

## Appeals court rules to protect sacred peaks

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Posted: March 16, 2007

by: **Staff Reports** / Indian Country Today

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*Photo courtesy Charles Seiverd/background photo courtesy Cy Wagoner -- Members of the Save the Peaks Coalition and Youth of the Peaks celebrated after the 9th Circuit Court of Appeals issued a unanimous ruling March 12 that will prevent the Arizona Snowbowl Ski Resort from expanding its snowmaking capabilities by using recycled sewage effluent on the San Francisco Peaks, a mountain held sacred by many area tribes. The decision is being seen as a victory for supporters of the Religious Freedom Restoration Act.*

FLAGSTAFF, Ariz. - On March 12, the 9th Circuit Court of Appeals issued a ruling to protect the San Francisco Peaks, a mountain held holy by more than 13 Native nations. The slopes of the Peaks, located in northern Arizona, have been at the center of a lengthy battle that has pitted economic interests on public lands against environmental integrity, public health and cultural survival.

Arizona Snowbowl, a local ski resort, planned to expand and use treated waste effluent to make snow.

An appeals court panel issued the unanimous decision, which was written by Judge William Fletcher: "We reverse the decision of the district court in part. We hold that the Forest Service's approval of the Snowbowl's use of recycled sewage effluent to make artificial snow on the San Francisco Peaks violates [the Religious Freedom Restoration Act], and that in one respect the Final Environmental Impact Statement prepared in this case does not comply with [the National Environmental Policy Act]."

"This is a very important decision that sets great precedent for people who are concerned with Native American rights and religious freedom," said Howard Shanker, of the Shanker Law Firm PLC, representing the Navajo Nation, the White Mountain Apache Tribe, the Yavapai-Apache Tribe, the Havasupai Tribe, Rex Tilousi, Dianna Uqualla, the Sierra Club, the Center

for Biological Diversity and the Flagstaff Activist Network.

"Because of this decision in the 9th circuit, other tribes throughout the nation could have the ability to rely on this case to help protect sites that are sacred to them and culturally and religiously important," Shanker said.

"The other thing that this court recognized in this decision which is important for all of us in Arizona is the fact that A-plus treated water is not potable water. You can't drink it."

The 70-page ruling also stated, "If Appellants do not have a valid [Religious Freedom Restoration Act] claim in this case, we are unable to see how any Native American plaintiff can ever have a successful RFRA claim based on beliefs and practices tied to land that they hold sacred."

Hopi Tribe Chairman Ben Nuvamsa said, "The Hopi Tribe is immensely gratified by the 9th circuit decision, which explicitly recognizes the Hopi Tribe's deep spiritual, traditional and cultural connection to the San Francisco Peaks, which we call Nuvatukaovi.

"The making of snow with sewage on the home of the Kachinas was a dire threat to the centuries-old link between Kachina, Nuvatukaovi and the Hopi. The 9th Circuit decision recognizes the importance of the Hopi's bond to the mountain and protects that bond. In so doing, the decision of the court ensures Hopi people's ability to continue their way of life."

Jamie Fullmer, chairman of the Yavapai-Apache Tribe, said, "We are gratified to learn that the appeal has been won. The San Francisco Peaks are a sacred mountain to us as we testified during the appeals hearing. We are honored to know that our Native voice is still heard.

"This decision by the federal appeals court tells us that even in the current environment of development at all costs, the United States' appeals process stands for justice: and the American justice system is capable of doing what is right when the facts are fully known. This is not just a victory for our elders and tribal traditions, but for all people of faith across the country. This confirms to us that when a few stand up for what is right everyone benefits," Fulmer said.

Navajo Nation President Joe Shirley Jr. said, "What I think this ultimately means is that it goes towards that, preserving our way of life, preserving my prayer, my sacred song, my sacred sites, my mother - the San Francisco Peaks. Years have been added to my life. I can't express how happy I am. As a people, we're elated."

Fletcher stated, "We are unwilling to hold that authorizing the use of artificial 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.'"

Rudy Preston, of the Flagstaff Activist Network, stated, "Snowbowl tried to push for too much. We knew that the lower court ruling was wrong and we are grateful that the 9th Circuit recognized that too. We have no intentions of closing down the ski area; if Snowbowl can't manage their resort, then maybe they're in the wrong business."

Klee Benally, a volunteer with the Save the Peaks Coalition, said, "This has been a struggle that has created painful division in our community. The actions of the Forest Service and Snowbowl have created many wounds, but today we can say, 'Let's let the wounds heal.' We recognize this ruling upholds human rights that we have been denied for too long. We urge Snowbowl and the Forest Service to respect the ruling that has been issued by the 9th Circuit Court and not appeal."

Carly Long, of the Flagstaff Activist Network, said, "Today is a triumph in the face of the ever-present threats to cultural and environmental justice and heritage. The peaks represent and hold different meaning for all people, but it is and has been evident how much support these sacred, awe-inspiring peaks have."

The Appeals Court decision states that the Supreme Court has repeatedly held that the Constitution "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any. ... declining to authorize the use of treated sewage effluent ... is a permitted accommodation to avoid 'callous indifference.'"

The decision also poignantly illustrates the unmet environmental need as mandated by NEPA. The Forest Service "does not address as an environmental impact the risk to human health from the possible ingestion of artificial snow made from treated sewage effluent."

Many people who spoke at a press conference in which the ruling was announced acknowledged that there are many threatened sacred sites throughout this country.

Coconino High School student Alberta Nells, of Youth of the Peaks, said, "This mountain is our mother, she is our grandparent and we're the children, the grandchildren; we hear it in our songs, in our prayers and now we can leave from this area knowing that we have made a difference in this world today. Now we can continue to walk life in beauty."

