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Snowbowl lawsuit straining Babbitt's rapport with tribes

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PRESCOTT - It had been another typically rough day outside the federal courthouse for Arizona Snowbowl consultant Bruce Babbitt.

As Babbitt, the former Arizona governor, Interior secretary and one-time darling of environmentalists and Native Americans, returned from lunch, he was greeted by a group of protesters opposed to his involvement with the Snowbowl and its efforts to pipe treated wastewater up the mountains and turn it into artificial snow.

"Shame!" the protesters chanted. "How do you sleep at night?" "Hey, hey, Bruce, you've got dirty underpants."

This was not the same Babbitt who years earlier had stood side by side with Native Americans protesting a pumice mine and who had made a concerted effort to leave a legacy of conservation, especially in Arizona, during his last year in the Clinton administration.

Rather than being pilloried by ranching and mining interests for being too environmentally sensitive for his job, this Bruce Babbitt was advising Arizona Snowbowl and the federal government about how to defend themselves in a lawsuit filed in U.S. District Court by state tribes and conservation groups after the U.S. Forest Service approved a plan to let the Snowbowl make snow out of wastewater.

The two-month trial before Judge Paul Rosenblatt concluded this week, when the parties submitted closing briefs. The case has huge implications for both sides. Snowbowl employs about 400 people and pumps an estimated \$20 million a year into Flagstaff's economy. But Snowbowl operators have said they will have to close eventually unless they can make their own snow.

The tribes say the plan to turn treated wastewater into snow would desecrate their sacred peaks and interfere with traditional religious activities.

Rosenblatt has not indicated when he will issue his ruling.

But that day can't come soon enough for Babbitt, who one afternoon jaywalked across Goodwin Street in front of the courthouse to get away from his critics.

Later, he assailed a member of the environmental group Save the Peaks, who had trailed him down a sidewalk while questioning him about working for Snowbowl.

"I want you out of my space. Respect it!" Babbitt said angrily, jabbing his finger at the man. He left the trial for its final two weeks, in part because of a national tour to promote his book *Cities in the Wilderness*, in which Babbitt makes the case for a national vision of land use to balance human-development needs with preservation of the wilderness.

'Green for money'

Native American protesters view Babbitt's involvement with the Snowbowl as an act of disloyalty by the man who stood with them in the spring of 2000 near the rim of White Vulcan Mine in the foothills of the San Francisco Peaks and later kept his promise to shut down the "sacrilege that had been perpetrated on this landscape."

"We feel betrayed. That goes without saying," said Klee Benally of Flagstaff, son of a Navajo medicine man and the leader of the Save the Peaks group, members of which have followed Babbitt to several book-promotion appearances and disrupted one in Tempe in October. "You wonder how someone could be so green for the forest and then turn around and be so green for money."

Babbitt, reached at home in Washington, D.C., declined to discuss the trial, those protesting him or his legacy.

"Maybe I'm old-fashioned, but I won't talk about any of these kinds of things while we are still in litigation," he said.

During a 2001 interview with PBS shortly before he left office, Babbitt acknowledged that he had been drained financially defending against an inquiry into purported influence peddling in the controversial rejection of a proposed Indian gaming casino in Wisconsin. Babbitt was exonerated.

"I'm in a much worse financial position than I was eight years ago," Babbitt told PBS. "I'm going to have to go out at age 62 and kind of readdress some of that."

Shortly thereafter, Babbitt raised eyebrows among environmentalists when he was hired by Ahmanson Ranch to help put together a plan to build more than 3,000 homes in rural Ventura County northwest of Los Angeles, one of the last expanses of hillsides in Southern California not covered by sprawl. The ranchland was later sold to the state as a wildlife refuge.

Babbitt then went to work for the Hearst Corp. to help broker a deal for an 82,000-acre ranch it owned on the central California coast south of Big Sur. In February, escrow with California was closed on the 13 miles of coastline.

In 2002, he was hired as chairman and chief executive of a subsidiary of Cadiz Inc., a California-based water and agricultural company, to help develop agriculture in Egypt and other countries.

Babbitt's approach

Don Moon of Prescott, a longtime friend and business partner, said he is not surprised by the former governor's role in the Snowbowl controversy.

"Like with the pumice mine, he can be as green as green gets or he can be a very non-sexy centrist," Moon said. "He doesn't demonize and exclude folks, and with that attitude he runs into folks on both extremes. He's been able to get phenomenal things done with his approach."

As proof of what he called Babbitt's effectiveness, Moon pointed to agreements hammered out as Interior secretary to restore Florida's Everglades, reintroduce wolves to Yellowstone National Park and restore salmon to the rivers of the Pacific Northwest.

Fred DuVal, a Phoenix political consultant and former gubernatorial aide to Babbitt, said Babbitt would not want to harm the San Francisco Peaks, where the Snowbowl is located.

"He grew up on those mountains and has a passion for them that has gotten stronger as he has gotten older. It taps into something primal with him," DuVal said.

But Navajo President Joe Shirley Jr. said he never considered Babbitt a friend to Native Americans, even though Babbitt closed the pumice mine and vetoed a bill in the 1980s that would have created an all-Indian county in northeastern Arizona.

"I'd like to believe that he left the courtroom in Prescott because he didn't want to offend U.S. tribes anymore," Shirley said. "If he doesn't really, really need money,

you wonder where he has been coming from on this one."

Tribes face tall order

As the final documents are filed in the case, Babbitt's side appears to be in an enviable position.

The tribes face a tall order in getting the Forest Service decision overturned, even with the 1993 Religious Freedom Restoration Act on the books.

But they do have a sympathetic ear in Rosenblatt, a longtime federal judge and Arizona native, who acknowledged in court that he has deep friendships with Native American jurists around the state.

Even if Rosenblatt decides that snowmaking using treated wastewater presents a "substantial burden" on Native American cultures, to overturn the Forest Service decision he would have to buck an established federal mandate of ensuring multiple uses of public lands. The federal government has permitted skiing in the peaks for 68 years, and Arizona Snowbowl is situated on only 1 percent of the total Kachina Peaks Wilderness Area.

Rosenblatt also would have to conclude that there is a less-harmful alternative to making snow with wastewater, one that doesn't threaten the practice of Native religions.

That likely would be the use of groundwater in snowmaking, an idea that was sharply criticized by Flagstaff and other water users in the water-deficient region when it was proposed years ago.

Religious practices

During the trial, religious leaders from the 13 tribes fighting Snowbowl fought to establish the significance of the peaks in their religious practices.

But there were repeated problems with language and expressing Native religious and cultural concepts in what one lawyer referred to as "Western terms."

Sacred peaks at stake

The San Francisco Peaks are one of the four sacred peaks to the Navajos - the others are in southwestern Colorado and northwestern New Mexico - within the boundaries of which traditional leaders say their people evolved.

The Hopis believe that the Creator communicates to them through spiritual intermediaries called kachinas, who live in the peaks from early August until midwinter.

The importance of the snowmaking issue prompted one Hopi spiritual leader to even testify where some of the tribe's most sacred sites are on the peaks, a heretofore taboo subject.

Shirley testified that putting treated wastewater on the Snowbowl ski area would be, for traditional Navajos, akin to "a child watching his mother get raped."

Behind the scenes

"I think our witnesses established the burden on their religious practices, and the government repeatedly asserted the multiple uses of the land," said Howard Shanker, a Valley attorney who is representing tribes and environmental groups in the case.

For his part, Babbitt just wants to remain behind the scenes.

"Some day, we'll have to talk about all of these issues raised about me," he said.

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