

The public can join the meeting to provide public comment. Please notify Jessica Vigorito at [Jessica.Vigorito@flagstaffaz.gov](mailto:Jessica.Vigorito@flagstaffaz.gov) if you need any assistance joining the meeting.

ATTENTION  
IN-PERSON AUDIENCES AT COMMISSION MEETINGS HAVE BEEN SUSPENDED UNTIL FURTHER NOTICE

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## **NOTICE AND AGENDA**

**COMMISSION ON DIVERSITY AWARENESS**  
**Tuesday**  
**July 19, 2022**

**VIRTUAL TEAMS MEETING**  
**1:30 P.M.**

1. **Call to Order**

2. **Roll Call**

*NOTE: One or more Commission Members may be in attendance telephonically or by other technological means.*

DeAnn Wegwert, Chair  
Robert "Dan" Duke  
Claire Hardi  
Mandy Martinez Gebler

Marcela Pino  
Jean Toner, Vice Chair  
Christine Tucci

3. **Mission Statement and Land Acknowledgment**

### **MISSION STATEMENT**

*A commission to foster support, respect, awareness and appreciation of diversity among all citizens of Flagstaff.*

### **LAND ACKNOWLEDGEMENT**

*The Commission on Diversity Awareness humbly acknowledges the ancestral homelands of this area's Indigenous nations and original stewards. These lands, still inhabited by Native descendants, border mountains sacred to Indigenous peoples. We honor them, their legacies, their traditions, and their continued contributions. We celebrate their past, present, and future generations who will forever know this place as home.*

4. **Upcoming Opportunities and Announcements**

- Guardian article ["Skiing on a sacred mountain: Indigenous Americans stand against a resort's expansion"](#) written by Annette McGivney
- Stride Forward Progress Report

5. **Public Comment**

*The Commission cannot act upon items presented during the Public Participation portion of the Agenda. Individual Commission members may ask questions of the public but are prohibited by the Open Meeting Law from discussion or considering the item among themselves until the item is officially placed on the Agenda. Each public comment or presentation will be limited to five (5) minutes.*

6. **Approval of Minutes**

A. **Consideration and Approval of Minutes:** Commission on Diversity Awareness Meeting of June 21, 2022.

Approve the minutes of the Commission on Diversity Awareness Meeting of June 21, 2022.

7. **Action Items**

A. **Commission Leadership roles**

- Discuss nominations of the members interested in the Leadership roles.
- Vote on the Chair and Vice Chair assignment.

B. **CODA Regular Meeting**

- Discuss and vote on new meeting date and time.
- The current meeting information to be considered is the third Wednesday of each month at 1:30pm.

8. **Date of Next Meeting- August 17, 2022 at 1:30pm**

9. **Reports/Discussion Items**

A. **Proclamations** - No Updates

B. **Recommendations to Council** - No Updates

C. **Current Commission Priorities**

i. **CODA Social Event**

10. **Agenda for Future Meeting(s)**

A. **Proclamations Work Group Update**

Hispanic Heritage Month October. Review draft in the September Regular meeting.

B. **Equitable Restroom Recommendation**

The item is currently in the Staff Future Agenda Items queue which means it is waiting for some research and staff work before it moves forward again.

C. **Municipal Equity Index**

The item is currently in the Staff Future Agenda Items queue which means it is waiting for some research and staff work before it moves forward again.

**D. Renaming of the Peaks Workgroup Update**

Pending follow up from the High School group on when to send the Commission's recommendation to Council.

**E. Future Priorities**

- Criminal Justice conversation with Flagstaff Police Department
- Conversation with Downtown Business Alliance including literature to distribute
- Civil Rights

11. **Adjournment**

CERTIFICATE OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m. This notice has been posted on the City's website and can be downloaded at [www.flagstaff.az.gov](http://www.flagstaff.az.gov).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Jessica Vigorito, Human Resources Analyst



**Commission on Diversity Awareness**

**4.**

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 07/19/2022

**SUBJECT: Upcoming Opportunities and Announcements**

- Guardian article ["Skiing on a sacred mountain: Indigenous Americans stand against a resort's expansion"](#) written by Annette McGivney
- Stride Forward Progress Report

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**STAFF RECOMMENDED ACTION:**

**Executive Summary:**

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**Attachments**

Skiing on a sacred mountain  
Stride Forward Progress Report

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## **Skiing on a sacred mountain: Indigenous Americans stand against a resort's expansion**

The debate over an Arizona ski resort's future has exposed two vastly different visions of the

American west:  
'Nuva'tukya'ovi is our  
Mount Sinai'

by [Annette McGivney](#) in Flagstaff, Arizona with photographs by  
Tomás Karmelo Amaya

The Arizona Snowbowl ski resort in Flagstaff occupies 777 acres on a mountain slope that Indigenous nations hold sacred. Photograph: Tomás Karmelo Amaya/The Guardian

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Tue 21 Jun 2022 15.15 EDT

Hopi farmer Bucky Preston talks to the clouds that form atop Arizona's tallest mountain. And they talk back.

For 2,000 years, communication with the sky has been an important traditional farming method of the Hopi and their Puebloan ancestors. The clouds drift with Hopi prayers from the mountain they call *Nuva'tukya'ovi* - "place of snow on the very top" - to the tribe's villages, providing life-giving rain and spiritual sustenance to the oldest continuously inhabited community in North America.

But last fall, the sacred conversation fell silent. "I did not have a harvest," says Preston, 72. "It was the first time in my life that happened." He says other farmers, who grow without chemical fertilizer or irrigation, experienced the same.

While the climate crisis and historic drought in the south-west may be factors, Preston blames another, human-made force for the disruptions: a ski resort carved into *Nuva'tukya'ovi*.

**▲▲ Our whole way of life depends on the mountain and praying for moisture Bucky Preston, Hopi farmer**

The Arizona Snowbowl resort, which occupies 777 acres (314 hectares) on the mountain's slope, has attracted skiers during the winter and spring for nearly a century. But its popularity has boomed in recent years thanks to growing populations in Phoenix, a three hour's drive away, and neighbouring Flagstaff. During peak ski season, the resort draws upwards of 3,000 visitors a day.

More than a dozen Indigenous nations who hold the mountain sacred have fought Snowbowl's existence since the 1930s. These include the Pueblo of Acoma, Fort McDowell Yavapai; Havasupai; Hopi; Hualapai; Navajo; San Carlos Apache; San Juan Southern Paiute; Tonto Apache; White Mountain Apache; Yavapai Apache, Yavapai Prescott, and Pueblo of Zuni. They say the resort's presence

has disrupted the environment and their spiritual connection to the mountain, and that its use of treated sewage effluent to make snow is akin to baptizing a baby with wastewater.



Bucky Preston, a Hopi farmer, is among those who say the presence of a ski resort on a sacred mountain has disrupted the environment. Photograph: Tomás Karmelo Amaya/The Guardian

Now, a proposed \$60m expansion of Snowbowl's facilities has brought simmering tensions to a boil.

The US Forest Service, the agency that manages the national forest land on which Snowbowl is built, is weighing a 15-year expansion proposal that would bulk up operations, increase visitation and add new summer recreational facilities such as mountain biking trails, a zip line and outdoor concerts. A coalition of tribes, meanwhile, is resisting in unprecedented ways.

The battle is emblematic of a vast cultural divide in the American west over public lands and how they should be managed. On one side are mostly financially well-off white people who recreate in national forests and parks; on the other are Indigenous Americans dispossessed from those lands who are struggling to protect their sacred sites.

*“Nuva’tukya’ovi is our Mount Sinai. Why can’t the forest service understand that?”* asks Preston.

## ‘A fight with no middle ground’

At the center of the Snowbowl controversy is the resort’s snowmaking operations, an increasingly necessary tool as climate breakdown causes snowfall to be less predictable. Snowbowl manufactures its artificial snow with reclaimed water from Flagstaff’s sewage system, a method approved by the forest service as part of an earlier resort expansion plan in 2005. It was the first resort in the country to use reclaimed water for snowmaking; since then a ski area in Montana and one in California have also adopted the practice.

Despite years of lawsuits brought by tribes and environmental groups, the use of reclaimed water has continued unencumbered. Over the last decade, Snowbowl has sprayed up to 1.5m gallons a year of treated sewage effluent on its groomed slopes.





Despite years of lawsuits brought by Indigenous nations and environmental groups, the use of reclaimed water for snowmaking has continued. Photograph: Tomás Karmelo Amaya/The Guardian

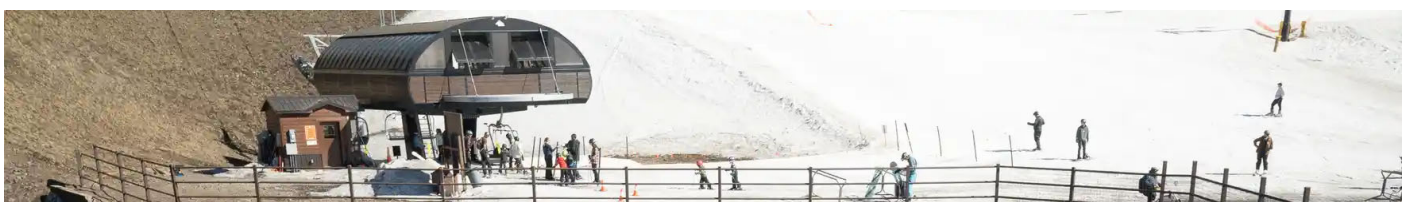
US regulators say the operation is safe and the resort views it as a way to outsmart the climate crisis. “We are using Grade A reclaimed water on the mountain for recreation and that is a positive thing,” says Rob Linde, Snowbowl’s general manager. “It is providing dependable snow for our guests and helps people enjoy the outdoors.”

But tribes say the practice is contaminating sacred ground. The San Francisco Peaks, as *Nuva’tukya’ovi* is more commonly known, is a lone, extinct volcano with a collapsed caldera surrounded by six summits. The mountain is the site of Indigenous origin stories, ancient shrines and a place where ceremonial and medicinal plants are gathered. It’s considered so holy that, before the arrival of colonizers, Indigenous Americans avoided living there.

There is no middle ground in this fight. Snowbowl executives insist the resort is not a sustainable business without the use of reclaimed water. The tribes say the existence of the ski area and use of treated sewage effluent is threatening their spiritual survival.

“Our whole way of life depends on the mountain and praying for moisture,” says Preston, adding that many Hopi feel they can no longer be “sincere” in their prayers because they know humans have taken over the sacred act of creating snow, making the Hopi’s ancient rituals seem pointless.

Snowfall on the San Francisco Peaks is highly erratic and, before snowmaking, Snowbowl struggled to stay afloat financially. But the 2005 decision opened a new era of profitability.





Snowfall on the San Francisco Peaks is erratic, increasing the need for snowmaking, according to ski area managers. Photograph: Tomás Karmelo Amaya/The Guardian

The resort is owned by James Coleman, an investor called [“the ski king of the southwest”](#) who bought it in 2014 for Mountain Capital Partners, a private equity and development firm that owns a growing portfolio of small south-west ski areas in New Mexico, Colorado and Utah. According to the company’s website, Snowbowl contributed \$53m to the Flagstaff economy in 2019 and employed 700 people. During the 2021/2022 season, Snowbowl opened in time for Thanksgiving and kept the slopes running until early May, despite below average precipitation. (Guardian requests for an interview with Coleman were redirected to Linde.)

**▲▲ We are using Grade A reclaimed water on the mountain for recreation and that is a positive thing Rob Linde, Snowbowl manager**

The use of reclaimed water has also raised environmental concerns. While the water meets Arizona Department of Environmental Quality’s highest standards, testing as part of the environmental review process for the 2005 expansion showed it contained trace amounts of hormones, antibiotics, antidepressants and other pharmaceuticals. The forest service still approved its use on the basis that these substances are not regulated and their presence did not violate any existing federal guidelines, and no further tests have been conducted since.

For Navajo tribal member Cora Maxx-Phillips, who serves on the Navajo Nation’s

human rights commission, the snowmaking is a continuation of cultural genocide against Indigenous Americans. “So they get to have their fun,” she says of the skiers, “but it comes at the expense of our spirituality and the environment.”

The forest service is not monitoring the long-term effects at Snowbowl, but separate [USGS studies](#) of agricultural fields irrigated with reclaimed water have shown hormones and pharmaceuticals remain in the soils, although their impact is unknown.



Cora Maxx-Phillips, a Navajo tribal member who serves on the nation's human rights commission, says snowmaking is a continuation of cultural genocide. Photograph: Tomás Karmelo Amaya/The Guardian

Maxx-Phillips, 66, and other tribal members are worried about how the ski area is

changing the ecosystem. “In our culture, upsetting the balance of the natural world is the greatest crime a human can commit.”

## A new finding halts development

During the week of spring break, Snowbowl’s slopes were bustling with skiers and snowboarders.

Rainy Oliver and her daughter Missy, who recently re-located from Colorado to Williams, Arizona, were among those enjoying their vacation. “We were leery when we moved to Arizona because we were worried we wouldn’t be able to ski,” Oliver said as she and her daughter waited at the bottom of a busy run. “We are thankful for Snowbowl.” Oliver had heard that the San Francisco Peaks were sacred to Indigenous Americans but wasn’t familiar with details about the controversy.

Chad and Ron, two firefighters from western Arizona, sat at a picnic table drinking a beer and enjoying the cool alpine climate of the Peaks.

The pair, who asked to withhold their last names for privacy reasons, were not aware that snow was being made from reclaimed water, nor that the area was sacred to Indigenous nations.

“I don’t have an emotional attachment to this land like Native Americans do,” said Ron. “But just to play devil’s advocate, we are in a drought and putting moisture back into the ground seems like a good use of reclaimed water.”

Snowbowl’s popularity is only rising, and many of its facilities were built in the 1980s and are ill equipped to handle the growing demand. Visitation has increased 12% annually and resort managers say the proposed developments will help ease overcrowding and improve customer care.

Snowbowl’s growth seemed all but certain until spring 2021, when a misstep by the forest service stopped development in its tracks - and offered hope that Indigenous people’s input might be taken more seriously.





Martina Dawley is the historic preservation officer for the Hualapai Nation. Photograph: Tomás Karmelo Amaya/The Guardian

The historic preservation staff for the Hualapai Nation, discovered that a memorandum of agreement that the forest service signed with the Hualapai and other nations as a stipulation of Snowbowl's 2005 development plan had expired six years earlier, and the nations were never notified. This put the forest service out of compliance with section 106 of the federal National Historic Preservation Act, a provision of the law that deals with sites of cultural or religious significance to **Indigenous peoples**. Section 106 requires the federal government to consult tribes before carrying out any development in these places and, if there are negative impacts, to develop a memorandum of agreement with tribes outlining mitigations.

To the dismay of Mountain Capital Partners, that discovery prompted Laura Jo West, the forest supervisor for Coconino national forest, which contains Snowbowl, to halt ski area development projects until a new memorandum of agreement could be reached. Construction slated for summer 2021 to build out snowmaking infrastructure - a project approved with the 2005 expansion plan - was cancelled. West's decision also put the brakes on the environmental review process for the new master development plan.

**/// It's important  
that we move  
beyond what's  
minimally required  
by law  
Laura Jo West,  
supervisor for  
Coconino National  
Forest**

Environmental groups and tribal governments question the validity of Snowbowl developments that occurred after the memorandum had expired and were allowed to proceed without proper tribal consultation. The Sierra Club, an environmental non-profit that advocates for the tribes, claims the forest service has frequently bent policy rules to accommodate the business interests of the ski area. The group submitted a detailed complaint to the agency in 2020 listing various violations of the National Environmental Policy Act (Nepa) that included allowing the number of daily Snowbowl visitors to grow beyond what was

approved in the ski area's 2005 master plan. The agency also failed to conduct an environmental review when the resort changed ownership, as stipulated under the terms of Snowbowl's special use permit for operating on forest service land. The forest service disputes allegations that policies were violated.

“The forest service does not care what the tribes need or want, nor does it care what the rules are,” says Alicyn Gitlin, program manager for the Sierra Club's Grand Canyon chapter.



Alicyn Gitlin and her dog, Dalya, at the foothills of what the Navajo call Dook'ooostííd, also known as Humphreys Peak. Photograph: Tomás Karmelo Amaya/The Guardian

For her part, supervisor West saw the pause as an opportunity to reset how the agency consults Indigenous peoples. “We need to heal our relationship,” says West. While she could not change the bad blood that developed as a result of the agency’s approval of Snowbowl’s 2005 expansion, West wanted to have “meaningful conversations with the tribes” before the agency began formal review of the ski area’s new master development plan.

“It’s important that we move beyond what’s minimally required by law,” says West of the forest service’s obligation for tribal consultation. “Only from a position of respect for what sacred sites like the San Francisco Peaks represent to the tribes can we start the conversation about how we manage these places into the future.”

This sentiment is echoed by the Biden administration, which issued a joint secretarial order last November requiring tribal consultation for decisions by agencies such as the forest service and encouraging the use of traditional ecological knowledge in land management practices as well as co-management with tribes.

## An unprecedented act of resistance

Based on past history, tribes are skeptical about whether Biden’s lofty initiatives will actually trickle down to regional situations such as Snowbowl. They also wonder why West’s supervisor removed her from Snowbowl-related activities this spring and replaced her with a supervisor in New Mexico, although she remains in charge of all other Coconino national forest matters.

While the future remains uncertain, the stakes are high.

If a fight over Snowbowl’s new master plan was to go to court, there is no law to protect Indigenous sacred sites such as the San Francisco Peaks. Past lawsuits arguing that a nation’s religious rights were being infringed upon by the resort have always, ultimately, been unsuccessful because judges disagreed with the basic premise of their argument: all living things are intrinsically interconnected.

Many Indigenous Americans insist that even though Snowbowl occupies just 1% of the mountain, the resort is spiritually and environmentally affecting the other 99% . But western laws and federal land management policies don’t see it that way.

Maxx-Phillips is a survivor of Native American boarding schools, where she was taught to forsake Navajo culture. It took years to recover her traditions and heal from that

to preserve Navajo culture. It took years to recover her traditions and heal from that experience. “Having to fight against these laws that are designed to protect corporations and the federal government brings up a lot of generational trauma,” she says. “It is very triggering.”

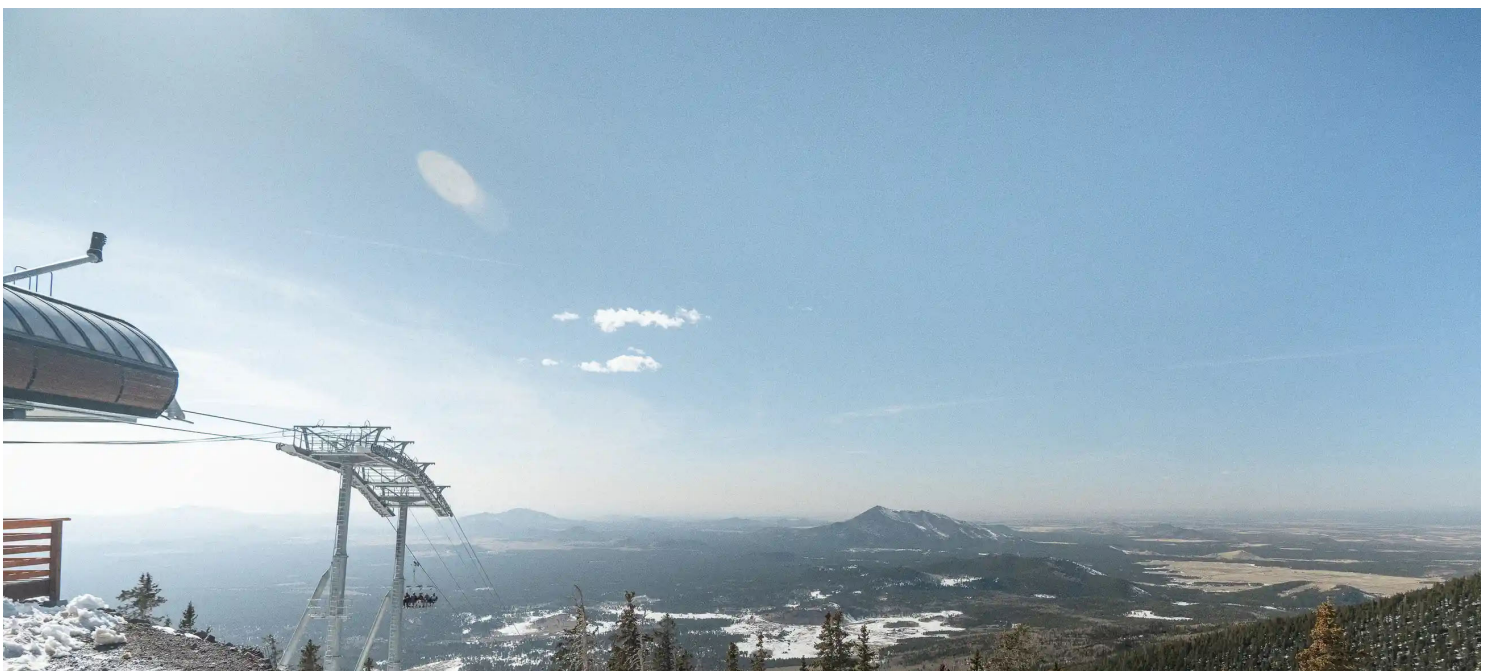
The battle has had one hopeful outcome: encouraging tribes to band together for the first time, using their collective power to resist in ways that haven’t been tested before.

After learning earlier this year that Mountain Capital Partners was holding private meetings with higher level forest service officials, Martina Dawley, a preservation officer who helped discover the memorandum error, rallied the 13 nations to organize as a single unit.

Such a move is unprecedented in the south-west, where economically stressed reservations with poorly resourced tribal governments have not had the emotional or financial capacity to independently take on the US government. But acting as one

makes it hard for the forest service to “divide and conquer”, as Dawley puts it, by consulting each tribe separately.

So far this spring, the forest service has held two virtual meetings with the 13-tribe coalition, whose demands include an independent environmental review of Snowbowl’s operations - before they will agree to a new memorandum - as well as involvement in defining what constitutes “tribal consultation”. The coalition is also resisting pressure to meet the agency’s timeline to restart ski area projects until tribal governments feel assured that their concerns are truly considered.





Native American tribal members have demanded an independent environmental review of Snowbowl's operations. Photograph: Tomás Karmelo Amaya/The Guardian

Regional Forest Service officials declined a Guardian interview request but Shayne Martin, the agency's south-west region communication director, responded to questions via email.

“We are currently working with tribal members toward a new [memorandum of] agreement,” said Martin. “We would like to emphasize that tribal consultation is our next needed step before any additional construction activities are authorized at Snowbowl.”

When asked how the forest service would deal with the inherent conflict between Snowbowl's business demands and the Biden administration's mandates to honor Indigenous spiritual values, Martin responded: “While the forest service has legal obligations under many laws and executive orders which require balancing multiple uses, the forest service also has great respect for the tribes, their desired outcomes, the sacred nature of the San Francisco Peaks, and the government-to-government consultation process as a means to work together on these issues.”

Meanwhile, undaunted by the failed harvest last year, Bucky Preston is working in his fields for the next few months to plant traditional Hopi corn, beans, squash and melons. He does it all by hand, kneeling on the ground and covering each seed with soil. “I put my whole body into it,” he says. “I need to feel what the plants feel.”

Preston says he is going to keep fighting in his own “Hopi way” to protect the peaks. “I am not familiar with how to fight with laws but I sure can depend on my prayer to stand up for the mountain,” he says. “That is my weapon.”

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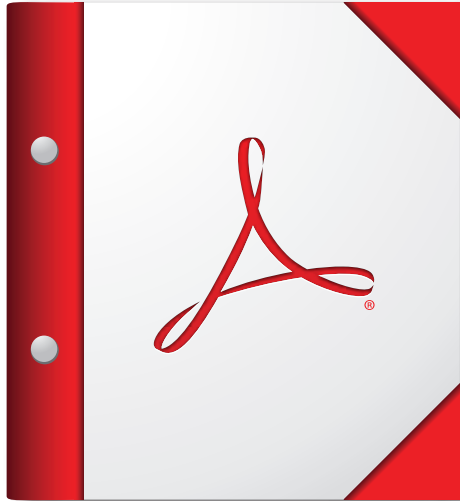
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Remind me in August







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**Commission on Diversity Awareness**

**6. A.**

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 07/19/2022

**SUBJECT: Consideration and Approval of Minutes:** Commission on Diversity Awareness Meeting of June 21, 2022.

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**STAFF RECOMMENDED ACTION:**

Approve the minutes of the Commission on Diversity Awareness Meeting of June 21, 2022.

**Executive Summary:**

Minutes of the Commission meetings of the Commission on Diversity Awareness are a requirement of Arizona Revised Statutes and, additionally, provide a method of informing the public of discussions and actions being taken by the Commission.

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**Attachments**

June 21, 2022 Regular meeting minutes

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# DRAFT

## DRAFT

COMMISSION ON DIVERSITY AWARENESS  
Tuesday  
June 21, 2022

VIRTUAL TEAMS MEETING  
1:30 P.M.

1. **Call to Order**

Chair Wegwert called the meeting to order at 1:35 PM.

2. **Roll Call**

PRESENT	ABSENT
DeAnn Wegwert, Chair	Mandy Martinez Gebler
Robert "Dan" Duke	Marcela Pino
Claire Hardi	
Jean Toner, Vice Chair	
Christine Tucci	

Others in Attendance

- Jessica Vigorito (Staff Liaison)
- Mayor Deasy

3. **Mission Statement and Land Acknowledgment**

### MISSION STATEMENT

*A commission to foster support, respect, awareness and appreciation of diversity among all citizens of Flagstaff.*

### LAND ACKNOWLEDGEMENT

*The Commission on Diversity Awareness humbly acknowledges the ancestral homelands of this area's Indigenous nations and original stewards. These lands, still inhabited by Native descendants, border mountains sacred to Indigenous peoples. We honor them, their legacies, their traditions, and their continued contributions. We celebrate their past, present, and future generations who will forever know this place as home.*

The Mission Statement was read by Chair Wegwert and the Land Acknowledgment was read by Chair Wegwert.

4. **Upcoming Opportunities and Announcement**

- The staff liaison shared an update from the Housing section on the 10 The Housing Plan.
- Commissioner Toner gave a shout out to the amazing range of offerings by Creative Flagstaff in the month of June!

**5. Public Comment**

No Public Comment

**6. Approval of Minutes**

**A. Consideration and Approval of Minutes**

- Commissioner Hardi motioned for the May 17, 2022 regular meeting and June 7, 2022 special meeting minutes to be approved as written.
- Commissioner Duke seconded the motion.
- Motion approved unanimously.

**7. Date of Next Meeting - July 19, 2022, time TBD**

- No conflicts stated in the meeting.
- Vice Chair Toner joined at 1:44pm

**8. Action Items**

**A. Transition of the Commission Leadership roles**

- Commissioner Toner expressed concern about moving into the Chair role.
- Chair Wegwert reminded the group about the current process for Leadership roles and reminded everyone that elections will occur in July with the roles beginning in October.
- The staff Liaison offered to answer any questions or meet with any commission member that is interested.

**B. CODA Regular Meeting**

- Chair Wegwert explained the protocol for exiting a meeting prior to adjournment and asked for commission members to raise their hand and state they are leaving or use the chat if needed.
- Commissioners reviewed the results of the email survey and the Boards and Commissions meeting calendar and discussed what dates/times work for the Regular meetings.
- Commissioner Tucci expressed the first and third Wednesday afternoon works best.
- Commissioner Hardi expressed Wednesdays work with the exception of July.
- Vice Chair Toner offered to begin the change in August to allow members time to adjust schedules.
- Chair Wegwert stated the importance of attendance of all members in order to meet quorum on a regular basis.
- Mayor Deasy stated that Council is on break in July and attendance should not be an issue with the break.
- Staff liaison stated the intent to transition to a hybrid format and how that impacts regular meetings.
- Chair Wegwert stated that the third Wednesday of the month at 1:30 works for those

that are in attendance. Chair Wegwert motioned to vote on this item in the July meeting, Vice Chair Toner seconded the motion. Motion approved unanimously.

- Chair Wegwert confirmed the next regular meeting will be July 19<sup>th</sup> at 1:30. .

**9. Reports/Discussion Items**

**A. Proclamations**

**i. Updates**

Chair Wegwert stated that the PRIDE Proclamation was read at the May 31<sup>st</sup> Council meeting.

**B. CODA Social Event**

- Commissioner Hardi asked to bring this item back when more attendees are present.
- Vice Chair Toner asked if an event during the warmer weather would be ok with everyone so they can do something outside.
- After discussion, Chair Wegwert offered a Monday or Tuesday 4-6pm as an option with a preference of outdoors and asked for this item to be added to the July agenda.

**10. Agenda for Future Meeting(s)**

**A. Future Priorities**

- Criminal Justice conversation with Flagstaff Police Department
- Conversation with Downtown Business Alliance including literature to distribute
- Civil Rights

**B. Equitable Restroom Recommendation**

The item is currently in the Staff Future Agenda Items queue which means it is waiting for some research and staff work before it moves forward again.

**C. Municipal Equity Index**

The item is currently in the Staff Future Agenda Items queue which means it is waiting for some research and staff work before it moves forward again.

**D. Renaming of the Peaks Workgroup Update**

Pending follow up from the High School group on when to send the Commission's recommendation to Council.

**E. Proclamations Work Group Update**

Hispanic Heritage Month October. Review draft in the September Regular meeting.

**11. Adjournment**

Chair Wegwert adjourned the meeting at 2:27 PM.



**Commission on Diversity Awareness**

**7. A.**

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 07/19/2022

**SUBJECT:** Commission Leadership roles

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**STAFF RECOMMENDED ACTION:**

- Discuss nominations of the members interested in the Leadership roles.
- Vote on the Chair and Vice Chair assignment.

**Executive Summary:**

March 2021 Meeting Minutes Summary on the Leadership roles:

- Nominations and voting occur in the same meeting in July and terms would start in October.
  - Chair and Vice Chair term of one year with the Vice Chair progressing to Chair after the one year as Vice Chair unless the Vice Chair has termed out.
  - There is no formalized position eligibility at this time.
- 

**Attachments**

CODA Helpful Notes

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### Commission on Diversity Awareness

- The CODA website is: <https://www.flagstaff.az.gov/2783/Commission-on-Diversity-Awareness> which includes the meeting information, current projects and announcements, member's names and the Enacting Authority.
- The Boards and Commissions website is: <https://www.flagstaff.az.gov/994/Boards-Commissions> which includes information on Open Meeting Law, the Rules and Operations Manual and Member training.
- Duties of the Chair include:
  - The chair is the presiding officer in all commission proceedings. During the absence of the chair, the vice-chair acts as chair.
- Important reminder:
  - As a general rule, a commission may recommend to the City Council the dismissal of any member who is absent for more than two consecutive regular meetings without prior notification. This same rule applies if a member is absent for more than thirty percent (30%) of all meetings during a twelve-month period.
  - March 2021 Meeting Minutes Summary on the Leadership roles:
    - Nominations and voting occur in the same meeting in July and terms would start in October.
    - Chair and Vice Chair term of one year with the Vice Chair progressing to Chair after the one year as Vice Chair unless the Vice Chair has termed out.
    - There is no formalized position eligibility at this time.
    - Leadership Team is composed of the Chair and Vice-Chair and meets with City Liaison prior to each monthly meeting to finalize the agenda for the upcoming monthly meeting.



**Commission on Diversity Awareness**

**7. B.**

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 07/19/2022

**SUBJECT:** CODA Regular Meeting

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**STAFF RECOMMENDED ACTION:**

- Discuss and vote on new meeting date and time.
- The current meeting information to be considered is the third Wednesday of each month at 1:30pm.

**Executive Summary:**

**Previous Council Decision on This:**

Transition to re-entry plan stage 4 April 11th.

All meetings need to stay hybrid in nature or virtual and must allow the public to access the meeting via electronic means moving forward.

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**Commission on Diversity Awareness**

**10. A.**

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 07/19/2022

**SUBJECT:** Proclamations Work Group Update

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**STAFF RECOMMENDED ACTION:**

Hispanic Heritage Month October. Review draft in the September Regular meeting.

**Executive Summary:**

Proclamations are made by the Mayor of Flagstaff. The Commission on Diversity Awareness is drafting proclamations to suggest to the Mayor to further promote diversity in the City of Flagstaff.

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**Commission on Diversity Awareness**

**10. B.**

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 07/19/2022

**SUBJECT:** **Equitable Restroom Recommendation**

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**STAFF RECOMMENDED ACTION:**

The item is currently in the Staff Future Agenda Items queue which means it is waiting for some research and staff work before it moves forward again.

**Executive Summary:**

Commission recommendations are important to the City Council and they are taken under consideration for possible action. The City Council has several options and may:

- Accept the recommendation and give further direction.
- Change the provisions of a recommendation before giving further direction.
- Send a matter back for further consideration.
- Not accept the recommendation.

**Previous Council Decision on This:**

FAIR item for September 7th Council meeting

Chair Wegwert presented the CODA recommendation to City Council on January 11, 2022.

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**Attachments**

Equitable Restroom Recommendation

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## Recommendation to the Flagstaff City Council for a city ordinance regarding equitable restroom availability

The Commission on Diversity Awareness for the City of Flagstaff recommends the creation and passage of a city ordinance requiring that all single occupancy public restrooms be available for use for everyone regardless of gender. It is our recommendation that the ordinance include the following elements:

1. Restrooms affected by this ordinance would be those intended for use by one person at a time, or for family or assisted use, and located in buildings owned by the City of Flagstaff.
2. Signage on such restrooms would include words such as “gender neutral,” “all gender,” or simply the word “restroom” without reference to the gender of the occupant.
3. Responsibility for ensuring that signage is updated to meet these requirements would be determined by the City Council.
4. The ordinance would affect all existing and future single occupancy restrooms.
5. The ordinance would include an effective date determined by the City Council.

Furthermore, the Commission on Diversity Awareness requests that the Flagstaff City Council recommend the practice of using nongendered signage for single-occupancy restrooms used by the public but not owned by the city (such as restrooms in educational facilities, healthcare facilities, and businesses that are open to the public).

Reasons for consideration of this ordinance include:

1. Promoting the safety of gender non-conforming persons
2. Creating a welcoming environment for gender non-conforming persons
3. Increasing restroom availability for all



**Commission on Diversity Awareness**

**10. C.**

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 07/19/2022

**SUBJECT:** **Municipal Equity Index**

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**STAFF RECOMMENDED ACTION:**

The item is currently in the Staff Future Agenda Items queue which means it is waiting for some research and staff work before it moves forward again.

**Executive Summary:**

The Human Rights Campaign uses the Municipal Equality Index (MEI) to examine how inclusive municipal laws, policies, and services are of LGBTQ people who live and work in Flagstaff. Cities are rated based on non-discrimination laws, the municipality as an employer, municipal services, law enforcement, and the city leadership's public position on equality.

Flagstaff is one of 506 cities that have been rated on 49 different criteria. [View city's scorecards](#)

**Previous Council Decision on This:**

January 11, 2022 Council meeting - Chris Rhode presented the Municipal Equity Index to City Council.

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**Attachments**

November 2021 MEI presentation to CODA

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# Municipal Equality Index

Recommendations to improve services  
to services to LGBTQ+ community





# Summary



## What is the Municipal Equality Index?

- Evaluation of inclusivity of municipal laws, policies & services
  - Sexual Orientation
  - Gender Identity
- Published by the Human Rights Campaign
- 506 municipalities
  - 11 in Arizona



# Summary



## Contents of Scorecard

- 100 points is max score
  - Additional 22 “Flex Points”
- 5 Categories
  - Non-discrimination Laws
  - Municipality as Employer
  - Municipal Services
  - Law Enforcement
  - Leadership on LGBTQ Equality



# Flagstaff 2020 Scorecard

## Overall Score

- 88/100
  - Same score since 2018

CATEGORY	SCORE	FLEX PTS
Non-discrimination Laws	20/30	+0
Municipality as Employer	22/28	+1
Municipal Services	10/12	+4
Law Enforcement	22/22	N/A
Leadership on LGBTQ Equality	7/8	+2
TOTALS	81/100	+7

# Where we lose points

- Housing NDO
- Transgender-inclusive healthcare benefits
- Enforcement of NDO
- Leadership's pro-equality policy efforts
- All-gender facilities
- Conversion Therapy
- Youth bullying prevention policy
- Services to unhoused LGBTQ people
- Services to LGBTQ older adults
- Services to the transgender community
- Testing limits of restrictive state law(s)





# Flagstaff 2020 Scorecard

## Housing Non-Discrimination Laws

- Points Received: 0/10
- City NDO covers “Public Accommodations” but not “Housing”
- Only Phoenix, Tucson, Tempe received full points in AZ
- Possible preemption from adding housing to NDO ([A.R.S. § 9-500.09](#))
  - Allows municipalities over 350k to adopt fair housing ordinance
- City stance: LGBTQ is included as federally protected class (sex)

### Recommendation:

Research legality of including housing in NDO and if legal pass amendment to city’s NDO to include Housing



# Flagstaff 2020 Scorecard

## City provides Transgender-Inclusive Healthcare Benefits

- Points Received: 0/6
- Benefits set in coordination with healthcare provider
- Working with BCBS to include coverage options inclusive to transgender employees

### Recommendation:

Continue working with provider to include transgender-inclusive coverage to City employees



# Flagstaff 2020 Scorecard

## Non-Discrimination Ordinance is enforced by CODA

- Points Received: 0/2
- NDO is enforced by City Manager's Office
- Existence of CODA satisfies separate area of scorecard
  - Commissions are primarily advisory and educational

### Recommendation 1:

Revise mission of the CODA to include enforcing the NDO

### Recommendation 2:

Actively seek points from HRC for current procedures



# Flagstaff 2020 Scorecard

## Leadership's Pro-Equality Legislative or Policy Efforts

- Points Received: 2/3
- Based on policy efforts and public stances of elected officials
- Subjective criteria

### Recommendation:

None



# Flagstaff 2020 Scorecard

## Single-Occupancy All-Gender Facilities

- Points Received: 0/2
- CODA work to make city-owned facilities gender-neutral
- 2 Points for ordinance requiring all gender facilities citywide
- Gender-neutral restrooms added to 2019 update of IBC

### Recommendation 1:

Adopt updated version of IBC

### Recommendation 2:

Ordinance requiring gender-neutral facilities in all buildings in city



# Flagstaff 2020 Scorecard

## City Protects Youth from Conversion Therapy

- Points Received: 0/2
- Conversion therapy not banned at State level
  - No pre-emption on localities passing ban
  - Pima County is only jurisdiction to ban Conversion Therapy

### Recommendation:

Ordinance banning conversion therapy for individuals under the age of 18.



# Flagstaff 2020 Scorecard

## Youth Bullying Prevention Policy for City Services

- Points Received: 0/2
- 1 point each for sexual orientation and gender identity
- Anti-bullying provisions currently done by each program
  - Language likely to vary

### **Recommendation 1:**

Collect and evaluate anti-bullying rules of individual programs

### **Recommendation 2:**

Ordinance prohibiting bullying in its youth programs on the basis of sexual orientation and gender identity



# Flagstaff 2020 Scorecard

## City Provides Services to LGBTQ People Experiencing Homelessness

- Points Received: 0/2
- Services provided through Northland Family Help Center
  - 24-hour crisis line, Domestic Violence and Sexual Assault shelter
  - Respectful of self-identified gender and sexual orientation
  - Assigns transgender youth to rooms within self-identified gender.
  - Provides transportation for LGBTQ youth to attend the one-on-ten

### Recommendation:

Document services provided by Northland Family Help Center



# Flagstaff 2020 Scorecard

## City Provides Services to LGBTQ Older Adults

- Points Received: 0/2
- Must be programs that target LGBTQ community directly
- No city programs identified that specifically target adult LGBTQ community

### Recommendation 1:

Evaluate non-city programs to ensure community needs being met

### Recommendation 2:

Begin offering city programs for the adult LGBTQQA community



# Flagstaff 2020 Scorecard

## City Provides Services to the Transgender Community

- Points Received: 0/2
- Programs must target transgender community directly
- No city programs identified that specifically target transgender community

### Recommendation 1:

Evaluate non-city programs to ensure community needs being met

### Recommendation 2:

Begin offering city programs for the transgender community



# Flagstaff 2020 Scorecard

## City Tests Limits of Restrictive State Law

- Points Received: 0/3
- Designed as incentive for municipalities to push back on state laws that hinder LGBTQ inclusivity

### Recommendation:

N/A



**Commission on Diversity Awareness**

**10. D.**

**From:** Jessica Foos, Human Resources Analyst  
**DATE:** 07/19/2022  
**SUBJECT:** **Renaming of the Peaks Workgroup Update**

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**STAFF RECOMMENDED ACTION:**

Pending follow up from the High School group on when to send the Commission's recommendation to Council.

**Executive Summary:**

**Informal Working Groups**

Informal working groups may be created to research, gather information, and provide recommendations back to the commission on various matters. No official appointments are made to a working group by the commission. Working groups may consist of members of the public and/or less than a quorum of commission members. Unlike subcommittees, working groups are not required to have formal agendas or minutes.

All information and recommendations from the work group must be provided and presented to the commission in an open meeting for public discussion. Informal working groups do not have any powers, duties, or responsibilities of the parent commission. No actions, statements, or recommendations can be made or provided by the working group on behalf of the commission

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**Attachments**

Dr. Silver Report  
Presentation from students  
Land Acknowledgment Recommendation  
Flagstaff Water Resources information email

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# **CITY OF FLAGSTAFF “DENIES” HOPI RELIGIOUS BELIEFS in SNOWBOWL LEGAL FILINGS**

**City compares harm to Hopi religion by use of City’s reclaimed wastewater on sacred area as similar to recreational boat owners being “deprived of no more than their occasional Sunday piscatorial [fishing] pleasure.”**

Excerpted quotations from the City of Flagstaff’s legal filings in *The Hopi Tribe v. Flagstaff* (with **Emphasis Added**) follow.

From the **City of Flagstaff’s October 10, 2014, VERIFIED ANSWER AND THIRD-PARTY COMPLAINT** in *The Hopi Tribe, Plaintiff, vs. The City of Flagstaff, Defendant.*; NO. CV2011-00701; in the Superior Court of the State of Arizona in and for the County of Coconino:

“...Without any evidence to support its [the Hopi’s lawsuit Complaint’s] inflammatory claims, Plaintiff [the Hopi Tribe] asks this Court to grant it relief that has broad-reaching, and, frankly, disastrous, implications upon Arizona’s comprehensive statutory scheme of water use. There is no public nuisance here [by the City’s reclaimed wastewater contaminating of Hopi sacred sites on the San Francisco Peaks].”...

115. Defendant [the City of Flagstaff] lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in paragraph 115 of the complaint [that “The Peaks have played a central and essential role in Hopi culture, traditions, and way of life for centuries. The Peaks, known as Nuvatukya’ovi to the Hopi, are the single most important sacred place the Hopi have. Every month Tribe members go to the Peaks for prayers, and during some months tribe members collect water, greens, and herbs for the ceremonies.”], and therefore [the City of Flagstaff] denies the same [that “The Peaks have played a central and essential role in Hopi culture, traditions, and way of life for centuries. The Peaks, known as Nuvatukya’ovi to the Hopi, are the single most important sacred place the Hopi have...”].

116. Defendant [the City of Flagstaff] lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in paragraph 116 of the complaint [that “The Hopi have been making regular pilgrimages and trips to the Peaks since before recorded history as a central part of their culture and the Hopi way of life. The various Hopi ceremonies conducted during the year, particularly Powamuya in the winter and Niman in the summer, require visits and offerings to specific shrines on the Peaks.”], and therefore [the City of Flagstaff] denies the same” [that “The Hopi have been making regular pilgrimages and

trips to the Peaks since before recorded history as a central part of their culture and the Hopi way of life...”]...

122. Defendant [the City of Flagstaff] lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in paragraph 122 of the complaint [that “There are Hopi sacred areas, including shrines, in the immediate vicinity of the Snowbowl Resort Area.”], and therefore [the City of Flagstaff] denies the same [that “There are Hopi sacred areas, including shrines, in the immediate vicinity of the Snowbowl Resort Area.”]...

125. Defendant [the City of Flagstaff] lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in paragraph 125 of the complaint [“The Hopi collect water from springs on the Peaks and use the water for a variety of ceremonial activities. Several of the springs on the Peaks are associated with specific ceremonies and religious societies.”], and therefore [the City of Flagstaff] denies the same [that “The Hopi collect water from springs on the Peaks and use the water for a variety of ceremonial activities. Several of the springs on the Peaks are associated with specific ceremonies and religious societies”]...

135. Defendant [the City of Flagstaff] lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in paragraph 135 of the complaint [“Artificial snow made with reclaimed wastewater will introduce numerous chemicals that are not degraded or removed in the wastewater treatment process to the San Francisco Peaks, in particular to the areas in the Snowbowl Resort Area and its vicinity that have been a part of Hopi use for ceremonial pilgrimages and hunting and gathering trips for centuries.”], and therefore denies the same [that “Artificial snow made with reclaimed wastewater will introduce numerous chemicals that are not degraded or removed in the wastewater treatment process to the San Francisco Peaks, in particular to the areas in the Snowbowl Resort Area and its vicinity that have been a part of Hopi use for ceremonial pilgrimages and hunting and gathering trips for centuries”], except [the City of Flagstaff] avers [asserts as fact]...upon information and belief, that the ceremonial significance of the San Francisco Peaks to the Hopi Tribe (among others [Navajo, Havasupai, Hualapai, Yavapai Apache, and White Mountain Apache]) was fully litigated in the eleven-day Religious Freedom Restoration Act Trial conducted in *Navajo Nation v. US Forest Serv.*, 408 F. Supp. 2d 866 (D. Ariz. 2006), *aff'd*, 535 F.3d 1058 (9th Cir. 2008).”<sup>1</sup>

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<sup>1</sup> *Navajo Nation v. US Forest Serv.* directly resulted from the City of Flagstaff’s decision to defer and refer to the Forest Service the decision to respect Tribal cultural and religious concerns regarding use of reclaimed wastewater on the Peaks. The City made this decision to defer and refer in spite of the fact that the Forest Service decision would inevitably be preordained to reject Tribal concerns. In *Navajo Nation v. US Forest Serv.*, the Navajo, Hopi, Havasupai, Hualapai, Yavapai Apache, and White Mountain Apache challenged in federal court the Forest Service decision to reject Tribal concerns regarding the use of reclaimed wastewater on the Peaks.

Excerpts from *Navajo Nation v. US Forest Serv.* that the City of Flagstaff “avers” or asserts as factual include:

...5. The Ninth Circuit has clearly articulated the proper legal standard to be applied in this case: an action "burdens the free exercise of religion if it puts substantial pressure on an adherent to

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modify his behavior and violate his beliefs, including \*904 when . . . it results in the choice of an individual of either abandoning his religious principle or facing criminal prosecution." *Guam*, 290 F.3d at 1222. . . .

7. **The government's land management decision will not be a "substantial burden" absent a showing that it coerces someone into violating his or her religious beliefs or penalizes his or her religious activity.** *Lyng*, 485 U.S. at 449-53, 108 S. Ct. 1319...*see Wilson*, 708 F.2d at 741 ("Many government actions may offend religious believers, and may cast doubt upon the veracity of religious beliefs, but unless such actions penalize faith, they do not burden religion."); *see also Havasupai Tribe*, 752 F.Supp. at 1484-1486 (finding Forest Service approval of plan for operations of uranium mine does not substantially burden exercise of religion because, although Havasupai Tribe's religious and cultural belief systems are "intimately bound up" in the site, "Plaintiffs are not penalized for their beliefs, nor are they prevented from practicing their religion."); *Means*, 858 F.2d at 406-07 (finding no substantial burden where "[t]he Forest Service has performed no act of compulsion to interfere with appellees' ceremonies or practices nor has it denied them access to [the Forest lands] for religious purposes").

8. Indeed, "Courts consistently have refused to disturb governmental land management decisions that have been challenged by Native Americans on free exercise grounds." *Means*, 858 F.2d at 407 (providing citations to numerous cases). . . .

10. **The evaluation of when the government's land management decisions cross the line from legitimate conduct to unconstitutional prohibitions on the free exercise of religion "cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development."** *Lyng*, 485 U.S. at 451, 108 S. Ct. 1319. . . .

13. Here, Plaintiffs have failed to demonstrate that the Snowbowl decision coerces them into violating their religious beliefs or penalizes their religious activity. *Cf. Lyng*, 485 U.S. at 449, 108 S. Ct. 1319. In fact, the Forest Service has guaranteed that religious practitioners would still have access to the Snowbowl and the approximately 74,000 acres of the CNF that comprise the Peaks for religious purposes. . . .

15. Plaintiffs' assertions of perceived religious impact are near identical to those voiced by the Hopi Tribe and the Navajo Nation in *Wilson v. Block*. In that case, the plaintiffs [Navajo Nation] similarly asserted that "development of the Peaks would be a profane act, and an affront to the deities, and that, in consequence, the Peaks would lose their healing power and otherwise cease to benefit the tribes." 708 F.2d at 740. They [Navajo Nation] contended "that development would seriously impair their ability to pray and conduct ceremonies upon the Peaks." *Id.* Considering this information, the D.C. Circuit found the agency's decision did not substantially burden the tribes' exercise of religion. *Id.* at 745. The same decision is warranted here. The subjective views and beliefs presented at trial, although sincerely held, are not sufficient for the proposed project to constitute a substantial burden under RFRA [Religious Freedom Restoration Act] on the practice of religion by any Plaintiff or any members of any Plaintiff tribe or nation. . . .

18. The Snowbowl decision does not bar Plaintiffs' access, use, or ritual practice on any part of the Peaks. The decision does not coerce individuals into acting contrary to their religious beliefs nor does it penalize anyone for practicing his or her religion. . . .

28. ...*Lyng*, 485 U.S. at 453, 108 S. Ct. 1319 ("Whatever \*907 rights the Indians may have to the use of the area . . ., those rights do not divest the Government of its right to use what is, after all, *its* land.")...)

... \*908 III. Conclusion

**The Forest Service properly observed all of the procedural requirements during the various stages of approving the Snowbowl project, including preparation of an extensive EIS [Environmental Impact Statement]..."**

This case, *Navajo Nation v. US Forest Serv.*, now cited by the City of Flagstaff, directly resulted from the City of Flagstaff's March 19, 2002, refusal to evaluate, on its own, Tribal concerns regarding the effects of the City's clearance to use its reclaimed wastewater on the Peaks. Instead of respecting Tribal concerns, the City of Flagstaff chose to defer and refer to the Forest Service the evaluation and the ultimate decision. This decision essentially guaranteed that Tribal concerns would be rejected based on (1) the Forest Service's history of consistently denying protection of sacred sites, and (2) the Forest Service's history of success in defending its consistent denials of sacred site protection in court.

Snowbowl's "future depends on artificial snow making."<sup>2</sup> On February 21, 2002, the Snowbowl formally asked the City of Flagstaff for a commitment to sell the City's reclaimed wastewater for use on the Peaks.<sup>3</sup> By March 19, 2002, the City of Flagstaff swiftly agreed to sell its reclaimed wastewater to the Snowbowl contingent on the Forest Service's ultimate "decision" regarding its use.<sup>4</sup>

Predictably, the Forest Service would go through the motions to produce an outcome-preordained environmental study rejecting Tribal concerns. Ultimately and predictably, the Forest Service would then defend its "decision" in *Navajo Nation v. US Forest Serv.* **The outcome in *Navajo Nation v. US Forest Serv.* was completely predictable owing to the April 19, 1988, U.S. Supreme Court ruling, *Lyng v. Northwest Indian Cemetery Prot. Assn.*, 485 U.S. 439 (1988) ["*Lyng*"]. In *Lyng*, the U.S. Supreme Court ruled, that the Forest Service may destroy the sacred nature of its land as long as the government does not "coerce" one to violate their religious belief.**

Specifically, in *Lyng*, the U.S. Supreme Court rules,

**"...Incidental effects of government programs, which may interfere with the practice of certain religions, but which have no tendency to coerce individuals into acting contrary to their religious beliefs, do not require government to bring forward a compelling justification for its otherwise lawful actions...Even assuming that the Government's actions here will virtually destroy the Indians' ability to practice their religion, the Constitution simply does not provide a principle that could justify upholding respondents' [Native American's] legal claims."**

Since 1988, *Lyng* and its following legal rulings unfortunately have become the defining legal authority in obstructing protection of sacred sites on public lands. **Simply stated, *Lyng* summarily declares that (1) the Forest Service's right to use its land as it wishes overrides the claim of Native American religious practitioners, because the government is not**

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<sup>2</sup> "Court rejects ski resort's snow plan for wastewater," Bruce Geiselman, Waste News, March 19, 2007 ("The operators of the Arizona Snowbowl said...the resort's future depends on artificial snow making."); See also: Draft Environmental Impact Statement for Arizona Snowbowl Facilities Improvements, Coconino National Forest, Coconino County, Arizona, February 2004.; and Final Environmental Impact Statement for Arizona Snowbowl Facilities, Volume 1, Coconino National Forest, Coconino County, Arizona, February 2005.

<sup>3</sup> "Snowbowl files reclaimed water plan," Jeff Tucker, Arizona Daily Sun, February 19, 2002.

<sup>4</sup> City of Flagstaff City Council Minutes, March 19, 2002.

**literally outlawing Native American religion, and (2) the First Amendment protects belief, but not the ability to practice religion for Native Americans.**

*Lyng* and its following legal rulings have been the controlling legal authorities governing non-protection of Native American sacred sites since 1988. **In 2002, the City of Flagstaff would have certainly known of *Lyng* and of the pain and suffering *Lyng* has been causing in Indian Country.**

Nonetheless, on March 19, 2002, the Flagstaff City Council unanimously passed a motion to “enter into an agreement to sell reclaimed wastewater” to Arizona Snowbowl saying “that the purpose of the NEPA [National Environmental Policy Act Forest Service] process is to take all cultural, social, religious, and environmental issues into account as part of the body of information used to make a decision at the next level...”<sup>5</sup>

**The City of Flagstaff’s ignoring the 1988, U.S. Supreme Court *Lyng* decision is obviously a lie by omission. Forest Service’ NEPA evaluations and decisions, subsequent to the 1988, *Lyng* decision, do not protect Native American sacred sites and religious practices on federal lands. The cultural and religious concerns of the Navajo, Hopi, Hualapai, Havasupai, Yavapai Apache and White Mountain Apache would not influence, would not affect, nor would these concerns change the predetermined Forest Service NEPA approval of the use of reclaimed wastewater on the Peaks resulting from the City’s deferral and referral to the Forest Service.**

From the **City of Flagstaff’s June 21, 2017, City of Flagstaff’s Answering [Appellate] Brief in 2017 WL 3198131, Court of Appeals of Arizona, Division 1.; The Hopi Tribe, v. The City of Flagstaff, Defendant/Appellee., and Arizona Snowbowl Resort Limited Partnership, Third-Party Defendant/Appellee.:**

**“While the Hopi may enjoy the Peaks in different manner than hikers, photographers, bird watchers, hunters, or other uses, the use and enjoyment of the Peaks which they claim is no different than that of any other group or the public at large.”...**

**“The City of Flagstaff submits that this Court should affirm the trial court and, in doing so, should award it fees and costs for this appeal.”**

**From the Appellate Court’s February 8, 2018, OPINION in the City of Flagstaff’s Appeal from the Superior Court in Coconino County in the Arizona Court of Appeals, Division One; The Hopi Tribe, Plaintiff/Appellant, v. ARIZONA SNOWBOWL RESORT LIMITED PARTNERSHIP, et al. [City of Flagstaff], Defendants/Appellees.; No. 1 CA-CV 16-0521, FILED 2-8-2018; Appeal from the Superior Court in Coconino County, No. S0300CV201100701:**

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<sup>5</sup> These quotations come from the March 19, 2002, City Council minutes. City officials at the time included, Mayor Joseph Donaldson; Council Members Vice Mayor Karen Cooper, Allen Edgar, Bill Jeffery, Libby Silva, Penny Tovillion, and Al White, City Manager Dave Wilcox, and City Attorney Joe Bertoldo.

**“Because we find the Tribe sufficiently alleged the use of reclaimed wastewater causes its members a special injury, different in kind than that suffered by the general public, by interfering with places of special cultural and religious significance to the Tribe, we reverse the trial court’s dismissal...**

This emphasis on the emotional, cultural, and religious significance of the cemetery in *Beatty* supports the Tribe’s argument here that interference with a place of special importance can cause special injury to those personally affected, even when that place of special importance is upon public land.

¶13 Adopting this position, we find that within its complaint, the Tribe sufficiently alleges special injury. ... the Tribe alleges:

131. **The purity of the ceremonial objects collected by members of the Hopi Tribe during pilgrimages is of particular importance. These objects cannot be used for ceremonial purposes if they become tainted or impure. ...**

138. ... **Natural resources that the Hopi collect, as well as shrines, sacred areas, and springs on the Peaks will come into contact with the blown reclaimed wastewater . . . . This negatively impacts the Hopi’s use of the Snowbowl Resort Area, the Wilderness Area, and surrounding areas, and causes Hopi practitioners to stop using the areas they have traditionally used. ...**

201. **The Hopi Tribe suffers specific injury . . . because the prevailing winds will blow the artificial snow outside the boundaries of the application area thus negatively impacting Hopi’s use of these areas, including for ceremonial practices. ...**

202. **The Hopi Tribe will suffer specific injury . . . because the artificial snow will blow towards, and melting snow will runoff into, springs and water bodies the Hopi Tribe uses for ceremonial and utilitarian purposes. ...**

¶14 We are not persuaded by the City’s reliance upon *Oppen v. Aetna Insurance Co.*, 485 F.2d 252 (9th Cir. 1973). There, the Ninth Circuit held that boat owners seeking to recover damages following an oil spill were not specially injured when “deprived of no more than their occasional Sunday piscatorial pleasure.” *Id.* at 253, 260 (internal quotations omitted). Unlike *Oppen*, where the boat owners’ loss of navigation rights was no different in kind from that suffered by the public generally, *see id.* at 260, here, the Tribe distinguishes its cultural and religious interest in the Peaks from the recreational interests of the public at large. ...

#### CONCLUSION

¶19 The trial court’s order dismissing the Tribe’s complaint is reversed...”

The City of Flagstaff appealed the appellate court ruling to the Arizona Supreme Court. From the City of Flagstaff’s March 12, 2018, PETITION FOR REVIEW IN THE SUPREME COURT STATE OF ARIZONA; The Hopi Tribe, Plaintiff/Appellant, v. The City

of Flagstaff, Arizona, Defendant/Appellee, and Arizona Snowbowl Resort Limited Partnership, Third-Party Defendant/Appellee.; Arizona Supreme Court No. CV-18-0057-PR:

“The City of Flagstaff, Arizona hereby petitions that this Court review the decision rendered by the Court of Appeals, Division One, dated February 8, 2018 in the above-captioned matter. ...

**The “injury” alleged by the Complaint is the environmental damage of using reclaimed water for snowmaking. That injury is common to all of the public who frequent or utilize the area for many different purposes. ...”**

From the **City of Flagstaff’s May 29, 2018, SUPPLEMENTAL MEMORANDUM in the State of Arizona Supreme Court; The Hopi Tribe, Plaintiff/Appellant, v. The City of Flagstaff, Arizona, Defendant/Appellee.; and Arizona Snowbowl Resort Limited Partnership, Third-Party Defendant/Appellee; No. CV-18-0057-PR.:**

**“The Hopi Tribe lacks standing to bring a public nuisance claim because it has no “special injury” different than the environmental injury suffered by the public who use the Peaks.”...**

**“...The Hopi cite to no case which supports their position that environmental damage to religious objects is a “special injury...The injury that is alleged as public nuisance is environmental damage common to all who use the San Francisco Peaks” ...”**

The City of Flagstaff’s appeal to the Arizona Supreme Court to reverse the appellate court’s ruling in favor of the Hopi was successful. The Arizona Supreme Court ruled in favor of the City of Flagstaff against the Hopi. From HOPI TRIBE, *Plaintiff/Appellant*, v. ARIZONA SNOWBOWL RESORT LIMITED PARTNERSHIP, ET AL [City of Flagstaff], *Defendants/Appellees.*; No. CV-18-0057-PR, Filed November 29, 2018, in the Supreme Court of the State of Arizona; Appeal from the Superior Court in Coconino County, **AFFIRMED;** Opinion of the Court of Appeals, Division One, 244 Ariz. 259 (App. 2018), **VACATED AND REMANDED:**

“...opinion of the Court:

**¶1 Private parties may bring public nuisance claims in Arizona if the alleged nuisance caused the plaintiff special injury, meaning “damage [that is] different in kind or quality from that suffered by the public in common.” *Armory Park Neighborhood Ass’n v. Episcopal Cmty. Servs. in Ariz.*, 148 Ariz. 1, 5 (1985). Today we hold, as a matter of law, that environmental damage to public land with religious, cultural, or emotional significance to the plaintiff is not special injury for public nuisance purposes.” ...**

¶14 Primarily relying on *In re Exxon Valdez*, 104 F.3d 1196 (9th Cir. 1997), Snowbowl contends that the alleged injury here is to the Tribe’s “desire to enjoy ‘pristine natural surroundings,’” *see id.* at 1198, which “is a right shared by the public generally.” Snowbowl argues that injury is not transformed into “special harm” “[j]ust because [the Tribe’s] members . . . wish to access the Peaks for religious reasons” when “others’ motivations are environmental or recreational.” The Tribe counters that “the reclaimed wastewater has directly and significantly impeded [its] use and enjoyment of a place of special importance to the Tribe by thwarting [its] religious practices” on the Peaks. According to the Tribe, such “significant interference with its use of sacred places that have formed a central component of its cultural and religious life since before recorded history” constitutes “injury [that] is clearly different in kind [from] that suffered by the public.” The Tribe maintains that recognizing its injury as “special” “fits squarely within long-established Arizona and other applicable precedent,” including *Armory Park* and *Beatty*, and supports its public nuisance claim...

¶15 We [the Arizona Supreme Court justices] agree with Snowbowl. Contrary to the Tribe’s assertion that the place-of-special-importance form of special injury is consistent with Arizona law, **the only public nuisance cases in which we have recognized special injury involved property or pecuniary [monetary] interests not present here.** ...

¶19 *Lyng* illustrates this well. There, various parties, including “an Indian organization, individual Indians, nature organizations and individual members of those organizations, and the State of California,” brought a religious-freedom-based challenge to a proposed road upgrade and timber harvesting in California’s Chimney Rock area. 485 U.S. at 443. The plaintiffs claimed that those projects violated their rights under the First Amendment’s Free Exercise Clause and various federal statutes. *Id.*

¶20 The United States Supreme Court rejected the challenge, *id.* at 453 [*Lyng*], despite recognizing that “the logging and road-building projects at issue in th[e] case could have devastating effects on traditional Indian religious practices” that are “intimately and inextricably bound up with the unique features of the Chimney Rock area,” *id.* at 451.

¶21 As the Court in *Lyng* observed, “[w]hatever rights the Indians may have to the use of the area, . . . those rights do not divest the Government of its right to use what is, after all, *its* land.” ... Although this case does not involve First Amendment or federal statutory claims, it similarly illustrates how the place-of-special-importance category the Tribe urges (and the court of appeals embraced) would essentially empower a lone plaintiff to interfere with decisions by public officials (made here after extensive input from interested parties, including the Tribe) concerning the best use of public lands...

¶22 The reclaimed water contract at issue here went through a nearly decade long review process in which the Tribe participated and actively voiced its opposition. That process included a series of public hearings at which the City considered alternatives to reclaimed water. And after approving the contract

**with Snowbowl, the City considered, held public comment on, and ultimately denied a motion to reconsider its decision. ...”**

For the reasons stated above, we affirm the trial court’s judgment in favor of Snowbowl and the City on the Tribe’s public nuisance claim, vacate the court of appeals’ opinion, and remand the case to the court of appeals to determine whether the trial court’s fee award is supportable and appropriate...”

Quotations from media coverage of the Arizona Supreme Court ruling are instructive. From the November 29, 2018, Arizona Republic, in “Hopi lose arguments on Snowbowl snowmaking in state Supreme Court ruling,”:

“A sad comment on our law’

In their dissent, Chief Justice Bales and Justice Bolick argued that the majority’s ruling “largely ignores the distinctive harms alleged by the Hopi” and undermined the very purpose of the public nuisance law.

“The majority fails to appreciate that the wastewater will affect the Hopi’s use and enjoyment of ancestral lands that have played a central role in Hopi culture and religion since before the Coconino National Forest was of concern to the broader public,” the dissenters wrote...

“We may live in a material world,” they wrote, “but it is a sad comment on our law to suggest that other interests — such as religious traditions and practices manifest through millennia and recognized by federal law — cannot support a claim of special injury for purposes of the public nuisance doctrine.”<sup>6</sup>

From the November 30, 2018, Arizona Daily Sun and the Associated Press, in “High court rules against Hopi Tribe in snowmaking challenge,”:

**“The city of Flagstaff declined comment on the ruling. ...**

In a dissenting opinion, Chief Justice Scott Bales said the court has long recognized that special injury can extend beyond property and monetary rights. He said it’s ironic that if the Hopi sold pine boughs or pinon nuts gathered from the mountain, the majority would allow a special injury claim.

“The general public does not have millennia of religious practice in the area that will be covered in a fine film of reclaim sewage,” Bales wrote. “Nor does the general

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<sup>6</sup> “Hopi lose arguments on Snowbowl snowmaking in state Supreme Court ruling, Arizona Republic, November 29, 2018, <https://www.azcentral.com/story/news/local/arizona/2018/11/29/hopi-lose-arguments-snowbowlsnowmaking-state-supreme-court-ruling/1997219002/> .

public have rights of access and use, rooted in Hopi tradition and cultural practices, recognized by federal statutes."

"I'm disappointed and I'm frustrated," said Leigh Kuwanwisiwma, who retired as the Hopi's longtime cultural preservation director last year and was heavily involved in the case. "But I think indigenous people like Hopi people are always going to be at a legal disadvantage when they put something like that in a white man's court."<sup>7</sup>

For more information:

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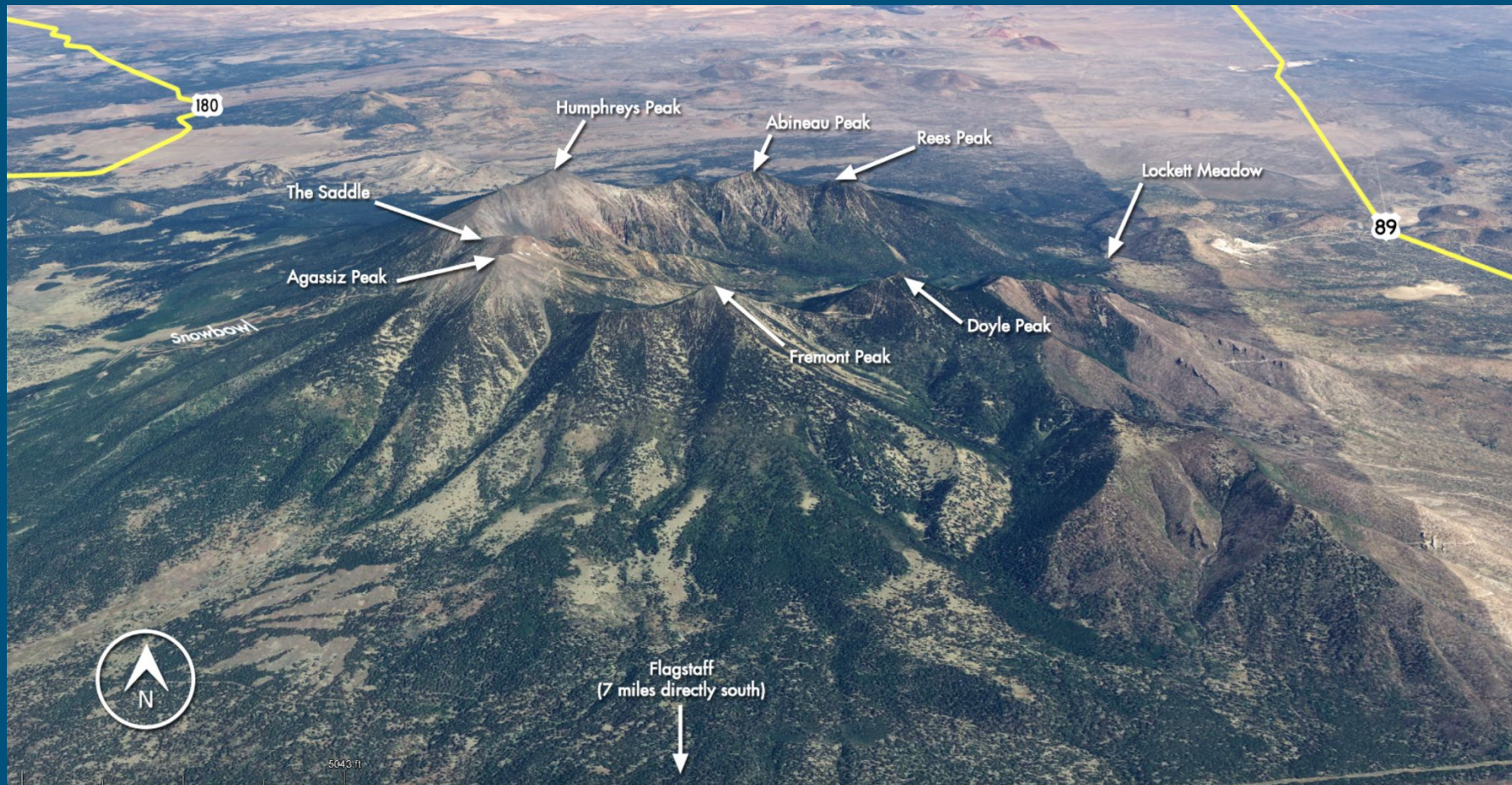
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<sup>7</sup> "High court rules against Hopi Tribe in snowmaking challenge," Felicia Fonseca, Associated Press, Arizona Daily Sun, November 30, 2018, [https://azdailysun.com/news/local/high-court-rules-against-hopi-tribe-in-snowmakingchallenge/article\\_1cad9758-a74e-539a-872a-5fb3b939aaaa.html#tracking-source=home-top-story-1](https://azdailysun.com/news/local/high-court-rules-against-hopi-tribe-in-snowmakingchallenge/article_1cad9758-a74e-539a-872a-5fb3b939aaaa.html#tracking-source=home-top-story-1).



# Renaming Agassiz Peak

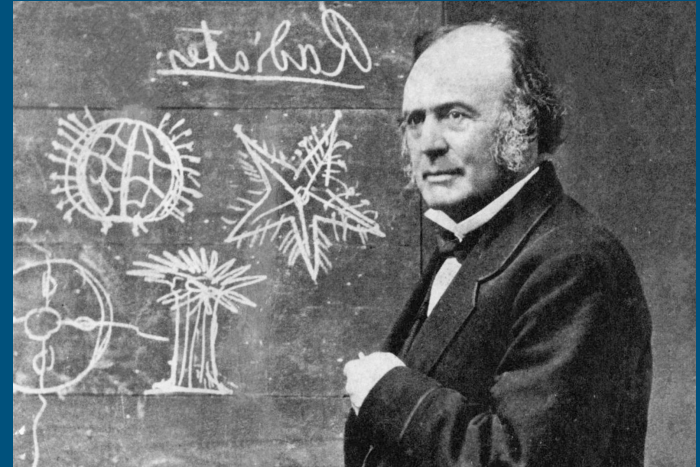
By: Indigenous Youth Leaders



# History of Jean Louis Rodolphe Agassiz

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- Jean Louis Rodolphe Agassiz was a Swiss- born American biologist/ geologist.
- Agassiz was also an opponent of miscegenation. At a lecture at the Charleston Literary Club in South Carolina in 1847, **Agassiz announced that blacks constituted a separate species**. In a letter to American abolitionist Samuel Gridley Howe in 1863, **Agassiz stated that sexual relations between blacks and whites were “immoral” and “destructive to the social equality.”**
- Agassiz peak, is named after a biologist who used his studies to legitimize racist beliefs of white superiority. So, keeping the name the same deeply affects the indigenous as the meanings behind each of their names are important to us. This also creates a culture of racism colonization that should be deemed unacceptable.



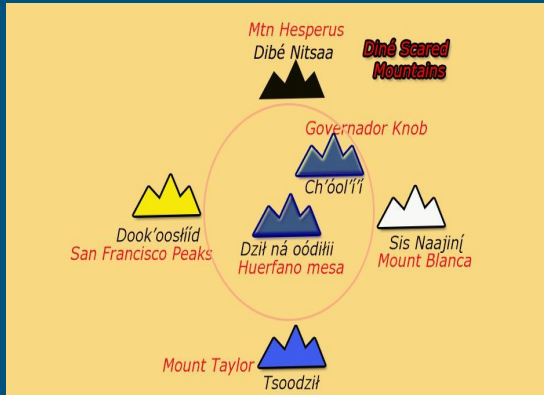
# Why is this is an important issue to indigenous people?

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- The peaks is considered sacred to 13 indigenous nations which sadly, some have been pushed out of Arizona. **13 Tribal Nations which include; Pueblo, Mohave, Havasupai, Yavapai, Hualapai, Navajo, Hopi, Apache, Zuni, Salt, Gila, Paiute, and Ute**
- The peaks still remain sacred and holy to many Indigenous nations therefore, the **current names of the peaks is viewed as inappropriate and misrepresenting.**

# Cultural significance to local Native tribes

The peaks are associated with 13 indigenous nations. The Peaks is associated with spiritual deities, ancestors, emergence, ceremonies, climate conduit, and is still integral to indigenous daily practices.



# Native names for Agassiz Peak

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- Dook'o'oosłíd (Navajo) (Abalone Shell Mountain) (The Mountain that reflects)
- Pavoyoykyasi (rain tablet) Nuva'tukya'ovi —(Hopi)
- Dził Tso—Dilzhe'e—(Apache) (Big Mountain)
- Tsii Bina—Aa'ku—(Acoma)
- Nuvaxatuh—Nuwuvi—(Southern Paiute)
- Hvehasahpatch or Huassapatch—Havasu 'Baaja—(Havasupai)
- Wik'hanbaja—Hwal'bay—(Hualapai)
- Wi:mun Kwa—(Yavapai)
- Sunha K'hbchu Yalanne—A:shiwi (Zuni)
- 'Amat 'Tikwe Nyava—Hamakhav—(Mojave)
- Sierra sin Agua—(Spanish) ( The mountain without water)

# Quotes from Native Elders

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- “Dook’oosliid has been a part of our sacred circle of life since the beginning of life for the Diné people. We as Diné utilize sacred plants, water, & minerals from this sacred mountain. Our medicine men go to the mountains to gather ceremony bundles & give offerings to the Diyin Dine’e & give their offerings/ thanks for protectings us. The mountain have the power to cure our ailments. That’s why the mountain are sacred to us. We must not abuse the mountains”- **Navajo Elder**
- “[The peaks are one of the] sacred places where the earth brushes up against the unseen world,” said **Yavapai-Apache Chairman Vincent Randall**.
- “To us Hopis, the Peaks is a sacred home and resting place for our spiritual beings, kachina spirits. The kachina spirits serve as guides to the Hopi people.” - **Hopi Elder**

# Press Release

Local news. The truth matters.

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## Earth Notes: Flagstaff To Rename Street Linked To Racist History

By RYAN HEINSIUS · NOV 18, 2020

PROGRAM  
Earth Notes

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There's a movement in Flagstaff to change the name of a downtown street with a controversial moniker. City officials are considering several community proposals to rethink Agassiz St. It was named after Louis Agassiz, an influential 19th century biologist and Harvard professor. But his legacy is one of racism.



File photo: Swiss-American biologist, Jean Louis Rodolphe Agassiz, 1807-1873  
CREDIT: GETTY IMAGES

[Listen](#)  
2:30

Louis Agassiz loomed large in the world of natural sciences in the 1800's. He

# Press Release continued..


Daily Sun | Flagstaff High School students advocate for renaming the Peaks | SHARE THIS | 37 comments

ALERT | TOP STORY

## Flagstaff High School students advocate for renaming the Peaks

Katlin Olson | Apr 14, 2020 | Updated Sep 24, 2020 | 37

11\* for 6 mos | EDITOR'S SPECIAL 3.0



Members of Flagstaff High School's Native American Club stand with Flagstaff City Councilmember Jamie Whelan, right, in this March photo. The students are seeking support from local jurisdictions in renaming the San Francisco Peaks to better represent their indigenous history.

Katlin Olson

f t e b l

Katlin Olson

**E**arly last month, rather than being distracted by their upcoming spring break, a group of Flagstaff High School students decided to add a higher issue to their list of spring semester to-dos: advocating for the renaming of the San Francisco Peaks.

In a press conference March 11, representatives from Flag High's Native American Club explained these mountains have long been sacred to 13 tribal nations, so names like Agassiz Peak, in particular, are out-of-line.

Although Louis Agassiz was recognized for his

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# Personal Statements from Students

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We will be hearing from the following students:

Mashayla Tso, Makaius Marks, Danell Lipscomb, etc.

# Closing Statement

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Agassiz's science was used to try to legitimize racist beliefs of white racial superiority. Therefore, naming a peak after him is not appropriate and antagonizes the beliefs and acknowledgments of the indigenous nations and other communities of color. **This creates a culture of Racism and colonization that we deem as unacceptable.**

- **Keeping the name, Agassiz Peak, deeply affects Indigenous people as the cultural names of the peaks describe the spiritual healing and power that the mountain withholds.. This also creates a culture of racism and colonization that should be deemed unacceptable.**



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<https://www.fs.usda.gov/detail/coconino/about-forest/about-area/?cid=stelprdb5340115>

Land Acknowledgement Recommendation for Flagstaff City Council

By the Commission on Diversity Awareness

September 21, 2021

Out of respect for the ancestral lands occupied by multiple Indigenous tribes and with respect for current residents of the Flagstaff community who are tribal members and/or descendants of Indigenous peoples, the Commission on Diversity Awareness strongly supports the proposal presented to City Council to incorporate a land acknowledgement on the City website. We also recommend that the land acknowledgement be read at the opening of City Council meetings.

## Jessica Vigorito

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**From:** Jessica Vigorito  
**Sent:** Monday, October 4, 2021 2:58 PM  
**To:** DD; Jean Toner; J and D Wegwert; Marcela Pino; Mandy Gebler; CTucci127@gmail.com; hardi.claire@gmail.com  
**Subject:** Flagstaff Water Resources information  
**Attachments:** IPD2021\_Final.pdf

Hello All,

I am passing along some Flagstaff Water Resources and Reclamation information that I have been able to find since the last conversation on this topic. Attached you will find a flyer for Indigenous Peoples Day which includes a section on Water that I thought might be helpful to the Workgroup discussion. I also copied links below to case studies and information available on the City website. Erin Young, Water Resources Manager, did offer to attend a Commission meeting to present or answer questions.

<https://www.flagstaff.az.gov/2328/Reclaimed-Water-Is-It-Safe>  
<https://www.flagstaff.az.gov/21/Reclaimed-Water>  
<https://www.flagstaff.az.gov/4522/Case-Studies>

To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other board members and board members should not reply all to this message.

Jessica Vigorito, MPA  
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