

MEMORANDUM OF UNDERSTANDING

REGARDING THE GATHERING OF PLANT RESOURCES FOR AMERICAN INDIAN
TRADITIONAL CULTURAL-RELIGIOUS PURPOSES FROM NATIONAL PARK LANDS
among

Zion National Park, Cedar Breaks National Monument, Pipe Spring
National Monument, and the Kaibab Band of Paiute Indians, the
Moapa Band of Paiute Indians, and the Paiute Indian Tribe of
Utah.

Whereas, the National Park Service (NPS), Zion National Park,
Cedar Breaks National Monument, Pipe Spring National Monument
(hereafter referred to as the "PARKS") recognizes the past and
present traditional cultural affiliation with these park lands
and their resources by the Southern Paiute Nation composed of the
following Bands: Kaibab Band of Paiute Indians, the Moapa Band of
Paiute Indians, and the Paiute Indian Tribe of Utah (hereafter
referred to as the "TRIBES"); and,

Whereas, the National Park Service seeks to build positive and
productive relationships between the PARKS and TRIBES through the
establishment and maintenance of Government-to-Government
relationships in accordance with the President's Directive to
Federal Agencies (F.R. vol. 59, No.85; Wednesday, May 4, 1994);
and,

Whereas, the National Park Service recognizes its
responsibilities under Executive Order Numbers 12875 ("Enhancing
the Intergovernmental Partnership") and 12866 ("Regulatory
Planning and Review") to design solutions and tailor Federal
programs, in appropriate circumstances, to address the specific
or unique needs of tribal communities; and,

Whereas, the PARKS recognize the constitutional religious rights
of the TRIBES as reiterated and reinforced by the American Indian
Religious Freedom Act of 1978 (AIRFA, P.L. 95-341); and,

Whereas, the PARKS recognize their responsibility under various
laws and agency policies [National Historic Preservation Act, as
amended (16 U.S.C. 470), the American Indian Religious Freedom
Act (P.L. 95-341), Executive Order (130007), and NPS Management
Policies to consult with American Indian peoples who are
culturally and historically affiliated with PARK lands and
resources, regarding the importance of traditional sites and
access to places and resources of importance to Indian religious
practices; and,

Whereas, the PARKS, in their role as the federal steward of

national park lands and resources, recognize the need to protect and preserve natural and cultural resources for the enjoyment of future generations; and,

Whereas, the PARKS recognize the TRIBES' interest in preserving and protecting their respective cultural and religious traditions which involves, but is not limited to, the gathering of culturally appropriate quantities of plants on PARKS lands; and,

Whereas, the PARKS and TRIBES both recognize the PARKS' responsibilities and obligations to protect natural and cultural resources under provisions of the National Park Service Organic Act (P.L. 64-235, 16 U.S.C. 1, 39 Stat 535), the Archeological Resources Protection Act (P.L. 96-95; 16 U.S.C. 470aa, 93 Stat 712), the Endangered Species Act (P.L. 93-205, 87 Stat 884, 16 USC 136, as amended), the National Historic Preservation Act, as amended (P.L. 89-665, 90 Stat 915-919, 16 U.S.C. 470, as amended); and various NPS Management Policies; and,

Whereas, the PARKS recognize their responsibilities under the Native American Graves Protection and Repatriation Act of 1990 (P.L. 101-601; 25 U.S.C. 3001-3013) (NAGPRA) to consult with Indian tribes on issues related to the culturally appropriate means of treating NAGPRA defined objects and remains, and the related use of plant materials from PARKS lands; and,

Whereas, the PARKS, have completed a report on Southern Paiute ethnographic resources in Zion National Park and Pipe Spring National Monument which provides a preliminary inventory of resources that are culturally significant; and,

Whereas, it is the intent of the PARKS and TRIBES to enter into this agreement to avoid any unnecessary disturbance or damage to park protected natural and cultural resources, and to work cooperatively to allow access to culturally and religiously important sites and to allow the gathering of plant materials in a manner that allows and fosters the sustainability of these resources.

NOW, THEREFORE: The PARKS and TRIBES agree that the following procedures will be adhered to for the purpose of ensuring tribal member access to areas in the PARKS that have cultural/religious significance, and to create a management climate for the PARKS within which the TRIBES can decide for themselves to continue (or not to continue) the gathering of culturally appropriate amounts of plants in the PARKS for the purposes of engaging in, maintaining, or transmitting to younger generations their own cultural/religious practices and beliefs.

Definitions

For the purposes of this Memorandum of Understanding (MOU), the following definitions shall apply:

1. **TRIBES:** As used in this document this term refers only to the following federally recognized tribes: the Kaibab Band of Paiute Indians, the Moapa Band of Paiute Indians, and the Paiute Indian Tribes of Utah.
2. **PARKS:** As used in this document this term refers only to the following National Park units: Zion National Park, Pipe Spring National Monument, and Cedar Breaks National Monument.
3. **Tribal Government:** The government of those federally recognized tribes referred to as TRIBES.
4. **Tribal Government Representative:** The individual or individuals designated by each of the TRIBES that are party to this agreement to act on behalf of their respective tribal governments.
5. **Park Representative:** The individual or individuals designated by the National Park Service to act on behalf for PARKS as parties to this agreement.
6. **Culturally Appropriate Amounts:** This phrase refers to those amounts of plants which are used for personal, family, or community use to engage in traditional, cultural, or religious activities. Commercial use of these materials is excluded from this definition.
7. **Collecting:** The hand gathering of plants and plant materials by traditional means.

Section I

General Agreements Regarding the Collection of Plants in the PARKS by Authorized Members of the TRIBES

The PARKS agree to allow the collection of limited quantities of plants, and plant material by authorized members of the TRIBES under the following stipulations;

1. General Limitation on Amount of Materials Collected:

Collection of resources is limited to traditionally appropriate amounts of plants for personal, family, or community use. The amount of materials collected,

individually or totally, shall not affect the sustainability of existing ecological relationships in those areas in which collection takes place.

2. Individuals Authorized to Collect in PARKS:

Under the terms of this agreement, only tribal members of the TRIBES who are signatory to this agreement are authorized to collect or gather plants within the PARKS.

3. Size of Gathering Groups:

The TRIBES agree to adhere to existing policies of the PARKS pertaining to park visitor group size in any particular area within the PARKS. Special arrangements may be negotiated with the PARKS to allow for the visitation of larger groups under special circumstances.

4. Authorized Collection Areas:

TRIBES will have access to all areas of the PARKS for the purpose of collection of plants. However, collection shall take place in a manner that will avoid, whenever possible, being within the sight of other visitors to the PARKS. As a result of the joint monitoring process (described elsewhere in this agreement), or as a result of other administrative or resource management decisions, areas may be determined to be temporarily closed or otherwise restricted from gathering due to the condition of the resource. In all cases, the TRIBES will be consulted before areas are restricted or closed.

5. Plant Materials Not Available for Gathering:

Plants and plant parts unavailable for gathering by the TRIBES shall be those whose status is listed as "sensitive," "threatened," or "endangered" as determined by the PARKS.

6. Limitations on Use of Materials Collected:

The use of all gathered material is limited to non-commercial, traditional use. The term "non-commercial" is not meant to preclude traditional aspects of exchange activity between tribal members or between members of different American Indian tribes. "Traditional" in this sense refers to a type of small-scale exchange plant materials which may take place between tribal members for religious, medicinal, or other customary purposes.

Section II

Notification

1. TRIBES that are party to this agreement will issue individual authorizations to tribal members who wish to collect or gather plants in the PARKS. Such authorization and a tribal enrollment card will be presented to the designated park representative when a tribal member wishes to enter any of the PARKS for the purpose of gathering.¹

2. The PARKS agree to promptly notify the TRIBES of any special restrictions, considerations, or changes related to collection activities resulting from monitoring activities or from any special park management considerations.

3. The PARKS agree to provide the TRIBES with the name of principle park representatives with the responsibility for administering the provisions of this agreement. Signatory TRIBES shall each provide the PARKS with the name of principle tribal representatives to serve as primary contacts to facilitate the implementation of this agreement.

4. The TRIBES shall promptly notify the PARKS regarding any special requests or concerns related to collection activities.

Section III.

General Agreements on Joint Monitoring of Impacts Resulting From Collection Activities

1. The PARKS have a mandated responsibility to determine any potential impacts resulting from approved actions within National Park Service lands. Under this agreement any impacts resulting from tribal gathering will be determined through a park monitoring program. It is the intent of this agreement that the PARKS and TRIBES enter into a resource protection partnership to jointly accomplish these monitoring activities and to determine any special resource management needs, if any, that result from resource gathering. The details and conditions of this partnership are to be determined in consultation with the TRIBES. This agreement constitutes such a partnership. It is the intent of the PARKS and TRIBES to jointly seek funding to support this

¹ Park representatives will design a form to be used for this purpose. The NPS will make these forms available at all tribal offices. At a minimum the form will consist of a tribal authorization section, a park authorization section, and a preliminary means of recording, to the extent practicable, plants to be collected, estimated quantity of collection, and an identification of the areas where the collection will take place. These records will be used solely as an aid to implement the joint monitoring activities to be undertaken by the PARKS and the TRIBES.

partnership and any planned joint monitoring activities.

2. In the event that funding is not available from the National Park Service to cover tribal personnel costs, the TRIBES agree to provide tribal personnel at tribal cost, or volunteers to work with the PARKS to complete monitoring work.

Section IV

Confidentiality

Information shared with the PARKS by the TRIBES or by individual tribal members, related to gathering activities, shall be considered sensitive and confidential. As such, the PARKS shall protect such information from public disclosure to the maximum extent practicable under law and regulation.

Section V

Dispute Resolution

1. Should any actions taken under the provisions of this agreement be disputed by any party, said party shall promptly notify by phone or in writing all parties to this agreement of this dispute.

2. It is agreed between all parties that should disputes occur between the parties to this agreement, an attempt will be made to resolve a dispute in an informal manner, emphasizing personal, face-to-face discussions and mutual interests.

3. After notification of a potential dispute, a meeting between the designated representatives of the TRIBES and the PARKS shall be convened as soon as possible but no later than 30 calendar days following receipt of the notification of the potential dispute. These individuals shall attempt to resolve the dispute at this initial stage.

4. In the event that the dispute cannot be resolved a second meeting will be convened between the PARK superintendent, or designated representative, and the Tribal Chairperson(s), or designated representative(s) as soon as possible but not later than 30 calendar days following the first meeting between designated representatives of the TRIBES and the PARKS.

Section VI

Term and Amendment

1. The PARKS and TRIBES agree that this MOU is a "living" document and may require changes or alterations to meet new or changing circumstances.
2. This MOU shall remain in effect for a term of five (5) years and may be amended only with the written consent of all parties hereto at the time of such amendment. } *
3. Any signatory party may terminate their participation in this MOU upon 30 days written notice to the other signatories.

VII.

Multiple Counterparts

This document may be executed in multiple counterparts, and when taken together, shall be deemed as one instrument.

ZION NATIONAL PARK

By: Donald A. Galt

Date: 6/4/98

Title: Superintendent

CEDAR BREAKS NATIONAL MONUMENT

By: Thomas D. Galt

Date: 6/8/98

Title: Superintendent

PIPE SPRING NATIONAL MONUMENT

By: Thomas D. Galt

Date: 6/2/98

Title: Superintendent

KAIBAB BAND of PAIUTE INDIANS

By: C. Bradley

Date: 5/29/98

Title: Tribal Chairperson

PAIUTE INDIAN TRIBE OF UTAH

By: _____

Date: _____

Title: _____

MOAPA PAIUTE INDIAN TRIBE

By: _____

Date: _____

Title: _____

ZION NATIONAL PARK

By: Donnell A. Salung Date: 6/4/98

Title: Superintendent

CEDAR BREAKS NATIONAL MONUMENT

By: Donnell A. Salung Date: 6/8/98

Title: Superintendent

PIPE SPRING NATIONAL MONUMENT

By: Donnell A. Salung Date: 6/2/98

Title: Superintendent

KAIBAB BAND OF PAIUTE INDIANS

By: Cliff Bradley Date: 5/29/98

Title: Tribal Chairperson

PAIUTE INDIAN TRIBE OF UTAH

By: Donnell A. Salung Date: 3/4/99

Title: Subel Chairwoman

MOAPA PAIUTE INDIAN TRIBE

By: _____ Date: _____

Title: _____

Authorization to Collect Plants for Cultural/Religious
Purposes in Zion National Park, Cedar Breaks National
Monument and Pipe Spring National Monument

TRIBAL AUTHORIZATION

_____ is a recognized member of _____
(Print Tribal Member Name) (Name of Tribe)

Under this authorization this tribal member is recommended for approval for the gathering of plants, and/or plant parts in Zion National Park, Cedar Breaks National Monument and/or Pipe Spring National Monument (circle one or more).

(Tribal Official Signature)

(Date)

NATIONAL PARK SERVICE AUTHORIZATION

The tribal member bearing this permit is authorized to gather limited amounts plants, and/or plant parts in Zion National Park, Cedar Breaks National Monument, and/or Pipe Spring National Monument (circle one or more) for customary cultural/religious purposes.

1. Number of Days of Authorized Gathering from Date of Authorized Signature Below: _____

2. Areas of Gathering: (identify general area(s) of park if known)

3. Materials to be collected: (list and add additional sheets if necessary):

Plant(s) Name(s) or more)	Est. Quantity	Location	Use (optional - circle one)		
_____	_____	_____	Customary	Religious	Personal
_____	_____	_____	Customary	Religious	Personal
_____	_____	_____	Customary	Religious	Personal
_____	_____	_____	Customary	Religious	Personal
_____	_____	_____	Customary	Religious	Personal

(NPS Representative)

(Date)