

**RESOLUTION OF THE  
NAVAJO NATION HUMAN RIGHTS COMMISSION**

**Opposing the United States Forest Services December 2023 Memorandum of Agreement  
Entitled “MEMORANDUM OF AGREEMENT between the UNITED STATES  
DEPARTMENT OF AGRICULTURE, FOREST SERVICE Coconino National Forest and  
the ADVISORY COUNCIL ON HISTORIC PRESERVATION and the ARIZONA STATE  
HISTORIC PRESERVATION OFFICER REGARDING THE ARIZONA SNOWBOWL SKI  
AREA PROPOSED MODIFICATIONS” and Recommending that the Navajo Nation not  
sign the Memorandum of Agreement**

**WHEREAS:**

1. Pursuant to 2 N.N.C. §920 and §921, the Navajo Nation Human Rights Commission (“Commission”) is established within the Legislative Branch as an entity of the Navajo Nation government to operate as a clearinghouse to address discriminatory actions against citizens of the Navajo Nation; and to interface with the local, state, federal governments and with national and international human rights organizations in accordance with the Commission’s plan of operation and applicable laws and regulations of the Navajo Nation; and
2. By Resolution NABIS-58-11, the President of the Navajo Nation, Speaker of the Navajo Nation Council (and their designees) and the Commission were directed to do all things necessary to protect the San Francisco Peaks as a sacred mountain for the Navajo people; and
3. Acknowledging Resolution NNHRCFEB-02-09, the Commission set the United Nations Declaration on the Rights of Indigenous Peoples as its minimum standard of achievement when assessing Diné human rights and making recommendations to policy making bodies in the Navajo government as follows:
  - a. Educating Diné people and other persons on the subject of Diné human rights consistent with the standards established by the Declaration; and
  - b. Evaluating concern regarding Diné human rights consistent with the standards established by the Declaration; and
  - c. Putting forward recommendations for consideration and approval by the Intergovernmental Relations Committee of the Navajo Nation Council and the Navajo Nation Council that advance the standards established by the Declaration; and
  - d. Putting into practical application the standards established by the Declaration within the Navajo Nation government processes to be looked upon as a model to other indigenous societies and the world community; and
4. Remembering Resolution NNHRCMAY-03-10, the Commission stated in its complaint filed with the United Nations Special Rapporteur on the Rights of Indigenous Peoples that “[t]he Diné Life Way commands the Diné to cherish, nurture, protect and honor the relationship between all living things - animals, trees, plants, species and the rest of the natural world. This deep respect for life and land is the heart of the protection and

preservation of the Diné cultural and spiritual integrity unlike non-indigenous peoples who seek to control the environment with treated wastewater to exploit indigenous sacred sites for economic and recreational purposes"; and

5. On August 22, 2011, Professor S. James Anaya, Special Rapporteur, issued his report entitled Report by the Special Rapporteur on the Rights of Indigenous Peoples, Rep. of Human Rights Council, 18th Sess, Aug. 22, 2011, U.N. Doc. A/HRC/18/35/Add.1; UN. GAOR, 65th Sess., (Sept. 14, 2011)., detailing that "[t]he United States should engage in a comprehensive review of its relevant policies and actions to ensure that they are in compliance with these international standards in relation to the San Francisco Peaks and other sacred sites of Native Americans, and should take appropriate remedial action." And "the Government should reinstate or continue consultation with the tribes whose religions, practices are affected by the ski operations on the San Francisco Peaks and endeavor to reach agreement with them on the development of the ski area. The Government should give serious consideration to suspending the permit for the modifications of Snowbowl until such agreement can be achieved or until, in the absence of such an agreement, a written determination is made by a competent government authority that the final decision about the ski area modifications is in accord with the United States' international human rights obligations." The United States failed to respond to the Special Rapporteur and no record was filed by the United States with the Office of High Commissioner for Human Rights. Special Rapporteur also called attention to information he received "relating to the proposed use of recycled wastewater for the commercial ski operation [on] the San Francisco Peaks, a mountainous area that is sacred to several Native American tribes."; and
6. Remembering Resolution NNHRCSEPT-08-11, the Commission acknowledged Special Rapporteur's report of August 22, 2011, by noting that the Special Rapporteur reported that the United States violated the indigenous peoples' human rights to free, prior and informed consent with the requirements under the International Covenant on Civil and Political Rights and International Convention on the Elimination of all Forms of Racial Discrimination. The Commission further noted in Resolution NNHRCSEPT-08-11 Special Rapporteur reported that "[d]espite adamant opposition by the tribes based on their religious practices and beliefs, the (U.S.) Forest Services decide to approve the artificial snowmaking and other ski area modifications, bringing into question the United States' adherence to international standards to which it has expressed its commitment."; and
7. By Resolution NABIS-58-11, the Naabik'iyat'i' Committee of the Navajo Nation Council acknowledged the Special Rapporteur's report of August 22, 2011 submitted to the United Nations Human Rights Council and further authorized the Navajo Nation President and Vice President, the Speaker of the Navajo Nation Council and Navajo Nation Human Rights Commission "to do all things necessary to protect and advocate for the human rights of the Navajo people as they pertain to San Francisco Peaks, sacred site for the Navajo people."; and
8. By Resolution NNHRCAPR-04-22, the Commission recommended the framework when indigenous coalition interacts with the United States Forest Services in order to find meaningful solutions when protecting the San Francisco Peaks as a sacred mountain:

- a. Indigenous Rights: while indigenous persons have individual rights, indigenous peoples, collectively, have the right to freedom of thought, conscience and religion without being discriminated against in their culture; the right to self-determination, right to be treated with dignity, right to be free of discrimination.
  - b. Preservation of Culture: indigenous peoples have the “right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the rights to maintain, protect, and have access in privacy to their religious and cultural sites.”
  - c. Consultation to Achieve Consensus: consultation under the framework of the United States government’s relationships with indigenous peoples is ineffective. Instead, the Indigenous Coalition demanded that the consultations must have the objective of achieving consensus or consent by the indigenous peoples; and
9. Navajo Nation Human Rights commissioners and staff were assigned to participate in all meetings with the U.S. Forest Service and thirteen indigenous nations as they pertained to the development of the new memorandum of agreement- (“MOA”) regarding the ski resort on San Francisco Peaks. The Commissioners and staff periodically reported to the commission on the progress regarding the development of the MOA; and
10. One of the critical points that needed to be part of the MOA is the U.S. Forest Services to acknowledge the international human rights standard of free, prior and informed consent. The Navajo Historic Preservation Department was the lead agency on behalf of the Navajo Nation to facilitate the dialogue between all parties, including the U.S. Forest Service, Arizona State Historic Preservation Office, Advisory Council on Historic Preservation and the Arizona Snowbowl Ski Resort. While the MOA incorporates the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”), Article 19, the United States government representative repeatedly asserted that indigenous peoples do not have the ability to say “yes” or “no” (consent) to the activities associated with the MOA; and
11. The Commission finds that the following conditions must be satisfied before the Navajo Nation signs the MOA:
  - a. MOA is between three parties: during the meetings between the indigenous governments, the U.S. Forest Services, the Arizona Council on Historic Preservation, the Arizona State Historic Preservation Officer regarding the Arizona Snowbowl Ski Area, the points were raised that indigenous governments be a party to the MOA, unlike the 2005 MOA, as equal to the three parties. However, the 2023 MOA for the Arizona Snowbowl Ski Resort is between three parties - the U.S. Forest Services, the Arizona Council on Historic Preservation and the Arizona State Historic Preservation Officer. The indigenous governments are only “invited signatories.”
  - b. Indigenous governments have no authority: while indigenous governments are “invited signatories”, the MOA does not define the role and authority of the “invited signatories”. Without the definition of the role and authority of the “invited signatories”, indigenous governments simply acknowledge the existence of the MOA. Multiple indigenous governments’ role in the MOA must be equivalent to the roles and authorities of the three parties; as an example, the MOA must

- expressly state that indigenous governments have the authority to raise written concerns that could be the cause for terminating the MOA.
- c. **Monitoring the Water Condition:** There are no provisions in the MOA for monitoring the fate and impact of reclaimed wastewater effluent used in snow production. This includes consideration of the movement of snowmelt water and any polluting constituents which may include, but not be limited to, dissolved and particulate nutrients such as nitrogen and phosphorus; dissolved salts; biodegradable organic compounds; anthropogenic organic compounds; endocrine disruptors; heavy metals; and wastewater indicators such as sucralose and acetaminophen, into downgradient surface waters, soils, stormwater runoff and groundwaters. Monitoring should also include long-term ecological monitoring to track changes in plant communities along set transects downgradient of the application of reclaimed water. Such provisions for this monitoring program must be expressly stated in the MOA. Considering scientific presentations provided to date related to the potential deleterious ecological and health impacts associated with the application of reclaimed wastewater on the designated ski slopes, it is the opinion of the Commission that previous requests for a separate long-term monitoring program were not adequately addressed by the United States Forest Service.
  - d. **Meaningful Consultation to achieve Consent:** while the MOA mentions the United Nations Declaration on the Rights of Indigenous Peoples, Articles 11, 19, 25 and 26, due to the insistence of the indigenous governments, the U.S. government rejects/neglects the “consent” part of the international human rights standard of “free, prior and informed consent” - presumably that indigenous governments do not have veto power over the MOA for the Arizona Snowbowl Ski Area. This provision dismisses any and all concerns indigenous peoples have raised in the past, present and in the future.
  - e. **Comporting with Human Rights Obligations:** Article 19 of UNDRIP is stated in the MOA. Article 19 specifies that “States shall...” work with indigenous peoples in order to reach consent. However, the MOA makes it an option for the USFS to work with indigenous people by using the word “will”, not shall, in many parts of the MOA - “will” is optional while “shall” is obligatory. As an example, several parts of the MOA must be changed such as, *inter alia*, Section 4, Paragraph a, .... “Within one (1) year, the USFS ~~will~~ shall begin....”, Paragraph b, .... “As part of this effort, the USFS ~~will~~ shall work with tribes....”
  - f. **Mitigation Measures:** the MOA will allow for the opportunity to place the San Francisco Peaks on the National Register of Historic Places which in its current form will allow for the continued development of the Arizona Snowbowl Resort as described in the Record of Decision for the Arizona Snowbowl Facilities Improvement of 2005. This provision is detrimental to the preservation and sacredness of the San Francisco Peaks; and
12. The Commission believes that the Diné culture dictates that San Francisco Peaks as a sacred mountain must maintain its pristine condition. The 2023 MOA for the Arizona Snowbowl Ski Area expands on its 2005 MOA by acknowledging the UNDRIP, the protection of traditional plants, and shrines and special places; however, the MOA is a

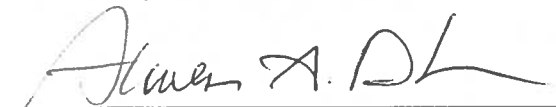
means to continue fostering recreational activities over the opposition by indigenous peoples not to desecrate San Francisco Peaks because the MOA falls short of stating the US Forest Services has indigenous human rights mandatory obligations.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Navajo Nation Human Rights Commission hereby opposes the 2023 Memorandum of Agreement because of the reasons stated in Whereas paragraph 11 in this resolution and including the need for the United States to recognize its obligations as stated in the International Covenant on Civil and Political Rights and International Convention on the Elimination of all Forms of Racial Discrimination.
2. The Navajo Nation Human Rights Commission further recommends that the Navajo Nation not sign the 2023 Memorandum of Agreement for the reasons outlined in Whereas Paragraph 11 in this resolution, which outline the failure of the Forest Service to meet the minimum threshold of both their legal Federal Tribal Trust Obligations (1563.01b) and their Consultation Requirements as outlined in FSM 1563.03.
3. The Navajo Nation Human Rights Commission further hereby directs the Office of Navajo Nation Human Rights Commission to communicate the intent of this resolution to the Navajo Nation Council, President and Vice President of the Navajo Nation and Chief Justice of the Navajo Judicial Branch.

**CERTIFICATION**

**I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Human Rights Commission as a duly called meeting at St. Michaels Navajo Nation (AZ), at which a quorum was present and the same was passed by a vote of 2 in favor and 0 opposed, this 5<sup>th</sup> day of January 2024.**



Steven A. Darden, *Vice Chairperson*  
Navajo Nation Human Rights Commission