

**The Bureau of Land Management**  
**2008-2009 Tribal Consultation Listening Sessions**  
**Summary Reports**

The BLM is providing these summary reports from its eight tribal consultation listening sessions held between October 2008 and July 2009 so that interested parties may be aware of the issues raised at those sessions. The reports represent the recorders' good faith efforts to capture the discussions and reflect the recorders' best recollections and understandings of speakers' remarks. Some of those remarks have been paraphrased, and the reports have been formatted for consistency within and across the reports. These reports are not transcripts, and they do not represent statements of any official BLM policy.

**September 2009**

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## Overview

A little over a year ago, on August 21, 2008, the Bureau of Land Management (BLM) initiated a tribal consultation outreach effort. We sent you copies of our tribal consultation policies and the national Programmatic Agreement (PA) we maintain with the Advisory Council on Historic Preservation and National Conference of State Historic Preservation Officers (NCSHPO). In our letter and follow-up calls, we invited questions, comments or concerns about the BLM's tribal consultation procedures and policies and most importantly suggestions for making our consultation with your tribe more effective. In October 2008, the BLM launched a series of listening sessions on tribal consultation, beginning with one in Anchorage on October 22, 2008. On March 12, 2009, we invited 356 tribal leaders in the lower 48 States to participate in a series of 2009 Tribal Listening Sessions. State Directors followed with letters to local tribes encouraging their participation.

The BLM has now completed eight regional planned sessions, as shown below. Our mailings invited tribes to request individual meetings, if they preferred, and the BLM held meetings with individual tribes in two locations, with a third planned for September 2009.

- Anchorage, Alaska (Oct 22, 2008)
- Phoenix, Arizona (April 8, 2009)
- Billings, Montana (April 24, 2009)
- Albuquerque, New Mexico (April 24, 2009)
- Boise, Idaho (May 6, 2009)
- Reno, Nevada (May 19, 2009)
- Palm Springs, California (May 20, 2009)
- Salt Lake City, Utah (July 27, 2009)

The regional listening sessions, each hosted by a BLM State Office, brought together State Office and Field Office leadership and members of the Director's staff with tribal representatives. Attendees had the opportunity to tell BLM line managers, who are responsible for ensuring that tribal consultation occurs, how consultation is working and provide suggestions for improvements. BLM State Directors and their senior managers not only attended, but travelled to sessions outside their state to give tribes access to the BLM's decision makers. For the convenience of prospective attendees, the meeting times and locations were chosen to coincide with other meetings that would bring tribes together, such as the Traditional Cultural Property Workshop in Phoenix and the Gathering of Nations in Albuquerque.

To provide a common framework, a planning team nominated by State Offices prepared a meeting check list, a PowerPoint to which states added state-specific information like ongoing tribal partnerships, upcoming projects and new land use planning starts, Qs and As for managers, and a documentation form. All sessions included at least two members of the Director's Washington Office staff and the Albuquerque session was also attended by the BLM Assistant

Director for Renewable Resources and Planning. Specific formats were determined by host States together with attendees in some cases, on the basis of what would be most conducive to the sharing of information. In Boise, for instance, tribal members in attendance were asked if they would like to talk one-on-one or in a group. As a result, each session had a different character and formats ranged from an open house, to open mic, to a facilitated discussion, to a combination of the above. Different formats and preferences of attendees required different methods of recordation of attendance and remarks.

Following each 2009 listening session, the host State or States prepared a summary report and sent it to all session attendees for review and comment. The present mailing consolidates those summary reports so you will know what we have heard about our consultation policies and practices and how they could be enhanced and improved. These summary reports capture the statements made by attendees in the open forum portions of the listening sessions, but not one-on-one conversations except by non-attributed general comments or recommendations. Consequently, the level of detail provided varies with the session format. These summary reports have been reformatted slightly to enhance consistency.

As we noted in our cover letter, the feedback and recommendations we received cover a wide range of interests and programs. Only some of these are applicable to the National Historic Preservation Act Section 106 process or the national PA, which is the subject of this mailing. Some have already been addressed at the State or Field Office level, as a result of one-on-one tribe-BLM conversations at a listening session. Others relate to multiple programs or require a change in policy or resource allocation and must be addressed in a different forum, at a higher level, or within a longer time frame. We are preparing a report on our overall outreach effort and will provide that at a later date.

We hope that these summary reports will inform your consideration of the enclosed draft PA revision strategy and possibly inspire additional suggestions for improving BLM-Tribe communications and relationship building.

## Anchorage, Alaska, October 22, 2008

Prepared by Ruth McCoard, BLM Alaska State Office

The BLM-Alaska sponsored Listening Session was held on October 22, 2008, in conjunction with the Alaska Federation of Natives convention. It was attended by 26 members of the public and 18 BLM staff. The majority of the public attendees were Alaska Natives. The State Director and both District Managers attended. The BLM-Alaska's Native Liaison and lead archaeologist attended, along with the WO Preservation Officer.

Due to the success of this event, BLM-Alaska plans to host a listening session annually in conjunction with the Alaska Federation of Natives Convention.

### **Format**

The Anchorage session was an open-house format. Attendees were greeted on arrival. If they had specific topics to discuss, the BLM staff introduced them to the most appropriate decision maker or technical expert.

### **Cultural Issues**

The issue of cultural sites that do not appear on listings as Alaska Native Claims Settlement Act (ANCSA) Section 14(h)(1) sites was raised by two attendees. One attendee wanted to know if or how these sites could be preserved and how additional sites could be added to the current listings. The other attendee was concerned with unmarked graves on Native Corporation lands that could be impacted because of Corporation-authorized development. The locations have never been recorded for fear of the information falling into the wrong hands. They may now need to be recorded to ensure new development avoids the grave sites.

The District Manager and the State Office Archaeologist answered those concerns about cultural sites.

### **General Topics discussed by attendees:**

- Possible cultural sites that do not appear on listings (listed above)
- Surplus land issues
- Master title plats
- Transportation infrastructure/roads, signage, Alaska Native Claims Settlement Act 17(b) easements
- Section 14(c) of ANCSA process assistance and workshop attendance (land reconveyance by village corporations to 1971 occupants)

- Gravel and subsurface issues
- Native Allotment program inquiry and request for someone to come to the village to explain the process
- Employment opportunities in wildfire suppression and fire fighting, and concerns about rotational hiring of fire crews
- Subsistence opportunities and concerns
- Request for a new Native Allotment book
- Issues with unpermitted/unauthorized commercial recreation use of public land
- Fish and water contamination
- Eastern Interior Resource Management Plan planning schedule and efforts
- Salmon Village historic site
- Just checking the turnout for the Listening Session

BLM-Alaska District Managers will respond to attendees who need further information on their issues of concern.

**Some of the comments overheard:**

- “This has been a great opportunity for me to meet everyone and to be here.”
- “In my mind, the BLM and the Federal Highway’s Western Federal Lands Division have been the most cooperative agencies to work with.”
- “It was relatively easy to set up a meeting with Glennallen Field Office and Anchorage District Office at our office and it was a really positive experience.”
- “It’s nice to see everybody in one place.”
- “These Listening Sessions are the best thing to get people to come out and talk.”

**Participants**

<i>Alaska Native Villages &amp; Corporations</i>	<i>Affiliation</i>	<i>Name</i>	<i>Title</i>
	Alatna		
	Chalkyitsik		
	Chickaloon		
	Douglas Indian Association		
	Ekwok		
	Georgetown		
	Kaktovik		
	Kwigillingok		

	Mt. Sanford Tribal Consortium		
	Unkumiut		
	Yakutat Tlingit		
BLM	Affiliation	Name	Title
	Alaska State Office	Tom Lonnie	State Director
		Ted Murphy	Deputy State Director-Resources
		Vanessa Rathbun	
		Robert Lloyd	
		Robert King	Deputy Preservation Officer
		Brenda TakesHorse	Native Liaison
		Teresa McPherson	Campbell Tract Facility
		Bob Schneider	Fairbanks District Manager
		Gary Reimer	Anchorage District Manager
		James Fincher	Anchorage Field Manager
		Pam Eldridge	Editorial Assistant
		Ralph Eluska	Resolution Specialist
		Dugan Nielsen	Campbell Tract Facility
		Ruth McChord	Deputy Chief, Communications
	BLM Washington Office	Robin Burgess	Preservation Officer

## Phoenix, Arizona, April 8, 2009

Prepared by Michael Johnson, Arizona State Office

As part of an ongoing national effort to improve agency cultural resource and tribal consultation policy and practice, the BLM is holding a series of tribal listening sessions across the western US and Alaska. These listening sessions are intended to provide an open forum for tribes to express concerns about consultation and other issues to the BLM.

The Phoenix Listening Session held on April 8, 2009 was the second of seven planned national BLM Tribal Listening Sessions. The Phoenix Listening Session was specifically scheduled in conjunction with a BLM co-sponsored Traditional Cultural Places (TCP) Workshop held at the BLM National Training Center in Phoenix. The TCP Workshop was planned in conjunction with tribes, state agencies, and Federal agencies, from throughout Arizona. This scheduling was intended to lower costs and ease attendance at both the Workshop and Listening Session for tribal representatives.

Announcement/invitation flyers with day, date, time, purpose, and location were mailed to all tribes in Arizona three weeks prior to the Listening Session by the BLM State Office. These flyers were mailed specifically to tribal leaders (Chair/President or other head of government), all THPOs in Arizona, as well as individual heads of tribal cultural programs or departments. These announcements/invitations were in addition to the letters that were sent from BLM Washington Office announcing the listening sessions.

A prominent announcement of the BLM Listening Session was placed on the TCP Workshop web page two weeks prior to the session, information flyers were available throughout the duration of the TCP Workshop, and the Listening Session was announced twice during the closing of the TCP Workshop. In addition, during the closing section of the TCP Workshop, Vernelda Grant, THPO of the San Carlos Apache, gave an announcement of the background of the Listening Session and asked tribes to review the BLM national PA, and express their concerns to the BLM. Ms. Grant is also a member of the Native American Advisory Group (NAAG) for the ACHP.

Signs directing visitors to the BLM Listening Session were placed immediately outside the meeting room, outside of the main doorway into the building housing the meeting room, and at the base of the stairs leading up to the meeting room.

### **Format**

The Phoenix Listening Session was organized on an open-house model similar to the first listening session held in Alaska in 2008. The meeting room was arranged so that visitors were greeted when first entering and asked to sign in. Each visitor was then asked if they had specific

concerns or issues, and/or if they wanted to speak to a specific individual (such as the State Director) or someone from a specific office or district. If a tribal visitor was initially uncertain about whom they should talk to, they were engaged in conversation by BLM greeters. The layout and purpose of the session was explained, and the arrangement of personnel around the room was pointed out, as was the PowerPoint presentation that was running as a continuous slide show on the side of the room opposite the entrance. This initial conversation usually helped the tribal visitor to identify a specific interest or concern. Based on these specifics, visitors were then directed to the BLM personnel who could best address their issues.

The room was arranged with group and individual seating through the center of the room, with tables set up around the edges of the room for display and discussion purposes. Seating was arranged in rows immediately in front of the screen showing the PowerPoint presentation, and in a loose oval in the central part of the room. All chairs were wheeled, which allowed easy movement and use in small group discussions.

Most BLM personnel were initially stationed at tables around the periphery of the room and were provided with name-tents, giving their name and title. A display table was set-up for cultural resources materials, including copies of the 8120 manual and handbook, the national PA, and the Arizona cultural resources protocol. Copies of the August 2008 letter from the BLM Director to Tribes were also available. In addition, a display of different solar energy technologies was set up, as was a display and information table for major NLCS units in Arizona.

Each BLM person in the room was given several copies of a documentation sheet and provided verbal instructions on how to use the sheet when discussing issues or concerns with tribal visitors. Three “floaters” (the Arizona Deputy Preservation Officer (DPO), the Arizona Lands, Resources, and Planning Branch Chief, and the Kingman Field Office Archaeologist) also circulated throughout the room, making sure that discussions were being captured in those instances where the BLM participant did not appear to be taking notes. This approach seemed to work well. The “floaters” maintained a low profile, but would openly respond to questions if included in the conversation. All notes and documentation were recorded openly in full sight of the tribal visitors.

### **The Listening Session**

The listening session began at 12:00 noon, immediately after the scheduled end of the TCP Workshop. The closing session of the TCP Workshop ended a few minutes late, but did not appear to seriously impact tribal participation in the Listening Session. Interaction took place between BLM personnel and tribal visitors in several different ways. One-on-one conversations were common, as were small group discussions. The room was set up intentionally to allow for small groups to form and disperse easily, with sufficient seating and space to allow for semi-private conversations, if that was what was desired. Often, conversation groups would form and change as different states were asked to join, or as different issues came up.

BLM representatives from four states (Arizona, California, New Mexico, and Nevada) were present at the meeting, which allowed tribes to discuss issues of importance with neighboring states as well as Arizona. This was particularly important for several tribes along the Colorado River.

A specific effort was made to have line officers (Arizona District Managers, Field Managers, as well as the State Director and Associate State Director) present at the Listening Session, so that tribes could speak directly to decision makers. A wish to speak directly to decision makers is a point often made by tribes during consultation in Arizona. Arizona BLM management was in full support of the Listening Session, and as can be seen from the list of attendees, management was present in large numbers. The presence of line officers who were clearly present to listen and respond to tribal concerns made a favorable impression on several tribal visitors.

Also present at the session were several Arizona Field Office Archaeologists, who usually serve as the primary point of contact for tribal consultation. The presence of these individuals provided a familiar face for several tribal visitors and allowed several discussions to start on a general basis and gradually become more focused on specific concerns.

### **Tribal Concerns**

Nine tribes were represented at the Phoenix Listening Session, including four of the five THPOs in Arizona. Two tribes (Fort Mojave Indian Tribe and Hualapai Tribe) had specific concerns, ideas, and complaints about how BLM was doing tribal consultation. Both tribes were specifically concerned with two on-going projects, one of which has already resulted in termination of Section 106 consultation. Representatives of both tribes had direct discussions with the Arizona State Director and Colorado River District Manager (both tribes are within the Colorado River District) about their specific concerns and ideas. Also present during these discussions were the BLM Federal Preservation Officer and BLM National Tribal Coordinator, as well as other BLM staff. The Fort Mojave Indian Tribe provided written comments and support material at the Listening Session. The BLM Federal Preservation Officer took possession of these materials, after providing several copies to BLM Arizona staff. ACHP representatives were also asked to participate in these discussions.

Of the other seven tribes represented at the Listening Session, two (Gila River Indian Community and Ak Chin Indian Community) stated that they were pleased with current BLM consultation methods, but wanted to increase the frequency of communications. Chemehuevi tribal representatives wished to speak about Off Highway Vehicle (OHV) damage to large geoglyphs along the Colorado River, and had questions about a specific land patent claim near their reservation on the California side of the Colorado River.

An employee of the Hopi Tribe wished to discuss BLM's reburial policy, as well as how BLM determined TCP eligibility. The San Carlos Apache THPO was concerned about increasing communication with BLM, and about BLMs handling of multiple alternative energy applications

in southern Arizona. A member of the Cocopah Tribal Council expressed concerns about an unfilled archaeologist’s position vacancy, and wished that the position be filled as soon as possible. The council member also wanted to continue on-going relations with the field office so the new archaeologist would be “up to speed”. The White Mountain Apache THPO had specific questions about the BLM national PA, and any changes that might be made to it.

**Results**

Many questions from tribal representatives were answered “on the spot” by BLM managers and staff. In some instances, follow-up actions were agreed to by a specific BLM manager or staff member and a tribal representative. These follow-ups ranged from researching more information about a specific issue or question to setting up additional one-on-one meetings with individual tribal THPOs or governments (which was the case with the San Carlos Apache).

The BLM State Director (Jim Kenna) noted that he considered the Listening Sessions only one part of a broader effort that involved expanding and elevating the relationships between the BLM and tribes to a government-to-government level. He wants to move toward developing relationships between BLM managers and tribal governments that are not driven by specific projects, but that are more general in nature, and intended to increase transparency and trust between the agency and tribes.

In general, the Listening Session was successful in providing interested tribes with open access to BLM decision makers. Multiple issues were addressed, many questions were answered, and communication was initiated about several areas of concern to tribes.

Some tribal visitors stayed for the entire Listening Session (from noon to 4 p.m.), while some visitors only stopped in long enough to provide their views or concerns before leaving. Visitation was highest in the first two hours, and dropped off dramatically by 3 p.m., as most of the tribal representatives from the TCP Workshop departed Phoenix in order to return home. BLM personnel stayed until 4 p.m. or later, and made certain that no tribal visitors were overlooked when the session was closed.

**Participants**

<i>Tribes</i>	<i>Affiliation</i>	<i>Name</i>	<i>Title</i>
	Hualapai Tribe	Loretta Jackson Kelly	THPO
	Cocopah Tribe	Edmund Dominugues	Council Member
	Cocopah Tribe	Jill McCormick	Cultural Resources Program Manager
	Chemehuevi Tribe	Matthew Lievas, Sr Ron Escobar	Council Members
	Fort Mojave Indian	Linda Otero	Council Member/Aha

	Tribe		Makav Cultural Society Director
	Hopi Tribe	Terry Morgart	Tribal Employee
	Ak-Chin Indian Community	Caroline Antone Carmen N.	Cultural committee members
	Gila River Indian Community	Barnaby Lewis	THPO
	San Carlos Apache Tribe	Vernelda Grant	THPO
	White Mountain Apache Tribe	Mark Altaha	THPO
<b>BLM</b>	<b><i>Affiliation</i></b>	<b><i>Name</i></b>	<b><i>Title</i></b>
	Arizona State Office	Jim Kenna	State Director
		Helen Hankins	Arizona Associate State Director
		Julie Decker	Branch Chief, Renewable Resources
		Michael Johnson	Arizona Deputy Preservation Officer
		Chris Horyza	Planning and Environmental Coordinator
		Eddie Arreola	Renewable Energy Team Program Manager
		Teri Raml	Phoenix District Manager
		Tom Dabbs	Gila District Manager
		Todd Shoaf	Yuma Field Office Manager
		Rebecca Heick	Colorado River District Manager
		Ruben Sanchez	Kingman Field Office Manager
		Craig Johnson	Kingman Field Office Archaeologist
		George Shannon	Lake Havasu Field Office Archaeologist
		Mark Calamia	Lake Havasu Field Office Tribal Coordinator
		Connie Stone	Hassayampa Field Office Assistant Manager
		Chris	Hassayampa Field

		McLaughlin	Office Archaeologist
		Amy Sobiech	Tucson Field Office Archaeologist
		Pamela Mathis	Acting Lower Sonoran Field Office Manager
		Cheryl Blanchard	Lower Sonoran Field Office Archaeologist
	New Mexico State Office	Signa Larralde	New Mexico Deputy Preservation Officer
	California State Office	Carrie Simmons	El Centro Archaeologist
		Rolla Queen	Desert District Archaeologist
	Nevada State Office		Southern Nevada District Manager
			Pahrump Field Office Archaeologist
	BLM Washington Office	Jerry Cordova	Tribal Coordinator
	BLM Washington Office	Robin Burgess	Preservation Officer
Other	ACHP	Nancy Brown	
	ACHP	Bill Dancing Feather	

Also in attendance were representatives of the Arizona State Historic Preservation Office (SHPO), Bureau of Indian Affairs, Department of Energy-Western Area Power Administration, and Department of Defense (Air Force and Marines). Although not planned as a multi-agency effort, several other agencies present at the Traditional Cultural Places Workshop were interested in how BLM arranged the Listening Session.

## Billings, Montana, April 15, 2009

Prepared by Gary Smith, Montana State Office and Ranel Capron, Wyoming State Office.

### **Format**

The Billings Listening Session was hosted by the Montana and Wyoming State Offices. It began with time for informal greetings and discussion. This was followed by welcome remarks from the Montana and Wyoming State Directors, followed by presentations from the Deputy Preservation Officers and then a facilitated listening session. The listening session was followed by an informal luncheon.

### **Listening Session**

Prayer invocation given by Stan Pretty Paint, Crow Tribe

### **Introductions**

Opening remarks given by Gene Terland, Montana/Dakotas State Director and Don Simpson, Wyoming State Director

Gary Smith, Montana/Dakota State Archaeologist gave a power point presentation which provided general background information on BLM and BLM's programs. He described the reason we are holding these meetings; i.e., to develop better and more effective tribal consultation procedures and policies and to see what kind of improvements can be made to the national PA that would provide tribes with a better opportunity to participate in the section 106 process. He also described the major projects Montana BLM is involved in including the Keystone XL pipeline, the Mountain States Transmission Intertie Transmission Line, and the Bison Pipeline. He provided the status of Resource Management Plans for the 3 state area of Montana and the Dakotas. Five are in progress; i.e., the Hiline RMP, the North and South Dakota RMPs, the Miles City RMP, and the Billings & Pompeys Pillar RMP. One RMP, (Butte) is nearly complete and the Upper Missouri River Breaks National Monument RMP is complete and is now being implemented. The final slide summarized the number of face-to-face consultation meetings with tribes.

Ranel Capron, Wyoming State Archaeologist power point presentation summarized the Wyoming protocol with their SHPO. She reviewed the current major projects within Wyoming, including several wind energy projects, transmissions lines, pipelines and coal projects. She briefly discussed the Resource Management Plan schedule for Wyoming. Four plans have been completed, three are in process and two will begin next year. Ranel then provided a slide

showing the number of tribal consultations that have been reported to Washington Office over the years. In FY08, BLM WY conducted 93 face-to-face meetings with tribal entities.

Floor was opened for questions and comments. The following were the major points addressed in the discussions:

**Stan Pretty Paint, Crow Tribe** – *Question:* Is there one point of contact at BLM offices for each tribe to communicate with? Example: Seven tribes in Montana with separate issues.

Gary Smith, BLM - *Response:* For the Montana State Office it is Gary Smith, State Archeologist on issues related to the National Historic Preservation Act (NHPA) and the Native American Graves Protection and Repatriation Act (NAGPRA). For 638 contracts and Self Governance issue that would be John Bown, Indian Liaison for Oil and Gas.

**Stan Pretty Paint** - Suggest having a liaison for each tribe as all tribal issues are not the same. We have different departments. Crow are represented by oil and gas and cultural here. So who do we talk to?

**Charlene Alden, Northern Cheyenne Tribe** - *Question:* Does Wyoming only work with Wyoming Tribes?

Ranel Capron, BLM - *Response:* No, Wyoming works with many different tribes depending where their traditional lands were.

**Question asked of the group for open discussion:**

**What, if any, are your experiences working with BLM?**

**Betsy Chapoose, Ute Tribe** -*Response:*

- I am involved in BLM issues in 3 states: WY, CO, UT.
  - Predominant issue is inconsistency in policy interpretation between BLM offices. Even Field Offices in the same state are different. Each Field Office is a unique experience.
  - Concern with NAGPRA issues – 3 discoveries in CO all being handled in different ways.
- Need an agreement in place with each tribe on how to handle NAGPRA issues and discovery issues. BLM should talk with the tribes about their protocol for handling discoveries; do this before a situation occurs.
- Wants to be invited to/participate in the NAGPRA training that BLM will hold in Rock Springs in June. She said that Russ Tanner (former BLM archaeologist) had once expressed an interest in having an agreement with the Ute over NAGPRA issues.

- She also indicated that she was pleased with the communication/contact she receives from the Rock Springs Field Office and specifically mentioned Terry Del Bene, Rock Springs FO archaeologist.
- Indicated that she would be happy to send Betsy the NAGPRA training agenda once it has been finalized. Betsy is more than welcome to attend and provide input from her perspective.

**Francis Auld, Salish & Kootenai Tribes** (see attached written comments) - *Response*:

- In the beginning, experiences were not good with BLM, i.e., re-burial policies, but now it's better.
- We are experienced working with other agencies, though tribes are spread pretty thin working with all the different agencies
- Seven tribes with seven different standards of living, customs, traditions.
- Would also lobby for each tribe to have a State Office liaison position and a W.O. liaison position within the DOI.
- Need more tribal assistance at the National level.
- Issue with BLM being the only agency able to approve Cadastral Surveys. Homesteading was forced on the tribes and some land went to non-tribal members. Tribe is now buying land back. Need surveys.
- We do not collect artifacts. The elders have asked us not to. Would like to see some policy on collections/storage/process that would allow for de-accessioning of artifacts, to get those artifacts back out to the site or allow them to be used in different ways. In the Dillon area a major Salish cultural site was excavated using bad methodology which had an impact to the site. No consultation was done. Investigators used a backhoe to dig a trench and disturbed a large area that impacted water areas. Artifacts were taken to university (OR) and nothing was done with them. Again, to reiterate, I would like to see de-accessioning
  - A couple of field offices dismantled a rock cairn to see if it was “Native American.” We are remedying that situation.
- Tribal officials and BLM need to revisit sites to get better documentation in order to protect artifacts.
- Has had experience working with other agencies on cultural resource management groups where he reviewed project lists and it provided an avenue for closer consultation. Thanks to BLM for the newsletter they send out.
- Treaty rights –not all tribes are treaty-oriented, but we would like to exercise our treaty rights to hunt, fish, and collect from BLM lands.

**Dean Bear Claw, Crow Tribe** – Oil and Gas Commission (OGC), *Response*:

- Thank you to MCFO and State Office BLM for invitation to participate today.

- Crow Reservation needs better housing, better health care and better hospitals. We believe our 12 thousand lives would be improved by developing our natural resources including oil and gas resources, coal, bentonite and wind power. In the past we had a good working relationship with BLM.
- We were told through secondary sources about the \$ 4000.00 processing fee. Our experience is that the \$ 4,000 fee is a hindrance. OGC was ready to start drilling and this fee was implemented. A lot of energy companies come to tribe to drill; this fee handicaps companies and tribe as well. The fee is being applied to public lands. Our minerals are not held in trust for the public. Federal Indian minerals on reservation are specifically reserved for Crow Nation in perpetuity.
  - We are not an executive order Indian tribe, but through treaty. Must deal with each tribal nation on each issue. One mixing bowl does not work for all the tribes. Crow have different perspective than Salish/Kootenai. Each tribe has its own religion or creation story and language.
  - There's always room for improvement.

**Joanie Rowland, Crow Tribe - Response:**

- No consultation was done with tribes on the 2008 omnibus bill.
- We were starting to look at new developments and planned for 50 wells, but the operator pulled back the program to 5 wells because of the \$ 4,000 APD fee. Crow Reservation land should not be considered the same as public lands. The fee should not be charged on Indian lands. Our Tribe will keep fighting the filing fee. The fee has an economic impact on the tribe.

**Conrad Fisher, Northern Cheyenne Tribe - Response:**

- Throughout history we see the federal government treating Indians in a paternalistic way - historically treaties have not been positive.
- Tribes have always been under different agencies; e.g., War Dept. Dept. of Interior, etc. The US government historically has not been consistent in its treatment of tribes and, as a result, tribes are still redefining themselves.
- It is evident that the BLM has not been consistent in dealing with tribes since you're here now listening to tribes after the fact of creating this national PA. More tribal people should be here and this should not be the only listening session, there should be more of them. Need more tribes at the table – not many here.
- Funding is always an issue. The Federal government should support tribal consultation by funding their participation.
- There is a lack of understanding on your part of who BLM is dealing with. Acknowledging tribes are a government is the first step. If we were to talk about ancestral lands for the Northern Cheyenne, that would be parts of 8 states and we would

need a multi-million dollar budget to do consultation meetings in all those states. BLM says they cannot fund tribes to go to consultation meetings, but they should.

- Treaty rights; i.e., tribes are governments and these national Programmatic Meetings fall under Federal law so BLM should provide funding for tribes to attend;
- Cairns are sacred sites to Native Americans; a cairn in Colorado, Wyoming, or Montana is valued no matter where it is located. When you look at these listening sessions, funding is a sticking point for all tribes. Yet you want tribes to participate in consultation.
- Tribes don't have money for travel to consult with various states.
- States are not unilateral in dealing with Indian Tribes.
- BLM has trouble with consulting on a whole, although some offices are better.
- Need consistent interpretation of policy.
- There is a lack of cultural understanding and training in BLM field offices. Tribes have distinct histories and languages. Miles City had a cultural sensitivity training session about Northern Cheyenne culture.
- BLM needs more training on cultural awareness, specific tribal customs, and on Federal Indian Policy.
- The national PA has language concerning cultural resource plans, cultural resource management plans, but there is no mention of training on tribes and there is no defined role for tribes to come in and train staffs. How many field offices have had tribes go in to their offices and talk about their tribe and history?

BLM Miles City Field Office - *Response*: A representative indicated it had done this.

- When BLM talks about cultural resources it is from the bureau's perspective not a tribal perspective. We do not interpret cultural resource in the same way. The BLM handbook on consultation was developed without tribal involvement. We did not have a say on what went into the handbook. The BLM's consultation handbook not a good tool because tribes weren't consulted.
- Tribes should be involved at the beginning of any consultation. The Northern Cheyenne have gone to court over the lack of tribal consultation; e.g., Miles City Field Office.
- Archaeologists are not experts on tribal peoples. BLM needs to incorporate interpretation of archaeological finds by tribal members. How does the archaeologist know that the sites are Native American? We want a role when things are discovered out there. Native Americans should be allowed to survey project areas just as the archaeologists are allowed to do so. I do not like the approach BLM usually takes such as stating that we have determined that 30 sites are Native American and we want to consult on them.
- Is there a Native American on the Preservation Board? If not there should be.
- Our elders have lifelong experiences with the interpretation of cultural resources. They are the experts, not the Ph.D. archaeologists. We are treated as subservient and that

should not be the case. In the past a landowner denied access for Native Americans to do a survey. We want to make sure those areas that may be potentially effected by developments are considered appropriately. We are not asking to reclaim those areas. Archaeologists were allowed to go in there to do a survey but we were not. Could have been the last time we set foot on those ancestral lands. Tribe should be allowed the same survey opportunities for all land exchanges and all land-disturbing activities those archaeologists have now.

- I will also send a letter with my concerns. Certainly hope that BLM makes an effort to sensitize themselves through training and be a bit more flexible in their policies.

**Stan Pretty Paint, Crow Tribe - Response:**

- Comments about the 2000 census. Did not take into account that tribes are different; we are alike in some ways, but different in many others. One size does not fit all. If you do research with census counts, the worst counts are on Indians on reservations. We get less money than we should because of bad census counts.
- Robin Burgess was asking me (at the break) if we had our own health services. We do, but you don't realize how many people are living on our lands. There are not enough doctors and our medical services are for both the Crow and Northern Cheyenne. If you need census numbers don't use the 2000 census counts they are wrong. Get a count from payroll or another part of the tribe.
- Don't look back, look forward and bring some solutions; more meetings needed about causes we bring forward to you.

**Charlene Alden, Northern Cheyenne Tribe - Response:**

- I have concerns with development going on federal lands with discharge into our river. We don't like to file suits, but we will. A lot of issues could be taken care of if we would talk more. There has to be a better way to reach out to tribes.
- There is a lot of development happening on BLM around our reservation and BLM geologists talk to us about faults and water quality issues. We would like to do some of this work on the reservation – why can't we 638 some of these positions; hydrologist, geologist etc. or perhaps BLM could send someone down once a month to help us out.

**Betsy Chapoose, Ute Tribe - Response:**

- Consultation often looks at only cultural resources. It should not always be about archaeology, there are other issues just as important. The minerals underneath our surface, lots of environmental issues, not just the tangible artifacts on the ground but environmental issues as well. Clifford Duncan is the elder I work with. We live our religion - it's not just the items on the ground.

- I support sensitivity training for all BLM employees, not just cultural. The USFS White River office out of Glenwood Springs CO asks us to come over and conduct training for all their staff – fire, cultural, etc. We do this annually or biannually if they have a lot of turnover.

**Lawrence Old Elk, Crow Tribe - Question:**

- How many years will it take to make these changes?
  - to address recommendations from Tribes;
  - to adjust policy/operations;

**Robin Burgess, BLM - Response:**

- These issues are high priority.

**Jerry Cordova, BLM - Response:**

- We are going around the western US and asking all tribes these questions. These meetings will be completed in May. We will prepare documents/issue papers/briefing papers for our leadership; but right now we don't have a Director, so there will be some time to get these issues taken of. The APD fee would require a legislative action to change that. A tribal liaison for each tribe would require a policy change. The White House is actually listening to us now. Haven't had high level tribal contacts in administration. The Crow tribe adopted President Obama so we have a relative in the White House now. That's good. You need to take these issues to your leadership and have the leaders talk to each other. In lean times, we need to make sure that Indian country is heard, taken care of. This is a beginning; need to keep this conversation going.

**Charlene Alden, Northern Cheyenne Tribe- Response:**

- We are always being asked for energy development; for the resources that sit under our land. Is there any way that someone can pay the tribe to keep that carbon in the ground; e.g. carbon sequestration. Keeping the land free and to plant trees is important to us. Say we don't farm our lands - we get paid for leaving the land fallow. If you can pay a farmer not to farm, why can't you pay to not develop that CBM? This could be an option available to tribes. Money from a carbon credit crop – invest that money into wind energy or thermal energy. Would this require legislation?

**Jim Stockbridge, BLM - Response:**

- I work on Indian energy issues. I will check with WO staff and see if anyone there can discuss carbon sequestration and some kind of plan on this. Have you asked this question of Bob Nelson with the Secretary's office? I will check with them on this too.

**Charlene Alden, Northern Cheyenne - Response**

- We've talked with EPA on this. They think it may have to be legislated or at least done through sovereign nation issues.

**Joanie Rowland, Crow Tribe - Question:**

- What is land held in Federal Reserve? What does that mean and what are the restrictions for mineral development? Near Yellowtail dam is a clay deposit we would to have access to - the area is special to us.

**Gene Terland, BLM - Response:**

- I know we have different types of reservation; that area may be reserved for a specific use. We would have to revisit the reasons why the reserve was placed on this land. It could be for a Power Site reservation. We will look into the issue and will get back to you with information about the reservation and the correct surface management agency.

**Francis Auld, Salish & Kootenai Tribe - Question:**

- In the national PA addendum it indicates timelines like "no later than 60 days, 6 months, and 12 months." It also says Field Offices will develop training programs – need a clarification on that: who, what, where and whose involvement. This issue of consultation has been kicked around since 1492 and is still being kicked around. I need to hire a Caucasian liaison to interpret words at meetings. The tribe was not at the table when section 106 was kicking along. Everyone is now trying to interpret how to consult. What does the training program mean?

**Gene Terland, BLM - Response:**

- I don't think BLM has decided or implemented a concept yet. BLM and tribes need to design this training.

**Gary Smith, BLM – Response**

- We are supposed revise the agreement in 12 months.

**Robin Burgess, BLM - Response**

- We need to have a draft in 12 months not necessarily a final product. That would come later. The training mentioned in the addendum refers to training the users of the PA.

**Conrad Fisher, Northern Cheyenne Tribe - Response:**

- It would be good to develop cross-cultural training where tribes are trained to work within federal guidelines and agency responsibilities and then train agency people in

tribal background and how the tribe works. Funding on a national basis is important. I'm in the field a lot as THPO; we've discussed the possibility of cultural training and ways BLM could improve its consultation practices, this would be good for that.

**Betsy Champoose, Ute Tribe - Response:**

- At the RMP stage many tribes may not get involved in these long-range planning efforts. It would be good for tribes to be more involved in the development of those plans. It is an important tool in working with tribes. BLM should incorporate tribe in the RMP process as cooperating agencies. The RMP document guides land management decisions for a long time.

**Conrad Fisher, Northern Cheyenne - Response**

- You are right, that is an important process to be involved in.

Both Gene Terland, MT State Director, and Don Simpson, WY State Director provided closing statements.

Invocation – Stan Pretty Paint, Crow Tribe

Adjourned for Lunch.

**Attendees**

<i><b>Tribes</b></i>	<i><b>Affiliation</b></i>	<i><b>Name</b></i>	<i><b>Title</b></i>
	Crow	Dean Bear Claw	
		Dallas Hugs	
		Lawrence D. Old Elk	
		Stan Pretty Paint	
		Joanie Rowland	
	Northern Cheyenne	Charlene Alden	
		Conrad Fisher	
	Salish & Kootenia	Francis Auld	
	Ute	Betsy Champoose	
<i><b>BLM</b></i>	<i><b>Affiliation</b></i>	<i><b>Name</b></i>	<i><b>Title</b></i>
	Montana State Office	Gene Terland	Montana State Director
		Elaine Raper	Miles City District Manager
		Gary Smith	Montana Deputy Preservation Officer
		Doug Melton	Miles City Field Office

			Lead Archaeologist
		David Breisch	Miles City Supervisory Mineral Resource Specialist
	Wyoming State Office	Don Simpson	Wyoming State Director
		Bill Hill	Deputy State Director for Resources
		Ranel Capron	Wyoming Deputy Preservation Officer
		Buck Damone	Buffalo Field Office Archaeologist
	Washington Office	Jerry Cordova	Tribal Coordinator
		Robin Burgess	Preservation Officer
		Jim Stockbridge	Indian Trust Specialist

## **Albuquerque, New Mexico, April 24, 2009**

Prepared by Signa Larralde, BLM New Mexico State Office and Dan Haas, BLM Colorado State Office.

As part of an ongoing national effort to improve agency cultural resource and tribal consultation policy and practice, the BLM is holding a series of tribal listening sessions across the western US and Alaska. These listening sessions are intended to provide an open forum for tribes to express concerns about consultation and other issues to the BLM.

Prior to the Albuquerque Listening Session, there was considerable discussion about an appropriate format to ensure that the Tribes had a sufficient opportunity to speak and to be heard by BLM managers. The format that was acceptable to the Colorado and New Mexico State Directors was described in an email, which was distributed to interested BLM personnel. This email described the background, purpose, and use of the Listening Session, and provided BLM participants with a general idea of what to expect at the session.

The Albuquerque Listening Session held on 4/24/09 was the third of seven planned national BLM Tribal Listening Sessions. The Albuquerque Listening Session was planned to coincide with a lull in the schedule for the Gathering of Nations Powwow, a large yearly tribal gathering in Albuquerque. The intent on BLM's part was to make it easy for tribal people attending the powwow, to also attend the Listening Session. The Listening Session was held in a meeting room at the Journal Center Marriott Courtyard Hotel, just off Interstate 25 several miles north of downtown Albuquerque.

An invitation letter with a flyer announcing the day, date, time, purpose, and location of the Albuquerque Listening Session was mailed to all tribes in Colorado and New Mexico, as well as tribes in Utah, Arizona, and Oklahoma that the two states regularly consult with. The letter, signed by the New Mexico State Director, was mailed three weeks prior to the Listening Session (copy attached). These flyers were mailed specifically to tribal leaders (Chair/President or other head of government). A flyer announcing the Listening Session was also sent to all Navajo Nation Chapters in New Mexico. These announcements/invitations were in addition to the letters that were sent from BLM Washington Office announcing the listening sessions. A prominent announcement of the BLM Listening Session was placed on the BLM New Mexico web page three weeks prior to the session. Signs directing visitors to the BLM Listening Session were placed outside the meeting room.

## **Format**

The Albuquerque Listening Session was organized more formally than the “open-house” model employed by the Alaska and Phoenix Listening Sessions. The meeting room was arranged so that visitors were greeted when first entering and asked to sign in. Visitors were asked if they wished to sign up to speak, and the schedule of the meeting was explained to them – two hours was to be allowed for BLM managers to listen to speakers, and the final hour was allowed for visitors to speak with individual managers about any concerns they might have. Packets available for visitors to take contained the materials previously sent out by the Washington Office (copies of the 8120 manual and handbook, the national PA, the Colorado and New Mexico cultural resources protocols, and the August 2008 letter from the BLM Director to Tribes), as well as maps showing BLM Field and State Office locations in Colorado and New Mexico.

The room was arranged with a main table set up at the front of the room, where the Colorado and New Mexico State Directors were seated, along with the Assistant Director of the Washington Office Renewable Resources and Planning Program. Seating for visitors and other BLM managers was arranged theater style in rows. A podium with a microphone was situated at the front, adjacent to the front table.

Refreshments--sodas, coffee and cookies--were included in the room fee and were available in the hall in front of the meeting room, near the sign-in table.

## **The Listening Session**

The listening session was scheduled to start at 3:00 p.m. Between 3:00 and 3:30 p.m., informal small group discussions took place. At around 3:30 p.m., the facilitator introduced the BLM State Directors and the Assistant Director of Planning and Resources, and asked everyone in the audience to introduce themselves, in case tribal visitors wanted to speak to specific individuals later on. Then, the speakers were introduced in the order they signed up. There were 12 speakers. All speakers were given as much time as they wanted to speak. Notes were taken by a contracted BLM recorder.

When all speakers were finished, the facilitator gave any speakers who wanted a chance to add comments, but there were no takers. At this point in the listening session, everyone broke up into small groups for more informal discussion. The meeting concluded around 6 p.m.

A specific effort was made to have managers (District Managers, Field Managers, as well as the State Directors and Associate State Directors) present at the Listening Session, so that tribes could speak directly to decision makers. A wish to speak directly to decision makers is a point often made by tribes during consultation in New Mexico. Those managers who interact frequently with tribes were present at the Listening Session.

## **Tribal Concerns**

Eight tribes were represented at the Albuquerque Listening Session, including two of the five THPOs in New Mexico (Colorado currently has no THPOs). A total of 17 tribal people attended the Albuquerque Listening Session. Following is a summary of the notes taken by the contracted BLM recorder.

After introductions, Mr. Roberson addressed the meeting. He said his intention was to provide background and context for how BLM operates in the area of historic properties, cultural resources and tribal consultation. At the national level, he said, BLM wants to hear what people have to say. In 1997, representatives from BLM, the NCSHPO, and the ACHP, signed a PA to work together to facilitate the roles each has to protect cultural properties. BLM manages nearly 260 million acres of public land nationally, including 13.5 million acres in New Mexico. Much of that land was occupied by Native Americans, some the ancestors of people in the room.

The agreement established in 1997 set a framework for how SHPOs and the BLM could work together. The agreement and the protocol talk about the importance of consultation with tribal people. Because so many acres that BLM manages have the possibility for cultural properties that people feel associated with, it is important to have good communication with those people regarding potential actions. Over the 12 years that the agreement has been in place, BLM and SHPO data sharing and other functions have operated well.

Mr. Roberson pointed out that the packet distributed that day had a copy of the PA, BLM's handbook, "Guidelines for Conducting Tribal Consultation," and the Colorado and New Mexico protocol agreements with their SHPOs.

The streamlining addressed by the PA helps all to be informed on decisions concerning cultural properties. The ACHP asked BLM to take another look at the agreement and consider changing it to reflect the changes of the past 12 years. As a result, last August BLM sent letters to more than 600 tribes throughout the country where BLM manages lands and resources—asking for a conversation about ways BLM can improve. Regional listening sessions started last fall in Anchorage, and will be completed this spring and early summer. Then partners will modify the PA, based in part on the results.

A lot of communication takes place on the ground with preservation boards and officers, archaeologists, and BLM district and field managers. BLM wants to know whether tribes think they are doing the best possible job, and how they can improve.

## **Floor opened to speakers**

Facilitator Gina Melchor introduced speakers.

### **Dan Rey-Bear, Nordhaus Law Firm for Pueblo of Laguna**

- Mr. Rey-Bear thanked BLM for holding the session, saying it is very important for tribes to be able to meet without traveling too far. He said the Governor of the Pueblo of Laguna sent his regards, and had intended to attend the session but was called elsewhere. Laguna is one of 19 New Mexico pueblos, and one of the largest in both population and area. Laguna has six villages, and covers approximately 5,000 acres in BLM units 2 and 4 of the Rio Puerco Field Office.
- The Pueblo of Laguna would like to pursue land exchanges with BLM and the state, because it has a number of checkerboard areas.
- The Pueblo of Laguna supports alternative energy development, but not uranium. The Jackpile-Paguate Mine, operated from 1953-1983 on Pueblo of Laguna land, was the largest open pit uranium mine in the world, with approximately 5,000 acres of pit and waste piles. There was substantial benefit to the pueblo, but there were also difficulties. Laguna Pueblo has adopted a moratorium on uranium mining due to its harmful effects on the environment, especially in New Mexico where there is little rainfall. The pueblo encourages development of wind and solar—both uniquely suited to New Mexico.
- The Pueblo of Laguna supports designation of Mt. Taylor as a traditional cultural property. Mt. Taylor and other Laguna sites are the reasons why it is important to communicate about cultural issues. The pueblo recommends that designation of Mt. Taylor as a traditional cultural property be considered in the pending Rio Puerco Field Office resource management plan.
- The pueblo has submitted a request to BLM concerning a property parcel that BLM designated as subject to disposal. The pueblo maintains that this parcel is not eligible for sale and should be a direct transfer to the pueblo. A letter sent to the Pueblo of Laguna in November considered the pueblo a local landowner and not a government. This issue has been raised repeatedly but the pueblo continues to await a proper response.
- Mr. Rey-Bear concluded that although there are issues where there is divergence of opinion, there are also numerous issues, especially land use involving energy development, where BLM and the Pueblo of Laguna share goals. The pueblo is eager to cooperate in working with BLM on shared issues.

### **Vernon Lujan, Tribal Historic Preservation Officer, Pueblo of Pojoaque**

- Mr. Lujan opened in his own language, welcoming all to his Pueblo of Taos and to pueblo country in general. He said he was disappointed that there was not very much pueblo representation at this meeting. As a Tribal Historic Preservation Officer for the Pueblo of Pojoaque, he has established relationships with BLM's Taos Field Office, especially with Sam DesGeorges, to gain access to clay sites that BLM manages in northern New Mexico. It is disconcerting to go to those clay sites and see trash laying there that pueblo people know will be washed down the arroyos. He put in a word for

Taos and other field offices to use upcoming stimulus money to hire officers to control dumping in those areas.

- Much of the arts and crafts that pueblo people make—like weaving, pottery, drum making, etc., require materials that are no longer accessible. Mostly BLM people are helpful, but sometimes pueblo people have to apply for permits, including mining permits for digging clay. Mr. Lujan agrees that some kinds of protective mechanisms need to be put in place, but he is glad that some BLM staff allow access. The pueblo wonders whether BLM might designate ways to alleviate barriers to make materials accessible.
- Recreational vehicles also cause problems, so in areas where BLM is responsible, the Pueblo of Pojoaque would appreciate BLM strengthening its law enforcement staff. These offenses are happening daily. Citizens need to step up and make sure good things happen. He again thanked the Taos Field Office. He appreciates BLM's willingness to provide forums for tribes and others to express their needs and concerns, opportunities for open engagement and confrontations.

### **Norman John II, Navajo Nation Council Delegate, Window Rock**

- Mr. John is on the Resource Committee of the governing body of the Navajo Nation, the Navajo Nation Council. The Navajo Nation has 27 million acres of land, with checkerboard areas including state trust lands, and neighboring tribes—Zuni, Acoma, Laguna, Jicarilla, and Ute.
- Even though Navajo Nation has a tri-party agreement with the state and BLM, the tribe doesn't always get a response right away, for example, when there's trespassing on mineral rights. A lot of oil fields and uranium mines drain Navajo minerals. Some of their lands have mineral rights, some not. On those with mineral rights, he would like to work closely with BLM and others to maintain their minerals.
- Many archaeological sites are harmed by trespassers who take artifacts. There are Navajo artifacts in museums around the world, and the tribe would like BLM's help to get them back.
- People destroy the land, make roads, throw trash, and cut trees. Through the tri-party agreement, these lands should be preserved.
- Tribal hunting rights should be considered, even on trust lands. Outside hunters destroy livestock.
- The tribe wants to make some land exchanges—especially on the east side of the Navajo Nation where there is a lot of checkerboard. Through history, a lot of the elders were living on those lands, and they are now thought to be illegal squatters. The tribe wants land exchanges especially for areas north of U.S. Highway 550 around Bloomfield, New Mexico. The Navajo Nation wants fair exchanges with equal representation of all rights there, including mineral rights. Neighboring tribes are having the same troubles, and need agreement, especially on uranium. Courts have determined its Indian Country, and

that will be carried through to the Supreme Court. Adhere to Navajo laws, including the uranium moratorium.

**Alan Downer, Navajo Nation Historic Preservation Department, Window Rock**

- We have been talking with historic preservation for years. Protocols that were negotiated between SHPOs and BLM were done without tribes, especially in Colorado and New Mexico. Consultation on [National Historic Preservation Act] Section 106 matters gets pushed aside. Mr. Downer said it is his opinion, and state courts have said, that the protocol agreements cannot be used as a basis for compliance with Section 106.
- BLM must consult with tribes on Section 106 matters. He is not sure the protocol agreements can be made effective without major change. Every single action taken has to include consultation with Indian tribes.

**John Berrey, Quapaw Tribe Chairman, Oklahoma**

- Mr. Berrey is a member of the ACHP. He said these state protocols do need to be revisited. However, these regional meeting areas are not really tribal-centric, and meeting late Friday afternoon is not good. It was offensive for BLM to assume that because of a powwow tribal representatives would come. If you want adequate consultation with tribal government, go to them. Or at least call them directly; do not send letters. This is a government-to-government deal. We need for elected officials of tribal governments to take part in this process.
- BLM needs to devote more full-time equivalents to tribal consultation, building communication across time. Work harder to coordinate with tribal governmental associations. Mr. Berry saw probably two dozen tribal delegates at the Albuquerque airport—a missed opportunity to coordinate with associations like the National Tribal Congress, etc. BLM should meet directly with those tribal government associations.
- The letters to tribal leaders have little value unless there's follow-up. Communicate person-to-person. He appreciated the attempt at listening sessions, but it was a weak attempt to develop communication with tribal governments on specifics of Section 106 and other agreements on cultural preservation, spiritual sites, etc., that tribes are trying to protect.

**Tony Joe, Navajo Nation Historic Preservation Department, Window Rock**

- Mr. Joe consults with BLM on a regular basis on Section 106. He reiterated that a phone call does not mean tribal consultation. You have to come to the tribe, sit down and talk with people. Talk with them about Navajo ancestral sites within Farmington District Office territory. Why is BLM opening its arms to uranium exploration and mining? BLM manages land surface. They are not the ones to confer with tribes on what goes on underground.

### **Earl Samuel, Lt. Governor, Pueblo of Tesuque**

- Mr. Samuel agreed with Mr. Berrey that tribes and the pueblos want to meet with BLM, including the Washington DC office, directly, face-to-face across the table. He also suggested having these meetings yearly, since many tribal officials change yearly. There are many sites important to tribes on BLM land, so it is important to keep talking to one another. Working together will get better understanding and better results. There are other issues with BLM that his tribe would like to meet and talk about.

### **Roger Martinez, Ramah Chapter President, Navajo Nation**

- Mr. Martinez described Ramah Chapter territory. He said in the 1960s some BLM land was converted to checkerboard state trust land. Ramah Chapter wants to get that land in trust for its people to have more assurance about where they live. Come see our land, he said. A hearing is nothing. The only way to make a mark is to meet face-to-face on the land. Ramah Chapter has a lot of BLM land on both sides.

### **Sam Sage, Counselor Chapter President, Navajo Nation**

- Counselor Chapter is in the northeast part of the Navajo Nation, surrounded by BLM land. Growing up, Mr. Sage remembers seeing giant BLM caterpillars clearing sagebrush—which ruined several sacred sites. He doesn't know if there was any consultation done then, but there were Navajo interpreters that traveled with BLM. The interpreters retired, and in 2003 or 2004, the Counselor Chapter became involved again in consultation with BLM through the Farmington District Office resource management plan. It was nearly complete before he found out about it. BLM notified people in other chapters, like Crownpoint, but for some reason Counselor Chapter was too far. Nonprofits, ranchers and Navajo chapters got together with BLM and things have improved somewhat. BLM employees come to our chapters and take tours to areas they plan to work on. Some improvement is still needed. A phone call will work, not a letter that gets to you a month later. BLM should follow its own guidelines and use them on us who are living out there. Activities, especially oil and gas, cause contamination, and the public doesn't find out, for example, that water has been contaminated.

### **Edwin Roberson, BLM**

- When no one else asked to speak, Mr. Roberson said BLM appreciated those who came to the session. He lived and worked in New Mexico for several years. He continues to try to listen and learn. Speakers brought up important issues, and it was important for BLM to hear from them.
- We resort to ways of communication we are used to, he said, for example, sending out 660 letters to tribes. BLM wants to have more strength in the field and to build relationships with people in their areas. The national PA talks about relationships, and is

laced through with the importance of consultation. Each BLM manager takes that to heart. We all want feedback for how to work with you. We do try to get as close to the ground as possible.

- In Washington, he and Jerry Cordova work on the national program leadership level to assure that what they learn from the field is applied. He appreciated the recommendation that they follow their own guidelines. They continue to work on improvement. BLM will modify the agreement in the next 8-10 months, and will apply tribal feedback.
- There are still a number of positions to be filled in the national BLM office—they don't even have a director at this time. He said again that the most important thing to BLM is person-to-person contact, building relationships so when tough situations come up either side feels comfortable to call the other and address concerns. He also acknowledged the necessity to work with tribal leadership. He looks forward to receiving e-mail or written comment from tribal representatives.

### **Additional tribal representatives asked to speak**

#### **Carol Harvey, Navajo Nation**

- Ms. Harvey is a storyteller, and wanted to speak on the importance of sacred sites. The four sacred mountains of the Navajo Nation give gifts to the Navajo and to all human beings. Sacred ones live on those mountains. She expressed a number of names, characters, and descriptions of their qualities. She teaches about them to children, so that the pantheon is appreciated and understood.
- Federal officials may not be aware how alive and real and meaningful this is to us, she said. They are there right now, in our sacred mountains. I can go to Mt. Taylor and receive the gifts I need to get away from the stresses of everyday life. Our culture is very important. We want our history, our culture, and especially our sacred sites, to be preserved for the depth and meaning of ourselves and our families. It's so important for us. She hopes we all get back to the value of diversity in our lives.

#### **Elmer Milford, Ft. Defiance Council Delegate, Navajo Nation**

- Mr. Milford is former Chairman of the Navajo Nation Natural Resources Committee and continues to be a Navajo Nation Council delegate. Half of his chapter is in New Mexico, and half in Arizona. He said he worked a lot with BLM but could never get the true definition of what BLM is about and why it is there. He always questioned that because on that white sheet of paper—he pointed to the blank white edges of the New Mexico map on display—there's no indication where our land is. Why do we have an agreement? How did it come about?
- In both Arizona and New Mexico, so much of the land is State school land and private checkerboard. Native Americans need to know why. He is very concerned about the eastern part of Navajo Nation, where if they wanted to do some development, going from

one point to another, for example, to run a water line, they have to go through eight or nine jurisdictions and need permits from every one.

- He would like to have all the different people involved in checkerboard areas discuss how we can best make things happen for all sides. He bought some land around Magdalena, and had to go to Socorro to sign an agreement that had a lot of dos and don'ts. The Largo Ranch has oil development, and in order for Navajos to use that land, even though it is considered theirs, only the surface is theirs.
- He developed a home site on trust land, but if he finds gold or oil under his land, it's not his. We Native Americans don't have our own America, he said. Think about us as the last frontier. People have fought and died for this country but we are barely scraping the surface of our land. We pay taxes. I want it to be simpler to make things happen on both sides. Navajo Nation land has been expanded but not quite back to what we originally used. When you are a Navajo tribal leader you can't figure out how this happened. Maybe we need to work together to make things easier.

Jerry Cordova, BLM Native American Coordinator from the Washington office, thanked all the tribal representatives for attending and for speaking. There will be a lot of unanswered questions and undone tasks, he said. We will keep plugging at it, and we need your help. This is the first of these kinds of meetings in this area, and you have made a difference, because your comments will tell us about your region. I expect we have in common wherever we go a love of the land, and for Native people a way of life long established before Europeans came. Everything I hear is exactly what I feel myself. And as a federal employee I have to make sure laws are adhered to. That's where I need your help. Let's follow up on this discussion. We know that staff and leadership change, and the population is getting younger. That's true in federal government too. This education process has to continue with us helping each other know more. Why did these lands pass out of Indian hands? Why was something like BLM established? We don't all have the time to study and find that out. We have people with expertise we can seek out. Communication is the key. He came from Taos Pueblo and will end his life there. So he has a vested interest in these issues and in communication.

Mr. Roberson ended the structured part of the meeting at 5:15 p.m. He repeated the names and positions of BLM staff and invited people to stay and continue to talk.

## **Results**

In general, the Listening Session was successful in providing interested tribes with open access to BLM decision makers. Communication was initiated about several areas of concern to tribes.

Expressed briefly, the following issues were raised to BLM, either by speakers or in informal conversations:

- Problems with managing lands because of checkerboard land status – projects, especially linear projects, need permits and coordination with multiple jurisdictions in order to get anything done.
- The desire to exchange lands with BLM in order to block both BLM and tribal lands and make both easier to manage.
- Support for solar and wind energy, but not for uranium mining on either tribal or BLM lands.
- Support for the protection of Mt. Taylor as a TCP, and consideration for protection of Mt. Taylor in the Rio Puerco RMP.
- Recognition of tribes' special status as governments, and special consideration in land exchanges and sales.
- Easier and more open tribal access to gathering and collecting sites on BLM, and tribal access to these sites without obtaining permits.
- Problems with trash dumping on BLM lands.
- Problems with off road vehicle use on BLM lands, and the need for more law enforcement staff to control ORV use.
- Need for BLM to be more responsive to tribal requests, especially concerning mineral rights and trespass. Need for additional monitoring of oil and gas development and faster action on infractions.
- Concern about preservation of the land from illegal tree-cutting, illegal roads, trash dumping, and illegal hunting. Concerns about protection of livestock.
- Vandalism to archaeological sites, and request for help to return Navajo artifacts to the tribe.
- Need for land exchanges to allow Navajo elders to continue to live on BLM land they have been occupying for a long time.
- Lack of tribal consultation when the PA was negotiated and lack of Section 106 consultation with tribes. Need for modifying the state protocols to incorporate tribal consultation.
- Need for BLM to consult face to face with tribes rather than sending letters or making phone calls, and need to involve elected officials of tribal governments in consultation.
- Need for additional BLM staff to do tribal consultation.
- Need to meet at least yearly with tribes, since many tribal officials change yearly. BLM needs to be present at a level commensurate with the decisions being made.
- Need to involve tribes early on in the RMP planning process, including Navajo Nation Chapters.
- Need for BLM to make a special effort to protect sacred sites.

- Lack of familiarity with BLM as an agency – what its mission is, what programs it administers, how split estate lands came to be managed by BLM, how tribal lands became BLM lands.
- Problems with bureaucratic roadblocks in making projects happen.

Some tribal visitors stayed for the entire Listening Session (from 3 to 6 p.m.), while some visitors only stopped in long enough to provide their views or concerns before leaving. Visitation was highest from 3:30 until around 5:30 p.m. BLM personnel stayed until 6 p.m. or later, and made certain that no tribal visitors were overlooked when the session was closed.

### Participants

<i>Tribes</i>	<i>Affiliation</i>	<i>Name</i>	<i>Title</i>
	Acoma Pueblo	Theresa Pasqual	THPO
	Laguna Pueblo	Dan Rey-Bear	Tribal Attorney
	Navajo Nation	Alan Downer*	THPO
		Tony Joe*	Director, Navajo Nation TCP Department
		Rodger Martinez*	Ramah Chapter President
		Sam Sage*	Counselor Chapter President
		Norman John*	Navajo Nation Council Delegate, Twin Lakes
		Elmer L. Milford*	Navajo Nation Council Delegate, Ft. Defiance
		Harriett K. Becenti	Navajo Nation Council Delegate, Manuelito/Rock Springs/Tseyatoh
		3 tribal members	Sante Fe*, Oak Springs Chapter, Ft. Defiance Chapter
	Pojoaque Pueblo	Victor Lujan*	THPO
	Potawatomi Tribe	1 tribal member	
	Quapaw Tribe*	John Berrey	Chairman
	Taos Pueblo	2 tribal members	(the THPO for Pojoaque and one BLM employee)
	Tesuque Pueblo*	Earl Samuel	Lt. Governor

<i><b>BLM</b></i>	<i><b>Affiliation</b></i>	<i><b>Name</b></i>	<i><b>Title</b></i>
	New Mexico State Office	Linda Rundell	State Director
		Jesse Juen	Associate State Director
		Bill Merhege	Deputy State Director Lands and Resources
		Signa Larralde	New Mexico Deputy Preservation Officer
		Theresa Herrera	Public Affairs
		Karen Meadows	Recorder
		Steve Henke	District Manager Farmington District Office
		Ed Singleton	District Manager Albuquerque District Office
		Gina Melchor	Administrative Officer and Meeting Facilitator
		Tom Gow	Rio Puerco Field Office Manager
		Lindsay Eoff	Rio Puerco Assistant Field Office Manager
		Kent Hamilton	Planning and NEPA Coordinator
		Cynthia Herhahn	Archaeologist
		Mark Lujan	Taos Field Office Public Affairs
	Colorado State Office	Sally Wisely	State Director
		Linda Anania	Deputy State Director Resources and Fire
		Dan Haas	Deputy Preservation Officer
		Mark Stiles	
		Pat Gallagher	Petroleum Engineer
		LouAnn Jacobson Ball	Monument/NCA Manager
			Desert District Archaeologist

			Lower Sonoran Field Office Archaeologist
			El Centro Archaeologist
	Nevada State Office		Southern Nevada District Manager
			Pahrump Field Office Archaeologist
	BLM Washington Office	Jerry Cordova	Tribal Coordinator
	BLM Washington Office	Robin Burgess	Preservation Officer
Other	U.S. Senator Tom Udall's Office	Michael Lopez	
	Uranium Industry	5 representatives of private companies	

## Boise, Idaho, May 6, 2009

Prepared by Cheryle Zwang, BLM Idaho State Office.

### **Format**

After brief welcome from Susan Giannettino, Acting State Director for Idaho, and self-introduction of all attendees, Richard Hanes shared a PowerPoint presentation.

Cheryle Zwang then asked Tribal attendees how they preferred to proceed with the session and provided options. The suggestion from the BLM was that the tribes meet separately with each of the state BLMs represented at the Listening Session (OR, NV and Idaho). Ted Howard commented that, "the BLM is a federal agency bound by the same policies and mandates and there was no point in speaking to each state separately." They were there to provide comments to the PA and not to consult on other issues. That is how the session progressed.

### **Action Items**

- Draft Minutes of Boise Listening Session will be typed up from the flipcharts and shared via email with the attendees. Attendees should review and make any corrections, additions so they can be adjusted and then sent to BLM WO for inclusion in the record. A draft summary of all seven listening sessions should be shared with all the Tribal governments, and a national meeting scheduled so that interested Tribes can get together with BLM to meet and discuss the issues. Would like to hear the thoughts of one another - brothers/sisters from other tribes (**Dennis Smith, Sr., Shoshone-Paiute Tribes**). Richard committed to sharing a draft summary of the Listening Sessions.
- The BLM's Reburial Policy is something the BLM came out with the 1990s, and after a few years the BLM told the tribes that the policy was no longer. If so, why is it still in the 8120? (Ted Howard, Shoshone-Paiute Tribes). Richard Hanes will send the most recent Instruction Memorandum on this policy change to Tribes attending this session, along with national direction reiterating this change in policy and referencing the change to 8120 manual direction. PowerPoint slide says "American people", Federally recognized tribes have a unique relationship with the federal government, and must be listed separately from the "American People." (Ted Howard, Shoshone-Paiute Tribes). Richard said he would do this.
- Tribes want copy of Addendum to the PA. Richard will provide a copy to the Tribes participating in the session and post it on BLM national website where PA, manual and handbook information is located so others have this info.
- **Nez Perce Tribe** has not been kept in the loop to know status of protest; there needs to be effective communication in all levels of process. They would like to meet with and share data/information on Big Horn/Domestic sheep with Idaho BLM. Susan's staff (Tom)

will work with the Tribe to set up a mutually agreeable time for a meeting with State Director and appropriate staff to discuss this topic.

- Commended Gary Cooper and Stephanie Connelly; feel they have good working relationship and have developed consultation process which works and which they can share if others are interested. They would like to see consultation agreement which also includes funding. There are so many issues which the tribes must address off reservation; with limited staff and resources, they need funding. Would like to see placeholder language at a minimum which addresses this issue/need. 93-638 may provide mechanism; BLM has statutory responsibilities we need Tribal assistance to accomplish, so we need to help them (**Mike and Keith, Nez Perce Tribe**). This is also true for the Shoshone-Bannock Tribes. Have to prioritize their involvement and they really need to be involved in much more than they are able to address (**Chad Colter, Shoshone-Bannock Tribes**). Richard will share this concern with BLM Director and work with the Tribes to find options to address this issue.
- Noted there has been progress made on addressing tribal concerns/issues. They have good working relationship with BLM. Always room for improvement (**Yvette Tuell, Shoshone-Bannock Tribes**). Susan suggested that Idaho have a meeting periodically (gut check) with the Tribes for this purpose – to evaluate how consultation is working and if we can improve or share successes. Will need to work with Tribes to decide how often and format – State Director host or maybe each District host? Also Idaho BLM will make greater effort to document how they have addressed tribal issues in our National Environmental Policy Act documents and also how tribal objectives/policies are being addressed.

## Overview

There were several common themes for the comments offered by the Tribes, particularly the Shoshone-Paiute Tribes, in attendance. This report summarizes and organizes them by providing an overall statement with supporting comments captured under each. Where possible, it attributes comments to the individual offering them.

- The national PA (PA) does not recognize or speak to the unique status of Federally Recognized Tribes (**Ted Howard, Shoshone-Paiute Tribes**).
  - Tribes are sovereign governments and, as such, the order in which they are referenced should recognize that status, i.e. they should come before local governments or others (**Chad Colter and Ted Howard, Shoshone-Bannock Tribes**). There are numerous page references provided by Ted which illustrate this point and they are included where noted in the flipchart notes.

- Additionally, Ted provided a copy of the PA with his recommended edits and comments. Unless noted the comments below are from **Ted Howard, Shoshone-Paiute Tribes**.
  - 1<sup>st</sup> Para, under preamble – tribes are completely left out. No mention consistently of spiritual or traditional
  - Last Para, 1<sup>st</sup> pg. – no tribal reference where state, local, and federal.
  - 2<sup>nd</sup> pg. Recommend, but final decision remains with BLM manager.
  - (2<sup>nd</sup> pg. 3<sup>rd</sup> Para.) – List of BLM, SHPO and Council but Tribes left out
  - Public interest. Make it read – “public and tribal interest” as Tribes have legal rights
  - 2<sup>nd</sup> pg. last line – reverse order of tribes and local communities
  - Bring tribes to forefront; numerous places where this needs to be done (**Chad Colter, Shoshone-Bannock Tribes**).
  - 3<sup>rd</sup> Whereas – move tribes up in order
  - Adequate “participation”. Is more than that...need to add consultation. It must be spelled out and not assumed.
  - Meaning unclear re: tribal vs. nontribal lands.
  - 2<sup>nd</sup> to last, tribes left out.
  - Last page, last “therefore” – add all relevant federal laws, not only Sec.106.
  - Integrate...”including treaty/trust obligations”.
  - Consultation with outside parties – who are they referencing Richard responded Historic trails groups, etc. Ted said they don’t have sovereignty; don’t have equal standing with tribes.
  - “Tailoring NEPA procedures” – this phrase is in the PA. Ted said this is not right; they are altering federal mandates.
  - Tribes shall be provided “appropriate opportunities for involvement”. BLM is mandated to consult
  - Throughout the document, Tribes are not included. They are totally out
  - Concern over “qualified” and how it relates to implementation of things like Owyhee Bill and agreement.
  
- The 8160 was replaced by the 8120 (stated in the 8120). Without any consultation with the tribes. The 8160 was a much better document than the 8120. The tribes do not have a voice in the 8120, and tribal sovereignty has been taken away in the 8120. I refer to Federally recognized tribes as “Recognized tribes are self governing entities that enjoy a government-to-government relationship with the United States.” (Ted Howard, Shoshone-Paiute Tribes).

- The 8120 manual should be rescinded and the 8160 manual reissued. Tribes are adamant on consultation. The 8160 manual should remain in place until appropriate consultation with Tribes takes place. (**Ted Howard, Shoshone-Paiute Tribes**). Richard Hanes explained that indicated that the original plan was to have the 8120 manual focus solely on cultural consultation and to develop intergovernmental direction which focused on broader consultation responsibilities; the broader guidance has not been developed, but may be in the future.
  - Tribes were not appropriately consulted when the PA was developed and this is a violation of BLM's mandated responsibility to consult with tribes on actions affecting Tribal rights and/or interests (**Ted Howard, Shoshone-Paiute Tribes**).
  - While this is not their agreement (PA), it has everything to do with Tribes (**Chad Colter, Shoshone-Bannock Tribes**).
  - Need to state that Tribes do not support this PA (**Terry Gibson, Shoshone-Bannock Tribes**).
  - 8160 was good manual; 8120 is not. Tribes don't have a voice in it. No opportunity to have input in its development nor dropping of old 8160 (**Ted Howard, Shoshone-Paiute Tribes**).
  - The Tribes are being told their comments will be used to improve the agreement and how consultation is conducted. We will see how much our comments are used and if our suggestions influence BLM and changes are made and follow up actions occur. If not, we will need to take further action (**Terry Gibson, Shoshone-Bannock Tribes**).
  - If it doesn't appear Tribal concerns are being addressed, we will take it to the National Congress of American Indians (NCAI) and/or Affiliated Tribes of Northwest Indians (ATNI) to force the issue. Tribes have legal rights which can't be ignored (**Ted Howard, Shoshone-Paiute Tribes**).
- The PA fails to reference elements which are significant to Tribes and which are critical to areas being considered and addressed appropriately.
    - The listing of BLM's multiple use programs in the PowerPoint presentation lacks reference to Tribal uses/rights which should be addressed: spiritual, unextinguished aboriginal title, inherent rights, and treaty rights. This should be changed (**Ted Howard, Shoshone-Paiute Tribes**).
    - Bulletin 38 is not included and appropriately referenced. It provides for consideration of contemporary and traditional use.
      - 2<sup>nd</sup> Whereas – Bulletin 38 should be mentioned, not assumed. Can't look at things like contemporary use, etc. as written.
      - Throughout PA, references historic properties (means 50 years or older); this is indicative of not recognizing contemporary use (**Ted Howard,**



need to be comfortable that BLM is dealing with treaty issues (**Chad Colter, Shoshone-Bannock Tribes**).

- Agreed; issue is BLM appears to be balancing treaty rights against economic gain and those two things aren't equivalent (**Mike Lopez, Shoshone-Bannock Tribes**).
- BLM needs to be more proactive; take greater stance on 3<sup>rd</sup> party issues. Feel like they raise issues and go to a lot of trouble to frame them and get a “thanks for your response”, but stops there. Include tribal policies, i.e. their Snake River policy. Most of the time, what BLM is trying to do is congruent with the policy so would be easy to do (**Yvette Tuell, Shoshone-Bannock Tribes**). Susan suggested we reference the policy and document how alternatives help to support tribal/policy objectives. Cheryle referenced work that the District has done in support of tribal objective relative to land tenure adjustments (no net loss) and trying to mitigate impacts to lands/resources associated with treaty rights. She suggested maybe we need to better document that work. Yvette agreed that things have improved in this vein over the last few years.
- Ted Howard read a prepared statement which addressed tribal consultation and the unique status of Tribes; it spoke to the Marshall trilogy. It defined ethnocentricity and stipulated how it must be avoided, and it included reference to Bulletin 38 and how it was left out of the PA (**Ted Howard, Shoshone-Paiute Tribes**).
- **Participants:**

<i>Tribes</i>	<i>Affiliation</i>	<i>Name</i>	<i>Title</i>
	Shoshone-Paiute Tribes	Terry Gibson	Councilman
		Dennis Smith, Sr.	Vice Chairman
		Ted Howard	Cultural Resource Director
	Shoshone-Bannock Tribes	Chad Colter	Fish and Wildlife Director
		Yvette Tuell	Environmental Coordinator
	Nez Perce Tribe (via telephone)	Keith Lawrence	Fish and Wildlife
		Mike Lopez	Legal Counsel
<i>BLM</i>	<i>Affiliation</i>	<i>Name</i>	<i>Title</i>
	Idaho State Office	Susan Giannettino	Acting State Director
		Joe Kraayenbrink	Idaho Falls District Manager

		Gary Cooper	Coeur d' Alene District Manager
		Jenifer Arnold	Acting Twin Falls District Manager
		Aden Seidlitz	Boise District Manager
		Jon Foster	Resources Branch Chief
		Stan McDonald	State Archaeologist
		Cheryle Cobell Zwang	Deputy State Director Communications
	Oregon/Washington State Office	Dave Henderson	Vale District Manager
		Carolyn Freeborn	Jordan Field Office Manager
		Pat Ryan	Malheur Field Manager
	Nevada State Office	Ken Miller	Elko District Manager
		Tom Burke	Cultural Resources Program Lead
<b><i>Other</i></b>	<b><i>Affiliation</i></b>	<b><i>Name</i></b>	<b><i>Title</i></b>
	Idaho State Historic Preservation Office	Ken Reid	SHPO
		Glenda King	Archaeologist
	Washington Office	Richard Hanes	Chief, Division of Cultural, Paleontological Resources and Tribal Consultation

**Reno, Nevada, May 19, 2009**

Comments from audience (taken by transcriber)

- Communication and consultation should be defined by the tribe representatives here. Every meeting?
- Spirit of the message should go from top to bottom in the BLM. Sometimes the message does not go from the managers to subordinates in BLM after the tribe meet with managers.
- BLM managers should be responsible for sharing the messages down the line. It will minimize actions that were not intended
- BLM too often approaches tribes after the fact, especially on big projects. Need to approach the tribes early in the life of projects. Timeframes for tribe responses are sometimes too short.
- Define consultation. Some tribes do not have the resources to attend meetings at great distances. Recognize that resources are tight for travel. Consider tribal resources in planning consultation.
- BLM needs to consult with tribes about tribal concerns on BLM lands before projects are developed. Road building often happens without tribal consultation. There is a long heritage on the lands for the tribes. Roads, cell towers are built before consulting with the tribes, blocking tribal access for traditional uses such as medicine and sacred purposes. The land has been taken and destroyed. Consider the value and importance of the lands for tribal people. The trees, water, plants and animals are important. We are connected with the land and were here first.
- The 8120 manual defines consultation. The tribes are contemporary and have been here a long time. Focus on more than “stones and bones.” The tribes care about soil, water and air issues. Focus on more than just cultural resource laws. The former manual has been replaced with the 8120 manual that is inadequate. There is concern that the majority of the staff is not familiar with the manual. Regular meetings with upper level staff need to occur. BLM needs to involve more staff than just the archaeologists when discussing issues and projects with the tribes.
- Executive order 13175 mandates tribal consultation before policy changes. BLM is not adequately consulting with affected tribes. This was our land before it was stolen.
- Administration needs to work closely with the tribes and follow the existing executive order.
- The BLM needs to be aware of its trust obligations to tribes and recognize them as sovereign governments. The Shoshone-Paiute tribes work with BLM in Idaho and Nevada in ongoing consultation.
- The 8120 manual dances around the key issue that tribes are sovereign governments that the U. S. government must deal with. There are treaty and statutory obligations between

the federal government and the tribes. The BLM must acknowledge its obligations to the tribal nations.

- Any time the federal government wants to consult it should come to the tribal council and meet face to face. The relationships between the states and the tribes should be closely monitored.
- The BLM should employ members of the tribes who know tribal concerns in their areas.
- The BLM should be aware of President Clinton's executive order regarding federal relationships with the tribes. Each district should receive it as a reminder of their mandated relationships with the tribes.
- People in the BLM districts should be well aware of all the tribes within their jurisdiction.
- Projects detrimental to Indian land usually drive consultation. The projects are usually completed anyway.
- Consultation should be driven from the tribal side to discuss issues that are detrimental to tribal interests.
- Consultation meetings should have outcomes. Often the concerns from previous meetings are just repeated, but there are no outcomes reported. The tribes want to know how input is used.
- Special interests such as mining and recreation have more standing than the tribes. Seems that they – special interests such as mining and recreation -- have more standing even though they have no special trust status, as the tribes do.
- We need to honor trust responsibility from the top down. Consultation is more than just consulting, but considering how we need to protect the land in which the tribes are interested.
- Stakeholders are not equal to the tribes. BLM holds them equal, but the tribes are governments and above stakeholders.
- We were the original stakeholders.
- Naval weapons center, China Lake problems with water and natural resources still exist.
- There is constant robbery and no action against the pot hunters, even when the tribes provide evidence.
- Educate staff members about tribal responsibility when they join the BLM.
- The tribes need more direct information about pending projects:
- BLM needs to remember that this is our land; we were here first. The tribes get nothing when permits are issued for resources such as gold.
- BLM needs to resolve the Spirit Cave issue.
- Think Indian. The BLM needs to understand how an Indian thinks and feels. Our people have died for this land. People are now being subjected to BLM laws.
- Archaeological companies hired by the BLM are asking the tribes about the land. They are not knowledgeable about the land or the area. Tribal members should be hired.

- The BLM should make use of people with traditional knowledge. There are shortfalls on relying on specialists who don't have knowledge of the land as tribal members do.
- Consultation can be improved with frequent meetings between the tribes and the BLM. It builds relationships and trust, even though differences can remain on issues.
- Don't use Native American coordinators to speak for the tribes. The tribes must speak for themselves.
- Native American tribal representatives who work for the BLM must have authority.
- There is no point in sending people who can't make decisions to come and talk with the tribes. We need to consult with people who can make decisions based on what we tell them.
- Will the tribes see the comments that will be taken from these meetings before they are shared with BLM leadership? When?
- The mediated process used by the Shoshone-Paiute tribes and the BLM has been successful at holding BLM accountable.
- Smaller tribes sometimes get missed when information is shared from the BLM to the tribes. Opportunities to comment are missed. Consultation should ensure that all tribes are informed and have the opportunity to participate. The process should be consistent.
- Volume of information: Tribes often have limited resources to review large volumes of information. BLM should consider ways to streamline to hit the major areas. The Ruby Pipeline is a good example.
- Sometimes information is provided without enough lead time for the tribes to review it before consultation meetings. More frequent meetings would be a helpful way to review large numbers of projects and large volumes of information.
- Formalized consultation could be problematic because it is the BLM telling the tribes how to consult.
- Dear Tribal Leaders salutations don't reflect government to government respect.
- Those involved in formalized consultation appreciate the process because it ensures the necessary information is presented to the tribes. There is value in formalization.
- MOUs between the BLM and tribes can lay out the consultation process.
- Some don't understand what the PA is.
- The PA with the SHPO was done without tribal input
- BLM personnel come to work for the agency with little or no understanding of the native people. They need to recognize who they are working with: a Paiute? Washoe? We are not the same. They should learn about us before they come to work and begin working with the tribes. They need to meet the people and get to know their history and traditions and what is important to them. They have to come and learn about us FROM us.
- BLM staff needs to recognize the knowledge that comes from the native people. Native people's knowledge is more valuable than the knowledge that archaeologists bring to their jobs.

- They gather information from our land and then keep it confidential. They won't share it with us without a confidentiality agreement.
- BLM people must recognize that tribal resources are very limited when they ask us to review and comment on information.
- The Reno Sparks Indian Colony has refused to sign several programmatic agreements because the tribes are shown as “concurring” parties. It is disrespectful – these are tribe resources. It treats tribes as second class citizens. It should be a red flag that few tribes are signing programmatic agreements.
- Tribes should have a role in design of the programmatic agreements. They are “boiler plate.”
- Comments regarding the PA (Nevada):
  - The tribes are not even mentioned in the litany of resources
  - There is no mention of traditional or spiritual resources
  - The 8120 has diminished the sovereign standing of the tribes.
  - Tribes have a higher legal standing than local communities, and that should be reflected in the PA.
  - Section 106 is a criterion for listing on the National Register. Sites that don't qualify may still be significant.
  - Only a tribe can identify a TCP.
  - There is a void between the definition of historic properties and the fact that people still use the sites today.
  - The SHPO is a state entity with no regulatory authority. It can only advise. BLM must consult with the tribes and they have been totally left out of the PA.
- Projects such as the Ruby Pipeline take up huge swaths of land and will likely be approved, but when tribes seek land there are numerous approval processes and no guarantee that the acquisition will be approved.
- Tribes have little power to stop development projects.
- There is not enough time to fully discuss issues in this forum. Are you really listening? We should have started early and continued until everything was discussed.
- This was supposed to be a BLM listening session, but the facilitator spoke for 12 minutes before the tribe spoke and interrupted tribal speakers. The facilitator was rude to several speakers. BLM needs to listen to us without interruption.
- Indian people have been here a long time, fed the white people when they were starving and then they came against us. White people don't listen to the Indian people. Indians are the first people on the land and should be respected rather than overlooked.
- We want the Federal government and its entities to respect tribal laws and policies. There has been much miscommunication. BLM should stand with the tribe on the Navajo transmission project?? in southern Nevada.
- Every tribe has issues with mining, water and natural resources on Indian lands.
- We should all respect the land that provides us all with food, water and medicine.

- The agencies need to give the tribal councils plenty of time to review and understand documents given to them for review
- Tribes are all sovereign.
- This forum has not provided enough time to discuss all issues.
- Federal agencies do not seem to understand trust and fiduciary responsibilities. Indigenous people have their own definitions that are both tangible and intangible regarding fiduciary and trust responsibilities.
- In discussing trust responsibility we need to consider whether we trust the Federal government. In the Hungry Valley mine issue there was no help from the BLM. The BLM has expanded the Hungry Valley recreation area with no tribal input. The BLM has failed to live up to trust responsibility. Now the question is how the BLM can regain trust. Does BLM support the tribe request to expand their land base in Hungry Valley? Will BLM increase law enforcement presence to stop abuses in the Hungry Valley area? The tribe will wait and see. Some tangible things must happen for the BLM to regain trust.
- BLM people should honor tribal sacred sites in the Great Basin. BLM land has been transferred to private ownership and burials have been looted.
- Before any project is approved, the BLM should consult with the nearest tribe.
- The 8120 manual has been watered down and diminished the standing of the tribes. The tribes should stand to reinstate the 8160 manual in its original form.
- The BLM needs to avoid an ethnocentric view in its management and policies.
- Spirit Cave: The BLM needs to give the remains back.
- BLM does not know its trust or fiduciary responsibilities.
- The agency people are not always listening, but focusing on a response. BLM representatives need to truly listen. Sometimes responses are not needed. Listening is most important during consultation meetings. We are contemporary. We are still here.

## Participants

<i>Tribes</i>	<i>Affiliation</i>	<i>Name</i>	<i>Title</i>
	Fort McDermitt	Justina Paradise	Tribal Council
		Justine Barr	Tribal Council
		Duane Masters	
	Washoe	Frank Grayshield	Member
		Clente Grayshield	Member
		Darrel Cruz	THPO
		A. JoAnn Nevers	Cultural Resources Advisor
	Lone Pine Paiute-	Sandra Jefferson	

	Shoshone Tribe	Yonge	
	Te-Moak	Davis Gonzales	Tribal Chairman
	Inter-Tribal Council of Nevada	Daryl Crawford	
		Gary Sharpe	
	Western Shoshone	Donna Hill	
		Bernice Lalo	
	Duckwater Shoshone Tribe	Maurice Frank-Churchill	
	Yomba Shoshone Tribe	James Birchim	
	Pyramid Lake Indian Tribe	Dean Barlese	NAGRA Committee
		Orville Balise	
		Kevin Reed	NAGRA Committee
		Ben Aleck	Tribe Museum
	Susanville Indian Rancheria	Melany L. Johnson	
	Summit Lake	Ron Johnny	
	Reno-Sparks Indian Community	Brian Melendez	
		Arlan Melendez	
	Shoshone-Paiute Tribe (Duck Valley)	Ted Howard	
	Walker River	Chad Williams	
	Navajo Nation	Norman John	
	Yerington Paiute Tribe	Elwood L. Emm	
	Ft. Bidwell Indian Reservation	Aaron Townsend	
		Lynel DeGarmo	
	Fallon Tribe	Jim Carter	
	Shoshone-Paiute Tribe	Lynneil Brady	
<b>BLM</b>	<b><i>Affiliation</i></b>	<b><i>Name</i></b>	<b><i>Title</i></b>
	Nevada State Office	Ron Wenker	Nevada State Director
		Doran Sanchez	Director Communications
		Tom Burke	Nevada Deputy Preservation Officer
		Dave Hays	Winnemucca Field Office

		Scott Richey	Winnemucca Field Office
		Gene Seidlitz	Winnemucca Field Office
		Samuel L. Potter	Winnemucca Field Office
		Chris McAlear	Carson City Field Office
		Terri Knutson	Carson City Field Office
		Jim Carter	Carson City Field Office
		Leona Rodreick	Elko Field Office
		Mark Boatwright	
		Gerald Smith	Battle Mountain Field Office
		Gerald Dixon	Battle Mountain Field Office
		Michael Herder	Ely District Office
		Elvis Wall	Caliente Field Office
		Mary D'Aversa	Ely District/Schell Fire Office
		Chris Lloyd	Ukiah Field Office
		Linda Kelly	Sierra Front Field Office
		Susan McCabe	Stillwater Field Office
		JoLynn Worley	
	Oregon State Office	Ed Shepard	Oregon State Director
	Utah State Office	Glenn Carpenter	West Desert District Manager
		Craig Harmon	Richfield Field Office
	California State Office	Shane Deforest	Surprise Field Office
		Charlotte Hunter	Incoming California Deputy Preservation Officer
		Gina Jorgenson	Acting California Deputy Preservation Officer
		Joe Pollini	
		Josh Scott	Alturas Field Office
		Greg Havenstock	Bishop Field Office
		Sharynn Blood	Eagle Lake Field Office
		Nancy Lull	BLM Norcal

		Penni Borghi	Surprise Field Office
		Dayne Barron	Eagle Lake Field Office Manager
		Jeff Fontana	
	Washington Office	Richard Hanes	Chief, Division of Cultural, Paleontological Resources and Tribal Consultation
		Robin Burgess	Preservation Officer
Other	Bureau of Indian Affairs	Steve Brown	
	Bengston Consulting	Ginny Bengston	
	Wings & Roots Program	Doug Connaughey	

## **Palm Springs, California, May 20, 2009**

Prepared by Gina Jorgenson, California State Office.

### **Background**

The Bureau of Land Management (BLM) is holding a series of tribal listening sessions across the western United States and Alaska in order to provide an open forum for tribes to express concerns about consultation and other issues related to interactions with the BLM. These listening sessions are part of ongoing BLM tribal consultation outreach efforts intended to improve agency cultural resource and tribal consultation policy and practice.

The Bureau is committed to working closely with Indian tribes in pursuing this mission. One avenue of coordination is through the historic preservation planning and compliance process. This process is critical to helping the BLM identify the cultural values, religious beliefs, traditional practices, and legal rights of Native American people, because agency actions on public lands can affect resources of value to tribes.

An invitation letter with a flyer announcing the day, date, time, purpose, and location of all the scheduled listening session was mailed to all tribes including those tribes with whom the BLM in California regularly consults. These letters were sent from BLM Washington Office announcing the listening sessions. All the local BLM California tribal liaisons were tasked to follow up with phone calls to the tribes with whom they consult to ensure that they received the invitation and reiterate BLM's interest in getting their input either at the listening sessions in Reno or Palm Springs or by individual meetings with the tribe. Tribes from the northern half of the state were also encouraged to attend the Reno Listening Session on May 19<sup>th</sup>, due to its proximity and BLM California had numerous representatives at that listening session as well.

### **Format**

The format for the Palm Springs was designed to provide a formal comment session, where general questions and comments could be addressed, and a session where participants could talk with BLM managers and staff on a one-on-one basis where they could discuss any specific issues not relevant to the entire group.

Information relevant to the listening sessions, laws and regulations governing BLM, and outreach documents were available for all participants. These included the letter and flyer sent to tribes by the Washington Office, the BLM California Protocol Agreement with SHPO, the BLM 8100 Manual Series, and maps showing the location of all BLM offices in California with contact information for Managers and Tribal Liaison staff.

All participants were asked to sign in and provide their contact information for dissemination and the opportunity to comment on notes from this session.

Steve Borchard, California Desert District Manager, opened the meeting with a brief introduction to the purpose and needs of the session. Emphasis was placed upon this being a listening session by BLM to listen to Tribal concerns and situations. Three areas of emphasis are anticipated: 1) the government to government process; 2) comments good and bad are welcome; and 3) how can consultation process be made better. Steve closed with an outline of the agenda for today's session.

Richard Hanes, Washington Office, gave an overview of the purpose and need for Listening Sessions and their expectations. The goal is primarily to share ideas on how to improve the consultation process, particularly involving the National PA, State Protocol Agreements, and other BLM programs besides just Heritage. This meeting is also an opportunity for one on one meetings between Tribal and BLM managers.

Introduction of BLM staff and managers in attendance by Steve Borchard

### **Listening Session Notes**

**Cabazon Band of Mission Indians:** Commented that they have a good relationship with Wanda and the Palm Springs South Coast Field Office

**Kern Valley Indian Community:** Is concerned that BLM pushes TERA and supports getting renewable energy on Tribal land for their use. Ron Wermuth introduces himself as an elder and a business consultant. He related his experience trying to find a Tribe in the Owen Valley that is willing to develop solar energy facilities on Tribal lands. He mentioned the TERA provisions of the 2006 Energy Act that allow Tribal involvement and preference in renewable energy projects. One Tribe, i.e. Lone Pine, is willing to build a solar facility for Tribal-reservation needs.

**Santa Rosa Band of Cahuilla:** Santa Rosa Band of Cahuilla representative speaks out about the lack of coordination or consultation regarding the recent additions to the Santa Rosa national Monument. They did not have phone service on their reservation for years, which makes it difficult to communicate with BLM; BLM needs to be more flexible in their consultation methods and outreach efforts.

**San Manuel Band of Mission Indians:** Ann Brierty commented that communications should be one on one direct contacts. Mail and emails are good but she prefers direct person to person contact with BLM and Tribe. Also, an issue that BLM needs to be aware of is the constant

turnover of Tribal staff and Council members, and the need for BLM to keep up with all this personnel changes so that consultation can be more efficient. She also stated that the government to government trust relationship includes Tribal and BLM staff and BLM has a responsibility to ensure that the Tribes are not disadvantaged. Need to use other resources, such as THPOs, to build relationships

**Kern Valley Indian Community:** Bob Robinson commented that there is frequently no money or funding for Tribes to be able to respond back to consultants or agencies when consultation does take place. There are also problems by Tribes to fully respond due to jobs and work, families, etc., in other words, they have normal lives like most people, and it is very difficult to continually respond to consultation requests. A reimbursement for the Tribes to help them with the costs of consultation responses is needed. Non-Federally recognized tribes also generally have significantly smaller staffs and budgets, which makes consultation difficult.

**Ron Wermuth (Kern Valley Indian Community)** pointed out the lack of ethno-botanical skills by agencies and archeologists and the possible effect that this lack of knowledge can have. Bob Robinson added to that by pointing out that projects can impact medicinal plants. He also mentioned that from his experiences, the SHPO has no enforcement power to protect threatened cultural sites.

**Ann Brierty (San Manuel Band of Mission Indians)** commented that tribes aren't just interested in archaeology; BLM also needs to ask about and address cultural landscapes, botanical and gathering issues. Tribes should have a role in educating agencies about why landscapes are important.

Tribes use the information provided by BLM and landscape information should be updated with input from tribes, though BLM needs to be mindful that most of this information is sensitive and may not be appropriate for all staff or the public to see. Where does tribal input go?

**Cahuilla Tribal Chairman Anthony Madrigal, Jr.** commented about experience with BLM regarding the cadastral boundary line for a 20 acre parcel that involved them. BLM acquired the parcel in the 1920s. He had questions about adjacent land BLM purchased and about the land boundaries. BLM discussed that tribes can request cadastral surveys of shared federal/tribal boundaries.

Questions were raised about who selects which Tribes are consulted with for any given project. Richard Hanes responded that it is an on-going process and is based upon cumulative interactions between BLM and the Tribes.

Hector Villalobos, Ridgecrest Manager, points out that some BLM Field Officers have individual PA or MOU agreements with specific Tribes as to how and when consultation will take place.

Wanda Raschkow, BLM Palms Springs again, remarked that there has been little follow up or signatures by Tribes to these kind of agreements.

**San Manuel** representative mentions issue of project comments being needed quickly and Tribal Councils and membership need time to be able to get together and comment as requested. There is a need to update the BLM guidelines being used. Another issue raised is that cultural landscapes need to be addressed by BLM. Also, botanical and biology reports need to be included with the CRM report sent to the Tribes. And then there is an issue with the confidential and proprietary nature of the Tribal information and the need to protect and restrict it.

**Ron Wermuth, KVIC** again, raised question of water rights and who has them, along with concerns over the current Calif. drought. Bob Robinson asked question as to whether BLM is involved in the Calif. integrated water management process, and answer was "No".

**Michael Contreras (Morongo Band of Mission Indians):** Make sure BLM casts a wide net when sending letters and determining areas of interest for tribes, and who would be interested in any particular project.

Updates are needed on the renewable energy project status to make sure that appropriate comments can be made and that traditional concerns can be expressed.

A request was made to clarify what 'consultation' means.

Tribes should have greater input into decisions

There is a need to look at the entirety of the cultural landscape and the importance of it as a whole.

Update the glossary for Manual Section 8120 and provide documents to tribes of current Sections H8120-1.

**Linda Otero (Ft. Mohave Indian Tribe)** spoke for several minutes on multiple issues:

- Her tribe works with lots of field offices, and finds it difficult to maintain relationships with all of them.
- She is also concerned with many issues besides archaeology, including the spiritual landscape and the Native American holistic view of the world.

- She feels that her tribe tries to build relationships and trust, but it’s difficult when Field Managers and archaeologists turn over so often.
- Tribes want to feel like they’re influencing the process and involved in the decision making, because they don’t feel that way now.
- She has issue with the 30 day comment period BLM often uses, as this is not enough time to read material, talk to elders, and bring issues to the Tribal Council.
- She does not like the narrowly archaeological and scientific way BLM views things, would prefer a more holistic view of the landscape.
- Tribes want input on the process, rather than BLM sending them documents with requests for signature. Tribes do not like consent without input- in other words, they do not like signing documents they have not had a role in writing.

The general session then broke up to allow time for participants to meet with individual managers.

One follow up discussion occurred concerning payment of tribal “monitors”. There is a growing expectation that the agency/proponent should pay to have tribal members “monitor” a project. The local Forest policy is to ask proponent, or try to find agency funding, to pay tribal members to participate in surveys and excavations. Monitoring is a different matter- does it make sense to pay someone to simply watch the archaeologists work?

BLM spends more money on fixing batched/late consultation than it would if it consulted up front.

**Participants**

<i>Tribes</i>	<i>Affiliation</i>	<i>Name</i>	<i>Title</i>
	Ramona Band of Cahuilla	Joseph Hamilton	Chairman
		John Gomez, Jr.	
	Torres Martinez Desert Cahuilla Indians	Diana Chilhuahua	
	Cabazon Band of Mission Indians	Judy Stapp	
	Soboba Band of Mission Indians	Carrie Garcia	
	Santa Rosa Band of Cahuilla Indians	Steven Astrada	
	Morongo Band of Mission Indians	Michael Contreras	

	San Manuel Band of Mission Indians		
	Kern Valley Indian Community	Robert Robinson	
	Twenty-Nine Palms	Anthony Madrigal, Jr.	
	Fort Mohave Indian Tribe	Linda Otero	
<b>BLM</b>	<b><i>Affiliation</i></b>	<b><i>Name</i></b>	<b><i>Title</i></b>
	California State Office	Steve Borchard	Desert District Manager
		Gina Jorgenson	Acting California Deputy Preservation Officer
		Rolla Queen	Desert District Archaeologist
		Alan Stein	California Desert District
		Steve Razo	California Desert District
		David Briery	California Desert District
		Roxie Trost	Barstow Field Office
		Jenny Hagger	El Centro Field Office
		Hector Villalobos	Ridgecrest Field Office
		John Kalish	Palm Springs and South Coast Field Offices
		Wanda Raschkow	Palm Springs and South Coast Archaeologist
		Chris Dalu	Palm Springs and South Coast Field Offices
		Don Storm	Ridgecrest Field Office
		Charlotte Hunter	
	Arizona State Office	George Shannon	Lake Havasu Field Office Archaeologist
	Nevada State Office	Suzanne Rowe	Las Vegas Field Office
	Washington Office	Richard Hanes	Chief, Division of Cultural, Paleontological Resources and Tribal

			Consultation
		Robin Burgess	Preservation Officer
Other	Forest Service	Daniel McCarthy	San Bernardino National Forest
	Honeywell Corporation	Brian Morford	
	Cinea LLC	Ron Wermuth	

Salt Lake City, Utah, July 27, 2009

Prepared by Byron Loosle, Utah State Office.

Don Banks, Deputy State Director, Division of Natural Resources, BLM Utah State Office  
Welcome/Introductions/Expectations

Don Banks, BLM: mentioned that the catalyst for the “listening meetings” concerns the National PA and consultation protocols. BLM would like to identify and address tribal issues. There have been a series of meetings across the west and one was suggested for Utah by Betsy Champoose. BLM focus is not to present but to listen.

**Betsy Champoose, Ute Tribe:** had a question concerning where is the review of the PA revision?

Jerry Cordova, BLM: responded that an addendum was added to the PA as a placeholder until a complete look could be done. Jerry continued by discussing the history of where we have been. The ACHP asked BLM why tribes were not signatories and why they were not represented. ACHP believed that tribes should have a seat at the table. Jerry explained why tribes were not included. One of the primary reasons is that BLM has a government to government relationship with tribes. We work with 560 tribes, each with equal footing. That is why they were not included. In order to keep peace in the family, BLM made a commitment to ask tribes what they think of the PA. There has been a nationwide effort to solicit tribal input in lower 48 including Alaska--- what policy changes, what works with tribes and individuals. The national effort started in Alaska last fall. A similar session—informal—listening to tribal representatives. Major concerns expressed were hunting and fishing. There was a session in Montana that Betsy had attended. The major concerns were oil and gas development and concern over the new APD fee. There was also a meeting in Albuquerque where there was representation from Grants Acoma, Laguna and Navajo. They had expressed concerns about uranium mining. Uranium was a mainstay in economy—reliance on domestic energy was more prevalent. They are talking about opening mines and tribes are concerned about mitigation and energy development in Grants.

Most comments had to do with need of BLMers to acquire a cultural awareness—managers not aware of customs and traditions of tribes they deal with. Desire was expressed about better representation of tribes in BLM and better tribal liaisons. Tribes recommended an overseer of tribal liaisons under the Secretary of Interior so that tribal concerns could be heard, single tribal consultation policy for BLM and entire government, too much bureaucracy at local level. Recommend quarterly or annual meetings with tribal heads.

These are the types of things coming up at the listening meetings. Also the 8160 Manual—go back and update- have one consultation manual—oil and gas people would do their own

manual—tribes not buying off on it. Scattered comments were made concerning Field Offices. These will be dealt with individually. Otherwise summaries done will be shared with everyone.

This is the last session--- emphasizing government to government consultation, amenable to individual one on one meeting to address tribal leaders concerns.

**Questions** — Byron back to Betsy—working on revision.

**Patty Timbimboo, Northwest Band of Shoshone Nation:** Some tribes are missing. The Paiute, Ute, Navajo, Shoshone are present but the people you need to be talking to are not here. Some tribes don't have a person dedicated to coordinating.

**Byron Loosle, BLM:** asked the group “is sending a letter adequate?”

**Betsy Chapoose, Ute Tribe:** is not supportive of just sending a letter. Phone calls, visits, field visits, relationships are important in order to get meaningful input--- just sending a letter doesn't do it.

Jerry Cordova, BLM: mentioned the Sandia Pueblo court case. Follow-ups, input is necessary. We need to go beyond letters.

**Betsy Chapoose, Ute Tribe:** said they have a good relationship with Rock Springs BLM dealing with wind farms and important sites in the basin, and looking at cumulative effects. She has been dealing with BLM people on the ground the past 10 years. Administrators are different. We are not getting understanding of administrators/supervisors.

**Patty Timbimboo, Northwest Band of Shoshone Nation:** Hill Air Force Base has quarterly meetings regardless if there are issues. There is a human aspect. Yearly 17 tribes they deal with get together. They had three years of rocky interaction—they worked through it. We are doing it for our ancestors--- worked out well for them.

**George Gover, Northwest Band of Shoshone Nation:** testing range-- in his experience working with tribes, when BLM land is being developed some tribes would be shut out. States take their positions. All parties should sit down and talk. Even BLM offices were not coordinating. Questions--- how can there be better coordination between state offices and tribes?

Don Banks, BLM: recently the Utah BLM about over a year ago changed from a 2 tier to a 3 tier organization to help address concerns. Instead of 11 field offices to deal with there are now 4 District Managers that can provide better management. This is now being replicated across the bureau.

**Betsy Chapoose, Ute Tribe:** they (Northern Ute) do not have a good relationship with Utah field offices. In Colorado and Wyoming they have good relationships. Until Craig Harmon- we do not regularly consult with any field office in Utah. Recently, Fillmore Field Office invited them to look at wind farms. They have more interaction with field offices outside of State. They have

not been able to establish a relationship. They have to deal with three states—if it requires her to jump through hoops—can't do it. She mentioned signing a volunteer agreement to ride in a truck. NAGPRA issues. BLM needs to come forward and start talking with Native people. She was aghast that Utah was not having a “listening meeting”. She had to travel to Montana. Betsy does \$15,000 worth of consultation with a \$200. budget. BLM needs to help tribes financially--- - consultation fees need to be addressed. West Tavaputs Plateau project has a meeting every 2 months—the Ute tribe is the only tribe that is involved. Other tribes should be involved. Two way road—we need to meet in the middle and bring issues to the table and address.

**Betsy Chapoose, Ute Tribe:** said that their relationship with BLM in Utah is not very good.

**Patty Timbimboo, Northwest Band of Shoshone Nation:** Craig is the first one that she has seen. No BLM interaction.

**Betsy Chapoose, Ute Tribe:** Who are four District Managers?

Don Banks, BLM: explained structure of District organization.

Green River District- Bill Stringer

Canyon Country District- Shelley Smith

West Desert District- Glenn Carpenter

Color Country District- Todd Christensen

The District Managers will play a key role in the future. What is working in other BLM offices?

**Betsy Chapoose, Ute Tribe:** Rock Springs BLM write letter, call, then sends an email. They know what sites the Ute are interested in. Invitation to look at sites. They go that extra mile. Betsy calls them all the time. For example, if they are on their way to Pinedale, they ask Rock Springs BLM if they can look at anything on their way. They talk weekly—have that—they can talk. They have been talking about the application of wind farm concerns including view shed, petroglyphs. They have been talking and involved with them for 12 years. Deal with all four archaeologists in Rock Springs.

White River Forest- 20 year relationship with the Ute. Annually they meet—knowing the people in the area and having interaction. They have developed at Ute Resource Group—three Ute tribes on burials. Outlines what tribes don't want to have happen such as photographs of burials and proper handling. They maintain intellectual property rights and hold a confidential file. This information does not go to SHPO. It is protected information.

Byron Loosle, BLM: Involvement in annual Protocol Meeting? Betsy was invited last year but due to an illness in the family she could not attend. Byron invited Betsy to come to the next protocol meeting and provide training to archaeologists and managers.

**Betsy Chapoose, Ute Tribe:** would like to get on schedule and she would be willing to speak her mind. She would like to build relationships. In Colorado, they have an ethnobotany project which has been in place for eight years. They are involved with Rocky Mountain, Grand Mesa, Colorado Monument, and Green Hollow. Betsy would be more than happy to come with Clifford Duncan. Getting tribes together provides a natural environment. The Crow attend the meetings at Hill Air Force Base. She wondered why they would come from so far away? After talking with them and establishing a relationship they found out that the Crow have traced a salt trail to the area and that is why they are interested in the Bonneville salt basin.

Don Banks, BLM: asked if these are quarterly meetings?

**Patty Timbimboo, Northwest Band of Shoshone Nation and Betsy Chapoose, Ute Tribe:** yes, there are quarterly meetings at Hill Air Force Base and they are good meetings.

Gloria Bulletts Benson, BLM: she has spent the past 8 years as a Tribal Liaison (Arizona Strip), with the lands north of the Grand Canyon and the Grand Canyon-Parashant National Monument which includes both BLM and National Park Service (NPS) lands. The number of tribes that they originally consulted with was only five. They have expanded their list to include other tribes that are not geographically located. They have offered tribes to sit at the table. For example, to discuss NEPA projects early in the process to identify red flag issues that might impact the tribe.

Her position is directly under the District Manager. She has better access to her manager and can get answers back to tribes quickly. She is considered part of the manager's staff. They try and visit tribes annually.

Gloria mentioned opportunities for tribes:

Take it outside monies—under NPS- Parashant side they had funding to take kids back out into nature. They funded a Paiute youth camp. They paid Elders to teach classes. Getting kids out and partnering with tribes. They are doing camps again. Gloria used to be a cultural person. BLM was signing MOU w/ tribes. They felt it was limiting their consultation and it allowed consultants to complete consultation rather than BLM. Kaibab meets with tribes annually, combining a day of meeting and a day of field trips. Gloria thinks they have a great staff that works with the tribes. The BLM project is completed and the tribe is represented. So both sides get what they want and concerns are addressed. Her job as liaison is to stay on top of tribal issues. Share issues with tribes. She did get into trouble recently for sharing information with tribes concerning Utah oil and gas leasing. Sharing tribal information? Why would BLM feel threatened? That was her experience with a field office manager. When she was a tribal leader years ago she had recommended that a tribal person be on the BLM staff. In Arizona, she is the only tribal liaison. At Lake Havasu there is a tribal liaison funded not a BLM archaeologist juggling several priorities, but a person dedicated to be a tribal liaison.

**Betsy Chapoose, Ute Tribe:** ethnobotany project in Ute learning. Take it outside. Six trips into Colorado. Exchange with BLM Grand Junction and Forest Service. They take out 15 people. They reconnect kids with homeland, Elders, and camp out at Rocky Mountain National Park. It is a four tier approach including visiting archaeological sites, identify traditional plant use (including roadside spraying and relationship to plants), animals, water and air are connected, and the landscape. Go further than lines on the map.

**Clarence Rockwell, Navajo Nation:** in San Juan County they are interested in improving relationship of Navajo Chapters with BLM folks to talk about issues. As you know the Navajo reservation is large. We have issues with oil and gas development, grazing herb gathering, wood gathering, construction of new roads and expanding new roads--- they would like to be involved in discussions.

Good things--- submitted letter to BLM involving energy leasing that we appreciated their attention and action. Also recent antiquities activities concerning looting – appreciated that. Proposed land exchange with SITLA and BLM- they appreciate it.

We appreciate your seeking improvement with consultation. Clarence presented a letter from the chairman of the Navajo Utah Commission who was unable to attend. Clarence invited the BLM to the November 11, 2009 meeting at Mexican Water.

They appreciated Craig's involvement.

Byron Loosle, BLM: who would you like to invite?

**Clarence Rockwell, Navajo Nation:** decision makers, archaeologist. Individual Navajo Chapters would like to participate.

Gloria Bullets Benson, BLM: BLM specialists that are involved with wood cutting, herb gathering, leasing, grazing—maybe have those people attend the November meeting.

Don Banks, BLM: Good comments, integrate decision makers. Question about camping out?

Gloria Bullets Benson, BLM: The youth camp out site because of remoteness at Mt. Trumball. They also have an administrative site in the vicinity but they have built the camp away from administrative camp. They start on a Friday field trip talk about issues on the way such as water monitoring.

Patty Timbimboo, Northwest Band of Shoshone Nation: teaches children to be stewards of the land.

Gloria Bullets Benson, BLM: BLM specialists are also involved with the tribal camp out. The children could be managers of the lands. The managers are also involved.

Jerry Cordova, BLM: Secretary Salazar is interested in youth programs. Any recommendations please send them in and send letters to Jerry Cordova.

Four corners sting operation— it was primarily FBI money that funded the antiquities sting operation.

The Secretary's message is that we want suggestions. New BLM Director, Asst. Secretary.

Once new leaders are in place, listening meeting summaries will be shared. These are the changes recommended and tribal comments.

Any ideas—brainstorm, write-up and submit comments—comment period is open.

Final Report won't be finished until end of August. Jerry passed out his business card with contact information.

Byron Loosle, BLM: handed out copies of the National and Utah State Protocol Agreement and his business card with contact information.

Don Banks, BLM: not surprised by comments. We know we need to do better. We need to develop relationships. Leadership is under transition. Don thanked Jerry Cordova for his involvement.

**Dorena Martineau, IHS:** would like to have a tribal meeting with BLM in November in Cedar City. Anne Stanworth was the first BLM employee to initiate consultation (now it is Rachel Tueller). Craig is the only one who visits. It makes a big difference when BLM comes to you. It is so much better face to face—it establishes trust. Dorena is working well with the BLM offices including Joelle McCarthy, Fillmore Field Office and Gloria. The kids love the camp. They have so much fun. If there is something of vital importance, let her know with a phone call or a sticky note.

End of Meeting

\*\*Prior to the start of the meeting--- Rebecca brought up designating State cemeteries. She recommended three to four cemeteries throughout the State for human remains. Can BLM do a land exchange, sharing land, transfer? Rebecca said they are interested in pursuing. Held in perpetuity, no maintenance, just record keeping. A protected place. The GSENM is an example of a recent reinternment.

Don Banks, BLM: thought it was a good idea that would need to be explored.

**Attendees**

<i><b>Tribes</b></i>	<i><b>Affiliation</b></i>	<i><b>Name</b></i>	<i><b>Title</b></i>
	Shoshone	George Gover	
		Clarence Rockwell	
		Patty G. Timbimboo	
	Ute	Betsy Chapoose	
<i><b>BLM</b></i>	<i><b>Affiliation</b></i>	<i><b>Name</b></i>	<i><b>Title</b></i>
	Utah State Office	Byron Loosle	Deputy Preservation Officer
		Craig Harmon	
		Julie Howard	
		Don Banks	
		Gloria Bullets Benson	
	Washington Office	Jerry Cordova	Tribal Coordinator
<i><b>Other</b></i>	Indian Health Service	Dorena Martineau	

**Written Comments Submitted in Conjunction with Reno, Nevada Listening Session by the Duck River Reservation Shoshone-Paiute Tribes**

PO Box 219 Owyhee, NV 89832

(208) 759-3100



May 19. 2009

Listening Session in Reno Nevada

Comments from the Shoshone-Paiute Tribes  
of the Duck Valley Indian Reservation

Re: PA among the BLM, Advisory Council, and the National Conference of State Historic Preservation Officers regarding the manner in which the BLM will meet it's responsibilities under the National Historic Preservation Act.

The United States has a unique legal relationship with Indian tribal governments defined in history, the U.S. Constitution, treaties, statutes, Executive Orders, and court decisions.

Since the formation of the union, the United States has recognized Indian tribes as domestic dependant nations under its protection. The Federal Government has enacted numerous regulations that establish and define a trust relationship with Indian tribes.

The relationship between Federal agencies and sovereign tribes is defined by several laws and regulations addressing the requirement of Federal agencies to consult with Native American tribes or otherwise consider their interests when planning and implementing Federal undertakings, among these are:

- **EO 13175, November 6, 2000, Consultation and Coordination with Indian Tribal Governments.** (1994 Presidential Memo) Agencies must consult with Federally recognized tribes (govt-govt) in the development of Federal Policies that have tribal implications.

*This PA certainly has major “tribal implications.”*

*All Federal undertakings must include consultation with the tribes. The tribes were excluded from the PA.*

- **National Historic Preservation Act (NHPA), 1966 as amended in 1992**  
Requires federal agencies to consult with federally recognized tribes if a proposed federal action may affect properties (eligible for the National Register) to which they attach religious and cultural significance.

The agencies must contact the State Historic Preservation Office (SHPO).

(Criteria for the National Register eligibility and procurements for implementing Section 106 are outlined in the US Code of Federal Regulations (36 CFR Parts 60 and 800 respectively))

*Bulletin 38 is a part of the National Historic Preservation Act, and it is not included in the draft PA.*

Bulletin 38 of the act (NHPA 36 CFR 60.4), is the criteria for the identification of Traditional Cultural Properties (TCPs) *This can only be accomplished by the tribes.*

What is “traditional cultural significance? (Bulletin 38 defines it as)

“Traditional” in this context refers to those beliefs, customs, and practices of a living community of people that have been passed down through the generations, usually orally or through practice. The traditional cultural significance of a historic property; then is derived from the role the property plays in a community’s (tribe’s) historical rooted beliefs, customs and practices.

A “traditional cultural property,” then can be defined generally as one that is eligible for inclusion in the National Register because of its association with cultural practices and beliefs of a living community that are;

- a. rooted in that community’s history, and
- b. are important in maintaining the continuing cultural identity of the community.

Section 106 of the National Historic Preservation Act (NHPA) – Is the criteria for determining the eligibility for listing on the National Register of Historic Places.

A site can also qualify for listing on the National Register of Historic Places under the criteria of Bulletin 38.

Whether a site is eligible for listing on the National Register of Historic Places is irrelevant to tribes. A site could have very little tangible evidence remaining at the site, or it may have none, as a result of vandals, pot hunters, or collection by professional archaeologists. Consultation with tribes must occur to determine the significance sites.

The term “Historic Properties” is defined as anything 50 years or older.

The contemporary use of the area and site(s) is not considered. There’s a huge void from the past 50 years to the present that is not considered. Contemporary and ongoing use of the sites and resources must be considered and addressed.

Contemporary Native American tribes are a living culture. Tribes still practice our traditions and we still use the sites. Our culture is dynamic and there will be new sites in the future.

The BLM and other federal agencies are legally obligated to fulfill their treaty/trust obligations to federally recognized tribes, and that includes complying with all relevant federal mandates. The BLM cannot be selective.

The State Historic Preservation Officer (SHPO) has no regulatory authority on federal lands. He can offer recommendations. The final decision remains with the land manager (BLM).

Throughout this PA the tribes are either left out or are mentioned at the end of the list. The tribes must be listed before local governments and interested parties because of their sovereign status, and their higher legal standing with US Government.

In the PA it states; The BLM Director will establish a Preservation Board to advise the Director. Has this board been selected? Were tribes offered an opportunity to have a representative on the board? What are the required qualifications to be on this board?

**Note:** Richard Hanes, Chief Division of Cultural Paleontological Resources and Tribal Consultation, DC Office, stated that the Preservation Board is in place (Boise Listening Session, May 6. 2009). ***And the tribes were not consulted.***

Revision of “Cultural Resource Management” – Within 6 months from the date of its establishment, the Preservation Board will provide notice to Indian tribes and the public to review, update, revise, adapt, and augment the various relevant sections of its manual 8100 series. *The BLM cannot delegate consultation to the Preservation Board.*

Manuals will be revised in consultation with Council, NCSHPO, and SHPOs and will consider the views of other interested parties who have identified themselves in response to 2d. *It is very clear that the Council and the SHPOs will have decided what should be in these manuals for sovereign tribes? Federal laws and tribal sovereignty are clearly being violated.*

The tribes need to have a signature block on this agreement.

This is in Bulletin 38:

Ethnocentrism means: viewing the world and the people in it only from the point of view of one’s own culture and being unable to sympathize with the feelings, attitudes, and beliefs of someone who is a member of a different culture. It is particularly important to understand, and seek to avoid, ethnocentrism in the evaluation of traditional cultural properties.

It is vital to evaluate properties thought to have traditional cultural significance from the standpoint of those who may ascribe such significance to them, based on one’s own cultural values.

## 8120 Manual

The purpose and Goal of this Handbook: This hand book replaces the H-8160-1 General Procedural Guidance for Native American Consultation. This Handbook narrows the span of coverage to focus mainly on the “cultural resource” laws, executive orders, and regulations.

*The 8120 is the General Procedural Guidance for Native American Consultation, and this states the 8120 narrows the span for coverage to cultural resource laws, EO and regulations.*

*Consultation with Native American Tribes must occur on all federal undertakings on BLM managed lands. The 8120 cannot be narrowed to focus on specific mandates and regulations.*

The 8120 describes tribes as “Recognized tribes are self governing entities that enjoy a government-to-government relationship with the United States.”

*Tribal governments are “Sovereign Tribal Governments” that have a unique legal relationship with the US Government. Many tribes signed treaties with the US Government and some issues have not been resolved, therefore the US Government and its agencies have treaty/trust and other legal obligations to Indian tribal governments. The BLM must acknowledge that the tribes are sovereign governments.*

Also in the 8120: A part of consultation must be to make it clear to our consultation partners that the BLM is not acting as the trustee’s agent.

*The US Government is the trustee for the tribes and the BLM as a federal agency is the representative of the US Government. The BLM cannot relieve themselves their legal obligations. They must consult with the tribes and fulfill their treaty/trust obligations to tribes.*

It is totally inappropriate, inconsiderate and illegal for the BLM to redefine the legal standing of the Federally Recognized Tribes.

The Shoshone-Paiute Tribes strongly recommend that the 8120 be rescinded and the 8160 reinstated in its original form.

**Trust Responsibility** – Is the fiduciary obligation that attach to the United States as trustee of the assets and resources that the United States holds in trust for Native American governments and their members, the treaty and statutory obligations of the United States toward Native American governments and their members, and other legal obligations that attach to the United States by virtue

of the special relationship between the Federal Government and Native American governments. The identification and quantification of trust assets is recognized as an ongoing and evolving process.

### **Conclusion**

This PA violates the tenets of the US Supreme Court case law, specifically the Cherokee vs. the State of Georgia. The Marshall Trilogy held that the relationship of the Federal government to the tribes is above the relationship of the Federal government to states (The SHPO is a state entity).

This violation is a vestige of the last 8 years, of racism and special interests running the Federal government. Someone is trying to sneak this in before the president appoints a new leadership for the agency. Someone should be ashamed, ashamed! This is not right.

This is illegal and the Shoshone-Paiute Tribes are asking all tribes including the National Congress of American Indians to stand in unity and demand that federally recognized tribes be addressed as sovereign governments, and that the federal government and its agencies must comply with all legal and trust obligations to tribes.

Sincerely,

---

Robert Bear, Tribal Chairman

**Comments Submitted in Conjunction with the Boise, Idaho Listening Session by Ted Howard,  
Tribal Historic Preservation Officer, Shoshone-Paiute Tribes**

**PROGRAMMATIC AGREEMENT AMONG THE BUREAU OF LAND MANAGEMENT, THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND THE NATIONAL  
CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS REGARDING THE  
MANNER IN WHICH BLM WILL MEET ITS RESPONSIBILITIES UNDER THE NATIONAL  
HISTORIC PRESERVATION ACT**

**The tribes were left out of this PA**

***Preamble***

**Bureau of Land Management.** The Bureau of Land Management (BLM), consistent with its authorities and responsibilities under the Federal Land Policy and Management Act of 1976 (FLPMA), is charged with managing public lands principally located in the States of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming in a manner that will "protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values, *Traditional/spiritual??*" and "that will provide for outdoor recreation and human occupancy and use." *FLMPA of 1976 pertains directly to the mission of the BLM, and is often described as the agency's "Organic Act." The relevance of the Act is that it obligates the BLM to coordinate (in consultation) all aspects of the agency planning with Indian tribes.*

The BLM also has specific responsibilities and authorities to consider, plan for, protect, and enhance historic properties and other cultural properties which may be affected by its actions in those and other States, including its approval for Federal mineral resource exploration and extraction, under the National Environmental Policy Act, the National Historic Preservation Act of 1966 (NHPA), the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, the Historic Sites Act of 1935, the Antiquities Act, the American Indian Religious Freedom Act, the Religious Freedom Restoration Act, Executive Order 13007 ("Sacred Sites"), and related authorities.

In carrying out its responsibilities, the BLM has developed policies and procedures through its directives system (BLM Manual Sections 8100-8160) to help guide the BLM's planning and decision making as it affects historic properties and other cultural properties, and has assembled a cadre of cultural heritage specialists to advise the BLM's managers and to implement cultural heritage policies consistent with these statutory authorities. *"These policies must be carried out in consultation with the tribes." The 8160 was the BLM's "General Procedural Guidance for Native American Consultation." The 8160 is a good document, but the 8120 diminishes tribal sovereignty and the participation of the tribes. The 8120 must be rescinded and the 8160 must be reinstated in its original form.*

**State Historic Preservation Officers.** State Historic Preservation Officers (SHPOs), as represented by the National Conference of State Historic Preservation Officers (NCSHPO), have responsibilities under State law as well as under Section 101(b)(3) of the National Historic Preservation Act that include to "advise and assist as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities," and to "consult with the appropriate Federal agencies (*Tribes?*) in accordance with [NHPA] on Federal undertakings that may affect historic properties, and the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties." In certain cases others may be authorized to act in the SHPO's place. Where the Secretary has approved an Indian tribe's preservation program pursuant to Section 101(d)(2) of the NHPA, a Tribal Preservation Officer may perform some SHPO functions with respect to tribal lands. A local historic preservation commission acting through the chief local elected official may fulfill some SHPO-delegated functions, where the Secretary has certified the local government pursuant to Section 101(c)(1) of the NHPA, and its actions apply to lands in its jurisdiction. Pursuant to the regulations implementing Section 106 of the NHPA [36 CFR 800.1(c)], the Council may at times act in lieu of the SHPO.

**Advisory Council on Historic Preservation.** The Advisory Council on Historic Preservation (Council) has the responsibility to administer the process implementing Sections 106, 110(f), and 111(a) of the National Historic Preservation Act, to comment with regard to Federal undertakings subject to review under Sections 106, 110(f) and 111(a) in accordance with its implementing regulations (36 CFR Part 800), and to "review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under [NHPA]" under Section 202(a)(6) of the NHPA. *The recommendations of the Advisory Council is advisory only, the final decision remains with the land manager.*

The above-named parties now wish to ensure that the BLM will organize its programs to operate efficiently, effectively, according to the spirit and intent of the NHPA, and in a manner consistent with 36 CFR Part 800; and that the BLM will integrate its historic preservation planning and management decisions with other policy and program legal requirements to the maximum extent. The BLM, *tribes*, the SHPOs, and the Council desire and intend to streamline and simplify procedural requirements, to reduce unnecessary paperwork, and to emphasize the common goal of planning for and managing historic properties under the BLM's jurisdiction and control in the public interest.

### ***Basis for Agreement***

Proceeding from these responsibilities, goals, and objectives, the parties acknowledge the following basis for agreement:

WHEREAS the BLM's management of lands and mineral resources may affect cultural

properties, many of which are historic properties as defined by the National Historic Preservation Act and are therefore subject to Sections 106, 110(f), and 111(a) of the NHPA; and

WHEREAS, among other things, the BLM's program established in response to Section 110(a)(2) and related authorities provides a systematic basis for identifying, evaluating, and nominating to the National Register historic properties under the bureau's jurisdiction or control; for managing and maintaining properties listed in or eligible for the National Register in a way that considers the preservation of their archaeological, historical, architectural, *traditional* and cultural values and the avoidance of adverse effects in light of the views of local communities, Indian tribes (*reversed*), interested persons, and the general public; and that gives special consideration to the preservation of such values in the case of properties designated as having National significance (*could be significant to a tribal nation*); and

*A site may not be important to the United States as a nation, but important to a tribal nation. That should be taken into account. Who's nation are you speaking of?*

WHEREAS the BLM's program is also intended to ensure that the bureau's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, and the private sector; and ***Tribes need to be moved up on the list, to be with federal and state. Tribes have a higher standing than "local governments."***

WHEREAS the BLM's program also has as its purpose to ensure that the bureau's procedures for compliance with Section 106 are consistent with regulations issued by the Council pursuant to Section 211 of the NHPA (36 CFR Part 800, "Protection of Historic Properties"), and provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and ***(Should include Bulletin 38, a Traditional Cultural Property (TCP) can qualify for listing under this criteria as well.)***

WHEREAS the BLM's program also intends to ensure that its Section 106 procedures recognize the historic and , ***contemporary and ongoing*** traditional interests of Indian tribes and other Native American groups in lands and resources potentially affected by BLM decisions, affording tribes and other groups adequate participation ***(the law requires consultation with tribes)*** in the decision making process in accordance with Sections 101(d)(6), 110(a)(2)(D), and 110(a)(2)(E)(ii) of the NHPA, and provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with Section 3(c) of the Native American Graves Protection and Repatriation Act, in accordance with Section 110(a)(2)(E)(iii) of the NHPA; and

WHEREAS this agreement will not apply to tribal lands, but rather, a proposed BLM undertaking on tribal lands will require consultation ***(all undertakings by the BLM requires consultation with the tribes)*** among the BLM, the Tribal Preservation Officer, and the Council; or among BLM, tribal officials (where no Tribal Preservation Program exists) the SHPO, and the Council; and such consultation will be outside the compass of this agreement\_ and will follow 36 CFR Part 800 or the Indian tribe's alternative to 36 CFR Part 800; and

WHEREAS the BLM's program, the elements of which were defined in the BLM Manual between 1988 and 1994, does not incorporate some recent changes in legal, regulatory, and Executive Order authorities and recent changes in the nature and direction of historic preservation relationships, rendering the program directives in need of updating, and this need is recognized by the BLM, the Council, and the NCSHPO as an opportunity to work jointly and cooperatively among themselves and with other parties, as appropriate, to enhance the BLM's historic preservation program; and ***must include tribes when discussing Native American sites.***

WHEREAS the States, particularly those containing a high percentage of public land under the BLM's jurisdiction and control, have a strong incentive in forming a cooperative relationship with the BLM to facilitate and promote activities of mutual interest, including direction and conduct of a comprehensive statewide survey and inventory of historic properties,

identification and nomination of eligible properties to the National Register of Historic Places, preparation and implementation of comprehensive historic preservation plans, and development and dissemination of public information, education and training, and technical assistance in historic preservation, and ***The definition of a Historic Property is anything fifty years and older, including trash scatters, old buildings, etc. Native American sites must be addressed separately.***

WHEREAS the parties intend that efficiencies in the Section 106 process, realized through this agreement, will enable BLM, *tribes*, SHPO, and Council staffs to devote a larger percentage of their time and energies to proactive work, including analysis and synthesis of data accumulated through decades of Section 106 compliance; historic property identification where information is needed, not just in reaction to proposed undertakings; long-term preservation planning; purposeful National Register nomination; planning- and priority-based historic resource protection; creative public education and interpretation; more efficient BLM, *tribal*, SHPO, and Council coordination, including program monitoring and dispute resolution; and other activities that will contribute to readily recognizable public benefits and to an expanded view of the Section 106 context, and

WHEREAS the BLM has consulted with the *tribes*, Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers (NCSHPO) regarding ways to ensure that BLM's planning and management shall be more fully integrated and consistent with the above authorities, requirements, and objectives;

NOW, THEREFORE, the BLM, *tribes*, the Council, and the NCSHPO mutually agree that the BLM, after completing the actions summarized in 1. below, will meet its responsibilities under *all relevant federal laws and* Section 106, 110(f), and 111(a) through the implementation of the mechanisms agreed to in this agreement rather than by following the procedure set forth in the Council's regulations (36 CFR Part 800), and the BLM will integrate the manner in which it meets its historic preservation responsibilities as fully as possible with its other responsibilities *including trust/treaty obligations and* for land-use planning and resource management under FLPMA, other statutory authorities, and executive orders and policies.

### *Components Of Agreement*

#### **1. Applicability**

The Council's regulations (36 CFR Part 800) and existing State programmatic agreements will continue to apply to BLM undertakings under a State Director's jurisdiction until the Director and State Directors, with the advice of the Preservation Board, assisted by the Council, *tribes*, the NCSHPO, the SHPOS, and other participating parties, as appropriate, have updated and revised national BLM policies and procedures; developed State-specific BLM/*tribal*/SHPO operating protocols; and trained all field managers and their cultural heritage staffs in the operation of the policies, procedures, and protocols. Field offices under a State Director's jurisdiction (including those under the jurisdiction of the Eastern States Director) will not begin to employ the streamlined procedures developed pursuant to this agreement until the Director has certified that the State Director's organization is appropriately qualified to do so.

## 2. Establishment of Preservation Board

a. The BLM's Director will establish a Preservation Board to advise the Director, Assistant Directors, State Directors, and field-office managers in the development and implementation of BLM's policies and procedures for historic properties. Authority, responsibilities, and operating procedures for the Preservation Board will be specified in the BLM Manual. **Tribes must concur, the tribes were not included in this decision. (Richard Hanes informed us (in Boise 5/6/09) that this board was already in place)**

b. The Preservation Board will be chaired by the BLM's Preservation Officer designated under Section 110(c) of the NHPA, and will include a professionally qualified Deputy Preservation Officer from each State Office. The field management organization will be represented by at least three line managers (i.e., officials who are authorized by the Director's or State Directors' delegation to make land-use decisions).

c. The Preservation Board will perform primary staff work and make recommendations to the Director and State Directors concerning policies and procedures (3. below); bureauwide program consistency (3. below); training (6. below); certification and decertification of field offices (8. below); monitoring of field offices' historic preservation programs (9. below); and responses to public inquiries (9. below).

d. In addition, the Preservation Board will confer regularly with the Council and NCSHPO and involve them in its activities, as appropriate, including the development of the items listed in 2.c. The Preservation Board will also confer regularly with individual SHPOs and such other parties as have identified themselves to the Board as interested parties, including Tribal Preservation Officers, local governments, and preservation associations, to promote consistency with State, regional, and national practice, to identify recurrent problems or concerns, and to create opportunities in general to advance the purposes of this agreement. **Obviously the Preservation Board plans on interacting with everyone, but the tribes.**

e. The BLM will provide assistance, where feasible and appropriate, with reasonable and prudent expenses of the Council related to its activities pursuant to 2.c. and 2.d. above. **This Board has been empowered to a position higher than the State Director. Who is the Board accountable to? Tribal consultation did not occur on this issue.**

## 3. Revision of "Cultural Resource Management" Procedures

a. Within 6 months from the date of its establishment under 2. above, the Preservation Board will provide notice to Indian tribes and the public and, in accordance with 2.c. above, will begin to review, update, revise, adapt, and augment the various relevant sections of its Manual (8100 Series). These are: **Federal laws have clearly been violated. Tribes were totally excluded from this entire document. The BLM should have consulted with the tribes before the Preservation Board was created. This Board will tell tribes how they are going to manage our sites, and how they are going to identify our sites, etc.**

8100 - "Cultural Resource Management";  
8110 - "Cultural Resource Identification";  
8111 - "Cultural Resource Inventory and Evaluation";  
8130 - "Cultural Resource Planning";  
8131 - "Cultural Resource Management Plans";  
8132 - "Cultural Resource Project Plans";  
8140 - "Cultural Resource Protection";  
8141 - "Physical and Administrative Protection";  
8142 - "Recovery of Cultural Resource Data";  
8143 - "Avoidance and/or Mitigation of Adverse Effects to Cultural Properties";  
8150 - "Cultural Resource Utilization";  
8151 - "Cultural Resource Use Permits";  
8160 - "Native American Coordination and Consultation"; and  
H-8160-1 - "General Procedural Guidance for Native American Consultation."

b. Manuals will be revised in consultation with the *tribes??*, Council, NCSHPO, and the SHPOs, and will consider the views of other interested parties who have identified themselves in response to 2.d. (above).

c. Procedures will be revised to be consistent with the purposes of (1) this agreement, (2) the principles and standards contained in the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800); (3) the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* regarding identification, evaluation, registration, and treatment, (4) the Office of Personnel Management's classification and qualification standards as revised under Section 112 of the NHPA, and (5) other applicable standards and guidelines, and will include time frames and other administrative details for actions referred to in this agreement.

d. The BLM will ensure adequate public participation and consultation with parties outside the BLM (*tribes?*) when revising policy and procedures under 3.a. The BLM's procedures for implementing the National Environmental Policy Act (NEPA) will be used as appropriate for ensuring adequate public participation (*tribes?*) in the BLM's historic preservation decision making. Provisions of Section 110 of the NHPA and the Council's regulations will be the basis for tailoring the NEPA procedures to historic preservation needs. Mechanisms for continuing public involvement in BLM's historic preservation process will be incorporated in BLM/SHPO protocols under 5. below. *So the intent includes not only excluding the tribes, but also altering federal mandates and tailoring them to their needs?*

e. The BLM will provide Indian tribes and other Native American groups with appropriate opportunities (*the BLM is legally obligated to consult with tribes*) for involvement. Consultation with tribes pursuant to Sections 101(d)(6) and 110(a)(2)(E) of the NHPA will follow government-to-government conventions. *What does that mean?* Procedures to ensure timely and adequate Native American participation will follow the direction

in Sections 101(d)(6) and 110(a)(2)(E) of the NHPA, and BLM Manual Section 8160 and Manual Handbook H-8160-1, as revised pursuant to a. and b. above. Revisions to the 8160 Manual Section and Manual Handbook will treat the cited NHPA direction as the **minimum standard for Indian tribes**' and other Native American groups' opportunities to be involved. Provisions for Native American participation in BLM's procedures for historic property identification, evaluation, and consideration of adverse effects will be incorporated in BLM/SHPO protocols under 5. below. For Indian tribes with historic preservation programs approved by the Secretary under Section 101(d)(2) of the NHPA, Tribal Preservation Officers will be involved in place of SHPOs when tribal land would be affected. Such involvement will occur under the Council's and/or the Tribe's procedures in all cases, not under this programmatic agreement. *All BLM managed lands are tribal lands, some have unsettled titles, all of these issues must be considered. This document attempts to treat tribes as if they have always lived on reservations and confine the tribes to their present day reservations . The BLM is mandated to consult with federally recognized tribes on all federal undertakings and proposed actions on BLM Managed lands (our homelands).*

f. It will be the Preservation Board's duty in accordance with 3.b. above to ensure that the policies and procedures, as revised pursuant to this section, are being followed appropriately by field offices. Where problems with implementation are found, it will be the Preservation Board's duty to move promptly toward effecting correction of the problems. This responsibility of the Preservation Board, among others, will be spelled out in the BLM Manual under 2.a. above.

#### **4. Thresholds for Council Review**

a. The BLM procedures will identify circumstances calling for the Council's review.

b. At a minimum, the BLM will request the Council's review in the following classes of undertakings:

(1) nonroutine interstate and/or interagency projects or programs;

(2) undertakings directly and adversely affecting National Historic Landmarks or National Register eligible properties of national significance;

(3) highly controversial undertakings, when Council review is requested by the BLM, an SHPO, an Indian tribe, a local government, or an applicant for a BLM authorization.

#### **5. Cooperation and Enhanced Communication**

a. Immediately following execution of this agreement, the BLM will offer each affected *tribe*, SHPO and the Council (and others who have identified concerns under 2.d. above) the following information, and will provide or update as needed:

--a reference copy of the existing BLM Manual Sections and Manual Handbooks related to "Cultural Resource Management; --a copy of any Handbook, Manual Supplement, or other standard procedure for "Cultural

Resource Management" used by the BLM within an individual State Office's jurisdiction --a list of Preservation Board members; --a list of BLM cultural heritage personnel within each State Office's jurisdiction; --a map of the State showing BLM field office boundaries and responsibilities; --the best available map of the State showing tribal lands, *traditional homelands*, ceded lands, and ancestral use

areas; and

--a brief summary of land holdings, major ongoing development projects or permitted uses, proposed major undertakings such as land exchanges or withdrawals, and particularly significant historic properties on BLM lands within each State Office's jurisdiction.

b. Within 6 months after revised policies and procedures become available, each State Director will meet with each pertinent *tribe and* SHPO to develop a protocol specifying how they will operate and interact under this agreement. Where a State Director has few interactions with an SHPO due to minimal public land holdings, protocols need not be pursued, *except consultation with tribes* and historic preservation consideration will continue to be carried out under the procedures of 36 CFR Part

800. Adoption of protocols, as formalized by the State Director's, *tribes* and SHPO's signatures, will be a prerequisite for the certification described in 8. The Preservation Board and the Council will be kept informed of the progress of protocol development, and will receive an information copy of any signed BLM/SHPO protocol. The *tribes*, SHPO and State Director may ask the NCSHPO, the Preservation Board, and the Council to assist at any stage in developing protocols.

At a minimum, protocols will address the following:

--the manner in which the State Director will ensure the SHPO's involvement in the BLM

State management process; --data sharing, including information resource management development and support --data synthesis, including geographical and/or topical priorities for reducing the backlog of

unsynthesized site location and report information, and data quality improvement; --public education and community involvement in preservation; --preservation planning; --cooperative stewardship; --agreement as to types of undertakings and classes of affected properties that will trigger

case-by-case review (case-by-case review will be limited to undertakings that BLM finds will affect historic properties; the parties to this agreement agree that such case-by-case review will be minimized);

--BLM/SHPO approaches to undertakings involving classes of, or individual examples of, historic properties for which the present BLM staff lacks specialized capabilities; --provisions for resolving disagreements and amending or terminating the protocol; and --relationship of the protocol to 36 CFR Part 800. *Tribes must be included on all of the above.*

***The SHPO has no regulatory authority. He or she can make recommendations. The final decision is up to the land manager (BLM).***

c. As agreed under the protocol, but at least annually, the BLM will regularly send to the SHPO copies of forms and reports pertaining to historic properties, in a format appropriate to the SHPO's established recording systems, and consistent with the confidentiality provisions of Section 304 of the NHPA, so that information can be shared to the maximum extent and contribute to State inventories and comprehensive plans as well as to BLM land use and resource management planning.

d. The State Director, with the assistance of the Preservation Board, will seek, as appropriate, the ***tribes and*** SHPO's active participation in the BLM's land-use planning and associated resource management activities so that historic preservation considerations can have a greater influence on large scale decisions and the cumulative effects of the more routine decisions, before key BLM commitments have been made and protection options have been limited. Where ***tribal and*** SHPO participation will be extensive, State Directors may provide funding, if available.

e. Relevant streamlining provisions of BLM Statewide programmatic agreements currently in force in Arizona, California, Colorado, **Nevada**, New Mexico, and Wyoming (and other programmatic agreements and/or formalized working arrangements between BLM and SHPOs in any State, relative to identifying undertakings, identifying properties, evaluating properties, determining effects, and protecting historic properties) may be incorporated in BLM/SHPO protocols as appropriate and as consistent with 5.b. above, after which the State Directors will notify the SHPO and Council that the Statewide agreements may be suspended for so long as this agreement remains in effect. Project and special purpose programmatic agreements will function normally according to their terms. ***Have the tribes been consulted and did they concur with the "streamlining provisions?"***

f. When potentially relevant to the purposes and terms of this agreement, the BLM will forward to the Council information concerning the following, early enough to allow for timely briefing and consultation at the Council's election:

- major policy initiatives;
- prospects for regulations;
- proposals for organizational change potentially affecting relationships addressed in this agreement;
- the Administration's budget proposals for BLM historic preservation activities;
- training schedules; and
- long-range planning and regional planning schedules.

## **6. Training Program**

In cooperation with the ***tribes***, Council and the NCSHPO, and with the active participation of ***local tribes and*** individual SHPOs, the Preservation Board will develop and implement a training program

to (a) instruct BLM line managers and cultural heritage program personnel on the policies underlying and embodied in this agreement, as well as specific measures that must be met prior to its implementation, and (b) enhance skills and knowledge of other BLM personnel involved with "Cultural Resource Management" activities, including land use planning and resource management staffs. Training sessions will be open to Indian tribes, *how generous of them!* cultural resource consultants, and other parties who may be involved in the implementation of this agreement. The BLM may, where feasible and appropriate, reimburse the Council for assistance in developing training programs.

## **7. Professional Development**

a. The Preservation Board, in consultation with the supervising line manager and cultural heritage specialist, will document each specialist's individual attainments as a preservation professional, consistent with OPM guidance and Section 112 of the NHPA and giving full value to on-the-job experience. Documentation will include any recommended limitations on the nature and extent of authorized functions. Where a field office manager's immediate staff does not possess the necessary qualifications to perform specialized preservation functions (e.g., historical architecture), the documentation will identify available sources of specialized expertise from outside the immediate staff, such as from other BLM offices, the SHPO, other Federal agencies, or non-governmental sources. ***The tribes must be included on all Native American sites.***

b. The Preservation Board, the supervising line manager, and the cultural heritage specialist will assess the manager's needs for special skills not presently available on the immediate staff, and the specialist's opportunities for professional development and career enhancement through training, details, part-time graduate education, and other means.

## **8. State Office Certification and Decertification**

a. The Preservation Board, in consultation with the appropriate ***tribes***, SHPO and the Council, will certify each BLM State Office to operate under this agreement upon determining that (1) managers and specialists have completed the training referred to in 7. above, (2) professional capability to carry out these policies and procedures is available through each field office's immediate staff or through other means, (3) each supervising line manager within the State has assigned and delimited cultural heritage specialists' duties, and (4) the State Director and the SHPO have signed a protocol outlining BLM/SHPO interaction in accordance with 5. above.

b. The Preservation Board may choose to review a field office's certification status. The field office's manager, the State Director, the Council, or the SHPO may request that the Preservation Board initiate a review, in which case the Preservation Board will respond as quickly as possible. If a field office is found not to have maintained the basis for its certification

(e.g. the professional capability needed to carry out these policies and procedures is no longer available, or the office is not in conformance with the BLM/SHPO protocol, the procedures developed under 3. above, or this agreement) and the office's manager has not voluntarily suspended participation under this agreement, the Preservation Board will recommend that the State Director decertify the field office. If a suspended or decertified field office is found to have restored the basis for certification, the Preservation Board will recommend that the State Director recertify the office. ***Explain what decertification is.***

- c. A State Director may ask the Director to review the Preservation Board's decertification recommendation, in which case the Director will request the Council's participation in the review.
- d. The Preservation Board will notify the appropriate *tribes*, SHPO(s) and the Council if the status of a certified office changes.
- e. When a field office is suspended or decertified, the responsible manager will follow the procedures of 36 CFR Part 800 to comply with Section 106.

## **9. Accountability Measures**

- a. Each State Director will prepare an annual report in consultation with the appropriate *tribes, and* SHPO(s), outlining the preservation activities conducted under this agreement. The annual report's content will be specified in the revised Manual. The report will be provided to the Council and made available to the public.
- b. Once each year, the Council, in consultation with the BLM, *tribes*, SHPOS, and interested parties, and with assistance from the BLM, may select a certified State or States, or field offices within a State, for a detailed field review limited to the implementation of this agreement. Selecting parties may consider including other legitimate affected parties as participants in the review, as appropriate. The Preservation Officer and the appropriate Deputy Preservation Officer(s) and SHPO(s) will participate in the review. Findings and recommendations based on this field review will be provided to the Director, the State Director, *tribes*, and the Preservation Board for appropriate action.
- c. The Preservation Officer and Deputy Preservation Officers will prepare responses to public inquiries for the Director's or a State Director's signature. This applies only to inquiries about the BLM's exercise of its authorities and responsibilities under this agreement, such as the identification, evaluation, and protection of resources, and not to general inquiries. Preparing responses will include establishing the facts of the situation and, where needed, recommending that the Director or State Director prescribe corrections or revisions in a practice or procedure.
- d. Each meeting of the Preservation Board will be documented by a report. The Preservation Board will provide a copy of each report to the *tribes*, Council, the NCSHPO, and participating SHPOs.

## 10. Reviewing and Changing the Agreement

- a. The parties to this agreement may agree to revise or amend it at any time. Changes that would affect the opportunity for public participation or Native American consultation will be subject to notice and consultation (with whom?), consistent with 3.e. above. *What does that mean? Consultation with federally recognized tribes is not a choice. It's a legal obligation.*
- b. Should any party to this agreement object to any matter related to its implementation, the parties will meet to resolve the objection.
- c. Any party to this agreement may terminate it by providing 90 days notice to the other parties, provided that the parties will meet during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the BLM will comply with 36 CFR Part 800, including any relevant suspended State programmatic agreements (see 5.e. above).
- d. Not later than the third quarter of FY 1999, and every two years thereafter, the parties to this agreement will meet to review its implementation.

### *Affirmation*

The signatures below represent the affirmation of the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers that successful execution of the components of this agreement will satisfy the BLM's obligations under Sections 106, 110(f), and 111(a) of the National Historic Preservation Act.

/s/ Sylvia V. Baca

3/26/97

\_\_\_\_\_  
Director, Bureau of Land Management

\_\_\_\_\_  
Date

/s/ Cathryn B. Slater

March 26, 1997

\_\_\_\_\_  
Chairman, Advisory Council on Historic Preservation

\_\_\_\_\_  
Date

/s/ Judith E. Bittner

Mar 26, 1997

\_\_\_\_\_  
President, National Conference of State Historic  
Preservation Officers

\_\_\_\_\_  
Date

*The tribes must be provided a signature block*

**Comments Submitted in Conjunction with the Phoenix, Arizona Listening Session by  
Linda D. Otero, Director Aha Makav Cultural Society**

## **FORT MOJAVE INDIAN TRIBE RECOMMENDATIONS ON BLM CONSULTATION**

Presented by Linda D. Otero, Director Aha Makav Cultural Society

April 8, 2009 – BLM Listening Session- Phoenix, Arizona

### **What We Want From BLM (and all other Federal agencies)**

1. We want to be consulted. Not “notified,” not “given opportunities to comment,” but consulted. We want to have our opinions sought before decisions are made and documents are drafted, not just afterwards. We want to have opportunities to negotiate, face-to-face, to try to clarify and resolve disagreements. We want to have reason to believe that our opinions will be taken seriously and given real weight in BLM’s decision making. We want to be able to influence that decision making.
2. We want consultation to address our concerns, not just the concerns of the agencies and their “cultural resource” staffs. We want BLM to give us the information we need to understand what is planned, to ask about our concerns, to listen when we explain our concerns, and to work with us to resolve them – regardless of how they relate to specific U.S. and state laws, regulations, and non-tribal institutions.
3. We want respect for our world-views and cultural institutions. We do not want to have to seek validation from anthropologists, archaeologists, state historic preservation officers, or the National Register of Historic Places.

### **What We Dislike About BLM’s Present Way of Relating To Us**

1. BLM gives lip service to tribal consultation, but seldom seriously engages in consultation as we understand it.
  2. BLM puts more time, money, and effort into avoiding real consultation than it would if it simply consulted us. For instance:
    - a. Rather than respecting our concern for the overall landscape and environment, BLM insists on defining specific, limited “archaeological” and other sites on which to focus discussions. This takes money and time, sometimes forces us to reveal information that we want to keep private, and fails to address our holistic concerns.
    - b. While insisting that it respects tribal values, BLM develops programmatic agreements and similar documents that subordinate our values to those of archaeologists, historians, anthropologists and bureaucrats. BLM then executes these agreements with state historic preservation officers and
-

the Advisory Council on Historic Preservation and claims to have satisfied the requirements of the National Historic Preservation Act.

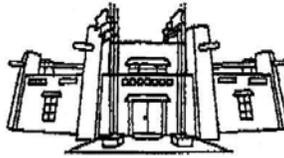
- c. BLM has rejected out of hand our own effort to put forward a consultation protocol that would have clarified our interaction and speeded review of proposed BLM actions; in doing so, BLM did not even feel it necessary to explain the rationale for rejecting our proposal. At the same time, BLM has put documents in front of us on which it expected prompt review comments – which it has then often ignored.

### **What we request**

1. Do not draft agreements and send them to us for our signature.
2. Negotiate with us a general protocol for ongoing consultation. Execute this protocol and adhere to its terms.
3. Negotiate agreements on specific projects in accordance with our agreed-upon protocol.

**Comments Submitted in Conjunction with the Salt Lake City, Utah Listening Session by  
the Navajo Utah Commission**

LAWRENCE T. MORGAN  
*Speaker of the Navajo Nation Council*



July 24, 2009

Selma Sierra  
State Director, Utah State Office  
Bureau of Land Management  
P.O. Box 45155  
Salt Lake City, Utah 84145-0155

**Re: Improving BLM Consultation and Working Relationship with the Navajo Nation**

Dear Ms. Sierra:

The Navajo Utah Commission (NUC) is in receipt of a copy of your July 10, 2009, letter to the Honorable President Joe Shirley, Jr., of the Navajo Nation, in regard to hosting a "listening session" on July 27, 2009, at the Bureau of Land Management (BLM) State Office in Salt Lake City from 1:00 to 5:00 p.m. In that letter, you espouse a commitment to improve BLM's consultation policies and working relationships with the Navajo Nation and other Indian tribes. The NUC is the designated Navajo Nation entity for matters affecting the Utah portion of the Navajo Nation, and Mr. Clarence Rockwell, Executive Director of the NUC, will be attending the July 27 "listening session" on behalf of the NUC. Mr. Rockwell is carrying this letter to you on behalf of the NUC and Mr. Rockwell will also provide other oral comments in regard to BLM consultation with the Navajo Nation, as well as discussing the need for continuing Navajo access to BLM lands for traditional medicinal, religious, and sustenance related activities.

The NUC appreciates the opportunity to attend a "listening session" with BLM but also requests a further commitment from the Utah Office of the BLM for regular consultation with the Navajo Nation through at least annual attendance at one NUC meeting. Accordingly, as a proposed first annual consultation with the Navajo Nation by your office, the Navajo Utah Commission would like to invite you and other appropriate BLM staff to attend the November meeting of the Navajo Utah Commission on Wednesday, November 11, 2009, at Mexican Water Chapter, beginning at 10:00 am.

Additionally, pursuant to the mandate under Executive Order 13175, for executive branch agencies to consult with Indian tribes on any policies or actions by those agencies which substantially affect Indian lands or peoples, the NUC expects the Utah Office of the BLM to timely consult with the NUC on matters substantially affecting the Utah portion of the Navajo Nation. The NUC also specifically requests that your office always consult with the NUC and appropriate Navajo Nation agencies or chapter officials whenever:

OFFICE OF THE SPEAKER / NAVAJO NATION LEGISLATIVE BRANCH / POST OFFICE BOX 3390 / WINDOW ROCK, ARIZONA 86515  
TELEPHONE (928) 871-7160 FAX (928) 871-7255

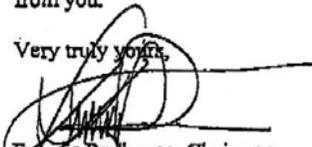
- (1) the BLM considers an application for a grazing or mineral lease on BLM lands adjacent to the Navajo Nation, or for any other grazing or mineral lease on BLM lands which may have a substantial impact on Navajo Nation lands or the Navajo people; or
- (2) the BLM considers any plans for the construction or improvement of any road or any off-road-vehicle (ORV) trail on BLM lands adjacent to the Navajo Nation, or on any other BLM lands which contain Native American cultural resources.

Furthermore, in accordance with Navajo Nation treaty rights pursuant to the Treaty of 1868, and the requirements of the American Indian Religious Freedom Act, Public Law 95-341, 42 U.S.C. § 1996, *et seq.*, the Navajo Nation would like to stress to the Utah Office of the BLM the following concerns:

- (1) the continuing need for non-restrictive Navajo access to traditional cultural sites on BLM lands in Utah, both for religious ceremonies and for the gathering of traditional medicinal herbs and other sustenance plants; and
- (2) the continuing need for non-restrictive Navajo access to BLM lands in Utah for wood-cutting or wood-gathering, where wood is the traditional and primary energy used by the Utah Navajo people for cooking and heating.

The Navajo Utah Commission is pleased with the BLM's commitment to improve its consultation policies with the Navajo Nation, and we are hopeful of forging a positive working relationship with your agency and staff. Please let us know if the proposed date of November 11, 2009, will fit your schedule, or if another date would be better. We look forward to hearing from you.

Very truly yours,

  
Francis Redhouse, Chairman  
Navajo Utah Commission