The Lawful Desecration of the San Francisco Peaks

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The San Francisco Peaks sprawl across the Colorado Plateau of North Central Arizona. Its three major peaks (Fremont, Agassiz, and Humphreys) attract recreational tourists and American Indian religious practitioners alike. The Peaks became embroiled in conflict in the late 1970s after these two groups clashed over the expansion of a ski resort on Humphreys Peak. This clash, which resulted in the Court of Appeals case *Wilson v. Block*, called attention to the sacred nature of the Peaks for American Indians, particularly the Navajo and Hopi tribes. It marked a climax in the federal government's long involvement in the Peaks and an even longer history of local tribes' relationship with the Peaks. Between 1848 and 2008, the US government created and then upheld circumstances that violated the San Francisco Peaks' sanctity for the Hopi and Navajo tribes. Its acquisition, colonization, and recreational development of the Peaks denigrated the sacred site; the courts then upheld these actions, allowing the harm to continue unchecked.

The story of the San Francisco Peaks begins at least 93,000 years ago, when the mountain range was formed by multiple volcanic eruptions. Today, the mountains sit on the edge of a crater that formerly housed one such volcano.[1] The Peaks are in Coconino County of North Central Arizona on the Colorado Plateau. The first of its three major peaks, Humphreys, boasts the highest point in the state at 12,633 feet and is named after a surveyor who was active in the area from 1851 onward.[2] The next tallest is Agassiz, named in 1867 after a fossil surveyor from Harvard. Finally, Fremont stands as the third-tallest peak, unsurprisingly named after yet another American expeditionary: John Charles Fremont, the "Pathfinder of the West," who governed the Territory of Arizona on the tail end of his long career exploring and warring across the US.[3] The naming conventions of the Peaks give the false impression that white Americans were the first to assert their presence in the region. On the contrary, Paleo-Indians first occupied the area as far back as 15,000 years ago. The Peaks are known by at least eleven other names today, ten of which come from local tribes that existed long before Humphreys, Agassiz, and Fremont arrived—Acoma, Apache, Havasupai, Hopi, Hualapai, Mojave, Navajo, Southern Paiute, Yavapai, and Zuni.[4] Of these tribes, the Hopi and Navajo became the face of the movement to protect the Peaks as a sacred site beginning in the 1980s. Their names for the mountains are *Nuva'tukya'ovi* (Hopi) and *Dook'o'oosłíid* (Navajo).

The Peaks have been part of the Hopi people's homeland in Northeastern Arizona, called *Hopitutskwa,* for at least one thousand years.[5] Spanish conquistadors and explorers led

[1] U.S. Geological Survey, "San Francisco Mountain," *U.S. Geological Survey*, last modified July 18, 2022, https://www.usgs.gov/volcanoes/san-francisco-volcanic-field/science/san-francisco-mountain.
[2] Encyclopaedia Britannica, s.v. "San Francisco Peaks," *Encyclopaedia Britannica*, accessed April 27, 2025, https://www.britannica.com/place/San-Francisco-Peaks.
[3] U.S. Forest Service, "History of the San Francisco Peaks," *Coconino National Forest*, last modified July 18, 2022, https://www.fs.usda.gov/detail/coconino/learning/history-culture/?cid=fseprd1107872.
[4] This tribe prefers to identify itself with the term "Dinè". In order to maintain accordance with the language used in the majority of sources, the term "Navajo" will be used in this work; U.S. Forest Service, "History of the San Francisco Peaks."
[5] "Hopi" in Southwest, 3rd ed., ed. Laurie J. Edwards, 1069-1089. Vol. 3 of *UXL Encyclopedia of Native American Tribes* (Detroit, MI: UXL, 2012) *Gale eBooks* (accessed April 28, 2025). https://link-gale-

by Francisco Vásquez de Coronado in 1540 were the first European expedition to make contact with the Hopi, and also the first to encounter the Peaks.[6] The Spanish were involved in Hopi life from 1629-1700, during which time Christian missionaries suppressed their religious practices. This eventually ended in revolt and the assassination of Christian converts by Hopi traditionalists. The Hopi lived free from heavy colonial pressures once more, until the 1850s brought United States Indian Agents, smallpox, and increased vulnerability to Navajo intrusions that they had suffered on and off throughout their shared history. The Hopi reservation was established in 1882; their proximity to the Navajo territory and past tensions led to various land disputes, but the reservation now occupies about 1.5 million acres in Navajo and Coconino Counties of Arizona.[7] It does not include any part of the Peaks, despite their deep religious and cultural significance to the tribe.

In order to understand the Hopi's determination to protect the Peaks, one must first understand their role in the tribe's religion. The Hopi traditional religion maintains a strong presence in the tribal community: as recently as 2011, 90% of tribal members were practicing it.[8] Their religious beliefs center on the idea of an underlying, undefined "sacred" that permeates everything, living and non-living. Prayer is usually viewed in practical terms, i.e., "for rain, crops, health, and long life."[9] The San Francisco Peaks are the home of the Kachinas, or *katsinam,* spirits that are the reincarnated souls of ancestors who ferry messages between the people and the gods, as well as bring rain. Hopi people leave prayers for the Kachinas at the Peaks. They also collect Douglas fir and feathers from the mountains for religious ceremonies. Songs about the Kachinas confirm their relationship with the Peaks: "They are preparing themselves [for a journey] / Over there at the snow-capped mountains [San Francisco Peaks]. / The clouds From there, they are putting on their endowments [of rain power] / To come here."[10] As the home of the Kachinas and a place for prayer and the collection of ritual materials, the religious value of the Peaks to the Hopi is clear: this mountain range is a sacred site. This conclusion is key to understanding the harm done by the US federal government to the Peaks, according to the Hopi.

The other leading tribe in the fight to protect the Peaks is the Navajo. The Navajo are evidenced to have lived in the Southwest since the eleventh century.[11] The boundaries of their traditional homeland are marked by four sacred mountains—*Sis Naajinii* (Blanca Peak in Colorado), *Dibe Ntsaa* (Hesperus Peak in Colorado), *Tsoodzil* (Mount Taylor in New Mexico),

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com.proxy2.library.illinois.edu/apps/doc/CX4019400079/GVRL?u=uiuc_uc&sid=bookmark-GVRL&xid=8d1386d7.

[6] The Spanish named the Peaks "Sin Agua", or "without water"

[7] Inter Tribal Council of Arizona, "Hopi Tribe," accessed April 27, 2025, https://itcaonline.com/member-tribes/hopi-tribe/.

[8] Laurie Edwards, "Hopi."

[9] John D. Loftin, *Religion and Hopi Life*, (Indiana University Press, 2003), 25, *ProQuest Ebook Central*, http://ebookcentral.proquest.com/lib/uiuc/detail.action?docID=149191.

[10] Maria Glowacka, Dorothy Washburn, and Justin Richland, "Nuvatukya'ovi, San Francisco Peaks: Balancing Western Economies with Native American Spiritualities," Current Anthropology 50, no. 4 (2009): 547–61, https://doi.org/10.1086/599069.

[11] "Navajo," in Southwest, 3rd ed., ed. Laurie J. Edwards, vol. 3 of UXL Encyclopedia of Native American Tribes (Detroit, MI: UXL, 2012), 1109–33, Gale eBooks (accessed April 28, 2025), https://link-gale-com.proxy2.library.illinois.edu/apps/doc/CX4019400081/GVRL?u=uiuc_uc&sid=bookmark-GVRL&xid=a2926b4f.

and *Dook'o'oosłíid* (Humphreys Peak of the San Francisco Peaks in Arizona).[12] Similar to the Hopi, they encountered, exchanged, and clashed with Spaniards in the seventeenth and eighteenth centuries. Land disputes with the United States began in 1848, when the US laid claim to Navajo territory under the Treaty of Guadalupe Hidalgo. The Navajo resisted, and in response the US exiled them to Fort Sumner, New Mexico, from 1864-1868. The journey, known as the "Long Walk," and life on the small reservation were deadly for many. Finally, in 1868, they were granted a reservation on part of their traditional homelands.[13] Today, the reservation has grown to 17 million acres in New Mexico, Arizona, and Utah.[14] Part of it is in Coconino County, Arizona, which the San Francisco Peaks and part of the Hopi Reservation also occupy. However, despite this proximity in the same county, the Navajo reservation does not include any part of the Peaks.

Like the Hopi, the Navajo hold religious beliefs that incorporate the San Francisco Peaks; these beliefs inform their protest of the US government's involvement with the mountains. Navajo religion centers on the natural order and harmony of the world. Accordingly, religious practices are intended to restore order and maintain a reciprocal relationship with both the natural and supernatural worlds. The Navajo pray to Holy People, who represent aspects of nature; to name a few, Earth, Moon, First Man, First Woman, and Changing Woman. The Holy People can offer aid and knowledge to those who reach out to them.[15] As previously mentioned, Humphreys Peak is one of four sacred mountains to the Navajo. Each mountain has unique powers and mythological associations. The Peaks are associated with "adulthood, physical strength, and the winds."[16] The mountain range is in the form of a "pregnant woman with knees propped up and torso lying toward the west as she faces east. The main part of her body is the San Francisco Peaks range, her breasts are prominent, and because she is trying to give birth, her legs are bent to the side toward the Grand Canyon."[17] The Peaks' male mountain partner is Hesperus, a peak of the Rocky Mountains in Colorado. The Navajo make mountain bundles out of soil and other materials from the mountains to join the male and female and place it in the home. They also gather other ritual materials and perform ceremonies there. Accordingly, the Peaks have a dual purpose: a protective female entity and a ritually significant locale. The doctrinal and practical involvement of the Peaks in Navajo religion establishes them as a sacred site. By understanding the Peaks as a sacred site to the Navajo, one can better understand the affront of the US government's actions.

By the time the United States took interest in the Peaks, the Hopi, Navajo, and other nearby tribes had venerated them for centuries. The Americans' involvement began in earnest in 1851, shortly after the acquisition of Southwestern lands via the Treaty of Guadalupe Hidalgo in 1848. That year, the US Army Corps of Topographical Engineers sent a team to

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[12] "History: The Navajo," *Utah Indians*, accessed April 28, 2025, https://utahindians.org/archives/navajo/history.html.
[13] Laurie Edwards, "Navajo."
[14] "Administrative Boundaries," Diné Nihi Kéyah Project – Navajo Nation Land History, Law and Custom, accessed April 28, 2025, https://dinelanduse.org/boundaries/.
[15] Trudy Griffin-Pierce, "The Continuous Renewal of Sacred Relations: Navajo Religion" in *Native Religions and Cultures of North America*, ed. Lawrence Eugene Sullivan (New York: Continuum, 2000), 126.
[16] Robert McPherson and Perry Robinson, *Traditional Navajo Teachings Volume 2: The Natural World* (Boulder: University Press of Colorado, 2020,) 22.
[17] McPherson and Robinson, *Traditional Navajo Teachings Volume 2,* 23.

map and evaluate the land down the Zuni and Colorado Rivers, "determining [their] course and character, particularly in reference to [their] navigable properties, and to the character of [their] adjacent land and productions."[18] In the report they note the biodiversity of the Peaks and repeatedly extol its scenery, which "presented a beautiful appearance."[19] Arizona was incorporated as a territory in 1863, and Yavapai County (which included the San Francisco Peaks) was formed in 1864 along with three other founding counties. From there, the colonization of Arizona rapidly continued. In 1866, in the middle of the Navajos' exile, the Atlantic and Pacific Railway Act was passed. In order to reach the West Coast of the US, the act provided for a rail line "to the head-waters of the Colorado Chiquito, and thence, along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado River, at such point as may be selected by said company for crossing."[20] The expected rail line attracted settlers to the Peaks region. Many arrived in the 1870s and 1880s, making their livings logging, mining, and raising livestock.[21] Due to rapid development, Coconino County was carved out of Yavapai County in 1891; the new boundaries included the Peaks. The expansion of white settlements in this period correlated to the relegation of the Navajo, Hopi, and other local American Indians to reservations. Tribes were pushed out, and white American settlers were moved in. In the process, the US government laid claim to the San Francisco Peaks by specifically excluding them from reservation boundaries and thus nullifying any legal or social tribal authority over them. The government knowingly facilitated the colonization of an already populated area, marking the first step toward the eventual desecration of the Peaks by the settlers' progeny.

The completion of the railroad at Flagstaff, Arizona, in 1883 planted the seed for the legal conflict over recreation on the Peaks a century later. Thanks to the increased accessibility of North Central Arizona via the railroad, "travelers from all over the world came to view the Grand Canyon, the San Francisco Peaks, the beauties of the Oak Creek Canyon, and the cliff dwellings in Walnut Canyon."[22] The government moved to facilitate this tourism by establishing the San Francisco Mountains Forest Reserve in 1898. President Theodore Roosevelt states in Proclamation 469 that "it appears that the public good would be promoted by setting apart and reserving said lands as a public reservation."[23] Ten years later, the Forest Reserve was consolidated with the Black Mesa, Tonto, and Grand Canyon National Forests "into one National Forest, which should be known as the Coconino National Forest."[24] At first glance,

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[18] U.S. Congress, Senate, *Report of the Secretary of War, Communicating, in Compliance with a Resolution of the Senate, the Report of an Expedition Down the Zuni and Colorado Rivers, by Captain Sitgreaves*, 32nd Cong., 2nd sess., 1853, 4 https://www.govinfo.gov/app/details/SERIALSET-00668_00_00-002-0059-0000.

[19] U.S. Congress, *Report of the Secretary of War,* 37.

[20] *1866, July 27 – 14 Stat. 292, Railroad and Telegraph Line Lands Act*, Hornbeck Collection – Historical Land Use in California, California State University, Monterey Bay, 4, accessed April 28, 2025, https://digitalcommons.csumb.edu/cgi/viewcontent.cgi?article=1014&context=hornbeck_usa_2_d.

[21] J.W. Byrkit, M.E. Hecht, and G.L. McNamee, "Arizona," Encyclopedia Britannica, April 26, 2025, https://www.britannica.com/place/Arizona-state.

[22] Platt Cline, *They Came to the Mountain: The Story of Flagstaff's Beginnings*, (Flagstaff: North Arizona University, 1976), 326.

[23] Theodore Roosevelt, Proclamation 469—Establishing the San Francisco Mountains Forest Reserve, April 12, 1902, The American Presidency Project, https://www.presidency.ucsb.edu/documents/proclamation-469-establishing-the-san-francisco-mountains-forest-reserve.

[24] United States Forest Service, Southwestern Region, Coconino National Forest, Arizona, 1908 Proclamation, Arizona Memory Project, 1, accessed April 27, 2025, https://azmemory.azlibrary.gov/nodes/view/82176.

these measures appear to be protective for the San Francisco Peaks and therefore in line with the desires of those who consider it sacred. After all, both proclamations place limitations on settlement and development. However, there are two implications of converting the Peaks to public land that facilitated their desecration.

Firstly, national forests are property of the federal government and managed by the U.S. Department of Agriculture. This means that upon the establishment of the Peaks and the surrounding area as a forest reserve and then a national forest, decision-making authority went to Congress. Per the Transfer Act of 1905, which created the Forest Service, "The Secretary of the Department of Agriculture Shall, from and after the passage of this Act, execute or cause to be executed all laws affecting public lands."[25] This allocation of authority to the federal government squashed the little influence that local tribes might have had over the use of the Peaks. Now, not only were the Peaks outside of tribal jurisdiction, but they were also outside of any local jurisdiction. On top of that, the administration of the Peaks was beholden to the values of the federal government rather than private citizens. This was a challenge to any religious accommodation that local tribes may have requested because they would have to make the case that said accommodations would not cause the government to violate the Free Exercise Clause on public lands by promoting one particular religion. Indeed, this implication of federal ownership became a deciding factor in later rulings against tribes who hold the Peaks as sacred. The federal government successfully argued that accommodating tribes entailed unconstitutionally furthering their religions in violation of the Free Exercise Clause, which the administration of the Peaks was bound to because they were federal government property rather than tribal or private. Therefore, the allocation of the San Francisco Peaks as public land was another step away from its protection as a sacred site due to the implications of federal ownership.

Secondly, national forests were (and still are) popular recreation areas, thanks to decades of accommodation by the Forest Service followed by legislation that specifically designated recreation as a function of national forests (namely, the Multiple-Use Policy of 1960). While the establishment of the Coconino National Forest did not make reference to recreation, the Forest Service increasingly provided for recreation on public lands. Some of the earliest regulations, from when the Forest Service was still known as the General Land Office, "stated that permits could be secured for the building and maintenance of sanitariums and hotels at mineral and other springs, and that land could be leased there for a fee for certain periods of time."[26] As time went on, demand for facilities increased, as did the Forest Service's accommodations. The Term Occupancy Act of 1915 even "permitted it to allow private use and development of public forest lands for terms of up to 30 years by persons or organizations wishing to erect summer camps, hotels, or other resorts."[27] Recreational development continued in this vein, and in 1960 Congress affirmed recreation as one of five essential purposes of national forests per the Multiple-Use Sustained-Yield Act. This policy stated that "the national forests are established and shall be administered for outdoor recreation, range,

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[25] *Transfer Act of 1905*, Act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472, 524, 554), accessed April 28, 2025, https://foresthistory.org/wp-content/uploads/2017/01/Transfer_Act_1905.pdf.

[26] William C. Tweed, *A History of Outdoor Recreation Development in National Forests, 1891–1942 (Washington, D.C.*: U.S. Department of Agriculture, Forest Service, 1989), 1, accessed April 28, 2025, https://foresthistory.org/wp-content/uploads/2017/01/USFS_Recreation_1891_1942.pdf.

[27] Tweed, *A History of Outdoor Recreation Development in National Forests,* 10.

timber, watershed, and wildlife and fish purposes."[28] As a result, the national forests would "best meet the needs of the American people."[29] The Hopi and Navajo tribes were not among the beneficiaries; the Multiple-Use Policy's encouragement of recreation was contradictory to their needs of the Coconino National Forest. Looking back to the religious uses of the San Francisco Peaks, tourism is contrary and disruptive to its role as a sacred site. For the Hopi, buildings and visitors occupied an area that was already home to the Kachinas. Development also endangered solitude for prayer, the safety of shrines, and the collection of ritual materials. For the Navajo, development acted as a genuine physical scar on the female entity that is the Peaks. Their prayer and ritual material collection was also threatened. Thus, the US government's claim of the Peaks as a national forest area facilitated and even encouraged acts of desecration.

The colonization, federal acquisition, and recreational development of the San Francisco Peaks, despite their religious significance to the Hopi and Navajo tribes, who occupied the land long before Americans, set the stage for two court cases that upheld the legality of their continued desecration. Historically, judicial rulings on sacred sites have not been favorable for American Indians. These disputes stem from the fact that "because so much Indian title to land has been lost … sacred sites and shrines may be hundreds of miles from where tribal peoples live."[30] As is the case with the San Francisco Peaks, these sites frequently end up as public lands and recreation areas. After all, sacred sites are often visually striking natural areas like Bear Butte, Rainbow Bridge, and of course the San Francisco Peaks. Because these sites are not under tribal jurisdiction, religious groups must invoke the Free Exercise Clause if they want to argue for any kind of accommodation.

In 1978 Congress passed the American Indian Religious Freedom Act, which specifically called for tribes to have access to sacred sites (among other provisions). However, even after this legislation, the argument that tribes should be granted access to their sacred sites in order to accommodate their right of free exercise of religion still fell short in the eyes of the court, primarily because of a fundamental misrepresentation of American Indian religion. Scholar of history and environmental studies Andrew Gulliford explains:

> For traditional native peoples, the landscape includes not only the physical world of rocks, trees, mountains, and plains but also the spirit world. Indigenous Native American worship depends on a detailed and particular sense of place that goes back in language and in stories for centuries, whereas Protestant Christianity has been evangelical, transportable, Bible-based, and not rooted in a particular landscape.[31]

This disconnect is clear in the rulings of *Badoni v. Higginson* (1977) and *Sequoyah v. Tennessee Valley Authority* (1979), the predecessors to the Peaks' own landmark legal battle. In both cases the court ruled that the flooding of sites sacred to the Cherokee and Navajo tribes, respectively, did not infringe on their free exercise because it had "no coercive effect on plaintiffs' religious beliefs or practices" and "these interests do not constitute 'deep religious conviction[s], shared

[28] *Public Law 86-517*, 74 Stat. 215 (1960), https://www.congress.gov/86/statute/STATUTE-74/STATUTE-74-Pg215.pdf.
[29] *Public Law 86-517*, 74 Stat. 215 (1960).
[30] Andrew Gulliford, *Sacred Objects and Sacred Places: Preserving Tribal Traditions* (Niwot, Colorado: University Press of Colorado, 2000), 3.
[31] Gulliford, *Sacred Objects and Sacred* Places, 67.

by an organized group and intimately related to daily living.'"[32] Both rulings reflected a blatant disregard for how flooding a sacred site would be fundamentally damaging to those practicing land-based religions. In *Badoni*, the court even questioned the validity of the claims of religious significance at all. In these rulings, the court rejected testimony from the religious practitioners themselves, who emphasized the contrary. Instead, the courts chose to rely on their own interpretation of American Indian religions, which did not accurately reflect what the plaintiffs themselves told them.

The second common failure point for American Indian plaintiffs arguing sacred site cases is the fact that the sites are usually not under tribal jurisdiction. In both *Sequoyah* and *Badoni,* the courts' rulings included a dismissal of the free exercise claim altogether on the basis of insufficient property interest. The ruling in *Sequoyah* summarized this opinion succinctly:

> The free exercise clause is not a license in itself to enter property, government-owned or otherwise, to which religious practitioners have no other legal right of access. Since plaintiffs claim no other legal property interest in the land in question, aside from the statutory claims previously discussed, a free exercise claim is not stated here.[33]

This interpretation of the applicability of the First Amendment of the Constitution is strikingly narrow, as it appears to immediately dismiss any free exercise claims outside of the private sphere. This justification, along with the previously discussed negligence to consider what American Indian religious freedom calls for in practice, "represent[s] a disturbing failure of the judiciary as interpreter of constitutional law to apply the protections of the Free Exercise Clause of the First Amendment to Native American Indian claims to preserve sacred land."[34] The courts' narrow interpretation of the First Amendment in sacred site cases deprives American Indians of the ability to practice their religions unobstructed. American Indians thus find themselves repeatedly unprotected by the religious freedom provisions of the Constitution due to the courts' reliance on property interest as a deciding factor and their incongruous interpretation of what "free exercise" for tribal plaintiffs entails.

The Hopi Indian Tribe and Navajo Medicine Men's Association found themselves in this unforgiving legal landscape when they brought a case against the US Forest Service for its facilitation of the expansion of a ski resort on Humphreys Peak. The resort, known as the Snow Bowl, began operating in 1937, when the Forest Service built a road and a ski lodge. Small expansions and upkeep continued until 1977. That year, the operating permit was transferred to Northland Recreation Company, who quickly "submitted to the Forest Service a 'master plan' for the future development of the Snow Bowl, which contemplated the construction of

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[32] *Sequoyah v. Tennessee Valley Authority*, 480 F. Supp. 608 (E.D. Tenn. 1979), 4, https://lira.bc.edu/work/ns/3a633117-e318-4f09-9cac-ae26e321606e/reader/952d76c2-77af-469a-ab9a-44ede2d3bf59; *Badoni v. Higginson*, 455 F. Supp. 641 (D. Utah 1977), https://law.justia.com/cases/federal/district-courts/FSupp/455/641/1415951/. The quote is from the ruling in *Wisconsin v. Yoder*, a landmark religious freedom case that ruled in favor of Amish families who wanted to exempt their children from compulsory education. The language in that ruling became a precedent that future religious freedom cases were compared to, including those of American Indians.

[33] *Sequoyah v. Tennessee Valley Authority*, 4.

[34] Brian Brown, *Religion, Land, and the Law: Native Americans and the Judicial Interpretation of Sacred Land* (Westport, Connecticut: Greenwood Press, 1999),171.

additional parking and ski slopes, new lodge facilities, and ski lifts."[35] The Forest Service approved a modified version of this plan. Various groups resisted the expansion, culminating in a US Court of Appeals case: *Wilson v. Block*. In 1981, the Navajo Medicine Men's Association, the Hopi Tribe, and local ranch owners Jean and Richard Wilson filed a consolidated lawsuit against the expansion. The suit centered on the Free Exercise Clause and the American Indian Religious Freedom Act due to the sacred nature of the Peaks. The plaintiffs argued:

> 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 … development would seriously impair their ability to pray and conduct ceremonies upon the Peaks, and to gather from the Peaks the sacred objects.[36]

Because the development would obstruct the tribes' abilities to engage with the Peaks in these various doctrinal and practical ways, they claimed protection under religious freedom laws.

The strength of these claims is apparent after consulting testimony from the tribes and known facts about their historic and religious relationship to the Peaks. The relationship expounded upon previously and further evidenced in the arguments made by the tribes before the court affirms their sacred nature and the burden the Snow Bowl expansion would place upon the plaintiff tribes. Despite this, both the district court and the appeals court ruled in favor of the expansion. The judges relied on *Badoni* and *Sequoyah* as precedent for this decision, once again disregarding American Indian religion and invoking the government's property interest as a trump card. The district court judge stated, "that as long as the Indians have continued access to the Peaks, the Snow Bowl will not impinge upon the continuation of all essential ritual practices."[37] This logic was invoked in sacred site cases before and after *Wilson*; most notably, the Supreme Court case *Lyng v. Northwest Indian Cemetery Association,* in which the court ruled against various American Indian groups who requested that the construction of a road and timber harvesting in the sacred Six Rivers National Forest be blocked. Brian Edward Brown, scholar of history, religion, and law, eloquently describes the judge's assessment as a "reductive delimitation of religion to 'ritual practices,'" echoing the minority opinion that would be written by Justice Brennan for *Lyng* in 1988.[38] Indeed, this interpretation ignored the importance of the Peaks as an entity whose sanctity would be compromised by development, regardless of whether the tribes had the right to practice their rituals or not. This claim disregarded an essential feature of the plaintiffs' religious beliefs, which they testified to but were either not understood or ignored. This mischaracterization thus upheld the second question that came from *Badoni* and *Sequoyah*: property interest. The appeals court explained, "If the plaintiffs cannot demonstrate that the government land at issue is indispensable to some religious practice, whether or not central to their religion, they have not justified a First Amendment claim."[39] As expected, the court ruled that the Snow Bowl area was not indispensable to Hopi and Navajo religious practices, thus rejecting the basis of a free exercise claim on government property altogether.

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[35] *Wilson v. Block*, 708 F.2d 735 (D.C. Cir. 1983), CaseText, 2, https://casetext.com/case/wilson-v-block.
[36] *Wilson v. Block*, 4.
[37] Brown, *Religion, Law, and the Land*, 69.
[38] Brown, *Religion, Law, and the Land*, 69.
[39] *Wilson v. Block*, 9.

The final decision in *Wilson* authorized the expansion of the Snow Bowl ski resort. This ruling was the greatest affront yet to the role of the San Francisco Peaks as a sacred site in a long history of harmful government decisions. The initial exclusion of the Peaks from Hopi and Navajo jurisdiction via the relegation of tribes to reservations in the 19th century, followed by the Peaks' designation as public lands as part of a National Forest, stripped the tribes of any legal property interest in them. The government's sponsorship of railroad construction, colonization, and recreational development facilitated the creation and use of the Snow Bowl ski resort. The *Wilson* ruling was made possible by this history that slowly desecrated the Peaks while simultaneously stripping the tribes of the ability to prevent it. The government relied on its own actions and legal precedents, formed on the basis of disregard or ignorance of American Indian religions, to justify yet another step down the road of desecration that it had begun over a century earlier.

This pattern did not end with *Wilson v. Block*. There is one more episode in this disturbing history: *Navajo Nation v. Forest Service,* a case that was tried at the US Court of Appeals and decided in 2008. The plaintiffs included the Navajo Nation, the Hopi Tribe, other American Indian tribes and individuals, and conservation groups. The dispute centered on the Snow Bowl's decision to use recycled wastewater to create artificial snow on the mountain for skiing. The tribes claimed that "the use of such snow on a sacred mountain desecrates the entire mountain, deprecates their religious ceremonies, and injures their religious sensibilities."[40] The plaintiffs invoked the Religious Freedom Restoration Act (RFRA) of 1993, which expanded protections for free exercise of religion. The act was partially a reaction to *Lyng*, which ruled that "the free exercise clause of the First Amendment does not prohibit the federal government from timber harvesting or constructing a road through a portion of a national forest that is considered a sacred religious site by three Native American tribes."[41] The expansion of protections in the RFRA in response to *Lyng* gave tribes hope that the tide was turning on sacred land rulings.

Unfortunately, they were wrong. The court rejected their free exercise argument on the basis of insufficient evidence of "substantial burden" on their practices and the government's ultimate authority as the property owner. Similar to *Wilson v. Block*, the court disregarded the importance of the sanctity of the Peaks beyond the ability to perform ritual acts upon or involving them. Because the artificial snow did not limit the accessibility of the Peaks for prayer and ritual material collection, the court argued:

> The sole effect of the artificial snow is on the Plaintiffs' subjective spiritual experience. That is, the presence of the artificial snow on the Peaks is offensive to the Plaintiffs' feelings about their religion and will decrease the spiritual fulfillment Plaintiffs get from practicing their religion on the mountain. Nevertheless, a government action that decreases the spirituality, the fervor, or the satisfaction with which a believer practices his religion is not what Congress has labeled a 'substantial burden' … on the free exercise of religion.[42]

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[40] *Navajo Nation v. U.S. Forest Service,* 535 F.3d 1058 (9th Cir. 2008), Native American Rights Fund, 2, https://www.narf.org/nill/bulletins/federal/documents/navajovusfs.pdf.
[41] Bridge Initiative Team, *Factsheet: Religious Freedom Restoration Act of 1993 (RFRA),* Georgetown University, March 16, 2021, https://bridge.georgetown.edu/research/religious-freedom-restoration-act-of-1993-rfra/.
[42] *Navajo Nation v. U.S. Forest Service*, 2.

This interpretation followed the reductive logic of all of the previously discussed sacred land rulings, which diminished American Indian religions to a set of practices. The Peaks are a living entity and sacred reality for these tribes; the court once again failed to acknowledge this. On top of that, the court argued that accommodating the tribes on federal land would be inappropriate because "giving one religious sect a veto over the use of public park land would deprive others of the right to use what is, by definition, land that belongs to everyone."[43] This argument fails to recognize that the land only became public after the government took it upon itself to oust local tribes from land they had occupied for centuries and declare it government property instead. This aspect of the ruling unsurprisingly ignores the historical context of the dispute and gives the government immense authority to reject free exercise claims.

Once again, the government's past decisions set the stage for further desecration of the Peaks. Just as in *Wilson v. Block*, the reservation system and designation of the Peaks as public lands in a national forest gave the court the basis to reject the Hopi and Navajo tribes' free exercise claims. Its reductive interpretation of American Indian religion led to the rulings in *Badoni, Sequoyah,* and *Wilson*, all of which served as precedent for *Navajo Nation*. The government created and then upheld the circumstances in this case that desecrated the Peaks. *Wilson* and *Navajo Nation* enshrined in law that the Peaks do not deserve special considerations from the government due to their sanctity, whether that be redress for past offenses or protection from future ones. Consequently, any acts of desecration going forward are liable to go unchecked.

The San Francisco Peaks have been a sacred site for the Hopi, Navajo, and other tribes for centuries. Their sanctity has been repeatedly violated by the US government, beginning in 1848 and continuing into the modern day. The first offense was the colonization of Northeastern Arizona, which the government facilitated by constructing a railroad and confining local American Indians to reservations, whose boundaries did not include the San Francisco Peaks. The second major offense was the designation of the Peaks as a national forest, which led to their development for recreation and gave the federal government full jurisdiction over them. These early decisions set up the Hopi and Navajo tribes for failure in 1981 and 2008, when they took to the courts to defend their sacred site from the Snow Bowl ski resort on Humphreys Peak. In *Wilson v. Block* and *Navajo Nation v. Forest Service*, the tribes drew on their long religious relationships with the Peaks to request accommodations that would protect their sanctity. The courts ruled against them both times, relying on past precedents set from other sacred site cases that were born out of a fundamental misunderstanding or disregard of American Indian religion. The tribes' failure in court was justified by the earlier decisions of the US government, which stripped them of jurisdiction and disregarded the Peaks' religious significance in favor of recreational usage. These cases, particularly *Wilson*, served as the culmination of the government's desecration of the sacred site. The ruling stated once and for all that the site did not merit protection, despite the Hopi and Navajo's long history and relationship with it. The ruling in *Navajo Nation* confirmed the finality of this decision. Each of these developments tells a story of the US government systematically setting itself up for success in its own courts. Thus culminated the 170-year process of desecration of the sacred San Francisco Peaks executed by the US government.

The harm inflicted by this history continues today, as private prayer and the gathering of ritual materials are still obstructed, and the sacred nature of the Peaks is compromised by

[43] *Navajo Nation v. U.S. Forest Service,* 3.

Snow Bowl infrastructure and the use of wastewater for artificial snow. The Hopi and Navajo tribes are still fighting to protect the Peaks, primarily focusing on the wastewater issue that was raised in *Navajo Nation*. Since the favorable ruling for the Snow Bowl resort was given in 2008, activist groups continue to stage protests and call for boycotts of the resort. In a renewed attempt for official recourse, the Navajo Nation also filed a petition to the Inter-American Council of Human Rights. None of these efforts have succeeded; this is the legacy of the US government's decisions in action.

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