



USET

SOVEREIGNTY PROTECTION FUND

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USET SPF Resolution No. 2020 SPF:013

OPPOSITION TO PETITION TO EXPAND U.S FISH AND WILDLIFE SERVICE REGULATIONS REGARDING POSSESSION AND USE OF EAGLE FEATHERS

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of thirty (30) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** on July 26, 2018, the United States Fish and Wildlife Service (FWS) received a petition for rulemaking from Pastor Robert Soto, the lead plaintiff in *McAllen Grace Brethren Church v. Jewell*, No. 7:07-cv-060 (S.D. Tex. June 3, 2016), and the Becket Fund for Religious Liberty, asking FWS to revise its existing rules pertaining to the religious use of federally protected bird feathers and parts for members of federally recognized Tribal Nations; and
- WHEREAS,** bald and golden eagles are protected by the Bald and Golden Eagle Protection Act (BGEPA), 6 U.S.C. §§ 668-668d, which criminalizes the taking or possession of eagles or their parts without a permit from the United States Fish and Wildlife Service (FWS); and
- WHEREAS,** recognizing the significance of eagles to Tribal Nations, Congress amended the BGEPA in 1962 and authorized the Secretary of the Interior to permit the taking, possession, and transportation of eagle feathers and parts for the "religious purposes of Indian tribes"; and
- WHEREAS,** in *U.S. v. Dion*, 476 U.S. 734, 740 (1986), the United States Supreme Court held that the BGEPA provision permitting use of eagles "for the religious purposes of Indian tribes" was tied to "abrogate[d] Indian treaty rights to hunt bald and golden eagles," and thus the right of members of federally recognized Tribal Nations to take, possess, and transport eagle feathers or parts is based on the government-to-government relationship between the United States and federally recognized Tribal Nations and not a religiously motivated impermissible racial classification; and
- WHEREAS,** the existing FWS policy governing the "religious purposes of Indian tribes" exception recognizes the limited language of the statute and its underlying political nature by only allowing members of federally recognized Tribal Nations to possess and use eagle feathers under the exception; and
- WHEREAS,** the FWS has published a petition for rulemaking and request for public comment related to a Petition submitted by an individual who claims membership in a state recognized Tribal Nations and a religious organization that seeks to have the FWS amend the existing regulations governing the "religious purposes of Indian tribes" exception in the Act; and
- WHEREAS,** the petition's main request is to have the existing regulations expanded to allow the "religious purposes of Indian tribes" exception to apply to any and all "sincere religious believers", including non-Indians; and

- WHEREAS,** the petition’s main request is in direct conflict with the express language of the Act and thus outside the scope of the FWS’s authority as established by the Supreme Court in *U.S. v. Dion* where they specifically rejected the “patronizing and strained view” that the Act allows the Secretary of the Interior to issue permits to non-Indians under the “religious purposes of Indian tribes” exception; and
- WHEREAS,** the petition’s main request would also diminish the rights of members of federally recognized Tribal Nations to the benefit of non-Indians and violate the government’s trust obligation to federally recognized Tribal Nations by judging the sincerity of federally recognized Tribal citizens’ religious beliefs alongside non-Indians, making federally recognized Tribal citizens compete against non-Indians in an already strained permitting system, and incentivizing the appropriation and commercialization of not only eagle feathers, but American Indian and Alaska Native culture and religious beliefs; and
- WHEREAS,** the Petition expressly seeks to challenge and undermine the political status of federally recognized tribes upheld by the Supreme Court in *Morton v. Mancari* by arguing that “[t]he politically unique relationship between federally recognized tribes and the U.S. government does not justify granting [federally recognized tribes] a religious accommodation while denying it to others who engage in similar religious practices”; and
- WHEREAS,** the political distinction underscored in *Morton v. Mancari* is a fundamental principle in the framework of federal Indian law and must be protected against all attempts to diminish its standing under federal laws and policies; and
- WHEREAS,** the FWS failed to conduct meaningful consultation with federally recognized Tribal Nations on the petition before publishing the Petition in the Federal Register and seeking public comments; and
- WHEREAS,** the formal comment period for the Petition has now closed but a final determination on the petition is still pending; and
- WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it
- RESOLVED** that USET SPF opposes and condemns any and all efforts to undermine the political status of federally recognized Tribal Nations, and the accompanying trust responsibility owed by the United States to federally recognized Tribal Nations based on the United States Constitution, treaties, statutes, executive orders and court decision; and be it further
- RESOLVED** that USET SPF calls on Petitioners Robert Soto and the Becket Fund for Religious Liberty to withdraw the petition; and be it finally
- RESOLVED** that USET SPF hereby calls on the United States Fish and Wildlife Service to take no additional action on the Petition.

Because there is Strength in Unity

CERTIFICATION

This resolution was duly passed at the USET SPF Annual Meeting held on the Sovereign Territory of the Mississippi Band of Choctaw Indians at which a quorum was present on November 7, 2019.



Chief Kirk E. Francis, Sr., President
United South and Eastern Tribes
Sovereignty Protection Fund



Chief Lynn Malerba, Secretary
United South and Eastern Tribes
Sovereignty Protection Fund

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