



United States
Department of
Agriculture

Forest
Service

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File Code: 1570-1/2300

Date: June 8, 2005

CERTIFIED MAIL – RETURN

Kristin Huisinga, Andrew Franklin, Patrick Pynes,
Stephen Weatherburn, Frederica Hall, Christine
Zachary, Robin Craig, Sylvan Grey, Jessica Fisher,
Helen Fairley, and Sylvia Holmes, Christine Maher,
Elena Kirschner, Lee Hutchinson, Steve Weishapel,
and Le

**RECEIPT REQUESTED
NUMBER:**

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

The Arizona Snowbowl Facilities Improvement Decision approved 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 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 the

Combined Appeals from Kristin Huisinga, Andrew Franklin, Patrick Pynes, Stephen Weatherburn, Frederica Hall, Christine Zachary, Robin Craig, Sylvan Grey, Jessica Fisher, Helen Fairley, Sylvia Holmes, Christine Maher, Elena Kirschner, Lee Hutchinson, Steve Weishapel, and Lea J. Parker

Arizona Snowbowl Facilities Improvement Record of Decision

ISSUE 1: The EIS violates the Religious Freedom Restoration Act, the American Indian Religious Freedom Act, and Federal Trust responsibilities.

Contention A (All): The project takes place on land that is sacred to many Native Americans and the idea of using reclaimed water to make snow on sacred land is appalling. FS needs to honor the values of the sacred site and support cultural survival. FS has a responsibility to protect this area and to continue to support relationships with tribal governments and Native American cultures. The decision is contrary to fundamental federal trust responsibilities and undermines the continued viability of native religions, traditions, and culture. The selected Alternative Two makes few, if any, concessions to indigenous people's concerns even though the FS acknowledges the concerns in the EIS.

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 FEIS (PR #199, p. 3-3) addresses Forest Service trust responsibilities, which are defined by laws, executive orders, and treaties. While treaty rights do not apply to the Peaks, the record documents compliance with applicable laws and executive orders (PR # 190, 199, Appendix D, PR #201, pp 31-32). Tribal concerns about the impacts of the proposed improvements on tribal religious and cultural values were identified and disclosed during the NEPA process (PR #199, Chapter 3.A) and were considered, along with other factors, in the decision rationale (PR #200, pp. 22-30). The ROD affirms that the decision does not prohibit access to the SUP area or the remainder of the Peaks for religious purposes (PR#201 p.32). A MOA was developed to mitigate adverse effects to the extent possible. Some of these concerns were also addressed in the Response to Public Comments (PR #200, Comments 5.1, 5.5, 5.11, and 5.12, 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 the FEIS and ROD acknowledge significant impacts on tribal cultural and religious values, the decision complies with applicable laws and executive orders and does not violate the Forest Service's trust responsibility.

Contention B (Frederica Hall): 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 C: DEIS should have been presented in languages of all 13 tribes.

Response: In the context of EO 12898, CEQ recognizes the importance of NEPA's public participation processes and directs agencies to improve the accessibility of meetings, crucial documents, and notices (Environmental Justice – Guidance Under the National Environmental Policy Act, p 1). And, while there is no standard formula for how to carry this out, CEQ provides general guidance with respect to public participation including: *“Agencies should, as appropriate, acknowledge and seek to overcome linguistic, cultural, institutional, geographic, and other barriers to meaningful participation, and should incorporate active outreach to*

affected groups” (Environmental Justice – Guidance Under the National Environmental Policy Act, p 9). As such, agencies are encouraged to explore various methods to enhance their outreach. Such methods may include but are not limited to: translating documents, providing translators at meetings, providing opportunities for public participation through means other than written communication, adjusting meeting sizes and formats, and/or using facilities that are local, convenient, and accessible (Environmental Justice – Guidance Under the National Environmental Policy Act, p. 130).

Methods employed for the purpose of gaining meaningful input on the Snowbowl project are summarized in the FEIS (PR #199, pp. 1-10 through 1-13). They included: sending scoping letters to 350 individuals and organizations, issuing press releases to key local and regional media outlets, publishing notices in the Federal Register, and hosting three open houses at the Flagstaff High School.

Throughout the planning process, special emphasis was placed on ensuring communication with Native American groups. In addition to standard types of information dispersal that included making multiple phone calls to alert/inform tribes of various phases of the planning process, sending formal letters, and hosting public information meetings on the Hopi and Navajo reservations, the agency explored other means to disseminate information and gain valuable input. Numerous government-to-government meetings were held at various locations including Tuba City High School, Kykotsmovi Community Center, and several Navajo Chapter houses; and an information booth was set up at as part of the Western Navajo Fair. A Navajo translator was present at a public meeting in Cameron. With respect to Tribal involvement, a total of 219 phone/emails were made, 41 meetings held, and 245 letters exchanged, many within the context of government-to-government relationship (PR #190).

Finding: The project record shows creative means of outreach were used as deemed appropriate. The numerous comments received through these processes indicate broad community input was achieved.

While translating documents in native languages is identified as a method to improve community outreach, there is no requirement in EO 12898 or in the CEQ implementing regulations for NEPA at 40 CFR 1500-1508 that the agency must translate documents into native languages.

ISSUE 2: Project violates the National Environmental Policy Act.

Contention A (Kristin Huisinga, Helen Fairley): Recent scientific studies on reclaimed water reveal the negative impacts on the environment from snowmaking. Dr. Catherine Propper generated data using water from Flagstaff showing some compounds called “endocrine disrupters” have detrimental effects in salamanders and other amphibians. These results should not be ignored but be considered seriously.

Response: The information from Dr. Propper 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 was also considered (PR# 199, pp. 3-188 to 3-191).

Finding: The agency considered relevant scientific evidence regarding the use of reclaimed water for artificial snowmaking.

Contention B (Kristin Huisinga): The EIS should propose a 10-year baseline study to determine the effects of wastewater on natural ecosystems.

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 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 record reflects that studies on the use of reclaimed water in snowmaking have shown no negative effects to the natural ecosystem. The required monitoring is appropriate.

Contention C (Patrick Pynes): There were no concerned indigenous citizens as members of the interdisciplinary team. There was extremely poor quality of consultation before, during and after the scoping process. No alternatives were added to incorporate indigenous concerns because of the lack of indigenous people on the interdisciplinary team.

Response: An interdisciplinary team is composed of federal employees unless the Federal Advisory Committee Act is employed. Participation on an interdisciplinary team by non-federal employees to give input must be consistent with the Federal Advisory Committee Act of 1972 as amended (5 U.S.C. App.). An advisory committee is established only when it is essential and the membership is kept to the minimum necessary (5 U.S.C §2(b)(2)). Executive Order 12838, (Termination and Limitation of Federal Advisory Committees, 1993) limits new establishment of advisory committees to those required by statute or for compelling considerations.

The type of information needed to develop alternatives in a NEPA process is gained from a variety of sources in the scoping, and notice and comment processes such as public meetings, outreach letters, comment input, and consultation. The question of issues and alternative development is answered elsewhere in this appeal review. The establishment of an advisory committee in this case would not add new information that is not already publicly available or provided in correspondence with the Forest.

Finding: The concerns of indigenous citizens were received from the public in scoping, meetings, and in the notice and comment period. The development of alternatives is not dependent on the makeup of the interdisciplinary team.

Contention D (Christine Zachary): Economic gains to local economy are questionable. Upgrades to recreational facilities will not improve Flagstaff's employment since Snowbowl will

only contribute less than 1 percent of the employment in the county. Snowbowl recreation does not significantly impact the influx of tourism in Flagstaff.

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 to 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 will 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 and tourism.

Contention E (Christine Zachary, Lea Parker): Snowmaking has hidden consequences for wildlife. Reclaimed water with chemicals and human waste, antibiotics and hormones can be very harmful to wildlife in the area.

Response: 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). The summary of these impacts is as follows:

- Direct consumption of snowmelt and surface runoff is limited due to the rapid infiltration and percolation of surface water in the area.
- Where direct consumption would occur, the concentrations of contaminants would be diluted by natural precipitation or mixing of natural snowmelt with reclaimed water snowmelt.
- While sublimation of snow from reclaimed water could concentrate solutes, this increased concentration would be insignificant compared to the dilution from natural snow and precipitation.
- The reclaimed water would not contaminate natural springs used by wildlife.

- The reclaimed water reservoir would be fenced to exclude most wildlife.

In addition, it is noted in the response to Comment 6.4 (PR#200, pp.43-47) that most of the contaminants present in the water do not bioaccumulate, and that water consumption is not the major transmission route for most compounds.

Finding: The effects of reclaimed water on wildlife were analyzed and disclosed.

Contention F (Jessica Fisher): The clear cuts being proposed are unsightly and will negatively impact the mammals, birds, insects, herbaceous plants and other biological organisms which depend on these trees for their lives.

Response: The regulations at 40 CFR 1502.16 (d) direct agencies to analyze the environmental effects of alternatives, including the proposed action. An effects analysis specific to aesthetic resources is presented in Chapter 3 of the FEIS (PR #199, pp 3-57 through 3-72). Mitigations were developed as part of the alternatives to help minimize some of the effects related to aesthetics, they include:

- Construct new structures with materials that blend with the landscape character,
- Strategically locate and camouflage or screen all proposed fuel and water tanks, and
- Straight edges in forest canopy will be avoided by feathering the layouts of proposed trails and by selectively removing trees of different species and ages to the extent possible (PR #199, p. 2-29).

However, even with the implementation of mitigations, the FEIS discloses there will still be some effect to aesthetic resources. Table 2-5 (PR #199, p. 2-43) notes with respect to Issue #2, *Proposed ground disturbance and vegetation removal may result in permanently evident alternatives of the San Francisco Peaks landscape*, the table notes: “the peaks are viewed as a living entity, where any ground disturbances would be harmful.” Additional information on the effects of scarring is disclosed in the Heritage and Cultural Resources section in Chapter 3 (PR #199, p. 3-21). And, the FEIS acknowledges the tribal perspective of the effects of scarring on the sacred landscape and that the associated spiritual and cultural impacts may in fact be considered irreversible in nature (PR #199, p. 3-30). Responses to comments related to aesthetic resources are presented in Volume 2 of the FEIS (PR #200, pp. 200-204).

The FEIS shows the amount of spruce-fir forest for both the Snowbowl SUP and in the San Francisco Peaks (PR#199 Table 3J-1, p. 3-281). The FEIS further documents the proportions of this forest type affected in both the Snowbowl SUP area and the San Francisco Peaks as a whole (pp.3-287 to 288). The total cumulative effects of past actions are also disclosed in the FEIS on pages 3-297 to 298. In the Response to Comments the issue of the broader landscape scale is addressed in the responses to Comment 10.9 (PR#200 pp. 152-153) and Comment 11.17 (p.166).

The FEIS (PR#199) contains an analysis of the effects of vegetation conversion to wildlife on pages 3-317 to 3-321, and on pages 3-324 to 325. The FEIS summarized the potential effects to wildlife species from habitat removal and fragmentation. The FEIS discloses that the proposed action results in more fragmentation of forest habitats, and could reduce or potentially eliminate

suitable habitat for breeding birds. The Response to Comments (PR#200, p.167 Comment 11.20) estimated that up to 90 acres of habitat could be lost for interior-forest birds.

Finding: The environmental effects on visuals, wildlife, and vegetation of tree cutting involved in the proposal were discussed and disclosed adequately in the analysis.

Contention G: (Frederica Hall, Sylvan Grey): The snowmaking alternative requires a significant commitment of treated waste water that currently recharges Flagstaff's well fields. Amendment #21 barely touches on the important issues of reduced recharge to the Regional Aquifer and available water for city wells. 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 Schwartzman and Springer, 2002). Impacts on future City of Flagstaff's water consumption looking at population growth and drier climate should be evaluated.

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 acre-feet (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 H: (Frederica Hall): The long term effect of treated effluent with chemicals is not known. The reclaimed water deposited high in the local watershed may have deleterious effects to people downstream.

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). This information was used in the analysis of potential water quality effects of using reclaimed water in the snowmaking system to downstream users. These potential effects are fully disclosed (PR# 199, p. 3-215 to 3-221).

Finding: Direct, indirect and cumulative water quality effects on downstream users were analyzed and disclosed.

Contention I (Robin Craig): Night lighting concerns were not properly addressed in the FEIS or ROD including impacts on those traveling on that side of mountain at night and nocturnal creatures. Some grooming and snowmaking will occur at night and this will necessarily involve some form of lighting. Flagstaff is a "Dark Skies" city.

Response: Alternatives for night lighting for skiing and snowplay were considered but dropped (PR #199 pp.2-32 through 2-34). Response to Public Comments (PR#200 p.223) states no lighting is proposed for recreational purposes. It further describes lighting associated with snowmaking as being low-voltage light bulbs in valve houses and head lights on snow mobiles. The lights in the valve houses will only be visible when the doors are open.

Finding: Night lighting concerns were addressed appropriately and disclosed in the analysis.

Contention J (Sylvia Holmes and Lea Parker): The noise level of the snowmaking machinery will effect the rest cycles of wildlife for miles around. Appellant opposes the noise pollution the snow making machines would create.

Response: The FEIS (PR#199) addresses the specific issue of noise to wildlife on pages 3-323 to 324. Effects of noise from snowmaking machinery are specifically disclosed on page 3-324. This section notes that snowmaking would occur mostly at night, and would occur outside the breeding season. The dBA level of a single snowmaking gun is disclosed, and it is noted that this dBA level is below the threshold for disturbance for raptors, which is approximately 90 dBA (p. 3-323).

Further information on the effects of noise on wildlife is found in the BAE (PR#134, pp. 22-26). There is an extensive literature review of the effects of noise on raptors and the Mexican spotted owl in particular, including a summary table containing citations and summaries of the findings in this literature (PR#134, pp. 24-25). The conclusions specific to the Mexican spotted owl are summarized on page 23 and are paraphrased as follows:

1. Response frequency and intensity to noise were generally low except in close proximity to the nest.
2. Responses were lower during incubation and nestling periods than at other times.
3. Response to sudden or instantaneous noise is higher than to noise with a gradual onset.
4. Birds habituated to repeated noise stimuli over time.

There was clearly disclosure that the noise from such activities would have some effect on wildlife in the immediate vicinity of the snowmaking activities (conclusions 2 and 3, above). This was specifically stated in the response to comment 11.13 (PR#200, p. 169), where it is stated that resident winter birds may be displaced. It is also noted that the cold weather (especially at night) and snowpack in the Snowbowl area precludes use by most wildlife species, and that the snowmaking activities would occur outside of the breeding season (PR#199, p2-323).

Finding: Effects of noise to wildlife were analyzed and disclosed.

Contention K (Christine Maher, Elena Kirschner, Lee Hutchinson, Steve Weishapel): The EIS shows that the number of skiers and amount of snow do not necessarily have a direct correlation.

Response: The FEIS analyzed the relationship between natural snowfall and skier visits (PR#199 pp.3-106 through 3-107). Figure 3E-2 compared natural snowfall and skier visits over

the last 22 ski seasons at Snowbowl. The analysis showed variation in snowfall at Snowbowl resulted in a similar variation in skier visits. When natural snowfall was low, so were skier visits. Table 3F-1 (PR#199 p.3-130) compared annual snowfall, ski area operating days and visitation at Snowbowl for the last 22 ski seasons. The analysis documented that operating days and resulting skier visits at Snowbowl were dependent on natural snowfall. Low snowfall years resulted in a low number of operating days at Snowbowl and low skier visits. Annual snowfall was recognized as a useful statistic in predicting skier visitation 79.6 percent of the time.

Finding: Analysis in the FEIS clearly links levels of snowfall with levels of skier visits.

ISSUE 3: (Stephen Weatherburn): **FS is violating First Amendment of Constitution.**

Contention: FS has no jurisdiction over religious practices under the First Amendment and decision is unconstitutional.

Response: Religious freedom is guaranteed by the First Amendment to the U.S. Constitution, which states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Under the Free Exercise clause, federal agencies are constrained from action that burdens religious beliefs or practices, unless the action serves a compelling governmental interest that cannot be achieved in a less restrictive manner.

A similar issue was brought up in previous litigation on the Snowbowl ski resort in 1981. The *Wilson v. Block* court of appeals decision (May 1983, District of Columbia Circuit Court, 708 F.2d 735, 228 U.S. App. D.C. 166) considered in detail the claims raised under the First Amendment Free Exercise Clause, the American Indian Religious Freedom Act, and the National Historic Preservation Act for the 1979 master plan decision on the Snowbowl ski area. The 1979 preferred alternative included the clearing of 50 acres of forest for ski runs, construction of a new day lodge, improvement of restroom facilities, reconstruction of existing chair lifts construction of three new lifts, and paving and widening of the Snowbowl road.

In the *Wilson v. Block* decision, regarding the Free Exercise Clause, the court found that the government did not regulate, prohibit or reward religious beliefs as such, nor did it directly burden the tribes in their beliefs. The proposed expansion was not shown to prevent tribes from engaging in any religious practices, as those practices and beliefs had managed to coexist with the diverse developments that have occurred in the past on the Peaks.

Finding: The Forest Service has not made a decision on religious practices under the First Amendment on the Snowbowl decision.

ISSUE 4 (Lea Parker): **Decision violates Public Trust Doctrine**

Contention: Appellant cites to California Supreme Court Decision in *Marks v. Whitney*. Snowmaking will unfavorably affect the integrity of the ecosystem.

Response: Ms. Parker does not give a case cite. However if she is referring to the 1971 decision at 491 P.2d 374, that case does not lend any support to her contention. The *Marks v.*

Whitney 1971 decision talks about a public trust doctrine established for tidelands along the California coast. A discussion on California tidelands ecosystem does not appear to be relevant to the Snowbowl area in Arizona.

Finding: The contention is outside the scope of the decision.



United States
Department of
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Forest
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Santa Fe National Forest

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File Code: 1570-1/2300
Route To: ()

Date: June 8, 2005

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