

## Integrating Indigenous Values into Federal Agency Impact Assessments to Reduce Conflicts—A Role for Anthropologists

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### **Abstract**

Conflicts surrounding the development of public lands are on the rise around the world. In the United States, where laws require federal agencies to conduct environmental and cultural impact assessments before approving or permitting development projects, conflicts still occur. This is especially true for projects that impact indigenous lands, resources, and communities, as the recent controversy surrounding Dakota Access Pipeline project so well illustrates. The purpose of this article is to highlight some of the problems I have encountered as an anthropologist conducting cultural impact assessments for federal agencies and for indigenous communities. Central among the problems encountered are the lack of awareness and appreciation for indigenous values by project proponents, agencies, and sometimes even the analysts hired to conduct the assessments. Recommendations for improving the quality of cultural impact assessments, which are based on the tenets of Action Anthropology, are explained.

### **Keywords**

Cultural impact assessments, effects, federal agencies, tribes, indigenous values, NEPA, Section 106, traditional cultural places

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## **Introduction**

The recent conflict in North America over the Dakota Access Pipeline (DAPL)—a project that involved a private corporation seeking to transport oil across hundreds of waterways whose crossing required federal approval—demonstrates the pressure that Native American tribes and other groups can apply on federal agencies with responsibilities for projects such as these. In the DAPL case, the company first had to conduct environmental studies required by the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) to document potential impacts to the natural and cultural environment. The Army Corps of Engineers then used the studies to assess potential impacts of alternative pipeline routes, engaging in hundreds of meetings with tribes and other groups before making its decision to issue the permit. One tribe disagreed with the agency conclusions, citing problems with the cultural studies conducted by the project proponent's contractor and concerns about risks to the tribe's water supplies, and a major protest ensued.

Similar conflicts are ongoing across the world every day between indigenous groups and companies and governments proposing land and resource-impacting projects.

Project proponents are wise to work with those concerned about project impacts to understand their concerns; many concerns can be addressed relatively simply by project redesigning the project during the early stages. Unfortunately, in many cases the approach has been to ignore the issues that exist and use political leverage to obtain the needed permits, leaving the indigenous community to absorb the loss to its natural resources, heritage, community, and future.

Beginning in the 1970s, soon after laws such as the NEPA and NHPA, federal agencies began conducting assessments of impacts of projects, mostly on archaeological sites and buildings. By the 1990s, changes in NEPA and NHPA paved the way for Native American tribes to get involved in the assessment process, and made it easier for tribes to force agencies to consider effects on non-archaeological sites such as traditional resource areas and other places with traditional significance. Anthropology, the discipline best equipped to work with cultural groups and issues, has played a minor role, primarily in what has become known as the field of Cultural Resource Management. With a long tradition of working with indigenous communities, anthropology is well suited for working with tribes to document traditional places, assess the effects of projects, and develop mitigation measures; unfortunately, findings and recommendations from anthropologists are often ignored or minimized.

Although the processes for assessing and mitigating effects to cultural resources under NEPA and NHPA are now 50 years old (Banks and Scott 2016), the processes are replete with problems. For example, there is often no consensus on whether a particular archaeological site or

resource area is “significant” and therefore worthy of consideration. Similar debates occur when agencies attempt to determine whether there is a significant adverse effect on a resource. Even when there is consensus about an adverse effect, conflicts can arise as to what constitutes adequate mitigation. Some of these problems are due to a failure to conduct meaningful consultation with the affected party; other problems can be traced to personal interests and experiences of the analysts and regulators. More often, however, the root of many conflicts is the lack of awareness—or appreciation—for the values of the indigenous group.

The purpose of this article is to examine some of these problems, primarily as they relate to indigenous communities. The discussion is based on my work as an anthropologist conducting cultural assessments over the past 37 years. Specifically, I contrast my work of the last seven years working for one particular indigenous community, with the previous 30 years conducting assessments for federal agencies. I also discuss the benefits that have come from my exposure to Action Anthropology, which has helped guide me in my work with indigenous communities. Action Anthropology in its essence is a collaborative approach whereby the anthropologist uses his or her training and expertise to assist a cultural group in solving a problem, and then takes what has been learned back to the profession to improve method and theory (e.g., by publishing or presenting at professional conferences). Especially helpful has a set of Action Anthropology tenets, which are presented in the conclusion to this article.

### **Cultural impact assessments**

The majority of cultural resource assessments conducted in the U.S. are done to be in compliance with the National Historic Preservation Act of 1966 (NHPA; Public Law 89-665; 16 U.S.C. 47, as amended), which was promulgated specifically to protect the cultural environment of the nation. Historic buildings, archaeological sites, and traditional places important to cultural groups are the main focus. The NHPA is enormously complex (King 2102), and the process and infrastructure that has been built to facilitate implementation has evolved into a bureaucratic quagmire.

The other federal law that produces a large number of cultural resource assessments is the National Environmental Policy Act of 1969 (NEPA; Public Law 91-90, 42 U.S.C. 4321, as amended), which includes the cultural environment among its various topics of concern. More importantly, from the perspective of tribal communities, NEPA is important because socioeconomic impacts need to be considered, as well as environmental justice.

Various other federal laws may require cultural assessments focused includes the cultural environment among its review topics. For example, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, known popularly as Superfund), requires a cultural assessment. Many states also have laws that can require cultural assessment.

The NHPA by far is responsible for the majority of cultural assessment; its Section 106, which details the requirements for assessing effect, almost single-handedly created the cultural resource management industry. One reason for this is that NEPA assessments (and CERCLA) often defer to the NHPA assessment rather than conduct a separate parallel assessment. In its essence, Section 106 of NHPA requires that a federal agency be aware of impacts it may cause before making a decision to go forward. The agency is to make a good faith effort to determine if significant buildings, archaeological sites, or cultural places will be impacted by its undertaking. If so, and with the concurrence of the relevant State Historic Preservation Officer (SHPO) (also created by the NHPA), a Memorandum of Agreement (MOA) must be developed identifying actions that will be taken to mitigate those adverse effects. In theory, tribes and other affected parties are involved in the process.

For the first decades, NHPA only really covered historic buildings and archaeological places. Tribes effectively had no role, despite their obvious relationship to archaeological sites in their homelands, until the mid-1980s when a few things happened which cemented clear roles for tribes in the NHPA in general, and Section 106 in particular. First, the implementing regulations, 36CFR800, defined consultation requirements for agencies to consult with tribes at different steps of the Section 106 process. Second, the National Park Service issued Bulletin 38, highlighted the importance of a category of resource—the traditional cultural property (TCP)—for which potential effects had to be considered (Parker and King 1990). Not only did the TCP category cover many of the types of places important to tribes (resource areas, sacred sites, mythological places), but also because only tribes generally knew about these places, agencies (or their cultural resource consultants) had to engage with tribal representatives to determine if any TCPs might be affected. Third, the 1992 amendments to NHPA established a process whereby a tribe could establish its own Tribal Historic Preservation Office (THPO) and perform the function of the SHPO on their reservation. This may not have affected many federal agencies, but it more broadly strengthened the capacity of tribes in the area of heritage management.

Section 106 has become a complex and bureaucratic process. The process involves the following steps:

- Upon determining that an agency action is an “undertaking,” the agency defines the “area of potential effect” (APE), the area for which the assessment should be conducted, in consultation with the SHPO.
- Upon concurrence, the agency begins studies of the APE in consultation with tribes and other interested parties to see if any resources (historic buildings, archaeological sites, or TCPs) are located there and could be "affected."
- If any resources could be affected, evaluations must be conducted to see if they are "eligible" for listing on the National Register of Historic Places (NRHP), with concurrence from the SHPO and tribes. To be eligible, the resource must have "significance."
- If any resources are eligible for the National Register, the agency must determine if the undertaking will have an "adverse" effect on those resources, again with consultation.

If there will be an adverse effect, the agency must try to negotiate a legally binding MOA with the SHPO and any other group with an interest in the historic property (e.g., a tribe, historical society, community group). The purpose of the MOA is to identify actions that will be taken to "mitigate" the adverse effects. If consultation fails, the agency must get formal comments from the Advisory Council on Historic Preservation, and the agency head must document consideration of such comments in making a decision. The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and productive use of our nation's historic resources, and advises the President and Congress on national historic preservation policy ([www.achp.gov](http://www.achp.gov)).

The Section 106 review process is lengthy and can be expensive. Determinations are not always clear-cut and often depend on one's perspective. The agency is the decider. Though there are dispute resolution processes, in the end the agency will win if they do anything that remotely follows the process. Nevertheless, Section 106 does consider effects on places and resources important to tribal groups, allows them into the process, and can result in a legally binding agreement to mitigate effects.

NEPA requires an agency to assess the effects of a project on the environment. Environment includes the physical environment (geology, soils, air, water), the biological environment (terrestrial and aquatic ecology), social environment (communities, economics), and cultural (archaeology, architecture, traditional use areas, traditional cultural values). Routine actions by an agency can take place without review if they qualify as a pre-determined Categorical Exclusion (CX or CatEx). Actions that clearly put the environment at risk proceed to a full Environmental Impact Statement (EIS), which can take years to complete

and cost millions of dollars. If the risk to the environment is not clear, the agency conducts an Environmental Assessment (EA). The result of the EA either results in a conclusion to proceed with an EIS, a Finding of No Significant Impact (FONSI) and a decision to proceed with project, or a FONSI with agreement to conduct some mitigation to address certain impacts revealed in the EA (a "Mitigated FONSI").

Both EISs and EAs require the agency to consider the potential impacts from different project alternatives before one is selected. The processes are open to the public, stakeholder, tribes, essentially any group that feels the project will harm them. A wide range of impacts can be evaluated. The process is not so strong when it comes to mitigations—agencies can agree to do something to avoid impacts, but unless the Record of Decision details these commitments, which they do not always do, they may not happen. I have been a part of battles on whether an action qualifies as a CX, and whether an EIS should be done instead of an EA. Despite these problems, NEPA remains the primary environmental legislation available for those concerned about an agency's action. The studies also become publicly available. For cultural resource impact assessments, regulations require that NEPA and NHPA be coordinated.

### **Conducting assessments for agencies and tribes**

In recent years, I have been helping a tribal community conduct NHPA and NEPA cultural assessments associated with projects being conducted by utilities and federal agencies. This experience, contrasted with my previous 30 years of experience doing cultural assessments for federal agencies, have broadened my perspective on the basic process. To explain this new perspective, a brief description of my history with the assessment process is provided below.

My first cultural resource assessments were for the U.S. Forest Service in 1980, reviewing potential impacts of timber sales. Even though we were on traditional lands of the Nez Perce Tribe, I do not recall any review or involvement by tribal representatives in our work. Throughout the early 1980s, at least in the Pacific Northwest, there was virtually no meaningful tribal involvement in any federal agency cultural resource program. Archaeologists dominated. It was only when Native American human remains were disturbed during construction that tribes were present. As a graduate student/young professional, it never occurred to me that tribes should be involved in archaeological research, be consulted about our work, or do the work themselves. Nor was there any recognition that non-archaeological places important to Native Americans should be included in our assessments.

This situation began to change toward the end of the 1980s, when various federal agencies or facilities within agencies began working with tribes or other groups with historic or cultural ties to lands under the

agencies' control. There are many example, but one agency that was particularly receptive to working with tribes was the U.S. Department of Energy (DOE). The Nuclear Waste Policy Act of 1982 had included language that required the agency to involve tribes affected by the agency past and present activities. Involvement focused primarily on three programs: development of the high level nuclear waste repository, the cleanup program designed to clean up the residual radiological and chemical contamination from 40 years of nuclear materials production. As a result, tribes played major roles at the DOE's Hanford Nuclear Reservation in Washington State (Stapp and Burney 2002:125–135), where I would spend much of my career, and the Nevada Test Site (Stoffle, Zendeño, and Halmo 2001). While involvement varied from agency to agency, much of the consultation occurred within cultural resources compliance programs. These programs were typically responsible for managing resources such as historic buildings, archaeological sites, monuments, and other things often associated with some community's identity.

By 1990, tribal gains were reflected nationally in such legislation as the Native American Graves Protection and Repatriation Act (NAGPRA) and the amendments to the NHPA discussed above. Tribal representatives began attending meetings with agencies and working with CRM staff to identify and manage TCPs (King 2003). Collaboration with anthropologists and tribes and other indigenous communities became more commonplace (Harrison 2003, Silliman 2008).

My first real exposure to tribal CRM occurred in 1992 when I served as the archaeological representative for a local planning effort to develop a tribally sensitive piece of land. My anthropologist wife arranged for me to meet the tribal representative from the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), Jeff Van Pelt, whom she had met while working at Hanford. We met one afternoon on the sacred landform targeted for development and walked and talked for two hours, while Jeff explained why places such as this were important to the Indian people. I learned more about CRM and the importance of places and resources to the Indian people than I had in eight years of formal anthropological education (Burney and Van Pelt 2002: vi–viii).

Shortly thereafter, I was helping the Department of Energy (DOE) conduct a tribal review of its Hanford CRM Program, which was now five years old. With more and more requirements appearing to involve tribes, the DOE was interested in seeing how it could improve its CRM program to be more responsive to tribal needs and expectations. Up to that point, the four tribes with historical ties to Hanford had not been actively involved. Out of that series of meetings, which occurred over a series of weeks, came the following recommendations, really demands:

- The tribes wanted earlier notification about projects; currently, they were only getting draft reports after the work had been completed.
- The tribes wanted to be involved in the fieldwork, not just sent notifications and draft reports to review.
- The tribes wanted the agency to use a broader definition of cultural resources, not just historic buildings and archaeological sites, but sacred mountains, traditional resource areas, story places, and old trails.
- The tribes wanted the agency to look at Hanford as a cultural landscape with many interconnected sites, not just a bunch of individual, unrelated sites.
- The tribes wanted the agency to recognize that projects effects were much broader than simply impacts to archaeological deposits; visual effects, in particular, were important to consider.

In response to this input, the Hanford CRM program underwent a major reorientation—from an artifact-focused program run by archaeologists for archaeologists, to one that incorporated tribal values when evaluating project impacts.

By this time, I was fully hooked on helping tribes get involved in the program. Part of our challenge was rediscovering the places that were important to the tribes. The tribal communities had been excluded from this part of their homeland for the previous 50 years, and thus their knowledge of the area was limited. We worked together using whatever documentation was available and working with elders who had known the place as children. We spent a lot of time on the land visiting the landscape, and even more time in the office talking about regulations, project effects, and mitigation.

These experiences gave me a newfound respect for the importance of CRM work because I could see how important the resources were to tribal communities. By bringing their own worldviews and values into CRM, American Indians were changing its practice, redefining significance, and introducing concepts and methods that were enriching the entire field. The work was intellectually engaging, providing me an opportunity to contribute to the emerging field of Tribal CRM. I became an advocate and began sharing my experiences with my colleagues at conferences and through professional publication (Stapp 1999; Stapp 2000a, b; Stapp and Prendergast 2006).

Note that while federal agencies were open to tribes getting involved in managing archaeological and other resources, the archaeological profession was far from receptive to the concept. While the 1990s began to see some improvement, the nearby discovery in 1996 of the ancient skeleton known as Kennewick Man renewed the conflicts



between archaeologists and tribes, thereby setting back any progress that had been made (Burke et al 2008). My wife, who had left the contractor supporting the agency to join the program at the CTUIR, was involved in the events surrounding the discovery and fight over control of the remains. We worked together to support the tribal claims to the consternation of our colleagues, which further cemented our relationship with the area tribes (Stapp and Longenecker 2000, 2002, 2005; Stapp and Jones 2008). During the 1990s, the CTUIR Cultural Resources Protection Program became a regional leader in Tribal CRM and helped many tribes develop their own programs (Burney and VanPelt 2002). Concerned that tribes might lose the gains they had made into CRM, in 2002, a colleague and I shared what we had learned in a book, *Tribal Cultural Resource Management, the Full Circle to Stewardship* (Stapp and Burney 2002).

I continued working for the agency into the first decade of the 21st century, but with the transition from the Clinton Administration to the Bush Administration, the direction to work with tribes slowly dissipated. Increasingly my assessments and ongoing relationships with the tribes were less and less appreciated by the agency. The implication was that my support for tribal involvement was influencing my cultural assessment approach and conclusions. I would argue not, but in contrast to colleagues who believed that tribes had no business in CRM, or who now suddenly were conducting assessments to support management preferences, it clearly had some influence. I will talk more about this in the discussion. In any event, by 2009, it was clear that it was time to go, and when I became eligible for early retirement on my 55th birthday, I took it, and started a small CRM consulting business.

Soon after opening an office and hanging my sign out offering my services, one of the Hanford-area tribes asked me to assist them in assessing impacts on their important cultural places from an upcoming agency action. The federal agency was relicensing a hydroelectric dam, which had been built 50 years earlier by the local electric utility company, inundating the tribe's homeland. I said yes and began a new life working for an affected group rather than the agency doing the affecting.

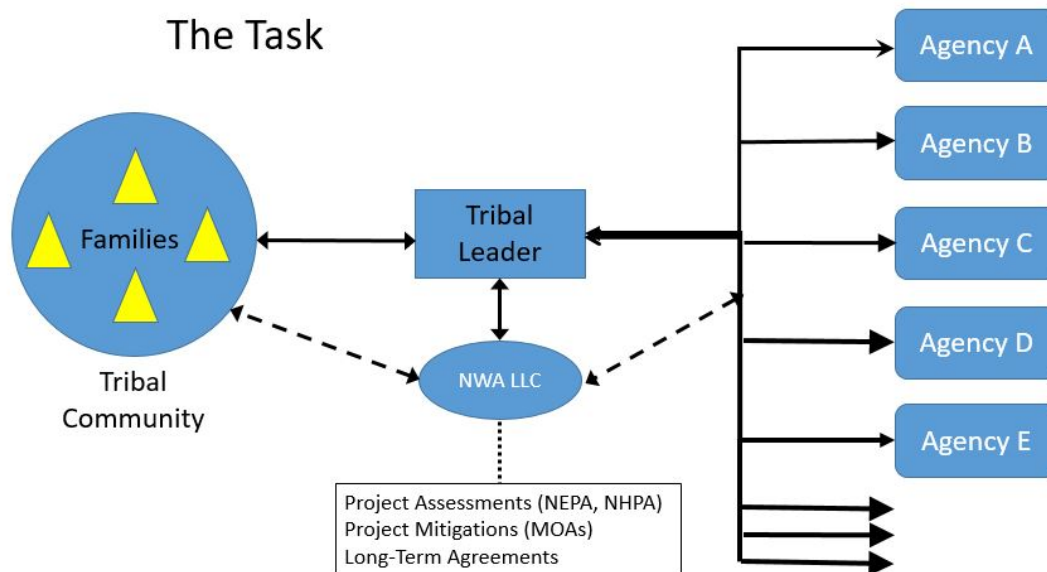
This indigenous group had never been recognized by the federal government as an Indian tribe. They just continued to live on the river, practicing their religion, and, to the degree possible in today's world, live a traditional subsistence lifestyle. Places on the landscape associated with their cosmology and with the living culture—subsistence and historical—are important to maintaining and perpetuating the culture and in practicing their religion. The group lived in a community where they had been placed after their traditional village was inundated by the construction of a dam in the 1950s. Approximately 75 people lived in the village, either directly descended from four main families or having married into the group. Some lived elsewhere, but still identified with the contemporary community and continued to participate in services and

ceremonies at the longhouse.

Agreements made with agencies and individuals during the twentieth century had enabled them to access traditional places and resources important in maintaining their way of life. Their beliefs dictate that they maintain their cultural identity by continuing to practice their traditional beliefs—as their parents did and their parents before them—as directed by the commanding law from the Creator. These traditional laws include, among other things, continuing to care for and use traditional foods and materials from places located across the landscape. Families practice traditional subsistence methods such as fishing salmon, hunting deer and elk, gathering roots and berries, and collecting various traditional materials used in clothing, shelter, basketry, cooking, and healthcare. The community knows it must continue to follow traditional law, or life for them will end.

To develop a strategy for the group, I began meeting regularly with their tribal leader. As a consultant, this was indeed fortunate, because he speaks for the group; moreover, federal agencies in the region recognized him as the person with whom to consult and respected his recommendations (Figure 1). Anthropologists rarely have the luxury to work with the leader of the group they are working for; more commonly they are assigned to a manager a layer or two down in the organization, introducing a whole new set of implementation issues.

I also had the benefit of having had a 25-year working relationship and friendship with this person. While working for the federal agency, we had met over the years two or three times a month with him and the then leader of the group to review projects, discuss options, and listen to their interests, concerns, and direction. During those years, the tendency of the group was not to share information or participate in the impact assessments more than necessary to protect specific places.



**Figure 1.** Diagram showing the relationships between me (NWA LLC), the tribal leader, the tribal community, and the agencies.

We began by looking at the social and economic status of the group. Suffice it to say that the cumulative effects of the last 150 years of development have been devastating. Whereas the dominant society has prospered by cultivating the lands, damming the rivers, building electrical transmission lines and highways throughout the region, conditions for the indigenous communities has declined. Per capita income, life expectancy, education, and social conditions all lag behind the dominant society. Most troubling, however, is the loss of their traditional subsistence base: the salmon are endangered, fishing is regulated by the state, and fishing places are fewer and farther between; natural habitats are virtually gone, invasive plants are increasing, and places to gather food and medicinal plants are harder to access; places to hunt are declining; the water supplies are oversubscribed.

Even more concerning was the steady loss of cultural information within the group. Elders were passing on. Young families had little time to maintain traditional ways as young families once had; they were doing all they could do to keep up with the demands modern society, such as taking their children to participate in school sports events. Many community members found the time to attend longhouse services and cultural events, but could not find the time to maintain many of the traditional subsistence efforts that take most of a day, not to mention \$50 in gas.

The point had been reached where something had to change.

Against this backdrop, the leader and I would hold our regular meetings to discuss recent events, new projects, and ideas. First, the decision emerged to begin gathering existing information about places from historical material, interviews, fieldwork—in short, by whatever means necessary—and for the moment at least, keep the documentation in house. This we did with support from the utility as part of its relicensing effort, which required a NHPA Section 106 review to determine if important resources existed that would be adversely affected.

Before long, neighboring agencies were calling to consult with the group to see if their undertakings would have an adverse effect on the group's traditional cultural places or resources. As we considered the advantages and disadvantages of participating in these various agency assessments, we looked back at the many studies that had been conducted by these agencies over the years. One disturbing pattern emerged: the group was essentially invisible. Agencies had in many cases consulted with the group and addressed concerns, if possible, and complied with the request to not include any of the efforts in the publicly available EISs, to not require TCP site forms (i.e., detailed documentation), and even to not describe the consultations in their EAs, EISs, or Section 106 reports. But, after reviewing the previous decade worth of agency reports, we noticed a disturbing pattern: the group did not exist; there was virtually no mention of them or any of the issues or commitments from the agencies. Unless agency cultural staff involved in the earlier projects were still in those jobs—rarely the case—there was essentially no record of those consultations, and no record of commitments that might have been made. The long-term implications of this pattern was not good.

Out of these observations came the realization that we had to start participating in these assessments, if only to document the existence of the group and their interest in the project area. The sensitive cultural information did not need to be included; we could provide enough material to show that the group had been involved, the impacts that were identified, the effects the group might experience, and any commitments made to mitigate the adverse effects. One nice aspect of NEPA EAs and EISs, in contrast to Section 106 documentation which often contains restricted archaeological information, is that the studies are publicly available—basically forever. Thus, we could use these types of documents to create a record that would benefit the group and be available for future generations.

Before long, we were starting to participate in various impact assessments being conducted for pipelines, electrical transmission lines, new buildings, and land transfers. This experience was qualitatively different from my previous life working with the agency when my primary concern was getting the agency through the process. As we

continued to meet and talk about the individual projects, new areas, different resources, different effects, I began to think about the assessments in new ways. Our perspective was focused on what we could do for the tribal community, what needed to be protected, ways we could use the agency to get what we needed to support cultural perpetuation.

From this new perspective, I began to see problems with the standard way of doing cultural impact assessments:

- Agencies preparing EISs, in many cases, avoided doing cultural resource assessments at all, stating that those would be done under NHPA Section 106; while this may be contrary to the plain language in both NEPA and NHPA, it nonetheless occurs frequently. One problem with this approach was that the Section 106 review would typically not be done until the EIS record of decision had been made and the alternative selected. Thus, cultural resources did not become part of the alternative selection process.
- Preparers of EISs tended to relegate impacts on Native American communities to sections pertaining to cultural resources, and those mostly focus on archaeological resources. The assessments were conducted by non-Native American consultants, occasionally with Native American consultation and involvement by tribal technical staff. Sections of the EIS pertaining to social and economic impacts and environmental justice were generally silent when it came to Native American communities, except to refer the reader to the cultural resources section.
- The agencies and their contractors conducting cultural resources assessments seemed to suffer from groupthink, especially in the area of assessing project effects on tradition resources and traditional resource areas. Visual effects, for example, were rarely considered, and when they were, were typically not viewed as adverse. Plant resources might be discussed in ethnographic overviews, but not included in resource surveys and impact assessments. Cultural resource review methods, after decades of development, were clearly becoming rote, despite significant advances in technologies such as geographic information systems, aerial photography, and near surface remote sensing, and greater understanding of nature of impacts from indigenous groups and other affected groups.
- EISs and Section 106 reviews never seemed to comply with the requirement to consider cumulative effects of their actions. A cumulative effect is the impact that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions (40CFR1508.7). From our

perspective, our community was teetering on the precipice of cultural extinction, every adverse effect was significant.

My perspective on mitigation was also clearly evolving from the agency and CRM profession groupthink of narrowly defining project effects and focusing mitigations options solely on the resource. Having gained a better understanding of tribal needs through our many discussions of the ways these projects were affecting the community, we were now proposing mitigation options that would benefit the people by supporting the goals of cultural perpetuation.

With our new focus on community effects rather than effects on places and resources—new to cultural resource assessments but common, for example, in assessment of projects in urban and other setting—I began to seek out literature on other indigenous communities affected by development. For example, The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007, opened up a whole spectrum of concepts applicable to our setting. Similarly, guidance from the World Bank, which has long funded development projects around the world that have impacted indigenous and other minority cultural groups, provided models for assessing and mitigating project effects (World Bank 1999). I became aware of the work of Michael Cernea, who had developed a model of impacts felt by indigenous peoples around the world displaced by development projects such as hydroelectric dams (Cernea 2000)—the same kind of development that had displaced the people I was working with.

Michael Cernea consistently found the following type of impacts resulting from displacement:

- landlessness
- joblessness
- homelessness
- marginalization
- food insecurity
- increased morbidity
- loss of access to common property resources
- community disarticulation.

These were exactly the kinds of impacts that our community was experiencing. By reading about the ways the World Bank was mitigating these types of effects from their projects (Cernea and Mathur 2008), numerous mitigation ideas appeared, which further stimulated our weekly discussions.

This new perspective crystallized in one particular project. A square mile of land was being proposed for transfer to a local economic organization to benefit the local community—that is the local community which included most everyone but our group. Once the land was transferred, a major energy park was envisioned that could produce as many as 3,000 jobs. I had been involved in projects in this general area for two decades and knew about the many archaeological sites in the area, the rich archaeological remains of a large village at one end, and the native cemetery had been discovered in the early 1990s at the downstream end a mile away. We always took care to protect the cemetery and avoid the archaeological sites.

I set about to conduct a TCP assessment for both the land transfer and a related project for a natural gas pipeline, I would meet regularly with the tribal leader and discuss our options. He would explain the different ways the area was important, I would brainstorm ways we could approach the study, how we might share the sensitive information, and how we might describe effects from the projects. What was surprising to me, as I looked at this area that I knew so well from 15 years of being involved in projects, was that I realized this entire area was a TCP. The tribe's leader in the 1950s, the grandfather of the leader I was currently working with, had revealed the name of the area. The group's ancestors had lived there in a major village in the 1800, prior to the arrival of the epidemics. Contemporary fishery studies revealed the stretch of river to be an important salmon area. A trail documented on a 1860s map leading from the area to the major fishery used today by the tribe was located about 10 miles away. And on and on it went. This was a traditional cultural place that was important to the group in the past, and was important to the group in the future. The land transfer and pipeline would both have significant adverse effects on the TCP and would need to be mitigated.

Next was the decision of whether or not to document the TCP and submit register it to the SHPO. The agency would have to make the National Register determination, and the SHPO would have to concur. This was something the group had not done before, and the leader would have to consult the community to get their thoughts. Long story short, they agreed to limited documentation. Next up was the determination of adverse effects. Here it was not so easy. The agency wanted to define the effects within the boundaries of the land transfer and pipeline. Our major concern was on the secondary effects that would accrue on the larger area once the energy perk was constructed; the secondary facilities that would spin off, the buildings, roads, and so on, what in Section 106 parlance are called "indirect effects."

Eventually, the agency acquiesced to some degree. Our recommendations for restoration of portions of the area, assistance in re-establishing the fishery, commitments to provide funding for a

community member to participate in the many cultural resources activities that would occur in the years to come, and commitments to provide economic opportunities (i.e., jobs) to community members eventually got watered down in the MOA. While disappointing, the fact that the area is now registered as a National Register-eligible TCP means that for years to come, any time a new project is proposed within or adjacent to the boundaries, the group will have to be consulted, and if their TCP will be affected, mitigation will need to occur. Additionally, we have reacquainted the community with a major area that was important in their past and can be important to their future. A major fishery can be re-established, natural areas can be preserved, and there can be economic opportunities from the hundreds of millions of dollars that will be spent on the energy park and supporting facilities in the years to come. Quite a contrast to our typical mitigation from the past for this area—monitoring construction by a tribal member for archaeological remains—which used to be the best deal the group could get.

From this experience, we have moved from project to project, agency to agency, documenting traditional places and resources, documenting effects on current and future generations, and developing agreements with agencies that call for restoration of cultural habitats, access protocols, education opportunities for youth and elders to promote greater cultural understanding of the places, and economic opportunity for community members. Little in the way of sensitive information has been given up, and documentation at the SHPO and in publically available EISs and EAs will ensure that commitments are not “forgotten.” There are still many hurdles to jump, but we are creating an infrastructure for the group that will help keep their traditional way of life, practice their religion, and perpetuate their culture, while creating economic opportunities for those community members who want to live in both worlds.

In retrospect, I can now see the tunnel vision that the agency and CRM profession has. We do things the way we always do things, i.e., we have ways to consult, certain conditions for a site to be eligible for the National Register, concepts that constitute adverse effects, and options available for mitigation. Everyone is in on it, including the SHPO and the Advisory Council on Historic Preservation. Anything that is out of the norm is not just discouraged, it is they are not even considered. This is best described as groupthink, at least among those with the power. Tribal representatives generally just go along because there really is no alternative.

Despite, perhaps in spite, of this groupthink, we have managed to develop a strategy that is producing results. I credit our ability to break out of the groupthink to the amount of time that the leader of the group has spent with me discussing our challenges, our options, and the multitude of contemporary issues that are directly or indirectly



confronting the group. These discussions provide the opportunity for both of us to brainstorm, learn, discuss, and remember in a regular, nonthreatening environment. So often during our discussions, the proverbial light bulb goes off and a new idea pops into one of our heads. We examine them, look at the good sides, the bad sides. Weeks or months later, one of them might reappear from the leader as a direction he wants to pursue, and off we go. I think the lesson here is that collaboration is a process that takes time—time to consult with others, time to distill, and time to evolve.

## **Discussion**

This experience brings to the forefront several points worthy of discussion that relate to situations involving indigenous groups. The first is the influence that a professional's perspective (e.g., social justice, resource focused, client focused) can have on their decision making process. The second is the importance of understanding the indigenous group you are working for and the amount of time it takes gain this understanding. The third is the importance of letting the indigenous group make its own decisions. And finally, building on the first three, I want to close with the importance of promoting the need for the agency and the businesses it regulates or assists to engage in meaningful consultation with indigenous groups.

### *Professional allegiance*

Should the allegiance of a professional affect the recommendations that one makes to a client? Should the finding of an environmental scientist who has a strong environmental ethic differ from the finding of the environmental scientist who has no strong feelings about the environment? Ideally no, but for problems that have no clear criteria for supporting a finding, it can. Should their findings differ from the finding of the environmental scientist who wants to please the client and deliver the finding the client wants? Hopefully not, but again, where the criteria are subjective, it happens.

As suggested above, cultural impact assessments are by their nature subjective at key points in the process. First, there is subjectivity in defining the scope of the analyses that should be conducted; project proponents and agencies typically want the scope to be narrowly defined, while those concerned about impacts typically want the scope to be defined broadly. Second, there are problems determining whether a resource in the project area is eligible for the National Register. The National Park Service has attempted to outline criteria that must be met for eligibility, there still comes a time when significance must be determined, and while that decision is sometime undisputable, more

often what is significant to one person is not significant to another. And so it goes with determining effects; what is a significant effect to one person is not a significant effect to another.

Such is the nature of the beast, but the biggest problem is the professional who believes he or she is duty bound to deliver what the client wants. When the criteria are subjective and one can make a predetermined significant determination by simply parroting back the regulatory language, the entire impact assessment process is undermined. This, sadly, is endemic in the world of cultural resource impact assessment (King 2009).

I witnessed this abuse first hand for years (c.f. Stapp 2009). In some cases, professionals are forced to make determinations that enable projects to proceed quickly, at the risk of losing their job; this is clearly wrong, if not illegal. In most cases, however, it is much more subtle, it simply is the case that a whole subclass of cultural resource professionals believes their function is to get their client through the impact assessment process so that they can get on with their projects. They use the regulations to determine the finding that is needed to speed the project through, and then collect and interpret the evidence accordingly. So, for example, if an archaeological site is in the way of a project, they simply need to conclude that the site is not eligible for listing in the National Register of Historic Places. Chances are, the SHPO reviewer will have neither the time or the interest to disagree, the resource, and the people who value the resource—or depend on the resource as with the group I work for—never have a chance.

Beyond the obvious problem that this situation holds for indigenous groups, it undermines the general process of impact assessment because if the system is fixed, why participate? Indigenous groups are forced to give up information that is often sensitive, forced to participate in meetings, and agree to measures that allow the agency to appear as if they are doing a legitimate assessment. Then, in the end, determinations are made that go against the group, and the resource is lost. It is understandable that why some groups prefer to not participate. But, what if you have no choice? For example, if you can't afford to lose the place or resource?

Fixing this problem will not be easy due to the subjective nature of many of the determinations that must be made. However, it will certainly help if professionals have independence and not subject to employer pressure. At a minimum, our assessments must be made by qualified individuals, based on facts, and consistent with the regulations. Ultimately the agency is the one that makes the decision, but if it wants to diverge from the professional recommendations, it should explain why.

*Knowing the cultural group involved in the assessment*

The notion that one should seek to understand the cultural group involved in the assessment is obvious. However, one does not always have the time nor opportunity to learn, especially if one is working for an agency. Moreover, if just starting in a position, the group may be new to you. Some groups may not always be particularly open to a new person, so it can be difficult. The point is to make an effort because the better one knows the group being impacted, the better the impact assessment will be. A professional needs to take every opportunity possible to get to know the group.

The real point of this discussion, however, is to make the point that regardless of how long one has spent with a group, do not ever think you understand the group. It is basically impossible to fully know a different cultural group and understand the decisions they make. Once you understand this limitation, you will be better able to provide assistance. It is dangerous to think you know a group, because then you might think you know what is best for them. Remember that your job is to provide ideas and options to the group so that they can make any decisions that need to be made. You may not agree with their decision, but realize that it is their decision to make, that you do not really understand them well enough to make a decision for them, and a group must have the freedom to make mistakes if they are to learn. I have known the group I work with for 30 years, but am always amazed how little I really know them.

*The importance of consultation*

The primary purpose of cultural impacts assessments, at least under NHPA and NEPA, is to ensure that the agency makes an informed decision. Consultation is the process that ensures the agency becomes aware of how concerned parties feel about a resource that is at risk from a project, and how those potential impacts might be mitigated. The concept is defined by the Advisory Council on Historic Preservation as follows:

Consultation does not require a specific outcome. Rather, it is the process of seeking, discussing, and considering the views of consulting parties about how project effects on historic properties should be handled [ACHP n.d.: 14].

While the concept is simple, meaningful consultation often proves difficult to achieve; sometimes it is even difficult to get an agency to do any consultation, meaningful or not. Pushing for consultation is the unwritten responsibility of the cultural resource professional.

Achieving true consultation is challenging; it takes time and often produces input that project proponents do not want to hear. Consultation is also something that can be reduced to a “checking the box” mentality.

For the social justice-paradigm CRM professional, consultation is something to achieve; you do what needs to be done to make it happen. For the project-focused CRM professional, consultation is something to avoid. Thus, for the social justice case, the professional might push to set up a face-to-face meeting with the potentially affected group, where the project can be explained, questions can be answered, and issues, concerns, and expectations can be heard; the project personnel would then take that input and incorporate it into the project plans, and return to explain to the group how their input was incorporated. In the project-focused case, consultation might proceed by writing a letter to the leader of a potentially effected group explaining the project and inviting input. If comments are received, a follow-up letter is sent thanking the group and promising to address the comments. If no response is received, the attempt to consult is documented and the project proceeds. Both approaches comply with the letter of the regulations, but not the spirit.

Tom King, the anthropologist and prolific writer concerning all issues CRM, recently explained in a comment applying to the DAPL case how the concept and responsibility of consultation has evolved among many in the project world:

It strikes me that [we] have fallen into what seems to be the common trap of confusing **CONSULTATION** with **DICTATION** (by which I mean dictating an outcome, not reciting words for faithful transcription). This confusion is widespread. Land managers, project planners, and regulators, for instance, exhibit it when they don't consult with indigenous groups or local residents because, in the relevant country's legal system, those groups don't have the authority to dictate outcomes. They also exhibit it by "consulting" only pro-forma, getting "input" and ignoring it. Courts exhibit the same confusion when they let government agencies get away with it—as the Corps of Engineers has been allowed to on the Dakota Access Pipeline.

Thanks to this confusion, consultation has come to be regarded as a zero-sum game; it's all or nothing. If you don't have the power to dictate an outcome, "consultation" with you can be reduced to mere bureaucratic fluff.

What ever happened to the notion of reasoning together? Of recognizing that different groups have varying interests, and that good public policy demands that we try to achieve meetings of the minds? To practice the fine art of compromise? (King 2017)

## Conclusion

Federal agencies increasingly need to incorporate indigenous values into their impact assessments. To accomplish this goal, agencies would do well to involve anthropologists who have experience working with indigenous communities. Working with an indigenous community can be a challenge, however, even for anthropologists with experience. I was fortunate early on to have been exposed to the subdiscipline of Action Anthropology, developed by Dr. Sol Tax, about which I learned by attending a Society for Applied Anthropology conference and reading an article about its origins (Lurie 1999). By the time I came along, Sol Tax and his students/colleagues had been working with indigenous communities for decades, and had learned some of the do's and don'ts of using one's expertise to aid a community experiencing change. I credit the advice they gave in their various writings with helping me work in my work with tribes in CRM settings. In recognition of the value that this advice had for me, I worked with several of his former students and colleagues in 2011 to define the following set of tenets that might characterize Action Anthropology (Stapp 2012:4–5):

1. *We serve at a community's discretion and direction.*
2. *We recognize that we will never fully know a community and its needs, but to the extent we can, it takes time, and we therefore temper our bias for action by avoiding premature choices and responses.*
3. *We work collaboratively with a community to develop alternatives for improving conditions.*
4. *We respect the right and ability of a community to make choice affecting its future and the freedom to make its own mistakes.*
5. *We are open and truthful.*
6. *We promote community sustainability and capacity building, and we strive to work ourselves out of a job.*
7. *As professionals, we learn from our experiences and use them to improve our method and theory.*
8. *We recognize that our source of funding can present conflicts of interest and we confront this problem by insisting on professional independence.*
9. *We share what we have learned with the community, our professional colleagues, and others, as appropriate, to improve the human condition.*

I believe that anyone working with another cultural group trying to adapt to the pressures of a changing and developing world will benefit by thinking about these tenets and incorporating them into the particular setting that they find themselves.

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