



# Sacred Places Protection: Fulfilling U.S. Religious Freedom Promises to Native Peoples

Native American Rights Fund

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- Native American Rights Fund/ The Morning Star Institute
- Goal:
  - strengthen protections for Native Peoples' sacred places in the United States, by putting Indigenous knowledge bearers, Native intellectual leaders, and cultural rights specialists in positions to be heard and recognized as the subject scholars and authorities
  - engage with scholars and professionals from various fields with the objective of achieving a common language, understanding, and approach to bolstering Native assertions, exercises, and defenses

# American Indian Religious Freedom Act (1978)

- . . . [I]t shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to [sacred] sites . . . 42 U.S.C. § 1996

# Judicial Record: remains unresponsive

- Courts: AIRFA creates no cause of action
- So, Tribes rely (unsuccessfully) on
  - Free Exercise Clause and
  - Religious Freedom Restoration Act
- *Lyng v. Nw. Indian Cemetery Protective Ass'n*. 484 U.S. 439 (1988)
  - USFS road, “incidental effect” & “religious servitude”
- *Emp't Div., Dep't of Human Res. of Or. v. Smith*. 494 U.S. 872 (1990).
  - Peyote users not protected. Rationally related to legitimate govt interest.
  - Led to Religious Freedom Restoration Act of 1993 (RFRA).

# National Congress of American Indians

- **#PDX-20-070**

- Oversight hearings
- Include right of action possibilities

- **#PDX-20-054 (Transition Plan)**

- Revise Executive Order 13007 on Indian Sacred Sites.
- “review and report on the manner in which they acquired jurisdiction regarding Native Peoples’ Sacred Places and whether such jurisdiction was asserted and Sacred Places taken with or without Native Peoples’ free, prior, and informed consent”



## A first note:

- Land Back is the first priority, and the real ask.
- “Co-Management” is half of that, at BEST.

# Activities

- Convenings – Targeted professions
- Best Practices
- Model CONSENT AGREEMENTS
- Model Policy Language
- Briefings
- Professional Development Opportunities – targeted groups
- Scholarship

# Thank You! - Wopila



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