

# RESISTANCE CONTINUES FOR SNOWBOWL OPPOSITION

BY KYLE BOGGS



**O**n December 1, 2010, Federal Judge **Mary Murguia** ruled in favor of **Arizona Snowbowl Resort Limited Partnership**, allowing the resort to use Flagstaff's treated effluent to make artificial snow on the San Francisco Peaks.

The plaintiffs in the case, including the **Save the Peaks Coalition** and nine concerned citizens, asserted that in its **Final Environmental Impact Statement**, the **Forest Service** did not follow the **National Environmental Policy Act** in addressing the potential human health concerns regarding the use of treated effluent to make snow.

**While many ski resorts utilize a percentage of treated effluent mixed with potable water to make snow, Snowbowl would be the only resort in the world to use 100% reclaimed waste water to make snow.** That is, if it continues to be successful in court.

When the decision was announced, Snowbowl indicated that it "plans to begin construction work on the supply pipeline for the snowmaking system as soon as possible, consistent with any necessary approval by the US Forest Service, and weather permitting."

On December 2, a day after the announcement, more than a dozen demonstrators took action and "quarantined" **Snowbowl's Heart Prairie Lodge**, disrupting the resort's annual job fair. **Truesnow.org**, the website dedicated to highlighting the perspective of those opposed to the use of treated effluent to make artificial snow on the San Francisco Peaks, posted

an article that originally appeared at **arizona.indymedia.org** covering the action.

"Carrying banners that read '**Danger: Snowbowl, Public Health Hazard**' and dressed in hazmat suits, some of the protestors attempted to enter Snowbowl lodge ... employees blocked the group and attempted to make them leave the public area. Becoming physically aggressive, Snowbowl general manager **JR Murray** then pushed one of the protesters and wrestled a banner pole from their hands.

"The demonstrators drove down the mountain in two separate cars. Six law enforcement vehicles swarmed and prevented them from leaving. The occupants were detained, interrogated and threatened with arrest, all while pictures and video were taken by county sheriffs, Forest Service and other federal agents, all of whom refused to identify themselves. When asked what the allegations were, the cops said, 'trespassing and littering.' After being detained for more than 30 minutes, the demonstrators were released without being charged or cited," the article reported.

"How can Snowbowl say we're littering when they are attempting to dump 180 million gallons of contaminated sewage per year and expand their development by clear cutting over 100 acres of old growth trees?" said Flagstaff citizen **Ned del Callejo**. "While Snowbowl is threatening public health, they are calling law enforcement on those who are trying to protect it. The alleged litter was two signs that accidentally left, which I told the agents I was more than willing to go and retrieve. To which there was

no response."

Disappointed in the decision, attorney **Howard Shanker** vowed to immediately appeal the court's decision on multiple points. "Unless stopped by an injunction pending the hearing of an appeal, construction for making snow at Arizona Snowbowl is slated to start next year [spring of this year] and finish for skiing by November 1, 2011," reported the *Daily Sun*.

Because Snowbowl intends to begin construction as early as this month, and the appeal process will not begin until mid-May, Mr. Shanker filed a request for an injunction.

**In order for an injunction to be granted, plaintiffs must demonstrate that 1) the details of the appeal have merits; 2) the "balance of hardships" tips sharply in the plaintiff's favor; 3) there is a likelihood of irreparable injury if the injunction is not issued; and 4) that the injunction is in the public interest.**

In the request for an appeal and in the subsequent reply to defendants, Mr. Shanker was confident that he met all of these criteria in his request for an injunction. In the legal documents he asserts that plaintiffs have a strong likelihood of success on several merits, including their appeal of the NEPA claims.

"This court found that the Forest Service does not have to do a thorough analysis or include a reasonably thorough discussion of the impacts associated with the potential ingestion of snow made from reclaimed sewer water in the FEIS because the **Arizona Department of Environmental Quality** approved the use of reclaimed

sewer water for snowmaking," said Mr. Shanker.

While using treated effluent to make snow was approved, Mr. Shanker contests that it was never approved for skiing. "The Forest Service is obligated to 'fully consider the physical, biological, social, and economic impacts on the human environment,' and they never 'considered the issue of people ingesting snow made from reclaimed sewer water in its NEPA analysis.'"

He claims this issue wasn't brought up in the District Court in *Navajo Nation v US Forest Service* in 2006 and "as a result, the *en banc* panel also declined to address the merits of that claim." Further, Mr. Shanker continues in the request for an injunction that any claims the Forest Service complied with NEPA when considering the environmental impact of making snow from reclaimed water "is disingenuous."

**On a related note, the Environmental Protection Agency is currently entrenched in a multi-year national study — to be completed in 2013 — that investigates the effects of treated effluent, or reclaimed wastewater, on human health.** Preliminary findings have exposed previously unknown levels of potentially harmful agents, which suggest that more stringent regulations will be implemented in the way reclaimed wastewater is used by municipalities in the near future.

While waiting for the Ninth Circuit Court to hear the appeal, Mr. Shanker and plaintiffs wanted simply to make sure that in the

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## RECAP:

2005: Coconino National Forest Supervisor Nora Rasure approves snowmaking with reclaimed wastewater at Arizona Snowbowl. Tribes and environmental groups file suit against the US Forest Service.

2006: A US District Judge in Prescott upholds the Forest Service's decision to allow snowmaking. Tribes subsequently appeal to the Ninth Circuit Court of Appeals, arguing the proposed upgrade desecrates sacred land, and citing First Amendment violations.

March 2007: A three-judge panel of the Ninth Circuit rules in favor of the tribes, ordering that Arizona Snowbowl cannot use treated effluent to make snow.

October 2007: Following an appeal by Arizona Snowbowl, the Ninth Circuit decides to rehear the case *en banc*, or with an 11-judge panel.

August 2008: The Ninth Circuit *en banc* panel rules that Arizona Snowbowl can

make snow with treated effluent and go ahead with other expansions, despite tribal objections.

January 2009: Tribes appeal to the US Supreme Court, arguing the further expansion of the ski area is in substantial conflict with religious beliefs. Odds of getting the case heard are long.

June 2009: The Supreme Court declines to hear the case, allowing the Ninth Circuit's *en banc* decision to stand.

July 2010: The Save the Peaks Coalition files the currently disputed NEPA claim against the Forest Service, arguing the Forest Service did not adequately consider human health concerns, particularly the likelihood of children ingesting snow made from treated effluent.

February 2011: A US District Judge denies the Save the Peaks motion for injunction, clearing the way for Arizona Snowbowl's construction of snowmaking infrastructure.

# DEAR MOM ...

## Part II

by Katie Lee

**T**here's never enough of them to push solutions up into the consciousness of your masses — whoops! I forgot; masses don't have a consciousness — past the stonewall of the media, the politicians and bureaucrats, the sects, environmental tug-of-warriors, and principally, past the *economy*. That old Scrooge, economy, will eventually bring the big cupboard raiders to their knees — knees that will give away before long and land them flat on their over-fat, greed-driven bellies!

Those who care will do whatever they can to make their lives and the lives of others better, for the present, the immediate future, or the long-term. Some will do nothing at all because it isn't possible, or because the load is finally too heavy and they've given up. When someone bats his head constantly against a power pyramid of unhearing, intransigent *homo sappy-sapiens*, it is hard to continue making the changes necessary for anything but mere survival — certainly not to worry about their own species, or any other.

It hasn't dawned on your masses that their fancy technology will not save their asses. As a matter of fact, their dependency on those computers is one thing that will most likely do them in altogether. They have them running everything from gasoline pumps to sperm banks — as if they needed those!! But just one saboteur to throw a wrench in the communication system they're so proud of, or a serious flare up from me, and the whole ball of wax will suffer meltdown. Nothing will work.

They probably think they can compute a global cooling machine to ease your rising temperature. By now, you'd expect them to have it down pat — how to best use me and all your oceans (before they dry up again) for their energy needs — rather than digging through your dresser drawers to get something that takes forty other components to make it useable, or putting tourniquets on your veins so they can have bright lights all night. Maybe that's why they need them. They aren't too bright themselves.

And the noise they make! The snarling-beeping-banging-clanging-screeching — what an infernal din! I can hear it clear up here — from the sky, from the ground, from the waters, throughout the forests, deserts, swamps and plains. It's a wonder to me they aren't all deaf. When do they have a moment of silence to figure things out?

You are making obvious signs to the anyone willing to observe. They aren't paying attention.

In their arrogance they fail to note THEY are THE exotic species. They have no place of natural origin, but spread out like a scourge of cockroaches all over your globe. After doing away with your natural flora and fauna, they pack themselves with all their needs and wants into small spaces — creating larger, more toxic areas of distress? Those rapidly multiplying areas of distress are changing the winds around your house; changing the quality of the very air your brats are breathing and the water they live by, to say nothing of disturbing the unmolested areas around them.

Meanwhile, most governments, leaders of one group or another, who might be able to do something constructive about the problems you have practically articulated for them, are mired in a swamp of power, lust and greed; too locked into their taboos, cult dictators and myths to do the job. Between theology, technology and no-knowledg-y everyone's goose is on the way to being cooked.

First thing to be done, to correct, turn around, or excise a worldwide problem, is to make your kids understand that it exists. But how many take it to heart and try to do something about it? Again, not enough.

So, I don't think you have to worry much longer, Mom. The majority's refusal to look in the face of what's really going on has triggered their own demise, and that great leveler you gave them, Good Ol' Common Sense, has atrophied for lack



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Nina Pale

of use. Everything they have, invent and use has gone from simplicity to a tangle of complicated, wasteful excess. With nothing to keep it in check, momentum keeps pushing them farther and faster along that same trajectory. I'd say they're pretty much past the point of no return. Most of them are sheep, another bunch asleep, the *Thwarted Visionaries* rendered helpless. When your kids finally do fly the coop, they leave a whole litter behind with even less brain power than the ones before, to create more sprawl, more who don't know, or care, about how to live with their neighbors. Like all before them, greed and sloth will finish them off.

Really, Mom, you've got to start thinking catastrophically.

Excluding a small minority of that fat little continent along your Americas ribcage — the techno bunch, the ones that take the most and make the most mess — can't even take the time away from their bewitching machines to understand the power in your magnificent sunset, or witness your creations with the awe and respect they deserve. They've decided you're there just to be used, to amuse them, to *administer to their whims alone*, every other thing be damned.

Heh-heh ... when will they learn that you and I are related — are in kahoots and have a partnership that alters global climate change? That when they rend a few more holes in your scarf, I'll burn the hell out of them!

Sorry to sound so negative, Mom, but if your progeny don't get on it within the next couple of decades, their situation will be irreversible. It takes them ten years to even *have* a constructive idea and circulate it; the next ten to mull it over and *plan* it, and yet another ten to set it in motion, *make it work*. That's three decades. I doubt they have that much time. If they haven't got it together by then Mom, give it to 'em. Scratch that itch. Knock 'em off. They don't deserve better.

I agree it's sad that you can't discriminate — the good ones will have to go with the bad — that's your way of dealing. But you need to set your rivers free. Bring back the woolly mammoth and the saber tooth tiger — those guys had class. Quit dickering with these pipsqueaks. Show 'em who's boss. I'm with you all the way, so is Sister Moon. She's had enough of them already!

Much love, and good luck!  
Your Sun

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meantime, irreparable harm is not done due to construction associated with snowmaking infrastructure.

"Irreparable injury is not only likely, it is a certainty," claims Mr. Shanker. "Indeed, the nature of the environmental injury asserted by plaintiffs — cutting trees, clearing, trenching, construction of a storage reservoir — in furtherance of snowmaking is precisely the type of environmental harm that is anticipated."

As for the other two requirements needed for an injunction pending an appeal, Mr. Shanker emphasizes that there is a "well-established public interest in preserving nature and avoiding irreparable environmental injury." And in 2008, the Supreme Court noted that "**Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e. irreparable.**"

Given the predicted injuries associated with construction of snowmaking infrastructure on the Peaks, Mr. Shanker affirms in his reply to defendants, "In these types of cases, it is generally accepted that, if such injury is sufficiently likely ... the balance of harms will usually favor the issuance of an injunction to protect the environment."

**The motion for injunction, however, was denied February 18.** According to Jdg. Marguia's order, the denial was due to the plaintiff's complaint reflecting the impact of reclaimed water on human health, instead of a direct request to protect the local environment from pipeline construction, as if the two were unrelated.

"While Plaintiff's might be correct in noting that building an almost 15-mile long pipeline will have a potential impact on the environment in general, Plaintiff's Complaint only concerns whether the NEPA process adequately considered the threat to human health posed by the ingestion of Class A+ reclaimed water."

Procedurally, Mr. Shanker was required to file the motion for injunction pending appeal with the same judge that ruled on the case in December. **When the Ninth Circuit briefing begins in late April, another injunction will be filed with a panel of three judges.**

Mr. Shanker is confident in the appeal and with good reason, as it wouldn't be the first time the Save the Peaks Coalition won on appeal. "In the meantime," Mr. Shanker responds, "Snowbowl can legally begin cutting down thousands of trees, grade the land, and begin constructing the pipeline."

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