

The Great Spirit created Man and Woman in his own image. In doing so, both were created as equals. Both depending on each other in order to survive. Great respect was shown for each other; in doing so, happiness and contentment was achieved then, as it should be now.

The connecting of the Hair makes them one person; for happiness or contentment cannot be achieved without each other.

The Canyons are represented by the purples in the middle ground, where the people were created. These canyons are Sacred, and should be so treated at all times.

The Reservation is pictured to represent the land that is ours, treat it well.



The Reservation is our heritage and the heritage of our children yet unborn. Be good to our land and it will continue to be good to us.

The Sun is the symbol of life, without it nothing is possible – plants don't grow – there will be no life – nothing. The Sun also represents the dawn of the Hualapai people. Through hard work, determination and education, everything is possible and we are assured bigger and brighter days ahead.

The Tracks in the middle represent the coyote and other animals which were here before us.

The Green around the symbol are pine trees, representing our name Hualapai – PEOPLE OF THE TALL PINES –

Wilfred Whatoname, Sr.  
Chairman

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Testimony of

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Before the

House Committee on Natural Resources  
Subcommittee on National Parks, Forests and Public Lands

Legislative Hearing on H.R. 2100

February 25, 2010

Thank you for the opportunity to present testimony about the concerns of the Hualapai Indian Tribe with respect to *Wi 'vis' – Kwi – va*, known in English as Boundary Cone Butte, which is located on land currently under the jurisdiction of the Bureau of Land Management in Mohave County, Arizona. Boundary Cone Butte holds religious and cultural importance for the Hualapai Tribe as well as for the Fort Mojave Indian Tribe. Because of its importance for both Tribes, Boundary Cone Butte has been determined to be eligible for the National Register as a traditional cultural property.

The sanctity of Boundary Cone Butte is crucial to the ability of tribal religious practitioners to carry on traditional practices and to pass these traditions along to younger generations. The two Tribes are closely related to each other culturally, and Boundary Cone Butte is located in an area that each Tribe regards as being within its aboriginal homeland.

For many years, the sanctity of Boundary Cone Butte has been threatened by a proposal to construct and operate a shooting range on nearby federal land. This Committee has jurisdiction over a bill that has been introduced in this Congress, H.R. 2100, which would direct the Secretary of the Interior to convey land in Mohave County to the Arizona Game and Fish Department for a shooting range. The Hualapai Tribe is opposed to H.R. 2100. This bill should be stopped. The Tribe recognizes, however, that, to protect Boundary Cone Butte, it is not enough to prevent the enactment of H.R. 2100, because on February 10, 2010, the BLM decided to approve the conveyance of land that would make the shooting range a reality. H.R. 2100 would be irrelevant because the conveyance of land will already have taken place without a specific mandate from Congress.

On February 10, 2010, the BLM decided to convey 315 acres of federal land to the Arizona Game and Fish Department (AGFD) for the State for use as a shooting range. The proposed site for the shooting range is about two miles from Boundary Cone Butte. On the same date that the BLM decision was announced, BLM also issued a finding of no significant impact (FONSI) based on an environmental assessment (EA) for the proposed action. As documented in the EA, the operation of a shooting range so close to Boundary Cone Butte will cause adverse effects on Boundary Cone Butte, especially the noise from the shooting range, which will interfere with traditional religious and cultural practices by members of the two Tribes.

BLM made this decision despite a formal letter from the Advisory Council on Historic Preservation recommending that BLM not approve the Boundary Cone location. The Advisory Council recognized that the noise caused by a shooting range would severely disrupt the sanctity of Boundary Cone. In a letter to Secretary of the Interior Dirk Kempthorne, dated November 3, 2008, John Nau, III, Chairman of the Advisory Council, said, in part, "There is a basic incompatibility between the land uses of a shooting range and an area where traditional cultural use would be disrupted by the audible intrusions of repeated gunfire." He called it "a basic incompatibility." In addition to the adverse effect on the integrity of Boundary Cone Butte and the characteristics that give this place historic significance, the audible intrusions of repeated gunfire will impose a burden on the exercise of religious practices by traditional tribal members.

This proposed shooting range has been sought for more than a decade by Tri-State Shooting Recreation Center, Inc., which has been pushing BLM to approve this project. The Hualapai Tribe found out about this project after the first EA and FONSI were released in

December 2003, and the Tribe has voiced its opposition since the Spring of 2004. The Fort Mojave Tribe had become engaged in the environmental review process in the fall of 2003. After the failure of BLM to engage in consultation with the Tribes early in the planning process, an alternative dispute resolution process was convened by the U.S. Institute on Environmental Conflict Resolution. The Tribes believed that process would yield a genuine, if belated, effort to consider alternative locations. Unfortunately, those efforts collapsed. The Hualapai Tribe believes that the failure of the alternative dispute resolution should have led BLM to a decision to prepare an environmental impact statement with a genuine search for alternative locations.

We note that the EA and FONSI for this project were prepared for compliance with the National Environmental Policy Act (NEPA). Of course, this proposed BLM decision is also subject to compliance with other federal environmental laws, including but not limited to the consultation process under section 106 of the National Historic Preservation Act (NHPA), as implemented through the regulations of the Advisory Council on Historic Preservation. 36 C.F.R. part 800. The EA attempts to convey the idea that BLM has made a genuine effort to fulfill its responsibilities under NHPA section 106. In describing mitigation measures, the EA says that BLM is requiring mitigation “in recognition of the [Fort Mojave Indian Tribe] continued use of Boundary Cone Butte and the surrounding area in traditional cultural practices.” EA at page 20. Similarly, the Decision Record states that BLM has completed the Section 106 process.” Decision Record at page 9. In fact, when the Section process did not lead to the result that BLM wanted, BLM simply stopped trying to consult.

After the failure of the alternative dispute resolution, BLM announced that it was “terminating” the NHPA Section 106 process. Under the Advisory Council’s regulations, the federal agency can “terminate” the consultation process upon determining that “further consultation will not be productive.” 36 C.F.R. § 800.7(a). When the federal agency terminates consultation, the head of the agency must formally request the Advisory Council to file comments on the proposed undertaking. As set out in the regulations, after the Advisory Council comments, the head of the agency must “take into account the Council’s comments in reaching a final decision on the undertaking.” § 800.7(c)(4). The requirements set out in this section of the regulations are based on section 110(l) of the statute, 16 U.S.C. § 470h-2(l), which provides that, for any proposed federal undertaking that adversely affects any property on or eligible for the National Register of Historic Places, if the federal agency has not entered into an agreement pursuant to the Advisory Council’s regulations, then any decision to proceed with the undertaking despite the failure to resolve adverse effects must be made by the heads of the

agency. The statute says, “The head of the agency may not delegate his or her responsibilities pursuant to such section.”

In the case of the proposed shooting range near Boundary Cone Butte, the documentation that the head of BLM actually considered the Advisory Council’s comments, was signed on January 16, 2009, by the person who was the acting Director of BLM. Regardless of whether that action complies with the letter of the law, it subverted the spirit of the law. The rationale for elevating this decision to the head of the agency is to provide some degree of accountability – there is no accountability when an administration makes such a decision on its last working day in office.

The fact that this proposal has even been given serious consideration by BLM and project proponents conveys the message to us, that they do not understand the importance of the Mojave Valley landscape for the cultural identity of each of the Tribes. The Tribes continue to believe that an acceptable alternative location could be found, if the proponents of the project really wanted to. In the first place, we believe that the footprint of the proposed shooting range could be reduced substantially.

In any case, the Tribes do not believe that their freedom of religion and cultural identity should be sacrificed to make way for this project.