

**Resolution of the
Navajo Nation Human Rights Commission**

Approving and Recommending that the Navajo Nation Register a Complaint of Navajo Human Rights Violation with the Organization of American States Inter-American Commission on Human Rights

WHEREAS:

1. Pursuant to 2 N.N.C. §§ 920 and 921, the Navajo Nation Human Rights Commission (“Commission”) is established within the Legislative Branch as an entity of the Navajo Nation government and organized to operate as a clearinghouse entity to administratively address discriminatory actions against citizens of the Navajo Nation, and to interface with the local, state, federal governments and with national and international human rights organizations in accordance with its plan of operation and applicable laws and regulations of the Navajo Nation; and
2. Recognizing that the Navajo people have lived in the southwest region of the United States within six sacred mountains since time immemorial, the Navajos have a responsibility to remain on and care for the land where the Holy People placed the Navajo people.¹ This includes the right to protect and preserve their right to practice and revitalize their cultural traditions and customs in accordance with Article 11 of the United Nations Declaration on the Rights of Indigenous Peoples (“Declaration”) which complements Navajo Fundamental Law; and
3. The six sacred mountains serve as the foundation of the Navajo Life Way. The mountains – the Sisaajini (Mount Blanca) to the East, Tsoodzil (Mount Taylor) to the South, Dook’o’osliid (San Francisco Peaks) to the West, and Dibé Ntsaa (Mount Hesperus) to the North – represent the sacred elements of earth, fire, water and air. Each element symbolizes freedom, cultural integrity and dignity, language, and spirituality and ceremony. Each element of the mountains is inextricably linked to a Navajo person’s mental, physical, and spiritual health. The remaining two mountains are Dzil Ná’oodilii (Huerfano Mesa) to the Center and Ch’oolii (Governador Knob) to the East of Center. When one of these mountains and elements is harmed, it throws the Navajo Life Way out of balance and weakens Navajo ceremonies and prayers; and
4. In *Navajo Nation v. United States Forest Service*,² the Navajo Nation put efforts to prevent the Arizona Snowbowl Resort Limited Partnership (“Snowbowl”) from using recycled wastewater to produce artificial snow on the San Francisco Peaks (“Peaks”).³ The Navajo Nation lost at the Arizona Federal District Court and appealed to the United States Ninth

¹ Resolution of the Navajo Nation Council, CN-69-02 (11/08/2002) §5(B) (amending Title 1 of the Navajo Nation Code to recognize the Fundamental Laws of the Dine)

² *Navajo Nation*, 408 F. Supp. 2d. at 867.

³ The Native American communities, including the Hopi, Zuni, Acoma, Navajo, Apache, Yavapai, Hualapai, Havasupai, Paiute and Tohono O’odham, all regard the Peaks as central to their spiritual beliefs. As noted by the 9th Circuit, even the Forest Service conceded that the “Peaks are sacred to at least thirteen formally recognized Indian tribes, and that this religious significance is of centuries’ duration.” *Native American Tribes Win Battle Over Sacred Mountain*, AMERICANS UNITED, (May 2007), available at <https://www.au.org/church-state/may-2007-church-state/au-bulletin/native-american-tribes-win-battle-over-sacred> (last visited March 13, 2013).

Circuit Court of Appeals (“Ninth Circuit”).⁴ A three-judge panel of the Ninth Circuit ruled in favor of the Navajo Nation and barred the United States Forest Service from allowing the Snowbowl to use recycled wastewater to produce artificial snow.⁵ However, the United States government and Snowbowl petitioned the Ninth Circuit for reconsideration. The Navajo Nation reargued the case in front of an eleven-judge en banc panel of the Ninth Circuit, which overturned the three-judge panel ruling by eight to three.⁶ In response to the Ninth Circuit en banc decision, the Navajo Nation petitioned for Writ of Certiorari in the United States Supreme Court (“Supreme Court”) and on June 8, 2009, the Supreme Court declined certiorari.⁷ In effect, the Supreme Court upheld the Ninth Circuit en banc ruling, which authorized the Snowbowl to use recycled wastewater to produce artificial snow; and

5. Recalling Resolution NNHRCFEB-01-10, the Commission submitted the Navajo Nation statement regarding the United States fulfillment of international human rights treaties, covenants and declarations and other obligations as its contribution to the 2010 Universal Periodic Review of the United States moral and legal human rights obligations to the Navajo people. The Commission explained the traditional Diné Life Way is a holistic ceremonial existence embedded in the traditional, cultural and spiritual bond to the land. In order to protect the Peaks and other sacred mountains as a sacred place to the Diné people, the Commission recommended the following to the United Nation Human Rights Commission:
 - a. Press the United States and its political subdivisions to immediately ratify and implement the Declaration with emphasis on Articles 19, 25 and 26;
 - b. Press the United States and its political subdivisions to enact federal and/or state legislation that guarantees the Diné and other indigenous peoples the birthright to implement and practice the fundamental legal rights under Article 18 of the Universal Declaration on Human Rights without the fear of undue burdens or restrictions from the federal, state or local government laws, policies, rules and regulations;
 - c. Press the United States and its political subdivisions to enact federal and/or state legislation placing a permanent moratorium on Mount Taylor, the Peaks and other sacred sites from further economic exploitation and desecration, that respects and protects the spiritual relationship of the Diné and other indigenous peoples to their lands;
 - d. Press the United States and its political subdivisions to recognize the inherent right of Diné and other indigenous peoples to access Mount Taylor, the Peaks and other sacred sites without any undue burdens and restrictions from the federal, state and local government laws, policies, rules and regulations; and
 - e. Press the United States and its political subdivisions to actively engage in true nation-to-nation negotiations with the Diné and other indigenous nations when contemplating, drafting and implementing federal, state and/or local government laws, policies, rules and regulations that impact the Diné and other indigenous peoples’ sacred sites; and

6. Recalling Resolution NNHRCMAY-03-10, the Commission stated that sacred sites are the foundation of Diné Life Way and the traditional values and cultural integrity of the other indigenous peoples. Sacred sites offer a place for spiritual ceremonies that protect the cultural

⁴ *Navajo Nation v. U.S. Forest Serv.*, 479 F.3d 1024, 1025-26 (9th Cir. 2007).

⁵ *Id.* at 1024.

⁶ *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, *passim* (9th Cir. 2008) (rehearing en banc), *cert. den.*, 174 L.Ed. 2d 270 (2009).

⁷ *Navajo Nation v. U.S. Forest Serv.*, *cert. denied*, 129 S. Ct. 2763 (2009).

integrity of the Diné and promote healing and offer social security to indigenous nations and peoples. Based on the approval and support of the Diné Hataalii Association, Diné Medicine Man Association and Azee Bee Nahaghá of Diné Nation, the Commission communicated with Professor S. James Anaya, Special Rapporteur of the United Nations on the Human Rights Violations and Fundamental Freedoms of Indigenous Peoples (“Special Rapporteur”) to:

- a. Examine ways and means of overcoming existing obstacles to permanently protect the Peaks as a sacred site to the Diné and other indigenous peoples from further economic and recreational exploitation and desecration;
 - b. Gather, request, receive and exchange information and communication from all relevant sources relative to the violations of Diné and other indigenous peoples’ human rights and fundamental freedoms to preserve and protect the Peaks and other sacred sites and to practice their cultural and religious beliefs without undue burdens or restrictions from the United States and the State of Arizona; and
 - c. Formulate recommendations and proposals to the United States and the State of Arizona to prevent, remedy and redress the continuing violations of the Diné and other indigenous peoples human rights and fundamental freedoms as it relates to the proposed desecration of the Peaks and other sacred sites and the practice of their cultural and religious beliefs without undue burden or restrictions; and
7. In August 2011, Special Rapporteur issued a report entitled *Report by the Special Rapporteur on the [R]ights of [I]ndigenous [P]eoples*, Rep. of Human Rights Council, 18th Sess, Aug. 22, 2011, U.N. Doc. A/HRC/18/35/Add.1; UN. GAOR, 65th Sess., (Sept. 14, 2011)., detailing that the United States did not respond to calling attention to information he received “relating to the proposed use of recycled wastewater for the commercial ski operation [on] the San Francisco Peaks, a mountainous area that is sacred to several Native American tribes.” The Special Rapporteur further observed and reached some of the following conclusions:
- a. That the stake holders human rights to free, prior and informed consent were violated as the United States did not comply with the requirements under the International Covenant on Civil and Political Rights and International Convention on the Elimination of All Forms of Racial Discrimination;
 - b. That “[d]espite adamant opposition by the tribes based on their religious practices and beliefs, the Forest Service decided to approve the artificial snowmaking and other ski area modifications, bringing into question the United States’ adherence to international standards to which it has expressed its commitment.”;
 - c. That “[s]imply providing indigenous peoples with information about a proposed decision and gathering and taking into account their points of view is not sufficient in this context. Consultation must occur through procedures of dialogue aimed at arriving at a consensus.”; and
 - d. That “[i]t is far from apparent how the decision to permit snowmaking by a private recreational ski facility is in furtherance of one of the specific public purposes – public safety, order, health or morals – or the human rights of others.”; and
 - e. That “[i]t is highly questionable that the effects on Native American religion can be justified under a reasonable assessment of necessity and proportionality, if the purpose behind the [United States] Government decision to permit the enhancement to the ski operation is none other than to promote recreation.”; and

8. Recalling Resolution NABIS-58-11, the Navajo Nation Council's Náabik'íyáti' Committee acknowledged the Special Rapporteur's *Report by the Special Rapporteur on the [R]ights of [I]ndigenous [P]eoples*. In the resolution, the Náabik'íyáti' Committee authorized the Navajo Nation President & Vice-President, the Speaker of the Navajo Nation Council, their designees, and the Commission to do all things necessary to protect and advocate for the human rights of the Navajo people as they pertain to the Peaks, a sacred site for the Navajo people; and
9. In August 2011, the Commission along with International Indian Treaty Council, on behalf of the Navajo Nation, respectfully requested the Committee on the Elimination of Racial Discrimination ("CERD") take Urgent Action against the United States and United States Forest Service for authorizing the desecration of the Peaks. Though the United States government possesses a general trust responsibility towards its indigenous peoples in the United States it has not sought to protect the cultural property important to indigenous peoples. The United States is bound by the International Convention on the Elimination of All forms of Racial Discrimination, the International Covenant on Civil and Political Rights and issued an Announcement of Support for the Declaration, and therefore, must be held accountable for the multiple human rights violations occurring against the Navajo people; and
10. In March 2012, CERD members expressed concern of the potential impact of the Snowbowl producing artificial snow from recycled wastewater on the Peaks. The members, in addition, requested that the United States provide information on the process it took to obtain the free, prior and informed consent from indigenous peoples in regards to the Snowbowl. Furthermore, the members requested information on concrete measures taken to ensure that the Peaks is respected, including the possibility of suspending the permit granted to the Snowbowl in order to further consult the indigenous peoples and take into account their concerns and religious traditions. Lastly, the members requested the United States respond to the Urgent Action raised by the Commission and International Indian Treaty Council no later than July 31, 2012; and
11. However, the United States did not respond to CERD no later than July 31, 2012 but provided a response on August 29, 2012. The response letter was not delivered to CERD until August 31, 2012 when CERD adjourned its second and last session of the year. In the United States response, it informed CERD that the United States has provided substantial information on the Peaks and Snowbowl project. The United States noted, "[i]n particular, the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, has requested [the same] information regarding the San Francisco Peaks. The [United States] response to his letter is available at https://spdb.ohchr.org/hrdb/19th/USA_17.11.11_%2810.2011%29.pdf"; and
12. In April 2012, the Commission co-hosted the Special Rapporteur first official state visit to the United States. At this time, the Commission met with the University of Arizona James E. Rogers College of Law's indigenous law and policy program to discuss and explore registering a complaint with the Organization of American States' Inter-American Commission on Human Rights to protect and preserve the Peaks from desecration. On February 13, 2013, the Commission met with the Special Rapporteur and the University of Arizona James E. Rogers College of Law's indigenous law and policy program to continue exploring the possibility of registering a complaint with the Inter-American Commission on

Human Rights. In addition, the Commission would need to secure a policy direction from the Navajo Nation Council authorizing the registration of a complaint with the Inter-American Commission on Human Rights to protect the Peaks in accordance with Resolution NABIS-58-11 based on the discussion with the Navajo Nation Department of Justice and a member of the Navajo Nation Council; and

13. When all domestic remedies are exhausted, the peoples in the western hemisphere have the opportunity to petition their human rights violation against their nation-states with the Inter-American Commission on Human Rights. The Commission finds that the Navajo people have exhausted all domestic remedies when the Supreme Court declined to accept the Navajo Nation petition for Writ of Certiorari; and
14. The Commission determines that it is in the best interest of the Navajo people to register a complaint on their behalf with the Inter-American Commission on Human Rights in order to protect their inherent right to protect and preserve the Peaks from further desecration and as a sacred place.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Human Rights Commission hereby approves and recommends that the Navajo Nation register a complaint of Navajo human rights violations with the Organization of American States' Inter-American Commission on Human Rights to protect and preserve the Peaks from further desecration in accordance with Navajo Fundamental Law which mandates that Navajo people have a responsibility to remain on and care for the land where the Holy People placed them.
2. The Navajo Nation Human Rights Commission further directs that the Office of Navajo Nation Human Rights Commission work closely with the Special Rapporteur and the University of Arizona James E. Rogers College of Law's indigenous law and policy program to protect and preserve the Peaks from further desecration. In addition, the Navajo Human Rights Commission further directs the Office of Navajo Nation Human Rights Commission to do all things necessary to ensure that the Navajo Nation Council and/or its oversight committee endorse and authorize the registration of a complaint to the Organization of American States' Inter-American Commission on Human Rights.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Human Rights Commission at a duly called meeting at St. Michaels, Navajo Nation (AZ), at which time a quorum was present and the same was passed by a vote of 4 in favor and 0 opposed, this 1st day of March 2013.


Steven A. Darden, *Chairperson*