

### 3.13 Native American Concerns

#### INTRODUCTION

Consultation with Native American tribes has been on-going throughout the NEPA process and has been conducted under the approach that Quitchupah Creek and surrounding areas, not just the cultural resource sites, are the important component for Native American concerns. The BLM Richfield Field Office has been the primary contact with the Native Americans for this project.

#### REGULATORY FRAMEWORK

Federal agencies are required by law (National Historic Preservation Act (NHPA) of 1966) and regulation to consult with Native Americans on actions that may affect their traditions or uses of public lands. Specifically the agencies are required to follow the Section 106 process as recorded in 36 CFR 800 - Subpart B as amended August 5, 2004. Native Americans should comment on proposed actions and participate in decisions prior to implementation, as the product of consultation. The goal of the BLM Manual Section 8160 is to “assure that tribal governments, Native American communities, and individuals whose interests might be affected have a sufficient opportunity for productive participation in BLM planning and resource management decision making.” To this end, the Richfield Field Office BLM, in conjunction with Fishlake National Forest, has engaged in consultation with the Native Americans. Native American consultation included the Paiute Indian Tribe of Utah, the Ute Indian Tribe, the Hopi Tribe, and the Navajo Nation.

The Archaeological Resources Protection Act (ARPA) of 1979 applies to any agency that receives information that a direct or federally assisted activity could cause irreparable harm to prehistoric, historic, or archaeological data. ARPA is enacted if a project requires issuance of a permit for the excavation and removal of archaeological resources. The consultation requirement in ARPA pertains to the issuance of permits.

The American Indian Religious Freedom Act (AIRFA) of 1978 states “...henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right to freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites [42 United States Code (U.S.C.) 1996].” Agencies are required to review their policies and procedures in consultation with traditional native religious leaders.

Executive Order (EO) 13007 - Indian Sacred Sites requires agencies to accommodate access to and ceremonial use of Indian sacred sites and to avoid adversely affecting the physical integrity of said sites. According to EO 13007, a sacred site is defined as “any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.” Sacred sites may consist of a variety of places and landscapes, such as springs, mountains, canyons, caves, and archaeological sites.

There are many places on Federal lands where Indians practice their religions. Many of the lawful activities that are permitted and authorized on Federal lands can compromise the integrity of sacred places and the privacy of religious practices. With this in mind, EO 13007 was signed, “in order to protect and preserve Indian religious practices”. The order obligates Federal land managers to work with Indian

tribes to help protect their basic rights and practice their religions. When planning and implementing land uses, agencies generally have the ability to accommodate tribal access to sacred sites and to prevent physical damage or intrusions that might impede their use – if it is known that the sites exist.

The discretion of the Federal land manager is exercised in guaranteeing access to the site and in how or if the physical integrity of the sacred site is preserved. EO 13007 states that impacts to the physical integrity of sacred sites are to be avoided “to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions”. The policy created by this clause says the Federal land manager will do as much as possible to protect sacred sites from harm, in light of the conditions at hand and using the technical means available, while acting within agency authority and fulfilling the agency’s public purpose.

### **AFFECTED ENVIRONMENT**

**Section 3.12 Cultural and Paleontological Resources** contains a prehistory of the region. The cultural resource sites, as discussed in **Section 3.12**, indicate long-term use of the Project Area by Native Americans. The rock art and diagnostic artifacts present indicate use of the area by Archaic, Fremont, Ute, and possibly Paiute cultures.

Historic General Land Office maps of the area also indicate use of the area by Native Americans. GLO maps from 1873, 1874, and 1891 note “Indian Trails” through and in the vicinity of the Quitchupah Creek area.

### **NATIVE AMERICAN CONSULTATION**

Native American consultation has been ongoing during the NEPA process. The tribes actively involved in the Native American consultation have been the Paiute and Ute, while the Navajo and Hopi have deferred to the Paiute. The Paiute and Ute tribes accepted consulting party status. Field meetings, presentations at tribal council meetings, agency-tribal meetings, and verbal and written communication have been utilized to keep the tribes informed and apprised of the proposed project.

The Paiute claim the Quitchupah Creek area as sacred and oppose the proposed road in the canyon. The Hopi have expressed interest in the Fremont sites and any activities that may affect them. Generally the Ute’s concern extends to all of the sites in the canyon but focuses on the rock art; they have requested a 0.5 mile buffer for protection of the rock art sites. The Navajo support the claims of the Paiute and Hopi. Details of the Native American consultation can be found in **Appendix E**.

In summary, the tribes actively involved in the Native American consultation were the Paiute, Ute, and Hopi tribes, all of whom have expressed that they want all of the identified cultural resource sites within the Project Area to remain undisturbed and intact, especially the rock art complex at North Fork. The Navajo and Hopi have deferred to the Paiute Tribe and support their claims.

### **ETHNOGRAPHIC STUDY OF THE QUITCHUPAH CREEK AREA**

During consultation, the Paiute Tribe expressed that the Quitchupah Creek area is sacred to them. As stated in EO 13007, a sacred site is “any specific, discrete, narrowly delineated location on federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion.” There exist different professional positions as to the affiliation between Fremont peoples and Numic peoples, geographic distribution of the Indian Tribes, and the accuracy of assigning rock art to cultural periods without studies that include datable materials. EO13007 directs federal agencies to provide access to and use of sacred sites and to avoid adversely affecting the physical integrity of them but does not mandate a review of sacred claims by a federal agency. In order to

document and clarify the sacred site, an ethnographic study of the Paiute and their association with the Quitchupah Creek area was undertaken (Stoffle et al., 2004). This study, *Quitchupah Creek Ethnographic Study for the Proposed Quitchupah Creek Coal Haul Road*, was headed by Dr. Richard Stoffle of the University of Arizona.

The field studies occurred between May 18 and May 21, 2004; studies included a visit to the Quitchupah Creek area by Tribal elders, ethnographers, and the archaeologist from the Richfield Field Office BLM. During this time, the group visited fourteen prehistoric archaeological sites. These areas were selected based on the potential impacts the Action Alternatives would have on these locations. These sites comprise six Indian “places”, as denoted by the Paiutes. A “place” is derived from the power it exhibits. The power that defines a “place” can be significant inherent natural qualities, or the production and recognition of meanings in particular places, or events that have taken place at that location. Interviews with Tribal elders were conducted at each of these “places”. Interviews focused on cultural, religious, traditional, and other connections with specific places (site interview); significance of rock art to the individual and the Tribe (rock art interview); and associations, paths, and connections between localized portions of the Study Area (cultural landscape interview). This information was then contextualized to provide insight into the significance of the entire area and the importance of specific places.

Many of the sites visited by the elders were described as having connections to other sites within the canyon, and at least one of the sites was an aggregate of multiple sites comprising a much larger single site or “place”. The elders voiced concerns for a variety of resources such as archaeology sites, plants, animals, water, and the canyon itself. Each of these resources has significance in Southern Paiute culture. Archaeology sites are respected as places their ancestors used. Plants have significance for their many uses. Plant communities at a site can increase its cultural significance for Indian people, in that many plants are still used by members of the community. Further, animals are significant both as a resource and as entities to be reckoned with or as co-residents of an area. Water is significant because it is necessary for the survival of all creatures, and it carries “puha”, the energy essence of the universe, down from the mountains. Also, geographic features such as the canyon itself are important to Indian people. Canyons are places within mountains, and are therefore conduits for “puha” to flow from the mountains for the use of people. Often canyons are places that offer a unique combination of resources, which Indian people need for their physical and spiritual well-being.

In summary, the ethnographic study supports the Quitchupah Creek area as sacred to the Paiute Indian Tribe of Utah. According to the ethnography, the area contains medicine/spiritual places, social and plant gathering places, and farming areas. The topographic features of the area contribute to the sacredness in relation to the flow and convergence of “puha” (Stoffle et al., 2004). According to the ethnographic study, the area was utilized for ceremonial activities in response to the presence of “puha”. In a letter dated October 5, 2004, the Paiute Tribe expressed their satisfaction with the ethnographic study and stated their support of Alternative D, the Water Hollow route.

### **Potential Impacts To Native American Concerns**

#### **REGULATORY**

AIRFA and EO 13007 do not specify criteria for determining whether a project will affect sacred sites or religious sites. That determination must be made by the Native Americans themselves. Sacred sites are not subject to the review that is common with compliance with Section 106 of the National Historic Preservation Act. Section 106 compliance typically includes detailed review by not only the involved Federal agency, but also the appropriate SHPO and the Advisory Council on Historic Preservation and deals mainly with project effect on and mitigation of cultural resources. There is no such review in the

case of sacred sites. They are a National Environmental Policy Act issue and have to be treated carefully in any land-use planning and decision-making. Many of the lawful activities that are permitted on Federal lands can compromise the integrity of sacred places and the privacy of religious practices. With this in mind, EO 13007 on Indian Sacred sites was signed “in order to protect and preserve Indian religious practices”. The order obligates Federal land managers to work with Indian tribes to help protect their basic rights and practice their religions. For the purposes of this project, a project effect is considered significant if it restricts access to or affects the physical integrity of such sites. Once areas of Native American concern were established, effects were considered on the following significance criteria:

- access reduced or lost (EO 13007)
- physical disturbance or destruction (EO 13007, NHPA)
- alteration of its setting (NHPA)
- visual, noise, or other elements that are out of character for the area (NHPA)
- area rendered unsuitable or unusable for traditional/religious use (EO 13007)

The following Native American concerns were identified:

- Sacred sites (as defined in EO 13007) - Quitchupah Creek and canyon
- Traditional Cultural Properties (TCPs) (as defined in NHPA) – Quitchupah Creek and canyon have been recommended for special management designation by the Paiutes, possibly as a TCP (Stoffle et al. 2004)
- Locations of traditional importance - Rock art complex near Quitchupah Creek (see also **Section 3.12**, Cultural Resources)

#### **NO ACTION - ALTERNATIVE A**

There will be no adverse effects to Native American concerns under Alternative A - No Action. Adverse impacts to locations of traditional importance resulting from recreational activities, possible vandalism, and cattle grazing/trailing would continue.

#### **QUITCHUPAH CREEK ROAD - ALTERNATIVE B**

This Alternative would be in conflict with Native American concerns, as expressed during consultation with the tribes. Quitchupah Creek and canyon, considered sacred to the Paiute, would be physically disturbed and the setting would be altered. As elicited during Native American consultation, the rock art complex, an area of traditional use, would be adversely impacted by alteration to its setting and the introduction of noise (coal trucks) and visual elements (paved road and truck traffic) not characteristic of the area. According to the Paiute Tribe of Utah, this would render the area unsuitable for traditional uses.

#### **ALTERNATE JUNCTION AND ALTERNATE DESIGN - ALTERNATIVE C**

This Alternative shares the route with Alternative B except for the easternmost two miles where it deviates northeasterly to cross Link Canyon and junction with SR-10. This alternative would be in conflict with Native American concerns, as detailed in Alternative B.

#### **WATER HOLLOW ROUTE - ALTERNATIVE D**

This alternative may be acceptable in relation to Native American concerns, as physical disturbance and construction in most of Quitchupah Creek and canyon would be avoided other than the uppermost two miles. This alternative would alter the setting of the canyon due to the presence of coal trucks passing through the upper portion of the canyon heading up Water Hollow and onto the upper benches, which would be visible and audible from Quitchupah Creek and canyon. In a letter dated October 5, 2004, the Paiute Tribe has expressed support of this action alternative.

**MITIGATION AND MONITORING FOR BUILD ALTERNATIVES**

No mitigation or monitoring is proposed for Native American Concerns.

**IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES AND RESIDUAL ADVERSE IMPACTS**

According to comments received from the Tribes during consultation and the ethnographic data, the sacred nature of the Quitchupah Creek area, including elements such as the rock art and remoteness of the area, would be irretrievably and possibly irreversibly altered by the construction and operation of a public road under Alternatives B and C. An area identified for traditional use would be rendered unusable under Alternatives B and C; this would be an irretrievable loss. The presence of a road and the subsequent truck traffic would be a residual adverse impact.

**CUMULATIVE EFFECTS**

Past actions affecting Native American concerns within the Project Area include construction of the existing road and power line. Vandalism to the rock art and other prehistoric sites, unauthorized excavation of sites, recreational use, and cattle grazing/trailing have also impacted the area. Excavation of cultural resource sites as mitigation for cultural resource impacts would further affect Native American Concerns. According to concerns stated during the Native American consultation and the ethnographic study, cumulative adverse impacts to Native American concerns under implementation of Alternatives B and C would likely be substantial; cumulative effects to Native American concerns under Alternative D would likely be minor to moderate.