

# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

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To: Field Managers, Nevada

From: State Director, Nevada

Subject: Authorizing Native American Compensation

The Bureau of Land Management (BLM) Manual 8160, Native American Coordination Consultation, and the Associated BLM Manual Handbook H-8160-1, General Procedural Guidance for Native American Consultation, define general policy and guidelines for Native American Consultation. This Instruction Memorandum clarifies how to determine when to compensate tribal representatives for their participation in the consultation process for all undertakings initiated by the BLM or by other land-use proponents.

### **Background:**

As specified in Appendix 1 of the Consultation Handbook, "It is the BLM's policy not to give compensation to members of the public, including Native Americans, for contributing information or comments as input into the BLM's administrative process . . . . The input that Native Americans choose to provide may benefit their particular interests relative to future BLM actions or decisions. As with other participants, Native American contributions to the BLM administrative process are a form of voluntary public participation."

The policy does point out that, "Nothing prevents BLM from contracting for the services of qualified Native American individuals, forms, or organizations, through BLM acquisition and procurement procedures, to produce in-depth ethnographic reports or other specific products."

The Comptroller General has determined that, "an agency may assist in paying expenses only if the party is indigent or otherwise unable to finance its participation." However, the policy cautions that, "the BLM should attempt to avoid creating circumstances where compensation for expenses might be necessary."

### **Nevada Compensation Policy:**

1. During normal consultation (letter exchanges, phone contact, meetings and field visits at the request of the tribe), it is reasonable to expect that tribes can inform the BLM of resource and heritage concerns in sufficient detail so that BLM managers can make reasonable decisions concerning these concerns. Such normal consultation is well within the prohibition on compensation and should not be compensated.
  
2. Within the strong constraints of the national policy, there are situations in which compensation could be appropriate. These are situations in which:
  - a. The BLM asks Tribal members for significant additional information to meet the BLM objectives that go beyond allowing the Tribe to participate in decision making. Some examples include BLM initiated: (1) National Register nomination forms; (2) compliance evaluation reports; (3) professional staff reports; (4) ethnographic, archaeological or historic reports; and (5) land use planning documents. Compensation should not be paid for review and comment on reports, agreements, or other products, or activities, in the normal consultation process.
  
  - b. The BLM requests regularly scheduled formal consultation meetings in BLM offices far removed from Tribal offices. Such compensation will be limited to travel expenses for one Tribal representative per meeting and should not be paid for routine meetings within the scope of normal consultation.
  
  - c. The BLM requests additional field trips to clarify tribal issues that emerge through the normal consultation process; and,
  
  - d. Tribal participation in the land-use decision or planning process is the same as non-Tribal governments or organizations whose participation is funded by the BLM.
  
3. Compensation Process:
  - a. Tribal representatives can not be compensated for time (salary) or for services, such as monitoring. As noted above, the BLM can pay for in-depth ethnographic reports or other specific products and travel expenses in limited circumstances.
  
  - b. Tribal compensation must follow BLM acquisition and procurement procedures.

Questions may be directed to Pat Barker, Archaeologist, at 775-861-6482.

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