

103  
Y 4.R.31/3:  
103-7 / PT. 1

# AMERICAN INDIAN RELIGIOUS FREEDOM ACT—PART I

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## 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)

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HEARING HELD IN WASHINGTON, DC  
FEBRUARY 23, 1993

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**Serial No. 103-7, Part I**

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Printed for the use of the Committee on Natural Resources



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# EFFECTIVENESS OF PUBLIC LAW 95-346—THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978 (AIRFA)

TUESDAY, FEBRUARY 23, 1993

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON NATURAL RESOURCES,  
Washington, DC.

The committee met at 9:45 a.m. in room 1324 of the Longworth House Office Building, the Hon. Bill Richardson presiding.

## STATEMENT OF HON. BILL RICHARDSON

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

Today we're conducting an oversight hearing on the Effectiveness of the American Indian Religious Freedom Act of 1978.

In 1978, Congress enacted the American Indian Religious Freedom Act in an effort to address the problems many Native Americans face in exercising their right to practice their religion.

During the debate, Chairman Udall expressed his concern that the Act lacked teeth, and to the chagrin of many Native American religious leaders and practitioners, that quote has been repeated consistently in reference to the Act.

Fourteen years of implementation of this legislation and two Supreme Court cases have brought us to this day. In 1988, the Supreme Court in the *Lyng* case held that this legislation did not confer a cause of action to Indians for the protection of religious sites for 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 longstanding practice of courts that, in order for the government to restrict an individual's right to religious practice, the government had to show it had an overriding "compelling interest" to do so.

This is the first of two hearings the Subcommittee will hold on the effectiveness of this legislation. This morning we will hear from several tribal and religious leaders on their experiences and views of how to better protect Native Americans in their right to freely exercise their religious practices.

And it's a great pleasure for me to recognize the ranking minority member, Mr. Thomas.

## STATEMENT OF HON. CRAIG THOMAS

Mr. THOMAS. Thank you, Mr. Chairman.

Just briefly, you, I think, have outlined well the purpose and the background for this hearing. Certainly, the American Indian Religious Freedom Act was designed to recognize the importance and the cultural aspects of Native American religions and it was obviously a strong step to do that. Clearly, it has not resulted in the kinds of things that some might have hoped that it would.

So I think it's appropriate that we do have hearings, have a comprehensive review of these laws and the problems and then do something to deal with it. So, Mr. Chairman, I look forward to the hearings.

Thank you.

Mr. RICHARDSON. The Chair recognizes the gentleman from Montana.

### STATEMENT OF HON. PAT WILLIAMS

Mr. WILLIAMS. Thank you, Mr. Chairman.

As you know, this is a matter of significance and importance to America's native people. It is critical, as this issue is discussed here and legislation drafted, that we retain the constitutional projections against church/state entanglement. The intervention of government in the affairs of religion is disadvantageous to both.

Our Nation's chief architect, Thomas Jefferson, stated this. "All persons shall have full and free liberty of religious opinion. None shall be compelled to frequent or maintain any religious institution." Thomas Jefferson wanted, not only for himself but for all his fellow citizens, not freedom from religion but rather freedom to pursue religion.

The corollary to the Declaration of Independence is Jefferson's Bill for Religious Freedom. And it contains in the Preamble the rage of Thomas Jefferson against the hypocrisy and self-righteousness that he associated with what had been the historic alliance between church and state.

Jefferson believed that of all personal convictions those of religion should be the least subject to authority or compulsion. The thoughts of Jefferson and Madison on this matter were not easily accepted then and are not easily accepted now and have been very difficult for this Nation to retain.

So I personally believe that it is critical that as we work hard and as best we can to ensure American Indian religious freedom, we take every step necessary to preserve the separation of church and state. Let me elaborate on that for a moment.

I'm an advocate of religious freedom for all people, including our Native Americans. I am unconvinced that Native American people now enjoy that religious freedom. Having said that, I'm also torn about legislation which has been introduced in the past because I believe it has bumped up against entanglement of the Federal Government with religion, with certain institutions or churches.

For example, can't a Federal Government which delineates religious practices are acceptable also be the Federal Government that will demonstrate which are not acceptable? If that's true—and I believe it is—then we have to be very, very cautious with this legislation or all people, most notably, the first people, will rue the day that the Federal Government ever set foot on this quicksand.



I want to welcome, Mr. Chairman, all of the witnesses but especially the Honorable John Sun Child, Chairman of the Chippewa Cree Tribe of the Rocky Boy Reservation in our State of Montana. Chairman Sun Child and I have been friends for many years and I'm pleased to see him here today. And I appreciate your inviting him to be one of our witnesses.

Thanks very much, Mr. Chairman.

Mr. RICHARDSON. Thank you.

The Chair recognizes the gentleman from California.

#### STATEMENT OF HON. KEN CALVERT

Mr. CALVERT. Thank you, Mr. Chairman.

I'm also very interested in the American Indian Religious Act. I also believe in the rights to pursue religion with few constraints and look forward to your testimony.

Thank you very much.

Mr. RICHARDSON. The Chair recognizes the gentleman from South Dakota.

#### STATEMENT OF HON. TIM JOHNSON

Mr. JOHNSON. Thank you, Mr. Chairman.

I commend you for holding this critically important hearing on an issue that is of great controversy and great importance.

I want to welcome all the members of the three panels, all of whom I think will make very valuable contributions. But I'd like to extend a special welcome to Jerry Flute, who is not only the Field Director for the Association of American Indian and a very well known leader of Native American issues nationwide, but also a member of the Sisseton-Wahpeton Tribe in my home State of South Dakota. We're proud of Jerry Flute's contributions.

I'm looking forward to the testimony on this issue. Much of the religious controversy centers around access and use and preservation of sacred sites. Inasmuch as some of the sacred sites involve literally thousands of square miles of public lands, there will always be some tension in the management of these areas relative to general access to the general public, multiple use and what in fact can be done in some of these huge areas that benefit the general public, but yet at the same time, preserve the sacredness of the region.

And I'm looking forward to the insights from all the panelists on what we can do to assure the preservation, as much as possible, of sacred sites and access and preservation of Indian religion.

I regret that I have another hearing going on in only a few minutes involving land management in my home state. And I'm going to have to excuse myself to attend that hearing. So I'm not going to be able to be here personally throughout this hearing, Mr. Chairman.

But I think it's very valuable and I'm studying the testimony that's been submitted in writing. I'm going to be working with my staff and working with you as we strive, throughout the course of this Congress, to come to some better resolution than we have to now over this Native American religious issue.

Thank you.

Mr. RICHARDSON. I thank the gentleman.

The Chair recognizes the gentleman from Hawaii.

**STATEMENT OF HON. NEIL ABERCROMBIE**

Mr. ABERCROMBIE. Thank you very much, Mr. Chairman.

I'm delighted to be able to this morning have as part of our hearing record, I think the last testimony in our array here, that of one of my dearest and oldest friends, the Hon. Kina'u Boyd Kamali'i from Hawaii.

I served in the legislature with Kina'u and she's now a Trustee of the Office of Hawaiian Affairs. I think this is a recognition, Mr. Chairman, of the people in Hawaii, of our Hawaiian brothers and sisters, in this Committee's jurisdiction, thanks in great measure to your insight and that of Chairman Miller, as well as your persistence. I want to recognize today—inasmuch as this is the first time that someone from Hawaii has had a chance to testify—that we now recognize formally in the jurisdiction of this subcommittee literally the existence of Native Hawaiians.

Let me just add then that, with respect to the subject under discussion today, religious freedom, there are particular elements associated with contemporary Hawaiian life that are intimately connected to the subject matter before us today. And Kina'u will explain that to us in detail.

So, suffice to say then, that this is a great opportunity for us to recognize your leadership and actually the beginnings of this Committee. I'm sure it's going to prove an invaluable resource to the Committee on Natural Resources.

Mr. RICHARDSON. I thank the gentleman.

I ask that the background be made part of the record.

Let me also state, before we get started, that as of this moment the Subcommittee has not drafted any legislation. So we have no preconceived decisions on any amendments and we're willing to look at all proposals. We do intend to draft a piece of legislation.

[Background information follows:]

BACKGROUND FOR OVERSIGHT HEARING ON THE EFFECTIVENESS OF THE  
AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978  
FEBRUARY 23, 1993

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 Lynq 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. The hearing record is going to remain open for two weeks for anyone who wishes to submit a statement. For our witnesses today, let me state that, as you know, it's common practice for your entire statements to be made a part of the record and I ask that you please summarize your statements in five minutes. We have 11 witnesses today and the more valuable exchanges in these hearings are the question-and-answer sessions.

So I will proceed to welcome the first panel and ask the Honorable Jerry Flute, the Field Director for the American Association of American Indian Affairs, to open up.

But let me also mention that in the first panel the Hon. James Hena, the Chairman of the All Indian Pueblo Council in Albuquerque, New Mexico, and the Hon. Cedric Chavez, the Governor of Cochiti Pueblo in New Mexico and I believe that Gilbert Sanchez, the 1st Lt. Governor of the San Ildefonso Pueblo, are also here.

So, Mr. Flute, please proceed.

**PANEL CONSISTING OF JERRY FLUTE, FIELD DIRECTOR, ASSOCIATION ON AMERICAN INDIAN AFFAIRS; HON. JAMES S. HENA, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL, ALBUQUERQUE, NM; HON. CEDRIC CHAVEZ, GOVERNOR, PUEBLO OF COCHITA, NM; HON. T. GILBERT SANCHEZ, 1ST LT. GOVERNOR, PUEBLO OF SAN ILDEFONSO, SANTA FE, NM**

#### **STATEMENT OF JERRY FLUTE**

Mr. FLUTE. Thank you, Mr. Chairman.

I appreciate Congressman Johnson's remarks about my involvement nationally and I think the Party forgot to tell you that I also campaigned very hard for his re-election. [Laughter.]

But let me begin by saying that Indians in this country are not, through legislation or any other mechanism, attempting to reclaim America. We are attempting to reclaim a basic and fundamental human right, which is the right to practice our native religions. And the courts over the past decade have been disastrous to our religions in their dispositions.

The U.S. Supreme Court has basically told us that we do not have First Amendment protection like any other religion. That we cannot challenge any Federal agency that may be attempting to destroy a site that's critical to our religion. But the courts certainly have not understood or attempted to understand the type of religions that we have in this country, particular with Native Americans.

But before I get into some summary of my testimony, I would like not to give you a lesson in theology but to tell you just a little bit that those of you who are familiar with theology know that there is a section that talks about paradisal man; this is in the Judeo-Christian theology. Paradisal man spent almost all of his waking hours in reverence to a Creator and that Creator, as we understand it, is God. And Indians are not different than that.

We do not pray to numerous gods; we have one God. And when you listen to the theology of Moses and Mount Sinai, we have many analogies that are very similar to that. Moses spent 40 days and 40 nights on the mountain and came down with the Ten Command-

ments. There are many tribes who have very similar theological stories and examples with mountains and this type of revelation.

But because we are not Judeo-Christian, because our religions are not written in a Bible, our religions seem to take a second- and third-class relationship. But that doesn't mean that our belief system is not strong; it doesn't mean that there aren't many similarities between Judeo-Christian beliefs and Native American beliefs.

When we look at these different sites—and in my testimony I've given you an example of some of the sites that are currently in jeopardy throughout the country—in almost every one of these cases, these sites are very important to the respective tribe and hold a very similar teaching to that of the Wailing Wall, to Mount Sinai, to Jerusalem, that you would find in the Judeo-Christian belief system; they'd be very similar to that.

Tribes have also had the same kind of revelations. Some of the sites where very important revelations occurred have already been desecrated. And I think we're here simply to ask you, as members of the Congress, to restore our constitutional protection.

The courts have been clear. Between 1980 and 1990, we lost 10 or 12 Federal court cases where tribes were attempting to protect sacred sites. Those were culminated by the two U.S. Supreme Court decisions in *Lyng* and *Smith*. So we are simply asking you to take a look at what is important to us in terms of our belief system.

That we are not asking that thousands upon thousands of acres of land be negated from the public. We are simply asking you to recognize our beliefs, recognize our ability to go to these sites and to protect them the best way we can. The courts have told us that we no longer have that ability.

So at this point, Mr. Chairman, I'm certainly open to any questions that you have may have.

[Prepared statement of Mr. Flute follows:]

U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON NATURAL RESOURCES

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS  
HONORABLE BILL RICHARDSON, CHAIRMAN

HEARING, FEB. 23, 1993  
WASHINGTON, D.C.

"effectiveness of P.L. 95-346, the American Indian Religious  
Freedom Act."

TESTIMONY  
JERRY FLUTE, STAFF MEMBER  
ASSOCIATION ON AMERICAN INDIAN AFFAIRS

TESTIMONY OF JERRY FLUTE  
ASSOCIATION ON AMERICAN INDIAN AFFAIRS

Mr. Chairman and members of the Committee. my name is Jerry Flute, I am a Sisseton-Wahpeton Sioux from the Lake Traverse Reservation in South Dakota. I am also a staff member to the Association on American Indian Affairs, a national non-profit Indian Advocacy organization. We are supported by a citizen group numbering 48,000 members and headquartered in New York City. We have field offices located in South Dakota, California and Washington D.C.

The policies of the Association are formulated by a Board of Directors, the majority of whom are Native Americans. Since its inception in 1923, AAIA has maintained its support for the religious rights of Native Americans. For example, AAIA played an integral role in efforts to return the sacred Blue Lake to the Taos Pueblo. AAIA continues its efforts to assist tribes in protecting sacred sites from adverse development and desecration. We are currently working with a coalition of tribes in Montana, Wyoming and South Dakota to protect a sacred area known as the "Medicine Wheel" located in the Big Horn Mountains of Wyoming.

AAIA is a founding member of the American Indian Religious Freedom Coalition which has been working to obtain legislative protection for the religious freedom rights of Native Americans. AAIA, together with the National Congress of American Indians and the Native American Rights Fund formed the now broad based coalition that includes national church organizations, civil rights groups, environmental organizations and Indian tribes.

In my capacity as Field Director and program manager for the Association's Religious Freedom project, I am in contact with many Native American spiritual leaders and traditional religious practioners. In addition I have had the opportunity to visit many sacred sites and to see first hand the results of desecration.

In addition to our work with the Medicine Wheel tribes, we have worked with the Apache Survival Coalition in their efforts to protect Mt. Graham in Arizona. The AAIA organized a National Sacred Sites Caucus, where spiritual leaders from across the country convened to discuss their shared concerns about the threat to their religious practices arising from governmental actions and the lack of legal protection.

Spiritual leaders questioned the judicial system (and interpretation of laws) for its lack of support for sacred places. They cited numerous sacred places and areas that have been lost in the court fights. They asked for example, where was our legal protection for the Cherokee's in their court battle to the stop the flooding of sacred sites in the TELlico DAM project



in 1980, or the Navajo case regarding RAINBOW BRIDGE wherein Lake Powell effectively "drowned" Navajo spirits under 21.0 feet of water.

Tribes are justified in questioning the courts of this country when U.S. Constitutional protection afforded under the 1st amendment is eroded case after case. The Sioux, Cheyenne and Arapaho were unable to judicially stop the desecration of BEAR BUTTE in South Dakota. Equally unsuccessful were the Navajo and Hopi in their judicial efforts to protect SAN FRANCISCO PEAKS. The Havasupai Tribe in the Grand Canyon is fearful of water contamination after loosing their judicial battle to stop desecration of their sacred RED BUTTE.

The 1978 American Indian Religious Freedom act and 1st Amendment simply did not work to protect these holy places for Native Americans. The last decade has been a legal disaster for American Indian Religions. Unless Congress moves quickly, it would appear with some certainty that the current Sacred Places now in dispute with state and federal land managers will be met with the same fate as those that have been lost between 1980 and 1990.

The Association herein submits a partial state by state listing of Native American Sacred places currently in jeopardy:

OREGON

<u>SITE</u>	<u>TRIBE</u>	<u>ISSUE</u>
ENOLA HILLS	WARM SPRINGS	LOGGING/PROPOSED DEV.
MT. HOOD MEADOW	WARM SPRINGS	TOURISM DEV.

WASHINGTON

SNOQUALMIE FALLS	YAKIMA/SNOQUALMIE	HYDO ELECTRIC DAM
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CALIFORNIA

MT. SHASTA	N. WINTU	SKI/RECREATION AREA
COLD SPRING MT.	N. WINTU	NEW AGE VANDALISM
**CHIMNEY ROCK	TOLOWA/KARUK/YUROK	LOGGING ROAD
DEKKAS SPIRIT CAMP	N. WINTU	VANDALISM
MT. DIABLO	WINTU/MEWUK	COMMUNICATION TOWERS
INDIAN SPIRIT ROCK	WUKCHUMNI	COMMUNIC./ACCESS

NEVADA

SPIRIT MTN.	HUALAPAI OF AZ.	TOURIST DEV.
TOSAWIHI QUARRY	W. SHOSHONE	GOLD MINE

ARIZONA

BOYNTON CANYON	CAMP VERDE APACHE	NEW AGE VANDALISM
BABOQUIVIRI	TOHONO O'ODHAM	RECREATIONAL DEV.
STAR MTN.	NAVAJO	LOGGING
CHUSKAS MTN.	NAVAJO	LOGGING
MT. GRAHAM	APACHE	TELESCOPE DEV.
BIG MOUNTAIN	NAVAJO/HOPI	CONG. RELOCATION
WINTERS BUTTE	NAVAJO/HOPI	MINING
CHILDRENS SHRINE	TOHONO O'ODHAM	VANDALS
RAINBOW BRIDGE	NAVAJO	DAM
SAN FRANCISCO PK.	NAVAJO/HOPI	SKI/RECREATION
RED BUTTE	HAVASUPAI	URANIMUN MINING

MONTANA

BADGER TWO MEDICINE	BLACKFEET	OIL/GAS EXPLORATION
SWEET GRASS HILLS	ROCKY BOY/BLACKFEET	OIL/GAS EXPLORATION
KOOTENAI FALLS	SALISH/KOOTENAI	HYDRO ELECT DAM
TONGUE RIVER	N. CHEYENNE	MINING/RAILROAD
CHIEF MTN.	BLACKFEET	TOURISM/RECREATION
MEDICINE TREE	NEZ PERCE/KOOTENAI	HIWAY CONST.
LITTLE ROCKY MTN.	GROS VENTRE	GOLD MINE
CRAZY MTN.	CROW	LOGGING

WYOMING

MEDICINE WHEEL	ARAPAHO/SHOSHONE/SIOUX CHEYENNE/BLACKFEET	LOGGING/REC. DEV.
CARTER MTN.	SHOSHONE	OIL/GAS EXPL.
S.FORK OWN CREEK	SHOSHONE/ARAPAHO	ROAD CONSTRUCTION
N.FORK OWL CREEK	SHOSHONE/ARAPAHO	OIL/GAS EXPLORATION
STEATITE QUARRY	SHOSHONE/ARAPAHO	MINING
DEVILS TOWER	SIOUX/CHEYENNE	TOURISM/ROCK CLIMBING

(PETROGLYPH SITES)

LEGEND ROCK	SHOSHONE/ARAPAHO	TOURISM
CASTLE GARDENS	SHOSHONE/ARAPAHO	VANDALISM
WHOOPIE CANYON	SHOSHONE/ARAPAHO	TOURISM
CEDAR CANYON	SHOSHONE/ARAPAHO	VANDALISM

SOUTH DAKOTA

BLACK HILLS	SIOUX/CHEYENNE	CONGRESSIONAL/TOURISM GOLD MINE/TIMBER
*BEAR BUTTE	SIOUX/CHEYENNE/ARAPAHO	TOURISM/BACK PACKERS

MINNESOTA

PIPESTONE QUARRY

SIOUX

MINING/CRAFTS PRODUCTION

NEW MEXICO

PETROGLYPH PARK

SANDIA PUEBLO

HIWAY CONSTRUCTION

NUMEROUS PUEBLO SITES WHICH ARE KEPT CONFIDENTIAL BY THE PUEBLO TRIBES.

\*\* Chimney Rock is the site in the 1988 U.S. Supreme Court case Lyng v. NW Cemetery Assn. (also known as Go-Road)

\*Bear Butte was litigated in Crow v. Gullet 1983

Mr. Chairman, my work with traditional people who are the activists in protecting these sites are sick and tired of hearing RHETORIC!! It is now time to move on and put legislative "teeth" into AIRFA.

The American Indian Religious Freedom Act of 1978 (AIRFA) is proclaimed to be "the policy of the Federal government." Yet Native American religious traditions continue to be under assault today to as great an extent as they were in 1977 before the Act was passed. A Federal Agencies Task Force issued a report required by AIRFA in 1979 which discussed the obstacles to Indian religious practice and included a number of positive recommendations. Most of the recommendations have never been acted upon -- but most of the problems that the Task Force describes are just as prevalent today as in 1979.

In fact, because of the United States Supreme Court, many of the problems are even worse now than they were in 1979. In its recent decisions, the Court has made it clear that its view of the First Amendment to the United States Constitution is so narrow, that the protections provided by that amendment are simply not available to protect those traditional activities and places which are necessary for the continuation of traditional Native religions and survival of the people.

In Lyng v. Northwest Indian Cemetery Prot. Assn., a case involving a Forest Service plan to build a road directly through a sacred site in Northern California, the Supreme Court ruled that the First Amendment does not restrict the management by the Federal government of its lands even if certain governmental actions would infringe upon or destroy a religion so long as: (1) the government's purpose is secular and not specifically aimed at infringing upon the religion; and (2) the government's action does not coerce individuals to act contrary to their religious

beliefs. The Court in Lyng also ruled that AIRFA is not judicially enforceable -- that it has "no teeth." The effect of this decision has been to prevent practitioners of Indian religions from challenging government land management decisions based upon either the First Amendment or AIRFA.

As you well know Mr. Chairman, every sacred place mentioned in this testimony was once part of a larger Indian Reservation system. Through subsequent treaties, tribes lost substantial acreage including these holy places.

In Wyoming, the Forest Service has proposed plans to develop the sacred Medicine Wheel as a tourist attraction and promote future logging activities in the vicinity of the Wheel. The Medicine Wheel is a sacred place to many Plains tribes including the Arapaho, Cheyenne, Shoshone, Sioux and Crow. It is only after more than five years of continuing protests by Native Americans, increasingly joined by non-Indians including the Big Horn County Commissioners, that the Forest Service has finally agreed to discuss modifications to these plans. Without "teeth" in the AIRFA, there continues to be no guarantee that the integrity of the Wheel will be protected.

In Montana, the Forest Service proposes to allow 10 story high exploratory gas/oil rigs to drill in a pristine wilderness area that represents the last undisturbed sacred place of Blackfeet traditional religious practitioners. In response to objections by traditional Blackfeet people, the Forest Service Supervisor referred to concerned Indian people (and not the oil companies) as a "special interest group". In spite of the undisputed "testimony" of Blackfeet traditional leaders, the Forest Supervisor has said that he is not convinced that the development of the area will destroy the sacredness of the site.

In Arizona, the University of Arizona is building telescopes on Mount Graham, a site sacred to the Apache Crown Dancer religion. The University received an exemption from various environmental laws after the Forest Service failed to identify the mountain as a sacred place and the Fish and Wildlife Service falsified a report pertaining to the impact of the project upon the red squirrel, an endangered species living on the mountain.

It is time for congress to take real action, action that will result in meaningful, enforceable Federal legislation that will truly protect the right of Native people to practice our ceremonies and rituals as required by our religions and a basic and fundamental HUMAN RIGHT.

Last year, Senator Inouye circulated draft legislation to "put teeth" into AIRFA. Senate staff worked closely with our American Indian Religious Freedom Coalition to develop the draft legislation. Much discussion about the specific proposals in that draft bill has ensued and a broad coalition of tribes, national Indian organizations, churches, environmental groups and human rights groups has coalesced around the basic approach in Senator Inouye's discussion draft. We recognize the fact that the draft bill needs refinement and an appropriate political strategy must be pursued including oversight hearings such as this. One thing is certain, Indian tribes need specific legislation to regain our Constitutional 1st Amendment rights taken away by the U.S. Supreme Court.

The Association stands ready along with the Religious Freedom Coalition to work with you and the congress to return basic HUMAN RIGHTS and HUMAN DIGNITY to the first citizens of this country

In closing, I would like to quote Uncle Vine Deloria who said, "EVERY SOCIETY NEEDS SACRED PLACES. A SOCIETY THAT CANNOT REMEMBER ITS PAST AND HONOR IT IS IN PERIL OF LOSING ITS SOUL."

Thank you for the invitation to appear before this Committee.

Mr. RICHARDSON. Thank you very much. Your timing, as you can see, was perfect.

Chairman Hena.

#### STATEMENT OF HON. JAMES S. HENA

Mr. HENA. Thank you, Mr. Chairman.

Mr. Chairman, members of the Committee, good morning. My name is James S. Hena, and I'm the Chairman of the All Indian Pueblo Council, composed of the 19 Pueblo Governments of New Mexico. According to Spanish records, this organization was in existence in 1598.

We have submitted the full text of my testimony, so I will only highlight parts of that text.

Religious intolerance and suppression has been a deliberate and systematic approach practice against the Pueblo Indians since the arrival of the Spaniards in 1598. Both the church and civil authorities of Spain, Mexico and the United States have been instrumental in suppressing our religious practices, as well as our style of government, because we have theocratic governments.

Atrocities were committed against our people and non-Indian religions were imposed on us. In some Pueblos the theocracy was forced to change to a so-called democratic form of government. Since the first encounters of Pueblo religion, our leaders took our religion underground where it has flourished and guaranteed our spiritual survival as a people.

Over the last few weeks, Pueblo leaders have deliberated long over this most sensitive issue and declared their opposition since, in our view, the Federal Government has no business regulating our religion nor our form of government. In emotionally charged meetings, statements were made describing the present legislative initiative as discriminatory. Views of bringing our objections to the United Nations and to the World Court were expressed.

I tell you this to impress upon you that present-day Pueblo leadership does not take our religious responsibilities and Governmental order lightly. The trust each governor and councilman individually assume for the sake of the people, the land and its resources is a serious charge handed down over the generations and no one is willing to change that order.

Moreover, the Pueblo governments have been given recognition by Spain, Mexico and the United States and the State of New Mexico as possessing powers and authorities like other governments. Consequently, legislation that is well-intentioned may be suspect as a result of a long history of discrimination, mistreatment and interpretation of laws different from what we understood by the State, by Federal agencies and the Federal courts. These past experiences make us wonder at the true intent of this proposed legislation.

A trust responsibility eloquently written about by Presidents of the United States since President Nixon fell on deaf ears in Federal agencies charged with providing services and benefits to Indians. This history and non-attention causes suspicion among the Pueblo leaders today.

Some examples creating suspicion are the Ole power line planned by the Public Service Company over the Jemez Mountain range.

Another is the proposed Jemez Tomography Project planned by the setting off of explosions in the subsurface. Expansion of the Santa Fe Ski Area is another. Polluted discharge by Los Alamos National Laboratory/Sandia Laboratory into the atmosphere, water and aquifers likewise are both just a few more examples of disregard for our religious views or protection for the environment.

It is our sincere hope that when this subcommittee starts drafting its version of a Religious Freedom Bill that it will invite the involvement of Pueblo leadership so that a version most acceptable to the Pueblos is ensured. Unless full involvement becomes a standard practice in Congress, Indians will continue to be told what is best for them by people who neither understand us nor support our wish to live as a diverse people in America.

Because America has been in the lead of protecting minority rights all over this world, we presume that if we Pueblos decide to support enactment of the proposed legislation, it will be consistent with inclusion of those principles that America attempts to influence the world with. For we Pueblos then, it might mean a separate section or even a separate title in the law to safeguard our concerns and lifeways regarding our theocracy, religion and government.

We hope this subcommittee will have the fortitude to seriously consider our request so that our spiritual survival and governmental order survive for our future generations.

Thank you.

[Prepared statement of Mr. Hena follows:]

JAMES S. HENA, *Chairman*  
 BENNY ATENCIO, *Vice-Chairman*  
 DANIEL L. SANCHEZ, *Secretary/Treasurer*



**ALL INDIAN PUEBLO COUNCIL**

OFFICE OF THE CHAIRMAN

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**TESTIMONY OF JAMES S. HENA, CHAIRMAN OF  
 THE ALL INDIAN PUEBLO COUNCIL ON THE AMERICAN  
 INDIAN RELIGIOUS FREEDOM ACT, BEFORE THE  
 HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS  
 WASHINGTON, D.C.  
 FEBRUARY 23, 1993**

Mr. Chairman, Members of the Committee, Good Morning! My name is James S. Hena, and I'm the Chairman of the All Indian Pueblo Council composed of the nineteen Pueblo Governments of New Mexico. According to Spanish records, this organization was in existence in 1598.

It is a privilege to be on this panel to discuss this most difficult and sensitive subject regarding Pueblo religion and theocracy. It is a topic that we Pueblos have spent much deliberation on recently, and today, we present our views to you.

**HISTORICAL:**

Religious intolerance and suppression of our Pueblo religion in the United States is not new. This form of discrimination has characterized the relationship between our people the Spaniards, the Mexicans and Americans for the past 500 years.

Historically--as early as 1598, Juan de Onate divided the Pueblo Country into Catholic mission districts and subsequently assigned a Franciscan Friar to impose the Catholic religion on our people. Since that time our people have been persecuted for practicing their traditional cultural beliefs. Such religious persecution was compounded when in 1620, the King of Spain attempted to abolish the Pueblos traditional leadership by requiring the Pueblo Nations to be administered by Pueblo Governors and officials designated by the Spanish Government. Some Pueblos, responded by burning Spanish missions and driving the Spanish officials out of their communities only to see religious persecution accelerated during which time numerous Pueblo people were whipped, enslaved, limbs amputated and hanged. In response to such actions, all of the Pueblo Nations united and the Spaniards were forcefully driven out of Pueblo lands during the Pueblo Revolt of 1680.



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In 1692, the Spaniards returned with a massive force and once again, imposed their government system and religious beliefs on the Pueblos.

This history is critical to understanding the Pueblos' position regarding AIRFA to ensure the continued vitality into the future of our Pueblo Nations.

Today, our theocratic governments stand strong, as we face difficult times and arduous decisions that effect and affect our very future. **The interweaving of our Indian religion into our government---the sacred trust and the responsibility---is a gift from our ancestors and our Creator---this trust and this responsibility we do not take lightly.** All of America could learn from us as our country strives to ethically, morally and legally respond to the citizens' aspirations.

Historically too, there were other areas of Federal law and policy that on first glance, appeared to be in our best interest. But after years of struggling with those requirements, we are fortunate to have been able to endure and thus survive. Other tribes, have had to suffer -- under forced marching from their homelands---losing children and elders. In compliance with **Federal policy**, we experienced the taking of our children to boarding schools, or as in the relocation-dislocation era-separating us from our homes and people are a few examples of discriminatory practices imposed on our People. Further, restricting use of our own language(s) and religion and even punishing us are examples of planned genocide even though **justifying the intrusion of the government and missionaries under the umbrella of Federal trust responsibility.** How does a simple tenant of law--the guaranteeing of a first amendment--freedom of religion--the freedom to believe and to practice or exercise our own beliefs fit into the context of these laws and policies?

It has been heart-rending for the Pueblo Tribes to build a consensus on the AIRFA. We faced similar difficulties when Congress brought us the Indian Civil Rights Act of 1968 which imposed the provisions of the Bill of Rights upon our Tribes. The legislative history reflects strong opposition by the Pueblos to this legislation because it continued an intrusion on our governments. We support fairness and equal protection of the rights of our people, but it must be by our laws, our policies, our remedies, not those of others; will America be big enough to allow a small segment of the U.S. population to exercise their religious practices which doesn't aim to interfere with other peoples religions. Pueblo religion and government are so inextricably interwoven into our everyday life--that the separation of our religion from our government would alter our lifeways beyond recognition as Pueblo People. Today, we live day-to-day with this Federal intrusion into our lives. The intent of ICRA was questionable then, and still is today because it has left us with a diminishment of our tribal governments.

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We do not want our Tribes to be terminated nor slowly choked to death by inappropriate legislation. Therefore, we ask you for equal protection as other American citizens enjoy with regard to religion. Congressmen, we ask you to rise to the highest level of knowledge, and understanding, and support us to prevent the termination of our religion and ultimately extermination of our People. The religions of the indigenous people of this land are sacred like other religions, and should be protected so that the Native People of America survive alongside other citizens of this great country. Our religion must be fully accepted as an inseparable and dominant basis of life that undergirds and defines Pueblo culture, government, and society.

VIOLATIONS OF OUR SACRED LANDS:

It is difficult to discuss actual violations of our religious freedom, because even disclosure causes us concern. There have been many violations of our religious practices, but mostly we have remained silent because to speak out would require us to disclose what we are forbidden to speak of. The attitude that has been most prevalent over the centuries by non-Indians has been to educate and christianize the Indian heathen. We Pueblos have had to go underground with our religion to protect it and to ensure our own spiritual survival for our children and for our future generations.

SOME EXAMPLES OF RELIGIOUS VIOLATIONS ARE:

The nineteen Pueblos have stood with neighboring Navajos in opposition to the "Ojo Line Extension Project or "OLE Power Line" since its inception. The proposed power line would desecrate and destroy the Jemez Mountains which have since time immemorial held sacred areas and provided for the Pueblos' spiritual life. Pueblo experts have identified at least 15 plants used for purification and healing which come from the high country of the proposed OLE corridor. Given the delicacy of the plants and the delicate environment in which they grow, any disturbance from service roads and the transmission corridor itself would threaten plant growth. In addition there are hundreds of shrines which are used year round, for this area about the corridor is sacred. Moreover, the power line once constructed and operating will harm natural substances and animals important to our culture. The burden of proof should be shifted to the agency undertaking the action, not the tribes.

"Jemez Tomography Project" in the Jemez Mountains--planning a series of subsurface test explosions will be conducted to measure the pattern of molten material below the surface of Valles Caldera. Tribes in the area were not consulted during the initial scoping for the project. Even after formal protest with strong testimony on the impact to Pueblo tribes, the Forest Service officials discounted any religious rights, stating that the present AIRFA confers no cause for action and contains no requirements for consultation.

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**The expansion of the Santa Fe Ski Basin**--the Pueblo Tribes have been called upon to reveal cultural matters and to further identify sacred sites. By disclosing such information, the tribes risk subjecting those areas to destruction without any assurance that such disclosure will serve the original purpose of protecting them.

**Exploitation of Aveshu Oweenge**--a large ruin on a mesa two miles south of Abiquiu which has been opened by the Bureau of Land Management; and shrines desecrated above the Rio del Oso--the primary route of San Juan Pueblo People entering the Jemez high country are another example.

**Religious pilgrimage routes** have been stripped away, as in the Santa Clara Canyon---due to increased access to sacred areas as a result of a transmission line and the influx of Forest Service employees or recreational users of the forest. This has caused the many routes to be overrun by outsiders and all semblance of privacy has been stripped.

**The Sandia Mountain, including Las Huertas Canyon**, is another example of traditional sacred areas surrounding our Pueblo homelands. That area has been desecrated and the traditional harvesting areas for eagles, and sacred plants for healing have been impacted by outsiders. The Pueblo has been asked to reveal the locations of sites used, but has refused and has pushed to designate the whole area as sacred. The Pueblo is geographically close to a major urban area and has had to withstand the shock of the non-Indian community in addition to the intrusion of the Federal agencies such as the Bureau of Land Management and Forest Service. Further, the housing developments within Forest Service property have caused an undue burden specifically causing pollution in an area that they are charged with preserving and protecting. In addition the Pueblo of Sandia continues to seek return of their claim to the west face of the Sandia Mountain, a lost due to a fraudulent or grossly erroneous survey.

**Bandelier National Park**--land was taken arbitrarily by the U.S. that is significant to Pueblo religion.

**Los Alamos National Laboratory**--the land is not only significant to our religion, but the continued threat of nuclear contamination is a daily threat to the lives of our People and communities and even poses a threat to the non-Indian communities. With the most recent spill occurring in January of 1993 and notification taking several days to our Pueblos, consequently severely threatens the health and safety of our People.

**The Petroglyph National Monument** is presently in severe jeopardy of being ruined and desecrated due to the so called necessity of a road by the City of Albuquerque and private interests. Access should be restricted to prevent the vandalism and destruction that has been the experience of such sites. It is a lack of understanding and a lack of enforcement in the present AIRFA Act that allows this kind of exploitation and violation.

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The passage of the El Malpais National Monument and National Conservation Act removed the free exercise of religion specific to the Pueblo of Acoma.

The pollution of the Rio Grande River. Water is very sacred to us. The quality of the waters that enter our reservations is of great concern not only to our health, but for our survival as a people. The water must be protected to ensure quality standards that prevent pollution. Congressmen, these are only a few of the many violations that have occurred.

CONCLUSION:

The protection for religious freedom of our communities is critical to our existence and survival. We have lost many of our loved ones over the years in this fight against extermination. These policies and persecutions resulted in the lost of the Pueblo of Pecos, an example of the extermination of our communities. We only have 19 Pueblos remaining in New Mexico. We do not want any more of our communities exterminated. Even if our Pueblos represent a different way of life to America. America has promoted the protection of the rain forests, the protection of the eagle, the owl, the protection of the water and air, but what about the protection of our PUEBLO PEOPLE, human beings. Further, Our religion and languages, the Tewa, Towa, Keresan, Zuni, and Tiwa have survived the extermination policies because of our tenacity to survive as Pueblo People. Other tribes in America have not been so fortunate. They have not only lost their land, but also their language and many of their traditions. We do not want the same for our people. In addition our children and elders remain dominant in our extended family structure. We do not want to be placed in a fragile state by a law that seeks to place our Indian religion in a questionable and vulnerable position. We want to remain healthy strong spiritual communities as we always have.

The United States of America has been at the forefront of protecting the human rights of people throughout the world. Further they have always respected the sacred sites of other countries--as recent as the Desert Storm war--where the U.S. Government encouraged its military allies to avoid religious sites in their bombing and artillery attacks. We request the same respect for our sacred areas and our religion. We are not asking for additional religious protection--we are only requesting the same protection that is provided to other citizens of America and for that matter---the World.

In the words of the Honorable Governor Walter Dasheno from Santa Clara Pueblo:

"Even though the Federal Government ceased in 1934 to deem it a criminal act for Indians to practice our traditional religions, we are still not even accorded the rights of accused criminals. An individual accused of a crime is innocent until proven guilty; but we, who have

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committed no crime but to abide by the way of life of our forefathers are considered to be liars until we prove that we are telling the truth when we state that a traditional religious area or water is being threatened. This is wrong. The Indian Pueblos, Nations, and Tribes should not be forced to violate our culture in order to protect them."

As you know Congressmen, 1993 is the Year of the Indigenous People, we respectfully ask your support to ensure the passage of an American Indian Religious Freedom Act that truly protects our tribal sovereignty and religious freedom as indigenous people of America. Because we Pueblos are special, as someone put it, our unique theocratic form of governments must be protected and nourished to the fullest extent possible, even if under a separate Section or separate Title in the proposed legislation. We hope the Committee will work closely with us to insure that our concerns are fully considered.

Today, the traditional Pueblo religious system remains underground out of fear of religious persecution and desecration of sacred ways, but more so because secrecy insures our spiritual survival. Religious persecution continues today through restrictions of Indian access to sacred areas and traditional use of aboriginal areas located off tribal lands.

As recent as January 22, 1993, religious leaders of the Pueblo of Jemez and descendants of the Pueblo of Pecos, while on a pilgrimage to the sacred Torrero Cave, encountered seven non-Indian persons within the sacred cave which is deemed a severe desecration of the sacred location and disruption of an extremely sensitive religious event.

On behalf of the 19 Pueblo Tribes of New Mexico, I thank you very much for this opportunity to share our history, concerns, and recommendations with you. I extend a hand to you in partnership in this new era of change---one of hope and religious freedom for our people---built on our diversity and strength within this Country called America.

Thank You.

Mr. RICHARDSON. Thank you very much, Chairman Hena. The Chair recognizes Governor Chavez.

### STATEMENT OF HON. CEDRIC CHAVEZ

Mr. CHAVEZ. Good morning.

Mr. Chairman, members of the Committee, I am Cedric Chavez, Governor, Pueblo de Cochiti.

I appreciate this opportunity to appear here and tell you some of the serious concerns and difficulties we, as Pueblo Indians have, in regard to access to sacred sites, use of sacred sites and protection of sacred sites from desecration and destruction. Our problems in these areas are longstanding and fundamental. In order to understand these problems, you have to understand several things.

First, in the traditional Pueblos, such as Cochiti, there is no separation of church and state; we are theocracies.

Second, our sacred areas and our obligation to protect them and to use them and to nurture them is fundamental to our way of life.

Third, we Pueblo Indians have over the centuries given our lives to preserve and protect our way of life. This includes our language, our beliefs and our sacred areas.

Fourth, we are sworn to keep secret all details concerning our traditional religious life and our sacred sites.

In looking at the various proposals for laws put forth so far, we have been sorely disappointed. The critical problem which has not been addressed is the idea that, in order to protect the sacred areas or to secure legal protection of our right to use those areas for traditional religious purposes, the Pueblos would have to come forward and reveal where a particular sacred site or shrine is located, explain why it is sacred and how it is used in order to build a significant legal record to secure its protection or to secure our rights to its use under the ordinary burden of proof rules.

The main point of my testimony today is that any law which requires the Pueblos to come forward and disclose this information will be of no real value to us. We have been able to protect and preserve our traditional religions—our way of life—only by going underground. We were forced to go underground by successive waves of European invaders who were bent on crushing our traditional way of life and forcing us to live and believe some other way.

Despite the terrible human costs of this 500-year struggle, we have prevailed. We have preserved our traditional ways of life only by maintaining the strictest of secrecy about what we believe, how we believe it, how we practice it and why.

We are not willing or able to give up our right to maintain that secrecy. That is now a part of our religious obligation. We are sworn to preserve that secrecy.

The second main point I want to express today is that the relationship of our Pueblo to the United States Government is one of government-to-government. Even though our traditional government is also a theocracy, underlying our external political forms is an internal traditional religious base of leadership and decision-making which is fully intertwined with our governmental structure.

Thus when I, as Governor of the Pueblo, am authorized by our internal Pueblo leadership to speak out on an issue of this sort, the

outside world can know that I speak with the authority of our people.

Any law intended to protect our access to, our use of and our ability to protect sacred sites from destruction and desecration must start with the premise that, when a Pueblo Governor identifies an area as sacred and indicates that a proposed governmental action will harm that area or interfere with our religious use of that area, the Governor's word on that issue must be accepted as true; nothing less is acceptable to us.

Then we can work with governmental agencies to seek alternative ways for the government to achieve what it needs without causing the destruction of what we must preserve.

In those instances where we cannot help the government find another alternative route or location for doing what it wants to do, or where the government will not accept any other alternative and where what the government proposes to do will cause our religious interests irreversible harm, the government should be required to prove that it is essential to achieve some compelling governmental purpose that the government proceed as originally planned. If the government cannot meet that burden, the proposed action should not go forward.

We will be able, in most instances, to identify alternative routes or alternative locations on a ground that would accommodate the government's interest. But we must be allowed to do this without explaining the whys and hows and what that we are trying to protect.

As I have already stated, we take an oath not to reveal those things. It is sacrilege of the most fundamental kind to do so. Don't ask us to commit that sacrilege as the price of legal protection for our sacred areas and our way of life.

Mr. Chairman, you are personally aware of some of the struggles our Pueblos have gone through to protect sacred sites. With your help, a special law, P.L. 101-644, was passed in 1990.

[Prepared statement of Gov. Chavez follows:]

Cedric Chavez  
Governor  
Joseph C. Quintana  
Lt. Governor



Matthew S. Pecos  
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**TESTIMONY OF**

**HONORABLE CEDRIC CHAVEZ, GOVERNOR, PUEBLO DE COCHITI**

**BEFORE**

**THE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE OF THE NATURAL RESOURCES COMMITTEE, U.S. HOUSE OF REPRESENTATIVES**

**HEARING OF FEBRUARY 23, 1993, CONCERNING PROBLEMS AND DIFFICULTIES IN REGARD TO USE, ACCESS AND PROTECTION OF NATIVE AMERICAN SACRED SITES FOR TRADITIONAL RELIGIOUS PURPOSES.**

GOOD MORNING, MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. I AM CEDRIC CHAVEZ, GOVERNOR, PUEBLO DE COCHITI.

I APPRECIATE THIS OPPORTUNITY TO APPEAR HERE AND TELL YOU SOME OF THE SERIOUS CONCERNS AND DIFFICULTIES WE AS PUEBLO INDIANS HAVE IN REGARD TO OUR ACCESS TO SACRED SITES, USE OF SACRED SITES AND PROTECTION OF SACRED SITES FROM DESECRATION AND DESTRUCTION. OUR PROBLEMS IN THESE AREAS ARE LONGSTANDING AND FUNDAMENTAL. IN ORDER TO UNDERSTAND THESE PROBLEMS, YOU HAVE TO UNDERSTAND SEVERAL THINGS.

FIRST, IN THE TRADITIONAL PUEBLOS, SUCH AS COCHITI, THERE IS NO SEPARATION OF CHURCH AND STATE. WE ARE THEOCRACIES.

SECOND, OUR SACRED AREAS AND OUR OBLIGATION TO PROTECT THEM AND TO USE THEM AND TO NURTURE THEM IS FUNDAMENTAL TO OUR WAY OF LIFE.

THIRD, WE PUEBLO INDIANS HAVE OVER THE CENTURIES GIVEN OUR LIVES TO PRESERVE AND PROTECT OUR WAY OF LIFE. THIS INCLUDES OUR LANGUAGE, OUR BELIEFS AND OUR SACRED AREAS. ALL ARE INTERTWINED.



FOURTH, WE ARE SWORN TO KEEP SECRET ALL DETAILS CONCERNING OUR TRADITIONAL RELIGIOUS LIFE AND OUR SACRED SITES.

WHEN ONE OF OUR SACRED AREAS IS DESTROYED OR DESECRATED OR WE ARE PREVENTED ACCESS AND USE OF THEM WE FEEL A SPECIAL KIND OF DEEP-SEATED SPIRITUAL PAIN. IT IS THE KIND OF PAIN YOU MAY FEEL WHEN A SMALL CHILD IS KILLED OR INJURED OR MISTREATED. IN THIS WORLD WE HAVE EXPERIENCED A GREAT DEAL OF THIS PAIN.

WHEN WE HEARD OF THE CONGRESSIONAL CONSIDERATION OF NEW LAWS TO HELP PROTECT INDIAN RELIGIOUS FREEDOM AND THE EXERCISE OF TRADITIONAL INDIAN RELIGIONS, AND THE GOOD WORK OF THE AIRFA COALITION TO ACHIEVE THESE GOALS, WE WERE HOPEFUL THAT THESE NEW LAWS WOULD PROVIDE SOME MEANINGFUL SOLUTION FOR OUR PROBLEMS WITH SACRED AREAS.

IN LOOKING AT THE VARIOUS PROPOSALS FOR LAWS PUT FORTH SO FAR WE HAVE BEEN SORELY DISAPPOINTED. THE CRITICAL PROBLEM WHICH HAS NOT BEEN ADDRESSED IS THE IDEA THAT IN ORDER TO PROTECT THE SACRED AREAS OR TO SECURE LEGAL PROTECTION OF OUR RIGHT TO USE THOSE AREAS FOR TRADITIONAL RELIGIOUS PURPOSES, THE PUEBLOS WOULD HAVE TO COME FORWARD AND REVEAL WHERE A PARTICULAR SACRED SITE OR SHRINE IS LOCATED, EXPLAIN WHY IT IS SACRED AND HOW IT IS USED IN ORDER TO BUILD A SUFFICIENT LEGAL RECORD TO SECURE ITS PROTECTION OR TO SECURE OUR RIGHT TO ITS USE UNDER THE ORDINARY BURDEN OF PROOF RULES.

THE MAIN POINT OF MY TESTIMONY TODAY IS THAT ANY LAW WHICH REQUIRES THE PUEBLOS TO COME FORWARD AND DISCLOSE THIS INFORMATION WILL BE OF NO REAL VALUE TO US. WE HAVE BEEN ABLE TO PROTECT AND PRESERVE OUR TRADITIONAL RELIGIONS - OUR WAY OF LIFE - ONLY BY GOING UNDERGROUND. WE WERE FORCED TO GO UNDERGROUND BY SUCCESSIVE WAVES OF EUROPEAN INVADERS WHO WERE BENT ON CRUSHING OUR TRADITIONAL WAY OF LIFE AND FORCING US TO LIVE AND BELIEVE SOME OTHER WAY. DESPITE THE TERRIBLE HUMAN COSTS OF THIS 500-YEAR STRUGGLE WE HAVE PREVAILED. WE HAVE PRESERVED OUR TRADITIONAL WAYS OF LIFE BUT ONLY BY MAINTAINING THE STRICTEST OF SECRECY ABOUT WHAT WE BELIEVE, HOW WE BELIEVE IT, HOW WE PRACTICE IT, AND WHY. WE ARE NOT WILLING OR ABLE TO GIVE UP OUR RIGHT TO MAINTAIN THAT SECRECY. THAT IS NOW A PART OF OUR RELIGIOUS OBLIGATION. WE ARE SWORN TO PRESERVE THAT SECRECY.

THE SECOND MAIN POINT I WANT TO EXPRESS TODAY IS THAT THE RELATIONSHIP OF OUR PUEBLO TO THE UNITED STATES GOVERNMENT IS ONE OF GOVERNMENT TO GOVERNMENT, EVEN THOUGH OUR TRADITIONAL GOVERNMENT IS ALSO A THEOCRACY. UNDERLYING OUR EXTERNAL POLITICAL FORMS IS AN INTERNAL TRADITIONAL RELIGIOUS BASE OF LEADERSHIP AND DECISION MAKING WHICH IS FULLY INTERTWINED WITH OUR GOVERNMENTAL STRUCTURE.

THUS WHEN I, AS GOVERNOR OF THE PUEBLO, AM AUTHORIZED BY OUR INTERNAL PUEBLO LEADERSHIP TO SPEAK OUT ON AN ISSUE OF THIS SORT THE OUTSIDE WORLD CAN KNOW THAT I SPEAK WITH THE AUTHORITY OF OUR PEOPLE. ANY LAW INTENDED TO PROTECT OUR ACCESS TO, OUR USE OF AND

OUR ABILITY TO PROTECT SACRED SITES FROM DESTRUCTION OR DESECRATION MUST START WITH THE PREMISE THAT WHEN A PUEBLO GOVERNOR IDENTIFIES AN AREA AS SACRED AND INDICATES THAT A PROPOSED GOVERNMENTAL ACTION WILL HARM THAT AREA OR INTERFERE WITH OUR RELIGIOUS USE OF THAT AREA THE GOVERNOR'S WORD ON THAT ISSUE MUST BE ACCEPTED AS TRUE. NOTHING LESS IS ACCEPTABLE TO US.

THEN WE CAN WORK WITH THE GOVERNMENTAL AGENCIES TO SEEK ALTERNATIVE WAYS FOR THE GOVERNMENT TO ACHIEVE WHAT IT NEEDS WITHOUT CAUSING THE DESTRUCTION OF WHAT WE MUST PRESERVE. IN THOSE INSTANCES WHERE WE CANNOT HELP THE GOVERNMENT FIND ANOTHER ALTERNATIVE ROUTE OR LOCATION FOR DOING WHAT IT WANTS TO DO, OR WHERE THE GOVERNMENT WILL NOT ACCEPT ANY OTHER ALTERNATIVE, AND WHERE WHAT THE GOVERNMENT PROPOSES TO DO WILL CAUSE OUR RELIGIOUS INTERESTS IRREVERSIBLE HARM, THE GOVERNMENT SHOULD BE REQUIRED TO PROVE THAT IT IS ESSENTIAL TO ACHIEVING SOME COMPELLING GOVERNMENTAL PURPOSE THAT THE GOVERNMENT PROCEED AS ORIGINALLY PLANNED. IF THE GOVERNMENT CANNOT MEET THAT BURDEN, THE PROPOSED ACTION SHOULD NOT GO FORWARD.

WE WILL BE ABLE IN MOST INSTANCES TO IDENTIFY ALTERNATIVE ROUTES OR ALTERNATIVE LOCATIONS ON THE GROUND THAT WOULD ACCOMMODATE THE GOVERNMENT'S INTEREST, BUT WE MUST BE ALLOWED TO DO THIS WITHOUT EXPLAINING THE WHYS AND HOWS AND WHATS THAT WE ARE TRYING TO PROTECT. AS I HAVE ALREADY STATED, WE TAKE AN OATH NOT TO REVEAL THOSE THINGS. IT IS A SACRILEGE OF THE MOST FUNDAMENTAL KIND TO DO SO. DON'T ASK US TO COMMIT THAT SACRILEGE AS THE PRICE OF LEGAL PROTECTION FOR OUR SACRED AREAS AND OUR WAY OF LIFE.

MR. CHAIRMAN, YOU ARE PERSONALLY AWARE OF SOME OF THE STRUGGLES OUR PUEBLO HAS GONE THROUGH TO PROTECT SACRED SITES. WITH YOUR HELP, A SPECIAL LAW (P.L. 101-644) WAS PASSED IN 1990 TO PREVENT INSTALLATION OF A HYDROELECTRIC PROJECT AT A MOST SACRED PLACE ON OUR OWN LAND. WITHOUT YOUR HELP AND THAT SPECIAL LAW, WE WOULD HAVE BEEN LEGALLY POWERLESS TO STOP THAT SACRILEGE, BECAUSE OF THE SMITH AND LYNG DECISIONS. BECAUSE OF THOSE DECISIONS, CURRENT LAW PROVIDES OUR TRADITIONAL RELIGIONS AND OUR SACRED AREAS ESSENTIALLY NO LEGAL PROTECTION. HOWEVER, FOR THE REASONS I HAVE ALREADY STATED, SIMPLY REVERSING THOSE DECISIONS BY STATUTE WILL NOT SOLVE THE MORE FUNDAMENTAL PROBLEM. ANY LEGISLATIVE SOLUTION WHICH WOULD REQUIRE US TO REVEAL OUR MOST INTIMATE RELIGIOUS SECRETS TO PROTECT OUR SACRED SITES, OR OUR RELIGIOUS USE OF THOSE SITES, IS NO SOLUTION FOR US. THE CHOICE - TO REMAIN SILENT AND ALLOW AN AREA TO BE DESTROYED OR DESECRATED, OR TO SPEAK OUT AND BREAK OUR MOST SACRED VOWS - IS TOO PAINFUL. DON'T PUT US TO THAT CHOICE.

IN CLOSING, I WANT TO SAY THAT WE ARE PREPARED TO PROVIDE DRAFT LEGISLATIVE LANGUAGE TO ACCOMMODATE THESE SPECIAL CONCERNS OF THE PUEBLOS IN REGARD TO OUR SACRED AREAS AND RELIGIOUS PRACTICES. LET US WORK WITH YOU TO FIND WAYS TO ACHIEVE THE LEGAL PROTECTION WE NEED WITHOUT CONDEMNING US TO THAT PAINFUL CHOICE.

THANK YOU.

Mr. RICHARDSON. Thank you very much.

Lt. Governor Sanchez, former Governor Sanchez also, I might add.

### STATEMENT OF J. GILBERT SANCHEZ

Mr. SANCHEZ. Mr. Chairman, members of the Subcommittee, my name is Gilbert Sanchez and I'm here on behalf of the Pueblo San Ildefonso.

San Ildefonso Pueblo for centuries prior to the coming of Europeans to this hemisphere enjoyed and lived in spirituality with nature and our universe. Upon initial contact with Europeans, our spirituality was forever impaired.

Those who came into our lives carried forth with them the symbols of their faith and their religion, totally disregarding the spirituality of the religion of those they found here. In our continued struggle to maintain our religious spirituality, some 500 years ago our forefathers were forced to go underground in order for our religious beliefs and spirituality to survive.

In 1680, nearly 200 years after our first encounter with Europeans, the Pueblo revolve broke out. Not unlike that of the American Revolution based on taxation and representation but was due to the oppression of our basic human rights to our own spirituality and our religion.

The Pueblo people, especially San Ildefonso, have revolted numerous times throughout historic times. In 1849, upon contact with Anglo-Saxon Americans, our spirituality and religion were once again questioned, if not attacked. Some 200 years or more after the Pilgrims landed, our Federal Government passed the American Indian Religious Freedom Act, an act that set forth for acceptance a form of apartheid, if not true apartheid, on the basis of religious freedom guaranteed by the Constitution's Bill of Rights.

The United States of America continually points its fingers of international justice to those who violate human rights around the world but has never looked to itself as the violator. The Pilgrims left their homelands because of religious freedom 200 years-plus ago. When they landed on this continent, they forgot about the religious freedoms of those they found here. Instead, they proceeded to destroy the religions that were being practiced.

San Ildefonso Pueblo and its sister Pueblos have long enjoyed the spirituality of a religion, moved about without interference prior to the coming of the Europeans. Upon the Europeans' coming, fences, roads and other impediments have been made to our spirituality. We no longer go freely from one mountain range to the others, to do the necessary rites in maintaining that spirituality.

We must sometimes request, from our non-Indian neighbors—state, local and Federal Government officials—permission to enter to either worship or gather the plants and herbs necessary to carry out our religious activities.

We at San Ildefonso, over the last 93 years, have seen our spiritual and religious activity limited by progress without planning.

One. The signing of the U.S. Forest Service Act, when land was taken which holds many of our significant sites and areas related to our religious needs.

Two. Under the War Powers Act, our government took an area that is second only to Bandelier National Park's area in significance to the Pueblos' religion. Ongoing now for 50 years, we have been kept from this area on which the National Laboratory has destroyed a known shrine site and has, or plans to build to within intolerable limits of our sacred area, congressionally recognized sites of radioactive wastes, radiation waste sites and develops areas for continued creation of such under the guise of national security.

Yet, during the most recent war, Mr. Chairman, Desert Storm, our government encouraged its military to avoid religious sites, this done during a war. As stated earlier, our government's rules change when it comes to those indigenous peoples whom they found here.

The American Indian Religious Act and the amendments hereto hits upon the very light of human rights. Does not every human being have the right to his or her religious beliefs, to practice them without government or other infringements? Does not apartheid begin when rules and laws are developed to protect rights of minorities or native peoples?

The Government of this United States cannot by law pretend to give us or take away this most basic of human rights to actively participate in our religious beliefs and practice our spirituality.

Mr. Chairman, San Ildefonso Pueblo stands with you in your efforts, and this Committee's efforts, given the diligence of direct consultation, to go forth and develop a comprehensive religious freedom act that would be sustainable to all people.

Thank you, sir.

[Prepared statement of Mr. Sanchez follows:]

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**American Indian Religious Freedom Act - 1993**

Testimony to  
United States Senate Select Committee on  
Indian Affairs  
by 1st Lt. Governor J. Gilbert Sanchez  
for the Pueblo of San Ildefonso  
February 9, 1993  
Field Hearings at Indian Pueblo Cultural Center  
Albuquerque, New Mexico

San Ildefonso Pueblo for centuries prior to the coming of European man to this hemisphere enjoyed and lived in spirituality with nature and our universe.

Upon initial contact with European man's ancestors, our spirituality was forever impaired. Those who came into our lives carried forth with them the symbols of their faith and religion--totally disregarding the spirituality of the religion of those they found here. In our continued struggle to maintain our religious spirituality, some 500 years ago our forefathers were forced to go underground in order for our religious beliefs and spirituality to survive. In 1680, nearly 200 years after our first encounter with European man, the Pueblo Revolt broke out, not unlike that of the American Revolution based on taxation--but this was due to the oppression of our basic human right to our own spirituality in our religion. The Pueblo people

and especially San Ildefonso have revolted numerous times throughout historic times up until the mid-1800's against the Spanish and later Mexican rule.

In 1849 upon contact with Anglo-Saxon Americans, our spirituality and religion once again were questioned if not attacked. Some 200 years or so after the Pilgrims landed our federal government passed the American Indian Religious Freedom Act--an act that set the stage for acceptance of a form of apartheid if not true apartheid on the basis of religious freedom guaranteed by the Constitution's Bill of Rights.

The United States of American continually points its finger of international justice to those who violate human rights around the world but has never looked to itself as the violator. Two hundred years ago the Pilgrims left their homeland because of religious freedom--when they landed on this continent they forgot about the religious freedom of those they found here, instead they proceeded to destroy the religions that were being practiced. Today you are here holding hearings on the amendments to the current law.

San Ildefonso Pueblo and its sister pueblos have long enjoyed the spirituality of our religions and moved about without interference prior to the coming of European man. Upon European man's coming, fences, roads and other impediment have been made to our spirituality--we can no longer go freely from one mountain range to the other to do the necessary rites in maintaining that spirituality. We must sometimes request from our non-Indian neighbors, state, local and federal government permission to either worship or gather the plants and herbs necessary to carry out our religious activities.

We at San Ildefonso Pueblo over the 93 years have seen our spiritual and religious activity limited by progress without planning.

1. By the signing of the U.S. Forest Act - land was taken which holds many of our significant sites and areas related to our religious needs.

2. Under the War Powers Act our government took in area that is second only to Bandalier National Park areas in its significance to the Pueblo religion. On-going now for 50 years we have been kept from these areas on which the National Laboratory has destroyed shrine sites and has or plans to build to within intolerable limits of sacred sites radiation waste sites and continues to develop areas for continued creation of such under the guise of national security. And yet during the most recent war, Desert Storm, our government encourages its military allies to avoid religious sites--this during a war. As stated earlier, our government's rules change when it comes to those indigenous people whom they found here.

The American Indian Religious Freedom Act hits upon the very light of human rights--does not every human being have the right to his/her religious beliefs and to practice them without government or other infringement? Does not apartheid begin when rules and laws are developed to "protect" rights of minorities or native peoples. The government of these United States cannot by law pretend to give us or take away this most basic of Human Rights--to actively participate in our religious beliefs and practices--our spirituality.

\* \* \* \* \*

Given the sad state of federal law concerning the inherent right of American Indians of

freedom to believe, express, and exercise our traditional religions, the proposed amendments to strengthen the American Indian Religious Freedom Act of 1978 (as codified at 42 U.S.C. 1996), will provide greater protection than presently exists for tribal religious practices and beliefs. Something is better than nothing. The Pueblo of San Ildefonso wants to recognize several areas where the proposed amendments will improve the present legal situation concerning American Indian religious practices. There are areas of concern that San Ildefonso would like to see improved before the Bill is submitted to Congress. The Pueblo sees the proposed amendments as the product of political compromise already. San Ildefonso hopes that the language intended to respect, protect and preserve our traditional Indian spiritual practices will not be further eroded through the legislative process.

Section 601 of the draft faxed to New Mexico on February 1, 1993 acknowledges the inherent rights of Indian tribes and of individual Indians regarding religious practices and other inherent rights. This "savings clause" means to the Pueblo of San Ildefonso that Congress does not intend to take away any of our existing rights by passing these amendments to the American Indian Religious Freedom Act. This is good. Section 501 provides for access to federal district court to enforce the provisions of these amendments. The idea of having to use federal law and courts to continue our ancient practices is very unpleasant to think about. In light of recent federal supreme court decisions disrespecting Indian religious practices and the present inability to challenge decisions of federal agencies concerning access and use of lands for our traditional ways, the proposed amendment authorizing access to federal district court



to enforce the proposed amendments can be seen as an improvement over the present situation.

San Ildefonso has an important concern about the use of the term "native american traditional leader" as defined in section 3(10), and as used throughout the proposed amendments. San Ildefonso does not want federal law to encourage bypassing the tribal governor on matters covered by the proposed amendments. The federal government should not, as a matter of policy and respect, bypass the tribal officials responsible for dealing with external affairs (including the United States). San Ildefonso does not disclose the identification of its traditional leaders. This is part of the way we protect our traditional ways of spirituality. These amendments should not require or encourage the federal government to bypass existing tribal lines of communication. Nor should the proposed amendments authorize or encourage the possible divisions within a tribe that can come from recognizing traditional religious leaders operating independently of the federally-recognized tribal council and administration of each tribe. San Ildefonso suggests using the term "tribal leadership" instead of "native american traditional leader".

San Ildefonso is glad that the proposed amendments would extend the protections afforded by the proposed amendments to not only lands within federal jurisdiction, but also those within state jurisdiction, including "any and all political subdivisions", as defined in section 3(14). San Ildefonso further appreciates the findings in Section 101 recognizing the "devastating impact" of Federal activities in the past, the integral part of religious practice to our Pueblo culture, and the historic trust responsibility of the United States to protect Native

American "community and tribal vitality and cultural integrity". Recognizing the significance of aboriginal territory now held by the federal government or others has having continuing importance to our Pueblo and other tribes is an improvement over the current situation.

The requirements in section 102 concerning federal land management will remove any questions about the authority and requirement of federal land managers to recognize Pueblo access to Native American Religious sites on federal lands at all times, and the federal managers' ability to close such lands to the public. Providing notice to tribes of any proposed federal agency activity on lands within "areas with aboriginal, historic, or religious ties" to a tribe is a definite improvement over present practice. Our concern about notice to "traditional leaders" that the agency knows may have an interest in the land extends to Section 103(d) for the reasons mentioned earlier. The language in Section 103(e) appears to require a tribal response within ninety (90) days of the notice. This should be optional. That can be accomplished by changing the word "shall" to the word "may" on page 15, line 24 of the February 1, 1993 proposed legislation. San Ildefonso considers it vital that no person or tribe be required to do anything or disclose any information to any agency.

San Ildefonso's concern about the role of "traditional leader" extends to proposed Section 104. The Pueblo again strongly urges that agency consultation be coordinated through the tribal government, and not directly with individual tribal members. The Pueblo further urges that the federal government stop doing things and making decisions that "will or may alter or disturb the integrity of native american religious sites or the sanctity thereof, or

interfere with the access thereto, or adversely impact upon the exercise of a native american religion or the conduct of a native american religious practice. Section 104, page 17, line 4 through 8. As Pueblo people we think that federal respect for our tribes should go that far. The proposed language for consultation and preparing a document analyzing adverse impacts and alternatives is clearly a political compromise. This seems to be something, which is better than nothing. We want to remind you that it is still a long way from the kind of respect we hope for from the federal government.

Section 105 concerning "burden of proof" we are told by our legal staff, is a significant improvement over existing law, both at the administrative and court levels. For that reason, San Ildefonso supports this provision. Our experience has shown that what the Pueblo considers to be "substantial and realistic" threats to Indian religious practices may be seen differently by federal land managers. In any event, requiring federal agencies to choose the least harmful or intrusive alternative is important progress. Requiring the government interest to be "compelling" is also important.

Section 106 recognizes tribal authority over Indian lands. This is one of our inherent rights, recognized and protected by Section 601. Requiring federal agencies to follow tribal laws on Indian lands is a valuable directive. San Ildefonso urges that Section 106(b) be strengthened on page 20, line 7 by replacing the word "authorized" with the word "required". This would mean any governmental agency would have to enter into an agreement with the appropriate Indian tribe to assurance conformance with the laws or customs of the tribe. To

the extent that authorization for a federal agency to do that is needed, the authorization would be included within the requirement for agreement. The requirement will assure that governmental agencies do in fact follow the laws or customs of the tribe.

The "national security" exception stated in Section 106(d) can be important for San Ildefonso, which borders the Los Alamos National Laboratory. Requiring a presidential determination helps contain the size of this exception. It would be better to require consultation with the tribe by the governmental agency involved early in the process, and long before a presidential request for exception is prepared. San Ildefonso has been concerned since the establishment of the Los Alamos National Laboratory that "national security" provided a convenient explanation for disrupting traditional hunting grounds and making access to Pueblo shrine sites difficult. At present, we see some relaxation in the scope of what "national security" requires. San Ildefonso suggests that the language in Section 106(e) on page 20, line 21 be amended by adding after "Section 103" the words "and 104" and after the word "notify" the words "and consult", and line 23 of that same section to add after the word "Indian" the words "and federal", so that tribal interference with use of religious sites outside tribal boundaries is minimized.

Section 108 and 109 concerning confidentiality and penalties seemed to make the best of a bad situation. The Pueblo is extremely reluctant to disclose any information about its religious practices. If it chooses to do so, however, the sections seem strong enough to discourage abuse of that information by federal employees. The Pueblo concerns in this area

remain, while recognizing the strong efforts made in the proposed amendments to address that concern.

Title 2 concerning traditional use of peyote and Title 3 Prisoners Rights will not be commented on by San Ildefonso.

Title IV Religious use of Eagles and other animals and plants recognizes the importance of wildlife in our traditional Indian spirituality. Section 401 does not spell out the exact details of the plan for how the government will "simplify and shorten" the process by which Indian people can receive eagles acquired by the federal government. Other wildlife besides eagles should also be made available for our traditional purposes. Injured eagles and other wildlife which cannot be returned to the wild should be made available to Indian tribes as a matter of federal policy. Dead eagles and wildlife should be made available to the tribes on a fair basis.

The requirement for a tribal permit system and annual report to the federal government concerning eagles within tribal lands disturbs San Ildefonso greatly. That should not be required. We have ways of handling these matters evolved through centuries. Requiring any kind of tribal ordinance to codify those practices seems to be an unreasonable imposition of "white tape". Tribal sovereignty and our inherent rights should respect Pueblo traditions enough to allow their continuation without adding paper requirements. The legislative history should make clear that the language in this act recognizing tribal ability to directly distribute and control eagles or their parts, nest, or eggs, and other wildlife in accordance with tribal religious custom constitutes federal acknowledgement of inherent tribal rights in this sensitive

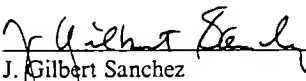
and important area of tribal control of its lands and that which lives and grows there.

In Section 402 San Ildefonso is glad to see attention paid to plant gathering activities. Certain greens are essential to our tribal ways, yet are rare within our present Pueblo boundaries. The scope of federal recognition here should go beyond items that are already cut and determined to be "surplus", as discussed in the 1979 American Indian Religious Freedom Act Task Force Report mentioned in the proposed amendments at page 34.

The Pueblo of San Ildefonso wants to state again its concern about these proposed amendments giving rise to an inference that tribal religion needs federal governmental approval. The legislative history should clearly show that is not true. If the proposed amendments will reinforce our traditional religions, they should be passed. Since we see our cultures as a cultural system that is endangered, and in fact should be considered as "an endangered species" within the broader context of federal law, San Ildefonso will support the proposed amendments, with the changes suggested in this statement.

Thank you for your consideration.

PUEBLO OF SAN ILDEFONSO,

  
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J. Gilbert Sanchez  
1st Lt. Governor

Mr. RICHARDSON. I thank the gentleman.

The Chair recognizes the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, I found the remarks of the gentlemen on the panel to be insightful and helpful and, of course, very interesting to all of those who are interested in fully granting religious freedom to all Americans.

At least two of you raised the issue of trying to maintain, understandably and I think correctly, the secrecy of some of your religious activities. It creates a dilemma such as the following. I know we all live in the world of reality but to make the point let me be a little hypothetical.

It may be in the tenets of some religions to withhold medical help for ill children, even to the point of that child's death. Does the public have an interest to try to stop that? And what if that religion also held that that practice of theirs was to be kept secret, that no one should know about it?

And yet if it is in the overriding public interest not to allow children to die without available medical help being applied, how does the Federal Government then, or the courts, or the enforcement agencies of the Federal Government, get around that dilemma?

Mr. HENA. Let me try to respond to that question. I think you're trying to equate that with some other religious sect that we read about every now and then who don't favor taking someone who's ill to the medics. In the Pueblo religion this is not the case.

I think where the concerns of health are concerned, those decisions are properly made within that government and usually access to medical professionals is practiced. So we don't see any problem with that, in the way you're asking the question.

Mr. WILLIAMS. Let me use a different example. Your response is well accepted.

If it is in the public interest to protect certain species who are in danger of extinction, should the government, and therefore the public, allow any religion to practice the taking of those animals, birds or whatever species it is, as part of their religious undertaking? If the government prevents that from happening, would that be entanglement in church/state issues? If we don't prevent it from happening, are we setting aside a certain group of people as superior to the Endangered Species Act?

Mr. SANCHEZ. If I may, Mr. Chairman, I think that question is very pointed. The fact is that if you look on, back in the War of Desert Storm, as I've indicated, your government/our government told the allies not to hit upon any of the religious situations, archaeological sites, religious-significant sites within Iraq.

And yet you're sitting there asking the question that is paramount, how can we go about this thing? We're not asking for any special privileges or any other things. We're only asking for the right to carry on our spirituality.

We cannot, as we sit here, divide our religious activities from ourselves. We live in the spirituality of that situation. I think that the situation of using an endangered species, a plant or an animal, is very farfetched.

We see the American Eagle, the Bald Eagle, as a symbol of the strength of this country. Yet, to us, it holds more sincerity of the relationship that we have in our spirituality. And yet we are not

allowed to use that particular bird or animal to do any of the things we want. We have to go through a process that is very limiting.

And I think if you have a religion of your own in western society, if you have to wait two or three years to bury your own people, or to initiate or to ordain someone, I think that you would understand this thing. It's very hard for us to relate to you how we feel.

I think the only analogy that I can give you here, sir, is that we, as Native Americans, as much as the Hebrew, are born into that religion. We can accept you as an associate member of our tribe; we can bestow a headdress upon you; you will never be one of us, the same as in the Hebrew Nation.

I think they can give you and ordain you and everything else in the Hebrew Nation, but you can never be a true Hebrew because you are not born into that group. Excuse me for that analogy.

Mr. WILLIAMS. Anyone else wish to comment on the endangered species analogy?

Mr. FLUTE. Congressman Williams, when you raise the hypothetical situation regarding endangered species, again you have to understand the theology of Native Americans, the theology that life is sacred, all life, not just human life but animal life. And I'm not aware of any native religion, regardless of its confidentiality or whatever, that would treat the child or any person who is ill in a way that they would not tend to them medically or whatever.

When we look at endangered species, the only one that I'm aware of personally would be the Bald Eagle. It was not the Native Americans who caused the Bald Eagle to be an endangered bird. When you look at the Park Service, Fish and Wildlife reports, you find that most of the eagles that are found dead are electrocuted by power lines.

In the State of Montana, for example, it wasn't too long ago that they found 40 eagles along a ten-mile stretch of power line that were electrocuted. In Oregon and Idaho, environmental groups have asked the power companies to put more space between the power lines so the eagles would not cross over and become electrocuted. And that's starting to help that situation.

But the endangered species situation is not something that we created nor are we attempting to take advantage of right now.

Mr. WILLIAMS. Finally, Mr. Chairman, let me try to make clear to this panel the reason for my question, as a way of demonstrating what I know you all understand to be the dilemma in the Congress.

I'm very supportive of religious freedom for America's native people. I've already begun meeting with and working with the staff and the Chairman of this Committee to try to achieve that. I believe you do not now enjoy the same religious rights that other Americans enjoy and we ought to change that.

But we have a dilemma and we have to find a way around the dilemma. And I mentioned your request for secrecy as one of the dilemmas.

Should the Federal Government allow any religion to operate outside of what may be the public good simply by saying, we need secrecy? That's a dilemma. Maybe the answer is, yes, we should allow that but it is a dilemma for us.



Can the Federal Government set aside what it believes to be the public good in any instance simply to protect people's right to practice their own religion? The laws of the United States have continually answered no to that question.

And so we have a tradition in the United States of the Federal Government coming right up to, on behalf of the public now, the point where we become entangled with religion and then we stop. But the question is, how big is the bump; how close do we get; how much freedom do we allow?

And it is—I'll use the term again—a real dilemma, particularly for those of us who insist, as I do, on absolute separation between church and state, not an iota of entanglement, and yet insist that people have full religious freedom.

Thank you, Mr. Chairman.

Mr. RICHARDSON. Thank you.

The Chair recognizes the gentleman from Wyoming.

Mr. THOMAS. Thank you, Mr. Chairman.

Thank you for your testimony. This is frankly the first hearing I've been involved in on this matter, so I don't think there's a soul here who doesn't want to work toward what we're doing. But it is as the gentleman from Montana indicated.

Relate to me an instance where, as a matter of information, lands off the reservation, lands that are not, in ownership at least, Indian lands, have a conflict with—give me an example of where lands are in conflict with religious and sacred places?

Mr. FLUTE. If I can take a shot at that, there will be other witnesses talking about specific sites but let me tell you about Mount Graham in Arizona.

Mount Graham is a very sacred site to the Apache Tribe, not just one tribe but all of the Apaches. Within their religious society they have a group that's known as Crown Dancers. The Crown Dance Society is the society within the Apaches that holds Mount Graham to be a very sacred site, the home of Cochise.

The University of Arizona decided to build a telescope there. And on the very site of this telescope were shrines that were critical to the importance of the spiritual leaders. This is a place where they trained young men to be spiritual leaders and that place is being destroyed.

Mr. THOMAS. What is the ownership of that particular piece of land?

Mr. FLUTE. This is Forest Service land. And previously that part of the land was in the San Carlos Reservation. And through subsequent treaties, as with all of these cases, almost every one of the sites that I've given you in my testimony were in fact within the geographic boundaries of a reservation at one time or other; Mount Graham is no different. Most of these sites have that kind of history.

Medicine Wheel in Wyoming is another site where the Forest Service is interested in turning that into a tourist attraction. Before the publicity spread about Medicine Wheel, just in the past three years, the numbers of tourists going there was approximately 15,000 people a year.

Because of the tribe's dispute with the Forest Service, in attempting to save and protect that sacred site, last year they had

over 75,000 tourists go there in a 65-day period. And the amount of destruction caused by that kind of an impact to that site has been tremendous.

Mr. THOMAS. Have you been there?

Mr. FLUTE. Yes, I have.

Mr. THOMAS. So have I; I'm from Wyoming.

Mr. FLUTE. So there's not been a proper management plan nor has the Forest Service been interested in working with the tribes to protect that site.

Mr. THOMAS. That may be part of the key. You say, working with them to protect it.

Pursuing again sort of Mr. Williams' notion, if one of these sites was on private property, and there's a conflict of takings here, what do you do? Isn't there a basic conflict then of ownership and right to use property?

Mr. FLUTE. It's been my personal experience that these are issues that are negotiable. And these are things that you can sit down with people, whether it's a private owner, state of the Federal Government, and these can be negotiated. And once the owners or the caretakers of this land understand why this is an important site, I'm not aware of any situation where the owner has declined to at least come halfway with the tribe. This has happened a number of times.

Mr. THOMAS. So in your view legislation would not grant a privilege of taking then of properties of that kind?

Mr. FLUTE. I don't think that's ever been the intent of tribes, sir. I think it's been the intent to protect these sites to allow us to continue to go there. Medicine Wheel, I think, is a prime example.

Mr. THOMAS. Mr. Brown is here, I see, and we'll be talking about Medicine Wheel in the next group.

Mr. Chairman, let me exercise a little personal privilege, if I may. A young man is here in the room who is from the Wind River Reservation and is here to exhibit some of his artistic work this evening at the Title II Education Conference. And his name is Sterling Howell; he's in the back. And I'd like to recognize him and his instructor, who's seated on the floor there, I see.

Thank you very much.

Mr. RICHARDSON. The Chair recognizes the gentleman from Hawaii.

Mr. ABERCROMBIE. Thank you, Mr. Chairman.

I want to thank the witnesses as well.

I may come at this from a slightly different angle, being an adopted son of Hawaii. You may not be familiar with the term but I'm a haole. That means I'm a stranger originally; it's come to mean caucasian. Contemporarily, it's usually preceded by a few adjectives that I won't repeat right now, although I think I've managed to get past those—is that right, Kina'u—in the past 30 years. [Laughter.]

But that doesn't bother me. Mr. Sanchez, it was you, I believe, that indicated you could be adopted or you would be asked to be a part of something, and I understand that. Not only do I understand it but accept it and am grateful for it.

Because sometimes it's been my observation that you can be born into something and then take it for granted. However, if you are

converted or adopted, sometimes you pay even more attention than you would otherwise because it's a privilege that's been granted to you. So if you would grant, in turn, to me that premise for my questioning your observations, I'd be grateful.

My observation has been as a haole in Hawaii and elected then to this position as a minority. From the voting demographics about three-quarters of the people in my district are not caucasian. So I think that I've demonstrated a fidelity then to that which constitutes Hawaiian values, Polynesian values, which is exemplified in what we hope is how we conduct ourselves today.

Establishing that context then—and I hope this doesn't sound gratuitous, Mr. Chairman, or sound even superficial to you—I think the difficulty is being created by the government here. I don't really see this as a difficult situation at all.

It seems to me that even the 1978 Religious Freedom Act is quite clear in what it says and it seems to me the First Amendment is clear. Of course I'm a First Amendment absolutist. I take the Nat Hentoff approach to the First Amendment. Good speech will drive out bad speech. And the First Amendment means what it says. And you don't have to go through all this.

It seems to me *Lyng v. Northwest Indian Cemetery Protection Association* and, more particularly, *Division of Oregon v. Smith*, is the government trying to get out of what it knows it has to do. And the Supreme Court merely making a pronouncement that it is going to run away from the First Amendment and the Freedom Act and has this torturous logic, or presumed logic, in holding these things.

It seems to me that it is absolutely clear that if the Act says that the United States is "to protect and preserve American Indians in their inherent right"—it says "inherent" there, an "inherent right"—". . . to exercise the traditional religions . . . including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

I don't know what else you can write. It seems to me it says what it says. In other words, Mr. Chairman, I think I need to hear some very specific legislation that can improve upon any of this.

Now maybe what we need is a new Supreme Court and we should urge the retirement or perhaps you have some—[Laughter.]

I will go along with your secret societies; maybe you can help hasten the departure, I don't know what kind of action you can take in that regard. But this has more to do with intrigue on the Supreme Court's part than it does with improving legislation.

So, unless I can hear something from you as to how to improve this, I really don't think that there's much that needs to be done, other than enforce it, to get a Justice Department and a head of the Interior Department that will do what he or she is supposed to do, which is protect these situations.

So my final point then, in observation—and I guess this is where the question comes—by the way, let me tell you something. The reason we don't have geothermal energy in Hawaii is that the people who are doing it are violating the religious basis of the volcanoes; I'm sure of that. Anybody who paid any attention would know

it wouldn't work. But they thought they could impose themselves on the Hawaiians and it's not going to work.

There's nothing inherently wrong with it, but in the Hawaiian situation, that hasn't been resolved yet. The Hawaiian goddess there, Pele, is not ready for that; I believe that. And I believe these natural forces are obvious to anybody; you don't even have to put a religious connotation on it if you don't wish to do it.

So when you get to hearing, for example, this is the question then that I wanted to ask after making those observations. If I understand the four of you correctly, none of you have said that there is not a recognition of what is called compelling interest by the government.

But that all of you have held that the government must show compelling interest; you don't have to prove anything. It's the government that has to prove compelling interest. This has to do with health and safety, for example, say, of a child. I think that was the question Mr. Williams posed.

Under this legislation, there's no difficulty in that regard, right? Or in your view of the thing, there's no difficulty in that regard; am I correct? That if the government can show that there is a compelling public interest, and if the government is willing to go to court and prove that there is a compelling interest, then they have a case. Otherwise, they should stay out of it; isn't that the case?

Mr. HENA. That's correct.

Mr. FLUTE. As long as their demonstration of a compelling interest takes the least intrusive method to the religion, certainly then—

Mr. ABERCROMBIE. But they have to prove that; isn't that correct?

Mr. FLUTE. Right.

Mr. ABERCROMBIE. For example, take eagles. I mean unless you want to assume, as opposed to prove, that any given tribe in America wants to destroy eagles and wipe them out—and it would seem to me that's what you'd have to show—then I think you'd have a compelling interest, right? But there's no evidence of that, is there? I don't know of any?

Mr. FLUTE. No.

Mr. ABERCROMBIE. There's certainly nothing in Hawaii. We used to have cloaks made from the feathers of birds and one of the difficulties why the cloaks were so sacred was that you didn't kill the birds just to get feathers. You had to get the feathers and not kill the birds. That's what made it very difficult, made it sacred, made it an honor and almost a ritual ordeal to do it.

Mr. HENA. I think an assumption is being made that once this particular law is passed that the Indians are going to have authority and what have you to destroy certain endangered species and so forth.

Let me tell you, as a child I recall a man in my Pueblo who was a traditional leader who captured an eagle and kept it for about 10 or 15 years—I don't remember—fed it, just like you folks would keep a dog or a cat in your home. He had it caged outside and he only pulled those feathers whenever he needed them for his own use or for the use of the Pueblo for various ceremonial purposes.

After those many years he released the bird. He never harmed it or anything. So I think that some assumptions are being made that traditionally we can counter because of those practices. Now they're illegal.

Mr. ABERCROMBIE. That's all I have, Mr. Chairman. Thank you.

Mr. WILLIAMS. Would the gentleman yield before the gentleman—

Mr. ABERCROMBIE. Yes, of course.

Mr. WILLIAMS. My question to the two gentlemen who talked about the essential need for religious secrecy went to the heart of your question. And that is, how would the government demonstrate the best interest of the public or how would the government prove that a law was being misused if you need secrecy, which you very well may need and deserve and should have. But then how do we get to the gentleman's point about demonstrating?

Mr. ABERCROMBIE. I neglected that part. I understand. May I respond in that, just quickly on it, with respect to secrecy?

Mr. RICHARDSON. Yes.

Mr. ABERCROMBIE. Again, there are all kinds of secrets. We supposedly have them on legislative committees, on intelligence. [Laughter.]

They're supposed to be leakproof and secret; they end up not being. I don't know what you can do. I suppose you can slap people on the wrist or shake your finger at them when they do it.

So far as I know, the deliberations of the College of Cardinals in Rome, if a pope dies, is secret. Now I don't know if that means that the government needs to pry it open and stick CNN cameras into the Roman Catholic Church but I think people would be upset by that.

It seems to me the Pueblo people have been here longer than anybody else. They still seem to be here today. And, if anything, they're the ones on the short end and the other people have been trying to push them around. So maybe we need more secrecy. Maybe that's the only way you've survived is because of the secrecy.

Mr. HENA. Well, I think that's what we're saying. And I think, like you folks say all the time, you're comparing oranges and apples. Because with Indian religion we don't intend, in any way, shape or form, to go out and convert people into our religion, where Judeo-Christian religions have that as an underlying concept. They have to go out and convert people, I guess considered heathens, to their religion. And we don't have that.

But I think the underlying use of the word "secrecy" is based on our experience of being able to survive 500 years of oppression from various governments, various peoples, with respect to having them impose their religion on us when we already had our own.

And as far as what we are saying, it's limited to members of the Pueblos. So that his Pueblo is a separate government, a different tribe. He speaks a different language; mine is also.

Mr. RICHARDSON. If I could just interrupt, because we have many, many more witnesses. I know this is a very important issue.

Mr. ABERCROMBIE. Thank you, Mr. Chairman.

Mr. RICHARDSON. I would like to, as a matter of courtesy, recognize the gentleman from California.

Mr. CALVERT. Thank you, Mr. Chairman.

I'm also new on this Committee and very interested in this particular legislation. My great-grandmother was a full-blooded Cherokee and so, over the years, I have listened to many stories from my family regarding Native Americans.

One issue here regarding religious sites, has there ever been or attempted by the various tribes an inventory of sites throughout the United States?

Mr. FLUTE. I'm not aware of any effort at this point. I think that's been attempted but I'm not sure that there's been an actual accumulation of that information.

This inventory that I've given you are sites that I'm personally aware of and I've either worked with the tribes or I've been to these sites.

Mr. CALVERT. Has there been in the past or possibly in the future some communication/coordination between the various tribes to locate those sites and to work with both the Federal, state and local agencies to assist in assuring that those sites aren't violated in the future?

Mr. SANCHEZ. If I may, sir, we in the Pueblo country hold those sites to be secretive because of the fact that, under the Freedom of Information Act imposed on Federal agencies and sometimes the state government, we refuse to identify sites in their true identity or to the specific site because of the fact of vandalism taking place and the raiding of those sites by our neighbors, those of us from within our own communities who have no respect for any of this situation. So we refuse, on the grounds of that, to be included in any type of inventory.

We do know, through our religious elders, that there are sites that are not in the inventory of certain things. Back in the turn of the century many archaeologists from the Smithsonian Institution and the Library of Congress were asked to go out there and look over some of these things and identify some of the sites. But I can say that less than ten percent of those sites were identified by our people. We continue to hold those in secrecy within our own communities, for their protection.

To give you an example, just this past summer, 18 months ago, we started working on the situation within DOE-held properties that were declared excess. The Forest Service was trying to initiate a land exchange with a private person who had some 400 acres in the Gila Wilderness that wanted to develop some homes and condominiums in the Los Alamos National Laboratory in the Los Alamos city limits.

Within that area there were 25 shrine sites that had not been identified. We went in there with the Forest Service archaeology team; we identified them. The day we identified them, the day after I went back up there and the archaeology crew that was out there had staked those areas out completely.

Five years earlier we had a similar incident that happened with the Forest Service in the canyon over from this area. And within 6 months those areas were raided completely.

So, for those reasons, we tend not to be very open to anyone, even your government. There's no guarantees of protection in any form at this point in time. As I indicated, even the Department of

Energy, under the War Powers Act, have gone out and destroyed a shrine site within DOE property.

Mr. CALVERT. So what we're saying then is I'm assuming that the other tribes in general follow that same logic, keeping the various sites secret. So that's a problem on how we protect those sites, especially off-reservation sites.

Mr. FLUTE. If I can make a comment, that's not universal, Congressman. There are some tribes who reserve that confidentiality. But many of these sites are already public knowledge.

And I'd like to just make a comment, going back to Congressman Williams' statement. The key to all of this is consultation. Despite any confidentiality or secrecy of religion, if the land manager will consult with tribes, tribes also have ideas and suggestions as to alternate methods of development or access to these areas.

And where we get into problems is when we're not consulted and a federal agency decides on its own that it's going to crash off and do a road across a mountain. Then we get into trouble. But if, through consultation—and I'm talking honest, bona fide consultation—with two parties with open minds sitting down and talking about it, you can find solutions without being antagonistic with each other.

And that's all we're asking here is we want a method whereby we are consulted on any of these plans that would disturb an area.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. RICHARDSON. I want to thank the witnesses for their very strong and compelling testimony.

I'd like to call to the table now the second panel. Mr. Chris Peters, Director, Seventh Generation Fund, McKinleyville, California; Mr. A.L. Johnnie, Director of the Lummi Cultural Resource Protection Office, Bellingham, Washington; the Hon. John Sun Child, Sr., Chairman, Chippewa Cree Tribe, Box Elder, Montana; and the Hon. Francis Brown, Chairman, Medicine Wheel Coalition, Riverton, Wyoming.

I especially want to welcome this panel and, again, as I mentioned before, your full statements will be inserted in the record. I would ask you to summarize within the 5-minute time limit.

Let me also say, for the members, I will also ask we keep our questions to 5 minutes so we can get into as extensive an exchange as possible.

I yield to the gentleman.

Mr. THOMAS. Mr. Chairman, thank you. I already indicated to Mr. Brown I have to leave, but I want to particularly welcome Mr. Brown from Riverton, Wyoming, to this panel.

The Medicine Wheel is an item of great interest in Wyoming, not only to Indians and Native Americans but to the rest of us. So I'm delighted that he's taken the time to come and he had a tough time getting here through the weather. But I wanted to welcome Mr. Brown.

Thank you.

Mr. RICHARDSON. In accommodating the ranking minority member, I'm going to ask the gentleman from Wyoming, the Hon. Francis Brown to go first.

The Hon. Francis Brown, you are recognized.

PANEL CONSISTING OF HON. FRANCIS B. BROWN, PRESIDENT, MEDICINE WHEEL COALITION FOR SACRED SITES OF NORTH AMERICA, RIVERTON, WY; HON. JOHN SUN CHILD, SR., CHAIRMAN, BUSINESS COMMITTEE, CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION, BOX ELDER, MT; AL SCOTT JOHNNIE, DIRECTOR, LUMMI CULTURAL RESOURCE PROTECTION OFFICE, BELLINGHAM, WA; AND CHRISTOPHER H. PETERS, EXECUTIVE DIRECTOR, SEVENTH GENERATION FUND, MCKINLEYVILLE, CA

#### STATEMENT OF HON. FRANCIS B. BROWN

Mr. BROWN. Thank you, Mr. Chairman.

My name is Francis Brown. I'm a member of the Arapahoe Tribe on the Wind River Reservation and also President of the Medicine Wheel Coalition for Sacred Sites of North America.

I would like to state some of the problems for the last 6 years that we've had with the Big Horn National Forest on protecting the Medicine Wheel.

I think we have worked and had meetings with the Forest Service many times and always come out with a blank check with no signature, no agreement of any kind. After 5 years, last year we finally got an agreement with the Forest Service to hire two interpreters to work at the Medicine Wheel.

And I think 5 years ago the tourism was around 18,000 people per year and every year it has increased to where there were 70,000 people last year visiting the Medicine Wheel. And they practically tromped the Medicine Wheel and the vegetation around there, with cars backing up, with no proper parking or anything, right into the ground. There's a probably eight- or ten-inch trail that has eroded around the Medicine Wheel with all this tourism.

Two weeks ago we met in Billings, Montana, with the Forest Service. We had quite an extensive meeting about things. There were probably eight different tribes there, representing their tribes in Montana and South Dakota and Wyoming.

Three days of talk did not furnish any kind of agreement with the Forest Service. So I consider those three days lost through lack of action from the Forest Service.

The Forest Service at that meeting, one of their employees had told us that the Forest Service could do what they wanted to do. They could agree on some of the things that were brought up at that meeting or they wouldn't have to agree on anything. They could just let the Medicine Wheel go as it is and not do anything or they could even destroy the Medicine Wheel, they said. That's how much power I guess the government has invested in the Forest Service.

So we did compromise a few things and finally, after the meeting, we did decide that we would give the Forest Service 10 working days to come up with an adequate agreement that we could sign for the protection of the Medicine Wheel. And I hear by some of the people that the Forest Service has come out with an agreement. I haven't seen it yet but some people have already received it by fax here.

So, in the 5 or 6 years now that we have worked with the Forest Service, we have never really come up with nothing. The only thing



that the Forest Service has done for the Medicine Wheel is to furnish two interpreters last year. And last year the 70,000 tourists that were there had entrenched around the Medicine Wheel an 8- to 14-inch trench all the way around there.

When the Medicine Wheel is 10,400 feet above sea level, there isn't much growing time for any vegetation to grow back. And the people and the cars had done the damage there right at the Medicine Wheel.

And at this meeting we requested that the Forest Service shut down the road at least a half a mile away and control tourism a little better to where maybe we could cut tourism down to half of what it was last year. Because I think, if they let it go for another year, there'll be nothing to save up there.

Thank you.

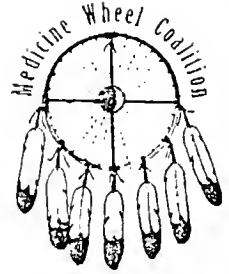
[Prepared statement of Mr. Brown follows:]

# Medicine Wheel Coalition for Sacred Sites of North America

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February 23, 1993



The Honorable Bill Richardson, Chairman  
Subcommittee on Native Affairs  
Longworth House Office Building  
Washington, D.C.

REGARDING: Testimony concerning Oversight Hearings on American Indian Religious Freedom Issues, Tuesday, February 23, 1993, Washington, D.C., by Francis B. Brown, Northern Arapaho Traditional Elder, and President, Medicine Wheel Coalition for Sacred Sites of North America.

Chairman Richardson, Committee Members:

It is important the U.S. House Subcommittee on Indian Affairs, and Congress in general, understand Native Americans need to have Congressionally guaranteed protection of sacred, traditional, and cultural sites, and access for ceremonial use of those sites.

**Concern Number 1) VANDALISM AND ADVERSE EFFECTS CAN BE AVOIDED:** Native American Indians should not have to continually plead to federal, state, and local governmental agencies for access to ancient and historic spiritual sites.

Even though, the US Forest Service in its 1991 DEIS for the Bighorn Medicine Wheel National Landmark admitted there would be **ADVERSE EFFECTS** and **IRREVERSIBLE AND IRRETRIEVABLE EFFECTS** to the archaeological and cultural resources at the Medicine Wheel site, it still has not grasped the attitude that a number of those **ADVERSE EFFECTS "CAN BE AVOIDED."**

The damage done to the Medicine Wheel Site during the 1992 Summer was immense. The U.S. Forest Service legally, and the Medicine Wheel Coalition spiritually, are obligated to ensure the protection of the Medicine Wheel Site. That protection cannot be accomplished if tourists, or anyone else are damaging the site intentionally or unintentionally. For that protection to happen though, the Forest Service needs to get past its multi-use [timbering, tourism, and recreation] view of the site and situation and recognize that the Bighorn Medicine Wheel National Landmark needs to be administered more in accord with how other major National Landmarks in the United States with cultural/archeological sites are being managed.

**Concern Number 2) MULTIPLE LAND USE LEADS TO VANDALISM:** Congress needs to recognize that this tactic of "misuse of the multiple land use theory" is standard approach by all of the federal agencies.

The Forest Service, using this tactic, still verbally claims they are compelled by Congressional decree to see that archaeological

sites are also multiple land use sites -- including the Bighorn Medicine Wheel National Historic Landmark. This means the archaeological site is also available for mining, drilling, foresting, timber hauling, grazing, snowmobiling, hunting, water storage [reservoirs], road building, placement of electric/radio towers, and tourism -- always to the detriment of the sacredness and archaeology of the site.

**Concern Number 3 BUFFER ZONES ARE NECESSARY TO REDUCE VANDALISM:** There needs to be a 2 1/2 mile environmental buffer zone around the Bighorn Medicine Wheel National Landmark prohibiting all new timbering and oil and mineral exploration and any industrial road use of the FDR-12 road. This sort of buffer zone is necessary around any ancient/traditional sites located on federal and state lands that are proposed as landmarks for public visitation.

**Concern Number 4) TOURIST VISITATIONS AS VANDALISM:** The Forest Service has proposed to make the Bighorn Medicine Wheel National Landmark a major tourist attraction, however, at the same time it still has not dedicated itself to maintaining at least one full-time employee at the site, and not place "tourist trap" hot dog stands, toilets, and parking lots immediately adjacent to the sites.

To protect traditional/ancient sites that are targeted as tourist attractions, and to protect the sites from overt, covert, accidental, and/or incidental tourist and/or industrial vandalism, then a full-time agency employee needs to be located at the site.

It is a fact that tourist visitations of ancient and historic Native American archaeological sites are increasing tourist season by tourist season. There is nothing wrong with people wanting to identify with their land and nation's past. However, it is wrong that tourism interests and the commercialization of ancient Native American sacred sites, often takes more precedence with federal, state, and local governmental agencies, than the preservation of the site itself. Agencies consistently choose locating outdoor toilets, barbecue pits, parking lots, hot dog stands, and tourist trinket shops as more important governmental business than maintaining the site's integrity and/or sacredness.

**Concern Number 5) UNREGULATED FEDERAL/STATE AGENCY SELF REGULATION OFTEN LEADS DIRECTLY TO VANDALISM:** Currently governmental agency directives are the main support in protecting sacred ancient and historic Native American sites. This sort of agency self regulation, however, is subject to the good will or whims of the agency's personnel who can change from day-to-day. Or, it can change due to the pressures of whimsical agency administrators who work within their own personal agenda, and not for the preservation of any Native American archaeology.

At this time, many governmental agency personnel "shutout" or ignore Native American inputs when developing their projects in a number of ways: 1] Some agencies totally disregard and/or do not request any Native American input. 2] Some agencies request Native American input [as required by federal guidelines], knowing all along they plan to ignore the Native American input in the developing process. 3] Some agencies ask for Native American input, but then use only a small portion of it that easily fits the agency's already predetermined agenda. And, 4] Some agencies ask for tribal

inputs on archaeological sites, but are very unwilling to share any of the agency's collected archaeological information back with the tribes.

Concern Number 6) **ARCHEOLOGICAL SURVEYS ARE NECESSARY:** The immediate need for a Complete Cultural/Archeological Survey to be done at the Bighorn Medicine Wheel Site and adjacent properties, to set the boundaries of the National Landmark is of utmost importance. This site was recognized as a landmark in the 1950s and still has not been adequately surveyed 40 years later. If other federal and state managed properties are managed similar to how the Bighorn Medicine Wheel, then there is the need for stricter laws requiring FULL archeological surveys of ancient sites that are being proposed as public landmarks, parks, etc. by all federal and state agencies.

At this time, the Medicine Wheel Coalition strongly proposes the United States Congress enact stronger laws that are permanent, and that will truly give legal protection to sacred and archaeological sites.

Sincerely,



Francis B. Brown

President, Medicine Wheel Coalition for Sacred Sites of North America; Northern Arapaho Tradition Elder

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Mr. RICHARDSON. The Chair recognizes the Hon. John Sun Child, Sr., Chairman of the Chippewa Cree Tribe from Box Elder, Montana.

Does the gentleman from Montana wish to add to that introduction?

Mr. WILLIAMS. Well, just to again thank the Chairman and the Committee for asking the Chairman to come out from Montana to be with us. I look forward to the testimony of my old friend.

Mr. RICHARDSON. Please proceed.

#### STATEMENT OF HON. JOHN SUN CHILD, SR.

Mr. SUN CHILD. Ladies and gentlemen, if I may [brief speech in Chippewa Cree].

Thank you, Mr. Chairman. I am grateful for this opportunity to help resolve problems of concern to Indian people. It saddens me that we are living in a time when mere mortals can do away with what the Creator has made sacred.

It saddens me that it has come to this point already, so fast in the history of creation, when the stroke of a pen can cut a stronghold which ties people of the Creator.

Our religion was given to us by the Creator to practice freely without interference. Yet I am appealing to you as legislators for assurance that I may continue to do something which is my god-given right. I am speaking now in search of some lawful means to protect basic human rights.

My testimony today concerns the Sweetgrass Hills located in Liberty County, Montana. The Hills have long been recognized as a place of significant traditional and cultural value by the native inhabitants of the surrounding prairie of northern Montana and southern Alberta and Saskatchewan.

Native American people who lived on the northern Montana plains and frequented the Sweetgrass Hills include ancestors of today's Blackfeet, Chippewa Cree, Gros Ventre, Salish, Kootenai and Assiniboine Tribes. All of these remain in the vicinity today.

These tribes affiliated with the Sweetgrass Hills value these hills as a spiritual retreat, a location for conducting special ceremonial activities. Specialized uses include fasting and praying, vision questing, gathering of economic and sacred plants, paints and medicines. It is clear that the Sweetgrass Hills offered a wide range of plant and animal food resources and was viewed as a pleasant and abundant refuge from the lowlands.

To the credit of the United States, in 1978 Congress passed the American Indian Religious Freedom Act in recognition of the need to protect the religious freedom of American Indians.

However, the pen which wrote the Act is the same pen which allows for continued assault on Native American religions, as sacred sites are still being violated. Today's people did not create history but we live with the results of our ancestors' decisions and experiences.

As Native Americans, we did not choose our sacred sites; we did not create the history of this country in which the only sacred sites are those evident in the American Indian religions. Perhaps that is why Congress is so ill-equipped to provide protection for our sacred sites.

Although this is understandable, it is still morally intolerable. Yet it has continued with the *Lyng* ruling by stating that "it is unlawful to punish a person for practicing a religion or to coerce a person into violating religious beliefs."

Native Americans won't be punished; they won't be coerced. But that statement is an extremely narrow interpretation of the free exercise clause and provides no guarantee that our sacred sites will not be desecrated.

Two U.S. Supreme Court decisions—1988—*Lyng*; 1990—*Smith*—provide loopholes in the American Indian Religious Freedom Act. The loopholes deny First Amendment protection for Native American religious freedom as it affects practicing ceremonies on sacred lands/sites and the use of peyote religion.

I'm speaking mainly about sacred sites because the threats to them, and us, are eminent. I wish for you to understand the peril we are all being put into. It is upon these sites that we communicate directly with the Creator, praying for guidance, giving thanks, not for us as individuals or as Tribes, but for all of creation.

AIRFA has no teeth and, as a result, the words spoken come out jumbled and promote misunderstanding. The regulations need to be written clearly and, when completed, will become a testimony to the religious freedom upon which this country was founded.

The individuals of the Nation have to follow the law as well as the administrative branches of government. But evidence indicates that neither feel the inclination to do so. Otherwise, why should Manhattan Mining entertain the prospect of gold development in the Sweetgrass Hills?

If American Indian religious freedom was considered, the Bureau of Land Management simply would have said no to Manhattan Mining. Perhaps the Nation's addiction to gold precludes religious protection. Has the BLM or Manhattan Mining violated AIRFA? When will their actions be considered a violation? What will be their penalty? Where is the legislation that provides for a legal cause of action when sacred sites may be impacted by federal governmental action?

From the beginning of time, the Sweetgrass Hills have been a source of spiritual sustenance to the Native Americans of the Great Northern Plains. In the heart of East Butte country, on the slopes of Mount Royal is Devil's Chimney Cave, which is recognized today by the Chippewa-Cree Tribe of Rocky Boy's Reservation as one of the most important religious sites.

There is a hole on top of the mountain from whence the great winds emerged. An Indian, braver than most, had once climbed to the top, crawled to the edge and looked into the hole. There he saw a whole new world, with the herds of buffalo and many Indian camps. This cave is also known as the Sweetgrass Hills Wind Cave. The Bureau of Land Management has allowed Manhattan Mining to look into the same hole. Manhattan saw nothing but gold.

In conclusion, the sacred sites are being destroyed. Foresters are building roads and miners are finding gold upon them. Some of the sacred sites are being inspected by tourists through the accommodating Park Service.

Today, as Indian people, if we don't take care of the sacred sites, then maybe tomorrow our children will have to ask for permission to pray there. How can the loss ever be described? And yet, that's what we are being asked to do as Indian people. It is apparent that all they want to do is translate everything into a number and put a dollar sign in front of it.

Our Elders said. "Remember that the earth was created for everyone and everything. And that we are not to selfishly claim it. We are all to share the good things in life so that we may all live in harmony."

Ladies and gentlemen, in my own language at the beginning of my presentation, I asked God to look upon me, look upon me, appearing before a group of people about what I thought, what all my teachers, teachers in my culture, teachers in my religion, what I always believed was a god-given right. Here I was appearing before a body about my religion willing, begging, pleading that my religion be legislated. We stand ready to help you.

Thank you.

[Prepared statement of Mr. Sun Child follows:]

# **The Chippewa Cree Tribe of the Rocky Boy's Reservation**

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TESTIMONY OF  
MR. JOHN SUN CHILD  
CHAIRMAN, CHIPPEWA CREE BUSINESS COMMITTEE

TO

SUB COMMITTEE ON NATIVE AMERICAN AFFAIRS  
FEBRUARY 23, 1993  
P.L. 95-346- AMERICAN INDIAN RELIGIOUS FREEDOM ACT



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MR. CHAIRMAN

I am John Sun Child, Chairman of the Chippewa Cree Business Committee, Rocky Boy's Reservation, Montana.

Speech is a gift to be used to tell the truth, speak kindly of others, and to help each other. I am grateful for this opportunity to help resolve problems of concern to Indian people and I have carefully chosen my words.

Truthfully, it saddens me that we are living in a time when mere mortals can do away with what the Creator has made sacred. It saddens me that it has come to this point already, so fast in the history of creation, when the stroke of a pen can cut the stronghold which ties people to the Creator. Our religion was given to us by the Creator to practice freely without interference. Yet, I am appealing to you, as legislators, for assurances that I may continue to do something which is my God-given right. I am speaking now in search of some lawful means to protect basic human rights.

My testimony today concerns the Sweetgrass Hills, Liberty County, Montana. The Hills have long been recognized as a place of significant traditional and cultural value by the Native inhabitants of the surrounding prairie of Northern Montana and Southern Alberta and Saskatchewan.

Native American people who lived on the Northern Montana

Plains and frequented the Sweetgrass Hills included ancestors of today's Blackfeet, Chippewa Cree, Gros Ventre, Salish, Kootenai, and Assiniboine Tribes; all of these remain in the vicinity today. These tribes affiliated with the Sweetgrass Hills, value these hills as a spiritual retreat and a location for conducting special ceremonial activities. Specialized uses include fasting and praying, vision questing, gathering of economic and sacred plants, paints and medicines. It is clear that the Sweetgrass Hills offered a wide range of plant and animal food resources and was viewed as a pleasant and abundant refuge from the lowlands.

Probably of even more significance than the food plants are the plants used for ceremonial activity including the Sweetgrass and the Sweet Pine.

Sweetgrass, which is available in the Hills, and by which, they received their name, is a critical purification incense used in almost all ceremonial activity by Northern Plains Tribes. According to Rocky Boy Chippewa Cree spiritual leader, the late Art Raining Bird, grass is one of the most important items in the world and sweetgrass is one very special kind of grass, representative of all the grasses to the Indians. Sweetgrass was chosen by the Creator as a sacred messenger of the people's prayers to the Creator and prayers sent to the Creator through the medium of Sweetgrass incense are easily interpreted by Him.

To the credit of the United States, in 1978, Congress passed the American Indian Religious Freedom Act in recognition of the need to protect the religious freedom of American Indians.

However, the pen which wrote the Act is the same pen which allows for continued assault on Native American religions as sacred sites are still being violated. Today's people did not create history but we live with the results of our ancestors' decisions and experiences. As Native Americans, we did not chose our sacred sites and we did not create the history of this country in which the only sacred sites are those evident in American Indian religions. Perhaps that is why Congress is ill-equipped to provide protection of sacred sites. Although this is understandable, it is still morally intolerable. Yet it has continued with the Lyng ruling by stating that "it is unlawful to punish a person for practicing a religion or to coerce a person into violating religious beliefs." Native Americans won't be punished and won't be coerced but the statement is an extremely narrow interpretation of the Free Exercise Clause and provides no guarentee that our sacred sites will not be desecrated. Two US Supreme Court decisions (1988 - Lyng, 1990 - Smith) provided loopholes in the American Indian Religious Freedom Act. The loopholes deny First Amendment Protection for Native American religious freedom as it effects practicing ceremonies on sacred lands/sites and the peyote religion.

I am speaking mainly about sacred sites because the threats to them, and us, are eminent. I wish for you to understand the peril we are all being put into. It is upon those sites, that we communicate directly with the Creator, praying for guidance, giving thanks, not for us as individuals or as Tribes, but for all of

creation. The Tribal Elders said, "We believe that racism and prejudice in any form is a useless exercise for the human mind because it only breeds hatred, misunderstanding, and unhappiness; it ignores the realities of the world because there are different people and beliefs which have a right to exist as long as their's does not attempt to do way with our way of life." So I ask this question: "Is your way of life attempting to do away with the Indian way of life?" Individually, you can answer that question. But as a group, you must define your answer in terms of the law of the land. Will it "mark the rise or fall of democratic faith?"

AIRFA has no teeth and as a result the words spoken come out jumbled and promote misunderstanding. The regulations need to be written clearly and when completed will become a testimony to the religious freedom upon which this country was founded. The individuals of the nation have to follow the law as well as the administrative branches of government. But evidence indicates that neither feel the inclination to do so. Otherwise, why would Manhattan Mining entertain the prospect of gold development in the Sweetgrass Hills? If American Indian religious freedom was considered, the Bureau of Land Management would simply have just said, "No," to Manhattan Mining. Perhaps the nation's addiction to gold precludes religious protection. Has the BLM or Manhattan Mining violated AIRFA? When will their actions be considered a violation? What will be their penalty? Where is the legislation that provides for a legal cause of action when sacred sites may be impacted by governmental action?

From the beginning of time, the Sweetgrass Hills have been a source of spiritual sustenance to the Native Americans of the Northern Great Plains. The Gros Ventre, Blackfeet, Salish, Kootenai, Assiniboine, and the Plains Cree have significant oral, traditional, and ceremonial history in northern Montana's Sweetgrass Hills, a sacred site. The Sweetgrass Hills is a most sacred, special place, a special area where we communicate with the spirit world through fasting and praying and vision questing. The Northern Plains' Tribes gathered economic and sacred plants, paints and medicines, and conducted ancient rites and ceremonies in the Sweetgrass Hills. "Authorization to perform ceremonies comes from higher spiritual powers and not by certification by an institution or even by any formal organization."

Within the Sweetgrass Hills, in the heart of East Butte country on the slope of Mount Royal is Devil's Chimney Cave which is recognized today by the Chippewa Cree Tribe of Rocky Boy's Reservation as one of our most important religious sites. "There is a hole at the top of the mountain from whence the great winds emerge. An Indian, braver than most, had once climbed to the top, crawled to the edge, and looked in the hole. There he saw a whole new world, with the herds of buffalo and many Indian camps." This cave is also known as the Sweetgrass Hills Wind Cave. The Bureau of Land Management has allowed Manhattan Mining to look into the same hole. Manhattan Mining sees gold.

In conclusion, the sacred sites are being destroyed. Foresters are building roads and miners are finding gold upon them.

Some of the sacred sites are being inspected by tourists through the accomodating Park Service. Today, as Indian people, if we don't take care of the sacred sites, then maybe tomorrow our children will have to ask for permission to pray there. How can the loss ever be described? And yet, that's what we are being asked to do as Indian people. The Bureau of Land Management and Manhattan Mining want clear cut information. They want to know exactly what we do in the Sweetgrass Hills, exactly where we do these things, and how we do them. Perhaps if we told them then maybe they, too, could cleanse their spirit. But it is apparent that all they want to do is translate everything into a number and put a dollar sign in front of it. The Elders said, "Remember that the earth was created for everyone and everything and that we are not to selfishly claim it. We are all to share the good things in life so that we may all live in harmony." No real progress can be made in environmental law unless some of the insights into the sacredness of land derived from traditional tribal religions become basic attitudes of the larger society (quote from Vine DeLoria, Jr., 1991).

Mr. RICHARDSON. I thank the gentleman for his very compelling testimony.

The Chair recognizes Mr. Al (Scott) Johnnie, Director of the Lummi Cultural Resource Protection Office in Bellingham, Washington.

#### STATEMENT OF AL SCOTT JOHNNIE

Mr. JOHNNIE. Stsa'stel'quyd is my traditional name; it's 16 generations old and I have many inheritances because of that.

I am speaking here on behalf of the Lummi Nation and I wish to say [Lummi phrase] or, good morning, to you. And I appreciate the time for hearing me out this morning on the testimony.

We have submitted a 13-page written testimony and I'm trying to summarize that here this morning. So I'll go ahead and get started.

The Lummis' view of the world is that basically the Great Spirit is in all things; all things are sacred in that we have our order and we, as people have our order. Like the gentleman that spoke before we, we believe that we are to take care of that order and we are to also protect it.

When Christopher Columbus arrived on our shores, he labeled us "Una Gente in Dios" or People in God. And over the centuries the term "in Dios" or, in God, became Indios or Indian people.

And yet today we somehow have to explain ourselves and our beliefs and our values to a society that may not totally understand. But yet we still have to stand up and be that voice.

It's real apparent to the Lummi Nation and we are very aware of the failure of the United States to protect our Indian traditions, ceremonies and spiritual practices and sacred sites from encroachment and also the destruction by non-Indian society.

Over the last quarter century examples of these misguided or destructive policies against Lummi include the U.S. Court of Claims gave an unacceptable judgment award regarding Lummi land and resource claims that was refused by the Lummi Nation. And that was under land claims.

In 1983 the federal, state county and non-Indian law enforcement made a raid on the Lummi Traditional Winter Societies and its religious practices.

Failure of the United States to protect Ancient Indian cemeteries and grave sites. For instance, the disturbance of Indian grave sites is a Class C felony in the State of Washington while the disturbance of non-Indian graves is a Class A felony under the same state law.

Up to a few years ago that was a misdemeanor for the disturbance of Indian graves. And we have many grave sites that have been clearly documented in the Puget Sound area.

And then again, in 1979, a raid on Lummi Traditionalists by federal, state and county enforcement agencies for possession of eagle feathers with generation-old sacred regalia, which was confiscated and our people imprisoned or placed on federal probation.

Then again, despite a 1980 documentation of 14 Tribes' cultural sites areas and resources in the Mount Baker-Snoqualmie National Forest, the USDA Forest Service in the State of Washington continued clearcutting and destruction of these sites and these places.

The U.S. Forest Service and the Federal Energy Regulatory Commission continue to allow destruction of sacred cleansing sites, despite our repeated objections.

The destruction of Ancient Forests in the Pacific Northwest is almost complete, denying our people access to traditional materials. The destruction of our streams and rivers is destroying our salmon-spawn habitat. The salmon is an integral part of our culture. We say at home that culture is fish and fish is culture.

The Lummi Indian Nation supports passage of the American Indian Religious Freedom Act. We recommend that Title I, Protection of Sacred Sites, strengthen the protection of identified sites in National Forests and travel access to traditional materials.

Section 103. Consultation. Strengthen consultation provisions to require agency recognition and respect for tribal expressed views. Disallow any alteration to the definition of "adverse impact" and consider the progress and practice of the Kluckhohn cross-cultural value-based research study, which the Tribe is involved in with the U.S. Forest Service and various other agencies.

Section 104. Federal Land Management. A federal agency should consider ceremonial continuity in the use of sites by the Indian community recognized by tribes in a region, rather than simply used by a federally-recognized tribe. Sacredness is sacred, period.

Section 105. Legal Cause of Action. Subsection [a][2]. Maintain and strengthen burden of proof requirement on the government.

Section 105. Legal Cause of Action. Subsection [c]. A federal agency must consult with a tribe to ensure factual records are true and complete. Tribal views should be included in the report or reasons stated as to tribal views aren't included in the pertinent or relevant issues.

The Lummi Nation is of the opinion that the Treaty of Point Elliot did not cede, surrender, relinquish or destroy Indian peoples' or Tribes' rights to religious freedom and that the United States is bound by the Treaty, the Northwest Ordinance and the U.S. Constitution to protect Native American Indian religious freedom from damage by federal departments, agencies or those of the states or their political subdivision or citizenry.

The U.S. is obliged, under the internationally recognized "sacred trust of civilization" not to subject Native Americans to culturocide, which is the end result of the destruction of denial of Native American religious freedom.

The Lummi Nation supports the passage of the American Indian Religious Freedom Resolution of 1993, not as an enactment to govern and regulate Native Americans, but as a vehicle to regulate and govern over the citizenry and the political subdivisions of the United States, as so much acts in prevention of or interference with or impacts to Native American religious freedom.

Such an enactment would be more in line with the intended purpose of Article I, Section 8, Clause 3 of the 1787 U.S. Constitution, rather than the historical use of the respective provision to justify all actions of the United States under the "plenary power" doctrine.

And lastly, the Lummi Indian Nation supports the resolution to protect sacred sites, to protect use of sacred regalia, including eagle parts, to rights of prisoners and the sacred sacrament of the Native American church. However, we must conclude that the failure to



provide legislative requirements for better management of the National Forests and rivers shall, in the Pacific Northwest, destroy the culture and religions of the Coast Salish Peoples. This then shall produce culturocide, which paves the way for genocide.

Thank you for the time.

[Prepared statement of Mr. Johnnie follows:]


**LUMMI INDIAN BUSINESS COUNCIL**

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DEPARTMENT \_\_\_\_\_

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**TESTIMONY OF THE LUMMI INDIAN NATION**  
**BY**  
**AL SCOTT JOHNNIE (STSA'STEL' QUYD), DIRECTOR**  
**LUMMI CULTURAL PROTECTION OFFICE**  
**BEFORE THE**  
**SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,**  
**HOUSE COMMITTEE ON NATURAL RESOURCES HEARING**  
**THE**  
**"AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978"**  
**February 23, 1993**

The relationship between our Tribal Indian societies, and the United States, has been burdened with different, conflicting world views and values. Our spirituality is viewed as subjective. Your religious worship of "science" is considered objective. Only now is your society beginning to understand all things are connected. What you do to creation you do to yourself. One of our Chiefs left your people a message, partially as follows:

"Every part of this country is sacred to my people. Every hillside, every valley, every plain and grove has been hallowed by some fond memory or some sad experience of my Tribe. Even the rocks, which seem to live dumb as they swelter in the sun along the silent shore in solemn grandeur thrill with memories of past events connected with the fate of my people, the very dust under your feet responds more lovingly to our footsteps than to yours, because it is the ashes of our ancestors, and our bare feet are conscious of the sympathetic touch, for the soil is rich with the life of our kindred."

*Chief Seattle, Duwamish/Suquamish, 1855*

History has dictated much of what guides the relationship between our people and yours, still, today. During the first voyage of Christopher Columbus, the Admiral entered in his log "Una Gente In Dios." He surmised the Natives were "A PEOPLE IN GOD." Over the centuries, the reference of "Indios" translated as "Indian", was more favored over "In Dios." One of the first Indian rights advocates was Bartolome de Las Casas. La Casas died about 1566, still fighting with King and Church over prevention of using the Sword to convert the Natives to Christianity. In 1993, the United States continues to force conversion to Christian beliefs and practices through denial of Native American religious freedom. This denial is profitable, since Christianity preaches exploitation of the natural world and separates "God" from creation.

It is ironic that the United States finds it so difficult to recognize Native American Religion, while simultaneously reaping the benefits of contact (See: Indian Givers, by Jack Weatherford, 1988). For example, in 1987, the Senate Select Committee on Indian Affairs introduced and passed Senate Concurrent Resolution No. 76: "To Acknowledge The Contribution Of The

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Iroquois Confederacy Of Nations To The Development Of The U.S. Constitution And To Reaffirm The Continuing Government-to-Government Relationship Between Indian Tribes And The United States Established In The Constitution" (Hearing Dec. 2, 1987). This resolution passed the House of Representatives as House Concurrent Resolution No. 331, as recommended by the House Interior & Insular Affairs Committee. The resolutions recognized the sovereignty of the relationships between Tribes and the United States.

Indian Tribes, nationwide, have entered treaty negotiations with the United States, as sovereignties. More than 800 treaties were negotiated, 300 were ratified, and all violated in whole or part.

The Lummi Indian Nation is party to the January 22, 1855 Point Elliot Treaty (12 Stat. 927). In accordance to the U.S. Constitution, under Article II, Section 2, Clause 2, the President was empowered to negotiate the treaty and the U.S. Senate was empowered to ratify it (on the 11th day of April, 1859, as Proclaimed by President Buchanan). Upon ratification, the treaty became the supreme law of the land under Article VI, Section 2. The Judiciary was to enforce protection of Tribal treaty rights against encroachments of non-Indian citizenry and government; through its power to review under Article III, Section 2, Clause 1. The President was empowered to enforce the treaty rights.

From 1787 to 1924, Tribal Indians were not classified as citizens of the United States, except under selective criteria (See: Supreme Court criteria in Elk v. Wilkins). They were citizens of their own nations first. The Constitution addresses Indians under the words "excluding Indians not taxed" in Article I, Section 2, Clause 3. While the provision is argued to deal with apportionment of representation only, it has also been seriously considered as a recognition to establish Indian Tribes as separate from the citizenry of the United States. This separation was obvious in post-revolutionary colonies and amongst the new States. This conceptual separation was reinforced in the debates during reconstruction (39th and 40th Congresses), in which language of Section 1 ("subject to the jurisdiction thereof") and Section 2 ("Excluding Indians not taxed") of the Fourteenth Amendment was drafted and approved to assure Tribal Indians were neither national citizens nor State citizens, respectively.

As guidance to the relationship with the Indian Tribes, the new United States bound itself through the Northwest Ordinance of 1787, in which it Stated that the 'utmost good faith shall always be observed towards the Indians, their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed...'. The U.S. Supreme Court has concluded, in U.S. vs. Winans 198 U.S. 371 (1905), that the treaties were not a grant of rights to the Indians but a grant of rights from them, that which was not given was reserved (e.g., Spiritual sovereignty).

If the United States sought to establish relationships with the Indian Tribes, outside the process of treaty, then it could and had resorted to Article I, Section 8, Clause 3- the (Indian) Commerce Clause.... "to regulate trade with foreign nations, amongst the several States, and with the Indian Tribes." This allows regulation of trade and commerce between the U.S. and Indian Tribes.

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Since failure to do so had and could lead to hostilities. The Trade and Intercourse Act of 1790 was one of the first such examples of regulation of the relations....with the emphasis on control of the white men that entered Indian Country.

States were prohibited by the U.S. Constitution to enter into any treaty, alliance or confederation under Article I, Section 10, Clause 1. Such relations were restricted to the national government as a central power. When territories became new States, each was required to enter the Union under the same Constitutional requirements as the original States. This meant the new States did not have power to enter treaties with Tribes, or to regulate or manage Indian Affairs or resources. For this reason, many States were allowed to join the Union provided each adhered to the respective "Enabling Act" requirements imposed upon them by the U.S. Congress. The results were "Compacts with the United States" written into the States' constitutions. North Dakota, South Dakota, Montana, and Washington were covered by the same Enabling Act-which conditionally authorized formation of new States. Section 4 forbid State assumption of jurisdiction over Indian lands, respectively.

As affects the Lummi Indian Nation, Washington State's Constitution declared the U.S. Constitution as 'supreme law of the land' (Art. I, Sec. 2). It declared protection of religious freedom (Art.I, Sec. 11), unless it impacts public property. In the State census taking (Art.II, Sec.3) for apportionment of representation, the State was restricted by the words "excluding Indians not taxed." If a person is not a citizen of the United States (as in the case of "excluding Indians not taxed" or Tribal Indians), then they cannot hold State legislative office (Art.II, Sec.7). Indians were prohibited from the elective franchise by State constitutional language (Art. VI, Sec.1). The State has never amended this constitutional language under the process of Amendment (Art. XXIII), nor formally removed Article XXVI- Compact with the United States (which disclaimed jurisdiction over Indian rights, resources, affairs).

Since the United States is indifferent to the full protection of Indian religious freedom, based on canons of construction of constitutions, the State of Washington has not drafted, ratified, or implemented actions that protect Indian spiritual or religious values outside the reservation communities. Without the force of Federal requirements, it is doubtful such protections will materialize in the State government action.

In analysis of the intended constitutional relationship between the Indian Tribes and the United States, Constitutional Law Professor Milnar Ball (in "Constitution,Court, Tribes," 1987, American Bar Foundation Research Journal) argued it would be a strained construction to find the Commerce Clause as the basis of plenary power. The Supreme Court obviously has done so, regardless of canons of construction of constitutions. The Professor argues there are two constitutions in America; one with honor and the other with dishonor (which is applied to Indians).

If the U.S. Congress bases its power to enact the American Indian Religious Freedom Act on the Commerce Clause (Art. I, Sec. 8, Clause 3), then there may be an obvious doctrine much more legitimate than the judicial-political reasoning for "plenary power." Just as in Brown v.

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Board of Education desegregation cases, it could use the regulation of interState commerce power to extend to Federal and State actions that allow economic harvesting of natural resources used in interState commerce (as a part of "amongst the several States". . .). Thus, economic activities that impact Native religions could be required to conduct impact assessments, in consultation with the Indian Tribes, if the activity is associated with interState commerce (such as timber, hydro-projects).

The Lummi Indian Tribe never intended the 'Treaty of Point Elliot' to waive, surrender, cede, or relinquish any rights of Tribal Indians as regards spiritual, cultural, ceremonial, traditional, and religious freedom. The Lummi people, like Tribes nationwide, has been under constant pressure to enculturate, assimilate, acculturate their way of life to fit the 'American Dream' and its correlating 'Christian citizenship' under the present interpretations of the First Amendment. Resistance usually was met with 'terminationist policies' of the government, supported by the Church.

In 1924, the U.S. Congress and Presidency ratified the 'Indian Citizenship Act.' Prior to this general citizenship, there were several enactments that, theoretically constitutional, allowed individual Indians to separate from their Tribes and then become United States citizens (e.g., Indian Homestead Acts, General Allotment Act, etc.). The full-fledged citizenship was intended to prevent the Department of Interior, Bureau of Indian Affairs from implementing Circular #1665- the Religious Crimes Code ( under Charles Burke, Commissioner of Indian Affairs, 1921-24). This code imprisoned Native Americans for practicing 'non-Christian' ceremonials. The Indian citizenship legislative proponents believed that United States 'citizenship' would provide Tribal Indians with the First Amendment Religious Freedom guarantee.

In an attempt to destroy the non-Christian religious activities of the Indian peoples, President Grant's Peace Policy (December 5, 1870) institutionalized the division of the Indian reservations amongst the Judeo-Christian Societies. Their influence culminated in the Religious Crimes Code. However, the forced conversion into a "civilized Christian Indian" has always been a joint endeavor of government and Church (1492 to present).

The institutionalization of racism destructive activities against Native American religious freedom has been a subject of reflection and apology in recent years.

In 1987, ten denominations (i.e., Lutheran Church in America, American Baptist Churches, N.W. Regional Christian Church, Episcopal Diocese, Washington/North Idaho Conference United Church of Christ, Roman Catholic Archdiocese, Presbyterian Church Synod Alaska-Northwest, American Lutheran Church, United Methodist)-officially apologized for helping institutionalize or passively allowing racism against Native American values, beliefs, and religions. The Churches declared support to secure: (1) the rights of Native Peoples to practice and participate in traditional ceremonies and rituals. . .; (2) access to and protection of sacred sites and public lands for ceremonial purposes; (3) the use of religious symbols (feathers, tobacco, sweet grass, bone, etc.) for use in traditional ceremonies and rituals. Over 1800 churches read the declaration on Thanksgiving Day of 1987.

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In February, 1989, Pope John Paul II, from the Vatican, issued Communique No.56 further condemning the institutionalized racism against Native Americans. The United Church of Christ and the National Bahai have both issued similar condemnations. Prior to these declarations, such denominations typically preached that Indian spirituality was a form of pagan, heathenistic worship of a savage and uncivilized race. As noted above, the Indian Nations contributed to the establishment of democracy. This influence extended to development of the First Ten Amendments. The theory of religious freedom by citizenship was espoused as justification for the 1924 Indian Citizenship Act by the "Indian Welfare League, the National Association to Help the Indian, and the Indian Defense Association of Northern California." These California-based activist groups secured national support for the Indian Citizenship Act enactment, based on their observations of the persecution of the Native American Religions (SEE: The Hopi, by Henry James, 1974).

This legal theory, however, was contrary to the prior rulings on the constitutionality of full-fledged Tribal Indian Citizenship. The U.S. Supreme Court ruled, under Elk vs. Wilkins, 112 U.S. 94 (1884) that the Indians could not be citizens under provisions of the U.S. Constitution. It held that Article I, Section 2, Clause 3 and the First and Second Sections of the Fourteenth Amendment did not include nor authorize Citizenship of Tribal Indians, and this is why the relationship with such Indians is governed by treaty and under the 'Commerce Clause' (Article I, Section 8, Clause 3). The Supreme Court Stated in the Elk vs. Wilkins case:

"An Indian, born a member of one of the Indian Tribes within the United States, which still exists and is recognized as a Tribe by the government of the United States, who has voluntarily separated himself from his Tribe, and taken up his residence amongst the white citizens of a State, but who has not been naturalized, or taxed, or recognized as a citizen, either by the United States or by the State, is not a citizen of the United States, within the meaning of the first section of the Fourteenth Article of Amendment of the Constitution."

This interpretation was stated, in dicta, in the case United States v. Wong Kim Ark (March 28, 1898, No. 132) in review of the applicability and scope of the Fourteenth Amendment to an American born Chinese male. Therein, we understand that "Persons who are born in a country are generally deemed citizens and subjects of that country." This natural-born citizenship, however, did not apply to the Tribal Indians, who were not taxed by the Federal or State governments, and who owed their allegiance to their Indian nation. The United States was constitutionally empowered 'to establish a uniform rule of naturalization." However, as we argue above, such application of this power to the Tribal Indians is constitutionally restrained.

The United States attempted to destroy "Tribalism" amongst the Indian people. From 1948 until passage of the Self-determination policies and enactments of the mid-1970's, the Federal policy was termination, relocation and assimilation of the Tribal Indians into the general populace.

Tribal subsistence and trading economies were destroyed. Indian people were not eligible for education or vocational training unless they left the reservation and promised to never return. The United States ignored treaty rights, consequently no fishing rights, gathering rights, or hunting rights could be exercised by Tribal Indians. The Federal neglect and State encroachments upon treaty reserved natural resources completely impoverished Indian Country. However, in the 1970's, with self-determination, with re-establishment of the rights to fish and hunt, the Tribal Indians returned to their reservations and Tribalism.

Even though the 1924 Citizenship Act was intended to provide the First Amendment guarantees, the U.S. Congress had to pass the 'Joint Resolution American Indian Religious Freedom' on August 11, 1978 (42 U.S.C. 1996, See: Committee Reports at H.R. Rep. No. 1308, 95th Cong., 2d Sess. 3 (1978); S. Rep. No.709, 95th Cong., 2d. Sess.3 (1978)), fifty-four years later. This attempt to secure religious freedom protections in the was blocked by economic interests, and as a consequence Native Americans did not secure a right that was enforceable in the Federal courts. In 1988, the U.S. Supreme Court ruled on Lyng v. Northwest Indian Cemetery Association. This ruling eliminated Native American religious freedom protections in the Constitution. It was, later, strengthened as court policy in Smith v. Emp. Sec. Division of Oregon (1990). The former eliminated any protections for sacred sites; the latter destroyed the Native American Church sacrament.

The constitutional experiment for Indian Citizenship, as a vehicle for providing religious freedom, was a complete failure. Not only did the 'citizenship act' fail to meet the test laid out by the Supreme Court in 1884, but it still continues to violate canons of construction and amendment of constitutions.

In fact, while Tribal Indians were allegedly made citizens, the only real action was the application of the entire Internal Revenue Code to Tribal Indians ("excluding Indians not taxed") by the Internal Revenue Service. The IRS coordinated many tax cases to institutionalize this taxation, primarily since 1940. On November 7, 1940 (M-31019 on pp 990-997 in Opinions of the Solicitor), and supplemented on the 22nd (Supplement to M-31019, on pp 997-1000), the Department of Interior Solicitor issued two Opinions on the question of "excluding Indians not taxed." These opinions enabled the IRS to extract an estimated ten (10) billion dollars annually from within reservation boundaries.

Thus, the experiment to secure religious freedom has been extremely costly to Tribal Indians and their governments. Of the nearly one billion dollars appropriated for Indian Affairs in the Interior Department it has been estimated that only one-tenth is applied for direct services to the Tribes. The Bureau uses ninety percent (90%) of its appropriations for Indian affairs management. The remaining ten percent of BIA appropriations is divided amongst urban and reservation programs. This means that a small percentage of the estimated Federal taxes extracted is returned annually as Federal program appropriations.

The direct effect of Federal taxation is the elimination of revenues for Tribal treasuries through application of revenue codes to business or industry by State and Federal governments prior to

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Tribal assessments. It has been economically/financially not feasible for private enterprise to locate on reservations when all three governments tax the enterprise. Reinforced by the Court, the IRS has eroded an essential power of Tribal government, as a result of the citizenship "granted" to the Tribal Indians.

The Lummi Tribe is very much aware of the failure of the United States to protect Indian traditions, ceremonials, spiritual practices and sacred sites from encroachment by non-Indian society. The Indian Tribes have constantly been subjected to activities that destroy their opportunity to practice their traditional spiritually. Actions by private citizenry, State governments or their political subdivisions, and/or the Federal departments destroy the possibility for Native American Religious Freedom.

It is believed passage of the American Indian Religious Freedom Act rests on constitutional powers of Article I, Section 8, Clause 3. According to the Supreme Court this clause is the source of "Plenary Power" (absolute power) over Indian Affairs. The Lummi Tribe disagrees with the constitutional foundations of this power. But, does recognize that our Religious rights conflict with economic exploitation of the environment. The U.S. Supreme Court considered the rights of Indian religious freedom in light of this question. The Supreme Court, in Lyng, placed "economics" on a much higher plateau of right; thereby, justifying the total elimination of constitutional protection for Indian Religious Freedom.

The final irony is the Lummi Indian Nation has never sold its lands, waters, or natural resources within its aboriginal territory; nor has the United States paid for the lands. The U.S. Court of Claims recommended a judgment award, which was first rejected by the Lummi People in 1972 and continuously ever since. The U.S. Claims Commission, and its Indian Claims Court, completely watered down the claim of the Lummi to the point that the offer made by the U.S. was completely frivolous and unconscionable (See attached Resolution 93-01). Not only did the U.S. not include the rivers, waters, and lakes owned by the Lummi, but it excluded the majority of the lands owned by the Lummi, from the offered settlement. When the Lummi refused to accept payment; then, the U.S. paid itself (by having the Bureau of Indian Affairs accept the payment) and placed the money in the U.S. Treasury.

Examples of problems the Lummi are confronting as regards our free exercise of religion are:

1] In 1979, the Lummi Traditionalists were raided by Federal, State, and county non-Indian enforcement agencies for having in their possession eagle feathers. Elders and toddlers were held at gun point, not allowed to dress themselves after being dragged from their beds before dawn. The armed non-Indian officers were in search of Eagle parts. Sacred regalia several generations old were taken as proof of crimes committed against the laws of the United States. After being made public spectacles, some Lummi people were imprisoned and elders placed on Federal probation.

2] In 1983, the Lummi Traditional Winter Societies were raided by Federal, State, and county non-Indian enforcement agencies for practicing Indian ceremonies that practice classical



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non-Christian activities in their spiritual societies. Lummi people were imprisoned. The defense, in cooperation with Federal Officials, negotiated the imprisonment of two Lummi clients for the freedom of two others from the same society.

3] The Lummi Indian Nation is concerned over the failure of the United States to protect the contents of Ancient Indian Cemeteries and Grave sites. The U.S. has never ratified legislation that would make it a felony to conduct interState marketing of grave goods or sacred objects or regalia taken from ancient Indian cemeteries. Market values have increased the temptation and tendency for private citizenry disturbance of our ancient graves. The State of Washington has been induced to classify such actions of disturbance of known ancient grave sites as a Class C State Felony (although disturbances of non-Indian graves is a Class A felony under the same law).

Recent grave violation activities in Washington State directly affecting the Lummi people have been the disturbances of Tribal Ancient Cemeteries at West Sound and East Sound on Orcas Island, at Point Roberts, and many other sites located throughout our traditional territory in Washington State. In the late 1970's, the City of Blaine, and Birch Bay Community were both authorized by local and State officials to destroy ancient Lummi Indian Burial Grounds at Semiahmoo and Birch Bay.

4] The U.S. Department of Agriculture (Forest Service), and the Washington State Department of Natural Resources (Forest Practices Board) have continued to authorize the destruction of the ancient forests within the State of Washington, through massive clear cutting. An estimated ninety-five (95%) percent of the U.S. Ancient Forests have been completely clear cut. This activity is more devastating than that found in the Amazon of Brazil, as disclosed by the New York Times (based on Landsat Photographs from NASA, June, 1992). Clear cutting continues regardless of the impacts to the N.W. spiritual traditions and ceremonial practices and beliefs of Tribal Indian societies. The Tribal Winter Societies depend on access to the undisturbed forests for questing ceremonies and sacred regalia storage. For these native societies and religious beliefs to continue, it is necessary that certain natural conditions are present in order for their spirituality to remain a reality- i.e., purity, isolation, continuity, integrity, accessibility, privacy.

In 1980, fourteen Tribes in western Washington completed an inventory of cultural use sites, areas, and resources on the Mt. Baker-Snoqualmie National Forest. The inventory, funded by the United States Department of Agriculture, identified over 450,000 acres of cultural use sites in the National Forest. These sites are used today, as they have been in the past, for spiritual questing and cleansing, as well as other traditional practices such as gathering medicinal plants, bark, and roots, and for depositing traditional regalia. The study, conducted by native cultural specialists, was submitted to the Forest Service in 1981. In spite of the overwhelming evidence of the importance of these sites and practices, the Forest Supervisor of the Mt. Baker-Snoqualmie National Forest, Mr. Doug MacWilliams, established a clear policy of disallowing any category of protection for these sites.

5] The U.S. Forest Service and U.S. Federal Energy Regulatory Commission have continued to authorize or support the destruction of sacred cleansing sites in the forests streams, creeks, and rivers; through impacts of silt-load damage due to clear cuts and major hydro-electric projects or the many low-head small hydro-projects instigated by the 1982 Northwest Power Bill. Very rarely does State government demand environmental impact studies. Nor are Tribes generally consulted. When Tribal consultation occurs, our comments are ignored. These activities have continued regardless of the impacts to the Lummi Spiritual Societies who depend on the streams for cleansing ceremonies. Recently the FERC, national office, considered having all FERC applicants for low-head hydro-projects proposed inside the aboriginal Lummi territory participate in studies of the cultural factors. Sadly, since this activity is not required by regulation or law, the request was attacked and rejected by the applicants.

6] The U.S. Forest Service does not recognize the treaty rights of the Northwest Indian Tribes to access the forests for collection of materials and animals essential to the cultural, traditional ceremonies of the people. Neither is the Forest Service willing to honor the U.S. laws that guarantee, without charge, access to mineral and vegetative materials for non-profit, governmental activities. The Tribe, according to the Mt. Baker-Snoqualmie Forest Service Office, did not qualify for the exemptions, even though the 1982 Indian Tax Status Act made very clear the non-profit governmental status of the Tribe. The United States has amended its laws several times since the Second World War, in order to accommodate the need for mineral, vegetative materials, etc. from the U.S. Forests. In 1978/79 the Forest Service addressed this matter, as their contribution to the Report to the Congress by the President in compliance to the 1978 Native American Religious Freedom Act.

The Lummi do not have to these three species access to ancient cedar trees for their Winter Ceremonial and Cultural Long-houses. Nor do their traditional cedar carvers have to these tree species access for totem poles, sacred regalia, cultural arts, or canoes, etc.. The Lummis cannot afford the fees and assessments required by the U.S. Forest Service. Still, the "gathering" cedar (and other products from the National Forest) is a "Winans" right.

7] The Lummi has sacred creation myths about the beginning of their world and spirituality. The Creation of Mt. Baker (Komo Kulsan), his two Wives- Clear Sky (Mt. Rainier) and Fair Maiden (Spieden Island, whose child was Sentinel Island) and his three older Children (the Twin Sisters Mountains and Mt. Shuksan) is the creation myth of the Nooksack River. It, also, tells how all the medicinal and food plants and shellfish came to be located on the all the different islands in the San Juan Island network. This is why the Islands are named for food/medicinal plants. The destruction of the Ancient Forest, especially those forest lands surrounding Mt. Baker and the Twins Sisters Region, and the destruction of the Nooksack River strikes at the heart of Lummi creation.

Thus, the destruction of the quantity and quality of water in the Nooksack River and Watershed is completely challenging the cultural life and society of the Lummi Indian Nation. The destruction of the ancient forests by clear cutting is causing massive silt-load and mud slide impacts to the upper river salmon habitat. This kills the salmon eggs and future annual returns.

The decreased run sizes then destroy the fishing opportunity of the Lummi (and non-Indian fishing fleets). In addition, the equivalent of 100,000 eight cubic yard truck loads of silt is entering the Lummi/Bellingham Bay delta annually, as well as destroying down river salmon habitat. The Salmon Culture of the Lummi is rapidly being destroyed.

The change in diet amongst the Tribal people has caused the Lummi to have an average life-expectancy of 47 1/2 years (only 60 percent of the expectancy of the average U.S. white male). The change in diet has resulted in diabetes, cancer, obesity (due to high starch diets and low protein). Decreased availability of salmon, deer, elk, and other natural wild animal protein has resulted in a marked shift in health. Our creation beliefs teach us to find the respective foods and the ceremonials to maintain the balance between man and nature (e.g., First Salmon Ceremony). In addition, the destruction of the Ancient Forest is resulting in the destruction of the food and medicinal plants found essential to our cultural and spiritual practices.

The Lummi Indian Nation has reviewed the proposal entitled as the 'American Indian Religious Freedom Resolution of 1991 and has concerns, as follows:

**First.** Title I. Protection of Sacred Sites, Sec. 101 Findings, subsection (13) mentions the powers of Congress under the 'fourteenth amendment(s) to the Constitution.' As Stated above, the experiment for Indian citizenship was intended to provide the 'first amendment guarantee' and thereby overcome Department of Interior Circular #1665. This experimental citizenship violated the canons of constructions of constitutions and was contrary to the ruling in Elk v. Wilkins, (1884);

The 1980 Cultural Use Inventory by the Fourteen Tribes identify up to 75 sacred sites in the Forest that are central to the belief and practices of the Winter Societies. The Lummi need guaranteed access to the U.S. Forests for questing ceremonies and sacred sites, and the storage of sacred regalia. The spiritual paints and medicines are located in the forests, just as most of the cultural materials essential to sacred regalia and ceremony. The Lummi need access to the streams, creeks, and rivers in the U.S. Forests for cleansing ceremonies. The Lummi need the U.S. Forest Service Plan to reflect the need to consult directly with the Tribal groups affected by past and proposed harvesting activities in the forests. While the Mt. Baker/Snoqualmie Forest has an objective #10 to address the cultural factor, it fails to be implemented into management strategy.

The Lummi need access to cedar to build their ceremonial houses and other cultural necessities. Even the implementation of current law and treaty right could solve some of the problems. Increasing the buffer zones along streams and creeks and rivers in the National Forest 150 wide zones would help solve some problems for winter bathing/cleansing sites.

**Second.** Section 103. Consultation. The Lummi Nation is concerned about the definition of what is defined as legitimate 'consultation' and the definition of 'adverse' impact. All too often the Tribes have been informed of impacts and then the Tribal responses were ignored or not implemented. In addition, there exists a tendency for the Federal, State, and private

sectors and institutions of society to restrict the definition of 'adverse' so that it protects the economic interests of the general populace over and above the interests of the traditional/ceremonial/spiritual peoples and societies.

The Lummi have been working cooperatively to investigate a scientific method of analyzing the sources of conflicts between Tribal spiritual societies and the U.S. Forest Service and private timber industry. The Lummi Nation, in association with the University of Washington, completed a six-year cross-cultural value-based research program. The program was conducted in association with a task force of anthropologists and cross-cultural psychologists, including the late Dr. Florence Kluckhohn to evaluate and compare basic values ("value orientations"). The project team utilized a method developed at Harvard University. The findings of the research project, published by the U.S. Department of Interior, describes the nature and extent of value-based similarities and differences between the Lummi Tribe and the participating resource management agencies.

The Study, reviewed and confirmed by the projects' Academic Advisory Committee, should be considered in any discussion of religious freedom issues, as so much applies to the development of forest management regimes. The findings indicate that the basic world-view of the Tribe varies significantly from those of other groups, resulting in a different manner of reasoning, belief, and association. Agencies whose activities impact the culture and traditions of the Tribe are often unaware or insensitive to these value-based differences. Perhaps, most importantly, the findings indicate that the Lummi Tribe will experience severe cultural stress if it is forced to curtail or change its traditional practices through the loss of cultural use sites, areas, and resources. This stress will affect not only the continuity of Tribal traditions and beliefs, but also the stability and mental health of the community.

**Third.** Section 104. Federal Land Management, Subsection (a)(2) addresses the concern of how to 'identify' Indian Tribes, . . . , having aboriginal or historic ties to the lands directly or indirectly. . . ". The Lummi Indian Nation does not believe that a Federal agency should be able to totally decide such questions based on the sole determination that the Tribe at issue is or is not 'Federally recognized', but rather should be guided by considerations as to whether or not there has been cultural and/or ceremonial continuity in use and concern for the lands/natural resources associated with the religious practices of the Tribal community, and substantiated and recognized by other Tribes in the same region, or as guided by interTribal continuity of cultural practices.

**Fourth.** Section 105. Legal Cause of Action. Under Subsection (a)(2) the burden of demonstrating that the governmental interest is 'compelling' is a primary matter. All too often the burden has been shifted to the Indian Tribes as a vehicle to prevent or stop their successful appeal and to eliminate significant costs to the party proposing the impact to the Tribal religious and spiritual practices and beliefs. This language should remain and not be changed to shift the burden to the Indian people; and,

**Fifth.** Section 105. Legal Cause of Action. Under Subsection (c) it is proposed that ' . . .

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the court shall conduct a de novo review of the factual record compiled by the Federal agency.' The Lummi Indian Nation is concerned about the contents of what the 'Federal agency' shall determine is a factual part of the record and recommends this process to ensure that the records are accurate and complete with the Indians concerns documented. The section should be amended to ensure the Federal agency shall consult directly with the Tribe on what is or is not a part of the 'factual record' before it submits the same for a de novo review, otherwise, specify reasoning why the records requested or submitted by the Tribe are not included as pertinent.

**In conclusion**, the Lummi Indian Nation is of the opinion that the Treaty of Point Elliot (12 Stat. 927) did not cede, surrender, relinquish, or destroy the Indian peoples' or Tribes' rights to religious freedom and that the United States is bound by the treaty, the Northwest Ordinance, and the U.S. Constitution to protect Native American Indian Religious Freedom from being damaged by Federal departments, agencies or those of the States or their political subdivisions or citizenry. The U.S. is obliged under the internationally recognized 'sacred trust of civilization' to not subject Native Americans to culturocide, which is the end result of the destruction or denial of Native American religious freedom.

The Lummi Indian Nation supports the passage of the 'American Indian Religious Freedom Resolution of 1993' not as an enactment to govern and regulate Native Americans, but as a vehicle to regulate and govern over the citizenry and political subdivisions of the United States, as so much acts in prevention of or interference with or impacts to Native American religious freedom. Such an enactment would be more in line with the intended purpose of Article I, Section 8, Clause 3 of the 1787 U.S. Constitution; rather than the historical use of the respective provision to justify all actions of the United States under the 'plenary power' doctrine.

The Lummi Indian Nation supports the resolution to protect sacred sites, to protect use of sacred regalia (including Eagle parts), to rights of prisoners, and the sacred sacrament of the Native American Church. However, we must conclude that failure to provide legislative requirements for better management of the National Forests and Rivers shall, in the Pacific Northwest, destroy the culture and religions of the Coast Salish Peoples. This, then, shall produce "culturocide"; which paves the way for genocide.

Mr. RICHARDSON. Thank you.  
Mr. Chris Peters.

### STATEMENT OF CHRISTOPHER H. PETERS

Mr. PETERS. Good morning.

My name is Chris Peters. I'm Pohlik-Lah or Yurok Tribe of northern California. I'm the Executive Director of Seventh Generation Fund. And just a few minutes on the concept of Seven Generations.

It's a concept widely held by many tribal people throughout the United States. Basically it infers that in each of our deliberations we consider the impact on seven generations from now. And it is germane to this particular discussion this morning.

The Pohlik or Yurok People in northern California, we're world renewal people. We perform annual ceremonies to heal the earth and to renew the world. If we are prevented from performing these ceremonies, we would cease to exist as a people.

For thousands of years our people used the sacred high country in the Siskiyou Mountain range of northern California for our medicine-making or vision quest, if you will. After a period of purification or cleansing of mind and soul, our religious leaders complete annual pilgrimages to places such as Doctor Rock, Peak 8, Chimney rock, Little Medicine Mountain and other sacred sites as well.

At these sacred places and through a process of intense prayer, prolonged and continuously driven thought, through fasting, through dancing, through singing, for many, many days our religious leaders receive the personal power needed to perform earth renewal ceremonies.

Through this process of medicine-making our religious leaders communicate with the spiritual side of the universe and, in doing so, acquire the wisdom and the knowledge that reaffirms our religious bases, our religious ideology. By virtue of similar religious wisdom, indigenous people throughout the United States and possibly throughout the world also use the process of high mountain medicine, a vision quest or reaffirmation of a religious ideology.

The use of the high country and sacred places are restricted to only a few people, religious leaders that have attained the knowledge of high medicine and who live a pure and clean life.

Religious leaders are always cautious to use the process of medicine making or vision quest in a good and careful manner. To misuse or abuse such power can cause significant emotional and spiritual harm on the individual, in a metaphysical means, if you will; the power can come back on you. And it's not necessarily an ostracization or removing from a tribe. But to use the medicine in a good way is, in a metaphysical way, a very important thing to do.

In 1988 I was a respondent in the *Lyng* case. Basically the *Lyng* case involved construction of the road, the G-O road that linked the two rural communities of Gasquet and Orleans. The road would go directly through the high country and destroy our ability to practice our religions.

Keep in mind, even through a process of consultation, even through a process of utilizing all of the administrative appeal procedures and the use of the American Indian Religious Freedom Act,

the forest Service continued with the road, knowing that their construction of the road would destroy our religious beliefs. Their own studies, produced in 1978, concluded. "That present day Yurok, Karuk and Tolowa Indians, as did their ancestors, consider the Chimney Rock section to be sacred land. That these Indians presently utilize this sacred "High Country" in the exercise of their religious beliefs; that a crucial element of the sacred high country is its pristine nature; and that intrusions on the sanctity of the Blue Creek high country [such as would result from road construction] are therefore potentially destructive to the very core of northwest religious beliefs and practices."

The Forest Service knowingly advanced the road project and advanced litigation to the Supreme Court.

In 1988 the high court not only rejected our arguments and use of the American Indian Religious Freedom Act of 1978 but also denied constitutional protection for our spiritual leaders. This action was taken knowing that "the threat to the efficiency of at least some religious practices is extremely grave."

Please understand that the ruling of the Supreme Court destroyed our ability to use the sacred high country for medicine purposes and for religious reaffirmation. Without the renewal of our spiritual wisdom, our people would not longer exist. Thus, the decision in the *G-O Road* case or *Lyng* case is analogous to a sentence of Forever Lasting Death. And that applies significantly to other tribes.

Although the high country itself has been legislatively saved, included in the Siskiyou wilderness area, and our religions in northern California continue uninterrupted, the precedent established by *G-O Road* has since been cited as the legal right to destroy sacred places and age-old religious wisdom of Native People across the Nation—Red Butte, Mount Graham, Mount Shasta, Badger Two, Snoqualmie Falls, Mount Hood, and the list goes on. And I encourage you to look at the list.

In closing, I'd like to make a few additional comments about sacred places. One, our people believe that sacred places are sacred not only to human. When you consider the significance of sacred places, please look beyond the anthropocentric qualities and understand their value to bio-regional sustainability. Sacred places are significant to the survival of all forms of life. They house the power, the source, the spiritual energy of natural system.

Two, sacred places establish the morality of our people. As indicated above, high mountain medicine reaffirms our religious ideologies and sustains our understanding of natural law. Additionally, the reaffirmation of our religions defines standards of our moral and ethical behaviors. Without access to sacred places and religious reaffirmation, the social and cultural institutions of our tribal communities will decay.

Three, sacred places create an ecologically-center consciousness. Through the process of high mountain medicine and the reaffirmation of earth-based religious wisdom, there has evolved within native cultures an ecologically centered consciousness and a unique world view.

This earth-based paradigm drastically departs from contemporary Euro-American thought. This ecologically based wisdom defines our relationship to the earth and to all forms of this.

It also sets forth the principles for a sustainable life style that teaches respect, reverence and a process of reciprocity that sustains rather than drains the natural elements of the earth.

The recent court cases that enjoin Native free exercise of religion will effectively eliminate this earth-based ecological paradigm. Thus, in future generations the only conscious regard for the earth shall be that of non-sacred commodifiable property.

I encourage the committee to take whatever action necessary to introduce and to pass the amendments to AIRFA. Thank you.

[Prepared statement of Mr. Peters follows:]



Testimony of Christopher H. Peters

Testimony in support  
of the  
proposed Amendments to the  
American Indian Religious Freedom Act

February 23, 1993

**Testimony in Support of the American Indian Religious Freedom Act**  
**Presented by: Christopher H. Peters**

Honorable Congressmen Bill Richardson, other distinguished members of the sub-committee on Native American Affairs and respected tribal elders, I am honored to offer testimony in support of the proposed amendments to the American Indian Religious Freedom Act of 1978.

My name is Christopher H. Peters I am of Pohlik-Lah/Karuk tribal ancestry of northwestern California. Since early childhood I have actively participated in the traditional religious ceremonies of my tribes. In recent years, I have assumed greater responsibility for the preparation and performance of the sacred Earth healing and world renewal ceremonies - contemporarily referred to as the Jump Dance and White Deer Skin Dance. Among the Pohlik and Karuk people Earth renewal ceremonies are fundamental to the very ethos of our cultural existence. We are earth renewal people, our legends and religious ideologies mandate that the primary responsibility for Pohlik and Karuk people is to heal the Earth and help bring forth renewal. The moral and philosophical obligations to continue this religious ideology is genetically or instinctually ingrained in our very souls. If we were prevented from performing these sacred ceremonies we would no longer exist as a people and the world would not be renewed.

For thousands of years my people have used the sacred high country in the Siskiyou mountains of northern California for "medicine making" or "vision quests". After periods of purification (mind, body and soul) our religious leaders complete annual pilgrimages to such places as Doctor Rock, Peak 8, Chimney Rock and Little Medicine Mountain. At these sacred places and through a process of intense prayer, prolonged and continuously driven thought, fasting, dancing and singing our religious leader seeks and receives the personal and spiritual power needed for the preparation and performance of Earth healing and Earth renewal ceremonies. Through this process of medicine making our religious leaders articulate with the spiritual side of the universe and in doing so require the wisdom and knowledge that reaffirms the religious ideology of the Pohlik and Karuk people. By virtue of similar religious wisdom, this process of high mountain medicine is used to reaffirm the earth-based

religious wisdom of Indigenous peoples throughout the United States and possibly throughout the world.

The use of the high country and sacred prayer places are restricted to only a very few religious leaders that have attained the knowledge of high mountain medicine and who live a pure and clean life. Religious leaders are always cautious to use the process of medicine making in a good and careful manner. for the misuse and abuse of such spiritual powers can cause significant emotional and/or physical harm. In fact, among many tribal groups the mere discussion of medicine making is forbidden.

In 1988, I was a respondent in the U.S Supreme Court case - Lyng v. the Northwest Indian Cemetery Association (485 US 439,1988) commonly referred to as the "G-O Road case". The case involved the U.S. Forest Services" planned road construction that would link the two rural communities of Gasquet and Orleans (thus, the name G.O. Road). The road construction would dissect the sacred high country and even according to the Forest Service our studies (TCR-Cultural Resources of the Chimney Rock section-1988) the road would destroy the religious practices of our people: the study concluded:

"That present day Yurok (Pohlik-lah), Karuk and Tolowa Indian, as did their ancestor, consider the Chimney Rock section to be sacred land. That these Indians presently utilize this sacred "High Country" in the exercise of their religious beliefs; that a crucial element of the sacred high country is its, pristine nature; and that intrusions on the sanctity of the Blue Creek high country (such as would result from road construction) are therefore potentially destructive to the very core of northwest religious beliefs and practices."

In 1988 the High Court denied First Amendment- Constitutional Protection for the spiritual leaders of our tribe. This action was taken knowing that "the threat to the efficiency of at least some religious practices is extremely grave". In her ruling Justice O'Connor writes:

"even if we assume that we should accept the ninth circuit prediction, according to which the GO Road will virtually destroy the indians ability to practice their religion, the Constitution simply does not provide a principle that would justify upholding respondents' claim"

Please understand that with this ruling the US Supreme court destroyed our ability to use the sacred high country for medicine making or religious reaffirmation. Without the renewal of our spiritual wisdom our people would no longer exist. Thus, the decision in the GO Road case is analogous to a sentence of - Forever Lasting Death. Although the High Country has since been legislatively included in the Siskiyou Wilderness area and our religions continue uninterrupted, the precedent established with the GO-Road decision has since been cited as the legal right to destroy sacred places and age-old religious wisdom of Native people across the nation.

In closing, I wish to make a few additional comment about sacred places and the practice of high mountain medicine. Our people believe that:

- (1) Sacred places are sacred not only to Humans: When we consider the significance of sacred places we must look beyond their anthropocentric qualities and understand their value for bio-regional sustainability. Sacred places are significant to the survival of all forms of life. They house the power source or spirituality for natural systems.
- (2) Sacred places establish the morality of our people: As indicated above high mountain medicine reaffirms our religious ideology and substantiates our understanding of natural law. Additionally, the reaffirmation of our religions defines standards of our moral and ethical behaviors. without access to sacred places and religious reaffirmation the social and cultural institutions of our communities would soon decay.
- (3) Sacred places create an ecologically centered consciousness: Through the process of high mountain medicine and the reaffirmation of earth-based religious wisdom there has evolved within Native cultures an ecologically centered consciousness and a unique world view. This Earth-based paradigm drastically departs from contemporary euro-american thought. This ecologically based wisdom defines our relationship to the earth and to all forms of life. It also setsforth principles for a sustainable lifestyle that teaches respect, reverence and a process of reciprocity that sustains rather than drains the natural elements of the earth. The recent court cases that enjoin

Native free exercise of religion will effectually eliminate this earth-based ecological paradigm. Thus, in future generations the only conscious regard for the earth shall be that of non-sacred comodifiable property.

In conclusion, at this critical time of environmental and social alarm, when both Indigenous and non Indigenous people are seeking guidance from Native religious philosophies the American Judiciary has formally washed its hands of any constitutional responsibility for protecting earth-based religious philosophies. Without First Amendment protection of the constitution, Native religious ideologies, tribal philosophies, ceremonial practices and the unique ecologically centered consciousness of Native people are susceptible to threats of extinction. In this regard, we humbly turn to the Congress of the United States to seek remedy to our life threatening dilemma. The amendments proposed for the American Indian Religious Freedom Act of 1978 will again establish needed protections of sacred sites and Native religious beliefs systems. Therefore I strongly encourage the Sub-committee on Native American Affairs to take appropriate action required to introduce and adopt the proposed amendments to the American Indian Religious Freedom Act during 1993. Thank you very much.

Mr. RICHARDSON. I thank the gentleman.

The Chair recognizes the gentleman from Montana.

Mr. WILLIAMS. Thank you, Mr. Chairman.

I want to commend and thank all the members of this panel and say, particularly in regard to the last statement by Mr. Peters, that I believe that this Nation and probably the world has come to a place where we are about to move from our focus on consumption to a different paradigm.

And I suggest that we in this country listen to the first Americans. And that people around the world listen to the various tribal members in their own countries. Because there is, it seems to me, a certain wisdom that's being spoken by tribal people which offers our world a way out. And it may well be that the religious freedom discussion will be as important as the eventual law.

I appreciate, Mr. Peters, your counsel.

I personally know, Mr. Chairman, of 10 sites sacred to Native Americans in the northern Rocky Mountains or the adjacent plains which today are in jeopardy because of either public or private pressures. More than half of those exist in our State of Montana.

I am hopeful that whatever we do, with regard to the potential for a new law protecting religious freedom for Native Americans, we will do in a timely fashion so as to provide appropriate and absolute protection to the sacred sites of people in the northern Rockies and the Great Plains.

Let me speak, if I may, just to the area that Chairman Sun Child mentioned, that is, the Sweetgrass Hills, which happen to exist in Montana but are in America's northern tier. I'm told by the Chairman and others that many Native Americans see the Sweetgrass Hills as Eden. Many Native Americans, beyond the members of Chairman Sun Child's tribe, travel to the Sweetgrass Hills annually, or more often, because it is, to them, going home. Many Christians travel to their sacred sites, be it Jerusalem or Bethlehem or the Vatican. People from other religions travel to theirs.

I don't believe that the United States would, for one minute, allow American industry to denigrate or destroy any of those sites—Jewish sites, Christian sites—although I'm quick to note that the American military, along with the military of other countries, has recently been involved in destroying the sites of the cradle of some of the world's great religions, now known as the Middle East or Iraq/Iran/Kuwait.

But I don't believe that we would encourage industry to destroy those sites or to destroy Bethlehem and Jerusalem. And yet it could be said that America's laws and regulations are encouraging American industry to, perhaps soon, move into sites such as the Sweetgrass Hills; Eden for many Native Americans.

And so, as we move on this Committee to protect these sites through the passage of a Religious Freedom Act, we should also, Mr. Chairman, consider moving to protect these sites by other means, for example, wilderness legislation.

My point is, Mr. Chairman, if we don't move quickly, we will move too late.

Again, I thank all of you for being with us.

Mr. RICHARDSON. Thank you very much.

I'd like to ask Mr. Peters, on the high country issue, being a wilderness area and now protected, what do you have to do now—I'm talking about the religious practitioners—to gain access to the area, such as application of permits or notification?

Mr. PETERS. I don't do anything, regardless of what the regulations may say. Likewise, my sisters are basketmakers and, where the regulations request them to do permits, they refuse to also.

One concern with the wilderness areas, it's better than the open market as the sacred sites have been in historically. We do experience a lot of hikers, a lot of desecrations that are less so than what the road would have provided in the associated logging practices. And we recognize the joint use area.

We are hesitant to reveal prayer seats, although some of them have been revealed. And we refuse, in many situations, to reveal the process that we go through in religious reaffirmation.

When you work and when you deal in spiritual power, it's unexplainable in language the potential impact that it can produce.

Mr. RICHARDSON. What if a cause of action would have been clearly defined in the original AIRFA legislation? Let's say we had it. Do you think that would have been enough to stop the *G-O Road* that led to the *Lyng* case if we had clearly defined it? Let's say it had been law.

Mr. PETERS. With significant backup of the Justice Department and the legislation of the United States. Like the gentleman from Hawaii said, there's nothing inherently wrong with the wording of the 1978 AIRFA.

The problem is the implementation and the authority to implement that. And what we come back to Congress for now is the strength to demand the implementation to protect sacred sites.

Mr. RICHARDSON. Mr. Johnnie, from your experience in dealing with federal agencies, in particular, the Forest Service, do you think it's possible to reach the goals of access and preservation you so eloquently outlined in your testimony, relating to sacred sites, through Memorandums of Understanding with these agencies?

Mr. JOHNNIE. Well, one thing I think that MOUs do promote is that there is an actual face consultation process to address the issues. Now I don't know in terms of whether or not there has been a successful MOU between tribes and federal agencies as of yet. But I think that there's possibly an avenue. I think that's the thing that AIRFA is trying to promote; there is an idea of open communication.

And MOUs between us, the Lummi Nation, and federal agencies, one issue that we bring up is that we do have value differences. And that if we can clearly address those differences first, so we know where we're coming from or where the other person sits, then possibly we'll begin to understand how we can obtain a certain goal that we have in mind.

Now again, there are some other issues in terms of confidentiality that are related with that. And, under those 14 various surveys and cultural inventories that have been done under the U.S. Forest with the Mount Baker Snoqualmie, there is a certain protection underneath there as well. And I think that comes from the federal level and not necessarily at the state level, but it is there as a highlight of that.

I'm not sure I answered your question.

Mr. RICHARDSON. No, you did.

Chairman Sun Child, what's the current status of gold mining in the Sweetgrass Hills?

Mr. SUN CHILD. I think we have a reprieve in terms of fact that there's more study being done by the Forest Service and the Park Service.

Mr. RICHARDSON. Have you been contacted by any federal agency for input on the impact of mining?

Mr. SUN CHILD. Yes. Yes, we have. The year's almost up now. We're planning on, like Congressman Pat Williams indicated, other legislation and mining, revision of those laws and the forest legislation. We have dug into just about every legislation that we can to preserve those sites.

A proposed road being advocated now is in 20 feet of one of the most sacred caves in that area, 200 feet from the road. And, yes, we have been able to stall. That's the tactic we have been using, just a little reprieve at a time, hoping for this new legislation of amendments of the American Religious Freedom Act, hoping that there will be more teeth in it.

Mr. RICHARDSON. Chairman Brown, the same question that I asked Mr. Johnnie. Do you think we can achieve these preservation goals of sacred sites through Memorandums of Understanding with the federal agencies?

Mr. BROWN. Well, the ones that I've had to deal with really have no concern, I guess, no concern of preserving any sacred sites if there's any valuable resource under it or near it. Because that has happened to the Medicine Wheel.

We have tried to work for the last 6 years that there would be no kind of industrial undertakings within 2½ miles of the Medicine Wheel area until an ethnographic study is completed. And last summer they came up with a logging proposal within that 2-mile radius of the buffer zone that we wanted around the Medicine Wheel.

So it's just a continuous thing. I mean they'll say one thing but it seems to me that they keep on doing what they think is their job, I guess, to take care of the land.

Mr. JOHNNIE. If I can just say one brief statement here. The Lummi Nation has also worked with the Advisory Council on Historic Preservation in nominating certain areas due to our areas that deal with creation and various other sacredness in the area, including a burial site. And one of the issues there is that they take consideration of what the tribe has to say and its view of why it's sacred and also the area.

Now it has some foreign concepts in there as well. But I think possibly, with the MOU, that question that you addressed earlier, that possibly there are other existing avenues that may need to be looked into. And that possibly is one of them I would suggest.

Mr. RICHARDSON. I want to thank panel two for appearing today.

I'd like to ask the third panel to come forth. The Hon. Nora Garcia, President of the Inter-Tribal Council of Arizona; the Hon. Marshall Plummer, Vice President, Navajo Nation, Window Rock, Arizona; and the Hon. Kina'u Boyd Kamali'i, Trustee, Office of Hawaiian Affairs, Honolulu, Hawaii.



Where's Mr. Abercrombie when I need him? [Laughter.]

I want to welcome these witnesses.

As you all know, under the subcommittee rules, your full statement will be included in the record and we ask you to summarize in five minutes.

Before I start, let me reinforce what Mr. Abercrombie said about our witness from Hawaii, and that is the subcommittee does intend to look into the issues raised on the sovereignty matter by the native peoples of Hawaii. It is our hope sometime in April to undertake an oversight visit to look into this issue, along with many of the reservations.

First, I'd like to recognize Nora Garcia, President of the Inter Tribal Council of Arizona.

**PANEL CONSISTING OF NORA GARCIA, PRESIDENT, INTER TRIBAL COUNCIL OF ARIZONA; HON. MARSHALL PLUMMER, VICE-PRESIDENT, NAVAJO NATION, WINDOW ROCK, AZ; AND KINA'U BOYD KAMALPI, TRUSTEE, OFFICE OF HAWAIIAN AFFAIRS, HONOLULU, HI**

#### STATEMENT OF NORA GARCIA

Ms. GARCIA. Thank you.

It is indeed my pleasure to be here this morning and also I'd like to thank you who've invited us to provide testimony on behalf of the American Indian Religious Freedom Act, members of the House Interior and Insular Affairs Committee, the House Subcommittee on Indian Affairs, elders and spiritual advisors of the Indian people present, fellow tribal leaders and all other interested participants at this hearing. It is with deep pleasure that I'm asked to be here today to present testimony.

For the record my name is Nora Garcia. I am the Chairperson of the Fort Mojave Indian Tribe which is located in the States of Arizona, California and Nevada. I also am the President of the Inter Tribal Council of Arizona, which is composed of 21 tribes in the State of Arizona.

I'd like to express my appreciate to the House Subcommittee on Native American Affairs as it begins to assist tribes in finding solutions to complex issues facing Indian communities.

I appreciate the opportunity at this hearing to further examine the deep concerns of traditional leaders and tribal officials for the preservation of sacred sites both on and off the reservation.

The Congress should become aware that currently the religious freedom for practitioners of Native American tribal religions, along with protection and access to sacred sites, is in jeopardy.

While the American Indian Religious Freedom Act of 1978 declared in federal policy the legitimacy of American Indian religions, it did not contain language to create specific recourse to judicially enforce individual religious rights.

When the U.S. Supreme Court in *Lyng v. Northwest Indian Cemetery*, 1988, eliminated First Amendment protection for tribal religions, the Court essentially institutionalized a discriminatory policy towards the Indian people.

The Court ruled that the impact on tribal traditional practices and religious sites in the development of federally assisted projects

would not be a consideration along with environmental, historical or economic impacts. It is now evident that the Congress must pass legislation to ensure that the national policy maintains the intent of the First Amendment of the U.S. Constitution to guarantee to Indian people that freedom of religion will be applied to them.

The Congress must be reminded, as in other world religions, that Native Americans share fundamental attachments to sacred sites where prayers and ceremonies must be completed. In Arizona there are a number of sites.

In specific, my sacred mountain is called Avi kwa 'Ame, which is located in Nevada and is currently under the Park Service administration. Other such sites are Woodruff Butte, Star Mountain, Boynton Canyon, Mount Graham, San Francisco Peaks, the Baboquivri Mountains, Kitt Peak, Big Mountain, Chuska Mountain, Kuchuman Mountain, Picacho Peak and numerous sacred archaeological and astronomical observatories.

The Committee and the Congress should be educated about sacred sites and burial grounds of tribes such as the Cocopah, O'odham, Quechan, Apache, Yaqui and others whose aboriginal territory include lands on both sides of the U.S./Mexico borders. At issue is the need to arrange for easier access to these sites for religious purposes. The preservation and access to these sites is an essential religious practice of numerous Indian groups in Mexico and the United States.

The Inter Tribal Council of Arizona, which represents the elected tribal leadership within the state is willing to assist traditional leaders and tribes in efforts to preserve and protect sacred sites.

The ITCA Cultural Resources Working Group, which is a very hard-working group that meets monthly and looks at all the different issues affecting the Arizona tribal areas as well as working with the state, will continue to provide a forum for tribes, traditional practitioners, state and federal officials to address these concerns and to facilitate revised federal policy and procedures.

The Working Group has experience in advocacy efforts to revise state and federal laws to allow repatriation of religious items to tribes and traditional leaders. Skeletal remains, artifacts and ceremonial items from state lands and private landowners, museums and educational institutions are in the process of being returned to the tribes for proper care by the traditional leaders. Access is also a negotiable item with those particular landholders.

The Inter Tribal Council will support the efforts of the House Subcommittee on Indian Affairs to facilitate an end to discrimination of Native American religion in federal land use practices.

Once again, I appreciate this opportunity to offer this opportunity and thank you for affording me the time today. Thank you.

[Prepared statement of Ms. Garcia follows.]



PRESERVATION, PROTECTION AND ACCESS TO  
AMERICAN INDIAN RELIGIOUS SITES

Members of the House Interior and Insular Affairs Committee, the House Subcommittee on Indian Affairs, Elders and Spiritual Advisors of the Indian People, fellow tribal leaders and all other interested participants at this hearing, my name is Nora Garcia. I am the president of the Inter Tribal Council of Arizona and the president of the Fort Mojave Tribe. I would like to express appreciation for the establishment of the House Subcommittee on Indian Affairs as it begins to assist the tribes in finding solutions to complex issues facing American Indian communities. I appreciate the opportunity at this hearing to further examine the deep concerns of traditional leaders and tribal officials for the preservation of sacred sites both on and off the reservations.

The Congress should become aware that currently religious freedom for practitioners of Native American tribal religions, along with protection and access to sacred sites is in jeopardy. While the American Indian Religious Freedom Act of 1978 declared in federal policy the legitimacy of American Indian religions, it did not contain language to create specific recourse to judicially enforce individual religious rights. When the U.S. Supreme Court in *Lyng v. Northwest Indian Cemetary* (1988), eliminated First Amendment protection for tribal religions, the court essentially institutionalized a discriminatory policy towards the Indian people. The court ruled that the impact on tribal traditional

practices and religious sites in the development of federally assisted projects would not be a consideration along with environmental, historical or economic impacts. It is now evident that the Congress must pass legislation to insure that the national policy maintains the intent of the First Amendment of the U.S. Constitution to guarantee to Indian people that freedom of religion will be applied to them.

The Congress must be reminded, as in other world religions, that Native Americans share fundamental attachments to sacred sites where prayers and ceremonies must be completed. In Arizona they include such sites as: Avi kwa 'Ame (Spirit Mountain, Woodruff Butte, Star Mountain, Boynton Canyon, Mount Graham, San Francisco Peaks, the Baboquivri Mountains, Kitt Peak, Big Mountain, Chuska Mountain, Kuchuman Mountain, Picacho Peak and numerous sacred archeological and astronomical observatories. The Committee and the Congress should be educated about sacred sites and burial grounds of tribes, such as the Cocopah, O'Odham, Quechan, Apache, Yaqui and others whose aboriginal territory include lands on both sides of the U.S. / Mexico border. At issue is the need to arrange for easier access to the sites for religious purposes. The preservation and access to these sites is an essential religious practice of numerous Indian groups in Mexico and the United States.

The Inter Tribal Council of Arizona which represents the elected tribal leadership within the state is willing to assist traditional leaders and tribes in efforts to preserve and protect

sacred sites. The ITCA Cultural Resources Working Group will continue to provide a forum for tribes, traditional practitioners, state and federal officials to address these concerns and to facilitate revised federal policy and procedures. The Working Group has experience in advocacy efforts to revise state and federal laws to allow repatriation of religious items to tribes and traditional leaders. Skeletal remains, artifacts and ceremonial items from state lands and private landowners, museums and educational institutions are in the process of being returned to the tribes for proper care by the traditional leaders.

The Inter Tribal Council of Arizona will support the efforts of the House Subcommittee on Indian Affairs to facilitate an end discrimination of Native American religion in federal land use practices. Once again I appreciate this opportunity to offer the concerns of tribes in Arizona and I hope these efforts bring about an enlightened federal policy.

Mr. RICHARDSON. Thank you very much.  
Vice President Plummer.

### STATEMENT OF THE HON. MARSHALL PLUMMER

Mr. PLUMMER. Chairman Richardson, true friend of Indian nations, I'm glad to be here before you.

I want to state the Navajo Nation's position on the American Indian Religious Freedom Act. I come before you because the fundamental law of this country, the constitutional right to freedom of religion, does not protect our birthright to practice our native traditional ceremonies and rituals. American Indian religious beliefs and practices are inherent and no man-made law should infringe on an individual's belief in and communication with his creator.

The problem with the current law is that it provides no legal cause of action to aggrieved practitioners. Simply put, this policy does not enforce our religious practices when they are threatened.

The recent Supreme Court decision make it clear that there is limited federal protection for the right of the American Indians to practice their traditional religions. The Navajo Nation believes in principle that the American Indian Religious Freedom Act should be strengthened to protect traditional Native religious freedom.

Religious issues affecting the Navajo Nation include protection of the sovereignty of the Navajo Nation over its land and people. 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 that expression of Navajo policy, I'm here to convey to you our comments regarding the scope of this hearing that focuses on religious sacred sites and the use of eagle feathers and their parts.

The Tribal Council passed a law in 1988, the Cultural Resources Protection Act, to protect sacred sites 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 Navajo Nation supports wholeheartedly the recognition that tribal governments and their law or customs pre-empt federal law pursuant to the inherent retained sovereignty of tribal governments. AIRFA amendments should be strengthened by recognizing the inherent rights of Indian tribal governments to govern over their lands and to protect religious rights of their people.

Protection of and Access to Sacred Sites. Many sacred sites are located on lands controlled by federal and state governments, private parties and other Indian tribes. Many sacred sites are no longer on Indian land.

Navajo Nation supports protection of off-reservation sacred sites from federal and state government activities that may potentially destroy, destruct or desecrate such religious sites. American Indian practitioners should have access to these religious sites located on federal lands at all times.

To give you an example, the Dzlth-Na-O-Dithle controversy, Congressman Richardson, south of Farmington where there was a plan to dump asbestos. That is a very sacred site to the Navajo. And we

fought it bitterly. And of course the outcome was that we eventually won.

But I think that's just a clear example of the need to have sacred sites protected off of reservation areas.

Ideally, protection of Indian religious sites should extend to private, state and federal lands.

Gathering of religious herbs, plants and natural objects. Navajos have encountered difficulties in gathering and collecting natural resources in National Parks for religious purposes.

The National Park Service prohibits such activity pursuant to laws which prevent American Indians from gathering or collecting natural resources for ceremonial use, thus infringing on American Indian religious practices and interfering with religious beliefs.

In contrast, scientific collecting, gathering of firewood while visiting the park, collecting nuts, fruits and berries are permissible. However, if collection is for religious purposes, it is prohibited. The Park Service policy is making a value judgment against Indian values while, at the same time, allowing mainstream activities to be carried out.

Navajo ceremonial life is dependent on collection of natural material. The Navajo Nation recommends a lifting of the Park Service regulations.

Religious use of eagles and their parts. Eagle feathers and their parts and other animals and plants are important elements in the practice of ceremonies. The use of these elements are sacred and are used only by authorized persons and prescribed procedures and religious ceremonies.

In addition to the Federal Endangered Species Act restricting the taking and use of eagle feathers and parts, the Eagle Protection Act, another federal law, also protects bald and golden eagles. However, these statutes allow for the use of eagle feathers and parts by American Indians for religious purposes.

The Eagle Protection Act is administered by the Law Enforcement Division of the U.S. Fish and Wildlife Service under the Department of the Interior. This federal agency administers the eagle permitting system at the regional level through assistant regional directors.

Applicants are required to document tribal enrollment and certification of participation in a named religious ceremony by a religious leader. The application are processed and verified through a central office in each region. The application are then forwarded to the National Repository in Ashland, Oregon. From there, the eagle feathers or parts are shipped to the American Indian applicant.

The problem with this is time. There is a lot of time involved in this, in fact as much as 2 to 5 years in some cases. And when you have a need for a ceremony, you need the shortness of time to do the religious ceremony.

I would just like to conclude by saying that the Navajo philosophy and religious belief is deeply rooted in the 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 and the gathering of herbs are preserved and protected for American Indians.

I appreciate the opportunity of appearing before this body. Thank you.

[Prepared statement of Mr. Plummer follows:]

**STATEMENT BY VICE-PRESIDENT MARSHALL PLUMMER  
OF THE NAVAJO NATION  
BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS  
OF THE HOUSE COMMITTEE ON NATURAL RESOURCES  
ON THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT**

February 23, 1993

Chairman Richardson and members of the Subcommittee, I thank you for this opportunity to state the Navajo Nation's position on strengthening the American Indian Religious Freedom Act (AIRFA). Chairman Richardson, I further extend my appreciation for your commitment to introduce legislation that will help strengthen this law. You have been a stalwart friend of the Navajo people and we look forward to working with you.

### INTRODUCTION

I come before you because the fundamental law of this country, *the constitutional right to freedom of religion*, does not protect our birth right to practice our native traditional ceremonies and rituals. American Indian religious beliefs and practices are inherent and no man-made law should infringe on an individual's belief in and communication with his creator.

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.

The problem with this current law, a policy statement, is that it provides no legal cause of action to aggrieved practitioners. Simply put, this policy does not enforce our religious practices when they are threatened. The recent Supreme Court decisions in the Employment Division of Oregon v. Smith (494 U.S. 872) and Lyng v. Northwest Indian Cemetery Association (485 U.S. 439) cases make it clear that there is limited federal protection for the right of American Indians to practice their traditional religions. The Supreme Court stripped away the

"compelling state interest" test used to determine whether or not there is infringement on religious practices and beliefs. All religions suffered by the Smith decision - not only American Indian religions.

## **NAVAJO NATION POSITION**

The Navajo Nation Council passed a resolution (CO-73-91) on October 24, 1991 affirming "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 the Intergovernmental Relations Committee of the Navajo Nation Council by Resolution IGRF-28-93, further supported the strengthening of AIRFA when it approved the Navajo Nation's testimony delivered by President Peterson Zah before the Senate Select Committee on Indian Affairs in Albuquerque, New Mexico. The Intergovernmental Relations Committee resolution states:

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 convictions.

With that expression of the Navajo policy, I am here to convey to you our comments regarding the scope of this hearing that focuses on religious sacred sites and the use of eagle feathers and their parts.

### **Navajo Law - Cultural Resources Protection Act of 1988**

To protect sacred places and other cultural resources important to Navajos and other Indian communities, the Navajo Nation Council enacted the Cultural Resources Protection Act of 1988. These laws cover only lands now under jurisdiction of the Navajo Nation government. The Navajo Nation supports wholeheartedly the recognition 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 is directly affected. AIRFA amendments should be strengthened by recognizing the inherent rights of Indian

tribal governments to govern over their lands and to protect religious rights their people.

### Protection of and Access to Sacred Sites

The Navajo philosophy evolves around living in harmony with the universal laws of the four sacred elements, the *earth, water, air* and *light*. The Navajo emergence myth speaks of how the Navajos came into this world and found their home 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. On this land, the Navajo believe there are places of special power, locations of historical religious and supernatural events and stories of immortal beings. Navajo practitioners are tied to the land - Navajos visit these sacred sites using prayers, songs and ceremonies to interact with the holy people. Sacred sites, physical markers and monuments and special areas are a part of Navajo life.

It is our duty to protect and preserve sacred areas for religious offerings, pilgrimages, and herb gathering. Sacred sites have been an integral part of Native American religious activities long before the United States government was established. The traditional Navajo homeland is a much larger area than the present Navajoland. Many sacred places are located on lands controlled by federal and state governments, private parties, and other Indian tribes. Many sacred sites are no longer on Indian land. The Navajo Nation supports protection of off-reservation sacred sites from federal and state government activities that may potentially destroy, destruct or desecrate such religious sites. American Indian practitioners should have access to religious sites located on federal lands at all times. Protection of such sites is essential.

Infringement on our religious practices is best exemplified by a recent proposal to build an asbestos storage facility near Dzilh-Na-O-Dithle, New Mexico on private land within an area known as Dinetah, the site of the Navajo emergence. We believe it is sacred Navajo land despite the mixture of state and federal land holdings that are within this area. We successfully argued against construction based on environmental concerns and more importantly interference with religious practice and desecration of a Navajo religious site and area. The next time we may not be as fortunate which is why this legislation is needed. Ideally, protection of Indian religious sites should extend to private, state and federal land.

### **Gathering of Religious Herbs, Plants and Natural Objects**

Navajos have been encountering difficulties in gathering or collecting natural resources (plants, animals, herbs, and minerals) in National Parks for religious purposes. The National Park Service prohibits such activity pursuant to 36 CFR 2.1 (a)(ii) and 36 CFR 2.1 (d) which prevent American Indians from gathering or collecting natural resources for ceremonial use, thus, infringing on American Indian 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. However, if the collection is for religious purposes, it is prohibited. The Park Service policy is making a value judgement against Indian values while at the same time allowing mainstream activities to be carried out. Navajo ceremonial life is dependent on the collection of natural material. The Navajo Nation recommends a lifting of the Park Service regulations.

### **Religious Use of Eagles and Their Parts**

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 authorized persons and prescribed procedures in religious ceremonies. The Navajo Department of Fish and Wildlife under the Division of Natural Resources, except as limited by the federal Endangered Species Act, manages and enforces fish and wildlife resources pursuant to tribal law. Tribal law protects all wildlife, including eagles for present and future Navajo generations.

In addition to the federal Endangered Species Act restricting the taking and use of eagle feathers and parts, the Eagle Protection Act, another federal law, also protects bald and golden eagles. However, these statutes allow for the use of eagle feathers and parts by American Indians for religious purposes. The Eagle Protection Act is administered by the Law Enforcement Division of the U.S. Fish & Wildlife Service under the Department of Interior. This federal agency administers the eagle permitting system at the regional level through Assistant Regional Directors. Applicants are required to document tribal enrollment and certification of participation in a named religious ceremony by a religious leader. The applications are processed and verified through a central office in each region. The applications are then forwarded to the National Repository in Ashland, Oregon. From there, the eagle feathers or parts are shipped to the American Indian applicant.

According to the Navajo Fish and Wildlife Department and highlighted in their testimony before the Senate Select Committee on Indian Affairs Albuquerque hearing, there are several problems with this process. First, is the inordinate length of time it takes to process an application for eagle feathers or their parts. Navajo Fish and Wildlife report ten years ago, it took approximately one to one and half years to complete the application process. Now it takes about two to two and half years. In the future, it may take three to five years to process an application from start to finish. Most, if not all, Navajo religious ceremonies are not planned along that extended time line. The need for eagle feathers and parts on short notice is the norm and manner by which to carry out ceremonial prescriptions. This prompts an immediate demand for eagle feathers. The delay in procuring such eagle feathers or whole birds may have the unfortunate consequence of encouraging the illegal killing of eagles, yet an individual may have no real intention of violating the law, but in order to fulfill religious practice, chooses to suffer the consequences.

The Navajo Nation supports legislation that empowers Indian tribes to administer collection and distribution of bald or golden eagles or their parts, nest, or eggs which are discovered on Indian lands by issuance of tribal permits to American Indian practitioners in accordance with tribal religious custom. Each tribal game and fish agency should be allowed to develop procedures for the eagle permit system. Transferring this responsibility to the tribes would certainly speed up the access process significantly and prevent the illegal taking of eagles. The National Repository may then, send eagles to tribal fish and game agencies for distribution locally.

Second, there is the problem of the condition of the eagle feathers or whole birds when received. Some of the feathers and birds are in deplorable shape. Religious practitioners report receiving broken tail and wing feathers, burnt birds and missing parts. Religious practice and ceremonial use requires practitioners to be particular about the type of feathers or birds utilized. In some instances, feathers from birds that have died in a certain manner such as electrocution are not suitable. Greater care has to be exercised in ensuring the proper handling of eagle feathers and parts.

Third, those birds that are found dead, salvaged or confiscated on Indian reservations are sent to the U.S. Fish & Wildlife Service Regional Office and eventually end up at the National Repository. As stated previously, delay exists in the disbursement of eagle feathers and its parts to American Indian practitioners. Further, eagles that are confiscated or otherwise found dead on Indian Reservations

should remain with the tribe on whose land it was found and distributed to their Native practitioners. These eagles should be stored with tribal game and fish agencies without being sent them to the National Repository. This would allow tribes to keep a supply of eagles and parts for immediate distribution as needed. Any proposed AIRFA amendments should recognize this tribal authority and provide a workable means for immediate distribution.

**Protection of And Access to Sacred Sites of One Indian Tribe That Are Located on The Lands of Another Tribe**

At a recent Senate Select Committee on Indian Affairs Committee field oversight hearing on AIRFA in Phoenix, Arizona, Hopi witnesses testified that they are concerned about sacred sites that are on Navajo land. In a written statement the Hopis alleged that "The Navajo Tribe, whose reservation surrounds our reservation, have imposed their tribal laws to restrain Hopis from entering traditional eagle-gathering areas." At the same hearing, Hopi Chairman Vernon Masayesva cautioned Congress that it would be inappropriate to inadvertently affect the disposition of the already complicated historic Hopi-Navajo land dispute. Access to Navajo and Hopi religious sites in the 1882 Executive Order Reservation is subject to provisions of P.L. 93-531. Currently there is court-ordered mediation, Manybeads v. United States, governing an overall Navajo-Hopi settlement. The Navajo Nation also cautions the Subcommittee from interfering with prior statutory protections - 1974 Act - and the on-going court process and prefers that such matters can best be resolved by friendly negotiations between traditional people. Navajo-Hopi issues should not be allowed to adversely affect the religious rights of Native American people which are the subject of the AIRFA amendments.

**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, and the gathering of herbs are preserved and protected for Americans Indians. I appreciate this opportunity to present to you concerns of the Navajo Nation in the protection and preservation of our way of life. I urge you and your colleagues to do all in your authority to introduce legislation that would protect our fundamental right to practice our native traditional religion.

Mr. RICHARDSON. Ms. Kamali'i. Please correct me; we should pronounce these properly.

#### STATEMENT OF KINA'U BOYD KAMALI'I

Ms. KAMALI'I. Good morning and I'm pleased to appear at this oversight hearing on the American Indian Religious Freedom Act.

By way of introduction, my name is Kina'u Boyd Kamali'i.

Mr. RICHARDSON. That's what I said, isn't it? [Laughter.]

Ms. KAMALI'I. I am a Trustee of the Office of Hawaiian Affairs, elected to office as are all nine of the OHA trustees by some 60,000 Native Hawaiian voters.

With me today in the audience is our Vice Chairman, Abe Aiona. And I'm also a member of the OHA's Native Hawaiian Preservation Council. The Council has been extremely active on issues relating to repatriation of skeletal remains from the Smithsonian Institution and various reburial and relocation efforts.

We wish to express our pleasure at the establishment of the Subcommittee and the specific inclusion of Native Hawaiians in your jurisdiction. And we pledge to work with you to better the conditions of the Native peoples of America.

The American Indian Religious Freedom Act, even without any enforcement provisions, has been an important symbolic act for Native Hawaiians. This is because AIRFA recognizes Native Hawaiians as indigenous people of this country—Native Americans with unique rights and a political relationship to the federal government.

Congress has consistently adopted this political view of Native Hawaiians in enacting legislation for the benefit of Native Hawaiians. This is not to say Native Hawaiians are Indians or Tribes; they are not.

Although there are similarities of experience and of culture, there are differences too. A critical difference to keep in mind in developing amendments to implement the policy of AIRFA is that 100 years ago, in 1893, the United States actively induced, participated in and benefited from the overthrow of Native Hawaiian self-government—the overthrow of Queen Lili'ūokalani.

The cumulative century-long harm to the Native Hawaiians is called *kaumaha*. *Kaumaha* describes a heavy weight emotionally, a feeling of deep hurt which oppresses the heart and soul. And it is this *kaumaha*, this deep spiritual harm experienced by the Native Hawaiian people, which must also be addressed.

As now written, federal and state laws relating to historic preservation do not fully acknowledge or incorporate Native cultural values and sites with attached meanings which transcend scientific knowledge and evidence. The American value system and law stresses the separation of church and state, relies on empirical proof and, unlike France, Japan and Fiji, has no native national cultural tradition.

As a consequence, federal laws are often unthinkingly damaging to deeply held cultural values and beliefs associated with historic properties, a process so ingrained that it must be judged, at the least, as institutionalized racism. However, the impact of insensitive or irrelevant laws to a native people of the United States are of deeper and more serious character than what, for example,



might be the racist impulse to accord less significance to a historic property because its importance reflected an Afro-American or Hispanic experience.

Other American citizens are immigrants. Their ancestral cultures, values and practices continue and can be experienced outside the United States. As emigrants further, being American was and is political choice of free association.

Native peoples of the United States did not historically choose to be Americans but were conquered. Moreover, as reflected in the social, economic, health and educational statistics, being American has not resulted in the improved condition of life enjoyed by the emigrant citizen.

The American Constitution and legal tradition imperfectly recognizes these profound differences and consequences and allows the Congress to enact special laws for Native peoples without violating the Fourteenth Amendment guarantees of due process and equal protection.

For many Native American and Alaskan Native peoples, the Congress has acted to formalize the special relationship of trust, recognizing a Nation within a Nation, sovereignty and self-determined government powers. This recognition has not been extended to Native Hawaiians.

Among the governmental powers exercised by certain Native Nations is the right to assume the functions of state historic preservation offices when tribal trust lands are involved to be included in Section 106. Deliberation at Request.

These rights do not exist for Native Hawaiians. Along with Native Americans, Native Hawaiians are explicitly excluded in the Native American Religious Freedom Act. However, in effect, that national legislation extends First Amendment rights prohibiting governmental infringement on religious beliefs.

It does not take a needed step of offering formal protections for the exercise or practice of traditional religious beliefs. Unlike most Western and Eastern religions, Native traditions often spring from and involve natural elements and landscapes, not formal rituals within identified physical confines but the worthier forces of nature.

Those Hawaiians who respect and honor the divine power of Pele, for example, are frequently denied full expression of their beliefs because the place of worship is not defined by the more easily recognized place and altar of a church or temple.

The issue of complex and sensitive, the full resolution of the kaumaha will require dedication and delicacy. However, the process has begun and we must continue.

If you will let me finish, I just have a little more. All historic sites are important. Design and construction decisions should recognize this inherent significance and make every effort to avoid or mitigate harm to every historic site.

However, there must truly be those places and sites where the sacred associates and renaissance of meaning attached to them, I view that the only treatment is absolute protection and respect. No mitigation is possible. Total avoidance is required.

By consequently clarifying the distinctions between modern and traditional Native Hawaiian recognitions of sacred character, the

inherent conflicts with existing or future self-determined law can better be resolved.

Further, decisions to reserve or to pursue formal litigation should not rest solely on the demonstrated or proven sacredness of a site. The Luluku Terraces in Hawaii were not protected because they are sacred but because they are part of the history and meaning of the Hawaiian identity.

To assert the sacred too broadly undermines public understanding and support for the full range of properties which would appropriately be seen as significant in meriting mitigation and protection. The elements involved in such preservation or mitigation decisions must also become culturally sensitive and relevant.

Preservation without accompanying information and appropriate access, that cluster of attributes which allows historic properties to take a place in the living community, may result in just saving a pile of rocks. The pride and recognition of self in the past and the fundamental value in historic preservation is the ability to gain increased self-awareness and an identity which transcends and amplifies individual lives.

The kumulipō, the extended creation chant which encompasses and intertwines cosmic evolution with a gestation and birth of an Ali'i child offers the highest expression of this connectedness as once understood. The source and affirmation of sovereignty of the child's right to govern was drawn from the chain of connections linking coral, fish, birds and divine and mortal ancestors.

The modern Hawaiian's search for a place in Hawaii must be viewed in this same way, as both a political and religious quest to forge new links to this chain. The Hawaiian cultural identity embodies the deepest belief of a people which trace and stretch back to a time when it was still dark kawā'ao.

The Native right to and recognition of self-determination will, in a profoundly symbolic and appropriate way, continue the kawā'ao, the time of light.

Thank you very much for your patience.

[Prepared statement of Ms. Kamali'i follows:]

TESTIMONY OF KINA'U BOYD KAMALI'I  
TRUSTEE, OFFICE OF HAWAIIAN AFFAIRS  
BEFORE  
THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS  
OF THE COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVE  
FEBRUARY 23, 1993

Good morning, I am pleased to appear at this oversight hearing on the American Indian Religious Freedom Act.

By way of introduction, I am Kina'u Boyd Kamali'i, a trustee of the Office of Hawaiian Affairs, elected to office as are all nine of the OHA trustees by some sixty thousand Native Hawaiian voters. With me today, in the audience, is our Vice Chairman Abe Aiona. I am also a member OHA's Native Hawaiian Preservation Council. The Council has been extremely active on issues related to repatriation of skeletal remains from the Smithsonian Institution, and various reburial and relocation efforts.

We wish to express our pleasure at the establishment of the Subcommittee and the specific inclusion of Native Hawaiians in your jurisdiction. We pledge to work with you to better the conditions of the native peoples of America.

The American Indian Religious Freedom Act, even without any

enforcement provisions, has been an important symbolic Act for Native Hawaiians. This is because AIRFA recognizes that Native Hawaiians as indigenous people of this country -- Native Americans with unique rights and a political relationship to the federal government. Congress has consistently adopted this political view of Native Hawaiians in enacting legislation for the benefit of Native Hawaiians.

This is not to say Native Hawaiians are Indians or Tribes; they are not. Although there are similarities of experience and of culture, there are differences too. A critical difference to keep in mind in developing amendments to implement the policy of AIRFA is that one hundred years ago, in 1893, the United States actively induced and participated in and benefitted from the overthrow of Native Hawaiian Self-Government -- the overthrow of Queen Liliokalani.

Although this is not the hearing to detail the case, it is important in this centennial year, to keep in mind that one of the grave difficulties in legislating with respect to Natives Hawaiians is that we do yet have restored a Native Hawaiian Self-Government entity. This means that resources, technical skills, and so forth that a tribal government brings to critical AIRFA issues, have to substituted for by some jerry-rigged device until a Native Hawaiian Government can be put in place. OHA and other Native Hawaiian organizations usually try to fill the gap. [I am submitting under

separate cover "Meaning and Mitigations" A 1992 report of the Native Hawaiian Historic Preservation Council, which demonstrates how this process has worked under the National Historic Preservation Act Process]

Another over-riding difficulty Native Hawaiians face, is that the last 12 years has seen an intensified effort to relegate Native Hawaiians to the status of a "racial group". The latest broadside in this effort was a January 19, 1993 memorandum from the departing Interior Solicitor arguing that the United States had no trust obligation from its inception in 191 and thereafter for the congressionally created Native Hawaiian Homes Land Trust.

One last general comment before discussing some of the detailed proposals. The Native Hawaiian cultural and religious experience is unique. We are a contained island culture; there is probably no area of land that does not contain something. Concepts developed with respect to what is sacred and how that is determined may be different in Hawaii than in some tribal communities. What is true, is that the Native Hawaiian community and not the United States needs to determine these differences.

With respect to the proposals for implementing amendments to AIRFA, we support the general thrust of the working group efforts. It is essential that the damage done to Native American Traditional Religions by the United State Supreme Court decisions in Lyng v.

Northwest Indian Cemetery Association, and Employment Division v. Smith be reversed and that a balanced process be developed to insure access and protection of sacred sites.

The working draft uses a fairly standard definition of Native Hawaiians -- descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii -- which we find acceptable. The draft then uses "Native Hawaiian Organization" as a device because of the absence of a Native Hawaiian self-governing entity. Not desiring to exclude anyone from participation, I should note that the preservation and protection of sites has been a Preservation Council function that has required significant time and resources. I gather that there is a hesitation in this legislation, to specifically include OHA (as was done in the Preservation Act Amendments, Repatriation, and so on) because of a perception that a first amendment may be raised.

As you aware, OHA is a very unique entity. Although elected exclusively by Native Hawaiians voters, our independent agency is a constitutional creature of the state of Hawaii. In a sense, we are a transitional entity whose job will be done when we reestablish a viable Native Hawaiian governing entity. I would propose that this legislation, and perhaps any legislation relating to Native Hawaiians, follow the lead of our draft Native Hawaiian Recognition, Restoration and Claims Act, and provide for the

eventual re-establishment of a Native Hawaiian government. For example, "...the Native Hawaiian government, or if such entity is not yet established, to the Office of Hawaiian until such entity is established... ." OHA's role is not that of a practitioner but as an advocate and technician; it is only the practitioners who can determine what is sacred, or what are sacred practices, that is not OHA's role; it would not be appropriate.

It is also not entirely clear in the Hawaiian context, what a "Native American Religion" means. The draft bill provides "...practiced by Native Americans and the origin and interpretation of which is from within a traditional Native American culture or community." While pre-contact Native religions exist in Hawaii, so do very distinct Native Hawaiian evolutions of Christian churches that were developed during missionary times. These institutions are distinctly Native Hawaiian, yet it is not clear whether the Act would intend to include them within its coverage.

The definition of lands provides for either lands within a Indian reservation, or public lands of the United States. In Hawaii, as noted, all lands are potential issue points; limiting coverage to federal lands or federally assisted projects, although helpful, excludes too much. A potential solution would to be to include all "ceded lands" ; ceded lands are those former royal and public lands of the Kingdom of Hawaii (approximately 1.8 million acres) that were ceded to the United States and then mostly transferred to the State upon statehood.

Under the access provisions relating to federal lands, there

is a potential limitation based a Presidential determination of national security. Such a determination could of course be delegated and could become a local issue. In Hawaii, as you may know, unlike the west, federal lands are either for defense or national parks. We have existing agreements with the military on access in areas that require pretty high security, and we would want to be sure that there continues to be some flexibility built in to the standard.

The Secretary of the Interior is identified as the appropriate government coordination point for provisions relating to the consultation, notice and adverse agency action processes under the draft. To date the Department has not been a responsive agency to Native Hawaiian concerns. It might be appropriate to require the Department of the Interior to have a Hawaiian organization play this role under a Memorandum of Understanding.

We are aware of the problems relative to demonstrating a burden of proof while maintaining the confidentiality of sacred matters, that have to worked through. In Hawaii, in some areas we have the additional difficulty that because of patterns of Island conquest and consolidation the human chain of responsibility and knowledge relative to particular sites may have been broken.

We would support a draft provision under consideration concerning recognizing tribal authority over Native American Religious Sites on Indian lands. An analogous provision for a Native Hawaiian Government over ceded lands would be appropriate.

Although the use of Peyote, and the taking of eagle feathers



is outside of our cultural experience, we would support our Native American sisters and brothers on these provisions, as well as the more familiar prisoners rights provisions.

Thank you for the opportunity to testify, We look forward to working with the subcommittee on these and other important issues.

Mr. RICHARDSON. Thank you very much for very compelling testimony.

Let me say that when my colleague from Hawaii was here, I did appreciate the statement he made that the recognition of the Native Hawaiian issue, as we look at this issue and others, is paramount on the agenda of this subcommittee.

My question to you, before I turn to my colleague, is while not asking you to divulge locations that would make it sensitive for you to disclose where your religious sites are, are Native Hawaiians currently denied access to any sites or frustrated in your abilities to practice your religion? I ask this basically in ignorance. Because I think one of the things that we are asking, as we develop legislation, is how can we cover the religions of all our Native American tribes and Alaska Natives and now also make sure we're responsive to Native Hawaiian needs?

Ms. KAMALI'I. A lot of our sites are on private property. When these sites are identified, there could be denied access to them.

In the National Park, as I stated earlier, Pele, the religious of many of our people to go and worship there, it caused a big stir when the National Park added a fee for entering the Park. And I must say I'm very grateful for the fact that you don't charge us, but we have to identify that we are Native Hawaiian.

And some of this is a little difficult for our people to accept, that we have to ask permission to enter the National Park for our religious purposes.

Mr. RICHARDSON. Thank you.

I'm going to turn the hearing over to the gentleman from Hawaii. I'm going to ask him, after he concludes his questions, to adjourn the hearing because we do have a vote on the House floor and I know there's a time problem for some of our witnesses.

So I want to recognize the gentleman from Hawaii and I want to thank Chairman Plummer and Ms. Garcia for their participation at this hearing.

The gentleman from Hawaii.

Mr. ABERCROMBIE. Thank you, Mr. Chairman.

I just want to emphasize, with respect not just to the testimony of Kina'u Kamali'i but the others, that I believe there's a commonality of interest here. And I would just like your very brief observation as to whether you think any extensive rewriting needs to be done here.

I think you heard my commentary before. Let me state it again, to be explicit. It would seem to me what needs to be done here is to make clear, in anything we write, that the burden of proof with respect to any practice of religion or access to sacred site, et cetera, needs to be upon the federal government, or some governmental entity, other than tribal government or any other such institutional governmental entity to present proof of a compelling need to interfere in any way being present in a court of law.

And that, absent that, there just shouldn't be any question. In other words, no one should have to, for example, come to the Park, say, Volcano Park, and prove they're Hawaiian. The government should have to present some compelling proof to the contrary.

Any comment on that? Was it clear enough what I was saying? To the degree that it needs to be rewritten at all or needs to be

written at all, we should simply make that the focus, rather than try and deal with every single possible variation that might come up with respect to the practice of religion?

Ms. KAMALI'I. Representative, I think where we got caught up in this National Park fee; it was created in another law. But the fact is that we were caught up in the cost—and I understand that, yes, you have to pay for the upkeep of National Parks. But it's demeaning for me to have to tell them who I am and that I'm a Native American, so please waive your five-dollar fee; do you understand where I'm coming from?

Mr. ABERCROMBIE. Yes, I understand exactly.

What I'm trying to get at is that may have been the result—if we had done something like what I'm talking about here. In other words, if there was a prevention of someone, not necessarily Native Hawaiians, you could see there's a tremendous spectrum of instances presented this morning in which there would be a violation of religious practice. Let's say, on access to a site that here the government could not show there was a compelling reason to have Native Hawaiians pay the fee, so they backed off.

And what it ended up being was, could we at least find out who was a Native Hawaiian, and then they ended up with the identification thing. It wasn't meant to humiliate anybody. It could be construed rather as actually moving along the line that I'd like to see be accomplished, namely, you try to facilitate the practice of religion without being intrusive or overtly being an obstacle.

Ms. KAMALI'I. Well, I agree. I think that this new law, we should depend on the First Amendment and not have to go through all this hassle. We have inherent rights, as Native Americans. And now someone else is telling us, well, prove to us that you're a part of religious, traditional, sensitive culture—because we don't understand it, you have to do something else. They don't belong in certain areas. A Nation within a Nation. Understand these very basic principles. It's up to the people themselves to govern themselves in true self-determination.

Mr. ABERCROMBIE. I will close with this, I am very grateful, and speaking on behalf of the subcommittee and the committee as a whole, for all the testimony that came in because I think it offers conclusive proof, if you will, that we have the cart definitely before the horse, with respect to all of this. And that there's no need for elaborate offerings of proof, it seems to me, from any tribe or any governmental entity of a Native or aboriginal people. That the burden is entirely on the federal government or other such governmental entities that see themselves, for whatever reason, in opposition or have some question with respect to Native and aboriginal people and their practices where religion is concerned.

The record is conclusive in that regard, as far as testimony is concerned.

Yes, ma'am.

Ms. GARCIA. I appreciate the statement you've made. I think that needs to filter down to those people who work with the tribes within those particular departments, whether it's BLM or the BIA as part of their Forest Service management program. Some of those other acts that apply, NEPA and the Endangered Species Act, all

those other departments equally have a trust responsibility to the tribes.

There may be a clear understanding here, but when it gets down there it's never implemented.

Mr. ABERCROMBIE. I understand completely and I agree with that. I think they're not aware that this subcommittee even exists yet, inasmuch as it's only about 30 days old. But I can assure you that, as long as I'm a member of it—and Kina'u Kamali'i has experience with me in terms of tenacity—I can assure you that the message that I'm putting forward today, while my own, nonetheless I think is reflective of many members of the subcommittee.

And I think that these agencies will find very quickly that we intend not to be merely an observer or a commentator but an implementor of policy and a true and honest respondent to the testimony that comes to us. It's not just merely accepted and then put on a shelf. We intend to absorb it, to get a perspective as a result of it, and then act on it.

Thank you very much.

[Whereupon, the above-entitled proceeding was adjourned at 12:15 p.m.]

# APPENDIX

FEBRUARY 23, 1993

## ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

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### INDIAN PUEBLO

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March 9, 1993

The Honorable Bill Richardson, Chairman  
Subcommittee on Native American Affairs,  
United States House of Representatives,  
204 Canon House Office Building  
Washington, D.C. 20515

FOR INCLUSION IN THE HEARING RECORD, U.S. HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS, AMENDING THE AMERICAN  
INDIAN RELIGIOUS FREEDOM ACT, WASHINGTON, D.C., FEBRUARY 23, 1993

Dear Chairman Richardson:

We of the Pueblo of Santa Clara would like to extend our sincere thanks to you and the other members of the Subcommittee for providing us the opportunity to include the following comments and recommendations in the above-mentioned hearing record. This is an issue of critical importance to our Pueblo, our people, our culture, and, ultimately, our entire existence and we deeply appreciate the ongoing dedication of yourself and your fellow Representatives and Senators to insuring that the Indian and Native American peoples have the fundamental human right of religious freedom.

As you are aware, the Pueblo Indian people are the first people of what is now the American Southwest. We have been here since time immemorial and our villages, fields, hunting areas, and religious and cultural areas form an ancient and integral part of this land. In turn they and this land are an essential part of us; they are our very being. And our way of life -- for it is much more than just our religion, it is the core of our everyday lives -- is of the utmost importance to us.

Yet, as with many other Indian people, from the moment of European arrival in our Santa Clara homeland, our way of life, our lands, our very existence have been the targets of persecution and destruction. The century, after the Spanish settled in our area in 1598, was filled with attempts to obliterate our traditional religions and ceremonies by force. Our religious buildings were raided and razed, ceremonial materials destroyed, and religious leaders punished and even executed. Still, there are examples in the 1670's of Santa Claras and other Pueblo Indians continuing our way of life and ceremonies in the face of cultural annihilation. And in 1680, the Indian Pueblos rose up against this persecution and successfully waged the Pueblo Revolt; a revolutionary war which expelled the Spanish Empire from New Mexico. The return of the Spanish in 1692, however, brought the religious system back upon the Pueblos, and we took our religion into secrecy to protect it and ensure its continuation.

With the advent of the United States into our region in 1846, we hoped to be freed of this religious persecution because religious freedom was one of the founding principles of the United States. We were quickly proven wrong. As with many other Indian tribes, we were stripped of much of our ancestral and aboriginal homeland, subjected to missionaries, interrogated and exploited by ethnographers and anthropologists, forced to stand by as archeologists and others plundered our religious areas and ancestral settlements, and prohibited by law from practicing any part of our religion from 1882 until 1934, punishable by thirty days imprisonment or "without rations." Where was our religious freedom then?

Though Federal Government reforms in 1934 sought to end this religious oppression, it has not ended. Our aboriginal lands -- which continue to be an integral part of us -- have not been restored and our religious and cultural areas continue to be raided and destroyed. We have been interfered with in the practice of our religions involving obtaining animals, natural plants, minerals, and materials necessary for religious usage. Even the American Indian Religious Freedom Act of 1978, in the final analysis, has done little to prevent this.

#### Specific Examples of Ongoing Religious Freedom Problems

To this day, the Pueblo of Santa Clara continues to be denied our religious freedom. Some examples of ongoing problems include the following:

Santa Clara has stood with the other Indian Pueblos in opposition to the "Ojo Line Extension Project" or "OLE Power line" since its proposal. In reviewing the Environmental Impact Statement (EIS), providing testimony before the New Mexico Public Service Commission (P.S.C.), and communicating through other methods, Santa Clara has emphasized that the proposed power line would desecrate and destroy the Jemez Mountains in New Mexico, which have since time immemorial held sacred areas and provided for our way of life. The power line, in its construction and operation, will harm natural substances and animals important to our culture. Further, it has been shown that there are viable alternatives to this project and its need is not entirely established. However, Santa Clara and the other Pueblos have been relegated, mostly due to the innocuous nature of AIRFA, from the position of sovereigns with a government-to-government relationship with the Federal Government to that of an individual forced to beg at each step in the process to protect the Jemez Mountains from this power line. As we await the decision of the P.S.C., we can only hope that they take into account the great cultural impact the power line will have, since the law does not prevent them from abrogating our religious freedom.

The Jemez Mountains are also being threatened in another respect. In mid-1992, Santa Clara had to learn through an article in the New Mexico newspaper, the Albuquerque Journal, that Los Alamos National Laboratories (LANL) were planning to conduct a "Jemez Tomography Project" in the Jemez Mountains, whereby a series of subsurface test explosions will be done to measure the pattern of molten material below the surface of the Valles Caldera. Santa Clara was never informed nor consulted during the initial scoping for the project. And, even after explaining our concerns and the impacts the proposed project would have upon an area central to our cultural beliefs during meetings with LANL personnel and issuing a formal request that the Forest Service permit for the Tomography Project be denied, our concerns and beliefs were dismissed. The Forest Service official who reviewed our request denied that the proposed project would "deny access or prevent the exercise of traditional beliefs and practices" (Carpenter, R. Forrest, USDA, FS, # 1570). Further, he discounted any religious rights we may have under AIRFA, stating that "... (AIRFA) confers no cause for action and contains no requirement for consultation."

A third example is the proposed expansion of the Santa Fe Ski Basin near Santa Fe, New Mexico. Our involvement in this issue has been greatly restricted, though the proposed expansion would also seriously impact cultural matters in the Sangre de Cristo Mountains, because of the damage we could face having to meet the burden of proof. Though it is our belief that our cultural matters should not be revealed, we are called upon to explain our beliefs and identify specific sites in order to petition for their protection. By disclosing such information, we risk subjecting those areas to destruction without any assurance that such disclosure will serve the original purpose of protecting them.

#### Comments And Recommendations

The Pueblo of Santa Clara has several serious concerns regarding the issue of ongoing restrictions of Indian religious freedom. We would like to submit the following comments and recommendations and request that they be integrated into any proposed solution to this problem.

Insuring the protection of religious and cultural areas is among the most important issues for Santa Clara regarding religious freedom. The third example provided above displays a great concern of the Pueblo of Santa Clara: that any effort to address the protection of our cultural areas does not saddle the Indian pueblos, nations, and tribes with the burden of proof. As stated above, nondisclosure of our Pueblo Indian culture is essential to the continuation of those beliefs and practices. In this respect, the Pueblos feel we are unique among Native Americans. Therefore, for the Federal Government to force us to disclose them to the general public in order to prevent their destruction would, in itself, violate our AIRFA and First Amendment Freedom of Religion. A statement by the Tribal Government that a particular traditional Indian religious area or water is at risk should be all that is necessary to mandate protection of that area or water. Though the Federal Government ceased in 1934 to deem it a criminal act for Indians to practice our traditional religions, in this respect we are not even accorded the rights of accused criminals. An individual accused of a crime is innocent until proven guilty; but we, who have committed no crime but to abide by the way of life of our forefathers, are considered to be liars until we prove that we are telling the truth when we state that a traditional religious area or water is being threatened. This is wrong. The Indian Pueblos should not be forced to violate our cultures in order to protect them.

At our Pueblo, our government derives from our traditions and culture. A threat to our religion and culture thus is a threat to our government and to our sovereignty. The Federal Government is bound by the trust responsibility to adhere in good faith to the fiduciary relationship between Indian tribes and the Federal Government as well as by the U.S. Constitution and Federal Indian law to respect the reserved inherent sovereignty of Indian tribes. Thus, the Government cannot countenance nor condone a threat to tribal sovereignty and the well-being of tribes, and absolutely cannot be the cause of that threat.

Therefore, the Pueblo of Santa Clara would support the following method of insuring the protection of religious and cultural areas off-reservation and Indian held land (it is similar to one proposed by the Pueblo of Taos) through a separate section or title specifically for the Indian Pueblos in any proposed amendments to AIRFA. After the affected Pueblo(s) are notified by a Federal agency or department of an action that could adversely affect a religious area, due to the government-to-government relationship of Indian tribes and the Federal Government, a statement by the Pueblo Tribal Government that a religious area is going to be seriously impacted should be all that is required to satisfy any burden of proof. This statement must only provide the general area(s) at risk, not requiring the affected Pueblo(s) to explain their religious beliefs or the use of the area(s) at risk. At that point, the Federal agency or department will suspend the proposed activity, only to be continued if the affected tribe(s) and the Federal Government, though their tribal government representatives and Federal agency or department heads (no lower

then under-secretarial level), respectively, reach a consensus that the Federal Government has proved that the proposed activity is necessary to further a compelling governmental interest, is the least restrictive, is the least intrusive method, or is critical to national security concerns. If they do not reach such an agreement then the proposed activity will be annulled. If the Pueblos are not satisfied then the Amendments should provide a clear cause of action so that they may seek judicial remedies; provided, that Tribes not be saddled with the burden of proof. Other alternatives to judicial remedies might include establishing a national arbitration board on a regional and case-by-case basis. If the affected Pueblo(s) agreed to this process, the affected Pueblo tribal government would provide one member for the board, the Federal agency or department would provide one member representing the agency or department Secretary, and the third member would be selected by the first two. That board would evaluate the situation and -- without requiring the Pueblos to meet a burden of proof -- would issue a decision binding upon the affected Pueblo and the Federal agency or department.

This issue is of great importance to the Pueblo of Santa Clara. If a process similar to the one outlined above is not included, at the very least, any new legislation should only seek to identify any fraudulent Indian religious area claims in a litigatively reactive, not administratively proactive, manner. In other words, the affected Pueblo(s) should not have to meet burden of proof at the beginning of the process for their claim to be considered "legitimate." Instead, the affected Pueblo's(s') claims should be accepted as legitimate based on the Federal trust responsibility and respect for Indian tribal reserved sovereignty, and if a Federal agency or department doubts the Pueblo(s) religious freedom claim regarding a cultural area, the agency or department must establish legitimate and documented reasons for such doubt and then may pursue fraudulent claim proceedings in court against the affected Pueblo(s). Finally, Santa Clara cannot, and should not, be required to explain the usage of the a religious area to a government agency for them publish in any action or area evaluation documents.

Also in regards to the protection of religious and cultural areas, we completely oppose the "centrality and indispensability" principle and believe that it should not be used to determine which Indian religious areas merit protection in legislative, administrative, or judicial procedures. We question why Indians are required to prove that the impacted belief, practice, or site is "central and indispensable" to their religions, while the Federal agency or department is not likewise required to prove that the proposed action is "central and indispensable" to its mission and that no other action will equivalently satisfy that mission. The Pueblo of Santa Clara cannot, and should not, be forced to prioritize in what order our religious areas and thus our religion can be destroyed or violated.

Further, any proposed amendments should protect sacred sites and areas, not just Indian religions and access to sacred sites and areas. Protection should be provided both to anticipated sites and ones found or identified while the proposed Federal or Federally-funded action is being implemented. Also, we support provisions in any amendments to AIRFA that make it a criminal act to knowingly destroy or disturb an Indian religious area on public or Indian land, provided, that this should in no way interfere with or affect Indian tribal exclusive jurisdiction over such offenses by Indians on Indian lands and that non-Indians be then subject to Federal jurisdiction for such an offense. We also support provisions that allow temporarily setting aside an area or access to an area to an Indian Pueblo or tribe for religious purposes, provided that to obtain such action Indian Pueblos or tribes should not be required to reveal the location of more than general areas and not provide how the area will be used at that time. Finally, tribes should have the right to prevent the excavation or disturbance of sacred areas and to protect archeological sites if they are considered religiously important. This should be separate from archeological site protection laws.

Among our greatest procedural issues regarding any proposed AIRFA amendments, we are concerned that, in providing protection for legitimate Indian religious freedom claims in general,



any proposed amendments should not be more directed to judicial rather than administrative remedies. While we strongly agree that the serious inadequacies and inequity of the judicial treatment of Indian religious freedom cases seriously demands legislative correction, why must tribes as "affected interests" be forced into what has been an adverse arena where they may very well still lose and be saddled with the costs. We believe that Indian religious freedom can and should be ensured by correct administrative procedures to respond to Indian religious freedom claims and not by increased litigation. At the very least, what is needed is to mandate uniform administrative procedures throughout federal agencies and departments that insure that no federal or federally-supported action will result in the serious impairment or infringement of Indian religious freedom unless the agency or department heads in direct consultation with affected Indian pueblo(s), tribe(s), or nation(s) proves that the action furthers a compelling governmental interest, that its method is the least intrusive and restrictive to serve that purpose, or national security concerns are involved. If that is not proven clearly, then the proposed action should be rescinded. If it is proven, then the affected Indian pueblo(s), tribe(s), or nation(s) could seek judicial remedies as a last resort. If we are all seeking the same result; protection of Indian religious freedom and areas, why make the process any longer or burdensome upon Indians than necessary? In this respect, we also support requiring governmental agencies to meet a burden of proof in litigation at the beginning of the case.

In addition, if the "appropriate changes necessary to protect and preserve Native American religious cultural rights and practices" in the various Federal departments and agencies as determined by the Federal Agencies Task Force established pursuant to AIRFA are supported by the Indian Pueblos, tribes, and nations, Santa Clara feels that they should be reconsidered for implementation.

In regards to religious articles and animals, plants, minerals, and natural materials necessary for Indian religions, we recommend the following. Indians should not be subject to strip searches or harassment when in possession of natural religious substances or materials. Also, religious articles and materials in possession of Federal or Federally-funded collections should be returned to tribes upon request. The States should not have the jurisdiction to regulate or prohibit Indian religious substance collection or use on Federal or Indian lands; it should only be tribal and, if necessary, Federal jurisdiction. Indians should be permitted to conduct hunting and collect natural substances for religious purposes on aboriginal or religious areas located on Federal lands at any time. For this, Indians should not be required to obtain a permit or explain the location of the plants or animals or their religious usage. There should be a plan or method put in place by any proposed legislation to allow tribes to collect live eagles on the reservation and not just those that have been killed by accidents or natural causes. Finally, any new amendments should insure that it is legal for Indians to collect plants, minerals, and natural materials for religious purposes from all Federal lands at any time.

Finally, we have the following recommendations. Provisions resulting from AIRFA requiring Federal agencies or departments to "consult" or "cooperate" with Indian tribes to protect Indian religious freedom have been revealed to be virtually useless in mandating such protection. Many cases provide examples where tribes were consulted, explained that a religious area or issue would be seriously impacted by a proposed action, even studies were done that could confirm the tribe's statement, and the Federal agency or department carried out the proposed action anyway. Thus, Santa Clara feels that there should be provisions in any new amendments that compel a Federal agency or department to change or abandon a proposed action if it going to seriously impair or impact Indian religious freedom. The language should not just require "consultation" and "cooperation," but rather, "adherence" and "accommodation." We believe that it should be stated clearly in any amendments that the amendments and protections provided are strictly for Indians and Native Americans. Also, Federal courts should be bound by the same application of any new amendments to AIRFA; the amendments language should specify the parameters of judicial interpretation so there is not the wide variance of application that characterized AIRFA.

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Further, the other recommendations given by the Federal Agencies Task Force should be reexamined for possible implementation if applicable and supported by the Indian pueblos, tribes, and nations. Finally, we support provisions which require that all Indian testimony and information regarding religious matters should be removed from any record or excluded from public access, including through the Freedom of Information act.

Above all, we of the Pueblo of Santa Clara want to emphasize that disclosure of our religious beliefs, practices, and areas should not be required in order to protect them. Since such disclosure would violate our religious beliefs in itself, we are opposed to requiring such disclosure in any new amendments and request that you, your Subcommittee members, and your staff create an appropriate new method to insure our religious freedom.

#### Conclusion

In conclusion, the Pueblo of Santa Clara views the problem of the Federal Government infringing and restricting Indian religious freedom as one that is caused by principally inadvertent factors. To our knowledge, very few of the current problems arise because an individual or Federal agency specifically sets out to destroy a religious area or practice. This, however, has been used against Indians as a reason to deny legitimate and serious religious freedom claims. Thus, we recommend that in any attempt to insure Indian religious freedom (whether, legislative, administrative, or judicial) the effect rather than the intent of an action should be the motivating factor in mandating protection. In other words, direct actions by the Federal Government which coerce an Indian into violating their religious beliefs or penalizes Indian religious activity should not be the only actions which constitute a violation of Indian religious freedom. Indirect actions resulting in these should also be seen for what they are -- violations in the case of Indians, thus, demanding protection.

Contrary to the arguments of those opposed to increased protection for Indian religious freedom, such additional protection would not designate religious use of Federal lands as their primary use and give statutory preference to the practice of Indian religions on Federal lands. First, it must be remembered that the reason that Indian religious areas are on some Federally managed lands is because those areas are on aboriginal Indian lands that sometimes were acquired by the Federal Government by indefensible methods. Second, expressing this concern ignores the utterly vast amount of land that the Federal Government manages. Under no logic can Indian religious areas be considered to cover every plot of federal land, and that argument should be disregarded when there is such a dire need to ensure this essential human right to Indians and Native Americans.

Finally, more protection for Indian religious freedom would not violate the Establishment Clause of the Constitution. As is clearly shown by the summary provided above of the persecution of our religion since the arrival of Europeans, we as Indians have already been singled out for unique treatment -- religious persecution. Increased protection will not wrongfully, unconstitutionally, or illegally provide Indians with special treatment. The basis for this treatment is two-fold: the reserved sovereignty of Indian nations and the Trust Responsibility engendered in the Constitution itself. Thus, the government is bound by its trust responsibility to provide a unique solution to these human rights violations, because it is both uniquely being imposed upon a group of U.S. citizens, as well as because those citizens -- unlike any other United States citizens -- are concurrently members of "domestic dependent nations" whose sovereignty the United States is bound by law and honor to abide by and uphold.

To the Pueblo of Santa Clara, the time is growing late for the settlement of this dispute. Certainly, progress has been made since the early colonial times and since the early 20th century; but how many Indian Pueblos, tribes, and nations have been annihilated in the interim. Clearly,

The Pueblo of Santa Clara, Testimony, AIRFA Amendments Hearing, February 9, 1993, page 7


the Indians of today cannot afford another long wait. It is now the time for the United States and its citizens other than Indians to realize that the conquest of Native Americans continues today, and is not merely a thing of the past. As long as the United States and its citizens do not act to change it, they are agents of that conquest. At stake is the obliteration of other U.S. citizens, and other human societies and cultures in their own homelands. Many would have the people of the United States believe that the dispossession of Native Americans of their land, that the destruction of traditional political organizations, that the attack on Native traditional religions are all things of a bygone era. The ongoing and uphill struggle for Native American religious freedom today shows clearly that this is false; that the past continues to be reflected in the present.

But will we allow the present to mirror exactly the past? This is the question that now stands before the United States Congress and the citizens of this country. The post-war era has been one of alterations and achievements in the area of race; yet this has little to do with Indian religious freedom. At its base, it is a conflict over cultural and human rights. That the denial of religious freedom to Native Americans that has characterized the post-war period has been more often inadvertent and the by-product of even sometimes well-intentioned individuals indicates that this is a result of different cultural views and values regarding the usage of public lands. Under the guise of bringing about "multiple use" of federal lands, the United States' Forest Service and Bureau of Land Management actually enforce the use of the lands they manage according to a view of American cultural values which deny our cultural values their rightful place and consideration.

Clearly, it is not that there may never be a better time to deal with this issue, for indeed this might not be the case. Rather, there may never be another time. One must only consider the vast amounts of Native religious areas that have already been buried, raided, submerged, razed, trampled, or otherwise impacted, to know that for many tribes, the destruction of the last sites means the destruction of the last part of their religious practices there. From this, there is no path back. The question remains, very simply, do the people of the United States today want to support the destruction of fellow-citizens through their fundamental religious beliefs and practices? If general action is not taken and some of the recommendations we have made implemented to ensure Indian religious freedom, the Pueblo of Santa Clara may be forced to reconsider its view that this is an inadvertent problem. Some would have it believed that the rise of the United States was based on the fall of us, the Indian people. If we do not want this to be true then now is the time for the Congress to act.

We thank you for this opportunity.

Sincerely,



Walter Dasheno, Governor

cc: Senator Daniel Inouye, Chairman, Senate Committee on Indian Affairs  
 Senator Pete Domenici  
 Senator Jeff Bingaman  
 Members of the Senate Select Committee on Indian Affairs  
 Congressman Steve Schiff  
 Congressman Joe Skeen  
 Mr. Jim Hena, All Indian Pueblo Council

STATEMENT REQUESTING THE AMENDMENT OF JOINT RESOLUTION  
AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978 TO THE  
PROPOSED AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1993.

I am voicing my concern, as a Native American Church of Navaholand Board of Director, on behalf of the Native American Church of Navaholand, Inc. members of Western Navaho, District #3 (Tuba City, Cameron, Bodaway and Coalming, AZ). We strongly support the amendment of the American Indian Religious Freedom Act.

This Bill has been long overdue. For centuries now, whenever the issue of our religion and culture is concerned, it is perceived by the Federal Government as all negative and zero percent (0%) good. Everything in nature is in equilibrium, except when it comes to our religion and culture. Why is it viewed as such? Our traditional ways may be strange and mysterious to our white brothers, but then again the Great Spirit (GOD) works in strange and mysterious ways. Our Creator is righteous and just, therefore, our ceremony, sacred sites, sacred objects and prayer are all valid. It is not a cult by any means like the way the media instilled it in the mind of the general public.

According to the Navaho legends, the Great Spirit gave us peyote (a bitter herb) at the emergence into this world. Peyote is the most sacred of all herbs in the plant kingdom. The peyote was given as a sacrament so that it may help to teach us the right way to live, grow spiritually, to protect us and to heal our mind and body so we can walk in balance and harmony with nature.

The peyote was taken from us by the Gambler and was taken towards the south. We were told that one day we will find it again when we begin to lose everything (our culture, language, land, spiritual way, etc.). The peyote spirit has seen our suffering and heard our cries and returned to us as it was prophesied.

Our Native American Church of Navaholand members are humble people, who believe in brotherly love and the importance of spiritual growth. We believe that in order to get close and communicate to the Great Spirit, a spirit to spirit contact has to be

made. We cannot see the spirit people because we are in the physical, but a spiritual mind can reach a spiritual being.

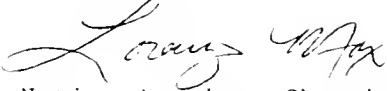
Peyote is not a drug, it is holy sacrament, an herb. We do not and will not abuse it. Compared to the tens of thousand cases of alcohol and drug related abuse that are reported daily in the United States, you never hear of one case of abuse or death associated with the traditional use of peyote. We only use peyote and open our sacred bundle to help the poor, the sick, the aged, the widowed and the orphaned.

The evidence is beyond challenge that the Indian people, before the Europeans came, had achieved a knowledge of the Creator of the Universe and was worshipping Him in a religion of spirituality, kindness and truth. Yet our rights are still being denied to worship in our own humble ways. Our children are becoming spiritually ignorant. We love and have hopes for our children just like everyone else. We cannot allow this cultural genocide to continue.

Honorable Congressmen, Senators and the President of the United States, everything has been taken from us already. We are reduced to poor people. Please find it in your heart to support and pass the amendment to the American Indian Religious Freedom Act. With your help we can enjoy our religious freedom like yourselves and all Americans do.

On February 06 and February 07, 1993, I attended several Native American Church prayer services for the passage of the proposed amendment of the American Indian Religious Freedom Act 1993. The general consensus was a overwhelming majority of the Native American Church of Navaholand, Inc. members strongly support the amendment. A count of vote taken was 157 approved and 0 nay and 0 abstained.

Lorenzo Max



Native American Church of Navaholand, Inc.

Board of Director, District #3

Western Navaho Agency

TO: Senate Select Committee, Congressmen, Senators and the President of the United States of America

RE: Support the amendment of the American Indian Religious Freedom Act. I, Lorenzo Max, made this affidavit for Mike Kiyaani on this day of February 07, 1993.

I am an elderly traditional Navaho. I am also a Native American Church Spiritual Leader who is concerned that the United States Constitution does not clearly cover our way of worship as it was intended by the Great Spirit.

Let it be known that I was called upon to take up arms against the enemy in World War II. I fought thinking that I was protecting and preserving our way of live. I suffered and was wounded. In addition to all this sacrifice, my Navaho language was used to beat the enemy. Yet, ironically, the United States Constitution still does not protect our right to pray in our traditional way using sacred objects (feathers, etc.), medicines (herbs, peyote, etc.) and at sites considered sacred by the Navaho people and other Native American tribes.

As a Navaho Spiritual Leader, my life is dedicated to helping my brothers and sisters to walk in harmony and balance with nature in our own humble ways. All of nature is our church. Certain sites where the Holy Ones have walked and taught their sacred ways are sacred to us because their spirits are linked to that part of nature. We are linked to nature in spirit, which is our channel to the Great Spirit.

Unlike the Christian people, we don't need to go to a fancy church to pray. We pray in the way it was taught to us. When we pray we sit on Mother Earth in a sacred manner. We sing our sacred songs and offer sacred objects at sacred sites. We honor and respect all things and beings in nature. All things have spiritual meaning for the Navaho people and other Native American tribes. Instead of seeing things in terms of dollar lost due to damages

done in natural disasters, we see and feel it the way nature sees and feels it. Learning and growing works both ways, maybe it is time to learn from one another.

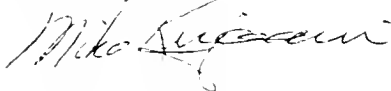
To continue denying us the use of eagle feathers, praying at sacred sites and using peyote as a sacrament is denying us our most basic human rights, while the rest of the Americans enjoy and take for granted their rights to worship freely without persecution.

A spiritual leader will not abuse his ways like a Constitutionally protected television preacher will for money and status. Plus, everyday we see make-believe marriages, funerals and oaths on television where the name of Almighty GOD is mentioned for entertainment sake.

If Jesus, the Great Spirit and Peyote Spirit were to all meet where we can witness it, they would talk a common language. It is only the scientists and the politicians that don't seem to understand.

As a humble Navaho man, I beg and pray that our Senators and Congressmen take an honest look at the Navaho people and other Native American tribes and realize what we have to struggle through everyday just to get by. We find peace and strength in our prayers. Listen to your heart and spirit and pass the American Indian Religious Freedom Act of 1993. Find the solution to our plight in your heart, because the policy that causes suffering begins in the mind and it comes from a sick heart that has lost its spirituality.

Mike Kiyaani



Native American Church of Navaholand, Inc.

Spiritual Leader

United States Veteran - World War II

Navaho Code Talker



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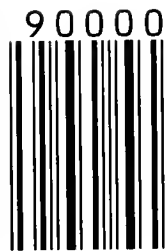


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