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October 4, 2011

U.S. Forest Service
Office of Tribal Relations
Attn: Ms. Ericka Luna
1400 Independence Ave., SW
Mailstop Code: 1160
Washington, D.C. 20250-1160
Email: sacredsitescomment@fs.fed.us

Re: Draft Report on Indian Sacred Sites (76 *Fed. Reg.* 47538)

Dear Ms. Luna:

The Northwest Mining Association (NWMA) appreciates the opportunity to comment on the U.S. Department of Agriculture's (USDA) Office of Tribal Relations and Forest Service Policy and Procedures Review: Indian Sacred Sites Draft Report to the Secretary (Draft Report). We have significant concerns with the process used to compile the Draft Report, the legal foundation used as the basis for the report's recommendations and the potential adverse effects on our members of the recommendations contained in the report.

NWMA is a 116 year old, 1,800 member, non-profit, non-partisan trade association based in Spokane, Washington. NWMA members reside in 42 states and are actively involved in exploration and mining operations on public and private lands, especially in the West. Our diverse membership includes every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA's broad membership represents a true cross-section of the American mining community from small miners and exploration geologists to both junior and large mining companies. More than 90% of our members are small businesses or work for small businesses. Most of our members are individual citizens.

MEMBER INTERESTS AFFECTED

While the Forest Service (USFS) may make recommendations to Congress, it is not within the discretion of the agency to unilaterally rewrite the laws under which it operates, or to implement policies that constitute a *de facto* rewrite of those laws. Such action would constitute a clear violation of the separation of powers doctrine, and is impermissible under the law.

The Draft Report contains several recommendations with potentially significant adverse implications for the mining industry, including potential changes to the Mining Law of 1872 "through legislation, regulation implementing the 1872 Mining Law, or agency policies interpreting those authorities to permit greater agency discretion when Sacred Sites may be impacted by hardrock exploration or development mining activities"; increased use of mineral

withdrawal authority; an expanded definition of sacred area; and the formation of partnerships with tribes.

“LEGAL LANDSCAPE” SECTION IS ON A WEAK FOUNDATION

The Legal Landscape section of the Draft Report attempts to lay the foundation for what the Agency describes as its “considerable discretion” to protect sacred sites. Specifically, it attempts to set forth the Agency’s authority to adopt the recommendations found on pages 13 through 17 of the report. However, the authorities cited in the Legal Landscape section do not give the Agency the authority to adopt the recommendations, particularly those recommendations that endorse Native American views regarding the metaphysical importance of certain federal lands or those recommendations that would essentially set aside large areas of federal land based upon nothing but the claimed religious/metaphysical significance of that land. None of the authorities identified in the Draft Report give the agency the authority to favor Native American beliefs regarding certain sites, especially over Congressionally-sanctioned uses of the nation’s National Forests.

The Draft Report is clearly targeting the Ninth Circuit Court of Appeals *en banc* decision in *Navajo Nation v. U.S. Forest Service*. In this decision, the court found no statutory basis for the tribe’s assertion that the USFS’ management decision for the subject ski area would violate federal law. This decision, along with the U.S. Supreme Court’s holding in *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988) should have settled the matter. Instead, it appears the USDA, through the Draft Report, is embarking on a blatant attempt to find ways to reinterpret laws and revise regulations to administratively overturn the Ninth Circuit Court of Appeals’ unambiguous decision supporting the Forest Service’s own position in that case.

The discussion of *The Access Fund v. USDA*, 499 F.3d 1036 (9th Cir. 2007) on pages 19-20 of the Draft Report, is incomplete and appears to be results driven rather than being a thorough discussion of the case and the Establishment Clause’s limits on the Agency’s discretion to protect a discrete group’s religious beliefs and practices. Figure 4 of the Draft Report quotes selectively from *Access Fund* and the quoted language gives the impression that the Agency has considerable discretion to protect/promote the religious beliefs and practices of a discrete group. A complete reading of the *Access Fund* decision reveals that this is not the case.

In *Access Fund*, a group of climbers challenged the Forest Service’s decision to ban rock climbing on Cave Rock, a rock formation located on the shores of Lake Tahoe. The climbers challenged the ban under the Establishment Clause of the Second Amendment, arguing that the ban favored the religious beliefs of the Washoe Indians in violation of the Second Amendment. The court disagreed. It emphasized repeatedly that the Forest Service’s decision to ban climbing was not based upon a desire to protect/promote traditional Washoe religious beliefs, but upon a secular policy of preserving places of significant historic and cultural importance. The court went to great pains to make this distinction.

For example, while acknowledging that Cave Rock “may be discussed in religious terms and is associated with spiritual figures,” the Forest Service emphasized that the rock “has significant cultural and historical significance that make it eligible to the National Register of Historic

Places. *Its significance is not based on 'Washoe religious doctrine' but rather on the secularly-derived historic and ethnographic record.*" The Forest Service's limitation on climbing *served the permissible secular goal* of protecting cultural, historical and archaeological features of Cave Rock. *Access Fund* at 1044 (9th Cir. 2007) (emphasis added).

In sum, the Ninth Circuit Court of Appeals rejected the climbers' Establishment Clause challenge because Cave Rock had secular value as a cultural, archaeological and historic site beyond its metaphysical significance to the Washoe. The 1992 amendments to the National Historic Preservation Act set the frame for this result by allowing "properties of religious and cultural importance" to Indian tribes to be listed on the National Register of Historic Places for their historic and cultural significance. The recognition of these sites is limited, however, by the requirements that any such place must meet the standard eligibility requirements for the National Register. The Agency's reading of this case does not acknowledge this limitation, but asserts that it has broad discretion to redefine a "sacred site" to have secular and historic values. This assertion is an invalid reading of the *Access Fund* case and seeks to improperly circumvent the narrow ruling on the Establishment Clause by the court. The Agency should revisit its reading of *Access Fund*.

Additionally, the Agency's notion that the Free Exercise Clause is a "floor" that establishes the bare minimum that a land management agency must do to protect free exercise is directly contradicted by the case cited in the Draft Report for this supposition. The Court in *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988), stated (at 448):

The Free Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens. Just as the Government may not insist that [the Roys] engage in any set form of religious observance, so [they] may not demand that the Government join in their chosen religious practices by refraining from using a number to identify their daughter....

...The Free Exercise Clause affords an individual protection from certain forms of governmental compulsion; *it does not afford an individual a right to dictate the conduct of the Government's internal procedures.*"

Again from *Lyng* (at 451):

The Free Exercise Clause is written in terms of what the government cannot do to the individual, *not in terms of what the individual can exact from the government.*

Further, again from *Lyng*,

The Constitution does not permit government to discriminate against religions that treat particular physical sites as sacred, and a law prohibiting the Indian respondents from visiting the Chimney Rock area would raise a different set of constitutional questions. Whatever rights the Indians may have to the use of the area, however, those rights do not divest the Government of its right to use what is, after all, its land.

Lyng at 453.

The Agency is without authority to overturn, by re-interpretation, established Supreme Court precedent to support the Draft Report's assertion that the Free Exercise Clause is a "floor" dictating the minimum that the Forest Service "must do" to protect sacred sites.

The Free Exercise Clause does not impose obligations to protect specific religious beliefs or practices. Rather, it prohibits government compulsion. The USDA should revisit this new reading of *Lyng*.

DRAFT REPORT ADVANCES VAGUE AND EXPANSIVE CONCEPTS

The team completing the Draft Report clearly started with a predetermined outcome. Thus, the team greatly limited the scope of the National Forest users it contacted, and zeroed in only on individuals and groups that would give the team its desired result. In spite of this flawed approach, if the Draft Report had addressed better identification and protection of readily-identifiable sites of historic importance with discernable boundaries, and working cooperatively, not just with the tribes but also with all other multiple-users of the National Forests to protect these sites, the issue could be dealt with under existing authorities. In addition, such an approach might actually assist other National Forest users, including our members.

Unfortunately, the Draft Report advocates the establishment of sacred sites not of a limited physical nature but rather of a broad non-specific nature on a landscape scale. We are very concerned with the new expansive concept of "sacred places" for use in all USFS decision-making. This concept attempts to subordinate federal land management to Native American religious/metaphysical beliefs regarding the land. The use of such a broad concept will be unworkable for the USFS and tribes, as well as depriving project proponents with activities on National Forest System (NFS) lands the certainty needed to move forward with projects.

The definition of sacred places will include such amorphous concepts as cultural landscapes, biological communities and any land features that may be in any way meaningful to an identifying tribe. These sites could include vast landscapes and mountain ranges encompassing hundreds of square miles, and seemingly will be determined by those tribes who hold the beliefs in question rather than by the USFS. It is difficult to comprehend how the USFS could close these areas to public use for the exclusive enjoyment of the tribes without violating the U.S. Constitution's Establishment Clause, not to mention numerous statutes and the findings in the aforementioned court decisions.

In addition, the Draft Report encourages the USFS to consider Traditional Ecological Knowledge (TEK) alongside traditional scientific and technical data when making land use planning decisions. TEK is explained as "a way of knowing or understanding the world, including knowledge of the environment derived from multiple generations of indigenous peoples' experiences with their ecological systems." Thus, the report endorses the use of undefined tribal "knowledge" that "transcends Western science for many Native Americans" on par with science and data in land use planning.

As such, use of TEK would impermissibly favor the cultural and religious beliefs of one or more groups over other groups and the general public. In addition, TEK does not usually present a uniform belief system. Tribal leaders and traditional elders do not agree amongst themselves what tribal beliefs and customs actually are. Some indigenous traditions designate areas as “sacred” based on the beliefs or practices of one individual or family. Similarly, the ways in which such areas were traditionally managed differ over time by family or tribal group. How is the Forest Service to measure what the appropriate TEK is in any given situation?

Many federal lands also include areas that are traditionally important to more than one tribe, with attendant differing – and sometimes completely irreconcilable – religious and cultural beliefs and practices. Requiring the Forest Service to consider unspecific, inconsistent and sometimes incorrect information under the umbrella of “TEK” interjects confusion and subjectivity into agency decision-making. It also would likely, and unfairly, place the Forest Service in the middle of cultural and religious disputes outside of its expertise or jurisdiction. This will further hamper the Forest Service’s ability to adequately manage the Forests as directed by Congress.

Further, use of TEK in Forest management and planning violates the USDA’s Scientific Integrity Policy. The USDA Policy, required under the Data Quality Act and Office of Management and Budget guidelines, was issued on August 5, 2011 – the same date the USDA first solicited public comments on its Draft Report in the *Federal Register*. The USDA’s Scientific Integrity Policy requires the USDA and the Forest Service to, among other things, “[u]tilize information based on well-established scientific processes, including peer review where appropriate, when considering scientific or technological information in policy decisions. . . .” The Draft Report does not explain how TEK complies with the Scientific Integrity Policy. Use of TEK, on equal footing with science-based, peer-reviewed information, to inform Forest planning and management decisions would impose subjectivity and could lead to impermissible and arbitrary agency decision-making.

The Scientific Integrity Policy also requires the USDA to “[m]ake publicly available . . . the scientific or technological findings or conclusions considered or relied on in policy decisions, and provide information on the specific approach and data used to develop such scientific information. . . .” In contrast, the Draft Report seeks to maximize the secrecy of tribal cultural information by increasing the agency’s authority to keep this information confidential. So while on the one hand the Forest Service seeks to use TEK on par with scientific information for Forest planning and management, on the other hand it contemporaneously seeks to shield that information from public disclosure, in contravention of its own Scientific Integrity Policy and other legal requirements discussed below.

Employing TEK to evaluate federal land-use decisions would elevate the beliefs of Native Americans in violation of the Establishment Clause. We cannot foresee a scenario where the federal government would (or legally could) employ “Creationism” or some other religious belief regarding the natural world to pervade its policy-making. Therefore, it is difficult to understand how the Agency can give any weight to TEK.

These vague and expansive proposed actions, which are based on inherently subjective criteria solely dictated by tribes, are inconsistent with court precedent and will undoubtedly lead to increased litigation and serious uncertainty concerning NFS land use.

RECOMMENDATIONS WILL NOT WITHSTAND CONSTITUTIONAL SCRUTINY

In *Access Fund*, the Court recognized that the so-called “*Lemon Test*” governs Establishment Clause challenges to governmental action. Under the *Lemon Test*, “an action or policy violates the Establishment Clause if, (1) it has no secular purpose; (2) its’ principal effect is to advance religion; or (3) it involves excessive entanglement with religion.” The Synthesis of Legal Landscape section of the Draft Report does not even mention this standard.

Many of the recommendations contained in the Draft Report (as well as the Draft Report’s overarching themes) will not withstand constitutional scrutiny. They demonstrate a willingness on the agency’s part to accept and give preference to Native American religious beliefs. This willingness permeates the Draft Report.

For example, on page 15 of the Draft Report the Agency addresses Executive Order (E.O.) 13007, *Indian Sacred Sites* (May 24, 1996), and states, “The definition limiting Sacred Sites to ‘specific, discrete, narrowly delineated locations’ of ‘religious significance’ is too narrow and *inconsistent with the Native American view of sacredness.*” The Draft Report then recommends that the E.O. be revised to bring it into line with Native American religious beliefs.

One of the more troubling aspects of the Draft Report is the USFS is clearly advocating making Traditional Cultural Properties/sacred sites the “highest and best use” on National Forests, superior to all other uses, in violation of their congressional mandate to manage NFS lands for multiple-use and sustained yield. Further, the Draft Report suggests the USFS is willing to cede control to the tribes to allow them to identify and manage these lands, in violations of numerous federal statutes. All the Draft Report would require is for a tribe to state an area is a cultural property and sacred site and the USFS would be obliged to give carte blanche to the tribe for the management of those lands. Moreover, the USDA would seek to shield the tribe’s assertion from public review and scrutiny by seeking to strengthen the confidentiality protections surrounding it.

Such a policy seems clearly designed to advance/promote/protect Native American religious beliefs as its primary purpose. The policy has no clear secular purpose. Furthermore, such a policy would require the Agency to excessively entangle itself in religious matters as it would be required to learn about and come to grips with Native American religious beliefs, to assess the sincerity of those beliefs in order to assess claims of religious significance, and to make religious determinations about what actions may or may not “desecrate” these “sacred places.” To reiterate, it is difficult to see how this policy will withstand constitutional scrutiny.

While the USFS has the authority to protect sacred places located on NFS lands, it cannot do so to the neglect of other land uses. The language in the Draft Report, however, clearly indicates that the Forest Service intends to elevate sacred sites protection well above all other land values.

The Draft Report should make clear that, while tribal concerns are to be given adequate consideration, USFS officials are not required to reach a determination consistent with tribal preferences, and rather must make their final decisions according to the mandates of any applicable statutes.

IMPROPER DELEGATION OF AUTHORITY

The Draft Report declares that the “[Forest Service] and Tribes [are] more than just neighbors; they are partners with common goals for social, cultural, ecological, and economic sustainability.” Draft Report at 4. The Draft Report also continually uses language such as “accommodate the preferences of tribal governments.”

While the Forest Service acknowledges that it cannot delegate decision-making authority to non-Federal entities, the Forest Service nevertheless commits to “exploring partnership approaches and agreements” and to “achieve shared goals” with Tribes. Draft Report at 8. The report also advocates seeking “co-management” opportunities. Establishing partnership agreements, setting and achieving shared goals, and looking for ways to co-manage the National Forests with tribes does not indicate that the Forest Service is all that concerned about unlawfully delegating its decision-making authority.

Use of partnership and co-management agreements and similar arrangements would unlawfully prioritize the interests of one group of Forest stakeholders over other stakeholders. Congress has enacted various statutes that specifically allow for uses of Forest lands for recreation, energy and mineral development, utilities, transmission, hydropower, education and research, among others. Yet the Draft Report advocates, without legal authority, giving Tribes unprecedented influence over Forest decision-making that has the potential to dramatically alter Forest management and these Congressionally-sanctioned uses.

The use of so-called co-management or partnership agreements, along with the use of TEK, also runs afoul of the Federal Advisory Committee Act (FACA). While the federal government has legal obligations to consult with federally-recognized Tribes in certain situations, it cannot hide behind the tribal consultation obligation to set up *de-facto* advisory groups. If the Forest Service truly seeks to partner with Tribes and other tribal groups and individuals to co-manage the National Forests, this violates FACA. If the Forest Service seeks the advice of tribal governments and groups, including TEK, that the Forest Service believes is relevant to Forest planning, management or protection of sacred sites, it must set up a formal FACA committee as required under FACA and the new Scientific Integrity Policy (emphasis added):

- (h) USDA will continue to develop policies, in coordination with the General Services Administration and consistent with the Administration’s guidance on lobbyists serving on Federal advisory committees (FACs), for convening FACs tasked with giving scientific advice, consistent with the following:
 - (1) The recruitment process for new FAC members ***should be as transparent as practicable***. When practicable and appropriate, FAC member vacancies will be announced widely, including notification in the Federal Register with an invitation for the public to recommend individuals for consideration and for self-nominations; . . .

- (3) The selection of members to serve on a scientific or technical FAC will be based on expertise, knowledge, and contribution to the relevant subject area. Additional factors for consideration will include the availability of the member to serve, diversity among members of the FAC, and the ability to work effectively on advisory committees. ***Committee membership should be fairly balanced in terms of points of view*** represented with respect to the functions to be performed by the FAC;

In contrast, because TEK will be kept secret, the Forest Service's use of TEK will be entirely unexamined. This lack of transparency means the Forest Service can seek and utilize the advice of non-federal sources without public scrutiny or knowledge, and without following either the procedures required by the Federal Advisory Committee Act or its own Scientific Integrity Policy. The Draft Report advocates the use of TEK, on par with scientific and technical information, without any standards as to TEK's source, reliability, consistency, authenticity and other factors, and since such information will be held secret, it will certainly not be transparent and unlikely to be balanced.

THE FOREST SERVICE MUST ADHERE TO ITS STATUTORY MANDATE

NWMA has serious concerns that the Draft Report does not serve long-term national interests nor will it achieve its stated objectives. Rather, it will only lead to more protracted conflicts and litigation over use of National Forest lands. The substantive and process principles outlined in the proposal are inconsistent with congressional intent, relevant statutory language, and case law. Thus, the Draft Report's attempt to revise mining, planning, and withdrawal regulations based on the principles stated in the report would be very vulnerable to legal challenge.

The National Forest Management Act of 1976 (NFMA) requires the Secretary of Agriculture to assess Forest lands, develop a management program based on multiple-use, sustained-yield principles, and implement the plan on each unit of the National Forest System. The plans must be in accordance with the *National Environmental Policy Act of 1969* and must consider economic and environmental factors. In fact, it is incumbent on the agency, when balancing the environmental analysis, to give equal consideration to the social and economic factors and not presume that environmental harm will outweigh all other considerations. Accordingly, the ninth circuit court of appeals in *Lands Council v. McNair*, 537 F.3d 981 (9th Cir. 2008), stated: "Our law does not...allow us to abandon a balance of harms analysis just because an environmental injury is at issue" (p. 53). Given the current state of the U.S. economy, it is more important than ever to adhere to that statutory and judicial mandate so that our communities and country remain healthy and vibrant.

Unfortunately, the Draft Report advances the concept of "sacred sites" above multiple-use, contrary to clear statutory language of the NFMA of 1976. We believe the proposed concepts and recommendations in the Draft Report ignore the multiple-use mandate, and the resulting land use plan revisions and amendments will adversely affect livestock grazing, timber production, mining, recreation and other multiple-uses in the national forests.

Further, the Draft Report attempts to circumvent the Administrative Procedure Act (APA) by establishing new legal requirements without adhering to the APA's formal notice and comment rulemaking requirements. Many of the recommendations are, in all practicality, new rules because they will create new legal rights and establish additional legal requirements not currently established in rule or statute. The USFS may not legally implement the Draft Report's recommendations merely through internal directives or guidance, rather implementation requires additional statutory authority and properly adopted new rules.

In that regard, we remind the Forest Service of the Wyoming Federal District Court's recent admonishment for the agency's attempt to avoid the APA's rulemaking requirements through directives. *See Western Energy Alliance v. Salazar*, (Case No. 2:10-cv-00237-NDF (August 12, 2011)). Like the agency directive at issue in *Western Energy*, the recommendations, if adopted, would alter legal rights and responsibilities and establish binding obligations on agency employees to implement the new rules. In this instance, the recommendations would establish new legal rights for one group of stakeholders and create new legal authority for the Forest Service to favor such rights over statutorily approved Forest uses. The recommendations also propose to hold regional foresters and line officers accountable to implement the new rules.

While the Draft Report does contemplate seeking legislative changes to expand the Forest Service's authority to protect sacred sites, it also advocates changes to "agency policies *interpreting* those authorities to permit greater agency discretion when Sacred Sites may be impacted by hardrock mining exploration or development activities." Draft Report at 16, emphasis added. All agency authority is delegated by Congress. If current legal authority does not grant the Forest Service the authority it desires, an agency may not *re-interpret* that same authority to create it.

Any USFS effort to seek to exercise broad discretionary regulatory authority over locatable mineral resources, whether through revising the planning, locatable mineral, or withdrawal regulations or changing policy in implementation of any of these regulations on NFS lands would exceed the Forest Service's statutory authority.

THE DRAFT REPORT SHOULD RECOGNIZE CONGRESS' REPEATED LIMITATION OF THE FOREST SERVICE'S AUTHORITY OVER LOCATABLE MINERALS.

NWMA is concerned that the Forest Service, through the proposals in the Draft Report, may seek to exercise broad discretionary planning authority over locatable mineral resources on NFS lands. That would exceed the USFS's regulatory authority over locatable minerals. While the USFS does have the authority to regulate the surface use of locatable mineral activities to ensure compliance with all applicable environmental laws and regulations, the Forest may not prohibit locatable mineral activities that comply with the applicable laws and regulations. To do so would constitute an illegal withdrawal.

The General Mining Law allows for "free and open exploration and purchase" of "[a]ll valuable mineral deposits in lands belonging to the United States." 30 U.S.C. § 22. Congress established the National Forests through the *Organic Administration Act of 1897*, 30 Stat. 11 (Jun. 4, 1897), which remains a central statutory authority for the Forest Service today. The Organic Act does

not provide authority to limit locatable mineral exploration and mining on National Forest Lands. To the contrary, the Act explicitly warns: “nor shall anything herein prohibit any person from entering . . . national forests for all proper and lawful purposes, including that of prospecting, locating and developing mineral resources. . . .” 16 U.S.C. § 478. Interpreting the Forest Service’s Organic Act, the 9th Circuit stated:

[T]he Forest Service may regulate use of National Forest lands by holders of unpatented mining claims, . . . but only to the extent that the regulations are “reasonable” and do not impermissibly encroach on legitimate uses incident to mining and mill site claims.

United States v. Shumway, No. 96-16480, 1999 WL 1256285 (9th Cir. Dec. 28, 1999) (citing *United States v. Weiss*, 642 F.2d 296, 299 (9th Cir. 1981)). *Accord*, *Shumway*, 1999 WL 1256285 at *11 (The right of the Forest Service to manage surface resources “shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto.”). Thus, the Forest Service cannot exercise discretionary authority to prevent the exploration, development, and mining of mineral resources on National Forest lands.

In 1960, Congress passed the *Multiple-Use and Sustained-Yield Act* (MUSYA), 16 U.S.C. §§ 528-531, which directed the Forest Service to manage the National Forests according to the principle of “multiple-use” and “sustained yield.” Significantly, in the MUSYA, as in the Forest Service’s Organic Act, Congress warned that “nothing” in the Act “shall be construed so as to affect the use or administration of the mineral resources of national forest lands . . .” 16 U.S.C. § 528.

The Act’s legislative history demonstrates a deliberate effort by Congress to limit Forest Service authority over mineral resources, and instead:

It is made clear that nothing in the bill would affect the authority which the Secretary of the Interior has with respect to the mineral resources in the national forest lands. Thus, the bill would not impair mining operations and activities under the authorities which the Secretary of the Interior has with respect to such mineral resources.

House Report No. 1551, 1960 U.S.C.C.A.N. 2377 (Apr. 25, 1960).

USDA should acknowledge the limitations imposed by the Mining Law, the Organic Act, MUSYA and the courts, and should abandon the proposals contained in the Draft Report as being irreconcilable with those authorities.

CONCLUSION

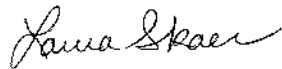
NWMA is sensitive to the need for effective communication between tribes and agency officials and the protection of sacred sites as discussed in E.O. 13007. However, the USFS readily admits that “laws, regulations, policies, and court decisions currently exist that enable land managers to protect Sacred Sites” under E.O. 13007, which expressly recognizes that federal agencies can only protect sacred sites in accordance with existing, applicable law. Draft Report at 25.

The proposals set forth in the Draft Report ignore the requirements and legal limitations of E.O. 13007 as well as the USFS's statutory obligations and numerous court decisions. Rather than adopt such policies, which will no doubt lead to an increase in litigation and decrease in investor confidence in a vital U.S. industry, the USFS should instead maintain its more clearly defined current policies concerning sacred sites.

If the USDA embarks on a misguided regulatory agenda to further the objectives of this flawed Draft Report, we hope the USDA will first form additional "teams" to hold conversations with other users of the National Forests about how they will be adversely affected by adoption of the recommendations in the Draft Report. The process should be open to all users of the National Forest since the USDA's actions will without doubt adversely affect the national economy, employment numbers, and the nations' sources of energy and strategic minerals.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in cursive script that reads "Laura Skaer".

Laura Skaer
Executive Director