



**Confederated Tribes and Bands
of the Yakama Nation**

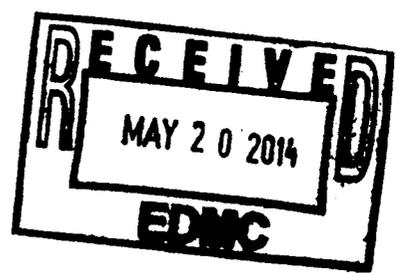
1225039

Established by the
Treaty of June 9, 1855

August 26, 2013

The Honorable Senator Patty Murray
154 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Senator Maria Cantwell
311 Hart Senate Office Building
Washington, D.C. 20510



RE: H.R 117; Rattlesnake Mountain Legislation and 2014 National Defense Authorization Act amendments

Dear Senators Murray and Cantwell;

Congressman Doc Hastings has introduced legislation that is of concern to the Yakama Nation (YN). H. R. 1157 would open Rattlesnake Mountain for public access. He has also separately secured an amendment to the 2014 National Defense Authorization Act would transfer 1,641 acres of the Hanford site to the Tri-Cities Development Council (TRIDEC).

On June 25, 2013, YN sent a detailed letter to each of you expressing concerns about H.R. 1157. Laliik (Rattlesnake Mountain) has a well-established religious significance to the YN and should be respected and protected. Laliik is the birthplace of the Waashat religion. This is the site where Smohalla received his visions and songs that became the basis for the Waashat religion, still followed by the majority of Yakamas today. Traditionally only certain people were allowed to go to the top, and even then, only after several days of spiritual preparation. Specific ceremonies and songs can only take place on top of Laliik. It is vital to the health of the culture and people to be able to perform these traditional practices. Public access and driving tours are activities that will adversely affect the spiritual nature of the site and the character defining features that make the site eligible for listing on the National Register of Historic Places. To put this in perspective, imagine the outcry if it was suggested that jeeps be allowed to drive atop the Wailing Wall in Jerusalem.

Executive Order 13007 dealing with American Indian Sacred Sites clearly states that adverse effects should be avoided, and in this situation it is quite possible to avoid adverse effects. In line with EO 13007, the Departments of Defense, Interior, Agriculture, and Energy, as well as the Advisory Council on Historic Preservation recently signed the attached Memorandum of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Sacred Sites, November 2012. Within the MOU these agencies recognize the importance of maintaining the integrity of sacred sites and the role of each agency as stewards of public land, to "protect and preserve sacred sites." YN strongly believes that public tours and/or access are not necessary, as there are other areas within the Hanford Reach National Monument that are open for public access and provide spectacular views of the Hanford Reach. Allowing public access and particularly

driving tours will be at the expense of a Yakama Nation sacred site. We ask that you support us on this matter.

It is important to understand some of the recent history involving Federal agencies' comprehensive planning for the lands within the Hanford Reach. As you know, the Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge is managed by the United States Fish and Wildlife Service (FWS) and the Department of Energy (DOE). YN has clearly stated our position and expressed our concerns to these agencies from the beginning of the planning process, which we have been heavily involved in. By contrast, H.R. 1157 seems to be trying to bypass and run roughshod over an extensive process that has spanned well over a decade. While we may not always agree with the positions taken by DOE and FWS, they have known of and acknowledged the importance of protecting these sacred sites and cultural resources.

In 1998, when the DOE issued a Comprehensive Land Use Plan (CLUP) designating appropriate land uses for certain areas on the Hanford site, a detailed letter expressing our position was sent on June 30, 1998, to John Wagoner, Manager, DOE, Richland Operations Office, from William Yallup Sr., then the Chairman of the Yakama Tribal Council. The DOE took the concerns expressed by us and other tribes into account, as can be seen from a May 1, 2008 letter from the DOE's Richland Office to the President and CEO of Fluor Hanford, Inc. indicating that to the maximum extent possible, DOE was going to limit activities on Rattlesnake Mountain consistent with the Hanford CLUP, the Hanford Reach National Monument Proclamation, and in consideration and protection of Traditional Cultural Properties and unique ecological resources.

This letter clearly demonstrated DOE's policy and recognition of Rattlesnake Mountain as an important sacred site to the Wa'ashat community and YN. In 2008 workshops were held with DOE to develop a management plan for Rattlesnake Mountain at which we participated. On February 27, 2012, on behalf of YN I sent a letter to Matt McCormick, DOE, Richland Office requesting a comprehensive Traditional Cultural Properties (TCP) study by DOE.

We have also been involved in the planning process with the FWS. Together with other affected Tribes, we met with DOE and FWS regarding the Comprehensive Conservation Plan (CCP) on several occasions. FWS detailed these meetings in their August 2008 report "Hanford Reach National Monument: Final Comprehensive Conservation Plan and Environmental Impact Statement". This FWS CCP noted that "The Monument supports a number of Native American foods and medicines and contains sacred places important to tribal cultures. The tribes hope to safely use these resources in the future and require assurance that the environment is clean and healthy." This report added that "Protection of these cultural resources—including tangible portions of sites such as artifacts, features, structures, natural resources and landscapes (e.g., traditional use and sacred areas), as well as oral and written records—is paramount to management of the Monument." While there were certainly parts of the CCP that YN never concurred with, what is clear is that FWS recognized that these sites are sacred to us and other Tribes.

It is particularly important to note that the final CCP and EIS for the Hanford Reach National Monument does not recommend an improved road or regular tourists going to the top of Rattlesnake Mountain. Preferred Alternative C-1 indicates that it should be closed except for Special Use Permits in addition to the establishment of a hiking trail. That is the recommendation of the Fish

and Wildlife after spending a number of years listening to and endeavoring to balance input they received from the public and affected Indian tribes and other governments. *If it is not already clear, it should be noted that the intent of HR 1157 is to specifically and categorically reverse this key part of the Comprehensive Plan for the Hanford Reach National Monument.*

On a separate issue, we are aware of your past support for the transfer of 1,341 acres of land from the Hanford site via the Tri-Cities Development Council (TRIDEC) by an administrative process, however we wanted to express our concerns about this proposed transfer and its process via a rider to a defense authorization bill. The wording in the amendment to the 2014 National Defense Authorization Act that has been inserted causes concern for YN. Currently the proposed Land Conveyance as defined by the Department of Energy would allow portions of the land to remain in Federal ownership, should there be either cultural or environmental issues that would prevent and/or delay a complete transfer of ownership. Via the administrative process, the Land Conveyance is going through the NEPA process and Section 106 cultural review under the National Historic Preservation Act. YN believes it is in the best interest of the public including members of the YN to complete this process. There still exist many unknowns at the Hanford site with regards to public safety due to contamination and cultural sites that have yet to be identified. The wording in the amendment would allow for a complete transfer of ownership, with no further consideration of contamination or cultural issues. This would bypass the NEPA process and the ability of affected Tribes to be involved. The amendment also explicitly gives counties/cities priority over tribal concerns in the larger comprehensive land use plan for Hanford.

YN recognizes the Tri-City area will need to replace the jobs that will eventually be terminated as work at the Hanford site is completed. It is not our intent to stand in the way of economic growth for the Tri-Cities, however we do feel such decisions need to be made carefully and through the appropriate process that the NEPA review and cultural review provide.

These are difficult issues that require thought and discussion to understand the many complexities and viewpoints. YN would appreciate the opportunity to further discuss these issues with you, either in Washington State, or your office/s in Washington D.C., at your convenience. We would appreciate if your staff would contact our DNR Deputy Director Philip Rigdon, at 509-865-5121 to arrange a meeting. Thank you for your consideration of these issues.

Sincerely,


Harry Smiskin, Chairman
Yakama Nation Tribal Council

Enclosure

cc: Honorable Chairman Ron Wyden (w/ encl.)



**Memorandum of Understanding
Among the
U.S. Department of Defense,
U.S. Department of the Interior,
U.S. Department of Agriculture,
U.S. Department of Energy,
and the Advisory Council on Historic Preservation
Regarding Interagency Coordination and Collaboration for the
Protection of Indian Sacred Sites**

I. Purpose and Principles

The Departments of Defense, the Interior, Agriculture, and Energy and the Advisory Council on Historic Preservation (Participating Agencies) enter into this Memorandum of Understanding (MOU) to improve the protection of and tribal access to Indian sacred sites through enhanced and improved interdepartmental coordination and collaboration.

II. Background

Federal land managing agencies hold in public trust a great diversity of landscapes and sites, including many culturally important sites held sacred by Indian tribes. Indian tribes are defined here as an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior has published on the list of federally-recognized tribes pursuant to Public Law No. 103-454, 108 Stat. 4791. All Federal agencies are responsible for assessing the potential effects of undertakings they carry out, fund, or permit on historic properties of traditional cultural and religious importance to Indian tribes. While the physical and administrative contexts in which Federal agencies encounter sacred sites vary greatly, similarities do exist. Because of those similarities, the Participating Agencies recognize that consistency in policies and processes can be developed and applied, as long as they remain adaptable to local situations.

For purposes of this MOU, a "sacred site" retains the same meaning as provided in Executive Order 13007; that is, "any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site." Such sacred sites may also be eligible for the National Register of Historic Places as historic properties of religious and cultural significance to Indian tribes.

Sacred sites often occur within a larger landform or are connected through features or ceremonies to other sites or a larger sacred landscape. Agencies should consider these broader areas and connections to better understand the context and significance of sacred sites. Sacred sites may include, but are not limited to geological features, bodies of water, archaeological sites, burial locations, traditional cultural properties, and stone and earth structures.

III. Authorities Which May be Relevant to the Protection and Preservation of Sacred Sites

The Participating Agencies will review the following authorities to determine their potential relevance to sacred sites and to determine if additional inter-agency measures may be warranted to better protect sacred sites:

Executive Order 13007: Indian Sacred Sites
National Historic Preservation Act
National Environmental Policy Act
Native American Graves Protection and Repatriation Act
American Indian Religious Freedom Act
Religious Freedom Restoration Act
Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

IV. Participating Agency Agreement

The Participating Agencies hereby agree to work together to accomplish and consult with Indian tribes as appropriate in developing and implementing the following actions:

1. Creating a training program to educate Federal staff on (a) the legal protections and limitations regarding the accommodation of, access to, and protection of sacred sites and (b) consulting and collaborating effectively with Indian tribes, tribal leaders, and tribal spiritual leaders to address sacred sites;
2. Developing guidance for the management and treatment of sacred sites, including best practices and sample tribal-agency agreements;
3. Creating a website that includes links to information about Federal agency responsibilities regarding sacred sites, agency tribal liaison contact information, the websites of the agencies participating in this MOU, and information directing agencies to appropriate tribal contact information for project consultation and sacred sites issues; this website would be hosted by one of the Participating Agencies;
4. Developing and implementing a public outreach plan focusing on the importance of maintaining the integrity of sacred sites and the need for public stewardship in the protection and preservation of such sites;
5. Identifying existing confidentiality standards and requirements for maintaining the confidentiality of sensitive information about sacred sites, analyzing the effectiveness of these mechanisms, and developing recommendations for addressing challenges regarding confidentiality;
6. Establishing management practices that could be adopted by Participating Agencies; for example, these could include mechanisms for the collaborative stewardship of sacred sites with Indian tribes, such as Federal-tribal partnerships in conducting landscape-level cultural geography assessments;
7. Identifying impediments to Federal-level protection of sacred sites and making recommendations to address the impediments;

8. Developing mechanisms to exchange and share subject matter experts among Federal agencies and identifying contracting mechanisms for obtaining tribal expertise;
9. Developing outreach to non-Federal partners to provide information about (a) the political and legal relationship between the United States and Indian tribes; (b) Federal agency requirements to consult with Indian tribes; and, (c) the importance of maintaining the integrity of sacred sites;
10. Exploring mechanisms for building tribal capacity to participate fully in consultation with Federal agencies and to carry out the identification, evaluation, and protection of sacred sites;
11. Establishing a working group of appropriate staff from each of the Participating Agencies to facilitate the implementation of the provisions of this MOU and address issues as they arise. The working group will develop an action plan for implementation of this MOU within 90 days. Participating Agency representatives will serve on the working group until replaced by their agencies. The working group will be chaired by one of the Participating Agencies chosen by majority vote of the working group and will serve a 2-year term. At the expiration of the chair's term, the Participating Agencies shall select a new chair from among the Participating Agencies.

V. Non-Funding Obligating Document

Participating Agencies will handle their own activities and use their own resources in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

Nothing in this MOU shall obligate any Participating Agency to obligate or transfer funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various Participating Agencies will require execution of separate agreements and will be contingent upon the availability of appropriated funds. Any such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

VI. Third Parties

This MOU is not intended to and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any party against the United States, its agencies, its officers, or any person.

VII. Administrative Provisions

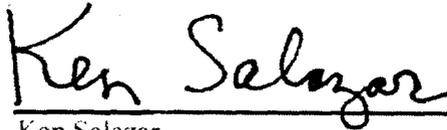
1. This MOU takes effect upon the signature of all Participating Agencies and shall remain in effect until December 31, 2017. This MOU may be extended or amended upon written consent from any Participating Agency and the subsequent written concurrence of the others.
2. Any Participating Agency can opt out of this MOU by providing a 60-day written notice to the other signatories.
3. Other Federal agencies may participate in this MOU at any time while the MOU is in effect. Participation will be evidenced by an agency official signature on the MOU.

VIII. Signatures of the Participating Agencies of the MOU on Indian Sacred Sites



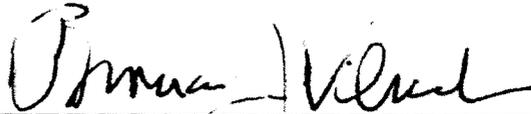
Leon Panetta
Secretary
U.S. Department of Defense

12/4/12
Date



Ken Salazar
Secretary
U.S. Department of the Interior

11/30/12
Date



Thomas J. Vilsack
Secretary
U.S. Department of Agriculture

11/30/12
Date



Steven Chu
Secretary
U.S. Department of Energy

NOV 30 2012
Date



Milford Wayne Donaldson, FAIA
Chairman
Advisory Council on Historic Preservation

NOV 30 2012
Date