

*Report of the*

NATIVE  
AMERICAN  
SACRED  
LANDS  
FORUM

**Boulder/Denver**

**October 9-10, 2001**



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## EDITOR'S FOREWORD

*Editor's note — A prelude to Tuesday*

■ Before I ever showed up at the Native American Sacred Lands Forum, I knew that I wanted to record how people were *feeling*. It appears that others were more interested in what people were *saying*. And here is how I found out:

As I was in the process of summarizing Tuesday's panel presentations, I compared my handwritten notes with the first-draft transcriptions of the video recordings. My notes show Chris Peters, Pemina Yellow Bird and Charles Wilkinson (a white man who knows from experience about Thunder) all acknowledged the thunderstorm that raged outside the open windows of the hall. Thunder Beings often visit to show their interest in our doings. They often bring rain to bless the people in their endeavors. They showed themselves — brash and noisy — in Boulder while we talked about how to protect lands that are sacred and precious to tribal Native Americans.

But the transcriptions did not contain the panelists' comments about the thunder and rain. The transcriber did not feel it was necessary to record them, apparently feeling that those comments were extraneous. Whether or not the transcriber was in the room while the thunderstorm was raging, she either didn't hear or didn't notice the Thunder Beings when they made themselves known in the wind, rain, lightning and thunder, and she certainly didn't think the event was worth recording. This points to an interesting but critical difference between Native and non-Native thinking.

Many or most tribes believe and acknowledge that there are beings on this earth whom we cannot see, but who have power greater than humans. The Thunder Beings are such ones. Many Native Peoples pray to the Thunders and others for help on a regular basis. So when the Sacred Lands Forum was opened with prayer, and when the panelists began their presentations about sacred subjects, and when the wind started to blow and the lightning flashed and the thunder cracked and rumbled, the speakers acknowledged the Thunders and thanked them for their presence at our meeting.

Meetings that are called to talk about sacred or spiritual subjects are often visited by the Thunder Beings, who come with the powerful rain. Native Peoples accept and welcome such visits, and acknowledge them, because we are truly grateful for the power lent to us by the spirit beings. They are part of the natural world, just as humans are — living, thinking and acting. Native People acknowledge this; non-Natives often do not.

Laws that are made by non-Native governments reflect this difference between cultures. Those laws ignore spiritual necessities of Native Peoples, the strong relationship between humans and our natural environment. This is the very reason this Sacred Lands Forum was called, to discuss ways to convince

non-Natives that we ignore the spiritual aspects of the environment at our peril. Therefore, it was especially significant that the transcriber did not feel that any mention of the Thunders should be a part of the official record of the proceedings. This is not meant to criticize the transcriber, but only to show that different cultures assign priorities for drastically different cultural reasons, and the process is unconscious and automatic, and very often harmful to those on the wrong end of the assumption. (The verbatim comments about the Thunders have since been added to the transcription in Appendix 1.)

If we are to be truly successful in any effort to change legislation and policy, we must change the way we perceive and react to cultures other than our own. We must learn how and why each culture believes and acts in a certain way, and must make room for (or accommodate, as some would say) the differences by crafting laws that allow for the different beliefs, avoiding harmful impacts on the groups most likely to be affected — in this case, Native Peoples and our sacred places. Protecting the sacred from harm requires education, thoughtfulness and constant vigilance to be sure that we are accurate in our assumptions and appropriate in our actions. The necessity of education became a refrain that rang many times during the short two days of the Forum.

**MARLON SHERMAN**

*Indian Dispute Resolution Services*

## ABOUT THE REPORT

■ This report conveys both the literal content and the essence of the two-day dialogue. The following executive summary provides background on the events leading up to the Forum and a summary of the Forum's recommendations, including those made by the working groups which focused on six areas: education, Native leadership, legal tools and legislation, land management policies, consultation, and an additional "all relevant issues" category. Subsequent sections and appendices contain summaries and transcripts of panelists' remarks from the opening session (Tuesday), a narrative summary of the recommendations of the second day's (Wednesday's) working groups, and transcribed notes from their deliberations. The report concludes with recommendations and observations about the Forum for consideration by organizers of future dialogue sessions. Appendices list forum participants and their contact information, and provide a summary of the various laws and agency policies relating to sacred lands, including relevant web sites.

The report was drafted by Lakota author Marlon Sherman of Indian Dispute Resolution Services. It is based on his observations at the forum, supplemented by videotapes, transcripts and notes of the session participants. Summaries of the small groups were reviewed in draft by a number of Forum participants. Several drafts of the entire report were reviewed by the Forum planning committee. The final draft document was sent to all Forum participants for comments. Many of these reviewers provided comments that were incorporated into the final report.



# EXECUTIVE SUMMARY

## Purpose of the Forum

■ Sacred landscapes, large and small, are a central concern to Native American nations, communities, spiritual leaders and activists. Sacred places embody values, beliefs, spirits, history, ceremonies, relationships and secrets. Sacred sites are at the core of cultural identity and health. Their protection and care is an ancient mandate and life-giving covenant. Yet hundreds of diverse native communities, whether recognized by the Federal government or not, have long watched sacred places threatened or destroyed by pothunters, extractive industries, government agencies, recreational interests and New Age spiritual seekers. The American Indian Religious Freedom Act of 1978 failed to protect sacred lands and Executive Order 13007 of 1996 has been marginally effective. The National Environmental Policy Act and the National Historic Preservation Act, while potentially more useful, have not been adequate. The need for dialogue, critical thinking, and a constructive, forward-looking strategy is clear.

The Native American Sacred Lands Forum (the Forum) was called because of a voiced need by Native Americans to find solutions to the very serious lack of protection given to sites and issues considered sacred by tribes. Indians are concerned they have little or no input into federal land management policy formulation or implementation. There are few laws that address the issues of sacredness of land, and fewer still that have important enforcement provisions. More than a hundred people attended the two-day forum; roughly half of the participants were Native Americans. A total of 10 tribes were represented at the forum, as well as 15 different federal agencies. A total of 13 non-profit groups were represented; 8 of these were tribal non-profits. Forum participants sought solutions that are feasible, given the state of federal and state law and tribal politics. The Forum offered some temporary solutions, realizing that implementation of all possible solutions will take time and much hard work.

The goals of the Forum were to:

- Promote dialogue about threats to sacred sites;
- Assess obstacles to site preservation; and
- Develop strategies to better protect sacred lands.

## Planning the Forum

■ The Forum was held on October 9 and 10, 2001, in Boulder and Denver, Colorado. It was sponsored by the Natural Resources Law Center of the University of Colorado, the Environmental Protection Agency Region 8 (Environmental Justice and American Indian Special Emphasis Programs), the American Indian Program Council of the Denver Federal Executive Board, the Native American Law Students Association, the Advisory Council on Historic Preservation, Seventh Generation Fund and the Sacred Land Film Project of Earth Island Institute. See Appendix 7 for a list of the Planning Committee members.

The Forum evolved out of discussions on the most effective way to facilitate a dialogue to accompany a screening in Boulder of the film on sacred lands, *In the Light of Reverence*. What began as a “policy seminar” was developed into an opportunity to hold a dialogue and strategy session among a wide range of participants: tribal officials, elders, native activists, federal land managers, and state agencies. While a few representatives of development interests often in conflict with protection of sacred sites were invited, none attended and their participation was not actively pursued for this strategy forum. With the exception of a small group of national organizations and a few federal officials from Washington D.C., invitations were limited to the states of Colorado, Utah, Wyoming, North and South Dakota and Montana — the extent of EPA Region 8. Although US EPA Region 8 was one of the Forum organizers, this Forum was not meant to constitute a formal government-to-government consultation. In this effort to hold an informal dialogue and strategy session, EPA Region 8 played a convening and facilitator role.

In part, the Native American Sacred Lands Forum built on the work started by the Albuquerque American Indian and Alaskan Native Environmental Justice Roundtable, held in August of 2000, and a Sacred Earth Conference held in Seattle, in April of 2001, both of which called for continuing dialogue around an array of issues, including cultural resource protection. The recommendations developed by the Forum participants are intended to be considered by bureaus within the Department of the Interior, the Department of Energy, the Department of Defense, the Department of Agriculture, the Interagency Working Group on Environmental Justice, tribal leaders, networks of federal agency tribal coordinators, and other sacred lands advocates.

Forum organizers envisioned the one-and-a-half day session as follows: first, a policy panel to refresh participants’ memories about sacred lands issues, to provide them with legislative and policy updates, to present them with some views from inside the federal bureaucracy, and to obtain initial comments from the participants — Indian, non-Indian, tribal, state, federal and grassroots. This discussion would lay the groundwork for small group discussion on the second day on at least three topics: legal authorities, education, and land management policy. General awareness of these issues would be

raised by two public screenings of the film, *In the Light of Reverence*. The initial list of topics for small group discussions was modified, based on the Tuesday panel and audience discussions, to include native leadership, consultation, and an additional open discussion group.

## Forum Highlights

■ The Forum began on the afternoon of October 9 with a welcome by Law School Dean Hal Bruff and an opening prayer by Elaine Quiver, an Oglala Lakota elder and member of the Grey Eagle Society. These and other introductions were followed by an afternoon panel featuring moderator Chris Peters (Pohlik-lah/Karuk) of Seventh Generation Fund, and panelists Pemina Yellow Bird (Mandan Hidatsa Arikara Nation), North Dakota Intertribal Re-Internment Committee, Vernon Masayesva (Hopi), former Hopi Tribal Chairman and current Director of Black Mesa Trust, Jim Pace, Acting Director of the Office of American Indian Trust at the Department of the Interior, Charles Wilkinson, Moses Lasky Professor of Law at the University of Colorado Law School, and Pat Parker, Chief of the American Indian Liaison Office for the National Park Service. See Appendix 6 for biographical sketches of the panelists.

The panel's remarks were followed by about two hours of stories, comments and questions from other Forum participants. Forum participants — including spiritual leaders, tribal political leaders, grassroots Native activists, federal and state government employees, environmental group representatives, and legal experts — discussed threats to sites considered sacred by Native Americans, and what might be done to protect them.

The Forum included two public screenings of the PBS film *In the Light of Reverence*, produced by Earth Island Institute's Sacred Land Film Project, which documents threats to sites considered sacred by Lakota, Hopi and Wintu peoples. The Tuesday night screening in Boulder drew over 500 people; a Tuesday noon screening in Denver focused on Forum participants and federal agency staff. The Boulder screening was introduced by Anishnaabe activist Winona LaDuke and filmmaker Christopher McLeod.

A panel consisting of Black Mesa Trust members Vernon Masayesva and Leonard Selestewa, CU Law professor Charles Wilkinson and author Terry Tempest Williams commented on sacred lands protection and answered questions after the Boulder screening. Professor Wilkinson characterized the callous treatment of Native sacred sites as a "stain on our national character" that equals the Japanese imprisonment of World War II. "We tried to rub religion out of Indian cultures [but] they just wouldn't let it go." Despite the trauma visited upon them by unfeeling corporations and government agencies in the struggle over water and coal from their lands, Mr. Masayesva and Mr. Selestewa maintain a positive attitude. As Mr. Selestewa said, "Life and death

**"How can a river be dying?" That question, asked by Pemina Yellow Bird, a Mandan/Hidatsa born and raised on the Missouri River in North Dakota, emphasized the Native American view that land and water possess a spirit that needs to be taken into consideration when drafting legislation that concerns lands and issues that are sacred to Natives.**

**We're not going to be able to do it alone, we have to work together...Respect us. We're here doing the best we can. We respect you.**

*Pemina Yellow Bird*  
MANDAN HIDATSA ARIKARA  
NATION

**I'd just like to see as much patriotism to this land as there is patriotism to the flag.**

*Winona LaDuke*  
ANISHNAABE

**Let there be life; let it be  
good life; let it be forever.**

*Vernon Masayesva*

HOPI

**Non-Native people have got to  
give up the power and control  
that they have over our sites and  
they have to move over and make  
room for Native People so that we  
can resume stewardship of these  
sites, no matter who owns the  
land that they're on.**

*Pemina Yellow Bird*

MANDAN HIDATSA ARIKARA NATION

exist among us, but the most important thing is to live well and love one another.” Mr. Masayesva mirrored that sentiment, leaving the audience with: “Let there be life; let it be a good life; let it be forever.”

The October 10 sessions in Denver began with a welcome from EPA Assistant Regional Administrator for Enforcement, Compliance and Environmental Justice, Carol Rushin. Bill Center, Oglala Lakota Spiritual Advisor, assisted by Rick Williams, Oglala Lakota and director of the American Indian College Fund, then opened the session with a song and a shared pipe. Participants commenced their all-day dialogue and strategy session among tribal representatives, federal and state agency officials, native activists, academics and journalists by creating a group history of sacred lands struggles (See Appendix 3).

After recaps of Tuesday’s dialogue by Lakota author Marlon Sherman and historian Patricia Nelson Limerick and comments from a few participants, participants broke into small groups to evaluate obstacles to sacred site protection and to develop strategies in five specific and one undesignated area:

- Education,
- Native Leadership,
- Legal Tools & Legislation,
- Land Management Policies,
- Consultation, and
- All Relevant Issues.

Then the small groups reconvened and the issues were discussed once more in a larger group setting, in which the entire audience commented on the proposed solutions.

## Summary of Recommendations

■ The following is a summary of issues raised by participants and their recommendations for future action. This list includes recommendations gleaned from the entire Forum: from the small group discussions (Wednesday), from the panelists’ remarks (Tuesday), and from remarks of Forum participants made throughout the two-day Forum. For specific comments and recommendations of the small group discussions or the panelists’ presentations, please see Appendices 4 and 1, respectively. The full-forum recommendations are organized into the following topics, which generally parallel the topics of the small group discussions:

- Education,
- Native Leadership,
- Legal Tools & Legislation,
- Federal Agencies, and
- Consultation.

## EDUCATION

- Education of both the public and of agencies about sacred lands issues is critical.
- In view of the September 11th atrocities and the national reaction to them, it is time non-Indians took notice of what Native Peoples have to teach about “survival through adversity... and respect for others” as well as the close connections that tie culture and environment together.
- Education efforts should reflect that although each tribe is unique, sacred sites are an important part of all Native cultures.
- Native Peoples should concentrate on educating ourselves about our own traditions and cultures, as a way of strengthening ourselves and focusing our energies in dealing with sacred issues.
- Education efforts should show that one size does not fit all; legislation for example, must be tailored to each tribe.
- Individual tribes should evaluate the education of their younger citizens and develop alternative approaches involving teaching about sacred subjects.
- Education is especially vital for tribal governments themselves, who need to remind themselves of their traditions.
- Indian peoples must be used as teachers at all levels — whether it involves teaching youth in schools or federal agency employees who have oversight of lands considered sacred by Indians.
- Elders must be included as part of the teaching process, using traditional methods to teach Native world views.
- Native Peoples must be paid for their teaching — the funding might be given to the individual teachers, to Indian groups, or to tribes.
- Native Peoples should develop and circulate resource lists of Native individuals or groups who are willing to act as educators.
- Education should include elders as teachers and might take the form of the “peacemaking approach,” as defined by the tribal peacemakers’ organization that was sponsored by the Native American Rights Fund some years ago.
- Education should take place in appropriate locations such as “informal settings, outdoors...and with sufficient time for informal discussion and field trips.”

## NATIVE LEADERSHIP

- Tribes and Indian leaders must reach a national consensus concerning sacred lands issues, by for example, holding “regional leadership forums” to build coalitions and help develop strategies for fundraising.
- There needs to be more unity among the tribes (including but not limited to: elders, grassroots, and spiritual leaders).
- There is a need for funds and resources for Natives to meet with Natives, to understand where each sacred land issue fits into a national context.

**Earth’s caretakers: If Earth is to survive, it needs its people in place. We cannot be separated from our sacred lands without serious consequences for all Earth’s inhabitants.**

*Unidentified participant*

**We are the people of the knowledge of this earth. Our strength is in this knowledge. It is the gift that we have for non-Natives. Our elders are caretakers of that knowledge, and because of their wealth of knowledge and their value as educators, in Euro-American terms our elders should all have Ph.D.’s.**

*Unidentified participant*

**We’re a ‘we’ people, not an ‘I’ people, which means that we are willing to share our knowledge with non-Native people, so all can live.**

*Unidentified participant*

**[Native Peoples] can’t know where you have been until you know where you are going, or know where you are going until you know your roots.**

*Unidentified participant*

**The tribes need to protect each other, and there has to be unity, including white people.**

*Unidentified participant*

**There is currently no way to compel the protection of a sacred site or sacred landscape and no cause of action. Current laws (AIRFA) and executive orders (13007) are toothless, without enforcement power. Education can lay the groundwork, but it does not bring people around — sacred places are not protected solely through education.**

*The Legal Tools & Legislation Work Group*

**Tribal governments may not have the same issues as traditional people, so when the U.S. deals with the tribal governments, the U.S. uses them to get what they want, even though tribal governments don't speak for everyone. Big business is the same way.**

*Robert Van Zile*

MOLE LAKE SOKOAGON DEFENSE  
COUNCIL

- All discussions of sacred sites and their protection should be tribally led.
- In the short term, tribal governments must allow grassroots Native groups to be included in discussions with nontribal governmental agencies concerning sacred lands.
- Native leaders should consider the use of ceremonies and fasting to “reclaim cultural courage,” that is, the spirit and willingness to act in accordance with their original tribal principles, despite the pressures and temptations of the American life and government. Tribes, then, need to return to a more traditional form of government.
- In the long term, Native leadership requires that tribes must concentrate on teaching the youth. The curriculum must include contemporary issues and how to deal with them, not just dead history. In addition, all Native youth gatherings must include discussions of sacred sites issues.
- Tribal councils should give more attention to revival of tradition.
- Tribes should draft an NCAI resolution with Indian attorneys in the lead to restore sacred site protection to a “#1 priority,” and connect with sovereign nations not part of NCAI.
- Tribes and others should build a sacred lands protection coalition of tribes, non-recognized nations, churches, environmental groups, etc.
- Tribes should take interim actions such as developing an Op-Ed in Indian Country Today — a call to action — and a “Boycott Albuquerque” campaign — to hold tourism accountable for impacts on Petroglyph National Monument.

## LEGAL TOOLS & LEGISLATION

- The overall, long-term goal of a strategy should be to assert local tribal authority and sovereignty, to take the initiative to define sacred lands protection laws, and to implement them.
- We should identify and evaluate current policies and laws for protecting sacred sites:
  - Compile all current cultural resource regulations and laws and other tools that have been used;
  - Research existing tribal codes and protocols relating to sacred sites;
  - Compile a complete list of cultural preservation offices and contacts; and
  - Compile applicable county and state laws.
- We should identify related and useful existing national legislation and consider supporting it; for example, roadless area and wilderness designations may protect sacred sites.
- We should develop an analysis of the problems with existing legislation.
- We should give increasing attention to getting state-level legislation.

SEVERAL TYPES OF PROVISIONS SHOULD BE INCLUDED IN NEW LEGISLATION AND AMENDMENTS TO CURRENT LAW:

- Create a cause of action to allow tribes and tribal members to sue to enforce laws;
  - Create procedures for land managers, including a trigger for tribes;
  - Protect confidentiality, information, and intellectual property;
  - Allow for the solving of problems without going to court;
  - Define sacred site (prayer sites for fasting and vision questing, power places) in such a way that allows for “newly created sacred sites”;
  - Affirm agency discretion for partial closure of sites to keep non-Native peoples out;
  - Utilize restorative justice techniques; give the law clerks and judges permission and an opportunity to be creative in doing restorative justice;
  - When putting legislation together, indigenous intellectual property rights must be included; tribal leadership needs to pass laws to protect indigenous intellectual property rights in order to make future adjustments to non-Indian laws to continue spirituality and religions of the tribes, especially regarding sacred sites;
  - Include an allowance to practice treaty hunting and gathering rights on National Park Service land, state land, etc. in certain situations;
  - Make it mandatory for agencies to respect and protect tribal ceremonies fully;
  - Exempt religious practitioners using their sacred sites on federal lands from access fees.
- Language from elders, spiritual leaders, etc. should be transformed into written laws.
- Important to remember that what a Native American says is not always understood in the same terms as what the white man says.
- There should be a hybridization of both cultural and legal concepts when passing legislation within the U.S.
- Even though a sacred site was protected, if the area around it has been destroyed and then rehabilitated, it’s not the same, because the power was not in that small area that was protected, but in the entire land. This needs to be addressed and tribal people need to strategize as to how to adapt to this.
- Presidential Executive Order 13007 is lacking a mechanism for tribes to have a cause of action; it is very non-threatening and it cannot be used in a court of law.
- The executive order should be changed into law to protect the sacred sites.
- Attorney should use the opportunity of the legal brief to educate and enlighten judges. However, there is a danger that after learning about sacred things in the brief, a judge may limit how a tribe practices its traditions, so this must be guarded against.

**The voices of tribal storytellers have power which can be used to make federal agency officials do the right thing.**

*Dean Suagee*

FIRST NATIONS LAW CLINIC

**When more people have a better understanding of the existing legal framework, we will collectively be better prepared to make recommendations for how the legislative framework should be changed.**

*Dean Suagee*

FIRST NATIONS LAW CLINIC

#### SPECIFIC LEGISLATION:

- Support CARA (Conservation and Reinvestment Act) involving land management, land preservation, species and habitat management. Title VI of the legislation, “Federal and Indian Lands Restoration,” needs support to remain in the bill.
- The U.S. needs to abolish the 1872 Mining Law because it is only a tool for big business with a governmental blessing.

#### FREEDOM OF INFORMATION ACT (FOIA) ISSUES:

- In order to avoid FOIA issues, do not allow the elders’ words to be recorded so that they cannot later be used for their sacred information in any way;
- The representatives of the federal agencies should sign forms to guarantee elders’ words will not be copied, recorded, etc. The FOIA does not forbid these silence agreements, so they should be used by the tribes to protect intellectual property;
- The tribes must be assertive against the FOIA and lead the discussions and protect sacred information within documents;
- Sacred sites must be identified in order to be protected, so this must be addressed under the FOIA;
- It is difficult for agencies to help tribes protect sacred sites if the tribes will not tell the agencies about the sites;
- A legislative buffer could be created around sacred sites, so that there is a protected area without revealing where the site is within that area; and
- The FOIA is a good law, but badly implemented. It is too hard to get information, it is too expensive, and it is frustrating. This needs to change.

#### NATIONAL HISTORIC PRESERVATION ACT ISSUES

- We should be devoting more attention to the National Historic Preservation Act, including the section 106 process, the responsibilities of federal agencies under section 110, and confidentiality under section 304 (including the apparent authority of the Secretary of the Interior to issue regulations to address some of the problems with section 304). There are flaws in the process and we should look to fix them through the legislative process.
- While some tribes have become proficient in using the NHPA section 106 process, there are big differences among tribes regarding their understanding of this process and the ways that it can be used to provide some protection for sacred places. Similarly, some federal agencies (and some regions within federal agencies) are better than others in the ways in which they work with tribes in carrying out the section 106 consultation process. We could do a lot of good if more tribal officials, staff, and their lawyers, had a working knowledge of historic preservation law.
- There is a need for training in these subjects, and some of this training



should include audiences comprised of federal and state agency people as well as tribal officials and staff. When more people have a better understanding of the existing legal framework, we will see better federal agency decisions. Education/training might also help to build a broad base of support for a legislative proposal.

- There is a need to make the interface of the Native American Graves Protection and Repatriation Act (NAGPRA) and NHPA work better than it does.

## FEDERAL AGENCIES

### RECOMMENDATIONS APPLICABLE TO LAND MANAGEMENT AND OTHER AGENCIES:

- Tribes need training in how to participate in agency processes. Training for tribes should be both tribe-to-tribe and from other sources (e.g., training in how to participate in the NEPA process).
- Agency personnel must be trained in “how to work with tribes,” (e.g., the consultation process), and the requirements of the trust responsibility.
- Senior executives in the agencies must be trained in their agencies’ responsibilities to tribes, and taught how the agency is supposed to deal with them.
- Increase unity among the federal agencies and the tribes to be respectful of the lands.
- Tribes are always dealing with agency officials who do not have the power to make decisions or to give tribes what they need. This has to change. Tribes need to be able to talk to those who *can* make decisions.
- Tribes must participate as peers with the federal agencies when discussing sacred lands.
- Improve coordination of federal agencies to carry out their trust responsibilities to tribes.
- Federal agencies should represent tribal interest.
- Solutions should “start at the top” by making agency directors responsible for their actions or inaction.
- Consequences for agency leaders who choose not to follow treaty, congressional and agency mandates concerning the trust responsibility should include salary adjustments and other legal actions.
- The tribes must be included in re-writing regulations.
- Under the *Lyng* case, administrative officials have broad discretion for accommodating religions; this should be utilized more fully.
- The tribes need to learn the laws better than the federal agencies.
- Tribes need people on the inside of the government in order to educate within; do not be a tool for an agency; purely educate and support the people.
- Native Americans need to stop babying federal agencies by telling them the laws that the agencies should know already. Tribes shouldn’t have to

**What’s more American: the right to drill for oil or the right to pray?**

*Chris Peters*

POHLIK-LAH AND KARUK

explain the laws that the agencies are already bound by.

- The United States government should put money where the federal laws are; give money to tribes to preserve and protect sites.
- Tribal leaders should accompany federal representatives to Congress and explain the need for resources.
- There is hard work going on in the agencies; we need to see more of it.
- We need to look forward; we need to look at internal policy development.

#### RECOMMENDATIONS SPECIFIC TO LAND MANAGEMENT AGENCIES:

- There needs to be a complete paradigm shift in management of sacred sites that is tribally led.
  - Develop a culture of “co-management” (with tribes) among land management agencies.
  - There is a large need for co-management so that tribes themselves can protect sacred sites.
  - Cooperative agreements between tribes and national parks can help to mitigate the impact of new personnel coming into the management of a park. Once the agreement is negotiated and signed, new superintendents are bound to it, and it is difficult for them not to extend it.
  - Cooperative agreements for resource use between tribes and parks are a solution for the time being.
  - Develop agency policy to support temporary closure of sacred sites.
  - The current regulations should be changed in order for national parks to accommodate the use of plants, teeth, etc. for religious ceremonies.
  - The federal agencies need to clearly explain to the elders why they are being asked to get involved. Agencies must be honest and clear with the tribal people, do not use them as tools to find the locations so they can be ‘mitigated’ (removed, etc.).
- 
- Sacred sites can be protected right now by either silence on the part of the tribe as to where and what they are, and by careful monitoring by the tribe to make sure that unauthorized people aren’t on them.
  - Sacred sites should have an environmental impact statement of their own when they are to be impacted.
  - Change the way the government charges businesses that want to use public lands. Charge them extra money, on top of what is charged for licensing and fees, in order to pay for the consultation process so that tribes can be included without having to worry about government money issues.
  - Tribes should rise above use of the word “accommodation” and deal with the manner of how federal agencies are/aren’t interacting with tribes.
  - The federal government needs to grant more resources to tribes in order to have better relations.

## CONSULTATION

- Change the consultation process so that it is meaningful consultation.
  - Teach federal agencies about tribal concerns, cultures and sacred site issues; use Native People as teachers;
  - Use language understandable by all—talk plain;
  - Bring in outside consultants to facilitate discussions;
  - Notify tribes well ahead of the date;
  - Allow plenty of time during the consultation;
  - Hold the consultations in Indian country;
  - Develop ground rules for consultations, developed by practitioners;
  - Seek tribal recommendations on who to consult with;
  - Have spiritual, traditional people on the committees, so that their voices and their ways are represented; and
  - Use interpreters.
  
- The ideal form of tribal consultation starts with a well-written letter that clearly describes the state or federal undertaking and the range of impacts it will have, proposes a number of dates the tribe can choose to meet with the agency, and asks for the tribe’s definition of consultation.
- Increase agency consultation with both tribes and tribal members on sacred lands issues.
- The federal government should not “contract out” consultation by hiring outside parties to conduct consultations with tribes because it puts another layer of separation between tribes and the federal government.
- The federal agencies and tribes must have a consultation before any decision at all is made regarding any federal action.
- If tribes say they don’t want any impact at all, instead of mitigation, often those conversations are not recorded, so tribes have been forced to hire court reporters to record the discussions so the government will not be able to deny what was said. This needs to change.
- Agencies and businesses do not tell elders and those who know the locations of sacred places the whole story. Often, the elders think they are telling the agency the locations so that the sites will be protected, but in reality, after the sites are identified, they are ‘mitigated’ (skeletons excavated and moved, etc.). This practice must stop. Agencies must be clear with elders why they want information, instead of using them as tools for their own plans.
- The federal government needs to recognize tribes *and* grassroots people.
- There must be a larger effort to include grassroots organizations. They should be at the same consultation level as tribal leaders.
- There should be a congressional appropriation of money to help tribes participate in the consultation process.

## **Next Steps**

■ This Forum report is meant to be both a record of the events of October 9 and 10, 2001 and a resource to Forum participants and others interested in continuing the work of sacred lands protection. The October Forum was followed by a second forum in Washington D.C. in March 2002 and formation of the Sacred Lands Protection Coalition. The Coalition has already achieved a series of Congressional oversight hearings on sacred lands protection which began in June, 2002 before the Senate Committee on Indian Affairs.

The work of sacred lands protection depends on the continued commitment of the Forum participants and many others.

# Day 1 of the Forum (Tuesday)

■ The first session of the Forum was a series of presentations of the issues by a panel of experts with a wide range of experience in sacred lands issues. Later in the afternoon, other Forum participants were invited to add their own comments or to ask questions. The following provides highlights of those presentations; transcriptions of the panelists' presentations can be found in Appendix 1.

Many of the panelists acknowledged that they could not speak for all Indians — there are simply too many tribes, too many different experiences, beliefs, feelings and interests for any one person to try to speak for all Native Peoples. They stated that they can only speak specifically of their own personal interests, from their own life experiences. Otherwise, they must generalize, stating at the very beginning that they may find it necessary to generalize in order to address common issues.

## SUMMARY OF PANELISTS' REMARKS

### Introductions: Purpose of the Native American Sacred Lands Forum

■ Hal Bruff, Dean of the University of Colorado School of Law at Boulder, set the tone for the Forum by stating that it had been convened “to promote dialogue about sacred lands, the values that they represent and the conflicts that surround them.” According to Dean Bruff, Forum participants would “explore the role of education, legal tools, land management policies and any other ways we can think of to improve the protection of sacred lands.” Elaine Quiver of the Grey Eagle Society then opened the Forum with a prayer.

In his brief introductory remarks, Christopher McLeod, filmmaker and a member of the Forum planning committee, also commented on the purpose and process of the Forum. Mr. McLeod's recently released film, *In the Light of Reverence*, documents threats to areas considered sacred by various groups of Native Peoples. The documentary was made with a purpose. As he said, “We hoped the film would be a turning point in terms of public education.” Similarly, McLeod reported that a key reason the gathering was convened was also to identify the most effective ways to inform and educate the public about threats to Native sacred sites. But more than that, the Forum was a way to facilitate dialogue, to “bring people together to talk about sacred lands,” to

**We have to share our lives  
together and reconcile with our  
enemies.**

*Elaine Quiver*

GREY EAGLE SOCIETY

**It's this kind of discussion, this kind of interaction that is going to make things start to move. And the ones who are going to benefit are the ones down the road who will have a place to pray.**

*Pemina Yellow Bird*

MANDAN HIDATSA ARIKARA NATION

strategize about ways to protect those areas, and to begin to “work together to protect sacred lands more effectively.” This sentiment was echoed by Pemina Yellow Bird, one of the opening session panelists, when she said, “Work with us. We need your help. We are not going to do this good work without the help of people from federal and state agencies, from environmental groups. We’re not going to be able to do it alone; we have to work together.”

Based on the experiences of those involved in the planning, the Forum focused initially on three major areas: 1) public education, 2) legal tools, and 3) land management policies. Public education is critically important because there has been a failure of the American public to understand what Native American sacred sites represent, and no reform is possible without public support, or at least public acceptance of reform efforts. Legislative tools are also needed — laws that are “more effective and stronger than the American Indian Religious Freedom Act or the National Historic Preservation Act or Executive Order 13007.” In addition, Mr. McLeod said, “improved, better coordinated land management policies” are necessary. Those agencies that have responsibility for managing lands need to better coordinate the development and implementation of policies concerning sacred places.

In taking ten years to make his film, McLeod encountered some of the same kinds of obstacles that Native People face every day. In his introductory remarks, McLeod described the widespread attitude that there is but “one way to salvation.” This attitude, which he feels characterizes so many Christians, is one that “basically sees Native American spiritual practices as paganism and something to be destroyed.” Beneath that attitude of cultural superiority lies racism. McLeod felt this racist attitude stems from “a deep fear [among Christian Americans] around what these places mean culturally and spiritually to Native People.” In addition, said McLeod, some Americans today feel very uneasy about the history of land acquisition in this country, a history of fraud and outright theft. In many other cases, “there’s just the basic ignorance, the basic lack of understanding of treaties, of history, of diverse cultures.” The fear, the guilt and the ignorance all combine within America at-large to block passage of any kind of coherent and sensitive sacred lands policy. Said McLeod, “The ignorance of this history, the lack of understanding of the relationship or the emotional connection to the land, to me is very much a part of our unease right now and a lot of the conflicts that we are confronting.” A number of Forum attendees felt that in the aftermath of the September 11 atrocities, these attitudes are made even more pronounced.

According to McLeod, in organizing the Forum, the planning committee asked themselves, “Why should people care; why should the dominant culture care about Native American sacred places?” During many conversations held to answer these questions, the committee decided to highlight four issues during the Forum, which might resonate with the American public: 1) religious freedom; 2) treaty obligations; 3) environmental justice; and 4) cultural diversity. As McLeod said, in trying to educate environmentalists about the impor-

tance of sacred site protection, we must convince them that in the same way that “ecosystems are strongest when they’re diverse,” so too “we need cultural diversity just as much as we need biological diversity.” Chris Peters agreed, saying, “they’re not only sacred to us as Native Peoples. These places are sacred to an ecosystem. Without the preservation and continuation of these places, an ecosystem will also wither and die.”

## **Panel Moderator: Chris Peters, Pohlik-lah/Karuk, Executive Director, Seventh Generation Fund**

■ Chris Peters is Pohlik-lah and Karuk, salmon peoples who live on the Klamath River in far northern California. Through all the Gold Rush massacres, genocides and relocations, the two tribes have managed to remain on the river where they were created. As with many Native Peoples who have stayed in their home territories, their ceremonies continue strong and powerful. Although they speak different languages, Pohlik-lah and Karuks share many common beliefs and participate in each other’s ceremonies. Anthropologists often call some of them World Renewal ceremonies, because the people get together and sing the world new each year. As Mr. Peters says, “We recognize that the earth is our mother; we recognize that the earth is sacred.”

Dance leaders spend a great amount of time preparing for these ceremonies, gathering power through prayer at various locations high in mountains of their home territory. These places are vitally important to the two tribes. Mr. Peters stated that, “based upon ... astute observations of the earth, we recognize that there are certain places within the natural ecosystem that ... have power, spiritual power, natural forces above and beyond other places in the world.” These places are “indispensable and are central to our cultural, our spiritual life as Indian people. Without these sacred places or through the destruction of these sacred places, there will be a certain death.”

In introducing the panelists, Mr. Peters noted that his beliefs about, and the dependence of his peoples on certain sacred sites are not unique among Native Peoples, but that there are also “a lot of common understandings amongst our tribal groups throughout the world.” Many of these sites are threatened by or already harmed by rapacious development. It is vitally important to most tribes in this country that these sites be protected, yet the federal government either ignores the problem or encourages development on a large scale. The wide-ranging panel of experts gathered at the Sacred Lands Forum was uniquely qualified to speak to these issues.

**They are not only sacred to us as Native Peoples. These places are sacred to an ecosystem. Without the preservation and continuation of these places, an ecosystem will also wither and die.**

*Chris Peters*

POHLIK-LAH AND KARUK

**We recognize that the earth is our mother; we recognize that the earth is sacred...we recognize that there are certain places within the natural ecosystem that are special places that have power, spiritual power, natural forces above and beyond other places in the world.**

*Chris Peters*

POHLIK-LAH AND KARUK

## Pemina Yellow Bird, Mandan Hidatsa Arikara Nation, North Dakota Intertribal Re-Internment Committee

**There's been a level of criminal neglect on the part of individual agencies who were supposed to protect sacred sites.**

*Pemina Yellow Bird*

MANDAN HIDATSA ARIKARA NATION

**Strategies always begin when someone talks and someone listens.**

*Pemina Yellow Bird*

MANDAN HIDATSA ARIKARA NATION

**Congress and federal agencies need to put their money where their laws are.**

*Pemina Yellow Bird*

MANDAN HIDATSA ARIKARA NATION

■ It is not only sacred lands that are being threatened today. Sacred waters are in danger, too. Pemina Yellow Bird also was born to a river people. Her first words to the audience spoke not of herself, but of her people: “I am a child of the Mandan Hidatsa Arikara Nations. We are Upper Missouri River peoples. We have lived near our Sacred or Mysterious Grandfather since the beginning of time. The river ... himself is sacred to us. He is holy, he is a giver of life, a supporter of life.”

Her people have seen their Sacred Grandfather dammed, polluted and sucked dry. Tribal leaders openly wept over the federal legislation that authorized the building of the first dams on their river. Now, says Ms. Yellow Bird, “it’s my sad duty to tell you today that he tops the list of the American Endangered Rivers. This holy being is an endangered river. How can that be? How can our river be dying...?”

Part of the problem can be that the federal government has not fulfilled its trust duties to Indian tribes. Acting in its self-appointed role as the tribes’ trustee, the government has for years passed critical legislation and has created policies with very little, if any, input from the affected tribes. Now, more than ever, said Ms. Yellow Bird, tribes must be allowed to speak for themselves. By implication, she criticized the trust structure of the federal/tribal relationship, which so often does not allow tribes to speak for themselves: “To us, everything that lives and moves and breathes is sacred, and this is a teaching that hardly anyone else in this country shares, and nobody’s going to understand it unless we are allowed to speak for ourselves.”

We should not only be allowed to speak for ourselves, we should also be allowed to make decisions about first, which sites we consider sacred, and second, how they should be managed. As Ms. Yellow Bird said, “Our sacred sites belong to *us*.... We Indigenous Peoples are the only ones, the only ones, who can claim an association with those sites. Our elders, our spiritual leaders, our teachers are the only ones who know the true facts about those sites. Not archaeologists, not anthropologists, not historians.” Any management solution that ignores these facts will be flawed and will eventually be harmful. Serious harm can be avoided if federal agencies with responsibility for managing sacred sites “move into co-management agreements with tribes, where we are equals, where we are peers when it comes to determining treatment and disposition of *our* sacred sites.”

Native Peoples in this country are strong and intelligent or we would not have survived the last five hundred years. We are not the childlike savages that the federal trust structure would have everyone believe. We are politically capable, we know what our needs are, and we know what must be done to meet those needs. However, given the current federal/tribal relationship, we lack a true voice in deciding our own fates. Therefore, Ms. Yellow Bird exhorted



those federal representatives in the audience to make sure that all discussions that concern tribes are also tribally-led: “Don’t tell us what the issues are, don’t tell us how to act, don’t tell us what to believe, don’t tell us what to say. Because we are here representing sovereign nations and we know exactly what to do.”

## Vernon Masayesva, Hopi, Director of Black Mesa Trust

■ Like the Missouri River peoples, the Hopi feel very strongly about the water that flows through, or rather, under their land. Vernon Masayesva, a Hopi and Director of Black Mesa Trust, addressing what Hopis consider theft of their pristine and sacred groundwater, talked briefly about the vitality of the waters in their desert country: “Springs are breathing holes to the Hopis. The underground water sucks in moisture from the clouds and has to breathe it out. That’s what springs are. So we see it as a living entity, a breathing, living entity. Water is breath. Water is life. The whole system breathes.”

Yet this vital water, this all-important water, is being taken from the Hopi people. Why? Because in 1966, according to Mr. Masayesva, “We were forced to sell it,” so the government could subsidize a power industry that slurries coal in a huge pipeline across the entire state to a power plant that supplies cheap electricity to the Southwest. After more than thirty years, the government doesn’t seem to worry about depletion of the Hopi’s aquifer. Even now, says Mr. Masayesva, “Pristine water from a waterless country is pumped at the rate of 3.3 million gallons a day.”

Mr. Masayesva told the audience that the problems that beset American Indians cannot be faced alone, but that all tribes must work together in solving them. What happened to the Hopis and their water will happen to tribes across the nation. Tribes need to take a more global attitude when dealing with such issues. For instance, the Hopi attitude, he said, is that when Hopi priests pray, “it’s not just about Hopis; it’s the whole of living beings all over the world.” He exhorted tribes to take concerted action, using typical Hopi water imagery: “The river is moving this way and we want it to move it that way; let’s all work together to make that happen.”

But Mr. Masayesva acknowledged a problem that makes it difficult for tribal governments to unite nationally on the issue of sacred lands: official tribal denial or ignoring of the problem. Using his own tribe as an example, he stated that they “don’t have any tribal leader up there, center stage, talking about reverence for the land, for air. Where are these people? Their voice is very quiet. ... We need a lot of help in those areas.” There is hope, though, because “we have grassroots people that are now cropping up and bringing up issues that need to be brought up.”

**We’re not here as authorities or even as spokesmen for the Hopi people.**

*Vernon Masayesva*

HOPi

**Hopi consider the whole universe sacred. There are many places on our reservation that are religious shrines, set up to offer our prayers to the Creator through certain beings like the sun, the eagle, the bear, the snake.**

*Vernon Masayesva*

HOPi

**Water is breath. Water is life. The whole system breathes.**

*Vernon Masayesva*

HOPi

## Charles Wilkinson, Professor of Law, University of Colorado

**There's fierce pride, and it's often private, but fierce pride in Indian country over the revival of tradition.**

*Charles Wilkinson*

UNIVERSITY OF COLORADO

**We have people here from EPA, from the Park Service, the Forest Service and I'm quite sure others, where there's hard work going on inside the agencies. We need to see more of it there; we need to see more of it from foundations, from state agencies, and from the general public.**

*Charles Wilkinson*

UNIVERSITY OF COLORADO

**We should be giving increasing attention to legislation at the state level.**

*Charles Wilkinson*

UNIVERSITY OF COLORADO

■ Professor Wilkinson, who has taken an active role in representing tribal interests in the last thirty years, feels that although federal statutes and policies may seem weak at first glance, tribes may be able to work closely with federal agencies in using laws creatively to tribal advantage. Many people in the agencies are working hard to support the principles behind laws and policies like the American Indian Religious Freedom Act of 1978 (AIRFA) and the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), as well as President Clinton's recent Executive Orders. "We have now," he said, "in most federal offices, able and committed Indian advocates who also are advocates for their agencies, committed to that work. They're valuable people who are pushing the envelope." He further noted that "there have been quite notable efforts in the federal agencies to try and provide — to honor — access to sacred sites."

In addition to relying on federal agency personnel for assistance, sacred lands advocates need to think strategically about how to broaden our support: "We need to see more of it... from foundations, from state agencies, and from the general public." Also, "we should be giving increasing attention to legislation at the state level."

In discussing *Lyng vs. Northwest Cemetery Protective Association* (see GO Road case in Appendix 5), Professor Wilkinson noted two things: First, that it is vitally important that Native People carry their own message to the decision-makers, without intermediaries; and second, that federal agencies were given large amounts of discretion in dealing with tribal issues within their jurisdiction.

In describing the *Lyng* process, Professor Wilkinson said that "the trial judge was originally predisposed against the practitioners, and then the practitioners came in and testified, and the judge could see their sincerity and see that these weren't some New Age environmentalists trying to stop a bad timber road, and that these were sincere people that came from a tradition of many centuries." The Ninth Circuit affirmed the decision, but the Supreme Court was an entire continent away, and "the judges in Washington are sitting there, in Washington, with a cold record in front of them, a paper record, and you can't present the flesh and blood the way you can at trial. So that case was lost."

The implication is that Native political and spiritual leaders, the real people who have a connection with the land, need to represent themselves as often as possible. As Professor Wilkinson stated, "I hope we can do more of that because it puts humanity into it." In our humanity lies our hope.

In further discussing *Lyng*, Professor Wilkinson stated that the decision gave federal agencies far more discretion than they had held before to shape policies and practices that allow extensive Native use of federal lands for spiritual practices. According to the *Lyng* holding, "the Forest Service had authority

to build that road, but the Court also said that the Forest Service had authority *not* to build the road” in order to accommodate Indian spiritual practices and beliefs.

Used in conjunction with AIRFA, which is “a policy direction to the agencies to allow access and to respect the religions and accommodate them,” the *Lyng* decision can be a powerful legal tool in showing “agency people who are taught that these are public lands and everybody has to be treated equally” that “it is permissible to respond to the unique circumstances of a particular group and treat them fairly.”

As a final word on *Lyng*, Professor Wilkinson said, “I urge you to work that through and think of AIRFA as a law that is a direction to the federal land agencies and *Lyng* is a case that allows them broad discretion to support the practitioners.”

Still, tribes need to think seriously about strengthening such policies and court decisions through legislation. Professor Wilkinson believes “it’s necessary for people who care about traditional access to begin work in a serious way on a statute that will make it mandatory for the agencies to respect and protect tribal ceremonies fully.” The makeup of the current Congress may work in tribes’ favor. He thinks this is “a Congress in which to introduce a bill and begin to work toward hearings that will begin to clarify these issues and the importance of them. We can’t be impatient... but we can expect results, and within a reasonable time period.”

As a final suggestion, Professor Wilkinson, who has worked intimately with many tribes on these very issues, stated that tribes have considerably advanced their positions as sovereign governments in the past two generations. “Sovereignty is a living, breathing concept now in a way that it wasn’t then,” he stated, adding, “When tribal leaders in the late 1960s and 1970s started to make their stand, there really was a sense that it was critical to work on sovereignty first, to re-establish the government-to-government relationship, to establish, among other things, tribal control over tribal lands so they wouldn’t be sold off... Establishing sovereignty over that land base really was critical and maybe was a job that had to be done at the beginning.”

The struggle to defend and protect tribal lands was so vital and so intense, that other concerns were overshadowed for some time. “The advocacy for culture, for traditional practices, has been somewhat less intense and widespread than it has been for some other crucial issues, including sovereignty itself, the right to govern on a reservation. Water rights, hunting and fishing rights and gaming I think have been given somewhat more attention.”

In addition to the overwhelming struggle for sovereignty, according to Professor Wilkinson, there have been other reasons tribal governments have tended not to concentrate an equal amount of energy on sacred lands issues. As he stated, “in almost all tribes, the work of political leadership traditionally has been done by different people than the work of carrying on the spirituality and the traditions. So it may be that the leaders tended to focus somewhat

more on political matters and governmental matters.” Also, traditional spiritual leaders may have intentionally stayed away from political matters, because “there was a sense in which having to get involved in public policy was something that was not at that time in the bloodstream of traditional people.”

Now, however, Professor Wilkinson believes Native spiritual leaders are becoming more involved than ever in the political arena, and that “there’s fierce pride, and it’s often private, but fierce pride in Indian country over the revival of tradition.” Hopefully, he says, and very respectfully, tribal councils will also give more attention to spiritual concerns.

## **James Pace, Acting Director of The Office of American Indian Trust, U.S. Department of the Interior**

**The Office of American Indian Trust was put in the Department of the Interior to perform four major tasks: oversight, ensure the trust responsibility is being met, outreach, and policy development.**

*James Pace*

THE OFFICE OF AMERICAN INDIAN TRUST

**What we need to do as a federal agency and as tribal entities is work together for what is right.**

*James Pace*

THE OFFICE OF AMERICAN INDIAN TRUST

■ Mr. Pace also believe tribes have advanced far beyond their capabilities in the middle of the 20th Century. As he said, “In the last 48 years we’ve watched a major transition from termination to self-determination, government empowerment in Indian country, and with that has come a new relationship with the federal government. It’s no longer a matter of tribes going to the Bureau and saying ‘Mother may I?’ Now they take issues into their own hands, they’re managing their own programs, and they work with the federal government in a different way.”

During this time, Mr. Pace believes the federal government has also shifted its views of tribes, and sees that they are interested in “working with tribes to ensure the trust responsibility is being met — instead of governing over them — to make sure the federal government is meeting its responsibility.” In an open invitation, he said that The Office of American Indian Trust is “the office that works with tribes to ensure the Secretary’s trust responsibility is being acted upon and recognized by all the agencies that they’re supposed to be working with. [It is also] the agency you can come to where we can go, as a Secretarial office, and talk to these people and get [your] answers.”

Mr. Pace also believes that federal agencies “quite frankly do not” understand the concepts of “trust responsibility, sovereignty, working government-to-government [and] the need for consultation when... working with tribes.” Often, he said, it is not necessarily “a matter of a federal agent or agency not wanting to do the right thing, it’s that they honestly don’t know how to work with an Indian tribe.”

According to Mr. Pace, Clinton’s Executive Order 13007 created “a mandate on federal agencies to go and develop policies so that they would be able to accommodate sacred sites and the interest of sacred sites by American Indian and Alaskan Native Peoples.” Mr. Pace’s office developed such a consultation policy for the Bureau of Indian Affairs that he now hopes will be utilized by the entire Department of the Interior, so there will be agency-wide uniformity in relation to tribal interests.

The policy was developed in consultation with tribes, but Mr. Pace noted that the consultation process is often too expensive for some tribes to be able to participate. He asked, “If you have a tribe that needs to consult with the federal government on some action that’s being taken, how are they going to afford those consultations? Some of us would argue that there should be some kind of congressional appropriation for that. There was one recently for the states.”

Further, he asked, “Is it right to charge a fee to an American Indian religious practitioner to go out onto their sacred lands and practice their religion?”

## **Patricia Parker, Chief of the American Indian Liaison Office, National Park Service**

■ In response to Mr. Pace’s question, Ms. Parker answered, “Should American Indian people have to pay to, let’s say, get into a national park to practice their religion? And the answer is no, of course they shouldn’t.... The National Park Service for years has had a waiver policy so that we do waive fees...for what we call ‘non-recreational’ purposes [which include ceremonial purposes].”

In working with tribal governments, Ms. Parker feels it is necessary to work with tribes cooperatively in managing resources and sites that are critical to the Native People of the area. She referred to “what I think of as the Three C’s: consultation, cooperation or cooperative agreements, and contracts,” which are ways that the federal government can channel funds to tribes for managing their own interests in units of the national park system. For instance, Ms. Parker said that “One of the contracts that we just recently negotiated with an Indian tribe was with the Yurok tribe, and they’re doing watershed management for us [on their ancestral lands] in Redwood National Park.”

On the other hand, Ms. Parker feels it is difficult, given the popularity of national parks, to integrate Indian interests in the ceremonial use of national parks as fully as some would like. Places that are evocative to non-Indian people are also evocative to Indian people. Most of our national parks are going to contain Indian sacred sites. When we tried to provide the Navajo religious practitioners the privacy they needed to conduct their ceremonies at Rainbow Bridge National Monument, we were sued because people said we were excluding the rest of the American public.

Ms. Parker feels there are workable resolutions to the issue of public versus tribal access and use of sacred sites that are on federal lands, but that these resolutions must provide a balance between tribal uses and uses by the American public as a whole.

**Often, parks have been set aside for protection as natural resources, as natural landscapes, and people are only now beginning to think about them as cultural landscapes, places of the ancestral peoples.**

*Patricia Parker*

NATIONAL PARK SERVICE

## Further Panelists' Comments

■ In response to a question from the moderator, asking why so many sacred places are facing imminent destruction, Pemina Yellow Bird said it is because of two things. First, the “incorrigible greed” of non-Indian resource users has caused misuse, depletion or destruction of many sacred resources and sites, such as “our holy and mysterious Grandfather, the Missouri River.” Second, she stated, “There’s been a level of criminal neglect on the part of individual agencies who were supposed to protect those sites.” The areas have been impacted because “ federal [and state] agencies... who have responsibility to protect them didn’t fulfill their responsibilities.”

James Pace, in responding to the same question, said, referring specifically to the Mining Act of 1872 and the Federal Land Policy and Management Act, that federal laws “fly in the face of what we’re trying to do here,” because those laws were written when the government had no interest in protecting sacred sites. Now the damage has been done, and we need to look forward at how we can change those laws and policies. One remedy may involve changing internal agency policy, but that only goes so far. Therefore, “what we need to do as a federal agency and as tribal entities is work together for what is right. Hopefully we can make positive changes. And if we’re going to do that we do need to work together... because there is an ethical and moral obligation on the federal government and on the part of American business.”

## Day 2 of the Forum (Wednesday)

■ The October 10 sessions in Denver began with a welcome from EPA Assistant Regional Administrator for Enforcement, Compliance and Environmental Justice, Carol Rushin. Rushin welcomed Forum participants, recognizing the tribal leadership, tribal elders and other distinguished guests that were present. Lori Windle, White Earth Ojibwe, of the American Indian Program Council of the Denver Federal Executive Board, also added her welcome. Bill Center, Oglala Lakota Spiritual Advisor, assisted by Rick Williams, Oglala Lakota and director of the American Indian College Fund, then opened the session with a song and a shared pipe. Participants commenced their all-day dialogue and strategy session among tribal representatives, federal and state agency officials, Native activists, academics and journalists by creating a group history of sacred lands struggles. See Appendix 2 for transcripts of the introductions and some of Wednesday's speakers. The group history and comments by Chairman Bourland of the Cheyenne River Sioux that followed are transcribed in Appendix 3.

## REFLECTIONS ON TUESDAY'S DIALOGUE

### **Marlon Sherman, Oglala Lakota**

*Marlon Sherman, Adult Programs Manager with Indian Dispute Resolution Services, was asked by the planning committee to observe the proceedings on both days of the Forum in order to coordinate preparation of the Forum report. On Wednesday, he gave some of his preliminary reflections on the dialogue. These reflections follow.*

■ I'm just going to pick up a few things that I saw yesterday, and if we can, we're going to try to focus the energies of this group toward maybe *discussing* some of these issues that we *felt* yesterday. I say *felt* because there weren't a lot of concrete recommendations and that's okay because yesterday we were just exploring the issues.

So, what we got out of it was a lot of *feeling*, these are what I think the Forum is focusing toward, is coalescing toward. If anybody has any different opinions, we'd like to hear those. And that will be the purpose of this afternoon, to focus on some of these issues, that we thought we were saying. If we misunderstood anything, do let us know.

**Elderly and each generation has a different way of learning something... we have to think about the common knowledge... the seven generations have to understand what we're facing.**

*Elaine Quiver*  
GREY EAGLE SOCIETY

**It isn't a myth, it's a reality — that we have to prepare our children for the future.**

*Elaine Quiver*  
GREY EAGLE SOCIETY

One of the first things I noticed was a lot of references, not specifically, but one or two, references to respect. We're talking, of course, about sacred lands, but people were addressing the issue of governments and the general public... to give tribes and Native People individually the respect... to allow us to become part of the process.

Number two, and Patty Limerick is going to talk about this later, that was the word "accommodation". I think it's important that we note that Charles Wilkinson's use of the word was as a strictly legal term. What we felt in the audience was the use of it as we normally hear it: "just accommodating us".

There were a couple of comments made to the effect that we need to be careful about the language we use and how we're dealing with the government and the general public. When we start to write the statutes, if we can, we must be careful with the language we use, so that it's clear to everybody. It's been a problem with treaties all along, right? Treaties were never clear enough about what tribes were expecting out of them, so use of proper language will be an important issue.

I heard some references to education. The general public, and government agencies are very much ignorant of native beliefs and the sacredness of land to us. We need to somehow get an education program going, to educate not only the general public, but the government — bureaucracies and legislators.

Charles Wilkinson mentioned that he believes that agencies have a broad discretion to accommodate native beliefs and there was a little bit of discussion, but not much, and I thought that would be a good starting point for us sometime today, when we're talking about the need for specific legislation, when we're talking about the strength of AIRFA, or lack of strength of AIRFA and NAGPRA. We need to find some teeth, file down some teeth for those statutes.

And, one more and this was my last one. There's a fear that Native political leaders are focusing more on political and governmental issues than on cultural issues and there needs to be a shift to recognize, among *tribal peoples*, the importance of the sacred within tribal governments.

That's all I have.

## **Response from Pemina Yellow Bird, Mandan Hidatsa Arikara Nation**

*Pemina Yellow Bird, one of the conference participants and Tuesday panel member responded to Marlon Sherman's reflections.*

You know, you spoke a little bit about being careful of the language that we use and to me, from a native perspective, from the perspective of someone who's out there in the trenches fighting to protect sacred sites, it's not about respect so much as it is about giving up some of the power and control. Non-Native people have got to give up the power and control that they have over our sites and they have to move over and make room for Native People so that



we can resume stewardship of these sites, no matter who owns the land that they're on.

Yes, it's a general disrespect toward all Native People, by the academics who write about our sites and our issues, who co-opt and exploit issues that are important in Native country, because all the while they're talking about their stuff, they're taking up time that Native People could be using to talk about our issues. So, it's more than respect, it's about power and control and who gets to be the experts, and who are the ones that people go to.

The lawyers — lawyers get a great deal of agenda time to discuss our issues. But what happens to the Native People who are living on the sites, whose culture, whose very existence, depends on the protection and preservation of those sites? We're not given access. To me, access is a really huge issue, when it comes to discussing sacred sites — access, by Native People. That to me, should be primary in any report that you write, because to me, that's what the Native People are saying here, whether it's a grassroots organization or an elder or somebody who can officially represent their tribe — they don't have access to power — that's hoarded by a few.

So it goes beyond respect. I think we need to use very strong language when we're talking about those who have power and control and who are routinely consulted when it comes to our issues. How many times, when those people are routinely consulted, are they Native Peoples? Do they have a role in actually protecting sacred sites? Do they have a role in actually using those sites? It's about access, it's about sharing power and control. It's about not automatically going to the lawyers and the academics and the bureaucrats.

When you talk about education, who did you mean? Right now who does the trainings for EPA, when you guys go out and do training about sacred sites protection? Is it Native Peoples, is it the folks who are out there fighting tooth and nail in the trenches? I don't think so. It's bureaucratic people, and I'm grateful that they're doing that, but the reason I came here was to send a very clear message that access and power and control needs to be shared. And, it's the people, the Native People, to whom their very lives, and the seven generations down the road, depend on for the protection of those sites.

We need to be out there, we need to be given access. We need to be talking about these things, from our perspective.

There's a handout here of all the laws, the sacred site protection laws. Every last one of those laws, with the possible exception of NAGPRA and the Smithsonian Act, were written by and for the science and museum industries to protect their interest. It wasn't until Native People forced their way to the table that we started seeing the passage of laws like NAGPRA and the Smithsonian Act, and like Chairman Bourland was saying, they don't go far enough and we've had to be content with them.

My purpose in being here today is to push the envelope, to force people to think outside the box and *allow us Native People to express ourselves about our sites*. To me, that's what's really important. It addresses every single issue

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*Pemina Yellow Bird*

MANDAN HIDATSA ARIKARA  
NATION

raised: respect, accommodation, access, education, the agencies ability to protect native interests, that they've always had but never optioned, never put into effect, legislation with teeth, and the issues surrounding native leadership. All of those, all of those — the correct arena to discuss them is with Native Peoples.

### **Patricia Nelson Limerick, Center of the American West**

*Patricia Nelson Limerick, a western historian at the University of Colorado at Boulder, was asked by the planning committee to listen to the presentations and discussion on Tuesday in order to provide a summary for Wednesday's Forum participants who may not have been in attendance on the first day of the Forum. Her summary follows.*

**Reconciling, after bitter conflict, is one of the toughest tasks human beings face on this planet. In fact, reconciliation demands so much of human beings that, as a practice, reconciliation in itself fits in the category "sacred." The places where reconciliation is practiced end up themselves sharing in that sacredness.**

*Patricia Nelson Limerick*

CENTER OF THE AMERICAN WEST

■ I am grateful for the opportunity to sum up the discussion at the first day of this conference, and also humbled by this opportunity. My qualifications are threefold: a habit of enthusiastic note-taking; three decades of thinking about western American history with a strong recognition of the centrality of Indian people; and an unbreakable habit of trying to communicate with the public about historical issues. Still, the assignment to sum up yesterday afternoon's wide-ranging discussion is one that could be experienced as a bit like "sum up the ocean; sum up the sky."

I have looked over my notes from the panelists' presentations and the comments and questions from the audience, and tried to identify main tracks of thought.

The first proposition, testified to by many yesterday, is this: Indian religious faiths and practices cannot be separated from landscapes and homelands.

And that leads to a second proposition, also testified to by many yesterday: much of the misery of the conquest has stemmed from a campaign — sometimes conscious and deliberate, sometimes off-hand and even inadvertent — to achieve precisely that separation between believers and the places crucial to their beliefs.

A third proposition was also very evident yesterday. For three or four decades, we have been living in an era in which various people have been seeking remedies and restorations to past injuries. We have been living in an era in which forceful people seek to reverse and correct some of the injuries of the preceding era, and this task is, of course, complicated by the fact that what I have just called inaccurately "the preceding era," the era of intended separation of Indian people from their sacred places, has never ended, never come to closure. Thus, even when one injury from the more distant past is corrected, another, current threat is just gearing up, so that the seeking of remedy must occur at the same time, and draw on the same energies, as defense against and prevention of future injuries. Still, it is important and heartening to see how vigorous this pursuit of remedy is; it is heartening to see how vigorous and

audible Indian advocates are in pursuing this remedy; and it is also heartening to see that Indian advocates have significant support from white allies in this cause.

It was clear, yesterday afternoon, that there is considerable, and very understandable ambivalence about the federal government's land management agencies and their role in this campaign for remedy. Maybe "ambivalence" is not the right word. Distrust, matched with a recognition of the power of the agencies, and, thanks to that power, a recognition of the need to persuade them to support Indian religious freedom:

I'm not sure if the phrase for all that is ambivalence. Maybe it would be best just to call it a heritage of distrust, composed of a three-part recognition: of the agencies' power, of the good reasons for Indian people to work from within the agencies rather than to shun them, and of the fact that individual white employees of the agencies often have the right sentiments and intentions, even if statutes and procedures stand in the way of their acting on those sentiments.

The origin of these mixed feelings is hardly a historical mystery. The federal government presided over the conquest of Indian people, and a painful part of the conquest involved the removal of Indian people from the areas that became the national parks, the national forests, and the BLM lands. So this is a deep paradox, but it is a clear one: the federal government orchestrated the conquest of Indian people, and yet there are now, working in the agencies of that same government, Indian people who are trying to represent tribal interests, as well as significant number of white people who are uncomfortable with, even repelled by, the federal government's past history, and eager to change the practices of conquest to the practices of consultation.

Is consultation to be preferred over conquest?

You bet.

Can consultation just pick itself up, declare a new era, and detach itself from conquest?

No way.

That, in truth, was one of the most striking features of yesterday's discussion — the way in which contemporary efforts at consultation are still carrying a heavy burden of the legacy of conquest, so that when even the best-intentioned federal agents say, "We want to consult with you," Indian people start counting the silverware and checking their wallets. This burdensome legacy is not going to go away fast, and it is never going to go away entirely. So my recommendation is something like this: whenever a federal agency plans a consultation, it would be a good plan for the people involved to spend a minute recognizing that historical ghosts will attend the consultation, and that these ghosts simply must be acknowledged and faced up to. At any tribal/federal consultation on an issue of sacred sites, Generals Custer and Sheridan and Miles and Crook and Carson and Howard will be in attendance, and, of course, Pontiac and Tecumseh and Black Hawk and Sitting Bull and Geronimo and

Chief Joseph and Captain Jack will also be sitting in. Trying to pretend that they and their legacies have been removed from the picture will make it very likely that the consultation will be much less effective than if the participants face up to this powerful inheritance of distrust. And so all of us left the session yesterday afternoon very much aware of the need to work on this process called “consultation,” and to try to invent new rituals, fresh customs, innovative ways to maximize the opportunities for honesty and directness and respect, while minimizing the already abundant opportunities for distrust and misleading promises and anxiety.

I truly think that one part of these new rituals should involve a ceremony of recognition that the employees of the federal agencies of the twenty-first century are different people from the employees of the U.S. Army and the Office of Indian Affairs in the 19th century. Yes, of course, the 21st century folks can unthinkingly regress to the attitudes of the 19th century, but if this should happen to them in mid-consultation, there should be some immediate and even congenial way of calling their attention to this slippage in time, and giving them a chance to recover, and return to their 21st century selves. The more direct strategy would probably be keeping a bucket of cold water on hand for dumping on the head of any federal employee who begins to regress to the 1870s or 1880s, but I’m sure that people with more subtle imaginations could think up ways of communicating this with more delicacy.

Consultation also faces a dilemma many noted yesterday. To identify a sacred site, to document it and map it and declare it, is, in many cases, to desecrate it, literally to desecrate it. While this presents a very difficult problem, it also presents a remarkable opportunity to experiment with the design of forms of communication that protect confidence, by dealing more in hints, clues, and nudges than in explicit recorded declarations.

And then there is the problem, noted by several yesterday, posed by the fact that tribal government shares, with every other form of human governance, the condition that it is sometimes more representative of its constituency than it is at other times. Back in 1983, I heard Floyd O’Neil, who had worked on histories with many tribes, remind an audience that this is a problem of human nature, and not unique to any group. “What we refer to as ‘factionalization’ on reservations, he said, “we just call ‘politics’ in Washington, DC.” Thus, the challenge for sacred lands issues: how do we acknowledge the occasions when tribal officials do not speak for the whole group, and how do we validate grassroots groups, without unintentionally undermining tribal sovereignty and self-government?

For anyone, Indian or non-Indian, trying to work productively on this subject, there is another big challenge: the labyrinth of legislation involving public lands, a curious combination of deeply installed, seemingly never-changing laws, like the 1872 Mining Law and newly emerging proposals and bills. Here we have a compelling need for interpreters and guides to help non-lawyers make sense of this labyrinth. And yet legal expertise carries this disadvantage:

when you become fluent in legal terms, you are at risk of forgetting what life was like before you were fluent. Thus — unless you are careful and guard against this — you become noticeably diminished in your capacity to communicate with the group we'll call “normal people,” which basically means people who have not gone to law school.

And then there was the thought-provoking Peters/Wilkinson exchange on “accommodation.” There are understandable reasons why Chris Peters finds this a deeply unsatisfying framework for Indian religious freedom, and there are also understandable reasons why Charles Wilkinson finds it useful, and wants to make sure that discomfort with the term does not prohibit Indian people from getting everything out of it that they can.

How much can non-Indian indifference be corrected by public education and the reduction of ignorance? How much of non-Indian failure to support Indian religious practice is a matter of hardheartedness or active prejudice, more than ignorance? We don't know the answers to that question, but the only sensible thing to do is to proceed on the assumption that public education could accomplish a lot, and then to watch the process and the outcomes very closely. Most practically — what kinds of information have the most power to galvanize a white audience into concern and commitment to ensuring Indian religious freedom? Are there particular stories that get to the goal more quickly than others? The film, *In the Light of Reverence*, presents a great opportunity to test this out. It would be an interesting experiment, to ask general audiences: “Which of the three stories moved you the most?” Given the sorrows of the shortened, staccato attention span of these days, it might be helpful to know which story affects an audience most intensely.

Another project may be important, though emotionally difficult: namely, putting more time and attention into figuring out, psyching out, exploring the workings of white hostility. Some of the most interesting moments in the film are the interludes of white people talking directly about their indifference, or hostility to Indian people. They are frustrating moments, not only because it is disheartening to hear these things, but also because I do not have a grasp on what drives these people. I do not know how typical they are or how atypical. And if I don't know those things, then I do not have a clue as to how to reach them, if they are in fact reachable. In the same way, if there is no hope of persuading them, then I also do not know what would be the most effective way of reducing the legal, cultural, and political power of their objections.

Here is what made me uncomfortable about the audience's reaction last night: every time a person on the screen said something about the primacy of private property, the audience reacted scornfully and dismissively. And yet I feel certain that the audience was composed of people who themselves either owned private property or aspired to own it in the future. By definition, if they were planning to own this property in North America, they would be owning what was once Indian land, and it is unlikely that they would be any more sharing and tolerant in the exercise of their powers of ownership than was the

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CENTER OF THE AMERICAN WEST

owner of Woodruff Butte.

So, in those moments when the audience *seemed* to be disapproving of the white people on screen who refuse to compromise their property rights on behalf of Indian people's traditions, I am afraid that those moments are too *comfortable*. They do not require the members of the audience to look in the mirror. They allow a white audience member to say, "That owner of Woodruff Butte, celebrating his property rights — what an intolerant and selfish person," without having to think, "He may be an intolerant and selfish person, but then again, maybe I am one, too."

Well, maybe that's for the best. When we know more, and know it more systematically, about what works best and what works worst in public education on this issue, we may decide that this is exactly the way to go. My own experience indicates that asking white Americans to look closely and critically at their own behavior is a precarious undertaking. It can get their backs up very fast, and turn them defensive and prickly in an instant, prickly enough to allow us to label this as the Porcupine Effect. So maybe it is truly the best strategy to keep them looking outward, smugly condemning the owner of Woodruff Butte or the mayor of that town near Devils Tower or the dreadlocked white retrohippies on Mt. Shasta. But I also cannot help thinking that the self-examination would be of value, and conceivably of more lasting value, than the easy condemnation of these insensitive "others."

What will post-9/11 configurations do to this whole situation? Will public resources be directed to the military and to the bailing out of major U.S. businesses, and will the money available for remedy and restoration be correspondingly constricted? Will the U.S. response to the terrorist attacks harden hearts, or open them? I wish I knew. I don't know anything with any certainty about the immediate future, but I still feel as if I know enough to suspect that the answer to those questions are not going to follow my own preferences.

Even with that failure of optimism on record, I still want to end this summary and commentary with Elaine Quiver's moving and memorable words from yesterday afternoon's opening. "We have to share our lives together," she said, and she then urged us to "reconcile with our enemies."

Reconciling, after bitter conflict, is one of the toughest tasks human beings face on this planet. In fact, reconciliation demands so much of human beings that, as a practice, reconciliation in itself fits in the category "sacred." The places where reconciliation is practiced end up themselves sharing in that sacredness.

**We as Native Americans have to think ahead as second generation people; we need to think ahead as seven generations, roughly 200 years.**

*Gregg Bourland*  
CHAIRMAN, CHEYENNE RIVER  
SIOUX

## Day 2 of the Forum (Wednesday)

■ Forum facilitators organized Wednesday’s small group discussions based on observations of Tuesday’s presentations and audience comments. Facilitators asked Forum participants to choose a small group discussion on either consultation, education, legal tools & legislation, land management policies, or Native leadership. A small group of participants also formed an additional group to discuss issues that did not fit within the assigned topics. The summaries below reflect the discussions that took place in the small groups, and are based on written flip chart sheets (transcribed in Appendix 4), video tapes of the small group reports and additional comments from the small group participants during the preparation of this report.

### SUMMARY OF SMALL GROUP DISCUSSIONS

#### Education

■ The group of around twenty Natives and non-Natives felt very strongly that federal agencies and the general public must be educated about the importance of sacred lands to Native Peoples. One group member said that most of the discussion was devoted to the “tremendous need to educate non-Native peoples,” particularly “leaders, decision makers, and power brokers [who] have no appreciation for the sacred sites of Native Peoples and sadly lack” any feeling toward them. Suitable locations would have to be found and procedures put in place to reach non-Native audiences.

The education effort would make clear that although each of the hundreds of tribes is unique, sacred sites are an important part of all Native cultures, unlike the majority of non-Native religions. One purpose of the education would be to show that — especially in regard to federal legislation — one size does not fit all, and that legislation must be tailored to the specific and unique cultures and needs of each tribe.

Indian peoples themselves [NOT non-Indians teaching ABOUT Indians] must be used as teachers at all levels — whether it involves teaching youth in schools or federal agency employees who have oversight of lands considered sacred by Indians. The education should take place in appropriate locations, for instance, “informal settings, outdoors ... and with sufficient time for informal discussion and possibly field trips [and] demonstrations.” Elders must be

included as part of the teaching process, using traditional methods to teach our world view. Contrary to what takes place all over the country today, Native Peoples MUST be paid for their teaching — the funding might be given to the individual teachers, to Indian groups, or to tribes. Resource lists of Native individuals or groups who are willing to act as educators should be developed and circulated.

Because schools teach Indian youth only the basic Euro-American subjects, without making any effort to reinforce Native cultures, the group felt that Native parents and families “should be the major educators of their children.” However, the group also recognized that “this was not always possible because of external pressures, difficult family situations and loss of knowledge of Native language and cultural... traditions.” Therefore, the group suggested that individual tribes evaluate the education that their younger citizens are receiving, and develop alternative approaches involving, among others, teaching about sacred subjects.

One important observation from this group, which underscored one of their written points, was that the Forum format did not allow the elders at the second day of the Forum to “contribute their knowledge to all the discussion groups.” They could choose only one group each, and there was not enough time to move from group to group, although, “a few members left for other groups and several new participants joined the group.” Rather than being a problem of the Forum structure, this issue seems to be a result of the allotted time: a day and a half to try to cover all aspects of a complex subject.

The group made one final point: In view of the September 11th atrocities and the national reaction to them, it is time non-Indians took notice of what Native Peoples have to teach about “survival through adversity... and respect for others” as well as the close connections that tie culture and environment together. We must do all within our power to get across the Native message of environmental sustainability and survival.

## **Native Leadership**

■ Like the Education group, this group also noted how important it is that federal agencies be educated about the sacredness of lands. They also felt such education is especially vital for tribal governments themselves, who need to remind themselves of their traditions. As the Education group noted, this education should include elders as teachers, and might take the form of the “peacemaking approach,” as defined by the tribal peacemakers’ organization that was sponsored by the Native American Rights Fund some years ago.

The group agreed that tribes and Indian leaders must reach a national consensus concerning sacred lands issues. They also need to hold “regional leadership forums” which will result in the formation of coalitions and fundraising strategies.



Native leaders need to be “decolonized or deprogrammed,” possibly through the use of ceremonies and fasting. They need to “reclaim cultural courage,” that is, the spirit and willingness to act in accordance with their original tribal principles, despite the pressures and temptations of the American life and government. Tribes, then, need to return to a “more traditional form of government.”

In the long term, tribes must concentrate on teaching the youth. The curriculum must include contemporary issues and how to deal with them, not just dead history. In addition, all Native youth gatherings must include discussions of sacred sites issues.

In the short term, tribal governments must allow grassroots Native groups to be included in discussions with nontribal governmental agencies concerning sacred lands.

## Legal Tools & Legislation

■ There is currently no way to compel the protection of a sacred site or sacred landscape; no way to stop destruction and request an impartial hearing; no cause of action; current laws (AIRFA) and executive orders (13007) are toothless, without enforcement power. The policy of accommodation ignores sovereignty, treaty rights, and religious freedom. How do we go from accommodation to entitlement? Education can lay the groundwork, but it does not bring people around — sacred places are not protected solely through education.

With this sense of the problem, the Legislative/Legal Strategy workgroup discussed a legislative strategy for sacred sites protection. Their strategy discussion included: (1) identifying and evaluating current policies and laws for protecting sacred sites, (2) proposals for new or amended legislation, and (3) strategies for “interim measures” to protect sites until more effective legislation can be developed.

The overall, long-term goal of a strategy should be to assert local tribal authority and sovereignty, to take the initiative to define sacred lands protection law and to implement it: write local codes, have hearings, train judges, and then the local councilmen can go to DC and say “My nation has implemented this sacred land protection law. We wrote it, we enforce it.” All of these actions must be tribally led.

### (1) IDENTIFYING AND EVALUATING CURRENT POLICIES AND LAWS FOR PROTECTING SACRED SITES

A first step in identifying and evaluating current laws and policies would be to compile all current regulations and laws, tools people have used, all agency policies, etc. We need to research existing tribal codes and protocols relating to sacred sites. We also need to gather a complete list of cultural preservation

offices. Thirty tribal historic preservation offices exist; they are an excellent way to protect tribal interests (Cheyenne River, Standing Rock, Hopi were mentioned as examples). The National Congress of American Indians (NCAI) might assist with this. We also need to gather county and state laws (e.g., Hawaii). Dean Suagee and students of the First Nations Environmental Law Program at the Vermont School of Law might be asked to help. *[Editor's note: Dean Suagee has expressed interest in pursuing this if funding could be obtained to support the effort.]* Related and useful existing national legislation should also be identified and supported. For example, roadless area and wilderness designations can protect sacred sites, but if it looks “environmental,” tribes may fail to endorse them.

In developing a legislative strategy, is it important to describe the problems with existing legislation and the reasons behind their limitations. For example: how and why did sacred site protection get pulled from AIRFA? How is EO 13007 working? Did it involve education? How do tribes view it? An ideological think tank, a legal foundation, or a secretariat could help take the next step to develop analysis and legislative strategy.

## (2) PROPOSALS FOR NEW OR AMENDED LEGISLATION

The group also discussed potential new legislation that will help protect sacred sites. One specific piece of legislation to consider is CARA (Conservation and Reinvestment Act) involving land management, land preservation, species and habitat management. HR 701 was introduced to the House of Representative, sponsored by Representative Don Young (R-AK) and John Dingell (D-MI), and S 1328 was introduced to the Senate by Mary Landrieu (D-LA). Title VI of the bills, “Federal and Indian Lands Restoration,” is to provide a dedicated source of funding for a coordinated program on Federal and Indian lands to restore degraded lands, protect resources that are threatened with degradation, and protect public health and safety. Last year Congress deleted tribal inclusion language; while funding for tribes is in the bills now moving through Congress, it needs support to remain.

The Legislative/Legal Strategy workgroup identified a number of priorities for inclusion in new legislation and amendments to existing legislation. They include provisions that will:

- Create a cause of action to allow tribes and tribal members to sue to enforce laws;
- Create procedures for land managers, including a trigger for tribes;
- Protect confidentiality, information, and intellectual property;
- Allow for the solving of problems without going to court;
- Define sacred site (prayer sites for fasting and vision questing, power places) in such a way that allows for “newly created sacred sites”;
- Affirm agency discretion for partial closure of sites to keep non-Native peoples out; and
- Utilize restorative justice techniques.

### (3) INTERIM MEASURES

The work group also discussed a number of measures to help protect sacred sites while legislation is being developed. These included:

- Draft an NCAI resolution (Indian attorneys take the lead) to restore sacred site protection to a “#1 priority.” For this effort, it would be important to connect with sovereign nations which are not members of NCAI.
- Develop an Op-Ed in *Indian Country Today* — a call to action.
- Consider a “Boycott Albuquerque” campaign — to hold tourism accountable, and help protect Petroglyph National Monument.
- Build a sacred lands protection coalition of tribes, non-recognized nations, churches, environmental groups, etc.

## Land Management Policies

■ The Land Management Group identified several barriers to protection of sacred sites on federally managed lands and a number of solutions to those specific barriers. This group began their presentation, however, with the disclaimer that there was only one Native person in the group, and only two non-agency people, and the recognition that that proportion would probably make it pretty “representative of land management agencies” which often “work in a vacuum away from Native input.” The solutions presented by the group were, therefore, primarily agency-types of solutions, offering a view from inside the agencies that might have been missed if the group had been made up only of non-federal agency individuals.

Among the barriers to sacred site protection, this group saw a serious lack of understanding at all levels of the federal government of both the need to manage sacred sites (for their protection) and of the federal trust responsibility regarding sacred sites. Without management, sites may erode or disappear for many reasons. The group also highlighted a lack of consistency in the ways federal agencies view their trust responsibilities and legislative mandates concerning Indians and sacred lands. They noted, for example, that the meaning of “consultation” differs from agency to agency.

Regarding statutes that apply to sacred sites (specifically NAGPRA and reinternment), the group noted that the statutes can give agencies discretion to protect sacred sites, but that agencies do not necessarily voluntarily exercise their discretion for the benefit of the sites. In addition, tribes do not necessarily understand how and when they can pressure agencies to use their discretion to protect sites. Further, however, the group recognized that inter- and intra-tribal disagreements over what agencies should do regarding sacred sites results in a lack of good guidance to agencies. One potential solution is to try to “legislate discretion out” of statutes so that agencies have a clear mandate and little discretion. On the other hand, if tribes could act in agreement, they might put pressure on agencies to act in accord with law. In any

case, better communication is important.

Participants felt the government should not “contract out” consultation — hiring outside parties to conduct consultations with tribes — because it tends to put another layer of separation between tribes and the federal government.

Other recognized barriers to sacred site protection include a lack of law enforcement to protect sacred sites; a lack of law enforcement resources; a lack of mutual trust between tribes and agencies, including tribes’ lack of trust that agencies will protect their interests, and a fear, on the part of agencies, that tribes want veto power in federal land management decisions that affect tribes; and, an inability of tribes to adequately participate in agencies’ environmental processes because there is a lack of understanding of the National Environmental Policy Act (NEPA) process, and a lack of tribal resources (money and people) to participate.

The group identified a number of solutions to these problems, including: use of 638 [the federal Self-Determination Act] funding, increased agency consultation with both tribes and tribal members on sacred lands issues, and development of an agency policy to support temporary closure of sacred sites.

The group also recognized that many of these problems can be addressed through training for both tribes and agencies. Tribes need training in how to participate in agency processes. At the same time, agency personnel must be trained in “how to work with tribes” (e.g., the consultation process), and the requirements of the trust responsibility. Training for tribes should be both tribe-to-tribe and from other sources (e.g., in how to participate in the NEPA process).

In discussing possible solutions, the group recognized that little can be accomplished unless agencies are held accountable for their actions — “If the boss wants it, it’ll get done.” But until those responsible know there will be sanctions for shirking their responsibilities, there will be no change. Therefore, they felt the solution should “start at the top” by making directors responsible for their actions or inaction. Senior executives in the agencies must be trained in their agencies’ responsibilities to tribes, and taught how the agency is supposed to deal with them. If the executives or others in responsible positions choose not to follow treaty, congressional and agency mandates concerning the trust responsibility, the agencies must institute and enforce consequences, including salary adjustments and other legal actions.

In concluding their discussion, the Land Management Group identified empowerment of tribes as a high priority for better protection of sacred lands. Two essential elements of empowerment are training for tribal governments and tribal members and co-management of sacred site lands.

## Consultation

■ This group found there are many barriers to meaningful consultation (seventeen, to be exact) and stated that their list was still not complete, given the time allotted to this portion of the Forum process. Thus, as with other groups, this group highlighted the need for more time to identify barriers and find solutions to protecting sacred sites.

The underlying barrier to meaningful consultation may be distrust and disappointment. After five centuries of dealing with federal and state governments, many Indians no longer trust that non-Indian governments have the best interests of tribes and Indian peoples at heart. Official consultations may fail because, regardless of the venue, agency, tribe or occasion for being there, the tribal side may enter the consultation with that background in mind.

When asked to expand on their findings, one Consultation Group member correctly warned against “very broad over-generalizations” when describing agency or tribal motives and actions. In his view, there is not “a universal problem by all agencies, for all tribes, on every occasion, by all Indians, on all official consultations.” Some problems may occur in some consultations, but to view the entire consultation process as therefore flawed is “too hysterical” a view.

The first barrier that the group listed, and considered the greatest by at least some of the group, was the fact that federal agencies and tribes lack a common language. Words that may look the same on paper often take on different meanings, depending upon who is doing the reading. Lack of common understanding of terminology leads to a lot of misunderstanding between agencies and tribes. In what they referred to as “line vs. landscape” in their group report (see Appendix 4) the group also implied that interpretation of words (and therefore of statutes, policies and regulations) follows cultural thinking. *[Editor’s note: The word “consultation” itself is a good example of the differences in the ways we see things or interpret them. Tribal groups may expect a federal consultation to be a negotiation, while a federal agency may view a consultation as no more than a listening session. A cultural property survey which is conducted “along a line” rather than throughout a landscape and looking at cultural resources in terms of the broader landscape is another example.]* Government regulations and actions, according to the group, will therefore follow “dominant society standards.” Again, the implication is that government agencies often consult only with the elected tribal governments, without recognizing that other groups within the tribes should be included in the discussion.

The group felt that language used within consultations often worked against Indians, because it is based on federal, legal English, which many people cannot understand, especially Native Peoples whose first language may not be English. One group member also warned that we should use Plain Talk, or we will be guilty of doing the same thing for which we criticize the federal

government. “Use simple, understandable English!!!!” he said. “Write it [the Forum report] for Native People, particularly traditional practitioners.”

According to the group, federal agencies lack training to make them aware of Native sacred beliefs and issues. Some agencies fail to see the value of seeking knowledge, insight and advice from Indians. Therefore, when they deal with tribes or Indian groups, agencies’ expectations result from their ignorance of or lack of understanding and appreciation of Native values, and the agencies may find themselves in serious differences with tribes. For example, the agency might feel it is allowable to impact a site, as long as they take some action to lessen the damage or “record” the resources. On the other hand, Natives may feel it is absolutely not acceptable to develop or even to touch the site, and that it must be completely protected. These differences may pit agency decision makers and archaeologists, acting according to current law and regulations, against Indians who hold traditional tribal beliefs.

The group further characterized the issue as “federal agencies serving their own purpose,” and felt that such problems may be made worse because there is little meaningful coordination between agencies when dealing with the issue of sacred sites. Agencies tend to compartmentalize, that is, they make their own rules and regulations based on statutes or policies, and the rules may not agree with what other agencies are doing. The lack of program coordination tends to favor the agency and hurt tribal interests.

The solutions were fairly simple on their face: Teach federal agencies about tribal concerns, cultures, and sacred sites issues using Native Peoples as teachers; bring in outside consultants to facilitate discussions; notify tribes well ahead of the date; allow plenty of time during the consultation; hold the consultations in Indian Country; use language understandable by all; talk plain. The group saw ground rules as a priority if consultations are to be successful. These ground rules, called “canons of consultation,” would be created by practitioners, presumably those who have had experience in facilitation and negotiation.

## **All Relevant Issues**

■ This group met to discuss issues that may not have been identified by the Forum facilitators. They stated that Native Peoples “can’t know where you have been until you know where you are going, or know where you are going until you know your roots.” Therefore, by implication, they echoed the thoughts of a number of other groups, who said that Native Peoples need to concentrate on educating ourselves about our own traditions and cultures, as a way of strengthening ourselves and focusing our energies in dealing with sacred issues.

The group talked about “the sacredness of who we are” as “caretakers of the earth.” As Earth’s caretakers, “if Earth is to survive, it needs its people in place.”

We cannot be separated from our sacred lands without serious consequences for all Earth's inhabitants.

“We are the people of the knowledge of this earth,” the group stated. Our strength is in this knowledge. It is the gift that we have for non-Natives. Our elders are caretakers of that knowledge, and because of their wealth of knowledge and their value as educators, in Euro-American terms our elders should all have Ph.D.'s. “We’re a *‘we’* people, not an *‘I’* people,” which means that we are willing to share our knowledge with non-Native people, so all can live.

## Postscript from the Editor:

### OBSERVATIONS AND RECOMMENDATIONS FOR FUTURE DIALOGUE

■ As described in the pages above, the day and a half Forum included a panel discussion, full-group and small-group discussions, individual presentations, summary statements and film screenings. The purpose of the initial panel presentations in Boulder on Tuesday, October 9, 2001, was to refresh participants' memories about sacred lands issues, to provide them with legislative and policy updates, to present them with some views from inside the federal bureaucracy, and to obtain initial comments from the participants — Indian and non-Indian; tribal, state and federal government; and grassroots organizations. The presentations on Tuesday were to serve as background for small group discussions that were held on Wednesday. Due to the general structure of the first day of the Forum, few concrete recommendations surfaced during the afternoon. Rather, the discussion developed organically during and after the panelists presented their views. The issues surfaced at first as feelings, which were then translatable into what are arguably widespread problems and challenges.

Perceptions — or expressions of these perceptions — about which of these issues are more important will vary from person to person and day to day, as evidenced by the impassioned statement of one participant, who, with hand to her heart, told federal representatives that the issues could be boiled down to one simple request: “Respect us.” Twenty-four hours later, that same participant commented that it is more than respect. She then characterized the most important issue as access — access to sacred lands and to the power of being able to protect them. Furthermore, no two people necessarily agree on how to prioritize or resolve the issues. For instance, two different people were invited to summarize and prioritize Tuesday's comments — a non-Indian historian and a Lakota professional. Although there was some overlap and agreement, these two, as well as the federal/non-Indian meeting facilitator, all prioritized differently and expressed themselves in varied terms. Therefore, any summaries of issues developed in this report may not be prioritized in the same manner by members of the same group on any given day, or may not be seen as valid by a broader Native group.

This problem of widely differing viewpoints among Indians is not one that is unique to Indian Country — it is common to all ethnic, racial, political, economic, age or gender groups in America. However, given the small Indian population, relative to the total U.S. population, given the fact that Indians are



often stereotyped as one large group that thinks alike, and given the fact that so many Indian issues in this country are so similar on their faces, the differences of opinion among Indians may seem more pronounced.

The purpose of the Sacred Lands Forum was to bring together a fairly representative cross-section of people who are familiar with sacred sites issues to discuss problems and to begin to strategize about how to solve them. Part of the discussion would involve ways to get input from tribes and Indians on a national scale. Therefore, while the comments recorded by participants during the Forum would provide a basis for future discussion, the structure of this Forum also would implicitly provide a measure of whether participants, both Native and non-Native, felt safe to express their concerns and participate in strategizing sessions, which might or might not be useful in planning future meetings, forums, consultations or negotiations and implementing specific sacred lands protection strategies.

As might be expected with any diverse Native group, there was some dissent. Some Native participants were unaware that the Forum included Native voices in the initial planning stages. Some Natives were uncomfortable speaking in a setting that included so many non-Indians. As one audience member stated, "We need to meet just among Natives so we feel safe." On the other hand, many of the Indian participants did feel there had been sufficient early input, and did participate, some very vocally in the open forum. It also appears that many Natives were active within the small discussion groups.

The conclusion that can be drawn from the issues raised by the dissenters may seem obvious, but should be stated even so: all Indians from the 550+ tribes across the United States will have widely differing cultures and living styles, will have different viewpoints, and will require differing procedures to give them various levels of comfort in any discussion or negotiation process. And although that point may seem obvious, it is a point that is often overlooked in government-to-government consultations and negotiations, and in facilitated discussions, many of which seem to follow a too-rigid format. Therefore, the differing viewpoints that came up during this relatively small forum are important indicators of what the planners of any future meeting can expect.

Although there was Native participation in planning for this Forum (see Appendix 7), the perception of Native exclusion (as seen by at least some of the Indian participants) echoed or confirmed one of the major themes of the first session — that Indian peoples are effectively not allowed to participate meaningfully in the process of protecting their sacred lands. In order for all parties to be at least somewhat satisfied with the outcome of a process, they must feel that they have been substantially heard and listened to, and they must feel they have had some influence on the outcome. Since the perception is often as important as the reality, a way must be found to reassure participants that they have been a meaningful part of the entire process, and that their participation will be more than a mere footnote in the end pages of some report that sits on

a shelf gathering dust. Discussions of future forums should not ignore this vital issue.

After the Forum, the planning committee discussed the event. In general, they were impressed that the amount of interest and level of participation exceeded their expectations, particularly a month after the attacks of September 11th. Committee members commented that there was a necessary element of story-telling present during the two days, and that much of the dynamic of the event was probably typical, with a need for participants to vent their frustrations before getting down to developing strategy. The planners also noted a strong undercurrent, at times clearly vocalized, that we need to be cautious about politicizing what is a sacred issue.

Committee members' hindsight criticism centered on the length of the Forum. Members commented that they should have built more time into the agenda; that we needed another day. Break-out times were too short and there was so much talent and expertise in the participants that we did not hear from. We needed more time. As an example for organizers of future sessions to consider, an important observation from one of the small groups, was that the forum format did not allow the elders at the second day of the Forum to "contribute their knowledge to all the discussion groups." Participants were asked to choose only one group each, and there was not enough time to move from group to group. In fact, though, "a few members left [the Education group] for other groups and several new participants joined the group." Rather than being caused by the Forum structure, this problem seems to have been a result of the allotted time: a day and a half to try to cover all aspects of a complex subject.

Committee members also thought that the film *In the Light of Reverence* should have been integrated into the Forum more directly.

Committee members suggested that the history and timeline be posted on a web site, to begin to build a living history where others can engage.

This Forum was just one small step in the process of recognizing the importance of and gaining protection for Native American sacred places. Many of the people who participated in the Forum took another step in March 2002 with a forum in Washington D.C. The Washington forum included an initial organizing meeting of the Sacred Lands Protection Coalition, a meeting with the American Indian and Alaskan Native Task Force of the Interagency Working Group on Environmental Justice, a keynote address by Lakota scholar Vine Deloria, a panel discussion on "Overcoming the Challenges," meetings to discuss sacred lands Congressional hearings and legislation, and screenings of the film, *In the Light of Reverence*. Concurrently, the film was also screened by the Society of American Archaeologists at their annual conference in Denver. (See Appendix 8 for a description of some of these events.)

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# APPENDICES

Appendix 1: Transcriptions of Panelists' Remarks (Tuesday)

Appendix 2: Transcription of Miscellaneous Remarks (Wednesday)

Appendix 3: Transcription of Group Sacred Lands History and Chairman Bourland's Comments

Appendix 4: Small Group Discussion Flip Chart Notes

Appendix 5: About Sacred Lands Laws, Executive Orders and Court Cases

Appendix 6: Biographical Sketches of Scheduled Speakers

Appendix 7: Forum Participants

Appendix 8: Native American Sacred Lands Forum, Washington D.C.,  
March 19–22, 2002

## Appendix 1

### TRANSCRIPTIONS OF PANELISTS' REMARKS (TUESDAY)

*The following transcriptions were made from video tapes of the panelists' presentations. They have been edited for continuity and reviewed and corrected by interested panelists.*

#### **Hal Bruff, Dean of University of Colorado School of Law, Boulder**

As you know, the idea is to promote dialogue about sacred lands, the values that they represent and the conflicts that surround them. The forum is going to draw upon the experience and wisdom of a very wide range of participants. We are going to explore the rule of education, legal tools, land management policies and any other ways we can think of to improve the protection of sacred lands.

#### **Christopher (Toby) McLeod, Sacred Land Film Project**

We hoped the film, *In the Light of Reverence*, would be kind of a turning point in terms of public education. After the GO Road decision came down in the 80s, a community of friends and advisors — including Terry Tempest Williams and Chris Peters and other folks I worked with on the film — all talked a lot about the GO Road decision and the failure to amend the American Indian Religious Freedom Act.

We recently received a grant from the Ford Foundation to convene more meetings like this to facilitate dialogue about this issue. So there is a real opportunity to try to present these issues and try to bring together creative people to talk about the importance of sacred places and threats to them and ways that we can all work together to protect sacred lands more effectively.

As Dean Bruff mentioned, the three categories we're going to be focusing on here in some way grew out of everybody in this room but they were certainly my experience. Public education is critically important. Some kind of legislative tools that are more effective and stronger than the American Indian Religious Freedom Act or the National Historic Preservation Act or the Executive Order. And improved, better coordinated land management policies. These are the three areas that we identified and we would like to encourage this group to think about specific strategies, specific suggestions, so we can develop these ideas. And I think everybody here is convinced of the importance of these issues, and we have all been involved in the struggles, so rather than take too much time telling our stories, we'd really like to get ahead to the common ground of strategizing creatively, to better protect sacred sites with concrete ideas and discussion around those ideas.

Just a couple ideas that I'd like to put out on the table as we get started, because in ten years of trying to make this film, of trying to raise money, of trying to convince people of the importance, struggling with the language and the translation of it, put me in

a position I think similar to many Native People in trying to fight this fight and explain the importance of it. And the obstacles we came up against are the obstacles that many Native Peoples face, and I'd like to just sort of throw out some of those obstacles, because as we strategize, I think we need to think a bit about how to confront those obstacles.

The first that I felt very deeply was the dominant Judeo-Christian value system that basically sees Native American spiritual practices as paganism and something to be destroyed, and I think it's a very, very deep reality of the American psyche. There's a deep fear around what these places mean culturally and spiritually to Native People and I think we have to deal with that superiority and that attitude of "one way to salvation." It's racism, a basic sense of superiority that comes out of that whole westward movement and the whole Judeo-Christian value system.

From that comes, deep again in the American psyche, a sense of, not necessarily guilt, but a deep sense of unease about how this land was acquired and the fact that the sacred land that we're talking about is stolen land, land that was taken in many cases illegally and dishonestly and that's a very deep blockage for a lot of people.

And of course we all know that there's just the basic ignorance, the basic lack of understanding of treaties, of history, of diverse cultures, these are the things that are coming up and smacking Americans in the face right now in terms of reactions around the world.

In making the film, I went to Jerusalem and the Middle East and went to a part of India that is pretty close to Afghanistan, and visited a lot of holy sites of other cultures, and as we made this film the original idea really was to put Native American sacred sites in a global context, because it's not just a tradition that relates to this place, it relates to the whole planet and the perception of sacredness and the kind of power that emanates from and the experiences that come from some of those places. The ignorance of this history, the lack of understanding of the relation or the emotional connection to the land, to me is very much a part of a lot of our unease right now and a lot of the conflicts that we are confronting.

The other question we came up against was "why should people care, why should the dominant culture care about Native American sacred places?" The things that we came up with in the many discussions, and the priorities of these things that I would love to talk about over the next couple of days, are: 1) religious freedom, which I think is one of the highest values in the American fabric; 2) obligations around treaties, the idea of the responsibility to that kind of contract; 3) environmental justice, which is the idea that Deldi [Reyes] and I have been trying to place the film in the context of discussions about environmental justice; 4) in terms of talking to environmentalists. The most powerful idea that I've been able to come up with is that just as ecosystems are strongest when they're diverse, and so species should be protected so the ecosystem is stronger, the whole planet is stronger when there's cultural diversity. So to try to talk to people who care about biological diversity and to get them to realize that cultural diversity and diversity of worldview are as important, and are part of that diversity. I think that is another strategic approach to take toward the idea of sacred site protection.

There's just one story I heard from Elaine Quiver early on as we started to shoot the segment of the film that dealt with Devils Tower that I think summarizes a lot of the lessons that I learned walking down this road making this film.

When the Park Service was trying to decide how to stop climbing on Devils Tower, which was an insult to at least seventeen different communities, they brought together climbers and environmentalists, Native People, land managers, attorneys, to talk about this and just that process of bringing people together to talk created an entirely different mindset and an entirely different view of the issue. But when the issue came up that the Park Service asked Elaine and some of the elders, “Do you want us to ban climbing at Devils Tower, or do you want us to do public education and then ask the climbers to make a choice?” Elaine and some of the elders went back to their communities and talked — and I know there’s a lot of sentiment that says that climbing should be banned — but the answer that they came back and gave to the Park Service, and I believe there was a consensus around it, was that public education was the preferred way to go. For the government to just tell people, “This is a sacred site, you have to change your behavior,” wouldn’t accomplish the sort of individual choice that people need to make to respect the place. There’s an incredible amount to be learned from this story in terms of our strategies.

### **Chris Peters, Executive Director, Seventh Generation Fund**

Good afternoon. First of all I’d like to thank Toby McLeod and just make a few comments on the film. The film, for Native Peoples, will create an alarm sometimes because it covers very sensitive areas. Please keep in mind that in making the film, communities were consulted with. The spiritual groups that were filmed were consulted with over and over again, and the segments of the film were shown back to the community and their approval was given. There are some areas that if another filmmaker had just produced it and brought it out I certainly would be out protesting. But in light of this situation and the seriousness of the issue, I think the film strikes home really well.

My name is Chris Peters; I am the executive director of the Seventh Generation Fund. At Seventh Generation Fund we have a philosophy or a motto. In each of our deliberations we consider the impact on the seventh generation from today, and certainly this issue around sacred lands motivates a lot of our work at Seventh Generation Fund. In April, we had hosted, with several co-sponsors, the Sacred Earth Conference in Seattle, Washington. It brought together over 400 people from diverse backgrounds to build coalitions around this issue of sacred places and protecting sacred places.

What are sacred lands? Native tribal groups are very diverse from region to region throughout the United States, throughout the Americas, throughout the world. We’re diverse linguistically, we’re diverse in our material cultures and we have diversity in our daily lives. We also have a very diverse cosmology, an understanding of how the world came together, how people came to be, how all of our other relations on the earth came to be. We differ also in our legends, our stories, our mythologies. Some of those legends may reflect different spiritual beings, some supernatural beings that we might refer to in contemporary terminology as gods or as spirit people. Each of our tribal groups understood that there were spiritual beings that existed in this world before human beings came to occupy the earth.

Based on this diversity, our spiritual understanding, our spirituality, our ceremonies of today may differ a little bit here and there. But we also have a lot of common understandings amongst our tribal groups throughout the world. Some of those common understandings or worldviews or paradigms: We recognize that the earth is our mother; we recognize that the earth is sacred. And based upon our individual cosmologies or

our astute observations of the earth, we recognize that there are certain places within the natural ecosystem that are special places that have power, spiritual power, natural forces above and beyond other places in the world. We recognize that these places are considered sacred. It's these sacred areas that we'll talk about today. Each of our communities understand and know of these sacred places, based on original instruction from spiritual beings or through a process of continued revelation [*Editor's Note: At this point thunder crashed. Chris paused, smiled, gestured skyward, said, "This topic always brings outstanding..." and laughed with the audience. These words and this interaction were not recorded in the original transcriptions.*] from going to sacred places and developing a better understanding of the world. We have established a profound metaphysical or spiritual relationship and sometimes a dependency with these special places, with these sacred places. In fact, most of these sacred lands are indispensable and are central to our cultural, our spiritual life as Indian people. Without these sacred places, or through the destruction of these sacred places, there will be an uncertain death of the tribal paradigm or tribal worldview that was established with these places. Our identity, our tribal existence would cease to exist if these places are destroyed. Many of our communities over the years have experienced that; an inability to reaffirm our spiritual, our cultural understanding with the world, with the earth, with our mother. That ceases to exist through the destruction that we often experience with mining, logging, and other destructions in our community.

Through the original instructions or revelations we know that these sacred lands and these natural forces are not only important to us as human beings, they're not only sacred to us as Native Peoples. In fact, these places, these sacred places extend far beyond the anthropocentric worldview that restricts other religious and philosophical understandings of the world. These sacred lands are, in fact, sacred to all of life. They're sacred to a bear, they're sacred to a deer, they're sacred to a fir, a spruce, they're sacred to all that lives on earth. And, if you will, they're even sacred to white people. These places are sacred to an ecosystem. Without the preservation and continuation of these places an ecosystem will also wither and die. That's the topic we bring to you today and our panelists will discuss and interact around these topics.

### **Pemina Yellow Bird, Mandan Hidatsa Arikara Nation, North Dakota Intertribal Re-Internment Committee**

I greet you all in a good way, and I say today is a good day. I want to excuse myself to those here in the room that are older than me. Excuse me for standing up here and speaking to you in this way. That's not our way to do those kinds of things and I just hope that whatever I do have to say and contribute will be something good and I ask you to excuse me. If I make any mistakes, you can take me aside later on and correct me. I want to also acknowledge all those in the room who have been bears for their people and who have been standing up for the places in their homelands that are considered holy and sacred and special. I want to acknowledge you and I want to honor and celebrate what it is that you do and I want to say thank you, too. I'm looking at my brother Scott Jones. This man has for years stood out there all alone, screaming and hollering to protect our sites, and he's had a hard job of it. I really want to honor him. He's taught me many, many things. I want to also thank the organizers of this important gathering, and I want to thank Deldi [Reyes] and all the people that made it possible for me to be here. I especially want to thank the members of the Native American Law



Students Association. I'm just really thankful for all the hard work that went into putting a gathering like this together.

I am a child of the Mandan, Hidatsa, Arikara Nations. We are Upper Missouri River peoples. We have lived near our Sacred or Mysterious Grandfather since the beginning of time. A lot of what I do on behalf of my people deals with sacred places that are along the river. The river itself, himself, is sacred to us. He is holy, he is a giver of life, a supporter of life, and it's my sad duty to tell you today that he tops the list of the American Endangered Rivers. This holy being is an endangered river. To me, that's an oxymoron. How can that be? How can our river be dying, how can it be endangered?

I'm not here to speak on behalf of any other tribe. That's the danger with gatherings like this. When you're talking about policy, I want to point that out, that we have hundreds of sovereign nations here in our own homeland, all of whom have every right to speak for themselves and all of whom must be consulted and included in on this discussion. My work in this area has involved being a plaintiff in a lawsuit that was brought against the State of Kansas and the Federal Highway Department to stop them from building a trafficway across the southern campus of the Haskell Indian Nation's University. That was a lawsuit brought by a grassroots organization. When you hear me talk about tribes today, it means tribal governments, it means our elders, it means grassroots organizations, it means all of those of us who consider ourselves bears and who stand up to protect what little we have left. We were successful in this lawsuit and we stopped them from building that road and they appealed, and we won the appeal. We did that because they wanted to build that road on top of the unmarked burials of little Haskell babies who never went home, because they wanted to build this trafficway for the purpose of commercial development through a wetlands — those are holy places to us. And because it was near the places where the Haskell students go to pray. Many, many ceremonies take place there, and nobody cared about that, they just wanted to build their road. And so a bunch of us got together, we raffled star quilts, my grandma's jewelry got raffled to pay for our lawyers who worked largely for free... We did a lot of things like that because we care about these places, because they're holy to us. *[Editor's Note: At this point the thunder crashed. Pemina paused, then smiled and said, "I'm thankful to those Thunders too." Gesturing skyward, she said, "They're talking right now." These comments were not recorded in the original transcriptions.]*

You want to talk about strategies. Strategies always begin when someone talks and someone listens. And I'm always the one that they get to come and be like the hired gun and say those things nobody wants to say, so here goes with the first thing: It's time that tribes are allowed to speak and it's time that somebody else listened. Nothing's going to change about what's been happening to those places we regard as dear and holy and precious, nothing's going to change until tribes are allowed to speak and until someone else listens. That's the first strategy I want to propose. To us, everything that lives and moves and breathes is sacred, and this is a teaching that hardly anyone else in this country shares, and nobody's going to understand it unless we are allowed to speak for ourselves. In order to create a change, Congress and federal agencies need to put their money where their laws are. Initiatives to protect our sacred sites have to be funded. I don't know about the rest of you tribal people but I'm getting really tired of meetings with federal agencies, where we remind them under the law what their responsibilities to our sites are, and they tell us they don't have any money. Congress and the federal agencies need to put their money where their laws are. Individuals who

work for agencies that manage lands that cradle our sacred and cultural resources need to move over and make room for tribes, particularly when discussions are being held where decisions will be made that affect our sacred and cultural resources. These agencies need to move into co-management agreements with tribes, where we are equals, where we are peers when it comes to determining treatment and disposition of *our* sacred sites. These federal agencies need to funnel contracts to tribes, to see to it that the work is carried out on these sites to protect them, to preserve them. That's one way to put their money where their laws are: See to it that it gets in the hands of tribes, so that *we* will be directing the decisions for the preservation and protection of these sites.

Our sacred sites belong to *us*. That's a hard thing for some people to hear. But there's no question about it. We indigenous peoples are the only ones, *the only ones*, who can claim an association with those sites. Our elders, our spiritual leaders, our teachers are the only ones who know the true facts about those sites. Not archaeologists, not anthropologists, not historians. Not anybody else but that very, very precious, rare few who, because of our original instructions and teachings, because of our oral histories, know about the facts of these sites. Everything else is speculation and conjecture. And thus, *our* sacred sites, here in *our own* homeland have to be protected and preserved because they matter to *us*. And any perceived archaeological value of these sites has to take a secondary role. In this country, the opposite has always been true. Sacred and cultural sites have been preserved and protected because of a perceived archaeological value that was attached to them. And we can all see what the results of that have been. They have not been protected; they have not been preserved, because archaeologists said they were special. Today, as we're talking, sites that are integral to the living cultures of the indigenous peoples who live along the Missouri River are falling into the water — as we're talking. Our sites have to be protected because they matter to *us*, because they're important to *us*.

Finally, the last thing I want to say about discussions like this forum, is that it's real tempting to co-opt or even exploit what the Native People have to say about their sacred sites. It's really tempting to do that and many times it's really easy to do that, whether we're talking about sacred sites, or environmental justice, or any other issue that's important to Native Peoples. There are always other groups who are interested in these issues also, and sometimes the things that we say get co-opted, and that's a hard thing to bring up in a group where we have a whole bunch of diversity and there's all kinds of people here to talk about this special issue. But I'm going to say it anyway: Those of you who come from outside a tribal environment, be really careful in that you work very hard to make sure all discussions are tribally led, including this one. If your interests intersect with ours, such as environmental groups, work with us. Don't tell us what the issues are, don't tell us how to act, don't tell us what to believe, don't tell us what to say. Because we are here representing sovereign nations and we know exactly what to do. Work with us. We need your help. We are not going to do this good work without the help of people from federal and state agencies, from environmental groups, from people who care about water quality, air quality. We're not going to be able to do it alone, we have to work together, but it's been an experience in the past of tribes that sometimes our issues get exploited, sometimes they get co-opted. So I'm going to be the unpopular one who says that out loud and cautions everybody not to do that. Respect us. We're here doing the best we can. We respect you.

I'm thankful that I got a chance to say these things. I'm grateful for the opportunity

to be able to contribute. Over the next day and a half that we're together I hope to have conversations with each and every one of you. I'm not really as mean as I sound. I'm an open person and it's this kind of discussion, this kind of interaction that is going to make things start to move. And the ones who are going to benefit are the ones down the road who will have a place to pray.

I give you a great thanksgiving for listening to me, and we always close what we're saying. We say, 'That's the way things always were, that's the way it is now, that's the way it always will be.'

## **Vernon Masayesva, Hopi, Director of Black Mesa Trust**

Hello, everybody. I'm from northern Arizona, the Four Corners area. I invited the president of our organization to come with me, so I want him to be recognized, Leonard Selestewa. We were invited here to be part of this forum talking about sacred lands, and we are honored to share what we know and what we are allowed to share. We are a very secretive society and there are a lot of things we can't talk about and a lot of things I don't even know about because I'm not a member of any one of the religious societies. Neither is Leonard. In a Hopi way, we're not really Hopis. We're strangers to our own people. But there are many societies that still practice the rituals, who each have part of the knowledge of the whole Hopi way of life. Not one society knows everything; they all play a part. There is a reason for that. But we can only talk about what Hopis say is common knowledge. We can certainly share our own interpretations, what we think some of our traditions mean. We're not here as authorities or even as spokesmen for the Hopi people. I'm just here as Vernon Masayesva, talking. His feelings, his ideas. Hopefully what I feel are important lessons to every one of us.

Hopi consider the whole universe sacred. There are many places on our reservation that are religious shrines, set up to offer our prayers to the Creator through certain beings like the sun, the eagle, the bear, the snake. So there are shrines to the snake and the eagle, but we don't pray to them, we pray through them for a long healthy life. We are strangers to our own part of the world. We're from a desert country where we get about ten inches of rain a year, which makes rain even more sacred and special to us. We came there, I don't know when, but we came from another world, previous worlds that we all went through. This is the fourth world, and the transition has already started into the fifth according to some of the elders. It's not looking too good at this point, and I think that's why we're all here, to somehow help turn the tide. The river is moving this way and we want it to move it that way; let's all work together to make that happen. Each one of us has a special obligation, a responsibility. We all have energy to make things happen.

In our area we have a pretty darn serious problem. Our groundwater is the only drinking water available to us. We don't have rivers or lakes, we only have what comes down as the rain, which as I've said is very scarce. But underneath us is a huge volume of stored water in aquifers. It was put there 35,000 years ago during the last Ice Age. This is pristine water. It is not only good for quenching your thirst, but it's blessed. You drink lots of that water and you're going to be well. The water has a lot of medicinal value in removing a number of toxins. That water was put there for us when we came to our land from another world, the third world, which Hopis say is somewhere in the south. The Red Cities we call it. That society was destroyed by men themselves. Lots of groups of people ran away for their own safety, and our ancestors were only one of

them. I can just imagine hundreds of groups of people fleeing. It's pretty obvious that as you go away, you are going to try to follow water, especially when you reach the desert — you go seeking water. As you move you seek the water supplies. To make a long, long story short, we ended up following the Colorado River and we emerged in a place you folks call the Grand Canyon. So that place to the Hopis is called the Place of Emergence. It connects us to the motherland, to the place that we left. We emerged from the Grand Canyon and we met a person already living there. We thought we were the first ones but there was a person there already and this person said, "I have only three things. These you have to use *together* and be dedicated to using them and using them in a good way. If you follow my instructions, my laws, you will be here for a long time." So he handed us an ear of corn, a special type of drought-resistant corn that can grow with very little rain, but you have to really work at it. You have to treat corn plants as the living things that they are. Then he gave us a planting stick, a simple planting stick, and he said, "If you use that simple energy, your energy, use that little stick to plant the corn, you'll have food for the rest of your life, for many generations to come." Then he gave us a gourd of water. I think that gourd of water represents what the hydrologists call the Navajo aquifer, which is the sole source of water for the Hopi people. Pristine water, mineralized water, 35,000 year-old Ice Age water.

We agreed that we would treat all of these things honorably and use them together according to the instructions. So we entered into an agreement of sorts, a compact, that if we followed the instructions we would be blessed, a blessed people, and that we would share our knowledge with the rest of the world, not just Hopis. That is why Hopis universally pray. When our priests make a prayer it's not just about the Hopis, it's the whole of living beings all over the world. This is why when a Hopi priest takes over a certain event when the time has come, like the snake ceremony for example, the head of that village steps down and the priest steps up and he then assumes the whole earth as his responsibility. That's the way we practice our religion.

We broke that compact in 1966. The Hopis sold water under tremendous pressure and deception and illegality. We were forced to sell it. Why? Because the outside world was building cities too fast. It was building golf courses like crazy; they need lots of water. The idea was to bring water from the Colorado River, pump it uphill over 300 miles to Tucson. The problem is, there was no energy to run those pumps. So an idea was born to use Hopi/Navajo coal. We have one of the richest deposits of coal in the country, the best coal you can find. This coal was needed to provide electric power to run the pumps to bring water from the Colorado River to Tucson. It's now been happening for thirty years. Pristine water from a waterless country is pumped at the rate of 3.3 million gallons a day. Right now, that amount's going to be permanently lost. We've lost over 40 billion gallons. The mining is going to keep going on because the coal people have put coal back on center stage as a source of cheap electricity. And we're going to be rolled over, Indians, not just Hopis but also other tribes that have coal. You'd better watch out because they're coming after you, in the name of national security, because we're in a state of war. So these are not easy times for anyone.

But all I can say in regards to the sacred place is this: If you fly over Black Mesa, you see an extended hand. It is the highest point on our reservation. The hand is literally cut off from the arm, and it drops off 600 feet into an area called Monument Valley. You can see the hand. Mr. Wilkinson was the first one who brought that to my attention. Now the Black Hand is very prominent in our supernatural beings that we call *kachina*.

There is one that has a hand [design] on the face. We call that the Water Keeper. Now it's obvious to me why they call that the Water Keeper. That hand is holding one of the three things; the corn seed, the gourd of water and the planting stick. The three essential things that we were told; if we cannot forget these, if we can treat these honorably, we would be here a long time. We haven't done that.

Now, it bothers the old elders because we did something wrong, and we *have* to suffer. We have already accepted the consequences that we're going to be punished. The only thing we can do, according to the elders, is to try and limit or control the severity of the punishment. In its severest form, the punishment is that we have to abandon our homeland, and that's pretty obvious because if you run out of water, you're not going to stay there. We don't want to do an exodus where kids are asked to pack up their belongings and start moving out again. There's a prophecy song written in the early 1900s that one man still remembers and it is specific. It describes beautifully what would happen to us if we sell rainwater. We will pack up our bags, our belongings and with little tin cups in our hands we'll visit place where water used to breathe. Springs are breathing holes to the Hopis. The underground water sucks in moisture from the clouds and has to breathe it out. That's what springs are. So we see it as a living entity, a breathing, living entity. Water is breath. Water is life. The whole system breathes. Western scientists see layers of aquifers that are discrete. They talk about a confined Navajo aquifer. But the Hopis don't see it that way. They see a very complex living system just like your body; your toes are connected to your ear. It's not separate. The problem is that western scientists do not know cultural values. They never will. They can't measure it. They can't weigh it, see it. They might see it, but they can't measure it, therefore it's not a real science to them. So it's kind of pushed aside. And then their science takes over, and *that* is some sort of injustice right there, where their science is superior to ours. Hopis say that's not the case. *Both* have value and *both* need to come together, and I think that's what we need to say to the people who study our hydrology. They need to begin to see it from our perspective. And they need to also help us get more information about laws and regulations that govern our environment. When environmental impact studies were done on Black Mesa for the mining, the Environmental Protection Agency in 1990 raised lots of concerns and criticisms about the conclusions of the study and the way it was done. It was about a 30-page, very scathing, critical commentary about the way the scientists did the study, and certainly did not agree with the conclusion that the mining of our water is having no impact. But then they produced that report and it vanished into the air. We haven't heard from them. I've written them now three times asking them, "What did you do with all these comments and concerns that you brought out?" I have yet to receive an answer, and I've been writing them now for the last three to five years. So I think we need to get a little more serious about this and begin to teach the NGO's, the environmental organizations that are coming up now to all the Indian countries. These are Indian people, grassroots people that are really concerned about what's happening to the environment. And one of our problems is with our own tribal government. They're so focused on gaming they forgot beliefs. We don't have any tribal leader up there, center stage, talking about reverence for the land, for air. Where are these people? Their voice is very quiet. But we have grassroots people that are now cropping up and bringing up issues that need to be brought up. We need a lot of help in those areas. So thank you for listening to me.

## Charles Wilkinson, Professor of Law, University of Colorado

I'd like to thank Toby McLeod for putting in years of work on the film, but also for being someone who is committed to the ideas and the movement in the film to want to carry it one beyond that. When you think about it, that's very unusual for a filmmaker to try to take their work beyond the film the way Toby is doing here.

I thought I'd offer a few reflections on the state of advocacy for access of Indian people to sacred sites, with the idea that this is a good time to take stock, to strategize, and it is true that when three million people, maybe more, have been exposed to a powerful idea [from the recent airing on PBS of Toby McLeod's film, *In the Light of Reverence*] it can matter, and we ought to try and take advantage of that in the best way we can. The Indian people here, and those of us who are their supporters, appreciate the change that natives have brought to their homelands over the past two generations. Sovereignty is a living, breathing concept now in a way that it wasn't then. It's been hard work. It seems to me that the advocacy for culture, for traditional practices, has been somewhat less intense and widespread than it has been for some other crucial issues, including sovereignty itself, the right to govern on a reservation. Water rights, hunting and fishing rights, gaming I think have been given somewhat more attention.

Maybe these are some of the reasons: When tribal leaders in the late 1960s and 1970s started to make their stand, there really was a sense that it was critical to work on sovereignty first, to re-establish the government-to-government relationship, to establish, among other things, tribal control over tribal lands so they wouldn't be sold off and so that we wouldn't be here today talking about access to former reservation lands totaling sixty million acres in the lower forty-eight [states]. Establishing sovereignty over that land base really was critical and maybe was a job that had to be done at the beginning.

Another factor is that, and correct me if I'm mistaken, in almost all tribes, the work of political leadership traditionally has been done by different people than the work of carrying on the spirituality and the traditions. So it may be that the leaders tended to focus somewhat more on political matters and governmental matters. And think how almost impossible it was in the 1970s and 1980s, after a century of cultural suppression, when it was official government policy to wring the Indian-ness out of Indian people, think how remarkable it was that there were the cultures there and how hard it was to begin to reassert them. Many of you know of the types of education that continued into the 1950s, and to some extent into the 1960s, in the BIA boarding schools, in the day schools, in the church schools; where you weren't allowed to wear your hair in braids, you weren't allowed to wear native clothing or to speak the language or to do the ceremonies. You had other ceremonies you were supposed to do. Just pause for all of us to appreciate one example: what was done to Sun Dance. It was outlawed as a matter of federal law in the 1880s. People said that the last Sun Dance was held in the mid-1880s. Well, of course, it wasn't. Now we understand that it went underground, but it was deep underground and it was hard to hold Sun Dance because it was illegal. Even in the 1950s you had to get a permit from the Interior Department to do a Sun Dance with piercing. That's a century of outright suppression of cultures and religions of all tribes. I think it was hard. Traditional practitioners are by and large private, in the sense that the ceremonies are private, and they certainly aren't proselytizers. Indian religions have never done that. So maybe there was a sense in which having to get involved in public policy was something that was not at that time in the bloodstream of traditional people.

There has been a lot accomplished in the last twenty years. The American Indian Religious Freedom Act was passed in 1978. In my view, I think that's going to become an increasingly important law, in spite of the difficulties we have seen. NAGPRA [Native American Graves Protection and Repatriation Act] passed in 1990, like a number of these efforts, supported in important part by the Native American Rights Fund here in Boulder; Walter Echo-Hawk, Steve Moore. The peyote legislation went through, and you can point to number of other accomplishments that have been hard earned. Again, it seems to me that overall the modern Indian movement has given somewhat less attention to those issues than some others. That may well be changing. I think there's fierce pride, and it's often private, but fierce pride in Indian country over the revival of tradition. Just in the past ten, fifteen years, I think we've seen it on most reservations. We see the dances. We see the language coming back as best we can do it, hard though that is. We see, I think, individual people giving increased attention. But I hope the councils — and I say that very respectfully — I hope that the councils give more attention to it. I hope that the federal agencies do. We have now, in most federal offices, able and committed Indian advocates who also are advocates for their agencies, committed to that work. They're valuable people who are pushing the envelope. We have people here from EPA, from the Park Service, the Forest Service and I'm quite sure others, where there's hard work going on inside the agencies. We need to see more of it there; we need to see more of it from foundations, from state agencies, and from the general public. I do think that this is an issue that resonates with most American people, because of trying to keep these traditions alive and flourishing through the old ceremonies.

To mention three areas, and you can look at these and certainly many others. One is the states. I think we should be giving increasing attention to legislation at the state level. There's been quite a bit of it, actually, when you start to piece it together. That includes Hawaii. Sometimes here on the mainland we forget the real nobility of the Hawaiian practitioners, who really deserve our support. They don't have a land base. They don't have their sovereignty established. I think it's going to be, but not yet. They have established some laws and won some court cases that are of real significance.

Secondly, I think that part of the access work can be achieved under the right circumstances. One thing that Toby McLeod's film brings out is that there have been quite notable efforts in the federal agencies to try and provide honor and access to sacred sites. But we have the *Lyng* case, the Indian cemetery case, [*Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439, (1988)] which was a case that we won in the Ninth Circuit, and I've always felt that maybe the real reason we won that case was that the trial judge was originally predisposed against the practitioners, and then the practitioners came in and testified, and the judge could see their sincerity and see that these weren't some New Age environmentalists trying to stop a bad timber road, and that these were sincere people that came from a tradition of many centuries. The Ninth Circuit affirmed, and the Supreme Court is so remote. It was a great thing this summer when Justice O'Connor and Justice Breyer went out to Navajo and Wind River and saw the court systems. I hope we can do more of that because it puts humanity into it. In the Indian cemetery case the judges in Washington are sitting there, in Washington, with a cold record in front of them, a paper record, and you can't present the flesh and blood the way you can at trial. So that case was lost and the Court found that the Forest Service had authority to put the GO Road through even though it was going to interfere with the ceremonies. What I just asked you, and I think it's really key to achieving some

successes, some of which are going to be modest, some of which are going to be more than that, what the opinion said is that, yes, the Forest Service had authority to build that road, but the Court also said that the Forest Service had authority *not* to build the road in order to accommodate the Indian religion. So the *Lyng* case can be seen, and I think the authorities increasingly understand that as a statement of broad discretion for the agencies to accommodate — that's the constitutional term that the Court uses — to accommodate Indian religious practice. Some of the good agency work that was done at Bear's Lodge, or Devils Tower, was done in that spirit; being able to accommodate. I think more can be done and it takes patient work, but the American Indian Religious Freedom Act (AIRFA) directs agencies, and it is a statement of policy, the Court has found that now, it's not a requirement, but it's a policy direction to the agencies to allow access and to respect the religions and accommodate them. We lost a very painful case, and the practitioners would be a lot better off if the *Lyng* case had said that the agencies were *required* to protect. But at least it said they're allowed to, and that helps because we have among the many other difficulties, the problem of agency people who are taught that these are public lands and everybody has to be treated equally. It's a way of understanding how it is permissible to respond to the unique circumstances of a particular group and treat them fairly, and AIRFA requires that. The findings in AIRFA refer to the long suppression of Indian religions. So I urge you to work that through and think of AIRFA as a law that is a direction to the federal land agencies, and *Lyng* is a case that allows them broad discretion to support the practitioners. That's obviously not going to work all the time, but it is working considerably more now than it was a few years ago. There's considerable movement [toward that] in the agencies. It's never going to be as much as tribal people are going to want, but there's been significant movement and I think we ought to continue to work on that.

Lastly, I do think that it's necessary for people who care about traditional access to begin work in a serious way on a statute that will make it mandatory for the agencies to respect and protect tribal ceremonies fully. This is a particular time in Congress; we all appreciate the difficulties right now. But it's not a year, or maybe even next Congress, to pass a bill in. But it does seem to me that it is a Congress in which to introduce a bill and begin to work toward hearings that will begin to clarify these issues and the importance of them. We can't be impatient on it, but we can expect results and within a reasonable time period. There are very powerful advocates for tribes. We have to appreciate that. Senator Inouye has been in Congress since Hawaii's statehood in 1959 and he came as a Congressman in 1960. He's in his seventies and he's been the greatest Indian legislator in history. He will support what the tribes propose but it's getting near the end of his time. So we need to be patient and recognize that it's not going to happen immediately, but it's a proposal that's deserving and we ought to see that it gets the respect and the treatment in Congress and in the early hearings that it deserves. This can be a very rough country in a number of ways, but the truth is that if there's an idea with heart and soul behind it and if it is given the attention that it deserves, the push by its advocates, in time that idea will be accepted. I certainly believe this idea is deserving enough to fit that description. Thank you very much.



## **James Pace, Acting Director of The Office of American Indian Trust, U.S. Department of the Interior**

Charles [Wilkinson] touched on a number of issues, one of which I think is paramount to what we're going to see here today, and speaking as a federal official, I just wanted to point that out. It's the issue of change. You're looking at a person who looks at the year 1953 with a great deal of joy and a great deal of disappointment. A great deal of disappointment because that was the beginning of the Termination Era when the federal government tried to get out of the "Indian business" as was written in the Washington Post. Great joy because that was the year that my mother gave birth to a wonderful son, yours truly. It's interesting because what you're looking at right now is the personification of 48 years of major changes in Indian policy. As you talk about change, I wanted to give you a little background history on our office. The Office of American Indian Trust is a manifestation of some of that change. We were created in 1992. We are not part of the Bureau of Indian Affairs. We were put in the office of the Secretary [of the Interior] to perform four major tasks. The first was oversight. In the last 48 years we've watched a major transition from termination to self-determination, government empowerment in Indian country, and with that has come a new relationship with the federal government. It's no longer a matter of tribes going to the Bureau and saying "Mother may I?" Now they take issues into their own hands, they're managing their own programs, and they work with the federal government in a different way. In order to expedite the manner in which they're able to be constructive when they work with the federal government, we were created to provide kind of a liaison office, an outreach office, an oversight office that would be there to work with them. In fact, when you [Vernon Masayesva] were speaking about the issues that you've been having, trying to get answers to your questions, and the letters that you've been writing to these agencies, we're the agency you can come to; where we can go, as a Secretarial office, and talk to these people and get you those answers. In many circumstances we've been able to accomplish this. We're pretty proud of our record. It's only been nine years and already we've been able to help a number of tribes get in contact with the federal agencies they need to be working with and work with them directly.

With regards to oversight, I was talking a little bit about self-determination and you heard a little bit about that. We are also the office that works with tribes to ensure the Secretary's trust responsibility is being acted upon and recognized by all the agencies that they're supposed to be working with. So, also a major change, a major switch if you will, working with tribes to ensure the trust responsibility is being met instead of governing over them, to make sure the federal government's meeting it's responsibility.

Outreach, well, you're kind of witnessing some of that. We participate in numerous panels, we go out and we try to educate on the issues of trust responsibility, sovereignty, working government-to-government, the need for consultation when federal agencies are working with tribes. Not new concepts, but ones that federal agencies need to understand and quite frankly do not. Many times it's not a matter of a federal agent or agency not wanting to do the right thing, it's that they honestly don't know how to work with an Indian tribe. We try to help and cross that bridge.

And then, of course, the fourth element of our office is policy development. In that, we developed the consultation policy that the Bureau of Indian Affairs currently uses. It was signed last year and we are now trying to get that departmentalized, so in other words all of the agencies and bureaus within the Department of Interior will have a

consultation schematic that they can use whenever their efforts in land management are going to impact upon tribal resources, whether they are the actual physical resources, sacred sites, what have you. And bringing up sacred sites, it was our office that was charged with developing the internal departmental policies to implement Executive Order 13007, which was the sacred sites executive order that was written and signed by President Clinton in May of 1996, and this was kind of the next step, if you will, in what Charles [Wilkinson] was addressing earlier about accommodation. What the executive order was designed to do — and did, in fact, in Interior — was to create a mandate on federal agencies to go and develop policies so that they would be able to accommodate sacred sites and the interest of sacred sites by American Indian and Alaskan Native Peoples.

Now, the way that that happened, when we began that process, we went out and started the process with consultation. We took the sacred sites executive order and we sent out a proposed departmental manual for implementation of that order, and we called a large scoping meeting of all tribes. We had three national consultation meetings, of which Charles [Wilkinson] and Patricia [Parker] were a part. Out of those consultation meetings came a lot of feedback, in fact the report I have right here is the report that was sent to the White House on all of those meetings. Primarily, there were a number of key points that I'm not going to go over here, because they were put onto a card that is out on the information table. Hopefully you've all been able to get a copy of this. The full text of the report is available on our website, listed on the bottom of that card. The crux of this was that every bureau and office in the Department of Interior, every land management agency, was required to recognize the accommodation of tribes with regards to sacred sites and to go out and develop their own policies so that whenever their actions impacted upon the sacred site area, they were going to meet with the tribes and consult with them to accommodate those interests.

There are a couple of issues that came out of this consultation that are contained in this report as well and things that I hope will come up during this forum. Some of the issues that we ran into were: Number one, on consultation itself. If you have a tribe that needs to consult with the federal government on some action that's being taken, how are they going to afford those consultations? Tribal communities are definitely not in Washington DC, and getting back and forth to federal offices is quite a major expense. How do we deal with that? Some of us would argue that there should be some kind of congressional appropriation for that. There was one recently for the states so that they could work with the tribes, and it seems only fitting that there be one for the tribes so that they can work with the federal government on a government-to-government basis, which you've heard so much about. The issue of fees that are currently charged: OMB Circular 875 allows for federal agencies to charge fees when you go onto parklands and so forth. Is it right to charge a fee to an American Indian religious practitioner to go out onto their sacred lands and practice their religion? Shouldn't there be something allowed in the form of a waiver perhaps, or a change in legislation, perhaps in the legislative process that may take place as a result of this forum here, and I certainly hope we're able to do something in that regard. But these are just a few of the issues and I'm sure more of them will be coming up.

I would like to just close my brief comments here by saying that it is an incredible honor for me to be here to speak to you about this. I am deeply honored to be a member of this panel. And I would just like to give my welcome to all the tribal leaders that

are here today and thank you for allowing me to speak before you. Thank you very much.

## **Patricia Parker, Chief of the American Indian Liaison Office, National Park Service**

I'd like to thank Toby [McLeod] and Chris [Peters] for inviting me, and it's nice to see so many old friends out in the audience. I'm going to keep my comments very, very brief and basically key off of some of the things some of the other speakers have said. All of the speakers have mentioned what I think of as the Three C's: consultation, cooperation or cooperative agreements, and contracts. I wanted to tell you a little bit about how the National Park Service is dealing with those three C's. I also want to talk about the fees. Jim mentioned a general question: Should American Indian people have to pay to, let's say, get into a national park to practice their religion? And the answer is no, of course they shouldn't. The National Park Service for years has had a waiver policy so that we do waive fees. We have a bureaucratic-speak about it; we call it American Indians entering national parks for what we call 'non-recreational purposes'. But that's really just bureaucrat-speak for the ability to practice their religions. The logic would be that if they were coming in to run a motorboat or go fishing, we'd charge them just like everybody else, but if they were coming in to practice their religion then we'd waive the fees.

I think in terms of contracts, I think that we're doing better than we ever have before. One of the contracts that we just recently negotiated with an Indian tribe was with the Yurok Tribe so they're doing watershed management for us in Redwood National Park.

In terms of consultation I think we're doing better, too. For the first time just within the last five years we have cooperated with Indian tribes in our NEPA process so that they become cooperating agencies. We've had the authority to do that for years but we've just never done it. Now people are beginning to think in those kinds of terms. We do not have a separate sacred site policy. Our policy that implements the executive order that Jim [Pace] was talking about is written throughout all the national park service management policies, which we just published in 2001.

It should not be surprising to anyone that places that become national parks are evocative places and they're evocative to people; they're the places that people want to save, that people want to preserve — we're a protection agency. But it only stands to reason that the places that are evocative to non-Indian people are certainly going to be evocative to Indian people and most of our national parks are going to contain sacred sites. So the issue is there.

Often those parks, though, have been set aside for protection as natural resources, as natural landscapes, and people are only now beginning to think about them as cultural landscapes, places of the ancestral peoples. For example, we're beginning to discuss re-nominating Hawaii Volcanoes National Park to the World Heritage List as a cultural site for its value to the native Hawaiian peoples, so that it will be recognized on the international list of places that are worthy of protection because of their importance to indigenous people. We're thinking about the same thing with the Medicine Wheel in northern Wyoming. We're working on Medicine Wheel, too, even though it is administered by the U.S. Forest Service. We end up being involved with it because we oversee the National Register/National Historic Landmarks program.

Charles [Wilkinson] mentioned accommodation. That's a term of art, to 'accommodate' the needs of American Indian religious practitioners. In the Park Service, we don't have too much trouble, and correct me if I'm wrong because you may have individual experiences that will negate what I'm saying here, but except in those places that are designated wilderness, where there may be some access issues for elderly people who need to get into the area to practice their religion, the accommodation to access to place is not as difficult for us as some other kinds of accommodations, particularly to accommodate the needs of American Indian religious practitioners for privacy during the ceremonies. We let everybody in, the problem is keeping everybody else out. That's really the problem. We had that problem at Rainbow Bridge and we were sued when we tried to protect the Navajos and give their religious practitioners the privacy they needed to conduct their ceremonies. People said we were excluding the rest of the American public. So that's something we have yet to resolve.

The other thing that we haven't resolved either, and it's a form of accommodation, is the need of American Indian people to protect the confidentiality of information. It's a very serious issue. As soon as you tell me [as a federal employee] why the Medicine Wheel is important and I write it down, it's almost impossible to not give it out. So that is an unresolved issue and I'm not exactly sure how it's going to play out.

We don't manage churches. There are churches in national parks, but we don't own them. For example, the San Antonio Mission. That is owned by the Catholic Church and we take care of the grounds. Some people would say that Bear's Lodge is a church from an American Indian perspective. But one of the other unresolved issues with churches, whether they're on national park land or they're on private land, is that it's very difficult to get permission to use federal money to take care of them as structures. It's a huge problem in Alaska where there are many, many old wooden churches and we're not allowed to give money to protect them the same way we would be able to give money to protect other sites that are listed on the National Register of Historic Places. That's all I've got to say. Thank you.

## ADDITIONAL PANEL COMMENTS

### **Chris Peters**

Accommodation. We hear accommodation a lot today. Is that the current disposition—that the religious rights of the first Americans have been reduced to an accommodation? It's an alarming word for me when I hear accommodation, when we as Native Peoples understand and recognize the spirit of this land and we give homage to the spirit.

Snoqualmie Falls in Washington, Mt. Hood in Oregon, Medicine Lake in California, Red Butte in Arizona, Mt. Graham in Arizona, Zuni Salt Lake in New Mexico, Petroglyph National Monument in New Mexico, Badger Two Medicine in Montana, Sweet Grass Hills in Montana, Alaska National Wildlife Refuge, Yucca Mountain and the list continues on and on and on. I guess the first question I have for the panel is, "What the hell happened?" Why are all of these places facing imminent destruction? What's going to result from it?

## **Pemina Yellow Bird**

Those sites and many, many, many others like them are being impacted, destroyed, or they're endangered because federal agencies and other land management groups and other people who have responsibility to protect them didn't fulfill their responsibilities. There's been a level of criminal neglect on the part of individual agencies who were supposed to protect those sites. Where they occur on private land or state land, nobody cares about them except the people who created the site, who have to depend on them to revitalize our cultures, to continue life.

The almighty dollar has run amok in this country and everything has crumpled before it, including places that are holy and necessary to Native Peoples.

Look at our holy and mysterious Grandfather, the Missouri River. He's got all those dams on him; that was for money. The communities that were protected from flooding of the river — ALL non-Native communities. The Native lands were deliberately selected to flood because we were not able to defend ourselves during those years, not litigatively, not legislatively. The decisions were already made without consulting or even notifying the tribes, let alone hearing what we had to say about it.

There's elders here in the audience who can tell you what our tribes tried to do to prevent those dams from being built on the river and flooding us out of our homelands. There's elders sitting right there who can tell you what they lost when our lands were taken by the Army Corps and flooded. Features and holy sites that figured in our sacred origin stories, our oral history; they're under the water.

Our elders continue to tell us about them and describe them to us; none of us will ever see them again. And why is that? It's because nobody cared about them. They disappeared in the face of an unquenchable greed to make money, to control a river, to develop, and because there were individuals who worked for federal and state agencies that managed land that are guilty of a criminal negligence of their duties to protect those sites.

## **Jim Pace**

This is one of the big challenges facing us. In the last 200 years, laws have been passed and enacted that are still on the books that fly in the face of what we're trying to do here, which is to increase sensitivity and go past the issue of accommodation with regard to sacred sites and sacred areas.

If you take a look back, it doesn't take very long to see, with the Bureau of Land Management, for instance. You've got what's called the Federal Land Policy and Management Act of 1976, which established certain rights of way for developing, certain land use principles that are law. And the problem is that when that law was written there was no concern for sacred sites.

And some of those areas that have now been established, they're on the books as law. The damage has been done; the site is still sacred, but will never be the same. It has been compromised. This is when we get into issues of integrity. It has changed. Look at the Black Hills. Someone had the unmitigated gall to go carve a bunch of faces in the side of a mountain.

Can we reverse history? No we cannot. But all those things that were done, we can look forward. And that's what we need to do here now, is look forward. We need to change some of those laws; we need to talk about, I think, a legislative remedy; we need to look at internal policy development certainly, but that's only going to go so far.

I stand before you as an individual who writes policy within the Department of Interior as a land management agency and I can tell you that we can't change FLPMA, and we can't change the Mining Act of 1872, which also needs to be changed. You talk about hot issues, wait until you bring up the Mining Act and the changes that need to be made to them. You've got special interests, you've got lots of money.

And what we need to do as a federal agency and as tribal entities is work together for what is right. And hopefully we can make positive changes. And if we're going to do that we do need to work together, we do need to make sure we're changing policy internally, we need to make sure we're going for legislative remedies, because there is an ethical and moral obligation on the federal government and on the part of American business.

## Appendix 2

### TRANSCRIPTION OF MISCELLANEOUS REMARKS (WEDNESDAY)

#### **Carol Rushin, Assistant Regional Administrator, Enforcement, Compliance and Environmental Justice**

*The following comments were made as a welcome to the Wednesday session at EPA offices in Denver.*

It is my great pleasure to welcome you here to EPA and to Denver. I know that many of you have traveled to be here today and I appreciate your efforts, your patience and your courage. I would like to recognize for a moment, some of the tribal leadership that's here as well as our elders and our other distinguished guests.

I'd like to first start with Chairman Bourland, Chairman of the Cheyenne River Sioux.

Johnson Holy Rock, Fifth Member, Oglala Lakota (not present)

Elaine Quiver, Lakota, Grey Eagle Society

Jim Pace (had to leave early)

Toby McLeod, director of the film, *In the Light of Reverence*

Patricia Parker, Chief of the American Indian Liaison office of the National Park Service

Let me take just a brief moment to talk a little bit about EPA's mission of protecting the environment and health of our citizens, which lends itself to the challenge and shared responsibility of protecting sacred lands.

We have a federal trust responsibility for the protection of the environment, the resources, and the health and welfare of this nation, especially the first nations. We've been able to do this through several of our environmental programs, such as our NEPA and environmental justice programs.

We are trying to build partnerships and capacity within tribal governments and communities. We think this is our foremost priority, which produces the best and most responsive results.

So I am honored that today, together with the Natural Resources Law Center and our other partners, we will host this gathering where you, who know best the struggles and challenges at hand, can focus on developing the strategies to protect sacred lands and resources. I wish you a successful continuation of what I understand was a high energy dialogue and I look forward to hearing the results of your efforts today.

Thank you once again for coming.

#### **Lori Windle, White Earth Ojibwe, of the American Indian Program Council of the Denver Federal Executive Board**

*The following comments were made as a welcome to the Wednesday session at EPA offices in Denver.*

The AIPC is a special emphasis subcommittee. It is an interagency group under the federal executive board in Denver. We concentrate on increasing the concentration of

American Indians in the federal work force, as well as visibility, and we try to educate federal staff on American Indian issues.

I've known Liz [Evans] and Deldi [Reyes] for about five years now, when I was part of the environmental justice team in my agency, the Office of Surface Mining. When Deldi asked me to be part of the planning group for this, I jumped on it right away.

Welcome to Denver on behalf on AIPC.

## **Elaine Quiver, Grey Eagle Society**

*The following comments followed Marlon Sherman's reflections on the Tuesday sessions.*

I wanted to ask a question here. There are a lot of programs here and each individual that's in this room has their own idea of how to send something out to the public and hope that the public will comprehend what's in that publication.

I worked many years with children. Elderly and each generation has a different way of learning something, and this is something that I was thinking and I better say it now before I forget again. I'm getting old now, so I forget things.

The 3rd graders today are the only ones that listen in school, so the 3rd grade language is more valid today than the letters I would write. But we expect people to use language, like he said [referring to Marlon Sherman's reference to Charles Wilkinson's comments on the legal term "accommodation"], "accommodation"—everybody will think, are they going to pay our room, are they going to pay our meals, are they going to pay per diem? That's what it means to a lot of them.

We need to break down and explain to children. Today there are so many. So many children, parents going here and there, so the children sort of raise themselves and they have a street language.

As an elderly, I have worked with elderly in Pine Ridge, talking to the children, so they all have the same grade level the grandmas has, both English and Lakota.

This is something we have to overcome. Everybody's working today. All the mothers, even if they get welfare, they have to be out of the house four hours to get the welfare.

So we have to think about the common knowledge, like Greg said, the seven generations have to understand what we're facing. How do we get across the history, from 1492 to 2002, to let a child know what's ahead of them and what's happened in the past? I could read what's written and explain it to the grandmas, but the grandmas have to know what the laws are, for the child. As a foster grandparent working in the schools, the child has to understand. But the grandma has maybe less than the 6th grade. But they're very kind to the children. The children listen to the grandma.

We need — Deldi [Reyes] has to write at the third grade level, sixth grade language and high school. I think only a professional might be able, could read the laws that are put out. This is something we have to realize — we have to accommodate a child that's going to grow up and go to school longer than I did. This is something that's a reality. It isn't a myth, it's a reality — that we have to prepare our children for the future.



## Introduction to the Wednesday Screening of *In the Light of Reverence* by Christopher McLeod

*The following comments were made by Christopher (Toby) McLeod as an introduction to the film screening at the EPA offices in Denver.*

We're in the middle of a two-day process — a very meaningful coming together of Native American activists, who are fighting to protect sacred places, and of government agency personnel from EPA, BLM, Department of Energy, and the Department of Defense. It's an amazing thing to have all these folks talking about the history of sacred lands protection and destruction.

In the course of the film, you're going to see many sacred places that are being destroyed. I think it is very important to recognize that while it's optimistic to dialogue and come up with strategies to protect these places, there is a lot of history of destruction, and that's really what the film is about.

I made a film 20 years ago, about the Hopi / Navajo energy situation and the Peabody coal stripmine. As much as I wanted to talk about environmental issues, all the elders wanted to talk about was sacred places: the sacredness of water, how important the shrines are, how far back in time these places have had meaning, the emotional connection that each clan, each village has to these places, and, the frustration that they felt. Even though lots of tourists come to the Hopi villages to watch the *kachina* dances, and hang out with elders and leave a little money behind, they didn't really understand.

And as a filmmaker, and a relatively well-educated person, I didn't understand what the elders were talking about either, in terms of the meaning and importance of sacred places. This was around 1980. So, over the years, my job description eventually became “translator” and “cultural bridge,” as I recognized that if non-Indian culture — from school teachers to judges to Park Service rangers — doesn't understand these culturally significant places, and their history, then how are we going to have any meaningful dialogue?

I think that the terrorist attacks that we've just experienced are directly linked to a history of arrogance, to ignorance of history, and to a lack of respect for the emotional feelings that people have for places they consider to be holy. When you have outside forces that don't respect that, and don't care, it's a very dangerous situation. We've had that here for 500 years on this land, too.

That's what this film is meant to address and to bring out, to facilitate dialogue and get people talking to recognize this history and these important issues.

It took ten years to make *In the Light of Reverence* because I'm obviously a white male, and I was coming into Native communities saying, “Hi, I want to help you protect your sacred sites, and to do that I would like permission to film your ceremonies.” I'd been around long enough to know what a loaded proposition that was, and still is.

I had to make it clear that this is a non-profit project. I see Elaine Quiver standing in the back of the room, and with Elaine and many others there had to be a lot of trust developed, and a sense of integrity that this was really for public education, before these communities could take the risk of exposing themselves to internal division, and revealing things that aren't supposed to be revealed. Elaine and her community were gracious enough to let us film a pipe ceremony, which is just not done, is not right. I hope that we did it in a right way, and that we're using it in the right way...but to do

that, we had to promise to come back with both a rough cut and a fine cut of the film, and to show it to ensure that we weren't taking things out of context, or misrepresenting things, or showing things that we shouldn't be showing.

With each of the three communities, in the process of this consultation, we changed some narration. In the case of the Hopi, we took out some historic photos. In the Wintu segment of the film, they sing a healing song and they wanted us not to have the entire song. It was fine to have some of the song, but their concern was that if the whole song was in the film, they'd go up to their sacred spring on Mt. Shasta and find New Age folks singing to the spring, and if they had all of the words, it would really upset the spiritual balance of the place. So, we cut out some words and avoided doing unintentional harm, and that kind of consultation process is why it took ten years, and it's an important part of the history of the film. And it's a much better film because of that consultation.

Thanks very much for coming. I'll be happy to answer questions after the screening.

## Appendix 3

# TRANSCRIPTION OF GROUP SACRED LANDS HISTORY AND CHAIRMAN BOURLAND'S COMMENTS

*The following list of events was compiled from the collective experience of the Forum participants on Wednesday morning.*

1492, Landing of Columbus. Put on notice the sacred seen in different perspective than us. Invaders see it as an economic opportunity for exploitation — we see it as sacred and to conserve it for the future.

Our problems (native) began when Chris came on his boat.

Early 1800s, “First Contact” Black Hills.

Early 1800s, Broken treaties on Sacred Lands.

Early 1800s, The designation of reservations.

1868, Black Hills claim, ongoing.

1868, Fort Laramie Treaty.

1872, Mining Act.

1906, Antiquities Act.

1930s, Indian Reorganization Act.

1930s, Columbia River Projects.

1940s, fight began for Taos Blue Lake creation site.

1944, Pick-Sloan Flood Control Act for dams on Missouri River.

1950s–1960s, Dam construction.

1950s, Indian Land Claims.

1960s, Cochiti Dam floods canyons, with sacred shrines and petroglyphs.

1960s, Alcatraz takeover.

1960, Glen Canyon Dam construction.

1960, Our ceremonial grounds were located on private land that passed on by lease.

Worked to buy it back.

1964, Rafting the Colorado. Juxtaposition of canyon's beauty with the Glen Canyon Dam.

1960s, Missouri River system of mainstem dam.

1966, National Historic Preservation Act (NHPA).

1966, Black Mesa coal leases and mining of waters from Navajo sandstone.

1969, National Environmental Protection Act (NEPA).

1970, Taos Blue lake returned to Taos Pueblo.

About 1970, Mekong River Development stopped, 56 dams in Southeast Asia.

Early 1970s, Longtong Conservation District established in Nepal as Mount Everest National Park.

1970s, NEPA issues and BIA consideration (or lack thereof) of Indian issues in the NEPA process.

1970s, Glen Canyon Dam.

1970s, Blue Lake Restoration.

1973, Haskell.

1973, American Indian Movement.

1975, GO Road controversy in California.

1976-1977, Micronesia site and airport tower issue.

1977, Black Mesa, strip mining by Peabody Coal.

1978, Spiritual (Native American) leaders sent to UN.

1978, Longest walk, (AIM).

1978, Orem Dam near Phoenix.

1978, American Indian Religious Freedom Act (AIRFA).

1978, Iowa — first state to protect Native American burials.

1979, Northern Cheyenne coal bed leasing issue. Indians acknowledged as mineral owners.

1979, Preparation of AIRFA Report.

Early 1980s, Alaska Wildlands Protection.

1980, Voight Decision on hunting and fishing. Wisconsin, Minnesota, and Michigan.

1980s, Big Mountain Struggle. (personal entrance into the fight).

1980–85. American Indians Against Desecration (movement through the West).

1984, Reburial of 6000 year old human remains at Fitzgibbons site (across from Slack Farm, Kentucky).

1985, Uranium mining in a deity's house.

1986, Wind River, Wyoming.

1985, Formation of ND Intertribal Reinternment Committee.

1989, Passed ND State Burial Protection Law.

Late 1980s, return of Zuni Heaven to Zuni Pueblo.

1988, GO Road case decided by U.S. Supreme Court.

1988, in South Dakota, Native American Day.

1988, Medicine Wheel Coalition begins in Wyoming.

1988–89, Kaayella, southern Utah, worked to prevent drilling (oil and gas) on land where sacred plants grow.

1989, Smithsonian National Museum of the American Indian.

1989, Master Manual Revision — Operation of Missouri River mainstem.

1990, Founding member of the Indigenous Environmental Network. Being a clearing house of information; created documentation of sacred site threats across the nation.

1990, Bulletin 38, National Historic Preservation Act, Traditional Cultural Properties.

1990, GO Road Coalition.

1990–1994, Formation of AIRFA Coalition, to put teeth in the law.

1990s, Arkansas Peak in Boulder County.

1990, ongoing Comprehensive Land Use Planning, Lower Brule, SD.

1990, Native American Graves Protection and Repatriation Act (NAGPRA).

1991, Petroglyph National Monument (NM) fight begins.

1991, Tonanztin Indigenous Youth Petroglyph Protest.

1992, NHPA amendments.

1992, Revisions in Section 106.

Early 1990s, Devils Tower, WY, and Bear Butte, SD.

1992–93, Creation of Intertribal Bison Corp.

1994, Significant limitation of rock climbing in Hueco Tanks, Texas.

1994, Peyote Act, amendment to AIRFA.

1994, Stopped chicken farm on Rosebud.

1995, Lawrence Trafficway proposed, Haskell Indian Nations University.

1995, Lake Cushman Project, WA — advisory council comments.

1990s, H3, “most expensive highway” got built through Hawaii sacred valley.

1995, Regulations to Archaeological Resources Protection Act (amended 1988) — notification to tribes of permits being issued for excavations on public land.

1995–1999, NEJAC/Indigenous Peoples Subcommittee Resolutions on: 1. Medicine Lake Proposed Geothermal, 2. Mt. Shasta proposed ski resort, 3. Mojave Nuclear Waste Storage Facility, 4. Ohlone Shell Mounds proposed industrial/housing development, San Francisco, CA.

1996, Devils Tower climbing controversy, and renaming of Devils Tower.

1966–present, Bear Butte.

1996, became part of PMPC, Petroglyph Monument Protection Coalition, which became SAGE Council, Sacred Alliance for Grassroots Equality — our struggle to protect the petroglyphs, we formed into an organization.

1996, Executive Order 13007.

1996–2000, Sand Creek Massacre Site Location Project.

1996 (ongoing), Tribal NEPA.

1996, Medicine Wheel / Medicine Mountain Historic Preservation Plan signed.

1997, production of “Sacred Domain” video.

1998, Mt. Shasta ski area permit denied by the Forest Service.

1998, Haskell Litigation victory.

1998–1999, litigation support: Haskell Indian Nations University vs. US DOT/Federal Highway Administration, KS DOT (federal lawsuit to compel US DOT to comply with NEPA and consider impacts to Native American sacred sites, i.e. Medicine Wheel).

1998, Sand Creek Massacre Site, N. Cheyenne, NPS, landowner partnership Arapaho.

1998–2000, Sand Creek Sacred Land Project, 4 tribes, US Park Service.

1998, Medicine Lake Geothermal Project.

Late 1990s, Army overflights over Duck Valley, Ouyahé Shoshone-Paiute.

Late 1990s, EPA Awareness training.

1999, DMNE RR crossed treaty land.

1999, Bighorn Medicine Wheel logging, logging company files lawsuit to overturn HPP.

2000, Canyon of the Ancients National Monument, Presidential Proclamation (BLM).

2000 (ongoing), Lower Brule developing Tribal laws.

2000 (ongoing), Buffalo issues.

2000s, Treaty Waters and the sacredness of water.

2001, Clean Air Act, “roll back”.

2001, Weatherman Draw, MT threatened by oil drilling.

2001, Federal District Court denies logging company Medicine Wheel claim.

2001, Missouri River Master Manual.

2000–2001, Arctic National Wildlife Refuge.

2001, August 14, national PBS broadcast of *In the Light of Reverence*.

2001, September 21, Sokaogon Tribe in the state of Wisconsin. TAS decided. The Clean Water Act.

2002, Protection and safety for activists who work for the protection of American Indian Religious Freedom.

2002, Future safety and protection of sites from attacks, i.e. terrorism and vandalism.

## **Chairman Gregg Bourland, Cheyenne River Sioux Tribe**

*Chairman Bourland made these comments in response to the discussion of the participants' personal history of sacred lands protection.*

Our group's timelines are a little different. We're the radical group here. We went back to the day that Columbus set foot on this great turtle continent and we're going ahead seven generations. We do not recognize the sordid past of the colonialism era, when our people faced genocide and all the things that happened from the day that Columbus set foot here. And even going back before here, the policies of manifest destiny—that when they discovered this land, when they discovered us people, that they had authority to take dominion over this land. That mentality was carried forward.

We as Native Americans, we as indigenous people, have witnessed this mentality for over five hundred years. Even though they passed all these laws and did all these other things, NAGPRA, NHPA, many of those are nothing more than appeasement to conservation groups, to many different groups that have risen up. College campuses rebelled in the 1960s saying we need to protect our environment and so Congress said we'll pass laws, we won't put very many teeth in them. Let them cut their baby teeth. We as Native Americans have to think ahead seven generations, roughly 200 years. I'm very supportive of our country right now, what our country is doing for the wartime effort, but does that mean giving up our civil liberties? Does it mean destroying our environment, at home and abroad for that effort? We're already talking about opening up the North Slope of Alaska because we need that six month supply of oil and the hell with the caribou and the G'wichin because we need that oil to power our planes and tanks. And all the industrialists in those countries, the only thing they care about is how much green they can put in their bank account, those people who could give a damn less about the environment — those will be the first ones to jump on the wartime bandwagon.

They'll be the first ones to say let's just knock down the rest of the trees, because we need it for the wartime effort. And, let's just mine the hell out of these reservations, and the rest of this country because of the wartime effort. Let's be the first to dump sludge and junk into the rivers, because we need it for the wartime effort.

It's not for the wartime effort, and it's got everything to do with 1492. It's a mentality: we can come to this land and we can take whatever we want, we can destroy this land. It's because of the policies of manifest destiny — we can destroy this land, why?, because God says to.

We can fight war, but we don't have to destroy our own homes, the air that we breathe and the land that we live in.

All the rest of this is nice and dandy, the day they created NAGPRA, but NAGPRA doesn't have any teeth, they're not even done implementing it. The bottom line is they're patronizing us.

In this wartime effort, even departments like EPA, you good folks at EPA you know

I've always supported EPA. I've always supported that department because you and me are on the same track: we want to protect our environment. Why? So that 200 years from now, my people and your people can still breathe clean air. We can still drink clean water. And my great, great, great, great, great, great, grandchildren will be able to exist on this planet.

Well guess what, you guys could easily be put on the back burner in favor of a B-2 bomber. You'll be told to sit in the back of the room or the back of the bus and told to shut up because what you're trying to do doesn't matter now, we'll bring you back later, after we've destroyed our environment.

I can't stress enough the importance of us routing out terrorism in this world, but at what cost to other worlds?

We've got knothheads talking about nuclear weapons right now. We've already tested enough of them. I hate to see all you good folks in Denver move to Cheyenne River, we don't have enough houses for you.

## Appendix 4

### SMALL GROUP DISCUSSION FLIP CHART NOTES

#### Legal

- I. Get a list of tribes which already have adopted codes.
  - Encourage those that haven't yet to do so.
  - Law students as researchers — Vermont Law School.
  - NCAI meeting in November
  - How will Sovereign Nations that are not part of NCAI become involved?
- II. Changes in legislation needed:
  - Cause of action — and *who* has it.
  - Land management procedures
    - Definition of sacred sites
    - Force land management to *go through a process* so don't have to go to court, e.g. Confidentiality v. disclosure — formalizing language of C&D.
    - Restorative Justice techniques.
  - Newly created sacred sites — as new Holy Places are revealed.
    - Must let Indians, not others, define.
    - Caution: Non-native fear and misunderstanding — *ignorance* of ongoing, living revelation.
- III. Conservation and Reinvestment Act (CARA) HR 701.
  - Co-sponsors: Don Young and John Dingell
  - Need tribal support to ensure total inclusion of tribal language
  - Info: Amy Wright/NWF (awright@nwf.org)
- IV. Review existing statutory and legislative language that has to do with sacred sites.
  - Coordinate information
  - Identifying and supporting existing legislation
  - Especially Wilderness legislation that affect sacred places.
  - “What's more American: The right to drill for oil or the right to pray?”
  - Sacred Sites as Heritage Preservation.
  - Evaluate effect so far of Executive Order 13007.
  - How are policies working in the field (reality vs. theory)?
  - All department's policies.
- V. What to do about sites like Albuquerque's petroglyphs that are in immediate danger?
  - How can you buy more time?
  - EIS, need tribal consult higher up, and need Inter-cultural consultant
  - Historic Preservation, if Federal.
  - Executive Order 12898.
  - Blue Book on Federal Laws and Regulations on Environmental Preservation legislation.
  - Also magazines, etc. (PR).



## Consultation

### I. Barriers

- Language.
- Archaeologists vs. traditionals.
- Interpretation.
- Line vs. landscape.
- Disclosure limited.
- Value of advice/insight and knowledge.
- Awareness training.
- Dominant society standards.
- Translation.
- Not acknowledging right people in tribe.
- Distrust and disappointment.
- Expectations — protections vs. mitigation.
- Compartmentalizing by agency.
- No teeth in Bulletin 38 and Section 106.
- Federal agencies serving own purpose.

### II. Solutions

- Awareness training.
- Tribal recommendations on who to consult with.
- Consultation ground rules.
- Interpreter.
- Plain talk.
- Facilitation.
- Allow time flexibility.
- Conferences at tribal areas, resorts, etc. go into Indian country, e.g., Ft. Peck/  
Ft. Berthold.

### III. Priorities.

- Ground rules.
- Interpretation.
- Awareness training (*Native trainers*).
- Canons of consultation.
- Ground rules by practitioners.

## Education

### I. Suggestions

- How are parents as educators — parents would be major educators.
- Need to recognize that this does not work in all circumstances.
- Evaluation of effectiveness of current education efforts.
- Three hours of American Indian language, culture, religion in evening.
- Need to develop education approaches for Indian peoples.
- Concern for loss of Indian languages.

### II. Issues

- Legal tools/legislation.
- Land management policies.
- Native leadership.
- Consultation process.
- Control, language, respect, accommodation.

### III. More ideas

- Dichotomy between majority and American Indian religions.
- No special classes because people live this way.
- Some of the people who could be educated.
- Lack of congruency.
- How to portray accurately Native American view point.
- Self education.
- Education from elders.
- Education on other points of view, ways of living.
- Need to educate majority society, non-Indians, government people.
- Advocate for internal education.
- Work with local, state, federal governments to educate- tribal self-governance can help here.

### IV. Problems

- Which groups to focus on?
- Lack of commitment by leaders, decision makers, and power brokers.
- Lack of sentiment of caring for our source.

### V. Solutions

- Indian people as teachers show uniqueness of each tribe.
- Funnel funds to Indian groups.
- Resource lists.
- Message for learning — message of survival, connection to environment and life and respect.
- Appropriate forums.

## Native Leadership

- I. Governmental Structure
  - A. Critical to protecting sacred sites.
- II. Educational Process
  - A. Federal government.
  - B. Tribes/people.
  - C. Use NEPA process or equal?
- III. Peacemakers approach, adapt for sacred sites.
  - A. Include spiritual leaders.
  - B. Include federal/state agencies.
- IV. Consensus among Native leaders regarding issues on national level.
  - A. Conferences?
  - B. Organization?
  - C. Action plan.
  - D. Information links.
- V. Regional Native leadership.
  - A. Forums regarding sacred sites.
    1. Coalitions.
    2. Fundraising.
- VI. Decolonize/Deprogram Native Leaders.
  - A. More traditional forms of government.
  - B. Teach and reclaim cultural courage.
- VII. Long-term: teach kids.
- VIII. Short-term: meet with grassroots activists.
  - A. Federal/state agency consultations.
  - B. All Native youth gatherings include discussions regarding sacred site issues.
  - C. Teach contemporary issues as well as history in curriculum, i.e. NEPA sacred sites.

## Land Management

### BARRIERS

1. Understanding that sacred sites are resources to be managed.
2. Access may be different for Native Americans and others, no policy support for this kind of distinction.
  - [need] Agency policy for partial/temporary closures.
3. Prior Appropriations Doctrine.
4. Lack of understanding of what the trust responsibility is — are sacred sites part of it? If not, can it be called something else and treated the same?
5. Inconsistency between agencies.
6. NAGPRA and Reinternment.
  - A. Statutes give discretion, but:
    - Managers exercise their discretion (what they can do — rather than “have to”) according to their majority bias.
    - They could exercise in favor of the tribes.
    - Tribes do not understand how they can use this discretion/when they can use it to their advantage.
  - B. Legislate out the discretion — can it happen?
  - C. Inter/intratribal disagreement over what the agency should do.
    - Lack of good guidance.
7. Lack of law enforcement for sacred sites protection.
  - \$/personnel for enforcement to tribe? (under co-management)
8. Mutual Trust [lack of].
  - A. Fear of land managers that tribes want veto power in management decisions over federal lands because it has impact on tribal interests.
  - B. Tribes generally do not trust agency people to protect their interests.
9. Consultation differs from agency to agency, and within agencies.
  - A. Some ‘contract out’ consultation.
  - B. Consult with tribe but work with tribal members as well?
  - C. Get consistency, within and between — this is problematic.
10. Inability of tribes to adequately participate in agency environmental process.
  - A. Lack of understanding of NEPA.
  - B. Lack of resources, money and people, to do it.

### SOLUTIONS

1. Section 638 funding.
2. Consultation with tribe but work with tribal members also.
3. Agency policy to support temporary closure.
4. Empower tribes through:
  - A. Tribes need training in how to participate (tribal government and tribal members).
  - B. Train agencies in how to work with tribes.
  - C. Fire them all and start over.
5. Senior executive training required.
  - A. Put it in their individual development plan.

- B. Develop serious pay and legal consequences of not fulfilling requirements to communicate with tribes in required manner.
- 6. [To deal with] ineffective tribal communication with agencies:
  - A. Tribe to tribe training.
  - B. Other training of tribes.

#### **PRIORITIES**

##### Empowerment of tribes

- A. Training of tribal government and tribal members.
- B. Co-management of lands.
  - specific agreements for certain areas.

#### **All Relevant Issues**

- I. The sacredness of who we are.
- II. The strength of the native is in laughter, tears, knowledge.
- III. Can't know where you have been until you know where you are going, or know where you are going until you know your roots.
- IV. We are the people of the knowledge of this earth. That is our gift. Our elders would have a Ph.D.
- V. We're a "we" people, not an "I" people.
- VI. If earth is to survive, it needs its people in place.
- VII. We are the caretakers of the earth.

## Appendix 5

# ABOUT SACRED LANDS LAWS, EXECUTIVE ORDERS AND COURT CASES (IN CHRONOLOGICAL ORDER)

Visit [www.sacredland.org](http://www.sacredland.org) for links to the court cases, laws and documents highlighted here.

Visit [www.achp.gov](http://www.achp.gov) for information about the Advisory Council on Historic Preservation and the National Historic Preservation Act.

## Sacred Lands Laws

### NATIONAL HISTORIC PRESERVATION ACT OF 1966, AS AMENDED

16 U.S.C. 470a, et seq; 36 CFR Part 800

<http://www2.cr.nps.gov/laws/laws.html> for full text of NHPA.

Pertains to historic properties: “any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion on the National Register [of Historic Places], & artifacts, records, and material remains related to such property or resource.”

Such properties generally are at least 50 years of age, meet the National Register eligibility criteria, and have physical integrity. Properties are included in the National Register by National Park Service or determined to be National Register eligible by Federal agencies with concurrence of State/Tribal Historic Preservation Officer.

National Park Service Bulletin 38 is guidance that discusses historic properties of traditional religious significance.

Section 101(d)(6)(a) establishes that properties of traditional religious and cultural importance to Indian tribes and Native Hawaiians may be eligible for the National Register of Historic Places.

Section 101(d)(6)(b) directs Federal agencies to consult with Indian tribes and Native Hawaiian groups that attach religious and cultural significance to properties eligible for the National Register.

Section 110 directs Federal agencies to inventory and preserve historic properties, and nominate them to the National Register.

Section 106 requires Federal agency officials to take into account the effects of undertakings on historic properties and to afford Advisory Council an opportunity to comment.

The Section 106 review process is specified in the Council's regulations, 36 CFR Part 800. Under this process, Federal agencies shall consult with Indian tribes regarding the effects of their undertakings on properties of religious and cultural significance to that Indian tribe or Native Hawaiian group. The location of the undertaking or affected historic properties may be on tribal lands or off tribal lands. A Memorandum of Agreement (MOA) outlining measures to avoid, minimize, or mitigate adverse effects to historic properties on tribal lands must have the concurrence of that Indian tribe or the

tribe must waive in writing its right to concur with the MOA. Lacking the Indian tribe's concurrence with MOA, the Federal agency must request the Council's advisory comment.

The NHPA, including Section 106, has been widely litigated and held up well in court (cf. Federal Historic Preservation Case Law, 1966-1996. Advisory Council on Historic Preservation, 1966). In a very recent case, the U.S. District Court upheld all the provisions of 36 CFR 800 regarding consultation with Indian tribes and requirements to identify and evaluate historic properties to which Indian tribes attach religious and cultural significance and consider them in the Section 106 review process (cf., <http://www.dcd.uscourts.gov/00-288.pdf> for the Court's full decision.)

#### **NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA)**

42 U.S.C. 4321, et seq; 40 CFR 1500-1508.

<http://ceq.eh.doe.gov/nepa/regs/nepa/nepaeqia.html> for full text of NEPA.

Establishes national environmental policy; encourages the federal government to use all practicable means and measures to protect environmental values.

Requires the federal government to analyze the environmental impacts of its actions on the human environment, disclose such impacts, and consider them in its decisions regarding that action (e.g., "take a hard look at").

For major federal actions substantially affecting the quality of the human environment, the federal agency must prepare a detailed environmental impact statement. For actions with less impact but that are not categorically exempted, the federal agency must prepare an environmental assessment. Requires that federal agencies consider alternatives and the mitigation of impacts.

Analyzes and considers impacts to the "human environment," "which includes the natural and physical (built) environment and the relationships of people to that environment, e.g., cultural and social aspects of the environment and the relationships between cultural and natural environment. Culturally-valued aspects of the environment include historic properties, culturally valued pieces of real property, cultural uses of the environment, "intangible" cultural attributes such as social cohesion, social institutions, lifeways, and other cultural institutions" ([www.npi.org](http://www.npi.org)).

Note that the more commonly applied term, cultural resource, is not officially defined in either statute or regulation, but NEPA language itself indicates that human environment is to be broadly construed.

#### **AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978 (AIRFA)**

42 U.S.C. 1996, et seq.

<http://www.hamline.edu/law/lawrealign/sacred/airfa78.ssw.html> for full text of AIRFA.

<http://www2.cr.nps.gov/laws/laws.htm>

Makes it a policy to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians their inherent right of freedom to believe, express, and exercise their traditional religions.

Allows them access to sites, use and possession of sacred objects, and freedom to worship through ceremonial and traditional rights.

Directs various Federal departments and agencies to evaluate their policies and procedures in consultation with Native traditional religious leaders to determine

changes necessary to protect and preserve Native American cultural and religious practices.

Only the National Park Service has promulgated rules to protect sacred sites within its jurisdiction, and the Courts have found AIRFA too vague to enforce. AIRFA has not held up well to challenges in Court (see list of court cases below).

#### ARCHEOLOGICAL RESOURCES PROTECTION ACT OF 1979 (ARPA)

16 U.S.C. 470aa-470mm; 43 CFR 7.

<http://www2.cr.nps.gov/laws/laws.htm>

<http://www4.law.cornell.edu/uscode/16/ch1B.html> for full text of ARPA.

Pertains to “archeological resources” located on Federal (including tribal) lands. Archeological resources are broadly defined as “any material remains of past human life or activities, which are at least 100 years if age, and which are of archaeological interest.”

Establishes a permitting and enforcement system to protect against unauthorized persons who “excavate, remove, damage, or otherwise alter or deface any archaeological resource.”

Imposes civil and criminal penalties that take into account the archaeological or commercial value of the archaeological resource involved and the cost of restoration and repair of the resource and the archaeological site involved. Criminal penalties can range from \$10,000 to \$100,000 in fines and from one to five years of imprisonment.

#### NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT OF 1990 (NAGPRA)

25 U.S.C. 3001-3013; 43 CFR 10.

<http://www4.law.cornell.edu/uscode/25/ch32.html> for full text of NAGPRA.

<http://www2.cr.nps.gov/laws/laws.htm>

Facilitates a process for protecting and distributing Native American “cultural items” found on federal or tribal lands either through “intentional excavation” or “inadvertent discovery.” Among other things, NAGPRA endeavors to place ownership or control of these items in the appropriate Indian tribe.

Pertains to “cultural items” that include: “human remains; objects constituting part of a death rite or ceremony that were placed with human remains and that are in the possession of a federal agency or museum (associated funerary objects); funerary objects that are not in the possession of a federal agency or museum (unassociated funerary objects); ceremonial objects that are necessary for the practice of Native American religions (sacred objects); and objects of ongoing historical, traditional, or cultural importance central to a Native American group, rather than an individual (cultural patrimony).”

The “intentional excavation” of the cultural objects is only permitted if the items are removed in accordance with ARPA’s permit requirements or if proper authorities are notified in the case of an “inadvertent discovery.” If such a discovery occurs during construction, mining, logging or agriculture, then “the person shall cease the activity in the area of the discovery, ...make a reasonable effort to protect the items discovered..., and provide notice.” The failure to follow these provisions and others can result in criminal penalties.



## Sacred Lands Executive Orders

### EXECUTIVE ORDER 13007: INDIAN SACRED SITES

<http://www.cr.nps.gov/local-law/eo13007.htm> for full text of EO13007.

Signed in 1996 by President Clinton

Defines sacred sites as — “any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site” on lands or interests in lands of the United States.

Section 1 directs Federal agencies, to extent practicable & consistent w/ agency missions, to: a) accommodate access to & ceremonial use of Indian sacred sites by Indian religious practitioners; b) avoid adversely affecting sacred sites; and c) where appropriate, maintain confidentiality of sacred sites.

Section 2 directs Federal agencies to implement procedures for carrying out Section 1 and to report to the President through the Assistant to the President for Domestic Policy on the implementation of the EO, including internal policy changes necessary to carry it out.

### EXECUTIVE ORDER 12898: ENVIRONMENTAL JUSTICE

<http://es.ep.gov/oeca/fedfac/cfa/eo12898.htm>

Visit <http://es.epa.gov/oeca/main/ej/index.html> for more information about environmental justice.

Signed in 1994 by President Clinton

Requires federal agencies to focus attention on disproportionate environmental and human health impacts to low-income communities and minority communities.

Section 6-606 establishes the Department of the Interior as the lead for implementation of the Order for Native American programs.

Accompanying Presidential memorandum directs federal agencies to analyze the environmental effects, including human health, economic and social effects, of federal actions, on minority and low-income communities, when required by NEPA and whenever feasible, to mitigate significant and adverse effects on minority communities and low-income communities.

Accompanying Presidential memorandum directs the Environmental Protection Agency to ensure that federal agencies analyze environmental effects, including inter-related social and economic effects, on minority and low-income communities as part of the NEPA process.

The EPA has authority under Section 309 of the Clean Air Act to review major federal actions for environmental impacts. The Agency has used EO 12898 to highlight potential environmental justice impacts, including cultural resource impacts that are disproportionate and adverse to Native American tribes.

## Sacred Lands Federal Policies

### NATIONAL PARK SERVICE POLICY

<http://www.nps.gov/refdesk/mp/chapter5.htm>

The 2001 edition of the National Park Service's management guidelines includes Chapter 5: Cultural Resource Management, which explains how the NPS manages land use, interacts with Native American communities, preserves cultural/historic objects or structures, and allows for ongoing use of sacred sites. The NPS, which is part of the Department of the Interior, has based these guidelines on the laws described above.

## Relevant Court Cases

### THE GO ROAD CASE

*Lyng vs. Northwest Indian Cemetery Protective Association* 485 U.S. 439 (1988), known as the "GO Road" case, was a landmark 1988 Supreme Court ruling that has hindered all subsequent efforts to protect sacred sites. It was AIRFA's final defeat. Though two lower courts had ruled that a Forest Service plan to build a logging road from Gasquet to Orleans in northern California (hence the name GO Road), was a violation of Native American religious freedom because of its impact on an extensive sacred landscape, those rulings were overturned by the Supreme Court.

### FOUR KEY CASES IN WHICH AIRFA FAILED

1) *Sequoyah v. T.V.A.* [620 F.2d 1159 (1980)], a Cherokee effort to stop the Tennessee Valley Authority from flooding the Little Tennessee River above the Tellico Dam;

2) *Badoni v. Higginson* [638 F.2d 172 (1980)], a Navajo effort to reduce the water level of Lake Powell and restrict tourists' access to the Rainbow Bridge area in southern Utah;

3) *Frank Fools Crow v. Gullet* [706 F.2d 856 (1983)], a Lakota effort to stop the state of South Dakota from expanding a parking lot in Bear Butte State Park in the Black Hills; and

4) *Wilson v. Block* [708 F.2d 735 (1983)], a Hopi and Navajo attempt to preclude expansion of the Arizona Snow Bowl ski area in the San Francisco Peaks, near Flagstaff.

See <http://www.sacredland.org/legal.html> for links to all of the above cases.

### THE DEVILS TOWER CASE

*Bear Lodge Multiple Use Association v. Babbitt* 12 F. Supp. 2d 1448 (D. Wyo., 1998), affirmed in 175 F.3d 814 (10th Cir. Wyo.) 1999.

U.S. District Court's 1998 decision concerning Devils Tower affirmed the National Park Service's policy promoting a voluntary ban on climbing during the month of June, along with other activities to educate the public about Native Americans' relationship to and uses of the Tower.

See <http://www.hamline.edu/law/lawrealign/sacred/lodge2.htm> for the lower court decision.

## Appendix 6

# BIOGRAPHICAL SKETCHES OF SCHEDULED SPEAKERS

### Tuesday Afternoon, October 9, 2001

**CHRISTOPHER PETERS**, *Pohlík-lah/Karuk*, Moderator. For over a decade, Chris has successfully led the Seventh Generation Fund as the Executive Director. A graduate of UC Davis and Stanford Universities, Chris has more than twenty-five years of experience in working for holistic community development, revitalizing traditional economies and supporting cultural revitalization efforts. He has dedicated his life to re-establishing the rights of Native People to religious freedom and protection of sacred lands and traditional practices, and has fought on the front lines of environmental struggles to protect aboriginal ecosystems from the effects of clearcuts, mining, recreational development and the impacts of the nuclear industry.

**VERNON MASAYESVA**, *Hopi*, Panelist, is the Executive Director of Black Mesa Trust and former Chair of the Hopi Tribe (1990-94). In his work with Black Mesa Trust, Mr. Masayesva is working to shut down the Peabody Coal Company slurry line, which uses billions of gallons of pristine underground water to move coal to the Mojave power plant in Nevada. He helped prepare a Natural Resources Defense Council report documenting the detrimental impact the slurry line has on Hopi springs.

**JAMES I. PACE**, Panelist, is the Acting Director of the Office of American Indian Trust. A fellow with the Council for Excellence in Government, Director Pace has been included in *Who's Who in America* for his civic and professional accomplishments. He is the recipient of the Earl Wilcox award from the Intertribal Timber Council for "outstanding service to Indian forestry" and has been elected an associate member of the Intertribal Agriculture Council and the Intertribal Timber Council. He was named an honorary Sequoyah Fellow with the American Indian Science and Engineering Society for "his many outstanding contributions to the Indian community." In 1992 he was appointed Director of Native American programs for the Secretary of the Department of Agriculture where he championed the first USDA Indian policy statement and published the guide to USDA programs for Native Americans. In 1993, Director Pace was appointed to work for the Assistant Secretary for Indian Affairs in the Office of American Indian Trust. Mr. Pace holds a Masters in Business from City University, a Bachelors degree in Biology from the University of Massachusetts, and an Associates degree in Forestry from Paul Smiths College in New York.

**PATRICIA PARKER**, Panelist, is Chief of the American Indian Liaison Office for the National Park Service, Washington, DC. She reports to the Director, and advises National Park Service leadership on Indian affairs including land restoration, environmental review, Indian Self-Governance and Self-Determination, free exercise of religion, sacred sites, and traditional cultural properties. She was the US representative at

the World Heritage Global Strategy Meeting in Suva, Fiji, and she attended the World Heritage Global Strategy Natural and Cultural Heritage Expert Meeting in Amsterdam, Netherlands. Dr. Parker represented ICOMOS on the World Heritage mission to Kakadu National Park in Australia in 1998 to assist in ascertaining whether the park would be threatened by development of a uranium mine on the park's boundary.

**CHARLES F. WILKINSON**, Panelist, is the Moses Lasky Professor of Law at the University of Colorado School of Law. He was formerly Professor of Law at the University of Oregon and staff attorney with the Native American Rights Fund. His books include *Federal Public Land and Resources Law*, (3rd ed. 1993) (with Coggins and Leshy); *Cases and Materials on Federal Indian Law* (3rd ed. 1994) (with Getches and Williams); *American Indians, Time and the Law — Native Societies in a Constitutional Democracy* (1987); *The Eagle Bird — Mapping A New West* (1992); *Crossing the Next Meridian — Land, Water and the Future of the West* (1992); *Fire on the Plateau: Conflict and Endurance in the American Southwest* (1999); and *Messages from Frank's Landing: A Story of Salmon, Treaties, and the Indian Way* (2000). He has received teaching awards from students at Colorado, Michigan and Oregon and the Faculty Excellence Award from the University of Oregon and the University of Colorado. The National Wildlife Federation awarded him its 1990 National Conservation Achievement Award. Professor Wilkinson holds a B.A. from Denison University and a LL.B. from Stanford University.

**PEMINA YELLOW BIRD**, Mandan Hidatsa Arikara Nation, Panelist, has been involved in the struggle to protect her native homelands and other sacred areas, and in the struggle to reclaim native remains. In 1985, Ms. Yellow Bird was appointed by the Governor of North Dakota to the North Dakota State Historical Board. As a board member, she successfully worked to amend state ordinances regarding unmarked human burials to benefit her community. Ms. Yellow Bird also helped establish the first inter-tribal coalition on Native burial issues, the North Dakota Intertribal Reinternment Committee, in 1985. Since then, she has shared her experience in building coalitions with tribes across the country to provide for the return of unaffiliated remains taken from collective aboriginal homelands. Ms. Yellow Bird serves on the board of the Indigenous Peoples Council on Biocolonialism, where she advocates for protections against the exploitation of Native genetic resources.

## Tuesday Evening, October 9, 2001

**WINONA LADUKE**, *Anishnaabe*, Speaker, is the founder of the White Earth Land Recovery Project and the Indigenous Women's Network. She is author of *Last Standing Woman and All Our Relations: Native Struggles for Land and Life*. Winona was selected by *Time Magazine* as one of the "50 for the Future," America's most promising leaders under 40 years old, and as one of *Ms. Magazine's* 1997 "Women of the Year."

**TERRY TEMPEST WILLIAMS**, Speaker, was Naturalist-in-Residence at the Utah Museum of Natural History in Salt Lake City in the 1980s and 90s. Her first book, *Pieces of White Shell: A Journey to Navajoland* received the 1984 Southwest Book Award. She is author of *Coyote's Canyon; Refuge: An Unnatural History of Family and Place; An Unspoken Hunger; Leap*; and *Red: Passion and Patience in the Desert*.

**CHRISTOPHER (TOBY) MCLEOD**, Speaker, produced and directed *In the Light of Reverence*, a feature-length documentary about Native American struggles to protect sacred lands, which aired nationally on the PBS series P.O.V. (Point of View) in August 2001. His previous films include: *The Four Corners: A National Sacrifice Area?*, *Downwind/Downstream*, and *Poison in the Rockies*. His first film was *The Cracking of Glen Canyon Dam—with Edward Abbey and Earth First!* Toby directs the Sacred Land Film Project of Earth Island Institute, and has been working with indigenous communities as a filmmaker, journalist and photographer for twenty-three years.

## Wednesday, October 10, 2001

**CHRIS LEHNERTZ**, Facilitator, is manager of the hazardous waste corrective action program at EPA Region 8. She has been with EPA since 1990, and previously worked at the Colorado Division of Wildlife, the U.S. Fish & Wildlife Service, and the U.S. Forest Service promoting and protecting wild lands. Ms. Lehnertz has worked with tribes in the Rocky Mountain area developing water quality and environmental protection programs, and represented the EPA Regional Administrator during development of EPA's national tribal environmental office in 1994. Ms. Lehnertz has worked on global climate change issues in Washington, D.C., and with the National Environmental Justice Training Collaborative at EPA. She currently serves as a governing board member for the Regional Institute for Health and Environmental Leadership, a committee of the Colorado Foundation for Public Health and the Environment.

**MARLON SHERMAN**, *Oglala Lakota*, principal author and editor of the Forum report, is the adult program manager of Indian Dispute Resolution Services, Inc. Mr. Sherman received his bachelor degree in American Studies from the University of California at Santa Cruz, did graduate work in wildlife science at Utah State University in Logan, and received his law degree from the University of Colorado School of Law in Boulder. Mr. Sherman has extensive background working with tribes and Native groups in the areas of tribal self-governance, economic development and government-to-government relations. He has worked for the Native American Rights Fund as a legal intern, as development director for the Seventh Generation Fund, and for the Yurok Tribe. Mr. Sherman has taught at Humboldt State University and has served on the board of Buffalo Gap Land Rescue.

**PATRICIA NELSON LIMERICK**, Speaker, is a Western American historian with particular interests in ethnic history and environmental history. She taught at Harvard University before joining the faculty at the University of Colorado at Boulder where she teaches a variety of courses on the American West. Dr. Limerick has published a number of books, articles, and reviews. Her best known work, *The Legacy of Conquest*, had a major impact on the field of Western American history. A collection of her essays, *Something in the Soil: Legacies and Reckonings in the New West*, was published by W.W. Norton in March of 2000. She is working on an edited collection of essays, *Justice for All: Racial Equity and Environmental Well-Being*, and, in collaboration with William Travis, *The Handbook for the New West*, a cultural literacy and etiquette guide for life in the region. Dr. Limerick is the chair of the board and co-founder of the Center of the American

West, an interdisciplinary regional studies center. She received her B.A. in American Studies from the University of California, Santa Cruz, and her Ph.D. in American Studies from Yale University. In 1995, she was named a MacArthur Fellow.

## Appendix 7

### FORUM PARTICIPANTS

Forum Planning Committee Members are noted as such in the following list.

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## Appendix 8

# NATIVE AMERICAN SACRED LANDS FORUM, WASHINGTON D.C., MARCH 19–22, 2002

## Sacred Lands Protection Coalition Report

From March 19 to 21, 2002, traditional and tribal leaders and advocates convened in Washington, DC to launch and support the Sacred Lands Protection Coalition called for by NCAI Resolution # SPO-01-162. The National Congress of American Indians (NCAI), in collaboration with the Seventh Generation Fund, Native American Rights Fund, United South and Eastern Tribes, the Association on American Indian Affairs and the Sacred Land Film Project, hosted the *Native American Sacred Lands Forum*, a summit addressing the destruction of sacred places essential to the practices of Indian religions and the well-being of tribal cultures. Throughout the three days, the Coalition was able to develop educational tools and strategies, build renewed momentum around the issue of sacred lands protection, and lay the foundation for expanding the coalition and focusing public and Congressional attention on the importance of protecting threatened sacred places.

### ORGANIZATIONAL MEETING OF THE SACRED LANDS PROTECTION COALITION

On March 19, 2002, the Sacred Lands Protection Coalition met in the offices of the National Congress of American Indians for its inaugural meeting to discuss current and potential threats to sacred lands and to lay the foundation for future efforts to protect sacred places. During this meeting, Coalition members shared updates about the battles they are currently fighting to save places held sacred to tribes and traditional practitioners. Through this sharing of information, the Coalition confirmed that sacred lands continue to be endangered throughout the nation, and legal remedies such as the American Indian Religious Freedom Act (AIRFA), Executive Order 13007 and the National Historic Preservation Act (NHPA) are often ineffectively implemented and provide limited legal redress to aggrieved traditional religious practitioners and tribes.

The assembled tribal leaders reached a consensus to begin an organized effort to halt private and governmentally-sponsored development that will threaten or destroy sacred places, including but not limited to Zuni Salt Lake, Quechan Indian Pass, Black Mesa, Mt. Shasta, Valley of the Chiefs, and Mt. Graham. Recognizing that this effort must be comprehensive in its approach, the Coalition asked NCAI to serve as the interim coordinating organization.

The Coalition outlined its draft goals, recognizing that the ambitious nature of these would require the Coalition to unify and commit time, resources and effort on a large scale in order to succeed. In summary, the strategic plan is as follows:

1. Strengthen administrative policies and regulations and encourage administrative decisions that will protect sacred sites and accommodate the ceremonial use of such sites;
2. Ensure adequate government-to-government consultation with tribes;

3. Secure Congressional oversight hearings concerning threats to sacred landscapes;
4. Address compliance and enforcement of existing federal law;
5. Educate Congress and the general public on the value and importance of sacred places to tribes and traditional people, and mobilize public support to protect sites;
6. Increase protection to sacred places and lands by developing comprehensive and well-thought legislation; and
7. Secure funding to tribes for the protection of sacred places.

Specific tasks the Coalition agreed to complete include the following:

1. Identify gaps in existing legislation and draft language that will address the gaps;
2. Develop a standard consultation process that will apply to all agencies when dealing with all tribes on issues of sacred places; and
3. Develop a detailed list of sacred places that are threatened.

Protecting sacred places is necessary for the survival of traditional religions and tribal cultures, and stands to fundamentally impact our cultural identity and our status as sovereign nations. Since the protection of sacred places is critical to the survival of tribal nations, the Coalition wishes to move forward at a measured pace to insure that all tribal and traditional concerns may be addressed in a comprehensive manner.

#### “OVERCOMING THE CHALLENGES” PANEL AND SCREENING OF *In the Light of Reverence*

On March 20, 2002, a screening of *In the Light of Reverence* was held at the Department of Interior’s Sidney Yates Auditorium, followed by a keynote speech delivered by Vine Deloria, Jr. and a panel discussion featuring Tex Hall, NCAI President, Eddie Tullis, USET Vice President, Jim Pace, DOI Office of American Indian Trust, Hannah Kihalani Springer, Native Hawaiian leader, John Brown, National Association of Tribal Historic Preservation Officers, and Suzan Shown Harjo, Morning Star Institute.

Keynote speaker Vine Deloria, Lakota author and historian, encouraged the coalition not to get “bogged down” in organizational details but instead “look at problems, not goals, get active and do some things.” Deloria stated that every generation needs to look at the generation before them. He encouraged the Coalition to produce leadership by taking younger Indian people and training them on “what we once said” and commissioning them to act in a limited authoritative capacity. “We have produced a lot of Indian professionals, but they do not even know where their grandparents are buried. We need to bring our Indian experts back to the tribal communities.”

Deloria also encouraged the Coalition to produce articles on why we need to protect sacred sites and seek publication in law reviews. He concluded by stating that he would like to see 200 traditional leaders meet with religious leaders at the National Cathedral in Washington, DC, in Spring of 2004 to present a sacred lands protection bill.

The Panel addressed the following questions:

- Why and how should federal agencies protect sacred lands?
- How well do existing laws and agency regulations protect sacred lands? (NEPA, NHPA, AIRFA, EO 13007 and EO 12898, etc.)

-How can people who care about sacred sites access decision makers?

Jim Pace responded by announcing the renewal of a Clinton-era initiative to protect public lands considered sacred to American Indians. Neal McCaleb, the Interior Department's Assistant Secretary for Indian Affairs, will appoint a task force to oversee management of public lands Indians have used for ceremonial and religious purposes. The task force will oversee land use policy in all public lands agencies. Specifically, it will work directly with Indian tribes to identify sacred sites, giving Indian leaders access to the Administration.

Tex Hall indicated that part of the problem in protecting sacred lands is tribal dependence on the federal government. Since policies and funding can change at whim, he encouraged tribes to work together because the government isn't fulfilling its obligations. Hall emphasized that any bill drafted to protect sacred places must be tribally driven. The president of NCAI also encouraged cohesiveness of the Coalition. "Unity has to happen. As tribal people, we must stand united to maintain that trust responsibility."

#### MEETINGS WITH HOUSE RESOURCES AND SENATE INDIAN AFFAIRS COMMITTEE STAFF

In a March 21 meeting, the Coalition advised the House Resources Committee staff of their goals to strengthen administrative policies and regulations, ensure adequate government-to-government consultation with tribes, secure Congressional oversight hearings concerning threats to sacred landscapes, and develop comprehensive and sound legislation. The committee staff indicated that it is very unlikely that Congressman Nick Rahall's (D, WV) draft bill will advance this year, but if introduced would serve as a marker to begin the multi-year effort required to secure legislation of this scope. Coalition representatives asked the staff to delay introduction of the bill until the language is strengthened, questions are answered, and more tribes are consulted. In the meantime, the staff members indicated that they will seek passage of legislation to protect the Valley of the Chiefs in Montana.

The Senate Committee on Indian Affairs staff also met with the Coalition and suggested a series of oversight hearings to begin in May, 2002, with the possibility of a joint hearing with the Senate Energy and Natural Resources Committee. The Sacred Lands Protection Coalition submitted a proposal regarding how these oversight hearings could be structured. The first two hearings were held June 4, and July 17, 2002.

The Sacred Lands Protection Coalition will take advantage of the attention sacred places are receiving by continuing to work with the House Resources Committee and the Senate Committee on Indian Affairs at a measured pace to insure that all concerns may be addressed in a comprehensive manner.

#### **Film Screenings for Society of American Archaeologists Annual Meeting, Denver, CO.**

In addition to Sacred Lands Forum activities occurring in Washington D.C. during the week of March 18, 2002, additional screenings of the film, *In the Light of Reverence*, were organized as part of the Society for American Archaeologists (SAA) Annual Conference, held in Denver, Colorado, on March 20 and 21.

The SAA conference drew approximately a thousand participants, including federal agency staff charged with tribal coordination and cultural resource management responsibilities. Many of those agencies held concurrent sessions. The film was presented twice during the conference. The first screening was for staff of the U.S. Department of Transportation and the Association for Transportation Archaeologists, including participants representing the states of Delaware, Wyoming, Colorado, Vermont, Michigan, New Mexico and Washington D.C. The Navajo Nation Historic Preservation Department, Roads Planning Program, was also represented. The second screening was for a conference-wide audience for a total of twenty participants.

The Forum Planning Committee would like to acknowledge Dawn Tesorero, US Environmental Protection Agency Region 8, and Bruce Crespín, Bureau of Land Management, Wenatchee, Washington Field Office, for organizing the screenings and facilitating discussions.