989 to 1991, excavating more than 54 cubic yards—or about 20 pickup truck loads—from the site. Forest Service personnel first noticed the digging during a visit to the remote cave in August 1990. Returning to the cave in 1991, authorities found that not only were the looters still at it, they were getting more ambitious. Whoever was visiting the cave had removed a great deal of earth, screened it for artifacts, and caused irreparable damage.

The Forest Service offered a reward for information, and shortly afterward, someone noticed an artifact collection at a pawnshop in Moab, Utah, and reported it to authorities. The shop owner, also a bail bondsman,



THE PILLAGING OF POLAR MESA CAVE: This photograph, taken by one of the looters, was later used as evidence.

had accepted the collection from Scott Timpson (one of the nine convicted) as bond collateral on a drug arrest.

Archeologists determined that the collection of over 500 artifacts seized from the bondsman, including human remains, likely came from public lands in south-

eastern Utah, and possibly the cave.

Forest Service and BLM agents investigated, assisted by the Grand County sheriff's office and the Moab police. At the cave, they found dust masks and cigarette butts. DNA from saliva traces correlated with sever-

al of the suspects, and soil residue on the artifacts matched samples from the cave floor. The DNA and soils analysis was performed by the FBI lab in Washington, D.C., and Pennsylvania's Mercyhurst Archeological Institute.

The investigators identified two looters, who pled guilty and agreed to cooperate

Heritage in Exodus

Canada, Peru Join U.S. to Stem Trafficking

The United States and Canada have signed an agreement protecting cultural material from both nations against illicit trafficking. Signed in April in Washington, DC, the agreement prohibits the import of certain archeological materials from Canada's aboriginal groups without a permit issued in accordance with that nation's Cultural Property Export and Import Act. The import of certain items from underwater historic sites is also prohibited. Canada will work to stem the flow of similar material from this side of the border.

In June, the United States finalized an agreement with Peru to stop the pillage of Andean artifacts, some of the most coveted in the illicit art market. The remains of Andean cultures from the prehistoric era (about 12,000 BC to AD 1532) include large city complexes as well as unsurpassed art and crafts. Specific objects from Peru's colonial period (AD 1532-1821) are also protected. Peru must issue a permit before these materials can be brought into the United States.

These agreements fulfill the obligations of the three nations under the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. The U.S. Customs Service published a list of the prohibited imports in the Federal Register.

with authorities. Later in the investigation, after Timpson and several others had been indicted, authorities learned he had photographed the looting. Even though he took the photos in the summer of 1990—now beyond the statute of limitations—they were valuable evidence against him and another looter, proving that they had been to the cave in the past looking for artifacts.

Wayne Dance, Assistant U.S. Attorney for the District of Utah, led the prosecution. Convicted of 17 felonies, three defendants were sentenced by District Judge David K. Winder to two years in prison. The other six were placed on probation, with four ordered to six months home confinement with electronic monitoring. All nine were ordered to pay restitution totaling \$25,500 to the Forest Service, which includes the cost of repatriating the human remains to the appropriate tribe.

Sending a Message to Civil War Relic Hunters

DETECTORISTS
CONVICTED

Two men caught relic hunting at Virginia's Fredericksburg and Spotsylvania National Military Park pled guilty May 23 to a single count of attempting to violate ARPA. It is the first case for attempted violation of the statute.

In February, Ranger Steve Davis spotted Randy Griffith, 46, and Tom Summers, 49, on private land near the park line. The two had metal detectors, and Davis advised them that they were close to the boundary. They said they were aware of it, but Davis

encountered them again three weeks later well inside the park. According to supervisory ranger Mike Greenfield, the boundary markers were plainly visible. There were also signs posted advising the public of ARPA.

The men had collected two bullets, but there were no signs of digging on park land, which led the U.S. Attorney's Office for the Eastern District of Virginia to bring the attempted violation charges. Griffith and Summers were each fined \$250, sentenced to two years' unsupervised probation, and ordered to stay off all federal park lands for two years. They also had to forfeit their metal detectors, valued at about \$500 each. Assistant U.S. Attorney Dennis Kennedy handled the prosecution.

With a residential boom around the park, rangers patrol the roads being carved out of the woods to educate relic hunters.

U.S. Seizes Rare Roman Pottery

COURT USES
ARPA PROVISION

A Manhattan art gallery has been ordered to forfeit a collection of rare 7th century BC Etruscan ceremonial pottery looted from a protected archeological site in Rome. U.S. District Judge John Sprizzo issued the order March 24, citing section 6(c) of ARPA (16 U.S.C. 470ee [c]), which prohibits international trafficking in archeological materials in violation of state or local law.

In 1987, after Rome's archeological office conducted excavations at the ancient Etruscan city of Crustumerium, relic hunters conducted at least 50 excavations of their own. Nearly a decade later, archeologist Francesco Di Gennaro was thumbing through a catalogue from Manhattan's Antiquarium, Ltd., and spotted several vessels excavated under his supervision. The Court of Rome's public prosecutor's office filed a formal request with the United States for help in their return.

Antiquarium, which cooperated fully, had paid another New York gallery—Antiquities and Medieval Works of Art—about \$24,500 for the pieces, unaware they were stolen, prosecutors say.

Evan T. Barr, Assistant U.S. Attorney for the Southern District of New York, handled the case. The artifacts were returned to Rome.

Court of Appeals Makes Major Ruling on Archeological Value

Decision Stems from Appeal of Record Sentencing in Shumway Case

In a landmark decision, the Tenth Circuit Court of Appeals ruled on May 6 that district courts should use "archeological value" to calculate loss when they sentence vandals and looters. The ruling stems from an appeal on the part of Earl Shumway, who received the largest sentence ever handed down in an archeological violation case.

In 1995, Shumway, described by one prosecutor as someone who "has come to symbolize the repeat looter of prehistoric sites," was sentenced to six and a half years in federal prison. He had pled guilty to three felony counts, including a charge of violating ARPA for illegally excavating two alcoves on Bureau of Land Management land in Utah. The same year, a jury convicted him of a four-count indictment—including two ARPA violations—of the 1991 looting of Anasazi sites at Canyonlands National Park and Manti-LaSal National Forest.

The record sentence was the result of Assistant U.S. Attorney Wayne Dance's successful arguments that archeological value be used to compute loss and for an increase—or "upward departure"—in the penalty allowed under the U.S. Sentencing Guidelines. Originally, the two cases were consolidated for sentencing. Dance argued that the sentencing guidelines were "grossly inadequate" for archeological violations, and that these particular cases, involving the destruction of three different sites and the desecration of two prehistoric graves, compelled the court to consider an increased sentence. His motion urged the upward departure because of aggravating factors in Shumway's "offense level" and "criminal history category," two factors that affect sentencing.

The district court for the District of Utah agreed to use archeological value in computing loss, and to depart upward in



RENOWNED LOOTER: Earl Shumway leaves the federal courthouse in Salt Lake City.

Shumway's criminal history category, and on December 15, 1995, sentenced Shumway to six and a half years. Chief Judge David Winder's sentence was especially significant because of the 40,000 sentences handed down by federal district courts every year, only about 350 depart upward from the U.S. Sentencing Guidelines.

Prosecutor Dance had asked that the court focus on Shumway's "extreme conduct" toward human remains as a basis for upward departure. Instead, it decided to follow the court probation officer's recommendation that sentencing be enhanced because

those human remains were "vulnerable victims" of Shumway's crimes. In addition, the court enhanced Shumway's base offense level for obstruction of justice for committing perjury during the 1995 hearing, and for causing over \$120,000 in damage to the archeological sites he looted.

Earl Shumway appealed his conviction and sentence to the U.S. Court of Appeals for the Tenth Circuit, which affirmed most of the lower court's ruling (*United States v. Shumway* [112 F.3d 1413 (10th Cir. 1997)]). Attorneys for Shumway argued that the district court had allowed inadmissible evidence to be submitted: evidence of Shumway's prior illegal acts at Manti-LaSal's Horse Rock Ruin. The appeals court ruled that the admission was proper, since the intent was to establish identity, knowledge, and intent—all relevant to the 1995 Manti-LaSal offenses for which Shumway had been tried.

The appeals court further ruled that obstruction of justice was a proper justification for increasing Shumway's offense level; that the district court had not erred in using "archeological value" to calculate loss under the sentencing guidelines; and that it did not abuse its discretion by increasing Shumway's criminal history category because it had used reliable information to do so. The appeals court differed, however, on considering human remains "vulnerable victims" for purposes of sentencing guidelines.

It examined whether the term fell under the definition, "someone unable to protect himself or herself from criminal conduct, and is therefore in need of greater societal protection than the average citizen." The court reasoned that giving skeletons the status of "vulnerable victims" also would require the same status for "a pile of cremated remains, or a pile of dirt that was once a pile of bones." This would, the appeals court decided, "stretch the imagination, and would render application [of the guidelines] potentially absurd." The appeals court remanded the case for resentencing without the "vulnerable victim" enhancement.

One of the most important parts of the Tenth Circuit's opinion deals with how loss should be calculated in archeological crimes in order for the court to determine the offense level under the guidelines. A guideline note explains that when property is taken or destroyed, "loss is the fair market value" of the property taken. When it is damaged, "loss is the cost of repairs, not to exceed the

What's It Worth?

How does one put a dollar amount on the loss caused by archeological looting? According to the uniform regulations of the Archaeological Resources Protection Act (for example, 43 C.F.R.7.14[a]), value is appraised in terms of what it would have cost to retrieve scientific information from the site had it not been violated. This includes the cost of preparing a research design, conducting field work, laboratory analysis, and preparing reports. In addition, the cost of restoration and repair (site stabilization and curation of artifacts) can also be used in calculating the loss caused by looting. Fair market value should be used to calculate commercial worth, provided one can determine what the item's condition was before it was damaged.

loss had the property been destroyed." The note also provides that "where market value is difficult to ascertain or inadequate to measure harm to the victim, the court may measure loss in some other way."

In calculating loss, the Shumway court decided to follow ARPA and use "archeological value" and "cost of repair" (defined in ARPA at 43 C.F.R. s 7.14) as relevant factors in determining the severity of Shumway's crimes. The archeological value and cost of repair for the Canyonlands and Manti-LaSal sites was \$96,500. At the BLM's Cedar Mesa Special Management Area it was \$40,700.

As the sentencing was consolidated, the district court added those two damage assessments to enhance Shumway's sentence. Shumway, however, argued on appeal that the court should have relied solely on the cost of repairs to the sites and the fair market value of the artifacts taken to calculate a loss of \$9,122. The court of appeals disagreed with Shumway, writing that that amount "was grossly insufficient to quantify the devastating and irremediable cultural, scientific, and spiritual damage Mr. Shumway caused to the American people in general and to the Native American community in particular. . . We hold the district court's method of calculating loss . . . was proper."

Interestingly, the court specifically stated that in deciding that vulnerable victims do not include skeletons, it did not intend to limit the "extreme conduct" provision that prosecutor Dance originally urged the district court to apply to Shumway's offense level. Although the court said it was leaving that question for another day, it hinted that "extreme conduct" might apply to dead victims and be a proper basis for upward departure in sentencing because it focuses on the nature of the offender's conduct and leaves the state of the victim "of far less consequence." The court cited two cases upholding the "extreme conduct" enhancement for acts committed after the victims' death.

At Shumway's resentencing hearing, Dance urged Judge Winder to apply the "extreme conduct" enhancement, which would have resulted in the same six and a half year sentence as originally imposed. The court elected to resentence Shumway without additional punishment for his desecration of prehistoric human remains. Shumway was sentenced to a prison term of five years and three months, still a record ARPA sentence.

Old Roads and New

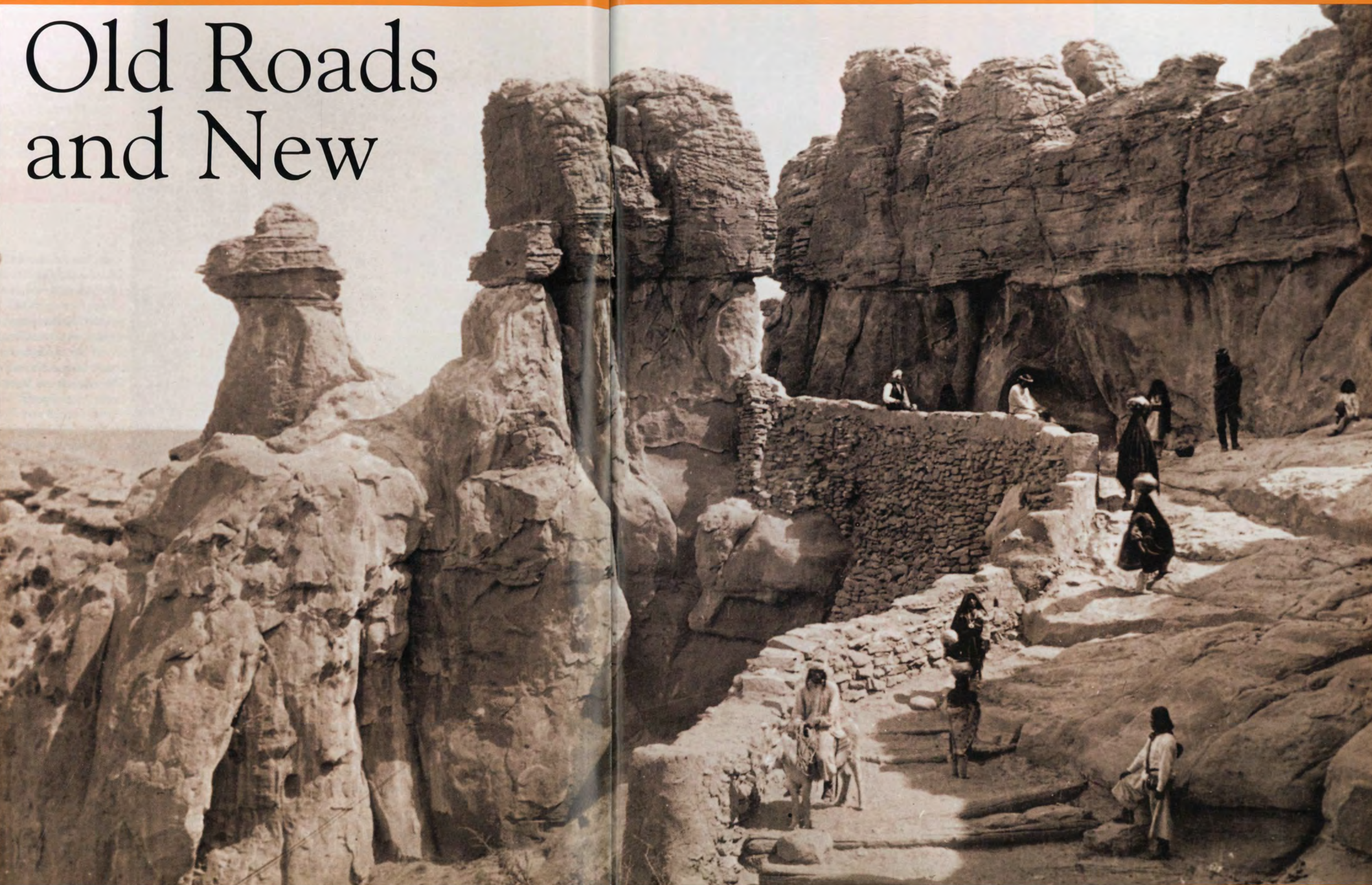
Little did Rep. Morris Udall realize on July 10, 1990, when he introduced H.R. 5237, that a single word within that bill—"consultation"—would have such a profound effect on the relationship between the United States and Indian tribes. Midway between the traditional standards of notification and obtaining consent, consultation requires an ongoing dialogue.

H.R. 5237 eventually became law as the Native American Graves Protection and Repatriation Act, but Udall's legacy has continued to spread through statute, regulation, and executive order as consultation has become the standard against which the government-to-government relationship between the United States and Indian tribes is measured.

This issue looks at how Udall's legacy has created a crossroads of opportunity for preservationists inside and outside the tribal community.

C. Timothy McKeown

*"Approach to Pueblo Acoma,"
ca. 1882, by George Wittick.*



COURTESY OF MUSEUM OF NEW MEXICO, NEGATIVE NUMBER 10030

The Meaning of Consultation

BY C. TIMOTHY MCKEOWN

Since 1990, a growing number of statutes and executive orders specifically require federal consultation with Indian tribes. Most requirements apply to particular departments or agencies, with the Department of the Interior having to consult most

often. Only two statutes—the Native American Graves Protection and Repatriation Act and the National Historic Preservation Act, as amended in 1992—apply to most agencies. In addition, Executive Order 12875 calls for regular consultation with tribal governments and Executive Order 13007 requires consultation with Indian tribes and religious representatives on the access, use, and protection of sacred sites.

None of these, however, explicitly define consultation. The common meaning is to ask advice of someone. A person may consult with a spouse before making reservations for a family trip; with an accountant before filing a tax return; or with an attorney before signing a contract. These individuals are not selected randomly: the spouse is familiar with the affairs of the family, the accountant knows the tax code, the attorney is expert in contract law. Each is in a position to inform the decision.

Above: The author consulting with Seminole tribes in Florida; Right: Cheyenne and Kiowa delegates in the White House conservatory, March 27, 1863. The woman standing to the right may be Mary Todd Lincoln. Within a year and a half, all four Indians in the front row had been killed or had died of sickness.

RESEARCH FOR THIS ARTICLE WAS SUPPORTED BY THE AIR FORCE CENTER FOR ENVIRONMENTAL EXCELLENCE



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onsultation has as much to do with obtaining information as providing it. The spouse may remember an event that conflicts with the trip. The accountant might recall a recent IRS ruling. The attorney may remember a precedent-setting decision. Consultation is always a dialogue.

The information obtained is given special, though not necessarily dispositive, consideration. The spouse might refuse to go on the trip, the accountant may spot inconsistencies in the return,

Obtaining consent differs from consultation in that the information obtained from the consulting party is dispositive. Refusal to consent is sufficient to stop a proposed plan. But the process is usually similar.

What Does the Law Require?

Consultation is founded on the government-to-government relationship between the United States and Indian tribes established by the Constitution, treaties, statutes, court decisions, and policy. This relationship has evolved to ensure tribes sovereignty over their lands and a voice in federal management. This legacy makes consultation similar in many ways to diplomacy between nations,



Above: Engraving of three Cherokees who were brought to England in 1762 by soldier of fortune Henry Timberlake, who hoped that their impressions of English wealth and power would "produce the happiest Effects"; **Right:** President Andrew Johnson meets members of the Yankton, Santee, and Upper Missouri Sioux tribes at a reception in the East Room of the White House, February 23, 1867.

NATIONAL ANTHROPOLOGICAL ARCHIVES

the attorney might flag risks in the contract, and the person could still go ahead, fully informed of the potential ramifications.

Consultation can be contrasted with two other forms of communication: notification and obtaining consent. Notification focuses on providing information, so potentially affected parties have the chance to respond to a pending action. But parties are often notified after basic decisions have already been made, and there is generally no formal follow-up. The Navajo Nation made the distinction very clear in a 1993 memorandum: "The majority of agencies with which we are familiar do not distinguish between 'notification' and 'consultation,' and consider the former as adequate to meet their mandates for the latter. This neither meets the letter or spirit of the consultation requirements of the laws mandating consultation" (BLM 1993).

which President Clinton recently underscored by requiring all executive departments and agencies to consult with federally recognized tribal governments "in a knowledgeable, sensitive manner respectful to tribal sovereignty" (Executive Memorandum, April 29, 1994).

Federal consultation is driven by specific statutes, regulations, and policies.

The Native American Graves Protection and Repatriation Act requires consultation with Indian tribes, Native Hawaiian organizations, lineal descendants, and tradi-



"The majority of agencies with which we are familiar do not distinguish between 'notification' and 'consultation,' and consider the former as adequate to meet their mandates for the latter. This neither meets the letter or spirit of the consultation requirements of the laws mandating consultation." —Navajo Nation

tional Native American religious leaders in order to provide for the disposition or repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony in an agency's possession or under its control.

The National Historic Preservation Act requires consultation with Indian tribes, Native Hawaiian organizations,

Policy and Management Act.

Several laws constrain how consultation is conducted and the information from it handled.

The Federal Advisory Committee Act restricts the process of obtaining advice from non-federal groups. Such "advisory committees," chartered by an agency head, must meet in public. The act does not prohibit soliciting advice from individuals at a private meeting, but they cannot submit their views as part of a group consensus [41 CFR 101-6.104 (i)].

In part because public forums are sometimes inappropriate for sensitive issues, Alice Rivlin, then director of OMB, exempted "any meetings called for any purpose relating to intergovernmental responsibilities or administration." This means that private meetings strictly between federal and elected tribal officials are permitted [2 U.S.C. 1534 (b)].

The Freedom of Information Act provides any person the right to access agency records, except to the extent that they are protected from disclosure by one of nine exemptions or by one of three special law-enforcement-record exclusions. Other statutes can also block disclosure. **The National Historic Preservation Act** [16 U.S.C. 470w-3] stipulates the withholding of information about the location, character, or ownership of a district, site, building, structure, or object eligible for inclusion in the National Register of Historic Places. **The Archaeological Resources Protection Act** [16 U.S.C. 470Hh] prevents the disclosure of information on the nature and location of archeological resources that require a federal permit for excavation or removal (with some exceptions).

Consultation provides an invaluable means of obtaining expert advice, ideas, and diverse opinions from Native American constituents regarding the control and appropriate treatment of federal resources. Failure to consult, however, can

significantly delay a project, either through court injunction or public pressure.

and the interested public regarding means by which adverse effects on any National Register-eligible district, site, building, structure, or object will be considered.

Executive Orders and Executive Memoranda require all executive departments and agencies to consult prior to taking actions that affect federally recognized tribal governments. Such actions often include activities conducted under **the National Environment Policy Act, the American Indian Religious Freedom Act, the Archaeological Resources Protection Act, and the Federal Land**

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- Rivlin, Alice M., Guidelines and Instructions for Implementing

Who Sits at the Table?

C. TIMOTHY McKEOWN

Agency officials must take care to verify who they are consulting with and who they represent. Federal consultation responsibilities vary depending on the parties involved. Both Indian tribes and Native Hawaiian organizations are formally constituted groups with designated representation. Although the federal trust responsibilities do not all extend to Native Hawaiian organizations, NAGPRA and NHPA require consultation with them on a par with tribes. Traditional religious leaders or Indian religious representatives, while not necessarily members of an Indian tribe or Native Hawaiian organization, are recognized by these groups for their cultural, ceremonial, or religious expertise. Lineal descendants must show their relationship to human remains or cultural items claimed under NAGPRA.

The federal government currently recognizes 769 Indian tribes and Alaska Native villages and corporations. New entities can be added only by recommendation of the Bureau of Indian Affairs or by an Act of Congress.

Formal acknowledgement entitles parties to special treatment in the consultation process.

NATIVE HAWAIIAN ORGANIZATIONS. Defined by NAGPRA and NHPA as "any organization which: (a) serves and represents the interests of Native Hawaiians; (b) has as a primary and stated purpose the provision of services to Native Hawaiians; and (c) has demonstrated expertise in Hawaiian Affairs or aspects of historic preservation that are culturally significant to Native Hawaiians. The term includes, but is not limited to, the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei. Congress has found that the historical and unique legal relationship between the United States and American Indian, Alaska Native, Eskimo, and Aleut communities extends in some cases to Native Hawaiians (42 U.S.C. 11701).

TRADITIONAL RELIGIOUS LEADERS. Defined by NAGPRA as persons recognized by members of an Indian tribe or Native Hawaiian organization as: (a) responsible for duties relating to ceremonial or religious traditions, or (b) a leader in cultural, ceremonial, or religious practices (43 CFR 10.2 [d][3]).

INDIAN RELIGIOUS REPRESENTATIVES. Defined by Executive Order 13007 as a member of a federally recognized Indian tribe determined to be the appropriately authoritative representative of an Indian religion.

LINEAL DESCENDANTS. NAGPRA defines a lineal descendant as "an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descent to a known Native American individual whose

remains, funerary objects, or sacred objects are being claimed" (43 CFR 10.2 [b][1]).

INTERESTED PUBLIC. Consultation with the interested public is required under the National Historic Preservation Act, a broad category that might include non-federally recognized Indian groups as well as individuals of Native American descent who are not lineal descendants, traditional religious leaders or representatives, or representatives of their tribes.



Above: Sioux and General William Tecumseh Sherman signing a treaty, Fort Laramie, Wyoming, 1868. The agreement was only a temporary reprieve from westward expansion; Sherman warned, "The railroads are coming. You cannot stop them any more than you can stop the sun and the moon." **Left:** A Prairie Indian leader speaks during negotiations with white officials.

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_____, Government-to-Government Relations with Native American Tribal Governments: Memorandum for the Heads of Executive Departments and Agencies, Memorandum of April 29, 1994 [59 FR 22951], Washington, DC.

_____, Indian Sacred Sites, Executive Order 13007 of May 24, 1996 [61 FR 26771], Washington, DC.

U.S. Code

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National Environmental Policy Act, 42 U.S.C. 4321, 4331-2, 1969.

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American Indian Religious Freedom Act, 42 U.S.C. 1996, 1973.

Archaeological Resources Protection Act, 16 U.S.C. 470aa et seq., 1974.

Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq., 1990.

Native Hawaiian Health Care Improvement Act, 42 U.S.C. 11701, 1991.

Federal Regulations

Federal Advisory Committee Act, 41 CFR 101-6.104 (i).

Native American Graves Protection and Repatriation Act, 43 CFR 10, December 4, 1995.

This article was prepared as part of a cooperative project by the National Park Service archeology and ethnography program and the Air Force Center for Environmental Excellence (Air Force Legacy Project #1041).

Consultation with
American Indian Sovereign Nations

CURRENT
D I R E C T I O N S

**from the
White House**

by Patricia L. Parker and Emogene Bevitt

President Clinton greets Wallace Coffey—chairman of the Comanche Tribe of Lawton, Oklahoma—at a 1994 meeting between the cabinet and 300 tribal representatives, the largest in the history of Indian-white relations.



DAYNA SMITH, WASHINGTON POST

tution, and has been affirmed by Congress (through treaties and statutes), the courts (through precedent-setting decisions), and the president (through executive actions).

On April 29, 1994, President and Mrs. Clinton, Vice President and Mrs. Gore, and most of the cabinet met with more than 300 representatives of tribal governments, the largest meeting ever held between U.S. and tribal leaders. Against this backdrop, President Clinton signed an executive memorandum directing all agencies in the executive branch to operate within a government-to-government relationship with federally recognized tribes. Agencies were asked to consult with tribal governments before taking actions that affect them; to assess the impact of plans, projects, programs, and activities on tribal trust resources

Susie Long, of the Yurok Tribe, after signing an agreement to protect Yurok ancestral lands. With her are Rick Sermon and Andy Ringgold, superintendents of Redwood State and National Parks.

and ensure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities; to remove any procedural impediments to working directly and effectively with tribal governments; and to accomplish the above in cooperation with other federal departments and agencies.

Recently, the White House requested copies of the new policies, specific points of contact for each agency, and a synopsis from each department regarding its overall approach to carrying out the memorandum.

Directing the development of the National Park Service response was one of the first activities of the new American Indian liaison office. A select team of field, regional, and Washington office managers—experienced in consultations with American Indians, Alaska Natives and Native Hawaiians—met and reviewed the issues raised by the memorandum, and, over the next several months, drafted a workable policy.

Key elements support the following.

- Direct contact between NPS national and field leaders with leaders of tribal governments
- Protocols to be developed in consultation with tribal govern-

European countries recognized tribes as nations long before the American Revolution and the establishment of the United States. The concept of tribes as sovereign nations was written into the Consti-

ments to guide government-to-government relationships

- Collaboration and cooperation between tribal government officials and NPS officials
- Administration of parks and programs with knowledge of traditionally associated tribal cultures in recognition of their ties to the mountains, rocks, trees, water, wildlife, vistas and other "resources" that the Park Service manages.

The principles in this document will be incorporated into National Park Service Management Policies during the planned revision this fiscal year. Tribal governments and the public will be able to review these policies prior to their implementation.

EXECUTIVE ORDER ON INDIAN SACRED SITES

On May 24 of last year, the president followed up with an executive order on Native American sacred sites, the first on Indian affairs in 19 years. Executive Order 13007 requires federal agencies to accommodate access and ceremonial use of these sites by Indian religious practitioners (where not inconsistent with law or essential agency functions), to avoid adverse effects to the sites (subject to the same caveats), and to maintain site information in confidence. The order also includes provisions for notifying tribes of actions that might affect these sites or access to them.

To draft implementation procedures, the NPS assembled a knowledgeable team including staff from Indian and Alaska Native offices

THE CONCEPT OF TRIBES AS SOVEREIGN NATIONS WAS WRITTEN INTO THE CONSTITUTION, AND HAS BEEN AFFIRMED BY CONGRESS (THROUGH TREATIES AND STATUTES), THE COURTS (THROUGH PRECEDENT-SETTING DECISIONS), AND THE PRESIDENT (THROUGH EXECUTIVE ACTIONS).

as well as Native American managers, archeologists, and ethnographers. Members of the team participated in three interdepartmental consultation sessions with tribal representatives sponsored by the Department of the Interior. They subsequently met to discuss the concerns raised, drafting procedures that include the following key elements.

The Order as Part of a Suite. The Park Service stresses employing the executive order in conjunction with other pertinent laws, regulations, and policies to provide the fullest possible access and use for these sites as well as the highest level of protection for them. The NPS guidelines view these sites as Indian peoples do—as parts of a landscape not conceptually bounded as specific identifiable spaces—even though the executive order defines them as such. These sites can be quite large, the guidelines note.

Extent of Consultation. Although the order calls for tribes to identify sacred sites on federal lands, it is up to the National Park Service under other statutes to identify historic places, including sacred sites, and to consult with tribal governments on how to protect them. NPS managers are cautioned that there may well be sacred sites on lands that they manage that

have not yet been identified by Indian tribes, or that may not yet exist because sacred sites are created through the practice of traditional American Indian religions. Managers are directed to develop procedures for ongoing consultation to identify

tify these sites.

Ensuring Confidentiality. Managers are encouraged to use the provisions of section 304 of the National Historic Preservation Act and section 9 of the Archaeological Resources Protection Act to limit public access to knowledge about sacred sites. Given the difficulty of limiting access under the Freedom of Information Act, NPS personnel should acquire the minimum amount of information they need to justify their management decisions. The National Park Service will respect any tribe's reluctance to reveal the location of sacred sites if they feel that it would compromise the confidentiality of their religious practices.

Accommodating Access. The guidelines underscore that the needs of tribes differ from those of the general public. Managers should consider—in consultation with tribes—the appropriateness of nearby changes in vegetation, air and water quality, noise level, and view shed.

Avoiding Adverse Effects. Inappropriate facilities should not be placed near the likely location of religious activities. In planning for change, managers should prevent harm to the physical integrity of the site.

Involving Tribes in Planning. Tribes should be part of any large-scale plans. This involvement should precede meetings open to the public, in case confidential issues must be resolved.

Notification Procedures. Notification should be on a government-to-government basis, in written form, and well before any planned project or other action. NPS managers are encouraged to include, as part of the notification, an offer to meet with tribal representatives to hear their concerns at a place of their choosing.

Training Managers. The guidelines also recommend training all park managers in the provisions of the order and related laws, regulations, and policies.

Suggested Changes. The Park Service guidelines suggest that various agency-wide and park-specific policies should be revised in light of the executive order.

For further information please contact Patricia L. Parker, Chief, American Indian Liaison Office, National Park Service, 1846 C Street NW, Room 3410, Washington, DC 20240, (202) 208-5475.



The government-to-government relationship between the United States and native groups puts consultation in a league with international diplomacy, with all the required protocol. A wide range of cultures must be accommodated within a highly formal context.

The 771 Indian tribes and Native Hawaiian organizations recognized under NAGPRA and NHPA all deal with the world differently. Some put the highest priority on returning human remains to the ground; others refuse to engage federal officials in any discussions of repatriation. Still others negotiate with the scientific community to allow osteological analysis. They all have different ways of controlling property, harvesting natural resources, revering the environment—and even conducting consultation meetings.

"A one-size-fits-all prescription is neither appropriate nor desirable," says Alice Rivlin, former director of the Office of Management and Budget. That said, the following guidelines are essential.

DO YOUR HOMEWORK. Successful consultation doesn't just happen. The statutes and executive orders discussed in this issue are all explicit about when and with whom consultation must be conducted. Each, in turn, is linked to agency procedures and other federal laws. The first step in any consultation is thorough understanding of what is required—and what is precluded.

PICK THE RIGHT PERSON FOR THE JOB. Rivlin recommends designating one person to coordinate consultation. This individual must be able to communicate the agency's position as well as consider alternate views, which requires a high degree of interpersonal skill. Overstating an agency's flexibility is sure to create inflated expectations, while ignoring others' opinions will cultivate intransigence.

CONSULT GOVERNMENT-TO-GOVERNMENT. Rivlin says that consultation should be at the highest level—with elected officials accountable to their constituencies. That usually means a tribal chair, governor, or president.

KNOW WHO YOU ARE TALKING TO. Know with whom you are to consult. Develop a list of contacts for all affiliated Indian tribes and Native Hawaiian organizations, traditional Native American religious leaders, and lineal descendants. This will prove essential in rapid-response situations, such as when human remains are discovered and appropriate parties must be notified in three working days.

If a consultation is coming up, learn as much as possible about the specific group. Investigate its policies, form of government, and history of relationships with federal agencies. And, if possible, know something about the individuals who will be sitting on the other side of the table.

NEGOTIATE PROTOCOL. Face-to-face meetings are a good forum for obtaining advice and opinion, but must be planned carefully.

A single meeting will likely not be enough. Participants usually need one or more sessions to get acquainted and review legal requirements. Subsequent meetings build on this foundation to address substantive and, often, sensitive issues.

The initial sessions are often open to a large number of people. "These meetings are good because they bring all the tribes together to discuss the issues," says Bureau of Reclamation archeologist Warren Hurley. "The drawback is that the probability of getting concrete results is fairly low." Later meetings are best limited to a small number of agency representatives and a particular tribe.

Initial sessions can usually be anywhere, while later sessions are often more effective if held near the site under discussion.

Some groups have their own protocol. Tribal representatives may be uncomfortable discussing sensitive subjects without opening the meeting with prayer. Topics may require comment from more than one person. Tribes may preclude some people from hearing sensitive information. Representatives may change from meeting to meeting. Groups may not want to discuss specific information at certain times of year. Participants may be unable to commit to a decision without clearance from

their tribal council or traditional religious leaders.

Given the potential complexities, it is important to negotiate the details ahead of time.

CONSULT EARLY AND OFTEN. Begin the consultation early and continue throughout the project. Consultation is worth very little if decisions have already been made.

How much is enough? "The more costly, the more potentially disruptive, the more broadly applicable, the more controversial the project," says Rivlin, "the more consultation there should be."

BE PATIENT. Tribal officials seldom have the authority to commit to a course of action without clearance from a tribal council and, particularly in cultural matters, from a council of elders as well. This can take time. "It is very difficult to gain the type of closure a lawyer would like to see," says Hurley. "Attorneys would like to see a finished product with everybody's signature on the dotted line. I am of the philosophy that it's never going to be that neat and clean. Consultation is just something you have to persist at."

YOU GET WHAT YOU PAY FOR. Most native groups do not have the time or funds to participate at agency behest. It is generally appropriate for the agency to pay the travel and per diem expenses for official representatives. It may also be appropriate to pay individuals with special expertise—such as traditional religious leaders and

translators—who otherwise would not be paid.

An agency's administrative office can suggest ways to pay for consultation services, including reimbursement for "invited travel" (when no consultation fees are involved) and purchase orders for professional services. It is generally not appropriate to pay travel costs and consulting fees for non-federal officials to attend general public meetings.

DOCUMENT THE PROCESS. NAGPRA requires proof of consultation or consent prior to issuance of a permit to excavate human remains, funerary objects, sacred objects, or objects of culturally patrimony on federal land. Though not explicitly required in other statutes, proof of consultation is highly recommended.

The consultation record should include a list of topics considered, copies of written correspondence, a log of telephone conversations, and documentation of meetings. Verbatim transcripts satisfy the highest standard for proof, particularly when the participants have a chance to comment before they are finalized. The protocol for audio recording—such as when the recorder is turned on and off—should be negotiated beforehand. When verbatim transcripts are not possible, send out a draft summary for participants' comments while the memory of the meeting is still fresh. Documentation will prove its worth when conflicts arise and the agency must produce an administrative record

DON'T PROMISE WHAT YOU CAN'T DELIVER.

The information the agency needs to make a decision may be considered extremely sensitive by tribal representatives. It is important to be candid that NAGPRA does not protect against public disclosure (exemptions under NHPA apply only to properties eligible for the National Register; ARPA exempts only specific kinds of site information).

The agency's general counsel should be involved in any confidentiality agreements. During consultation, agency representatives should not request any more information than needed to reach a decision.

FOLLOW THROUGH. Stories are legion of well-executed consultations that foundered when steps were not taken to implement agreements.

EVALUATE AND RE-EVALUATE. As complicated as it is, consultation is bound to have false starts, overblown expectations, the intrusion of collateral issues, misunderstandings, and—at least occasionally—early and unexpected success. Ongoing evaluation of the process is essential.

KEEP OUT OF TRIBAL POLITICS. Perhaps the most important principle of all. Tribal governments, like all organizations, can be rife with political factionalism. The consultation process gives the federal official a window into the tribe's inner workings. While it is important to understand the position of all parties, the official must not appear to favor one faction over another.

Delegation on the White House lawn, December 31, 1857, in the earliest known photograph of Indians in Washington, by Mathew Brady.

NATIONAL ARCHIVES



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Sound Decisions, Respectful Results

The Native American Voice in Preservation Law

by
Sherry Hutt



Southern Cheyenne tribal members view collections during consultation with Panhandle Plains Historical Museum.

Consultation is an indicator of respect. Too often, our government has not consulted with Native Americans, even when its judiciary obligations demand it. This shows a lack of respect for them as players in the decision making process.

The articles in this issue focus on legislation that has moved agencies from communicating to Native Americans to communicating *with* Native Americans. Preservation laws signposted this evolution. It is fitting that laws created to preserve culture have achieved their purpose not only by regulatory and punitive schemes, but also through the very process inherent in the legislation. A brief look at these laws illustrates this evolution.

Characteristic of early preservation laws is the absence of any mention of tribes. The Antiquities Act of 1906 simply protects "any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States." The Secretaries of the Interior, Agriculture, and Defense could authorize excavations on land under their jurisdictions without any regard for the impact on Native Americans.

The National Historic Preservation Act and the National Environmental Policy Act, passed in the 1960s, similarly ignored tribal concerns. Thanks to amendments and regulations, however, both now acknowledge tribes as entities to receive information and submit input. But information exchange is not consultation. According to the 1979 NEPA regulations, agencies can weight the input as they see fit. Tribal views may compete with those of numerous other groups. Since NEPA's primary focus is the environment, not culture, the door is open for ethnocentric assumptions to justify adverse impacts on native lands.

Under NHPA's 1992 amendments, which allow for the establishment of tribal historic preservation offices, agencies must "consult" with Native Americans before a federal undertaking, but how is not defined beyond a provision to seek "advice and comment." This provision more closely resembles NEPA's information exchange than actual consultation. While well-intended, the legislation ignores tribal sovereignty, exemplifying the practice of talking to Native Americans rather than with them. The amendments do recognize traditional cultural properties, which may now be nominated to the National Register of Historic Places.

Most notable of the preservation laws from this period is the Archaeological Resources Protection Act of 1979, devised to stop the looting of sites so they can be preserved for scientific purposes. Although ARPA mandates that tribes be notified of activities that will impact religious or cultural sites on federal lands, consultation is not required. There is no means to inform the land manager about the location of these sites, only regulations asking that they be sought out and identified. The act's 1984 regulations state that "the Federal land manager may meet with official representatives of an Indian tribe or group to discuss their interests," including ways to mitigate harm. But the land manager is not bound by their recommendations.

ARPA makes great strides in that it distinguishes between federal and Indian land, where tribal permission is now required to excavate. The act also implores land managers to seek out information from tribes, who need not be federally recognized to be part of the communication.

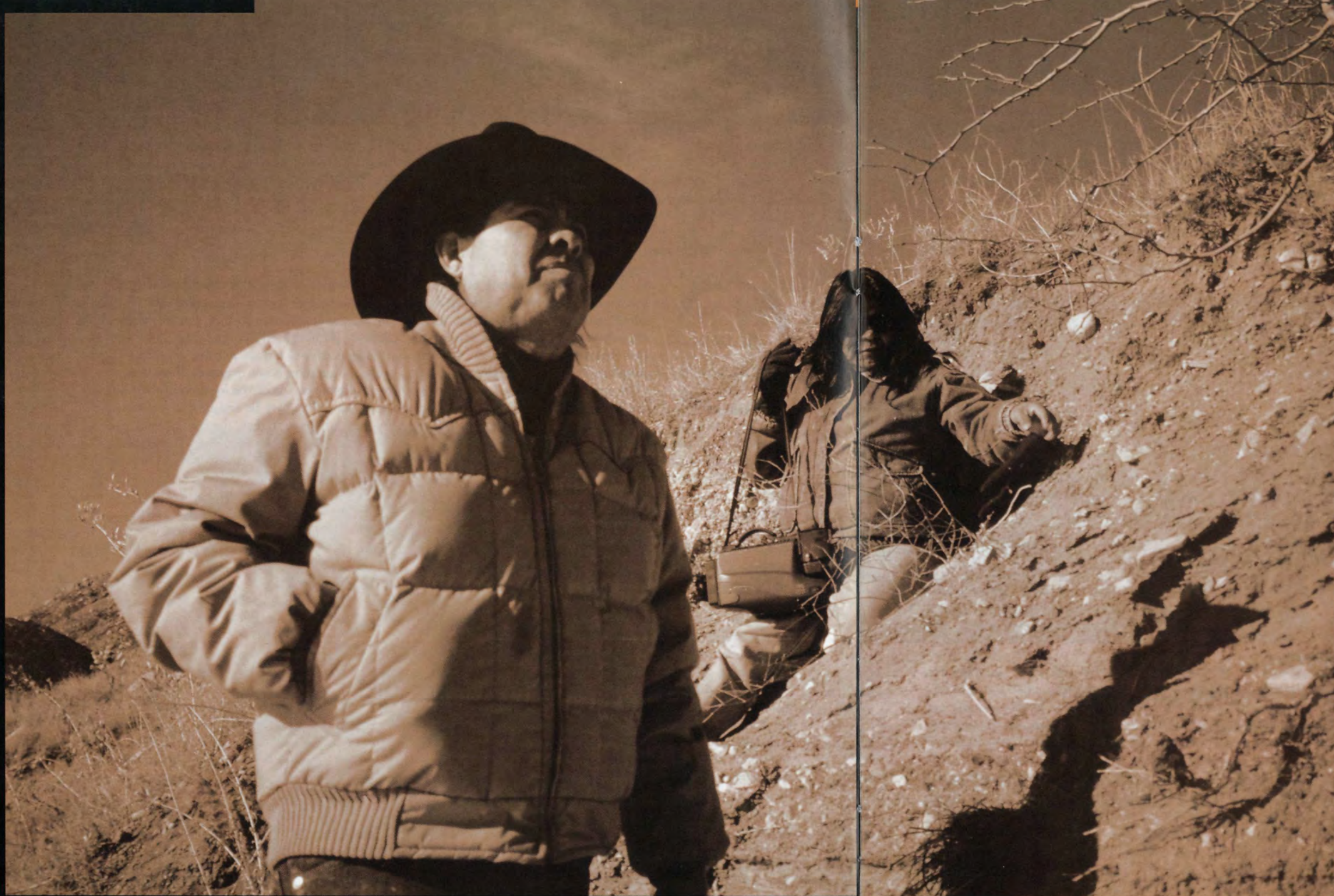
Full consultation, with parties going beyond information exchange to making joint decisions, was institutionalized in 1990 with the Native American Graves Protection and Repatriation Act. The entire repatriation process—determining the ownership of individual remains, burial items, sacred property, and objects of cultural patrimony—is predicated on consultation. NAGPRA has been referred to as human rights legislation because it affords native people the respect for property rights that had been lacking in our society and the courts. NAGPRA consultation is unlike the one-way agency-to-tribe notice required by ARPA, or the one-way tribe-to-agency information flow employed under NEPA. Under NAGPRA, consultation is true dialogue.

NAGPRA's impact has gone beyond the return of human remains and sensitive items, however. Now it is standard operating procedure for agencies to contact tribes who may have an interest in any item or activity, using the contact list compiled by the National Park Service NAGPRA program. This was inconceivable before 1990.

Hopefully, the technicalities of consultation will not overshadow its reason for being, as has occurred under NEPA. Consultation forms the basis of sound decisions and respectful results.

For more information, contact Sherry Hutt, Judge, Superior Court of Arizona, Maricopa County, Phoenix, AZ 85003-2205, (602) 506-3905, fax (602) 506-7867, e-mail shutt@smtpgw.maricopa.gov.





Members of the Wichita and Affiliated Tribes in the hills around Lake Meredith.

**HOW ONE DISCOVERY LED
TO A NEW RELATIONSHIP
WITH SOUTHERN PLAINS
TRIBES**

a common cause on common ground

**From a skeleton's inadvertent
discovery to its return to the
earth, the National Park Service
and Native Americans realize
the full rewards of consultation.**

by Alexa Roberts and James E. Bradford

A

VISITOR'S 1993 DISCOVERY OF HUMAN REMAINS eroding from a knoll along the shores of Lake Meredith National Recreation Area, Texas, began a three-year process of consultation between the National Park Service and affiliated tribes. Over the course of the process, which involved nearly all the consultation provisions of the Native American Graves Protection and Repatriation Act, the remains were excavated and analyzed, and then blessed and reburied during a tribal ceremony.

"The entire process, from discovery to reburial, was successful due to the integrated and multidisciplinary approach of all those involved. The park's request for its regional experts; the blending of ethnography and archeology in consultation, excavation, and analysis; the Wichita's request for radiometric dating—all were essential to the outcome."

Consultation about the remains, and about Lake Meredith collections, created a new relationship between the park and the tribes.

The visitor spotted the remains at the water's edge, where they had rolled from an eroded burial site atop a small hill, and brought them to a ranger. Ranger Ed Day took them to the Panhandle-Plains Historical Museum, where much of the park's 750,000-item collection is housed, to ensure careful treatment until the tribes could be consulted. Due to their highly deteriorated condition, the remains were assumed to pre-date European contact, but since no objects were found associated with the burial, an exact age and cultural affiliation could not be determined.

Lake Meredith had not yet begun its NAGPRA-mandated inventory of human remains—which calls for consultation with tribes—and therefore did not know which could be culturally affiliated, nor even which to consult. So, acting on consultation

guidelines then in use, the park turned to Edward Natay, chief of the office of American Indian programs at the Southwest regional office. He contacted the Kiowa Tribe, Comanche Tribe, and Mescalero and Jicarilla Apache Tribes; two responded, saying they could advise only if the remains were proved conclusively to be affiliated with them. The tribes and the park decided to keep the remains in the museum until affiliation was determined for the rest of the inventory.

The following month, at an Oklahoma City consultation with the NPS regional NAGPRA team on the inventories of several parks, the Kiowa Tribe, Comanche Tribe, and Wichita and Affiliated Tribes expressed an interest in human remains from Lake Meredith. The Jicarilla Apache Tribe and the Apache Tribe of Oklahoma also claimed general affiliation with geographic areas encompassing the lake. Although the Comanche and Kiowa

were still considering how to approach affiliation with human remains over 500 years old, tribal representatives said they wished to be consulted further about the discovery.

Meanwhile, events at Lake Meredith hastened a decision: additional remains were actively eroding downslope. Those that were disarticulated and too close to the water's edge were collected and carefully placed among stone cobbles next to the grave until they could be properly treated.

At a New Mexico consultation a month later, a coalition of Apache tribes said that they did not wish to claim pre-European contact human remains at present (although they may develop a policy in the future). In November we contacted Virgil Swift, historic preservation officer with the Wichita and Affiliated Tribes,

mented, inventoried, and then relocated to another area on the same ridge; 2) the Wichita and Kiowa would conduct the reburial ceremonies; 3) the grave would be two to three feet deep to minimize the area of impact, with fill including two layers of wire mesh and a layer of concrete above the remains and vegetation planted to camouflage the site from vandals; 4) both the original and the reburial grave would be recorded with Global Positioning System mapping for future monitoring; and 5) for record-keeping, the location would be associated with a larger, previously recorded archeological site nearby.

The Kiowa Tribe, the Wichita Tribe, and the Texas SHPO concurred. To make the identity of the remains less ambiguous, the Wichita requested that they be radiocarbon-dated to determine



Members of the Wichita and Affiliated Tribes consult with National Park Service representatives at Lake Meredith.

and Lawrence Edge, then NAGPRA coordinator for the Kiowa, to follow up. Both agreed that the remains should be reburied and wished to be involved. Plans were made to meet at the burial site in January to work out a course of action. The recovered remains were returned to the park for inspection at the meeting and to reunite with the other remains for reburial.

In addition to ourselves, Park Service attendees included Chief Ranger Dale Thompson, Environmental Protection Specialist Wesley Phillips, Ed Day, and graduate research student Deborah Summers. Virgil Swift and Ira French represented the Wichita and Affiliated Tribes while Lawrence Edge and Leon Hunter represented the Kiowa. A representative from the state historic preservation office was invited but unable to attend.

We went to the grave site by boat to discuss the eroding remains and where they could be reinterred. Later in the day, at Lake Meredith headquarters, we explained to tribal representatives that the Park Service was mainly interested in their concerns about what had happened since the discovery and what to do with the remains now.

The group agreed that the two of us would prepare a scope of work outlining excavation and in-field analysis. The following provisions would apply: 1) the remains would be exposed, docu-

if they were from the Antelope Creek phase (AD 1250-1500), a period to which the tribe traces ancestry [see sidebar]. NPS consulted with the other four interested tribes (the Kiowa, Mescalero Apache, Jicarilla Apache, and Apache Tribe of Oklahoma), none of whom objected, and agreed to honor the request (coincidentally, final NAGPRA regulations had just lifted a Park Service moratorium on destructive analyses in the Southwest).

The remains were excavated in mid-March of last year. Both the Wichita and Kiowa were asked if any ceremonies were necessary before the removal of the remains, and neither said there were. The skeleton was in very fragile condition; part was missing, including the cranium, having eroded downslope. Some of the long bones, partially exposed for quite some time, were heavily sun-bleached. No associated artifacts were found.

Michael Schillaci, a physical anthropologist, was hired to conduct the inventory and analysis, which concentrated on determining sex, age, and biological affinity as well as identifying any pathology or developmental disorders. The remains were those of a female between 49 and 55, who stood about 4 feet 2 inches at the time of her death. She had at least one child, suffered from osteoarthritis severe enough to restrict her mobility, and had broken a wrist at some point in her life. Her cause of death and biological affiliation could not be determined, but radiometric dates of AD 1180-1265 (68 percent probability) and AD 1150-1285 (95 percent probability) unquestionably placed her remains in the early Antelope Creek phase.

Unprecedented Analysis

The Wichita's request to radiocarbon-date human remains—a destructive form of analysis—was unprecedented in National Park Service consultations with tribes in the Southwest. But to the Wichita, the request was a practical matter of clarifying cultural affiliation and establishing an appropriate claim.

The Wichita and Affiliated Tribes claim ancestral ties to the Texas Panhandle into the pre-European period, particularly in their connection with the Antelope Creek phase (AD 1250-1500). This period along the Canadian River is characterized archeologically by small, contiguous-room villages and agriculture with evidence of hunting, including bison. Archeological and historical evidence indicates that people of this phase most likely combined with people of west-central Oklahoma. This combined group, historically called the Escanxages, was located on the Kansas-Oklahoma line in the 1500s and 1600s. The Escanxages eventually became one of the Affiliated Tribes of the Wichita.

Other evidence of Wichita ties to the Antelope Creek phase, from southeast of the Texas Panhandle, indicates that Antelope Creek phase people may have combined with people in Oklahoma around A.D. 1400 and coalesced into a large group occupying the western part of the state, eventually evolving into the affiliated tribes of the Wichita. Although a specific contemporary group has not been identified as associated with these archeological complexes, their affiliation with a Plains Caddoan (i.e., Wichita) group is relatively certain.

With no associated funerary objects or any other means of dating the human remains found at Lake Meredith, the only avenue was through radiometric dating. The Wichita were interested in pursuing this method to establish an unambiguous date. If the remains dated after ca. AD 1500, they could arguably be associated with the Comanche, various Apache tribes, or, perhaps, the Kiowa. If several tribes were potentially affiliated, the reburial process would have required additional consultation among the tribes to determine appropriate disposition procedures. If the date was unquestionably earlier than AD 1500, however, they would be of Wichita ancestry. The results of the dating analysis proved the latter to be the case.

For the Wichita, the analysis clarified the cultural affiliation of the individual, allowing the tribe to rebury her with the appropriate ceremonies, and provided another piece of evidence to understand the tribe's pre-European contact association with the lands along the Canadian River in the panhandle.

Before the Wichita could rebury her, still other measures had to be taken. According to the final NAGPRA regulations (43 CFR 10), which had taken effect just days before the January meeting, the Park Service was required to "publish general notices of the proposed disposition in a newspaper of general circulation in the area in which the human remains . . . were excavated . . . or discovered inadvertently . . . and, if applicable, in a newspaper of general circulation in the area(s) in which affiliated Indian tribes . . . now reside." The notice had to be published at least two times a week apart, and the disposition could not take place until 30 days after the second notice "to allow time for any additional claimants to come forward" (43 CFR 10.6[c]). Published in the Amarillo, Texas, Globe-News and the Anadarko, Oklahoma, Daily News, they were the first Park Service notices for an inadvertent discovery under the new rules. No other claimants came forward.

Due to the rough terrain on which the remains were originally buried, and the physical limitations of the Wichita Purity Priest who would conduct the ceremony, it was agreed to move the grave site to a more accessible location in the same area of the park. In compliance with section 106 of the National Historic Preservation Act, this area was surveyed and found clear of sites eligible for the National Register of Historic Places.

Approximately 20 people attended the mid-October ceremony, including Virgil Swift, George Akeen, Sr., and Timothy Baugh of the Wichita and Affiliated Tribes, Superintendent John Benjamin and Wesley Phillips from Lake Meredith NRA, and Director Walter Davis and archeologist A.J. Taylor from the Panhandle-Plains Historical Museum. The reburial went extremely well, bringing together a diverse group for a common cause on common ground.

The entire process, from discovery to reburial, was successful due to the integrated and multidisciplinary approach of all those involved. The park's request for its regional experts; the blending of ethnography and archeology in consultation, excavation, and analysis; the Wichita's request for radiometric dating—all were essential to the outcome. The interest and participation of the other tribes ensured that no concerns were overlooked.

Today, Lake Meredith has requested and received funding to develop a long-range consultation plan. As a first step, the park is working with the Wichita and Affiliated Tribes to craft a NAGPRA consultation protocol agreement. Thus, through a lengthy but careful process, one discovery ultimately led to another: of a new relationship between the park and its tribal partners.

The authors wish to thank John Benjamin, superintendent at Lake Meredith National Recreation Area, Timothy Baugh, archeologist for the Wichita and Affiliated Tribes, and Virgil Swift, historic preservation officer for the Wichita and Affiliated Tribes for their review of a draft of this article. We also wish to thank them for their continual enthusiasm and efforts to maintain an active and positive dialogue.

For more information, contact Alexa Roberts, anthropologist for the NPS Southwest Support Office Cultural Resources Program at (505) 988-6764 or Jim Bradford, archeologist and program leader, at (505) 988-6758.

To Go the Extra Mile

C. TIMOTHY McKEOWN



SWCA ENVIRONMENTAL CONSULTANTS

To launch a multi-million dollar water project in the Southwest, the Bureau of Reclamation followed the NEPA process step by step and consulted with the President's Advisory Council on Historic Preservation as well as the preservation offices of New Mexico and Colorado. But because of one misstep—ignoring the consultation provisions of the Native American Graves Protection and Repatriation Act—the project has yet to be built, even though local tribes support it.

The bureau had been involved in the project—to divert water from the Animas and La Plata rivers to meet the region's farming, municipal, and industrial needs—from its inception in 1968. The Colorado Ute Indian Water Rights Settlement Act, enacted in 1988, expanded the project's goals to settle water rights claims by the Southern Ute and Ute Mountain Ute tribes. Although the tribes objected to disturbing native sites and burials, they eventually compromised and with the promise of jobs and royalties got behind the project.

Meanwhile, NAGPRA was passed, requiring the bureau to consult with tribes before excavating or removing Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony from federal lands. However, given tribal support—and a year 2000 deadline mandated by the settlement—the bureau slated construction to start in late 1991, without consulting under the statute.

The Four Corners Action Coalition and three other environmental organizations immediately filed a petition to enjoin the project in U.S. District Court, forcing the bureau to do further environmental studies (even though NEPA requirements had

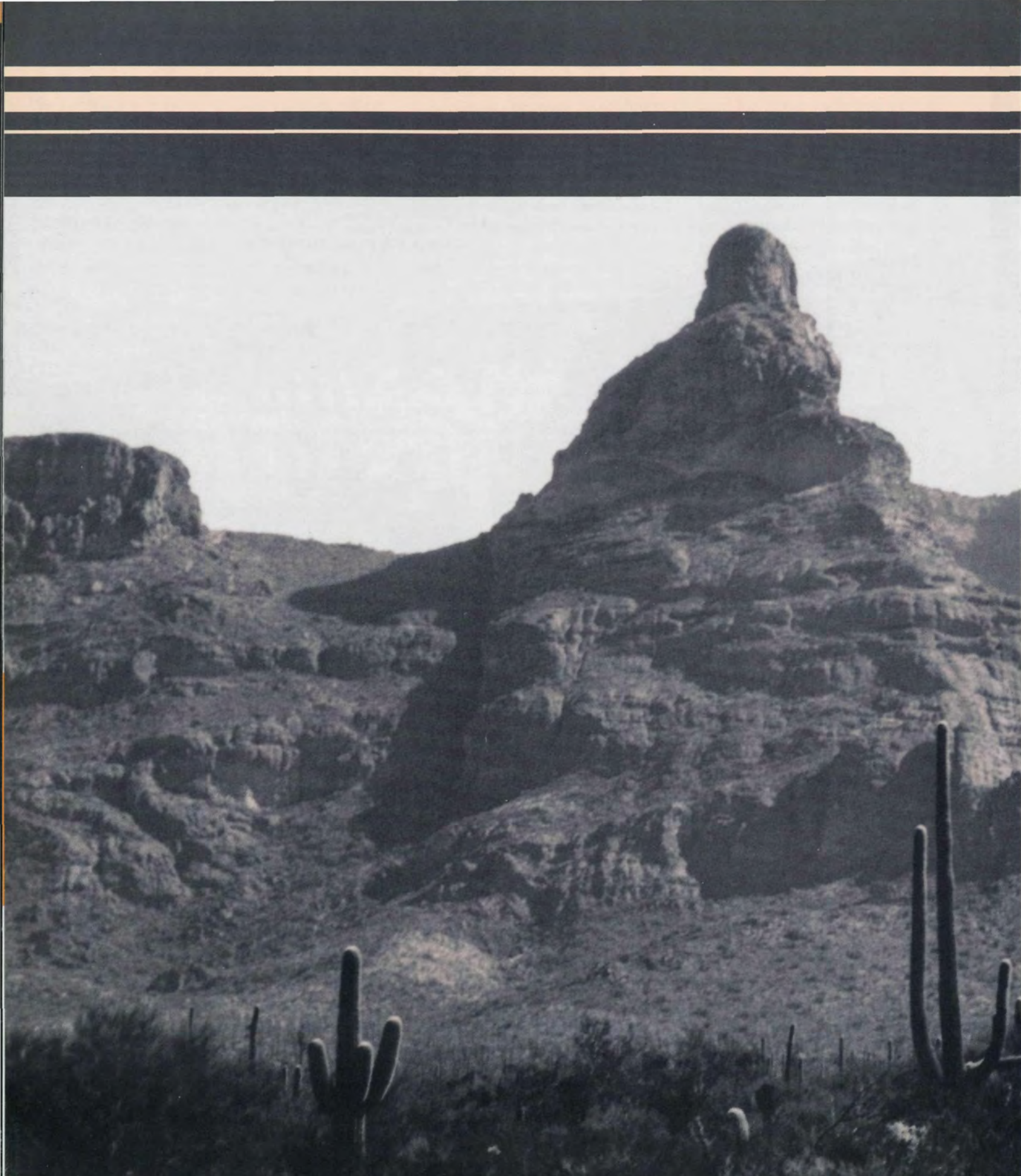
Bureau of Reclamation and environmental consultants with members of the Jicarilla Apache tribe during an ethnographic study. The bureau's extensive consultation with area tribes was triggered by the impending diversion of the Animas-La Plata River in the Four Corners region.

been met years before). Angered by the delay, the tribes and water districts threatened to counter-sue. The bureau restarted the project, announcing its intent to award an archeological contract to ensure that no National-Register eligible sites were in harm's way, as mandated by NHPA.

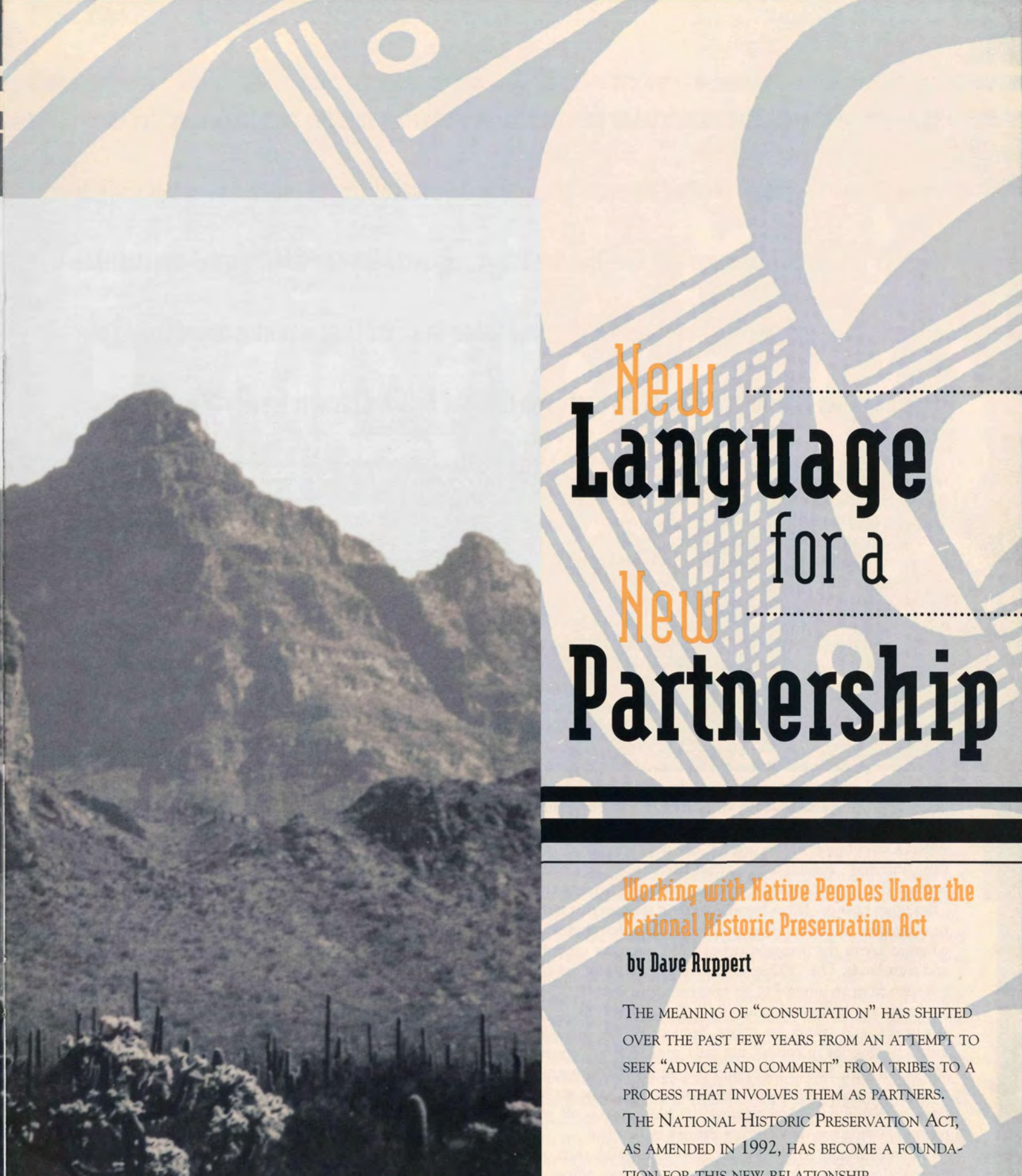
The coalition refused to drop its suit, this time invoking NAGPRA's consultation provisions. On September 22, U.S. Judge Weinshienk issued an injunction to stop the project. Using the statute, the coalition ultimately compelled consultation with tribes hundreds of miles outside the area of the project.

Beyond the cost of stopping a multi-million dollar endeavor for several years, the injunction may have also damaged the bureau's credibility. A university contracted to do the archeological work had already recruited a crew. "It takes some effort to put together a team," explains bureau program manager Larry Walkoviak. "I think the next time we go out and procure a staff to do this same kind of work there are likely to be some of these folks saying 'Do we have to put ourselves through this?'"

Bureau archeologist Warren Hurley sees a positive result: BRec is now consulting with 26 different tribes on the project. "We have to go the extra mile," he says. "When the record of decision is issued on this project, we're going to be in court. Everything I have done is going to be picked over with a fine-tooth comb. I don't want to be blamed for this project going down the tubes."



Montezuma's Head, in Arizona's Rijo Mountains, is known to the Tohono O'odham Nation as I'itai Mo'o, a sacred site listed on the National Register of Historic Places in 1994.



New Language for a New Partnership

Working with Native Peoples Under the National Historic Preservation Act

by Dave Ruppert

THE MEANING OF "CONSULTATION" HAS SHIFTED OVER THE PAST FEW YEARS FROM AN ATTEMPT TO SEEK "ADVICE AND COMMENT" FROM TRIBES TO A PROCESS THAT INVOLVES THEM AS PARTNERS. THE NATIONAL HISTORIC PRESERVATION ACT, AS AMENDED IN 1992, HAS BECOME A FOUNDATION FOR THIS NEW RELATIONSHIP.

The concept of consultation has taken on a number of meanings over the past few years. For some, consultation has meant sending letters of notification to tribal offices in advance of public projects such as interstate highways and the like. For others, consultation has meant formal negotiations and cooperative agreements between agencies and tribes. Of all the laws requiring consultation, perhaps none has contributed more to the confusion than the National Historic Preservation Act of 1966.

This does not mean that I find serious fault with the act regarding consultation. It is a document of its time, originally designed for purposes quite different than what we ask of it today. Its amendments, however, have attempted to keep pace with change, and when combined with other laws, offer many innovative approaches for agencies in consulting with their tribal partners.

Originally, the law's intent was to force full consideration of cultural issues in project planning and management by federal agencies. Previous laws did little to affect the course of federally funded projects as they impacted historic and archeological sites. So, the law established a structure (i.e., state historic preservation offices, the President's Advisory Council on Historic Preservation, and the National Register of Historic Places) so these resources would be considered on all federally funded projects. Agencies were instructed to comply with the law by "consulting" with state preservation offices and/or the council before approving undertakings. In essence, the law established a mechanism for agencies to consult with each other and the states. Consultation in the original law dealt exclusively with this "internal" consultation. Tribes were not considered because the act emphasized Euroamerican built environments.

But times change. Tribes found a voice in statutes that forced new meaning to consultation, making it clear that they wanted more say in the management of tribal resources on public and trust lands. The 1992 amendments to NHPA shifted consultation from an internal to an external focus. As a result, the law now emphasizes training, for tribes as well as federal employees, and grants for tribes. Section 110, as amended, instructs agencies to consult not only with state preservation offices but with Indian tribes and Native Hawaiian organizations before undertaking any "significant action." The act also bows to NAGPRA in recognizing the need to consult with tribes regarding any "property" as defined by that law.

The amendments go on to allow tribes to establish their own preservation offices (tribal historic preservation offices, or THPOs). And the law now recognizes that cultural properties

need not be historic buildings or archeological sites, but can be areas or sites of significant cultural or religious importance to tribes, which can be nominated to the National Register.

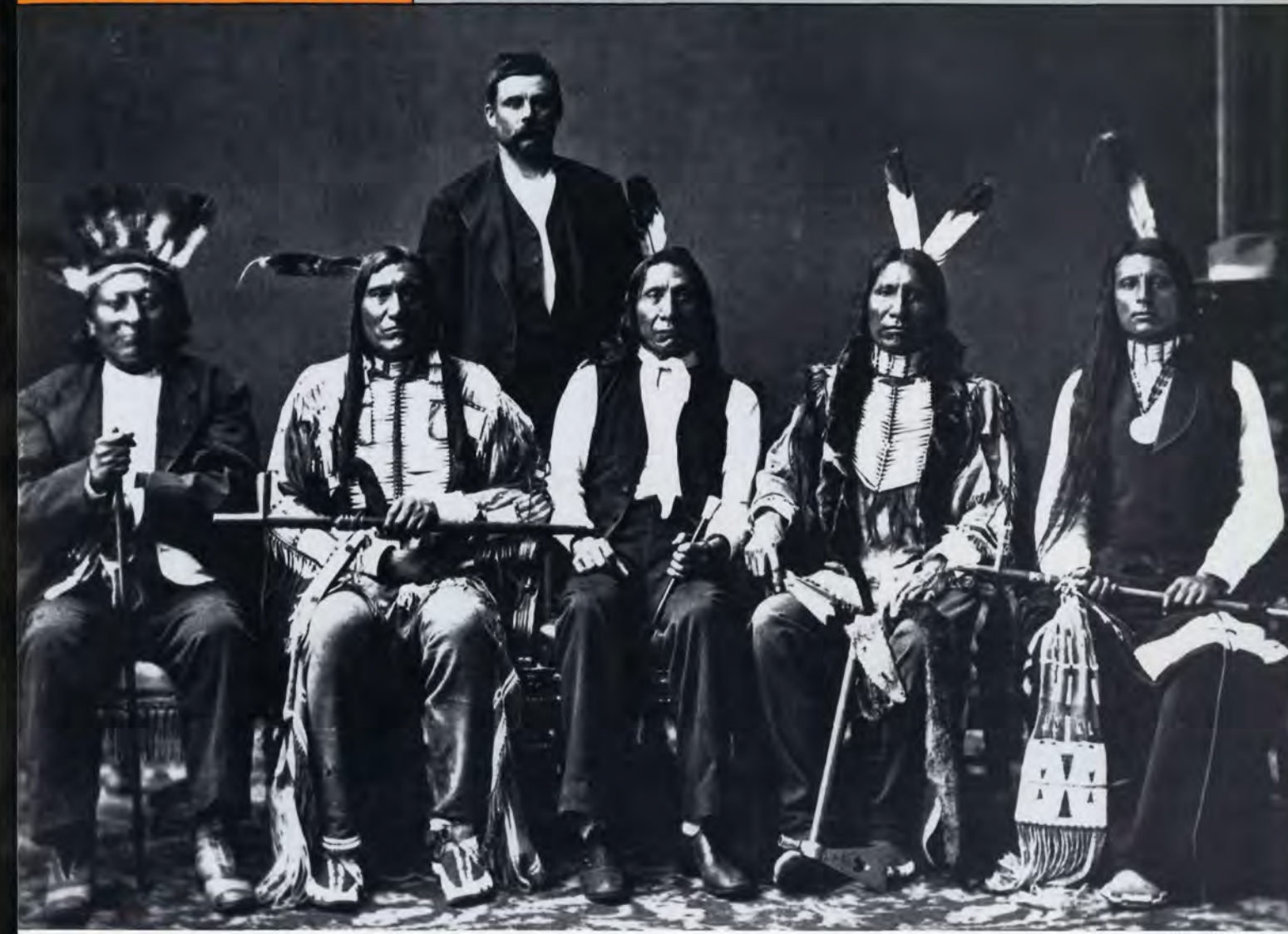
When combined with other statutes, the provisions of NHPA provide a new meaning to consultation. And, the implications are not lost on tribes.

The act's amendments inject tribes into the broad federal/state relationship created in 1966. With the establishment of THPOs, they have a real voice. Under amendments to the Self Determination Act, tribes can contract with Interior Department agencies to provide services on non-trust federal lands, which may well include aspects of management once the sole purview of the agencies themselves. Combine all of this with NAGPRA's emphasis on tribal ownership and control, and it is clear that the concept of consultation goes far beyond seeking "advice and comment."

All of this leads to a simple conclusion. The meaning of consultation has changed dramatically. But the change has largely resulted from tribal efforts to take more control of what they consider to be their heritage. Consultation no longer means letters of notification or even follow-up phone calls or visits to tribal offices. It has taken on more the character of "negotiation" with a sovereign entity. Tribes have asked for, and largely received, a place at the decision-making table. Increasingly, they ask federal agencies for more training, more monies to establish THPOs, and more co-managing agreements, not just on the treatment and disposition of cultural resources, but for educational programs as well.

The term "consultation" does not quite describe this new relationship. What has emerged is a kind of mutual responsibility, a mutual authority that has transformed how both agencies and tribes operate. There is a need to recognize—with new language—the full dimensions of this new partnership.

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NATIONAL ARCHIVES

Federal consultation must be conducted in good faith; that is, in a manner that implies honesty, fair dealing, and full revelation of facts. A recent case involving the National Historic Preservation Act illustrates the good faith standard (*Pueblo of Sandia v. United States*, No. 93-2188).

In July 1988, the Forest Service released a draft environmental impact statement (called for by NEPA) on eight alternate strategies for managing Las Huertas Canyon in New Mexico's Cibola National Forest, including plans for picnic grounds, parking lots, and the like. Since NHPA requires land managers to consider the effect of such plans "on any district, site, building, structure, or object that is included in or eligible for the National Register," the Forest Service had mailed letters asking tribes to describe traditional sites in the project area, and how often they were used. Forest Service officials also addressed the All Indian Pueblo Council (a body of elected representatives not recognized by the federal government) and the Pueblo of San Felipe. No one came forward with the information. In the ensuing months, however, the tribes submitted two affidavits outlining general traditional uses of the canyon.

Concerned about the planned paving of a gravel road, the Pueblo of Sandia filed an administrative appeal to block it. When the deputy regional forester affirmed the decision, the pueblo filed suit in federal court. The court granted summary judgement

Red Cloud, center, with a Sioux delegation to Washington, ca. 1875.

to the Forest Service, so the pueblo appealed to the Tenth Circuit. On March 14, 1995, the Tenth Circuit ruled that the Forest Service requests, in form letters and at tribal meetings, were not reasonable efforts. "Writing a letter is not sufficient in itself," explains Forest archeologist Tom Cartledge. Because the affidavits were not discussed in consultation, the court further ruled that the Forest Service did not make a good faith effort and remanded the case back to the local jurisdiction.

The Forest Service agreed to hire an ethnographer to document historic properties in the project area. "We weren't sending the appropriate people to talk to the Indians," continues Cartledge. "There are proven techniques and methodologies for eliciting information. Your Forest archeologist may not be the right person."

Cartledge sees lack of confidentiality as an obstacle to effective consultation, even when it is done in good faith. "Confidentiality is the crux of the issue," he explains. "We have a legal process that says we'll make a reasonable, good faith effort to obtain information and then manage the resource in an appropriate fashion. Native peoples don't want us to have that information. In part it's a lack of trust, but at least in pueblo religion they also cannot disclose the information without destroying whatever powers are attached to a given location."



CONSULTING
WITH NATIVE
AMERICANS
UNDER THE
NATIONAL
ENVIRONMENTAL
POLICY
ACT

by Mark Schoepfle

Big federal projects that reshape the environment—natural and cultural—require a great deal of thought and discussion before the equipment starts moving. A look at how the National Environmental Policy Act brings native peoples into the consultation process.

John Collier, U.S. Commissioner of Indian Affairs, listens to Seminoles plead their case to save the deer population from official slaughter to eradicate cattle ticks, Florida, 1940.

DUE PROCESS AND



Two o'clock, one warm July afternoon, finds me and my Navajo research colleague Kenneth Begishe consulting with a group of elderly Navajos about 15 miles south of Mexican Hat, Utah. Mexican Hat, and the communities to the south around Monument Valley, are part of the Oljato Chapter, a unit of political representation on the Navajo Nation. We are talking to an elderly man and several of his close relatives at his house next to a 100-foot-high pile of uranium tailings, a residue of the Cold-War-era mines that still pierce these hills. The pile was soon to be remediated using EPA's Superfund. We are here simply to discuss some stone enclosures south of Mexican Hat, overlooked by an earlier team inventorying archeological sites for a remediation feasibility study.

This afternoon, we are a good 15 miles south of the enclosures, listening to what the gentleman has to say. He is an influential leader in these parts, and relatives sitting in the shade arbor nearby defer to him. If we had decided not to speak with him, everybody else would simply have had nothing to talk about.

He is not about to answer our questions quickly. First, he observes that trucking away the tailings will stir up even worse-than-normal dust. He has heard all about the health dangers. For him, however, uranium is not the biggest killer of Navajos—it is wine and attendant drunkenness. He points to little yellow-cake figurines (pure uranium) on his kitchen window sill. He's been making them for years, he says, and nothing has happened to him.

At this point, it would have been easy to assume that his cultural perspective had rendered him unconcerned about the hazards. A guided tour of his sheep grazing areas shows otherwise. First, his point about the wine was true—even for the local communities near Monument Valley. Just about every family on the Navajo Nation is either affected directly by alcohol-related accident or violence, or someone close to them has been. We also find that Navajo workers from outside the community had moved here in the late 1950s and early 1960s to work in the uranium mines and mills, bringing their livestock with them. They also brought liquor from the towns to the north. Later in the afternoon, as we walk about the grazing area, we can also see half-boarded uranium pits, ruins of old houses, and tin cans and trash strewn everywhere. Now the remains of these Navajo out-

siders' occupation are a hazard for goats and sheep, the rotted wood covering the mine pits endangering children and livestock alike.

He is concerned that these problems will never go away. No one had addressed them before and he is realistically skeptical that anybody ever will. His recommendations are nevertheless straightforward: cover up the tailings—do not truck them away—and favor Navajos in the area for the job. After he finishes, his sons add their own plea. Their issue has less to do with safety than with chronic unemployment.

The next day, Mr. Begishe and I meet with others in the community, including medicine men and former miners, one of whom has brown lung disease. They tell us that site managers had already been talking about burying the tailings—with dirt from a hillock where medicine men gather sacred plants. The leaders had discussed this with the medicine men. Together, they determined that while damaging this sacred site was lamentable, it was necessary for the good of the community. Their recommendation: take the dirt from the southwest side but don't damage the north side, where the plants grow.

The former miners tell us that the workers will need dust masks as well as shower houses where they can clean up—many homes have no running water—to shield their families as well as themselves from the potential danger.

And we finally find out about the stone structures: playhouses built by boys in the early 1960s.¹

THE ESSENCE OF CONSULTATION

We were ushered into this consultation courtesy of NEPA, the National Environmental Policy Act of 1969, whose 1979 regulations intend to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken" affecting resources for which the federal government is directly responsible. Our encounter in Monument Valley puts a human face on a process that, to some, may seem rigidly bureaucratic.

In fact, consultation under NEPA need not be highly structured. It is an attempt, first, to understand a potential impact from the standpoint of those who see themselves directly affect-

His recommendations are nevertheless straightforward: cover up the [uranium] tailings—do not truck them away—and favor Navajos in the area for the job. After he finishes, his sons add their own plea. The issue has less to do with safety than with chronic unemployment.

ed. This means that the information-gathering can be structured around their understanding. Second, consultation usually implies action. This may involve little more than simply noting their concerns in a formal way, or giving them additional information. However, in no case can those conducting the consultation promise what they cannot deliver.

Consultation can be integrated into many parts of the NEPA process, and with other laws that NEPA assumes are observed. Since various federal agencies are supposed to draft guidelines and procedures to implement NEPA, the Department of the Interior requires that laws such as NAGPRA, the American Indian Religious Freedom Act, and the American Antiquities Act be integrated into the process. NEPA, in effect, is a sort of skeleton upon which the requirements of these other laws hang. The example above highlights a number of important points.

First, consultation can occur at any time. Briefly, the process for drafting an environmental impact statement, or EIS, involves five principal stages: notice of intent, scoping, the draft statement, the final statement, and the record of decision. Our activity occurred after the EIS had been completed. Consultation is important especially during the scoping phase and the responses to the draft EIS. However, there are other times when public involvement is solicited, such as when certain resources were not identified adequately, or an agency or segment of the public was overlooked.

Second, consultation can be conducted with any constituency that considers itself affected. Consultation is not limited to federal and tribal agencies. Among tribes especially, there are times when communities wish to deal with the federal agency directly, as well as through their own tribal government.

Mr. Begishe and I knew that the Navajos in the area had long been sensitive to impact assessments, and would demand to air their positions—in full. Even though our job was simply to identify a set of stone enclosures, we were obligated to interview the people who wanted to be interviewed. Because we did our homework, we realized that all were either officials or active leaders in the Oljato Chapter.

Executive Order 12898 is important here.² The order requires all federal agencies to include as part of their mission "identifying

and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low income populations in the United States . . ." It also requires that an interagency work group identify the effects, develop a strategy to deal with them, coordinate research, and hold public meetings. While the consultation in our example occurred before its passage, EO 12898 makes it much easier to fit this kind of consultation into the NEPA process.

Third, the regulations governing the NEPA process are focused on determining the significance of impacts. Significance of impacts constrains consultation. Significance can be defined in terms of an impact's context or intensity. "Context" means the social and environmental framework within which the action would occur. "Intensity" refers to factors such as health and safety, controversy, uniqueness of geography, uncertainty of events, degrees of risk, cumulative impacts, effects on historic or cultural resources, and many more (40 CFR 1508.27). "Context" and "intensity" have not been rigorously defined, and the courts have focused mostly on clarifying cumulative and socioeconomic effects.³ Determining intensity is important to evaluating the alternatives put forth in the EIS (whose purpose is to evaluate, not collect evidence to permit or deny).

Fourth, like the EIS process, consultation is evidence driven. While the impact statement must address all concerns raised either by informed experts or the concerned public, the statement itself is evidence driven. Both the EIS and the consultation must define—preferably in quantifiable terms—the resource, the effects of the proposed activity, and the impact. Resources can include subsistence, cultural artifacts, sacred sites, and the general welfare of the people affected. All impacts are discussed "in proportion to their significance"; concerns over what "might" happen require "only a brief discussion" (40 CFR 1502.2). As the regulations make clear: "... significant economic or social effects by themselves do not require the preparation of an EIS (see 40 CFR 1508.14) (BIAM 5.3A.2)."⁴

It is important to maintain a good base of evidence. General concern about violating a sacred site, for instance, will obviously not generate alternatives as well as a well-articulated statement



Strip mining for coal in Arizona near Navajo places of prayer.

KLARA B. KELLEY

and how they would be affected, as well as propose solutions to mitigate. The Navajos already had their own recommendations for protecting the places and minimizing dust. Similarly, their concerns about subsistence were easily documented and photographed.

To use a different example, if low-flying airplanes were going to disrupt native hunting and gathering, at the very least show how. If game are scared off, will hunters have to go further afield, expending more fuel and energy? How many people will be affected?

Fifth, the EIS and the consultation process must be "analytic rather than encyclopedic" (49 CFR 1502.2[a]). As Treitler has observed, the statement's impacts must be in cause-effect order.⁵ Descriptions of different worldviews will not produce mitigative measures. For example, while the elderly speaker in the introduction could voice his opinion, we needed to quantify the impact of a safety hazard. Discussions of sacred places had to be explicit, and mitigations spelled out carefully. To our good fortune, the Navajos had already been thinking along these lines. Consultation can also address seemingly unrelated issues,⁶ such as the Navajos' concern about employment, since they affect the decision-making associated with the proposed measure.

Sixth, consultation must maintain the same balance maintained in the rest of the NEPA process. In NEPA the negative impacts of the action are balanced against the benefits. Mitigation is performed to reduce negative impacts, and change the bal-

of impact. In our example, we needed to show exactly where the sacred places were

ance in the direction of acceptability. Again, the mitigations suggested by the Navajos were explicit: limit the source of landfill from a particular sacred location, take safety precautions for workers, and give employment preference to local residents.

DUE PROCESS WITH OBLIGATIONS

Consultation can be important in the NEPA process at every stage, from the environmental assessment to the final environmental impact statement. It allows the interested public and governmental agencies to address issues that may have been overlooked. It allows continued examination of uncertain impacts of great concern to the public, and monitoring of research whose findings are incomplete.

Consultation provides an opportunity to conduct quick, on-the-ground qualitative rapid assessment—complete findings. Such assessment has become increasingly popular, first, because it does not require cumbersome surveys or other primary research. Second, it includes ethnographic and other qualitative approaches that focus on the knowledge of the people affected. Third, the assessment design is iterative, and can be built systematically around that knowledge. Fourth, because of its iterative nature, it can be linked to focus groups and other planning and evaluation approaches.⁷ Finally, such assessments can be linked to the more putatively objective findings of other scientific inquiry involved in the environmental impact process.

Consultation is a due process presupposing that the public, if interviewed and observed properly, can and do know a lot about what will happen to them (only after reasonable attempts to record their understanding can we conclude that they have not

It is well known that many reservation communities associate quick decisions and majority votes with perceived attempts by federal agencies, private companies, and tribal governments to get questionable projects approved . . . One of NEPA's great contributions is providing a channel for people to be involved in these decisions. This process is not always easy, but it is vital.

been properly informed, as sometimes obviously happens). Through this process, those conducting the consultation can be mediators without becoming advocates.

However, with due process comes obligations. One cannot simply accept the first answer received. Interviewees may not be accustomed to supplying the level of detail required, or may not want to disclose the whereabouts of grave or ceremonial sites.⁸ Efforts must be made to negotiate suitable arrangements with them.

Although this process is limited in its ability to fully characterize a group of people, it is not relativistic. That is, the process highlights cultural differences not for their own sake, but only to the extent that they illuminate potential impacts, resources, or populations that might otherwise be overlooked.

It is well known that many reservation communities associate quick decisions and majority votes with perceived attempts by federal agencies, private companies, and tribal governments to get questionable projects approved.⁹ One of NEPA's great contributions is providing a channel for people to be involved in these decisions. This process is not always easy, but it is vital.

For more information, contact Mark Schoepfle, Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C St., N.W., MS4603-MIB, Washington, DC 20240, 202/208-2753, fax 202/219-3008, e-mail Mark_Schoepfle@ios.doi.gov.

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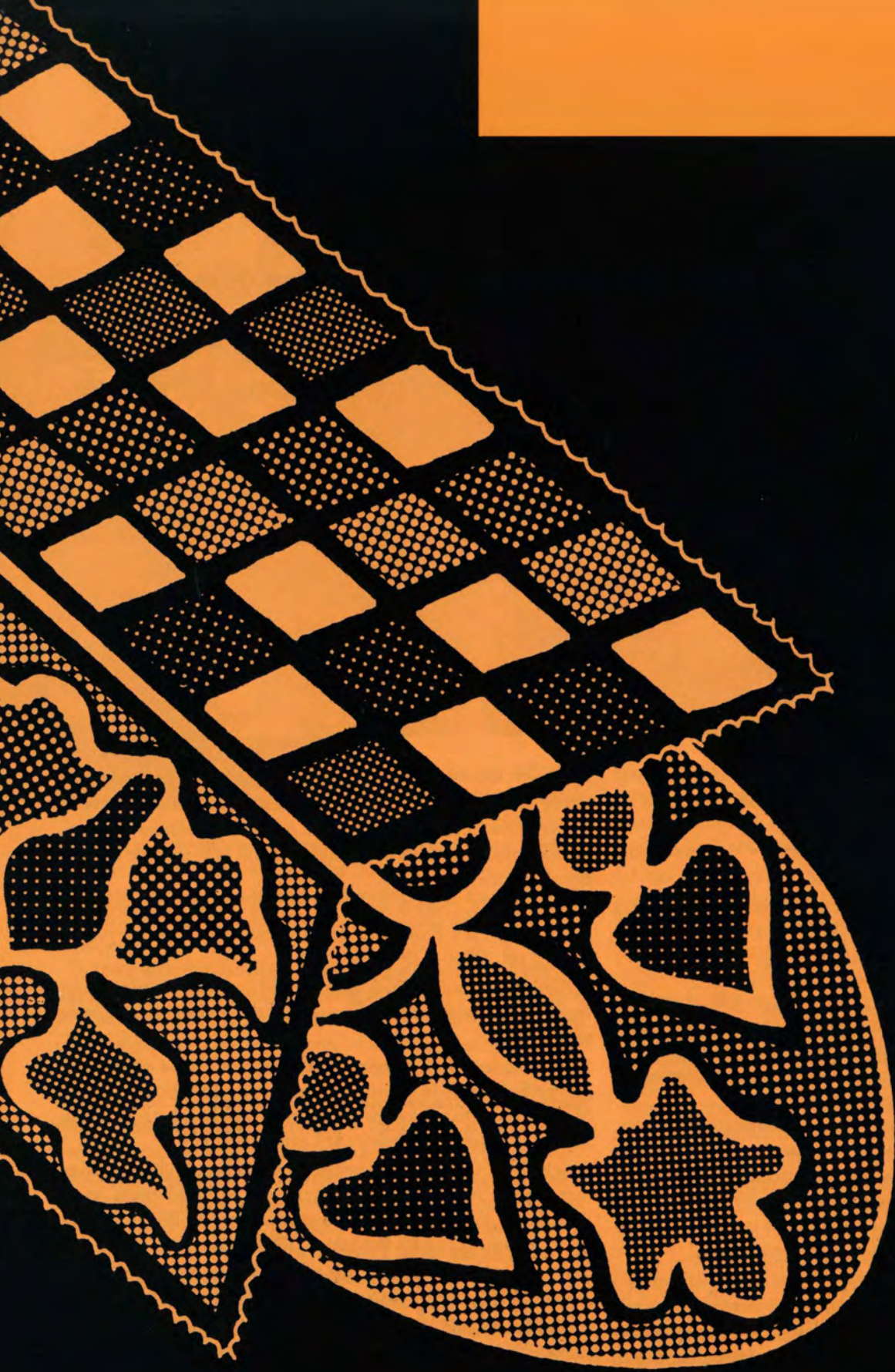
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ARCHEOLOGY'S FIRST STEPS



MOCCASINS

Top: Stacy Halfmoon of the Caddo Tribe, Virgil Swift of the Wichita and Affiliated Tribes, and Fort Sill Apache tribal historian Michael Darrow at NAGPRA review committee meeting, Norman, OK, in March; **Right:** BIA archeologist and Choctaw tribal member Joe Watkins outside the meeting.

by Joe Watkins and Tom Parry



Watkins at the podium during the meeting of the NAGPRA review committee in Norman, Oklahoma.

"When we talked about using remote sensing to locate [burials], the tribes insisted we try to get the equipment. [Now] we are offering the service to tribes throughout the state."

IN MAY OF 1995, Phyllis Attocknie of the Comanche contacted me about a letter I had sent her requesting information about tribal trust property. The Bureau of Indian Affairs' Anadarko Agency was planning some road projects and we needed to know if they would affect anything the tribe considered important. I translated the letter's jargon for her, and by the end of the conversation it was apparent to both of us that something had to be done to improve communication. Thus began a series of meetings between my colleague Tom Parry and I and the seven tribes under the agency's jurisdiction—the Apache, Caddo, Comanche, Delaware of Western Oklahoma, Fort Sill Apache, Kiowa, and the Wichita Affiliated Tribes.

As archeologists trained in bureaucratese and academic English, we often find it difficult to understand why the consultation process seems to take so long. We provide the same information to tribes as we do to the state historic preservation office, but the response takes much longer.

One of the first meetings dealt with the consultation process itself: who we contact, why, and the kinds of responses we need. We learned that although the tribes appreciate the effort, they sometimes have problems with the information we send them. While archeologists may be familiar with topographic maps, many tribal members find it difficult to translate the "squiggly" contour lines to a plot of land in the real world. So we gave a presentation on how to read the topographic maps. In addition, we now send them large-scale maps keyed to landmarks they recognize. We also translate the legalese.

In these early meetings, Tom and I gave brief presentations on preservation and the laws related to managing archeological and historic sites. We apparently whetted a few appetites, because the group expressed a desire to learn more. There was a great deal of discussion about why archeologists excavate, the techniques they use, and the information they get from what they recover. This led to a presentation on what osteologists learn from human remains.

In April 1996, representatives of the seven tribes watched as the Oklahoma Archaeological Survey and the University of Oklahoma used remote sensing to investigate a possible pre-European contact gravesite. The tribes are very interested in the possibilities of the technology, especially since, for a variety of reasons, the locations of many gravesites on agency land have been lost. When we talked about using remote sensing to locate

these burials, the tribes insisted we try to get the equipment. Luckily, our office was able to purchase it and we are offering this service to tribes throughout the state.

We have had many discussions about NAGPRA, particularly on what to do if culturally unidentifiable remains are found on land held by two or more tribes. Consequently, the tribes are trying to formulate compatible policies to deal with the situation should it come up. They cosponsored the recent NAGPRA review committee meeting in Norman, Oklahoma, as well as a National Park Service workshop on tribal preservation.

We have discovered that helping Native Americans help one another is in our best interests as well as theirs. The tribes, for their part, have found that acting together increases their influence on government decisions, locally, regionally, and nationally.

Ultimately, the group asked us to develop a program to certify tribal members in the basics of archeology and preservation. During the summer of last year, I taught an introductory archeology class at the Wichita tribal complex, with each student earning three credit hours through the University of Oklahoma. Teacher and student alike learned from the experience.

None of us is sure what form our loose working group will take in the future. But we are sure about some things. The tribes are more responsive to our consultation requests. We at the agency have a better sense of the problems they face in consulting with each other. And we are all committed to helping each other deal with what Indians call "white tape."

My job has gotten easier, too. I know exactly who to contact in case of an unanticipated archeological discovery, and I know that tribes will understand exactly what archeology can (and cannot) accomplish. But, above all, I've made some lasting friendships that I might never have made without meeting with these people on such a frequent and open basis. One tribal representative said to me, "Archeology is in its adolescence for science, but it's in its infancy for us Indians." We need to make sure archeology's first steps in moccasins are as fully supported as its first steps were in Oxfords.

For more information, contact Joe Watkins, Agency Archeologist, Bureau of Indian Affairs-Anadarko Agency, P. O. Box 309, Anadarko, OK 73005, (405) 247-6677 ext. 233, fax (405) 247-9232.

WHEN?

Notify	Prior to issuing an ARPA permit for work that may harm any religious or cultural site
	After completing NAGPRA-required inventories of Native American human remains and associated funerary objects
	Summarizing unassociated funerary objects, sacred objects, and objects of cultural patrimony
Consult With	Prior to removing Native American human remains or cultural items from federal lands
	Prior to completing inventories of human remains and associated funerary objects in an agency's possession
	Determining the cultural affiliation of unassociated funerary objects, sacred objects, and objects of cultural patrimony
	Determining where and in what manner to return cultural items or human remains
	Clarifying an agency's responsibilities under section 106 of the National Historic Preservation Act
	An agency's preservation work may have a bearing on tribal concerns
	Deciding how to deal with adverse effects on historic properties
	Dealing with matters that significantly affect tribal communities
	Before taking actions that will affect tribal governments
	Dealing with access, use, and protection of sacred sites
Obtain Consent From	Before issuing an ARPA permit on Indian lands
	Exchanging or determining the ultimate disposition of archeological items removed from Indian lands
	Before removing Native American human remains or cultural items from tribal lands

End of the Indian Wars. Sioux chiefs and leaders in council at Pine Ridge, South Dakota, 1891.

NATIONAL ARCHIVES

WHO?

REQUIRED BY

Indian tribes that may consider a site to have religious or cultural importance	16 U.S.C. 470cc (c) [ARPA]
	25 U.S.C. 3003 (d) [NAGPRA]
Affected Indian tribes or Native Hawaiian organizations	25 U.S.C. 3004 (a) [NAGPRA]
Appropriate Indian tribe or Native Hawaiian organization	25 U.S.C. 3002 (c)(2) [NAGPRA]
Tribal government, Native Hawaiian officials, or traditional religious leaders	25 U.S.C. 3003 (b)(1)(A) [NAGPRA]
	25 U.S.C. 3004 (b)(1)(B) [NAGPRA]
Lineal descendant, Indian tribe, or Native Hawaiian organization	25 U.S.C. 3005 (a)(3) [NAGPRA]
Any Indian tribe or Native Hawaiian organization that attaches religious or cultural significance to places that may be eligible for inclusion in the National Register	16 U.S.C. 470a (d)(6)(B) [NHPA]
Indian tribes or Native Hawaiian organizations that perform preservation activities	16 U.S.C. 470h-2 (a)(2)(D) [NHPA]
Indian tribes, Native Hawaiian organizations, and the interested public	16 U.S.C. 470h-2 (a)(2)(E)(ii) [NHPA]
Tribal governments	Executive Order 12875, October 26, 1993
Federally recognized governments	Executive Memorandum, April 29, 1994
Appropriate Indian tribes and religious representatives	Executive Order 13007, May 24, 1996
Indian tribe or individual that owns or has jurisdiction over the land in question	16 U.S.C. 470cc (g)(2) [ARPA]
	16 U.S.C. 470dd (2) [ARPA]
Appropriate Indian tribe or Native Hawaiian organization	25 U.S.C. 3002 (c)(2) [NAGPRA]

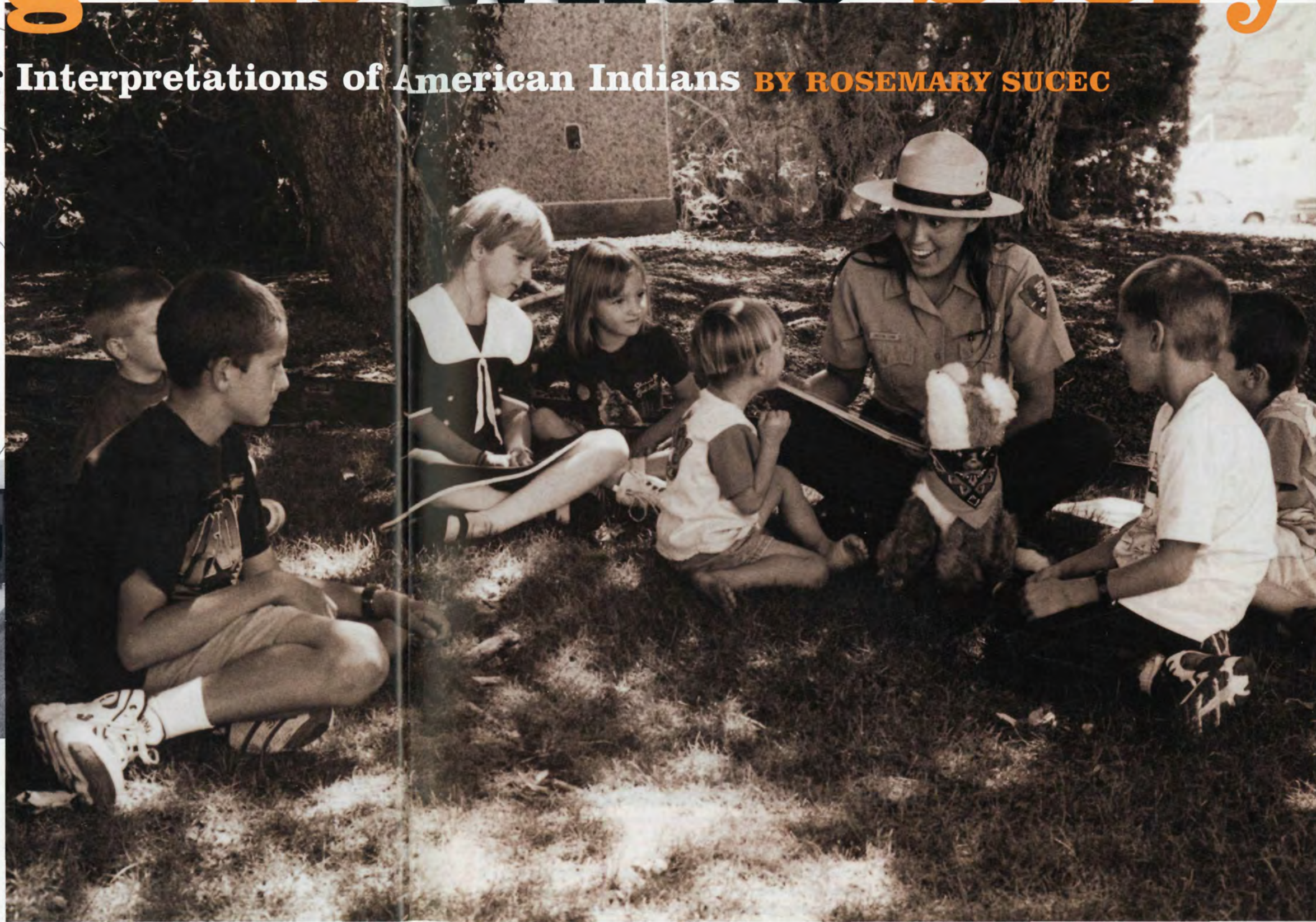


Telling the Whole Story

Re-scripting Interpretations of American Indians **BY ROSEMARY SUCEC**

A chief of interpretation at one of the natural resource parks once told me that "Indians are not a valid interpretive theme." He was referring to the misconception that interpreting Native American culture has no place where it is not mentioned in a national park's enabling legislation or interpretive plans. In fact, the 1988 Management Policies, an agency mandate, requires that parks "actively consult" with tribes in planning, developing, and operating interpretive programs.¹ The National Park Service Cultural Resource Management Guideline says that, when appropriate, parks must

Interpreters such as Navajo Crystal Lynn—shown here with young visitors to Glen Canyon, which straddles Utah and Arizona—are the direct result of efforts to include Native American perspectives. NPS interpreters at the canyon, who began consulting in earnest two years ago as part of a new management plan, now meet annually with representatives from five tribes to address their concerns and to concur on interpretive language for sacred sites such as Rainbow Bridge National Monument. As a result, all aspects of interpretation—even that offered by concession employees on boat tours—has changed. Brochures were altered, and signs and interpretive talks now more assertively raise awareness of native perspectives. Indian interpreters were hired as well, and for the past three years, high school students in the top five percent of their classes—such as Lynn—have been recruited as seasonal employees, with an eye toward cultivating their interest in Park Service careers.



incorporate Native American perspectives “whether or not they relate to specific authorizing legislation or interpretive programs of the parks in which they lie.”²

“I struggle with the rationale that certain histories are immaterial because they are not the reason the park was established,” says Sue Fischer, chief of interpretation at Arizona’s Wupatki National Monument. “Legislative intent focuses interpretation in a necessary way. But, it can also lead us to describe park scenes in which certain people are not a part—people whose self-identity, beliefs, or religion may have been determined by a relationship with these resources.”

Park Service interpretive guidelines³ do not specifically address how to incorporate Native American perspectives (an upcoming revision will, however). But the management policies clearly state that “interpretive programs will reflect the best present, accepted ethnographic understanding.” The policies also decree “cooperative programs . . . developed with various tribes and groups.”⁴ In planning exhibits, for example, parks should consult with affiliated tribes both to comply with NAGPRA and to find out if displays are appropriate.⁵ Parks are not to exhibit human remains or photographs of them; grave goods are not to be shown nor are objects that affiliated tribal communities might object to. Many parks, however, do not have professionals trained to carry

ers, interpretive program leaders, ethnographers, archeologists, curators, and historians—got together with planners from the Park Service center for interpretation in Harpers Ferry, West Virginia. Dave Ruppert, cultural anthropologist for the Colorado Plateau and Rocky Mountain parks, challenged us to do some adventuresome thinking about our agency’s educational undertakings. Perhaps, he suggested, we engage in myth-making unbeknownst to ourselves. We began to notice other nagging perceptions that needed re-visiting and clarification, along with the idea that interpreting Indians is not “valid.”

“**The Vanishing Native.**” Ever visit a national park in the Southwest and hear stories about the Anasazi “mysterious disappearance,” “vanished civilization,” and “abandonment” of their communities? “Convincing arguments were presented long ago that the Anasazi did not simply die or disappear,” says Linda Cordell in Jerold Widdison’s *The Anasazi*.⁶ “Rather, they



Visitors to prehistoric sites in the southwest usually find printed trail guides with similar stories, based on accumulated archeological research. But no matter how the information is written to heighten its appeal, a particular perspective remains—western, scientific, and non-Indian.

New Mexico’s Aztec Ruins, however, has broadened the visitor experience. Visitors can also read a personal interpretation written by a member of Santa Clara Pueblo, one of the tribes descended from the prehistoric people who once lived throughout the southwest. The Pueblo view focuses on The People—how they came to exist, what brought them here, how their lives were intertwined with this “Place by Flowing Waters.”

Producing the guide met with some challenges. Finding a Pueblo person who felt free to share very personal thoughts without being misunderstood or constrained by his or her tribe was difficult. Gregory Cajete of Santa Clara Pueblo worried that readers would take his own view of Aztec Ruins as a general Puebloan perspective. There were also concerns about the confidentiality of sacred sites, and other Pueblos spoke out about the accuracy of the creation story and the use of words



and ideas they felt were associated more with their own tribes than Cajete’s. Despite the difficulties, visitors experience a deeper, more personal dimension of the ruins by getting both the archeological and the Puebloan perspectives.

out these mandates. Fortunately, there are anthropologists in most regional offices committed to helping make interpretive programs more accurate and effective, conducting ethnographic research and assisting with consultations in part for this very reason.

In the interest of improving these programs, a group of us in the intermountain region—park staff, American Indian liaison offi-

cers, moved southward to the Rio Grande valley of New Mexico, to the Acoma-Zuni area, and to the Hopi mesas of Arizona.” What appears to be “abandonment” to us, says Leigh Jenkins elsewhere in the book, was spiritually mandated migrations and relocations.⁷ Today, the concept of “abandonment” inadvertently negates the significance that places like Mesa Verde and Chaco Canyon hold



in the memories and traditions of contemporary Indian communities.

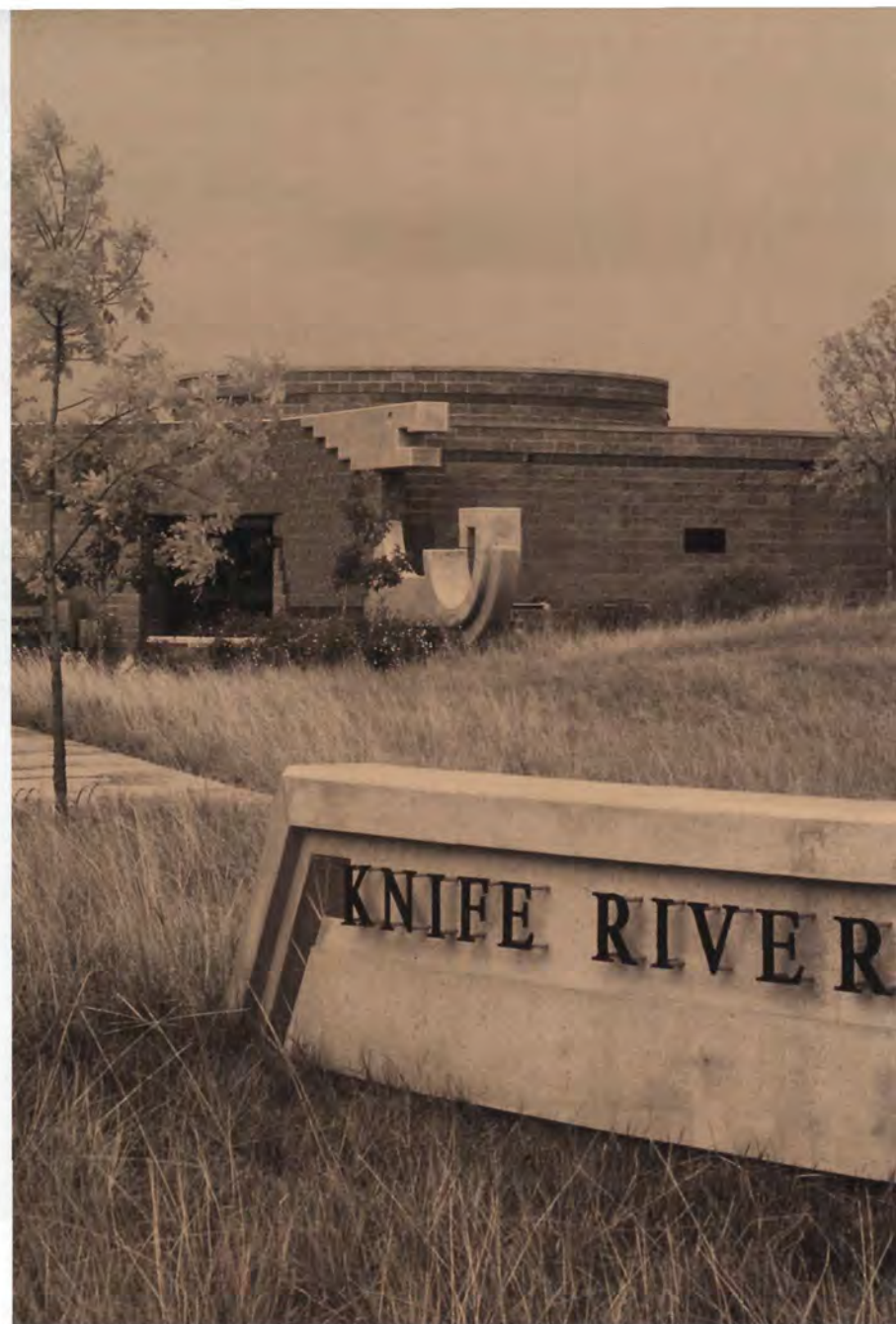
Uninformed of the deep meaning such places hold for Indians, even in their absence from them, some parks abruptly end stories about Native Americans at point-of-contact with colonizing European Americans. Even when staff grasp the profound implications of such omis-

sions, both for Indian descendants and for the understanding of millions of visitors to these sites yearly, limited budgets, personnel, and time constrain what can be done. The narrator of a 30 year old video at Golden Spike National Historic Site declares at one point that the transcontinental railroad had such profound human consequences that the “way of the Plains Indians disappeared.” Of course, this is not the case. While they could no longer hunt buffalo in the same manner, the Plains Indians adapted to ensure their survival and, despite numerous hardships, remain culturally viable. Superintendent Bruce Powell is pursuing funds for a new interpretive film, but given the estimated cost—\$100,000 to \$200,000—a less expensive “countermeasure” such as a brochure may have to suffice.

“**The National Park Service as Arbiter of Truth.**” Some omissions are more problematic. With the idea of “consensus truth” largely shattered,⁸ the Park Service finds itself increasingly drawn into a debate—and into the courts—over how to interpret its resources. Should the agency refrain from incorporating multiple views into its interpretive programs? Or should it confront the visitor with a set of choices? If so—and this is the fundamental question—how? A lawsuit this year against the National Park Service accuses Devils Tower National Monument’s cross-cultural education program of “teaching the religious beliefs of certain American Indian tribes,” thereby violating the establishment of religion clause of the First Amendment (*Bear Lodge Multiple Use Association v. Babbitt and Cheyenne River Sioux Tribe*).

Management policy is not silent on this matter, directing the Park Service to seek “factual, balanced, and to the extent achievable, value-neutral presentations of both native and non-native American cultures, heritage, and history.”⁹ The Vail Agenda advises that the Park Service “cannot and should not attempt to be the official ‘arbiter’ of American cultural and natural history,” encouraging managers and interpreters to interpret controversial events and sites using multiple points of view.¹⁰

Despite the challenge, many parks honor the policy even in the



NOTES

1. National Park Service, "Interpretation and Visitor Services," Chapter 7 in *Management Policies* (Washington, DC, 1988), p. 5.

The Three Affiliated Tribes—Hidatsa, Mandan, and Arikara—once hunted and grew crops in riverside villages throughout the Plains. Today, they live on the Fort Berthold Indian Reservation in North Dakota. Knife River National Historic Site was established to preserve and interpret the archeological and historic remnants of this culture.

In order to tell their story properly, the park embarked on an ongoing consultation program, starting with a new visitors center. An Arikara architect designed the eagle symbol at the entrance (left), as well as the earth lodge motif of the interior lobby. A group of tribal members worked closely with NPS interpretive specialists to ensure that artifacts were displayed appropriately and label text accurate. Sacred objects were repatriated following consultations.

To tie the archeological sites in with the displays, the Park Service built a replica of an earthlodge. The lead interpreter, a Native American, saw to it that the structure was built, and several items now displayed in it were made by tribal artisans.

A member of the tribes is featured in the park orientation video, which makes a direct connection between their past, present, and future. And the park's annual Northern Plains Indian Culture Fest continues to rely on tribal involvement.

face of downsizing and other limiting factors—not just because it is mandated, but because the idea behind it is compelling. As managers and interpreters in federal agencies, we come into contact with what amounts to the entire population of the United States (250 million people) every year. To a large extent, we affect what the public thinks about American Indians and our obligations to them. This is an awe-inspiring fact.

While conducting consultation can be problematic for numerous reasons—not the least of which is agency constraints—it should be a non-negotiable if you wish to ensure that the information you provide is accurate and sensitive. By working actively with tribes, we can all find innovative ways to do justice to our American Indian trust responsibility as well as to our agency missions.

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2. _____, *Cultural Resource Management Guideline*, NPS-28 (Washington, DC, 1994).

3. _____, *Interpretation and Visitor Services Guideline*, NPS-6 (Washington, DC, 1986).

4. *Management Policies*, Chapter 7, p. 4.

5. *Management Policies*, Chapter 7, p. 5.

6. Widdison, Jerold G., *The Anasazi. Why Did They Leave? Where Did They Go?* (Albuquerque: Southwest Natural and Cultural Heritage Association, 1991), p. 11.

7. *The Anasazi*, p. 33.

8. Foner, Eric, *The New American History* (Philadelphia: Temple University Press, 1991).

9. *Management Policies*, Chapter 7, p. 5.

10. Steering Committee of the 75th Anniversary of the National Park Service, *National Parks for the 21st Century: The Vail Agenda. Report and Recommendations to the Director of the National Park Service* (Washington, DC, 1991), p. 90.



PORT GAMBLE S'KLALLAM TRIBE

Members of the Olympic Peninsula Intertribal Cultural Advisory Committee with U.S. Navy representatives at Indian Island, Washington, consulting about an archeological site.

lympic Vision

PORT GAMBLE S'KLALLAM TRIBE

Washington state's Olympic Peninsula is a diverse ecosystem where American Indians have resided for at least 10,000 years. Present-day tribes have taken notable measures to ensure that the peninsula's cultural sites are protected and to create a better understanding of the interconnectedness of the people and the landscape.

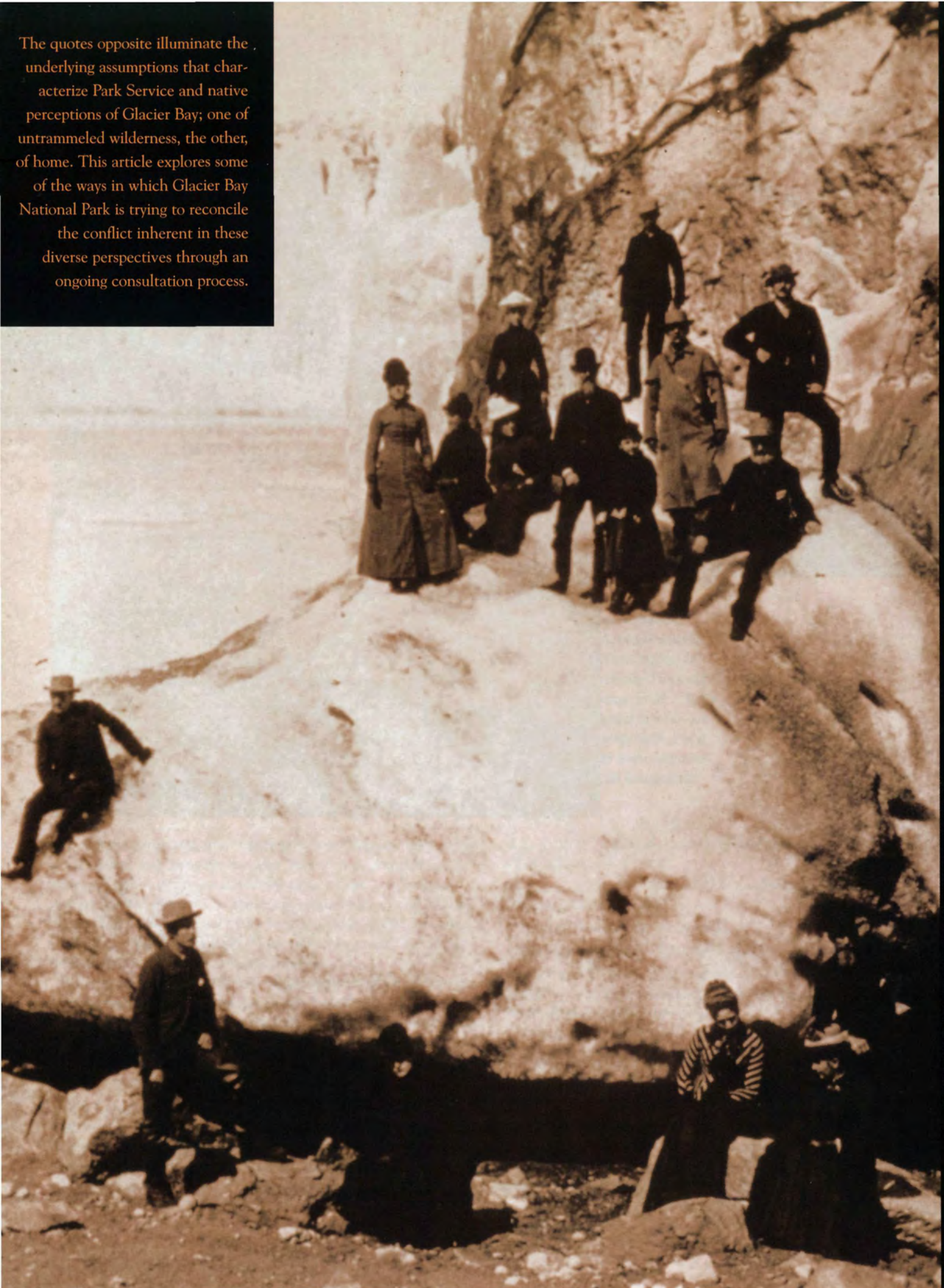
Eleven tribes banded together to facilitate consultation among themselves and with Olympic National Park, which encompasses lands ceded by eight of them and areas traditionally associated with at least three others. The result has been a boon for both the park and the peninsula's tribal residents: the Jamestown S'Klallam, the Lower Elwha Klallam, the Hoh, the Makah, the Port Gamble S'Klallam, the Quileute, the Quinault, the Shoalwater Bay, the Skokomish, the Squaxin, and the Suquamish.

Thanks in part to its non-profit status, the Olympic Peninsula Intertribal Cultural Advisory Committee, as the alliance is called, won an Historic Preservation Fund grant from the National Park Service to train eight of its members in preservation law. With this training under its belt, the committee was able to dovetail its goals with those of the park, helping managers identify and protect cultural properties potentially affected by land use plans and activities.

Since many issues concern more than one tribe, the committee is in the position to facilitate communication among all of them—as well as with the park and other agencies who manage land on the peninsula, like the Forest Service. Jacilee Wray, the park's anthropologist, consulted with the committee for her study of past and present tribal connections to Olympic. The committee, like the park, seeks to enhance understanding of tribal lifeways, a confluence of interest that recently helped net another Park Service grant (from the Challenge Grant Cost Share Program) to develop a publication on the tribes with Wray and other staffers.

Although the committee cannot represent individual tribes in formal, government-to-government consultations with state and federal agencies, it has proved essential to maintaining trust and open communication over many culturally sensitive issues.

The quotes opposite illuminate the underlying assumptions that characterize Park Service and native perceptions of Glacier Bay; one of untrammelled wilderness, the other, of home. This article explores some of the ways in which Glacier Bay National Park is trying to reconcile the conflict inherent in these diverse perspectives through an ongoing consultation process.



ALL PHOTOGRAPHS COURTESY GLACIER BAY NATIONAL PARK AND PRESERVE

THIS WAS MY FIRST GENERAL VIEW OF GLACIER BAY, A SOLITUDE OF ICE AND SNOW AND NEWBORN ROCKS, DIM, DREARY, MYSTERIOUS.
—JOHN MUIR, TRAVELS IN ALASKA

ALL OF GLACIER BAY IS A TREASURE. THERE IS NO ONE WHO LOVES AND VALUES HIS OWN HOMELAND MORE THAN A TLINGIT. WE ARE VERY PROUD OF THIS OUR HOME.
—WILBUR JAMES, CHOOKENEIDI ELDER



the Bay
in place of a glacier

BY WAYNE HOWELL



In the fall of 1879, an imperceptible but nonetheless significant event occurred in the lives of the Hoonah Tlingit when a canoe carrying two white men paddled into Glacier Bay; one was a Presbyterian missionary, the other, naturalist John Muir.

Muir was enthralled by the grandeur of the scene and awed by the forces at work. His effusive writings inspired laymen and scientists alike. By the late 1880s and early 1890s the Hoonah Tlingit homeland was a regular stopover for tourist-laden steamships, and scientific expeditions set up tent villages in the bay's upper reaches, where before there had been only the seal hunter camps. The vision of a monument to the forces of ice and time was born.

Established in 1925, and expanded in 1939 and again in 1980, Glacier Bay National Park and Preserve encompasses 3.3 million acres of deep coastal fjords, glacier-clad mountains, and forested lands. It eventually came to encompass the greater portion of Hoonah Tlingit territory and the homeland of the Dry Bay (Gunaaxoo) clans of the Yakutat tribe. The monument was founded in the spirit of Muir, with a strong tradition of scientific inquiry; its enabling legislation directed managers to promote scenic and scientific values, with a historic focus looking only as

far back as the arrival of European explorers. Perhaps it was this short-sightedness that led to many of the conflicts to come.

DECADES OF CONFLICT

In the early years of the monument the Park Service and the Hoonah people rarely interacted, and the natives were able to continue many of their traditional ways. That began to change in the late 1930s, when the Park Service restricted the use of firearms in anticipation of expanding monument boundaries to protect brown bears. Such conflicts came to define the relationship between the Park Service and the Hoonah. In 1946 three Hoonah men were arrested for trapping in the monument. Then, in the 1950s, the National Park Service, largely in response to plummeting seal populations brought on by a state bounty program, began regulating seal hunting, eventually curtailing it entirely by the late 1960s. Having lost most of their traditional subsistence activities in the park, the Hoonah Tlingit found themselves on the outside looking in.

Both sides have in the past decade made isolated attempts to resolve matters. In 1988 there was a wonderfully conceived canoe project that brought Hoonah elders and carvers together at Bartlett Cove (park headquarters) to carve a traditional sea otter hunting canoe. After the wood chips stopped flying and the songs and dances of the dedication ceremony quieted, the canoe was put on outdoor display. But it rarely touched the

water and soon began to crack. Although it is the central Tlingit interpretive display in the park, it has not created the bridge that its designers had hoped for. In 1992 the Hoonah clans brought a flotilla of fishing boats to Bartlett Cove and conducted a memorial ceremony on the beach, symbolically rekindling their ties to Glacier Bay, and making an overture of peace. Although both sides parted amicably, relations eventually slipped into the familiar routine of episodic NPS "consultation" whenever a ground disturbing project needed clearance, and an occasional NEPA-related public meeting that produced long lists of native grievances, but no solutions.



THE MONUMENT WAS FOUNDED IN THE SPIRIT OF MUIR, WITH A STRONG TRADITION OF SCIENTIFIC INQUIRY; ITS ENABLING LEGISLATION DIRECTED MANAGERS TO PROMOTE SCENIC AND SCIENTIFIC VALUES, WITH A HISTORIC FOCUS LOOKING ONLY AS FAR BACK AS THE ARRIVAL OF EUROPEAN EXPLORERS. PERHAPS IT WAS THIS SHORT-SIGHTEDNESS THAT LED TO MANY OF THE CONFLICTS TO COME.

REDEFINING A RELATIONSHIP

Just when Glacier Bay National Park turned the corner is open to debate. I believe the course started to change about 1993, when the park's newly hired resource management specialist, Mary Beth Moss, began working with Tim Cochrane, the regional cultural anthropologist. This convergence of regional and park interests generated a more holistic approach. Merging cultural and natural resource funds, they initiated several projects, including a NAGPRA repatriation, a place name map, an ethnographic study to help us better understand the Hoonah connection to Glacier Bay, and a maritime anthropology study of the traditional and commercial fisheries in the bay.

In the winter of 1995, a watershed year, new superintendent Jim Brady arrived with native relations near the top of his list. In the spring the NPS systemwide archeological inventory program proposed a survey in the park, and Mary Beth seized the opportunity. She posted a local hire announcement for an archeologist, and got only one applicant—an itinerant "dirt archeologist" working a seasonal round between Guatemala and Alaska.

Although I hired on as a seasonal archeologist, unrelated files began appearing on my desk: land claims, missing clan artifacts, subsistence disputes. For the first time in its existence, Glacier Bay had a cultural resource manager, and immediately the staff saw the value of having someone to do the job. In September the NPS and the Hoonah Indian Association signed a memorandum of understanding establishing government-to-government relations. The signing ceremony coincided with a traditional totem pole raising and potlatch, followed the next day by a NAGPRA repatriation in a remote corner of the park.

What a weekend! But what happened the following Monday morning was equally important; rather than the silence that had always followed these coming-together events, there was a phone call. I don't remember what I talked about with Johanna Dybdahl, the Hoonah tribal administrator—probably unsigned

NAGPRA papers. The significance was that there was a phone call at all. The memorandum had created a common platform, spelling out in a few clear words that a designated person in the park was assigned to communicate on a regular basis with a designated person from Hoonah.

With relations established we were ready to move to the next phase. In the spring of 1996 the park moved forward on its development plan to guide growth at Bartlett Cove for the next several decades. The governing board of the Hoonah Indian Association participated in every stage of planning, and an open house in Hoonah provided the general tribal membership the chance to participate. What we discovered is heartening: partners with a strong conservation ethic, committed to preserving the integrity of their homeland and their culture, which they view as an integral aspect of the landscape. Key elements of the document are a Hoonah tribal house based on a traditional model, and a spirit camp to teach tribal traditions and customs to the children. In essence, the plan lays part of the foundation for the Hoonah homecoming to Glacier Bay.

GUNAAXOO—LAND OF RAVEN

With virtually all of my energy focused on Hoonah, I had little time to reflect on the far northwest corner of the park, where the Dry Bay clans had lived. Over the decades forces like those experienced by the Hoonah people had driven them to resettle in the larger centralized villages scattered throughout southeast Alaska, principally at Yakutat. What drew me to Yakutat was some paperwork on my desk telling me that we were to take part in a three-park, multiyear oral history project, called Jukebox, in cooperation with the University of Alaska Fairbanks.

All I really knew about our remote Yakutat office was that it was staffed by a couple of back country rangers and a quiet Inupiat woman who worked as an interpreter/clerk. I had met her at a training session the year before, so I knew that she was married to a local Tlingit man, and that she was a basketweaver. With

Above Left: "Scene across Bay from Muir Glacier, July 19, 1899"; **Above Right:** Sealers' camp in Glacier Bay, 1899.



DOING THE RIGHT THING IN THE RIGHT PLACE

BY MARY ANN PORTER

In 1994 when the position of interpreter/clerk came open at the Park Service office, I thought about what the community needed, then looked at my qualifications. At first I hesitated because my only work experiences were as a part-time court clerk and a full-time mother of five. One of the elders told me to include on my application what I had learned from the many hours of visiting with them in my home. When I included those visits, what a delightful surprise: a resume rich with cultural gems.

I've always believed in the basic intent of the Park Service, and my main focus was to foster the relationship between the park and the community. After training with the fine interpretive staff at



Glacier Bay, I was pushed out on stage and embarked on a new career that my children claim is my second-childhood project.

With the blessings of my supervisors and our companion park, Wrangell St. Elias, we have developed classes in raven's tail weaving, spruce root basketry, and sea grass basketry. To offset costs, we pay presenters in the coin of

the community. For our next class in cedar bark weaving, the presenter told us she needs salmon berries for a potlatch. So the Park Service will pick up her travel ticket and supply the facilities, the students will provide housing and pay for the instruction, and everyone will contribute wild berries and seaweed to trade for the cedar bark she brings.

Our most exciting project, however, has been an elder storytelling program. Once a week a clan elder tells a story or talks about how things were when they were young. I felt the country around us come alive after a few of those evenings. Through the storytelling, many place names have emerged, and several people have been inspired to start family genealogy projects. When the opportunity to do the "Jukebox" oral history project came up, our storytelling program easily grew into it. When I explained that our great-great grandchildren would be able to utilize this program to link them to their ancestral lands and the stories that bind them to it, the response from the elders was phenomenal. Following our trip to Dry Bay, the bay clans and the Park Service sponsored a potlatch, and the words of gratitude from everyone told me that I was in the right place doing the right thing.

only that to go on, I went to Yakutat with a sense of uneasiness. I wasn't sure what my approach should be, but I knew I didn't want to walk around with a tape recorder sticking a microphone in people's faces. What I found was a pleasant surprise; unknown to park headquarters, Yakutat had sprouted its own cultural resource program. Intelligent and village-savvy, MaryAnn Porter had in a few short years developed a multifaceted community outreach program [see sidebar].

By the time I got there, an oral history group—formed in consultation with native elders—was already hard at work. As people settled in for the first meeting, they brought with them notebooks, maps, lists, and tape recorders. I opened the meeting by laying out the parameters of the project. One gentleman took a few quick jabs at summing up park /tribe relations; with this protocol out of the way we plunged into the work. It became immediately clear that these people had a mission; they knew it was their job to transfer the special knowledge of this, the last generation of Tlingits to have lived on the land, to future generations of children and grandchildren. I quickly learned that my job was to provide general direction, handle the logistics, and stand clear.

The group decided that the first order of business was to travel to Dry Bay and reconnect to the landscape. In the spring, a group of nine bay residents accompanied six NPS and Forest Service staffers for three days of exploration. The highlight of the trip for me was the chance to teach a Tlingit grandmother how to look at the landscape with the eye of an archeologist, then watch her plunge into the brush to search for house pits. We found several old village sites, identifying by name some of the old clan houses. The group is already planning another expedition to look for Shaking Ground Village and the legendary settlement of Guseix.

They are also recruiting people from throughout the region who might have specific information about place names and clan histories of Dry Bay. The group has decided that place names should be a central focus of the project, and thus far we have several dozen toponyms for villages, streams, and landforms. Some names, we are finding, are from the time of Raven, a sort of trickster through whose wily manipulations the current world came to be.

A NEW DIRECTION

As we get our footing in these new relationships we are finding many challenges. We have learned that the consultation process is just that—a process for building a relationship. In the past we had treated it at as a project-related event with a beginning and an end (usually when the paperwork was completed). Rather it is an ongoing dialog with a fuzzy beginning, and probably no end.

We have also discovered limitations in our process. Although the memorandum of agreement has worked well for us, I tend to make a quick and easy phone call to the tribal liaison, rather than consulting directly with the clans because sometimes the message often does not reach who it should.

On the other hand, it seems like our partners have been waiting for us to come along for years. They are separated from their homelands, but hold tenaciously to the stories and names that make them whole. One NPS role is to help them preserve those stories and names, and reconnect them to the landscape. Aside from our oral history projects, which are the core of our program,

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Above: Sealers' shack, Glacier Bay, 1899; **Top Left:** Hoonah elder Jessie Dalton splitting spruce roots for a canoe; **Bottom Left:** Mary Ann Porter.

we are also using the place name maps as tools in ethnoarcheology surveys, where we hire native college students and train them as

field archeologists. Not only do they get to spend the summer kayaking around the park (putting them in the ancestral paddling mindset), they also learn first hand about the old villages and sacred sites, and the names their ancestors gave them.

We also see that the Tlingit language is at a critical stage. In Hoonah, of 542 tribal members, there are only about 25 who speak it; in Yakutat there are 24 out of just over 300. Very few under the age of 50 speak the native tongue, and it is unheard of for children to learn it at home. With each year, more elders die, and the number of native speakers declines. The Tlingit language

is the human voice of our landscape. Embedded in it is the rhythm of the tides and the seasons, and if we allow it to fade away we will all lose something precious. We are exploring ways in which the Park Service can help slow or even halt the trend.

Now that we have connected with our partners and understand their needs and the urgency of their mission, one challenge is to design projects that don't just stand on their own, but that can evolve into other, related projects. That way, relationships can grow with our program. Perhaps my biggest challenge, though, is to just keep working with those Tlingit elders, who recognize that time is short, and there is much work to do.

For more information, contact Wayne Howell, Cultural Resource Specialist, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, AK 99826, (907) 697-2230, fax (907) 697-2654, e-mail Wayne_Howell@nps.gov.

NAGPRA NEWS

Implementing the Native American Graves Protection and Repatriation Act

Wooden Figure Remains at Center of Dispute

REVIEW COMMITTEE
RECOMMENDS
REPATRIATION

The Native American Graves Protection and Repatriation review committee, meeting March 25-27 in Norman, Oklahoma, dealt with a dispute over a Hawaiian figurine currently held by the city of Providence, Rhode Island. Two Hawaiian groups, Hui Malama I Na Kupuna 'O Hawai'i Nei and the Office of Hawaiian Affairs, had identified the carved wooden figure (or ki'i la'au) as a sacred object and requested its repatriation. When the city rejected their claim, the two groups asked for help in resolving the issue.



FIGURE OF DISPUTE: Wooden sculpture at the center of dispute between the city of Providence and native Hawaiians.

Little is known about the figure, believed collected in Hawaii during the 19th century. Several authorities on Hawaiian sculpture identified it as a canoe haka, used to hold spears or fishing poles. One expert, Edward Dodd, says the figure is a

rare mixture of utilitarian function and stylistic features associated with god images. Three traditional religious leaders responsible for performing duties related to Hawaiian ceremonial or religious traditions—Pualani Kana'ole Kanahele, Kunani Nihipali, and Edward Halealoha

Ayau—identified the figure as an 'aumakua, an ancestral deity called upon by present-day descendants for guidance and protection.

Based on these findings, the committee recommended that the city repatriate the object to a Native Hawaiian organization. The National Park Service and the Secretary of the Interior have not taken a position.

Why Consult?

ALASKA DISCOVERY
PROVIDES PROOF

When researchers surveying caves in Alaska's Tongass National Forest in 1993 found bear bones at the mouth of one cavern, they decided it was wise to leave them in place until someone could get out to study them. Four years later, according to paleontologist Timothy Heaton, "[the] cave has delivered one record find after another, the most significant being human remains that are well over 9,000 years old. The age of the remains is where the similarity to the Kennewick controversy ends.

Forest Service archeologist Terry Fifield immediately began consultation with the tribal governments of Klawock, Craig, Hydaburg, and Kake to discuss how to proceed. The Klawock and Craig groups supported

analysis of the remains and further excavation of the cave, provided the tribes were notified of any new discoveries. Both groups expressed some discomfort with analysis, but decided that the potential to learn more about their earliest ancestors was overwhelming.

Excavations both inside and outside the cave are planned over the next few years, as researchers continue to search for answers to the many questions about the first Americans. Science and Native Alaskan culture benefit from what Fifield calls "a truly gratifying spirit of cooperation."

New Members Join Review Committee

MUSEUMS, NATIVE
AMERICANS REPRESENTED

On June 27, Secretary of the Interior Bruce Babbitt announced three new appointments to the review committee, selected from nominations by Indian tribes, Native Hawaiian organizations, national museums, and scientific organizations.

The new members, who will serve for six years, represent a range of backgrounds. James Bradley, director of the Robert S. Peabody Museum of Archaeology at Phillips Academy in Andover, Massachusetts, is an archeologist and historian with interests in native peoples of the Northeast and in

Native American metallurgy. He serves on the Society for American Archaeology's committee on repatriation.

Armand Minthorn, who is on the board of trustees of the Confederated Tribes of the Umatilla Indian Reservation, helped establish Tamustilik (the Umatilla Tribal Cultural Center) and the Umatilla Cultural



NOW ON BOARD: New members of NAGPRA review committee, clockwise from above: James Bradley, Armand Minthorn, John O'Shea.

Resource Protection Program. He serves as the northwest area representative to the National Congress of American Indians' commission on repatriation and burial sites, and is a traditional religious leader of the Umatilla Longhouse.

John O'Shea, curator of Great Lakes archeology and professor of anthropology at the University of Michigan Museum of Anthropology, has studied issues of site complexity and variation in both the United States and Europe, with emphasis on funerary practices.

To ensure the committee's continuity, Babbitt reappointed two original members, Tessie Naranjo and Martin

Sullivan, for three year terms. Naranjo, committee chair since 1993, is a founding board member of Keepers of the Treasures who has lived in New Mexico's Santa Clara Pueblo all her life.



Martin Sullivan, director of the Heard Museum in Phoenix, was appointed by President Clinton in 1995 to a four-year term as chair of the President's Advisory Committee on Cultural Property, which advises the State Department and the Customs Service on implementing the UNESCO Convention on Cultural Property.

The other members are Lawrence Hart, a Southern Cheyenne traditional religious leader appointed in 1996, and a yet to be named appointee chosen by the Secretary from a list prepared by the other six members.

"The issues before this very talented committee are chal-

lenging and complex," Babbitt noted. "I look forward to their recommendations as we work to develop a process for disposition of culturally unidentifiable Native American human remains."

Who to Call Online

NEW DATABASE IS USER-FRIENDLY WAY TO START CONSULTATION PROCESS

A Native American consultation database is now internet accessible. NACD provides an easy way to identify contacts for each of the 771 federally recognized Indian tribes, Alaska Native corporations, and Native Hawaiian organizations. The NACD contact list corresponds to the list published by the Bureau of Indian Affairs. The user can search for contacts by name, tribe, reservation, state, county, and military installation.

NACD was a joint venture of the NPS archeology and ethnography program and the Air Force Center for Environmental Excellence and was funded by the Air Force through the Department of Defense's Legacy Program. The Center for Advanced Spatial Technologies at the University of Arkansas and the National Conference for State Historic Preservation Officers cooperated with NPS in providing online access.

U.S. law (and several executive orders) requires con-

sultation with Native American groups before undertaking a federal project. NACD is a convenient way to start the process. To ensure that all appropriate Native Americans are included in consultation, however, database users should investigate other sources of information, such as national and local archives. The Bureau of Indian Affairs and other federal, state, and local agencies with Native American programs should be contacted as well. In addition, the NAGPRA home page (<http://www.cr.nps/aad/nagpra.htm>) directs users to information in the National Archeological Database NAGPRA data module.

Each tribal record in NACD includes the name, address, and telephone number of the official tribal contact(s). Some tribes have also provided additional information, for example, identifying geographic areas or types of cultural objects about which they are particularly concerned under NAGPRA.

Searching on a field, such as a tribal or reservation name, results in a report for each tribe that meets the search criteria. Each report contains all the information in the database on that tribe including its relationship to other tribes in the database. Searching by reservation name will produce information on the tribe that resides there. A search by state or county name results in information on tribes with federal reservations or aboriginal land in the area indicated. Contacts for tribes who live in the state or county but do

Training

Representatives of the archeology and ethnography program will conduct workshops, make presentations, or teach classes on NAGPRA implementation at:

Society for American Archaeology annual meeting, Seattle, March 24-29, 1998 [SAA: (202) 789-8200]

NAGPRA's Evolving Legacy (3-day course offered by the University of Nevada-Reno). Seattle, March 29-31, 1998 [Crystal Raynor: (702) 784-4046]

NAGPRA's Evolving Legacy (3-day course offered by the University of Nevada-Reno). Los Angeles, May 7-9, 1998. [Crystal Raynor: (702) 784-4046]

American Association of Museums annual meeting, Los Angeles, May 10-14, 1998. [Sue Ellen Alford: (202) 289-9114]

not live on a federal reservation will also be reported. A search by the name of a military installation will give data on tribes that reside, have aboriginal land, or federal reservations in the county or state where the installation is located.

NACD is currently only available through a telnet session. Further information about the NACD database can be found on the NPS web site (www.cr.nps.gov/nacd/). The web site includes maps of federal Indian reservations, military installations, and land claims disposed by the former Indi-

an Land Claims Commission (1946-1978). NACD can be accessed via the web site, or through a direct FTP connection at the following telnet address: [cast.uark.edu](telnet://cast.uark.edu) or 130.184.75.44. In order to provide more user friendly access, a web interface is being developed by NPS and CAST that will be available in 1998. The information in NACD is updated annually by the National Park Service, and NACD is maintained online by CAST through a NPS cooperative agreement.

Grant Applications Online

AT NPS WEB SITE

The 1998 NAGPRA grant applications are now available on the Web at www.cr.nps.gov/aad/nagpra/grapp1.htm. The grants, administered by the NPS archeology and ethnography program, are available to Indian tribes, Alaskan Native villages and corporations, Native Hawaiian organizations, and museums, including institutions of higher learning and state or local government agencies. Awards range from \$5,000 to \$75,000. Applications from tribes must be postmarked by November 21. Applications from museums must be postmarked by December 5.

For more information, contact NAGPRA consultant Mandy Murphy at (202) 343-1095, email mandy_murphy@nps.gov.

NPS Updates Tribal and Federal Contacts

FEEDBACK NEEDED FOR CRUCIAL LIST

The archeology and ethnography program is updating its list of people within tribes and federal agencies who are authorized to deal with NAGPRA issues.

For tribes, where an authorized representative's name has not been received, the chairperson or president is identified as the contact. This list is provided to museums, federal agencies, and other interested parties who need to consult with tribes. Changes in authorized contacts must be in the form of a resolution or letter from the tribe or organization's governing body.

For agencies, the contact is the preservation officer unless otherwise specified. The departmental consulting archeologist requests that all agencies verify the name of their preservation officer and, if different, their NAGPRA contact person.

Updates should include the contact name, address, phone and fax numbers, and e-mail address, and should be called to the attention of Mandy Murphy, NAGPRA consultant, National Park Service, Archeology and Ethnography Program, 1849 C St. NW, Suite 210 (2275) Washington, DC 20240; e-mail mandy_murphy@nps.gov.

common Ground

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Send comments, articles, address changes, and information on conferences, training, and publications to Editor, NPS Archeology and Ethnography Program (2275), 1849 C St., NW, Washington, DC 20240, (202) 343-4101, fax (202) 523-1547, e-mail david_andrews@nps.gov or joe_flanagan@nps.gov.

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