

**Submission of the Washoe Tribe of Nevada and California
Protection of De'ek wadapush (Cave Rock)
Federal Management and Litigation Update
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Executive Summary

In 2003, the U.S. Forest Service issued a Record of Decision protecting Cave Rock by prohibiting certain activities, including rock climbing that adversely affect the site. The decision has been upheld by the U.S. District Court in Reno, Nevada and an appeal is pending with the U.S. Ninth Circuit Court of Appeals.

Background

The Washoe Tribe of Nevada and California is a federally recognized Indian tribe, with a current enrollment of approximately 1900 members. The ancestral lands of the Washoe Tribe consist of at least one and a half million acres spanning what is now eastern California and western Nevada. Lake Tahoe, or Da ow a ga, meaning “edge of the lake,” has been the heart of the Washoe Tribe’s civilization and culture for thousands of years until, with the approval, encouragement and support of the United States government, the Washoe Tribe was forcibly deprived of their use and occupancy of those lands. Lake Tahoe is the place of origin of the Washoe people and that the waters of Lake Tahoe, which are sacred, breathe life into the land, plants, fish, birds, animals and people around it. Archeologists have dated the “aboriginal occupation” of the Washoe descendants in the Lake Tahoe Basin back at least 10,000 years, and recognize that Washoe ancestry may date back 15,000 years. De'ek wadapush, or “standing gray rock,” now known as Cave Rock, has a significant role in Washoe culture, and is a place that demands the highest respect. The federal government has recognized the site as a quintessential symbol of Washoe culture and spirituality. In 1866, the Superintendent for Indian Affairs in Nevada reported that there is no suitable place for a reservation in the bounds of their territory and, in view of their rapidly diminishing numbers and the diseases to which they are subjected, none is required.

Cave Rock has been subject to repeated acts of destruction. The most destructive acts were the dynamiting of the two highway road tunnels through the heart of Cave Rock, in 1931 and again in 1957. A boat ramp was constructed and expanded by Nevada State Parks in 1993, over the Washoe Tribe’s objections. During that time, the Tribe discovered that Cave Rock was becoming a popular rock-climbing site. In a few years, rock climbers created approximately 59 climbing routes up Cave Rock, installed over 300 fixed anchors, cemented over important cave openings and desecrated the site with vulgar graffiti. The Tribe had long sought to have Cave Rock protected as a traditional cultural site, and in 1993 the Tribe formally requested that the Forest Service assess the site’s eligibility for listing on the National Register. Cave Rock was determined to be eligible for the National Register as a Traditional Cultural Property in 1996.

Following the eligibility determination, the Forest Supervisor for the Lake Tahoe Basin Management Unit (LTBMU) found that rock climbing poses an adverse effect to the National Register eligibility of Cave Rock, a finding with which the Nevada State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) concurred. Tribal Chairman Brian Wallace continued to advocate for the protection of Cave Rock during the 1997 Presidential Forum at Lake Tahoe, and the Forest Service agreed to conduct an Environmental Impact Statement (EIS) before establishing a management direction for Cave Rock.

Management Plan

The Tribal Chairman, representatives from the Cultural Committee and Senior Center, as well as other Tribal members and staff, worked through the long and sometimes hostile EIS process. Although Cave Rock had been compromised over and over again, the Washoe Tribe and Tribal members were often depicted as being uncompromising, because they refused to agree to further destruction. A draft EIS was issued in 1998, and the preferred plan was to close only a handful of rock climbing routes that presented a highway safety danger, remove graffiti, and educate rock climbers about the importance of Cave Rock. Despite this initial setback the Washoe Tribal government submitted comments noting that Forest Plan's Standards and Guideline set forth management practices which ranked protection of cultural resources above the establishment of recreational facilities and use. The Tribe argued that the Forest Plan required the site to be managed in manner protective of the cultural resources and that no justification for a deviation had even been offered. In response to the Tribe's comments, the Forest Service held several consultation meetings over the next two years. During this period, Tribal members continued to advocate for protection of Cave Rock, worked to secure letters of support from several Indian organizations, raised the protection of Cave Rock to the United Nations, and circulated an online petition in support of protection.

In July 2003, the Forest Supervisor for the LTBMU issued a Record of Decision banning rock climbing and other destructive activities from Cave Rock. The Order was retracted and reissued on August 5, 2003, to make technical corrections in the Decision. The purpose of the new management plan is to "protect the Cave Rock heritage resource and regulate uses there in a manner that, consistent with mandates and restrictions of law and regulations, preserves the historic and cultural characteristics that make the property eligible for listing on the National Register [of Historic Places]." The decision prohibits rock climbing at Cave Rock, and requires the removal all existing climbing bolts and other climbing hardware, masonry flooring and graffiti.

Litigation Summary

The Access Fund, special interest group representing rock climbers, filed a complaint against the Department of Agriculture in the U.S. District Court in Reno, Nevada seeking to overturn the Forest Service decision. The Access Fund argued that the decision was arbitrary and that it violated the Establishment Clause of the US Constitution, which prohibits the establishment of a state religion. In 2005, the Court denied the Washoe Tribe's efforts to intervene as a defendant in the case, but the Court rejected both of the Access Fund's arguments and dismissed their complaint on Summary Judgment. The

Access Fund has appealed this decision and it is currently pending before the US Ninth Circuit Court of Appeals. The Washoe Tribe has filed an Amicus Brief in the action. The Tribe has argued that the purpose of the Cave Rock management plan is to resolve adverse effects in accordance with the National Historic Preservation Act and the Forest Plan. The Tribe has emphasized that the Forest Service expressly rejected the Tribe's request that the site be protected in accordance with the Tribe's tradition and custom and that the Cave Rock management plan permits activities that will continue to adversely affect the Tribe's traditional use. While the plan will protect Cave Rock from many adverse effects, it is certainly not an endorsement of the Washoe Tribe's traditional customs or beliefs.

With the Cave Rock management plan decision, the Forest Supervisor made a deliberate and thoughtful compromise that provides a Native American cultural site with the protection it is due under the Forest Plan and federal law. Because of a misperception among federal land managers that a decision to protect a Native American cultural site will be struck down as a violation of the Constitution, many such sites have been denied even minimal protection. As demonstrated by the District Court's ruling in this matter, decisions to protect Native American cultural sites are being made and upheld. However, this case also demonstrates that even a fair application of federal law may not protect a site. The Washoe Tribe has found that repatriation of a site to the indigenous people is the only way to ensure proper protection. This event, sponsored by Yachay Wasi, shows that much of the "developing world" is now experiencing the type of indiscriminate development Nevada and California experienced over the past 150 years. The two tunnels dynamited through Cave Rock are a stark reminder of the destruction of indigenous culture that occurs during such periods, and we hope that the recent protections to the site demonstrate the strength and resiliency of indigenous culture.