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File Code: 1570-1/2300
Date: June 8, 2005

Ms. Lisa and Rachel Tso
Combined appeal response

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
NUMBER: 70002870000011350747

Re: Appeals #02-03-00-0022 and 0024-A215**,** Arizona Snowbowl Facilities Improvement Decision, Peaks Ranger District, Coconino National Forest

Dear Ms. Tso and Tso:

This is my review decision concerning the appeal you filed regarding the Record of Decision and Final EIS, which approves snowmaking using reclaimed water as a source, additions and modifications to the Snowbowl's lift and terrain network, improvements to day lodges and parking, and a lift-served snowtubing facility.

I have decided to consolidate your appeal with similar appeals in this decision (per 36 CFR 215.8)(b). This decision includes a Forest Plan amendment to update the Snowbowl Ski Area Master Plan.

BACKGROUND

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

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

My review of this appeal has been conducted in accordance with 36 CFR 215.18. I have reviewed the appeal record and the recommendation of the Appeal Reviewing Officer. My review decision incorporates the appeal record.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer concluded:

1) The purpose and need was clear and the Proposed Action was appropriate and consistent with the purpose and need.
2) The project record shows that the environmental analysis was thorough, reasoned and in line with environmental laws and regulations.

3) The scoping and public involvement process was appropriate and effective in developing alternatives and evaluating effects.
4) The analysis and decision documented in the project record are consistent with national policy, direction and agency objectives.
5) The proposed project is consistent with the Coconino Forest Plan as amended with the exception of cutting eleven trees in a Mexican spotted owl (MSO) Protected Activity Center (PAC).
6) Several documents utilized and referenced in the record and in the analysis and decision-making process were not included in the project record.

APPEAL DECISION

At the onset, I wish to recognize the importance of the values and issues raised in your appeal. During my review, I gave them utmost consideration. After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm with instructions the Responsible Official's Arizona Snowbowl Facilities Improvement Decision with the following instructions:

1) The eleven trees scheduled for cutting in the PAC along the pipeline must be left in place in accordance with Plan direction.

2) Supplement the Project Record with the following documents and any other documents not included in the record that were used in the project analysis and decision-making process:

   - Coconino National Forest Plan
   - ISA & Report 1987-104-W White Vulcan Mine Settlement Agreement, in which San Francisco Peaks are formally determined eligible for the National Register.
   - July 14 and 28, 1998 letters to tribes informing them of CNF intent to nominate Peaks to National Register.
   - December 7, 1998 and January 28, 1999 letters to Havasupai and Hualapai attempting to set up meeting to discuss National Register nomination.
   - January 28, 1999 and November 22, 1999 annual consultation letters to San Juan Southern Paiute Tribe on National Register nomination process.
   - September 13, 1999 letters to tribes about proposal for snowplay area.
   - February 17, 2000 letters to tribes about feasibility work being conducted on Arizona Snowbowl.
   - June 20, 2002 pre-proposal letter to tribes.
   - December 2002 Arizona Snowbowl Scoping Response- Preliminary Issue Themes, meeting summary and second copy with notes.
   - May 12, 13, and 19, 2003 letters to tribes enclosing preliminary drafts of National Register nomination form.

- Big Game status report for GMU 17, from Arizona Dept of Fish and Game, 2003.
- April 26, 2004 letters to ACHP, SHPO, Snowbowl and tribes with first MOA draft.
- August 9, 2004 letters to tribes advising them of a determination of adverse effect for all Snowbowl alternatives and request for MOA consultations.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

HARV FORSGREN
Appeal Deciding Officer, Regional Forester

2 enclosures: Technical Review and Findings, ARO letter

cc: Mailroom R3 Coconino, Clifford Dils, Nora Rasure, Judy Levin, Judy Yandoh, Constance J Smith, Mailroom R3, Sandra Nagiller

REVIEW AND FINDINGS

of

Combined Rachel Tso and Lisa Tso's Appeals

#05-03-00-0022 and 0024-A215

Arizona Snowbowl Facilities Improvement Record of Decision

ISSUE 1: The EIS violates the Religious Freedom Restoration Act and the American Indian Religious Freedom Act.

Contention: The Snowbowl Facilities Improvement decision directly and significantly affects our family's ability to practice traditional ceremonies and religion by desecrating the environment of the sacred San Francisco Peaks. Healing ceremonies and the sacredness of the plants and water used in those ceremonies has been disregarded. Putting water that has touched death on the top of our sacred, holy place is very disrespectful, offensive, and a violation of our religious law.

Response: The Religious Freedom Restoration Act states that the government shall not substantially burden a person's exercise of religion without a compelling reason. AIRFA states that it is the policy of the United States to protect and preserve the inherent right of Native Americans to believe, express, and exercise their traditional religion, including access to religious sites, use and possession of sacred objects, and the freedom to worship through ceremonies. The DEIS (PR #93, pp.3-14 through 3-20) and FEIS (PR #199, pp.3-16 through 3-30; PR # 200, pp.25-39) document and disclose the sincere beliefs of many tribal members that the Snowbowl improvements, particularly the use of reclaimed water for snowmaking, will have a devastating impact on the spiritual values of the Peaks and will contaminate natural resources needed to perform ceremonies.

The decision to implement these improvements, however, does not prohibit individuals from practicing their religion in terms of the constitution and associated laws like the Religious Freedom Restoration Act and the American Indian Religious Freedom Act. It does not coerce religious practitioners into acting contrary to their religious beliefs or penalize them for practicing their religion. Tribal members have not identified any specific locations for ceremonies that will be impacted by the Snowbowl improvements (PR #199, p. 3-8) and have not identified any plants, springs, or natural resources within the SUP area that will be affected (PR #199, p.3-12; #200, Comment 5.8, p.27). Tribal members will still have access to the SUP area and the remainder of the Peaks for religious purposes. Concerns about religious impacts are addressed in the ROD (PR #210, pp.25-28) and in the Response to Public Comments (PR #200, pp.25-29). Mitigation measures address ceremonial uses to the extent possible (PR #199, Appendix D, pp.2-4).

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: Project violates the National Environmental Policy Act.

Contention: The long term effect of treated effluent with chemicals is not known. Effects of endocrine disrupters on wildlife and pharmaceuticals is a concern.

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

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

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

Finding: The effects to wildlife were appropriately analyzed and disclosed.

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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