

Chapter 5.

PEOPLES OF THE MOUNTAINS – AND THEIR NEIGHBORS

Part I. HOME IS THE HIGH COUNTRY

Pre-Columbian Conditions. Ancient indigenous inhabitants of the high country of the intermountain American West came from many places. Findings in and near the Rocky Mountains indicate human habitation dating back as far as 15,000 years. Archaic and ancient peoples were a relatively continuous presence in the region, giving some credence to the view of the Ute peoples (of Colorado and Utah) that some of their ancestors had been in the high country since time immemorial.

Archeological evidence indicates that these hunting and gathering peoples followed the migration of the game on which they depended: down into the lower, sheltered valleys during the fall and winter, and back up into the high country as the snows melted, temperatures warmed, and wildlife habitat flourished. With the later arrival of tribes such as the Utes and Shoshones in the southern Rocky Mountains and the Nez Perce and others in the Yellowstone area of the northern Rockies, a familiar pattern began to emerge. The high country tribes coming down into the plains and basins encountered lower-elevation tribes who considered those hunting grounds to be theirs exclusively. When negotiation and bartering gave way to armed conflict, the outcome often depended on which side was better armed and provisioned, had the most and best horses, and who had wintered over most successfully in terms of nutrition and shelter. In this ebb and flow, fortunes of the conflicting tribes varied not only in terms of how successfully they competed against each other, but also which

ones were able to take best advantage of contact with the newly arrived European explorers, trappers, and (later) settlers.

Contact and Conquest. Depending on where they were located, first contact of the mountain tribes with the European world was with the Spanish conquistadores and colonists (in the Southwest), or Canadian and American fur trappers (farther north). Acquiring guns and horses, the mountain tribes were able to increase the efficiency of their hunting (and nutrition), allowing them to start engaging in commercial as well as subsistence hunting. Now competing with the Europeans as well as plains and basin tribes for sustenance, they alternately sought to establish hegemony over relations with Europeans (through either trade or warfare or both); and—if that failed—retreated further into their mountain abodes, safe from those less able to subsist in a high elevation environment characterized by extremes in weather, climate, terrain, and the availability of food sources.

So it was that final subjugation of high country tribes by the Euro-Americans also tended to come a little later than it did to some of the lower-elevation indigenous peoples, who inconveniently occupied lands sought after by white settlers, ranchers, railroads, and land developers. What finally led to the conquest of tribes such as the Colorado Utes, who had retreated to the relative safety of their was the discovery of their lodges in the San Juan Mountains, was the discovery of precious metals in their midst.

Sacred Sites and the Parklands Connection: Past, Present, and Future. The conquest and removal of the high country tribes from the great mountain ranges of the

western United States tracks closely with the founding of the national parks in the region. Since the focus of the Place and Native Voice Project was on the National Park Service's Intermountain Region (see Chapter 1, p. 11), this chapter emphasizes the historical, contemporary, and possible future relationship between some of the traditional high country tribes and two of the Park Service's crown jewels: Yellowstone and Rocky Mountain National Parks.

Who “owned/owns” the parklands? To be a hunting and gathering tribe in the North American high country meant being seasonally nomadic, because the large game on which they principally depended were also seasonally nomadic. So the tribes did not “own” the lands over which they hunted and in which they lived. What they did have with respect to their relationships with other tribes was what in law is called a “usufructory” right—a right to the use of whatever natural resources they needed to survive.

Whether they shared this right with other tribes or fought to repel them was a matter of inter-tribal politics. Some tribes entered into alliances with each other in order to keep out common enemies (usually plains tribes from lower elevations). In other cases, such as the relationship between the Utes and the Arapahos in what was to become Rocky Mountain National Park, the high country tribes that migrated to lower elevations only in the winter and the plains or Great Basin tribes who migrated to the high country only in the summer fought each other whenever their migratory paths crossed and schedules conflicted.

The Constitution the new American nation ratified in 1789 regarded as semi-sovereign nations the American Indian tribes whose lands the former colonists now

occupied. It established that only the U.S. Government would thereafter be empowered to enter into treaties with the tribes for the purpose of land acquisition.

However, it would be another 30 years before the U.S. Supreme Court began to interpret this constitutional language, with regarding who actually held title to the vast stretches of western lands the new nation had acquired through the Louisiana Purchase.¹ In a trio of related cases interpreting the relationship between indigenous peoples, the U.S. Government, and the states, opinions written by Chief Justice John Marshall first held that all lands not in private ownership or given to the states by Congress were the collective property of the people of the United States, to be managed on their behalf by the federal government, which would hold legal title.

Second, these decisions held that the federal government had gained title to these lands by “right of conquest”, so that American Indian tribes could not assert tribal ownership of the lands on which they lived and hunted. Instead, the high court held, the legal relationship between the tribes and the federal government was that of a ward to a guardian—an ancient British common law doctrine under which minor person who inherited an estate would have it managed on their behalf by a competent person acting as a guardian of the estate.

The weakness of this analogy plagued Indian tribes at the time, just as it still does today. For under the common law, once wards achieve the age of majority, they also take possession of the estate, to manage as they please. But under the ward-guardian doctrine as Marshall applied to tribal peoples (and as the federal courts have consistently maintained), the Indians never grew up. They don’t hold title to most of their reservation lands, and must obtain Interior Department permission for many of the land use decisions they make. All the tribes were to retain in this arrangement was

a “right of occupancy” — to live, hunt, farm, and otherwise use these newly acquired federal lands as they always had. Finally — and much to the consternation of the states — the Marshall court held that federal lands (including Indian reservations) were places in which state law would “have no force”, with state authorities being able to perform governmental functions (e.g., wildlife management, law enforcement) only with the permission of the federal government.

So as explorers, traders, settlers, and the U.S. Army began to make incursions into the Indian Country of the American West in the 19th century, there were two different doctrines in play, the relationship between which had not been fully worked out. The first was recognition of the tribes as semi-sovereign nations with which the federal government would enter into land use and other agreements primarily through the treaty-making process. But the second was assertion of absolute ownership rights by the federal government of all lands and resources on which the Indian tribes subsisted.

What this meant is that in terms of historical sequencing, the lands that would become the high country national parks started out as traditional native hunting grounds; then became federal property thanks to the decisions of the Marshall court; then became treaty-ceded lands once the army had conquered the tribes who would be compelled to enter into these highly disadvantageous agreements. What the tribes were able to obtain in nearly all these treaties, however, were hunting and fishing rights, since these activities were their means of survival, and farming was not really an option for these high country tribes. And it was these use rights — so essential to a tribe’s physical and cultural survival — that proved most problematic when it came to the establishment of America’s first great national parks.

What is a National Park? This is a question that no one seemed to know the answer to when Congress created Yosemite National Park in 1864 and Yellowstone in 1872—more than 40 years before Congress created the National Park Service. To the explorers, government commissioners, and conservationists who first recommended their preservation, there was simply something so unique and awe-inspiring about these landscapes that their destruction was unthinkable. And it was no accident of history that the impetus to preserve and protect these places arose amid the rampant and profoundly destructive natural resource exploitation most the rest of the American West was experiencing.

Miners were blasting away at mountain canyon walls in search of mineral wealth, loggers were mowing down whole forests like corn crops, and railroads and land development companies were busily carving up the western lands into little squares suitable for private ownership as farms, ranches, and townships. In this effort, the 1862 Homestead Act, which gave away federal land (most of it Indian hunting grounds) to anyone willing to farm and ranch it, actively aided and abetted the dissolution of what was left of the tribes' traditional homelands and the unbounded West.

So while answering the question of what the parks would be used *for* would need to await congressional enactment of the National Park Service organic act in 1916, what the parks would *not* be used for was fairly clear from the outset. They were not to be used for the purpose of natural resource exploitation. And since there was not yet a Park Service to manage the first parks, it fell to the U.S. Army to enforce the will of Congress.

Unfortunately for the indigenous peoples who already lived in these places, both the army and the Interior Department interpreted the no use mandate as a no occupancy mandate. And so it happened that the same cavalry regiments that had fought and defeated the western tribes in their homelands now, as *de facto* park rangers, also acted as federal landlords, evicting them from the high country on which their subsistence depended and within which sites sacred to their religions were located.

Congress did create the National Park Service in 1916, and gave it managerial dominion over the growing number of parks and national monuments either already established by the congressional enactments or created by presidential executive order under the authority of the 1906 Antiquities Act. The two-part mandate to the service was a simple but broad one: to preserve and protect these unique landscapes entrusted to their care, while also providing for their use and enjoyment by the American public.

The NPS had relatively unfettered discretion in determining how to go about achieving these two management objectives, which has kept it in something of a political crossfire ever since. The reason is that the two mandates are not naturally compatible with each other. The most effective way to preserve and protect such natural treasures is to allow no human use at all, which defeats the “use and enjoyment” goal. Yet to allow too much use and enjoyment is to degrade the resource. So to some degree, the century-long history of the Park Service is a story of its unending (and sometimes uneven) efforts to balance these two management objectives.

Yellowstone. Both before and after creation of the National Park Service, there were three persistent myths in the federal government’s telling of the Yellowstone story with regard to the indigenous peoples who had seasonally resided

there. Later research has proven all three to be demonstrably false, yet to some extent they still persist in some versions of the Yellowstone narrative.

As set forth in Keller and Turek's 1998 book, *American Indians and National Parks*,² the first Yellowstone myth is that it was devoid of human presence. As with Devils Tower National Monument, in support of the first myth is a second one: that the superstitious native peoples avoided these places because they feared geological anomalies such as geysers and massive volcanic uprisings as abodes of evil spirits, and so avoided them.

In fact, these peoples' oral histories as well as more recent archeological and environmental analysis shows that the very features that elevated these landscapes to national park status were also ones that made these sites sacred to indigenous peoples, and explains much of the evidence of ancient human presence there. Present-day members of some of these tribes have told me that in all probability, the stories native peoples told white explorers, army officers, and settlers about these sites being haunted by "bad gods" (one erroneous translation of the Lakota name for Bears Lodge/Devils Tower) and other evil spirits was an effort to dissuade them from desecrating the tribes' places of worship or degrading the natural resource base on which they depended. The same tactic is occasionally still used today, but evidently with the same limited effect. Tales of malevolent unseen forces may ward off some, but they only seem to attract others.

The third myth is that at least since 1916 the park has been managed for the use and enjoyment of all American peoples. As interpreted by the Park Service until quite recently, "all American peoples" meant fees-paying, short-term, recreational visitors to the park. Tribal peoples were first denied any traditional subsistence use of

Yellowstone, and then were ejected from the park entirely. For most of the 20th century, it seemed that all Americans were welcome to the parks *except* the tribes that had lived and worshiped there. Not until President Clinton's 1996 executive order³ did this situation change. In this action, he directed all federal land management agencies to recognize the rights of American indigenes to the free exercise of their religion to include free access to sacred sites and landscapes on the public lands.

What this meant (and means) is that as the Park Service creates park-specific management plans implementing its dual mandate, it needs to recognize religious uses by indigenous peoples as one among several of its management goals. The same holds true for other agencies such as the U.S. Forest Service, the Bureau of Land Management, and the Bureau of Reclamation.

The modern-day story of sustainability and the sacred at Yellowstone actually has as much to do with wildlife as it does the wildlands found within the park, though the modern story has ancient roots. Given the troubled history of the relationship between American indigenes and our national parks, there is no small irony in the fact that the two most prevalent official icons in National Park Service signage and documents are an Indian arrowhead and the American Bison.

The first symbol underscores the fact that every national park of any size in the American West was originally inhabited by indigenous peoples, whose artifacts still abound in these places (with nearly 4,000 archeological sites discovered within Mesa Verde National Park alone). Evidence of early indigenous habitation of Yellowstone exists as well.

But it is the story of the bison that most stirs the imagination. In reporting to Congress in 1874 on the status of wars with the Plains tribes, Interior Department

officials testified that it to “civilize” and subdue the Plains tribes, it would necessary to make environmental war on them—that is, by wiping out the buffalo herds. This government and railroad hunters, commercial hunters, ranchers, settlers, and others proceeded to do with a vengeance.

From aboriginal herds estimated at somewhere between 40 and 60 million animals, by the end of the 19th century they had been hunted nearly to extinction. A small remnant herd of about 200 was discovered in Yellowstone, but by the time their illegal hunting was finally brought to an end, herd size had dwindled to 25. So resource protection within Yellowstone did indeed play a role in keeping this iconic indigenous wild American mammal from being wiped off the face of the Earth. And it has continued to do so. Near the end of the 20th century, the Yellowstone bison herd size was estimated at about 3,900.

And the existence of the Yellowstone herd is significant for more than just its size and the success of its comeback. Biological research also shows it to be genetically unique. A few sympathetic cattle ranchers and herders in the early 20th century also played an important role in saving the bison from going over the cliff to extinction. In nursing the herds back, however, some interbreeding with cattle inevitably occurred. And indeed to this day, in states like Texas, active commercial interbreeding programs still exist.

So most of the western bison herds carry cattle genes, and manifest some bovine characteristics. But not so of the Yellowstone herd, which wildlife biologists acknowledge to be the most naturally genetically pure of the herds—at least insofar as a lineage connection to the ancient aboriginal herds is concerned.

This fact has tremendous significance for the modern-day tribes on many of the reservations in the greater Yellowstone region. For they have established bison herds on their own reservations, for subsistence, commercial, and spiritual reasons. Some tribal herd managers I've spoken with from this region emphasize the undeniable parallels between the historic fortunes of the bison and that of their own cultures—hunted or starved nearly to extinction, displaced from their original homelands, and now gradually re-establishing themselves. And for some of these tribes, the continuing rebirth and sustenance of their cultural traditions is fused with the status of the bison—both their own herds and those elsewhere on the American landscape.

The problem with some of the tribal reservation herds is that they, like those elsewhere in the West, carry a substantial load of cattle genes. And since it is the goal of most tribal herd managers to try to interbreed their herds as closely as they can back to aboriginal status, they need a continuing influx of Yellowstone herd members to achieve this objective.

Thus all the tribes who once hunted bison in the high mountain meadows and are now working to re-establish their own herds depend heavily on how the Park Service manages the Yellowstone herd, in terms of both size and genetic purity. This connection between the tribes and Yellowstone wildlife managers is an ongoing one—sometimes mutually beneficial and sometimes contentious, in that ranchers on lands immediately adjacent to the park also have some strongly held and directly opposing views on how the Yellowstone herd should be managed.

Rocky Mountain National Park. As with Yellowstone, archeological findings and current oral histories indicate that this park, with its 12,000 to 14,000-foot peaks and high mountain meadows, was only seasonally inhabited by indigenous

peoples. Although several tribes may have travelled through or hunted in the park when weather permitted, it is the Utes that seem to have had the longest history of continuous seasonal residence there, only to be later intruded upon by the Plains-based northern Arapaho, as shifts in geopolitical spheres of influence resulted in Ute fortunes waning and the Arapahos' waxing.⁴

So it was that by the time Euro-American trappers and Army explorers first came upon what would be Rocky Mountain National Park, it was the contested seasonal abode of the Utes and the Arapaho. But not for long.

Due to their relative remoteness, the various bands and enclaves of Utes in the Colorado Rockies and high valleys between them were among the last to come into direct military conflict with the U.S. Army, and among the last to be subdued. Not inherently a warrior culture (like many of the Plains tribes) and thus not having previously been a threat to the U.S. military, the Utes were nonetheless adept at raiding other tribes as well as Spanish settlers for livestock and goods. At the same time, other Ute bands had relatively long-term friendly relations with Spanish and (later) Mexican immigrants into traditional Ute territory.

But matters took a different turn after American miners discovered gold in Colorado Ute territory in the mid-19th century, and American immigrant settlers started replacing the Mexicans on favored Ute farming and hunting grounds. After first agreeing to cede many of their homelands to the U.S. Government and reside on reservations set aside for them, familiar problems began to arise on the reservations: promises of supplies, livestock, and provisions made but not honored, Indian agent insistence on tribes abandoning their old ways and turning to farming in return for

those goods that did arrive, and the complaints of neighboring non-Indian miners, ranchers, and farmers that tribes were not staying on the reservation.

In Colorado, the most tragic incident exemplifying these sources of conflict happened in the early in the autumn of 1879. White River Ute Indian Reservation Agent Nathaniel Meeker came to an impasse with tribal leaders over their resistance to giving up their hunting and horse-raising culture in favor of agriculture.⁵ He sent a message requesting that a U.S. Army contingent be temporarily stationed near the reservation boundary to strengthen his bargaining position with the tribe. Learning this, tribal leaders told Meeker that if army troops came onto the reservation, it would be considered an act of war and they would respond accordingly.

For reasons that historians variously attribute to miscommunication or outright duplicity, contingent commander Thornburgh led his forces onto the reservation anyway. As they promised, the Utes attacked, killing him and several of his men, pinning some down in a pitched battle, and driving the rest away. Furious at having been betrayed, they also killed Meeker and the other white men at the reservation agency, and took all the white women there (including Meeker's wife and daughters) captive. The Utes released them three weeks later near Grand Junction.⁶

With anti-Indian sentiments in Colorado already at a fever pitch, Colorado Territorial Governor Pitkin threatened to use the state militia to commit genocide against the Utes if the federal government did not remove them from his state.⁷ Though he never did quite get his way, he and other politically powerful belligerents did manage to get all the remaining Colorado Utes either confined to a handful of small reservations in the southwestern corner of the state or removed to Utah.

Relocation in Utah was the fate that befell the Utes who had seasonally occupied the future Rocky Mountain National Park, while the Arapahos were relocated northward in Wyoming. As in Texas, Colorado solved its “Indian problem” mostly by driving of them from the state.

During the summers of 2005 and 2006, University of Colorado student and Navajo tribal member Robbyn Hickman served as the first student intern in the newly inaugurated Place and Native Voice Project. Though a member of neither the Arapaho nor Ute tribes, Robbyn realized the importance of his representing as authentically as he could in his own interpretive program the cultural teachings and traditions of these two tribes with the closest cultural and historical affiliation with RMNP. Therefore, he first traveled to and received teachings from the elders at both the Northern Arapaho reservation in Wyoming and the Fort Duchesne Utes in Utah prior to seeking to share with park visitors some essentials of the cultural connection these two tribes continue to have with this place.

Both his work in learning from Ute and Arapaho oral histories (see Part II, below) and more recent archeological research reveal a rich history of both the subsistence and spiritual uses of resources and sites in the park. Among the stories Robbyn recounted were of how indigenous peoples learned lessons from the animals they considered to be relatives.

One is the relevance of the design beaver lodges found in the ponds and streams of Beaver Meadow, near the southeast entrance to the park, to the design of sweat lodges that tribal members both construct for purification rituals. The mounded shape, the indirect entrance, and the sense of enclosure are all lessons understood to

have been acquired from the beaver, as means of creating places of sanctuary and refuge in the wilds.

Over 400 archeological sites have been identified and surveyed within the confines of Rocky Mountain National Park.⁸ Some of these are low rock walls and hunting pits indigenous peoples used to herd and slay game; others are apparently old tipi bases. But archeologists have identified several of them as places devoted to ritual purposes. Arranged stone formations in some locations suggest them as places for large ritual gatherings. Others are positioned in such a way as to align seasonally with solar and lunar events, and the arising and setting of major constellations. And judging from both their sheltered location and the viewsheds they afford, still others suggest that they were used for individual ceremonial purposes such as vision quests or personal purification rituals.

Much of the story of indigenous peoples in Rocky Mountain National Park is one that still waits to be told, for there is still a great deal to be learned. Further archeological investigation can surely teach us more than we now know in terms of the gathering and analyzing of physical evidence.

But there is another form of learning, that lies not in the ground or in archeology labs. It resides instead in the memories of those tribal elders whose ancestors called this place home. And this equally important learning can be preserved and interpreted for the visiting public only by devoting an equal amount of effort to making it possible for the elders who hold these treasured teachings to convey the ones they think we can all benefit from hearing.

¹ Lloyd Burton, *American Indian Water Rights and the Limits of Law*. Lawrence, KS: University Press of Kansas, 1991; chapter 2.

² Robert Keller and Michael Turek, *American Indians and National Parks*. Tucson, AZ: University of Arizona Press, 1998; at 23-24.

³ Exec. Order 13,007 (1996).

⁴ John Emerick, *Rocky Mountain National Park Natural History Handbook*. Niwot, CO: Rinehart, 1995; at 11-12.

⁵ Peter Decker, *The Utes Must Go!* Golden, CO: Fulcrum Publishing, 2004.

⁶ *Id.* at 151.

⁷ *Id.* at 153.

⁸ David Diggs and Robert Brunswig, *Modeling Native American Sacred Sites in Rocky Mountain National Park*. Working Paper, School of Social Science, University of Northern Colorado, 2006.