



# *Sacred Lands and Gathering Grounds: A Toolkit for Access, Protection, Restoration & Co-Management*

Center for Sustainable Environments and Applied Indigenous Studies



## **Introduction**

I want to tell you a story that conveys why I think this toolkit will be so useful to Native Americans who are already working to protect their community's sacred sites and gathering grounds. At age nineteen, on my first time camping in Monument Valley on Diné nation lands, I got my pickup truck deeply stuck in the sand. For several hours, I tried to use a small jack and a camping trowel to get the tires up above the level of the soft sand. Finally, an elderly Navajo sheepherder came by in his truck, and not only offered me another shovel and larger jack, but showed me how to use the two jacks in tandem on the back axle to get the pickup truck loose.

Without those extra tools and knowledge of where and when to strategically use them, I may have remained stuck in Monument Valley to this very day! The same is true with certain sacred lands efforts—some are stuck simply because they have only applied a single tool to the problem, and not drawn on the entire range of strategies that other Native American communities have already found to be successful.

The following toolkit does not divulge any sacred, esoteric or otherwise sensitive information about particular sacred sites, ceremonial plants, or gathering grounds. That is not its purpose. Instead, it assembles tools of proven value to communities as they attempted to gain access to, protect, co-manage or restore such sacred resources. We welcome your input on how to improve the presentation of these resources. It has been a team effort to compile these materials, and I am grateful to my fellow team members, both Native American and non-native, and to the Christensen Fund for support.

Gary Paul Nabhan  
Spring 2005





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### Digital Video Disc (DVD)

- *In the Light of Reverence* (2001) produced and directed by Christopher McLeod, Sacred Land Film Project of Earth Island Institute. Distributed by Bullfrog Films, [www.bullfrogfilms.com](http://www.bullfrogfilms.com). For more information about Sacred Land Film Project visit [www.sacredland.org](http://www.sacredland.org).

### Compact Disc (CD) Documents and Templates

- Gathering Policy Agreement: U.S. Forest Service and California Indian Tribes
- Challenge Cost-Share Agreement: California Indian Basketweavers Association and U.S. Forest Service, Six Rivers National Forest
- Memorandum of Understanding for Gathering Plant Resources: Zion National Park, Cedar Breaks National Monument, Pipe Spring National Monument, and the Kaibab Band of Paiute Indians, the Moapa Band of Paiute Indians, and the Paiute Indian Tribe
- Memorandum of Understanding for Collection of Tan Oak mushroom in Six Rivers National Forest
- Conservation Easement Template
- Nomination Forms for National Historic Register
- Assessing Health Hazards Related to Plant Gathering
- Statement of the Relationship between the White Mountain Apache Tribe and the U.S. Fish and Wildlife Service
- Memorandum of Understanding between Western Apache and Forest Service
- Talking about Biodiversity by Jane Elder
- Selected photographs and descriptions by D. Seibert, G. Nabhan, J. Running

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# *Sacred Lands and Gathering Grounds: A Toolkit for Access, Protection, Restoration & Co-Management*

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## **Preface**

Native nations occupy a unique legal and political status within the United States—sovereign nations with a status higher than state governments, but whose sovereignty is subject to legal limits from the federal government. The relationship has always been complex, with the federal government sometimes protecting tribal interests from the states and private interests, and other times choosing to ignore its fiduciary duty to those who the first inhabitants and caretakers of the land and other natural resources.

While the nation grew up around them, competition for use of those resources, including traditional land use areas of native peoples, increased. As the demands of non-native citizens mounted, federal policy toward American Indians changed several times over several decades, and native peoples lost more and more traditional use lands. The result is a complicated patchwork of complex federal Indian law, federal and state agency jurisdiction, and private ownership.

In the toolkit, we've compiled short summaries of those laws, legal doctrines, and agency policies confronting native peoples today in their efforts to protect sacred places and gathering grounds that are now outside the borders of American Indian reservations. Section I is comprised of many of the legal doctrines, laws, and court cases which are most applicable to protecting sacred lands and gathering grounds, along with a few case studies illustrating how these legal and legislative tools have been used. Some of the case studies are success stories, while others are not. It is our hope that both the success stories and the on-going attempts will provide useful information for those still engaged in the struggle to protect sacred lands and gathering grounds.

Section II summarizes various federal agency policies with respect to how they affect sacred lands and gathering grounds and issues of access for native peoples to those areas and the right to gather in them. The examples of agency policy provide ready access to agency motivations, mandates, and responses to constantly shifting but common ground on which multiple parties stand and work. In many cases, our approaches to this situation through the Toolkit, like those of the agencies and Tribes involved, utilize multiple methods and tools in situations as they emerge on the ground.

Section III offers tools for collaboration as well as co-management, including information on consultation between tribal nations and agencies. Here we provide strategies and examples of successfully co-managed projects, including the elements that contribute to beneficial working collaborations. This collection results from extensive conversation, project collaboration, research, and workshops conducted through the Center for Sustainable Environments and the department of Applied Indigenous Studies at Northern Arizona University. The MOU and MOA examples collected in the CD contained in the Toolkit provide useful templates and examples of successful partnerships, including articulations of specific circumstances that have proven effective in establishing precedents, empowering local entities, and maintaining beneficial



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relationships. These on-going interactions have occurred between individuals, tribes, agencies, and other groups in creative, interactive processes.

Advocates for the protection of indigenous sacred sites and gathering grounds have often failed in their attempts to build broader coalitions to support their causes. It has sometimes been difficult to create dialogue with individuals or organizations that do not understand native world-views and religious practices related to the environment. There has also been a reluctance to use analogies and metaphors from the Judeo-Christian traditions of the dominant cultures in order to explain indigenous world views to the unacquainted, for fear that the analogies distort or co-opt indigenous beliefs.

In addition, the necessary reservations of indigenous peoples to publicly explain their world views and practices may prevent well-meaning non-natives from fully comprehending the importance of protecting sacred lands and gathering grounds. Many tribes consider it simply inappropriate or sacrilegious to communicate details of their cosmology and religious practices to outsiders. Section IV provides an overview of some current perspectives of various religious organizations to address and promote the sanctity of creation, and the responsibility of humans of all faiths to provide stewardship of sacred lands. It is an effort to provide the reader with tools to bridge the seemingly wide chasm between Indigenous and Western (including Judeo-Christian-Islamic) world-views regarding sacred places. We hope that this information can be used to increase the awareness of native and non-natives alike of opportunities to find common ground. To do so, it may be helpful if practitioners of indigenous spiritual traditions learn more of the current initiatives and historic legacies of Judeo-Christian traditions that resonate or support the protection of all holy places. Many religions have in their teachings a divine mandate that the lands and water that nurture us should be cared for, and not destroyed. In fact, some faiths have explicitly written declarations to support protection of indigenous peoples' sacred places. This document provides links to faith-based environmental justice advocacy groups to facilitate dialogue and coalition building between native and non-native communities that share some of the same goals.

Finally, some of the case studies and summaries of legislation and legal doctrines are applicable to more than one section. Therefore, toolkit users will find notes about where to cross-reference certain tools, and some examples are included in more than one section. It is our hope that this Toolkit becomes a useful and well-worn set of tools in the hands of practitioners, and that any who make use of it also contribute to improving and adjusting its contents as new situations continue to emerge surrounding these issues.

Comments may be directed to:

Center for Sustainable Environments, Northern Arizona University

[www.nau.environment.edu](http://www.nau.environment.edu)

928-523-0637

928-523-8243



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## **I. Legislative Processes, Laws, and Legal Doctrines**

Public policy surrounding sacred sites and gathering grounds of indigenous peoples in the United States can be understood as encompassing two primary arenas: the legal and legislative arena, and the public opinion and educational arena. Throughout the toolkit, one will find discussions and examples of the components of both arenas. Readers should bear in mind, however, that many of the tools identified encompass aspects of more than one arena. For example, the process by which a piece of legislation which ultimately became law also might be a good example of how public opinion can be shaped on a particular issue to result in a desired outcome. For example, while the piece on the Tribal Forest Protection Act is included here in Section I, it is also an example of successful collaboration and co-management, which is the focus of Section III.

Section compiled by Karen Jarratt-Ziemski



## Treaties and Treaty Rights

American Indian tribal nations are also unique in the American political system in that treaties exist between many tribal nations and the United States. Particular rights (i.e. water rights, off-reservation hunting and fishing rights, mineral rights, and other natural resource rights) are often misunderstood and misconstrued by non-Indians as “special rights.” This inaccuracy often stems from a deeper misunderstanding that Indian tribes are considered ethnic minorities rather than governments. However, simple logic unmasks this fallacy—the United States government does not make treaties with ethnic minorities. Treaties are agreements made between sovereigns. While treaty provisions are sometimes upheld and sometimes ignored, Chief Justice Marshall’s observation that treaties with Indians are sanctioned by the constitution and declared, along with the constitution, to be the supreme law of the land, remains valid law (*Worcester v. Georgia*, 1832).

Treaty rights have been recognized time and again by federal and state courts, including the U.S. Supreme Court. The Court first articulated the reserved rights doctrine as a specific means of interpreting treaty rights in 1905 (*United State v. Winans*). In the opinion, Justice McKenna stated that Indian tribal nations retained rights historically held by their peoples unless they were specifically ceded in a treaty. The reserved rights doctrine was subsequently applied by the Court specifically to water rights, now known as the Indian reserved water rights doctrine (a.k.a. the *Winters* doctrine) in 1908 in *Winters v. United. States*. Over the years, the Court has also developed rules for interpreting treaties with tribal nations, known as the Canons of Construction (Getches, et. al., 1998, 129-132). See also The Reserved Rights Doctrine and The Modern Trust Doctrine below.



**U.S. v. Winans (1905)**  
**Supreme Court of the United States**  
**198 U.S. 371, 25 S. Ct. 662, 49 L. Ed. 1089**

Mr. Justice McKenna delivered the opinion of the Court:

The Yakima nation entered into a treaty with the U.S. in 1855, setting forth provisions for guaranteeing fishing rights to the tribe both on and off the reservation, “in all usual and accustomed places in common with the citizens of the territory.”

Winans and other non-Indians attempted to interfere with off-reservation fishing rights of the Yakimas, by denying them access to their “usual and accustomed places,” and by barring them from crossing over non-Indian owned land to get to the sites. The Yakimas sued to enforce their treaty rights. The lower Court dismissed the action, saying that as the respondents held absolute title to the lands they then had the right to exclude the Yakimas from it.

The legal question before the Court was whether treaty rights of the Yakimas superseded objections by non-Indian landowners for access to the traditional fishing sites.

In its analysis, the Court reasoned that the context of the treaty must be taken into account, and said that fishing rights were part of a larger set of rights the Indians held which were necessary to their daily existence and were without limits. While some limits were placed on Indian rights under the treaty, the Court noted that it was not intended to be a destruction of those rights.

In a most important statement, the Court reasoned that the treaty was not a grant of rights to the Indians, but rather a grant of rights from them. Thus rights not expressly ceded under the treaty were reserved to the Indians. This statement has come to be known as the *reserved rights doctrine* (see enclosed description of The Reserved Rights Doctrine).

The Court held that non-Indians could not deny the Yakimas access to their fishing sites even though it was necessary to cross land owned by non-Indians to reach the sites.





## **The Canons of Construction**

The Canons of Construction are rules the courts have developed over time for use in interpreting Native American treaties. Although there are several, the three primary and most widely recognized are:

- ❖ Treaties should be interpreted as the Native Americans would have understood them.
- ❖ Ambiguous expressions must be interpreted in favor of Native Americans.
- ❖ The whole treaty should be liberally construed in favor of Native Americans.

While the courts do not always apply the canons, they have been recognized in courts to support Indian treaty rights claims in many cases, including recent fishing and gathering rights cases.

Reference: Getches, David H., Charles F. Wilkinson, and Robert A. Williams, Jr. 1998. *Cases and Materials on Federal Indian Law, Fourth Edition*. St. Paul, MN: West Publishing Company.



## The Reserved Rights Doctrine

The reserved rights doctrine stems from both constitutional and judicial foundations. The U.S. Supreme Court first articulated the doctrine in *U.S. v. Winans* 1905. In *Winans*, the court applied the canons of construction (rules used in interpreting Indian treaties, see above) in the case, which involved a dispute between Indians and non-Indians regarding off-reservation fishing rights of Yakima Indians. Writing the opinion for the Court, Justice McKenna held that the treaty between the United States and the Yakima Indians could not be interpreted simply as an explicit list of rights retained by Indians. Rather, the Court said,

*In other words, the treaty was not a grant of rights to the Indians, but a grant of rights from them, a reservation of those not granted. And the form of the instrument and its language was adapted to that purpose. Reservations were not of particular parcels of land, and could not be expressed in deeds, as dealings between private individuals. The reservations were in large areas of territory, and the negotiations were with the tribe. They reserved rights, however, to every individual Indian, as though named therein. (198 U.S. 371, 1905, emphasis added.)*

Since *Winans*, the reserved rights doctrine has been upheld by the Supreme Court and applied specifically to Indian water rights attached to Indian lands [*Winters v. United States*, 207 U.S. 564 (1908)], and in several cases, affirmed tribal nations' off-reservation right to hunting, fishing and gathering for cultural, ceremonial and subsistence purposes.

The U.S. Supreme Court does not always uphold reserved rights, but tribal nations have found success in utilizing the Courts to protect reserved rights in several cases since *Winans*, through the 1980's. Generally speaking, tribal nations have had success in pursuing reserved rights when a simultaneous challenge to federal power by non-federal entities (i.e. states or private parties) is intertwined with Indian reserved rights. Finally, reserved rights explicitly stated in treaties have generally been protected by the Courts more often than implicit reserved rights.



## Case Studies on Indian Reserved Rights to Gather Forest Products on Public Lands

### *Legal basis for off reservation gathering grounds*

The 1905 decision of the U.S. Court in *United State vs. Winans* has become the cornerstone for the recognition and protection of off-reservation reserved usufructary rights. A suit brought by the U.S. on behalf of the Yakama Indian Nation reserved the right of taking fish in all usual and accustomed places. The suit did not involve a grant of rights *to* the Indians but were rather a grant *from* them. The treaties were instruments by which the tribes granted certain of those rights and retained those not given away. The Supreme Court has subsequently held that these same principles of construction apply whether the instrument reserving the rights was a treaty, Executive Order, Congressional act, or some other legal instrument. This reflects an agreement between a tribe and the United States that has been repeatedly upheld, particularly in the context of off-reservation usufructary rights, and preempts state law or regulations. Tribal reserved rights are property rights under the Supreme law of the land, based on government-to-government agreements with the United States.

The Confederated Tribes of the Colville Reservation in northeastern Washington State hold and exercise off-reservation hunting, fishing, trapping, and gathering rights on lands that originally comprised the former northern half of their reservation now under federal (U.S. Forest Service and U.S. Bureau of Land Management) ownership. The Klamath Reservation in south-central Oregon retains hunting, fishing, trapping, and gathering rights on national forest lands that formerly constituted the Klamath Reservation.

The rights of the Klamaths, Colvilles and similarly situated tribes are also recognized as compensable property rights. Aboriginal rights includes a broad array of usufructary rights of aboriginal use and possession, not divested but recognized as inherent in a tribe's use of an area since time immemorial.

### *Scope and exercise of off reservation usufructary rights*

Three areas of litigation: The federal government's right to regulate tribal exercise of the right; allocation of resources between tribal use and non-Indian users; and environmental protection of the resources.

- 1) The Federal Government's Right to Regulate Tribal Exercise of the Right. The courts have repeatedly recognized that the rights exercised by tribal members belong to the tribes as inherent sovereign entities except when necessary to protect various species from extinction. Fish and game are usually the province of the states and the tribes. The U.S. government does maintain regulatory authority over the flora on public lands (National Forest Management Act, 16 (USC 1601).
- 2) Rights to Allocation of a Shared Resource. In situations of scarcity resulting from the increase in non-Indian populations have led to conflicts over who has a right to how much. Courts have generally found that the tribes who had a reserved right to a common resource had a right to a 50 percent allocation of that resource. This is based on court-created document of a "moderate living standard" to ensure that tribes could obtain a moderate living.
- 3) Rights to Environmental Protection of Resources. Another issue that courts have addressed is whether tribes who have the right to harvest a particular off-reservation resource also have the right to environmental protection sufficient to protect that resource and thereby guarantee that the tribe's right can continue to be meaningfully exercised. Fisheries (*United States v. Washington* 1985, 759 F.2d 1353, 1357) over fisheries; timber.

Examples:

*Chippewa Tribes of the Upper Midwest*

The courts determined that the Chippewa tribes had reserved usufructary rights on all public lands in the northern third of the state of Wisconsin; rights to gather 175 different species of plants and animals, and wild rice. The Minnesota Chippewas' successful assertion of a treaty right to gather wild rice off-reservation led to the creation of a Wild Rice Lake Reserve for their exclusive use.

**Pacific Northwest Tribes**

Various tribes have gathering rights on off-reservation land, including lands that are part of the U.S. National Forest System. The Yakama Indian Nation has entered into an agreement with the U.S. Forest Service that sets aside certain huckleberry picking areas for the exclusive use of tribal members exercising treaty-reserved off-reservation gathering rights.

**Salish and Kootenai tribes**

Other tribes expressly reserved the rights of gathering roots and berries on ceded lands that remained unclaimed. Work includes both an economic component (subsistence or commercial) as well as a cultural component. Gathering of certain species is often an essential part of various religious or spiritual practices of the tribes.

References:

- Blumm, Michael and Brett Swift. 1998. The Indian Treaty Piscary Profit and Habitat Protection in the Pacific Northwest: A Property Rights Approach." University of Colorado Law Review 69:407-414.
- Goodman E.C. 2002. Indian reserved Rights *in* Jones E.T., McLain R.J. and J. Weigand, Eds. Nontimber Forest Products in the United States. University Press of Kansas.

## **Chippewa Off-Reservation Fishing Rights**

In Wisconsin, several bands of Chippewa fought to utilize their reserved treaty rights to off-reservation fishing. Traditionally, the Chippewa spear-fished for walleye. Wisconsin developed a strong tourism economy, in which hunting and walleye fishing played a large role, and asserted that the Chippewa had no right to fish off the reservation. In fact, those who did were fined, arrested, and many had their boats and other equipment seized by the state. In 1973, subsequent to being arrested for off-reservation walleye fishing, two Chippewas sued the state, claiming Wisconsin violated their reserved fishing rights under the treaties of 1837 and 1842. After years of legal battles, the U.S. Court of Appeals, Seventh Circuit, agreed, holding that under the two treaties the Chippewas held explicit reserved rights to fish off-reservation in their traditional use areas. The court did not say that the Chippewas held *exclusive* rights to fish walleye—only that they held the right to fish in common with Wisconsin non-Indian residents.

After the court decision, Wisconsin sports fishermen and other non-Indian residents responded with huge protests, including violent confrontations. Chippewas going out to lakes to fish were faced with running a gauntlet of people jeering, yelling racial epithets, and holding signs such as “spear an Indian, save a walleye.” Some Chippewas were shot at, others received death threats, and some non-Indians even printed up fliers advertising the “first annual Indian shoot.” Wisconsin game and fish administrators did not help diffuse the situation when they claimed that native spear fishermen were to blame for reducing walleye populations, when in fact native spear fishing represented only a very small fraction of the total number of walleye caught each year. In 1991, the district court issued a final order in the case saying that the reserved treaty rights of the Chippewa tribes included “rights to those forms of animal life, fish, vegetation, and so on that they utilized at treaty time...and the right to use all of the methods of harvesting employed at treaty times and those developed since” (Prucha 1994, pp. 421-422). Additionally, the six Chippewa tribal nations of Wisconsin were assured gathering rights to forest products such as firewood, tree bark, maple syrup, lodge poles, and various others.

Eventually, however, the extreme anti-Indian racism turned against the non-Indian residents. Media attention focusing on the protests eventually led to that area of Wisconsin developing a reputation as racist, which in turn led to a decline in tourism.

### **What Worked**

The reserved rights doctrine, the canons of construction, persistence in exercising legally protected rights, media attention, maintaining the “high moral ground.” These particular reserved rights were explicitly mentioned in treaties.

### **What Didn't Work**

Wisconsin game and fish officials incorrectly attributed walleye population decline to native spear fishing, fueling backlash against the Chippewas, rather than attempting to diffuse the situation by educating non-natives. State agency administrators seemingly were uninformed of (or chose to ignore) the legal and political status of tribal nations and the nature of treaty rights.





## **United States v. Washington**

**United States District Court (1974)  
384 F. Supp. 312, Affirmed 520 F.2d 676 (9<sup>th</sup> Cir. 1975)  
Certiorari denied, 423 U.S. 1086, 96 S. Ct. 877, 47 L. Ed. 2d 97 (1976).**

This case involved the extent of off-reservation fishing rights in six treaties between the United States and fourteen Western Washington tribes, entered into between 1854 and 1859. Each treaty provided for certain off-reservation fishing rights of Indians at “usual and accustomed grounds and stations in common with the citizens of the Territory, and of erecting temporary houses ...”

The legal issue in the cases was whether the language of the treaty guaranteeing the off-reservation rights to the native peoples subjected them to state fishing regulations such as bag limits and seasons.

In its analysis, the Court considered anthropological reports, which established the dependence of the life ways (including food supplies and religious ceremonies) upon fishing for the tribes involved. The Court also noted that the purpose of the treaties was to extinguish title to certain areas of Indian lands, but not to destroy their rights to fishing, and observed that the Superintendent of Indian Affairs for the Washington Territory had assured the Indians of their off-reservation fishing rights during the treaty negotiations. The Court applied the canons of construction in this case, noting a language difference between the Indians and non-Indian parties to the treaty negotiations, and ruled that the Indians probably understood the treaty to mean that there would be no restrictions to their fishing rights, even though they would share such rights in common with the citizens of the Territory.

The Court ruled that the Indian parties who held off-reservation fishing rights under the treaties were entitled to fifty percent of the harvestable fish.



## The Modern Trust Doctrine and Tribal Nations

The status of domestic dependent nations, along with the ward/guardian relationship (expressed by the U.S. Supreme Court in *Cherokee Nation v. Georgia*), the principle of Indian title (articulated by the Supreme Court in *Johnson v. McIntosh*), and the treaty relationship between the U.S. and tribal nations are components of what is referred to in federal Indian policy and law as the modern trust doctrine. The heart of the modern trust doctrine is that as tribal nations are considered under the protection of the United States, the federal government has a fiduciary duty to protect their interests. In fact, the federal government often must exercise its fiduciary duty to protect tribal interests from the state governments, as demonstrated in *Cherokee Nation v. Georgia*, as well as from citizens of the states as demonstrated in *Winans*, *Winters*, and many other cases.

Often, the trust responsibility of the federal government is needed to protect tribal treaty rights (see *Winters*, *Winans*, and *United States v. Washington*, for example). For more information on the government's fiduciary duty and treaty rights protection, see Getches, et. al, 1998, and Wilkins and Lomawaima, 2001. The fiduciary duty of protection of tribal interests has also been interpreted from time to time as the basis for expansion of Congressional power over Indian affairs, although Wilkins and Lomawaima along with other legal scholars of federal Indian law dispute the constitutional legitimacy of that expansion of powers. Some debate exists as to whether the foundations of the trust responsibility embody legal versus ethical responsibility on the part of the federal government. As Wilkins and Lomawaima note, however, "...the majority of political and legal scholars, jurists, and federal policy-makers assert that the federal trust responsibility is an ancient and entrenched (although ambiguous) legal doctrine that permeates the tribal-federal trust relationship" (2001, 67).

*Cherokee Nation v. Georgia* (1831), 30 U.S. (5 Pet.) 1, 8 L. Ed. 25.

Deloria, Vine, Jr., 1996. Reserving To Themselves: Treaties and The Power of Indian Tribes. *Arizona Law Review*, Fall 1996, 38:963-980.

Deloria, Vine, Jr. and David E. Wilkins, 1999. *Tribes, Treaties, & Constitutional Tribulations*. Austin, TX: University of Texas Press.



## **The American Antiquities Act (AAA) and The Archaeological Resources Protection Act (ARPA)**

Enacted in 1906, the American Antiquities Act (AAA) established a mandatory permit process for archaeological digs on federal property and penalties for vandalism and/or illegal excavation of ancestral sites. However, several problems with the act surfaced, including a charge by the courts that it was constitutionally vague, which rendered it fairly ineffective. In 1979, Congress sought to remedy some of the weaknesses in the AAA by passing the Archaeological Resources Protection Act (ARPA). ARPA requires federal permits for excavation or removal of archaeological resources on public lands or Indian lands, and instructs the federal agency managing the public lands to notify any affected Indian tribe or tribes if the activities carried out under the permit might cause harm to a religious or culturally important site. Additionally, the ARPA prohibits the sale or transportation of items removed, and prescribes a scale of civil and criminal penalties for violations. Penalties range from \$500 to \$100,000, and imprisonment from one to five years.

### References:

United States Code, Title XV.

Available on-line at <http://www.cr.nps.gov/hps/laws/archprotect.htm#A>

Chapter 11 in Getches, David H. et. al. 1998. *Federal Indian Law, Cases and Materials 4<sup>th</sup> Edition*. St. Paul, MN: West Group Publishing.



## **National Historic Preservation Act (NHPA)**

The National Historic Preservation Act (NHPA) may be a useful tool to protect a sacred site in certain instances. Section 106 of the NHPA specifically discusses traditional cultural properties, and instructs federal agencies to consider the effects of proposed actions on sites eligible for the National Register of Historic Places. The procedures for using Section 106 to determine whether or not a site is eligible is complicated, and a separate bulletin in the National Register (Number 38) spells out the rules for utilizing this section of the NHPA. The Advisory Council on Historic Preservation's (ACHP) website, listed below, contains a wealth of information helpful to anyone interested in utilizing Section 106.

Additionally, the ACHP's Policy Statement Regarding ACHP's Relationships with Indian Tribes strongly supports tribal sovereignty and respect for cultural values, and recognizes the government-to-government relationship between the federal government and tribal nations as affirmed by the trust relationship, treaties, executive orders, and court cases.

### References:

Advisory council on Historic Preservation. "Section 106 User's Guide"

----- . 2000. "ACHP Policy Statement Regarding ACHP's Relationships with Indian Tribes."

<http://www.achp.gov/policystatement-tribes.html>





## Case Study: Traditional Cultural Properties (TCPs)

Traditional Cultural Properties are defined as eligible for inclusion in the National register of Historic Places because of their "association with cultural practices or beliefs of a living community that a) are rooted in that community's history, and b) are important in maintaining the continuing cultural identity of the community, or a location where a community has traditionally carried out economic, artistic, or other cultural practices important in maintaining its historical identity"(National Register Bulletin 38). The site must be a permanent location, and generally must be more than fifty years old.

Examples of traditional cultural properties (TCPs) include a particular group of sand bars in the Rio Grande River, used by the Sandia Pueblo people for many generations as the location of sacred ceremonies requiring immersion in the river's waters, and Hesperus Peak in the La Plata Mountains, where Nightway ceremonies are held by the Navajos, and soil and plants are gathered by Navajo medicine men.

The Center of Southwest Studies, Fort Lewis College, U.S. Forest Service San Juan National Forest (*S.W. Colorado Cultural Properties Scoping Document Working Paper*) offers an in-depth discussion of TCPs in general, and has discussions on a variety of case studies for potential TCP sites throughout Southwestern Colorado. The document also includes specific recommendations for consulting with Native American tribes on TCPs.

The process for having a site listed as a TCP can be difficult for tribes, however. Problems involve having to share confidential information, differences in definitions of use, and delineating boundaries, which may cross different agency jurisdictions and/or private land, and timeline difficulties (Othole and Anon).

### References

Center of Southwest Studies, Fort Lewis College, U.S. Forest Service San Juan National Forest (*S.W. Colorado Cultural Properties Scoping Document Working Paper*). Edited by Andrew Gulliford, March 2003

<http://swcenter.fortlewis.edu/inventory/UsfSanJuanTCP.htm#I>.

Othole, Andrew L. and Roger Anyon *Tribal Perspectives on Traditional Cultural Property*

*Consultation* <http://crm.cr.nps.gov/archive/16-si/16-si-11.pdf>



## **Mining Laws and the Federal Land Policy and Management Act (FLPMA) 43 U.S.C. 1701**

U.S. policy in the late 1800s was primarily aimed at disposing of all lands acquired by the U.S. government into private hands for settlement or made available for resource development. The **Mining Law of 1872 (30 U.S.C. 21, 22 et seq, 42.)** established the basic statutory framework governing the location of mining claims that is still in practice today. Under the law, a person can acquire an interest in the public lands by the proper location of a mining claim. A prospector can go out on the public lands, search for minerals and, upon discovery of a valuable mineral deposit, locate a claim to the lands upon which the discovery is made. A prospector can locate a claim by staking corners of the claim, posting a notice of the claim, and filing or recording the claim according to state and federal law. This law gives priority, with few restrictions, to miners and mining operations.

The first ideas about retention of public lands were first expressed by Congress in the 1890s, with the passage of the General Land Reform Act and the creation of Yellowstone National Park and the first forest reserves. Other ideas emerged, including a focus on a more scientific approach to resource conservation emphasizing sustained yield, as clearly identified in the Taylor Grazing Act of 1934. In 1945, Congress passed the Reorganization Act in order to create a greater use of and more efficient administration on Federal natural resources. It combined the Grazing Service and the General Land Office to form the Bureau of Land Management (BLM).

By 1950 it had become clear that widespread abuse of the general mining law was taking place. People who either had no intention of mining or who never got around to it were establishing numerous claims. Some of the uses taking place on unpatented claims included permanent residence, summer homes, hunting and fishing lodges, museums, etc. To deal with this, Congress passed the **Surface Resources Act of 1955 (30 USC 600-615).**

By 1970 additional necessary reforms were identified, which resulted in the passage of the **Federal Land Policy Management Act (FLPMA) (43 USC 1701 et seq) of 1976** that declared new policies for public lands and consolidated and articulated BLM's management responsibilities. FLPMA's policies are aimed at retaining federal ownership of public lands unless disposal of the land will serve the national interest. Such decision should be based upon inventories of resources, and present and future use as projected through a land use planning process coordinated with other Federal and State Planning efforts. The policies direct that management be based on multiple-use and sustained yield, unless otherwise specified by law, and in a manner that protects the quality of science, scenic, historical, ecological, environmental, atmospheric, water resources, and archaeological values; and where appropriate, preserve and protect certain public lands in their natural condition.

As for mining activities, the FLPMA directed the Secretary of Interior to take any action necessary to prevent unnecessary or undue degradation of the public lands. FLPMA established a federal mining claim recording system, which requires an annual filing of an affidavit of assessment work or notice of intention to hold a mining claim. It also strengthened the Secretary's enforcement authorities by authorizing the Secretary to issue regulations necessary to implement FLPMA, the violation of which is punishable by civil and criminal penalties. The FLPMA has seven components:

Title I--Short Title, Policies and Definitions

Title II--Land Use Planning, Land Acquisition and Disposition.  
Title III--Administration  
Title IV--Range Management  
Title V--Rights-Of-Way  
Title VI--Designated Management Areas  
Title VII--Effect on Existing Rights: Repeal of Existing Laws; Severability.

Title II, Section 202(c)(3) of the FLPMA gives priority to the designation and protection of areas of critical environmental concern (ACEC). ACEC means areas within the public land where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards. The identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands. ACECs have been identified for Tribal cultural areas including the Sweet Grass Hills in Montana. In 1992, the BLM recognized the special qualities of the Hills and designated it as an ACEC with special management prescriptives. However, the ACEC status was not enough to deter the Agency from wanting to approve a mineral exploration permit for the area. Even a determination of the area's eligibility as a National Register District under the National Historic Preservation Act (NHPA) was not enough to protect the site. The local BLM officials took the position that the 1872 Mining Law did not allow them to evaluate other alternatives that would avoid destruction or impact on cultural resources of the Hills. BLM believed that compliance with the 1872 Mining Law prevented them from complying with the NHPA and other federal preservation laws such as Archaeological Resource Protection Act or Native American Graves Protection and Repatriation Act. However, other efforts such as obtaining community support and support from lawmakers resulted in a positive outcome for the Tribes concerned.

Regulations concerning public lands are set forth in Title 43 Code of Federal Regulations, Chapter II-Bureau of Land Management (BLM), Department of Interior Parts 1000-9999. Beyond the regulations there are a number of policies and handbooks for additional Agency guidance.

The Agency adopted guidelines for coordination and consultation with Tribes found in *H-8160-1-General Procedural Guidance for Native American Consultation*. The Handbook is mainly devoted to providing general guidance for determining when, where, what kind and how much consultation is needed. Go to [www.blm.gov/flpma](http://www.blm.gov/flpma) for more information.

## **Self-Determination Policy**

The era of self-determination in federal Indian policy began in the early 1970's, announced by President Nixon. However, in 1975 Congress responded by passing the Indian Self-Determination and Education Assistance Act of 1975. This law promotes self-determination for native governments by providing for them (using grants and contracts) to assume responsibility for federally funded programs intended to benefit native peoples. Prior to enacting this law, such programs had been administered by the Bureau of Indian Affairs and other federal agencies, such as the Indian Health Service. Contract programs and services run by tribal nations today under the Indian Self-Determination and Education Assistance Act of 1975 are often referred to as "638" contracts or programs.

For more on self-determination policy, see Chapter 4, Section D in Getches, David H. et. al. 1998. *Federal Indian Law, Cases and Materials* 4<sup>th</sup> Edition. St. Paul, MN: West Group Publishing.



**The American Indian Religious Freedom Act (1978)**  
**(AIRFA)**  
**P. L. 95-341**

The American Indian Religious Freedom Act, enacted during the era of self-determination in federal Indian policy, directs all federal agencies to be certain that their policies and by extension, their agency's actions, will not diminish the free exercise of native religions.

Resources for more on AIRFA:

Chapter 11 in Getches, David H. et. al. 1998. Federal Indian Law, Cases and Materials 4<sup>th</sup> Edition. St. Paul, MN: West Group Publishing.

U. S. Forest Service. 1997. Forest Service National Resource Book on American Indian and Alaska Native Relations, FS-600 and Forest Service Manual (FSM) section 1563.





**Case Study: Lyng v. Northwest Cemetery Protective Association**  
**485 U.S. 439 (1988)**

Over objections from native people, The Forest Service decided to construct a paved road through the Chimney Rock area of the Six Rivers National Forest, and was also considering timber harvesting in the area. A study commissioned by the Forest Service found that harvesting the Chimney Rock area would irreparably damage grounds that had historically been used by Native Americans to conduct religious rituals. Following the Forest Service's decision, the Northwest Indian Cemetery Protective Association took action against Secretary of Agriculture Richard Lyng.

Though two lower courts had ruled that a Forest Service plan to build a logging road from Gasquet to Orleans in northern California was a violation of Native American religious freedom because of its impact on an extensive sacred landscape, those rulings were overturned.

The case wound its way through the system, to the U.S. Supreme Court in 1987. The question before the Court was whether or not the Forest Service's proposed development actions violated the first amendment right to free exercise of religion of native peoples. In this case, AIRFA failed to protect the religious rights of native peoples, as the Court noted that the *procedural* requirement of AIRFA had been met, which was all that was required under the legislation. In this case, the majority of the Court ruled that even though the government's actions would have serious adverse effects on the Indians' practice of their religion, those effects were *only incidental* and were not an attempt to coerce Native Americans to act in violation of their religious beliefs (emphasis added).



**Executive Order 13007—Indian Sacred Sites**  
**Signed May 24, 1996**

Executive order 13007 directs all federal agencies to accommodate Indian religious practitioners in accessing sacred sites on federal lands, to preserve the sites, and to maintain the confidentiality of sacred sites. Agencies were to have developed procedures for implementing the order within one year. As part of the report, agencies were to have developed procedures for consulting with tribal nations and religious leaders regarding proposed actions or policies which might restrict access to a site or disturb the site. Additionally, agencies were to report to the President any changes needed in order to implement the accommodation and protection provisions of the order.

The Order acknowledges the government-to-government relations between tribal nations and the federal government, provides for consultation with tribes and religious leaders prior to an agency taking action, opens access, and may be used to protect the “physical integrity” of a site. However, the Order does not create any new trust responsibilities or rights, nor does it supersede vested property interests.



**Executive Order 13175—Consultation and Coordination with Indian Tribes  
Signed November 6, 2000**

Executive Order 13175 affirms the unique legal and political status of American Indian tribal nations as sovereign, self-governing domestic dependent nations and the government-to-government relationship between tribal nations and the United States. The order further directs agencies to recognize and consider treaty rights, Indian self-determination, and the trust responsibility in formulating policy “significantly or uniquely affecting Indian tribal governments,” and directs each agency to establish a process which facilitates meaningful participation throughout the regulatory policymaking process. Additionally, EO 13175 instructs agencies to increase flexibility in requests by tribal nations for waivers of statutory and regulatory requirements where the waiver would accomplish a federal policy goal “or is otherwise appropriate.”



## Executive Order 12898 and NEPA Guidelines on Environmental Justice

The February 11, 1994, Executive Order (EO 12898) directed federal agencies to address environmental justice concerns relating to federal agency actions. The disproportionate environmental risks component, as well as the environmental racism and socio-economic class components of environmental justice, are reflected in Executive Order 12898, which defines environmental justice as

*“The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.”*

Executive Order 12898 directs all federal agencies to include environmental justice as part of their mission through “...identifying and addressing, as appropriate, disproportionately high *and adverse* human health or *environmental effects* of its programs, policies, and activities on minority populations and low-income populations...” (emphasis added). Furthermore, according to Section 1.1.2, socioeconomic impacts “associated with significant physical environmental impacts” must be addressed in an Environmental Impact Statement under both EPA and the Council on Environmental Quality (CEQ) regulations, and Environmental Assessments completed by the EPA regularly address socioeconomic impacts of Agency actions.

EO 12898 also directs that every agency shall make every effort to meaningfully involve members of low-income/minority communities in the decision-making process. As specified in EO 12898, tribal nations are a protected class, along with low-income and or minority communities. As elucidated by the following passage from Ernest Atencio’s work:

Public health impacts from environmental conditions or hazardous waste, or discrimination in the implementation and enforcement of environmental policies, are unquestionably critical problems, but environmental justice is about more than that. It is also about widening the discourse on environmental issues to include the perspectives, values, and concerns of the traditionally ignored populations of people of color and the poor....there will soon be no nature to protect, unless we address social justice issues to share the world’s resources more equitably....  
*Environmental justice is not whole, then, unless it recognizes the inescapable global forces of political economy that perpetuate cycles of poverty and environmental abuses, and unless it addresses social and economic justice as integral components.* (Atencio 2000, p. 75, emphasis added.)

For tribal nations, environmental justice considerations also may include gathering and subsistence activities, and spillover effects from environmental hazards on adjacent federal lands, such as those from catastrophic wildfires, for example. Environmental justice (EJ) policy goals can best be served to the extent that an agency includes members of EJ communities in meaningful, equal participation in the decision-making process to produce a decision which not only mitigates negative environmental effects, but also will have positive effects on tribal, low-income, and minority populations in the area. Positive

effects could include utilizing members of those EJ communities to help implement management activities, concomitantly boosting employment while implementing sound environmental policies

For more on environmental justice see:

Atencio, Ernest. 2000. Environmental Justice and Public Lands Ranching in Northern New Mexico, *The Quivira Coalition*, November, 4 (1). Reprinted in *Forging A West That Works: An Invitation to the Radical Center*. Santa Fe, NM: The Quivira Coalition. 2003.

Chapter 14 and Chapter 15 in Champagne, Duane, editor. 1999. *Contemporary Native American Cultural Issues*. Walnut Creek, CA: Alta Mira Press.



## **Collaborative Management and Stewardship: A Case Study from the Carson National Forest**

The area currently known as the Carson National Forest was first occupied by indigenous peoples and later by Hispanics, subsequent to Spanish colonization in Mexico and present day New Mexico. Local residents continue to utilize the natural resources in subsistence activities, as they had for hundreds of years.

While the relationship between the federal government and community members was amicable with respect to use of those resources when the United States gained control of region at the conclusion of the Mexican-American War, by the 1970s the U.S. Forest Service (USFS) had an adverse relationship with the local community. In the words of the USFS,

Pressures from environmental groups wishing to maintain a pristine environment, settlers from outside who were interested in developing the land for recreational purposes and the interest of large timber companies wishing to harvest the trees for profit all tugged at the Forest Service in opposite directions. These groups all competed with one another to impose their will on forest management, often resulting in costly litigation and ill will within the community.<sup>1</sup>

Additionally, other management practices contributed to creating unhealthy forest conditions.

In the 1990's the Camino Real Ranger District began to work with the community in managing the land. The district trained local residents to thin unhealthy forests and provided the equipment for the work. The residents now get to either keep trees cut as a result of the thinning project or sell it in the community forest products yard.<sup>2</sup> By working with the community to manage this area, the relationship between the USFS and local residents has improved, and “...*no litigation over forest resources has been filed since 1993...*”<sup>3</sup>

This case offers an example of how agencies can successfully work with community members, tribal nations, and others to support subsistence activities while simultaneously restoring ecosystems to healthy conditions. It's a win/win case: the agency has become a better manager by involving the local community, and social, economic, and environmental justice concerns have been concurrently achieved. This project won an award from Harvard University's Innovations in Government program.

<sup>1</sup> U.S. Department of Agriculture, Forest Service, Carson National Forest. Collaborative Stewardship: The Community and Forest Service Working Together.” [http://www.fs.fed.us/r3/carson/html\\_main/colaberate.html](http://www.fs.fed.us/r3/carson/html_main/colaberate.html). Accessed 6/21/2004.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.



**Native American Graves Protection and Repatriation Act (1990)  
(NAGPRA)  
P.L. 101-601**

NAGPRA acknowledges the rights of lineal descendants and members of federally recognized American Indian tribal nations, Alaskan natives, and native Hawaiian organizations to certain human remains, as well as to certain precisely defined cultural items with which they are related. Among the items protected by NAGPRA are human remains from graves of a specific tribal nation and artifacts associated with burials. Additionally, items that hold religious, cultural, or spiritual significance to a tribal nation are protected by NAGPRA. However, NAGPRA does not apply to tribal nations who are not federally recognized, as is the case of many California tribes.

NAGPRA directed museums, colleges and universities, and federal agencies who received federal funds and were in possession of American Indian artifacts to provide a summary of those holdings to tribal nations within three years after the legislation became law and submit complete inventories of the artifacts to the tribes within five years (by 1995).

The passage of NAGPRA became the catalyst for discussion of two issues, as author Troy Johnson notes—conflict resolution between different cultures and the exclusion of non-federally recognized tribes. Some progress in both issues has been made between tribal nations and states. Additionally tribes working together, particularly cooperation between federally recognized and non-federally recognized tribes, can strengthen the application of NAGPRA (Goldberg, p. 280).

Like the American Indian Religious Freedom Act, NAGPRA often is more effective when used in conjunction with other laws, such as state environmental regulatory laws, state repatriation and/or cultural property protection laws, and/or the National Environmental Policy Act and other federal laws.

For case studies on resolving NAGPRA issues with states see:

Goldberg, Carole. 1999. "Acknowledging the Repatriation Claims of Unacknowledged California Tribes," in Troy R. Johnson, editor, *Contemporary Native American Political Issues*, Walnut Creek, CA: Alta Mira Press.

Peregoy, Robert M. 1999. "Nebraska's Landmark Repatriation Law: A Study of CrossCultural Conflict Resolution," in Troy R. Johnson, editor, *Contemporary Native American Political Issues*, Walnut Creek, CA: Alta Mira Press.

For more in depth information on NAGPRA and AIRFA, see:

Chapter 10 in Getches, David H. et. al. 1998. *Federal Indian Law, Cases and Materials* 4<sup>th</sup> Edition. St. Paul, MN: West Group Publishing.



## **The Religious Freedom Restoration Act PL 101-601 (1993)**

Passed in 1993, the Religious Freedom Restoration Act (RFRA) was a response to the U.S. Supreme Court decision in *Smith v. Oregon* (1992). In *Smith*, the Court reduced the test for government infringement on religion from the *compelling interest test* to the *general applicability test*, holding that a state employee could have his employment lawfully terminated for participating in a Native American Church ceremony.

In passing the RFRA, Congress returned the burden to government to demonstrate that it has a compelling interest in taking an action which breaches first amendment religious freedom rights.

The success of the RFRA is still uncertain, as legal challenges to its constitutionality were raised, and the U.S. Supreme Court declared the law unconstitutional in 1997. In response to legal challenges already in progress, Congress amended AIRFA in 1994 to include protection for ceremonial peyote use.



## **The Tribal Forests Protection Act (PL 108-278)**

This bill (which became law in July 2004) transfers some management control on Forest Service (FS) or BLM lands which are adjacent to tribal lands, to tribal nations, through a process resembling the Forest Service's stewardship contracting program.

The legislation provides for contracting with a tribe under four criteria:

1. Conditions on the adjacent FS or BLM land pose a fire danger to tribal lands
2. Restoration activities undertaken in these areas
3. No conflict with existing stewardship contracts or other obligations
4. The federal land involves a feature or circumstance unique to that Indian tribe (including treaty rights or biological, archaeological, historical, or cultural circumstances)

The Act allows the Secretary to “give specific consideration to tribally-related factors” when considering a tribe’s proposal, including “the treaty rights *or other reserved rights of the Indian tribe relating to the land...the indigenous knowledge and skills of the members of the Indian tribe, the trust status of the Indian lands, access by members of the tribe to the federal land in question.*”

(see also Section III on co-management and collaboration)





## How A Bill Becomes Law

A bill may be introduced into either branch of the Congress—the House of Representatives or the Senate. Once it has been read twice to its entire membership, the bill is given a number and sent for “mark up,” or printing. Once the bill is printed by the Government Printing Office, it is available for review in both houses and electronically, and sent to the appropriate committee, which then may refer it to a subcommittee. The committee usually holds hearings, and may amend the original bill before sending it to the floor to be presented to and voted on by its entire membership. If it passes in one house, the final version of the bill is sent to the other house (i.e. Senate bills are sent to the House for action and vice versa). The other house of Congress may also amend the bill, and then vote on it. If it passes in the second house, it will be “enrolled” in the house of Congress where it originated, and then sent to the President.

Both houses of Congress must vote on and pass *identical* versions of a bill before it can be sent to the President for a signature. If the two houses of Congress have similar bills or if the second house *amends* the version sent by the other branch of Congress, the bill must go to a conference committee. Conference committees have members from both houses of Congress, and are responsible for creating one version of the bill that the membership of both the House and Senate agree upon.

Once a bill has been passed by both houses and sent to the President, the President has ten days (not counting Sundays) to sign it. If the President fails to sign the bill within the ten-day period *and* Congress is in session, the bill automatically becomes law. If Congress is *not* in session and the bill is not signed by the President within ten days, it does not become law (this is known as a “pocket veto”). If the President does not approve of the bill, he may veto it. Congress may override the President’s veto if two-thirds of the members vote to do so.

Resources for tracking legislation:

[www.senate.gov](http://www.senate.gov)

[www.house.gov](http://www.house.gov)

<http://thomas.loc.gov> or call your Senator or Congressional representative’s office



### Additional References

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# *Sacred Lands and Gathering Grounds: A Toolkit for Access, Protection, Restoration & Co-Management*

Center for Sustainable Environments and Applied Indigenous Studies



## **II. Federal Agency Policies Toward Tribal Governments**

This section outlines federal agency policies and applications in response to many of the legislative acts outlined in Section I. Agencies and Tribes have had varying levels of success in protecting or gaining access to sacred sites and gathering grounds. The examples of agency policy condensed herein provide ready access to agency motivations, mandates, and responses to constantly shifting but common ground on which to stand and work. In many cases, our approaches to this situation through the Toolkit, like those of the agencies and Tribes involved, utilize multiple methods and tools in situations as they emerge on the ground. The descriptions enable activists to sort information and judge its effectiveness for a specific goal. Case Studies contained in the sections below support “nuts and bolts” federal and state policies, and point to creative solutions and potentials for collaboration, a discussion we continue in Sections III and IV.

Section compiled by Eunice Tso



## **U.S. Environmental Protection Agency**

Since 1970, the U.S. Environmental Protection Agency (EPA) has been working toward a cleaner, healthier environment for the American people. EPA is responsible for researching and setting national standards and delegating authority to states and tribes for issuing permits and monitoring and enforcing compliance. It coordinates its efforts to strengthen public health and environmental protection in Indian Country through the American Indian Environmental Office (AIEO) in building Tribal capacity to administer environmental programs. AIEO provides multi-media program development grants and tools that assist environmental managers in making decisions on environmental priorities. AIEO develops training curricula for EPA staff on how to work effectively with Tribes and ways to improve communication between the Agency and its Tribal stakeholders.

In 1984, EPA became the first Federal agency to adopt a formal Indian Policy when William D. Ruckelshaus pledged that the Agency would support the primary role of Tribal governments in matters affecting American Indian country. Since then, these policies have been reaffirmed by subsequent EPA Administrators. The policy acknowledges the principal of Indian self-government by working directly with Tribal Governments on a government-to-government basis in carrying out EPA's responsibilities on Indian reservations. It guides the Agency in building a stronger partnership with Tribal Governments in order to protect the human health and environment of Indian communities. EPA's Indian Policy can be viewed at [www.epa.gov/Indian/1984/htm](http://www.epa.gov/Indian/1984/htm).



### **Case Study: Using Tribal water quality standards to protect important cultural resources**

Tribal regulations concerning air quality, water quality, and waste management may be part of a comprehensive legal strategy to protect on and off reservation sacred sites and gathering grounds from environmental contamination. Such was the case involving the City of Albuquerque and the Isleta Tribe in northern New Mexico. The Tribe was concerned about the city's upstream activities where the city's plant was discharging treated water into the Rio Grande River several miles upstream from where the Tribe conducted ceremonial activities. While the city's discharge met state standards for its designated uses, the Tribe had identified designated uses involving direct human contact, and therefore required higher water quality standards. To this end, the Isleta Tribe developed water quality standards to protect designated ceremonial uses of the water that were more stringent than state and federal standards. In a landmark decision, the 10<sup>th</sup> Circuit Court upheld EPA's approval of the tribal water quality standards (Albuquerque V. Browner 1996) where EPA recognized Isleta Pueblo as a state under Section 518(e) of the Clean Water Act and approved its water quality standards. As a result of the decision, EPA imposed permit conditions on the city's sewage treatment plant to protect the Isleta Pueblo's designated ceremonial use of the water.





## **Department of Interior**

The Department of Interior's mission is to protect and provide access to the nation's natural and cultural heritage and to honor its trust responsibilities to Indian Tribes. The Department is committed to building partnerships that encourage conservation and innovative approaches to solving land management and water disputes. In addition, the Interior supports energy development, including renewable sources of energy, in the most environmentally protective manner. It oversees a number of agencies that conduct and perform functions that affect Indian Tribes directly and indirectly, such as the Bureau of Land Management (BLM), U.S. Fish and Wildlife Services (USFWS), National Park Service (NPS), Bureau of Reclamation (BOR), and the Bureau of Indian Affairs (BIA). The roles of these agencies and their policies are briefly described in the remainder of this section.



## **Bureau of Land Management**

The BLM manages large land bases, including lands traditionally used by Native Americans living nearby. The Federal Land Policy Management Act (FLPMA) of 1976 articulates BLM's management responsibilities for public lands. The Act directs BLM to manage public land based on the concepts of multiple-use and sustained yield and in a manner that protects the quality of scenic, historical, ecological, environmental, atmospheric, and water resources, including archaeological values; and where appropriate, the Act helps preserve and protect certain public lands in their natural condition. Under Title II, Section 202(c)(3) of the FLPMA, areas of critical environmental concern (ACEC) can be designated on public lands where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards. However, the ACEC designation does not always guarantee complete protection of various sites.

A number of federal laws and regulations require BLM to consult with Native Americans before decisions are made that may result in changes to the land that could affect their interests. BLM's H-8160-1-General Procedural Guidance for Native American Consultation gives practical guidance to managers and staff whose duties include coordination and consultation with Native Americans. The handbook provides guidance on identifying whom to consult (i.e., tribal contacts, traditional cultural and religious leaders), preparing for consultation, documentation, confidentiality, and compensation. It also discusses procedures unique to specific laws, such as the American Indian Religious Freedom Act, Archaeological Resources Protection Act, and other laws.

More and more, BLM managers are seeking ways to address many of the Tribal concerns for gaining access to sites and attaining needed materials within the scope of a multiple-use management approach. Possible solutions for providing administrative access to sensitive areas include making special land use designations, developing cooperative management agreements with Native American communities, and providing leases, permits, and other land use authorizations.



## **Case Study: Protecting Traditional Landscapes within BLM Managed Lands**

The Sweet Grass Hills are a small range of mountainous buttes separated by open grasslands located near the Montana-Canada border. The area encompasses several thousand acres of public land administered by the BLM. This area is significant to the cultural and religious practices of the Blackfoot, Chippewa-Cree, Gros Ventre, Salish, Kootenai and Assiniboine tribes who regularly travel to the Sweet Grass Hills to conduct ceremonies and gather medicinal plants and paints.

The East Butte of the Sweet Grass Hills was threatened by a company's proposal to conduct coal mining exploration activities. Early on, BLM had its position firmly established on approving the exploration plans. Although BLM had previously determined that the area was eligible for the National Register based on its importance to the traditional religious practices of the Tribes in the region, the agency continued to cite the 1872 mining law that gave priority to mining on public land over all other uses and values. Most surprising, BLM's position contradicted the land designation for the Sweet Grass Hills, which had been previously identified as an ACEC, with special management prescriptives pursuant to the FLMPA.

The Tribes and local non-Indian community members were deeply concerned that the exploration activities would lead to open pit heap-leach gold mining and destroy the irreplaceable cultural and natural qualities of the Hills. To this end, they began to work closely with the Tribal governments and traditionalists on the issue. They found support from local farmers, ranchers and environmentalists, even though each group had different reasons for wanting to preserve the Sweet Grass Hills. They obtained support from the State Historic Preservation Office and the Advisory Council on Historic Preservation, as well as the BLM Headquarters, who demanded the regional BLM office comply with the NHPA, even issuing a notice of foreclosure against BLM for failure to comply with the requirements of the law. They also obtained support from their Congressmen, Pat Williams and Senator Max Bacus.

The Tribe's efforts in communicating and advocating their concern were successful. In April 1996, the BLM changed its position and recommended a full withdrawal of the 19,765-acre federal mineral estate from locatable entry, and stated that it would "encourage holders of valid claims to relinquish their claims through purchase, exchange, or conservation easements." This management change was articulated in the Final Sweet Grass Hills Resource Management Plan Amendment and EIS. While the Sweet Grass Hills are protected from this particular mining effort, this decision does not provide a permanent solution for protection of the Sweet Grass Hills.



## **U.S. Fish and Wildlife Service**

The U.S. Fish and Wildlife Service (FWS) works toward conserving, protecting, and enhancing fish, wildlife, and plant habitats for the American people. In many ways, the agency's mission is consistent with many Tribal governments' priorities for preserving land and natural resources, including vulnerable wildlife species, for future generations. Some Tribal lands remain untouched by conventional land use practices and continue to provide high quality ecosystems that attract many sensitive species. The FWS believes its ability to achieve its mission depends on active cooperation with others, and the organization is committed to a collaborative approach to conservation.

FWS operates under the Secretary's Order # 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act pursuant to the Endangered Species Act of 1973 (as amended). The Secretary's Order clarifies the responsibilities of the component agencies, bureaus and offices of the Department of the Interior when actions taken under authority of the Act and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights, as defined in the Order.

The agency's guiding document is the Fish and Wildlife Manual (FWM), which describes the structure and functions of the Service's organizational units, delegations of the authority, and prescribes the policies and procedures for administrative activities and program operations. Series 500—Interagency, Intergovernmental, and International Activities contains policy, standards and procedures governing the Service's interagency, intergovernmental (including State and Tribal grant programs), and international activities. The agency's broad policy as representative of the Federal government and steward of our country's natural resources is to manage these natural resources in a way that reflects the Federal trust responsibility toward Indian tribes, respects tribal rights, acknowledges the treaty obligations of the United States toward tribes, uses the government-to-government relationship in dealing with tribes, and protects natural resources that the Federal government holds in trust for tribes.

The agency's Partners for Fish and Wildlife Program places a high priority on working in partnership with tribes to restore fish and wildlife habitats and to ensure spiritual and physical sustenance of the tribal members, and increasingly, the means for economic self-sufficiency. In 2001 alone, the FWS developed nearly 100 habitat restoration agreements with Indian tribes, such as the Houlton Band of Maliseets of Maine that restored a mile of riparian habitat



along the Meduxnekeag River in northeast Maine. They planted native red and white pine and a variety of hardwoods along the river banks to prevent soil erosion and provide benefits for a variety of wildlife, including migratory birds, fish and mussels. The program also worked with the HoChunk tribe of Wisconsin to restore 57 acres of wetlands, where the tribe is now sharing its restored lands with the public.

Native American liaisons at the regional and national offices combine their backgrounds in wildlife biology, conservation, and Indian law and policy to achieve the best possible conservation scenario in Indian Country. Among their roles and responsibilities, the Native American liaisons provide counsel to the Directorate concerning Native American issues that impact Service operations, serve as point-of-contact for tribal conservation issues, and take the lead for Departmental tribal initiatives, e.g., through Self-Governance Act application, Self-Determination Act contracting, sacred sites access, tribal colleges cooperative education program, and water rights. Contact numbers are listed below:

Region 1 - Native American Liaison, U.S. Fish and Wildlife Service  
(for Hawaii, Idaho, Oregon, Washington, Nevada, and California)  
911 N.E. 11th Avenue  
Portland, Oregon 97232-4181  
(503) 231-6121

Region 2 - Native American Liaison, U.S. Fish and Wildlife Service (for Arizona, New Mexico, Oklahoma, and Texas)  
500 Gold Avenue SW  
Albuquerque, New Mexico 87103  
(505) 248-6810

Region 3 - Native American Liaison, U.S. Fish and Wildlife Service (for Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin) U.S. Bishop Henry Whipple Federal Building  
One Federal Drive  
Fort Snelling, Minnesota 55111-4056  
(612) 713-5108

Region 4 - Native American Liaison, U.S. Fish and Wildlife Service (for Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee)  
1875 Century Boulevard, Suite 410,  
Atlanta, Georgia 30345  
(404) 679-7125

Region 5 - Native American Liaison, U.S. Fish and Wildlife Service ( for Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New

Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia)  
300 Westgate Center Drive  
Hadley, Massachusetts 01035-9589  
(413) 253-8662 or (609) 646-9310

Region 6 - Native American Liaison, U.S. Fish and Wildlife Service (for Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming)  
P.O. Box 25486 Denver Federal Center,  
Denver, Colorado 80225-0486  
(303) 236-7905 x-253

Region 7- Native American Liaison, U.S. Fish and Wildlife Service (for Alaska)  
1011 East Tudor Road  
Anchorage, Alaska 99503-6199  
(907) 786-3492

Region 9 - Native American Liaison, U.S. Fish and Wildlife Service  
1849 C Street NW MS-3012 Washington, DC 20240 (202) 208-4133



## **National Park Service**

Within the Department of Interior, the mission of the National Park Service (NPS) is to preserve unimpaired natural and cultural resources and values of the national park system for the enjoyment, education and inspiration of this and future generations. Beyond managing the national park system, the agency administers a broad range of programs that serve the conservation and recreation needs of the nation and the world.

The agency's Tribal Preservation Program assists Indian Tribes in preserving their historic properties and cultural traditions. Given the limited funding levels of the program, its main purpose is to help Tribes strengthen their capabilities for operating sustainable preservation programs. Projects that provide training for Tribal members and have a lasting impact on the Tribe are given the highest priority in the funding process.

Grant awards from the Program provide much needed assistance to Indian communities interested in protecting their cultural heritage. The federal grant funds used for these preservation projects are often leveraged with tribal and private funds in cooperative projects that benefit tribal, non-profit groups and NPS simultaneously. Since 1990, the Tribal Preservation Program has directly assisted over 260 tribes through the award of 585 grants. Over \$29.3 million has been used to assist tribes in assuming State Historic Preservation Office responsibilities, in drafting preservation ordinances, implementing cultural resource management plans, identifying and protecting historic sites, and conducting preservation needs assessments. The average grant award is \$50,000.

The agency's Cultural Resources Geographic Information Systems (CRGIS) facility uses advanced computer and satellite technologies to enable federal, state and local agencies, tribal governments, and community organizations to access, exchange, and distribute accurate information on the location, status, and condition of non-sensitive cultural resources. State and Tribal Historic Preservation Offices are beginning to use GIS to automate historic resource inventories. A GIS database can contain a complete record of resources for any geographic area. By establishing such a database, cultural resource managers are better equipped to identify and protect historic areas. Since its inception in 1990, the CRGIS facility has provided mapping and GIS services to partners both within and outside the National Park Service. The CRGIS facility offers low-cost technical assistance to a wide variety of groups and organizations.

The agency's American Indian Liaison Office was established in February 1995 to provide consultation, outreach, technical assistance, education, and advisory services. The program's objectives, among others, are to educate NPS field and program managers concerning Indian Self-Determination, Tribal Self-Governance, and effective means of working with tribes, and assist and promote American Indian participation in carrying out NPS policies, programs, and activities, and ensure that their concerns are considered in policies, regulations, and programs that affect them.

NPS policies and management allow potential opportunities for collaboration with tribes, and individual collectors, for co-management of sacred sites and gathering grounds. Within the agency's policies, there are a number of references to these opportunities including specific policies concerning harvesting of plants and animals. Within the framework of cultural resource management, the policies state how the agency will deal with consultation with Native American tribes, stewardship of human remains and burial, cultural landscapes, preservation, rehabilitation, restoration, land use ethnographic value, ethnographic resources, resource access and use, sacred sites, and research. A full review of NPS law, policy, and other guidance can be found at [\*\*http://www.nps.gov/policy/mp/policies.pdf\*\*](http://www.nps.gov/policy/mp/policies.pdf)

## **Case Study: Opportunities for Collaboration and Co-Management at Organ Pipe National Monument**

Since springs were probably among the first places that desert hunter-gatherers wished to settle, and given that the water, plants and wildlife there were essential to their subsistence, it should not surprise conservation biologist or ecological restorationists that desert springs, such as Quitovac and Quitobaquito, are not “pristine” but have been managed through indigenous practices for millennia (by the O’odham cultural). Given this evidence, the dilemma for land managers becomes how to manage or restore springs and their biota to both sustain natural and cultural diversity, not simply how to protect them from any and all cultural influences (Nabhan 2003).

Two former traditional villages of the O’odham people at the Quitovac and Quitobaquito springs of the Sonoran Desert are now separated by the U.S.\_ Mexican Border. Different land management practices have resulted in significant ecological differences and the diminishment of rich bio-cultural diversity at one of these areas, now managed by the NPS. Quitovac and Quitobaquito riparian systems have deep-rooted human and natural histories. Both sites served as wildlife stopovers on significant migration routes from the Sea of Cortes to Arizona and beyond. For hundreds of years, the O’odham lived in dynamic relationship with these rare and unique riparian systems, where they harvested wetland plants for food, fiber, medicinal and ceremonial uses, and traded to their nearby villages. They manipulated the springs to increase water flow, and diverted water to irrigate and develop other agricultural activities, while maintaining an environment that was beneficial for the wildlife.

Today, the Quitovac springs are part of the common lands located in the municipality of Plutarco Elias Calles, Mexico. These lands have been managed in much the same manner for the past 500 years. Residents continue to receive direct benefits from the land. Their oasis provides wild green leafy vegetables, and herbal medicines and edible fruits, some of which are rich in antioxidants and soluble fiber that continue to benefit the overall physical health and well-being of the residents. The springs continue to sustain the people’s traditional agricultural practices while continuing to provide for a variety of wildlife habitat.

Biodiversity studies from 1982 to 1994 documented the plant, bird and mammal species richness associated with these ancient traditional use areas at Quitovac. The vegetation types provide a great variety of wildlife habitat including bird roosts at various heights, shelter, open ground adjacent to standing water, and a heterogeneous herbaceous community where insectivores can forage.

In contrast, the Quitobaquito springs in Arizona have changed dramatically over the past 50 years under varying management regimes at Organ Pipe Cactus National Monument. After the last O'odham residents were vacated in 1957, the NPS bulldozed all the buildings, as well as most fields, orchards, archaeological sites and ceremonial use areas in order to "restore" the area to what has been called "a bird sanctuary" and later a "Midwestern-style fishing pond." The goals were preserving the site's biota and wildness instead of maintaining it as one of the oldest continuously inhabited sites in the North American deserts. Ironically, the initial NPS attempts to restore Quitobaquito probably brought about the greatest loss of biological and cultural diversity.

Recent policy changes have prompted NPS resource managers to allow wild plant collecting for food, medicine and ritual for the O'odham descendants of former Quitobaquito residents. Co-monitoring and natural resource management are opportunities for collaboration. Northern Arizona University's Center for Sustainable Environments proposes "ethnobiological clearances," whereby native practitioners and oral historians are consulted prior to any NPS-initiated management or restoration shifts.

## **Bureau of Reclamation**

The Bureau of Reclamation (BOR), established in 1902, is best known for the dams, power plants and canals constructed in the 17 western states. BOR has constructed more than 600 dams and reservoirs, including Hoover Dam on the Colorado River and Grand Coulee on the Columbia River.

Today, BOR is the largest wholesaler of water in the country. The agency brings water to more than 31 million people, and provides one in five Western farmers (140,000) with irrigation water for 10 million acres of farmland that produce 60% of the nation's vegetables and 25% of its fruits and nuts. The Bureau is also the second largest producer of hydroelectric power in the western United States; 58 power plants annually provide more than 40 billion kilowatt hours, generating nearly a billion dollars in power revenues and producing enough electricity to serve 6 million homes.

The agency's mission is to assist in meeting the increasing water demands of the West while protecting the environment and the public's investment in these structures. They place great emphasis on fulfilling our water delivery obligations, water conservation, water recycling and reuse. They focus on developing partnerships with their customers, states, and Indian Tribes, and in finding ways to bring together the variety of interests to address the competing needs for our limited water resources.

Reclamation is committed to increasing opportunities for Indians in developing, managing, and protecting their water resources. The agency's Native American Affairs Office develops and coordinates policies that direct and guide the agency in providing technical assistance to Indian Tribes, and participating in Indian water rights settlement negotiations. As more progress is made, activities intensify for these teams. Activities primarily include direction and participation of Reclamation on Federal Indian water rights negotiating teams, the performance of technical studies, and the gathering and technical analysis of data to assist in negotiations.

The Indian Policy of the Bureau of Reclamation starts with the agency's proclamation that it will comply with both the letter and spirit of federal laws and policies relating to Indians; acknowledge and affirm the special relationship between the U.S and federally recognized Indian Tribes; and actively seek partnerships with Indian Tribes to ensure that Tribes have the opportunity to participate fully in the Reclamation program as they develop and manage their water and related resources. BOR's policy toward sacred sites is to: (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and (2) avoid adversely affecting the physical integrity of such sacred sites; these actions will be carried out to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions.

The Native American Affairs Office at each Regional Office serves as the central coordination point for the Native American Program and is Reclamation's policy lead for all Native American issues. For more information please go to [\*\*www.usbr.gov/native\*\*](http://www.usbr.gov/native).





## **Case Study: Using Programmatic and Memoranda of Agreements to Co-Manage Sacred Sites**

In the late 1990s the Bureau of Reclamation, the Federal Highway Administration (FHWA) and other agencies worked closely to plan and construct the U.S. 93 Hoover Dam Bypass Project. In accordance with their internal policies, BOR and other agencies formally consulted with the Tribes in the region as a result of a number of traditional and historic properties that were identified in the affected area. Such properties were determined to be eligible for the National Register of Historic Places (NRHP). A Programmatic Agreement was struck among the agencies and the tribes, including the Chemehuevi Indian Tribe, the Colorado River Indian Tribes, the Fort Mojave Indian Tribe, the Hopi Tribe, the Hualapai Indian Tribe, the Kaibab Band of Paiute Indians, the Las Vegas Tribe of the Paiute Indians, the Moapa Band of Paiute Indians, the Navajo Nation, the Paiute Indian Tribe of Utah, and the Zuni Tribe. The agreement was signed by all parties in early 2000.

The Programmatic Agreement acknowledged that tribal information shared with the agencies in the process of determining lands eligible on the NRHP is highly sensitive from a traditional, cultural or religious standpoint, and that this information should be kept confidential to the extent allowable under federal law and regulation. Under the agreement, Tribes were allowed to participate on the Design Advisory Panel and comment on the corridor design criteria. They were provided an opportunity to comment on the engineering details and input to the corridor design criteria for the bypass roadway and bridge. They were also allowed to monitor construction of the roadway through the Traditional Cultural Properties area.

The agency's efforts should be recognized and hailed as models for other agencies. The Bureau of Reclamation appropriately consulted with affected Tribes to administer cultural resources responsibility in a manner that exhibited a spirit of stewardship. This process provided Indian Tribes the opportunity to be involved early in the process when considering actions that may affect their religions or cultures.



## **Department of Energy**

The mission of the Department of Energy (DOE) has evolved from developing the massive arms and national defense campaign that began in the 1940s, to addressing environmental issues associated with unmanaged waste and by-products of nuclear weapons. In the early 1990s, Congress directed DOE to provide a full risk picture at DOE sites across the nation in order to facilitate cost-risk comparison and prioritization of remedial actions. A number of DOE facilities are located adjacent to American Indian reservation lands and reserved treaty lands. The DOE's Hanford site, for example, lies within ceded lands of the Yakima Tribe and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), where these Tribes maintain off reservation treaty-reserved rights and interests. In this respect, the DOE is required to consult Tribes before any actions that may affect their rights, and these should be clearly identified and addressed to the extent practicable.

The DOE's American Indian and Alaskan Native Tribal Government Policy sets forth the principals to be followed by the Department to ensure an effective implementation of a government-to-government relationship with American Indian and Alaska Native tribal governments. Among the policy principals, DOE recognizes the Federal Trust Relationship to American Indian and Alaskan Nations and government-to-government relationship; recognizes and commits to a government-to-government relationship and promises to institute appropriate protocols and procedures for program and policy implementation; and establishes mechanisms for outreach, notice and consultation to ensure integration of Indian issues into decision-making processes. It will initiate a coordinated Department-wide effort for technical assistance, business and economic self-determination development opportunities, and education and training programs. It also promises to comply with applicable Federal cultural resource protection and other laws and executive orders that protect historic and cultural sites and traditional religious practices.

DOE's Indian Nations Program helps facilitate appropriate government-to-government interactions on the many issues potentially affecting tribes in the northeast that have interests at Hanford. The program's stated mission is to provide a proactive program that guides the implementation of U.S. DOE's American Indian Policy in an honorable and consistent manner. Through the Indian Nations Program, the tribes are regularly consulted at the earliest opportunity for recommendations and advice on DOE activities potentially affecting tribal rights and interests.

The Yakama Indian Nation, Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Wanapum work with the DOE to co-manage the cultural resources at the Hanford Site. Interactions among DOE, contractor and tribal staffs occur in a collegial atmosphere. Tribal people routinely access portions of the Site for traditional religious practices, including the gathering of foods and medicines. The DOE and the Tribes view the interactions between the DOE-RL and individual tribes as an appropriate government-to-government relationship. For more information about Tribal involvement at Hanford, contact the Indian Nations Program Manager office at (509) 376-6332.

## **Case Study: Raising Concerns About Clean-up Standards and Environmental Risks in Indian Country**

The Umatilla, Nez Perce, Yakama and Warm Springs Tribes of the Columbia River Basin possess fishing rights reserved by treaties signed in the 1850s with the Federal Government. Fish resources are a major food source for tribal members, as well an integral part of the tribe's cultural, economic, and spiritual well-being. The Tribes rely on the protection and enhancement of water quality in the Columbia River Basin sufficient to protect treaty resources from harmful exposure to waterborne pollutants, including pollutants from DOE facilities.

During the 1990s these Tribes spoke out against DOE risk-based decision-making process. They argued that the DOE risk-based approach for environmental decision-making did not integrate cultural and social values, and therefore, lacked meaningful results. To this end, the Columbia River Inter-Tribal Fish Commission (CRITFC) tested their hypothesis that Indians in that region consume more fish than the national average, and therefore were at greater risk from environmental contamination.

The report, entitled A Fish Consumption Survey of the Umatilla, Nez Perce, Yakama and Warm Springs Tribes of the Columbia River Basin, concluded that adults who participated in the study consumed approximately nine times more fish than the national average, seriously calling into question the applicability and adequacy of using a national fish consumption rate when setting goals for clean up. The Tribes want federal, state and tribal regulatory agencies to incorporate the information in this survey and other similar studies when developing and re-evaluating human health-based water quality criteria and standards for toxics.



## **Department of Agriculture**

The U.S. Department of Agriculture (USDA) is committed to helping America's farmers and ranchers and to lead the federal anti-hunger effort with the Food Stamp, School Lunch, School Breakfast, and WIC Programs. It is the steward of the nation's 192 million acres of national forests and rangelands, and is the country's largest conservation agency, encouraging voluntary efforts to protect soil, water, and wildlife on the 70 percent of U.S. land that is in private hands. USDA also brings housing, modern telecommunications, and safe drinking water to rural America. The agency is responsible for the safety of meat, poultry and egg products and is a research leader in everything from human nutrition to new crop technologies that allow us to grow more food and fiber using less water and pesticides, and helps open markets for U.S. agricultural products and provides food aid to needy people overseas.

USDA's internal regulation for working with Tribal governments is set forth in the Departmental Regulation # 1340-006: Policies on American Indians and Alaskan Natives. These policies establish procedures for interactions with Indians, Alaska Natives, tribal governments, and Alaska Native Corporations (ANC). As the lead agency of the Federal Government for providing effective and efficient coordination of Federal agricultural and rural development programs, USDA recognizes that Indians possess the right to govern themselves and manage their resources. Therefore, USDA supports and seeks to further the principles of self-governance as delineated in the Indian Self-Determination and Education Assistance Act of 1975.

USDA officials consult with tribal governments regarding the influence of USDA activities on water, land, forest, air, and other natural resources of tribal governments and ANCs. USDA recognizes that tribal governments and ANCs manage land for such agricultural activities as farming, grazing, hunting, fishing, subsistence agriculture, and gathering of plants, animals, and plant products. It further recognizes that such resources may hold a unique meaning in the spiritual as well as everyday life-ways of many Indians and Alaska Natives. Consistent with applicable law, USDA officials solicit input from tribal governments and ANCs on USDA policies of good resource management and multiple use. The agency works with the tribal governments, tribal high schools, colleges and universities to encourage the development of agribusiness skills, awareness and, where needed, curricula. USDA will share information through the exchange of technical staffs and skills.

USDA oversees and number of agencies who work directly or indirectly with Indian Tribes, including the National Forest Service (NFS), the National Resource Conservation Service



(NRCS) and the Federal Emergency Management Agency (FEMA). The roles of these agencies and their policies are briefly described in the remainder of this section.

## **National Forest Service**

The National Forest Service works with State forestry programs, Indian Tribes and private landowners to apply good forest practices. It provides research and technical assistance opportunities to States and Tribes on ways to better manage and use the nation's resource.

Many Forest Service lands are adjacent to American Indian or Alaska Native Tribal lands. Some tribal governments have traditional-use lands or reserved rights on what are present-day Forests Service lands. More and more, Tribal governments are asserting their interests and rights to these lands. The Forest Service is increasingly working with American Indian and Alaska Native tribes and individuals on these issues and other program activities.

In order to improve government-to-government relations with all federally recognized American Indian and Alaskan Native Tribes, the Forest Service developed the Forest Service National Resource Book to American Indian and Alaskan Native Relations (1997). This book offers a vast resource for Forest Service leaders that will allow them to become more knowledgeable about Indian nations in order to pursue partnerships, provide technical assistance, and two-way exchanges of information. It acknowledges Indian tribal governments possess inherent powers of self-government; no two tribal governments are exactly alike; there are no single or standard answers for any given issue that can be equally applied to all tribes; and Forests and regions need to communicate and consult directly with each sovereign tribe about related laws, treaties, policies, and Forest Service activities.

The Forest Service's Tribal Government Policy and Program was established to strengthen growing relationships with American Indian and Alaska Native tribes. The guiding policy for this program is located in Forest Service Manual-Directive 1563. The program is located in the State and Private Forestry Deputy Area at the Washington Office. Each region and some research stations have Tribal Government staff. The Washington Office Tribal Government Liaison may be contacted at (202) 205-0892.



## **Case Study: Preserving Sacred Mountains in a National Forest**

The San Francisco Peaks stand above the northern Arizona landscape, a forested refuge rising over 5,000 feet above the surrounding plateau lands. They are a unique and unparalleled landscape, and one of the most ecologically diverse regions in Arizona. Yet, they're threatened by the impacts from more than a century of extractive industries, unhealthy forest management practices, and burgeoning recreation and development.

The Arizona Snowbowl Resort Limited Partnership operates a 777-acre ski resort on the west flank of the Peaks under a Coconino Forest Service (CFS) Special Use Permit. Arizona Snowbowl purchased the resort in December 1992 and since has made significant improvements to the facility, all in accordance with the CNF 1984 Forest Plan (the 1984 plan was amended to include and adopt the 1979 Environmental Statement into its standards and guidelines for Management Area 15, which provides direction for developed recreational areas). The Arizona Snowbowl proposes to convert the resort to a reliable operating season, which has raised outrage by some Indian people. The CFS will decide whether or not to issue a new permit.

Arizona Snowbowl's proposed action involves, among other activities, creating artificial snow utilizing a Class A reclaimed water source, and constructing a 10 million gallon snow-making water reservoir near the top terminal of the sunset chairlift. The need for the project is to respond to two broad categories: 1) to provide a consistent/reliable operating season; and 2) to improve safety, skiing conditions and recreational opportunities by bringing terrain and infrastructure into balance with the existing demand. The Draft Environmental Impact Statement describes the entire proposal in detail. It can be viewed at [www.fs.fed.us](http://www.fs.fed.us).

The tribes in the region have grave concerns about the proposed action. They believe that reclaimed water is impure and would negatively affect the spiritual values of the Peaks: a place of extraordinary spiritual significance to more than 14 area Tribes. One has only to visit the Hopi Mesas or the ancient dwellings at Wupatki and view the Peaks rising like a mirage from the desert floor on the horizon to understand the significance of this geography to the people who have lived here for hundreds and even thousands of years.

Although the reclaimed water would meet both EOA and ADEQ water quality standards, the tribes are concerned that the water may contain low levels of unregulated and unmeasured residual constituents (e.g. pathogens, pharmaceuticals or hormones), which may cause health

problems in humans and wildlife. They're concerned that the habitat of native plants and animals would be permanently disrupted. In addition, they believe that removal of trees for a new, multi-mile utility corridor along with the ground-disturbing activities would scar the sacred landscape and mountain, which are believed to be living entities.

A number of tribes and grassroots organization, such as the Save the Peaks Coalition, have formally protested the proposed action. For the past year, they've organized themselves, communicated their concerns through the media, and advocated support from numerous sources. The results of these efforts are will be gauged by the decisions of the CFS. See the final two sections of this Toolkit for further details and integrative solution strategies on the San Francisco Peaks as a case study.

## **Natural Resource Conservation Service**

The Natural Resources Conservation Service's (NRCS) mission is to provide leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment. The agency's vision is to restore harmony between people and the land. NRCS puts nearly 70 years of experience to work in assisting owners of America's private land with conserving their soil, water, and other natural resources. Local, state and federal agencies and policymakers also rely on their expertise. NRCS delivers technical assistance based on sound science and suited to a customer's specific needs. Cost shares and financial incentives are available in some cases. Most work is done with local partners. The agency's partnership with local conservation districts serves almost every county in the nation, and the Caribbean and Pacific Basin.

American Indians and Alaska Natives are eligible to participate in all Natural Resources Conservation Service programs, and may have special status as provided by statute or regulation. NRCS provides assistance for conservation planning on cropland, pastureland, and rangeland and assistance to apply rangeland management and improvement practices. In addition, they assist on projects relating to irrigation water development structures and management, brush control, erosion control structures, agriculture, forestry, salinity control, watershed activities, no-till conservation tillage, soil interpretation, farmland protection, wildlife habitat improvement, and wetlands restoration.

NRCS has an American Indian Liaison located at National Headquarters. The Liaison's role is to work with Indian tribes and various American Indian groups to improve technical assistance to American Indians and to increase their participation in NRCS and USDA programs. For more information or assistance contact the American Indian Liaison, Community Assistance and Rural Development Division, NRCS, USDA, Washington, DC at (202) 720-8576.



## **Federal Emergency Management Agency (FEMA)**

Within the USDA, the Federal Emergency Management Agency (FEMA) is an independent agency responsible for leading America's efforts to prepare for, prevent, respond to and recover from disasters. FEMA was formed in 1979 by executive order of the President, combining Federal programs that deal with all phases of emergency management, for disasters of all types, into a single agency.

FEMA recognizes and acknowledges that American Indian and Alaska Native Tribal governments hold a unique status in the United States of America with the rights and benefits of sovereign nations. To this end, the Agency has developed the Policy for Government-to-Government Relations with American Indians and Alaskan Native Tribal Governments to affirm the Agency's understanding, support, and pursuit of a government-to-government relationship with American Indian and Alaska Native Tribal governments. The principles mirror and reinforce the philosophy embodied in President Clinton's April 29, 1994 Executive Order regarding Government-to-Government Relations with Native American Tribal Governments. The policy can be seen at [www.fema.gov/tribal](http://www.fema.gov/tribal).

FEMA has provided \$490,000 in grant funds in an effort to implement and refine the agency's Tribal Policy and is now working with eight Tribal Governments as pilot projects, including the St. Regis Mohawk, Prairie Island Indian Community, Mille Lacs Band of Ojibwe Indians, the Keewenaw Bay Indian Community, Gila River Indian Community, Lummi Indian Nation, Unalakleet Village and the Confederated Tribes of the Umatilla Indian Reservation. FEMA has 10 regional offices where an Indian Liaison can be reached, plus a liaison at the D.C. Headquarters. For more information go to [www.fema.triballiasion](http://www.fema.triballiasion).

Regional Tribal Liaisons:

Region I-Boston, MA (for Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont (617) 223-9494

Region II-New York, NY (for New Jersey, New York, Puerto Rico, Virgin Islands) (212) 680-3688

Region III-Philadelphia, PA (No Federally Recognized Tribes in DC, Delaware, Maryland, Pennsylvania, Virginia, West Virginia)



Region IV -- Atlanta, GA (for Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee) (912) 225-4572

Region V -- Chicago, IL (for Illinois, Indiana, Wisconsin, Michigan, Minnesota, Ohio) (312) 408-5322

Region VI -- Denton, TX (for Arkansas, Louisiana, New Mexico, Oklahoma, Texas) (940) 898-5213

Region VII -- Kansas City, MO (for Nebraska, Iowa, Missouri, Kansas) (816) 283-7020

Region VIII -- Denver, CO (for Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) (303) 235-4864

Region IX -- Oakland, CA (for Arizona, California, Guam, Hawaii, Nevada, Pacific Islands) (510) 627-7044

Region X -- Bothell, WA (for Alaska, Idaho, Oregon, Washington) (425) 487-4765/ (425) 487-4784 HQ -- Washington, D.C. (202) 646-3516

### **III. Tools for Consultation, Collaboration, and Co-Management**

This section provides strategies and examples of successfully co-managed projects, including the elements that contribute to beneficial working collaborations. This collection of examples results from extensive conversation, project collaboration, research, and workshops. The MOU and MOA examples collected in the CD contained in the Toolkit provide useful templates and examples of successful partnerships, including articulations of specific circumstances surrounding gathering and protection of cultural resources. The examples below have proven effective in establishing precedents, empowering local entities, and maintaining beneficial relationships. These on-going interactions have occurred between individuals, tribes, agencies, and other groups in creative, interactive processes.

The following section outlines the means that others have found effective in advocating for the protection, access and co-management of sacred lands and gathering grounds. Other sections of this toolkit have focused on tools needed for negotiation and conflict resolution with government officials or private landowners. In some cases, however, it is just as necessary to inform the general public about an issue, to build broader constituencies, and to respond to misinformation in order to even get to the table to begin negotiations. In addition, some parties in your community may be opposed to your protection of or access to a traditional cultural property. Therefore, you may need to build a coalition that shows greater public support for your goal than what the opposing group claims to have.

As a rule of thumb, it is often better to attempt non-confrontational approaches and negotiations with landowners and resource managers before assuming that broader advocacy and direct political action are needed to tip the balance in your favor. Advocacy campaigns and direct political action can be emotionally and financially costly. However, once it is clear to your community that such advocacy and action are needed, a clearly-planned communications campaign needs to be elaborated, one that clarifies the what and why of your advocacy efforts, and that selects with whom, when and where the advocacy should be done. In particular, news releases, press conferences, rallies, and non-violent demonstrations need to be carefully planned and promoted, or they will do more harm than good. However, recent studies suggest that multi-pronged advocacy campaigns can be extremely effective in elevating the public importance of an issue, especially if the constituencies involved are diversified and strengthened through time. Hearings, rallies or other events should not be one-shot deals, but should become more frequent and visible through time, or else they will have little impact. The tools described in this section include strategic planning of communications strategies, including press releases, op-eds and letter-writing initiatives.

Compiled by Karen Jarratt-Ziemski, Laurie Monti, Gary Paul Nabhan, David Seibert



**Public-Private Partnerships to Protect Cultural and Historic Lands:  
New Hampshire Land and Community Heritage Commission Final Report 1999**

This process and outcome outline an exciting means of creating public-private partnerships (through state or tribal legislative actions) to protect priority natural, cultural and historic sites. It creates a permanent program – comparable to a housing finance authority – to provide grants, block grants, loans and loan guarantees to protect archaeological and sacred sites, historic and cultural landscapes, ecologically significant habitats, and traditional farmlands. The authority not only funds land acquisition, but feasibility, management and restoration initiatives as well, on the basis of imminence of threat and uniqueness of the resource.

Note that few states and no tribes currently have established such quasi-governmental authorities or commissions per se, but instead use other means to achieve some but not all of the same goals. Considerable political lobbying and financial planning skills are required to legislatively establish such authorities.

See also [www.cas.nercrd.psu.edu/Toolbox/ NH%20web%20pages/NHhistoricLINKS.htm](http://www.cas.nercrd.psu.edu/Toolbox/NH%20web%20pages/NHhistoricLINKS.htm)  
[www.lchip.org/](http://www.lchip.org/)



## **Conservation Easements Briefing Sheet from the National Center for Appropriate Technology/ATTRA's National Sustainable Agriculture Information Service**

This briefing sheet provides an overview of conservation easements as a legal tool useful in preserving traditional farms, historic orchards, culturally significant gathering grounds and other cultural properties. Although the NCAT/ATTRA briefing is geared toward assisting off-reservation farmers and ranchers with protecting productive lands from development, the conservation easement tool can be used 1) to decrease the actual cost of purchasing and maintaining off-reservation lands that tribes choose to purchase and 2) setting deed restrictions for such lands that limit certain activities for as long as the conservation easement is legally recognized. It should be noted that rigorous monitoring must be done annually to ensure that the easement is being managed in a manner that achieves its expressed conservation objectives, or else the federal government or third parties can challenge the easement's legal validity and withdraw tax breaks.

See [www.ncat.org/](http://www.ncat.org/)



**“Massachusetts Projects Advance National Tribal Lands Program”  
Trust for Public Land New England Newsletter, Winter 2003**

These newsletter notices highlight how private land trusts, such as the Trust for Public Land, can assist tribal communities in purchasing culturally significant sites beyond their reservation boundaries. Specifically, these notices announce transfer of a burial site on the coast of Cape Cod to the Mashpee, protection of a sacred site significant to the Wampanoag, and purchase of a “Praying Town” that played a poignant role in the acculturation of the Native Americans in New England. What is critical to understand is that most land trusts do not cover the costs of such purchases themselves, but assemble donors, for a fee, to broker such purchases with the help of state historic commissions, foundations, quasi-governmental organizations and tribes themselves. The land trust brokers are experienced at appraising and negotiating land deals, sometimes obtaining the cooperation of land owner who were at first reluctant to negotiate directly with tribes themselves. As third parties, they can advise the original land owner on how to obtain maximum tax credit for donating portions of land or reducing their price per acre. In some cases, the tribes immediately become sole owners, while in others, the land trust holds the deed and initiates collaborative agreements to co-manage the land with the tribe and to limit other conflicting uses.

The Land Trust Alliance ([www.lta.org](http://www.lta.org)) can refer tribes to local land trusts in their area. Alternately, the Tribal Lands Program of Trust for Public Lands can advise tribes on how to link up with TPL’s regional staff ([www.tpl.org](http://www.tpl.org)).





## **Case Study: Restoring Timbisha Shoshone Land Management Practices in Death Valley National Park**

The following case study explores an effective and creative approach to culturally appropriate land and resource management, including traditional ecological knowledge (TEK) concerns.

The honey mesquite (*Prosopis glandulosa var. torreyana*) and the single-leaf pinyon (*Pinus monophylla*) once provided an important source of food products for the Timbisha Shoshone in the region that later became Death Valley National Park. The people cared for these trees in a manner that allowed the trees to thrive and provide important food and fuel products. In 1941, the National Park Service took over the management of Death Valley region along with its resources. The policies denied access to the Tribe, and as a result the trees were neglected and they no longer flourished.

The mesquite trees were harvested for food and wood products. The Tribe managed these trees by trimming the lower branches to make harvesting of the bean pods easier, and used the wood for fuel. They cleared and cleaned underbrush from beneath the trees to prevent the build-up of blowing sand. They discarded the endocarp encasing of the seeds within the groves. All of these processes promoted tree and grove health, opening the groves to sunlight and more effective moisture and providing potential new materials for germination and grove renewal.

In the early stages when the mesquite's pods are green, the Tribe harvested the pods to roast as an important food source. Later, as the pods turned yellow and were still moist, the women collected and crushed the pods using a wooden mortar and stone pestle and squeezed the mash with their hands to extract the juice. After the pods had fully matured, they were collected and pounded with a mortar and pestle into a fine sweet powder. The hard endocarp containing the seed was discarded and most of the flour was prepared for storage in large cones or cakes that were coated with the pod residue. The large cones or cakes would be put away in rock shelters or grass-lined pits, as would some quantity of whole pods, for a winter supply.

The pinyon groves were managed in a similar fashion to the mesquite groves but with additional treatments. The pine nut harvest was a lengthy procedure, with different techniques developed for preparing both green and fully mature cones. The Tribe used long, wooden harvesting poles during both stages to remove the cones from the trees. After they roasted the green cones, removed the nuts and otherwise prepared the ripened nuts for eating and for storage, they took care of these trees by again bringing out the wood harvesting poles and whipping the trees. This dislodged old cones and likely broke the branch tips, which would have stimulated growth and additional production. They also pinched the growth tips of lower branches, which likely produced the same effect as whipping the trees.

In the past few years, the Timbisha Shoshone have taken action to save resources that have long been the hallmarks of their plant subsistence system. They want something done about what they see as a deteriorated and deteriorating situation for the trees and also a situation that has precluded them from practicing cultural remedies that are deeply ingrained, and should be passed down to the next generations.

The Tribe is currently trying to negotiate cooperative agreements with Death Valley National Park, U.S. Geological Service, and the Bureau of Indian Affairs that will ensure funding for a long-term study of these culturally and ecologically significant mesquite and pinyon groves within the Timbisha Shoshone homeland. They are not newcomers to

Death Valley, which they see as a living place in spite of the name and negative connotations in the minds of many non-Natives. Their reward will come when their young people are “caring for the trees” in healthy groves of mesquite near their Furnace Creek Village, and pinyon pines in Wildrose Canyon.

## Case Study: Zuni Heaven

The Zuni Tribe, residing in what is now known as New Mexico and Arizona, has been engaged in traditional cultural practices on that landscape for hundreds of years. These practices involved, and continue to involve, the continuous maintenance of numerous shrines, springs, and paths that extended for hundreds of miles in either direction from the present reservation lands along the New Mexico/Arizona border.

The maintenance of such traditional cultural properties and the journeys required to reach them soon became part of the collective knowledge of local immigrants during the period of European incursion. In one example, every four years Zuni religious leaders conduct a specific pilgrimage along a trail to a large portion of sacred land that is no longer attached to the present Zuni reservation, to a site known by the Zuni as their most important sacred site—Zuni Heaven.

This journey came under threat as Zuni lands began to shrink due to increased immigration by nineteenth century settlers, until Zuni Heaven existed far from the present reservation lands. In the late twentieth century a local non-Zuni rancher, who owns land over which the pilgrimage crosses, threatened to stop Zuni religious leaders from observing the ancient tradition that is vital to Zuni culture and existence. In 1985 and 1989 the Zuni were able to gain restraining orders against the “landowner” in order to continue the pilgrimage, while they worked with the U.S. Department of Justice to obtain a prescriptive easement across the land.

Meanwhile, Zuni religious leaders prepared for trial by working very closely with expert witnesses, including anthropologists, ethno-historians and, significantly, local non-Zuni who knew of the pilgrimage and had elder relatives who recalled it as well. The Zuni decided that they would *not* pursue the case by making use of their First Amendment rights to freedom of religion—a seemingly counter-intuitive move. Although the religious nature of the practice was never in question, they sought instead a prescriptive easement, through Arizona law, that would allow movement across the landscape. This required only that the Zuni show peaceful and adverse possession of the land for at least ten years, and the evidence for such possession was strong, as noted above. The opposition in the case declined to call a single witness during the trial.

It is vital to note that the Zuni made no claim to ownership of the “private” land, and instead put their energy into obtaining the easement based on long, open, and notorious usage. More importantly perhaps, and because of their choice of tactics, the Zuni were never required to speak of the religious nature of the pilgrimage, nor were they required to explain their religious beliefs, customs, or any other facet of the pilgrimage—including the destination. The fact that the walk was tied to deeply religious purposes had no bearing whatsoever on the case. Thus, while First Amendment rights are of critical importance to tribes, the Zuni Heaven case shows how those rights can be preserved intact, and without disclosure of details, through creative and alternative means of working within an existing system.

For comparative purposes, see also Section IV and the conservation easement template document on the enclosed CD.



## **Tribal Access to Clambeds on Private Coast Tide Lands**

“Suquamish Tribe Completes First Private Lands Shellfish Harvest” (*Native Americas*, 2000)

Reserved rights (Section I) and collaboration can merge in effective ways. This 2000 article by Ronald Neizen recaps the progress of the Suquamish Tribe in Puget Sound to assert its off-reservation reserved rights to harvest shellfish from private tidal lands along the coast of Puget Sound. These rights to shellfish, explicitly granted to the Suquamish in their original 1855 treaty with the U.S. Government, were upheld by the Supreme Court in April 1999. Since tribal reserved rights are property rights guaranteed by treaties or other laws of the land pursuant to the Constitution, abrogation of the ability of the tribes to collect shellfish in traditional gathering areas would be a “taking” in violation of the Fifth Amendment. A 1994 case in Federal district court ruled that 15 tribes in Washington were entitled to half the state’s harvestable shellfish; including those present on privately held tidelands, beaches and bays.

In February 2000, the Suquamish completed the first commercial tribal shellfish harvest since this ruling, taking some 2,000 pounds of Manila clams on private lands along Dyes Inlet near Bremerton, Washington. The Suquamish Fisheries program must do biological surveys before clam digging to determine sustainable harvesting levels, but has initiated such surveys in 30 locations. Several prime land owners are paid fees for their half of the resource should they choose not to harvest any shellfish themselves and allow the Suquamish to dig for all clams allowable within the sustainable harvest limit. A number of private landowners once fearful of the gathering rights decisions are now willing collaborators with the tribe.



## **Case Study: Comprehensive Tribal Shellfish Management**

Moving beyond litigation can be a tedious but necessary process, if long-term changes in relationships are to be realized. Western Washington tribes have harvested shellfish on coastal lands for thousands of years. The 1855 Treaty of Point No Point guaranteed the right of tribes to continue harvests of shellfish, in exchange for the peaceful relinquishment of most of western Washington. However, European settlers soon began programs of abuse, exclusion, and harassment of tribes who tried to collect on coastal lands, and law enforcement refused to step in.

In the late 1970s, tribal and state fisheries staff began working together to develop fisheries regimes for all cultures in the area to continue harvests. This apparently cooperative natural resource management program provided some hope to area tribes, but negotiations between tribes and the state began to falter in the mid-1980s. Many years of negotiations were unsuccessful, and the case went to trial in 1994. Significantly, testimony during the trial emerged from various sources—tribal elders, biologists, treaty experts, historians, anthropologists, private property owners, non-Indian harvesters, state employees, and others. During the trial, the judge ruled that “A treaty is not a grant of rights to the Indians, but a grant of rights from them.” The clarification remains important because it upholds the fact that the United States government made a promise to the tribes that they would have a permanent right to fish and harvest as they had for centuries.

However, the ruling also excluded tribal access to many private beaches. Numerous appeals began to drain the resources of tribal governments, without any change in the original ruling. At this point, tribes began to shift their focus to cooperation and co-management. They began developing harvest management and supplementation plans, and collected and shared data among the tribes and with the state.

Attempts at cooperation and moving past litigation produced powerful effects. With the support of the partially favorable original ruling, tribes began harvesting in culturally significant areas while proving their ability to manage and monitor resources effectively. This show of faith and ability encouraged further agreements between tribes and the state. Surveys of pollution impacts and cooperative agreements for the management of resources have resulted in greater mutual understanding. Tribes hope to build on these successes by working next with private property owners on scientific surveys of populations, harvest planning, and cooperative resource enhancement activities that will benefit all resource sharers.

Full text: [www.nwifc.wa.gov/ctnrm/2000\\_shellfish.htm](http://www.nwifc.wa.gov/ctnrm/2000_shellfish.htm)





## Case Studies: Katie John's Landmark Fishing Rights Lawsuit Win

“Alaska Native Harden Subsistence Position” (*Native Americas*)

“Katie John: Standing Up for What's Right” (*American Indian Report*)

“Katie John Prevails in Subsistence Fight” (*Native American Rights Fund Legal Review*)

These articles highlight the subsistence rights cases, *Katie John v. United States of America*, and *State of Alaska v. Bruce Babbitt* on behalf of Katie John, an Athabaskan fisherwoman from Mentasta, Alaska. As the Native American Rights Fund recently summarized, “*Katie John*, more than any other subsistence case that had been pending before State or Federal courts, exemplifies the contentious battle being waged between federal, tribal and state interests over the jurisdiction of Native fishing rights.” The case has largely been won by Native interests, since Governor Tony Knowles decided to drop his appeal of the earlier case once he met and talked with Katie John herself.

John and her friend Doris Charles traditionally fished at a place called “Roasted Salmon Place” (Batzulnetas) on a tributary of the Copper River, inside the Wrangell-Saint Elias National Park. In the early 1990s, Alaska state fisheries biologists ordered the elderly women to shut down their fishing camps in order to protect spawning sockeye salmon that were at that time managed by the state. Katie John sought legal assistance to reaffirm her subsistence rights on federal lands that she assumed to be protected by the 1980 federal law known as the Alaska National Interest Lands Conservation Act (ANILCA). Under ANILCA, rural residents who hunt fish or gather for subsistence purposes were granted preferential treatment over urban sportsmen during times of resource shortage. However, it remained ambiguous whether Alaska state or federal resource managers had authority to determine the appropriateness of rural Native American's fishing of protected fish stocks. In 1995, the Ninth Circuit Court of Appeals agreed with John's legal team that since the Copper River flows through federal lands, its fisheries must be managed for rural subsistence preference, just like game and wild plants. It held that the federal government has the obligation to provide subsistence fishing priority rights on all navigable waters in Alaska in which the U.S. has federally reserved water rights.

In October 1999, the federal government tried to move into fisheries management in Alaska, to ensure Alaskan Natives' fishing rights in any watershed running through federal lands. Alaskan congressmen and governors attempted an appeal to block this effort and the State of Alaska was granted a rehearing; but in December of that year, a majority of judges in the Ninth Circuit Court of Appeals concurred with the case made by Native American Rights Fund attorneys. Since then, both the Governor of Alaska and two Supreme Court judges have come to help work out operative procedures with Native American interests favored by the case. Although ANILCA provides explicit protection for subsistence rights in Alaska to a degree not offered to Native Americans in the lower 48 states, this case nevertheless provides another precedent for trumping state regulations unfairly limiting Native American subsistence. As such, it may provide a means for thwarting states' attempts to exert undue control over natural resources traditionally used by Native Americans.



## **Native Participation and the National Historic Register Converge at The Hanford Site, Washington**

This document is a wealth of information centered on noting the importance of and facilitating native participation in decision-making on the appropriateness and eligibility of submissions for National Historic Register status. The write-up provides detailed and far-reaching historic precedent for cultural landscape protection, as opposed to specific site protection only.

The idea of a precedent also commands legal respect in the existing culture of law and State institutions in the U.S., that variously administer and co-manage culturally important sites. The document's methodology points to the importance of legal history of tribes and the area under question, extending as far back in time as is historically and ethnographically available. Personal testimony from many tribe members strengthens the account and claim to specific property rights.

The document outlines the mechanisms within the existing legal and social systems that are utilized. This includes the historic moves of empowerment by both individuals and agencies, such as the use of existing law and the timing of defiant acts. The study provides an excellent example of how to articulate the existence of different kinds of native knowledge, and the means of continuing it, without exposing esoteric knowledge. Agency perspectives and their failure to match native ways of knowing come under consideration, and the document suggests alternative ways of interacting, such as without the pressures of typical formal meetings in formal settings. The consideration of cultural landscapes, as articulated by native peoples to non-natives in agencies and institutions, alongside on-the-ground data provided by native informants, crucially assist non-native collaborators and co-managers in considering landscapes culturally and beyond typical agency constraints and requirements.

“Cultural triage,” or the forced choice and prioritizing of plants, places, sites, and objects when threatened, can help tribes sort information. But ideally tribes will become aware of the cultural triage method by example here and in the remainder of this Toolkit, where we emphasize that the idea is to avoid reaching such a flashpoint originally. New models of interaction between groups and interactive consideration of existing, shared landscapes will further the goals of all groups to reconcile people, place, and relationships between them.

For full text go to: [www.hanford.gov/doe/culres/mpd/sec3.htm](http://www.hanford.gov/doe/culres/mpd/sec3.htm)



## **Case Study on Consultation and Collaboration: An Intertribal, Regional Approach**

This case study illustrates a successful long-term consultation partnership involving U.S. Department of Energy Nevada Operations office (DOE/Nevada) and 20 tribes and organizations composed of Western Shoshone, Southern Paiute, and Owns Valley Paiute-Shoshone people. The Indian Tribes and organizations that participated in the DOE/NV consultation program represented all Indian people of Las Vegas Valley with ancestral ties to the region.

The DOE/Nevada designated the Nevada Test Site as an area for a practice bombing range and to test nuclear weapons during the Cold War. Within this site at Yucca Mountain was the site of a nuclear waste repository that would occupy a small portion of the southwest corner of the Nevada Test Site and extend onto adjacent lands outside this facility. Consultation was initiated by the DOE in compliance with Sections 106 and 110 of the National Historic Preservation Act (NHPA) and the American Indian Religious Freedom Act (AIRFA). Seventeen tribal groups participated—those with cultural affiliations with the NTS and surrounding lands, with an established history of prior occupancy and use of the region's lands, and cultural affiliations (defined in federal legislation and regulations for implementing NAGPRA 43CFR 10,vo.1, pts.1-999; 189-213, 1997). These tribes incorporated themselves as the Consolidated Group of Tribes and Organizations (CGTO) to accurately represent the tribes and official Indian organizations that comprised the CGTO to develop protection and conservation alternatives for resources important to these tribal groups.

Other accomplishments of the Consultation Program and the Nevada Test Site:

- American Indian monitors selected by tribal leaders of each ethnic group to evaluate the cultural significance of artifacts, features, archaeological sites, rock art, sacred places, plants, animals, minerals, water and other natural elements contained within the NTS landscape;
- Repatriation and on-site reburial of sacred objects, unassociated funerary objects, and objects of cultural patrimony under NAGPRA;
- The development of the American Indian Resource Document for the Environmental Impact Statement (EIS) for the NTS and Off-Site locations in the State of Nevada;
- Precedent-setting execution of an American Indian LLRW transportation study;
- Institutionalization of best consultation practices in the form of a DOE agency wide American Indian policy.

-Stoffle R.W., Zedeño M. N. and D.B. Halmø Eds. 2001. American Indians and the Nevada Test Site; A Model of Research and Consultation.

-Collen Beck, M. Nieves Zedeño, and Robert Furlow. 2001. Time, Trust, and the Measure of Success: The Nevada Test Site Cultural Resources Program. National Park Service Archeology and Ethnography Program. Stewards of the Human Landscape.

-Bureau of Applied Research in Anthropology, Haury Building, University of Arizona, Tucson, AZ 85721, e-mail [mzedeno@u.arizona.edu](mailto:mzedeno@u.arizona.edu) or [rstoffle@u.arizona.edu](mailto:rstoffle@u.arizona.edu).



### **Applying Memoranda of Agreement and Understanding On the Ground:**

- Memorandum of Understanding Regarding Tribal-USDA-Forest Service Relations on National Forest Lands Within Territories Ceded in Treaties of 1836, 1837, and 1842
- Wisconsin Off-Reservation Wild Rice Harvest Regulations Summary
- Charter: Voigt Inter-Tribal Task Force Committee, Great Lakes Indian Fish and Wildlife Commission

These three documents all outline the means by which off-reservation wild rice gathering, fishing and hunting has been made operative following landmark decisions in the Upper Great Lakes: *Lac Courte Oreilles Band of Chippewa Indians v. Voight (1983)*; *Lac Courte Oreilles Band v. Wisconsin (1988)*; *Lac Courte Oreilles Band v. Wisconsin (1999)*; and *Minnesota v. Mille Lacs Band (1999)*. With these decisions, tribes were given the rights to sufficient resources to meet a moderate standard of living, but this must be determined to be a 50 percent allocation of sustainably harvestable resources. Significantly, the judge chose to build tribal capacity to determine what those sustainable harvest levels should be, rather than letting Wisconsin, Michigan or Minnesota state departments of natural resources do so. In essence, the attached documents outline how the tribes have taken over the responsibility of sustainable harvest monitoring, co-management and regulation of selected natural resources off-reservation, but within their traditional gathering grounds.

The Charter for the Voigt Inter-Tribal Task Force Committee can serve as a template for inter-tribal agreements once resource management responsibilities are ceded to tribes; that is, responsibilities formerly accomplished by state or federal governments. Its goals include developing technical capacities of tribes to monitor, manage and regulate uses of natural resources, to slow or reverse environmental degradation in habitats where harvests occur, and to foster resource conservation and use for future generations.

The MOU between the Chippewa Tribes along Lake Superior and the US Forest Service may also serve as a template for government-to-government relations between tribes and federal agencies that not only facilitate tribal access for harvesting but for co-management of the harvests of wild natural resources in waters and lands within National Forest boundaries. The agreement is based on acknowledging the Forest Service's national policies regarding Native Americans, as well as recognition of both parties' mutual interests, such as the sustainability of the ecosystems that provide both harvestable (economic or cultural) products and ecosystem services of benefit to society at large. It then sets forth some very specific agreements needed to implement government-to-government coordination. It offers a model for consensus-based decision making, as well as for conflict resolution should consensus be difficult to achieve.

The final document in this set is a brief wild rice regulations summary that highlights how GLIFWC alerts tribal members to the allowable harvesting places and practices for wild rice gathering. It suggests that any reader who needs more information should contact his tribal office or the GLIFWC office, noting the name of an individual who can guide callers to other sources of information they may need. Although not necessarily useful as a template to model other tribal communications on, it nevertheless gives the feel of how human individuals (not just tribal bureaucracies) must be engaged in bringing sustainable harvests into fruition.





## Using Public Relations and Working with the Media

The media can also play a significant part in shaping public opinion in negative ways about native peoples and issues of importance to native communities. However, using the media and public relations can be an effective tool for persuading others to support a particular policy or course of action. One of the key factors in using the media to effectively shape public opinion in favor of your agenda or issue is what language is used to present the issue. In other words, how the issue is framed—which words and symbols are chosen to convey the message—is critical.

Examples of how the same issue can elicit either a positive or negative reception are plentiful. The following example is offered by Stone (1998):

When asked about public spending on welfare, 48 percent of Americans say it should be cut. But when asked about spending on programs for poor children, 47 percent say it should be increased, and only 9 percent want cuts. Do Americans want to enlarge or curtail welfare spending? *It all depends on how the question is framed* (p. 3, emphasis added).

Another example of effective use of public relations and the media comes from native nations in the Southwest in recent years. Tribal nations in both Arizona and California engaged in a fight to win approval of ballot initiatives to involving Indian casino gaming operations have “re-framed” the issue to win support from the public. Rather than posing it as being a matter of tribal nations exercising sovereign rights to choose their own form of economic development, the issue has been framed as one of self-sufficiency. Since, 1996, the term self-sufficiency has become a powerful symbol associated with welfare reform. Over and over, the theme in welfare reform policy is repeated—people move off the welfare rolls when presented with the opportunity for self-sufficiency.

In addition to reframing an issue, a few of the many tips for utilizing the media effectively include the following:

- Put together an educational packet which can be distributed to the media and offer to send it to specific reporters who have shown an interest in the issue.
- Carefully select the wording used in all press materials and informational materials so that the issue is portrayed in a manner you think will be persuasive to the public, or at least will present a positive image to the public.
- Consider whether to keep the scope of the issue narrow, or whether your campaign will be more effective by linking it to a broader issue.
- Remain calm in the face of negative attacks. Distributing educational and informational materials can be an effective way of responding to previous negative media pieces and interest group attacks.
- If possible use the services of a public relations specialist to assist in formulating your presentation.

### **References for Further Reading:**

Banks, Stephen F. 2000. *Multicultural Public Relations: A Social-Integrative Approach, Second Edition*. Ames, IA: Iowa State University Press.

Jarratt-Ziemski, Karen L. 2004. Working Paper: "Policy Designs, Tribal Sovereignty and Welfare Reform: Pathway to Self-Determination or Relocation Revisited?"

Paletz, David L. 2002. "Public Policy," Chapter 15 in *The Media in American Politics: Contents and Consequences, Second Edition*. New York: Addison Wesley Educational Publishers.

Rocheffort, David A. and Roger W. Cobb, editors. 1994. "Problem Definition: An Emerging Perspective," Chapter One in *The Politics of Problem Definition: Shaping the Policy Agenda*. Lawrence, KS: University of Kansas Press.

Stone, Deborah. 1998. "Introduction," (especially pp. 3-6) in *Policy Paradox: The Art of Political Decision Making*. New York & London: W.W. Norton & Company.

## **Tools for Community Organizing**

### Advocacy

Petitions to the Forest Service to extend the comment period (petition was denied).  
Online comments, petition/signatures to the Forest Service via Save the Peaks website.  
Comment writing party/meetings in the community.  
Contact elected officials asking them to put pressure on the Forest Service to make a decision on the DEIS that respects human rights!

Capitol Switchboard at (202) 224-3121

[www.visi.com/juan/congress](http://www.visi.com/juan/congress) Online Directory for the 108th Congress

### Personal contact with agency/ community leaders

Harvey Forsgren, Regional Forester for the Southwestern Region  
< <http://www.fs.fed.us/r3/contact/index.shtml> >

City of Flagstaff Mayor and Council E-mail: [council@ci.flagstaff.az.us](mailto:council@ci.flagstaff.az.us)  
<mailto:council@ci.flagstaff.az.us>  
Opinion Hotline: (928) 779-7691  
Telephone: (928) 779-7600 Mail: 211 W. Aspen Avenue, Flagstaff AZ 86001

Arizona State Governor Janet Napolitano  
><http://www.governor.state.az.us/global/contact.htm>>

U.S. Senator John McCain <http://mccain.senate.gov/index.cfm?fuseaction>

Tribal representatives

### Education

Distribute flyers and pamphlets to educate people about the issue.

### Publicity

Media campaign. Write letters to editors of local papers.  
Public Hearings/Public Statements.  
Demonstrations. Participate in or organize a protest: walk, run, ride or a prayer vigil to raise awareness and help protect the peaks in your community!

See also Section IV on communicating across cultures, and communicating the sacred



# *Sacred Lands and Gathering Grounds: A Toolkit for Access, Protection, Restoration & Co-Management*

Center for Sustainable Environments and Applied Indigenous Studies



## **IV. Integrative Strategies and Communicating the Sacred: Beyond the Religious Freedom Act**

This section provides an overview of some current perspectives of various religious organizations to address and promote the sanctity of creation, and the responsibility of humans of all faiths to provide stewardship of sacred lands. It is an effort to provide the reader with tools to bridge the seeming chasm between Indigenous and Western (including Judeo-Christian-Islamic) world-views regarding sacred places. We hope that this information can be used to increase the awareness of native and non-natives alike of opportunities to find common ground. To do so, it may be helpful if practitioners of indigenous spiritual traditions learn more of the current initiatives and historic legacies of Judeo-Christian traditions that resonate or support the protection of all holy places. Many religions have in their teachings a divine mandate that the lands and water that nurture us should be cared for, and not destroyed. In fact, some faiths have explicitly written declarations to support protection of indigenous peoples' sacred places. This document provides links to faith-based environmental justice advocacy groups to facilitate dialogue and coalition building between native and non-native communities that share some of the same goals.



## Introduction

Advocates for the protection of indigenous sacred sites and gathering grounds have often failed in their attempts to build broader coalitions to support their causes. It has sometimes been difficult to create dialogue with individuals or organizations that do not understand native world-views and religious practices related to the environment. There has also been a reluctance to use analogies and metaphors from the Judeo-Christian traditions of the dominant cultures in order to explain indigenous world views to the unacquainted, for fear that the analogies distort or co-opt indigenous beliefs.

In addition, the necessary reservations of indigenous peoples to publicly explain their world views and practices may prevent well-meaning non-natives from fully comprehending the importance of protecting sacred lands and gathering grounds. Many tribes consider it simply inappropriate or sacrilegious to communicate details of their cosmology and religious practices to outsiders.

Nevertheless, the detrimental effects on the health of native communities resulting from the contamination or degradation of a sacred area or gathering site have recently begun to be considered in legal cases. Agencies such as the Center for Disease Control's Agency on Toxic Substances (ATSDR) have begun to assess the disproportionate risk of exposure to contaminants that tribal medicinal plant collectors routinely face (see the enclosed cd for further details). Historically, such issues were largely overlooked when federal or state land managers based their resource decisions on economic impacts alone, failing to adequately address the rights of indigenous peoples to use sacred sites and gathering grounds in ways that generate more non-monetary than monetary value.

The purpose of this document, then, is to uncover parallel concepts from other spiritual traditions that may be consistent or compatible with indigenous world views, allowing support for sacred lands protection from sectors of society that have not yet been regularly recruited as allies.

Many ancient spiritual traditions, indigenous or otherwise, assume that the universe is in some way "alive" and all its beings live in balance with one another. The universe itself is understood to be the Great Teacher and our relationships in it an expression of these teachings. Obviously, the holistic spirituality of many indigenous and some exiled peoples is rooted in the sacredness of the homelands in which their ancestors have dwelled. "The Native Indian," writes Lame Buffalo, a member of the Sioux tribe, "has centered his life in the Natural World. . . only in reference to the earth can he persist in his true identity." Unlike the more abstract sacredness of some religions, indigenous spirituality is usually tangibly linked to a *particular* place or places, in ancestral territory. It is not as moveable to foreign lands, nor can it be fully expressed in human-constructed environments; instead, it is relational and intrinsic to specific places.

Most indigenous traditions are not merely embedded in place, they are embedded in a community of inheritance, rather than being intellectually chosen by an individual who "shops around" for a faith compatible with his or her peculiar sensibilities. Father Dave Denny, a Catholic priest of the Carmelite order, writes: "As Judaism, Christianity, Buddhism, Hinduism, Confucianism and other world traditions sprang up, a greater emphasis evolved on the individual (for example the great teachers: Moses, the Buddha, Confucius, Jesus); on reason; on culture separated from nature; and on the spiritual quest as an individual's ascent toward the transcendent. As many cultures broke from their original roots in myth and ritual, urbanized, they began to reflect more analytically on the meaning of life. Our hope lies in our welcoming and developing a consciousness that challenges *each tradition to retrieve its own depths and reinterpret them in the context of the encounter between traditions*. As we sit around the campfire and begin to listen

deeply to the other [we hear] mutually affirming complementarities that can expand and deepen each unique heritage.” Our task then is to remind those who have forgotten to *remember* the depths of their own tradition, to retrieve the wisdom.

### **Western religious traditions: connections to the land**

A century ago, naturalist and philosopher John Muir wrote: “When we try to pick out anything by itself, we find it hitched to everything else in the universe. Thousands of tired, nerve-shaken, over-civilized people are beginning to find out that going to the mountains is going home.” In ways, he was simply rephrasing the Great Chain of Life and other Western religious images of connectedness to and dependence on the land. Such images are fundamental to the Judeo-Christian-Moslem traditions. From the early writers of the Jewish laws we hear Yahweh proclaim that the land is sacred and therefore cannot be owned by anyone but the Spirit: “the land is mine; you are but aliens who have become my tenants”.... (Leviticus 25). Sacred peaks such as Jebel Musa (Mount Sinai) were places where Yahweh offered guidance to those who listened; interestingly it became one of the first areas protected from warfare and destruction by Helena, the mother of Emperor Constantine in 330 AD, a status that the Islamic prophet Mohammed also respected.

Care for used land and its vegetation was emphasized as a complement to the protection of land (like Mount Sinai and Mount Horeb) from use. The original Sabbath resting period was designed for people and land alike: “When you enter the land that I am giving you, the land is to keep a Sabbath’s rest for Yahweh. For six years you shall sow your field, for six years you shall prune your vine and gather its produce. But in the seventh year the land is to have its rest, a Sabbath for Yahweh...The Sabbath of the land will itself feed you and your servants, men and women, your hired laborer, your guest, all its produce will serve as food” (Leviticus 25). Thus, as in indigenous traditions, land and vegetation can be used for human purposes if they are also rested so that their bounty is regenerated and respected. It is now believed that the period of forty days set aside for fasting and prayer was originally linked to the forty days that the Nile typically flooded fields that were being rested, regenerating their fertility.

### **Western Religious Traditions: the sacredness of water**

Images of the sanctity of water, especially of flowing water, are powerful in Judeo-Christian-Islamic traditions. The visionary Prophet Ezekiel showed his awe and respect for the Jordan River, as did John the Baptist centuries later. Ezekiel proclaimed that “along the bank of the river I saw very many trees on both sides. Yahweh said to me, ‘This water flows into the eastern district down from the Arabah, and empties into the sea, the salt waters, which it makes fresh. Wherever the river flows, every sort of living creature that can multiply shall live, and there shall be abundant fish, for wherever this water comes the sea shall be made fresh. Along both banks of the river, fruit trees of every kind shall grow, their leaves shall not fade nor their fruit fail. Every month they shall bear fresh fruit, for they shall be watered by the flow from the sanctuary. Their fruit shall serve for food and their leaves for medicine.’”

In this mystical vision, Ezekiel sees water flowing from the threshold of the new temple. There is power and greatness to this flow. Isaiah also spoke an encouraging message of hope for people in exile: “The Lord will guide you and satisfy your needs in parched places, and you shall be like a watered garden, like a spring of water, whose waters never fail.”

When Jesus met the Samaritan woman at the well, he reflected upon Ezekiel’s image of water flowing from the temple. Jesus spoke of the water flowing from himself when he



told the woman: "If you knew the gift of God...you would have asked him and he would have given you living water...the water that I will give will become in them a spring of water gushing up to eternal life."

There is something universally energizing and transforming about flowing water. Jesus was baptized by John the Baptist in the River Jordan, as flowing waters were poured over his body. Many churches now have baptismal pools that trickle or stream so that the sight and sound of the flowing, gurgling water will remain present among people. Yet today, there are disturbing signals coming from our sources of water: the drying of springs, the dying of rivers, and the dead spots in many of our oceans. Salmon runs have been depleted. Nitrate pollution is evident in nearly every stream and lake. Environmental damage has occurred which will take generations, if not millennia, to repair and to heal.

In recent years, most Western religious communities have begun to take seriously the notion that protecting or restoring health to water and land is not merely a secular issue, but a sacred obligation or responsibility for the land on which we live. This notion is being embraced by a growing portion of the American population, who may potentially be sympathetic to and supportive of indigenous connections to natural landscapes. Since the first Earth Day in 1970, many faith-based organizations throughout the world have mobilized around environmental stewardship. Most mainstream Christian denominations now have a national office for environmental justice. Some evangelical Christian groups strongly supported the Endangered Species Act's reauthorization by simply stating, "God created it, we're obligated to care for it, and that's all there is to it." The National Council of Churches has offered its support to the ever-expanding environmental justice movement that is now supported by several U.S. government agencies (including the Environmental Protection Agency). And, as detailed below, the Catholic bishops of the Pacific Northwest issued a pastoral letter in January 1999, proclaiming the Columbia River watershed to be sacred, while calling for support of the bioregion's family farms and sustainable timber harvests. The following case study offers support for the views of many tribal peoples in the Pacific Northwest.

### **Case Study: The Columbia River Pastoral Letter Project**

The Columbia River Pastoral Letter Project represents the work of twelve Catholic bishops from the states of Oregon, Washington, Idaho and Montana, and the province of British Columbia. With the assistance of grants from the United States Catholic Conference Environmental Justice Program and the National Religious Partnership for the Environment, the Project began in 1997 with the formation of an international Steering Committee. The Committee represented Canadian and U.S. dioceses and Catholic colleges and universities in the Columbia watershed.

A series of "Readings of the Signs of the Times" were held in Washington, Oregon and British Columbia in which representatives of diverse constituencies—industry, agriculture, fishing, education, community organizations and native peoples—presented their perspectives on regional environmental needs. A draft of these perspectives was enlarged and enhanced by the advice of a wide range of consultants: theologians, natural and social scientists, community organizers, and church representatives. A website was established that described their collective activities, inviting comments from interested people. An exploratory document, "The Columbia River Watershed: Realities and Possibilities," was released for discussion on May 12, 1999.

Subsequently, listening sessions were hosted by bishops from the Columbia River watershed, and by other groups in Oregon, Washington, Idaho, Montana and British

Columbia. Hundreds of people from all walks of life participated in the process. Their ideas and perspectives were considered for inclusion in the Pastoral Letter. The letter was then disseminated throughout the Columbia River watershed. In effect, the Pastoral Letter initiated an ongoing conversation to foster care for creation, to resolve regional conflicts with respect, compassion and good will, and to promote sustainable ecological relationships linked with community economic benefits.

Bishop William S. Skylstad is a Catholic bishop in Portland Oregon who grew up on the banks of the Columbia River. He has articulated current Catholic teachings on environmental stewardship developed by U.S. bishops in a lecture he delivered at the Catholic Rural Life Conference in 1998. What follows is an overview of the issue and excerpts from Bishop Sylstad's talk. The full lecture can be found at: [www.columbiariver.org](http://www.columbiariver.org) or contact them at 6211 Vassar Ave. NE Seattle, WA 98115.

## **Water: A Sacramental Commons Connecting Tribes**

The Columbia watershed includes 1,200 linear miles of the river itself, plus thousands of miles of its tributaries, and 259,000 square miles of surrounding landscape. It is the major river of the Northwest, with its source in southeastern British Columbia. About one-third of its course is in Canada. The river holds value for many groups. This area is thought to have sustained at least 20,000 to 30,000 Native Americans before infectious diseases, war, and the reservation system decimated their populations. Tribal groups surviving and once again thriving in this watershed include Salish speaking people to the north—the Methow (Mitois, Chiliwists), Entiat (Sinialkumuhs, Point de Bois), Chelan (Tsill-anes) Wenatchee (Pisquows, Wenatchi), Sinkiuse (Kawachens, Moses Columbia, Isle des Pierres), and Sahaptan speaking groups to the south, including the Wanapums (Sakulks). This drainage system also provides a connectivity among resident cultures. Native Americans have lived and traded on the banks of the river for at least ten thousand years. That kind of connectivity needs to be renewed and allowed to prosper.

In 1991, the U.S. Catholic bishops wrote another Pastoral Letter entitled *Renewing the Earth: An Invitation to Reflection and Action on the Environment in Light of Catholic Social Teaching*. It spoke of the religious and moral dimensions of the environment in which we live. In their reflection on the environment, the bishops mentioned seven themes integral to our responsibility to the land and water that Bishop Sylstad relates to the Columbia watershed:

**1. A God-centered and sacramental view of the universe, which grounds human accountability for the fate of each.** The sacramental view of the universe speaks to us of the power of God's creation that is so vast and mysterious we can't quite comprehend it all. But there is also something about the flowing water that is fascinating and mysterious as well... reverence for the presence of God in our created world demands from all of us respect, accountability, and stewardship.

**2. A consistent respect for human life which extends to respect for all creation.** Because of a lack of appreciation or reflection on the implication of gifts, we can tend to take them for granted or even abuse them. Reverence for human life from the moment of conception to death has become a hallmark of the Catholic Church. Reverence for God's creation in our world must also be part of our mission of serving the Lord and one another.

**3. A world-view affirming the ethical significance of global interdependence and the common good.** The Columbia River wonderfully pulls together two nations, Canada and the United States. Waters flow from these countries and through several states to blend into this great river that connects us and reminds us that any use of the river impacts a much larger community than just our immediate surroundings. Salmon from the river are caught by other nations on the open seas, and the cleanliness of the river is impacted by industry, farming, and how we as individuals use the river. A clean river makes for a clean sea.

**4. An ethics of solidarity promoting cooperation and a just structure of sharing in the world community.** The gift of the river is for all, and no one person or group should feel that they have absolute right to the river. Obvious tensions have arisen surrounding the potential use of the river. Thus we find complex relationships which involve the use of the river for energy, for salmon production, for sport fishing, for irrigation, for cultural traditions, and for river transportation and commerce, to mention just a few.

**5. An understanding of the universal purpose of created things, which requires equitable use of the earth's resources.** It is easy for us to be protective of this gift, thinking only of ourselves in this beautiful part of God's creation. Created things are meant for all of God's people. We need to use them prudently, without a spirit of hoarding or selfishness. What does this say about us in the Northwest who experience the cheapest rates for electrical energy in our country?

**6. An option for the poor, which gives passion to the quest for an equitable and sustainable world.** The history in the Columbia River Basin has not been particularly a happy or inspirational one given the nature of conquests and a lack of respect for the diversity of cultures and peoples of the land. Efforts at national security, although well intentioned at the time, have left us a legacy now that we question and significantly doubt as the best use of the resources of the region. People and cultures need to be respected and protected. Sustainability should be uppermost in our minds as good stewards.

**7. A conception of authentic development which offers a direction for progress that respects human dignity and the limits of material growth.** The river significantly impacts the economic life of our region. Much development and growth have occurred in recent decades. This theme of the pastoral letter leaves much room for continued discussion, searching, discovery, and discernment. Respectful dialogue and justice should be motivating factors in this interaction.

The previous discussion should offer Native American advocates for protection of sacred lands and waters insight into how to relate their values to those found in other spiritual traditions, so that followers of those traditions can learn to better support indigenous rights to access and stewardship of sacred sites and gathering grounds. While it cautions against equating Native American and Judeo-Christian-Islamic beliefs as if they are fundamentally the same but in different clothes, it attempts to offer means of eliciting support from the many sympathetic faith-based environmental groups emerging in North America.

## **Resources and Further Reading**

*National Council of Churches.* The Eco-Justice Programs office of the National Council of Churches works in cooperation with the NCC Eco-Justice Working Group to provide an opportunity for the national bodies of member Protestant and Orthodox denominations to work together to protect and restore God's Creation. The Eco-Justice Working Group has been providing an opportunity for the national bodies of member Protestant and Orthodox denominations to work together to protect and restore God's Creation. A major task of their environmental ministry is to provide program ideas and resources to help congregations as they engage in eco-justice.

110 Maryland Ave, NE  
Washington, DC 20002  
Phone: (202) 544-2350 ext. 27  
E-mail: [cassandra@toad.net](mailto:cassandra@toad.net)

*The National Religious Partnership for the Environment* (<http://www.nrpe.org/>) is a formal alliance of major faith groups and denominations across the spectrum of Jewish and Christian communities and organizations in the United States. Its four founding partners include: The U.S. Catholic Conference, the National Council of Churches of

Christ, the Coalition on the Environment and Jewish Life, and the Evangelical Environmental Network. The Partnership is integrating care for God's creation throughout religious life: theology, worship, social teaching, education, congregational life, and public policy initiatives. They seek to provide inspiration, moral vision, and commitment to social justice for all efforts to protect the natural world and human well-being within it.

Office of Social Development and World Peace  
(<http://www.nccbuscc.org/sdwp/ejp/index.htm>)  
(United States Conference of Catholic Bishops  
3211 4<sup>th</sup> Street, N.E., Washington, DC 20017-1194 (202) 541-3000

*The Coalition on the Environment and Jewish Life* (<http://www.coejl.org/about/>) was founded in 1993 to promote environmental education, scholarship, advocacy, and action in the American Jewish community. COEJL is sponsored by a broad coalition of national Jewish organizations and has organized regional affiliates in communities across North America. COEJL is the Jewish member of the National Religious Partnership for the Environment.

Ecological philosopher Max Oelschlaeger of Northern Arizona University has discussed recent faith-based environmental protection efforts in *Caring for Creation: An Ecumenical Approach to the Environmental Crisis*, published by Yale University Press, New Haven, in 1994. Biologist Ursula Goodenough of Washington University has explored *The Sacred Depths of Nature*, reconciling Western scientific and faith-based perspectives in her book published by Oxford University Press, Oxford, in 1998. See also Beldon Lane's *The Solace of Fierce Landscapes: Exploring Mountain and Desert Spirituality*, published by Oxford University Press, Oxford in 1998.

In addition, Thomas Berry has lectured widely on the intersection of cultural, spiritual and ecological issues. His first book, *Dream of the Earth*, was published in 1988 by Sierra Club Books. This was followed by a joint effort with physicist Brian Swimme, *The Universe Story: From the Primordial Flaring Forth to the Ecozoic Era, A Celebration of the Unfolding of the Cosmos*, published by Harper San Francisco in 1992. His latest book, *The Great Work*, was published in 1999 by Crown Publishing, New York.



## Communicating the Sacred: Regarding Traditional Cultural Properties in Mountain Landscapes

This essay, intended for the general reader rather than for legalistic use, offers some literary and current affairs perspectives on sacred peaks from indigenous and Judeo-Christian cultures. The ethical concerns of treating a sacred place merely as a site for recreational activities are addressed. In fact, McNamee critiques not only the dominant culture for allowing trivial uses of sacred mountains, but Indian casinos built into these landscapes as well. In general, McNamee provides a series of reflections that have utility in cross-cultural, interfaith discussions about protecting mountains of spiritual significance, arguing that the reasons to do so are universal, rather than ones that benefit only Native Americans.

### “Spiritual Peaks” by Gregory McNamee:

Was the earth created with or without mountains? A strange question, perhaps, but one that nonetheless occupied the residents of the Jesuit college of Coimbre, France, for the better part of the year 1592, when the gold-rich mountains of the new-found Americas and of Asia were much on the European mind. Using twists and turns of logic and complex arguments of faith, the seminarians argued pro and con, invoking such contradictory sources as their near-contemporary St. John of the Cross, who urged seekers after the truth to retreat to “solitary places, which tend to lift up the soul to God, like mountains, which furnish no resources for worldly recreations,” and the Old Testament prophets, who conversely regarded mountains as frightful places capable of settlement only by Yahweh and assorted demons.

In the end, having determined that the mountains brought humans as close as they could ever come to the heavens, the Jesuits of Coimbre ruled that mountains were evidence of the earth’s perfection as the creation of an infallible God. And so the matter rested. Not for a century would it arise again, revived in the fiery words of the Protestant theologian Thomas Burnet (1635-1715), who examined the Coimbre seminarians’ argument and countered that the earth was inherently “confused by Nature” and that the mountains were “Ruines and Rubbish on a dirty little planet.”

We have since Burnet’s time made room in our mental and spiritual worlds for mountains, and Burnet has few modern supporters, I suspect—with the notable exception of the confirmed city dweller Roland Barthes (1915-1980), a sometimes Catholic literary critic who sniffed at the “Helvetico-Protestant morality” of mountain lovers while arguing that qualities like verticality, “so contrary to the bliss of travel,” are the hell of ordinary mortals. But we are fortunate to live in a time when the holiness of mountains is almost a given, as the world’s religions have always taken it to be. And for good reason: who after all, standing on The Bluff and taking in the vast magnificent sweep of the Central Cascades, could not believe that there, up on 12,300-foot Mount Adams, or the 10,000-plus-foot Three Sisters, or on an exceptionally clear day, 14,410-foot Mount Rainier, lies a threshold of Heaven?

There on those peaks, the native peoples of this part of the Pacific Northwest say, stands the abode of the spirits, of fierce winds, of the very Creator. There, the Warm Springs storyteller Lucy Miller told the anthropologist Theodora Kroeber, the gods wrestled as Coyote, the Trickster, mightily conspired to keep Mount Adams and Mount Hood from killing each other in a long-ago time. There the earth shook so badly that the First People all disappeared, leaving only the *Klah Klahnee*, the Three Sisters, behind to guide the next people to their new homeland.

On another volcanic mountain half a world away—one that, as University of Portland theologian Will Deming remarks, probably does not exist in time or space but only in metaphor—Saint Paul rose to behold God, pointing the way to a new homeland, too, for his people. And on still another mountain, a 2,510-foot cinder cone called

Cruachán Aigle, St. Patrick strode forth to conquer the citadel of the ancient Irish harvest god. He did so, and the mountain, now called Croagh Patrick, is Ireland's holiest peak. As the anthropologist Lawrence Taylor observes in his fine study of Irish Catholic pilgrimage, *Occasions of Faith*, Patrick played on powerful memories when he conquered that height, sacred before as now, driving away the great bird and the monster serpent who guarded its summit; mountains, along with wells and caves, were the loci for the Christianization of Ireland, and today thousands of people retrace Patrick's steps on the first Sunday of August.

They are wild places, those mountains, and terrifying. There is something about mountains that sends humans into states of consciousness—fearful, reverential, even awestruck—that are far from our normal modes of being. Some of the reasons are obvious, even deceptively so. As the Jesuits of Coimbre observed, mountains are for believers the closest points on the planet to the abodes of the gods, connecting the spirit world with our own. Mountains hold obvious dominion over the land, stern royalty gazing down on their lowly subjects. And, of course, mountains are high places, and many people fear heights, although a current psychiatric index will show you that many more people fear, in descending order, animals, the sight of blood, and being pent up in enclosed spaces.

But from that terror grows a kind of grace. It is no surprise, I think, that Saint Francis's notions of "tendance and comforting" should have arisen in the craggy Appenines, as he walked from Assisi to La Verna, for without such kindness, a contemporary remarked, "in those desolate places man could not live." Grace indeed: the nature of mountains embodies the gift by which God enables us to live holy lives, as Saint Francis knew; they change our being. It is for this reason, as John Muir observed at the beginning of this chewed-up age, that "thousands of tiered, nerve-shaken, over-civilized people are beginning to find out that going to the mountains is going home." Muir knew whereof he wrote: not for nothing did he quit the grim industrial lowlands of his native Scotland for the highest peaks of California.

In mountains were nourished the great religions of the world, nearly all born in the deserts but raised in the high country. The environmental psychologist Bernard Aaronson has noted that "the traditional association of mountain tops with the abode of Deity may be less because they are higher than the areas around them than because they make possible those experiences of expanded depth in which the self can invest itself in the world around it and expand across the valleys," a feeling that resembles nothing so much as extrasensory perception.

That is the feeling experienced, of course, by human beings deprived of oxygen, a sure step toward a coma, and by those who have survived close encounters with death: most mountain climbers, in other words. Alpinist after alpinist reports returning from the mountains filled with an inexplicable sense of inner peace born of that sensory sharpening, filled with something approaching the religious thump on the head that Buddhists call *satori*, like Maurice Herzog's epiphany atop the 26,502-foot summit of Annapurna: "I had a vision of the life of men. Those who are leaving it for ever are never alone. Resting against the mountain, which was watching over me, I discovered horizons I had never seen. There at my feet, on those vast plains, millions of beings were following a destiny they had not chosen. There is a supernatural power in those close to death." And in those, we might say, who venture close to it, as you will read in the pages of Neville Shulman's fine memoir *Zen in the Art of Mountaineering*, an account of terror and redemption on the north face of 15,771-foot Mont Blanc, and in the ninth-century Japanese account of a Buddhist monk named Shodo who climbed the volcanic peak Nantaizan to confront mortality: "If I do not reach the top of this mountain, I will never be able to attain Awakening!" After having said these words he moved across the glistening snow and walked on young shoots glimmering like jewels. When he had ascended halfway, all strength left him. He rested for two days and then climbed to the



peak. His joy there was complete, like that of a dream: his dizziness portended the Awakening.

In the mountains the eyes become clearer, it seems, the ears more finely tuned; the customary flavors of food take on new nuances; the calls of birds provide a richer music. The first European known to have climbed a mountain for the sheer pleasure of it, the Italian poet Petrarch (1304-1374), devoted many pages of his journals to describing the odd sensations that overcame him in the highlands, especially on seeing a glacier-lit rainbow atop the small alp Ventoux: "I stood as one stupefied. I looked down and saw that the clouds lay beneath my feet. I felt as if another."

As if another, indeed. The English Catholic mystic Dom John Chapman calls the sense of mountains "unearthly and expanding," echoing the English traveler Freya Stark's notion that the mountains are moving vortexes of energy on a spinning globe—another strange idea, on the face of it, but one that has considerable attraction when you consider that everything on the planet is indeed constantly in motion. I've experienced that "unearthly and expanding" sense on a number of mountaintops: the Zugspitze, in the Bavarian Alps; Mount Evans, one of Colorado's "sixteeners"; on Mount Rainier and, just a few weeks before it blew, on Mount Saint Helens; and most profoundly, atop Copperas Peak, an otherwise unimposing mountain in southwestern New Mexico that overlooks the rushing headwaters of the Gila River, three streams that pour down from the surrounding highlands and unite two thousand sheer feet below.

In their mountain-studded Alaska homeland, the anthropologist Richard Nelson has observed, Koyukon children learn their place in the order of things from geomorphology itself, having been instructed that they are not to argue over the respective merits of mountains or to compare their sizes. "Your mouth is too small," an offending child will be scolded, meaning that we humans cannot possibly comprehend the vastness of nature. Similarly, the O'od no'ok, or Mountain Pima, of northern Mexico, not far from where I live, liken themselves to ants who crawl along the ragged canyons and massifs of the Sierra Madre, singing an elaborate body of traditional songs that reinforce the notion of our tininess against the high mountains. The Buddha was likely getting at the same idea when he observed, "In the high places of the earth the being is better to look at himself in the face and learn the truth and true proportion of things."

Terror, vertigo, insignificance: it is odd, perhaps, that these fundamentally dehumanizing elements should lead to the sublime state that characterizes our best spiritual impulses. The human mind is made up of odd stuff, however, and susceptible to seeing in the land whatever it chooses to. In the mountains, those frightening places, it locates the deities; there is no mountain landscape in the world that is not heavily invested with gods, sometimes from many traditions. Chomolungma, or Everest, is sacred to Hindus, Buddhists, Taoists, and Confucianists alike. Similarly, Mount Cuchama, in San Diego county, is a mountain island sacred to the now-dispersed Luiseño and Diegueño Indians of the California coast, but also to the far-inland Cocopa, Quechan, and Chemehuevi peoples, for whom the distant mountain, rising above the sere desert floor, was a place of pilgrimage.

Saint Theodoros, the Byzantine mystic, held that "a mountain is the image of the soul rising in meditation." The metaphor is apt. Surely Jesus knew the power of landscape when He took up his position on an unnamed mountainside—perhaps it was Tabor, the site of His transfiguration—to give His famous Sermon on the Mount. There He commanded a sweeping view of His followers and the valley below them while enjoying a steep, craggy backdrop that symbolically projected him into heaven, ascending, in the manner of a climber, to attain the ethereal, the clarity, the shudder that the theologian Rudolf Otto finds in the presence of what he calls the "numinous," lying at the base of all religious impulse. It is no accident, I think, that Jesus chose a mountain site to deliver His most powerful address: from on high, there next to God, He spoke of good and evil, of

loving one's enemies, of doing one's part in bringing peace to the world; from on high, He taught us how to pray to the Heavenly Father.

Just so, throughout time, in religious traditions the world over, holy people have taken themselves into hermitage in the mountains, there to let their souls rise. Just so, throughout time, we have found peace and spiritual succor in the highlands of the world, where, as Hindu *Puranas* promise, "As the dew is dried up by the morning sun, so are the sins of mankind dried up by the sight of the mountains."

It is no wonder that, the world over, the architecture of the sacred aims to emulate mountains: the ziggurats of Babylon, which bore names like House of the Mountain and Mountain of God; the pyramids of Egypt; the temples of Jerusalem; the stupas of Tibet; the Gothic cathedrals of Europe; even, in this money-worshipping age, the skyscrapers of our urban centers. It's tempting to think that God struck down the Tower of Babel not so much out of anger for its builders' having attempted to unite humans with their maker, but for their hubris in trying to recreate what nature takes millions of years of geological evolutions to accomplish: a mountain piercing the heavens.

We cannot undo two million years of our own primate evolution to dissolve the fears and emotions that lie at the center of our beings. Rollercoasters, tall buildings, and a good portion of the films *Cliffhanger* and *The Eiger Sanction* can still produce those beads of sweat that proclaim our fragility, even though we pretend to be masters of our world. In that pretense, overlooking the tininess of which those Koyukon mothers so wisely speak, we are increasingly placing the world's mountains at risk.

Sometimes we do so out of greed. Where two thousand years ago Greek priests climbed the slopes of Olympus and Parnassus to search for signs of lightning, indications that holocausts were propitious and prayers to the gods most likely to be heard, now their descendants build ski lodges; Indian casinos now lie spattered among the once-sacred mountains of Arizona, where I live. And sometimes, with less damage to be sure, we do so out of mere vanity, out of the mere misplaced drive to conquer nature. N.E. Odell, who accompanied the tragic Mallory expedition to Everest in 1924, wondered whether it were right to climb it: "If it was indeed the sacred ground of Chomolungma, Goddess Mother of the Mountain Snows, had we violated it—was I now violating it?" Today, in the race to deprive the planet of all its mysteries, such questions of propriety are laid aside. Not long ago the famed alpinist Reinhold Messner, having secured permission from Chinese authorities glad to offend Tibetan sensibilities, announced his plan to climb Kailas, the holiest of holy mountains to untold millions of people, despite warnings that to do so is to profane it.

Whether we climb them or view them from afar, they continue to pull at us, calling us home, those mountains. Gazing out on the Cascades from the University, watching their peaks pierce the sky, or on the Santa Catalina Mountains closer to my desert home, I count myself blessed to have their sanctuary, their daily reminder of God's gift, and to be able to yield again to tininess, even to terror, and to the ever-expanding universe that lies in the ranges beyond.

— from *Portland* magazine (2003), and the anthology *God is Love: Essays from Portland Magazine*, edited by Brian Doyle (2003), pp. 50-57. Augsburg Books: Minneapolis.



## Case Study: The San Francisco Peaks

Key content: tools for community organizing and coalition building; communicating across cultures, traditional cultural property.

This case study illustrates some of the following community organizing, coalition building, communication strategies, and tools.

1. Understand the deep history of the issue.
2. Identify key players.
3. Clarify underlying values and needs represented by all parties involved.
4. Communicate core values and needs in language the other can understand.
5. Consider a variety of creative options for solutions based on mutual respect.
6. Set realistic strategies and goals and implement them in a reasonable time frame.

### Introduction

San Francisco Peaks are a constellation of three volcanic peaks (12,000 feet) north of Flagstaff Arizona and south of the Grand Canyon. The San Francisco Peaks are sacred to 13 tribes. For the Navajo, the Peaks are the sacred mountain of the west, *Doko'oo'sliid*, "Shining On Top," a key boundary marker and a place where medicine men collect herbs for healing ceremonies. To the Hopi, the Peaks are *Nuvatukaovi*, "The Place of Snow on the Very Top," home for half of the year to the ancestral katsina spirits who live among the clouds around the summit. When properly honored through song and ceremony, the katsinas bring gentle rains to thirsty corn plants and other vital crops. The Peaks are one of the "sacred places where the Earth brushes up against the unseen world," in the words of Yavapai-Apache Chairman Vincent Randall.

### History

The San Francisco Peaks, part of the Coconino National Forest, have been the source of land-use conflicts since the 1800s, when the area was extensively logged and grazed. The area is under the domain of the U.S. Forest Service, which has a mandate to allow multiple uses on its lands. A ski lodge was built on the northern slopes in the 1930s. In 1969 a full-scale development proposal for shops, restaurants, and lodges was successfully opposed by tribes and community groups of the region. However, in 1979, and again in 1980 the Forest Service approved major expansions of the ski lodge in spite of Navajo and Hopi protests. The Hopi and Navajo filed separate lawsuits to stop the development, while the Forest Service argued that religious rights would be unimpeded, and even facilitated, by the ski lifts. Three years later (the suits having been consolidated into one case, *Wilson v. Block*), the Hopi and Navajo were unable to convince the District of Columbia Circuit Court that the Peaks were "indispensable" to their religions, and the suit was denied. According to the judge, permitting the Snow Bowl expansion may have "offended" their beliefs, but the Forest Service had faithfully met all the provisions of the American Indian Religious Freedom Act of 1978.

On the eastern slopes of the mountain, the Forest Service took a strong stand in the interest of environmental protection when another conflict arose involving the White Vulcan Pumice Mine. To increase its production of pumice to supply the demand for trendy stone-washed jeans, the mining company Tufflite proposed to expand the mine. This time the Forest Service responded to the proposal with a lawsuit which alleged violations of the Clean Water Act and destruction or damage of archaeological sites. Secretary of the Interior Bruce Babbitt was a key player in the process, advocating for the closure of the mine. In an unprecedented move in the region the federal government brokered an agreement with the company in August of 2000. The company agreed to shut

the mine and site and to give up its other 49 mining claims and its effort to sell some of the mine to a private buyer. In return the government dropped the lawsuit and paid Tufflite \$1 million. This time, the Forest Service went further when it recommended to Secretary Babbitt that 74,000 acres of the Peaks be protected from all new mining claims for 20 years. It has also petitioned to have the area designated a Traditional Cultural Property under Section 106 of the National Historic Preservation Act. As a Traditional Cultural Property, the San Francisco Peaks would be permanently shielded from mining.

The Snow Bowl Resort also stated in 1997 that it wanted to add another 66 acres of trails and a major upgrade of existing ski runs, relying on the precedent of the 1979 Forest Service decision. The snow-making proposal and expansion plans are now being considered by the Coconino National Forest, subject to a full environmental investigation as stipulated in the National Environmental Policy Act. The first step in this process occurred in September 2002 when the Forest released a Proposed Action in response to the Arizona Snow Bowl's proposal. This was followed by a draft Environmental Impact Statement, an investigation of alternatives, and public hearings.

The forest service released a draft study on the Snow Bowl Upgrade on Feb. 2 entitled Draft Environmental Impact Statement (DEIS) for the Arizona Snow Bowl Improvement project, kicking off a 60-day comment period. Under the preferred alternative, a new chairlift and four surface lifts would be added. Three of the current chairlifts would be realigned or lengthened, creating 74 acres of new ski runs. A snowplay/tubing area and snowboarding halfpipe would be created and resort infrastructure would be improved. Under the preferred alternative now being considered, the Snow Bowl expansion would create snowmaking on 205 acres using reclaimed wastewater from the City of Flagstaff. The document, drafted under the guidelines set by the National Environmental Policy Act, showed that for the Snow Bowl the artificial snowmaking was a preferred alternative. The final decision on whether to allow for artificial snowmaking at Snow Bowl—considered a boon to the local economy but viewed as a desecration by Native Americans, will fall on the new Coconino National Forest Supervisor, Nora Rasure.

Local economic interests weighed heavily in their decision. The present-day Arizona Snow Bowl ski area hosts 30,000 to 180,000 visitors per year. Visitor numbers fluctuate according to the snowfall; hence the resort is seeking to manufacture extra snow using wastewater from the city of Flagstaff. The water has been treated and meets Environmental Protection Agency standards and is also used on ballfields in Flagstaff. However, because the natural melting snow goes into an aquifer within the mountain which is then piped to provide water for Flagstaff, opponents fear the waste water in the manufactured snow will pollute the pure mountain water. In fact, in unrelated studies by NAU professor Kathleen Propper and by USGS, organic pollutants have been identified in recycled waste water.

Once again, area tribes and community members are working together to fight this proposal. The Save the Peaks Coalition was formed in February, 2004. Using their newly formed website ([savethepeaks.org](http://savethepeaks.org)) they have begun a massive public education and media campaign. "The Snow Bowl Effect," a documentary developed by Navajo film producer Klee Benally, is being shown throughout the region and beyond.

## **Lessons Learned**

The history and ongoing conflict at the San Francisco Peaks illustrates how a variety of factors may influence a government office to take different positions on the same mountain. On both sides of the mountain, strong tribal and community advocacy against

economic development has been an important barrier to development expansion. The case of Vulcan Mine shows how political influence and economic power worked in favor of protecting sacred lands and gathering grounds. The move to leverage government funds to buy out the mining interests by Arizona Secretary of the Interior Bruce Babbitt may have set a precedent.

The potential for economic buy-out on the peaks remains unexplored. In spite of a number of meetings held with some tribal members, meaningful, inclusive and effective consultation with tribal members required by federal law regarding the use of recycled water on the Peaks, was not accomplished by the U.S. Forest Service, according to tribal leader testimony at public hearings. Some of the obstacles noted were language barriers and lack of effective outreach to a rural based population. Traditional practitioners are generally older, do not speak English, or attend public meetings. The successful use of the EIS process to protect the east side of the peaks was probably related to the more tangible effects of mining that visibly degrade the environment. The non-visible effects of recycled water on the groundwater and plants, is not as apparent to lawmakers in the Snow Bowl controversy. Thus the use of science alone to argue for limiting development may become a long and expensive process.

The recreational use of the north side of the mountain by tourists, skiers and snowboarders (that includes some Native individuals) further complicates the matter for Forest Service officials with public accountability. On the other hand, it is true that the awe-inspiring beauty of the Peaks has drawn many, young and the old alike, to recreate at this sacred mountain. For many, the swift slide down the slope of the mountain is a way to physical, psychological, and spiritual “re-creation” or renewal, leading to a sense of balance and harmony. The exuberance felt during their weightless descent allows them a few hours of unencumbered play, strengthening the re-creation seeker’s ability to grapple with the challenges and complexities inherent in modern life. For some snow sliders, the Peaks are the only church they attend, and they describe the Peaks as such.



## Communicating Across Cultures

*The stakes are high.* If Snow Bowl's improvement plan is approved by the Forest Service, it will be the first U.S. ski area to make snow from reclaimed water. According to Snow Bowl Proposal Issues described in the draft EIS: "Tests prove this water is of a very high quality... It will not harm children who eat snow or wildlife and plants." Hopi Chairman Wayne Taylor disagreed, saying snowmaking using reclaimed water is particularly offensive to his tribe: "The impact... to rare and fragile alpine habitat and its animals and plants is viewed by the Hopi Tribes as an illegitimate sacrifice," (from Taylor's response to Snow Bowl's renovation plans in a Feb. 7 2003 letter to the Coconino National Forest).

Native Americans from the region have dedicated talent, time and resources to communicate to non-natives what is indescribable in importance regarding the importance of the Peaks to the identity and cultures of Native People of the Colorado Plateau Region. Understanding of these concepts can best be gained through personal experience and mutual friendships with Indians from the region. We encourage the relative new-comers to the regions to slow down and tread gently in unfamiliar territory, while deepening their understanding of the importance of sacred places to their own culture and heritage. (see the section on Communicating the Sacred for some beginning ideas).

What follows are some fundamental principles that can guide Native Americans' concepts of sacred places. Each tribe and subgroup within the tribe may have different approaches and practices. We quote tribal leaders speaking at a public hearing in response to the release of the draft EIS, attended by tribal leaders from 13 tribes from the region.

### *Cultural Landscapes*

The San Francisco Peaks are part of a cultural landscape for the tribes and concept that is difficult for newcomers to a region to grasp at first. The intense bond between human and landscape is formed over generations. In addition to a site's specific locale for spiritual practices, it is the big picture that matters as well: the connectivity between places along the way that provides identity and therefore health for Native Americans of the Colorado Plateau Region.

"The San Francisco Peaks in Arizona are extensively documented and widely recognized as places of extreme cultural importance to the Hopi, Navajo, and other American Indian people of the Southwest," according to The National Registrar Bulletin's Guidelines for Evaluating and Documenting Traditional Cultural Properties. Being a Traditional Cultural Property, any development of the Peaks must go through a specific process of decision making. This information can be found on the National Park Service's Web site, at <http://www.cr.nps.gov/>.

These peaks comprise one of the four sacred mountains in Northern Arizona. The significance of these mountains to the spiritual development and traditions of Native American people in the Colorado Plateau region resembles the importance of Mount Sinai, Mt Hebron, Mt Tabor and the Mount of Olives to people from many other lands and races with a Judeo-Christian tradition. As with the Muslim pilgrimage to Hejira in the Middle East, the Peaks represent a lifetime obligation that does not require permanent residence by peoples, nor even constant visitation. The clouds that sometimes veil the Peaks from the below beckon our ascent both figuratively and literally, and encourage us to listen and understand. Rather than stone tablets, living medicine bundles of plants



gathered from these sacred mountains encode the guiding and healing way given to ancient people who first responded and were inspired on these mountains thousands of years ago. The San Francisco Peaks continue to supply important medicines and other plants to healers and other Native gatherers from the region.

### *Landscape-based Religious and Healing Practice*

To Native People of the region, the San Francisco Peaks have the power to heal both mind and body. The mounds, buttes and hills around the Peaks carry the prayers of the Havasupai to the heights of the Peaks, and beyond to the Great Spirit. For the Western Apache people, the Peaks, known as *Dzil Cho*, are the home of the Mountain Spirits (*Gan*) who “bless our lives and anchor our understanding of what it means to be Apache. *Dzil Cho* marks our place in this world.” The universal need to know one’s identity and place in world is echoed in Judeo-Christian tradition. It was on the Mount of Olives that Jesus learned of his true identity and purpose in life.

"It [the mountain] is considered sacred ground, where we make offerings to our Holy People, to the Creator. We cherish it as a place of worship, and we need to stop and realize that these grounds are a part of our culture, the cultural diversity which makes up the tapestry of American life (Public hearing testimony by Cora Maxx-Phillips, on behalf of Navajo Nation President Joe Shirley, Jr. 2/10/04).

Jones Benally, a traditional health practitioner and medicine man who works with the Winslow Indian Medical Center, strongly objects to using reclaimed water in any of the developments on the San Francisco Peaks. The Diné medicine bundle contains all of the herbs from the foot of the mountain to nearly the top of the sacred Peaks. Benally said that if the reclaimed water is used and sprayed on the mountain, it will affect his ability to practice his traditional medicine along with Western medical doctors, because all of those herbs are there to help heal his patients. (*Arizona Daily Sun*, February 2004)

Saying their spiritual sovereignty is as important as their legal sovereignty, the Diné (Navajo Nation) Medicine Men Association called for protection of the San Francisco Peaks from expansion of the Arizona Snow Bowl and artificial snow-making with reclaimed water. The Diné Medicine Men Association (DMMA) approved a resolution in opposition to the Snow Bowl expansion project and supporting the DEIS' "No Action Alternative," stating that the development infringes and violates the First Amendment rights of the U.S. Constitution, American Indian Religious Freedom Act of 1978, and Executive Order 13007, Indian Sacred Sites.

Dr. David Begay testified at a hearing on the Snow Bowl proposal to expand and use recycled water, saying, “Navajo traditional people believe that use of the four sacred mountains is indispensable and central to their way of life. The government of any one of us simply can't change ancient beliefs, nor can we ask [a culture] to take out one of the four sacred mountains from their ancient belief system. They say we have no proof that the development of the ski area resort does in any way infringe upon our belief system. *There is a language that is missing* and this language is the sacred mountain bundles that all Diné medicine man practitioners have. That is our burden of proof. We weren't given the Bible. We weren't given money. We were given these two energy sources. And today we are talking about this serious desecration of the San Francisco Peaks,” which is an insult to the Diné people.

Dr. Begay continues: “The federal government through the U.S. Forest Service is claiming that the Native Americans are currently given access to the San Francisco Peaks and therefore their religious rights under the First Amendment of the United States Constitution are not violated. From a Native American traditional perspective, *access isn't the underlying concern here. Rather the concerns are over the extreme desecration of the physical and spiritual integrity of the San Francisco Peaks.* Development of the San Francisco Peaks with reclaimed sewer water would be considered a grossly profane act. It is an affront to spiritual Navajo beings and a violation of traditional Navajo beliefs.”

Dr. Begay’s spiritual passion is echoed in the book of Exodus, one the earliest of the Jewish sacred writings. In chapter 19 we hear the mandate of Yahweh the Hebrew god: “Mark out the limits of the mountain (Sinai) and declare it sacred.” It was on this sacred mountain that the ancient Hebrews learned that freedom from slavery was a human right that involved moral responsibility and environmental stewardship. The obedience that Moses and the Hebrew priests gave to respect the Divine holiness and spiritual integrity revealed at Mount Sinai is similar to the seriousness of the mandate given to Native People of the region—respect the holiness of the mountains of the region.

Rowland Manakaja, speaking on behalf of the Havasupai Tribe speaks in a way that is hauntingly familiar:

"We as indigenous people will not tolerate further disrespect and desecration of our Sacred Peaks. We will live up to our responsibilities to protect our Mother, the Earth. I come with humble thoughts and prayers to ask for forgiveness for you, so that you may see who we are, the true, original inhabitants and guardians of these lands.”

*Freedom to practice religion is a human right*

Norman Brown of Diné Bidziil notes that the first immigrants fled Europe to pursue their religion of choice: "*How is our right to practice our way of life any different from the first immigrants' right to freedom of worship? Any defacement of what's sacred to Native people is a defacement of indigenous notions of humanity. Any act to exploit and deface sacred sites is an act of dehumanization and therefore a violation of our human rights.*"

Theodore Smith Sr., a member of the Yavapai-Apache Nation's tribal council, said the Yavapai-Apache's stance on the Peaks is the same as that of the Hopi Tribe: "It's a holy place. It's a church. ... I think that we need a lot of respect with this mountain here due to the fact that you want to use the effluent on the mountain. We do not condone that. If you have a church, you go to church, respect that church. You don't want things like that spilled on your church. That's the same feelings that we have," he said.

"The Congress and the federal government have an obligation to the Indian people to protect their sacred sites. It's a law. ... I say God comes from that mountain. Let's keep it that way. ... The Apache in their songs and the words that they sing, want us to reach the top of the mountain. Why do they say that for, 'to reach the top of the mountain?' You're closer to God, you know. That's why they say that."

*The Sacred is not for sale*

Vincent Randall, Western Apache tribal councilman, writes on behalf of the tribes’s NAGPRA Working Group: "For the people who own and control what happens on *Dzil Cho* the most sacred thing is money. We know money is important. We cannot raise our

families in this world without it, but there is a line we cannot cross. I would like to ask the Forest Service how they can ignore the convictions of over a quarter of a million Indian people for the benefit of a few skiers and businesses." (letter of support to the medicine men on behalf of the Western Apache NAGPRA Working Group, which consists of traditional elders from White River, San Carlos, Payson, Camp Verde, and the Yavapai Apache Nation).

Randall's sentiments resonate through time, and echo the scene Jesus created in the Jewish temple, when he overturned the tables and chairs of the local vendors who had taken up residence on the sacred site. Quoting the ancient prophet Isaiah, he screams into the deaf ears of the materialists: "My house will be called a house of prayer; but you are turning it into a robbers' den" (Matthew 21).

### *Creative options and brainstorming ideas*

We provide a list of possibilities all players may consider, revise and add their own ideas:

- Is it possible to build a diverse, broad-based coalition of citizens committed to protecting the beauty *and* heritage of the San Francisco Peaks? Can common ground be found among the interests of the Tribes, recreation seekers, and non-Native communities of faith?
- Is it possible to create a public space that models public land use policy that implements laws and legislation based on historic treaties and trust agreements between Native Americans and the United States government? The United States leads the world in the implementation of laws that protect human rights and the environment. U.S. law is complimented by recent trends in international law: the U.N Declaration of Human Rights, and the U.N Conference on Biodiversity, which provide legal leverage for the cultural and intellectual property rights of indigenous people.
- Can a regional environmental ethic be developed to guide policy makers by initiating dialogue between tribes and faith-based environmental coalitions and organizations? (See the Columbia River case study discussed in the Toolkit)
- The leading civic, cultural, educational and economic organizations of the region could join Native leaders of the region to re-create a new space with a new vision; a cultural, educational, and recreational area that would reach the world.
- The scientific reports of organic pollutants in wastewater was not fully appreciated in the draft EIS. The physical and spiritual are considered inseparable in traditional medicine throughout the world. The presence of pollutant and toxic substances in the environment is incompatible with the healing practices of Native healers, just as a contaminated scalpel is to a modern surgeon.
- Is it possible to begin a dialogue between Western and Traditional healing and environmental health professionals to recommend guidelines to planners? These guidelines would reflect the state of the art findings on the relationship between spiritual health, environmental health and physical health.
- Could the different tribes involved organize a series of meetings with the traditional practitioner associations of the region to formulate a pro-active position statement with specific policies and guidelines for policy makers, planners and the public that addresses the spiritual sovereignty of Native Nations on public lands?

The San Francisco Peaks story continues to unfold.

See the Save the Peaks Coalitions website ([savethepeaks.org](http://savethepeaks.org)).





# *Sacred Lands and Gathering Grounds: A Toolkit* *for Access, Protection, Restoration & Co-Management*

Center for Sustainable Environments and Applied Indigenous Studies



## CONCLUSIONS

This sacred lands and gathering grounds toolkit has attempted to bring together a variety of resources and strategies to assist tribes, intertribal coalitions, and indigenous communities in their attempts to protect, gain access to, co-manage and restore sacred sites and cultural landscapes of many kinds. There is no one tool that will do the job in every case, because each tribe has its own capacities, traditions, needs and priorities, and each landscape or site is unique. Some tools work well with federal agencies, while others work well with private landowners. Finding ways to better match the strategy and associated tools to the appropriate context is part of the creative process that you may initiate with your community or coalition. There is a great variety of options in the continuum between behind-the-scenes negotiation and in-your-face confrontation, but few of us have had the time to select which option can best get the particular task done, without putting the places or people we love at further risk. Because we sense that many of us could benefit from using a broader range of tools to complete such sacred tasks, we welcome hearing what has best worked for you, to include in future versions of this toolkit.

Finally, it is worth remembering that there are many kinds of traditional cultural properties in addition to sacred mountains, and utilitarian gathering grounds. Some tribes also acknowledge (and stay away from) sites where evil has been done, sites where battles were lost, and sites where culturally important plants, animals or waters once thrived, but no longer do. Some places are both sacred and utilitarian. Others are sacred to or used by specific clans, kiva groups or religious societies, but cannot be visited by anyone who is uninitiated. Efforts to communicate and promote the cultural significance of these places and cultural processes should not gloss over these differences, but explain and celebrate them as vital to entire cultures, and to individual human lives.

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By Gary Nabhan and David Seibert

