

**TESTIMONY OF CHRISTOPHER KEARNEY  
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UNITED STATES DEPARTMENT OF THE INTERIOR  
FOR THE HEARING BEFORE THE  
COMMITTEE ON RESOURCES  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
H.R.5155  
A BILL TO PROTECT SACRED NATIVE AMERICAN FEDERAL LANDS FROM  
SIGNIFICANT DAMAGE**

**September 25, 2002**

I am pleased to be here today to testify before this Committee on the important issue of Sacred Sites and lands protection. The Department of the Interior is working to implement a policy on Indian Sacred Sites and we believe imposing statutory requirements at this time would be counterproductive to that process. We therefore view that moving forward with H.R. 5155 is premature.

**Background**

Executive Order No. 13007, 61 Fed Reg. 26,771, Indian Sacred Sites, was issued in 1996. The Order requires federal land management agencies to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical integrity of such sacred sites. The order required each respective branch agency to implement procedures, where practicable and appropriate, to ensure reasonable notice is provided of proposed actions or policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of these sites. The Order also requires federal agencies to consult with tribes on a government-to-government basis whenever plans, activities, decisions, or proposed actions affect the integrity of, or access to, the sites. Each relevant Cabinet agency was required to send an implementation report to the President within one year of the Order's issuance.

The Office of American Indian Trust (OAIT) coordinated the Department of the Interior's implementation plan. The OAIT is responsible for ensuring department-wide compliance and overall consistency of the Sacred Sites Executive Order. An interagency Working Group on the Implementation of the Sacred Sites Executive Order was created at the Department, comprising representatives of each departmental bureau, appropriate departmental offices and the Office of the Solicitor.

The Working Group has actively sought input from Tribal representatives on all aspects of the

Department's implementation process. The Department asked for Tribal input on the structure, location and content for consultations and hosted three formal discussion meetings between tribal and federal representatives focusing on implementation from both a procedural and substantive perspective. The meetings were held in Portland, Oregon; Denver, Colorado; and Reston, Virginia in March and early April of 1997. Topics at the meetings included: how to conduct meaningful consultation; how and when consultation processes are triggered; how to protect the physical integrity of sacred sites; how to protect the confidentiality of culturally sensitive information; how to accommodate access and use; and dispute resolution.

Departmental Manual Chapter (512 DM 3) was created as a result of the consultation. The Chapter serves as a permanent means to integrate protection, preservation, accommodation of access and use practices and policies into departmental processes. It contains specific provisions requiring bureaus and offices to ensure that planning and decision documents contain: 1) a rationale for the recommended decision; 2) an explanation of how the decision is consistent with the Departmental Manual Chapter; and 3) when there is a determination that compliance with the general requirements of the Executive Order would be clearly inconsistent with essential agency function, the agency's rationale must be fully explained in the report.

To facilitate the development of working relationships, the Departmental Manual Chapter directed bureaus, where appropriate, to establish formal procedures for interaction with tribes on matters concerning Indian sacred sites. The OAIT serves as coordinator for the Department but all bureaus and offices are responsible for identifying senior level staff members as designated points of contact. Bureau representatives are responsible for contacting tribes to address the terms and conditions for interaction and to enter into formal arrangements as appropriate. These formal arrangements should include provisions: **1)** to ensure the protection, accommodation, access and use of Indian sacred sites; **2)** to ensure the confidentiality of Indian sacred sites; **3)** to develop mutually acceptable notification process; and **4)** to develop specific dispute resolution procedures.

### **Current Status**

In October, 2001, the Department attended the Sacred Lands Forum in Boulder, Colorado. Through considerable internal review and dialogue with interested participants at the forum, it became clear that we needed to move forward on establishing policies and procedures for addressing protection of sacred sites. At the "Overcoming the Challenges" symposium held on March 20, 2002, which was held as part of the DC Sacred Lands Forum, we announced our intent to reconvene the Department's Sacred Sites Working Group.

In June, 2002, each Interior office and bureau involved with sacred sites issues was asked to assign a representative to the Working Group and the first meeting occurred on July 2, 2002, in the office of the Assistant Secretary for Indian Affairs. The Group has been in the process of identifying the status of sacred site management across the bureaus. At future meetings, the Working Group will develop management guidance and tools to ensure full compliance with the

## **Executive Order**

On August 14, the Interior Working Group and the Advisory Council on Historic Preservation sponsored an interagency meeting on sacred lands and cultural resources. This meeting was conducted under the auspices of the Interagency Working Group on Environmental Justice with the idea that broader collaboration was needed to bring awareness of sacred site issues to other agencies. Several important issues were discussed at that meeting including the issue of confidentiality. The Department is exploring ways to address the desire of tribes to keep information about the nature and location of Indian sacred sites confidential, while still ensuring that appropriate public processes and input are maintained.

The next meeting of the Working Group will be held on Wednesday, October 23, 2002, from 10:00 - 12:00 where it is expected that the Department will move to finalize the Bureau policies and draft Departmental directives for implementing Sacred Sites policy.

## **Summary**

The Department plans to continue working closely with American Indians and Alaska Natives, through the government-to-government process, in ensuring access to and protection of sacred sites. A substantial amount of effort has already gone into consultation with the Tribes to establish a sacred sites protection policy that works for Native Americans and for all parties. The Department appreciates the efforts of Congressman Rahall to address this issue through legislation, however, we believe the new mandates contained in H.R. 5155 would create an unreasonable and imbalanced statutory process. This Administration should be afforded the opportunity to complete implementation strategies for the Executive Order before pursuing any new legislative mandates.

That concludes my statement. I would be glad to answer any questions you might have.