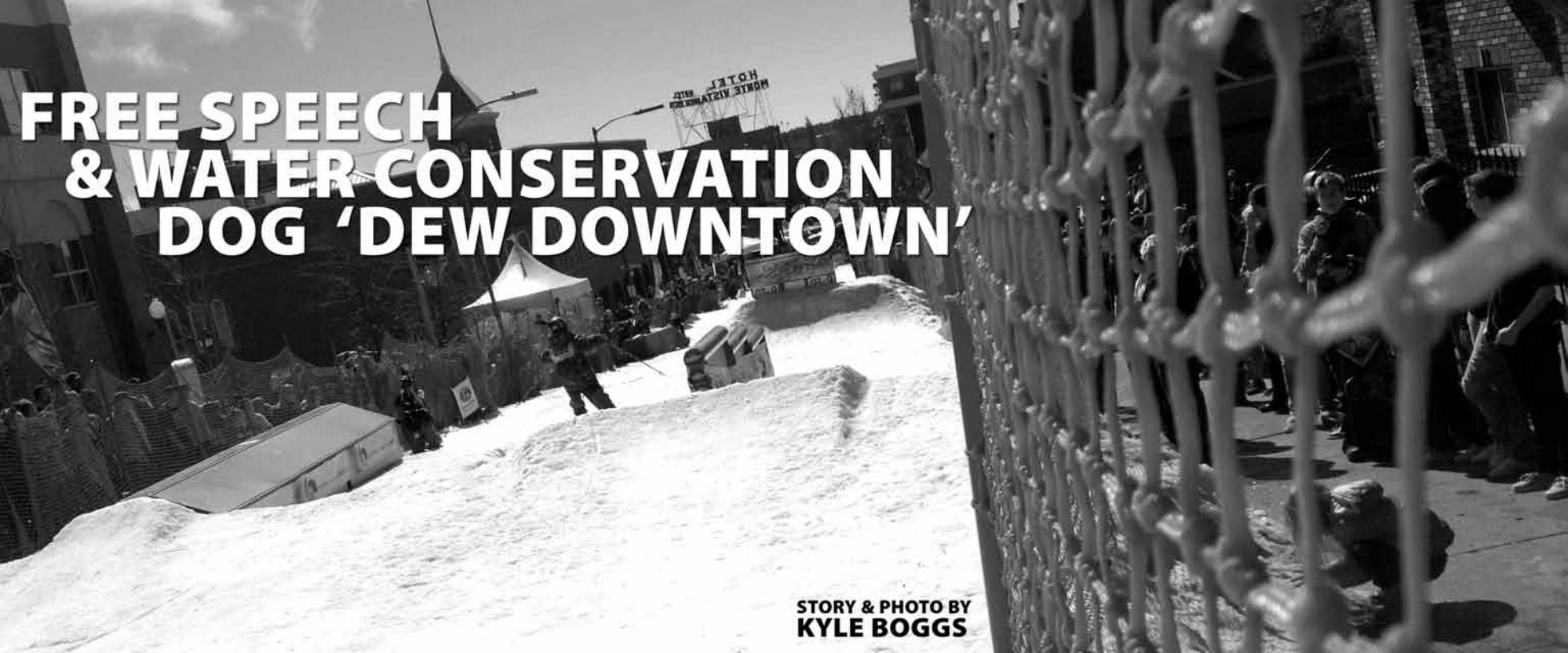


FREE SPEECH & WATER CONSERVATION DOG 'DEW DOWNTOWN'



STORY & PHOTO BY
KYLE BOGGS

On February 8 and 9, the City of Flagstaff hosted **Dew Downtown**, its third annual “adrenaline rich, high octane” urban ski and snowboard festival. Juxtaposed among the thousands of spectators, and beer drinkers — mingled with prominent use of words like “shred,” “stoked” and “tweaked out” — were a group of protestors who echoed much different messages: free speech and responsible water use.

A lot goes into planning an event like this. Beyond the sponsors, permits, and advertising, **the City used at least 300,000 gallons of Flagstaff’s drinking water to make artificial snow** with the Arizona Snowbowl ski resort’s snowmaking guns. The snow was made at the resort, and trucked into the city where it was spread along San Francisco Street for the event.

But this wasn’t all the City did to prepare for the event. It also sent armed plain-clothed police officers to various community member’s houses, as well as the **Táala Hooghan Infoshop**, a community center on Flagstaff’s eastside, as “preventative maintenance” of the event.

Making snow from any source of water has been a contentious issue in Flagstaff for the last decade or more. Since the Arizona Snowbowl ski resort started expanding their operations to make artificial snow from Flagstaff’s reclaimed wastewater on the San Francisco Peaks, protests — which have included road blockades, tree sits, lockdowns, and other nonviolent demonstrations — have resulted in more than 50 arrests.

Officers Kevin Rued and Eric Greenwald stated that their supervisors gathered information from Facebook and Twitter that protesters were “going to chain themselves and cause this huge disruption,” a claim that those targeted denied. The officers were relaying a message to certain individuals that the City was setting up a **“free speech zone”** in front of the courthouse. “The entire front grassy area of the courthouse is roped off specifically for protesters just outside of where the event is taking place,” they said.

James Kennedy, a community member who was arrested last year for participating in a tree sit aimed at disrupting construction of a wastewater pipeline from Thorpe park to Snowbowl was alarmed by the visit, “It’s chilling and terrifying. Armed men showed up at

my house, I didn’t know if I was going to jail [that] morning.”

The irony here is that nobody was planning anything. “We were just planning a simple boycott of the event,” said community member **Dawn Dyer** who held up a sign at the event that read, “Water is Life.”

Diné activist and Flagstaff citizen **Klee Benally**, who was also targeted as part of the City’s “preventative maintenance” prior to the event, confirmed that no demonstrations were planned. “We were planning on not going there because last year it was so intense and violating. The boycott we planned was just a boycott online where we said, ‘Hey we don’t want to go; we don’t want to support this event; and we wanted to let people understand why.’”

The intensity of last year’s protest, which Mr. Benally and others wanted to avoid this year, resulted in charges reluctantly handed down to a Snowbowl supporter for assaulting two Diné minors.

On February 9, 2013, more than 50 people had gathered in downtown Flagstaff for a peaceful **Idle No More** round dance in protest of the Arizona Snowbowl ski area’s expansion and the use of reclaimed wastewater to make artificial snow on the San Francisco Peaks, a mountain held sacred to at least 13 tribes of the Southwest. The protest coincided with that year’s Dew Downtown event, sponsored in part by the Arizona Snowbowl.

According to a press release, the group formed a circle and were closing the protest with the *American Indian Movement Song* when Snowbowl supporter **Lindsay Lucas**, who was intoxicated at the time, “rushed into the circle of protesters swinging her arms and tore through a large banner, pulling it from the people holding it and smashed it on the ground. She then pushed further into the circle and assaulted two young Diné who were singing and drumming. After punching at them, she grabbed at the drums and tried to break them.”

Police initially refused to charge the assaulter. At the time **Leslyn Begay**, Diné mother of the two boys who were 11 and 13 when assaulted stated, “I feel if the roles were reversed it would have been a different outcome. If I attacked a Caucasian child I would have gone straight to jail. This white

female attacked us and knocked their drums out of their hands and may get away with it. It’s racism. The cops refused my request to arrest her for assault. They gave her a disorderly conduct ticket but refused to charge her with assault or jail her for her actions against my kids,” stated Ms. Begay.

On January 22, a Flagstaff judge ruled that Ms. Lucas must pay restitution for assaulting the two Native youth. “I’m pleased to report that the Judge was in our favor. It’s been a very long year of constant continuances. We’ve all suffered emotionally as a family from this ordeal,” said Ms. Begay. “It’s nerve wracking walking into the judicial system not knowing what to expect. As a Diné and person of color you worry it may not go in your favor.”

Another irony is that Messrs. Benally and Kennedy, and others were targeted for “preventative maintenance” for this year’s event despite the fact that it was actually a Snowbowl supporter who had ever acted out violently. To the police officers who visited him at his house, Mr. Kennedy stated, “It looks bad when police come to check in on us when at the last Dew Downtown, the only thing that happened was the pro-Snowbowl lady came and attacked my friends.”

Mr. Benally was similarly outraged at the double standard. “The only person who’s ever been violent at any of these protests, that I suspect would warrant a serious police response, would be Snowbowl supporters,” he said. “I mean, they attacked children, minors 11 and 13 at the time, yet the response is to target those who have been peaceful.”

The “free speech zone” was configured on the courthouse lawn, a dozen or so metal barricades formed a small square outside and away from the event. This is where the City intended any and all protests to take place.

So-called “free speech zones,” or “free speech cages,” are based on the notion that government may regulate the time, place, and manner — but not the content — of expression, but the **American Civil Liberties Union**, among other groups and individuals have widely criticized such designations of free speech as unconstitutional. Many colleges and universities instituted free speech zones during Vietnam-era protests in the 1960s and 1970s, and George W. Bush’s ad-

ministration made prominent use of them throughout his presidency.

Critics have claimed that if speech is regulated by time and space, it cannot be free by definition. Indeed, when 18th Century French philosopher Voltaire wrote, “I do not agree with what you have to say, but I’ll defend to the death your right to say it,” it goes without saying that he was not further stipulating, “as long as you say it when and at the proper location the state deems appropriate.”

“It was, therefore, the institution of a free speech zone and the intimidating visits by police officers that prompted a protest presence at the event. I personally wasn’t planning anything until this outright repression occurred,” Mr. Benally said, referring to the police harassment, and what he considered efforts to limit free speech. “And to me, in and of itself, this was a matter to protest.” Symbolically the group met opposite the corner where the two Native youth were attacked last year.

Law enforcement agents repeatedly stated the special event permit extended to the sidewalks and gave them the right to restrict access to the sidewalk.”

There were multiple police officers, including Arizona Rangers stationed at different points who were blocking access,” said Mr. Benally. “They stated that folks couldn’t go up there unless part of the group,” referring to the event area on San Francisco between Birch and Dale, “And then they said you couldn’t go up if you had a sign. So it wasn’t entirely consistent, but primarily they said if you were a protester you couldn’t go up there,” said Mr. Benally.

Mr. Benally knew from organizing past events, specifically a Human Rights March in 2012, that when the City issued special event permits, such permits did not extend to the sidewalks. “At every step of the permitting process it was very explicit that the permit did not extend to the sidewalk, that the sidewalk was to remain public,” said Mr. Benally. “So on Saturday, when I went up San Francisco Street on the sidewalk, I had that information already.”

When a friend pointed out that **Flagstaff Mayor Jerry Nabours** was in the area, Mr. Benally took this as an opportunity to voice

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