



NAVAJO NATION HUMAN RIGHTS COMMISSION

SACRED SITES

The Preservation, Protection and Use of Sacred Sites



Statement by Duane H. Yazzie, Chairman
Navajo Nation Human Rights Commission
Presented to the NM Cultural Properties Review Committee
Santa Fe, NM – May 15, 2009

On the Mt. Taylor nomination for
Traditional Cultural Property (TCP) Designation

“I am of the Salt Clan, born for the Waters Flowing Together Clan, my Cheii are Towering House and my Nalis are Red Running into the Water Clan. The bond that we have as Native Peoples to the Earth Mother is in accord with the original intent of the Almighty Creator. We introduce ourselves as belonging to certain clans that are symbolized by animals and other elements of the earth, this accentuates that bond. We have said and we will say again, and again, that we are one with the earth – it is reality; it is a matter of life, a matter of survival and not some romantic notion. A basic flaw of Western thought is the dichotomizing of the physical and spiritual aspects of the earth; this separating of the physical and spiritual is contrary to the original intent. We implore of you to consider our views. As objective leaders you have the capacity to momentarily put aside your own beliefs and conceptions to truly hear us and to make a sincere effort to understand what it is we declare. A positive consideration by the committee of the Mt. Taylor TCP designation will be a significant contribution to the continuum of life on this earth, as it will be consistent with the original intent. I submit Mr. Chairman that we were here *first*. When all these lands were violently being taken from us, we did not get consultation.”

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

**Adopting the Public Hearing Report on Sacred Sites: The Preservation, Protection and Use of
Sacred Sites and Approving the Dissemination of the Report**

WHEREAS:

1. Pursuant to 2 N.N.C. § 920, the Navajo Nation Human Rights Commission (herein referred to as “Commission”) is established in the Legislative Branch as an entity of the Navajo Nation government; and
2. One of the purposes of the Commission is to conduct public hearings on and off the Navajo Nation to determine the state of race relations between Navajos and non-Navajos. During the period covering August 2008 to July 2012, the Commission conducted several public hearings, one of which was to receive input and information from Navajos and non-Navajos regarding sacred sites; and
3. By Resolution NNHRC-FEB-02-09, the Commission adopted the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) as the minimum standard of achievement for the Commission when advocating for and protecting the human rights of Navajo citizens. The Navajo government advocated for the adoption of UNDRIP by presenting recommendations during the meetings conducted by the United Nations Working Group on the Draft Declaration on the Rights of Indigenous Peoples. These meetings took place at Geneva, Switzerland, during the course of fifteen years, which resulted in the adoption of UNDRIP by the United Nations General Assembly in September 2007; and
4. UNDRIP is unanimously supported by nation-states of the world, including the United States of America. It provides for minimum legal standards that nation-states must achieve when addressing rights of indigenous peoples. Nation-states agree to change their domestic arrangements and laws in order to advance protection of indigenous rights stated in UNDRIP. Under Article 11, paragraph 1, nation-states agreed that:

“Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.”

5. Furthermore, UNDRIP provides at Article 25:

“Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”

6. As provided in the attached Exhibit "A" public hearing report, entitled "Sacred Sites: The Preservation, Protection and Use of Sacred Sites," the Commission finds the Navajo Nation and Navajo people must ensure that the sacred sites on and off the Navajo Nation are appropriately preserved and protected for future generations. The protection and preservation to sacred sites is paramount to the validity of the Diné and to the cultural integrity of Diné culture; and
7. The Commission is indebted to all individuals and concerned citizens that shared their information regarding sacred sites and places; and
8. The Commission finds that existing Federal laws and policies do not afford the protection to sacred sites. These laws, the Native American Graves and Repatriation Act (NAGRA); Native Americas Religious Freedom Act (AIRFA); National Environmental Policy Act of 1969 (NEPA); National Historic Preservation Act of 1966 (NHPA) and the Religious Freedom Restoration Act (RFRA) continue to allow for the desecration and disturbance to sacred sites.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Human Rights Commission hereby adopts the public hearing report entitled "Sacred Sites: The Preservation, Protection and Use of Sacred Sites," attached hereto as Exhibit "A".
2. The Navajo Nation Human Rights Commission further hereby directs the Office of Navajo Nation Human Rights Commission to transmit this resolution to the Navajo Nation Council, and Navajo Nation President and Vice President and make available to citizens of the Navajo Nation thorough appropriate means, including but not limited to posting it on the Commission website www.nnhrc.navajo-nsn.gov, a copy of the Exhibit "A" public hearing report.

C E R T I F I C A T I O N

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 a quorum was present and that same was passed by a vote of 4 in favor and 0 opposed this 6th day of July, 2012.


 Duane H. Yazzie, Chairperson

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PREFACE

In our attempt to understand the concern with sacred sites to the Diné it became apparent that issues surrounding Navajo sacred sites are no different than what other Indigenous nations and peoples are confronted with globally. Those sacred site areas that are subject to economic ventures benefit communities, private investors and governments; rarely is there any benefit for the Indigenous nations. We found similar scenarios of conflicts, desecration and destruction of sacred sites throughout the Navajo Nation. In some instances we found the assault on these sites to have been approved by the Navajo Nation.

The coordination, cooperation and communication among the agencies responsible for the protection and preservation of these sacred sites are inconsistent or non-existent in some cases. We also conclude that the Federal Government and its subagents continued to govern through colonial structure built on a model of conquer and destroy. We find that federal and tribal laws and policies intended to protect sacred sites are ineffective, including the Native American Graves and Repatriation Act, the American Indian Religious Freedom Act, the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, and the Religious Freedom Restoration Act. Conversely, there are laws and policies that are overly restrictive to the point of hampering and interfering with the right to freely practice our religious freedoms and limit or restrict access to sacred sites.

Just as in other studies commissioned by the Navajo Nation Human Rights Commission (“Commission”) we continue to see a pattern of colonial subjugation and discrimination of Navajo people through federal laws, policies, and regulations. Sadly we also witness the Navajo Nation leaders continually capitulating to outside authorities without questioning whether the rights of the people are compromised. More disturbing is the fact that while the Navajo Nation is a sovereign nation, it fails to exercise the right of self determination to the fullest extent as predicated by Navajo fundamental, customary and natural laws.

As this Commission has stated through previous reports, the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) offers an avenue where the Navajo Nation can protect the Navajo people’s inherent human rights and assure that the Diné are recognized as a distinct and equal people with all other peoples in the world. This international doctrine authored by Indigenous peoples and supported by the United States provides recognition of Indigenous people’s rights to exist as peoples, nations, cultures and societies and to exercise rights of self-determination, property and culture. The Navajo Nation has not considered incorporating the principles of UNDRIP into Navajo law despite the recommendation of the Commission. This would include the development of new laws and policies in the spirit of the UNDRIP that incorporates principles that protect and preserve sacred sites and places of the Diné.

Until we as a Navajo Nation can take this first step, we will continue to be subject to federal and state laws and policies that are proving to not protect and preserve Diné sacred sites to the optimum. Fortunately for the Diné the opportunity to incorporate UNDRIP standards, as they relate to sacred sites and places rests with the people of the Navajo Nation.

ACKNOWLEDGEMENT

The Navajo Nation Human Rights Commission is indebted to everyone that contributed to the authoring of this report. Through the process of gathering information, discussing aspects of sacredness and visiting and conversing with the Diné medicine people, Navajo historians and in general, Navajo people that possess a deep cultural understanding of traditional knowledge of sacred sites, we cannot thank you enough. You have enlighten and confirmed our understanding of *our* --the Diné's, relation to the land, the earth, the cosmos and the natural forces that we hold sacred and revere with great respect and honor. Thank you.

In particular, the Commission expresses appreciation to the Diné Medicine Men's Association, Inc., Diné Hataalii Association, Inc. and the Aze'e' Bee Nahaghá of the Diné Nation for their steadfast assistance and with guiding the Commission. Diné Life Way and fundamental laws are indeed complex and sophisticated. The medicine men associations freely provided the information they shared with the Commission and staff, and provided the much needed guidance and direction in order to comply with Diné protocols.

As we complete the last of three reports that speak to the human rights of Indigenous peoples, and more specifically of Navajo human rights, we are humbled by the fact that our footsteps, ceremonies and chants confirm our rights to exist between the four sacred mountains and share in reaffirming that we are equal to all other five-finger beings of this world. Moreover, we share in the celebration that as a distinct nation we have inalienable rights to self governance and to land, territories and resources that were possessed since time-immemorial.

Ahee'hee to our relatives, brothers, sisters and Navajo citizens who enriched our understanding of Navajo human rights issues that remain pervasive and systemic in every aspect of our social, economic, and political hemispheres. Collectively and independently we must stand to protect these rights.

SACRED SITES

The Preservation, Protection, and Use of Sacred Sites

CHAPTER I. Introduction

A Thematic Discovery

The Navajo Nation Human Rights Commission¹ (“Commission”) authorized the investigation and study of human rights violation as it related to the desecration and protection of sacred sites on and near the Navajo Nation in December of 2009. The Commission while fulfilling a legislative mandate by its oversight committee, the Navajo Nation Intergovernmental Committee, discovered the Navajo citizens² concern about the desecration of sacred sites and places that threaten the spiritual balance between nature and the Diné. Additionally, the Commission discovered that the Navajo people often come into disagreements and conflicts with non-Indian entities, including the federal government, corporations, business and private developers over places that they consider sacred. Unlike the past two public hearings reports on *Border Town Race Relations* and *The Impact of the Navajo-Hopi Land Settlement Act of 1974*, the Commission also sought information from other Indigenous nations in Arizona who also had sacred sites and places under attack by non-Indigenous forces. Based upon these two past investigative reports, the Commission deemed it necessary to examine the desecration and the ongoing efforts to preserve and protect Diné sacred sites and authorized five public hearings.

This report, “*Sacred Sites: The Preservation, Protection and Use of Sacred Sites*” provides a review of the Commission’s investigation of Diné sacred sites. It begins with a brief introduction of how the Commission determined sacred sites as a thematic issue and the decision to incorporate international human rights standards to assess the current status of these sacred sites and places. Chapter Two summarizes the Diné emergence story, which explains how the people became part of the land, and how Diné traditional values are inseparable from the land. These narratives also name many areas of the Diné to be sacred sites. The Diné Holy People established the parameters of the homeland and instructed the People to hold sacred these areas forever. The Commission also assessed five United States (“U.S.”) federal laws and their application to the protection and preservation of sacred sites. Two domestic policies are discussed in Chapter Three. Following this segment of the report, Chapter Four examines the United Nations General Assembly and its approach and adoption of various declarations, conventions and other international charters that bring an international viewpoint to the rights of Indigenous nations. The Commission, as it has done in earlier public hearing reports, incorporated standards contained in the United Nations Declaration on the Rights of Indigenous Peoples,³ (“UNDRIP”) to assess the preservation, protection and use of sacred sites. Chapter Five provides a summary account of individuals, who testified at five public hearings held in the

¹ NAVAJO NATION CODE ANN. Title. 2, §920 - §924.

² Navajo people and Diné are used interchangeably throughout the report. Both terms are used by the Navajo Nation and its people.

³ United Nations Declaration on the Rights of Indigenous Peoples, UN G.A. Res 61/295, UN H.R.C., 61st Sess., Annex, Agenda Item 68, UN Doc. A/RES/61/295 (2007) [hereinafter UNDRIP].

month of July, 2010. The findings from the public hearings are presented in Chapter Six. Included in this chapter are additional findings from investigative meetings conducted by the Commission while promoting the protection and preservation of religious practices to sacred sites. The final chapter offers nine recommendations which the Commission deemed important to the perpetuation of the Navajo Life Way and is crucial to address, if we expect the Navajo Nation to fully exercise Diné human rights.

The Navajo Nation Human Rights Commission's Mandate

The Commission facilitated five public hearings on the Navajo Nation through a period of two weeks. The hearings were held in major populated communities of the five Navajo agencies that serve as economic hubs of the Navajo Nation. Participants who shared their testimony came from a variety of backgrounds including medicine men (who are considered to be the cultural and traditional experts of Navajo knowledge), Navajo archeologist and anthropologist, elders, Navajo historians, authors and individual Navajo citizens, all of whom shared their knowledge about sacred sites and the Diné's relation to these sites. To ensure the Commission and staff were properly prepared to deal with the nature of sacred sites and the imperative to protect and preserve them, the Commission sought expert counsel from three organizations of Diné medicine professionals. The organizations were the Diné Medicine Men's Association, Inc., the Diné Hataalii Association, Inc. and the Azee' Bee Nahaghá of Diné Nation. Leaders from each organization served as advisors to the Commission throughout the entire study. Together the Commission and the medicine men analyzed oral history, prayers, chants, ceremonies and locations that were pivotal to the recognition, significance and establishment of sacred sites and places. We visited sites, conversed with experts, conducted ceremonies and made offerings to ensure that we followed proper protocols for our investigation.

The Commission concluded that indeed, Diné sacred sites are continually under threat and vulnerable to internal and external forces that refuse to acknowledge their centrality to the Navajo Life Way. The Commission found some sites vandalized and in some places, completely destroyed. Moreover, equally disturbing, the number of Diné who possess the cultural and traditional knowledge about these sites and how they are linked to ceremonies is declining. These sacred sites and places are imbued with spiritual and religious connections to the land. The Commission fears that if the Navajo Nation does not continue to work to retain, protect, and preserve the prayers, songs and ceremonies that go hand in hand with the sites, our identity as Diné will be irrevocably harmed.

The Commission also examined current U.S. federal law and policies to determine the extent of protections they provide to protect and preserve sacred sites. It was surmised that these laws do not adequately protect sacred sites as Indigenous peoples had envisioned. Through the course of several meetings and discussions it became apparent that the Navajo Nation and its people cannot remain silent or passive when their sacred sites and places are being destroyed and effaced. To halt the destruction of Navajo sacred sites and consider avenues to best preserve and

protect them, the Commission utilized an international human rights mechanism, identified as the United Nations Declaration on the Rights of Indigenous People. In the face of on-going injustices perpetuated against them, particularly as the United States has failed to honor its treaties with Indigenous nations, there is hope that UNDRIP will be the a mechanism by which Indigenous nations will reaffirm self-governance and assert their inherent rights over land, territories and resources that are crucial to our identities as indigenous nations and peoples. UNDRIP, after all, is one of three international covenants that the U.S. supports and insists all nation-states must uphold when dealing with the human rights of Indigenous peoples throughout the world.

UNDRIP encapsulates all political, social, economic and governmental norms that are specific to Indigenous peoples and recognizes the permanent collective rights of a people, nations, cultures and societies. It preserves Indigenous peoples right to practice traditional cultural teachings that are fundamental to the identity of that people. Article 11 of UNDRIP states, *“Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.”* Article 12 maintains *“Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.”* The Commission also found Article 25 of the UNDRIP to specifically address the inherent rights of Indigenous peoples to maintain and strengthen their distinctive relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and costal seas and other resources and to uphold their responsibilities to future generations. And, finally, in Article 34, *“Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.”*

These four articles of UNDRIP support the principles of Diné Fundamental Law of the Navajo people. Together, they reinforce the inalienable rights of Indigenous peoples to continue to practice, revitalize, develop, teach, strengthen and maintain traditional ceremonies, prayers, sacred sites and resources without the interference or fear of global dominant maneuvers that purposefully alter the life way of a people.

CHAPTER II. Sacred Sites and the Navajo Nation

Sacred Sites and the Holy People

The holy people lived here in the beginning.
They built the first hooghan, made the first weapons,
sang the first songs and made the first prayers.
Diné language, ceremonies,
history, and beliefs began here.
This is where we began.⁴

In the Navajo origins narratives, the Holy deities created the life way for the Diné. These narratives are the oral history of the Diné and places Diné beginnings in the first world. As the beings that inhabited this first world traveled to the next worlds, they encountered other beings and eventually emerged into the fifth world, which is the present world. In each world, the beings interacted with each other and the places they inhabited, until they emerged into the final world. Their actions through the worlds form the foundation for the stories, songs, prayers and ceremonies that make up the Diné Life Way. Central to the Navajo creation narrative is that from the third world came the soil that was used to form the sacred mountains that set the boundary of the Navajo homeland to the present.

The forebears of the modern Diné emerged into the present world at a place known as Dinétah, in northwest New Mexico, which includes sections of the San Juan River. Here the Holy People interacted with the people who would become Diné. In this world, the deities established the boundaries of Diné Bikéyah. The first world from which the beings began their journey was black, with four corners over which appeared four clouds: black, white, blue, and yellow. In this First World⁵, various spiritual beings lived. Altse Hastiin (First Man) and Altse Asdzáan (First Woman) dwelled in this first world. This first world was small, a “floating island in mist or water.” On it grew one pine tree, which was later brought up to the present world for firewood. Along with First Woman and First Man, Great-Coyote-Who-Was-Formed-in-Water came into being, followed by crowds of beings with thick lips, who were powerful and evil and killed each other steadily. This small world became overcrowded and people quarreled and were unhappy. Because of the strife, First Man, First Women and Great Coyote climbed from the world of Darkness and Dampness into the second world, the Blue World. They were followed by others. In the Second World⁶, they found blue birds, blue hawks, blue jays and other blue-feathered beings already living there. This world was already occupied by the blue birds, animals and other beings that were in disagreement and couldn't get along with one another. Unpleasant

⁴ Luci Tapahonso, *A Radiant Curve: Poems and Stories* (Tucson: The University of Arizona Press) (2008).

⁵ Klara Bonsack Kelley and Harris Francis, *Navajo Sacred Places* (Indiana University Press) (1994).

⁶ *Ibid.*

swallow people also lived there and made things difficult for the First World people. There was severe hardship so they decided to leave this world. First Man made a wand of white shell, turquoise, abalone, and jet. This wand carried everyone through an opening in the south into the Third World. The Yellow World was entered first by blue bird, First Man, First Woman, Coyote, and other beings. This land had great rivers crossing from east to west and north to south. While the people thought they would find happiness here, it did not last long. One day, Coyote stole Water Baby from the river, causing a great flood. First Man ordered everyone to climb into the reed to escape the rising waters. As the beings climbed out of the reed into the Fourth World, the people discovered Coyote had Water Baby. Coyote was ordered to take Water Baby back to its mother. Coyote did and the flood waters began to recede. The people found themselves in the fourth world. Locust was the first to enter the Fourth World, known as the White world. He saw water everywhere and other beings living there. The beings in the Fourth World would not let the beings from the Third World enter unless the Locust passed certain tests. Locust passed all the tests and the people entered into the Fourth World. First Man and First Woman formed the four sacred mountains when they brought soil from the First World to form them. Again, chaos erupted and the People escaped into the Fifth and final world (the Glittering World) where they remain today.

The story of the emergence into the present world and the actions that occurred between the Holy People and the Diné are the foundation for the central ceremony known as the Blessing Asdzáá Nádleehé or Changing Woman⁷ which plays a crucial role in the formation of Diné values. She is the mother of all Diné and it is her birth that brings about the next phase of harmony in Navajo history. Changing Woman is the inner form of the Earth and represents her seasonal transformations. First Man and First Woman were some of the beings who emerged into this world near present day Huerfano Mountain (Dziłná'oodilii) in New Mexico. One day, First Man found a baby on a nearby mountain. The baby matured in four days and became Kinaaldá. That is, she matured into womanhood. Her passage from youth to womanhood was so important to the perpetuation of the People, that today the Diné continue to perform the Blessing Way ceremony for their daughters when they come of age. Changing Woman is attributed with the establishment of many Diné values. For example, upon her passage to womanhood, she became pregnant by the Sun and gave birth to the hero twins, who are known as Naayéé Neezgháni (Monster Slayer) and Tó Bájísh Chíní (Born for Water). The birth of the twins was the beginning of a new era in Navajo history, for the twins, armed with warrior's implements given to them by their father, the Sun, slayed the monsters who plagued the earth. Among other things she did for her children, Changing Woman also created the four original Navajo clans from her body. The Blessing Way, then, is the foundation for the values of beauty and harmony. This ceremony, with its accompanying stories and prayers, form the basis of the instructions Changing Woman gave to the Navajo people by which they should live.⁸

⁷ *Ibid.*

⁸ *Ibid.*

Changing Woman instructed that the Navajo people would inhabit the land within the four sacred mountains. Instruction was also provided concerning the four cardinal directions which specify a movement that begins in the east and moves directionally south, west and north. The order of the four directions can never be reversed or moved out of order. The directions follow the sun, moon and stars as they rise and set every day. The four sacred mountains representing the four cardinal directions are as follows; to the east the male mountain of Tsisnaasjini' or Black Belted Mountain, is also known as the Dawn or White Shell Mountain. It is located near Alamosa in the San Luis Valley, Colorado. To the south is Tsoodzil or Mount Taylor, and is referred to as the Blue Bead or Turquoise Mountain. This male mountain lies northwest of Laguna, New Mexico. To the west, Doko'ooliit or Abalone Shell Mountain, she is also known as the San Francisco Peaks ("Peaks"), and is near Flagstaff, Arizona. To the north, Dibé Nitsaa (Big Mountain Sheep Sits) is known as the Obsidian Mountain. This northern sacred mountain is female and is referred to as the La Plata Mountains above Durango, Colorado. The Diné that reside outside of the lands of these boundaries are encouraged to return to Diné Bikéyah as frequently as possible for it is important they renew their spiritual connection to the land. The emergence story provides graphic details about the six mountains and their significance to the survival of the Diné. The two other significant and sacred mountains that are located and protected within the boundaries of the four sacred mountains described above are Ch'ool'i'j (Governador Knob Mountain) and Dziłná'oodilii, (Huerfano Mountain). All the sacred mountains are living beings that must frequently be visited, for in that way, the bond between the Holy People and the Diné are continually reaffirmed.

Based upon the instructions provided in the creation narratives, the Diné have always known that their perpetuation is intimately connected to all natural life forms and the land. The earth is our mother and the sky is our father. Between our father and our mother, the air, water, plants and all beings are sacred and must be respected. The Holy People established the world as we know it and from this, the Diné know the purpose of life. The Holy People manifest themselves through stories, chants, and prayers. The Diné know that their charge is to be the guardians of the earth and sky. The Commission was fortunate to hear on numerous occasions about the special relationships that the Navajo people hold with the cosmos, the natural world, and the land as they consulted with medicine people. The sacred relationship to the land forms the basis of customary law and dictates that certain behaviors and actions must be followed when there is contact with a sacred site. To the Navajo people, the sacredness of life cannot be disconnected from the land.

Sacred Sites and the Diné

During the course of many consultations with Diné medicine people, it became clear that the relationship the Diné have to the land is paramount. Certain places in the southwest are marked as sites where energy flows and are held in high regard and are not to be disturbed, unless the site itself allows for prayer offerings or the taking of its self. These sites are places where the events from the creation of the Diné unfolded. Ceremonies are associated with these

sites and prayers are conducted. Some sacred sites are also associated with clan stories. Some sites are considered dangerous and access to them is restricted. In some instances, access is only limited to male beings, while other places are strictly limited to females. Sacred sites are also connected with specific vegetation and flora, which are important Navajo ceremonies. Some of these plants have medicinal and healing properties. Given that sacred sites are integral to Navajo life it is incumbent that we as Diné uphold the sacredness of sacred sites and places, including plants and other life forms that inhabit these places.

On another level, the relationship that Navajos have to the land is an intricate network that details the relationships between individuals, families, relatives, livestock, certain animals and the Holy People. For Navajos, children are so special that even before birth they are already a part of this network. When a newborn enters the world, and once the umbilical cord is cut and the afterbirth is expelled from the uterus, both are returned to the earth as a way to ensure that a child will be nurtured and protected by the Earth, who is the spiritual mother of the child, for the rest of her life. The place where the umbilical cord is buried becomes sacred, because it established the relationship between the child and the land. Navajo tradition teaches us that our relationship to the land and to Mother earth is sacred. Because of the extricable ties that link the earth to the Navajo Life Way, any actions of aggression to interfere with, or the breakage of this bond is an attack on the Navajo People's rights to exercise and maintain religious beliefs, ceremonies, prayers, which are at the core of Navajo life.

The Diné Life Way makes no distinction between church and state, whereas in America, democratic forms that are imposed upon Indigenous peoples as *values* often conflict. For the Diné, there is no separation between the religious/spiritual practices and daily life. The spiritual realm is integrated in everyday life and dictates one's actions or thoughts throughout the day. Navajos' spiritual connections to the earth and the land are always at the forefront of any actions that are considered. This life way is often referred to as *hózójii*, the Beauty Way. Living according to the Beauty Way means that as one proceeds through life, one is always moving forward, recognizing the good and bad, and knowing that he or she is surrounded by beauty. This idea of the Beauty Way is a principle concept that the Navajo deities have impressed upon the Diné since time immemorial. Everything has beauty and therefore, everything must be respected for its purpose in this world.

The Navajo Nation Human Rights Commission recognized the need to consult with medicine people as they embarked upon this study on the status of Navajo sacred sites and places. The medicine people consultation provided much regarded advice and guidance for this investigation. As needed, they also performed ceremonies and prayers to assist in this investigation. Their participation fell within the guidelines of UNDRIP which notes the importance of traditional ways in promoting Indigenous self-determination and respect for human dignity.

Navajo medicine men and women are considered to have gifts that allow them to communicate and interact with spiritual beings that convey specific meanings about sacred sites. Medicine people possess cultural and traditional knowledge is attained through years of

apprenticeship, knowledge and experiences that are often passed through family lineages. Because of their abilities to heal and bring forth harmony, they are revered as the keepers of sacred traditional knowledge. From time to time, medicine people have instructed the governing bodies of the Navajo Nation to host ceremonial prayers intended to restore balance to the people.

During the public hearings on sacred sites, participants frequently referenced the emergence stories and their places in the imperative to protect the land, the people, and the culture and tradition. Many Navajos provided testimony that expressed concern for the desecration and the lack of protection for sacred sites and places. During the course of the Commission's investigation, one issue that arose was the proposed business venture to make artificial snow from reclaimed wastewater for a ski resort on the San Francisco Peaks. The mountain is the western marker of the Diné Bikéyah, of Navajo homeland. At the heart of the controversy is a private ski company's right to make artificial snow as a venture for profit and the objections of traditional Navajos who have maintained that making snow out of wastewater is a desecration of a sacred site. For Navajos, the sacred mountain possesses sacred powers and medicinal herbs that if disturbed, could bring harm and illness to the Navajo people. Any tampering of nature and to the mountain disrupts the delicate balance between the cosmos and nature, which the Holy People have taught, must always be maintained. Furthermore, Arizona Indigenous nations have indicated that the San Francisco Peaks are sacred⁹ and a living being¹⁰ that is significant to the survival of these Indigenous nations.

Sacred Sites and Indigenous Nations

Land is integral to Indigenous nations and their right to exercise self-determination. However, under U.S. federal laws, Indigenous nations have met with limitations upon their right to exercise sovereign control over their lands, resources and minerals. Center to these limitations are capitalistic ventures as U.S. corporations maintain a steady presence on Indigenous lands where they seek to explore, excavate and mine mineral resources. In many cases, mining occurs on and near sacred sites and places. Thus, threats to Indigenous sacred sites are on-going.

The history of U.S. policy regarding the religious and spiritual practices of Indigenous peoples contrasts sharply with the image of the United States as a place where differences are tolerated and even embraced. Rather, the U.S. has practiced ethnic cleansing in regards to Indigenous peoples' religious beliefs and practices. By the early 19th century, federal Indian policy supported the "civilization" and "Christianizing" of Indigenous peoples. Congress supported missionary work and established over 200 mission schools¹¹ as institutions that would assimilate Indigenous children to American ways. In 1883, the U.S. government adopted the

⁹ *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058 (9th Cir. 2008), *petition for writ filed*, WL 355746, U.S. Feb. 6, 2009 (No. 08-846), at 12.

¹⁰ *Navajo Nation v. U.S. Forest Serv.*, 408 F. Supp. 2d. 866, 887 (D. Ariz. 2006).

¹¹ Friends Committee on National Legislation: A Quaker Lobby in the Public Interest, *Protecting Religious Freedom and Sacred Sites*, http://fcnl.org/issues/nativeam/protecting_religious_freedom_and_sacred_sites/ (last visited on July 17, 2014) [hereinafter *FCNL*]

Code of Indian Offenses which established the Court of Indian Offenses, which criminalizes all things Indigenous peoples held sacred, including the practice of religion and the speaking of traditional languages.¹² The official policy of “*religious repression*” stood for more than fifty years as the U.S. government forcibly removed Indigenous peoples from their homelands in order to facilitate white settlement on these same lands. By the 1930s, under the administration of the Commissioner of Indian Affairs John Collier, Indigenous peoples did see a reverse in federal Indian policy where a measure of cultural diversity was embraced. In fact, Indigenous peoples continued to experience repression of their rights to practice their own religion throughout the twentieth century and into the present.¹³

In response to oppressive federal Indian policies around religion and spirituality, Indigenous peoples have long sought relief through international forums such as the United Nations. In 1923, the Deskaheh (Levi General) of the Cayuga Nation of the Haudenosaunee Confederacy traveled to Geneva, Switzerland to request international action against Canada for violating its inherent right to self-government.¹⁴ Since 1976 Indigenous peoples of North America have sought international intervention on issues of religious freedom, the appropriation of land, resources and minerals, education policies that removed children from their families and other protections afforded U.S. citizens contained in the U.S. Constitution. In response to ongoing oppressions, Indigenous peoples have embraced the articles of UNDRIP and advocate for the implementation in all aspects into Indigenous governments. North American Indigenous nations and peoples have demanded that United States Congress and State governmental bodies rewrite domestic laws and policies in ways that support, rather than hinder, Indigenous people’s right to self-govern.

How Indigenous peoples regard land and its uses have been at the crux of their relationships with non-Indigenous settlers. While many Indigenous peoples continue to believe that they are the stewards of the earth and sky as decreed by the Creators, Western-based nations value land as property and capital which must turn a profit. These competing philosophies are articulated through the dissemination of geological, anthropological, archaeological, ethnographic, and traditional oral history that more often than not, value land as a means to profit. In contrast, many Indigenous peoples place a spiritual value on the land. Whereas western European interests toward land differs with a view rooted back to the 15th century, when a Roman Catholic Pope authorized the taking of “*undiscovered*” land. The Doctrine of Discovery¹⁵ served as the foundation for the American legal system which has been a significant vehicle for the dispossession of Indigenous peoples from their lands. This report, then, adds further evidence to Indigenous people’s contention that U.S. laws distort and render irrelevant the spiritual and religious meaning of land and sacred places.

¹² *Rules Governing The Court of Indian Offenses*, <http://rclinton.files.wordpress.com/2007/11/code-of-indian-offenses.pdf> (last visited on July 17, 2014)

¹³ FCNL, *supra* note 11 (last visited July 17, 2014).

¹⁴ Deskaheh was born in 1872 and considered a hero of the Haudenosaunee Confederacy. Deskaheh sought help from the League of Nations in Geneva, Switzerland in 1923 to reaffirm Haudenosaunee sovereignty.

¹⁵ *Johnson and Graham’s Lessee v. William M’Intosh*, 21 U.S. 543(8 Wheat.) 543 (1823)

Preservation and Protection of Sacred Sites: Review of Federal Acts and Policies

In an effort to understand current United States laws and policies that were intended to protect Indigenous sacred sites, the Commission reviewed several federal laws and policies. In short, these laws and policies fail to protect and preserve sacred sites and places. Rather, the Commission finds that the U.S. continues to effect policies that are largely procedural with little or no substantive protection of traditional and cultural rights. U.S. laws severely restrict the ability of Indigenous peoples to protect sacred sites and places. Because of the inability of Indigenous nations to freely exercise control of lands, territories and resources that are central to sacred sites and religious cultural practices, the Commission seeks international forums to mitigate relief and to restore fundamental Navajo human rights, which are the right of sovereign nations. The restrictiveness of these laws is discussed in the next segment of this chapter.

In order to ascertain the status of sacred sites and places under the protection of federal laws and policies intended to preserve and protect them, the Commission learned that the United Nations Human Rights Council¹⁶ selected the United States for a Universal Periodic Review (“UPR”)¹⁷ and used this opportunity to illuminate how U.S. laws are restrictive in relation to protecting and preserving Indigenous sacred sites and places. The UN Human Rights Council is composed of 148 nation-states that represent countries all over the world. The United States is a member to the Human Rights Council and has a history of advancing and protecting the human rights of under-developed third world nations. The UPR process reviews each member nation-state’s human rights record. This process provides an opportunity for each state to declare what actions they took to improve the human rights in their countries and to fulfill their human rights obligations. Every four years each member nation-state of the United Nations undergo a review and in December of 2010, the Navajo Nation Human Rights Commission co-hosted two listening sessions to assist in the U.S. review in Albuquerque, New Mexico and in Window Rock, Navajo Nation (AZ.).

During the listening sessions of the U.S. human rights record, a number of Indigenous leaders, traditional and cultural experts, community leaders, academic scholars, and lawyers presented testimony before the United States delegation in preparation for their UPR. A number of Navajos also provided testimony. It was evident from the two day review that the Navajo and other Indigenous peoples still raise questions around the legal merits of federal law, regulations and Indian policies toward Indigenous nations. As domestic dependents of the U.S., Indigenous nations still do not control their territories and as a result must yield to the federal Indian policies that hamper economic, social and cultural development on their lands. Further, not only has the federal government refused to uphold the treaties it signed with Indigenous leaders, it also

¹⁶ The Human Rights Council is an inter-governmental body within the United Nations made up of 47 states responsible for the promotion and protection of all human rights around the globe.

<http://www.ohchr.org/en/hrbodies/hrc/pages/hrcindex.aspx> (last visited on July 18, 2014)

¹⁷ G.A. Res. 60/251 U.N. HRC, 16th Sess., U.N. Doc. A/Res/60/251 (April 3, 2006).

consistently refuses to ignore the customary and traditional laws of Indigenous peoples. More specifically, the U.S. Department of Interior (“DOI”) remains the single oversight for Indigenous nations and their affairs.

As the oversight of Indigenous affairs, the DOI consistently disregards the welfare of Indigenous nations by approving land-into-trust applications, land transfers, rights-of-way permits, leases for business development and the sale of natural resources, which historically were not negotiated in the best interest of the Indigenous peoples. Specifically, Navajo participants expressed concerns about the United States control over lands that Navajos hold as sacred sites since time immemorial. Many of these Navajo sacred sites and places are located off the Navajo Nation and under the management of the U.S. Department of Agriculture Forest Service (“Forest Service”), which has the authority to decide and regulate all Indigenous religious ceremonies and activities that should take place on or near these places.

It was also substantiated, that DOI continues to approve land-into-trust applications, land transfers, rights-of-way permits, leases for business development and the sale of natural resources. Historical relationships between the U.S. and Indigenous nations demonstrated that, the rights of Indigenous nations to oversee, manage and regulate tribal resources and land negatively impacted nations from achieving economic development, community planning and in general the right to self-governance. Navajo participants expressed concerns regarding rights to lands where sacred sites remain since time immemorial. Many sites are located off Navajo Nation boundaries and are under the management of the Forest Service. The Forest Service has the authority to decide what activities can take place in many of these areas. They have extended their authority to regulate all traditional ceremonies and activities that are conducted in areas considered sacred and holy to Indigenous Peoples. It was found that federal policies that govern land management continue to erode the principles of the religious freedoms and practices that Indigenous Peoples desire to maintain and that are rightfully theirs to practice. In sum, the U.S. Department of Interior continued to exercises substantial oversight of Indigenous affairs.

Based on the findings from this review, the Commission analyzed five federal acts as they apply to the preservation and protection of cultural property. Each act fell far short of protecting cultural property, sacred sites and Indigenous life ways.

Native American Graves Protection and Repatriation Act

In 1990, Congress passed the Native American Graves Protection and Repatriation Act of 1990 (“NAGPRA”) which provides for museums and federal agencies to return certain Native American cultural items, such as sacred objects to Indigenous nations. However, this law does not provide for the protection or return of items found on private property. Moreover, not all cultural items are treated the same under NAGPRA. Depending on the item, NAGPRA allows for different repatriation procedures. Indigenous nations must also prove ancestor lineage to cultural items. Further, under the Archaeological Resources Protection Act of 1979, archaeologists have the right to conduct surveys on federally owned land where an Indigenous

site is being investigated. These initial surveys are often objected to by Indigenous nations who often consider these surveys to be antithetical to the protection of sacred sites. Thus, NAGPRA has been the sources of legal and moral conflicts than cooperative efforts between Indigenous nations and non-Indigenous nations.

American Indian Religious Freedom Act

The American Indian Religious Freedom Act of 1978 (“AIRFA”) was intended to “protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions. . . including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.”¹⁸ AIRFA directs federal agencies to consult with native traditional religious leaders when changes are being made to federal policies.¹⁹ One change to federal policy was Executive Order 13007, which encouraged agencies to “preserve and protect” Native American religion and practices.²⁰ However, the Executive Order creates no substantive rights or remedies for Native American religious practice.²¹ Rather, the Executive Order states that it may not be used to “impair enforceable rights to use Federal land that have been granted to third parties.”²²

Although the U.S. Congress had intended the AIRFA to provide protection for Indigenous sacred sites, the U.S. Supreme Court has consistently denied Native American efforts to protect and preserve sites located on federal public land.²³ Also, AIRFA suggests that Native Americans “enjoy protection of sacred sites beyond the Constitution; the reality is that they enjoy less protection and freedom than other American individuals and groups”²⁴ because the statute is void of legal rights enforceable against any person or entity.²⁵ In fact, the AIRFA is routinely described as having “no teeth,” for it has no provisions for penalties whenever Native Americans seek redress for infringements upon their freedom of religion.²⁶ Thus, the U.S. continues to effect policies that are mainly procedural with no substantive rights.

¹⁸ 42 U.S.C. § 1996 (2011).

¹⁹ *Id.*

²⁰ Exec. Order No. 13007, Fed. Reg. 26771 (May 24, 1996).

²¹ Sandra B. Zellmer, *Cultural and Historic Resources, Sacred Sites and Land Management in the West*, Rocky Mountain Law Special Institute, Ch. 3 (2003).

²² Exec. Order No. 13007, *supra* note 20, at § 4.

²³ *Navajo Nation*, 535 F.3d at 1058 (Fletcher, J. dissenting) (stating majority “misunderstands the very nature of religion . . . the religious significance [of the San Francisco Peaks] is of centuries’ duration.”); *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 477 (Brennan J. Dissenting) (stating majority makes a mockery of Indian religious freedom federal policy.”).

²⁴ Kristen A. Carpenter, *Real Property and Peoplehood*, 27 STAN. ENVTL. L.J. 313, 362 (2008).

²⁵ Zellmer, *supra* note 21, at 10, n. 161.

²⁶ Rebecca W. Watson, *Managing Cultural Resource Issues on Indian Lands*, Rocky Mountain Mineral Law Foundation (2011). *See also Lyng*, 485 U.S. at 455 (ruling that “nowhere in [AIRFA] is there so much as a hint of any intent to create a cause of action or any judicially enforceable right.”).

National Environmental Policy Act

Congress enacted the National Environmental Policy Act of 1969 (“NEPA”) as part of the policy to protect Native American cultural resources.²⁷ The NEPA sets forth procedures for federal agencies to evaluate the effects of “major federal actions” on Native American nations (“Indian nations”).²⁸ Major federal actions consist of federal approval, federal permit, or federal funding actions that frequently occur on Native American lands.²⁹ One stated purpose of the NEPA preserves “cultural and natural aspects of our national heritage.”³⁰ However, the NEPA merely requires a federal agency to investigate the environmental impacts of a proposed action³¹ and develop an Environmental Impact Statement (“EIS”).³² The NEPA provides no substantive protection for the negative impacts an Indian nation will suffer due to the proposed action. At most, the federal agency may invite a Native nation to participate in the scoping process³³ or as a cooperating agency³⁴ in the preparation of the EIS.

Even if the federal agency finds in its EIS that a site is sacred and home to deities, spirit beings, or a place where tribal members pray, and therefore has a duty to protect the site, the agency does not possess the authority to grant a permit for the proposed action.³⁵ Moreover, even if the agency finds that the proposed action will virtually destroy an Indian nation or people’s freedom to practice their religious beliefs, the proposed action still proceeds. The Commission also found that within the Navajo Nation, the Navajo Nation’s Environmental Protection Agency policies and regulations are identical to federal standards that allow for the desecration of these sacred sites and places. In some cases, on Indigenous lands, mining corporations have desecrated sacred sites and places because they are only required to meet minimal standards which do not provide adequate protections to the land.

National Historic Preservation Act

The National Historic Preservation Act of 1966 (“NHPA”)³⁶ provides a consultation policy when federal agencies identify historic properties to assess the effects of federal undertakings on the historic properties.³⁷ Section 106 process mandates that federal agencies “take into account the effect of the undertaking on any district, site, building, structure, or object

²⁷ 42 U.S.C. §4321 (1969).

²⁸ *Id.*

²⁹ *Id.*

³⁰ 42 U.S.C. § 4331(b)(4).

³¹ *Id.* § 4332(C).

³² *Id.*

³³ 40 C.F.R. § 1501.6 (2011).

³⁴ *Id.* § 1501.7 (2011); *see* Watson, *supra* note 26 (discussing the procedures of the NEPA and noting that “there are no specific regulations requiring the agency to seek involvement of tribes.”).

³⁵ *Navajo Nation*, 479 F.3d at 1042-43 (finding that the use of wastewater to make artificial snow will impact the traditional practices of the Navajo).

³⁶ 16 U.S.C. § 470 (2011).

³⁷ *Id.* § 470(w)(7); *see* Watson, *supra* note 26 (discussing the procedures of NHPA).

that is included or eligible for inclusion in the National Register.”³⁸ However, the NHPA does not provide substantively for the protection of the sacred site either. The NHPA like the NEPA process only provides that agencies consult with tribes through the Section 106 process, which creates confusion and dissatisfaction among the participants.³⁹ Indigenous leaders agree that national historic sites afforded more protection than sacred sites of Indigenous leaders.

Religious Freedom Restoration Act

Of the few Congressional efforts intended to protect Native American sacred sites, the Religious Freedom Restoration Act of 1993 (“RFRA”)⁴⁰ seems to provide the most substantive protection. Congress enacted RFRA in response to the Supreme Court’s holding that sidestepped the strict scrutiny standard outlined in previous cases.⁴¹ The RFRA’s purpose is to “restore the compelling interest test to guarantee its application in all cases where free exercise of religion is substantially burdened.”⁴²

In the case involving the San Francisco Peaks, the U.S. Ninth Circuit Court of Appeals (“Ninth Circuit”) en banc decision limited the meaning of substantial burden. The Ninth Circuit acknowledged that the “Indians’ religious activities on the San Francisco Peaks, including the spiritual fulfillment they derive from such religious activities, constitute an ‘exercise of religion.’”⁴³ However, the court found no “substantial burden” on religion. The Ninth Circuit reasoned that “spiritual fulfillment of the Tribes was subjective therefore damaged spiritual feelings, under Supreme Court precedent, government action that diminishes subjective spiritual fulfillment does not ‘substantially burden’ religion.”⁴⁴ The Ninth Circuit found no substantial burden because it limited the substantial burden test only to include if Native Americans (1) were coerced into acting contrary to their religious beliefs by threat of civil or criminal sanction, or (2) if Native Americans were forced to choose between following tenets of their religion and receiving a governmental benefit.⁴⁵

Because RFRA does not specify the substantial burden standard to include Native American quality of life as it relates to the sacred sites, it leaves up to the Supreme Court to decide for the Navajo what is sacred. Although Congress intended to afford Native Americans protection of their sacred sites through RFRA, in the case of the San Francisco Peaks, the statute does not protect the “*Peaks*” as a sacred site. Thus, a gap exists in federal law “leav[ing] no

³⁸ 36 C.F.R. § 800.1 (2011).

³⁹ See Watson, *supra* note 26, at ch. 6 (stating “the word ‘consultation’ is interpreted differently by Indians and non-Indians where the Indians regard the process similar to negotiation and the non-Indians interpret it as contact and discussion of the issues regardless of the outcome.”).

⁴⁰ 42 U.S.C. § 2000bb-1 (2011).

⁴¹ *Emp’t Div. v. Smith*, 494 U.S. 872 (1990); see *Sherbet v. Verner*, 374 U.S. 398 (1963); *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

⁴² 42 U.S.C. § 2000bb(b)(1) (2011).

⁴³ *Id.* at n. 12.

⁴⁴ *Id.*

⁴⁵ *Navajo Nation*, 535 F.3d, at 1070.

meaningful way for tribes to substantively protect sacred sites that [are] under [the] control of the federal government”⁴⁶ and “[the court] effectively read American Indians out of RFRA.”⁴⁷

Another gap in protection of sacred sites stems from the Supreme Court’s interpretation of the Constitution. The United States Constitution sets forth a guarantee that “Congress shall make no law prohibiting . . . the free exercise of religion.”⁴⁸ The courts employ the compelling interest test to determine whether a violation of the free exercise clause occurred. The compelling interest test includes two steps: (1) whether the beliefs are sincere and whether the government imposes a substantial burden in the free exercise of religion;⁴⁹ and (2) whether a compelling government interest of the least restrictive means outweighs the burden imposed.⁵⁰

However, the Constitutional guarantee became somewhat inapplicable to protecting the free exercise of Native American religion and religious practices because of Supreme Court Indian law jurisprudence. In particular, *Lyng v. Northwest Indian Cemetery Protective Association* holds that the government did not violate the free exercise of religion without applying the full government compelling interest test.⁵¹ Like *Lyng*, the Ninth Circuit en banc in *Navajo Nation v. United States Forest Service* did not analyze whether the government action was compelling and whether it employed the least restrictive means. The Ninth Circuit stated, “The government is not required to prove a compelling interest for its action or that its action involves the least restrictive means to achieve its purpose, unless the plaintiff first proves the government action substantially burdens his exercise of religion.”⁵² The Ninth Circuit did not employ the strict scrutiny test mandated by RFRA when it denied the Navajo Nation the fundamental freedom to freely exercise our religion.

Lyng also ignores the collective rights Native Americans hold toward sacred sites by ignoring the strict scrutiny test and validating the destruction of Native American sacred area through a land status theory. *Lyng* states, “[w]hatever rights the Indians may have to the use of the area; however, those rights do not divest the Government of its right to use what is, after all, its land.”⁵³ The *Lyng* court grossly de-valued the relationship between Native Americans and the land.

The Ninth Circuit en banc likened the building project in *Lyng* to the use of recycled wastewater on the San Francisco Peaks and stated that even though the government action will “virtually destroy the . . . Indian’s ability to practice their religion . . . we simply cannot uphold the plaintiffs claims of interference with their faith”⁵⁴ and still be in accordance with *Lyng*. Also, the

⁴⁶ Jessica M. Wiles, *Have American Indians Been Written Out of the Religious Freedom Restoration Act?*, 71 MONT. L. REV. 471, 498 (2010).

⁴⁷ *Navajo Nation*, 535 F.3d at 1114.

⁴⁸ U.S. CONST. amend. I.

⁴⁹ *See, e.g., Ashcroft v. ACLU*, 542 U.S. 656, 657 (2004).

⁵⁰ *Id.*

⁵¹ *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. at *passim* (involving a proposed construction of a logging road through the sacred high country of three tribes located in the federal lands known as the Six Rivers National Forest where the tribes conducted ceremonial practices for generations).

⁵² *Navajo Nation*, 535 F.3d at 1069.

⁵³ *Lyng*, 485 U.S. at 453.

⁵⁴ *Navajo Nation*, 535 F.3d at 1073.

Ninth Circuit also emphasized that the sacred site was located on “government owned” “public” land and that beneficial ownership could become a factor to establishing any rights to sacred sites for the purpose of exercising religion.⁵⁵ Not only did the U.S. courts read Native Americans out of the RFRA, they also wrote Native Americans out of free exercise clause.⁵⁶

The Ninth Circuit reaffirmed the premise that Native Americans are not protected by the Constitution notwithstanding that the desecration of the sacred site compromises the entire Navajo Life Way. Therefore, the holdings in both *Lyng* and *Navajo Nation* underscore the need for implementation of the UNDRIP because without recognizable rights to continue the practice of religion, Native American and Indigenous peoples ways of life will be irreparably damaged without a legal remedy.

⁵⁵ *Id.* at 1072 (stating “no disrespect for these practices is implied when one notes that such beliefs could easily require *de facto* beneficial ownership of some rather spacious tracts of public property”).

⁵⁶ *Lyng*, 485 U.S. at 476 (Brennan, J. dissenting) (stating “the Court holds that a federal land-use decision that promises to destroy an entire religion does not burden the practice of that faith in a manner recognized by the free exercise clause. Thus, stripped *respondents and all other Native Americans of any constitutional protection* against perhaps the most serious threat to their age-old religious practices, and indeed their entire way of life.”) (emphasis added).

CHAPTER III. Review of Domestic Remedies

Executive Orders 13007 - May 24, 1996

United States President William J. Clinton authorized Executive Order 13007 on May 26 1996. His presidential memorandum required federal agencies to the extent practicable and allowed by law, to allow Native Americans to worship at sacred sites located on federal property and to avoid adversely affecting the physical integrity and accommodate access to and ceremonial use of sacred sites. While this Executive Order encourages tribal consultation and discussion with Indigenous nations, it does not protect sacred sites located on private or state land. Moreover, Executive Order 13007 does not supersede federal policy nor does it prevent the desecration or potential harm to a site, but merely provides reasonable time to comment on proposed actions or land management policies that are to be undertaken on a sacred site.

The Executive Order offers the following definition of a sacred site as “any specific, discrete, narrowly delineated location of Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of religion; provided that the tribe or appropriately representative of an Indian religion has informed the agency of the existence of a such a site.” This definition is troublesome, as it assumes that sacred sites are significant to a confined area. Furthermore, it assumes that Native Americans have separated their religious practices from all other aspects of their social life or life way. This is far from the truth. Indigenous nations have since time immemorial practiced a holistic life way where there are no delineations that separate religion, government, cultural and traditional customs. Indeed there is a need to strengthen Executive Order 13007 by directly revisiting federal policies that impede the protection and preservation of sacred sites and places. Moreover, procedural procedures must include Indigenous nations and federal policies must originate from the perspectives of Indigenous peoples.

United States Department of Agriculture Forest Service

The support for United Nations Declaration on the Rights of Indigenous Peoples by the U.S. President Barack Obama on December 16, 2010, initialed a review of all federal policies, regulations and procedures of programs that assist and support Indigenous nations in the U.S. The Forest Service hosted a series of tribal listening sessions to seek input and information on existing policies and to assess the effectiveness of these policies with Indigenous nations. The Navajo Nation Human Rights Commission reviewed the draft report to the U.S. Secretary of Agriculture on the review of the document entitled, *Forest Service Policy and Procedures*

*Review of Indian Sacred Sites*⁵⁷ before its submission to the Secretary. The Commission identified five areas of concern.

The first issued cited was the lack of protection and preservation of sacred sites. Forest Service was encouraged to develop new policies and regulations that would provide absolute protection to these sites. Moreover, Forest Service were encouraged to incorporate into these new policies and regulations contained in the United Nations Declaration on the Rights of Indigenous Peoples. It was also strongly recommended that the Forest Service abandon its statement pertaining to sacred sites and broaden that to include sacred places, which encompasses large areas where sites are concentrated in. It is well known that many sacred sites are not limited to specific landmarks or sites. By incorporating the concept of places, the language provides for a more inclusive understanding of an area. The final draft report had not been approved by the Department of Agriculture at the completion of this report. We will not know if the recommendations offered by the Commission will be incorporated into the final report.

Federal policies that the U.S. Department of Agriculture enforce through the Forest Service also erode the principles of the religious freedoms and practices that Indigenous peoples desire to maintain and that are rightfully theirs to practice. During the course of this investigation, the Commission became aware of the on-going federal jurisprudence assault on Indigenous religious rights and the right to manage lands, territories and resources around Doko'oosliid, the San Francisco Peaks in Flagstaff, Arizona. Doko'oosliid is sacred to the Navajo people and other Arizona Indigenous nations. The seventy-year-old dispute involves Forest Service's approval for the development and construction of a ski lodge and a road on Dokoo'sliid since 1930. In 1977, the Forest Service approved the expansion of the ski resort to include four additional ski lifts, fifty acres of trails, a new lodge and additional parking area. This expansion increased the ski complex by 777 acres. At the same time, in 1977, the Arizona Snowbowl Resort Limited Partnership ("Snowbowl") requested permission to expand their ski resort operation by 47%, which included the installation of piping that will pump used reclaimed sewage water to make snow at the resort. Since the ski operation's request for permits from the Forest Service, the Navajo Nation and other Arizona Indigenous nations have expressed their opposition based upon the sacredness of the mountain. The Arizona Indigenous nations were joined by the Sierra Club, the Flagstaff Activist Network, the Center on Biological Diversity and the Save the Peaks Coalition in their opposition to the desecration of the mountain as a sacred site. A lawsuit was filed to stop the Forest Service from permitting the expansion and the use of reclaimed sewage water on the Peaks, which since time immemorial is a sacred living deity to many Arizona Indigenous nations. Much to the dismay of the Navajo Nation and other Indigenous nations in Arizona the only alternative and after failed discussions with representatives of the U.S. government and City of Flagstaff, the permit to expand the site and to allow the use of reclaimed water was approved.

⁵⁷ U.S. Dep't of Agric. Forest Service Off. of Tribal Relations, *Draft Report to the Secretary. USDA and Forest Service Policy and Procedures Review: Indian Sacred Sites*, June 2011 (on file with author).

The United States District Court ruled in favor of the Snowbowl expansion in January 2006. However, upon appeal, the Ninth Circuit reversed the decision on March 12, 2007. Proponents of the ski expansion immediately filed an appeal to the Ninth Circuit decision and requested that a larger panel of appellate judges hear the case. A vote of 8-3 reversed the decision rendered by a three-judge panel in February of 2012. The Navajo Nation and other interested parties filed a petition with the Supreme Court requesting reconsideration of the Ninth Circuit court's ruling on January 5th, 2009. The United States Supreme Court refused to consider the lawsuit, thus leaving the decision of the appellate judges to remain. The Supreme Court's refusal to reconsider the lower court's ruling sends a clear message to Indigenous nations that religious practices and sacred sites are not protected under any current United States law or policy. The concept of private ownership to rights of property and land as a primary resource for profit are protected by the U.S. Constitution in ways that Indigenous sites and places are not. The U.S. has declared a general trust responsibility towards its Indigenous peoples. However, the U.S. has failed to protect sacred sites, thereby failing to preserve and protect the cultural integrity of Indigenous nations.

The Commission, deeply upset and discouraged by the decision rendered on February 9, 2012 by the Ninth Circuit en banc panel, looked closely at the composition of the sitting Ninth circuit judges who rendered the latest decision. It is again, very clear that public business interests superseded the protection and preservation of Navajo sacred sites and places. When the three panel judge issued its written opinion on June 21, 2012, our investigation revealed that eight of the eleven en banc panel judges were appointed by Republican Presidents. Judge Milan D. Smith Jr., the son of a former Assistant U.S. Secretary of Agriculture and the brother to former Republican Gordon H. Smith of Oregon, authored the opinion and kept to his moral principles of putting business first and thereby subjugating the San Francisco Peaks and its holy environment to further abuse and desecration.

This opinion rendered by the highest court in the region, should be an awakening to Indigenous nations that the Constitution, which the U.S. triumphs is the law of the land, begins with "*Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof,*" has a different application to Indigenous nations. This is why we, Indigenous peoples must seek international recourse as federal laws and polices provide very little protection.

CHAPTER IV. Review of International Mechanism

The U.S. Constitution is often invoked to declare that the structure and function of the government is based on the *will* of the people, thereby legitimizing its actions and decisions. While many citizens of the United States laud the Constitution as democratic and principled, for Indigenous nations and indigenous human rights, the Constitution as the law of the land have entirely different meanings, implications, and applications within the U.S. justice system. Major parts of federal law dealing with Indigenous lands violate articles of the Constitution, including the doctrine of plenary power which gives unlimited power to the federal government to regulate, manage and oversee Indian nations. The status of Indigenous nations as domestic dependents of the United States has resulted in the dispossession of Indigenous lands and resources and has been a major source of contention between European settlers and Indigenous peoples since the fifteenth century. At the point of contention is how land is viewed. For Indigenous peoples of the U.S., the United States government does not acknowledge their concepts of land. However, in contradiction, immigrants to the U.S. often have their claims to land upheld by the Constitution and through federal laws and policies.

Indigenous nations' attempts to seek justice redress and to preserve sacred sites and places under U.S. laws and policies have not been successful. Thus, these laws remain unjust and unworkable for Indigenous peoples. Therefore, because U.S. laws cannot address Navajo human rights violations, the Commission has deemed it necessary and imperative to seek relief through the mechanisms of international law. The Commission examined four international mechanisms that provide an opportunity for the Navajo Nation to continue on its path to self-determination and to reaffirm Navajo efforts to end discrimination as recognized by international law. Further, Navajos possess collective rights which are indispensable to their rights to live in a manner they deem fit and to develop in ways that are conducive to their cultural and traditional practices.⁵⁸ In this review the Commission looked to how the mechanisms could be used to effectuate federal policy changes.

United Nations Declaration on the Rights of Indigenous Peoples

On September 13, 2007, the United Nations General Assembly passed the United Nations Declaration on the Rights of Indigenous Peoples. This momentous declaration compliments the 1948 passage of the United Nations Universal Declaration on Human Rights.⁵⁹ UNDRIP recognizes the inherent rights of Indigenous peoples to live with their philosophies of life which were in place prior to European and then American colonization. These standards of UNDRIP set the standard to guarantee Native Americans the rights to protect and preserve sacred sites and

⁵⁸ UNDRIP, *supra* note 3, Preamble

⁵⁹ Universal Declaration of Human Rights, UN G.A. Res. 217 A (III), U.N. Doc. A/810 (1948) [hereinafter *Universal Declaration*].

places. A majority of one hundred and forty-four (144) nations-states voted in favor of UNDRIP, while four (4) votes against it. The four nations who voted against the declaration were Australia, Canada, New Zealand and United States. However, since January 2011, all four nations offered their support to UNDRIP. The U.S. has yet to ratify UNDRIP.

In December of 2010, President Barack H. Obama issued an *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*,⁶⁰ which “express[ed] [the] aspirations of the United States, aspirations that this country seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies.”⁶¹ However, UNDRIP remains a non-legally binding document. The Navajo Nation has urged the U.S. to adhere to the international standards of UNDRIP.

Indigenous nations and peoples throughout North American embraced UNDRIP as it is the first acknowledged international doctrine that protects the human rights of Indigenous peoples. Moreover, Indigenous peoples from all over the world were directly involved in developing the articles that are presented in UNDRIP. Principle to UNDRIP is that “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁶² UNDRIP presents the best opportunity for the Navajo Nation to affirm its legal rights to self-government and to its own management of land, minerals and resources.

The Commission appropriated the standards from UNDRIP to determine the violations of human rights as related to Navajo sacred sites and places that are threatened, effaced and destroyed. The Commission also included Navajo citizens’ complaints of access to sacred sites/places and the hampering or prevention of their abilities to conduct prayer ceremonies at the sites. During the public hearings, the Commission heard participants described the desecration of sacred sites and places and the inability to access these sites. Further, when these sites were outside the boundaries of the Navajo Nation, it was even more difficult to access them.

Article 11 of UNDRIP states, “Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.” The Navajo people made it very clear that on various occasions they were deprived of the right to offer prayers or to pay homage at a sacred place because the land no longer fell within the boundaries of the Navajo Nation. This theme was notable at all of the hearings. The Commission noted that Navajo experts were also denied opportunities to participate in archaeological investigations that were taking place, even when Navajos could place the sites of

⁶⁰ U.S. Dep’t of State, “*Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples: Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples*,” available at <http://www.state.gov/documents/organization/153223.pdf> (last visited June 16, 2011).

⁶¹ *Id.* at 1.

⁶² UNDRIP, *supra* note 3, Art. 3.

excavation and study within the realm of Navajo traditions and oral history. Article 12 of UNDRIP also insulates the traditional relationship to sacred sites through prayers, chants and offerings that are exercised daily in the Navajo Life Way. It states, “Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.”

Article 25 of UNDRIP expressly addresses the inherent rights of Indigenous peoples to maintain and strengthen their distinctive relationship with their traditional lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations. As testimonies have established, there is no separation between the Diné, the land, and the imperative to care for the land. Further, this relationship between Navajos and the land is based upon the creation narratives in which it is clearly delineated that the Holy People guided First Man and First Woman to the region within the four sacred mountains and that they established the boundaries of Diné Bikéyah. Today the Diné continue to honor these relationships to the land and to each other through prayer and ceremonies. The Navajo people have the inherent right to practice and maintain their ties to land they hold sacred.

Finally, Article 3 speaks to Indigenous peoples’ rights to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in cases where they exist, juridical systems or customs, in accordance with international human rights standards. The Commission found that every U.S. federal act designed to protect and preserve Navajo sacred sites or places has fallen short of these objectives. Indigenous peoples’ distinctness is determined by traditional, cultural and political teachings that are conveyed through their language, prayers, and life ways; which make up Indigenous peoples’ human rights, individually and collectively. It was clear that the Navajo people’s rights to promote and develop their own customs and laws to protect and preserve sacred sites and places have been, and continue to be, greatly impeded.

These four Articles of United Nations Declaration on the Rights of Indigenous Peoples support the principles of Diné Fundamental Law of the Navajo people. Together these documents reinforce the inalienable rights of Indigenous nations and specifically, the Navajo Nation, to continue to practice, revitalize, develop, teach, strengthen and maintain traditional ceremonies, prayers, sacred sites and resources without the interference or fear of global dominant maneuvers that purposefully alter the life way of a people. The four sacred elements of life – air, light/fire, water and earth/pollen are the foundation of the people’s spiritual ceremonies and Diné Life Way. Therefore, it is the duty and responsibility of the Diné to protect and preserve the natural world where sacred sites and places exist for future generations.⁶³

⁶³ 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).

International Convention on the Elimination of all Forms of Racial Discrimination

The Committee on the Elimination of Racial Discrimination (“CERD”) is the body of independent experts that monitors the implementation of the Convention on the Elimination of All Forms of Racial Discrimination (“Convention”)⁶⁴ by its State parties. CERD was adopted by the General Assembly of the United Nations in Resolution 2106 on December 21, 1965. It was later ratified by Congress on October 21, 1994. However, prior to ratifying the Convention the United States Senate asserted comments that hamper the obligations contained in the Convention. The U.S. based its commentary on an internal study of the requirements of the Convention and examined existing domestic law and policy. That study concluded that the U.S. laws, policies and government institutions are fully consistent with the provisions of the Convention.⁶⁵ Moreover, the Senate held the Constitution provides the necessary protections of individual freedom of speech, expression and association and therefore does not accept any obligation under this Convention, in particular to Articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the U.S. The Senate included the following reservations, “The Constitution of the United States contains provisions for the protection of individual rights, such as the right of free speech, and nothing in the Convention shall be deemed to require or to authorize legislation or other action by the United States of America incompatible with the provisions of the Constitution of the United States of America.”

The Navajo Nation has had a tumultuous relation with the Forest Service since the U.S. established authority over lands, territories and resources in 1881.⁶⁶ Navajos traditional occupied the region surrounding the San Francisco Peaks and Flagstaff, Arizona since time immemorial. The presence of the Diné and their use of the land had been largely ignored by Forest Service personnel since 1881. The issue concerning the desecration of San Francisco Peaks by the Snowbowl reached with United Nations Office of the High Commission for Human (“Office of the High Commissioner”) rights through the submission of a complaint filed by the Commission. The Commission learned on August 26, 2011, the Navajo complaint was dismissed because of Article 14.1 of the Convention which required that the U.S. consent to the filing of the complaint against itself. Because this step was not cleared with the U.S. State Department, the Commission’s complaint was dismissed. Since all domestic legal remedies were exhausted the Commission felt it was compelled to bring this matter before an international forum.

⁶⁴ International Convention on the Elimination of All Forms Racial Discrimination, U.N. G.A. Res. 2106 (XX) (December 21, 1965).

⁶⁵ *Third Periodic Report from the United States to the International Convention on the Elimination of all Forms of Racial Discrimination*. Rep. of the U.N. CERD, Oct. 10, 2000, U.N. Doc. CERD/C/351/Add.1 (Sept. 21, 2000).

⁶⁶ The Forestry Reserve Act of 1891 established by U.S. Congress.

Convention Concerning the Protection of the World Cultural and Natural Heritage

Another convention reviewed was the Convention Concerning the Protection of the World Cultural and Natural Heritage (“UNESCO”).⁶⁷ UNESCO links together in a single document the concepts of nature conservation and the preservation of cultural properties. UNESCO recognizes the way in which people interact with nature, and the fundamental need to preserve the balance between the two. The *Convention concerning the Protection of World Cultural and Natural Heritage* was adopted by the General Conference of UNESCO of which the U.S. is a member, on November 16, 1972. The following year the United States ratified UNESCO on July 12, 1973.

UNESCO sets standards for the designation of sites that are to be protected. To be included on the World Heritage List, sites must be of outstanding universal value and meet at least one out of ten selected criteria. Upon achieving the designation of either a natural or cultural site, resources become available to restore, protect and preserve the site in its natural presentation. There are 962 properties identified on the world heritage list that are protected by UNESCO. In the U.S. only three Indigenous sites are recognized. They are Mesa Verde National Park, Chaco Cultural Site, and the Pueblo de Taos. Thirty-eight properties are listed as endangered globally, with the Florida Everglades National Park as the only endangered natural site in the United States.

While examining Article V of UNESCO, it states, “*To be an outstanding example of a traditional human settlement, land use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change*” as Article VI reads, “*To be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance,*” the two articles provide a reasonable avenue for the Navajo Nation to examine more thoroughly as it relates to cultural and natural sacred sites and places especially in relation to testimony provided by Mr. Taft Blackhorse. The Navajo archeologist, Blackhorse found that through traditional Navajo ceremonial chants and prayers; the reference to specific historical sacred items and artifacts found in certain locations affirm the Diné’s presence prior to 1500’s. This finding clearly dismisses the findings of Anglo anthropologist and archeologist who unfortunately have the ears of decision makers that make the final decisions on designating specific sites as protected.

Although UNESCO has been ratified by the U.S., there is little hope that any of the Navajo Nation’s cultural or sacred sites or places would meet the criteria of UNESCO and therefore be permanently protected from any intrusion that could disturb the delicate balance of nature and the people. UNESCO’s past record has its shortfalls. It funded the complete dismantlement and movement of ancient temples treasured by Egyptians to allow for the construction of the Aswan High Dam in Egypt. Furthermore, because the temples were

⁶⁷ United Nations Educational, Scientific and Cultural Organisation, *Convention concerning the Protection of the World Cultural and Natural Heritage*, Adopted by the General Conference, 17th session Paris, available at <http://whc.unesco.org/archive/convention-en.pdf> (Nov. 16 1972).

considered an international community interest, support from global heritage organizations, archeologists, anthropologist and the member nations of UNESCO recognized the economic benefits to the people and also the need to preserve the temples.

United Nations Universal Periodic Review

As noted in this report, the U.S. has been a member state to the United Nations since it was established after the Second World War. It facilitated the consideration and adoption of the Universal Declaration of Human Rights, upon which other international bills of human rights were adopted.⁶⁸ At the turn of the millennium, the United Nations recognized the need to restructure in order to more effectively implement human rights laws with all member state countries. All 192 member states agreed to implement a periodic review of member nation-states to report and determine individual efforts to implement human rights declarations, covenants, laws and treaties through nation-states respective domestic laws.

The Navajo Nation Human Rights Commission co-hosted listening sessions in preparation for the U.S.'s UPR and submitted questions to the Office of the High Commissioner. All members of the United Nations have an opportunity to make recommendations to nation-states under review. When the U.S. was reviewed in November 2010, it received numerous recommendations and suggestions. In response to recommendations pertaining to rights of Indigenous peoples, the U.S. supported the following:

83: Implement concrete measures consistent with the Covenant on Civil and Political Rights, to ensure the participation of Indigenous Peoples in the decisions affecting their natural environment, measures of subsistence, culture and spiritual practices.

85: Formulate goals and policy guidelines for the promotion of the rights of Indigenous Peoples and cooperation between government and Indigenous Peoples.

200: Guarantee the rights of Indigenous Americans, and to fully implement the United Nations Declaration on the Rights of Indigenous Peoples.

202: Adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples.

203: Endorse the United Nations Declaration on the Rights of Indigenous Peoples when completing its national review process.

205: Continue its forward movement on the Declaration of the Rights of Indigenous Peoples.

⁶⁸ Universal Declaration, *supra* note 60, at Art. 18: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

206: Guarantee the full enjoyment of the rights on natives of America in line with the United Nations Declaration on the Rights of Indigenous Peoples.⁶⁹

The U.S. supported the following in part:

199: End the violation of the rights of Indigenous Peoples.

201: Recognize the United Nations Declaration on the Rights of Indigenous Peoples without conditions or reservations, and implement it at the federal and state levels.⁷⁰

The United States will be under review in April or May 2015. It is essential that the Navajo Nation and its agencies mobilize to ensure that the U.S. implements its support of the above recommendations. It is even more essential that the Navajo Nation make recommendations as to how domestic laws should be amended to reflect the legal standards recognized in UNDRIP. As an example, Article 3 of UNDRIP must be fully implemented, coupled with the requirements under the articles pertaining to ownership of surface and subsurface resources. Professor Erica-Irene Daes,⁷¹ Special Rapporteur of the United Nations Working Group on Indigenous Populations, acknowledged that peoples in exercising the right of self-determination must have full authority over the management and use of their lands. She further stated in her report to the Sub-Commission on the Promotion and Protection of Human Rights Fifty-sixth session stating that “[a]s a result, it has become clear that meaningful political and economic self-determination of Indigenous Peoples will never be possible without Indigenous Peoples’ having the legal authority to exercise control over their lands and territories.”⁷²

It is therefore imperative that the Navajo Nation ensure that it is represented in various United Nations forums, including the preparation and presentation during the April-May 2015 U.S. UPR.

⁶⁹ U.S. Dep’t of State, *UPR Recommendations Supported by the U.S. Government*, available at <http://www.state.gov/j/drl/ups/recommendations/index.htm> (last visited on July 18, 2014)

⁷⁰ *Id.*

⁷¹ Professor Dr. iur. Erica Daes, *Founding Chairperson & Special Rapporteur, United Nations Working Group on Indigenous Populations; Member, United Nations Sub-Commission on the Promotion and Protection of Human Rights*, available at <http://www.stu.edu/IMGFCK/misc/facultyws1/eidaes.pdf> (last visited on July 18, 2014).

⁷² U.N. Comm. on Human Rights, Sub-Comm. on the Promotion and Protection of Human Rights, Rep. on Prevention of Discrimination, Prevention of Discrimination and Protection of Indigenous Peoples, U.N. Doc. E/CN.4/Sub2/2004/30/Add.1; ECOSO, 65th Sess. (July 12, 2004) at 5, para. 8.

CHAPTER V. Hearing Summaries

The summary of the testimonies on sacred sites was approached with extreme care and respect. Diné protocols required that the Commission demonstrate respect to the words, actions, prayers and spiritual forces that were involved in the gathering of this information. Diné words especially in this context of researching and even talking about the past is considered sacred. The disturbance to plants, fire pits, sacred ground and shelters were conducted with the utmost respect to the surroundings. It was therefore imperative that Commission staff exercise great care in the delivery of all aspects of this important study. Many that testified identified themselves through proper Navajo protocol by identifying maternal and paternal clans. This information was omitted as the Commission believed some anonymity of the presenter should be preserved. Moreover, the identification of specific sacred sites are purposefully omitted as these areas have great reverence to Navajo families and clans.

Crownpoint, (Navajo Nation) New Mexico July 20, 2010

Ericke Willie: A young Navajo medicine man spoke to the conflict when business people develop a business site and have no concern for the sacredness of the land. Many regions of the land were referenced by name and were recognized to possess a significant reverence for medicinal, ceremonial or personal sacredness. The sites had cultural and historical ties confirmed through ceremonies, stories and divine discovery. According to Mr. Willie, the business people only want to make money and bring danger to the land. They do not take the additional measures to correct the damage or wrongs that are imposed on the land. Mr. Willie alluded to previous studies that documented the dangers of uranium mining and other land explorations that were ignored. Mr. Willie wanted laws to protect these sites and to protect livestock and children that live on and use the land in the area. Mr. Willie proceeded with identifying thirty-eight sacred sites in the Whitecliffs, Churchrock, and Springsteads area of New Mexico.

Pete Watchman: Mr. Watchman came from Mexican Springs, New Mexico to present two issues. His first interest was a request to be considered for an appointment on the Navajo Nation Human Rights Commission. Mr. Watchman was a former Council Delegate and served on various boards that enhanced his knowledge of Navajo history, culture and government. Mr. Watchman's second issue was about sacred sites and cultural teachings and how the Navajo Nation as a whole moved toward the acceptance of Western European thinking. He recalled in 2002 the Navajo Nation Council passed the Diné Fundamental Law with the intent to restore traditional laws into Navajo government. Mr. Watchman reminded the Commission and members in the audience of the need to be respectful and knowledgeable of all sacred sites, traditional teachings and ceremonial prayers that are instrumental to the Diné existence.

Leonard Perry: Mr. Perry was born and raised in Crownpoint, New Mexico. He was a Ph.D. candidate at the University of New Mexico studying Indigenous philosophy with an emphasis in Navajo and Southwest study. Mr. Perry is a member of the Crownpoint Historical and Cultural Heritage Council of Crownpoint, New Mexico. This organization was responsible for the preservation of ceremonial sites, stories and sacred paraphernalia in this region. Mr. Perry contended there needs to be a repository of cultural information that would document all sacred elements contain in the region. His interest was to preserve the information and have the information available for future generations. He believed Navajo people were losing their cultural teachings. Mr. Perry believed identity is important. As put, *“If you don’t understand your history, you’re losing a part of yourself. If you don’t understand certain areas in your area, and what they mean, then you’re losing a part of yourself.”*

Dan Vicenti: Mr. Vicenti concurred with testimony provided by the two previous speakers. The entire earth was sacred to him. His concern was with the use of non-renewable energy resources that were dug out of Mother Earth. Mr. Vicenti comments included the enormous use of wood used by Navajo families. There was no plan to replenish or re-seed those areas that were cleared from wood gathered. He added there was no water for the people but water for the mining companies. Navajo families remain without water and electricity. He repeated what we have come to know, *“Water is sacred and should be given special attention as any other sacred site.”* Mr. Vicenti reported that community members were very concerned with water contamination, uranium exposure and how that affected the development of their community. He was troubled about the depletion of vegetation and advocated for cleaner fuel efficiency. Mr. Vicenti would like to see more wind and solar energy development as these alternatives are more environmentally friendly. Another human rights issue raised by Mr. Vicenti dealt with discriminatory business practices Navajo consumers continue to confront with Gallup businesses. He supported public education actions taken by a representative of the New Mexico Attorney General’s Office. Mr. Vicenti’s concluded with a personal observation of the way the Navajo language was used today. There is an integration and exchange of both English and Navajo verbiage in communication today. This was bothersome to Mr. Vicenti as it adds to the corrosion of the Navajo language, cultural values and teachings.

Rena Martin: Navajo Anthropologist/Archeologist Rena Martin spoke on two issues. The first concerned the Navajo Employment Preference Act. As a Navajo Anthropologist, Ms. Martin believed Navajo experts should be given preference in hiring especially when conducting field work on the Navajo Nation. Instead, these contracts are given to non-Navajo experts who take the finished product with them after completing it. Ms. Martin held previous positions with the Navajo Nation Historical Preservation Department and the Navajo Nation Archeology Department where she raised these issues with Navajo officials, including her Supervisor. She left the Historical Preservation Office because she believed Navajo experts should be responsible

for the documentation of all sacred sites and not outsiders. Ms. Martin believed the current director did not have the Navajo Nation's interest to protect or preserve these sites. Ms. Martin's second issue concerned the Historical Preservation Department and the overall management of the office which was under the leadership of a non-Navajo. She recommended an advisory council provide oversight to the department and that a review of current laws and policies that protect sacred sites also be undertaken. Ms. Martin also complained about the RRB (Research Review Board) and the appointment of non-Navajo citizens on the board. She was uncomfortable with non-Indians representing and protecting Navajo human rights. Ms. Martin would also like to see more cultural information provided to youth. In her line of work she had witnessed the desecration of sacred places and artifacts. She was very disturbed about this. Ms. Martin reported their studies and findings were sent to Navajo Nation Historical Preservation Department, but she was unsure as to what happened with them.

Unidentified Speaker: A speaker not identified raised issues regarding discrimination practices at a local chapter house. This person helped an elder Navajo lady who suffered from cancer with housing. The elderly lady was turned away from the chapter she was enrolled with. She had housing and therefore could not be assisted again. This speaker reported five families shared a three bedroom home. Youth in the home applied for summer employment and were all turned down. Chapter personnel had hired their children to work in the positions at the chapter house. This speaker understood this situation to be discrimination perpetrated by Navajo officials. An application to file a complaint with NNHRC was provided to this speaker.

**Fort Defiance, (Navajo Nation) Arizona
July 21, 2010**

Nicole Johnny: Ms. Johnny identified an area call Diablo Canyon near Ch'ooli'i, (Gobernador Knob) New Mexico where ancient petroglyphs were etched and are now removed. The site was considered sacred and there was no consistent protection to stop the vandalism and partying that appeared to be going on near these sites. Ms. Johnny hoped the Navajo Nation Human Rights Commission would get this site protected. It was identified as the site where the Diné emerged into this world.

Karen Johnny: Ms. Johnny was the mother of the previous speaker. She spoke about her visit to Ch'ooli'I, Diablo Canyon and Three Corn Ruin, New Mexico when she was a student at Diné College. Ms. Johnny travel to the site as part of a course requirement for Navajo History. Ms. Johnny confirmed the condition of the petroglyphs and the debris that surrounded the area. Ms. Johnny wanted the sites preserved and protected. The field trip was a very moving experience for the students. As a single parent she believed that it was her personal responsibility to teach her children about the Diné emergence story. The preservation of this site had to be protected.

Charles Yazza: Mr. Yazza spoke briefly and welcomed the audience to the Chapter House.

Roger Shirley: Mr. Shirley began his testimony by relaying conversations he had with medicine people who believed the study on sacred sites required a protection ceremony and should include the expertise of medicine people. He expressed some disillusionment with the way the San Francisco Peaks lawsuit had been handled. He recommended a Navajo protection ceremony be conducted to protect the actions taken against the Peaks. He spoke about the detention of Navajo ancestors at Fort Sumner and how they spent four days praying for their release and protection from General Sherman and the U.S. Calavery. Each day that General Sherman negotiated with the Navajos, they conducted a protection ceremony. On the fourth day, they received word from General Sherman that he decided to allow them to return to the land between the four sacred mountains. He emphasized the sacredness and power behind this ceremony. He asked the Commission to consider conducting the protection ceremonies for the San Francisco Peaks. It worked in the past and it would work again according to Mr. Shirley. Another concern raised by Mr. Shirley was with the name, Navajo. He heard Navajo derived from the word Nabajo, which met a person that steals. He did not approve of the Diné using this derivative especially since it is associated as “stealers.” The word Navajo implied negative connotations that the U.S. government used to identify the Diné and to subjugate policies against the Diné. Mr. Shirley expressed concern about the collection of sacred Navajo ceremonies that were housed at the University of Arizona in Tucson, Arizona. He reported this collection was comprehensive and contained information of ceremonies that are no longer preformed and the ceremonies in the collection provide a detail description of actions, chants and motions taken between the time when a medicine man arrives to when he departs. Mr. Shirley wanted to see this collection housed at the Navajo Nation museum. He believed the Navajo Nation should have possession of its cultural properties and preserve the contents for future use by medicine people. Mr. Shirley expressed concern with other religious influences that had penetrated the Navajo Nation. He recalled a sacred Navajo ceremony called ma’ii bizee’naast’aani, which was conducted twice. This ceremony is considered a traditional sacred ceremony and makes no delineation between religion and the Navajo Life Way. He wanted to make it clear that the Navajo Life Way was grounded in Navajo tradition that has a distinct language, culture and Life Way. He did not believe Christianity and the Native American Church entailed this distinctness. Mr. Shirley implored the importance of sustaining the Navajo life-way for perpetuity.

Roy Keeto: Mr. Keeto was from Window Rock, Arizona and spoke about the rock formations near the Navajo Nation Museum. Each rock was reference by name Standing Cow, Rock Cliff or Pile of Rocks. These names are significant to a story of a giant snake that lived near the area. The people tried to get rid of the snake, but in the process they turned into rocks. Mr. Keeto felt that people who climbed the rocks had no respect for the sacredness of the rock formation. Mr. Keeto also reported the rocks north of Window Rock were also people. Many of Mr. Keeto’s extended family members were laid to rest in areas where the current governmental complexes

are located. Prior to the construction and growth of the Navajo Nation, the Keeto family occupied that area. The family on numerous occasions sought answers from the Bureau of Indian Affairs and Navajo Law Enforcement on where the remains of family members were moved. Mr. Keeto had not been given an answer yet. He had pursued this matter for over six decades now.

Willie Keeto Sr.: Mr. Keeto Sr. expressed concern about the of gathering information on the Blessingway and One Night Chant ceremonies by Catholic priest who had a significant presences in the early part of Navajo history. A priest known to many as the *little priest* spoke Navajo and gathered the information. A book was made and received tentative review from some Navajo council delegates. The book was never fully approved for publication or dissemination. However, the information was reported to have been removed from the local parish to the University of Arizona. He wanted the information returned to the Navajo Nation. Mr. Keeto believed other documents were missing that pertained to sacred sites and ceremonies from this area. He spoke about the Yei'bei'chei ceremony that was held in conjunction with the Shiprock fair the first week in October of every year. He referred to a conversation with a medicine men who advised against having the Yei'bei'chei with the fair. The ceremony was to be performed only upon the first hard freeze and was very sacred. It should not be mixed with activities of a fair. Mr. Keeto's message was taken very seriously when he first raised the issue. However the people responsible for the fair continued to combine the two activities, which he and other elders believed cause the drought that the Navajo Nation is experiencing now.

Harris Francis: Mr. Francis begun with an introduction of the archaeology assignments he and Dr. Kelley completed while working with the Navajo Nation. Dr. Kelley and Mr. Francis archived oral stories and the relationship to sacred sites and ceremonies that were known among the people living nearby. Unfortunately, Mr. Francis reported the sites had been desecrated. He was bothered that there is no law enforcement nor is the Navajo Nation government concerned with the destruction of the sites. Mr. Francis was visible upset when he spoke about non-Indian contractors that purposefully violate these sites and are not penalized. He added he would like to see more Navajo contractors and Navajo archeologist work together. Mr. Francis postulated that by developing and implementing severe penalties for the desecration of sacred property, the Navajo Nation could save the language, culture and traditions. He warned the Commission, *"The elder say we are going to cease to be a people one day because of our own doing, and we're going to be replaced by a new race."* Mr. Francis boldly stated the Navajo Nation Historic Preservation program needed to be under the leadership of a Navajo, one who understood why Diné needed to take ownership of their past.

Klara Kelley: Dr. Kelley was an independent Navajo historian and cultural researcher. She previously worked at the Navajo Nation Historic Preservation and Archaeology Department. Dr. Kelley began her testimony with emphasizing the need to develop a protection plan for sacred

places. Dr. Kelley clarified that current Federal, State and Navajo Nation laws and policies do not come into effect, unless there is some disturbance or dispute about the site. She described this protection plan as having identified designated sensitive areas, zones, spots or large areas where there was a concentration of sacred sites and places. The zones would have extra legal protections in place. Dr. Kelley's intent was to alleviate any disputes that develop as a result of construction. She envisioned a well developed plan that would identify zones where areas are classified as off-limits and other zones as sensitive but not sacred. According to Dr. Kelley, the Navajo Nation council directed the Navajo Nation Historic Preservation and Archaeology Department to develop a protection plan over twenty years ago. The plan had never been developed. Dr. Kelley framed the plan as an internal and external mechanism that could reinforce tribal and law enforcement jurisdictions and serve as a permanent standard that would be recognized by the United Nations. This would also serve as a guide when disputes arise with large corporate conglomerates or with the U.S. government. She ended with re-emphasizing that a protection plan would address issues concerning sacred sites before problems arise.

Earl Milford: Mr. Milford, attacked the developers who purposed to use reclaimed water on Dook'o'osliid and compared that to baptizing children in sewage water. To explain his frustration with the desecration of Dook'o'osliid, Mr. Milford referred to the following analogy of how the people in Flagstaff would like it if the Navajo Nation insisted they use sewage water in their holy places and practices. He believe this perspective was the only way to elevate the attention to Dook'o'osliid. He concluded that Dook'o'osliid was a living deity.

Chinle, (Navajo Nation) Arizona

July 22, 2010

Corrina Teller: Mrs. Teller addressed the Commission with concerns about the supervision and management of Canyon De Chelly National Park in Chinle, Arizona. Mrs. Teller informed the Commission of a sacred site located near the opening of the canyon where many continue to make offerings. She reported she had a summer home in the canyon. The canyon was reported to have many sacred places. Her issue was that Navajo families that travel into the canyon to make ceremonial offerings or who reside in the canyon had a hard time entering into the canyon. Mrs. Teller claimed Park Rangers over regulate the entrance. She alleged non-Indian visitors are free to enter and roam about the canyon without the strict and stringent regulations the Navajos have to abide. Mrs. Teller was concerned the sacred sites were not properly protected because she witnessed Anglo visitors in the canyon without guides. Mrs. Teller reported a new park superintendent had been hired and was more approachable and listened to the people. She thought the canyon was under the management of the Navajo Nation. However, there appeared to be some confusion with who was responsible for Canyon De Chelly. Mrs. Teller asked the Commission to check into who managed the canyon and why Navajo people were treated differently than the Anglos. Mrs. Teller did not feel the Navajo Nation government, leaders and

programs responsible to address this matter cared. They had raised this issue many times with them. Promises were made and nothing was done. Ms. Teller also spoke of her sister's concern regarding the Squaw dance's second night. She reported people were erecting fences in areas where second night ceremonies took place. Mrs. Teller was against any fencing. She requested the Commission also look into this.

Bobby Begay: Mr. Begay extended his appreciation to the Commission on behalf of the Diné as he recalled past racial encounters between Navajos and Anglos in Farmington, New Mexico. He too was vividly disgusted with the lack of protection and preservation of sacred sites in Canyon De Chelly, Lukachukai and Round Rock, Arizona. Mr. Begay spoke eloquently about visits to scared places on the Chuska mountain range and observed turtles, squires, chickmucks and birds near these sites. Today, these life forms are no longer seen there. Instead signs that warn of poisonous gas pipelines replaced their habitat. He also complained of an abandoned uranium mine that remained open and not abated. Mr. Begay added the Navajo Environmental Protection Act Program had a reputation of doing nothing and was a big joke. Mr. Begay hoped this office would do everything necessary to protect and preserve sacred places. He wanted youth and children to know about these sites. He also warned the Commission that the information to be gathered on this topic, sacred sites could harm us. He recommended the Commission be very careful and conduct appropriate ceremonies as we begin this study.

Justin Tso: Mr. Tso was a native of the Chinle valley and spent a lot of time in Canyon De Chelly. Mr. Tso recalled earlier days when officials from Washington D.C. managed the park and were respectful and sensitive to the Navajo concerns. His father worked with Park Services for thirty years and certain individuals had privileges to visit sacred sites in the canyon. Today, Navajos undergo tight security clearances to get into the canyon or to go home. Mr. Tso pleaded with the Commission to investigate the management of the canyon, since the Navajo Nation government fail to take an active step to address the matter. Mr. Tso reported that park rangers continued to assess fees to Navajos that live in canyon. He believed this is wrong and speculated it would become a problem. Mr. Tso refused to pay for any fees.

To'Nanees'Dizi', (Navajo Nation) Arizona

July 23, 2010

Marsha Morestersky: Ms. Morestersky was the Project Director for the Forgotten People. She presented information on matters that the Forgotten People worked on. The Forgotten People assisted people in the Bennett Freeze area by providing water and other commodities that were badly needed by the people. Water in this area was contaminated, roads were impassable and livestock and vegetation were no longer affordable to people that occupied the region. Ms. Morestersky spoke of water as a sacred element to the Diné. She mentioned the Forgotten People filed a law suit against the Navajo-Hopi Land Commission to account for the funds

allocated through the Navajo-Hopi Relocation Act. Ms. Morestersky also reported the organization developed a white paper that proposed amendments to ban the transportation of uranium across Navajo land. She stated abandoned uranium mines reading levels were high and therefore hazardous to the health of people living there. She claimed that some levels were highly contaminated that a bomb could be constructed with the uranium that was lying exposed at the mine entrances. She shared her findings with two universities that were to develop maps that plot hazardous spots throughout the Navajo Nation. Ms. Morestersky also spoke about a recent news article that exposed the environmental life threatening conditions that the people in Black Falls, Arizona lived with. Many lived in conditions that represented third-world countries. The Forgotten People filed a suit against Kayenta Mine because the mine capped wells, fenced areas that were not to be fenced and bulldozed vegetation in areas that were off limits to the mine. The organization was also concerned about Hopi's plan to store carbon and other heavy metals beneath the ground. The massive endeavor required further underground excavation. Ms. Morestersky postulated that any sacred sites or places that were still untouched would be permanently destroyed. The group praised the work that Special Rapporteur James Anaya conducted on assessing sacred sites. They hoped he would expand his study to include the desecration of sacred sites at Big Mountain, Peabody and the Kayenta mines. Ms. Morestersky recommended that this Commission advise the Navajo Nation council on issues concerning the injustices that confront the Navajo people. She believed the council was ill prepared to keep up with the issues that plagued relocatees and other endangered Navajos. Finally, Ms. Morestersky offered support for the request to seek the permanent observer status at the United Nations.

C. Dale Rapheal: Mr. Rapheal was of mixed Indigenous blood composed of Mexican, San Carlos Apache and Navajo descent. In his testimony, Mr. Rapheal linked sacred commonalities that his Indigenous heritages held sacred. He reflected on prayers that connect Indigenous peoples to the earth, minerals that were held sacred and contained in the human body. He also spoke about the common recognition of protecting and preserving what was considered sacred. Mr. Rapheal also expressed disdain toward the leadership of local elected leaders. He believed that they were not truthful. According to him they made decisions that were against fundamental law, and customary law. These decisions when became known created hardship, distrust and animosity between the people and government. Mr. Rapheal held close stories that he learned about the name of specific areas (name-place) that had significant value to that area. He recalled several medicine people who inspired and taught him to respect the sacredness of life. Mr. Rapheal's mission was to carry this message where every his life took him. Mr. Rapheal warned Indigenous peoples of federal policies and laws that were created to divide and alienate Indigenous peoples from their culture and from one another. He called to the people to heed the wisdom of those that had passed on and to confront the injustices that undermine the traditional foundation of Indigenous existence.

Alice Morgan: Ms. Morgan also expressed extreme disappointment with Navajo Nation Council Delegates and President Joe Shirley. She refused to vote for candidates and cited greed, corruption, disrespect and unethical behavior as reasons for not casting her vote. Ms. Morgan was a resident for Bodeway Gap, which was in the Bennett Freeze area. She testified about the extreme cost of water she paid each time they hauled water for themselves. Ms. Morgan spoke about climate change and how that brought drought and prevented the growth of certain plants that cannot grow because of the extreme heat. The Senior Citizens center at Bodaway Gap was closed which added to the frustration and dislike toward chapter officials. Ms. Morgan felt that the closure of the Center added to the hardship the elder faced and no effort was made to reopen the center. This was the only social arena that brought people together. Ms. Morgan stated that the only Navajo leader that helped the people and visited in the homes was former Navajo Nation Peter McDonald. She still had concern for his imprisonment, but nevertheless she still held him in high esteem.

Robert Begay: Mr. Begay questioned the legitimacy of the Navajo Nation Human Rights Commission and inquired on why the organization decided to conduct hearings during election time. He was cautious about the whether the Commission would protect the rights of Diné citizens. Mr. Begay also believed the only leader that protected the rights of the Diné was Peter MacDonald. Mr. Begay expressed harsh words against Council Delegate George Arthur who is reported to have told people that they have no voice with issues concerning the Navajo Nation government or the chapter. According to him, the Navajo Nation government worked against the people and not with them. He was deeply disturbed that Navajo leaders talk about economic development and job development when they know that the Diné are not being properly prepared and jobs will go to non-Navajos. He feared that any development would lead to the waiving of tribal sovereignty and the diminished loss of rights to the Diné. Mr. Begay warned that the current Navajo Nation leadership will erode the people's right and use Title 2 against them. He spoke about Hopi law enforcement and the continued human rights violation that they perpetrated against the Diné. He was concerned with the water wells being capped off, the violations of religious practices and the control that the Navajo Nation and Hopi governments subjugate the Diné to. Mr. Begay had grave concerns for the future of the Navajo Nation, especially with the direction that the Navajo Nation Council had embarked upon. He hoped that leadership within the Navajo Nation would truly represent the people and restore the people's authority back into government.

Cecil Nez: Mr. Nez was the first elected chapter official from Nahata Dziil, Arizona when that chapter was established for relocatees. He claimed that Diné were denied the right to practice their religious freedom, to vote and healthcare when they moved to Nahata Dziil. He traveled to Washington D.C. and brought these injustices to Congress. He also brought to the attention of the Navajo-Hopi Land Commission the desecration of sacred sites that belong to the Diné.

Frank Bilagody: Mr. Bilagody addressed the Commission with his concern about the destruction of sacred sites and burial grounds. He described vandalism of property and the physical assaults on relocatees that he thought were caused by individuals that lost contact with traditional Navajo values. Mr. Bilagody was from the Bennett Freeze area. He recalled as a young male he lived with hardship and witnessed many Diné succumb to early deaths because of the restrictions placed on them. They lived with abuse and neglect and throughout the forty years the Navajo and Federal leaders paid no attention to the human rights violations that were perpetrated against the people. Even when they raised the issue of human degradation, no one paid attention. Their voices were muffled. Mr. Bilagody spoke about a meeting he had with the U.S. Forestry Service in Flagstaff, Arizona. Eighteen Chapters governments were invited, including Navajo Nation leaders, yet he was the only Navajo to attend this important meeting. He indicated that at that time, Forest representatives were concerned with the gathering of herbal medicine and the encroachment of Diné who offered prayers to the mountain. Forestry personnel often confiscated the herbs and destroyed them on site. One agreement that came from this meeting was that Forestry personnel would no longer require a permit for the gathering of mountain herbs. From this meeting, Mr. Bilagody believed that the U.S. Forest Service understood the sacredness of the San Francisco Peaks to the people. However, that understanding of the mountain and relationship with Forest Service changed years later.

Gregory Hall: Mr. Hall brought to the attention of the Commission a lawsuit concerning water. He lived near LaPlata County, Colorado in an area identified as Tse'go'ee where he raised five children. His maternal relatives are Diné while the paternal are African American. Mr. Hall sought advice from the Commission regarding a lawsuit that involved the State of New Mexico, the Navajo Nation and the Jicarilla Apache Nation. The suit concerned water use and water rights. Mr. Hall believed that since time immemorial the Diné lived near the foothill of the mountain known as Dibé Nitsaa, which is sacred to the Diné. He was conflicted and did not want to participate in a suit against the Navajo Nation but yet he also wanted to exercise his right to the traditional use of all water. Mr. Hall wanted the Commission to know that other Diné residing off the Navajo Nation were also confronted with human rights issues that need to be addressed by the Nation. Mr. Hall also informed the Commission about his employment with Arizona Public Service (APS) and his service to that company. Initially, APS hired many Navajo employees at entry level paid positions and he witnessed this practice change. He felt that there were occasions where Navajos were discriminated but he believed this practice had changed some. He also added discrimination and bigotry remained alive and well amongst the Diné. He supports the preservation of land and sacred sites. Mr. Hall recalled his grandmother saying to him, *"you go to church but you remember you are Navajo, you are Indian."* He ended encouraging the Navajo Nation to institute a toll-fee on Navajo roads to raise revenue to build the infrastructure that would bring water to the people.

Shiprock, (Navajo Nation) New Mexico
July 27, 2010

Chester Benally: Mr. Benally opened the public hearing and identified what was sacred to him. His home, life, plants, water, prayer sites and the earth beneath his feet were all sacred. He questioned the wisdom of the Commission to publish a report that exposed the location of sacred sites. Mr. Benally testified about the desecrations of ancient burial sites of the Anasazi near Blanding, Utah. He feared that a report that exposed the type and location of such sites would lead to vandalism and destruction of these sites. Mr. Benally also expressed frustration with the Navajo Nations inability to affectively enforce laws on and off the Navajo Nation. He felt this was a great disservice to history of the Diné. He believed the disruption to burial sites would bring harm and hardship to the people if sacred sites are disturbed.

Arnold Clifford: Mr. Arnold had a background in geology and botany where he testified about the destruction and desecration of many sacred sites. Mr. Arnold talked about the four sacred mountains and the important sacred elements that each mountain possessed. He reminded the audience that a lot of attention had been given to Dook'o'osliid and no attention was directed to the other sacred mountains. Mr. Arnold was concerned about the desecration of sacred sites, as he related the installation of cell towers near First man and First woman's dwelling, a flood at a sacred site near Navajo Dam, pollution to the land, air and water in Aneth, Utah and serious health conditions that are amongst Navajo families. He elaborated about the proposed mine site called Desert Rock, which was a failed economic venture of the Navajo Nation. Mr. Arnold expressed concern for the cultural teachings of the deities that lived in the earth, plants and air, which were no longer talked about or known. He spoke of the need to save sacred sites and to revised laws that would provide thorough protection of the sacred plants, sites and cultural knowledge. Mr. Arnold lived where certain endangered plants are only found in this area in the entire U.S. He, like others at previous hearings was concerned that no electricity and water was available to the majority of Navajos that live on the Navajo Nation. He too would like the Commission to look into all of his concerns.

Herman Hunt: Mr. Hunt was from Shiprock, New Mexico. He agreed with all the information the presenters before him. Mr. Hunt focused his testimony on discrimination issues in border towns. Mr. Hunt complained that the white people continued to discriminate against the Navajo even after they took homes and land from the Diné. He spoke about his experience with a local farm business off San Juan Boulevard in Farmington. Mr. Hunt had a coupon for dog food. The cashier would not honor the coupon. After an exchange of words with her, she chased him out of the store. But he was persisted and insisted the store honor the coupon. He did not leave until they did. Mr. Hunt wanted members in the audience to be aware of the unfriendly and unscrupulous business practices that are out there.

Elouise Brown: Ms. Brown was the President of Dooda Desert Rock, a grass root activist group that was concerned about many environmental issues that confront the Navajo Nation. She had been the President of this organization since 2006 and assisted many other grass root organizations as an activist. She announced that the Desert Rock Power Plant would not be developed. Ms. Brown lived near the proposed mining site and explained her concerns with the two other plants in this region. She spoke about the underground explosions that had caused cracks in the walls of her home and other relatives. She was disappointed that families living near the power plants did not have electricity or running water either. Air quality was poor and close siblings and relatives had succumbed to cancer. Some died of lung cancer and did not have a lifestyle of smoking or being in environments where smoke was prevalent. She reported she had a lung problem. Ms. Brown believed life was sacred and monetary resources were not important when your life became endangered. She recanted Mr. Arnold's concerns regarding the environment.

Paul S. George: Mr. George expressed deep concern for the lack of services for Navajo Veterans. He spoke from a perspective of knowing what Navajo government actions were taken to assist all veterans. The veteran's trust fund that was established in 1998 was mismanaged and Navajo veterans were not benefiting from this fund. He spoke about the physical, social and psychological trauma veterans are experience. Mr. George also complained about candidates that run for elected positions and the promises made to veterans, only to forgotten once they are elected. His final concern dealt with Farmington, New Mexico's city ordinance that did not allow the posting of material at the Indian Center. Mr. George felt the city council over extending its authority. Mr. George was advised that political campaign posters are not allowable if the program and facility is supported by tax dollars.

Henry Barber: Mr. Barber a Navajo medicine man spoke from the expertise of his traditional cultural upbringing. He spoke of his understanding of how Diné leaders negotiated the return from Hwéeldi to the land between the four sacred mountains. These leaders knew how sacred the land was and why the Diné had to return to this same area. The medicine people knew the holy people gave this area to the Diné along with all the natural forces and places that were to be used by the Diné. This was why the land was sacred. Mr. Barber believed the federal government made policies that violated and interfered with exercising Diné rights. He spoke strongly of how the Diné carried and preserved Navajo custom and tradition through oral language, which he reported was not acceptable to the federal government. They put rules and regulations in writing, which was not the method that Navajo forebears did. Grazing permits, land partitions, home site leases and rules of land, caused a lot of confusion and disputes with the land. Mr. Barber surmised these written laws, and regulations, violated Navajo human rights and disturbed the Navajo Life Way. He believed that in spite of these laws, the Diné remain committed to the land and the teachings from the holy people. Mr. Barber spoke of meetings and ceremonies that he and other Navajo medicine men associations had been conducting. The

organizations were very concerned with the status of the Navajo Nation and erosion of the rights of the people. He spoke of the proposed mining plan that he feared would bring more destruction to Mother Earth. He compared existing Navajo mining sites to various body parts of the human body with mother earth and said the mining activities were near Mother Earth's heart now. He feared that as more drilling and excavating took place, more bad and evil spirits would be released. According to him they had extracted what was to have been sealed permanently. This was what was disturbing the atmosphere and the world. He believed that Anglo greed controlled the land, water and air and they would soon take the energy of the sun and the spirit of the night. Mr. Barber hoped the United Nations Declaration on the Rights of Indigenous Peoples would open up opportunities to address the injustice indigenous peoples face. He knew President Obama supported the international human rights declaration. He asked how could this instrument protect sacred sites and how could those programs responsible to protect these sites recognize this effort. Mr. Barber expressed sarcasm toward the Navajo Nation government when he mentioned the close relationship the government had with the mining and gas companies. He wondered if they were truly representing the interests of the people and whether they were knowledgeable about traditional self-governance. He did not think they were.

Leo Johnson Sr.: Mr. Johnson was also a voting member of the Shiprock Chapter. He testified to the relation of plant life and water. He remembered when this relationship was explained as being human and understood to be life. Mr. Johnson approved of the topic of this hearing and encouraged the return and practice of Navajo traditional teachings.

Virgil Kirk, Jr.: Mr. Kirk a lifelong resident of Shiprock, New Mexico expressed concern with Central Consolidate School District. As a Board of Education member to the school district they failed to get the Navajo Nation government to move forward with renewing the lease agreements. Mr. Kirk expressed frustration and disappointment with the reluctance of Navajo government to act on important issues, like this. Mr. Kirk was very concerned that without a renewed lease, Navajo children would not be able to get cultural instruction and Navajo educators would not be given an employment preference through Navajo Employment Practice Act. Mr. Kirk called to the Commission Chair to be proactive and help get the lease agreements renewed. His second concern dealt with the lack of appointments for Diné College. The college does not have enough regents to fulfill the requirements of a quorum. He asked the Commission to also assist with getting Navajo Nation council to make the appointments.

Earl Saltwater Jr.: Mr. Saltwater had a complaint about an employee who worked for the Bureau of Education that filed a suit against him because he was running for an elected position with the Navajo Nation. The Agency administrator is reported to not hire qualified Navajo educators and instead, promoted and hired non-Navajos from out of state. As a former board member Mr. Saltwater wanted the Commission to be aware of this situation at Teec Nos Pos, Arizona. He also testified about a conversation he had with auto mechanic. He claimed the

mechanic told him that at Performance Auto he was instructed to replace new parts with old parts on used cars that were sold. This would require the new owner to come back to the service center at a later date for more work. Mr. Saltwater also complained about the high car insurance premiums that are paid in San Juan County. He thought it would be good if the Navajo Nation could establish some of these businesses on the Navajo Nation. Mr. Saltwater also expressed concern for the enormous amount of paper work that was to be completed when filing a uranium exposure claim. He felt the paper work was too arduous. Mr. Saltwater also shared a story about a sacred site and story that his grandmother told him about. It concerned an area where deer were rounded up and slaughtered for food. Navajo medicine man sang sacred chants and deer would come to this area to be sacrificed. He reported that he was told never to swallow his spit when he crosses this area, as it would affect him later in life.

Lester Begay: Lester Begay recalled stories told by elders of when the Diné emerged into this world. The point of where Diné beings emerged was followed by water, mud and wind. Water came first, causing very muddy conditions, which was dried through harsh winds that the holy people sent. The wind blew the land dry to where new top soil allowed for the growth of plants and other vegetation. Life from the land emerged as a means to plant food and to sustain life. Based on the Diné's ability to survive Mr. Begay believed the emergence stories were true. The evidence that convinced him is the existence of the Diné and the will to live. He reminded the audience that although the wind was at times harsh, it was to be tolerated and respected because it was also here long ago and contributed to the survival of the Diné.

Mr. Begay spoke briefly about an agreement made by the paternal water deity who agreed to let the eagle remain on the surface of the earth. This is why the eagle is revered as a symbol of significance to both indigenous nations and the citizens of the U.S.. There were other agreements made by Diné deities and the earth people that remain silent and preserved. Global warming was said to have come with the invasion of the non-Indian; it was to be a process of a slow end that would eradicate the people from the earth. Contaminants in the air would slay the people and end all languages spoken on earth.

Mr. Begay had concerns about the power plants that were established in the region. He believed the mineral deposits where Diné people lived were sacred and held spiritual value that conflicted with the views of the white people. Anglo people saw financial gain and never intended to let the resources rest. They would manipulate the Diné into letting them extract the resources. When lease negotiations were to be revisited, the Anglo people would cater an expensive meal to the Diné leaders and the leaders would heed to the wishes of the Anglo people. Mr. Begay purports the power plants bring more harm than good to the people. Not only do they exploit the Navajo employee; they contributed to the pollution of the air, endanger the health of citizens and they pocket large sums of money. The Anglo people that manage the power plants are reluctant to change their ways. He analogized power plants in this region as older 1960 vehicles that were not fuel and emissions friendly. Thus power plants operate under older technologies with old plans that leave dangerous levels of nitrogen oxide in the air.

Moreover Navajo employees are prevented from assuming upper management and administrative positions within the power plant hierarchy. Money is a driving force that prevents Anglo leaders from embracing change and incorporating new energy efficient measures that would benefit everyone, including Navajo employees and the Navajo people.

Mr. Begay was a product of the Bureau of Indian Affairs (BIA) education. He, like many other Navajo students was abused and when reported, BIA officials would not listen. Mr. Begay lived in many areas of the U.S. before returning to family land near Burnham, New Mexico. He was trying to develop a business but found BIA regulations to be cumbersome and its purpose to have been outlived. Mr. Begay chastised its usefulness and speculated that only one BIA office was needed near Washington DC, where Indigenous nations that still relayed on its services could go. Mr. Begay ended his testimony with the statement that the expectations of education and jobs for Navajo children were secondary to the teachings of the Diné language and the Navajo Life Way. Navajo families are confronted with this decision today.

Taft Blackhorse, Jr.: Mr. Blackhorse was also from Shiprock, New Mexico. He introduced a colleague, Mr. John Stein who held a degree in archaeology. Together both of them had studied and published articles that supported the Diné existence prior to 1500. Mr. Blackhorse spoke about traditional Navajo chants and prayers that confirm Navajo's presence with the Hopi civilization. He and other Navajo archaeologist believed Navajo and Anasazi are of the same people. His findings were disputed by several Archaeology Associates that do not agree with the Navajo findings. Mr. Blackhorse also expressed concern with the Navajo Nation Historic Preservation Program as there is little use of Navajo traditional knowledge to collaborate historical findings. It bothered him that the focus of the Historic Preservation Program was **not** to protect Navajo sovereignty but to assist in other areas that lead to economic develop of tribal lands. There was no preservation plan about what the Navajos are concerned with like, traditional language and culture property. Mr. Blackhorse was concerned that none of their findings are published or cataloged with the Historic Preservation program. He also testified that his findings substantiate an Anasazi clan relation that is identical to Navajo clans. Moreover, DNA test confirmed a match between the Diné and Anasazi peoples. Mr. Blackhorse reported that cultural sites and cultural properties were vanishing. He felt historical cultural information needed to be housed at Diné College. Overall, Mr. Blackhorse testimony reinforced the Commission and the audience suspicion of oral stories and chants that spoke and confirm this direct relation to the Anasazi. Mr. Blackhorse reported his studies and findings were not supported by Anglo archaeologist who also discounted the DNA findings. He was hopeful that eventually this information would be disclosed and the history of the Diné would be corrected. Commissioner Darden addressed Mr. Blackhorse and spoke about the significant of his findings, as the relocation of thousands of Navajo families under the Navajo-Hopi Relocation Act removed and destroyed many Navajo families. Congressional approval for this Act was partially based on the claims and findings from non-Indian archaeologist.

Francis Mitchell: Mr. Mitchell identified Navajo ancestors who were originally from Window Rock, Arizona where he was originally from. He is a member to the Farmington Community Relations Committee and taught at Navajo Preparatory School prior to retiring. Mr. Mitchell was impressed with earlier remarks made by several individuals. He expressed concern for the lack to respect to sacred sites and to the harm and hurt that some Navajo's are confronted with while in Farmington. He commended the Commission on the sacred site study and encouraged the Commission to advance the concerns of sacred sites and cultural knowledge everywhere.

Anne King: Ms. King brought to the attention a concerned that involved the Shiprock Fair Committee. She reported the Regional Business Development Office (RBDO) had violated her family's human rights by allowing the annual Northern Navajo Fair to conduct activities on land that belonged to her family. RBDO had also approved a lease for the construction of a new laundry mat which the family did not consent to. Ms. King wanted the Commission to assist the family with getting the parcel of land back that was traditional owned, occupied and managed by her paternal relatives. Ms. King also confirmed earlier testimony concerning Teec Nos Pos School and the allegations of the mismanagement of funds and services. Ms. King indicated that a former school administrator was fired for the misuse of BIA funds. She was the Board President of the Teec Nos Pos School and felt the Commission should be aware of the community's concern.

Loretta Danzoka: Ms. Danzoka was an employee at Diné Legal Services and offered testimony on the unlawful arrest and detention of Navajo citizens by the Shiprock Law Enforcement. Police officers are alleged to violate the human rights and due process of Navajo citizens. Ms. Danzoka also claimed that detainees were beaten and tazed while incarcerated. She was concerned with high interest rates that Navajo consumers are confronted with when purchasing vehicles and the extremely high interest rates that elder Navajo citizens pay when they pawn. She hoped the Commission would work with the State of New Mexico and get a law pass to prevent the continued exploitation of Navajo consumers. Ms. Danzoka expressed concern for children who are dressed or wear clothing that is not acceptable for school. She would like to see parents be involved in their children's life by teaching the traditional knowledge that she sees lacking.

CHAPTER VI. Findings

The findings demonstrate a clear and conscientious need to develop a comprehensive plan to protect, preserve Navajo sacred sites and places, cultural property and the land base that is an integral part of Diné being which is manifested through the Navajo Life Way. The Commission also found a significant void with the teachings and the education of the Navajo language and traditional ceremonies that are essential to the survival and recognition of the Navajo people. It is duly noted that although these findings were limited with respect to the number of hearings held and the participation from these hearings, other resources including meetings with Navajo medicine practitioners compliment and support similar findings as noted in the hearings held.

One finding that elevated the interest of the Commission dealt with the allegations from Navajo archaeologist and ethnographic experts of their cultural and professional expertise to be below standards for meeting contract requirements to conduct archaeological and ethnographic work for the Navajo Nation Historical Preservation Department and Navajo Nation Division of Natural Resources. These individuals raised the issue as to why important cultural studies are awarded to non-Navajo cultural resources management companies that are located in the Phoenix and Tucson, Arizona. Moreover, it was reported that these large national companies do not pay Navajo Nation taxes and do not hire local Navajo experts. The request for proposals and qualifications should support the Navajo Procurement Act by instituting the Navajo Preference and Employment Act. The Commission questioned why non-Navajo cultural resource companies are giving preference to conduct cultural resource work on the Navajo Nation, especially when historical findings require the input of traditional Navajo speaking experts. The Commission was baffled at why the Navajo Nation did not capitalized on the use of their own resources.

The Commission offered these findings.

1. The preservation and protection of sacred sites and places is vital to the existence of the Navajo people. After hearing and witnessing the harm and desecration to these sites the Commission found that a Protection and Preservation Plan is needed. This plan which was proposed many years ago by Navajo and non-Navajo cultural experts is the most logical approach to preserving and protecting sacred sites and places. Additionally future generations of Diné youth can capitalize on the teachings from our cultural properties.
2. The Commission found sacred sites and places not adequately protected. It was understood that the agencies responsible for the protection and preservation of these sites do not protect these sites as expected by Indigenous nations, including the Navajo Nation. Communication, coordination and cooperation amongst these agencies are lacking. There is no coordinated or comprehensive approach to preserving the history of the Navajo

people. The Commission is mindful of the contributions made by Navajo Hataaliis and the need to also cultivate and preserve their knowledge.

3. Many Navajo experts reported a need to review the plan of operation with the Navajo Nation Historic Preservation Department. Although the policies reflect responsibilities that are guided by federal mandates, the Commission found some shortcomings with this program. The Commission found that standards from the United Nations Declaration on the Rights of Indigenous Peoples are not incorporated into the policies that governing the management, preservation and protection of sacred sites and in general cultural knowledge. Also discerning is that the Navajo Nation Historical Preservation Department Handbook does very little to reaffirm Diné traditional perspectives for protecting and preserving its cultural properties. Instead the handbook reinterprets federal regulations into the Navajo language.
4. The reports from Navajo cultural experts about the Diné occupying the area between the four sacred mountains elevated a keen interest with the Commission. The Navajo Nation has not done enough to support the archaeological findings that indicate a relationship between the Diné and Anasazi peoples. This revelation could rewrite history and strengthen the Navajo Nations claim of existing in this region before 1500's. This is imperative to the goals that should be identified in the handbook of the Navajo Nation Historical Preservation Department and the Navajo Nation government.
5. The Commission found that the Navajo Nation must pursue domestic and international measures to protect all of its sacred sites and places, including land, territories, resources and subsurface minerals. U.S. federal laws, policies, and regulations that were designed to protect and preserve sacred sites are not adequate. They for the most part address procedural matters and do little to protect these sites.
6. The Commission found a void with the general knowledge about the sacred sites, the significance of these sites and need to preserve and protect these sites amongst Navajo youth. Moreover, the Commission found a decline in the number of Navajo medicine people that posses the knowledge and skills to interface with natural and supernatural beings that lived amongst us.
7. Diné fundamental laws are triumphed to be the legal frame that all Navajo laws will be developed from and by. However, the Commission found inconsistence and avoidance of these laws by Navajo leaders who are in positions to strengthen tribal sovereignty. The Commission found it disturbing that the application of fundamental law substandard to state and federal laws, policies and regulations.

CHAPTER VII. Recommendations

In response to the information gathered to various forms of qualitative investigative work, the Commission developed nine recommendations that further protect, preserve and perpetuate the sanity of Navajo sacred sites and all that is inclusive of why the elements are and remain sacred are as follows.

1. The Commission recommends the development of a comprehensive sacred site protection plan that will identify, catalogue and preserve all sacred sites and places. This plan will be used as a land use planning guide in all economic development plans on the Navajo Nation with the expectation that it will mitigate conflicts that arise between developers, governments and communities.
2. The Commission recommends that based on recent archeology and anthropological studies conducted by Navajo scholars, every effort should be made by the Navajo Nation scholarship office and the Navajo Nation government to fund and support the traditional and cultural research that demonstrates Navajo's presences prior to Hopi habitation.
3. The Commission recommends that Navajo archeologist and anthropologist serve in similar academic and scholarly studies that are conducted on the Navajo Nation. All cultural and environmental procurement contracts must abide by strict compliance to the Navajo Preference and Employment Act.
4. The Commission strongly recommends that the future survival of the Navajo people and the Navajo Nation depends upon a thoroughly grounding of historical knowledge. Paramount to this is the preservation, protection and practice of sacred sites, places, songs, prayers and ceremonies. The Commission insists that the Navajo Historical Preservation Department undergo a complete review of its mission, the plan of operation and develop a program that incorporates the issues raised by Navajo constituents.
5. The Commission recommends that all Navajo Nation programs that are responsible for the protection of the land, water, air and foliage immediately incorporate the human right standards contained in the United Nations Declaration on the Rights of Indigenous Peoples and develop laws and policies that support the distinct cultural and traditional aspects of the Navajo Life Way.
6. The Commission recommends that the Navajo Nation government support all international actions, including human rights complaints against the U.S. that the Commission initiates on behalf of the Navajo people.
7. The Commission recommends the Navajo Nation government recognize the human rights of the Navajo people and adopt and promulgate a law that recognizes the United Nations on the United Nations Declaration on the Rights of Indigenous Peoples.
8. The Commission recommends that the Navajo Nation government take additional measures to strengthen Diné Bi Beenahaz'aanii (Fundamental Law), Diyin Dine'é

Bitsaądeę Beenahaz'áanii (Customary Law), Diyin Bitsaądeę Beenahaz'áanii (Traditional Law), and Diyin Nohookáá Diné bi beenahaz'áanii (Diné Common Law) into all aspects of the Navajo Nation governance.

9. The Commission commends the Navajo medicine people for their contributions to the development and implementation of this important report. The willingness to share cultural and traditional knowledge as it related to sacred sites is commendable.

In closing this report, the significance of the Navajo Life Way cannot be underscored. It is of paramount importance the identity of the Diné remains here forever. Our oral teachings and narratives that are specific to the Navajo origin story, chants, ceremonies, language, culture and land are the bases in which we are a sovereign nation. To fully exercise Navajo human rights as a nation we must maintain our distinct identity, individually and collectively. Further, we must revitalize the Navajo Life Way and insist government organizations and business entities be receptive and acceptable to Navajo custom and law. This would be a positive step in securing our Navajo identity for future generations.

APPENDIX

Table I : Public Hearing Participant Listing

Crownpoint Public Hearing - July 20, 2010

Ericke Willie	Pete Watchman	Leonard Perry
Dan Vicenti	Rena Martin	

Fort Defiance Public Hearing - July 21, 2010

Nicola Johnny	Karen Johnny	Charles Yazza
Roger Shirley	Roy Keeto	Willie Keeto, Sr.
Harris Francis	Klara Kelley	Earl Milford

Chinle Public Hearing - July 22, 2010

Corina Teller	Bobby Begay	Justin Tso
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Tuba City Public Hearing - July 23, 2010

Marsha Morestresky	C. Dale Rapheal	Alice Morgan
Robert Begay	Cecil Nez	Frank Bilagody
Gregory Hall		

Shiprock Public Hearing - July 27, 2010

Chester Benally	Arnold Clifford	Herman Hunt
Elouise Brown	Paul S. George	Henry Barber
Leo Johnson, Sr.	Virgil Kirk, Jr.	Earl Saltwater, Jr.
Lester Begay	Taft Blackhorse	Francis Mitchell
Annie King	Loretta Danzoka	

Table II. Sacred sites Public Hearing Participant Totals

Date	Location	Testimonies	Registering
July 20, 2010	Crownpoint, Navajo Nation (NM)	6	50
July 21, 2010	Ft. Defiance, Navajo Nation (AZ)	9	16
July 22, 2012	Chinle, Navajo Nation (AZ)	3	14
July 23, 2010	Tuba City, Navajo Nation (AZ)	7	17
July 27, 2010	Shiprock, Navajo Nation (NM)	14	68
	Total	39	165



Diné Medicine Men's Association, Incorporated

DINÉ BI NAHAGHA' YEE DA' AHÓTA'

P.O. Box 368

Gallup, New Mexico 87305

The Sacred Sites Statement

The Diné Medicine Men Association, Incorporated has compellingly come to understand factually that federal laws as well as the state laws do not protect sacred sites. The sacred sites as part of the unchanging Diné fundamental and natural laws of the four sacred elements of fire, water, air, and earth, has the interaction of our traditional spiritual belief foundation since the proceeding of the growth and the journey of life.

In reality, the federal and state laws allow for incontrollable unlimited exploitation for profits, as pilfering, imitations, disruptions, denials, and discriminations by non-indigenous entities that operate in total desecrations and eradications of the traditional practices of intellectual collective to the holistic bona fide healing ceremonies (songs, prayers, offerings, teachings, paraphernalia, and domestic medicinal wildlife, and minerals) connected in high regards to the Creator. No such man-made policies should be of obstruction to our natural healing especially in case of a life is in urgent situation.

There has to be meaningful understanding of truthful protection of the Diné traditional intellectual collectives to the holistic basics of our spiritual belief foundation to maintain the interaction with the traditional properties, and traditional self-determination on our unique innate Mother Homeland sharing with flora and fauna existences, without all abuses and injustices.

Ordained elder and medicine-peoples are the keepers of the verbal ancient sacred doctrines has been taught over and over from mouth to ear and from generations to generations about maintaining respectabilities and practices of high regards to the Creator. The compilation and interpretation by deities within these sacred doctrines also reveal many basics to the unchanging universal guiding principles that were descended from the Creator.

All sacred places are created and instilled with far-reaching universal values to the uniqueness of overall indigenous and aboriginal healthy life ways. All these sacred places possess the sacred laws and energies of powers as a whole possesses passageways to make contacts with the holy-ones; we mainly come to them with songs, offerings and prayers to receive our remedies to maintain the welfare of life and maintain balance with the creation. The gross harmful sacrilege brought upon these holy elements forces unhealthy encounters of mental and physical depressions are eradicating our lives, wildlife, and the beauty of the land.

Beyond what are all of sacred, these places are of natural beauties full of wildlife interconnected with the natural laws, meaning to prolong life from injustice disorders and eradication.

We have forwarded many statements to the federal government expressing very much of all about sacred. What is it that the federal and its certain departments do not understand about sacred or is there some sort of publication in plan about sacred? We used virtually every word that is defined as sacred and its synonyms that are provided in many American dictionaries and thesauruses. The government ought to have the knowledge of sacred, after all the United States of America is built on countless religious denominational foundations. In the outcome, there are great disrespects and denials of our indigenous spiritual belief foundations across this great country.

President,

 President

