

## Appendix A: Rights of Indigenous Peoples

### Introduction

Globally, there is growing recognition of the need to fully recognize the rights of indigenous populations and to fully involve them in processes of land use planning and management.<sup>1</sup> The Declaration on the Rights of Indigenous Peoples, adopted by the UN in 2007,<sup>2</sup> emphasizes, among other things, the rights of indigenous peoples to live in dignity, to maintain and strengthen their own institutions, cultures, and traditions and to pursue their self-determined development, in keeping with their own needs and aspirations. The Declaration calls for indigenous peoples' participation in all decisions that affect their lives; recognizes subsistence rights and rights to lands, territories and resources; outlaws discrimination against indigenous peoples; promotes their full and effective participation in all matters that concern them; and defends their right to remain distinct and to pursue their own visions of economic and social development.

### Native American Rights in the United States

In the U.S., Native Americans occupy a unique legal position. They are both U.S. citizens<sup>3</sup>, entitled to the same legal rights and protections under the Constitution as all other U.S. citizens enjoy, as well as members of self-governing tribes, whose existence predates the arrival of Europeans to North America. Native Americans are descendants of peoples who possessed their own inherent rights. These unique and inherent rights are of particular importance with respect to decisions regarding public land management and land use designations that may permanently alter its use and access for native peoples. Vast portions of federal and state public lands constitute the ancestral territories of Native American tribes. These lands remain sacred and in many cases economically, culturally, and spiritually vital to the tribes.

Over the last few decades, the U.S. government has taken important measures to ensure that Native American's claims on public lands are recognized, especially where designations impose restrictions on the general citizenry, as is the case in wilderness and similar types of protected areas. For example, Native Americans use of portions of certain wilderness areas for cultural and religious purposes has been supported in the *American Indian Religious Freedom Act*, enacted by Congress in 1978. This law specifies that –

On and after August 11, 1978, it 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 sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites.*<sup>4</sup>

Upon enacting this Joint Resolution, Congress acknowledged that “religious infringements” may result from “laws [that] were designed for such worthwhile purposes as conservation

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<sup>1</sup> Rao and Geisler, 1990; Brandon et al, 1998; WCED, 1987.

<sup>2</sup> 150 nations have endorsed the Declaration.

<sup>3</sup> Native Americans were granted US citizenship in 1924.

<sup>4</sup> This is the resolved clause in a Joint Resolution of Congress enacted in Public Law 95-341, 92 Stat. 469, which was signed by President Jimmy Carter on August 11, 1978, and which is codified at 42 U.S.C. 1196; emphasis added.

and preservation of natural species and resources ... and were passed without consideration of their effect on traditional American Indian religions.”<sup>5</sup> The Wilderness Act of 1964 is such a law and Congress has subsequently taken care to assure protection of Native American cultural and religious uses within designated wilderness areas.<sup>6</sup>

Numerous federal court decisions have also assisted the rise of modern Indian tribes’ authority and political power, in particular regarding treaty rights. Key among these decisions are the “Boldt Decision”, concluded in 1979, which upheld tribal off-reservation treaty rights for fishing purposes (allocating to tribes a 50-percent allocation of all fish at traditional fishing sites). Similarly, resolutions of a number of conflicts between the National Park Service and tribes have tended to support tribal political and legal authority – resulting in concessions by the Park Service to tribes with ancestral ties to park lands.<sup>7</sup>

These international declarations, national and state laws, and court decisions have significantly expanded the legal and political power of American Indian tribes and are directly relevant to the processes of county land planning currently being conducted in Utah. In short, they significantly change the relationship between tribes and the federal government, particularly with concern to public land management decisions and underscore the need to:

- Recognize the legitimate interests and needs of Native American tribes and acknowledge their rights to provide input on public land use and management decisions;
- Consult Native American tribes, through appropriate procedures and through their representative institutions, in legislative and administrative decisions that may affect them, such as decisions regarding the management of federal lands within their ancestral territory;
- Establish means by which the tribes can freely participate to the same extent as other sectors of the population at all levels of decision-making regarding land use designations, management regimes, and policies that concern ancestral lands; and
- Establish means for the full development of tribal institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose (e.g., providing for and facilitating co-management of areas of critical importance to the tribes).

There is agreement among these decisions and recommendations which recommend that institutions working in the area of human rights and indigenous peoples that the goals of such consultation and participation should be to 1) identify the views and obtain broad tribal support for land use decisions; 2) collaboratively develop place-based management measures as well as general policies and regulations to avoid adverse impacts to tribal communities; and 3) enhance opportunities for developing culturally-appropriate benefits.

## References

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<sup>5</sup> This statement comprises one of the “Whereas” clauses in this Joint Resolution of Congress.

<sup>6</sup> Scott, 2010

<sup>7</sup> Zipfel, 2009 contains a review of these and other court cases and important legislation.

- Brandon, K. 1998. Perils to Parks: The Social Context of Threats. In: K. Brandon, K.H. Redford, S.E. Sanderson. 1998. Parks in Peril: People, Politics, and Protected Areas. Washington, D.C.: Island Press.
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