

Defending the cultural patrimony of the Quechan Indian Nation in Imperial County, California, USA

Courtney Ann Coyle
Environmental and land use consultancy

Introduction and background to the struggle

The Quechan Indian Nation has lived at the juncture of what is now known as the border of California, Arizona and Baja California since time immemorial. This area is rich in culture, history and archaeology, and remains important today to the living indigenous cultures along the Colorado River.

Certain developments threaten the cultural continuity of the nation, most notably, the proposed Glamis Imperial Mine. The mine, proposed about seven years ago, is a massive, open-pit, cyanide heap-leach gold mine on 1,600 acres of what is now, off-reservation federal public (Bureau of Land Management) land. This proposed mine would be located in the heart of an area withdrawn from future mining claims to protect Native American religious and cultural values.

The area contains some 55 recorded historic properties eligible for listing on the National Register of Historic Places, including the Indian Pass-Running Man Area of Traditional Cultural Concern, items subject to the Native American Graves Protection and Repatriation Act (NAGPRA) and religious sites including prayer circles, ceremonial places, shrines, ceramic scatters, petroglyphs and spirit breaks linked by ancient trails. This largely pristine area is adjacent to designated wilderness, critical habitat for the federally listed desert tortoise and a designated area of critical environmental concern for Native American cultural values.

This highly controversial mine was denied in January 2001 by Clinton Interior Secretary Bruce Babbitt after an exhaustive, six-year public permit process, including three major environmental documents, several rounds of public hearings and formal government-to-government consultation between the federal government and the Quechan tribal government and its Culture Committee.

In November 2001, without tribal consultation, Bush Interior Secretary Gale Norton issued a one-paragraph statement rescinding the denial of the mine based on a purported legal error: that without regulations to define “undue impairment”, the Interior Department cannot determine when a project would unduly impair Indian heritage resources. The Interior Department is now reconsidering the project. Based on this change of policy, the National Trust for Historic Preservation in the United States listed the Indian Pass area as one of its 11 “most endangered historic places” for 2002.

This article summarizes the nature of the threat and administrative and legislative actions that have been taken in 2002 in an effort to stop the mine, once again, and protect the cultural heritage, the way of life and spiritual practices of the Quechan people. It is hoped that this article will expand participants’ knowledge and understanding of the region and share strategies to protect the irreplaceable cultural resources on both sides of the border.

Protecting the sacred, protecting the Quechan Indian Pass area

In 2002, new state and federal legislative initiatives in the United States have focused on protecting Indian sacred places. A brief tour of recent legislative and administrative efforts and their status follows.

California State sacred places bills

In 2002, the California legislature demonstrated leadership and introduced two Indian sacred places bills. SB 1828 (Burton) sought to amend the California Environmental Quality Act (CEQA) to require avoidance and mitigation of impacts to bona fide Indian sacred places. SB 483 (Sher) sought to amend the Surface Mining and Reclamation Act (SMARA) to require new open pit mines near sacred places and within protected areas of the California desert, such as the Quechan Indian Pass area, to be completely backfilled.

The bills went through several rounds of substantive amendments. Over 50 California tribes and 30 national and state organizations, including environmental, historic preservation, labor and others, supported the bills.

The broader CEQA bill passed the California legislature by strong bipartisan votes and wide margins of 4:1 in the Assembly and 3:1 in the Senate. The SMARA bill also easily passed both houses. No editorial page supported the desecration of the Indian Pass area by mines. In fact, the *Sacramento Bee* wrote an editorial, "Indian Pass clearly deserves rescue" (September 7, 2002), in support of a stateside legislative fix. Unfortunately, on September 30, 2002, Governor Davis vetoed SB 1828.

California Governor vetoes bill, but promises action

The reasons for the Governor's veto suggested to those following the bill that his office might not have fully understood how current cultural resource management often fails or the seriousness of the values at stake for Indian people. He did, however, sign SB 483 requiring complete backfill and contouring. However, for broader strategic purposes, SB 483 was joined to, and contingent upon, SB 1828 being signed.

In signing SB 483, the Governor made a strong statement in support of the Quechan Nation's struggle against the Glamis mine and directed his Secretary for Resources "to pursue all possible legal and administrative remedies that will assist in stopping the development of the mine." The Governor also directed the Resources Agency to seek urgency clean-up legislation when the legislature convenes in December 2002 to allow SB 483, decoupled from SB 1828, to become law.

Also, in his SB 1828 veto message, the Governor directed his Secretary for Resources and the Director of the Governor's Office of Planning and Research to work with the proponents of the bill to introduce a bill in 2003. The administration has subsequently met with tribes in southern and northern California, and the Governor has directed his highest-level staff to develop a broad sacred sites protection bill that, in the Governor's words: (1) tribes will feel good about, (2) will afford greater protection to Indian sacred places and (3) that the administration can sponsor. He has also promised that all administrative and legislative actions will be taken without delay and without resource loss.

Concerned communities must hold the Governor to his promises to the Quechan people,

all California Indians and California's environment. From the experience with this legislative issue, it became very clear that cultural resource professionals must do a better job of articulating to the public and elected officials, early and often, how current cultural resource management often fails, the seriousness of the values at stake for Indian people and why cultural heritage preservation matters. Only continued vigilance and input from citizens will ensure that these promises become reality.

U.S. federal sacred places bill

Protecting Indian sacred places is not just a state lands issue in the United States. In July 2002, Rep. Rahall (West Virginia) introduced HR 5155, the Native American Sacred Lands Act. This federal bill would essentially codify Executive Order 13007, President Clinton's 1996 order on Indian sacred sites, and require federal agencies to: (1) accommodate access and ceremonial use of sacred places, (2) protect sacred places from significant damage and (3) add a requirement for meaningful government-to-government consultation. The bill would also provide a mechanism for tribes to petition the government to designate sacred places on federal lands as unsuitable for certain uses. The introduction of the bill came after the National Congress of American Indians passed a resolution asking for such a bill.

In 1998, the *Los Angeles Times* and the *Washington Post* wrote that the Indian Pass dispute is the first significant test of Executive Order 13007. So far, the Bush administration is failing this test miserably. At congressional hearings over the last year, Interior representatives consistently were unable to testify as to whether any projects under its jurisdiction have been denied in favor of protecting sacred places; nor could witnesses respond whether Interior consulted with the Quechan Nation prior to rescinding the denial of the Glamis mine.

This summer, the Quechan Nation was invited by Rep. Rahall to participate in the Washington, D.C. press conference introducing the bill and was invited to testify at the September 25, 2002 House Resources Committee hearing on the bill. Unfortunately, the bill (along with many others) did not advance during this last legislative session; however, it is expected that the bill, or a version of it, will be reintroduced in 2003.

Concerned individuals and organizations on both sides of the border can support the reintroduction of the bill by asking that their representatives along the entire California-Mexico border join in cosponsoring the federal bill in 2003. Representative Bob Filner (D-Chula Vista) now represents the California border area and joined as a bill sponsor last session.

Bipartisan Interior appropriations bill amendment

In September 2002, U.S. Senators Boxer (California), Nighthorse-Campbell (Colorado) and Inouye (Hawaii) introduced an amendment to the fiscal year 2003 Interior Federal Appropriations bill that would prohibit Interior from using funds to determine the validity of the mining claims of, or to approve the plan of operations submitted by, Glamis for the proposed Imperial mine. This amendment arose from the tribe's long-standing relationship with Senator Boxer, her devotion to cultural and resource issues, and her consistent opposition to the mine. The support from Senators Campbell and Inouye (co-chairs of the Senate Indian Affairs Committee (SIAC)) arose from the tribe's testimony at the July SIAC oversight hearing on the Interior's implementation of sacred sites protection.

The Senate accepted the amendment without objection, sending a strong message to

Interior and Glamis. However, very few appropriations bills were approved before the end of this last session. Senator Boxer and other members of the Congress are committed to reintroducing the provision in the next legislative session. When the bill is ultimately adopted, Interior's actions on the mine could be suspended for up to one year, and that suspension may be renewed.

Mine's claim validity

In spite of the Appropriations amendment and with the California bills awaiting the Governor's action, again with no consultation with the tribe, Interior released a determination that Glamis' mining claims were valid on September 27, 2002. Documents recently obtained from the tribe's Freedom of Information Act request show that Glamis was meeting with Interior's Washington, D.C. lawyers just two days after Interior's D.C. office had reviewed the draft validity determination and just nine days prior to the public release of the determination. In contrast, the Quechan Nation was expressly informed by BLM that it would not consult with the nation on the exam prior to its approval by Interior.

On October 4, 2002, Senator Boxer asked that the Interior Inspector General begin an independent investigation of the circumstances surrounding the validity exam and whether actions were taken to advantage the company in case a "buy-out" of Glamis's property interests were proposed by Interior or Glamis. The investigation is ongoing, but has already revealed that Glamis has had numerous private meetings and communications with Interior during the new administration prior to key actions being taken by Interior to advance the company's position.

Current status

On December 2, 2002, California Senators Burton, Chesbro and Ducheny (the new border senator for California) introduced SB 18, an act relating to Native American sacred places. This bill is a "spot bill" that will act as placeholder until it may be needed to introduce a more developed bill to protect Indian sacred places; the bill may end up being similar to SB 1828. Also on December 2, 2002, Senators Burton and Sher introduced, and Senator Ducheny co-authored, SB 22, relating to mining, which is the "trailer bill" to, essentially, "de-link" last session's SB 483 from SB 1828.

Moreover, on December 12, 2002, the California State Mining & Geology Board will be introducing emergency regulations to require complete backfill and recontouring during mine reclamation. Glamis claims that costs to fully mitigate the physical impacts of its mine, such as backfilling, will render the mine uneconomic, given expected prices for gold.

Finally, on December 3, 2002, Glamis wrote the State of California that U.S. Senator Reid of Nevada sent a letter to Interior Secretary Gale Norton to request that Interior conduct an appraisal and attempt to reach an agreement with Glamis for the purchase of its mining claims comprising the Imperial Project by the federal government.

What have we learned?

State and federal lawmakers in both the United States and Mexico need to hear early and often that a diverse public supports meaningful and enhanced protection for Indian sacred places and other historic places and heritage resources of significance to living cultures. It is hoped that this outline of the administrative and legislative actions to re-fight the proposed Glamis open pit

gold mine may prove useful for other struggles to protect other important places on either side of the border.

It is long past due for our nation's cultural resources to be treated on par with our nation's natural resources. We need to continue to work together on both sides of the border to protect the irreplaceable in both nations. With your continued support, we will make a difference for present and future generations.