

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

Acknowledging the Report by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, and Recommending that the Navajo Nation Council to Formally Request the President of the United States of America to Direct the U.S. Forest Service to Suspend the Permit authorizing the use of Reclaimed Waste Water to make Artificial Snow and follow the Recommendations of the Special Rapporteur; and Issue other Directives

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. Pursuant to 2 N.N.C. § 921, the Commission is organized to operate as a clearinghouse entity to administratively address discriminatory actions against citizens of the Navajo Nation, and to interface with the local, state, federal governments and with national and international human rights organizations in accordance with its plan of operation and applicable laws and regulations of the Navajo Nation; and
3. Pursuant to its plan of operation, the Commission is mandated to network with local, state, national and international organizations to advocate for recognition of Navajo human rights; and
4. On May 7, 2010, the Diné Hataalii Association, Diné Medicine Man Association, and Azee’ Bee Nahagha of Diné Nation jointly requested the Commission to communicate with Professor S. James Anaya, United Nations Special Rapporteur, regarding the desecration of the San Francisco Peaks and violation of Navajo human rights; and
5. On May 17, 2010, based on the recommendation of the Commission, the Intergovernmental Relations Committee of the Navajo Nation Council authorized the submission of a complaint to Professor S. James Anaya, Special Rapporteur, and requested that Special Rapporteur carry out his mandates to protect the human rights of Navajos and other indigenous peoples as they pertain to their religious beliefs that the San Francisco Peaks is a sacred site; and
6. On August 22, 2011, Professor S. James Anaya, Special Rapporteur, issued his report entitled *Report by the Special Rapporteur on the [R]ights of [I]ndigenous [P]eoples*, Rep. of Human Rights Council, 18th Sess, Aug. 22, 2011, U.N. Doc. A/HRC/18/35/Add.1; UN. GAOR, 65th Sess., (Sept. 14, 2011)., detailing that the United States did not respond to calling attention to information he received “relating to the proposed use of recycled wastewater for the commercial ski operation [on] the San Francisco Peaks, a mountainous area that is sacred to several Native American tribes.” Id. at 43. The Special Rapporteur’s report is attached hereto as Exhibit “A”; and
7. The Special Rapporteur further observed and reached some of the following conclusions:

- a. That the stake holders human rights to free, prior and informed consent were violated as the United States did not comply with the requirements under the International Covenant on Civil and Political Rights and International Convention on the Elimination of All Forms of Racial Discrimination;
- b. That “[d]espite adamant opposition by the tribes based on their religious practices and beliefs, the Forest Service decided to approve the artificial snowmaking and other ski area modifications, bringing into question the United States’ adherence to international standards to which it has expressed its commitment.” Id. at 47;
- c. That “[s]imply providing indigenous peoples with information about a proposed decision and gathering and taking into account their points of view is not sufficient in this context. Consultation must occur through procedures of dialogue aimed at arriving at a consensus.” Id. at 48; and
- d. That “[i]t is far from apparent how the decision to permit snowmaking by a private recreational ski facility is in furtherance of one of the specific public purposes – public safety, order, health or morals – or the human rights of others.” Id. at 51; and
- e. That “[i]t is highly questionable that the effects on Native American religion can be justified under a reasonable assessment of necessity and proportionality, if the purpose behind the [United States] Government decision to permit the enhancement to the ski operation is none other than to promote recreation.” Id. at 52.

8. The Special Rapporteur provided the following recommendations:

- a. “On the basis of the foregoing, the Special Rapporteur respectfully recommends that the United States Government engage in a comprehensive review of its relevant policies and actions to ensure that they are in compliance with international standards in relation to the San Francisco Peaks and other Native American sacred sites, and that it take appropriate remedial action.” Id.
- b. “In this connection, the [United States] Government should reinstate or continue consultations with the tribes whose religious 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 [United States] 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 accordance with the United States’ international human rights obligations.” Id.
- c. “The Special Rapporteur wishes to stress the need to ensure that actions or decisions by [the United States] Government agencies are in accordance with, not just domestic law, but also international standards that protect the right of Native American to practice and maintain their religious traditions. The Special Rapporteur is aware of existing government programs and policies to consult with indigenous peoples and take account their religious traditions in government decision-making with respect to sacred sites. The Special Rapporteur urges the [United States] Government to build on these programs and policies to conform to international standards and by doing so to establish a good practice and become a world leader that it can in protecting the rights of indigenous peoples.” Id.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Human Rights Commission hereby acknowledges the report by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Professor S. James Anaya, and commends the Special Rapporteur on accepting the complaint regarding the desecration of the San Francisco Peaks from the Navajo Nation, Diné Hataalii Association, Diné Medicine Man Association and Azee' Bee Nahagha of Diné Nation.
2. The Navajo Nation Human Rights Commission further hereby respectfully requests the Navajo Nation Council, Speaker of the Navajo Nation Council, and President and Vice-President of the Navajo Nation to formally request the President of the United States to suspend the permit from the U.S. Forestry Service authorizing the use of reclaimed waste water to produce artificial snow until the Special Rapporteur's recommendations contained in his report are appropriately addressed.
3. The Navajo Nation Human Rights Commission further hereby recommends that the Navajo Nation Council, Speaker of the Navajo Nation Council and President and Vice-President of the Navajo Nation send a delegation to Geneva, Switzerland, to be present and/or participate in the presentation of the report (A/HRC/18/35/Add.1) to the United Nations Human Rights Council by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Professor S. James Anaya.
4. The Navajo Nation Human Rights Commission further hereby recommends that the Navajo Nation expressly direct and authorize the Commission to engage and utilize international forums such as, including but not limited to, United Nations Human Rights Council, Inter-American Commission on Human Rights and Committee on the Elimination of Racial Discrimination in order to protect and have formally recognize that the Navajo people actively use the San Francisco Peaks in the cultural, historic and religious contexts.
5. The Navajo Nation Human Rights Commission further directs the Office of Navajo Nation Human Rights Commission to present this resolution to the appropriate committees within the Navajo Nation Legislative Branch, to the appropriate offices and departments within the Navajo Nation Executive Branch.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Human Rights Commission at a duly called meeting at Window Rock, Navajo Nation (AZ), at which time a quorum was present and the same was passed by a vote of 4 in favor and 0 opposed, this 2nd day of September 2011.



Clarence Chee, Vice-Chairperson