

**AMERICAN INDIAN RELIGIOUS FREEDOM ACT—
PART II**

**OVERSIGHT HEARING
BEFORE THE
SUBCOMMITTEE ON
NATIVE AMERICAN AFFAIRS
OF THE
COMMITTEE ON
NATURAL RESOURCES
HOUSE OF REPRESENTATIVES**

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

**EFFECTIVENESS OF P.L. 95-346—THE AMERICAN INDIAN RELIGIOUS
FREEDOM ACT OF 1978 (AIRFA)**

**HEARING HELD IN WASHINGTON, DC
MARCH 16, 1993**

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AMERICAN INDIAN RELIGIOUS FREEDOM ACT

TUESDAY, MARCH 16, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to call, at 9:35 a.m., in room 1324, Longworth House Office Building, Hon. Bill Richardson (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN BILL RICHARDSON

Mr. RICHARDSON. The subcommittee will come to order. Good morning.

Today's hearing is the second oversight hearing the subcommittee will hold on the effectiveness of the American Indian Religious Freedom Act of 1978.

In 1988, the Supreme Court held in the *Lyng* case that the American Indian Religious Freedom Act did not confer a cause of action to Indians for the protection of religious sites from Federal land management decisions and therefore could not be used by Indians to challenge such decisions.

In 1990, the Supreme Court further frustrated Native Americans in the case of *Smith* when it, in essence, threw out the long-standing practice of courts that in order for the Government to restrict or curtail an individual's right to religious practice, the Government had to show it had an overriding "compelling interest" to do so.

In the hearing held on February 23, the subcommittee received testimony focused on land access and sacred site preservation issues. This morning, we will hear from several tribal and religious leaders on concerns relating to access and availability of sacred objects and the rights of Native American prisoners to practice their religion while incarcerated.

At present, no legislation amending the American Indian Religious Freedom Act is before the subcommittee and no decisions have been made as to what amendments should look like. We are willing to look at all proposals at this time.

I encourage anyone who is interested to submit testimony for the official record, which will remain open for two weeks for this purpose.

For our witnesses today, your entire statements will be made a part of the permanent record, and we will be asking you to summarize in five minutes your prepared remarks.

At this time, I ask that the Background be made part of the record.

[Background information follows:]

BACKGROUND FOR OVERSIGHT HEARING

HISTORY

In 1978, Congress enacted the American Indian Religious Freedom Act, which states:

"Henceforth 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 ceremonials and traditional rites." (P.L. 95-341; 42 USCS 1996).

During debate on the Act the Chairman of the then House Interior and Insular Affairs Committee, Representative Morris Udall, stated that the Act has "no teeth". To the chagrin of many Native American religious leaders and practitioners, that quote has been repeated consistently in reference to the Act.

In *Lyng v. Northwest Indian Cemetery Protection Association* (1988), the Supreme Court held that the American Indian Religious Freedom Act (AIRFA) did not confer a cause of action to Indians for the protection of religious sites from federal land management decisions and, therefore, could not be used by Indians to challenge such decisions. The Court further held that under the Free Exercise Clause of the Constitution, the government could not be prevented from destroying sites held sacred by Indians and necessary to the practice of traditional religious ceremonies because the Clause as written is in terms of what the government cannot do to the individual and not in terms of what the individual can extract from the government. The Court's decision meant that the action in this case of the Forest Service to allow logging and to build a logging road in the area of an Indian cemetery was not unconstitutional because, (1) AIRFA did not confer a cause of action and, (2) the Forest Service was not forcing an individual to act in opposition to his or her religious beliefs.

A second Supreme Court decision has raised additional concerns in Native as well as non Native religious communities. In *Employment Division of Oregon v. Smith* (1990), the Supreme Court abandoned the practice used by courts for 30 years that in order for the government to restrict or curtail an individual's right to practice his or her religious freedom, the government had to show that it had an overriding "compelling interest" (such as the public's health and safety) to do so. The Court held that as long as the government was applying a law generally to the public and not targeting a specific religious group, the government did not have to demonstrate a compelling interest.

PURPOSE OF HEARING

The Subcommittee has received voluminous correspondence lending to the belief that the American Indian Religious Freedom Act has become little more than a statement of policy directing federal

agencies to consider the views of Native American religious leaders when making land management decisions. Numerous tribes have expressed frustration and concern over their inability to protect their most sacred sites and practices. The Supreme Court cases named above have only exacerbated the situation.

Several tribal and religious leaders will testify before the Subcommittee on their views and experiences regarding the effectiveness of the American Indian Religious Freedom Act.

Mr. RICHARDSON. Before I call the first panel, I would like to recognize the ranking minority member, Mr. Thomas of Wyoming.

OPENING STATEMENT OF HON. CRAIG THOMAS

Mr. THOMAS. Thank you, Mr. Chairman.

I don't have a prepared statement. I am pleased to participate in this second hearing. I guess I would like to suggest that you and all of us begin to look at some remedies. It is important, of course, to preface it with what the difficulties are, what the experiences have been, with what we currently have. But it seems to me, there is a limit to how much value there is in that, and there ought to come a time soon when we say, "Here's the experience; here's what we think we ought to do about it," and start to recommend some specific remedies. I think that would be useful.

Thank you, Mr. Chairman.

Mr. RICHARDSON. I thank the gentleman.

The gentleman from South Dakota.

OPENING STATEMENT OF HON. TIM JOHNSON

Mr. JOHNSON. Thank you, Mr. Chairman, and again I commend you for holding the hearing and providing some badly needed leadership relative to Native Americans in general and certainly on this religious rights issue.

I regret that I will not be able to stay for the duration of the hearing. I have overlapping hearings, including one that meets shortly, that I am going to have to attend and participate in. But this is an important follow-up hearing on a prior hearing we held on this issue.

I want to especially welcome Mr. Bud Johnston of the Pipestone Indian Community of Sioux Falls, South Dakota, and I am looking forward to reviewing his testimony. But I think all the panel members are excellent and will contribute, I think, in a substantial way.

Again, one of the ongoing concerns that I have and I think that I share with other members of this panel is that, on the one hand, we want to do what we can to assure the right of religious practice for all peoples. On the other hand, there is a certain amount of balancing that goes on.

I note, for instance, in some proposals that areas that are tens of thousands of square miles would be denominated a religious site. Unlike the *Lyng* case, which dealt with logging near a very specific cemetery area, when thousands of square miles are designated a religious site, then we have questions about what kind of litigation and what kind of participatory process is involved, the decisions dealing with logging and mining and recreation development, and all the other multiple uses that the national forests in particular

are used for. That kind of balancing is something that no doubt we are going to have to deal with.

But I am looking forward not only to this additional background and the problems we face, but as the gentleman from Wyoming notes, moving on hopefully to deal with some specific remedies that may accommodate all parties.

Thank you, Mr. Chairman.

Mr. RICHARDSON. I thank the gentleman.

For the first panel, I would like to ask Mr. Gene Haislip, Deputy Assistant Administrator, Office of Diversion Control, from the DEA in the Department of Justice.

Mr. Haislip, let me say that on behalf of our subcommittee and the staff, we want to thank you for your cooperation as we initiated this hearing and your good work in cooperation with the Native American Church. Let me say that from the beginning, you and your office have been very responsive. I look forward to your statement. As I said earlier, we would appreciate your summarizing it. The full statement is inserted in the record. Please proceed.

STATEMENT OF GENE R. HAISLIP, DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF DIVERSION CONTROL, DRUG ENFORCEMENT ADMINISTRATION, U.S. DEPARTMENT OF JUSTICE

Mr. HAISLIP. Thank you, Mr. Chairman and members of the committee. I am pleased to have this opportunity to appear before you. I will try to summarize my statement very briefly.

I am here to comment on one specific matter of interest, and that is the use of the cactus called peyote in certain religious practices of the Native American Church. First let me say that this cactus, peyote, contains an active principal called mescaline, which is a powerful hallucinogenic drug. As such, the cactus is classified as a Schedule 1 substance under the Federal Controlled Substances Act, which I am responsible for administering.

This simply means that there is no legitimate medical use for the drug and it cannot normally be consumed for any legal purpose other than research. It grows only in the State of Texas, by the way, and we have on a few occasions actually seen some illicit traffic in this cactus. But I think it is important to point out that for a great many years, more than we know, it has been also used as a religious article or sacrament or in a manner as to facilitate certain religious rights of American Indians, particularly in the southwestern United States, and today that is represented by the practices of the Native American Church, which uses this cactus for religious purposes. We have provided under our law, since the very first enactment when this cactus was brought under drug controls, a special exception within the Federal regulations to permit this particular type of non-medical use because of the fact that it does represent a traditional religious practice among certain Native American peoples, especially as they are now represented by the Native American Church.

I would like to say that we have been cooperating with this Native American Church and its members for a great many years. We have had no complaints from them, that I am aware of, with regard

to our administration and our practices under this regulation, and by the same token, we have no complaints of their practice as well.

I should point out that on occasion we have seen others, non-Native American individuals, sometimes seek to obtain access to this or other similar drugs, claiming religious practice where they have no such bona fide claims in fact and no affiliation whatsoever with the Native American Church.

We have always denied such claims as unjustified and really taking advantage of the legitimate practices of members of the Native American Church, and that is the only problem that we have encountered with administering our law. We have had no problems whatsoever with those legitimate members of the church, and I would like to think that they have had no problems with our administration of the law as well.

Mr. Chairman, that really concludes a brief summary of my statement. I think these are the salient points, but if you have some specific questions with regard to our policy or practices or experiences, I would be more than happy to try to answer them for you.

Thank you.

[Prepared statement of Mr. Haislip follows.]

STATEMENT OF GENE R. HAISLIP, DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF DIVERSION CONTROL, DRUG ENFORCEMENT ADMINISTRATION

Chairman Richardson and Members of the Committee:

Thank you for this opportunity to appear before you to discuss the experience of the Drug Enforcement Administration (DEA) enforcing the Controlled Substances Act (CSA) as regards peyote, and implementing 21 CFR 1307.31 relating to the Native American Church (NAC).

Peyote is a cactus whose primary active ingredient is mescaline, a drug which produces hallucinogenic effects similar to those of LSD in the user. Along with a number of other hallucinogenic drugs, peyote (mescaline) has on occasion been found in the illicit traffic.

Although in recent years DEA and state and local law enforcement agencies across the country have reported a resurgence in the trafficking in and abuse of LSD, the same cannot be said for peyote. Nor has the abuse problem with peyote historically ever approached the magnitude or prevalence of LSD. That any abuse and trafficking problems with this drug have been negligible in recent years attests to the fact that the CSA controls have worked well for peyote. Despite the fact that Federal regulation allows for the legal use of this drug in specific circumstances and indeed for the registration of legitimate distributors, DEA is not aware of diversion of this drug to any illicit market at this time.

As with any Schedule I controlled substance, peyote has no currently accepted medical use. In hearings on the CSA over 20 years ago, Congress decided that the traditional, historic use of peyote by the NAC as a sacrament in traditional religious ceremonies for many generations warranted a specific exemption. Congress determined, consistent with past Federal practice regarding the issue, that it should be addressed in the regulations rather than the law.

Thus, as exception to the virtual ban or any use of the drug conferred by its placement in Schedule I of the CSA was provided for in 21 CFR 1307.31. This paragraph provides for the nondrug use of peyote in bona fide religious ceremonies of the Native American Church. Such use is not subject to the applicable law regarding Schedule I controlled substances. Although the NAC is not defined in the regulation, the members of this Church are required to be native Americans.

I believe the Federal regulation has worked and is working effectively not only from the viewpoint of DEA, but also from the viewpoint of the NAC. For many years DEA has had an excellent relationship with this group, and I am not aware of any instance in which the NAC has expressed concern about this regulation restricting supply to Church members. In fact, the only complaints we have heard from the NAC have concerned short natural supply of the drug and difficulty in obtaining peyote outside the areas where peyote grows indigenously.

A problem DEA has experienced in the past that other groups have attempted to expand the exemption to authorize their use of peyote or other controlled substances in what they claim to be religious ceremonies. In fact, the NAC advised us of a non-Native American individual seeking to establish a chapter of the NAC in his Northeastern state in order to legitimize his use of and potential trafficking in peyote. Unfortunately, there will always be individuals who seek to use any loopholes in the law of their own purpose. It has been DEA's position to strictly adhere to the limited exception of nondrug peyote use as defined in CFR 1307.31, that is, to allow such use only by NAC members. To do otherwise might ultimately discredit those individuals in the NAC who truly have a valid claim to historical cultural use of this drug for religious purposes.

Mr. Chairman, this concludes my statement. I will be pleased to answer any questions that you may have.

Mr. RICHARDSON. Thank you, Mr. Haislip.

The chair recognizes the ranking minority member.

Mr. THOMAS. Thank you, Mr. Chairman.

Thank you, sir. That is very much to the point.

I don't have a feel for the volume you are talking about. Is it a very small amount? How many people are involved? Do you have any idea?

Mr. HAISLIP. Well, there are certainly tens of thousands of people involved in the Native American Church and its activities. I don't really have an exact count, but I have some idea because, as I have said, this cactus only grows in the State of Texas and we are required to register those who supply the cactus for these religious purposes. I can tell you that we have registered now, I think, eight individual suppliers who are licensed, who are permitted under the law to supply this cactus in this way. So I think that shows that the number of people involved is not a very great number, probably tens of thousands.

Mr. THOMAS. Do you have problems with people who are suppliers apparently that are not registered, or has that been a problem?

Mr. HAISLIP. The only problems that we have had are with a few individuals over the years who have actually harvested the cactus

themselves for distribution in the illicit drug traffic having nothing to do with the Native American Church or, as far as I'm aware, nothing to do with any of its members. These were not people who were operating in that fashion or for those reasons, and we haven't had many such cases, but we have had a few.

Mr. THOMAS. And you have brought action against those?

Mr. HAISLIP. Yes, we did.

Mr. THOMAS. I suppose the difficulty is in defining an exception. Are there other kinds of substances that people would bring to you to utilize this same opportunity for an exception?

Mr. HAISLIP. Well, certainly the effort has been made before on the part of various individuals seeking such exceptions for all different kinds of drugs. As I say, this drug has effects somewhat similar to LSD. But here I think it is important to note that the exception is grounded in a very long-standing tradition. I don't really think that people outside of that particular milieu really have any basis to make claims for such exception because they have no such traditions, and in fact, we regard those claims as entirely bogus.

So I think here what we have is a unique circumstance relating to the cultural history of a particular group of Americans, and I think it is not difficult to identify that cultural history and that group of Americans.

Mr. THOMAS. Some Jamaicans, I understand, have made an effort to have an exemption for some kinds of drugs. Are you familiar with that?

Mr. HAISLIP. That particular I am not familiar with at the moment, but of course the Rastafarian sect, some of them have been users of cannabis, and I suspect that they have made such claims in the past.

Mr. THOMAS. So you are comfortable with the fact that you can identify the legitimate exemption here and not let that extend itself.

Mr. HAISLIP. Well, I am quite comfortable with our regulation, which is quite specific, and it has existed now for quite a long time, over 20 years in its present form and with very little change. We have had no problem in administering that regulation, and as I say, I am pleased also to report, I don't believe that the members of the Native American Church have had any problem with our administration either.

Mr. THOMAS. Do you think that is what we will hear from the panelists this morning?

Mr. HAISLIP. I believe it is.

Mr. THOMAS. Thank you very much, and thank you, Mr. Chairman.

Mr. RICHARDSON. The gentleman from South Dakota.

Mr. JOHNSON. Are there Native Americans or tribes that historically have not used peyote that have adopted this, and can they do that under your regulations? Are there tribes in other parts of the country that—

Mr. HAISLIP. I think this is a little more difficult to answer with precision. I would like to point out again the fact that this cactus grows only in the State of Texas. The traditional use has been among the Native Americans of the southwestern United States

and areas adjacent to that. The cactus in past history would not have shown up in some other parts of the country because of the great distance involved.

This does not seem to represent a problem to us. Certainly with the mobile society that we have, it is entirely possible that people who have their cultural heritage or cultural roots in one part of the country may now reside actually in another. So I think we can't dismiss that possibility.

But as a practical matter at least, we haven't experienced any problems, we haven't experienced any illicit traffic deriving from this kind of a source, we haven't seen any problems, but I can't give you exact answers.

Mr. JOHNSON. You haven't seen efforts to organize this particular religious practice outside the geographic areas for it?

Mr. HAISLIP. Yes, there is one case that comes to mind, where there was an attempt to organize in the form of some sort of affiliation or branch of this church. I believe that was by non-Native Americans, by the way, and I don't think it was a legitimate or bona fide exercise. I think it was another effort to seek to obtain religion as a color or disguise for drug abuse, and in the particular case I have in mind that was wisely rejected by the church authorities here. But that was one case. There may be others as well.

Mr. JOHNSON. Are practitioners of this religion which uses peyote permitted to have use of peyote if they are incarcerated in a Federal facility?

Mr. HAISLIP. I would have to say that that is an area we have not addressed before or felt the necessity to address. I think it would be better if you addressed that kind of question to a representative from the Bureau of Prisons because that is a special type of environment, special kind of problem, and I wouldn't feel comfortable in responding without their expertise.

Mr. JOHNSON. Thank you.

I have no further questions.

Mr. RICHARDSON. I thank the gentleman.

Mr. Haislip, let me see if I understand the main thesis of your testimony. Is it the DEA's opinion that the use of peyote by the Native American Church is not related to the serious drug problem in this country?

Mr. HAISLIP. That is correct. We have no evidence that it is.

Mr. RICHARDSON. Have you taken a position as to whether or not regulation of the Controlled Substances Act pertaining to the Native American Church should be written into law? As you know, this is one of the pieces of legislation that is currently floating around. Have you taken an official position?

Mr. HAISLIP. We have not taken a position.

Mr. RICHARDSON. Have you been asked to take one?

Mr. HAISLIP. I think we have seen drafts of previous legislation, but at this point we are not in a position to address anything specifically because we don't have anything specific before us.

Mr. RICHARDSON. Well, let me say that this subcommittee would want to work with you as we move ahead with this legislation. It is our intent to move ahead a piece of legislation, and as I said earlier in my opening statement, the cooperation of your agency has been noted, and we appreciate it.

You did say in your testimony that there was no problem at this stage in the federal regulation of peyote. Is that correct?

Mr. HAISLIP. Yes, that is my opinion. I know of no problems with regard to it, and I would only say about legislation that, if there is such legislation, it would be useful to study our regulation because we have had no problems with it. I think although we want to be sure to protect the bona fide interests of this particular group of Americans in the manner that I have spoken of, we do want to be careful not to create, by accident, loopholes which others might seek to take advantage of under color of religion or in some other fashion.

Mr. RICHARDSON. Great. Well, Mr. Haislip, thank you very much for appearing this morning, and we appreciate the efforts of you and your agency. We will keep you apprised of our progress, and again, our thanks for your cooperation.

Mr. HAISLIP. Thank you, Mr. Chairman and members, and we will certainly be pleased to work with you in the future in any way we can.

Thank you.

Mr. RICHARDSON. The subcommittee will now hear the second panel, and I would ask Mr. Craig Dorsay, Attorney at Law, from Portland, Oregon to step up; Mr. Douglas Long, the President of the Native American Church of North America, Osseo, Wisconsin; Mr. Robert Whitehorse, President of the Native American Church of Navajoland, Cortez, Colorado; Mr. Gus Palmer, an elder of the Kiowa and Apache Chapter, Native American Church, Anadarko, Oklahoma; and Mr. Palmer will be accompanied by Mr. Henry Ware, a member of the Kiowa Chapter of the Native American Church, Anadarko, Oklahoma.

Gentlemen, welcome to the subcommittee.

As you know, we ask that you summarize your statement in five minutes because we get the most out of our questions that we ask you. We want to start first with Mr. Craig Dorsay.

Mr. Dorsay, welcome. Please proceed.

PANEL CONSISTING OF CRAIG DORSAY, ATTORNEY AT LAW, PORTLAND, OR; DOUGLAS LONG, PRESIDENT, NATIVE AMERICAN CHURCH OF NORTH AMERICA, OSSEO, WI; ROBERT WHITEHORSE, PRESIDENT, NATIVE AMERICAN CHURCH OF NAVAJOLAND, CORTEZ, CO; AND GUS PALMER, ELDER, KIOWA AND APACHE CHAPTER, NATIVE AMERICAN CHURCH, ANADARKO, OK, ACCOMPANIED BY HENRY WARE, MEMBER, KIOWA CHAPTER, NATIVE AMERICAN CHURCH, ANADARKO, OK

STATEMENT OF CRAIG DORSAY, ESQ.

Mr. DORSAY. Thank you, Congressman.

I don't know if I have a lot to add to the written statement I have submitted. I was involved in the *Employment Division v. Smith* case. That case had a 5- or 6-year history, and I only came in at the very end of the case in the second review by the U.S. Supreme Court.

As you are aware, in that decision the majority held that the Native American Church was not subject to the protections of the

First Amendment, and Justice Scalia left protection of Native American religion specifically to Congress and said that Congress does have the authority to pass legislation if it so wishes to protect Native American and other religions.

I have practiced Indian law for close to 20 years, and it is my opinion that there is a close connection between Native American religion and the protection of tribal sovereignty, and the Congress does have specific authority to take action as in the pending legislation that will protect particularly the Native American Church and other Native American religions.

The experience in Oregon since the *Smith* case has been somewhat difficult. After the *Smith* case came down, there was introduction of legislation in Oregon to protect the Native American Church, but what we ended up with was only a bill which provided an affirmative defense to a prosecution for possession and use of peyote. So what that means is, you still have to be charged and prosecuted with a criminal violation, and then if you use bona fide use, religious use, of peyote as a defense, then you will not be convicted. It still subjects members of the church to the stigma of prosecution in the State.

It also does not take care of the situation that led to the *Smith* case, which was the denial of unemployment compensation because the U.S. Supreme Court ruled that you can be denied unemployment compensation if you engage in an illegal act, and possession or use of peyote is still an illegal act, so an employer can, with impunity, fire a member of the church from his or her employment, and then the State will deny that person unemployment benefits even if they have engaged in the use of peyote for bona fide religious purposes.

In the *Smith* case, we attempted to resolve the problem by getting a State exemption from the Oregon Pharmacy Board for religious use of peyote. That move was blocked by the Attorney General of Oregon on the basis that an exemption would be unconstitutional, one, if it selected out only the Native American Church instead of all users of peyote; and, two, if it selected out peyote and did not include all hallucinogenic substances.

We believe that both those objections to the administrative rule were improper, but his ruling on that issue controlled while the *Smith* case was going on, and it appeared to be more of a strategic move than to have much of a legal basis.

That administrative rule has been resubmitted, but again, it still appears to be blocked based on whether you could give an exemption just for the Native American Church and not for all users of peyote, but that is the State's interpretation of the law, and they have not been that kind towards Indian rights and Indian affairs in general. So unless there is Federal protection there will continue to be problems in Oregon. That is our opinion.

Thank you.

[Prepared statement of Mr Dorsay follows:]

WRITTEN STATEMENT OF CRAIG J. DORSAY, ESQ.

My name is Craig J. Dorsay. I am the attorney who represented Al Smith in the United States Supreme Court case *Employment Division v. Smith*, 494 U.S. 872, 108 L.Ed.2d 876, 110 S.Ct. 1595

(1990), which held that the right of Native Americans to practice the peyote religion is not protected against state infringement by the United States Constitution.

Because of the short time between when I was contacted about appearing at this hearing and today, I am restricting my written comments to a few points. The chronology of the Al Smith case is exceedingly tortuous and complex. Rather than repeating that history, I refer to you to the law review article I wrote shortly after the decision for the University of Missouri-Kansas City Law Review entitled "*Employment Division v. Smith: Just say 'No' to the Free Exercise Clause.*" I did not choose the title of this article. I have attached a copy of it for the Committee's record. The article describes in detail the chronology of the case, which had continued on for over five years before I was asked to represent Al Smith in the second United States Supreme Court review of the case.

The Al Smith decision is quite clear and does not need additional explanation from me when such decision has been provided by local scholars in the field. I have two points to make about my experience in the case. The first is the complete lack of respect accorded to Native American religion by the dominate non-Indian society, from State law enforcement officials to Supreme Court justices. The sad thing about this attitude is the lack of comprehension these persons had about the degrading effect of comments they made. For example, the Attorney General of Oregon was shocked at the level of public opposition he encountered when he persisted in prosecuting this case, when he expected all of the "mainstream" churches to agree with his position that the Native American Church was an extreme religion that did not deserve protection. His attitude changed dramatically when representatives of large Christian denominations informed him that there was no theological difference between their churches and the Native American Church that he was pursuing vigorously.

Statements made about the Native American Church or comparisons made to other churches illustrate the ethnocentrism displayed by the government in this case. The State's brief in the case made a point of comparing the Native American Church to religions that used poison snakes or engaged in self-mutilation. Justice Scalia during oral argument compared the Church to the practice of human sacrifice in the Aztec religion at the time of the Spanish conquest. The State made unfounded assertions about the dangers of ingesting peyote and the amount of peyote taken at one time, relying on one or two anecdotal comments and extending these unverified statements to the entire religion.

For me, the most startling example of this attitude occurred during oral argument in the case before the Supreme Court. Attorney General Forhnmayr was arguing the dangers of allowing any exemption for peyote and the Native American Church, relying on the argument that no analytical distinction could be drawn between peyote and drug based religions which used marijuana, heroin, LSD and other illegal substances. He was arguing that if you allowed Indians to use peyote, you would have to allow all persons to use all kinds of drugs under all kinds of conditions. Justice Stevens then asked the Attorney General whether the use of alcohol in religious ceremonies presented a similar example, such that the use of

alcohol and its ingestion by minors in religious ceremonies could be outlawed by a neutral law prohibiting such use. Frohnmayer replied that alcohol presented a completely different question because alcohol was not classified as a dangerous drug, and that alcohol presented a religious accommodation argument of an entirely different order because the legislature provided a "religion indifferent" exemption for the use of sacramental wine during Prohibition.

I was flabbergasted by the ignorance and arrogance displayed by these comments. They prove my ethnocentrism argument. The only reason alcohol is not treated as a "drug" thousands of times more dangerous than peyote is because the majority, non-Indian society tolerates its use and abuse. Hundreds of thousands if not millions of Native Americans (as well as all other citizens, not to mention priests) have been devastated by alcohol use in their families. I think it safe to say that none or very few Indians have been adversely affected by peyote. And of course the sacramental use of wine was protected during Prohibition by a religion "neutral" law; of course the Christian majority is going to act to protect its own practices. But to argue that there is an intellectually honest distinction between alcohol and peyote and to ignore the cultural bias inherent in the entire argument is beyond my comprehension. To give Justice Stevens credit, he did ask Mr. Frohnmayer whether the real constitutional difference between alcohol and peyote was not the fact that alcohol is associated with a better known religion.

The second point I have to make about the *Smith* case is that if you thought *Smith* was bad, you haven't seen anything yet. From my experience in the case the majority of the Court, and particularly Justice Scalia, wanted to go further in dismantling protection for individuals under the First Amendment, but were prevented from doing so by a lack of votes. This is why I think Justice Scalia's scathing attack on Justice O'Connor's dissenting legal theory goes on at such length; I think he had depended on her for his fifth vote in a wider ranging opinion. Instead, the fifth vote was Justice Stevens, and the majority opinion follows Justice Steven's view of the First Amendment as set out in footnote three of his concurring opinion in *United States v. Lee*, 455 U.S. 252 (1982), an earlier First Amendment "accommodation" decision.

Now, of course, one of the dissenters in *Smith*, Justice Marshall, is gone and his replacement, Clarence Thomas, is much more likely to follow the views of Justice Scalia. We also have the perfect case, involving an animal-sacrificing religion which is unlikely to elicit much sympathy from the Court. See *Church of the Lukumi Babalu Aye v. City of Hialeah*. In this climate I would not be surprised to see an opinion directly overturning *Wisconsin v. Yoder*, 406 U.S. 205 (1972), which confirmed protection of the Amish religion. I would not even be surprised to see *Cantwell v. Connecticut*, 310 U.S. 296 (1940), the decision which applied the First Amendment of the United States Constitution to the States, limited or overturned. If this scenario plays out, statutory protection for Native American religious practices will be the critical lifeline preserving and protecting Native American religions.

In my opinion the Solarz bill does not go far enough. It reestablishes the compelling state interest balancing test as a matter of federal statutory law, but this standard may not protect Native

American religions. For example, Justice O'Conner, applying this test in the *Smith* decision, found that the legislative judgment contained in the law classifying peyote as a Class I Controlled Substance was enough to justify limitations on Native American Church practices. This test still leaves Native American religious practices under the control of subjective value judgments by non-Indian judges. Native American religious practices should not be subject to the permission of the dominant society.

In my opinion Congress clearly has the authority to enact legislation which singles out Native American religious practices for protection. Native American religions are such an integral piece of the identify of Indian tribes themselves, and of the expression of tribal sovereignty through the tribal government, that the proposed legislation clearly falls under the umbrella of legislation upheld as constitutional even though it singled Indians out for special treatment as rationally related to the protection of Indian tribes, sovereignty and tribal government. In the area of peyote and the Native American Church, there are a number of cases which upheld a special exemption for the Native American Church based on this principle. See *Peyote Way Church of God v. Thornburgh*, 922 F.2d 1210 (5th Cir. 1991). The Subcommittee would be justified in relying expressly on these opinions and the factual findings contained therein as the constitutional basis for enacting the present legislative proposal.

The final point I wanted to make in my written statement is to briefly discuss what has occurred in Oregon since the *Smith* decision. There have been no prosecutions of peyote use by Native American Church members. Attorney General Frohnmayer stated during the *Smith* case that he did not intend to prosecute bona fide use of peyote by members of the Native American Church no matter what the outcome of the *Smith* case, which led more than one Justice to ask Mr. Frohnmayer why he was bringing the case to begin with. Frohnmayer replied that it was the principle that was important. This was just another example of Indian rights being trampled for the convenience of an outside agenda.

Soon after the *Smith* opinion came out, the Oregon legislature passed legislation making bona fide religious use of peyote a statutory defense to possession or use of peyote. This legislation does not make peyote use legal; you can still be prosecuted but cannot be convicted. Obviously, religious use of peyote carries around the stigma of illegality. In addition, the legislation does not correct the problem which was the heart of the *Smith* case—unemployment benefits. Since the Court ruled that a State may deny unemployment benefits to someone engaged in "illegal" conduct, even if for religious reasons, a member of the Native American Church can still be fired from his job in Oregon for practicing his religion, even if it did not affect his or her job performance, and the State will deny that person unemployment benefits because he or she engaged in conduct prohibited by law. This is surely a sad result if persons can be denied benefits available to all other United States citizens only because they have engaged in conduct which is not familiar to the majority society.

This concludes my written remarks. I would be glad to answer any questions members of the Subcommittee or staff might have.

Mr. RICHARDSON. Thank you very much.
President Douglas Long, welcome to the subcommittee. Please proceed.

STATEMENT OF DOUGLAS J. LONG

Mr. LONG. Good morning, Mr. Chairman.

Members of the subcommittee, I am Douglas Long, a member of the Winnebago Tribe of Wisconsin and president of the Native American Church of North America. Thank you for allowing me to testify at this important hearing. I am pleased to offer testimony on behalf of the Native American Church of North America on the need for a new Federal law to protect freedom of worship by the estimated 250,000 members of the Native American Church of North America.

I have submitted 100 copies of my written testimony together with exhibits and ask that my written testimony be made a part of the hearing record. I will only summarize my written testimony today. I would like to cover two areas. First, I would like to give a background on the national efforts of America's Native American Church community to organize and address the religious crisis caused by the *Smith* decision. Second, I will state the reasons why the Native American Church of North America supports the need for a new religious freedom law along the lines that are being proposed by Senator Inouye.

Mr. Chairman, the Indian religious use of peyote has existed for 10,000 years. This ancient way of worship ranks among the oldest, largest, most continuously practiced indigenous religions in this hemisphere, predating the founding of this Nation. To achieve American legal status early in this century, beginning in 1918, Indians began to organize this peyote religion into formal, State-charted church organizations using the general name of the Native American Church. Today, there are many major, autonomous Native American Church organizations, such as my nationwide organization, the Native American Church of North America, the Native American Church of Navajoland, the Native American Church of Oklahoma, of Wyoming, of Idaho, of South Dakota, and so on. Although our beliefs and practices are similar, we enjoy a diverse tribal religious community with autonomy in each organizations.

The Native American Church of North America is the only nationwide and international Native American Church organization. We were established in 1950. Today we have 46 affiliated chapters in 24 States, Canada, and Mexico. Our Native American Church estimate, according to low estimates, is 250,000.

Mr. Chairman, the *Smith* decision was devastating to our ancient church. It stripped us of all legal protection under American law and social policy. It created a loophole in the First Amendment for Indians. It created a heart-breaking human rights crisis in our tribal communities that is seen in a recent Oklahoma felony prosecution, courts martial law, employment discrimination, widespread fear among elders, and deep psychological scars among our young children.

As such, the Native American Church is deeply concerned about the frightening religious crisis caused by the *Smith* decision. The stark reality in our lives is that today, according to the Supreme

Court, America is no longer based upon freedom of worship, and this is intolerable. Furthermore, there is a need for a uniform national law protecting the sacramental use of peyote for religious purposes by Indians that essentially codified the existing administrative regulatory exemption of the U.S. Drug Enforcement Agency. And, by the way, I would like to thank the representative for his testimony from the DEA.

The DEA has an Indian religious exemption. So do 28 states. However, the exemptions are not uniform in their provisions or their protections, some of which are inadequate, and 22 states have no protection whatsoever. Attachment 6 to my testimony is a chart summarizing these laws and exemptions. Attachment 7 is a DEA letter to me supporting the need for a uniform law.

The Native American Church of North America strongly supports the need for a new religious freedom law. Attachment 2 is our resolution of support. Specifically, the Native American Church of North America supports the legislative proposal being developed by Senator Inouye protecting the religious use of peyote by Indians. Mr. Chairman, I respectfully urge you and the members of this committee to develop, sponsor, and champion identical, companion legislation in the House of Representatives to address this paramount human rights crisis facing American Indians today.

Since the 1990 *Smith* decision, Native American Church members, chapters, and organizations have been coordinating with each other in an unprecedented way to address this crisis. Attachment 3 is a 1990 Native American Church of North America resolution that established the Religious Freedom Project of the Native American Church. The purpose of this project, headed by Mr. Reuben Snake, is to inform our community about the *Smith* decision, to work with members, chapters, and organizations to develop support for the need for a legislative solution and develop specific legislation that can be supported by the Native American Church nationwide community, such as that being proposed by Senator Inouye.

In short, our community is close to a unanimous view on the need for Federal legislation as any church could hope to be on a given issue.

Let me make one final closing point. The Native American Church is primarily concerned about the need to protect traditional religious use of peyote by Indians. However, the Native American Church is also deeply concerned about other religious issues being considered by this committee and by the Senate Indian Affairs Committee, such as religious use of eagle feathers, which plays an important role in the Native American Church beliefs and ceremonies; gathering of natural products from Federal lands in appropriate instances for religious purposes, such as tipi poles needed in our Native American Church ceremonies; and protection of sacred sites in appropriate instances.

In conclusion, Mr. Chairman and the members of the subcommittee, the Native American Church stands ready to work with you on urgently needed religious freedom legislation. We commend to the subcommittee the American Indian Religious Freedom Act amendments being developed by Senator Inouye and recommend that similar, companion legislation be sponsored by you. Time is long

overdue for our Nation to guarantee the same freedom of religion to those who were here first.

My family is a family of military veterans who have fought on foreign shores to defend the Bill of Rights. Our plea to Congress is to quickly pass the religious freedom law for Native Americans.

Thank you, Mr. Chairman. This concludes my oral testimony. I am available for questions.

[Prepared statement of Mr. Long, including appendices, follows:]



Native American Church of North America

United States, Canada and Mexico

**TESTIMONY OF DOUGLAS J. LONG ON BEHALF OF THE
NATIVE AMERICAN CHURCH OF NORTH AMERICA BEFORE
THE NATIVE AMERICAN AFFAIRS SUB-COMMITTEE OF
THE NATURAL RESOURCES COMMITTEE**

March 16, 1993

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IV. Conclusion 7

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NACNA Resolution (Aug. 3, 1991) supporting the need for federal legislation	2
NACNA Resolution (May 11, 1990) establishing the Religious Freedom Project of the Native American Church	3
Resolutions and exhibits of support for federal legislation from Native American Church of Navajoland, Native American Church of South Dakota, Native American Church of Wisconsin, Native American Church of Wyoming, Crow Indian Peyote Ceremonies, Sac & Fox Chapter Native American Church, Native American Church of Idaho, Native American Church of Oklahoma	4
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I. Introduction. Good morning, Mr. Chairman and members of the Sub-Committee. I am Douglas J. Long, a member of the Winnebago Indian Tribe of Wisconsin and President of the Native American Church of North America. Thank you for the invitation to offer testimony in this important hearing. I am pleased to offer testimony on behalf of the Native American Church of North America on the need for a new federal law to protect freedom of worship by 250,000 estimated members of the Native American Church of North America.

Native American religious use of peyote has existed for 10,000 years. As such, this ancient way of worship ranks among the oldest, largest, most continuously practiced, indigenous religions in this Hemisphere, predating the founding of this Nation and the writing of the First Amendment. Nonetheless, in a sweeping retreat from established legal precedent, the Supreme Court in Employment Division v. Smith, 494 U.S. 872 (1990), ruled that the First Amendment does not protect the sacramental use of peyote in bona fide religious ceremonies of the Native American Church. This decision has created a frightening loophole in the First Amendment and a human rights crisis for members of our religion presently seen in a recent Oklahoma felony prosecution, court martials, employment discrimination, and widespread fear.

My testimony addresses efforts by the national Native American Church community to respond to the Smith crisis and its support for a new law to protect our religion. Other witnesses will address:

- 1) the theological importance of the sacramental use of peyote in

bona fide religious ceremonies of the Native American Church; 2) the need for legislation and power of Congress from a legal standpoint; and 3) examples of persecution of Native American Church members in the wake of the Smith decision.

II. Interest and Background of the NACNA. Religious use of peyote in traditional Native religious ceremonies is an ancient practice with a 10,000 year history in Mexico and a 7,000 year history in the United States. Attachment 1 to my testimony is a background paper concerning the history and legal status of this religion by Dr. Jay Fikes, a post-doctoral Fellow at the Smithsonian Institution. See, Also Generally, Omer C. Stewart, Peyote Religion--A History (Univ.Okla.Press, 1987). As noted by the California Supreme Court in People v. Woody, 394 P.2d 813, 817 (1964):

Peyotism discloses a long history. A reference to the religious use of peyote in Mexico appears in Spanish historical sources as early as 1560. Peyotism spread from Mexico to the United States and Canada: American anthropologists describe it as well established in this country during the latter part of the nineteenth century. Today, Indians of many tribes practice Peyotism.

[Quoted by Sen. Daniel K. Inouye, "Discrimination and Native American Religious Rights," 23 UWLA L REV 1, 16 (1992)]

Today, this ancient American religion, centered upon the sacramental use of peyote, claims an estimated membership of about 250,000 Indians in the membership of the NACNA alone -- excluding the members of the many other autonomous Native American Church organizations. To achieve legal status in the United States, the

modern embodiment of this indigenous religion, beginning in 1918, began to organize into formal, state-chartered church organizations. Today, major Native American Church groups are: 1) Native American Church of North America; 2) Native American Church of Navajoland; 3) Native American Church of Wyoming; 4) Native American Church of Oklahoma; 5) Native American Church of the State of South Dakota; 6) Crow Indian Peyote Ceremonies (no state charter).

The Native American Church of North America ("NACNA") is the only nation-wide and international NAC organization. Our purpose is stated in Article 2 of the Articles of Incorporation:

The purpose of the Native American Church of North America (NACNA) shall be to foster and promote religious belief in Almighty God and the customs of the several tribes of Indians throughout North America in the worship of a Heavenly Father; to promote morality, sobriety, industry, charity and right living; and to cultivate a spirit of self-respect and brotherly love and union among the members of the several tribes throughout North America . . .

Originally, NACNA was incorporated in 1950 under the laws of the State of Oklahoma as the "Native American Church of the United States". By 1955, 13 NACNA chapters were incorporated under laws of their respective states. The Church name was changed to its present form to accommodate increased membership in Canada and Mexico. Today, the NACNA is composed of 46 affiliated chapters located in 24 states, Canada and Mexico.¹ Though a comprehensive

¹ NACNA Chapters are located in: Arizona (2 Chapters), California, Colorado, Canada (Chapters in British Columbia, Alberta, Manitoba, and Saskatchewan), Idaho (2 chapters), Iowa, Illinois, Kansas, Mexico (2 Chapters), Missouri, Montana, Maryland, Minnesota, New Mexico (2 chapters), Nebraska (3 Chapters), Nevada, North Dakota, North Carolina, Oklahoma, Oregon, South Dakota,

NACNA membership list is not maintained by our Church, there are 250,000 members of the NACNA, according to low estimates. Membership criteria are one quarter degree Indian blood quantum or membership in a federally recognized Indian tribe, within which each chapter may determine its own local membership criteria.

III. The Need for Federal Legislation -- Native American Church

Organisational Efforts and Support: From a national perspective, the NACNA is deeply concerned about the lack of legal protection for the sacramental use of peyote in bona fide religious ceremonies of the Native American Church under American law and social policy. The Smith decision has opened a new era of government persecution against traditional religious practitioners and discrimination against Indians solely on the basis of their religion. See, Inouye, "Discrimination and Native American Religious Rights," supra. See also, Native American Church testimony in Senate Indian Affairs Committee Field Hearings in Portland (Mar. 7, 1991), Los Angeles (Nov. 16, 1992), Scottsdale (Feb. 7, 1993), Albuquerque (Feb. 8, 1993), Minneapolis (Mar. 16, 1993).

Though the DEA and 28 states presently exempt Native religious use of peyote from federal and state drug laws, the exemptions are not uniform and some state exemptions are inadequate. Attachment 6 is a chart summarizing these exemptions. Further, no legal protection exists in 22 states whatsoever. Therefore, there is a

Texas, Washington, Wisconsin (7 Chapters), Wyoming, and Utah (2 chapters).

need for a uniform national law that essentially codifies the existing religious exemption of the U.S. Drug Enforcement Agency (DEA), 21 C.F.R. 1307.31 (1984). Attachment 7 is a letter from the DEA to me indicating its support for such legislation.

Attachment 2 is an NACNA Resolution supporting the need for a new federal law to protect our religious freedom. More specifically, NACNA supports the language presently proposed by Senator Daniel K. Inouye's Indian Affairs Committee to amend the American Indian Religious Freedom Act, 42 USC 1996.

To help secure passage of such urgently needed legislation, Attachment 3 is an NACNA Resolution, dated May 11, 1990, establishing the Native American Religious Freedom Project of the Native American Church. This Project, headed by Mr. Reuben Snake, has worked with Native American Church organizations and chapters around the country to educate members about the need for a new federal law and to develop support for specific legislation such as that now being developed by Senator Inouye's Indian Affairs Committee to protect the sacramental use of peyote.

The written testimony of Mr. Snake filed in this hearing on behalf of the Native American Religious Freedom Project discusses the significant work and progress of that Project to date. As discussed therein, much work has been done throughout Indian country since the date of the Smith decision to inform NAC members, chapters and organizations about this issue. Through this process, the following NAC organizations, through their duly elected officers, have joined the American Indian Religious Freedom

Coalition and are working together to develop and support amendments to the American Indian Religious Freedom Act being developed by Senator Inouye: 1) NACNA; 2) Native American Church of Navajoland; 3) Native American Church of Oklahoma; 4) Native American Church of Wyoming; 5) Native American Church, Half-Moon Fireplace, State of Wisconsin, Inc.; 6) Native American Church of the State of South Dakota; 7) Crow Indian Peyote Ceremonies; and 8) Religious Freedom Project of the Native American Church. See, Attachments 4-5.

America's NAC community is a diverse and autonomous community, which is true for most religious faiths. Nonetheless, to its credit, significant NAC consensus has developed supporting the need for a new federal law. Indeed, general agreement has been reached by all major NAC organizations regarding specific legislative language being proposed by Senator Inouye, with the exception of 3 or 4 Chapters of the Native American Church of Oklahoma who, according to written testimony of Ed Red Eagle filed in this hearing (pp.1-2), prefer the Texas standard limiting statutory protection to Indians with quarter degree or more blood quantum, rather than the tribal membership criteria favored by the rest of the NAC community that is presently proposed in Senator Inouye's draft legislation.²

² With the sole exception of Texas, neither the federal DEA regulatory exemption nor any of the other 27 states maintain a Native religious exemption based upon a blood quantum requirement. See, Attachment 6. The Texas statute (12C REV STAT TX Art. 4476-15, Sec. 4.11), adopted at the end of the Termination Era in 1967, is out of step with modern federal legislation and the deference now paid to tribal membership as the criteria for federal Indian

Even as to the small minority which prefers the Texas standard, we hope that further discussions can help resolve their concerns. While NACNA respects their view (the Texas blood quantum criteria may meet the membership preference of their chapters -- and nothing in Senator Inouye's proposed bill would interfere with their membership criteria), we must respectfully disagree with it as a criteria for federal legislation. Additionally, the NACNA does not intend to diminish Texas regulatory authority over peyote and will continue, as it has in the past, to work closely with Texas officials to protect the harvest and distribution of peyote. In short, the NAC community is as close to a unanimous view on the need for federal legislation as any church could hope to be on a given issue, with all of the community, except for three or four chapters, adopting a specific legislative proposal.

IV. Conclusion The NACNA -- including its attorneys of the Native American Rights Fund -- stands ready to work with the Subcommittee on urgently needed legislation to protect the sacramental use of peyote in religious ceremonies of our faith. We commend to the Subcommittee the AIRFA amendments being developed by Senator Inouye. Chairman Richardson, we request that similar, if not identical, legislation be introduced in the House sponsored by you and members of your Subcommittee. I appreciate your leadership on this human rights issue.

legislation that is observed by Congress out of respect for tribal sovereignty considerations.

In closing, while the NACNA is principally concerned with the need for legislation to protect the traditional use of peyote, NACNA is also deeply concerned about other Native religious issues before this Subcommittee and the Senate Indian Committee, such as:

- 1) religious use of eagle and other feathers -- which are important aspects of Native American Church beliefs and practices;
- 2) the right to gather natural products from federal lands, such as tipi poles needed for NAC prayer ceremonies;
- 3) and protection of sacred sites, such as the peyote gardens located in the State of Texas.

For these reasons, we commend and support Congress for addressing these important aspects of Native American religious freedom.

Coming from a family of military veterans, who has defended the American Bill of Rights on foreign shores, it is my plea that Congress acts quickly to pass a law extending these fundamental protections to Native Americans. 1993 marks 500 years since Columbus' descendants began immigration to this Hemisphere seeking religious freedom and the time is now appropriate for our Nation to guarantee that freedom to those who were here first. Thank you.

NATIVE AMERICAN CHURCH

BACKGROUND INFORMATION

**CONCERNING THE HISTORY, LEGAL STATUS AND
THE NEED FOR FEDERAL LEGISLATION**

**By: JAY COURTNEY FIKES, Ph.D.
February, 1992**

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**NATIVE AMERICAN CHURCH
BACKGROUND INFORMATION**

Prepared by Jay Courtney Fikes, Ph.D.

"The only thing necessary for the triumph of evil
is for good men to do nothing." Edmund Burke

SUMMARY

The Native American Church is the largest indigenous religion in this country. Estimates range to a quarter of a million members. Indigenous people have treated the peyote cactus as a sacrament for at least 10,000 years in Mexico, and at least 7,000 years in the United States. The Native American Church (NAC) is the modern embodiment of this ancient religious way of life.

The NAC is in a crisis situation. Its legal existence is jeopardized. The U.S. Supreme Court in 1990 ruled in Employment Division of Oregon v. Smith (493 U.S. 378) that the First Amendment does not protect the ritual life of this church (i.e., the sacramental use of peyote).

There is no record of danger or harm associated with the religious practices of the NAC. The Federal Drug Enforcement Administration and the NAC work cooperatively in protecting the distribution and use of peyote.

Yet, since the Smith decision, NAC members have been unnecessarily hindered in the exercise of their religion by the removal of the constitutional underpinning that had protected them. Indeed, at least one NAC member is currently being prosecuted for a felony for practicing what earlier courts had held was a constitutionally protected religion.

For these reasons a coalition of NAC leaders, advocates and supporters from around the country are asking Congress to put back what the Supreme Court took away by amending the American Indian Religious Freedom Act of 1978 to create a specific federal statutory exemption for the bona fide religious use of peyote by Indian people in the traditional exercise of their religion.

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303 447-8760

OUR INALIENABLE RIGHT TO WORSHIP THE CREATOR

More than appreciation for diversity of religious expression led the authors of our First Amendment to insist that "Congress shall make no law prohibiting free exercise of religion." Their commitment to religious freedom was based on their conviction that each of us is a child of God. Ever since we declared our independence from Great Britain, the United States has been sustained by faith in a few "self-evident truths." Is the right to freely worship the Creator who endowed each of us with certain "inalienable rights" still self-evident? If it is, no member of Congress should be reluctant to enact legislation to protect the religious liberty of over 250,000 members of the NAC.

Legal protection for sacramental peyote use of NAC members seemed assured in 1960, when the Arizona Supreme Court decided that a statute prohibiting possession of peyote was unconstitutional when applied to Mary Attakai, a Navajo peyotist. The Arizona Supreme Court ruled that:

There are no harmful after-effects from the use of peyote. Peyote is not a narcotic. It is not habit-forming. ... There is no significant use of peyote by persons other than Indians who practice peyotism in connection with their religion. ... The peyote rite is one of prayer and quiet contemplation. ... The manner in which peyote is used by the Indian worshiper is ... entirely consistent with the good morals, health and spiritual elevation of some 225,000 Indians" (Stewart 1987: 307).

In 1964, the California Supreme Court ruled, in People vs. Woody, that Navajo railroad workers using peyote in "honest religious rites" were protected by the First Amendment of the United States Constitution (Anderson 1980: 168).

Since 1964, nothing in the beliefs or conduct of NAC members has changed. Yet in 1990 the Supreme Court ruled, in Oregon Employment Division v. Smith, that individual states could outlaw peyote use, even the NAC's bona fide religious use, without violating the First Amendment of our Constitution. Scholars familiar with the legislative history of the NAC believe non-Indian abuse of psychedelic drugs clouded the Supreme Court's judgment in the Smith case. It is now up to Congress to champion religious freedom for First Americans.

HISTORY OF MODERN PEYOTE MEETINGS

Native American veneration of peyote may be 10,000 years old (Stewart 1987). Peyote cactus buttons discovered in Shumla Cave in southern Texas have been radiocarbon dated to 5000 B.C. (Franklin 1991). The Huichol Indians of northwestern Mexico still practice an essentially non-Christian, but clearly sacramental, use of peyote. Their peyote pilgrimage may have been introduced by 200 A.D. (Fikes 1992). Scholars consider it the oldest aboriginal American expression of reverence for peyote in North America (LaBarre 1989: 256-259).

The exact route and time of diffusion of the Peyote religion is unclear (LaBarre 1989; Stewart 1987). The Carrizo culture which once occupied the area from Laredo, Texas east to the Gulf of Mexico is evidently the one whose pre-Columbian peyote rituals were first observed in 1649 (Stewart 1987: 45). After learning the peyote ceremony from the Carrizo, the Lipan Apache probably taught it to the Kiowa, Kiowa-Apache, and Comanche. By 1874, the Kiowa

and Comanche, once proud warriors of the southern Plains, had been confined to reservations in Oklahoma. The loss of liberty entailed by reservation life brought great pain and suffering to all Native Americans. By 1890, two new religious movements were spreading rapidly among Native Americans. One, the Ghost Dance, has all but disappeared. The other, the Peyote religion, has become the most popular meeting in Native America except for the pow-wow.

In the early 1880's, after the railroads reached Laredo, Texas (a town in the area where peyote is gathered), the stage was set for rapid communication between various tribes of North America. The railroads also made it easier for Native American tribes who had recently been confined in Indian territory (Oklahoma) to obtain their sacrament. Quanah Parker (Comanche), the most famous of all Oklahoma peyotists, helped bring peyote meetings to members of the Delaware, Caddo, Cheyenne, Arapaho, Ponca, Oto, Pawnee, Osage, and other tribes (Stewart 1987: 79). John Wilson, a Caddo, is credited with disseminating a slightly more Christian form of peyote meeting (LaBarre 1989: 151-161; Stewart 1987: 86-93). From these and other Oklahoma peyotists, two slightly different types of peyote meeting evolved. Peyotists are sometimes active members in other Christian churches.

The Peyote meeting spread rapidly to tribes north of Oklahoma. By 1908, Albert Hensley, a Winnebago educated at Carlisle, was defending eloquently his Christian religion. For Hensley and the Winnebago, Peyote was a Holy Medicine.

...to us it is a portion of the body of Christ, even as the communion bread is believed to be a portion of Christ's body by other Christian denominations. ... Christ spoke of a Comforter who was to come. ... it never came to Indians until it was sent by God in the form of this Holy Medicine" (Stewart 1987: 157).

The steady proliferation of NAC membership among diverse North American tribes has made the NAC Native America's largest church. Singing accounts for approximately sixty per cent of ritual devotions in NAC meetings. Each of about twenty-five worshipers seated inside the tepee has ample opportunity to sing, accompanied by a small drum and gourd-rattle. Singing often occurs in Native American languages, but English phrases like "Jesus only" and "He's the Savior" are common. Worshipers sing, drum, pray, meditate, and consume peyote during all-night meetings. Most meetings are held for healing, baptism, funerals, and birthdays. The NAC has no full-time paid clergy. However, there are recognized leaders called "Roadmen" who have been given the authority to conduct peyote prayer services by predecessor Roadmen. Members are free to interpret Scripture according to their own understanding. Their morality is Christian and emphasizes the need for abstinence from alcohol, fidelity to one's spouse, truthfulness, meeting family obligations, economic self-sufficiency, praying for the sick and for peace. Peyote is regarded as a gift from God. It eliminates the craving for alcohol, the most widely abused drug in Indian country. It is not eaten to induce visions. It heals and teaches righteousness. Peyote is eaten, or consumed as a tea, according to a very formal ritual. It is reverently passed clockwise around the

circle of church members on several occasions during the course of all-night prayer services.

SACRAMENTAL PEYOTE USE IS NOT HARMFUL

Scientific studies of sacramental peyote use have produced no evidence that it is harmful. In fact, there is some scientific evidence suggesting that peyote may have antibiotic properties (Anderson 1980: 96). Eminent psychiatrists, including the late Karl A. Menninger, M.D., Abe Hoffer, Ph. D. and M.D., Humphry Osmond, M.D., Robert L. Bergman, M.D., and Bernard C. Gorton, M.D., have all reported that Native American sacramental peyote use is beneficial, or certainly not at all harmful (Anderson 1980: 165-66; Franklin 1991; Stewart 1987: 306). A similar opinion has been expressed by Everett Rhoades, M.D., Director of the Indian Health Service.

Dr. Maurice H. Seevers' (1958) scientific studies clearly demonstrate that peyote is not addicting. Of all substances tested by Seevers, alcohol was the most addicting. Dr. Seevers stated that "no cases of (human) addiction to peyote have ever been found" at the Federal Narcotic Farm in Lexington, Kentucky. His laboratory experiments proved it was impossible to addict dogs or monkeys to peyote (Franklin 1991). A chromosome damage study conducted by a group of California physicians on the Huichol Indians (whose unfaltering tradition of sacramental peyote use was mentioned above) showed that "no serious chromosome damage had occurred" (Dorrance, Janiger, and Teplitz 1975: 301).

ANTHROPOLOGISTS SUPPORT THE NAC

Anthropologists have steadfastly defended the religious freedom of Native American peyotists since 1890, when their rituals were first observed by James Mooney of the Smithsonian. In 1918, after testifying in favor of Native American peyotists at Congressional hearings, Mooney helped peyotists of various Oklahoma tribes obtain a legal charter. With Mooney's help, the Native American Church was officially incorporated in 1918 (LaBarre 1989: 217, 260). Another anthropologist, James Slotkin (1956) became a NAC officer and legal advocate. Following Slotkin's death in 1958, Omer Stewart (1987: xv) became the leading expert witness for the NAC.

In 1991 ninety-six percent of those members of the American Anthropological Association who voted on a resolution supporting the Native American Church approved. The resolution states that:

...use of peyote as a sacrament is in no sense harmful... there is no compelling interest that justifies restricting the first amendment rights of members of the NAC to practice their religion; therefore be it resolved that the American Anthropological Association supports NAC efforts to protect their sacramental use of peyote, and calls upon the federal and state governments to assure that NAC members have full legal protection for their way of worship.

Anthropologists define NAC rituals as a synthesis of aboriginal and Christian elements, and find considerable continuity between peyote paraphernalia used in Mexican Indian rituals and sacred artifacts in NAC meetings. The use of a staff, tobacco, feather fans, gourd rattle, incense, fireplace, and emphasis on the four directions are some of the shared elements (LaBarre 1989;

Stewart 1987). There is also a common ceremonial core shared by peyotists in both types of NAC meeting. These two are called Half-Moon (or Tipi Way) and Big-Moon (or Cross Fire). The primary difference seems to be that the Bible is preferred over tobacco in the Cross Fire tradition as a catalyst for prayer (Steinmetz 1990; Stewart 1987: 91-93, 339).

ENDURING EFFORTS TO GAIN SELF-DETERMINATION

Native American respect for peyote has always been misunderstood by European immigrants to the "New World." In 1620 the Spanish Inquisition denounced peyote as diabolic and made use illegal (Anderson 1980: 2-7; Stewart 1987: 20-30). Persecution of Mexican Indian peyotists included torture and death (Stafford 1983: 104). After nearly three centuries of Catholic condemnation of peyotists, peyote meetings began permeating Indian reservations north of the Mexican border. It was during an era of agonizing cultural disintegration, which became acute around 1880, that peyote was accepted as a remedy and inspiration by members of many Native American tribes.

Once sacramental peyote use among Oklahoma tribes was discovered, zealous missionaries began agitating to outlaw it. Vigorous anti-peyote activity was organized by Christian missionaries and federal Indian agents (Stewart 1987). Peyotists bravely defended their religious freedom in several states and in Congress. In 1933, when John Collier became the Commissioner of the BIA, it seemed Native American religious freedom might finally be respected.

In 1945, the BIA recognized the Native American Church. In 1954, sacramental peyote use was legalized in South Dakota. In 1957, Montana removed a 34 year old ban against peyote. In 1959, religious use of peyote was legalized in New Mexico. This trend toward religious tolerance was soon eclipsed by fears about non-Indian abuse of chemical psychedelics.

Responding to non-Indian experimentation with psychedelic drugs, peyote became illegal in California in 1959 and in New York in 1965. In 1967 Texas outlawed peyote. After Judge Kazan found Texas law unconstitutional when applied to Native Americans, the Texas legislature amended its law. Provisions of the Texas Narcotic Law of 1969 exempt only persons having at least one-quarter "Indian blood" who possess a valid NAC membership card (Stewart 1987: 246-247, 333). This exemption, still in force today, is of vital significance inasmuch as Texas is the only state in the United States where peyote is plentiful.

The Texas Department of Public Safety and the Justice Department license Peyote dealers that may lawfully sell Peyote to members of the Native American Church who have appropriate certificates of membership and have permits to possess, harvest, purchase and transport peyote issued by Native American Church custodians from Churches that are enrolled with the Texas Department of Public Safety (Franklin 1991).

NAC members have always cooperated with officials of the Texas Department of Public Safety and the U.S. Justice Department. Those entities enjoy a good working relationship and a mutuality of

interest in seeing that peyote does not come into unauthorized hands and become abused.

PEYOTE LISTED AS A FEDERALLY CONTROLLED SUBSTANCE

In 1965, the Drug Abuse Control Amendments to be administered by the United States Department of Health, Education, and Welfare, through the Food and Drug Administration, added peyote to the list of controlled drugs. The Commissioner of the Food and Drug Administration informed the Native American Church:

on the basis of the evidence you have submitted, we recognize that peyote has a non-drug use in bona fide religious ceremonies of the Native American Church. It is not our purpose to bring regulatory action based on the shipment, possession, or use of peyote in connection with such ceremonies (Franklin 1991).

In 1970, Congress passed the Controlled Substances Act which, in Section 202, classified peyote as a "Schedule 1 Controlled Substance." In hearings on that bill, Congressman Satterfield asked if passage of the bill would imperil the NAC's ancient religious use of peyote. The Director of the Bureau of Narcotics and Dangerous Drugs (BNDD) assured him that the regulatory exemption protecting the religious freedom of NAC would continue.

We consider the Native American Church to be sui generis. The history and tradition of the church is such that there is no question but that they regard Peyote as a deity as it were, and we'll continue the exemption (Franklin 1991).

The BNDD Director also told Satterfield that in 1965:

Congress was going to write in a specific exemption, but it was then decided that it would be handled by regulation and we intend to do it the same way (Franklin 1991).

This regulatory exemption continues today and is found at 21 C.F.R. §1307.31 (1984):

The listing of peyote as a controlled substance in Schedule 1 does not apply to the non-drug use of peyote in bona fide religious ceremonies of the Native American Church. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law (Anderson 1980: 208).

It must be noted that Texas dealers cannot "manufacture" Peyote, which is a small spineless cactus (*Lophophora williamsii*). These dealers do collect and sell peyote to members of the NAC. To do so legally, they must be registered with the Texas Department of Public Safety and the U.S. Justice Department.

SUPREME COURT ABANDONS FIRST AMENDMENT PROTECTION OF NAC

From 1963 (in Sherbert vs. Verner), to 1990 (in Smith), whenever compliance with state or federal law involved a restriction of any citizen's religious freedom, the government was required to prove it had a "compelling interest" (e.g., public health or safety). After a government demonstrated it had sufficient cause for curtailing religious freedom, it was obliged to seek the least restrictive method for making citizens comply with the state or federal law at issue. In Smith, the Supreme Court abandoned the compelling interest test, ruling that as long as a law is allegedly neutral and generally applicable the Supreme Court need not determine whether the state has a compelling interest. To the NAC, the Supreme Court's ruling in Smith seems tantamount to punishing the NAC for the rebellious and bizarre behavior of non-Indians.

In 1984, Al Smith and Galen Black were fired after telling their employer they had eaten peyote as participants in NAC rituals. Their employer, a private substance abuse treatment organization in Oregon, claimed that the firing was defensible because of its policy that employees be "drug-free." Smith's unemployment benefits were denied because the state of Oregon defines peyote as a "Schedule 1 Controlled Substance" (a harmful drug) instead of a sacrament. Although sacramental peyote use could be considered a crime in Oregon, the Oregon Supreme Court, thinking First Amendment protection of NAC rituals was constitutionally required, ruled in favor of Smith. When Oregon's Attorney General appealed, the U.S. Supreme Court, thinking that the classification of peyote as a "Schedule 1 Controlled Substance" represented a neutral and generally applicable law, ruled against Smith.

From 1980 to 1988, the quantity of peyote confiscated nationwide by the DEA was only 19.4 pounds. DEA agents confiscated a grand total of 5.6 kilograms (about 12 pounds) of peyote in 1981. No peyote was seized in 1980, 1982, or 1983. In 1987, only two kilos were confiscated (Fikes 1992: 215). But the facts have not erased the memories of sensational media coverage of psychedelic use by non-Indians. The psychedelic craze of the 1960's is still ingrained in the minds of most Americans. It was non-Indian experimentation with psychedelics which passage of the 1970 Controlled Substances Act was designed to deter. This federal law, and state laws modeled upon it, played a decisive role in the

Supreme Court's decision in Smith. Because there is no proof of harm to Native Americans who use peyote sacramentally, the DEA regulation exempting NAC members from prosecution under it has remained in force. Because there is no proof of harm to Native Americans who use peyote sacramentally, the "compelling interest" test could not reasonably be invoked to curtail NAC religious freedom. In deciding Smith, the Supreme Court announced that as long as laws are neutral and generally applicable, governments no longer need to justify abridging religious freedom.

The notion that the listing of peyote as a Schedule 1 Controlled Substance in the 1970 Controlled Substances Act is a neutral and generally applicable law is questionable. For the NAC, whose sacrament may now be banned, any claim that anti-peyote laws are neutral provides little consolation. The truth is that the overwhelming majority of peyote used today is eaten as a sacrament by members of the NAC. Without national legislation exempting sacramental peyote use from prosecution under allegedly neutral and generally applicable state laws, the effect of laws banning peyote use would be discriminatory.

Prior to the Smith case lawmakers in some 27 states and drafters of the federal regulation protecting sacramental peyote use from anti-drug legislation had assumed the exemption for the NAC was constitutionally required. But the Smith decision declared that although it is Constitutionally permissible to exempt the NAC's religious use of peyote from anti-drug laws, it is not Constitutionally required. Thus individual state legislatures can

now ban sacramental peyote use of NAC members whenever they see fit. DEA officials familiar with NAC rituals have no desire to dispense with the NAC's regulatory exemption. They favor national legislation which grants the NAC a specific statutory exemption for their sacramental use of peyote. Currently 27 states have an exemptive law protecting the religious use of peyote by NAC members.

The Smith decision clearly threatens NAC religious liberty. It also heralds a chilling curtailment of religious freedom for all Americans. Accordingly, an unusually broad coalition of America's churches feel their own religious freedom is jeopardized by the precedent set in Smith. Led by Congressman Steven Solarz (NY), they have persuaded over 125 Representatives to co-sponsor legislation to reinstate the "compelling interest" test for free-exercise claims against a federal, state or local authority. Since the Smith decision, the Amish in Minnesota have been forced to comply with state laws requiring them to place bright orange reflectors on their buggies. Jews in Michigan, and Laotian immigrants (of the Hmong faith) in Rhode Island, have been forced to allow the state to perform autopsies on their sons. Religious practices long considered safe are imperiled.

The Occupational Safety and Health Administration on the basis of Smith canceled an exemption from wearing hard hats dating back for many years, that had been granted to Old Amish and Sikhs (Franklin 1991).

Because the Smith decision discarded the "compelling interest" test, there is now no justification for exempting sacramental use of wine from prosecution under "neutral, generally applicable laws" outlawing alcohol.

WHAT THE NAC WANTS CONGRESS TO DO

Passage of the proposed Religious Freedom Restoration Act advocated by the Solarz coalition is supported by the NAC. The NAC recognizes, however, that a specific statutory exemption for sacramental peyote use is needed to protect NAC religious liberty. In the 1964 California Supreme Court case, People vs. Woody, the court relied on the "compelling governmental interest" test of religious freedom cases which had just been proclaimed in 1963 by the U.S. Supreme Court in Sherbert vs. Verner. The California high court ruled that NAC members had a First Amendment right to use peyote reasoning that:

[T]he right to free religious expression embodies a previous heritage of our history. In a mass society, which presses at every point toward conformity, the protection of a self-expression, however unique, of the individual and group becomes ever more important. The varying currents of the subcultures that flow into the mainstream of our national life give it depth and beauty. We preserve a greater value than an ancient tradition when we protect the rights of the Indians who honestly practiced an old religion in using peyote one night at a meeting in a desert hogan near Needles, California. People v. Woody, 394 P.2d 813, 821-22.

That California Supreme Court decision was made by justices whose orientation differed from those who sit on the current U.S. Supreme Court. In fact, some members of Congress and legal analysts speculate that even if the "compelling state interest" test abandoned in the Smith case were to be restored by passage of

the Solarz bill, today's U.S. Supreme Court would still rule against the NAC (Fikes 1992: 221).

To safeguard the religious freedom of the NAC either of two federal laws could be amended: 1. The American Indian Religious Freedom Act of 1978, Public Law 95-441, could provide specific statutory protection for sacramental peyote use of Native Americans by incorporating the existing regulatory exemption found at 21 C.F.R. §1307.31. 2. The Controlled Substances Act of 1970, Title 21 §841 can be amended to specifically incorporate the existing C.F.R. exemption.

The NAC is confident that Congressional hearings featuring expert testimony on the historical, religious, anthropological and scientific aspects of sacramental peyote use among NAC members will amply justify passage of national legislation specifically protecting the NAC's religious freedom. We stand ready to help Congress renew this country's commitment to promoting freedom of religion by allowing all its citizens to worship, in their own manner, the Creator who granted each of us those inalienable rights whose defense gave birth to this great nation.

TREATING FIRST AMERICANS AS FULL AMERICANS

NAC members feel their manner of worshiping the Creator is proper and worthy of the same First Amendment protection which has always been extended to immigrant-American religions (e.g., Christianity, Judaism). But for First Americans the right to worship their Creator is also an issue of self-determination. The 371 treaties ratified between sovereign Native American nations and

the U.S. Senate indicate that Native Americans enjoy a unique legal and political status. After the era of treaty-making ended, in 1871, the special status of first Americans was acknowledged in the "trust responsibility" the federal government proclaimed it would exercise over Indian lands. Because Native Americans are now simultaneously U.S. citizens, and members of semi-sovereign nations, their right to worship with a sacrament illegal for immigrant-Americans has been protected by some 27 states and by DEA regulations. The treaties, the trust relationship the federal government has assumed with Native Americans, the uniqueness of Indian languages and religions, all suggest that legal accommodations to protect Indian cultures are justifiable and important. To treat Native Americans as if they were ordinary Americans denies U.S. history and abrogates legal precedents.

Prompt enactment of federal legislation exempting NAC members from anti-drug laws is required to live up to the obligation intrinsic to the federal government's special historic trust responsibility with Native American nations. Protecting Native American lands and culture is part of this trust responsibility. Failure to pass federal legislation protecting the rights of Native American peyotists violates the trust responsibility and may encourage states to pass and enforce laws which will coerce Native Americans into assimilating into the culture created by immigrant-Americans.

President Johnson's March 6, 1968 statement to Congress speaks to the unmet need for Indian self-determination. It is a fitting preamble for the national legislation the NAC seeks.

... the Federal government can best be a responsible partner in Indian progress by treating the Indian himself as a full citizen, responsible for the pace and direction of his development. But there can be no question that the government and the people of the United States have a responsibility to the Indians. In our efforts to meet that responsibility, we must pledge to respect fully the dignity and the uniqueness of the Indian citizen.

That means partnership--not paternalism.

We must affirm the right of the first Americans to remain Indians while exercising their rights as Americans.

We must affirm their right to freedom of choice and self-determination.

... And we must assure the Indian people that it is our desire and intention that the special relationship between the Indian and his government grow and flourish. For the first among us must not be last (Prucha 1990: 249).

The NAC urges all Americans to join us in asking Congress to honor its trust responsibility with first Americans, and simultaneously fulfill our First Amendment guarantee of religious liberty for citizens of all creeds and cultures. The national legislation we propose is imperative to establish First Americans as fully American.

BIBLIOGRAPHY

Aberle, D.F. The Peyote Religion Among the Navajo. Chicago: Aldine Publishing Co., 1966.

Anderson, Edward F. Peyote: The Divine Cactus. Tucson: University of Arizona Press, 1980.

Dorrance, David L.; Janiger, Oscar; and Teplitz, Raymond L. "Effect of Peyote on Human Chromosomes." Journal of the American Medical Association 234 (1975): 299-302.

Fikes, Jay C. Huichol Indian Identity and Adaptation. Unpublished doctoral dissertation, University of Michigan. Ann Arbor: University Microfilms, 1985.

Fikes, Jay C. Carlos Castaneda, Academic Opportunism, and the Psychedelic Sixties. Lanham, MD: Madison Books, 1992.

Franklin, Virgil. "An Overview of the Native American Church from its Inception To The Present Date." Essay reprinted from the Cheyenne and Arapaho Bulletin. Distributed on March 9, 1991 to the Senate Select Committee on Indian Affairs.

LaBarre, Weston. The Peyote Cult. Norman: University of Oklahoma Press, 1989.

Prucha, Francis P. Documents of United States Indian Policy.

Lincoln: University of Nebraska Press, 1990.

Slotkin, J.S. The Peyote Religion: A Study in Indian-White Relations. Glencoe, IL.: Free Press, 1956.

Stafford, Peter. Psychedelics Encyclopedia. Los Angeles: J.P. Tarcher, 1983.

Steinmetz, P.B. Pipe, Bible, and Peyote Among the Oglala Lakota.

Knoxville, TN.: University of Tennessee Press, 1990.

Stewart, Omer C. Peyote Religion: A History. Norman, OK.: University of Oklahoma Press, 1987.



Native American Church of North America

United States, Canada and Mexico

RESOLUTION

- EXECUTIVE OFFICERS -
 PRESIDENT
 DOUGLAS J. LONG - WINNEBAGO
 VICE PRESIDENT
 TONY LEE - NAVAJO
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 EARLEY GOODBEAR - MANDAN-HIDATSA
 SECRETARY
 HOPE B. SMITH - WINNEBAGO
 EDITOR
 REV. ANTHONY SMITH, SR. - WINNEBAGO

WHEREAS, The Native American Church of North America (NACNA) is a duly constituted organization representing the interests of many Native American Church chapters and members, and

WHEREAS, those interests include the protection and preservation of our traditional religious use of the Sacrament Peyote, and

WHEREAS, our sacramental use of Peyote is seriously jeopardized by the U. S. Supreme Court decision in Employment Division of Oregon v. Smith (1990) which removed constitutional protections for the free exercise of our religion, and

WHEREAS, the Native American Church of Navajoland is intending to articulate these concerns to the National Conference of State Legislatures in Orlando, Florida on August 14, 1991;

NOW, THEREFORE BE IT RESOLVED that NACNA does hereby endorse and fully support the efforts of the Native American Church of Navajoland to seek the understanding and support of the National Conference of State Legislatures in an effort to secure Federal legislation to protect our Native American Church by amending the American Indian Religious Freedom Act for the purpose of protecting our sacramental use of Peyote in our bonafide religious services and ceremonies.

CERTIFICATION

I, the undersigned, certify that the foregoing resolution was duly adopted by an affirmative vote of 10 for, 0 against, and 0 abstaining, by the duly called Special Summit Conference and Officers Meeting held on August 3, 1991. at Winnebago, Nebraska.

ATTEST:

Hope B. Smith
 Hope B. Smith, Secretary
 Native American of North America

Douglas J. Long
 Douglas J. Long, President
 Native American Church

Resolution of the
Native American Church of North America

Resolution # 1

Whereas, In the recent Oregon V. Smith decision the U.S. Supreme court continued its attack of Native Americans right to freedom of religion under the First Amendment, in a ruling that has chilling implications for all religions

Whereas, The Rehnquist Court for lack of spiritual enlightenment withdrew constitutional protection for the sacramental use of the divine herb, Peyote in the Native American Church

Whereas, The court ruled that the Constitution does not exempt any religious practices from state laws that don't single out a particular religion or practice for regulation

Whereas, this ruling could eventually affect mainline faiths, it is now an immediate threat to the Native American Church and other minority faiths

Whereas, the Native American Church is a Christian church that uses the divine herb, Peyote, as a sacrament in the same way that other churches use bread and wine

Now therefore be it resolved that the Native American Church establishes the Native American Religious Freedom Project to work to alert, educate and organize religious and moral leaders, and the media in this country, around this clear and present threat to the very existence of the Native American Church, and to basic religious freedom for all.

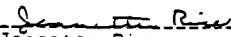
Be it further resolved that the Native American Church actively solicits the endorsement and the support of all national and international religious, human and civil rights organizations to assist in this process.

Be it finally resolved that the Native American Church emphatically asserts that the American public must expand its awareness of the positive and beneficial uses of the sacrament Peyote among Native American Church Members, and enact laws which reflect that expanded awareness.

Certification

This Resolution is approved by a vote of 17 for and 0 against at a duly called meeting held on May 11, 1990 at the Denver Indian Center in Denver, Colorado with two Executive officers, six Delegates-at-large and thirteen chapters officially represented.

Signed



Jeanette Rice,
Recording Secretary



NATIVE AMERICAN CHURCH OF NAVAJOLAND, INC.
 P.O. BOX 1570 • CHINLE, ARIZONA 86503

PRESIDENT
 ROBERT B. WHITEHORSE
 VICE PRESIDENT
 CLIFFORD DAWES
 SECRETARY
 MELBA GAYTO
 TREASURER
 JERRY C. BARBONE
 LIAISON/ADVISOR
 AGNES DAVOLLE
 SERVICE OFFICER
 LOLITA SPENCER

POSITION STATEMENT
 OF
 NATIVE AMERICAN CHURCH OF NAVAJOLAND, INC.
 ROBERT B. WHITEHORSE, PRESIDENT

We, members of the Native American Church of Navajoland, Inc. contend that our human rights shall be guaranteed and protected by the Bill of Rights through the United States Constitution.

The Native American Church of Navajoland, Inc. further contend the use of such items as the sacrament 'peyote', eagle feathers, sissor-tails, feathers of other spirtual birds and sacred objects necessary to the survival and preservation of Navajo religion and culture.

We believe, our sacrament peyote as being an integral part of the Navajo culture which is protected by P.L. 95-341, 92 Stat. 469 (American Indian Religious Freedom Act); P.L. 91-513 (Comprehensive Drug Abuse Prevention & Control Act of 1970); Texas Controlled Substance Act of 1983 and Title 17, Section 394(c) of the Navajo Tribal Code.

It is to no surprise that we, the Indian people still maintain a rich heritage, culture, language and tradition in our everyday lives. Our belief in religion has linked us to tie these richness together to firmly believe in our religious ceremonies. It is for this purpose that our use of the sacrament peyote has become an integral part of our traditional religions.

The Native American Church of Navajoland, Inc. have shared their legends of the, "Fifth Sacred Herb" known as the sacrament peyote. We have shared this legend with the honorable Chief Justice of the United States, William Rehnquist in March, 1990. It is our hope that we will bring a better world of understanding to others including the federal government to know and trust in our belief of the sacrament peyote as a bona fide religious ceremony.

Through Indian Treaty Rights, it has been stated by the federal courts that the United States Congress would oversee and be given the responsibility to preserve our rich heritage and culture in every aspects. The United States Congress has recognized and responded to its duty by the enactment of Public Law 95-341 (American Indian Religious Freedom Act). It has afforded our Indian nations, the best opportunity to correct past injustices and has also begun to reanew to those who adhere to tenets of traditional native religions.

Recently, the Native American Church of Navajoland, Inc. has been reassured its recognition as a non-profit Native American Church organization accommodating the practice of the sacrament peyote in a bona fide religious ceremony through Navajo Tribal Council Resolution CF-14-90 and State Memorial Bills --New Mexico Senate Joint Memorial 15 and Arizona Senate Consurient Memorial 1001. The passage of these two Memorial Bills will suffice our legislative presentation at the National State Legislature Conference in Orlando, Florida. Our request is to amend the existing American Indian Religious Freedom Act (P.L. 95-341) to exclusively specify the sacrament peyote as a bona fide religious ceremony.

The Native American Church of Navajoland, Inc. further requests for your efforts and support to propose another legislative bill that will encompass the United States Congress to make necessary provisions in the American Indian Religious Freedom Act to include the sacrament peyote as a bona fide religious ceremony.



Robert B. Whitehorse, President

Native American Church of Navajoland, Inc.

Native American Church Of South Dakota, Inc.
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 Pine Ridge, South Dakota 57770
 State Minister
 Rev. Emerson Spider, Sr.

Executive Officers

RESOLUTION

President

Scott S. American Horse

Vice-President

Francis Priamus, Sr.

Secretary

Jackie Never Miss A Shot

Asst. Secretary

Ed Lays Bad, Sr.

Treasurer

Charles Stoneman, Sr.

Sergeant-At-Arms

James Stoneman, Sr.

Whereas, The Native American Church of State of South - Dakota is a duly constituted organization representing the interests of many Native American Church chapters and members, and

Whereas, those interests include the protection and preservation of our traditional religious use of the sacrament, peyote, and

Whereas, our sacrament use of peyote is seriously jeopardize by the U.S. Supreme Court decision in Employment Division of Oregon vs. Smith; (1990), which removed constitutional protections for the free exercise of our religion, and

Whereas, The Native American Church of Navajoland is intending to articulate these concerns to the National Conference of State Legislatures in Orlando, Fla. on August 14, 1991;

NOW THEREFORE BE IT RESOLVED, that the Native American Church of South - Dakota does hereby endorse and fully support the efforts of the Native American Church of Navajoland, to seek the understanding and support of the National Conference of State Legislatures in an effort to secure Federal legislation to protect our Native American Church, by amending the American Indian Religious Freedom Act for the purpose of protecting our sacramental use of peyote in our bona fide religious services and ceremonies.

Jackie Never Miss A Shot
 Jackie Never Miss A Shot,
 Secretary, N.A.C. of State
 South Dakota
By Eddie M. Spivey
 Assistant Secretary

A-T-T-E-S-T

Scott American Horse
 Scott American Horse, President
 N.A.C. State of South Dakota

**NATIVE AMERICAN CHURCH, HALF-MOON FIREPLACE
STATE OF WISCONSIN, INC.**

**STATEMENT OF SUPPORT
FOR
AIRFA AMENDMENTS**

The Native American Church, Half-Moon Fireplace, State of Wisconsin, Inc., supports the proposed amendments to the American Indian Religious Freedom Act concerning the traditional use of peyote. We are aware of the significance of the April 17, 1990 Supreme Court decision, Employment Division of Oregon v. Smith, (493 U.S. 378) and the adverse affect upon the Native American Church. The impact of the Supreme Court decision has varied negative implications for members in all states. Even among the states with exemptions the risk of reversal exists.

Additionally, our church members run the risk of felony prosecution when transporting the lawfully acquired peyote from Texas to our home church chapter; and we are also legally prohibited from joining with our friends and relatives in other NAC chapters for the purpose of prayer in other states which may not have a law that is respectful of our tradition.

Although the State of Wisconsin enacted in its 1978 drug law an exemption for the bona fide religious use of peyote, uniform legal protection through the federal legislative process is well-advised. We call upon Congress to exercise its trust responsibility by responding to the need to safeguard the traditional use of peyote.

Following the lead of the Native American Church of the United States, subsequently changed to the Native American Church of North America, our organization filed Articles of Incorporation under Wisconsin Statutes, Chapter 181, on November 13, 1953. The Native American Church, Half-Moon Fireplace, State of Wisconsin, Inc., organized "to promote the Christian religious belief of the Winnebago and other tribes and all Indians within the United States; to teach the scriptures, morality, kindly charity and right living, and to cultivate a spirit of respect and brotherly love and union among all Indians; and other benevolent charitable and reformatory purposes."

The American Indian Religious Freedom Act (AIRFA) passed in 1978, was signed into law by President Carter, who stated in signing it, "to protect and preserve the inherent right of American Indian... people to believe express and exercise their traditional religions." As a policy law, with no specific protections and enforcement mechanisms for the Native American Church, AIRFA requires an amendment to give specificity and enforcement mechanisms to it. The speedy passage of the proposed amendment will correct the current neglect of legal protection of an estimated one quarter of a million Native American Church members

for the bona fide religious use of peyote. Moreover, the proposed protections will serve to preserve and protect Indian cultures and the traditional use of the peyote cactus in Indian ceremonies. Among Winnebago tribal members the cultural cohesiveness is manifested in the maintenance of a complex kinship system, tribal values and the ancestral language. The practice of the Native American Church has contributed to the maintenance of cultural integrity and cohesiveness. Winnebago tribal members will provide testimony to the significant role of the use of the sacrament peyote in combatting alcohol and drug abuse. Thus, all of the foregoing is highlighted in support of the amendment proposed to the new Congress.

We recommend the passage of the proposed Amendment to the American Indian Religious Freedom Act concerning the traditional use of peyote. In addition, we recommend the provision for the hiring and employment of American Indians in federal agencies dealing with issues identified in the amendment.

Dated: 1-9-93

BY: George Handsley
GEORGE HANDSLEY, President

NATIVE AMERICAN CHURCH, HALF-MOON FIREPLACE
STATE OF WISCONSIN, INC.

WHEREAS, the Native American Church, Half-Moon Fireplace, State of Wisconsin, Inc., is a bona fide church organization filed under Wisconsin Statutes, Chapter 181, on November 13, 1953; and

WHEREAS, the Native American Church, Half-Moon Fireplace convened a special meeting on December 27, 1992, at Tomah, Wisconsin; and

WHEREAS, the cultural and spiritual survival of Native American people is closely tied to the continuation, preservation and well-being of our tribal religious traditions; and

WHEREAS, the right to worship is a fundamental human right that most Americans take for granted; and

WHEREAS, in Lyng v. Northwest Indian Cemetery Protective Association, and in Employment Division, Department of Human Resources v. Smith, the Supreme Court ruled that the First Amendment does not protect traditional Native American sacred sites from destruction (Lyng), or the peyote religion of the Native American Church (Smith); and

WHEREAS, the American Indian Religious Freedom Act has not prevented the federal government from unnecessarily engaging in activities which impair or disturb Native American religious practices on federal lands.

THEREFORE, BE IT RESOLVED, that the Native American Church, Half-Moon Fireplace urges Congress to enact legislation that will protect Native American religions and basic religious freedom,

similar to that recently circulated to tribal leaders by Senator Inouye.

BE IT FURTHER RESOLVED, that to that end, the Native American Church, Half-Moon Fireplace petitions Congress to immediately hold hearings on legislative proposals that have been developed to protect Native American religious freedom, with the goal of passing legislation by the end of 1993; and

BE IT FURTHER RESOLVED, that the United States Government, through its departments, appropriate money and Indian personnel to implement the American Indian Religious Freedom Act.

CERTIFICATION

I, the undersigned, as Secretary of the Native American Church, Half-Moon Fireplace, State of Wisconsin, Inc., hereby certify that the Native American Church, Half-Moon Fireplace, State of Wisconsin, Inc., of whom 3 constituting a quorum were present at the meeting duly called and convened the 27th day of December, 1992, and the foregoing resolution was duly adopted at said meeting by an affirmative vote of 8 members, 0 opposed, 0 abstaining, and that said resolution has not been rescinded or amended in any way.

NATIVE AMERICAN CHURCH,
HALF-MOON FIREPLACE,
STATE OF WISCONSIN, INC.

Dated: December 28, 1992

Helene C. Lincoln
HELENE C. LINCOLN, Secretary



Native American Church of Wyoming

for Arapahoos & other tribes

Res. No. 1

RESOLUTION

WHEREAS, The use of Peyote, also known as Lophophora Williamsii as a sacrament, and other herbs and plants, is widespread among American Indians; and

WHEREAS, The said position paper discusses the problems surrounding the use of Peyote, also known as Lophophora Williamsii, as a sacramental herb, and other herbs and plants of the Native American Church, and Critical Issues; and

WHEREAS, In Lyng v. Northwest Indian Cemetery Protective Association, and in Employment Division, Dept. of Human Resources v. Smith the Supreme Court ruled that the First Amendment does not protect traditional Native American sacred sites from destruction (Lyng), or the peyote religion of the Native American Church (Smith):

NOW, THEREFORE, BE IT RESOLVED, That this Organization has a State Charter to deal with other organizations, including Federal, State, and local governments, toward the solution of the problems surrounding the acquisition, possession, and use of Peyote, also known as Lophophora Williamsii, as a sacrament, and the use of other herbs and plants, in the Native American Church rituals and ceremonials; and

BE IT FURTHER RESOLVED, That the Organization is authorized and hereby directed to seek all manner of solution to the issues surrounding Peyote, including administrative relief and judicial and legislative remedies, and to seek and obtain the advocacy and support of all agencies, including Federal, State, and local governments, with the First Amendment of the Constitution of the United States of America, with appropriate exemptions.

RESOLUTION

The foregoing resolution, was adopted by a majority vote of the Native American Church members. Date January 6, 1992.

Abraham Spotted Elk, Sr.
Abraham Spotted Elk, Sr., President
Native American Church of Wyoming
for Arapahoos & Other Tribes

That the Native American Church of Wyoming for Arapahoes & Other Tribes urges Congress to enact proposed legislation, similar to that recently circulated to tribal leaders by Senator Daniel Inouye, that will protect Native American religions and basic religious freedom, and to that end the Native American Church of Wyoming for Arapahoes & Other Tribes petitions Congress to immediately hold hearings on legislative proposals that have been developed to protect Native American religious freedom, with the goal of passing legislation by the end of 1992.

DATE: 1-6-92**INTRODUCTION**

American Indian culture, tradition, and history are the basis for Indian identity, values, and uniqueness in the United States of America. There is a common background for Indian culture, tradition, and values, particularly in the area of worship, life-styles, and the perception of the Indian to his environment. This is to the extent that it has been correctly represented that the "American Indian lived in harmony with nature." This was and continues to be true with the traditional Indian in his manner and style of worship, which manner extends into practically every facet of the Indian way, including culture, social, economic, and other areas of the Indian life-style.

Similarly, Indian worship is not readily divided among many forms as it is with Christianity and other religions. The separation of church and state generally does not apply to traditional Indian situations, although there is exception to this, as with any rule.

Also unique are the sites, mediums, and methods of Indian meditation and worship. The Indian uses permanent sites, semi-permanent sites, and almost every location for his worship. He uses every form of nature, including animals, plants, birds, and every form of living and non-living things in his worship, which practices frequently extend to other areas of the Indian life-style. The known is extended to the unknown, such as the relating of worship to the morning star.

In view of this complex but common background, it is now time for the American Indian peoples of this country to be considering a position from which the contemporary Indian who has been away from the traditional Indian patterns, as well as the rest of the country, can better understand, respect, and relate to the Indian culture, tradition, and values, particularly in the light of some current and critical issues.

To this end, this paper was offered to the members of the NATIVE AMERICAN CHURCH OF WYOMING FOR ARAPAHOES & OTHER TRIBES, and Critical Issues, DATED: June 6, 1992. It was unanimously adopted as the position paper of the continuing organization, which is known as NATIVE AMERICAN CHURCH OF WYOMING FOR ARAPAHOES & OTHER TRIBES. Some actions by the Indians are necessary to preserve Indian tradition, culture, worship, and the Indian way of life.

CONCLUSION

In spite of common backgrounds and similarities, there are a great variety of methods of tradition, culture, and worship among Indians. There is no common value system which can be applied in total across Indian peoples or even among tribes. This variety and

difference does not lessen the authenticity nor the peace of mind it brings to tribal and individual practitioners of Indian worship. This worship is mentioned in that it is an integral part of the Indian way of life and culture which cannot be separated from the whole. This oneness of Indian life seems to be the basic difference between the Indian and non-Indians of the dominant society. It may be noted that under the precept of separating "church from state", the churches, thence the religious practices of the United States people, enjoy immunity from regulations, enforcement agencies, and enjoy equal protection -- under the laws of the United States. Recent events indicate that Indians do not enjoy this equal protection in their ceremonial and traditional worship. If this is the case.... it follows that the entire culture of the American Indian is vulnerable to regulation, suppression, and liquidation by imposing over-control measures upon Indians which is inimical to the principle of Indian self-determination and the separation of church and state.

ISSUES OF SELF-DETERMINATION

Recent events clearly identify a critical need for Indians to act now to protect, preserve, and revitalize Indian culture, including life-styles, worship, and equal protection under United States law and the Government. The understanding support, protection, and advocacy of the United States and all of the subdivisions of the Government are needed.

In Lyng v. Northwest Indian Cemetery Protective Association, and in Employment Division, Dept. of Human Resources v. Smith, The Supreme Court rules that the First Amendment does not protect traditional Native American sacred sites from destruction (Lyng), or the peyote religion of the Native American Church (Smith).

At the same time, Indians must now share their sensitivities, concerns, and aspirations with one another, in order that common positions, may be established; then to share some of these concerns with the rest of the country.

Now for some comments on current issues:

American Indians have used sites, and all forms of natural and living things in their culture and worship since time immemorial. Indians must now exert every effort to protect their God-given right to use all living forms in their culture, including their traditional acts of worship, which practices sometimes predate the United States of America, its laws, and even the so-called discovery of this continent BY WESTERN EUROPEANS!

Peyote - Its Use and Acquisition. The use of peyote (*Lophophora Williamsii*) a sacrament, is widespread among American Indians, although it is not universal in any sense. It is mentioned here because the users of peyote, which is another critical issue today facing the Indian way of life, including tradition, culture, and native worship.

The Native American Church is a chartered organization to facilitate the use of peyote as a part of Indian ceremonials. The Native American Church recognizes and sanctions all "fire-places" ... which is another way of recognizing that there is no particular orthodoxy within the use of peyote, as there is no common orthodoxy in native Indian worship.

Because of its organization (Native American Church), the use of peyote has been extended some exceptions to laws which govern peyote and its sale, and use, particularly under Texas law. (The plant is peculiar to some areas of the State of Texas and the northern part of Mexico.)

The peyote issue is critical for several reasons:

- Its acquisition is becoming more difficult and enforcement of regulations is contributing to a rise in prices and a shortage of supply.
- Lands where the plant is available are rapidly falling into control of parties who do not share a sensitivity for the Indian-way.
- Lands where the plant grows are being subjugated to other uses, which further diminishes the supply or its availability for sacramental purposes.
- A continued supply of the plant is necessary for the continued capacity of many Indians to continue their native worship and life-styles.
- Present sanctions and exceptions to the law are not adequate... there needs to be more protection and more support from the United States and all levels of Government, including the designation of lands amendable for harvest of the plant for sacramental use.

~~REDACTED SECTION OF DOCUMENT~~

The issues surrounding the peyote issue are symptomatic of the circumstances surrounding native Indian culture, worship, and the Indian way of life. The Government does not similarly regulate culture of the rest of the American society, particularly in the areas of worship.

- Government enforcement officials do not confiscate wines and other unlicensed property of churches of all denominations, races, and languages, except American Indians.
- Government offers protection for the use of churches, accessories and all that is used in the name of the church, to the extent of rationalizing fund-raising and non-taxable funds, property, and other exemptions.

Because of these, regulation of any segment of this way of life is tantamount to a suppression of the Indian way of life and culture!

CONCLUSION

This paper recognizes that there are many alternatives open to Indians of all tribes, beliefs, and disciplines. It does not pretend to speak for all Indians nor for any particular way of life among the many life-styles of American Indians. It recognizes that there is no particular orthodoxy which can adequately govern all forms of worship or culture. More importantly, it recognizes that there is unprecedented threat through recent events which give rise to a critical issue in the Indian way of life.

To the purpose of maintaining, preserving, and perpetuating the American Indian way of life, this position paper is respectfully adopted.



Crow Country

CROW TRIBAL COUNCIL

P.O. Box 159
Crow Agency, MT 59022
(406) 638-2601

November 18, 1991

Senator Daniel K. Inouye, Chairman
Senate Select Committee On Indian Affairs
United States Senate
828 Hart Building
Washington, D.C. 20510-6450

Dear Senator:

I have reviewed proposed bills affecting Indian tribes distributed by your office.

Although we all share the concerns and the intentions of the proposed bills, I have more concern in the area of Native American religious freedom, i.e. the use of peyote as religious sacrament by Indian people. The Crow Indian Peyote Ceremonies of the Crow Nation, thus, took action to authorize our officers to fully assist and support your efforts on this measure, as well as authority to join other organizations, copy of resolution attached.

Since my organization has adopted a resolution on this matter, I will present another resolution to the full Crow Tribal Council at its next quarterly session on January 11, 1992. I foresee no problem from the Crow Tribal Council.

I share the same concern with you on this very important matter. Should you have any questions, please do not hesitate to contact me at 406-638-2601, ext. 105.

With regards, I remain

Sincerely yours,

Arlo Daves, President
Crow Indian Peyote Ceremonies
Crow Nation

R E S O L U T I O N


A Resolution Of The Crow Indian Peyote Ceremonies To Authorize The Officers To Join The Senate Select Committee On Indian Affairs, As Well As Other Organizations To Urge The United States Congress To Pass Legislation To Protect Native American Religious Freedom,


Whereas, it has become necessary for the Crow Indian Peyote Ceremonies and its Officers to join efforts with the Senate Select Committee on Indian Affairs and other organizations in an effort to urge the United States Congress to pass legislation protecting Native American religious freedom,

Therefore, Be It Resolved, by the Officers and the authorities of the Crow Indian Peyote Ceremonies that the present Officers are hereby authorized to join with any and all organizations on behalf of the Crow Indian Peyote Ceremonies in the efforts of urging the United States Congress to pass legislation in regard to the use of peyote,

Be It Further Resolved, that the Officers are also authorized to solicit or obtain any fundings from any source and expend such monies for this purpose.

Passed and Adopted on this 18th day of November, 1991.


Arlo Dawes, President
Crow Indian Peyote Ceremonies


Andrew Russell, Vice-President
Crow Indian Peyote Ceremonies

RESOLUTION

SAC AND FOX CHAPTER
NATIVE AMERICAN CHURCH

A RESOLUTION EXPRESSING SUPPORT OF THE PROPOSED AMENDMENTS TO THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978; REQUESTING FAVORABLE CONSIDERATION BY THE U.S. CONGRESS FOR THE ENACTMENT OF THE PROPOSED AMENDMENTS.

WHEREAS, the Sac and Fox Chapter, Native American Church, was officially sanctioned and chartered October 11, 1918 in Oklahoma, and

WHEREAS, the American Indian Religious and Freedom Act of 1978 provides the protection and insures the rights under the First Amendment to free exercise of religion, and

WHEREAS, the American Indian Religious and Freedom Act provides for the protection on the use and possession of peyote by members and members of the Native American Churches, and possess peyote and eagle feathers and protect against destruction of sacred sites, and

WHEREAS, the Sac and Fox Nation's government recognizes, respects, and guarantees the rights and traditional beliefs of its members to worship as members of the Native American Church, and has adopted favorable legislation and laws providing for exemptions for the members and members of the Native American Churches within their respective jurisdiction for the possession of peyote, per Resolution 88-50-10.

WHEREAS, the Honorable Senator Daniel Inouye will introduce proposed amendments to the American Indian Religious Freedom Act which will strenghten and provide greater protection for Native American Churches throughout the United States.

NOW THEREFORE BE IT RESOLVED THAT the Sac and Fox Chapter Native American Church does hereby express full support of the proposed amendments to the American Indian Religious Freedom Act 1978.

FURTHER BE IT RESOLVED THAT the Sac and Fox Chapter of the Native American Church does hereby respectfully request favorable consideration by the U.S. Congress for the enactment of the proposed amendments to the American Indian Religious Freedom Act of 1978.

CERTIFICATION

We, the undersigned Chairman and Secretary of the Sac and Fox Chapter of the Native American Church do hereby attest that this Resolution was duly adopted and witnessed by our signature this 25th day of May, 1979.

Mary Butler
Mary Butler, Sec.

Larry Butler
Larry Butler, Chairman

Native American Church
State of Idaho
Fort Hall, Idaho 83203
Willard Ballard, President

December 26, 1991

The Honorable Daniel K. Inouye, Chairman
Senate Select Committee on Indian Affairs
SH-838 Hart Senate Office Building
Washington, D.C. 20510-6540

RE: Amendments to the American Indian Religious
Freedom Act

Dear Chairman Inouye:

The State of Idaho, Native American Church, Board of Directors have received a copy of the draft legislation you sent to Indian Tribes. We strongly support and urge your endeavors to sponsor legislation protecting Indian religion, culture and tradition.


Freedom of religion, under the First Amendment of the United States Constitution, a citizen's right, sanctions the Native American to practice our spiritual belief without fear and bondage of laws imposed by the Federal, State and Tribal Governments. Although, we fully abide by ALL laws, our way of survival as Native Americans is still in question.


American Indian Religious Freedom Act of 1978, 42 U.S.C. Sec. 996 and the American Indian Civil Rights Act of 1978 are protections of our inherent rights for Native Americans. Still, with the two (2) Acts, we are challenged through the U.S. Supreme Court, constantly fighting for freedom of religion. Wording has to be changed and made stronger for our protection to be more beneficial for Native Americans.

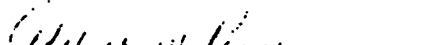
With this letter, our support is with you during your legislative hearings on the draft Indian Religious Freedom Act and may Congress enact legislation for the best interest of our people. May our plea be heard and the protection and preservation of our Indian religion, culture and tradition be granted for ALL Native Americans. Thank you, NAC Board of Directors 1991-92.



Willard Ballard, President

Page two
December 26, 1991


Alvin Buckskin, Vice-president


Allen Tindore, Treasurer


Adeline M. Ponzo, Secretary


Fred Auck, Board of Director


Carlino Broncho, Board of Director


Leonard Mosh, Board of Director

cc: file

**AMERICAN INDIAN RELIGIOUS FREEDOM COALITION
FOR THE AMENDMENTS TO THE
AMERICAN INDIAN RELIGIOUS FREEDOM ACT**

Y E E. Our organization supports the proposed amendments to AIRFA, and we would like to be included in the following ways:

- Add our name to the list of AIRFA Coalition members.
- Active involvement in the legislative advocacy process in Senate and House.
- Endorsement of AIRFA amendments, but cannot formally join the AIRFA Coalition at this time.

NAME OF ORGANIZATION: Native American Church of Oklahoma

ADDRESS: 1006 East Lee

Sapulpa, Oklahoma 74066

TELEPHONE: (918) 224 - 6674

FAX: _____

CONTACT PERSON: Melvin George, Chairman

AUTHORIZATION SIGNATURE: *Melvin George*

TITLE: State Chairman

DATE: 12 - 24 - 92

ORGANIZATION NAME AS YOU WISH IT TO APPEAR ON COALITION MEMBER LIST
(IF APPLICABLE):

Native American Church Of Oklahoma

Please complete this form and send it to:

James Botsford, Indian Law Office Director
Wisconsin Judicare, Inc.

408 Third Street, Suite #408

P.O. Box 6100

Wausau, WI 54402-6100

Tel: (715) 842-1681 FAX: (715) 848-1885

**AMERICAN INDIAN
RELIGIOUS FREEDOM COALITION
FOR THE AMENDMENTS
TO THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT**

MEMBERS

American Baptist Churches, U.S.A.
 American Civil Liberties Union
 American Ethical Union,
 Washington Ethical Action Office
 American Indian Anti-Defamation Council
 American Indian Ritual Object Repatriation
 Foundation
 American Jewish Committee
 Americans for Indian Opportunity
 Apache Survival Coalition
 Association on American Indian Affairs
 Confederated Salish and Kootenai Tribes,
 Flathead Reservation, Montana
 Congressional Human Rights Foundation
 Conservation International
 Council for American Indian Ministry,
 United Church of Christ
 Crow Indian Peyote Ceremonies (CIPC)
 Cultural Conservancy
 Cultural Survival
 Episcopal Council of Indian Ministries
 Friends Committee on National Legislation
 Friends of the Earth
 Greenpeace
 Heart of the Earth Survival School
 Prison Program
 Hollywood Policy Center Foundation
 Honor Our Neighbors Origins & Rights (HONOR)
 Keepers of the Treasures
 KIFARU Productions ~ San Francisco
 Learning Circle, The
 Lutheran Office for Governmental Affairs,
 Evangelical Lutheran Church in America
 Maryknoll Fathers and Brothers,
 Justice and Peace Office
 Medicine Wheel Coalition
 Mennonite Central Committee, U.S.
 Morning Star Foundation
 National Audubon Society
 National Conference of Christians and Jews,
 Inc. ~ Minnesota-Dakotas Region
 National Congress of American Indians
 National Indian Education Association
 National Parks and Conservation Association
 Native American Church, Half-Moon Fireplace,
 State of Wisconsin, Inc.
 Native American Church of Navajoland
 Native American Church of North America
 Native American Church of Oklahoma
 Native American Church of Wyoming
 Native American Church of the State of
 South Dakota
 Native American Prisoners' Rehabilitation
 Research Project
 Native American Religious Freedom Project
 of the Native American Church
 Native American Rights Fund
 Native Lands Institute
 Native Spiritual Cultural Councils, Inc.
 Natural Resources Defense Council
 Navajo Corrections Project
 Navajo Nation (Support in principle)
 Presbyterian Church U.S.A.
 Sealaska Corporation
 Seventh Generation Fund
 Sierra Club
 Student Environmental Action Coalition
 Unitarian Universalist Association of
 Congregations, Washington Office
 United Church of Christ, Office for Church
 in Society
 United Methodist Church, General Board of
 Church and Society
 Wilderness Society
 Winds of Life
 Wisconsin Tribal Judges Association
 Women's International League for Peace
 and Freedom
 Writers Guild of America, West

**INDIVIDUAL STATE STATUTES
REGARDING THE USE OF PEYOTE**

Tied to CFR	Full Exemption For any Bona Fide Religious Use	Full Exemption For Bona Fide Religious Use by Native American Church	Bona Fide Religious Use as Affirmative Defense	Exemption for Bona Fide Use on Reservation Only	Court Created Exemptions
Utah	New Mexico	South Dakota	Arizona	Idaho ¹	California
Rhode Island	Colorado	Wisconsin	Oregon		Oklahoma
New Jersey	Nevada	Minnesota ¹			
Washington		Wyoming			
West Virginia		Texas ¹			
North Dakota		Iowa			
Tennessee		Kansas			
Alaska					
Montana					
Mississippi					
Virginia					
North Carolina					

¹Exemption Applies only to Members of Native American Church who are also Enrolled or Enrollable Members of a Federally Recognized Tribe.

¹Reads "American Indian Church".

¹Contains a 25% Blood Quantum Requirement.



U.S. Department of Justice
Drug Enforcement Administration

Washington, D.C. 20537

AUG 08 1991

Mr. Douglas J. Long
President
Native American Church of North America
Route 1, Box 67
Osseo, Wisconsin 54758

Dear Mr. Long:

This is in response to your letter of July 13, 1991, with which you enclosed a copy of your proposed amendment to the American Indian Religious Freedom Act. The proposed amendment would create a statutory exemption for the sacramental use of peyote in ceremonies of the Native American Church. As such, it would replace the Drug Enforcement Administration's (DEA) regulatory exemption found at 21 C.F.R. 1307.31.

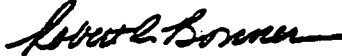
As you know, the Bureau of Narcotics and Dangerous Drugs DEA's predecessor agency, issued the regulation in response to Congress' documented direction that it do so. While we were pleased that in Peyote Way Church of God v. Thornburgh, 922 F.2d 1210 (1991), the regulation was upheld by the United States Court of Appeals for the Fifth Circuit, DEA has long preferred a statutory exemption over an administrative one. Accordingly, DEA personnel who participated in your recent meeting with representatives of several Department of Justice Offices and Divisions supported your proposed statutory amendment. Within the past few weeks, the Department of Justice requested that DEA formally state its views with respect to the proposed amendment. As our representatives did during the aforementioned meeting, DEA strongly supported the legislation while suggesting some minor changes which would make clear that the exemption applied only to Native Americans and would recognize DEA's legitimate role in regulating those persons who import or harvest peyote and distribute the material to the designated representatives of the Native American Church. We anticipate that Congress will also be interested in our views as your amendment moves through the legislative process.

Mr. Douglas J. Long

Page Two

I have been advised that since the enactment of the Controlled Substances Act, DEA and the Native American Church have maintained a close working relationship with respect to the handling of peyote. DEA's registration and regulation of peyote distributors and the Church's self-regulation of the handling of the substance have combined to insure the availability of peyote without diversion or abuse. I look forward to a continuation of this cooperative environment and wish you well in your term as president of the Native American Church of North America.

Very truly yours,



Robert C. Bonner
Administrator of Drug Enforcement

Mr. RICHARDSON. Thank you, President Long.
The chair recognizes President Robert Whitehorse.

STATEMENT OF ROBERT WHITEHORSE

Mr. WHITEHORSE. Thank you, Mr. Chairman, members of the subcommittee. I appreciate the time this morning.

My name is Robert (Billy) Whitehorse. I reside in Cortez, Colorado. I am the president of the Native American Church of Navajoland, representing the Navajo people from Arizona, New Mexico, Utah, and Colorado. I appreciate, Mr. Chairman—Mr. Richardson—that you took this upon yourself to introduce the bill on the House side, and I would like to say a word for the Navajo Tribe. We would like to thank you and this subcommittee for taking this giant step for the Navajo people, not only the Navajo Tribe but also the Navajo Indians across the Nation here.

Mr. Chairman, my position as the president of the Native American Church of Navajoland is that we have full support from our members of the tribe, meaning that we have registered members of 30,000 currently of the Navajo people, and we are wholeheartedly supported by the Navajo Tribal Council and our president, Mr. Peterson Zah, his administration, and the Council and the present administration have supported wholeheartedly the production of the amendment of the bill to the State legislature. We currently have a bill with this position, and the New Mexico State legislature has wholeheartedly supported us, and so has the State of Arizona. By going this route, we are now united by all the Indian tribes across the United States and then beyond—Alaska, et cetera.

I would like to say here that being members of the Native American Church, I think this is the last resort that the Indian tribes are holding on to as a holy sacrament. In history, we have found out that this medicine, the holy sacrament, will come back to us, as the Navajo Tribe says. I think we are in the stage where we need to hold on to our sacrament for us to have freedom and rights to practice religion.

Also, on this route, we found out that there are hard obstacles that we are currently facing, meaning that our youngsters, when they enroll in education, our church members, members of the Native American Church, are not fully recognized. This is true with the American soldiers and veterans. Our tribes across the United States serve, and we come across hard obstacles indicating that recognizing the peyote is not really there.

Also, in any type of religious ceremony that the Indian people are used to, I think we are still feeling that the United States Government is not fully protecting us to the extent where we will have freedom of religion. I think what we are saying here is that we are only repressing the freedom of religion that is recognized in the United States where we have a provision for the Native American to have the same rights.

I think not only going this route and recognizing the medicine, the peyote, the holy sacrament, but I think this bill entails others—Titles 1, 2, 3, 4, and 5—which we wholeheartedly support, and in one way or another they are related.

So, Mr. Chairman, just as I indicated, the Navajo Tribe does have stature with our own tribal government, and we are also established with Arizona and New Mexico, and we do have a charter of places in each State, and Texas recognizes our way of religion; the bill has been in place for us.

So in the interests of your time, Mr. Chairman, I would like to have my written statement in the record. We have several attachments included for your information that show the long history we have, meaning that we have opposition when the Supreme Court came down with the *Smith* decision, and we want our position to be answered. Through our prayers, I think the answer was that this bill needs to be amended.

So, Mr. Chairman, in conclusion, I would like to thank you and your subcommittee for this opportunity to speak. The Native American Church of Navajoland supports the Congressional legislation to amend the American Indian Religious Freedom Act that would solve these problems by creating a uniform national law that would remove these obstacles and legal cloud and allow our religion to continue, perhaps finally free of the long history of oppression and persecution and misunderstanding that has troubled us for so long.

On behalf of the Native American Church of Navajoland, I urge you and your colleagues to do everything you can to cut through this wall of misunderstanding, to introduce and forward legislation that will protect the traditional use of peyote. I plea before this subcommittee that Congress should restore our rights to freely practice our Native traditions and religion.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Whitehorse follows:]



NATIVE AMERICAN CHURCH OF NAVAJOLAND, INC.

P.O. BOX 1570 • CHINLE, ARIZONA 86503

PRESIDENT
ROBERT B. WHITEHORSE
VICE PRESIDENT
JESSE THOMPSON
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HELENA CHATO
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JOHNNY C. BARBONE
SERVICE OFFICER
VICTOR CLYDE

STATEMENT BY

ROBERT BILLY WHITEHORSE, PRESIDENT

NATIVE AMERICAN CHURCH OF NAVAJOLAND, INC.

PRESENTED TO

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE HOUSE NATURAL RESOURCES COMMITTEE

BILL RICHARDSON, CHAIRMAN

CONCERNING THE

AMERICAN INDIAN RELIGIOUS FREEDOM ACT

THE TRADITIONAL USE OF PEYOTE

March 16, 1993

Introduction

Congressman Richardson, members of the Subcommittee, thank you for inviting me to present views about the traditional use of sacrament peyote. My name is Robert Billy Whitehorse, President of the Native American Church of Navajoland (NACNL), Inc. I reside on the Navajo Reservation in the great Four Corners region of the United States. My home address is Box 503, Cortez, Colorado.

I come before you with mixed feelings about the U.S. Government's protection of our traditional religious belief and practices. Prior to enactment of American Indian Religious Freedom Act (AIRFA) of 1978, my people have long suffered persecution in many forms from those who do not understand the beliefs, practices and use of sacrament peyote. NACNL members have believed that AIRFA gave us protection in the use of sacrament peyote and to freely practice our religion. This trust in the federal government's fiduciary duty to protect and preserve our traditional use of peyote is greatly hindered by the Lyng and particularly the Smith court decisions.

Our Navajo people travel all over this country and attend Native American Church (NAC) prayer services in many states. Some of those states have no protective laws for our sacrament. This makes our people fearful of persecution, and places a discriminatory burden on their religious practices -- even though those practices harm no one and are rooted deep in history.

It was Navajos working on railroad lines in California in the early 1960's who were arrested for praying in a hogan near Needles, California. Those arrests led to the well known People v. Woody case from the California Supreme Court in 1963, which upheld their right to worship based on the constitutional principle of Freedom of Religion. Now, since the Smith case, that constitutional underpinning has been stripped away. Once again Indian people may

be subject to a felony arrest if they gather in our traditional prayer services in that state and many other states where our religious practice is considered a crime.

An example of continued persecution is best described by the recent threat of two court martial of Sergeant Shawn Arnold, a Navajo member of the U.S. Marine Corps, cited with possession of peyote in the State of California (see Appendix A). The court martial has been dismissed with support from the Navajo Nation Council, NACNL, State of Arizona, State of California and the Comprehensive Drug Abuse Prevention and Control Act of 1970. Sergeant Arnold is an example of fine young individuals that hold prestigious positions in today's society that are consistently discriminated against for their use of peyote. People like Sergeant Arnold and Troy Nakai, another Navajo member of the U.S. Army that participated in Operation Desert Storm, who testified before the Senate Committee on Indian Affairs hearing in Portland, Oregon last year, defended this country and the Constitution in order that the citizens of this country including Native Americans have the freedom to express their basic rights and the right to practice their traditional religious beliefs without being threatened or persecuted (Appendix B)

There are also the risks and indignities for our people in the neighboring state of Arizona because of the way their law is structured. Under the Arizona law, our only protection is proving an "Affirmative Defense" to a criminal charge in use of peyote. We are forced to prove that the use of peyote is: in connection with the bonafide practices of a religious belief; as an integral part of a religious exercise; and in a manner not dangerous to public health, safety or morals. Such laws places an enormous and unfair burden upon members of NAC. Since the Smith decision, the likelihood of arrests and harassment are dramatically increased in states with that type of law. This is not only undignified, but can be very expensive and hard to prove in court.

In this mobile society our people travel and work in the four corners of this land. We are a spiritual people. We cannot be asked to leave our religion at home. Nor can we be asked to restrict our travel or our employment options based on a patchwork of dangerous state laws. With these kinds of laws, it all points clearly to the need for a uniform federal law that would allow protection for the possession, transportation, harvest and use of the peyote.

Theological Role in Traditional Use of Peyote

While most members of NAC have similar beliefs in the religious use of peyote, I will focus on the Navajo beliefs and practices. The sacramental use of peyote for bonafide religious purposes has been in existence for many generations. Navajos believe that this devine herb is a gift of the Creator, as old as the emergence of the Dine' (Navajo) into this world. This is best exemplified in my interview with Navajo Medicine Man Harvey Johnson, stated in my letter to Chief Justice of the United States (Appendix C). The peyote is used as a sacrament and medicine to maintain one's balance with the universe and natural forces. This use of sacrament peyote embraces the principles of the universe and its elements (earth, water, air and light) as a continual process in one's life and communication with the Creator. This use is one of prayer, quiet contemplation, discipline, and seeking guidance in a never-ending search for righteousness to remain in a constant and consistent relationship with the Creator. This belief and practice is our way of life that we want preserved and protected. I have appended the statement of Wilson Aronilth, Jr. which details the traditional use of peyote in his testimony before the Senate Committee on Indian Affairs on February 8, 1993 (see Appendix D).

Native American Church of Navajoland

The Native American Church of Navajoland (NACNL), Inc. is chartered through the states of Arizona, New Mexico and Utah. NACNL has its bylaws and is governed by a Board

of Directors and elected officers comprised of a President, Vice-President, Secretary, Treasurer, an Administrative Service Officer and Liaison Officer. The executive officers are elected by the Board of Directors whom are elected from the 90 local chapters across the Navajo Reservation. The local chapters are responsible in the safekeeping of the use and possession of the sacrament herb. NACNL promotes and has held good working relationships with other Native American Church organizations across the nation. NACNL represents the interests of our people who pray to the creator using this divine peyote in a way that has existed for thousands of years.

My written testimony submitted at the Senate Committee on Indian Affairs field hearing in Portland, Oregon, nearly one year ago indicated 25,000 Navajos have membership cards for our organization. Most other religions do not have membership cards. The vast majority of Navajo people who are affiliated with the Native American Church do not have any official membership document.

Because of the cultural ways of our people, who are quite different from the western society, it would be unreasonable to require our members to be registered as such and carry cards. Therefore AIRFA amendments should not require a comprehensive list of all members. However, amendments should allow for the State of Texas to continue to require proof of membership in an Indian tribe and in the NAC, and to require an Authorization Permit harvest and transport sacrament peyote in Texas. This is also good because in addition to protecting our right to worship, we also want to protect the peyote itself which the Texas regulations does.

Peyote - Not a Medical Problem

In the hundreds of years of known American Indian religious use of peyote, there is no documented evidence of any problems associate with it. Dr. Emery A. Johnson, a physician, issued a statement recently (Attachment E), that he had not found any evidence in abuse of

peyote while working with Indian health for 38 years. Dr. Robert Bergman, also experienced with Indian health programs, found similar conclusions. Dr. Everette Rhodes in his statement (Attachment F) has supported the use of peyote in the healing practices in context of religious rituals.

Support for Religious Use of Peyote

The Navajo Nation has supported strengthening of AIRFA. The Navajo Nation Council, on October 24, 1991, passed resolution CO-73-91 (Appendix G) "to protect and preserve the inherent right and freedom of religion of all members of the Navajo Nation." On February 1, 1993, the Intergovernmental Relations Committee of the Navajo Nation Council passed Resolution IGRF-28-93 (Appendix H), further supporting the strengthening of AIRFA when it approved the Navajo Nation's statement. President Peterson Zah delivered the Navajo Nation's statement before the Senate Committee on Indian Affairs on February 9, 1993 in Albuquerque, New Mexico (see Appendix I). The Intergovernmental Relations Committee stated that "[R]eligious issues affecting the Navajo Nation include protection of the sovereignty of the Navajo Nation over its own land and people, which issue largely encompasses the matter of regulatory authority; further, the Navajo Nation government is wholly committed to the protection of the rights of its individual Navajo members and all Native Americans to live and practice their religion in accordance with individual religious convictions." With this Navajo policy, I am positive that our views and comments will assure amendments of the American Indian Religious Freedom Act of 1978 to protect our traditional use of peyote.

The Dine' (Navajo) Traditional Healing Science Practitioners (Medicine men) also supports the traditional use of peyote when it passed its resolution on November 1, 1991 (Appendix J), stating "the cultural and spiritual survival of Native American people is closely tied

to the continuation, preservation and well-being of our tribal religious traditions."

The states have supported the sacramental use of peyote. The State of Arizona, in 1991, passed Senate Concurrent Memorial 1001 (Appendix K) urging the President of the United States to amend the American Indian Religious Freedom Act to protect the sacramental use of peyote. The State of New Mexico, in 1991, passed the Senate Joint Memorial 15 (Appendix L) that supports amendment of the American Indian Religious Freedom Act "so that the exercise of Native American ceremonial and traditional rites are protected and the use of peyote as a sacramental right is preserved". The state of California has similar statutes. The State of Utah has considered similar protection measures and the State of Utah does abide by the federal peyote exemption in the Comprehensive Drug Abuse Prevention and Control Act of 1970.

The Drug Enforcement Administration (DEA) of the U.S. Department of Justice also helps us protect the use of peyote. DEA has an exemption from the Comprehensive Drug Abuse Prevention and Control Act of 1970 for our religious use of peyote in the Code of Federal Regulations (21 C.F.R. Section 1307.31). That application has been in place since 1965 when peyote was first listed in the Controlled Substances Act. Since that time, and even before then, the Native American Church has enjoyed a good relationship with the federal authorities. In fact, D.E.A. has written a letter supporting of this effort and to put their regulation into a federal statute. That letter was submitted for the record of these hearings at the Portland Hearing on March 7, 1992. President Zah in his statement before the Senate Committee on Indian Affairs in Albuquerque on February 9, 1993, stated support for a statutory exemption over a regulatory exemption.

Conclusion

Thank you for this opportunity to speak. NACNL supports Congressional legislation to

amend the American Indian Religious Freedom Act that would solve these problems by creating a uniform national law that would remove these obstacles and legal clouds, and allow our religion to continue, perhaps finally free of the long history of oppression, persecution and misunderstanding that has troubled us for so long. On behalf of the Native American Church of Navajoland, Inc., I urge you and your colleagues to do everything you can to cut through this wall of misunderstanding to introduce and forward legislation that will protect the traditional use of peyote. I plea before this Subcommittee that Congress should restore our right to freely practice our native traditional religion.

Respectfully submitted this 16th day of March, 1993.

NATIVE AMERICAN CHURCH OF NAVAJOLAND, INC.

A handwritten signature in black ink, appearing to read "Robert Billy Whitehorse", written over a horizontal line.

ROBERT BILLY WHITEHORSE, President

APPENDIX

- A. Testimony of Sergeant Shawn Arnold**
- B. Testimony of Troy Nakai**
- C. Letter to Chief Justice of the United States**
- D. Testimony of Wilson Aronilth, Jr.**
- E. Statement of Emery A. Johnson, MD, MPH**
- F. Statement of Dr. Everette Rhoades**
- G. Resolution of the Navajo Nation Council¹**
- H. Resolution of the Intergovernmental Relations Committee
of the Navajo Nation Council**
- I. Statement of Peterson Zah, President of the Navajo Nation**
- J. Resolution of the Dine' Traditional Healing Science Practitioners**
- K. State of Arizona Senate Concurrent Memorial 1001**
- L. State of New Mexico Joint Memorial 15**

APPENDIX A

TESTIMONY
OF
STAFF SERGEANT SHAWN ARNOLD, U.S.M.C. (NAVAJO)
NATIVE AMERICAN CHURCH MEMBER

PRESENTED
TO
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SENATOR DANIEL K. INOUE, CHAIRMAN

CONCERNING
AMERICAN INDIAN RELIGIOUS FREEDOM:
THE SACRAMENTAL USE OF PEYOTE

PRESENTED
AT A HEARING HELD IN
LOS ANGELES, CALIFORNIA
ON
NOVEMBER 12, 1992

Before I begin, I would like to acknowledge my appreciation to you Senator Inouye, and fellow Senators and Committee staff members for giving me this opportunity and honor to come before your Committee to express my thoughts and testimony concerning the Discussion Draft called "American Indian Religious Freedom Resolution". Even though there are five titles to the Bill the main focus of my testimony will center on Title Two of the Bill which is "Traditional Use of Peyote".

These three American flags before you Sir, belong to my immediate family. The first flag belongs to my grandfather who serviced in WW1, the second flag belong to my father who served during the Korean conflict and the third flag belongs to my brother who recently passed away in July of this year and who served honorably from 1977-81 in the United States Marine Corps. These flags represent three generations of veterans who have passed on into the spirit world like the countless other honorable veterans through out this great country. I just have one younger brother left who also served honorably in the Corps from 1983-86 and distinguished himself in combat both in Lebanon and Grenada. My grandfather, father and brother were active members in the Native American Indian Church too.

From WW1 up to the present date Native American Veterans have always distinguished themselves honorably on the battlefield and during peacetime so it goes to say as veterans our feelings are deeply rooted in what the United States Constitution stands for. Recent decisions in the last several years made in the Supreme Court concerning Protection of Sacred sites (Lyng V. Northwest Indian Cemetery Ass. 1988) and Traditional use of Peyote (Oregon V. Sixth 1990) bring us here today. These decisions have had a devastating impact on a lot of Native Americans starting from the Hawaiian Islands to our far Northern State Alaska and from the West to the East coast. The Supreme Court is not sympathetic towards Native American Rights, and these two decisions have had the most discriminatory impact concernig our inherent right to freely exercise or express our traditional (religious) beliefs as afforded to all American Citizens under the First and Fourteenth Amendment of the United States Constitution of American.

In 1982, after being honorably discharged following four years of faithful service to our great country, I departed the military and, eight months later, I decided to come back into the service. During that time, I informed the Marine Corps that I was an active member of the Native American Indian Church and that "peyote" was used as a sacrament in our ceremonies. Because of this, the Marine Corps sent a request for a waiver to Headquarters Marine Corps in Washington, D.C.. The waiver came back approved, about two to three weeks after the request was sent from Albuquerque, New Mexico. Along with the waiver, the authorization for my reenlistment was granted October 1, 1982. In return, as I did in January 1978, October 1982, December 1985 and June 1991, I raised my right arm and took an oath to defend and give my life, if necessary, in defense of our Constitution in order that, not only

all Native American Indian people, but all other nationalities from all walks of life can have the freedom to express their basic human rights, including the right to practice their traditional religious beliefs without being threatened or prosecuted.

From January 1991, to June 1991, my religious beliefs (faith) were put to the test by the United States Marine Corps. During that time I endured two Court Martials. On January 31, 1991, the Marine Corps sent me up for my first court martial. Within two months into the court martial the Marine Corps dropped the court martial against me and told me that I was cleared of all charges and signed the authorization sheet for my fourth reenlistment. Within three weeks of being cleared of my first court martial the Marine Corps charged me with another Court Martial, and without the intervention of yourself and your colleagues, I don't know what would have happened. Ultimately the second court martial was also dismissed. However, I have no guarantee that the military will not again take action against myself or another of our church members serving in the Armed Forces because of our way of worship.

Under the American Constitution we allow people the right to burn the American flag, but as a Native American Indian who has been faithfully defending our Constitution, as I sit before you Senator giving my testimony, I have to wake each day knowing that I'm being threatened by fear of prosecution if I practice my traditional belief in the Native American Indian Church and that's a very hard feeling.

The issue of my religious freedom does not just concern me, but all Native American Indians, both male and female, who are serving in the Armed Forces all over the world today, as well as the future generations who will put their lives on the line as you and I have, unselfishly, done and continue to do.

In April of 1992, I had an opportunity to briefly express to you Senator, the legal difficulties concerning different traditional beliefs which the military does not recognize, or is not sympathetic about when it concerns basic human rights and religious freedom for active duty Native Americans in the Armed Forces, even though our warriors both male and female are out there defending that right for everyone in the United States.

When we spoke Senator I personally asked that all Native Americans serving on active duty in the Armed Forces be included in the writing structure of the Bill. By doing this Senator it would leave no misinterpretation in the military judicial system as to how they will interpret this legislation.

In conclusion, Senator, I speak for my family and the many other families and veterans across this great country, for we have all talked and prayed many times about this issue concerning our basic human rights as Native Americans to practice our religious and traditional values without having to be threatened or prosecuted by the laws which govern the Constitution of the United States. I

respectfully ask as a citizen of the United States of America that all of our words through these testimonies be heard by you, the law makers of this Country, and that you all grant your support in defending our right to religious freedom, a right this country was founded upon.

As a veteran of the Marine Corps for over fifteen years, it gives me great hope to know we have outstanding political leaders such as your self and the other honorable members who are also with the United States Senate and sit on your Committee with a dedication to fairness for all humankind. To me, what makes our country what it is today is exceptional leaders like yourself and your Committee members. Thank you.

As attachments to my testimony I would like to submit for the record of this Hearing the following supportive documentation:

1. Department of the Army Pamphlet No. 165-13 dated April, 1978 entitled "Religious Requirements and Practices of Certain Select Groups , A Handbook for Chaplains". I am submitting that portion which describes the Native American Indian Church.

2. A Memorandum from the Congressional Research Service, Library of the Congress to the Senate Select Committee on Indian Affairs dated April 20,1990, and entitled "Native American Church: Background Information".

3. Copies of portions of my military record which corroborate my testimony with regard to my 1992 reenlistment and subsequent court-martial actions taken against me.

4. Resolution of the Navajo Tribal Council (CF-14-90) entitled "Declaring the Navajo Nation's Opposition to the Persecution of the Native American Church and Urging Other Governments to Recognize as a Religion an To Accommodate the Practice of the Religion of the Native American Church.

5. Petition signatures of 866 registered voters from numerous states who, after listening to my story and hearing about the proposed amendments to AIRFA wanted to voice their support.

Shawn Arnold

SSgt USMC

TESTIMONY
OF TROY NAKAI
MEMBER, NATIVE AMERICAN CHURCH
U.S. ARMY COMBAT VETERAN, DESERT STORM

PRESENTED
TO
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SENATOR DANIEL K. INOUE, CHAIRMAN

CONCERNING
AMERICAN INDIAN RELIGIOUS FREEDOM:
THE SACRAMENTAL USE OF PEYOTE

PRESENTED
AT A HEARING HELD IN
PORTLAND, OREGON
ON
MARCH 7, 1992

Senator Inouye, representatives from the Congress of the United States, I am honored to be invited to speak to you today on a subject that is of the deepest importance in my life.

My name is Troy Nakai. I am Navajo and Winnebago and live in Navajo, New Mexico. I have been a member of the Native American Church all my life. I was baptized into this church as an infant. My family has always been active members of the Native American Church.

I joined the Army in December of 1987. My family had Native American Church services for me when I left for the Army. My family also sponsored Native American Church prayer meetings for me when I was in the service, for instance when I was first sent to be stationed in Europe.

When I was stationed in Germany I got orders for Saudi Arabia during Desert Shield. I was sent there in November of 1990. I was there when on January 15, 1991 Desert Shield became Desert Storm.

I was in a front line combat unit until May of 1991, after the conclusion of Desert Storm. I was there on that "Highway of Death" on the road to Baghdad. I suffered there with those people in my own way. Then I was sent back to Germany and subsequently discharged honorably.

I had a hard time adapting to civilian life. It was like I had too much freedom all at one time. I couldn't sleep lying down. I couldn't sleep near anyone. People asked me if I was O.K. I was getting on the bad side of my family. Things got worse for me. I would drink and party a lot.

One day I was talking to my dad. I told him I didn't want to go on this way. He offered to help me. He put up a Native American Church prayer service for me. I really helped me out all around. I don't drink, smoke...none of that stuff. I'm working every day and, as a single parent, I'm taking care of my son.

I had forgotten about taking care of myself. Through the prayer services of the Native American Church, I got control of my life again.

When I joined the Army I raised my hand and took an oath. The First Article of the Army Code of Conduct says: "I am an American fighting in the Armed Forces which guard our country and our way of life, and I am prepared to give my life in their defense."

I was thinking about the Native American Church and how that falls within the meaning of this Article. That is what that Article meant to me. Religion is a part of the way we live. I was doing what I had to do so people back home will have this right....to pray as they are taught to pray and choose to pray.

When I came back from the Army and realized the United States Supreme Court said that the Constitution doesn't protect this Native American Church way of life and our way of praying with the sacrament of peyote...I felt disappointed.

If it's going to be like that why do they say what they do in the First Article of the Code of Conduct to protect "our way of life"? Religion is the heart of our way of life.

I went into the military and sacrificed that time of my life. It almost makes me feel like I wasted my time. I sacrificed my

time and effort to not only better myself physically and mentally, but to do this on behalf of my family and relatives. I went as far as actually laying my life on the line for what I believed.

Therefore, if I was to ask for anything I would ask for this law to be passed for the Native American Church because our way of life is basically what I joined the military for.

A long time ago I prayed that someday if I could do something on behalf of my church, I would do or say it without a second thought. And now I've been awarded this opportunity to do so. SO I'm here now. Before I came here I also prayed for a positive outcome. Hopefully my prayers will be answered again.

APPENDIX C

**NATIVE AMERICAN CHURCH OF NAVAJOLAND, INC.**

P.O. BOX 1570 * CHINLE, ARIZONA 86503

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CLIFFORD DAVIS
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HELENA ORTIZ
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JOHN W. C. BARRON
LAWSON HANCOCK
AGNES BUCKLE
SERVICE OFFICER

FILE

The Chief Justice of the United States,
William H. Rehnquist
and The Associate Justices of the Supreme
Court of the United States
Washington, D.C. 20543

Dear Mr. Chief Justice and Associate Justices

This letter is in regard to the sacred ceremonies and use of sacred herbs by the Dine', the Navajo. The contents are based upon an interview with Harvey Johnson. He told this story in his native Navajo language. It is retold here in English by his sons. Mr. Johnson, 85 years old, is one of the prominent Medicine Men in the Navajo Nation. He is relied upon by the Navajo people because of his vast knowledge of Navajo history, culture, and ceremony. But he is more than an historian, he is a Man of Medicine, a healer, a holy man who has devoted his life to the well being of the Navajo. The interview begins with Mr. Johnson relating the creation story of the Dine'. Very few Medicine Men have his knowledge.

In order for me to explain this, so that it will make sense and tie together, I can't just tell you about how we got the medicines, sacred herbs, I must tell you the story of our creation. This is difficult for me because I am Dine', Navajo. My language, religion, the way I think is different from most of the people in America. It may be difficult for you because I do not know you, know your language or your God. But we must try to understand each other because this is a matter of great importance to all Dine'. In another way, this is a matter of great importance to all people. Maybe in our understanding we will come to know and trust each other.

Before the Dine', i.e., present day Navajo people, were created, there were holy people who lived on earth. They were made by the Great Spirit. They were created for the purpose of laying out the plans to create the earthly Dine'. They created, "First Man and First Woman," and with the assistance of the first man and woman the Holy People created the first children, four of them.

The first earthly people (Dine') would not flourish and multiply as the holy people had intended because the earth was a hostile place with many dangers. So, the Great Spirit created, "Changing Woman." She was raised on earth by First Man and First Woman. They were instructed by the Holy People as to how to raise her. The Changing Woman (Asdzaá Na'dleehé) was brought up in accordance with the primal law of the Great Spirit (Diyin Ayo'at'ei). The way she was raised has remained a model for raising Navajo girls to this day. When the Changing Woman reached adulthood she conceived twin males for the Sun (Jóhonaa'ei).

The Holy Twins were to be called, Enemy Slayer (Nayéé Neizghání) and Born for Water (Tóbáíschíní). The Changing Woman and the Holy People raised the Twins in accordance with principles set forth by the Great Spirit. These principles were to be a model for raising future Navajo boys (Nohookaa'Dine'é) who would live on the surface of the earth. These principles are still followed today as the way of preparing Navajo males to live on earth.

When the Holy Twins became young men, they journeyed to their Father Sun (Jóhonaa'ei) in quest for refuge and salvation which neither had been able to find on earth. They, along with earthly Navajos (Dine') were in constant danger on earth. Many had been hunted down and devoured by Giant Monsters (Naayéé). As the Holy Twins journeyed along the trail to their Fathers they had to endure numerous hardships and dangers. Upon arrival at their Father's house they had to endure one last test so Father Sun was completely assured that the Holy Twins were truly his sons.

Upon this assurance, they Holy Twins received a purification ceremony in which they were dressed in proper ceremonial attire. This practice is continued in our ceremonies of today. After the purification ceremony the Holy Twins were called into the house of the Sun (Jóhonaa'ei). There, in his house, Father Sun, asked the Holy Twins the purpose of their journey and he opened the vast door of his house to the east. The opened door to the East revealed all of the turquoise on earth. The Holy Twins answered, "Yes, we want this." Then Father sun opened the great door to the West and great herds of horses were seen. To this door the Holy Twins answered, "Yes, this too." Father Sun then opened the door to the South and they were shown the Holy Herbal Medicines. To this door they answered, "Yes, this too." The final door to the North exposed wild animals. They answered, "Yes, we have come for this too."

They also asked for weapons. Father Sun refused at first because these were powerful weapons that were not to be used by anyone but himself. The Holy Twins finally persuaded their Father and received the weapons with specific instructions for use against the Giant Monsters only.

As the Holy Twins were departing Father Sun gave them the five spirits of the Holy Herbal Medicines that dwelled in his house. He told them to take the medicines to the earthly people (Dine') to heal their bodies, minds, emotions, and spirits; to restore them a state of harmony (Hózhó'). Father Sun cautioned against misuse of these Holy Herbal Medicines. He gave each medicine a name. He also prescribe specific ways to administer them to the people. He detailed particular prayers and songs that must accompany the medicines as well as offerings that must be made prior to their use.

With the gifts from their Father the Holy Twins returned to earth and made it a safe place for the Navajo (Dine') to live. The Holy People formulated the events of the entire journey, The Holy Trail, (Atiin Diyinii) into a healing ceremony. This ancient ceremony is practiced today as it was upon the Holy Twins return to earth.

When the earth was a safe place to live the Holy People prepared to depart for their holy places in the highest mountains of the East, South, West, and North. As they left they sent four of the Sacred Herbs in all four directions and proclaimed that these medicines were to used in holy ceremonies for the well being of the Dine'. The fifth Sacred Herb, Azee'ba'nat'aah (Peyote), designated as chief of the five Sacred Herbs, was sent further south, where it was to remain until a special time when it was needed. The Holy People prophesized that someday the Dine' would depart from their religious ways and ignore the teachings of the Holy People. Their departure from the Sacred Ways would bring chaos and turmoil in many forms. And there would be religious suppression.

The prophesy was fulfilled with the westward expansion of the 19th and 20th century. In the 1800's, the Holy Herb, Azee'ba'nat'aah (Peyote), came first to the Plains Indians whose way of life had been almost totally destroyed by westward expansion. The Plains people desperately needed this new faith to survive. Shortly after Peyote came to the Plains People the Sacred Herb made its way back to the Dine' who were trying to recover from their captivity at Fort Sumner.

The Sacred Herb returned to the Dine' in a religious ceremony called the Native American Church. However, it was met with opposition by US, Anti-Peyote, and Tribal Officials. And Native American Church members were persecuted and jailed for practicing their religion. In 1967 Tribal Officials reversed their opposition and passed laws allowing the Dine' to practice their religion. However, Native Americans, the Dine' included, did not enjoy full freedom of religion until the Native American Religion Act was passed in 1978.

Now, in 1990, we find our religious freedom threatened again because of our use of the Sacred Herb, Azee'ba'nat'aah (Peyote), in our sacred ceremonies. This medicine was given to us before the beginning of time. It was given to us by our God, The Great Spirit. It, along with the other four Sacred Herbs, is essential to the well being of the Dine'. We are a nation of people within a nation. We obey the laws of the land. We know there are many problems with drug abuse in America. We see the effects and dangers of misuse, especially alcohol. But Peyote is not misused or abused by the Dine' in Sacred Ceremonies. In fact, it is only when it is not used by the Dine' that it becomes dangerous, because in not using it we cannot heal ourselves.

The Holy Medicine was given to us by God. When we use it we are in a sense taking God into our bodies. The Catholic people of the world drink wine and eat bread. They believe the wine to be the actual blood and the bread to be the actual body of their God. Wine is harmful when misused but no one is proposing to take this Sacred Ceremony from them. We ask for the same consideration and respect for our Sacred Ceremonies.

We, the members of the Native American Church Of Navajoland, Inc. hope this letter brings about better understanding regarding the practice of our religion. If you require additional information please contact us.

Respectfully,



Robert B. Whitehorse, President
Native American Church of Navajoland INC.

**Amendment to the
American Indian Religious Freedom Act of 1978
(P.L. 95-341)**

Title II: Traditional Use of Peyote

TESTIMONY submitted by: Mr. Wilson Aronilth, Jr.
Native American Church Member
Navajo Nation

submitted to: Senator Pete Domenici
Senior Member
Select Committee on Indian
Affairs
08 February 1993
Albuquerque, New Mexico

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- 2. Sacramental Herb = Peyote
- 3. Divine Herb = Peyote
- 4. Divine Medicine = Peyote
- 5. N.A.C. = Native American Church
- 6. Diné = The Navajo People

I. THE NATIVE AMERICAN CHURCH
AND THE
HOLY MEDICINE (PEYOTE) TEACHING

Before I begin [this longer talk], I want to tell you I truly believe in the N.A.C., Native American Church, way of life. I believe in the Medicine (Peyote), its prayers, songs and its foundation which is hope, faith, love and charity.

I believe in the foundation and philosophy of the Fire Place, the heart and life of our religion, from my heart and my mind. I believe in the lifestyle and education that goes with the N.A.C., the Fire Place and its teaching. Why? Because I grew up with it and the N.A.C. gave me a good mind, courage, strength and a very good and beautiful spiritual life to make my life complete up to this time. My grandfolks said to me, "Please learn to listen and to have good discipline within yourself, then you will learn to understand the N.A.C. way of teaching which will beautify your life with love, faith, hope and charity to achieve the true principles of life." The N.A.C., Holy Medicine (Peyote) and the Fire Place can give you a positive mind to understand your spiritual being and your spiritual image. The N.A.C. and Holy Medicine (Peyote) will help you to believe in yourself and help you to believe in everything that you do [sc as] to live a good spiritual life and social life. Myself, I am committed to the maintenance and survival of the N.A.C way of praying, singing and all of its beliefs and values. I believe in perpetuating and protecting and enhancing my grandfather's belief and his discipline in the Medicine Way (Peyote Way) of teaching. I am truthfully convinced that the N.A.C. and the Holy Medicine can positively provide the foundation of life for my young people and my elders. This is to discipline them to walk on the Corn Pollen Road of Life of the Holy Medicine. When we go with the N.A.C., we go with the Holy Medicine, the Holy Spirit, the Fire Place and the Creator. When we do this, there will be a positive gain of spiritual power and strength to walk in beauty to keep our soul, spirit, mind and body pure and clean. The Native American Church and the Holy Medicine teaching cannot be poured upon you like water on thirsty ground, but the spiritual

feeling of wanting to achieve the teaching and happiness must come from within your own creative Being, like a spring of living water. The N.A.C. way of teaching is the spiritual art of being taught through the Holy Spirit of the Holy Medicine so the art of spiritual learning can be discovered, then positive understanding can take place. The N.A.C. can prepare a person's life by instilling the proper elements in the mind to make a person think worthy of himself or herself and to wear a positive image and identity. The N.A.C. and the Holy Medicine can instill a spiritual awareness in one's self and motivate and direct one to a good place. The N.A.C. and the Holy Medicine can condition us to build a firm structural foundation to stand upon. This is a way of life to respect and a way to appreciate your own values and beliefs, and to learn to display self-pride in a good way by showing love and compassion for all walks of life. This way of life can motivate your mind, attitude and behavior on the right path of life. It can take care of you and protect you in your life. Finally, the N.A.C. and the Holy Medicine will make you do the right thing because it is right. Now, when this happens, there is an honest suggestion coming from the Holy Medicine to you and me.

As a member of the N.A.C. we have to believe in the Holy Medicine and the Holy Spirit, so that our direction of life is good and then evil and the tragedies of life are not there. We do not look for evil or magic. We, as members, have to take care of our Medicine, our prayers and our songs and what goes with them, which is our:

1. Stave = Bow
2. Gourd
3. Eagle Feather, all feathers, etc.
4. Sage that goes with stave and medicine
5. Drum and drum stick
6. Drum hide and drum rope and drum rocks
7. Drum water - charcoal inside the drum = water
8. Fire Place - dirt moon, sage on moon - road on the moon
9. Fire Poker - wood we use for meetings
10. Medicine and Medicine Tea - we use for meetings
11. Tobacco and Corn Husk we use
12. Cedar we use and special tobacco we use for offering
13. Water we use and the basic food we use

14. Hogan we use and Teepee, teepee poles, ropes, stakes, and teepee pines

We should understand that the essence and interpretation of all that we use in the N.A.C ceremony is what we are all part of and this essence is the most powerful and highest intellectual, spiritual, physical, emotional, and moral achievement to which we set our faith and our pattern of life.

As a member of the N.A.C. using this Holy Medicine, [we know that] this Medicine can make you see yourself as you really are and understand that the way you talk is important to your self-image. How you say things is important, [and] by this your body has a language of its own. The Good Medicine can help you develop a positive attitude and behavior and it will make you realize and recognize that there will be both good and bad in this road of life. This Medicine will teach you how to decide to choose the good road of life. This is how you decide to emphasize the good over the bad. When you do this, you will see the beauty of life increase. But if you use this medicine the wrong way, you will concentrate on the bad and you will see unhappiness and failure increase.

As a member of the N.A.C., the power of the Holy Medicine and Holy Spirit becomes your spiritual feeling and thinking, [and] then this is how it gives strength to your attitude and behavior to determine the direction in which your life will go. Holy Medicine's teaching says [that] this spiritual, positive attitude will move your body forward on the good road of life which we call, the Sacred Corn Pollen Road of Life.

The Holy Medicine (Peyote) will make us see facts, ideas, our own emotions, the truth and our fellow man as they all are. It will make us see the whole universe in such a way that we understand that everything goes together to make more sense, and that we are a part of the whole universe.

The Holy Medicine (Peyote) is created on wholeness to keep our soul, spirit, mind and body pure and clean. This is to say that [it helps us] seek the understanding of internal unity and internal life as Dine.

The Native American Church stands on the strong foundation of humanity, and we, the Dine, stand together with the spiritual power of the faith of love. The Native American Church is a house of ethics, a house of worship, a house of prayers, a house of singing, and a house of meditation of love and understanding. The Native American Church is a beautiful echo of spiritual music going across our land to all the sacred mountains and sacred places of the Holy People. It is built on the foundation of positive understanding and forgiveness. The Native American Church knows each prayer, song, laughter and each tear - it knows each peace of mind, and all troubled times and happy times. The Native American Church and the Holy Medicine (Peyote) will never turn away or get tired of you. We should never turn away from the N.A.C. It is our most favorite place and our most favorite scenery. The Native American Church is the Great Spirit, the Holy People, and you. The N.A.C. is built on faith, love, hope, and charity and it is organized by us. It is dedicated to the Great Spirit in the hope of peace and happiness in this world. The N.A.C. and the Holy Medicine (Peyote) should be our rule of life.

Nobody is to harm our Holy Medicine. It was put here for religious purposes and for healing. This Medicine Way is one way that our civilization as Indian people of this continent existed and exist. The way we were given these sacraments, plants, and herbs was through the Divine Spirit, or what we as Navajos call the Holy People. And through this Medicine (Peyote), we would understand how to keep our body, mind, spirit and soul clean, and we would learn to understand why we are born into this world, how to survive in it, and how to follow the natural, cosmic law. As of now today, Indian people - our people - our younger generation, our daughters, sons, nephews, nieces, grandchildren and those who are not born yet will need this [Way] to follow the natural law [so as] to survive and pray and have communication with our Maker. That way our generations would not be harmed and would not perish. But if some man-made law tries to control the way my people - our people- believe, then they are trying to correct the natural order and cosmic law itself.

So today that is where we are and we want to caution each other to understand one another in peace and harmony. This is one way our people

understand life and living. This Medicine Way (Peyote Way) is spirituality. It is wholeness and purposefulness within the natural cosmic order of life. The [Holy Medicine] Way will help us follow that natural order of life [so that] we protect ourselves from harm, danger, evil and other sickness for generations to come.

If somebody's going to tell us how to pray, how to sing, what to eat, how to dress and how to think - then that's totally wrong. And it's totally wrong to tell us how to practice what we believe because we as Indian people don't tell the other society, "Hey, you're using your religion the wrong way. This is the law you have to use to control what you believe." If we ever did that, there would be severe jealousy and hatred. I think we would be abusing a society.

This call to you for understanding of who we are and how we live our lives within this cosmic, natural order is all for the protection of the Holy Medicine Way, the Sacramental Herb Way, the Peyote Way and its teachings, values, its healing power and for the sake of our children, grandchildren and the unborn and for [the protection] of all vegetation and paraphernalia that we use to pray. This call for your understanding is for the protection of Eagle Feathers and other feathers, and for the protection of the types of animal we use ceremonially, like deer. And for the type we use for food in our ceremony and also for the water we use. And for the trees and wood we use. There are many things we use as Indian people and we want to protect those things the way we were told to by the Great Spirit and not by other people. We want to protect our lives and our living system and the lives of all the generations to come.

The Native American Church and the Holy Medicine stand on the strong foundation of humanity. We, the Dine, stand together with the spiritual power of the faith of love.

II. THE DINÉ CULTURAL HISTORY OF PEYOTE
Native American Church of Navajoland

Native American Church Education Day

August 2, 1980

Story by: Wilson Aronilth, Jr.

As a Navajo student and member of the Native American Church, it is very important to know the foundation of your religion. It is true what our forefathers used to say - that you identify yourself to the Great Spirit and his Divine Nature through religion. I was told that if you know your religion, you would identify yourself as to who you are, where you came from, and what direction you are going.

I was told that our religion and our ways of communicating to the Great Spirit were created and developed ahead of us by the Great Spirit. The Great Spirit did this through his loving care so that we, the Indian people, would not be lost. Also, if you understand your religion you will have respect for people and all creations. If you take this religion as a foundation, you will walk in beauty.

The Great Spirit, in the beginning, gave us a way of glorifying Him. He also gave us sacred paraphernalia to use to communicate with Him. He gave us certain things to eat; to survive. And he gave us a certain way to dress; to show our identity. He gave us certain ways to live on earth. Some of these creations we use, as Indians, other individual races of people cannot use. So, there are certain laws set by the Great Spirit and nature to control this.

The Great Spirit created peyote, in the beginning, when He created all other herbs and plants. As I was told by my grandfolks, the Great Spirit created peyote for a good purpose and cause. He created four different kinds of herbs in the beginning that were going to be useful in His creation.

The first herb created by the Great Spirit was identified by the color white and He put it in the direction of the east. This herb is used only for food; for mankind today to survive.

The second herb created by the Great Spirit was the color of bluish-green. He put it in the direction of the south. This was created only for ceremonial purposes. It is used to glorify His name, for healing purposes, and for spiritual guidance. When He created this certain herb, He said that some day His children, the Indian people, would use it for religious purposes. This is what most European people call peyote. We, as the Indian people, have our own name for it.

The third herb was identified by the color yellowish-orange. The Great Spirit placed it in the direction of the west. This was created only for His other creations so they could use it and survive, which are the animals, birds, insects, etc.

The fourth herb was the color black which was placed in the north direction. He created this herb only for the Mother Earth's purposes, the Father Sky's purposes, and His Divine Helpers, so that they could benefit by it.

"Peyote" What is peyote to you? Think about it for awhile. To some of us peyote is a sacrament. It is divine herb and a divine medicine. The Great Spirit created this divine herb in the beginning and when He did this he put His love, spiritual healing, comfort, knowledge, wisdom, and the characteristics of life for mankind to enjoy. This is a blessing. This is the reason why we say that no man made this divine herb.

The Great Spirit foretold that one of His creations, His children were going to lose out on their religion, beliefs, identity, language, and direction. For this reason He created this divine herb for His children, the Indian people, to use to refresh their minds, identities, and to put them back on the right road of life upon which the Great Spirit intended for them to travel. Also, [He created this divine herb] to gain love, comfort, and spiritual healing.

The Great Spirit said that He is everywhere. He said He walks with you every minute of your life, no matter what kind of person you are or what you do. For this reason the Great Spirit has to be in the divine herb. His power and spirit is in the divine herb. For this reason, the divine herb is alive, it can see, it moves, it talks, it sings, it grows, it can hear, and so it listens.

We, the Dine, have a name for peyote. We call it, "The divine herb who lives with the Mother Earth's flesh", "The divine herb that travels by the holy spirit of the rainbow and the sunbeam." "The divine herb that makes his home with the early twilight dawn," and "The divine herb that can give you life and materialistic things of value." This is the closest I can translate from the Navajo language to English. There are the four names that the Navajos call peyote, other tribes have different names for it.

The divine herb has its own culture and story. These are controlled by the Great Spirit and his divine nature. This herb can talk to you through mysterious ways and show you something good. It was foretold by our forefathers that this herb was going to come back to us someday when we are in need. It will always be remembered that the coming of this herb was found by an Indian woman. It didn't say what tribe she was from. We were told that we were all one people in the beginning.

When the woman found this herb it was a pretty flower. This woman recognized this plant and flower as the Holy Spirit's flower because through this plant the Holy Spirit talked to this woman and gave her a direction to survive.

Peyote is taken only as a holy sacrament at a place prepared for this religious ceremony, either in a hogan or a teepee. It has to be at a quiet place, away from all the noise that goes on. Peyote is administered raw, or in a grinded form, or in a warm tea. It can be used for colds, pneumonia, tuberculosis, and other health related diseases. If you take this medicine with a sincere humble thought it can clear your physical being and purify and cleanse your mind and soul from evil things. In other words, it can chase the evil spirit out of you and put the holy spirit within you. In this

way you will have to discipline yourself to live like a humble christian person. By doing this, the door of beauty and you perception of beauty will be opened. And then you will step through this door of beauty into a better life.

In the old days, in peyote meetings, only traditional clothes were worn by the members. Today we cannot do that, but we try. There is a saying, "Come as you are to pray to the Great Spirit."

If you find peyote for what it is, you will find God for what He is. Then the door will open for you towards the beauty of life.

Any members attending peyote meetings are not or should not be looking for magic, searching for witchcraft, or for the power of being better than his follow person. Also, he should not criticize and talk about other people's beliefs and other churches and their ways. If you play around with peyote or use it in any other way other than for its religious purpose, it will take its revenge and punish you.

If you believe in this divine herb you will understand your faith, belief, and religion. By doing this, it will protect you from poverty, harm, evil, and danger. A lot of people try to abuse it and use it in a harmful way. They make false stories and talk against it, but all in all they either don't understand it or don't know what its religious purposes are for.

Peyote cannot be smoked or mixed with other things.

Peyote has made a great contribution to education, Indian art in general, the health of the Indian people, and in the life of the Indian people.

The foundation of the Native American Church of Navajoland is love, faith, hope and charity. In this religion, brotherly love and friendship is practiced and it is believed that it is good to forgive one another.

The significant values and meanings behind the sacred paraphernalia are these:

"Fire" - Fireplace

It is the heart and life of our religion.

"Tobacco lighter"

Our religion carries a light of life for our family and our people.
It is our protector and shield.

"The Altar" - (moon)

Our grandfolks said that we came into this world as a seed through the cycle and changes of the moon. This is where we came from. The road on the moon represents the road of everlasting life, this is what we are traveling on. From childbirth to old age it represents a footprint of mankind.

"Sage"

Sage represents the growth of life.

"Peyote" - "Divine Herb"

We do not pray to the divine herb or any other divine nature. Rather, we talk to them, just like to the Holy People. Through this divine herb we communicate to the Great Spirit. It is the key to His Kingdom.

"Staff"

A bow, arrow, spear or a cane is used. It keeps away harm and evil from us. It identifies us and we survive accordingly to it.

"Gourd"

This represents the earth and heaven. Through this gourd, when we use it, we communicate with the earth and heaven and with the divine nature and the Great Spirit.

"Eagle feather"

The eagle feather identifies us as an Indian. We use it only in our religious ceremony. We hold it when we pray and sing to glorify the Great Spirit's name. It represents our faith, our courage, our dignity and our strength.

"Eagle bone" or "Bamboo Whistle"

This we blow to attract the Great Spirit's attention for blessings and spiritual guidance in life.

"Sacred Drum"

Represents the Mother Earth and the Father Sky. There is life within it. That is why there is water in it, which represents the male and female rain. The embers within it represent life and air. The drum cover represents the first sacred animal, the deer, which partook of the water in the beginning of the creation. The rope around the drum represents the everlasting sunbeam which is our path and our direction. The seven rocks around the drum represents the seven "knowledge" of the human beings, the seven parts and color of our body, the seven senses of the human body, and the seven days of the week with which the four seasons change.

"Cedar"

Represents everlasting life. We use it to communicate to the Great Spirit for His richest blessings. It also represents male and female as well as materialistic things.

"Tobacco"

This Indian Tobacco is used for cleansing your mind and thoughts. By doing this you will have a clear mind and positive thoughts and use this as a holy instrument to communicate with Him. It is the key to the Great Spirit's Kingdom.

"Water"

Water is also the life of the ceremony. It gives you life, it helps you grow, and it can heal you and comfort you. It is one of the greatest helpers of the Great Spirit. You can be blessed with what this holy Divine Nature is dressed with.

"Morning Food"

The principle foods are corn, fruit, and meat.

- a) Corn is for your brain, your mind and intelligence.
- b) Fruit is for a fruitful life and a normal heart beat and normal blood circulation.
- c) Meat is your flesh, your human nature, and your looks which the Great Spirit gave you.

"Songs"

Peyote songs are used only for sincere and humble ways of thinking to glorify the Great Spirit's creation and His Divine Nature and Him. There are various kinds of songs. There are straight prayer songs, healing songs, seasonal songs, protection songs, comforting songs,

future path songs, education songs, appreciation songs, birthday songs, etc.

I have used this holy sacrament all my life and this is the way I understand a little bit of it. I hope it will be beneficial to you young youths. Dwell, prosper, and walk on the road of beauty so, when opportunity knocks once in your lifetime, you will never get confused or frustrated with the things that may come your way. You will step into the doorway of opportunities. You, as an individual, will gain courage, strength, and faith and use these things as a foundation and believe in them, understand them. Do it and it will take you in the right direction. With this in mind, as you go into a new horizon, you will meet your objectives and goals and have a better understanding with a better self-positive concept. In this way you will see the pretty value of home, the good foundation of livelihood and the survival of this generation. This is my wish for all of you young people. Try your best.

III. NATIVE AMERICAN CHURCH TESTIMONY: REFERENCE TO ARIZONA LAW

As an example of how the law does not respect the Native American Church way of life, we can look at the law of Arizona regarding our sacrament. Under the Arizona law our only protection is proving an "Affirmative Defense" to a criminal charge, the way I understand it and was told about it.

This type of law places an enormous and unfair burden upon members of the N.A.C. We are believed to be guilty and are forced to prove the following three things about our use of peyote. That we use the Holy Medicine, Peyote,

1. in connection with the bona fide practices of a religious belief, and
2. as an integral part of a religious exercise, and
3. in a manner not dangerous to public health, safety or morals.

Failure to prove all three of these things can result in conviction of a felony.

This is an indignity; it can be very expensive to prove and can even be very hard to prove to a court. It subjects honest N.A.C. members to arrest and incarceration and for these reasons it has the effect of discriminating against member of this particular religion - my religion.

Both the nature of the Arizona law, and the fact that various states have different kinds of protective laws (or none at all) all points clearly to the need for a uniform federal law, under the Trust Doctrine, that would allow us as practitioners of this religious way of life to feel secure in our homes and in our travels.

No other historic bona fide religion in this country is subjected to such threatening treatment under a patchwork of state criminal laws.

We are not criminals. We are practitioners of our Medicine Way (Peyote Way) of life.

APPENDIX E

EMERY A. JOHNSON, MD. MPH

13826 Dowlais Drive
Rockville, Maryland 20853
(301) 460-4766

March 7, 1993

Honorable Bill Richardson
United States House of Representatives
Washington, DC 20510

Dear Mr. Richardson:

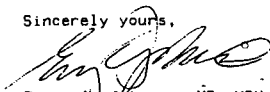
I have been requested by representatives of the Native American Church to share with you my experiences with the use of peyote by American Indian people. My experience is based on nearly 38 years of involvement in Indian health - reservation physician in Minnesota and Nebraska, Assistant Area Director and Medical Officer-in-Charge of the Phoenix Indian Medical Center, Indian Health Area Director in Billings, Montana, twelve years as Director of the Indian Health Service (IHS) and, since my retirement from active duty in 1981, consultant to Indian tribes and Indian interest organizations.

As a practicing physician, I had patients who were active members of the Native American Church and in no instance did I find any evidence of abuse of peyote. As a medical care and public health administrator, I was aware of Indian Health Service staff experiences with members. For example, Dr. Robert Bergman, Senior Clinician in Psychiatry and Director of the IHS Mental Health Program, reviewed the use of peyote in the Church and came to a similar conclusion.

In a recent computer search of the last ten years of medical literature at the National Library of Medicine, I found no report of abuse of peyote in the sacraments of the Native American Church. Peyote has been used for over a thousand years and has been a part of traditional Indian religious ceremonies since the early nineteenth century. Within the context of the Church, the use of peyote is carefully controlled and, rather than a drug of abuse, peyote is actually used in the treatment of other substance abuse.

In summary, it is my view that peyote, as used in the Native American Church, is not a drug of abuse but is a component of the traditional sacraments of the Church.

Sincerely yours,

Emery A. Johnson, MD, MPH
Assistant Surgeon General, Retired
United States Public Health Service

APPENDIX F

OBSERVATIONS ON THE RELIGIOUS USE OF PEYOTE BY AMERICAN INDIANS

EVERETT R. RHOADES, M.D.

My name is Everett Ronald Rhoades. I am a member of the Kiowa Tribe of Oklahoma. I completed medical school in 1956 and have worked as a physician since that time with extensive experience in academic, military, private, and public medicine. I have been trained as a scientist, and have published a number of original investigations. I am currently the Director of the Indian Health Service, one of the agencies of the United States Public Health Service. However, this statement is purely personal and is not offered in any official capacity whatsoever. It is not to be construed as an official position of the Public Health Service.

In addition to my now extensive medical experience, I have had a certain amount of direct experience with the Native American Church and the sacramental use of peyote in its religious observances. Further, I have some knowledge of the medicinal uses of peyote in traditional Indian healing practices. It might be of some interest to know of my experience and observations relating to the use of peyote in religious and healing activities in religious practices carried out in the Native American Church.

The practices of the Native American Church in which I have participated in both Oklahoma and Montana have been conducted in the most serious, solemn, and devout manner. The basic worship is night long singing and praying, with the use of peyote as an essential sacramental element. The use of peyote is eucharistic, equivalent to the use of sacramental elements in communion services in Christian religions, specifically, the use of wine and bread. In the case of peyote, it is not a representation of the body and blood of Christ as such, but a representation of the things, plant, animal, and inanimate, that God has placed in the world, many of which are available for use by Man. In this sense, the "Chief" peyote is taken as symbolic, but very spiritual. The fact that the peyote has psychopharmacologic, and therefore mind altering, properties is not of primary importance. Never is it incumbent upon the participants to use peyote for the mind altering characteristics it possesses, even though some participants may choose to do so. Likewise, my experience has been that the frivolous or "recreational" use of peyote outside the rather strict observances of Native American Church worship is regarded as inappropriate and socially proscribed by the general membership of the church.

Participation in Native American Church worship, with or without pharmacologic effects of the peyote eucharist, inculcates a sense of worth and dignity as human beings and brings about a harmonious relationship between the individual and the rest of the universe. It is precisely in this sense that it is so spiritual. I can personally attest to this essential spiritual nature of the use of peyote in religious and healing procedures. I have never known of any habituation or addiction to it. In fact, there has always been a strong implication that the use and abuse of alcohol, or other drugs, is contrary to belief and the tenets of the Native American Church, and this fact has been one of the reasons that the Native American Church remains an important resource in dealing with the major scourge of Indian people, alcoholism. In my experience, those with alcohol abuse problems are discouraged from participation while they are dependent upon alcohol, unless participation in the church is part of an active program of sobriety. In this regard, the Native American Church is an important source of strength in efforts to remove the terrible affliction of alcoholism from Indian communities.

I am aware of the concern about the use of any mind altering drug and the fact that the alkaloids of peyote are Class I controlled substances. I am aware of the dilemma posed between the religious use of such a substance and the need for protection of the public's health. Further, in some instances it may be nearly impossible to distinguish between religious and secular use of any sacrament. However, in the case of peyote and its centuries old religious use by American Indians, there is a real possibility of infringement of the freedom of religious expression.

It is important that my remarks not be construed as condoning or supporting the frivolous or other use of peyote outside the Native American Church, or as part of some other cultural movement. I speak only of my experience with the Native American Church. I have been impressed with the organizational aspects of the Church and the efforts of the Church to control the membership, and the inappropriate use of its elements. I believe there may be an opportunity to insure that control measures are available to the Church and to the respective tribes so that the cultural and spiritual use of peyote in a sacramental and healing way may be strengthened. I hope that the United States Congress and the American people will give urgent attention to measures that would clearly allow the free exercise of the religion of the Native American Church.

Class "C" Resolution
No BIA Action Required.

RESOLUTION OF THE
NAVAJO NATION COUNCIL

Requesting the Congress of the United States of America to Enact Legislation Acceptable to the Navajo Nation to Strengthen the American Indian Religious Freedom Act of 1978 and Urging the New Mexico, Arizona and Utah Congressional Delegations to Support Such Legislation

WHEREAS:

1. The Navajo Nation Council is the governing body of the Navajo Nation, pursuant to Navajo Tribal Code, Title 2, Section 102 (a); and
2. The Navajo Nation deems it necessary and appropriate to protect and preserve the inherent right and freedom of each member of the Navajo Nation to believe, express and exercise his or her religion, whether that religion be the traditional Navajo religion, the Native American Church religion or any other religion; and
3. In 1978, Congress enacted the American Indian Religious Freedom Act declaring that it was "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 Indians . . . including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional sites"; and
4. The United States Supreme Court has severely limited Native American religious freedom with its holdings in recent decisions; and
5. The Navajo Nation believes, in principal, that there is a need for federal legislation to strengthen the American Indian Religious Freedom Act of 1978 and to protect traditional Native religious freedom.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Council hereby affirms the policy of the Navajo Nation to protect and preserve the inherent right and freedom of religion of all members of the Navajo Nation.
2. The Navajo Nation Council requests the United States Congress to enact legislation acceptable to the Navajo Nation to strengthen the American Indian Religious Freedom Act of 1978.

3. ~~The Navajo Nation Council~~ urges the New Mexico, Arizona and Utah Congressional Delegations to support appropriate legislation.

4. The Navajo Nation Council directs and authorizes the Navajo Nation President, Attorney General, the Navajo Nation Washington Office Director and other appropriate tribal officials to do all things necessary and proper to support passage of Native American religious freedom legislation that is appropriate for the members of the Navajo Nation in conjunction with the Intergovernmental Relations Committee of the Navajo Nation Council.

5. Further, the Navajo Nation Council directs and authorizes said officials to consult with the Religious Freedom Coalition composed of the National Congress of American Indians, the Native American Rights Fund, the Association on American Indian Affairs and other concerned Native groups and Indian tribes.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 60 in favor, 3 opposed and 5 abstained, this 24th day of October 1991.

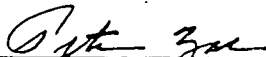

Speaker
Navajo Nation Council

October 25, 1991

Date Signed

ACTION BY THE EXECUTIVE BRANCH

1. Pursuant to 2 N.T.C., Section 1005 (c)(1), I hereby sign into law the foregoing legislation this 25 day of October 1991:



Peterson Zah, President
Navajo Nation

* * *

2. Pursuant to 2 N.T.C., Section 1005 (c)(10), I hereby veto the foregoing legislation this _____ day of _____ 1991 for the reason(s) expressed in the attached letter to the Speaker:

Peterson Zah, President
Navajo Nation

IGRF-28-93

Class "C" Resolution
No BIA Action Required.

RESOLUTION OF THE
INTERGOVERNMENTAL RELATIONS COMMITTEE
OF THE NAVAJO NATION COUNCIL

Supporting the Testimony of the Navajo Nation Before
the Senate Select Committee on Indian Affairs in
Reference to Native American Religious Freedom

WHEREAS:

1. Pursuant to 2 N.T.C., Section 821, the Intergovernmental Relations Committee ("the Committee" hereafter) is a standing committee of the Navajo Nation Council; and
2. Pursuant to 2 N.T.C., Section 822 (2), the Intergovernmental Relations Committee of the Navajo Nation Council is authorized to ensure the voice and presence of the Navajo Nation; and
3. Pursuant to 2 N.T.C., Section 824 (b) (2), the Intergovernmental Relations Committee of the Navajo Nation Council is authorized to assist and coordinate all requests for information, appearances and testimony related to proposed county, state and federal legislation impacting the Navajo Nation; and
4. Pursuant to 2 N.T.C., Section 824 (b) (5), the Intergovernmental Relations Committee of the Navajo Nation Council is further authorized to coordinate with all committees, chapters, branches and entities concerned with all Navajo appearances and testimony before Congressional committees, departments of the United States Government, state legislatures and departments and county and local governments; and
5. Religious issues affecting the Navajo Nation include protection of the sovereignty of the Navajo Nation over its own land and people, which issue largely encompasses the matter of regulatory authority; further, the Navajo Nation government is wholly committed to the protection of the rights of its individual Navajo members and all Native Americans to live and practice their religion in accordance with individual religious conviction; and
6. To this end, the Navajo Nation supports proposed amendments to the federal law, enacted August 11, 1978, the American Indian Religious Freedom Act, which will change the law from mere policy and high sounding rhetoric to one which contains substantive protections for Native Americans. The United States

Supreme Court has made it patently clear, both in Lyng v. Northwest Indian Cemetery Associations, 484 U.S. 439 (1988), and in Employment Division of Oregon v. Smith, 494 U.S. 872 (1990), that in its present form federal legislation which addresses Native American religion, fails entirely to provide protection for Native American sacred sites or protection for traditional Native American religious activity. Because the survival of Native American ways of life is founded in the spiritual, threats to Native American spiritual foundations must necessarily be understood as threats to the very existence of Native Americans.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Intergovernmental Relations Committee of the Navajo Nation Council approves the testimony of the Navajo Nation before the United States Senate Select Committee on Indian Affairs which proposes amendments to the American Indian Religious Freedom Act, enacted August 11, 1978, as set forth and incorporated herein as Exhibit "A".

2. The Intergovernmental Relations Committee of the Navajo Nation Council authorizes the Speaker of the Navajo Nation Council to ensure that the testimony is submitted to the United States Senate Select Committee on Indian Affairs.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 8 in favor, 0 opposed and 0 abstained, this 1st day of February, 1993.


Chairman
Intergovernmental Relations Committee

Testimony of the
Navajo Nation
before the
Senate Select Committee on Indian Affairs
In reference to
Native American Religious Freedom
February 8 - 9, 1993

The Navajo Nation appreciates the opportunity to address issues of grave concern to the Navajo Nation, to the Nation's individual members, and to all Native Americans.

Religious issues affecting the Navajo Nation include protection of the sovereignty of the Navajo Nation over its own land and people, which issue encompasses the matter of regulatory authority, and the continuation of the Navajo Nation as a People in perpetuity. In addition, the Navajo Nation government is wholly committed to the protection of the rights of its individual Navajo members and all Native Americans to live and practice their religions in accordance with individual religious convictions.

To this end, the Navajo Nation supports proposed amendments to the federal law, enacted August 11, 1978, the American Indian Religious Freedom Act, which will change the law from mere policy and high sounding rhetoric, to a one which contains substantive protections for Native Americans. The United States Supreme Court has made it patently clear, both in Lyng v.

Northwest Indian Cemetery Associations, 484 U.S. 439 (1988), and in Employment Division of Oregon v. Smith, 494, U.S. 872 (1990) that in its present form, federal legislation which addresses Native American religion, fails entirely to provide protection for Native American sacred sites or protection for traditional Native American religious activity. Because the survival of Native American ways of life are founded in the spiritual, threats to Native American spiritual foundations must necessarily be understood as threats to the very existence of Native Americans.

Sacred sites have since time immemorial been an integral part of Native American religious activities. Protection of such sites from federal and state government activities is unquestionably essential. The proposed amendments which require notice consultation and development of written alternatives documents to tribal governments as well as to traditional leaders, and no commencement of action or decision making when federal action may result in changing the character or use of religious sites is admirable.

However, one wonders, considering the checkered history of the Environmental Impact Statement experience, under the Environmental Protection Act, and the reluctance and ignorance of federal agencies to be supportive of Native American claims, and agency institutional bias for development, whether this approach simply forces Native Americans to seek court action for relief. A court remedy is hardly comforting these days to Native Americans,

considering the cost and with the prospect of a judge uneducated in Native American religious practice determining whether or not a federal action is posing or will pose both a substantial and a realistic threat to a Native American religion or religious practice. Nevertheless, reinstating the compelling interest test for government action, previously available but taken away by the Supreme Court, affords protection. The Navajo Nation supports that approach for protection of sacred sites located off Indian lands.

The Navajo Nation supports wholeheartedly the recognition in the proposed amendments that tribal governments and their law or customs preempt federal law pursuant to the inherent retained sovereignty of tribal governments. It should be made clear that the tribal law or custom to be followed is that of the tribal government whose land base is directly affected. Statements supporting tribal sovereignty are critical to this legislation because such federal policy statement recognizes tribal governmental authority over land and people.

In furtherance of this recognition, it is respectfully suggested that the matter of what is confidential and subject to deletion from the record should be determined in some manner by Tribes and by Native American traditional practitioners and not by the federal agency or court which has the material. The determination of the need for confidentiality should be established by knowledgeable persons. Such determination may be helpful to the

federal agents responsible for handling requests for information, particularly in light of the heavy criminal sanctions imposed for "knowing" release. The defense suggested is "I didn't know" or "I'm not knowledgeable about Native American religion", which defense would be less likely where prior determination is made by proper persons.

Another area where tribal sovereignty can be greatly enhanced by the proposed amendments to the American Indian Religious Freedom Act is the issue of Eagle feathers, animal parts or plants. While studying the matter and developing a plan for prompt disbursal and sufficient allocation may eventually result in simplifying the process for individuals, the approach taken seems to depart rather sharply from the strong approach favoring tribal sovereignty found in the sections related to sacred sites. Rather than rely on creating additional federal institutions such as another "Advisory Council" for disbursal and allocation, it would be more in keeping with recognition of tribal sovereignty for the law to provide that tribal government entities may be recognized as repositories and disbursing agents. This matter is clearly one of regulatory control and should properly rest with tribal governments.

The proposed amendments do suggest that tribal governments "may" distribute where the objects are discovered on Indian lands and the Tribe has established or establishes by law or

custom a permit and distribution system. This discretionary language should be strengthened to assure that the Department of the Interior Fish and Wildlife Service is mandated to recognize tribal government regulatory authority in this matter. The Secretary of Interior presently has regulatory authority to give permits. The regulations related to Indian religious purposes should be redrafted to make special provision for tribal governments. This would require removing the regulatory restriction that applications be accepted only from individuals. As provided for under the present law the Secretary's authority to enter into cooperative agreements with State agencies and the delegation of authority attendant to said agreements should be extended to tribal governments. Far flung regional depositories delay disbursement to Native American practitioners. Disbursement by tribal government entities through agreements and delegated authority would result in a more effective and efficient process, while at the same time recognizing and enhancing tribal sovereignty.

Many sacred sites are no longer situated on Indian land. The Navajo Nation supports access by Native American practitioners to religious sites located on Federal lands at all times and believes that National security and motorized vehicle access exceptions are reasonable.

The rights of individual Native Americans to practice their religion must be protected. Thousands of Navajo people practice the centuries old Native American peyote religion. While

some states exempt peyote use for religious purposes from criminal and drug enforcement laws and federal regulations allow transportation and distribution of peyote for Native American religious ceremonies, these protections are limited. After the Supreme Court ruling in Oregon v. Smith, supra, first amendment rights of all Native American traditional religious practitioners are endangered. Reinstating the "compelling State interest" test for determining whether or not there is government infringement on religious practices and not just beliefs is important to all religions. The Congress can lead the way to stronger protections for all Americans who practice religious which have minority status by protecting the first Americans rights to practice their traditional beliefs.

There is no evidence that the sacramental use of peyote in religious ceremonies is harmful or habit forming. In fact there is substantial evidence that the religious practices and beliefs of the peyote religion are an effective means of combatting alcohol abuse, an unquestionably devastating disease in Indian country.

Those sections of the proposed amendments which address the rights of individual Native Americans in prison to have the same privileges and access to practice their religion as any other prisoners are supported by the Navajo Nation. Since 1980, the Navajo Nation Council has funded the Navajo Nation Correction Project, an effort which has resulted in successful negotiated agreements with states to permit, American Indian Religious

ceremonies in prisons. Federal recognition by statute of the rights of Native American prisoners who practice a Native American religion to access to traditional elders and materials for religious practice and to sweat lodges is simply an equal protection matter. Native American prisoners should have the same rights as Judeo-Christians or others to practice their religion.

A consistently applied federal law and policy designed to protect and preserve the inherent right of all Native Americans to practice traditional religions is clearly needed if the promise of freedom of religion is to be meaningful in Indian country. The Navajo Nation urges the United States Congress to move expeditiously and aggressively to enact meaningful amendments to the American Indian Religious Freedom Act.

APPENDIX I

STATEMENT OF PRESIDENT PETERSON ZAH
OF THE NAVAJO NATION
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
ON THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT

February 9, 1993

Chairman Inouye, Senator Domenici, members of the Committee, I thank you for this opportunity to state the Navajo Nation's position on strengthening the American Indian Religious Freedom Act (AIRFA). I come before you because the fundamental law of this country, *the right of freedom of religion*, does not protect Native Americans freedom to practice native traditional ceremonies and rituals.

The current policy as expressed in the 1978 Joint Resolution on American Indian Religious Freedom (Public Law 95-341, 92 Stat. 469) states:

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 ceremonial and traditional rites.

This current policy, a policy statement, provides no legal cause of action to aggrieved practitioners. Simply, this policy cannot be enforced. This has been affirmed by the recent Supreme court decisions in the Employment Division of Oregon v. Smith (493 U.S. 378) and Lyng v. Northwest Indian Cemetery Association (485 U.S. 439) cases which make it clear that there is limited Federal protection for the

right of Native Americans to practice their traditional religions.

The Navajo Nation Council resolution CO-73-91 "affirms the policy of the Navajo Nation to protect and preserve the inherent right and freedom of religion of all members of the Navajo Nation. The Navajo Nation believes, in principle, that the American Indian Religious Freedom Act should be strengthened to protect traditional Native religious freedom.

On February 1, 1993, Intergovernmental Relations Committee of the Navajo Nation Council by Resolution IGRF-28-93, approved the Navajo Nation's testimony before the United States Senate Select Committee on Indian Affairs. Through the efforts of the AIRFA Coalition, this bill has been greatly improved. I believe the current legislation will provide the Navajo Nation and the many tribes throughout the Nation a mechanism to further protect and preserve our practice of traditional religion. An important change we support is Section 501 that will provide legal protection in the practice of Native religions and places a barrier in the exercise of governmental authority which might interfere with those practices. In addition, it reinstates the First Amendment test, stripped from Indian and all Americans in the Smith decision.

It is the policy of the Navajo Nation to protect the inherent rights embodied in our sovereign status, including our right to self governance and our right to individual liberty. The amendments strengthen the current law by acknowledging the inherent rights of Indian tribal governments and the right of individual Native Americans to their beliefs and to practice their religions.

Protection of Sacred Sites

The Navajo people has a strong cultural and religious base. The Navajo philosophy evolves around living in harmony with the universal laws of the four sacred elements, the earth, water, air and light. Navajos were placed within the four sacred mountains; Mount Blanco, Mount Taylor, San Francisco Peaks and Hesperus Mountains. The entire region within the four sacred mountains is considered sacred and holy to the Navajo people. It is on this land there are places of special power, locations of special natural or cultural processes, events and immortal beings. The interaction of natural forces with the earth create sacred areas that are most powerful. It is these sacred Navajo visit using prayers, songs and ceremonies to interact with these powers. These sacred sites and areas provide the ways of Navajo life that it rightfully protect.

Federal laws protect special places and historic sites that are important to the American people such as Civil War battlefields. Though many natural areas such as the Grand Canyon in Arizona are preserved, the cultural traditions including religious practices associated with them are not protected. Currently, the National Park Service policies and regulations (36 CFR 2.1 (a)(ii) and 36 CFR 2.1 (d) prohibit American Indians from gathering or collecting natural resources (plants, animals and minerals) for ceremonial uses, thus, infringing on Native American religious practices and interfering with religious beliefs. In contrast, scientific collecting, gathering of firewood while visiting the park and collecting nuts, fruits and berries are permissible. If the collecting is for religious purposed, however, it is prohibited.

It is the policy of the Navajo Nation to protect and preserve sacred areas for religious offerings, pilgrimages, and herb gathering. Recently, a company proposed to build an asbestos storage facility near Dzilth-Na-O-Dithle, New Mexico. This is a sacred area called Dinetah, the site of the Navajo emergence. This area has always been considered sacred Navajo land despite the mixture of state and federal land holdings. Such a proposed asbestos storage facility as well as any federal or federally-assisted undertaking violates Navajo belief and doctrine of protecting our mother earth from destruction, alteration or desecration. The Navajo Nation was successful in blocking the building of this facility based on arguments including interference with religious practice and desecration of a religious site.

The Navajo Nation Council enacted the Cultural Resources Protection Act of 1988 to protect sacred places and other cultural resources important to Navajos and other Indian communities. These laws cover only lands now under jurisdiction of the Navajo Nation government. The traditional Navajo homeland is a much larger area that surrounds present Navajoland and is full of sacred places on lands controlled by federal and state governments, private parties, and other Indian tribes. The proposed amendments to AIRFA together with strong implementing regulations would help protect many more of these places than existing laws and policies currently allow.

Traditional Use of Peyote

The sacramental use of peyote for bona fide religious purposes is not foreign to the Navajos. Traditional Navajo medicine men account for the origin of this sacred herb on Navajo land. The Smith decision has clearly stated that the first amendment of the United States Constitution does not protect the traditional use of peyote by

Native Americans. American Indians including Navajo should not be penalized or discriminated against on the basis of such use, possession, harvest or transportation.

Sergeant Shawn Arnold, a Navajo member of the U.S. Marine Corps, has twice been threatened with court martial because of possession of peyote and for being a member of the Native American Church. This kind of oppression, persecution and discrimination are consistently experienced by members of the Native American Church.

Currently, the U.S. Department of Justice, Drug Enforcement Administration's (DEA) regulatory exemption, 21 C.F.R. 1307.31, provides for the sacramental use of peyote in ceremonies of the Native American Church. The Navajo Nation supports a statutory exemption over a regulatory exemption, which this legislation will provide. In a letter dated August 08, 1991 the DEA has stated their preference for such a statutory exemption over an administrative one.

Prisoner's Rights

The Navajo Nation has a Corrections Project to provide counseling and advocate on behalf of Navajo inmates incarcerated in federal and state prisons. Navajo and Native American inmates are discriminated against when they wish to practice their native religion.

An integral part of the Corrections program is providing opportunity for religious and spiritual ceremonies in counseling and treatment of these inmates. The traditional Navajo counseling and healing of an individual involves treatment of the body and mind which ought to be afforded to our Navajo inmates. The proposed amendments will allow our fellow Native American inmates to exercise their traditional religious

practices.

Religious Use of Eagles and Other Animals and Plants

Eagle feathers and their parts, and other animals and plants are important elements in the practice of Navajo religious ceremonies. The use of these elements are sacred and are used only by proper procedures in religious ceremonies as carried through many generations.

Federal statutes have placed restrictions on the taking and the use of eagle feathers and its parts because they have been identified as protected species under the Federal Endangered Species Act. The proposed AIRFA amendments provides that the existing procedures for obtaining and the use of eagle feather or eagle parts, nests, or eggs for traditional use be streamlined and strengthened. However, the bill does not state on how the government will simplify and strengthen the process for eagle feathers or eagle parts permits.

The Navajo Nation supports the legislation's part that empowers Indian tribes to administer collection and distribution of bald or golden eagles or their part, nest, or eggs which are discovered on Indian lands by issuance of tribal permits to Native American practitioners and for direct distribution of bald or golden eagles or their parts, nest, or eggs in accordance with tribal religious custom. This section of the law will allow our tribe to directly control and distribute those articles to Native American practitioners once the tribe has established, by tribal law or custom, a procedure for that process. The Navajo Department of Fish and Wildlife under the Division of Natural Resources, except as limited by Federal Endangered Species Act, manages wildlife resources and has enacted fish and wildlife codes and which are enforced.

The proposed AIRFA amendments should recognize this tribal authority.

Conclusion

The Navajo philosophy and religious belief is deeply rooted in a balanced co-existence with the natural environment and its laws. The traditional religious practices and ceremonies are in existence to maintain this balance. It is important that sacred sites, the use of eagle feathers and parts, animals, and gathering of herbs are preserved and protected for Native Americans. I appreciate this moment to present to you concerns of the Navajo Nation in the protection and preservation of our way of life. I urge you and you colleagues to do all in your authority to pass this important legislation.

..

APPENDIX J

**RESOLUTION OF DINE'
TRADITIONAL HEALING SCIENCE PRACTITIONERS**

WHEREAS, the cultural and spiritual survival of Native American people is closely tied to the continuation, preservation and well-being of our tribal religious traditions; and

WHEREAS, the right to worship is a fundamental human right that most Americans take for granted; and

WHEREAS, in Lyng v. Northwest Indian Cemetery Protective Association, and in Employment Division, Department of Human Resources v. Smith, the Supreme Court ruled that the First Amendment does not protect traditional Native American sacred sites from destruction (Lyng), or the peyote religion of the Native American Church (Smith); and

WHEREAS, the American Indian Religious Freedom Act has not prevented the Federal Government from unnecessarily engaging in activities which impair or disturb Native American religious practices on federal lands;

WE RESOLVE AS FOLLOWS:

1. The Dine' (Navajo) Traditional Healing Science Practitioners urges Congress to enact legislation that will protect Native American religions and basic religious freedom, similar to that recently circulated to tribal leaders by Senator Inouye; and
2. To that end, the Dine' (Navajo) Traditional Healing Science Practitioners petitions Congress to immediately hold hearings on legislative proposals that have been developed to protect Native American religious freedom, with the goal of passing legislation by the end of 1992.

CERTIFICATION:

I hereby certify that the foregoing resolution was duly considered by the Traditional Healing Science Practitioners at a duly called meeting at Window Rock, Navajo Nation (Arizona) at which a quorum was present and that same was passed by a vote of 30 in favor and 0 opposed, this 1st day of November, 1991.

1 obtained

Taylor Dixon
Representative of Traditional
Healing Science Practitioners

MOTION: Richard Jumbo
SECOND: Earl Yellowhorn

APPENDIX K

WORKING FILE

STATE OF ARIZONA
40th LEGISLATURE
FIRST REGULAR SESSION

REFERENCE TITLE: religious freedom restoration act

SENATE

Referred on February 13, 1991

Rules

Judiciary

SCM 1001

Introduced
February 11, 1991

Introduced By
Senators Henderson, Rios: Blanchard, Pena, Walker

A CONCURRENT MEMORIAL

URGING THE PRESIDENT OF THE UNITED STATES TO AMEND THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT TO PROTECT THE SACRAMENTAL USE OF PEYOTE.

1 To the President of the United States of America:
2 Your memorialist respectfully represents:
3 Whereas, the Navajo Nation Council is the governing body of the
4 Navajo Nation; and
5 Whereas, the Navajo Nation Government is based on and operated
6 pursuant to the Navajo Bill of Rights and the Navajo Nation Council
7 desires to protect those basic rights and freedoms; and
8 Whereas, the Native American Church of Navajoland, Inc., is a unique
9 Indian religious organization that uses peyote as a sacrament in its
10 religious practices and that has long suffered persecution in many forms
11 from those who do not understand the beliefs and practices of the church.
12 Thousands of Navajos are members of the Native American Church of
13 Navajoland, Inc. It is incumbent on the Navajo Nation to assist and
14 protect its citizens in practicing their religion; and
15 Whereas, the Native American Church of Navajoland, Inc., has existed
16 in the Navajo Nation for many years. The Native American Church of
17 Navajoland, Inc., believes that the church and the gift of the sacrament
18 peyote is as old as the emergence of the Dine' into this world. The
19 beliefs and practices of the Native American Church of Navajoland, Inc.,
20 are so intimately intertwined with Navajo tradition and culture that to
21 attack the Native American Church is to attack Navajo life itself; and
22 Whereas, the Navajo Nation Council declares its support of the
23 Native American Church of Navajoland, Inc., in requesting that the
24 religious use of peyote be exempt from all tribal, state and federal
25 criminal laws and that this exemption apply to members of recognized

S.C.M. 1001

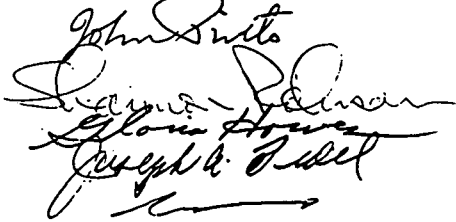
1 Indian tribes who are members of the Native American Church and are at
 2 least one-quarter Indian; and
 3 Whereas, in Gresham Employment Division v. Smith, the United States
 4 Supreme Court dealt a crippling blow to freedom of religion and to the
 5 right of the members of the Native American Church of Navajoland, Inc., to
 6 exercise the sacrament of the use of peyote in the practice of their
 7 religion; and
 8 Whereas, the Religious Freedom Restoration Act of 1990 would
 9 require that a government cannot impose a burden on the free exercise of
 10 religion except in furtherance of a compelling state interest and by use
 11 of the least restrictive means to that end; and
 12 Whereas, the proposed Religious Freedom Restoration Act of 1990 is
 13 an important and necessary response to a serious threat to the practice of
 14 religion in the United States; and
 15 Whereas, because the use of peyote as a religious sacrament is
 16 unique to the Native American Church, the religious practices of the
 17 Native American Church of Navajoland, Inc., are in greater jeopardy than
 18 the practices of mainstream religions; and
 19 Whereas, the United States Congress, should amend the American
 20 Indian Religious Freedom Act, (Title 42 United States Code) to protect the
 21 right of members of the Native American Church of Navajoland, Inc., to
 22 practice their religion free from governmental interference and to engage
 23 legally in the sacramental use of peyote.
 24 Wherefore your memorialist, the Senate of the State of Arizona, the House
 25 of Representatives concurring, prays:
 26 1. That the President of the United States instruct the United
 27 States Congress to amend the American Indian Religious Freedom Act to
 28 allow members of the Native American Church of Navajoland, Inc., to engage
 29 legally in the sacramental use of peyote.
 30 2. That the Secretary of State of the State of Arizona transmit
 31 copies of this Concurrent Memorial to the President of the United States
 32 and to each Member of the Arizona Congressional Delegation.

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SENATE JOINT MEMORIAL 15

40TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1991

INTRODUCED BY



A JOINT MEMORIAL

REQUESTING THE NEW MEXICO CONGRESSIONAL DELEGATION TO CONSIDER AMENDING THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT TO PROTECT THE SACRAMENTAL USE OF PEYOTE BY MEMBERS OF THE NATIVE AMERICAN CHURCH OF NAVAJOLAND, INC.

WHEREAS, the Native American church of Navajoland, inc., is a duly authorized New Mexico corporation with over two hundred thousand members in four states and uses peyote as a sacrament in its religious practices; and

WHEREAS, the right of the Native American church of Navajoland, inc., to practice its religion free from government interference is jeopardized by Oregon employment division v. Smith, a recent supreme court case handed down on April 17, 1990. Under Smith, the Native American church's use of peyote as a sacrament is not protected by the first amendment of the constitution of the United States; and

underscored material = new
[bracketed material] = deletion

SJM 15

1 WHEREAS, the United States house of representatives has introduced
 2 a bill, H.R. 5377, the Religious Freedom Restoration Act of 1990, which
 3 would reinstate the legal test prior to Oregon employment division v.
 4 Smith; and

5 WHEREAS, because the United States congress, following their fid-
 6 uciary duty to protect and preserve Native American religious rights
 7 and practices, has enacted the American Indian Religious Freedom Act,
 8 42 U.S.C. 1996, it should also consider amending this act to allow the
 9 sacramental use of peyote for the Native American church of Navajoland,
 10 inc., and to continue to protect the religious rights and freedoms of
 11 these members;

12 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF
 13 NEW MEXICO that it request the New Mexico congressional delegation to
 14 support enactment of federal legislation that amends the American
 15 Indian Religious Freedom Act, 42 U.S.C. 1996, so that the exercise of
 16 Native American ceremonial and traditional rites are protected and the
 17 use of peyote as a sacramental right is preserved; and

18 BE IT FURTHER RESOLVED that copies of this memorial be transmitted
 19 to the New Mexico congressional delegation.

- 2 -

.82931.1 mo

underscored material = new
 [bracketed material] = deletion

Mr. RICHARDSON. Thank you very much.
Mr. Gus Palmer, please proceed.

STATEMENT OF GUS PALMER

Mr. PALMER. Mr. Chairman and committee members, my name is Gus Palmer, Senior, from the Kiowa Tribe. It is indeed a pleasure to have this opportunity to come before you and discuss our concern about our Native American Church.

My father and my mother took me into the Native American Church when I was really young, nine years old. The experience I want to tell you about our Native Americans is quite a bit, how I came about and why I do respect this church of ours. It is an Indian religious organization, and they are the only people that understand this church.

We have songs pertaining to God, and we all believe in God, the creator of Heaven and Earth and you and I. In there, within the tipi, you could see his creation. Members of this organization are in there, my father and my mother, my grandparents, my in-laws, my father-in-law, all my relations. I saw them in there, how they prayed. They prayed for the welfare of their family, their immediate family. They were mostly concerned about that each time when they have their Native American Church right on the Mother Earth. They have there the altar, the moon, the sage, then the tipi. The tipi is the home, it is the temple of our Native American Church.

This was back in 1918. There was a man that lived with our tribe and studied our tribe. He was an anthropologist by the name of James Mooney. He so helped our tribe in the southwestern part during that time to establish or incorporate a charter for them, knowing that these Indians didn't know that you have to have a law, but he explained to them that you must during that time, and they accepted that. He helped them create this charter for them to protect their church; this was the main reason. This is what my grandfather told me.

Today, part of this that we are testifying to here in behalf of our church, within that church, when we go in there we feel like we are closely related, because the non-Indian doesn't understand this religion. They don't understand this peyote. It is even called a drug. I say it is a sacrament that God has created for the Indian people. How? Through the spirit, they were told, "If you believe in God, you will find this out through the spirit. He will guide you." This is our Indians; this came about years and years ago. Way before the non-Indian was ever here, they knew of God, that this sacrament was made purposely—I always say this—for the Indian, this poor Indian, and through that he spoke to us.

My daughter a while back—she lived in Dallas—called me and said, "Daddy, I'm going to tell you something. In spirit, he spoke to me, and here's what I said: 'Is the Native American Church all right?' and he said, 'It's all right.' 'Is the peyote religion all right?' and he said, 'All right, because I'm in there also in spirit.'"

And this I want to testify today, that the laws of Texas—it is a good thing that they have established the law there to protect this sacrament that has been blessed by God. They call it peyote because it grows in Mexico, all over there, but there is just a small

portion of land there next to the Rio Grande Valley where it grows. I am glad that they have made a law whereas the only people that can go there and receive this peyote must be a bona fide chapter member of the Native American Church, and it requires fourth-degree blood Indian at least, and this is how we want it to be kept, in our Indian tribe, because we are the only ones that understand it, no one else understands it.

Before that law, the non-Indian was abusing it. How? They cut it and sold it for money; they were after the money. I'm glad that they made a law there that only Indians, bona fide Native American Church members, could receive that.

Also, what we need is the protection of this sacrament to transport it, to use it, and have possession of it. We need the help of your committee to protect our Native American Church.

[Prepared statement of Mr. Palmer follows:]

**WRITTEN STATEMENT OF GUS PALMER
DULY APPOINTED REPRESENTATIVE OF THE
KIOWA AND APACHE CHAPTERS
NATIVE AMERICAN CHURCH**

March 16, 1993

Dear Mr. Chairman and Committee members,

We thank you for this opportunity to come before you and to discuss our concerns. I am here on behalf of the Kiowa and Apache Chapters of the Native American Church. We have here my written statement and a short position paper, along with attachments. We would like to submit these materials for the hearing record at this time.

My name is Gus Palmer, Sr. and I am Kiowa tribal member. I served as Kiowa Native American Church Chapter President from 1960 to 1962. I served as Chairman of the Kiowa Tribe in 1970-72. Currently, I am serving as the Kiowa Veterans Association Commander a.k. a. the Kiowa Black Leggings Warrior Society and have served in this capacity since 1958. I am a veteran of World War II with the U.S. Army Air Force where I was stationin in England with the 96th Bomb Group, 413 Heavy Bombardment Squadron. As a waiste Gunner on the Famous Flying Fortress, the B-17, I received two Air Medals, two Campaign Battle Stars for Rineland and Central Europe, European Theatre Operation Medal, Presidential Unit Citation, Sharp-Shooter Medal, and the Good Conduct Medal.

I have attended the Native American Church with my father and mother since I was 9 years old. Today, I am 74 years old. My wife, Alice Tenadooah Palmer, and I have been married 53 years. We have 6 grown children, 14 grandchildren and 6 great-grandchildren.

The Kiowa and Apache Chapters of the Native American Church have been using the sacrament peyote for several generations. Indeed, it is well documented in Anthropological and Archaeological studies. Our forefathers along with James Mooney helped to incorporate the Native American Church under corporate charter, in 1918. Our forefathers knew at that time that we would need to organize ourselves in a way that would perpetuate this form of religious practice. You should be aware that several tribes including the Comanches, were worshipping in this manner even before Oklahoma became a state. Our tribesman likewise were practicing this way of worship before 1918 and so we feel knowledgeable about the subject of peyote. We are not to comfortable talking about it as that is not our way but we will try to do the best we can. We realize that a federal law on the subject will impact not only the Chapters we represent today, but all the other Native American Church (NAC) organizations that have adopted this form of religious practice.

The NAC realizes that you will be stormed with many tribal governmental concerns. Let me begin by stating, this is not an issue revolving around federal funds or tribal jurisdiction, so it is not necessarily a tribal concern. But, we would suggest to you that in formulating this law, that you draft it to conform to the needs of the religious practitioners and not to lobbyists or lawyers who may have a different agenda. We as practitioners of this peyote religion want to keep what little we have left, with an eye toward keeping it for our next generation of Indian practitioners. recommendations for protection of our religion.

Back in the late 1970's the American Indian Religious Freedom Act was hailed as the ultimate protection for our NAC, now we find that it has no enforcement mechanism. We have found that it is a statement of policy but does not create a way to protect us in court. We firmly believe that there needs to be a specific provision to protect our religious sacrament and there needs to be protections for our NAC members as well. We have enjoyed a cordial relationship with the State of Texas, through the years, even before the Texas law gave specific exemptions to the NAC. Even before the Smith decision, there was fear the State of Texas would close the fields down altogether. This threat continued until after the Peyote Church of God v. Thornburg case was finally decided. The Texas law is a good law because it is restrictive, NAC members must provide documentation from their respective chapters, show other proof including blood quantum (25% or more) in order to have access. These laws protect our interests as NAC members because it provides a minimal safeguard for possible abuse from Indian and non-Indian alike. We feel that the Texas law or its standards are best, if our religious practices are to survive into the next century. Is the best standard for our NAC.

A detailed discussion of our position is outlined in the Position Statement that I have just presented to you. We have also attached documentation in support of our position.

We thank you for allowing us to address you today.

Sincerely,



Gus Palmer, Sr.
Route #3
Carnegie, Oklahoma 73015
1-405-654-2351

POSITION PAPER

NATIVE AMERICAN CHURCH
KIOWA AND APACHE CHAPTERS

I. INTRODUCTION

The Native American Church Chapters (NAC) located in Southwest Oklahoma have not had an opportunity, prior to this hearing, to officially present their views on the proposed amendments to the American Indian Religious Freedom Act. The statements included herein are the official positions of two chapters. Many members of other chapters share the same concern. The Senate has held oversight hearings on the AIRFA amendments and these Chapters thus far have not had an opportunity to participate. We appreciate the opportunity to do so now.

It has been well established, in historical studies and court decisions, that the Native American Church as a religious organization had its beginning in Southwest Oklahoma in 1918. The tribes represented here today along with the Comanche and Caddo Chapters have had significant influence on traditional practices of the Native American Church even before formal incorporation. It is further established that the tribes in Southwest Oklahoma passed on these religious practices and teachings to other tribes, including tribes in the Northern Plains and Canada. Although the Kiowa and Apache Chapters are concerned about the other religious freedom issues that have been negatively effected, through judicial decisions, namely, eagle feathers, sacred sites and prisoner's rights, the fact that a federal law may soon be introduced which will effect the traditional use of the sacrament, peyote, in the Native American Church, has promoted us to come forward.

A draft version of a Senate Bill, which includes an exemption for the traditional use of peyote in Title II thereof, was circulated to the tribal chapters and was rejected because it did not show enough sensitivity to the needs of the Native American Church as a religious institution. We are alarmed that if the Senate bill becomes law, it would allow non-NAC groups to organize, call themselves "bona fide religious organizations" and thereby exempt themselves from the control substance laws of each state and the federal government. In addition, in places like Oklahoma (and other non-PL 280 States), where the traditional practices take place in Indian Country, the current Senate version would open the door to other organizations, where the law up to this time had forbidden altogether. More horrifying is the idea that these same organizations could then go to Texas and legally gather the sacrament. We feel that the law was overbroad and appears to create more problems than it answers. In our view, the Senate version seeks to expand the federal exemptions currently in place in the Drug Enforcement Agency regulations and will preempt and therefore expand the current Texas exemption. This Senate bill if passed, would eliminate the legal rights the NAC has gained in the

Courts, as will be discussed later in this paper. The NAC Chapters here today, while being members of the Native American Church of Oklahoma, do not belong to the organization that supports the Senate draft, American Indian Religious Freedom Coalition.

In our opinion, any law drafted must not only address the hysteria created by the now infamous Oregon Division, Department of Human Resources v. Smith, 494 U.S. 872 (1990) decision, but measure also must be taken to insure survival of a religious practice that began in Western Oklahoma. It is our belief and therefore our position that a strict law can be passed that would not only protect the sacrament but foster protection for a centuries old religious practice, the Native American Church, to insure its survival into the Twenty First Century and beyond.

There are no guarantees that a federal law that would expand or protect a larger class of religious observers, would lead to less litigation. From a practical standpoint, legislation purely aimed at expanding the legal exemption now accorded the Native American Church would make a mockery of the very ancient religious practice sought to be protected. Moreover, a more liberal law would increase the use of the sacrament. We must be mindful that our primary emphasis, as Indian advocates and NAC members, should be to protect the religious practices of the Native American Church. It is important to note that the Smith case dealt with an Indian, who practiced the religion of the Native American Church. Any legislation which deals with more than the legal predicament faced by the NAC, as a result of the Smith decision, should be viewed with caution and suspicion.

The Native American Church, prior to the Smith decision, had always thought their religious practices were protected by the First Amendment, freedom of religion. Prior to Smith, the sacramental use of peyote in Oklahoma was protected by judicial decision. See Whitehorn v State, 561 P.2d 539 (Ok. Crim. 1977). The court in Whitehorn held that although there was no specific statutory exemption for religious practices, under state law, the sacramental use of peyote by a member of the Native American Church was still protected by the First Amendment. Recently, a felony prosecution took place in Caddo County, State of Oklahoma v Konuite, CRF 91-80 (6th Jud. Dist. Okla. 1991). This has caused some concern among Kiowa, Comanche, Apache, Wichita, Caddo, Cheyenne-Arapaho NAC members since many live in Caddo County, Oklahoma or the surrounding area.

The Kiowa and Apache Chapters agree there is a need for a legislative cure to the Smith decision and discuss this issue in Section II herein. However, without good reason, the protections heretofore judicially afforded the Native American Church are sought to be stripped away by the language in the proposed bill for a far more liberal and dangerous language. These issues are discussed further in Sections III, IV, and V herein.

II. THE NEED FOR FEDERAL LEGISLATION TO OVERTURN SMITH.

It is now beyond debate, that a legislative solution is needed to overcome the harm caused by the Smith decision. Judicial decisions now give protection to the NAC, but legislation is of course preferable. The American Indian Religious Freedom Act of 1978, is the foundation for accomplishing this. Section 1 of AIRFA states:

Henceforth 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 Hawaiian, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

Since AIRFA was passed, there has been no movement to expand or address the policies covered by the act. As it currently stands, there are no remedies under AIRFA for a cause of action and it has been labeled as a law without teeth.

The Smith case, while dealing with an interpretation of Oregon unemployment laws, has sent a chill down the backs of many minority religions. It declared that an Indian NAC member would not be entitled to a criminal exemption under Oregon law, even when sacramental use of peyote was an integral part of his religious practice. Members of the NAC do not ridicule the beliefs or practices of other religions. We wonder how it can be that a bona fide religion that pre-dates the United States Constitution, whose history shows an existence on this continent for several thousand years, and which is one of a few religions native to the western hemisphere can mean something less than other religions brought here. The creator gave the sacrament to the Indian, to use it with respect and the NAC has done the very best it can to protect the sacrament and the sanctity of the religious practice.

III. THE NATIVE AMERICAN CHURCH MUST BE SPECIFICALLY MENTIONED IN THE NEW AIRFA LEGISLATION.

The Native American Church since the 1960's have had its share of defending itself in litigation. In the very early cases, the church had to legitimize its religious practices to the courts and remove any doubt that it was indeed a religious movement, not simply some cult. See People v. Woody, 394 P.2d 813 (Cal. 1964); State v. Whittingham, 504 P.2d 950 (Ariz. App. 1973); Whitehorn v. State, 561 P.2d 539 (Okla. Crim. App. 1974). In recent years, due to NAC popularity among other Indian tribes, legal protections were extended under both federal law and state law. See generally 21 C.F.R. 1371.31; 21 U.S.C. 821; Texas Stat. Ann. Art. 4476-15 (1976). The NAC has been attacked by both non-Indian religious groups and non-NAC religious organizations who have tried to claim the same exclusion status. These groups have sued the United States and states in efforts to compel those governments to give

their organizations the same religious protections given to the Native American Church. These groups claim that since an exemption from the various Control Substances Acts are accorded the NAC, they are also entitled. See Wisconsin v. Pock, 422 N.W. 2d 160 (Ct. App. Wisc. 1988); Olsen v. DEA, 878 F. 2d 1458 (D.C. Cir. 1989) A number of federal courts have rejected their arguments and have affirmed the special status given to the NAC based on the political relationship between the United States and Indian people. The Courts have uniformly held that Congress could pass legislation to protect the unique culture and traditions of American Indians. Peyote Way Church of God v. Moose, 698 F. Supp. 1342 (N.D. Tex. 1988; Rupert v. Fish and Wildlife Dept., 957 F.2d 32 (1st Cir. 1992).

Recent court decisions in the Circuit Courts have laid ground work for suitable legislation. The most recent of these decisions is the Peyote Way Church of God v. Thornburg, 922 F.2d 1210 (5th Cir. 1991). (Attachment I) The Fifth Circuit amid Establishment Clause and Equal Protection arguments, upheld the constitutionality of the federal DEA regulation which provides as follows:

The listing of peyote as a controlled substance in Schedule 1 does not apply to the non-drug use of peyote in bona fide religious ceremonies of the Native American Church.

21 C.F.R. 1307.31 (1984). [Emphasis added.]

Texas Stat. Ann. Art. 4476-15 (1976) (Attachment II) also designates specific exemptions from criminal prosecution for possession and use of peyote, while in the connection and exercise of bona fide religious practices by Native American Church members of one quarter (1/4) blood quantum or more. The plaintiffs, Peyote Way Church of God, represented a group comprising predominantly non-Indians. The disturbing facts concerning this decision are that not only did these people challenge the federal law as being too narrow, but attempted to strike down the federal and state laws altogether.

The practical effects of a Peyote Way victory would have been disastrous to the Native American church. During the time of the Peyote Way litigation rumors spread throughout Indian County that if the Texas laws were invalidated, the peyote gardens would have been closed down. We are all painfully aware that this could be done, under the holding of Smith. Luckily, the Court in Peyote Way rationalized the specific exemptions as being consistent with federal policy of passing laws to promote the political status of American Indians, not as favoring one race over another. See also Morton v Mancari, 417 U.S. 535 (1974). What is more frightening, is this attitude of, "If I can't do it, you can't do it," evident from the way the constitutional arguments progressed. There are competing interests between the civil libertarian view and the Indian point of view. If the decisions of Smith and Peyote Way were decided differently, they would have given satisfaction to civil libertarians but would have, from a practical standpoint,

destroyed the Native American Church's access by possibly drying up the supply. In a sense, a solid victory for civil libertarians would be a defeat for and spell the demise of the Native American Church which is anticipated in the current version of the proposed AIRFA amendment bill.

The shocking realities of these court decisions are important to shaping a remedy for the Native American Church. The remedy, is of course a federal law that would amend the American Indian Religious Freedom Act, to extend specifically to NAC members, but most important, protect the source of the sacrament, in Texas. In deciding which is to be accorded the most protection, the latter is most important, since the individual rights mean nothing without a protected religious practice. When considering legislative alternatives, including amendments to AIRFA the federal law must be tailored to fit the needs of the Native American Church. A blanket law, protecting "bona fide religious practices" would be a mistake and open up accessibility to a sizeable unknown pool. When you couple this factor with a law that has no restrictions on blood quantum, then the risks increase for abuse. This is surely not what we want from a law meant to protect the Native American Church. The only questions that remain is whether legislation that singles out the Native American church and blood quantum requirements, can pass constitutional muster. The Courts have already dealt with these issues and the questions can be answered in the affirmative.

IV. SPECIFIC DESIGNATION OF THE NATIVE AMERICAN CHURCH IN A FEDERAL STATUTE DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

The Fifth Circuit Court of Appeals in Peyote Way Church of God, ruled that the regulation exempting only the Native American Church was constitutional in addressing equal protection challenges to the Drug Enforcement Agency regulation, 21 C.F.R. Section 1371.31 (1990). The courts said:

We hold that the record conclusively demonstrates that NAC membership is limited to Native American membership of federally recognized tribes who have at least 25% Native American ancestry, and therefore represents a political classification. Thus, under Morton, we must now consider whether the preference given the NAC 'can be tied rationally to the fulfillment of Congress' unique obligation toward Indians. 94 S.Ct.2485. "As [the Supreme Court has] repeatedly emphasized, Congress' authority over Indian matters is extraordinary broad". Santa Clara Pueblo v. Martinez, 436 U.S.49,72 S.Ct.1670, 1684, 56 L.Ed.2d. 106 (1978).

Peyote Way, 922 F.2d at 1216. [Emphasis added.]

The Court in Peyote Way held that the NAC exemption, which allowed Native Americans to continue their centuries old tradition of peyote use for ceremonial purposes, is rationally related to the legitimate governmental objective of preserving Native American culture. Most importantly the court stated:

Under Morton, the Peyote Way's members are not similarly situated to those of the NAC for purposes of cultural preservation and thus, the federal government may exempt NAC members from statutes prohibiting peyote possession without extending the exemption to Peyote Way's exemption.

Peyote Way, 922 F2d at 1216.

The Peyote Way decision came after Smith and is one of the latest cases dealing with 21 C.F.R. Section 1371.31. It appears that as far as the Fifth Circuit is concerned, a regulation or federal statute, that singles out the Native American Church, whether with or without the blood quantum (1/4) requirement will pass constitutional muster. The Peyote Way decision relied primarily on the historical information and the fact that all of the Native American Church Chapters had maintained a blood quantum limitation:

During his tenure as NAC National Chairman, Emerson Jackson testified that the NAC is made up of approximately 36 chapters, each separately incorporated by different tribes and that all NAC members are of 25% Native American ancestry.

Peyote Way, 922 F.2d at 1215.

The Smith and Peyote Way cases when read together indicate that Congress may pass legislation for the benefit of the Native American Church, specifically. One way of insuring that the legislation is passed to benefit Indian peyote practitioners, is to include the degree of blood (1/4 or more) in the legislation, since blood quantum is rationally related to membership in the Native American Church.

The Kiowa and Apache Chapters of the Native American Church have always adhered to a blood quantum (25% or more) as a prerequisite for membership. The strict membership furthers the interests of the NAC by insuring that abuse will not occur. The practice of sending individuals (1/4 or more) to get the sacrament in Texas, has worked well and should not be changed. From the cultural standpoint, the NAC and its blood quantum requirement encourages the preservation of language, culture and religion which is the cornerstone of this religion. Our elders can attend and not have to worry about having to communicate in English, as it is a second language for many. Many of our prayers and songs are in our tribal language and having to translate, would create an

unacceptable burden. When NAC members of other tribes attend, they are aware of the strict requirements, but there appears to be more understanding and respect for the practice from those 1/4 or more blood quantum.

These are legitimate concerns, because depending on how the law is drafted, these practices may have to change. It is not our desire to change these practices, because the practices are all a part of a centuries old religion that has been basically unchanged, at least in Southwest Oklahoma.

V. LEGISLATION SPECIFYING AN EXEMPTION TO THE NATIVE AMERICAN CHURCH WILL NOT VIOLATE THE ESTABLISHMENT CLAUSE.

Recent drafts of the Senate bill suggest that limiting the law to just the Native American Church would create Establishment Clause problems. Testimony taken from many well known Native American Church practitioners, during oversight hearings, held before the Senate Select Committee on Indian Affairs, overwhelmingly suggests that an exemption designating the NAC is the preferred choice. Under the case law, it currently appears that such a designation is legal and not a violation of the Establishment clause.

The Fifth Circuit in the Peyote Way court dealt with this issue and can give us some guidance. The court began its analysis of First Amendment law by observing that issues of this kind are generally accorded Equal Protection analysis. The court emphasized that based upon the unique guardian-ward relationship between the Indian tribes and the United States, traditional notions of 1st Amendment law do not necessarily apply. Indeed, Smith is testament to that notion. The Peyote Way court in upholding the DEA regulation, 21 C.F.R. Section 1371.31 (1990), which singles out the Native American Church, stated:

While the exemption facially singles out one religion, we accept the government's explanation that this was done because the NAC is the only tribal Native American organization of which the government is aware that uses peyote in a bona fide religious ceremonies. We know of no evidence to the contrary. Thus, we hold that the NAC exemption represents the government's protection of the culture of quasi sovereign Native American tribes and as such, does not represent an establishment of religion in contravention of the First Amendment.

Peyote Way, 922 F.2d at 1217.

Most recently, in Rupert v. Director of United States Fish and Wildlife, 957 F.2d.32 (1st Cir.1992), a non-Indian group calling itself an all race church, challenged a Fish and Wildlife regulation that limited accessibility to eagle feathers, to only

people who were members of an Indian tribe. The plaintiffs sued the United States claiming regulation violated the Establishment Clause. The Second Circuit adopted the analysis and rationale previously laid in Peyote Way and found the regulation to be constitutional because the government was not only protecting Indian culture and traditions but protecting a dwindling supply of the eagle population.

There are no guarantees that lawsuits will be any less by passage of a statutory exemption but, it seems to be quite clear under the case law, that if the government wanted to pass legislation that singled out the Native American Church. It could do so. It also seems clear that a blood quantum could be used if in fact it is rational to protect and preserve the culture of the Native American Church. The Peyote Way case, is good law and definitely favors the Native American Church, why forsake its holding? The only real unfortunate reality of Peyote Way, is that the Native American Church may have to continue to be involved in litigation in order to protect its special status, a reality certainly to be exacerbated by the proposed bill.

VI. RECOMMENDATIONS

1. That a practical assessment be done on any legislative proposal drafted to address the Smith decision to determine whether the legislative remedy will hinder the practices of the Native American Church.
2. If a state is said to have both civil and criminal jurisdiction in Indian Country pursuant to Public Law 280, legislation should specifically protect NAC members in those states. A "blanket" law is not appropriate because of the obvious distinctions between P.L. 280 and non-P.L. 280 states. Further, a general law would create a mechanism for formation of non-NAC religious organizations and would open accessibility. Such broad language would create problems in states like Oklahoma where P.L. 280 has no application. Specific language should be developed addressing the needs of non-P.L. 280 states.
3. Incorporate into federal legislation, the specific provisions of Texas law or incorporate by reference the language thereof. A more restrictive federal law relating to the accessibility of the sacrament will help to maintain the tradition and culture heretofore safeguarded by the NAC and will further insure that the sacrament, peyote, stays in the right hands for bona fide religious practices of the NAC.
4. Any federal law relating to the distribution, use, possession, and transportation should be codified to exempt NAC members with 25% or more Indian Blood pursuant to the holding in Peyote Way Church of God v. Thornburg, 922 F. 2d 1210 (5th Cir. 1991).
5. The House of Representatives are urged to support the initiatives of the Kiowa and Apache Chapters of the Native American Church to protect the holy sacrament from becoming extinct as would

the religion itself.

VII. CONCLUSION

The Kiowa and Apache Chapters of the Native American Church and individual members of other chapters, would support legislation that would favor the needs of the Native American Church. This should include legislation that specifically excludes from criminal prosecution, religious use of peyote by members of the Native American Church who possess at least 1/4 Indian blood. A federal law that would protect the sacrament, similar to the Texas law, would be acceptable. As mentioned earlier in this paper, this form of legislation has already been upheld in the Courts and would go far in protecting our culture and religious rights. Legislation that would put more protections for individual rights than protection for our traditional Indian church is not acceptable and will lead to demise of the Native American Church. We respectfully request your serious consideration of our views and rights and strongly urge your support of our position.

Mr. RICHARDSON. Thank you very much.

The chair recognizes the gentleman from Wyoming.

Mr. THOMAS. Thank you, Mr. Chairman.

Thank you, gentlemen, for your testimony.

Mr. Dorsay, the purpose and the focus of this hearing, of course, is on Native American religious rights. Is this broader than that? Does it affect other religious groups as well?

Mr. DORSAY. Well, I think that was really the only advantage of the *Smith* decision, that it didn't single out the Native American Church, it really affects every minority religion in the country.

Justice Scalia ruled that protection of religious diversity is a luxury that we cannot afford in a democratic society and it is subject to the majority will, and so all religions are subject to possible discrimination, and the only advantage of the *Smith* decision is that it galvanized activity by, I think, all religious groups in the country.

Mr. THOMAS. You have not had any experience with other religious groups specifically, though?

Mr. DORSAY. I have not, no.

Mr. THOMAS. President Long, let me ask you this. The Drug Enforcement Agency has apparently handled this to your liking. Is that true?

Mr. LONG. Yes. We have had a long-standing working relationship with the Drug Enforcement Agency. Since my being a member and an officer of the Native American Church of North America since 1962, since that time, we have had a really good working relationship with the Drug Enforcement Agency and the United States Customs Service in our crossing the border from the United States into Canada, and also we have a good working relationship with the United States Justice Department.

In 1982, when I was the president of the Native American Church of North America for my first term, the Justice Department is the one that suggested to us that if we would fully organize the Native American Church in these continental United States that we would have one of the largest Indian religious organizations, and through that they encouraged us to make an amendment to the Controlled Substances Act of 1970, which at that time we tried, but as you know, we failed.

Mr. THOMAS. Not all of your 250,000 members are involved with the use of this particular substance. Isn't that true?

Mr. LONG. That is true. That is a low estimate, sir. Of the 960,000 Native Americans that are registered by the Bureau of Indian Affairs, there are more than 250,000 of us that partake of our sacrament, peyote, because this is a low count, and we have several large Native American Church organizations within the continental United States, such as Navajoland and Oklahoma and North and South Dakota, sir.

Mr. THOMAS. So you are suggesting that more than 250,000 Native Americans use this substance?

Mr. LONG. Yes.

When we went to take a census of our membership, we did not go below the age of 12 years, and I, myself, was born into this Native American Church and I have been using peyote since I was nine months old.

Mr. THOMAS. Really?

President Whitehorse, I assume we would all agree that if this substance is available for religious rights and uses that it ought to be limited to that. How do you do that? What do you do within your church, for example, to ensure that if the use is made available for religious purposes, that that is what it is available for and only used for that?

Mr. WHITEHORSE. Yes, thank you for the question.

How we members know when our limit is—that is your question, sir?

Mr. THOMAS. Well, it seems to me, if you are requesting the use of a substance that is otherwise probably illegal, except for the use in your historic procedures and processes and religious rites, that you have some responsibility also to ensure that it is used for that purpose. How do you do that?

Mr. WHITEHORSE. Other than that the Indian people know the uses of the peyote, if we know that the sacrament there is really not for only, say, healing of a patient but you know that it will cover other areas, like praying for our ancestors, paying for our veterans, elderly, handicapped, just like if you were going to a church, that it covers a lot of areas for the good family standing. Those are some of the examples that are pointed out as the ones covered when we get into the circle and pray throughout the nights.

Mr. THOMAS. I see.

Does anyone else want to take a shot at that?

Mr. LONG. Yes, sir.

The way that we control the use of our sacrament in the Native American Church of North America is like, for instance, in the State of Wisconsin we have one buying custodian. The Drug Enforcement Agency representative who was here this morning told us and verified that we do have eight custodian persons that are able to harvest, procure, distribute, and sell peyote under the law in the State of Texas, whereby then we are able to have only one custodian from the State of Wisconsin to service five Native American Church chapters within our State.

Also, I know that this is true with the Native American Church of North America. We have only one buying custodian, and we have authorization permits that are given to us by the Texas Department of Public Safety. Those are the only authorization permits that we can give to one of our members to make a journey into the Rio Grande Valley to approach one of these dealers and buy peyote from them, and then we can transport it back to our respective reservations.

Mr. THOMAS. I see. Okay. Thank you very much.

Yes, sir.

Mr. WHITEHORSE. Along with what my brother, Douglas Long, indicated, the 90 chapters that we have within the four corners of the Navajo Tribe, the way we control it is also similar to what my brother indicated. We have authorized the border director or custodian which is established with Texas, and those are the only persons who are authorized to transport the peyote. Also, along with it, in this bill that is now before the subcommittee here, it is also identified that the distributor within Texas will serve the Indian tribe, not elsewhere. So we support this.

Mr. THOMAS. All right. Thank you very much.

Thank you, Mr. Chairman.

Mr. RICHARDSON. Thank you.

I would like to ask Mr. Dorsay: In your opinion, if the current Federal regulatory exception becomes statutory and, therefore, precludes any kind of Federal prosecution, could NAC members, in your judgment, still be prosecuted under State law, or would the Federal law preempt that State law?

Mr. DORSAY. If the current legislation is passed?

Mr. RICHARDSON. If the exception becomes statutory.

Mr. DORSAY. If the current exception becomes statutory?

Mr. RICHARDSON. Right, if we pass a law.

Mr. DORSAY. I think that would preempt State prosecutions—in my opinion.

[Additional information on this question follows:]

SUPPLEMENT TO WRITTEN TESTIMONY OF CRAIG DORSAY, ESQ.

I was asked a question by Chairman Richardson which requires further explanation. Representative Richardson asked me whether it would be sufficient protection for Native American religious practices if Congress enacted the current regulatory exemption, codified at 36 CFR § 307.31, into federal statutory law. I said at the hearing that I believed that such action would provide national protection for the Native American Church.

Upon review of the actual language of section 307.31, I am not sure that my statement was correct. This administrative regulation says only that the listing of peyote as a controlled substance in schedule I does not apply to the non-drug use of peyote in NAC ceremonies. Since most states tie their drug proscription laws to the federal schedule, a federal law removing NAC religious use of peyote from schedule I will automatically transfer to each state's law.

It will not however, transfer to state laws which have not tied criminality of specific substances to the federal schedule. In these states religious use of peyote would still be illegal under state law unless that state provided its own independent exemption for the NAC. Based on information provided by the State during the *Smith* case before the United States Supreme Court, there were at that time (1989) six states which either did not list peyote as schedule I under their act or had not adopted the uniform controlled substances act: Alaska, Maine, Massachusetts, Nevada, Texas, and Vermont.

I hope this clarifies this issue.

Mr. RICHARDSON. Okay.

Now, as you know, before the *Smith* decision, the Government needed the compelling interest to take away its religious right. Now the test is that the statute must only be "rationally related" to the Government interest.

In your judgment, if we are to fix this, should we start by restoring the compelling Government interest test? Would this be enough?

Mr. DORSAY. I do not believe the compelling interest test would be enough. As you may know, from the *Smith* decision, Justice O'Connor, who joined the minority in dissenting with Justice Scalia

on the overturning of the test, still found that the State proscription of peyote would be upheld under the compelling interest test, and that was based solely on the legislative judgment in making peyote a Class 1 Controlled Substance. So I think you need to go further than the compelling interest test and make a specific exception for peyote for the Native American Church.

Mr. RICHARDSON. Thank you.

I would like to ask a few questions of my friends from the Native American Church. These are mainly just factual questions. Regarding membership in the Native American Church, if membership is limited to those with a quarter-quantum blood, blood quantum or tribal membership, does the tribal membership include non-Federally recognized tribes?

Mr. LONG. No. It only includes Federally recognized tribes.

Mr. RICHARDSON. Okay.

Do you see the use of peyote by members of the Native American Church the same as Christians who use wine during their services?

Mr. LONG. Yes.

Mr. RICHARDSON. Do each of you consider yourselves members of the American Religious Freedom Coalition?

Mr. WARE. That is correct.

Mr. WHITEHORSE. No.

Mr. RICHARDSON. No? That is the coalition that is involved in drafting the legislation. Mr. Whitehorse, you are not a member?

Mr. WHITEHORSE. No, I'm not a member of the coalition, but—

Mr. RICHARDSON. But you support the legislation?

Mr. WHITEHORSE. I support the legislation and then concur with them.

Mr. RICHARDSON. Now, some have suggested that peyote use be limited to a quarter-blood quantum. In your judgment, is this racial classification a problem under the Equal Protection Clause? Aren't Indians generally categorized under a political classification, and are we treading on dangerous ground when we draw these kinds of racial distinctions?

Mr. WARE. I don't think so, Mr. Chairman. There are a long line of cases since *Morton v. Mancari* that have held that if Congress decides to pass legislation that would single out Indians, that as long as they had a rational basis for it, that it could be done.

Our feeling is that the Native American Church has been here for a long time. I think testimony to that effect has been established here. It has also been established that the DEA themselves have not had any problems with the Native American Church, and, based upon that and based upon *Morton v. Mancari*, a case came out of Texas called *Peyote Way Church of God* that has upheld section 1507.31 that you were referring to in the DEA regulations, and I might add that that particular regulation passed both the First Amendment and the Equal Protection arguments that were presented at that time.

I would just like to add that our reason for wanting the one-quarter in it is basically to separate possession, use, and transportation from distribution. Texas has a separate law on distribution. The only protection that we have is the Texas law that is in effect right now, and it goes to help us to at least have something in there that would protect our membership, protect our ability to re-

ceive the sacrament. That is why we felt like the Texas law ought to be codified as part of the distribution section of any law that would be drafted.

Mr. DORSAY. And I would concur in that statement also. You are much stronger when you base the protection on the political relationship. There is a half-blood-quantum requirement in the Indian Reorganization Act, and that was upheld in one case, I believe, *United States v. John* by the U.S. Supreme Court, but even in that case they tied the blood quantum to the political relationship through descendancy, and you are much stronger on that basis.

Mr. RICHARDSON. Well, let me thank this panel. It has been a very good, substantive panel, and I appreciate very much your traveling to appear before our subcommittee. Again, our thanks.

Mr. RICHARDSON. Our third panel is: Ms. Karen Atkinson, Attorney at Law, Confederated Salish and Kootenai Tribes, Pablo, Montana; the Honorable Richard Hill, Chairman of the Oneida Tribe of Indians, Wisconsin; and the Honorable Vernon Masayesva, Chairman of the Hopi Tribe, who I understand may be represented by someone; I don't see the chairman here; and I understand Richard Hill may be represented by somebody else also.

Let me also extend the same welcome as I have to all the panels. All of your statements are inserted in the record. I will ask you to observe the five-minute rule, and if you are substituting for anybody, if you would please identify yourselves when I call you to testify.

So first let us start with Ms. Karen Atkinson.

Please proceed, Ms. Atkinson.

PANEL CONSISTING OF KAREN ATKINSON, TRIBAL ATTORNEY, CONFEDERATED SALISH AND KOOTENAI TRIBES, PABLO, MT; HON. VERNON MASAYESVA, CHAIRMAN, HOPI TRIBE, KYKOTSMOVI, AZ; AND MARK A. POWLESS, TRIBAL ADVOCATE, ONEIDA TRIBE OF INDIANS OF WISCONSIN

STATEMENT OF KAREN ATKINSON, ESQ.

Ms. ATKINSON. Thank you, Mr. Chairman. I would like to thank you for the opportunity for providing this testimony today.

I am going to talk about the eagle feather permit system and how that permit system frustrates Indian religious practices because of the cumbersome nature of the system and the delays involved in obtaining eagle feathers and eagle parts.

Most Indian religious practices are based on the natural environment. For many Indian people to practice their religions, they rely on natural substances such as wildlife, plants, and minerals. These items can be worn, carried, or merely present in a religious ceremony. For most Indian people, the eagle feather is held in the highest regard and respect. The sacred nature of eagle feathers is deeply rooted in religious beliefs. The eagle feather is the messenger to the spirit world, and it allows Indians to communicate with their creator.

These Indian religious practices and the use of eagle feathers are frustrated by current laws and regulations which protect the bald and golden eagles. In 1940, Congress passed the Eagle Protection Act, making it a Federal crime to use, possess, or transport eagle

feathers or eagle parts. In 1962, Congress amended the Eagle Protection Act to include the protection of gold eagles and also provided for religious exemption for the use of eagle feathers by Indian people in religious ceremonies.

Pursuant to the statutory authority, the Department of the Interior has issued regulations establishing an eagle permit system to distribute eagle parts to Indian practitioners for religious uses. This permit system is administered by the U.S. Fish and Wildlife Service in its seven regional offices nationwide.

The permit system has established an elaborate application process whereby Indian practitioners can obtain eagle feathers for religious purposes by applying with the U.S. Fish and Wildlife Service. To obtain eagle feathers to use in religious ceremonies, Indian practitioners must fill out an application form. This form requires them to identify the religious ceremony in which the eagle feathers are going to be used. It requires them to attach two certifications. The first certification is from the Bureau of Indian Affairs which certifies that the individual is indeed an enrolled member of a tribe. The second certification is from a traditional religious leader who certifies that the eagle feathers are going to be used in a religious ceremony.

Once the applications are submitted to the regional offices, they are verified by the regional offices and then transmitted to a national repository which is located in Ashland, Oregon. The repository stores eagles that are found from across the Nation. The repository distributes the eagle feathers to Indians for religious purposes and to schools and institutions for educational purposes.

The current system fills the applications or requests for eagle feathers in the chronological order received. Right now, there is approximately a 2-year delay from the time an Indian applies and submits his form to the time that eagle feathers are actually received. I have heard of instances where this delay can be up to 3 or 4 years or where applications are simply lost in the system and eagle feathers are never received.

Currently, there is no method or procedure to expedite requests if there is a need for eagle feathers immediately or a ceremony needs to be conducted and you can't wait the 2 years that it takes to apply for the system. There is no method to expedite that request. This is simply left up to the discretion of the regional offices.

There are severe criminal and civil penalties for anyone who obtains or uses eagle feathers that are not obtained through the permit system or who does not have a valid permit. A lot of these delays are a result of the permit system being low on the priority list by the Fish and Wildlife Service. The number of employees that administer the system nationwide is very small. They tend to be understaffed. There seem to be problems getting eagles that are found nationwide to the repository in a timely manner. This process is very insensitive to the needs of Native Americans who rely on eagle feathers for their ceremonies.

Many Native Americans find it very humiliating to have to ask the Federal Government for these objects which they need in order to practice their religion. While the purpose of the Bald Eagle Protection Act is commendable in protecting eagles and eagle parts, Congress didn't fully understand the impacts it would have on In-

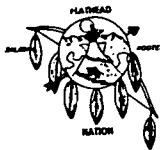
dian religious practices. This elaborate and cumbersome process results on the Indian practitioners due to the amount of paperwork that is necessary to process a permit and due to the delays inherent in the system.

Congress has already attempted to accommodate Indian religious values by providing for a statutory exemption in the Eagle Protection Act. I hope that Congress takes this time and that this committee takes time to review the permit process and to look at ways to provide better accommodation for Indian religious use of eagle feathers. This can be done by streamlining the current permit system to reduce the amount of paperwork that is necessary to process a permit, to reduce the delays in giving eagle parts and eagle feathers to Indian practitioners, and by providing tribal input into the permit process.

To provide this type of accommodation would assure that Indian people can continue to use eagle feathers in a manner which they have used them for centuries.

That concludes my testimony. Thank you.

[Prepared statement of Ms. Atkinson including exhibits follows:]



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John "Chris" Lozau
D. Fred Matt

House of Representatives Committee on Natural Resources
Subcommittee on Native American Affairs

Religious Freedom
Oversight Hearing

March 16, 1993
Washington, D.C.

Introduction

Good morning Chairman Richardson and members of the Native American Subcommittee. My name is Karen Atkinson, I am Mandan/Hidatsa/Tsimshian and an attorney for the Confederated Salish and Kootenai Tribes. I represent the Salish and Kootenai Culture Committees on cultural and religious issues. Thank you for holding this hearing on the effectiveness of the Indian Religious Freedom Act, and for the opportunity to provide this testimony. I wish to express my sincere appreciation to the Chairman for considering sponsoring religious freedom legislation and to Representative Pat Williams for considering co-sponsoring legislation to protect age-old religious practices.

In my testimony I will provide a legal background on the current federal laws and regulations which protect bald and golden eagles, and the current administration of the eagle feather permit system. I will also discuss the manner in which the current administration of the eagle feather permit system interferes with the free exercise of religion by Indian practitioners. Lastly, I will address the need for a law which reforms and streamlines the current eagle feather permit system and which is more sensitive to the needs of Indian religious practitioners.

Religious Use of Eagle Feathers by Indians

Indian traditional religions are based on the natural environment. Indian practitioners rely on natural substances for their religious observances. Certain wildlife, plants and minerals--which may be worn, be carried or simply be present--are considered sacred and fundamental to religious practices.

For most Indian people, eagles and eagle feathers are held in the highest regard and respect. The eagle represents power and has significant meaning. The sacred nature of eagles is deeply rooted in Indian religious beliefs. In many traditional practices, the eagle serves as a messenger to the spirit world. The ceremonial use of eagle feathers allows the living to communicate with their Creator. Many Indian practitioners believe that ceremonial use of eagle feathers can bring about blessings to an individual and his family and can provide good health and a positive and constructive life.

Indian religion is the glue which binds a tribal community and provides for its well-being. The continuance of many tribal ceremonies is dependent on the availability of eagles and eagle feathers. Indian people who practice their traditional ways must have the freedom to use eagle feathers as they have since time immemorial.

Federal Laws Protecting Eagles

Currently, there are three federal statutes which severely impact upon Indian religious use of bald and golden eagle feathers and eagle parts for ceremonial purposes, they are: the Migratory Bird Treaty Act of 1918,¹ Protection of Bald and Golden Eagles Act,² and the Endangered Species Act of 1973.³ While these laws are commendable in their purpose of protecting various wildlife species, Congress did not adequately consider their impact on Indian religious practices when they were enacted.

Migratory Bird Treaty Act

To comply with international treaty obligations and in response to declining bird populations, Congress enacted the Migratory Bird Act of 1918 ("MBTA"). MBTA prohibits the taking, killing, possession, import, export, sale, or offer for sale of all wild birds commonly found in the United States except the house sparrow, starling, rock dove or pigeon, and resident game birds such as pheasant, grouse, quail, wild turkeys.⁴ The MBTA provides for both misdemeanor and felony convictions. Both bald and golden eagles are protected by the provisions of MBTA pursuant to the United States-Mexico Convention of 1936.⁵ There are no statutory exemptions for the use of migratory bird feathers by Indians for religious purposes. Certain treaties and conventions, however, provide exemptions for subsistence takings of migratory birds by Alaska natives.⁶

Endangered Species Act of 1973

In 1973, Congress enacted the Endangered Species Act which established a comprehensive and integrated approach to preserve species listed as threatened (species likely to become endangered in the near future) or endangered (species which are in danger of becoming extinct).⁷ The Act prohibits the "taking" of any endangered species.⁸ "Taking" is broadly defined to include harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in such conduct.⁹ Presently, bald eagles in all but five of the

¹ 16 U.S.C.A. §§ 703-15 (1985 & Supp. 1992).

² 16 U.S.C.A. §§ 668-668d (1985 & Supp. 1992). The Bald Eagle Protection Act was originally passed in 1940. In 1962 it was amended to include golden eagles and the provision's official title is the Protection of Bald and Golden Eagles.

³ 16 U.S.C.A. §§ 1531-1543 (1985 & Supp. 1992).

⁴ 16 U.S.C.A. § 703. A reference list of migratory birds can be found at 50 C.F.R. § 10 (1991).

⁵ Convention for the Protection of Migratory Birds and Game Mammals, Feb. 7, 1936, United States-Mexico, 50 Stat. 1311, T.S. No. 912.

⁶ 16 U.S.C.A. § 712 (1985).

⁷ 16 U.S.C.A. § 1532(6) & (20) (1985).

⁸ *Id.* at §§ 1531-1543 (1985 & Supp. 1992).

⁹ *Id.* at § 1532(14) (1985).

conterminous United States are listed as endangered. In Washington, Oregon, Minnesota, Wisconsin, and Michigan, bald eagles are listed as threatened.¹⁰ Golden eagles, however, are not listed as threatened or endangered.¹¹ The ESA does not provide for any exemption for use of threatened or endangered species by Indians for religious purposes. The only Indian exemption provides for subsistence takings by Indians, Aleuts or Eskimos who are Alaska Natives residing in Alaska.¹²

Protection of Bald and Golden Eagles Act

Recognizing that the bald eagle is America's symbol of "ideas of freedom" and that the bald eagle has special significance to many people, Congress enacted the Bald Eagle Protection Act in 1940. At this time, the decline in the bald eagle population was drastic in many areas. For many decades prior to 1940, the bald eagle population decreased in numbers largely due to drastic habitat changes as human population increased and due to human induced mortality, including, bounties on eagle carcasses and legs, defense of livestock and agriculture, and industrial chemicals. A significant contributor to the decline of the bald eagle population was the use of man-made chemicals and pollutants--especially DDT--which increased susceptibility to death and diminished reproductive success. Bans on the use of DDT in the United States have resulted in fewer deaths attributable to this chemical.¹³

In 1962, Congress amended the Bald Eagle Protection Act to include golden eagles. This is largely because golden eagles are difficult to distinguish from juvenile bald eagles and because their populations were declining. Accordingly, Congress changed the official title of the act to the Protection of Bald and Golden Eagles. This statute makes it a federal crime to take, possess, sell, purchase, barter, offer to sell, purchase, or barter, transport, export, or import bald or golden eagles, or any part, nest, or egg of an eagle.¹⁴ The statute establishes severe criminal and civil penalties for any one who violates any permit or regulation issued thereunder. Criminal penalties under the statute are a \$5,000 fine and/or imprisonment of not more than one year, for a subsequent violation the fine is \$10,000 and/or imprisonment of not more than two years.¹⁵ In addition, due to the continued killing of eagles by ranchers and farmers, Congress established a penalty to cancel grazing leases on Federal lands for anyone convicted for violating the provisions of this statute.¹⁶

The statute provides an exception for the taking, possessing and using of the bald and golden eagle for scientific purposes, exhibition purposes, and for the religious purposes of Indian tribes when it is compatible with the preservation of the bald and golden eagle.¹⁷ Pursuant to statutory authority, the Secretary of the Interior promulgated regulations which create a permit process for obtaining eagle parts and feathers for these specific purposes.

¹⁰ 59 C.F.R. § 17.11 (1991).

¹¹ *Id.*

¹² 16 U.S.C.A. § 1539(e) (1985 & Supp. 1992). This exemption is subject to the determination by the Secretary of Interior that such subsistence takings do not materially and negatively affect the threatened or endangered species.

¹³ See *Generally, Handbook of North American Birds*, Vol. 4, pp. 226-228, (R. Palmer ed. 1988).

¹⁴ 16 U.S.C.A. § 668(a) (1985 & Supp. 1992).

¹⁵ *Id.*

¹⁶ *Id.* at § 668(c).

¹⁷ *Id.* at § 668a. These exceptions were included in the 1962 amendments to the Bald Eagle Protection Act.

Eagle Permit Regulations

Administration

The law enforcement branch of the U.S. Fish and Wildlife Service (hereinafter "the Service") administers the eagle permit system pursuant to regulations implemented by the Secretary of Interior.¹⁸ The Service's law enforcement division is divided into seven regions nation-wide. The eagle permit system is administered at the regional level by the Assistant Regional Director of each law enforcement district. Although there are seven separate law enforcement districts, there is only one repository for salvaged eagles, parts and feathers. The National Repository, located in Ashland, Oregon, serves Indians throughout the United States. Eagles, parts and feathers are acquired by the Service in connection with law enforcement and other official activities nation-wide and are sent to the repository for distribution to Indians for religious purposes and to schools for educational purposes through the permit process.

Although the perception of many people is that decline in the eagle population was caused by Indians' use and killing of live eagles, most traditional practitioners use eagle parts and feathers from dead eagles. The vast majority of eagles and eagle parts obtained by Indians from the Service are from dead birds that have been salvaged from across the nation. Currently, the major cause of death for eagles is electrocution from power lines. Eagles are generally not harvested or killed to fulfill the demand for Indian religious purposes. The one exception of which I am aware is the Hopi Tribe, who has a permit directly from the Secretary of the Interior to take twelve golden eaglets for ceremonial purposes.¹⁹ The Hopi must apply for this permit every year.

The Application Process

The regulations establish a intricate and complicated application procedure by which Indians can acquire bald and golden eagles or parts for use in religious ceremonies. Indian practitioners are required to fill out an application form with their regional Service office to obtain bald or golden eagle parts or feathers for use in religious ceremonies.²⁰ Applicants must be a member of a federally recognized tribe. This status must be certified by a representative of the Bureau of Indian Affairs. In addition, the applicant is required to identify the ceremony in which the feathers are going to be used, and a duly authorized official of the tribal religious group must certify that the applicant is authorized to participate in tribal ceremonies.

On the application form, the applicant must specify the species of the eagle and the number of parts requested. At most, an applicant may request only one eagle or the equivalent of one eagle per order and may submit only one order at a time. The application packet for Region two informs the applicant that it will take up to two years to fill the request.²¹

The regulations governing the issuance of permits to Indians for the possession of eagle

¹⁸ The regulations are codified at 50 C.F.R. § 22.21 (1991). Much of the information on the administration of the eagle permit system was obtained through interviews with Service personnel from the Assistant Regional Director's Offices from Region two and six.

¹⁹ This information was provided by Region two, Assistant Regional Director Law Enforcement.

²⁰ Copies of the application form and guidelines from Region two and six are attached as Exhibit "A".

²¹ See also Exhibit "B." Acknowledgement letter from the Service notifying the applicant of the 24-month delay.

feathers for religious purposes provide the permits will be granted upon a showing of the following:

- (1) Species and number of eagles or feathers proposed to be taken, or acquired by gift or inheritance.
- (2) State and local area where the taking is proposed to be done, or from whom acquired.
- (3) Name of tribe with which applicant is associated.
- (4) Name of tribal religious ceremony(ies) for which required.
- (5) Applicant must attach a certification from the Bureau of Indian Affairs that the applicant is an Indian.
- (6) Applicant must attach a certification from a duly authorized official of the religious group that the applicant is authorized to participate in such ceremonies.²²

The regulations further provide that a permit shall not be granted until an investigation has been conducted and it is determined that the taking, possession and transportation is compatible with the preservation of the bald or golden eagle. In making this determination, the following are considered:

- (1) The direct or indirect effect which issuing such permit would be likely to have upon the wild populations of bald or golden eagles; and
- (2) Whether the applicant is an Indian who is authorized to participate in bona fide tribal religious ceremonies.²³

Applicants are also required to provide a home and work phone number or a list of phone numbers where they can be reached in approximately two years, so their addresses can be verified before their eagle parts or feathers can be shipped to them from the repository. If the repository is unable to contact the applicant to verify the mailing address at the time the eagle parts are ready to be shipped, the applicant's request will be placed on inactive status and considered abandoned. Each time eagle parts or feathers are needed for a ceremony, an Indian practitioner must re-apply to obtain the necessary parts and permits.

Delays

When Indian practitioners apply for eagle parts or feathers from the federal government, they are told that they will have to wait at least two years before their request is shipped. There is approximately a 1500 person waiting list for applicants who meet the issuance criteria. All requests are filled in the chronological order received. There is no special procedure for expediting requests when a ceremony must be conducted immediately. Often, the eagle parts or eagle feathers shipped to applicants are not in very good physical shape and are considered "unpure" because of all the handling they have received. If an Indian practitioner is required by his religious beliefs to conduct a specific ceremony that requires the use of eagle feathers, he must wait two years until he has received eagle feathers through the permit process. An Indian who obtains and uses eagle feathers by other means runs the risk of severe criminal or civil

²² 50 C.F.R. § 22.22(a)(1)-(6) (1991).

²³ *Id.* at 22.22(c)(1) & (2).

penalties. For many tribes, the eagle enjoys such an exalted status in its religious practices that any regulatory process which limits the access to eagle parts or feathers has a profound effect on the exercise of their religious beliefs.

Supply Problems

Presently, the requests for eagle parts and feathers clearly outnumber the amount on hand at the repository. Part of the supply problem, however, is created by lack of Service law enforcement agents in the field nation-wide. According to the staff at Region six, there are only two Service law enforcement agents in each state who, among many other official duties, have the responsibility of picking up dead eagles when they are discovered and sending them to the repository. Such understaffing results in eagles not being picked up and sent to the repository in a timely manner. In one instance, the Salish and Kootenai Tribes notified one of the Montana agents of two dead eagles that were found on the Flathead Indian Reservation, it took almost two years for the agent to pick them up and send them to the repository--during this time there were numerous Salish and Kootenai applicants requesting eagle parts pending in the regional office.

The supply of eagle parts or feathers could be increased by educating state game wardens, wildlife refuge managers, and law enforcement agents on the provisions of the Eagle Protection Act. The Service could also prioritize the tagging and picking up of eagles by placing a time limit on the agents in which they have to respond to someone who has discovered a dead eagle.

Regional Discretion

Though each region is under the same federal directives, there does seem to be room for a certain amount of regional discretion. There was a disparity among the two regions I interviewed, in how much flexibility is given to special requests made by Indian individuals or requests to expedite the process for a specific ceremony that needed to take place immediately. These types of requests seem to be evaluated on a case-by-case basis by the Assistant Regional Director without tribal input. Depending on the circumstances, the Assistant Regional Director may allow a request to be expedited. In addition, at one time in Region two, there was an informal policy to allow tribes to keep and distribute dead eagles found on their own reservation to tribal members who had applications pending.

Permits for Educational and Other Uses

There are two different application procedures depending on whether the request is for religious purposes or for scientific and educational purposes. There is no standard application form used for educational requests similar to the application used for Indian religious requests. Both Region two and six require only a written statement of justification by applicants for educational and scientific requests.²⁴ In some instances, eagles found in the field are simply turned over to educational institutions and an application for educational use is submitted after-the-fact, completely by-passing the lengthy delay involved in having the application filled by the national repository. Most requests from schools are for whole eagles which can be mounted and put on display.

Distribution Problems

A major distribution problem exists at the national repository. There is only one Service

²⁴ Application requirements listed in 50 C.F.R. § 22.21.

employee staffed at the repository. He is responsible for receiving all of the eagle parts and feathers discovered nation-wide, filling all of the requests as they are sent to him by each of the seven regional offices, preparing the eagle parts and feathers for each individual request, and verifying the mailing address of each applicant when the request is ready to ship. If, after two years or longer, the repository employee cannot reach the applicant by phone or mail to arrange delivery, the application is considered abandoned.

Once eagle parts or feathers are ready to be shipped, the repository employee must call the applicant to arrange a delivery point. The applicant pays for all shipping costs. The applicant receives a temporary permit with the eagle parts or feathers shipped from the repository. The applicant is then required to return another form to the Service in order to receive a final permit. Failure to do so could result in action by the Service to recover the eagle parts or feathers.²⁵

Education

The personnel who administer the permit system lack general information on the tribes within their region. After thirty years of administering the permit system, the regions do not seem to have developed any regular working relationships with tribes in attempting to expedite the process or to request tribal input on how the process can be improved.

Need to Reform the Permit System

At best, the permit process for Indian religious uses can be described as cumbersome and insensitive to the needs of Indian practitioners, at worst, as one federal court found the "federal administrative apparatus erected to accommodate Indian religious needs is utterly offensive and ultimately ineffectual."²⁶ For many Indian people it is unthinkable that they need to obtain a federal permit to use an eagle feather in a religious ceremony that has been practiced since time immemorial. Many Indian practitioners have described the permit process as "humiliating," and view it as having to obtain permission from the federal government to continue to practice their age-old religions.

In enacting the regulations, the Department of Interior attempted to develop an administrative system to accommodate Indian religious practices. In establishing such a complex system, the Department has unknowingly infringed on the religious rights of Indians. The complicated and intricate permit system intrudes on Indian religious beliefs and practices. The system requires Indians to identify ceremonies to a federal agency that are generally regarded as very personal and usually not revealed to anyone. In addition, it subjects these ceremonies and the religious leader who must "certify" that the applicant requires an eagle feather to participate in tribal ceremonies to scrutiny by federal employees and it causes lengthy delays in the time it takes to obtain eagle parts or feathers from the repository.

There is clearly a need to reform this permit system to better accommodate Indian religious practices. Congress has already established precedent for accommodating Indian religious practices in this area by providing for a statutory exemption for the use of eagle parts or feathers by Indian practitioners in the Eagle Protection Act. This exemption permits the

²⁵ See Exhibit "C".

²⁶ *United States v. Abeyta*, 632 F.Supp. 1301, 1307 (D.N.M. 1986). In this decision the court held a prosecution for possession of a golden eagle without a permit was barred because the taking of a golden eagle solely for religious purposes, by an Isleta Pueblo member, on aboriginal lands was a lawful and protected liberty under the Treaty of Guadalupe Hidalgo and by the first amendment to the United States Constitution.

Secretary of Interior to establish regulations which authorize the taking, possession and transportation of eagle feathers for the religious purposes of tribes. In addition, the American Indian Religious Freedom Act of 1978 established a United States policy to protect and preserve Native American religious freedom, Section 1 of this Act provides:

Henceforth 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 ceremonials and traditional rites.

Section 2 of this Act required a review and report to Congress of all federal practices interfering with Indian religious freedom along with recommendations for administrative and legislative change necessary to protect and preserve Indian religious cultural rights and practices. In this report to Congress, 522 incidents of infringements upon Indian religious freedom were documented, 11 recommendations for administrative changes were made, 5 legislative proposals were made (none of which were ever acted upon by the Executive Branch or by Congress).²⁷

In 1979 when this report was made to Congress, the above-described problems with the eagle feather permit system were not documented by the task force. Since this time, however, the permit system for Indian religious use has become unworkable and the effect on Indian religious practices has become intolerable.


Congress should take this opportunity to reform and streamline the current permit system to better accommodate Indian religious practices. Congress can accomplish this by establishing a procedure to reduce the "red tape" necessary to obtain a permit, to reduce the lengthy delays which result in hardship on Indian practitioners, to establish a mechanism to allow more tribal input into the application process, and to provide for tribal management of the permit system on Indian lands.

Conclusion

The Eagle Protection Act was designed to conserve a species, however, when it was enacted, the impact it would have on traditional religious practices was not fully understood. The lack of a simple, workable, consistent policy regarding Indian use of eagle parts and feathers for religious purposes has resulted in the infringement on Indian religious practices.

Now is the time for Congress to act to accommodate traditional religious use of eagle feathers so Indians like--all Americans--can practice their religion freely.

Respectfully submitted,


 Karen J. Atkinson
 Tribal Attorney
 Confederated Salish and Kootenai Tribes

²⁷ American Indian Religious Freedom Act Report, P.L. 95-341, Federal Agencies Task Force, (U.S. Dept. Int., August 1979) pp. 62-63, 71, 72, 81.

Denver Region



United States Department of the Interior

Fish and Wildlife Service
Division of Law Enforcement



HOW TO OBTAIN EAGLES, FEATHERS OR PARTS FOR RELIGIOUS USE

The Federal law protecting bald and golden eagles makes provision for the use of eagles, feathers and parts by Native Americans for religious purposes. This law is administered by the U.S. Fish and Wildlife Service. This agency acquires eagles and parts in connection with law enforcement and other official activities and these items are provided to Native Americans for religious use under a valid Federal Fish and Wildlife Permit.

Application for a permit to acquire eagles and parts for religious use may be made by completing the attached Federal Fish and Wildlife License/Permit application form. In addition to this permit application form, you must also provide the information requested on the enclosed forms entitled Certification of Enrollment and Participation AND Request to Receive Eagle Feathers for Use in Religious Ceremony(ies).

Return the completed forms to:

United States Fish and Wildlife Service
Assistant Regional Director
Law Enforcement, MS-69400
P.O. Box 25486, Denver Federal Center
Denver CO 80225

Please keep in mind that the National Eagle Repository in Ashland, Oregon serves Native Americans throughout the entire 50 states. Due to the number of requests for eagles and parts, each request is LIMITED TO ONE (1) EAGLE OR THE EQUIVALENT OF ONE (1) EAGLE. Please note that you may only have one authorized request pending at one time. Shipments from the Repository are made according to the date the application is received, so applicants are encouraged to return the completed forms as soon as possible. In addition, please keep us advised of any address or phone number changes in order to avoid delay in processing your request.

Copies of the Bald Eagle Protection Act and Federal regulations concerning permit procedures (50 CFR Parts 13 and 22) are enclosed for your information.

For further information or assistance, contact the Assistant Regional Director for Law Enforcement at the above address.



IN REPLY REFER TO:

United States Department of the Interior
FISH AND WILDLIFE SERVICE

MAILING ADDRESS:
Post Office Box 25468
Denver Federal Center
Denver, Colorado 80225

STREET LOCATION:
134 Union Blvd.
Lakewood, Colorado 80228



October 9, 1991

REGION 6 INFORMATION SHEETFEATHERS AND FEDERAL LAW

This information sheet is designed to answer the most frequently asked questions concerning Federal laws regulating commercial traffic in items made from the feathers and parts of certain federally protected birds. It is especially directed at persons engaged in the sale, trade, or barter of feathered Indian art objects, artifacts, antiques, curios, and other goods from trading posts, curio shops, antique shops, pawn shops, and other retail outlets.

What species of birds are protected by Federal law?

The Migratory Bird Treaty Act offers protection to all wild birds found commonly in the United States, except the house sparrow; starling; feral pigeon; and resident game birds such as pheasant, grouse, quail, wild turkeys, etc. Resident game birds are managed by the separate states, and may be taken and their feathers and parts utilized as prescribed by State law. A reference list of migratory birds can be found in Title 50, Code of Federal Regulations, Part 10. The Bald Eagle Protection Act affords additional protection to all bald and golden eagles. Additionally, some species of migratory birds are provided further protection by the Endangered Species Act of 1973.

What activities do these laws prohibit?

The Migratory Bird Treaty Act makes it unlawful for anyone to kill, capture, collect, possess, buy, sell, trade, ship, import or export any migratory bird, including feathers, parts, nests or eggs, unless the person first obtains an appropriate Federal permit in compliance with Federal regulations on migratory birds (see 50 CFR Part 21). The Bald Eagle Protection Act likewise prohibits all commercial activities including import and export, involving bald or golden eagles, their feathers, parts and products.

Some migratory game birds may be lawfully hunted during specified periods but may not be sold. Annually published State and Federal hunting regulations impose limits on the number and kinds of birds that can be taken, and control the manner, means and open seasons within which such taking is lawful. Be advised, under the Migratory Bird Treaty Act, states may impose more restrictive regulations than the Federal government.

What types of traditional Indian curios and artifacts are affected by these prohibitions?

Any Indian curios or artifacts that are made of or decorated with migratory bird feathers are included within these prohibitions. Among the more common articles decorated with feathers or parts of birds, but by no means all such items, are: headdresses, bonnets, hats, fans, pipes, necklaces, Kachina dolls, lances, bustles, musical instruments, and various articles of clothing.

Why does the Federal government prohibit commercial traffic in the feathers and parts of eagles and migratory birds?

Because migratory birds cross international boundaries in many cases, they are considered an international resource that must be protected from commercial exploitation. The Migratory Bird Treaty Act, passed in 1918 and subsequently amended, implements treaties for the protection for migratory species signed with Great Britain (for Canada), Mexico, Russia and Japan. The Bald Eagle Protection Act was passed in 1940 to protect our national bird, which at the time was rapidly declining in numbers. The golden eagle was given protection under the Bald Eagle Protection Act in 1962. In 1972, an amendment to the treaty with Mexico also included eagles as migratory birds, and afforded these birds protection under the Migratory Bird Treaty Act.

As the popularity of American Indian artifacts has increased in recent years, a lucrative black market has developed for the eagle and migratory bird feathers used to make or decorate any Indian curios and art objects. The result has been the slaughter of thousands of birds to fill this demand for feathers, and other parts such as beaks, bones, and talons. The prohibitions against commercial traffic in eagles and migratory birds are intended to eliminate any market for the birds themselves, or for their feathers and parts.

Can permits be obtained to sell curios and artifacts made with the feathers and parts of protected birds?

NO. The Department of the Interior firmly believes that to carry out the objectives of the law, it must totally deny a marketplace for migratory birds including eagles. If such markets were allowed to exist, individuals would be prompted to supply the demand for protected birds by killing them illegally.

What if an item is a genuine antique?

The sale, purchase or barter of any protected bird, or article made from the feathers or parts of protected birds, is prohibited no matter when the bird was killed or possessed. Thus, even genuine antique Indian art objects, if they are made with feathers or parts of protected birds, may not be sold or purchased.

Some manufacturers of Indian curios, in order to increase the value of their merchandise, have been known to clip or otherwise alter the appearance of feathers to make them look old. The item is then sold as an "antique." A fraudulent "history" may even be fabricated to further enhance its value. Once the appearance of bird feathers has been so altered, it is extremely difficult to tell them from genuine antiques. This is one very telling reason for prohibiting the sale of antique Indian articles made with the feathers or parts of protected birds.

Can a person sell items made from feathers of birds found dead in the wild, or which are killed accidentally?

No exception from the prohibitions of the law is made for the commercial use of feathers or parts of protected birds found dead in the wild, those killed accidentally (such as road kills), or those electrocuted by power lines, even though large numbers of birds that die from such causes could probably be salvaged. This prohibition ensures that individuals will not deliberately kill birds for their own personal use, under the guise that "they were found dead." The fact that increasing numbers of protected birds are being killed each year, and their feathers or parts sold for personal gain, makes it imperative that the Federal Government prohibit the possession of salvaged dead specimens without the proper permits.

Are there any legally recognized commercial uses of feathers or parts of protected birds?

As a general rule, feathers or parts of migratory birds or eagles may not be sold, traded, or bartered or offered for sale. However, these items may be displayed (without price tags) in shops or at shows and pow-wows. In addition, any person may possess, purchase, sell, barter, or transport for the making of fishing flies, bed pillows, mattresses, and for similar commercial uses, the feathers of migratory waterfowl (wild ducks, geese, brant, and swans) legally taken in accordance with 50 CFR Part 20.

What other kinds of feathers can be legally bought and sold?

Feathers obtained from the following sources could be used to manufacture items for sale, provided that manufacturers comply with all applicable State laws:

1. Domesticated species such as chickens, turkeys, and guinea fowl. Also, some species of ducks and geese are considered "domestic" and are not protected by Federal law.
2. Resident game birds such as pheasant, grouse, quail, wild turkey, etc., when taken with the appropriate license during game season.
3. Non-native species, not protected under Federal or State law, held in zoos or private collections.
4. Unprotected species such as the house sparrow, starling, and rock dove (pigeon).

Please check with the office of the Assistant Regional Director of the U.S. Fish and Wildlife Law Enforcement District serving your area if you are unsure whether a particular species is protected.

Can an individual make items from the feathers of protected birds for his own personal use?

Any person for his own use may possess, transport, and ship, without a permit, the feathers, parts, and skins of lawfully taken migratory game birds. A permit is required for import or export. While feathers and parts of migratory nongame birds, bald eagles and golden eagles may not be possessed by any person without appropriate Federal permits unless the feathers or parts were acquired prior to the date when Federal protection was provided for individual species (see below).

As noted above all persons are allowed to possess or transport, but not sell, feathers or parts of protected birds, if the birds, feathers or parts were lawfully obtained prior to the date the species in question was first protected by Federal law. The bald eagle has been protected since 1940; the golden eagle since 1962. The first migratory birds were protected in 1918; however, numerous amendments to the Migratory Bird Treaty Act have since protected additional species. Please check with the Assistant Regional Director of the U.S. Fish and Wildlife Law Enforcement District serving your area to find out when a particular species was first afforded protection.

Is there any other way in which an individual can legally acquire migratory bird feathers?

Permits are obtainable which authorize the taking of migratory birds, and their feathers, parts, nests, or eggs for bona fide scientific or educational purposes. Such projects must be amply justified and the collector's ornithological qualifications established. No such permits are issued for personal or hobby purposes. In addition, there are certain other activities involving migratory birds, such as the salvage of sick, injured or dead birds; experimental breeding of migratory game birds other than waterfowl; or unusual possession, transportation, or display requirements for which special purpose permits may be issued. Migratory bird permit applications should be directed to the Assistant Regional Director of the Fish and Wildlife Service Law Enforcement District serving your area.

Important Note: All States have identical or similar protective provisions for most migratory birds. In most cases, States likewise require permits to take, possess, buy, or sell captive raised migratory birds. Federal permits are not valid without a corresponding State permit, if required. It is important, therefore, to check with State wildlife or conservation authorities concerning their restrictions, before applying for a Federal permit, because they may be more restrictive.

Indians require the feathers of protected birds for use in their religious or cultural activities. How can they obtain feathers for these purposes?

American Indians may possess, carry, use, wear, give, loan, or transfer among other Indians, but without compensation, all legally acquired federally protected birds, as well as their parts or feathers (under some circumstances a Federal permit may be required). American Indians who wish to possess bird feathers or parts to be worked on by tribal craftsmen for eventual use in Indian religious or cultural activities may transfer such feathers or parts to tribal craftsmen without charge, but such craftsmen may be compensated for their work.

In addition, American Indians can obtain feathers, whole carcasses, and parts of bald or golden eagles for use in bona fide religious ceremonies. Permits which authorize possession of eagles feathers, received from the National Repository, by tribal enrolled Native Americans for religious purposes are issued by the U.S. Fish and Wildlife Service. The Service salvages the remains of eagles killed in the wild, or which die naturally in zoos, for distribution to Indians for religious purposes from a newly established repository in Ashland, Oregon. NATIVE AMERICANS MAY NOT SALVAGE EAGLES OR MIGRATORY BIRDS FOUND DEAD/ALIVE FOR RELIGIOUS OR ANY OTHER PURPOSES.

Information on how to apply for eagle feather permits can be obtained by writing to the Assistant Regional Director of the Fish Wildlife Service Law Enforcement District serving your area.

What other bird feathers could be used by Indians for religious or cultural purposes?

Feathers from the following sources are also available to Indians for religious or cultural use, but they cannot be sold:

1. Wild migratory game species such as ducks, geese, swans, doves pigeons, rails, snipe, woodcock, and cranes. These birds could be taken during open seasons with the proper license, and their feathers utilized.
2. Captive-reared migratory game birds such as ducks, geese, swans, doves, and pigeons.
3. Various species taken in accordance with Federal regulations on depredation control (see section 21.43 of 50 CFR Part 21), such as blackbirds, cowbirds, grackles, crows, and magpies.

Can any other individuals obtain eagle feathers?

Yes. Permits are available authorizing qualified individuals to take possess, or transport bald or golden eagles or their parts, nests, or eggs, for the scientific or exhibition purposes of public museums, public scientific societies, or public zoological parks.

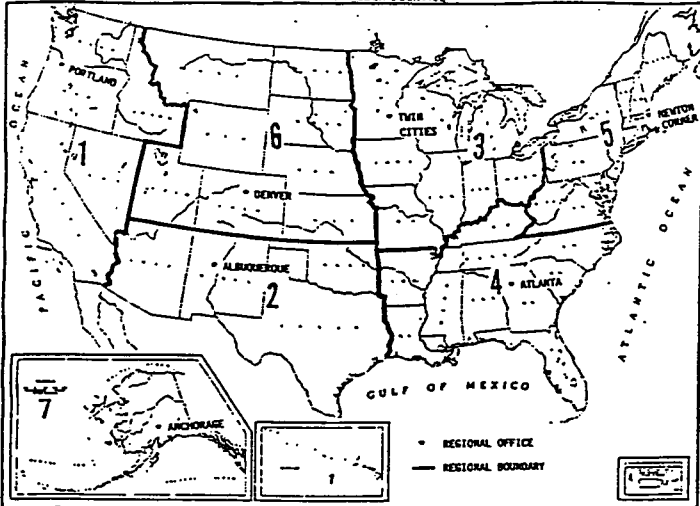
What are the penalties for violating Federal laws protecting eagles and migratory birds?

The Migratory Bird Treaty Act provides for penalties of up to \$250,000 and 2 years imprisonment for persons convicted of selling protected birds, or their feathers, or parts. For first offenses, the Bald Eagle Protection Act carries a maximum criminal penalty of a \$100,000 fine and 1 year in prison for persons convicted of selling eagles, or their feathers or parts. The penalty for second offenses is up to a \$250,000 fine and 2 years imprisonment.

The Endangered Species Act of 1973 carries a maximum penalty of \$100,000 and 1 year imprisonment for criminal offenses.

United States Department of the Interior

FISH AND WILDLIFE SERVICE



FOR MORE COMPLETE INFORMATION, CONTACT THE ASSISTANT REGIONAL DIRECTOR OF THE U.S. FISH AND WILDLIFE SERVICE'S LAW ENFORCEMENT DISTRICT SERVING YOUR AREA.

If you reside in:Please contact:Region 1

California, Hawaii, Idaho, Nevada, Oregon, Washington, Guam, and the Trust territories

Assistant Regional Director
Law Enforcement
U.S. Fish and Wildlife Service

911 N.E. 11th Avenue
Portland, Oregon 97232-4181
(503) 231-6125

Region 2

Arizona, New Mexico, Oklahoma and Texas

P.O. Box 329
Albuquerque, New Mexico 87103
(505) 766-2091

Region 3

Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin

P.O. 45-Fed. Bldg, Ft. Snelling
Twin Cities, Minnesota 55111
(612) 725-3530

Region 4

Alabama, Arkansas, Georgia, Florida, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands

P.O. Box 4839
Atlanta, Georgia 30302
(404) 331-5872

Region 5

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

P.O. Box 129, New Town Branch
Boston, Massachusetts 02258
(617) 965-2298

Region 6

Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming

P.O. Box 25486, DFC
Denver, Colorado 80225
(303) 236-7540

Region 7

Alaska

P.O. Box 92597
Anchorage, Alaska 99509-2597
(907) 786-3311

BALD EAGLE PROTECTION ACT
16 U.S.C. 668-668c

§ 668. Bald and golden eagles

(a) Prohibited acts; criminal penalties

Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in this subchapter, shall knowingly, or with wanton disregard for the consequences of his act take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner any bald eagle commonly known as the American eagle or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to this subchapter, shall be fined not more than \$5,000 or imprisoned not more than one year or both: *Provided*, That in the case of a second or subsequent conviction for a violation of this section committed after October 23, 1972, such person shall be fined not more than \$10,000 or imprisoned not more than two years, or both: *Provided further*, That the commission of each taking or other act prohibited by this section with respect to a bald or golden eagle shall constitute a separate violation of this section: *Provided further*, That one-half of any such fine, but not to exceed \$2,500, shall be paid to the person or persons giving information which leads to conviction: *Provided further*, That nothing herein shall be construed to prohibit possession or transportation of any bald eagle, alive or dead, or any part, nest, or egg thereof, lawfully taken prior to June 8, 1940, and that nothing herein shall be construed to prohibit possession or transportation of any golden eagle, alive or dead, or any part, nest, or egg thereof, lawfully taken prior to the addition to this subchapter of the provisions relating to preservation of the golden eagle.

(b) Civil penalties

Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in this subchapter, shall take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner, any bald eagle, commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to this subchapter, may be assessed a civil penalty by the Secretary of not more than \$5,000 for each such violation. Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. In determining the amount of the penalty, the gravity of the violation, and the demonstrated good faith of the person charged shall be considered by the Secretary. For good cause

shown, the Secretary may remit or mitigate any such penalty. Upon any failure to pay the penalty assessed under this section, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing any such action, the court must sustain the Secretary's action if supported by substantial evidence.

(c) Cancellation of grazing agreements

The head of any Federal agency who has issued a lease, license, permit, or other agreement authorizing the grazing of domestic livestock on Federal lands to any person who is convicted of a violation of this subchapter or of any permit or regulation issued hereunder may immediately cancel each such lease, license, permit, or other agreement. The United States shall not be liable for the payment of any compensation, reimbursement, or damages in connection with the cancellation of any lease, license, permit, or other agreement pursuant to this section.

(June 8, 1940, ch. 278, § 1, 54 Stat. 250; June 25, 1959, Pub. L. 86-70, § 14, 73 Stat. 143; Oct. 24, 1962, Pub. L. 87-884, 76 Stat. 1246; Oct. 23, 1972, Pub. L. 92-535, § 1, 86 Stat. 1084.)

§ 668a. Taking and using of the bald and golden eagle for scientific, exhibition and religious purposes

Whenever, after investigation, the Secretary of the Interior shall determine that it is compatible with the preservation of the bald eagle or the golden eagle to permit the taking, possession, and transportation of specimens thereof for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or that it is necessary to permit the taking of such eagles for the protection of wildlife or of agricultural or other interests in any particular locality, he may authorize the taking of such eagles pursuant to regulations which he is hereby authorized to prescribe: *Provided*, That on request of the Governor of any State, the Secretary of the Interior shall authorize the taking of golden eagles for the purpose of seasonally protecting domesticated flocks and herds in such State, in accordance with regulations established under the provisions of this section, in such part or parts of such State and for such periods as the Secretary determines to be necessary to protect such interests: *Provided further*, That bald eagles may not be taken for any purpose unless, prior to such

taking, a permit to do so is procured from the Secretary of the Interior. *Provided further*, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking, possession, and transportation of golden eagles for the purposes of falconry, except that only golden eagles which would be taken because of depredations on livestock or wildlife may be taken for purposes of falconry; *Provided further*, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking of golden eagle nests which interfere with resource development or recovery operations.

(June 8, 1940, ch. 278, § 2, 54 Stat. 251; Oct. 24, 1962, Pub.L. 87-884, 76 Stat. 1246; Oct. 23, 1972, Pub.L. 92-535, § 2, 86 Stat. 1065; Nov. 8, 1978, Pub.L. 95-616, § 9, 92 Stat. 3114.)

§ 668b. Enforcement

(a) Arrest; search; issuance and execution of warrants and process

Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this subchapter may, without warrant, arrest any person committing in his presence or view a violation of this subchapter or of any permit or regulations issued hereunder and take such person immediately for examination or trial before an officer or court of competent jurisdiction; may execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this subchapter; and may, with or without a warrant, as authorized by law, search any place. The Secretary of the Interior is authorized to enter into cooperative agreements with State fish and wildlife agencies or other appropriate State authorities to facilitate enforcement of this subchapter, and by said agreements to delegate such enforcement authority to State law enforcement personnel as he deems appropriate for effective enforcement of this subchapter. Any judge of any court established under the laws of the United States, and any United States magistrate may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

(b) Forfeiture

All bald or golden eagles, or parts, nests, or eggs thereof, taken, possessed, sold, purchased, bartered, offered for sale, purchase, or barter, transported, exported, or imported contrary to the provisions of this subchapter, or of any permit or regulation issued hereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid in the taking, possessing, selling, purchasing, bartering, offering for sale, purchase, or barter, transporting, exporting, or importing of any bird, or part, nest, or egg thereof, in violation of this subchapter or of any permit or regulation issued hereunder shall be subject to forfeiture to the United States.

(c) Customs laws applied

All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subchapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this subchapter. *Provided*, That all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this subchapter, be exercised or performed by the Secretary of the Interior or by such persons as he may designate.

(June 8, 1940, ch. 278, § 3, 54 Stat. 251; Oct. 17, 1962, Pub. L. 90-578, title IV, § 402(b)(2), 82 Stat. 1118; Oct. 23, 1972, Pub. L. 92-535, § 3, 86 Stat. 1065.)

§ 668c. Definitions

As used in this subchapter "whoever" includes also associations, partnerships, and corporations; "take" includes also pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb; "transport" includes also ship, convey, carry, or transport by any means whatever, and deliver or receive or cause to be delivered or received for such shipment, conveyance, carriage, or transportation.

(June 8, 1940, ch. 278, § 4, 54 Stat. 251; Oct. 23, 1972, Pub. L. 92-535, § 4, 86 Stat. 1065.)

PART 13 -- GENERAL PERMIT PROCEDURES [Updated 10/1/89]

Subpart A -- Introduction

Sec.

13.1 **General.**

13.2 **Purpose of regulations.**

13.3 **Scope of regulations.**

13.4 **Emergency variation from requirements.**

13.5 **Information collection requirements.**

Subpart B -- Application for Permits

13.11 **Application procedures.**

13.12 **General information requirements on applications for permits.**

Subpart C -- Permit Administration

13.21 **Issuance of permits.**

13.22 **Renewal of permits.**

13.23 **Amendment of permits.**

13.24 **Right of succession by certain persons.**

13.25 **Permits not transferable; agents.**

13.26 **Discontinuance of permit activity.**

13.27 **Permit suspension.**

13.28 **Permit revocation.**

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Subpart D -- Conditions

13.41 **Humane conditions.**

13.42 **Permits are specific.**

13.43 **Alteration of permits.**

- 13.44 Display of permit.
- 13.45 Filing of reports.
- 13.46 Maintenance of records.
- 13.47 Inspection requirement.
- 13.48 Compliance with conditions of permit.
- 13.49 Surrender of permit.
- 13.50 Acceptance of liability.

Authority: 16 U.S.C. 668a; 16 U.S.C. 704, 712; 16 U.S.C. 742j-1; 16 U.S.C. 1382; 16 U.S.C. 1538(d); 16 U.S.C. 1539, 1540(f); 16 U.S.C. 3374; 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 15683; 31 U.S.C. 9701.

Source: 39 FR 1161, Jan. 4, 1974; 54 FR 38147, Sept. 14, 1989, unless otherwise noted.

Subpart A -- Introduction

§ 13.1 General.

Each person intending to engage in an activity for which a permit is required by this Subchapter B shall, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by this subchapter must make application for such permit in accordance with the requirements of this Part 13 and the other regulations in this subchapter which set forth the additional requirements for the specific permits desired. If the activity for which permission is sought is covered by the requirements of more than one part of this subchapter, the requirements of each part must be met. If the information required for each specific permitted activity is included, one application will be accepted for all permits required, and a single permit will be issued.

§ 13.2 Purpose of regulations.

The regulations contained in this part provide uniform rules, conditions, and procedures for the application for and the issuance, denial, suspension, revocation, and general administration of all permits issued pursuant to this Subchapter B.

§ 13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including "Import and Marking" (Part 14), "Feather Imports" (Part 15), "Injurious Wildlife" (Part 16), "Endangered Wildlife and Plants" (Part 17), "Marine Mammals" (Part 18), "Migratory Birds" (Part 21), "Eagles" (Part 22) and "Endangered Species Convention" (Part 23). As used in this Part 13, the term "permit" shall refer to either a license, permit, or certificate as the context may require.

[42 FR 10465, Feb. 22, 1977, as amended at 42 FR 32377, June 24, 1977; 45 FR 56673, Aug. 25, 1980]

§ 13.4 Emergency variation from requirements.

The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations will not hinder effective administration of this Subchapter B, and will not be unlawful.

§ 13.5 Information collection requirements.

(a) The information collection requirements contained within this Part 13 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018 - 0022. This information is being collected to provide information necessary to evaluate permit applications. This information will be used to review permit applications and make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation or denial of permits. The obligation to respond is required to obtain or retain a permit.

(b) The public reporting burden for these reporting requirements is estimated to vary from 15 minutes to 4 hours per response, with an average of 0.803 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms. Comments regarding the burden estimate or any other aspect of these reporting requirements should be directed to the Service Information Collection Clearance Officer, MS-224 ARLSQ, Fish and Wildlife Service, Washington, D.C. 20240, or the Office of Management and Budget, Paperwork Reduction Project (1018-0022), Washington, D.C. 20503.

[47 FR 30785, July 15, 1982; as amended 54 FR 38147, Sept. 14, 1989]

Subpart B – Application for Permits

§ 13.11 Application procedures.

The Service may not issue a permit for any activity authorized by this Subchapter B unless the applicant has filed an application in accordance with the following procedures. Applicants do not have to submit a separate application for each permit unless otherwise required by this subchapter.

(a) Forms. Applications must be submitted in writing on a Federal Fish and Wildlife License/Permit Application (Form 3 - 200) or as otherwise specifically directed by the Service.

(b) Forwarding instructions. Applications for permits in the following categories should be forwarded to the issuing office indicated below.

(1) Migratory bird banding permits (50 CFR 21.22) – Bird Banding Laboratory, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Laurel, Maryland 20708. (Special application forms must be used for bird banding permits. They may be obtained by writing to the Bird Banding Laboratory).

(2) Exception to designated port (50 CFR Part 14), import/export license (50 CFR 14.93), migratory bird permit, other than banding (50 CFR Part 21) and Bald or Golden eagle permits (50 CFR Part 22) – Assistant Regional Director for Law Enforcement of the Law Enforcement District in which the applicant resides (see 50 CFR 10.22 for addresses and boundaries of the Law Enforcement Districts).

(3) Feather quota (50 CFR Part 15), injurious wildlife (50 CFR Part 16), endangered and threatened species (50 CFR Part 17), marine mammal (50 CFR Part 18) and permits and certificates for the Convention on International Trade in Endangered Species (CITES) (50 CFR Part 23) – U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, Virginia 22203.

(c) Time notice. The Service will process all applications as quickly as possible. However, it cannot guarantee final action within the time limits the applicant requests. Applicants for endangered species and marine mammal permits should submit applications to the Office of Management Authority which are postmarked at least 90 calendar days prior to the requested effective date. Applicants for all other permits should submit applications to the issuing office which are postmarked at least 60 days prior to the requested effective date.

(d) Permit fees. (1) Unless otherwise exempted by this paragraph, applicants for issuance or renewal of permits must pay the required permit processing fee at the time of application. Applicants should pay fees by check or money order made payable to "U.S. Fish and Wildlife Service." The Service will not refund any application fee under any circumstances if the Service has processed the application.

However, the Service may return the application fee if the applicant withdraws the application before the Service has significantly processed it.

(2) Except as provided in paragraph (d)(4) of this section, the fee for processing any application is \$25.00. If regulations in this subchapter require more than one type of permit for an activity, and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing the activity. The issuing office may charge only the highest single fee for the activity permitted.

(3) A fee shall not be charged to any Federal, State or local government agency, nor to any individual or institution under contract to such agency for the proposed activities. The fee may be waived or reduced for public institutions (see 50 CFR 10.12). Proof of such status must accompany the application.

(4) Nonstandard fees.

<u>Type of Permit</u>	<u>Fee</u>
Import/Export License (Section 14.93).....	\$125 and inspection fees.
Marine Mammal (Section 18.31).....	100
Migratory Bird--Banding or Marking (21.22)...	None
Bald or Golden Eagles (Part 22).....	None

(e) Abandoned or incomplete applications. Upon receipt of an incomplete or improperly executed application, or if the applicant does not submit the proper fees, the issuing office will notify the applicant of the deficiency. If the applicant fails to supply the correct information to complete the application or to pay the required fees within 45 calendar days of the date of notification, the Service will consider the application abandoned. The Service will not refund any fees for an abandoned application.

[47 FR 30785, July 15, 1982; 50 FR 52889, Dec. 26, 1985, as amended at 54 FR 38147, Sept. 14, 1989.]

§ 13.12 General information requirements on applications for permits.

(a) General information required for all applications. All applications must contain the following information:

(1) Applicant's full name, mailing address, telephone number(s), and,

(i) If the applicant is an individual, the date of birth, height, weight, hair color, eye color, sex, and any business or institutional affiliation of the applicant related to the requested permitted activity; or

(ii) If the applicant is a corporation, firm, partnership, association, institution, or public or private agency, the name and address of the president or principal officer and of the registered agent for the service of process;

(2) Location where the requested permitted activity is to occur or be conducted;

(3) Reference to the part(s) and section(s) of this Subchapter B as listed in paragraph (b) of this section under which the application is made for a permit or permits, together with any additional justification, including supporting documentation as required by the referenced part(s) and section(s);

(4) If the requested permitted activity involves the import or re-export of wildlife or plants from or to any foreign country, and the country of origin, or the country of export or re-export restricts the taking, possession, transportation, exportation, or sale of wildlife or plants, documentation as indicated in § 14.52(c) of this Subchapter B;

(5) Certification in the following language:

I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter I of Title 50, Code of Federal Regulations, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to the criminal penalties of 18 U.S.C. 1001.

(6) Desired effective date of permit except where issuance date is fixed by the part under which the permit is issued;

(7) Date;

(8) Signature of the applicant; and

(9) Such other information as the Director determines relevant to the processing of the application.

(b) Additional information required on permit applications. As stated in paragraph (a)(3) of this section certain additional information is required on all applications. These additional requirements may be found by referring to the section of this Subchapter B cited after the type of permit for which application is being made:

<u>Type of Permit</u>	<u>Section</u>
Importation at non-designated ports:	
Scientific.....	14.31
Deterioration prevention.....	14.32
Economic hardship.....	14.33
Marking of package or container:	
Symbol marking.....	14.83
Import/export license.....	14.93
Feather import quota: Importation or entry.....	15.21
Injurious wildlife: Importation or shipment.....	16.22
Endangered wildlife and plant permits:	
Similarity of appearance.....	17.52
Scientific, enhancement of propagation or survival, incidental taking for wildlife.....	17.22
Scientific, propagation, or survival for plants.....	17.62
Economic hardship for wildlife.....	17.23
Economic hardship for plants.....	17.63
Threatened wildlife and plant permits:	
Similarity of appearance.....	17.52
General for wildlife.....	17.32
American alligator - buyer or tanner.....	17.42(a)
General for plants.....	17.72

Marine mammals permits:

Scientific research.....	18.31
Public display.....	18.31

Migratory bird permits:

Banding or marking.....	21.22
Scientific collecting.....	21.23
Taxidermist.....	21.24
Waterfowl sale and disposal.....	21.25
Special aviculturist.....	21.26
Special purpose.....	21.27
Falconry.....	21.28
Raptor propagation permit.....	21.30
Depredation control.....	21.41

Eagle permits:

Scientific or exhibition.....	22.21
Indian religious use.....	22.22
Depredation control.....	22.23
Falconry purposes.....	22.24
Take of golden eagle nests	22.25
Endangered Species Convention permits.....	23.15

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 10465, Feb. 22, 1977; 42 FR 32377, June 24, 1977; 44 FR 54006, Sept. 17, 1979; 44 FR 59083, Oct. 12, 1979; 45 FR 56673, Aug. 25, 1980; 45 FR 78154, Nov. 25, 1980; 46 FR 42680, Aug. 24, 1981; 48 FR 31607, July 8, 1983; 48 FR 57300, Dec. 29, 1983; 50 FR 39687, Sept. 30, 1985; 50 FR 45408, Oct. 31, 1985; 54 FR 38147, Sept. 14, 1989.]

Subpart C -- Permit Administration

§ 13.21 Issuance of permits.

(a) No permit may be issued prior to the receipt of a written application therefor, unless a written variation from the requirements, as authorized by § 13.4, is inserted into the official file of the Bureau. An oral or written representation of an employee or agent of the United States Government, or an action of such employee or agent, shall not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 10.12.

(b) Upon receipt of a properly executed application for a permit, the Director shall issue the appropriate permit unless:

(1) The applicant has been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction evidences a lack of responsibility.

(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his application;

(3) The applicant has failed to demonstrate a valid justification for the permit and a showing of responsibility;

(4) The authorization requested potentially threatens a wildlife or plant population, or

(5) The Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(c) Disqualifying factors. Any one of the following will disqualify a person from receiving permits issued under this Part.

(1) A conviction, or entry of a plea of guilty or nolo contendere, for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act disqualifies any such person from receiving or exercising the privileges of a permit, unless such disqualification has been expressly waived by the Director in response to a written petition.

(2) The revocation of a permit for reasons found in §§ 13.28(a)(1) or (a)(2) disqualifies any such person from receiving or exercising the privileges of a similar permit for a period of five years from the date of the final agency decision on such revocation.

(3) The failure to pay any required fees or assessed costs and penalties, whether or not reduced to judgement disqualifies such person from receiving or exercising the privileges of a permit as long as such moneys are owed to the United States. This requirement shall not apply to any civil penalty presently subject to administrative or judicial appeal; provided that the pendency of a collection action brought by the United States or its assignees shall not constitute an appeal within the meaning of this subsection.

(4) The failure to submit timely, accurate, or valid reports as required may disqualify such person from receiving or exercising the privileges of a permit as long as the deficiency exists.

(d) Use of supplemental information. The issuing officer, in making a determination under this subsection, may use any information available that is relevant to the issue. This may include any prior conviction, or entry of a plea guilty or nolo contendere, or assessment of civil or criminal penalty for a violation of any Federal or State law or regulation governing the permitted activity. It may also include any prior permit revocations or suspensions, or any reports of State or local officials. The issuing officer shall consider all relevant facts or information available, and may make independent inquiry or investigation to verify information or substantiate qualifications asserted by the applicant.

(e) Conditions of issuance and acceptance. (1) Any permit automatically incorporates within its terms the conditions and requirements of Subpart D of this part and of any part(s) or section(s) specifically authorizing or governing the activity for which the permit is issued.

(2) Any person accepting and holding a permit under this Subchapter B acknowledges the necessity for close regulation and monitoring of the permitted activity by the Government. By accepting such permit, the permittee consents to and shall allow entry by agents or employees of the Service upon premises where the permitted activity is conducted at any reasonable hour. Service agents or employees may enter such premises to inspect the location; any books, records, or permits required to be kept by this Subchapter B; and any wildlife or plants kept under authority of the permit.

(f) Term of permit. Unless otherwise modified, a permit is valid during the period specified on the face of the permit. Such period shall include the effective date and the date of expiration.

(g) Denial. The issuing officer may deny a permit to any applicant who fails to meet the issuance criteria set forth in this section or in the part(s) or section(s) specifically governing the activity for which the permit is requested.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977; 47 FR 30785, July 15, 1982; 54 FR 38148, Sept. 14, 1989.]

§ 13.22 Renewal of permits.

(a) Application for renewal. Applicants for renewal of a permit must submit a written application at least 30 days prior to the expiration date of the permit. Applicants must certify in the form required by § 13.12(a)(5) that all statements and information in the original application remain current and correct, unless previously changed or corrected. If such information is no longer current or correct, the applicant must provide corrected information.

(b) Renewal criteria. The Service shall issue a renewal of a permit if the applicant meets the criteria for issuance in § 13.21(b) and is not disqualified under § 13.21(c).

(c) Continuation of permitted activity. Any person holding a valid, renewable permit, who has complied with this section, may continue the activities authorized by the expired permit until the Service has acted on such person's application for renewal.

(d) Denial. The issuing officer may deny renewal of a permit to any applicant who fails to meet the issuance criteria set forth in § 13.21 of this part, or in the part(s) or section(s) specifically governing the activity for which the renewal is requested.

§ 13.23 Amendment of permits.

(a) Permittee's request. Where circumstances have changed so that a permittee desires to have any condition of his permit modified, such permittee must submit a full written justification and supporting information in conformity with this part and the part under which the permit was issued.

(b) Service reservation. The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity.

(c) Change of name or address. A permittee is not required to obtain a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the permitted activity when approval of the location is a qualifying condition of the permit.

§ 13.24 Right of succession by certain persons.

(a) Certain persons, other than the permittee are granted the right to carry on a permitted activity for the remainder of the term of a current permit provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) the surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; and

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to secure the right provided in this section the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

[39 FR 1161, Jan. 4, 1974, as amended at 47 FR 30786, July 15, 1982; 54 FR 38148, Sept. 14, 1989.]

§ 13.25 Permits not transferable; agents.

(a) Permits issued under this part are not transferable or assignable. Some permits authorize certain activities in connection with a business or commercial enterprise and in the event of any lease, sale, or transfer of such business entity, the successor must obtain a permit prior to continuing the permitted activity. However, certain limited rights of succession are provided in § 13.24.

(b) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit, as an agent for the permittee.

§ 13.26 Discontinuance of permit activity.

When a permittee, or any successor to a permittee as provided for by § 13.24, discontinues activities authorized by a permit, the permittee shall within 30 calendar days of the discontinuance return the permit to the issuing office together with a written statement surrendering the permit for cancellation. The permit shall be deemed void and cancelled upon its receipt by the issuing office. No refund of any fees paid for issuance of the permit or for any other fees or costs associated with a permitted activity shall be made when a permit is surrendered for cancellation for any reason prior to the expiration date stated on the face of the permit.

§ 13.27 Permit suspension.

(a) Criteria for suspension. The privileges of exercising some or all of the permit authority may be suspended at any time if the permittee is not in compliance with the conditions of the permit, or with any applicable laws or regulations governing the conduct of the permitted activity. The issuing officer may also suspend all or part of the privileges authorized by a permit if the permittee fails to pay any fees, penalties or costs owed to the Government. Such suspension shall remain in effect until the issuing officer determines that the permittee has corrected the deficiencies.

(b) Procedure for suspension.

(1) When the issuing officer believes there are valid grounds for suspending a permit the permittee shall be notified in writing of the proposed suspension by certified or registered mail. This notice shall identify the permit to be suspended, the reason(s) for such suspension, the actions necessary to correct the deficiencies, and inform the permittee of the right to object to the proposed suspension. The issuing officer may amend any notice of suspension at any time.

(2) Upon receipt of a notice of proposed suspension the permittee may file a written objection to the proposed action. Such objection must be in writing, must be filed within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed suspension, and may include supporting documentation.

(3) A decision on the suspension shall be made within 45 days after the end of the objection period. The issuing officer shall notify the permittee in writing of the Service's decision and the reasons therefore. The issuing officer shall also provide the applicant with the information concerning the right to request reconsideration of the decision under § 13.29 of this part and the procedures for requesting reconsideration.

§ 13.28 Permit revocation.

(a) Criteria for revocation. A permit may be revoked for any of the following reasons:

(1) The permittee willfully violates any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, which involves a violation of the conditions of the permit or of the laws or regulations governing the permitted activity; or

(2) The permittee fails within 60 days to correct deficiencies that were the cause of a permit suspension; or

(3) The permittee becomes disqualified under § 13.21(c) of this part; or

(4) A change occurs in the statute or regulation authorizing the permit that prohibits the continuation of a permit issued by the Service; or

(5) The population(s) of the wildlife or plant that is subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

(b) Procedure for revocation.

(1) When the issuing officer believes there are valid grounds for revoking a permit, the permittee shall be notified in writing of the proposed revocation by certified or registered mail. This notice shall identify the permit to be revoked, the reason(s) for such revocation, the proposed disposition of the wildlife, if any, and inform the permittee of the right to object to the proposed revocation. The issuing officer may amend any notice of revocation at any time.

(2) Upon receipt of a notice of proposed revocation the permittee may file a written objection to the proposed action. Such objection must be in writing, must be filed within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed revocation, and may include supporting documentation.

(3) A decision on the revocation shall be made within 45 days after the end of the objection period. The issuing officer shall notify the permittee in writing of the Service's decision and the reasons therefore, together with the information concerning the right to request and the procedures for requesting reconsideration.

(4) Unless a permittee files a timely request for reconsideration, any wildlife held under authority of a permit that is revoked must be disposed of in accordance with instructions of the issuing officer. If a permittee files a timely request for reconsideration of a proposed revocation, such permittee may retain possession of any wildlife held under authority of the permit until final disposition of the appeal process.

§ 13.29 Review procedures.

(a) Request for reconsideration. Any person may request reconsideration of an action under this part if that person is one of the following:

- (1) An applicant for a permit who has received written notice of denial;
- (2) An applicant for renewal who has received written notice that a renewal is denied;
- (3) A permittee who has a permit amended, suspended, or revoked, except for those actions which are required by changes in statutes or regulations, or are emergency changes of limited applicability for which an expiration date is set within 90 days of the permit change; or
- (4) A permittee who has a permit issued or renewed but has not been granted authority by the permit to perform all activities requested in the application, except when the activity requested is one for which there is no lawful authority to issue a permit.

(b) Method of requesting reconsideration. Any person requesting reconsideration of an action under this part must comply with the following criteria:

(1) Any request for reconsideration must be in writing, signed by the person requesting reconsideration or by the legal representative of that person, and must be submitted to the issuing officer.

(2) The request for reconsideration must be received by the issuing officer within 45 calendar days of the date of notification of the decision for which reconsideration is being requested.

(3) The request for reconsideration shall state the decision for which reconsideration is being requested and shall state the reason(s) for the reconsideration, including presenting any new information or facts pertinent to the issue(s) raised by the request for reconsideration.

(4) The request for reconsideration shall contain a certification in substantially the same form as that provided by § 13.12(a)(5). If a request for reconsideration does not contain such certification, but is otherwise timely and appropriate, it shall be held and the person submitting the request shall be given written notice of the need to submit the certification within 15 calendar days. Failure to submit certification shall result in the request being rejected as insufficient in form and content.

(c) Inquiry by the Service. The Service may institute a separate inquiry into the matter under consideration.

(d) Determination of grant or denial of a request for reconsideration. The issuing officer shall notify the permittee of the Service's decision within 45 days of the receipt of the request for reconsideration. This notification shall be in writing, shall state the reasons for the decision, and shall contain a description of the evidence which was relied upon by the issuing officer. The notification shall also provide information concerning the right to appeal, the official to whom an appeal may be addressed, and the procedures for making an appeal.

(e) Appeal. A person who has received an adverse decision following submission of a request for reconsideration may submit a written appeal to the Regional Director for the region in which the issuing office is located, or to the Director for offices which report directly to the Director. An appeal must be submitted within 45 days of the date of the notification of the decision on the request for reconsideration. The appeal shall state the reason(s) and issue(s) upon which the appeal is based and may contain any additional evidence or arguments to support the appeal.

(f) Decision on appeal.

(1) Before a decision is made concerning the appeal the appellant may present oral arguments before the Regional Director or the Director, as appropriate, if such official judges oral arguments are necessary to clarify issues raised in the written record.

(2) The Service shall notify the appellant in writing of its decision within 45 calendar days of receipt of the appeal, unless extended for good cause and the appellant notified of the extension.

(3) The decision of the Regional Director or the Director shall constitute the final administrative decision of the Department of the Interior.

[47 FR 30786, July 15, 1982, as amended 54 FR 38148, Sept. 14, 1989.]

Subpart D – Conditions

§ 13.41 Humane conditions.

Any live wildlife possessed under a permit must be maintained under humane and healthful conditions.

[47 FR 30786, July 15, 1982, as amended 54 FR 38150, Sept. 14, 1989.]

§ 13.42 Permits are specific.

The authorizations on the face of a permit which set forth specific times, dates, places, methods of taking, numbers and kinds of wildlife or plants, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

§ 13.43 Alteration of permits.

Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid. Unless specifically permitted on the face thereof, no permit shall be copied, nor shall any copy of a permit issued pursuant to this Subchapter B be displayed, offered for inspection, or otherwise used for any official purpose for which the permit was issued.

§ 13.44 Display of permit.

Any permit issued under this part shall be displayed for inspection upon request to the Director or his agent, or to any other person relying upon its existence.

§ 13.45 Filing of reports.

Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of this Subchapter B or the provisions of the permit set forth other reporting requirements.

§ 13.46 Maintenance of records.

From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of plants obtained from the wild (excluding seeds) or wildlife pursuant to such permit. Such records shall be kept current and shall include names and addresses of persons with whom any plant obtained from the wild (excluding seeds) or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records shall be legibly written or reproducible in English and shall be maintained for five years from the date of expiration of the permit.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977; 54 FR 38150, Sept. 14, 1989.]

§ 13.47 Inspection requirement.

Any person holding a permit under this Subchapter B shall allow the Director's agent to enter his premises at any reasonable hour to inspect any wildlife or plant held or to inspect, audit, or copy any permits, books, or records required to be kept by regulations of this Subchapter B.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

§ 13.48 Compliance with conditions of permit.

Any person holding a permit under Subchapter B and any person acting under authority of such permit must comply with all conditions of the permit and with all applicable laws and regulations governing the permitted activity.

§ 13.49 Surrender of permit.

Any person holding a permit under Subchapter B shall surrender such permit to the issuing officer upon notification that the permit has been suspended or revoked by the Service, and all appeal procedures have been exhausted.

§ 13.50 Acceptance of liability.

Any person holding a permit under Subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit.

[54 FR 38150, Sept. 14, 1989.]



United States Department of the Interior

FISH AND WILDLIFE SERVICE

DIVISION OF LAW ENFORCEMENT

Post Office Box 329

Albuquerque, New Mexico 87103

(505) 766-2091

Federal regulations require that each person applying for eagle feathers complete three (3) forms. These are:

- 1) Federal Fish & Wildlife License/Permit Application (3-200)
- 2) Request to Receive Eagle Feathers for Use in Religious Ceremony(ies)
- 3) Certification of Enrollment and Participation

These three (3) forms are enclosed for you to complete and return to this office. We have also enclosed the regulations that pertain to these forms.

Due to the number of requests for eagle feathers, each order is limited to one (1) eagle or the equivalent of one (1) eagle. Please keep in mind that there are usually between 500 to 700 persons on the waiting list to receive a whole eagle. It may take up to 24 months to fill your order. Please note that you may only have one order pending at one time. Any other requests for eagle feathers will be returned to the applicant. In addition, please keep us advised, in writing, of any address or phone number changes so that we can contact you faster when your order is ready to be shipped.

If you have any questions at all regarding this application procedure, please contact this office at the above address or phone number.

Sincerely yours,

Kamile McKeever
Permits/Licenses Administrator
Law Enforcement, Region 2

Enc

U.S. DEPARTMENT OF INTERIOR
FISH AND WILDLIFE SERVICE

HOW EAGLE FEATHERS MAY BE OBTAINED BY INDIANS FOR RELIGIOUS USE

The Federal law protecting bald and golden eagles makes provision for use of eagle feathers by Indians for religious purposes. This law is administered by the U.S. Fish and Wildlife Service. From time to time this agency acquires eagle feathers in connection law enforcement and other official activities and these feathers may be provided to Indians for religious use under the terms of a valid Federal Fish and Wildlife permit.


Application for a permit to acquire eagle feathers for religious use may be made by completing the enclosed Federal Fish and Wildlife License/Permit application form. In addition to this permit application form you must also provide the information requested on the enclosed forms entitled Request to Receive Eagle Feathers for Use in Religious Ceremony(ies) AND Certification of Enrollment and Participation.

Please return completed forms to: U.S. Fish and Wildlife Service
Division of Law Enforcement
P.O. Box 329
Albuquerque, New Mexico 87103
(505) 766-2091

Please keep in mind that the National Eagle Repository in Ashland, Oregon serves Native Americans throughout the entire 50 states. Due to the number of requests for eagles and parts, each request is LIMITED TO ONE (1) EAGLE OR THE EQUIVALENT OF ONE (1) EAGLE. Please note that you may only have one (1) authorized request pending at one time. Shipments from the Repository are made according to the date the application is received, so applicants are encouraged to return the completed forms as soon as possible. In addition, please us advised of any address or phone number changes in order to avoid delay in processing your request.

Copies of the Bald Eagle Protection Act and Federal Regulations concerning general permit procedures and eagle permits (50 CFR 13 and 22) are enclosed for your information.

For further information or assistance contact the Assistant Regional Director for Law Enforcement (ARD/LE) at the above address.

 <p>DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE</p> <p>FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION</p>	<p>1. APPLICATION FOR (Indicate only one)</p> <p><input type="checkbox"/> IMPORT <input type="checkbox"/> EXPORT LICENSE <input checked="" type="checkbox"/> PERMIT</p>													
<p>3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)</p>	<p>2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.</p>													
<p>4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td><input type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.</td> <td>HEIGHT</td> <td>WEIGHT</td> </tr> <tr> <td>DATE OF BIRTH</td> <td>COLOR HAIR</td> <td>COLOR EYES</td> </tr> <tr> <td>PHONE NUMBER WHERE EMPLOYED</td> <td colspan="2">SOCIAL SECURITY NUMBER</td> </tr> <tr> <td colspan="3">OCCUPATION</td> </tr> </table> <p>ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT</p> <p style="text-align: center;">N/A</p>	<input type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.	HEIGHT	WEIGHT	DATE OF BIRTH	COLOR HAIR	COLOR EYES	PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER		OCCUPATION			<p>5. IF "APPLICANT" IS A BUSINESS CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:</p> <p>EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION</p> <hr/> <p>NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.</p> <hr/> <p>IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED</p>	
<input type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.	HEIGHT	WEIGHT												
DATE OF BIRTH	COLOR HAIR	COLOR EYES												
PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER													
OCCUPATION														
<p>5. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED</p>	<p>7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? <input type="checkbox"/> YES <input type="checkbox"/> NO (If yes, list license or permit numbers)</p> <p>8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? <input type="checkbox"/> YES <input type="checkbox"/> NO (If yes, list jurisdictions and type of documents)</p>													
<p>9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF</p> <p style="text-align: center;">\$ -0-</p>	<p>10. DESIRED EFFECTIVE DATE</p>	<p>11. DURATION NEEDED</p>												
<p>12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.</p> <p style="text-align: center;">50 CFR 22.22</p>														
<p>CERTIFICATION</p>														
<p>I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.</p>														
<p>SIGNATURE (In ink)</p> <p>XX</p>		<p>DATE</p> <p>XX</p>												

Application for Federal Fish and Wildlife License/Permit

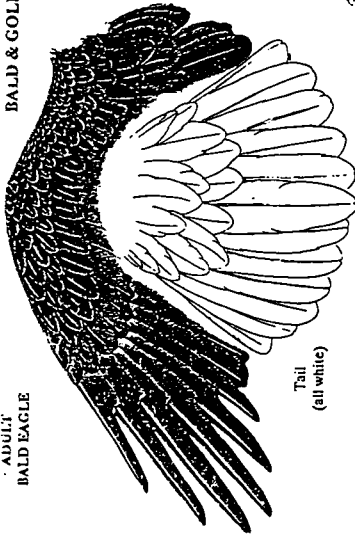
NOTICE

In accordance with the Privacy Act of 1974 (PL 93-579), please be advised that:

1. The gathering of information on fish and wildlife is authorized by: (a) Bald Eagle Protection Act (16 U.S.C. 663a), (b) Endangered Species Act of 1973 (16 U.S.C. 1539), (c) Migratory Bird Treaty Act (16 U.S.C. 703-711), (d) Marine Mammal Protection Act of 1972 (16 U.S.C. 1371-1383), (e) Lacey Act (18 U.S.C. 42 & 44), (f) Tariff Classification Act of 1962 (19 U.S.C. 1202), and (g) Title 50, Part 13, of the Code of Federal Regulations.
2. The disclosure of the requested information is required in order to process applications for licenses or permits authorized under the above acts. With the exception of your social security number, failure to disclose all of the requested information may be sufficient cause for the U.S. Fish and Wildlife Service to deny you a permit.
3. Applications for licenses or permits authorized under the Endangered Species Act of 1973 (16 U.S.C. 1539) and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371-1383) will be published in the Federal Register as required by the two acts.
4. In the event there is indicated a violation of a statute, regulation, rule, order, or license, whether civil, criminal, or regulatory in nature, the requested information may be transferred to the appropriate Federal, State, local, or foreign agency charged with investigating or prosecuting such violations.
5. In the event of litigation involving the records or the subject matter of the records, the requested information may be transferred to the U.S. Department of Justice.

BALD & GOLDEN EAGLE FEATHER GUIDE

ADULT
BALD EAGLE



Tail
(all white)

ADULT
GOLDEN EAGLE



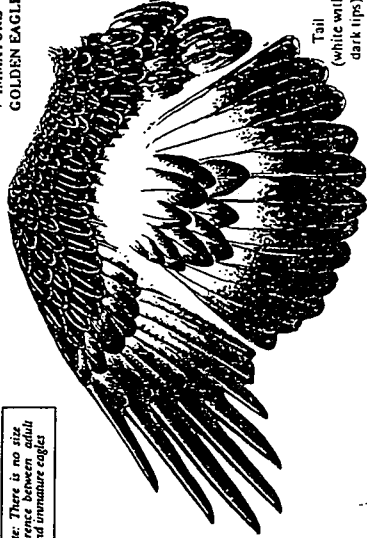
Tail
(dark
barring)

IMMATURE
BALD EAGLE



Tail
(unevenly
speckled)

IMMATURE
GOLDEN EAGLE



Tail
(white with
dark tips)



flight feathers

spines

Note: There is no size difference between adult and immature eagles

REQUEST TO RECEIVE EAGLE PARTS/FEATHERS FOR USE IN RELIGIOUS CEREMONY (IES)

Please provide ALL the following requested information:

1) Species (bald or golden eagle), or feathers or parts requested. Only ONE eagle or the equivalent of ONE eagle per order. ONLY ONE ORDER PENDING AT A TIME.

<u>ITEM</u>	<u>SPECIES</u>	<u>AGE</u>	<u>AMOUNT</u>
<input type="checkbox"/> Whole Eagle	<input type="checkbox"/> Golden	<input type="checkbox"/> Adult	<input type="checkbox"/> Pair
<input type="checkbox"/> Eagle Tail	<input type="checkbox"/> Bald	<input type="checkbox"/> Immature	<input type="checkbox"/> One
<input type="checkbox"/> Wing(s)	<input type="checkbox"/> Either	<input type="checkbox"/> Either	<input type="checkbox"/> _____
<input type="checkbox"/> Talon(s)	<input type="checkbox"/> Other		
<input type="checkbox"/> Feathers			

- 2) Name of your tribe. _____
- 3) Name of tribal religious ceremony(ies) in which eagle or parts will be used. _____
- 4) Certification from the Bureau of Indian Affairs that you are an Indian has been submitted. (see Page 3) YES. NO.
- 5) Certification from a duly authorized official of your religious group that you are authorized to participate in ceremonies has been submitted. (see Page 3) YES. NO.
- 6) Name of TOWN of nearest major bus line (Greyhound, Trailways) where eagle can be shipped. _____
- 7) Telephone numbers (yours, friends, relatives) where you can be reached or a message left for you Monday through Friday, between 8 and 4. When we are ready to ship, we can make arrangements much faster and easier by phone than by mail. Indicate next to number, the location/person to which phone number belongs (work, home, wife's name)
(INCLUDE AREA CODE OF PHONE NUMBERS)
- _____
- _____
- _____

YOU MUST NOTIFY THIS OFFICE, IN WRITING, OF ANY ADDRESS OR TELEPHONE NUMBER CHANGES. IF THE REPOSITORY IS UNABLE TO CONTACT YOU, YOUR ORDER WILL BE PLACED ON INACTIVE/ABANDONED STATUS.

U.S. DEPARTMENT OF INTERIOR
FISH AND WILDLIFE SERVICE

CERTIFICATION OF ENROLLMENT AND PARTICIPATION

The Federal law protecting bald and golden eagles makes provision for the use of eagle feathers by Indians for religious purposes. This law is administered by the U.S. Fish and Wildlife Service. From time to time this Agency acquires eagle feathers in connection with law enforcement and other official activities and these feathers may be provided to Indians for religious use under the terms of a valid Fish and Wildlife Service permit.

Application for a permit to acquire eagle feathers for religious use requires certification from the Bureau of Indian Affairs that the person requesting feathers is an enrolled member of a tribe. As a representative of the BUREAU OF INDIAN AFFAIRS, please complete the following certification statement and return it to the applicant for submission with his/her application.

I hereby certify that _____ is an enrolled member of the _____ Tribe. I understand that the making of a false statement may subject me to the criminal penalties of 18 USC 1001.

SIGNED: _____

BIA TITLE: _____

DATE: _____

Application for a permit to acquire eagle feathers to religious use also requires certification from a DULY AUTHORIZED OFFICIAL OF THE TRIBAL RELIGIOUS GROUP that the applicant is authorized to participate in tribal ceremonies. As an official of the tribal religious group, please complete the following certification statement and return it to the applicant for submission with his/her application.

I hereby certify that _____ is a member of the _____ Tribe, and requires eagle feathers to participate in religious ceremonies of the Tribe. I understand that the making of a false statement may subject me to the criminal penalties of 18 USC 1001.

SIGNED: _____

RELIGIOUS TITLE: _____

DATE: _____



United States Department of the Interior
 FISH AND WILDLIFE SERVICE
 DIVISION OF LAW ENFORCEMENT
 Post Office Box 329
 Albuquerque, New Mexico 87103

INFORMATION ON EAGLES AND EAGLE PARTS POSSESSED AND USED BY
 NATIVE AMERICANS FOR RELIGIOUS PURPOSES

BACKGROUND: Both species of North American eagles, the bald eagle (*Haliaeetus leucocephalus*) and the golden eagle (*Aquila chrysaetos*) are protected by several federal laws and regulations. They are afforded protection under the Migratory Bird Treaty Act (18 USC 703-712) and the Eagle Act (16 USC 668). In addition, the bald eagle is also protected under the Endangered Species Act of 1973 (16 USC 1531-1543). Even though the eagles are fully protected under these federal laws, there are exceptions or exemptions within several of these statutes that allow or permit certain activities by Native American Indians when such activities are related to a religious use or purpose.

What can and cannot be done regarding eagles and eagle parts is outlined below. These authorized activities are either permitted by federal law and/or authorized by implementing regulations or enforcement policies of the U.S. Fish and Wildlife Service.

WHAT YOU "CAN" DO: If you are a Native American Indian and are using eagle feathers or other eagle parts for a bona fide religious purpose, you may:

- 1) Possess, receive from or transfer to other Native American Indians who reside within the United States, eagle feathers or parts that are currently lawfully possessed. NO PERMIT IS REQUIRED FOR SUCH POSSESSION, RECEIPT OR TRANSFER.
- 2) Request and receive eagle feathers or their parts from the Fish and Wildlife Service by contacting the appropriate office for the state in which you reside. Each of these office oversees a program of eagle feather and part distribution to Native American Indians for religious purposes. The attached list shows the office locations and states under their jurisdiction.

This program of providing eagles or eagle feathers to Native American Indians utilizes feathers from eagles that have died of natural causes or which have been confiscated as a result of some illegal activity. While some delays exist from time of request to actual receipt of these feathers and parts, the program does provide a source of eagle feathers and eagle parts for religious purposes without having to kill eagles.

WHAT YOU "CANNOT" DO: No one, Indian or non-Indian, may:

- 1) Kill eagles, either on or off a reservation, without first applying for and obtaining a permit from the Fish and Wildlife Service. Since the Fish & Wildlife Service has in place a program to provide eagle carcasses and feathers to Native American Indians, permits to kill eagles are seldom, if ever, issued.
- 2) Sell to or purchase from any person, Indian or non-Indian, eagle feathers or other eagle parts, or items containing eagle feathers or parts, such as prayer feathers, Kachina dolls, bustles, fans, etc.
- 3) Transfer or give eagles, eagle feathers, or other eagle parts to non-Indian even though they may be members of the Native American Church of North America.
- 4) Import into or export from the United States, eagles, eagle feathers or other eagle parts. Some exceptions are made for ceremonial and religious items that are taken out of the United States and then returned in connection with a bona fide exhibition. The Fish and Wildlife Service office for your state can provide specific information. You may not lawfully take prayer feathers or other items containing eagle feathers out of the United States as gifts for persons in foreign countries, nor may you receive as gifts and return to the United States from a foreign country any eagle feathers or any items containing eagle feathers.

The same general prohibitions, or what you "can" do and "cannot" do with eagle feathers or other eagle parts also applies to the feathers or parts of all hawks, owls, scissor-tailed flycatchers, flickers, and other migratory birds. Again, your Fish and Wildlife Service office can give you specific information.

THE ABOVE INFORMATION IS VERY GENERAL AND IS INTENDED TO PROVIDE GUIDELINES ONLY.

This is not a legal document and any specific questions regarding the Migratory Bird Treaty Act, Eagle Act, or Endangered Species Act as they apply to Native American Indians should be directed to the appropriate Fish and Wildlife Service office as shown on the attached list.

REMEMBER, the Fish and Wildlife Service has an active program in place whereby Native American Indians may obtain eagles and eagle feathers for religious purposes. You can receive details about this program by contacting the appropriate Fish and Wildlife office as shown on the attached list.



United States Department of the Interior FS-11 April 75

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

Feathers and Federal Law

This fact sheet is designed to answer the most frequently asked questions concerning Federal laws regulating commercial traffic in items made from the feathers and parts of certain Federally protected birds. It is especially directed at persons engaged in the sale, trade or barter of feathered Indian art objects, artifacts, antiques, curios and other goods from trading posts, curio shops, antique shops, pawn shops and other retail outlets.

What species of birds are protected by Federal law?

The Migratory Bird Treaty Act offers protection to all wild birds found commonly in the United States, except the house sparrow, starling, feral pigeon, and resident game birds such as pheasant, grouse, quail, wild turkeys, etc. Resident game birds are managed by the separate States, and may be taken and their feathers and parts utilized as prescribed by State law. A reference list of migratory birds can be found in Title 50, Code of Federal Regulations, Part 10. The Bald Eagle Protection Act affords additional protection to all bald and golden eagles. Additionally, some species of migratory birds are provided further protection by the Endangered Species Act of 1973.

What activities do these laws prohibit?

The Migratory Bird Treaty Act makes it unlawful for anyone to kill, capture, collect, possess, buy, sell, trade, ship, import or export any migratory bird, including feathers, parts, nests or eggs, unless the person first obtains an appropriate Federal permit in compliance with Federal regulations on migratory birds (see 50 CFR Part 21). The Bald Eagle Protection Act likewise prohibits all commercial activities involving bald or golden eagles, including their feathers or parts.

Some migratory game birds may be lawfully hunted during specified periods but may not be sold. Annually published Federal hunting regulations (50 CFR Part 20) impose limits on the number and kinds of birds that can be taken, and control the manner, means and open seasons within which such taking is lawful.



What types of traditional Indian curios and artifacts are affected by these prohibitions?

Any Indian curios or artifacts that are made of or decorated with migratory bird feathers are included within these prohibitions. Among the more common articles decorated with feathers or parts of birds, but by no means all such items, are: headdresses, bonnets, hats, fans, pipes, necklaces, Kachina dolls, lances, bustles, musical instruments and various articles of clothing.

Why does the Federal government prohibit commercial traffic in the feathers and parts of eagles and migratory birds?

Because migratory birds cross international boundaries in many cases, they are considered an international resource that must be protected from commercial exploitation. The Migratory Bird Treaty Act, passed in 1918 and subsequently amended, implements treaties for the protection of migratory species signed with Great Britain (for Canada), Mexico and Japan. The Bald Eagle Protection Act was passed in 1940 to protect our national bird, which at the time was rapidly declining in numbers. The golden eagle was given protection under the Bald Eagle Protection Act in 1962. In 1972, an amendment to the treaty with Mexico also included eagles as migratory birds, and afforded these birds protection under the Migratory Bird Treaty Act.

As the popularity of American Indian artifacts has increased in recent years, a lucrative market has developed for the eagle and migratory bird feathers used to make or decorate many Indian curios and art objects. The result has been the slaughter of thousands of birds to fill this demand for feathers, and other parts such as beaks, bones and talons. The prohibitions against commercial traffic in eagles and migratory birds are intended to eliminate any market for the birds themselves, or for their feathers and parts.

Can permits be obtained to sell curios and artifacts made with the feathers and parts of protected birds?

No. The Department of the Interior firmly believes that to carry out the objectives of the law, it must totally deny a marketplace for migratory birds including eagles. If such markets were allowed to exist, individuals would be prompted to supply the demand for protected birds by killing them illegally.

What if an item is a genuine antique?

The sale, purchase or barter of any protected bird, or article made from the feathers or parts of protected birds, is prohibited no matter when the bird was killed or possessed. Thus, even genuine antique Indian art objects, if they are made with feathers or parts of protected birds, may not be sold or purchased.

Some manufacturers of Indian curios, in order to increase the value of their merchandise, have been known to clip or otherwise alter the appearance of feathers to make them look old. The item is then sold as an "antique." A fraudulent "history" may even be fabricated to further enhance its value. Once the appearance of bird feathers has been so altered, it is extremely difficult to tell them from genuine antiques. This is one very telling reason for prohibiting the sale of antique Indian articles made with the feathers or parts of protected birds.

Can a person sell items made from feathers of birds found dead in the wild, or which are killed accidentally?

No exception from the prohibitions of the law is made for the commercial use of feathers or parts of protected birds found dead in the wild, those killed accidentally (such as road kills), or those electrocuted by power lines, even though large numbers of birds that die from such causes could probably be salvaged. This prohibition ensures that individuals will not deliberately kill birds for their own personal use, under the guise that "they were found dead." The fact that increasing numbers of protected birds are being killed each year, and their feathers or parts sold for personal gain, makes it imperative that the Federal government prohibit the possession of salvaged dead specimens without the proper permits.

Are there any legally recognized commercial uses of feathers or parts of protected birds?

As a general rule, feathers or parts of migratory birds or eagles may not be sold, traded or bartered or offered for sale. However, these items may be displayed (without price tags) in shops or at shows and pow-wows. In addition, any person may possess, purchase, sell, barter, or transport for the making of fishing flies, bed pillows and mattresses and for similar commercial uses, the feathers of migratory waterfowl (wild ducks, geese, brant and swans) legally taken in accordance with 50 CFR Part 20.

What other kinds of feathers can be legally bought and sold?

Feathers obtained from the following sources could be used to manufacture items for sale, provided that manufacturers comply with all applicable State laws:

1. Domesticated species such as chickens, turkeys, ducks, geese and guinea fowl.
2. Resident game birds such as pheasant, grouse, quail, wild turkey, etc., when taken with the appropriate license during game season.

3. Non-native species held in zoos or private collections.
4. Unprotected species such as the house sparrow, starling, and rock dove (pigeon).

Can an individual make items from the feathers of protected birds for his own personal use?

Any person for his own use may possess, transport, and ship, without a permit, the feathers, parts and skins of lawfully taken migratory game birds. A permit is required for import or export. While feathers and parts of migratory nongame birds, bald eagles and golden eagles may not be possessed by any person without appropriate Federal permits unless the feathers or parts were acquired prior to the date when Federal protection was provided for individual species (see below), it is the current policy of the Department of the Interior not to take legal action against any American Indian who merely possesses migratory bird or eagle feathers. This is in recognition of the role that migratory bird feathers have in American Indian religious practices. We stress, however, that the Department is not authorizing commercial traffic in protected birds and their parts, even among Indians.

As noted above all persons are allowed to possess or transport, but not sell, feathers or parts of protected birds, if the birds, feathers or parts were lawfully obtained prior to the date the species in question was first protected by Federal law. The bald eagle has been protected since 1940; the golden eagle since 1962. The first migratory birds were protected in 1918; however, numerous amendments to the Migratory Bird Treaty Act have since protected additional species. Please check with the Special Agent in Charge of the U.S. Fish and Wildlife Service Law Enforcement District serving your area, to find out when a particular species was first afforded protection.

Is there any other way in which an individual can legally acquire migratory bird feathers?

Permits are obtainable which authorize the taking of migratory birds, and their feathers, parts, nests or eggs, for bona fide scientific or educational purposes. Such projects must be amply justified and the collector's ornithological qualifications established. No such permits are issued for personal or hobby purposes. In addition, there are certain other activities involving migratory birds, such as the salvage of sick, injured or dead birds; experimental breeding of migratory game birds other than waterfowl; or unusual possession, transportation or display requirements, for which special purpose permits may be issued. Migratory bird permit applications should be directed to the Special Agent in Charge of the Fish and Wildlife Service Law Enforcement District serving your area.

Important Note: All States have identical or similar protective provisions for most migratory birds. In most cases, States likewise require permits to take, possess, buy or sell migratory birds and their feathers or parts. Federal permits are not valid without a corresponding State permit, if required. It is important, therefore, to check with State wildlife or conservation authorities concerning their restrictions, before applying for a Federal permit.

Indians require the feathers of protected birds for use in their religious or cultural activities. How can they obtain feathers for these purposes?

American Indians may possess, carry, use, wear, give, loan or exchange among other Indians, but without compensation, all Federally protected birds, as well as their parts or feathers. American Indians who wish to possess bird feathers or parts to be worked on by tribal craftsmen for eventual use in Indian religious or cultural activities may transfer such feathers or parts to tribal craftsmen without charge, but such craftsmen may be compensated for their work.

In addition, American Indians can obtain feathers and parts of bald or golden eagles for use in bona fide religious ceremonies. Free permits for distribution of eagle feathers for religious purposes are available from the U.S. Fish and Wildlife Service. The Service salvages the remains of eagles killed in the wild, or which die naturally in zoos, for distribution to Indians for religious purposes from a newly established repository in Pocatello, Idaho. Eagle feathers, however, are not obtainable from this source for sale or other commercial activities.

Information on how to apply for eagle feather permits can be obtained by writing to the Special Agent in Charge of the Fish and Wildlife Service Law Enforcement District serving your area.

What other bird feathers could be used by Indians for religious or cultural purposes?

Feathers from the following sources are also available to Indians for religious or cultural use, but they cannot be sold:

1. Wild migratory game species such as ducks, geese, swans, doves, pigeons, rails, snipe, woodcock and cranes. These birds could be taken during open seasons with the proper license, and their feathers utilized.
2. Captive-reared migratory game birds such as ducks, geese, swans, doves and pigeons.
3. Various species taken in accordance with Federal regulations on depredation control (see section 20.43 of 50 CFR Part 20), such as blackbirds, cowbirds, grackles, crows and magpies.

Can any other individuals obtain eagle feathers?

Yes. Permits are available authorizing qualified individuals to take, possess, or transport bald or golden eagles or their parts, nests or eggs, for the scientific or exhibition purposes of public museums, public scientific societies, or public zoological parks.

What are the penalties for violating Federal laws protecting eagles and migratory birds?

The Migratory Bird Treaty Act provides for penalties of up to \$2,000 and two years imprisonment for persons convicted of selling protected birds, or their feathers or parts. For first offenses, the Bald Eagle Protection Act carries a maximum criminal penalty of a \$5,000 fine and one year in prison for persons convicted of selling eagles, or their feathers or parts. The penalty for second offenses is a \$10,000 fine and two years imprisonment.

The Endangered Species Act of 1973 carries a maximum penalty of \$20,000 and one year imprisonment for criminal offenses.

FOR MORE COMPLETE INFORMATION, CONTACT THE SPECIAL AGENT IN CHARGE OF THE U.S. FISH AND WILDLIFE SERVICE'S LAW ENFORCEMENT DISTRICT SERVING YOUR AREA.

If you reside in:

Please contact:

DISTRICT OFFICES
ASSISTANT REGIONAL DIRECTOR/LAW ENFORCEMENT (ARD/LE)

<p>DISTRICT 1. California, Hawaii, Idaho Nevada, Oregon, Washington: 911 NE 11th Avenue Portland, OR 97232-4181 (503) 231-6125</p>	<p>DISTRICT 2. Arizona, New Mexico Oklahoma, Texas P.O. Box 329 Albuquerque, NM 87103 (505) 766-2091</p>	<p>DISTRICT 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, Wisconsin: P.O. Box 45 Fed. Bldg., Ft. Snell Twin Cities, MN 55111 (612) 725-3530</p>	<p>DISTRICT 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee: P.O. Box 4839 Atlanta, GA 30302 (404) 331-5872</p>
<p>DISTRICT 5. Connecticut, District of Columbia, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia: P.O. Box 129 New Town Branch Boston, MA 02258 (617) 965-2298</p>	<p>DISTRICT 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: P.O. Box 25486 Denver Federal Center Denver, CO 80225 (303) 236-7540</p>	<p>DISTRICT 7. Alaska: P.O. Box 92597 Anchorage, AK 99509-2597 (907) 786-3311</p>	

BALD EAGLE PROTECTION ACT
16 U.S.C. 668-668c

§ 668. Bald and golden eagles

(a) Prohibited acts; criminal penalties

Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in this subchapter, shall knowingly, or with wanton disregard for the consequences of his act take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner any bald eagle commonly known as the American eagle or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to this subchapter, shall be fined not more than \$5,000 or imprisoned not more than one year or both: *Provided*, That in the case of a second or subsequent conviction for a violation of this section committed after October 23, 1972, such person shall be fined not more than \$10,000 or imprisoned not more than two years, or both: *Provided further*, That the commission of each taking or other act prohibited by this section with respect to a bald or golden eagle shall constitute a separate violation of this section: *Provided further*, That one-half of any such fine, but not to exceed \$2,500, shall be paid to the person or persons giving information which leads to conviction: *Provided further*, That nothing herein shall be construed to prohibit possession or transportation of any bald eagle, alive or dead, or any part, nest, or egg thereof, lawfully taken prior to June 8, 1940, and that nothing herein shall be construed to prohibit possession or transportation of any golden eagle, alive or dead, or any part, nest, or egg thereof, lawfully taken prior to the addition to this subchapter of the provisions relating to preservation of the golden eagle.

(b) Civil penalties

Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in this subchapter, shall take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner, any bald eagle, commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to this subchapter, may be assessed a civil penalty by the Secretary of not more than \$5,000 for each such violation. Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. In determining the amount of the penalty, the gravity of the violation, and the demonstrated good faith of the person charged shall be considered by the Secretary. For good cause

shown, the Secretary may remit or mitigate any such penalty. Upon any failure to pay the penalty assessed under this section, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing any such action, the court must sustain the Secretary's action if supported by substantial evidence.

(c) Cancellation of grazing agreements

The head of any Federal agency who has issued a lease, license, permit, or other agreement authorizing the grazing of domestic livestock on Federal lands to any person who is convicted of a violation of this subchapter or of any permit or regulation issued hereunder may immediately cancel each such lease, license, permit, or other agreement. The United States shall not be liable for the payment of any compensation, reimbursement, or damages in connection with the cancellation of any lease, license, permit, or other agreement pursuant to this section.

(June 8, 1940, ch. 278, § 1, 54 Stat. 250; June 25, 1959, Pub. L. 86-70, § 14, 73 Stat. 143; Oct. 24, 1962, Pub. L. 87-884, 76 Stat. 1246; Oct. 23, 1972, Pub. L. 92-535, § 1, 86 Stat. 1064.)

§ 668a. Taking and using of the bald and golden eagle for scientific, exhibition and religious purposes

Whenever, after investigation, the Secretary of the Interior shall determine that it is compatible with the preservation of the bald eagle or the golden eagle to permit the taking, possession, and transportation of specimens thereof for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or that it is necessary to permit the taking of such eagles for the protection of wildlife or of agricultural or other interests in any particular locality, he may authorize the taking of such eagles pursuant to regulations which he is hereby authorized to prescribe: *Provided*, That on request of the Governor of any State, the Secretary of the Interior shall authorize the taking of golden eagles for the purpose of seasonally protecting domesticated flocks and herds in such State, in accordance with regulations established under the provisions of this section, in such part or parts of such State and for such periods as the Secretary determines to be necessary to protect such interests: *Provided further*, That bald eagles may not be taken for any purpose unless, prior to such

taking, a permit to do so is procured from the Secretary of the Interior. *Provided further*, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking, possession, and transportation of golden eagles for the purposes of falconry, except that only golden eagles which would be taken because of depredateions on livestock or wildlife may be taken for purposes of falconry: *Provided further*, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking of golden eagle nests which interfere with resource development or recovery operations.

(June 8, 1940, ch. 278, § 2, 54 Stat. 251; Oct. 24, 1962, Pub. L. 87-884, 76 Stat. 1246; Oct. 23, 1972, Pub. L. 92-535, § 2, 86 Stat. 1065; Nov. 2, 1978, Pub. L. 95-616, § 9, 92 Stat. 3114.)

§ 648b. Enforcement

(a) Arrest; search; issuance and execution of warrants and process

Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this subchapter may, without warrant, arrest any person committing in his presence or view a violation of this subchapter or of any permit or regulations issued hereunder and take such person immediately for examination or trial before an officer or court of competent jurisdiction; may execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this subchapter; and may, with or without a warrant, as authorized by law, search any place. The Secretary of the Interior is authorized to enter into cooperative agreements with State fish and wildlife agencies or other appropriate State authorities to facilitate enforcement of this subchapter, and by said agreements to delegate such enforcement authority to State law enforcement personnel as he deems appropriate for effective enforcement of this subchapter. Any judge of any court established under the laws of the United States, and any United States magistrate may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

(b) Forfeiture

All bald or golden eagles, or parts, nests, or eggs thereof, taken, possessed, sold, purchased, bartered, offered for sale, purchase, or barter, transported, exported, or imported contrary to the provisions of this subchapter, or of any permit or regulation issued hereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid in the taking, possessing, selling, purchasing, bartering, offering for sale, purchase, or barter, transporting, exporting, or importing of any bird or part, nest, or egg thereof, in violation of this subchapter or of any permit or regulation issued hereunder shall be subject to forfeiture to the United States.

(c) Customs laws applied

All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subchapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this subchapter: *Provided*, That all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this subchapter, be exercised or performed by the Secretary of the Interior or by such persons as he may designate.

(June 8, 1940, ch. 278, § 3, 54 Stat. 251; Oct. 17, 1968, Pub. L. 90-578, title IV, § 402(b)(2), 82 Stat. 1118; Oct. 23, 1972, Pub. L. 92-535, § 3, 86 Stat. 1068.)

§ 648c. Definitions

As used in this subchapter "whoever" includes also associations, partnerships, and corporations; "take" includes also pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb; "transport" includes also ship, convey, carry, or transport by any means whatever, and deliver or receive or cause to be delivered or received for such shipment, conveyance, carriage, or transportation.

(June 8, 1940, ch. 278, § 4, 54 Stat. 251; Oct. 23, 1972, Pub. L. 92-535, § 4, 86 Stat. 1068.)

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PART 13 -- GENERAL PERMIT PROCEDURES [Updated 10/1/89]

Subpart A -- Introduction

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Authority: 16 U.S.C. 668a; 16 U.S.C. 704, 712; 16 U.S.C. 742(i); 16 U.S.C. 1382; 16 U.S.C. 1538(d); 16 U.S.C. 1539, 1540(f); 16 U.S.C. 3374; 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 15663; 31 U.S.C. 9701.

Source: 39 FR 1161, Jan. 4, 1974; 54 FR 38147, Sept. 14, 1989, unless otherwise noted.

Subpart A -- Introduction

§ 13.1 General.

Each person intending to engage in an activity for which a permit is required by this Subchapter B shall, before commencing such activity, obtain a permit authorizing such activity. Each person who desires to obtain the permit is subject to the requirements of this Part 13 and the other regulations in this subchapter which set forth the additional requirements for the specific permits desired. If the activity for which permission is sought is covered by the requirements of more than one part of this subchapter, the requirements of each part must be met. If the information required for each specific permitted activity is included, one application will be accepted for all permits required, and a single permit will be issued.

§ 13.2 Purpose of regulations.

The regulations contained in this part provide uniform rules, conditions, and procedures for the application for and the issuance, denial, suspension, revocation, and general administration of all permits issued pursuant to this Subchapter B.

§ 113.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including "Import and Marking" (Part 14), "Feather Imports" (Part 15), "Injurious Wildlife" (Part 16), "Endangered Wildlife and Plants" (Part 17), "Marine Mammals" (Part 18), "Migratory Birds" (Part 21), "Eagles" (Part 22) and "Endangered Species Convention" (Part 23). As used in this Part 13, the term "permit" shall refer to either a license, permit, or certificate as the context may require.

[42 FR 10465, Feb. 22, 1977, as amended at 42 FR 32377, July 24, 1977; 45 FR 36873, Aug. 23, 1980]

§ 113.4 Emergency variation from requirements.

The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations will not hinder effective administration of this Subchapter B, and will not be unlawful.

§ 113.5 Information collection requirements.

(a) The information collection requirements contained within this Part 13 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018 - 0022. This information is being collected to provide information necessary to evaluate permit applications. This information will be used to review permit applications and make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation or denial of permits. The obligation to respond is required to obtain or retain a permit.

(b) The public reporting burden for these reporting requirements is estimated to vary from 15 minutes to 4 hours per response, with an average of 0.803 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms. Comments regarding the burden estimate or any other aspect of these reporting requirements should be directed to the Service Information Collection Clearance Officer, MS-224 ARLSO, Fish and Wildlife Service, Washington, D.C. 20240; or the Office of Management and Budget, Paperwork Reduction Project (1018-0022), Washington, D.C. 20503.

[47 FR 30785, July 13, 1982; as amended 54 FR 38147, Sept. 14, 1989]

Subpart B - Application for Permits

§ 113.11 Application procedures.

The Service may not issue a permit for any activity authorized by this Subchapter B unless the applicant has filed an application in accordance with the following procedures. Applicants do not have to submit a separate application for each permit unless otherwise required by this subchapter.

(a) Forms. Applications must be submitted in writing on a Federal Fish and Wildlife License/Permit Application (Form 3 - 200) or as otherwise specifically directed by the Service.

(b) Forwarding instructions. Applications for permits in the following categories will be forwarded to the issuing office indicated below.

(1) Migratory bird banding permits (50 CFR 21.22) - Bird Banding Laboratory, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Laurel, Maryland 20708. (Special application forms must be used for bird banding permits. They may be obtained by writing to the Bird Banding Laboratory).

(2) Exception to designated port (50 CFR Part 14), Import/export license (50 CFR 14.93), and 77-hour training program (50 CFR Part 21) and Bald or Golden Eagle permits (50 CFR Part 22) - Assistant Regional Director for Law Enforcement of the Law Enforcement District in which the applicant resides (see 50 CFR 10.22 for addresses and boundaries of the Law Enforcement Districts).

(3) Feather quota (50 CFR Part 15), Injurious wildlife (50 CFR Part 16), endangered and threatened species (50 CFR Part 17), marine mammal (50 CFR Part 18) and permits and certificates for the Convention on International Trade in Endangered Species (CITES) (50 CFR Part 23) - U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, Virginia 22203.

(c) Time notice. The Service will process all applications as quickly as possible. However, it cannot guarantee final action within the time limits the applicant requests. Applicants for endangered species and marine mammal permits should submit applications to the Office of Management Authority which are postmarked at least 90 calendar days prior to the requested effective date. Applicants for all other permits should submit applications to the issuing office which are postmarked at least 60 days prior to the requested effective date.

(d) Permit fees. (1) Unless otherwise exempted by this paragraph, applicants for issuance or renewal of permits must pay the required permit processing fee at the time of application. Applicants must pay fees by check or money order made payable to "U.S. Fish and Wildlife Service". The Service will not refund any application fee under any circumstances if the Service has processed the application.

However, the Service may return the application fee if the applicant withdraws the application before the Service has significantly processed it.

(2) Except as provided in paragraph (d)(4) of this section, the fee for processing any application is \$25.00. If regulations in this subchapter require more than one type of permit for an activity, and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing the activity. The issuing office may charge only the highest single fee for the activity permitted.

(3) A fee shall not be charged to any Federal, State or local government agency, nor to any individual or institution under contract to such agency for the proposed activities. The fee may be waived or reduced for public institutions (see 30 CFR 10.12). Proof of such status must accompany the application.

(4) Nonstandard fees.

Type of Permit	Fee
Import/Export License (Section 14.93).....	\$ 125 and inspection fees.
Marine Mammal (Section 18.31).....	100
Migratory Bird-Banding or Marking (21.22)....	None
Bald or Golden Eagles (Part 22).....	None

(5) Abandoned or incomplete applications. Upon receipt of an incomplete or improperly executed application, or if the applicant does not submit the proper fee, the issuing office will notify the applicant of the deficiency. If the applicant fails to supply the information to complete the application or to pay the required fees within 45 calendar days of the date of notification, the Service will consider the application abandoned. The Service will not refund any fees for an abandoned application.

[47 FR 30785, July 15, 1982; 50 FR 52809, Dec. 26, 1985, as amended at 54 FR 38147, Sept. 14, 1989.]

§ 13.12 General information requirements on applications for permits.

(a) General information required for all applications. All applications must contain the following information:

- (1) Applicant's full name, mailing address, telephone number(s), and,

(1) If the applicant is an individual, the date of birth, height, weight, hair color, eye color, sex, and any business or institutional affiliation of the applicant related to the requested permitted activity; or

(1f) If the applicant is a corporation, firm, partnership, association, institution, or public or private agency, the name and address of the president or principal officer and of the registered agent for the service of process;

(2) Location where the requested permitted activity is to occur or be conducted;

(3) Reference to the part(s) and section(s) of this Subchapter B as listed in paragraph (b) of this section under which the application is made for a permit or permits, together with any additional justification, including supporting documentation as required by the referenced part(s) and section(s);

(4) If the requested permitted activity involves the import or re-export of wildlife or plants from or to any foreign country, and the country of origin, or the country of export, the applicant must furnish the taking, possession, transportation, exportation, or sale of wildlife or plants, documentation as indicated in § 14.52(c) of this Subchapter B;

(5) Certification in the following language:

I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter 1 of Title 50, Code of Federal Regulations, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to the criminal penalties of 18 U.S.C. 1001.

(6) Desired effective date of permit except where issuance date is fixed by the part under which the permit is issued;

(7) Date;

(8) Signature of the applicant; and

(9) Such other information as the Director determines relevant to the processing of the application.

(b) Additional information required on permit applications. As stated in paragraph (4)(1) of this section certain additional information is required on all applications. These additional requirements may be found by referring to the section of this Subchapter B cited after the type of permit for which application is being made.

Type of Permit

Section

Importation at non-designated ports:

Scientific.....	14.31
Deterioration prevention.....	14.32
Economic hardship.....	14.33
Marking of package or container:	
Symbol marking.....	14.83
Import/export license.....	14.93
Feather import quota: Importation or entry.....	15.21
Injurious wildlife: Importation or shipment.....	16.22
Endangered wildlife and plant permits:	
Similarity of appearance.....	17.52
Scientific, enhancement of propagation or survival, incidental taking for wildlife.....	17.22
Scientific, propagation, or survival for plants.....	17.62
Economic hardship for wildlife.....	17.23
Economic hardship for plants.....	17.63
Threatened wildlife and plant permits:	
Similarity of appearance.....	17.52
General for wildlife.....	17.32
American alligator - buyer or tanner.....	17.42(e)
General for plants.....	17.72

Mainline mammals permits:

Scientific research.....	18.31
Public display.....	18.31
Migratory bird permits:	
Banding or marking.....	21.22
Scientific collecting.....	21.23
Taxidermist.....	21.24
Waterfowl sale and disposal.....	21.25
Special aviculture.....	21.26
Special purpose.....	21.27
Falconry.....	21.28
Raptor propagation permit.....	21.30
Depredation control.....	21.41
Eagle permits:	
Scientific or exhibition.....	22.21
Indian religious use.....	22.22
Depredation control.....	22.23
Falconry purposes.....	22.24
Take of golden eagle nests.....	22.25
Endangered Species Convention permits.....	22.15

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 10465, Feb. 22, 1977; 42 FR 32377, June 24, 1977; 44 FR 54006, Sept. 17, 1979; 44 FR 59083, Oct. 12, 1979; 45 FR 56673, Aug. 25, 1980; 45 FR 78154, Nov. 25, 1980; 46 FR 42680, Aug. 24, 1981; 48 FR 31607, July 8, 1983; 48 FR 37300, Dec. 29, 1983; 50 FR 39687, Sept. 30, 1985; 50 FR 45408, Oct. 31, 1985; 54 FR 38147, Sept. 14, 1989.]

(3) The failure to pay any required fees or assessed costs and penalties, whether or not reduced to judgment disqualifies such person from receiving or exercising the privileges of a permit as long as such moneys are owed to the United States. This requirement shall not apply to any civil penalty presently subject to administrative or judicial appeal; provided that the pendency of a collection action brought by the United States or its assignees shall not constitute an appeal within the meaning of this subsection.

(4) The failure to submit timely, accurate, or valid reports as required may disqualify such person from receiving or exercising the privileges of a permit as long as the deficiency exists.

(5) Use of supplemental information. The issuing officer, in making a determination under this subsection, may use any information available that is relevant to the issue. This may include any prior conviction, or entry of a plea guilty or nolo contendere, or assessment of civil or criminal penalty for a violation of any Federal or State law or regulation governing the permitted activity. It may also include any prior permit revocations or suspensions, or any reports of State or local officials. The issuing officer shall consider all relevant facts or information available, and may make independent inquiry or investigation to verify information or substantiate qualifications asserted by the applicant.

(6) Conditions of issuance and acceptance. (1) Any permit automatically incorporates within its terms the conditions and requirements of Subpart D of this part and of any part(s) or section(s) specifically authorizing or governing the activity for which the permit is issued.

(2) Any person accepting and holding a permit under this Subchapter B acknowledges the necessity for close regulation and monitoring of the permitted activity by the Government. By accepting such permit, the permittee consents to and shall allow entry by agents or employees of the Service upon premises where the permitted activity is conducted at any reasonable hour. Service agents or employees may enter such premises to inspect the location; any books, records, or permits required to be kept by this Subchapter B; and any wildlife or plants kept under authority of the permit.

(3) Term of permit. Unless otherwise modified, a permit is valid during the period specified on the face of the permit. Such period shall include the effective date and the date of expiration.

(4) Denial. The issuing officer may deny a permit to any applicant who fails to meet the issuance criteria set forth in this section or in the part(s) or section(s) specifically governing the activity for which the permit is requested.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977; 47 FR 30785, July 15, 1982; 54 FR 38148, Sept. 14, 1989.]

Subpart C -- Permit Administration

112.21 Issuance of permits.

(a) No permit may be issued prior to the receipt of a written application therefor, unless a written variation from the requirements, as authorized by § 13.4, is inserted into the official file of the Bureau. An oral or written representation of an employee or agent of the United States Government, or an action of such employee or agent, shall not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 10.12.

(b) Upon receipt of a properly executed application for a permit, the Director shall issue the appropriate permit unless:

(1) The applicant has been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction evidences a lack of responsibility.

(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his application;

(3) The applicant has failed to demonstrate a valid justification for the permit and a showing of responsibility;

(4) The authorization requested potentially threatens a wildlife or plant population, or

(5) The Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(c) Disqualifying factors. Any one of the following will disqualify a person from receiving permits issued under this Part.

(1) A conviction, or entry of a plea of guilty or nolo contendere, for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act disqualifies any such person from receiving or exercising the privileges of a permit, unless such disqualification has been expressly waived by the Director in response to a written petition.

(2) The revocation of a permit for reasons found in §§ 13.28(a)(1) or (a)(2) disqualifies any such person from receiving or exercising the privileges of a similar permit for a period of five years from the date of the final agency decision on such revocation.

113.22 Renewal of permits.

- (a) Application for renewal. Applicants for renewal of a permit must submit a written application at least 30 days prior to the expiration date of the permit. Applicants must certify in the form required by § 13.12(a)(5) that all statements and information in the original application remain current and correct, unless previously changed or corrected. If such information is no longer current or correct, the applicant must provide corrected information.
- (b) Renewal criteria. The Service shall issue a renewal of a permit if the applicant meets the criteria for issuance in § 13.21(b) and is not disqualified under § 13.21(c).
- (c) Continuation of permitted activity. Any person holding a valid, renewable permit, who has complied with this section, may continue the activities authorized by the expired permit until the Service has acted on such person's application for renewal.
- (d) Denial. The issuing officer may deny renewal of a permit if the applicant who fails to meet the issuance criteria set forth in § 13.21 of this part, or in the part(s) or section(s) specifically governing the activity for which the renewal is requested.

113.23 Assessment of permits.

- (a) Permittee's request. Where circumstances have changed so that a permittee desires to have any condition of his permit modified, such permittee must submit a full written justification and supporting information in conformity with this part and the part under which the permit was issued.
- (b) Service reservation. The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity.

- (c) Change of name or address. A permittee is not required to obtain a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the permitted activity when approval of the location is a qualifying condition of the permit.

113.24 Right of succession by certain persons.

- (a) Certain persons, other than the permittee are granted the right to carry on a permitted activity for the remainder of the term of a current permit provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) the surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; and

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to secure the right provided in this section the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

[39 FR 1161, Jan. 4, 1974, as amended at 47 FR 30786, July 15, 1982; 54 FR 38148, Sept. 14, 1989]

113.25 Permits not transferable; agents.

(a) Permits issued under this part are not transferable or assignable. Some permits authorize certain activities in connection with a business or commercial enterprise and in the event of any lease, sale, or transfer of such business entity, the successor must obtain a permit prior to continuing the permitted activity. However, certain limited rights of succession are provided in § 13.24.

(b) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for purposes authorized by the permit may carry out the activity authorized by the permit, as an agent for the permittee.

113.26 Discontinuance of permit activity.

When a permittee, or any successor to a permittee as provided for by § 13.24, discontinues activities authorized by a permit, the permittee shall within 30 calendar days of the discontinuance return the permit to the issuing office together with a written statement surrendering the permit for cancellation. The permit shall be deemed void and cancelled upon its receipt by the issuing office. No refund of any fees paid for issuance of the permit or for any other fees or costs associated with a permitted activity shall be made when a permit is surrendered for cancellation for any reason prior to the expiration date stated on the face of the permit.

113.27 Permit suspension.

(a) Criteria for suspension. The privileges of exercising some or all of the permit authority may be suspended at any time if the permittee is not in compliance with the conditions of the permit, or with any applicable laws or regulations governing the conduct of the permitted activity. The issuing officer may also suspend all or part of the privileges authorized by a permit if the permittee fails to pay any fees, penalties or costs owed to the Government. Such suspension shall remain in effect until the issuing officer determines that the permittee has corrected the deficiencies.

(b) Procedure for revocation.

- (1) When the issuing officer believes there are valid grounds for revoking a permit, the permittee shall be notified in writing of the proposed revocation by certified or registered mail. This notice shall identify the permit to be revoked, the reason(s) for such revocation, the proposed disposition of the wildlife, if any, and inform the permittee of the right to object to the proposed revocation. The issuing officer may amend any notice of revocation at any time.
- (2) Upon receipt of a notice of proposed revocation the permittee may file a written objection to the proposed action. Such objection must be in writing, must be filed within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed revocation, and may include supporting documentation.
- (3) A decision on the revocation shall be made within 45 days after the end of the objection period. The issuing officer shall notify the permittee in writing of the Service's decision and the reasons therefor, together with the information concerning the right to request and the procedures for requesting reconsideration.
- (4) Unless a permittee files a timely request for reconsideration, any wildlife held under authority of a permit that is revoked must be disposed of in accordance with instructions of the issuing officer. If a permittee files a timely request for reconsideration of a proposed revocation, such permittee may retain possession of any wildlife held under authority of the permit until final disposition of the appeal process.

§ 13.29 Review procedures.

- (a) Request for reconsideration. Any person may request reconsideration of an action under this part if that person is one of the following:
 - (1) An applicant for a permit who has received written notice of denial;
 - (2) An applicant for renewal who has received written notice that a renewal is denied;
 - (3) A permittee who has a permit amended, suspended, or revoked, except for those actions which are required by changes in statutes or regulations, or are emergency changes of limited applicability for which an expiration date is set within 90 days of the permit change; or
 - (4) A permittee who has a permit issued or renewed but has not been granted authority by the permittee to perform all activities requested in the application, except when the activity requested is one for which there is no law-fal authority to issue a permit.

(b) Procedure for suspension.

- (1) When the issuing officer believes there are valid grounds for suspending a permit, the permittee shall be notified in writing of the proposed suspension by certified or registered mail. This notice shall identify the permit to be suspended, the reason(s) for such suspension, the actions necessary to correct the deficiencies, and inform the permittee of the right to object to the proposed suspension. The issuing officer may amend any notice of suspension at any time.
- (2) Upon receipt of a notice of proposed suspension the permittee may file a written objection to the proposed action. Such objection must be in writing, must be filed within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed suspension, and may include supporting documentation.
- (3) A decision on the suspension shall be made within 45 days after the end of the objection period. The issuing officer shall notify the permittee in writing of the Service's decision and the reasons therefor. The issuing officer shall also provide the applicant with the information concerning the right to request reconsideration of the decision under § 13.29 of this part and the procedures for requesting reconsideration.

§ 13.28 Permit revocation.

(a) Criteria for revocation. A permit may be revoked for any of the following reasons:

- (1) The permittee willfully violates any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, which involves a violation of the conditions of the permit or of the laws or regulations governing the permitted activity; or
- (2) The permittee fails within 60 days to correct deficiencies that were the cause of a permit suspension; or
- (3) The permittee becomes disqualified under § 13.21(c) of this part; or
- (4) A change occurs in the statute or regulation authorizing the permit that prohibits the continuation of a permit issued by the Service; or
- (5) The population(s) of the wildlife or plant that is subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

(b) Method of requesting reconsideration. Any person requesting reconsideration of an action under this part must comply with the following criteria:

- (1) Any request for reconsideration must be in writing, signed by the person requesting reconsideration or by the legal representative of that person, and must be submitted to the issuing officer.
- (2) The request for reconsideration must be received by the issuing officer within 45 calendar days of the date of notification of the decision for which reconsideration is being requested.
- (3) The request for reconsideration shall state the decision for which reconsideration is being requested and shall state the reason(s) for the reconsideration, including presenting any new information or facts pertinent to the issue(s) raised by the request for reconsideration.
- (4) The request for reconsideration shall contain a certification in substantially the same form as that provided by § 13.12(e)(3). If a request for reconsideration does not contain such certification, but is otherwise timely and appropriate, it shall be held and the person submitting the request shall be given written notice of the need to submit the certification within 15 calendar days. Failure to submit certification shall result in the request being rejected as insufficient in form and content.

(c) Inquiry by the Service. The Service may institute a separate inquiry into the matter under consideration.

(d) Determination of grant or denial of a request for reconsideration. The issuing officer shall notify the permittee of the Service's decision within 45 days of the receipt of the request for reconsideration. This notification shall be in writing, shall state the reason for the decision, and shall contain a copy of the evidence relied upon by the issuing officer. The notification shall also provide the following information concerning the right to appeal, the official to whom an appeal may be addressed, and the procedure for making an appeal.

(e) Appeal. A person who has received an adverse decision following submission of a request for reconsideration may submit a written appeal to the Regional Director for the region in which the issuing office is located, or to the Director for offices which report directly to the Director. An appeal must be submitted within 45 days of the date of the notification of the decision on the request for reconsideration. The appeal shall state the reason(s) and issue(s) upon which the appeal is based and may contain any additional evidence or arguments to support the appeal.

(f) Decision on appeal.

(1) Before a decision is made concerning the appeal the applicant may present oral arguments before the Regional Director or the Director, as appropriate, if such official judges oral arguments are necessary to clarify issues raised in the written record.

(2) The Service shall notify the applicant in writing of its decision within 45 calendar days of receipt of the appeal, unless extended for good cause and the applicant notified of the extension.

(3) The decision of the Regional Director or the Director shall constitute the final administrative decision of the Department of the Interior.

[47 FR 30786, July 15, 1982, as amended 54 FR 38148, Sept. 14, 1989.]

Subpart D - Conditions

§ 13.41 Humane conditions.

Any live wildlife possessed under a permit must be maintained under humane and healthful conditions.

[47 FR 30786, July 15, 1982, as amended 54 FR 38150, Sept. 14, 1989.]

§ 13.42 Permits are specific.

The authorizations on the face of a permit which set forth specific times, dates, places, methods of taking, numbers and kinds of wildlife or plants, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

§ 13.43 Alteration of permits.

Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid. Unless specifically permitted on the face thereof, no permit shall be copied, nor shall any copy of a permit issued pursuant to this Subchapter B be displayed, offered for inspection, or otherwise used for any official purpose for which the permit was issued.

§ 13.44 Display of permit.

Any permit issued under this part shall be displayed for inspection upon request to the Director or his agent, or to any other person relying upon its existence.

§ 13.45 Filing of reports.

Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of this Subchapter B or the provisions of the permit set forth other reporting requirements.

§ 13.46 Maintenance of records.

From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of plants obtained from the wild (excluding seeds) or wildlife pursuant to such permit. Such records shall be kept current and shall include names and addresses of persons with whom any plant obtained from the wild (excluding seeds) or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records shall be legibly written or reproducible in English and shall be maintained for five years from the date of expiration of the permit.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977; 54 FR 38150, Sept. 14, 1989.]

§ 13.47 Inspection requirement.

Any person holding a permit under this Subchapter B shall allow the Director's agent to enter his premises at any reasonable hour to inspect any wildlife or plant held on to inspect, sell, or copy any permits, books, or records required to be kept by regulations of this Subchapter B.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

§ 13.48 Compliance with conditions of permit.

Any person holding a permit under Subchapter B and any person acting under authority of such permit must comply with all conditions of the permit and with all applicable laws and regulations governing the permitted activity.

§ 13.49 Surrender of permit.

Any person holding a permit under Subchapter B shall surrender such permit to the issuing officer upon notification that the permit has been suspended or revoked by the Service, and all appeal procedures have been exhausted.

§ 13.50 Acceptance of liability.

Any person holding a permit under Subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit.

[54 FR 38150, Sept. 14, 1989.]

50 CFR 22

PART 22—EAGLE PERMITS

Subpart A—Introduction

Sec.

- 22.1 Purpose of regulations.
22.2 Scope of regulations.
22.3 Definitions.

Subpart B—General Requirements

- 22.11 General permit requirements.
22.12 General restrictions.
22.13 (Reserved)

Subpart C—Eagle Permits

- 22.21 Permits for scientific or exhibition purposes.
22.22 Permits for Indian religious purposes.
22.23 Permits to take depreddating eagles.
22.24 Permits for Falconry purposes. (Reserved)
22.25 Permits to take golden eagles nests.

Subpart D—Depredation Control Orders on Golden Eagles

- 22.31 Golden eagle depredations control order on request of Governor of a State.
22.32 Conditions and limitations on taking under depredation control order.

Authority: Sec. 2, Act of June 8, 1960, chapter 278, 84 Stat. 251; Pub. L. 87-664, 79 Stat. 1248; section 2, Pub. L. 92-533, 88 Stat. 1985; section 2, Pub. L. 95-518, 92 Stat. 3114 (18 U.S.C. 6050a).

SOURCE: 39 FR 1183, Jan. 4, 1974, unless otherwise noted.

Subpart A—Introduction

§ 22.1 Purpose of regulations.

The regulations contained in this part govern the taking, possession, and transportation of bald and golden eagles for scientific, educational, and depredations control purposes and for the religious purposes of Indian tribes. The import, export, purchase, sale, or barter of bald or golden eagles, their parts, nests, or eggs is not permitted by any regulation of this Subchapter B.

§ 22.2 Scope of regulations.

(a) Bald eagles, alive or dead, or their parts, nests, or eggs lawfully acquired prior to June 8, 1940, and golden eagles, alive or dead, or their parts, nests, or eggs lawfully acquired prior to October 24, 1963, may be possessed, or transported without a Federal permit, but may not be imported, exported, purchased, sold, traded, bartered, or offered for purchase, sale, trade or barter; and all shipments containing such birds, parts, nests, or eggs must be marked as provided by 18 U.S.C. 44 and §14.81 of this subchapter. Provided, That no exemption from any statute or regulation shall accrue to any offspring of such birds.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of this Subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife (see also Part 13 of this subchapter).

§ 22.3 Definitions.

In addition to definitions contained in Part 10 of this subchapter, and unless the context otherwise requires, in this Part 22:

"Area nesting population" means the number of pairs of golden eagles known to have a nesting attempt during the preceding 12 months within a 10-mile radius of a golden eagle nest.

"Golden eagle nest" means any readily identifiable structure built, maintained or occupied by golden eagles for reproduction purposes.

"Inactive nest" means a golden eagle nest that is not currently used by golden eagles as determined by the absence of any adult, egg, or dependent young at the nest during the 10 days before the nest is taken.

"Nesting attempt" means any activity by golden eagles involving egg laying and incubation as determined by the presence of an egg attended by an adult, an adult in incubation posture, or other evidence indicating recent use of a golden eagle nest for incubation of eggs or rearing of young.

"Person" means an individual, corporation, partnership, trust,

association, or any other private entity, or any officer, employee, agent, department, or instrumentality of any State or political subdivision of a State.

"Resource development or recovery" includes, but is not limited to, mining, timbering, extracting oil, natural gas and geothermal energy, construction of roads, dams, reservoirs, power plants, power transmission lines, and pipelines, as well as facilities and access routes essential to these operations, and reclamation following any of these operations.

"Take" includes also pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb.

(48 FR 57300, Dec. 29, 1983)

Subpart B—General Requirements

§ 22.11 General permit requirements.

No person shall take, possess, or transport any bald eagle (*Haliaeetus leucocephalus*) or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of such birds except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part and Part 13 and under § 21.22 (banding or marking permits), or under a depredation order issued under Subpart D of this part.

§ 22.12 General restrictions.

No person shall sell, purchase, barter, trade, or offer for sale, purchase, barter, or trade, export or import, at any time or in any manner, any bald eagle (*Haliaeetus leucocephalus*), or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of such birds, and no permit will be issued to authorize such acts.

§ 22.13 (Reserved)

Subpart C—Eagle Permits

§ 22.21 Permits for scientific or exhibition purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing taking, possession, or transportation of bald eagles or golden eagles, or their parts,

nests, or eggs for the scientific or exhibition purposes of public museums, public scientific societies, or public zoological parks.

(a) *Application procedure.* Applications for permits to take, possess, or transport bald or golden eagles, their parts, nests or eggs for scientific or exhibition purposes shall be submitted to the appropriate Special Agent in Charge (See: § 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following information:

(1) Species of eagle and number of such birds, nests, or eggs proposed to be taken, possessed, or transported;

(2) Specific locality in which taking is proposed, if any;

(3) Method taking proposed, if any;

(4) If not taken, the source of eagles and other circumstances surrounding the proposed acquisition or transportation;

(5) Name and address of the public museum, public scientific societies, or public zoological park for which they are intended;

(6) Complete explanation and justification of request, nature of project or study, number of specimens now at institution, reason these are inadequate, and other appropriate explanations.

(b) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, permits to take, possess, or transport bald or golden eagles for scientific or exhibition purposes, shall be subject to the following condition: In addition to any reporting requirement set forth in the permit, the permittee shall submit a report of activities conducted under the permit to the Special Agent in Charge within 30 days after expiration of the permit.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take, possess, or transport bald or golden eagles for scientific or exhibition purposes unless he has determined that such taking, possession, or transportation is compatible with the preservation of the bald or golden eagle. In making such determination, the Director shall consider, among other criteria, the following:

(1) The direct or indirect effect which issuing such permit would be likely to have upon the wild populations of bald and golden eagles;

(2) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application;

(3) Whether the justification of the purpose for which the permit is being

requested is adequate to justify the removal of the eagle from the wild or otherwise change its status; and

(4) Whether the applicant has demonstrated that the permit is being requested for *bona fide* scientific or exhibition purposes of public museums, public scientific societies, or public zoological parks.

(d) *Tenure of permits.* The tenure of permits to take bald or golden eagles for scientific or exhibition purposes shall be that shown on the face of the permit.

§ 22.22 Permits for Indian religious purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the taking, possession, and transportation of bald or golden eagles, or their parts, nests, or eggs for the religious use of Indians.

(a) *Application procedure.* Applications for permits to take, possess, and transport bald or golden eagles, their parts, nests, or eggs for the religious use of Indians shall be submitted to the appropriate Special Agent in Charge (See: § 13.11(b) of this subchapter). Only applications from individual Indians will be accepted. Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) Species and number of eagles or feathers proposed to be taken, or acquired by gift or inheritance.

(2) State and local area where the taking is proposed to be done, or from whom acquired.

(3) Name of tribe with which applicant is associated.

(4) Name of tribal religious ceremony(ies) for which required.

(5) Applicant must attach a certification from the Bureau of Indian Affairs that the applicant is an Indian.

(6) Applicant must attach a certification from a duly authorized official of the religious group that the applicant is authorized to participate in such ceremonies.

(b) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, permits to take, possess, and transport bald or golden eagles, their parts, nests or eggs, for the religious use of Indians shall be subject to the following conditions:

(1) Bald or golden eagles or their parts possessed under permits issued pursuant to this section are not transferable, except such birds or their parts may be handed down from one generation to generation or from one Indian to another in accordance with

tribal or religious customs; and

(2) Permittees shall make such reports or submit inventories of eagle feathers or parts on hand as may be requested by the Special Agent in Charge.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take, possess, and transport bald or golden eagles, their parts, nests or eggs, for the religious use of Indians unless he has determined that such taking, possession, and transportation is compatible with the preservation of the bald or golden eagle. In making such determination, the Director shall consider, among other criteria, the following:

(1) The direct or indirect effect which issuing such permit would be likely to have upon the wild populations of bald or golden eagles; and

(2) Whether the applicant is an Indian who is authorized to participate in *bona fide* tribal religious ceremonies.

(d) *Tenure of permits.* Any permit issued pursuant to this section under which the applicant is authorized to take eagles shall be valid during the period specified on the face thereof which shall in no case be longer than 1 year from date of issue. Any permit issued pursuant to this part which authorizes the permittee to transport and possess eagles or their parts shall be valid for the life of the permittee unless sooner revoked.

§ 22.23 Permits to take depredating eagles.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the taking of depredating bald or golden eagles.

(a) *Application procedure.* Applications for permits to take depredating bald or golden eagles shall be submitted to the appropriate Special Agent in Charge (See: § 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) Species and number of eagles proposed to be taken;

(2) Location and description of property where taking is proposed;

(3) Inclusive dates for which permit is requested;

(4) Method of taking proposed;

(5) Kind and number of livestock or domestic animals owned by applicant;

(6) Kind and amount of alleged damaged; and

(7) Name, address, age, and business relationship with applicant of any person the applicant proposes to act for him as his agent in the taking of such eagles.

(b) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, permits to take depredating bald or golden eagles shall be subject to the following conditions:

(1) Bald or golden eagles may be taken under permit by firearms, traps, or other suitable means except by poison or from aircraft;

(2) The taking of eagles under permit may be done only by the permittee or his agents named in the permit;

(3) Any eagle taken under authority of such permit will be promptly turned over to a Service agent or other game law enforcement officer designated in the permit; and

(4) In addition to any reporting requirement set forth in the permit, the permittee shall submit a report of activities conducted under the permit to the Special Agent in Charge within 10 days following completion of the taking operations or the expiration of the permit whichever occurs first.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take depredating bald or golden eagles unless he has determined that such taking is compatible with the preservation of the bald or golden eagle. In making such determination the Director shall consider the following:

(1) The direct or indirect effect which issuing such permit would be likely to have upon the wild population of bald or golden eagles;

(2) Whether there is evidence to show that bald or golden eagles have in fact become seriously injurious to wildlife or to agriculture or other interests in the particular locality to be covered by the permit, and the injury complained of is substantial; and

(3) Whether the only way to abate the damage caused by the bald or golden eagle is to take some or all of the offending birds.

(d) *Tenure of permits.* The tenure of any permit to take bald or golden eagles for depredation control purposes shall be that shown on the face thereof, and shall in no case be longer than 90 days from date of issue.

§ 22.24 Permits for falconry purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the possession and transportation of golden eagles for falconry purposes.

Note.—The information collections contained in this § 22.24 are cleared by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned approval number 1018-0022. The information is necessary to determine

potential permittee's qualifications and is required to obtain a permit.

(a) *Application procedure.* Applications for permits to possess and transport golden eagles for falconry purposes shall be submitted to the appropriate special agent in charge (see § 13.11(b) of this subchapter). Each application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) A copy of the applicant's master (or equivalent) class permit issued in accordance with 50 CFR 21.22.

(2) A statement of the applicant's experience in handling large raptors, including the species, type of experience and duration of the activity in which the experience was acquired.

(3) At least two (2) letters of reference from individuals with recognized experience in handling and/or flying eagles. Each letter must contain a concise history of the author's experience with eagles. Eagle handling experience is defined as, but is not limited to, the handling of pre-Act birds, zoological specimens, rehabilitating eagles, or scientific studies involving eagles. Each letter must also assess the applicant's capability to properly care for the fly golden eagles in falconry, and recommend the issuance or denial of the permit.

(4) A description of the facilities in which golden eagles will be housed.

(5) If requesting an eagle(s) from the Service, applicants must specify the sex, age and condition of the eagle(s) they will accept.

(6) For eagles already legally possessed, a copy of the permit or other documentation authorizing possession of said birds, and the procedures to be used to minimize or eliminate hazards associated with the use of imprinted birds in falconry.

(7) Name, address, age and experience in handling raptors of any person the applicant proposes to act as an authorized agent in taking possession of golden eagles provided by the Service.

(8) To obtain additional or replacement golden eagles, a request in writing to the appropriate special agent in charge must be tendered, identifying the existing permit and, for replacement eagles, the reason for such replacement.

(b) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, permits to possess and transport golden eagles for falconry purposes are subject to the following conditions:

(1) Golden eagles possessed for

falconry purposes are considered as raptors and must be maintained in accordance with Federal falconry standards described in §§ 21.28 and 21.29 of this subchapter.

(2) Only golden eagles legally obtained may be possessed and transported for falconry purposes.

(3) Captive breeding of golden eagles possessed for falconry purposes is prohibited.

(4) The applicant, or authorized agent, must agree to take possession of a requested golden eagle(s) within 72 hours of notification of availability. Expenses incurred by the applicant in taking possession of said eagle(s) will be the applicant's responsibility.

(5) The golden eagle(s) must be banded with a numbered eagle marker provided by the Service.

(6) All permits issued pursuant to this section shall state on their face that eagles possessed for falconry purposes under authority of this permit may not be transferred or otherwise intentionally disposed of by any means, including release to the wild, without written approval from the appropriate regional director.

(7) All permits issued pursuant to this section shall state on their face that the appropriate special agent in charge must be notified no later than ten (10) days after the death of a permit holder.

(c) *More restrictive State laws.*

Nothing in this section shall be construed to prevent a State from making and/or enforcing more restrictive laws and regulations as regards the use of golden eagles in falconry.

(d) *Issuance criteria.* The Director shall conduct an investigation and shall not issue a permit to possess and transport golden eagles for falconry purposes unless he has determined: that such possession and transportation is compatible with the preservation of golden eagles; that the proposed possession and transportation of golden eagles for falconry is not otherwise prohibited by laws and regulations within the State where the activity is proposed; and that the applicant is qualified to possess and transport golden eagles for falconry purposes. In making the latter determination, the Director shall consider, but shall not necessarily be limited to, the following:

(1) The applicant's cumulative falconry experience.

(2) The applicant's demonstrated ability to handle and care for large raptors.

(3) Information contained in the

applicant's letters of reference.

(e) *Tenure of permits.* Any permit to possess and transport golden eagles for falconry purposes is valid for as long as the holder maintains a valid master (or equivalent) class falconry permit or until revoked in writing by the Service.

(f) *Permission to trap golden eagles for falconry purposes.* Applicants desiring to trap golden eagles from the wild for use in falconry must request and obtain permission from the Service prior to exercising this privilege. The following applies to requests:

(1) Only golden eagles from a specified depredation area may be trapped for falconry purposes.
 (2) Permission to trap golden eagles must be requested in writing from the appropriate State Animal Damage Control (ADC) supervisor subsequent to issuance of the permit to possess and transport golden eagles for falconry purposes.

(3) *Permission to trap will not be granted until the permittee suitably demonstrates to the State ADC supervisor or a designated project leader his/his qualifications and capabilities to trap golden eagles from the wild.*

(4) All such trapping must be conducted under the direct supervision of the State ADC supervisor or designated project leader in the specified depredation area.

(5) Any permission to trap golden eagles from the wild pursuant to this section shall in no case extend more than 90 days from the date of issue.

(6) Upon issuance of permission to trap in accordance with the above conditions, the appropriate special agent in charge will be notified in writing by the State ADC supervisor of the individual's name, address, location of the specified depredation area and tenure of permission to trap golden eagles.

[49 FR 891, Jan. 6, 1984]

§ 22.25 Permits to take golden eagle nests.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing any person to take golden eagle nests during a resource development or recovery operation when the nests are inactive. If the taking is compatible with the preservation of the area nesting population of golden eagles. The information collection requirements contained within this section have been approved by the

Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1018-0022. This information is being collected to provide information necessary to evaluate permit applications. This information will be used to review permit applications and make decisions, according to the criteria established in this section for the issuance or denial of such permits. The obligation to respond is required to obtain or retain a permit.

(a) *Application procedure.* Applications for permits to take golden eagle nests must be submitted to the appropriate Special Agent in Charge (see § 13.11(b) of this chapter). Applications are only accepted from persons engaged in a resource development or recovery operation, including the planning and permitting stages of an operation. Each application must contain the general information and certification required by § 13.12(a) of this chapter plus the following additional information:

(1) A description of the resource development or recovery operation in which the applicant is engaged;

(2) The number of golden eagle nests proposed to be taken;

(3) A description of the property on which the taking is proposed, with reference made to its exact geographic location. An appropriately scaled map or plat must be included which delineates the area of the resource development or recovery operation and identifies the exact location of each golden eagle nest proposed to be taken. The map or plat must contain enough detail so that each golden eagle nest proposed to be taken can be readily located by the Service.

(4) For each golden eagle nest proposed to be taken, the applicant must calculate the area nesting population of golden eagles and identify on an appropriately scaled map or plat the exact location of each golden eagle nest used to calculate the area nesting population unless the Service has sufficient data to independently calculate the area nesting population. The map or plat must contain enough details so that each golden eagle nest used to calculate the area nesting population can be readily located by the Service.

(5) A description of each activity to be performed during the resource development or recovery operation which involves the taking of a golden eagle nest;

(6) A statement with any supporting documents from ornithologists experienced with golden eagles or other

qualified persons who have made on site inspections and can verify the applicant's calculation of the area nesting population;

(7) The length of time for which the permit is requested, including the dates on which the proposed resource development or recovery operation is to begin and end;

(8) A statement indicating the intended disposition of each nest proposed to be taken. Applicants should state whether they are willing to collect any nest for scientific or educational purposes; and

(9) A statement indicating any proposed mitigation measures that are compatible with the resource development or recovery operation to encourage golden eagles to recoccupy the resource development or recovery site. Mitigation measures may include reclaiming disturbed land to enhance golden eagle nesting and foraging habitat, relocating in suitable habitat any inactive golden eagle nest taken, or establishing one or more nest sites. If the establishment of one or more nest sites is proposed, a description of the materials and methods to be used and the exact location of each artificial nest site must be included.

(b) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this chapter, permits to take golden eagle nests are subject to the following additional conditions:

(1) Only inactive golden eagle nests may be taken.

(2) The permittee shall submit a report of activities conducted under the permit to the Director within ten (10) days following the permit's expiration;

(3) The permittee shall notify the Director in writing at least 10 days but not more than 30 days before any golden eagle nest is taken;

(4) The permittee shall comply with any mitigation measures determined by the Director to be feasible and compatible with the resource development or recovery operation; and

(5) Any permit issued before the commencement of a resource development or recovery operation is invalid if the activity which required a permit is not performed.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take any golden eagle nest unless such taking is compatible with the preservation of the area nesting population of golden eagles. In making such determination, the Director shall consider the following:

(1) Whether the applicant can

reasonably conduct the resource development or recovery operation in a manner that avoids taking any golden eagle nest:

- (2) The total number of golden eagle nests proposed to be taken;
 - (3) The size of the area nesting population of golden eagles;
 - (4) Whether suitable golden eagle nesting and foraging habitat uneffected by the resource development or recovery operation is available to the area nesting population of golden eagles to accommodate any golden eagles displaced by the resource development or recovery operation;
 - (5) Whether feasible mitigation measures compatible with the resource development or recovery operation are available to encourage golden eagles to reoccupy the resource development or recovery site. Mitigation measures may include reclaiming disturbed land to enhance golden eagle nesting and foraging habitat, relocating in suitable habitat any golden eagle nest taken, or establishing one or more nest sites; and
 - (6) Whether the area nesting population is widely dispersed or locally concentrated.
- (d) *Tenure of permits.* The tenure of any permit to take golden eagle nests is 2 years from the date of issuance, unless a shorter period of time is prescribed on the face of the permit. Permits may be renewed in accordance with Part 13 of this chapter.

[48 FR 57300, Dec. 29, 1983]

Subpart D—Depredation Control Orders on Golden Eagles

§ 22.31 Golden eagle depredations control order on request of Governor of a State.

- (a) Whenever the Governor of any State requests permission to take golden eagles to seasonally protect domesticated flocks and herds in such State, the Director shall make an investigation and if he determines that such taking is necessary to and will seasonally protect domesticated flocks and herds in such States he shall authorize such taking in whatever part or parts of the State and for such periods as he determines necessary to protect such interests.
- (b) Requests from the Governor of a State to take golden eagles to seasonally protect domesticated flocks and herds must be submitted in writing to the Director listing the periods of time

during which the taking of such birds is recommended, and including a map of the State indicating the boundaries of the proposed area of taking. Such requests should include a statement of the facts and the source of such facts that in the Governor's opinion justifies the request. After a decision by the Director, the Governor will be advised in writing concerning the request and a notice will be published in the FEDERAL REGISTER.

§ 22.32 Conditions and limitations on taking under depredation control order.

- (a) Whenever the taking of golden eagles without a permit is authorized for the seasonal protection of livestock, such birds may be taken by firearms, traps, or other suitable means except by poison or from aircraft.
- (b) Any person exercising any of the privileges granted by this Subpart D must permit, at all reasonable times, including during actual operations, any Service agent, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require concerning such operations.
- (c) The authority to take golden eagles under a depredations control order issued pursuant to this Subpart D only authorizes the taking of golden eagles when necessary to seasonally protect domesticated flocks and herds, and all such birds taken must be reported and turned over to a local Bureau Agent.

ASSISTANT REGIONAL DIRECTOR/LAW ENFORCEMENT (ARD/LE)
 P.O. BOX 329
 ALBUQUERQUE, NEW MEXICO 87103
 (505) 766-2091

REQUEST TO RECEIVE EAGLE PARTS/FEATHERS FOR USE IN RELIGIOUS CEREMONY(IES)

NOT TO BE USED FOR FIRST/INITIAL APPLICATION. ALL ITEMS MUST BE COMPLETED AS REQUESTED.

Species (bald or golden eagle), or feathers or parts requested. Only ONE eagle or the equivalent of ONE eagle per order. ONLY ONE ORDER PENDING AT A TIME.

<u>ITEM</u>	<u>SPECIES</u>	<u>AGE</u>	<u>AMOUNT</u>
<input type="checkbox"/> Whole Eagle	<input type="checkbox"/> Golden	<input type="checkbox"/> Adult	<input type="checkbox"/> Pair
<input type="checkbox"/> Eagle Tail	<input type="checkbox"/> Bald	<input type="checkbox"/> Immature	<input type="checkbox"/> One
<input type="checkbox"/> Wing(s)	<input type="checkbox"/> Either	<input type="checkbox"/> Either	<input type="checkbox"/> _____
<input type="checkbox"/> Talon(s)	<input type="checkbox"/> Other		
<input type="checkbox"/> Feathers	_____		

NAME: _____

FULL ADDRESS: _____

TELEPHONE NUMBER(S): _____

DATE OF BIRTH: _____

NEAREST MAJOR BUS LINE (CITY/TOWN): _____

PERMIT NO: _____
 (if available)

SIGNATURE: _____

YOU MUST NOTIFY THIS OFFICE, IN WRITING, OF ANY ADDRESS OR PHONE NUMBER CHANGES. IF THE REPOSITORY IS UNABLE TO CONTACT YOU, YOUR ORDER WILL BE PLACED ON INACTIVE/ABANDONED STATUS.

FOR REGIONAL OFFICE USE ONLY

REQUEST RECEIVED BY LE: _____

REQUEST APPROVED BY LE: _____

REQUEST APPROVED BY: _____

REQUEST NUMBER: _____



United States Department of the Interior
FISH AND WILDLIFE SERVICE
DIVISION OF LAW ENFORCEMENT
Post Office Box 329
Albuquerque, New Mexico 87103
(505)766-2091

This letter constitutes a request for all individuals/organizations holding a federal migratory bird permit to forward, on a timely basis, feathers as well as whole carcasses of raptors and eagles to:

U.S. Fish and Wildlife Service
Division of Law Enforcement
National Fish & Wildlife Forensics Laboratory
1490 E. Main Street
Ashland, OR 97520
ATTENTION: JIM KNIPPEN
(503) 482-4383

These feathers and carcasses are distributed from the Forensics Laboratory to Native Americans for use in religious ceremonies.

Please separate, label and bundle all feathers, whenever possible. Feathers necessary for imping may be retained.

Please contact the Forensic Laboratory for instructions on shipping whole carcasses.

REMINDER: All eagle acquisitions and/or mortalities must be reported to this office at the above address or telephone number within 48 hours.

Thank you for your continued cooperation.

Permits/Licenses Section
Region 2



United States Department of the Interior
FISH AND WILDLIFE SERVICE



IN REPLY REFER TO:

USFWS/LE
EAGLE FEATHER

MAILING ADDRESS:
Post Office Box 25468
Denver Federal Center
Denver, Colorado 80225

STREET LOCATION:
134 Union Blvd.
Lakewood, Colorado 80225

Re: A letter of information and
IMPORTANT INSTRUCTIONS.

EXHIBIT B

Dear Applicant:

We have received your recent request for eagle feathers. Only one whole bird or parts/feathers equivalent to one bird, can be sent at a time. The national supply is very limited and the requests for feathers far exceed the the supply. Additionally, these requests are filled on a first-come first-served basis.

Your request will be forwarded to the eagle repository in Ashland, Oregon. The shipping agent in Ashland will call you, in approximately 24 months, when your request is ready to be filled. If the eagle repository cannot contact you by telephone when shipment is ready, your request will automatically be placed in an inactive status, so it is very important for you to notify this office of any address and telephone changes.

When you receive the feathers, a receipt will be included in the shipment. You must sign this receipt and return it to this office. After this office receives the signed receipt, a permit will be issued certifying legal possession. At this time if more feathers are necessary, you may request a "re-order form" specifying the feathers needed and for what ceremony they will be used.

If you have any questions, please contact this office at (303) 236-7540.

Sincerely yours,

Bernadette Hilbourn


Bernadette Hilbourn
Chief, Permit Section

Dear _____ Date _____

Checked boxes indicate information applicable to your shipment:

- Your eagle, eagle feathers and/or parts will be forwarded by way of _____ and should arrive on _____.
- If this package is not claimed by _____; it will be returned. Your request will be placed in a non-active status.
- You must pay all charges for shipping this material to _____.
- You must sign for acceptance of the package. Complete and mail attachment C to the indicated address. Failure to return a properly completed form will result in action by the U. S. Fish and Wildlife Service to recover the eagle, eagle feathers and/or parts.
- When your completed form is returned to the address indicated, you will be issued a permit authorizing your possession of the eagle, eagle feathers and/or parts. Until the permit is received, this notification of shipment will serve as a temporary permit.

PLEASE DO NOT DESTROY IT.

Signed: 
 National Eagle Repository
 U. S. Fish & Wildlife Service
 Division of Law Enforcement

cc: ARD - LE

Temporary Permit
ATTACHMENT B

Mr. RICHARDSON. Let me welcome the chairman of the Hopi Tribe and apologize to him also for not putting him first as protocol dictates. I'm still recovering from the storm that hit us this week-end, stuck in an airport, and I apologize for not recognizing him.

Mr. Chairman, welcome, and, again, my thanks to you and my commendations for your efforts to deal with the Navajo-Hopi issue. I know that has taken up a lot of your time. I know how busy you are. I want to again welcome you to the subcommittee.

STATEMENT OF HON. VERNON MASAYESVA

Chairman MASAYESVA. Thank you very much. Good morning, Mr. Chairman and members of the subcommittee.

My name is Vernon Masayesva, chairman of the Hopi Tribe. I am certainly glad to be here to be part of this occasion.

As I was listening to the testimony provided by my brothers and sisters here this morning, I was struck by the fact that this country was founded in part by people who sought to escape religious persecution in their native lands. Now, 300 years later, the Native Americans, the first Americans, are still petitioning Congress for religious freedom and protection from persecution. So the committee will move rapidly to guarantee Native Americans their basic rights afforded to all religious organizations in the United States.

Of course, there are many issues that I would like to address, but the specifics have been prepared in written document which has been submitted to your committee, and I hope they become part of the record. This morning, I also would like to address specifically the use of eagles by the Hopis and the concern that the *Lyng* decision has created for our right to use and gather eagles, which has been carried on by our ancestors from time immemorial.

As I was sitting here, I was looking behind you, where you see the flag of the United States, the symbol of our country, and the colors that you see there—red, white, and blue, and yellow—represents the types of corn that my ancestors have been raising for hundreds and hundreds of years. The yellow tassels to the Hopis represent the tassels of the corn, and, if you notice, at the very top sits an eagle. So the eagle is also very important to our Constitution and to our Government, and certainly to the Native Americans who must use the eagles to carry on their ancient traditional ceremonies.

The use of eagles is so important to the Hopis that the founding fathers who drafted the Hopi Constitution put in a provision for the protection of eagle gathering territories and the right to gather eagles. The United States acknowledged our right to gather eagles, and through an agreement exempted the Hopi Tribe from "all rules and regulations that may be incompatible with any of the provisions of said Hopi Constitution and byelaws."

The Hopi gathering of eagles has also been acknowledged in many legal, anthropological, and other sources. Recently, for example, the United States Supreme Court took note of Hopi gathering in upholding the Federal regulations of eagle taking by Indians for commercial purposes in *United States v. Dion*. So I hope, that given these provisions, the amendments being proposed will build on the foundation rather than threaten it.

I would also like to say this morning that on my way here I was reading a paper, an article which appeared in Arizona Republic, which I think depicts graphically how Indian religions are being eroded and destroyed by people who deal in the theft and sale of religious objects, and I would like to also enter that for the record because it is a graphic depiction of what can happen to a culture.

So thank you very much for giving me this opportunity, and the Hopi Tribe stands ready to assist you in any way they can. Thank you very much.

[The prepared statement of Chairman Masayesva follows:]

CHAIRMAN VERNON MASAYESVA, THE HOPI TRIBE

Good morning, Mr. Chairman, Members of the Subcommittee. I am Vernon Masayesva, Chairman of the Hopi Tribe.

On behalf of the Hopi Tribe, I would like to thank the Subcommittee for inviting me to present testimony on the American Indian Religious Freedom Act (AIRFA), and the statute's effectiveness in protecting our rights to continue the practice of our traditional religion.

At the outset, I must inform the Subcommittee that my remarks relative to the Hopi religion must be general in nature. Some things should only be discussed in certain settings and only by religious authorities. However, I recognize the need to bring certain matters to your attention in order for you to understand the Hopi people's concern and interest in protecting our religious freedom.

I would like to emphasize that religious freedom concerns the belief that people have an inherent right to practice their particular religion. This right includes the places and/or sacred objects involved in the practice of the religion. This United States government was founded, in part, by people who came to this country to escape religious persecution in their own countries. The fathers of the United States Constitution recognized the need for protecting the religious freedom of the individual from governmental interference and adopted the freedom of religion clause in the First Amendment to the United States Constitution.

In addition to the First Amendment, the Congress sought to protect and preserve the rights of Indian and Native American people through the enactment of AIRFA. However, the Act failed to specifically provide a judicially enforceable right. This failure became apparent with the recent Supreme Court's decision in *Lyng v. North West Indian Cemetery Association*.

The Supreme Court held that, in spite of the freedom of religion clause of the First Amendment and the American Indian Religious Freedom Act, did not provide Native Americans with any legal cause of action. The practical result of the Court's decision was that Native Americans had no enforceable right to have their religious, ceremonial and sacred sites, located on federal land, protected from governmental action that threatens the site.

This ruling has the potential of allowing the incidental destruction or desecration of sacred sites and sacred objects thereon, without giving the Native American people any recourse. Therefore, the Hopi Tribe would support legislation to amend the American Indian Religious Freedom Act, to provide the Native American people

a mechanism to protect sacred sites and ceremonial objects on public and private lands.

Let me emphasize that sacred sites and ceremonial objects are inseparable when discussing the issue of American Indian religious freedom protections. In fact, ceremonial objects are the first aspect of care and concern in carrying out religious rituals and practices.

Today, our religious leaders and elders are saddened by the lack of concern non-Hopi people have for our ceremonial and sacred sites and objects. We are continually faced with the destruction and desecration of many of our ceremonial and sacred sites, and sacred objects.

One of the most important customs of the Hopi Tribe is the use of eagles and eagle feathers in the practice of our religion. The eagle and eagle feathers are fundamental to our religious beliefs. Hence, the gathering of eagles for religious practice is an indispensable part of our religion. The Hopis have been practicing eagle gathering since time immemorial. So important are eagles to our religion and our traditional land base that in 1936 the Hopis included eagle territories and the right to gather eagles in their Hopi Constitution and By-Laws (Article IV). The U.S. Government acknowledged the importance of eagles to Hopi religion by exempting the Hopi Tribe from "all rules and regulations that may be incompatible with any of the provisions of said Constitution and By-Laws." (Hopi Constitution and By-Laws. Art. IV).

Hopi gathering of eagles of sacred religious purposes is also acknowledged in many legal, anthropological and other sources. See for example *Healing v. Jones*. 210 F. Supp. at 160 N. 45; *Wilson v. Block*. 708 F 2d 735, 740 (D.C. Cir. 1983) and "Inside the Sacred Hopi Homeland." 162 *National Geographic* 607, 609, 626-629 (November 1982). Recently, even the U.S. Supreme Court took note of Hopi gathering in upholding federal regulation of eagle taking by Indians for commercial purposes. *United States v. Dion*. 106 S. Ct. 2216.2221. (1986).

The right of Hopis to take eagles for religious purposes is further secured by the First Amendment of the U.S. Constitution, the Treaty of Guadalupe Hidalgo, the Act of June 14, 1934 (PL 73-352), the Settlement Act of 1974 and 1980 Amendments, and 25 U.S.C. S1802(1).

Today, the Hopis hold a Federal Fish and Wildlife Permit (16 U.S.C. 668a. PRT-707073) to gather eagles within the Hopi Traditional Land base, which includes both Navajo and Hopi Reservations, as well as private and public lands within Coconino, Navajo and Apache Counties. The *Lyng* decision clearly threatens our ability to gather eagles and eagle feathers on public lands.

We need a legislative vehicle that provides a legal course of action enforcing religious rights when Native Americans are denied access to sacred sites and/or are disturbed during the practice of their religious ceremonies and rites and/or access to sacred objects. At the very least, such a proposal should require that Native Americans be consulted whenever their religious beliefs or sites are affected or could be affected by federally-funded or assisted action.

Further, we are deeply concerned that ceremonial objects so critical to Hopi religion are being lost to thieves and collectors. Hundreds of Hopi religious and ceremonial objects held by public muse-

ums and private collectors must be returned to the proper societies and authorities at Hopi. Sadly, missing are some of the more significant, irreplaceable objects. Theft alone has been the sole reason for discontinuing some important religious rituals and practices.

Many ceremonial objects are known to be held by certain collectors. Others are missing, but their whereabouts are unknown. They are believed to be held by collectors throughout the United States and the world. The Native American Graves protection and Repatriation Act (NAGPRA) provides establishes a system by which sacred objects are returned to the Tribe of origin. The Act has enforcement provisions. Thus, in protecting basic religious rights, the American Indian Religious Freedom Act should be coordinated with NAGPRA provisions.

We must warn the Subcommittee, however, while supporting the concept of a legislative solution, I am concerned that it must be carefully crafted to not affect the complicated state of affairs in Northern Arizona relating to the historic Hopi-Navajo land dispute. Arguably, there are Hopi religious sites on Navajo and vice-versa. Certain of these sites are already the subject matter of important litigation pending in Arizona and having a direct impact on the relocation process. It strikes me, with all respect, that it would be inappropriate for Congress to inadvertently affect the disposition of such cases already proceeding before the federal courts.

In closing, let me express my appreciation to present testimony on this important issue. As the Chairman of a Tribe whose people believe protection of religious customs lies at the very core of our continued existence, I applaud this undertaking. The Hopi Tribe is prepared to work with the Committee to develop a proposal that addresses the problems created by the *Lyng* decision and ensures the protection of our religious freedom.

I sincerely thank the Subcommittee for providing this opportunity to testify on this very important topic.

[EDITOR'S NOTE.—News article, "Curse of the Taalawtuma," may be found in its entirety in the hearing file.]

[Introductory paragraphs of the newspaper article follow:]

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ITION

THE ARIZONA RE

Copyright 1993, The Arizona Republic

day, March 14, 1993

Phoenix, Arizona

THE CURSE OF THE TAALAWTUMSI

The thoughtless act of two Arizona pothunters 15 years ago devastated an entire generation of young Hopis, and nearly destroyed their centuries-old religion.

It happened when two Safford men, looking for Indian artifacts, stumbled upon a cave in which four large wooden idols were "asleep" on a bed of feathers. The objects were the *taalawtumsi*, (pronounced tah-LAO-toom-see) the Hopis' most sacred and secret deities, whose presence is required for Hopis to be initiated into manhood.

With visions of making thousands of dollars on the Indian arts black market, the pothunters grabbed the *taalawtumsi* and ran. (A portion of the idol Dawn Woman is seen at right.)

Tragically, the collector who bought the idols, fearing arrest, says he chopped them up and burned them. Under U.S. law, it was theft. To the Hopis, it was kidnapping and murder.

Tragedy and misfortune, even death, have followed those who

How the thieves of time stole the Hopis' religion



mistreated the *taalawtumsi* — a curse, some of them believe.

Arizona Republic reporters Richard Roberson and Paul Brinkley-Rogers spent four months investigating the 15-year mystery of the *taalawtumsi*, piecing together for the first time the story of the deities' journey.

The reporters picked up the trail in Shungopavi, the Hopi village that suffered the loss, and began the difficult task of tracking down and confronting people who were often unknown even to one another.

The Hopis, who for centuries had refused to even acknowledge the existence of the *taalawtumsi*, agreed to talk about how the disappearance affected their whole society. Some of them believe the *taalawtumsi* were not destroyed. They say they hear the *taalawtumsi*'s cries in the wind, asking to come home.

This fascinating tale of crimes against society and the clash of cultures starts on Page A16.

Mr. RICHARDSON. I understand that, Mr. Powless, you are representing the Oneida Tribe.

STATEMENT OF MARK A. POWLESS

Mr. POWLESS. Yes, sir. Mr. Chairman, I would like to thank you for this opportunity to be here today, and I would like to extend greetings to you on behalf of the Oneida Tribe of Indians of Wisconsin. I am here on behalf of our Chairman Richard Hill.

Today, I want to talk to you about the eagle and how it relates to us Indian people. We as Native American people have understood that we are related to the animals. As far back as we could remember, we have always held the animal world with the highest regard as the animals are our helpers and our relatives. It is within this regard that we have come here today to speak on behalf of our right to exercise our religious beliefs.

We have been given original instructions on how we are to live while here on Mother Earth. These instructions come from our Creator and have been handed down from generation to generation. We have always worshiped our Creator with the utmost respect and sincerity. Additionally, the animal world has always been part of our spiritual way of life. We hope and pray that this way of worship may continue for generations to come.

Mr. Chairman, in our way of life, we believe that we must represent future generations. I am here today, and I am representing seven generations of my tribe that are yet to come, and it is with those thoughts and those feelings that I come here today and want to speak to you about the eagle.

To the Indian people, the eagle is the most sacred animal on our Mother Earth, and the eagle itself is the one that is the closest to the Creator. In our teachings in our traditional way of life, the eagle sits on our tree of peace and watches over our people and warns us of any harm or any danger that might come to our people.

To us, the eagle is very sacred. It is very sacred in that it has a spiritual strength and power for us. The eagle can do many things for us and is a helper to us. We have a ceremony in our tribe that when a person passes away and dies, there is a lot of grief that goes with that, from the loss of a loved one, and we have a bald eagle feather that we use to wipe away the tears from the eyes of the individual, to wipe away the hearing, that they could hear again.

When you are in grief and you are in mourning for the death of a person, it is kind of hard for you to talk; you have a lump in your throat, and you can't really talk, or you really can't see, or you really can't hear. Well, this eagle feather is used to help the individual in a spiritual sense to once again put together their mind, body, and spirit. The eagle is a part in a way of our life and our spirituality.

Mr. Chairman, I would like to relate a story to you, and I will deviate from my testimony for a minute. I think it is important. I come from Wisconsin, and in northern Wisconsin we have got about as much snow as you guys got here, and I was reminded of a friend of mine. He is a traditional man, and he was raised in our traditional Indian way. He uses Indian tobacco to pray to the Creator,

and he used this tobacco to hunt for deer. He lived way up in the northern part of Wisconsin, and he and his family lived off the land.

He made a prayer one morning to go out and get a deer to feed his family, and he went out in the woods on a winter morning, and about the middle of the day the clouds started coming in and it started to snow, and the snow got heavier. During the latter part of the day he shot a deer, and he wasn't able to get that deer out of the woods that evening because of the storm. He had to leave it there. Later on, he found out that it was left there for a reason, but at the time he didn't know what that reason was.

The next day he went back to get that deer, and when he returned he found that there was a large number of eagles that were feasting on this deer, and through his spirituality and through his belief in the Creator he came to understand that this deer that he caught was for the eagles; this deer was food for them because of the harsh winter that they had that particular year. Through that, an eagle gave itself to him; an eagle presented itself to him.

The way that things are today and the way that the laws are written today, I guess it would be an illegal activity, I guess it would be against the law for him to take this eagle. However, he did take this eagle in a spiritual sense, and today they use it in their ceremonies, they pray with it, and they use it in their everyday life.

I would like to thank you for this time to present this testimony to you, and I submit it for the record on behalf of the Oneida Tribe of Indians of Wisconsin.

[Prepared statement of Mr. Powless follows:]

TESTIMONY OF THE ONEIDA TRIBE OF INDIANS OF WISCONSIN

I would like to take this opportunity to extend the greetings on behalf of the Oneida Tribe of Indians of Wisconsin. I would also like to thank you for the opportunity to offer testimony on behalf of my people on the need for Federal legislation to protect our rights and the free exercise of our religious beliefs as Native American people.

In 1978, the United States Government passed the American Religious Freedom Act for the purpose of protecting and preserving the right of tribal religious freedom. It has become very evident that policies alone are not sufficient in the protection of our rights. We are therefore recommending in the strongest terms possible that the Congress amend the American Indian Religious Freedom Act to help protect and preserve our basic human right to exercise our religious beliefs without fear from the dominant society.

Today, it is ironic that we must convey these words on behalf of our people as the early settlers and immigrants known as colonists came to our country because in Europe they had been persecuted for exercising religious beliefs. In fact, they came here in search of religious freedom. We have suffered many times over at the hands of the Europeans. The ultimate insult is the harm to our spiritual being that we have endured for centuries. We can cite many injustices as I am sure my brothers will. However, we come here today to extend our hand in peace so that we might make a better day for our children. Let it be known that the Oneida Tribe of Indians

of Wisconsin strongly encourages this Subcommittee to swiftly take action to amend the 1973 Act to protect our religious freedom.

We are told as Oneida that we must act on behalf of the next seven generations of people yet to come. It is with that thought that we convey these good words to you. We hope and pray that these words will be received with the utmost sincerity of our hearts and minds.

RELIGIOUS USE OF EAGLE FEATHERS

As you all may know, the eagle is perhaps the most sacred of all animals to Indian people. It is the only animal that is closest to the Creator. Through the generations the eagle has watched over the Iroquois people and has warned us of any danger and has cured us of many ills.

There are three types of eagles which are held to be sacred by Indian people, the Bald, the Golden, and the Spotted. Tail feathers are a frequently used in ceremonial rights including curing the individual spiritually, physically, and mentally.

For example, it is often the case that tribal members seek more traditional ways to help alleviate the pain caused from a loved one passing away. Eagle feathers are rubbed on the grieving persons ears, around the eye lids, the mouth, and over ones head to help the individual overcome their loss.

Eagle feathers are also used during the burial ceremony. Often times feathers are placed in the casket of the deceased helping the spirit of the deceased persons' journey to the creators land.

Often it is the case that Native American vets are honored with presentations of eagle feathers in recognition of their heroic deeds in the service of their country. These feathers have generally passed on from generation to generation.

Now Mr. chairman, you ask "How do the Indians come across such eagle feathers?" In the traditional way a person would fast for four days and nights in a place of solitude—generally out in the wild. At some point during the fasting period the person would be blessed with an eagle. Through the sincerity of the prayer, an eagle would give themselves to the person.

It is this ceremony which has most often been misunderstood by the general public. To some people this act would be considered contrary to the preservation of the eagle, and therefore, against the law. However, in our religious practices such ceremony is considered to be the highest form of sacrifice. These are not illegal actions, but the continuation of our spiritual way of life. These are the actions which you in Congress are obligated to uphold on behalf of the Native American people.

CONCLUSION

As you may know the Senate has introduced legislation amending the 1978 Act. The Oneida Tribe of Indians of Wisconsin has reviewed the amendment and fully supports its passage. We would strongly encourage this Subcommittee to follow a similar path.

We as Native American people have understood that we are related to the animals. As far back as we can remember we have always held the animal world with the highest regard, as the animals are our helpers and relatives. It is within this regard that we

have come here today to speak in behalf of our right to exercise our religious beliefs. We have been given original instructions on how we are to live while here on Mother Earth. These instructions come from our creator and have been handed down from generation to generation. We have always worshipped our creator with the utmost respect and sincerity. Additionally, the animal world has always been a part of our spiritual way of life. We hope and pray that this way of worship may continue for generations to come.

Mr. RICHARDSON. Thank you very much.

Chairman Masayesva, let me ask you a delicate question. I know that with your tribe and the large concentration of Native American tribes in Arizona, you are aware many tribes have sacred sites which are on the reservation of a different tribe. Do you have any suggestions for us as to how this subcommittee and the Congress should address this delicate issue, or should we stay out of it?

Chairman MASAYESVA. I believe the way to handle that—and this is the way we are handling it with the president of the Navajo Nation—is, we feel that rather than writing rules and regulations that protect the rights of religious leaders' access to their sacred sites, that it is critical that the leaders of both nations bring the elders of both nations together, educate each other, to remind each other of the importance of the religious pilgrimages that Hopis undertake annually to their sites. Through this type of dialogue, respect would be established, and that, to us, is a better approach than through a legislative resolution.

But wherever there are flagrant incidents of interference with the religious rights of the elders, there ought to be some type of penalty, and I think this would be acceptable to both Hopis and Navajos.

But we are planning to hold a meeting of the elders very shortly because we will be starting our eagle pilgrimages in about another couple of months. We have done this for a couple of years, and last year for the first time there was no incident reported anywhere where Hopis went out on pilgrimage, and we hope that the dialogue between the two nations will put to permanent rest any kind of interruptions with the pilgrimages.

So I feel that, let's sit down face to face and talk and understand each other, and then tell our people, educate our kids, so they can carry on that respect. To me, that is the best way.

Mr. RICHARDSON. That is a very good suggestion, Mr. Chairman.

Mr. POWLESS, do you have any views on that issue?

Mr. POWLESS. Mr. Chairman, I believe that the tribes that have these sacred sites within their lands ought to have the freedom to exercise utilization of these sites.

I was related a story a while back about one of these sacred sites. A university wanted to put a telescope on top of this mountain where the sacred site was.

Mr. RICHARDSON. Was that Mount Graham?

Mr. POWLESS. Yes.

In the course of putting this telescope on, they had to put a huge cement foundation down, and apparently through the efforts of the construction people there they bulldozed over the sacred site to lay down this concrete block to set this telescope on. I think that is a travesty, and I think it is a dereliction of the United States' respon-

sibility to protect our sacred sites, and I think we need legislation to protect that.

Mr. RICHARDSON. A very good point.

Let me ask Ms. Atkinson: How do we resolve the current access problem to bald eagles? Do you think we should do it through legislation, or should we do it through regulations and agency policy changes? What would be your view on how we resolve the access issue?

Ms. ATKINSON. Probably the most effective way would be through legislation directing the current administration or the current Fish and Wildlife Service to review its policies and looking at ways that it can streamline the current process. I fear that if we leave it just to regulation that it may not get done without some sort of directive that this sort of review and modification of policy needs to occur.

Mr. RICHARDSON. Mr. Powless, is that your view also? You touched on the eagles issue.

Mr. POWLESS. Yes. I would like to add that I also feel that there should be a provision that would allow the tribe also to regulate an activity, and I believe that they should have the authority also through their governmental authorities to provide access to eagles within their jurisdiction through, I believe, legislation that would be compatible with that.

Mr. RICHARDSON. Chairman Masayesva, does the tribe currently have any major access problems relating to the eagle issue right now?

Chairman MASAYESVA. Not in public lands like national forests. The Bureau of Land Management, we have an agreement with them where they cooperate with the Hopi religious leaders in gathering eaglets, and we have an arrangement where we are allowed to take only a certain number every year. So we have close cooperative relations with the United States Government.

The area where we had problems was primarily on Hopi partitioned lands, Navajo partitioned lands, and in the Navajo 1934 reservation where several of our people were arrested by the Navajo police about 3 years ago, but those, hopefully, are incidents that have now been put to rest through a dialogue between the two tribes.

Mr. RICHARDSON. Let me again thank you for appearing. It has been a very good, strong panel, and again, my apologies to the Hopi chairman. My thanks to all of you, and please extend our best to Chairman Hill. I think, Mr. Powless, you represented him very well.

Mr. POWLESS. Thank you.

Mr. RICHARDSON. Ms. Atkinson, thank you very much panel number three.

Now, panel number four. We would like to call Mr. Ben Carnes from Oklahoma City, Oklahoma; and Mr. Bud Johnston of the Pipestone Indian Community in Sioux Falls, South Dakota, I understand a constituent of Mr. Johnson. Mr. Johnson has recognized you. I want to thank both of you for coming.

As you know, the subcommittee will insert your full statements in the record, and we ask that you summarize, observing the five-minute rule.

Mr. Carnes, please proceed.

PANEL CONSISTING OF BEN CARNES, CHAHTA NATION, DIRECTOR, SPIRITUAL ALLIANCE FOR NATIVE PRISONERS, OKLAHOMA CITY, OK; AND BUD JOHNSTON, ENROLLED MEMBER, BAD RIVER, NORTHERN WISCONSIN, CHIPPEWA, ON BEHALF OF THE PIPESTONE NATIVE AMERICAN COMMUNITY, SIOUX FALLS, SD

STATEMENT OF BEN CARNES

Mr. CARNES. My name is Ben Carnes. I am of the Chahta Nation, from a place that we call the Native Territories and other people call Oklahoma.

On August 11, 1978, we thought we had time and reason to celebrate because they had passed a law guaranteeing us our right to practice and pray in our traditional ways. It seems like within the last few years we have an attack upon our religious beliefs. So we thank you for this opportunity to fix an Act that has not worked for us.

Myself, I am a convicted felon, and also as a juvenile I spent almost two-thirds of my past life in juvenile and adult detention facilities. Throughout those times in these places, I began to discover my identity as a Native person and also began to discover the history of my people and all my relatives from across this country here, about the abuses that went on early in the 1800s with the land thefts. Everything that went on there was terrible, and it had such a very devastating effect upon me, discovering who I am, that I began to indulge in several years of drug abuse and alcoholism and also justified my criminal activities by stating that it was because the white man stole my land from my and I've got a right to take whatever I want. That was my rationalization for whatever I did during that time.

In 1978, I entered the Oklahoma Department of Corrections for a 2-year sentence for second-degree burglary, and it was there that I met more of my relatives from the western parts of the United States, or Oklahoma, our Native Territories, and these were the people who were of the Kiowa Nation, Cheyenne Nation, Apaches, Comanches, and from them I learned about our ceremonies, about the Native American Church, and I learned about the beauty of the traditional pow-wows or dances there, where people come to socialize and celebrate the birth of somebody's family or the passing of somebody's family. These were things that were not taught to me because I was raised in a non-Indian atmosphere with their values, and I was baptized as a Presbyterian when I was two years old.

At that time, when I began to discover all my religious identity as a Native person, Christianity meant nothing to me then, but I was very angry that I had no identity. I was on this path of self-destruction for a number of years until I entered the prison system in 1981 with a 12-year sentence for second-degree burglary and a 10-year sentence for knowingly selling stolen property, which were concurrent.

I was sent to Younger Prison in Oklahoma until I was involved in a barricade riot in the east cell house of the state reformatory, and I was sent to the state penitentiary in McAlester and put in

solitary confinement for a period of 90 days. During that time, I had a lot of anger from all those years. The abuses I saw in the prison system that were going on just on that unit alone caused me a lot of anger and a lot of grief—the way Indians were being treated, being handcuffed and being beaten by several prison guards—and there was nothing we could do but kick the guards just to irritate them.

One night, I was lying there, and I kept thinking about, there has got to be another way to do these things, and I began to find out from other inmates how to do legal research, and I eventually became a jail house lawyer there. That is when I began to find out that, as a Native prisoner inside any State or Federal prison, we had a right to practice in our traditional way. I researched the case law that supported our right. This was in the 1970s, right about the time of the Religious Freedom Act, and it still had some effect on a lot of the State and Federal agencies in which they began to recognize our religious rights.

As time went on during my second incarceration, the Department of Correction implemented the Grooming Code that prohibited the wearing of long hair, and we ended up in a lawsuit over this right. By the time we went to jury trial, the Supreme Court had issued a decision in the case of *Shabazz v. Alone*, which is the rationally related test, that type of thing, which, in fact, the prison officials deemed as a security threat; that is all they had to say; they didn't have to prove that. So the basis of the burden of proving our religious belief and our sincerity was upon us.

The current situation in Oklahoma is that if we want to wear our hair long we have to prove our sincerity, and they have not told us how much proof we need for sincerity. They can't give us a measurement—you know, is this much sufficient sincerity or this much here?

You know, a lot of our people are not very well educated as far as writing down essays, which is required of them, and in their writing they speak of, you know, "It's our culture, it's our custom, it's our tradition, to wear our hair long." This committee was made up of maybe a security major or a chaplain, and the case manager says, "Well, you say tradition, so it is not religious; we are denying you an exemption." Another inmate who filed for an exemption who was visibly Indian—you could tell by looking at him—the security major asked him, "How long have you been an Indian?"

These people have no understanding of our beliefs, our religion, and our ways, and we cannot have this. This is not how you judge our religion. Our religion is not a privilege that we have to earn and conduct ourselves in a certain way to hold on to.

We need this type of legislation that would put the burden back on the Department of Corrections or any prison system. Now, if they have a valid security threat, you know, show it to us, show us that threat, and we will work with them to try to find an alternative, and if there is not an alternative then we will have to go to court, but as it is, it is on us. That is not right, that is not how it should be. There is great difficulty put on us.

Some of the things we have had problems with in Oklahoma are that, we have not had a sweat lodge until the last two years, and at some of the institutions that we have been trying to get them

at, they have refused to allow us to have that. Their claims are always the same, that they are afraid that we are going to sit in there and plan escapes, plan murders, or engage in homosexual activities.

Such ideas and fallacies are repulsive to us and make us very angry when we hear these things from so-called educated men who are representing the State of Oklahoma or any other State, because we have evidence and documents from other correctional administrators who have allowed sweat lodges and say there has been nothing but good results that come from those. Native inmates who had been a problem before but who had participated in sweat lodge ceremonies had a total change in their behavior. They become more positive, more productive, more concerned about their self-appearance. It is a change that has never been achieved in correction before on any prisoner. Our Native belief is a positive and effective rehabilitation that must be allowed.

One of the last things I want to mention before I close is that people who say that the person should have thought about his religion before he went to prison—that is not the point. The point is that this person gets into prison and discovers his religion right there, by all means he should be encouraged, not denied, harassed, and punished, because these people who have been punished, locked up, had additional years put on their sentence for defending the right to wear their hair long, to me, does not indicate a person who is antisocial. This indicates a person who has found his identity and who is willing to fight to hold on to that.

So when you do some things with this resolution, this bill, protect these people. I think one of the strongest incentives that any bill could have is deny Federal aid to any State or agency that has not complied with the provisions of this law. I think there are no other teeth we could put in that would be as effective as that.

Thank you.

[Prepared statement of Mr. Carnes follows:]

STATEMENT OF BEN CARNES, DIRECTOR, SPIRITUAL ALLIANCE FOR
NATIVE PRISONERS, OKLAHOMA CITY, OK

INTRODUCTION

I am Ben Carnes of the Chahta Nation. I am the person that many people have looked down upon and cursed. I am someone that represented the criminal element in this country who society felt should be locked away forever. Not it is those people who look to me with respect and call me friend or brother

Between the date of November 7, 1972, to January 3, 1991, I was in the custody of juvenile and adult correctional systems, except for those times I was able to liberate myself from captivity.

Throughout those periods I was held in custody. I was in constant struggle with my self and my keepers for my identify and spirituality as a Native person. I have presented the Senate Select Committee on Indian Affairs with a very detailed statement about the history of religious suppression in the prisons of this country. In a phone conversation with Marie Howard, she suggested that my statement point out the problems and recommend solutions to

those problems dealing with the religious rights of Native prisoners.

PROBLEMS WITHIN THE PRISONS

There is nothing that comes close to dramatizing the plight of Native prisoners, than a quote by Chahta elder, Standing Deer, who said the "the McAlester prison has absolutely nothing for us Indian prisoners. It is a spiritual wastebasket."

It is those spiritual wastebaskets where our people exists today, praying that the proposed amendments to the 1978 American Indian Religious Freedom Act will address their concerns. The 1978 Act did give rise to the belief that, for the first time in a two hundred year period, Native prisoners would be able to practice their traditional religious beliefs without hindrance.

However, as we have seen in the majority of the prisons, the Native religious beliefs was met with resistance by prison officials. That resistance was based upon ignorance and intolerance of a belief completely foreign to them. Our religious practices was not afforded the same respect as other "established beliefs" of different faiths. The prison officials would determine what constituted a significant religious practice and who was sincere adherent.

A. Long hair

Such proofs of sincerity have denied many Native prisoners the opportunity to uphold or began to practice a traditional religion. For example, the proposed amendments provide that in order for a Native prisoner to wear his hair long for religious purposes he must show that the practice is deeply rooted in tribal religious beliefs and that these beliefs are sincerely held by the Native prisoner. In Oklahoma, the process required for proof of sincerity is that the Native prisoner must submit a written statement as to why he should be granted an exemption to the grooming code. Then a committee of prison officials determine the depth of sincerity from the written document.

Any committee of this nature are made up of people who have absolutely no working knowledge of Native beliefs or rituals. In some cases, a prisoner may be denied an exemption to the grooming code if he was not articulate enough to prepare a written statement. Sometimes the statement may make references to a religious practice being a tradition and be denied an exemption to the grooming code because the wearing of long hair is a cultural practice and not a religious one. Another Native prisoner was denied an exemption because if he held such religious beliefs he would not have come to prison.

The practice of a First amendment right should not be based on how well a person is able to make an essay of his court convictions or institutional misconduct. Obviously, a Christian prisoner would not be denied the right to attend congregated worship in the chapel or possess a Bible if he has been found guilty of an institutional misconduct. Nor are they denied the choice to become a Christian or Muslim because of their criminal convictions.

Racism and/or ethnocentric views held by prison officials have been the road block to understanding and respect needed to resolve many of the problems. It is alien to the Western school of thought

that our religion and culture are one and the same, which is evident by the structure of tribal governments through the Indian Reorganization Act. We have an alien form of government imposed upon our indigenous nations, which goes against the beliefs of our people.

The solution to the issue of long hair in prisons is to guarantee this practice to all Native prisoners. It should be the burden of the prison officials to prove that the wearing of long hair is a "valid and significant threat to security" and not the burden of Native prisoners to prove their sincerity.

A supporting fact is that the Oregon Department of Corrections have allowed the wearing of long hair since 1968, all Canadian prisons have allowed long hair, and most if not all the federal prisons permit the wearing of long hair. To my knowledge and those of other Spiritual Advisers in this country there is not one documented case of a Native prisoner with long hair that has resulted in a significant security threat.

B. Feathers/animal parts and sacred objects.

Recently, a hawk wing was confiscated by guards during a routine shakedown of housing units in a minimum security prison. A group of Native prisoners went to speak to the duty office in an attempt to have it returned. However, this prison official a Captain said that it was "the Indian's fault that eagles and hawks were becoming extinct," he also remarked that the Indians weren't here first since the Indians "traveled over to this continent with the Vikings."

In our beliefs, it is an honor to be given an eagle feather in a traditional way. This is usually done in a ceremonial manner. Once the ceremony is completed the feather has been blessed and is sacred. Our sacred objects are not to be handled by anyone without the "owner" designating someone to hold it. The person selected is usually someone whom the "owner" feels would show the proper respect to the feather or sacred object which it is in their physical possession.

One prison Chaplain, who has condemned Native practices as "pagan beliefs" has refused to allow the current Spiritual Advisor to bring in eagle feathers from the families of Native prisoners, even though he would allow security officers to inspect the feather by holding it in full view of officers. Many Native prisoners object to the Chaplain handling their feathers at all, due to his prejudice.

A solution to the inspection of eagle feathers or other sacred objects in the prison environment, is to ask the Native prisoner to present the item in question for visual inspection. A process which is not difficult to perform since there is nowhere to conceal contraband within a feather. Pipes can be inspected in this manner also, without anyone other than the "owner" handling it.

C. Religious facilities

The use of sweat lodge ceremonies is one of the most effective ceremonies for Native prisoners to deal with the despair of imprisonment. Despite the positive effects many correctional administrators have observed in prisons where sweat lodges exist, there are still many prisons where the sweat lodges are not permitted.

In those cases where prison officials have denied that a sweat lodge would be a threat to prison security, it has never been shown that a valid threat ever existed. Nor has any prison that has a sweat lodge shown that there was ever an incident that would support a "security concern."

D. Access to spiritual advisors and group ceremonies

Native prisoners have been denied access to Spiritual Advisors or participate in group ceremonies, because they have not been able to prove that they are Indian. In another example, the Chaplain at the Oklahoma State Penitentiary has refused admittance to a Spiritual Advisor who has entered several prisons across the country for years. He told the current Spiritual Advisor that the Indian prisoners only needed one Spiritual Advisor, although several ministers and lay persons of the same faiths can be found throughout the prison at any given time.

CONCLUSION AND RECOMMENDATIONS

In a report on crime and the administration of justice in the minority communities, *The Inequality of Justice*, prepared by the National Minority Advisory Council on Criminal Justice (1982), researchers found that the "lack of alcohol rehabilitation programs, and the lack of cultural identity within the prison setting all contribute to the recidivism rate, which sometimes reaches 54 percent among (Native) offenders." In contrast, Chief Archie Fire Lane Deer testified in a court case that with the 100 prisoners he had worked with in a five year period, only two returned to prison.

It must be recognized that not all religious practices are covered here, but they are some of the most predominant in all the prison, and some allowances must be allowed for other religious practices not mentioned here or in the proposed amendments.

I would support the section on prisoners rights, if the solutions to the wearing of long hair were to be adopted, and that our religion would not be viewed from the perspectives of a non-native person.

I would also recommend that incentives for "encouraging" prison systems to comply with the provisions of this proposed amendments be included. One incentive that would give this Act real teeth is for any state that is found to be in non-compliance with these amendments to withhold all Federal funding to the offending state, except such funding that directly affects Native people. This would discourage prison administrators from placing the practice of religion in the category of "privileges" which a Native prisoner must earn.

The Bill should also require prison systems that have salaried Chaplains or contract volunteers to provide equitable funding to Spiritual Advisors. In Oklahoma, all ministers or contract volunteers are compensated, except Spiritual Advisors.

A final recommendation to this committee is that the Commission that is to investigate all the state and federal prisons to ensure compliance with this Bill should also be empowered with the authority to mediate with prison officials to secure religious practices for Native prisoners.

Mr. RICHARDSON. Mr. Carnes, thank you for some very compelling testimony. I want to make sure members of the subcommittee get a copy of your testimony.

I know you submitted something for the record. Is what you just stated extemporaneously in your statement?

Mr. CARNES. There is basically a part of my statement there. I could have made it longer, but I just got your letter on Saturday about the 100 copies, and I had to borrow a printer, so I only made it three pages, to try to keep it short and concise. But I submitted one to the Senate Select Committee which is 19 pages with approximately 52 pages of documents and exhibits.

Mr. RICHARDSON. Well, make sure we get all the copies the Senate got over here, because I think you have made some very interesting points that I want to make sure our subcommittee, on both sides, is made aware of.

Mr. CARNES. Okay. I will do that.

Mr. RICHARDSON. Mr. Bud Johnston, welcome to the subcommittee.

STATEMENT OF BUD JOHNSTON

Mr. JOHNSTON. Thank you for allowing me to testify on behalf of the Pipestone Indian Community in Pipestone, Minnesota.

My name is Bud Johnston. I am an enrolled member of Bad River, Northern Wisconsin, Chippewa, and the total focus of my discussion today will be access to a sacred site, mainly the proposed addition of the Pipestone Quarries of Minnesota as one of the 44 proposed sites.

At this time, there are approximately 44 tribes who have actively quarried in Pipestone in the last 20 years, with about 175 different people. That is just the registered ones who are quarrying. That doesn't include anybody who went there to pray, or to sweat, or to participate in a sun dance.

But I would like to read a letter from our community regarding the situation. We are asking for an exemption because of the problems with access to it.

"We, the Pipestone Indian Community, feel compelled to issue a statement regarding proposed amendments to the American Indian Religious Freedom Act, specifically, title I. The Great Pipestone Quarries of Minnesota is listed as one of 44 sites designated to be protected by the proposed amendments. Some individuals have initiated petitions and resolutions and are encouraging support from Indian people to return the administration of the Pipestone Quarries to the Yankton Sioux Tribe. It is a further wish that the National Park Service and the Pipestone Indian Shrine Association vacate the premises of the Pipestone National Monument. These individuals contend that pipestone is being marketed in an unethical manner. We, pipe makers in the Pipestone Indian Community, felt that we should offer our views in the spirit of understanding.

"The Pipestone National Monument was established in 1937 by an Act of Congress. The Yankton Sioux Tribe, in part, had relinquished their title to these quarries and the Pipestone Reservation. In 1929, an appropriated settlement with the Yankton Sioux Tribe in the amount of \$328,558.90, which compensated the tribe for the surrender of their sole claim to the Pipestone Reservation. We In-

dian people realize that these issues are secondary to our belief that the only 'true' owner of the quarries is the Creator. As is the case with every other tribe, individual members of the Yankton Sioux Tribe have the right to use the quarries, but the United States Department of the Interior has legal title to them.

"The care of the Pipestone Quarries was placed in the hands of the Department of the Interior in order to preserve and protect the Sioux quartzite and the pipestone from being destroyed during the turn of the last century. In essence, Indian peoples' interest in the Pipestone Quarries nearly ceased to exist in the early 1900s, and non-Indian commercial ventures threatened their very existence. In the 1920s, local people started a drive to preserve the area for the Native Americans since no tribe was here to protect the quarries. Without this effort, the ecology of the area would have been changed forever and the quarries undoubtedly despoiled.

"The Pipestone Indian Shrine Association is a nonprofit organization. Its purpose is to assist the Indian pipe makers. All revenues generated by these efforts are reinvested into the local Indian community. All employees of the Indian Pipestone Shrine Association are Native Americans. In fact, some of the individuals who are generally raising concerns were themselves past employees of the Pipestone Indian Shrine Association. Additionally, Pipestone National Monument and Shrine Association provide the sole means of making a living for 95 percent of the Indian adults in our community.

"Our Indian community is composed of tribal members from all over the country. We have not been fortunate enough to enjoy the support of a tribal government, we have had to be on our own. Many of us have lived here for several generations, where our fathers' fathers have taught us the significance of being pipe makers. We have had conversations with medicine people over the past 50 years, and they always expressed joy that there were still Native people here to work the quarries so that they could obtain pipestone for their use. Many of these healers are happy to buy the stone or finished pipes from our pipe makers as they realize the great amount of physical effort and time that is involved in quarrying pipestone. When we have asked medicine people about our craft, we were told that a pipe becomes a sacred object only when it has been touched by the spirits, and this is done in a ceremonial manner.

"This brings us to the point about trading in Pipestone. History notes that as long as 200 to 300 years ago, American Indians were distributing Pipestone pipes in a flourishing inter-tribal trade economy. Since all our ancestors were at that time traditional people, clearly trade in Pipestone must have been an approved custom among our tribes. As to the increased interest of non-Indians in Pipestone, all we pipe makers know is that we have not been responsible for the spread of traditional Indian spirituality among non-Indians. What we do know is that one cannot know the motives of another person unless that person chooses to share them with you. If a person wishes to obtain a pipe because they believe it is correct for them, it is not our place to be self-righteous and judge them. If a pipe is not used for the reason that it was made and intended for, then the Creator will judge that person. It is not

for us to do so. We only trust to the beliefs that we were taught by our elders.

"In closing, we believe that support for this recent movement will take food from the mouths of young children and beloved elders in our community. Support for this movement will impede the desire for a good education, constrict the ability for Indian adults to be responsible providers, and eventually depress Indian pride and self-sufficiency. Most profoundly, support for this movement goes against the primary spiritual taboo for Indians who wish to quarry here. That is, it is tantamount to an act of war and aggression against peaceful people on the most spiritual land in Indian country. This above all has been forbidden by the Creator, and we pipe makers do not understand this behavior.

"Thank you for the opportunity to voice our opinions.

"In peace, the Pipestone Native American Community."

I also would like to enter into testimony a two-minute videotape that we took of one of the guys quarrying.

[EDITOR'S NOTE.—The videotape may be found in the hearing file.]

Mr. RICHARDSON. Without objection.

[Prepared statement of Mr. Johnston follows:]

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STATEMENT OF BUD JOHNSTON:

WE, THE PIPESTONE NATIVE AMERICAN COMMUNITY, FEEL COMPELLED TO ISSUE A STATEMENT REGARDING PROPOSED AMENDMENTS TO THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT, SPECIFICALLY, TITLE I. THE GREAT PIPESTONE QUARRIES OF MINNESOTA IS LISTED AS ONE OF FORTY-FOUR SITES DESIGNATED TO BE PROTECTED BY THE PROPOSED AMENDMENTS. SOME INDIVIDUALS HAVE INITIATED PETITIONS AND RESOLUTIONS AND ARE ENCOURAGING SUPPORT FROM INDIAN PEOPLE TO RETURN THE ADMINISTRATION OF THE PIPESTONE QUARRIES TO THE YANKTON SIOUX TRIBE. IT IS A FURTHER WISH THAT THE NATIONAL PARK SERVICE AND THE PIPESTONE INDIAN SHRINE ASSOCIATION VACATE THE PREMISES OF THE PIPESTONE NATIONAL MONUMENT. THESE INDIVIDUALS CONTEND THAT PIPESTONE IS BEING MARKETED IN AN UNETHICAL MANNER. WE, PIPE MAKERS IN THE PIPESTONE INDIAN COMMUNITY, FELT THAT WE SHOULD OFFER OUR VIEWS IN THE SPIRIT OF UNDERSTANDING.

THE PIPESTONE NATIONAL MONUMENT WAS ESTABLISHED IN 1937 BY AN ACT OF CONGRESS. THE YANKTON SIOUX TRIBE, IN PART, HAD RELINQUISHED THEIR TITLE TO THESE QUARRIES AND THE PIPESTONE RESERVATION. IN 1929, AN APPROPRIATED SETTLEMENT WITH THE YANKTON SIOUX TRIBE IN THE AMOUNT OF \$328,558.90, WHICH COMPENSATED THE TRIBE FOR THE SURRENDER OF THEIR SOLE CLAIM TO THE PIPESTONE RESERVATION. WE INDIAN PEOPLE REALIZE THAT THESE ISSUES ARE SECONDARY TO OUR BELIEF THAT THE ONLY "TRUE" OWNER OF THESE QUARRIES IS THE CREATOR. AS IS THE CASE WITH EVERY OTHER TRIBE, INDIVIDUAL MEMBERS OF THE YANKTON SIOUX HAVE THE RIGHT TO USE THE QUARRIES. BUT, THE UNITED STATES DEPARTMENT OF THE INTERIOR HAS LEGAL TITLE TO THEM.

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THE CARE OF THE PIPESTONE QUARRIES WAS PLACED IN THE HANDS OF THE DEPARTMENT OF INTERIOR IN ORDER TO PRESERVE AND PROTECT THE SIOUX QUARTZITE AND THE PIPESTONE FROM BEING DESTROYED DURING THE TURN OF THE LAST CENTURY. IN ESSENCE, INDIAN PEOPLES' INTEREST IN THE PIPESTONE QUARRIES NEARLY CEASED TO EXIST IN EARLY 1900 AND NON-INDIAN COMMERCIAL VENTURES THREATENED THEIR VERY EXISTENCE. IN THE 1920'S, LOCAL PEOPLE STARTED A DRIVE TO PRESERVE THE AREA FOR THE NATIVE AMERICAN, SINCE NO TRIBE WAS HERE TO PROTECT THE QUARRIES. WITHOUT THIS EFFORT, THE ECOLOGY OF THE AREA WOULD HAVE BEEN CHANGED FOREVER, AND THE QUARRIES UNDOUBTEDLY DESPOILED.

THE PIPESTONE INDIAN SHRINE ASSOCIATION IS A NON-PROFIT ORGANIZATION. IT'S PURPOSE IS TO ASSIST THE INDIAN PIPE MAKERS. ALL REVENUES GENERATED BY THESE EFFORTS ARE RE-INVESTED INTO THE LOCAL INDIAN COMMUNITY. ALL EMPLOYEES OF THE PIPESTONE INDIAN SHRINE ASSOCIATION ARE NATIVE AMERICAN. IN FACT, SOME OF THE INDIVIDUALS WHO ARE CURRENTLY RAISING CONCERNS, WERE THEMSELVES PAST EMPLOYEES OF THE PIPESTONE INDIAN SHRINE ASSOCIATION. ADDITIONALLY, PIPESTONE NATIONAL MONUMENT AND SHRINE ASSOCIATION PROVIDE THE SOLE MEANS OF MAKING A LIVING FOR 95 PERCENT OF THE INDIAN ADULTS IN OUR COMMUNITY.

OUR INDIAN COMMUNITY IS COMPOSED OF TRIBAL PEOPLE FROM ALL OVER THE COUNTRY. WE HAVE NOT BEEN FORTUNATE ENOUGH TO ENJOY THE SUPPORT OF A TRIBAL GOVERNMENT. WE HAVE HAD TO BE ON OUR OWN. MANY OF US HAVE LIVED HERE FOR SEVERAL GENERATIONS WHERE OUR FATHER'S FATHERS HAVE TAUGHT US THE SIGNIFICANCE OF BEING PIPE MAKERS. WE HAVE HAD

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CONVERSATIONS WITH MEDICINE PEOPLE OVER THE PAST 50 YEARS, AND THEY ALWAYS EXPRESSED JOY THAT THERE WERE STILL NATIVE PEOPLE HERE TO WORK THE QUARRIES, SO THAT THEY COULD OBTAIN PIPESTONE FOR THEIR USES. MANY OF THESE "HEALERS" ARE HAPPY TO BUY THE STONE OR FINISHED PIPES FROM OUR PIPE MAKERS, AS THEY REALIZE THE GREAT AMOUNT OF PHYSICAL EFFORT AND TIME THAT IS INVOLVED IN QUARRYING PIPESTONE. WHEN WE HAVE ASKED MEDICINE PEOPLE ABOUT OUR CRAFT, WE WERE TOLD THAT A PIPE BECOMES A SACRED OBJECT ONLY WHEN IT HAS BEEN "TOUCHED BY THE SPIRITS, AND THIS IS DONE IN A CEREMONIAL MANNER".

THIS BRINGS US TO THE POINT ABOUT TRADING IN PIPESTONE. HISTORY NOTES THAT AS LONG AS 200 TO 300 YEARS AGO, AMERICAN INDIANS WERE DISTRIBUTING PIPESTONE PIPES IN A FLOURISHING INTER-TRIBAL TRADE ECONOMY. SINCE ALL OF OUR ANCESTORS WERE AT THAT TIME "TRADITIONAL PEOPLE", CLEARLY, TRADE IN PIPESTONE MUST HAVE BEEN AN APPROVED CUSTOM AMONG OUR TRIBES. AS TO THE INCREASING INTEREST OF NON-INDIANS IN PIPESTONE, ALL WE PIPE MAKERS KNOW IS THAT WE HAVE NOT BEEN RESPONSIBLE FOR THE SPREAD OF TRADITIONAL INDIAN SPIRITUALITY AMONG NON-INDIANS. WHAT WE DO KNOW IS THAT ONE CANNOT KNOW THE MOTIVES OF ANOTHER PERSON UNLESS THAT PERSON CHOOSES TO SHARE THEM WITH YOU. IF A PERSON WISHES TO OBTAIN A PIPE BECAUSE THEY BELIEVE IT CORRECT FOR THEM, IT IS NOT OUR PLACE TO BE SELF-RIGHTEOUS AND JUDGE THEM. IF A PIPE IS NOT USED FOR THE REASONS THAT IT WAS MADE AND INTENDED FOR, THEN THE CREATOR WILL JUDGE THE PERSON. IT IS NOT FOR US TO DO THIS. WE CAN ONLY TRUST TO THE BELIEFS THAT WE WERE TAUGHT BY OUR ELDERS.

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IN CLOSING, WE BELIEVE THAT SUPPORT FOR THIS RECENT MOVEMENT WILL TAKE FOOD FROM THE MOUTHS OF YOUNG INDIAN CHILDREN AND BELOVED ELDERS IN OUR COMMUNITY. SUPPORT FOR THIS MOVEMENT WILL IMPEDE THE DESIRE FOR A GOOD EDUCATION, CONSTRICT THE ABILITY FOR INDIAN ADULTS TO BE RESPONSIBLE PROVIDERS, AND EVENTUALLY DEPRESS INDIAN PRIDE AND SELF-SUFFICIENCY. MOST PROFOUNDLY, SUPPORT FOR THIS MOVEMENT GOES AGAINST THE PRIMARY SPIRITUAL TABOO FOR INDIANS WHO WISH TO QUARRY HERE. THAT IS, IT IS TANTAMOUNT TO AN ACT OF WAR AND AGGRESSION AGAINST PEACEFUL PEOPLE ON THE MOST SPIRITUAL LAND IN INDIAN COUNTRY. THIS ABOVE ALL HAS BEEN FORBIDDEN BY THE CREATOR AND WE PIPE MAKERS DO NOT UNDERSTAND THIS BEHAVIOR.

THANK YOU FOR THE OPPORTUNITY TO VOICE OUR OPINIONS.

IN PEACE,

THE PIPESTONE NATIVE AMERICAN COMMUNITY.

WHEREAS, the Pipestone Dakota Indian Community is comprised of Indian people enrolled in various tribes in and out of the state of Minnesota. Their sustenance in many aspects is derived from the Great Pipestone Quarries of Minnesota; and

WHEREAS, the right to subsist is a fundamental human right that most Americans take for granted; and

WHEREAS, the Great Pipestone Quarries of Minnesota have been historically utilized by all tribal nations; and

WHEREAS, no single tribe or coalition of tribal nations may assert entitlement or domain over the Great Pipestone Quarries of Minnesota; and

WHEREAS, the proposed amendments to Public Law 95-341, known as the Indian Freedom of Religion Act of 1978; and

WHEREAS, such proposed amendments may restrict the historical access of the Great Pipestone Quarries by all tribes; and

WHEREAS, such restrictions may no longer accomodate the diversity of indigenous religious practices of all tribes and tribal members seeking access to the Great Pipestone Quarries; and

WHEREAS, given that historical custom affords unrestricted access to the Great Pipestone Quarries by all tribes; and

WHEREAS, a prohibition of the manufacturing and distribution of pipes and pipestone articles will have a devastating negative impact of revenues and income to the citizens of the Pipestone township and county,

THEREFORE, BE IT RESOLVED, that the Pipestone Dakota Indian Community of Pipestone, Minnesota requests that EXEMPTION STATUS FROM ANY AND ANY FUTURE AMENDMENTS TO PUBLIC LAW 95-341 (KNOWN AS THE INDIAN FREEDOM OF RELIGION ACT OF 1978), BE CONFERRED UPON THE GREAT PIPESTONE QUARRIES OF MINNESOTA.

Dear N.C.A.I.

The Pipestone Dakota Indian Community disagrees with the actions of the National Congress of American Indians, on the passage of Resolution #DC92-40. The resolution was passed at the 49th annual convention, October 11-16, 1992, Crystal City, Virginia.

In the 1851 Treaty with the Sisseton/Wahpeton Sioux Tribe, they were recognized as owners of the Pipestone Quarry and ceded all their lands in southern Minnesota, which encompassed the Pipestone Quarry.

In the Treaty of 1858, the Yankton Sioux Tribe, ceded all their lands in eastern South Dakota in exchange for 400,000 acres, in southeast South Dakota and unrestricted use of the Pipestone Quarry in Minnesota.

The Yankton Tribe was compensated \$328,558.90 by a land sale agreement, in 1928. The Superintendent of Yankton Agency made per capita payments to each tribal member on the 1920 rolls.

The National Park Service's responsibility is to preserve and protect the lands which encompasses the Pipestone Quarry and are reserved for Native Americans of all tribes. The Pipestone Indian Shrine Association is a non-profit cooperating association of the National Park Service, which was organized to perpetuate the dying art of pipemaking. Only Native Americans are employed by the Pipestone Indian Shrine Association. The Red Pipestone Quarries are void of desecration due to the fact that no commercial mining operations exist. The quarrying operations are a labor intensive, time consuming task consisting of the use of hand tools only. Where as only small amounts are removed.

Historically, the Yankton Sioux Tribe had many tribal members who participated in the selling of pipes and other trinkets made from the pipestone since the 1700's and up to 1912. The Yankton Sioux Tribes involvement with the Quarries has been minimal since 1912. There has been no Yankton Sioux Tribal member, who has sought to exercise their right to use the Quarries, since 1972.

Our understanding is that your organization is chartered to help all Native Americans, and the Pipestone area has always had a population of Native Americans since 1891. The trading and bartering of pipestone dates back to the early 1600's.

Certain amendments, such as Title I of the proposed amendments to the American Indian Religious Freedom Act would prohibit some Native Americans from expressing their Religious belief. Many Native American Tribes practice their religion with the Red Stone Pipe.

Not all Native Americans possess the resources to make the journey to the Pipestone Quarries and exercise their right to procure the Red Stone. The Local Native American people have made it possible for them to obtain these pipes, through bartering, so they can continue to practice their religion. We must preserve this religious freedom for future generations.

We request your organization, to rescind Resolution #DC-92-40. Your decision will affect the livelihood of 51 Native American craftpersons and their families whose numbers exceed over 100 people.

Sincerely,

Pipestone Dakota Community

**STATEMENT IN SUPPORT OF RESOLUTION PROPOSED BY
THE MINNESOTA STATE INDIAN AFFAIRS COUNSEL
At Regular Meeting, dated September 18, 1991**

The Resolution asks: Exemption status from all applications of Title I and the proposed amendments to the American Indian Religious Freedom Act of 1978, Public Law 95-341, be conferred upon the Great Pipestone Quarry of Minnesota.

PURPOSE OF RESOLUTION: To ensure an open policy for all Indian people.

LEGISLATIVE HISTORY: The following is a brief summary of the proposed federal legislation amending the American Indian Religious Freedom Act. Accompanying this summary is an issue and positional statement by representatives of the Pipestone Dakotah Community.

Over the past several years, a group called the Religious Freedom Coalition has drafted, submitted to Congress and is currently lobbying for the passage of their proposed amendments to the American Indian Religious Freedom Act of 1978 (Public Law 95-341). This coalition is comprised of elements of the National Congress of American Indians, National Indian Education Association, Native American Church, Native American Rights Fund and the interests of a private group known as the Association of American Indian Affairs. Only one of the three sections of TITLE I "Protection of Sacred Sites" is addressed in this summary; that being:

The preservation of "Native American Religious Sites". Outlined in this section are the processes by which "...tribes, bands, nations, or other organized groups or communities of Indians..." may petition and potentially obtain from federal agencies the jurisdiction over lands where it has been evaluated that the "...affected site should be transferred into the trust of a tribe...". This section details claim processes, legal cause of action and transfer processes.

HISTORY STATEMENT: The Pipestone Dakotah Community was established in 1930 and for generations, our Indian craftspeople and artisans have quarried and fashioned pipestone articles. As such, pipe crafting is the primary economic and cultural vehicle for the approximate 50 Indian families who live in the vicinity of the Pipestone Quarries. Although many Indians living in Pipestone are enrolled in non-Minnesota reservations, several Minnesota tribal enrollees also utilize the quarries.

ISSUE STATEMENT: Recently, the Yankton Sioux Tribal Council of South Dakota has passed resolutions to use the proposed amendments to the American Indian Religious Freedom Act to suppress or deny open access to the Pipestone Quarries. Their criterion for which

individuals would then be permitted to quarry pipestone is ambiguous and unclear at best. The Yankton Sioux Tribe claim special privilege by their own oral mythology, citing treaty right obligations and finally, the justification of God's will. The Yankton Sioux have also expressed interest in preventing the Pipestone Dakotah Community from continuing its activities. These arguments suggest the following inquiries and responses by the Pipestone Dakotah Community.

Issue 1) Whether it is not contrary to tradition to sell pipestone, yet to permit the trading for the pipestone?

Response: The distinction between trading and selling is questionable. Historically, evidence suggests that tribes and individual members have exchanged pipestone for the "currency of the times", i.e., horses, flint, corn, tobacco, money, etc. for hundreds of years. This has been done with full knowledge of the tribal elders, leaders and medicine people and has been sanctioned as appropriate.

Issue 2) Whether the Yankton tribe have exclusive possession of the quarries, whether they were the last tribe to occupy this region and whether negotiated treaty terms provide them with access to the quarries?

Response: Although several different tribes have occupied the hunting territories in the vicinity of the quarries, the Great Pipestone Quarry has never been the exclusive property of any one tribe or group. It is common belief of all tribal people that the Pipestone Quarries were given to all Indian nations by the Creator. Traditional spiritual philosophy would suggest that the Creator owns the pipestone. In response to treaty claims, the National Park Service does not deny any Indian the privilege of quarrying pipestone. Members of the Yankton Sioux tribe share in this privilege, although none has exercised their treaty rights for over twenty-five years.

Issue 3) Whether the distribution of pipestone items and in particular pipestone pipes to "non-believers" is a form of religious sacrilege?

Response: The traditional pipemakers of Pipestone are not in any way responsible for the wide dissemination of traditional Indian ideology, ceremony, ritual or practice among non-Indian peoples. The pipemakers simply respond to a growing need for these items. The pipemakers have discovered that they are unable to detect the non-believers among all of those who purchase pipestone pipes. Since the distinction between true believers and non-believers is difficult, the pipemakers have determined that perhaps it is better to leave this determination to the Creator.

Issue 4) Whether the question of the character of the individuals who currently quarry pipestone is a consideration?

Response: Many of the contemporary traditional pipemakers are descendants of a long family history of pipemaking. In historic times, these artisans were considered to be an asset to the people. In recent years, bona fide medicine people have lived in Pipestone and have conferred with the local Indian craftspeople. They have never suggested that there is the least impropriety in the quarrying and fashioning of pipestone items. Frequently, traditional Indian practitioners and healers are the recipients of these finished pipes. The pipemakers believe that each individual must first reconcile his action with the Creator. Having done this, he may honor his contributions to his people. The traditional pipemakers humbly seek to do this according to their own visions.

Issue 5) Whether mining (quarrying) of the pipestone may unnecessarily exhaust a limited resource, i.e., pipestone?

Response: Geological survey and core sampling obtained by the National Park Service has confirmed that, contrary to popular belief, there exists a "double" layer of deposits of pipestone at the Great Pipestone Quarries of Minnesota. It must also be understood that strict restrictions apply to the quarrying process. All quarrying must be done by hand tools. No power tools or any kind of contemporary machinery is permitted in removing pipestone deposits. These protocols are explicitly designed to minimize the ecological disturbances to the site, to protect the pipestone deposits and to preserve the time honored integrity of quarrying.

ADDITIONAL CONSIDERATIONS: One must consider the political and social impact of enacting legislation with the federal framework as a means of preserving indigenous spiritual practice. The Pipestone Dakota Community has no interest in obstruction the utilization of lands by specific tribes within their own geographical context. Indeed, we support these efforts as a national agenda. However, the Great Pipestone Quarries of Minnesota is in a classification in and of itself. It belongs to all the people and no tribe may mistakenly claim exclusive control.

It occurs to us that our strength as tribal people is supported by our diversity as nations. We do not share mother tongues. Our conventions and social etiquette are dissimilar. Our spiritual practice is as diverse as our dreams. We question the wisdom of shaping a pan-indian, Indian religious framework. Who can possibly construct legislation that accommodates our religious diversity? An additional consideration is legal in nature. We can envision a "worst case scenario" where an individual may contest his/her right to practice their religion. Class action suits could place that which we consider our heritage into the political arena of the United States judicial system. To our thinking this should be avoided. Precedent has been established by a higher law. Tribal custom has already shaped appropriate processes for conflict resolution among our nations.

CLOSING STATEMENT: Traditional pipemakers who live near the quarries, have everyday been aware of two primary laws governing the use of pipestone. First, that these quarries are to benefit all mankind and as such are open to all Indian nations. Secondly, under no circumstances is conflict to be displayed or facilitated at the quarries. The Pipestone Dakota Community of Pipestone, Minnesota wishes to honor these ancient laws of our people. We believe that this may best be accomplished by removing this sacred site from any controversy, thus preserving its decorum.

THEREFORE, we are requesting an "Exemption for the Great Pipestone Quarries of Minnesota from all and any future amendments to the American Indian Religious Freedom Act of 1978, P.L. 95-341".

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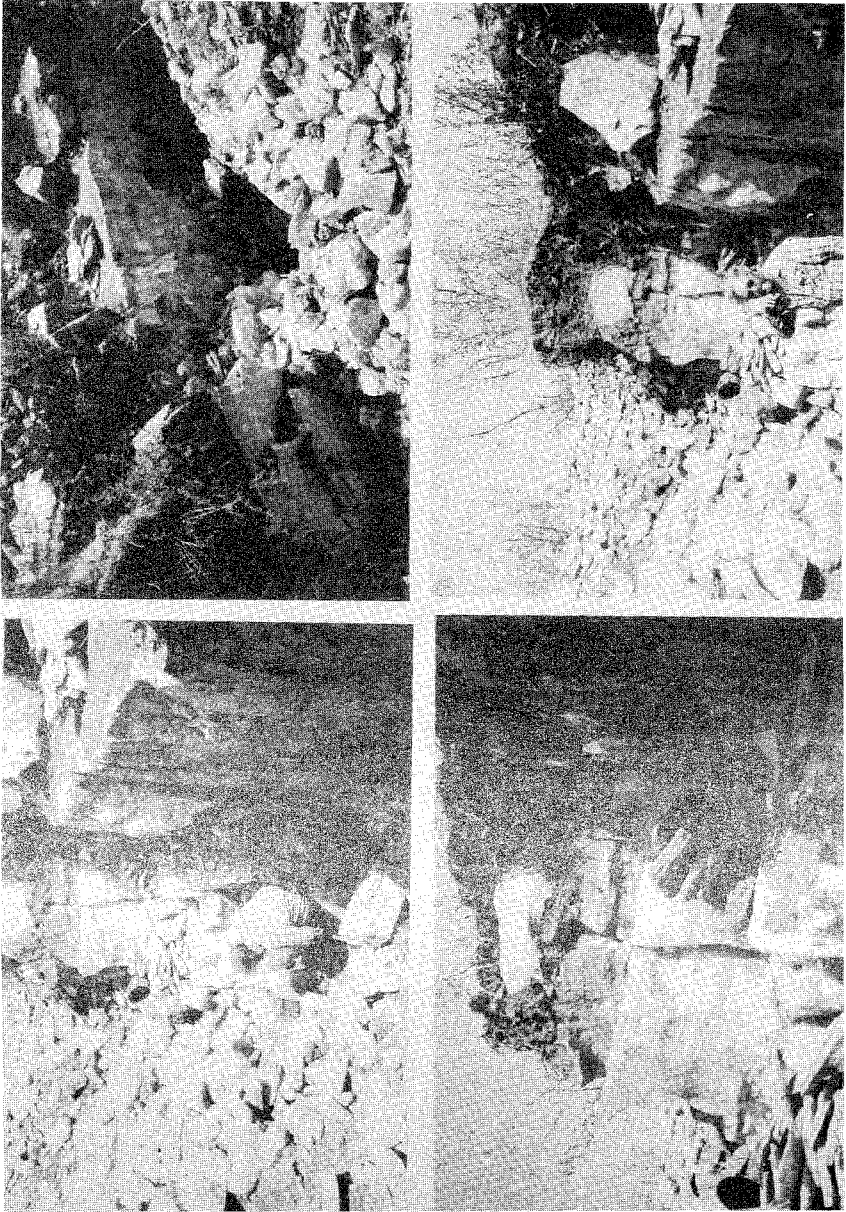
March 4, 1993

Listing of quarriers from different Tribal groups from 1971 thru 1990

<u>Sisseton Wahpeton</u>	¹⁷ <u>Santee Sioux</u>	⁵ <u>Yankton Sioux</u>
Harrison Crow	George Allen Sr	Joseph Dudley
Lloyd Crow	Ted Taylor	Joe, Dan, and Elijah
Quentin Crow	Myron Taylor	Packard
Jack Crow	Sam Gurnoe	Alphonse Gerken
Ethel Derby	Donald Gurnoe	Gary Gullikson
Chuck Derby	Donna Moose(Redearth)	Zeph Zephier
Jeff Derby	Ray Redwing	Edward Zephier
Marge Parsons	Gary Kills A Hmndred	Edward Redlightning
Betty Tellinghuisen	Fred Lovejoy	Loren Zephier
Alice Erickson	Linda Rodefer	
Carol Derby	Lauren Herrick Jr	⁶ <u>Cheyenne River Sioux</u>
Maddie Redwing	Colin Cavender	George Kane
Aileen Bird	Brenda Crow	Robert Hale
Colleen Bird	Lee Taylor	Jim Marshall
Adrienne Bird	Rocky Shopbell	Mona Grey Bear
Shirley Erks	Roger Trudell	Richard Stands
Faye Brune	Mato Wilch	Jim Garrett
Randy Stevens		
Dale Stevens		
Mike Stevens	² <u>Lower Sioux</u>	⁴ <u>Mdewakanton</u>
Steven Brady	David Larsen	Crooks Family-Norman
Tim Brady	Dennis Blue	Robert, Clarence,
Bill Bryan		Amos Owen
Clara Bryan (Winona)	⁸ <u>Rosebud Sioux</u>	Amos Crooks
Mark Pederson	Moses Big Crow	
Kevin Pederson	Alvin looking Horse 1973	
Travis Erickson	Silas Eagle Elk Horse Looking	
Todd Tellinghuisen	Lessert Moore	² <u>Winnebago Sioux</u>
Joel Hein	Phyllis Stone	James Funmaker
Pete Musil	Paul Szabo	Willard LaMere
Tim Blue	Eugene Leroy Sr	
Todd Parsian	Tim Whitebird	
Duane Wilka		
Herbert IronHeart	¹ <u>Teton Sioux</u>	¹ <u>Crowcreek Sioux</u>
George Renville	Wallace Black Elk	Mr & Mrs George Tuttle
Darlene Tester		
Carol Iron Moccasin	<u>Sioux Tribal ID ?</u>	³ <u>Standing Rock Sioux</u>
Greg Maestas	Martin High Bear	Ken One Feather
Willard Greeley	Mona Dupris	James One Feather
Joseph Genia	Rene Whiting	Nick Halsey
Doyle/John Robertson	Joseph Flying By	
	C W Hart	
⁵ <u>Ogalala Sioux</u>	Clinton Turgeon	¹ <u>Devils Lake Sioux</u>
Roy Weston	Walter Lakota	Sylvester DeMarce
Marvin Red Elk	Jerome DeWolfe	
Douglas Fasthorse	Ralph Whitehorse	¹ <u>Santee/Rosebud Sioux</u>
Duane Blindman	Daryl No Heart	Harvey Ross
Mabel Shangreau	Virgil Charging Hawk	
	Cody Knoch and Michael Erickson	

Listing of quarriers from different Tribal groups from 1971 thru 1990

<u>Ojibway</u> 33	<u>Northern Cheyenne</u>	<u>Cheyenne Arapaho</u>
George Bryan	Michael Joseph	Marvin Tasso
Zona Busse		Mitch Walking Elk
Bill Hallett	<u>Nez Perce</u>	} Same person
Edward Thomas	David Penny	
Betty Rand		<u>Athabaskan</u>
Keith Lussier		William Dominic
Mushkooub	<u>Arapaho Wind River</u>	<u>Pottawatomie/Ottawa</u>
Jeff Savage	Willis Whiteman	Lee Sprague
Elmer Sunn		
Leonard Vetternick	<u>Pottawatomie</u>	3 <u>Blackfeet</u>
Larry Devlin	Paul Nadjewan	Charles Hirst
Gena Belgarde		Ted Guardipee
Robert Thompson	<u>Papago</u>	Merle Yellow Kidney
Littlecreek Family-	Manny Two Feathers	
Thomas, Russell, Hollis		
Marvin French	<u>Menominee</u>	<u>Comanche</u>
Louis Boyd	Max Dixon	Ed Yates
Robert Rosebear		
Sam Morris	<u>Navajo</u>	<u>Dine-Navajo</u>
Bruce Savage	Paul Begaye	Tom Goldtooth
Jean Aquash		
Brian Wichern	<u>Mandan-Hidatsa</u>	<u>Ponca</u>
Jim Weaver	Gordon Bird	John Williams
Gordon LeGarde		
Joe King Bird	<u>Iroquois/Seneca</u>	<u>Eskimo</u>
Francis Johnson	John Crazy Bear	Frank Alby
Myron Rosebear		
David Hoagland	<u>Osage</u>	<u>Gros-Ventre</u>
Larry Goose	Tim Tall Chief	Bernard Cliff
Norman Blakely		
Jack Chambers	<u>Paiute</u>	2 <u>Oneida</u>
Charles Robertson	Richard Burchett	Maisie Schenandoah
Terri Jackson		Don Deny
Donald Wright	2 <u>Arikara</u>	
	Daryl/Leo Lockwood	
<u>Creek</u>		<u>Pennobscot</u>
Freeman Mitchell	<u>Cheyenne</u>	Fred Nicola
	Robert Garrison	
<u>Ottawa</u>		<u>Conkow Maidu</u>
William King	<u>Peepekeesis</u>	Robert Mullins
	Dwight Pinay	
		<u>Yellowknife/Canada</u>
		Tim Sikyea



Mr. RICHARDSON. Thank you, Mr. Johnston.

Let me ask Mr. Carnes: As I understand from your testimony, is it your contention that Native American religious practitioners are treated differently by prison officials than practitioners of non-Native religions?

Mr. CARNES. They most definitely are in many places. It is based a lot on the ignorance of the correction officers, security line officers, who have no understanding or ideas about our religious objects or things, because they may come into our cell during a shakedown or in the prison yard and come and handle our feather and play with these things—you know, make a lot of jokes or remarks they feel like. It is not hurting nobody. Well, you know, it creates a sense of anger or tension within the prison system, and there is already too much there anyway.

Mr. RICHARDSON. Is it your view, Mr. Carnes, that giving access to Native American prisoners to their religious practices would make them better, law-abiding citizens when they are released?

Mr. CARNES. Yes, only for those who have that sincere interest to participate. There may be a few who attend out of curiosity because they never had that opportunity. They may also be deeply affected and choose to pursue that way of life. Even these people who have never had this spirituality before they went to prison, they pick it up there, and they are going to need help when they get out. They need some post-assistance or a support group when they get out, which is one of the things I have been hoping to develop, this spiritual camp for people who are paroled or discharged from prison, because in a sense they are just like babies learning how to walk again, their spirituality. They need to be surrounded by these people, pray at the pipe, the sun dance, go to the stomp dance ceremonies, participate in all these other traditional ways.

Mr. RICHARDSON. Mr. Carnes, what are you doing now profession-wise? Are you counseling?

Mr. CARNES. Yes, I am trying to get back into the prisons in Oklahoma. I have had problems with some of the institutions because I was not very popular once we started a lawsuit, because I brought national attention to the Oklahoma Department of Corrections. At the same time, the person who was the warden that started a policy had been confirmed as the director of the Department of Corrections the same week that I received the 1987 Oklahoma Human Rights Award for my efforts in trying to create an understanding about the religious rights of Native prisoners in Oklahoma, and, to my knowledge, I have been the only person in this country who has ever received such a distinguished award while I was incarcerated.

Mr. RICHARDSON. Well, make sure you stay in touch with us, because we want to work with you as we move this legislation.

Mr. Johnston, you related concerns about how one defines a traditional leader. Who do you think should make that determination?

Mr. JOHNSTON. I think that is best left to the people, but that doesn't fit the criteria for what this wants to do.

So many people say that they are a traditional person. Whatever that means to them is what it means. Every tribe has their own idea of what a traditional person is, and every individual has their own idea of what a traditional person is. The same thing with the

spiritual person. The tribes recognize one or two, usually representing the tribe, but they don't even attempt to try to define whether each enrolled member is a traditional person or a spiritual person.

Mr. RICHARDSON. I believe the provision in the Senate makes a definition of a traditional leader.

Mr. JOHNSTON. That is true; they try to.

Mr. RICHARDSON. Right. So your view is that we should basically leave that up to the tribes?

Mr. JOHNSTON. I don't know how the other sacred sites that are off the reservation are going to be administered, but in relation to what I'm saying in regard to Pipestone, if you put that in control of any one tribe—and I wouldn't really care which tribe it was—then they would be in a position to define who was traditional and who should quarry stone in what they decide was the proper manner, and if they decide an individual who is enrolled somewhere but doesn't believe in the Lakota traditions, he may not be allowed to go in there. I don't know how anybody can define spirituality or traditionalism for any individual or group. That is really difficult.

We have got a lot of our spiritual people today, like Mr. Carnes was saying, who have been in prison. We grew up in a time when being Indian was not the thing to be. We couldn't even find people at home that would talk about spiritualism or traditionalism. We had to go back to our grandfathers and hope that they were still alive and try to talk to them, and these same people are now listed as spiritual advisors for our tribes.

Mr. RICHARDSON. You have raised an issue that we are going to have to grapple with very seriously. I think you make a very good point.

Let me again thank panel number four. I, regrettably, have to run off. I think we have had a very good hearing—four panels, very excellent testimony, especially those that came from long distances. These hearings are very useful as we prepare our legislation. As everybody knows, we want to make sure our legislation has a good bipartisan focus. We want to work with the administration. We want to work with the tribes especially because we are very serious about making this very important piece of legislation law.

So, with that, the hearing is adjourned, and we want to thank all the witnesses here today.

[Whereupon, at 11:26 a.m., the subcommittee was adjourned.]

APPENDIX

MARCH 16, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

SUPPLEMENTAL TESTIMONY OF

**DOUGLAS J. LONG, PRESIDENT
NATIVE AMERICAN CHURCH OF NORTH AMERICA**

AND

**ROBERT BILLY WHITEHORSE, PRESIDENT
NATIVE AMERICAN CHURCH OF NAVAJOLAND, INC.**

**SUBMITTED TO
CONGRESSMAN RICHARDSON AND MEMBERS OF
NATIVE AMERICAN AFFAIRS SUBCOMMITTEE
FOLLOWING AN
OVERSITE HEARING ON THE AMERICAN INDIAN
RELIGIOUS FREEDOM ACT**

ON

**MARCH 16, 1993 IN WASHINGTON, D.C.
REGARDING**

THE TRADITIONAL USE OF PEYOTE

**SUBMITTED ON
March 26, 1993**

Dear Congressman Richardson and Members of the Subcommittee:

First of all we would like to thank you and the Committee staff for conducting a fine Hearing on the critical issues of Native American religious liberty. For many of us, these are the most significant issues affecting our cultural survival.

During the March 16th Oversight Hearing, you and your colleagues posed several very good questions which we would like to respond to more elaborately than time permitted during the Hearing itself. We discussed the following paraphrased questions after the Hearing and the accompanying responses reflect our views.

QUESTION #1. Do all members of the Native American Church take peyote during the course of a typical NAC prayer service?

Generally speaking, yes they do. Peyote is taken either as a tea or eaten when passed clockwise around the congregation during the ceremony. There is no requirement that the congregant take peyote, and typically children accompanying the parents will simply sit quietly beside the parents, listen to the prayers and songs, and eventually lay down to sleep beside their parents.

QUESTION #2. Does the proposed legislation affect other religions?

The proposed bill, circulated by the AIRFA Coalition and Senator Inouye, is Indian-specific legislation. It is an exercise of the federal trust responsibility to protect and preserve Indian cultures (as described in the existing AIRFA). It applies only to Indian or Native American people as defined in the draft bill, and only to traditional Native American religions as defined in the draft bill. It does not say specifically "Native American Church"

because some groups that meet the above-referenced definitions do not use that name. For instance, Crow Indian Peyote Ceremonies is a Native American Church organization acknowledged by other NAC organizations and duly registered in Texas for lawful procurement of our sacrament, but preferring its own name. Non-Indians are not intended to be covered by this legislation.

QUESTION #3. How do you ensure that peyote is used only for religious purposes within the NAC?

First of all, among our members peyote is a Holy Sacrament, it is the flesh of God, so it would be a sacrilege to use peyote in any way inconsistent with its spiritual significance.

Secondly, the NAC, the D.E.A. and the Texas Department of Public Safety share a mutual interest in protecting the peyote to ensure that it doesn't get abused or fall into the wrong hands. These organizations all have regulatory apparatus in place that creates these safeguards. For instance, NAC chapters typically have an appointed "Custodian" who is the person responsible for securing peyote under the Texas regulatory scheme. The Custodian then has the duty to keep the sacrament for the chapter and make it available for the bona fide prayer services conducted within that chapter.

This self-regulatory system works well as is evidenced by the uncontroverted record established in the Smith case that between the years 1980 and 1987, the D.E.A. confiscated and analyzed 19.4 pounds of peyote nationwide... about the equivalent of one grocery bag for the entire country. (In contrast, during that same period,

D.E.A. confiscated and analyzed over 15 million pounds of marijuana.) These figures help explain why the D.E.A. in their testimony at the Hearing stated that the NAC's sacramental use of peyote is in no way part of this country's drug problem.

QUESTION #4. If the current C.F.R. exemption (§1307.31) were simply enacted as a statute, would that prohibit state prosecutions?

This question was posed to Hearing witness Craig Dorsay who will be responding more elaborately in his own Supplemental letter. We would essentially like to codify the current C.F.R. exemption. However, certain modifications may need to be made to that C.F.R. language in order to clarify that this is intended to be a uniform national law, constitutionally sound, within the ambit of the federal Trust Doctrine, superseding inconsistent state laws and prohibiting discrimination based on NAC membership or participation in NAC activities. We believe that the language in Senator Inouye's draft bill would accomplish these purposes.

The discrimination problems plaguing the NAC arise in various contexts; for instance in the area of employment discrimination see Smith, and in the area of military service exclusion and court martials see the testimony of Ed Red Eagle, Jr., Vice-President of the NAC of Oklahoma submitted for the written record of this Hearing, and the testimony of Marine Corps. Sgt. Shawn Arnold before the Senate Select Committee on Indian Affairs, Hearing in Los Angeles, November 12, 1992, copy attached.

QUESTION #5. Would restoring the "compelling state interest" test abandoned in Smith (ala the current pending "Religious Freedom Restoration Act") solve the NAC's problem?

No. For a comprehensive analysis of this question, please see the attached "Religious Freedom Restoration Act" testimony submitted to the House Subcommittee on Civil and Constitutional Rights, May 14, 1992.

Briefly stated, the answer can be found in Justice O'Connor's concurring opinion in Smith, wherein she describes how she would have preferred to keep the "compelling state interest" test and simply rule that the NAC's use of peyote flunks that test. Her view points clearly to the need for specific statutory protection.

QUESTION #6. If the applicability of relevant AIRFA amendments was limited to those of 1/4 degree Indian blood, would that include non-federally recognized tribes?

That would depend on the definition of "Indian" for purposes of establishing what constitutes "Indian blood."

On the broader question of defining "Indian" by blood quantum rather than tribal membership, we would offer the following considerations:

1. Nearly all contemporary federal Indian law uses a 'tribal membership' rather than 'blood quantum' definition for Indian. There are at least two reasons for this:
 - A. In order to avoid Equal Protection problems (and in this case Establishment Clause problems as well), a tribal membership definition is used to squarely ground such legislation in the Trust Doctrine, the unique legal and political relationship between the United States and Tribes and their members. This politically based classification is permissible constitutionally, whereas a 'blood quantum'

definition alone, without linking it to tribal membership, may be susceptible to challenge as being a racial classification. Justice Scalia in writing for the majority in Smith said:

"But to say that a nondiscriminatory religious-practice exemption is permitted, or even that it is desirable, is not to say that it is constitutionally required... (emphasis added) (494 U.S. at 890 (1990))."

- B. The right to decide who is an Indian belongs to the tribes as a matter of inherent sovereignty and self-determination.¹ Once the tribes define their membership criteria (which varies from tribe to tribe) then it is the responsibility of the United States to fulfil its Trust responsibility to those politically identified members.
2. Some tribes with active NAC chapters have their tribal membership criteria set at a blood quantum level that is lower than 25%. A '25% blood quantum' definition of Indian would paint those people out of the ambit of this law. This raises a legal question of those excluded people, although legally and politically Indian by virtue of their membership in a tribe, not being equally protected by the Trust Doctrine. This question was also raised in a footnote in the Peyote Way case.²
 3. NAC organizations are and should remain free to set their own membership criteria (such as additionally requiring 25% Indian blood if they so choose) provided that the

¹ "The courts have consistently recognized that one of an Indian tribe's most basic powers is the authority to determine questions of its own membership. A tribe has power to grant, deny, revoke, and qualify membership. Membership requirements may be established by usage, by written law, by treaty with the United States, or even by intertribal agreement." The power of an Indian tribe to determine questions of its own membership derives from the character of an Indian tribe as a distinct political entity." (Footnotes Omitted). Cohen, Handbook of Federal Indian Law, 1982 ed., p. 20.

² "The federal defendant explains that Section 1307.31 exempts only NAC members because that is the only bona fide tribal Native American peyotist religion of which the government is aware. While this explanation satisfies us as to the exception's rationality, we note that another bona fide tribal Native American peyotist organization may well have a valid equal protection claim based on the federal NAC exemption. Peyote Way, not being a tribal Native American organization, is not the proper plaintiff to raise this claim." (Citations Omitted). 5 Peyote Way Church of God v. Thornburgh, 922 F.2d 1210, at 1218, Fn.4 (5th Cir. 1991).

members must be 'Indian' to be protected within this proposed law and the Trust Doctrine.

4. The various NAC organizations have differing membership criteria.

QUESTION #7. Is the sacramental use of peyote similar to the sacramental use of wine in other churches?

Yes it is similar. And just as during Prohibition there was a federal law passed to protect the sacramental use of wine... similarly, there needs to be a federal law passed to protect the sacramental use of peyote. The analogy is striking: The sacramental use of wine was not related to the nation's alcohol problem -- and the sacramental use of peyote is not related to the nation's drug problems (as stated unequivocally by the D.E.A. at the March 16th Hearing). A legal accommodation to religious needs is appropriate in both cases.

QUESTION #8. (To Mr. Whitehorse.) Do you consider yourself a member of the AIRFA Coalition?

Mr. Whitehorse wishes to clarify for the record that although it has been logistically prohibitive for him to personally participate in many of the AIRFA Coalition's meetings, conferences and Hearings he, as President of the Native American Church of Navajoland, has eagerly supported this legislative initiative and successfully led his church to become an organizational member of the AIRFA Coalition.

QUESTION #9. Is the NAC primarily located in the Southwest?

Although this ancient religious tradition originally entered the United States through the Southwest, it has expanded throughout

much of Indian Country and now has one or more chapters in 24 states, as well as several chapters among the Indian tribes of both Canada and Mexico.

QUESTION #10. Do these proposed AIRFA amendments require that peyote be permitted in prisons?

No. It is the general feeling among NAC leaders that prison is not an appropriate environment for their Holy Sacrament. The liturgy of the NAC contains a ceremony typically called "Devotional Services" which is similar to a full NAC prayer service except that it is considerably shorter in duration (often 1 to 2 hours) and does not include ingesting peyote. NAC leaders generally agree that these Devotional Services are appropriate ceremonies in a prison setting.

The 'Prisoner's Rights' section of the proposed AIRFA amendments specifically states in §301(a)(2):

In no case, however, shall the provisions of paragraph (1) be construed as requiring prison authorities to permit (nor prohibit them from permitting) access to peyote or Native American religious sites.

We hope we have adequately paraphrased the questions the Committee posed at the Hearing regarding our Native American Church, and that these responses are helpful to your understanding of the problems we are attempting to redress.

Thank you again for conducting a fine Oversight Hearing on these issues that are at the very heart of our spiritual and cultural life. We look forward to working with your new

Subcommittee and all of Congress so that our human dignity might be reflected in the laws of this land.

Respectfully submitted this 26 day of March, 1993.

NATIVE AMERICAN CHURCH OF
NORTH AMERICA

DOUGLAS J. LONG,
President

NATIVE AMERICAN CHURCH OF
NAVAJOLAND, INC.

ROBERT BILLY WHITEHORSE,
President

The Confederated Salish and Kootenai Tribes of the Flathead Nation

FLATHEAD CULTURE COMMITTEE

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United States House of Representatives
 Native American Affairs Subcommittee
 Rep. Bill Richardson, Chairman

RE: House Oversight Hearings on American Indian Religious Freedom Act
 March 16, 1993

Written testimony of Clarence Woodcock
 Director, Flathead Culture Committee
 Confederated Salish and Kootenai Tribes of the Flathead Nation

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify before the Indian Affairs Committee on the crucial matter of the American Indian Religious Freedom Act. No other issue before Congress is of such profound concern to my people or of such great importance to the survival of our traditional ways.

My name is Clarence Woodcock. My address is Box 523, St. Ignatius, MT 59865. I am the Director of the Flathead Culture Committee, which is a branch of the tribal government of the Confederated Salish and Kootenai Tribes of the Flathead Nation. Our program was established in 1975 and charged with the mission of "preserving, protecting, and perpetuating the traditional way of life and living culture" of our people. In doing this work, we are given our guidance and direction by the elders of the Salish speaking tribes of the Flathead Indian Reservation, and we serve as their representatives and liasons. Our elders guide us in all matters. We strive in all ways to ensure that their wisdom and their knowledge is passed on to the generations to come. Over the past 18 years, we have gradually and painstakingly built a strong program in both archival preservation and the holding of cultural activities among our people that now serves as a model for many other tribes across the nation. Our current staff of seven full-time

Testimony of Clarence Woodcock, page 2

employees now maintain a vast archives of cassette and video recordings of oral history and culture, a vibrant and growing program in the revitalization of our language, a priceless collection of several thousand photographs, a sophisticated program in Cultural Resource Protection, and an extensive body of geneology records. Our young people are now participating in ever-growing numbers in our language programs and in all of our cultural doings, from the Jump Dances of the New Year, to the first Bitterroot ceremony of the spring, to the celebrations and dances of the summer season.

The heart of all of this is our spiritual ways, and central to our spiritual ways is the importance of eagle feathers, which I have come to comment on today.

It is difficult for me to communicate to you in such a short time the importance of these things to our people. In order for you to understand fully the sacredness, the power of eagle feathers, of the eagle and its spirit and the power of other animals and birds as well, it would be necessary for each of you to immerse yourselves in our cultural ways for many years. So today I will only try to express to you that these things mean everything to us; they are our life. It is as sacred to us, as crucial a part of our world, as the most sacred cross in your church or the most sacred altar in your synagogue. One of our most esteemed elders, Pete Beaverhead (1900-1975), said that it was

"as if the eagle is sitting on top, and is given to the medicine men to be their strength in their medicine power. All the animals that speak to you, the eagle always plays a big part....That is why the Indians....do not play with the eagle feathers, They respected it very highly. They used the feathers in their Indian medicine power. They regarded this very highly."

In our traditional ways, not just anyone can be the keeper of an eagle feather. As Pete Beaverhead said, it is "the highest honor." It is something that marked the feats of courage by which our warriors defended our people from great dangers. Feathers hung from coup sticks and warrior shields, the "flags" of our tribal nations. Even the gathering of the feathers was done by very specific, careful, prayerful ways. At certain times, certain medicine men would construct eagle pits in which they would hide to capture eagles in order to use the feathers for these special purposes. Everything about the eagle feathers – how they are acquired, how they are regarded, how they are used, how they are taken care of – is surrounded with the greatest care, respect, and spiritual attention.

All of this has made it at times difficult and painful for our people to secure eagle parts and feathers through the federal bureaucratic channels that have now been in place for some years. The eagle seems to be handled as just another bureaucratic matter, to be handled through endless forms and paper shuffling. It is not treated as the powerful sacred matter that it is. Furthermore, some of our people do not feel as comfortable speaking English and they become intimidated by the language barrier, particularly when dealing with the seemingly endless forms that are required. Much of our reservation consists of rural areas without street addresses or telephones; this at times has presented more difficulties in filling out the forms. The forms also request very sensitive information about the purpose for which the eagle will be used. And finally, there is often an extremely long waiting period before receiving the eagle, in spite of an apparent backlog of deceased birds in

Testimony of Clarence Woodcock, page 3

cold storage at federal facilities. It is not uncommon for people to wait two years or more before receiving an eagle. Sometimes, when the birds do arrive, they are in a badly decomposed condition, having been cared for very poorly.

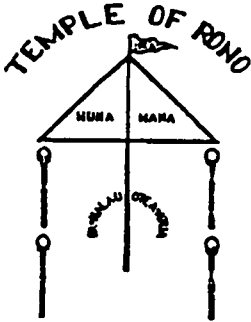
All of this adds up to an extremely discouraging situation for a vitally important part of our spiritual life.

We think that we have a recommendation that would provide a good, workable solution to these problems. This is to streamline the process and make use of the well-established tribal institutions that are now in place among many tribes, including our own. On our reservation, for example, it would be ideal if our Flathead Culture Committee – which, as described above, is a duly established branche of the tribal government and serves as the liason for the tribal elders – could serve as the reviewing board for requests for eagles and feathers among our Salish-speaking tribes. We would have a much closer knowledge of the legitimacy of the request than any federal agency, and a much greater sensitivity to the cultural issues involved; furthermore, there would be no problems associated with language barriers or unknown addresses or telephone numbers. The Culture Committee would then pass on approved requests directly to the federal repositories and also serve as the recipient of the shipments, and of course be held responsible for them until turned over to the individual applicant.

We think that this solution would not only be the best expression of the just principal of tribal self-rule, but also a smoother, better functioning bureaucratic process. And it would help make real the promise of American Indian religious freedom.

There is one final matter we would like to mention here. The eagle is of great importance and sacredness to our people – and so are many other birds and animals. We understand that many of these are also held in federal storage facilities. We would like to explore the possibility of expanding the request form to include these other birds and animals.

Clarence Woodcock



March 8, 1993

Representative Neil Abercrombie
U. S. House of Representatives,
Committee on the Interior
Sub-Committee on Indian Affairs

**TESTIMONY REGARDING PROPOSED AMENDMENTS TO THE AMERICAN INDIAN
RELIGIOUS FREEDOM ACT**

Aloha Representative Abercrombie and Members of the Sub Committee:

Thank you for the opportunity to submit testimony on proposed Amendments to the American Indian Religious Freedom Act. As Representative Abercrombie knows, The Temple of Lono is a non-profit Traditional Hawaiian Religious Organization whose members would be greatly affected by the Amendments you are considering. As one of the first groups to test Public Law 95-341 by gaining access through federal lands for rededication of the temple of Ku and Hina at Mo'okapu, O'ahu in 1981, we have since seen our rights and freedoms abridged and restricted. These amendments are essential to guarantee the promise of freedom of religion for Native Americans.

We are pleased that many of our concerns with previous drafts have been addressed in the latest proposal. However, we offer the following suggestions and comments:

1. In Section 3, Definitions, Paragraph 7, a Native Hawaiian Organization is defined. In our view, such an organization should be comprised of members who both practice or conduct ritual and utilize, preserve and protect religious sites. We suggest that the conjunction "or" at the end of sub-paragraph A be replaced with the conjunction "and".
2. There is no definition for Native American Traditional Religious Organization. As this legislation is intended to preserve and protect the rights of Native Americans to worship in their traditional way, we would


think that religious organizations would be the first to be consulted. We offer the following definition:

- serves and represents the interest of Native Americans in the area of traditional religion (spirituality)
- has a primary and stated purpose the provision of services to Native Americans
- has natives in its membership
- practices traditional religion or conducts traditional ceremonial rituals
- utilizes, preserves and protects native sacred sites and areas.

In addition, Section 103, Notice, should state that Native American Traditional Religious Organizations will be consulted and notified whenever a situation falls within the scope of the law.

3. Title III - Prisoners Rights establishes a Commission to investigate the conditions of Native American prisoners in the Federal and State prison systems. In Hawaii a large percentage of the prison population are Native Hawaiian. We suggest that an additional requirement be placed on the makeup of the Commission: "At least one (1) of the Native American Commission members shall be a Native Hawaiian."
4. We strongly suggest that there be some public notice requirement (publish in the newspaper) so that all Native Americans will be advised of undertakings affected by this law.
5. It appears that there is no specific process or procedure that addresses an inadvertent discovery of a sacred site after a complete survey and development of land management plans. There is a need to ensure that the undertaking which resulted in an inadvertent discovery will immediately be suspended and a process will be followed that will ensure the preservation of Native American rights with respect to the sacred site.
6. In the past, we have found that the Federal government has been more responsive than State and County governments to the needs of Native Americans who wish to practice their traditional religion. Ideally, we would like to see these amendments and the American Indian Religious Freedom Act respected at all levels of government. We suggest that the American Indian Religious Freedom Act apply to all undertakings which receive any Federal funding, including State, City, County or private undertakings.

The aforementioned comments and suggestions are based on the latest draft of the Senate version of the Amendments. We were unaware that the House was considering similar Amendments and hope our comments and suggestions are relevant to your deliberations. We have found that the State Office of Hawaiian Affairs (OHA) and Hawaiian political organizations fail to dispense information on activities in Congress to all interested parties. Through Representative Abercrombie's office we will keep abreast of this legislation and will submit future testimony in a more timely manner.

THE TEMPLE OF LONO
Imua makou i malama pono,

Clive L. Cabral
Secretary

cc: (FAX) Senator Daniel K. Inouye

NATIVE AMERICAN RELIGIOUS FREEDOM PROJECT

Reuben A. Snake, Jr., Coordinator, P.O. Box 683, Winnebago, Nebraska 68071
Telephone: (402) 878-2837

**WRITTEN TESTIMONY OF
REUBEN A. SNAKE, JR.
COORDINATOR
NATIVE AMERICAN RELIGIOUS FREEDOM PROJECT**

**PRESENTED TO
HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
CONGRESSMAN BILL RICHARDSON, CHAIRMAN**

**PRESENTED IN CONJUNCTION WITH
A HEARING HELD IN
WASHINGTON, D.C.
ON
MARCH 16, 1993**

Congressman Richardson and other Honorable members of the United States House of Representatives, my name is Reuben A. Snake, Jr., and my address is P.O. Box 685, Winnebago, Nebraska 68071. This statement is being presented for the record of hearings held in the Native American Affairs Subcommittee of the Natural Resources Committee of the U.S. House of Representatives in support of the need to amend the American Indian Religious Freedom Act in order to create a uniform national law to protect the traditional use of peyote by Indian people in our ceremonies and services.

The Native American Religious Freedom Project (NARFP) was created in April, 1990, immediately after the devastating decision in the U.S. Supreme Court case Employment Division of Oregon v. Smith, 494 U.S. 872 (1990). I was first asked by the Native American Church of the Omaha Tribe and then by the Native American Church of the Winnebago Tribe of Nebraska to pursue their interests in overcoming the impact of that decision so that Native American Church members could be made whole, and be legally accommodated so that the stigmas, risks of prosecution and other discriminatory effects that came with the Smith decision would no longer be a burden upon us.

Since NARFP was created, we have received the endorsement of the Native American Church of North America, and have organized or participated in literally dozens of meetings and conferences involving Native American Church leaders and members from throughout the country.

For instance, there was a meeting with constitutional law scholars and theologians at the Harvard Divinity School in November

of 1990; a Native American Church Leaders Summit meeting in August of 1991 on the Winnebago Indian Reservation in Nebraska; an American Indian Religious Freedom Summit in Albuquerque in November of 1991; lengthy discussions at the annual meetings of every major Native American Church organization in America; numerous presentations to the Tribal Leaders Forum and the National Congress of American Indians during this post-Smith era; and to date five Field Hearings before the renamed Senate Committee on Indian Affairs.

In virtually each and every one of those forums and many others we have found overwhelming support for the need to amend the American Indian Religious Freedom Act to protect our sacrament, our churches and our way of life.

In addition, we have held briefing sessions with the Department of Justice, the Drug Enforcement Administration and the Texas Department of Public Safety. We consider those entities friends of our Native American Church and look forward to working with them in resolving this crisis in fundamental human rights.

Interest in and sympathy for our current debilitating and unnecessary plight has spread beyond our nation's shores. I have personally appeared on German national television, and been interviewed in three French magazines as well as a newsletter circulated throughout South America serving the Indigenous peoples of those lands.

Every major Native American Church organization in the country has officially joined the American Indian Religious Freedom Coalition for the purpose of supporting comprehensive amendments to AIRFA as proposed by the Coalition. Those groups include the Native American Church of North America, the Native American Church of Navajoland, the Native American Church of Oklahoma and the Native American Church of South Dakota. In addition to those multi-chapter organizations, independent NAC organizations such as Crow Indian Peyote Ceremonies and the Native American Church of Wyoming have also joined the Coalition.

The degree of support for comprehensive federal legislation to protect and preserve the Native American Church is truly remarkable. Nearly every single chapter of the NAC is in support of the specific language which appears as Title II of proposed AIRFA amendments that have been circulated by the AIRFA Coalition and by Senator Inouye's office. I have attached a copy of that text to this testimony.

As with any religious tradition, there are a few NAC chapters who would prefer a different approach to the language of the bill, but I think it is safe to say that virtually every NAC group supports the need for remedial legislation in light of the Smith decision.

This problem, which the Native American Church did not create, is immediate and critical. Our elders and our children are looking

to the legislative branch of the federal government to undo the damage done by the judicial branch. We call upon you with a strong and clear voice to find the time to understand and the courage to do the right thing. Then we can all walk in a dignified manner.

We will pray for you.

Respectfully Submitted on this 16th day of March, 1993.

BY:

REUBEN A. SNAKE, JR., Coordinator
NATIVE AMERICAN RELIGIOUS
FREEDOM PROJECT

PROPOSED AMENDMENT
TO THE
AMERICAN INDIAN RELIGIOUS FREEDOM ACT
REGARDING
THE TRADITIONAL USE OF PEYOTE

"TITLE II - TRADITIONAL USE OF PEYOTE

"SEC. 201. FINDING.

"The Congress finds that -

"(1) some Indian people have used the peyote cactus in various ceremonies for sacramental and healing purposes consistently for many generations, and such uses have been significant in perpetuating Indian tribes and cultures in that such ceremonies promote and strengthen the unique cultural cohesiveness of Indian tribes;

"(2) since 1965, this ceremonial use of peyote by Indians has been protected by Federal regulation, which exempts such use from Federal laws governing controlled substances, and the Drug Enforcement Administration has manifested its continuing support of this Federal regulatory system;

"(3) the State of Texas encompasses virtually the sole area in the United States in which peyote grows, and for many years has administered an effective regulatory system which limits the distribution of peyote to Indians for ceremonial purposes;

"(4) while numerous States have enacted a variety of laws which protect the ceremonial use of peyote by Indians, many others have not, and this lack of uniformity has created hardships for Indian people who participate in such ceremonies;

"(5) the traditional ceremonial use by Indians of the peyote cactus is integral to a way of life that plays a significant role in combating the scourge of alcohol and drug abuse among some Indian people;

"(6) the United States has a unique and special historic trust responsibility for the protection and preservation of Indian tribes and cultures, and the duty to protect the continuing cultural cohesiveness and integrity of Indian tribes and cultures;

"(7) it is the duty of the United States to protect and preserve tribal values and standards through its special historic trust responsibility to Indian tribes and cultures;

"(8) existing Federal and State laws, regulations and judicial decisions are inadequate to fully protect the ongoing traditional uses of the peyote cactus in Indian ceremonies;

"(9) general prohibitions against the abusive use of peyote, without an exception for the bona fide religious use of peyote by Indians, lead to discrimination against Indians by reason of their religious beliefs and practices; and

"(10) as applied to the traditional use of peyote for religious purposes by Indians, otherwise neutral laws and regulations may serve to stigmatize and marginalize Indian tribes and cultures and increase the risk that they will be exposed to discriminatory treatment.

"SEC. 202. TRADITIONAL USE OF PEYOTE.

"(a) Notwithstanding any other provision of law, the use, possession or transportation by an Indian of peyote for bona fide ceremonial purposes in connection with the practice of a Native American religion by an Indian is lawful and shall not be prohibited by the Federal Government or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.

"(b) Nothing in this section shall prohibit such reasonable regulation and registration of those persons who import, cultivate, harvest or distribute peyote as may be consistent with the purpose of this title.

WRITTEN TESTIMONY OF
ED RED EAGLE, JR.
VICE-PRESIDENT
NATIVE AMERICAN CHURCH OF OKLAHOMA

PRESENTED TO
HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
CONGRESSMAN BILL RICHARDSON, CHAIRMAN

CONCERNING
AMERICAN INDIAN RELIGIOUS FREEDOM ACT AMENDMENTS:
THE TRADITIONAL USE OF PEYOTE

PRESENTED IN CONJUNCTION WITH
A HEARING HELD IN
WASHINGTON, D.C.
ON
MARCH 16, 1993

STATEMENT

Congressman Richardson, members of the Subcommittee, thank you for this opportunity to submit testimony on a most important matter. My name is Ed Red Eagle, Jr., and I reside at Route 1, Box 1419, Barnsdall, Oklahoma. I am a member of the Osage Tribe, and I am the Vice-President of the Native American Church of Oklahoma.

The Native American Church of Oklahoma supports the draft amendments to AIRFA regarding the traditional use of peyote as they have been proposed by the AIRFA Coalition on the Senate side in conjunction with Senator Inouye. There are seventeen chapters of the NAC of Oklahoma, made up of members of 21 Oklahoma tribes. There are perhaps 3,500 Indians in our state affiliated with our church.

At the 1992 Annual Meeting of the NAC of Oklahoma, eleven of those seventeen chapters were represented. All those in attendance voted unanimously to endorse this proposed legislation in a form consistent with the substance and definitions of the bill that has been circulated in draft form. The NAC of Oklahoma has also formally joined the broad-based Coalition that is advocating for passage of this bill.

As an officer of the Native American Church of Oklahoma, however, I must tell you that not all of our chapters support the language of the draft bill. There are a few chapters of our church who would prefer an approach whereby the definition of "Indian" is linked to a 25% Indian blood quantum rather than to tribal membership. However the majority of our church favors a definition

linked to tribal membership. As with any other religious group, not all the members agree on everything.

There will be testimony submitted for the written record of these Hearings as to the long and rich history of this Native American Church way of life in Oklahoma and elsewhere; as well as testimony of the long and ugly history of oppression this church has faced at times in Oklahoma and elsewhere since the last century. I am attaching for the record a research article written by Virgil Franklin which serves that purpose.

But today I would like to take these few minutes to describe some of the present day problems we are facing related to what the Supreme court did to us in the Smith case of 1990.

1. The legal protection for our sacrament in Oklahoma is not found in a statute. It was assumed to be in the First Amendment, and that was affirmed by the Oklahoma courts in Whitehorn v. Oklahoma in 1977, which found specifically that this way of worship was protected by the Free Exercise Clause. However, since the Smith decision in 1990, no one knows the state of the law in Oklahoma. This has created tremendous confusion and hardship in our state as evidenced by the following examples:

2. In 1991, because of Smith, an attempt was made to get a law passed in the Oklahoma legislature to protect our sacrament. But because of the fear and misunderstanding created by Smith there was no agreement on what that law should or could now say. The result was that no law was passed.

3. Also in 1991, an older life-long member of the NAC in Oklahoma was arrested on a state felony charge for his use of peyote in the Native American Church. After many months, considerable expense and lengthy pre-trial negotiations, the case was ultimately dismissed. But that experience caused a great deal of anxiety for that church member who could have been sent to prison for ten years simply for exercising the religion of his life. And it also caused a great deal of anxiety for the many members of the NAC throughout the state. We do not know who might be arrested next by local, county or state officials.

4. As another example of the immediate need for this uniform national law, as recently as January of 1993, a member of the Shawnee Tribe of Oklahoma who, along with his family, is also a member of our church enlisted in the Navy. His family has a history of serving in the armed services. During his processing at a Naval base in Florida, he was asked routine background questions. When he informed the processing officers of his membership in the Native American Church, he was summarily kicked out and sent home.

5. Finally, because of our geographical location many NAC chapter representatives from other states pass through Oklahoma when making a religious pilgrimage to the Peyote Gardens in Texas. Given the problems I've described, they may not feel free to travel through our state... they might be charged with a state felony while simply and humbly engaging in a religious practice taught to them by their parents and grandparents. These are good devout people sent by their local church chapters to Texas to lawfully

purchase the peyote sacrament, just as they have done for many years. Many of these people are elders, are leaders in their tribal communities. They may have their children or their grandchildren with them. What are they to do when they come to the border of Oklahoma, or any other state that may either inadvertently or intentionally consider them criminals?

CONCLUSION

Congressman, these problems are real and immediate. We cannot go on in a dignified manner subjected to such treatment. How can we be expected to live like this in America?

So this is a national problem for Indian people, and it is a human rights crisis in a country that prides itself on religious freedom. On behalf of the Native American Church of Oklahoma, I urge you to do everything you can to move these AIRFA amendments through Congress with all deliberate speed. Thank you for this opportunity to address your Committee.

Respectfully submitted this 16th day of March, 1993.

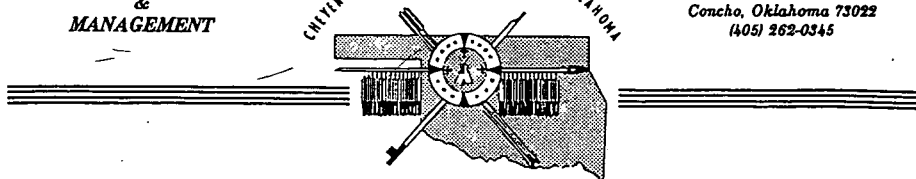
BY:

ED RED EAGLE, JR., Vice-President
NATIVE AMERICAN CHURCH OF OKLAHOMA

ADMINISTRATION
&
MANAGEMENT

CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA

P.O. Box 38
Concho, Oklahoma 73022
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PEYOTE

AN OVERVIEW OF THE NATIVE AMERICAN CHURCH FROM ITS INCEPTION TO THE PRESENT DATE WITH DEVELOPMENT OF A NATIONAL INDIAN LEGISLATIVE AGENDA FOR THE 102ND CONGRESS OF THE UNITED STATES AND THE 1990s

PRESENTED BY: VIRGIL FRANKLIN, *ARAPAHO CHIEF*
NATIVE AMERICAN CHURCH OF OKLAHOMA

TO: *Oklahoma Tribal Leaders Forum*, Conducted by Senator Daniel K. Inouye, Hawaii, Chairman, and Senator Don Nickels, Oklahoma, Select Committee on Indian Affairs, United States Senate

DATE: March 9, 1991

The Peyote Religion is probably the oldest religion on the North American continent. Its ancient roots are lost in time. The Witte Museum of San Antonio, Texas, possesses Peyote specimens recovered from the Shumla cave, overlooking the Rio Grande River, five miles north of the Pecos River confluence. These Peyote specimens were recovered in a hunter-gatherer Indian archeological context, and were carbon-14 dated to the date of 5,000 B.C. The evidence suggests that Native American people have continuously used Peyote for over 10,000 years, from the era of late Pleistocene Paleo-Indian hunters of mammoth, mastodon, giant bison, and other now long extinct animals, to the present day.

The use of the Peyote cactus for religious purposes was occurring on this continent before Columbus was born. The Spanish Conquerors of the 16th Century chronicled Indians using various plants including what was described as the curious tasting Peyote. The name Peyote is derived from the Aztec language.

The Spanish Conquistadors issued an edict in 1620 forbidding the Indians from using Peyote as it was considered "pagan" and "opposed to the purity and integrity of our Holy Catholic Faith". At that time, many Taos Pueblo Indians were publicly flogged for the use of Peyote. The Pueblo Indians undoubtedly shared Peyote with the Navajo Indians.

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The traditional range of the Plains Indians extended south into the area of the Rio Grande where the Peyote cactus naturally occurs. The Plains Indian culture adopted the religious use of Peyote from southern Indian cultures that they traded with. The location of the Southern Plains Indians in Oklahoma in the latter part of the 19th century further disbursed the religious use of Peyote among the many tribes removed to and concentrated in Oklahoma. From Oklahoma, the Peyote religion extended north throughout the Rocky Mountains and northern plains and into Canada.

In the early 20th century, the Peyote religion was well established among all of the Oklahoma Indians, with the exception of a few southeast tribes. Today, Peyote has become a unifying influence in Indian life. It provides the basis for prayer services, friendships, relationships, social gatherings, travel, marriage, and much more. It is a source of comfort, inspiration and healing and of means of expression for the Indian people. Peyote has brought together all of the Indian tribes and has produced the strongest Pan-Indian movement in the United States. Through Peyote, Indians have been able to find some answers to their condition in white America and to do so in their own traditional way, at their own pace, on their own ground. Activities of the Native American Church have also assisted non-Indian people spiritually and given them sanctuary from drugs and alcohol and increased the success and productivity of their lives.

Peyote has sometimes been an object of controversy. The prohibition era raised concern among the Indians that their Holy Sacrament Peyote would be prohibited. In fact, anti-Peyote activity had been occurring by federal Indian agents.

James Mooney, an ethnologist with the Smithsonian Institution's Bureau of American Ethnology, had spent many years with the Kiowa tribe. He was sent among the Kiowas by the Smithsonian to study their interesting and colorful pictorial calendar and Peyote ritual. James Mooney was honored to participate in their religious ceremony involving the use of Peyote. James Mooney recognized that the ceremony was an ancient religion deserving of official sanction and entitled to legislative and Constitutional protection. Various Indian tribes with the assistance of James Mooney first formally chartered the Native American Church in Oklahoma in 1918. Mooney drafted the Articles of Incorporation that were signed by the Chiefs of various tribes and filed with the Oklahoma Secretary of State.

The Native American Church is a Christian religion. The Indians accepted the Bible and the teachings of Christ. This transition was easier than one might assume for the Indians. Indian people are very spiritual and are traditionally mono-theistic. Indians believed in one Creator that was the mother/father of all creation. They readily accepted and revered the Creator's son, Jesus Christ. Indian people have used prayer for several

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thousand years. Indians knew how to humbly and earnestly pray and communicate with the great spirit long before the "discovery" of America. The Christian religion involves prayer. It was easy for Indian people to accept the Christian tradition of prayer since it had always been a part of their religion and daily lives.

Since its "official" beginning in 1918, the Native American Church membership has grown to an estimated 250,000, to perhaps as many as 400,000, members. Precise numbers are impossible to determine, in that membership roles are not maintained by many state chapters. The Native American Church is not a monolith. Like the European Christian faith that experienced schisms from the Roman Catholic, Greek Orthodox, Anglican and various Protestant faiths, the Native American Church has divided into various official organizations. Although, the dynamic of schism sometimes produces conflict and rivalry, it is a positive growth process of religious institutions.

The Native American Church of Oklahoma is the original Native American Church and one of the primary Native American Churches existant today. There are many other independent state and local Native American Church organizations.

The Native American Church has generally enjoyed legal sanction and Constitutional status in the various Indian states in which its membership primarily resides. In 1945 the Bureau of Indian Affairs recognized the Native American Church. In 1954 Peyote was legalized in South Dakota for religious use. In 1957 Montana removed a 34 year Peyote ban. In 1957 the first official importation of Peyote was made into Canada; in 1989 Canada fully legalized Peyote. In 1959 Peyote was legalized by the New Mexico state legislature for religious use. Peyote is legalized for religious adherents and members of the Native American Church in the state of Oklahoma, Colorado, Wyoming, Nevada, Texas and various other states.

In 1960, the Mary Attikai case was decided in Arizona. The state judge ruled that Ms. Attikai, a Navajo, had a First Amendment Constitutional right to use Peyote. The Native American Church assisted Ms. Attikai in this case. Shortly thereafter, several Navajo railroad workers were charged in California with illegal possession of Peyote when a Native American Church prayer service was raided. In 1964, in the case of People vs. Woody, the California Supreme Court in an eloquently worded opinion held that the railroad workers, who were members of the Native American Church, had a First Amendment constitutional right to use Peyote and declared:

"In a mass society, which presses at every point toward conformity, the protection of a self-expression, however unique,

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of the individual and the group becomes ever more important. The varying currents of the subcultures that flow into the mainstream of our national life give it depth and beauty. We preserve a greater value than an ancient tradition when we protect the rights of the Indians who honestly practiced an old religion in using Peyote one night at a meeting."

In the Woody case, the California Supreme Court relied on the "compelling governmental interest" doctrine that had been announced in 1963 by the United States Supreme Court in the case of Sherbert vs. Verner. In the compelling interest test, the state or Government was required to show that in overruling a bona fide invocation of the First Amendment free exercise of religion clause that the practice posed a serious threat to a governmental function. The interest that the state or government sought to protect by the religious restriction had to outweigh the interference with the religious practice of the individual or group that was being restricted from their religious practice.

In 1965, The Drug Abuse Control Amendments to be administered by the United States Department of Health, Education, and Welfare, through the Food and Drug Administration, added Peyote to the list of controlled drugs. The commissioner of the Food and Drug Administration informed the Native American Church "that on the basis of the evidence you have submitted, we recognize that Peyote has a non-drug use in bona fide religious ceremonies of the Native American Church. It is not our purpose to bring regulatory action based on the shipment, possession, or use of Peyote in connection with such ceremonies."

The evidence submitted by the Native American Church concerning Peyote was impressive. Anthropologists, Weston La Barre, Ph.D. of Duke University, David McAllester, Ph.D. of Wesleyan University, J. S. Slotkin, Ph.D. of the University of Chicago, Omer Stewart, Ph.D. of the University of Colorado and Sol Tax, Ph.D. of the University of Chicago jointly authored a "Statement on Peyote" printed in Science concluding "[T]he Native American Church of the United States is a legitimate religious organization deserving of the same right to religious freedom as other churches; also, that Peyote is used sacramentally in a manner corresponding to the bread and wine of white Christians."

The late Karl A. Menninger, M.D., who passed away in July of 1990, at age 96 and who founded the world's first psychoanalytic hospital, the Menninger Clinic, and the world famous Menninger Foundation in Topeka, Kansas, for psychiatric treatment, education and research was an ardent supporter of the Native American Church. Dr. Menninger was once hailed by the American Psychiatric Association as the nation's greatest living psychiatrist. Dr. Menninger supported the Native American Church by writing regarding Peyote, "We have taken so many things from the Indians that we should not also take away this ancient boon."

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M. H. Seever, Ph.D. of the University of Michigan, Department of Pharmacology, testified for the Native American Church in an Arizona case. Dr. Seever did extensive research regarding Peyote. Dr. Seever authored a report for the Native American Church that stated:

"We have done a considerable amount of work in the animal area with respect to Peyote, both in the dog and the monkey and find that we cannot create a problem of addiction like one is able to do with alcohol and drugs which are ordinarily considered to be in this class of substances. This is also the case at the Federal Narcotic Farm at Lexington where no cases of addiction to Peyote have ever been found. We actually tested mescaline, the active principal of Peyote, in addicts at the United States Public Health Service hospital at Lexington and found that they neither like the drug nor were interested in using it as a substitute for morphine or drugs of known addicting properties."

A. Hoffer, Ph.D., M.D. the Director of Psychiatric Research of the University Hospital in the Province of Saskatchewan, Canada attended a Native American Church prayer service in 1956, along with several colleagues, including his Superintendent, Humphry Osmond, M.D. Dr. Osmond later became Director of the Bureau of Research in Neurology and Psychiatry for the State of New Jersey at the New Jersey Neuro-Psychiatric Institute in Princeton. In 1962 while Director of the Institute, Dr. Osmond wrote the President of the Native American Church reflecting on the Peyote prayer service that he had attended with Dr. Hoffer 12 years earlier and stated, "It remains one of the most vivid and remarkable experiences of my life."

In 1966, John Finlator, the Director of the Bureau of Drug Abuse Control of the Food and Drug Administration that had jurisdiction of the Drug Abuse Control Amendments in addressing an annual convention of the Native American Church stated:

"When the Congress passed the Drug Abuse Control Amendments in 1965 to take effect last February 1, we felt strongly about not interfering in your use of peyote so much that we specifically designated the members of your church as legal purchasers of peyote in the regulations. The history of the

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use of peyote or peyote-like substances as sacraments is as old as written history. In studying the literature of this history I found myself referred back from one age to another to its beginning; as far as I can tell, the beginning lies in its use by the ancient Persians. Their Bible, called the Zend-Avesta, contains many references to medicinal plant "Haoma." It should be significant to you that the Three Wise Men of the east who came bearing gifts to the Christ Child in Bethlehem were Persians of the Avesta religion. The Zend-Avesta, the loftiest thoughts ever uttered by man, was the basis of religion three thousand years ago comparable, in many ways, to the beliefs and practices recognized by your more than 300,000 members.

We know, also, that Peyote to your church is the material representation of a spirit-force, much as the consecrated wafer or unleavened bread and wine are believed to be the blood and body of Christ in other churches. It is mentioned as "Teo-Nacatl" or "God Flesh" in the fragmentary writings of the ancient Aztecs among whom it was used since time immemorial both as a medicine and as a sacrament. As the ancient Persians founded a great religion, so did the ancient Aztecs. Their's today represents not only one of the oldest religious groups in America, but one of the most devout, the Native American Church."

In 1967, the State of Texas passed legislation prohibiting the possession of Peyote. In 1968, Judge Kazen of Laredo, Webb County, Texas, declared the Texas legislation unconstitutional based on the First Amendment, religious freedom clause of the United States Constitution. Immediately thereafter, in 1969 the Texas State Legislature passed an exemption for the Native American Church that continues in effect today.

Texas is the only state which possesses an abundance of Peyote. The natural habitat of the spineless Peyote cactus extends approximately 30 miles east of Laredo, Texas, and then south to the Rio Grande River located near the city of Rio Grande City, Texas. A large abundance of Peyote exists in northern Mexico. Members of the Native American Church traditionally harvest or purchase Peyote from licensed Peyote dealers in south Texas.

The Texas Department of Public Safety and the Justice Department license Peyote dealers that may lawfully sell Peyote to members of the Native American Church who have appropriate certificates of membership and have permits to possess, harvest, purchase and transport Peyote issued by Native American Church custodians from Churches that are

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enrolled with the Texas Department of Public Safety. The Texas Department of Public Safety has promulgated regulations that regulate the harvesting, possession, purchasing, and transportation of Peyote in Texas. Texas D.P.S. has always enjoyed a good working relationship with the various Native American Churches. According to representatives of Texas D.P.S. the administration of Peyote practices and regulations with the Native American Church have been "problem free".

In 1968, U.S. President Johnson signed the 1968 Civil Rights Bill which contained 6 Titles granting rights to American Indians which were secured to all other Americans except the Indians. The Act extended the Bill of Rights to the reservation and provided, "No Indian tribe in exercising powers of self-government shall (1) make or enforce any law prohibiting the free exercise of religion. . . ." Senator Sam Ervin, of North Carolina sitting on the Senate Committee on the Judiciary and Chairman of the Subcommittee on Constitutional Rights requested various members of the Native American Church to testify before the Subcommittee regarding their need for First Amendment Constitutional protection regarding the religious use of Peyote. One important, specific reason why the 1968 Civil Rights Act was passed was to extend protection to the Native American Church. The Native American Church archives possesses correspondence from Senator Ervin establishing this fact.

In 1970, Congress passed the Controlled Substances Act of 1970 which prohibits the possession and distribution without prescription of a number of substances including Peyote. Peyote is classified as a Schedule 1 controlled substance. During hearing before the Subcommittee on Public Health and Welfare of the House of Representatives, 91st Cong. 2nd Sess. 117-118 (1970), Congressman Satterfield inquired regarding the Peyote exemption as follows:

"I have one other question. I recall when we were discussing dangerous drugs a few years ago, the question came up about the Native American Church involving Indians in the west who use and have for centuries used Peyote in connection with religious services. It is my understanding that they enjoy an exemption under the current law. My question is whether in any of the bills we have before us, if passed, would in any way affect this present exemption?"

The Director of the Bureau of Narcotics and Dangerous Drugs, Mr. Sonnenreich, replied:

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"In the first instance, Mr. Satterfield, the Native American Church did ask us by letter as to whether or not the regulation, exempting them by regulation, would be continued and we assured them that it would because of the history of the church.

.....
 We consider the Native American Church to be *sui generis*. The history and tradition of the church is such that there is no question but that they regard Peyote as a deity as it were, and we'll continue the exemption. [Note by author: *sui generis* is defined by Black's Law Dictionary as a Latin term meaning, "Of its own kind or class; i.e., the only one of its kind; peculiar."

Congressman Satterfield then inquired:

"You do not see anything in the Senate bill that would make this impossible?"

B.N.D.D. Director Sonnenreich responded:

"No. Under the existing law originally the Congress was going to write in a specific exemption but it was then decided that it would be handled by regulation and we intend to do it the same way under this law."

Congressman Satterfield:

"Thank you. I have no other questions."

Pursuant to the assurance delivered to Congress by drug enforcement authorities the Native American Church was given an exemption pursuant to regulations prorogated by the B.N.D.D. The exemption continues today and is found at 21 C.F.R § 1307.31 (1984) and reads:

The listing of Peyote as a controlled substance in Schedule 1 does not apply to the nondrug use of Peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using Peyote are exempt from registration. Any person who manufactures Peyote for or distributes Peyote to the Native American

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Church, however, is required to obtain registration annually and to comply with all other requirements of law.

In 1978, Congress passed the American Indian Religious Freedom Act, public law 95-341. The American Indian Religious Freedom Act is found at 42 U.S.C. § 1996. The Act is as follows:

Protection and preservation of traditional religious of Native Americans

On and After August 11, 1978, it shall be the policy of the United States to protect for American Indians their inherent right of freedom to believe, express, and exercise the traditional religious 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.

Although this statute expressly contains an important guarantee of religious freedom for American Indians it has not yet been interpreted to provide protection for the Native American Church and its sacrament, Peyote. By clear and reasonable interpretation this statute should provide protection for the Native American Church.

In order to make the matter absolutely beyond dispute the American Indian Religious Freedom Act should be amended to specifically include the Native American Church's sacramental use of Peyote.

The United States Department of the Interior has a long standing practice of supporting the Native American Church. In May of 1944, the Commissioner of Indian Affairs, of the Department of the Interior advised and encouraged the desirability of the Native American Church formally organizing a national Native American Church organization.

Secretary of the Interior, Stewart Udall, in February of 1966, wrote John Gardner, Secretary of Health, Education, and Welfare, and urged providing exemptions for the Native American Church under the 1965 Drug Abuse Control Amendments, "[W]hich is recognized by the Bureau of Indian Affairs as a bona fide religious organization."

Continued present day support of the Native American Church from the Department of the Interior is needed. In April of 1990, the United State Supreme Court announced a decision in the case of Employment Division, Oregon vs. Smith involving the use of Peyote

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by two members of the Native American Church. The Supreme Court held the Free Exercise Clause of the First Amendment permits the State of Oregon, or by implication any other state or the Government, to prohibit sacramental Peyote use. The Supreme Court abandoned the "compelling governmental interest" test and held that the test is inapplicable in the context of Peyote and criminal statutes. Thus, although it is Constitutionally permissible to exempt sacramental Peyote use from the operation of drug laws, it is not constitutionally required.

The Supreme Court in the final paragraphs of the Oregon vs. Smith held that although the religious-practice exemption is permitted, and even maybe desirable; it is not a matter for the Courts. The exemption is left up to the political process, Congress and the legislatures.

The Smith case was an obscure and seemingly insignificant case arising in Oregon and involving a question regarding unemployment benefits for two individuals who had been terminated from their employment as drug abuse counselors for ingesting Peyote at a Native American Church service. The case grew out of an administrative hearing that had little, if any, evidentiary record. There were no expert witnesses; there was no scientific evidence. The case was presented by an understaffed free legal services clinic that had never presented a case to the Supreme Court. Oregon has a very small Native American Church group and traditionally has not been considered a Peyote state. The Oregon case sneaked in the Supreme Court without the knowledge, preparation or support of the mainstream Native American Church groups. Caught off guard and unprepared and fearing a negative decision as a result, the Native American Church of North America unsuccessfully attempted to persuade Al Smith to dismiss the appeal.

The Native American Church is a poor church. It owns no property. Native American people are disadvantaged people. Their unemployment rate, infant mortality rate, suicide rate, and poverty rate is substantially higher than that of the average American. Never-the-less, the Native American Church could have presented a much better coordinated and historically and scientifically documented case if the litigation had arisen in a different set of circumstances. Much of the information presented in this report was not contained in the record of the Smith case before the Supreme Court.

At its official inception, the Native American Church was founded upon the premiss that this ancient Indian religion was protected by the Free Exercise Clause of the First Amendment of the United States Constitution. Various legal precedents, some referred to in this paper, have consistently held that the Native American Church enjoyed First Amendment protection. Legislation has been passed based upon the underlying assumption

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that religious freedom protection was Constitutionally required for the Native American Church.

The Supreme Court case casts a shadow on the legal status of the Native American Church. Concern exists that a Drug Enforcement Administration official could with a pen stroke nullify the existing Native American Church Exemption at 21 C.F.R. § 1307.31. Congress did not include a Peyote exemption for the Native American Church in the drug statute based on expressed representations by the BNDD, predecessor of the DEA, that the drug enforcement authorities would provide for the exemption by regulation. Legislation is vitally needed by Congress to amend the Control Substance Act to specifically include the present C.F.R. exemption in the actual statute. The Native American Church cannot reasonably rely on a regulation; the Native American Church needs a specific statutory exemption for the sacramental use of Peyote.

The shadow occasioned by the abandoning of the compelling interest test by the Supreme Court is of concern to all churches. Oliver S. Thomas, General Counsel for the Baptist Joint Committee observed in June 1990, immediately after the Smith case that the "Church leaders and their attorneys dropped their jaws in disbelief as Supreme Court Justice Antonin Scalia, with a stroke of his pen, transformed the nation's 'first liberty' into a Constitutional stepchild." Thomas predicted that "mainstream" religions would be impacted by the decision which he characterized the decision as "a dangerous one that has serious implications for all laws affecting churches."

Indeed, two days after the Smith case, the case was cited by the Supreme Court as the rationale for vacating an order of the Minnesota Supreme Court upholding the rights of the Amish to adorn their buggies with silver reflector tape rather than the orange signs the state had sought to force upon them. In November of 1990, in response to the Smith case a U.S. District Court in Rhode Island reversed an earlier decision holding that the state of Rhode Island had no "compelling reason" to perform an autopsy on the son of a Laotian couple. After Smith the Rhode Island Court "with deep regret" was forced to hold that the free exercise clause did not protect the right of members of the Hmong faith to be free from autopsies that violated their deeply held religious beliefs. The same result was reached in U.S. District Court in Michigan regarding a Jewish woman after the state performed an autopsy on her son without her consent.

Practices accommodated for years without problems are no longer safe. The Occupational Safety and Health Administration on the basis of Smith canceled an exemption from wearing hard hats dating back for many years, that had been granted to Old Amish and Sikhs.

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In the words of Justice Sandra O'Connor, "[T]he First Amendment was enacted precisely to protect the rights of those whose religious practices are not shared by the majority and may be viewed with hostility." In response to the Smith case, last summer and fall, groups of Congressmen and Senators led by Representative Steven Solarz, D-N.Y. introduced the Religious Restoration Act in congress. The proposed statute reinstates the "compelling interest" test for free-exercise claims against a Federal, State, or local authority; it does not dictate the outcome of any particular claim. Congress lacked sufficient time to consider the Religious Freedom Restoration Act before the 101st Congress adjourned. The bill enjoyed broad support and will be reintroduced with more than 100 sponsors in 1991. By once again requiring Government to justify restrictions it places on religious practices, the Religious Freedom Restoration Act would return the law to where it stood for nearly 30 years.

If given the benefit of balancing the "compelling governmental interest" against the enforcement of Peyote restrictions against the Native American Church, the religious historical background, scientific evidence and practices of the Native American Church should tilt the balance substantially in favor of the Church. Indeed, the California Supreme Court in the Woody Case regarded, "the moral standards of members of the Native American Church as higher than those of Indians outside the Church."

All Indian people call on their Congressman and Senators and the United States Department of the Interior to support the Religious Freedom Restoration Act on behalf of the oldest religion existing on the North American continent, the Native American Church.

Although the proposed Religious Freedom Restoration Act is helpful and its passage is supported by the Native American Church, the Act does not go far enough. The Native American Church needs a specific statutory exemption for the sacrament Peyote.

In order to provide the Native American Church with the specific statutory protection that it needs to protect its sacrament, Peyote, three (3) alternatives are possible:

- 1.) The Religious Freedom Restoration Act should be redrafted to dictate the outcome of the Peyote exemption for the Native American Church after Congressional hearings where historical, religious, sociological and scientific evidence can be presented to demonstrate to Congress that the continuation of the Native American Church exemption is desirable and important.

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- 2.) The Native American Religious Freedom Act can be amended to specifically incorporate the existing C.F.R. exemption after appropriate hearings.
- 3.) The Controlled Substance Act, Title 21 § 841 can be amended to specifically incorporate the existing C.F.R. exemption after appropriate hearings.

Mililani B. Trask, Kia'aina
 Ka Lahui Hawai'i
 152 B Koula Street
 Hilo, HI 96720

February 3, 1993

To: Representative Bill Richardson
 Chair, Sub-Committee Native American Affairs
 1522 Longworth Bldg.
 Washington, D.C. 20515

TESTIMONY OF KA LAHUI HAWAII REGARDING
 THE JOINT RESOLUTION AMERICAN
 INDIAN RELIGIOUS FREEDOM ACT (AIRFA) OF 1993

Aloha Members of the House of Representatives:

This testimony is submitted in behalf of the 16,000 enrolled citizens of Ka Lahui Hawaii, a native Hawaiian initiative for self-governance. Several of our citizens have been arrested engaging in religious practice or acts of civil disobedience undertaken to protect traditional religious sites. In light of the Lyng case and the subsequent ruling of the U.S. Supreme Court in the Smith case, there has been a substantial erosion of native rights to worship, protected by the First Amendment of the U.S. Constitution. Consequently, we welcome and support the proposed amendments to AIRFA with the following additions and changes.

New language proposed:

1. Title I, Section 101 (6) - line 21 - The term:

Indians" should be deleted and the term "Native Americans" should be used.

Justification: The provision refers to the fact that many religious sites were part of the original territory of Indians but are now held by the U.S. This is also true of the aboriginal lands of Hawaiian people. The substitution of the term "Native American" for "Indian" makes the provision applicable to Hawaiians.

2. Title I, Section 102 - Notice:

A new section (b) should be added which states.....

"(b) The government agency involved shall also publish notice of the proposed undertaking in a newspaper of general circulation for four consecutive weeks."

Justification: The Federal Agency involved may not know who to contact and may not know whether any Native Hawaiian organization (ohana) may consider a site to have religious importance. In order to maximize the opportunity for interested parties to be informed in a timely manner, notice should be published.

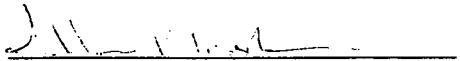
3. Title I - Protection of Sacred Sites:

The bill as drafted anticipates that the Federal agency will know that sites will be impacted before it begins its undertaking. This may not be the case. If a Federal agency commences and undertaking and later sites are discovered, the activity should be halted until proper notice is sent and consultation (Section 102 & 103) occurs.

A new section needs to be added to Title I to cover this situation.

With these added changes we believe the AIRFA Amendments will provide adequate protection for native rights to worship and the protection of native sacred sites.

Sincerely,



MILILANI B. TRASK
KIA'AINA, KA LAHUI HAWAII

cc: Island Po'o
Executive
Ali'i Nui
Denise

**UNITED STATES HOUSE COMMITTEE
ON NATURAL RESOURCES**

THE NATIVE AFFAIRS SUB-COMMITTEE

**WRITTEN TESTIMONY OF
DAVID S. CLARK
ON
TRADITIONAL USE OF PEYOTE IN
NATIVE AMERICAN CHURCH**

**SUPPORTING THE
PROPOSED AMENDMENTS TO
AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1987**

Mr. Chairman and Members of the Committee, my name is David Clark and I am from Teesto, Arizona, on the Navajo Reservation. My father has been a well known peyote practitioner for about forty (40) years in our area. I, myself, am a Native American Church practitioner as was my father.

I am pleased to have this opportunity to submit my testimony to you on the proposed amendments to the American Indian Religious Freedom Act of 1978.

I would like to begin by giving you a brief explanation of the Native American Church and our use of peyote. Peyote is the central part of our Native American Church religion. Without peyote, we would not have a complete and genuine Native American religious church ceremony.

In some situations, the Native American Church ceremony combines certain elements of Christianity with traditional Native American beliefs. Although the religious use of peyote has existed among our people long before Columbus came to this country, the Native American Church was formally established in Oklahoma in 1918. James Mooney, an ethnologist with Smithsonian Institution's Bureau of American Ethnology spent many years with the Plains Tribes in Oklahoma and eventually assisted the Indians in filing for a charter with the Oklahoma Secretary of State. At that time, the leaders of the Native American Church believed that by creating a formal church-like structure, they would be entitled to greater protection in the exercise of their religion.

Unlike traditional Christian religion, which have sacramental symbols like bread and wine, peyote is more than a sacrament to those of us in the Native American Church.

Peyote as it is consumed in a religious church meeting is regarded as the most sacred and divine spiritual power. It is a guide and gives direction comparable to the Holy Bible. The spiritual powers of peyote heals and produces the right and true psychological state of mind. Peyote brings out the truth in a person and guides one to

distinguish between right and wrong in human behavior. It establishes the mental, spiritual and psychological balance of a human life to harmonize with nature.

We know that under the influence, the human conscience is awoken to the highest level to understand nature as it actually is. It re-enforces the ability of human mind to spiritually get in tune with mother nature and universe as it is the bases for all life form.

Peyote provides and instills in a human life that one sees one self as a child and becomes humble to God the Great Spirit. That everything that grows is a living life in various forms, that there is a purpose in every life and there is order in the spiritual life of which we are a part of.

Our traditional Navajo medicine man have informed us, and we know that in the beginning of time, the Great Spirit made various plants and herbs. Earthly plants and herbs are used in very special ways in our traditional religious ceremonies. These particular herbs consumed by patients especially in "the Life Way" ceremonies are stronger than peyote. Each herb used has a spiritual and sacred name, hence herbs may not be used openly by anyone and their names cannot be mentioned just anytime. Offerings of either corn pollen or sacred stones are given for their spiritual power and blessing by bonafide medicine man. Consequently, peyote can only be harvested through a religious pilgrimage to Texas where peyote grows. When one decides to harvest and procure peyote, one does not leave without any religious ceremonies. It is most sacred to travel to peyote garden and where peyote sacrament grows, the land is considered sacred and highly respected.

At the garden, before harvesting peyote, one must make an offering of mountain tobacco, corn pollen, or sacred stones, to the Mother Earth in thanksgiving and spiritual blessing of the sacrament peyote.

The studies of scientific facts has long been established by well known doctors from various schools of thought; the historians and anthropologists, including Western LaBarre, Ph.D., David McAllester, Ph.D., J.S. Slokin, Ph.D., Omer C. Stewart, Ph.D., Sol Tax, Ph.D., David F. Aberle, Ph.D., and Jay C. Fikes, Ph.D., have concluded that the use of peyote by American Indians in their religious ceremonies predates the written history of this country. The use of peyote in the religious practices of Native American Church is a legitimate religion and should not be harmed and be denied to the Native Americans.

In their studies and research of the well known psychiatrists; Karl A. Menninger, M.D., Abe Hoffer, M.D., Robert L. Bergman, M.D., and Bernard C. Gorton, M.D., have determined that human consumption of peyote will not have any detrimental affect mentally or physically. They have concluded that there is a great deal of positive benefits the American Indians do receive from this ancient medicine. The findings are that self respect, self reliance, obedience and sobriety is received and the enjoyment of life is truly obtained from the use of peyote in their religious practices.

Dr. Maurice H. Seevers (1958) who is one of the leading pharmacologists in this country has done an extensive studies research and analysis and has concluded that the consumption of peyote by an individual was safe. The peyote is not habit forming and certainly not a narcotic. His laboratory experiments proved that peyote was harmless and the use of alcohol was more addicting and dangerous to the health than the latter.

The Native American Indian elderlies, our forefathers, our ancestors, and long time members of Native American Church, have testified that they have witnessed that peyote does possess a unique spiritual healing power. We realize and do acknowledge many benefits from the use of peyote as a divine sacrament including healing the sick -- psychologically and physiologically. God is the only one that knows and he created peyote along with other herbs to be consumed by the Indian people in their religious ceremonies. Native American Indians

who use peyote know and understand that it does possess spiritual healing powers.

In this day and age, in America, we are confound by liquor and alcohol. It is commonplace for use of alcohol, a habit forming and dangerous chemical substance. Thousands of deaths are related to use of alcohol. It is the number one killer of people. Every minute in America, a life is lost because of a drunk driver, one of many incidents that are related to death by use of alcohol. Alcohol and all its negative ramifications has been protraged by the media to serve as a medical resolution.

You will note that my affiliation with the use of peyote in Native American Church is quiet extensive and my experience in some court litigation on the use of peyote does qualify me to some degree as an authority in dealing with peyote issues.

I have an attachment to my statement an Exhibit "A" about my involvement with Native American Church to demonstrate the many obstacles which we have had to overcome in our struggle for the federal government to recognize our First Amendment Rights to the free exercise of religion. As I look back over the long difficult years of this struggle, I asked myself "Why is this so". "Why are Indian people treated differently than the non-Indians?" I asked myself "Why". When the White Man says that his religion is sacred, everyone accepts that and believes him. But when an Indian says that his religion, the peyote and ceremonies are sacred, the Courts and Congress does not believe him. The Courts and Congress always want to know why the peyote is sacred. They always want to know how our religion is practiced. They want to dissect, analyze, and study our Indian religion. Now after all these years, we learned that we must again struggle to overcome obstacles which are not inflicted upon non-Indians.

The use of peyote for religious purposes are allowed on the Navajo Nation. In the State of Arizona, the state law also allows for the

use of peyote for religious purposes. Arizona revised statutes, Section 13-3402, makes it a crime for anyone to possess, sell, transfer or offer to sell or transport peyote. At the same time, that same state law allows a person to use peyote as long as it is in connection with a bona fide practice of a religious belief. While the Navajo Nation and the State of Arizona recognize our religion, most of the states in this country do not. For those of us who are members of the Native American Church, we can still be arrested and jailed in most states in this country simply for performing our religion. This is true even though the Federal Drug Enforcement Administration (DEA) itself has created a regulation which allows for the religious use of peyote. The 21 Code of Federal Regulations (CFR) Section 1307.31 says:

"The listing of peyote as a controlled substance (under federal law) does not apply to the non-drug use of peyote in a bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempted from registration."

There is a unique legal and political relationship established between the Federal Government and Native American Church members. The Drug Abuse Control Act of 1965 listed peyote as a controlled substance. This Federal exemption recognized the use of peyote as a sacrament in the Bona fide ceremonies of Native American Church (21 CFR SS1307). This cooperative relationship has been respected ensuring that peyote is lawfully harvested and distributed for Native American religious use. This important relationship is enjoyed by both and it continues to the present day.

In 1967, the State of Texas completely outlawed the use of peyote. Texas is the only state in the United States where peyote grows plentiful. On April 26, 1968, Judge Kazen of Laredo, Texas declared the Texas legislation unconstitutional based on Religious Freedom of the United States Constitution.

In 1969, the Texas legislatures enacted an exemption for Native American Church recognizing their use of peyote as a sacrament in

their religious services. Since this enactment, the Texas Department of Public Safety has incorporated in their regulations, clear provisions as to who has the right to harvest, transport, sell and use peyote.

The Native American Churches across the country are required to enroll with the Department of Public Safety in the State. The Texas Department of Public Safety and the Justice Department recognizes and requires all peyote dealers to be license authorizing them to harvest and sell to Native American Church members who have appropriate membership authorization and hauling permit to harvest, possess, transport and use peyote.

The major Native American Church organizations have an annual meeting with the Texas Department of Public Safety officials to discuss any major or minor problems surrounding the implementation of the regulations or any issues requiring immediate attention.

The Texas Department of Public Safety has established a very good cooperative working relationship enjoyed by all concerned. Obviously, this implementation of Texas substance control regulation is an assurance to the use of peyote for religious use of Native Americans is not abused. According to Texas Department of Public Safety officials is that this working relationship has been "problem free" to date.

Despite the fact that several states and the Federal Drug Enforcement Agency recognized our rights to possess and use peyote, we, as Native Americans, still find that we have no real protection under the U.S. Constitution. This sad fact became clear in 1990, when the United States Supreme Court issued its decision in the Oregon vs. Smith case. In Smith, the Supreme Court ignored long standing legal precedent and created an enormous exemption to the First Amendment for all criminal statutes and civil statutes or regulations as long as they were not expressly hostile to religion. It is our understanding that the Supreme Court ruled in Smith that a state such as Arizona can pass any law it wishes, which outlaws the use of peyote so long as they are doing it for non-religious reasons. In Smith, the

Supreme Court, in the name of the war on drugs, ruled it was all right to deny First Amendment protection to Native Americans who use peyote only for religious purposes. The United States Supreme Court ruled in Smith that protecting Native Americans and religion was "luxury" that this country can no longer afford.

The Smith case was in many Native American Church members opinion, an obscure and unfavorable case. Majority of Native American Church members across the country deeply regret that this case was tried at a time and the way it did. The Court proceeding over passed Native American Church experts, crucial evidences and expert witnesses. The State of Oregon has very little traditional Native American Church members. The mainstream Native American Church people were caught off guard and unprepared. This case would have been litigated better under a different set of circumstances. In this Supreme Court decision, the Court abandoned the "compelling governmental interest" test that is of great concern to all religious churches. The court decision undermined the fundamental religious freedom, guaranteed to all citizens under the United States Constitution.

Discrimination against Native Americans and our traditional religion is a problem we have, since the arrival of Columbus on this Continent. It is difficult for me to understand how 500 years later Native American Indians are continuing to be discriminated against. How, in 1993, can the United States government continue to deny us the equal protection of the Constitution, especially the freedom of expression and religion upon which this government is built on. The time has come for the United States government to begin rectifying injustices of the past. Many of us have struggled for so long trying to protect our fundamental rights. We thought we finally achieved equality with non-Indian religion and we wake up to find the Smith decision of the United States Supreme Court. So now we must pick up where we left off and began the struggle again for justice and equality. It is most frustrating when we could be enjoying the fruits of the Constitution like any citizen.


Statistically, 28 states have laws protecting Native American Church to use peyote as a sacrament and the rest of the states either have laws against or no law at all to protect the use of the peyote by Native Americans.

There is a great deal of inconsistency existing among the states. The current administrative policy is virtually inadequate as indicated by the Smith decision. The present policy (AIRFA) lacks any type of legal recourse and enforcement mechanism for protection of Native Americans to use peyote in the religious ceremonies. The Native American Church needs a specific statutory exemption for the peyote sacrament. Native American Church members does support the amendments to AIRFA to specifically incorporate a statutory exemption to provide a uniform protection across these United States.

I, and the Native American Church members, do strongly support the amendments to the American Indian Religious Freedom Act and to include the restoration of the "compelling governmental interest" test in the court proceeding in this country to protect the religious guarantees of the United States Constitution for every citizen of this Nation.

Chairman and Committee Members, I thank you for all the work that you have devoted to our struggle and I pray that we will continue to work together until we are successful in this effort. May the Great Spirit be with you.

Respectfully submitted this 26th day of March . 1993.



David S. Clark

BIBLIOGRAPHY

- Aberle, D.F. The Peyote Religion Among the Navajo. Chicago: Aldine Publishing Co., 1966.
- Anderson, Edward F. Peyote: The Divine Cactus. Tucson University of Arizona Press, 1980.
- LaBarre, Weston. The Peyote Cult. Hamden, Connecticut, Shoe String Press, 1964, 1959.
- Menninger, Karl A. The Vital Balance; The Life Process in Mental Health and Illness. New York, Viking Press, 1963.
- Mooney, James. The Ghost Dance Religion and the Sioux Outbreak of 1890. Washington Government Printing 1896, Glorieta, N.M. Grande Press, 1973.
- Osmond, Humphry, joint author by Hoffer, Abe. New Hope for Alcoholics and How to Live with Schizophrenia. New Hyde Park, N.Y., University Books, 1966, 1968.
- Slokin, J.S., The Peyote Religion. Glencoe, Illinois, Free Press, 1956.
- Stewart, Omer C. Navajo and Ute Peyotism. Boulder, University of Colorado Press, 1957.

MY INVOLVEMENT WITH THE NATIVE AMERICAN CHURCH

by

David S. Clark

This is a brief overview on my participation in major events which has resulted in the legalization of peyote as a sacrament on the Navajo Indian Reservation and several other States.

I have used the sacrament in the Native American Church since childhood. I am now fifty seven years old, and my parents, Jack and Marie Clark have been Peyote Yana-halihe (traditional practitioners) for the past fifty years. My beloved father passed away recently. I was oriented and reared through the traditional teachings of the principles; values, and beliefs of the Native American Church.

My first involvement with the church issue was at an early age. In the summer of 1955, just fresh out of high school, an incident took place at my parent's resident. A Native American Church prayer service was in progress on behalf of my parents. The Navajo Police came carrying a number of armed Police Officers. They disrupted the ceremony by force, during the forceful intervention by the police, an argument erupted, resulting into a physical fight. There were women and children participating in the services at the time. We voluntarily stopped fighting for the safety and concern for the women and children.

We were all arrested including the children and were taken to jail for prosecution. During those years the Judges showed no mercy whatsoever towards any violators of the Navajo Tribal law which prohibited the religious use of peyote. This particular anti-Peyote Code was established by the Navajo Tribal Council in 1940, with the support of the Bureau of Indian Affairs and Christian Missionaries.

The Judge sentenced virtually everyone to the fullest extent of the law, however, a few of us were released on probation. This gave us the time to seek legal representation, and we hired two attorneys from Flagstaff,

Arizona. This incident was the beginning of the nationwide legal fight for the legalization of the religious use of peyote.

Mr. Frank Takesgun, a Crow Indian from Montana, was the newly elected National President of Native American Church of North America. Mr. Hola Tso, a Navajo was elected as the Vice-President; Mr. Tales Romero, a Taos Indian from New Mexico as Secretary; and Mr. Ruben DeRoan of Oklahoma, as Treasurer (who died a year later). Mr. Anson Damon, Sr., a Navajo was appointed to replace Mr. DeRoan.

This historic incident captured the attention of the Navajo general public and more importantly, the national Native American Church leaders. As a result, a meeting was arranged to be held in Flagstaff, Arizona. Prior to this meeting, the newly elected Native American Church leaders met with our attorneys. After some discussion, an agreement was made to unite and fight towards the legalization of peyote for religious purposes on the Navajo Reservation, and in States where existing anti-peyote laws had been enacted.

Mr. Frank Takesgun temporarily set up the Nation Headquarters in Albuquerque, New Mexico, while the plans for amending Navajo and other anti-peyote laws were being formulated.

I am grateful for being at the right place and at the right time to play an important role in preserving the rights of Native Americans to worship as they see fit.

The following are some of the events of which I was involved. Through out those years in our struggle to preserve peyote for our religious sacrament. I translated for the non-English speaking Navajos and Mr. Takesgun.

1. In 1958, with consistency and continuing persistence of Mr. Takesgun in his attempt to legalize the use of peyote in New Mexico, he made friends with Governor John Burrough. Governor Burrough not only became a good friend of the Native American Church, but was also sympathetic to Indian causes. He supported legislation amending the anti-peyote law in his state. In those struggling years, I participated in lobbying efforts to reverse the law prohibiting peyote.

2. In 1959, Mr. Takesgun filed a lawsuit against the Navajo Tribal Council in the Federal District Court in Albuquerque, New Mexico. This was the Native American Church vs Navajo Tribal Council case, which asserted the denial of First Amendment rights under the United States Constitution.

The case was denied by the Court due to lack of jurisdictional because of Navajo Tribal Sovereignty at the time. This was an attempt to force amendments of the Navajo Tribal law which prohibited religious use of peyote.

3. During the year of 1960, in the case of Mary Attakai vs Arizona, I interpreted for Mrs. Attakai during the Court proceedings. I assisted Mr. Takesgun and the attorney in building the case, interpreting and in explaining the laws and court procedures to Mrs. Attakai. In Mr. Takesgun's meetings with Navajo church members regarding this case, I interpreted and explained the court proceedings to them. This case is now widely regarded as one of the historic landmark cases of the Native American Church.

4. In 1962, I also served as an interpreter for Mr. Takesgun in the James Oliver vs Udall litigation in the 10th Circuit Court of Appeals in Denver, Colorado. I assisted in filing the necessary legal forms for Mr. Oliver in this proceedings. Mr. Oliver at the time was a member of the Navajo Tribal Council. He was a traditional Navajo Medicineman and Peyote Yanahalihe (practitioner) in the church. Again, the court ruled against the church due to the fact that Navajos were a Sovereign Nation and that no State or Government had the authority to interfere with their governmental decisions on procedures. The three-Judge Court also informed the church that the United States Constitution did not apply on the Navajo reservation and that this was a political decision to be made by the Navajo Tribal Council. From this Court decision, it was realized that the Navajo issue on peyote was an internal affair, and that the Native American Church of North American as a non-Navajo organization was not recognized by our Tribal Council. Therefore, the Native American Church of Navajoland was established.

5. In 1964, in the People vs Woody case, which was heard in the California Supreme Court, I assisted our national President, Mr. Takesgun. This particular case also became one of the landmark decisions favoring the Native American Church in its battle to legalize peyote.

6. In 1965, the Navajo people were involved in assisting Mr. Takesgun in having the sacrament peyote recognized and approved by the Federal Food and Drug Administration in Washington, D.C. The Food and Drug Administration provided an exemption for the bonafide religious use of peyote by American Indians in Native American Church ceremonies. Mr.

Takesgun maintained a close communication with Congressional leaders and Washington officials to establish the cooperative working relationship.

7. During the years 1964-65, I toured the Navajo Reservation organizing to communities in establishing the Native American Church of Navajoland (NACNL). It required multiple visits to these communities to explain the legal need for, and purpose of a constitution and governing By-laws for this proposed church organization. These documents were subsequently approved by the members which authorized the official establishment of the Native American Church of Navajoland.

8. On June 11, 1966, the Native American Church of Navajoland members approved the Constitution and By-laws. I was elected as its first President, and served eight years in this capacity. During those years, we closely cooperated with the Native American Church of North America. I am happy and thankful to God for my role in the establishment of the Native American Church of Navajoland.

9. Between 1966-68, we continued in our efforts to incorporate the Native American Church in the states of Arizona, New Mexico, Utah and Texas. The Native American Church established a good working relationship with these states.

10. After the 10th Circuit Court decision was rendered in Denver, Colorado, the Native American Church of Navajoland undertook the strategy of electing members of the Church to the Navajo Tribal Council. This decision was made because the Native American Church of Navajoland was at the mercy of the Tribal Council. The solution to legalize peyote was to amend the Navajo law. At that time, the Navajo Nation did not have a Bill of Rights. The rights guaranteed under the Constitution of the United States did not apply on the reservation and the Federal Courts also did not have any jurisdiction on the reservation. Therefore, the only recourse available to the Native American Church of Navajoland was to gain political strength by electing church members to the Tribal Council. We diligently campaigned to elect Native American Church members to the Tribal Council. These efforts resulted in the successful election of one half of the Navajo Tribal Council who were Native American Church members.

11. On October 11, 1967, the Tribal Council approved the amendments of the Navajo anti-peyote code by which the religious use of Peyote was legalized for members of Native American Church. This outcome

was made possible by the active participation in the Navajo political arena which led to the successful amendment of the Navajo Tribal Code.

12. In 1968, I was arrested for possession of peyote in the State of Texas. At that time, the Texas legislature had adopted laws which prohibited harvesting, possessing, transporting and sale of peyote. This Texas case was also important because Texas is the only State where the peyote plant grows. This was an "arranged" case met to test Texas law against the First Amendment rights of religious freedom guaranteed under the United States Constitution. The lawsuit was filed by Native American Church of North America, and the American Civil Liberty's Union represented the church in this litigation. On April 22, 1968, the Webb County District Court of the State of Texas heard the case. Subsequently, the District Court found me "Not Guilty" and declared that Texas peyote law was unconstitutional. Later in the same year, the legislature amended Texas law to permit the religious use of peyote for American Indians in their religious ceremonies. The Texas Department of Public Safety has created one of the finest regulatory system in the entire country regarding peyote. The Navajo Nation has also developed an exemplary system second to none.

13. On April 9, 1993, I had the opportunity to meet with June Tracy and another staff (legal) member of Senator Dennis DeConcini, regarding the possibilities of the Senator to sponsor and introduce legislation in the Senate to establish a statutory law to protect the use of peyote for the Native American Church religious ceremonies. This attempt was made after some discussions with Native American Church National President Douglas Long, because there obviously was a need for stronger protection and authority then the present administrative exemption. The Senator's staff members advice was that this was not the right time because of problems with drugs in the country, that United States Congress would never support any legislation of this nature.

14. On April 10, 1993, our legal representative Mr. Martin Senecca, the National Native American Church President Mr. Douglas Long, Mrs. Mary Natani, delegate at-large of Wisconsin, June Tracy, Staff Assistant of Senator Dennis DeConcini of Arizona, and I met with the United States State Department's staff and legal advisor and the staff and legal advisor of the Food and Drug Administration, to discuss the possibilities of developing an agreement between the United States and the Republic of Mexico so that

Native Americans may procure and transport peyote supplies from Mexico into the United States for religious ceremonies. This policy would be developed by both Countries and implemented with strict administrative and legal procedures. This would allow Native American Church members to obtain their peyote supplies and eliminate any unnecessary legal punishments and penalties by members. We were informed that the timing was not right because of tremendous drug traffic in both countries.

Respectfully submitted by:

David S. Clark

David S. Clark

STATE OF Arizona }
COUNTY OF Apache } ss.
This instrument was acknowledged before me this 17th day of May, 1993, by David S. Clark
in witness whereof I herewith set my hand and official seal.
William H. Toucher NOTARY PUBLIC

My Commission Expires:
October 31, 1994
My Commission Expires:
October 31, 1994

The Laredo Times, Wed., Apr. 24, 1968.

Peyote Possession Trial Set For Friday

Test Case To Be Held In 49th District Court

By TOM GREEN
Laredo Times Staff

An American Indian group is attempting to test the Texas law against the possession of peyote, in a case set before Judge E. James Kazen for Friday in 49th District Court.

The trial is set for 9:30 a.m. David S. Clark, about 35, is free on bond following his arrest at Mirando City February 9. He had possession of peyote, which a law passed by the legislature last year classifies as a dangerous drug, police said.

Clark is president of the Native American Church of Navajoland, Ariz. He was freed on \$500 personal recognizance bond in the misdemeanor case.

A SPOKESMAN FOR THE Indian group has said their purpose is to test the constitutionality of the state statute, claiming that peyote is used in religious ceremony and the new law violates religious freedom provided in both the U.S. and state constitutions.

The defense is represented by Sam Houston Clinton Jr. of Austin, general counsel for the Texas Civil Liberties Union.

In an answer already filed in the case, Clinton claims the state law strikes the free exercise of religion as granted by the First Amendment to the

U.S. Constitution and also by the Bill of Rights of the state constitution.

He claims Clark had peyote in his possession, "incident to its non-drug use in bona fide religious ceremonies of the Native American Church, and therefore permitted by the Constitution and laws of the United States and in those circumstances the State of Texas may not validly prohibit that which federal law permits."

THE COURT IS ASKED TO take judicial notice of the fact that statutes against peyote have been successfully challenged in higher court decisions in such states as Arizona, California, Colorado, New Mexico and Montana, as well as federal court decisions.

District Attorney Carlos Castillon says he will prosecute vigorously.

"The only position that I can take at the trial is the enforcement of the state law as it reads, which makes possession of peyote a violation of the penal law and provides no exemptions for religious purposes," Castillon said.

The defense will introduce depositions from Dr. Weston La Barr, of Duke University in Durham, N.C., and Dr. Humphrey Osmond, New Jersey Neuro-Psychiatric Institute, Princeton, N.J., who have made studies and are the authors of works on the Indian religion in which peyote is part of the tribal ceremony.

Union to Defend Church Official In Peyote Case

AUSTIN, Tex. (AP) — A Native American Church official from Window Rock, Ariz., charged with possession of peyote, will be defended in court by the Texas Civil Liberties Union.

Sam Houston Clinton Jr., union general counsel, said Friday he will seek to establish a recently amended Texas law unconstitutional in that it infringes upon the free exercise of the group's religion.

Clinton said David S. Clark, head of the Native American Church in Window Rock, was arrested in Mirando City, Tex., and charged under a new state law defining peyote as a dangerous drug.

Peyote comes from cactus. It is eaten by members of the church as part of a religious ritual. The peyote is considered sacred, Clinton said.

The new law says possession or sale of the cactus is punishable by fines up to \$2000 and a year in jail.

