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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

The Save the Peaks Coalition; Kristin
Huisinga; Clayson Benally; Sylvan Grey;
Don Fanning; Jeneda Benally; Frederica
Hall; Berta Benally; Rachel Tso; Lisa Tso,

Plaintiffs,

v.

U.S. Forest Service; Nora Rasure (in her
official capacity as Forest Supervisor for the
Coconino National Forest),

Defendants.

No.

**PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER, OR, IN THE ALTERNATIVE,
PRELIMINARY INJUNCTION**

Pursuant to Rule 65, Fed. R. Civ. P., plaintiffs hereby move this Court for a
Temporary Restraining Order, or, in the alternative, a Preliminary Injunction. A copy of the
summons, the Complaint and this Motion were served via hand delivery to the Office of the
U.S. Attorney for the District of Arizona on September 21, 2009. Copies of the same were
sent via certified mail to: (1) the Attorney General of the United States; and (2) to the
employees of the Forest Service named in their official capacity, pursuant to Rule 4(i), Fed.
R. Civ. P.

1 On approximately June 26, 2009 the Ninth Circuit Court of Appeals issued a mandate
2 that allows, in part, clearing, grading, and construction activities on Mount Humphreys, part
3 of the San Francisco Peaks, to begin. These activities will have an immediate impact on the
4 *status quo*, will result in irreparable injury to plaintiffs and the environment, and will likely
5 destroy the subject matter of this litigation. *See, Univ. of Texas v. Camenisch*, 451 U.S. 390,
6 395 (1981) (injunction should issue if necessary to preserve the relative positions of the
7 parties until the merits can be decided). Plaintiffs are requesting that an injunction be put in
8 place to preserve the relative positions of the parties until the merits of this case can be
9 decided.
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13 **A. Brief Background and Facts**

14 The Arizona Snowbowl ski area (öSnowbowlö) is owned and operated by Arizona
15 Snowbowl Resort Limited Partnership. Snowbowl is located entirely on the Coconino
16 National Forest on the western flank of the San Francisco Peaks, i.e., on federal land. The
17 ski area is operated under a Special Use Permit that is issued by the U.S. Forest Service
18 (öFSö). To help provide Arizona Snowbowl Resort Limited Partnership with a
19 öconsistent/reliable operating season,ö the FS undertook to expand the ski area and to
20 introduce the use of reclaimed sewer water for snowmaking.
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23 Plaintiffs are seeking declaratory and injunctive relief for violations of the National
24 Environmental Policy Act, 42 U.S.C. §§ 4321 - 4370d (öNEPAö), and the Administrative
25 Procedure Act, 5 U.S.C. §§ 701-706 (öAPAö). Plaintiffsø claims are based, in large part, on
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1 the FS failure to adequately consider the fact that people will ingest snow made from non-
2 potable, reclaimed sewer water at the ski area and in the proposed snow play area.

3
4 The possibility that children (and others) might ingest snow is acknowledged in only
5 two places in the project record. First, the FS created "Strategic Talking Points" in October,
6 2002. The "objective" of the talking points was to "anticipate perceptions and accusations
7 critical of the Snowbowl Proposal, and to create messages to explain the USFS point of
8 view. . . ." Strategic Talking Point 3 (identified incorrectly as "2" in the document) provides:
9 "Will my kids get sick if they eat artificial snow made from treated wastewater?" scripted
10 Response "Although the Snowbowl's proposal states that the water to be used in
11 snowmaking would be treated to ADEQ's highest treatment standard, this question is really
12 one that will be thoroughly answered in the NEPA analysis process."

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14
15 The FS, however, fails to provide the promised analysis in the NEPA process or
16 anywhere else. The only other mention of the fact that humans will intentionally or
17 inadvertently ingest snow made from reclaimed sewer water appears only in the Response to
18 Comments section of the Final Environmental Impact Statement ("FEIS"). Thus, according
19 to the FS:

20
21 [t]here will be signs posted at Snowbowl informing visitors of the use of
22 reclaimed water as a snowmaking water source. . . it is the responsibility of the
23 visitor or the minor's guardian to avoid consuming snow made with reclaimed
24 water. . . Because ADEQ approved the use of reclaimed water, it is assumed
different types of incidental contact that could potentially occur from use of
class A reclaimed water for snowmaking were fully considered.

25 FEIS, Vol. 2 at 264 (Response to Comments).

1 The above statement does not meet the obligations of a federal agency to: (1) fully
2 consider the impacts of [its proposal] on the physical, biological, social, and economic
3 impacts of the human environment (40 C.F.R. § 1508.14); (2) ensure the scientific
4 integrity of its environmental analysis (40 C.F.R. § 1502.24); and/or . . . insure that
5 environmental information is available to public officials and citizens before decisions are
6 made and before actions are taken. . . . (40 C.F.R. § 1500.1(b); *see also, e.g.*, 40 C.F.R. §
7 1500.2(d) (obligation to facilitate public involvement in decisions).
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10 As discussed below, the Ninth Circuit previously held that:

11 [t]he Forest Service has not provided a reasonably thorough discussion of
12 any risks posed by human ingestion of artificial snow made from treated
13 sewage effluent or articulated why such a discussion is unnecessary, has not
14 provided a candid acknowledgment of any such risks, and has not provided
15 an analysis that will foster both informed decision-making and informed
16 public participation. We therefore hold that the FEIS does not satisfy NEPA
17 with respect to the possible risks posed by human ingestion of the artificial
18 snow.

19 *Navajo Nation et al. v. U.S. Forest Service*, 479 F.3d 1024, 1053-1054 (9th Cir. 2007),
20 (vacated in part on other grounds) *Navajo Nation et al. v. U.S. Forest Service*, 535 F.3d 1058
21 (9th Cir. 2008) (*en banc*).

22 1. Project/NEPA Background

23 A Draft Environmental Impact Statement (DEIS) for the Arizona Snowbowl
24 Facilities Improvements proposal was released by the FS in February 2004. In response to
25 the DEIS, a total of 9,887 comments were submitted to the FS. In February 2005, the FS
26 issued the Final Environmental Impact Statement for Arizona Snowbowl Facilities

1 Improvements (FEIS) and the Record of Decision of Arizona Snowbowl Facilities
2 Improvements Final EIS and Forest Plan Amendment #21 (ROD). The ROD documents
3 the Selected Alternative and rationale for the decision. The ROD was signed by defendant
4 Nora Rasure on approximately February 18, 2005.

6 The DEIS and FEIS identified three alternatives that were addressed in detail: (1)
7 Alternative 1 the No Action Alternative; (2) Alternative 2 The Proposed Action; and
8 Alternative 3 No Snowmaking or Snowplay. The ROD identified Alternative 2, the
9 Proposed Action, as the Selected Alternative. Alternative Two requires, in part: (a)
10 approximately 205 acres of snowmaking coverage throughout the area, utilizing reclaimed
11 wastewater; (b) a 10 million-gallon snowmaking reclaimed wastewater reservoir near the top
12 terminal of the existing Sunset Chairlift and catchment pond below the Hart Prairie Lodge;
13 (c) construction of a reclaimed water pipeline between Flagstaff and Snowbowl with booster
14 stations and pumphouses; (d) construction of a 3,000 to 4,000 square foot snowmaking
15 control building; (e) construction of a new 10,000 square foot guest services facility; (f) an
16 increase in skiable acreage from 139 acres to approximately 205 acres an approximate 47%
17 increase; and (g) approximately 47 acres of thinning and 87 acres of grading/stumping and
18 smoothing.
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22 Notification of the decision was published by the FS on March 11, 2005. Pursuant to
23 36 C.F.R. Part 215, publication of the decision triggered a 45 day administrative appeal
24 period, ending on approximately April 25, 2005. On approximately April 25, 2005 plaintiffs
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1 (and numerous other parties) filed timely administrative appeals with the Appeal Deciding
2 Officer for the project.

3
4 On approximately June 8, 2005, the Appeal Deciding Officer issued the final
5 administrative determination for the agency. The final decision approved the selection and
6 implementation of Alternative Two, including the 47% expansion of the ski area and the
7 introduction of reclaimed sewer water for Snowmaking.

8 9 **2. Prior Litigation**

10 Shortly after the June 8, 2005 approval for the expansion of the Snowbowl ski area, a
11 number of Indian Tribes and environmental organization sued the FS to stop the project. In
12 January, 2006, the U.S. District Court for the District of Arizona ruled against the Tribes and
13 environmental organizations on all counts. *Navajo Nation et al., v. U.S. Forest Service et al.*
14 408 F.Supp.2d 866 (D. Ariz. 2006). The district court did not specifically address the issue
15 of possible human ingestion of snow made from reclaimed sewer water.

16
17 On appeal, however, the Ninth Circuit found, in part, that the FS failed to adequately
18 consider the possibility of human ingestion for purposes of NEPA. *Navajo Nation*, 479 F.3d
19 at 1048-1054. According to the Ninth Circuit:

20
21 [t]he Forest Service has not provided a "reasonably thorough discussion" of
22 any risks posed by human ingestion of artificial snow made from treated
23 sewage effluent or articulated why such a discussion is unnecessary, has not
24 provided a "candid acknowledgment" of any such risks, and has not provided
25 an analysis that will "foster both informed decision-making and informed
26 public participation." We therefore hold that the FEIS does not satisfy NEPA
with respect to the possible risks posed by human ingestion of the artificial
snow.

1 *Id.* at 1053-1054.

2 The Ninth Circuit granted a petition for rehearing *en banc* and vacated, in part, the
3 earlier panel decision. On the issue of human ingestion of snow made from reclaimed sewer
4 water, the *en banc* panel found that the plaintiffs in the case never properly raised the issue in
5 the lower court, and declined to address the merits. *Navajo Nation et al. v. U.S. Forest*
6 *Service*, 535 F.3d 1058, 1079-1080 (9th Cir. 2008) (*en banc*); *see also, e.g., id.* at 1108
7 (Fletcher, Pregerson and Fisher dissenting) (öThe majority concludes that Appellants failed
8 properly to plead a violation of NEPA in their complaint. The violation in question is an
9 alleged failure by the Forest Service to analyze the risks posed by human ingestion of
10 artificial snow made with treated sewage effluent. Because of the asserted pleading mistake,
11 the majority declines to reach the merits of the claimed violation.ö); *id.* (dissent) at 1111
12 (öThe FEIS does not contain a reasonably thorough discussion of the risks posed by possible
13 human ingestion of artificial snow made from treated sewage effluent, and it does not
14 articulate why such discussion is unnecessary.ö).

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18 On June 8, 2009, the U.S. Supreme Court denied a petition for certiorari that was filed
19 by petitioner Indian Tribes. The petition sought review of the FS approval of reclaimed
20 sewer water to make snow, on religious grounds. Any activity in furtherance of the project
21 was stayed pending the Supreme Court's determination on the petition for certiorari. The
22 Supreme Court's denial of certiorari and the subsequent issuance of the Mandate from the
23 Ninth Circuit on June 26, 2009, mean in part, that clearing, grading, and construction
24 activities on Mount Humphreys, part of the San Francisco Peaks, can begin immediately.
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1 These activities will have an immediate impact on the *status quo*, will result in irreparable
2 injury to plaintiffs and the environment, and will likely destroy the subject matter of this
3 litigation.
4

5 **B. Standard for Granting Preliminary Injunctive Relief**

6 In the Ninth Circuit, a court may grant a temporary restraining order (TRO) or
7 preliminary injunction if the plaintiff demonstrates either a combination of probable success
8 on the merits and the possibility of irreparable injury or that serious questions are raised and
9 the balance of hardships tips sharply in his favor. *Earth Island Institute v. U.S. Forest*
10 *Service*, 351 F.3d 1291, 1298 (9th Cir. 2003) (emphasis in original); *Save Our Sonoran v.*
11 *Flowers*, 408 F.3d 1113, 1120 (9th Cir. 2005). These tests are not separate but rather
12 represent the outer reaches of a single continuum. *Lopez v. Heckler*, 713 F.2d 1432, 1435
13 (9th Cir. 1983).
14

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16 In *Winter v. Natural Resources Defense Council*, 129 S.Ct. 365 (2008), however, a
17 majority of the Supreme Court found, in part, that the Ninth Circuit's possibility of
18 irreparable harm standard is too lenient. According to the Court, in order to obtain injunctive
19 relief the plaintiff must demonstrate that irreparable injury is likely in the absence of an
20 injunction. *Id.* at 375. In the instant case, plaintiffs can demonstrate that irreparable injury
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1 is likely in the absence of an injunction.¹ Indeed, in the instant case, irreparable injury is
2 certain without an injunction.
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4 **1. Plaintiffs Can Demonstrate a Strong Likelihood of Success on the Merits**
5 **and that Irreparable Injury is Likely in the Absence of an Injunction**

6 As indicated above, the applicable test in the Ninth Circuit has historically been a
7 continuum. Thus, for example, if plaintiffs can demonstrate a relatively high degree of
8 possible irreparable harm, the requisite showing of probability of success decreases, and
9 visa-versa. *Idaho Sporting Congress, Inc., v. Alexander*, 222 F.3d 562, 565 (9th Cir. 2000);
10 *see also, e.g., Earth Island Institute*, 351 F.3d at 1298 (preliminary injunction only requires
11 plaintiffs to show *probable* success on the merits and the *possibility* of irreparable harm)
12 (emphasis in original).
13

14 Whether or not the “continuum” test historically applied to determine if an injunction
15 should issue has any efficacy after *Winter v. Natural Resources Defense Council*, need not be
16 decided here. Plaintiffs in the instant case can demonstrate a strong likelihood of success on
17 the merits and that irreparable injury is likely in the absence of an injunction.
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25 ¹ It is not clear what impact *Winter v. Natural Resources Defense Council* will have on
26 the “continuum” test historically applied by the Ninth Circuit. As indicated above, however,
in the instant case, plaintiffs can meet the apparently heightened *Winter* standard.

1 a. **Plaintiffs Can Demonstrate a Strong Likelihood of Prevailing on the**
2 **Merits**

3 • The FS Failed to Take the "Hard Look" Required by NEPA

4 NEPA requires that a federal agency contemplating action "consider every significant
5 aspect of the environmental impact" of the proposed action, and "inform the public that it has
6 indeed considered environmental concerns in its decision-making process." *Baltimore Gas &*
7 *Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 97 (1983); *see also* 42 U.S.C. § 4331.
8 NEPA's purpose is to ensure that federal agencies take a "hard look" at environmental
9 consequences before committing to action. *Robertson v. Methow Valley Citizens Council*,
10 490 U.S. 332, 350 (1989). In order to take a hard look, the Forest Service must "[f]ully
11 consider the impacts of [its proposal] on the physical, biological, social, and economic
12 impacts of the human environment." 40 C.F.R. § 1508.14.

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15 As discussed *supra*, and as previously held by the Ninth Circuit, the Forest Service
16 failed to adequately consider impacts on people who might ingest snow made from
17 reclaimed sewer water while skiing or playing in the snow-play area. *See, Navajo Nation*,
18 479 F.3d at 1048-1054 ("... the FEIS does not satisfy NEPA with respect to the possible
19 risks posed by human ingestion of the artificial snow."). The FS failed to take the requisite
20 "hard look" at the environmental consequences of its actions. *E.g., Oregon Natural*
21 *Resources Council Fund v. Goodman*, 505 F.3d 884, 889 (9th Cir. 2007) ("if an agency fails
22 to consider an important aspect of a problem . . . its action is arbitrary and capricious").
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1 • The FS Failed to Ensure the "Scientific Integrity" of Its Environmental Analysis

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3 The FS is obligated to ensure the "scientific integrity" of its environmental analysis.
4 40 C.F.R. § 1502.24. Further, an FEIS must "make explicit reference . . . to the scientific
5 and other sources relied upon for conclusions in the statement." *Id.* Indeed, an
6 environmental analysis under NEPA must include reference to important scientific materials
7 that both support and call into question its conclusions." *Blue Mountains Biodiversity*
8 *Project v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998); 40 C.F.R. § 1500.1(b)
9 ("Accurate scientific analysis, expert agency comments, and public scrutiny are essential in
10 implementing NEPA.").
11

12 In the instant matter, the FS simply asserts (in its response to comments) that,
13 "[b]ecause ADEQ approved the use of reclaimed water, it is assumed different types of
14 incidental contact that could potentially occur from use of class A reclaimed water for
15 snowmaking were fully considered." FEIS, Vol. 2 at 264 (Response to Comments). The
16 FEIS neither ensures the "scientific integrity" of its environmental analysis as required by 40
17 C.F.R. § 1502.24, nor provides the requisite "accurate scientific analysis, expert agency
18 comments, and public scrutiny" required by 40 C.F.R. § 1500.1(b).
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21 The FS failure to ensure the "scientific integrity" of its environmental analysis and to
22 provide the requisite "accurate scientific analysis, expert agency comments, and public
23 scrutiny" was arbitrary, capricious, an abuse of discretion, and/or not otherwise in
24 accordance with law.
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- 1 • The FS Failed to Make Environmental Information Available to the Public and
2 Public officials.

3 NEPA procedures must insure that environmental information is available to public
4 officials and citizens before decisions are made and before actions are taken. The
5 information must be of high quality. . . 40 C.F.R. § 1500.1(b); *see also, e.g.*, 40 C.F.R. §
6 1500.2(d) (obligation to facilitate public involvement in decisions).
7

8 In the instant case, the FS failure to provide information to the public on the potential
9 impacts to children (and others) who might eat snow made from non-potable, reclaimed,
10 sewer water results in a procedural injury that is actionable under NEPA and the APA. *See,*
11 *Citizens for Better Forestry v. U.S. Dep't of Ag.*, 341 F.3d 961, 971 (9th Cir. 2003) (ö. . .
12 environmental plaintiff was surely harmed when agency action precluded the kind of public
13 comment and participation NEPA requires in the EIS process. . . ö).

14 The FS failure to provide the public with information regarding the potential impacts
15 on people who might ingest snow made from reclaimed sewer water was arbitrary,
16 capricious, an abuse of discretion, and/or not otherwise in accordance with law.
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19 In short, the plaintiffs can show a relatively high probability of success on the merits.
20

21 **b. Plaintiffs Can Demonstrate That Irreparable Injury is Likely in the**
22 **Absence of an Injunction**

23 The Forest Service is proposing, *inter alia*, construction of: (a) a 10 million-gallon
24 snowmaking reclaimed sewer water reservoir near the top terminal of the existing Sunset
25 Chairlift; (b) a catchment pond below the Hart Prairie Lodge; (c) a reclaimed water pipeline
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1 between Flagstaff and Snowbowl with booster stations and pumphouses; and (d) a 3,000 to
2 4,000 square foot snowmaking control building on the mountain. This is to accommodate
3 approximately 205 acres of snowmaking coverage throughout the area, utilizing reclaimed
4 sewer water. The project also anticipates an increase in skiable acreage from 139 acres to
5 approximately 205 acres ó including approximately 47 acres of thinning and 87 acres of
6 grading/stumping and smoothing.
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8 It is well established that there is no adequate remedy at law for the type and
9 magnitude of injury to the environment that will result from the proposed project. It is
10 similarly well settled that, barring some extremely unusual circumstance (which is not
11 present in the instant case), an injunction should be issued. *E.g. Idaho Sporting Congress*,
12 222 F.3d at 569; *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 545, 107 S. Ct.
13 1369 (1987) (öenvironmental injury, by its nature, can seldom be adequately remedied by
14 money damages and is often permanent or at least of long duration, i.e., irreparableö).
15

16 Moreover, a violation of the processes required by these statutes generally results in
17 irreparable harm, separate and distinct from the prospect of physical harm considered above.
18 *See, e.g., Northern Cheyenne Tribe v. Hodel*, 851 F.2d 1152, 1157 (9th Cir. 1988) (the danger
19 of bureaucratic commitment presents a type of irreparable harm that warrants an
20 injunction.).²
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24 ² Plaintiffs have also demonstrated the possibility of harm to their religious beliefs.
25 öCourts have persuasively found that irreparable harm accompanies a substantial burden on
26 an individual's rights to the free exercise of religion . . . ö *Jolly v. Coughlin*, 76 F.3d 468,
482 (2d Cir. 1996), *citing, in part, Lucketta v. Lewis*, 883 F. Supp. 471, 483 (D. Ariz. 1995).

1 Plaintiffs have demonstrated a strong likelihood of success on the merits and that
2 irreparable injury is likely in the absence of an injunction. For the reasons set forth above,
3 this Court should issue an injunction preserving the *status quo* pending the outcome of this
4 litigation.
5

6
7 **2. Plaintiffs Have Raised Serious Legal Questions and the Balance of
8 Hardships Tips Sharply in Plaintiffs' Favor**

9 Notwithstanding the foregoing, plaintiffs are also entitled to the injunctive relief they
10 seek if they can raise serious legal questions and they can demonstrate that the balance of
11 hardships tips sharply in their favor. *E.g., Earth Island Institute*, 351 F.3d at 1298.

12 Plaintiffs have raised "serious legal questions." Indeed, the prior Ninth Circuit finding, that
13 the FS failed to adequately consider the impact of human ingestion of snow made from
14 reclaimed sewer water should, in-and-of-itself, demonstrate the existence of a serious legal
15 question.
16

17 The balance of hardships in this case tips sharply in plaintiffs' favor. In a worst case
18 scenario for Snowbowl, the ski area will have another ski season at current user capacity
19 levels relying on natural snow. Defendants will suffer no irreparable harm. *See, e.g.,*
20 *Northern Alaska Env'tl Ctr. V. Hodel*, 803 F.2d 466, 471 (9th Cir. 1986) ("more than
21 pecuniary harm must be demonstrated" in order to avoid a preliminary injunction).
22

23 Plaintiffs on the other hand, have raised the prospect of irreparable environmental,
24 recreational, educational, scientific, historic, cultural, procedural, and religious harms. In
25 these types of cases, it is generally accepted that, "if such injury is sufficiently likely . . . the
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1 balance of harms will usually favor the issuance of an injunction to protect the environment.ö
2 *Id.* at 1299, quoting *Amoco production Co.*, 480 U.S. at 545. For these same reasons, the
3 question of ðrelative hardship to the partiesö (the ðcritical elementö in the analysis) also
4 weighs heavily in favor of granting the requested injunction.
5

6 **3. The Public Interest Tips Strongly in Favor of Granting an Injunction**

7 The public has an interest in ensuring that proper scrutiny and analysis is provided by
8 the government before an irreparable commitment of public lands is made. It would be
9 imprudent for the defendants to commit public resources to the site while this case is
10 pending. See *Sierra Club v. Bosworth*, 510 F.3d 1016, 1033 (9th Cir. 2007) (citations
11 omitted) (ðThe balance of equities and the public interest favor issuance of an injunction
12 because allowing a potentially environmentally damaging program to proceed without an
13 adequate record of decision runs contrary to the mandate of NEPA.ö)
14

15 The public interest in preserving nature and avoiding irreparable harm to the
16 environment is also well established and applicable in the instant case. Indeed, in the context
17 of granting injunctive relief that halts the proposed expansion of a ski area, the Ninth Circuit
18 reiterated its well established position ó ðthis Court has ðheld time and again that the public
19 interest in preserving nature and avoiding irreparable injury outweighs economic concerns.ö
20 *Oregon Natural Resources Council Fund v. Goodman*, 505 F.3d 884, 898 (9th Cir. 2007),
21 quoting, *Lands Council v. McNair*, 494 F.3d 771, 780 (9th Cir. 2007); see also, e.g., *Sierra*
22 *Nev. Forest Prot. Campaign v. Tippin*, No. 06-00351, 2006 WL 2583036, at *21 (E.D.Cal.
23 Sept. 6, 2006) (ðThe environment is a vital constituent public interest that must be
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1 recognized and protected by federal law even in the face of adverse economic
2 consequences.ö).

3
4 **C. Conclusion**

5 In the instant case: (1) the balance of hardships tips sharply in plaintiffs favor; (2)
6 plaintiffs will suffer irreparable injury if an injunction is not granted; (3) defendants will not
7 suffer any irreparable harm; (4) plaintiffs have demonstrated a probability of success on the
8 merits; and (5) plaintiffs have raised serious legal questions. Plaintiffs respectfully request
9 that their motion for injunctive relief be granted so the *status quo* can be maintained pending
10 the outcome of this litigation.³

11 Respectfully submitted September 21st , 2009.

12
13 THE SHANKER LAW FIRM, PLC.

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³ The Court should not require the posting of a bond. Plaintiffs, who are acting in the public interest, do not have the economic resources to afford a substantial bond. If a bond is required it should be nominal. Under NEPA, Congress intended for private plaintiffs to aid in the enforcement of national environmental policy. Ordinarily, where a party is seeking to vindicate the public interest served by NEPA, a minimal bond amount, if any, should be considered. *Davis v. Mineta*, 302 F.3d 1104, 1126 (10th Cir. 2004), *citing*, *Friends of the Earth, Inc. v. Brinegar*, 518 F.2d 322, 322-323 (9th Cir. 1975); *see also, e.g., Wisconsin Heritages, Inc. v. Harris*, 476 F. Supp. 300, 303 (E.D. Wisc. 1979) (no bond); *Scherr v. Volpe*, 466 F.2d 1027 (7th Cir. 1972) (no bond); *Natural Resources Defense Council, Inc. v. Morton*, 337 F. Supp. 167 (D.D.C. 1971) (\$100); *Environmental Defense Fund v. Corps of Engineers*, 331 F. Supp. 925 (D.D.C. 1971) (\$1.00).

1 ORIGINAL and COPY
2 of the foregoing filed September 21st, 2009:

3 Clerk of the Court
4 District Court of Arizona
5 401 W. Washington
6 Phoenix, Arizona 85003

7 Copy Served via Hand Delivery on
8 September 21st, 2009 to:

9 U.S. Attorney's Office
10 Two Renaissance Square
11 40 North Central Ave., Suite 1200
12 Phoenix, AZ 85004-4408

13 Copy sent via Certified Mail on
14 September 21st, 2009 to:

15 The Attorney General of the U.S.
16 U.S. Dept of Justice
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