

No fake snow at Snowbowl

The Associated Press

SAN FRANCISCO — Operators of the Arizona Snowbowl can't use treated wastewater to make snow, a federal appeals court ruled Monday in a decision that found the procedure would have violated the religious freedom of Navajos and a dozen other American Indian tribes.

The 777-acre resort north of Flagstaff wanted to add a fifth chair lift, spray man-made snow and clear about 100 acres of forest to extend the ski season on the western flank of the San Francisco Peaks that have spiritual and religious significance to 13 Southwest tribes.

The tribes claimed the plans would have violated their religious freedom and that the government did not adequately address the impact of wastewater on the environment.

In a 64-page decision, Judge William A. Fletcher of the 9th U.S. Circuit Court of Appeals said the snowmaking scheme violated the Religious Freedom Restoration Act of 1993 and was akin to using wastewater in Christian baptisms.

"We are unwilling to hold that authorizing the use of ar-

tificial snow at an already functioning commercial ski area in order to expand and improve its facilities, as well as to extend its ski season in dry years, is a governmental interest 'of the highest order,'" Fletcher wrote for the three-judge panel, which heard arguments in September.

The ruling overturned an opinion by U.S. District Judge Paul Rosenblatt in Phoenix who said last year the tribes "failed to present any objective evidence that their exercise of religion will be impacted by the Snowbowl upgrades."

The panel also ruled the U.S. Forest Service did not adequately address the possible health risks of drinking water tainted by runoff from snow made with treated wastewater.

Howard Shanker, who represents several tribes, including the Navajo, said Monday's decision could have important repercussions.

"Hopefully, this stands because it creates a tremendous precedent for tribes to protect their sacred sites," he said.

Snowbowl could ask for a rehearing by the full appeals court or could petition the U.S. Supreme Court. An Arizona lawyer did not immediately return a call seeking

comment.

Environmentalists also opposed the planned expansion because resort owners intended to build a pipeline to pump the purified wastewater up the mountain from Flagstaff.

For the third time in four years, the Arizona Snowbowl, which brings an estimated \$10 million annually to Flagstaff's economy, opened late this winter because of a lack of snow.

Two years ago, when 460 inches of snow fell on the mountain, the 68-year-old resort stayed open for 139 days and hosted more than 191,000 skiers. But last year, there was so little snow that the lifts ran only for 15 days.

"We are struck by the obvious fact that the Peaks are located in a desert," Fletcher wrote in the ruling. "It is (and always has been) predictable that some winters will be dry."

Snowbowl principal owner Eric Borowsky said his group of investors has already spent \$4 million on the environmental impact statement and legal fees, as much as they paid for the resort in 1992. He has said he will sell Snowbowl if the appeals court ruled against him.

