

DUANE J. RAY
President



Seneca Nation of Indians

P.O. Box 231
Salamanca, NY 14779

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June 24, 1999

Duane James Ray, President
Seneca Nation of Indians
P.O. Box 231
Salamanca, NY 14779

Dear Mr. Ray,

I wanted to take the time to let you know what progress has been made in response to your May seventh fax concerning Indian remains at the American Rock Salt Mine.

On request of Mrs. Clinton, your case was immediately forwarded to Lynn Cutler, Senior Advisor to the Chief of Staff for Indian Affairs. Since then, Lynn has been in with the Bureau of Indian Affairs, which is trying to assist in this matter. Unfortunately, the Bureau does not have federal authority to intervene, but *is* working with the State of New York to encourage a just settlement.

I will continue to follow this issue to see if there is anything that Mrs. Clinton or I can do to help. Please keep us informed as to your progress.

Sincerely,

Shirley Sagawa
Deputy Chief of Staff
Office of the First Lady

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Shirley Sagawa
Deputy Chief of Staff
Office of the First Lady

MEMORANDUM FOR THE FIRST LADY

FROM: LYNN CUTLER, SENIOR ADVISOR TO THE CHIEF OF STAFF FOR
INDIAN AFFAIRS

DATE: JULY 16, 1999

CC: SHIRLEY SAGAWA

SUBJECT: NY LAND CLAIMS

I thought that you would be interested in learning of the following information.

On July 6, 1999, the Department of the Interior entered into a Memorandum of Agreement (MOA) with the State of New York, the Cayuga Indian Nation of New York, and the Seneca-Cayuga Tribe of Oklahoma. The parties agreed to the principles that will govern a final settlement agreement on New York land claims. The MOA was submitted to the Federal District Court for the Northern District of New York on July 8, 1999. The terms of the MOA are governed by a court-imposed confidentiality order, and therefore are not subject to public disclosure. Settlement negotiations on the Oneida Land Claim issue continue.

As always, please let me know if I can be of assistance to you on this or any other matter.

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR THE FIRST LADY

FROM: LYNN CUTLER, SENIOR ADVISOR TO THE CHIEF OF STAFF FOR
INDIAN AFFAIRS



DATE: JUNE 21, 1999

CC: SHIRLEY SAGAWA

SUBJECT: STATE OF NEW YORK TRIBAL CLAIMS

I thought that you would like to see the attached memorandum. It was prepared by David Hayes at the Department of the Interior. I am told that the State of New York is anxious to settle these claims and that the Governor is coming to Washington, D.C. next week to meet with David and with Ray Fischer at the Department of Justice. Because the State delayed any action on this for a long time, there was not much movement in the settlement process. The Department of Justice has had mediators dealing with the tribes and with the State. I will keep you updated. The Cayuga claim appears to be the closest to settlement.

Please let me know whether there is anything I can do to assist you in this matter.

**NEW YORK LAND CLAIMS
(Cayuga, Mohawk, Oneida, Onondaga, Seneca)**

**Settlement Possibilities
Briefing for the Office of Management and Budget**

May 25, 1999

Attached please find:

- **A narrative providing a brief description of the New York land claims, including their factual and legal underpinnings (originally provided to OMB in January of this year).**
- **An outline of the current status of settlement efforts in each of the negotiations.**
- **A reference table which provides more detailed information about each of the claims (number of acres affected, parties, legal posture of the case).**
- **A reference table which provides summary information about federal contributions in previous eastern Indian land claims settlements.**

For more information, please contact:

**V. Heather Sibbison
Special Assistant to the Secretary
U.S. Department of the Interior
202/208-6291**

SENECA (2 claims totaling about 19,000 acres, and a third likely to be much larger):

The Seneca have filed two claims (Cuba Lake/50 acres; Grand Island/18,600 acres) which are the subject of recent talks involving the affected tribes, the State, and the federal government. These negotiations have been somewhat dormant for the last year, but now are gaining significant momentum. It is extremely unclear at this time how much money would be needed to settle these two claims.

The Seneca also are poised to file a third claim, the "Genessee Valley" claim, which reportedly includes a very large area of land. DOJ has not yet indicated whether it is willing to join the Seneca in pursuing the Genessee Valley claim, and the State at this time is unaware of its existence (although both Seneca and the federal government agree that meaningful negotiations of the Cuba lake and Grand Island claims cannot move forward until the state is apprised of the existence of the Genessee Valley claim.)

Prepared by: Heather Sibbison
Special Assistant to the Secretary
202/208-6291
May 22, 1999



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

BRIEFING PAPER

Date: January 29, 1999

Prepared By: Lisel Loy
Secretary's Indian Water Rights Office
(202) 208-1442

Subject: New York Land Claims

In the state of New York, there are six Indian land claims that seek to recover land and damages from the State, certain counties and numerous private land owners. These claims have been brought by federally-recognized tribes seeking to invalidate conveyances of land from Indian tribes to the State of New York between 1790 and 1850. All of the claims have been brought under the Trade and Intercourse Act of 1790, which provides that no conveyance of Indian land is valid unless it has been approved explicitly by Congress. The claims range in size from approximately 15,000 acres to 250,000 acres and a number of them have been pending since the 1970s. Because the Eleventh Amendment has been held to provide the states with a sovereign immunity defense against claims for damages brought by tribes, the United States has intervened in a number of these cases on behalf of the tribes to ensure that the tribes can recover the full measure of relief to which they are entitled. Based on several early rulings in the Oneida Indian Nation's case, liability in these cases is relatively easy to prove. The most important unresolved issue remains the scope of relief available.

Uncertainty raised by these pending claims is a source of concern for the private, government and tribal parties, and there is significant interest among the parties in settling this longstanding litigation. Over the last several years, the United States has entered into settlement discussions with state, county and tribal parties in several of these cases in an effort to resolve the litigation. Although earlier efforts have not been successful, the litigation of the Cayuga and Oneida claims has advanced significantly over the last six months and there is again a real opportunity to settle these cases this year.

Each settlement would include a land component as well as financial compensation for the plaintiff Nation. In the Cayuga case, the Cayuga Nation is seeking to reclaim 64,000 acres taken by the State in violation of the Trade and Intercourse Act, as well as money damages as compensation. The Seneca-Cayuga Tribe, descendants of Cayuga Nation members who were forced to relocate to Oklahoma, have intervened in the case seeking money damages only. Prior court rulings in the Cayuga case have held the defendants fully liable for the violations of the Trade and Intercourse Act. The court has not yet ruled on the issue of available remedies. This

case is the furthest along in the litigation and represents a good opportunity for settlement. Recently, the parties tentatively agreed on a structure for settlement, and they have requested that the court appoint a mediator to help them reach consensus on the specifics of a settlement package. A federal financial contribution of between \$40 and \$60 million would likely be required as part of a successful settlement package. It is anticipated that this case could settle in the next year.

There is also an opportunity to reach a settlement in the Oneida case. The Oneida Indian Nation has asserted a claim to approximately 246,000 acres they once held. Earlier settlement discussions did not succeed, although there is now a new opportunity to reach agreement among the parties since the parties are on the verge of hiring a mutually-agreed upon mediator. A federal financial contribution of between \$50 and \$100 million would likely be required as part of a settlement package among the parties, and it is expected that settlement might be reached in the next year.

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**NEW YORK LAND CLAIMS
Current Status of Settlement Negotiations**

(OMB briefing May 25, 1999)

CAYUGA (64,000 acres):

Extremely active court-ordered mediation with a mid-June deadline has spurred significant progress in settlement negotiations. While court may extend mid-June deadline if talks continue to be productive, the court has made clear that trial to determine what damages are owed to the two affected tribes will commence in September regardless of the status of the settlement negotiations. Current outline of mediator's settlement proposal includes:

- **MONEY:** \$100 million – federal/state split still to be determined. Thus far, DOI has insisted that we would only bring to OMB a proposal for a \$45 million federal contribution, and that we expect the State to make up the balance of \$55 million. This 45/55 split would constitute a significant departure from the 50% to 100% federal contribution which has marked most or all other federal contributions to eastern Indian land claims settlements. Also as yet undetermined is how the cash component of the settlement would be divided between the Cayuga Nation and the Cayuga Tribe of Oklahoma, both of which are successors in interest to the original Cayuga Nation.
- **LAND:** The State is to purchase and give to the Cayuga Nation roughly \$10 million-worth of land in an area of particular significance to the Cayuga Nation. In addition, the Cayuga Nation will be able to reacquire reservation land by purchasing parcels from willing sellers over time. (Note: a significant and particularly difficult issue remains as to whether the reservation will continue to comprise the entire 64,000 acres which is subject to the land claim, or whether the Cayuga Nation will consent to a diminishment of its reservation boundary.)
- **JURISDICTIONAL ISSUES:** These issues range from whether there will be any kind of payments in lieu of taxes for tribal purchases from willing sellers, to the need for cooperative agreements to ensure adequate fire/police/ambulance protection for both Indians and non-Indians. In general the parties have agreed that theoretically these issues should be resolvable, although little work on these issues has been done thus far.

MOHAWK (15,000 acres):

Settlement negotiations are continuing without benefit of a mediator, although it is not in conceivable that one will be appointed by the court in the near future. (This case is before the same judge as are the Cayuga and Oneida claims.) The State recently provided the Mohawk plaintiff groups with a settlement offer that included essentially the same components as are outlined in Cayuga above (money, land, jurisdiction). Of particular note for OMB's purposes:

- **MONEY:** The State proposes a cash component of \$30 million, of which the federal government would pay \$15 million (50%). The State and DOI are scheduled to meet in the near future to discuss these figures further.

ONEIDA (250,000 acres):

Active court-ordered mediation with a late-June deadline appears to be spurring significant progress in settlement negotiations. The mediator has been engaged in a shuttle-diplomacy style effort, and is scheduled to meet with federal negotiators within the next two weeks. It is anticipated that he will at that time set forth his own settlement proposal. It is likely that his settlement proposal will encompass the same components as described in Cayuga above, although of particular interest to OMB:

- **MONEY:** The claim is the largest in New York and potentially worth many, many hundreds of millions of dollars. (The Supreme Court already has ruled in favor of the plaintiff tribes on the issue of liability – we are now in the remedy phase of the case.) For a number of years, we had worked hard to create a settlement which included an off-reservation gaming component. It was our hope that the opportunity to generate a huge amount of cash from a casino outside New York City would obviate the need for any federal contribution to a settlement. More recently, the tribal plaintiffs have cooled on the off-reservation casino concept, and so it is very unclear at this point what the mediator will include in his proposed settlement. The **WORSE CASE SCENARIO** is that there will be no casino component and that he'll expect the federal government to accept a 50% share of a huge monetary award. Such a federal contribution could involve more than a hundred million dollars. (DOI is not prepared to support a number that high.)

ONONDAGA (up to 75,000 acres):

Until recently, the Onondaga have been disinclined to file suit, but rather have tried to negotiate directly with the State. Within the last few months, the Onondaga have determined that formal litigation is in their better interest, and have asked DOJ to join the Nation as a coplaintiff. (DOJ is still considering Onondaga's request.) Even under the most optimistic scenario, it is highly unlikely that an Onondaga settlement could be negotiated within the next two years.

SUMMARY OF INDIAN LAND CLAIM SETTLEMENTS

Settlement	Total Acres Claimed	Total Acres Recovered	Total Tribal Membership	Federal Award/% of Total Award	Per Capita Payment?
Rhode Island Pub. L. 95-395	3,200	1,960	2,800	\$3,500,000 56% ¹	None
Maine Pub. L. 96-420	12,500,000	305,000	3,000	\$81,500,000 100% ²	Possible
Florida Pub. L. 97-399	5,000,000	189,000 ³	400	0/0%	Not Applicable
Mashantucket Pequot Pub. L. 98-134	800	Unspecified ⁴	187	\$900,000 100%	Possible ⁵
Wapanoag Pub. L. 100-95	3,400	467.8	500	\$2,250,000 50%	None ⁶

¹The State contribution consisted of the conveyance of State land worth an estimated \$2.7 million.

²Of the total federal appropriation, \$54,500,000 was allocated to the Maine Indian Claims Land Acquisition Fund and \$27,000,000 to the Maine Indian Claims Settlement Fund. Pub. L. 96-420 § 5. Income from the Settlement Fund was to be expended for the benefit of Tribal members over the age of sixty. *Id.* § 5(b)(3).

³The Tribe received a perpetual lease on 189,000 acres of State land in the Florida Everglades. Pub. L. 97-399 § 6.

⁴The State of Connecticut contributed 20 acres of land. Pub. L. 98-134 § 2(f). The federal appropriation was to be used to purchase portions of the "private settlement lands" from willing sellers. *Id.* § 5(b)(9). The "private settlement lands" included approximately 800 acres of privately held land plus the lands known as Cedar Swamp. *Id.* § 3(3). The Act does not estimate how many acres of "private settlement land" could be purchased for \$600,000.

⁵Not less than \$600,000 of the appropriation was available for purchase of private settlement lands. Pub. L. 98-134 § 5(b)(2). The Secretary was directed to disburse the remaining funds according to an economic development plan submitted by the Tribe and approved by the Secretary. *Id.* § 5(b)(3). Disbursement to individual members was prohibited unless made pursuant to the approved economic development plan. *Id.* § 5(b)(4).

⁶Of the total federal appropriation, \$2,125,000 was to be used to acquire the private settlement lands. Pub. L. 100-95 § 6(a). The remaining funds were to be used to survey public settlement lands and to reimburse the Native American Rights Fund and Gay Head Taxpayers Association for a previously completed appraisal of the private settlement lands. *Id.* § 6(b). Any funds not required by those sections, were to be used to acquire additional lands contiguous to the private settlement lands. *Id.* § 6(c).

Settlement	Total Acres Claimed	Total Acres Recovered	Total Tribal Membership	Federal Award/% of Total Award	Per Capita Payment?
Seminole Pub. L. 100-228	5,000,000	[-14,470] ⁷	1,700	0/0%	Not Applicable
Mohegan Pub. L. 103-377	20,480	700 plus Fort Shatok State Park	1,000	0 ⁸ /0%	Not Applicable
Puyallup Pub. L. 101-41	18,000	900 ⁹	1,400	\$77,250,000 48% ¹⁰	Yes ¹¹

⁷Under the Settlement Agreement, the Tribe would convey 14,470 acres covered by a disputed flowage easement to the State and would sell that portion of its East Big Cypress State Reservation located in Palm Beach County to the State for approximately \$7.5 million. The remaining 9,600 acres in the East Big Cypress State Reservation would become a federal reservation.

⁸Instead of a cash payment, the Settlement Agreement grants the Tribe the right to establish a federal reservation and the right to establish a Class III gaming operation on that reservation.

⁹The number of acres could be smaller if "the Port elects to provide the cash value" of the Torre property (approximately 27.4 acres) rather than convey the property, Pub. L. 101-41 § 4(c)(6), and if the "option relating to the Union Pacific Property (Fife) (as described in document 1 of the Technical Documents" (22 acres) was not exercised, *id.* § 4(c)(5). The 900 acre figure does not include the "submerged lands in the Puyallup River within the 1873 Survey Area." *Id.* § 4(c)(8).

¹⁰Under the Settlement Agreement, the Tribe was to receive \$161,824,000 worth of monetary and in-kind benefits. Of the federal contribution, \$25,500,000 was already authorized by law as part of the Army Corps of Engineer's appropriation for work on the Blair navigation project.

¹¹The federal government contributed \$24,000,000 to a fund that would provide a one-time cash payment to each Tribal member upon attaining the age of 21. Pub. L. 101-41 § 6(a).

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: BLL DATE: 6/130/13

SYNOPSIS OF NEW YORK LAND CLAIMS (5/22/99)

(PRIVILEGED AND CONFIDENTIAL - DO NOT RELEASE)

2013-0124-5

	Tribal Parties/ Counsel	Defendants	Court	Acres of Land	Date of Transactions	Procedural Status	Relief Requested	DOJ Attorney
Oneida - "Test Case"	-Oneida Indian Nation of Wisconsin (federally recognized) /Arlinda Locklear -Oneida Nation of NY (federally recognized) /William Taylor -Oneida of Thames Band (a Canadian band in Ontario)/Cary Ramos.	-County of Oneida -County of Madison -State of New York - potentially hundreds of individual landowners	-Northern District, Judge Neal McCurn	Approx. 800 acres	1795 (plus 25 other potential Oneida transactions between Oneida and New York)	Supreme Court decision on liability in 1985 found the counties liable for trespass damages and rejected affirmative defenses; case is on remand to District Court for a trial on recalculation of amount of damages based on the extent to which the defendants occupied the land in good faith. Trial likely to occur in August if case does not settle.	Declaratory judgment that transactions are invalid and that defendants titles are void; trespass damages for 2 years; "ejectment" of individuals has been dropped.	Charlie O'Connell 305-0261 US Attorney Thomas Maroney (315)448- 0672
Oneida - "Main Claim"	-Oneida Indian Nation of Wisconsin (federally recognized) /Arlinda Locklear -Oneida Nation of NY (federally recognized)/ Bill Taylor -Oneida of Thames Band (a Canadian band in Ontario)/Cary Ramos.	-County of Oneida -County of Madison -State of NY - Potentially thousands of individual landowners	-Northern District, Judge Neal McCurn	Approx. 250,000 acres	1795 (plus there are 25 other potential Oneida transactions between Oneida and New York)	Action filed in 1974; dispositive motions filed; case stayed for many years pending settlement negotiations and/or outcome of test case; DOJ intervened last year and case now in active litigation - court has consolidated this case w/ the test case (see above) - trial on liability issues scheduled for August 1999.	Same as above, except trespass damages since transaction occurred - HOWEVER in both Oneida cases DOJ is now composing an updated formula for determining appropriate remedy (value of unimproved property + rental value as improved from six years prior to date of filing through the present)	Charlie O'Connell 305-0261 US Attorney Thomas Maroney (315)448- 0672

	Tribal Parties/ Counsel	Defendants	Court	Acres of Land	Date of Transactions	Procedural Status	Relief Requested	DOJ Attorney
Stockbridge Munsee	Stockbridge- Munsee Indian Community of Wisconsin/Don Miller (NARF)	-New York State -All Municipal land owners -defendant class (may include private landowners)	Northern District; Magistrate DiBianco	6 square miles	1818 through 1847 (15 transactions)	-DOI has requested DOJ to intervene (8/25/97) -Anticipated that stay will be lifted in near future -no active settlement negotiations at this time	Declaratory judgment that title remains in Stockbridge; ejectment; trespass damages.	Jim Clear 305-0259
Cayuga	Cayuga Nation/Martin Gold Seneca- Cayuga/Glen Feldman	-State of New York -Seneca County -Cayuga County -Miller Brewing Co. -Class reps for class action, including possibly thousands of individual landowners	Northern District; Judge Neal McCurn	64,000 acers	1795 and 1807	Defendants' liability has been determined in favor of the tribes; proceedings to determine proper remedy will occur summer 1999.	NY Cayuga: Declaratory judgment that transactions are invalid and that defendants' titles are void; ejectment trespass damages; Seneca-Cayugas: only looking for monetary compensation. DOJ has asked for "ejectment;" further is formulating damage theory based on value of land as unimproved + rental value of improved land from six yrs prior to filing date through the present.	Hank Meshorer 616-9643

	Tribal Parties/ Counsel	Defendants	Court	Acres of Land	Date of Transactions	Procedural Status	Relief Requested	DOJ Attorney
Mohawk	-St Regis Mohawk (federally recognized Tribe)/Hans Walker -People of the Longhouse (traditional gov't)/Steve Tullberg -Mohawks of Akwesasne (Canadian Band)/Harry Sachse	-State of New York -Franklin County -St. Lawrence County -New York Power Authority -Several large landowners	Northern District; Judge Neal McCurn	15,000 acres	1816 through 1845	Dispositive motions have been briefed and were stayed pending <u>Coeur d'Alene</u> decision. Litigation now moving again; court due to rule on state's motion to dismiss two of the plaintiff groups (traditionals and Canadians).	Declaratory judgment that transactions are invalid and that defendants' titles are void; ejectment; trespass damages.	Jim Clear 305-0259 Chuck Jacobs US Attorney Thomas J. Maroney (315) 448- 0672
Seneca- Cuba Lake	Seneca Nation of Indians/Arlinda Locklear and Jeanne Whiteing	-State of New York -46 lessees - no class certification named individually (represented by the State of NY)	Western District; Judge Curtin	50 acres surrounding Cuba Lake	1858	Seneca Nation has won in liability phase (though this is being appealed by the state); remedy phase of litigation not yet commenced.	Declaratory judgment that transactions are invalid and that defendants' titles are void; ejectment; trespass damages; accounting of lease monies paid.	Jim Clear 305-0259 Craig Alexander US Attorney Patrick NeMoyer (716) 551-4811

	Tribal Parties/ Counsel	Defendants	Court	Acres of Land	Date of Transactions	Procedural Status	Relief Requested	DOJ Attorney
Seneca- Grand Island	-Seneca Nation of Indians (federally recognized)/ Arlinda Locklear -Tonawanda Band of Seneca Indians (federally recognized)/Steve Tullberg	-State of New York -NY State Thruway Authority -Erie County -six class reps (including individual landowners)	Western District; Judge Curtin	Grand Island 18,600 acres Highway easement 300 acres	Grand Island -1815 Highway easement - 1954 (Seneca Nation only)	Motions to dismiss have been filed and briefed.	Declaratory judgment that transactions are invalid and that defendants; titles are void; ejectment; trespass damages.	Jim Clear 305-0259 US Attorney Patrick NeMoyer (716) 551-4811
Onondaga	Onondaga Nation/Robert (Tim) Coulter	(potential) -State of NY -County of Onondaga -City of Syracuse -several corporate landowners	Northern District	up to 75,000	5 transactions between 1789 and 1822	-Not yet filed -Several members of the Nation have filed their own action without authority from the Nation and is strongly opposed by the Nation.	Declaratory judgment that transactions are invalid and that defendants' titles are void; ejectment; trespass damages. The Tribe does not intend to sue individual land owners.	Jim Clear 305-0259 David Harde (303) 312- 7328

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THE WHITE HOUSE
WASHINGTON

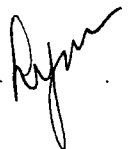
MEMORANDUM FOR THE FIRST LADY

FROM: LYNN CUTLER, SENIOR ADVISOR TO THE CHIEF OF STAFF FOR
INDIAN AFFAIRS

DATE: JUNE 18, 1999

CC: SHIRLEY SAGAWA

SUBJECT: SENECA NATION CONCERNS



Attached is a memorandum from the Interior department outlining the considerable effort they made to see if there was anything that could be done at the federal level to address the concerns of the Seneca Nation regarding Indian remains at the American Rock Salt Mine site.

Unfortunately, there is no federal interest at all to be found on this issue, so the Bureau of Indian Affairs has no authority to intervene. The Bureau did make calls to the company and urged the State of New York to intervene. It appears that the State does not have adequate protections in law to be helpful. The State people did tell the Bureau of Indian Affairs that they would seek stronger laws to enable them to deal with issues like this in the future.

The Tribe knows all of this, but it is hard for them to accept.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUN 17 1999

MEMORANDUM

TO: Lynn Cutler
Deputy Assistant to the President and
Deputy Director of Intergovernmental Affairs

FROM: Elizabeth A. Bell *Elizabeth A. Bell*
Senior Advisor

THROUGH: Michael Anderson *MA*
Deputy Assistant Secretary-Indian Affairs

SUBJECT: Report on the American Rock Salt Mine Site, Geneseo, New York

The following is a summary of actions I have taken on behalf of the Assistant Secretary-Indian Affairs (OASIA) to address the concerns raised by Seneca Nation of Indians (Nation) regarding the removal of ancestral burial remains at the American Rock Salt Company's (Company) mine site at Hampton Corners, near Geneseo, New York.

Communication with the Nation

On June 2, 1999, I contacted the G. Peter Jemison, Chairman Haudenosaunee Standing Committee, to discuss the latest developments at the mine site regarding protection of the burial sites. During this conversation, Mr. Jemison stated that the burial sites could be avoided if the proposed rail spur was moved to the east a few hundred yards, but that the company had stated such a move would be cost prohibitive.

During this conversation, we also discussed potential federal actions, which if necessary for the construction of the rail spur, might bring the burial sites within the scope of federal laws and regulations. These potential federal actions included:

- An Army Corp of Engineers Clean Water Act § 404 permit for the dredge and fill of waters of the United States (wetlands);
- Oversight authority by the Department of Transportation (DOT) Federal Railroad Administration or Surface Transportation Board; or
- Federal funding by DOT.

On June 3, 1999, I spoke with Joe Heath, General Counsel, Seneca Nation of Indians, about his assessment of state and federal authority over the project.

During this conversation, Mr. Heath mentioned that he had sent a Freedom of Information Act (FOIA) request to Delores Jones, FOIA Officer, Federal Railroad Administration, on April 30, 1999, requesting all communications and information concerning the proposed Genesee & Wyoming rail spur. He further stated that he had not yet received a response to this request and that when he spoke with Ms. Jones, she told him that due to staff shortages she would not be able to respond to his FOIA request in a timely manner.

Also during this conversation, Mr. Heath mentioned a state law referred to as § 12-a, which permits the State Office of Parks and Recreation to designate any Indian cemetery or burial grounds as a place of historic interest and prohibits any person from destroying, altering, converting or in any way impairing such designated Indian cemetery or burial ground.

On or about June 4, 1999, I spoke with Duane James Ray, President, Seneca Nation of Indians, about the proposed rail spur and the Nation's opposition to the proposed removal of burial remains in order to construct the spur. I assured the President that we were looking into this matter and would do whatever we could to try to address the Nation's concerns, but that the project appeared to be beyond the reach of federal authority.

Since June 4, 1999, I have spoken at various times with Mr. Heath about the status of my findings regarding any potential federal actions related to the proposed rail spur and my conversations with the State of New York.

Conversations with the State of New York

New York State Office of Parks, Recreation & Historic Preservation (OPRHP)

On June 3, 1999, I spoke with Meg Levine, Counsel, OPRHP, regarding the status of the project, the expected date for a decision by OPRHP on whether to permit removal of the burial sites and various State laws that might protect Native American grave sites.

During this conversation, Ms. Levine stated that OPRHP had been working with the Nation since April 1999 to try to resolve their concerns with the removal of the burial sites. As a result of this effort, construction on the project had been delayed while the State and the Company worked to develop an acceptable mitigation plan for the project.

According to Ms. Levine, the project had been subjected to a historical preservation review, a process similar to the federal process under the National Historic Preservation Act § 106. As a result of this review process, the State had included a special permit condition in the Company's mining permit that required the approval of the State Historic Preservation Officer (SHPO) prior to beginning construction on the rail spur. Apparently, as a result of the need for this approval, the Company developed a mitigation plan, which it submitted to OPRHP on June 3, 1999. While

this plan called for the protection of some of the burial sites, it still permitted the removal of two of the sites.

Also, Ms. Levine asserted that while there had been a number of alternative routes considered for the proposed rail spur, it was unclear whether any of the routes would completely avoid all of the burial sites. Furthermore, even if such an alternative existed, according to Ms. Levine, it may impact prime agricultural land which is afforded special consideration and protection under state law.

Finally, according to Ms. Levine, § 12-a is not currently a useful source of state authority, despite its apparent applicability, because the State has not developed any implementing regulations, standards or procedures for how to actually designate an Indian cemetery or burial ground.

New York State Department of Transportation

On or about June 14, 1999, I spoke with Berry Quinn, the state project officer for the proposed rail spur regarding the nature of the funding for the project. According to Mr. Quinn, the project is supported by state funds, but it is not receiving any federal funds.

Conversations with Federal Agencies

United States Environmental Protection Agency (EPA), Region 2

On June 7, 1999, I spoke to EPA Region 2 about whether a Clean Water Act (CWA) § 404 permit would be necessary for the construction of this rail spur. Based on their conversation with the Army Corp of Engineers (ACOE), they did not believe that such a permit would be necessary.

United States Department of Transportation

On or about June 8, 1999, I contacted Delores Jones, FOIA Officer, FRA, to inquire about the status of the Nation's FOIA request and to encourage a more timely reply. Ms. Jones stated that due to staff shortages in her office, she had been able to begin the search for the requested documents and did not expect a reply to be ready for a couple of weeks.

Also, on or about June 8, 1999, I contacted the Surface Transportation Board to determine if they had any oversight responsibility for the construction of the proposed rail spur. According to the staff person there, the Board did not have a pending application for this particular rail spur, which is generally how projects come within the Board's jurisdiction. Furthermore, this staff person stated that given the nature of the spur, i.e., serving a single private company, the Board would not likely have jurisdiction regardless of whether an application had been duly filed.

United States Army Corp of Engineers

On or about June 9, 1999, as a follow-up to EPA Region 2's discussion with the ACOE, I received a voice message from Paul Leuchner, Chief of the Regulatory Branch, for the Buffalo Region of the ACOE. According to Mr. Leuchner, the ACOE, upon inspection of the right-of-way for the rail spur, had determined that they had no jurisdiction under either § 404 of the CWA or § 10 of the Rivers and Harbors Act.

Most Recent Developments and Current Status

On June 10, 1999, the Company wrote Ms. Levine to inform her that two additional burial sites had been found and that one of them appeared to be of a Caucasian person. The letter stated that neither sites would need to be removed and that the Company was modifying their June 3, 1999, mitigation plan to extend the mitigation structure to protect these sites.

On June 10 and 11, 1999, the Nation wrote Ms. Levine requesting that the State take more time to consider the Company's mitigation plan, especially in light of the discovery of the additional burial sites.

On June 11, 1999, OPRHP approved the Company's mitigation plan. OPRHP sent a letter, signed by the Deputy Commissioner for Historic Preservation, to the leadership of the Seneca Nation, the Tonawanda Seneca Nation and the Tuscarora Nation announcing this decision and personally committing to work with the nations to develop stronger laws, regulations and procedures for protecting Native American grave sites in the future.

Finally, this morning, I received a message from Mr. Heath who stated that he had spoken again, a few days ago, with Ms. Jones, FOIA Officer, FRA, and that she had promised to promptly send him the information he had requested, but that he had still not received any response.



THE SENECA NATION OF INDIANS

The President's Office

PO Box 231

Salamanca, NY 14779

Fax # (716) 945-1565

FAX TRANSMITTAL COVER SHEET

DATE May 7, 1999

TRANSMITTING TO FAX # 1 (202) 456-6244

ATTENTION:

Shirley Sagawa, Deputy Assistant to the President

Deputy Chief of Staff to the First Lady

FROM:

Duane James Ray, President

Seneca Nation of Indians

COMMENTS: Copies will also be sent via US Postal Service

For your convenience, letters following the initial letter to Mrs. Clinton
are in chronological order.

-a guy from Seneca
n'th

-is a salt mine has
uncovered remains
of a burial ground

-talk to Lynn/Alice

Sent to

Lynn + Alice

12/05/10/99

If you did not receive 23 pages, including cover sheet
contact Sheila Kettle at (716) 945-1790, ext. 121

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this messages is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone. Thank you.

Seneca Nation of Indians

President - Duane J. Ray
Clerk - Norma Kennedy

P.O. BOX 231
SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790
FAX (716) 945-1565



Treasurer - J. Conrad Seneca

1490 ROUTE 438
IRVING, NEW YORK 14081

Tel. (716) 532-4900
FAX (716) 532-6272

PRESIDENT'S OFFICE

May 7, 1999

Mrs. Hillary Rodham Clinton
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20503

Dear Mrs. Clinton:

Greetings from the Seneca Nation of Indians.

It was good to meet and speak with you on May 4, 1999. As per your request I am following up with a letter concerning the American Rock Salt Company LLC and its salt mine at Hampton Corner's, near Geneseo, New York.

To date, eight sets of Human Remains have been discovered on the mine site. These were found by archaeologists under contract from the Rochester Museum and Science Center in Rochester, New York. Our first preference is avoidance of Human Remains to prevent disturbance of the deceased. We are the living descendants of these individuals and we are the only remaining Native Americans who can claim this area as our aboriginal territory. We have been working with the Tonawanda Band of Seneca, who can also count this as their aboriginal territory, and the Tuscarora Nation who later shared this territory with us, to resolve this problem.

At a meeting on April 27, 1999, with the American Rock Salt company, the New York State Office of Parks, Recreation and Historic Preservation and the New York State Department of Environmental Conservation, we stated our position, which is: **We do not want to move our ancestors from their final resting place.** Our way of life dictates that the deceased be returned to our Mother Earth and left in peace to complete the cycle begun when they were born.

American Rock Salt has put forth a mitigation plan which involves our moving the bones of our ancestors so that they can build a proposed rail line to move salt off the mine site. They have offered land on which to bury the remains. Our response is that this plan involves removal of Human Remains from their resting place which we have stated, we do not want to do.

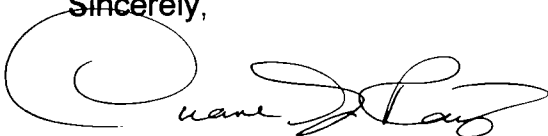
Furthermore, we believe if we were to give our approval to this offer we would be opening a door for more of the same on this site. There are burial mounds on the south end of this site and we believe there are additional burials apart from the mounds nearby. Testimony given prior to construction warned the Department of Environmental Conservation for the potential of finding Human Remains and they chose to ignore our warnings.

Now, the company has informed us that due to the enormous cost of the project, they are resuming work and asking the archaeologists to remove our ancestor's remains. They downplay this to say it's only ONE they are moving. However, we know they will continue this practice, if they deem it necessary, over our stated objections.

Please see the enclosed attachments for further information. The Seneca Nation representative on this matter is G. Peter Jemison, whom I believe you are acquainted with. Mr. Jemison can be reached at (716) 945-5848 should you wish to speak with him for more details concerning this matter.

I would like to thank you, in advance, for any assistance you may provide.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane James Ray". The signature is written in a cursive style with a large, looping initial "D".

Duane James Ray, President
SENECA NATION OF INDIANS

cc: G. Peter Jemison, Chairman-HAUDENOSAUNEE STANDING COMMITTEE
Tonawanda Band of Senecas Nation

AMERICAN ROCK SALT COMPANY LLC

P.O. Box 172, Groveland, New York 14462-0172

Phone 716-243-9510 / Fax 716-243-9626

April 9, 1999

Mr. G. Peter Jemison, Chairman
Haudenosaunee Standing Committee
P O. Box 239
Victor, NY 14564

Dear Mr. Jemison:

I appreciated the opportunity to meet with you and the other Standing Committee members yesterday, and I heard your requests. As I said at our meeting it has never been American Rock Salt Company's intent to disturb the remains of any Native American, and we regret that the remains that have been discovered are in our mine site area. We want to work with you in going forward with the treatment of these discovered remains in a manner acceptable to the Nations.

First, in light of the presence of human remains on site Nda033 and the current construction effort on site to prepare the site for the rail yard, we will honor your request to have an observer from the Seneca Nation on site while this rail yard construction is completed to a depth of at least 5 feet below ground surface. The deepest feature found anywhere on our site to date has been 36 inches below ground surface, so we believe that monitoring the excavation of the rail line to a depth of 5 feet should give you full assurance that no further burials will be disturbed. We propose to compensate your tribal representative \$100.00 per day plus \$75.00 per day per diem if they wish to stay in a local motel while monitoring the site. We have a \$50.00 per day rate at the new motel in Mt. Morris that is available to anyone working on the project, and the balance of the per diem would apply toward meals. Please contact Adam Riddell with the name of the Seneca tribal representative you would like to send to the site and when we can expect him or her to arrive. Since construction on the rail line south of Nda033 is ongoing, I would suggest you designate your representative at your earliest possible date.

We have discussed the "mound" area on the southern end of our mine site property as a possible site for re-burial of remains if you so choose. That site is protected from development and is still available, but as you know it is somewhat surrounded by construction activity at this time. Re-burial there after the mine construction is completed would be an option, and certainly the site would be quieter and more suitable at that time. As an alternative I would like to offer to give to the Haudenosaunee a parcel of land that lies between the Genesee River and I-390 on the west side of the highway. This parcel is about 15 acres in size and has no public access to it. We can provide you access via our easement to the property which we would need to maintain to access our power line and discharge pipe at the southern edge of the parcel, but otherwise no one else would have legal access to the site. I have enclosed some copies of air photos showing where this property is and also a land ownership map showing the site. This seems to be a much more suitable site for re-burial and your ownership of it may give you a much better sense of security for the site than anyplace on our other property. Please let me know if you are interested in this parcel.



AMERICAN ROCK SALT COMPANY LLC

P.O. Box 172, Groveland, New York 14462-0172

Phone 716-243-9510 / Fax 716-243-9626

We hope that this response is timely and reflects our effort to respond to your concerns. Please contact me if I can be of further assistance.

Sincerely,



Larry D. Milliken, C.O.O.

Cc: Chief Leo R. Henry
Chief Stuart Patterson
Richard Henry
Vincent Schiffert
Richard Hill



Seneca Nation of Indians

President - Duane J. Ray
Clerk - Norma Kennedy

P.O. BOX 231
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Treasurer - J. Conrad Seneca

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IRVING, NEW YORK 14081

Tel. (716) 532-4900
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PRESIDENT'S OFFICE

April 16, 1999

To All Whom It May Concern:

I am aware that American Rock Salt has been in the process of constructing a railroad spur in and around the village of Mt. Morris, Livingston County. As President of the Seneca Nation of Indians, I must voice my objections to the continuation of this culturally devastating project.

First I would like to express my concerns regarding the blatant violation of Native American religious and human rights. The desecration of burial sites and the disruption of sacred, ceremonial lands has caused much distress to Native Americans, in particular those of the Six Nations Iroquois Confederacy.

Evidence of burial grounds, a rare longhouse, and the discovery of many other features has proven that the site of your excavation is the aboriginal territory of the Iroquois Confederacy, specifically the Seneca and Tuscarora. Therefore, I am requesting that the site located in Livingston County be closely monitored by a representative of the Seneca Nation of Indians.

Tribal Council Member, Mr. Wayne Jones, has requested the distinct honor of representing the Seneca Nation on this matter. I would also like to request that Mr. Jones be permitted full access to all areas under question. Mr. Jones will have full authority from the Seneca Nation to proceed in a manner which he deems necessary for the satisfactory resolution of this matter. As a measure of good faith and conscience, I would expect your full cooperation with our request.

Thank you for your time and attention concerning this matter. We anticipate your expedient response to our justifiable request.

Sincerely,

Duane James Ray, President
SENECA NATION OF INDIANS

Seneca Nation of Indians

President - Duane J. Ray
Clerk - Norma Kennedy

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SALAMANCA, NEW YORK 14779

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PRESIDENT'S OFFICE

April 22, 1999

Larry D. Milliken, C. O. O.
American Rock Salt Company LLC
P. O. Box 172
Groveland, New York 14662-0172

Dear Mr. Milliken:

Greetings from the Seneca Nation of Indians.

In response to the current situation at the Hampton's Corner mine site, which is a continuing disturbance of Human Remains by archaeologists from the Rochester Museum and Science Center, we are asking that all work be stopped as of this date, 4/22/99. We need a cooling off period now. We are appalled by the fact that seven sets of human remains have been discovered in the area of Nda033.

The archaeologists are on a burial site. The only thing, which can result from more work by them, is more disturbance of our ancestor's Human Remains. Our first priority is avoidance of this disturbance. We are sickened by what has already occurred and what we have witnessed first hand. Please direct the Rochester Museum and Science Center to stop work today. We are also requesting a meeting between all parties to consider what the alternatives are.

You stated in your letter to Peter Jemison dated April 9, 1999 that "we (American Rock Salt) regret that the remains that have been discovered are in our mine site area." If that is the case then have the archaeologists stop now all work on Nda033 and let's explore alternatives.

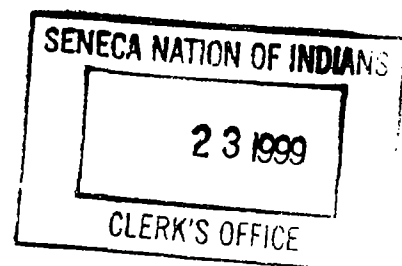
Please contact my office if you have further questions (716 945-1790).

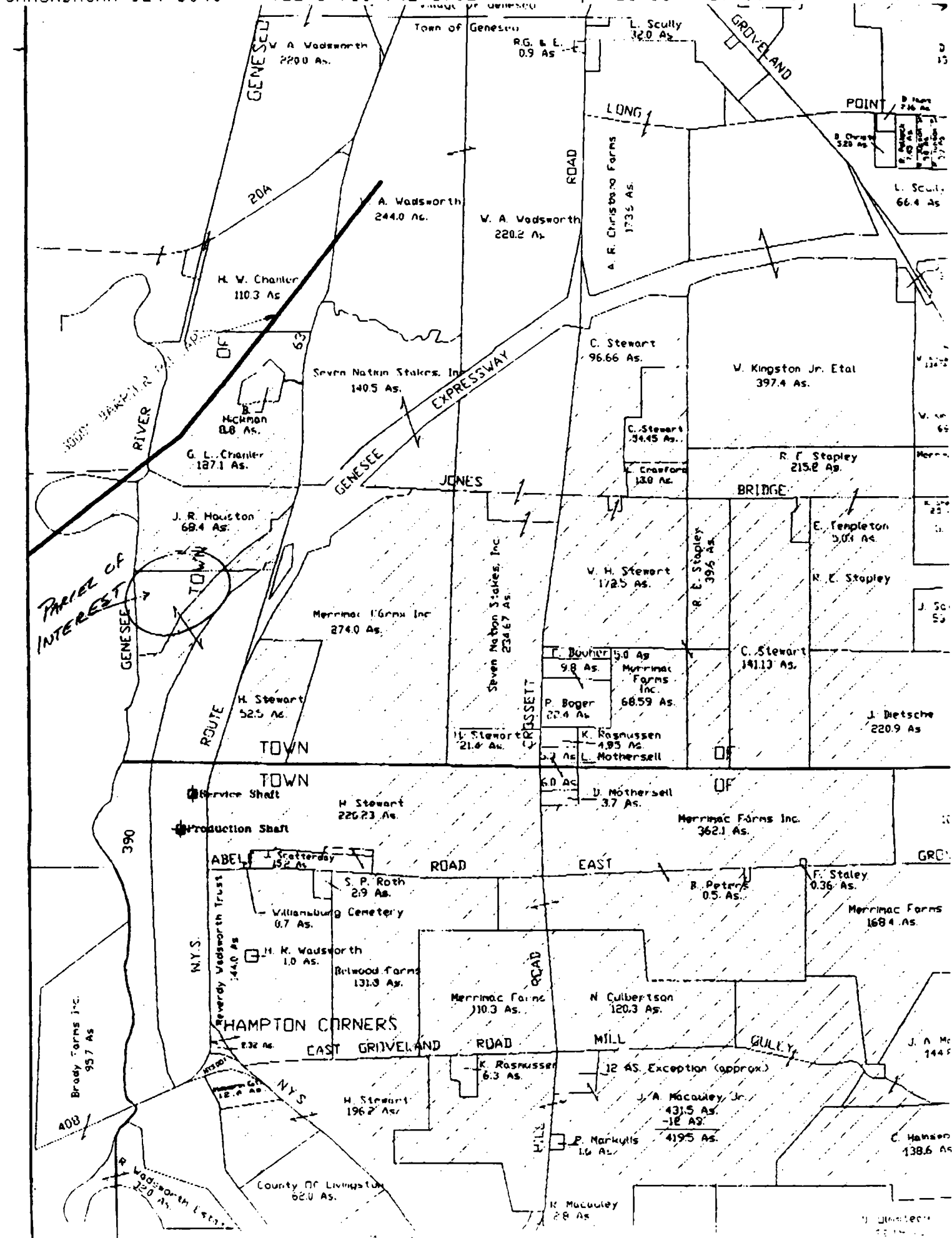
Sincerely,

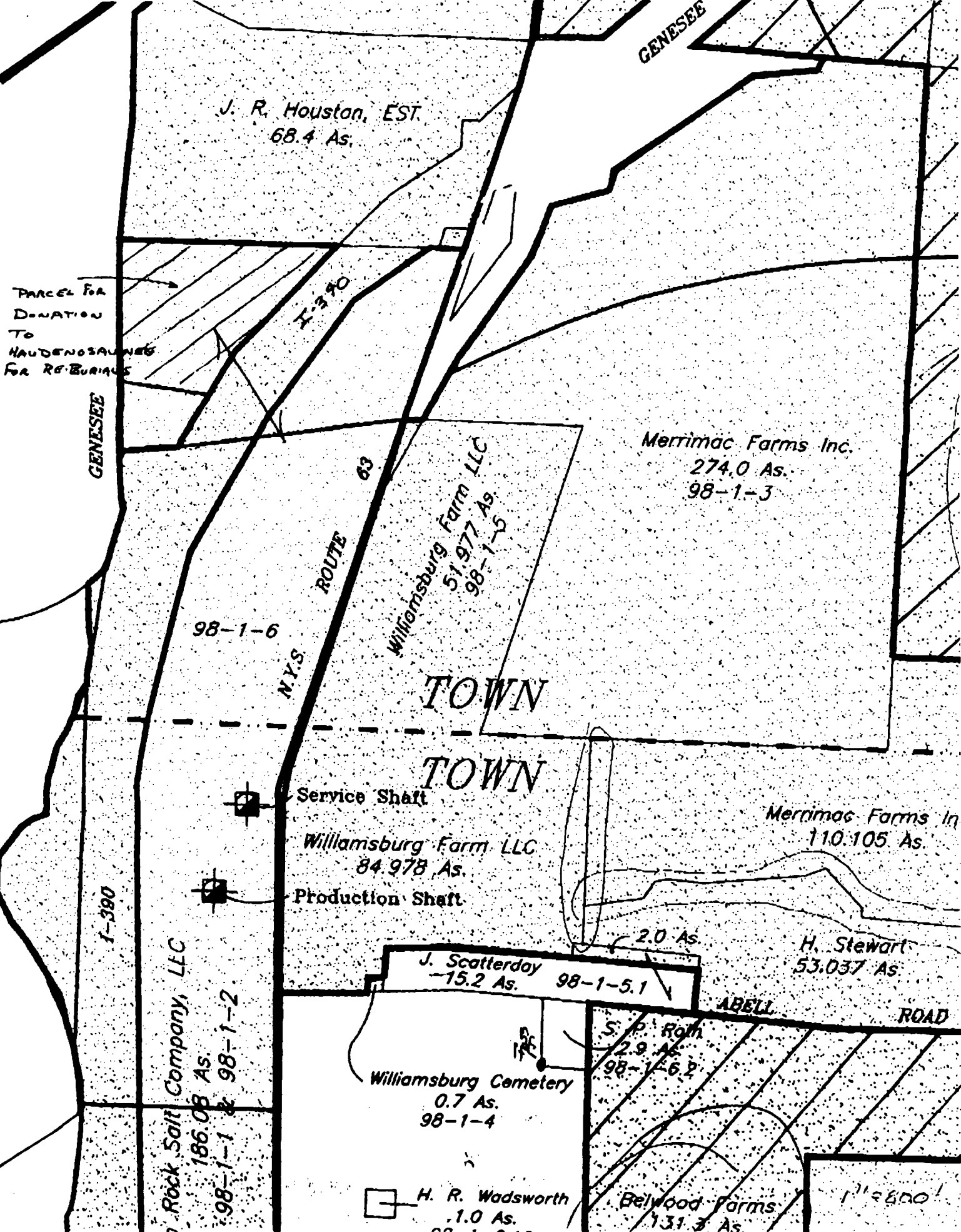
Duane J. Ray, President
THE SENECA NATION OF INDIANS

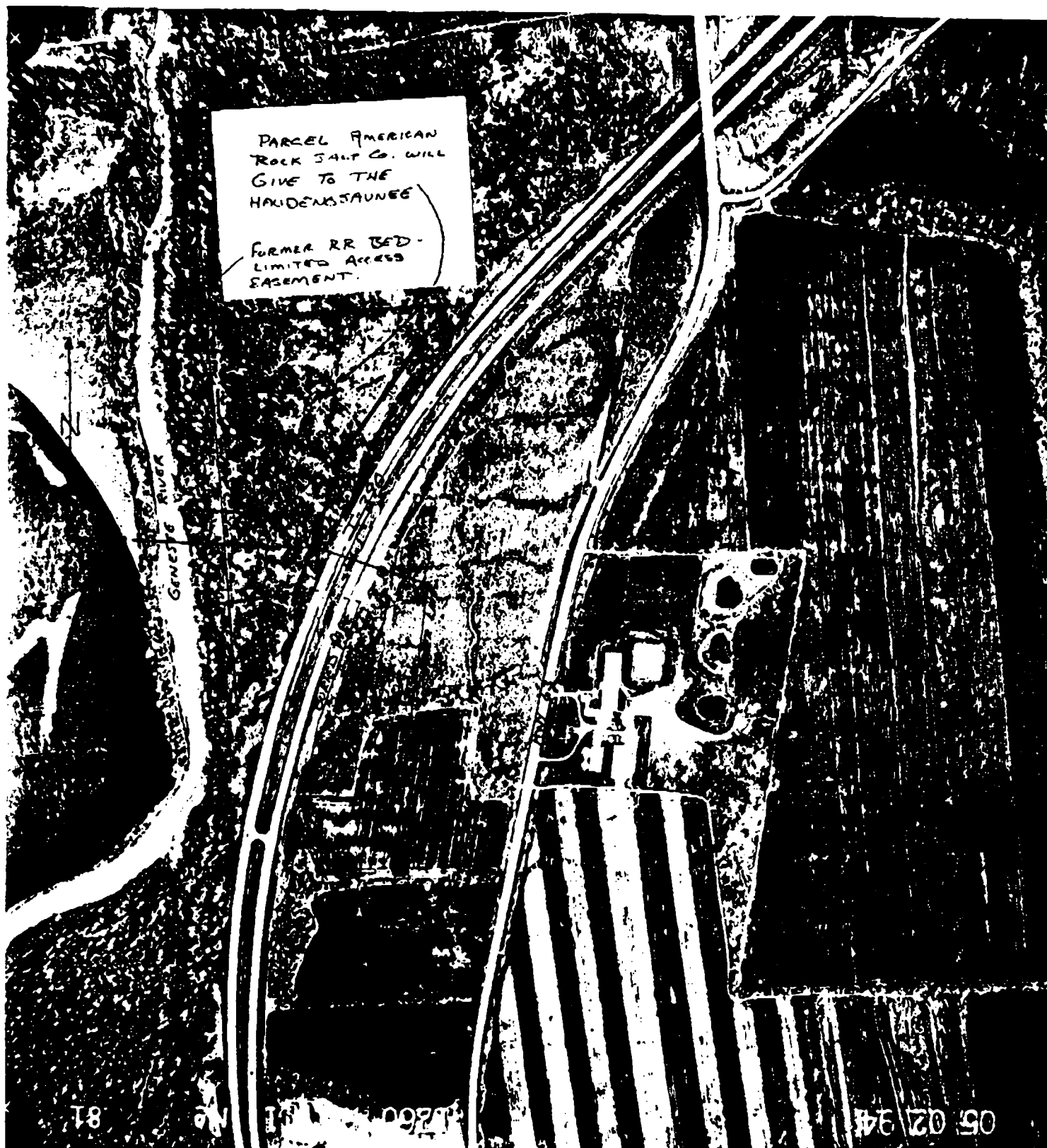
C: Gavin Donohue, DEC ✓
John Hicks, DEC ✓
Meg Levine, NYSOPRHP ✓
Chief Emerson Webster ✓
Chief Leo Henry ✓
Pete Jemison ✓

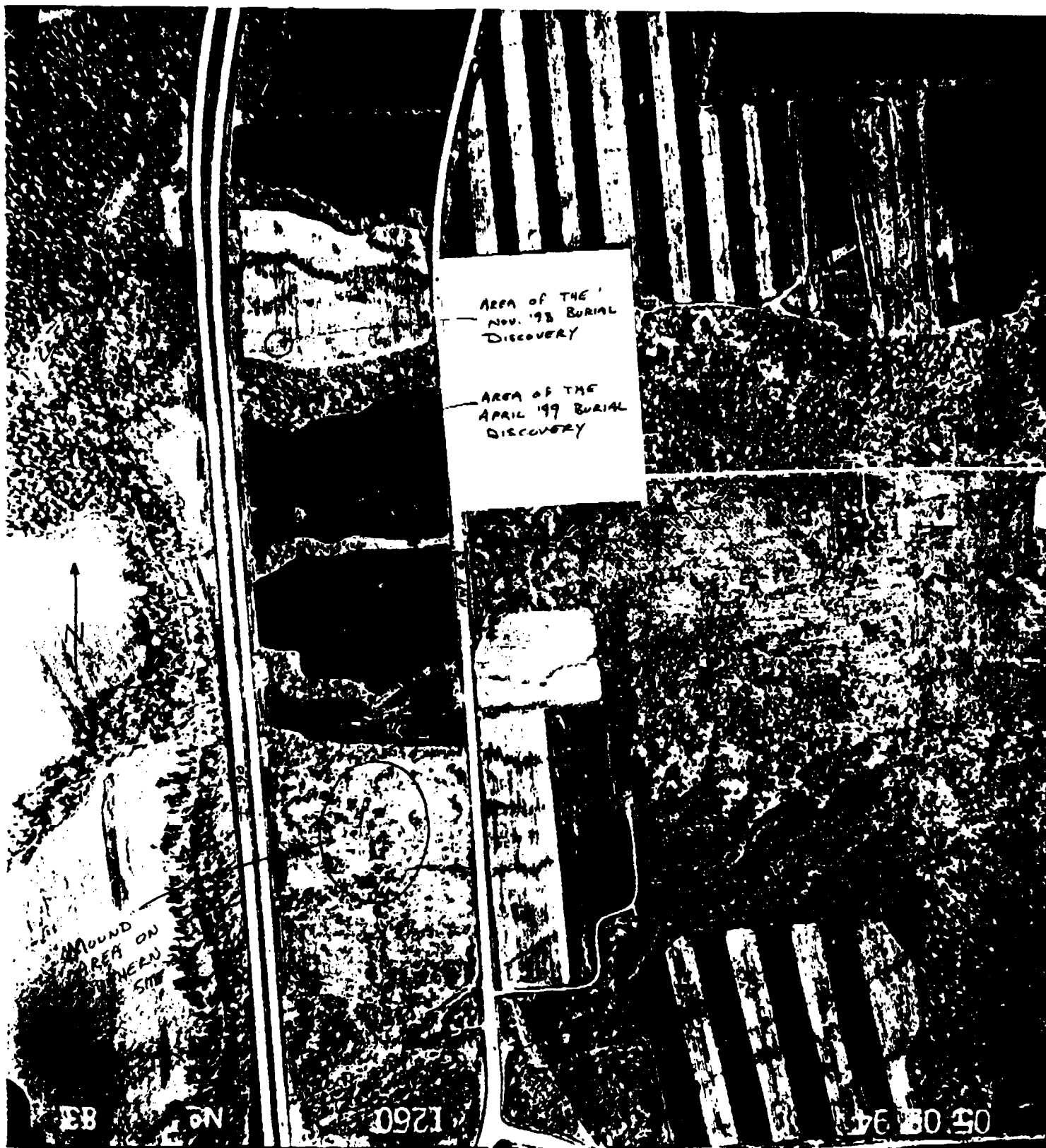
FAXED
4/22-23/99











APR 23 1999

CLERK'S OFFICE

**RESOLUTION TO APPOINT GERALD "PETE" JEMISON AS THE SENECA NATION OF INDIANS
REPRESENTATIVE AT THE AMERICAN ROCK SALT SITE IN LIVINGSTON COUNTY**

WHEREAS, the Seneca Nation of Indians should be represented at the American Rock Salt proposed site of a Railroad spur located at Hampton Corners in Livingston County, where human remains and other features have been uncovered, and;

WHEREAS, Mr. Gerald "Pete" Jemison is associated with Longhouse representatives including Clayton Logan, Elliott Tallchief, Geraldine Green, Phillip Thompson, Lehman 'Dar' Dowdy, and Rodney Pierce, and;

WHEREAS, these individuals, including Mr. Jemison, are all members of the Haudenosaunee Standing Committee on Burial Rules and Regulations, which Mr. Jemison is the Chairman of, and;

NOW, THEREFORE BE IT RESOLVED, that on this 27th day of April 1999, the Council of the Seneca Nation of Indians appoints Mr. Gerald "Pete" Jemison as the Seneca Nation Representative for the Native American Graves Protection and Repatriation Act and is hereby authorized to act on matters of repatriation and protection of sacred sites including sites where human remains have been found.



GEORGE E. PATAKI
GOVERNOR

JOHN P. CAHILL
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK, 12233-1010

FAX TRANSMISSION

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
50 WOLF ROAD, ROOM 608
ALBANY, NEW YORK 12233-1011
(518) 457-2390
Fax: (518) 457-3911

To: *President Duane Ray
Seneca Nation*

Date: *4/23/93*

Pages: *2*, including
cover sheet

From: GAVIN J. DONOHUE
EXECUTIVE DEPUTY COMMISSIONER

COMMENTS:

Urgent:
*Judy Hard asked me
to forward this
to you*

AMERICAN ROCK SALT COMPANY LLC

1510 Pennsylvania Avenue, Peckville, PA 18452

Phone 717-383-7102 / Fax 717-383-7126

Toll Free 1-888-R₂O₄C₂ • S₂A₂L₃T₂

April 23, 1999

Mr. Gavin Donohue
Executive Deputy Commissioner
NYSDEC
50 Wolf Road, Rm 608
Albany, NY 12233-1010

Re: Archeological Studies at the Hampton Corners Mine

Dear Mr. Donohue:

Upon further discussion with many of the parties concerned about the archeological work ongoing at our Hampton Corners Mine site and in the interest of cooperation with the Seneca Nation we will suspend further archeological field work in area Nds033 pending a meeting with the DEC, OPRHP, and Tribal Representative(s) to be held not later than April 27, 1999 at the Avon office of NYSDEC. I look forward to this meeting and the opportunity to explain why we believe completion of the archeological work on site is necessary and how we believe we can re-engineer the site to avoid the remains found to date. I hope that we can arrive at an agreeable mitigation plan to address all parties concerns at this meeting. We will plan on attending with representatives of the Rochester Museum archeological team.

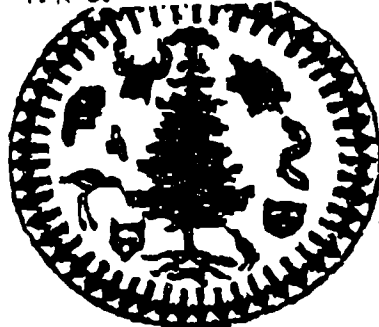
Yours truly,



Larry D. Miliken, C.O.O.

Cc: Dr. Robert Kuhn, NYSOPRHP
John Hicks, NYSDEC Region 8
Steve Army, NYSDEC Region 8
Dr. Connie Bodner, Rochester Museum and Science Center
Peter Jemison
Joe Heath, Esq.
Adam Riddell





HAUDENOSAUNEE

MOHAWK • ONEIDA • ONONDAGA • CAYUGA • SENECA • TUSCARORA

TONAWANDA BAND OF SENECA NATION

7627 MEADVILLE ROAD BASOM, NEW YORK 14013

PHONE/FAX (716) 642-4244

April 29, 1999

VIA FACSIMILE and REGULAR MAIL

Commissioner Bernadette Casiro
New York State Office of Parks, Recreation and Historic Preservation
Empire State Plaza
Agency Building 1
Albany, NY 12238

RE: AMERICAN ROCK SALT HAMPTON CORNERS MINE SITE
DEC PERMIT #: 8-2428-00019/00001-0
FACILITY ID #: 8033-29-0695

Dear Commissioner Casiro:

This letter is a formal notice to your agency that the Tonawanda Seneca Nation and the Seneca Nation of Indians conjointly have a very strong interest in this mining site and that we claim all human remains, burial objects and cultural patrimony that have been and will be uncovered and disturbed in this site.

We are particularly concerned with the area that has been designated as Nda033, wherein five or six sets of human remains have been discovered to date. These remains are our ancestors and we once again renew our instructions to the State that we do not want these remains moved or disturbed in any manner. It is our religious and moral duty to protect them. Our law and custom forbids any disturbance of such sacred remains. Further, the fact that six remains have been discovered in such a short period of time in close proximity to each other is a clear indication to us that this area was a significant Seneca village. We have no doubt that there are many more of our ancestors' remains that will be disturbed if any further construction of the proposed rail line is permitted to continue. Additionally, we are deeply concerned that countless archaeological features and objects will be destroyed and disturbed by any further construction of the proposed rail line.

We were particularly distressed to learn, at the April 27th meeting at the DEC Avon office, that earth movers had once again been used in this area on Monday, April 26th. We also learned that your agency has already given its approval for construction to proceed in area Nda052, in which two sets of our ancestor's remains were found, dug up and removed to the Rochester Museum. Following your approval, this area has now been completely destroyed. We feel that whatever process your agency used to make this determination was flawed and did not properly take into account both Nations' interests.

All of this was done without proper notice to both Nations and without the benefit of our input and consultation. Since there appears to be no formal procedure which governs your agency's determination of when and under what circumstances to give this permission for construction, and there appears to be little or no written record of this decision making, we are at a loss to understand why construction was permitted in area Nda052.

We understand that this area is governed by Special Condition #24 of this mining permit, which states that American Rock Salt "ARS shall comply with all procedures, mitigation measures, and schedules issued or approved by the New York State Office of Parks, Recreation and Historic Preservation ("SIHPO") with respect to cultural resource investigation/mitigation at the Mine Site." This Special Condition also states that no construction can be done in this area "until such time as the field work for such investigation/mitigation has been completed to SIHPO's satisfaction."

We hereby formally request that your agency not provide the mining company with this necessary permission to begin construction in this area. Any construction in this area would inevitably result in desecration of more of our ancestors' remains. It is our opinion that full public hearings on the significance of these archeological findings must be conducted before the state agencies can properly evaluate the proper modifications in this permit.

We feel that our Nations' interests in this extremely important matter cannot be properly protected unless you issue a written notice to the mining company that Special Condition #24 is in effect and require the company to submit a written request to your agency for permission to proceed with construction in this area, with a full explanation of what mitigation measures they would propose. We then would be able to respond in writing and to properly prepare for the public hearing that we have requested. Failure on your part to institute this type of formal procedure may well be evidence that your process is arbitrary and capricious.

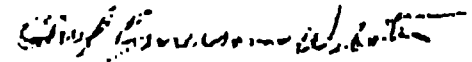
Since this permit was issued last October, there has clearly been newly discovered evidence: the finding of these six remains should be ample grounds for the state agencies to re-examine this permit and to modify the conditions of the permit to prohibit any construction in this area. We intend to file a formal request for the state to suspend and modify this permit under § 621.14 of the DEC's regulations as soon as our fact finding process has been completed.

We also are placing your agency on notice that we request you immediately exercise your powers, under Indian Law § 12-a, and § 3.09 (1) of the Parks, Recreation, and Historic Preservation Law, to designate this mining site, or at least all portions thereof wherein ancient Seneca human remains and archeological objects have been found, as a place of historic interest.

If you feel that your agency cannot honor our requests that are contained in this letter, we would request written notification of this as soon as practical.

Thank you for your time and attention to this matter of extreme importance both to the Tonawanda Seneca Nation and the Seneca Nation of Indians.

Da'neho:



Chief Emerson Webster
Chairman, Council of Chiefs
Tonawanda Seneca Nation

cc: Larry D. Milliken, American Rock Salt Co., LLC
Judith Ann Hard, Esq.
Joseph J. Heath, Esq.
John Hicks, NYS DEC Regional Director, Region 8
Duane J. Ray, President, Seneca Nation of Indians
Peter Jamison, Haudenosaunee Standing Committee

HARTEK, SECREST & EMERY LLP
ATTORNEYS AT LAW

CC COPY

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Silo, New York 14203-2584
716-853-1616Washington Avenue, Suite 206
Albany, New York 12210-2208
518-434-4377

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

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FAX 716-232-2152E-mail: msg@ldecofiscslaw.com5551 Ridgewood Drive, Suite 405
Naples, Florida 34108-2763
541-598-44446719 Winkler Road, Suite 121
Fort Myers, Florida 33919-7100
941-459-1774Please Reply To: Rehwyer
Direct Dial: 716-232-1178

April 30, 1999

Fax and MailMegan Levine, Esq., Counsel
New York State Office of Parks,
Recreation & Historic Preservation
Agency Building No. 1
Empire State Plaza
Albany, New York 12238

Re: American Rock Salt Hampton Corners Mine Site

Dear Ms. Levine:

We are acting as permits counsel to American Rock Salt. We previously represented Akzo Nobel Salt Inc., which was the applicant for, and recipient of, permits from NYSDEC for the Hampton Corners Mine. As you know, the permits were subsequently transferred to American Rock Salt.

I was directly involved in all of the mine application processes that commenced in the fall of 1994 and culminated with issuance of permits by NYSDEC in March 1996. I also participated in the litigation that followed.

The Indian Nations are now, for the first time, advancing the position that Native American remains found at the site cannot be removed regardless of contravening, economic, engineering or private property concerns. There is nothing in the DEC administrative record or in applicable law that grants the Indian Nations such veto power over the mine project.

The human remains protocol for the mine site (copy enclosed) as discussed in the DEC proceeding was that any Native American remains would be treated with respect, the appropriate Indian representatives notified, and the remains removed if such removal was necessary for completion of the project.

Megan Levine, Esq.
April 30, 1999
Page 2

The protocol was developed by the Rochester Museum and Science Center ("RMSC") in coordination with OPRHP and was the subject of discussion by the parties at the DEC issues conference. The Haudenosaunee-Six Nations Confederacy was a party to this proceeding (appeared jointly as part of the RAGE group). The issues conference was held November 8-10, 1995. There was extensive post-conference exchange of correspondence.

Materials submitted on behalf of the applicant to the Administrative Law Judges ("ALJs") included an affidavit from Brian Nagel of RMSC, which included the human remains protocol and included references to Phase III cultural resource investigations as including mitigation plans based upon a balancing of engineering, environmental, economic and resource preservation concerns.

The applicant's issues conference memorandum of law (relevant page enclosed) set forth (despite the typographical error) the clear statement that the protocol involved notification of Native American representatives and repatriation of remains.

It was in this context that the protocol was presented and subsequently incorporated by reference in the DEC permit conditions. Draft permit conditions were circulated to the issues conference parties with the directive from the ALJs that "Intervenors not objecting to a proposed permit condition will be assumed to accept that condition as satisfactorily resolving the potential issue addressed by the condition." RAGE never made timely objection to the human remains protocol incorporated by reference in the permit conditions.

On December 21, 1995, the ALJs issued their report. Enclosed is a copy of page 19 of that report specifying that the protocol provided for recovery of Native American remains. The ALJs proposed other issues for adjudication. All parties appealed the ALJ report to the DEC commissioner.

Subsequently, DEC Commissioner Zagata rendered a decision on January 31, 1996, concluding there were no issues for adjudication, otherwise adopting the ALJ report, and directing DEC Staff to complete the administrative process and issue permits for the project. The final environmental impact statement was filed on February 29, 1996, lead agency findings were made by DEC on March 18, 1996, and the mining permit was issued on March 22, 1996.

RAGE challenged the DEC permit decision by a petition dated April 1, 1996. Nothing in that petition challenged the human remains protocol as discussed in the ALJ report.

Megan Levine, Esq.
April 30, 1999
Page 3

The RAGE lawsuit was dismissed by Supreme Court Justice Cobb on May 19, 1997. Justice Cobb's decision was upheld by the Third Department Appellate Division on December 11, 1997 (245 A.D.2d 798, 666 NYS2d 307), and the Court of Appeals denied leave to appeal on April 2, 1998 (91 NY2d 811, 671 NYS2d 1998).

Dr. Robert Kuhn of OPRHP has been involved in the review of all cultural resource investigations conducted on and in the vicinity of the mine site. Dr. Kuhn provided an affidavit in opposition to the RAGE lawsuits. The State respondents in the RAGE litigation (including OPRHP) were represented by James H. Ferreira, Esq. of the Attorney General's Office.

I hope that this background information is helpful to you. Please call me if you have any further questions.

Very truly yours,

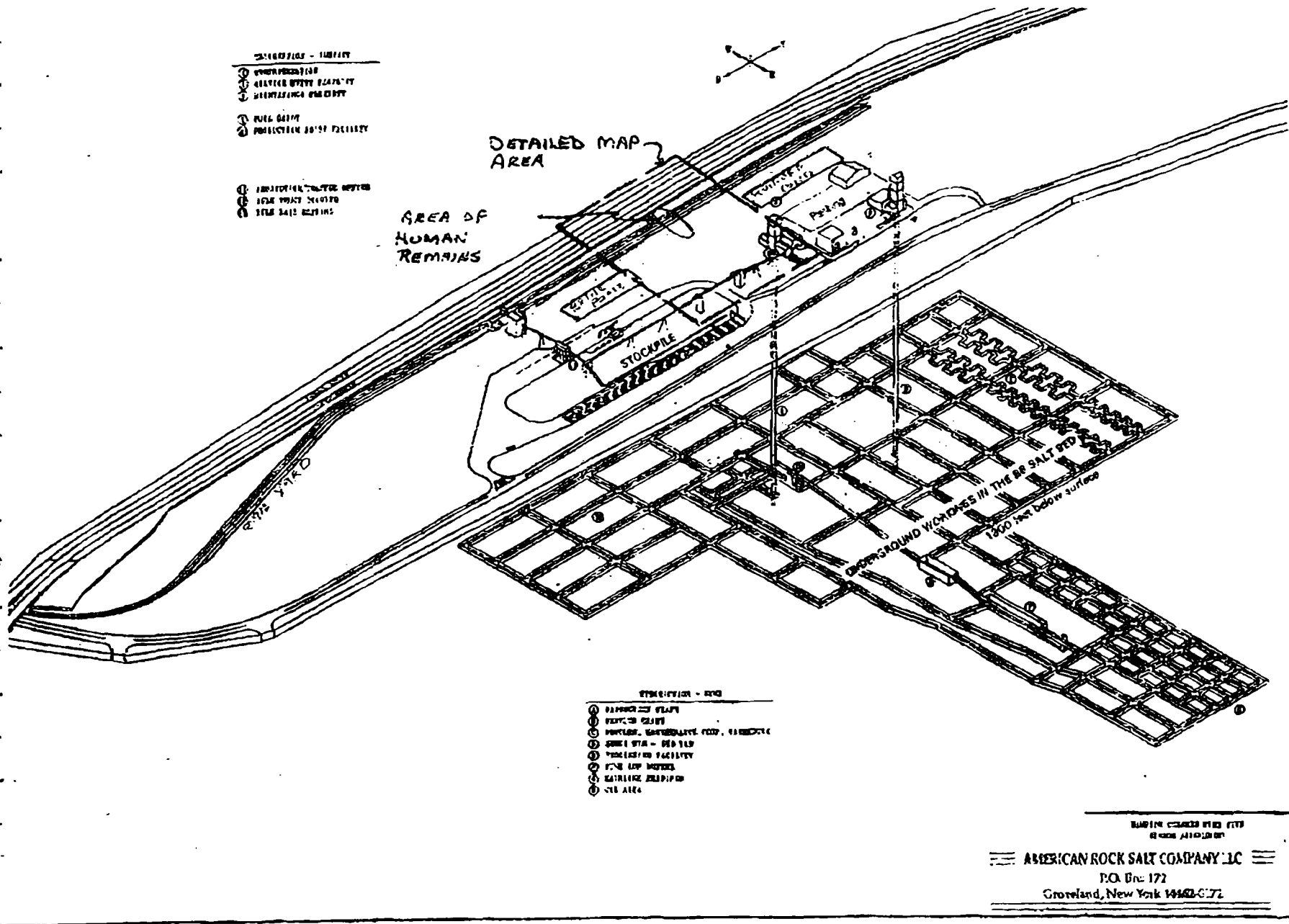
HARTER, SECRET & EMERY LLP

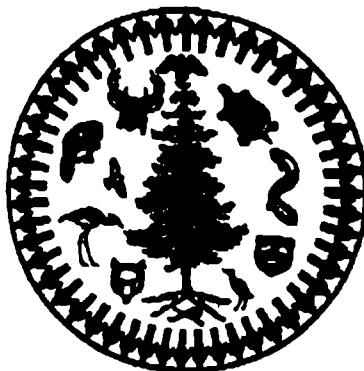
Neal D. Madden

NDM:seg

Enclosures

cc: Larry Milliken (fax)





HAUDENOSAUNEE

MOHAWK - ONEIDA - ONONDAGA - CAYUGA - SENECA - TUSCARORA

TONAWANDA BAND OF SENECA NATION

7027 MEADVILLE ROAD BASOM, NEW YORK 14013

PHONE/FAX (716) 842-4244

May 06, 1999

Mr. Larry Milliken, Chief Operating Officer
American Rock Salt Co., LLC
PO Box 172
Groveland, NY 14462-0172

Dear Mr. Milliken,

The Tonawanda Seneca Nation sends greetings of peace and friendship to you and your associates.

Firstly, the Tonawanda Seneca Nation takes this opportunity to reaffirm our position that the remains of our ancestors are not to be removed or further disturbed. As previously stated, it is our religious and moral duty to protect them; in addition, our law and custom forbids any disturbance of their burial grounds. We maintain the belief that more remains will be discovered and desecrated if construction continues for the proposed rail line.

Secondly, in reference to the offer of the two parcels of land for reburial of the remains, the Tonawanda Seneca Nation graciously decline the offer for the aforementioned reasons.

Thirdly, the Tonawanda Seneca Nation graciously declines the proposed mitigation plans presented at the April 27, 1999 meeting held at the DEC office in Avon, NY. We repeat the aforementioned reasons that cannot be altered or diverted as readily or easily as you propose.

Finally, the Tonawanda Seneca Nation does appreciate the concerted efforts of ARS to offer a amicable and respectful solution. However, the concerns are not only of timely notices or alternative plans, but the continuing disturbance, destruction, and theft of Native American burial sites. No matter how much archaeological testing has been conducted and completed, the tests proved wrong; remains have been found and therefore, desecrated.

There was a protocol developed and established by the Rochester Museum and Science and the OPRHP with input by Peter Jemison, on behalf of the Haudenosaunee Standing Committee, that did create the process of removal and re-burial of human remains, if found. Nevertheless, the number of remains found at this particular site is unprecedented and that this amount cannot be ignored and tossed aside. The Tonawanda Seneca Nation refuses to stand by and permit our ancestors again to pay the price for being who they are, Haudenosaunee.

Da'neho:



Darwin Hill
Clerk, Council of Chiefs
Tonawanda Seneca Nation

cc: Judith Ann Hard, Esq.
Bernadelle Castro, Commissioner, OPRHP
John Hicks, DEC Regional Director
Duane J. Ray, President, SNI
Peter Jemison, Standing Committee
Joseph Heath, Esq.



THE SENECA NATION OF INDIANS

The President's Office

PO Box 231

Salamanca, NY 14779

Fax # (716) 945-1565

FAX TRANSMITTAL COVER SHEET

DATE 5-16-99TRANSMITTING TO FAX # (202) 456-6244

ATTENTION:

Shirley Sagawa, Deputy Asst to the
President & Deputy Chief of Staff to the First Lady

FROM:

Duane J. Ray, President

COMMENTS: Ms. Sagawa - following is a copy of a press
release to be issued at the mining site tomorrow morning.
Per our earlier conversation and correspondence, it would
be greatly appreciated if you would bring this matter
to the attention of the President and Mrs. Clinton.
Thank you for your assistance. Duane James Ray

If you did not receive 4 pages, including cover sheet
contact Sheila Kettle at (716) 945-1790, ext. 121

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FOR RELEASE AFTER 10:00 A.M., MONDAY, MAY 17, 1999

STATEMENT OF
SENECA NATION OF INDIANS' PRESIDENT DUANE J RAY AND TRIBAL COUNCIL
AND TONAWANDA SENECA NATION COUNCIL OF CHIEFS:

Hampton Corners, NY - We are gathered here at the site of a historic settlement and burial grounds of the Seneca people in an effort to prevent the further desecration of the burial remains of our Seneca ancestors.

A rail spur is under construction to service a salt mine proposed by the American Rock Salt Company. Even though testimony was offered at administrative hearings held by the New York State Department of Environmental Conservation that the area proposed has great historical significance and likely contained burial remains, the New York State Department of Environmental Conservation issued a permit for construction to go forward. In November of 1998 and again in April and May of this year, human remains traceable to our Seneca ancestors were uncovered during the construction of the rail spur. It appears to us that American Rock Salt and New York State authorities failed to make a prompt disclosure about the discovery of these remains because of their great interest in proceeding with the project.

According to archaeological studies prepared by the Rochester Museum and Science Center and others, this area near the confluence of the Canaseraga Creek and the Genesee River contains burial grounds and many other features that prove it is the site of the aboriginal territory of the Iroquois Confederacy, specifically the Seneca. Notwithstanding this information, the salt company and the state proposed to continue construction of the rail spur resulting in continued desecration of the remains of our ancestors.

What is happening here represents a blatant violation of Native American religious and human rights. The desecration of these burial sites and the disruption of sacred ceremonial lands has caused much distress to people of good conscience, in particular for the members of the Six Nations of the Iroquois Confederacy.

We believe that remains of Native Americans should be treated with at least the same dignity afforded to remains of persons from other ethnic groups. We note with concern the greater respect shown for the nearby territory of the Williamsburg Cemetery where non-Indians are buried.

We too are concerned about employment opportunities for people in the area and the potential economic benefits that could be realized if the salt mine is reopened. However, the economic benefit must be balanced with considerations of common decency, religious tolerance and the requirements of law. We are confident that people of good mind can find a way to proceed with this project without disrupting the remains of our ancestors.

Both the Seneca Nation of Indians and the Tonawanda Seneca Nation strongly oppose relocation of the remains already found or further construction activity that would desecrate additional graves. We call upon New York State, the American Rock Salt Company, and the responsible contractors to discontinue construction of the rail spur until our legitimate concerns can be addressed.

By direction of both Seneca Councils, we are taking a number of steps to protect the sacred burial remains in this area.

First, we are calling this news conference in an effort to increase public awareness and to move people of conscience to support our cause.

Second, we ask for a moratorium on further construction while discussions and evaluations of alternatives take place.

Third, we call upon Commissioner Bernadette Castro of the New York State Office of Parks and Recreation to exercise the powers afforded to her by Section 12-A of the New York Indian Law to officially designate this site as a place of historic interest, thereby affording it the protections of your agency.

Fourth, we have directed the Seneca Nation's attorneys to investigate legal options available to us under the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, and other provisions of law. We are seeking to identify involvement of United States government authorities in this project that would trigger protection under federal laws as well as avenues of other legal recourse that may be available to us if negotiations prove unsuccessful.

Finally, I have asked members of the Seneca Nation, members of the other Nations of the Haudenosaunee and our friends and supporters to establish an honor guard and lay vigil over this sacred site to guard against further disruption of our ancestors' remains as we seek a creative solution for this problem.

We hope that people everywhere will hear our message, understand the sincerity of our concerns, and join us in calling upon the responsible officials to treat Native American burial remains with the same dignity and respect as those of later settlers to this land.