



United States
Department of
Agriculture

Forest
Service

R3 Regional Office

333 Broadway SE
Albuquerque, NM 87102
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570-1/2300

Date: June 8, 2005

Howard M. Shanker
Attorney for Sierra Club, Navajo Nation, SW Forest
Alliance, Hualapai Tribe, Save the Peaks Coalition
The Shanker Law Firm, PLC
600 East Baseline Road, Suite C-8
Tempe, AZ 85281

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
NUMBER: 70002870000011350587**

Re: Appeal #0-03-00-0009-A215, Arizona Snowbowl Facilities Improvement Decision,
Peaks Ranger District, Coconino National Forest

Dear Mr. Shanker (Attorney for appellants);

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

Sierra Club, Navajo Nation, SW Forest Alliance, Hualapai Tribe, Save the Peaks Coalition, Paul Torrence PhD, Center for Biological Diversity, Flagstaff Activist Network, Benally, and Dineh Bidziil Coalition Appeal

#05-03-00-0009-A215

Arizona Snowbowl Facilities Improvement Record of Decision

ISSUE 1: The Decision violates the Religious Freedom Restoration Act.

Contention: The FEIS and ROD failed to consider RFRA in the decision. The project will substantially burden the practice of traditional Indian religions. The Hualapai healing ceremonies and tribal ceremonies that use plants, spring water, and place prayer feathers on the Peaks will be contaminated and ineffectual for religious purposes by the introduction of reclaimed water on the area. The decision to expose the area including plants and water to reclaimed water will have a devastating impact on the Navajo's ability to practice their various healing and protection way ceremonies and other cultural ceremonies. The FS has not shown a compelling interest here that cannot be achieved by less restrictive alternatives.

Response: The Religious Freedom Restoration Act states that the government shall not substantially burden a person's exercise of religion without a compelling reason. In *Boerne v. Flores* (521 U.S. 507), the Supreme Court found that the Religious Freedom Restoration Act (RFRA) exceeded Congress's power and reversed the judgment of the Fifth Circuit Court of Appeals which had affirmed RFRA's constitutionality (73 F.3d 1352). The constitutionality of RFRA as applicable to federal law remains questionable. However, even if RFRA has continued applicability, the Forest Supervisor's decision does not substantially burden tribal member's exercise of religion in terms of the First Amendment to the Constitution (*Wilson v. Block*, 708 F.2nd 735, cert. denied, 104 S. Ct. 371, 1983; *Northwest Indian Cemetery Protective Association v. Peterson*, 485 U.S. 439). 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, 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. Nor does it coerce them into acting contrary to their religious beliefs or penalize them for practicing their religion. Tribal members have not identified any specific plants, springs, natural resources, shrines or locations for ceremonies in the Special Use Permit

area that will be impacted by the Snowbowl improvements (PR #199, p. 3-8 and 3-12; #200, Comment 5.8, p. 27). Religious practitioners will still have access to the SUP area and the remaining 74,000 acres of the Peaks for religious purposes. The FEIS (#199, p. 3-18) and the MOA (Memorandum of Agreement, PR #199, Appendix D) provide that the FS will work with the tribes to assure continued access to special places on the Peaks and to natural resources needed for ceremonies and medicinal purposes and to assure that ceremonial activities conducted on the Peaks continue uninterrupted. The Forest will continue to consult with the tribes to accommodate religious practices.

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.

ISSUE 2: The Project violates the National Historic Preservation Act.

Contention A: The Forest Service's inaccurate description of and misplaced reliance on an earlier court decision demonstrates a lack of good faith. The Forest Supervisor's June 20, 2002 letter to the Hualapai tribe conveyed the erroneous implication that the Forest Service had little discretion and would not give serious consideration to a "no action" alternative, thus demonstrating a lack of good faith.

Response: The June 20, 2002 letter in question (not in the record) was a pre-proposal letter to the tribes letting them know that the Forest was expecting a proposal for ski area improvements from the Snowbowl. In providing background information on the ski area, the letter correctly stated that the 1981 lawsuit [and resulting 1983 circuit court decision] allowed the development of the Arizona Snowbowl, and that the scope of the new proposal, with some exceptions, was expected to be within the concept approved by the court decision and would not be an expansion of the permit area. The letter also stated that it would take about a year to evaluate the proposal and requested tribal participation. The appellant mischaracterizes Golden's letter. The letter seeks to involve the tribe in developing a proposal and demonstrates the Forest Service's good faith.

A subsequent letter on September 23, 2002 (PR #37), which transmitted the proposed action, clearly states, "The Snowbowl has developed and submitted a proposal to address safety, customer service, and economic issues associated with the existing ski area operations. I have accepted the proposal as an application and I am now moving forward with the process we use to make a decision on whether or not to authorize all, part, an alternative, or none of the proposed

action. I need to hear from you about the project in order to make a fully informed decision.” The subsequent NEPA analysis, DEIS (PR # 93) and FEIS (PR#199), and extensive tribal consultation (PR #190) over the following two years document that this process was followed and that the “no action” alternative was analyzed and considered.

Finding: The reference in the June 20, 2002 letter to the 1981 lawsuit and subsequent court decision did not demonstrate a lack of good faith regarding the Forest Service’s ability to consider alternatives to the Snowbowl’s proposal, as evidenced by subsequent communications and the NEPA analysis.

Contention B: The FS decision before completing the National Register nomination of the Peaks precluded the tribes from having reasonable opportunity to participate in the resolution of adverse effects under the Advisory Council on Historic Preservation regulations. The National Register nomination consultation and analysis must be done for the assessment of adverse effects to be thorough.

Response: The DEIS (PR #93, pp. 3-4 through 3-5) and the FEIS (PR #199, pp. 3-6 through 3-7; PR #200, Comment 5.2, p 25) accurately state that the Peaks have been determined eligible for the National Register of Historic Places (PR # 40 and Report No. 1987-104-W, not in the record) and that a National Register nomination is in progress. These records also note that the nomination of a property to the National Register is not required for compliance with the Advisory Council’s regulations, only a determination of eligibility. The Council’s regulations require federal agencies to evaluate the significance of identified properties by applying the National Register criteria (36 CFR 800.4(c)). If determined eligible, the agency then applies the criteria of adverse effect in consultation with the SHPO and any tribes that attach religious and cultural significance to the property (36 CFR 800.5). The regulations do not require that the property be nominated to the National Register. Between April and November, 2004 the project record documents several letters to tribes, numerous phone calls, and several meetings with tribal officials to request input on the resolution of adverse effects and the MOA (PR # 190, pp.11-14).

Finding: The fact that the National Register nomination was not completed prior to the decision did not preclude tribes having a reasonable opportunity to participate in the resolution of adverse effects. The execution of the MOA by the Forest Service, SHPO, and Council documents compliance with NHPA and the Council’s regulations, including tribal consultation requirements.

Contention C: The regulations of the ACHP require the FS to make a “reasonable and good faith effort” to identify any Indian tribes that attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. The FS is required to ensure that consultation provides the tribe a reasonable opportunity to identify its concerns and participate in the resolution of adverse effects. The FS received limited input from the 13 impacted tribes and proceeded to ignore most of the input it did receive. No reasonable good faith effort at consultation was undertaken.

Response: The project record (PR #117, 118, 190, 201, pp. 8-9) contains documentation that the Forest Supervisor identified and initiated contact with 13 tribes regarding the anticipated proposal for improvements to the Snowbowl as early as 1997. 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 begin preparations for meetings to discuss the proposal in greater detail. The Forest followed up (PR #18), 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 and Kykotsmovi (PR #64) and participation in a meeting of the 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 (not in the record) enclosing a preliminary draft of a National Register nomination was sent to the tribes, requesting input and additions on tribal-specific sections. In February, 2004, the DEIS was sent to the tribes (PR #190, p.6), along with follow-up phone calls and faxes.

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 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 officials from the Navajo Cultural Preservation Office (PR #190, p.13). During this period the draft MOA (memorandum of Agreement) 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 (PR #191). 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.

Finding: The Forest Service made a reasonable and good faith effort to identify tribes that attach religious and cultural significance to the Peaks and provided the tribes a reasonable opportunity to identify concerns and participate in the resolution of adverse effects. The execution of the MOA by the Forest Service, SHPO, and Council documents compliance with NHPA and the Council's regulations, including tribal consultation requirements.

ISSUE 3: Project violates the National Environmental Policy Act.

Contention A: 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. There is no clear purpose and need for the project other than to make operating profitable for the permit holder.

Response: The purpose and need is not narrowly focused on Snowbowl's financial viability. 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 (PR#199, pp. 1-7 through 1-9) with respect to limited recreation opportunities, lack of infrastructure, and safety concerns.

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 B: The need for project is not based on the actual data. Annual visits have gone down since 2000 (FEIS 3-81). These current use levels do not support the need for the project.

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 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. The FEIS clearly linked the decline in annual skier visits to Snowbowl with low snowfall. The FEIS also assessed skier demand in the Flagstaff market by determining the utilization rate for Snowbowl (PR#199 p.3-108). Utilization rate is the annual skier visitation divided by annual capacity (CCC times days area open). Snowbowl's average utilization rate for the period 1990 to 2004 was 64 percent. The FEIS states "only those ski areas that experience unusually strong demand achieve utilization rates of 50 percent or more".

Finding: The FEIS adequately established a need for the proposed action.

Contention C: The economic forecasts and speculation about Snowbowl's impacts on the tourist trade in Flagstaff are similarly unsupportable. There is virtually no relationship between winter tourism in Flagstaff and winter ski visits (FEIS 3-119) and there is no obvious relationship

between tourism and precipitation (FEIS 3-122). However the FS concludes that snowfall and skier visits do have impacts on winter tourism in Flagstaff (FEIS 3-120).

Response: 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 the 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 adequately documents the effects of the proposed action on Flagstaff area tourism.

Contention D: FS failed to consider numerous viable alternatives. Because of the improperly formulated purpose and need, neither the "no action" alternative, nor alternative 3, was given proper consideration. FS failed to consider and rejected an alternative that would have closed the ski area (FEIS 2-32). Since the business has been unprofitable (FEIS 3-84), closure of Snowbowl should have been considered as a viable alternative. FS should have considered a buyout of the special use permit from a consortium of tribes or a variation. An alternative based on a lower level of expansion and a reduced amount of artificial snowmaking should have been considered.

Response: "[A]n agency must look at every reasonable alternative, within the range dictated by the 'nature and scope of the proposed action' and 'sufficient to permit a reasoned choice'" *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir. 1992). For an alternative to be reasonable, it must meet the stated purpose and need (FSH 1909.15, 14.2) and address one or more issues. The formulation of alternatives is driven by significant issues identified in scoping (40 CFR 1501.2 (c)).

The purpose and need is identified in the FEIS (PR #199, p. 1-6) as: "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."

Two issues were identified during the scoping process: 1) The installation and operation of snowmaking infrastructure as described in the Proposed Action and the use of reclaimed wastewater as a water source will impact cultural and spiritual values associated with the San Francisco Peaks, and 2) Proposed ground disturbances and vegetation removal may result in permanently evident, visible alteration of the San Francisco Peaks' landscape (PR #199, pp. 1-14 through 1-15). The identification of these issues led to the development of Alternative 3, which eliminated snowmaking and eliminated the development of a snowplay area.

Three alternatives were analyzed and considered in detail: Alternative 1- No Action, Alternative 2 – Proposed Action, and Alternative 3 – No Snowmaking or Snowplay. Twelve additional

alternatives were considered but not analyzed in detail for reasons described in the FEIS as required by 40 CFR 1502.14 (a).

Revocation of the Snowbowl Special Use Permit and removal of the ski facilities does not meet the stated purpose and need, nor does a buyout of the permit from a consortium of tribes or a variation of such. These alternatives are not within the scope of the decision to be made. An analysis of a lower level of expansion was considered in Alternative 3, which eliminated snow making and the snowplay area.

Finding: The agency considered a range of reasonable alternatives driven by the significant issues identified through scoping.

Contention E: FS fails to consider connected actions and cumulative impacts of the construction of additional parking, the snowplay facility, the snowmaking reservoir, realignment of the chairlifts and contouring new ski terrain. While the FEIS notes impacts to several plant and animal species, the few mitigation measures relating to reducing impacts are vague in terms of actions required. The need for a 10 million gallon impoundment above the Sunset Chairlift and the construction of the 14 mile pipeline connecting the ski area to the City of Flagstaff's reclaimed water systems are connected actions and have cumulative impacts that need to be discussed in greater detail.

Response: Connected actions are closely related to the proposal and therefore should be discussed in the same impact statement (40 CFR 1508.25 (a)(1)). Construction of additional parking, the snowplay facility, the snowmaking reservoir, realignment of the chairlifts and contouring new ski terrain are connected actions and are included in the proposed action described in the FEIS (PR #199, pp. 2-5 through 2-16).

Table 2-2 (PR #199, pp. 2-23 through 2-31) outlines the extensive mitigation measures and best management practices that are part of the proposal. These mitigations include mitigations for vegetation (pp. 2-23 through 2-25) and wildlife (pp. 2-29 through 2-30).

The direct, indirect, and cumulative impacts related to the construction of additional parking, the snowplay facility, the 10 million gallon impoundment above the Sunset Chairlift, the realignment of the chairlifts, recontouring of new ski terrain, and the construction of the pipeline connecting the ski area to the City of Flagstaff's reclaimed water systems are analyzed and disclosed in Chapter 3 of the FEIS (PR #199).

Finding: The agency identified connected actions within the scope of the analysis and adequately analyzed and disclosed the direct, indirect, and cumulative impacts associated with implementation of the different alternatives.

Contention F (Torrence Exhibit): FS fails to consider best available science on the use of reclaimed or grey water for artificial snowmaking.

- FEIS does not adequately analyze mechanisms of pollutant release from the snowpack and underestimates effects on microorganisms, vegetation and wildlife. FEIS fails to deal with uptake of pollutants into soils. FEIS fails to analyze synthetic musk pollutant loading effects. (Appellant's exhibit goes into more detail on processes and cites several articles.)

- FEIS fails to analyze input of pollutants from expansion of parking facilities.
- FEIS fails to address human health concerns such as contaminants found in Flagstaff reclaimed water that may be transformed into dioxins.
- The FEIS has confused the rationale involved in the Arizona Department of Environmental Quality classification of Class A/A plus reclaimed water for use in irrigation. The DEQ standard is for irrigation, not for body contact or drinking water. Long-term chronic exposure could occur via the aquifer on humans, plants and wildlife.
- Concerns brought forward in DEIS were not responded to appropriately, or with responses or with scientific studies. The DEIS reference (DEIS pp. 3-171 to 178) is incorrect and misrepresents the National Research Council reference. No changes were made between the DEIS and FEIS in response to my comments.
- FEIS does not refer to any interagency consultation with government health authorities regarding pollutants of reclaimed water.
- FEIS has failed to consider the long-term effects of reclaimed water pollutants on children and Native Americans.

Response: Analysis on pollutant release from snowmelt and snowpack freeze/thaw cycles is contained in the project record (PR# 113, p. 23-24 and PR#200, p. 68). Effects on vegetation are discussed in the FEIS (PR#199, pp. 3-280 to 2-299) and effects to wildlife are discussed (PR#199, pp. 3-300 to 3-334). Detailed effects to soils, including pollutant uptake, can be found in the FEIS also (PR# 199, pp. 3-251 to 279). Discussion of organic and inorganic chemical constituents, disinfection by-products, pharmaceuticals and personal care products known to occur in wastewater and a discussion on their fate and transport in the environment are found in the project record (PR# 113, pp.24-32).

A 128-page technical report conducted by experts in the field of hydrogeology contains over 40 citations specifically related to snowpack melt behavior and reclaimed water chemistry, pharmaceutical and personal product residues, and uses in snowmaking (PR # 113, pp. 93-102).

In the analysis, the fate of chemical constituents in the reclaimed water was evaluated based on calculations of precipitation, snowmaking water use, watershed losses and groundwater recharge expected under dry, average and wet conditions. The analysis discloses the anticipated effects on groundwater quality and clearly describes the limitations of the predictions due to the various physical, chemical and biological processes that occur as water infiltrates below ground and mixes with other groundwater. It is clear that there will be substantial attenuation of solute concentrations as the reclaimed water in artificial snow combines with natural precipitation and blends with existing groundwater as it moves through the aquifer (PR# 113, p. 86-88).

Regarding the input of pollutants from expansion of parking facilities, the project analysis appropriately concentrated on the significant water quality issues identified during scoping (PR# 199, pp.1-14 to 1-24). Although not specifically analyzed, any snowmelt associated with a new 3-acre parking lot will infiltrate into the permeable ground surface (PR#200, p. 48).

Discussion regarding dioxins and other organic compounds can be found in the Response to Comments (PR# 200, p. 61).

Discussion regarding Arizona Department of Environmental Quality's (ADEQ) Reclaimed Water Permit Program, water quality standards and classification system is contained in the project record (PR# 199, pp. 3-203 to 3-205). The State of Arizona maintains the regulatory authority for permitting uses of reclaimed water and has determined that the quality of water from the Rio de Flag Water Reclamation Facility can be used for snowmaking and is acceptable for unrestricted recreational use (PR# 199, p. 3-204). The validity of the ADEQ standards is outside the scope of this analysis.

40 CFR 1503.4 (a) requires that an agency preparing a final environmental impact statement shall assess and consider comments and shall respond by one or more of the means listed below, stating its response in the final statement: (1) modify alternatives including the proposed action, (2) develop and evaluate alternatives not previously given serious consideration by the agency, (3) supplement, improve or modify its analysis, (4) make factual corrections, and/or (5) explain why the comments do not warrant further agency response citing sources, authorities, or reasons which support the agency's position and, if appropriate- indicate those circumstances which would trigger agency reappraisal or further response. The agency received several comments from Dr. Torrence (email, petition, open house, and letter) and responded to those comments in Volume 2 of the FEIS (PR #200, see comments: 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 5.2, 6.1, 6.2, 9.1, 9.3, 10.2, 13.0, and 18.0).

There is no requirement for consultation with other government agencies regarding pollutants in reclaimed water. The Forest Service relied on the expertise of consultants in the field of hydrogeology who produced a rigorous technical report containing over 100 citations of technical reports, government reports and personal communication with other experts (PR # 113, pp. 93-102). As stated before, the State of Arizona maintains the regulatory authority for permitting uses of reclaimed water and concerns regarding the validity of the ADEQ standards are outside the scope of this analysis.

A technical report containing over 100 citations of relevant scientific information on reclaimed water (PR# 113) was used as the basis for the FEIS discussion of environmental effects. The determination that the use of reclaimed water poses minimal risks to human health or the environment (PR# 201, p. 29) is based on existing scientific studies which can be reasonably expected to apply to all ages and ethnic groups.

Finding: The agency analyzed and disclosed environmental effects, utilized accepted science in its analysis and appropriately considered and responded to comments submitted by Dr. Torrence as required under the implementing regulation for NEPA.

Contention G: The FEIS fails to take a hard look at impacts from traffic and ski area access. The FEIS does not adequately analyze how the constrained parking situation will be improved by the proposed action.

Response: The FEIS (PR#199, pp. 3-40 through 3-51) considered in-depth the potential direct, indirect and cumulative effects of traffic and Snowbowl access associated with the proposed action and alternatives on traffic volumes/congestion on US Highway 180 and the Snowbowl Road. Historic and projected traffic counts on Highway 180 were displayed, anticipated winter traffic volumes were compared with existing traffic volumes, and existing and projected winter traffic volumes were compared with summer traffic volumes. Given a combination of peak day

skier and snow play visits, peak traffic on both the Snowbowl Road and US Highway 180 may approach 1,920 vehicles. Increased congestion at the intersection of Snowbowl Road and Highway 180 is one of the effects of the proposed action. Snowbowl traffic though will have little impact on average annual daily traffic on US Highway 180. Summer traffic (Grand Canyon traffic) on Highway 180 is much higher than winter traffic. Based on the analysis in the FEIS, no significant effects related to traffic and Snowbowl access were anticipated.

Under the proposed action (PR#199, p.3-48), skier parking would increase by about .3 acres providing for an additional 35 vehicles. Total parking would be for about 1,235 vehicles accommodating about 3,087 skiers. In addition, a 3.3-acre snowplay parking lot providing about 400 spaces for snow players only will be constructed. The FEIS recognized under the proposed action skier parking will continue to constrain skier visits at Snowbowl during the estimated 10 peak visit days a year.

Finding: The FEIS adequately disclosed and addressed the effects of the proposed action on traffic and ski area access on US Highway 180 and the Snowbowl Road, and parking at Snowbowl.

Contention H: FS fails to take a hard look and adequately address effects of soil disturbance, the presence of persistent pollutants in reclaimed water and underestimates the potential effects on vegetation, wildlife, ephemeral waters and future ecosystem health. FS fails to provide support for its assertion that the use of reclaimed water for artificial snowmaking will not harm the environment. There is no explicit reference to the scientific references and other sources relied upon for conclusions.

Response: Detailed effects to soils are discussed in the FEIS (PR#199, pp. 3-251 to 3-279), effects to vegetation are discussed (at PR#199, pp. 3-280 to 3-299) and effects to wildlife (at PR#199, pp. 3-206 to 3-228). Potential effects from human and ecosystem exposure to the chemical constituents in reclaimed water used for snowmaking are also rigorously discussed in the project record (PR# 199, pp. 3-175 to 3-206 and PR# 113, pp. 19-50). There was no conclusive evidence found that suggest the presence of reclaimed water in the environment contains the potential for quantifiable and adverse effects to human health, wildlife or the environment. Scientific references and citations are found in PR#113 (pp. 93-102) and in PR#89, PR#89a, PR#90, and PR#90a.

Finding: The agency took the requisite hard look at the environmental consequences of the proposed project.

Contention I: Criteria used for noise measurement are more appropriate for an industrial or urban setting, The EIS did not address concerns that criteria used for Grand Canyon National Park would be more appropriate. The wilderness criterion for noise impacts should be audibility. The FEIS failed to complete a thorough analysis to determine the level of audibility of the site equipment. Analysis should include surrounding rural areas and adjacent wilderness.

Response: Noise (snowmaking and construction) created by the proposed action and alternatives was extensively analyzed in the FEIS (PR#199, pp.3-31 through p-39) and addressed in Volume 2 of the FEIS (PR#200, pp.91-92, 185, 187). As there is no direction in policy, regulation or law on what noise standards should be used in this type of analysis, HUD (US Department of

Housing and Urban Development) exterior noise standards were used. The potential effect of project generated noise from snowmaking was investigated for Hart Prairie and Fort Valley (residential housing area). It was determined from Fort Valley the snowmaking system would not be audible. From a distance of 1.5 miles and closer (Hart Prairie) the snowmaking system would be audible and above ambient noise levels.

There is no wilderness standard or criteria for measuring the acceptability of noise effects from within a designated wilderness area. There is no Forest Service direction that management activities cannot be heard within a designated wilderness area. The FEIS documented the proposed snowmaking system would be audible, and would be above ambient noise levels immediately within the Kachina Peaks Wilderness. These noise levels would decrease with distance from the snowmaking systems. Also most snowmaking would take place at night during the winter months when anticipated use of the Kachina Peaks Wilderness would be low.

Finding: The FEIS adequately evaluated and disclosed the effects related to noise of the proposed action.

ISSUE 4: Project fails to adequately consider impacts on aesthetic resources and violates newer FS Scenery Management System guidelines.

Contention: The Visual Quality Objective of maximum modification when compared to SIL Very Low shows they are not the same. The language of the SIL Very Low has stronger language for viewing a “composition” such as the San Francisco Peaks. The existing conditions are already at a maximum modification for visual quality and the proposed view (as seen in pictures in Figure 3D-2 in FEIS) will clearly “dominate the composition”.

Response: The Visual Quality Objective (VQO) of maximum modification and the Scenery Management System Scenic Integrity Level (SLI) of Very Low are basically the same (p.H-1 “Landscape Aesthetics, A Handbook for Scenery Management”) and both allow deviations that will dominate the natural landscape character (p.2-4 “Landscape Aesthetics, A Handbook for Scenery Management” and p.36 “National Landscape Management Volume 2, Chapter 1, The Visual Management System). Also until the Forest Plan is revised the Visual Management System and its associated VQOs provide direction for project implementation (p.3-55 FEIS).

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

ISSUE 5: The project decision violates Executive Order 12898 Environmental Justice.

Contention A: Many of the impacted tribes use springs and plants on the Peaks for medicinal and ceremonial purposes. These springs and plants will be directly impacted by artificial snowpack and reclaimed water. Potential health effects of the contaminants in reclaimed water need to be analyzed in the context of elevated consumption levels attributable to the various tribes.

Response: Potential effects of the reclaimed water and snowmaking on vegetation are disclosed in the FEIS (PR#199, pp. 3-291 to 294) and in the Response to Comments (PR#200, pp. 151-152, 154-156). The summary of these effects are that the additional nitrogen will increase plant growth, and this may alter plant community composition by increasing forbs at the expense of

perennial cool-season grasses. However, these effects would be limited to the cleared ski-trail and the immediately adjacent areas. Effects outside of these areas would be limited by the rapid infiltration and run-off, as well as dilution from natural precipitation, of the artificial snow.

Potential effects from human exposure to the chemical constituents in treated wastewater were analyzed and disclosed in the project record (PR #199, pp. 3-175 to 3-206 and PR# 113, pp. 19 to 50). There was no conclusive evidence found that suggests the presence of reclaimed water in the environment contains the potential for quantifiable and adverse effects to human health or the environment. Recent monitoring of the reclaimed water indicates that all regulated parameters in the water currently meet the established numerical limits for Aquifer Water Quality Standards, which are equivalent to EPA's Primary Drinking Water Standards and that no enteric viruses or parasites have been detected (PR# 199, p. 3-206). Based on the information provided above, there is no indication that drinking spring water or ingesting plants within the SUP would result in negative human health effects.

Finding: Potential health effects of the contaminants in reclaimed water have been analyzed. The effects of reclaimed water on plants and groundwater were also analyzed. With respect to Environmental Justice, there is no indication of a disproportionate effect on minority or low-income populations

Contention B: FS approved the alternative with the greatest negative impacts which would have disproportionately high and adverse human health or environmental effects on the affected 13 Tribes and dismissed mitigation. Tribal concerns were disregarded as not consistent with the purpose and need for the project.

Response: During pre-proposal discussions and the formal scoping period, the Native American community and individual tribes expressed significant concern related to the use of reclaimed water for snowmaking and the increased ground disturbance associated with additional ski area development. These concerns were not disregarded, rather, they were treated as significant, and an alternative (Alternative 3) was subsequently developed to address the concerns. Alternative 3 eliminated the snow play area and snowmaking using reclaimed water. 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). Even with mitigations applied (as outlined in the MOA, PR #199, Appendix D), the FEIS disclosed the proposed action (Alternative 2) would represent the highest degree of potential disproportionate environmental impact to Native American Cultures (PR #199, p 3-370). Under NEPA, this determination does not preclude a proposed agency action from going forward, nor does it compel a conclusion that a proposed action is environmentally unsatisfactory (Environmental Justice – Guidance Under the National Environmental Policy Act, p 10).

Finding: Tribal concerns were not disregarded; rather, they led to the creation of an alternative and subsequently framed the analysis of environmental effects. In analyzing the effects of the proposed action and alternatives, the agency disclosed the potential for disproportionately high and adverse environmental effects to Native Americans, as required under NEPA and EO 12898.

Contention C: Government-to government consultations were inadequate and not all tribes were contacted beyond the Navajo and Hopi.

Response: E.O. 12898 requires that agencies identify disproportionately high and adversely affected minority populations, including Indian tribes, and provide opportunities for effective participation in the NEPA process. 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 and Kykotsmovi (PR #64) and a presentation at the Navajo Western Agency Council (PR 190, p. 5). The DEIS received coverage in local, state, and tribal newspapers, including the Navajo Times (PR #65), and the Navajo-Hopi Observer (PR #46, 57, 59) and Tutuveni, a Hopi newspaper (PR # 190 p. 6). 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 (PR #190, p. 9), 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, 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 Kytotmovi, 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: The record documents that the Forest Service made a good faith effort to identify tribes for whom the proposed Snowbowl improvements might have disproportionately high and adverse effects and provided opportunities for affected tribes to participate in the planning, analysis, and decision-making process, including the mitigation of adverse effects.

ISSUE 6: FS has failed to ensure the viability of Management Indicator Species which violates NFMA.

Contention A: The FS lacks population data for management indicator species including the Abert squirrel, red squirrel and pygmy nuthatch (FEIS 3-306). The data for the remaining species is three years out of date. Without data sufficient to gauge population trends, the FS cannot determine the project's impact on the continued viability of species in the Project area. Songbird information is particularly important including MIS of pygmy nuthatch and yellow-bellied sapsucker.

Response: Disclosure of the project impacts to MIS (Management Indicator Species) within Management Areas for which MIS have been designated are found in the FEIS (PR#199) in Chapter 3K. Descriptions of the affected vegetation types and the MIS associated with those habitat types are found on pages 3-307 to 308, and the effects to the forest-wide habitat and population trends for those species are found on pages 3-317 to 334. The project was determined to have no effect on the forest-wide habitat trends and population trends for any of the species analyzed. The FEIS referenced the Management Indicator Species Status Report for the Coconino National Forest (PR#88.46), which included available quantitative information on population trends for each MIS as well as information on the forest-wide habitat trends for each species. The information in the FEIS was updated with more recent information where it was available; these sources are cited in the FEIS.

The appellants have argued that the information on Abert's squirrel was not sufficient to meet the requirements for monitoring populations because harvest information was used. The section on Abert's squirrel in the MIS Status Report (PR#88.46, pp. 35-39) used harvest information as

only a portion of the reasoning in determining forest-wide population trend. Several studies of Abert's squirrel which occurred on the Coconino National Forest are cited, which evaluated populations or indices of populations during 1985-1987, 1996-1997, and 1999-2001 (PR#88.46, p. 36). All the studies indicated that squirrel populations were either stable or that density estimates were showed consistency among years and observers.

For red squirrels (PR#88.46, pp. 38-39), the forest relied upon fluctuating but stable harvest levels of tree squirrels in Arizona, as well as the global heritage ranking of G5 (widespread in North America, abundant in many areas), and a increasing number of snags from insects and disease.

For pygmy nuthatch (PR#88.46, pp. 50-53), the forest concludes that the population trend is stable based on North American Breeding Bird Survey (BBS) data for the state, region, and a route on the Coconino National Forest. The forest also used Christmas Bird Count data for the forest, and a 15-year study of breeding birds along the Mogollon Rim (on the south end of the forest), as well as six other studies demonstrating a long-term stable trend for this species.

The Red-naped (Yellow-bellied) sapsucker population trend (PR#88.46, pp. 56-59) was evaluated from Christmas Bird Counts and a 15-year study of breeding birds along the Mogollon Rim on the south end of the forest. All these data show populations trends to be stable.

Finding: Quantitative data was available and considered in the analysis of MIS.

Contention B: FEIS fails to analyze effects on MIS because none were established for recreation areas as part of the Forest planning process. The MIS analysis and discussion relate only to the acres impacted by building of the pipeline. The lack of MIS for recreation areas does not remove the FS obligation under NFMA to analyze the impacts of this project on MIS.

Response: As stated in the FEIS (PR#199, p. 3-305; cf. Response to Comments, PR#200, p. 163), no MIS were assigned to Developed Recreation sites (Management Area 15) due to limited size and high levels of human use and alteration. MIS were analyzed for those Management Areas with designated MIS that were affected by the project (FEIS, PR#199, pp. 3-319 to 320). These are identified in the Coconino Land Management Plan for Management Areas 3, 4, 5, and 9 (FEIS, PR#199, p. 3-306; cf. pp. 3-306 to 312). The project was found to be consistent with the Coconino Land Management Plan (ROD, PR#201, p. 31).

The January 5, 2005 planning rule states, "For units with plans developed, amended, or revised using the provisions of the planning rule in effect prior to November 9, 2000, the Responsible Official may comply with any obligations relating to management indicator species by considering data and analysis relating to habitat unless the plan specifically requires population monitoring or population surveys for the species. Site specific monitoring or surveying of a proposed project or activity area is not required, but may be conducted at the discretion of the responsible official." This statement effectively gives precedence to the Land Management Plan in determining what is required for analysis of MIS. In the case of the Coconino Land Management Plan, since no MIS were established for Management Area 15, no MIS analysis is required within the Snowbowl SUP.

Finding: The MIS analysis conducted for the Snowbowl project is consistent with the Coconino Land Management Plan.

Contention C: FS jeopardizes the viability of the MIS with the use of reclaimed water. Endocrine disrupters and contaminants could be found in the water that is used. The study referenced in the FEIS recommends more rigorous studies be completed. FEIS and ROD allows use of reclaimed water for snowmaking without adequate science to confirm effects to species and viability of MIS.

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#199, 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.

Potential effects of the reclaimed water and snowmaking on vegetation are disclosed in the FEIS (PR#199, pp. 3-291 to 294) and in the Response to Comments (PR#200, pp. 151-152, 154-156). The summary of these effects are that the additional nitrogen will increase plant growth, and this may alter plant community composition by increasing forbs at the expense of perennial cool-season grasses. However, these effects would be limited to the cleared ski-trail and the immediately adjacent areas. Effects outside of these areas would be limited by the rapid infiltration and run-off, as well as dilution from natural precipitation, of the artificial snow.

Finding: There is no evidence that the use of reclaimed water will effect the viability of MIS or wildlife.

Contention D: A fragmentation analysis along an altitudinal gradient is needed to determine impacts to population dynamics of songbird MIS (cites to Coons 1984) and this cannot be done without a MIS analysis. Fragmentation of forest cover is described in the FEIS page 3-324 from new lift construction, removal of 76.3 acres of spruce-fir forest, and new Humphrey's pod.

Response: The FEIS (PR#199) contains an analysis of the fragmentation effects to wildlife on pp. 3-324 to 325. The FEIS summarized the potential negative effects of fragmentation on birds, and from a review of literature reached the following conclusions:

1. Generalist species are only affected by direct habitat loss;
2. Interior forest species are affected more than edge species, unless only small habitat patches are removed from the landscape;
3. Resident interior species are most vulnerable to fragmentation, while migrant species are less vulnerable.

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: Fragmentation effects were analyzed and disclosed in the FEIS.

ISSUE 7: The project is inconsistent with National Forest Management Act and the Coconino Forest Plan as amended.

Contention A: The project is inconsistent with the Mexican spotted owl standards and guidelines which amended the Forest Plan. By cutting trees for installation of the reclaimed water pipeline within a MSO PAC, the guidelines for protection of Mexican spotted owl are violated. Cutting trees can only be removed in PACs under the Coconino Forest Plan for fuelwood, fire risk abatement, or for roads or trails as a “pressing management reason” under the Forest Plan guidelines. The DEIS states that there will be no tree removal within Restricted Areas or PACs (DEIS 2-28), and reason for change in this position is cited in the FEIS. Timber harvest is one of the primary threats to MSO in the Upper Gila Mountain Recovery Unit (DEIS at 3-276 and FEIS at 3-301) and this decision disregards the NFMA and the ESA.

Response: The appellant correctly cites the 1996 Plan amendment which allows tree cutting in Mexican spotted owl Protected Activity Centers (PACs) for fuel wood, fire risk abatement or for roads or trails as a pressing management reason. The ROD does not include a plan amendment which would allow the removal of eleven trees from the MSO PAC. No site-specific amendment to the Coconino Land Management Plan was issued to allow the removal of the 11 trees from within Mexican spotted owl Protected Activity Centers (PACs).

Finding: The removal of the 11 trees from Mexican spotted owl PACs is not consistent with the Coconino Land Management Plan, as amended.

Contention B: The FEIS fails to adequately discuss the impacts of habitat loss on a broader landscape scale. The FEIS will impact one percent of spruce-fir forest on the Peaks but this loss of function where aspen, mixed conifer and sub-alpine forests amount to less than 1 percent of regional vegetation, is significant from a cumulative impact perspective. FEIS concludes that removal of forest cover is an irretrievable loss (FEIS 3-299) but fails to represent it as an irreversible impact.

Response: The FEIS (PR#199) discloses the amount of spruce-fir forest for both the Snowbowl SUP and in the San Francisco Peaks (Table 3J-1, p. 3-281). The FEIS further documents the proportion of this forest type affected in both the Snowbowl SUP area and the San Francisco Peaks as a whole (pp. 3-287 to 288).

Cumulative effects are the effects on the environment which result from incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. The total cumulative effects of past actions are disclosed in the FEIS on pages 3-297 to 298.

The impacts of habitat loss on a broader landscape scale are addressed in the Response to Comments (PR #200). In the response to comment 10.9 (pp. 152 -153), the direct, indirect, and cumulative effects combined impact about 2 percent of the spruce-fir forest on the San Francisco Peaks due to the majority of this forest type occurring in the San Francisco Peaks Wilderness. The response also points out there have been few other losses of this forest type due to the majority occurring in the Wilderness. The response addresses the loss of some of this habitat regionally from timber harvest on the Kaibab Plateau and other areas, as well as from insects, windthrow, and fire. The response to comment 11.17 (PR#200 p. 166) discloses that the proposed action includes thinning of bark beetle infested stands which will reduce the probability of total loss of the thinned stand, as well as reduce the probability of infestation and loss of other stands within the SUP area and in the Kachina Peaks Wilderness.

Irreversible losses of spruce-fir habitat are disclosed in the FEIS (PR#199, p. 3-299). These habitat losses would arise from new parking facilities, snowplay facilities, the snowmaking reservoir, chairlift re-alignment, and new skiing terrain contouring. The removal of the timber for recreation activities does not in itself constitute an irreversible commitment of resources. The FSH 1909.15 definition of “Irretrievable” (0 Code, p.7) is: “A term that applies to the loss of production, harvest, or use of natural resources. For example, *some or all of timber production from an area is lost irretrievably while an area is serving as a winter sports site. The production lost is irretrievable, but the action is not irreversible. If the use changes, it is possible to resume timber production*” (emphases added).

Finding: The FEIS adequately analyzed and disclosed the impacts of habitat loss within the spruce-fir type within the Coconino National Forest

Contention C: The FS is required to manage for old growth habitat within each 10K block and across the Forest. The Coconino National Forest is deficient in old growth. The FEIS does not display the vegetation structural stages within the 10K block that would help the public determine the amount of old growth in habitat types within the project area and surrounding area. Appellant cites to Response to Comments pages 166 and 167.

Response: The proposed action would affect spruce-fir forest, but no mixed-conifer forest (FEIS, PR#199, pp. 3- 280 and 3-285). The FEIS (PR#199, Chapter 3J) contains estimated acreages of spruce-fir forest within the SUP area and in the San Francisco Peaks (Table 3J-1, p. 3-281). Table 3J-1 lists approximately 547 acres of spruce-fir forest in the SUP area and 7,170 acres in the San Francisco Peaks. The Vegetation Effects in the FEIS (PR#199, pp. 3-287) states that the removal and thinning under the proposed action would affect approximately 14 percent of the spruce-fir forest in the SUP area and approximately 1 percent of the spruce-fir forest in the San Francisco Peaks area. The FEIS also notes (PR #199 p. 3-135) that the Kachina Peaks Wilderness Area (18,960 acres in size) borders the Snowbowl on the north, east, and south. Inspection of the orthophotos included in the FEIS show most of the area east of the Snowbowl to be forested. In the Response to Comments (PR#200, pp. 166-167), the response to comment 11.7 states that the removal and thinning of the spruce-fir within the SUP area will not affect the

old growth component for the 10,000 acre block because the required amount of old growth (20 percent per 10,000 acre block) is contained in the Kachina Peaks Wilderness Area.

Finding: Removal and thinning of spruce-fir component will not affect old growth in 10,000 acre block.

ISSUE 8: The project is in violation of the Endangered Species Act.

Contention A: FEIS has little data to support conclusion that the temporary disturbance of 17 acres of Gunnison's prairie dog colony at Snowbowl would have no impact on this population. Given its potential for listing under The ESA in the near future, loss of habitat should be minimized.

Response: Gunnison's prairie dog does not have status as either a Federally listed species or a Forest Service sensitive species. The effects to the existing prairie dog colony in the Snowbowl SUP area are disclosed in the FEIS (PR#199, pp. 3-163 to 164, 170), the Response to Comments (PR#200, pp. 3-318 to 319), and in the Biological Assessment and Evaluation (PR#134, p. 17).

Finding: The effects to the colony are clearly disclosed, and would not result in the extirpation of the existing colony.

Contention B: FS failed to assess project's impact on pair of spotted owls that will be directly affected by construction activities and snowmaking activities (FEIS 3-301).

Response: The Forest Service met with representatives of the U.S. Fish and Wildlife Service on July 31, 2002, to discuss the draft proposal and potential effects to listed and proposed species (PR#22). Effects to listed species are discussed in the EIS (PR#199) on pp. 3-317 to 3-334. Detailed analysis of effects are found in the Biological Assessment and Evaluation (PR#134). The BAE found that the project would have "No Effect" on critical habitat for the Mexican spotted owl. The BAE found that the project "May Affect, but is Not Likely to Adversely Affect" the Mexican spotted owl. This included consideration of the noise from construction activities and snowmaking (FEIS, PR#199, pp. 3-323 to 324; BAE, PR#134, pp. 22-26). The information contained in the BAE was submitted to the U.S. Fish and Wildlife Service for concurrence on the effected species and critical habitat, as required under Section 7(a)(2) of the Endangered Species Act of 1973, on March 29, 2004 (Request for Concurrence Letter, PR#125). The U.S. Fish and Wildlife Service concurred with the determinations made by the Forest Service on July 8, 2004 (Letter of Concurrence, PR#157).

Additional information on the effects to the Mexican spotted owl and informal consultation are found in the Response to Comment (PR#200) on pages 162 (comment 11.5) and 168 (comment 11.21).

The effects determination to the Mexican spotted owl was a "May Affect, Not Likely to Adversely Affect" and informal consultation under Section 7(a)(2) of the Endangered Species Act was completed. This type of consultation requires written concurrence with the effect determination from the Fish and Wildlife Service, which was obtained as noted above. A Biological Opinion is obtained through formal Section 7 consultation, when the effect determination is "May Affect, Likely to Adversely Affect."

Finding: The FEIS and supporting documentation clearly disclosed the potential effects of construction activities and snowmaking to the Mexican spotted owls in the vicinity of the SUP. The U.S. Fish and Wildlife Service concurred with the determination of “May Affect, Not Likely to Adversely Affect.”

ISSUE 9: 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. FS has failed to take the hard look at the impacts of the project.

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. The Responsible Official used several sources of information in making her decision. Environmental consequences were adequately analyzed in the FEIS.

Finding: A hard look was given to the proposed action under NEPA and the rationale for the decision is based on the project record and disclosed in the Record of Decision. The project analysis, FEIS and ROD comply with the Administrative Procedures Act.



United States
Department of
Agriculture

Forest
Service

Santa Fe National Forest

1474 Rodeo Road
P.O. Box 1689
Santa Fe National Forest
505-438-7840 FAX 505-438-7834

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