

AMERICAN INDIAN RELIGIOUS FREEDOM ACT AMENDMENTS OF 1994

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

H.R. 4155

TO PROVIDE FOR THE MANAGEMENT OF FEDERAL LANDS IN A MANNER THAT DOES NOT UNDERMINE OR FRUSTRATE TRADITIONAL NATIVE AMERICAN RELIGIONS OR RELIGIOUS PRACTICES

H.R. 4230

TO AMEND THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT TO PROVIDE FOR THE TRADITIONAL USE OF PEYOTE BY INDIANS FOR RELIGIOUS PURPOSES, AND FOR OTHER PURPOSES

HEARING HELD IN WASHINGTON, DC

JUNE 10, 1994

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H.R. 4155, TO PROVIDE FOR THE MANAGEMENT OF FEDERAL LANDS IN A MANNER THAT DOES NOT UNDERMINE OR FRUSTRATE TRADITIONAL NATIVE AMERICAN RELIGIONS OR RELIGIOUS PURPOSES; AND, H.R. 4230, TO AMEND THE AMERICAN RELIGIOUS FREEDOM ACT TO PROVIDE FOR THE TRADITIONAL USE OF PEYOTE BY INDIANS FOR RELIGIOUS PURPOSES, AND FOR OTHER PURPOSES

FRIDAY, JUNE 10, 1994

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

The subcommittee met, pursuant to call, at 9:40 a.m. in room 1310, Longworth House Office Building, Hon. Bill Richardson (chairman of the subcommittee) presiding.

STATEMENT OF HON. BILL RICHARDSON

Mr. RICHARDSON. The committee will come to order. Today we are taking testimony on H.R. 4230 and H.R. 4155. Both bills amend the American Indian Religious Freedom Act of 1978.

For years, we have heard that the 1978 Act has no teeth, and today we are seeking realistic ways to provide protections for Native American religious practices. H.R. 4155 deals with the protection of sacred sites and H.R. 4230 deals with the sacramental use of peyote. As most of you know, we are coming down to a precious few days in the 103rd Congress. Consequently, it is time to talk about what can realistically get enacted this year.

We have also solicited testimony on a proposal drafted by the Chochiti Pueblo which deals with sacred sites. I should note that an additional hearing on sacred sites is needed, and will be held in the very near future, so that the Committee can be sure it has heard from all interested parties who may be impacted by the sacred sites legislation.

Witnesses will have five minutes to present testimony. Your full written statement will be made part of the record, and I ask that you summarize your statement. The record will be open for two weeks.

At this time I ask unanimous consent that the bills, backgrounds and section-by-section analyses be made part of the record.
[The information follows:]

103D CONGRESS
2D SESSION

H. R. 4155

To provide for the management of Federal lands in a manner that does not undermine or frustrate traditional Native American religions or religious practices.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1994

Mr. RICHARDSON introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To provide for the management of Federal lands in a manner that does not undermine or frustrate traditional Native American religions or religious practices.

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.**

4 This Act may be cited as the “American Indian
5 Religious Freedom Act Amendments of 1994”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) unlike any other established religion, many
9 traditional Native American religions are site-spe-

1 cific in that the Native American religions hold cer-
2 tain lands or natural formations to be sacred;

3 (2) such sacred sites are an integral and vital
4 part of the Native American religions and the reli-
5 gious practices associated with such religions;

6 (3) many of these sacred sites are found on
7 lands which were formerly part of the aboriginal ter-
8 ritory of the Indians but which now are held by the
9 Federal Government; and

10 (4) lack of sensitivity or understanding of tradi-
11 tional Native American religions on the part of Fed-
12 eral agencies vested with the management of Federal
13 lands has resulted in the lack of a coherent policy
14 for the management of sacred sites found on Federal
15 lands and has also resulted in the infringement upon
16 the rights of Native Americans to religious freedom.

17 **SEC. 3. MANAGEMENT OF FEDERAL LANDS SO AS TO NOT**
18 **UNDERMINE NATIVE AMERICAN RELIGIOUS**
19 **PRACTICES.**

20 Public Law 95-341 (42 U.S.C. 1996), popularly
21 known as the American Indian Religious Freedom Act, is
22 amended by adding at the end thereof the following new
23 section:

24 “SEC. 3. (a)(1) Except as provided by subsection (b),
25 no Federal lands described in paragraph (2) may be man-

1 aged in a manner that undermines and frustrates a tradi-
2 tional Native American religion or religious practice.

3 “(2) The Federal lands referred to in paragraph (1)
4 are those lands that—

5 “(A) have historically been considered sacred
6 and indispensable by a traditional Native American
7 religion, and

8 “(B) are necessary to the conduct of a Native
9 American religious practice.

10 “(b) Subsection (a)(1) shall not apply to a manage-
11 ment decision that is necessary to protect a compelling
12 governmental interest. In making such a management de-
13 cision, the Federal agency shall attempt to accommodate
14 the various competing interests and shall, to the greatest
15 extent feasible, select the course of action that is the least
16 intrusive on traditional Native American religions or
17 religious practices.

18 “(c) An Indian tribe or a member of an Indian tribe
19 may, upon showing of actual harm suffered by such tribe
20 or member, bring an action in the appropriate United
21 States district court against any person who is violating,
22 or who has violated, the prohibition contained in this sec-
23 tion. In any such action, the court may enjoin such viola-
24 tion or issue such orders as may be necessary to enforce

1 such prohibition or to require that action be taken to rem-
2 edy such violation, or any combination of the foregoing.

3 “(d) Nothing in this section shall be interpreted as
4 requiring any Federal agency to totally deny public access
5 to Federal lands.

6 “(e) As used in this section—

7 “(1) The term ‘Federal lands’ has the same
8 meaning as provided by section 2(5) of the Native
9 American Graves Protection and Repatriation Act
10 (25 U.S.C. 3001(5)).

11 “(2) The term ‘Indian tribe’ means any Indian
12 tribe, band, nation, or other organized group or com-
13 munity, including any Alaska Native village or re-
14 gional or village corporation as defined in or estab-
15 lished pursuant to the Alaska Native Claims Settle-
16 ment Act (85 Stat. 688) (43 U.S.C. 1601 et seq.),
17 which is recognized as eligible for the special pro-
18 grams and services provided by the United States to
19 Indians because of their status as Indians.

20 “(3) The term ‘tribal lands’ includes Indian res-
21 ervations; public domain Indian allotments; former
22 Indian reservations in Oklahoma; land held by incor-
23 porated Native groups, regional corporations, and
24 village corporations under the provisions of the Alas-
25 ka Native Claims Settlement Act (43 U.S.C. 1601 et

1 seq.); and dependent Indian communities within the
2 borders of the United States, whether within the
3 original or subsequently acquired territory thereof
4 and whether within or without the limits of a
5 State.”.

BACKGROUND ON H.R. 4155

The American Indian Religious Freedom Act was enacted in 1978. The Act declared that it was "the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indians... including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites."

In spite of its good intentions, the Act has proved itself to be a paper tiger insofar as allowing Indians to legally challenge Federal actions which may be in contravention of the public policy stated in the Act. The Supreme Court in the case of *Lyng v. Northwest Indian Cemetery Protective Association*, stated that "Nowhere in the law is there as much as a hint of any intent to create a cause of action or any judicially enforceable individual rights."

Until *Lyng*, Indian religious practitioners had reasons to believe that in spite of the lack of legal recourse under the American Indian Religious Freedom Act, their religious freedom rights could at least be protected under the Constitution. However, in the *Lyng* case, the Supreme Court held that under the free exercise clause of the Constitution, the Government could not be prevented from destroying sites held sacred by traditional Indian religions because the clause was written in terms of what the Government cannot do to the individuals, not in terms of what the individual can extract from the Government.

In their dissenting opinion, Justices Brennan, Marshall and Blackmun expressed the view that the adoption of this principle pushed the majority of the Court to the astonishing conclusion that Federal land-use decisions that render the practice of a given religion impossible do not burden that religion in a manner cognizable under the free exercise clause because such decisions neither coerce conduct inconsistent with religious beliefs nor penalize religious activity.

Justice Brennan, in his dissent stated that:

"In marked contrast to traditional western religions, the belief systems of Native Americans do not rely on doctrines, creeds, or dogmas... Where dogma lies at the heart of Western religions, Native American faith is inextricably bound to the use of the land. The site-specific nature of Indian religious practice derives from the Native American perception that land is itself a sacred living being."

H.R. 4155 attempts to strike a balance among the many competing interests involved in Federal land management decisions. The bill provides that Federal lands which have been considered sacred and indispensable to a Native American religion and are necessary to the conduct of that religion are entitled to protection. It further provides that these lands should not be managed in a way that will pose a threat of undermining and frustrating the Native American religion or religious practice. Under the bill, Federal officials are granted latitude to act to protect compelling governmental interests. These land management officials shall, to the greatest extent feasible, select a course of action that is the least intrusive on traditional Native American religions or religious practices.

H.R. 4155 establishes a cause of action by which an Indian tribe or a member of an Indian tribe can obtain injunctive relief and other judicial remedies against violators of their religious freedom rights on sacred sites on Federal lands.

SECTION-BY-SECTION ANALYSIS ON H.R. 4155**SECTION 1. SHORT TITLE**

Section 1 provides that the Act may be cited as the "American Indian Religious Freedom Act Amendments of 1994".

SECTION 2. FINDINGS

Section 2 provides for the findings of the Congress.

SECTION 3. MANAGEMENT OF FEDERAL LANDS SO AS TO NOT UNDERMINE NATIVE AMERICAN RELIGIOUS PRACTICES

Section 3 provides for an amendment to the American Indian Religious Freedom Act of 1978 as follows:

Subsection (a)(1) provides that no Federal lands may be managed in a way that undermines and frustrates traditional Native American religion.

Subsection (a)(2) states that the Federal lands referred to in (a) (1) are those that have (A) historically been considered sacred and indispensable by traditional Native American religion, and (B) are necessary to the conduct of a Native American religious practice.

Subsection (b) provides that Subsection (a)(1) is not to apply to a management decision that is necessary to protect a compelling governmental interest. It further provides that when making such management decisions, Federal agencies are to attempt to accommodate competing interests and to select the course of action that is the least intrusive on traditional Native American religions.

Subsection (c) provides that an Indian tribe or a member of an Indian tribe may bring an action in Federal court against any person who is violating the prohibition contained in this section. It further provides that the court may enjoin the violation or issue such orders as may be necessary to enforce the prohibition.

Subsection (d) provides that nothing in this section is to be interpreted as requiring Federal agencies to totally deny public access to Federal lands.

Subsection (e) provides for definitions of terms used within this section.

103^D CONGRESS
2^D SESSION

H. R. 4230

To amend the American Indian Religious Freedom Act to provide for the traditional use of peyote by Indians for religious purposes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 1994

Mr. RICHARDSON introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the American Indian Religious Freedom Act to provide for the traditional use of peyote by Indians for religious purposes, and for other purposes.

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.**

4 This Act may be cited as the "American Indian
5 Religious Freedom Act Amendments of 1994".

6 **SEC. 2. TRADITIONAL INDIAN RELIGIOUS USE OF THE**
7 **PEYOTE SACRAMENT.**

8 The Act of August 11, 1978 (42 U.S.C. 1996), com-
9 monly referred to as the "American Indian Religious Free-

1 dom Act”, is amended by adding at the end thereof the
2 following new section:

3 “SEC. 3. (a) The Congress finds and declares that—

4 “(1) for many Indian people, the traditional
5 ceremonial use of the peyote cactus as a religious
6 sacrament has for centuries been integral to a way
7 of life, and significant in perpetuating Indian tribes
8 and cultures;

9 “(2) since 1965, this ceremonial use of peyote
10 by Indians has been protected by Federal regulation;

11 “(3) while at least 28 States have enacted laws
12 which are similar to, or are in conformance with, the
13 Federal regulation which protects the ceremonial use
14 of peyote by Indian religious practitioners, many
15 States have not done so, and this lack of uniformity
16 has created hardship for Indian people who partici-
17 pate in such religious ceremonies;

18 “(4) the Supreme Court of the United States,
19 in the case of *Employment Division v. Smith*, 494
20 U.S. 872 (1990), held that the First Amendment
21 does not protect Indian practitioners who use peyote
22 in Indian religious ceremonies, and also raised un-
23 certainty whether this religious practice would be
24 protected under the compelling State interest stand-
25 ard; and

1 “(5) the lack of adequate and clear legal protec-
2 tion for the religious use of peyote by Indians may
3 serve to stigmatize and marginalize Indian tribes
4 and cultures, and increase the risk that they will be
5 exposed to discriminatory treatment in violation of
6 the religious guarantees of the First Amendment of
7 the Constitution.

8 “(b)(1) Notwithstanding any other provision of law,
9 the use, possession, or transportation of peyote by an In-
10 dian who uses peyote in a traditional manner for bona fide
11 ceremonial purposes in connection with the practice of a
12 traditional Indian religion is lawful, and shall not be pro-
13 hibited by the United States or any State. No Indian shall
14 be penalized or discriminated against on the basis of such
15 use, possession or transportation, including, but not lim-
16 ited to, denial of otherwise applicable benefits under public
17 assistance programs.

18 “(2) This section does not prohibit such reasonable
19 regulation and registration of those persons who cultivate,
20 harvest, or distribute peyote as may be consistent with the
21 purposes of this Act.

22 “(3) This section does not prohibit application of the
23 provisions of section 481.111(a) of Vernon’s Texas Health
24 and Safety Code Annotated, in effect on the date of enact-

1 ment of this section, insofar as those provisions pertain
2 to the cultivation, harvest, and distribution of peyote.

3 “(c) For purposes of this section—

4 “(1) the term ‘Indian’ means a member of an
5 Indian tribe;

6 “(2) the term ‘Indian tribe’ means any tribe,
7 band, nation, pueblo, or other organized group or
8 community of Indians, including any Alaska Native
9 village (as defined in, or established pursuant to, the
10 Alaska Native Claims Settlement Act (43 U.S.C.
11 1601 et seq.)), which is recognized as eligible for the
12 special programs and services provided by the
13 United States to Indians because of their status as
14 Indians;

15 “(3) the term ‘Indian religion’ means any
16 religion—

17 “(A) which is practiced by Indians, and

18 “(B) the origin and interpretation of which
19 is from within a traditional Indian culture or
20 community; and

21 “(4) the term ‘State’ means any State of the
22 United States, and any political subdivision thereof.

23 “(d) Nothing in this section shall be construed as ab-
24 rogating, diminishing, or otherwise affecting—

1 “(A) the inherent rights of any Indian
2 tribe;

3 “(B) the rights, express or implicit, of any
4 Indian tribe which exist under treaties, execu-
5 tive orders, and laws of the United States;

6 “(C) the inherent right of Indians to prac-
7 tice their religions; and

8 “(D) the right of Indians to practice their
9 religions under any Federal or State law.”.

BACKGROUND ON H.R. 4230

H.R. 4230 makes statutory the protection now provided by Federal regulation and the laws of 28 States for the religious use of peyote by Indian practitioners. This legislation to protect the First Amendment right of Indians to use peyote as a sacrament is made necessary by the ruling of the Supreme Court of the United States in the case of *Employment Division v. Smith*, 494 U.S. 872 (1990). Under *Smith*, the Court held that unless a state provides a specific exemption, the sacramental use of peyote can be declared illegal.

Peyote, the scientific name of which is *Lophophora Willaimsii*, is a small, spineless cactus that grows only in the Rio Grande valley of Texas and northern Mexico. Native American religious use of peyote was discovered by Spanish explorers in the 1600's and has continued to the present. Such use exists today, largely through the Native American Church of North America (NAC), among about 50 Indian tribes in the United States. The NAC is the present-day embodiment of one of the oldest religious traditions in the western hemisphere. Anthropologists date the sacramental use of the peyote cactus among indigenous peoples back 10,000 years. The contemporary NAC was first incorporated in Oklahoma in 1918, and now has chapters in 20 States. About 250,000 American Indians are affiliated with the NAC.

The Federal District Court in New Mexico, in the 1986 case of *Toledo v. Nobel-Sysco, Inc.*, held that the religious use of peyote was not illegal. The court found that--

"Church peyote users believe that peyote is a sacred and powerful plant. Peyote is seen as a medicine, a protector, and a teacher. In terms used by other religions, peyote can be called a sacrament, something which when eaten gives awareness of God. The use of peyote is central to the Native American peyote religion. The religion teaches that those who use peyote must not use alcohol. It encourages love of parents and obedience to parents, fidelity to a spouse, and charity towards others. The peyote religion does not prohibit members from also practicing other religions."

While the First Amendment right of Indian practitioners of the peyote religion is endangered by the *Smith* decision, its religious use is basically non-controversial. Attempts by the Congress to recognize and protect this right have a long history. When the House of Representatives passed H.R. 2, which became the "Drug Abuse Control Amendments of 1965", it protected the right of Indians to use peyote in connection with the ceremonies of a certified religious organization. The Senate omitted that specific protection, preferring that substances be included on such a list on a case-by-case basis. Congressman Harris assured House members that such omissions would not prevent bona fide religious use because courts had already upheld peyote use as a First Amendment right. The Administration then added peyote to Schedule I by administrative regulation in 1966, but provided an exemption for non-drug use of peyote in religious ceremonies of the Native American Church.

When Congress passed the Controlled Substance Act of 1970, it enacted Schedule I into law. During hearings on the legislation, Congressman Satterfield expressed concern that the religious use of peyote by Indian practitioners be protected. The Administration assured him that this would be taken care of by regulation. The regulations adopted in 1971 to implement the Act included such an exemption and provides, at 21 CFR 1307.31, that--

"The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church."

Since that time, Native American Church use of peyote as a religious sacrament has had the limited protection of that Federal regulation. Also, 28 States have included some degree of protection of the religious use of peyote by Indians in their laws. Unfortunately, neither the Federal regulation nor the state laws provide the full range of protection needed for the unhindered religious use of peyote by Indians, and 22 of the States still have no laws protecting that right.

Officials of the Drug Enforcement Administration of the Department of Justice testified at a House hearing in 1993 that the religious use of peyote by Indians has nothing to do with the vast and violent traffic in illegal narcotics that plagues this country. The NAC has a good, cooperative relationship with DEA in ensuring that peyote is lawfully harvested and distributed solely for American Indian religious use. The distribution of peyote is strictly controlled by Federal regulations, and by the laws and regulations of the State of Texas, the only State in which the sacrament grows in significant quantities.

H.R. 4230 provides that the use, possession or transportation of peyote for traditional, ceremonial purposes by Native Americans is not to be prohibited by the United States or any state. It further provides that no Indian is to be discriminated against for the use, possession or transportation of peyote.

SECTION-BY-SECTION ANALYSIS ON H.R. 4230**SECTION 1. SHORT TITLE**

Section 1 provides that the Act may be cited as the "American Indian Religious Freedom Act Amendments of 1994".

SECTION 2. TRADITIONAL INDIAN RELIGIOUS USE OF THE PEYOTE SACRAMENT

Section 2 amends the American Indian Religious Freedom Act of 1978 by adding a new "Section 3" as follows:

Subsection (a) provides the findings of the Congress.

Subsection (b)(1) provides that the use, possession or transportation of peyote by an Indian for ceremonial purposes is lawful and is not to be prohibited by the United States or any state government. It further provides that no Indian is to be penalized or discriminated against on the basis of the use, possession or transportation of peyote and benefits under public assistance programs are not to be denied.

Subsection (b)(2) provides that this section does not prohibit the regulation and registration of persons who cultivate, harvest or distribute peyote under this Act.

Subsection (b)(3) provides that this section is not to impact a Texas law governing the growing and distribution of peyote.

Subsection (c) provides for definitions for terms used in this section.

Mr. RICHARDSON. Before I introduce our first witnesses, let me mention that I have a number of very important members of the Native American community, and I would, as a representative from New Mexico, especially welcome the witnesses from New Mexico.

PANEL CONSISTING OF JOHN J. DUFFY, COUNSEL TO THE SECRETARY, U.S. DEPARTMENT OF THE INTERIOR; AND, GERALD TORRES, COUNSEL TO THE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY JILL GIBSON, ATTORNEY ADVISOR FOR OFFICE OF LEGISLATIVE AFFAIRS, DENNIS BURKE, ATTORNEY ADVISOR FOR OFFICE OF LEGISLATIVE AFFAIRS, AND, CRAIG ALEXANDER, ATTORNEY ADVISOR FOR ENVIRONMENT AND NATURAL RESOURCES

Mr. RICHARDSON. Let me introduce our first two panelists, Gerald Torres, Counsel to the U.S. Attorney General, U.S. Department of Justice; and Mr. John Duffy, counsel to the Secretary, Department of the Interior. These are two public officials we have worked closely with and have high regard for.

I want to commend Gerald Torres for the excellent organizational work he did in putting together the Albuquerque Conference in which many issues crystallized in the administration, the urgency of them being reflected at that meeting. Let me commend him and Mr. Duffy for the excellence of that meeting, as well as the very positive spin President Clinton's meeting had with our Native American leaders.

With that biased introduction to both of you, that means we expect very positive testimony. I would remind the witnesses that the green light will be operating and when you get the yellow light, it means that we ask you to start rapidly summarizing. When the red light comes, please proceed at your peril.

Mr. RICHARDSON. Mr. Torres, please proceed.

Mr. Duffy.

STATEMENT OF JOHN J. DUFFY

Mr. DUFFY. Thank you very much, Chairman Richardson and Members of the committee. I am pleased to be here today to present the views of the Department of Interior on H.R. 4155 and H.R. 4230. I am doing so at the request of Assistant Secretary Deer, who was unavoidably engaged in another preexisting commitment and was unable to attend today. I know that she is unhappy to be unable to come here and express her views in her forceful persuasive way on this issue, which is so important to her and on which she has taken such a strong leadership role within both the Department and the administration.

The administration strongly supports the purposes of these bills. We support the principle of access to public lands for traditional Indian religious purposes and the protection provided for traditional use of peyote.

I am not going to read my statement, I will summarize it for the record. While we are not providing fully detailed comments on the bills at this time because of the problem of coordinating the interests and approval of all the affected agencies, we are able to offer some general comments and recommendations.

We believe that there is considerable merit in H.R. 4155, not only in its purpose, but in its relative simplicity and in its limited applicability to federally recognized tribes and their citizens and to the Federal Government management of Federal lands.

I will defer to Mr. Torres to discuss the constitutional issues in greater detail in his testimony; however, I will summarize the Department position by saying that 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.

While we recognize the great merits of H.R. 4155 we think that there are certain issues that we would like to see changed. We would recommend, for example, that: the range of Federal and federally related actions which are subject to the bill be more carefully defined; the application of the bill be limited to new actions, certain renewals and reauthorizations; the terminology of the Religious Freedom Restoration Act of 1993 be adopted with respect to behavior which is to be limited by the bill; protections be provided for confidentiality and secrecy of Indian religious sites and practices where applicable; and certain exceptions for emergency conditions be included.

The bill also provides for a cause of action against a person. We recommend that, instead, the cause of action be directed against the appropriate agency. The bill also provides for a cause of action by individuals, as well as tribes. In keeping with the government-to-government relationship, we recommend that a cause of action be limited to tribes and their designated representatives.

With respect to H.R. 4230, we strongly support its purposes and we have no objections to its provisions, although I would defer again to my colleague, Mr. Torres, and to the Justice Department, for primary comment on this particular bill. I am aware that the committee has requested comment on the Cochiti bill, but I have been informed that the administration has a policy of not commenting on bills that have not been introduced. I have been asked to make that statement, and I am doing so.

This concludes my testimony. I notice I still have the greenlight, which shows that I still retain some of the instincts I developed as an advocate before courts of appeals. I look forward to working with you and with your staff—and I know that I can say the same for the Assistant Secretary—in trying to fulfill your goal of getting legislation on this very important and significant issue enacted as soon as possible.

[Prepared statement of Mr. Duffy follows:]

STATEMENT OF JOHN J. DUFFY, COUNSELLOR TO THE SECRETARY,
DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIVE
AMERICAN AFFAIRS, COMMITTEE ON NATURAL RESOURCES, UNITED STATES
HOUSE OF REPRESENTATIVES, ON H.R. 4155 AND H.R. 4230, BOTH ENTITLED
"AMERICAN INDIAN RELIGIOUS FREEDOM ACT AMENDMENTS OF 1994".

JUNE 10, 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 H.R. 4155, a bill "To provide for the management of Federal lands in a manner that does not undermine or frustrate traditional Native American religions or religious practices", and H.R.4230, a bill "To amend the American Indian Religious Freedom Act to provide for the traditional use of peyote by Indians for religious purposes, and for other purposes".

The Administration strongly supports the purposes of the bills and the long overdue recognition of religious freedom that these bills represent for Indian Tribes and their citizens. We strongly support the principle of access to public lands for traditional Indian religious purposes, affirmed in H.R. 4155, and we strongly support the protection provided by H.R. 4230 for the traditional

use of peyote by Indians for religious purposes. We support providing a process to protect and focus attention on the need to allow exercise of their traditional religions by Tribes and their citizens .

We believe federal legislative protection of traditional Indian religions and religious practices is warranted by the special historical circumstances and the political relationship that Congress has long recognized and applied with respect to recognized 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 American Indian religions, and increase appreciation for their unique qualities.

Indian religious traditions have natural sites, as well as plants and animals, for their spiritual basis. We recognize that protection of the exercise of the American Indian traditional religions involves providing protection in public areas, areas which once were tribal lands, where traditional Indian religions were once freely practiced. These lands, as well as plants and animals, are as important to the exercise of Indian 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 legislation that would further fulfill the promise of the First Amendment for Native Americans.

Because of time limitations and the need to accommodate the interests and obtain the approval of all of the many affected agencies, we are unable to provide fully detailed comments on the bills at this time, but we are able to offer some general comments and recommendations.

We believe that there is merit in H.R. 4155, not only in its purpose, but in its relative simplicity, and in its limited applicability to federally recognized Tribes and their citizens, and to federal government management of federal lands.

Protecting Native American religious sites and practices raises potentially complex issues of constitutionality under the United States Constitution and of manageability for government agencies. We seek a bill that is meaningful to Tribes and their practitioners, while reducing the risk of successful constitutional challenge, and actively encouraging land managers to work cooperatively with tribal governments to avoid conflicts.

The Department of Justice will discuss the constitutional issues in greater detail in its testimony. However, we believe that the government-to-government relationship between federally recognized Tribes and the United States is central to protecting tribal sovereignty and to defending the bill's constitutionality on establishment and equal protection grounds.

We believe that limiting application only to federally recognized Tribes and their members, as this bill is apparently intended to do, will serve to protect and strengthen this government-to-government relationship, and to protect the Tribes' sovereignty over the affairs of their citizens, their territory, and their religions, as they choose.

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 groups that lack federally recognized status, including administrative 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.

While recognizing merits in H.R. 4155, we have some concerns and recommendations. We believe that any bill protecting Indian

religions should seek to avoid litigation to the extent possible by establishing an administrative review and decision process, and encouraging early and meaningful consultation by government agencies with Tribes as to proposed actions, to identify and solve problems through cooperative arrangements and, where possible, to establish specific agreements to effectively address Indian religious issues. Our greatest concern is that the bill does not do enough to minimize litigation.

The bill lacks specificity as to conditions under which a federal land manager may deny or limit access to Indian religious practitioners to religious sites on federal lands. It does not provide a process where Tribes may be notified and consulted in advance by federal managers as to actions which may burden Indian religious practices. Nor does it provide any uniformity of process or standards among federal agencies. Additionally, the definition of religious site may not offer sufficient protection to Indian religious practices.

We would also recommend that: (1) the range of Federal and federally related actions which are subject to the bill be more carefully defined; (2) the application of the bill be limited to new actions, certain renewals, re-authorizations, and similar decisions, and certain routine activities not be included; (3) the terminology of the Religious Freedom Restoration Act of 1993 be adopted with respect to the behavior which is to be limited by

the bill, and as to applicable burdens of proof and the application of the compelling interest test; (4) protections be provided for confidentiality and secrecy of Indian religious sites and practices where applicable; and (5) that certain authorities for emergency conditions be included.

The bill provides for a cause of action against a "person." We recommend that any cause of action be against the appropriate agency. The bill also provides for a cause of action by individuals as well as tribes. In keeping with the government-to-government relationship, we recommend that a cause of action be limited to "tribes and their designated representatives."

With respect to H.R. 4230, we strongly support its purpose, and we have no objection to its provisions. We defer to the Justice Department and the DEA for primary comment on the bill. We note, however, that the bill has no provision for recognition of the special needs of the military, law enforcement agencies, and public safety agencies such as Transportation, to apply reasonable limits on peyote use associated with job performance.

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 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.

Mr. RICHARDSON. Let me say that what we should do is informally talk about the Cochiti draft, because I consider it very important. It could be the breakthrough we need to deal with this issue in terms of dealing with the secret sites.

Let me recognize my good friend and distinguished Ranking Member of the subcommittee, Craig Thomas, who has been very active and helpful on a variety of our Native American bills.

Mr. THOMAS. Thank you, Mr. Chairman. I am sorry I am late. I was in the Park Service hearing. I will submit a statement.

Let me say that I fully support H.R. 4230 and I think it is something that we should do. I understand there is some agreement with an amendment that might deal with the military and the Department of Transportation. Perhaps you have already talked about that. So I look forward to supporting that bill.

H.R. 4155—I have some concerns about that. We certainly want to be in a position to preserve those places that have some sort of religious significance. On the other hand, I think there have to be some definitions, or we may have to reserve all of Wyoming because it has religious implications. So I think there needs to be some refining in that one, and perhaps it is overbroad to some extent. But I am willing to work on it. I think it does need some work.

I look forward to the hearing, Mr. Chairman.

[Prepared statement of Mr. Thomas follows:]

**OPENING STATEMENT
OF CONGRESSMAN CRAIG THOMAS
ON
H.R. 4230 AND 4155:
AMENDMENTS TO THE AMERICAN INDIAN RELIGIOUS FREEDOM
ACT**

When the subcommittee met on February 23 and March 16 of last year for oversight hearings on AIRFA, I noted that it was time to put some teeth into the Act and that I hoped the subcommittee would address some specific remedies in the near future. I am pleased that today we are doing just that.

I fully support H.R. 4230. Given the Supreme Court's ruling in Smith, as well as the disparate treatment accorded Native Americans who use peyote for religious purposes by the states, I think it makes good sense to make statutory the existing federal regulatory exemption

for that use. I hope that we will move swiftly to mark-up the bill this month.

While I support the bill, I do have one change which I will suggest at the proper time. I understand that the Native American Church, in conjunction with representatives from the DEA and DOJ, has proposed a few amendments to the bill, including allowing military commanders, law enforcement administrators, and the Secretary of Transportation to proscribe the use of peyote within so many hours of the individual engaging in safety sensitive duties. It seems to me that we should also allow states to issue similar regulations regarding the operation of a motor vehicle. I look forward to working with the Chairman's staff on this issue in the weeks ahead.

Finally, while I support the principles embodied in H.R. 4155, I do have some concerns about the legislation. Among those concerns is the fact that the phrase "undermines and frustrates" as used in section 3(a)(1) of the bill is vague, and perhaps overbroad. I am also worried about what effects the bill as written might have on the accessibility to the American public of some sights which are listed as historic landmarks or public parks, such as the Medicine Wheel in my state, but may also have some religious significance to Native Americans. I look forward to working closely with the Chairman to resolve any ambiguities or unintended results.

Mr. RICHARDSON. Mr. Torres.

STATEMENT OF GERALD TORRES

Mr. TORRES. Thank you, Mr. Chairman. I want to thank you for the gracious introduction. As a friend of mine once said, I haven't had so gracious an introduction since I was called on to introduce myself once. So I appreciate it.

I am here to present the administration's view on the Constitution issues raised by both H.R. 4155 and H.R. 4230. I will also introduce testimony for the record by the DEA on H.R. 4230.

The principal issue that we want to address and one which we are fully in support of are the efforts to preserve the practice of Native American religions from interference because of the importance of Native American religions, both to their cultural and tribal identity. The Supreme Court in *Lyng v. Northwest Indian Cemetery Protective Association* considered whether the government could build a road through a site that was considered indispensable to Indian religious practices. The Court there held that the free exercise clause of the First Amendment did not provide protection for sacred sites on government lands and, in that case, permitted the use of Federal land in a manner that might threaten the practice and existence of Indian religion.

In the wake of *Lyng*, the protection of Native American religious and cultural practices remains uncertain. It is for that reason that we feel legislation is necessary to protect Native American religious sites that are threatened from Federal action.

The recently enacted Religious Freedom Restoration Act helps ensure liberty of religion for all Americans. These amendments we view as providing the religious freedom protection for Native Americans and to ensure that *Lyng* does not remain a limitation on the action the government may take to protect native sites.

We believe that the Act is constitutional because it derives or flows from the special government-to-government relationship that exists between the tribes and the Federal Government. Tribal religious practices are unique in many respects, but two in particular; one, where they—the government, political, cultural and religious practices—are often intertwined in Indian cultures and religions; and second, unlike other North American religions indigenous religions are uniquely land based and involve practices that are deeply embedded in the history and tradition of the tribes.

Even though many of these sites are no longer on tribal lands, their importance to the tribe's existence predates the Federal control of this land; and, thus, we believe the Federal Government may take actions to preserve rather than destroy cultural and religious treasures.

The Congress has a special authority, a special power to pass legislation in support of Indian tribes and this was reflected in the decision of *Morton v. Mancari* when the Supreme Court ruled that the government could give special preferences in the hiring of Indian tribes. The reasoning of *Morton* was extended in *Peyote Way Church of God, Inc. v. Thornburgh* and *Rupert v. United States Fish and Wildlife Service*, so that the special relation does create a predicate for the action that you are attempting to take in this bill.

H.R. 4155 extends the compelling interest test to Federal activities that undermine and frustrate religious practices. What we would recommend are a couple of changes that we believe would make the bill stronger and not subject to challenge.

First, we recommend that the cause of action be limited to tribes or their designated representatives, and we believe that that will insulate the bill from constitutional challenge. We also feel that there ought to be some notice provision in the bill in order to eliminate unnecessary litigation; that is, when an action is going to be taken by Federal agencies, the agencies ought to notify the tribes so that some consultation can be undertaken, and it will not just result in litigation. We believe that prior consultation, in fact, will be a useful thing.

Finally, we believe that the substantial burden test ought to be adopted rather than the undermine-and-frustrate standard, largely because that is a standard that the courts are familiar with; and finally, that the cause of action ought to be limited to causes of action against the appropriate agency rather than against persons.

We support the testimony of the DEA concerning 4230 and believe that there is adequate constitutional basis for that bill. Thank you.

[Prepared statement of Mr. Torres follows:]



Department of Justice

STATEMENT OF

GERALD TORRES
COUNSEL TO THE
ATTORNEY GENERAL

BEFORE THE

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

AMERICAN INDIAN RELIGIOUS FREEDOM
ACT AMENDMENTS OF 1994

H.R. 4155

H.R. 4230

PRESENTED ON

JUNE 10, 1994

Mr. Chairman, thank you for giving me this opportunity to testify on the American Indian Religious Freedom Act Amendments of 1994. I am here to present the Administration's views on the constitutional issues raised by H.R. 4155 and H.R. 4230. In addition, I will introduce for the record testimony from the Drug Enforcement Agency on H.R. 4230.

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 Lyng 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 provide protections for sacred sites on government lands. 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 Lyng, protection of Native American religion and cultural practices remains uncertain. For this reason, legislation is needed to safeguard 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 rejecting the standard set out in Employment

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Division v. Smith, which held that the compelling interest test did not apply in this context. RFRA, however, does not specify how the compelling interest test applies in situations in which Native American sacred sites are threatened by federal action. Furthermore, RFRA's legislative history states that it does not affect the way in which the government manages its property. Therefore, RFRA lends itself to the interpretation that Lyng remains the applicable law.

The primary goal of H.R. 4155 -- a goal strongly supported by this Administration -- is to specify how government should address federal land use decisions that burden the exercise of Indian religion. The question of what steps the federal government can take to protect 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 Chief Justice Marshall that tribes were pre-existing sovereign communities that were brought into the United States' constitutional order. Another basis for the special relationship is the principle of tribal self-governance. Beyond the recognition of tribes as dependent sovereigns, there is specific constitutional grounding in the Indian Commerce Clause, which empowers Congress to "regulate Commerce . . . with the Indian Tribes."

This special government-to-government relationship permits Congress to enact legislation that recognizes the unique aspects

of Indian tribes. Traditional tribal religious practices provide one such unique aspect. In particular, tribal religion, culture, and governance are often inextricably intertwined. Moreover, unlike other North American religions, indigenous Indian religions are uniquely land-based and religious practices involving these sites are deeply embedded in the history and traditions of Indian tribes. Even though many of 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 serve to preserve rather than to destroy such cultural treasures.

The special relationship between the United States and Indian tribes provides the underpinning of elements of a number of federal statutes, such as 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, contain provisions tailored to protect Native American cultural artifacts. Legislation such as H.R. 4155 also represents an attempt to recognize some of the differentiating characteristics of Indian religion.

We believe that the special relationship empowers Congress to pass legislation, such as H.R. 4155, that provides protection for sacred sites. In Morton v. Mancari, the United States Supreme Court ruled that the federal government could give hiring preferences to members of Indian tribes. This reasoning was

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extended to the religious context in two recent circuit court cases, Peyote Way Church of God, Inc. v. Thornburgh, from the Fifth Circuit, and Rupert v. Director, United States Fish and Wildlife Service, from the First Circuit. In both cases the court found that, because of the unique relationship between the 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 also permits Congress to protect the exercise of tribal religions.

H.R. 4155

H.R. 4155 protects traditional Native American religions by extending the compelling interest test to federal activities that "undermine and frustrate" Indian religious practices on federal government lands. In effect, H.R. 4155 fills the gap left by RFRA by tailoring the protections of RFRA to safeguard unique characteristics of traditional Native American religions.

Importantly, the protections of H.R. 4155 are designed to be limited to federally recognized tribes, as a manifestation of the government-to-government relationship between federally-recognized tribes and the federal government. To the extent that the scope remains limited to federally recognized tribes, the Department believes that H.R. 4155 is not only constitutional in principle, but also is defensible in the courts. We have several suggestions designed to clarify the scope of the bill and remove any possibility of confusion. First, the present definition of

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"Indian tribe" could be clarified to ensure that the bill is not interpreted to reach beyond federally recognized tribes. Second, the bill provides a cause of action for individuals as well as tribes. To ensure that the bill remains within the parameters of the government-to-government relationship, we recommend that the cause of action be limited to "tribes and their designated representatives." With these changes in place, we believe that the bill will withstand any constitutional challenge and will provide an effective protection of traditional Native American religious practices.

In light of the Department's interest in the enactment of the strongest protections of Indian sacred sites that are permitted by law and our concern that legislation not generate unnecessary litigation, we believe that H.R. 4155 should include a provision for notice by federal agencies to tribes prior to the commencement of federal action. Such a notice and comment procedure would provide for meaningful consultation before the commitment of resources. Communication between the tribes and the land management agencies will enhance the effectiveness of the protections for sacred sites and provide an alternative to protracted litigation.

The Department has two final recommendations that are designed to clarify the goals of H.R. 4155 and reduce unnecessary litigation. First, H.R. 4155 accords protections where federal activities "undermine and frustrate" traditional Native American religions. This creates a new and undefined standard for the

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protection of religion, one which will have to be given meaning by the courts. Neither the tribes nor the land management agencies will be able to predict the scope of this legislation until the courts interpret it. To avoid such a delay, we recommend that the "substantial burden" standard from RFRA be adopted, rather than the "undermine and frustrate" standard. Second, H.R. 4155 provides for a cause of action against "persons." We recommend that the cause of action be limited to the appropriate agency.

In concluding my remarks on sacred sites protection, I would like to note the Administration's strong support for the goal that animates H.R. 4155. The Administration believes that such protections are welcome and long overdue. Thus, we want sacred site protections to be as effective as possible. To be effective, we must avoid miring this much needed legislation in lengthy litigation and, more important, we must avoid any adverse rulings on its constitutionality. From this perspective, the scheme proposed in H.R. 4155 -- a scheme that mirrors the protections already available to all Americans through RFRA -- offers few avenues for facial constitutional challenge, and, thus, is likely to be both effective and constitutionally defensible.

Above all, we wish to hasten the day when protections for the effective exercise of Native American religions are a reality. To this end, our lawyers are available to work with the Subcommittee to draft strong and effective legislation to protect

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Native American sacred sites and religious practices.

That concludes my prepared remarks on the protection of sacred sites.

H.R. 4230

I turn now to H.R. 4230, which provides statutory protections for the traditional use of peyote by Indians. The Department believes that the special relationship with federally recognized tribes empowers Congress to protect the traditional religious use of peyote. This position received direct affirmation in Peyote Way Church of God, which upheld the constitutionality of a Drug Enforcement Agency ("DEA") regulation exempting from prohibition the traditional use of peyote by Indians.

From a policy perspective, the Administration also supports the codification of the DEA regulations in H.R. 4230. I bring to your attention the Drug Enforcement Agency testimony that you have before you. We believe that H.R. 4230, if amended to address certain public safety concerns, will be a relatively noncontroversial bill that will provide an important protection for the exercise of Native American religions. Therefore, we urge the Subcommittee to act promptly on H.R. 4230.

At this time Mr. Chairman, I would be pleased to respond to any questions or comments you or other Subcommittee Members may have.



Department of Justice

STATEMENT OF

GENE R. HAISLIP

DEPUTY ASSISTANT ADMINISTRATOR

OFFICE OF DIVERSION CONTROL

DRUG ENFORCEMENT ADMINISTRATION

BEFORE THE

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

CONCERNING

AMERICAN INDIAN RELIGIOUS FREEDOM

ACT AMENDMENTS OF 1994

H.R. 4155

H.R. 4230

PRESENTED ON

JUNE 10, 1994

Chairman Richardson and Members of the Subcommittee:

The Drug Enforcement Administration (DEA) appreciates the opportunity to comment regarding H.R. 4230 "American Indian Religious Freedom Act of 1994." This bill seeks to statutorily provide for the traditional use of peyote by Indians for religious purposes.

Almost 25 years ago when Congress began hearings pertaining to the Controlled Substances Act (CSA) they decided that the traditional, historic use of peyote by members of the Native American Church (NAC) as a sacrament in traditional religious ceremonies warranted a specific exemption. Congress determined, to be consistent with past Federal practice, this exemption should be specified in regulation rather in law. Consequently, an exception was created for the NAC to use peyote for religious purposes. Although the NAC is not defined in the subject regulations, the members of this church are required to be Native American.

The regulation has worked very well for both DEA and the NAC with only minor difficulties from time to time concerning the natural supply of the drug and the difficulties obtaining peyote outside of the area where it grows locally. In fact, our experience over the years in enforcing this regulation has revealed no particular problems of abuse of this substance by the NAC or its members. Unfortunately there will always be

individuals who seek to circumvent the regulations for their own purposes and on occasion, DEA has dealt with groups who have attempted to expand the exemption to authorize the use of peyote or other controlled substances in what they claimed to be religious ceremonies.

On occasion, peyote, whose primary active ingredient is mescaline, a hallucinogen similar to LSD, has been found in the illicit traffic. It has not been reported by DEA, state or local enforcement agencies to be anything other than a sporadic problem. Despite the fact that the regulation allows for the legal use of the drug and the registration of legitimate distributors, DEA at this time is not aware of the diversion of the drug to any illicit market.

Although we at DEA feel that the regulation that has been in place for almost 25 years has worked well, we would prefer a statutory exemption over an administrative exemption. We have reviewed H.R. 4230 and could support the bill if amended to: (1) restrict the use, possession, or transportation of peyote to bona fide traditional ceremonial purposes only; and (2) to make clarifying amendments to address public safety concerns.

DEA and the NAC have maintained a close working relationship to allow the use of peyote for religious ceremony without diversion or abuse. DEA believes the passage of this legislation

will serve to strengthen the uniform application throughout all of the states without reprisal to NAC members of this religious exception.

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

Mr. RICHARDSON. The gentleman from Wyoming.

Mr. THOMAS. I am sorry, Mr. Duffy, that I missed your testimony.

Do you—there will be apparently more consideration of this bill on H.R. 4155; is that your understanding? I suspect there will be further hearings and something more on it.

Mr. DUFFY. That is my understanding.

Mr. THOMAS. One of the problems that seems to have occurred is that SHPO, the State agencies funded by the Federal Government that get involved with a determination of use of these kinds of things seems to get involved in it, and it becomes just an administrative nightmare to arrive at some conclusion. When several agencies get involved in trying to make the judgment as to what are religious sites, how do you define that?

Mr. DUFFY. Are you asking me?

Mr. THOMAS. Mr. Torres testified most on the bill.

Mr. TORRES. I would be glad to answer and defer to Mr. Duffy to characterize this. In fact, Mr. Duffy may be more appropriate, since he is with the Department of Interior.

Mr. DUFFY. How sacred sites are defined, is that the question?

Mr. THOMAS. Yes.

Mr. DUFFY. The difficulty of defining sacred sites is one of the reasons, I think, that the administration has recommended some mechanism for preexisting consultation with tribes to identify sacred sites and their location before problems arise. I think that there are ways of identifying areas that have particular religious significance.

The impression I get from the lands managers in our Department is that many sites are well known already and that the Department takes action to avoid problems with these sites or to give particular access to people to those sites. So although, if you try to create a definition of sacred sites, it can be difficult, I think that the land managers and the tribes have been able to work together in the past and I assume under any bill, they would be able to work together in the future, to define what are sacred sites.

Mr. THOMAS. Are you saying that there is a list of sacred sites at the Interior Department and that constitutes the sacred sites?

Mr. DUFFY. I wouldn't say that we have a list now, but a list could be developed. I think that it is fair to say that the tribes have expressed a well-founded concern that a list not be published.

There is a great interest in Indian religions, both from people who are practitioners and those who are admirers and to some extent the admirers interfere with the practitioners, so there is a concern on the part of tribes that sacred sites not be identified to the general public. Land managers know, in general, where many sacred sites are. Some they do not and that is why we have recommended that there be some provisions for secrecy and confidentiality to protect the location of these sites.

Mr. THOMAS. I say a list in order to make a point. We don't know where all the sacred sites are, or that there won't be more next week; is that correct?

Mr. DUFFY. That is correct.

Mr. THOMAS. It is difficult to deal with it when the idea of sacred sites seems to arise only when something is going on in that particular area.

Mr. DUFFY. Well, we know where the spring at Lourdes is, where that is located. I think that within Indian religions we can identify similarly sacred sites.

What you are expressing is a concern which a large number of people share, that the protection for sacred sites will be "misused"; that is, that sacred sites will be defined in some fashion which will allow people who do not have real concern about these sites to misuse them.

Mr. THOMAS. That is the issue. I support the idea of protecting sacred sites, but I think you have seen some instances of non-Indians using that as a means of preserving something that otherwise would be in multiple use. I think you have seen definitions of very broad sites like the entire Black Hills area, which gets to be pretty difficult when you are in that broad a definition.

I agree that there needs to be some kind of a definition that is a little more clear, and I think more work needs to be done in that area.

Mr. DUFFY. I definitely think we need to work that out. The difference, I think, between the bill introduced here and the bill in the Senate, for example, is whether that working out is going to occur within the legislation or in some sort of regulatory framework created by the Administration.

Mr. THOMAS. Which frankly bothers me a little—not the Administration, but we constantly go through this business where there is a relatively broad statutory authority, and I understand that; but all the confusion and all the debate and all the rulemaking is where the difficulties are. And agencies and bureaucrats have a tendency to expand far beyond the source of the spirit of the legislation, in my view; and I think that has to be very carefully—you probably don't agree—

Mr. DUFFY. No. I think that the view might also be the view of a large number of tribal representatives who also want these protections in the Act.

Mr. THOMAS. Thank you very much.

Thank you, Mr. Chairman.

Mr. RICHARDSON. I thank my colleague.

Let me just, to Mr. Torres and Mr. Duffy, I think it is very important that we deal with the secrecy issue as a priority. I am pleased generally with your testimony that you are supportive of the legislation, but some of the tribes nationally, and I know in my State, the Pueblos and the Navajos want that secrecy issue dealt with in a way that respects their religious sites, sanctifies the concept of secrecy.

But what we have done with the Cochiti proposal, we have submitted it to the Justice Department to make sure that constitutionally we are not going to have problems. I don't want any litigation arising out of this bill. I want this bill to pass. I want administration support for it. We are concerned about "entanglement", the role of the government vis-a-vis religion, and we want to be sure that the language is adequate.

I think that it is a good first step that the Cochitis have proposed, but maybe there are refinements we need to make. Rather than try to get you on the record either way, let me say that I want to deal with this issue legislatively—I think we should—because I think if we achieve a breakthrough on secrecy, we would be able to move ahead with a bill that possibly the other body would accept also, and we can expedite this legislation.

So I would ask you both to go back to your Departments and get back to us on your legal, constitutional and other views on the Cochiti proposal, which I think could be a breakthrough here because it involves Federal agencies, it involves apparently a consensus within some of the tribes. If we constitutionally can deal with that and we can get a process going where we move it rapidly, that would be very important.

So, Mr. Torres, let me ask you about the use of peyote. I am very pleased that the Department of Justice has educated itself on this issue. As I understand it, you have had a regulation in place for a long time exempting peyote from being considered as a narcotic. Do you think we need to put this into statute? Do you think we need language to state this fact in the statute?

Mr. TORRES. Well, the testimony of the DEA indicates that for over 25 years, peyote has been exempted from regulations of drugs for ceremonial use. I think that the concerns that are raised by people who are worried about peyote use—illicit peyote use, the DEA testifies, is really quite moderate. What they view is that—the DEA's testimony is that they could support this bill if certain changes were made: one, to continue essentially the regulatory structure that has been put in place concerning the transportation of peyote and people registered and transportation, and other clarifying amendments for public safety. They could support that.

There has been a good working relationship between DEA and the Native American church, to the best of my knowledge, and we are confident that the church supports the continued access to peyote and DEA is supportive of continued access to peyote for church members.

Now, we could support the bill with those changes that I have indicated.

Mr. RICHARDSON. Mr. Duffy, your testimony suggests more of an administrative process with regard to sacred sites. I know I kind of left you off the hook with the previous statement. But can we just briefly deal with this entanglement issue of the establishment clause in the first amendment?

If we have too much government regulation of access to these sacred sites, are you comfortable answering this now?

Mr. DUFFY. I am comfortable deferring on all constitutional issues to Mr. Torres.

Mr. RICHARDSON. Mr. Torres is a former law professor at one of the great schools. Which one is that?

Mr. TORRES. There are a number of what I consider great law schools. My latest tenure was at the University of Minnesota.

Mr. RICHARDSON. That is the university of my counsel, so I can see why you put that down.

Mr. TORRES. I would like to say it is one of the great State universities in the country and that the students of that institution

are among the best in the country. I have another one in the audience here, sir.

I guess what we would like to do is to—we are concerned about the entanglement issue as well. I would like to get back to the committee with additional testimony on that issue. That is our principal concern. We feel that—and the administration fully supports actions to permit the greatest protection of sites, both secret and nonsecret.

Mr. RICHARDSON. You know our bill differs from the Senate in this respect?

Mr. TORRES. Right.

Mr. RICHARDSON. Let me mention another area that I want to make sure we deal with, and that is, the bill deals with federally recognized tribes.

Mr. TORRES. Correct.

Mr. RICHARDSON. I would like to deal with federally unrecognized tribes and I would like to accommodate them. Do you think we run any risk of constitutionally having problems if we deal with that?

You all know my long record—I think Mr. Duffy knows—of exasperation with our process of recognizing tribes. They are very sincere, some of these federally unrecognized tribes about their religious sites, too. Mr. Thomas and I have a bill to speed up that recognition process.

How do you suggest that we deal with this in this bill?

Mr. TORRES. It is the view of the Department of Justice that this bill is on the firmest constitutional footing if we limit it to federally recognized tribes, because there is a preexisting federally recognized—recognized by the Supreme Court relationship between the tribes and the Federal Government.

We believe that there are other techniques used that could be used to protect important cultural sites and have been used in other pieces of legislation like the Grave Protection Act, et cetera.

Mr. RICHARDSON. I was pleased at the White House meeting that the administration has committed to seeking religious freedom for Native Americans. Do you think that we need legislation on eagle feather access or prisoner rights? I understand the President issued an executive order to allow tribes better access to eagle feathers.

Is there legislation that passed recently enough to protect Indian prisoners, for instance, in their use of eagle feathers or prisoner rights?

Mr. DUFFY. Again, I think that we have tried both within the Department and, with the President's executive order, throughout the Administration to provide substantial protection in the use of eagle feathers.

As to the question of whether additional legislation is needed to protect prisoners' rights, I would defer to Mr. Torres and to various representatives of the tribes who are here who probably have more sensitive insight as to whether or not those problems are taken care of without legislation.

Mr. RICHARDSON. I appreciate that. I think that is good, that the administration is saying let's see what the tribes think. It seems to me, if we can put it in statute to make things absolutely sure, it makes sense to include them in legislative statute.

Let me thank both you of you for your testimony. I do ask you in the days ahead, perhaps if we could set a time frame of the July 4th recess to come up with your response on the constitutionality on the Cochiti provisions so that we could move ahead.

But let me say that I am pleased with your testimony, both of you, your support of the legislation. We want to move something forward. We consider this a priority.

My thanks to both of you for your very active and positive work on behalf of Indian affairs.

Mr. TORRES. Thank you for giving me the opportunity to testify. The Attorney General is deeply committed to getting something passed to protect Native American religions.

Mr. RICHARDSON. Thank you.

STATEMENTS OF HON. GAIASHKIBOS, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS; HON. PETERSON ZAH, PRESIDENT, NAVAJO NATION, WINDOW ROCK, ARIZONA; HON. JAMES HENA, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL, INC.; RAYMOND O. APODACA, COORDINATOR, AMERICAN INDIAN RELIGIOUS FREEDOM COALITION; REGIS PECOS, EXECUTIVE DIRECTOR, NEW MEXICO OFFICE OF INDIAN AFFAIRS; AND, RAYMOND L. "CHUCK" DERBY, SPOKESPERSON, PIPESTONE DAKOTAH COMMUNITY

Mr. RICHARDSON. We will move on to our second panel, the Honorable Gaiashkibos, President of the National Congress of American Indians; the Honorable Peterson Zah, President of the Navajo Nation, Window Rock, Arizona; the Honorable James Hena, Chairman, All Indian Pueblo Council; Mr. Ray Apodaca, Coordinator, American Indian Religious Freedom Coalition; Mr. Regis Pecos, Executive Director of the New Mexico Office of Indian Affairs; and Mr. Raymond "Chuck" Derby, spokesperson, Pipestone Dakotah Community.

I want to welcome these distinguished witnesses and I want to especially thank them for the work they have done on this issue.

I was with President Zah recently in De Baca County, Fort Sumner, and with Mr. Pecos, on interment of Navajos and the possibility of setting up a national monument so that we remember the tragedy that was suffered by Indian people. Mr. Zah spoke eloquently about the problem and the importance of getting the bill passed on American Indian religious freedom.

I want to welcome all of you.

We will start with the President of the National Congress of American Indians, Honorable Gaiashkibos.

STATEMENT OF HON. GAIASHKIBOS

Mr. GAIASHKIBOS. Good morning. Thank you very much Mr. Chairman and other distinguished members of the committee. I am Gaiashkibos, President of the National Congress of American Indians, representing over 170 member tribes of NCAI, which includes the oldest and largest and most representative Indian advocacy organization in the United States.

I am also the Chairman of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of northern Wisconsin.

I want to thank you for your diligence and hard work regarding the religious freedom of all Native Americans and for all of your other efforts on behalf of our people. It is very much appreciated, and I extend that on behalf of the National Congress.

It is a honor and a pleasure to address this subcommittee on an issue that has captured the attention of people around the country and around the world. As you know, the Indian people are a people in distress, not only economically but culturally, socially and spiritually. Even though reservation economies are the poorest in the United States, Indian people believe that freedom to worship free is also very important. To that effect, our membership officially adopted as our number one priority of 1994 the passage of legislation to protect the religious freedom of all native Americans.

Ironically, the first European settlers came to our shores fleeing religious persecution in Europe. Today, we are here seeking the freedom to worship as we believe.

Mr. Chairman, I think you will agree that Native Americans, like all Americans, are owed this basic constitutional right. We take the First Amendment very seriously and are here today to discuss H.R. 4155, regarding sacred sites; H.R. 4230, dealing with the ceremonial use of peyote and religious freedom for incarcerated Native American prisoners.

The Supreme Court provided the wake-up call for Native Americans concerned about religious freedom. Court decisions in *Lyng v. Northwest Indian Cemetery Protection Association* and *Employment Division v. Smith* demonstrated Native American religious practices are not protected by our Constitution. In denying the claim based on religious liberty in *Lyng*, the Court stated that the 1978 AIRFA Act had no teeth. To Native Americans, this meant we have no rights.

H.R. 4155 is designed to remedy the situation by providing sacred site protection. This legislation, together with H.R. 4230 dealing with the ceremonial use of peyote, is the cornerstone of this committee's efforts; and we very much appreciate the time and effort and care you have demonstrated in making religious freedom a reality and not just a slogan.

The protection of sacred sites is an integral part of our religious beliefs and practices. We have read and studied H.R. 4155 and other suggestions related to native religious practices, including the proposal put forth in the Cochiti Pueblo known as the New Mexico Indian alternative.

We believe that the New Mexico Indian alternative provides for government-to-government relationship, is inclusive of various types of Federal activities. In fact, the President recently by presidential directive directed the agencies to recognize that. This is flexible enough to adopt to various situations which have and undoubtedly will arise in the future.

In short and without going into detail, we support the New Mexico alternative to craft procedures to bring real and effective protection to Indian sacred sites.

Peyote should be declared by Federal law as a religious sacramental item for use by Native Americans organized and recognized as members of the Native American church and for other groups using peyote in sacred religious practices.

Mr. Chairman, I would like to bring to your attention that as of today no legislative initiative has been offered in the House of Representatives to enforce the First Amendment rights of Native Americans who are incarcerated in prisons across the country. Just as other prisoners' religious practices are respected and honored, so too should the religious practices of our brothers and sisters be understood and respected.

Regulations should be in place to permit access to traditional healers, sweat lodges, sacred foods, traditional medicines and the undisturbed entry of recognized Native American religious practitioners and teachers. In addition, education by Native American educators should be developed and provided for prison staff on the subject of Native American religious beliefs and practices. All constitutional rights are not surrendered at the jailhouse door.

Mr. Chairman, our First Amendment rights should be enforced whenever they are ignored or disregarded.

It is not included in my written testimony, but I would like to read a short excerpt from one of the many letters that we received from brothers and sister incarcerated in prison. This one comes from the Arizona State Prison.

"Greetings, Mr. President Gaiashkibos. I am an incarcerated inmate here in Arizona Prison. I have four more years left on my sentence. My main concern is on the decisions made on Native American religious rights. Here at the prison, the administration has placed restrictions on the sweat lodge. We are allowed to sweat once every three months, while all other faiths that practice have weekly services, sometimes twice a week."

I just wanted to enter that into the record.

[The letter referred to follows:]

May, 10, 1904

National Congress of American Indians
 Mr. Bainskikwa - President
 Rt 2 Box 2700
 Hayward, Cal.
 54843

Dear Sir,

I'm an incarcerated inmate here in the Arizona Prison, I have four years left on my sentence.

My main concern is on decisions made on the Native American Religion, Rights.

Here at the Prison, the Administration has placed restrictions on the Sweat-Lodge, we are allowed to sweat once every three months while all the other Faiths that practice here have Weekly Services, some twice a week.

We are preparing a Habeas Corpus to ask the Courts to lift these restrictions based on our Liberty, Interests and the Free Exercise of Religion Clause of the 1st Amendment, 14th Amendment - Prisoner's Rights.

The restrictions placed on the Sweat-Lodge reach Constitutional Dimensions, (Discrimination and Prejudice), by granting certain rights to others and denying another is Unconstitutional.

We as Native American Students, are members of the Native American Brotherhood Society and greatly appreciate any information that would help us in preparing our Unit.

I take this time to thank you for your time and consideration on this matter as we struggle in the Iron Klans as well.

Hopefully I can be added to your mailing list of all issues concerning Native Americans.

Respectfully Submitted,

Charles W. Ad.
(Mojave)
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Mr. GAIASHKIBOS. I would like to conclude my remarks by reminding this committee that in over 50 years—in fact, this is the fiftieth anniversary of the D-Day invasion of Normandy, this was the beginning of the end for Hitler's Europe and his twisted vision. We fought Nazi tyranny for four long years for human rights democracy.

This fall, NCAI celebrates its fiftieth anniversary of fighting a different battle, the battle for Indian rights.

With that, I want to conclude my remarks. Thank you for your time and this committee's work. My staff and myself are prepared to assist you in whatever effort is needed to get this legislation passed this year.

Thank you very much.

Mr. RICHARDSON. I want to commend you, too, for your role in the meeting with the President. It was your organization that organized the meeting that made it so successful.

[Prepared statement of Mr. Gaiashkibos follows:]



900 Pennsylvania Avenue S.E. Washington, D.C. 20003 (202) 546-9404 Fax (202) 546-3741

**STATEMENT OF PRESIDENT GAIASHKIBOS
ON BEHALF OF THE
NATIONAL CONGRESS OF AMERICAN INDIANS
BEFORE THE
HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS**

JUNE 10, 1994

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Southeastern Area
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EXECUTIVE DIRECTOR
JoAnn K. Chase, J.D.
Mandan Hidatsa

INTRODUCTION

GOOD MORNING CHAIRMAN RICHARDSON AND OTHER DISTINGUISHED MEMBERS OF THE COMMITTEE. I AM GAIASHKIBOS, TRIBAL CHAIRMAN OF THE LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS OF WISCONSIN, AND PRESIDENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI). I REPRESENT 170 MEMBER TRIBES OF NCAI WHICH IS THE OLDEST, LARGEST, AND MOST REPRESENTATIVE INDIAN ADVOCACY ORGANIZATION IN THE UNITED STATES. I WANT TO THANK YOU MR. CHAIRMAN FOR YOUR DILIGENCE AND HARD WORK REGARDING THE RELIGIOUS FREEDOM OF ALL NATIVE AMERICANS, AND FOR ALL OF YOUR OTHER EFFORTS ON BEHALF OF OUR PEOPLE.

OUR NUMBER ONE PRIORITY

IT IS AN HONOR AND A PLEASURE TO ADDRESS THIS SUBCOMMITTEE ON AN ISSUE THAT HAS CAPTURED THE ATTENTION OF PEOPLE AROUND THE COUNTRY AND AROUND THE WORLD. AS YOU KNOW, INDIAN PEOPLE ARE A PEOPLE IN DISTRESS, NOT ONLY ECONOMICALLY, BUT CULTURALLY AND SOCIALLY. EVEN THOUGH RESERVATION ECONOMIES ARE THE POOREST AREAS IN

THE UNITED STATES, INDIAN PEOPLE BELIEVE THAT FREEDOM TO WORSHIP FREELY IS ALSO VERY IMPORTANT. TO THAT EFFECT OUR MEMBERSHIP OFFICIALLY ADOPTED AS OUR NUMBER ONE PRIORITY IN 1994 THE PASSAGE OF LEGISLATION TO PROTECT THE RELIGIOUS FREEDOM OF ALL NATIVE AMERICANS.

FREEDOM: THE UNFULFILLED PROMISE

IRONICALLY, THE FIRST EUROPEAN SETTLERS CAME TO OUR SHORES FLEEING RELIGIOUS PERSECUTION IN EUROPE. TODAY WE ARE HERE SEEKING THE FREEDOM TO WORSHIP AS WE BELIEVE, AND MR. CHAIRMAN I THINK YOU WILL AGREE THAT NATIVE AMERICANS, LIKE ALL AMERICANS, ARE OWED THIS MOST BASIC CONSTITUTIONAL RIGHT. AMERICAN INDIANS ARE CITIZENS AND SHOULD RECEIVE THE PROTECTIONS OUR CONSTITUTION AFFORDS. WE TAKE THE FIRST AMENDMENT VERY SERIOUSLY, AND WE ARE HERE TODAY TO DISCUSS H.R. 4155, REGARDING SACRED SITES, H.R. 4230, DEALING WITH THE CEREMONIAL USE OF PEYOTE, AND RELIGIOUS FREEDOM FOR INCARCERATED NATIVE AMERICAN PRISONERS.

THE NEED FOR AIRFA AMENDMENTS IN 1994

THE SUPREME COURT PROVIDED THE WAKE UP CALL FOR NATIVE AMERICANS CONCERNED ABOUT RELIGIOUS FREEDOM. COURT DECISIONS IN LYNG v. NORTHWEST INDIAN CEMETERY PROTECTIVE ASSOCIATION AND EMPLOYMENT DIVISION v. SMITH DEMONSTRATED THAT FOR NATIVE RELIGIOUS PRACTICES ARE NOT PROTECTED BY OUR CONSTITUTION. IN DENYING THE CLAIM BASED IN RELIGIOUS LIBERTY IN LYNG, THE COURT STATED THAT THE 1978 AIRFA ACT "HAD NO TEETH". TO NATIVE AMERICANS THIS MEANT THAT THEY "HAD NO RIGHTS". H.R. 4155 IS DESIGNED TO REMEDY THE SITUATION BY PROVIDING FOR SACRED SITE PROTECTION. THIS LEGISLATION, TOGETHER WITH H.R. 4230 DEALING WITH

THE CEREMONIAL USE OF PEYOTE, IS THE CORNERSTONE OF THIS CHAIRMAN'S EFFORTS, AND WE VERY MUCH APPRECIATE THE TIME AND EFFORT AND CARE YOU HAVE DEMONSTRATED IN MAKING RELIGIOUS FREEDOM A REALITY, AND NOT A SLOGAN. THE PROTECTION OF SACRED SITES IS AN INTEGRAL PART OF OUR RELIGIOUS BELIEFS AND PRACTICES. WE HAVE READ AND STUDIED H.R. 4155 AND OTHER SUGGESTIONS RELATED TO NATIVE RELIGIOUS PRACTICES, INCLUDING A PROPOSAL PUT FORTH BY THE COCHITI PUEBLO, KNOWN AS THE "NEW MEXICO INDIAN ALTERNATIVE". WE BELIEVE THAT THE "NEW MEXICO INDIAN ALTERNATIVE" PROVIDES FOR GOVERNMENT-TO-GOVERNMENT RELATIONSHIPS, IS INCLUSIVE OF VARIOUS TYPES OF FEDERAL ACTIVITIES, AND IS FLEXIBLE ENOUGH TO ADAPT TO THE VARIOUS SITUATIONS WHICH HAVE AND UNDOUBTEDLY WILL ARISE IN THE FUTURE. IN SHORT, AND WITHOUT GOING INTO DETAIL, WE SUPPORT THE NEW MEXICO INDIAN ALTERNATIVE TO CRAFT PROCEDURES TO BRING REAL AND EFFECTIVE PROTECTION TO INDIAN SACRED SITES.

SACRED SITES ARE PROTECTED BY LAW THROUGHOUT OTHER NATIONS OF THE WORLD. SACRED SITES SHOULD BE PROTECTED BY TRIBAL LAW ENACTED BY TRIBAL GOVERNMENT ON ALL FEDERAL INDIAN RESERVATIONS. OTHER SACRED SITES ON PUBLIC OR PRIVATE LANDS SHOULD BE PUT INTO TRUST BY THE FEDERAL GOVERNMENT FOR THE TRIBE OR TRIBES WHO USE THESE SITES.

PEYOTE SHOULD BE DECLARED BY FEDERAL LAW AS A RELIGIOUS SACRAMENTAL ITEM FOR USE BY NATIVE AMERICANS ORGANIZED AND RECOGNIZED AS MEMBERS OF THE NATIVE AMERICAN CHURCH, AND FOR OTHER GROUPS USING PEYOTE IN SACRED RELIGIOUS PRACTICE.

MR. CHAIRMAN, I WOULD LIKE TO BRING TO YOUR ATTENTION THAT AS OF TODAY NO LEGISLATIVE INITIATIVE HAS BEEN OFFERED IN THE HOUSE OF

REPRESENTATIVES TO ENFORCE THE FIRST AMENDMENT RIGHTS OF AMERICAN INDIANS WHO ARE INCARCERATED IN PRISONS ACROSS THE COUNTRY. JUST AS OTHER PRISONERS' RELIGIOUS PRACTICES ARE RESPECTED AND HONORED, SO TOO SHOULD THE RELIGIOUS PRACTICES OF OUR BROTHERS AND SISTERS BE UNDERSTOOD AND RESPECTED. REGULATIONS SHOULD BE IN PLACE TO PERMIT ACCESS TO TRADITIONAL HEALERS AND RELIGIOUS PRACTITIONERS, SWEAT LODGES, SACRED FOODS, TRADITIONAL MEDICINES, AND THE UNDISTURBED ENTRY OF RECOGNIZED NATIVE AMERICAN RELIGIOUS PRACTITIONERS AND TEACHERS. IN ADDITION, EDUCATION BY NATIVE AMERICAN EDUCATORS SHOULD BE DEVELOPED AND PROVIDED FOR PRISON STAFF ON THE SUBJECT OF NATIVE AMERICAN BELIEFS AND PRACTICES. ALL CONSTITUTIONAL RIGHTS ARE NOT SURRENDERED AT THE JAILHOUSE DOOR, MR. CHAIRMAN, AND OUR FIRST AMENDMENT RIGHTS SHOULD BE ENFORCED WHEREVER THEY MAY BE IGNORED OR DISREGARDED.

CONCLUDING REMARKS

MR. CHAIRMAN, FOUR DAYS AGO WE CELEBRATED THE 50TH ANNIVERSARY OF THE D-DAY INVASION OF NORMANDY. THIS WAS THE BEGINNING OF THE END FOR HITLER'S EUROPE AND HIS TWISTED VISION. WE FOUGHT NAZI TYRANNY FOR FOUR LONG YEARS FOR DEMOCRACY AND HUMAN RIGHTS. THIS FALL NCAI CELEBRATES ITS 50TH ANNIVERSARY OF FIGHTING A DIFFERENT BATTLE: THE BATTLE FOR INDIAN RIGHTS.

I WANT TO EMPHASIZE MY DEEPLY HELD BELIEF, MR. CHAIRMAN, THAT AMERICA IS DIFFERENT FROM OTHER COUNTRIES, WE ARE A FREEDOM LOVING PEOPLE, AND I HAVE EVERY CONFIDENCE THAT FREEDOM LOVING PEOPLE HERE IN THE UNITED STATES WILL NOT STAND FOR THE CONTINUED DENIAL OF NATIVE AMERICANS' RELIGIOUS FREEDOMS. I AGAIN THANK YOU FOR THE OPPORTUNITY TO ADDRESS THIS DISTINGUISHED

COMMITTEE, AND LOOK FORWARD TO WORKING WITH YOU IN THE WEEKS AHEAD. THIS CONCLUDES MY REMARKS AND AT THIS POINT I WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

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SUPPLEMENTAL STATEMENT OF WITNESS
BEFORE THE HOUSE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE
REGARDING AMENDMENTS TO THE AMERICAN INDIAN RELIGIOUS
FREEDOM ACT OF 1994

H.R. 4155 - SACRED SITES
H.R. 4230 - USE OF PEYOTE
AND THE RELIGIOUS RIGHTS OF NATIVE AMERICAN PRISONERS

THE WITNESS IS GAIASHKIBOS, PRESIDENT
OF THE NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI)
900 PENNSYLVANIA AVENUE, S.E.
WASHINGTON, D.C. 20003
(202) 546-9404

Mr. RICHARDSON. President Zah.

STATEMENT OF HON. PETERSON ZAH

Mr. ZAH. Mr. Chairman and Members of the House Subcommittee on Native American Affairs, we wanted to first personally thank Members of the committee for introducing the two bills that we basically feel is needed by religious practitioners, as well as Indian people at large.

As you stated, you were in New Mexico about a couple of weeks ago where the Navajo people came to Bosque Redondo, where we were in prison for four years, and one of the things that was said at that meeting by many of those people who were attending the event was that the Navajo people who were in prison there must have something that is stronger than what we now have as people.

I wanted to just remind you that that strength that we use to survive is the religious part of the Navajo life. It is the religion, it is the belief and the faith that we have that enable us to survive as long as we have and to endure all if pain; and I wanted you to know that we will do whatever we can to help you with the passage of these two bills.

I know that there are amendments that are going to be offered. We are hearing one that is going to be offered by my good friend, James Hena, and others, the Cochiti bill. I think those deserve some discussions. I have not really read the proposed bill yet, but as we go forward, we need to keep in mind that nationwide we have done everything that we can at our disposal to make sure that we have the excellent support that is needed to pass at least some version of the American Indian Religious Freedom bill, because it is needed out there, specifically dealing with the use of peyote.

One thing that many of our Indian brothers and sisters continue to say is that when it comes down to the use of peyote for religious purposes, that was here thousands and thousands of years, even before your ancestors came to this country, so why should we go to the Federal Government, the instrument of the Federal Government having come across the ocean, and then deciding to build what we now know as America and as a Federal Government, why should we ask them to give us permission to use something that we have been using even before they came?

That is a very, very strong statement that many of our Indian people usually ask us, those of us who are involved in the Coalition. So the feeling is very emotional among the Indian people out there.

Depending on the amendments that are going to be offered from our side, and more specifically from the Navajo side, we are also amending our tribal law so that it could dovetail with what the Federal Government is going to be doing on the use of peyote.

The Native American Church is a very effective organization where they want to police their own activities, they want to control how the peyote will be used by members of the Native American Church. So the tribe is even having to amend its tribal laws to accommodate the Native American Church members. So depending on what the Federal Government does, we will also have to coordinate the Act down at the local tribal level.

The other thing that I wanted to just state is that when it comes down to the practice of religion and identifying sacred sites, I think we need to keep in mind that sacred sites, when it comes down to Indian land, there may be one definition coming from the practitioners, as opposed to land outside of the reservation or land that is being occupied by another Indian tribe as a sovereign entity, how do we address some of those. Those still have to be worked out. There still has to be a lot of discussion and a meeting of minds on those kinds of concepts.

I just wanted to encourage the committee to continue working with the Religious Coalition group to make sure that at least by the end of this summer, at the end of the congressional session, that we have some form of religious freedom bill for the American Indian tribes.

In that light, I wanted to commend you and congratulate you for what you have done. This is a starting point. As you indicated, we have to go through a lot of discussion before we finally come up with a bill and I want to see one by the end of this Congress.

Mr. RICHARDSON. Thank you for coming. I know that you are always very pressed for time, and I think it gives this effort added importance with a person of your stature coming here.

In New Mexico, the largest tribe in the Nation exists even though it is partly in my State and three others. I am very pleased that you have made this trip here. Again, thank you for your testimony.

[Prepared statement of Mr. Zah follows:]

**THE
NAVAJO
NATION**

P. O. DRAWER 308 • WINDOW ROCK, ARIZONA 86515 • (602) 871-6352-55

PETERSON ZAH
PRESIDENT**MARSHALL PLUMMER**
VICE PRESIDENT**STATEMENT OF PETERSON ZAH
PRESIDENT OF THE NAVAJO NATION****HEARING ON H.R. 4155 AND H. R. 4230
AMERICAN INDIAN RELIGIOUS FREEDOM ACT AMENDMENTS OF 1994****BEFORE THE HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS****JUNE 10, 1994**

Chairman Richardson and Members of the House Subcommittee on Native American Affairs, on behalf of the Navajo Nation, thank you for inviting me to testify before the Subcommittee on the need to protect and preserve our native traditional religious practices. I would like to thank Chairman Richardson for introducing H.R. 4155 and H.R. 4230, two important pieces of legislation that will address sacred sites and the sacramental use of peyote.

The Navajo people have endured hardship and survived many obstacles for many generations because of our ability to retain our language and maintain strong ties with our culture and religion. This is why we survived the anguish of the "Long Walk" and captivity at Bosque Redondo (Ft. Sumner, New Mexico) in the 1860's. As an honored guest at our recent ceremony to commemorate the signing of the Treaty of 1868 at Bosque Redondo you have witnessed our emphasis to preserve our history and to educate our children so that they will be able to better understand the significance of Navajo heritage and identify their role in Navajo community. It is very important that we are afforded the right to freedom of religion as provided to all citizens of this

country, since our existence is deeply rooted in our traditional religion.

We understand that the United States Constitution, the fundamental law of the federal government created by its founding fathers because of religious persecution in their homelands, affords the constitutional right to freedom of religion to all citizens of this country. We are disheartened that the U.S. Supreme Court, the highest court of this country, has limited federal protection for the right of Native Americans to practice their own traditional religions including the use of sacrament peyote that has been in use for centuries. We are further disillusioned that during the recent war with Iraq, the United States ordered its military to not destroy Iraq's sacred sites. Yet, sacred sites of Native Americans in the United States have not been fully protected. There is absolutely no rationale for the Navajo Nation and Native Americans to come before the federal government to ask for the inherent and birth right to practice native traditional religion.

Last year, Congress passed the Religious Freedom Restoration Act which reinstates the "compelling government interest" test in determining government infringement on religious freedom. However, this Act does little to protect Native American Church (NAC) members to use peyote in religious ceremonies. As a result, NAC members remain subject to the State's right to abrogate NAC members' right to use peyote. NAC members remain the only segment of our population penalized for the practice of its religion.

The Navajo Nation appreciates your introduction of H.R. 4155 to provide for the management of Federal lands in a manner that does not undermine or

frustrate traditional Native American religions or religious practices. We applaud your wholehearted effort for recognizing the need to protect our sacred sites and religious rights. However, we are concerned that H.R. 4155 does not clearly address the issues and does not include provisions to fully protect the Navajo Nation's interests. We are specifically concerned that any legislation on sacred sites should not be misconstrued in any manner to infringe upon the sovereignty of tribes who live in proximity to other tribes, including interference with land use on their own lands.

We are aware of the "New Mexico sacred sites" bill or otherwise referred to as the "Cochiti" bill on sacred sites. The Navajo Nation feels that this draft version focuses more on addressing the sacred sites issues than H.R. 4155. We view this draft as a potential legislative vehicle for further discussion.

In regard to the sacramental use of peyote, H.R. 4230 would provide the needed equal and uniform protection in the use of sacrament peyote. The use of peyote in a bona fide religious ceremony is a prevalent practice among Navajos who are members of the NAC. Currently, there are 92 Native American Church of Navajoland chapters. Navajo NAC members continue to be subject to penalties or outright discrimination on the basis of such use, possession, harvest or transport. We are aware that the U.S. Department of Justice (DOJ), Drug Enforcement Administration (DEA) is in stronger support of legislation to provide a statutory exemption. The State of Texas where peyote grows provides the necessary regulations for harvesting and distribution. Also, Arizona and New Mexico have passed laws that provide for the use of sacrament peyote.

The Navajo Nation supports the intent of H.R. 4230 and believes it can be improved for strength and clarity. We recommend the Subcommittee work with the NAC organizations, the Native American Free Exercise of Religion Act (NAFERA) Coalition, and the Administration to produce acceptable legislation. As a matter of support, the Navajo Nation is currently working to revise its Tribal Code to refine its regulatory policy. In that context, the Navajo Nation governmental officials have consulted with NAC leaders to develop this initiative.

Finally, the Navajo Nation is concerned that the rights of Native Americans incarcerated in federal and state prisons are not addressed in either piece of your legislation. Navajo and other Native American inmates are discriminated against by federal and state prisons to practice their traditional religion. The Navajo Nation's Corrections Project provides counseling and advocacy on behalf of Navajo inmates. An integral part of the Corrections program is providing an opportunity for religious and spiritual ceremonies in counseling and treatment of these inmates. The Navajo people hold traditional counseling and healing as an effective means to restore an individual's body and mind holistically. This should be afforded to our Navajo and Native American inmates. I urge that you consider legislation to extend this religious right to our Native American prisoners.

Mr. Chairman, I place high regard and respect in your efforts to introduce legislation that would protect our birth right to practice our traditional religious ceremonies. There is a definite need to enact legislation for this protection. Tribes, tribal organizations, Congress and the Administration have

made significant progress towards developing comprehensive legislation in the Senate and in order to enact legislation during this Congressional session which the Navajo Nation supports, I strongly urge that you consider a prompt mark-up in the Subcommittee. Thank you again, for this opportunity to present the Navajo Nation's views on H.R. 4155 and H.R. 4230.

Mr. RICHARDSON. Chairman Hena.

STATEMENT OF HON. JAMES HENA

Mr. HENA. Thank you, Mr. Chairman. And good morning. Mr. Chairman and Mr. Thomas; my name is James Hena, and I am the Chairman of the All Indian Pueblo Council, an organization composed of 19 Pueblo nations in New Mexico. Early Spanish records show that this organization has been in existence since at least 1598.

The All Indian Pueblo Council has also been actively involved in drafting and refining a similar bill on the Senate side with the American Indian Religious Freedom Coalition.

In my examination of H.R. 4155, I find its intent and spirit is well-meaning. However, what I see is broad language that is disturbing because it does not provide the protection to the degree and extent that we Pueblos would like to have.

Pueblo religion has suffered at the hands of Christianity through the efforts of Spain, Mexico and the United States. Our holy people in their wisdom took our beliefs underground, where it has survived and is still a vital part of the Pueblo way of life. Because of this experience, secrecy in matters of Pueblo religion is essential. Without secrecy, our way of life and governmental systems would collapse.

In our work with the Coalition and administration representatives we have emphasized that sacred areas and sacred sites are vital to Pueblo religion, and have recommended securing strong legal sanctions to ensure protection for tribal sacred areas to accommodate Pueblo traditional ceremonies in sacred places. Our efforts resulted in placing the burden of proof on Federal agencies and to consult with the tribes before implementing any of the provisions of the Indian Religious Freedom Act.

We do not want the government to proceed with site projects without Indian consultation, input and consent. Through this approach, those holy people among the Pueblos charged with an oath of secrecy may not be completely comfortable with sufficient protection for sacred places. Because of the oath, Pueblo religious persons are prohibited from identifying specific sacred sites. In addition, breaking these oaths subject such people to severe punishment. This, too, requires extraordinary protection of sacred areas.

H.R. 4155, as indicated earlier, does not go far enough to protect the Pueblo religion as it may pertain to protection of sacred places. Therefore, we respectfully recommend that the Cochiti version, or the New Mexico proposed version dealing with sacred places, be substituted for Senate bill S. 1021, be made a part of H.R. 4155 so that at minimum the Pueblo people will be comfortable and assured that our ways will be protected.

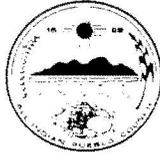
Pueblo people have heard good words in the past, and in 1994 they want assurances that do not go the way of past promises. At times in the past, Federal laws and policies at first glance appeared to be in our best interest, only to experience disappointment and especially the impositions by people who do not know our way and who do not respect our way.

Before I close, I would like to indicate that the All Indian Pueblo Council supports H.R. 4230, although Pueblos do not use peyote.

Thank you.

[Prepared statement of Mr. Hena follows:]

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



ALL INDIAN PUEBLO COUNCIL

OFFICE OF THE CHAIRMAN

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**TESTIMONY OF JAMES S. HENA BEFORE THE HOUSE SUB-COMMITTEE
 ON NATIVE AMERICAN AFFAIRS ON H.R. 4155, THE AMERICAN
 INDIAN RELIGIOUS FREEDOM ACT AMENDMENTS OF 1994**

JUNE 10, 1994

Good morning Mr. Chairman and members of the Committee. My name is James S. Hena, and I am the Chairman of the All Indian Pueblo Council an organization composed of nineteen Pueblo Nations. Early Spanish records show that this organization has been in existence since at least 1598. The All Indian Pueblo Council has also been actively involved in drafting and refining a similar Bill on the Senate side with the American Indian Religious Freedom Coalition.

In my examination of H.R. 4155, I find it's intent and spirit as well meaning, however; what I see is broad language that is disturbing because it does not provide the protection to the degree and extent that we Pueblos would like to have.

Pueblo religion has suffered at the hands of Christianity through the efforts of Spain, Mexico, and the United States. Our Holy People, in their wisdom took our beliefs underground where it

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has survived and is still a vital part of the Pueblo way of life. Because of this experience, secrecy in matters of Pueblo religion is essential. Without secrecy, our way of life and our governmental systems would collapse.

In our work with the Coalition and administration representatives we have emphasized that sacred areas and sacred sites are vital to Pueblo religion and have repeatedly recommended securing strong legal sanctions to ensure protection for tribal sacred areas to accommodate Pueblo traditional ceremonies and sacred places.

Our efforts resulted in placing the burden of proof on the Federal Agencies and to consult with the Tribes before implementing any of the provisions of the Indian Religious Freedom Act. We do not want the Government to proceed with site projects without Indian consultation, input, and consent.

Through this approach, those Holy People among the Pueblos charged with an oath of secrecy, while they may not be completely comfortable, is sufficient protection for sacred places. Because of the oath, Pueblo religious persons are prohibited from identifying specific sacred sites. In addition, breaking these oaths subjects such people to severe punishment. This, too, requires extraordinary protection of sacred areas.

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H.R. 4155, as indicated earlier does not go far enough to protect Pueblo religion as it may pertain to protection of sacred places. Therefore, we respectfully recommend that the version dealing with sacred places contained in Senate Bill S.1021, be made a part of H.R. 4155, so that at minimum the Pueblo People will be comfortable and assured that our ways will be protected. Pueblo People have heard good words in the past, and in 1994 they want assurances that do not go the way of past promises. At times in the past, Federal laws and policies at first glance appeared to be in our best interest only to experience disappointment and especially impositions by people who do not know our way and who do not respect our way.

Government action during this century restricting use of our own languages 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.

The protection for religious freedom of our communities is critical to our existence and survival. We have lost many of our loved ones over the years in this fight against extermination. These policies and persecutions resulted in the lost of the Pueblo of Pecos, an example of the extermination of our communities. We only have 19 Pueblos remaining in New Mexico. We do not want any

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more of our communities exterminated even if our Pueblos represent a different way of life.

America has promoted the protection of the rain forests, 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 -- 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.

In closing, I'd like to read something that was indicated in 1924 over Pueblo religious issues. It says, "We met because our fundamental right of religious liberty is threatened and is actually at this time being nullified, and we make, as our first declaration, the statement that our religion to us is sacred and is more important to us than anything else in our lives. The

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religious beliefs and ceremonies and forms of prayer of each of our Pueblos are as old as the world. They are holy."

"Our happiness and our moral behavior, our unity as a people, and the peace and joyfulness of our homes are all a part of our religion and are dependent on its continuation.

To pass this religion with its hidden, sacred knowledge and its many forms of prayer onto our children is our supreme duty to our ancestors and to our own hearts and to the God whom we know. Our religion is a true religion and it is our way of life."

Before closing, I want to indicate that the Pueblo People support the Peyote Bill, although Pueblo People do not use Peyote in the religion.

Thank you, Mr. Chairman.

Mr. RICHARDSON. Mr. Ray Apodaca, Coordinator, American Indian Religious Coalition.

STATEMENT OF RAYMOND D. APODACA

Mr. APODACA. I am Raymond Apodaca, Coordinator of the American Indian Religious Freedom Coalition. The Coalition is a nationwide consortium of Indian tribes and groups of Christian, Jewish, Moslem and Native American religious organizations and environmental social justice and human rights organizations that have joined together in a common interest, which is to achieve the passage of new legislation to protect the religious rights of Native Americans.

Represented either by individual membership or through member organizations, the coalition numbers over 170 Indian tribes, Alaskan native villages and over a hundred nontribal organizations.

Mr. Chairman, I have submitted a written statement, and I will not read the entire statement, but I would like to touch on some of the major points.

The Government of the United States, throughout its history, has tolerated and at times actively engaged in religious persecution against Native Americans. While institutional intolerance and persecution are no longer the policy of the Federal Government, interference with and encroachment upon our religions still exist and still threaten our spiritual existence.

One very sensitive and critical area where there are major problems is in the protection of, access to and use of sacred sites for worship and privacy. Just as numerous religions around the world, including Christianity, Judaism, Islam and Buddhism have sites that are held sacred and are protected because of their association with manifestations of the creator or with other special significance in their theologies, Native Americans have such sites in this quadrant of the world. To us, these sites are no less sacred, no less important and certainly no less worthy of protection.

Mr. Chairman and Members of the committee, President Clinton, as has been noted many times, stated in his signing of the Restoration of Religious Freedom Act that the agenda for the restoration of religious freedom in America will not be complete until traditional Native American religious practices receive the protection they deserve. We could not agree more with his statement. A very important part of that, of course, we believe to be the protection of sacred sites.

We would like to thank the Chairman for his foresight and leadership in having sponsored 4155. It is truly heartening to us that you understand and appreciate the crisis that we face, and that you are willing to join us in trying to remedy this crisis and protect our religious sites.

The Legislative Technicians Committee of the Coalition, which is responsible for the development of legislation and has coordinated the Coalition's efforts relating to passage of legislation has had an opportunity to review both H.R. 4155 and the proposed proposal set forth by Pueblo Cochiti, which we refer to as the New Mexico alternative.

The Legislative Technicians Committee believes that 4155 is lacking in some major respects in that, one, it only covers a limited number of sacred sites, those "indispensable" to the religions, which is a difficult test and the most difficult legal test to meet.

Two, it has no provisions for secrecy or confidentiality, which is vital to tribes such as the Pueblos and the Apaches.

Three, it has no procedures to avoid litigation such as notice, consultation and planning, and no negotiation requirements. It covers only Federal lands and not Federal activities outside of Federal lands, or State activities on State lands which are federally assisted, which would have been covered if *Lyng v. Northwest Indian Cemeteries Association* had been decided the other way. Therefore, it offers a scope of coverage that is much narrower.

We also believe that it provides a watered down First Amendment test, as compared to the restoration of Religious Freedom Act, and that it provides no guarantee of access to traditional Indian religious practitioners.

We believe that the New Mexico Indian alternative and the process of negotiated agreements that it proposes would be a workable solution in most instances for the protection, access to and use of sacred sites. We believe that the New Mexico Indian alternative addresses most of the issues just noted. We urge the committee to substitute the alternative, and we note that some refinements are needed in it, and we offer our services to make refinements and to move this legislation forward.

We would like to note with great concern that there is no legislation pending in the House on religious freedom for prisoners, and we urge Members of the House to consider such legislation.

I would like to share a short story with you, if I may. Often when we speak, many of us—and I am sure you often do—we look for nice quotes or good stories or things by which to make a good point. I did that during this week while I was thinking about this testimony, and we had I had a meeting with a delegation of Indian people from Mexico—Mayas, Taramaya and various other Indian people who were visiting in the capital. I briefed them on what we are doing and how we work with Congress and how you work with us and how we listen to each other and negotiate and work on legislation.

At the end of the process this whole group of people, one by one, as is their custom, gave me little gifts, tokens of their visit in gratitude for the exchange. The very last person who approached me from that delegation gave me this silver coin.

In handing it to me, he said, I am going to give you this to remind you what your work is all about. He said, remember, without our cultures, without our religions and without our sacred lands, this and everything it provides and represents is totally useless to us as Indian people, because without our lands, without our cultures and our religions, we are not Indians any more.

Thank you, Mr. Chairman.

Mr. RICHARDSON. That is a very moving statement and it illustrates the need to deal with this issue.

[Prepared statement of Mr. Apodaca follows.]

**TESTIMONY OF RAYMOND D. APODACA BEFORE THE HOUSE SUBCOMMITTEE
ON NATIVE AMERICAN AFFAIRS OF THE COMMITTEE ON NATURAL RESOURCES
RELATING TO H.R. 4155, THE AMERICAN INDIAN RELIGIOUS FREEDOM
ACT AMENDMENTS OF 1994**

Good morning Mr. Chairman and distinguished Members of the Subcommittee. I am Raymond D. Apodaca, Coordinator of the American Indian Religious Freedom Coalition. The Coalition is a nationwide consortium of Indian tribes and groups; Christian, Jewish, Muslim, and Native American religious organizations; and environmental, social justice and human rights organizations that have joined together in a common interest to achieve the passage of new legislation to protect the religious rights of Native Americans. Represented either through direct membership or through membership in one of its organizations, the Coalition numbers over 170 Indian tribes and Alaska Native villages and over 100 non-tribal organizations and groups.

It is a distinct honor and great pleasure to appear before you today to offer testimony on H.R. 4155. Thank you for inviting me to do so. The history of the persecution of Native religious practitioners and intolerance toward and interference with the practice of Native American and American Indian religions is well established. From the beginning of contact with the non-Indian world, Native Peoples, cultures, and religions have been under unceasing attack. Attempts have been made in every way possible to exterminate American Indians as a People, to undermine our cultures, and to discredit and destroy our religions. The Government of the United States throughout its history has tolerated and, at times, actively engaged in religious persecution against Native Americans. While institutional intolerance and persecution are no longer the policy of the federal government, interference with and encroachment upon our religions still exist and the threat to our spiritual existence continues. One very sensitive and critical area where there continues to be major problems is in the protection of, access to, and use of sacred sites for worship in privacy.

Just as numerous religions around the world, including Christianity, Judaism, Islam, and Buddhism, have sites that are held sacred and are protected because of their association with manifestations of the Creator or with other special significance in their theologies, Native Americans have such sites in this quadrant of the world. To us, these sites are no less sacred, no less important, and certainly no less worthy of protection. Many of these sites and the ability to use them are critical to the practice of our religions.

Even after the enactment of the American Indian Religious Freedom Act of 1978 -- wherein the expressed policy of the United States was to "protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the traditional religions of American Indians, Eskimo, Aleut,

and Native Hawaiians" -- the federal government not only has failed to protect American Indian religions and religious practitioners from encroachment, but has, in fact, itself been a participant in or the major perpetrator of gross and unnecessary interference with Native American religions and the use and protection of sacred sites. In numerous instances, for example, the development of forests and other public lands for recreation or resource development have been placed above the needs of Native American religions and practitioners and sacred sites have been desecrated and damaged or destroyed.

At the signing of the Religious Freedom Restoration Act of 1993, President Clinton stated that "the agenda for the restoration of religious freedom in America will not be complete until traditional Native American religious practices have received the protection they deserve." We could not agree more. Legislation providing protection for our sacred sites and guaranteed access to and private use of them for religious purposes is essential to providing this protection.

Mr. Chairman, we would like to thank you for the foresight and leadership you have shown on this issue through your sponsorship of H.R. 4155. It is truly heartening to us, as Indian People, to know that you appreciate the severity of the crisis we face, and are willing to help us take on the difficult task of achieving protection for our religious rights and sacred sites.

The Legislative Technicians Committee of the Coalition, which has been responsible for the development of legislation and has coordinated the Coalition's efforts relating to achieving the passage of legislation, has had a opportunity to review H.R. 4155 and the proposal set forth by the Pueblo of Cochiti, referred to as the New Mexico Indian Alternative. While the Native American Rights Fund has requested that it be noted that it has not completed its review process and may want to offer separate comments at a later date, the remaining thirteen members of the Committee have concluded that the New Mexico Indian Alternative would be the preferred alternative.

The Committee believes that H.R. 4155 is flawed in several major respects:

1. It covers only a limited number of sacred sites, those "indispensable" to Native American religions, which is the which is the most difficult legal test to meet.
2. It has no provisions for secrecy and confidentiality, which are vital to certain tribes, such as the Pueblos and the Apaches.
3. It has no procedures to avoid litigation, such as notice, consultation and planning, and has no negotiation requirements.

4. It covers only federal lands and not federal activities outside of federal land or state activity on state lands, as would have been the case if Lyng v. N.W. Indian Cemeteries Assn. had been decided differently. This scope of coverage is narrower than the coverage provided by the Religious Freedom Restoration Act of 1993.

5. It provides for a "watered down" First Amendment test, as compared to the Religious Freedom Restoration Act.

6. It provides no guarantee of access for traditional Indian religious practitioners.

The New Mexico Indian Alternative and the process of negotiated agreements that it proposes would be a workable solution in most instances for the protection of, access to, and use of sacred sites. Moreover, the Alternative addresses most of these issues noted above, which H.R. 4155 does not. For these reasons, we believe that is a preferable alternative.

We urge the Subcommittee to substitute the Alternative for H.R. 4155, as introduced, and move forward with the Alternative as a Subcommittee substitute.

We note that the Legislative Technicians Committee believes that some refinements of the New Mexico Indian Alternative are in order, particularly to make sure that the needs of individual religious practitioners and traditional leaders are adequately addressed, and to make sure that the procedures in the bill are workable and appropriately build upon existing efforts by federal agencies to consult with Indian people. The Coalition stands ready to work with the Subcommittee to develop these refinements and to move forward on this vital piece of legislation.

We also note with great concern that there is no legislation currently pending in the House dealing with the protection of the religious rights of Native American prisoners. We strongly urge the members of the House also to consider appropriate legislation on this issue.

Thank you for the opportunity to testify today.

Mr. RICHARDSON. Next we have Regis Pecos, Executive Director, New Mexico Office of Indian Affairs. He is a member of the Cochiti tribe, and in the course of your testimony, I would like you, if you can, to briefly describe this famous Cochiti proposal we are talking about, but be very brief.

I know this is very important to the Pueblos and to the Cochiti's, but I think for purposes of the audience, if you could summarize it, it would be useful. For that, I will give you an additional minute. I know him well, so I can say this to him.

STATEMENT OF REGIS PECOS

Mr. PECOS. Thank you, Mr. Chairman. Greetings from the Tribal Council at Cochiti on behalf of Governor Quintana. I come here as the representative to present our proposal which is based on our experience that you know very well. With me also, for the record, is Mr. Alan Parker who the Pueblo Tribal Council has retained in Washington, D.C. for this issue.

I want everyone here to know that one of the first pieces of legislation passed when Congressman Richardson came to Washington was a piece of legislation that returned several thousand acres of land that contained many sacred sites to our people. He championed that cause as one of his first pieces of legislation.

I also want everyone in this room to know that one of the most sacred sites to all Pueblo people that is on our reservation some years ago was threatened with the development of hydroelectric power and one of the most sacred sites to all Pueblo people all the way to our brothers and sisters of the Hopi Nation.

You came to help us in that struggle, Congressman Richardson. We have invested the time and the energy and the financial resources so that our efforts might result in Indian people and tribes throughout the country to not have to suffer the pain and the agony that you saw when you spoke to the members of our tribal council, and I think you were deeply moved when you saw grown men cry because they had no means to protect something that was at the very heart of their spirituality and something that was at the very heart of the cultural survival represented by the need for our protection of that sacred site.

You came to understand the dilemma we face in the administrative procedures before FERC, that one of our members would have to be sacrificed to make the compelling argument in why this sacred site should not be desecrated, should not be destroyed from the process of hydroelectric power development, because secrecy is a tenet of our native religion and you saw the pain and agony of our people.

When we were faced with this very difficult choice of who among the members of our council would be sacrificed to make that argument, understanding that when they made that argument to protect that site that they most likely would be excommunicated by breaking that sacred vow, you rescued us in that situation by offering legislation that prohibited the development of hydroelectric power.

It is for these reasons that I want all the people in this room to come to understand why all of us in New Mexico feel blessed with your representation and your presence here on the Hill, because

you are aware and sensitive that in order for our native religions to be protected, that where secrecy is a tenet of our religion, that that is something that we cannot compromise in this effort to develop this piece of legislation.

I was pleased to hear the recommendations of Mr. Torres with regard to the cause of action and the limitation to tribes and their designees, the recommendation that provides for notice and consultation provisions in our proposed bill, using RFRA as a standard and making the cause of action against agencies not persons part of the language in the bill.

The core idea is very consistent with the President's statements of policy with regard to the fundamental principle of the government-to-government relationship, and in the proposal, the very core is an established policy that authorizes Federal agencies and their land managers to engage in government-to-government or inter-agency agreements and provide notification of any proposed activity within a given area, that once given this notification to the tribes of proposed Federal activity, that the tribe would have an opportunity to respond to provide various alternatives so as not to desecrate or destroy sacred sites within that proposed area.

It gives every opportunity for both parties to fulfill a shared responsibility with regard to protection of these cultural resources in a way that you get the maximum opportunity to come to some agreement and, in the worst case scenario, if there was not agreement with these proposed alternatives, that if the Federal land managers felt compelled that this was something absolutely necessary, that then we would trigger a process that is offered much in the same way as the Senate provisions in 1021. But that is the core, and I think the most important is addressing all four recommendations by Mr. Torres, those are the core elements of what we are proposing.

I think you are very well aware that this is not something new with regard to the National Park Service effects where many people have found this to be the most useful way in bringing land managers and tribal representatives to exemplify that shared responsibility. In this way, we are never subjected to having to break those sacred vows with regard to the secrecy of the level of the sacredness or uses of these resources that we are trying to protect.

I thank you, Mr. Congressman, and Members of the committee for giving us an opportunity and to place this proposal on the table. I think that you begin to hear some consensus with regard to the positive approach contained in this proposal and, again, as the Navajo people recently stated, at Bosque Redondo where President Zah and yourself dedicated Bosque Redondo to memorialize the imprisonment of the Navajo people, those people feel deeply about you with regard to your commitment to our cause in protecting what has been the essence of our cultural survival and what still represents our future, because that is the essence of who we are as Indian people.

I thank you for your advocacy on behalf of all Indian people of this country.

Mr. RICHARDSON. I appreciate those comments. Do you need any more time?

I want to thank you very much.

[Prepared statement of Mr. Pecos follows:]

Andrew Quintana
Governor
Jose A. Herrera
Lt. Governor



Matthew S. Pecos
Treasurer
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Secretary

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**STATEMENT OF REGIS PECOS, MEMBER
PUEBLO de COCHITI TRIBAL COUNCIL**

**CONCERNING PENDING FEDERAL LEGISLATION TO
PROTECT TRIBAL SACRED SITES**

**PRESENTED AT
THE NATIONAL AMERICAN INDIAN LISTENING CONFERENCE**

MAY 5, 1994

ALBUQUERQUE, NEW MEXICO

For the past several years a broad coalition of Indian Tribes and religious organizations have worked to secure legislation that will provide meaningful protection to tribal sacred areas located on public lands and ensure access to those areas for traditional tribal ceremonial use. These sacred areas have been used by our Tribal Communities for such ceremonial purposes since time immemorial. Their protection is critical to preserving our traditional beliefs and way of life.

Under Lyng v. N.W. Indian Cemetery Protection Association, 485 U.S. 439 (1988) existing law provides no legal protection for these sacred areas. In Lyng the Indian parties proved that road construction in a particular sacred area would destroy that area and would also destroy their native religion. They were told by the United States Supreme Court that the First Amendment does not

protect them from even this extreme consequence of a federal land management decision.

The Lyng decision was simply another in a long sordid road of government indifference or overt hostility to native religions.

For the Pueblos, this long road began with the efforts of the Spanish to forcibly impose Catholicism and destroy our traditional spiritual beliefs. We survived that campaign only at great human cost--in torture, in murder, in mutilation, in the destruction of whole communities.

This eventually led to the Pueblo Revolt in 1680 in which all the Pueblos united and drove all the Spanish out of Pueblo lands. The Spanish returned with a massive force in 1692 and once again imposed their government and religion on the Pueblos. We were forced to go underground with our most important religious beliefs and practices in order to ensure their survival and our survival as traditional Pueblo communities.

Our ancestors have since also had to survive the organized attempts of the United States government to forcibly suppress our traditional beliefs and ways of life. Excerpts from a 1924 declaration of the Pueblos will illustrate this:

The Council of All the New Mexico Pueblos, assembled at Santo Domingo Pueblo this fifth of May, 1924, issues the following Declaration, addressed to the Pueblo Indians, to all Indians, and to the People of the United States.

We have met because our most fundamental right of religious liberty is threatened and is actually at this time being nullified. And we make as our first declaration the statement that our religion to us is sacred and is more important to us than anything else in our life. The religious beliefs and ceremonies and forms

of prayer of each of our pueblos are as old as the world, and they are holy. Our happiness, our moral behavior, our unity as a people, and the peace and joyfulness of our homes, are all a part of our religion and are dependent on its continuation.

To pass this religion, with its hidden sacred knowledge and its many forms of prayer, on to our children, is our supreme duty to our ancestors and to our own hearts and to the God whom we know. Our religion is a true religion, and it is our way of life. We must now tell how our religious freedom is threatened and denied to us.

. . . .

. . . And one of our present Superintendents of the Pueblos thus states his attitude in a printed Governmental report: "Until the old customs and Indian practices are broken up among his people, we cannot hope for a great amount of progress. The secret dance is perhaps one of the greatest evils. What goes on I will not attempt to say, but I firmly believe that it is little less than a ribald system of debauchery."

. . . .

. . . on February 14, 1923, the Commissioner addressed all Superintendents, commending to their attention the proposals of certain Christian missionaries stating that "the suggestions agreed in the main with his attitude." Among these suggestions were the following:

"That the Indian dances be limited to one each month in the daylight hours of one day in the midweek and at one center in each district; the months of March and April, June, July, and August being excepted (no dances these months).

"That none take part in these dances or be present who are under 50 years of age.

"That a careful propaganda be undertaken to educate public opinion against the (Indian) dance."

. . . .

Most of all we say to all the Pueblos whom we represent--to all of the ten thousand Pueblo Indians, and likewise to the Hopi and Navajo Indians: This is the time

of the great question. Shall we peacefully but strongly and deathlessly hold to the religion of our fathers, to our own religion, which binds us together and makes us the brothers and children of God? There is no future for the race of Indians if its religion is killed. We must be faithful to each other now.

. . . .

As Jemez Pueblo author, Joe S. Sando, has recently written:

The Religious Crimes Code, instituted by the United States Government, forbidding most types of religious gatherings and observances, was also applied to the Pueblo Indians, and a period of suppression began that extended through the first two decades of the twentieth century. Indian religious practices were considered "anti-Christian," therefore "un-American." The Commissioner of Indian affairs, in order to enforce the code, sent investigators to the pueblos to gather information and report on violations of the edict against the practice of their religion. A campaign of publicity was begun in the newspapers and magazine media, attempting to turn public opinion against the Pueblo Indians. Misunderstanding and misconception proliferated. Strangely enough, the first contact of Anglo-Americans with the Pueblo people gave them the impression that they were devout Christians, because of the Catholic observances they had adopted. Upon closer examination, it was found that these Christian observances had been made a part of Pueblo practices. Sando, Pueblo Nations p. 96 (Clearlight Publishers 1994).

One outgrowth of this history has been the emergence of deep seated traditions of strictly enforced secrecy requirements regarding our traditional religious beliefs and practices. Many of those traditional beliefs and practices are critically tied to our sacred areas. We have a duty to our ancestors and to our children to protect those sacred areas.

It is this history and those secrecy obligations that caused the Pueblos to react with great skepticism, even opposition, to the early efforts to overturn Lyng with new legislation. That concern

was heightened when we saw the early drafts as the proposed AIRFA legislation.

Under that legislation, to secure protection for a sacred area or to gain access to it would have required that we reveal its precise location, how we use it and when we use it for our religious purposes. Under our traditions, such information cannot be revealed without violating our oaths of secrecy. Violators of such oaths are subjected to severe tribal sanctions--including our traditional equivalent of a permanent "excommunication" from the religious life of the Pueblo.

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 the Senate Committee on Indian Affairs 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.

We were pleased that the Committee accepted our amendments in particular, §§104(b) and 105(b) of what became S. 1021. Those sections provide a mechanism by which our secrecy obligations can be honored and our sacred areas protected without imposing an impossible burden upon us or the Government. We suggested the language of §104(b) in recognition that the only way our secrecy obligations can be honored and alternatives to destruction of our sacred areas identified is by legislation which enables us through dialogue with the Government to identify reasonable alternatives to

proposed governmental action, which would otherwise harm, destroy or impede the use of those sacred places. Under §104(b) this dialogue would not require disclosure of our religious secrets, but would instead focus the discussion on alternative locations or means by which the government could do what it needs to do without harming our sacred areas.

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 practitioners) 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(a) 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 location or how and when we use them. Under §104(b), this can be achieved through dialogue. Where in that dialogue the Government and 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, and none of the alternatives, 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 the continent's first human inhabitants, entitled to comparable protection?

We realize that the secrecy provisions of S. 1021 contain different versions of the "compelling interest" and "least restrictive alternatives" tests familiar to First Amendment Scholars. Those differences are, however, mandated by the Pueblo's traditional secrecy obligations and have been found to pass constitutional muster. See Hearings on Native American Free Exercise of Religion Act, S. 1021, Senate Select Committee on Indian Affairs, 103rd Congress, First Session, September 10, 1993.

We have repeatedly explained in detail to representatives of the Department of Justice and the Department of the Interior through a series of meetings in 1993 and 1994 the necessity that S. 1021 accommodate these secrecy concerns in this manner or by some other workable approach that would provide meaningful legal protection to Pueblo sacred areas. Thus, we were taken aback by the position on this issue taken last week by your agencies in

their latest working draft of an alternative to S. 1021. That working draft is one step in a process expected to lead to a revised form of S. 1021 which will be submitted to the Senate Indian Affairs Committee for consideration as a substitute to S. 1021.

ESSENTIALLY, FOR THE PUEBLOS THE DOJ/DOI WORKING DRAFT REMOVES ALL SACRED SITE LEGAL PROTECTIONS FROM S. 1021! IT CONVERTS THE S. 1021 SECRECY PROVISION INTO AN EMPTY PROCESS IN WHICH A PARTICULAR SACRED AREA WILL BE PROTECTED ONLY IF THE GOVERNMENT AND THE PUEBLO CAN AGREE ON AN ALTERNATIVE LOCATION OR OTHER MITIGATIVE MEASURES ACCEPTABLE TO BOTH PARTIES. WHERE SUCH AGREEMENT IS NOT REACHED, THE DOJ/DOI WORKING DRAFT LEAVES THE PUEBLOS WITH NO PRACTICALLY ENFORCEABLE LEGAL RIGHTS AGAINST THE PROPOSED GOVERNMENT ACTION, NO MATTER HOW DEVASTATING THE HARM TO US AND NO MATTER HOW UNIMPORTANT OR UNNECESSARY IS THE PROPOSED GOVERNMENT ACTION. THAT IS THE SAME LEGAL SITUATION WE ARE IN NOW.

This outcome is primarily the result of DOJ/DOI's rewrite of 105(a) and 105(b), although similar problems derive from the working draft revisions to Section 3(12) requiring that particular religious sites be identified to secure protection under the Act. S. 1021's existing Section 3(12) allows for such protection without requiring precise identification of the sacred areas which might be protected. There are numerous other legal problems with the DOJ/DOI working draft. However, since that draft's worst problems are in the rewrite to 104(b) and 105(b), I'll direct the remainder of my remarks to those sections.

Read together, the proposed revisions to 105(a) and 105(b) would require that to secure legal protection for a Pueblo's sacred areas that the Pueblo must come forward and prove that the proposed government activity "is posing or will pose a substantial burden on a Native American religious site or the exercise of a Native American religion". There is no way for an Indian Pueblo to meet this burden of proof without breach of its traditional secrecy obligations. Thus, the Pueblos will never be able to trigger the hypothetical Government duty under 105(b) to show a compelling governmental interest to justify destruction of the endangered sacred area.

Moreover, under 105(b), the government would reserve to itself--free of judicial scrutiny--the power to determine a) whether any of the alternatives offered by a Pueblo in the consultation process under §104 were or were not "reasonable" and b) whether the approach chosen by the government was in fact a reasonable means of furthering a compelling governmental interest.

This language leaves the Pueblos without any legal protection under any variant of the "compelling interest" or "least restrictive alternatives" tests. In short, the DOJ/DOI working draft revisions of the 104/105 provisions are for the Pueblos nothing less than a cruel hoax.

Thus, here we are, back where we started, explaining to now more Senior Federal representatives why the bill language their Departments have asked us to consider is less than worthless to us. How many times do we have to say the same thing before someone will

hear us? We need you to not only listen to our words but to hear and accept their meaning. We are honorable people. We have no ulterior motive. We just want the ability to protect our remaining sacred areas from destruction.

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 our fight against physical and cultural extermination. We only have 19 Pueblos remaining in New Mexico. We do not want any more of our communities exterminated. 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 people.

Further, our religion and languages, the Tewa, Towa, Keresan, Zuni, and Tiwa, have survived government 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. Instead, we want to remain healthy, strong, spiritual communities as we always have been.

Attorney General Reno, Secretary Babbitt, we implore you to instruct your Departments to hear us on this issue and to draft or accept legislative language which allows us to secure meaningful legal protection for and access to our sacred areas. The existing language of S. 1021 meets that standard. The revised language of the DOJ/DOI working draft does not.

Mr. RICHARDSON. Let me mention that for our next witness, Hon. Raymond "Chuck" Derby, your representative, David Minge, welcomes you.

I understand he is trying to come here to especially do that. He has talked to me about your issues and how fond he is of you. He may be here shortly. In case he doesn't make it, I have questions that he wants me to convey to you.

Welcome, and please proceed.

STATEMENT OF RAYMOND L. "CHUCK" DERBY

Mr. DERBY. Thank you, Mr. Chairman, and committee members. On behalf of the Pipestone Dakotah Community, we thank you for the opportunity to present a side of an issue unknown to many people, but it has serious economic and religious impacts.

Our concern is Title I of the American Free Exercise of Religion Act or any legislation in reference to sacred sites. The great Pipestone Quarries of Minnesota have always been open to all Indian tribes. The tribes that use the Pipestone range from the plains of Oklahoma, far into Canada and from the Mississippi River to the Rocky Mountains. These are the quarries where America obtained the soft red stone to make the ceremonial peace pipes.

Protection of the Pipestone Quarries is under the jurisdiction of the National Park Service. For the past eight years, the Yankton Sioux Tribe of South Dakota has passed resolutions seeking to get the quarries under their control. We feel Yankton Sioux will utilize the new legislation to accomplish the goal of controlling the Pipestone Quarries.

The free and unrestricted access has never been nor should it ever be under control of any one tribe, who will be able to dictate who can and cannot quarry the stone. It is common belief of all tribal people that the Pipestone Quarries were given to all the Indian nations by the creator. Philosophy would suggest the creator owns the Pipestone.

The Pipestone Dakotah community was established in 1930 and for generations our Indian crafts people and artisans have quarried and fashioned pipestone articles. As such, the pipe crafting is the primary economic and cultural vehicle for approximately 50 Indian families who live in the vicinity of the Pipestone Quarries.

From time immemorial, pipestone pipes and articles made from this stone were traded throughout North America. Historically, evidence suggests that tribes and individual members have exchanged pipestone for the currency of the times such as horses, flint, corn, tobacco, money, et cetera, for hundreds of years. This has been done with full knowledge of tribal elders, leaders and medicine people and has been sanctioned as appropriate.

The Pipestone Dakotah community continues the precedent set hundreds of years ago. Trading of pipes and other pipestone crafts by our community members helps us to live independently of social programs and not be a burden to the taxpayers. Any change occurring in management will have a devastating effect on our community members.

It would be hard to tell Harrison Crow, age 74, the elder male in our community who lives on a very small social security check that he can no longer supplement his social security with his craft

of pipe making. Young men like Mark Pedersen, Indian name Swift Horse, who forfeited higher education to be a pipe maker so many other Indian people can have a pipe to create with.

My nephew, Solomon Derby, a young man who will be looking forward to marriage some day, and how will he be able to pass his culture as a pipe maker on to his children. Cynthia Brade, elder female in our community, her only source of survival is with pipestone crafts. How will she survive when this is gone from her.

Many grandchildren of our Indian community will have a vacant spot in their cultural heritage, once a proud and respected family of pipe makers will fade into the past.

A change in present management will have a devastating effect on the future of the pipe for religious purposes. For over 30 years, we have seen many Indian people come to the pipe stone quarries and dig for the red stone but come up empty handed. The quarrying takes special skill to be successful in reaching the pipestone deposit and our Indian community possesses such skills.

Members of the Pipestone Dakota community respect and use the pipe in a traditional manner and work the Pipestone Quarries in a manner as our traditional elders did. The work is done by hand so as to be the least intrusive on the Pipestone Quarries, therefore preserving and protecting that which our Creator provided for his people.

In conclusion, the great Pipestone Quarries of Minnesota is in a classification in and of itself. It belongs to all people and no tribe may mistakenly claim exclusive control. Therefore, the Pipestone Quarries should be excluded from any and all legislation.

Thank you very much.

[Prepared statement of Mr. Derby and attachments follow:]

ON BEHALF OF THE PIPESTONE DAKOTA COMMUNITY WE THANK YOU FOR THE OPPORTUNITY TO PRESENT THE SIDE OF AN ISSUE UNKNOWN TO MANY PEOPLE, BUT HAS SERIOUS ECONOMIC AND RELIGIOUS IMPACTS. OUR CONCERN IS TITLE 1 OF THE AMERICAN INDIAN FREE EXERCISE OF RELIGION ACT - OR ANY LEGISLATION IN REFERENCE TO "SACRED SITES".

"THE GREAT PIPESTONE QUARRIES OF MINNESOTA" HAVE ALWAYS BEEN OPEN TO ALL INDIAN TRIBES. THE TRIBES THAT USED THE PIPESTONE PIPE RANGED FROM THE PLAINS OF OKLAHOMA FAR INTO CANADA AND FROM THE MISSISSIPPI RIVER TO THE ROCKY MOUNTAINS. THESE ARE THE QUARRIES, WHERE AMERICAN INDIANS OBTAIN THE SOFT RED STONE TO MAKE THEIR CEREMONIAL PEACE PIPES. PROTECTION OF THE GREAT PIPESTONE QUARRIES IS UNDER THE JURISDICTION OF THE NATIONAL PARK SERVICE. THE PAST EIGHT YEARS, THE YANKTON SIOUX TRIBE OF SOUTH DAKOTA, HAS PASSED RESOLUTIONS SEEKING TO GET THE QUARRIES UNDER THEIR CONTROL. WE FEEL THE YANKTON SIOUX TRIBE WILL UTILIZE THE NEW LEGISLATION TO ACCOMPLISH THEIR GOAL OF CONTROLLING THE PIPESTONE QUARRIES. FREE AND UNRESTRICTED ACCESS IS OF PARAMOUNT IMPORTANCE FOR ALL TRIBES. THE FREE AND UNRESTRICTED ACCESS HAS NEVER BEEN NOR SHOULD IT EVER BE UNDER THE CONTROL OF ANY ONE TRIBE, WHO WILL THEN BE ABLE TO DICTATE WHO CAN OR CANNOT QUARRY THE STONE. IT IS COMMON BELIEF OF ALL TRIBAL PEOPLE THAT THE PIPESTONE QUARRIES WERE GIVEN TO ALL INDIAN NATIONS BY THE "CREATOR". TRADITIONAL SPIRITUAL PHILOSOPHY WOULD SUGGEST THE "CREATOR" OWNS THE PIPESTONE.

THE PIPESTONE DAKOTA COMMUNITY WAS ESTABLISHED IN 1970, AND FOR GENERATIONS OUR INDIAN CRAFTS PEOPLE AND ARTISANS HAVE QUARRIED AND FASHIONED PIPESTONE ARTICLES. AS SUCH, PIPE CRAFTING IS THE PRIMARY ECONOMIC AND CULTURAL VEHICLE FOR THE APPROXIMATE 50 INDIAN FAMILIES WHO LIVE IN THE VICINITY OF THE PIPESTONE QUARRIES.

FROM TIME IMMEMORIAL, PIPESTONE PIPES AND OTHER ARTICLES MADE FROM THIS STONE WERE TRADED THROUGHOUT NORTH AMERICA. HISTORICALLY, EVIDENCE SUGGESTS THAT TRIBES AND INDIVIDUAL MEMBERS HAVE EXCHANGED PIPESTONE FOR THE "CURRENCY OF THE TIMES", I.E., HORSES, FLINT, CORN, TOBACCO, MONEY, ETC. FOR HUNDREDS OF YEARS. THIS HAS BEEN DONE WITH FULL KNOWLEDGE OF THE TRIBAL ELDERS, LEADERS AND MEDICINE PEOPLE AND HAS BEEN SANCTIONED AS APPROPRIATE.

THE PIPESTONE DAKOTA COMMUNITY CONTINUES A PRECEDENT SET HUNDREDS OF YEARS AGO. TRADING OF PIPES AND OTHER PIPESTONE CRAFTS BY OUR COMMUNITY MEMBERS HELPS US TO LIVE INDEPENDENTLY OF SOCIAL PROGRAMS AND NOT BE A BURDEN TO TAX PAYERS. ANY CHANGE OF THE CURRENT MANAGEMENT WILL HAVE A DEVASTATING EFFECT ON OUR COMMUNITY MEMBERS. IT WOULD BE HARD TO TELL HARRISON CROW, AGE 74, THE ELDER MALE IN OUR COMMUNITY, WHO LIVES ON A VERY MINIMUM SOCIAL SECURITY CHECK THAT HE CAN NO LONGER SUPPLEMENT HIS SOCIAL SECURITY WITH HIS CRAFT OF PIPE MAKING. YOUNG MEN LIKE MARK PEDERSEN (SWIFT HORSE), WHO FORFEITED HIGHER EDUCATION TO BE A PIPE MAKER SO MANY OTHER INDIAN PEOPLE CAN HAVE A PIPE TO PRAY WITH. MY NEPHEW SOLOMON DERBY, A YOUNG MAN WILL LOOK FORWARD TO MARRIAGE SOME DAY AND HOW WILL HE BE ABLE TO PASS HIS CULTURE, AS A PIPE MAKER, TO HIS CHILDREN? CYNTHIA BRADY, ELDER FEMALE IN OUR INDIAN COMMUNITY, HER ONLY SOURCE OF SURVIVAL IS WITH THE PIPESTONE CRAFTS, HOW WILL SHE SURVIVE WHEN THIS IS GONE FROM HER? THE MANY GRANDCHILDREN OF OUR INDIAN COMMUNITY WILL HAVE A VACANT SPOT IN THEIR CULTURAL HERITAGE, ONCE A PROUD AND RESPECTED FAMILY OF PIPE MAKERS WILL FADE INTO THE PAST.

A CHANGE IN PRESENT MANAGEMENT, WILL HAVE A DEVASTATING EFFECT ON THE FUTURE

OF THE PIPE FOR RELIGIOUS PURPOSES. FOR OVER 30 YEARS, WE HAVE SEEN MANY INDIAN PEOPLE COME TO THE PIPESTONE QUARRIES AND DIG FOR THE RED STONE, BUT COME UP EMPTY HANDED. THE QUARRYING TAKES A SPECIAL SKILL, TO BE SUCCESSFUL IN REACHING THE PIPESTONE DEPOSIT AND OUR INDIAN COMMUNITY POSSESSES SUCH SKILLS. MEMBERS OF THE PIPESTONE DAKOTAH COMMUNITY RESPECT AND USE THE PIPE IN A TRADITIONAL MANNER AND WORK THE PIPESTONE QUARRIES IN THE SAME MANNER AS OUR TRADITIONAL ELDERS DID. THE WORK IS DONE BY HAND SO AS TO BE THE LEAST INTRUSIVE ON THE PIPESTONE QUARRIES, THEREFORE PRESERVING AND PROTECTING THAT WHICH OUR "CREATOR" PROVIDED FOR HIS PEOPLE.

IN CONCLUSION, "THE GREAT PIPESTONE QUARRIES OF MINNESOTA" IS IN A CLASSIFICATION IN AND OF ITSELF, IT BELONGS TO ALL THE PEOPLE AND NO TRIBE MAY MISTAKENLY CLAIM EXCLUSIVE CONTROL, THEREFORE THE PIPESTONE QUARRIES SHOULD BE EXCLUDED FROM ANY AND ALL LEGISLATION.

RAYMOND L. "CHUCK" DERBY
SPOKESPERSON
PIPESTONE DAKOTAH COMMUNITY

THE PIPESTONE DAKOTA COMMUNITY FEELS COMPELLED TO ISSUE A STATEMENT REGARDING PROPOSED AMENDMENTS TO THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT, SPECIFICALLY, TITLE 1. THE GREAT PIPESTONE QUARRIES OF MINNESOTA IS LISTED AS ONE OF FORTY-FOUR SITES DESIGNATED TO BE PROTECTED BY THE PROPOSED AMENDMENTS. SOME INDIVIDUALS HAVE INITIATED PETITIONS AND RESOLUTIONS AND ARE ENCOURAGING SUPPORT FROM INDIAN PEOPLE TO RETURN THE ADMINISTRATION OF THE PIPESTONE QUARRIES TO THE YANKTON SIOUX TRIBE. IT IS A FURTHER WISH THAT THE NATIONAL PARK SERVICE AND THE PIPESTONE INDIAN SHRINE ASSOCIATION VACATE THE PREMISES OF THE PIPESTONE NATIONAL MONUMENT. THESE INDIVIDUALS CONTEND THAT PIPESTONE IS BEING MARKETED IN AN UNETHICAL MANNER. WE, PIPEMAKERS IN THE PIPESTONE INDIAN COMMUNITY, FELT THAT WE SHOULD OFFER OUR VIEWS IN THE SPIRIT OF UNDERSTANDING.

THE PIPESTONE NATIONAL MONUMENT WAS ESTABLISHED IN 1937 BY AN ACT OF CONGRESS. THE YANKTON SIOUX TRIBE, IN PART, HAD RELINQUISHED THEIR TITLE TO THESE QUARRIES AND THE PIPESTONE RESERVATION. IN 1929, AN APPROPRIATED SETTLEMENT WITH THE YANKTON SIOUX TRIBE IN THE AMOUNT OF \$328,558.90, WHICH COMPENSATED THE TRIBE FOR THE SURRENDER OF THEIR SOLE CLAIM TO THE PIPESTONE RESERVATION. WE INDIAN PEOPLE REALIZE THAT THESE ISSUES ARE SECONDARY TO OUR BELIEF THAT THE ONLY "TRUE" OWNER OF THESE QUARRIES IS THE CREATOR. AS IS THE CASE WITH EVERY OTHER TRIBE, INDIVIDUAL MEMBERS OF THE YANKTON SIOUX HAVE THE RIGHT TO USE THE QUARRIES. BUT, THE UNITED STATES DEPARTMENT OF THE INTERIOR HAS LEGAL TITLE TO THEM.

THE CARE OF THE PIPESTONE QUARRIES WAS PLACED IN THE HANDS OF THE DEPARTMENT OF INTERIOR IN ORDER TO PRESERVE AND PROTECT THE SIOUX QUARTZITE AND THE PIPESTONE FROM BEING DESTROYED DURING THE TURN OF THE LAST CENTURY. IN ESSENCE, INDIAN PEOPLES INTEREST IN THE PIPESTONE QUARRIES NEARLY CEASED TO EXIST IN EARLY 1900 AND NON-INDIAN COMMERCIAL VENTURES THREATENED THEIR VERY EXISTENCE. IN THE 1920'S, LOCAL PEOPLE STARTED A DRIVE TO PRESERVE THE AREA FOR THE NATIVE AMERICAN, SINCE NO TRIBE WAS HERE TO PROTECT THE QUARRIES. WITHOUT THIS EFFORT, THE ECOLOGY OF THE AREA WOULD HAVE BEEN CHANGED FOREVER, AND THE QUARRIES UNDOUBTEDLY DESPOILED.

THE PIPESTONE INDIAN SHRINE ASSOCIATION IS A NON-PROFIT ORGANIZATION. ITS PURPOSE IS TO ASSIST THE INDIAN PIPE MAKERS. ALL REVENUES GENERATED BY THESE EFFORTS ARE RE-INVESTED INTO THE LOCAL INDIAN COMMUNITY. ALL EMPLOYEES OF THE PIPESTONE INDIAN SHRINE ASSOCIATION ARE NATIVE AMERICAN. IN FACT, SOME OF THE INDIVIDUALS WHO ARE CURRENTLY RAISING CONCERNS, WERE THEMSELVES PAST EMPLOYEES OF THE PIPESTONE INDIAN SHRINE ASSOCIATION. ADDITIONALLY, PIPESTONE NATIONAL MONUMENT AND SHRINE ASSOCIATION PROVIDE THE SOLE MEANS OF MAKING A LIVING FOR 95 PERCENT OF THE INDIAN ADULTS IN OUR COMMUNITY.

OUR INDIAN COMMUNITY IS COMPOSED OF TRIBAL PEOPLE FROM ALL OVER THE COUNTRY. WE HAVE NOT BEEN FORTUNATE ENOUGH TO ENJOY THE SUPPORT OF A TRIBAL GOVERNMENT. WE HAVE HAD TO BE ON OUR OWN. MANY OF US HAVE LIVED HERE FOR SEVERAL GENERATIONS WHERE OUR FATHER'S FATHERS HAVE TAUGHT US THE SIGNIFICANCE OF BEING PIPE MAKERS. WE HAVE HAD

CONVERSATIONS WITH MEDICINE PEOPLE OVER THE PAST 50 YEARS, AND THEY ALWAYS EXPRESSED JOY THAT THERE WERE STILL NATIVE PEOPLE HERE TO WORK THE QUARRIES, SO THAT THEY COULD OBTAIN PIPESTONE FOR THEIR USES. MANY OF THESE "HEALERS" ARE HAPPY TO BUY THE STONE OR FINISHED PIPES FROM OUR PIPE MAKERS, AS THEY REALIZE THE GREAT AMOUNT OF PHYSICAL EFFORT AND TIME THAT IS INVOLVED IN QUARRYING PIPESTONE. WHEN WE HAVE ASKED MEDICINE PEOPLE ABOUT OUR CRAFT, WE WERE TOLD THAT A PIPE BECOMES A SACRED OBJECT ONLY WHEN IT HAS BEEN "TOUCHED BY THE SPIRITS, AND THAT THIS IS DONE IN A CEREMONIAL MANNER".

THIS BRINGS US TO THE POINT ABOUT TRADING IN PIPESTONE. HISTORY NOTES THAT AS LONG AS 200 TO 300 YEARS AGO, AMERICAN INDIANS WERE DISTRIBUTING PIPESTONE PIPES IN A FLOURISHING INTER-TRIBAL TRADE ECONOMY. SINCE ALL OF OUR ANCESTORS WERE AT THAT TIME "TRADITIONAL PEOPLE", CLEARLY, TRADE IN PIPESTONE MUST HAVE BEEN AN APPROVED CUSTOM AMONG OUR TRIBES. AS TO THE INCREASING INTEREST OF NON-INDIANS IN PIPESTONE, ALL WE PIPE MAKERS KNOW IS THAT WE HAVE NOT BEEN RESPONSIBLE FOR THE SPREAD OF TRADITIONAL INDIAN SPIRITUALITY AMONG NON-INDIANS. WHAT WE DO KNOW IS THAT ONE CANNOT KNOW THE MOTIVES OF ANOTHER PERSON UNLESS THAT PERSON CHOOSES TO SHARE THEM WITH YOU. IF A PERSON WISHES TO OBTAIN A PIPE BECAUSE THEY BELIEVE IT CORRECT FOR THEM, IT IS NOT OUR PLACE TO BE SELF-RIGHTEOUS AND JUDGE THEM. IF A PIPE IS NOT USED FOR THE REASONS THAT IT WAS MADE AND INTENDED FOR, THEN THE CREATOR WILL JUDGE THE PERSON. IT IS NOT FOR US TO DO THIS. WE CAN ONLY TRUST TO THE BELIEFS THAT WE WERE TAUGHT BY OUR ELDERS.

IN CLOSING, WE BELIEVE THAT SUPPORT FOR THIS RECENT MOVEMENT WILL TAKE FOOD FROM THE MOUTHS OF YOUNG INDIAN CHILDREN AND BELOVED ELDERS IN OUR COMMUNITY. SUPPORT FOR THIS MOVEMENT WILL IMPEDE THE DESIRE FOR A GOOD EDUCATION, CONSTRICT THE ABILITY FOR INDIAN ADULTS TO BE RESPONSIBLE PROVIDERS, AND EVENTUALLY DEPRESS INDIAN PRIDE AND SELF-SUFFICIENCY. MOST PROFOUNDLY, SUPPORT FOR THIS MOVEMENT GOES AGAINST THE PRIMARY SPIRITUAL TABOO FOR INDIANS WHO WISH TO QUARRY HERE. THAT IS, IT IS TANTAMOUNT TO AN ACT OF WAR AND AGGRESSION AGAINST PEACEFUL PEOPLE ON THE MOST SPIRITUAL LAND IN INDIAN COUNTRY. THIS ABOVE ALL HAS BEEN FORBIDDEN BY THE CREATOR AND WE PIPE MAKERS DO NOT UNDERSTAND THIS BEHAVIOR.

THANK YOU FOR THE OPPORTUNITY TO VOICE OUR OPINIONS.

THE PIPESTONE NATIVE AMERICAN COMMUNITY.



State of Minnesota

INDIAN AFFAIRS COUNCIL

127 University Avenue
St. Paul, Minnesota 55155
Phone: (612) 296-3611

RESOLUTION 091891-02

1819 Bemidji Avenue
Bemidji, Minnesota 56601
Phone: (218) 755-3825

WHEREAS, the Minnesota Indian Affairs Council was created by the State Legislature in 1963 to advise the Legislature and State Agencies on Indian Affairs, issues, concerns, and to include assistance and support of both tribal and urban needs and,

WHEREAS, the Great Pipestone Quarries of Minnesota have been historically utilized by all tribal nations and,

WHEREAS, no single tribe or coalition of tribal nations may assert entitlement or dominion over the Great Pipestone Quarries of Minnesota and,

WHEREAS, the proposed amendments to Public Law 95-341, known as the Indian Freedom of Religion Act of 1978 and,

WHEREAS, such proposed amendment may restrict the historical access of the Great Pipestone Quarries by all tribes and,

WHEREAS, such restrictions may no longer accommodate the diversity of indigenous religious practices of all tribes and tribal members seeking access to the Great Pipestone Quarries and,

WHEREAS, given that historical custom affords unrestricted access to the Great Pipestone Quarries by all tribes,

THEREFORE, BE IT RESOLVED, that the Minnesota Indian Affairs Council supports that exemption status from all applications of Title 1 of the proposed amendments to Public Law 95-341, the Indian Free of Religion Act of 1978, be conferred upon the Great Pipestone Quarries of Minnesota".

Unanimously passed by the Minnesota Indian Affairs Council and Urban Indian Advisory Council on September 18th, 1991.

A handwritten signature in cursive script, appearing to read "Lucretia E. Klenk", is written over a horizontal line.

Recorded by Lucretia Klenk
Administrative Secretary
Minnesota Indian Affairs Council

WHEREAS, the Pipestone Dakota Indian Community is comprised of Indian people enrolled in various tribes in and out of the state of Minnesota. Their sustenance in many aspects is derived from the Great Pipestone Quarries of Minnesota; and

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

WHEREAS, the Great Pipestone Quarries of Minnesota have been historically utilized by all tribal nations; and

WHEREAS, no single tribe or coalition of tribal nations may assert entitlement or domain over the Great Pipestone Quarries of Minnesota; and

WHEREAS, the proposed amendments to Public Law 95-341, known as the Indian Freedom of Religion Act of 1978; and

WHEREAS, such proposed amendments may restrict the historical access of the Great Pipestone Quarries by all tribes; and

WHEREAS, such restrictions may no longer accomodate the diversity of indigenous religious practices of all tribes and tribal members seeking access to the Great Pipestone Quarries; and

WHEREAS, given that historical custom affords unrestricted access to the Great Pipestone Quarries by all tribes; and

WHEREAS, a prohibition of the manufacturing and distribution of pipes and pipestone articles will have a devastating negative impact of revenues and income to the citizens of the Pipestone township and county,

THEREFORE, BE IT RESOLVED, that the Pipestone Dakota Indian Community of Pipestone, Minnesota requests that EXEMPTION STATUS FROM ANY AND ANY FUTURE AMENDMENTS TO PUBLIC LAW 95-341 (KNOWN AS THE INDIAN FREEDOM OF RELIGION ACT OF 1978), BE CONFERRED UPON THE GREAT PIPESTONE QUARRIES OF MINNESOTA.

List of quarriers and tribal affiliation (1971-1990)

<u>Sisseton Wahpeton</u>	<u>Santee Sioux</u>	<u>Yankton Sioux</u>
Harrison Crow	George Allen Sr	Joseph Dudley
Lloyd Crow	Ted Taylor	Joe, Dan & Elijah
Quentin Crow	Myron Taylor	Packard
Ethel Derby	Sam Gurnoe	Alphonse Gerken
Chuck Derby	Donald Gurnoe	Gary Gullikson
Jeff Derby	Donna Moose (Rederth)	Zeph Zephier
Marge Parsons	Ray Redwing	Edward Zephier
Betty Tellinghuisen	Gary Kills A Hundred	Edward Redlightning
Alice Erickson	Fred Lovejoy	Loren Zephier
Carol Derby	Linda Rodefer	
Maddie Redwing	Lauren Herrick Jr	<u>Cheyenne River</u>
Aileen Bird	Colin Cavender	<u>Sioux</u>
Colleen Bird	Brenda Crow	George Kane
Adrienne Bird	Lee Taylor	Robert Hale
Shirley Erks	Rocky Shopbell	Jim Marshall
Faye Brune	Roger Trudell	Mona Grey Bear
Randy Stevens	Mato Wilch	Richard Stands
Dale Stevens		Jim Garrett
Steven Brady	<u>Lower Sioux</u>	
Tim Brady	David Larsen	<u>Mdewakanton</u>
Bill Bryan	Dennis Blue	Crooks Family:
Clara Bryan		Norman, Robert &
Mark Pederson	<u>Rosebud Sioux</u>	Clarence
Kevin Pederson	Moses Big Crow	Amos Owen
Travis Erickson	Alvin Horse Looking	Amos Crooks
Todd Tellinghuisen	Silas Eagle Elk	Joel Hein
Pete Musil	Lessert Moore	
Tim Blue	Phyllis Stone	<u>Winnebago Sioux</u>
Todd Parsian	Paul Szabo	James Funmaker
Duane Wika	Eugene Leroy Sr	Willard LaMere
Herbert Iron Heart	Tim Whitebird	
George Renville		<u>Crow Creek Sioux</u>
Darlene Tester	<u>Teton Sioux</u>	George Tuttle
Carol Iron Moccasin	Wallace Black Elk	Annabelle Tuttle
Greg Maestas		
Willard Greeley	<u>Sioux Tribal ID ?</u>	<u>Standing Rock</u>
Joseph Genia	Martin High Bear	<u>Sioux</u>
Doyle/John Robertson	Mona Dupris	Ken One Feather
	Rene Whiting	James One Feather
	Joseph Flying By	Nick Halsey
	C W Hart	
<u>Oglala Sioux</u>	Clinton Turgeon	<u>Devils Lake Sioux</u>
Roy Weston	Walter Lakota	Sylvester DeMarce
Marvin Red Elk	Jerome DeWolfe	
Douglas Fasthorse	Ralph Whitehorse	<u>Santee/Rosebud</u>
Duan Blindman	Daryl No Heart	Harvey Ross
Mabel Shangreau	Virgil Charging Hawk	
	Cody Enoch & Michael Erickson	

List of Quarriers and tribal affiliation (1970-1990)

<u>Ojibwe</u>	<u>Pottawatomie</u>	<u>Blackfeet</u>
George Bryan	Paul Nadjewan	Charles Hirst
Zona Busse		Ted Guardipee
Bill Hallett	<u>Papago</u>	Merle Yellow Kidney
Edward Thomas	Manny Two Feathers	
Betty Rand		<u>Ponca</u>
Keith Lussier	<u>Menominee</u>	John Williams
Mushkoob	Max Dixon	
Jeff Savage		<u>Eskimo</u>
Elmer Sunn	<u>Navajo</u>	Frank Alby
Leonard Vetternick	Paul Begaye	
Thomas Littlecreek		<u>Gros-Ventre</u>
Russell Littlecreek	<u>Mandan/Hidatsa</u>	Bernard Cliff
Hollis Littlecreek	Gordon Bird	
Marvin French		<u>Oneida</u>
Louis Boyd	<u>Iroquois/Seneca</u>	Maisie Schenandoah
Robert Rosebear	John Crazy Bear	Don Deny
Sam Morris		<u>Pennobscot</u>
Bruce Savage	<u>Osage</u>	Fred Nicola
Jean Aquash	Tim Tall Chief	
Brian Wichern		<u>Conkow Maidu</u>
Jim Weaver	<u>Paiute</u>	Robert Mullins
Gordon LeGarde	Richard Burchett	
Joe King Bird		<u>Yellowknife/Canada</u>
Francis Johnston	<u>Arikara</u>	Tim Sikyea
Myron Rosebear	Daryl Lockwood	
David Hoagland	Leo Lockwood	
Larry Goose		<u>Cheyenne</u>
Norman Blakely	<u>Cheyenne</u>	Robert Garrison
Jack Chambers		
Charles Robertson	<u>Peepeekeesis</u>	
Terri Jackson	Dwight Pinay	
Donald Wright		<u>Cheyenne/Arapaho</u>
<u>Creek</u>	<u>Cheyenne/Arapaho</u>	Marvin Tasso
Freeman Mitchell		Mitch Walking Elk
<u>Ottawa</u>	<u>Athabaskan</u>	
William King	William Dominic	
<u>Northern Cheyenne</u>	<u>Pottawatomie/Ottawa</u>	
Michael Joseph	Lee Sprague	
<u>Nez Perce</u>	<u>Comanche</u>	
David Penny	Ed Yates	
<u>Arapaho/Wind River</u>	<u>Dine-Navajo</u>	
Willis Whiteman	Tom Goldtooth	



FOUR YANKTON SIOUX INDIANS are digging at the Pipestone National Monument to get enough pipestone for winter production of peace pipes to be sold on a commercial basis. They will be sold under "Struck By the Ree Enterprises Inc." name, Marty, S.D. According to Ralph Shaver, Superintendent of the Monument, this is the first time that other than local Indians have been digging in the quarries in a long time. Shaver observes, above, the work of Hollis Medicine Crow, Patrick, Daniel and Elijah Packard as they dig.

11-15-67

— Star Photo

STATEMENT IN SUPPORT OF RESOLUTION PROPOSED BY
 THE MINNESOTA STATE INDIAN AFFAIRS COUNCIL
 At Regular Meeting, dated September 18, 1991

The Resolution asks: Exemption status from all applications of Title 1 and the proposed amendments to the American Indian Religious Freedom Act of 1978, Public Law 95-341, be conferred upon the Great Pipestone Quarry of Minnesota.

PURPOSE OF RESOLUTION: To ensure an open policy for all Indian people.

LEGISLATIVE HISTORY: The following is a brief summary of the proposed federal legislation amending the American Indian Religious Freedom Act. Accompanying this summary is an issue and positional statement by representatives of the Pipestone Dakota Community.

Over the past several years, a group called the Religious Freedom Coalition has drafted, submitted to Congress and is currently lobbying for the passage of their proposed amendments to the American Indian Religious Freedom Act of 1978 (Public Law 95-341). This coalition is comprised of elements of the National Congress of American Indians, National Indian Education Association, Native American Church, Native American Rights Fund and the interests of a private group known as the Association of American Indian Affairs. Only one of the three sections of TITLE I "Protection of Sacred Sites" is addressed in this summary; that being:

The preservation of "Native American Religious Sites". Outlined in this section are the processes by which "...tribes, bands, nations, or other organized groups or communities of Indians ..." may petition and potentially obtain from federal agencies the jurisdiction over lands where it has been evaluated that the "...affected site should be transferred into the trust of a tribe ...". This section details claim processes, legal cause of action and transfer processes.

HISTORY STATEMENT: The Pipestone Dakota Community was established in 1930 and for generations, our Indian craftspeople and artisans have quarried and fashioned pipestone articles. As such, pipe crafting is the primary economic and cultural vehicle for the approximate 50 Indian families who live in the vicinity of the Pipestone Quarries. Although many Indians living in Pipestone are enrolled in non-Minnesota reservations, several Minnesota tribal enrollees also utilize the quarries.

ISSUE STATEMENT: Recently, the Yankton Sioux Tribal Council of South Dakota has passed resolution to use the proposed amendments to the American Indian Religious Freedom Act to suppress or deny open access to the Pipestone Quarries. Their criterion for which individuals would then be permitted to quarry pipestone is ambiguous and unclear at best. The Yankton Sioux Tribe claim special privilege by their own oral mythology, citing treaty right

obligations and finally, the justification of God's will. The Yankton Sioux have also expressed interest in preventing the Pipestone Dakota Community from continuing its activities. These arguments suggest the following inquiries and responses by the Pipestone Dakota Community.

Issue 1) Whether it is not contrary to tradition to sell pipestone, yet to permit the trading for the pipestone?

Response: The distinction between trading and selling is questionable. Historically, evidence suggests that tribes and individual members have exchanged pipestone for the "currency of the times", i.e., horses, flint, corn, tobacco, money, etc. for hundreds of years. This has been done with full knowledge of the tribal elders, leaders and medicine people and has been sanctioned as appropriate.

Issue 2) Whether the Yankton tribe have exclusive possession of the quarries, whether they were the last tribe to occupy this region and whether negotiated treaty terms provide them with access to the quarries?

Response: Although several different tribes have occupied the hunting territories in the vicinity of the quarries, the Great Pipestone Quarry has never been the exclusive property of any one tribe or group. It is common belief of all tribal people that the Pipestone Quarries were given to all Indian nations by the Creator. Traditional spiritual philosophy would suggest that the Creator owns the pipestone. In response to treaty claims, the National Park Service does not deny any Indian the privilege of quarrying pipestone. Members of the Yankton Sioux tribe share in this privilege, although none has exercised their treaty rights for over twenty-five years.

Issue 3) Whether the distribution of pipestone items and in particular pipestone pipes to "non-believers" is a form of religious sacrilege?

Response: The traditional pipemakers of Pipestone are not in any way responsible for the wide dissemination of traditional Indian ideology, ceremony, ritual or practice among non-Indian peoples. The pipemakers simply respond to a growing need for these items. The pipemakers have discovered that they are unable to detect the non-believers among all of those who purchase pipestone pipes. Since the distinction between true believers and non-believers is difficult, the pipemakers have determined that perhaps it is better to leave this determination to the Creator.

Issue 4) Whether the question of the character of the individuals who currently quarry pipestone is a consideration?

Response: Many of the contemporary traditional pipemakers are descendants of a long family history of pipemaking. In historic times, these artisans were considered to be an asset to the people.

In recent years, bona fide medicine people have lived in Pipestone and have conferred with the local Indian craftspeople. They have never suggested that there is the least impropriety in the quarrying and fashioning of pipestone items. Frequently, traditional Indian practitioners and healers are the recipients of these finished pipes. The pipemakers believe that each individual must first reconcile his action with the Creator. Having done this, he may honor his contribution to his people. The traditional pipemakers humbly seek to do this according to their own visions.

Issue 5) Whether mining (quarrying) of the pipestone may unnecessarily exhaust a limited resource, i.e., pipestone?

Response: Geological survey and core sampling obtained by the National Park Service has confirmed that, contrary to popular belief, there exists a "double" layer of deposits of pipestone at the Great Pipestone Quarries of Minnesota. It must also be understood that strict restrictions apply to the quarrying process. All quarrying must be done by hand tools. No power tools or any kind of contemporary machinery is permitted in removing pipestone deposits. These protocols are explicitly designed to minimize the ecological disturbances to the site, to protect the pipestone deposits and to preserve the time honored integrity of quarrying.

ADDITIONAL CONSIDERATIONS: One must consider the political and social impact of enacting legislation with the federal framework as a means of preserving indigenous spiritual practice. The Pipestone Dakota Community has no interest in obstructing the utilization of lands by specific tribes within their own geographical content. Indeed, we support these efforts as a national agenda. However, the Great Pipestone Quarries of Minnesota is in a classification in and of itself. It belongs to all the people and no tribe may mistakenly claim exclusive control.

It occurs to us that our strength as tribal people is supported by our diversity as nations. We do not share mother tongues. Our conventions and social etiquette are dissimilar. Our spiritual practice is as diverse as our dreams. We question the wisdom of shaping a pan-Indian, Indian religious framework. Who can possibly construct legislation that accommodates our religious diversity? An additional consideration is legal in nature. We can envision a "worst case scenario" where an individual may contest his/her right to practice their religion. Class action suits could place that which we consider our heritage into the political arena of the United States judicial system. To our thinking this should be avoided. Precedent has been established by a higher law. Tribal custom has already shaped appropriate processes for conflict resolution among our nations.

CLOSING STATEMENT: Traditional pipemakers who live near the quarries, have everyday been aware of two primary laws governing the use of pipestone. First, that these quarries are to benefit all mankind and as such are open to all Indian nations. Secondly, under no circumstances is conflict to be displayed or facilitated at the quarries. The Pipestone Dakota Community of Pipestone, Minnesota wishes to honor these ancient laws of our people. We believe that this may best be accomplished by removing this sacred site from any controversy, thus preserving its decorum.

THEREFORE, we are requesting an "Exemption for the Great Pipestone Quarries of Minnesota from all and any future amendments to the American Indian Religious Freedom Act of 1978, P.L. 95-341".

Contact: Chuck Derby
Little Feather Indian Center
925 2nd Street S. W.
Pipestone MN 56164

Telephone: (507)825-5464 (work)
(507)825-2623 (residence)
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Mr. RICHARDSON. I would like to welcome the gentleman from Minnesota. Mr. Derby has just concluded his statement. We are in the stage where he is the last witness.

I would like to recognize the gentleman and welcome him and mention that the gentleman has always been enormously interested in Native American issues. We discussed one on the Floor yesterday. I want to welcome the Honorable David Minge to our subcommittee.

Do you have any statement?

STATEMENT OF HON. DAVID MINGE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. MINGE. Thank you, Mr. Chairman, and I appreciate the fact that Mr. Derby was able to testify this morning. I have a statement I would like to include in the record basically recognizing the importance of the Pipestone Quarry in the Native American culture of this country, and the open access that all Native Americans have enjoyed to this unique and deeply important site.

With that comment, Mr. Chairman, I will reserve any questions to when the question time is available.

Thank you.

Mr. RICHARDSON. I thank the gentleman. Let me mention to him that I know he has a tight schedule. I will recognize first the Ranking Minority Member and then I will recognize him and then the Chair will recognize himself.

The gentleman from Wyoming.

Mr. THOMAS. I will be very brief. I do want to say, too, that I appreciate working with the chairman. He has been very useful—useful isn't the right word—very cooperative, and I have enjoyed that. We have worked together very closely and of course we have Indian country in Wyoming that we are very much interested in.

Mr. Derby, tell me, what do you believe that this H.R. 4155 would do to your present operations?

Mr. DERBY. Under this bill, it pretty much leaves the door open for some kind of a class action to happen that would basically probably put a halt to what our Indian community people are doing. And in a case like this, the economics of our people, they live on a day-to-day basis using these Pipestone crafts, and any shutdown for any one day would deprive them of their basic source of survival.

Mr. THOMAS. Are you saying that perhaps one tribe would claim that as a religious site and then make it not available for what it has been used for?

Mr. DERBY. That is correct. We do feel that if they direct us to do this, then it would be limited to however they want to operate it.

Mr. THOMAS. Everyone seems to be reasonably happy with H.R. 4230, all of you seem to suggest that. So the effort needs to be made, I guess, to amend the other one.

Chairman Hena, I understand the secrecy issue, but in terms of being able to identify, being able to do land management and land planning on Federal lands, I don't quite understand how we would deal with that.

Could you help me a little? Is it just something that would be site-specific opportunities to react? Is that the solution that you recommend?

Mr. HENA. I think probably that would be one way of looking at it. For example, right now, we have controversies in New Mexico regarding placement of a power line for purposes of increasing power to—electrical power to the Los Alamos National Laboratory which the Pueblos are opposing.

There is another controversy with respect to increasing ski area sites which involves my own tribe, the Pueblo. This site is located in the Crystal Mountains, east of Santa Fe about 16 miles, and presently the present ski operators are asking for expansion of the site, increasing ski runs and so forth. We have opposed that. The environmentalists have opposed it, including—I think I can safely say—the previous city council of Santa Fe, the county commissioners have opposed it and so forth. We have controversies like that.

For instance, we have been asked to take religious leaders up to the site to point out specific areas that might be affected and our religious leaders have refused to do this. This is why we continue to emphasize that these people have taken vows not to reveal these sites. And as much as possible, I think they would be willing to work with tribal officials because these people do not themselves come out in public to conduct a negotiation, let's say. They rely on the governmental officials to do that and the governmental officials can only do that to the extent that the religious people allow them to do it.

So that what I foresee is that there will be perhaps extensive consultation, negotiations, and hopefully an understanding on the part of a developer or a Federal agency that what the Indians are considering is of greater interest and maybe hopefully resolve issues when they come about.

I hope that answers your question.

Mr. THOMAS. Everyone would hope that you could resolve them. Let me be the devil's advocate. Say there is a development plan in a place where environmentalists don't want it to happen. What keeps someone from a tribe saying that is a religious site, using that as a means of stopping something when no one knows whether it is a religious site or not.

Look at it as a concept. How do you avoid someone just saying that is a religious site?

Mr. HENA. I can't speak for the other tribes, but I know that among the Pueblos, we have a system of recognition for our religious people. This is a system that is very much similar to the Christian idea of ordination. People have to go through extensive years of training to learn the fundamental pledges of our religion so that they can practice it among our people.

So the whole tribe, in our case among the Pueblos, we know who those individuals are from the moment they go to, say, like a seminary, a seminary procedure so that they begin involvement in the training process until the time they are ordained, so to speak, in terms of becoming Indian religious persons.

So we know that that process identifies people who are respected, who are regarded as principals in our religion, and there is no way

that anybody else can come to a situation where he may misrepresent our religion to others.

Mr. THOMAS. I respect that, but it makes it a little difficult—how would you deal with this issue of being able to establish some confidence in folks outside of the tribes that these were indeed bona fide issues?

Mr. GAIASHKIBOS. Mr. Congressman, as Mr. Hena stated, it is a difficult question to really have a very good response for. In most tribes—again, I can't speak for all of the spiritual practitioners, but I can speak for the Ojibwe practitioners in the Great Lakes area, because I am a member of our medicine lodge—that for the most part, we all know which sites, again, are sacred to us. In fact, we see destruction every day of sacred mounds with highways going through, of development and transportation going through and asking for comment.

But within our own religious societies, as Mr. Hena stated, our spiritual people who we recognize, and they are not just self-proclaimed as plastic medicine men as we see happening in the new age movement; they know the particular sites in that particular area that are sacred to us.

We are very hesitant in saying these things publicly because of the past history of digs, excavations or whatever it might be or destruction of these sacred sites. I am sorry I cannot be more specific for you, but in terms of the old people, the way they tell me, each day my father says he gives thanks to this shrine and this whole earth is our shrine, so you see destruction of our sacred sites every day.

But in specific areas, you would almost have to be tribe specific and ask those tribes if this is indeed something that is held sacred for religious purposes and ceremonies. It would have to be recognized by those tribes.

Mr. THOMAS. I realize it is a difficult question, but it makes it difficult to draft legislation that recognizes those kinds of things.

Thank you very much for your response. Thank you, Mr. Chairman.

Mr. RICHARDSON. Before I recognize Congressman Minge, let me ask President Zah—you have been in the last 10 years, you have been in a leadership position in the Navajo Nation, had years and then you stepped aside and are now back.

How many times—would you just for the record—how many times have tribes been consulted by Federal agencies on land management decisions? How would you say over the last 10 years Federal agencies have been—how would you rate them in dealing with Native Americans on religious freedom issues?

I know this would be a very broad answer, but if you could characterize, President Zah, that relationship, what would it be?

Mr. ZAH. Well, if I was a teacher, I would give them an F. And the reason why I say that is that consultation, the definition of a consultation from the Federal side is a little different than the way we view what consultation should mean from the tribal side, one of those issues where we could never get together on what we mean by that.

I would suggest that during the last several years that they go ahead and they do things as they please without really considering

that this might be a sacred site to someone. To me, sacred sites are those places that the great spirit put before human eye so that we can see beauty, so that we can feel religious about a place that we, as men and women, we cannot create those things with our hands, but the great spirit placed those there so that we can appreciate our own esthetic values, the sense of beauty. That is to me the definition of a sacred site.

For those of you who say that it is a very hard issue to deal with, yes, but how did other countries around the world, how did they define and handle the situation? Is our English language so limited that we are hung up on how that wording should be structured, how those sentences should be structured?

I don't think we should be limited by that. If other people around the world are able to do what they did when it comes down to protecting those sacred sites, I am pretty sure the United States with all of our technical people and assistance and people who draft these complicated legislation can come up with something so that everybody respects one another.

You have tribal governments that are out there that are sovereign and you have a situation where many of those tribal people go on to U.S. forestland and they try to tell the Federal officials that, yes, this is a sacred site to certain practitioners.

I think it really comes down to respecting one's belief, and some of the things that I have seen during the last several years, the respect just isn't there. People just go out and destroy things. We are being a very destructive society.

I think more emphasis ought to be put on keeping some of those places as they are, because those are, you know, God-given creations that the Great Spirit wanted us to see and to feel so that we can have a sense of respect and beauty in human mind.

Mr. RICHARDSON. Thank you.

The Chair recognizes the gentleman from Minnesota.

Mr. MINGE. Thank you, Mr. Chairman. I would like to make a couple of additional introductory comments. The Pipestone Quarries in Southwestern Minnesota have for hundreds of years been recognized as an important Native American site. They have been open to all peoples, and I think that the fact that Mr. Derby is here this morning to speak to the use and the tradition that surrounds the Pipestone Quarry is important for our consideration because the Pipestone Quarry is indeed a unique area in North America.

I have with me this morning an example of the work that is done at the Pipestone Quarry. This is one of the pipes that has been made. It is ceremonial and sits in my office as an example of the type of work that is performed and the skill and the dedication of the Native Americans that are in the Pipestone Dakota community.

Mr. Derby, I would like to pose quickly two or three questions for you. The first is, historically, how have the Native Americans in the area approached the issue of access to the Pipestone Quarries?

Mr. DERBY. All people that come to the Pipestone Quarries, several different tribes have really appreciated having the open access. They come there unannounced and you never know when they are going to be there, and when they come there and ask for the

chance to quarry pipestone rock, they are given that opportunity with no problem.

Traditionally, when they came there, again, they were open, as the tribe moved through or the band moved through, they were able to stop at the quarry and get the Pipestone. So there is really open access to the quarries.

And as far as the ceremonial portions of the quarry, those ceremonies were held away from the quarries and then they came to the quarry to get the stone. The quarry is where the stone is at, but the ceremonial grounds are away from the Pipestone Quarry.

Mr. MINGE. So the Pipestone Quarries is a working area and the ceremonial sites are away from that area.

Mr. DERBY. That is correct.

Mr. MINGE. What is significant about the Pipestone Quarries that would merit a sacred site status?

Mr. DERBY. For the many years I have been around the area, we have never heard of the quarries being a sacred site. People always came there because they knew that was a place where they could get stone to make pipes for ceremonies but not for a sacred site. We never heard until January 1993 that we were a sacred site.

Mr. MINGE. So any reference we may be making to the quarry as a sacred site would be, in your opinion, misguided?

Mr. DERBY. That is correct.

Mr. MINGE. In a scenario where quarries were designated sacred, what do you believe would be the impact on the Pipestone community and how would the maintenance of the community be affected?

Mr. DERBY. Being under protection of sacred site would have a serious economic impact on our Native American communities because we all grew up in that area, five generations of us, and we were taught the art of pipe making by our elders. They told us to keep this going because, between 1911 and 1930, there was very minimum use of the quarry area and the pipe was starting to fade away. There was nobody skilled that could work the quarries, nobody skilled to make the pipes.

In 1930, when our community was established, we were able to continue to keep the quarries going and also there was encroachment from non-Indian quarry operations that were starting to encroach in the Pipestone Quarry area. With that usage and, finally, in 1937 when the National Park Service established Pipestone National Monument, which provided further protection to our Indian community, protected it from 1930 to 1937, and we brought back the art of pipe making and made the pipes available to all people who needed a pipe to pray in their ceremonies.

At the same time, it provided us a very—not living that was exorbitant, very minimum, that we were able to survive on from the pipestone craft work. We already know that in historical times, that pipestone pipes and crafts were sold to people, to native people and non-native people, and this is a continuation of what has been done in past history.

So if this were to be set aside as a sacred site, we could no longer do what we are doing now. Every one of our community members would wind up on social programs. We would not have the opportunity to be self-sufficient, to be proud Native American people, to use our craft as a means of providing for ourselves.

Mr. MINGE. Have you been able to prevent exploitation of this site by the larger immigrant community, white community?

Mr. DERBY. Yes, we have. It was really fortunate that the community, even the non-Indian community at Pipestone, realized that this was very important to native people and, by establishment of Pipestone National Monument, it was protected under that organization and also the Indian community made sure that it was operated in a traditional manner.

We kept the quarry to the traditional way by hand and we would not like to ever see any kind of commercial operation come in there because then, when you talk about destruction of a sacred site, that would be destruction with bulldozers and what have you.

Mr. MINGE. So it is not an industrial operation that exists at the Pipestone Quarries?

Mr. DERBY. No. It is all a hand-crafted, like many hand-crafted operations on many reservations. We are only a small little community.

Mr. MINGE. If litigation were allowed under this proposed Section 3(c) of the legislation, how would litigation affect the operation of the quarry by the Native American Pipestone Dakota community and their livelihood?

Mr. DERBY. It would have a serious impact on us. Whatever happens in this legislation, whether there are lawsuits filed or whatever, I know that our little community could not survive.

Mr. MINGE. Thank you very much. I don't know if others on the panel have any comments on the Pipestone Quarry, but I would certainly direct any of those questions to the rest of you so that we make sure that we have a fair opportunity for comment on this important site.

Mr. Zah?

Mr. ZAH. Yes. Since the two of you are doing all the questioning, could I ask a question of both of you?

Mr. MINGE. Please do.

Mr. ZAH. What can we reasonably expect from Congress by the end of this congressional year on this subject.

Mr. MINGE. That is perhaps more appropriately directed to the Chair of the subcommittee than to me.

Mr. RICHARDSON. President Zah, my view is that we should have a bill on religious freedom this year, certainly one on Peyote. I want to do the sacred sites bill. In order to do that, we have to have agreement. In order to do that more easily, let me say from the executive branch—and this is why on the sacred sites on the secrecy issue—we want the Justice Department, the administration to be on board.

As you heard this morning from the administration, they still have constitutional and other administrative issues to resolve. I am going to move a bill regardless of what they say, but we would like to get their support. My goal is to act this session of Congress before October.

I have given the administration a deadline of the July 4th recess to come up with their response. If that is the case, I think we could move the peyote bill very soon and we intend to do that. The sacred sites bill, I think we can move expeditiously if we have an agreement. I think the Cochitis have submitted a good compromise, a

good proposal. We want to make sure that that entanglement issue is resolved and make sure that the administrative matters relating to it can be handled.

In that connection, I would like to have perhaps Mr. Gaiashkibos to help us coordinate a meeting with the Justice Department so that we can immediately get this issue resolved with perhaps even Mr. Torres and Mr. Duffy. And the staff will facilitate that.

But I would like some reading of how rapidly we will have an administration position. As I understand it, they need to hear directly from you on some of the concerns that they raised with us. I don't think the concerns are serious, but I would like to get this process accelerated.

With that, let me thank—go ahead.

Mr. GAIASHKIBOS. Mr. Chairman, the National Congress of American Indians would be very pleased to assist in facilitating in any way to move this legislation forward.

Let me say, Mr. Chairman, that I failed to mention the prisoner's name, Charles Wade, from the Mojave Arizona State Prison.

Mr. GAIASHKIBOS. The National Congress would also like to reserve the opportunity for further comment and clarification on any provisions of any amendments and any further language to this legislation.

Thank you very much, Mr. Chairman.

Mr. RICHARDSON. You know I know this is not a religious freedom issue, Mr. Gaiashkibos, but I have been reading about the Peltier case and it seems to me that he needs a new trial. I know this is a legal matter and this is the Congress—of course that never stopped us from anything.

I would like your collective wisdom on how this subcommittee and this chairman might deal with that issue, at least the issue of trial. I don't want to prejudge any conclusions, but it strikes me that there has been some new evidence I have become aware of. But I don't know how to deal with it. You mentioned prisoner rights and I would like to engage in a conversation with you on that.

With that, let me thank the witnesses for their appearance and again we appreciate your collective wisdom. And you heard me tell President Zah there would be rapid movement on these two pieces of legislation.

PANEL CONSISTING OF WALTER ECHO-HAWK, SENIOR STAFF ATTORNEY, NATIVE AMERICAN RIGHTS FUND ON BEHALF OF THE NATIVE AMERICAN CHURCH OF NORTH AMERICA; FRANK DAYISH, JR., DELEGATE-AT-LARGE EASTERN REGION, NATIVE AMERICAN CHURCH OF NORTH AMERICA; AND, JESSE THOMPSON, VICE PRESIDENT, NATIVE AMERICAN CHURCH OF NAVAJOLAND, INC.

Mr. RICHARDSON. Our third panel—I know counselor Echo-Hawk is a member of this panel. Walter Echo-Hawk, Senior Staff Attorney, Native American Rights Fund; Frank Dayish, Jr., Delegate-at-Large Eastern Region, Native American Church of North America; and Mr. Jesse Thompson, President of the Native Church of Navajoland. Welcome.

Counselor Echo-Hawk, my thanks to you for all the work you have done on this issue. Probably no one—at least in this city and country—probably knows more about this issue than you do. I will ask you to please proceed. Remember that your statements are part of the record, and I look forward to your testimony.

STATEMENT OF WALTER ECHO-HAWK

Mr. ECHO-HAWK. I appreciate those kind remarks this morning. Good morning to you, sir, as well as to the Members of the subcommittee. I am a staff attorney with the Native American Rights Fund and I am very pleased and deeply honored to appear before the subcommittee today on behalf of the Native American Church of North America.

I am very pleased also to offer testimony in support of the H.R. 4230 on behalf of the Native American Church of North America.

I would like to commend you, Mr. Chairman, and thank you very much for your leadership in introducing this very important, critically important legislation and bringing the issues and the high objectives of this legislation before the Congress. It is very, very timely to do that in the wake of the Smith decision. It is very, very timely to bring this bill before the Congress at this time.

Also, in the wake of the recent passage of Congress of the Religious Freedom Restoration Act, which I think sets the tenor of this Congress as being one concerned with American religious liberty. So I commend you for introducing this bill, holding this hearing. I wish you Godspeed in deliberating on it further.

We have offered in my written testimony some amendments that the Native American Church of North America hopes will expedite a markup of this legislation. They have been offered in a very constructive manner. We hope that they will refine the bill. They were developed by our client in consultation with DEA and we hope to meet further with the affected agencies next week so we can make this a consensus piece of legislation and be of assistance to the committee.

I have offered written testimony yesterday and I won't read it today, but merely to summarize portions of it, if I may. The bill itself is very, very simple despite its great importance and objectives. But it seems to me that the ingredients for a quick markup by this subcommittee are all present. The bill is supported by the administration, the DEA. The Justice Department considers it to be constitutional and we agree with that conclusion. And the bill is very desperately needed as we sit here today so that native people can worship free from harassment, from imprisonment and job discrimination.

I also think we are fortunate to have a very full record that this subcommittee has developed last year in its oversight hearing concerning the need for the legislation, and I think that the bill is very responsive to this record that we do have already in front of the subcommittee.

I do not think that this legislation is controversial, given the testimony of the DEA both here and last year, to where they have regulated very successfully the Indian religious use of Peyote for religious purposes for the past 25 years without law enforcement problems. This bill would not disturb that system.

The DEA has concluded that this issue is not related to America's very serious drug war problem and it should be a non-controversial matter to proceed, and we stand ready, Mr. Chairman, to assist the subcommittee and your—in your efforts in this matter.

I know we are short of time, but I fully agree with President Clinton when he did sign the Religious Freedom Restoration Act last year where he stated that our country's agenda for restoration of American Indian religious liberty in the wake of the Smith decision is not complete until legislation of this nature is also passed.

This bill is literally a part of America's unfinished business and I hope to work closely with you on behalf of our client to address this human rights problem.

Thank you, Mr. Chairman.

Mr. RICHARDSON. Thank you very much.

[Prepared statement of Mr. Echo-Hawk and attachments follow:]

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TESTIMONY OF WALTER ECHO-HAWK ON BEHALF OF THE NATIVE AMERICAN CHURCH OF NORTH AMERICA BEFORE THE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE OF THE NATURAL RESOURCE COMMITTEE, HEARING ON H.R. 4230 AND H.R. 4155, THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT AMENDMENTS OF 1994

June 10, 1994

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EXHIBIT LIST

- Attachment A ----- Compilation of medical studies
- Attachment B ----- Excerpt from Statement of President Clinton on Signing RFRA, November 15, 1993
- Attachment C ----- Excerpt from Statement of President Clinton to Tribal Leaders, April 29, 1994

I. Introduction. Good morning, Mr. Chairman and members of the Subcommittee. I am Walter Echo-Hawk, a staff attorney of the Native American Rights Fund. Thank you for the invitation to offer testimony in support of H.R. 4230 on behalf of NARF's client, the Native American Church of North America (hereinafter, "NACNA").

The sacramental use of peyote by Indians has a long history, spanning 10,000 years as one of the oldest religious traditions in North America. Sadly, this ancient and harmless way of worship has been unnecessarily endangered by the decision in Employment Division v. Smith, 494 U.S. 872 (1990). H.R. 4230 would protect the sacramental use of peyote by Indians for religious purposes.

As the embodiment of this ancient religion, the NACNA, which is composed of 250,000 estimated members belonging to 46 affiliated chapters in 24 states, Canada and Mexico, is vitally interested in H.R. 4230. The NACNA strongly supports H.R. 4230 and commends your leadership in protecting the very survival of the Church and its religious way of life.

My testimony addresses two areas to: 1) provide an overview of the need for H.R. 4230 and its constitutionality; and 2) offer amendments to refine the bill for Subcommittee consideration.

II. Background Overview. H.R. 4230 was introduced on April 14, 1994, following a comprehensive Subcommittee Oversight Hearing held on March 16, 1993. See, American Indian Religious Freedom Act--Part II, Oversight Hearing Before the Subcommittee on Native American Affairs of the Committee on Natural Resources, Hearing held on March 16, 1993, (hereinafter, "Oversight Hearing"). That hearing developed a full record concerning the background of the Native American Church, the central and indispensable role of the sacramental use of peyote in this indigenous religion, and the importance of this religion in Native American culture. The excellent record of that hearing also provides solid facts regarding the need for H.R. 4230, as well as the power of Congress to legislate in this area. That record is accurately and cogently summarized in the findings in Section 3 (a) of the bill.

Nonetheless, by way of providing background for considering H.R. 4230, it is helpful to underscore a few salient points from that record and to provide an update on relevant developments that occurred after the Oversight Hearing.

A. Federal protection of the religious use of peyote by Indians is non-controversial: Federal law and the law of 28 states protect the religious use of peyote by Indians. See, Oversight Hearing, Testimony of Douglas Long, pp. 4, 70. Based on testimony of Gene Haislip, the Deputy Assistant Administrator of the Drug Enforcement Administration's Office of Diversion Control, the religious use of peyote by Indians is not controversial insofar as the federal government is concerned. Mr. Haislip testified to the long record of federal accommodation of this form of Indian worship by Congress

and the DEA, stating that in

"hearings on the CSA [Controlled Substances Act] over 20 years ago, Congress decided that the traditional, historic use of peyote by the NAC as a sacrament in traditional religious ceremonies for many generations warranted a specific exemption. Congress determined, consistent with past Federal practice regarding the issue, that it should be addressed in the regulations rather than the law. Thus, as exception to the virtual ban or any use of the drug conferred by its placement in Schedule I of the CSA was provided for in 21 CFR 1307.31. This paragraph provides for the nondrug use of peyote in bona fide religious ceremonies of the Native American Church."

Oversight Hearing, Testimony of Gene Haislip, pp. 5-6. Mr. Haislip testified at pp. 6 and 8 that federal regulation under this provision has worked, and that the religious use of peyote by Indians is not a part of our Nation's drug abuse problem:

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

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

Thus, from the standpoints of existing congressional policy, law enforcement considerations, and drug abuse concerns, H.R. 4230 is consistent with Congress' prior treatment of the religious use of peyote by Indians in the Controlled Substance Act and with the DEA regulatory system. Mr. Haislip's testimony also dispells concerns that a legitimate Indian religious exemption may open doors for other persons to use controlled drugs on spurious religious grounds. Id. at 7. Indeed, the Smith opinion indicates that religious exemptions for Indian peyote use has not lead to a flood of other similar claims by other groups and the courts have uniformly rejected such claims. 494 U.S. at 917-18. Moreover, from a medical standpoint, no studies have documented even a single Indian medical problem in the centuries of known religious use of peyote. Attachment A to my testimony is a compilation of medical studies on the harmless Indian peyote use for religious purposes. See, also, Oversight Hearing, Statements of Dr. Johnson and Dr. Rhodes, pp. 112-115; Employment Division v. Smith, 494 U.S. at 912.

For the above reasons, the Subcommittee's record establishes that Indian peyote use for religious purposes is non-controversial. The NACNA expects full Administration support for this bill.

B. The need for H.R. 4230 remains, despite the passage of the Religious Freedom Restoration Act: The Oversight Hearing firmly established the compelling need for H.R. 4230. Starkly put, after Smith, Indians can be imprisoned or discriminated against in the

job place for worshipping God. It is hard to imagine worship by any citizen under a climate of such fears in the United States.

Not only did Smith devastate Native American Church worship, but it seriously weakened religious liberty for all Americans by abandoning the legal standard long used by courts to protect First Amendment rights, known as the "compelling government interest" test. Congress deemed the rejection of this test such a serious adverse impact upon religious freedom that it passed the Religious Freedom Restoration Act of 1993, Pub.L. 103-141, ("RFRA") to restore the legal standard. When President Clinton signed RFRA into law on November 15, 1993, he noted:

The power to reverse by legislation a decision of the Supreme Court is a power infrequently and hesitantly exercised by the Congress. But this is an issue, and this is a time, when an extraordinary measure is needed. The Religious Freedom Restoration Act reverses the effects of an ill-judged Supreme Court decision, Employment Division v. Smith, and reestablishes a standard that better protects religious expressions and practices from invasion by government, as contemplated by the founders of our nation.

See, Remarks of President Clinton on Signing of the Religious Freedom Restoration Act, November 15, 1993 (Attachment B, hereto), p. 1. However, upon the signing of RFRA, President Clinton very carefully noted the continuing need to pass additional legislation to protect Native American religious freedom:

The agenda for restoration of religious freedom in America will not be complete until traditional Native American religious practices have received the protection they deserve. My Administration has been and will continue to work actively with Native Americans and the Congress on legislation to address this issue.

Id. at 2. There are several reasons why the need for H.R. 4230 remains despite passage of RFRA.

First, RFRA's legislative history shows that Congress sought only to restore the "compelling government interest" test, but ironically did not seek to disturb the actual holding in the Smith case as it pertained to the Native American Church. Instead, Congress left the question whether the Native American Church would be protected under the "compelling governmental interest" test unresolved:

The Committee wishes to stress that the act does not express approval or disapproval of the result reached in any particular court decision involving the free exercise of religion, including those cited in the act itself.

Senate Report No. 103-111, Religious Freedom Restoration Act if

1993, 103rd Cong., 1st Sess., July 27, 1993, p. 9. Unfortunately, mere restoration of this test does little to protect the Native American Church, given Justice O'Connor's opinion in Smith. Justice O'Connor argued that it was unnecessary for the majority to discard the test, since she would have ruled against the NAC under that test on the ground that, in her view, the "State in this case has a compelling interest in regulating peyote use by its citizens." 494 U.S. at 907. Her opinion is highly disturbing, given the lack of evidence in that case upon which to base such a holding; and it strongly suggests the substantial likelihood that NAC worship will not be protected under the RFRA standard by Justice O'Connor and her more unsympathetic colleagues.

H.R. 4230 is also needed to provide equal and uniform protection for Indian worship without regard to state or reservation of residence or tribal affiliation. Twenty eight states have varying laws protecting Indian religious use of peyote in differing degrees; and twenty two states have no protections whatsoever. NAC members may lawfully obtain the sacrament peyote in Texas, where the peyote cactus grows, but be arrested on the trip home when passing through a state which does not have a religious exemption. This confusing and arbitrary patchwork has a chilling effect on worship, employment and travel by the 250,000 members of the NAC. It also subjects similarly situated Indians to vastly different treatment based solely on their state or reservation of residence. Differential treatment between Indian reservations exists within the same state due to unique characteristics of federal Indian laws. In Nebraska, for example, state law contains no exemption protecting Indian peyote use. NAC members living on the Santee Sioux reservation are subject to state criminal jurisdiction under P.L. 280 and may be prosecuted and imprisoned, while NAC worship on neighboring Omaha and Winnebago reservations is lawful because these reservations retroceded from Nebraska jurisdiction. H.R. 4230 would remove burdens on NAC worship of this nature by establishing a uniform national standard based upon the DEA exemption.

More recently, the President reiterated his position on the need for legislation in the nature of H.R. 4230 during the historic meeting with tribal leaders at the White House on April 29, 1994:

No agenda for religious freedom will be complete until traditional Native American religious practices have received the protections that they deserve. Legislation is needed to protect Native American religious practices threatened by federal action. The Native American Free Exercise of Religion Act is long overdue. My Administration will work with you and members of Congress to make sure the law is constitutional and strong. Then I want it passed . . .

See, President Clinton's Statement to Tribal Leaders, April 29, 1994 (Attachment C hereto), p. 2.

C. H.R. 4230 is constitutional. As noted in Employment Division v. Smith, 494 U.S. at 890, Congress unquestionably has the power to pass a law such as H.R. 4230 to grant an exemption for the religious use of peyote by Indians without running afoul of the Establishment Clause or the Equal Protection Clause. This principle is strongly bolstered by applicable principles of federal Indian law. In Morton v. Mancari, 417 U.S. 535 (1974), and its progeny, the Supreme Court has consistently upheld the constitutionality of special Indian legislation under the federal Indian trust doctrine and treaty relationship. These principles were recently applied in Peyote Way Church of God v. Thornburgh, 922 F.2d 1210, 1216-17 (5th Cir. 1991) to uphold DEA's exemption for Indian religious use of peyote against a challenge by non-Indians that the exemption violated the Establishment and Equal Protection Clauses, stating:

We hold that the federal NAC exemption allowing tribal Native Americans to continue their centuries-old tradition of peyote use is rationally related to the legitimate governmental objective of preserving Native American culture. Such preservation is fundamental to the federal government's trust relationship with tribal Native Americans.

* * * *

The unique guardian-ward relationship between the federal government and Native American Indian tribes precludes the degree of separation of church and state ordinarily required by the First Amendment. The federal government cannot at once fulfill its constitutional role as protector of tribal Native Americans and apply conventional separatist understandings of the establishment clause to that relationship.

See also, Oversight Hearing, Testimony of Craig Dorsey, pp. 13. For the above reasons, we expect that the Justice Department will concur with the NACNA on the constitutionality of H.R. 4230.

III. Proposed Amendments to H.R. 4230. After consulting with other elected NAC leaders and representatives from the DEA, Justice and Interior Departments, the NACNA respectfully offers the following amendments to refine H.R. 4230:

1. Section 3 (b) (1): To reflect recent discussions between DEA and NACNA representatives to refine Section 3 (b) (1), line 10 on page 3, should be amended to read as follows:

"Indian for bona fide traditional"

2. Section 3 (b) (2): To clarify the existing DEA regulatory role, line 19 on page 3 should be amended to read as follows:

"regulation and registration by the Drug Enforcement Administration of those persons who import, cultivate,"

3. Add new Section 3 (b) (4), (5), (6) and (7): To meet concerns of

the Departments of Defense and Transportation and to clarify the intent of Congress with respect to peyote use in prison and law enforcement contexts, the NACNA proposes the following new subsections:

"(4) This section does not prohibit military commanders from restricting the use or ingestion of peyote by active duty personnel within 12 hours prior to the performance of official duties in circumstances where safety or military readiness may be adversely affected by such use or ingestion.

(5) This section does not prohibit regulations by the Secretary of Transportation restricting the use or ingestion of peyote by transportation workers in safety sensitive positions, as defined by the Secretary, within 12 hours prior to the performance of official duties, in circumstances where public safety may be adversely affected by such use or ingestion.

(6) This section does not prohibit regulations by law enforcement administrators restricting the use or ingestion of peyote by sworn law enforcement personnel within 12 hours prior to the performance of official duties in circumstances where public safety may be adversely affected by such use or ingestion.

(7) This section shall not be construed as requiring prison authorities to permit, nor shall it be construed to prohibit prison authorities from permitting, access to peyote by Indians while incarcerated within federal or state prison facilities.

The NACNA appreciates the Subcommittee's consideration of the above proposed amendments and stands ready to assist the Subcommittee in its deliberations in refining H.R. 4230.

Conclusion. H.R. 4230 squarely addresses one of America's cherished, most precious liberties -- religious freedom. Mr. Chairman and members of the Subcommittee, thank you for your leadership in addressing the Native American religion crisis. Let us act quickly to safeguard and guarantee this liberty to Native Americans.

Respectfully submitted,

Walter R. Echo-Hawk

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ATTACHMENT A
to WALTER ECHO-HAWK's Testimony

THE SACRAMENT OF PEYOTE
IN THE NATIVE AMERICAN CHURCH

THE MEDICAL RECORD

Numerous well respected Medical Doctors and Psychiatrists have studied the use of Peyote in the Native American Church (NAC) either through their own medical patient experience or as a subject of medical research. The following are excerpts from their findings:

* * * *

- I. "As a practicing physician [38 years], I had patients who were active members of the NAC and in no instance did I find any evidence of abuse of peyote."

"In a recent computer search of the last ten years of medical literature at the National Library of Medicine, I found no report of abuse of peyote in the sacraments of the NAC."

"Within the context of the Church, the use of peyote is carefully controlled and, rather than a drug of abuse, peyote is actually used in the treatment of other substance abuse."

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

SOURCE: Emery A. Johnson, M.D., MPH, former Director (12 years) of Indian Health Services. Statements excerpted from testimony presented to House Subcommittee on Native American Affairs, March 16, 1993.

* * * *

- II. "I support the Native American Church and the use of peyote in that setting, including the healing practices utilizing the same attention to religious observance."

"In addition to my now extensive medical experience, I have had a certain amount of direct experience with the Native American Church and the sacramental use of peyote in its religious observances. Further, I have some knowledge of the medicinal uses of peyote in traditional Indian healing practices."

<p>Compiled in 1993 by: Native American Religious Freedom Project of the Native American Church</p>

"The basic worship is night long singing and praying, with the use of peyote as an essential sacramental element. The use of peyote is eucharistic, equivalent to the use of sacramental elements in communion services in Christian religions, specifically, the use of wine and bread."

"... my experience has been that the frivolous or "recreational" use of peyote outside the rather strict observances of Native American Church worship is regarded as inappropriate and socially proscribed by the general membership of the church."

"I can personally attest to this essential spiritual nature of the use of peyote in religious and healing procedures. I have never known of any habituation or addiction to it."

"... the Native American Church is an important source of strength in efforts to remove the terrible affliction of alcoholism from Indian communities."

"I have been impressed with the organizational aspects of the Church and the efforts of the Church to control the membership, and the inappropriate use of its elements."

"I hope that the United States Congress and the American people will give urgent attention to measures that would clearly allow the free exercise of the religion of the Native American Church."

SOURCE: Everett R. Rhoades, M.D., Director of Indian Health Service. Excerpted from a June 9, 1990 letter to Reuben Snake which was made a part of the Hearing Record of Senate Select Committee on Indian Affairs Oversight Hearings on AIRFA on March 7, 1992.

* * * *

III. "Fifty-seven Huichol Indians with a lifelong individual history and a 1,600-year cultural tradition of ingestion of peyote, a mescaline-containing cactus possessing hallucinogenic properties, were compared with 50 Huichol Indian controls and ten laboratory controls for effects on lymphocyte chromosomes. The frequency of abnormalities in the experimental and control groups did not differ significantly. Our results indicate that multigenerational ingestion of peyote is not associated with abnormalities in lymphocyte chromosomes."

"... no significant chromosomal aberrations were apparent among the peyote- and non-peyote-using Huichol Indians."

"Peyote plays an important role in their daily life, traditions, myths, art, and religion. Archeological evidence suggests its use as early as 350 AD."

"To our knowledge, this is the largest cytogenetic study of peyote use. Several observations may be made: Peyote does not cause detectable abnormalities in the chromosomes of lymphocytes taken from lifelong users. The data show a strikingly low overall frequency of chromosome abnormalities. This fact, coupled with the lack of complex karyological changes indicative of severe chromosomal rearrangement, and the low incidence of isochromatid breaks, speaks against the presence of a significant chromosome-damaging agent in vivo."

"The physician responsible for the Indians' health care is of the clinical impression that no increase in congenitally malformed offspring exists among peyote users."

"The lack of hereditary cytogenetic abnormalities... in the experimental population group supports the conclusion that 1,600 years of peyote use has not adversely affected the "cytogenetic pool"."

SOURCE: "Effect of Peyote on Human Chromosomes", by David L. Dorrance, M.D.; Oscar Janiger, M.D.; Raymond L. Tepliz, M.D. Published in Journal of American Medical Association (JAMA 234: 299-302, 1975).

* * * *

- IV. "Although the authors do not propose that the peyote meeting is a cure for alcoholism, they feel it offers some specific advantages in the treatment of the unique problems of the Indian alcoholic."

"The peyote religion possesses several attributes that make it particularly suitable as a treatment for the multiple social and psychological problems of the Indian alcoholic. The religion is uniquely pan-Indian and is generally held in high regard in the Indian community among members and nonmembers of the NAC."

"... the philosophy, teachings, and format of the NAC can be of great benefit to the Indian alcoholic. The NAC is effective in reducing feelings of alienation and isolation for many persons by allowing safe, cathartic expression of inner feelings. ... NAC also helps the alcoholic to develop a sense of personal identity and clearer relationships to his external world. As a cultural phenomenon, the growth and spread of the NAC that seems to be occurring in the United States could prove to be a major factor in the reduction of anomie among American Indians..."

"We do not propose that either the pharmacological effects of peyote or the NAC by itself is a cure for alcoholism. Alcoholism is a chronic condition that is notoriously resistant to treatment. The NAC does, however, seem to offer some specific advantages in the treatment of the unique problems of Indian alcoholics..."

"What seems apparent is that the integration of the NAC into ethnically oriented alcoholism treatment programs, such as those now in existence, can be a valuable addition that provides an added dimension to the treatment of alcoholism among American Indians."

SOURCE: "Peyote in the Treatment of Alcoholism Among American Indians", by Bernard J. Albaugh, M.S.W., and Philip O. Anderson, Ph.D. Published in American Journal of Psychiatry (131:11 p. 1247-50, November, 1974).

* * * *

- V. "The services of this religion ("meetings") are highly serious and arduous. They follow a prescribed form that is derived largely from the ceremonial symbolism and practices of many tribes."

"The whole spirit of the religion seems best characterized as communion - with God and with other men."

"Meetings are conducted in a strict and orderly way."

"Almost everything is done in a ritualized way that requires attention to the detail of one's movements and speech. The drum, ceremonial tobacco, and other important objects are passed only in a certain way. In moving about the hogan or tepee, one walks only in a certain direction."

"The ceremony is experienced as beautiful, but much of the beauty is the beauty of orderliness."

"In describing some of the ways in which the Native American Church avoids harming its members, I have also implied some ways in which I feel that it helps them. That is a subject for another and longer paper, but this one would be incomplete without saying that we have seen many patients come through difficult crisis with the help of this religion. For many Indian people threatened with identity diffusion it provides real help in seeing themselves not as people whose place and way in the world is gone, but as people whose way can be strong enough to change and meet new challenges. The Peyotists themselves are proud in particular of the help the church has been to Indian people who have drinking problems. In fact, Levy and Kunitz report a greater success rate for the

Peyotists than for any other agency working with alcoholics in one part of the Navajo reservation."

"There have been recent attempts to limit the freedom of the church members to practice their religion. There have been a few journalist reports depicting them as drug abusers. Careful study is called for not only to avoid injustice but also to learn from these people who use well a potentially dangerous drug and who, after all, have had much longer experience in these matters than we have."

SOURCE: "Navajo Peyote Use: It's Apparent Safety, by Robert L. Bergman, M.D. Published in American Journal of Psychiatry (Vol. 128:6, p. 695-99, December, 1971).

* * * *

VI. "Time after time various western states have passed laws prohibiting the use of this drug. Time after time they have been repealed or rejected by the Supreme Court. I am happy to have had a small part in some of these legal actions."

"Dr. Robert Bergman, on the basis of his scientific training, confirms precisely what Weston La Barre told me long ago. Peyote is not harmful to these people; it is beneficial, comforting, inspiring, and appears to be spiritually nourishing. It is a better antidote to alcohol than anything the missionaries, white man, the American Medical Association, and the public health services have come up with. It is understandable that these organizations should be a bit envious of the success of this primitive natural native remedy. We are indebted to our colleague for his scientific documentation and personal evaluation of what is a real preventive mental health measure."

"I concur in all that Dr. Robert Bergman has said. I see the legal persecution that keeps cropping up as typical of the reactionary regression of the day."

SOURCE: Karl T. Menninger, M.D. quoted in American Journal of Psychiatry (Vol. 128:6, p. 699, December, 1971).

ATTACHMENT B
to WALTER ECHO-HAWK's Testimony

**REMARKS OF PRESIDENT WILLIAM JEFFERSON CLINTON
SIGNING OF THE RELIGIOUS FREEDOM RESTORATION ACT
November 15, 1993**

It is a special pleasure for me to welcome people of conscience and faith to the White House. This is your House, and this is our Day.

I want to especially recognize the Coalition for the Free Exercise of Religion -- they played a central role in drafting the legislation and working hard for its passage. This unique group of Americans crossed sectarian lines and worked together for shared values.

Along the way, I am told, some friendships were formed across ideological and religious lines among people who previously distrusted each other -- showing, I suppose, that even in the legislative process, miracles do happen.

But these groups -- and the others I invited to be here today -- were brought together by something powerful in the American experience; a shared desire to protect one of our most cherished liberties, religious freedom.

The signing of legislation by the President is, in many ways, a ministerial act -- often a quiet ending to the turbulent legislative actions that come before. But today, this ministerial action assumes a more majestic quality, because we affirm the historical role people of faith have played in our country, and the constitutional protections those who profess and express their faith have historically enjoyed.

The power to reverse by legislation a decision of the Supreme Court is a power infrequently and hesitantly exercised by the Congress. But this is an issue, and this is a time, when an extraordinary measure is needed. The Religious Freedom Restoration Act reverses the effects of an ill-judged Supreme Court decision, Employment Division v. Smith, and reestablishes a standard that better protects religious expressions and practices from invasion by government, as contemplated by the founders of our nation.

Under Smith, the free exercise clause became nearly a dead letter. And it is that holding of the Supreme Court we reverse today. The Religious Freedom Restoration Act honors the principle that our laws and political institutions should not impede or hinder but protect and preserve our most fundamental religious liberties.

ATTACHMENT C
to WALTER ECHO-HAWK's Testimony

obligations of the federal government. Today I vow to honor and respect tribal sovereignty based upon our unique historical relationship. And today I promise to continue my efforts to protect your right to fully exercise your religion as you wish.

Let me talk a minute about the issue of religious freedom because I feel strongly about it.

For many of you, traditional religions and ceremonies are the essence of your culture and your existence. Last year I was very pleased to sign a law that restored certain Constitutional protections for those who want to express their faith.

No agenda for religious freedom will be complete until traditional Native American religious practices have received the protections that they deserve. Legislation is needed to protect Native American religious practices threatened by federal action. The Native American Free Exercise of Religion Act is long overdue. My Administration will continue to work closely with you and Members of Congress to make sure the law is Constitutional and strong. Then I want it passed, so I can invite you back and sign it into law.

And to make certain you can obtain the ritual symbols of your religious faith, in a moment I will sign a directive to every Executive Department and agency of the government -- not just the Department of the Interior -- instructing them to cooperate with tribal governments to accommodate wherever possible the need for eagle feathers in the practice of Native American religions.

That, then, is our first principle: respecting your values, your religions, your identity, and your sovereignty.

This brings us to the second principle that should guide us. We must dramatically improve the federal government's relationship with the tribes, and become full partners with the tribal Nations.

I don't want there to be any mistake about our commitment to a stronger partnership between our people. Therefore, in a moment I will also sign an historic governmental directive that requires every Executive Department and agency of government to take two simple steps. First, to remove all barriers that prevent them from working directly with tribal governments. And second, to make certain that if they take action effecting tribal trust resources, they consult with tribal governments prior to their decision. Our entire government has a trust responsibility with tribal governments, not just the Department of the Interior, and it's time the entire government recognized it.

Native American Rights Fund

WRITTEN STATEMENT OF THE NATIVE AMERICAN RIGHTS FUND BEFORE THE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE OF THE NATURAL RESOURCES COMMITTEE ON H.R. 4155 AND H.R. 4230, AMENDMENTS TO THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT, FOR THE HEARING OF JUNE 10, 1994

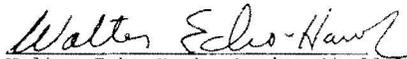
The Native American Rights Fund ("NARF") respectfully requests that this written statement be added to the record of June 10, 1994, hearing on H.R. 4155 and 4230, which remains open for a two week period following the date of the hearing. The purpose of this written testimony is to provide NARF comment upon H.R. 4155 and the proposal from Cochiti Pueblo.

NARF is a national, non-profit legal organization that has provided legal representation to Indian tribes and Native Americans in significant matters since 1970. NARF has legal and legislative expertise in issues relating to First Amendment rights of Native Americans and the need for an adequate federal law to protect places of Native American worship. NARF has served as a member of the Technicians' Committee referred to at page 1 of Mr. Ray Apodaca's written testimony, which was offered as the Coordinator for the American Indian Religious Freedom Coalition, since the inception of that Committee.

As correctly noted by Mr. Apodaca, NARF was unable to complete its review of H.R. 4155 and the Cochiti proposal by the date of the June 10 hearing. (*Id.* at 2). Having completed its review, NARF joins its colleagues on the Technicians' Committee and strongly supports Mr. Apodaca's testimony and recommendations.

In conclusion, NARF thanks Chairman Richardson and members of the Subcommittee for taking an important leadership role in developing federal legislation to protect Native American sacred sites. NARF stands ready as a member of the Technicians' Committee of the American Indian Religious Freedom Coalition to assist the Subcommittee in developing and refining the Cochiti proposal.

Respectfully submitted for the Native American Rights Fund,



Walter Echo-Hawk, Senior Staff Attorney
Robert M. Peregoy, Senior Staff Attorney
NATIVE AMERICAN RIGHTS FUND
1712 N Street, N.W.
Washington, D.C. 20036-2976
Phone: 202/785-4166; Fax: 202/822-0068

Dated: June 17, 1994

SUPPLEMENTAL TESTIMONY OF WALTER ECHO-HAWK

How do you convince the public this is not a narcotic and that it is well-regulated?

First, peyote is not a narcotic. Nor is it an addictive or habit-forming substance, as concluded in the medical record referenced in my testimony. In addition to effective regulation by the Drug Enforcement Administration and State of Texas pursuant to federal and state law, the Native American Church and the DEA share the common purpose in assuring the sacrament is used for religious purposes only. Native American Church leaders accordingly assure that the cactus plant is administered only in sacramental/religious settings. Since peyote is a holy substance, any other use would be considered sacrilegious. Finally, I refer the Subcommittee to the DEA's testimony entered into the record on March 16, 1993, as well as this morning, that the religious use of peyote by Indians is not related to America's drug problem, and that the DEA is not aware of the diversion of peyote to any illicit market.

Mr. RICHARDSON. The Chair recognizes Mr. Frank Dayish, Delegate-at-Large Eastern Region of the Native American Church of North America.

STATEMENT OF FRANK DAYISH, JR.

Mr. DAYISH. Good morning, Mr. Chairman, and Members of the subcommittee. Thank you for the invitation to offer testimony in support of H.R. 4230. This morning, I have the distinct honor of presenting joint testimony on behalf of the four largest Native American Church organizations in the country: The Native American Church of North America, the Native American Church of Navajoland, the Native American Church of South Dakota, and the Native American Church of Oklahoma.

Before I begin, please allow me to introduce myself. I am Frank Dayish, a Navajo. I was born into the Native American Church and have been a member all my life. I graduated from Shiprock High School in New Mexico in 1976. After graduation, I enlisted in the United States Marine Corps and was honorably discharged in 1979.

After my military service, I attended New Mexico State University and graduated with a B.A. in Business Administration. I am currently a candidate for an MGA at the University of Maryland. Since 1985, I have been employed by NASA as a contracting officer. For the past three years, I have served as the Native American Church of North America, Delegate-at-Large for the Eastern United States.

I will begin with a brief history of the Native American Church. The roots of this religion go back at least 10,000 years, making it among the oldest ongoing religious traditions and grounding it firmly among the historic bona fide religions of the world.

One distinguishing feature of our religion is the use of the Peyote cactus as the sacrament of our church. It is the misunderstanding of our sacrament and liturgy by the larger society that has created the hardships which have led us to the need for this legislation.

This eucharistic religion was first documented among American Indian tribes by Europeans in the 1700s. The Native American Church was first incorporated in 1918 in Oklahoma at the urging of anthropologists from the Smithsonian Institute who were concerned about the persecution of church members.

Although no precise figures exist, it is generally believed that approximately 250,000 Native Americans are members of the church. Membership is divided into four large multichapter umbrella organizations as well as numerous independent NAC chapters incorporated in various States.

The larger NAC organizations are NAC of North America with 46 chapters in 24 States, Mexico and Canada, NAC of Navajoland with 92 chapters spread throughout the Navajo Nation, NAC of Oklahoma, with 17 chapters spread throughout Indian country in Oklahoma, and NAC of South Dakota with a multichapter organization with chapters on the various South Dakota Indian reservations.

Each of these organizations is structured by articles of incorporation, bylaws and is governed by elected officers. The smaller independent churches which are not affiliated with one of our larger organizations are similarly structured.

Virtually all of the Peyote in the United States grows in the region of Texas, where it is gathered by distributors who are licensed by Texas and regulated by the DEA. All NAC organizations must be registered with the Texas Department of Public Safety in order to acquire our Peyote sacrament.

The Texas regulatory scheme limits distribution of Peyote to only Native Americans who meet specific requirements. The Native American Church supports the Texas laws which govern the distribution of our sacrament.

This subcommittee has received a lot of testimony on the legal problems burdening our religious way of life, especially in the aftermath of Employment Division of Oregon versus Smith. Both this subcommittee and the Committee on Indian Affairs have seen fit to introduce legislation to remove those burdens through exercising the trust responsibility of the United States to Indian tribes and the intent of Congress to protect and preserve Indian cultures. We appreciate this much-needed legislation.

While we are very supportive of H.R. 4230, we do have a few proposed amendments to the bill which were presented to the subcommittee as part of the hearing testimony of Mr. Echo-Hawk, attorney for the Native American Church of North America.

Our purpose in introducing this joint testimony is to declare our unity of purpose as elected leaders of the Native American church in calling upon the subcommittee and the Congress of the United States to enact a bill with our recommendations in order that the Native American Church may have restored to it the peace that it deserves and that only members may freely practice their religion no matter where we may live, without fear of persecution or prosecution.

Before I close, I must state that we are the only recognized religion in this country that stands to go to prison for praying. This is why the presidents of the Nation's four largest Native American Church organizations are appealing to the lawmakers of this country for religious freedom. This is why the leaders of this age-old religion are asking Congress to promptly and comprehensively enact this important human rights legislation.

It is hard to overstate the irony that the first Americans are the very last to be included in the Bill of Rights. There can be no more immediate need than to remove this cloud from our spiritual lives. The time for action is now. We ask the subcommittee for a quick markup and decisive action to enact this bill into law this session.

I would like to extend my deepest appreciation to this subcommittee for their extraordinary efforts on this endeavor on behalf of the Native American Church of North America, Oklahoma, South Dakota, as well as other Native American churches throughout the United States.

Mr. RICHARDSON. Thank you.

[Prepared statement of Mr. Dayish follows:]

Native American Church of North America



- EXECUTIVE OFFICERS -
 PRESIDENT
 DOUGLAS J. LONG - WINNEBAGO
 VICE PRESIDENT
 TONY LEE - NAVAJO
 TREASURER
 HARLEY GOODBEAR - HAWDAH-HIDATSA
 SECRETARY
 HOPE B. SMITH - WINNEBAGO
 EDITOR
 REV. ANTBONT SMITH, SR. - WINNEBAGO

United States, Canada and Mexico
TESTIMONY OF FRANK DAYISH, JR.,
 PRESENTING A JOINT STATEMENT ON
 BEHALF OF THE NATIVE AMERICAN CHURCH
 OF NORTH AMERICA, THE NATIVE AMERICAN
 CHURCH OF NAVAJOLAND, THE NATIVE
 AMERICAN CHURCH OF OKLAHOMA, AND THE
 NATIVE AMERICAN CHURCH OF SOUTH
 DAKOTA, BEFORE THE NATIVE AMERICAN
 AFFAIRS SUBCOMMITTEE OF THE NATURAL
 RESOURCES COMMITTEE, U.S. HOUSE OF
 REPRESENTATIVES, HEARING ON H.R.
 4230, THE AMERICAN INDIAN RELIGIOUS
 FREEDOM ACT AMENDMENTS OF 1994

June 10, 1994

Good morning, Mr. Chairman and members of the Subcommittee. I am Frank Dayish, Jr. Thank you for the invitation to offer testimony in support of H.R. 4230. This morning I have the distinct honor of presenting joint testimony on behalf of the four largest Native American Church organizations in the country.

Before I begin, please allow me to take a moment to introduce myself. I am Diné (Navajo). I was born into the Native American Church and have been a member all of my life. I graduated from Shiprock High School in New Mexico in 1976. After graduation, I enlisted in the United States Marine Corps and was honorably discharged in 1979. After my military service, I attended New Mexico State University and was awarded a bachelor of arts degree in business administration. I am currently a candidate for an MGA at the University of Maryland. Since 1985 I have been employed as a contracting officer by the National Aeronautics and Space Administration (NASA) here in the Washington area. For the past three years I have served as an officer of the Native American Church of North America, as the delegate-at-large for the Eastern United States.

At this time it is my honor to offer testimony on behalf of the Native American Church of North America, the Native American Church of Navajoland, the Native American Church of South Dakota, and the Native American Church of Oklahoma.

Respectfully submitted,

Frank J. Dayish
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 Native American Church
 of North America
 2006 Peaceful Way #302
 Odenton, MD 21113
 (301) 621-0845

JOINT TESTIMONY
OF
DOUGLAS LONG, PRESIDENT
NATIVE AMERICAN CHURCH OF NORTH AMERICA
ROBERT BILLY WHITEHORSE, PRESIDENT
NATIVE AMERICAN CHURCH OF NAVAJOLAND
SCOTT AMERICA HORSE, PRESIDENT
NATIVE AMERICAN CHURCH OF SOUTH DAKOTA
MELVIN GEORGE, PRESIDENT
NATIVE AMERICAN CHURCH OF OKLAHOMA

Presented to
The Native American Affairs Subcommittee of
the U.S. House of Representatives in conjunction with a
Hearing held in Washington, DC on June 10, 1994 on H.R. 4230

Congressman Richardson, and members of the native American Affairs Subcommittee, we are elected representatives of the largest Native American Church organizations in the country and in that capacity are submitting this joint testimony in support of H.R. 4230.

We thank the Subcommittee for this opportunity to convey to you who we are and to urge your decisive action to ensure that this important legislative bill is enacted into law.

HISTORY OF THE NATIVE AMERICAN CHURCH

The roots of this religion go back at least 10,000 years according to anthropological evidence--making it among the oldest ongoing religious traditions in the Americas, and grounding it firmly among the historic, bona fide religions of the world.

One distinguishing feature of our religion is the use of the peyote cactus (*Lophophora Williamsii*) as the sacrament of our church. It is the misunderstanding of our sacrament and liturgy by the larger society that has created the hardships which have led to the need for this legislation.

This eucharistic religion was first documented among American Indian tribes by Europeans in the 1700's. The Native American Church (NAC) was first incorporated in the modern sense in 1918 in Oklahoma by NAC leaders at the urging of anthropologists from the Smithsonian Institution who were concerned about the persecution of NAC members in some states.

The Native American Church is often referred to as the largest traditionally rooted indigenous religion among the Indian nations in the United States.

STRUCTURE

Although no precise figures exist, it is generally believed that approximately 250,000 Native Americans are affiliated with the NAC. Membership in the NAC is divided into four large multi-chapter umbrella organizations as well as numerous independent NAC chapters incorporated in various states. The larger NAC organizations are as follows:

1. Native American Church of North America - 46 chapters in 24 states, Canada and Mexico.
2. Native American Church of Navajoland, Inc. - 92 chapters spread throughout the Navajo Nation.

3. Native American Church of Oklahoma - Seventeen chapters spread throughout indian Country in Oklahoma.
4. Native American Church of South Dakota - A multi-chapter organization with chapters on the various Indian Reservations of South Dakota.

Each of these organizations is structured by Articles of Incorporation and By-Laws, and governed by elected officers. The smaller independent Native American Churches which are not technically affiliated with one of our larger NAC organizations are similarly structured and governed.

Virtually all of the peyote in the United States grows in a region of Texas where it is harvested by distributors who are licensed by the State of Texas and regulated by the Federal Drug Enforcement Administration. All Native American Church organizations must be registered with the Texas Department of Public Safety in order to acquire our peyote sacrament. The State of Texas regulatory scheme limits distribution to only Native Americans who meet certain specific requirements. The Native American Church supports the Texas laws which govern the distribution of our sacrament.

SUPPORT FOR H.R. 4230

This Subcommittee has received much testimony documenting the scope of the legal problems burdening our religious way of life, especially in the aftermath of *Employment Division of Oregon v. Smith*, 494 U.S. 872 (1990). Both this Subcommittee and the Senate Committee on Indian Affairs have seen fit to introduce legislation

to remove those discriminatory burdens through exercise of the Trust Responsibility of the United States to Indian tribes and the intent of Congress to "protect and preserve Indian cultures" as stated in the American Indian Religious Freedom Act of 1978. We are most appreciative of this much needed legislation.

While we are very supportive of H.R. 4230, we do have a few proposed amendments to the bill that we believe will improve both its strength and clarity in meeting the needs of our members in the years to come, as well as improve the cooperative framework for good relations with affected federal agencies.

The specific amendments we are proposing are being presented to the Subcommittee as part of the Hearing testimony of Walter Echo-hawk, attorney for the Native American Church of North America.

Our purpose in introducing this joint testimony is to declare our unity of purpose as elected leaders of the Native American Church in calling upon this Subcommittee and the Congress of the United States to promptly and comprehensively enact H.R. 4230, with our recommended amendments, in order that our Native American Church may have restored to it the peace and dignity it deserves, and that our members may freely practice the religious way of life we have learned from our elders, no matter where we may live in this land, without being fearful of persecution or prosecution.

We thank you for your kind attention, and urge you to call upon us if the Subcommittee desires further information, or if we can help in any way to accomplish the passage of H.R. 4230.

Respectfully submitted,

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Robert Billy Whitehorse, President
Native American Church of Navajoland,
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Cortez, Colorado 81321

Melvin George, State Chairman
Native American Church of Oklahoma
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Native American Church of the State of
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SUPPLEMENTAL TESTIMONY OF FRANK DAYISH

Does the NACNA allow children to use peyote?

As indicated during my oral testimony, some parents allow children to partake in the sacrament. However, most do not. Because of the extremely bitter taste of this cactus plant, many children choose not to participate in that part of the prayer service. It is common for those children to sit up at the beginning of the service and listen to the ceremonial songs and prayers, and eventually curl up at their parents' side and sleep through the remainder of the night-long service. For those children who do partake in the sacrament, it is administered in a strictly-controlled religious setting, much like the wine in communion is administered in the ceremonies of other religions. Because the administration of the sacrament is carefully controlled and well-regulated by responsible parents and church leaders, it has never been known to be harmful to children in the centuries old tradition of the church. Mr. Chairman, I believe that the best evidence that our peyote sacrament is not harmful to children or adults is the fact that many of the most healthy and highly respected tribal elders were raised in the Native American Church and are today often the most vibrant leaders of our tribal governments and Native American Churches.

Mr. RICHARDSON. We will turn next to Mr. Thompson.

STATEMENT OF JESSE THOMPSON

Mr. THOMPSON. In March, there was a letter submitted by three organizations, the NAC of Navajoland, Oklahoma, and North America. In that letter, they requested Chairman Richardson to introduce traditional use of the Peyote bill, and he has done that and we deeply appreciate that.

Again, I would like to also inform you that the President of the Native American Church of Navajoland regrets that he could not make it out to this hearing and I am his replacement. I am Jesse Thompson, Vice President of Native American Church of Navajoland.

It is a pleasure for me to be here with you in support of prompt enactment of H.R. 4230 on the traditional use of Peyote. I have been in this position for at least three years, but my use of Peyote as a sacrament in the Native American Church goes back a long time.

I participated and joined this church when I was only a very young person still in the elementary age. And up to today, I am well mentally, physically, spiritually and faithfully. A lot of the teachings I have gained from my elders as well as the practitioners of these services.

The Native American Church of Navajoland was established in 1966, and it is so important to us that we are now recognized by our own tribal government. Just as indicated by President Zah, the Navajo Tribal Council, and the government itself, is very supportive of the NAC. We currently have at least 35,000 members and have a good working relationship with the States of Arizona, New Mexico, Utah, and Texas, as well as the Drug Enforcement Administration.

We believe that the organization that I represent is well organized. It has a constitution and bylaws, it is guided by law in the operation and the management and the control of who uses the Peyote. The organization's primary purpose is to protect and preserve the Native American Church ways of worshipping and to promote the teachings of the traditional and cultural values of the Navajo people and to maintain internal control of the organization.

The Native American Church of Navajoland, Incorporated is steadfast in its position that all American Indians and every Native American should be legally entitled to exercise their traditional use of Peyote as a sacrament. Some of us have lost a good part of our Indian religion. I am a prime example of that. All we have today is the NAC way of worshipping and we would like to protect and preserve that.

The United States Supreme Court, in the case of Oregon State versus Smith, ruled that the First Amendment of the United States Constitution does not guarantee protection for the sacramental use of Peyote in the Native American Church services. The consequence of that Smith case has been harshly felt by the Navajo people and other tribal members.

Our religion, the heart of our existence, has been inflicted with pain. It has impacted our elders and middle-aged children. We

shouldn't be doing this but we are asking, "Where did we go wrong?"

When the foreigners first made their appearance in America, native people were concerned that there were human beings who were tired, sick and starving. With their compassion and disregard for any discrimination, the Indian people fed and insured survival of these people who have since developed into the dominant force in this country.

We have the support of New Mexico and Arizona legislators. They have submitted a resolution requesting that Congress provide legislation to protect the traditional use of Peyote. And all these documents were submitted by my President, Mr. Robert Billy Whitehorse, a year ago during an oversight hearing.

Mr. Chairman, I would like to—Acting Chair, I would like to urge that this legislation be passed sometime this year so that we can exercise the religious use of our sacrament. I urge the subcommittee for a quick markup so that we can enact legislation this congressional session.

Thank you very much for allowing me to present the views of the Native American Church. Again, thank you.

[Prepared statements of Mr. Thompson follow:]

Statement of Jesse Thompson, Vice-President of the Native American Church of Navajoland, Inc. on H.R. 4230, Traditional Use of Peyote, Before the Subcommittee on Native American Affairs

June 10, 1994

Good morning, Chairman Richardson and members of the House Committee on Native American Affairs; ladies and gentlemen in the audience. I am glad to be here to testify before this Committee. My name is Jesse Thompson, Vice-President of the NACNL, Inc. On behalf of the organization, I am here to support prompt enactment of H.R. 4230 on Traditional Use of Peyote. We need an enforceable law that will protect the sacrament use of peyote by members of Native American Church and to help deter abuse by pretenders.

Let me add that I am also a member of the Navajo County Board of Supervisor in ARIZONA.

I have been a member of the NAC for the most part of my life. As a young man, I turned to the NAC religion for help and guidance to overcome the many uncertainties and other social problems that existed at the time. Much of my teachings came from my elders, practitioners, and leaders of the NAC. Today I am functioning well mentally, physically, spiritually and faithfully. There is a purpose in life and a place in society for me today.

The Native American Church of Navajoland, Inc. was established in 1966 and is recognized by the Navajo Nation Council. It currently has a membership of approximately 35,000. It is incorporated with the states of Arizona, New Mexico, Utah and Texas.

The organization's primary purpose is to protect and preserve the Native American Church ways of worshiping, and to promote the teachings of the traditional and cultural values of the Navajo people, and to maintain internal control of the organization.

The organization has a Constitution and a set of By-Laws that is guided by in the management and control of the use of the peyote as a sacrament by members of the NAC.

The NACNL, INC. is steadfast in its position that all American Indians and every Native American should be legally entitled to exercise their traditional use of peyote as a sacrament in NAC prayer services. We've got to establish a perimeter for the sacramental use of peyote for control to avoid possible out break of misuse and abuse.

Since some of us lost a good part of our Indian religion, all we have today is NAC ways of worshiping. We want to protect this.

The United States Supreme Court, in the case of Oregon State V. Smith ruled that the First Amendment of the United States Constitution does not

guarantee protection for the sacramental use of peyote in bonafide Native American Church religious services. The ruling is destructive to the existence of the Navajo people and other Native Americans. We feel it is wrong to subject the Native Americans to the lost of religious freedom.

The consequence of the Smith case has been harshly felt by the Navajo people and other tribal members. Our religion, the heart of our existence has been inflicted with a sharp pain. It has impacted our elders, the middle-aged, and children. We are asking ourselves, "Where and What did we do wrong?".

When the foreigners made their first appearance in America, the Native people were concerned that these human beings were tired, sick, starving and on the edge of death. With their compassion and disregard for any discrimination the Indian people fed and assured the survival of these people, whom have since developed into a dominant force in this country. We are only asking that we be treated with the same respect, treatment and hospitality given those who arrived in America in 1492.

The President of the Native American Church of Navajoland, Inc., Mr. Robert Billie Whitehorse at last year's oversight hearing in this Subcommittee submitted many documents concerning our church. I ask that you please review those documents in support of this legislation.

It is important to mention that the legislators of New Mexico and Arizona passed resolutions calling upon Congress to pass a law like H.R. 4230.

Mr. Chairman, there is an urgent need to pass legislation so that we can freely, exercise the religious use of sacrament peyote. I urge the Subcommittee for a quick mark-up so that we can enact legislation this Congressional session.

Thank you very much for allowing me to present the views of the Native American Church of Navajoland, Inc.

SUPPLEMENTAL TESTIMONY OF JESSE THOMPSON

Are non-Indians allowed to participate in Native American Church Services?

As I indicated in my oral testimony, the Constitution of the Native American Church of Navajoland, Inc. provides that authorized officials of tribal, state or federal organizations may be admitted into NAC services under certain narrow conditions. First, they may attend for an observational or educational purpose only. Second, such attendance must be approved in advance by Executive Officers of the Church. This provision, although used infrequently, has been sporadically invoked over the years, for example, to allow anthropologists to observe prayer services, and has resulted in the publication of literature describing these religious ceremonies.

Most other NAC organizations and chapters do not have a provision that would permit non-Indian participation. Typically, NAC chapters strictly prohibit all non-Indian participation under any circumstance.

Finally, and perhaps most significantly, HR 4230 is specifically limited in its scope to Indian people who are members of federally recognized tribes, and who use peyote "in a traditional manner for bona fide ceremonial purposes in connection with the practice of a traditional Indian religion."

Mr. JOHNSON [presiding]. The Chair thanks all the members of this panel. We appreciate the insights you have brought to this particular issue.

Let me ask a few questions to the panel in general and any of you respond who feel comfortable. I apologize if I am covering some ground already covered by you as Mr. Richardson and I changed places here.

Does the Native American Church allow children to use Peyote as a sacrament?

Mr. DAYISH. Absolutely. We conduct our church services, which are family oriented, and the church services are conducted in a fashion that you are conducting this hearing today. We have a roadman who sits and coordinates the events of a prayer service and along with him are helpers who assist him in running the prayer service.

In the prayer service, children and families sit and participate in the service. And while the families are sitting in there along with the participants, they consume the medicine. Some children do and some children don't. The church services are conducted in a manner where we are all in a controlled environment just as we are here. Everyone there very reverent when the sacrament is passed and that is how I would like to respond to your question.

If anybody else has—

Mr. JOHNSON. How long do the effects of Peyote use last, typically?

Mr. THOMPSON. Your question again?

Mr. JOHNSON. How long do the effects of Peyote last typically for a person who has used it for religious purposes?

Mr. THOMPSON. I would like to respond to that, Mr. Johnson. The use of Peyote is, as mentioned by Mr. Dayish here, it is to help an individual to reestablish some kind of clarity. He may have a little problem going through life or he may have a kind of an ailment that he wants to get rid of or that he is being blessed.

So depending on the reason for a particular prayer service—see, there are one—sometimes everything that you want done for the purpose of that meeting is taken care of during that meeting services. And that—the Peyote can have effect on you, I would say, not more than about six hours.

You will see a lot of people like myself—you know, I get out there, once I leave the prayer service, I get out there and start doing what needs to be done around the house. So that is my answer to your question.

Mr. DAYISH. I would like to add that the church services are an all night services, and usually the sacrament is passed. And depending on the roadman conducting, the services, they usually stop passing the sacrament around 3:00 or towards morning. I have never sat down to think when the effects have left me. You are getting closer to the creator, and the religion that we have, you have a religious feeling all the time. So I have never stopped to think how long does the sacrament affect me and when does that feeling stop. You are in a religious mode.

Mr. JOHNSON. I guess one of the more fundamental questions is: How do we convince the public that this is not a narcotic and that it is a well-regulated sacrament?

Mr. ECHO-HAWK. If I may respond, Mr. Johnson. I think the most powerful way to do that is through the testimony of the DEA itself, who offered written testimony for the hearing and also appeared here last year at the oversight hearing.

The DEA very clearly indicated as the agency responsible for administering the Controlled Substance Act that they have had a very successful regulatory system for the Indian religious use of Peyote since the very beginning that this cactus plant was added to the controlled substance Schedule 1, and Mr. Haislip of the DEA testified last year that, in their opinion, since the mid-1960s up to the present, that that system has worked, that there is not a law enforcement problem, and that the native use of this Peyote for religious purposes is not related to our Nation's drug abuse problem.

In addition, in my own testimony, I have supplied a bibliography of available medical studies concerning Indian religious use of Peyote for—which indicate that in the centuries of known Indian religious use of Peyote, there has not been one documented case of a medical problem. So it is a very harmless, ancient practice that did not cause our country's drug war, has not contributed to it in the opinion of the DEA, and I feel that is a very powerful opinion.

I hope that we could proceed with this legislation, feeling very comfortable that what we do here is consistent with the Controlled Substance Act and the policies of Congress behind it and all of the other relevant policies that are raised by this bill such as the policies of Congress behind passing last year their Religious Freedom Restoration Act, the American Indian Religious Freedom Act of 1978, as well as Congress' policies of Indian self-determination.

So I would hope that at this late date in looking at this issue, that it would be safe for Members of Congress to conclude after looking at this issue that it is not controversial from that standpoint.

Mr. JOHNSON. May non-Indians participate in these ceremonies and belong to the Native American Church?

Mr. THOMPSON. According to the Native American Church of Navajoland Constitution and bylaws, I have already indicated to you that we do have that. Specifically, it indicates that Native Americans who are 25—who have 25 percent Indian blood will be allowed in those prayer services.

In addition to it, is that any non-Indian may be allowed to participate if this is an educational or for observational purposes. That is primarily to preserve what we have and in order so that we do not allow for misuse or abuse beyond that.

Mr. JOHNSON. So this is a religious practice that may expand beyond its traditional bound, not only into non-Indians, but into Native American community that historically did not use Peyote as part of its religious practice; that is a correct statement, then?

Mr. ECHO-HAWK. Mr. Johnson, the bill, with the support of the administration and the Native American Church organizations, limits the application to members of federally recognized tribes to be consistent with the existing regulatory system of the DEA as well as the State of Texas which is the only place in the country where the sacrament grows.

It is true and you are right, that this religion has grown among different Indian tribes such as in your home State of South Dakota

where the Native American Church of South Dakota is very—has a very—a lot of vitality as a religion among those tribes. So this indigenous religious practice has grown among the different Indian tribes, and that is true, that this bill with DEA support would protect that natural cultural interaction between these indigenous groups.

Mr. JOHNSON. I thank all members of this panel. I think your insight has been very helpful to the progress of this legislation.

We have just had a last call for a vote. I am going to have to leave to do that. This would be a natural point, I think, probably, in that case, to break off the testimony here.

I thank you and the members of the other panel.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned.]

APPENDIX

JUNE 10, 1994

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

ENI F. H. FALCOMAVAEGA
Member of Congress

Mr. Chairman: I would like to express my strong support for H.R. 4230, a bill to amend the American Indian Religious Freedom Act to provide for, among other things, the traditional use of peyote by Indians for religious purposes. Among its other provisions, H.R. 4230 recognizes that for many Indian people, the traditional ceremonial use of the peyote cactus as a religious sacrament has for centuries been integral to a way of life, and significant in perpetuating Indian tribes and cultures.

Attempts by Congress to recognize and protect this right have a long history. When the House of Representatives passed H.R. 2, which became the "Drug Abuse Control Amendments of 1965," it protected the right of Indians to use peyote in connection with the ceremonies of certified religious organizations. Unfortunately, the Senate bill omitted that specific protection.

Today, even the Department of Justice and the Drug Enforcement Agency (DEA) are in support of this legislation, in part, since it would codify an existing DEA regulation which allows for "the non-drug use of peyote in religious ceremonies of the Native American Church.." (21 CFR §1307.31).

H.R. 4230, would provide a comprehensive, uniform law so that American Indians who practice the traditional peyote religion will be protected equally without regard to state of residence, reservation of residence, or particular tribal affiliation.

Mr. Chairman, in my view, it is appropriate for Congress to remove known barriers and problems which prohibit or burden Native Americans from exercising their religious beliefs. As a result of varying state laws, Indians in different states are subject to varying laws and are treated differently regarding the religious use of peyote.

In a recent meeting with Indian tribal leaders, President Clinton stated that "legislation is needed to protect Native American religious practices threatened by federal action. The Native American Exercise of Religion Act is long overdue."

Mr. Chairman, there was a period of our history when the mere exercise of religion and culture by native peoples of the United States was prohibited. Children were punished for speaking in their native language. Native people were imprisoned for practicing their religion. Accordingly, we have had a long history of Government oppression when it comes to religious freedom of native Americans.

Mr. Chairman, the time is now -- to correct yet

another of a long list of injustices we have imposed on the indigenous people of this country -- and I urge my colleagues to support passage of H.R. 4230.

Finally, I would like to commend Chairman Richardson and others who have worked long and hard to give back to our Native American brothers and sisters the measure of dignity and respect they rightfully deserve.

Thank you Mr. Chairman



NORTHERN CHEYENNE TRIBE
INCORPORATED

P.O. Box 128

LAME DEER, MONTANA 59043



June 9, 1994

Honorable Doug Richardson, Congressman
U.S. House of Representatives
Chairman, Indian Affairs and Natural Resources Committee

Honorable Pat Williams, Congressman
U.S. House of Representatives
Committee member, Indian Affairs and Natural Resources Committee

RE HR 4155 Protection of Sacred Sites and HR 4230 Traditional Religious Use of
Peyote

Dear Chairman and Committee:

Submitted herewith is a series of concerns regarding the legislation proposing to protect
the religious right and freedom of Native Americans.

As the designated representative of the Council of Chiefs and Military Societies of the
Northern Band of Dsi stsi stsi and Suhtai (Northern Cheyenne), Northern Cheyenne
Tribe, Inc. (NCT Resolution 67-91), Board member of Medicine Wheel Coalition for
Sacred Sites of North America and as a member of the Native American Church I would
like to this opportunity to address to the Committee our concerns on this important issue.

Historically, it has been the policy to eradicate the traditional and cultural element of the
Tribe and has been done so with the assistance from various Christian denominations. The
Cheyenne people have an extensive history that provides a clear picture of resistance and
refusal to submit to servitude and subjugation to a foreign power. It is often thought that
this is one of the reasons why the repressive and oppressive acts continue to be imposed
and in some instances these types acts seem to be racially motivated. Moreover,
ignorance, insensitivity and callousness seem to play a role. But nonetheless, it is
unequivocal that we do not have religious freedom in a country that purports to champion
human rights throughout the world. The unfortunate and sad fact of the whole situation
is that the Cheyenne people are succumbing to the repressive conditions, it is almost a
situation where the traditional element of the Tribe has become a minority within his own
homeland. Thus, the five century old policy of ethno-cide is very quickly becoming a
reality.

LITTLE WOLF AND MORNING STAR - Out of defeat and exile they led us back to
Montana and won our Cheyenne homeland that we will keep forever.

Congressmen Richards and Williams
HR 4155 & 4230
Pg. 2
6/9/94

It is hoped that the Doctrine of Trust Responsibility plays a significant role throughout these proceedings - A Doctrine that has legal, moral and historic significance. Unfortunately, however, this philosophy has been abused by federal agencies, to the extent that it may only be used for their protection and nothing else. It is imperative that the Congress of the United States restore this obligation to where it has credibility.

More often than not, the traditional leadership of the Tribe do not have the financial or technical resources available to protect and maintain a sacred site as it had been originally intended. Meanwhile, state and federal agencies can basically do whatever and whenever they want and can prolong whatever administrative process or procedure is in place. More often than not, a gray or vague process that seems to be always interpreted in their favor. Where else do you go through so much technical bureaucratic red tape just to exercise or at least hope to exercise a way of worship at a site that it was originally intended for and concurrent with that is the incessant commercial and industrial demands (e.g. tourism, among other things), but a federal agency. And the courts many times are not always receptive or sympathetic.

Many times the Congress of the United States will pass legislation and not even realize its impacts. An example is the Clean Air Act Amendment (1990), which literally gave up the Powder River Basin in southeastern Montana for its low sulfur coal - The Northern Cheyenne Reservation appears to have been the "sacrificial lamb" in this instance. Tongue River Railroad Co. has proposed a railroad that will run along the eastern border of the Reservation and the spin-offs will be multitude of coal mines and related activity. Currently, sacred sites and Native American burial sites are in jeopardy. Not to mention that tranquility of the pristine Tongue River Valley (see NCT Resolution 139-92).

In terms of protecting sacred sites, other examples include the Medicine Wheel in northern Wyoming (Bighorn National Forest) where tribes have been involved in extensive and endless negotiations and administrative proceedings with U.S. Forest Service (it has been at least 6 years) to where maybe, just maybe Tribes can use that particular Site as it was originally intended - for undisturbed worship.

Another is the sacred mountain Bear Butte, in the northern stretches of the sacred Black Hills, near Sturgis, South Dakota. Currently, Tribes are involved (once again) in extensive negotiations with Bear Butte Water Users Association, State Historic Preservation Office (SHPO) of South Dakota, Soil Conservation Service (SCS)-USDA, Agricultural Stabilization and Conservation Service (ASCS)-USDA and a number of other state and federal agencies in the hopes of somehow or another to prevent further desecration of a Site that is very sacred and religious to many Tribes, including the

Congressmen Richards and Williams
 HR 4155 & 4230
 Pg. 3
 6/9/94

Cheyenne (both Southern and Northern), (see attached documents - response to Draft EA). The Northern Cheyenne Tribe have a standing Resolution 78(78) that was passed in December of 1977 that supports AIRFA and that requests the protection of Bear Butte. We have not gone anywhere, we're still talking about the some thing's today - It has only gotten worse.

It is somewhat uncertain at this point why there is separate legislation (HR 4155 and HR 4230) regarding the protection of Sacred Sites and the Traditional Religious Use of Peyote, in that the "Site" where the medicine (peyote) is harvested, commonly referred to as Peyote Gardens is considered very sacred and holy and is a very important and an integral part of the religious ceremony. It is impossible to have one without the other - Unthinkable.

Moreover, it is unfortunate that the sacred and holy medicine has been associated with vice, drugs and/or related paraphernalia and has been abused by those do not understand its doctrine or philosophy of how or why it was brought to the Native American people.

What exacerbates matters is that those who do use the Medicine for legitimate purposes are often persecuted and prosecuted by law enforcement and courts, with no compassion or sensitivity to its sacredness or religiousness. There are numerous examples, they include the Smith case (1990), the impetus to this legislative effort. And more recently, a member of the Northern Cheyenne Tribe, who is a member of the Native American Church (a young aspiring college student) had his Medicine (peyote) and related sacred objects seized and was charged with "possession of a controlled substance," by Park County Law Enforcement in Wyoming. While the charges have since been dropped, it is unclear at this point of whether or not the sacred Medicine (peyote) and associated objects, including eagle feathers have been molested or violated in any way. The Medicine and the associated objects are still currently being held and awaiting the owner's retrieval, (see attached documents, Kaline case, 1994).

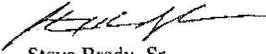
I suspect that Native American (Indian) religious freedom and right will still be in the criminal courts, litigation and legislative process in the next millennium, even though it is a constitutional right and more importantly an indigenous human right.

Members of Congress, you are urged to once and for all correct in what has been appropriately coined as "cruelly surreal" by the late Honorable Justice Marshall, and restore an inherent, fundamental and sacred right.

Congressmen Richards and Williams
HR 4155 & 4230
Pg. 4
6/9/94

Thank you for your time on this important matter.

Respectfully submitted,



Steve Brady, Sr.
Headsman, Crazy Dog Society - Northern Cheyenne Cultural Commission - Medicine
Wheel Coalition for Sacred Sites of North America - Native American Church

NOTE: A complete packet of relevant documents are forthcoming and will be submitted
as matter of record to this Committee.

Attachments

RETURN OF INVENTORY PURSUANT TO WARRANT
FOR SEARCH AND SEIZURE AND RECEIPT

Officer Kevin Schmidt _____, of the

- Park County Sheriff's Department
- Powell Police Department

does hereby make the following return pursuant to Warrant for Search and Seizure issued on the 21 day of April, 1994, in the State of Wyoming, Plaintiff, vs. Merria Kalina and Landon Means, Defendant. That pursuant to said Search Warrant issued, I did seize:

- from the premises known as:
Room 113B, Lewis & Clark Dorm, Northwest College Campus, Powell WY. (West hallway of the south wing, second room on the right, with room number tag on door installed upside down)
- from the person of:
- from a vehicle described as:

the following described property:
See attached.

That I:

- gave a copy of the Warrant and Receipt to the person from who, or from whose premises the property was taken.
- left a copy of the Warrant and Receipt at the place from which the property was taken.

Dated this 21 day of April, 1994.

Kevin J. Schmidt
Applicant

Witness: _____

STATE OF WYOMING }
 }
COUNTY OF PARK }

Officer Kevin Schmidt, being of lawful age, and first duly sworn, deposes and says that he has read the above and foregoing Return subscribed by him, and knows the matters and things therein contained, and that the facts stated therein are true.

Subscribed and sworn to before me this 21 day of April, 1994.

James S. Allison

Subscribed and sworn to before me this 21 day of April, 1994.

James S. Allison
 Justice of the Peace
 Commissioner
 District Judge
 Notary Public

This return received by the undersigned this 21 day of April, 1994.

James S. Allison
 Justice of the Peace
 Commissioner
 District Judge

RETURN OF INVENTORY PURSUANT TO WARRANT
FOR SEARCH AND SEIZURE AND RECEIPT

Seized property cont'd:

Item LM-100 One package of Zig-Zag cigarette papers located on top of desk in NW corner of room.

Item LM-101 White paper sack with suspect marijuana residue and partially burned incense stick lying on top of it located on top of desk in NW corner of room.

Item LM-102 Strawberry Crush soda pop can with ashes on top located on top of desk in NW corner of room.

Item LM-103 Two plastic sandwich bags (same type that marijuana seized in NWC administrative search had been packaged in) with bottom corners torn out located on top of desk in NW corner of room.

Item LM-104 One package of Bull Durham cigarette papers and one cover off of a Zig-Zag cigarette paper package located in top desk drawer of desk in NW corner of room.

Item LM-105 Micro-cassette tape with recording of incoming phone call from "Jason" located in answering machine.

Item MK-200 One package Zig-Zag papers in desk drawer of desk in SW corner of room.

Item MK-201 One heavily perfumed blue piece of cloth tied with white leather thong containing a brown leafy substance located in over night kit in closet in SE corner of room.

Item MK-202 One brown vinyl case measuring approx. 15" x 8" x 4" containing letters, Native American artifacts, glass jar with green leafy substance, pill vial with suspected crushed peyote, cloth bag with brown leafy substance, plastic bag with green plant substance, one cigarette rolling paper, one lighter, approx. 44 suspect peyote buttons and pieces and residue of suspected peyote found in closet in SE corner of room.



NORTHERN CHEYENNE TRIBE
INCORPORATED

P.O. Box 128

LAME DEER, MONTANA 59043



June 7, 1994

Rodney D. Baumberger, State Conservationist (Acting)
USDA - Soil Conservation Service
200 4th Street SW, Federal Building
Huron, South Dakota 57350

RE. Proposed water well and pipeline at Bear Butte - Draft EA

CERTIFIED RETURN RECEIPT

Dear Mr. Baumberger:

This in response to the April 7th - June 7th, 1994 (60 day) extension of the Draft Environmental Assessment (EA) regarding the water well and pipeline proposed by Bear Butte Water Users Association (BBWUA) and assisted by the Soil Conservation Service (SCS) and Agricultural Stabilization and Conservation Service (ASCS), agencies of the U.S. Department of Agriculture at Bear Butte near Sturgis, South Dakota.

At present the members of the Northern Cheyenne Tribe continue use the Mountain Bear Butte for sacred and religious purposes and is still very much central and important to the traditional religious ceremonial cultural way of life of the Cheyenne people. Moreover, the Northern Cheyenne Tribe is a landowner at or around Bear Butte area

It is recommended that the following be taken into serious consideration:

- It has become somewhat apparent that there exists a conflict of interest between BBWUA and ASCS in the preparation of the Draft EA in that Mr. Mick Hurlburt is President of BBWUA and is an employee of ASCS and has been involved extensively in the proceedings. This has to be clarified and in furtherance of this it is recommended that the Draft EA be redone by an independent agency or contractor leading to a full Environmental Impact Statement (EIS).
- In regards to the Cultural Resource Survey done by Jeff Buechler, Archaeologist (1993) regarding this proposed project, the concerns of the Northern Cheyenne Tribe were not adequately addressed, to the extent that Tribe was only given cursory acknowledgment. It is recommended that a Cultural Resource Survey be redone that addresses the Tribe's concerns appropriately, it is further recommended that an Ethnographic Survey be completed prior to any consideration of proceeding any further.

LITTLE WOLF AND MORNING STAR - Out of defeat and exile they led us back to Montana and won our Cheyenne homeland that we will keep forever.

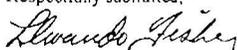
Mr. Baumberger, SCS

Pg. 2
6/7/94

- * The water rights of the Northern Cheyenne Tribe have not been adjudicated yet in the State of South Dakota. It is imperative that a comprehensive Hydrology study be completed prior to any consideration of proceeding any further.
- * With regard to the sacred and religious significance of the mountain Bear Butte and what it represents to the Cheyenne people, it must be made exceptionally clear that the Cheyenne at this point are in no position to discuss this matter until such a time that the religious ceremonial period is over, which is sometime in the latter part July 1994. This part of the Draft Environmental Assessment proceedings cannot be discussed at this point due sacred and religious nature of the circumstances appertaining to the Cheyenne religious ceremonial way of life, which is directly related and very relevant to the mountain Bear Butte. It is strongly recommended that this proposed project (well/pipeline) be suspended until this religious ceremonial period is over.

Please forward any questions or comments to Steve Brady, Sr. or Gilbert Brady, Sr., Northern Cheyenne Cultural Commission, PO Box 128, Lame Deer, Montana 59043, Phone# (406)477-6284, Fax# (406)477-6210.

Respectfully submitted,



Llevando Fisher
President
Northern Cheyenne Tribe

cc. File
Billings Area Office, Bureau of Indian Affairs
Aberdeen Area Office, Bureau of Indian Affairs
Mick Hurlburt, Bear Butte Water Users Association
Francis Brown, Medicine Wheel Coalition for Sacred Sites of North America
Game, Fish & Parks of South Dakota
Jerry Flute, Association on American Indian Affairs
Agricultural Stabilization and Conservation Service, USDA
State Historic Preservation Office of South Dakota
Advisory Council on Historic Preservation
Jeff Buechler, Dakota Research Services
Rosebud Sioux Tribe
Cheyenne River Sioux Tribe

Mr. Baumberger, SCS

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6/7/94

Fort Peck Tribes

Ogalla Sioux Tribe

Michael Burney, Burney & Associates

Steve Chestnut, Esq., Counsel for Northern Cheyenne Tribe

Keepers of the Treasurers

TRUE
COPY

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

DEC 29 1977

RESOLUTION NO. 78 (78)

A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL SUPPORTING THE JOINT RESOLUTION ON AMERICAN INDIAN RELIGIOUS FREEDOM INTRODUCED BY SENATOR ABOUREZK AND ALSO REQUESTING PROTECTION OF BEAR BUTTE IN SOUTH DAKOTA.

WHEREAS, American Indian Religion has been neglected, scoffed at and actively repressed for centuries; and,

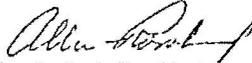
WHEREAS, the Northern Cheyennes feel no religious belief in America should receive such treatment; and,

WHEREAS, a joint resolution is now in Congress to alleviate some of the abuses accorded to native American religious beliefs, now

THEREFORE BE IT RESOLVED that the Tribal Council of the Northern Cheyenne Reservation supports the joint resolution on American Indian Religious Freedom introduced by Senator Abourezk; and,

BE IT FURTHER RESOLVED that the Tribal Council requests all concerned and interested people to protect Bear Butte in South Dakota, a primary religious site of the Northern Cheyenne people.

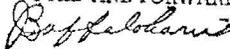
PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by (11) votes for passage and adoption and no votes against passage and adoption this 19th day of December, 1977.



Allen Rowland, President
Northern Cheyenne Tribal Council

ATTEST:

Norma Wolfchief
Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council

NOTED AND FORWARDED: 1-4-78


 SUPERINTENDENT



NORTHERN CHEYENNE TRIBE
INCORPORATED

P. O. Box 128

LAME DEER, MONTANA 59043



To: Rodney D. Baumberger, State Conservationist
USDA - Soil Conservation Service

Fr: Llevando Fisher, President 
Northern Cheyenne Tribe

Re: Response on Draft EA (6/7/94) - Bear Butte

Dt: June 8, 1994

cc: Gilbert Brady, Sr. and Steve Brady, Sr., N Chey. Cultural Commission
Ken Davis, Supt., Bureau of Indian Affairs

For your information and records the following have been added to receive a copy of our response to the Draft EA regarding the proposed well/pipeline at Bear Butte:

Cheyenne & Arapaho Tribes of Oklahoma
National Congress of American Indians (NCAI)
Jack Trope, Esq. Counsel for Association on American Indian Affairs and Medicine
Wheel Coalition for Sacred Sites of North America
Walter Echo Hawk; Native American Rights Fund (NARF)
Mni-Sose Intertribal Water Rights Coalition
Senator Daniel K. Inouye, Chmn., Select Committee on Indian Affairs
Senator Ben Nighthorse Campbell, Select Committee on Indian Affairs
Senator Thomas Daschle, Select Committee on Indian Affairs
Senator Max Baucus
Senator Conrad Burns
Congressman Pat Williams
John Lavelle, Center for SPIRIT
Northern & Southern Cheyenne Council of Chiefs & Military Societies (Crazy Dogs, Elk
Horn Scrapers, Dog Soldiers, Bow String & Kit Fox)
Bill Red Hat, Jr., Keeper of the Sacred Arrow Covenant
James Black Wolf, Keeper of the Buffalo Hat Covenant

-- END --



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

ON REPLY REFER TO:

102

JUN - 8 1992

Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Dahle:

Enclosed is the original of Northern Cheyenne Resolution No. 139(92) enacted by the Council on May 19, 1992 and received in this office on May 29, 1992.

Resolution No. 139(92) - supports the Birney District's opposition on the Tongue River Railroad's proposed plans as the Birney District will be greatly impacted by the development and further recommends to the President that the Birney District be fully informed of the Tongue River Railroad proposed plans and statements to be submitted by the May 29, 1992 submission deadline.

The Northern Cheyenne Tribal Council has the authority to take this action via Article IV, Section 1 of the Constitution and By-laws.

All necessary copies of this resolution have been retained for our files.

Sincerely,

Kenneth W. Davis
Superintendent

Enclosure

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

RESOLUTION NO. 139 (92)

A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL CONCERNING THE BIRNEY DISTRICT AND THE PROPOSED TONGUE RIVER RAILROAD.

WHEREAS, this matter concerning the Tongue River Railroad has been brought to our attention and review; and,

WHEREAS, the Birney District discussed a course of action that the Northern Cheyenne Tribal Council should take on their behalf specifically the Tongue River Railroad plans; now,

THEREFORE BE IT RESOLVED that the Northern Cheyenne Tribal Council hereby supports the Birney District's opposition on the Tongue River Railroad's proposed plans as the Birney District will be greatly impacted by this development.

BE IT FURTHER RESOLVED that the Tribal Council recommends to the President that the Birney District be fully informed of the Tongue River Railroad proposed plans and statements to be submitted by the May 29th, 1992 submission deadline.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 8 votes for passage and adoption and 2 votes against passage and adoption with 2 abstentions this 19th day of May, 1992.

Edwin Dahle
Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:

Norma Wolfchief
Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council

MAY - 8 1992
Bennett W. Davis
SECRETARY



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043



ON REPLY REFER TO
182

MAY - 6 1992

Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Dahle:

Enclosed is the original of Northern Cheyenne Resolution No. 140(92) enacted by the Council on May 19, 1992 and received in this office on May 29, 1992.

Resolution No. 140(92) - requests a Bureau of Indian Affairs grant to research historical Cheyenne Land Claims along the Tongue River near Miles City, Ashland, and Birney and further authorizes Steve Chestnut to submit comments on the proposed Tongue River Railroad.

The Tribe will need to submit a proposal including the amount for the budget. When we receive the proposal we will forward to the Billings Area Office along with Resolution No. 140(92).

The Northern Cheyenne Tribal Council has the authority to take this action via Article IV, Section 1 of the Constitution and By-laws.

All necessary copies of this resolution have been retained for our files.

Sincerely,

Kenneth W. Davis
Superintendent

Enclosure

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

RESOLUTION NO. 140 (92)

A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL REQUESTING A BIA GRANT TO STUDY POSSIBLE NORTHERN CHEYENNE LAND CLAIMS ALONG THE TONGUE RIVER AND REQUESTING STEVE CHESTNUT TO SUBMIT COMMENTS ON THE PROPOSED TONGUE RIVER RAILROAD.

WHEREAS, the Northern Cheyenne Tribe may still have land claims or ownership near Miles City and across the Tongue River from Ashland and Birney; and,

WHEREAS, the Tribe has no tribal funds for an investigation of these potential claims; and,

WHEREAS, the Tribal Council would like these claims to once and for all be historically reviewed and a determination made of ownership; and,

WHEREAS, the Tribe needs to comment on the proposed Tongue River Railroad and these land claims needs to be referenced in the comments; and

WHEREAS, Steve Chestnut, the tribal attorney has experience in these technical matter and can provide substantive comments to the proposed Tongue River Railroad; now,

THEREFORE BE IT RESOLVED by the Northern Cheyenne Tribal Council that grant is hereby requested from the BIA to research historical Cheyenne land claims along the Tongue River near Miles City, Ashland and Birney.

BE IT FURTHER RESOLVED that the Tribal Attorney Steve Chestnut is authorized to submit comments with Council participation on the Tongue River Railroad.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 12 votes for passage and adoption and no vote against passage and adoption this 19th day of May, 1992.

Edwin Dahle
Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:

Norma Wolfchief
Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council

NOTED. JUN - 8 1992!
Henneth W. Adams
SUPERINTENDENT



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043



IN REPLY REFER TO:
102

JAN 7 1993

Mr. Flavando Fisher, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Fisher:

Enclosed is the original of Northern Cheyenne Tribal Resolution No. 66(93) enacted by the Council on December 21, 1992 and received in this office on December 30, 1992.

Resolution No. 66(93) - supports and recognizes the spirit, intent, and purpose of the Medicine Wheel Coalition for Sacred Sites of North America and further appoints Steven C. Brady as the representative and Clifford Long Sioux as the alternate for the Northern Cheyenne Tribe.

The Northern Cheyenne Tribal Council has the authority to take this action via Article IV, Section 1(1), (r) and (s) of the Constitution and By-laws.

All necessary copies of this resolution have been retained for our files.

Sincerely,

Henneth W. Davis
Superintendent

Enclosure

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

RESOLUTION NO. 66 (93)

A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL RECOGNIZING AND SUPPORTING THE MEDICINE WHEEL COALITION FOR SACRED SITES OF NORTH AMERICA AND THE APPOINTMENT OF A TRIBAL REPRESENTATIVE AND AN ALTERNATE TO THE COALITION.

WHEREAS, prior to the time of the establishment of Indian reservations and since immemorial certain sites and locations throughout the continent of what is now North America have held sacred and spiritual significance to the Northern Cheyenne; and,

WHEREAS, these sites and locations of sacred and spiritual significance must be protected in contemporary times; and,

WHEREAS, Tribes are now and have been organizing to protect these sites; and,

WHEREAS, the traditional leadership of the Northern Cheyenne Tribe have appointed their representative (Steven C. Brady, Sr.) and alternate (Clifford Long Sioux) to the Medicine Wheel Coalition for Sacred Sites of North America; and,

WHEREAS, the Tribal Council under the Constitution (1960) Article I - Duties of Officers, Section 1., the Tribal President has the power to appoint representatives of the Tribe subject to the advice and consent of the Tribal Council; now,

THEREFORE BE IT RESOLVED that the Northern Cheyenne Tribal Council hereby supports and recognizes the spirit, intent and purpose of Medicine Wheel Coalition for Sacred Sites of North America; and,

BE IT FURTHER RESOLVED that Steven C. Brady, Sr., is hereby appointed as the representative and Clifford Long Sioux as the alternate for the Northern Cheyenne Tribe and shall serve in accordance with Bylaws of the Medicine Wheel Coalition for Sacred sites of North America and at the pleasure of the Northern Cheyenne Tribe.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 16 votes for passage and adoption and no vote against passage and adoption this 21st day of December, 1992.

Llevando Fisher
Llevando Fisher, President
Northern Cheyenne Tribal Council

ATTEST:

Norma Gourneau, Secretary
Northern Cheyenne Tribal Council

Geneth Walters

To : Medicine Wheel Coalition for Sacred Sites of North America
From : Chiefs and Military Societies, Northern Band of Suh'tio' and Dsi'sti'stas' Nation (Northern Cheyenne)
Re : Appointment to the Board of Directors and alternate
Date : February 7, 1990

The traditional governing institutions of the Chiefs and Military Societies vested with the aboriginal sovereign authority of the Northern Band of Suh'tio' and Dsi'sti'stas' Nation (Northern Cheyenne) hereby provide for the appointment of:

Steven C. Brady, Sr. and Clifford Long Sioux (alternate)
P.O. Box 542 P.O. Box 266
Lame Deer, MT. Busby, MT.
-59043- -59016-

to the Board of Directors to represent their concerns in regards to the Medicine Wheel Coalition for Sacred Sites of North America.

Any and all prior appointments temporary or otherwise to represent the Chiefs and Military Societies of the Northern Band of Suh'tio' and Dsi'sti'stas' Nation (Northern Cheyenne) are herewith rescinded in regards to the Medicine Wheel Coalition for Sacred Sites of North America.

Steven C. Brady, Sr. and Clifford Long Sioux (alternate) shall serve at the pleasure of the Chiefs and Military Societies of the Northern Band of Suh'tio' and Dsi'sti'stas' Nation (Northern Cheyenne).

PASSED, ADOPTED AND APPROVED by the Chiefs and Military Societies by consensus on this 7th day of February, 1990

Joe Little Coyote, Sr.
Council of Chiefs
Alfred Little Coyote, Jr.
Bow String Society

Walter L. Wilson Sr.
Kit Fox Society
Timothy J. Evans
Dog Soldier Society

Elk Horn Scraper Society
Walter Little Coyote

Charles Brady
Crazy Dog Society



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

DO NOT REPLY REFER TO

102

LAW - 5 393

Mr. Llevando Fisher, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Fisher:

Enclosed is the original of Northern Cheyenne Tribal Resolution No. 67(93) enacted by the Council on December 21, 1992 and received in this office on December 30, 1992.

Resolution No. 67(93) - supports and approves the amending of the American Indian Religious Freedom Act and appoints John Woodenlegs and Steven Brady as representatives of the Northern Cheyenne Tribe.

The Northern Cheyenne Tribal Council has the authority to take this action via Article IV, Section 1(l), (r), (s) and Article V, Section 2 of the Constitution and By-laws.

All necessary copies of this resolution have been retained for our files.

Sincerely,

Herbert W. Davis
Superintendent

Enclosure

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

RESOLUTION NO. 67 (93)

A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL SUPPORTING THE PROPOSED AMENDMENT TO THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT, THE APPOINTMENT OF TRIBAL REPRESENTATIVES ON THE PROPOSED AMENDMENT AND THE SUPPORT OF THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT (AIRFA) COALITION.

WHEREAS, the people of the Northern Cheyenne Tribe, indigenous to this land, have a unique and a distinct traditional, cultural and ceremonial way of life that has existed prior to the coming of Columbus and since time immemorial; and,

WHEREAS, the inherent and basic right of religious freedom of the Northern Cheyenne people has been clearly denied by the recent United States Supreme Court decisions; and,

WHEREAS, the traditional leadership of the Northern Cheyenne Tribe have appointed their representative (Steven C. Brady, Sr.) in the proposed amendment to AIRFA; and,

WHEREAS, national Indian organizations, Tribes and other interested organizations and individuals have formed a nationwide AIRFA Coalition to seek amendments to the American Indian Religious Freedom Act which would strengthen that Act; and,

WHEREAS under the Bylaws of the Northern Cheyenne Tribal Constitution (1960) Article I - Duties of Officers, Section 1., the Tribal President shall with the advice and consent of the Tribal Council, appoint delegates, representatives, committees, or other officers as are deemed proper from time to time; and,

WHEREAS, the Constitution of the Northern Cheyenne Tribe (1960), Article IV - Powers of the Tribal Council, Section 1., Sub-section (1) provides the power and authority of the Tribal Council "to cultivate and preserve arts, crafts, culture and Indian ceremonial"; now,

THEREFORE BE IT RESOLVED that the Northern Cheyenne Tribal Council hereby supports and approves the amending of the American Indian Religious Freedom Act; and,

BE IT FURTHER RESOLVED that John J. Woodenlegs and Steven C. Brady, Sr., are hereby appointed as the representatives of the Northern Cheyenne Tribe for the proposed amendment process to AIRFA; and,

RESOLUTION NO. 67 (93)
DECEMBER 21, 1992
PAGE 2.

BE IT FURTHER RESOLVED that the Tribal Council hereby supports the AIRFA Coalition.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 16 votes for passage and adoption and no vote against passage and adoption this 21st day of December, 1992.

Llevando Fisher
Llevando Fisher, President
Northern Cheyenne Tribal Council

ATTEST:

Norma Gourneau
Norma Gourneau, Secretary
Northern Cheyenne Tribal Council

AN - 5 393
Kenneth W. Davis

December 10, 1992

The Hon. Daniel K. Inouye
1722 Hart Senate Office Building
Washington, DC 20510-1102

Dear Honorable Sir:

We are writing you about a very serious concern. It relates to the following:

- A.) Amendment of American Indian Religious Freedom Act. and,
- B.) the Northern Cheyenne representative selected to testify on behalf of the Northern Cheyenne tribe.

Also, we would like to call to your attention, the need to recognize Indian custom, traditional laws and ways in efforts to help us. For example, Western people sometime assume that because an Indian is an elder or that because someone has some knowledge, he/she is automatically qualified to legally and culturally speak on behalf of the Cheyenne people or represent the tribe. But such is not the case! According to ancient custom, law and the traditional ways, the official leaders are chosen by rights of inheritance, evaluation by the tribal traditional societies and by cultural-spiritual agreement.

As an example, a younger man from one of the traditional societies might be chosen by the hereditary chiefs, traditional society headsmen and ceremonial leaders to officially represent his people. This process follows traditional tribal protocol, Indian custom and law. Anyone trying to represent our people outside of our society is doing so without our permission, and therefore is not endorsed or selected to represent us. Women are not allowed to represent the Cheyennes, especially those who are non-Indian, no matter how much knowledge they seem to demonstrate or claim to have.

The Hon. Daniel K. Inouye
Page 2 of 2.

Thus, in conclusion, we are asking that you accept Mr. Steven C. Brady, Sr. of the Crazy Dog Society, Northern Cheyenne Tribe, as our official, cultural, legal, and spiritual representative. Mr. Brady will testify on the revision of the American Indian Religious Freedom Act before the committee in charge of amending this bill. This selection is in accordance with our traditional laws given to us by Sweet Medicine at Bear Butte and with our aboriginal rights as recognized in U.S. code Title 25, Felix Cohen's Federal Indian Law Handbook and P.L. 95-341, the American Indian Religious Freedom Act.

Sincerely,

John Howard Flying H
Crazy Dog Society

Cliff Long Song
Elk Society

Cliff Long Song
Bow-String Society

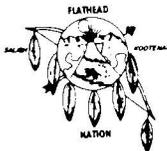
Kenneth Kaline
Kit-Fox Society

Tune Fish
Dog Soldier Society

Johnny Bussell
Hereditary Chief Society

James Blackwood
Keeper of the Sacred Hat

cc: Mr. Llevando Fisher, Chmn.
Northern Cheyenne Tribe, Inc.



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

P.O. Box 278
Pablo, Montana 59855
(406) 675-2700
FAX (406) 675-2806



Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Bernice Hewankorn - Sergeant-at-Arms

Written Testimony
Submitted on behalf of the Confederated
Salish and Kootenai Tribes
to the
House Native American Sub-Committee
on H.R. 4155
the "American Indian Religious Freedom
Act Amendments of 1994"

TRIBAL COUNCIL MEMBERS:
Michael T. "Mickey" Pablo - Chairman
Rhonda R. Swaney - Vice Chairwoman
Carole McCreary - Secretary
Lloyd Irvine - Treasurer
Louis Adams
Elmer "Sonny" Mongeau Jr.
Henry "Hank" Baylor
O. Fred Matt
Donald "Donny" Dupuis
Mary Lefthand

June 17, 1994

Mr. Chairman and Members of the Subcommittee:

The Tribes sincerely appreciate Chairman Richardson's leadership in this area of protection of sacred sites, access to and protection of our sacred sites located off the Flathead Indian Reservation and on BLM land in US. As President Clinton's Executive Order on the Religious Freedom Administration Act of 1994, "The agenda for restoration of religious freedom in America will not be complete until traditional Native American religious practices have received the protection they deserve." We strongly support the Chairman's efforts to amend the "American Religious Freedom Act" but we feel the present Amendment (H.R. 4155) does not adequately address the aspects of the Executive Order provision in the case of the Flathead Indian Reservation, which has stripped our age and reverence of the constitutional protection afforded to all users.

Background for Tribal History

The Tribes have a long history throughout the protection and advancement of our traditional treaty and tribal cultural practices. Fourteen years ago the tribes established the Salish and Kootenai Cultural Commission to preserve and enhance our cultural heritage. Main part of the work done by the Culture Committee is to consult with Federal and State agencies on projects which may affect our cultural resources located off the Flathead Reservation.

Testimony of [Name]

Through the Hellgate Treaty of 1855, we gave up thousands of acres of land to the United States, however, we did not give up many important rights in these homelands. In our treaty we reserved the right to hunt and fish, to gather foods and medicines, and the right to continue to worship at our sacred places. Many of these lands are now managed by federal or state agencies such as the United States Forest Service, the Bureau of Land Management, the Army Corps of Engineers and the Montana Department of State Lands.

Many of our sacred places have already been lost to us by the land management policies of these federal and state agencies. It is imperative that we protect those sites that we have left. It is at these places that we seek visions, perform ceremonies, communicate with our Creator, and gather medicinal plants. Our continued well-being and sovereignty as a people are dependent on these sacred sites.

We are directed by the creator to these places of worship. These places are not like a church that you can rebuild if it destroyed. They are irreplaceable and irrevocably lost to us if destroyed. These places have special spiritual qualities similar to those that Mecca has for Moslems and the Vatican has for christianity. Like the Christians who make pilgrimages to the the "Holy lands" in the the old country, we make pilgrimages to our holy lands here in America.

Our churches have no walls. Our churches are not made of things that the human hand has touched. Instead, it is the mountains, the rivers, the lakes, the trees, and even the rocks; we depend on them in their natural condition.

The Medicine Tree Site

Today we are fighting to protect one of our significant sacred sites which is being threatened by a Montana Department of Transportation construction project. This site, known as the Medicine Tree, is a religious site of the Salish and other tribal people. The Tree is located in Montana, along U.S. Highway 93 in the Bitterroot Valley. The Bitterroot Valley was the original homeland of the Salish, it is still an important hunting, fishing, gathering, and cultural area for us.

For centuries, we and other tribal people have used the Medicine Tree as a place of healing, it is part of the Salish coyote legends. Every spring and fall we make a pilgrimage as a group to the Medicine Tree Site. Throughout the year individuals make their personal pilgrimages to the Tree as necessary.

The Medicine Tree is a large ponderosa pine which is located along U.S. Highway 93, and is situated approximately 15 feet from the highway pavement. The highway was originally built in the 1930's as a Federal Forest Highway project, and at that time was recognized as having cultural significance, and was specifically avoided during construction.

The Tree's current proximity to the highway has damaged the Tree and has threatened the integrity of the site as a place of spiritual healing. The current pavement alignment has damaged the roots of the tree; the exhaust fumes by vehicles using the highway has damaged the tree; the noise level created by ongoing traffic interferes with use of the site as a place of prayer and contemplation; curious onlookers have vandalized and desecrated the Tree by placing trash and other improper objects in the Tree.

Continued use of the Medicine Tree site is threatened by the Montana Department of Transportation's proposal to widen U.S. Highway 93, thereby bringing the road closer to the Tree, increasing traffic in the area, and increasing the detrimental impacts to the Site. Further impacts to this site is intolerable and would destroy the integrity of the site as a place of healing. This project although, proposed by a state agency is funded by the Federal Highway Administration and by federal excise tax revenues.

Need for Federal Legislation

We are a deeply spiritual people with profound religious attachment to the land. The freedom to practice our religion and our continued existence as a people depends on our ability to maintain a continuing and enduring relationship to our sacred places. Our religion is at the heart of our sovereignty as Indian people. Our religious liberty can not rest with the always changing administrative policies of state and federal agencies. We can not depend on the goodwill of state and federal agencies to assure that our holy places will be kept in a natural condition and that our religious practices are not interfered with.

Currently, there are no laws which clearly and adequately protect our sacred sites. The American Indian Religious Freedom Act of 1978 sets a federal policy to preserve and protect Indian religions including sacred sites, but this Act has no "teeth," it has done nothing to protect our sacred sites. According to the current Supreme Court, the United States Constitution also does not protect our worship at sacred sites. As Justice Brennan noted in *Lyng*, we have no Constitutional protection for our religious practices upon which our very survival as people depends.

There are a multitude of laws which protect other aspects of the natural environment such as the water quality, air quality, rivers and streams, endangered wildlife and endangered plants. There are also numerous federal laws protecting historical and archaeological sites. Yet there is nothing on the books that protects something as critically important as Indian sacred sites. At present, we are at the whim of each agency's policies, discretion, and attitudes towards our religious practices. Treatment of our sacred sites by these agencies is uncertain and intermittent. It causes a great deal of anxiety and creates an intolerable situation. Federal legislation is necessary to protect our religious liberty and to provide spiritual security which is necessary to our well being.

The Supreme Court has sent us to Congress for protection of our religious liberty. We need a federal law that will protect our sacred sites. We need legislation that will incorporate adequate consideration of sacred sites in the land management policies of the federal government and permit Indian people to challenge government actions regarding the treatment of sacred sites by providing a legal cause of action.

Specific Comments on H.R. 4155

We strongly support amendments to the American Indian Religious Freedom Act which will put "teeth" into the Act by providing a much needed cause of action when government action will interfere with the free exercise of a Native American religion or religious practice. We have very grave concerns, however, with portions of the present language contained in Section 3(a)(2)(A) of H.R. 4155 which define federal lands as those lands that "have historically been considered sacred and indispensable by a traditional Native American religion." We have several serious problems with this limitation which will protect only those sacred sites that are "historical" and "indispensable" to our religious practices.

First, it is not clear if "historical" is used in the archaeological and anthropologic sense in which "historic" denotes a time period which begins with european contact with Indian people and "prehistory" denotes a time period before european contact. Also, limiting protection to lands that have "historically been considered sacred" precludes protection of sites considered sacred by new revelations and fails to acknowledge the evolving nature of Indian religious practices. The definition proposed in this section would essentially "freeze" Tribal religious practices at some arbitrary time and would provide Tribes with an inferior right than is granted to other Americans. Other Americans do not have to prove that they historically held a particular religious belief before their practice is protected by the free exercise clause of the Constitution.

Second, and more importantly, requiring that a site also be "indispensable" establishes an impossible legal threshold and burden for Tribes to meet. Use of the word "indispensable" imposes a very high standard and implies that protection of a specific site can occur only if Tribes can demonstrate that government action will "infringe" on a tribal religious practice and such action will virtually destroy a religious practice or belief. This implies that there are some sacred sites that are "dispensable" or only "peripheral" and there will be an infringement on tribal religions or religious practices only if government action threatens the very survival or extinction of tribal religious practices.

In the Lyng decision both the majority and the dissenting Justices rejected the centrality-indispensability standard because it is unworkable and would require the Court to determine whether sincerely held religious beliefs and practices are "central" to certain religions. The Court stated

this would require us to rule that some religious adherents misunderstood their own religious beliefs. We think such approach cannot be squared with the Constitution or with our precedents and that it would cast the judiciary in a role that we were never intended to play. 485 U.S. 458.

In his dissent, Justice Brennan suggested that there be some sort of showing of centrality before the Government can be required either to come forward with a compelling justification for its proposed use of federal land or to forego that use altogether. But, he stated,

"Centrality", however, should not be equated with the survival or extinction of the religion itself. 485 U.S. 474.

Brennan recommended legal standards to accommodate the unique needs of Native American Religious practitioners:

Rather, adherents challenging a proposed use of federal land should be required to show that the decision poses a substantial and realistic threat of frustrating their religious practices. Once such a showing is made, the burden should shift to the Government to come forward with a compelling state interest sufficient to justify the infringement of those practices. Id. at 475.

Third, the scope of the bill should be expanded to cover not only activities on "federal lands" but also "federally assisted activities" which include federally-funded projects implemented by state agencies such as the Montana Department of Transportation's

highway expansion project which impacts the Medicine Tree site. Broader coverage of protected activities is necessary to more fully restore the First Amendment right of free exercise of religious practices.

Fourth, we are unclear what showing of "actual harm" an Indian tribe or member of an Indian tribe will have to prove before an action can be brought to enforce the prohibitions of H.R. 4155. If Tribes have to wait to file a cause of action until "actual harm" has occurred do tribes have to wait until a site is destroyed before they are entitled to a remedy in federal court. If this is so, how can the court fashion an effective remedy if the site is already destroyed. There is no way to replace or restore a sacred site or the values associated with it. To provide an effective remedy a Indian tribe or member of an Indian tribe should be able to bring a cause of action once it has made a showing that government action has or will undermine or frustrate a Native American religion or religious practice.

Fifth, we recommend that a section be added to require that federal or state agencies provide Tribes and traditional practitioners with notice and establish consultation procedures when a proposed action may result in changes to the character or use of a sacred site. We have found that early and meaningful consultation with agencies is the most effective manner to provide meaningful input to projects which may impact our sacred areas. If we do not become involved in a project until after an environmental document is complete and a preferred alternative chosen, it is very difficult to have meaningful input into developing alternatives which might avoid impacts to a sacred site.

Once again we thank you for your commitment to protection of Native American freedom of religion and for your leadership in this most important issue. A judicially enforceable federal law to protect and preserve Native American sacred sites and to assure the free exercise of unique Native American religious practices is long overdue. We urge you and the Congress to act expeditiously to enact legislation to provide much need protection to our sacred areas. We look forward to working with you on this important matter and on the comments and suggestions we have raised.

Respectfully Submitted,



Michael T. Pablo
 Michael T. Pablo
 Chairman of the Tribal Council

MOST RECENT REVISION
MARCH 27, 1994

103D CONGRESS
1st Session

H. R. _____

103-111-1
103-111-1

IN THE HOUSE OF REPRESENTATIVES

MR. _____ introduced the following bill; which was referred
to the Committee on _____

A BILL

To amend the American Indian Religious Freedom Act of 1978.

Be it enacted by the Senate and House of Representatives of the United States of
America in Congress assembled.

SECTION 1. The Act of August 11, 1978 (42 USC, 1966; commonly referred to as the
"American Indian Religious Freedom Act") is hereby amended by inserting at the end
thereof:

TITLE II-

**"NATIVE AMERICAN SACRED SITES PROTECTION AND
PRESERVATION"**

SEC. 201. FINDINGS.

The Congress finds that--

(1) It is essential to the exercise of traditional ceremonies and the preservation of cultural and spiritual values unique to many Native American tribes that certain lands or natural formations in the United States be preserved in the integrity of their natural state, and in order for these sites to be in a condition appropriate for their sacred use, the physical environment, water plants and animals associated with those sites must be protected, and,

(2) Such Native American sacred sites are also an integral and vital part of, and inextricably intertwined with, the ceremonial use and gathering, harvesting, or maintaining of natural substances or natural products, and,

(3) Many of these Native American sacred sites are found on lands which were part of the aboriginal territory of the Indian Tribes but which now are held by the Federal Government or are the subject of Federal or federally assisted activities, and,

(4) The Supreme Court in Lyng vs Northwest Indian Cemetery Protective Association (485 U.S. 439 (1988)) concluded that practitioners of traditional Native American religions have no enforceable legal rights under the American Indian Religious Freedom Act to protect Native American sacred sites against destruction or desecration from Federal or federally assisted activities. The Court further concluded that the interests of plaintiffs in the Lyng case to preserve a sacred site from destruction that would result from a timber cutting contract between the U.S. Forest Service and a private contractor were not protected by the freedom of religion clause of the 1st Amendment of the U. S. Constitution.

(5) Some Indian tribes, such as the 19 Pueblos of New Mexico, adhere to traditional beliefs and tenets which prohibit disclosure of information concerning their sacred sites, beliefs and practices, and impose severe internal sanctions to enforce these prohibitions thus making it impossible for them to prove that any particular federal activity desecrates their sacred sites;

(6) the lack of an effective Federal policy providing legally enforceable standards and procedures for the protection of Native American sacred sites imposes serious and often overwhelming problems for Native Americans who practice traditional Native American religions.

SEC. 202. DEFINITIONS.

For the purposes of this Act, the following definitions apply:

(1) **FEDERAL OR FEDERALLY ASSISTED ACTIVITIES.--**

(A) The term "Federal or federally assisted activity" means any program, project, or action pertaining to the management, use, or preservation of land and associated natural resources (including continuing and new programs, projects, or actions) which is funded in whole or in part by, or under the direct or indirect jurisdiction of, a Federal agency, including--

- (i) those activities carried out by or on behalf of the agency;
- (ii) those carried out by non-Federal entities with Federal financial assistance;
- (iii) those requiring a Federal permit, license or approval; and

(iv) those subject to State regulation administered pursuant to a delegation or approval by a Federal agency.

(B) Such term does not include--

(i) routine maintenance activity for structures existing at the time of enactment of this Act or later constructed in compliance with this Act which does not change the size or scale or the existing use of the already built environment;

(ii) actions taken in time-critical emergencies to address immediate threats of serious harm to human life or property where rapid response is required, including toxic spills, forest fires, and other time critical life threatening natural disasters; and

(iii) regulations, programs, projects, or activities operated, approved, or sponsored by Indian tribes, including (but not limited to) those programs, projects, or activities which are funded in whole or in part by Federal funds pursuant to contract, grant, or agreement, or which require Federal permits, licenses or approvals.

(2) PUBLIC LAND --The term "public land" means surface and subsurface land owned by the United States, or the respective States, or political subdivisions thereof other than Indian lands, including submerged land of any kind or interest therein and all water and waterways occupying, adjacent to, or running through land.

(3) NATIVE AMERICAN RELIGION.--The term "Native American religion" means any religion--

(A) which is practiced by Native Americans, and

(B) the origin and interpretation of which is from

within a traditional Native American culture or community.

(4) NATIVE AMERICAN SACRED SITE.--The term "Native American sacred site" means any place or area, including (but not limited to) any geophysical or geographical area or feature--

(A) which is sacred to the members of an Indian tribe and/or the practitioners of Native American religions; or

(B) where Native Americans are required by their religion and/or traditions to gather, harvest, or maintain natural substances or natural products for use in Native American religious ceremonies or rituals or for spiritual purposes; or

(C) which is utilized by Native Americans for ceremonies, rituals, or other spiritual practices.

(5) INDIAN LANDS.--The term "Indian lands" means all lands within the limits of any Indian reservation; public domain Indian allotments; all other lands title to which is either held in trust by the United states for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation; all dependent Indian communities; and all fee lands owned by an Indian tribe.

**SEC. 203. FEDERAL LAND MANAGEMENT USE AND PRESERVATION OF
NATIVE AMERICAN SACRED SITES.**

(a) SACRED SITES PROTECTION AGREEMENTS.--It shall be the policy of the

United States, in the exercise of its public land management responsibilities, including (but not limited to) national parks, monuments and recreation areas, national forests, rangelands, wetlands, coastal areas, wilderness areas and military reservations, to protect and preserve Native American sacred sites and to consult on a government-to-government basis with Indian tribes in order to develop mutually agreeable procedures for such protections. Each Federal agency involved in federal or federally assisted land management, regulation and licensing activities, shall, upon the request of an Indian tribe, enter into negotiations to identify appropriate land management procedures for addressing that tribe's interests in the protection and preservation of their sacred sites and to avoid adverse impacts on such sites as may be located on public lands within the jurisdiction of such agencies. Consistent with the public mission of such agencies and the responsibility of the United States to support Indian tribes and tribal members in the preservation of their sacred sites, each federal agency is hereby authorized to enter into **Sacred Sites Protection Agreements** with Indian tribes for the purpose of memorializing the land management procedures that result from the inter-governmental consultations and negotiations. Such agreements may include provisions for the delegation by federal agency officials of land management responsibilities to the Indian tribe(s) for designated public land areas described in the agreement. In the event such a delegation of management functions is included in such agreements, the federal agency and the tribe may also agree to use the procedures and regulations employed under the Indian Self-Determination Act, Public Law 93-638.

(b) IDENTIFICATION OF LANDS BY TRIBES

For the purpose of assisting Federal agencies to determine whether a proposed activity may have an adverse impact on a Native American religion and to identify which affected tribes should be provided notice of such proposed activity, the Secretary of Interior shall, within 1 year after enactment of this Act, contact all Indian tribes to request a broad geographic description of the lands as to which each Indian tribe desires notice of proposed federal or federally assisted activities and the Secretary shall provide such land descriptions to all Federal agencies. Each tribe shall be given no less than 120 days to respond to this notice.

(c) NOTICE OF FEDERAL ACTIVITY ON IDENTIFIED LANDS.--Before a Federal agency proceeds with any Federal or federally assisted activity that will impact on any lands identified by tribes pursuant to subsection (b), the agency shall notify each such Indian tribe and provide to each such tribe a geographical description of the lands where the proposed activity will take place (including information on metes and bounds of the lands in question, where available), a description of the activity, and any existing plans, analyses or studies of the activity.

(d) NOTICE OF A TRIBAL DETERMINATION OF ADVERSE IMPACT--

Upon receiving notice from a federal agency of a federal activity as provided for in Section 203 (c), or upon otherwise learning of such proposed activity, any Indian tribe that concludes

that the proposed activity will substantially alter or disturb the integrity or sanctity of a Native American religious site of importance to the tribe, or substantially interfere with access thereto, or adversely impact upon the exercise of a Native American religion or the conduct of a Native American religious practice in the affected area, may submit written notice to the federal agency. Such notice shall be delivered to appropriate federal agency officials within 120 days after receiving the notice and description of the proposed federal activity required of such agencies in subsection (c) and shall state that the proposed federal activity will have a serious impact on a Native American religious interest and, at the option of the tribe, included recommended alternatives that would minimize or prevent the impact in a manner acceptable to the tribe(s).

(e) CESSATION OF FEDERAL OR FEDERALLY ASSISTED ACTIVITIES --If an Indian tribe gives written notice as provided in subsection (d), the federal agency shall immediately cease action on the federal or federally assisted activity upon receipt of such notice and shall not recommence the activity until completion of negotiations, or, until the parties consent to a shorter time period or, a court has determined that the government has met its burden of proof on the compelling interest test as required under section 208. However, such cessation of activities shall not apply to intra-agency governmental actions, including (but not limited to) studies, plans, reviews, analysis, and notices for review processes, that do not constitute an irreversible commitment of resources, an approval or a

binding legal commitment respecting the use of any land affected by such governmental actions.

(f) PROCEDURES FOR NEGOTIATIONS FOLLOWING CESSATION OF ACTIVITIES.-- Each federal agency receiving notice from a tribe or tribes pursuant to subsection (d) shall, within 30 days of receipt of such notice, provide an opportunity for each tribe giving such notice to review all relevant information concerning the activity, to submit written comments to the agency and to meet with responsible federal officials for purposes of discussing their comments and views. The negotiation process shall be conducted in the manner agreed upon among the parties, including the joinder of all Indian tribes that submitted notice under subsection (d). An Indian tribe which negotiates pursuant to this subsection may, as a part of any agreement produced in such negotiation, assume responsibilities for management or co-management of designated areas of public lands as provided for under subsection (a).

(g) IDENTIFICATION OF A COMPELLING GOVERNMENTAL INTEREST

If no alternative to the proposed federal activity is identified in the negotiations provided for in subsection (f) which is acceptable to the Indian tribe, the federal agency shall not proceed with the activity unless the head of such agency makes a determination that there is a compelling governmental interest that requires the agency to proceed with the activity and shall, within 30 days of such determination, submit a complete written explanation of

such compelling interest to the concerned tribe(s) including an explanation of why none of the alternatives recommended by the tribe(s), if any, are acceptable.

(h) PROTECTION AGAINST DISCLOSURE OF CERTAIN INFORMATION --An Indian tribe shall not be required during negotiations or otherwise under this Act to disclose information pertaining to--

(1) specific tenets or details of a Native American religion or the significance of a Native American sacred site to that religion; or

(2) the specific location of any sacred site.

SEC. 204 STATE ACTION -- Where an Indian tribe provides notice to a state that a proposed state action or a proposed activity on state lands will substantially alter or disturb the integrity or sanctity of a Native American religious site of importance to the tribe, or substantially interfere with access thereto, or adversely impact upon the exercise of a Native American religion or the conduct of a Native American religious practice in the affected area, and states that the proposed activity will have a serious impact on a Native American religious interest and, at the option of the tribe, included recommended alternatives that would minimize or prevent the impact in a manner acceptable to the tribe(s), the state shall engage in negotiations with said Indian tribe in an attempt to indentify less intrusive alternatives to the proposed action or activity which will avoid harm to or be less harmful to the affected sacred sites or the tribe's use thereof. If these negotiations fail to produce an

agreed alternative to the action or activity as originally proposed, the Indian tribe may seek to secure protection of the sacred site or its traditional use thereof by instituting legal proceedings under Section 208.

SECTION 205. ACCESS--

(a) IN GENERAL.--The practitioners of Native American religions shall be permitted access to Native American sacred sites located on public lands for traditional cultural and religious purposes, including the right to gather, harvest, or maintain natural substances or natural products for Native American religious purposes. Such access shall be consistent with the purpose and intent of the joint resolution entitled "American Indian Religious Freedom", approved August 11, 1978 (42 U.S.C. 1996; commonly referred to as the "American Indian Religious Freedom Act").

(b) PROHIBITION AGAINST VEHICLES.-- This section does not authorize the use of motorized vehicles or other forms of mechanized transport in areas where such use is prohibited by law, nor affect the application of the Endangered Species Act of 1973 except as provided for under the RELIGIOUS FREEDOM RESTORATION ACT OF 1993. ____ Stat. ____

(c) TEMPORARY CLOSURE.--In order to implement this section, the head

of each agency on whose public land a Native American sacred site is located, upon the request of an Indian tribe, may from time to time temporarily close to general public use one or more specific portions of public land in order to protect the privacy of traditional, cultural or religious activities in such areas by Native Americans. Any such closure shall be made so as to affect the smallest practicable area for the minimum period necessary for such purposes, taking into account that many traditional Indian religious ceremonies and activities require privacy and isolation and can not be performed if non-participants are able to observe the ceremonies or activities, even from a distance.

(d) NATIONAL SECURITY AND EMERGENCY SITUATIONS.--The provisions of this subsection shall not apply for any period in which the President determines on a case-by-case basis that national security concerns are directly affected by a Federal or federally assisted undertaking or such emergency situations as are defined in Section 202(1) (B) of this Act have arisen and may temporarily bar access.

(e) INADVERTENT DISCOVERY --If in the process of a federal or federally assisted activity, a Native American sacred site is inadvertently discovered, the governmental agency engaged in the activity shall immediately cease the activity and provide notice in accordance with subsection 203 (c).

SEC 206. CONFIDENTIALITY.

(a) IN GENERAL.--Notwithstanding any other provision of law, whenever information has been obtained as a result of or in connection with a proceeding pursuant to section 203, 204, or 210, no information pertaining to--

(1) specific tenets or details of a Native American religion or the significance of a Native American sacred site to that religion; or

(2) the location of that sacred site.

shall be subject to disclosure under section 552 of title 5, United States Code, or any other applicable law.

(b) SUPPLEMENTATION OF RECORD.--The agency or court shall supplement the record described in subsection (a) to include the general results and conclusions of the administrative or judicial review to the extent necessary to provide other interested parties with sufficient information to understand the nature of, and basis for, a decision by the agency or court.

(c) EXCEPTIONS --This section shall not apply where all parties to a proceeding (excluding the Federal Government) waive its application.

(d) OTHER LAW --Indian tribes, Native American traditional leaders, and Native American practitioners seeking to maintain the confidentiality of information relating to Native American sacred sites may also seek redress through existing laws requiring that certain information be withheld from the public, including (but not limited to) the National Historic Preservation Act (16 U.S.C. 470 et seq.) and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), and may also use the provisions of those other laws to secure protection for any sacred site.

SEC. 207. CRIMINAL SANCTIONS.

(a) DAMAGING SACRED SITES.--

(1) INITIAL VIOLATION --Any person who knowingly damages or defaces a known Native American sacred site located on public land or who violates an order closing lands pursuant to section 101(3), except as part of an approved Federal or federally assisted undertaking or an action authorized by a governmental agency with the authority to approve such activity, shall be imprisoned not more than one year, fined in accordance with title 18, United States Code, or both.

(2) SUBSEQUENT VIOLATIONS.--In the case of a second or subsequent violation of paragraph (1), a person shall be imprisoned not more than five years, fined in accordance with title 18, United States Code, or both.

(b) RELEASE OF INFORMATION.--

(1) INITIAL VIOLATION --Any person who knowingly releases any

information required to be held confidential pursuant to this Act shall be imprisoned not more than one year, fined in accordance with title 18, United States Code, or both.

(2) SUBSEQUENT VIOLATIONS.--In the case of a second or subsequent violation of paragraph (1), a person shall be imprisoned not more than five years, fined in accordance with title 18, United States Code, or both.

SEC. 208. JURISDICTION AND REMEDIES.

(a) (1) IN GENERAL.--Any United States district court shall have original jurisdiction over a civil action for equitable or other relief, including damages, brought against the United States or a State to enforce the provisions of the Act.

(2) WAIVER OF IMMUNITY -- Neither the sovereign immunity of the United States nor of a State, including immunity derived from the 11th Amendment to the U.S. Constitution, shall be a defense against such civil action and such immunities are hereby waived.

(b) BURDEN OF PROOF.--

(1) IN GENERAL.--In any judicial proceeding in which an Indian tribe, which has given notice under section 203 of this Act, objects to a state action, or a federal or federally assisted activity and where no agreement under section 203 or 204 has been reached, the governmental agency shall not proceed with such activity unless it proves that--

(A) it has a compelling interest in pursuing the activity;

(B) it is essential that the governmental agency's compelling interest be

furthered as originally proposed, and

(C) none of the less intrusive alternatives (if any) identified in the negotiation process, or by the Indian tribe, will adequately advance that compelling governmental interest. This burden of proof shall remain with the governmental agency through all stages of such proceedings.

(2) DEFINED.--For purposes of paragraph (1), the term "burden of proof" means the burden of production and the burden of persuasion.

(c) ATTORNEY'S FEES.--A prevailing party in any administrative or judicial proceeding brought pursuant to this Act, other than the United States or a State, shall be entitled to reasonable attorney's fees, expert witness fees, and costs under the provisions of section 504 of title 5, United States Code, and section 2412 of title 28, United States Code.

SEC. 209. SAVINGS CLAUSE.

Nothing in this Act shall be construed as abrogating, diminishing, or otherwise affecting--

- (1) the inherent rights, laws, or customs of any Indian tribe;
- (2) the rights, express or implicit, of any Indian tribe which exist under treaties, Executive Orders and laws of the United States; and
- (3) the inherent right of Native Americans to practice their religions.

SEC. 210. APPLICATION

(a) This Act does not apply to any governmental activity on Indian lands or for which final approval was obtained on or before the date of enactment of this Act, wherever located.

(b) In addition to the procedures established in Sections 203 and 204 of this Act for tribal consultation and Sacred Sites Protection Agreements, in those cases where the duly constituted governing body of an Indian Tribe does not, in accordance with Tribal Law, represent religious interests within the tribal community, individual Native American practitioners whose exercise of a Native American religion is burdened by Federal or federally assisted activities or State Actions involving the management, use or preservation of public lands, shall have standing to file a civil action pursuant to subsection 208 of this Act. The judicial standards for review of governmental action provided for in the Religious Freedom Restoration Act of 1993, shall govern any judicial proceedings initiated pursuant to this section, provided that governmental land management activities which cause the exercise of a Native American religion to be significantly more difficult, or which directly interfere with Native American religious practices, shall be deemed to burden the exercise of that religion for purposes of such judicial review.

SEC. 211. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.



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June 10, 1994

To: Interested Persons

From: Nkechi Taiifa, Legislative Counsel
Sam Mistrano, Research Associate

Re: The Need to Protect Sacred Sites

Native Americans often attach religious significance to particular natural sites, such as high mountain peaks or secluded valleys. These sites are considered holy places of worship, acting as Native American churches, synagogues or temples. Sacred sites are often located on public lands, primarily because the federal government often created reservations without regard to the locations of the sacred sites.

Sacred religious sites, although central to Native American worship, are not fully protected under law as they should be. The U.S. Supreme Court ruled in Lyng v. Northwest Indian Cemetery Protective Assn., 484 U.S. 439 (1987) that the government's use of public land does not burden religious exercise -- even if the sacred site itself is destroyed. The decision is a setback for the right of Native Americans to freely practice their religion.

In Lyng, the Forest Service proposed to build a timber-access road in California that cut through a Native American sacred religious site. Although the lower courts had found that the road was only of marginal use, and that other alternatives were available, the Supreme Court held that the First Amendment's free exercise balancing test did not apply to the government's use of the land. California is free to destroy the sacred religious site without a compelling reason to do so, even where alternatives are available.

The Religious Freedom Restoration Act (RFRA), which restored the compelling interest test when government action infringes on religious practice, did not overturn Lyng. RFRA does not guarantee that the state show a compelling interest in every case of religious infringement. Thus, the government does not have to show the highest need in order to destroy a Native American sacred site. **Special legislation is therefore needed to protect sacred sites, and to assure that Native Americans who traditionally worship in this manner will be protected by the compelling state interest test.**

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June 10, 1994

To: Interested Persons

From: Nkechi Taifa, Legislative Counsel
Sam Mistrano, Research AssociateRe: The Need for H.R. 4230, A Bill Providing for the Native American
Religious Use of Peyote

On April 14, 1994, Representative Bill Richardson (D-NM) introduced an amendment, H.R. 4230, to the American Indian Religious Freedom Act (AIRFA). This amendment protects the First Amendment rights of Native Americans to practice their religion through the use of peyote as a religious sacrament.

Peyote is a small cactus with psychedelic properties that grows naturally in southern Texas. Peyote use is central to traditional Native American religious practices - practices which predate this country's founding. Anthropologists date the religious use of peyote back 10,000 years, and its use by Native North Americans has been documented since the 1600s.

The present day Native American Church, with 250,000 members and chapters in 20 states, advocates the religious use of peyote. According to practitioners, peyote is central to a spiritually profound exercise, and its use constitutes a way of life that ranks among the oldest, largest and most continuously practiced religions in the Western Hemisphere. Peyote is a sacrament to believers, something which when eaten provides awareness of God. The medical evidence shows that religious peyote use is not harmful to the practitioner, and it is taken in private and secluded religious settings. In fact, to ingest peyote other than in a religious setting is regarded as a sacrilege.

The Need for H.R. 4230 to Protect the Religious Use of Peyote

The Drug Enforcement Administration has a longstanding regulatory exemption, codified at 21 CFR Sec. 1307.31, which allows for the "non-drug use of peyote in bona fide religious ceremonies for the Native American Church." Twenty-eight states have similar exemptions, but twenty-two states do not.



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In 1990, the Supreme Court decided Employment Division v. Smith, 494 U.S. 872. Smith rejected the "compelling interest" test for infringement of religious practices, which mandates that the state and federal government show the highest need when it takes action that infringes on religious freedom. The decision let stand the state of Oregon's refusal to provide unemployment benefits to an employee fired for using peyote as religious sacrament in his private time. [Oregon has since changed its law to protect religious use of peyote]

Congress restored the "compelling interest" test by passing the Religious Freedom Restoration Act (RFRA) in 1993. However, RFRA does not guarantee that the compelling interest test will be used in every case. Justice Sandra Day O'Connor, in fact, wrote in her concurring opinion in Smith that she would still find that Oregon had a right to abrogate Mr. Smith's religious use of peyote even under a "compelling interest" test. Thus, it is clear that further legislation is needed.

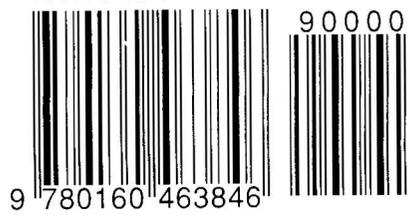
The constitutional rights of Native Americans to exercise their religion must be ensured. President Clinton, upon signing of RFRA, said that "the agenda for restoration of religious freedom in America will not be complete until traditional Native American religious practices have received the protection they deserve." H.R. 4230 is needed to protect fully Native Americans' right to practice their traditional religion.

Further, although 28 states have laws that protect the use of peyote as a sacrament, those laws are inconsistent with each other. Tribes located in different states are treated differently regarding peyote use. Native American Church members who have lawfully acquired peyote in Texas can be arrested and subject to felony prosecution in the 22 states that do not protect religious use of peyote, even for just driving through those states. **H.R. 4230 is needed to assure the full and free exercise of Native American religious beliefs and practices; as well as to assure comprehensive and uniform protection of religious peyote use regardless of state or reservation of residence. Please support, and ask your U.S. Representative to support, H.R. 4230.**

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