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Tribes Invoke Gods to Block Wastewater Snowmaking

 By **NICK TIMIRAOS**
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Faced with one of its worst ski seasons in years amid an ongoing drought, operators of the Arizona Snowbowl pitched a plan five years ago to make man-made snow by using treated wastewater from the nearby city of Flagstaff.

"In today's world, it is impossible to run a ski area depending on natural snowfall," says Eric Borowsky, general partner of the Snowbowl resort.



Arizona Snowbowl

A court stopped Arizona Snowbowl from making snow from wastewater.

tribes across the West.

But in March, a three-judge panel of the Ninth Circuit Court of Appeals killed the scheme. The reason: The mountaintops are sacred to the Navajo and 12 other tribes, even though the land is not part of their reservations.


The tribes regard the mountains as living deities that would be offended by man-made snowmaking, especially if it used treated wastewater that the tribes contend would contaminate plants and spring water used in religious ceremonies. The court compared spraying snow made from treated wastewater on the peaks to requiring Christians to use reclaimed water for baptisms.

That ruling has given new hope to similar challenges from Indian

At issue is the interpretation of the Religious Freedom Restoration Act, or RFRA, which Congress passed in 1993 with almost unanimous support after the Supreme Court upheld a government decision to deny unemployment benefits to two Native Americans fired for using illegal drugs in a religious ceremony. In the past, courts denied that the First Amendment's religious-freedom protections extend to American Indians who challenge federal land-use decisions. RFRA changed that by requiring the government to demonstrate a compelling interest when considering any action that would substantially burden a religious practice. The Snowbowl case is the first to successfully apply the law to a sacred site, says Howard Shanker, the Flagstaff attorney who represented several of the tribes before the court.

The U.S. Forest Service -- which leases the land to Snowbowl -- signed off on the plan despite its recognition that the San Francisco Peaks are sacred to the Hopi and Navajo, who lost similar legal challenges when the resort expanded in 1979. "Tribes have been saying since the foreigners first arrived that they hold their land sacred. This is not a new argument," says George Hardeen, a Navajo spokesman.

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"Now we have this new yardstick."

But developers worry that will limit the doctrine that allows for multiple uses of federal land, especially in the West, where tensions between development and conservation mount as the population expands. "Every federal project is now going to be held hostage to any Native American saying, 'Boy, that area is significant to me,'" says Mr. Borowsky. The defendants last week filed a petition for the full Ninth Circuit to rehear the case.

Since the March ruling, the Quechan Tribe in Yuma, Ariz., has sued to stop a public land swap for a new oil refinery, the first to be constructed in the U.S. in more than 30 years. The tribe says the land is culturally significant. The ruling could also boost the Snoqualmie Tribe's long-standing bid to block the permit renewal for Puget Sound Energy's 109-year-old hydroelectric power plant at the Snoqualmie Falls, the tribe's most sacred site.

Vincent E. Randall, a cultural preservation officer for the Yavapai-Apache, a plaintiff in the Snowbowl case, rejects the idea that "we're going to run out and claim every mountain to be holy." He says that the case has been complicated by the difficulty in translating the tribe's beliefs for a Western audience. "This is our way of life, and if we don't do it right, we have consequences from our almighty."

While most U.S. ski resorts make snow, Snowbowl would have been the first to do so only with reclaimed water, which is used across the parched Southwest on golf courses and parks. Under state law, the resort would have had to post signs warning skiers not to eat any snow.

Snowbowl, one of Arizona's two most popular ski areas, stayed open for 44 days this year, down from an average of 120. Using treated wastewater would allow the resort to stay open from Thanksgiving until mid-April, says Mr. Borowsky. At 777 acres, the footprint of the resort takes up less than 1% of the peaks.

The case has riled Flagstaff, a northern Arizona city of 60,000 and the largest economic center for several Indian reservations. While running for re-election, Flagstaff Mayor Joseph Donaldson left a candidate forum where he had spoken in support of the Snowbowl plan, and found a urine-filled toilet atop his car, which was covered in toilet paper. Printed on the commode: "How would you like it, Joe?"

Flagstaff's business community, which relies heavily on tourism, has rallied around the resort. Local businesses have posted "Support Snowmaking" signs in storefronts. "This is not really about reclaimed water," says Joe Galli of the city's chamber of commerce. "This is about whether they want Snowbowl to exist at all, whether they want recreation to exist at all" on the mountain.

Others suggest a double standard, as some of the tribes that seek to curb Snowbowl develop their own lands. Snowbowl's chief competitor, Sunrise Park Resort, located three hours from Flagstaff, uses artificial snow and is operated by the White Mountain Apache, a plaintiff in the case. The tribe called on the government to remove the entire Snowbowl resort and says snowmaking there would impair the tribe's ability to perform religious ceremonies.

In court, Sunrise's operators testified that their resort isn't on sacred ground and that its artificial snow comes from a lake downstream from a creek bed where treated wastewater from two lodges is discharged. A spokesman for the tribe says it only uses spring water to make snow.

Another plaintiff, the Hualapai Tribe, recently opened Grand Canyon West, a 9,000-acre tourist development that includes the Skywalk, a U-shaped glass structure that juts out over the canyon rim. It

has drawn criticism from some Hualapai.

Sheri Yellowhawk, chief executive of Grand Canyon Resort Corp., the tribal outfit that runs the attraction, rejects comparisons to Snowbowl and says tourism will provide much-needed economic growth. She says that some tribal elders had said, "Yes, it is sacred, but we need to do something for the future."

To Mr. Borowsky, "It's the height of hypocrisy." Gordon Watkins, who runs a bed-and-breakfast in Flagstaff, is even blunter: "The Indians have desecrated their lands for economic purposes for decades."

Those attitudes have sparked fears of a backlash. "There's been a lot of silly stuff being thrown out there, and some of it is borderline racist," says Mr. Shanker, who touts his legal win as part of his campaign for Congress as a Democrat. "Some people have the perception that these tribes all have gaming and that they're all wealthy. They have no or little economic activity."

And tribal leaders say development on reservations is dwarfed by government development of public lands. "It's just a hollow argument," says the Navajo's Mr. Hardeen. "Go to the south rim of the Grand Canyon on the Fourth of July. It's like Coney Island."

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