

ZIA PUEBLO and the Sacred Sun Symbol in the Public Domain

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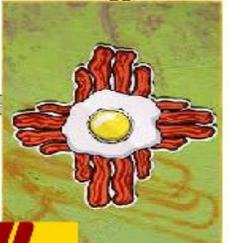
WIPO/IGC 38, Geneva, Switzerland December 10, 2018

Presentation by Gov. Anthony Delgarito



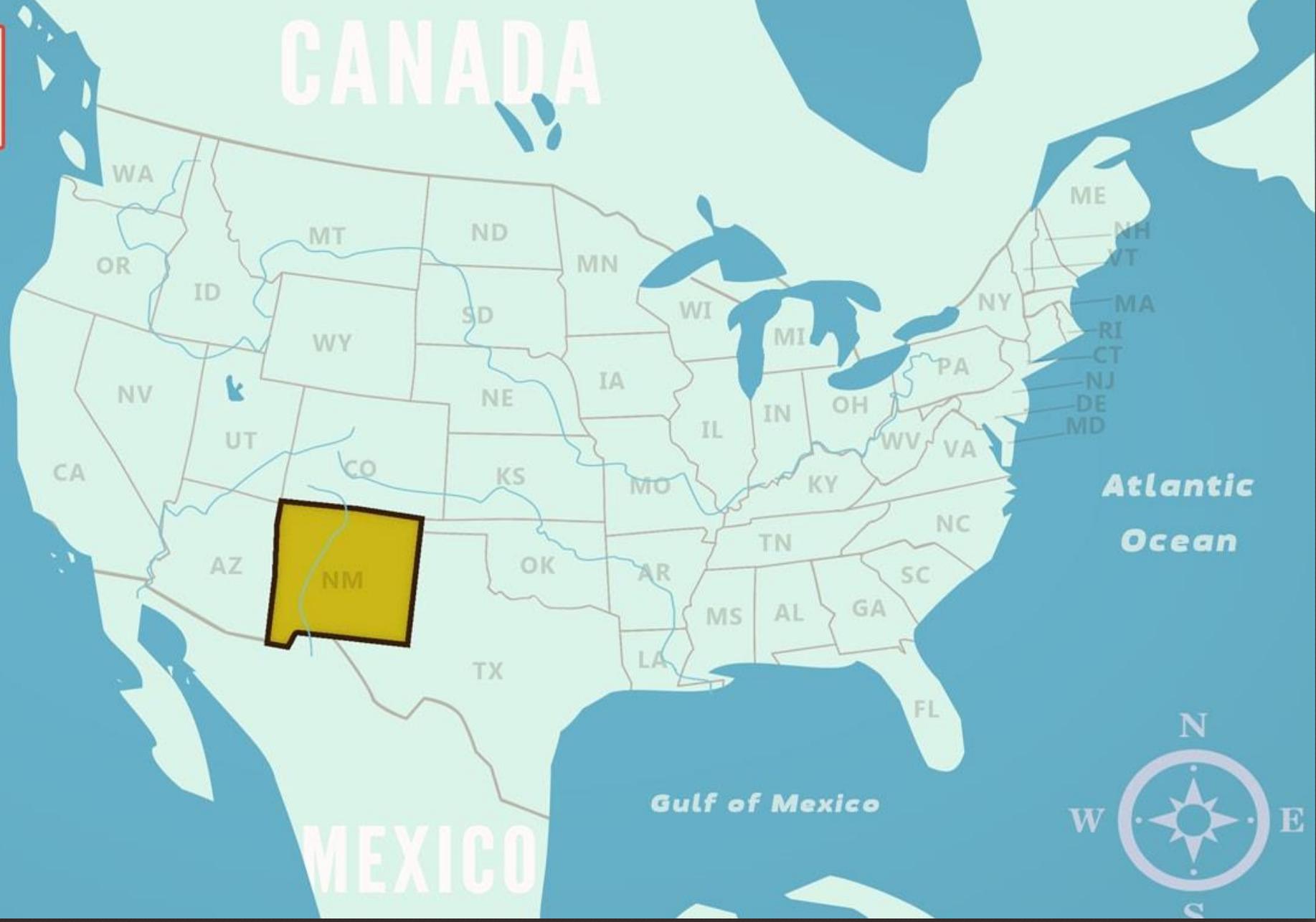
ZIA PUEBLO AND ITS SACRED ZIA SUN SYMBOL: A Presentation by Governor Anthony Delgarito
Dec 10, 2018 2-3pm Room B

PUEBLO OF ZIA



 New Mexico
ID State
 River

CANADA



Pacific Ocean

Atlantic Ocean

Gulf of Mexico

MEXICO



PUEBLOS OF THE SOUTHWEST



HOPI

ARIZONA

NEW MEXICO

TAOS

PICURIS

SAN JUAN

SANTA CLARA

NAMBE

SAN ILDEFONSO

POJOAQUE

COCHITI

TESUQUE

JEMEZ

SANTA FE

ZIA

SANTO DOMINGO

SANTA ANA

SAN FELIPE

SANDIA

ALBUQUERQUE

LAGUNA

ZUNI

ISLETA



Historical Facts about Zia

CONTINUOUSLY INHABITED SINCE 1200 AD

1583 - First Contact with Spain

1680 - Pueblo Revolt

1689 - Battle with Gov. Cruzate- 600 killed, 70 enslaved

Population: est. 700 at contact to 120 in 1892

disease and warfare

Land base: 27.3 square miles (7.070 hectares)

Survived Spanish, Mexican and American colonialism

ZIA SUN SYMBOL TAKEN FROM ZIA

Late 1800's - Sacred pot/ water jar stolen from Zia. (Matilda Stevenson?)

Reappeared in 1920 in Santa Fe for state sym

Repatriated to Zia in 2000- 02

Violation of Zia Indigenous Law



Symbol widely dispersed

1925- DAR Contest for
state flag design

Dr. Harry Mera - had seen
pottery, used sun symbol
for his entry

Won contest; became N.M.
state flag

Without permission of Zia
people



GAPS IN DOMESTIC LAW

- State of N.M. (appropriator) use of Zia sun symbol protected but Pueblo of Zia's use of their own symbol is not
- Section 2(b) of the Lanham Act: the USPTO must refuse registration of a mark if it “[c]onsists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation.”
 - 15 U.S.C. § 1052(b) (2006).
- Theory: discourage commercial uses of insignia that represent any nation or state, because such insignia are considered “culturally sacred.”
- But many loopholes- look-alikes but not replicas

GAPS IN INTERNATIONAL LAW

- INDIGENOUS AND TRADITIONAL NAMES WORDS & SYMBOLS:
- Defensive protection:
- “contrary to morality” and “contrary to public order” subject to multiple interpretations
- Often, owner does not seek to register a trademark
- Positive protection:
- Prohibitively expensive to register all names, words & symbols

- Updated Gap Analysis July 6, 2018

Conceptual Gaps

- Public domain
 - Often contrary to Indigenous law
 - accommodate a number of different worldviews with regard to the sharing of knowledge (2010)
- ZIA Traditional Law
 - Chthonic legal tradition
 - cf. customary law (common rule or practice that has become an intrinsic part of the accepted and expected conduct in a community, profession, or trade and is treated as legal requirement)
- UNDRIP Articles 11 and 27 - "Indigenous laws, traditions and customs"

Indigenous Law

CHTHONIC

TALMUDIC

CIVIL

ISLAMIC

ASIAN

HINDU

COMMON LAW

H. Patrick Glenn - Legal Traditions of
the World

- Tradition: a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected, and taught

- Merryman (1985)

ZIA ACTIONS TO REGAIN CONTROL

- 1990s - demanded compensation from New Mexico for - \$ million for every year it had flown from flagpoles
- 1992 - Zia challenge to trademark application from Coulton: primate laboratory located in NM attempted to register a trademark containing variation of the Zia sun symbol
- Zia objected to the registration: allowing Coulston to register the trademark would violate Section 2(a) of Lanham Act by falsely suggesting a connection to the Zia and bringing the Zia people into disrepute
- 1995 Coulston withdrew application

Actions

- 1994- USPTO: compile a list of “official insignia” of Native American tribes
 - determine more easily whether a given trademark application violated Section 2(a) of Lanham Act
- 2001- USPTO created Native American Tribal Insignia (NATI) database
- 2014 - National Congress of American Indians Resolution - recognized cultural property rights to its symbol
- 2014 - New Mexico State Legislature: Memorial and Study on “who has a right to use the Zia sun symbol and if there are any restrictions on how it may be used”

UNDRIP ARTICLE 11

- 1. Right to maintain, protect and develop the past, present and future manifestations of their cultures
- 2. States shall provide redress through effective mechanisms ... developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs

UNDRIP Article 31

- 1. Right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions
- [R]ight to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
- 2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Selected References

- Turner, The Case of the Zia: Looking Beyond Trademark Law to Protect Sacred Symbols,
http://digitalcommons.law.yale.edu/student_papers
- Cruz, C. Z. (2009). Law of the Land - Recognition and Resurgence in Indigenous Law and Justice Systems. In S. I. Benjamin J. Richardson (Ed.), *INDIGNEOUS PEOPLES AND THE LAW: COMPARATIVE AND CRITICAL PERSPECTIVES*, Shin Imai and Kent McNeil , eds (pp. 315-335). Hart Publishing.
- Glenn, P. (2010). *Legal Traditions of the World: Sustainable Diversity in Law*.