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Environmental Tug-of-War: Treated Effluent on the San Francisco Peaks

The San Francisco Peaks (the Peaks), located in Northern Arizona's Coconino National Forest, have been a place of reverence for indigenous peoples since time immemorial. In recent years, however, the environmental integrity and religious significance of the Peaks have been infringed upon by modern economic development efforts that push beyond the scope of reason. The Peaks serve as a spiritual keystone for a number of indigenous peoples in the surrounding region. The Hopi, Navajo, and Yavapai, to name a few, view the Peaks as sacred land where powerful spiritual beings reside. The indigenous peoples that consider the Peaks to be sacred refer to the Peaks by a holy name in their respective languages. The Navajo, for example, refer to the Peaks as "Dook'o'oośkíid", which roughly translates into "the mountain peak which never thaws."¹

Enter the Arizona Snowbowl ski resort. The Snowbowl, situated at the base of the San Francisco Peaks, has long been an economic and recreational boon for Coconino County and the surrounding area. Initially afflicted by limited controversy upon its 1938 establishment, concern among environmental activists and tribal citizens alike began to amplify exponentially as a result of the purchase of Snowbowl by Summit Properties.² Summit's corporate mission was, and still is, to create a world-class ski resort – a process with details which have resulted in an enduring legal battle over the environmental integrity of land sacred to many indigenous peoples.

¹ USDA, History of the San Francisco Peaks and how they got their names, <https://www.fs.usda.gov/detail/coconino/about-forest/about-area/?cid=stelprdb5340115> (last visited Sep 19, 2018).

² Grace Fenlason, Flagstaff's sacred mountain: the economic, political and spiritual power of the San Francisco Peaks – The Lumberjack (2016), http://www.jackcentral.org/culture/flagstaff-s-sacred-mountain-the-economic-political-and-spiritual-power/article_e8c827f8-f06f-11e5-a4c0-83d92de048e1.html (last visited Sep 19, 2018).

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Controversy reached its zenith following the 2002 contractual agreement between the City of Flagstaff and Snowbowl, in which the City agreed to sell treated effluent to Snowbowl. Effluent is “liquid waste” or “treated and purified wastewater.” Snowbowl intends to use this effluent in the production of artificial snow, which will be allowed to melt into the surrounding environment at the end of its useful life. The U.S. Forest Service granted official permission to Snowbowl to use effluent for this purpose in 2005, a decision that was unsuccessfully contested in court by a number of major indigenous nations and their supporters.³ The Hopi Tribe countered by filing a public nuisance claim in 2010, formulating an argument on the basis that the treated effluent infringes upon public enjoyment of the land by damaging the environment. The Hopi’s public nuisance claim was dismissed by a trial court – but, as of February 2018, the dismissal was reversed by the Court of Appeals of Arizona, Division One.⁴ The Arizona Supreme Court granted a petition of review to Snowbowl and the City of Flagstaff the first week of September 2018, during which the Hopi’s special injury claims underwent extensive scrutiny in the context of Arizona case precedent.⁵ Further action is pending.

The use of treated effluent in snowmaking raises a number of serious concerns from an environmental perspective. Proponents of Snowbowl’s effluent usage downplay the environmental impact, suggesting that the high-quality treatment renders the usage entirely safe. This assertion is misguided, however, as the long-term consequences and chemical alterations of treated wastewater are currently unknown. According to microbiologist Catherine Propper, an analysis of the treated effluent reveals compounds such as pharmaceuticals and steroids, and that

³ *Navajo Nation v. United States Forest Serv.*, 535 F.3d 1058 (9th Cir. 2008).

⁴ *Hopi Tribe v. Ariz. Snowbowl Resort Ltd. P'ship*, 244 Ariz. 259, 418 P.3d 1032 (Ct. App. 2018).

⁵ HOPI TRIBE v ARIZONA SNOWBOWL RESORT LIMITED PARTNERSHIP, Granicus - Arizona Supreme Court (2018), http://supremestateaz.granicus.com/MediaPlayer.php?view_id=2&clip_id=2500 (last visited Sep 26, 2018).

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“some of the compounds will bind to the soil... get into the aquifers.”⁶ The use of effluent may result in a crippling dose of infringement upon the livelihood of indigenous as chemical alterations to medicinal plants and groundwater alike could potentially result in irreversible cultural repercussions in the long-term. Flora used for ceremonial or spiritually significant purposes may be tainted by the treated effluent’s runoff, rendering the materials useless and thereby damaging the spiritual livelihood of indigenous peoples. Further, because there is no way to contain the entire snowmelt runoff, the surrounding areas may also suffer from unintended environmental consequences, including the contamination of city drinking water and soil. The San Francisco Peaks’ beauty and significance have persisted for centuries – without appropriate action, those traits may well disappear in their entirety.

⁶ Leslie Macmillan, Resort's Snow Won't Be Pure This Year; It'll Be Sewage - The New York Times (2012), <https://www.nytimes.com/2012/09/27/us/arizona-ski-resorts-sewage-plan-creates-uproar.html> (last visited Sep 19, 2018).