Testimony of William D. Bettenberg
Director, Office of Policy Analysis
Department of the Interior
At the Oversight Hearing Before the
Senate Committee on Indian Affairs
on
The Protection of Native American Sacred Places
June 18, 2003

Mr. Chairman and Members of the Committee, I am pleased to be here today to testify before this Committee on the important issue of Sacred Sites and lands protection. My name is William Bettenberg and I am the Director of the Office of Policy Analysis in the Department of the Interior.

Background

Executive Order No. 13007, 61 Fed. Reg. 26,711, 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. Under the Bureau of Indian Affairs reorganization, the functions of the OAIT will be transferred to the Office of Environmental, Safety and Cultural Resource Management, including this responsibility.

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; 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 that consultation. The Chapter serves as a permanent means to integrate protection, preservation, accommodation of access and use practices and policies into departmental processes. It requires 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.

To facilitate the development of working relationships, the Departmental Manual Chapter directs 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 representatives of 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 clarify 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 D.C. 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. The first meeting occurred on July 2, 2002, in the office of the Assistant Secretary for Indian Affairs. The group has met five more times (October 2002, January 2003, March 2003, and April 2003) and will be meeting for the sixth time tomorrow, June 19, 2003. The Group has been in the process of identifying the status of sacred site management across the bureaus and is working on developing management guidance to ensure full compliance with the Executive Order.

On August 14, 2002, the Interior Working Group and the Advisory Counsel 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. In fact, the Working Group is focusing on three areas of practical concern for land managing agencies: the confidentiality and protection of the location of sacred sites; the discrete delineation of sacred sites; and consultation with Indian tribes and is drafting policies and guidance for the agencies on these three issues. The Working Group expects to complete the final draft shortly. The Working Group's guidance will assist land managers in their daily activities implementing the Executive Order.

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. This concludes my statement. I would be pleased to answer any questions the Committee may have.