

STAKEHOLDER REPORT ON THE UNITED STATES OF AMERICA

**50th session of the 4th
Universal Periodic
Review (Nov 10)**

7 APRIL 2025

*Submitted by the Navajo Nation Human Rights
Commission*



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I. Reporting Organization

We the Navajo Nation are the largest Indigenous Nation in the United States of America (“US”). With approximately 421,374 (NN. Census Office) members who live primarily in and around the reservation extending into Utah, New Mexico, and Arizona. Our Navajo Nation was established as a three-branch government during the era of extracting oil within our boundaries. Throughout time, this concurred with more interaction and dictation as a domestic dependent nation according to our treaties with the United States, the Navajo Nation Code, and Diné Fundamental Law which includes the natural laws. Thus, the Navajo Nation Human Rights Commission (“NNHRC”) is an office within the legislative branch of the Navajo Nation established in 2006 to address discriminatory actions against the citizens of the Navajo people.

II. Introduction

The Navajo people have a rich oral history of how we became people of this world. This oral history begins with the four previous underworlds before the emergence into this, the fifth and present world. Navajos call themselves, “Five-Fingered People of the land.” Each of our five fingers represents one of the worlds we traveled through. The Navajo people are the children of this land, and it is our responsibility to protect Navajo heritage and places of traditional significance on our ancestral lands. Ever since we emerged into the present world, we have always been here. We know this because our ceremonies describe ancient changes in the landscape and the celestial markers.

1.Four mountains bound Navajo land in sacred directions, with two additional sacred mountains representing the doorway. Each mountain has a divine creation. Each sacred mountain was put in place and anchored with natural powers and elements, including lightning bolts, war clubs, rainbows, male/female rain, animals, trees, other plants and seeds. Each is honored and respected by Navajo people daily, through ancient songs, prayers and ceremonies. The ceremonial songs and prayers are still sung today with the same words in the same order.

2.We have thus far been in the five of the twelve stages of the cycle of life. The first was flint tool people, known to archaeologists as the Paleoindian period, when we hunted megafauna. The second was basket people, or the Archaic period, when farming of corn, beans, squash, and tobacco began. The third was clay pottery people, or the Basketmaker I-III periods, when mountain sheep, deer and antelope were hunted. The Forth was the adaptors, when domesticated sheep, horses, and goats were introduced. We are now the five-fingered earth surface people. During all these eras, we have lived here. we are asserting our sovereign rights as the protectors or our heritage and places of traditional significance. We are taught that we are the caretakers of our culture, our lands, and our resources. Since time immemorial, we have been here, and for

countless generations we will remain on our Aboriginal Lands.

3.This Report addresses Indigenous Peoples' right to religious freedom and the failure of the US to implement previous UPR recommendations and to uphold its legal obligations under the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"),ⁱ the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"),ⁱⁱ and the International Covenant on Civil and Political Rights ("ICCPR")ⁱⁱⁱ.

4.Specifically, the US, through its Department of Agriculture, Forest Service ("USFS") and the City of Flagstaff is permitting the use of treated sewage effluent "reclaimed wastewater" to produce artificial snow at Snowbowl Ski Resort on the San Francisco Peaks, a sacred landscape and aboriginal territory to the Navajo and at least twelve other Indigenous nations in the region. The use of contaminated water on the sacred mountain is a violation of the Navajo peoples' religious and inherent rights under the UNDRIP and other human rights norms. Further, the US is discriminating against the Navajo and other impacted Indigenous Peoples by not affording the legal protection.

III. Navajo relationship to the San Francisco Peaks

5.The San Francisco Peaks is located on Navajo aboriginal territory within the Coconino National Forest near Flagstaff, Arizona, is one of the most sacred landscapes to the Navajo people. Although the Peaks are located on land designated as federal public land under the administration of the Forest Service, the Navajo, along with other Indigenous Peoples, have continuously accessed and used the area for the maintenance of their long-standing religious, cultural, ceremonial, and other traditional practices associated with the Peaks since time immemorial. The Peaks mark the western boundary of the Navajo homeland and serve as a foundation for their spiritual and physical well-being. The Blessing Way and other ceremonies require elements from the Peaks, including sacred plants, trees, soil, and water, essential for healing practices.

6. According to Navajo practitioners or "medicine people" the mountains "serve as the foundation of the Navajo Life Way and represent the elements of earth, fire, water, and air. Each element in, on, and of the mountain landscape is inextricably linked to a Navajo person's mental, physical, and spiritual health ... when one of these mountains and elements is desecrated, it throws the Navajo Life Way out of balance and weakens Navajo traditional healing ceremonies and prayers."

7. In its Final Environmental Impact Statement, the USFS acknowledged the sacred significance of the Peaks and the Navajo's belief that they were placed between the four sacred mountains by the Navajo deities and have a duty to protect them. Despite this, the USFS permitted Snowbowl's expansion and increased use of reclaimed wastewater for snowmaking.

IV. Use of Reclaimed Sewage Water on the San Francisco Peaks

8. The USFS first permitted commercial ski operations on the Peaks in the 1930s. Snowbowl began operating the ski resort in 1992 under a USFS special-use permit and expanded operations in 2001 due to inconsistent snowfall. In 2005, USFS approved Snowbowl's request to make artificial snow using reclaimed wastewater. Snowmaking began in 2012 with water provided by the City of Flagstaff, despite strong opposition from the Navajo Nation. In 2014, Flagstaff extended its five-year agreement with Snowbowl to a 20-year contract (until 2034) and increased the rate of water delivery. A city council ordinance granting the Utilities Director executive decision-making authority over water contract renewals allowed the action to be taken without public comment and in the absence of consultation with the Navajo Nation and other impacted Indigenous Peoples.^{iv}

9. Reclaimed water used for snowmaking contains unregulated compounds, including pathogens and pharmaceuticals, which the Navajo see as contaminating the Peaks.^v Artificial snowmelt spreads the contamination, disrupting traditional healing and religious practices and undermining the cultural integrity of the Navajo people.^{vi} The Navajo view artificial snowmaking on the Peaks as a disruption of the Navajo Life Way that threatens the purity and integrity of the sacred area and is incompatible with the mountain's sacred nature and ecological balance. They believe the Peaks must remain in their pure, natural state, *át'é* or *ákót'é* (alive and in existence before mankind) to maintain their religious and cultural practices. Snow is respected as a deity that nourishes the land through snowmelt. Only natural, uncontaminated snow can maintain ritual purity.

V. Failure of US domestic law and policy to protect Indigenous Peoples' religious rights

10. In the US, Indigenous Peoples maintain a nation-to-nation relationship with the federal government. Under this "trust relationship", the US agrees to protect the rights of Indigenous Peoples, including their religious freedom. However, existing US legal instruments including the First Amendment of the US Constitution and the Religious Freedom Restoration Act ("RFRA")

have failed to adequately protect Indigenous Peoples' religious rights because they have been interpreted and applied in a discriminatory manner.

11. The US Supreme Court and federal courts have set a restrictive standard for determining a "substantial burden" on religious exercise under the U.S. Constitution – a standard that has been impossible to meet for Indigenous Peoples.^{vii} Judicial interpretations of federal statutes, such as RFRA, also demonstrate a lack of legal protection against the type of State action at issue here. RFRA prohibits the government from substantially burdening religious exercise unless it serves a compelling interest by using the least restrictive means to achieve its objective.^{viii} RFRA is limited in its application because it only applies to federal actions, not municipal decisions such as the City of Flagstaff's wastewater permit extension. Most recently in *Apache Stronghold v. the United States*,^{ix} Apache tribal members were unsuccessful in invoking RFRA to protect their sacred site, Oak Flat, from copper mining. The case has been appealed to the US Supreme Court.

VI. Navajo Nation's efforts to protect the San Francisco Peaks

14. Courts have repeatedly ruled against the Navajo Nation's efforts to halt ski operations, finding that these recreational and commercial operations do not "substantially burden" Native American religious practices.

15. The Navajo began challenging the government's action in the 1980s. In 1983, the D.C. Circuit Court ruled in *Wilson v. Block* that their religious rights were not violated under the First Amendment of the US Constitution because the government did not "deny access" or "prohibit" ceremonies. After the 2005 approval of wastewater snowmaking, the Navajo filed an administrative appeal, which the USFS denied based on *Wilson v. Block*.

16. The Navajo and other Indigenous nations continued to sue the US under several federal statutes including RFRA, however, their claim was dismissed after the court found the government's action did not coerce religious violations or penalize Indigenous practices.

17. On appeal, a Ninth Circuit three-judge panel reversed the lower court decision, ruling that the snowmaking imposed a "substantial burden" on the Navajo's religious exercise that the USFS failed to justify under RFRA. The court also found that the environmental assessment failed to evaluate human health risks.^{xi} In an *en banc* review, the full Ninth Circuit overturned the panel's decision. Although the Court acknowledged that the presence of reclaimed wastewater would

desecrate the sacred mountain and seriously diminish spiritual fulfillment, it held that it was not a ‘substantial burden’ on the free exercise of religion because the government did not force the Navajo to violate their beliefs or deny them benefits.

18. In 2009, the Navajo Nation petitioned the US Supreme Court to review whether artificial snowmaking imposed a substantial burden on their religious rights. The Supreme Court denied the petition without comment, effectively ending legal options in US courts. After years of litigation and significant legal costs, it is evident that domestic law provides no remedy to protect the San Francisco Peaks and other sacred sites, and Indigenous religious rights.

19. Turning to the international community to protect the Peaks, the NNHRC engaged the UN Special Rapporteur on the rights of Indigenous Peoples who urged the US “to “give serious consideration to suspending the permit for the modifications of Snowbowl until such agreement can be achieved. . . in accordance with United States’ international human rights obligations” and to “adopt legislation to amend existing laws governing the protection of sacred and cultural places beyond present-day reservation boundaries so as to further protect the religious freedoms of indigenous peoples [and that] [t]he policies should reflect the vision of indigenous peoples’ definition of sacredness.”

20. In 2011, the NNHRC submitted an Early Warning and Urgent Action request to CERD reporting on the continued rights violations and the US failure to implement the Special Rapporteur’s recommendations. A stakeholder report was also sent to the Committee in 2014 outlining the US’s desecration of the Peaks for the financial and recreational benefit of non-Indigenous business owners and the American public.^{xii} In a letter to the US government, CERD expressed concern over the potential impact of Snowbowl on Indigenous Peoples’ spiritual and cultural beliefs, requesting information on the process to obtain free prior and informed consent and on measures taken to ensure the sacred character of the Peaks and the possibility of suspending the permit pending consultation.

21. The NNHRC also reported to the CCPR that the US “has not protected the cultural properties important to the Navajo people” and “frequently allows desecration” of sacred sites.^{xiii} The NNHRC recommended the US “uphold its commitments and trust responsibilities to protect indigenous peoples’ sacred places and start embracing the [UNDRIP’s] standard of free, prior and informed consent, especially as it relates to indigenous peoples’ sacred places.

22. In another attempt to protect the Peaks, the NNHRC filed a petition to the Inter-American Commission on Human Rights in 2015 that was dismissed for failure to exhaust domestic remedies.^{xiv}

VII. US violations of International Human Rights Law

23. Indigenous Peoples' right to practice religion and access religious sites is protected by Article 12 of UNDRIP which the US has endorsed, Article 5 of ICERD of which the US is a party and Articles 2, 18 and 26 of the ICCPR that the US has also ratified.

24. The UN Committee on the Elimination of Racial Discrimination expressed concern that the US has "failed to uphold the rights of Indigenous peoples concerning the protection of their sacred places and areas of cultural importance."^{xv} The Human Rights Committee also noted the "insufficient measures taken to protect the sacred areas of Indigenous Peoples against desecration, contamination and destruction as a result of urbanization, extractive industries, industrial development, tourism, and toxic contamination" and the "restriction of access of indigenous peoples to sacred areas that are essential for the preservation of their religious, cultural, and spiritual practices, and the insufficiency of consultation with indigenous peoples on matters of interest to their communities (art. 27)."

25. The Special Rapporteur on Freedom of Religion or Belief confirmed that the US offers no protection for Indigenous People's freedom of religion and that US legislation concerning Indigenous religious rights is lacking, recommending that "Higher standards for the protection of sacred sites are needed and effective tribal consultation should be ensured."^{xvi} The Rapporteur reported that religious "protections must also extend to traditional lands that are integral to indigenous spirituality" because States "fail to protect believers of indigenous spirituality equally, often dismissing legal claims invoking the right to freedom of religion or belief as a justification for protecting indigenous peoples' access to use of traditional lands." Speaking specifically about the decisions in *Navajo Nation v. U.S. Forest Service* and *Apache Stronghold v. United States of America*, he emphasized that US courts "ruled that commercial use of traditional lands would not 'coerce' indigenous peoples to act contrary to their beliefs and ruled that the US "could use federal lands anyway "even if [it] makes [their] worship [...] 'impossible'".

26. The Special Rapporteur reported that "desecration and destruction" of Indigenous peoples' sacred sites "raise serious concerns for indigenous peoples' right to freedom of religion or

belief,” and that “systematic and systemic discrimination makes it difficult for indigenous peoples to live, let alone live consistently, with their spirituality.” He recommended that States “Establish legal and policy frameworks that recognize the right of indigenous peoples to their beliefs and comprehensively promote and protect their rights, drawing specifically on the United Nations Declaration on the Rights of Indigenous Peoples, including freedom of religion or belief. To this end, States should regularly review and revise such frameworks to tackle discrimination, undue restrictions on spiritual manifestations, and impediments to access and use of indigenous peoples’ lands.”^{xvii}

VIII. US Failure to Implement Previous UPR Recommendations

27. In its first UPR review, the US agreed^{xviii} to fully UNDRIP but only consistent with its 2010 UNDRIP endorsement and supported a recommendation to ensure the participation of Indigenous Peoples in decisions affecting their natural environment, measures of subsistence, culture and spiritual practice.^{xix} It rejected recommendations that UNDRIP be implemented without conditions or reservations and that the Declaration be used as a guide for interpreting human rights treaty obligations relating to Indigenous Peoples’ rights.

28. At its second UPR, the US agreed to the following UPR recommendations, again only to the extent they are consistent with its announcement of support for UNDRIP: fully implement UNDRIP, and remove discriminatory legal barriers; and regularly consult with indigenous peoples on matters of interest to their communities, to support their rights to traditionally owned lands and resources and to adopt measures to effectively protect sacred areas of indigenous peoples against environmental exploitation and degradation.

29. At its third UPR, the following recommendations were supported by the US^{xx}: “develop norms that ensure free, prior and informed consultations with indigenous communities in relation to projects with a potential impact on their territories and traditional ways of life... “continue to take concrete actions to promote inter-racial and inter-religious respect and eliminate discrimination, including by addressing the socioeconomic root causes and strengthening domestic remedies;” “take steps to ensure the full implementation of domestic and international laws to end all forms of discrimination, including discrimination on the basis of race, sex and religion, and bring the perpetrators to justice;” and “take the necessary measures to eliminate all forms of racial, gender, religious and other forms of discrimination.”

30. The United States has failed to fully implement the UNDRIP and other relevant international standards and norms as per the recommendations of the UPR and the human rights treaty bodies and special procedures. The State's ongoing desecration of the San Francisco Peaks a clear violation of religious rights of the Navajo Nation that has not been remedied by US courts.

IX. Conclusions and Recommendations

31. Despite commitments made during previous universal periodic reviews, the United States has failed to implement recommendations made by the UPR, CERD, CCPR, and Special Rapporteurs to protect Indigenous sacred sites and places and the free exercise of religion. The NNHRC recommends that the Human Rights Council urge the US to prevent the continued desecration of the Peaks through the use of reclaimed wastewater and to remind the US of its international commitments to protect Indigenous sacred places. The US is urged to:

Suspend the permitting of reclaimed wastewater on the San Francisco Peaks;

Establish and implement free, prior, and informed consent mechanisms for proposed developments on indigenous sacred sites, landscapes and places, including the San Francisco Peaks;

Develop an action plan to address structural discrimination against Indigenous Peoples' religious beliefs and practices.

Take steps to ensure the full implementation of Indigenous Peoples' domestic and international rights to religious freedom and exercise.

Implement measures for remediation of the San Francisco Peaks in consultation with the Navajo and affected Indigenous peoples; and

Ensure that any actions or decisions of state agencies are in accordance with international standards.

ⁱ United Nations Declaration on the Rights of Indigenous Peoples, U.N. G.A. Res 61/295, U.N. H.R.C., 61st Sess., U.N. Doc. A/RES/61/295 (2007).

ⁱⁱ United Nations International Convention on the Elimination of All Forms of Racial Discrimination, U.N. G.A. Res. 2106 (XX) (Dec. 21, 1965).

ⁱⁱⁱ United Nations International Covenant on Civil and Political Rights, U.N. G.A. Res 2200A (XXI), U.N. H.R.C. (Dec. 16, 1966).

^{iv} City of Flagstaff News Release, "City of Flagstaff Administratively Approves Snowbowl Agreement", August 8, 2014; "Reclaimed water snowmaking to continue on San Francisco Peaks", NAVAJO-HOPI OBSERVER, August 26, 2014.; Direct Delivered Reclaimed Water Agreement between City of Flagstaff Utilities Director on behalf of the

City of Flagstaff and Arizona Snowbowl Resort Limited Partnership, August 8, 2014 at para. 11; Letter from J.R. Murray, Snowbowl General Manager to Brad Hill, City of Flagstaff Utilities Director, July 22, 2014 (requesting 20-year extension of reclaimed water agreement).

^v *Id.* at 3-17.

^{vi} Diné Statement, *supra* note 16.

^{vii} *Wilson v. Block*, 708 F.2d 735 (D.C. Cir. 1983), *Employment Div. v. Smith*, 485 U.S. 660 (1988); *Lyng v. Northwest Indian Protective Cemetery Ass’n*, 485 U.S. 439 (1988). *Badoni v. Higginson*, 638 F.2d 172 (10th Cir. 1980).

^{viii} Religious Freedom Restoration Act of 1993 (H.R. 1308) 42 U.S.C. ch. 21B § 2000bb *et seq.*

^{ix} *Apache Stronghold v. United States*, 95 F.4th 608 (9th Cir. 2024).

^x *Wilson v. Block*, 708 F.2d 735 (D.C. Cir. 1983)

^{xi} *Navajo Nation v. United States*, 479 F.3d 1024 (9th Cir. 2007).

^{xii} 2014 Shadow Report, Regarding the United States of America report submitted by State parties under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, NNHRC, Exhibit A, Res. NNHRCJUNE-45-14 at 3 (June 14, 2014).

^{xiii} 2013 Shadow Report: Regarding the United States of America fourth periodic report on the International Covenant on Civil and Political Rights as it relates to indigenous peoples’ sacred places and free, prior and informed consent, Exhibit A, Res. NNHRCAUG-34-13, at 3 (Aug. 2, 2013).

^{xiv} Petition to the Inter-American Commission on Human Rights, submitted by the Navajo Nation against the United States of America, March 2, 2015.

^{xv} CERD/C/USA/C0/6 (2008).

^{xvi} E/CN.4/1999/58/Add. 1 at paras. 80-82.

^{xvii} *Id.*, at para. 86(a). (Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, General Assembly)

^{xviii} A/HRC/16/11Add.1 paras. 10-12.

^{xix} A/HRC/16/11 recommendations 200, 202, 203, 205, 206 and 83.

^{xx} A.HRC/46/15/Add.1 paras. 13-14.