



NAVAJO NATION HUMAN RIGHTS COMMISSION

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NNHRC SAYS U.S. DISTRICT COURT JUDGE RULED AGAINST HEALTH OF ALL PEOPLES NOT JUST INDIGENOUS PEOPLES

Ingesting crystallized wastewater is ok; ruling does not favor indigenous peoples or scientific data

ST. MICHAELS, Ariz.—The Navajo Nation Human Rights Commission is not surprised by U.S. District Judge Murguia of Arizona who ruled on December 1, 2010 against science, health and indigenous peoples, and instead ruled that snow made with wastewater is safe to ingest.

Murguia ruled against the Save the Peaks Coalition and 9 other individuals listed in the lawsuit who filed against the U.S. Forest Service in 2009, *The Save the Peaks Coalition, et al v. U.S. Forest Service*. The coalition was “formed to address environmental and human rights issues caused by proposed ski resort development on the San Francisco Peak, a mountain in Northern Arizona held sacred by over 13 Native America Nations,” according to their website. The attorney representing the coalition in the lawsuit is Howard Shanker. Shanker will file an appeal and along with a motion for an injunction pending an appeal, according to Shanker in an e-mail sent on December 1, 2010 though that may not be an option.

“The Commission commends the legal effort made by Save the Peaks Coalition. Persistent attention and vigorous pursuit has been the only way indigenous societies survive,” said NNHRC Executive Director Leonard Gorman.

November 30, 2010 was the last day of a temporary restraining order that blocked breaking ground for any development at Arizona Snowbowl ski resort, the ruling lifts that block.

Gorman said, “Even though it’s indicated in numerous literature that indigenous people are distinct, it is because indigenous peoples make-up a small population, the dominant society needs to learn more about the distinctness of indigenous peoples and make indigenous peoples insignificant. Thus, part of NNHRC’s job is to educate, educate, educate the general public about Diné distinct human rights.”

Another effort to protect the San Francisco Peaks was thwarted on June 8, 2009. “[T]he

United States Supreme Court refused to accept certiorari in the matter of Navajo Nation v. U.S. Forest Service notwithstanding the Coconino National Forest Service's environmental impact admission that "[s]nowmaking and expansion of facilities, especially the use of reclaimed, would contaminate the natural resources need to perform the required ceremonies that have been and continue to be, the basis for the cultural identity from many of these tribes," as stated in a NNHRC communication to explain to U.N. official James Anaya the allegation that the United States fails to preserve and protect sacred sites, cultural and religious beliefs and practices of the Diné and other indigenous peoples.

"The judge's ruling suggests the court rules in favor of the federal agency than indigenous peoples," said Gorman and continued that it seemed that the judge unnecessarily reviewed the merits of Save the Peaks Coalition's claims. He also said the court did not delve into the scientific data and said, "I believe that it's up to the scientific community to determine scientific claims, not the courts." About Judge Murguia's serial lawsuit claim, Gorman said, "That does not mean the issue is closed. A person has a right to issue a claim."

Regardless, Gorman said, "Navajo beliefs have prevailed for centuries for Diné." In this decision, "It's interesting to learn that a federal agency makes note that data exists contesting the health risk, but finds it appropriate to continue with the development at the Arizona Snowbowl ski resort," he said.

Greed seems to be underlying factor over health and scientific data. Repeatedly, the courts ignore indigenous human rights in protecting indigenous sacred sites.

Seeking United Nations Protection for Dook'o'osliid [San Francisco Peaks]

On November 5, 2010, as the United States was under United Nations protocol to review its human rights commitments and obligations as a member of the United Nations in Geneva, Switzerland, Harold K. Koh, legal advisor to the U.S. Department of State, said about Dook'o'osliid that religious rights are upheld by the First Amendment of the U.S. Constitution and made reference to the International Covenant on Civil and Political Rights Article 27.

The United States ratified the International Covenant on Civil and Political Rights in 1992, stating in Article 27 that "[i]n those States [nation-states] in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use the own language." This is a binding treaty for human rights.

"It is rare that the U.S. acknowledges international binding treaty to be applicable on indigenous peoples," said Gorman in a previous press release issued on November 5, 2010 in response to Koh in Geneva.

Last May, NNHRC submitted to U.N. Special Rapporteur James Anaya to submit a letter of allegation against the United States to uphold its human rights obligation as a U.N. member-state.

“We are very confident that the Special Rapporteur will thoroughly investigate the sacred sites violation as it pertains to the desecration of the San Francisco Peaks and fully consider the Diné and other indigenous nations concerns,” said NNHRC Chairperson Duane H. “Chili” Yazzie.

The reason for the complaint, according to the NNHRC communication to the Special Rapporteur, is that “The Diné and other indigenous peoples have exhausted all of their domestic remedies through the United States judicial process to protect and preserve Dook’o’osliid [San Francisco Peaks].

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