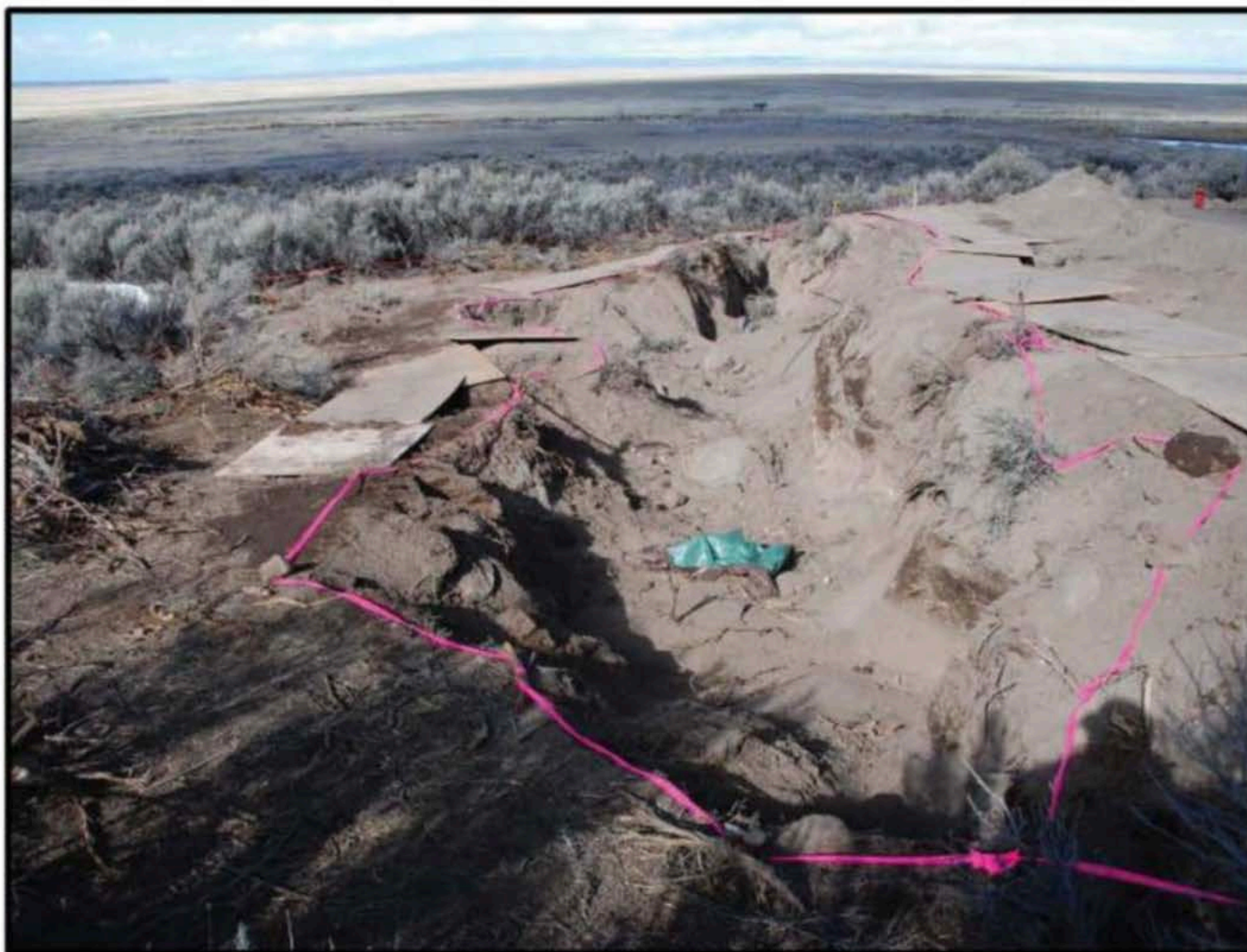


***Archaeological Damage Assessment Report for
Headquarters Site (35HA403)
Malheur National Wildlife Refuge
Harney County, Oregon***

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**FBI Case Number 266T-PD-6774258
June 25, 2016**

Exhibit 1

Page 1

APPENDIX D

DESTRUCTION OF GOVERNMENT PROPERTY

The willful injury and depredation inflicted on the Headquarters Site is also covered under 18 USC §1361, Destruction of Government Property. Costs associated with this statute have been determined to be \$108,173.34 for the injuries described in this report. Additional costs for Destruction of Government Property including the costs for building repairs and Refuge cleanup are not included here.

DESTRUCTION OF GOVERNMENT PROPERTY

Fetterman (2012:21) notes that government property statutes can be charged in archaeological violation cases in addition to ARPA. Title 18 United States Code Section 1361 states:

Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof, or attempts to commit any of the foregoing offenses, shall be punished...

The suspects caused serious injury to the Headquarters Site including the damages described in the pages above. As previously noted, the Headquarters Site is located on lands of the United States within the Malheur National Wildlife Refuge. Acts of depredation include the willful construction of the Bunkhouse Road as well as purposeful trenching operations at three locations. At Trench #1 the suspects also cut through the phone line during their excavation activity.

Since injury and depredation to archaeological resources occurred during the willful acts of the suspects, the costs involved with the documentation of site damage is an acceptable expense. Costs associated with these injuries (Table D-1) are similar to those identified for the Restoration and Repair of the Headquarters Site under ARPA (16 USC §470) with several important exceptions. The costs of preparing the ARPA damage assessment report are not included here, nor are the costs associated with the commercial value assessment or the fieldwork associated with the ATV Trails area. At Trench #1 and #2 the entire excavated volume is included. Restoration costs involved with Trench #3 have been included and pre-field logistics, post-field logistics, per diem costs, Native American consultation, vehicle charges, monitoring, and materials and supplies have been assigned to each disturbance area and calculated at $\frac{1}{3}$ of the total cost ($\frac{1}{3}$ each for Bunkhouse Road, Trench #1 and Trench #2). The phone company provided an estimate of \$800.00 to repair the phone line. Additional costs (building damage, cleanup, etc.) associated with Destruction of Government Property (18 USC §1361) are not addressed in this report.

The archaeological damage assessment consisted of the field investigation described in the pages above and included pre-fieldwork logistics associated with the incident as well as mapping and documenting the damaged site. Pre-field logistics included phone conversations with Special Agents Walker and Swain and Refuge Archaeologist Burnside to plan for the field damage

assessment. Background literature on the Headquarters site and regional archaeology was gathered and reviewed. Equipment was gathered and supplies were purchased. Field damage assessment of each of the identified damage areas was supervised by the author and each of the archaeologists assisted in the documentation efforts at Bunkhouse Road, and Trenches 1 – 3.

Characterization of the damage areas is also included in the costs associated with destruction of government property and includes sampling the spoil piles and tracked excavator damage areas, screening the soil, and excavating units directly adjacent to the two trenches. Costs for using a government vehicle (Nick Valentine, Jorie Clark and Virginia Parks) were assessed at a rate of \$25.83 per day. Costs for using the Tribal vehicle (Teeman and Soucie) were assessed at a rate of \$38.41 per day. The rental vehicle was used by the author for the duration of the fieldwork. Post-fieldwork logistics include GIS development, downloading and reviewing digital photos taken by the ACT, and preparing profile sketches using a computer drawing program.

Native American Consultation includes discussions with the Chair of the Burns Paiute Tribe on February 16th by Archaeologist Burnside, Special Agents Walker and Swain and Assistant United States Attorney Tim Simmons. Materials and supplies includes such things as buckets, stakes, tarps, shovels, geotextile cloth, archival storage boxes, hardware cloth, and graph paper.

Ground contour reconstruction and vegetation planting includes filling in the two trenches with the associated spoil pile. This will be accomplished with a rubber tired front-end loader carefully pushing the spoil back into the trench and leaving several inches of overburden to guard against additional disturbance. At the Bunkhouse Road damage area the front-end loader will carefully scrape-up the imported road base leaving several inches to guard against further disturbance. Top soil will then be brought in and spread 6 inches deep over all affected areas (Bunkhouse Road, Trenches #1 and #2) and native seed and sagebrush plugs will be planted to promote vegetation growth. The Refuge staff will water the areas until the new vegetation has had a chance to become established. Archaeologists will monitor all ground contour reconstruction activities.

Split rail cedar fences will be erected at the end of Bunkhouse Road (where one had previously existed prior to the violation) and along the edge of the embankment at Trench #1. The Trench #1 fence will extend 600 ft. from the current fence along the edge of the visitor parking area and will wrap around the end of the parking lot to prevent motor vehicles from leaving the road in this highly sensitive area.

During meetings with the Burns Paiute Tribe, we were told that, in the tribal view, restoration and repair of the injured site would not be complete until cleansing and healing ceremonies were held. Therefore, as part of the costs of destruction of government property of the Headquarters Site, tribal elders versed in traditional practices were brought to the site after the fieldwork was completed to perform their healing ceremonies. Fortunately, no human bone or associated NAGPRA (Native American Graves Protection and Repatriation Act) items were encountered in the damaged areas except for the single human talus bone found adjacent to the ATV Trails area. The human talus bone was reburied in place following established Malheur National Refuge protocols.

The healing ceremony was to be done prior to the completion of filling in the trenches and after our field damage assessment was completed. The Tribe felt that leaving the trenches open during the healing ceremony would be a desecration. In addition, the defense team had requested that the trenches be left open until they had an opportunity to examine them. Therefore, out of respect for the Tribe and to ensure a safe environment to conduct the ceremony, the trenches would be covered with tarps and safety fencing would be erected around the perimeter. Costs associated with this task include putting up safety fences, ordering tarps, renting fencing, putting tarps on the trenches, performing the cleansing ceremony by the Burns Paiute Tribe and removing tarps and fences for the subsequent defense team visit by the incident overhead team.

Table D-1. Destruction of Government Property Costs.

<i>Incident Investigation</i>	<i>Cost</i>
BUNKHOUSE ROAD	
1/3 Pre-field Logistics	\$ 666.19
1/3 Native American Consultation	\$ 340.13
Fieldwork (Archaeologists and Mapping Crew)	\$13,348.10
1/3 Per diem	\$ 2,205.14
1/3 Materials and Supplies	\$ 104.62
1/3 Vehicle Charges	\$ 674.81
Stabilization and Repair (Refuge Staff)	\$ 1,330.56
Clean Fill Dirt (Contract)	\$ 8,225.66
1/3 Native Seed and Sagebrush Plugs	\$ 391.83
1/3 Site Monitoring	\$ 706.40
Protective Fencing	\$ 737.00
1/3 Cleansing and Healing Ceremony by Burns Paiute Tribe	\$ 333.33
1/3 Overhead Team for Cleansing Ceremony	\$ 312.00
1/3 Post Field Logistics	\$ 1,180.80
Bunkhouse Road Total	\$30,556.57
TRENCH #1	
1/3 Pre-field Logistics	\$ 666.19
1/3 Native American Consultation	\$ 340.13
Fieldwork (Archaeologists and Mapping Crew)	\$17,494.41
Shoring Crew	\$ 7,219.69
1/3 Per diem	\$ 2,205.14
1/3 Materials and Supplies	\$ 104.62
1/3 Vehicle Charges	\$ 674.81
Stabilization and Repair (Refuge Staff)	\$ 1,925.00
Clean Fill Dirt (Contract)	\$ 403.75
1/3 Native Seed and Sagebrush Plugs	\$ 391.83
1/3 Site Monitoring	\$ 706.40
Protective Fencing	\$13,000.00
Phone Line Repair	\$ 800.00
1/3 Cleansing and Healing Ceremony by Burns Paiute Tribe	\$ 333.33
1/3 Overhead Team for Cleansing Ceremony	\$ 312.00
1/3 Post Field Logistics	\$ 1,180.80
Trench #1 Total	\$47,758.10
TRENCH #2	
1/3 Pre-field Logistics	\$ 666.19
1/3 Native American Consultation	\$ 340.13
Fieldwork (Archaeologists and Mapping Crew)	\$13,607.92
Shoring Crew	\$ 6,419.05
1/3 Per diem	\$ 2,205.14
1/3 Materials and Supplies	\$ 104.62
1/3 Vehicle Charges	\$ 674.81
Stabilization and Repair (Refuge Staff)	\$ 1,925.00
Clean Fill Dirt (Contract)	\$ 467.50
1/3 Native Seed and Sagebrush Plugs	\$ 391.83
1/3 Site Monitoring	\$ 706.40
1/3 Cleansing and Healing Ceremony by Burns Paiute Tribe	\$ 333.33
1/3 Overhead Team for Cleansing Ceremony	\$ 312.00
1/3 Post Field Logistics	\$ 1,180.80
Trench #2 Total	\$29,334.72
TRENCH #3	
Fieldwork (Archaeologists)	\$ 523.24
TOTAL	\$108,172.63