

Snowmaking faces new suit

By CYNDY COLE
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After losing one legal case this summer, opponents of making snow with reclaimed wastewater at Arizona Snowbowl are trying a second.

Save the Peaks Coalition and nine individuals in Flagstaff filed suit Monday in the U.S. District Court in Arizona against the U.S. Forest Service. The plaintiffs contend the agency did not adequately weigh or analyze the human health or environmental risks of making snow with reclaimed wastewater, in violation of the National Environmental Policy Act and other federal laws.

They are seeking an injunction to prevent snowmaking at Snowbowl until the case is decided.

"The federal government, before they approve these sorts of things, should understand what their potential impacts are," said attorney for the plaintiffs Howard Shanker. "They did no analysis of the risk of people ingesting this snow."

Arizona Snowbowl did not immediately respond to the claims in Monday's filing.

"We and our attorneys are reviewing the lawsuit filed today. We do not have a specific comment until further review," said General Manager J.R. Murray. "We will deal with the lawsuit in due course, but at this time our focus is on preparing for the upcoming ski season... All along, the snowmaking system has been scheduled for 2010, and we continue our efforts to meet that schedule. And the lawsuit will take its course."

This case is different from the last one because it is based solely on environmental arguments, not religious ones, and because it has been filed by different plaintiffs.

The lawsuit cites 2002 "talking points" issued by the Forest Service in which officials say the agency will answer the question, "Will my kids get sick if they eat artificial snow made from treated wastewater?" in a future environmental analysis.

That analysis, released several years later, says the agency relied on the Arizona Department of Environmental Quality to determine whether the snow was safe for human contact and possible ingestion, and "it is assumed" those activities were considered.

Signs would be posted informing skiers that the snow was made from reclaimed water, and it would be up to visitors or parents to keep themselves and their children from eating snow, as part of the Forest Service's plans.

The 9th U.S. Circuit Court of Appeals appeared to agree with the plaintiffs' arguments as a side note to the last legal case, saying the Forest Service had not provided a "reasonably thorough discussion" of the risks posed for people who might eat snow made from such water.

That point was not what that court was assigned to decide, however.

Following the U.S. Supreme Court's decision not to hear the last legal case this summer, Snowbowl was cleared for construction as soon as the Forest Service allows it.

This new legal case comes with a request for an injunction barring installation of snowmaking equipment and other development until the new case is decided.

Plaintiffs joining Save the Peaks in the lawsuit against the U.S. Forest Service are Kristin Huisinga, Clayson Benally, Sylvan Grey, Don Fanning, Jeneda Benally, Frederica Hall, Berta Benally, Rachel Tso and Lisa Tso.

The plaintiffs say they use the Peaks for hiking, snowboarding, skiing, plant gathering, teaching and religious purposes.

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