

STATEMENT OF SUZAN SHOWN HARJO, PRESIDENT, THE MORNING STAR INSTITUTE, FOR THE OVERSIGHT HEARING ON NATIVE AMERICAN SACRED PLACES BEFORE THE COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, WASHINGTON, D.C., JUNE 18, 2003

Mr. Chairman, Mr. Vice Chairman and Members of the Committee on Indian Affairs, thank you for holding another in the series of oversight hearings on Native American sacred places.

The national Sacred Places Protection Coalition is most appreciative of the opportunity to develop a record on the status of Native American sacred places, how they are faring under existing laws and policies and what new law needs to be enacted for their protection. It is our hope that the Committee will continue its series of oversight hearings and, in this 25th anniversary year of enactment of the American Indian Religious Freedom Act, will begin to develop legislation that treats the subject with the seriousness it deserves.

Since the Committee's last oversight hearing, the Sacred Places Protection Coalition conducted a gathering of Native American traditional religious leaders and practitioners, as well as tribal representatives, cultural specialists and attorneys. The gathering, which was held in San Diego, California, on November 8 and 9, 2002, produced a major policy statement regarding legislation to protect Native sacred places: "Gathering to Protect Native Sacred Places: Consensus Position on Essential Elements of Public Policy to Protect Native Sacred Places."

Participants at the gathering considered strategies for protecting Native sacred places and arrived at a consensus on the essential elements and the objectionable elements of any public policy to protect Native sacred places. A bill that includes these essential elements and excludes these objectionable elements would indeed be serious legislation.

The very first of the essential elements is a *sacred places cause of action*. As the Committee knows, deletion of the cause of action for protecting sacred places was the price of House passage in 1978 of the American Indian Religious Freedom Act.

Without a specific cause of action, Native Americans have not been able to adequately defend sacred places in court. This has exposed Native sacred places to risk and left Native Americans at a disadvantage in negotiations, when and where federal agencies and developers have entered into talks at all. For the most part, the attitude of agencies and developers has been, "So, sue me," knowing full well that we lack the legal tools to do that. Federal laws protect non-Native churches, sacred ground and religious practices.

All the other religions have several doors to the courthouse. We do not have even one door. Native Americans need protection for our places of worship and for our exercise of religious liberties, too. It is grossly unfair that we do not have them.

Federal actions and inactions caused or allowed most of the damage and destruction of Native sacred places when the U.S. policy was to eradicate our traditional religions and keep us from the places where we pray. Now that the U.S. policy is to preserve and protect our traditional religions, the federal government has an affirmative obligation to do that and to take remedial action on our behalf, including returning and restoring those places that still have life.

The 2002 gathering identified the following as essential elements in any legislation on Native American sacred places:

- Cause of action for protection of sacred places.
- Zero tolerance for desecration, damage or destruction of sacred places.
- Recognition that sacred places are to be defined only as places that are sacred to practitioners of Native traditional religions and that sacred places include land (surface and

subsurface), water and air; burial grounds, massacre sites and battlefields; and spiritual commemoration, ceremonial, gathering and worship areas.

- Early, meaningful consultation with traditional religious leaders and tribal leaders.
- Recognition of and reliance on traditional religious leaders, tribal science and oral history as the authorities on Native sacred places.
- Respect for traditional religious tenets and tribal law regarding non-disclosure of confidential and private information about sacred places.
- Notice requirements, with burdens of proof on the developers, for proposed development within the aboriginal territory of Native nations, in accordance with mapping to be developed by Native nations.
- Application to undertakings and actions on federal land, water and airspace and to all other land, water and airspace with a federal nexus.
- Provisions for protection of sacred places by transferring or conveying ownership title to the affected Native nations.
- Provisions for protecting the integrity of sacred places through agreements for management or co-management of or access to sacred places.
- Severe federal penalties for violations of sacred places.
- Recognition and application of tribal laws regarding arrests, penalties and imprisonment for violations of sacred places.
- Appropriations and allocations of land acquisition fund and other monies for acquisitions of sacred places and maintenance of the integrity of sacred places.

The 2002 gathering identified the elements below as objectionable in any legislation on Native American sacred places.

The first of these objectionable elements is *definition of the sacred*. As the Chairman and Vice Chairman will recall, there was considerable pressure for Native Americans to define the term “sacred object” in the historic repatriation provision in the National Museum of the American Indian Act of 1989 and the Native American Graves Protection and Repatriation Act in 1990. Ultimately, Congress agreed with Native Americans that no other religions had to define the sacred in American laws or legal proceedings and that it would be discriminatory and unduly burdensome for Native Americans and only Native Americans to define the sacred.

- Definition of the sacred.
- Prioritizing sacred places.
- Centrality or degree of significance requirements.
- Discrimination against non-federally-recognized tribes with traditional sacred places to protect.
- So-called “mitigation” of impacts to sacred places.
- Reliance on previously published or recorded coerced or incomplete information regarding sacred places.
- “Discrete delineation” requirements.

Participants in the 2002 gathering unanimously agreed to carry this position to the National Congress of American Indians and to urge that NCAI support public policy to protect Native sacred places only if it includes these essential elements and to oppose any such policy that includes these objectionable elements.

Participants also agreed to urge the NCAI to utilize these same criteria to support or oppose state-based legislative efforts to protect sacred places; to support non-comprehensive congressional measures that will advance protection of sacred places and are consistent with this criteria; to oppose legislation with the potential to harm sacred places; and to assure that its lobbying process is inclusive and reflects all segments of Native nations.

These elements were adopted unanimously by the NCAI Subcommittee on Human, Religious & Cultural Concerns on November 11, 2002, and by the participants in the NCAI Convention Session on Sacred Lands: Protecting Our Most Precious Resources on November 13, 2002; The NCAI Convention unanimously adopted conforming resolution #SD-02-027 on November 14, 2002.

The policy elements position was developed by some of the most knowledgeable people nationwide on the subject of protection of sacred places. We trust that the Committee will continue to work with traditional Native people and our cultural and legal representatives when it comes time to prepare legislation for movement through Congress.

A bill that would do little to protect sacred places has been reintroduced in the House. It does not have a cause of action or other essential elements we have identified, and it has too many of the objectionable elements. Native people who were not boosters of last year's bill were not permitted to testify in the sole legislative hearing on it.

Oddly, the House bill purports to codify the 1996 Executive Order on Indian Sacred Sites. That Order is a bare restatement (and a limitation, in part) of a portion of the American Indian Religious Freedom Act, which has been codified since 1978. We already have a good policy statement. Now, we need a law to give that good policy statement the teeth the House defanged 25 years ago.

This makes the Committee's process more important than ever – to hear about the threatened sacred places from the people who are the most directly affected, then to craft legislation that is based on and will meet real needs.

The Committee has heard testimony about the Comanche and multi-tribal burial ground in Texas, Coso Hot Springs, Hickory Grounds, Hopi Black Mesa and Lower Moencopi, Kaho'olawe Island in Hawaii, Missouri River sacred sites, Mount Shasta, Quechan Indian Pass and Zuni Salt Lake. Situations at these sacred places have not improved over the past year and the federal agencies still have not responded to the questions the Committee asked them during the prior two oversight hearings on June 4, 2002 and July 17, 2002.

Today, the Committee will hear about three Native American sacred places, all of which have in common various forms of a federal/state/private nexus:

- 1) Bear Butte in the Bear Butte State Park in South Dakota – a holy mountain to the Cheyenne, Lakota, Arapaho and other Native Peoples – which is under attack from a proposed state and private gunnery range, funded with federal seed money from the Department of Housing and Urban Development, that would destroy the peace and sanctity required for ceremonies, vision quests and prayer.
- 2) The Ocmulgee Old Fields in Georgia – which contain the former capitol of the Muscogee Nation, ceremonial grounds and burial mounds – are threatened by a proposed multi-lane state highway. The National Trust on Historic Preservation recently named this Traditional Cultural Property to its 2003 list of the 11 Most Endangered Historic Places.
- 3) Medicine Lake in California, a Pitt River Nation ceremonial and healing place, is threatened by the Bureau of Land Management and Forest Service decision to permit the state-funded Calpine Corporation to build a network of geothermal power plant facilities to produce electricity to export to Bonneville Power Administration for consumers in Idaho, Oregon and Washington.

The Committee also will hear from one of our Cheyenne ceremonial leaders -- who will speak in part from his experience with the Medicine Wheel in Wyoming -- about the federal agencies' ongoing requirement in the American Indian Religious Freedom Act to consult with Native American traditional religious leaders, as well as the consultation requirements in several other laws.

Despite these requirements, no one consulted with the traditional leaders or with those Indian nations that own Bear Butte property – not HUD, not the state, not the city and not the private developers. As a result of this failure to consult, they are being sued in federal court. In the case of the Ocmulgee Old Fields, the state did not consult with the Muscogee Nation and has ignored its numerous requests to move the

planned highway. With Medicine Lake, consultation did not occur initially; when it did, the substance was disregarded and plans proceeded as if consultation had not taken place.

Federal agencies do know how to protect sacred places and do know how to build in meaningful consultation and review of agreements. The co-management of fisheries in the Northwest and Great Lakes, including ceremonial fishing and sites, are working examples of ongoing cooperative agreements that have spanned three decades.

The Bureau of Land Management has entered into a cooperative agreement with the Pueblo de Cochiti for joint management of the Kasha-Katuwe Tent Rocks Monument in New Mexico, a sacred place to all the Pueblos. The Bureau's excellent record in this instance makes its record of permitting desecration and destruction of sacred places elsewhere, most prominently the proposed gold mining at Quechan Indian Pass, all the more inexplicable.

The Sacred Places Protection Coalition will be examining the fisheries and Tent Rocks agreements and other co-management accords as it develops guidelines for the Tribal/Federal Summit on Sacred Places Consultation Protocols, which will take place on November 15 and 16, 2003, in Santa Fe, New Mexico.

We invite the Committee to send representatives to the Summit. We request the Committee to encourage the federal agencies to send high-level policy representatives to this Summit and to work with us to develop guidelines and elements for consultation and management.

There are many sacred places around the country that are not being damaged at this time. A few are known to be sacred places, but many are not known. Some Native Americans have strict prohibitions against revealing the identity or location of a sacred place or any information about why it is sacred or what is done there. Others maintain silence in an effort to keep from attracting the attention of people who are looking for recreation or vacation spots or of developers who would flood out, pave over, dig up or suck the life out of these precious places.

Both the 2002 gathering and NCAI Convention identified numerous Native American sacred places that are under attack now.

Among the endangered sacred places identified in California, in addition to Medicine Lake and Quechan Indian Pass, are the following: Coastal Chumash lands in the Gaviota Coastal southern region; Yurok Nation's salmon fisheries in the Klamath River affected by the Interior Department's waterflow decreases; Berry Creek, Moore Town and Enterprise Rancherias' lands impacted by the California Water Project's fluctuation zone at the Oroville Dam Reservoir; the sacred Puvungna of the Tongva and Acjachemen Peoples; and the sacred Katuktu (Morro Hill) of the San Luis Rey Band of Mission Indians.

The groups called for the protection and recovery of these identified sacred places in the Southwest: 1) in Arizona, Apache holy land, Mount Graham, from the Forest Service and the University of Arizona's massive telescope project; Hualapai Nation landforms in Truxton and Crozier Canyons from private extraction of boulders for decorative landscaping; Hopi and Navajo lands and the Navajo aquifer from slurry coal mining by Peabody Coal Company; the San Francisco Peaks from Forest Service and private expansion of the Arizona Snow Bowl; and the Boboquivari Mountain of the Tohono O'odham Nation; 2) in New Mexico, in addition to Zuni Salt Lake, the micaceous clay-gathering place of the Picuris Pueblo from mica mining by Oglebay Norton Specialty Minerals; and 3) in Texas, Carrizo/Comecrudo lands flooded by Amistad Lake and Falcon Dam.

Other sacred places identified as under attack now, in addition to Hickory Ground, Missouri River and Ocmulgee Old Fields, include the following: the Badlands, Black Hills and Medicine Wheel in the Plains; Semiahmah Village burial ground and Snoqualmie Falls in Washington; Pipestone National Monument and Cold Water Springs in Minnesota; Taino Caguana ceremonial site in Puerto Rico and Yaqui Zona Indigena in Sonora, Mexico.