

Public Abstract

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Title:KACHINAS ARE SNOWMAKERS: UNITED STATES PUBLIC LAND MANAGEMENT AND THE HOPI QUEST FOR RELIGIOUS FREEDOM, 1962-2008

This study is the only in depth look at the first case to test the scope of religious protections offered to Native American sacred places on public lands by the Religious Freedom Restoration Act of 1993, Navajo Nation v. Forest Service, (2005, 2007, 2008). The study is presented with the relevant political and historical context of the Hopi Nation and the United States of America from the late nineteenth century to present, with a focus on the Hopi struggle for religious freedom as it related to the most sacred of Hopi places, Nuvatukyaovi, also know as the San Francisco Peaks located in the Coconino National Park, from 1962 to 2008. The most detailed examination is of the 2005 Forest Service decision to approve an expansion of the Snowbowl ski that would have artificial snowmaking with reclaimed sewage effluent on Nuvatukyaovi and the legal battled that followed.

This historical and legal study of Federal Indian policy differs from typical studies in that it is an examination of the implementation of policy at the local level by Forest Service personnel and the legal resistance to that policy by the Hopi government and Hopi individuals (in cooperation with other Indian nations, individuals, and non-Indian allies). As is more typical of examinations of Federal Indian legal history, the intricacies of the legal complexities surrounding indigenous religious freedom and the management of U.S. Public lands are be examined in detail. Thus, while this study examines bureaucrats and policy, it presents an account of the voices of those Hopi who chose to participate in the resistance to the policy implementation through the federal courts of the U.S.

Sharply departing from other studies of American Indian legal history, this study engages in an existentialist-humanist analysis of the decision making processes of the Forest Service administrators and the Ninth Circuit Court of Appeals. There are many detailed examinations of the ideological and structural failings of the Anglo-American legal system with regards to U.S. relations with Indian peoples. While these studies are of the utmost importance, a clear understanding of what exactly has gone on can be lost in the details of the legal arguments. An existentialist-humanist analysis is used bring the core tragedy of Navajo Nation into focus.

It is the contention of this study that the ordeal of the Hopi from 1962-2008 with the Snowbowl Resort reveals how a system of law and administrative regulation of public land, theoretically designed to harmonize relations between Native Americans and the needs of public lands management of the United States, was easily subverted by those with no interest in taking into account the differing sensibilities and spiritual concerns of the Native Americans whom their decisions affected. The United States regulatory apparatus for public land use provided what seemed to be an extraordinarily progressive requirement for consultation with Indian governments and religious leaders. While fulfilling the letter of the law, those ultimately responsible for approving the adverse action against Hopi religious interests were able to use the legal framework to deny the reality of their involvement in the decision by claiming they had no choice in the matter. Forest Service officials discounted the differing Hopi meanings of spirituality and applied objective standards of land management not mandated by law to provide the luxury of thinking themselves rational, just, fundamentally decent, and continuing to work with Hopi interests in an area of shared values. By the same token, the Hopi ordeal with the Snowbowl Resort also demonstrates that the actual protections of religious freedom that have existed in the settler community have been found in the choices of some individuals within the government bureaucracy to consider the actual spiritual concerns and needs of Native Americans -- not in the objective requirements of the law.

