



Memo:

To: Participants in **American Indians and Cultural and Natural Resources Management: The Law & Practices Regarding Federal Lands**, May 22-25, 2001, Hunter Conference Center, Southern Utah University, Cedar City, Utah

From: Professor Raymond Cross ^{to} Prime Course Instructor, University of Montana School of Law

Date: May 10, 2001

Re: Course Information and Advice

Congratulations on your selection as a participant in this course! We ask you to read this course information in advance of your arrival at the course site.

1. About the Course: This course offers you the opportunity to develop "hands on" knowledge about **American Indian Natural and Cultural Resources Law**. It combines two learning approaches that will help you build a lasting knowledge base about these topics. These two approaches are the lecture and case analysis methods. This course is organized around eight (8) lectures and five (5) problem sets. The eight lectures will provide you with basic legal knowledge in each of the topic areas. The five problem sets require you to immediately apply this knowledge within your assigned "break-out" group to resolve the presented factual and legal issues. Past course participants emphasized how much they enjoyed opportunities for spirited exchanges with their "break-out" group colleagues about the difficult legal, practical and ethical issues raised in their discussions.

2. Course Texts and Other Related Course Materials: You will receive at the course site two primary resource books and two supporting books for this course:

A. Primary Resource Book: You will receive on-site your **Course Materials and Participant Resource Book**. This book contains your lecture outlines and the relevant background treaty/ statutory/ case law information that you will need to resolve the included 5 problem sets. Take a few minutes to "thumb-through" the book's table of contents so you can quickly access the relevant material when needed during the course presentation and your break-out sessions.:

B. Secondary Resource Books: There are two additional "take-home" books that provide deeper reference sources for your later use. In a few instances, the **Course**

Materials Book cross-references to sources in these **secondary books**. You should have them at hand during the course for these occasional cross-reference needs:

1) **S. Pevar, The Rights of American Indians;** and

2) **Indian Tribes As Sovereign Governments**

C. Course Agenda: Please review the attached **Course Agenda** so that you are oriented to the overall course structure. This document is Attachment "A" herein.

D. Five (5) Problem Sets: Please review the attached **Five (5) Problem Sets** so that you are familiar with the general facts and issues in advance of the course. You need not do any advance work on these problem sets. These problem sets appear in your primary resource books as well so do not worry if you misplace these copies. These problem sets are Attachment "B" herein.

E. Your "Break-Out" Group Assignment: You have been pre-assigned to a specific "break-out" group. Your group will be facilitated by a law-trained adviser, as well as an assigned federal agency facilitator, who will assist you in identifying, defining and responding to the issues presented by each of the 5 problem sets. Please stay with your assigned "break-out" group during the course session. Past participants have emphasized in their evaluations that this is the best way to get the most out of your group experience.

Your assigned "break-out" group is identified in Attachment "C" herein.

3. Brief Overview of the Course Structure: This is a three (3) day course supplemented by an optional half-day session. A brief summary of each day's course activities is as follows:

A. Day One (May 22, 2001): You will hear four (4) lecture presentations and participate in one (1) "break-out" session. These activities will provide you with a comprehensive grounding in contemporary federal Indian law:

1) **Lectures:** You will hear the following lecture presentations on Day One:

a) **Tribal Sovereignty: Principles and History:** You will hear about the origin, evolution and present status of tribal sovereignty that forms the fundamental backdrop for later course topics and discussion.

b) **Federal Trust Duties to American Indians: Origin, Nature & Scope:** You will learn how the federal trust duty arose from the unique "guardian-ward" relationship between the federal government and the Indian peoples. Federal common law and statutes "flesh-out" the federal trustee's substantive and procedural duties to protect the natural and cultural resources of the Indian peoples.

c) Tribal Self-Determination and Self-Governance; Re-establishing the Government-to-Government Relationship: Tribal self-determination supports the Indian peoples' efforts to re-create their basic institutions such as their tribal constitutions, tribal governments and tribal courts as the means for tribal self-governance..

d) First Annual Guest Lectureship (7:30-9:00 p.m, Tuesday Evening): Professor Lloyd Burton will present his guest lecture on the topic tribal consultation as a means of preserving traditional cultural properties and interests.

2) "Break-Out" Session # 1: "Principles of Indian Treaty Interpretation: Establishing A Tribal Water Right To Preserve Treaty-Recognize Hunting, Fishing and Gathering Rights in Kalumet Marsh": You will resolve the tribe's claim for a treaty-reserved water right to an in-stream flow sufficient to support the fish and wildlife within Kalumet Marsh. This marsh is dying due to up-stream diversions by non-Indian irrigators who claim an equal or superior right to use the water of the Wilkinson River. You, along with your group colleagues, will develop and "report-out" to the full conference your group's resolution of the conflicts presented by this problem set.

3) Plenary Discussion of Group Solutions to Problem Set #1: You will be asked to constructively evaluate the other "break-out" groups' proposed solutions to this problem set.

B. Day Two (May 23, 2001): Day two focuses on "American Indian Natural Resources Law." You will hear two (2) lecture presentations and participate in two (2) "break-out" sessions:

1) Lectures: These two lectures on natural resources law are:

a) American Indian Natural Resources Law (Part I): "The National Environmental Policy Act (NEPA) and It Effects on Tribal Interests and Resources: You will hear about NEPA's effect on natural resources management on public lands, its extension to Indian Country and its potential benefits and limits for tribal self-determination.

b) American Indian Natural Resources Law (Part II): "Treaty-Reserved Hunting and Fishing Rights and the Impact of the Endangered Species Act (ESA) on Those Rights": You will learn about the on and off-reservation hunting and fishing rights held by the Indian peoples under treaties, executive orders and administrative practice. You will hear about the potential abrogation of those reserved rights by subsequent statutory enactments such as the ESA.

2) "Break-Out" Sessions #2 and #3: You will participate in the following two "break-out" sessions:

a) "Break-Out" Session #2: Facilitated Group Discussion of Problem Set # 2: "The Blue Mountain Coal Lease--Tribal Sovereignty, Cultural Integrity and

NEPA's Role in Indian Country": You are asked to advise a group of traditional Indian practitioners who wish to bring a NEPA-based challenge to their tribal council's proposed coal lease that would allow the strip-mining within a tribal sacred area.

b) "Break-Out" Session #3: Facilitated Group Discussion of Problem Set #3: "Reconciling Federal Wildlife Regulations With American Indians' Treaty Reserved Hunting, Fishing and Cultural Values": You are asked to evaluate a traditional tribal healer's challenge to his federal prosecution under the ESA for taking an endangered animal species that is central to his tribe's cultural and religious practices.

3) Plenary Discussion of Group Solutions to Problem Sets #2 and #3: You will be asked to constructively evaluate the other "break-out" groups' proposed solutions to these problem sets.

C. Day Three (May 24, 2001): You will hear two lecture presentations on "**American Indian Cultural Resources Law**," participate in two "break-out" sessions and discuss a tribal panel presentation on the federal trust duty:

1) Lectures:

a) You will hear a presentation on "**American Indian Cultural Resources Law: Federal & Tribal Duties & Responsibilities Under the National Historic Preservation Act (NHPA), the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA)**": These statutes recognize new types of American Indian cultural property called "traditional cultural properties" and "tribal cultural patrimony." These cultural properties are statutorily accorded both substantive and procedural protections so as to ensure a tribal voice in development decisions that affect their cultural resources on public and Indian lands.

b) You will hear a presentation by the Honorable Sherry Hutt, Superior Court Judge, Arizona, on "**An Overview of the Native American Graves Protection And Repatriation Act**."

2) "Break-Out" Sessions #4 and # 5: You will participate in two "break-out" sessions:

a) "Break-Out" Session #4: Facilitated Discussion of Problem Set #4: "Resolving the Stanwick Man Dilemma: Negotiating A Fair Settlement To A NAGPRA-Based Dispute": You will represent one of the parties to a legal contest of the possible repatriation to ostensibly culturally affiliated tribes of ancient human remains discovered on federal lands. Your task is to resolve the matter short of litigation in a manner that respects the fairly asserted rights and interests of the respective parties.

b) "Break-Out" Session #5: Facilitated Discussion of Problem Set # 5: "Consultation as a Means of Accommodating American Indian Cultural & Religious Beliefs: Resolving the Big Heart Medicine Wheel Controversy": You will develop a consultation process that complies with sections 106 and/or 110 of the National Historic Preservation Act (NHPA) and results in a Memorandum of Understanding (MOU) that reasonably accommodates the relative users' interests defined in the problem set.

3) Plenary Discussions of Group Solutions to Problem Sets #4 and #5: You will be asked to constructively evaluate the other "break-out" groups' proposed solutions to these problem sets.

5) Optional Two-Hour Round Table Discussion of Participants' Questions & Issues (7:00-9:00 p.m., Thursday Evening): Participants are invited to bring their questions and issues for an informal discussion with the course instructors:

D. Day Four(9:00 a.m.-12:00 p.m., May 25, 2001): You are invited to participate in an optional **Informal Discussion Session Evaluating the 2001 Course Session and Planning the 2002 Course Session.** Past participants have enjoyed this opportunity to look ahead to new departures in the "government-to-government" relationship between the federal government and the Indian peoples.

Our goal as course instructors is to provide you with the best possible learning experience and environment. We believe that this course structure appreciably contributes to that goal. However, you should not overlook the opportunity for relaxation and enjoyment at the tribally sponsored cultural and other events held in conjunction with this course.

I look forward to meeting and working with each of you during this course.

**Fourth Annual Course Presentation: American Indians and Cultural and
Natural Resources Management: The Law and Practice Regarding Federal Lands**

**May 22-25, 2001
Hunter Conference Center
Southern Utah University
Cedar City, Utah**

Day One (May 22, 2001): Basic Principles of Federal Indian Law

- 8:00 a.m. Welcome: Hosted By The Paiute Indian Tribes of Utah**
- 8:05 a.m. Traditional Welcome**
- 8:10 a.m. Announcements & Introductions--Mr. David Ruppert, National Park Service**
- 8:45 a.m. Tribal Sovereignty: Principles & History--Ray Cross, University of Montana**
- 10:30 a.m. Question and Answer Period**
- 10:45 a.m. Break**
- 11:00 a.m. Federal Trust Duties to American Indians: Origin, Nature & Scope With
Examples- Stephen Pevar, American Civil Liberties Union (ACLU)**
- 12:00 p.m. Question and Answer Period**
- 12:15 p.m. Lunch Break**
- 1:30 p.m. Tribal-Self-Determination & Self-Governance: Re-establishing the
Government-To-Government Relationship With the American Indian
Peoples--Ray Cross**
- 2:45 p.m. Break**
- 3:00 p.m. Break Out Session #1--Facilitated Group Discussion of Problem Set #1:
"Principles of Indian Treaty Interpretation: Establishing A Tribal Water
Right to Preserve Treaty-Recognized Hunting, Fishing and Gathering Rights
in the Kalumet Marsh"**
- 4:15 p.m. Report and Discussion of Group Solutions to Problem Set # 1**
- 5:15 p.m. Dinner Break**
- 7:30 p.m. First Annual Guest Lectureship: Professor Lloyd Burton, University of
Colorado at Denver**

Day Two (May 23, 2001): American Indian Natural Resources Law

- 8:15 a.m.** **Recap of Events of Day One--Rosemary Sucec**
- 8:25 a.m.** **Announcements & Information-- Dave Ruppert**
- 8:30 a.m.** **American Indian Natural Resources Law (Part I): "The National Environmental Policy Act (NEPA) and Its Effects on Tribal Interests and Resources"--Ray Cross**
- 9:30 a.m.** **Question & Answer Period**
- 9:45 a.m.** **Break**
- 10:00 a.m.** **Break Out Session #2--Facilitated Group Discussion of Problem Set #2:"The Blue Mountain Tribal Coal Lease: Tribal Sovereignty, Cultural Integrity and NEPA's Role in Indian Country"**
- 11: 15 a.m.** **Report and Discussion of Group Solutions to Problem Set #2**
- 12:15 p.m.** **Lunch Break**
- 1:30 p.m.** **American Indian Natural Resources Law (Part II): "The Treaty Reserved Hunting &Fishing Rights And The Impact of the Endangered Species Act on those Rights"--Stephen Pevar & Ray Cross**
- 2:30 p.m.** **Question and Answer Period**
- 2:45 p.m.** **Break**
- 3:00 p.m.** **Break Out Session #3--Facilitated Group Discussion of Problem Set # 3: "Reconciling Federal Wildlife Regulations With American Indians' Treaty Reserved Hunting, Fishing and Cultural Values"**
- 4: 15 p.m.** **Report and Discussion of Group Solutions to Problem Set #3**
- 5: 15 p.m.** **Adjournment**

Day Three (May 24, 2001): American Indian Cultural Resources Law

- 8:15 a.m.** Recap of Events of Day Two--Ms. Rosemary Sucec, NPS
- 8:25 a.m.** Announcements & Information--Mr. Dave Ruppert, NPS
- 8:30 a.m.** American Indian Cultural Resources Law: Federal & Tribal Duties & Responsibilities Under National Historic Preservation Act (NHPA), Native American Graves Protection and Repatriation Act (NAGPRA) & Archaeological Resources Protection Act (ARPA)--Ray Cross
- 9:45 a.m.** Break
- 10:00 a.m.** Break Out Session #4: Facilitated Discussion of Problem Set # 4: "Resolving the Stanwick Man Dilemma: Negotiating A Fair Settlement To A NAGPRA-Based Dispute"
- 11:15 a.m.** Report and Discussion of Group Solutions to Problem Set # 4
- 12:15 p.m.** Lunch Break
- 1:30 p.m.** An Overview of the Native American Graves Protection and Repatriation Act--The Honorable Sherry Hutt, Judge of the Superior Court, Arizona
- 2:45 p.m.** Break
- 3:00 p.m.** Break Out Session # 5: Facilitated Discussion of Problem Set # 5: "Consultation As A Means of Accommodating American Indian Cultural & Religious Beliefs: Resolving the Big Heart Medicine Wheel Controversy"
- 4:15 p.m.** Report and Discussion of Group Solutions to Problem Set # 5
- 5:15 p.m.** Presentation of Certificates of Course Completion
- 5:30 p.m.** Adjournment
- *7:00 p.m.** Optional Two-Hour Roundtable Discussion Session With Stephen Pevar and Ray Cross Re: Participant Questions, Observations and Comments

Day Four (May 25, 2001): Optional Discussion Session Re: Future Course Planning

9:00 a.m. Informal Discussion Session Evaluating the 2001 Course Session and Planning the 2002 Course Session

12:00 p.m. Adjournment