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FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING
2012 MAR 30 PM 12 03
STEPHAN HARRIS, CLERK
CHEYENNE

**UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING**

NORTHERN ARAPAHO TRIBE,)
on its own behalf and on behalf of its)
members, and)
)
JIM SHAKESPEARE,)
Chairman, Northern Arapaho Business)
Council, in his official and individual)
capacities,)
)
Plaintiffs,)
)
vs.)
)
DANIEL M. ASHE,)
Director, U.S. Fish and Wildlife Service,)
and)
)
MATT HOGAN,)
Assitant Regional Director, Region 6,)
Migratory Birds and State Programs)
)
in their official capacities,)
)
Defendants.)
_____)

Civil. No. 11-CV-347-J

AMENDED COMPLAINT

COME NOW the Plaintiffs, Northern Arapaho Tribe (hereinafter "NAT" or "the Tribe")

and Jim Shakespeare, Chairman of the Northern Arapaho Business Council, and file their Amended Complaint pursuant to Fed.R.Civ.P. 15(a)(1)(B) (amending as a matter of course within 21 days of Defendants' responsive pleading) as follows:

PRELIMINARY STATEMENT

1. This action seeks to protect the traditional religious rights and freedoms of the Tribe and its members. Those rights include the limited taking of an eagle for traditional religious purposes of the Tribe. For two and a half years, Defendants failed or refused to issue a federal permit to allow the taking of an eagle by members of the Northern Arapaho Tribe for traditional Native American religious purposes. The denial placed members of the Tribe at risk of criminal prosecution for the taking of an eagle pursuant to their rights under the First Amendment of the United States Constitution, the Religious Freedom Restoration Act ("RFRA"), other federal laws, and the laws of the Tribe. The denial unreasonably burdened the religious rights and freedoms of tribal members, unlawfully interfered with the authority of the Tribe to protect and facilitate the taking of an eagle under the laws and customs of the Tribe, abused and exceeded Defendants' lawful authority, and was arbitrary and capricious.

On March 9, 2012, Defendants issued an eagle take permit for lands within the State of Wyoming, but excluded all lands within the Wind River Indian Reservation. This action by Defendants continues to place members of the Tribe at risk of criminal prosecution in the permitted area, unlawfully denies a permit for areas within the Wind River Indian Reservation, and is otherwise in violation of federal law.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the Defendants and this action pursuant to

28 U.S.C. §§1331, 1343, and 1362, and the Administrative Procedure Act, 5 U.S.C. § 706. The authority of Defendants to deny or interfere with rights, or to burden freedoms preserved, under the Constitution, RFRA (42 U.S.C. § 2000bb-2000bb(4)), and the sovereign authority of the NAT is a question of federal law. This Court is authorized to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§2201-2202.

3. Venue is proper because Plaintiffs reside or are located within the District of Wyoming; a substantial part of the events or omissions giving rise to the claims and the cause of action arose within the District of Wyoming; Defendants' official duties include the area within the District of Wyoming; and no real property is at issue.

PARTIES

4. The Plaintiff Northern Arapaho Tribe is a federally recognized Indian Tribe located on the Wind River Indian Reservation, Wyoming.

5. Plaintiff Jim Shakespeare is the Chairman of the Northern Arapaho Business Council, the duly elected governing body of the Tribe, and is also a member of the Tribe.

6. Defendant Daniel M. Ashe is the Director of the U.S. Fish and Wildlife Service ("USFWS"), a federal agency within the United States Department of the Interior.

7. Defendant Matt Hogan is the Assistant Regional Director of Region 6, Migratory Birds and State Programs, of the USFWS, a federal agency within the United States Department of the Interior.

FACTUAL AND GENERAL ALLEGATIONS

8. The taking and use of an eagle are an integral part of the traditional religious beliefs and ceremonies of the NAT and its members.

9. The Tribe has protected and facilitated the taking and use of an eagle for traditional religious and ceremonial purposes since time immemorial and currently does so through Title 13 of the Northern Arapaho Code. (13 N.A.C. 101 *et seq.* attached as Exhibit 1 to original complaint; publicly available at northernarapaho.com.)

10. Chairman Shakespeare and other members of the Tribe are sincere adherents to the traditional religious beliefs and ceremonies of the Tribe, which occasionally require the taking and use of an eagle.

11. Among other on-going ceremonial uses, the Tribe's Sundance requires the taking and use of a religiously pure eagle in accordance with Northern Arapaho religion. The Sundance is conducted every summer.

12. The Bald and Golden Eagle Protection Act ("Eagle Act") is implemented by the Secretary of Interior acting through the USFWS. The Eagle Act was created to protect and preserve the bald and golden eagle for a number of reasons, including use of eagles "for the religious purposes of Indian Tribes." 16 U.S.C. §668a. It establishes a broad prohibition against possession of any part of an eagle without a permit.

13. Defendants are charged with the responsibility for issuing eagle take permits within the District of Wyoming pursuant to the Eagle Act and implementing regulations.

14. It is the policy of the United States to prohibit the taking of an eagle, even for religious purposes, without a federal permit. Members of the NAT who take an eagle without such a permit face a real threat of criminal prosecution. See United States v. Friday, 525 F.3d 938 (10th Cir. 2008).

15. The NAT is a federally recognized Indian tribe with sovereign authority to

regulate the internal affairs of the Tribe and the conduct of its members, to the extent the same is not contrary to federal law.

16. The NAT has enacted Title 13 (Religious Freedom) of the Northern Arapaho Code, which protects and facilitates the occasional taking of an eagle strictly for traditional religious purposes by members of the Tribe on lands owned by the Tribe or its members within the Wind River Indian Reservation.

17. The NAT, on its own behalf and on behalf of its members, through its Business Council Chairman, applied for an eagle take permit from Defendants on October 7, 2009.

18. Between October 7, 2009, and March 9, 2012, Defendants requested and NAT provided additional information regarding the permit application and discussed the same in an effort to obtain the permit. Between October 7, 2009, and March 9, 2012, numerous ceremonies were conducted, including two annual Sundances, without a decision from Defendants regarding such permit. Defendants' failure or refusal to timely approve the permit application substantially burdened the practice of religion by the Tribe and its members.

19. On March 9, 2012, Defendants issued a permit to the Tribe to take up to two bald eagles for religious purposes. The permitted area includes lands within the State of Wyoming, but categorically excludes lands within the Wind River Indian Reservation.

20. As a matter of federal law, the laws of the State of Wyoming apply to activities of persons on federal (and other) lands within the State. Wyoming law prohibits and criminalizes the taking of an eagle. Exceptions to this prohibition may be made, only at the discretion of the Wyoming Department of Game and Fish, and not for religious reasons.

21. The March 9, 2012, permit also requires, by its terms, compliance with the laws

of the State of Wyoming.

22. Defendants' March 9, 2012, eagle take permit is a sham. Any tribal member taking an eagle pursuant to the March 9, 2012, permit is subject to arrest and prosecution by the State of Wyoming, whether the take occurs on federal, state or other lands (excluding the Wind River Indian Reservation). The permit categorically denies permission to take an eagle within the Wind River Indian Reservation, where State law is no barrier to the take of an eagle on tribal lands.

23. The Consultation Handbook of the USFWS provides that the Department "will carry out their responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to tribes, tribal sovereignty, and statutory missions of the Departments. ...". Defendants' failure or refusal to issue an eagle take permit on the Wind River Reservation or offer any viable alternative to accommodate the religious practices of tribal members violates the federal trust responsibility, tribal sovereignty, First Amendment of the Constitution, and statutory obligations of the USFWS.

24. Defendants have failed or refused to issue an eagle take permit to the NAT on the Wind River Reservation or otherwise accommodate the traditional religious practices of the Tribe with respect to the taking of an eagle. Defendants' decision constitutes "agency action." 5 U.S.C. §551(13).

25. The facts set forth above demonstrate an actual controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. §2201(a).

FIRST CAUSE OF ACTION - DECLARATORY
JUDGMENT – FREE EXERCISE CLAUSE

26. Plaintiffs reassert and incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

27. The Free Exercise Clause of the First Amendment to the U.S. Constitution provides that Congress shall make no law “prohibiting the free exercise” of religion. Tribal members are subject to criminal prosecution for the taking or use of an eagle pursuant to the permit issued on March 9, 2012.

28. Defendants’ failure or refusal to issue such permit, set forth above, Defendants’ denial of a permit on the Wind River Indian Reservation, and the terms of the March 9, 2012, permit, violate the Free Exercise Clause.

29. Plaintiffs are entitled to declaratory judgment and injunctive relief as set forth in their prayer for relief.

SECOND CAUSE OF ACTION - DECLARATORY JUDGMENT - RFRA

30. Plaintiffs reassert and incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

31. The RFRA provides that governmental activity may not substantially burden the free exercise of religion unless that governmental activity is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest.

32. The United States has a compelling governmental interest in fostering the culture and religion of federally recognized Indian tribes. Defendants’ failure or refusal to issue such permit, set forth above, and the terms of their March 9, 2012, permit are directly contrary to that compelling interest and violate RFRA.

33. The United States also has a compelling governmental interest in the protection of eagles as a species. However, Defendants' failure or refusal to issue such permit, set forth above, and the terms of their March 9, 2012, permit do not advance that interest in the least restrictive means, as required by RFRA.

34. Defendants' failure or refusal to issue such permit, set forth above, and the terms of their March 9, 2012, permit substantially burden the free exercise of religion of the NAT and its members. Defendants have no compelling interest on which to base their refusal to act or to impose the terms of their March 9, 2012, permit. Even if such a compelling interest could be shown, Defendants have failed or refused to meet their duty to protect such an interest by the least restrictive means.

35. Defendants' failure or refusal to issue such permit, set forth above, Defendants' denial of a permit on the Wind River Indian Reservation, and the terms of the March 9, 2012, permit, violate RFRA.

36. Plaintiffs are entitled to declaratory judgment and injunctive relief as set forth in their prayer for relief.

THIRD CAUSE OF ACTION - ADMINISTRATIVE PROCEDURE ACT

37. Plaintiffs reassert and incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

38. Defendants' failure or refusal to act, set forth above, Defendants' denial of a permit on the Wind River Indian Reservation, and the terms of the March 9, 2012, permit, constitute agency action that is in excess of statutory jurisdiction and authority.

39. In the alternative, Defendants' failure or refusal to act, set forth above,

Defendants' denial of a permit on the Wind River Indian Reservation, and the terms of the March 9, 2012, permit, are contrary to Plaintiffs' Constitutional and statutory rights.

40. In the alternative, Defendants' failure or refusal to act, set forth above, Defendants' denial of a permit on the Wind River Indian Reservation, and the terms of the March 9, 2012, permit, are without observance of procedures required by law.

41. In the alternative, Defendants' failure or refusal to act, set forth above, Defendants' denial of a permit on the Wind River Indian Reservation, and the terms of the March 9, 2012, permit, are arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law.

42. Defendants' decision should be set aside and declaratory and injunctive relief provided to Plaintiffs as set forth in their prayer for relief.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray that this honorable Court will:

A) Enter declaratory judgment in favor of the Plaintiffs and against Defendants as follows:

1) Declare that Defendants have no legitimate rationale for their denial or refusal to grant an eagle take permit to the NAT or for imposition of the terms of their March 9, 2012, permit.

2) Declare that Defendants' failure or refusal to issue an eagle take permit or imposition of the terms of their March 9, 2012, permit, constitute a deprivation of rights or immunities established in the Free Exercise Clause of the First Amendment and RFRA and as expressed and protected in Title 13 of the Northern Arapaho Code or other laws of

the Tribe.

3) Declare that Defendants are without authority to fail or refuse to issue an eagle take permit or to impose the terms of their March 9, 2012, permit sought by the NAT, on its behalf or on behalf of its members, for traditional Northern Arapaho religious purposes.

4) Declare that NAT may protect and facilitate the taking of an eagle by its own members for traditional Northern Arapaho religious purposes, pursuant to Title 13 of the Northern Arapaho Code, or otherwise.

B) Issue injunctive relief in favor of Plaintiffs and against Defendants as follows:

1) Order Defendants to issue an eagle take permit to the NAT, without improper restrictions or terms, with all deliberate speed.

2) Order Defendants to cease any further interference with efforts by the NAT to protect and facilitate the free exercise of traditional Northern Arapaho religion by its members, pursuant to Title 13 of the Northern Arapaho Code, or otherwise.

C) Award to Plaintiffs all costs and attorney's fees allowed by law.

D) Grant such other and further relief as the Court deems just and equitable.

Dated this 29th day of March, 2012.

Northern Arapaho Tribe and
Jim Shakespeare, Plaintiffs

By: Andrew W. Baldwin

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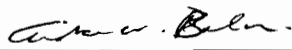
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing AMENDED COMPLAINT was served upon the following by the methods indicated below on the 29th day of March, 2012:

Barbara M. R. Marvin	<input type="checkbox"/>	By Facsimile
Dept. of Justice	<input checked="" type="checkbox"/>	By U.S. mail, postage prepaid
Environmental & Natural Resources Div.	<input type="checkbox"/>	By Hand Delivery
P.O. Box 7611	<input type="checkbox"/>	By Overnight Courier
Washington, DC 20004	<input type="checkbox"/>	Electronic Filing

Nicholas Vassallo	<input type="checkbox"/>	By Facsimile
U.S. Attorney's Office	<input checked="" type="checkbox"/>	By U.S. mail, postage prepaid
P.O. Box 668	<input type="checkbox"/>	By Hand Delivery
Cheyenne, WY 82003-0668	<input type="checkbox"/>	By Overnight Courier
	<input type="checkbox"/>	Electronic Filing

Coby Howell	<input type="checkbox"/>	By Facsimile
Environmental & Natural Resources Div.	<input checked="" type="checkbox"/>	By U.S. mail, postage prepaid
Wildlife and Marine Resources Section	<input type="checkbox"/>	By Hand Delivery
c/o U.S. Attorney's Office	<input type="checkbox"/>	By Overnight Courier
1000 S.W. Third Avenue	<input type="checkbox"/>	Electronic Filing
Portland, OR 97204-2901		



Andrew W. Baldwin