



United States
Department of
Agriculture

Forest
Service

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File Code: 1570-1/2300

Date: June 8, 2005

Shawn Mulford
Midwest SOARRING Foundation, Indigenous Youth
Experience Council
P.O. Box 526
Pinon, AZ 86510

CERTIFIED MAIL – RETURN

RECEIPT REQUESTED

NUMBER: 7000 2870 0000 1135 0556

Re: Appeal #02-03-00-0025-A215, Arizona Snowbowl Facilities Improvement Decision,
Peaks Ranger District, Coconino National Forest

Dear Shawn Mulford;

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,

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

Shawn Mulford's Appeal**#05-03-00-0025-A215****Arizona Snowbowl Facilities Improvement Record of Decision****ISSUE 1: The EIS violates the American Indian Religious Freedom Act and Executive Order 13175 and Forest Service trust responsibilities.**

Contention A: The Forest Service has violated the American Indian Religious Freedom Act (AIRFA). Our access to religious sites cannot be defined by physical presence alone. The decision does not allow us to access our sacred mountain in accordance with our way of life and holy beliefs.

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 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). The MOA (Memorandum of Agreement) includes stipulations (PR #199, Appendix B, p. 2) to ensure continued access, within and outside the SUP (Special Use Permit) 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).

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: Although the FEIS identifies and discloses negative impacts to the Peak's spiritual values and related cultural and religious practices, the decision does not violate AIRFA.

Contention B: The decision violates the trust responsibility the United States government has toward indigenous people.

Response: 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 laws and executive orders that protect tribal rights and interests, such as the American Indian Religious Freedom Act, National Historic Preservation Act and E.O. 13175 (PR # 190, 199, Appendix D, PR #201, pp. 31-32).

Finding: The FEIS and ROD acknowledge 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 C: Executive Order 13175 has been violated. Regular or meaningful tribal consultation has not taken place. All affected tribes have not been identified and informed.

Response: E.O. 13175, Consultation and Coordination with Indian Tribal Governments requires that agencies have an accountable process to ensure meaningful and timely input by tribal officials in the development of policies, regulations, and actions that have tribal implications. The project record (PR #16, 117, 118, 190, 191), the FEIS (PR #199, p. ES-5) and the ROD (PR# 201, pp. 8-9) contain documentation that the Forest Supervisor identified and initiated contacts with 13 affected tribes regarding the anticipated proposal for improvements to the Snowbowl early in the planning process.

In 1998, public meetings regarding the initial Snowbowl improvements concept were held in Kykotsmovi and Tuba City (PR #128, 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) with follow-up phone calls 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) and four tribal meetings (PR #24, 26) 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 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) and four Navajo chapter houses (PR #60, 63), plus tribal public meetings at Tuba City, Kykotsmovi (PR #64), and a presentation at the Navajo Western Agency Council. 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 sixteen meetings with tribal officials, including meetings with Hopi (PR# 123), five Navajo chapter

houses (PR #109; 132; 188), the Yavapai-Apache Tribe, the Hualapai Tribe (PR #160) and the Yavapai-Prescott Tribe (PR #190, p. 13), plus meetings in Flagstaff with the Hopi Tribal Chairman (PR #190, p.8) and with officials from the Navajo Cultural Preservation Office (PR #190, p 13). During this period, on April 26, 2004, 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 (PR #190, p. 11), an additional letter on August 9, 2004 (not in the record) and additional phone calls (PR #190, p. 13). On February 12, 2005, the Forest Supervisor also participated in a tribal summit, organized by the tribes in Flagstaff (PR#198a).

Each tribe received at least nine letters with information about the proposed Snowbowl improvements and their effects on the Peaks, with a request for input and consultation. At least 3 letters offered meetings or field trips. Each tribe received at least five follow-up phone calls. The record also demonstrates that the Forest made diligent efforts to schedule meetings with those tribes who responded that they would like to meet to discuss the proposal. Over twenty-five meetings with tribal officials were held, representing five tribes and five chapter houses. In addition, six tribal public meetings were held at Kykotmovi, Tuba City, Second Mesa, and Cameron. 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 tribal comments on the proposed action and DEIS. The ROD documents that tribal concerns and comments were considered by the Forest Supervisor in making her decision (PR #201, pp. 22-30).

Finding: In accordance with E.O. 13175, the Forest Service made a reasonable and good faith effort to identify tribes for whom the Snowbowl proposal would have cultural and religious implications and to provide tribes the opportunity to provide meaningful and timely input.

ISSUE 2: This proposal violates NFMA

Contention A: The proposal goes beyond the 777 acres designated for the Snowbowl with the pipeline. The impacted area when the snow melts or the wind blows can not be guaranteed to stay within the 777 acres.

Response: The Coconino National Forest's Land and Resource Management Plan designated developed recreation sites including Snowbowl as Management Area 15. The proposed action including the pipeline is in keeping with forest land management direction for Management Area 15.

Finding: The proposed action does not violate NFMA.

Contention B: The proposal violates the National Forest Management Act by not establishing measures for the protection of significant cultural resources.

Response: 36 CFR 219.24 applies to the development of Forest plans, not to project specific proposals. The Forest complied with the National Historic Preservation Act by following the procedures in 36 CFR 800 in evaluating the effects of the alternatives on significant cultural

resources and in consulting with the State Historic Preservation Officer, affected tribes, and the Advisory Council on Historic Preservation to resolve adverse effects to the extent possible. The execution of the MOA (PR #199, Appendix D) documents compliance with NHPA.

Finding: The proposal does not violate the National Forest Management Act regulations regarding development of Forest plans.

ISSUE 3: This project violates Executive Order 12898, policy on EO 12898, Environmental Justice.

Contention A: Executive Orders 13007 and 12898 must be enforced. The comment period was not extended long enough for low income indigenous people to fully understand and respond to the DEIS.

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. The comment opportunities provided met the requirements of E.O. 13007 and 12898.

Contention B: A translated DEIS was not developed.

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 the Tuba City flea market 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.



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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