



# Cultural Affiliation at Fort Union National Monument, New Mexico



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**Cultural Affiliation at Fort Union National Monument, New Mexico: A Native American Graves Protection and Repatriation Act Section 5 Compliance Assessment and Recommendation for Human Remains and Associated Funerary Objects under the Control of Fort Union National Monument**

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Cover Photograph  
Fort Union National Monument, 2003. David Ruppert

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## Introduction

This paper is the result of a project to determine if the human remains in the control of Fort Union National Monument are of Native American ancestry and therefore subject to the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). For those remains determined to be Native American efforts are made to determine which federally recognized Indian tribes are, or are likely to be, culturally affiliated with the human remains and associated funerary objects.

### Native American and Cultural Affiliation

At the outset of this report, it is important to make a distinction between 1) research conducted to determine if human remains are **Native American** and, 2) if they are found to be Native American, research to determine the **cultural affiliation** of these remains. The first determination answers a broad question regarding the relationship of the remains to a tribe, people, or culture that is indigenous to the United States [25 USC 3001 § 2(9)]. Biological research, along with other lines of evidence, is sometimes used to help answer this first question (the results of non- destructive measures on the remains from Fort Union NM are presented in this report). The second determination narrows the focus and provides an affiliation of the remains with a specific tribe or tribes for the purpose of consultation and repatriation. An answer to the first question is important since it determines if NAGPRA should be applied in specific cases involving human remains. Once it is determined that NAGPRA does apply, evidence is then gathered and used to determine cultural links of remains to an existing federally recognized tribe or tribes.

Biological research alone (usually non- destructive measurement of the remains as mentioned above) may not always be definitive in determining if remains are Native American. Such research on individuals of mixed biological ancestry may result in ambiguous determinations of ancestry and a determination that NAGPRA applies in specific cases may rely on additional evidence. If additional non- biological evidence also provides ambiguous results an administrative decision may be needed to determine if the law applies to a specific case. Such a case is dealt with in this report.

Cultural affiliation may also prove to be somewhat ambiguous. Depending on the amount of information related to specific human remains (e.g. archeological evidence or existing historical records) it may prove difficult to determine with a high degree of certainty the cultural affiliation of a given set of remains. The law directs federal agencies to consult with Indian tribes to gather additional

information on affiliation of specific remains to aid in that agency's final determination.

Since cultural affiliations for the human remains that are the subject of this report are difficult to determine, recommendations to the park are made here to help identify those Indian tribes most likely to be affiliated. Consultation with these tribes will aid in the final determination of cultural affiliation.

## Report Structure

The report first details sections of the Native American Graves Protection and Repatriation Act pertinent to the current study. Following this brief listing of authorities, the report provides a description of the human remains controlled by Fort Union National Monument, including a summary of the non-destructive biological research. Next, the results of research into documentary evidence that helps to shed light on cultural affiliation is provided. Finally, the report findings are detailed and conclusions and recommendations made regarding the next step in the process of determining cultural affiliation.

## NAGPRA Provisions

### **NAGPRA: Applicability to the four sets of human remains under the control of Fort Union**

The Native American Graves Protection and Repatriation Act (NAGPRA) was passed by Congress and signed into law by President George H. W. Bush on November 16, 1990, to provide for the protection of Native American graves and establish a mandate for the repatriation of human remains, associated funerary objects, unassociated funerary objects, sacred objects, and items of cultural patrimony to lineal descendants and culturally affiliated tribes (Public Law 101-601, 104 Statute 3048).

### **Provisions of Section 5 – Inventory for Human Remains and Associated Funerary Objects**

Section 5 of the Act pertains to human remains and associated funerary objects collected before the enactment of NAGPRA on November 16, 1990. Under Section 5, federal agencies and museums that have control of collections of Native American human remains and associated funerary objects are directed to compile an inventory of such remains and associated funerary objects and, to the extent possible, to identify the geographical and cultural affiliation of these remains and associated funerary objects. The inventory is to be compiled in



consultation with tribal governments and tribal traditional religious leaders from whose traditional lands the remains and objects were originally obtained. Consultation also takes place with Indian tribes judged likely to be culturally affiliated although the remains and objects were not removed from their traditional lands.

The Act also requires that the inventory list the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with a specific Indian tribe but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to likely be culturally affiliated with a tribe or tribes.

When this determination of cultural affiliation is completed, the Act requires these inventories and a Notice of Inventory Completion be sent to the Secretary of the Interior for publication in the *Federal Register*. If cultural affiliation of human remains or associated funerary objects is determined pursuant to this section, federal agencies and museums are directed to notify the affected Indian tribes within six months of the completion of the inventory. Federal agencies and museums were given five years to complete the inventories required by Section 5 with a provision for extensions of this deadline if a good faith effort to comply with it had been made.

#### **43 CFR § 10.9 - Inventory Consultation**

- (2) *Initiation of consultation.* Museum and Federal agency officials must begin inventory consultation as early as possible, but no later in the inventory process than the time at which investigation into the cultural affiliation of human remains and associated funerary objects is being conducted. Consultation may be initiated with a letter, but should be followed up by telephone or face- to- face dialogue.
- (3) *Provision of information.* During inventory consultation, museums and Federal agency officials must provide the following information in writing to lineal descendants, when known, and to officials and traditional religious leaders representing Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains and associated funerary objects.
  - (i) A list of all Indian tribes and Native Hawaiian organizations that are, or have been, consulted regarding the particular human remains and associated funerary objects;
  - (ii) A general description of the conduct of the inventory;

- (iii) The projected time frame for conducting the inventory; and
  - (iv) An indication that additional documentation used to identify cultural affiliation will be supplied upon request.
- (4) *Requests for information.* During the inventory consultation, museum and Federal agency officials must request, as appropriate, the following information from Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with their collections:
- (i) Name and address of the Indian tribe official to act as representative in consultations related to particular human remains and associated funerary objects;
  - (ii) Recommendations on how the consultation process should be conducted, including:
    - (A) Names and appropriate methods to contact any lineal descendants of individuals whose remains and associated funerary objects are or are likely to be included in the inventory; and
    - (B) Names and appropriate methods to contact traditional religious leaders who should be consulted regarding the human remains and associated funerary objects.
  - (iii) Kinds of cultural objects that the Indian tribe or Native Hawaiian organization reasonably believes to have been made exclusively for burial purposes or to contain human remains of their ancestors.

**43 CFR § 10.9 - Culturally Affiliated Human Remains Inventory and Culturally Unidentifiable Human Remains Inventory**

- (d) *Documents.* Two separate documents comprise the inventory:
  - (i) A listing of all human remains and associated funerary objects that are identified as being culturally affiliated with one or more present-day Indian tribes or Native Hawaiian organizations. The list must indicate for each item or set of items whether cultural affiliation is clearly determined or likely based upon the preponderance of the evidence; and

- (2) A listing of all culturally unidentifiable human remains and associated funerary objects for which no culturally affiliated present-day Indian tribe or Native Hawaiian organization can be determined.

## **Provisions of Section 7 – Standards for Repatriation**

If the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects (NAGPRA Section 7(a); 25 USC 3001).

### **Legal Definitions**

“For the purposes of the Act the term **cultural affiliation** means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group” (NAGPRA Section 2(2); 25 USC 3001).

Cultural affiliation is established when the preponderance of the evidence — based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion — reasonably leads to such a conclusion (43 CFR 10.2).<sup>1</sup>

“For the purposes of the Act the term **Native American** means of, or relating to, a tribe, people, or culture that is indigenous to the United States” (NAGPRA Section 2(9); 25 USC 3001).

### **Human Remains and Associated Funerary Objects in Control of Fort Union National Monument**

In the spring of 1958, Martin Archuleta, a Fort Union National Monument (FOUN) employee, discovered four sets of human remains during the course of

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<sup>1</sup> NAGPRA lists biological data as one of ten lines of evidence that can be used to determine “cultural affiliation” [25 USC 3001 § 2(2)]. Using biological evidence alone in a determination of “cultural affiliation” poses serious questions. It is the position of the authors of this report that biological evidence can be considered along with many other lines of non-biological evidence to address the language of the law, but without other non-biological evidence, it alone does not provide a scientific basis for determining cultural affiliation.

constructing new park personnel housing. Archuleta informed Fort Union Superintendent Homer Hastings of the discovery, and Hastings assigned National Park Service (NPS) archaeologist George Cattanach the task of excavating the remains. Cattanach recovered the bodies of four men and approximately forty artifacts. The individuals were buried in a grave only eighteen inches deep. The remains were sent to Christy Turner II, NPS collaborator, for examination in the late 1950s. The artifacts stayed at FOUN until 1972 when they were sent to the NPS Arizona Archaeological Center Preservation Laboratory, to be studied by then graduate student, Randall Morrison (Morrison 1975: 381- 382). During the interim between Morrison's study and the present, the remains have been housed at the Western Archeological and Conservation Center in Tucson, Arizona.

All but ten of the approximately forty artifacts found with the human remains have either been lost or have disintegrated. As described on FOUN museum catalogue cards, the surviving associated funerary objects consist of the following:

FOUN Catalogue Number 8252, one turquoise bead, one shell bead, a fragmentary shell bead and a leather fragment;

FOUN Catalogue Number 8254, fabric;

FOUN Catalogue Number 8257, bark fragment;

FOUN Catalogue Number 8260, originally read "rotted leather," this was crossed out and "metal/tin" was written in;

FOUN Catalogue Number 8261, fabric;

FOUN Catalogue Number 8270, rotted leather; and

FOUN Catalogue Number 8271, rotted leather.

All discussion of cultural affiliation or repatriation of the four men found buried together will include these associated funerary objects for the remainder of this document.

FOUN also has control of a skullcap that was recovered by George Cattanach in 1958 from Room 6- 223, a brick lined privy. The skullcap is cleanly cut, and is interpreted to have been the result of an autopsy. The skullcap is thought to date to the late 1800s in correspondence with the tenure of the military Fort (National Park Service Fort Union NAGPRA Undetermined Cultural Affiliation Inventory).

## Previous NAGPRA Compliance Efforts

The first steps towards NAGPRA compliance were taken in July of 1995 when Fort Union National Monument participated in a multi- park, multi- tribe meeting in Oklahoma. Harry Myers, the superintendent of FOUN at that time, was in attendance. Myers told the tribes about the four individuals found in the mass burial in 1958 (Carranza 2001:1). Representatives from the Comanche, Kiowa, and Jicarilla Apache tribes were in attendance (Harry Myers, personal communication 2005). The Comanche, Apache, Jicarilla, and Kiowa tribes expressed an interest in the remains (National Park Service, Plains Tribe Meeting Minutes 1995: 5). Gordon Yellowman of the Southern Cheyenne voiced concern that the remains would not be claimed, and said that if this occurred, the Southern Cheyenne Tribe would claim the remains. Upon returning to Fort Union N.M. from Oklahoma City, Harry Myers wrote several letters to Mr. Merton Sandoval, the THPO of the Jicarilla Apache tribe inviting him and any other tribal members to come to Fort Union National Monument to talk and to examine the collections. Mr. Myers never received a response from the tribal members he contacted. Myers also spoke with the Comanche tribal representative a year or two later and invited her to come to the fort, but she did not visit (Harry Myers, personal communication 2005).

In 1995 Todd Fenton, a graduate student from the University of Arizona, examined the skeletal remains of the four nearly complete individuals (Western Archeological and Conservation Center catalog cards, Fort Union File). The terms used to describe the “race” of the individuals is different depending upon which documents are examined. On the skeletal analysis sheets, two of the individuals (Catalog numbers FOUN 8540, and FOUN 8543) are identified as “Native American,” and two (Catalog numbers FOUN 8541, and FOUN 8542) are identified as being possibly “admixed Caucasoid- Mongoloid” (Fenton 1995). On the museum catalog cards from the Western Archeological and Conservation Center where the remains are stored, two of the individuals (FOUN 8540 and FOUN 8543) are identified as “Native American,” and the other two (FOUN 8541 and FOUN 8542) are identified as possible “admixed Anglo- Native American.” Presumably, “admixed Anglo- Native American” is comparable to “admixed Caucasoid- Mongoloid.” The remains were identified as two “Native Americans,” and two possibly “admixed Caucasoid- Mongoloid” individuals on the National NAGPRA Culturally Unidentified Remains Database. In November of 1995, the NPS Fort Union National Monument NAGPRA inventory was completed. All five individuals in control of the park are listed without a cultural identity indicated (Carranza 2001: 1).

In 1999, a memorandum from the regional curator at the Intermountain Support Office in Santa Fe was submitted to Fort Union. This memo indicated

that all culturally unidentified individuals included in the NAGPRA Inventory for Culturally Unidentified are Native American.<sup>2</sup> The memo also indicated that the tribal affiliation for these individuals remains unknown (Salazar- Halfmoon 1999). According to Heather Young from the Intermountain Support Office in Santa Fe, all culturally unidentified remains were re- evaluated in 1999. Since two of the individuals were thought to be Native American (FOUN 8540 and FOUN 8543), an administrative decision was made that all of the remains were Native American. This decision also encompassed the skullcap (NPS Catalog #8500) from the privy (Heather Young, personal communication 2005).

In 2001, Dr. Debra Komar and Wendy Potter from the Maxwell Museum Laboratory of Human Osteology completed an osteological examination of the skullcap (NPS Catalog #8500) from the privy. The skullcap was determined to belong to a male between 31 and 60 years of age. The isolated skullcap is thought to be the result of a medical autopsy. Metric analysis for ethnic affinity indicated that the individual was most likely of Hispanic descent. Non- metric analysis of ethnic affinity indicates that the individual was either Hispanic or Caucasian (Komar and Potter 2001). These findings raise the question of why this individual remains on the culturally unidentified NAGPRA inventory if he or she was not Native American.

In February of 2001, Fort Union National Monument applied for funding for NAGPRA consultation and repatriation through the National Park Service funding procedures. (Carranza 2001: 1). Funding was received, and the result is the NAGPRA Repatriation and Consultation Project that is detailed in this report.

To summarize, the superintendent of Fort Union National Monument, Harry Myers, attended a multi- tribe, multi- park meeting in Oklahoma in 1995. No further consultation resulted from this meeting. Also in 1995, the skeletal remains were examined and found to represent two Native Americans and two individuals of Caucasoid- Mongoloid admixture. In November of 1995, the Fort Union NAGPRA inventory was completed. No cultural identity was indicated for the skeletal remains. In 1999, an administrative decision was made to assign to all of the skeletal remains Native American ancestry. In 2001, the skullcap was examined and determined not to be of Native American origin. Finally, in February of 2001, funding for consultation and repatriation was applied for through the standard internal funding request process.

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<sup>2</sup> Classifying these remains as “culturally unidentifiable” may have been premature since very little research, including tribal consultation, had taken place to support this determination. The determination of “unidentifiable” is often made following archeological, archival investigations, and tribal consultation.

## Methods of Current Study

Ideally, the goal of the current study was to determine the actual identities of the four men. Barring this, research focused on identifying the Native American tribes with the greatest presence in the Fort Union area during the 1860s and 1870s. Further research regarding the skullcap has not been pursued due to the 2001 study that indicated that the skull is of European ancestry (Komar and Potter 2001).

Randall Morrison's (1975) study of the remains and context was utilized to establish the probable dates of the incident. Based upon buttons and the caliber of the weapons that killed the men, Morrison argues that the event under investigation most likely occurred sometime between the years of 1863 and 1872 (1975: 402). Morrison interprets the remains in the context of the general lawlessness present around the Fort during the time period of interest, stating that the archaeology suggests that the army may have utilized "extralegal" means of controlling the activities of outlaws in the vicinity. Forensic evidence indicates that one of the men was shot in the shoulder from a distance. The men were then overtaken, beaten, shot in the head, and then buried near the military fort (Morrison 1975: 403- 404). Morrison believes that "at least some members of the military establishment at Fort Union 'covered- up' and sanctioned an illegal execution of native civilians, possibly between 1863 and 1872" (Morrison 1975: 404).

## Summary of Sources

Following are summaries of each source used to find clues to the possible biological ancestry of the remains, and to find evidence to help in the determination of the separate issue of cultural affiliation for these remains under the Native American Graves Protection and Repatriation Act. Resources examined during the course of research include the (1) James W. Arrott Collection, (2) Historic newspapers published between 1863 and 1872, (3) the *Fort Union National Monument Draft Ethnographic Overview and Assessment*, (4) the Report of the Commissioner of Indian Affairs in the Michael Steck, Superintendent of Indian Affairs, Papers at the Center of Southwest Research at the University of New Mexico in Albuquerque, (5) Published Materials and archival sources pertaining to Fort Union, (6) Individuals with expert opinion or knowledge, (7) Three separate osteological analyses, (8) Archaeological Interpretation. Original spelling and terminology were retained for each of the sources examined.

## James W. Arrott Collection

James W. Arrott, a rancher with property near Fort Union, compiled the Arrott Collection (Wallace W.S. 1964: ix, in Emmett 1965). James W. Arrott was also vice- president of Fort Union, Inc., the group that spearheaded the efforts to obtain national monument status for Fort Union in the early 1950s (Zhu 1992: 25). Arrott initiated the collection with a few books and pamphlets, but eventually made it his goal to bring together all documents relating to the Fort. Mr. Arrott hired a research assistant at the National Archives to identify documents pertaining to Fort Union, and documents in other repositories throughout the United States were identified and added to the Arrott Collection (Wallace W.S. 1964: ix- x in Emmett 1965). The Arrott Collection is considered to be the largest assembly of documents pertaining to Fort Union, including some 16,363 documents from the War Department, Office of Indian Affairs, and Senate and Congressional records. The collection also includes some excerpts from newspapers and a small collection of secondary sources (Sanchez et al. 2005: 161).

Since the Arrott Collection is so sizeable, only documents falling between the years of 1863 and 1872, the time period determined by Morrison (1975) to be the most likely window for the event in question, were examined. To further narrow the still large sample, an online finding aid provided by New Mexico Highlands University in Las Vegas, New Mexico was utilized to identify documents of particular interest or importance. Once such documents were identified, they were located and read in greater detail for mention of the men, or of Native American tribes present in and around Fort Union. The Arrott Collection was also determined to represent a sufficient sample from the National Archives to preclude a trip to Washington D.C. In addition to the fact that Mr. Arrott hired a research assistant to gather documents pertaining to Fort Union at the National Archives, expert opinion, including that of Harry Myers, ex- superintendent of Fort Union National Monument, advised that a visit to the National Archives would most likely be unnecessary and unfruitful.

An examination of the Arrott Collection reveals no specific reference to the four young men found during construction activities at Fort Union National Monument in 1958. However, one tantalizing document dating to April 30, 1863 indicates that four men, named Felipe Vasques, Juan Andrez Archuleta, Anastacio Trujillo, and Robert Babbitt were accused and convicted of desertion and sentenced to execution. General Carleton expresses confusion over his powers to execute the men, and requests clarification from Joseph Holt, Judge Advocate General in Washington D.C. (AC, NA, RG 98, Dept of NM Ltrs, v. 13, p. 436). Unfortunately, no further records of what became of these men were



recovered throughout the course of research. While the correspondence of four men found buried together and four men accused of desertion is intriguing, it cannot be assumed that these are the same four men on the basis of the evidence recovered.

The Arrott Collection provides much valuable insight concerning the presence of specific Native American tribes in and around Fort Union and the attitude of the military regarding these tribes. As an illustration of the treatment of the Native Americans in the vicinity of Fort Union, consider orders issued by General Carleton in Santa Fe to Captain Plympton at Fort Union in July of 1863 to attack and destroy all grown male Indians met between Fort Union and Camp Easton. Women and children are not to be harmed; rather they should be taken as prisoners (AC, NA RG 98, Dept. of NM Ltrs., v. 13, p. 608). Then, in August of 1863, General Ben Cutler orders Lieutenant McMullen at Fort Union to “leave no stone unturned to give prompt and efficient protection to the stock of all people living within a radius of fifty miles of Fort Union” (AC, NA, RG 98, Dept. of NM Ltrs., v. 14, p. 9). Furthermore, Cutler directs McMullen, “in case it is necessary you will detach for the purpose of capturing and killing bands of hostile Indians who may be committing depredations in your vicinity” (AC, NA, RG 98, Dept. of NM Ltrs., v. 14, p. 9). These orders indicate that the policy of the military towards the Native American tribes in the area was quite brutal and geared towards protecting the interests of the United States government and the white settlers in New Mexico.

Several documents in the Arrott Collection make specific references to certain Native American groups in the Fort Union area. For instance, General Carleton informs Major Joseph Smith that Navajos stole 8,000 sheep from the Burgwin Valley near Fort Union in August of 1863 (AC, NA, RG 98, Dept. of NM Ltrs., v. 14, p. 75). There are also several instances of Navajos being sent to Fort Union en route to the Bosque Redondo Reservation at Fort Sumner (AC, NA, RG 98, Dept. of NM Ltrs., v. 14, p. 75; AC, NA, RG 98, Dept. of NM Ltrs., v. 14, p. 196; AC, NA, RG 98, Dist. of NM Orders, v. 41, p. 293- 4).

The Arrott Collection provides direct information concerning the activity of different Native American groups in the vicinity of Fort Union, primarily through reporting various “depredations” committed by said tribes. Comanches are implicated in several documents. For example, in 1864, Comanches are accused of killing five Americans at lower Cimarron Springs (AC, NA, RG 98, Dept. of NM Ltrs., v. 15 (11A), p. 89); and in 1869, Fort Union is issued orders to send out a company of officers to arrest eleven Comanches and return them to the Fort as prisoners (AC, NA, RG 98, Dist. of NM Ltrs., v. 44, p. 200).

In addition to the Comanches, other Plains tribes are mentioned in the Arrott Collection. For instance, in 1864, Captain Edward H. Bergmann of Fort

Bascom is ordered to take men and go to Fort Union to help them to protect settlers on the Santa Fe Trail from attacks perpetrated by Comanches, Kiowas, and Cheyennes between Cimarron and the frontier of Missouri (AC, NA, RG 98, Dept. of NM Ltrs. V. 15 (11A), p. 101- 2). Another document mentions that Comanches and Kiowas sometimes live in the northeastern portion of the territory of New Mexico (Special and General Orders, Dept. of NM, Fort Union, January 23, 1867).

Utes and Jicarilla Apaches are implicated in both helping and hindering the interests of the United States Army. In 1864, Fort Union is ordered to send blankets and shirts to Colonel Carson at Maxwell's Ranch to issue to the Utes and Apaches who are going to participate in the contemplated expedition against the Kiowas and Comanches (AC, NA, RG 98, Dept. of NM Ltrs., v. 15 (11A), p. 217). Conversely, in 1865, Fort Union is ordered to send out officers to pursue Jicarilla Apaches accused of attacking some herders between a ranch on the Pecos and Tecolote (AC, NA, RG 98, Dept. of NM Ltrs., v. 16, p. 287). In 1866 Carleton writes to Headquarters at Cimarron indicating that a decision needs to be made as to what course of action to take to address the present serious trouble with the Utes and Jicarilla Apaches living in the area (AC, Fort Union Letter Book, Letters Received and Letters Sent, Fort Union, New Mexico, October 7, 1866). Mescalero Apaches are accused of 'committing depredations' near Upper Las Vegas and in San Miguel County (AC, Letters Received and Letters Sent, October 26, 1866, Fort Union Letter Book). Finally, a document dating to January 23, 1867 indicates that the Mouache Utes and Jicarilla Apaches live at the Cimarron Agency and go east onto the Plains to hunt buffalo (AC, Special and General Orders, Dept. of NM, Fort Union New Mexico, January 23, 1867).

The military records indicate that a wide variety of Native American tribes were in the vicinity of Fort Union during the time period between 1863 and 1872, including: Navajos, Comanches, Kiowas, Cheyennes, Utes, Mouache Utes, and Jicarrilla and Mescalero Apaches.

### Historic Newspapers

Historic newspapers examined include the *Santa Fe Weekly New Mexican* for the period between November 7, 1863 and March 1, 1870; *The Santa Fe Weekly Gazette* for the period between 1864 and 1869; and the *Santa Fe Weekly Post* for the period between October 2, 1869 and June 22, 1872. The papers were located at the Denver Public Library, New Mexico State Archives, and the Zimmerman Library at the University of New Mexico.

Since newspapers on microfilm are difficult and time consuming to read, it was determined that the best strategy was to examine only weekly newspapers. Then, if one of the papers referenced the four men, efforts would be made to

locate daily papers to gather more information. The papers in the sample selected represent coverage for the entire period of interest, or between 1863 and 1872. Unfortunately, much of the *Santa Fe Weekly Gazette* was in very poor condition and all but impossible to read. Otherwise, headlines and articles were scanned in an effort to locate a reference to the four men or to Native American tribes in the vicinity of Fort Union.

While unable to find a direct reference to the event in question, the nineteenth century newspapers provide an additional historical line of evidence to determine which Native American groups were present in the region surrounding the Fort. According to Dr. Frances Levine, consulted due to her considerable knowledge of New Mexican archaeology and history, it is not surprising that no reference was made to the four men because she believes that Santa Fe is not in close enough proximity to Fort Union to cover the disappearance of the four men (Personal Communication, June 2005). Unfortunately, according to the New Mexico Newspaper Project database (<http://libdata.unm.edu/nmnp/>) there are no newspapers published during the 1860s or early 1870s in any closer proximity to Fort Union than Santa Fe.

Several newspapers indicate Navajos “committing depredations” in the region surrounding Fort Union, specifically Rio Arriba county in 1864 (*Santa Fe Weekly Gazette* [SFWG], 17 September 1864) and San Miguel county in 1866 (*Santa Fe Weekly New Mexican* [SFWNM], 27 April 1866) and 1867 (SFWNM 22 June 1867).

A variety of different bands of Utes and Apaches are implicated for being in the region as well. In 1866, the *Santa Fe New Mexican* reports that the Utah and Jicarilla Indians are on the warpath and will lay waste to the entire region unless something is done. The article goes on to state that the Capote and Tabawatch Utes are intermarried with the Jicarilla Apaches, and that General Carleton has sent some troops to watch over the Mowatche Utes located at Maxwell’s Ranch near the Cimarron Agency (SFWNM, 25 August 1866). The fact that the Capote and Tabawatch Utes are intermarried with the Jicarillas is of particular interest because this indicates that despite the fact that the two bands are not generally associated with the region immediately surrounding Fort Union, they still have genetic and cultural connections with the Jicarilla Apaches, who are associated with Fort Union.

In September of 1866, Colonel Norton, the superintendent of Indian Affairs, and Governor Army depart from Santa Fe for the camps of the Utahs and Apaches in Mora County. There, the men met with the chiefs of the two bands, and made plans to send some people to San Juan country to bring the headmen of the Wemenuche and Capote bands to Mora as well (SFWNM, 8 September 1866). Again, the *Weekly New Mexican* reports the presence of Ute Indian bands in the

vicinity of Mora, and therefore of Fort Union, despite the fact that the region is not typically associated with these bands.

On October 20, 1866, the Santa Fe Weekly New Mexican reports that the Jicarilla and Mescalero Apaches have been robbing and plundering “promiscuously” in Mora and San Miguel Counties. The Mescaleros even chased a stage between Las Vegas and Fort Union (SFWNM, 20 October 1866). The Jicarillas continue to cause mischief on June 30 of 1868 when they are reported to have kidnapped two children in Mora County. Other Jicarillas have been implicated in committing depredations on the Pecos (SFWNM 20, June 1868). Finally, in 1870, the Weekly New Mexican details the problems caused by the Utes and Apaches in the vicinity of Maxwell’s Ranch because the land was sold despite the fact that the Indians claim that it belongs to them (SFWNM, 20 September 1870).

Newspapers from the time period between 1863 and 1872 indicate a fluid and dynamic tribal composition for the region surrounding Fort Union. Again, the aforementioned groups are present, i.e. the Jicarilla Apaches, Navajos, and Mowatche Utes. However, there are also other groups moving through the region, including the Wemenuche, Capote and Tabawatch Utes, and the Mescalero Apaches.

#### Fort Union National Monument Ethnographic Overview and Assessment

The authors of the *Fort Union National Monument Ethnographic Overview and Assessment* state, “The primary focus of this study was on tracing the regional development of Hispanics and Native American Indians and how they helped shape and influence the surrounding physical, historical, and cultural landscape of Fort Union” (Sanchez et al. 2005: 1). Previous studies of Fort Union have focused on the military history of the region. The ethnographic overview utilizes archaeological evidence, historical primary source materials, written histories, diaries, and oral interviews (Sanchez et al. 2005: 1).

The four men that are the subject of this study are briefly mentioned in the *Fort Union National Monument Ethnographic Overview and Assessment*. The authors state, “Although many Indian captives successfully escaped from Fort Union, some were not as fortunate. One clandestine gravesite, excavated by archaeologists in the 1970s uncovered the remains of four male skeletons who appeared to be Hispanic and or Native Americans” (Sanchez et al. 2005: 68). Furthermore, the location of the grave and wounds suggest execution and the records contain frequent references to Indians escaping from the Fort (Sanchez et al. 2005: 69). It should be noted that the burial was not actually excavated in the 1970s, but in 1958.

Fort Union's primary responsibility was to control the nomadic Indians, including the Comanches, Kiowas, Utes, Apaches, and Navajos, in the region and to protect settlers and others traveling on the Santa Fe Trail (Sanchez et al. 2005: 33). Fort Union was also charged with the difficult task of preventing trade between New Mexicans and Plains tribes, specifically known as Comanchero trading. Interestingly, the army sanctioned a limited amount of this trade for the potential information that New Mexicans could provide about the activities and position of Plains tribes (Sanchez et al. 2005: 7- 8).

Native American activity in the region that would later center on Fort Union has a long and complex history. Archaeological evidence indicates that pottery and corn were produced as early as 200 A.D. in the region. Excavated house mounds suggest that the Tecolote- Ribera area, Watrous Valley, and Mora- Ocate had significant population densities prehistorically (Sanchez et al. 2005: 29). The presence of Plains artifacts at Pueblos and Pueblo artifacts at Plains sites imply that economic and other interactions have a history extending to at least 1300 A.D. in New Mexico (Sanchez et al. 2005: 30). Blackfeet Indians from Montana and Gros Ventre Indians came into the Southwest on raids as early as the 18<sup>th</sup> century. Finally, Crows, Shoshones, Arikaras, and Osage Indians regularly had contact with New Mexicans as raiders and traders (Sanchez et al. 2005: 31- 32).

While many Native American tribes were present in the Fort Union area, by far the largest ethnic groups in the area were Hispanic New Mexicans, Navajo, Apache, Ute, Pueblo and Comanche tribes (Sanchez et al. 2005: 5). Fort Union participated in many campaigns against Indians in the region, including action against the Utes and Jicarilla Apaches from 1854- 1855, Navajo campaigns ranging between 1863- 1867, and operations against the Mescalero Apaches, Kiowas and Comanches in 1860, 1864, 1868, and 1874. Native Americans were often involved on the side of the army in battles with other groups. For example, in 1857 Pueblos and Navajos were hired for a campaign against the Mogollon Apaches, in 1860, Pueblos were recruited to serve in battle against the Kiowas and Comanches, Kit Carson assembled 250 Utes and Apaches at Fort Union to fight the Comanches, and after the Bosque Redondo years, Navajos were used by the military (Sanchez et al. 2005: 73- 33). An interpreter from Zia Pueblo was utilized in 1863 (Sanchez et al. 2005: 43- 44), and Zuni scouts were hired during the Navajo efforts (Sanchez et al. 2005: 77). Parties of Navajos often stopped at Fort Union en route to the Bosque during the attempt to concentrate the tribe there in the 1860s (Sanchez et al. 2005: 53). Navajos who attempted to escape from Fort Union on their way to the Bosque were usually shot (Sanchez et al. 2005: 69).

Several Native American tribes are reported to have 'committed depredations' near Fort Union. For example, Navajos are accused of attacking settlers within the vicinity of Fort Union and Mora in the early 1860s (Sanchez et

al. 2005: 48), and Comanches often committed mischief in both San Miguel and Mora Counties. The Cimarron region to the northeast of Fort Union became a focal point of conflict because the hunting and raiding territories of many different tribes overlapped. The Cheyennes and Arapahoes were allied to the north of this area, and the Kiowas, Comanches, and Kiowa Apaches were allied to the south (Sanchez et al. 2005: 39).

Many Native Americans were held as prisoners at the Fort. In the second half of the history at Fort Union, numerous San Carlos Apaches were held at the post for years (Sanchez et al. 2005: 5). While Pueblos were more often cooperative with the Fort than not, there is an instance where several Isleta Pueblos were captured by soldiers and held for trading with Plains tribes (Sanchez et al. 2005: 13). The resident Indian community in and around Fort Union often consisted of women and children with combatant husbands, sons, brothers, and fathers as prisoners (Sanchez et al. 2005: 25). Plains Indians were much more commonly found as prisoners at the Fort than as employed by the Fort (Sanchez et al. 34). Over time, it became routine for troops to go to the reservations to capture women and children to entice combatant men to come to Fort Union to surrender. This practice was especially true with Apaches (Sanchez et al. 2005: 65).

*The Fort Union National Monument Ethnographic Overview and Assessment* provides a good summation of the relationships between Fort Union and the indigenous populations of New Mexico. As a general rule, Pueblos had more cordial relationships with both the Spanish and the United States Army than the more nomadic tribes, including the various Apache tribes, Navajos, and tribes from the Plains (Sanchez et al. 2005: 7). Native Americans were to both serve the Fort and be pursued and imprisoned by the Fort. The tribes with the most frequent interactions with the Fort include the Navajos, Kiowas, Comanches, Jicarilla Apaches, and Utes. However, New Mexico was dynamic and tribes from as far away as Montana were known to visit the region for raiding and trading. And, finally, the authors of this ethnographic overview interpret the clandestine burial of four executed men as representative of Native Americans who attempted to flee the fort were killed in the process (Sanchez et al. 2005: 68- 69).

Report of the Commissioner of Indian Affairs from the Michael Steck,  
Superintendent of Indian Affairs Papers

Michael Steck was appointed Superintendent of Indian Affairs for New Mexico in 1863. The records of interest from this collection consist of those from his tenure as superintendent between 1863 and 1865 (University of New Mexico Center of Southwest Research 2005). *Reports of the Commissioner of Indian*

*Affairs* were submitted annually to the War Department and detail the activities of the department for the previous year.

There is no specific mention of the four men, but the *Reports of the Commissioner of Indian Affairs* are useful for shedding light on the locations and activities of Native Americans in the area surrounding Fort Union during this time period. The 1863 report for New Mexico states that the primary tribes of the territory are the Navajos, the Apaches and the Utes (“Utahs”). The Navajos occupy the Western portion of the territory and are by far the most powerful and hostile of the tribes. The Apache Tribe is made up of three bands: the Jicarillas who live in the northeastern area of the territory, the Mescaleros who live in the southeastern area, and the Gilas who are located in the extreme southwest. In 1863, approximately four hundred Mescaleros were living at the Bosque Redondo. Like the Apaches, the Utes consist of three different bands. Two of the bands live in the northwest portion of the territory, while the other lives in the northeast portion (*Report of the Commissioner of Indian Affairs* 1864: 13- 14).

Levi J. Keithly, the Indian Agent for the Cimarron Agency indicates that Mohuache Utahs and Jicarilla Apaches reside under his jurisdiction. Keithly goes on to describe an incident in August of 1863 wherein a band of Arapahoes and Cheyennes steal some of the Ute’s horses. The Utes pursue the thieves and kill a Cheyenne in retaliation. Keithly notes that there is ongoing violence between the Utes, Arapahoes, and Cheyennes (Keithly in *Report of the Commissioner of Indian Affairs* 1864: 114- 115).

In 1864, the Mohuache Utes join together with the Tabeguache Utes and are transferred to the jurisdiction of the Colorado superintendency. The Capote and Winnemuche Utes continue to live in the western portion of the territory (*Report of the Commissioner of Indian Affairs* 1864: 181). Also in 1864, two Jicarillas Apaches are taken prisoner and held at Fort Union. They are later released upon promising to convince the chiefs of the Jicarilla to meet at Mora (*Report of the Commissioner of Indian Affairs* 1866: 197). And finally, Miguel Romero Y Basa, probate judge of the Office of the Probate Court in Las Vegas, N.M. submits a complaint regarding the Navajos stealing sheep in the area. He goes on to urge that the Navajos not be settled on the Rio Pecos because they steal too much stock (Romero Y Basa in *Report of the Commissioner of Indian Affairs* 1866: 215- 216).

The *Report of the Commissioner of Indian Affairs* for the years 1863 and 1864 provide another line of evidence that the Mohuache and Tabeguache Utes, Jicarilla Apaches, Arapahoes, Comanches, Cheyennes, and Navajos were present in the region surrounding Fort Union in the early 1860s.

## Other Printed and Archival Sources

As noted by Sanchez et al. (2005) in the *Fort Union Ethnographic Overview and Assessment*, most published material concerning Fort Union has a decidedly military perspective. Our review of the literature confirms this appraisal. Only sources with information relevant to the issue of cultural affiliation are reported here.

Leo Oliva's book, *Fort Union and the Frontier Army in the Southwest* (2003) provides a comprehensive overview of the history of the Fort, with an emphasis on the role of the military in the Southwest between 1851 and 1891. Oliva also briefly discusses the Native American groups in the region, saying that the Jicarilla Apaches originally occupied the region where Fort Union was founded and constituted the most serious threat to travelers on the Santa Fe Trail. While Comanches probably had the closest relationship with eastern New Mexico of the Plains tribes, the Kiowas sometimes allied with them in efforts to raid settlers on the Santa Fe Trail (Oliva 1993: 14). By the 1820s, Cheyennes and Arapahoes had begun to raid in New Mexico as well. In sum, Fort Union was established to protect settlers from raids by Comanches, and Mescalero and Jicarilla Apaches (Oliva 1993: 15- 16).

Other major sources examined include the William Edward Matthews Letters housed at the Fort Union National Monument Archives, and Chris Emmett's *Fort Union and the Winning of the Southwest* (1965). No useful information was discovered in these sources.

## Expert Opinion

It seems that most New Mexico historians and archaeologists are aware of the four human remains discovered at Fort Union, but none have further information regarding these men. Many individuals were contacted; those who provided the most useful information include: Dr. Durwood Ball, professor of history at the University of New Mexico and editor of *New Mexico Historical Review*; Dr. Larry Ball, professor emeritus at Arkansas State University; Dr. John P. Wilson, New Mexico historian; Dr. Frances Levine, Director of the Palace of the Governors; Robert Torrez, former New Mexico State Historian; David Brugge, retired NPS historian and archaeologist; Harry Myers, former superintendent of Fort Union; Dr. Jerry Gurule, one of the authors of the *Fort Union Ethnographic Overview and Assessment*; Sandra Jaramillo, NM State Archives; and Dr. Estevan Rael- Galvez, New Mexico State Historian. Perhaps of most interest were interviews with former superintendent of Fort Union National Monument, Harry Myers, and email correspondence with retired NPS historian, David Brugge.



Harry Myers has done considerable research regarding the four men, and he suggests that they may be part of a group of outlaws known as the Coe Gang. In 1867, Colonel Lane of Fort Union was becoming increasingly irritated with the general lawlessness in the region and issued an order stating that four men, by the names of Seth Luce, Joseph Knapp, Hank Johnson, and T.B. Brown, were to be arrested if they came into the confines of the fort. He suggested that these four men are more dangerous than Indians because they were “in the semblance of white men” (National Archives [NA], Letters Received, District of New Mexico B. 139, 1867, Microfilm M1088, Roll 5, frame 0534). A subsequent letter indicated that T. B. Brown was actually arrested and spent six months in prison at Fort Union. Brown wrote to Commanding General Getty in Santa Fe pleading his side of the story and claimed that he does not belong on the list of outlaws on Lane’s General Orders No. 10 (NA, Letters Received, District of New Mexico B. 139, 1867, Microfilm M1088, Roll 5, frame 0525.). While the mention of four outlaws specifically of interest to Fort Union is tantalizing, it is impossible to correlate the remains with these four outlaws. Lane indicates that the men appeared to be “white” and according to skeletal analyses (discussed below), at least three of the men have skeletal features that indicate at least some Native American ancestry. Furthermore, it appears as though one of the men, T. B. Brown, was in prison and therefore was not involved in a chase resulting in the execution of the four outlaws.

David M. Brugge, retired NPS historian, believes that the dress of the four men is indicative of a Euroamerican ethnic identity rather than a Native American identity. However, it should be noted most items of value were probably removed from the bodies at the time of burial. Brugge suggests that the murder of Hispanic New Mexicans would probably have been more likely to be clandestine, in the manner described by Morrison (1975), than would murder of Native Americans. However, he notes the possibility of mixed Native American and Hispanic ancestry, given a history of over two hundred and fifty years of captives and slaves in New Mexico (see Brooks 2003). One of the men had associated beads and a pendant of probable Native American manufacture, indicating Native American identity or perhaps a partially acculturated Hispanic captive. Brugge states that there are many possibilities for cultural affiliation; Comanche, Kiowa, Jicarilla Apache, or Ute are most likely. Furthermore, during the mid to late 1860s Mescalero Apaches and Navajos were held at Ft Sumner, and some may have been present at Ft Union under various circumstances. Raiders, traders or emissaries of many tribes visited Ft Union, including Pueblos, Cheyennes, Tonkawas or even members of eastern Native groups resettled in Indian Territory/Oklahoma, although these last seem less likely (David M. Brugge 2005, personal communication).

## Osteological Analyses

Three osteological analyses have been performed on the skeletal remains by (1) Turner, (2) Fenton, and (3) Beck and McClelland. The racial terminology utilized by the analysts has been retained in the following descriptions of each study.

Christy Turner II, now professor emeritus at Arizona State University, completed the first osteological analysis in 1959. Turner concluded that the men represented a mixture of North American Indian, Spanish and possibly Negro, were between the ages of 20 and 30 and were in excellent health at time of death. These results are summarized in a letter from Turner to the NPS regional archaeologist dating to June 8, 1960 (on file at WACC in Tucson).

Todd Fenton, a graduate student at the University of Arizona, completed a second analysis in 1995. Fenton identified the individuals as follows: FU- 1 (NPS catalog #8540), 21 to 35, male, Native American; FU- 2 (NPS catalog #8541), 21 to 35, male, Anglo- Native American mixture; FU- 3 (NPS catalog #8542), 30 to 45, male, Anglo- Native American mixture; and FU- 4 (NPS catalog # 8543), 30 to 45, male, Native American. These results can be found on catalog cards housed at WACC and in the osteological report on file at WACC.

Dr. Lane Beck, Associate Curator of Bioarchaeology at the Arizona State Museum and Dr. John McClelland, Lab Manager for Osteology at the Arizona State Museum completed the third and final osteological analysis in June of 2005. Burial FU- 1, Accession FOUN- 0022I, Catalogue Number FOUN 8540 was determined to be of Native American ancestry and between the ages of 27 and 30. Burial FU- 2, Accession FOUN- 0022I, Catalogue Number FOUN 8541 was determined to be of European ancestry and between the ages of 22 and 24. Burial FU- 3, Accession FOUN- 0022I, Catalogue Number FOUN 8542 appears to be between the ages of 50 and 60 and to be of mixed European and Native American ancestry. Finally, Burial FU- 4, Accession FOUN- 0022I, Catalogue Number FOUN 8543 was between the ages of 45 and 49 at death and of Native American ancestry. All four of the men were shot to death and show evidence of perimortem trauma. Furthermore, the diverse angles of the bullet wounds indicate that the men died in a violent conflict rather than a more formal execution.

Since the various osteological analyses arrived at different conclusions, it is necessary to distinguish between the three and to determine the most accurate and rigorous of the disparate analyses. Dr. Dennis Van Gerven, physical anthropologist at the University of Colorado, Boulder agreed to review the three analyses and concluded that the only acceptable study is that completed by Dr. Lane Beck and Dr. John McClelland. Van Gerven noted that the skeletal traits

used by Beck and McClelland to determine 'racial' identity are appropriate and that this analysis and report were by far superior to the previous two. Furthermore, the earlier analyses do not present the data upon which their determinations of ancestry were based and therefore cannot be evaluated.

Dr. Beck, when queried, corroborates Dr. Van Gerven's conclusions: "Standards have changed since Turner's analysis was conducted. Additional anatomical studies have been completed and our ability to extract information has been enhanced" (Personal Communication, July 2005). Furthermore, the purposes of Turner's and Fenton's studies were different than the most recent analysis. Turner and Fenton were asked to provide basic information with minimal documentation. According to Beck, Fenton was only asked to complete a basic inventory of the skeletal remains. Additionally, determining specific ancestral identification was not a priority in either of the two previous studies. Conversely, the most recent study was designed to provide a standardized set of documentation to determine ancestry. Therefore, the third and most recent skeletal analysis should be accepted as the most rigorous and accurate study.

### **Archaeological Interpretations**

To quickly review, the details of the situation as interpreted by Morrison (1975) are as follows. Four men were pursued, and one was shot in the left shoulder. The men were then overtaken, beaten, shot in the head, and dragged to their final resting place using leather straps found with the bodies, and buried in a grave approximately 18" deep. The mass grave was located immediately adjacent to the location where the Santa Fe Trail entered Fort Union. The men were laid out in an orderly fashion, oriented to the southeast. It appears as though most items of value were removed from the bodies, but FU- 1 or 8540 was left with a couple of shell beads and a turquoise pendant. Buttons and the caliber of bullets used to kill the men indicate that the murders took place sometime between the years of 1863 and 1872. Additionally, the location of the burials indicates that at least some members of the U.S. military at Fort Union were cognizant of and probably even sanctioned the execution of four civilians. Furthermore, the most recent osteological analysis has indicated that two of the men were most likely of Native American ancestry; one of mixed European- Native American ancestry, and one of European ancestry.

The findings of the osteological report raises the question of what four men representing such varied ancestry were doing together, and perhaps more importantly, how did they end up in the same grave? Does the fact that they were treated in the same way indicate that their murderers perceived them as part of the same class of people? Or, does the fact that they were all together in the first place indicate some type of fictive kinship or shared group identity? Issues such

as these are especially important to address in the context of 19<sup>th</sup> century New Mexico. As noted by James F. Brooks in *Captives and Cousins* (2003: 37)

Identities like Comanche, Kiowa, Apache, Ute, Pueblo, Spanish-American and Hispano seem timeless and unquestioned in much historical literature. The intergroup economic, cultural, and biological exchanges across the centuries show that ethnicities in the Southwest were often a matter of biological interchange, strategic reconstruction, and political invention, as sexual enslavement, market penetration, and state pacification policies closed some avenues of identity while fostering others.

Several different scenarios for what the treatment of the four men is indicative of in terms of ethnicity and identity are possible when framed within the context of captivity and slavery that dominated life in New Mexico for two and a half centuries. The identity of these four men is not simply a matter of strict biological classification. Rather, social and historical processes must be considered.

The fact that the four men were buried in a formal grave and laid out in an orderly fashion demonstrates a degree of respect for them as people. If Morrison's reconstruction is correct, and it seems to be plausible, then the men were dragged from some distance to the Fort for burial. This is interesting because it would have been quite easy to just leave them where they lay, or dispose of them into ravine or other sheltered locale. It is useful to ask: if the murderers considered these men as Native Americans, would they have expended such effort to give them a "decent" burial? Historical records (discussed earlier in this document) suggest that the answer to this question is probably "no." Policy towards Native Americans was brutal and swift. After a deadly confrontation, Native dead were usually not buried. And, drawing from Brugge (discussed above), the murder of Hispanic New Mexicans would have been more likely to be clandestine, i.e. the military would not leave the victims men lying where civilians could have discovered them. In this chain of events, the men, despite the fact that osteological analysis is indicative of a European heritage for only one individual, may have identified as Hispanic or, rather, were perceived as such by their murderers, and were accorded the respect of a burial.

The location of the mass burial is also of interest. The fact that the grave is directly adjacent to the Santa Fe Trail and to the entrance to the Fort indicates that, at least for a time, the disturbed soil would have been visible to all of those coming and going from the military installation. Perhaps, even more important than the visibility of the burial, is the fact that word would have gotten around that the military had taken matters into its own hands in terms of controlling the lawlessness in the region. General Orders No. 10 issued by Colonel Lane at Fort

Union, discussed previously, is indicative of and establishes the context of the frustration that military officials felt regarding the volatile situation around the Fort. In this scenario, the grave serves as a warning to those around the Fort that lawlessness is not going to be tolerated any longer. If the goal of the execution and burial was to serve as a warning, then the perception of the victims as Hispanic or Native American becomes less important and less meaningful to the current study because the treatment and burial of the individuals has nothing to do with their ethnicity, and everything to do with their status as outlaws.

Finally, what are we to conclude from the fact that a young man of European ancestry was murdered or executed with three individuals of Native American ancestry? As discussed above, the long and complicated history of captivity and slavery in New Mexico suggests that this young man may have been captured and perhaps even raised by Native Americans. The “European” man was treated in the same manner as the Native American men (killed, dragged, and buried); thus the murderers may have perceived all four men as ethnically similar. In this scenario, a biologically European man might identify ethnically with Native Americans.

## Conclusions

This study was unable to identify any direct records regarding the four sets of human remains discovered during construction activities at Fort Union National Monument in 1958. For the purposes of NAGPRA, the men are not clearly associated with any present-day tribe, but research reveals the Native American groups most likely to be culturally affiliated with the remains.

Based upon a preponderance of the evidence, it is recommended that FU- 1 (FOUN 8540), FU- 3 (FOUN 8542), and FU- 4 (FOUN 8543) be accepted as representative of Native American ancestry. The most recent and rigorous osteological analysis has indicated that the three men demonstrate skeletal characteristics typically associated with Native Americans. Additionally, the geographic, archaeological, and historical information presented previously is supportive of a finding of Native American ancestry.

FU- 2 or FOUN 8541 poses a challenge that can be approached in any of several different ways. One possibility is for FU- 2 or FOUN 8541 to be included as having potential cultural affiliation with a Native American tribe along with the other three men, despite osteological analysis indicating European ancestry. There are several arguments for this option. Biological evidence is only one of the ten lines of evidence that are eligible for use in determining cultural

affiliation.<sup>3</sup> If FU- 2 is stricken from the inventory strictly based upon biological evidence, it would privilege that line of evidence over others in regard to a determination of cultural affiliation. The fact that the man was treated identically to and buried with others of Native American ancestry is indicative of a potential shared group identity, particularly in light of the long history of inter-ethnic slavery and captivity in colonial and territorial New Mexico. Historical and archaeological evidence, therefore, supports identification as Native American.

Alternatively, with an administrative decision issued by the National Park Service, FU- 2 could be determined to not be of Native American ancestry based upon the third and final osteological analysis. In this scenario, FU- 2 would still be included in the consultation process as it would be impossible to discuss the other three sets of human remains without mention of the fourth. All historical and contextual findings previously presented in this report would be shared with the tribes involved in consultation.

It is recommended that the skullcap, NPS Catalog #8500 and NPS Accession # 234, found in the privy be stricken from the NAGPRA inventory because osteological analyses indicate a Caucasian or Hispanic ancestry and there is no other evidence to contradict this identification. The preponderance of the evidence, in this case, supports a determination that the individual represented by this fragment is not Native American.

Many tribes had contact with Fort Union or had some type of connection with northeastern New Mexico during the probable period of the burial of these human remains. In this section, we identify a list of tribes revealed throughout the course of historical research. It should be noted that historically identified tribes do not necessarily correlate with the list of federally recognized tribes listed in the following “Recommendations” portion of this document. We define an “inclusive list” of all possible tribes, and a more limited “most likely list” of tribes for consultation.

The “inclusive list” of tribes encountered at least once in our research includes: Navajo, Comanche, Kiowa, Cheyenne, Ute, Jicarilla Apache, Mescalero Apache, Mouache Ute, Capote Ute, Tabawatch Ute, Wemenuche Ute, Blackfeet, Gros Ventre, Crow, Shoshone, Arikara, Osage, Pueblo, Zia Pueblo, Zuni Pueblo, Arapaho, Kiowa Apache, San Carlos Apache, and Isleta Pueblo.

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<sup>3</sup> Using only biological evidence in a determination of “cultural affiliation” poses serious questions. However, it is the interpretation of the authors of this report that it may be considered along with many other lines of non- biological evidence. Taken together, biological and non- biological evidence may present a more compelling case for the determination of cultural affiliation.

The list limited to “most likely” Native American tribes are those encountered repeatedly throughout the course of research. Fort Union was established on land originally inhabited by the Jicarilla Apache. Tabawatch and Mouache Utes were also constantly present in northeastern New Mexico. Navajos and Mescalero Apaches are recorded as being present at the Fort en route to the Bosque Redondo and also in the general vicinity, raiding and “committing depredations.” Additionally, several Plains tribes commonly visited northeastern New Mexico to raid and trade. These tribes include the Comanche, Kiowa, Cheyenne, and Arapaho. In sum, the sources consulted indicate that the following tribes constitute the “most likely” tribes for consultation on cultural affiliation: Jicarilla and Mescalero Apache, the Tabawatch and Mouache Ute, Navajo, Comanche, Kiowa, Cheyenne and Arapaho.

## **Recommendations**

The following two lists are based on historical records, resources, and expert opinions, and are translated into federally recognized modern day tribes. The *Most Likely* and *Inclusive* lists present two possible courses of action for consultation on human remains in control of Fort Union National Monument.

### ***Most Likely***

The “most likely” list indicates tribes with the highest likelihood of cultural affiliation, and is composed of seven Federally recognized tribes including: the Jicarilla Apache Nation of New Mexico; the Navajo Nation of New Mexico, Arizona and Utah; the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; the Comanche Nation, Oklahoma; Kiowa Indian Tribe of Oklahoma; Cheyenne- Arapaho Tribes of Oklahoma; and the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.

The Ute Mountain Ute Tribe of Colorado, New Mexico, and Utah are considered the most likely federally recognized tribe representing Utes present historically at Fort Union, because they are the only Ute tribe that has filed NAGPRA claims for items or remains from New Mexico, as listed by National NAGPRA. Additionally, as discussed above, the *Report of the Commissioner of Indian Affairs* (1864) indicates that the Utes in northeastern New Mexico were transferred from the Cimarron agency to an agency in southern Colorado in the 1860s. The Cheyenne and Arapaho are legally considered a single entity, the Cheyenne- Arapaho Tribes of Oklahoma.

### ***Inclusive***

The “inclusive list” offers a second option. In this scenario, a total of eighteen Federally recognized tribes would be contacted, including: the

Arapahoe Tribe of the Wind River Reservation of Wyoming; the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; the Cheyenne- Arapaho Tribes, Oklahoma; the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah; Southern Ute Indian Tribe of the Southern Ute Reservation in Colorado; the Ute Mountain Tribe of the Ute Mountain Reservation of Colorado, New Mexico and Utah; the Apache Tribe of Oklahoma; Fort McDowell Mohave- Apache Community; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation of New Mexico; Mescalero Apache Tribe of the Mescalero Reservation in New Mexico; San Carlos Apache Tribe of the San Carlos Reservation in Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation in Arizona; the Yavapai- Apache Nation of the Camp Verde Indian Reservation in Arizona; Comanche Indian Tribe of Oklahoma; the Kiowa Indian Tribe of Oklahoma; and the Navajo Nation of Arizona, New Mexico, and Utah.

In previous NAGPRA consultations, the Arapahoe Tribe of the Wind River Reservation of Wyoming, the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation in Montana, and the Cheyenne- Arapaho Tribes of Oklahoma, presented evidence of oral traditions indicating that these groups were culturally identical, provided by official NAGPRA representatives of said tribes.

According to historical evidence and oral tradition shared by members of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah, Southern Ute Indian Tribe of the Southern Ute Reservation in Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation of Colorado, New Mexico and Utah, the Utes were originally comprised of fifteen bands which shared cultural traditions, language, and group identity. Therefore, all three of these tribes may need to be contacted when a set of remains is possibly of “Ute” ancestry.

In the past, all nine Apache tribes have worked as a consortium in NAGPRA consultations. Additionally, despite the fact that the tribes ended up in different geographical locations, they are all Apache people with a shared group identity. Therefore, it may be desirable to contact all the federally recognized Apache tribes listed above.

## **Recommendations for Individual Human Remains**

### **i. NPS Catalog #8500 and NPS Accession # 234 – Skull cap**

This individual should be withdrawn from the NAGPRA Culturally Unidentifiable Human Remains Inventory. This recommendation is based on the osteological analysis that determined that the skullcap was of Caucasian or Hispanic ancestry (Komar and Potter 2001). Because this



individual is not Native American these remains are not covered by NAGPRA.

**2. Burial FU- 1, Accession FOUN- 00221, Catalogue Number FOUN 8540**

Based on geographical, biological, archeological, and historical evidence, and expert opinion, it is reasonable to conclude that this individual should be classified as Native American. However, based on the evidence a specific cultural affiliation with a contemporary Indian tribe cannot be determined. Evidence supports a finding that this individual may have been culturally affiliated with the Apache, Arapaho, Cheyenne, Comanche, Kiowa, Navajo, or Ute. But, there is not a preponderance of evidence to support a cultural affiliation with a Federally Recognized Indian Tribe. Consultation with tribes historically affiliated with Fort Union N.M. may provide additional evidence to make such a determination.

**3. Burial FU- 2, Accession FOUN- 00221, Catalogue Number FOUN 8541**

Based on the geographical, archeological, historical evidence, and expert opinion this individual is reasonably believed to be Native American as defined by NAGPRA. Based on the evidence, a relationship of shared group identity cannot reasonably be traced between the human remains and any present- day Indian tribe. Evidence supports a finding that this individual may have been culturally affiliated with Apache, Arapaho, Cheyenne, Comanche, Kiowa, Navajo, or Ute. But, there is not a preponderance of evidence to support a cultural affiliation with a Federally Recognized Indian Tribe. Consultation with tribes historically affiliated with Fort Union N.M. may provide additional evidence to make such a determination.

**4. Burial FU- 3, Accession FOUN- 00221, Catalogue Number FOUN 8542**

Based on geographical, biological, archeological, and historical evidence, and expert opinion this individual is reasonably believed to be of Native American ancestry. Based on the evidence a relationship of shared group identity cannot reasonably be traced between the human remains and any present- day Indian tribe. Evidence supports a finding that this individual may have been culturally affiliated with Apache, Arapaho, Cheyenne, Comanche, Kiowa, Navajo, or Ute. But, there is not a preponderance of evidence to support a cultural affiliation with a Federally Recognized Indian Tribe. Consultation with tribes historically affiliated with Fort Union N.M. may provide additional evidence to make such a determination.

5. **Burial FU- 4, Accession FOUN- 00221, Catalogue Number FOUN 8543**

Based on geographical, biological, archeological, and historical evidence, and expert opinion this individual is reasonably believed to be of Native American ancestry. Based on the evidence a relationship of shared group identity cannot reasonably be traced between the human remains and any present- day Indian tribe. Evidence supports a finding that this individual may have been culturally affiliated with Apache, Arapaho, Cheyenne, Comanche, Kiowa, Navajo, or Ute. But, there is not a preponderance of evidence to support a cultural affiliation with a Federally Recognized Indian Tribe. Again, consultation with tribes historically affiliated with Fort Union N.M. may provide additional evidence to make such a determination.

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## Appendix

National Park Service accession and catalogue numbers for the human remains and the funerary objects addressed in this report.

- NPS Catalog #8500 and NPS Accession #234
- Burial FU- 1, Accession FOUN- 00221, Catalogue Number FOUN 8540
- Burial FU- 2, Accession FOUN- 00221, Catalogue Number FOUN 8541
- Burial FU- 3, Accession FOUN- 00221, Catalogue Number FOUN 8542
- Burial FU- 4, Accession FOUN- 00221, Catalogue Number FOUN 8543
- Funerary Object, Accession FOUN- 00221, Catalogue Number FOUN 8252
- Funerary Object, Accession FOUN- 00221, Catalogue Number FOUN 8254
- Funerary Object, Accession FOUN- 00221, Catalogue Number FOUN 8257
- Funerary Object, Accession FOUN- 00221, Catalogue Number FOUN 8260
- Funerary Object, Accession FOUN- 00221, Catalogue Number FOUN 8261
- Funerary Object, Accession FOUN- 00221, Catalogue Number FOUN 8270
- Funerary Object, Accession FOUN- 00221, Catalogue Number FOUN 8271