



EDGE OF

NATIVE VOICES SPEAK FOR THE BEARS EARS

MORNING

EDITED BY JACQUELINE KEELER



First Torrey House Press Edition, May 2017
Copyright © 2017 by Torrey House Press

All rights reserved. No part of this book may be reproduced or retransmitted in any form or by any means without the written consent of the publisher.

Published by Torrey House Press
Salt Lake City, Utah
www.torreyhouse.org

International Standard Book Number: 978-1-937226-71-8

E-book ISBN: 978-1-937226-72-5

Library of Congress Control Number: 2016943304

Cover art by Shonto Begay, "Peaceful Eve" at modernwestfineart.com
Book design by Alisha Anderson

PERMISSIONS

"A Birthday Poem" from *Blue Horses Rush In. Poems and Stories* by Luci Tapahonso. © 1997 Luci Tapahonso. Reprinted by permission of the University of Arizona Press

"Guidelines for the Treatment of Sacred Objects" and "The Theft Outright" by Heid E. Erdrich from *National Monuments* © 2008 Heid E. Erdrich. Reprinted by permission of Michigan State University Press

"Chinle Summer" and "In Memory of Crossing the Columbia" by Elizabeth Woody. Reprinted by permission of Elizabeth Woody.

WE FIGHT FOR THE LAND, THE EARTH, EVERYTHING: FROM BEARS EARS TO THE HIGH COUNTRY OF CALIFORNIA

CUTCHA RISLING BALDY, PH.D.

We consider all of nature to be alive, possessing both feelings and a consciousness. Hence the natural world is capable of seeing and hearing us, "blessing" us, and taking pity on us. The Earth is a physical manifestation of God's creative spirit, and we, Human Beings, are recognized by the Earth as a part of the natural world. Once I asked my one-hundred-and-eleven-year-old great-grandmother, Bessie Tripp, "Who did the old Indians say was God, Grandma?" She said, "Why, the Earth, Ever'thin'. The rocks, the leaves, the mountains.

JULIAN LANG (KARUK)

IT FEELS FITTING FOR ME THAT I WILL FINISH WRITING this article today, July 8, 2016, which marks 164 years since Congress voted against ratifying the treaties that were negotiated with California Indian tribes in 1852 and would have guaranteed tribes 7,488,000 acres or 7.5% of the state.¹ Between March 19, 1851, and January 7, 1852, three government commissioners, Redick McKee, Geo W. Barbour, and O.M. Wozencraft had met with numerous California Indian tribes and established eighteen treaties.² These

¹ Rawls, James J. *Indians of California: The changing image*. University of Oklahoma Press, 1986.

² Secrest, William B. *When the great spirit died: The destruction of the California Indians, 1850-1860*. Quill Driver Books, 2003.

treaties were supposed to result in a peaceful transfer of lands from California Indians to the United States. They were also supposed to quell the many uprisings of Native people who were fighting against a systematic genocide being perpetrated by the California citizenry.

California Indian peoples contended with what scholar Sherburne Cook called "three waves of destruction." He identified these as the Spanish Missions, the Mexican-American War/Rancho system, and the Gold Rush.³ For Southern and Central California, the mission system was designed as a way of seizing lands in the name of the church and converting Indians to Catholicism through the enslavement of Indian peoples. By the end of the mission period, many California Indian peoples had died, moved inland or in some cases south to Mexico, or were living in the missions without claim or ownership of any land.

In Northern California, contact with settlers was relatively late in the 1800s and mostly happened during the Gold Rush. After that, Northern California became what Hupa scholar Jack Norton calls a "deranged frontier" where Native peoples were hunted, killed at random, and their ways of life desecrated.⁴ I grew up in Humboldt County, the site of a number of egregious acts of genocide perpetrated against my own peoples. Fifty-six massacres of Native people took place in the Humboldt region from 1850-1864.⁵ Stories of miners and settlers (or, as Jack Norton calls them, "invaders") in Humboldt County included indiscriminate killing, rape, kidnapping, enslavement of Indian children, burning homes and

³ Cook, Sherburne Friend. *The Population of the California Indians, 1769-1970*. University of California Press, 1976

⁴ Norton, Jack. *Genocide in Northwestern California: When our worlds cried*. Indian Historian Press, 1979.

⁵ Platt, Tony. *Grave Matters: Excavating California's Buried Past*. Berkeley: Heyday, 2011.

food supplies, and sliding whole villages off the sides of mountains into the canyons.

Among this thirst for gold and riches was the thirst for our land, what the settlers called a "resource." Gold would prove less profitable than expected. As a result, according to historian Brendan Lindsay, many of the Euro-American invaders "began an assault on Indigenous populations in order to wrest the land itself from their control. Land and its productive capacity would be California's new gold—indeed, in the long term, its real gold"⁶

What happened in California, and to many Native people throughout the western hemisphere, was genocide. These depraved acts of violence were not only against people, animals and cultures, but against the land. The depravity of miners during the Gold Rush in my own homeland of Northern California is often classified as human rights atrocities, but it was also built on atrocities against the land, flora, and fauna, the continued abuse of a land that many Native people in California say is woven into the DNA of the people. The old stories say we are made of the earth. The earth is like us, living. We are responsible for the earth. The earth is responsible for us. It is not just that land is sacred, it is that land protects, provides and nurtures us, so it is imperative that we do the same. Why wouldn't we? Why wouldn't we want this earth to thrive?

We sometimes hear about Indian people selling land for beads and blankets. Tall tales spread by historians that Indian people were more like children who did not know the value of the place they called home. But these stories were told mainly to diminish our claims to the land. We sometimes think the agreements, things like treaties, were just about protecting or securing rights

⁶ Lindsay, Brendan C. *Murder State: California's Native American Genocide, 1846-1873*. U of Nebraska Press, 2012.

for the people. And that was part of it. We were protecting ourselves, but we were also protecting our land. If miners can come in and build dams with no concern about what this does to the wildlife, build lakes with no concern about what this means for the trees, blow up mountains and watch the earth itself run red, spill toxins into the water and watch the fish die, then who will protect the land from this destruction? Our treaties weren't just about us, they were about the land, the earth, everything.⁷

This is where I begin in order to express the deep-seated ties that Native people have to sacred sites, national monuments or "wilderness" territories and national parks. Currently, the Bears Ears Inter-Tribal Coalition is proposing a presidentially declared national monument designation under the Antiquities Act of 1906 to protect 1.9 million acres of land in Southern Utah. They are also proposing a collaborative management strategy, between tribes and federal agencies, for the area. The coalition has already rejected one proposal by representatives from Utah because it did not adequately involve tribes in the continued management and decision-making for the area. In fact, the draft of the proposed "Public Lands Initiative" prioritized resource development and mining over land protection.⁸

Sound familiar? It does to me. Having grown up with the old stories of the Gold Rush, I am still amazed at how the rhetoric continues, the thirst for riches and resources. The continued exploitation of our land is unrelenting. And we, still unwilling to sell out our land for beads and trinkets, still fighting and resisting, still finding ways to negotiate a federal government

⁷ I draw this phrase and the quote at the beginning of this essay from Arapikva: Creation Stories of the People by Julian Lang, a Karuk scholar

⁸ Burr: Thomas "Bears Ears Book will be Sent to Members of Congress" The Salt Lake Tribune, June 23, 2016

system, we still think beyond this generation or the next generation, we still think for seven generations. If Congress can come in and strip minerals with no concern about what this does to the wildlife, drill with no concern about what this means for soil, blow up mountains and watch the earth itself run red, spill toxins into the water and watch the rivers die, then who will protect the land from this destruction? These negotiations aren't just about us, they are about the land, the earth, everything.

This is a continuing fight, a continued enactment of "bio-cultural sovereignty," where the history is written on the landscape and human memory can be so pointedly short. I have written about bio-cultural sovereignty before.⁹ Bio-cultural sovereignty is drawn from the work of Stefano Varese in his book *Witness to Sovereignty: Essays on the Indigenous Movement in Latin America* and his discussion on the related issues of "indigenous knowledge and biodiversity" and "bio-cultural and socio-political sovereignty."¹⁰ Varese asks his readers to consider:

...how could the indigenous outlast the European military invasion, the massive biological warfare, the systematic ecological imperialism and the meticulous destruction of their institutions, and still initiate almost immediately a process of cultural and sociopolitical recuperation that allowed for their continuous and increasing presence in the social and biological history of the continent?

We have always maintained an active presence, knowledge, and interaction with the land, not just the sacred places, but the land

⁹ Baldy, Cutcha Risling "Why we gather: traditional gathering in native Northwest California and the future of bio-cultural sovereignty," *Ecological Processes* 2, no 1 (2013): 1

¹⁰ Varese, Stefano, and Alberto Chirif *Witness to Sovereignty: Essays on the Indian Movement in Latin America*. No 117 Iwgia, 2006

that sustained us in our everyday lives. Tribes have enacted and continue to enact bio-cultural sovereignty, which solidifies their relationship with the land. And we do this despite the erasure of our presence from the land by government agencies, policies, history books, and researchers. The Bears Ears Coalition writes of the land in Southern Utah:

The Bears Ears land is a unique cultural place where we visit and practice our traditional religions for the purpose of attaining or resuming health for ourselves, human communities, and our natural world as an interconnected and inextricable whole.

When we speak about health, we are not only talking about an individual, we are talking about one's health in relation to others around us and that of the land. We are talking about healing.

Our relationship and visits to Bears Ears are essential for this process. Ruining the integrity of these lands forever compromises our ability to heal. The traditional knowledge related to Bears Ears is important and irreplaceable in itself. The continuity of indigenous traditional medicine is in peril, as long as lands like the Bears Ears are not protected."

And I know the importance of what the Bears Ears Inter-Tribal Coalition continues to fight for: written recognition and commitment to a co-management of the area. This is a continued refusal to be erased from the land. It is a smart move, especially in light of the federal government's history with Native land cases. In my own tribal area, we are constantly reminded of our hard-fought

¹¹ "Proposal Overview." Bears Ears InterTribal Coalition. N.p., n.d. Web. 01 Dec. 2016.

protection of sacred lands by the presence of a paved road that reaches just up into the mountains in a place that we call the "high country." The Gasquet-Orleans Road (or the G-O Road) was the centerpiece of the 1988 Supreme Court case *Lyng v. Northwest Indian Cemetery Protective Association*. In this case, the US Forest Service had proposed building a road that would run through the Six Rivers National Forest in northern California from Gasquet to Orleans to benefit the logging industry.¹² Local tribes protested the completion of the road, arguing that it would destroy sacred sites and in effect destroy the practice of their religions.

In my 2013 article on this case, I wrote about how tribal consultation was used as a way to dismiss Native concerns for the area:

In 1979, the Forest Service commissioned a report while planning the building of the G-O Road in which they did consult with local Indian tribes. The report, Cultural Resources of the Chimney Rock Section, Gasquet-Orleans Road, Six Rivers National Forest, stated that the road would have harmful effects on the religious practices of the tribes and that because there was no way to mitigate these issues, the road should not be built (Theodoratus et al. 1979). However, this consultation was actually used as a way to move forward with the building of the road, with the Forest Service maintaining that they had consulted with Indian tribes, but that did not mean they had to listen to any recommendations. Though tribes in the area were steadfastly against the building of the road, the Forest Service went ahead and paved a portion of the high country.¹³

¹² Miller, Robert J. "Correcting Supreme Court 'Errors': American Indian Response to *Lyng v. Northwest Indian Cemetery Protective Association*." *Environmental Law Review* 20 (1990): 1037.

¹³ Risling Baldy, 2013.

The case was brought before the United States Supreme Court where the court overturned a lower court injunction against the building of the road, saying that while the building of the road could have devastating effects on traditional religious practices, "whatever rights the Indians may have to the use of the area, however, those rights do not divest the Government of its right to use what is, after all, its land."¹⁴

Justice Sandra Day O'Connor further expressed that "no disrespect for these practices is implied when one notes that such beliefs could easily require de facto beneficial ownership of some rather spacious tracts of public property"¹⁵

With these remarks, Justice O'Connor was attempting to further solidify "rightful ownership" by the federal government over lands in the United States. While the Lyng case had been framed as a fight for the First Amendment and freedom of religion, the concerns of the government over ownership and rights to land once again trumped the rights of Native peoples.

The land was ultimately protected against development because Congress passed the Smith River National Recreation Area Act (1990) which "added the twelve-hundred-foot G-O Road corridor into the protected Siskiyou Wilderness."¹⁶ This action highlighted that protection of the land as "wilderness" meant designating the land as unexplored, "virgin" territory, instead of a sacred, well-managed place of inter-tribal importance. My previous article discusses some of the more tenuous language in the act

¹⁴ *Lyng v Northwest Indian Cemetery Protective Assn*, 485 U.S. 439, 108 S. Ct. 1319, 99 L. Ed. 2d 534 (1988).

¹⁵ *Ibid*.

¹⁶ Echo-Hawk, Walter R. *In the courts of the conqueror: The 10 Worst Indian Law Cases Ever Decided*. Fulcrum Pub., 2010.

What is particularly interesting about the language of the act itself is that while Sec. 460(b)(b)-3 allows for management of the Siskiyou Wilderness pursuant to the provisions of the Wilderness Act (16 U.S.C. 1131 et seq) it does not speak to nor specifically allow Native-based management of, interaction with, or continued use of the area. The Act does specifically mention several acceptable uses of the area including recreation, public access (including vehicular roads for recreational activities such as camping, hiking, hunting and fishing), permitted use of off-road vehicles, and permitted programmed timber harvest.¹⁷

Written policies have been used as an attempt to divest Native peoples of their interest in the land and also as a means to erase Native interactions with the landscape. The Bears Ears Inter-Tribal Coalition's insistence on a written legislation that protects Native interests and solidifies a relationship between Native peoples and other agencies for a continued stewardship over land areas is admirable and imperative. There are several successful contemporary examples of Native tribes and organizations working together in tribal conservation. Native American Studies Professor Beth Rose Middleton Manning explores many of these co-management coalitions in her book *Trust in the Land*.¹⁸ Her case studies demonstrate innovations in land conservation and how tribes are working with conservation easements and land trusts to continue to steward land in a meaningful way. There has also been written scholarship on what Kristen Carpenter and Angela Riley conceptualize as Indigenous cultural property rights dictating that "certain lands, resources, and expressions are entitled to legal protection as cultural property because they are integral to

¹⁷ Risling Baldy, 2013.

¹⁸ Manning, Beth Rose Middleton. *Trust in the land: New Directions in Tribal Conservation*. University of Arizona Press, 2011.

group identity and cultural survival of indigenous peoples."¹⁹ These rights should be thought of as "stewardship" rather than ownership.

The Bears Ears National Monument proposal demonstrates an ongoing fight for Native lands, a fight that is not only about Native sovereignty and investment in land conservation, but a fight that illustrates how we must live with our Earth in order to thrive for future generations. The necessity of being a voice for the earth is built into our epistemologies and ways of life. We do it for the future of all people but also for the future of our land, flora, and fauna. If governments, companies, miners, and settlers can come in and strip the land of minerals, drill with no concern, dam the rivers, siphon the water and let the land run dry, blow up mountains and watch the earth itself run red, spill toxins into the water and watch the rivers die, then who will protect the land from this destruction? We will. Our coalitions, our organizations, our scholars, our speakers, our activists, our elders. These fights aren't just about us, they are about the land, the earth, everything.

¹⁹ Carpenter, Kristen A., Sonia K. Katyal, and Angela R. Riley "In defense of property." *The Yale Law Journal* (2009): 1022-1125.