

HUALAPAI CULTURAL RESOURCES STUDIES  
FOURTH QUARTERLY REPORT  
JUL, AUG, SEP, 1993

JUL:

- 8TH: GCES-Hualapai GIS Coordinator, Jeff Wilkerson, interviewed Loretta Jackson and identified needs assessment for the Cultural Resources. Recommendations will be addressed in a needs assessment report.
  - 9TH: Phyllis Hogan was contracted as an Ethnobotanist to assist Hualapai Cultural Resources in the Cultural/Elderly Rivertrip scheduled for July 30 -August 6, 1993.
  - 19TH: Pre-trip meeting regarding the rivertrip and the goals and objectives pertaining to the trip was held in Peach Springs at the Wildlife Management. All Staff and Technical Assistance Personnel including the Elders were present to discuss the rivertrip.
  - : Preparations for the rivertrip including verifications for a Helicopter shuttle at Whitmore Pad were conducted.
  - 29TH: The Cultural/Elderly & Technical Staff met in Flagstaff at the Final Pre-Trip meeting at the GCES office with Program Manager-Dave Wegner. Overall safety briefing and the GCES-EIS Studies and process were presented to the Elders.
  - 30TH: Embarked on the River at Lee's Ferry for an eight day trip with seven Elders, four Staff members, and three Technical Assistants (which included a volunteer Registered Nurse, Melanie Johnson, from a private sector.)
- \* TRIP REPORT IS FORTHCOMING

AUG:

- 1ST - 6TH: Interviews were conducted throughout the river-trip. Archaeological site visitations with the assistance from Park Service Archaeologist, Jan Balsom, was also conducted throughout the River Corridor from Lee's Ferry to Diamond Creek. On the 2nd, Phyllis Hogan joined the trip at Pipe Springs. She assisted in interviewing elders about plants and their useages at stops that we made. \*Formal report is being drafted on the ethnobotany.
- On the 3rd, Bill Leibfried joined the trip at Havasu Creek. He presented an overall view of the on-going science studies regarding the Dam Operations, Water Releases, and the EIS. On the 4th, two more Elders were flown in at Whitmore Pad, which included the Vice-Chairwoman; Louise Benson, and an additional Staff Member.
- On the 6th, the trip disembarked at Diamond Creek.
- 11TH - 16TH: Clay B. and Loretta J. attended Park Service meeting in Bemidji, Minn. regarding the new amendments to the NHPA. the Native American Graves Protection and Repatriation Act (NAGPRA) was also discussed among the Tribal representatives and there is still a grave concern over language in the regulations.
- 26TH - 27TH: Ronald S. and Ben Z. attended the Cooperative Meetings in Phoenix, Az.
- : Transcribing and interpretation begins on the tape recordings of

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the Elders who participated on the River-trip.

SEP:

- 1ST - 10TH: Loretta J. attended ten day river-trip from Lee's Ferry to Diamond Creek along with representatives from the Cooperating Agencies regarding the Cultural Resource Monitoring Plan sponsored by GCES/BOR-NPS.

- 23RD: Loretta J. went to Grand Canyon Park Service to present Hualapai views and cultural values to the Interpretive staff members.

- 29TH: Loretta J. attended Programmatic Agreement meeting at the GCES office in Flagstaff, Az. Also 3rd Draft Monitoring Plan was reviewed and team of Tribal representatives will work together to incorporate Tribal concerns regarding Remedial Action of this Draft.

End.

HUALAPAI CULTURAL RESOURCES STUDIES

FIRST QUARTERLY REPORT

OCT, NOV, DEC, FY94

-Cultural Resources Staff, Ronald Susanyatame, Christopher Walker & Tony Watahomigie received training from BIA Road Archaeologists in a five day field school in excavations and recording of two archaeological sites on the Buck and Doe Road on the Hualapai Reservation. This project stems from the road construction funded through the Bureau of Indian Affairs. A full report of the findings will be published by Neal Crozier, Roads Archaeologist of Phoenix Area - BIA. All collections of artifacts, shards and lithic will be analyzed and recorded and returned back to the Hualapai Tribe, to be archived at the Wildlife Management Department-Cultural Resources Division.

- Attended Native American Meeting at BOR, Phoenix, AZ on Oct 12th. The draft biological opinion was discussed. Also the spikes and critical habitat designations and their implications to T&E species, but more importantly, to Indian Country of the Colorado Plateau & Hualapai Plateau. Another topic discussed at this time was education opportunities to Indian communities involved with the GCES organization that could be assisted from the Northern

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Arizona University Campus in Flagstaff, Az. - Attended  
Cooperative Meetings on Oct 13 & 14th at BOR, Phoenix, AZ.

- Attended meeting at the GCES office in Flagstaff on Oct 19th  
regarding draft monitoring plan. Hualapai & Hopi Representatives  
& Park Service archaeologists went through recent draft and made  
inclusions and deletions. This office has not received that  
current draft document for review from responsible agency.

- Council meetings were attended by L.J. including presentation on  
EIS related studies. Programmatic Agreement has been approved by  
the Tribal Council. Upon the Chairman's signature, the signed  
document will be forwarded to the BOR-Salt Lake City Office.

\*Cultural Resource Tech. Trainee, Tony Watahomigie resigned Nov.  
1st to take a Ranger position at Wildlife Conservation - Hualapai  
Tribe.

\*Cultural Resource Secretary, Susan Elias, transfers Nov. 8th in-  
house to Cultural Resource Technician Trainee position.

-On Nov. 15 - 18th, Cultural Resources Staff, Ronald Susanyatame &  
Christopher Walker and Morris Sampson of the Fisheries Division  
attended the first **National Tribal Environmental Council Conference**  
in Albq., NM. Topic discussions in environmental issues ranged from  
history of N.T.E.C., Indian spirituality, the basis for  
environmentalism, legislative update, Tribal sovereignty

jurisdiction, and E.P.A. Indian policy.

-Cultural Resources Staff, Loretta Jackson & Ronald Susanyatame attended **National Congress of American Indians Convention** in Reno/Sparks, Nevada. **\*TRIP REPORT ATTACHED w/ additional information.** (see Appendix C and Appendix D)

-Transcribing of oral interviews from August trip still in the early stages of interpretations. The additional information will be analyzed to be incorporated into the Ethnographic and Oral Historical Survey Report. Determination for additional research will be recommended to the GCES Program Manager upon finalization of Trip Report.

-Oral History Workshop entitled: **"Cultural Studies Using Ethnographic Methods"** was presented by Robert "Hank" Stevens of Univ. Ca., Irvine from Dec. 6 - 10th. The Cultural Resources staff and new employees attended as well as staff members of the Peach Springs Elementary School and the Fort Mohave Cultural Resources Management of Needles, CA. The workshop was video recorded by the School staff for documentation and for review when needed. **\*SEE WORKSHOP REPORT BY HANK STEVENS ATTACHED** (see Appendix B)

-Loretta Jackson has been recommended by Cecil Antone, Lt. Governor of Gila River Community, to replace his Directorship as *Acting Director* for the Phoenix Region Area in the State of Arizona for the *Keepers Of The Treasure Organization Board of Directors*. This

recommendation has been approved by the Hualapai Tribal Council.

**-Status of the Cultural Resources Advisory Team Committee:**

A meeting was held on Dec. 29, 1993 at the Wildlife Management Bldg. The following list of people no longer serve on the committee due to lack of participation:

Beecher, Cheryle

Imus, Bonita

Walema, Edgar

The following list of people have been added to the committee and resumes will be submitted to GCES Program Manager, Dave Wegner as soon as possible:

Bravo, Lena

Bender, Emmett

Wescogame, Betty

The following people are the current committee members who have remained quite active with the Cultural Resources Program and are still included in the committee:

Powskey, Malinda

Querta, Anna

Querta, Sylvia

Watahomigie, Lucille

The committee was briefed on current status of the ethnographic studies under GCES. Other current and up-coming projects related to various aspects of cultural resources were discussed. The next meeting will be scheduled for January 29, 1994.

-Loretta Jackson submitted an abstract to present in a panel titled: "Tribal Perspectives on Cultural Resource Management" for the 1994 Annual Conference, *SOCIETY for APPLIED ANTHROPOLOGY*, in Cancun, Quintana Roo, Mexico. Other presenters of the panel include Roger Anyon of Pueblo Zuni, Alexa Roberts & Dr. Allan Downer of Navajo Nation, Cecil Antone & John Ravesloot of Gila River, Jean Ann Mercer of SWCA, Inc., Kurt Dongoske & Leigh Jenkins of Hopi Tribe, T.J. Ferguson of Institute of the North America West and Susan Perlman of Albq., NM. The conference will take place April 13 through 17, 1994. Each presentation will be 20 minutes in length. Question: Will GCES Program Manager, Dave Wegner, support the anticipated travel for Loretta to do this presentation on the Tribe's involvement with the GCES-GCD-EIS?

**\*Abstract is included with this report for review. (see Appendix A)**

## Appendices

- Appendix A..... Abstract and Information
- Appendix B..... "Cultural Studies using Ethnographics Methods"
- Appendix C..... NCAI Trip Report
- Appendix D..... S. 1021, Native American Free Exercise of  
Religion Act of 1993 and *Joint Resolution*  
*American Indian Religious Freedom of 1978.*

Appendix A

Jackson, Loretta - Hualapai Tribe - NATIVE AMERICAN INVOLVEMENT IN  
THE NEPA PROCESS.

The Hualapai Tribe has been involved with the Glen Canyon Environmental Studies and the Glen Canyon Dam Environmental Impact Statement since 1990. The means to ensure that Hualapai Tribal concerns were to be taken into consideration stems from the legal requirements of the National Environmental Policy Act. The Hualapai Cultural Resources Division investigates contemporary Hualapai lifeways, aspects, perspectives and worldviews in relation to the Grand Canyon and Colorado River where the ethnographic studies are focused. Areas of Hualapai cultural and historical significance about natural resources utilization and the Dam's influence on the Tribe's lands, waters, natural resources and traditional cultural properties are part of the research. Hualapai cultural scholars interviewed, so far in the process, perceive degradations of Hualapai natural and cultural resources as a threat to tribal sovereignty, economic self-sufficiency, environmental quality, human rights, and the spiritual and physical well being of Hualapai citizens.

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LORETTA JACKSON  
P.O. BOX 300  
PEACH SPRINGS, AZ 86434-0300



Dec. 21, 1993

Dear Colleague:

The 1994 SfAA Program Committee is pleased to accept your presentation for the Cancun Meetings. The Meetings will begin on Wednesday evening (April 13) with the Peter New Award and Reception and continue through Saturday night. Cancun promises to be an interesting setting and the sessions will be first rate. Please make your travel plans as soon as possible. Rooms at the Westin Regina Hotel (the conference hotel) will be on a first-come basis. Phone 1-800-524-5405. Outbound Travel (1-800-678-3273) can help with your air/ground transportation. The preliminary program with dates/times of presentations will be completed in mid-January.

Allan Burns, Program Chair.  
(904) 392-0299; FAX (904) 392-6929

# Society for Applied Anthropology 1994 Annual Meetings

April 13-17, 1994  
Cancun, Quintana Roo, Mexico

*social science for the next generation*

The Society for Applied Anthropology and the city of Cancun, Quintana Roo, Mexico, invite your participation in the 1994 SfAA meetings. Sessions, papers, and posters concerning applied anthropology in all parts of the world and on all applied topics will be presented. Those that reflect the Caribbean context of the four themes of the meetings, **the environment, tourism, cultural resource management, and the Maya tradition** will be emphasized. Cancun, the wonder of the Caribbean coast of Mexico, is a place where these themes can be discussed and also confronted. Cancun is the fastest growing city in Mexico and in the Caribbean; it is a zone of tropical biospheres, world class archaeological sites, and initiatives for ecotourism. Cancun and Mexico are undergoing profound changes in land tenure and identity that will influence both the north and the south. As the Maya calendar completes another cycle and the end of the millennium approaches, we again meet in the Yucatan peninsula to seek out options for the next generation of applied social science.

**Program Committee:** Allan Burns (Florida) 904/392-0299 or 392-2031, Bitnet: Maya@Nervm; Tom May (Oklahoma) Business and Hotel Arrangements 405/843-5113; Mark Barnes (Georgia State) Cultural Resource Management 404/651-2255; Barbara Johnston (Independent Researcher) Environmental Issues 406/723-8073; Anthony Oliver-Smith (Florida) Tourism 904/392-2290; Francisco Fernandez (Universidad Autonoma de Yucatan, Merida, Yucatan) Latin American Applied Collaboration (52) 99 25 45 23; Jorge Duany (Universidad del Sagrado Corazon, Puerto Rico) Caribbean Applied Anthropology; Elizabeth Guillette (Florida), Poster Sessions 904/392-2031. **Session Committee Members:** Mary Elmendorf (World Bank), J. Bryan Page (Miami), Lucia McSpadden (San Francisco), Judith Freidenberg (Mt. Sinai), Otto von Mering (Florida), Ann Juarez (Stanford), Alicia Re Cruz (N. Texas), Paul Doughty (Florida), Michael Evans (Arizona), Sue Lurie (NAPA), Florencia Pena (INAH), Jeronimo Camposeco (CORN-Maya).

## ADVANCE REGISTRATION FORM

Name: \_\_\_\_\_

Affiliation: \_\_\_\_\_

Address: \_\_\_\_\_

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\_\_\_\_\_ Office: ( ) \_\_\_\_\_

Registration rates (check appropriate category and indicate amount)

Fellow/member \$60 \_\_\_\_\_ Student member \$20 \_\_\_\_\_ Student nonmember \$20 \_\_\_\_\_ Other \$60 \_\_\_\_\_

Amount Enclosed \$ \_\_\_\_\_

Nonmembers may register and join SfAA (\$35 students, \$85 others - total amount due). Memberships include subscription to *Human Organization*, *Practicing Anthropology*, and *SfAA Newsletter*. Applies only to new members.

MAKE CHECKS PAYABLE TO Society for Applied Anthropology. SEND TO SfAA, P.O.Box 24083, Oklahoma City, OK 73124. REFUND POLICY: Full refund less \$10 for processing can be made up to Dec. 31, 1993. No refund requests can be honored after Jan. 1, 1994. All payments must be made in US dollars drawn on US banks, properly encoded for the Federal Reserve System.

Appendix B

***CULTURAL STUDIES USING  
ETHNOGRAPHIC METHODS***

Robert Henry ("Hank") Stevens  
Ph.C., M.A., Social Sciences  
University of California, Irvine

Presented on  
December 8-10, 1993  
Peach Springs, Arizona

as a

Training Program for the  
Hualapai Tribe Cultural Resources Division

in

Cooperative Agreement with the  
United States Department of the Interior  
Bureau of Reclamation  
Glen Canyon Environmental Studies

The program is drawn from the booklet:  
***American Indian Cultural Studies Using Ethnographic Methods***  
*A Research Handbook for Cultural Continuity,  
Cultural Resource Management and Historic Preservation,  
In Accordance with Tribal Sovereignty*  
by Robert Henry Stevens

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P.O. Box 627-4960  
Irvine, California 92716-4960  
Telephone (714) 856-3217

## **CULTURAL STUDIES USING ETHNOGRAPHIC METHODS**

- Culture, cultural practices, cultural resources
- Language and culture
- Identity, traditions, lineage, family, kinship
- Social organization:
  - Roles, authority, political relations
  - Bands, clans, divisions, Tribes, Nations, language families
- Geographical affiliations, territorial claims
  - Ancestral, traditional and continual residence, occupancy and use
  - Sovereignty, ownership, property rights, trust status
- Worldviews and beliefs, philosophy of religion
  - Cultural practices, ceremonies, conceptions of the sacred
  - Culturally significant landscapes, waters, plants, animals, minerals, elements, processes, locations, sites, structures, shrines, memorials, petroglyphs, etc.
- Differences in worldviews and approaches to knowledge:
  - Wholistic systems, or linear analysis and logic
  - Ideas and explanations concerning first causes and origins
- Knowledge: events and things (phenomena) are experienced by the senses (observed), and are described and analyzed using language; influences on perception include point-of-view and environment
  - Empiricism: observations are made, then explanations are formulated and experimentally tested
  - Scientific method: observations, hypothesis development and testing by experimentation
  - Social scientific methods
    - (1) Research question(s).
    - (2) "Admissible evidence:" data and information
      - (a) Material/physical
      - (b) Historical documents, archival data
      - (c) Interviews, surveys
      - (d) "Social facts"
    - (3) Forming hypotheses to interpret or explain phenomena
    - (4) Testing hypotheses:
      - (a) Use of evidence, logic, and reason
      - (b) Experimentation
      - (d) Comparison to alternative hypotheses
      - (e) Possible need to discard or modify the hypothesis and conduct a new experiment
    - (5) Research findings or results:
      - (a) Written
      - (b) Comparisons to literature
    - (6) Peer review
    - (7) Contribute to theory; apply to laws and policy
- Interpretation (Hermeneutics)
  - Contextual validity
  - References and meanings
- Cultural relativism
- Bias, stereotyping, and ethnocentrism

- Concerns for reliability, trustworthiness and accuracy
  - Methods, authorizations, controls, monitoring, and review
- History of relations between the U.S.A. and American Indian Nations and Tribes:
  - Tribal sovereignty, nation to nation status, nations within a nation, reservations, relocations, Bureau of Indian Affairs, allotment, assimilation, citizenship, Indian Reorganization Act, termination, self-determination, federal trust responsibility, government-to-government relations
  - Federal and state laws and policies regarding Tribal culture and history:
    - (1) Antiquities Act of 1906
    - (2) Reservoir Salvage Act of 1960 (amended)
    - (3) National Historic Preservation Act (NHPA) of 1966, as amended (1980, 1992)
    - (4) American Indian Civil Rights Act of 1968
    - (5) National Environmental Policy Act (NEPA)
    - (6) Indian Self-Determination and Education Assistance Act of 1975, as amended (1988)
    - (7) American Indian Religious Freedom Act (AIRFA) of 1978
    - (8) Archeological Resources Protection Act (ARPA) of 1979
    - (9) Public Law 93-638: Tribes as Contracting Agencies
    - (10) Native American Graves Protection and Repatriation Act (NAGPRA)
    - (11) State laws
    - (12) Policies, regulations, and enforcement
    - (13) Opportunities for cooperation in cultural and natural resources administration, protection of cultural resources and maintenance of cultural practices
- Ethical and legal principles
  - Constitution, Bill of Rights, Federal and State laws
  - United Nations: Nuremburg Codes (1947-48), International Declaration of Human Rights, Declaration on the Rights of Indigenous Peoples
  - Scientific human subject research ethics, professional codes of ethics (e.g., American Anthropological Association)
  - Possible need to protect confidentiality
- Tribal use of cultural research
  - Comply with Tribal governance and traditional culture
  - Use social science and humanities cultural studies methods
  - Culturally-based and community-supported research
  - Public benefit: contributions to knowledge, policy

- Collaborative research:
  - According to Tribal sovereignty, self-determination, and contractual authority
  - To protect culture, traditional cultural properties, cultural resources, culturally significant landscapes
  - Within the Tribe: Tribal Council, administration, law, traditional cultural practitioners, cultural/historical societies/committees, Tribal elders, Tribal schools, etc.
  - With other Tribes: neighbors, through the U.S.A. and beyond
  - With government agencies according to federal trust responsibility and intergovernmental relations
  - With private institutions
  - Cooperative agreements
  - Regarding resources, funds, skilled researchers, program administration and review
- Research design
  - Research subject/question
  - By whom: individual, team (department, etc.)
  - For whom: Tribe, traditional practitioners, educators, government agencies, public or private institutions
  - Selecting the research population: purposive, interest, and "snowball" sampling
  - Procedures: informal exploratory proposal, with assistance from persons of varying affiliations and/or agencies; formal development and endorsement by Tribal governance; advice, brainstorming, listening, focusing, developing a checklist of topics, getting feedback from advisors, using recommendations, making revisions, and improving the checklist of topics
  - Studying the geography of the area, making preliminary site visits
  - Literature review
  - Supervision and review: multiple layers at different stages
- Research methods: ethnography, participant-observation, interviews, ethnology, archeology, archival, ethnohistory, life experience narratives, oral history, oral traditions, historical critical comparative religious studies (origins/creation accounts, mythology, folklore), hermeneutics, petroglyphs, cultural landscape, topography, geomorphology, hydrology, geology, mineralogy, toponymy, ecosystems, demographics, ethnobotany, ethnozoology, traditional economics, modern economics, climatology, meteorology, astronomy
  - Neutrality of methods: honest attempt at objectivity; experimental replicability
  - Preventing methods problems; defending the validity of methods

- 
- Preparing for field research and interviews
    - Funding is required: develop/propose a budget, identify and apply to funding source(s), consider and itemize all costs, set up and implement accounting procedures, specify channels of approval and control, allocation, allotment and disbursement procedures, audits, financial reports
    - Personnel: employees, consultants, policies and procedures, contracts, job descriptions, supervision, evaluations and reviews, termination of employment
    - Geographical areas: travel to locations, time, distance, expense, authorizations, permits, maps, orienteering, trip reports
    - Logistics: transportation, supplies, equipment, shelter, emergency plans
    - Size or scale of interview: personal or small group
    - Communications: interpersonal, interagency, written, electronic
    - Authorizations, permits, and advisory approval: Tribal Council, Tribal elders, traditional practitioners, advisory boards/committees, agencies (Tribal, federal, state, local, academic); Consent and release forms for interviews, protection of confidentiality
    - Steps to take to arrange an interview (protocols)
  - Interview technology
    - Audio and/or video tape recording: equipment quality, costs, specifications, power supply, cables, plugs, microphones, microphone techniques, magnetic tape, proper tape storage and care, tape transfer or duplication
  - Recording techniques
    - Unobtrusive methods; distractions; preset and test levels, monitor and adjust; tools
  - Interview procedures
    - Status of interviewees: "Cultural Scholars" or "Consultants" having knowledge, expertise and/or experience concerning the research topic; co-contributors to the research text; fluency in Tribal language preferred
    - Formal written agreement: consent and release form; confidentiality
    - Interviewer reliability: trustworthiness, rapport, honor
    - Consultant specifies how he or she wants to be identified (by name, family, band/clan, and Tribal affiliation, date and place of birth, residence, vocation), or not
    - Consultant tells whether or not to make a recording (audio and/or video), to take notes, and/or take photographs

- The Interview Guide:
  - Structured
  - Semi-structured
  - Broad topic
  - Sharply focused, narrow topic
  - Life experience narrative (time span or topical focus)
  - Oral historical accounts (primary source, secondary source, oral tradition)
  - Genealogy, family history
  - Follow-up questions
- Interviewer skills
  - Fluent in Tribal language, and bilingually (with English)
  - Attentive, careful, empathetic, patient listener
  - Allow time for consultant's memory to recall details and/or feelings
  - Encourage vivid remembrance, recollections of life experiences, details, senses, actions, people, places, and things -- can these be visualized?
- Participant Observation
  - Powers of observation and description
  - Environment, time, human behaviors
  - Fieldnotes/Journal notes: observations, details, descriptions, personal experiences, impressions, thoughts, subjects for related research, etc.; drawings; organization and safety of fieldnotes; copy on file; backup files
  - Coding: consultant identifications and personal data; other categories of data
  - Developing a database based on categories in Tribal language, translated into English; cross-references, indexes
- Translation
  - Domains of fluency: Tribal language, English language, others
  - Team of translators: interviewer; interviewee; researcher(s) fluent in Tribal language and also having extensive knowledge of culture context; researcher(s) having bilingual and bicultural fluency to intermediate between conflicting social-cultural contexts and worldviews; researcher-writer(s) highly skilled with English speech and writing
  - Translation must be accurate and precise, retaining the integrity of understandings, references and meanings in the original language
- Presenting translated text
  - Bilingual:
    - (1) Facing pages
    - (2) Interlinear (variations: simple and easy-to-read, or complex and laden with cultural and linguistic data)

- English language translation as the published text
- Use of italic typeface to indicate words and phrases of languages that are different from the surrounding text
- Footnotes and/or endnotes
- Translating and writing for particular audiences:
  - The communications practice of audience analysis
  - Composition of the audience(s) who will read the study
  - Audience variations and commonalities
  - Organize and present the study to meet the interests and needs of the readers:
    - (1) Selection of topics and categories
    - (2) Claims and evidence
    - (3) To inform, educate, enlighten
    - (4) To persuade and convince by using good reasons
- Effective writing and speaking: four styles of discourse
  - Conversational
  - Consultative
  - Deliberative
  - Rhetorical
  - Research and writing uses language from all four styles; usually, moving from conversational towards rhetorical
- Organizing the written report
  - Standard format: Title, Author, Cooperating Agencies, Publishing Agency, Date of Publication, Abstract/Executive Summary, Table of Contents, Introduction, Background and Context, Research Design, Research Population, Research Methods, Research Results or Findings (categorized), Summary, Conclusion, Recommendations, Literature Cited/References, Recommended Bibliography, Tables, Maps, Illustrations, Charts, Figures, Graphs, Footnotes and Endnotes, Appendices, Acknowledgments
  - Source attribution (proper form for quotations, paraphrases, and citations; plagiarism and copyright)
  - Acceptable alternatives for presenting the study in written format
  - Presentation of interview text:
    - (1) The complete text of the interview conversation
    - (2) Whether to make grammatical corrections
    - (3) Only the words of the consultants; all, or excerpts?
    - (4) Proper format and punctuation
    - (5) The importance of maintaining conversational integrity
  - Identifying the interviewees in print:
    - (1) Consultant identifications and personal data: name, sex, age, date and place of birth, affiliations (Tribal, band/clan, etc.), vocation(s), social role(s)

- 
- (2) Do as consultants specify and indicate in the interview consent/informational release forms
  - (3) Sensitive information might need to be kept confidential
    - (a) Insensitive, adversarial or exploitative readers could be disruptive to the lives of consultants who are identified "on the record"
    - (b) Testimony and statements made "on the record" can be used as legal evidence in court cases; persons identified "on the record" could be required to give testimony in court, or could be named in a lawsuit
    - (c) Consultant's statements about controversies may be taken to be inflammatory, liable for court action
    - (d) Protection of the privacy of the consultant is the responsibility of the researchers and writers
  - (4) Do not print statements that are, or might be, libelous, slanderous or defamatory
- Editing: check for accuracy, clarity of organization, textual unity, appropriate vocabulary and tone, grammatical agreement, punctuation, spelling
  - Authority for production of text: Tribal advisors and consultants, Tribal government, cooperating agencies, funding source(s)
  - Formal peer review:
    - Tribal community cultural scholars
    - Tribal government
    - Cooperating agencies researchers
    - Academic scholars, committees, councils, ("juries")
  - Going to press: private, for-public, profit, not-for-profit, for sale, free . . . ?
    - Who will publish: Government Printing Office; academic / university press; Tribal press; collaborative/joint venture; museum/library press; professional publishing house; foundation; desktop (computer-assisted) publishing
    - Business and accounting plan
    - Distribution and duration of availability
    - Copyright
      - (1) Submit to Library of Congress for cataloging
      - (2) Publication data: "P number," "ISBN"
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Appendix C

Trip Report of the  
National Congress of American Indians Annual Convention  
November 27th - Dec. 2nd, 1993

Submitted

by  
Loretta Jackson

January 10, 1994

The 1993 NCAI Annual Convention convened in Reno, NV. on Sunday, Nov. 28, 1993 with Tribal Leaders and members participating. Hualapai Wildlife Management Staff who attended were Ronald Susanyatame and Loretta Jackson of the Cultural Resources Division. One of the primary objectives for attending this conference was to participate in the Hearings scheduled for Sunday, Nov. 27, 1993 on the S.1021 Native American Free Exercise of Religion Act of 1993 (NAFERA). The Human and Religious Rights Committee of the NCAI co-chaired the hearing. The six hour hearing allowed many tribes and individuals (23 presenters) to address the panel regarding Native American Religious Freedom.

S.1021 is a bill divided into six (6) main parts or titles. Title I - *Protection of Sacred Sites* covers Findings, Federal Land Management; Use and Preservation, Notice, Consultation, Burden of Proof, Tribal Authority over Native American Religious Sites on Indian Lands, Application of Other Laws, Confidentiality, and Criminal Sanctions. Title II - *Traditional Use of Peyote* covers Findings, and Traditional use of Peyote. Title III - *Prisoners*

*Rights* covers Rights. Title IV - *Religious Use Of Eagles And Other Animals And Plants* covers Religious Use of Eagles and Other Animal and Plants. Title V - *Jurisdiction and Remedies* covers Jurisdiction and Remedies. Title VI - *Miscellaneous* covers Savings Clause, Severability, Authorization of Appropriations, and Effective Date.

The testimonies given by Hualapai members, Loretta & Ronald, reflected on the Sacred Sites portion of the Bill.

The main points addressed during this time were the importance of:

- a) the process of consultation between federal agencies and tribes,
- b) the early involvement of the tribes in the NEPA process regarding federal projects,
- c) maintaining government to government relationships between tribes and federal agencies,
- d) Tribe's recognition as a sovereign nation by federal agencies and
- e) the right to secrecy of confidential and sacred knowledge.

The other issues of importance under the Sacred Sites portion are the potential natural resource and significant geographic locations of sacred sites tribes (*with tribal beliefs*) may be concerned with (*on ancestral territorial homelands*), and how overlapping interests from an anthropological and archaeological point of view of academic and management which may initiate roles of conflict.

The definition of the term "Indian Tribes" on pages 5 & 6 of S.1021 has sent a message of outcry in Indian Country to narrow the definition to "Federally Recognized Tribes". The Hualapai Tribal Council will be approached by the Cultural Resources representatives to allow the Tribal Chairman to participate in the testimonial hearing in Washington D.C. on February 10, 1994,

sponsored by Senator Inoyue, to voice concerns and state their position on the support (or lack of) the S.1021 Bill. Currently the Bill is being reviewed by the Tribal Council and Attorney, Terry Janis of the Indian Law Resource Center at Helena, Montana, for further analysis and interpretation.

The other primary objective of the Cultural Resources participation of the convention was to gather more information on the Native American Graves Protection and Repatriation Act (NAGPRA) and the current status on the regulations and implementation. Dr. C. Tim McKewon, Archaeological Assistance Division of the National Park Service in Washington, DC, made a presentation at the Religious Freedom caucus on Nov. 29th. He serves a role as the NAGPRA Program Leader and supervised development of the draft regulations and is responsible for coordinating activities for the NAGPRA REVIEW COMMITTEE. The Review Committee is comprised of 7 individuals and they serve in an advisory capacity to the Secretary of Interior regarding the regulations and resolving disputes resulting from repatriation issues. On Nov. 11th, 1993, 2.3 million dollars was appropriated through Congress to fund museums and tribes to implement the Act. However only 1/3rd of the funds will be made available to tribes and 2/3rds for museum organizations for FY94 (total sum to fund tribes on national level is \$700,000.!!). Grant applications will be made available in the near future and deadline for proposals is March, 1994.

The regulations to the Act, as published May 28, 1993 in the Federal Register, 43 CFR Part 10 under Notice of proposed

rulemaking (NPRM), consist of 17 sections divided into four subparts and five appendices. Subpart A includes introductory sections, Subpart B - *Human Remains and Cultural Items From Federal or Tribal Lands* covers Intentional excavations, Inadvertent discoveries, Consultation, and Ownership and Disposition of Unclaimed Human Remains and Cultural Items.[Reserved]

Subpart C - *Human Remains or Cultural Items in Museums and Federal Collections* covers Summaries, Inventories, Repatriation, Disposition of Culturally Unidentifiable Human Remains.[Reserved], Civil Penalties.[Reserved], and Future Applicability.[Reserved].

Subpart D - *General* covers Lineal Decent and Cultural Affiliation, Repatriation Limitations and Remedies, and Review Committee.

The National Museum of the American Indian, Smithsonian Institute, will be offering tribes a workshop regarding NAGPRA on Feb. 11 & 12, 1994 in Washington, DC. This workshop will outline what Tribes can do as far as creativity in applying NAGPRA with local problem solving examples. The Hualapai Tribe has received over 100 letters and summaries of inventories of artifacts and culturally affiliated objects from Federal Agencies, Museums and organizations nationwide in complying with this Act. The information is being reviewed by the Cultural Resources Division. Already, the Tribe has responded to all the parties indicating they have received the data and will be in future contact. Aside from the repatriation process in dealing with museums, more education is needed in dealing with federal agencies during project developments and potential impacts to burial sites. SUBPART B of the regulations

is upmost important to enforce when both federal agencies and tribes know what to expect for solutions in the event of inadvertent discoveries of human remains. As stated in the Act, planned activities by federal agencies that are subject to review under the section 106 of the National Historic Preservation Act(NHPA), it is encouraged that the federal agency official coordinate consultation and any subsequent agreement for compliance conducted under that Act with the requirements of compliance with NAGPRA. In short, complying with the NHPA Act does not relieve the agency from complying with the NAGPRA Act.

#### RECOMMENDATIONS

1) To actively participate in testimonial hearings for further ammendments, where appropriate, to the S.1021 Bill (NAFERA).

Scheduled hearings are as follows:

Febuary 10th, 1994 @ Washington, DC. sponsored by Senator Inoyue.

March 15th, 1994 @ Washington, DC. during the NATIVE AMERICAN RELIGIOUS SUMMIT.

2) To seek support from the GCES Program to permit usage of federal funds to allow the Cultural Resource Division to participate in the NAGPRA workshop scheduled for Feb 11 & 12, 1994 in Washington, DC. to obtain further education in the process of complying with the Act.

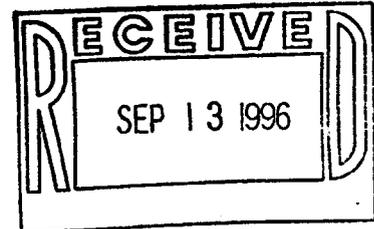
Appendix D

**GCES OFFICE COPY  
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**HUALAPAI TRIBE'S**

**CULTURAL INVENTORY of the GRAND CANYON, COLORADO RIVER  
CORRIDOR from SEPARATION CANYON (Rivermile 239.7) to PEARCE  
FERRY (Rivermile 276), MOHAVE COUNTY**



**DRAFT**

*draft*

*Revised Report Prepared for*

**United States Bureau of Reclamation  
Cooperative Agreement for the Hualapai Tribe  
Coordination with the Glen Canyon Environmental Studies  
and the Glen Canyon Dam Environmental Impact Statement**

**CONFIDENTIAL**

**GLEN CANYON ENVIRONMENTAL  
STUDIES OFFICE**

**SEP 26 1996**

*Revised Report Prepared by*

**RECEIVED  
FLAGSTAFF, AZ**

**Loretta Jackson  
Principal Investigator  
Hualapai Tribe's Office of Cultural Resources  
P.O. Box 310  
Peach Springs, Arizona 86434**

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September 13, 1996

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103D CONGRESS  
1ST SESSION

# S. 1021

To assure religious freedom to Native Americans.

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## IN THE SENATE OF THE UNITED STATES

MAY 25 (legislative day, APRIL 19), 1993

Mr. INOUE (for himself, Mr. BAUCUS, Mr. CAMPBELL, Mr. FEINGOLD, Mr. HATFIELD, Mr. PELL, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To assure religious freedom to Native Americans.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Native American Free Exercise of Religion Act of 1993”.

6 (b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

Sec. 2. Policy.

Sec. 3. Definitions.

### TITLE I—PROTECTION OF SACRED SITES

Sec. 101. Findings.

Sec. 102. Federal land management; use and preservation.

Sec. 103. Notice.

Sec. 104. Consultation.

- Sec. 105. Burden of proof.
- Sec. 106. Tribal authority over Native American religious sites on Indian lands.
- Sec. 107. Application of other laws.
- Sec. 108. Confidentiality.
- Sec. 109. Criminal sanctions.

#### TITLE II—TRADITIONAL USE OF PEYOTE

- Sec. 201. Findings.
- Sec. 202. Traditional use of peyote.

#### TITLE III—PRISONERS' RIGHTS

- Sec. 301. Rights.

#### TITLE IV—RELIGIOUS USE OF EAGLES AND OTHER ANIMALS AND PLANTS

- Sec. 401. Religious use of eagles.
- Sec. 402. Other animals and plants.

#### TITLE V—JURISDICTION AND REMEDIES

- Sec. 501. Jurisdiction and remedies.

#### TITLE VI—MISCELLANEOUS

- Sec. 601. Savings clause.
- Sec. 602. Severability.
- Sec. 603. Authorization of appropriations.
- Sec. 604. Effective date.

### 1 **SEC. 2. POLICY.**

2       It is the policy of the United States, in furtherance  
3 of the policy established in the joint resolution entitled  
4 “Joint Resolution American Indian Religious Freedom”,  
5 approved August 11, 1978 (42 U.S.C. 1996), to protect  
6 and preserve the inherent right of any Native American  
7 to believe, express, and exercise his or her traditional reli-  
8 gion, including, but not limited to, access to any Native  
9 American religious site, use and possession of sacred ob-  
10 jects, and the freedom to worship through ceremonies and  
11 traditional rites.

1 **SEC. 3. DEFINITIONS.**

2 For the purposes of this Act, the following definitions  
3 shall apply:

4 (1) **AGGRIEVED PARTY.**—The term “aggrieved  
5 party” means any Native American practitioner, Na-  
6 tive American traditional leader, Indian tribe, or Na-  
7 tive Hawaiian organization as defined by this Act.

8 (2) **FEDERAL AGENCY.**—The term “Federal  
9 agency” means any department, agency, or instru-  
10 mentality of the Federal Government.

11 (3) **FEDERAL OR FEDERALLY ASSISTED UN-**  
12 **DER TAKING.**—The term “Federal or federally as-  
13 sisted undertaking” means any regulation relating to  
14 or any project, activity, or program pertaining to the  
15 management, use, or preservation of land (including  
16 continuing and new projects, activities, or programs)  
17 which is funded in whole or in part by, or under the  
18 direct or indirect jurisdiction of, a Federal agency,  
19 including—

20 (A) those carried out by or on behalf of the  
21 agency;

22 (B) those carried out with Federal finan-  
23 cial assistance;

24 (C) those requiring a Federal permit, li-  
25 cense or approval; and

1 (D) those subject to State regulation ad-  
2 ministered pursuant to a delegation or approval  
3 by a Federal agency.

4 The term "Federal or federally assisted undertak-  
5 ings" does not include regulations, projects, activi-  
6 ties, or programs operated, approved, or sponsored  
7 by Indian tribes, including, but not limited to, those  
8 projects, activities, or programs which are funded in  
9 whole or in part by Federal funds pursuant to con-  
10 tract, grant or agreement, or which require Federal  
11 permits, licenses or approvals.

12 (4) GOVERNMENTAL AGENCY.—The term "gov-  
13 ernmental agency" means any agency, department,  
14 or instrumentality of—

15 (A) the United States; or

16 (B) a State, in the case of a Federal or  
17 federally assisted undertaking described in  
18 paragraph (3)(D).

19 The term "governmental agency" does not include  
20 an agency, department, or instrumentality of an  
21 Indian tribe.

22 (5) INDIAN.—The term "Indian" means—

23 (A) an individual of aboriginal ancestry  
24 who is a member of an Indian tribe,

1 (B) an individual who is an Alaska Native,

2 or

3 (C) in the case of California Indians, an  
4 individual who meets the definition in section  
5 809(b) of the Indian Health Care Improvement  
6 Act (25 U.S.C. 1679(b)), except that an Indian  
7 community need not be served by a local pro-  
8 gram of the Indian Health Service in order to  
9 qualify as an Indian community for purposes of  
10 this definition.

11 (6) INDIAN LANDS.—The term “Indian lands”  
12 means all lands within the limits of any Indian res-  
13 ervation; public domain Indian allotments; all other  
14 lands title to which is either held in trust by the  
15 United States for the benefit of any Indian tribe or  
16 individual or held by any Indian tribe or individual  
17 subject to restriction by the United States against  
18 alienation; all dependent Indian communities; and all  
19 fee lands owned by an Indian tribe.

20 (7) INDIAN TRIBE.—The term “Indian tribe”  
21 means—

22 (A) any tribe, band, nation, pueblo, or  
23 other organized group or community of Indians,  
24 including any Alaska Native village (as defined  
25 in, or established pursuant to, the Alaska Na-

1           tive Claims Settlement Act (43 U.S.C. 1601 et  
2           seq.)), which is recognized as eligible for the  
3           special programs and services provided by the  
4           United States to Indians because of their status  
5           as Indians,

6           (B) any Indian group that has been for-  
7           mally recognized as an Indian tribe by a State  
8           legislature or by a State commission or similar  
9           organization legislatively vested with State trib-  
10          al recognition authority,

11          (C) any Indian tribe whose federally recog-  
12          nized status has been terminated, and

13          (D) any non-federally recognized tribe that  
14          has—

15               (i) filed a petition for acknowledge-  
16               ment with the Branch of Federal Acknowl-  
17               edgement of the Bureau of Indian Affairs  
18               of the Department of the Interior or is the  
19               subject of pending legislation in the Con-  
20               gress seeking federally recognized status,  
21               and

22               (ii) is recognized as an Indian tribe by  
23               other Indian tribes, communities or  
24               groups.

1           The definition contained in subparagraph (D)  
2           shall not apply if the Department of the Inte-  
3           rior has acted to deny such tribe's petition for  
4           acknowledgement and all appeals of the Depart-  
5           ment's determination have been exhausted and  
6           have been decided in support of the Depart-  
7           ment's determination.

8           (8) LAND.—The terms "land", "lands", or  
9           "public lands" mean surface and subsurface land  
10          within the jurisdiction of the United States or the  
11          respective States, including submerged land of any  
12          kind or interest therein and all water and waterways  
13          occupying, adjacent to, or running through the land.

14          (9) NATIVE AMERICAN.—The term "Native  
15          American" means any Indian or Native Hawaiian.

16          (10) NATIVE AMERICAN PRACTITIONER.—The  
17          term "Native American practitioner" means—

18                (A) any Native American who practices a  
19                Native American religion, or

20                (B) any Native Hawaiian with an obliga-  
21                tion to protect a Native Hawaiian religious site,  
22                or any Native Hawaiian who practices a Native  
23                Hawaiian religion or engages in a Native  
24                Hawaiian ceremonial or ritual undertaking.

1 (11) NATIVE AMERICAN RELIGION.—The term  
2 “Native American religion” means any religion—

3 (A) which is practiced by Native Ameri-  
4 cans, and

5 (B) the origin and interpretation of which  
6 is from within a traditional Native American  
7 culture or community.

8 (12) NATIVE AMERICAN RELIGIOUS SITE.—The  
9 term “Native American religious site” means any  
10 place or area, including, but not limited to, any  
11 geophysical or geographical area or feature—

12 (A) which is sacred to a Native American  
13 religion;

14 (B) where Native American practitioners  
15 are required by their religion to gather, harvest,  
16 or maintain natural substances or natural prod-  
17 ucts for use in Native American religious cere-  
18 monies or rituals or for spiritual purposes, in-  
19 cluding all places or areas where such natural  
20 substances or products are located; or

21 (C) which is utilized by Native American  
22 religious practitioners for ceremonies, rituals, or  
23 other spiritual practices.

1           (13) NATIVE AMERICAN TRADITIONAL LEAD-  
2           ER.—The term “Native American traditional leader”  
3           means any Native American who—

4                   (A) is recognized by an Indian tribe, Na-  
5                   tive Hawaiian organization, or Native American  
6                   traditional organization as being responsible for  
7                   performing cultural duties relating to the cere-  
8                   monial or religious traditions of the tribe or tra-  
9                   ditional organization, or

10                   (B) exercises a leadership role in an Indian  
11                   tribe, Native Hawaiian organization or Native  
12                   American traditional organization based upon  
13                   its cultural, ceremonial, or religious practices.

14           (14) NATIVE HAWAIIAN.—The term “Native  
15           Hawaiian” means any individual who is a descend-  
16           ant of the aboriginal Polynesian people who, prior to  
17           1778, occupied and exercised sovereignty and self-  
18           determination in the area that now comprises the  
19           State of Hawaii.

20           (15) NATIVE HAWAIIAN ORGANIZATION.—The  
21           term “Native Hawaiian organization” means any or-  
22           ganization which is composed primarily of Native  
23           Hawaiians, serves and represents the interests of  
24           Native Hawaiians and whose members—

1 (A) practice a Native American religion or  
2 conduct traditional ceremonial rituals, or

3 (B) utilize, preserve and protect Native  
4 American religious sites.

5 (16) STATE.—The term “State” means any  
6 State of the United States and any and all political  
7 subdivisions thereof.

8 **TITLE I—PROTECTION OF**  
9 **SACRED SITES**

10 **SEC. 101. FINDINGS.**

11 The Congress finds that—

12 (1) throughout American history, the free exer-  
13 cise of traditional Native American religions has  
14 been intruded upon, interfered with, and, in some in-  
15 stances, banned by the Federal Government and the  
16 devastating impact of these governmental actions  
17 continues to the present day;

18 (2) the religious practices of Native Americans  
19 are integral parts of their cultures, traditions and  
20 heritages and greatly enhance the vitality of Native  
21 American communities and tribes and the well-being  
22 of Native Americans in general;

23 (3) as part of its historic trust responsibility,  
24 the Federal Government has the obligation to enact  
25 enforceable Federal policies which will protect Native

1 American community and tribal vitality and cultural  
2 integrity, and which will not inhibit or interfere with  
3 the free exercise of Native American religions;

4 (4) just as other religions consider certain sites  
5 in other parts of the world to be sacred, many Na-  
6 tive American religions hold certain lands or natural  
7 formations in the United States to be sacred, and,  
8 in order for those sites to be in a condition appro-  
9 priate for religious use, the physical environment,  
10 water, plants and animals associated with those sites  
11 must be protected;

12 (5) such Native American religious sites are an  
13 integral and vital part of, and inextricably inter-  
14 twined with, many Native American religions and  
15 the religious practices associated with such religions,  
16 including the ceremonial use and gathering, harvest-  
17 ing, or maintaining of natural substances or natural  
18 products for those purposes;

19 (6) many of these Native American religious  
20 sites are found on lands which were part of the ab-  
21 original territory of the Indians but which now are  
22 held by the Federal Government, or are the subject  
23 of Federal or federally assisted undertakings;

24 (7) lack of sensitivity to, or understanding of,  
25 Native American religions on the part of Federal

1 agencies has resulted in the absence of a coherent  
2 policy for the protection of Native American reli-  
3 gious sites and the failure by Federal agencies to  
4 consider the impacts of Federal and federally as-  
5 sisted undertakings upon Native American religious  
6 sites;

7 (8) the Supreme Court of the United States, in  
8 the case of *Lyng v. Northwest Indian Cemetery As-*  
9 *sociation*, 485 U.S. 439 (1988) ruled that the free  
10 exercise clause of the First Amendment does not re-  
11 strict the Government's management of its lands,  
12 even if certain governmental actions would infringe  
13 upon or destroy the ability to practice religion, so  
14 long as the Government's action does not compel in-  
15 dividuals to act in a manner which is contrary to  
16 their religious beliefs;

17 (9) the holding in the case of *Lyng v. North-*  
18 *west Indian Cemetery Association* creates a chilling  
19 and discriminatory effect on the free exercise of  
20 Native American religions;

21 (10) the Supreme Court of the United States,  
22 in the case of *Employment Division v. Smith*, 494  
23 U.S. 872 (1990) extended the *Lyng* doctrine to all  
24 "valid and neutral laws of general applicability" not  
25 intended to specifically infringe upon religious prac-

1        tice and held that the First Amendment does not ex-  
2        empt practitioners who use peyote in Native Amer-  
3        ican religious ceremonies from complying with "neu-  
4        tral" State laws prohibiting peyote use, notwith-  
5        standing the chilling effect of such laws upon their  
6        right to freely practice their religion;

7            (11) Native Hawaiians have distinct rights  
8        under Federal law as beneficiaries of the Hawaiian  
9        Homes Commission Act, 1920 (42 Stat. 108) and  
10       the Act entitled "An Act to provide for the admis-  
11       sion of the State of Hawaii into the Union",  
12       approved March 18, 1959 (73 Stat. 4);

13           (12) the United States trust responsibility for  
14       lands set aside for the benefit of Native Hawaiians  
15       has never been extinguished;

16           (13) the Federal policy of self-determination  
17       and self-governance is recognized to extend to all  
18       Native Americans;

19           (14) Congress has enacted numerous laws  
20       which regulate and restrict the discretion of Federal  
21       agencies for the sake of environmental, historical,  
22       economic, and cultural concerns, but has never en-  
23       acted a judicially enforceable law comparably re-  
24       stricting agency discretion for the sake of the site-

1 specific requirements associated with the free exer-  
2 cise of Native American religions;

3 (15) the lack of a judicially enforceable Federal  
4 law and of a coherent Federal policy to accommo-  
5 date the uniqueness of Native American religions  
6 imposes unique and unequal disadvantages on Na-  
7 tive American religions, gravely restricting the free  
8 exercise of Native American religions and impairing  
9 the vitality of Native American communities and  
10 Indian tribes; and

11 (16) Congress has the authority to enact such  
12 a law pursuant to section 8, Article I, of the Con-  
13 stitution and the First and Fourteenth Amend-  
14 ments.

15 **SEC. 102. FEDERAL LAND MANAGEMENT; USE AND PRESER-**  
16 **VATION.**

17 (a) IN GENERAL.—Notwithstanding any other provi-  
18 sion of law each Federal agency shall manage any lands  
19 under its jurisdiction in a manner that complies with the  
20 provisions of this Act.

21 (b) PLANNING PROCESS.—Each Federal agency in-  
22 volved in Federal or federally assisted undertakings, in-  
23 cluding, but not limited to, activities pursuant to the Na-  
24 tional Forest Management Act (16 U.S.C. 1600 et seq.),  
25 and the Federal Land Policy and Management Act (43

1 U.S.C. 1701 et seq.), shall as part of its planning  
2 process—

3 (1) consult with Indian tribes and Native Ha-  
4 waiian organizations identified pursuant to section  
5 103, as well as Native American traditional leaders  
6 who can be identified by the agency to have an inter-  
7 est in the land in question;

8 (2) provide for notice of all Federal or federally  
9 assisted undertakings with the potential to have an  
10 impact on certain specified lands to an Indian tribe,  
11 Native Hawaiian organization, or Native American  
12 traditional leader if such tribe, organization, or lead-  
13 er places the agency on notice, in writing, that it is  
14 interested in receiving notice of all such undertak-  
15 ings;

16 (3) ensure that its land management plans are  
17 consistent with the provisions and policies of this  
18 Act; and

19 (4) maintain the confidentiality of specific de-  
20 tails of a Native American religion or the signifi-  
21 cance of a Native American religious site to that re-  
22 ligion in accordance with the procedures specified in  
23 sections 107 and 108 of this Act.

24 (c) ACCESS.—

1           (1) IN GENERAL.—Unless the President deter-  
2 mines that national security concerns are directly af-  
3 fected, in which case the provisions of section 105  
4 shall apply, Native American practitioners shall be  
5 permitted access to Native American religious sites  
6 located on Federal lands at all times, including the  
7 right to gather, harvest, or maintain natural sub-  
8 stances or natural products for Native American  
9 religious purposes.

10           (2) PROHIBITION AGAINST VEHICLES.—Para-  
11 graph (1) does not authorize the use of motorized  
12 vehicles or other forms of mechanized transport in  
13 roadless areas where such use is prohibited by law,  
14 nor affect the application of the Endangered Species  
15 Act, except as provided for by section 501(b) of this  
16 Act.

17           (3) TEMPORARY CLOSING.—Upon the request  
18 of an Indian tribe, Native Hawaiian organization, or  
19 Native American traditional leader, the Secretary of  
20 the department whose land is involved may from  
21 time to time temporarily close to general public use  
22 one or more specific portions of Federal land in  
23 order to protect the privacy of religious cultural ac-  
24 tivities in such areas by Native Americans. Any such  
25 closure shall be made so as to affect the smallest

1 practicable area for the minimum period necessary  
2 for such purposes.

3 (d) REGULATIONS.—The Secretary of the Interior, in  
4 consultation with Indian tribes and Native Hawaiian orga-  
5 nizations, shall promulgate uniform regulations relating  
6 to—

7 (1) Federal planning processes pertaining to  
8 the management, use or preservation of land; and

9 (2) notice to and consultation with Indian  
10 tribes, Native Hawaiian organizations, Native Amer-  
11 ican traditional leaders and Native American practi-  
12 tioners as required by sections 103 and 104 of this  
13 Act.

14 The regulations shall be sufficiently flexible to enable con-  
15 sultation to meet the unique needs of Indian tribes, Native  
16 Hawaiian organizations, Native American traditional lead-  
17 ers and Native American practitioners.

18 **SEC. 103. NOTICE.**

19 (a) IDENTIFICATION OF LANDS BY SECRETARY.—

20 (1) IN GENERAL.—For the purpose of assuring  
21 that a governmental agency properly determines  
22 whether a proposed undertaking will have an impact  
23 on the exercise of a Native American religion and  
24 which affected parties should be provided notice of  
25 a proposed undertaking, the Secretary of the Inte-

1 rior, in conjunction with tribal governments, shall  
2 identify land areas with which an Indian tribe has  
3 aboriginal, historic, or religious ties.

4 (2) ONGOING IDENTIFICATION.—Paragraph (1)  
5 does not preclude a tribal government from continu-  
6 ing to conduct an ongoing identification process,  
7 which may supplement the process required by this  
8 subsection.

9 (b) DUTY OF AGENCIES.—

10 (1) TRIBAL LANDS.—Before a governmental  
11 agency proceeds on lands identified pursuant to sub-  
12 section (a) with any Federal or federally assisted un-  
13 dertaking that may have an impact on the exercise  
14 of a Native American religion, the agency shall pro-  
15 vide a geographical description of the lands affected  
16 by the undertaking (including information on metes  
17 and bounds of the lands in question, where avail-  
18 able) and a description of the undertaking to—

19 (A) the Secretary of the Interior;

20 (B) each Indian tribe which has aboriginal,  
21 historic, or religious ties to the land affected by  
22 a proposed Federal or federally assisted under-  
23 taking; and

24 (C) each Native American traditional lead-  
25 er known by the agency who may have an inter-

1 est in the land affected by the proposed under-  
2 taking.

3 (2) **LANDS IN HAWAII.**—Before a governmental  
4 agency proceeds on lands in the State of Hawaii  
5 with any Federal or federally assisted undertaking  
6 that may have an impact on the exercise of a Native  
7 American religion, the agency shall publish a geo-  
8 graphical description of the lands affected by the un-  
9 dertaking (including information on metes and  
10 bounds of lands in question, where available) and a  
11 description of the undertaking in a newspaper of  
12 general circulation for a period of 2 weeks.

13 (3) **DOCUMENTATION.**—The governmental  
14 agency shall fully document the efforts made to pro-  
15 vide the information to Indian tribes, Native Hawai-  
16 ian organizations and Native American traditional  
17 leaders as required by this section or any applicable  
18 regulations, guidelines, or policies.

19 (c) **NOTICE BY TRIBE.**—

20 (1) **IN GENERAL.**—Within 90 days of receiving  
21 the notice provided under subsection (b), or within  
22 the time limit of any comment period permitted or  
23 required by any Federal law applicable to the Fed-  
24 eral or federally assisted undertaking, whichever is  
25 later, an Indian tribe, Native Hawaiian organization,

1 or Native American traditional leader invoking the  
2 protection of this title may provide notice to the gov-  
3 ernmental agency whether the proposed Federal or  
4 federally assisted undertaking may result in changes  
5 in the character or use of one or more Native Amer-  
6 ican religious sites which are located on lands with  
7 which the Indian tribe or Native Hawaiian organiza-  
8 tion has aboriginal, historic, or religious ties.

9 (2) NO DUTY TO RESPOND.—Paragraph (1)  
10 does not impose a duty upon any Indian tribe, Na-  
11 tive Hawaiian organization, or Native American tra-  
12 ditional leader to respond to any notice under this  
13 section.

14 (3) ADDITIONAL INFORMATION.—The Indian  
15 tribe, Native Hawaiian organization, or Native  
16 American traditional leader acting pursuant to para-  
17 graph (1) may also provide the agency with informa-  
18 tion as to any Native American traditional leaders or  
19 practitioners who should be included in the notice  
20 and consultation requirements of this section and  
21 section 104.

22 (d) 90-DAY PROHIBITION AGAINST ACTIVITY FOL-  
23 LOWING NOTICE TO TRIBES.—No action to approve, com-  
24 mence, or complete a Federal or federally assisted under-  
25 taking that is subject to this section shall be taken by a

1 governmental agency for a period of 90 days following the  
2 date on which notice is provided under subsection (b) to  
3 Indian tribes and Native Hawaiian organizations unless  
4 or until—

5 (1) the matter is resolved pursuant to the pro-  
6 cedures of this Act;

7 (2) the period of consultation required under  
8 section 104 has been completed; or

9 (3) all parties entitled to such notice consent to  
10 a shorter time period.

11 **SEC. 104. CONSULTATION.**

12 (a) IN GENERAL.—

13 (1) EFFECT OF NOTICE BY TRIBE.—If an In-  
14 dian tribe, Native Hawaiian organization, or Native  
15 American traditional leader indicates in writing  
16 within 90 days of receiving notice under section 102,  
17 or within the time limit of any comment period per-  
18 mitted or required by any Federal law applicable to  
19 the Federal or federally assisted undertaking, which-  
20 ever is later, that a Federal or federally assisted un-  
21 dertaking will or may alter or disturb the integrity  
22 of Native American religious sites or the sanctity  
23 thereof, or interfere with the access thereto, or ad-  
24 versely impact upon the exercise of a Native Amer-  
25 ican religion or the conduct of a Native American re-

1 religious practice, except as provided in paragraph (2),  
2 the governmental agency engaged in the Federal or  
3 federally assisted undertaking shall immediately dis-  
4 continue such undertaking until the agency performs  
5 the duties described in paragraphs (3) and (4).

6 (2) INADVERTENT DISCOVERY.—If in the proc-  
7 ess of a Federal or federally assisted undertaking, a  
8 Native American religious site is inadvertently dis-  
9 covered, the governmental agency engaged in the un-  
10 dertaking shall immediately discontinue such under-  
11 taking until the agency performs the duties set forth  
12 in paragraphs (3) and (4).

13 (3) CONSULTATION.—The governmental agency  
14 shall consult with any interested party, including  
15 Native American practitioners with a direct interest  
16 in the Native American religious site in question,  
17 concerning the nature of the adverse impact and al-  
18 ternatives that would minimize or prevent an ad-  
19 verse impact, including any alternatives identified by  
20 an Indian tribe, Native Hawaiian organization, or  
21 Native American traditional leader that has filed a  
22 written objection under this subsection.

23 (4) EVALUATION OF COMMENTS.—The govern-  
24 mental agency shall prepare and make available to  
25 the tribe, organization or traditional leader, as well

1 as Native American practitioners who have been in-  
2 volved in the consultation process, a document evalu-  
3 ating and responding to the comments received. The  
4 document shall include an analysis of adverse im-  
5 pacts upon the site and the use thereof and an anal-  
6 ysis of alternatives to the proposed action, including  
7 any alternative offered by an Indian tribe, Native  
8 Hawaiian organization, or Native American tradi-  
9 tional leader submitting a written objection under  
10 paragraph (1) and a no action alternative.

11 (5) ADDITIONAL INFORMATION.—In any case  
12 where the governmental agency is also required to  
13 prepare a document analyzing the impact of its un-  
14 dertaking or decision pursuant to the National Envi-  
15 ronmental Policy Act (43 U.S.C 4321 et seq.), the  
16 National Historic Preservation Act (16 U.S.C. 470  
17 et seq.) or any other applicable law, such agency  
18 shall incorporate the analysis required by this sec-  
19 tion into the contents of the document.

20 (b) CASES WHERE SECRECY IS REQUIRED.—

21 (1) IN GENERAL.—In the case of those Indian  
22 tribes whose traditional religious tenets prohibit dis-  
23 closure of information concerning their Native Amer-  
24 ican religious sites or religious beliefs or practices,  
25 and mandate secrecy and internal sanctions to en-

1 force those prohibitions, and where the tribal govern-  
2 ment of the affected Indian tribe so certifies and  
3 invokes this subsection—

4 (A) the tribal government shall not be re-  
5 quired to reveal the location of the Native  
6 American religious site or in what manner the  
7 undertaking would have an impact on the site  
8 or any information concerning their religious  
9 beliefs or practices;

10 (B) the tribal government shall not be re-  
11 quired to explain in what manner any proposed  
12 alternative is or is not less intrusive upon the  
13 adversely affected Native American religious  
14 practice or religious sites which may be ad-  
15 versely affected than the original proposed Fed-  
16 eral or federally assisted undertaking; and

17 (C) in engaging in consultation and pre-  
18 paring any document required by this Act, the  
19 governmental agency shall not include an analy-  
20 sis of adverse impacts upon the site or the use  
21 thereof or the Indian tribe's religious beliefs  
22 and practices.

23 (2) AFTER CONSULTATION.—If after  
24 consultation—

1 (A) the governmental agency agrees to  
2 pursue a less intrusive alternative proposed by  
3 the Indian tribe or some other alternative which  
4 the Indian tribe agrees would be less intrusive;  
5 or

6 (B) if no alternative is identified which the  
7 Indian tribe agrees is less intrusive;  
8 the governmental agency shall be deemed to have  
9 met its obligation to consider and pursue the least  
10 intrusive alternative under this Act in regard to the  
11 objection raised to the Federal or federally assisted  
12 undertaking by the Indian tribe invoking this sub-  
13 section.

14 (c) **RULE OF CONSTRUCTION.**—Where the provisions  
15 of subsection (b) have been invoked, those requirements  
16 shall control in all circumstances and shall supersede any  
17 conflicting provisions in this Act or any other provision  
18 of law.

19 (d) **DISCLOSURE REQUIRED.**—Within 30 days of re-  
20 ceipt of any written objection under subsection (a), the  
21 governmental agency proposing the Federal or federally  
22 assisted undertaking which gave rise to that notice shall  
23 disclose to and shall make available to the objecting party,  
24 all plats, maps, plans, specifications, socioeconomic, envi-  
25 ronmental, scientific, archaeological or historical studies,

1 and comments and information in that agency's possession  
2 bearing on said undertaking.

3 (e) SPECIAL RULE FOR PUEBLOS REGARDING  
4 STANDING.—In the case of a proposed Federal or feder-  
5 ally assisted undertaking affecting the management, use,  
6 or preservation of public land involving potential adverse  
7 religious impacts on any of the Indian pueblos of New  
8 Mexico or any of their religious sites, the only party with  
9 standing to file an objection or participate in consultation  
10 under this section, or to file an action under section 105  
11 or 501, shall be the governor of the affected pueblo or  
12 the governor's designee.

13 **SEC. 105. BURDEN OF PROOF.**

14 (a) IN GENERAL.—

15 (1) BURDEN ON AGGRIEVED PARTY.—Except as  
16 provided in subsection (b), in any action brought  
17 under section 501(a), the aggrieved party shall have  
18 the burden of proving that the Federal or federally  
19 assisted undertaking or the State action having an  
20 impact upon the management, use, or preservation  
21 of public land, is posing or will pose a substantial  
22 threat of undermining or frustrating a Native Amer-  
23 ican religion or a Native American religious practice.

24 (2) BURDEN ON AGENCY.—If the aggrieved  
25 party meets its burden of proof under paragraph

1 (1), the Federal agency or State shall have the bur-  
2 den of proving that the governmental interest in the  
3 Federal or federally assisted undertaking or the  
4 State action is compelling.

5 (3) LEAST INTRUSIVE COURSE OF ACTION.—If  
6 the aggrieved party fails to meet its burden of proof  
7 under paragraph (1), but establishes that the Fed-  
8 eral or federally assisted undertaking or the State  
9 action will alter or disturb the integrity of a Native  
10 American religious site or the sanctity thereof, or  
11 will have an adverse impact upon the exercise of a  
12 Native American religion or the conduct of a Native  
13 American religious practice, or if the Federal agency  
14 or State meets its burden of proof in paragraph (2),  
15 the Federal agency or State shall have the burden  
16 of proving that it has selected the course of action  
17 least intrusive on the Native American religious site  
18 or the Native American religion or religious practice.

19 (b) CASES WHERE SECRECY IS REQUIRED.—In the  
20 case of any proceeding involving a Native American reli-  
21 gious site or associated religious practices of an Indian  
22 tribe described in section 104(b), if the Indian tribe ob-  
23 jects to the Federal or federally assisted undertaking or  
24 State action based upon any of the grounds specified in  
25 section 104(a), the provisions of section 104(b) shall apply

1 and the Federal agency or State shall have the burden  
2 of proving that—

3 (1) it has a compelling interest in pursuing the  
4 Federal or federally assisted undertaking or the  
5 State action as originally proposed;

6 (2) it is essential that the Federal agency's or  
7 State's compelling interest be furthered as originally  
8 proposed; and

9 (3) none of the less intrusive alternatives (if  
10 any) identified in the consultation process, or by the  
11 Indian tribe, will adequately advance that compelling  
12 governmental interest.

13 The Federal agency or State shall retain this burden of  
14 proof at all stages of any proceeding or decisionmaking  
15 process involving an Indian tribe described in section  
16 104(b) as to objections raised by that Indian tribe.

17 (c) FAILURE OF AGENCY TO MEET BURDEN.—If a  
18 Federal agency or State does not meet its burden of proof  
19 under this section, it shall not proceed with the proposed  
20 undertaking. For purposes of this section and section 501,  
21 the phrase “burden of proof” means the burden of produc-  
22 tion and the burden of persuasion.

23 (d) ESTABLISHMENT OF ADMINISTRATIVE PROCE-  
24 DURE.—

1           (1) IN GENERAL.—A Federal agency may, by  
2 regulation, establish an administrative procedure to  
3 implement the requirements of this section.

4           (2) EXHAUSTION REQUIREMENT.—An ag-  
5 grievied party must use a procedure established  
6 under paragraph (1) before filing an action in a  
7 Federal court pursuant to section 501(a).

8           (3) NEW FACTUAL FINDINGS.—If an action is  
9 filed in Federal court after exhaustion of administra-  
10 tive remedies, the court shall not defer to the factual  
11 findings of the Federal agency, but shall make its  
12 own factual findings based upon the record compiled  
13 by the Federal agency as well as other evidence that  
14 may be permitted by the court under Federal law.

15 **SEC. 106. TRIBAL AUTHORITY OVER NATIVE AMERICAN RE-**  
16 **LIGIOUS SITES ON INDIAN LANDS.**

17           (a) RIGHT OF TRIBE.—All Federal or federally as-  
18 sisted undertakings on Indian lands which may result in  
19 changes in the character or use of a Native American reli-  
20 gious site or which may have an impact on access to a  
21 Native American religious site shall, unless requested oth-  
22 erwise by the Indian tribe on whose lands the undertak-  
23 ings will take place, be conducted in conformance with the  
24 laws or customs of the tribe.

1           (b) AGREEMENTS.—Any governmental agency pro-  
2     posing a Federal or federally assisted undertaking on In-  
3     dian lands which may result in changes in the character  
4     or use of a Native American religious site or which may  
5     have an impact upon access to a Native American religious  
6     site, may enter into an agreement with the Indian tribe  
7     on whose lands the undertaking will take place for pur-  
8     poses of assuring conformance with the laws or customs  
9     of the tribe.

10          (c) PROTECTION BY TRIBES.—Indian tribes may reg-  
11     ulate and protect Native American religious sites located  
12     on Indian lands.

13          (d) OTHER AUTHORITIES.—

14            (1) SOVEREIGN AUTHORITY OF TRIBES.—The  
15     provisions of this section are in addition to and not  
16     in lieu of the inherent sovereign authority of Indian  
17     tribes to regulate and protect Native American reli-  
18     gious sites located on Indian lands.

19            (2) NATIONAL SECURITY.—The provisions of  
20     this section shall not apply if the President deter-  
21     mines that national security concerns are directly af-  
22     fected by a Federal or federally assisted undertak-  
23     ing.

24            (3) DUTY TO NOTIFY.—This section does not  
25     relieve a governmental agency of any duty pursuant

1 to section 103 to notify an Indian tribe of a Federal  
2 or federally assisted undertaking on Indian lands  
3 which may result in changes in the character or use  
4 of a Native American religious site.

5 **SEC. 107. APPLICATION OF OTHER LAWS.**

6 (a) **IN GENERAL.**—Nothing in this title shall be con-  
7 strued to deprive any person or entity of any other rights  
8 which might be provided under the laws, regulations,  
9 guidelines, or policies of the Federal, State, and tribal gov-  
10 ernments, including but not limited to the National His-  
11 toric Preservation Act (16 U.S.C. 470 et seq.), to receive  
12 notice of, comment upon, or otherwise participate in the  
13 decisionmaking process regarding a Federal or federally  
14 assisted undertaking.

15 (b) **EXISTING PROCEDURES.**—To the maximum ex-  
16 tent possible, the procedures required by this Act shall be  
17 incorporated into existing procedures applicable to the  
18 management of Federal lands and decisionmaking proc-  
19 esses of Federal agencies engaged in Federal or federally  
20 assisted undertakings.

21 **SEC. 108. CONFIDENTIALITY.**

22 (a) **IN GENERAL.**—Notwithstanding any other provi-  
23 sion of law, whenever information has been obtained as  
24 a result of or in connection with a proceeding pursuant

1 to section 105 or 501 or consultation pursuant to sections  
2 102 and 104, all references pertaining to—

3 (1) specific details of a Native American reli-  
4 gion or the significance of a Native American reli-  
5 gious site to that religion; or

6 (2) the location of that religious site;

7 shall be deleted from the record of a Federal agency or  
8 court before the record is released to any party or the gen-  
9 eral public pursuant to the Freedom of Information Act  
10 (5 U.S.C. 552) or any other applicable law.

11 (b) SUPPLEMENTATION OF RECORD.—The agency or  
12 court shall supplement the record described in subsection  
13 (a) to include the general results and conclusions of the  
14 administrative or judicial review to the extent necessary  
15 to provide other interested parties with sufficient informa-  
16 tion to understand the nature of, and basis for, a decision  
17 by the Federal agency or court.

18 (c) EXCEPTIONS.—This section shall not apply—

19 (1) where all parties to a proceeding (excluding  
20 the Federal Government) waive its application, and

21 (2) in case of a Native Hawaiian religious site,  
22 where the information is sought by a Native Hawai-  
23 ian organization for the purpose of protecting such  
24 site.

1 (d) OTHER LAW.—Indian tribes, Native Hawaiian  
2 organizations, Native American traditional leaders, and  
3 Native American practitioners seeking to maintain the  
4 confidentiality of information relating to Native American  
5 religious sites may also seek redress through existing laws  
6 requiring that certain information be withheld from the  
7 public, including, but not limited to the National Historic  
8 Preservation Act (16 U.S.C. 470w-3) and the Archae-  
9 ological Resources Protection Act (16 U.S.C. huh).

10 **SEC. 109. CRIMINAL SANCTIONS.**

11 (a) **DAMAGING RELIGIOUS SITES.—**

12 (1) **INITIAL VIOLATION.—**Any person who  
13 knowingly damages or defaces a known Native  
14 American religious site located on Federal land, ex-  
15 cept as part of an approved Federal or federally as-  
16 sisted undertaking or an action authorized by a gov-  
17 ernmental agency with the authority to approve such  
18 activity, shall, upon conviction, be fined not more  
19 than \$10,000, or imprisoned not more than 1 year,  
20 or both.

21 (2) **SUBSEQUENT VIOLATIONS.—**In the case of  
22 a second or subsequent violation, a person shall be  
23 fined not more than \$100,000, or imprisoned not  
24 more than 5 years, or both.

25 (b) **RELEASE OF INFORMATION.—**

1 (1) INITIAL VIOLATION.—Any person who  
2 knowingly releases any information required to be  
3 held confidential pursuant to this title shall, upon  
4 conviction, be fined not more than \$10,000, or  
5 imprisoned not more than 1 year, or both.

6 (2) SUBSEQUENT VIOLATIONS.—In the case of  
7 a second or subsequent violation, be fined not more  
8 than \$100,000, or imprisoned not more than 5  
9 years, or both.

## 10 **TITLE II—TRADITIONAL USE OF** 11 **PEYOTE**

### 12 **SEC. 201. FINDINGS.**

13 The Congress finds that—

14 (1) some Indian people have used the peyote  
15 cactus in religious ceremonies for sacramental and  
16 healing purposes for many generations, and such  
17 uses have been significant in perpetuating Indian  
18 tribes and cultures by promoting and strengthening  
19 the unique cultural cohesiveness of Indian tribes;

20 (2) since 1965, this religious ceremonial use of  
21 peyote by Indians has been protected by Federal  
22 regulation, which exempts such use from Federal  
23 laws governing controlled substances, and the Drug  
24 Enforcement Administration has manifested its con-  
25 tinuing support of this Federal regulatory system;

1           (3) the State of Texas encompasses virtually  
2 the sole area in the United States in which peyote  
3 grows, and for many years has administered an ef-  
4 fective regulatory system which limits the distribu-  
5 tion of peyote to Indians for ceremonial purposes;

6           (4) while numerous States have enacted a vari-  
7 ety of laws which protect the ceremonial use of pe-  
8 yote by Indians, many others have not, and this lack  
9 of uniformity has created hardships for Indian peo-  
10 ple who participate in such ceremonies;

11           (5) the traditional ceremonial use by Indians of  
12 the peyote cactus is integral to a way of life that  
13 plays a significant role in combating the scourge of  
14 alcohol and drug abuse among some Indian people;

15           (6) the United States has a unique and special  
16 historic trust responsibility for the protection and  
17 preservation of Indian tribes and cultures, and the  
18 duty to protect the continuing cultural cohesiveness  
19 and integrity of Indian tribes and cultures;

20           (7) it is the duty of the United States to pro-  
21 tect and preserve tribal values and standards  
22 through its special historic trust responsibility to  
23 Indian tribes and cultures;

24           (8) existing Federal and State laws, regulations  
25 and judicial decisions are inadequate to fully protect

1 the ongoing traditional uses of the peyote cactus in  
2 Indian ceremonies;

3 (9) general prohibitions against the abusive use  
4 of peyote, without an exception for the bona fide re-  
5 ligious use of peyote by Indians, lead to discrimina-  
6 tion against Indians by reason of their religious  
7 beliefs and practices; and

8 (10) as applied to the traditional use of peyote  
9 for religious purposes by Indians, otherwise neutral  
10 laws and regulations may serve to stigmatize and  
11 marginalize Indian tribes and cultures and increase  
12 the risk that they will be exposed to discriminatory  
13 treatment.

14 **SEC. 202. TRADITIONAL USE OF PEYOTE.**

15 (a) **IN GENERAL.**—Notwithstanding any other provi-  
16 sion of law, the use, possession, or transportation by an  
17 Indian of peyote for bona fide ceremonial purposes in con-  
18 nection with the practice of a Native American religion  
19 by an Indian is lawful and shall not be prohibited by the  
20 Federal Government or any State. No Indian shall be pe-  
21 nalized or discriminated against on the basis of such use,  
22 possession or transportation, including, but not limited to,  
23 denial of otherwise applicable benefits under public assist-  
24 ance programs.

1 (b) REGULATION AUTHORIZED.—This section does  
2 not prohibit such reasonable regulation and registration  
3 of those persons who import, cultivate, harvest or distrib-  
4 ute peyote as may be consistent with the purpose of this  
5 title.

6 (c) TEXAS LAW.—This section does not prohibit ap-  
7 plication of the provisions of section 481.111(a) of  
8 Vernon's Texas Code Annotated, in effect on the date of  
9 enactment of this Act, insofar as those provisions pertain  
10 to the cultivation, harvest or distribution of peyote.

## 11 **TITLE III—PRISONERS' RIGHTS**

### 12 **SEC. 301. RIGHTS.**

13 (a) IN GENERAL.—

14 (1) ACCESS.—Notwithstanding any other provi-  
15 sion of law, Native American prisoners who practice  
16 a Native American religion shall have, on a regular  
17 basis comparable to that access afforded prisoners  
18 who practice Judeo-Christian religions, access to—

19 (A) Native American traditional leaders  
20 who shall be afforded the same status, rights  
21 and privileges as religious leaders of Judeo-  
22 Christian faiths;

23 (B) subject to paragraph (6), items and  
24 materials utilized in religious ceremonies; and

25 (C) Native American religious facilities.

1           (2) MATERIALS.—Items and materials utilized  
2           in religious ceremonies are those items and mate-  
3           rials, including foods for religious diets, identified by  
4           a Native American traditional leader. Prison au-  
5           thorities shall treat these items in the same manner  
6           as the religious items and materials utilized in cere-  
7           monies of the Judeo-Christian faith.

8           (3) HAIR.—

9           (A) RIGHT OF PRISONER.—Except in those  
10          circumstances where subparagraph (B) applies,  
11          Native American prisoners who desire to wear  
12          their hair according to the religious customs of  
13          their Indian tribes may do so provided that the  
14          prisoner demonstrates that—

15               (i) the practice is rooted in Native  
16               American religious beliefs; and

17               (ii) these beliefs are sincerely held by  
18               the Native American prisoner.

19          (B) DENIAL OF REQUEST.—If a Native  
20          American prisoner satisfies the criteria in para-  
21          graph (3)(A), the prison authorities may deny  
22          such request only where they can demonstrate  
23          that the legitimate institutional needs of the  
24          prison cannot be met by viable less restrictive

1 means which would not create an undue admin-  
2 istrative burden.

3 (4) DEFINITION OF "RELIGIOUS FACILITIES".—  
4 The term "religious facilities" includes sweat lodges,  
5 teepees, and access to other secure, out-of-doors lo-  
6 cations within prison grounds if such facilities are  
7 identified by a Native American traditional leader to  
8 facilitate a religious ceremony.

9 (5) DISCRIMINATION PROHIBITED.—No Native  
10 American prisoner shall be penalized or discrimi-  
11 nated against on the basis of Native American reli-  
12 gious practices, and all prison and parole benefits or  
13 privileges extended to prisoners for engaging in reli-  
14 gious activity shall be afforded to Native American  
15 prisoners who participate in Native American reli-  
16 gious practices.

17 (6) SCOPE OF SUBSECTION.—Paragraph (1)  
18 shall not be construed as requiring prison authorities  
19 to permit (nor prohibit them from permitting) access  
20 to peyote or Native American religious sites.

21 (b) COMMISSION TO INVESTIGATE RELIGIOUS FREE-  
22 DOM.—

23 (1) IN GENERAL.—The Attorney General shall  
24 establish the Commission on the Religious Freedom  
25 of Native American Prisoners (hereafter in this sec-

1       tion referred to as the "Commission") to investigate  
2       the conditions of Native American prisoners in the  
3       Federal and State prison systems with respect to the  
4       free exercise of Native American religions.

5           (2) REPORT.—Not later than 36 months after  
6       the date of enactment of this Act, the Commission  
7       shall submit to the Attorney General and the Con-  
8       gress a report containing—

9           (A) an institution-by-institution assessment  
10       of the recognition, protection, and enforcement  
11       of the rights of Native American prisoners to  
12       practice their religions under this Act; and

13          (B) specific recommendations for the pro-  
14       mulgation of regulations to implement this Act.

15          (3) COMPOSITION OF COMMISSION.—The Com-  
16       mission shall consist of 5 members, at least 3 of  
17       whom shall be Native Americans and—

18          (A) at least 1 of whom shall be a Native  
19       American traditional leader;

20          (B) at least 1 of whom shall be a Native  
21       American ex-offender; and

22          (C) at least 1 of whom shall be a Native  
23       American woman.

24          (4) NOMINATIONS.—The Native American  
25       members selected under paragraph (2) shall be ap-

1 pointed from nominations submitted by Indian  
2 tribes, Native Hawaiian organizations and Native  
3 American traditional leaders.

4 (5) CHAIRPERSON.—The Commission shall se-  
5 lect 1 of its members to serve as Chairperson.

6 (6) COMPENSATION.—Each member of the  
7 Commission who is not a Federal employee shall be  
8 compensated at a rate equal to the daily equivalent  
9 of that prescribed for level V of the Executive  
10 Schedule under section 5316 of title 5, United  
11 States Code. All members of the Commission while  
12 away from home or their place of business, in the  
13 performance of the duties of the Commission, shall  
14 be allowed travel and other related expenses, includ-  
15 ing per diem in lieu of subsistence, in the same man-  
16 ner as persons employed intermittently in Govern-  
17 ment services are allowed expenses under section  
18 5703 of title 5, United States Code.

19 (7) STAFF.—The Commission may hire, with-  
20 out regard to the provisions of title 5, United States  
21 Code, governing appointments in the competitive  
22 service, and may pay without regard to the provi-  
23 sions of chapter 51, and subchapter III of chapter  
24 52 of such title relating to classification and General  
25 Schedule pay rates, such staff as necessary to fulfill

1 its duties under this section. In addition, the Com-  
2 mission may request any Federal department or  
3 agency to make available to the Commission person-  
4 nel on a nonreimbursable basis, to assist the Com-  
5 mission in fulfilling such duties.

6 (8) **TERMINATION.**—The Commission shall  
7 cease to exist upon the expiration of the 60-day pe-  
8 riod following the date of submission of its report to  
9 the Congress.

## 10 **TITLE IV—RELIGIOUS USE OF** 11 **EAGLES AND OTHER ANIMALS** 12 **AND PLANTS**

### 13 **SEC. 401. RELIGIOUS USE OF EAGLES.**

14 (a) **IN GENERAL.**—Within 1 year after the date of  
15 enactment of this Act, the Director of the United States  
16 Fish and Wildlife Service (hereafter in this section re-  
17 ferred to as the “Director”) shall, in consultation with In-  
18 dian tribes and Native American traditional leaders,  
19 develop a plan to—

20 (1) ensure the prompt disbursement from Fed-  
21 eral repositories of available bald or golden eagles, or  
22 their parts, nests, or eggs for the religious use of In-  
23 dians upon receipt of an application from a Native  
24 American practitioner;

1           (2) provide that sufficient numbers of bald or  
2 golden eagles are allocated to Native American prac-  
3 tioners to meet the demonstrated need where they  
4 are available by reason of accidental deaths, natural  
5 deaths, or takings permitted by Federal law; and

6           (3) simplify and shorten the process by which  
7 permits are authorized for the taking, possession,  
8 and transportation of bald or golden eagles, or their  
9 parts, nests, or eggs for the religious use of Indians.

10       (b) CONSULTATION WITH REGIONAL ADVISORY  
11 COUNCILS.—In developing the plan required by subsection  
12 (a), the Director shall consult with the Regional Advisory  
13 Councils established pursuant to subsection (c) to deter-  
14 mine whether these goals might best be met by decen-  
15 tralizing the system for the disbursement of bald or golden  
16 eagles or their parts, nests, or eggs for Native American  
17 religious purposes.

18       (c) REGIONAL ADVISORY COUNCILS.—

19           (1) ESTABLISHMENT.—Within 120 days after  
20 the date of enactment of this Act, the Regional Di-  
21 rectors of the United States Fish and Wildlife  
22 Service shall establish Regional Advisory Councils.

23           (2) COMPOSITION.—Each Regional Advisory  
24 Council shall consist of 3 Native American tradi-  
25 tional leaders appointed by each Regional Director

1 of the United States Fish and Wildlife Service from  
2 nominations submitted by Indian tribes and Native  
3 American traditional leaders located within the re-  
4 gion.

5 (3) DUTIES.—The Regional Directors and the  
6 Regional Advisory Councils, in consultation with In-  
7 dian tribes and Native American traditional leaders,  
8 shall—

9 (A) develop a plan to—

10 (i) ensure that all bald and golden ea-  
11 gles and their parts, nests, or eggs which  
12 are recovered within the region are  
13 promptly transmitted to and collected by  
14 the United States Fish and Wildlife Serv-  
15 ice and made available for distribution as  
16 provided by law and consistent with the  
17 plan developed by the Director pursuant to  
18 subsection (a); and

19 (ii) expedite the review and approval  
20 of permit applications at each regional  
21 level;

22 (B) consult with the Director regarding  
23 the advisability of decentralizing the distribu-  
24 tion system; and

1 (C) monitor the operation of the collection,  
2 permit, and, if applicable, the distribution sys-  
3 tem at the regional level.

4 (4) COMPENSATION.—Members of the Regional  
5 Advisory Councils established under paragraph (1)  
6 of this section shall serve without pay, but shall be  
7 reimbursed at a rate equal to the daily rate for GS-  
8 18 of the General Schedule for each day (including  
9 travel time) for which the member is actually en-  
10 gaged in council business. Each member shall re-  
11 ceive travel expenses, including per diem in lieu of  
12 subsistence, in accordance with sections 5702 and  
13 5703 of title 5, United States Code.

14 (d) TRIBAL LAW.—If bald or golden eagles or their  
15 parts, nests, or eggs are discovered on Indian lands and  
16 the Indian tribe on whose land the eagles or their parts,  
17 nests, or eggs were discovered has established or estab-  
18 lishes, by tribal law or custom, a procedure for—

19 (1) issuance of tribal permits to Native Amer-  
20 ican practitioners, and

21 (2) distribution of bald or golden eagles or their  
22 parts, nests, or eggs in accordance with tribal reli-  
23 gious custom,

1 the Indian tribe may distribute said bald or golden eagles  
2 or their parts, nests, or eggs to Native American practi-  
3 tioners in accordance with such tribal law or custom.

4 (e) **SCOPE OF SUBSECTION (d).**—Subsection (d) ap-  
5 plies only to eagles which have died by reason of accidental  
6 deaths or natural deaths and does not authorize the taking  
7 of live eagles which, subject to standards established in  
8 section 501(b), shall continue to be governed by regula-  
9 tions promulgated by the United States Fish and Wildlife  
10 Service. An Indian tribe under subsection (d) shall provide  
11 an annual report by March 31 of each year to the United  
12 States Fish and Wildlife Service summarizing the number  
13 and type of bald and golden eagles and their parts, nests,  
14 and eggs that have been discovered and distributed during  
15 the previous calendar year.

16 **SEC. 402. OTHER ANIMALS AND PLANTS.**

17 (a) **PLAN.**—Within 1 year after the date of enact-  
18 ment of this Act, the Director of the United States Fish  
19 and Wildlife Service shall, in consultation with Indian  
20 tribes and Native American traditional leaders, develop a  
21 plan to implement the recommendations of the President's  
22 1979 American Indian Religious Freedom Task Force Re-  
23 port regarding the disposition of surplus plant and animal  
24 products by Federal agencies.

1 (b) ASSESSMENT.—In developing this plan, the Di-  
2 rector shall—

3 (1) assess the availability of surplus animals,  
4 plants or parts from Federal agencies;

5 (2) determine whether there is a need for such  
6 parts for religious purposes by Native American  
7 practitioners; and

8 (3) evaluate the feasibility of developing a joint  
9 uniform set of regulations to govern the disposition  
10 of surplus animals, plants or parts which have been  
11 confiscated or gathered under the jurisdiction and  
12 control of Federal agencies.

## 13 **TITLE V—JURISDICTION AND** 14 **REMEDIES**

### 15 **SEC. 501. JURISDICTION AND REMEDIES.**

16 (a) IN GENERAL.—Any appropriate United States  
17 district court shall have original jurisdiction over a civil  
18 action for equitable or other relief, including damages,  
19 brought by an aggrieved party against the United States  
20 or a State to enforce the provisions of this Act.

21 (b) BURDEN OF PROOF.—

22 (1) IN GENERAL.—Except as provided in titles  
23 I through III, if an aggrieved party meets the bur-  
24 den of proving that a governmental action restricts  
25 or would restrict the practitioner's free exercise of

1 religion, the governmental authority shall refrain  
2 from such action unless it can demonstrate that ap-  
3 plication of the restriction to the practitioner is es-  
4 sential to further a compelling governmental interest  
5 and the application is the least restrictive means of  
6 furthering that compelling governmental interest.

7 (2) SPECIAL RULE FOR NATIVE AMERICAN  
8 PRACTITIONERS.—The burden of proof for a Native  
9 American practitioner is a showing of any evidence  
10 that a restriction upon the practitioner's free exer-  
11 cise of religion exists as a result of Federal or State  
12 action. Native American practitioners may elect to  
13 provide testimony about their beliefs in camera or in  
14 some other protective procedure.

15 (c) ATTORNEY'S FEES.—An aggrieved party who is  
16 a prevailing party in any administrative or judicial pro-  
17 ceeding brought pursuant to this Act shall be entitled to  
18 attorney's fees, expert witness fees, and costs under the  
19 provisions of section 504 of title 5, United States Code,  
20 and section 2412 of title 28, United States Code.

## 21 **TITLE VI—MISCELLANEOUS**

### 22 **SEC. 601. SAVINGS CLAUSE.**

23 Nothing in this Act shall be construed as abrogating,  
24 diminishing, or otherwise affecting—

25 (1) the inherent rights of any Indian tribe;

1           (2) the rights, express or implicit, of any Indian  
2       tribe which exist under treaties, Executive Orders  
3       and laws of the United States; and

4           (3) the inherent right of Native Americans to  
5       practice their religions.

6       **SEC. 602. SEVERABILITY.**

7       If any title or section of this Act, or any provision  
8       or portion thereof, is declared to be unconstitutional, in-  
9       valid, or inoperative in whole or in part, by a court of com-  
10      petent jurisdiction, such title, section, provision or portion  
11      thereof shall, to the extent it is not unconstitutional, in-  
12      valid, or inoperative, be enforced and effectuated, and no  
13      such determination shall be deemed to invalidate or make  
14      ineffectual the remaining provisions of the title, section,  
15      or provision.

16      **SEC. 603. AUTHORIZATION OF APPROPRIATIONS.**

17      There are hereby authorized to be appropriated such  
18      sums as may be necessary to carry out the provisions of  
19      this Act.

20      **SEC. 604. EFFECTIVE DATE.**

21      This Act takes effect on the date of its enactment.  
22      Application and enforcement of this Act does not depend  
23      upon the promulgation of regulations by any governmental  
24      agency.

○

11-11-11



*Loretta Jackson*

**Public Law No. 95-341 • Aug. 11, 1978**  
**American Indian Religious Freedom**  
**42 U.S.C. § 1996**

*Joint Resolution American Indian Religious Freedom*

Whereas the freedom of religion for all people is an inherent right, fundamental to the democratic structure of the United States and is guaranteed by the First Amendment of the United States Constitution;

Whereas the United States has traditionally rejected the concept of a government denying individuals the right to practice their religion and, as a result, has benefited from a rich variety of religious heritages in this country;

Whereas the religious practices of the American Indian (as well as Native Alaskan and Hawaiian) are an integral part of their culture, tradition and heritage, such practices forming the basis of Indian identity and value systems;

Whereas the traditional American Indian religions, as an integral part of Indian life, are indispensable and irreplaceable;

Whereas the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridgment of religious freedom for traditional American Indians;

Whereas such religious infringements result from the lack of knowledge or the insensitive and inflexible enforcement of Federal policies and regulations premised on a variety of laws;

Whereas such laws were designed for such worthwhile purposes as conservation and preservation of natural species and resources but were never intended to relate to Indian religious practices and, therefore, were passed without consideration of their effect on traditional American Indian religions;

Whereas such laws and policies often deny American Indians access to sacred sites required in their religions, including cemeteries;

Whereas such laws at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies;

Whereas traditional American Indian ceremonies have been intruded upon, interfered with, and in a few instances banned;

Now, therefore, be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that 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.

*42 U.S.C. § 1996 note*

Sec. 2. The President shall direct the various Federal department agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices.

*Presidential Report to Congress*

Twelve months after approval of this resolution, the President shall report back to the Congress the result of his evaluation, including any changes which were made in administrative policies and procedures, and any recommendations he may have for legislative action.

*Approved August 11, 1978*

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DO NOT REMOVE!

HUALAPAI CULTURAL RESOURCES STUDIES

SECOND QUARTERLY REPORT

JAN, FEB, MAR, FY94

*Should have an introduction  
should identify purpose of this course  
should identify participants  
should have a section on  
"required action"*

- On Jan. 05, Cultural Resources Tech. L.J. met with GIS coordinator, Jeff Wilkerson at the GCES office in Flagstaff for the monitoring site #13 along with NPS Archaeologist Christopher Coder for incorporation of site concerns on the in Colorado River corridor.

- Jan 13, attended planning meeting for a proposed Tribal Preservation Symposium scheduled for March 17 & 18 at Camp Verde, Az. The meeting was attended by L.J. along with Jim Garrison of AzSHPO, ITCA INC. Director John Lewis and Lt. Governor of Gila River Indian Community, Cecil Antone. Source of funding for Symposium will be from AzSHPO for education process of the new amendments to the NHPA regarding SHPO responsibilities.

- On Jan. 15, Cultural Techs L.J. & R.S. attended meeting with Rich Hereford @ USGS in Flagstaff, Az. National Park Service Archaeologist , Jan Balsom, was also in attendance. Schedules of monitoring were discussed and purposes of monitoring trips with the Geomorphology studies. Monitoring at Granite Park has been set up for

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March 23 to March 30 where a Hualapai monitor will be present.

- On Jan 20, L.J. attended the Cooperative meeting with C.B. & D.B. in Phnx., Az.
- On Jan. 25, the Cultural Resources Division hired Celeste Powskey as secretary.
- On Jan. 29, an Advisory Team meeting was conducted with elders in regard to cultural resource issues.
- Feb 10 through 13, L.J. travelled to Washington D.C. to attend NAGPRA Workshop sponsored by the Smithsonian Institution, National Museum of the American Indian, Office of Repatriation, National Museum of Natural History. Panel discussions included the preliminary work efforts of the museums in compiling data of inventories and summaries of cultural items and human remains belonging to Native American Indians. Interpretation of the act with proposed regulations were attempted with much dismay from the Native American Indian sector in regard to "Burden of Proof". Other presenters were from representatives of tribes describing the process of repatriation, also describing the emotional and significant experience in reburials. There were discussion forums, and question & answer periods. The available repatriation funds for FY94 from the Park Service (does not include Subpart B) of the NAGPRA Act on Intentional excavations and inadvertent discoveries which were vaguely addressed. However this particular issue

with steps towards resolutions can be addressed at the next Repatriation Review Committee meeting on May 12, 13, & 14 in Rapid City, South Dakota.

- On Feb. 23 through March 12, monitors were available for the NPS Archaeological monitoring trip. Susan Elias, Cultural Resource Tech. monitored from Feb. 23 to March 3. Test units were set to assess for erosion impacts for management purposes at various sites. On Feb. 27th, the crew camped at Palisades on right bank and set up a makeshift "Sweat" hut for purposes of "sweating". Hualapai monitor did not participate. However, upon receiving this report, it seems that the purpose of the monitoring program is to allow the Native American Indians involved the opportunity to express concerns on the lack of sensitivity that is often displayed from the scientific and professional community on cultural and traditional beliefs and values. Most Native American Indian cultures regard the Sweat Lodge as highly significant, including the Hualapai. The sweat lodge process and participation involves purification with prayers and songs with spiritual intent.

In realizing that portable sweats used for purposes of a sauna-like experience and social gathering is not related to Native American Indian Sweat Lodges, this Division recommends that such activities be deterred or conducted with discretion away from camp site areas, beaches, and water during all monitoring trips with Native American

participation in the future.

- On March 17 and 18 the staff attended "Tribal Preservation Symposium" @ Cliff Castle Lodge, Camp Verde, Az. (\*see attached agenda.)

- On March 21 through 25, LJ went to Wash. D.C. to attend numerous meetings and functions in relation to the proposed (SB. 1021)"Native American Free Exercise of Religion Act", Glen Canyon Dam- EIS open house hearing, and the opening of a photographic exhibit entitled: "Shooting Back from the Reservation, Another Dimension".

\* SB. 1021 NAFERA testimonial materials are enclosed for your information.

\* Shooting Back catalog of exhibit is available upon request.

\* Official comments of GCD-EIS, Long-Term Monitoring Plan, and the proposed Adaptive Management Plan has been submitted from the Tribe.

- On March 23 through 30, Ronald (Man) was stationed with Richard Hereford monitoring mapping activities at Granite Park. Studies included collecting of data regarding the eroding of arroyos at m.207.5 and deposits of soil and sand sediment on the river bank.

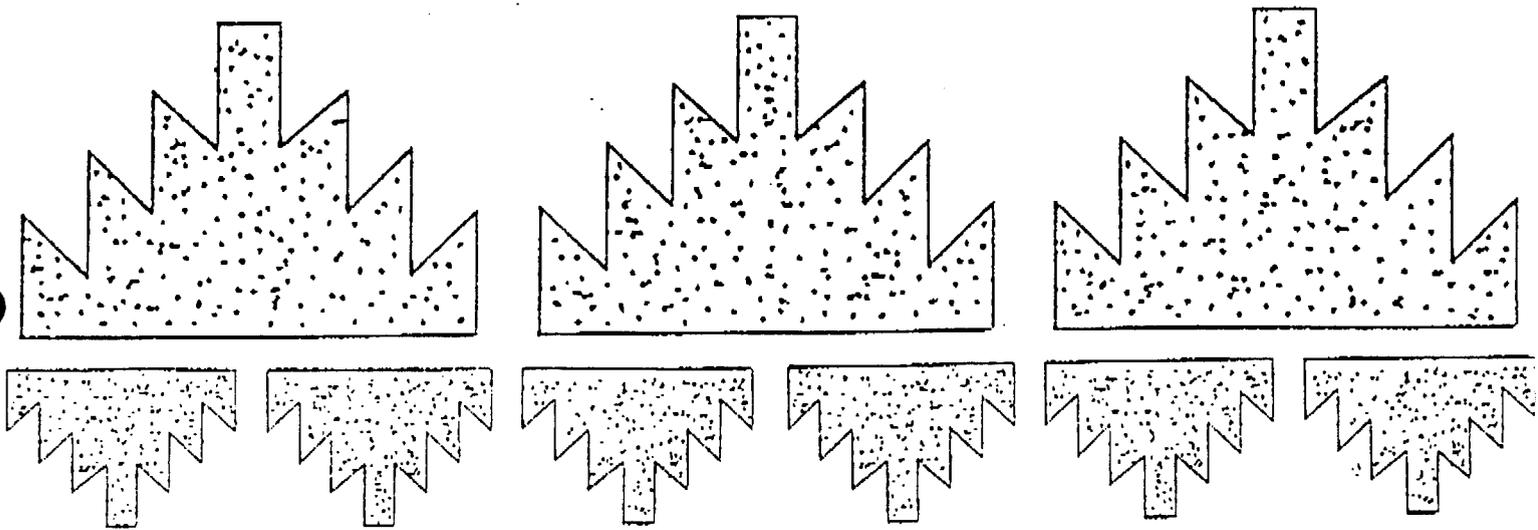
Measuring arroyo cuttings and carbon dating charcoal stains on the walls of the arroyos were also conducted.

- On March 28 & 29, LJ, Clay & Don attended a BOR Cultural Awareness Workshop. Various BOR agency officials & Native American representatives were in attendance.

The workshop goals were to sensitize Bureau officials to native american concerns and their cultural values in dealing with bureaucratic business.

# TRIBAL PRESERVATION SYMPOSIUM

MARCH 17 AND 18, 1994  
CLIFF CASTLE LODGE, CAMP VERDE, ARIZONA



Sponsored By:  
Inter Tribal Council of Arizona, Inc.  
National Park Service  
Arizona State Parks  
State Historic Preservation Office  
Arizona Heritage Fund

# TRIBAL PRESERVATION SYMPOSIUM

## Thursday Afternoon, March 17

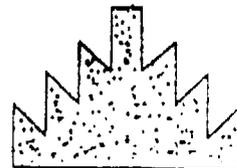
- 12:00-12:15 Introductions  
*Cecil Antone, Lt. Governor, Gila River Indian Community*
- 12:15-1:00 Overview of National Historic Preservation Act Amendment  
*Patricia L. Parker, Deputy Chief, Preservation Planning, NPS*
- 1:00-1:30 Fiscal Year 1994 Interior Budget Report : Potential Funding for Tribal Historic Preservation Offices  
*Patricia L. Parker, Deputy Chief, Preservation Planning, NPS*
- 1:30-2:00 Overview of Arizona State Historic Preservation Office Funding Opportunities for Tribes  
*James Garrison, State Historic Preservation Officer*
- 2:00-2:30 Break
- 2:30-4:00 Cultural Resource Management and Historic Preservation in Accordance with Tribal Sovereignty  
*Robert Henry Stevens, Ph.D candidate, M.A. in Social Sciences, University of California, Osage Nation, Oklahoma*

## Thursday Evening, March 17

- 6:30-7:30 Dinner
- 7:00-7:30 Native American Graves Protection and Repatriation Act Update  
*Cecil Antone, Lt. Governor, Gila River Indian Community*
- 7:30-8:30 Panel Discussion-  
What are Tribes Currently Doing in Historic Preservation?  
*Moderated by: Alida V. Montiel, Cultural Resources Working Group, Inter Tribal Council of Arizona*

## Friday Morning, March 18

- 7:30-8:30 Breakfast
- 8:30-12:00 An Overview of Arizona SHPO Programs  
*Carol Griffith, Deputy State Historic Preservation Officer*
- Review and Compliance  
*Robert Gasser, Compliance Coordinator*
  - Survey and Nomination  
*Diana Thomas, Architectural Historian*
  - Incentives/Public Programs  
*Dr. Reba Wells Grandrud, Historian*
- Rick Lewis, Architect*  
*Ann Howard, Public Programs Director*
- 12:00-12:30 Questions and Answers/Wrap-up



**SB. 1021 NATIVE AMERICAN FREE EXERCISE OF RELIGION ACT  
TESTIMONIAL MATERIALS FROM MARCH 23, 1994 ADMINISTRATIVE  
HEARINGS, WASHINGTON, D.C.**

STATEMENT OF SENATOR DANIEL K. INOUE  
CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

BEFORE THE MARCH 23, 1994 HEARING ON  
S. 1021, THE NATIVE AMERICAN FREE EXERCISE OF RELIGION ACT

THIS MORNING, THE COMMITTEE MEETS TO RECEIVE TESTIMONY ON A BILL WHICH IS INTENDED TO PUT AN END TO THIS NATION'S HISTORY OF DISCRIMINATION AGAINST NATIVE AMERICANS IN THE FREE EXERCISE OF THEIR RELIGION AND SPIRITUALITY -- DISCRIMINATION WHICH DATES BACK TO THE ARRIVAL OF CHRISTOPHER COLUMBUS IN THE NEW WORLD, AND WHICH HAS CONTINUED THROUGHOUT THE COLONIAL PERIOD TO THE PRESENT TIME.

ACCORDING TO ALMOST UNIVERSAL SCHOLARLY OPINION BY THOSE WHO ARE KNOWLEDGEABLE OF THE HISTORY OF RELATIONS INVOLVING THE NATIVE PEOPLE OF THIS COUNTRY, ONE OF THE DARKEST SPOTS ON THE NATIONAL CONSCIENCE IS THE TREATMENT OF THE NATIVE PEOPLES OF THIS CONTINENT AT THE HANDS OF THOSE WHO CAME TO SETTLE IN THIS COUNTRY.

THIS HISTORY IS PARTICULARLY IRONIC WHEN ONE REFLECTS ON THE FACT THAT MANY OF THOSE FIRST EUROPEANS WERE THE VICTIMS OF RELIGIOUS PERSECUTION IN THEIR OWN COUNTRIES AND CAME TO THE SHORES OF THIS GREAT NATION SEEKING REFUGE FROM THAT PERSECUTION AND FREEDOM TO PRACTICE THEIR RELIGIOUS BELIEFS.

OVER THE PAST FIVE HUNDRED YEARS, EUROPEANS WHO WERE INTENT UPON SEIZING NATIVE LANDS, HAVE SYSTEMATICALLY VIOLATED AND UNDERMINED THE INTEGRITY AND VITALITY OF INDIAN PEOPLES AND THEIR CULTURES.

THE FACT THAT THIS DESTRUCTION WAS ACCOMPLISHED IN THE NAME OF THE EUROPEAN INVADER'S HIGHEST MORAL, ETHICAL AND SPIRITUAL PRINCIPLES HAS CREATED A RELIGIOUS PARADOX.

THEY SAW LITTLE INCOMPATIBILITY BETWEEN THE IDEAS OF SAVING THE SOULS OF THE INDIANS AND DESTROYING AMERICAN INDIAN TRIBAL LIFE.

THIS BLINDNESS RESULTED IN THE EXPLOITATION AND DEVASTATION OF A RACE OF NATIVE PEOPLE ON THE ONE HAND AND A LEGACY OF

SHAME ON THE OTHER.

EARLY MISSIONARIES AND COLONISTS WERE UNIVERSALLY CONSISTENT IN CONDEMNING THE ORIGINAL INHABITANTS OF THIS COUNTRY AND INSISTING THAT THEY HAD TO BE "CIVILIZED" AND "CHRISTIANIZED".

THIS DETERMINATION TO CIVILIZE AND CHRISTIANIZE INDIANS ACCORDING TO EUROPEAN STANDARDS WAS ADVOCATED AS EARLY AS 1819, WHEN CONGRESS ENACTED INTO LAW A BILL RECOMMENDED BY THE HOUSE COMMITTEE ON INDIAN AFFAIRS THAT ESTABLISHED A "CIVILIZATION FUND".

THEIR WAS LITTLE DOUBT ABOUT THE REASON FOR THIS BILL.

THE ADMINISTRATION OF THE CIVILIZATION FUND WAS TURNED OVER TO RELIGIOUS AND MISSIONARY GROUPS AND THEY USED IT TO SEND MISSIONARIES TO CHRISTIANIZE NATIVES AND TEACH THEM THE CUSTOMS REQUIRED FOR GOOD CITIZENSHIP.

AN INTEGRAL PART OF THE FEDERAL GOVERNMENT'S ASSIMILATIVE POLICIES IN THE LATE 1800S AND EARLY 1900S WAS THE REPLACEMENT OF TRADITIONAL INDIAN RELIGIONS WITH CHRISTIANITY.

CHRISTIANITY WAS EQUATED WITH CIVILIZATION. INDIAN RELIGIONS WERE REGARDED AS PRIMITIVE AND IMMORAL.

FOR YEARS THE FEDERAL GOVERNMENT SUPPRESSED INDIAN DANCES, RITUALS, AND OTHER TRADITIONAL CULTURAL AND RELIGIOUS PRACTICES.

THIS WAS ACCOMPLISHED THROUGH THE ESTABLISHMENT OF COURTS OF INDIAN OFFENSES.

THESE COURTS, ESTABLISHED BY THE INTERIOR DEPARTMENT, WERE INTENDED TO REPRESS CERTAIN ASPECTS OF INDIAN CULTURE.

THE CONGRESS ANNUALLY APPROPRIATED MONEY TO PAY THE JUDGES OF THESE COURTS, BEGINNING IN 1888.

THE CONGRESS ALSO AUTHORIZED THE WITHHOLDING OF RATIONS IN ORDER TO ENFORCE INDIAN CHILDREN'S ATTENDANCE AT SCHOOLS.

IN FACT, IT APPEARS THAT THERE ARE TWO SUCH PROVISIONS WHICH ARE STILL PART OF THE BODY OF FEDERAL INDIAN LAW (25 U.S. C. 283 AND 285).

AT THE TIME THESE PROVISIONS WERE ENACTED, SCHOOLS WERE A MAJOR INSTRUMENT OF INDIAN ASSIMILATION.

ANOTHER INSTANCE OF FEDERAL ACTION WHICH RESTRICTED ASPECTS OF INDIAN CULTURE OCCURRED IN 1877, WHEN THE CONGRESS AUTHORIZED THE WITHHOLDING OF RATIONS FROM CERTAIN SIOUX INDIANS, IF THEY WERE NOT ENGAGED IN FARMING.

FEDERAL POLICIES INCLUDING --

- THE ALLOTMENT OF TRIBAL LAND,
- THE FORCED REMOVAL OF INDIAN PEOPLE FROM THEIR TRADITIONAL LANDS,
- THE CRIMINALIZATION OF TRADITIONAL INDIAN RELIGIOUS PRACTICES,
- THE PROMOTION OF CHRISTIAN MISSIONS IN INDIAN COUNTRY,
- AND THE SEPARATION OF YOUNG INDIAN CHILDREN FROM THEIR PARENTS AND TRADITIONAL CULTURE THROUGH THE FEDERAL BOARDING SCHOOL SYSTEM REPRESENT SOME OF THE MORE OVERT FORMS OF DISCRIMINATION AGAINST INDIAN RELIGIONS.

IN LIGHT OF THIS COUNTRY'S HISTORY OF RELIGIOUS AND CULTURAL PERSECUTION OF THE NATIVE PEOPLES OF THIS NATION, I FIND IT STRANGELY IRONIC THAT THERE ARE NOW THOSE WHO EXPRESS THE BELIEF THAT THE PROTECTION OF NATIVE AMERICAN SPIRITUALITY AND RELIGIOUS CEREMONIES IS VIOLATIVE OF THE ESTABLISHMENT CLAUSE OF THE UNITED STATES CONSTITUTION.

THE UNITED STATES CONSTITUTION AND OUR LAWS MAKE CLEAR THAT RELIGIOUS DISCRIMINATION OF ANY SORT WILL NOT BE TOLERATED.

THE FACT THAT WE ARE HERE TODAY, IS A TRIBUTE TO THE REMARKABLE TENACITY OF THE SPIRITUAL STRENGTH AND INTEGRITY THAT IS SO MUCH A PART OF INDIAN IDENTITY AND THE ABILITY OF NATIVE AMERICANS TO SURVIVE SUSTAINED PERSECUTION.

THE TIME IS LONG OVERDUE FOR THIS DARK CHAPTER IN OUR NATION'S HISTORY TO BE BROUGHT TO AN END.

THE ENACTMENT OF THE NATIVE AMERICAN FREE EXERCISE OF RELIGION ACT WILL BRING TO A CLOSE THE LONG AND DISGRACEFUL HISTORY OF PERSECUTION AND SUPPRESSION OF AMERICAN INDIAN RELIGIONS BY THE U.S. GOVERNMENT. -

THE ACT WILL ASSURE THAT NATIVE AMERICANS--THE FIRST AMERICANS--WILL BE ACCORDED ADEQUATE PROTECTION IN THE EXERCISE OF THEIR UNIQUE TRADITIONAL RELIGIONS.

BEFORE WE BEGIN TODAY'S HEARING, THERE IS ANOTHER ISSUE THAT I WOULD LIKE TO ADDRESS WHICH HAS BEEN THE SUBJECT OF SOME CONTROVERSEY.

THIS IS THE MATTER OF TO WHOM THE ACT'S PROTECTIONS OUGHT TO BE EXTENDED.

SOME HAVE TAKEN THE POSITION THAT ONLY ENROLLED MEMBERS OF FEDERALLY-RECOGNIZED TRIBES SHOULD BE AFFORDED THE RIGHT TO FREELY EXERCISE THEIR RELIGION WITH GOVERNMENT PROTECTION.

HOWEVER, I HAVE REVIEWED THE FEDERAL LAWS WHICH WERE ENACTED IN EARLIER DAYS -- LAWS THAT WERE ENACTED LONG BEFORE I CAME TO THE CONGRESS -- LAWS THAT PROHIBITED THE PRACTICE BY NATIVE PEOPLE NOT ONLY OF THEIR RELIGIONS, BUT ANY ASPECT OF THEIR CULTURAL BELIEFS, THEIR SONGS, DANCES, THEIR DRESS -- EVEN THE SPEAKING OF THEIR NATIVE LANGUAGE.

THESE LAWS DID NOT APPLY JUST TO ENROLLED MEMBERS OF FEDERALLY-RECOGNIZED TRIBES -- THEY APPLIED TO ALL INDIANS, WHEREVER THEY LIVED, WITHOUT REGARD TO THEIR RELATIONSHIP WITH THE UNITED STATES. TODAY, WE ARE SEEKING TO REMEDY THIS DARK PAGE IN OUR HISTORY.

AND AS THE CHAIRMAN OF THE SENATE COMMITTEE ON INDIAN AFFAIRS --

- HOW CAN I TELL THE TRIBES IN CALIFORNIA WHOSE TREATIES, THROUGH NO FAULT OF THEIR OWN, WERE NEVER RATIFIED BY THE UNITED STATES SENATE;

- HOW CAN I TELL THE TRIBES WHOSE RELATIONSHIP WITH THE FEDERAL GOVERNMENT WAS TERMINATED EITHER BY ADMINISTRATIVE OR LEGISLATIVE ACTION;

- HOW CAN I TELL THE SCORES OF TRIBES WHO WERE NEVER ABLE TO SECURE TREATIES WITH THE UNITED STATES...

- HOW CAN I TELL ANY OF THESE TRIBES THAT WHILE YOU WERE VERY CLEARLY VICTIMS OF DISCRIMINATION BY VIRTUE OF FEDERAL LAW, UNLESS YOU HAVE SECURED A FEDERALLY-RECOGNIZED STATUS IN THE INTERIM, THESE REMEDIES AND PROTECTIONS WILL NOT BE EXTENDED TO YOU?

IN MY MIND, THAT IS AN INDEFENSIBLE POLICY FOR THE UNITED STATES TO ADVOCATE.

FOR THOSE THAT RAISE THE CONCERN ABOUT THOSE GROUPS WHO MAY PURPORT TO BE INDIAN BUT ARE NOT, I WOULD SUGGEST THAT WE WORK TOGETHER TO COME UP WITH A MECHANISM THAT WILL WEED OUT THE PRETENDERS.

AND FOR THOSE THAT ARE CONCERNED THAT EXTENDING THE GUARANTEE OF RELIGIOUS FREEDOM TO INDIANS WHO ARE NOT FEDERALLY-RECOGNIZED WILL ESTABLISH A DANGEROUS PRECEDENT, I WOULD SUGGEST THAT THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION DOES NOT SAY THAT YOU HAVE TO BE FEDERALLY-RECOGNIZED, OR THAT YOU HAVE TO BE A MEMBER OF A RELIGION THAT IS RECOGNIZED BY THE UNITED STATES, OR THAT YOU HAVE TO HAVE A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH THE UNITED STATES.

NO, RATHER, THE FIRST AMENDMENT TO THE CONSTITUTION GUARANTEES THE FREE EXERCISE OF RELIGION TO ALL AMERICANS, REGARDLESS OF RACE, CREED, COLOR OR NATIONAL ORIGIN.

IF THE FEDERAL GOVERNMENT PROPOSED TO BUILD A ROAD THAT WOULD EFFECT THE DEMOLITION OF A CATHOLIC CHURCH OR A JEWISH SYNAGOGUE, THE MEMBERS OF THOSE RESPECTIVE CONGREGATIONS WOULD NOT HAVE TO PROVE THAT THEY HAVE A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH THE UNITED STATES BEFORE THEY COULD PURSUE LEGAL ACTION TO CHALLENGE THE GOVERNMENT'S ACTION.

WHY SHOULD INDIAN TRIBES -- BE THEY FEDERALLY-RECOGNIZED OR THE UNFORTUNATE VICTIMS OF A HISTORY THAT DID NOT ACCORD THEM THAT STATUS -- BE HELD TO A DIFFERENT STANDARD?

THERE HAS BEEN MUCH DISCUSSION OF THIS ISSUE IN THE CORRIDORS OF THE FEDERAL AGENCIES AND IN THE CONGRESS.

I THINK IT IS TIME THAT WASHINGTON HEARS FROM INDIAN COUNTRY ON THIS MATTER THAT IS SUCH A CRITICAL ASPECT OF THE NATIVE AMERICAN FREE EXERCISE OF RELIGION ACT.

I HAVE RECENTLY SENT A LETTER OUT TO TRIBAL LEADERS TO SEEK GUIDANCE ON THIS IMPORTANT ASPECT OF THE BILL, AND I AM LOOKING FORWARD TO HEARING FROM INDIAN COUNTRY ON THIS IMPORTANT

ISSUE.

TODAY, WE LOOK FORWARD TO RECEIVING AND CONSIDERING RECOMMENDATIONS FROM THE ADMINISTRATION ON MODIFICATIONS TO THE ACT WHICH THE ADMINISTRATION FEELS ARE NECESSARY TO PROVIDE A BALANCE BETWEEN THE GOVERNMENT'S OTHER STATUTORY RESPONSIBILITIES AND THE NEED TO PROTECT THE FREE EXERCISE OF NATIVE AMERICAN RELIGIONS.

BEFORE WE BEGIN, HOWEVER, I WISH TO EXPRESS ~~ME~~ MY PERSONAL GRATITUDE TO THE DEPARTMENT OF THE INTERIOR, THE DEPARTMENT OF JUSTICE AND DONSIA STRONG, A SENIOR POLICY ANALYST IN THE WHITE HOUSE, FOR THEIR COMMENDABLE LEADERSHIP IN PARTICIPATING IN THE DIALOGUE THAT WAS INITIATED IN THE SENATE TO ADDRESS THE CONCERNS OF THE FEDERAL AGENCIES.

WE ARE MOST GRATEFUL FOR YOUR THOUGHTFUL CONTRIBUTION TO THE DEVELOPMENT OF THIS MEASURE.

DENNIS DIXON ARIZONA  
THOMAS A. DASCHLE SOUTH DAKOTA  
KENT CONRAD NORTH DAKOTA  
HARRY REID NEVADA  
PAUL SIMON ILLINOIS  
DANIEL K. AKAKA HAWAII  
PAUL WELLSTONE MINNESOTA  
BYRON L. DORGAN NORTH DAKOTA  
BEN NIGHORSE CAMPBELL COLORADO

FRANK H. MURKOWSKI ALASKA  
THAD COCHRAN MISSISSIPPI  
SLADE GORTON WASHINGTON  
PETE V. DOMENICI NEW MEXICO  
NANCY LONDON KASSEBAUM KANSAS  
DON NICKLES OKLAHOMA  
MARK O. HATFIELD OREGON

PATRICIA M. ZELL  
STAFF DIRECTOR/CHIEF COUNSEL  
DANIEL N. LEWIS, MINORITY STAFF DIRECTOR

# United States Senate

COMMITTEE ON INDIAN AFFAIRS  
WASHINGTON, DC 20510-6450

Hearing before the  
Senate Committee on Indian Affairs  
on  
S. 1021, Native American Free Exercise of Religion Act

Wednesday, March 23, 1994  
9:30 a.m. - 11:30 a.m.  
485 Russell Senate Office Building  
Washington, D.C.

## WITNESS LIST

### Panel I

THE HONORABLE ADA DEER, Assistant Secretary for Indian Affairs, U.S. Department of the Interior, Washington, D.C.

THE HONORABLE GERALD TORRES, Counsel to the Attorney General, U.S. Department of Justice, Washington, D.C.

### Panel II

MR. FRANCIS BROWN, President, Medicine Wheel Coalition, Wind River, Wyoming

MR. JAMES HENA, Chairman, All Indian Pueblo Council, Albuquerque, New Mexico

MR. JON EARTH, President, Native American Church of Winnebago, Winnebago, Nebraska

MR. LENNY FOSTER, Spiritual Advisor and Director, Navajo Nation Corrections Project, Fort Defiance, Arizona

MR. PATRICK H. LEFTHAND, Former Councilman, Confederated Salish and Kootenai Tribes, Pablo, Montana

STATEMENT OF ADA E. DEER, ASSISTANT SECRETARY, INDIAN AFFAIRS,  
DEPARTMENT OF THE INTERIOR, BEFORE THE COMMITTEE ON INDIAN  
AFFAIRS, UNITED STATES SENATE, ON S.1021, A BILL "TO ASSURE  
RELIGIOUS FREEDOM TO NATIVE AMERICANS."

MARCH 23, 1994

Good morning Mr. Chairman and Members of the Committee. I am pleased to be here today to present the views of the Department of the Interior on S.1021, the "Native American Free Exercise of Religion Act."

Religious freedom for Native Americans is long overdue. As we all know, our Native American views on religion are deeply personal, and traditional religions are the essence of Native American existence and culture. While the American Indian Religious Freedom Act of 1978 was a very important step towards recognizing Native American religions, it failed to extend actual protections to tribes and practitioners. Sacred sites are still being desecrated and Native Americans are often disturbed during their worship by government employees, tourists, and curiosity seekers. Government actions of all kinds so often seem to ignore, override, and take precedence over Native American religious practices and sacred religious sites.

We strongly support the concepts and purposes of the bill. We support providing a process to protect and focus attention on the needs of Native Americans to allow exercise of their traditional religions. We support the application of the compelling interest test to justify government interference with the exercise of Native American religions. We support liberal provision for access by Native American practitioners to public lands for traditional religious purposes. We support protection for the religious use of peyote. We also support protection of equal opportunity for those imprisoned, of all religions, to practice their religions. We support the improvement of the process for provision of eagle parts and feathers for the practice of Native American religions. We have concerns over some provisions of the bill, and I will point them out later, but we strongly support passage of a bill, modified to meet our concerns, to meet these important objectives.

We believe federal legislative protection is warranted by the special historical circumstances and the political relationship that Congress has long recognized with Indian tribes.

Mr. Chairman, we support legislation which would foster respect for traditional tribal religious customs and ceremonies and would help to ensure that the processes of government provide sufficient attention and protection to such traditional Native American religions, and increase appreciation for their unique

qualities.

Religions of the American majority are better understood by decision-makers, and are better able to control their places of worship and protection of their practices.

Our religious traditions, however, have natural sites, as well as plants and animals, for their spiritual basis. We recognize that protection of the exercise of the Native American traditional religions involves providing protection in public areas and areas which we do not now own. But these areas once were tribal lands, where we once freely practiced our spiritual traditions. These sites, as well as plants and lands, are of equal importance to the exercise of our religions as the churches, mosques, and synagogues are to the practices of other religions.

As you know, the Administration supported the Religious Freedom Restoration Act of 1993 (RFRA) and we look forward to the passage of a bill that would further fulfill the promise of the First Amendment for Native Americans.

Protecting Native American religious sites and practices raises decidedly complex issues of constitutionality under the United States Constitution and of manageability for government agencies. The modifications we will seek to the bill are aimed at producing a bill that is meaningful to tribes and their practitioners, while reducing the risk of successful constitutional challenge, actively encouraging land managers to work cooperatively with tribal governments to avoid conflicts, and making the bill more manageable for government agencies. The Department of Justice will discuss the constitutional issues in its testimony.

Our first concern is the scope of the bill's application to Indian tribes, an issue with which we have painfully struggled. The bill contains a very broad definition of the term "tribe". We recommend that the Act's application be limited to federally recognized tribes and their members. We realize that there are other Native American groups with traditional religious sites and practices that are not federally recognized. We are fully willing to explore other approaches to protect Native Hawaiians and other groups that lack federally recognized status including application to the extent possible of other laws for cultural, historical, and environmental protection, such as the National Environmental Policy Act, the Native American Graves Protection Act, and the National Historic Preservation Act to address cultural and religious interests.

However, we believe that the government-to-government relationship between federally recognized tribes and the United States is central to defending the bill's constitutionality on establishment and equal protection grounds. We believe that limiting application only to federally recognized tribes will

serve to protect and strengthen this government-to-government relationship, and to protect tribal sovereignty over the affairs of their people, and their religions, as they choose.

We do have other concerns with S. 1021, and would recommend that: (1) the range of Federal and federally related actions which are subject to the bill be slightly narrowed; (2) the term "site" be more carefully defined; (3) the application of the bill be limited to new actions, certain renewals, re-authorizations, and similar decisions, and certain routine activities not be included; (4) the review process be refined to encourage early and meaningful consultation between the agencies and the tribes, and the development of memoranda of agreement, concerning review of actions and access to lands; (5) the terminology of the Religious Freedom Restoration Act of 1993 be adopted with respect to the applicable burdens of proof; and (6) the inclusion of certain authorities for emergency conditions.

Notwithstanding these concerns, we support: (1) the liberal access to, as well as the temporary closing of federal lands for Indian religious purposes, working with the Committee to craft a viable approach to balance needs for national security, dangerous circumstances, and statutory mandates of agencies; (2) the application of federal criminal sanctions for violations of confidentiality and for desecration of religious sites; (3) the protection of traditional religious use of peyote by Indians, provided that the concerns of the military, police, confinement facilities, and transportation safety, are met; and (4) equal opportunity for Native American prisoners to practice religious observances to the same extent as prisoners practicing other religions.

We strongly support the development of plans and new processes to greatly improve the distribution of eagle parts and feathers for Indian religious purposes. The Fish and Wildlife Service is currently making a major effort to improve the process by administrative means, and we expect to announce significant new improvements in the near future. These developments may affect our recommendations on provisions in the bill for this purpose. We continue to support the maintenance of centralized authority under the Eagle Protection Act to afford maximum protection for eagles, for health reasons, and to assure distribution of eagle parts to Indian groups who have no natural supply. We will work administratively, on a tribe-by-tribe basis, to involve tribal governments in the process.

We would like to work with the committee to develop a comprehensive estimate of costs or increased workload that might be occasioned by the implementation of S.1021. The bill would increase the responsibilities of the Secretary and other agencies in the development of new databases, as well as in implementing the required notice and consultation. The requirements could not

be met within existing budgetary and personnel arrangements, and the bill would likely impact other programs of the bureaus, as well as other Federal and non-federal entities, to support the additional responsibilities under this bill.

Mr. Chairman, we favor a positive and pro-active federal approach to protect Native American religions and to put an end to the history of discrimination and insensitivity to Indian religions. We strongly support enactment of legislation as we propose to substantially improve the position of the tribes in protecting the exercise of their traditional religions, and we are prepared to work closely with the Committee to craft specific language to achieve this important purpose.

This concludes my presentation. I look forward to continuing discussions with you, and to legislative success, on these important matters. At this time, I would be pleased to respond to any questions you or other members of the Committee may have.



# Department of Justice

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STATEMENT OF  
GERALD TORPES  
COUNSEL TO THE ATTORNEY GENERAL  
BEFORE THE  
COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE  
CONCERNING  
THE NATIVE AMERICAN FREE EXERCISE OF RELIGION ACT  
(S. 1021)  
PRESENTED ON  
MARCH 23, 1994

TESTIMONY OF GERALD TORRES, COUNSEL TO THE ATTORNEY GENERAL,  
ON THE NATIVE AMERICAN FREE EXERCISE OF RELIGION ACT  
March 23, 1994

Mr. Chairman, thank you for giving me this opportunity to testify on the Native American Free Exercise of Religion Act of 1993 (NAFERA). I am here to present the Administration's views on the constitutional issues raised by that bill.

For centuries, certain sites have been considered essential to the practice of Native American religions as well as to the preservation of Native American cultural and tribal identity.

The Supreme Court in Lynq v. Northwest Indian Cemetery Protective Association considered whether the federal government could build a road that would disturb or destroy a site that was indispensable to Indian religious practices. The Court held that the Free Exercise Clause of the First Amendment did not protect the sacred site. The case, in effect, permitted the use of federal land in a manner that might threaten the practice and existence of an Indian religion. In the wake of Lynq, protection of Native American religion and cultural practices remains uncertain. For this reason, legislation is needed to protect Native American religious sites threatened by federal action.

The recently enacted Religious Freedom Restoration Act (RFRA), Pub. L. 103-141, helps to ensure the religious liberty of all Americans. That law requires government to apply a compelling interest test where neutral laws impinge on religious liberty, thereby overturning Employment Division v. Smith. RFRA, however, does not specify how the compelling interest test

applies in situations in which Native American sacred sites are threatened by federal action. Therefore, RFRA is open to the interpretation that Lyng remains the applicable law.

The primary goal of NAFERA -- a goal strongly supported by this Administration -- is to specify how government should address federal actions that prevent the exercise of Indian religion. The question of how the federal government should treat Native American religious sites can be answered only if we understand that the United States and Indian tribes have a special historical and legal relationship.

One basis of that relationship is grounded in the recognition by Justice Marshall that tribes were pre-existing

these sites are no longer on tribal lands, their religious uses predate the existence of the federal government. In light of this, the federal government may ensure that its actions do not lead to the destruction of such cultural treasures.

The special relationship between the United States and Indian tribes provides the underpinning of a number of federal statutes, such as elements of the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act. These laws, and others, recognize the singular characteristics of Native American culture and, therefore, provide protections tailored to protect Native American cultural artifacts. NAFERA also represents an attempt to recognize some of the differentiating characteristics of Indian religion. In addition to the protection of sacred sites, NAFERA protects the ceremonial use of peyote and the religious practices of Native American prisoners.

We believe that the special relationship empowers Congress to pass legislation like NAFERA that provides protection for

federal government and Indian tribes, the federal government did not violate the Establishment Clause by giving certain benefits to tribal religions and not to any others. We believe that this reasoning applies to NAFERA, so that Congress can protect the exercise of tribal religions.

Although the Department believes that NAFERA-like protections are constitutional, we are concerned that certain provisions might lead to entanglement between the federal government and Native American religions. One potential concern arises if tribal religions are granted traditional federal powers as in the section providing for a temporary cessation of government activity if a tribe notifies the government that the activity will or may disturb a religious site. The Supreme Court ruled in Larkin v. Grendel's Den that giving churches the ability to stop government action -- in that case, the granting of liquor licenses -- impermissibly entangled religion and government. The crucial similarity between Larkin and NAFERA is that both vest religious groups with unilateral authority to stop government action. We believe that, in order to avoid any constitutional problems, such unilateral authority should be replaced with a process that allows the land management agencies some discretion. We have drafted two sets of alternative language that would accomplish this aim, either by directing the relevant Secretary to determine if a federal action would burden Native American religious practice or by directing the Secretary to determine whether or not tribal leaders have a good-faith belief that the

action would burden their religious practices.

Similarly, NAFERA could in theory entangle the federal government in core religious issues if the federal government were placed in the position of determining who a "Native American traditional leader" is. Such a determination would necessarily implicate the federal government in sensitive aspects of Native American religions. Limiting aggrieved parties to tribal governments or their chosen representatives, on the other hand, would eliminate such intrusive determinations.

In closing, I would like to note the Administration's support for the concepts animating this Bill. The Administration believes that NAFERA is a welcome and long overdue measure. We want NAFERA to be as effective as possible. We do not want to see it mired in lengthy litigation and, more important, we want to avoid any adverse rulings on its constitutionality. Our lawyers are available to work with the Committee to provide alternative language that would satisfy these constitutional concerns. We have made our comments in order to make the bill stronger, so that we may hasten the day when protections for the effective exercise of Native American religions are a reality.

That concludes my prepared remarks. At this time Mr. Chairman, I would be pleased to respond to any questions or comments you or other Committee Members may have.

March 18, 1994

U.S. Senator Daniel K. Inouye, Chairman  
Select Committee on Indian Affairs  
U.S. Senate Building  
Washington, D.C. 20510-6450

REGARDING: Testimony concerning amendments to the American Indian Religious Freedom Act, March 23, 1994, U.S. Senate Select Committee on Indian Affairs, Washington D.C., by Francis B. Brown, Northern Arapaho Traditional Elder, and President, Medicine Wheel Coalition for Sacred Sites of North America.

Honorable Senator Daniel Inouye, Committee Members, Et Al:

Korean influenced Moonies, East Asian influenced Hare Karishinas, African influenced voodoos, and ultra modern atheists all have more religious guarantees and freedoms under the First Amendment of the US Constitution, than Native Americans.

Why are those religious beliefs more tolerated by our US Christian society?

In the name of God, the whiteman has alleviated his guilt for more than 400 years for murdering Native American Indian peoples to acquire their lands, which included our sacred sites.

Native Americans historically were openly viewed as subhumans practicing pagan religions -- a hostile peoples who needed to be Christianized and disenfranchised from their lands and God. The founders of the US Constitution were interested in protecting their own religious rights, their own voting rights, and their rights to seize Indian lands -- they were not interested in preserving or protecting our lands and religion. George Armstrong Custer represented that prejudicial US Government view of Indians very efficiently, and the fact that he was morally degenerate, was a mirror of those he exemplified.

US citizenship and voting rights were not granted to Indians, until 56 years after the 14TH AMENDMENT [1868] or five years after the First World War, with the INDIAN CITIZENSHIP ACT OF 1924. Native American Indian religious rights, particularly in conjunction with sacred items and sites, are still being denied, even though Congress enacted the AMERICAN INDIAN FREEDOM OF RELIGIONS ACT OF 1978 to make the situation more equitable.

Land greed and 400 year old Christian thoughts and controls still dominate much of the US government laws concerning we traditional Native Americans' freedom to worship our religion in the manner we have been instructed by God.

Historically the United States Government, and currently numerous states, have **DELIBERATELY DESIGNED WEAK ARCHEOLOGICAL PROTECTIVE LAWS AND**

**REGULATIONS** to insure there were, and still are, no obstructions placed in the way of the natural resource industries or the federal, state, and local land management agencies.

There are still numerous federal, state, and local land management agencies, where federal laws and directives, already passed by Congress, are subject to the **WHIMS OF AGENCY PERSONNEL** and their outdated personal beliefs that clear cutting, road building, tourism, and oil, gas, and mineral exploration automatically are more important than the fact that the property in question is a sacred traditional Native American site.

This violation of Native American Indian sacred sites and **MISMANAGEMENT AND DELIBERATE VANDALISM** of publically managed lands is by those people entrusted by Congress with protecting those properties.

That mismanagement is deliberate with many government agency personnel **"SHUTTING OUT" AND IGNORING NATIVE AMERICAN INPUTS** when developing their land use projects in a number of ways:

1] Some government agencies deliberately **HIDE THEIR PUBLIC INPUT PERIOD** from Native Americans.

2] Some government agencies **TOTALLY DISREGARD** any Native American inputs.

3] Some government 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.

4] Some government agencies ask for Native American input, but then use only small bits of it that easily **FITS THE AGENCY'S ALREADY PREDETERMINED AGENDA**, which is often not in the best interests of Native Americans.

5] Some government agencies ask for tribal inputs on archaeological sites, but are very **UNWILLING TO SHARE** any of the agency's collected archaeological information in return with the tribes.

6] And, some government agencies consistently claim they are following Congressional directives to maintain a **"MULTIPLE LANDUSE POLICY"** in developing and managing the properties they have been assigned to protect for the public.

It is easily noted that government land management agency personnel are not bothered one bit to designate a large tract of property solely to be clearcut of trees or mined: However, it does bother them immensely to designate a much smaller property as a sacred Native American archaeological site. Congress needs to recognize that this **"MISUSE TACTIC" OF THE MULTIPLE LANDUSE POLICY** has to stop, especially when it automatically designates a sacred archaeological site as also being available for: mining, drilling, foresting, timber hauling, grazing, snowmobiling, hunting, water storage [reservoirs], road building, placement of electric/radio towers, and tourism.

It is a fact that tourist visitations of ancient and historic Native American archaeological sites are increasing tourist season- by-season, and there is nothing wrong with people wanting to identify with their homeland and nation's past. However, it is wrong that tourism interests and the **COMMERCIALIZATION OF ANCIENT NATIVE AMERICAN SACRED SITES**, often take more precedence with federal, state, and local governmental agencies, than the preservation of the sacred 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.

In a related area of concern, whether done legally or illegally, the fact continues to exist that ancient and **HISTORIC NATIVE AMERICAN SITES ON GOVERNMENT PROPERTY ARE "RAIDED"** for Indian childrens' clothing, womens' cooking utensils, and any Native American warriors' clothing, medicine bundle, or artifacts -- these are viewed as **"JUSTLY HELD TREASURES"** to be collected and shown off in local, state, and national museums; family basements; and corporate executive offices. Even though there are laws protecting such sites, land management personnel consistently claim they do not have time nor money to enforce the protection of sacred sites -- even though they have plenty of time to design roads into areas for clear cutting, usually incurring a financial loss, while destroying the environment.

In closing, it is very evident that some of the worst offenders in **VANDALIZING** Native American sites are the major federal land management agencies, and their counter parts on the state level.

It is important the U.S. Senate Select Committee on Indian Affairs, and Congress in general, understand Native Americans need to have Congressionally guaranteed protection of sacred, traditional, and cultural sites.

Native American Indians have had to continually plead with federal, state, and local governmental agencies just for access to ancient and historic spiritual sites, and this sort of "begging" has to stop. It is evident that there is a critical need for stronger federal laws to protect Native American sacred sites and the numerous Indian burial sites across our nation, from the **MISMANAGEMENT AND DELIBERATE VANDALISM** by all levels of governmental agencies.

At this time, the Medicine Wheel Coalition strongly supports the United States Congress enacting the proposed American Indian Freedom of Religion Act amendments, and truly legislate legal protection for sacred Native American cultural sites.

Sincerely,

Francis Brown, President  
Medicine Wheel Coalition  
C/O P.O. Box 601  
Riverton, Wyoming 82501  
Phone: [307] 856-4556

/ijs

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Sincerely,

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/jjs



ALL INDIAN PUEBLO COUNCIL, INC.

OFFICE OF THE CHAIRMAN

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TESTIMONY OF JAMES S. HENA, CHAIRMAN OF  
THE ALL INDIAN PUEBLO COUNCIL ON S. 1021,  
THE NATIVE AMERICANS FREE EXERCISE OF RELIGION ACT  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS  
WASHINGTON, D.C.  
MARCH 23, 1994

Mr. Chairman, members of the Committee. My name is James Hena, I am Chairman of the All Indian Pueblo Council composed of the Nineteen Pueblo Governments of New Mexico. Although our oral history carries the record of AIPC further back into time, the early Spanish records show this organization has been in existence since at least 1598.

Since providing testimony last year at the several oversight and field hearings regarding the need to stop destruction of Tribal sacred areas and to ensure tribal access to those places for traditional ceremonial purposes, Pueblo representatives have been active in the efforts of your committee to bring Indian and administration representatives together to discuss how best to implement the purposes of S. 1021. While there has been a great deal of discussion about a number of issues in S. 1021, the Pueblos' focus throughout that process has been on securing strong legal protection for Tribal sacred areas in a way which accommodates our Pueblo traditions regarding secrecy in matters relating to our religious beliefs, ceremonies and sacred places.

During this effort we have also strongly endorsed the provisions of Title IV S. 1021 which strengthens the law regarding Tribal religious use of eagle feathers. We have also supported the provisions of Title II protecting the traditional use of Peyote for Indian religious purposes and for Title III, which extends legal protection to the free exercise of Tribal religion to Indian prisoners. We also support the cause of action provisions of Title V and for miscellaneous provisions under Title VI.

However, throughout this process, our primary focus regarding S. 1021 has been to emphasize that the traditional Pueblos are unable and unwilling to provide details regarding their spiritual

use of sacred areas on federal lands. We cannot tell you exactly where those sacred areas are located. We cannot tell you how and when we use them. Those members of our Pueblos charged with responsibility for protecting and using those areas must take sacred oaths not to reveal such information. Those oaths require severe punishment if broken.

To some extent, the severity of our enforcement of those internal sanctions for breaches of these secrecy obligations is a product of our 500-year experience with the European invaders of this continent. That experience has involved extreme cruelty, torture, murder, and active Spanish, Mexican, and American governmental efforts to suppress our spirituality and traditional beliefs.

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.

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' total opposition to any bill that would put the burden of proof on us to justify protection of sacred areas in order to stop their destruction or to secure our use of them. We support Title I - the sacred sites provisions of S. 1021 because those provisions do not ask us to break our religious oaths to secure legal protection for our sacred areas.

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 citizens' aspirations.

Historically too, there were other areas of federal law and policy that at 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, U.S. Government action during this century restricting use of our own language(s) and outlawing our religions in flagrant disregard of the First Amendment make clear that further legal protection for Pueblo traditional use of sacred areas is long past due.

We cannot overemphasize the fundamental need for legal protection for our remaining sacred areas and of our right to use them for traditional ceremonial purposes. When those areas are destroyed or disturbed or desecrated, or we prevented access and use of them, we feel a special kind of spiritual pain. Some of the Pueblos have in prior testimony compared this pain to a severe pain as similar to the kind of loss a mother might experience from the death of her small child. It is a deep seated pain and loss which we have experienced for many centuries. §102C of S. 1021 for the first time (and with certain narrow exceptions) guarantees us access to our sacred areas on public lands for traditional religious use without us having to give a detailed explanation to a government agent or secure a written permit. That is as it should be because we were here first. We have been using these areas in these ways far longer before any other Government or people were here.

Based on our prior experiences, we were initially skeptical that any federal law would or could provide any meaningful protection for our sacred areas. Our study of the initial versions of what later became S. 1021 confirmed our worst fears. Those early versions would have done us no good and actually would have caused us harm. When we brought these concerns to the AIRFA coalition and to you, Senator Inouye, the response was good. We were invited to offer amendments which would provide legal protection to Pueblo sacred areas without requiring Pueblo members to violate their sacred oaths not to reveal information concerning those places.

I am pleased then to testify today that S. 1021, and, in particular, §104(b) of that bill would give legal recognition to this practical and spiritual reality. It provides a mechanism by which our secrecy obligations can be honored and our sacred areas protected without posing an impossible burden upon us or the Government. We have suggested the language of §104(b) in recognition that the only way our secrecy obligations can be

honored is by legislation which enables us through dialogue with the Government to identify practicable alternatives to proposed governmental action, which would otherwise harm, destroy or impede the use of those sacred places.

Under S. 1021, a Tribe which has secrecy obligations such as the Pueblos may (but is not required to) invoke the Section 104(b) secrecy provision at the same time it gives notice of concern about a proposed federal undertaking under Section 103(c). Only Tribes that have an established religious tradition which includes traditional religious tenets prohibiting disclosure concerning their religious sites or religious beliefs and practices and which provide for internal sanctions to enforce prohibitions for disclosure, would be able to invoke the secrecy provisions.

Only Tribal Governments (not individual religious practitioner(s) can invoke these provisions. This is to ensure that these special provisions are invoked only when it is the sense of the whole Tribe--(not any one religious leader--or claimed religious leader)--that the potential or harm to the sacred site is sufficiently grave that the Tribe must step forward and seek to protect that area. Only the Tribal Government can provide the certification necessary to invoke these secrecy provisions. The Tribal Government--and per 104(e) in the case of Pueblos--because of our theocratic mode of internal organization--only the Governor of the Pueblo--can invoke the secrecy provisions. The Pueblo Governor is the Pueblo's interface with the outside world. Our religious leaders do not interact directly with the outside world except on the rarest of occasions and then only with great difficulty. Section 104(e) acknowledges that aspect of our Pueblo way of life.

In most cases the S. 1021 process will permit necessary Government action to be carried out in a way which accommodates our need for access and protection of our sacred areas without forcing us to reveal their locations or how and when we use them. Under §104(b), this can be achieved through dialogue. Where in that dialogue the Government and the Tribe agree upon an alternative to the form of action originally proposed by a Government agency, the agency could proceed with its action in a way acceptable to it and to us. In those rare instances where no alternative action is both acceptable to us and to the agency, S. 1021 requires that the Government not proceed to destroy our sacred areas unless it has a compelling interest for so doing and can show that the particular approach which the Government originally proposed to use for achieving that compelling interest was essential from the Government's perspective. The Government would have the burden of proving both its compelling interest to proceed and its compelling interest to proceed in the way proposed and in no other.

S. 1021 thus allows the Government to prevail and to destroy our sacred areas in those rare instances when there is no practicable alternative to the Governmental activity as originally proposed and where that activity is required to advance a compelling Governmental interest.

We believe this burden is the appropriate burden. Destruction of our sacred areas which we have used for our traditional spiritual purposes for thousands of years should not be destroyed except for the most compelling of reasons.

The United States Congress has mandated in some cases even more stringent legal protection to endangered species both plant and animal. Are we not, as this continent's first human inhabitants, entitled to comparable protection?

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 loss 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 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 want to remain healthy, strong, spiritual communities as we always have.

Enactment of S. 1021 would be a small but important step in helping to right the great wrongs visited upon us in the past by, for, the first time, extending meaningful legal protection to our sacred areas and our access to those areas for traditional ceremonial purposes.

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TESTIMONY OF JONATHON EARTH, SR., PRESIDENT  
NATIVE AMERICAN CHURCH OF WINNEBAGO, NEBRASKA  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS ON S.1021  
"THE NATIVE AMERICAN FREE EXERCISE OF RELIGION ACT"

Washington, D.C.  
March 23, 1994

Senator Inouye, Committee members and staff, I would like to begin by saying thank you to each and everyone of you for making this important Hearing possible and for giving me the opportunity to speak here today on behalf of the Native American Free Exercise of Religion Act, S.1021.

I would also like to thank the Administration, and particularly Ada Deer and Gerald Torres for their help and their testimony here today. We are much encouraged by their support of Title II of S.1021.

My name is Jonathon Earth, Sr., and I am a member of the Winnebago Tribe of Nebraska. My address is Box 819, Winnebago, Nebraska. I currently have the honor and responsibility of serving as President of the Native American Church of Winnebago, Nebraska. Our church is a member chapter of the Native American Church of North America.

Our Native American church in Winnebago began in 1889, when John Rave, a member of our Tribe, brought the teachings of this church up from Oklahoma, where he had been living and learning those ways.

It was from the Winnebago Reservation in the early years of this century that these Native American Church teachings spread to many of the tribes in the Great Plains and northern regions of this country.

If you ever have the opportunity to read a book called The Peyote Religion, by Professor Omer Stewart, you will see in there some of the rich history of our church, and how the Winnebago people figure significantly in that history. Throughout this century, the Native American Church has grown to where it is the single largest religion on our Reservation. . .and the same is true on the Omaha Indian Reservation, with whom we share a common border.

From the Winnebago people have come many of the songs that are sung today in Peyote prayer services throughout Indian Country. From the Winnebago and Omaha Indian Reservations in Nebraska have come many of the leaders of the Native American Church. . .people like Elmer Blackbird (Omaha) who during the 1980's was President of the Native American Church of North America; and people like Reuben Snake (Winnebago) who was known to many in this room, and whose virtues and accomplishments could alone provide many days of testimony.

Mr. Blackbird and Mr. Snake have not only been leaders in our church, they have also been Chairmen of their tribes, highly regarded elders in their communities, and recipients of numerous honorary degrees -- not to mention United States military veterans. Both of them have testified before this Committee on this same urgent issue that brings us here today.

And, Senator Inouye and members of the Committee, it pains me to tell you that those good men, in their most devout and prayerful lives, while appearing humble and exemplary to us, have been committing felonies under the intolerably oppressive rules of American law.

And, of course it is not just them--it is many of our Native American Church members who live under threat of felony prosecution, and who are discriminated against in the work place. . .all depending on what state they live in, what states they travel through, where they go to pray and how their employers choose to interpret the law.

Nebraska, for instance, is one of 22 states where there is no protection in the law for us. Since the Smith decision in 1990, life has been very confusing and dangerous for us. It is only because the Omahas and Winnebagos have gone through the legal process of retrocession from Public Law 280 criminal jurisdiction that we can even pray in peace on our own reservations. We run the risk of felony prosecution everywhere else in the state of Nebraska--even on the other Indian reservations which are still under PL 280.

And it is not just the majority of Winnebagos and Omahas I'm talking about. Other Indian people, good devout NAC members from other states, run that same risk of felony arrest when they travel through our state. For instance, Native American Church chapters in North Dakota, South Dakota, Minnesota or Wisconsin send their member delegates to Texas to acquire our Peyote sacrament, which they do lawfully under the Texas laws and federal D.E.A. requirements.

But on their return trip home they must travel through Oklahoma where the law is unclear, and then Kansas where they are safe, and then Nebraska where they have no legal protections whatsoever. Senators, no one should be expected to live that way in America. If you ran such risks for practicing your own good

religious traditions, you too would find those circumstances intolerable, you would be outraged, and you would be sure to change the law so your religious life could be accommodated.

Senators, we respect our elders and leaders like Mr. Elmer Blackbird and Reuben Snake. We try to live up to the teachings that were handed down to them and that they in turn have tried to pass on to us. But how can we pass on those good moral and spiritual teachings of the Native American Church to our children in this climate of intolerance and fear? How can we bring our people into the tepee circle around our Holy Fireplace when they know they must pray fearful of a knock on the door?

Senator Inouye and members of the Committee, I would like to present myself as an example of the religious discrimination we currently live with. I chose a career in law enforcement as a 1983 graduate from the Nebraska Law Enforcement Training Center, located in Grand Island, Nebraska. Unfortunately, I have been the victim of job discrimination solely on the basis of my religion by City and by federal agency employers, which I would like to tell you about.

In the first example, I was employed as a city law enforcement officer by the Village of Winnebago. When my supervisor learned that I was a Native American Church member, he told me not to go around church services and, within one week, I was suspended -- even though I did not partake of the sacrament during duty hours. I was suspended a second time on the same ground by the Chief of Police. I subsequently resigned for attitudes such as these.

In the second example, when my Winnebago Tribe went through the long and difficult process of retrocession from PL 280 criminal

jurisdiction in the mid-1980's, I became a Bureau of Indian Affairs police officer on my Winnebago Reservation.

I was proud to serve my people that way, to help protect their peace and public safety. I like to think that I was a good officer. But after the Smith decision in the U.S. Supreme Court in 1990, I was informed by the BIA that they would not allow their officers to be active members of the Native American Church, to use our sacrament Peyote in our all night prayer services.

I was told, in effect, to choose between my religion and my job. No one said my religious life was interfering with my job performance, no one alleged that by going to the services of the largest religion on our reservation I became somehow unable to be a good cop in that community. No one, of course, could make such an outrageous allegation, and yet there I was, confronted with the ultimatum--your religion or your job.

Senators I had to leave that job and the career path I had chosen for myself and been well trained for. I currently am employed by the Winnebago Tribe as a bailiff in the Winnebago Tribal Court system. I have lower pay, fewer benefits and much more limited career advancement opportunities.

But I had no real choice. My religion is my spiritual foundation, even my marriage is rooted in that church. In order to have remained a police officer, I would have had to move to another jurisdiction and leave the friends and relatives that I had hoped to serve.

There are no doubt many such stories out there, because there are over a quarter of a million Indian people affiliated with this Native American Church way of life.

This is not the first time we have had to come forward to testify to protect our way of life. In the early decades of this century we had to travel to our state capitol to successfully defeat a proposed law that would have banned our church practices. In the early decades of this century we had to travel here to Washington to successfully defeat several legislative proposals that would have specifically outlawed our religion.

We had hoped that the passage of the American Indian Religious Freedom Act in 1978 marked the end to intolerance and persecution of our church. But it did not, and the Smith case has once again created a situation that threatens our spiritual and cultural survival.

Senators, this is sadly not the first time we have had to go through the humiliating process of having to justify our religion in these strange legal forums. But Senators, please, please make this time the last.

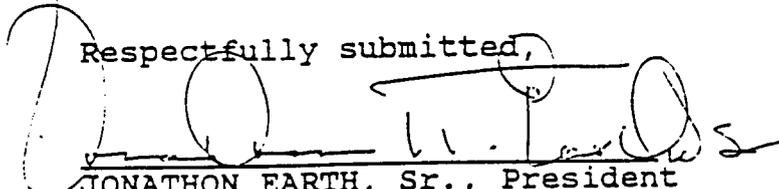
Reuben Snake resigned from a position on Senator Bob Kerrey's staff after the Smith decision, and told us he would devote the rest of his life if need be to try to fix this most vital and critical problem. Senators, Reuben Snake gave more energy than he had to this cause, and last June he died as a result.

But along that way he testified before this Committee at a Field Hearing on this crisis of religious freedom in Portland, Oregon in May of 1992. At that time he quoted Sir Edmund Burke in his testimony by reminding us all that "the only thing necessary for evil to triumph, is for good men to do nothing."

Senators, please do something.

Thank you very much for your kind attention.

Respectfully submitted,

  
JONATHON EARTH, Sr., President  
Native American Church  
Winnebago Tribe of Nebraska  
March 23, 1994

TESTIMONY OF LEN FOSTER, DIRECTOR  
NAVAJO NATION CORRECTIONS PROJECT  
BEFORE THE UNITED STATES  
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS  
ON NATIVE AMERICAN PRISONERS' RIGHTS  
NATIVE AMERICAN FREE EXERCISE OF RELIGION ACT  
S. 1021

WASHINGTON, D.C.

MARCH 23, 1994

Good afternoon, Mr. Chairman and members of the Senate Select Committee on Indian Affairs. Thank you for the invitation to offer testimony today at this important congressional hearing.

My name is Len Foster and I am the Director and Spiritual Advisor for the Navajo Nation Corrections Project. I am honored and pleased to offer testimony on behalf of approximately 1500 Native Americans whom I visit in thirty-eight state prisons and federal correctional institutions throughout the United States. I have been delegated the responsibility to present evidence of a serious human rights crisis affecting Native American prisoners, both male and female. This is a serious issue because our Native peoples are being incarcerated in very disproportionate numbers due to alcoholism and poverty. Approximately 7000 Native Americans have been identified in twenty-three states with significant Native American populations. As the Director of the Navajo Nation Corrections Project for the past fourteen years, I have both witnessed and experienced the harassment, interference, indifference, intimidation, and discrimination toward our Native traditional beliefs and the right to worship in a traditional fashion. The various state Departments of Corrections and the Federal Bureau of Prisons have violated the First Amendment rights of Native prisoners to practice their respective tribal religions. The ever-increasing number of incarcerated Native Americans presents a serious human rights issue.

Recent Supreme Court decisions of O'Lone and Turner (1987), Lyng (1988), and Smith (1990) cases have suspended protections for the right of traditional Native worship under the United States Constitution and laws. These decisions have made it virtually impossible for Native American prisoners to have First Amendment protection.

The American Indian Religious Freedom Act of 1978 had raised the hopes and expectations that religious freedom would be insured and guaranteed, but those hopes proved to be without foundation, and there has been little or no compliance with or enforcement of the policy.

The 1500 Native prisoners with whom the Navajo Nation Corrections Project has come into contact have demonstrated a lack of strong self-identity and self-esteem. Approximately 95-98% of Native Americans who are incarcerated are serious substance abusers, and the crimes for which they were convicted were committed while under the influence, primarily alcohol-related crimes. This rate is 33-50% higher than that for other ethnic groups in the institutions.

The anger, rage, shame, resentment, and pain exhibited are the result of a dysfunctional environment and addictive behavior. The psychological and emotional pain and grief have decimated Indian Nations across the United States. The Native American community has been completely invaded by alcohol, and our spiritual values have been undermined by alcohol. The spiritual identity and foundation of Native peoples are deteriorating. Reclaiming our spirituality

and spiritual identity are the bases for restoring dignity.

Since 1972, there have been more than forty lawsuits filed by Native prisoners seeking freedom of worship and the opportunity for recovery by becoming a dignified human being through the rekindling of ancient religious practices. It has been the experience of the Navajo Nation Corrections Project for the past fourteen years that religious and spiritual programs in corrections are successful and positive rehabilitative tools and therapies for Native Americans. We know from experience that self-esteem and dignity can only be restored and revived if we are allowed to teach our own people through traditional counseling and ancient ceremonial practices. The experience of incarceration also affects the immediate families, clans, communities, and Indian Nations, and for this reason, in particular, religious freedom for Native Americans is very important because our incarcerated relatives will soon return to their loved ones. Those individuals who have participated in religious and spiritual services while incarcerated are more culturally viable, respectful, and responsible contributing members upon returning to their communities.

All state prisons and federal penitentiaries provide chaplains, chapels, religious items, and religious services to inmates of Judeo-Christian and Muslim faiths, but have denied equitable conditions for the traditional religious practices of Native prisoners. Denial of access to traditional spiritual advisors is tantamount to a denial of an opportunity for recovery and healing. Native American inmates deserve the same

opportunities to practice their respective traditional religion as other inmates have to practice their religious beliefs, particularly the Sweatlodge Ceremony and the Pipe Ceremony.

Title III, Prisoners' Rights, of the Native American Free Exercise of Religion Act, S. 1021, will facilitate the healing and recovery process for Native prisoners through (1) access to the sweatlodges for a cleansing and purification of the emotional, physical, psychological, and spiritual well-being, (2) access to traditional spiritual leaders who shall be afforded the same stature, respect, and inmate contact as is afforded the clergy of any Judeo-Christian or Muslim faith, and who will lead and instruct in the ancient practices, songs, and prayers, as well as provide traditional counsel, (3) the right to wear a traditional hairstyle as dictated by religious beliefs, and the cessation of the indiscriminate cutting of long hair, which produces depression and emotional imbalance, and which many regard as a form of spiritual castration, and (4) access and right of possession of sacred items used in ceremonies such as the Pipe, drum, gourd, sage, cedar, sweetgrass, tobacco, medicine bundles, bags, feathers, corn pollen, and other traditional items and materials. These traditional practices and ceremonies must be respected without any interference, harassment, or irreverence. Discrimination toward Native American religious practices and beliefs must stop.

Federal legislation S. 1021, the Native American Free Exercise of Religion Act, in addressing the religious rights of Native prisoners, is therefore necessary to ensure that corrections

officials and courts appropriately apply relevant legal standards to the free exercise of Native religions by Native prisoners. S. 1021 will provide Native prisoners the equality of civil and human rights afforded other ethnic groups. Ignorance and lack of awareness should not be an excuse for systematically or arbitrarily denying religious rights and then justifying these denials on the basis of "security concerns." Those Native prisoners who participate in traditional religious practices are often model inmates and do not exhibit any security threats. Instead, they often show definite improvements in their behavior, responsibilities, sobriety, attitude, and lifestyle.

There is a definite need to include Title III, Section 301, Native Prisoners' Rights of the Native American Free Exercise of Religion Act, and the Navajo Nation Corrections Project strongly urges the Senate Committee on Indian Affairs and the United States Senate to pass S. 1021. As sovereign Nations, we come before this distinguished body and request your complete understanding and support. The original peoples of this land have survived, endured, and prevailed, and the passage of S. 1021 will preserve and perpetuate the beauty, harmony, and richness of Native American cultures and traditions, and insure complete religious freedom, healing and recovery of the original peoples of this land. Thank you.

NAVAJO NATION CORRECTIONS PROJECT  
PRISON VISITS:

ARIZONA

Arizona State Prison - Florence  
Tucson  
Winslow  
Douglas  
Fort Grant  
Perryville  
Phoenix  
Safford  
Yuma

NEW MEXICO:

Penitentiary of New Mexico - Santa Fe  
Central New Mexico Correctional Facility - Los Lunas  
Los Lunas Correctional Facility - Los Lunas  
New Mexico Women's Correctional Facility - Grants  
Western New Mexico Correctional Facility - Grants  
Southern New Mexico Correctional Facility - Las Cruces

COLORADO:

Colorado State Prison - Canon City  
Ordway  
Buena Vista

UTAH:

Utah State Prison - Draper  
Central Utah Correctional Facility - Gunnison

OKLAHOMA:

Oklahoma State Prison - McAlester  
Lexington

MONTANA:

Montana State Prison - Deerlodge

CALIFORNIA:

California State Prison - San Quentin

SOUTH DAKOTA:

South Dakota State Prison - Sioux Falls  
Springfield

NORTH CAROLINA:

Eastern Correctional Institution - Maury

OHIO:

Ohio State Correctional Facility - Mansfield

MINNESOTA:

Minnesota State Prison - Stillwater

FEDERAL CORRECTIONAL INSTITUTIONS:

FCI - Safford, Arizona  
FCI - Phoenix, Arizona  
FCI - Tucson, Arizona  
FCI - LaTuna; Anthony, New Mexico  
FCI - El Reno, Oklahoma  
FCI - Englewood, Colorado  
FCI - Lompoc, California  
FCI - Allenwood, Pennsylvania  
FCI - McKean, Pennsylvania  
FCI - Pleasanton, California

UNITED STATES PENITENTIARY:

USP - Leavenworth, Kansas  
USP - Lompoc, California  
USP - Lewisburg, Pennsylvania

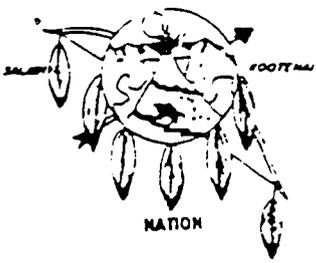
PRISON CAMP:

Prison Camp - LaTuna  
Prison Camp - Lompoc  
Prison Camp - Englewood

U.S. FEDERAL MEDICAL CENTER FOR PRISONERS:

USFMC - Springfield, Missouri





THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD NATION

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Rhonda R. Swaney - Vice Chairwoman  
Carole McCrea - Secretary  
Lloyd Irvine - Treasurer  
Louis Adams  
Elmer "Sonny" Morigeau Jr.  
Henry "Hank" Baylor  
D. Fred Matt  
Donald "Donny" Dupuis  
Mary Lefthand

Testimony of Patrick Lefthand

Submitted to Senator Daniel Inouye

on behalf of the  
Confederated Salish and Kootenai Tribes

Hearing on Senate Bill 1021, the Native American  
Free Exercise of Religion Act of 1993

March 23, 1994

Good morning Senator. My name is MYUKNANA (Little Weasel). In English, I am known as Patrick Lefthand. I am here today on behalf of the Confederated Salish and Kootenai Tribes, and I am Medicine man for the Kootenai people.

What I will say to today, I say with much difficulty and with much reflection; my religion and religious practices are not something I can speak about freely. I am here today because my religious practices are endangered, and once again subject to religious persecution by the United States government. Religious intolerance and suppression of our Kootenai religion is not new. This form of discrimination has characterized our relationship with the federal government.

This persecution began in 1842 with the Jesuits who arrived on our homelands bringing with them the Catholic religion. With no respect or understanding of our culture or religion, the Jesuits instituted a campaign to suppress our religious and cultural practices. The Jesuits attempted to "civilize" us by forcing us to give up our living very intimately with the land and the seasons. Our children were taken away from us and sent to a boarding school where they were punished for speaking Indian, and were forced to learn english and the other ways of the white man.

At the about the same time that U.S. troops were used to stamp out the Ghost Religion at Wounded Knee, South Dakota, Kootenai sacred dances were prohibited and the Kootenai people were ordered to destroy their medicine bundles. These

actions began a 500 year pattern of discrimination against traditional cultural beliefs, that still persist today.

The traditional homelands of the Kootenai people include portions of Idaho, Montana, and Canada with Kootenai Falls at its center. This is a pristine area of Montana rich in wildlife and other subsistence resources. This area is important to the Kootenai not only for the harvesting and gathering of wildlife and food, but it is also at the heart of our spiritual life.

Kootenai religion is based on our relationship to nature, society and the spiritual world. We are very dependent on the land, and our spiritual relationship with the land. We are dependent on the same natural places and spirit guides who protected and instructed our ancestors. To maintain harmony with the spirit world we must conduct rituals at appropriate times.

Our very survival would be threatened if we could no longer conduct our necessary ceremonies and protect our holy places. These holy places not only have special geographic or physical qualities, but they also possess very special spiritual qualities as well. Sacred sites themselves, apart from the ceremonies conducted there, have deep religious significance and importance. To maintain the integrity of such sites we must assure not only our continued access to these sites, the privacy and silence necessary to communicate with our Creator, Nupika, but we must also ensure that offerings and other religious objects remain undisturbed. We

are the rightful guardians over these holy places. We have an obligation to see that the spiritual integrity of these sites are not disturbed.

In *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988), the Supreme Court with the sweep of a pen told us that our religion did not deserve the same protection afforded to all americans who practice Judeo-Christian religions. As Justice Brennan noted in his dissent, the decision "leaves Native Americans with absolutely no constitutional protection against perhaps the gravest threat to their religious practices."

The *Lyng* decision has created a human rights crisis for Indian people. In a nation that prides itself on the the protection of individual liberties, it is difficult for me to understand why the the religions of the first Americans, which predate the United States Constitution, are not protected by the United States Constitution.

Although, the First Amendment to the Constitution guarantees religious freedom for all people, this guarantee has never been fully extended to Indian people. The United States recognizes and respects Judeo-Christian religious practices, however, as Lyng demonstrates, it has never given the same respect for the religious practices of the people who lived here and lived off the land before the Europeans arrived in this Country. The United States historical and current treatment of Indian religious practices has created a double standard that Congress must now address. Federal legislation is necessary to ensure the continuation and

vitality of Indian communities. That is why I am here today. To ask Congress to act to correct this injustice by enacting legislation that will assure the religious liberty of the first Americans.

Since the Lyng decision, the Salish and Kootenai Tribes have been actively seeking the enactment of legislation which would overrule Lyng and provide meaningful protection to our religious practices and protect our sacred areas which lie within our aboriginal homelands and at which we still conduct ceremonies that are necessary to our very survival. Since 1991, I have served, with President Zah, as Co-Chair of the Tribal Leaders Forum Committee on Cultural and Religious Rights. In 1991, the Navajo Nation and the Confederated Salish and Kootenai Tribes sponsored an "American Indian Religious Freedom Summit" in Albuquerque, New Mexico which was attended by nearly 400 traditional leaders. The Summit was a call to action, and a call for equality in religious freedom. The consensus of the Summit participants was that Indians do not have the same religious freedoms as other Americans, even though their ceremonies developed thousands of years before Europeans arrived in this country and that recent U.S. Supreme Court decisions further eroded Indian religious freedom, thus, making it necessary for Tribes to push for federal legislation to protect their religious practices.

The Salish and Kootenai Tribes have also worked with other Indian organizations to build a broad-based Coalition

consisting of environmental, church, and human rights groups to support our call for federal legislation and protection of sacred sites. Our Coalition now consists of more than 80 national organizations and continues to grow.

At the National Congress of American Indians (NCAI) 1993 Annual Convention more than 100 Indians participated in a special religious freedom hearing and provided their view and comments on S. 1021. In addition, and most importantly, at the Convention, the 1,500 representatives of about 300 tribal governments unanimously passed a resolution stating that religious freedom legislation was NCAI's top legislative priority for 1994.

On November 15, 1993, President Clinton signed the Religious Freedom Restoration Act into law and reversed the effects of the ill-judged Supreme Court decision in Employment Division v. Smith and reestablishes a standard which better protects religious practices for more mainstream religions. At the signing ceremony, President Clinton recognized this historical moment and the ability of this legislation to reaffirm constitutional protections. But, the President also recognized that the "agenda for restoration of religious freedom in American will not be complete until traditional Native American religious practices have received the protection they deserve."

A tremendous amount of support by both Indian Country and non-Indian organizations has been generated in support of religious freedom legislation. It is now time for Congress to complete the agenda for religious freedom restoration and

end this 500 year pattern of discrimination towards Indian religious practices by enacting legislation to assure that the first Americans, like all Americans have the right to worship freely and to exercise their thousands-year-old religious practice.