



NAVAJO NATION HUMAN RIGHTS COMMISSION

P.O. Box 1689

Window Rock, Navajo Nation (Arizona) 86515

Phone: (928)871-7436 Fax: (928)871-7437

www.nnhrc.navajo-nsn.gov

 facebook.com/nnhrc

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Media Contact: Rachele Todea
rtodea@navajo-nsn.gov

NNHRC passes resolution to request US President to suspend USFS Permit *NNHRC legislation will go to Navajo Nation Council, next*

ST. MICHAELS, Ariz.—The Navajo Nation Human Rights Commission urges the Navajo Nation Council to formally request the U.S. President to suspend the permit authorizing the use of reclaimed water on Dook’o’osliid [San Francisco Peaks], the sacred mountain to the west marking the traditional boundary of the Navajo people—the Diné.

The request is on the heels of the U.N. Special Rapporteur of the Rights of Indigenous Peoples S. James Anaya’s recommendation in his report to the U.N. Human Rights Council in Geneva, Switzerland, which was released to the public on August 22, 2011. Anaya will present the report to the U.N. Human Rights Council on September 20, 2011.

“The Navajo people is a part of the world community and the world community has set standards for a good reason,” said Leonard Gorman for the Navajo Nation Human Rights Commission and continued, “The United States must be responsible and abide by international standards that protect the human rights of Navajos.”

The NNHRC resolution passed 4 in favor, 0 opposed on September 2, 2011, and will be presented to the Navajo Nation Council at a date to be determined. It is titled, “Acknowledging the Report by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, S. 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 other recommendations” and indicates the timeline between the NNHRC and Anaya formal correspondences. (To view the report, visit www.nnhrc.navajo-nsn.gov.)

“On May 7, 2010, the Diné Hataahii Association, Diné Medicine Man Association, and Azee’ Bee Nahagha of Diné Nation jointly requested the [Navajo Nation Human Rights] 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

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On May 17, 2010, based on the recommendations 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 sites; and

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.”

From the onset, it took about 15 months for a response, but that response came with three recommendations from the U.N. representative to the United States.

The three recommendations were:

“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 relations to the San Francisco Peaks and other Native American sacred sites, and that it take appropriate remedial action.

In this connection, the [United States] Government should reinitiate or continue consultations 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 [United States] Government should give serious consideration to suspending the permit for the modification 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.”

“The Special Rapporteur wishes to stress the need to ensure that actions or decision 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.

With Anaya's recommendations, NNHRC has respectfully requested 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, President Obama, to suspend the permit from the U.S. Forest 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, according to the NNHRC resolution.

"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 [Anaya] report to the United Nations Human Rights Council by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Professor S. James Anaya," according to the NNHRC resolution.

Relevant new perspective from a United Nations official

For Navajo human rights official Leonard Gorman, Anaya's report provides relevant language to the international community who Anaya serves on behalf of indigenous peoples.

Anaya stated, "Under the cited human rights treaties, to which the United States is a party, and the Declaration on the Rights of Indigenous Peoples, which the United States has endorsed, consultations should take place with the objective of achieving agreement or consent by indigenous peoples to decisions that may directly affect them in significant ways, such as decisions affecting their sacred sites."

Moreover, Anaya said, "Simply 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."

Otherwise, Anaya stated, "In the absence of consent by indigenous peoples to decisions that affect them, States should act with great caution. At a minimum, States should ensure that any such decision does not infringe indigenous peoples' internationally-protected collective or individual rights, including the right to maintain and practice religion in relation to sacred sites.

"The process of snowmaking from reclaimed sewage water on the San Francisco Peaks undoubtedly constitutes a palpable limitation on religious freedom and belief, as clearly indicated by the U.S. Forest Service's Final Environmental Impact Statement," stated Anaya.

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Anaya continued and stated, “The religious freedom at stake is not simply about maintaining ceremonial or medicinal plants free from adverse physical environmental conditions or about physical access to shrines within the Peaks. More comprehensively, it is about the integrity of entire religious belief systems and the critical place of the Peaks and its myriad qualities within those belief systems.”

Gorman said, “Anaya’s report supports the need to not only elevate the fundamental religious rights into the international arena but importantly the necessity to ensure that United States carries out its commitments to human rights based on binding international treaties. This is a comprehensive approach to protect Dook’o’osliid.”

Anaya is one of few international representatives on human rights who said in his report, “It 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 Government decision to permit the enhancements to the ski operation is none other than to promote recreation.”

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The 22nd Navajo Nation Council Delegate Jonathan Nez (Shonto/Navajo Mountain/Oljato/Tsah Bii Kin) will sponsor the legislation on behalf of the Navajo Nation Human Rights Commission, date to be determined.