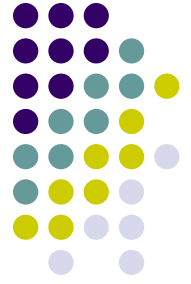


THPO

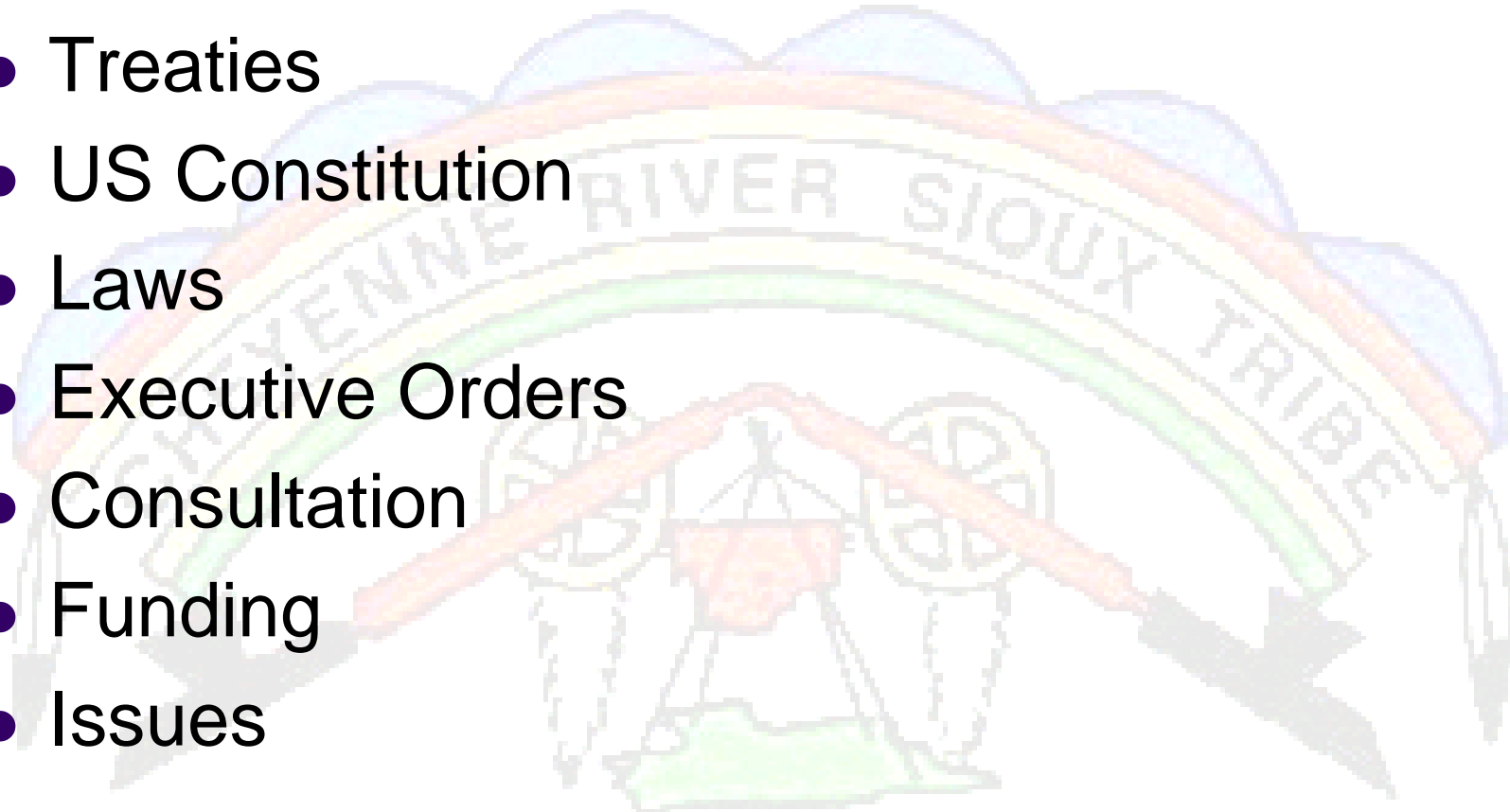


Treaties, Laws, and Executive
Orders.



Outline

- Treaties
- US Constitution
- Laws
- Executive Orders
- Consultation
- Funding
- Issues



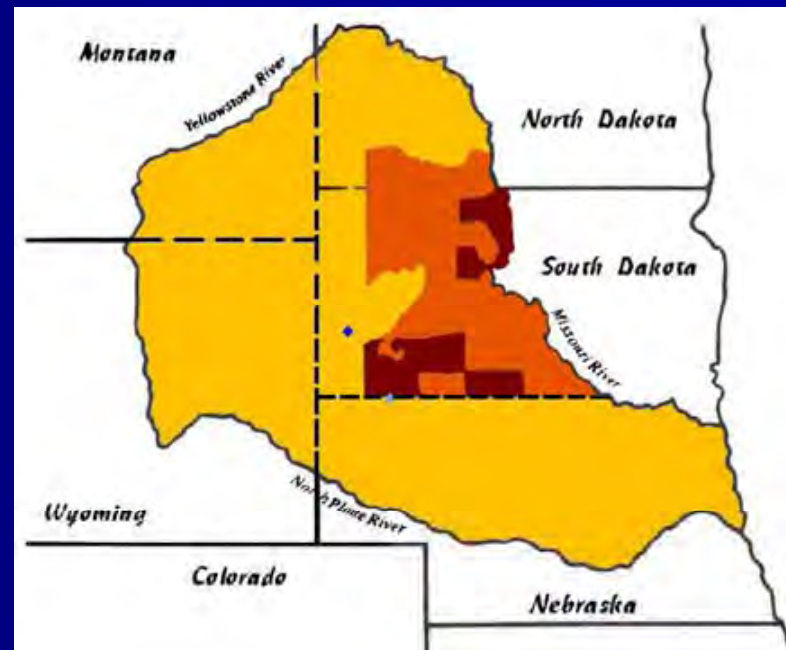
Who are you?

- Tribal Historic Preservation Officer for the Cheyenne River Sioux Tribe (2003-2009)
- South Dakota Advisor for the National Trust for Historic Preservation
- Archaeologist
- Student



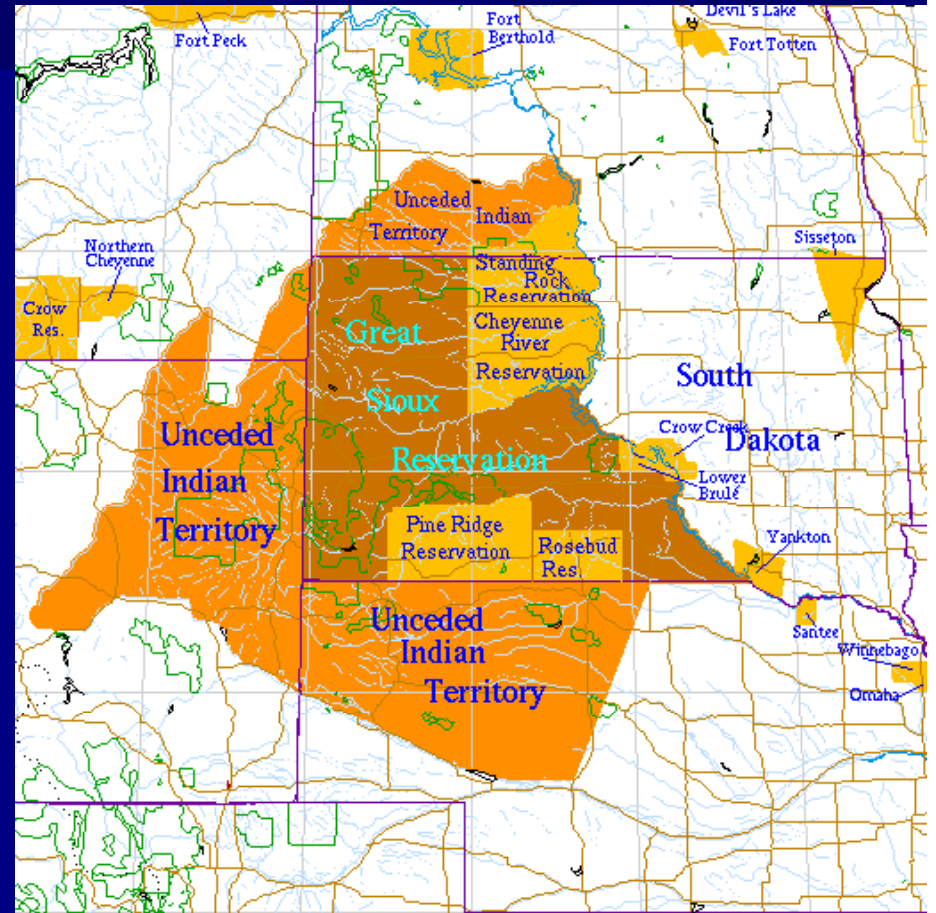
What is a THPO?

- THPO is responsible for historic preservation within the Tribal Boundaries.
- Is the point of contact for consultation on aboriginal homelands
- Point of Contact for NAGPRA



Treaties

- For the Lakota Dakota and Nakota, there are 2 Treaties
 - 1851 Ft. Laramie Treaty
 - 1868 Ft. Laramie Treaty



Brief Overview



- Land
- Annuities
- Schools
- Health care
- Peace treaties

US Constitution

- Article 1 Treaty language
- Indians vs. Everyone else in the language of the document



Constitution

- Article I Section 8 Powers of Congress
 - To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;
- Article VI
 - This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the **supreme Law of the Land**; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

More constitution language

■ Bill of rights

- 1st amendment: Freedom of Religion and Press: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; ...1783
- 14th amendment: Citizenship Rights: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside...right to due process ...1868

LAWS!!

- Black Hills Acquisition Act 1877
 - Illegal taking of lands, appealed, non-decision 1980-1981
- American Antiquities Act 1906
- Citizenship Act 1924
 - Made Native Americans citizens of the US regardless of the 14th amendment
- Indian Reorganization Act 1934
 - Removed from the Dept. of War place under the Dept. of the Interior
- Relocation Act
 - Moved Native off reservation, sold their lands, and treaty rights
- National Historic Preservation Act 1966
 - 1992 revisions est. the THPO

NHPA

- 36 CFR part 800.3
 - 36 CFR part 800.3 (c)(1)(ii) THPO clause
 - 36 CFR part 800.3 (c)(2)(i) and A, (ii) which refers back to Section 101(d)(6)(B)
 - Consultation on land significant to Indian Tribe and NHO's.
 - These were the 1992 amendments

More Laws

- American Indian Religious Freedom Act 1978
 - Gave the right to practice our religion regardless of the 1st and 14th amendments, and the 1924 citizenship act
- Archaeological Resources Protection Act 1979
- Native American Graves Protection and Repatriation Act 1990
 - Apparently we needed protection of our grave sites from looters and archaeologists..

AIRFA

- American Indian Religious Freedom Act 1978:
 - it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites.
- With the exception of the Native American Church and the use of Peyote or other mind altering drugs

ARPA

- 100 yrs or older clause
- Makes it a criminal offense to destroy, alter, impact archaeological resources
- Has an "arrowhead" clause
- Transportation of artifacts, interstate sales ect..

NAGPRA

- Bones of dead people
- Items buried with dead people
- Items of cultural patrimony
 - What is that??
- Made museums look at their collections and the repatriation started.
- Why is it so scary? What is being lost?

E.O.s

- 13007 Access to sacred Site 1996
 - (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and
 - (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

E.O's continued

- E.O. 13175

- Discusses the special relationship of tribal peoples with the US
- States that federal agencies must consult on a government to government level

How does a Tribe get a THPO?

- The NPS will recognize THPOs if they follow simple steps:
 - Apply for a Historic Preservation Grant
 - Which allows for viability study
 - Apply for THPO Grant
 - This includes developing Historic Preservation laws for tribal lands and sets up an office structure
 - Enter into an MOA with NPS taking the responsibilities from the SHPO
 - Apply for yearly funding.

Guidelines on maintaining the THPO

- Maintain an accurate record of consultation request for both on and off reservation
- Produce a end of the year report and submit it back to the NPS
 - This report is required if you still want to get funding

Consultation

- What is it?
- Consultation is required by law but offer no real definitions
- Consultation is defined differently by tribes.
- NHPA states that consultation will take place with tribes. Well how do you do that?
 - PA's, MOA's, MOU's, CA's.
 - Unfunded mandate



THPO and TRIBE

- THPO responsibilities are outlined in 36CFR part 800 (c)
 - This only applies to actions on the reservation
 - THPO is not legally responsible for action off reservation
 - Are the POC for consultation off reservation
 - Can not make decisions without tribal council approval/does not speak on behalf of tribe.

TRIBE

- When off reservation, considered a POC for the Tribe.
- All info is brought back to the tribe in accordance with 13175
- Can not make decisions on behalf of the tribe...**CAN NOT MAKE DECISIONS ON BEHALF OF THE TRIBE**
 - Unless there is explicate documentations allowing the THPO to represent the tribe

Aboriginal Homelands

THPO's in most cases consider themselves as caretakers of sites off reservation.

Those tribes that were forced to move take ownership of site that were part of their original homelands

Funding

- Is based on some land ratio equation.
- Funding is from the Historic Preservation Fund from the President's Budget

Historic Preservation Fund (HPF), administered by the National Park Service, US Department of the Interior

HPF Categories	FY2005 Enacted	FY2006 Enacted**	FY2007 Enacted	FY2008 Enacted	FY2009 President's Request	FY2009 House	FY2009 Senate	FY2009 Final
States (SHPOs)	\$ 35.5 mil	\$ 35.717 mil	\$ 36.717 mil	\$ 39.376 mil	\$ 35.717 mil	\$ 45.00 mil		
TRIBES TOTAL – Comprised of:	\$ 3.205 mil	\$ 3.941 mil	\$ 5.446 mil	\$ 6.399 mil	\$ 3.941 mil	\$ 7.00 mil		
1. THPOs:	\$ 2,505 mil ¹	\$ 3,187 mil ²	\$ 4,823 mil ³	\$ 5,720,300 ⁴				
2. Competitive grants*	\$ 753,208*	\$ 678,300*	\$ 678,300*	\$ 678,300*				
3. Admin discretion/diff	\$ 52,764	\$ 20,400						
Hist Black Coll/Univ.	\$ 3.451 mil	\$ 2.956 mil	\$ 0 mil	\$ 0 mil	\$ 0 mil	\$ 0 mil		
+ Save America's Treasures* (*Nat'l Trust)	\$ 29.583 mil	\$ 29.558 mil#	\$ 13.00 mil	\$ 24.610 mil	\$ 15.0 mil	\$ 25.00 mil		
+ Nat'l Trust Hist. Sites								
Preserve America [from SAT or other fund]	\$ 0	(\$ 4.926 mil)	[\$ 5.00 mil]	[\$ 7.3830 mil]	\$ 10.0 mil	\$ 5.00 mil		
* Hurricane Inventory			\$ 10.00 mil		\$ 2.0 mil			
* Inventory								
TOTALS	\$ 71.739 mil	\$ 72.172 mil	\$ 65.163 mil	\$ 70.385 mil	\$ 66.658 mil (516,000) \$ 66.142 mil	\$ 82.0 mil		

The issues.

- There are 73 THPO's and 3 mil dollars to spread around. Average grant is only 43k.
- We are tasked to consult on our aboriginal homelands but are not funded to do so
- Level funding is a bad thing when the program continues to grow
- The idea of Neo-pan-indianism, this is the idea that all Natives can be treated the same, it is wrong. Each tribe must be treated as a sovereign nation.

Conclusions

- History
- Consultation, Consultation, Consultation
- By understanding where Natives are coming from, preservationists will be able to better help protect the resources that need to be protected.

Questions???



More info

- www.NATHPO.org
- www.NPS.gov
- www.ACHP.gov
- www.NCSHPO.org
- www.preservationnation.org