

# Court blocks effluent on sacred peaks

By Howard Fischer

CAPITOL MEDIA SERVICES

The operators of a Flagstaff-area ski resort cannot use recycled sewage to make snow, the 9th U.S. Circuit Court of Appeals ruled Monday.

In a unanimous decision, the judges said there is no evidence that denying Snowbowl operators the ability to use sewage for artificial snow would force the facility, on U.S. Forest Service land, to shut down.

They said there is no "compelling governmental interest" in having artificial snow on the San Francisco Peaks.

More to the point, the judges said the federal Religious Freedom Restoration Act requires government agencies to use the "least restrictive" means of interfering with any religious practice.

"The record in this case establishes the religious importance of the Peaks to the ... tribes who live around it," Judge William Fletcher wrote for the court. He said "from time immemorial" the tribes have relied on the purity of the water for their religious beliefs.

He said permitting the use of treated effluent would be the equivalent of the government requiring Christian baptisms be done with reclaimed water.

Fletcher also said that even if denying the use of effluent would force the facility to close, it was hardly a secret to the current owners, who bought the ski facility in 1992, that the Snowbowl is located in a desert and there would be dry years.

Even if the owners could convince the U.S. Supreme Court that federal religious protection law do not apply, that would not give them the go-ahead for snow-making. Fletcher said the Forest Service did not consider whether anyone would be endangered by ingesting snow made entirely from treated sewage water.

Monday's decision, which overturns a trial court ruling against the tribes, may break new legal ground. Attorney Howard Shanker who represents the tribes, said he believes this is the first time the 1993 federal Religious Freedom Restoration Act has been used successfully to block government action.

The ruling comes just hours after the resort, located on about 770 acres, shut down at 4 p.m. Sunday due to lack of snow.

Snowbowl general manager Eric Borowsky said in a prepared statement that the decision means the environmental laws have been abused "and the taxpayers of our country

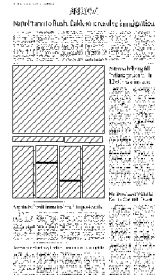
held for ransom by a small group of activists who believe that they personally own our nation's public lands."

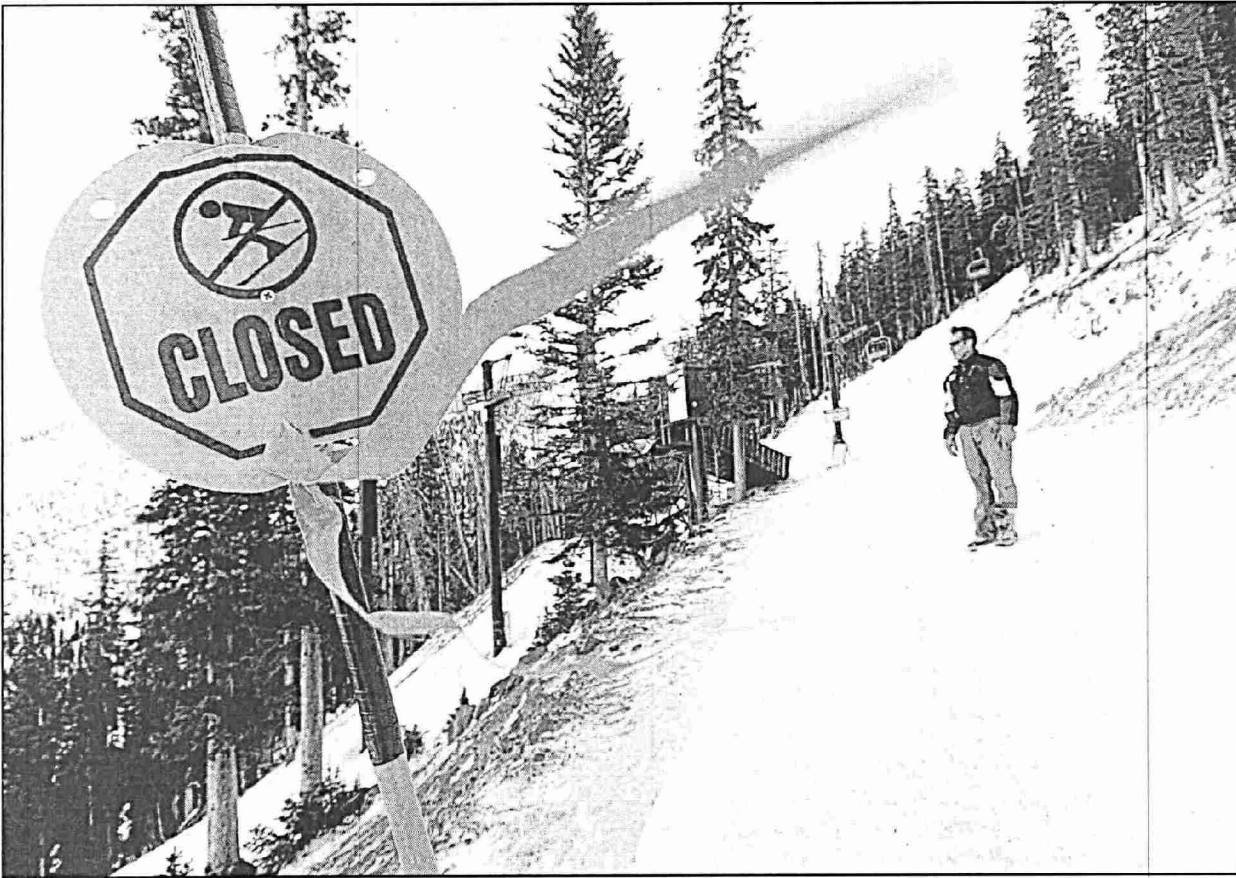
Borowsky also lashed out at native tribes, saying the White Mountain Apache tribe sprays "virtually untreated" sewage on its own ski resort — Sunrise — "without question or environmental review." And he said the Hualapai Tribe is putting a scenic walkway at the Grand Canyon for tourism and economic development.

"The political position of several of the Indian tribes with less than stellar environmental records who are involved in this matter is nothing short of hypocritical," he said.

Several tribes sued to stop the use of effluent to make artificial snow. But the appellate judges relied mostly on evidence from the Navajo and Hopi tribes about the religious significance of the mountains and, to a lesser extent, the impact on the Hualapai and Havasupai tribes.

Fletcher noted that even the Forest Service conceded the mountains are the most sacred place for the Hopi and Navajo. And he said evidence showed that putting treated sewage on the mountain would place a "substantial burden on their exercise of religion."





JILL TORRANCE / ARIZONA DAILY SUN

Arizona Snowbowl marketing director Dave Smith checked out snow conditions on a trail that was closed on opening day, Jan. 24.