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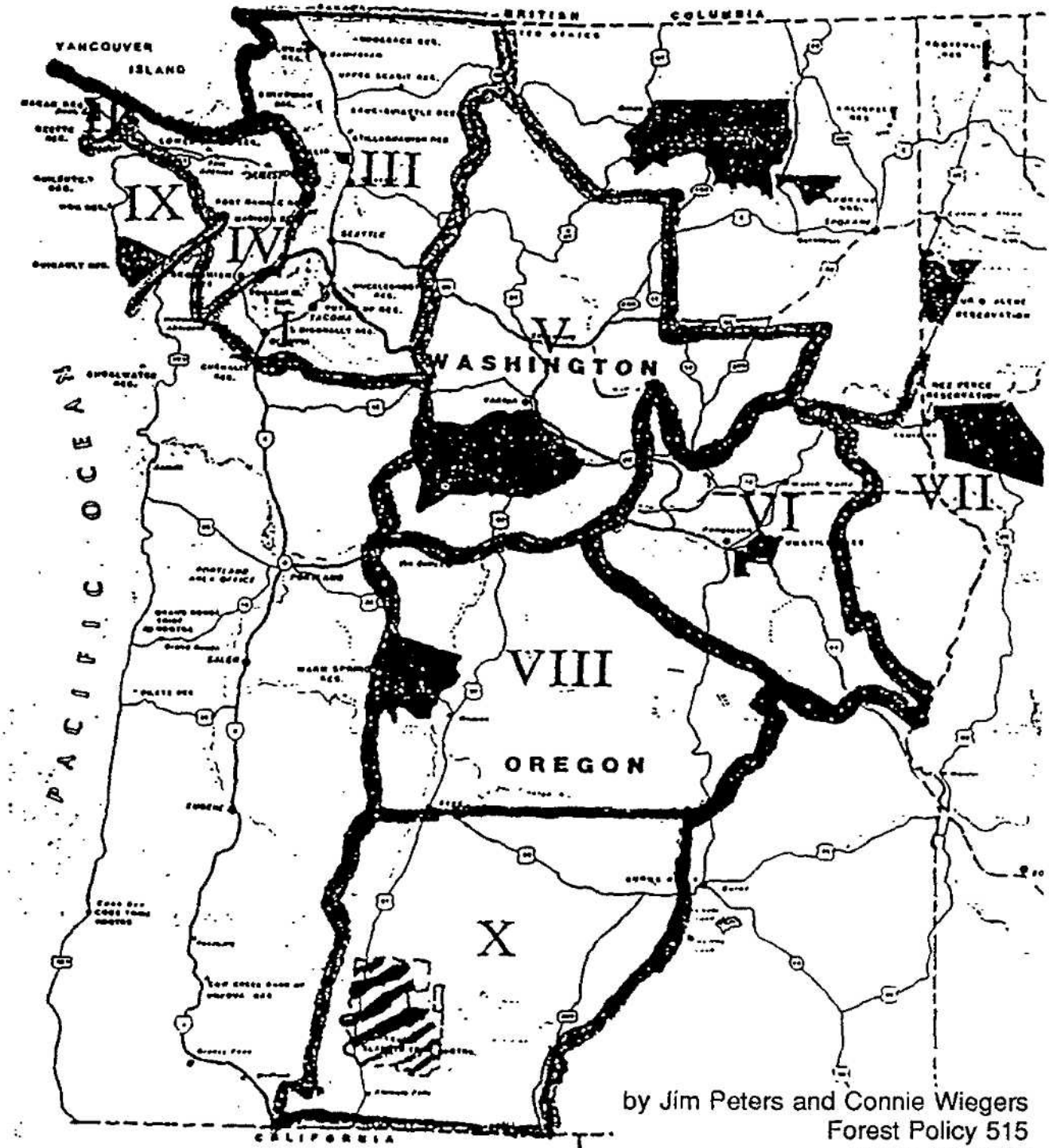
Cultural Resources, Treaty Rights, and Tribal Co-Management Authority: Changes to NFMA Regulations Supporting Cultural Resources and Indian Participation in Ecosystem Restoration.



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1.0 Introduction

American Indian rights and cultural resources are central to the ability of the Forest Service to manage our National Forests. Although the National Forest Management Act of 1976 (NFMA), did not specifically address cultural resources there have been several attempts to address them in the NFMA regulations. According to Bob Wolf, a Congressional staffer present during the writing of the NFMA, the omission of cultural resources was an oversight (Wolf, 1993). Congressional intent at the time, was to contend with the issue of managing forests for timber production. However, under Federal and treaty law, the U.S. forest management policy must protect cultural resources and it must meet U.S. treaty obligations with American Indians.

Since 1978, the NFMA regulations have been drafted. Under these regulations the U.S. Forest Service must protect cultural resources under other federal laws such as the Federal Land Management Practices Act (FLPMA). We beieve that the regulations drafted thus far are inadequate. The cultural resources regulations do not consider biological species as cultural resources, they do not address treaty obligations, and they do not recognize American Indian resource management practices as having a role in forest planning.

In practice, the existing regulations relating to cultural resources have not been followed and have left the Forest Service open to lawsuit for its actions. U.S. treaty obligations remain unaddressed in NFMA. Several lawsuits involving Federal law and treaty obligations of the U.S. government to the Indian nations have established that the U.S. government must provide a sustainable environment in which American Indians can continue to practice the cultural, religious,

hunting, fishing, trapping, and gathering rights they reserved for themselves. Resource issues of this type are ignored in Forest plans out of a disregard for American Indian resource management practices.

Indian rights and privileges have been and are still being violated in Forest Service activities. The Indian tribes are denied these rights because the laws and treaties that protect tribal interests are not fully recognized in Forest Service natural resource management plans. Management operations must recognize Indian culture, language, customs, and lifestyles. They must respect Indian desire to maintain cultural and religious practices and pass them on to their children. The Forest Service must recognize its past record and preserve and protect Indian cultural resources from alteration or destruction. We can learn from these resources; many pre-historic and historic sites have humanistic, educational, and scientific value that should be incorporated into Forest planning and management through co-operation with Indian tribes. Failure to protect cultural resources and reserved rights to natural resource use will lead to an unfeasible number of court cases that will tie up Forest Service plans on a scale larger than the Endangered Species Act.

We are arguing that Forest plans cannot continue to ignore American Indian treaty obligations on a moral or legal basis. Consequently, the regulations under NFMA must be changed to strengthen the implementation of cultural resource laws, to address treaty obligations in forest planning, and to include American Indian tribal elders or their representatives in the design, implementation, evaluation, and adjustment of National Forest management plans.

This paper will provide a description of American Indian land

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management practices followed by a history of U.S. government relations with American Indian tribes. An overview of the current NFMA regulations and national laws reviews current federal legal attempts to protect Indian culture. An informal survey of selected National Forest Plans is provided and the effectiveness of these and other Forest plans is reviewed through interviews with American Indians, Forest Service employees, former Forest Service employees, and archaeological contractors for the U.S. Forest Service. U.S. treaty obligations and federal laws are defined and interpreted in an attempt to evaluate the rights American Indians reserved to themselves through treaties and executive agreements and to interpret the rights extended to them under U.S. law. A section on American Indian ideas for National Forest planning, management, and restoration demonstrates Indian methodology for cultural-historical-ecological restoration and management. The final section of this paper provides a suggested set of new regulations based on the previous material and the impact of the regulations is discussed in the paper's conclusion.

2.0 History of American Indian Forest Management

Before European settlers arrived, American Indians managed forested areas in a sustainable manner over thousands of years. In the Indian natural resource management model, there were no areas that were set aside as 'wilderness'. Native peoples managed all areas to produce an abundant number of the plant and animal species that were most useful to them. Anthropologists still refer to large groups of Indians as hunter-gatherers. However, the difference between European agriculture and the agroecosystem management practiced by many Indian tribes is a cultural one. Early Europeans and later anthropologists

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have most likely pinned an ethno-centric label on Indian tribal resource management techniques that reflect European values systems more than it reflects the efficacy of tribal resource management practices.

Many of the Indian tribes defined as hunter-gatherers employed agricultural management techniques such as pruning, cultivation, weeding and clearing, selective harvesting and planting, game inventory, and controlled burning. Controlled burning was a key to the Indian agroecosystem management as it opened the landscape and provided an environment in which a high level of biodiversity was maintained. The high level of biodiversity provided Indians with a variety of animal and vegetable foods (Martinez, 1992b).

Indian resource management activities were regulated by a complex system of social sanctions and taboos. These traditions provide a set of guidelines which recognize the impact of people on the physical and biological community. The traditions seek to set guidelines which are implemented to reverse or compensate for human impacts (Rogers-Martinez, 1992b).

American Indian knowledge of how the ecosystem worked and could be managed has been passed from generation to generation through stories told to children by their elders. The stories contain metaphors which describe ecological information critical to the sustained maintenance of the their managed habitat. Indian elders today can identify the whereabouts of and interactions between various species of forest plants and animals as readily as any federal agency scientist. Moreover, the tribal elders can provide an oral history of the forest that describes the deterioration of Northwest forest biological

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species, the reasons for their deterioration, and where existing species remain (Rogers-Martinez, 1992a).

Some people argue that Indians cannot be trusted to conserve resources. Examples of Indian strip-mining and clear-cutting are cited. The reservation lands where these activities take place tend to be marginal. Consequntly, any resource extraction that has taken place has been not been wisely thought out. Why are these decisions then made? Clear-cutting, strip-mining, and petroleum-based, non-sustainable agricultural practices were taught to Indians as part of a 'civilization' effort. Over the decades the Bureau of Indian affairs has recognized the resource decisions of the Indians who, as 'progressives,' have bought into the dominant European management practices. The 'progressives' have a correspondingly large political voice in most reservation decisions. Indians favoring traditional practices have had little or no political voice until recently.

Indian resource management practices disappeared as the number of Indians living on the land disappeared. Resources that were once abundant are now scarce. The decline of American Indian land management practices is linked to the arrival of European settlers.

3.0 History of Relations between American Indians and European Americans

It is important to understand the chronological events of American Indians and their first relations with early Euro-Americans when examining how cultural resources are addressed in the NFMA regulations and National Forest management/policy issues.

Throughout its relationship with American Indians, the U.S. government has sought to seek sovereignty over American Indian lands.

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To eliminate further claims to Indian territorial sovereignty the U.S. government also sought to isolate and eliminate Indian cultural identities. "Savages" was the term used to describe Indians who did not accept Euro-American lifestyles imposed upon them by the U.S government. In their attempt to secure sovereignty over lands occupied by American Indians, the United States government and the European settlers stripped Native Americans of their lives and pushed them off most of their land to gain access to its title and its resources. Throughout this period and ever since American Indian cultural norms were not respected as having legitimate value for America's first peoples.

Throughout it relations with American Indians, the U.S government tried to isolate American Indians to reservation areas to avoid armed conflicts arising when Indian rights were abused by unrestricted pioneers. The American Indians who survived initial contact with incoming settlers and the U.S. government also sought to isolate themselves in an attempt to retain their ethnic identity and self respect against the drive to incorporate them and their children into the European society. Consequently, Indian desire to find protection and preservation from the militarily superior forces of European culture forced them to negotiate and sign treaties with the U.S.. government. The treaties ceded sovereignty over Indian lands to the U.S. government in return for small remunerations and the guarantee of their sovereignty within marginal reservation areas one tenth or less of the size of the original ceded territories. The treaties also directed the U.S. government to hold the reservations in trust for the tribes. Some of these reservations were located outside the tradition

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boundaries of the Indians. In many cases, traditional enemies were placed within the same small geographic area defined by reservation boundaries.

In spite of the protection afforded by the treaties, newly arriving settlers continued to murder, steal reservation land, abuse, and even hunt Indian people within their protected areas. Over the history of their contact with migrating Euro-Americans, American Indians were subjected to severe losses in human rights and access to their land, which they believed was not something to be owned, but shared and respected. Land was foremost, to the Indians it was life itself (Dippie, 1982). Removing Indians from their lands greatly damaged the cultural and spiritual integrity of future generations.

A review of the historical contact between the Native American and European cultures reveals that Euro-Americans continued to undermine American Indian cultures throughout the late nineteenth and the twentieth centuries. As the demand for land ownership by Euro-Americans increased, American Indians were forced to assimilate to the Euro-American culture. Over time American Indians have lost much of their culture, spirit, and traditional way of life as a result of U.S. policies directed toward them. The reservations did not provide full protection from the intervention of the U.S. government or from individual settlers or miners who wanted further access to Indian held resources. As demand for Indian resources increased reservations were divided further and Indians faced even greater pressure to assimilate to the dominant Euro-American culture. Eventually, Indians were forced to learn the Euro-American way of life on <u>their</u> reservations! American Indian children were in some cases sent to boarding schools to be

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brought up in Euro-American fashion.

The historical treatment of American Indians has created a situation in which the U.S. government has forced American Indians to learn about and adopt U.S.-European cultural lifestyles, but has learned little about and has adopted few Indian lifestyles in return. The lack of respect for Indian culture demonstrated in the interactions between Native Americans and U.S. government agencies has created a historical pattern of abuse of the laws and protection that the U.S. government provides as well as an abuse of the treaty rights that American Indians reserved for themselves.

This pattern of abuse of these rights continues to be represented in the dysfunctional process of consideration of American Indian rights during forest planning and implementation practiced today. To correct the imbalance in consideration of culture interests, Indians and non-Indians must learn about traditional American Indian ways of life, philosophies, and land management practices. Non-Indian cultures need to understand American Indian culture, to learn directly from the Indian land management practices that preserved the integrity of the forests for thousands of years. If we are to manage our resources in the egalitarian and sustainable manner prescribed by NFMA, we must preserve native cultural resources, research native cultural practices, ensure the execution of native resource management practices, and incorporate the American Indian perspective in forest planning.

4.0 Laws Attempting to Protect Invasion of Native American Cultural Rights

From the beginning of the 20th century, there have been efforts by Indians and non-Indians to improve the situation. The Federal laws

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listed below, were adopted addressing Native American rights and protection of sites, artifacts and other issues.

The Antiquities Act of 1906
Historic Sites Act of 1935
The Reservoir Salvage Act of 1960
The Archaeological and Preservation Act of 1974
The Department of Transportation Act of 1966
The National Historic Preservation Act of 1966
The National Environmental Protection Act of 1969
Federal Land Policy and Management Act of 1976
American Indian Religious Freedom Act of 1978
The Archaeological Resources Protection Act of 1979

Key Federal laws in this group that protect cultural resources are the National Historic Preservation Act, the National Environmental Protection Act (NEPA), the Archeological Resources Protection Act (ARPA), the American Indian Religious Freedom Act (AIRFA), and the Federal Land Policy Management Act (FLMPA).

The National Historic Preservation Act's most important provision to the NFMA directs that before any federal funds are spent on a project, a federal agency or an agency working with federal funds must 'take into account the effect of the action on any district, site, building, structure, or object that is included in the National Register.'(16 U.S.C. 470, P.L. 89-665, 80 Stat. 915 in Commission on Indian Services, 1991).

This act was designed to insure that all points of view were heard to prevent Federal agency abuses. The Act also forces federal planning agencies to spell out their reasons for their decisions to serve as a check on their proposed actions (Commission on Indian Services, 1991).

The National Environmental Policy Act, 42 U.S.C., 4331(b)(4) states:

"(I)t is the continuing responsibility of the Federal Government t use all practicable means...to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation

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may...preserve important historic, cultural, and natural aspects of our national heritage." (Commission on Indian Services, 1991). The NEPA regulations force the Forest Service to consider the cumulative impacts of forest management practices on the preservation and maintenance of cultural, and natural aspects of our heritage. Under NEPA, sites are located and the impact of proposed forest plans is assessed by an environmental assessment. The need for mitigation requires that an environmental impact assessment would be conducted. The use of the words 'preservation of historic, cultural, and natural aspects of our heritage' implies that once discovered, cultural resources must not be disturbed. It also implies that the natural aspects of our heritage must not be significantly impacted if Indian cultural heritage is to remain in tact (Northwest Indian Cemetery Protective Association v. Peterson, 1986 in Commission on Indian Services, 1991).

The Federal Land Policy Management Act (FLPMA) states that federal public lands will be managed in a manner that:

1) will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values;

2) will, where appropriate, preserve and protect certain public lands in their natural condition;

3) will provide food and habitat for fish and wildlife and domestic animals; and,

4) will provide for outdoor recreation and human occupancy and use.

The Secretary of Agriculture must coordinate land use plans for the Forest Service with land use planning programs developed by and for Indian tribes. He must consider the policies of approved tribal land resource programs (Commission on Indian Services, 1991).

The American Indian Religious Freedom Act (AIRFA) requires that

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federal agencies conduct their business in a manner that allows American Indians to practice their religion without federal interference. The enabling statutes, policies, and practices of all federal agencies are required to be altered to accommodate the practice of American Indian religions on Indian land. Federal management of cultural resources must be in compliance with AIRFA (Commission on Indian Services, 1991). Consequently, uniform administrative procedures for archaeological excavations have been developed to address Indian concerns about land, sacred objects, and religious sites in a uniform manner. These procedures are the ones outlined in the 1982 NFMA regulations and will be described below.

The Archeological Resources Planning Act (ARPA) was one of the first inclusions of American Indian concerns in the development of historic preservation policy (Commission of Indian Services, 1991). This law expands federal protection to sites of archeological interest. In ARPA, a site of archeological interest is defined as a site or object at least 100 years old capable of providing scientific or human understanding of past human behavior, cultural adaptation, and related topics. ARPA applies to all federal and Indian lands. Uniform regulations were established in 1984 to assure compliance with AIRFA. ARPA contains provisions relating to prohibited acts, permit requirements, and exceptions, applications for permits, information collection, notification to Indian tribes, confidentiality of archaeological resource information, and criminal and civil penalties for violations (Commission of Indian Services, 1991).

5.0 State Laws

State laws provide additional guidelines for cultural resources

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and can provide an appropriate set of guidelines for individual National Forests to follow. State-based cultural resource laws can reflect the local set of circumstances under which individual treaties were negotiated. They also provide a good picture of how American Indian rights are regarded by the dominant culture on a more local basis. The following laws from the State of Oregon provide examples of the types of laws that provide additional guidelines for managing cultural resources at the state level of government:

Protection of Indian Graves
State Land Use Planning Law
State Historic Preservation Plan
Classification of Historic Properties
Scenic Waterways
Ocean Resource Management
Conservation Easements

These state laws further define society's rules for protecting cultural resources. State laws are used as guidelines for operating procedures regarding cultural resources under NFMA. Some National Forests call for the use of state laws as part of their operating procedures for cultural resources (See Section 7).

6.0 The National Forest Management Act Regulations (NFMA)

The NFMA regulations are largely based on the requirements defined in the National Historic Preservation Act and the National Environmental Policy Act. The following is a summary of how the NFMA regulations from 1978-1991 address cultural resources.

Aug. 1978 — First draft of the regulations. Cultural resources were addressed under 219.9 Forest planning process:

> (c) Inventory data and information collection.
> (3) Informational needs generally may include ....(ix) property included eligible for inclusion in the National Register of Historic places and cultural resources...

May 1979 — Second set of regulations. Cultural resources were addressed in a similar manner.

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Sept. 1979 — Third (final from NFMA) regulations. This set expanded the requirements for cultural resources, and included them under 210.10 Regional Planning Actions:

(b)
(15) Discover, manage, protect, and interpret cultural resource values which are qualified or may qualify for inclusion in the National Register of Historic Places.

Cultural resources were also addressed under 219.12 Forest Planning Actions:

(1) Forest planning shall provide for the identification, protection, interpretation, and management of cultural resource on National Forest System lands. Planning for the resource will be governed by the requirements of Federal laws pertaining to historic preservation and be guided by Chapter 2360, Forest Service Management and the criteria in paragraph (1) through (3) of this paragraph.

Forest planning will-(below is a brief version, not exact)
(i) provide an overview of known historic and cultural resource data;
(ii) identify more areas for inventory;
(iii) provide for evaluation and identification;
(iv) protect resources from vandalism;
(v) identify the need for maintenance of historic sites;
(vi) identify opportunities for interpretation and education;
(2) examine interaction of cultural resources and multiple uses, and the impact of their management with other uses;
(3) formulation and analysis of alternatives shall be coordinated with State historic agencies and plans, and with other Federal agencies.

Feb. 1982 — Fourth set of regulations. This set had the same verbiage as Set. 1979, however they were only addressed in section 219.13(1) Forest Planning - resource integration requirements.

Sept. 1982 — Fifth set of regulations. This set also addressed cultural resources in the same manner as the Sept 1979 regulations did, except it was under Section 219.24 Cultural and Historic Resources.

Feb. 1991 — Sixth set (draft) regulations. This set completely deleted the verbiage from the previous regulations, and replaced it with Sections 219.39(a) and 219.40(a):

219.39(a) Public participation and government

> coordination. This section fully endorses the findings of the Critique of Land Management Planning which highlighted the critical role of ongoing and meaningful public involvement and strengthened coordination with other Federal agencies and State, local and Indian tribal governments...
>
> 219.40(a) Plans shall provide for integrated resource management and coordination of all resource uses and values on a multiple use and sustained yield basis. Management direction shall be established for applicable resource uses or values including, but not limited to, soil, water, fish....**cultural, historic,**....

The NFMA regulations are thought to be adequate guidelines for cultural resource management. However every American Indian and every Forest Archaeologist we interviewed noted that far too much discretion is left to the Forest Service for the interpretation and implementation of these regulations. The NFMA regulations do not establish specific guidelines on cultural resources for Forest Service planners or archaeologists. On the one hand, the regulations allow a Cultural Resources Manager the discretion he or she needs to carry out his/her duties in a manner most appropriate to local conditions. On the other hand, the lack of specific guidelines has allowed Forest Service employees to ignore the spirit of the regulations. The spirit of the regulations is ignored far more often than positive discretion is practiced.

The most appropriate set of guidelines has been established in other federal acts and in federal treaties signed between the U.S. government and the Indian tribes. In general, current forest plans do not consider all of these laws. Implementation of these plans has ignored NFMA cultural resource regulations to an even greater degree. The adherence to federal laws relating to cultural resources depends on the awareness of and the value placed on them by a given forest ranger.

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As currently practiced, the appropriateness of Forest Service activities related to cultural resources depends on the sensitivities of each USFS forest planner and each USFS forest archaeologist. In many cases the efforts of Forest Service employees who conduct their activities according to the NFMA cultural resource regulations are nullified.

7.0 Review of Cultural Resources as Addressed in Forest Plans

To verify the inadequacy of the Forest Plans in response to the NFMA regulations, the Winema, the Deschutes, the Willamette and the Siuslaw Natinoal Forest Plans were examined to determine and compare how each addressed cultural resources. (See Appendix for each individual copy.)

7.1 The Winema National Forest

The Winema Forest Plan proved to be the best of the four. They set the stage by providing a good, simple definition of cultural resources. They outlined specific goals and objectives for managing and protecting cultural resources based on current conditions. Some of the objectives include: compliance with state and federal laws; initiate survey on non-disturbances areas; upgrade site records; study Indian history, coordinate with other resources, and monitor and work with tribes. Through their partial inventory (scheduled to be complete by the year 2000) the site locations are that are known will be managed and protected according to the tribes' input. They have reviewed the Klamath tribe issues, documented them,and quantified them, response to the Federal court recognition of the Klamath tribe's reserved rights to former reservation land that is now national forest.

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7.2 The Deschutes National Forest

The Deschutes Forest plan objectives are to: inventory cultural resources by a professional; develop a management plan for cultural resources; document project level inventories through environmental analysis and professional evaluation for significance and possible management alternatives; and manage cultural resources in coordination with other agencies and tribes. It does state however, that cultural resources may be developed for education, scientific, or recreation purposes if integrity is maintained. Human burials must follow federal and state laws, and be evaluated by a professional. Burials may be reinterred and projects redesigned. However, the Deschutes National Forest has a clause that if projects cannot be redesigned, the local tribe must be contacted. (They should be contacted as soon as burial is found and it should be left untouched). Sites and religious places must meet the AIRFA. Tribes are permitted access to sacred and traditional sites and use and possession of sacred objects in recognition of treaty rights. A clause was included to protect forests as property of U.S. Government.

7.3 The Willamette National Forest

The Willamette Forest Plan was very vague and brief compared to the Deschutes and the Winema plans. Cultural resources inventories will precede ground disturbances. Existing federal and state laws will be used to determine management decisions. An "emphasis" is placed on inventories only if there is a project, and then it will be done on a stratified basis. "Efforts" will be made to ensure Native American religious rights. Interpretation of cultural resources will continue.

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7.4 The Siuslaw National Forest

The Siuslaw National Forest lists its cultural resources goals as identification, protection, and enhancement of historic and prehistoric cultural resources. These goals would be accomplished through inventories beofre and after ground disturbing activities. Identified sites are to be evaluated and significant sites are to be protected. Selected sites are to be enhanced and interpreted. The sites are to be evaluated under the procedures established by the National Historic Preservation Act. Cultural resource inventories are to be conducted in response to ground disturbing projects as a priority. Known sites not in project areas are evaluated when there is time. Maintenance, protection, and interpretation of selected sites is to be ongoing. The plan calls for regular monitoring of sites. There is a heavy reliance on post-disturbance surveys to discover cultural resources in areas where there is heavy ground cover. Cultural resources discovered during project implementation are protected through contract clauses.

7.5 The Forest Service Regional Guide for Pacific Northwest Forests

The Forest Service Regional Guide for Pacific Northwest Forests states that Regional Forest policy toward cultural resources must: identify treaties relevant to the forest; inventory cultural resources; consult with tribal leaders; design project plans which consider needs to protect cultural resources; assign a planning team to review adjacent tribal lands management plans and determine forest plan impacts on their lands; and consider the effects of alternatives on cultural resources.

Only the Winema National Forest facilitates the participation of American Indians in its planning process.

Table 1.

National Forests	Winema	Descu-tes	Willa-mette	Siuslaw	Regional Guideline
Defines cultural resources	X				
Provides management plan for cultural resources	X	X		X	X
Requires inventory of cultural resources	X	X	X	X	X
Considers redesigning projects to protect sites, artifacts, etc.	X	X		X	X
Committed to working with tribes	X	X		X	X
Facilitates tribal input in forest plans	X				

The fact that only the Forest Plan of the Winema National Forest includes the facilitation of tribal input into its Forest plan points to problems with the actual implementation of the spirit of the NFMA cultural resource regulations as they are practiced on the ground. (See Table 1.) The next section discusses the problems and opportunities present in current Forest management activities as they relate to Federal law.

8.0 Problems and Opportunities with the Implementation of Federal Laws and Regulations

Through interviews with American Indians, Forest Archaeologists, and private archaeology contracting firms familiar with Forest Service policy toward cultural resource, we have noted some fundamental

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problems with the methodologies used by the Forest Service to protect and reserve cultural resources. These include: 1) the failure to meet survey objectives; 2) the lack of adequate definition of site probability areas; 3) the use of inadequately trained person power; 4) lack of job security for employees whose actions delay timber harvest objectives; 5) deliberate destruction of cultural resource sites by Forest Service employees; 6) lack of dialogue and communication within the Forest Service relating to site locations, 7) lack of site monitoring; and 8) lack of Forest Service enforcement of treaty rights. By 1992, 100 percent of the forest lands were to be surveyed. By March 1993, only ten percent of the land base of the Umatilla National Forest and five to ten percent of the Umpqua National Forest lands had undergone a cultural resources survey. In most cases the Forest Service has conducted cultural resource surveys only on sites that are designated for timber harvest.

There is also a great need to redefine high, medium, and low site probability areas, particularly medium site probability areas. National Forests produce litter which covers sites. In the Siuslaw National Forest, site searches are concentrated near waterways or the coast where erosion uncovers them. As a result, the it is assumed by the Siuslaw National Forest that Indians did not live in or make great use of the mountains. Yet in the Siuslaw, no sub-surface soil testing methods are employed. Many sites are discovered after a timber site is cleared. This practice is simply unacceptable according to the spirit of the regulations.

Sites remain undiscovered for a number of other reasons. The use of inadequately trained person power is another case of operating

against the spirit of the law. In many cases, the Forest Service provides forty hours of cultural survey training for Forest Service employees who are experts in timber management, not cultural resources. Many of these employees do not want to find sights.

Those employees that speak out against such actions are removed from their positions. David Liberty, current a graduate student in Anthropology at Oregon State University, and a former Forest Service Engineer for the Malheur District, was told to contribute 5% of his time to act as a liaison for American Indian input for the forest plan. However, he was fired within two years, even though a great deal of effort and good communication was being established. The Malheur District feared there would be a stall in the planned timber sales. Once Mr. Liberty was removed from his position, the forest supervisor stopped contact with the tribes and never implemented any of the protection measures for culture resources and Native Americans' traditional use of certain forest lands. In the Santa Fe National Forest, an archaeologist, Landon Smith, spoke out about 100 sites that had been destroyed by timber sales; he was displaced into another position with strict guidelines never to be involved in cultural resource issues again.

Jeff Painter, a former Forest Service employee with the Umpqua National Forest cites another personal example of deliberate destruction and removal of cairns marking religious sites. He believes the cairns were pushed over by Forest Service employees to avoid litigation relating to planned timber sales. The sales were located in an area that has since been logged. Forest Service employees who destroy cultural resources or who vandalize or destroy cultural sites,

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do so in clear violation of Federal law. In another area, a large natural formation in the Umpqua National Forest called 'Old Man Rock' was desecrated after a futile attempt to destroy it was made. Mr. Painter has a number of photographs which document both sets of destructive activities. He believes that the destruction was carried out under the auspices of the Umpqua National Forest.

Mr. Painter tried to register these sites in the National Historical Register under the National Historic Preservation Act for protection. In the process of trying to register these religious sites, he discovered that the laws applies more readily to European sites or buildings. For instance, there are no documents to prove that a particular site is a vision quest site. Artifacts are not needed, nor particularly wanted at such a site; a major effort is kept to keep the area free of human debris. Oral history is, in many cases, the only type of documentation available for such sites. As a result, the process for adding Indian religious sites to the historical register must be changed.

Cultural resource sites are disturbed in less deliberate ways. The lack of dialogue regarding survey strategy and communication about the location of protected areas has resulted in their potential destruction. An archaeologist working for the Umatilla National Forest noticed that a significant stand of ponderosa pine in a protected site were being marked for harvest. The Forest Service explained to him that the lines of communication had been crossed and that a mistake had been made. This episode points out the need for improved communication between the Forest Archaeologist and the Forest Planner of the Umatilla. In addition, the episode points out the need for monitoring

of protected sites.

Carl Davis, an archaeologist for the Siuslaw National Forest, provided a detailed overview of cultural resource management at his District. He believed the federal laws have "lots of teeth", however the "good ol' boys" pressure and some ignorance factors often prohibit adherence to the law. Mr. Davis sites a shortage of monitoring on site. Cultural resource technical training is needed for field personnel. Better interagency cooperation, public awareness and understanding of the importance of sites and artifacts is needed. Native American involvement has improved, however he believes lack of time for involvement is emphasized by both Forest Service and the local Indian tribes. Staff Archeologist involvement in in-house communication for planning and other purposes varies by forest and personnel. Archaeologists are involved in environmental assessments more that environmental impact assessments. On ground operation and "site" disturbances are his highest priority. He believes the Forest Service is meeting the minimum interpretation of cultural resource laws, however there is no management of them. Historic-cultural landscapes are recognized, but they are not addressed in Forest Plans. Cumulative impacts on archeology, historic, and Native American values are also unaddressed in Forest plans.

Louie Pitt, a natural resource coordinator with the Warm Springs Reservation, was contacted regarding the proposed changes to the NFMA regulations. His position was very firm toward improving the Forest Service's compliance with treaty rights. He felt there needs to be an "in-between" of preserving the land and high yield. "We need to get the Forest Service, BLM, State agencies and tribal governments together

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and talk about the problems in natural resource management. A ground up approach will give us the answer. If we have sovereignty as a tribe, we have a right to be co-managers of the forest, and protect our treaty rights."

David Painter provides two positive examples of how a ground up approach has been used to manage cultural resources, and save a potential site from destruction. The first example was a personal one for him. In the Umpqua National Forest, the Forest was plan called for the removal of an historic fire tower from Garwood Butte to a parking lot at Diamond Lake. It was argued by the Forest Service that the fire tower was not located within access of the general public. Therefore it should be removed to the Diamond Lake parking lot. What was not mentioned was that with the fire tower remaining, the area could not be logged under the National Historic Preservation Act. To protect the fire tower as it existed, Mr. Painter and others in the local community organized volunteer labor to restore it. They got free materials from lumber companies to rebuild the area. Under the restoration plan, the forest service was directed to build a replica of the fire tower in the Diamond Lake parking lot. The fire tower was saved. The Umpqua National Forest has yet to construct the proposed replica in the parking lot.

Mr. Painter also cited another positive experience taking place in the Redwood National Forest. The cultural resources manual there is written closer to the spirit of the laws protecting cultural resources. In Redwood National Forest a heritage revisory committee conducts a biannual review of sites slated for change. Members of the heritage revisory committee include representatives of the tribes who are

appointed by elders. They attend these meetings and then report back to the elders. The elders might agree or disagree with a set of plans. They have equal decision-making authority.

American Indians, Forest Service archaeologists and private archaeologists who have worked for the Forest Service verify the problems and opportunities related above. They have also provided input on the inadequacies and in some cases, the sabotage of the Forest Planning process and the lack of in-house communication related to implementation. The regulations are ineffective due to the lack of action to protect sites from timber sales, clear guidance, funding, and in-house as well as interagency communication with professional archeologist and Native Americans.

Over time, Forest Plans have not adequately addressed cultural resources, and have not significantly involved American Indians or USFS Archaeologists and Native Americans in forest planning and management. In the circumstances in which American Indians and archaeologists are involved and provide input to the plans, their recommendations are usually not implemented during ground operations.

All versions of the NFMA regulations have not provided enough requirements to assure that cultural resources will be protected and managed in a manner sensitive to American Indian rights and privileges. The regulations related to cultural resources were added to NFMA as an afterthought. The spirit of the law as the legislators crafted it is vague, if present at all. Certainly it does not appear to exist at the implementation and evaluation level of the Forest management activities of the National Forests we hastily reviewed.

Consequently, we believe that the NFMA regulations for cultural

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resources fail to understand and protect the meaning of pertinent issues critical to the value, the maintenance, and the preservation of past and present American Indian culture including: sites and artifacts; rights to fishing, trapping, hunting, gathering, and ceremonial grounds; historic cultural landscapes used by American Indians; and American Indian involvement in forest planning and management.

9.0 Treaties, Indian Law, and Tribal Co-management Authority

The laws and regulations mentioned above have not addressed treaty rights of American Indian tribes. We will do so here in an attempt to demonstrate the importance of treaty rights to Forest management within the guidelines of Federal Law. Treaty rights are a critical issue to American Indians and to the Forest Service at this time. Treaty rights of North American tribes have been continually broken, often with the sanction of the U.S. courts. Yet since the late 1970s, Indian treaty rights have been increasingly recognized in the courts. These court cases have set precedents which have defined treaty law increasingly in favor of American Indians. The precedents provided by recent court interpretations are creating legal ground for tribal co-management of public forest lands.

9.1 Treaties

Treaties are defined as 'a formal agreement between two nations' (Webster's New Dictionary, 1979). Treaties with American Indians were undertaken by the United States as a negotiation between two sovereign nations. By signing treaties with American Indians tribes, the U.S. government recognized them as a sovereign nations and peoples (Zucker, Hammel, Hogross, 1983). Treaties were used by the U.S. government as

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a means to acquire title to lands it needed for development as it moved its geographical boundaries to Western portion of the continent.

In general the treaties were meant to describe boundaries; make agreements for territories; establish rights for fish, water, wildlife, hunting; provide government services, subsidies, facilities, and dwellings; and to set presidential discretion regarding these rights. Treaties did not give American Indians any special rights or reservations, they helped the government acknowledge the distinct political status of tribes while resolving land conflicts with new white settlers (Zucker, Hummel, and Hogfoss, 1983). However, most treaties were broken or never ratified. As a result, the "trust" relationship that had been established through the treaties, between Native Americans and the federal government, was also broken or unratified. Legally, areas turned over to the federal government through unratified treaties were never formally ceded to the United States.

The treaties signed by the tribes and the U.S. government placed significant obligations on the U.S. government. Under Article 6 of the U.S. Constitution, treaties with Indian tribes constitute the supreme law of the land. Executive order agreements were bilateral transactions similar to treaties. Treaties were created out of a desire to isolate the tribes and encroaching settlers from each other. To protect the tribes from the encroachment of settlers seeking to exploit reservation land and reserved resources, the treaties and executive agreements provided that the United States became a trustee of the Indian nations it dealt with. As a trustee for each Indian nation, the U.S. government took on the responsibility of dealing

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openly and fairly with the natives people for whom it provides protection.

Several court cases provide a legal definition of Indian rights granted in the treaties between Indian tribes and the U.S. government. Indian treaties have as much force as any treaty made with any other nation (Worcester v. Georgia in Columbia River Inter-Tribal Fish Commission (CRITFC), 1981). No substantial change in these arrangements occurred after the U.S. government created executive order agreements to isolate tribal people from European settlers in the interests of both parties.

When the tribes ceded their land to the United States government, they reserved special privileges for themselves including tribal self government; land; and hunting, fishing, and gathering rights on and off their reservation areas. The basis for these rights is in the historical relationship between the Indians and the United States. As the original owners of the lands and the waters of the United States, the Indian tribes have the right to regulate the use of their resources as they see fit unless federal regulations direct them to do otherwise (United States v. Shoshone Tribe of Indians, 304 U.S. 111, 1938, in CRITFC, 1981).

These rights reserved by the tribes, guaranteed in treaties and executive agreements, have conflicted with many private interests and many of the federal and state laws promulgated thereafter. In cases of conflict, the rights of Indians will be considered first. Unless or until Congress repeals the trust relationship between the United States and the tribes, the U.S. government will remain responsible for protecting tribal rights reserved in the treaties and executive

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agreements. Consequently, all laws (including NFMA) promulgated since the signing of any treaties or executive agreements are required to respect and protect treaty rights.

9.2 Indian Law

There have been many disputes over the these rights and their interpretations. In modern times, the courts have tended to favor Indian prerogatives in these disputes, unless laws created by Congress stated otherwise. The courts have established that under the treaty agreements between American Indians and the United States: 1) Treaties were a grant of rights **from** American Indians, not a grant of rights **to** them; 2) Rights retained by American Indians are permanent; 3) Hunting, trapping, fishing, and gathering rights are determined on the ability of the Indians to earn a moderate living from them; 4) The environment of the plants and animals on which treaties are based must be protected; 5) Federal land resource agencies must not manage resources in a manner that degrades the value of fishing rights; 6) The tribes have the right to the quantity and quality of water necessary to protect fish and wildlife habitat necessary to protect the tribes present and future needs; 7) Water rights needed to maintain fish and wildlife habitat are aboriginal and cannot be replaced by competing claims; and 8) Indian rights to religious practices can restrict Forest Service management options.

The court cases listed above establish a legal interpretation of the rights that American Indians reserved for themselves. The following cases back up this assertion and are listed below. These cases and others can serve as set of legal guidelines that the Forest Service must follow if it is to meet its treaty and executive agreement

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obligations to American Indians.

9.2.1 United States v. Winans

In this case, non-Indian Settlers had received title to lands bordering one of the best Indians fishing spots on the Columbia River. The owner, Winans, attempted to prevent a Yakima Indian from fishing on his land against the provisions of the treaty under which the Yakima ceded their territory. The Supreme Court decided that the Yakima fishing rights were permanent. "The right was intended to be continuing as against the United States and its grantees as well as against the state and its grantees." (Winans at 381-2, 1905, in CRIFC, 1981). The other important precedent for Indian law coming from Winans states that the treaty was not a grant of rights to the Indians, but a grant of rights from them...a reservation of those not granted." Id. at 381.

9.2.2 Sohappy v. Smith

Sohappy v. Smith defined the nature of those fishing rights. In this case, the judge decided that the Yakima tribe has a right to the fishery and are entitled to their fair share. The share of the fishery was set at 50% within the area along the Columbia River basin reserved by the tribes for fishing. Subsequently it was decided that the amount of fish taken from the fishery would be based on the ability of the Indians tribes to earn a moderate living (Passenger Fishing Vessel, 1979, p. 8 CRIFC).

9.2.3 United States v. Washington

In United States v. Washington, the question of preservation of the fishing habitat was debated as it related to preservation of fishing rights. In this case the judge decided that the right to fifty

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percent of each fish run passing through traditional fishing sites had no value if there were no fish passing through those areas (U.S. v. Washington, 1980 in CRITFC, 1981). This decision meant that the environment of the fish must be protected to ensure the integrity of the rights reserved by the tribes for themselves. The court identified the following environmental conditions necessary to preserve Salmon runs: 1) access to and from the sea for Salmon; and 2) an adequate supply of good quality water (CRITFC, 1981).

9.2.4 Confederated Tribes of the Umatilla Indian Reservation v. Callaway

This case establishes that federal resource management agencies must not manage resources in a manner that degrades the value of existing tribal fishing rights. In this case, the managers of the Federal Columbia Power System (FCRPS) were ordered by an Oregon Federal District Court to manage the FCRPS's peak power system in a way that doesn't impair or destroy the tribe's fishing rights (CRIFC, 1981). Other cases have kept the federal government, particularly the Army Corps of Engineers, from executing projects which would interfere with Indian fishing rights.

9.2.5 Arizona v. California

One of the basic principles of this case applies to management of Forest Service lands. The forest management principle states that the tribes have the right to enough quantity and quality of water to ensure protection of fish and wildlife habitat necessary to the tribe's ability to satisfy its present and future needs.

9.2.6 Colville Confederated Tribes v. Walton

In this case it was determined that the Colville tribe had

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retained water rights which entitled it to maintain a habitat for the trout upon which it depended for its sustenance. The court decided that the tribe had the right to sufficient water needed to maintain the habitat required by the spawning trout. The final opinion further stated that these rights were aboriginal rights and could not be replaced by competing claims.

9.2.7 United States v. Anderson

United States v. Anderson further clarified the rights of American Indians to the water needed to maintain trout habitat. This case explored this amount of water flows needed to maintain water temperature suitable for the maintenance of trout habitat. The court held that the water flow couldn't decline below twenty cubic feet per second. This was the minimum water flow that was needed to maintain the creek temperature at 68° F, the required temperature needed for suitable fish habitat.

9.2.8 Kimball v. Callahan

Kimball v. Callahan defined the Klamath Tribe's hunting, trapping, gathering, and fishing rights as extending from time immemorial. Irrigation rights were extended from the 1864 creation of the Klamath reservation. In this decision there was a clear distinction between agricultural water rights and traditional water rights. The court held that water needed to preserve wetlands must be reserved for the Klamath Tribe if the wetlands were part of the Klamath traditional hunting, trapping, gathering, or fishing areas.

9.2.9 Northwest Indian Cemetery Protective Association v. Peterson

In this case Indians and conservation groups challenged Forest Service plans to clearcut and build a road through the sacred Blue

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Creek 'high country' in the Siskiyou mountains in California. This area was listed on the National Register of Historic Places. The case used the First Amendment, NEPA, and the Federal Water Pollution Control Act to bolster its claims. To win the case, the plaintiffs demonstrated a burden to their rights on the basis that:

1) the high country central and indispensable to their religious beliefs and practices

2) logging and road construction would seriously interfere with or impair their religious practices (McDonald, 1986).

The court accepted these arguments and the evidence submitted. This case demonstrates that the Forest Service must respect the American Indian rights to practice Indian religion on public land as long as the tribes actions do not obstruct others' land use practices. The court decision also demonstrates that the integrity of the area must be maintained in respect of the American Indian religious practices.

9.3 Tribal Co-Management Authority

The cases described above interpret the extent upon which the Forest Service, as a federal agency-trustee is required by Article 6 of the Constitution to incorporate American Indian treaty rights into planning considerations. As mentioned earlier, federal and state agencies responsible for protecting those rights have largely avoided including legal considerations in their land management plans.

Nance v. the Environmental Protection Agency, determined that "Any federal government action is subject to the United States fiduciary responsibilities toward Indian tribes." (Nance v. Environmental Protection Agency in CRIFC, 1981). As a trustee of American Indian tribes the government is under the obligation to administer the trust

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solely in the interests of the beneficiary (CRIFC, 1981). In the cases in which Indian rights are ignored by federal agencies, these agencies are operating against the law.

Pyramid Lake Paiute Indian Tribe v. Morton holds up this assertion. In this case the Pyramid Paiutes stopped the Secretary of the Interior from diverting 378,000 cubic feet of water from the reservoir built above the tribes' fishery. The loss of water below the dam would have greatly harmed this fishery. The court held that the Secretary of the Interior could not simply decide that the water could be diverted from the dam. The Pyramid Lake Paiutes relied upon the Secretary of the Interior as trustee to make resource decisions that would protect their interests. The court held that the Secretary was obligated under law to consider the needs of the Indians first.

The definitions of treaty and federal laws coming out from these cases demonstrates that it is the legal as well as the moral obligation of all federal agencies, including the Forest Service to uphold the intent of the treaties and executive agreements made between American Indians and the United States government. The burden of proof lies with the federal agencies to demonstrate that their actions will not harm the interests of their American Indian trustees. Such acts are considered an act of confiscation instead of guardianship (CRIFC, 1981).

As the court cases cited above demonstrate, recent Federal and private actions that have been challenged have favored the American Indian plaintiffs. As more is known about habitat considerations and American Indian cultural heritage, the Forest Service can expect an increasing number of challenges to its Forest plans developed under the

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current discretion exercised in the past. Any Forest Service planning action that impinges upon the treaty rights of the tribes can expect a strong, time consuming challenge in court. Meanwhile the Forest Service will be unable to carry out all related activities in such a forest plan while a case is being decided. Forest Service compliance with existing treaties and federal laws is mandatory if it does not wish to risk its ability to carry out its Forest plans unopposed. The ideal method for conducting forest management without legal challenge from American Indians would be to recognize tribal co-management authority. Tribal co-management authority would include American Indian elders or their representatives as equal partners in the design, implementation, evaluation, and adjustment of current and future Forest plans. Indians have their own management objectives which incorporate the goals of land restoration in forest planning. The current regulations in NFMA do not provide the legal framework in which all federal laws and treaty obligations can be met. While the legal framework can provide a means by which American Indians can become partners in Forest planning, it is important to realize the value of the Indian resource management contributions in and of themselves. The knowledge, the experience, and the love of the land, air, and water provided by American Indians will root Forest planning to a firm historic-cultural basis for resource uses.

10.0 American Indian Forest Management

American Indians are proposing their own models of forest management and restoration. The philosophical basis of one such model involves managing forested areas on the basis of a historical-cultural land ethic practiced for thousands of years before the arrival of Europeans.

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To manage natural resources in a historic-cultural manner, Rogers-Martinez (1990) suggests the first task is to determine the nature of continental ecosystems as they existed before the arrival of Columbus. The second task would be to determine how native cultures managed what was there. Management techniques to be researched would include harvesting, prescription fire, economic and cultural uses of plants and animals for food, medicine, implements and religious purposes. Use of specific knowledge of fire ecology, plant succession, and game management combined with research on historical and ethnographic literature is projected to provide the basis for the transformation to native land stewardship principles.

This transformation is projected to include a working synthesis of ethno and modern science such as:

1) the development of a wide variety of historic native food, fiber, and medicinal plants for modern use;

2) agro-ecology (native perennial polyculture, native forest and prairie interplanting, uneven age forest management);

3) native seed banks;

4) rest-rotation herbivore grazing; and

5) wildlife management-hunting regulations emphasizing species diversity (Rogers-Martinez, 1990)

These types of resource management and restoration must be practiced at the level of an entire ecosystem, rather than managed for a particular species. The implementation of this model would involve community management of public lands, incorporating a holistic native model of a integrated ecological-cultural-economic whole.

One proposed model of such an integrated system is the Sinkyone

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Intertribal Park Project. The proposed site of the park is an area that was sold by the Georgia Pacific Corporation to the State of California and the Trust for Public Lands. In his article entitled, "The Sinkyone Intertribal Park Project" Rogers-Martinez (1992b) describes Intertribal Sinkyone Wilderness Council's ideas for the park. The park would provide an area in which Indian people could meet and perform traditional ceremonies, and hunt, fish, and gather in the traditional manner. It would serve as an educational center to provide an opportunity for Indians and non-Indians to learn about Indian cultures and ways. An important objective for Sinkyone would be to serve as a educational source for Indian children to learn about their cultures directly.

The tribes organizing the Sinkyone project identify water restoration as their first goal. Thinning and fuel load reduction will be the first objective. The time-frame in which the forest will be restored will be a long one. Thinning would be done by hand and would create local Indian and non-Indian employment opportunities. Marketing strategies for redwood and Douglas-fir saplings would be developed. The restoration effort would employ the work of volunteers.

The next step would be to restore the tall-moisture trapping forest canopy. Redwood stump sprouts would be thinned from 7-15 per stump to 1-2 per stump. The article goes on to include a number of other projected practices based on a model of holistic planning and implementation including allowing shrub plants to live out a life cycle to prepare grounds for regeneration of redwoods through their nitrogen-fixing capacities, replanting of redwood seedlings, and restoration of native grasses and shrubs. (See Appendix B.)

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The Sinkyone Inter-Tribal Park Project is an effort to restore landscape and culture in a holistic manner. It demonstrates that the generation of indigenous knowledge and culture can make a powerful contribution to the restoration of the land. The tie between the land and indigenous people provides a methodology for undoing some of the damage that has occurred within U.S. Forest Service managed lands within the past one hundred years. Projects such as the Sinkyone Intertribal Park Project demonstrate the unique capacity for American Indians to provide a leadership role in the coming restoration of our forests. They also demonstrate the basis upon which Euro-Americans, African Americans, Asians, and Hispanics can work together with American Indians to create a new basis for cultural understanding and respect. We support such projects and our support is reflected in the new set of NFMA regulations regarding cultural and American Indian treaty rights to reservation lands and non-reservation use of natural resources proposed below.

11.0 RECOMMENDATIONS FOR THE NFMA REGULATIONS

The current regulations (9/20/82) are not specific enough and omit some of the critical issues facing cultural resources today. The first issue which was not addressed in the regulations, is to define cultural resources, and since there are varied interpretations, the following definition is recommended based on the literature review and on feedback from American Indians:

> Cultural resources are irreplaceable remains of sites, structures, artifacts, objects, ruins, works of art, architecture, biological species, and natural features and landscapes that were of importance in human events both historic and pre-historic.

The reality of what is happening with cultural resource management today is that unethical Forest Service actions are occurring in the

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planning and implementation of forest plans. The monitoring and coordination of timber sales planners and Forest archaeologists do not effectively locate and protect cultural resources. Sites are being destroyed, and the employees that are ethical enough to speak out, are being fired or displaced.

Listed below are the recommendations for replacing the existing and proposed sets of regulations. Four major categories of issues need to be addressed:

1) Sites, burials and artifacts;
2) Cultural landscapes;
3) Treaty rights to fish, water, wildlife, hunting and gathering, ceremonial sites, etc.; and
4) Forest Management and Planning.

These major categories are preceded by a section which tries to capture the spirit of the suggested regulations so that there will be no question as to how these regulations are to be implemented.

11.1 Spirit of the Regulations on Cultural Resources

For thousands of years, native people have lived in the territory controlled today by the U.S. government. Over the years, indigenous people lived a harmonious relationship with the land. They observed natural processes and developed a great understanding of their environment. American Indians discovered and developed local medicines and they used local materials to provide shelter, make implements, and provide sustenance through hunting, fishing, trapping, and gathering. All of these practices were and still are conducted in sustainable manner. Native religions taught and teach American Indians to be thankful for what they receive by not taking more than they can use.

These ideas and practices are respectful of the people's tie to the land. The assault on Indian culture that has occurred throughout

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the history of the United State government must end. Recognizing the value of the Indian tribes' historical, cultural ties to the land and their rights as sovereign nations, several federal laws have been promulgated to protect treaty rights cultural resources, among them the National Historic Preservation Act, the National Environmental Protection Act, the Federal Land Management Policy Act, the American Indian Religious Freedom Act, the Archaeological Resources Protection Act and the cultural resources regulations of the National Forest Management Act. Planning must be implemented in strict accordance with the provisions contained within these laws.

These laws do not protect all of the rights reserved by Indians. Therefore treaty obligations must be met as defined by the tribes, or in disputed cases, by the courts. Court cases are costly and do not contribute to an understanding based on mutual trust that could serve the Forest Service and the tribes that it must serve as federal trustee. Rather than litigation, cooperation must be emphasized in resource issues of concern to the tribes.

By virtue of the success by which their ancestors managed forest resources, additional resources must be diverted to learn all that we can about indigenous cultures and management systems before the turn of the century. Most cost effective among learning styles would be interviews with tribal elders. Millions of dollars are being paid to Western scientists to determine how to manage our resources in a sustainable manner. American Indians already had a sustainable natural resource management system in place for thousands of years before European nations invaded their lands. At least twenty percent of all natural resource research money should be allocated toward the

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rediscovery of American Indian nature resource management value systems.

Researching and documenting indigenous resource knowledge and management systems is an action could repeat history by taking knowledge from them without facilitating the use of Indian knowledge to their benefit. In return for a U.S government sponsored research program soliciting Indian traditional knowledge, U.S. government agencies must include American Indians in the design, implementation, monitoring, evaluation, and adjustment of forest planning activities. Elders will have veto power over Forest resource decisions that they believe would affect the tribes adversely. The ideas and needs expressed by Indian elders are respected as a knowledge base which is critical to the healthy maintenance of our forest systems.

To achieve the objectives outlined above, the following regulations must be added to the current regulations existing in NFMA:

11.2 Ceremonial Sites, Burials and Artifacts

All sites, burials and artifacts that have religious significance in Native American ceremonial traditions will not be excavated unless all local tribes concerned have been contacted, have visited the area, and have provided written or oral permission for the action to take place. Management responsibility for unknown sites that are dismantled or destroyed by accident will be given to the local tribes concerned. All operations contributing to the destruction of a site will cease upon its discovery.

Forest lands designated for timber management will be completely inventoried for any sites, burials or artifacts. Other lands will be inventoried immediately following.

Probability areas for potential sites defined as high, medium, and low must be redefined into high, medium and low with input from American Indian elders and archaeologists.

Sites will not be disturbed if they contain a burial site. The whereabouts of these sites will not be publicized without permission of the concerned tribes. If they are publicized, they will be strictly monitored in a manner prescribed by the tribes with religious ties to the site.

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Tribal elders or their representatives and qualified archaeologists with a minimum of a M.A. degree or five years field experience must lead the implementation of all cultural resources surveys.

Prior to timber sale ground disturbances, a representative of the potentially affected tribe and a trained archaeologist will monitor timber harvesting activities to avoid destruction of sites, burials, artifacts, and cultural landscape destruction.

The amount of monitoring of timber sales will be increased to a level that will ensure that protected lands remain undisturbed.

The Forest Service shall employ subsurface testing to determine the existence of sites in high and medium probability areas.

A management plan for any sites, burials, artifacts, landmarks, sacred ceremonial grounds, and biological cultural resources will be developed jointly with local tribes.

11.3 Cultural landscapes

Data will be collected and evaluated to determine cultural landscapes for interpretation and protection of past human ways of life.

Proactive research on cultural resources and their location must be conducted beginning in July 1, 1994. All Forest lands must be surveyed by June 30, 2001. A proactive cultural surveys is defined as a cultural survey taking place on lands that do not have immediately pending timber sales. The proactive cultural survey reduces the conflict arising out of a perceived need to harvest a planned timber sale area despite the presence of cultural resources requiring preservation.

Proactive research on cultural landscapes should include a focus on past American Indian land management practices.

Cultural landscape districts will be established from the above research. Federal Forest lands shall be managed to protect the following: irreplaceable remains of sites, structures, artifacts, objects, ruins, works of art, architecture, culturally important biological species, religious sites, and natural features and landscapes that are of importance in human events pre-historic, historic, present, and future.

11.4 Treaty rights to fish, water, wildlife, hunting and gathering

Treaty rights will be upheld as they are binding legal agreements recognizing Indian tribes as independent nations. They are the supreme law of the land.

Treaty rights will be included in all forest plans to protect Native American privileges and rights to use natural resources in

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a traditional manner.

Treaty rights to fish, water, wildlife, hunting, and gathering on and off reservation as specified in treaties with individual tribes must be fully honored.

The environmental integrity of the lands, air, and water must remain intact so as not to obstruct or degrade the above mentioned usufructuary rights reserved by American Indians on and off the reservation.

All Forest Service employees must be educated on the nature of these treaty rights to ensure that American Indian natural resource rights will be protected. Penalties including short term suspension without pay will be meted out to those whose negligent actions can be documented.

11.5 Forest Management and Planning

In-house communication shall be established through monthly district level staff meetings to ensure that all available knowledge related to cultural resources and their potential locations within a particular forest are being incorporated into all aspects of forest planning at the National Forest level.

In all resource decisions or discoveries concerning cultural resources or reserved natural resource rights of American Indians, the local tribes or the tribes with a historical and cultural connection to the site must be consulted immediately. Local American Indians and tribes in the region shall be involved in the forest planning process when it relates to impacts to sites, artifacts, landscapes, treaty rights, maintenance of habitat related to hunting, fishing, trapping and gathering rights, and existing Federal laws pertaining to Native Americans. The identified tribes must be involved in the design, implementation, monitoring, evaluation, and adjustment of Forest Service activities taking place near identified cultural resources.

The Forest Service, as a federal trustee of American Indian tribes, must execute its planning decisions in a manner that benefits the interests of the tribes.

The Forest Service must follow and respect all federal laws and treaties relating to American Indians.

American Indians have the right to refusal of all Forest plans that are not sanctioned by the laws and treaties that protect the interests they reserved for themselves.

Forest Service employees who try to uphold the law cannot be transferred without just reasons.

Evidence of any Forest Service employee involved in the destruction of cultural resources or in obstruction of federal

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laws on or off duty will result in the automatic termination of his or her employment with the Forest Service.

When American Indians treaty rights conflict with existing laws, those treaty rights must be considered first.

Public education about the value and the right of American Indians to manage their cultural and natural resources they reserved to themselves must receive equal attention with other educational activities promoted by the Forest Service within the agency as well as to Forest visitors.

Forest Service promoted education activities related to Indian cultures will take place at the discretion of the Indian tribes.

12.0 Conclusion

The regulations cited above are designed to create a basis for a new paradigm based on restoration, nurturing, and sustainable use of our natural resources in forest management. American Indian, European, African, Asian and Hispanic American cultures have been living together and apart for five centuries. To ensure the survival of all of us, we must live together and respect and understand our respective cultures. American Indian culture holds the strongest and oldest cultural relationship to the land, air, and water of the North American Continent. European land use practices have created a disturbance that threatens the viability of our forests as functioning ecosystems. Under Euro-American cultural dominance, Indian culture has suffered the same fate. American Indians believe that their existence depends on the integrity of the environment. If our forests are destroyed, American Indian cultures will be destroyed. Over the history of European existence on the North American continent, the Indians and the forests have suffered the same fate.

The regulations above suggest that National Forest management practices should be tied closely to joint American Indian/Forest Service stewardship. The regulations strongly support the ability of

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American Indians to practice native cultural and religious beliefs that are central to the sustainable forest management practices they have conducted for thousands of years. Maintenance of cultural and religious beliefs includes maintenance of the biological species which have been traditionally utilized by native peoples.

Land restoration will be the key to the survival and proliferation of such species. For this reason, the regulations ensure that laws such as the American Indian Religious Freedom Act are strictly enforced. Indian cultural and religious beliefs will need to be incorporated into Forest plans to meet the intention of this law as interpreted by Indian people. To ensure that cultural and religious beliefs are incorporated into Forest plans, elders or their representatives will become part of an active planning partnership in the federal forest areas surrounding their homelands.

Laws such as AIRFA and a strict interpretation of treaty rights will significantly impact local and national communities. We are fully aware of and support the paradigm shift that would occur under these guidelines. Employment and resource management will begin to focus on restoration and away from unsustainable exploitation. Indians will be recognized again as the stewards of the land and will pass this ethic on to the broader American society. Decisions on resource use will again focus on whether our children's children's children's children will have access to the same resources that we have used in our life times.

We realize that the large number of proposed regulations will reduce the freedom of land managers to act rationally. There is an argument that the initial regulations were left open to interpretation

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to ensure that the best policies could be designed according to specific field conditions. We would argue that this experiment has failed on the basis of lack of respect for Indian culture within the bulk of the plans implemented by the Forest Service. We need stronger regulations to protect cultural resources and to ensure that the lifestyle American Indians reserved for themselves in the treaties they signed remain in tact. Under the current regulations, some of these cultural resources and treaty rights need protection **from** the Forest Service instead of protection **by** it.

These regulations are not designed to last forever. They outline a starting point which will protect what we have now until we learn how to use these resources wisely, in a way that can touch us all in personally relevant and spiritual way. As a society, the United States must learn a great deal about the value of American Indians lifesytles. These regulations provide the main avenue for the journey to this intuitive understanding. We feel that the sheer amount of regulations will provide a good basis from which the United States as a nation of people can learn from and respect the lifestyles of American Indian people. At the point that the majority of our country begins to feel that the regulations are obstructing sound management practices that support native participation in forest restoration and management, we encourage another change in the regulations to bring about more freedom to act. That is the purpose of this endeavor.

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