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File Code: 1570-1/2300

Date: June 8, 2005

Combined appeals, Phyllis Hogan, Amanda Cronin,  
Amanda Kuenzi, Anne Ramsey, Candice Kearns,  
Carly Long, James Dryer, Jon Orlando, Julie  
Crawford, Tamara Ramirez, James Crittenden, Joann  
Finch, Jeronimo Vasquez, Don Fanning, and Michael  
Blakeslee

fill in from merge mail list  
Flagstaff, AZ 86001

**CERTIFIED MAIL – RETURN**

**RECEIPT REQUESTED  
NUMBER:**

Re: Combined appeals of Arizona Snowbowl Facilities Improvement Decision, Peaks Ranger  
District, Coconino National Forest

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. I have decided to consolidate your appeal with similar appeals in this decision (per 215.8)(b). 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,

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

**Combined Appeals from Phyllis Hogan, Amanda Cronin, Amanda Kuenzi, Anne Ramsey, Candice Kearns, Carly Long, James Dryer, Jon Orlando, Julie Crawford, Tamara Ramirez, James Crittenden, Joann Finch, Jeronimo Vasquez, Don Fanning, and Michael Blakeslee**

### **Arizona Snowbowl Facilities Improvement Record of Decision**

#### **ISSUE 1: The EIS violates the Religious Freedom Restoration Act, the American Indian Religious Freedom Act, and Executive Order 13007.**

**Contention A (All):** The project takes place on land that is sacred to many Native Americans. They are essential to native religions in that ceremonies and the gathering of medicinal plants integral to cultural and spiritual practices occur there. The FEIS assumes the ground disturbance impacts are reversible if facilities are disassembled, however this demonstrates ignorance to respect the nature of tribal members' sacred heritage and relationship to the Peaks. This action would diminish the free exercise of native religions and disturb the sacred site.

**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 DEIS (PR #93, pp 3-14 through 3-20) and FEIS (PR #199, pp 3-16 through 3-30; PR # 200, pp 25-39) document and disclose the sincere beliefs of many tribal members that the Snowbowl improvements, ground disturbance and particularly the use of reclaimed water for snowmaking, will have a devastating impact on the spiritual values of the Peaks and will contaminate natural resources needed to perform ceremonies.

The decision to implement these improvements, however, does not prohibit individuals from practicing their religion in terms of the First Amendment to the constitution and related laws such as the Religious Freedom Restoration Act. It does not coerce religious practitioners into acting contrary to their religious beliefs or penalize them for practicing their religion. 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 (Special Use Permit) area that will be affected (PR #199, p. 3-12; #200, Comment 5.8, p. 27). Tribal members will still have access to the SUP area and the remainder of the Peaks for ceremonial uses in accordance with the American Indian Religious Freedom Act (PR #199, Appendix D, p. 2, #201, p. 28). Concerns about religious impacts are addressed in the ROD (PR #201, pp.25-28), the MOA (Memorandum of Agreement, PR#199, Appendix D), and Response to Public Comments (PR #200, pp. 25-29).

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:** While many tribes and tribal members have stated that the Snowbowl improvements will have an adverse impact on their religion, in terms of RFRA and the First Amendment to the Constitution, these impacts do not substantially burden the free exercise of religion.

**Contention B** (Joann Finch): The minimal information provided by FS to tribal governments was insufficient to fulfill requirements of Executive Order 13007 regarding consultation with tribes on Indian Sacred Sites. Public hearings should have been held on each affected Indian reservation and additional information disseminated should have been translated into native tongues. The lack of access to newspapers, radio, and/or television stations has neglected people who live in remote locations and resulted in an act of discrimination.

**Response:** E.O. 13007 requires that the agencies provide tribes reasonable notice of proposed actions that may restrict future access to, use of, or the physical integrity of sacred sites, using the principles of government-to-government relations. The E.O. does not require public hearings or translation of information into native languages. The project record (PR #117, 118, 190, 191, 201, pp. 8-9) contains documentation that the Forest Supervisor identified and initiated contacts with 13 affected tribes regarding the anticipated proposal for improvements to the Snowbowl as early as 1998, when public meetings were held in Kykotsmovi and Tuba City (PR # 117, p. 1). Letters were sent to the tribes on September 13, 1999 (not in the record), requesting input on the idea of adding a snowplay area at the Snowbowl and offering three fieldtrip options to discuss the proposal. On February 17, 2000, letters (not in the record) were sent to the tribes informing them that the Arizona Snowbowl was conducting feasibility work on a snowmaking proposal and letting the tribes know that if such a proposal were received, it would be evaluated through the NEPA process. A pre-proposal letter was sent to the tribes on June 20, 2002 (not in the record) to discuss input and to begin preparations for meetings to discuss the proposal in greater detail. The Forest followed up with phone calls (PR #18), four tribal meetings (PR #24, 26) and an information booth at the Western Navajo Fair were held prior to sending the tribes the proposed action in September 2002 (PR #37).

The letter transmitting the proposed action included an invitation to attend a Flagstaff open house and an invitation to schedule tribal-specific meetings. From September 2002 to February 2004 when the DEIS was released, the record includes documentation of numerous letters and phone calls to schedule meeting dates and locations in response to tribal requests (PR #190, pp. 2-6). Twelve meetings with tribal officials occurred during this time, including meetings at Hopi (PR #51, 190, pp. 4-5) and four Navajo chapter houses (PR #60, 63), plus tribal public meetings at Tuba City and Kykotsmovi (PR #64) and participation in a Navajo Western Agency Council (PR

#190, p.5). In addition, two public meetings were held in Flagstaff (PR #53, 59). On May 12, 2003, a letter enclosing a preliminary draft of a National Register nomination (not in the record) was sent to the tribes, requesting input and additions on tribal-specific sections.

In February 2004, the DEIS was sent to the tribes, along with follow-up phone calls and faxes (PR #190, p. 6). Following release of the DEIS, letters and phone calls with the tribes continued (PR #190 pp. 6-14), along with meetings at Hopi (PR 123), several Navajo chapter houses (PR #109; 132; 188), the Yavapai-Apache Tribe, the Hualapai Tribe (PR #160) and the Yavapai-Prescott Tribe, plus a meeting with the Hopi Tribal Chairman (PR 190, p. 8) and officials from the Navajo Cultural Preservation Office (PR #190, p 13). During this period the draft MOA was sent to the tribes with an invitation to participate as a consulting party in developing the agreement (PR #140). This was followed up with phone calls, an additional letter on August 9, 2004 (not in the record) and additional phone calls. Throughout this process, the Forest received numerous tribal responses, including tribal resolutions (PR # 68, 79, 86, 124, 133), letters (PR #201, Appendix B), telephone conversations, and comments recorded in meeting notes and on meeting response forms, in addition to individual comments on the proposed action and DEIS. Volume 2, Response to Comments, addressed the reason why the DEIS was not translated into the languages of the tribes (PR# 200 p.5).

**Finding:** The consultation conducted by the Forest Service was sufficient to fulfill the requirements of E.O. 13007 regarding consultation with tribes on sacred sites.

**Contention C (Jeronimo Vasquez):** There was a lack of opportunity to comment. The FS appears to have made commenting on the DEIS as difficult as possible, by releasing the DEIS for comment when tribes are in ceremony time and only giving 60 days for comment period.

**Response:** The regulations at 40 CFR 1503 require agencies to invite comments after preparing a draft environmental impact statement and before preparing a final. The Notice, Comment, and Appeal regulations require that comments shall be accepted for 45 days following the date of publication of the Notice of Availability in the Federal Register (36 CFR 215.6 (a)(2)(ii)). The Coconino National Forest extended the comment period to 60 days due to the controversial nature of the project.

The Notice of Availability was published on February 13, 2004, initiating the official 60-day comment period. Of note, the 13 tribes were alerted to the DEIS release on February 2, 2004 (PR #190, p. 6), eleven days prior to the start of the official comment period. On this date, Heather Cooper from the Coconino National Forest called tribal representatives from Cultural Preservation Offices of 13 affiliated tribes. In the phone call, Cooper notified the tribes of the upcoming DEIS release, told them to expect a FedEx copy of the DEIS on that date, and advised them to call her if they did not receive the document. A total of 9,887 comments were received and accepted by the Forest Service via various mediums including: letters, form letters, faxes, emails, public meeting comment forms, petitions, and oral comments. The number of commentors on the DEIS totaled 5,716 (PR #200, p 1). The Project Record (DC 1 through DC 3269) indicates many comments were from tribal members or representatives.

**Finding:** The agency met the requirements for public comment as outlined in the regulations at 40 CFR 1500-1508 and 36 CFR 215. Tribal members and the public had ample opportunity and time to comment as evidenced by the high number of commentors.

**Contention D** (Joann Finch): The MOA required by the National Historic Preservation Act has not been signed by all of the affected tribes and does not represent a required and concerted effort to acknowledge and reduce negative cultural impacts. Impacts to tribal members can not be mitigated by development of a cultural center within the Special Use Permit Area.

**Response:** The record demonstrates that the Forest Service followed the Advisory Council regulations in developing the MOA (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. While agreement on mitigation measures among all consulting parties is desired, the Advisory Council regulations do not require this. They only require that all parties be invited to participate and that all views be considered. The cultural center identified in the MOA (PR #199, Appendix D, p. 4) is an option; the ROD states that if tribes do not wish to pursue this option, it will not be developed (PR #201, p. 15).

**Finding:** The execution of the MOA by the Forest Service, SHPO, and Council documents compliance with NHPA and the Council's regulations, including consultation requirements. Four tribes signed the MOA as concurring parties.

**Contention E** (Don Fanning): The FS filed a request to designate the Peaks as a Traditional Cultural Property. This decision indicates it is ignoring the duty to protect the public trust and honor native cultural concerns.

**Response:** The Peaks have been determined eligible for the National Register of Historic Places as a traditional cultural property. The National Historic Preservation Act (NHPA) does not require that all eligible properties be preserved, but requires that the effects of federal undertakings on eligible properties be taken into consideration and that the Advisory Council on Historic Preservation be given the opportunity to comment when those effects are adverse. The record (PR #67, 99, 140, 171, 121) demonstrates that the Forest Service followed the Advisory Council's regulations in determining effects, in consultation with the State Historic Preservation Officer (SHPO) and affected tribes, and in identifying mitigation measures to the extent possible

The Peaks have been determined to be eligible to the National Register of Historic Places (PR #40). The Forest Service is currently working in consultation with tribes on completing a National Register nomination for the Peaks as a Traditional Cultural Property. Implementing Alternative 2 will not prevent such designation.

**Finding:** The execution of the MOA by the Forest Service, SHPO, and Council documents compliance with NHPA and the Council's regulations regarding consideration of eligible traditional cultural properties in project planning. Implementing the project will not impact the qualities that make the Peaks eligible for listing as a Traditional Cultural Property.

**ISSUE 2: Project violates the National Environmental Policy Act.**

**Contention A** (Phyllis Hogan, Joann Finch): The decision has more impacts than simply allowing snowmaking. There will be 1.5 million gallons of reclaimed water used per day, the creation of a 10,000,000 gallon reclaimed water storage pond, two 10,000 gallon underwater storage tanks as well as the natural features stripped, contoured or reshaped. Effects are more than not significant. Effects would cause irreparable harm to the environment and a significant threat to public health.

**Response:** 40 CFR 1502.16 (d) directs agencies to analyze the environmental effects of alternatives, including the proposed action. Use of reclaimed water, construction of a 10,000,000 gallon snowmaking pond, and installation of buried water storage tanks were among the activities disclosed in the proposed action (PR #199 pp.1-9 through 1-10). The anticipated environmental effects associated with these aspects of the proposed action are analyzed in Chapter 3 of the FEIS (PR #199) where the potential effects to the environment and to public health are discussed.

**Finding:** The environmental effects associated with use of reclaimed water, construction of a 10,000,000 gallon snowmaking pond, and installation of buried water storage tanks were appropriately considered and disclosed.

**Contention B** (Phyllis Hogan, Amanda Cronin et al): The long term effect of waste water and hormones and steroids are not known. The reclaimed water deposited high in the local watershed may have deleterious effects. (Joann Finch): The FEIS should have included new information and an impact analysis of the pharmaceuticals and personal care products found in Flagstaff's reclaimed water, including local studies completed by USGS and Northern Arizona University Biology Department. Appellant cites to impact of steroids on fish in USGS study. FEIS does not adequately address impacts of contaminants which can bio-accumulate such as endocrine disrupting compounds. FEIS does not address triazine herbicides found in the water which have human health effects. (Don Fanning): The City of Flagstaffs treatment system is aging, new employers and the presence of a Purina plant in the City were not considered in the effects analysis.

**Response:** The project record includes a technical report containing over 100 citations of relevant scientific information on reclaimed water, fate and transport, and effects on soils, vegetation, wildlife and human health (PR# 113). Studies and full-scale use of reclaimed water in snowmaking have been conducted in Colorado, Michigan and Maine (PR# 199, p. 3-204) with results that indicate no negative effects to natural ecosystems.

The information from USGS and NAU Biology Department was considered in the analysis (PR# 199, pp. 3-191 to 3-198 and PR# 200, p.42). Additional scientific information on endocrine disrupting compounds, pharmaceuticals and personal care products was also considered (PR# 199, pp. 3-188 to 3-191).

The wastewater obtained from the Rio de Flag Water Reclamation Facility is authorized for re-use under the Arizona Pollutant Discharge Elimination System (AZPDES) Permit system. Under the requirements of the permit, the facility must monitor water quality and submit

monitoring reports to Arizona Department of Environmental Quality (ADEQ) four times each year (PR# 199, p. 3-206).

**Finding:** The agency considered relevant scientific evidence and disclosed effects regarding the use of reclaimed water for snowmaking.

**Contention C** (Phyllis Hogan, James Crittenden): Snowmaking will affect water availability to the Flagstaff region with decline of groundwater levels and use of effluent on the Peaks. The majority of treated water used for snowmaking would no longer recharge the aquifer but will be lost to the atmosphere which is about 6 percent of Flagstaff's current water consumption per year (cites to Springer, Schwartzman and Dr. Avery report). Impacts on future City of Flagstaff's water consumption looking at population growth and drier climate should be evaluated. A new EIS is needed for these impacts.

**Response:** The project record contains information regarding direct, indirect and cumulative recharge impacts to the regional aquifer (PR# 199, pp. 3-208 to 3-214 and 3-222 to 3-224 and PR# 200, p. 77). The analysis concluded that proposed snowmaking would result in an estimated net average reduction in groundwater recharge to the regional aquifer of 154 AF per year. This calculated reduction represents less than two percent of the City of Flagstaff's annual water production. Regardless, the Arizona Supreme Court has determined that cities can put reclaimed water to any reasonable use they see fit, within existing legislative restrictions (PR # 199, p. 3-222). The city of Flagstaff's decision to provide reclaimed water to the Snowbowl during the winter months is outside the scope of this analysis.

**Finding:** Direct, indirect and cumulative effects on the regional aquifer were analyzed and disclosed.

**Contention D** (Phyllis Hogan, Amanda Cronin et al, Jeronimo Vasquez): The economic forecasts about the Snowbowl impacts on the tourist trade in Flagstaff are unsupportable. Snowbowl is not a dominant driver of growth and the economy, rather the Grand Canyon is more important. There is no relationship between winter tourism in Flagstaff and skier visits (DEIS PR#93 pp. 3-71, 3-75, 3-78, 3-119). The minimal Snowbowl contribution to employment in Coconino County is only .29 percent and with snowmaking, the increase will still be less than 1 percent of the county. The FEIS also does not link tourism and precipitation (FEIS PR#199 p.3-122), but concludes that snowfall and skier visits do have impacts on winter tourism in Flagstaff (FEIS PR#199 p.3-120).

**Response:** Volume 2 of the FEIS addresses comments related to the economic effects of Snowbowl and of the proposed action on the Flagstaff area economy (PR#200 pp. 94-151). Chapter 3 of the FEIS contains an in-depth socio-economic analysis of the effects of Snowbowl and the proposed action on the Flagstaff area economy (PR#199 pp. 3-73 through 3-128). The major conclusions of the analysis were the proposed action would result in a significant increase in total visitation to Snowbowl, with a resulting impact of an additional 564 FTEs (full time equivalents) at Snowbowl and outside the ski area in Coconino County, and \$17.23 million in economic output in the Flagstaff area at the end of a ten-year planning period. The proposed action would also result in substantial increases in fees and taxes paid the public sector. Short-term impacts of construction of the proposed action's ski area improvements would create 232

FTEs and \$21.24 million in economic output in Coconino County (PR#199 pp.3-85 through 3-86). The FEIS recognizes Snowbowl would still not be a major driver in the Flagstaff area economy, but also recognizes Snowbowl would be a positive contributor.

An analysis of five years of tourist data determined an average of 35 percent of the area's tourism occurred during the winter months. An attempt was made in the FEIS to determine if there was a statistical relationship between winter tourism in Flagstaff, annual snowfall, and annual skier visits at Snowbowl. It was found neither snowfall nor skier visits were useful in projecting total winter tourism in the Flagstaff area (PR#199 pp. 3-117 through 3-122). The FEIS (PR#199 pp. 3-83, 3-116) states, "The Arizona Snowbowl is a positive contributor to area tourism and the Flagstaff area economy. Snowbowl draws visitors to the Flagstaff area who spend dollars at the ski area and other area businesses. However, in an economy of this size, and with countywide tourism drawing over eight million visitors annually, it is unrealistic to think that Snowbowl would be a significant driver of tourism activity or the economy."

**Finding:** The FEIS analysis adequately documents the effects of the proposed action on the Flagstaff area economy.

**Contention E:** There is no clear justification of the purpose and need for project except profit for the permit holder.

**Response:** As identified in the FEIS: "The overall Purpose and Need responds to two broad categories: 1) to provide a consistent/reliable operating season, and; 2) to improve safety, skiing conditions, and recreational opportunities by bringing terrain and infrastructure into balance with existing demand" (PR #199 p.1-6). While the first broad category speaks to the existing situation of inconsistent annual snowfall and addresses a need for a more consistent operating season, the second category is not based on economics. Rather, it responds to the existing situation as described in the FEIS (#199 pp.1-7 through 1-9) with respect to limited recreation opportunities, lack of infrastructure, and safety concerns.

**Finding:** The purpose and need was appropriately established and clear justification of the purpose and need, including a discussion of the existing condition, is presented in the FEIS.

**Contention F (Phyllis Hogan):** Use of artificial snow could lead to vegetation emerging later in the season, decreasing spring habitat for birds, insects and animals. The extension of ski season into spring and fall would adversely affect wildlife preparing for winter or hibernation.

**Response:** The effects of increased snowpack duration are discussed in the FEIS (PR#199) on pages 3-326 to 328, and in the Response to Comments (PR#200) on pages 165-166 (Comment 11.16). The fact that artificial snow has smaller crystals and is therefore denser and takes longer to melt is disclosed in the FEIS (PR#199 pp.3-326 to 327). However, as stated in the Response to Comment 11.16 (PR#200, pp.165-166) this would only affect the areas on ski trails. The reduced availability of grasses and forbs in these areas and the wildlife affected by these reductions are disclosed.

**Finding:** The effects of increased duration of snowpack were analyzed and disclosed.

**Contention G** (Phyllis Hogan): Noise from the creation of the snowmaking and snow guns would have significant impacts on the local environment.

**Response:** Volume 2 of the FEIS addresses numerous comments related to the effects of noise on various resources (PR #200 pp.183-188). Chapter 3 of the FEIS presents an analysis of noise associated with the proposed snowmaking system and the potential direct, indirect, and cumulative impacts increased noise levels may have on residents, recreation users, and/or wildlife (PR # 199 pp.3-31 through 3-39). Noise associated with snowmaking and fan guns is specifically discussed. The analysis concluded that with the exception of temporary construction related disturbances to wildlife (which would be considered irretrievable), the analysis identified no other irretrievable commitments of resources with respect to noise (PR #199, p.3-39).

**Finding:** The FEIS analyzed the direct, indirect, and cumulative impacts of increased noise resulting from snowmaking and concluded there would be no significant impact.

**Contention H** (Phyllis Hogan): Additives such as Snow Max (snowmaking enhancer) are banned in some areas. Increased nitrogen levels in the recycled wastewater can burn alpine vegetation and may affect plants. Chemicals used in artificial snowmaking could alter soil structure or runoff into water supplies.

**Response:** There will be no chemical nucleating agents such as Snow Max used in the snowmaking process (PR#200, p 51, 238).

Testing of the recycled water indicates that both nitrate and nitrite levels are well below all the existing water quality standards- including those for drinking water (PR#199, p. 3-181). In addition, soil column testing was performed using soils from the Special Use Permit (SUP) and treated wastewater from the City of Flagstaff (PR#199, p 3-260 to 3-269). Results from this test and other controlled experiments disclose that there could be increased nitrogen available to plants (PR#199, p 3-267) which could increase the biomass of existing vegetation and enhance the re-vegetation process on newly disturbed areas (PR#199, p 3-277). Other potential effects of increased nitrogen on plant species composition and mortality are also analyzed and disclosed in the FEIS (PR# 199, p 3-291 to 3-294).

Detailed effects of using reclaimed water in snowmaking on soils (PR#199, pp 3-251 to 279) and effects on water supplies (PR# 199, pp. 3-160 to 3-224) are discussed in the FEIS

**Finding:** The agency analyzed and disclosed the effects of using reclaimed water for snowmaking.

**Contention I** (Amanda Cronin et al): By focusing narrowly on a purpose and need to improve Snowbowl's financial viability, there are no environmentally benign alternatives that were considered to accomplish that goal. The only alternative considered that could meet these goals was the selected alternative.

**Response:** The purpose and need is not narrowly focused on Snowbowl's financial viability. As defined in the FEIS: "The overall Purpose and Need responds to two broad categories: 1) to provide a consistent/reliable operating season, and; 2) to improve safety, skiing conditions, and

recreational opportunities by bringing terrain and infrastructure into balance with existing demand” (PR #199 p.1-6).

The proposed action (Alternative 2) was developed to address the purpose and need. Through the scoping process, the agency identified issues related to the proposal. These issues centered on the use of reclaimed water for snowmaking, and the associated ground disturbance associated with several of the proposed infrastructure activities. Alternative 3 was developed to respond to these issues. This alternative would not allow snowmaking and a snowplay area would not be developed; however, other improvements are proposed that would address the purpose and need to improve safety, skiing conditions, and recreational opportunities.

There is no requirement under NEPA that directs the agency to analyze environmentally benign alternatives if they do not meet the purpose and need for the project.

**Finding:** The purpose and need was appropriately established and clear justification of the purpose and need is presented in the FEIS. An alternative was developed and fully analyzed to address issues related to the proposed action.

**Contention J** (Joann Finch): The FS should have revealed during scoping that this proposal would result in a new Master Plan for Arizona Snowbowl and a Forest plan amendment as they are both significant actions.

**Response:** Scoping is the procedure by which the Forest Service identifies important issues and determines the extent of analysis necessary for an informed decision on a proposed action (FSH 1909-15, 05). The Forest Service conducted extensive scoping efforts in the fall of 2002. As part of the scoping efforts, a letter (PR #35) detailing elements of the proposed action was sent to approximately 350 individuals, residents, agencies, and organizations. The letter clearly identified the improvement activities being proposed, including the proposal to use reclaimed water for snowmaking. It is through the scoping process that the Agency identified significant issues to the proposal as well as identified analysis needs, including the need to amend the Forest Plan. The proposed Forest Plan amendment was included in the DEIS (PR #93), allowing for individuals and organizations to review and comment.

The process for amending a forest plan and determining its significance is outlined in 36 CFR 219.10 (f). Please refer to Issue 4 Contention.

**Finding:** The Forest Service met the requirements of scoping as outlined in FSH 1909.15.

**Contention K** (Joann Finch): An evaluation of current conditions of air, soil, water, plant and animal populations in the Peaks including a baseline study of the human health population should have been included in the FEIS.

**Response:** 40 CFR 1502.15 and FSH 1909.15, 22.3, 6 instruct the agency preparing an environmental impact statement to “...*succinctly describe the environment of the area to be affected or created by the alternatives under consideration. The description shall be no longer than necessary to understand the effects of the alternatives.*” Existing conditions/affected

environment for various resources are provided in Chapter 3 of the FEIS including a discussion of Air Quality (pp 3-353 through 3-357), Soils and Geology (pp 3-225 through 3-239), Watershed Resources (pp 3-160 through 3-205), Vegetation (pp 3-280 through 3-285), and Wildlife (pp 3-300 through 3-316). A baseline study of the human health population is not within the scope of the analysis.

**Finding:** The FEIS describes the existing condition/affected environment and the effects of the action with respect to the resources in the area to be affected.

**Contention L (Jeronimo Vasquez):** The ID team ignores potential damage to the ecosystem, for example, endemic Bed Willows at the Nature Conservancy in the Hart Prairie watershed that will be greatly affected by introduction of reclaimed water into the ecosystem.

**Response:** The effects to the Bebb willow restoration project were disclosed in the watershed cumulative effects section (FEIS, PR#199, p. 3-220). The analysis concluded that there would not be sufficient additional groundwater recharge to recruit new willows in the project area since the area is fed by shallow perched aquifers. For this same reason, measurable quantities of constituents remaining in the treated water used to produce snow upstream would not be expected to reach these sources (PR# 200, pp. 152 and 155).

**Finding:** The effects to Bebb willows were analyzed and disclosed.

**Contention M (Don Fanning):** The external factors of drought, poor location, and poor long-term markets for ski resorts may invalidate the economic analysis done.

**Response:** Snowbowl's ability to operate through multiple seasons of drought entirely on artificial snow was addressed in Volume 2 of the FEIS (PR#200, p. 215). The model estimated that in a dry year with limited natural snow, Snowbowl would require approximately 486 acre-feet (AF) of water to create and maintain a skiable snow base. This is within the amounts available under the area's contract with the City of Flagstaff (552 AF). The FEIS displayed annual skier visits in the U.S. Pacific West Region, Table 3E-10 (PR#199 p. 3-81). The FEIS stated "U.S. skier visit trends have generally been positive in recent years, with the 2002-03 season setting an all-time record. While there are fluctuations, the overall trend has also been positive for the Pacific West region..." Using a three-year average, average skier visits in the Pacific West region have moved from 10.7 million visits to 11.3 million visits (PR#200 p. 134).

**Finding:** The FEIS adequately addressed the economic feasibility of the proposed action.

**Contention N (Michael Blakeslee):** The agreement between the City of Flagstaff and Snowbowl for sale of the wastewater is no guarantee that this water will be provided in a drought.

**Response:** Volume 2 of the FEIS addresses the effects of a potential drought on the availability of reclaimed water from the City of Flagstaff. It states the amount of reclaimed water will increase in association with the projected increase in Flagstaff population, even assuming a long term drought. Also, there are no significant demands for reclaimed water in the city during the winter months (PR#200, p. 76).

**Finding:** The effects of drought on the availability of reclaimed water from the City of Flagstaff were adequately addressed in the FEIS.

**Contention O (Michael Blakeslee):** Possible spills from the pipeline and health effects are not covered.

**Response:** The main pipeline which carries reclaimed water from Thorpe Park to the storage impoundment will be buried to provide protection against breakage (PR #199 p.2-5) and will include booster stations and hydrants which can be used to assist the main valves in controlling any unexpected water flows (PR #199 p.2-6). The waterlines transmitting water from the storage impoundment area to the snowmaking equipment have been designed to back-drain after each snowmaking period (PR #199 p.2-7) thus posing little risk if breakage should occur. The reclaimed wastewater impoundment area will be designed and managed using numerous safety mitigation, seepage and stability features (PR #199 pp.2-30 through 2-31).

**Finding:** The FEIS describes measures designed to address pipeline safety and risk of breakage.

### **ISSUE 3: This project violates Executive Order 12898 and policy on Environmental Justice.**

**Contention (Amanda Cronin et al):** This decision will disproportionately affect many native tribes.

**Response:** 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 discloses 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 analyzed the effects of the proposed action and alternatives, and disclosed the potential for disproportionately high and adverse environmental effects to Native Americans as required under NEPA and EO 12898.

### **ISSUE 4: The Forest Plan amendment that is part of this decision violates NFMA**

**Contention (Amanda Cronin et al):** The amendment to the Forest Plan is significant considering the size of the watershed and viewshed that are affected. The 1979 Forest Plan decision does not allow for any of the changes called for in the proposed action alternative 2. The 1979 decision does not even consider the effects of wastewater on the mountain.

**Response:** The process for amending a forest plan is outlined in 36 CFR 219.10 (f). In amending a forest plan, the Forest Supervisor must determine whether a proposed amendment would result in significant changes to the plan. In the context of amending a forest plan,

significance is determined by examining the following factors (FSH 1909.12, 5.32): (a) timing, (b) location and size, (c) goals, objectives, and outputs, and (d) management prescription. Appendix B of the FEIS (PR #199, pp B-1 through B-3) clearly describes consideration of these factors in determining whether the proposed amendment would result in significant changes to the Forest Plan.

The effects of wastewater were not considered in the 1979 Snowbowl EIS because its use was not being proposed. Appropriately, the effects associated with using reclaimed water is analyzed and disclosed in the 2005 FEIS. The FEIS does not imply that Alternative 2 was approved in the 1979 ROD, nor is there a requirement that it be. The decision made in the 2005 ROD (PR #201) is based on the analysis presented in the 2005 FEIS.

**Finding:** Updating management direction in the Coconino Forest Plan to allow current and potential future proposals (as approved by NEPA analysis) is not a significant change with respect to timing, location and size; goals, objectives, and outputs, and management prescriptions. The effects associated with artificial snowmaking using recycled wastewater are analyzed and disclosed in the 2005 FEIS.

**ISSUE 5** (Amanda Cronin et al): **Project violates FS Scenery Management System guidelines.**

**Contention:** The proposed view (as seen in pictures in Figure 3D-2 in FEIS) will clearly “dominate the composition” which does not meet the Scenery Management Guideline for SIL (page 3-55 FEIS). What Snowbowl wants to do is beyond the scope of FS regulations on landscape character.

**Response:** Until the Forest Plan is revised the Visual Management System and its associated VQOs provide direction for project implementation (PR #199 p.3-55). The VQO of maximum modification and the SLI of Very Low both allow deviations that will dominate the natural landscape character (pg 2-4 “Landscape Aesthetics, A Handbook for Scenery Management” and p.36 “National Landscape Management Volume 2, Chapter 1, The Visual Management System).

**Finding:** The Proposed Action is compliant with the Forest Plan VQOs.

**ISSUE 6** (Amanda Cronin et al): **The EA violates the Administrative Procedures Act.**

**Contention:** The decision was based on inaccurate and/or incomplete information, is not supported by the record and was improper as a matter of law.

**Response:** The Project Record, FEIS and ROD disclose and evaluate a long scoping effort and in-depth analysis of the public issues and concerns brought forward. Environmental consequences were adequately analyzed in the FEIS.

**Finding:** A hard look was given to the proposed action under NEPA, the rationale for the decision is based on the project record and disclosed in the Record of Decision.



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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