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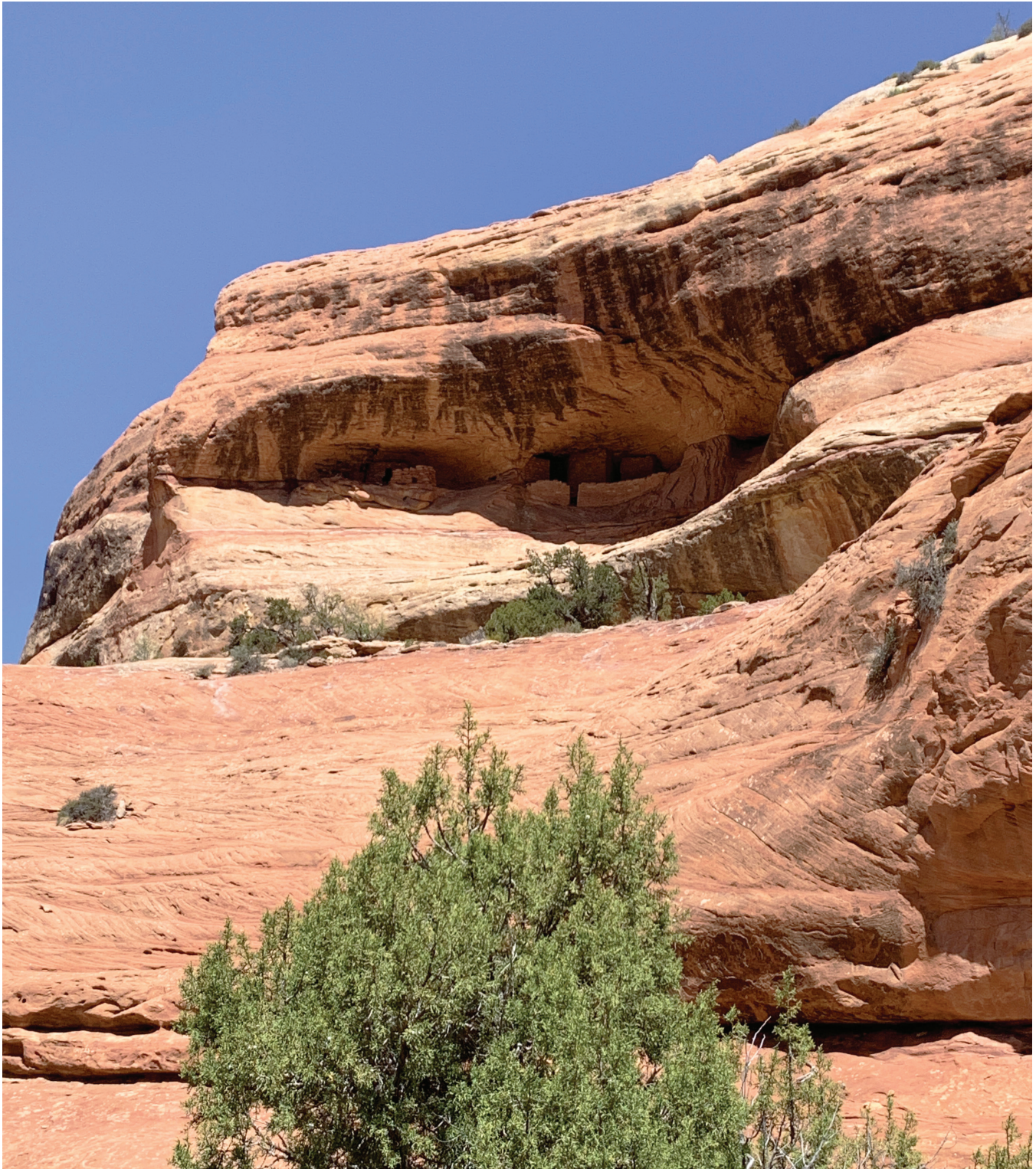
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REFOUNDATION: DOES PLACE-BASED CONSERVATION IN AMERICA NEED TO START OVER?
REBECCA CONARD, ROLF DIAMANT, DAVID HARMON & JOHN REYNOLDS, THEME EDITORS



A Better Path to Tribal Stewardship of Public Lands

CARLA CHUNG MATTIX

In the 1990s, calls for Tribal stewardship and co-management of public lands attracted the attention of lawmakers, executive branch policy-makers, and federal land managers. These initiatives gained ground during the early 2000s and reached a new apex under the Biden administration. Joint Secretarial Order 3403, issued by the secretaries of the interior and agriculture and later joined by the secretary of commerce, directed agencies to work with federally recognized Tribes and Native Hawaiian communities to implement collaborative and cooperative stewardship arrangements. The national monuments created under the Antiquities Act during the Biden era provided the strongest language to date for Tribal inclusion in planning and management activities.

Despite these significant forward steps, the current framework to incorporate Tribal stewardship is fragile. Implementation is dependent upon a complicated patchwork of laws, policies, and legal doctrines. Terms such as “co-management” and “co-stewardship” do not have statutory or regulatory definitions, creating confusion and uneven expectations among Tribes and land managers. Federal agency institutional cultures and discretion may also contribute to inconsistent measures for shared decision-making.

The current greatest threat to widespread and committed implementation is political. Secretarial Order 3403 remains in effect, but there is no indication that the Trump administration or any future administration will give Tribal stewardship directives the same priority. The inclusion of Tribes and Native Hawaiian communities in place-based conservation needs a new approach.

During my 26-year career as an attorney advising the National Park Service (NPS), I encountered the complexities of the current piecemeal approach. National park units have historical links to Native Americans, Native Alaskans, and Native Hawaiians. The lands and resources within parks were once, and in some cases may still be, the homes, hunting and gathering grounds, and sacred sites of Tribes. Yellowstone National Park, for example, is culturally associated with the Blackfeet, Confederated Salish and Kootenai, Crow, Eastern Shoshone, Gros Ventre and Assiniboiné, Nez Perce, and Shoshone-Bannock Tribes. Additionally, the park consults with 54 other federally recognized Tribes on various matters. In this respect, Yellowstone is not unique.

Many parks include Tribal trust lands within their boundaries. Other parks share borders with Native American reservations. In 1987, NPS established a Native American Relationships Management Policy. Soon after, the NPS

American Indian Liaison Office worked in earnest to establish collaborative arrangements with Tribes. NPS recognized that partnerships with Native Americans enrich interpretation efforts, assist park management responsibilities, resolve disputes, and help fulfill the federal government’s trust responsibility.

Some partnerships with Tribes involving NPS units and other public lands are the result of legislative requirements. For example, legislation that established or expanded Bighorn Canyon National Recreation Area, Badlands National Park, and Grand Canyon National Park necessitated the development of agreements to address issues involving Tribal lands within park boundaries. Other relationships evolved from policies, such as President Clinton’s executive order to promote access to sacred sites on federal land. As these relationships matured, efforts to enhance Tribal involvement and co-management grew.

The Department of the Interior Office of the Solicitor worked with NPS to identify the legal authorities and instruments available to facilitate these relationships. At times, we had to be creative and unorthodox in our approach. We used general and cooperative agreements along with legislative authorities and treaty rights applicable to specific parks. NPS has had some success using annual funding agreements under the Tribal Self-Governance Act for non-Bureau of Indian Affairs programs, but these can only be entered into with Tribes that have a compact with Interior under strict requirements.

Many of these measures are now captured in the 2022 Solicitor’s Office *Current Land, Water, and Wildlife Authorities That Can Support Tribal Stewardship and Co-Stewardship Final Report*. This comprehensive guidance is an important resource for land managers seeking to implement collaborative and cooperative

partnerships with Tribes. Yet, it is careful to identify legal limitations, distinguishes “co-stewardship” from “co-management,” and still reflects the agency-by-agency patchwork nature of legal authorities.

One of the most promising and ultimately frustrating opportunities for collaborative Tribal management that I worked on involved Badlands National Park. In 1968, Congress authorized the return of 133,000 acres of former Air Force bombing range land abutting the park and within the Pine Ridge Reservation boundaries to the Oglala Sioux Tribe. At the same time, the legislation expanded the boundary of the park to include this area, known today as the South Unit of Badlands, and instituted perpetual NPS management under an agreement with the Tribe.

The circumstances surrounding the creation and subsequent management of the Tribal lands within the park have been the subject of continual controversy. In the early 2000s the situation presented the possibility of a new paradigm for the National Park System. Together with the Oglala Sioux Tribe, NPS leadership explored the idea of turning the South Unit into the first Tribal National Park. Following a decade of negotiation and planning, including the development of a general management plan for the South Unit, NPS supported Tribal management of the unit in accordance with the laws governing the National Park System.

Delegating this level of authority over a park unit to a Tribe required congressional approval. After further negotiations, NPS and the Oglala Sioux developed draft legislation and found a sponsor in the Senate. At this point, the effort stalled. Political changes in Congress, the federal government, and the Tribe dampened the momentum and the Tribal National Park did not materialize.

Even if Tribal management of the South Unit had come to fruition, the 15 years of dedicated work and significant

resources expended for this project are simply not feasible for most Tribal stewardship proposals. Neither is the square peg-round hole approach of using existing authorities that are not designed to address the unique needs of land-managing partnerships with Tribes.

Is there a different approach? Yes, there is. As a start, when there are opportunities to reset major environmental and cultural preservation laws and agency organic acts, language regarding Tribal involvement should go beyond consultation requirements and incorporate stewardship authorities. Though not ideal—the scope of Tribal involvement might vary from law to law or by agency—such measures would still provide agencies much-needed clarity.

But since we are thinking in terms of a “Refoundation,” I submit that an overarching legislative framework is needed to integrate consistent and effective Tribal co-management into the future of our public lands. To do this, federal agencies need flexibility and discretion to delegate a reasonable level of authority to Tribes. Crafting such legislation to apply to a multitude of federal agencies and 575 federally recognized Tribes will be a challenge. One model similar in scope that had bipartisan support and has achieved tangible results is the Native American Graves Protection and Repatriation Act (NAGPRA).

Enacted in 1990, NAGPRA provides for the respectful protection and return of Native American human remains and cultural items from federal holdings to Tribes. The statute and implementing regulations uniformly apply to all federal agencies. In 35 years, it has produced a sea change in attitudes toward science and museum collection practices involving Native Americans. The Native American scholar, David Treuer, has noted that since the passage of NAGPRA, “tribes and parks (not to mention museums, galleries, and private collections) have drawn closer together in their efforts to preserve Native spaces and objects.” During my years in the Solicitor’s Office advising the NPS National NAGPRA Program



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and the NAGPRA Federal Advisory Review Committee, I witnessed this strengthened relationship and shift toward collaboration among many federal land managing agencies and Tribes.

The legislative development of NAGPRA forged its path to broader stewardship. In 1986, the US Senate Indian Affairs Committee and a group of bipartisan US senators and representatives from disparate regions of the nation began an exploration of the complicated topic of repatriation. Following several draft bills that fell short, the museum community requested a one-year period to provide museums and Native American communities time to initiate a dialogue on crucial matters. With the encouragement of the Senate committee, The Heard Museum, a respected Native American art museum, accepted the responsibility for organizing and sponsoring the dialogue. An initial planning meeting brought together national leaders of the Native American, museum, and anthropology communities to select a dialogue panel. The ensuing Panel for a National Dialogue on Museum/Native American Relations included broad representation of Native Americans (not just federally recognized tribes), prominent museum officials and recognized scholars. A facilitator and congressional staff also participated in the discussions.

After convening five meetings during the year-long initiative, the Panel produced a report that formed the framework for the final language of NAGPRA. In their report, they attributed their success to a candid and extended exchange of views and mutual education. The involvement of key congressional staff members also proved critical to the effort. Senator Daniel K. Inouye, one of the sponsors of the statute, called this level of cooperation which fostered ongoing discussions with Congress as “unprecedented.”

A similar process could be used to develop comprehensive Tribal stewardship and co-management legislation. National and regional Tribal organizations, as well as Tribes with a stake in co-management, can direct this effort by engaging amenable sponsors in Congress and hosting a national dialogue on Tribal participation in

the stewardship of public lands. To be successful, this dialogue will need to include the committed participation of representatives from Tribes, federal and state agencies, environmental, historic preservation, conservation and sporting organizations, and other stakeholders with informed perspectives. While all 575 federally recognized Tribes could not manageably have a seat at the table, regional meetings would provide venues for their inclusion.

Legislative proposals to incorporate meaningful Tribal stewardship into public lands management need not start from scratch. In recent years, the work completed to implement Secretarial Order 3403 and other initiatives has created a body of reports and agreements with valuable legal analysis and experiential information.

The aforementioned 2022 Solicitor’s Office report offers specific definitions that provide helpful guidance, but these terms are not defined in any law. Clarifying the terms “co-management,” “co-stewardship,” and similar terminology would be a fundamental starting point in any dialogue and proposal.

Members of the dialogue also have 400 co-stewardship agreements signed during the Biden administration from which to draw. These agreements span multiple federal agencies, Tribes, and geographic regions. A review of the strengths and weaknesses encountered during the implementation of these partnerships can inform future legislation.

In 2023, the Congressional Research Service, the non-partisan public policy research arm of the US Congress, published a lengthy examination of the varying degrees of Tribal influence in federal decision-making. This thorough report makes it clear that the issues are complicated. But, as the report suggests, Congress has the ability, and I would stress the responsibility, to consider the suitability and effectiveness of federal–Tribal co-management, and the scope of activities on federal land allowed under agreements, including whether agencies should delegate certain activities to Tribes.



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Most recently, in January 2026 the Government Accountability Office, the independent, non-partisan investigative office of the US Congress, also issued a report to examine issues related to agencies developing shared decision-making agreements with Tribes. The report found that limited federal agency understanding of legal authorities and incomplete guidance impeded the development of agreements, and the significant federal workforce reductions that began in 2025 have diminished planning to make strategic use of partnerships with Tribes. Among other things, the Accountability Office recommended that Congress authorize additional federal agencies, beyond Interior and Agriculture, to enter into self-governance type agreements with Tribes, “to the extent legally permissible.”

We are at a critical juncture for capitalizing on the momentum to clarify and strengthen Tribal stewardship. It is time to move beyond a piecemeal approach. There is a general sense that federal–Tribal co-management on public lands may help federal agencies achieve congressional priorities. Attitudes toward integrating Tribal traditional knowledge with contemporary resource management policies to meet mutual objectives are becoming more favorable. The opportunity exists to overcome challenges that agencies have faced when trying to balance various Tribal interests with other statutory mandates and mission. That opportunity can take the form of a comprehensive legislative initiative that ushers in a new era of public land management.

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