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THE NAVAJO NATION

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Navajo Nation today files appeal in San Francisco Peaks court decision

WINDOW ROCK, Ariz. – The Navajo Nation today appealed a U.S. District Court's decision to allow the Arizona Snowbowl to use reclaimed effluent to make artificial snow on the sacred San Francisco Peaks.

"We not only disagree with the lower court opinion on moral and ethical grounds, there are a number of legal errors that we believe provide us with a solid basis for appeal," attorney Howard Shanker said.

Mr. Shanker represents the Navajo Nation, the White Mountain Apache Tribe, the Yavapai-Apache Tribe, the Havasupai Tribe, the Sierra Club, the Center for Biological Diversity, the Flagstaff Activist Network and several members of the Havasupai Tribe.

The Navajo Nation holds that the Forest Service's decision to allow expansion of the ski area and the use of wastewater to make artificial snow violates the Religious Freedom Restoration Act and that the Forest Service did not comply with the National Environmental Policy Act. The federal law prohibits the government from burdening a person's exercise of religion.

On Jan. 11, U.S. District Judge Paul Rosenblatt ruled that the use of reclaimed wastewater on the sacred *Dook'o'osliid* – the San Francisco Peaks – does not constitute a substantial burden on the ability of the tribes to exercise their respective religions, as required by the law. He said the tribes failed to present "objective evidence" that their exercise of religion will be impacted by the Snowbowl upgrades. He also said they "have identified no shrines or religious ceremonies that would be impacted by the Snowbowl decision."

"The district court ruling makes no sense," Navajo Nation President Joe Shirley, Jr., said. "The entire mountain is a shrine, not just parts of it. The government's own documents show the sacredness of the San Francisco Peaks to our people. We – all of the tribes – have emphasized this many times but the court does not hear us."

In an 11-day trial, the court heard testimony from various tribal religious leaders, elders and political leaders who agreed on the importance of the San Francisco Peaks to their tribes.

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– Navajo President Joe Shirley, Jr.

Steven Begay, a Navajo medicineman, testified about the spiritual significance of *Dook'osliid* to Navajos and how permitting the project to proceed will impact them.

"The San Francisco Peaks play a role in all of our ceremonies," he said. "I can name all of the ceremonies that the Navajo people have today and all of them are connected to the San Francisco Peaks."

Mr. Begay said that the proposed project would "significantly impact Navajo life" by contaminating an environment considered pristine by Navajos.

Ramon Riley, Cultural Resources Officer for the White Mountain Apache Tribe, said if allowed to proceed the project would have a negative impact on the Apache way of life.

"It would probably destroy our people, our way of life," he said. "Our prayers are not going to be strong."

Vince Randall, an Apache educator, testified that the word religion inadequately describes Native peoples' spiritual connection to the Peaks.

"If you want to call it a religion, that's your language," he said. "It's a way of life."

He said the proposed project would have a devastating impact on Native people.

The court decision allows Snowbowl to immediately begin clearing, grading and construction activities on the Peaks. Mr. Shanker said the Navajo plaintiffs are prepared to file motions to seek an injunction pending the outcome of the appeal. However, the parties are currently engaged in negotiations designed to expedite the appeals process in exchange for an agreed-upon stay of activities that could impact the sacred San Francisco Peaks.

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ADDITIONAL SOURCE:

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