



Consultation Phase Report

Provincial Agricultural Services Program (PROSAP II)

AR MICI002/2011



CONSULTATION PHASE

May 2011

Closing Report

The report has been prepared pursuant to Article 51 of the Policy establishing the ICIM, and aims to present the work done during the consultation phase as well as its conclusions, outcomes, and lessons learned.



Executive Summary

Project: Loan 1956/OC-AR “Provincial Agricultural Services Program (PROSAP II).”

Country: Argentina.

The request: On 3 November 2010, Archaeologist Dr. Gustavo Neme submitted a request to the Independent Consultation and Investigation Mechanism (ICIM) of the Inter-American Development Bank (IDB) related to loan 1956/OC-AR “Provincial Agricultural Services Program (PROSAP II),” claiming the potential and actual damage that the excavation works for the “Nuevo Alvear Main Irrigation Canal” project had begun to cause to the archaeological heritage of the “La Olla” site in the municipio of San Rafael and General Alvear. The operational policies relevant to the request are OP-703, Section B.9 (the section on Natural Habitats and Cultural Sites of the Environment and Safeguards Compliance Policy) and Policy OP-102 (Disclosure of Information).

Institutional stakeholders: The PROSAP executing agency, the Irrigation Department of the Province of Mendoza (DGI), the Cultural Heritage Bureau of the Province of Mendoza (DPC), and the Agricultural Development Programming Agency of the Province of Mendoza (EPDA).

The ICIM team: Isabel Lavadenz (Ombudsperson) and Fátima Andrada (Legal Operations Analyst).

Termination of the Consultation Phase: This case has concluded with an agreement between the parties and a work plan to be implemented by 1 July 2011. This report describes the events following the assessment phase (signing of the agreement and approval of the rescue plan), as well as the conclusions and outcomes obtained in this ICIM proceeding, and the lessons learned, closing the consultation phase before the ICIM Project Ombudsperson.

Conclusions of the consultation phase: Following this process, the archaeological site has been protected; the project did not have an environmental impact assessment that included an archaeological impact assessment, a fact that was remedied by the timely request and the constructive response of the executing agencies. The development of a museum exhibit was considered appropriate. There must be better communication with the community and among public institutions regarding archaeology-related legislation in the province.

Outcomes: The effective protection of the archaeological site; the coordination of the involved institutions; the setting of a precedent for procedures to be followed in the future, and greater commitment by the institutions.

Lessons learned: Collaboration and dialogue are essential tools for any process; having subject experts in the area facilitates dialogue; sharing information accelerates processes. Creating spaces for learning and exchanging perspectives are essential elements in development programs.

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1. Background

The case submitted with respect to loan 1956/OC-AR, “Provincial Agriculture Services Program (PROSAP II),” which was brought before the Independent Consultation and Investigation Mechanism (ICIM) in its consultation phase on 3 November 2010, and closes with this report, includes the following phases: eligibility review, assessment, dialogue, and a search for solutions and agreement.¹

This case’s eligibility was determined on 3 January 2011 pursuant to Articles 37 and 40 of the ICIM policy.

The assessment phase, which ended with the submission of the assessment report dated 3 May, opened a concurrent dialogue, and culminated in the signing of an agreement on 18 March,² a rescue plan, and the approval of this plan by the DPC on 4 April 2011. Therefore, the assessment phase covered the period from 3 January 2011 to 4 April 2011, which included a consultation and dialogue process among the parties.

1.1. The agreement and work plan

This case concluded with an agreement between the parties and a work plan approved by the applicable authorities to be implemented between the date it was signed and 1 July 2011.

The agreement established several commitments for the parties: (i) the Irrigation Department (DGI) agreed to develop and implement an archaeological rescue and development plan to complete the studies and take measures to ensure the preservation and dissemination of the site’s cultural heritage; (ii) the Cultural Heritage Bureau (DPC) took responsibility for supervising the execution of the rescue plan, for which it submitted a list of appropriate, competent professionals to design and implement it; (iii) the DGI agreed to request the DPC’s opinion with respect to archaeological impact assessment, approval, and monitoring procedures in effect for projects under its authority; (iv) the DGI agreed to make any necessary adjustments in its procedures based on the recommendations made by the DPC. Lastly, PROSAP agreed to assist and support the DGI and the Agricultural Development Programming Agency of the Province of Mendoza (EPDA) in fulfillment of the provisions of the agreement.

As agreed, the DGI prepared the rescue plan, specifying the rescue and conservation activities for the La Olla site. It was agreed that once the DPC approved this plan, the DGI would take the measures necessary to complete its implementation by 1 July 2011.

1.2. Adjustments to the work plan

The work plan was adjusted for implementation according to the technical assessment of the independent advisor, and addresses the following considerations:

¹ The ICIM opened a monitoring file on this case at the requester’s request.

² See Annex 1, the agreement dated 18 March 2011.

- The need to place the site and the knowledge it holds in a spatial and temporal context: the results will be presented to the local community, who will take part in the excavations, which is expected to give them a sense of ownership of their past and inspire them to contribute to its construction and interpretation through their perspective on the archaeological record of the La Olla site.
- The importance of trial excavations on the rest of the site: a series of 50 cm by 50 cm test areas will be excavated in various parts of the archaeological site.
- The dissemination of the results through explanatory talks in the community of Real del Padre and explanatory documentation for the interpretive center.
- The scheduling of periodic monitoring of the remaining site: the final report on the rescue plan will determine the sensitivity of the different areas based on the results of the archaeological rescue, so the DPC can determine the applicable monitoring.
- In order to ensure the proper consideration of current legislation on the protection of cultural heritage, the parties agreed to request the DPC's opinion with respect to current archaeological impact assessment, approval, and monitoring procedures for works under their authority, and to make any necessary procedural adjustments based on the DPC's recommendations.

2. Field visit and verification

On 28 April 2011, Dr. Catalina Teresa Michieli (ICIM) visited the La Olla site with staff from the DGI and the San Rafael Museum of Natural History.

According to the technical report submitted by Dr. Michieli, it was confirmed that the site has a very significant symbolic value in terms of heritage, and archaeological artifacts were found at the surface corresponding to ancient pre-Hispanic periods that could date back more than 1,200 years before present (1200 B.P.), the date established for the site.





*A ceramic fragment with a flat base, an indicator of very ancient times
(photograph from the report by Dr. Michieli)*

The technical report (ICIM) indicates that “at that time the arrival of a cold front with strong winds made it clear that the material at the surface is gradually becoming exposed by erosion. This observation, along with the work done previously by Drs. Gustavo Neme and Adolfo Gil, confirm the existence of stratigraphic levels beneath the surface, making the rescue of the site even more important.”



Wind erosion of the archaeological site (photograph from the report by Dr. Michieli)

3. Conclusions of the consultation phase

The processes begun and carried out during the ICIM's consultation phase are aimed at facilitating the resolution of the problem. Within the framework of this consultation process and based on the technical information received, the following conclusions have been drawn:

- It is important to note the good will of those responsible for the involved areas in the DGI and the PROSAP II executing agency, as well as the researchers, who expressed their interest in having the ICIM monitor the work plan.
- Under this process, the La Olla site was protected, addressing the requester's concern.
- The project did not have an environmental impact assessment including an archaeological impact assessment and/or study;³ however, this fact was largely remedied thanks to the timely request and the constructive response by the executing agencies.⁴
- Since archaeological assets must be duly safeguarded (under the law) by a specialized, responsible institution, the possibility of creating a museum unit was discussed, more specifically an interpretive center or temporary exhibit.
- There should be better communication with the community and among government agencies (executing agencies and/or regulators of investment programs), as well as knowledge of new requirements under provincial, national, and international legislation on the protection of archaeological heritage.

4. Outcomes

In closing the proceeding initiated before the ICIM, the following outcomes obtained by the parties can be highlighted:

- **Effective protection of the archaeological site:** The request to the ICIM began as a response to the requester's concern regarding protection of the La Olla site from potential damage as a result of the project. The dialogue among the parties led to the signing of the agreement, which reflected the decision by the central provincial executing agency of PROSAP and the DGI to

³ Operational Policy OP-703 "Environment and Safeguards Compliance Policy," Section B.9., paragraphs 4.23 and 4.24.

⁴ The project took care to assess and prevent the potential impact of the works on the archaeological heritage. This took shape in the hiring of a local archaeologist to review the site and prepare recommendations and procedures for its protection.

complete the studies on the La Olla site, demonstrating their interest in the preservation and dissemination of regional cultural heritage.

- **Coordination among the various involved institutions:** One feature of the PROSAP case was the necessary coordination among different institutions and stakeholders: the PROSAP executing agency, the DGI, the DPC, the EPDA, and the IDB Country Office in Argentina. All of these institutions succeeded in coordinating an agreement and work plan, the result of which will set a precedent for improving the future management of all parties involved.
- **Precedents for procedures to be followed:** The process undertaken has set an important precedent for responsible institutions on the protection of the archaeological heritage of the Province of Mendoza; these institutions have completed a fundamental exercise in compliance with legal regulations governing the preservation of the province's archaeological wealth. These are new procedures in this area, and will therefore take root over time.
- **Greater institutional commitment:** This is the most notable outcome in terms of institutional strengthening. Now, after several months of work, it can be said that the involved institutions are committed to the issue.

5. Lessons learned

The following lessons emerged from the consultation phase:

- **Collaboration and dialogue, essential tools for any process:** Establishing a dialogue and collaboration among participants represented key elements that enabled an agreement to be reached and implemented. These characteristics are key in the timely channeling of claims and in the prompt resolution of disputes.
- **Strengthening the consideration of archaeological issues in environmental impact assessments in cases like PROSAP:** Archaeological issues do not receive due attention in infrastructure programs that include the establishment of loan areas for extraction of materials, which are usually not considered part of the primary area for the impact assessment. Therefore, in areas with cultural and/or archaeological value, identification and prevention measures are needed prior to beginning work on the site.
- **Having subject experts from the area facilitates dialogue:** The main thrust of the PROSAP case has been the protection of the archaeological heritage of a complex geographical area in Mendoza province. In addressing a technical issue that requires highly specific professional competence, it was crucial for several of the stakeholders involved to have knowledge of archaeological issues, and not only was their professional training important, but their

knowledge of the specific area was as well. By having professionals who met these criteria, it was possible to establish a fluid dialogue and exchange of information.

- **Sharing information accelerates processes:** The request to the ICIM was processed quickly thanks to the effective collaboration between the Country Office and the PROSAP II executing agency. Both the executing agency and the DGI shared the information necessary to accelerate the dialogue process.
- **It is essential to create spaces for learning:** The various institutions involved in this process were faced with a situation that motivated them to analyze the new legal framework governing archaeological issues in Mendoza province. The lesson learned from this situation is the need to create space for training and debate, so the officials of the involved institutions can better understand the current regulations and create practical solutions for effective enforcement of the law within the framework of development programs.



Annex 1

AGREEMENT ON CLAIM FOR ALLEGED ARCHAEOLOGICAL DAMAGE

The Provincial Agricultural Services Program (PROSAP), represented by Environmental and Social Manager Mario Nanclares (National Identity Document 17,254,795), the Irrigation Department of the Province of Mendoza (DGI), represented by Secretary of Water Management, Engineer Marciano Juan Gasco (Voter's Registration 8,072,651), the Cultural Heritage Bureau of the Province of Mendoza (DPC), represented by Director General, Liliana Girini (National Identity Document 16,448,093), the Technical Coordinator of the Agricultural Development Programming Agency of the Province of Mendoza (EPDA), Eduardo Ramet (National Identity Document 18,081,948), and Dr. Gustavo Neme (National Identity Document 20,012,178) have agreed to the following terms of agreement with reference to the request submitted by Dr. Neme to the Independent Consultation and Investigation Mechanism (ICIM) of the Inter-American Development Bank (IDB) on the alleged impact on the archaeological site known as La Olla by the "Modernization of the Nuevo Alvear Main Irrigation Canal" project (under PROSAP – IDB – loan 1956/OC-AR).

- 1) The undersigned, recognizing the archaeological value existing in the area surrounding the General Alvear and San Rafael oasis in the Province of Mendoza, agree on the importance of promoting the conservation and development of the La Olla archaeological site that is located on private land separate from the Nuevo Alvear Main Irrigation Canal plans and project, in an area that was repeatedly impacted by the extraction of dry aggregate and other activities by various enterprises and private individuals.
- 2) Since the parties have accepted a recent report prepared by the archaeological specialist for the Nuevo Alvear Canal project, Dr. Roberto Bárcena, for the DGI, which states that, although the new channels for the Nuevo Alvear Main Irrigation Canal project did not affect the La Olla archaeological site or any reservoir, there are archaeological artifacts dispersed in areas close to the project area whose protection is in the public interest, as confirmed by the DPC on a recent site visit, the DGI has agreed to implement an Archaeological Rescue and Development Plan in order to complete the studies and take measures to ensure the preservation and dissemination of this site's cultural heritage.
- 3) In its capacity as the enforcement authority for National Law 25,743 on the Protection of Archaeological and Paleontological Heritage and Provincial Law 6,043 on Cultural Heritage, the Cultural Heritage Bureau of the Province of Mendoza will supervise the execution of the Rescue Plan mentioned in the foregoing paragraph, for which it will submit to the DGI a list of appropriate professionals for its design and implementation.
- 4) The DGI will select some of the professionals proposed by the Cultural Heritage Bureau and will commission them to develop a work plan specifying the rescue and conservation activities to be undertaken in the area. Once this work plan is approved

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[five sets of initials]

by the DPG, the DGI agrees to take the measures necessary to complete its implementation by 1 July 2011.

5) In order to ensure the proper consideration of current regulations on the protection of cultural heritage, the Irrigation Department agrees to request the opinion of the Cultural Heritage Bureau with respect to current archaeological impact assessment, approval, and monitoring procedures for works under their authority. The DGI agrees to make any necessary procedural adjustments based on the recommendations made by the DPC.

6) PROSAP agrees to assist and support the DGI and the EPDA for purposes of fulfillment of the provisions of this agreement.

7) PROSAP agrees to maintain the IDB and the ICIM informed of the status of fulfillment of the commitments assumed by the parties under this agreement.

8) Dr. Gustavo Neme acknowledges the predisposition and good will hereby made manifest by PROSAP, the DGI, the EPDA, and the DPC, and agrees to immediately inform the Independent Consultation and Investigation Mechanism (ICIM) of the Inter-American Development Bank (IDB) of the terms of this agreement, which resolves the claim filed and satisfies his interest with respect to the preservation of the region's cultural heritage.

In witness whereof, this agreement is signed in five (5) identical counterparts in the city of General Alvear on 18 March 2011.

[signature]
Gustavo Neme
20,012,178

[signature]
Dr. Liliana Girini
Director of Cultural Heritage
Office of the Secretary of Culture
GOVERNMENT OF MENDOZA

[signature]
Mario Nanclares
Env. & Soc. Unit, PROSAP
ID 17,254,795

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Marciano Juan Gasco
Secretary of Water Management
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