



P.O. Box 1689  
WINDOW ROCK, AZ 86515  
PHONE: (928) 871-7436  
FAX: (928) 871-7437

**Testimony by Chairperson Duane H. Yazzie before the U.S. Senate Committee on Indian Affairs on “Setting the Standard: Domestic Policy Implications of the United Nations Declaration on the Rights of Indigenous Peoples”**

**Thursday, June 9, 2011**

On behalf of the Navajo Nation Human Rights Commission (“Commission”) and the Navajo Nation, we thank you for the opportunity to speak about how the United Nations Declaration on the Rights of Indigenous Peoples (“Declaration”) will improve current U.S. legislation that concern Native Americans.

The Declaration sets the standard to guarantee Native American the rights to sacred sites. The Declaration fills the gaps where U.S. domestic law and policy fail to protect sacred sites. Navajos consider the San Francisco Peaks (“Peaks”), located in Flagstaff, Arizona, sacred.

Since 2004, the Navajo Nation litigated for the protection of the Peaks pursuant to the American Indian Religious Freedom Act, the National Historic Preservation Act, the National Environmental Policy Act, and the Religious Freedom Restoration Act (“Acts”). Although Navajos revere the Peaks as a sacred single living entity, the Acts failed to protect the Peaks from desecration and economic exploitation.

In 2009, the U.S. Supreme Court denied certiorari to the 9<sup>th</sup> Circuit en banc decision upholding the Coconino National Forest permit authorizing the Arizona Snowbowl Ski Resort (“Snowbowl”) to use reclaimed wastewater (“wastewater”) to produce artificial snow for economic and recreational purposes.

On May 24, 2011, the Snowbowl began construction to install a water pipeline for manufacturing artificial snow. The Navajo Nation continues opposition of the Snowbowl efforts because the use of wastewater poses great concerns for Navajos. The use of wastewater will contaminate the soil and medicinal vegetation needed to perform ceremonies and prayers. The use of wastewater will prevent a Navajo traditional medicine person from effectively treating his or her patient.

The implementation of the Declaration will hold the U.S. accountable to its responsibility toward Native Americans. The Declaration recognizes Native Americans possess’ distinct rights to sacred sites since time immemorial, whereas the U.S. recognizes a few rights post-colonization.

The Declaration's article 11 and 12 acknowledge the indigenous peoples' rights to protect and access past, present and future cultural and religious sites. Also, the Declaration recognizes the right to practice tradition, custom and ceremonies. The Peaks constitute one of four main sacred sites to Navajos. Four sacred mountains surround the Navajo Nation. The cultural integrity rests on the four sacred mountains remaining pure. If one mountain is contaminated it negatively impacts the quality of Navajo life.

Furthermore, the Declaration's article 24 and 25 recognizes the right to the traditional medicines and medicinal vegetation; and the right to maintain and strengthen the distinctive spiritual relationship with the land. Navajos gather traditional medicine on the Peaks; however, the same vegetation may not exist in the future due to the contamination.

The Commission and the Navajo Nation advocate for the implementation of the Declaration and identified three (3) methods in which the U.S. can implement the Declaration:

1. Ratify the Declaration;
2. Integrate the Declaration into existing law and policy; and
3. Legislatively address Indian law jurisprudence

Ratifying the Declaration will mandate the U.S. to change its laws and policies towards Native Americans. Integrating the Declaration into existing law will focus substantively on the value of sacred sites instead of placing an undue burden on procedure. Also, the Declaration will emphasize international policy instead of relying on domestic policy alone. Legislatively addressing Indian law jurisprudence will repair the dispossession of Native American rights to sacred sites.

While implementing the Declaration creates a challenge, the U.S. must balance its own interest with the rights of Native Americans. The U.S. must respect and abide by international law regarding indigenous human rights, specifically those that address sacred sites.