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Sharp opinions about mines and mining from Jack Caldwell

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Religion trumps mining: recent court cases on the Religious Freedom Restoration Act

July 21, 2007 in [Law \(Mining\)](#), [About the news](#) by [jcaldwell](#)

Mark Squillace is Professor of Law at the University of Colorado School of Law, Boulder, Colorado. In a masterful summary of recent developments in the law as it affects mining and public lands that he made this morning at the Rocky Mountain Mineral Law Institute meeting in Vancouver, he gave somber warnings of the implications of a case not involving mining to the mining industry.

The case is Navajo Nation v. U.S. Forest Service. Four tribes sued the Forest Service contending that the Forest Service's decision to allow a ski resort to use reclaimed sewage water for snow making "burdened their exercise of religion by contaminating water and soils." On the basis of the Religious Freedom Restoration Act of 1993, the court agreed. And it found the project's EIS in violation of NEPA because it did not contain a "reasonably thorough discussion" of the negative health effects of ingesting snow made of treated wastewater.

As Professor Squillace puts it: "While this case only marginally concerns mining and public land law, its implications for those dealing with natural resources issues in Indian country could be profound."

He notes the story of the Glamis mine in California. In 2000, the Interior Department denied a permit to mine, finding that the proposed mine would cause undue degradation to public land and substantial irreparable harm to the tribal lands of the Quechan Tribe. Following the 2000 election, the Interior Department reversed its decision and reopened the permit application process. A law suit over that decision resulted in a remand to the Department of the Interior. We do not know the outcome as yet, but as Professor Squillace notes, if the tribe invokes the Religious Freedom Restoration Act they would have a pretty powerful tool to stop the mine in light of the finding in the Navajo case.

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