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File Code: 1570-1/2300

Date: June 8, 2005

Robert Tohe
408 E. Route 66, Ste. 1
Flagstaff, AZ 86001

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
NUMBER: 70002870000011350563**

Re: Appeal #05-03-00-0019-A215, Robert Tohe appeal of Arizona Snowbowl Facilities Improvement Decision, Peaks Ranger District, Coconino National Forest

Dear Mr. Tohe;

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

Robert Tohe's Appeal**#05-03-00-0019-A215,****Arizona Snowbowl Facilities Improvement Record of Decision****ISSUE 1: The EIS violates the Religious Freedom Restoration Act, the American Indian Religious Freedom Act, and the Forest Service's own policies and procedures implementing AIRFA and Executive Orders.**

Contention A: The project takes place on land that is sacred to many Native Americans and to spray wastewater to make snow on sacred land discounts the most core values and cultural traditions of the Tribes. FS has a responsibility to protect this area and should choose the No Action alternative.

Response: The Religious Freedom Restoration Act states that the government shall not substantially burden a person's exercise of religion without a compelling reason. AIRFA states that it is the policy of the United States to protect and preserve the inherent right of Native Americans to believe, express, and exercise their traditional religion, including access to religious sites, use and possession of sacred objects, and the freedom to worship through ceremonies. Tribal concerns about the impacts of the proposed improvements on tribal religious and cultural values were identified as issues in the FEIS (PR# 199, pp. 13-14) and were analyzed and disclosed during the NEPA process (PR #199, Chapter 3.A). The ROD affirms that the decision does not prohibit access to the Special Use Permit area or the remainder of the Peaks for religious purposes (PR#201, p.32). A MOA (Memorandum of Agreement, PR # 199, Appendix D) was developed to mitigate adverse effects to the extent possible. Impacts on the spiritual values of the Peaks and associated religious traditions were considered, along with other factors, in the decision rationale (PR #201, pp. 22-30).

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: Impacts of the proposed action on the spiritual values of the Peaks were identified and disclosed in the FEIS and were considered in the decision. The rationale for not selecting the No Action alternative is discussed in the ROD.

Contention B: The “tribes” are referred to as a monolithic group, with the Hopi and Navajo Tribes as examples. The generic categorization by the federal government consultation process fails to uphold the government-to-government standard mandated in consultation requirements.

Response: The record (PR #190) and the ROD (PR #201, pp. 8-9) clearly demonstrate that consultation was carried out with individual tribes on a government-to-government basis. Tribal responses were necessarily summarized in the ROD and FEIS discussions; however, individual tribal comments are preserved in the record (PR # 39, 98, 200, Appendix B).

Finding: The record demonstrates that consultation with the tribes was carried out on a government-to-government basis.

ISSUE 2: Project violates the National Environmental Policy Act.

Contention A: Two issues relating to heritage concerns requiring additional analysis warranted the creation of an additional alternative. The issues are 1) the installation and operation of snowmaking infrastructure and use of reclaimed wastewater as impacting cultural and spiritual values, and 2) ground disturbances and vegetation removal may result in evident visible alterations (scarring). These issues are identified and acknowledged and are then dismissed, not addressed by the decision to approve the proposed action.

Response: The two issues noted above were identified as issues in the FEIS (PR #199, pp.1-14 and 1-15). The environmental consequences for all three alternatives were evaluated with respect to these two issues (PR #199 pp.3-16 through 3-30). Volume 2 of the FEIS (PR #200) responds to comments on the DEIS that were submitted by various tribes. The decision rationale presented in the ROD (PR #201) documents consideration of potential effects on cultural resources; and the affects and risks associated with using reclaimed water for snowmaking.

Finding: Issues related to heritage concerns were not dismissed. Rather, the issues framed the discussion of environmental consequences and were thoroughly considered in making the final decision.

Contention B: The FEIS acknowledges no irreversible or irretrievable commitments of resources related to noise, traffic, or air quality. Appellant notes the approved action will result in significantly increased cumulative impacts of noise and traffic on the Snowbowl road which affects Native people’s traditional uses of natural resources.

Response: An *irreversible* commitment is a permanent or essentially permanent use or loss of resources; it cannot be reversed, except in the extreme long-term. An *irretrievable* commitment is a loss of production or use of a resource for a period of time. In the case of irretrievable, the condition can be reversed (FSH 1909.15, 05). The FEIS addresses whether irreversible or irretrievable commitments of resources related to noise, traffic, or air quality (as well as other resources) would result from implementation of the alternatives.

With the exception of temporary construction related disturbances to wildlife (which would be considered irretrievable), the analysis identified no other irretrievable commitments of resources with respect to noise (PR #199, p.3-39). The FEIS noted temporary, reversible reductions in air quality would be experienced in the area as a result of construction activities. Although these impacts are irretrievable, they would only be anticipated to occur for short duration (PR #199 p.3-361). No irreversible and/or irretrievable commitments of resources in relation to traffic were identified (PR #199 p.3-51).

With respect to Native people's traditional uses of natural resources, the Forest Service acknowledges the tribal perspective of the effects of scarring on the sacred landscape and that the associated spiritual and cultural impacts may in fact be considered irreversible in nature (PR #199 p.3-30).

Finding: The environmental consequences presented in Chapter 3 include the anticipated direct, indirect and cumulative impacts associated with each alternative and a determination as to whether there would be irreversible and/or irretrievable commitments of resources related to noise, traffic, or air quality was made. The effects analysis supports the determination that there will be no irreversible commitments of resources related to noise, traffic, or air quality.

Contention C: The proposed impacts to the physical, cultural and spiritual qualities of the Peaks should be regarded as irreversible. Concerns of Native American tribes are not addressed; they are dismissed as being purely spiritual sentiment.

Response: An irreversible commitment is a permanent or essentially permanent use or loss of resources; it cannot be reversed, except in the extreme long term. Concerns of Native American tribes were identified as issues and subsequently framed the analysis of environmental consequences. The Forest Service acknowledges the tribal perspective of the effects of scarring on the sacred landscape and that the associated spiritual and cultural impacts may in fact be considered irreversible in nature (PR #199 p.3-30).

Finding: The FEIS, ROD, and project record demonstrate consideration of concerns raised by Native American tribes. The Forest Service acknowledges impacts associated with the selected alternative could be irreversible.

Contention D: The overall ski season length that was used by the FS to determine annual visitation projections is flawed. The early closing of Snowbowl this year in mid-April shows that the operating season Snowbowl really seeks is when snow is light, not the late winter season when the most snowfall occurs on the Peaks. The underlying assumption that more operating days will result in an increase in skier visits is erroneous.

Response: The Snowbowl season is addressed in Volume 2, Response to Comments (PR#200, pp.99, 112) and the FEIS (PR#199, p.3-112). During the past 12 ski seasons (1993-2004) with natural snowfall Snowbowl operated an average of 86 days with a range from four days to 138 days of operation. The proposed action will maintain consistency and extend the ski season at both ends allowing for a 125-day ski season. Historically Snowbowl has been open in December and rarely in November when snow conditions permitted. Typically, skier visits decline in April when the weather is warmer and other recreational opportunities are available.

Figure 3E-3 (PR#199 p.3-108) compared operating days (days open) at Snowbowl and skier visits to the area over eight ski seasons. Operating days and skier visits were clearly linked. When operating days were low, skier visits were low. Table 3F-1 in the FEIS (PR#199 p.3-120) compared annual snowfall, ski area operating days and visitation at Snowbowl for the last 22 ski seasons. The analysis documented that operating days and skier visits at Snowbowl were dependent on natural snowfall. High snowfall years resulted in a high number of operating days at Snowbowl and high skier visits.

Finding: The ski season length used to project annual visitation was supported by the FEIS. The FEIS clearly documented the relationship between operating days and skier visits.

Contention E: The FEIS should analyze the economic value of the tribal people to the City of Flagstaff and Coconino County. By stating this is outside the scope of the analysis, the tribes continue to be socioeconomically as well as culturally disenfranchised from the lands that are the source of their traditions.

Response: The socio-economic effects of Snowbowl and the proposed action are analyzed in the FEIS (PR#199 p.3-73 through 3-128). Analysis of the effects of visitor spending on the Flagstaff area economy was limited to Snowbowl visitors. Spending by Snowbowl visitors was not broken down by racial category. The FEIS did not analyze non-Snowbowl visitor spending in the Flagstaff area.

Finding: The socio-economic effects of Snowbowl and the proposed action were adequately addressed in the EIS.

Contention F: The Havasupai Tribe's concerns with the dangers posed by hospital waste, increased pathogens and pharmaceutical residue from fecal matter and potential toxins and diseases with long term negative effects on plants and fauna, and which contribute to the degradation of natural springs, were not adequately addressed in the FEIS. The conclusions regarding environmental damage is merely speculative and it is unknown how chemical contaminants present in reclaimed wastewater will affect the environment.

Response: Detailed effects on vegetation (PR#199, pp. 3-280 to 3-299), wildlife (PR#199, pp. 3-300 to 3-334) and ground water, including springs (PR#199, pp. 3-160 to 3-224) are discussed in the FEIS. Extensive analysis on the fate and transfer of water through the aquifer was conducted and is contained in the project record (PR# 113). 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).

Finding: The FEIS analyzes and discloses effects on plants, fauna and natural springs.

Contention G: The 10 million gallon on-mountain recycled wastewater impoundment will be used for snowmaking, non-potable water needs and firefighting. Use will spread the wastewater far outside the Special Use Permit area. Water and wastewater are treated as a combined category in the FEIS, yet cross contamination of the potable and recycled wastewater supplies is not addressed. Water line breaks and seepage, which would distribute recycled wastewater outside of the Special Use Permit Area, are not addressed.

Response: The main pipeline which carries reclaimed water from Thorpe Park to the storage impoundment will be buried to provide protection against breakage (PR# 199, p. 2-5) and will include booster stations and hydrants which can be used to assist the main valves in controlling any unexpected water flows (PR# 199, p. 2-6). The waterlines transmitting water from the storage impoundment area to the snowmaking equipment have been designed to back drain after each snowmaking period (PR# 199, p. 2-7); thus posing little risk if breakage should occur. The reclaimed wastewater impoundment area will be designed and managed using numerous safety mitigation, seepage and stability features (PR# 199, pp. 2-30 to 2-31). In any event, the water in the pipeline and impoundment poses minimal risks to human health or the environment (PR# 199, pp. 3-201 to 3-205). Monitoring is completed quarterly and submitted to ADEQ. Current monitoring shows that all regulated parameters in the reclaimed water meet the established numerical limits for Aquifer Water Quality Standards, which are equivalent to EPA's Primary Drinking Water Standards (PR# 199, p. 3-206).

Finding: The FEIS adequately addresses potential contamination connected with use of reclaimed water for snowmaking.

Contention H: The FEIS acknowledges that signs will be posted to inform the public not to ingest the snow or melted snow; however the effects to plants and animals that will ingest the snow and runoff are not addressed. It is not known what type of effects using reclaimed water will have on the wildlife.

Response: The effects of reclaimed water on wildlife were disclosed in the FEIS (PR#199, pp.3-206 to 224, pp.3-326 to 328) and the Response to Comments (PR#200, pp.42-49, 160-162, and 164-165). The summary of these impacts is as follows:

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

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

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: The potential effects of reclaimed water use for snow-making on wildlife and vegetation were analyzed and disclosed.

Contention I: Dr. Paul Torrence of Northern Arizona University states that the FEIS fails 1) to protect human health concerns, 2) to employ well-known and accepted science in the analysis of snowpack melt behavior, 3) confuses the rationale involved in the Arizona Dept. of Environmental Quality classification of Class A plus reclaimed water for irrigation and 4) is replete with errors of scientific fact. Coconino National Forest did not seriously consider Dr. Torrence's or other experts' comments. Recycled wastewater is a new technology, the long-term effects of which are not known.

Response: 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).

The project record contains a rigorous technical analysis conducted by experts in the field of hydrogeology (PR# 113). This report contains over 40 citations specifically related to snowpack melt behavior and reclaimed water chemistry, including fate and transport in the environment, 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, pp. 86-88).

Finding: The agency 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 J: The FEIS fails to adequately consider impacts on soils, vegetation and wildlife. The grading of terrain will result in substantial potential increase in sediment yield and a risk of soil loss. The effect to vegetation should be considered irreversible as was the effect to soils. The impact to meadows should be considered significant since meadows are very important to wildlife and in maintaining the biodiversity on the mountain. Contaminants and increased nitrogen levels in the recycled wastewater may affect plants. Chemicals used in artificial snowmaking could alter soil structure or runoff into water supplies. The mitigation will not

protect wildlife that will come and drink from the snowmaking pond. The standards for reclaimed water are untested for wildlife

Response: Detailed effects to soils are discussed in the FEIS (PR#199, pp. 3-251 to 279) and effects to vegetation are discussed at PR#199, pp. 3-280 to 3-299 where some irreversible vegetation losses are disclosed (PR#199 p. 3-299)

Existing grassland plant communities (meadows) are discussed in the FEIS (PR#199, pp. 3-280 to 3-281) and anticipated effects are disclosed (PR#199, pp. 3-288 to 3-289). The proposed action would result in permanent loss of 2.7 acres of montane grassland, representing 7.3 percent of the grassland in the SUP area and 0.3 percent of the grassland in the San Francisco Peaks, and temporary disturbance of 18.2 acres represents 49.2 percent of the grassland in the SUP area and 1.7 percent of the grassland in the San Francisco Peaks (PR# 199, pp.3-286 and 3-288 to 289). This disturbance would mostly occur in areas previously disturbed by management (PR#199, p. 3-288).

Effects to wildlife using grasslands are disclosed in the FEIS (PR#199, pp. 3-300 to 334). Specific effects are disclosed on pages 3-318 to 321 for the following grassland species: Black-footed ferret, Navajo mountain Mexican vole, elk, pronghorn, Ferruginous hawk, and Gunnison's prairie dog.

Testing of the recycled water indicates that both nitrate and nitrite levels are well below all the existing water quality standards- including those for drinking water (PR#199, p. 3-181). In addition, soil column testing was performed using soils from the SUP (Special Use Permit) and treated wastewater from the City of Flagstaff (PR#199, pp. 3-260 to 3-269). Results from this test and other controlled experiments disclose that there could be increased nitrogen available to plants (PR#199, p. 3-267) which could increase the biomass of existing vegetation and enhance the re-vegetation process on newly disturbed areas (PR#199, p. 3-277). Other potential effects of increased nitrogen on plant species composition and mortality are also analyzed and disclosed in the FEIS (PR# 199, pp. 3-291 to 3-294). There will be no chemical nucleating agents used in the snowmaking process (PR#200, pp. 51, 238).

The issue of wildlife use of the water is discussed in Contention H above. The impacts of the pond are discussed in the FEIS (PR#199, pp. 3-326 to 328) and in the Response to Comments (PR#200, p. 163). The concern of wildlife being attracted to the water in the pond and then trapped will be mitigated by the construction of a fence. This will exclude most wildlife which may be trapped in the pond (PR#200, p. 163). The FEIS notes that the fence could cause collisions with some birds, but this impact could be reduced through the use of orange netting in the fence (PR#199, p. 3-327). The FEIS notes that the pond may benefit some birds as an additional available water source and through increasing abundance of arthropods (PR #199, pp. 3-327 and 3-328).

Finding: The agency appropriately addressed and considered the effects on soils, vegetation, wildlife, and meadow ecosystems.

Contention K: The statistics regarding the nearly 10,000 public comments are not disclosed. We understand a large majority of the public comments opposed the proposed action, and these numbers should be disclosed in the FEIS instead of a supportive comment section.

Response: The regulations at 40 CFR 1503.4 require an Agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond to comments. 36 CFR 215.6 (b) requires that the Responsible Official consider all substantive written and oral comments. Comments shall be placed in the project file and shall become a matter of public record.

All comments received in response to scoping as well as those made during the official comment period for the Arizona Snowbowl project are contained in the project record and are available for review. Volume 2 of the FEIS (PR #200) contains responses to comments received on the Draft Environmental Impact Statement. The “Supportive Comments” section is one of 26 categories of comments presented in Volume 2. Comments opposed to the proposed action may be found in the other 25 categories.

Finding: The Agency appropriately considered comments. Responses to comments are presented in Volume 2 of the FEIS. All comments received are contained in the project record and are available for public review.

Contention L: Havasupai Tribe contends that FS failed to consider Alternative 3 a viable alternative. The FEIS responds to this comment by stating the FS has the ability to create a new alternative out of components of the alternatives, but this was not done. The ROD acknowledges the environmentally preferred alternative, no action and then dismisses it.

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

Chapter 3 of the FEIS presents a thorough evaluation of the environmental impacts anticipated for the three alternatives studied in detail. A summary of the direct and indirect environmental consequences associated with the implementation of each alternative is provided in Table 2-5 (PR #199 pp.2-43 through 2-61). This information supports the identification of Alternative 1 (No Action) in the ROD as the environmentally preferred alternative (PR #201 p.33). The ROD outlines the Decision Maker’s rationale for selecting Alternative 2 over the environmentally preferred alternative.

Finding: The agency appropriately evaluated the environmental impacts of each alternative, including Alternative 3. The agency identified the environmentally preferred alternative (Alternative 1), and provided rationale for selecting an alternative other than the environmentally preferred.

ISSUE 3: The project decision violates Executive Order 12898 Environmental Justice.

Contention A: The Coconino National Forest did not consult with us during the development of the DEIS on Environmental Justice so that we could identify environmental justice issues. The analysis was reconstructed between DEIS and FEIS and made without the Coconino National Forest consulting with us.

Response: The record (PR #190) indicates multiple attempts were made to involve tribes in the planning process. Agencies are not directed or required to consult on “*Environmental Justice*” per se; rather, it is through appropriate use of existing public participation and consultation processes that agencies are alerted to potential issues/effects related to proposed activities that may result in disproportionately high and adverse environmental effects to low-income or minority populations.

In the memorandum (February 11, 1994) to heads of departments and agencies that accompanied EO 12898, President Clinton emphasized the importance of NEPA’s public participation process, directing that “each federal agency shall provide opportunities for community input in the NEPA process.”

It is through such input that agencies are alerted to actions that may have Environmental Justice implications. In the case of Snowbowl, during pre-proposal discussions and the formal scoping period, the Native American community and individual tribes expressed significant concern related to the use of reclaimed water for snowmaking and the increased ground disturbance associated with additional ski area development. These issues were treated as significant, and an alternative was subsequently developed to address the concerns.

In February 2004, the DEIS was released to the public for comment. Included in the DEIS was an analysis and disclosure of the anticipated environmental impacts of the proposed action and alternatives. The previously identified heritage issues helped frame the discussion of environmental consequences.

During the official comment period, thousands of comments were received (PR #200); among them were questions related to Environmental Justice and EO 12898. The regulations at 40 CFR 1503.4 (a) require 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.

With respect to comments specifically related to Environmental Justice, the agency concluded a reconsideration of the Environmental Justice analysis presented in the DEIS was warranted. As such, the section on this topic was improved and the analysis modified to address the concerns/comments received on the DEIS. Information presented in the Environmental Justice section of the FEIS (PR #199, pp 3-362 through 3-371) and Volume 2 of the FEIS (PR #200, pp 244-259) offer clarification regarding the intent of EO 12898.

Finding: There is no requirement to consult on Environmental Justice. The agency fulfilled the requirements of EO 12898 through NEPA’s public participation processes. Opportunities for community input during project planning were provided and environmental justice concerns related to the proposed project and alternatives were appropriately identified.

Contention B: FS has failed to consider innovative measures that would provide opportunities for broader community input.

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.

Contention C: In the MOA the FS concludes that the determination of adverse effects applies to all the alternatives. The identification of an effect on environmental justice should heighten agency attention to alternatives according to CEQ, but this apparently had no effect on this decision.

Response: During pre-proposal discussions and the formal scoping period, the Native American community and individual tribes expressed significant concern related to the use of reclaimed water for snowmaking and the increased ground disturbance associated with additional ski area development. These issues were treated as significant, and an alternative (Alternative 3) was subsequently developed to address the concerns. Alternative 3 eliminated the snow play area and snowmaking using reclaimed water. While it was recognized that this alternative would have less effect than the proposed action, the continued presence of the ski area and the limited improvements proposed under Alternative 3 would still result in some level of impact. Thus, based on the Heritage and Cultural Resource analysis provided in the FEIS (PR #199, pp. 3-3 through 3-30), a determination was made that each of the alternatives carry with them some level of disproportionately high and adverse environmental effect to Native Americans who hold the Peaks sacred (PR #199, p. 3-367).

The FEIS further disclosed the proposed action (Alternative 2) would represent the highest degree of potential disproportionate environmental impact to Native American cultures (PR #199, p. 3-370). Under NEPA, this determination does not preclude a proposed agency action from going forward, nor does it compel a conclusion that a proposed action is environmentally unsatisfactory (Environmental Justice – Guidance Under the National Environmental Policy Act, p 10).

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

ISSUE 4: The project is inconsistent with National Forest Management Act and the Coconino Forest Plan as amended.

Contention A: The use of artificial snowmaking with recycled wastewater to address an existing condition of “unreliable snowfall” or to “stabilize Snowbowl’s investment” was not a consideration in the 1979 Plan decision. Therefore, the proposed, preferred, and approved action was not specifically approved in the 1979 ROD and cannot be said to remain within the contextual scope of the 1979 approvals.

Response: Artificial snowmaking with recycled wastewater was not considered in the 1979 Snowbowl EIS. Rather, the effects associated with this activity is appropriately analyzed and disclosed in the 2005 FEIS. Furthermore, the 2005 FEIS acknowledges that while many of the projects analyzed in the current FEIS are consistent with the 1979 Master Plan, due to the length of time that has passed since approval, the advent of new procedural requirements and potentially changed conditions, *these approvals are no longer valid* (PR #199 FEIS pp. 1-3 through 1-4). It is for these reasons that the forest initiated and completed a new analysis for the ski area.

With respect to the contextual scope, the current FEIS clearly states, “From the selected alternative identified in the 1979 ROD, this analysis carries forward the size of the ski area (777 acres) and the comfortable carrying capacity (CCC) of 2,825” (PR #199 FEIS p. 1-4). The FEIS does not imply that the current proposed, preferred, and approved action was approved in the

1979 ROD, nor is there a requirement that the current alternatives be previously approved. The decision made in the 2005 ROD is based on the analysis presented in the 2005 FEIS.

Finding: The effects associated with artificial snowmaking using recycled wastewater are analyzed and disclosed in the 2005 FEIS.

Contention B: Snowmaking and snowtubing are inconsistent with the Coconino Forest Plan. Amending the Plan to add these is a major and significant change, not a non-significant Plan amendment.

Response: Snowbowl is located in Management Area 15 of the Coconino National Forest Plan. Emphasis in this management area is on developed recreation. The current plan states the following with respect to management of Snowbowl: “*Facility development at the Snow Bowl ski area is guided by the Final Environmental Impact Statement of 1979*” (p.188, Coconino Forest Plan as referenced in FEIS p.B-2, not in record). As part of the Snowbowl decision, the Agency has proposed to replace this guidance with the following: “*Facility development at the Snow Bowl ski area is guided by the Ski Area Master Development Plan as based on approved NEPA analysis.*” Making this change will allow current and potential future proposals at the Snowbowl to be in compliance with Forest Plan direction.

The process for amending a forest plan is outlined in 36 CFR 219.10 (f). In amending a forest plan, the Forest Supervisor must determine whether a proposed amendment would result in significant changes to the plan. In the context of amending a forest plan, significance is determined by examining the following factors (FSH 1909.12, 5.32): (a) timing, (b) location and size, (c) goals, objectives, and outputs, and (d) management prescription. Appendix B of the FEIS (PR #199, pp.B-1 through B-3) clearly describes consideration of these factors in determining whether the proposed amendment would result in significant changes to the Forest Plan.

Finding: Updating management direction in the Coconino Forest Plan to allow current and potential future proposals (as approved by NEPA analysis) is not a significant change with respect to timing, location and size, goals, objectives, and outputs, and management prescriptions.

ISSUE 5: The project is in violation of the Endangered Species Act.

Contention: In response to the U.S. EPA comments to the DEIS the FS said that a Biological Opinion is not required.

Response: A list of Threatened, Endangered, and Proposed species for the project area is in the project record (PR#21). This list showed that the Bald eagle, Black-footed ferret, Mexican spotted owl, and San Francisco Peaks groundsel were the only federally listed species in the project area. 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 pages 3-317 to 3-334 (for animals), and 3-289 to 3-297 (for plants). Detailed analysis of effects are found in the Biological Assessment and Evaluation (BAE at PR#134). The BAE found that the project would

have “No Effect” on the Bald Eagle, Black-footed ferret, and 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, the San Francisco Peaks groundsel, and critical habitat for the San Francisco Peaks groundsel. 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 San Francisco Peaks groundsel and the informal consultation are found in the Response to Comments (PR#200) on pages 151 (comment 10.3) and 158 (comment 10.22). 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).

Because the project determined that the effects to Mexican spotted owl and the San Francisco Peaks groundsel and its critical habitat were a “May Affect, Not Likely to Adversely Affect,” 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: All procedures of Section 7(a)(2) of the Endangered Species Act of 1973, as Amended, were followed.



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Forest
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File Code: 1570-1/2300

Date: June 8, 2005

Route To: ()

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

To: Harv Forsgren, Regional Forester
Appeal Deciding Officer

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

Background

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

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

Review and Findings

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

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



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

Recommendation

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

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

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

cc: Constance J Smith