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Department of
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Forest
Service

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File Code: 1570-1/2300

Date: June 8, 2005

Laura Watchempino
Pueblo of Acoma
P.O. Box 309
Acoma, NM 87034

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
NUMBER: 70002870000011350594**

Re: Appeal #05-03-00-0008-A215, Pueblo of Acoma appeal, Arizona Snowbowl Facilities Improvement Decision, Peaks Ranger District, Coconino National Forest

Dear Laura Watchempino (designated contact in appeal),

This is my review decision concerning the appeal you filed regarding the Record of Decision and Final EIS, which approves snowmaking using reclaimed water as a source, additions and modifications to the Snowbowl's lift and terrain network, improvements to day lodges and parking, and a lift-served snowtubing facility. This decision includes a Forest Plan amendment to update the Snowbowl Ski Area Master Plan.

BACKGROUND

Forest Supervisor Nora Rasure issued a decision on March 11, 2005 for the Arizona Snowbowl Facilities Improvement Decision as described above. The Forest Supervisor is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of your appeal. The record indicates that informal resolution was not reached.

My review of this appeal has been conducted in accordance with 36 CFR 215.18. I have reviewed the appeal record and the recommendation of the Appeal Reviewing Officer. My review decision incorporates the appeal record.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer concluded:

- 1) The purpose and need was clear and the Proposed Action was appropriate and consistent with the purpose and need.
- 2) The project record shows that the environmental analysis was thorough, reasoned and in line with environmental laws and regulations.
- 3) The scoping and public involvement process was appropriate and effective in developing alternatives and evaluating effects.



- 4) The analysis and decision documented in the project record are consistent with national policy, direction and agency objectives.
- 5) The proposed project is consistent with the Coconino Forest Plan as amended with the exception of cutting eleven trees in a Mexican spotted owl (MSO) Protected Activity Center (PAC).
- 6) Several documents utilized and referenced in the record and in the analysis and decision-making process were not included in the project record.

APPEAL DECISION

At the onset, I wish to recognize the importance of the values and issues raised in your appeal. During my review, I gave them utmost consideration. After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm with instructions the Responsible Official's Arizona Snowbowl Facilities Improvement Decision with the following instructions:

- 1) The eleven trees scheduled for cutting in the PAC along the pipeline must be left in place in accordance with Plan direction.
- 2) Supplement the Project Record with the following documents and any other documents not included in the record that were used in the project analysis and decision-making process:
 - Coconino National Forest Plan
 - ISA & Report 1987-104-W White Vulcan Mine Settlement Agreement, in which San Francisco Peaks are formally determined eligible for the National Register.
 - July 14 and 28, 1998 letters to tribes informing them of CNF intent to nominate Peaks to National Register.
 - December 7, 1998 and January 28, 1999 letters to Havasupai and Hualapai attempting to set up meeting to discuss National Register nomination.
 - January 28, 1999 and November 22, 1999 annual consultation letters to San Juan Southern Paiute Tribe on National Register nomination process.
 - September 13, 1999 letters to tribes about proposal for snowplay area.
 - February 17, 2000 letters to tribes about feasibility work being conducted on Arizona Snowbowl.
 - June 20, 2002 pre-proposal letter to tribes.
 - December 2002 Arizona Snowbowl Scoping Response- Preliminary Issue Themes, meeting summary and second copy with notes.
 - May 12, 13, and 19, 2003 letters to tribes enclosing preliminary drafts of National Register nomination form.
 - Big Game status report for GMU 17, from Arizona Dept. of Fish and Game, 2003.

- April 26, 2004 letters to ACHP, SHPO, Snowbowl and tribes with first MOA draft.
- August 9, 2004 letters to tribes advising them of a determination of adverse effect for all Snowbowl alternatives and request for MOA consultations.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Harv Forsgren
HARV FORSGREN
Appeal Deciding Officer, Regional Forester

2 enclosures: Technical Review and Findings, ARO letter

cc: Mailroom R3 Coconino, Clifford Dils, Nora Rasure, Judy Levin, Judy Yandoh, Constance J Smith, Mailroom R3, Sandra Nagiller

REVIEW AND FINDINGS

of the

Pueblo of Acoma Appeal**#05-03-00-0008-A215****Arizona Snowbowl Facilities Improvement Record of Decision****ISSUE 1: The EIS violates the National Historic Preservation Act, the American Indian Religious Freedom Act, and Executive Order 13007- Indian Sacred Sites.**

Contention A: The ROD fails to adequately account for the adverse impact that the project will have on the Pueblo of Acoma and other Native American communities throughout the Southwest. The selected Alternative 2 will have the greatest cumulative effect in degrading the current physical and spiritual condition of the Peaks (FEIS 3-27).

Response: The Religious Freedom Restoration Act states that the government shall not substantially burden a person's exercise of religion without a compelling reason. AIRFA states that it is the policy of the United States to protect and preserve the inherent right of Native Americans to believe, express, and exercise their traditional religion, including access to religious sites, use and possession of sacred objects, and the freedom to worship through ceremonies. The ROD (PR #201, p.26) acknowledges that tribal concerns regarding the proposed action may result in religious and cultural repercussions for which there may be no mitigative actions. The ROD (PR #201, pp.22-30) contains the Forest Supervisor's rationale in selecting Alternative 2, including consideration of tribal concerns and other factors. The ROD affirms that the decision does not prohibit access to the Special Use Permit area or the remainder of the Peaks for religious purposes. The ROD (PR #201, p.26-28) also states that the Forest developed the Memorandum of Agreement MOA (PR #199, Appendix D) required by NHPA to try to address these impacts to the extent possible and will continue to consult with the tribes regarding potential impacts and will attempt to find ways to mitigate the impacts.

In the ROD (PR #201, pp. 22-28), the Forest Supervisor acknowledges that the decision was a very difficult one. In making her decision she considered the purpose and need, the environmental and cultural effects, and the significant differences in cultural beliefs and perspectives regarding how the Peaks should be managed. The decision authorizes improvements within the existing ski area to provide a more consistent and safer recreation experience for the public and community while 1) mitigating the adverse effects identified by the tribes to the extent practical and possible and 2) continuing to accommodate tribal cultural and religious use of the Peaks, recognizing that most of the Peaks are managed in a way much more closely aligned with tribal values. The Forest will continue to work with the tribes to attempt find ways to address tribal concerns.

Finding: The ROD supported by the project record, acknowledges the adverse impacts to the Peaks identified by the tribes, and these impacts are considered in the decision rationale.

Contention B: FS conducted no special meetings with Tribes regarding the effects of the proposed Alternatives on the values that make the Peaks eligible for the National Register of Historic Places.

Response: The record (PR #190; #191; and #201, pp.8-9) documents many letters and phone calls to tribes offering meetings to discuss the proposed action, DEIS, and MOA. The record also reflects a concerted effort on the part of the Forest Service to arrange meetings when tribes requested meetings. Over 20 meetings with tribal officials were held in the course of evaluating the proposed action and alternatives, including the effects of the alternatives on the values that make the Peaks eligible for the National Register. The record also demonstrates that the Forest Service followed the Advisory Council regulations in developing an MOA to address the effects of the proposed action and alternatives on the Peaks (PR #7, 67, 99, 140, 171, 212). The summary of tribal consultation (PR #190) documents two letters and several follow-up phone calls to the 13 tribes requesting participation in development of the MOA and possible mitigation measures.

Finding: The record provides documentation that the Forest Service made a reasonable and good faith effort to meet with tribes regarding effects on the Peaks.

Contention C: The cumulative effect of increased noise, light, traffic, and soil disturbance impacts from the project will cause quantifiable physical harm to the Peaks, and will disturb the spiritual integrity of the entirety of the Peaks which constitutes a sacrilege in violation of the AIRFA and EO 13007.

Response: AIRFA states that it is the policy of the United States to protect and preserve the inherent right of Native Americans to believe, express, and exercise their traditional religion, including access to religious sites, use and possession of sacred objects, and the freedom to worship through ceremonies. The ROD (PR #201, pp. 32) confirms that the decision does not prohibit access to the SUP area or the remainder of the Peaks for religious purposes. The MOA (PR #199, Appendix B, p. 2) and the ROD (PR #201, p. 28) ensure continued access, within and outside the SUP area for traditional cultural and religious uses. Compliance with AIRFA is addressed in the Response to Public Comments (PR #200, Comment 5.12, p. 29). E.O. 13007 requires that agencies, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical integrity of such sacred sites. Sacred sites are defined as specific, discrete, narrowly delineated locations of religious significance or ceremonial use.

Tribal members have not identified any specific shrines or locations for ceremonies that will be impacted by the Snowbowl improvements (PR #199, p 3-8) and have not identified any plants, springs, or natural resources within the SUP area that will be affected (PR #199, p 3-12; #200, Comment 5.8, p 27). An MOA (PR #199, Appendix D) was developed to minimize and resolve to the extent practicable the adverse effects, physical and spiritual, of the proposed action and alternatives on the Peaks. Impacts to the spiritual and physical qualities of the Peaks were

identified as issues in the FEIS (PR #199, pp.2-14 through 2-16), and effects of the alternatives on the Peaks were analyzed and disclosed (FEIS (PR# 199, pp.3-16 through 3-30).

Finding: Many tribal members believe the selected alternative will have a devastating impact on the physical and spiritual qualities of the Peaks; the decision, however, does not violate AIRFA or E.O. 13007.

Contention D: The socio-economic impacts analysis does not include any discussion related to the disproportionately high and adverse environmental effects to Native Americans who hold the Peaks sacred. Environmental Justice principles require the socio-economic impacts of each alternative on the significant Native American population be assessed and documented. Environmental justice consultation should have been integrated into the entire FEIS, not relegated to an after-the-fact summary at the end of Chapter 3.

Response: The effects of the proposed action and alternatives on Native American cultures and traditions were discussed and analyzed in the FEIS (PR#199) Section 3A, Heritage and Cultural Resources (pp. 3-3 through 3-29), and in Section 3N, Environmental Justice (pp.3-362 through 3-371). The analysis of the effects of the proposed action in Section 3N (p.3-370) recognized that alternative as having the highest potential for disproportionate adverse impacts on Native American cultures. 1997 CEQ Environmental Justice Guidance referenced in the FEIS (PR #199 p.3-363), states “there is no standard formula for identifying or addressing environmental justice issues” that would have required Environmental Justice issues to have been integrated into the entire FEIS section by section.

Based on the Heritage and Cultural Resource analysis provided in the FEIS (PR #199 pp.3-3 through 3-30), a determination was made that each of the alternatives carry with them some level of disproportionately high and adverse environmental effect to Native Americans who hold the Peaks sacred (PR #199 p.3-367). The FEIS further disclosed the proposed action (Alternative 2) would represent the highest degree of potential disproportionate environmental impact to Native American Cultures (PR #199, p.3-370).

Finding: Socio-economic impacts related to disproportionately high and adverse environmental effects to Native Americans were addressed in the analysis.

ISSUE 2: Project violates the National Environmental Policy Act.

Contention A: The analysis on the use of reclaimed wastewater from the city for snowmaking should have discussed the long term effects of such diversions on the regional aquifer. Projected population growth rates and current and future water sources should have been included in this analysis to assess groundwater level reductions over a forty-year period, the life of the project.

Response: The analysis of the use of reclaimed wastewater did include an appropriate discussion of the long-term effects on the regional aquifer (PR# 199, pp. 3-160 to 3-224), including cumulative effects. The use of the reclaimed water for snowmaking, rather than discharging it directly into the Rio de Flag, will result in a 2 percent reduction from the current situation (PR# 199, p.3-223). As population and water use in Flagstaff increase over time, the amount of reduction attributable to snowmaking use will decrease. This project does not use groundwater and will not directly result in groundwater reductions.

Finding: The agency appropriately analyzed and disclosed the direct, indirect and cumulative effects on groundwater and groundwater recharge.

Contention B: ROD does not account for human health effects from exposure to pharmaceuticals and personal care products, disinfection byproducts and nitrogen which enter the environment through wastewater systems. Wildlife and the surrounding ecosystem would be exposed to the potential adverse effects of these substances.

Response: Potential effects from human exposure to the chemical constituents in treated wastewater were analyzed and disclosed in the project record (PR #199, pp. 3-175 to 3-206 and PR# 113, pp. 19 to 50). The effects of reclaimed water on wildlife were disclosed in the FEIS (PR#199, pp. 3-206 to 224, pp. 3-326 to 328) and the Response to Comments (PR#200, pp. 42-49, 160-162, and 164-165). There was no conclusive evidence found that suggests the presence of reclaimed water in the environment contains the potential for quantifiable and adverse effects to human health, wildlife or the environment.

Finding: The agency appropriately analyzed and disclosed the environmental effects.

Contention C: The FEIS acknowledges that the uses of reclaimed water within the SUP (Special Use Permit) have the potential to represent disproportionately high and adverse environmental impact, with the potential for both cultural and social effects (cite to FEIS 3-371). The No Action alternative should have been reviewed from this perspective, not based on potential adverse effects from an earlier development project that was already decided in 1979.

Response: During pre-proposal discussions and the formal scoping period, the Native American community and individual tribes expressed significant concern related to the use of reclaimed water for snowmaking and the increased ground disturbance associated with additional ski area development. These issues were treated as significant, and an alternative (Alternative 3) was subsequently developed to address the concerns. Alternative 3 eliminated the snow play area and snowmaking using reclaimed water. With respect to the analysis of the no action alternative, FSH defines the no action alternative as: “no change from current management” (FSH 1909.15, 14.1) and CEQ clarifies: “... ‘no action’ is ‘no change’ from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the ‘no action’ alternative may be thought of in terms of continuing with the present course of action until that action is changed” (CEQ’s Forty Most Asked Questions Concerning the National Environmental Policy Act Regulations, Question #3).

Based on the Heritage and Cultural Resource analysis provided in the FEIS (PR #199 pp.3-3 through 3-30), a determination was made that each of the alternatives carry with them some level of disproportionately high and adverse environmental effect to Native Americans who hold the Peaks sacred (PR #199, p.3-367). The FEIS further disclosed the proposed action (Alternative 2) would represent the highest degree of potential disproportionate environmental impact to Native American Cultures (PR #199, p.3-370). Under NEPA, this determination does not preclude a proposed agency action from going forward, nor does it compel a conclusion that a proposed action is environmentally unsatisfactory (Environmental Justice – Guidance Under the National Environmental Policy Act, p.10).

Finding: The agency appropriately identified the no action alternative, developed an alternative to address cultural and heritage concerns, and analyzed the effects of the proposed action and the other alternatives. The FEIS disclosed the potential for disproportionately high and adverse environmental effects to Native Americans as required under NEPA and EO 12898.

Contention D: The ROD and FEIS falls short of the mandate to assess environmental impacts from each alternative including the No Action Alternative. The Pueblo of Acoma requests the Forest Service select the environmentally preferable No Action Alternative.

Response: 40 CFR §1502.14 requires agencies to evaluate the environmental impacts of the proposed action and alternatives, sharply defining the issues and providing a clear basis of choice among options. Section 1505.2 (b) directs the agency to identify all alternatives considered by the agency in reaching its decision and to specify the environmentally preferred alternative. There is no requirement under NEPA that the agency select the environmentally preferred alternative.

Chapter 3 of the FEIS (PR #199) presents a thorough evaluation of the environmental impacts anticipated for the three alternatives studied in detail. A summary of the direct and indirect environmental consequences associated with the implementation of each alternative is provided in Table 2-5 (PR #199, pp.2-43 through 2-61). This information supports the identification of Alternative 1 (No Action) in the ROD as the environmentally preferred alternative (PR #201, p.3). The ROD outlines the Decision Maker's rationale for selecting Alternative 2 over the environmentally preferred alternative.

Finding: The agency appropriately evaluated the environmental impacts of each alternative, identified the environmentally preferred alternative (Alternative 1), and provided rationale for selecting an alternative other than the environmentally preferred.



United States
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Forest
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Santa Fe National Forest

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File Code: 1570-1/2300

Date: June 8, 2005

Route To: ()

Subject: ARO, Appeals of Snowbowl Facilities Improvement Project EIS, Peaks RD,
Coconino National Forest

To: Harv Forsgren, Regional Forester
Appeal Deciding Officer

This is my recommendation on the disposition of the appeals filed regarding the Arizona Snowbowl Facilities Improvement Record of Decision and Final Environmental Impact Statement, which approves snowmaking using reclaimed water as a source, additions and modifications to the Snowbowl's lift and terrain network, improvements to day lodges and parking, and a lift-served snowtubing facility. This decision included a Forest Plan amendment to update the Snowbowl Ski Area Master Plan.

Background

Forest Supervisor Nora Rasure issued a decision on March 11, 2005 for the Arizona Snowbowl Facilities Improvement Decision as described above. The Forest Supervisor is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of these appeals. The record indicates that informal resolution was not reached.

Review and Findings

My review was conducted in accordance with 36 CFR 215.19 to ensure that the analysis and decision are in compliance with applicable laws, regulations, policies and orders. The appeal records, including the appellants' issues and requests for relief have been thoroughly reviewed. Having reviewed the Environmental Impact Statement (EIS), Record of Decision (ROD), and the project record file, as required by 36 CFR 215.19(b), I conclude the following:

- 1) The purpose and need was clear and the Proposed Action was appropriate and consistent with purpose and need.
- 2) The Project Record shows that the environmental analysis was thorough, reasoned, in line with laws, regulations and national policy, and appropriate for the decision to be made.
- 3) The scoping and public involvement process was appropriate and effective in developing alternatives and evaluating effects.



- 4) The analyses and decision documented in the Record are consistent with the Coconino National Forest Plan direction as amended with the exception of cutting eleven trees in a Mexican Spotted Owl Protected Activity Center (MSO PAC).
- 5) The project record does not include several documents utilized in the analysis and decision making process.

Recommendation

I recommend that the Responsible Official's decision relating to these appeals be affirmed with the following instructions:

1. Supplement the project record with all documents used in the analysis and decision-making process.
2. Any tree cutting in the MSO PAC must be consistent with the Coconino Forest Plan direction.

/s/ Clifford J. Dils
CLIFFORD J. DILS
Deputy Forest Supervisor
Appeal Reviewing Officer

cc: Constance J Smith