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SNOWMAKING GOES TO 9th CIRCUIT COURT

Flagstaff, August 23 — The Save the Peaks Coalition announced today that it is continuing the battle to prevent **Arizona Snowbowl** from using treated effluent for snowmaking on the San Francisco Peaks. After a defeat in US District Court last January, tribes and environmental groups have appealed to the Ninth Circuit Court of Appeals in San Francisco. Their arguments will be heard September 14.

While being the first ski resort in the world attempting to solely rely on treated effluent for snowmaking, Arizona Snowbowl has maintained that approvals from the United States Forest Service and the **Arizona Department of Environmental Quality** — which had previously ruled that treated effluent only be used for irrigation purposes — assure the quality of artificial snow will be at adequate levels. Nonetheless, the appeals process has forced Arizona Snowbowl to delay its development.

Said **Howard Shanker**, attorney for four native tribes and other interested parties, "The use of reclaimed wastewater on the Peaks makes no sense. Spraying tainted water on the sacred Peaks should be offensive to all people of conscience. The potential impacts to human health from exposures to the contaminants found in the reclaimed water have not been adequately assessed. In this context, the federal government needs to reconsider their unflinching devotion to a privately run, for profit ski area in a part of Arizona that does not have sufficient precipitation to support skiing."

Mr. Shanker will bring four main arguments to the court. As quoted from a released statement, they are:

1. Defendants failed to disclose and discuss **scientific viewpoints**. Under NEPA, the agency is required to "disclose and discuss responsible opposing scientific viewpoints in the final statement itself." Dr. **Paul Torrence** submitted an approximately 40-page treatise of the analysis of health and environmental impacts of using reclaimed sewer water for snowmaking included in the Draft Environmental Impact Statement. The Forest Service neither disclosed nor discussed Dr. Torrence's viewpoints in the Final Environmental Impact Statement. The FS's failure to "disclose and discuss" was without observance of the procedure required by law.

2. Defendants failed to consider the fact that **children might eat snow made from non-potable reclaimed water**. The only time that the possibility of eating snow is directly addressed in the FEIS is in the FS response to comments, which provides, in pertinent part, that "there will be signs posted at Snowbowl informing visitors of the use of reclaimed water as a snowmaking source ... it is the responsibility of the visitor or the minor's guardian to avoid consuming snow

made with reclaimed water ..." ER 52. Defendants' failure to adequately consider this impact was without observance of the procedure required by law, arbitrary, capricious, and abuse of discretion, and/or otherwise not in accordance with law.

3. Defendants refused to consider the impacts associated with **withdrawal of 1.5 million gallons a day** of reclaimed water that is currently used to recharge the Regional Aquifer near Flagstaff. During the winter months, approximately 1.5 million gallons a day of effluent from the **Rio de Flag** treatment plant is currently introduced into the Rio de Flag River to recharge the regional aquifer in Flagstaff — where it is diluted with fresh water before it percolates into the underground aquifer. The FS refused to consider the impact of this diversion in its decision making process — noting that the City of Flagstaff was free to do whatever it wanted with its wastewater. This is an "indirect effect," a "cumulative impact," and/or a "connected action," the impact of which should have been thoroughly considered in the FEIS. The FS's refusal to consider this impact is without observance of the procedure required by law, arbitrary, capricious, and/or not in accordance with law.

4. Defendants' approval of this project violates RFRA. In finding that defendants did not violate the **Religious Freedom Restoration Act**, the lower court: 1) ignored the FS's own findings and the Ninth Circuit precedent on demonstrating a "substantial burden" in the context of a government land use decision; 2) improperly interpreted sincerely held religious beliefs; 3) improperly interpreted the requirement that RFRA decisions be made in "context;" 4) applied improper legal analyses to the "compelling interest" and "least restrictive means" components of the strict scrutiny test; and 5) made clear errors in many of its findings of fact.

Arizona Snowbowl, LLC operates the ski area under a Special Use Permit issued by the US Forest Service. Under its expansion proposal endorsed by USFS nearly two years ago, it will thin over 100 acres of forest, build a 15-mile pipeline from Flagstaff to a 10-million gallon storage pond to create 205 acres of artificial snow.

DEMOCRATS FACE TOUGH CHOICE SEPT 12

Flagstaff, August 30 — With the Democratic Primary looming, many Democrats are still undecided as to whom to nominate as their candidate to challenge Congressman **Rick Renzi**. In the fold are five candidates, all with slight variations on the themes of health care, the war in Iraq, and the status of the middle class. But each have a distinct personality, a certain manner of speech, a characteristic background and, perhaps most notably, varied amounts of cash in their war chest.

Bob Donahue is a longtime resident of Arizona, having moved to the state when

28% UNDECIDED ?

32% CACCIOPPOLI

28% SIMON

6% MCKERLIE

3% DONAHUE

3% FRIEDMAN

In a random poll of 37 attendees of the Democratic Forum at Flagstaff City Hall August 22, Mike Caccioppoli and Ellen Simon were neck-and-neck.

he was two. He graduated with a degree in economics from ASU in 1966, and joined the Marine Corps for two years. After moving to Flagstaff in 1979 to raise his children, Mr. Donahue started an equipment company, which he sold for several million dollars 15 years later. He and his wife then began an assisted living center following a move to Cornville in 1999. In his youth, he was a County Chairperson for the Republican Party and recently re-entered politics, receiving 25% of the primary vote in the Paul Babbitt campaign two years ago. Although he recently received endorsements from the *Arizona Republic* and United Steelworkers, June financial reports put his campaign at just under \$6,000.

Susan Friedman is a native of Long Island who has lived in Yavapai County for 10 years. After earning a BA in government and an MA in history from NYU, she worked in international trade, marketing, and public relations. She has raised five children, three of which were adopted from indigenous mothers in Peru. She is an advocate for senior citizens, public funding of federal elections, and women's rights. Active in building the Yavapai Democratic Party, she earned 40% of the vote in her bid as a State Senator, in a legislative district known for its staunch Republican leanings. In a recent speech, Ms. Friedman said: "I want to replace 'election by the highest bidder' ... I want to restore the checks and balances of the three branches of government. I want our government to be responsive and responsible." As of June 30, her campaign has garnered just over \$9,000.

Vic McKerlie is the son of an Illinois factory worker who became a dentist after graduating with a degree in chemistry at Florida Atlantic University. He moved his practice to Prescott nearly 20 year ago, raising a family, and throwing his hat into a race for county office in 2004. An avid runner, he recently ran 1000 miles across District One to gain exposure for his campaign. His major campaign issue, and one that reverberates from his career, is healthcare. Mr. McKerlie proposes a 4% income deduction to go toward a nationally-sponsored healthcare system, which would provide universal coverage and require less interference from government and corporations. His campaign financials are not reported.

Mike Caccioppoli is a native of New York who became a talk radio host and producer in NYC and Las Vegas. He moved to Arizona

two years ago and immediately began working on the Kerry for President campaign. The youngest candidate running at age 34, he is a vocal supporter of the impeachment of George W. Bush and the immediate withdrawal of troops from Iraq. Although this is his first foray in the political arena, his radio programs were mostly political commentary and debate, and he developed a knack for arguing the progressive perspective. Mr. Caccioppoli has been endorsed by DFA-Flagstaff, Progressives of the Verde Valley, Progressive Democrats for America, and Stu Starky, the Democratic candidate for the Senate in 2004. His June financial statements reflect \$14,000 in contributions.

Ellen Simon was born in Ohio to a wealthy real estate developer, and after earning a law degree from Suffolk University, went on to pursue a 25-year legal career in which she argued several high-profile cases, earning her the title of President of the Ohio Chapter of the ACLU. She has lived full-time in Sedona for about a year and a half, using her residence there as a second home for six years. Although she is a newcomer to the campaign, she has already amassed an arsenal of rhetoric against Rick Renzi and is a starlet for talking points. And despite recent reports raising doubts about her husband's credibility and the collective disgruntlement of her tactics by her opponents, Ms. Simon is above and beyond a remarkable fundraiser. After having dumped \$275,000 of her own money into the campaign, she reported raising over \$503,000, as of June 30. A recent release stated she has contributed another \$250,000 of her own funds into the pot.

On August 22, following a Democratic Forum at Flagstaff City Hall — which packed a house of 170 — *the Noise* conducted a random poll of 37 attendees. While 28% were still unsure for whom they would vote for, respondents were practically tied in their choice between Mr. Caccioppoli (32%) and Ms. Simon (28%).

For more information on the candidates, visit azdem.org/candidates/115. The primaries are September 12 and by state law, independent or nonpartisan voters can participate with valid voter identification. ●

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