

# **The Shoshone-Bannock Tribes' Position Regarding the Transfer of Federal Lands**

July 2005

## **Introduction**

The Shoshone-Bannock Tribes set forth the following position concerning any deposition, sale or transfer of federal lands, use rights or other rights in lands that may affect the Shoshone-Bannock Tribes' treaty rights as guaranteed by the Fort Bridger Treaty of July 3, 1868 and subsequent cession agreements. The Tribes oppose any federal land disposition, sales or transfers to private entities or state and local governments based on two fundamental reasons. First, the United States government entered into a solemn treaty with the Shoshone and Bannock tribal peoples in which the Tribes reserved certain off-reservation hunting, fishing and gathering rights which they continue to exercise on unoccupied lands of the United States. Subsequent to the 1868 Treaty, the Tribes ceded certain lands to the United States and reserved in the cession agreements certain communal rights for grazing and use of the public lands. Second, the United States, including its federal agencies, have a trust responsibility as established in the Fort Bridger Treaty and other federal laws, policies and executive orders to protect and preserve the rights of Indian tribes, and to consult with the Tribes prior to such land sales or transfers.

## **Treaty Guaranteed Rights**

The Shoshone-Bannock Tribes ("Tribes") have reserved rights based on their Treaty of Fort Bridger of July 3, 1868. In the treaty negotiations, the Tribal leaders made it clear that they wished to continue to fish for salmon, hunt buffalo and elk, gather the plants and medicines and other cultural resources in their aboriginal areas within the United States, including but not limited to the present states of Idaho, Utah, Wyoming, Nevada and Montana. The Tribes ceded millions of acres of their aboriginal homelands in return for a much smaller reservation known as the Fort Hall Reservation. Accordingly, the Tribes in the Treaty reserved certain off-reservation hunting, fishing and gathering rights which they continue to exercise on unoccupied lands. These reserved treaty rights have been recognized and confirmed by the Idaho Supreme Court.

Following the Treaty of 1868, the United States sought further land cessions from the Tribes in the late 1880's. Under these cession agreements the Tribes reserved grazing and gathering rights on public or unoccupied lands. Today, Tribal members continue to graze their livestock on federal lands, and gather firewood, posts, poles, food and medicinal plants for traditional practices.

The disposition, sale or transfer of federal lands to a private entity or state and local governments adversely impacts the Shoshone-Bannock Tribes' guaranteed off-reservation treaty rights by diminishing the locations and access to areas where Tribal members exercise treaty rights. Tribal members, whose ancestors hunted, fished or gathered on aboriginal lands for thousands of years, are forced to relocate to other areas or cease the exercise of such treaty guaranteed rights. Tribal members grazing areas are also reduced by land transfers, depositions or sales and access for gathering may be severely limited. The transfer, patent or outright purchase of federal lands, and the extension of leases for mining on federal lands by private

businesses enable them to control access and use, which jeopardize access to certain Shoshone-Bannock traditional fishing, hunting and gathering areas, and grazing and plant material use.

### **Federal Trust Responsibility**

It is well established that the United States has a solemn trust obligation to the Shoshone-Bannock Tribes. Under this obligation the United States has a special fiduciary responsibility to consider the best interests of the Shoshone-Bannock Tribes pursuant to the Fort Bridger Treaty. The United States assumed this responsibility when it entered into the Treaty with the Tribes. Today, most fundamentally, the modern form of the trust obligation is the federal government's duty to protect tribal lands and treaty resources, including the off-reservation rights the Tribes reserved. This duty to protect treaty resources includes preserving the integrity of lands upon which the resources are located.

The cultural resources located on many off-Reservation lands are essential to the culture and traditions of the Tribes. Importantly, these resources provide subsistence to a majority of Tribal families residing on the Fort Hall Reservation. Loss of the aboriginal lands because of federal land depositions, sale or transfers to private businesses and non-federal governmental agencies may be devastating to the Tribes and lead to irreversible cultural extinction of traditional practices. Loss of Tribal culture and traditions occur because Tribal identity depends heavily upon the socio-cultural ties that link individuals, families and groups to specific traditional and aboriginal territories and lands. The reservation of these aboriginal areas for hunting, gathering and fishing were contemplated by the Tribal leaders and reserved in the Fort Bridger Treaty. Accordingly, elimination of the federal lands through transfers severely impacts the subsistence food sources for Tribal members, severs the family and cultural ties to certain traditional lands, and restricts the use of cultural resources which are not found on the Fort Hall Reservation.

The federal trust obligations require a federal agency to carefully consider and investigate the effects of its actions on tribal interests and assess its obligation to tribes. The Tribes must not be treated like merely citizens. Instead, the federal land management agencies owe a duty to preserve and protect the Tribal resources by diligently discussing and considering the Shoshone-Bannock Tribal interests through consultation with the Tribes concerning any consideration of a transfer of lands located within the Tribes' aboriginal areas. Proposed land depositions, sales or transfers must consider appropriate mitigations to address reserved treaty rights, cultural resource laws and Tribal policy. Consultation is required by numerous federal laws, including Executive Orders 12875, 13007, 13084 and 13175.

The Shoshone-Bannock Tribes oppose any federal land depositions, sales or transfers that may adversely impacts natural and cultural resources and/or our reserved treaty rights of hunting, fishing and gathering on unoccupied lands of the United States. We certainly welcome the opportunity to work with any federal agency in transferring any federal lands to the Shoshone-Bannock Tribes to insure the Tribes' treaty rights are secured for future generations. If any federal agency or employee has any questions regarding the Shoshone-Bannock Tribes' position, please contact the Chairperson at 478-3700.