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The City of Flagstaff, Arizona
6



7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF COCONINO

9 THE HOPI TRIBE, a federally recognized
10 Indian Tribe,
11 Plaintiff,
12 vs.

NO. CV2011-00701

13 THE CITY OF FLAGSTAFF, ARIZONA, a
municipal corporation,
14 Defendant.

**VERIFIED ANSWER AND
THIRD-PARTY COMPLAINT**

(Assigned to the Honorable Ted S. Reed)

15
16 THE CITY OF FLAGSTAFF, ARIZONA, a
municipal corporation,
17 Third-Party Plaintiff,
18 vs.

19 ARIZONA SNOWBOWL RESORT
20 LIMITED PARTNERSHIP, an Arizona
limited partnership,
21 Third-Party Defendant.
22

23 Defendant The City of Flagstaff, Arizona (“Defendant” or the “City”) hereby
24 answers Plaintiff’s Verified Complaint (hereinafter the “complaint”) as follows:

25 **NATURE OF THE CASE**

26 Plaintiff initiated this litigation more than two years ago. After briefing before this
27 Court and the Arizona Court of Appeals, only Plaintiff’s public nuisance claim survives.
28 This claim too is devoid of merit and destined to fail.

1 This is not a case about public nuisance. Rather, this is a case about Arizona's
2 comprehensive statutory scheme pertaining to water use and its public policy on water
3 conservation. The relief Plaintiff improvidently seeks by its only remaining claim could
4 undermine, if not entirely cripple, the responsible, statutorily-approved and widespread
5 utilization of reclaimed water throughout the State of Arizona; a practice that has been in
6 place for more than 30 years.

7 Water is a finite, precious resource in Arizona. The public policy of the State of
8 Arizona is to put this most valuable of its resources to the most appropriate and beneficial
9 uses. In addition to snowmaking, reclaimed water is used throughout Arizona to irrigate
10 baseball fields, children's playgrounds, parks, golf courses and to sustain municipal and
11 corporate landscaping. By using reclaimed water in this arid environment, Arizona is
12 able to promote recreation and tourism while maintaining adequate reserves of drinking
13 water for its residents. Reclaimed water thus boosts Arizona's economy and furthers
14 several of Arizona's fundamental public policy goals, including water conservation.

15 More than ten years ago, the City—in furtherance of Arizona's statutes and public
16 policy on water conservation—contracted with Third Party Defendant Arizona
17 Snowbowl Resort Limited Partnership ("Snowbowl") to deliver reclaimed water to
18 Snowbowl's resort for use in snowmaking. The reclaimed water is utilized under
19 authority of a permit Snowbowl obtained from the United States Forest Service. The
20 reclaimed water is treated to levels that exceed quality standards per the regulatory
21 requirements of the Arizona Department of Environmental Quality ("ADEQ") and is
22 routinely tested to ensure that it satisfies these standards, and is then made available for
23 Snowbowl's retrieval. Snowbowl then transports the reclaimed water to the Snowbowl
24 resort through a pipeline that it constructed and owns. Snowbowl stores the reclaimed
25 water in a secure reservoir, converts the reclaimed water to snow, and applies it in
26 furtherance of yet another public policy of the State of Arizona—public recreation.

27 For the past two winter seasons, Snowbowl has utilized reclaimed water in the
28 manner contemplated by the contract with the City. Snow made from the reclaimed

1 water purchased by Snowbowl covers less than 1% of the surface area of the San
2 Francisco Peaks, and Snowbowl has implemented measures to minimize—if not wholly
3 prevent—run-off and blowing of the snow into the surrounding areas. The City is not
4 aware of any studies or reports of adverse health impacts related to the application of
5 reclaimed water at the Snowbowl resort or, indeed, anywhere.

6 Reclaimed water is used throughout the State of Arizona for a multitude of
7 purposes. More than 30 years of state-wide use of reclaimed water has helped Arizona to
8 thrive and provide its growing population with safe drinking water and abundant
9 recreational opportunities despite more than a decade of drought. Without any evidence
10 to support its inflammatory claims, Plaintiff asks this Court to grant it relief that has
11 broad-reaching, and, frankly, disastrous, implications upon Arizona's comprehensive
12 statutory scheme of water use. There is no public nuisance here.

13 PARTIES

14 1. Defendant lacks knowledge or information sufficient to form a belief
15 regarding the truth of the allegations in paragraph 1 of the complaint, and therefore
16 denies the same, except admits that the Hopi Tribe is a federally recognized Tribe.

17 2. Defendant lacks knowledge or information sufficient to form a belief
18 regarding the truth of the allegations in paragraph 2 of the complaint, and therefore
19 denies the same.

20 3. Defendant lacks knowledge or information sufficient to form a belief
21 regarding the truth of the allegations in paragraph 3 of the complaint, and therefore
22 denies the same.

23 4. Defendant lacks knowledge or information sufficient to form a belief
24 regarding the truth of the allegations in paragraph 4 of the complaint, and therefore
25 denies the same.

26 5. Defendant lacks knowledge or information sufficient to form a belief
27 regarding the truth of the allegations in paragraph 5 of the complaint, and therefore
28 denies the same.

1 December 23, 2011 Under Advisement Ruling (Lodge, J.) (“Motion to Dismiss
2 Decision”).¹

3 **VENUE AND JURISDICTION**

4 15. Paragraph 15 asserts legal conclusions to which no answers are required.
5 To the extent an answer is called for, Defendant lacks knowledge or information
6 sufficient to form a belief regarding the truth of the allegations in paragraph 15 of the
7 complaint, and therefore denies the same.

8 16. Paragraph 16 asserts legal conclusions to which no answers are required.
9 To the extent an answer is called for, Defendant admits that it is a municipality within
10 Coconino County.

11 17. Paragraph 17 asserts legal conclusions to which no answers are required.
12 To the extent an answer is called for, Defendant admits that it contracted in writing to
13 perform an obligation in Coconino County.

14 18. Paragraph 18 asserts legal conclusions to which no answers are required.
15 To the extent an answer is called for, Defendant denies the allegations in paragraph 18 of
16 the complaint.

17 19. Paragraph 19 asserts legal conclusions to which no answers are required.
18 To the extent an answer is called for, Defendant admits that it has agents and/or
19 representatives in Coconino County.

20 20. Paragraph 20 asserts legal conclusions to which no answers are required.
21 To the extent an answer is called for, Defendant admits that it conducts business in
22 Coconino County.

23 21. Paragraph 21 asserts legal conclusions to which no answers are required.
24 To the extent an answer is called for, Defendant denies each of the allegations in
25

26
27

¹ The portion of this Court’s decision dismissing and/or abstaining from the first and
28 second causes of action was upheld by the Arizona Court of Appeals on April 25,
2013.

1 paragraph 21 of the complaint, except admits that it is a municipality in the State of
2 Arizona and maintains offices in the State of Arizona.

3 22. Paragraph 22 asserts legal conclusions to which no answers are required.
4 To the extent an answer is called for, Defendant denies the allegations in paragraph 22 of
5 the complaint.

6 23. Defendant admits the allegations in paragraph 23 of the complaint.

7 24. Defendant admits the allegations in paragraph 24 of the complaint.

8 25. Defendant admits the allegations in paragraph 25 of the complaint.

9 26. Paragraph 26 asserts legal conclusions to which no answers are required.
10 To the extent an answer is called for, Defendant lacks knowledge or information
11 sufficient to form a belief regarding the truth of the allegations in paragraph 26 of the
12 complaint, and therefore denies the same.

13 FACTUAL BASIS FOR CLAIMS

14 **The Arizona Snowbowl**

15 27. Defendant lacks knowledge or information sufficient to form a belief
16 regarding the truth of the allegations in paragraph 27 of the complaint, and therefore
17 denies the same, except avers that The Arizona Snowbowl Resort has a mailing address
18 of P.O. Box 40, Flagstaff, Arizona 86002.

19 28. Defendant lacks knowledge or information sufficient to form a belief
20 regarding the truth of the allegations in paragraph 28 of the complaint, and therefore
21 denies the same.

22 29. Defendant lacks knowledge or information sufficient to form a belief
23 regarding the truth of the allegations in paragraph 29 of the complaint, and therefore
24 denies the same.

25 30. Defendant lacks knowledge or information sufficient to form a belief
26 regarding the truth of the allegations in paragraph 30 of the complaint, and therefore
27 denies the same.

1 access,” meaning access to Reclaimed Water by the general public is uncontrolled. *See*
2 A.A.C. R18-11-301. The A.A.C. permits eleven “open access”/uncontrolled uses for
3 Reclaimed Water sold by the City (in its capacity as a Reclaimed Water Agent),
4 including snowmaking, irrigation of food crops, schoolground landscape irrigation, and
5 residential landscape irrigation. *See* A.A.C. R18-11-303(D) (“A person may use Class
6 A+ reclaimed water for any type of direct reuse listed in Table A.”).

7 38. Defendant admits the allegations in paragraph 38 of the complaint, and
8 avers that Flagstaff commenced selling Reclaimed Water to the Snowbowl on December
9 14, 2012.

10 39. Defendant denies the allegations in paragraph 39 of the complaint and avers
11 that the process for making Reclaimed Water meets the highest standards propounded by
12 both the United States Environmental Protection Agency (“EPA”) and ADEQ.
13 Specifically, Reclaimed Water can have no detectable fecal coliform organisms in at least
14 four of the last seven daily Reclaimed Water samples taken, and the single sample
15 maximum concentration of fecal coliform organisms in a Reclaimed Water sample is less
16 than 23/100 ml. Additionally, per A.A.C. R18-11-303(B)(3), to reach a Class A+
17 certification, Reclaimed Water must have a 5-month geometric mean concentration of
18 total nitrogen of less than 10mg/L.

19 40. Defendant lacks knowledge or information sufficient to form a belief
20 regarding the truth of the allegations in paragraph 40 of the complaint, and therefore
21 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
22 meets the highest wastewater treatment standards propounded by both the EPA and the
23 ADEQ.

24 41. Defendant lacks knowledge or information sufficient to form a belief
25 regarding the truth of the allegations in paragraph 41 of the complaint, and therefore
26 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
27 meets the highest wastewater treatment standards propounded by both the EPA and the
28 ADEQ.

1 42. Defendant admits the allegation in paragraph 42 of the complaint, except
2 avers that the Reclaimed Water with Class A+ rating is deemed by the EPA and the
3 ADEQ to be suitable for "open access," meaning access to Reclaimed Water by the
4 general public is uncontrolled. *See* A.A.C. R18-11-301. The A.A.C. permits eleven
5 "open access"/uncontrolled uses for Reclaimed Water sold by the City (in its capacity as
6 a Reclaimed Water Agent), including snowmaking, irrigation of food crops,
7 schoolground landscape irrigation, and residential landscape irrigation. *See* A.A.C. R18-
8 11-303(D) ("A person may use Class A+ reclaimed water for any type of direct reuse
9 listed in Table A.").

10 43. Defendant lacks knowledge or information sufficient to form a belief
11 regarding the truth of the allegations in paragraph 43 of the complaint, and therefore
12 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
13 meets the highest wastewater treatment standards propounded by both the EPA and the
14 ADEQ.

15 44. The allegations of paragraph 44 of the complaint presume inaccurate facts
16 such as dangers associated with the alleged compounds in the alleged samples.
17 Defendant thus lacks knowledge or information sufficient to form a belief regarding the
18 truth of the allegations in paragraph 44 of the complaint, and therefore denies the same,
19 and avers that the Reclaimed Water sold by Flagstaff to Snowbowl meets the highest
20 wastewater treatment standards propounded by both the EPA and the ADEQ.

21 45. Defendant lacks knowledge or information sufficient to form a belief
22 regarding the truth of the allegations in paragraph 45 of the complaint, and therefore
23 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
24 meets the highest wastewater treatment standards propounded by both the EPA and the
25 ADEQ.

26 46. Defendant lacks knowledge or information sufficient to form a belief
27 regarding the truth of the allegations in paragraph 46 of the complaint, and therefore
28 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl

1 meets the highest wastewater treatment standards propounded by both the EPA and the
2 ADEQ.

3 47. Defendant denies the allegation in paragraph 47 of the complaint and avers
4 that the Reclaimed Water sold by Flagstaff to Snowbowl meets the highest wastewater
5 treatment standards propounded by both the EPA and the ADEQ, which, per A.A.C. R18-
6 11-303(B)(3), require treated water to contain a 5-month geometric mean concentration
7 of total nitrogen of less than 10mg/L.

8 48. Defendant lacks knowledge or information sufficient to form a belief
9 regarding the truth of the allegations in paragraph 48 of the complaint, and therefore
10 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
11 meets the highest wastewater treatment standards propounded by both the EPA and the
12 ADEQ.

13 **The City of Flagstaff's Contract with**
14 **the Snowbowl for Sale of Reclaimed Wastewater**

15 49. Defendant admits the allegations in paragraph 49 of the complaint.

16 50. Defendant denies the allegations in paragraph 50 of the complaint.

17 51. Defendant lacks knowledge or information sufficient to form a belief
18 regarding the truth of the allegations in paragraph 51 of the complaint, and therefore
19 denies the same.

20 52. Responding to paragraph 52 of the complaint, Defendant refers to the
21 Contract, which speaks for itself. To the extent the allegations in paragraph 52 of the
22 complaint contradict or modify the Contract, Defendant denies those allegations.

23 53. Responding to paragraph 53 of the complaint, Defendant refers to the
24 Contract, which speaks for itself. To the extent the allegations in paragraph 53 of the
25 complaint contradict or modify the Contract, Defendant denies those allegations.

26 54. Responding to paragraph 54 of the complaint, Defendant refers to the
27 Contract, which speaks for itself. To the extent the allegations in paragraph 54 of the
28 complaint contradict or modify the Contract, Defendant denies those allegations.

1 55. Defendant lacks knowledge or information sufficient to form a belief
2 regarding the truth of the allegations in paragraph 55 of the complaint, and therefore
3 denies the same.

4 56. Defendant lacks knowledge or information sufficient to form a belief
5 regarding the truth of the allegations in paragraph 56 of the complaint, and therefore
6 denies the same.

7 57. Defendant lacks knowledge or information sufficient to form a belief
8 regarding the truth of the allegations in paragraph 57 of the complaint, and therefore
9 denies the same.

10 58. Defendant lacks knowledge or information sufficient to form a belief
11 regarding the truth of the allegations in paragraph 58 of the complaint, and therefore
12 denies the same.

13 59. Defendant lacks knowledge or information sufficient to form a belief
14 regarding the truth of the allegations in paragraph 59 of the complaint, and therefore
15 denies the same.

16 60. Defendant lacks knowledge or information sufficient to form a belief
17 regarding the truth of the allegations in paragraph 60 of the complaint, and therefore
18 denies the same.

19 61. Defendant denies the allegation in paragraph 61 of the complaint, and
20 avers, on information and belief, that on May 20, 2010, the Flagstaff Water Commission,
21 during its meeting, considered alternative means of delivery for the Reclaimed Water, but
22 never considered alternatives to the sale of Reclaimed Water to Snowbowl.

23 62. Defendant admits the allegation in paragraph 62 of the complaint.

24 63. Defendant denies the allegation in paragraph 63 of the complaint and avers,
25 on information and belief, that on July 29, 2010, the Flagstaff Water Commission, in its
26 advisory capacity, met to discuss proposed amendments to the Contract that would allow
27 for an alternative means of indirect delivery of Reclaimed Water. The Flagstaff Water
28

1 Commission made recommendations to the Flagstaff City Council. On September 2,
2 2010, the City Council elected to proceed with the Contract as written.

3 64. Defendant lacks knowledge or information sufficient to form a belief
4 regarding the truth of the allegations in paragraph 64 of the complaint, and therefore
5 denies the same.

6 65. Defendant denies the allegations in paragraph 65 of the complaint and avers
7 that in August and September 2010, the City considered options related to delivery of the
8 Reclaimed Water to Snowbowl, but never considered alternatives to the Contract.

9 66. Defendant denies the allegations in paragraph 66 of the complaint and avers
10 that on September 2, 2010, no action was taken to modify the Contract.

11 67. Defendant admits that the Flagstaff City Council met in September 2010,
12 and considered, among other issues, a proposed amendment to the Contract. The
13 Flagstaff City Council voted not to amend the Contract. Except as expressly admitted
14 herein, the allegations of paragraph 67 are denied.

15 68. Responding to paragraph 68 of the complaint, Defendant refers to the
16 Contract, which speaks for itself. To the extent the allegations in paragraph 68 contradict
17 or modify the Contract, Defendant denies those allegations.

18 **Sale of Reclaimed Wastewater for Snowmaking at the Snowbowl Ski Area**
19 **Violates Arizona Reclaimed Wastewater Regulations**

20 69. Defendant admits the allegations in paragraph 69 of the complaint.

21 70. Defendant admits the allegations in paragraph 70 of the complaint, and
22 avers that it is the policy of Arizona to encourage the use of Reclaimed Water for
23 recreational and other management purposes; in some areas the use of Reclaimed Water
24 is mandated by statutes, *i.e.* active management areas on golf courses, parks, schools and
25 similar settings.

26 71. Defendant denies the allegations in paragraph 71, and avers that the City
27 fully complied with the requirements for issuance of a Type 3 General Permit to operate
28 as a Reclaimed Water Agent, as set forth in R18-9-718 of the A.A.C.

1 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
2 meets the highest wastewater treatment standards propounded by both the EPA and the
3 ADEQ, and further avers, upon information and belief, that the issue of snowmelt runoff
4 was already considered by the appropriate administrative agencies during the permitting
5 and review process of Snowbowl's application to amend its Special Use Permit.

6 **Reclaimed Wastewater Standing on Open Areas Is Prohibited**

7 79. Defendant denies the allegations in paragraph 79 of the complaint and avers
8 that A.A.C. R18-9-704(F) does not apply to the use of Reclaimed Water for snowmaking,
9 but rather to "[i]rrigating with reclaimed water."

10 80. Defendant lacks knowledge or information sufficient to form a belief
11 regarding the truth of the allegations in paragraph 80 of the complaint, and therefore
12 denies the same.

13 81. Paragraph 81 of the complaint states a legal conclusion to which no
14 response is required. To the extent an answer is called for to the allegations in paragraph
15 81 of the complaint, Defendant denies the allegations and avers that the Reclaimed Water
16 sold by Flagstaff to Snowbowl meets the highest wastewater treatment standards
17 propounded by both the EPA and the ADEQ, and further avers, upon information and
18 belief, that the issue of Reclaimed Water standing on open areas was already considered
19 by the appropriate administrative agencies during the permitting and review process of
20 Snowbowl's application to amend its Special Use Permit.

21 82. Paragraph 82 of the complaint states a legal conclusion to which no
22 response is required. To the extent an answer is called for to the allegations in paragraph
23 82 of the complaint, Defendant denies the allegations and avers that the Reclaimed Water
24 sold by Flagstaff to Snowbowl meets the highest wastewater treatment standards
25 propounded by both the EPA and the ADEQ, and further avers, upon information and
26 belief, that the issue of Reclaimed Water standing on open areas was already considered
27 by the appropriate administrative agencies during the permitting and review process of
28 Snowbowl's application to amend its Special Use Permit.

1 83. Paragraph 83 of the complaint states a legal conclusion to which no
2 response is required. To the extent an answer is called for to the allegations in paragraph
3 83 of the complaint, Defendant denies the allegations and avers that the Reclaimed Water
4 sold by Flagstaff to Snowbowl meets the highest wastewater treatment standards
5 propounded by both the EPA and the ADEQ, and further avers, upon information and
6 belief, that the issue of Reclaimed Water standing on open areas was already considered
7 by the appropriate administrative agencies during the permitting and review process of
8 Snowbowl's application to amend its Special Use Permit.

9 ***Human Contact with Reclaimed Wastewater Must Be Precluded***

10 84. Defendant denies the allegations in paragraph 84 of the complaint and avers
11 that A.A.C. R18-9-704(F)(1) does not apply to the use of Reclaimed Water for
12 snowmaking, but rather to "[i]rrigating with reclaimed water."

13 85. Defendant lacks knowledge or information sufficient to form a belief
14 regarding the truth of the allegations in paragraph 85 of the complaint, and therefore
15 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
16 meets the highest wastewater treatment standards propounded by both the EPA and the
17 ADEQ. Moreover, Defendant avers that snowmaking is one of the eleven types of use of
18 Reclaimed Water that is approved for "open access," meaning that access to the
19 Reclaimed Water by the general public is uncontrolled. See A.A.C. R18-11-301.
20 Defendant further avers, upon information and belief, that the issue of human contact
21 with Reclaimed Water was already considered by the appropriate administrative agencies
22 during the permitting and review process of Snowbowl's application to amend its Special
23 Use Permit.

24 86. Defendant lacks knowledge or information sufficient to form a belief
25 regarding the truth of the allegations in paragraph 86 of the complaint, and therefore
26 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
27 meets the highest wastewater treatment standards propounded by both the EPA and the
28 ADEQ. Moreover, Defendant avers that snowmaking is one of the eleven types of use of

1 Reclaimed Water that is approved for “open access,” meaning that access to the
2 Reclaimed Water by the general public is uncontrolled. *See* A.A.C. R18-11-301.
3 Defendant further avers, upon information and belief, that the issue of human contact
4 with Reclaimed Water was already considered by the appropriate administrative agencies
5 during the permitting and review process of Snowbowl’s application to amend its Special
6 Use Permit.

7 87. Defendant lacks knowledge or information sufficient to form a belief
8 regarding the truth of the allegations in paragraph 87 of the complaint, and therefore
9 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
10 meets the highest wastewater treatment standards propounded by both the EPA and the
11 ADEQ. Moreover, Defendant avers that snowmaking is one of the eleven types of use of
12 Reclaimed Water that is approved for “open access,” meaning that access to the
13 Reclaimed Water by the general public is uncontrolled. *See* A.A.C. R18-11-301.
14 Defendant further avers, upon information and belief, that the issue of human contact
15 with Reclaimed Water was already considered by the appropriate administrative agencies
16 during the permitting and review process of Snowbowl’s application to amend its Special
17 Use Permit.

18 **Efforts to Obtain Action from HTEDC**

19 88. Defendant lacks knowledge or information sufficient to form a belief
20 regarding the truth of the allegations in paragraph 88 of the complaint, and therefore
21 denies the same.

22 89. Defendant lacks knowledge or information sufficient to form a belief
23 regarding the truth of the allegations in paragraph 89 of the complaint, and therefore
24 denies the same.

25 90. Defendant lacks knowledge or information sufficient to form a belief
26 regarding the truth of the allegations in paragraph 90 of the complaint, and therefore
27 denies the same.

28

The San Francisco Peaks

1
2 91. Defendant lacks knowledge or information sufficient to form a belief
3 regarding the truth of the allegations in paragraph 91 of the complaint, and therefore
4 denies the same.

5 92. Defendant lacks knowledge or information sufficient to form a belief
6 regarding the truth of the allegations in paragraph 92 of the complaint, and therefore
7 denies the same.

8 93. Defendant lacks knowledge or information sufficient to form a belief
9 regarding the truth of the allegations in paragraph 93 of the complaint, and therefore
10 denies the same.

11 94. Defendant admits the allegations in paragraph 94 of the complaint, except
12 to aver that the cited document is the Coconino National Forest Plan – Amendment No.
13 17, dated December 2002.

14 95. Defendant lacks knowledge or information sufficient to form a belief
15 regarding the truth of the allegations in paragraph 95 of the complaint, and therefore
16 denies the same.

17 96. Defendant lacks knowledge or information sufficient to form a belief
18 regarding the truth of the allegations in paragraph 96 of the complaint, and therefore
19 denies the same.

20 97. Defendant lacks knowledge or information sufficient to form a belief
21 regarding the truth of the allegations in paragraph 97 of the complaint, and therefore
22 denies the same.

23 98. Defendant lacks knowledge or information sufficient to form a belief
24 regarding the truth of the allegations in paragraph 98 of the complaint, and therefore
25 denies the same.

26 99. Defendant lacks knowledge or information sufficient to form a belief
27 regarding the truth of the allegations in paragraph 99 of the complaint, and therefore
28 denies the same.

1 100. Defendant lacks knowledge or information sufficient to form a belief
2 regarding the truth of the allegations in paragraph 100 of the complaint, and therefore
3 denies the same.

4 101. Defendant lacks knowledge or information sufficient to form a belief
5 regarding the truth of the allegations in paragraph 101 of the complaint, and therefore
6 denies the same.

7 102. Paragraph 102 of the complaint states a legal conclusion to which response
8 is required. To the extent a response is required to paragraph 102 of the complaint,
9 Defendant does not dispute that Plaintiff has quoted a portion of the 1964 Wilderness
10 Act, but denies that the quoted portion of the Wilderness Act is applicable to this
11 situation since Plaintiff has not alleged any violation of the Wilderness Act.

12 103. Defendant lacks knowledge or information sufficient to form a belief
13 regarding the truth of the allegations in paragraph 103 of the complaint, and therefore
14 denies the same.

15 104. Defendant lacks knowledge or information sufficient to form a belief
16 regarding the truth of the allegations in paragraph 104 of the complaint, and therefore
17 denies the same.

18 **The Impact of the Snowbowl Ski Area on the Surrounding Environment**

19 105. Defendant denies the allegations in paragraph 105 of the complaint, and
20 avers that the Reclaimed Water sold by Flagstaff to Snowbowl meets the highest
21 wastewater treatment standards propounded by both the EPA and the ADEQ, and further
22 avers, upon information and belief, that the issue of Snowbowl's use of Reclaimed Water
23 for snowmaking and its potential impact on the surrounding environment was already
24 considered by the appropriate administrative agencies during the permitting and review
25 process of Snowbowl's application to amend its Special Use Permit.

26 106. Defendant lacks knowledge or information sufficient to form a belief
27 regarding the truth of the allegations in paragraph 106 of the complaint, and therefore
28 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl

1 meets the highest wastewater treatment standards propounded by both the EPA and the
2 ADEQ, and further avers, upon information and belief, that the issue of snowmelt runoff
3 was already considered by the appropriate administrative agencies during the permitting
4 and review process of Snowbowl's application to amend its Special Use Permit.

5 107. Defendant lacks knowledge or information sufficient to form a belief
6 regarding the truth of the allegations in paragraph 107 of the complaint, and therefore
7 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
8 meets the highest wastewater treatment standards propounded by both the EPA and the
9 ADEQ, and further avers, upon information and belief, that the issue of snowmelt runoff
10 was already considered by the appropriate administrative agencies during the permitting
11 and review process of Snowbowl's application to amend its Special Use Permit.

12 108. Defendant lacks knowledge or information sufficient to form a belief
13 regarding the truth of the allegations in paragraph 108 of the complaint, and therefore
14 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
15 meets the highest wastewater treatment standards propounded by both the EPA and the
16 ADEQ, and further avers, upon information and belief, that the issue of snowmelt runoff
17 was already considered by the appropriate administrative agencies during the permitting
18 and review process of Snowbowl's application to amend its Special Use Permit.

19 109. Defendant lacks knowledge or information sufficient to form a belief
20 regarding the truth of the allegations in paragraph 109 of the complaint, and therefore
21 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
22 meets the highest wastewater treatment standards propounded by both the EPA and the
23 ADEQ, and further avers, upon information and belief, that the issue of snowmelt and its
24 chemical composition was already considered by the appropriate administrative agencies
25 during the permitting and review process of Snowbowl's application to amend its Special
26 Use Permit.

27 110. Defendant lacks knowledge or information sufficient to form a belief
28 regarding the truth of the allegations in paragraph 110 of the complaint, and therefore

1 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
2 meets the highest wastewater treatment standards propounded by both the EPA and the
3 ADEQ, and further avers, upon information and belief, that the issue of snowmelt runoff
4 was already considered by the appropriate administrative agencies during the permitting
5 and review process of Snowbowl's application to amend its Special Use Permit.

6 111. Defendant lacks knowledge or information sufficient to form a belief
7 regarding the truth of the allegations in paragraph 111 of the complaint, and therefore
8 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
9 meets the highest wastewater treatment standards propounded by both the EPA and the
10 ADEQ, and further avers, upon information and belief, that the issue of wind blowing the
11 manmade snow was already considered by the appropriate administrative agencies during
12 the permitting and review process of Snowbowl's application to amend its Special Use
13 Permit.

14 112. Defendant lacks knowledge or information sufficient to form a belief
15 regarding the truth of the allegations in paragraph 112 of the complaint, and therefore
16 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
17 meets the highest wastewater treatment standards propounded by both the EPA and the
18 ADEQ, and further avers, upon information and belief, that the issue of noise caused by
19 snowmaking was already considered by the appropriate administrative agencies during
20 the permitting and review process of Snowbowl's application to amend its Special Use
21 Permit.

22 113. Defendant lacks knowledge or information sufficient to form a belief
23 regarding the truth of the allegations in paragraph 113 of the complaint, and therefore
24 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
25 meets the highest wastewater treatment standards propounded by both the EPA and the
26 ADEQ, and further avers, upon information and belief, that air quality effects of the
27 snowmaking was already considered by the appropriate administrative agencies during
28

1 the permitting and review process of Snowbowl's application to amend its Special Use
2 Permit.

3 **The Impact of the Snowbowl Ski Area on the Hopi Tribe**

4 114. Defendant lacks knowledge or information sufficient to form a belief
5 regarding the truth of the allegations in paragraph 114 of the complaint, and therefore
6 denies the same.

7 115. Defendant lacks knowledge or information sufficient to form a belief
8 regarding the truth of the allegations in paragraph 115 of the complaint, and therefore
9 denies the same.

10 116. Defendant lacks knowledge or information sufficient to form a belief
11 regarding the truth of the allegations in paragraph 116 of the complaint, and therefore
12 denies the same.

13 117. Defendant lacks knowledge or information sufficient to form a belief
14 regarding the truth of the allegations in paragraph 117 of the complaint, and therefore
15 denies the same.

16 118. Defendant lacks knowledge or information sufficient to form a belief
17 regarding the truth of the allegations in paragraph 118 of the complaint, and therefore
18 denies the same.

19 119. Defendant lacks knowledge or information sufficient to form a belief
20 regarding the truth of the allegations in paragraph 119 of the complaint, and therefore
21 denies the same.

22 120. Defendant lacks knowledge or information sufficient to form a belief
23 regarding the truth of the allegations in paragraph 120 of the complaint, and therefore
24 denies the same.

25 121. Defendant lacks knowledge or information sufficient to form a belief
26 regarding the truth of the allegations in paragraph 121 of the complaint, and therefore
27 denies the same.

28

1 122. Defendant lacks knowledge or information sufficient to form a belief
2 regarding the truth of the allegations in paragraph 122 of the complaint, and therefore
3 denies the same.

4 123. Defendant lacks knowledge or information sufficient to form a belief
5 regarding the truth of the allegations in paragraph 123 of the complaint, and therefore
6 denies the same.

7 124. Defendant lacks knowledge or information sufficient to form a belief
8 regarding the truth of the allegations in paragraph 124 of the complaint, and therefore
9 denies the same.

10 125. Defendant lacks knowledge or information sufficient to form a belief
11 regarding the truth of the allegations in paragraph 125 of the complaint, and therefore
12 denies the same.

13 126. Defendant lacks knowledge or information sufficient to form a belief
14 regarding the truth of the allegations in paragraph 126 of the complaint, and therefore
15 denies the same.

16 127. Defendant lacks knowledge or information sufficient to form a belief
17 regarding the truth of the allegations in paragraph 127 of the complaint, and therefore
18 denies the same.

19 128. Defendant lacks knowledge or information sufficient to form a belief
20 regarding the truth of the allegations in paragraph 128 of the complaint, and therefore
21 denies the same.

22 129. Defendant lacks knowledge or information sufficient to form a belief
23 regarding the truth of the allegations in paragraph 129 of the complaint, and therefore
24 denies the same.

25 130. Defendant lacks knowledge or information sufficient to form a belief
26 regarding the truth of the allegations in paragraph 130 of the complaint, and therefore
27 denies the same.

28

1 131. Defendant lacks knowledge or information sufficient to form a belief
2 regarding the truth of the allegations in paragraph 131 of the complaint, and therefore
3 denies the same.

4 132. Defendant lacks knowledge or information sufficient to form a belief
5 regarding the truth of the allegations in paragraph 132 of the complaint, and therefore
6 denies the same.

7 **Harms to the Hopi Tribe From the Introduction of Reclaimed Wastewater Into the**
8 **Snowbowl Ski Area and Its Vicinity**

9 133. Defendant lacks knowledge or information sufficient to form a belief
10 regarding the truth of the allegations in paragraph 133 of the complaint, and therefore
11 denies the same, except avers that Flagstaff delivers Reclaimed Water pursuant to the
12 Contract, and further avers, that pursuant to the Contract, Snowbowl is obligated to use
13 the Reclaimed Water in compliance with the terms set forth in the United States Forest
14 Service Special Use Permit and Arizona state law.

15 134. Defendant lacks knowledge or information sufficient to form a belief
16 regarding the truth of the allegations in paragraph 134 of the complaint, and therefore
17 denies the same, except avers, upon information and belief, that other ski resorts in the
18 United States also use reclaimed water for snowmaking, including the Sunrise Park
19 Resort in Greer, Arizona, which is located within the White Mountain Apache
20 Reservation.

21 135. Defendant lacks knowledge or information sufficient to form a belief
22 regarding the truth of the allegations in paragraph 135 of the complaint, and therefore
23 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
24 meets the highest wastewater treatment standards propounded by both the EPA and the
25 ADEQ, and further avers, upon information and belief, that the ceremonial significance
26 of the San Francisco Peaks to the Hopi Tribe (among others) was fully litigated in the
27 eleven-day Religious Freedom Restoration Act Trial conducted in *Navajo Nation v. U.S.*
28 *Forest Serv.*, 408 F. Supp. 2d 866 (D. Ariz. 2006), *aff'd*, 535 F.3d 1058 (9th Cir. 2008).

1 136. Defendant lacks knowledge or information sufficient to form a belief
2 regarding the truth of the allegations in paragraph 136 of the complaint, and therefore
3 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
4 meets the highest wastewater treatment standards propounded by both the EPA and the
5 ADEQ, and further avers, upon information and belief, that the chemical contents of the
6 Reclaimed Water was already considered by the appropriate administrative agencies
7 during the permitting and review process of Snowbowl's application to amend its Special
8 Use Permit.

9 137. Defendant lacks knowledge or information sufficient to form a belief
10 regarding the truth of the allegations in paragraph 137 of the complaint, and therefore
11 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
12 meets the highest wastewater treatment standards propounded by both the EPA and the
13 ADEQ, and further avers, upon information and belief, that the issues of snowmelt was
14 already considered by the appropriate administrative agencies during the permitting and
15 review process of Snowbowl's application to amend its Special Use Permit.

16 138. Defendant lacks knowledge or information sufficient to form a belief
17 regarding the truth of the allegations in paragraph 138 of the complaint, and therefore
18 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
19 meets the highest wastewater treatment standards propounded by both the EPA and the
20 ADEQ, and further avers, upon information and belief, that the issue of wind blowing the
21 manmade snow was already considered by the appropriate administrative agencies during
22 the permitting and review process of Snowbowl's application to amend its Special Use
23 Permit. Moreover, Defendant avers, upon information and belief, that the ceremonial
24 significance of the San Francisco Peaks to the Hopi Tribe (among others) was fully
25 litigated in the eleven-day Religious Freedom Restoration Act Trial conducted in *Navajo*
26 *Nation v. U.S. Forest Serv.*, 408 F. Supp. 2d 866 (D. Ariz. 2006), *aff'd*, 535 F.3d 1058
27 (9th Cir. 2008).

1 139. Defendant lacks knowledge or information sufficient to form a belief
2 regarding the truth of the allegations in paragraph 139 of the complaint, and therefore
3 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
4 meets the highest wastewater treatment standards propounded by both the EPA and the
5 ADEQ, and further avers, upon information and belief, that the spread of chemicals from
6 the use of Reclaimed Water was already considered by the appropriate administrative
7 agencies during the permitting and review process of Snowbowl's application to amend
8 its Special Use Permit.

9 140. Defendant lacks knowledge or information sufficient to form a belief
10 regarding the truth of the allegations in paragraph 140 of the complaint, and therefore
11 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
12 meets the highest wastewater treatment standards propounded by both the EPA and the
13 ADEQ, and further avers, upon information and belief, that the ceremonial significance
14 of the San Francisco Peaks to the Hopi Tribe (among others) was fully litigated in the
15 eleven-day Religious Freedom Restoration Act Trial conducted in *Navajo Nation v. U.S.*
16 *Forest Serv.*, 408 F. Supp. 2d 866 (D. Ariz. 2006), *aff'd*, 535 F.3d 1058 (9th Cir. 2008).

17 141. Defendant lacks knowledge or information sufficient to form a belief
18 regarding the truth of the allegations in paragraph 141 of the complaint, and therefore
19 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
20 meets the highest wastewater treatment standards propounded by both the EPA and the
21 ADEQ, and further avers, upon information and belief, that the ceremonial significance
22 of the San Francisco Peaks to the Hopi Tribe (among others) was fully litigated in the
23 eleven-day Religious Freedom Restoration Act Trial conducted in *Navajo Nation v. U.S.*
24 *Forest Serv.*, 408 F. Supp. 2d 866 (D. Ariz. 2006), *aff'd*, 535 F.3d 1058 (9th Cir. 2008).

25 142. Defendant lacks knowledge or information sufficient to form a belief
26 regarding the truth of the allegations in paragraph 142 of the complaint, and therefore
27 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
28 meets the highest wastewater treatment standards propounded by both the EPA and the

1 ADEQ, and further avers, upon information and belief, that the ceremonial significance
2 of the San Francisco Peaks to the Hopi Tribe (among others) was fully litigated in the
3 eleven-day Religious Freedom Restoration Act Trial conducted in *Navajo Nation v. U.S.*
4 *Forest Serv.*, 408 F. Supp. 2d 866 (D. Ariz. 2006), *aff'd*, 535 F.3d 1058 (9th Cir. 2008).

5 143. Defendant lacks knowledge or information sufficient to form a belief
6 regarding the truth of the allegations in paragraph 143 of the complaint, and therefore
7 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
8 meets the highest wastewater treatment standards propounded by both the EPA and the
9 ADEQ, and further avers, upon information and belief, that the ceremonial significance
10 of the San Francisco Peaks to the Hopi Tribe (among others) was fully litigated in the
11 eleven-day Religious Freedom Restoration Act Trial conducted in *Navajo Nation v. U.S.*
12 *Forest Serv.*, 408 F. Supp. 2d 866 (D. Ariz. 2006), *aff'd*, 535 F.3d 1058 (9th Cir. 2008).

13 144. Defendant lacks knowledge or information sufficient to form a belief
14 regarding the truth of the allegations in paragraph 144 of the complaint, and therefore
15 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
16 meets the highest wastewater treatment standards propounded by both the EPA and the
17 ADEQ, and further avers, upon information and belief, that the ceremonial significance
18 of the San Francisco Peaks to the Hopi Tribe (among others) was fully litigated in the
19 eleven-day Religious Freedom Restoration Act Trial conducted in *Navajo Nation v. U.S.*
20 *Forest Serv.*, 408 F. Supp. 2d 866 (D. Ariz. 2006), *aff'd*, 535 F.3d 1058 (9th Cir. 2008).

21 145. Defendant lacks knowledge or information sufficient to form a belief
22 regarding the truth of the allegations in paragraph 145 of the complaint, and therefore
23 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
24 meets the highest wastewater treatment standards propounded by both the EPA and the
25 ADEQ, and further avers, upon information and belief, that the ceremonial significance
26 of the San Francisco Peaks to the Hopi Tribe (among others) was fully litigated in the
27 eleven-day Religious Freedom Restoration Act Trial conducted in *Navajo Nation v. U.S.*
28 *Forest Serv.*, 408 F. Supp. 2d 866 (D. Ariz. 2006), *aff'd*, 535 F.3d 1058 (9th Cir. 2008).

The Hopi Tribe's Groundwater Rights

1
2 146. Defendant lacks knowledge or information sufficient to form a belief
3 regarding the truth of the allegations in paragraph 146 of the complaint, and therefore
4 denies the same.

5 147. Defendant lacks knowledge or information sufficient to form a belief
6 regarding the truth of the allegations in paragraph 147 of the complaint, and therefore
7 denies the same.

8 148. Defendant lacks knowledge or information sufficient to form a belief
9 regarding the truth of the allegations in paragraph 148 of the complaint, and therefore
10 denies the same.

11 149. Defendant lacks knowledge or information sufficient to form a belief
12 regarding the truth of the allegations in paragraph 149 of the complaint, and therefore
13 denies the same.

14 150. Defendant denies the allegations in paragraph 150 of the complaint.

15 151. Defendant denies the allegations in paragraph 151 of the complaint and
16 avers that it purchased Red Gap Ranch as a potential source of support for anticipated,
17 future water needs of its populous.

18 152. Defendant admits the allegations in paragraph 152 of the complaint.

19 153. Defendant lacks knowledge or information sufficient to form a belief
20 regarding the truth of the allegations in paragraph 153 of the complaint, and therefore
21 denies the same.

22 154. Defendant denies the allegation in paragraph 154 of the complaint, except
23 avers that it does recharge the aquifer with Reclaimed Water.

24 155. Responding to paragraph 155 of the complaint, Defendant refers to the
25 Contract, which speaks for itself. To the extent the allegations in paragraph 155 of the
26 complaint contradict the Contract, Defendant denies those allegations.

27 156. Defendant lacks knowledge or information sufficient to form a belief
28 regarding the truth of the allegations in paragraph 156 of the complaint, and therefore

1 denies the same, except Defendant specifically denies that the use of Reclaimed Water
2 for snowmaking will force the City to rely on other sources of water to meet its needs.

3 157. Defendant denies the allegations in paragraph 157 of the complaint, and
4 avers that Flagstaff's long-term water supply is sufficient to meet projected demand.

5 158. Defendant lacks knowledge or information sufficient to form a belief
6 regarding the truth of the allegations in paragraph 158 of the complaint, and therefore
7 denies the same, except avers that the Red Gap Ranch is near the Hart Ranch.

8 **FIRST CLAIM FOR RELIEF:**
9 **PERMANENT INJUNCTION OF CONTRACT FOR SALE OF**
10 **RECLAIMED WASTEWATER TO THE SNOWBOWL**
11 **DUE TO VIOLATION OF ARIZONA LAW AND PUBLIC POLICY**

12 159. Answering paragraph 159 of the complaint, Defendant realleges the
13 responses contained in paragraphs 1-158 of this answer.

14 160. Defendant neither admits nor denies the allegations in paragraph 160 of the
15 complaint because the Court dismissed Plaintiff's First Claim for Relief.

16 161. Defendant neither admits nor denies the allegations in paragraph 161 of
17 the complaint because the Court dismissed Plaintiff's First Claim for Relief.

18 162. Defendant neither admits nor denies the allegations in paragraph 162 of the
19 complaint because the Court dismissed Plaintiff's First Claim for Relief.

20 163. Defendant neither admits nor denies the allegations in paragraph 163 of the
21 complaint because the Court dismissed Plaintiff's First Claim for Relief.

22 164. Defendant neither admits nor denies the allegations in paragraph 164 of the
23 complaint because the Court dismissed Plaintiff's First Claim for Relief.

24 165. Defendant neither admits nor denies the allegations in paragraph 165 of the
25 complaint because the Court dismissed Plaintiff's First Claim for Relief.

26 166. Defendant neither admits nor denies the allegations in paragraph 166 of the
27 complaint because the Court dismissed Plaintiff's First Claim for Relief.

28 167. Defendant neither admits nor denies the allegations in paragraph 167 of the
complaint because the Court dismissed Plaintiff's First Claim for Relief.

1 181. Defendant neither admits nor denies the allegations in paragraph 181 of the
2 complaint because the Court dismissed Plaintiff's Second Claim for Relief.

3 182. Defendant neither admits nor denies the allegations in paragraph 182 of the
4 complaint because the Court dismissed Plaintiff's Second Claim for Relief.

5 183. Defendant neither admits nor denies the allegations in paragraph 183 of the
6 complaint because the Court dismissed Plaintiff's Second Claim for Relief.

7 **THIRD CLAIM FOR RELIEF:**
8 **PERMANENT INJUNCTION, OR IN THE ALTERNATIVE,**
9 **DAMAGES FOR PUBLIC NUSAINCE**

10 184. Answering paragraph 184 of the complaint, Defendant realleges the
11 responses contained in paragraphs 1-183 of this answer.

12 185. Defendant denies the allegations in paragraph 185 of the complaint.

13 186. Defendant denies the allegations in paragraph 186 of the complaint.

14 187. Defendant denies the allegations in paragraph 187 of the complaint, and
15 avers that the use of Reclaimed Water for snowmaking, coupled with Snowbowl's
16 expansion, have already increased the public use and enjoyment of the Snowbowl Resort
17 Area in the two years since Snowbowl began using Reclaimed Water for snowmaking.

18 188. Defendant lacks knowledge or information sufficient to form a belief
19 regarding the truth of the allegations in paragraph 188 of the complaint, and therefore
20 denies the same, except avers that the City, and upon information and belief, Snowbowl
21 and the Forest Service, all strove during the prior ten years to accommodate any and all
22 reasonable requests made by the Hopi Tribe and its members in response to the plan to
23 use Reclaimed Water for snowmaking.

24 189. Defendant lacks knowledge or information sufficient to form a belief
25 regarding the truth of the allegations in paragraph 189 of the complaint, and therefore
26 denies the same, except avers that the City is not the actual entity making the artificial
27 snow, merely the entity that treats the Reclaimed Water to the highest wastewater
28 treatment standards propounded by the EPA and the ADEQ, and sells it to Snowbowl.

189. Defendant denies the allegations in paragraph 190 of the complaint.

1 191. Paragraph 191 of the complaint states a legal conclusion to which no
2 response is required. To the extent a response is required, Defendant denies the
3 allegations in paragraph 191 of the complaint and avers that the Reclaimed Water sold by
4 Flagstaff to Snowbowl meets the highest wastewater treatment standards propounded by
5 both the EPA and the ADEQ.

6 192. Paragraph 192 of the complaint states a legal conclusion to which no
7 response is required. To the extent a response is required, Defendant denies the
8 allegations in paragraph 192 of the complaint, and avers that the Reclaimed Water sold
9 by Flagstaff to Snowbowl meets the highest wastewater treatment standards propounded
10 by both the EPA and the ADEQ, and further avers, upon information and belief, that the
11 impact of using Reclaimed Water for snowmaking on Arizona species conservation
12 policies was already considered by the appropriate administrative agencies during the
13 permitting and review process of Snowbowl's application to amend its Special Use
14 Permit.

15 193. Defendant denies the allegations in paragraph 193 of the complaint and
16 avers that the benefits of snowmaking to the public are myriad and far outweigh any
17 possible (and by no means demonstrated) environmental impacts of snowmaking, and
18 further avers, upon information and belief, that the positive benefits of Snowbowl's use
19 of Reclaimed Water for snowmaking was already considered by the appropriate
20 administrative agencies during the permitting and review process of Snowbowl's
21 application to amend its Special Use Permit.

22 194. Defendant lacks knowledge or information sufficient to form a belief
23 regarding the truth of the allegations in paragraph 194, and therefore denies the same,
24 except avers that the Reclaimed Water sold by Flagstaff to Snowbowl meets the highest
25 wastewater treatment standards propounded by both the EPA and the ADEQ, and further
26 avers, upon information and belief, that the impact of Snowbowl's use of Reclaimed
27 Water for snowmaking on the environment was already considered by the appropriate
28

1 administrative agencies during the permitting and review process of Snowbowl's
2 application to amend its Special Use Permit.

3 195. Defendant lacks knowledge or information sufficient to form a belief
4 regarding the truth of the allegation in paragraph 195, and therefore denies the same,
5 except avers that the Reclaimed Water sold by Flagstaff to Snowbowl meets the highest
6 wastewater treatment standards propounded by both the EPA and the ADEQ, and further
7 avers, upon information and belief, that the positive economic impact of Snowbowl's use
8 of Reclaimed Water for snowmaking was already considered by the appropriate
9 administrative agencies during the permitting and review process of Snowbowl's
10 application to amend its Special Use Permit.

11 196. Defendant denies the allegations in paragraph 196, and avers that the
12 Reclaimed Water sold by Flagstaff to Snowbowl meets the highest wastewater treatment
13 standards propounded by both the EPA and the ADEQ, and further avers, upon
14 information and belief, that the total impact of Snowbowl's use of Reclaimed Water for
15 snowmaking, including economic and environmental, was already considered by the
16 appropriate administrative agencies during the permitting and review process of
17 Snowbowl's application to amend its Special Use Permit.

18 197. Defendant denies the allegations in paragraph 197 of the complaint and
19 avers that the Snowbowl expansion project will have significant utility to the City, its
20 residents, and to many visitors.

21 198. Defendant denies the allegations in paragraph 198 of the complaint and
22 avers that Arizona state law and policy explicitly authorize and encourage the use of
23 Reclaimed Water for snowmaking and other purposes.

24 199. Defendant denies the allegations in paragraph 199 of the complaint and
25 avers that Plaintiff does not have standing to bring a claim for public nuisance regarding
26 snowmaking because they have not, and cannot allege that any conduct of the City (or
27 Snowbowl) has caused "damage special in nature and different in kind from that
28

1 experienced by the residents of the city in general.” *Armory Park Neighborhood Ass'n v.*
2 *Episcopal Community Servs. in Ariz.*, 148 Ariz. 1, 5, 712 P.2d 914, 918 (1985).

3 200. Defendant denies the allegations in paragraph 200 of the complaint and
4 avers that all residents of Flagstaff and visitors from other communities have the same
5 interest in environment, including the flora and fauna, of the San Francisco Peaks in the
6 immediate vicinity of the Snowbowl Resort Area.

7 201. Defendant lacks knowledge or information sufficient to form a belief
8 regarding the truth of the allegations in paragraph 201 of the complaint, and therefore
9 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
10 meets the highest wastewater treatment standards propounded by both the EPA and the
11 ADEQ, and further avers, upon information and belief, that the issue of wind blowing the
12 manmade snow was already considered by the appropriate administrative agencies during
13 the permitting and review process of Snowbowl’s application to amend its Special Use
14 Permit. Moreover, Defendant avers, upon information and belief, that the ceremonial
15 significance of the San Francisco Peaks to the Hopi Tribe (among others) was fully
16 litigated in the eleven-day Religious Freedom Restoration Act Trial conducted in *Navajo*
17 *Nation v. U.S. Forest Serv.*, 408 F. Supp. 2d 866 (D. Ariz. 2006), *aff’d*, 535 F.3d 1058
18 (9th Cir. 2008).

19 202. Defendant lacks knowledge or information sufficient to form a belief
20 regarding the truth of the allegations in paragraph 202 of the complaint, and therefore
21 denies the same, except avers that the Reclaimed Water sold by Flagstaff to Snowbowl
22 meets the highest wastewater treatment standards propounded by both the EPA and the
23 ADEQ, and further avers, upon information and belief, that the issues of runoff and noise
24 caused by snowmaking of Reclaimed Water were already considered by the appropriate
25 administrative agencies during the permitting and review process of Snowbowl’s
26 application to amend its Special Use Permit. Moreover, Defendant avers, upon
27 information and belief, that the ceremonial significance of the San Francisco Peaks to the
28 Hopi Tribe (among others) was fully litigated in the eleven-day Religious Freedom

1 Restoration Act Trial conducted in *Navajo Nation v. U.S. Forest Serv.*, 408 F. Supp. 2d
2 866 (D. Ariz. 2006), *aff'd*, 535 F.3d 1058 (9th Cir. 2008).

3 203. Paragraph 203 of the complaint states a legal conclusion to which no
4 response is required. To the extent a response is required; Defendant lacks knowledge or
5 information sufficient to form a belief regarding the truth of the allegations in paragraph
6 203 of the complaint, and therefore denies the same, except avers that the Reclaimed
7 Water sold by Flagstaff to Snowbowl meets the highest wastewater treatment standards
8 propounded by both the EPA and the ADEQ, and further avers, upon information and
9 belief, that the impact on the Kachina Wilderness Area of the use of Reclaimed Water to
10 make artificial snow was already considered by the appropriate administrative agencies
11 during the permitting and review process of Snowbowl's application to amend its Special
12 Use Permit.

13 204. Defendant neither admits nor denies the allegations in paragraph 204 of the
14 complaint because it relates to Plaintiff's Second Claim for Relief, which the court
15 dismissed.

16 205. Paragraph 205 of the complaint states a legal conclusion to which no
17 response is required. To the extent a response is required, Defendant denies the
18 allegations in paragraph 205, and avers, upon information and belief, that in the past two
19 winters, during which time Snowbowl has used Reclaimed Water for snowmaking, the
20 Contract has not created a public nuisance. Defendant further avers that the Contract has
21 successfully increased the public's enjoyment of the Snowbowl, even in low-precipitation
22 winters such as the 2013-14 ski season, while also creating increased economic activity.

23 206. Paragraph 206 of the complaint states a legal conclusion to which no
24 response is required. To the extent a response is required, Defendant denies the
25 allegations in paragraph 206.

26 **GENERAL DENIAL**

27 207. Defendant denies each and every allegation not expressly admitted herein.
28

AFFIRMATIVE DEFENSES

1
2 1. Plaintiff fails to state a claim for relief, including as to its remaining claim
3 for public nuisance.

4 2. Plaintiff's claims are barred by the doctrine of displacement.

5 3. Plaintiff's claims are barred because Plaintiff does not allege that the City
6 had the requisite control over the instrumentality that caused the alleged public nuisance.

7 4. Plaintiff does not have standing to bring a claim for public nuisance.

8 5. Plaintiff's claims are barred by the doctrines of absolute or qualified
9 sovereign immunity.

10 6. Plaintiff's claims are barred by A.R.S. §§ 12-820, *et. seq.*

11 7. Plaintiff fails to allege cognizable damages as a result of any alleged
12 wrongdoing by the City.

13 8. Plaintiff's claims are barred by the doctrine of issue preclusion or claim
14 preclusion.

15 9. Plaintiff's claims are barred by the doctrine of laches.

16 10. Plaintiff's claims are barred by failure to comply with the notice of claim
17 statute.

18 11. Some or all of Plaintiff's remaining claim for public nuisance is barred by
19 the doctrine of unclean hands.

20 12. Plaintiff is barred from recovery by reason of its failure to mitigate or avoid
21 any of its alleged damages.

22 13. Plaintiff's claims are barred, in whole or in part, because the City did not
23 breach any obligations and/or duties owed to Plaintiff.

24 14. Plaintiff's claims are barred, in whole or in part, because the use of
25 Reclaimed Water is an important affirmative tool in the City's Water Management
26 Portfolio, Water Management Policy and Budget, and the public has consistently
27 demanded that the City maximize the use of Reclaimed Water instead of potable water
28 whenever appropriate.

1 **THIRD PARTY COMPLAINT**

2 Defendant/Third-Party Plaintiff the City of Flagstaff, Arizona (the “City”),
3 pursuant to Rule 14(a), Arizona Rules of Civil Procedure, and by way of Third-Party
4 Complaint against Third-Party Defendant Arizona Snowbowl Resort Limited Partnership
5 (“Snowbowl”), alleges the following:

6 1. The City has been named as a defendant in a lawsuit filed by the Hopi
7 Tribe, referred to herein as the “Plaintiff,” in Coconino County Superior Court, Docket
8 No. CV2011-00701 (the “complaint”). A copy of the complaint filed by Plaintiff, which
9 is referred to and incorporated by reference herein solely for the purpose of referencing
10 the allegations and without admitting the truth of any allegations therein, is attached as
11 **Exhibit A.**

12 2. The complaint seeks to “enjoin performance of, or in the alternative for
13 damages due to, the contract between the City ... and [Snowbowl] to sell municipal
14 wastewater for snowmaking at the Snowbowl ski area, because the contract violates
15 various provisions of the Arizona code and the public interest, will infringe upon the
16 Hopi Tribe’s water rights, and will cause a public nuisance.” Complaint at ¶ 14.

17 3. Snowbowl is a party to the agreements that are the subject of Plaintiff’s
18 allegations and thus has an interest in the outcome of this litigation.

19 4. The complaint originally asserted three separate claims for relief: 1)
20 seeking an injunction of the contract due to an alleged violation of Arizona law and
21 public policy; 2) an injunction because of an alleged infringement on Plaintiff’s water
22 rights; and 3) an injunction or damages for public nuisance.

23 5. After a successful motion to dismiss, which was partially upheld on appeal,
24 only Plaintiff’s third claim for public nuisance remains.

25 6. The City has answered the complaint as detailed above and has denied any
26 wrongdoing, and further has denied any liability to Plaintiff for damages or any other
27 relief sought by Plaintiff’s complaint.
28

1 25. After entering into the Contract, Snowbowl secured all city, state and
2 federal permits required for the use of Reclaimed Water for snowmaking purposes.

3 26. Upon information and belief, Snowbowl is in compliance with all permits it
4 obtained for the use of Reclaimed Water for snowmaking purposes.

5 **B. Snowbowl's Facilities to Retrieve, Handle and Use the Reclaimed Water.**

6 27. The Reclaimed Water sold to Snowbowl is treated at the Rio de Flag
7 treatment facility by the City to standards that exceed regulatory requirements for quality
8 and safety.

9 28. The Reclaimed Water is then made available to Snowbowl at the City's
10 "Point of Delivery" located within the City's service area.

11 29. After entering into the Contract, Snowbowl constructed a several-mile-long
12 underground pipeline to carry Reclaimed Water from the Point of Delivery up to the
13 Snowbowl resort area.

14 30. Once transported through Snowbowl's underground pipeline up to its
15 resort, Snowbowl stores the Reclaimed Water in a reservoir on the resort property.

16 31. Upon information and belief, the reservoir is fenced to prevent individuals
17 from gaining access to it and Snowbowl has posted signs at regular intervals along the
18 fence disclosing that the reservoir contains reclaimed water.

19 32. Upon information and belief, while in the reservoir, the Reclaimed Water is
20 diluted by naturally-occurring snow and rainfall that enters the reservoir.

21 33. After the Point of Delivery, Snowbowl owns, operates and maintains the
22 facilities that it utilizes to retrieve, transport, store and create snow from the Reclaimed
23 Water it purchases pursuant to the Contract.

24 34. After the Point of Delivery, the City does not own, operate or maintain any
25 of the facilities that Snowbowl utilizes to retrieve, transport, store or create snow from the
26 Reclaimed Water that Snowbowl purchases pursuant to the Contract.

27
28

1 35. After the Point of Delivery, the City is under no obligation to operate or
2 maintain any of the facilities that Snowbowl utilizes to retrieve, transport, store or create
3 snow from the Reclaimed Water that Snowbowl purchases pursuant to the Contract.

4 **C. The New Contract.**

5 36. On August 8, 2014, Snowbowl and the City entered into an agreement for
6 the Direct Delivery of Reclaimed Water (“New Contract”). A true and correct copy of
7 the New Contract is attached hereto as **Exhibit B**.

8 37. The New Contract provides that the Contract “is hereby terminated and
9 replaced in its entirety by this [New Contract].” *Id.* at Section 1.

10 38. Under the terms of the New Contract, Snowbowl is “responsible for
11 conducting all testing and analysis of the reclaimed water at the Point of Delivery ... to
12 ensure that it meets all applicable standards under City, State and Federal law and is of
13 adequate quality for [Snowbowl’s snowmaking].” *Id.* at Section 3.

14 39. Under the terms of the New Contract, Snowbowl is responsible, “at its sole
15 cost and expense” for compliance with all Federal, State and local laws, regulations,
16 ordinances, permits and standards that now exist, and as may be enacted in the future,
17 including those that pertain to the use, handling and distribution of reclaimed water. *Id.*
18 at Sections 8-9.

19 40. Under the terms of the New Contract, Snowbowl’s responsibilities vis-à-vis
20 the handling and use of the Reclaimed Water it purchases from the City include, but are
21 not limited to:

- 22 a. providing proper signage indicating the use of reclaimed water;
 - 23 b. preventing reclaimed water from standing on open access areas during normal
24 periods of use;
 - 25 c. preventing reclaimed water from coming into contact with drinking fountains,
26 water coolers, or eating areas;
 - 27 d. using secure hose bibs to prevent public access to the reclaimed water; and
- 28

1 e. using whatever other precautions as may be prudent to retain reclaimed water
2 within the designated place of use.

3 *Id.* at Section 9.

4 **D. Snowbowl's Management and Use of Reclaimed Water at the Resort.**

5 41. Upon information and belief, Snowbowl limits the application of snow
6 made from Reclaimed Water to designated ski slopes on Forest Service lands within the
7 boundaries of the resort property. See Reclaimed Water application map, attached as
8 **Exhibit C.**

9 42. Upon information and belief, the areas where Snowbowl currently applies
10 snow made from Reclaimed Water cover less than 1% of the entire area of the San
11 Francisco Peaks.

12 43. Upon information and belief, Snowbowl only utilizes the Reclaimed Water
13 from November through March of each year (the "Winter Season").

14 44. Upon information and belief, during the Winter Season, when Snowbowl
15 deems it appropriate, it retrieves the Reclaimed Water from its on-site reservoir, converts
16 the Reclaimed Water to snow and applies the Reclaimed Water to its property.

17 45. Upon information and belief, Snowbowl's current use and application of
18 snow made from Reclaimed Water does not result in any snow made from Reclaimed
19 Water coming into direct contact with threatened or endangered plant or animal species.

20 46. Upon information and belief, Snowbowl's current use and application of
21 snow made from Reclaimed Water does not result in any snow made from Reclaimed
22 Water coming into direct contact with known areas of cultural or religious significance to
23 Plaintiff.

24 47. Upon information and belief, Snowbowl has implemented measures,
25 including construction of berms and other physical obstacles, to prevent run-off of snow
26 made from Reclaimed Water into the surrounding wilderness.

1 48. Upon information and belief, Snowbowl has implemented measures to
2 prevent any snow made from Reclaimed Water from melting and pooling in areas
3 frequented by visitors.

4 49. Upon information and belief, Snowbowl has implemented measures to
5 prevent snow made from Reclaimed Water from blowing into the surrounding
6 wilderness.

7 50. The City does not participate in, and has no authority to direct, when or
8 how the Reclaimed Water will be converted to snow and applied by Snowbowl.

9 51. The City does not participate in, and has no authority to direct, how much
10 of the Reclaimed Water retrieved by Snowbowl in a given Winter Season will be
11 converted to snow and applied by Snowbowl.

12 52. The City does not participate in, and has no authority to direct, where
13 Snowbowl will apply snow that it makes from Reclaimed Water.

14 53. Upon information and belief, if the City is ordered to cease delivery of
15 Reclaimed Water, Snowbowl will secure alternative sources of reclaimed water for use in
16 snowmaking.

17 **E. Plaintiff's Public Nuisance Claim Attacks Snowbowl's Conduct.**

18 54. By the remaining claim for public nuisance, Plaintiff seeks an injunction
19 and/or damages against the City for alleged harms caused by the application of snow
20 made from Reclaimed Water at the Snowbowl resort.

21 55. Specifically, by its complaint, Plaintiff alleges that the City's agreements
22 with Snowbowl cause a public nuisance because:

- 23 a. Snowbowl allegedly sprays snow made with Reclaimed Water in such a
24 way that it blows into the Kachina Wilderness Area,
25 b. runoff of snow made from Reclaimed Water could "contaminate" nearby
26 wells, springs and other water bodies,
27 c. run-off of snow made from Reclaimed Water could pool and pose a health
28 risk to humans,

- 1 d. noise caused by Snowbowl's snow-making machines could interrupt
2 Plaintiff's religious ceremonies in nearby areas,
3 e. Snowbowl's expansion in the area could disrupt the habitats of threatened
4 and endangered plant and animals species, and
5 f. Snowbowl's expansion disrupts or intrudes upon places traditionally
6 utilized by Plaintiff to prepare for and complete religious and cultural
7 ceremonies.

8 Plaintiff's complaint at ¶¶ 106-113, 130-145, 186-187, 200-206.

9 56. The City denies Plaintiff's allegations of harms.

10 57. The City further denies that the allegations of harm, even if true, would
11 result in the injuries alleged by Plaintiff to humans, the surrounding environment, or any
12 religious and cultural ceremonies.

13 58. Regardless, the conduct alleged by Plaintiff in support of its public
14 nuisance claim all relate to the alleged conduct of Snowbowl. The City has no
15 connection whatsoever to any of these actions, nor can the City prevent the alleged
16 conduct.

17 59. The City has already expended significant resources and time defending
18 itself against the instant lawsuit.

19 60. After the City's initial success in securing dismissal of all of Plaintiff's
20 claims, however, the matter was remanded by the Court of Appeals to proceed on the sole
21 remaining count of public nuisance.

22 61. Plaintiff, apparently for strategic reasons, elected not to name Snowbowl as
23 a defendant in this litigation.

24 62. The City has thus borne the costs and fees of defending itself against
25 Plaintiff's remaining claim of public nuisance even though the harms alleged by Plaintiff
26 would in fact be caused by Snowbowl's alleged use and handling of the Reclaimed Water
27 during the snowmaking process at the resort and thereafter, not the City's mere sale of the
28 Reclaimed Water for statutorily authorized snowmaking purposes.

1 63. Even were Plaintiff to prevail against the City, an injunction on the City's
2 performance of the Contract and/or the New Contract, or an award of damages to
3 Plaintiff from the City would not prevent or ameliorate the harms alleged by Plaintiff, as
4 Snowbowl would still be free to purchase Reclaimed Water from an alternative source
5 and continue to apply snow made from Reclaimed Water at its resort.

6 64. Should Plaintiff obtain a damages judgment, it would be inequitable for the
7 City to be liable for alleged harms that it did not cause and that it cannot prevent.

8 **F. Snowbowl Fails to Abide by its Indemnity Obligations to the City.**

9 65. Under the terms of the New Contract, Snowbowl must indemnify the City
10 for all damages, losses, costs and expenses (including reasonable attorneys' fees and
11 litigation expenses) regarding Snowbowl's use or handling of the reclaimed water
12 purchased pursuant to the New Contract. *Id.* at Section 18.

13 66. On October 1, 2014, the City sent correspondence (the "Indemnity
14 Demand") to Snowbowl regarding its obligation to indemnify the City under the New
15 Contract.

16 67. Snowbowl received the Indemnity Demand.

17 68. To date, Snowbowl has not agreed to perform its indemnity obligations as
18 detailed in the New Contract.

19 69. To date, Snowbowl has not paid any of the attorneys' fees or costs incurred
20 by the City in defending against Plaintiff's claims.

21 70. Snowbowl's failure to indemnify the City has caused, and continues to
22 cause, damages to the City in the form of attorneys' fees and costs the City has incurred
23 to defend against Plaintiff's claims, as well as improper exposure of the City to potential
24 damages or the permanent injunction sought by Plaintiff's complaint.

25 71. Upon information and belief, Snowbowl and the City cannot mediate their
26 disagreement per the terms of the New Contract as indispensable parties are not able or
27 willing to participate in mediation at this time.

28

FIRST CLAIM FOR THIRD-PARTY RELIEF
CONTRACTUAL INDEMNITY

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2
3 72. The previous paragraphs of the Third-Party Complaint are incorporated and
4 re-asserted herein.

5 73. The City and Snowbowl are parties to the New Contract.

6 74. The New Contract is binding as between the City and Snowbowl.

7 75. The City and Snowbowl negotiated an indemnity provision, whereby
8 Snowbowl agreed to indemnify the City for all damages, losses, costs and expenses
9 (including reasonable attorneys' fees and litigation expenses) regarding Snowbowl's use
10 or handling of the reclaimed water purchased pursuant to the New Contract.

11 76. The indemnity provision is enforceable as against Snowbowl.

12 77. The City has performed as obligated under the New Contract, and is
13 entitled to indemnity from Snowbowl.

14 78. Snowbowl is immediately obligated to pay the City's past attorneys' fees
15 and costs of the instant litigation.

16 79. Snowbowl is obligated to pay the City's on-going attorneys' fees and costs.

17 80. In the event Plaintiff secures a monetary judgment against the City pursuant
18 to its public nuisance claim, Snowbowl is obligated to satisfy the monetary judgment.

19 81. To date, Snowbowl has not paid the City's past attorneys' fees and costs of
20 the instant litigation, nor has Snowbowl indicated that it will satisfy the City's future fees
21 and costs and, if applicable, any judgment that may be obtained against the City by
22 Plaintiff.

23 82. The Court should order and direct Snowbowl to perform its contractual
24 indemnity obligations to the City by paying all past attorneys' fees and costs incurred by
25 the City in defending against Plaintiff's Complaint (including the appeal to the Arizona
26 Court of Appeals), satisfying the City's future attorneys' fees and costs incurred in this
27 litigation and, if necessary, satisfying any judgment Plaintiff may obtain against the City
28 in this litigation.

1 91. After ensuring delivery of properly treated Reclaimed Water to the Point of
2 Delivery, however, the City does not exercise control over the facilities Snowbowl uses
3 to retrieve the water and transport it to Snowbowl's resort.

4 92. The City does not, and cannot, participate in the use or handling of snow
5 made from Reclaimed Water on the Snowbowl resort grounds.

6 93. The City does not, and cannot, dictate, direct or determine where snow
7 made of Reclaimed Water is applied at Snowbowl's resort.

8 94. Snowbowl profits from the creation and application of snow made of
9 Reclaimed Water by, among other things, extending its Winter Season and thus
10 generating additional visitor revenues.

11 95. Plaintiff is suing the City for allegedly wrongful conduct that is, in fact,
12 undertaken by Snowbowl, including Snowbowl's handling and use of the Reclaimed
13 Water before and while it converts it to snow and the application of the snow on the
14 Snowbowl resort grounds.

15 96. The City has been forced to incur attorneys' fees and costs to defend
16 against Plaintiff's claims despite that the conduct at issue is not undertaken by or under
17 the control of the City.

18 97. Since Snowbowl actually engages in the conduct that Plaintiff places at
19 issue in its complaint, and further in light of the profits derived by Snowbowl as a result
20 of the use of Reclaimed Water for snowmaking, it would be inequitable to allow
21 Snowbowl to escape the attorneys' fees and costs of this dispute, and escape the potential
22 liability and damages sought by Plaintiff.

23 98. The City's sale of Reclaimed Water to Snowbowl is not negligent, nor has
24 the City breached or failed to fulfill any duty by entering into the Contract or the New
25 Contract.

26 99. In the event the indemnity provision of the New Contract is found not to
27 apply, or to apply only partially to the litigation, the City asks this Court should find that,
28

1 under the common law, Snowbowl must indemnify the City from and against all costs,
2 attorneys' fees and, if applicable, damages secured by Plaintiff.

3 **THIRD CLAIM FOR THIRD-PARTY RELIEF**
4 **DECLARATORY JUDGMENT**

5 100. The previous paragraphs of the Third-Party Complaint are incorporated and
6 re-asserted herein.

7 101. This claim is brought pursuant to pursuant to the Uniform Declaratory
8 Judgment Act, A.R.S. § 12-1831, *et seq.*

9 102. An actual and justiciable controversy exists between the City and
10 Snowbowl concerning the parties' rights and obligations under the Contract and the New
11 Contract.

12 103. The City contends that based upon the acts and/or omissions as herein
13 alleged: (1) Snowbowl is obligated to defend and indemnify the City as to past and future
14 attorneys' fees and costs of suit against the Plaintiff as well as any damages that may be
15 obtained by Plaintiff in this litigation, and (2) in the event Plaintiff prevails on its
16 permanent nuisance claim or otherwise such that the City is unable to perform under the
17 Contract and/or New Contract, the City is entitled to be released from the Contract and/or
18 New Contract without any liability or further duties owed to Snowbowl.

19 104. Upon information and belief, Snowbowl disputes the City's understanding
20 of its rights and obligations under the Contract and New Contract as detailed herein.

21 105. The City has a present legal right against Snowbowl and is entitled to
22 declaratory relief pursuant to A.R.S. § 12-1831, *et. seq.*

23 106. Despite written demand, Snowbowl has not fully or adequately responded
24 to the City's requests for indemnity.

25 107. Because Snowbowl refuses accept its obligation to indemnify the City, the
26 City is presently damaged as it is forced to continue to incur attorneys' fees and costs in
27 this on-going dispute with Plaintiff, and continues to be exposed to a potential judgment
28 from Plaintiff.

1 108. Based on the allegations set forth herein, the City seeks a declaration that
2 Snowbowl:

- 3 a. Is obligated to indemnify the City, including satisfying any monetary judgment
4 Plaintiff may obtain and paying the City's past and on-going litigation costs
5 and attorneys' fees incurred in this litigation;
- 6 b. In the event Plaintiff prevails on its permanent injunction claim for public
7 nuisance or otherwise prevails such that the City's performance of the New
8 Contract is unduly burdensome or impracticable, this Court will clarify the
9 parties' respective rights and obligations under the New Contract, including, if
10 appropriate, determining that the New Contract is terminated and the City is
11 released from all liability or obligations to Snowbowl under the Contract
12 and/or New Contract.

13 109. The City therefore seeks a declaratory judgment as to its indemnification
14 rights and the validity, severability or potential termination of the New Contract in the
15 event Plaintiff prevails on its public nuisance claim.

16 WHEREFORE, the City respectfully requests that this Court:

17 A. Enter Judgment in favor of the City and against Snowbowl, and any
18 successors or assigns, finding that the City is entitled to indemnity in accordance with the
19 New Contract or, alternatively or additionally, finding that the City is entitled to
20 indemnity from Snowbowl under the common law, and awarding the City all attorneys'
21 fees and costs of defending against Plaintiff's complaint;

22 B. Enter Judgment finding that the City is entitled to indemnity in accordance
23 with the New Contract or, alternatively or additionally, finding that the City is entitled to
24 indemnity from Snowbowl under the common law, and further finding, in the event
25 Plaintiff is successful on its damages claim (which the City expressly denies), that any
26 monetary judgment secured by Plaintiff against the City must be satisfied by Snowbowl;

27 C. Enter declaratory judgment as to the City and Snowbowl's respective rights
28 and obligations under the New Contract including, but not limited to finding that

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CERTIFICATE OF SERVICE

I certify that on this 10th day of October, 2014, the original and one copy of this document was hand delivered for filing to:

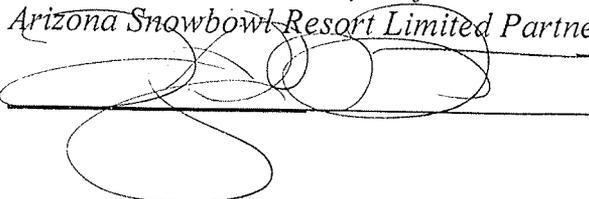
Deborah Young, Clerk
Coconino County Superior Court
200 North San Francisco
Flagstaff, Arizona 86001

COPY of the foregoing mailed this same date to:

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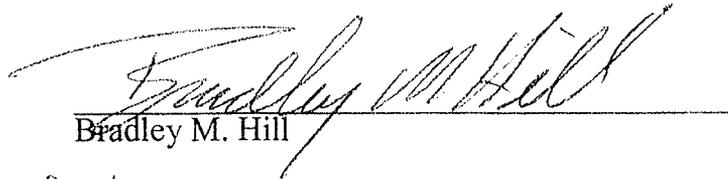
Paul G. Johnson
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Attorneys for Third Party Defendant
Arizona Snowbowl Resort Limited Partnership



VERIFICATION

I, Bradley M. Hill, am the Utilities Director of the City of Flagstaff (the "City"), the named Defendant and Third Party Plaintiff in the action, and am authorized to make this Verification on the City's behalf. I have read the City's Verified Answer and Third Party Complaint, and the matters set forth therein and Exhibits attached thereto are true and correct to the best of my knowledge, except for those matters stated on information and belief, and as to those matters, I believe them to be true based upon my personal knowledge or review of records regularly maintained by the City.

I declare under penalty of perjury that the foregoing is true and correct.


Bradley M. Hill

EXECUTED this 9TH day of OCTOBER, 2014 in Coconino County, Arizona.

EXHIBIT A



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12
13 *Attorneys for Plaintiff Hopi Tribe*

14
15 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
16 **IN AND FOR THE COUNTY OF COCONINO**

17 THE HOPI TRIBE, a federally recognized
Indian Tribe,
18
19 vs. Plaintiff,
20 THE CITY OF FLAGSTAFF, ARIZONA,
21 Defendant.

Case No.: CV2011-00701

**VERIFIED COMPLAINT
FOR RELIEF**

22 Plaintiff the Hopi Tribe, for themselves and on behalf of the Hopi Tribe Economic
23 Development Corporation as the sole shareholder, hereby files this Complaint for Relief
24 against Defendant the City of Flagstaff ("the City") and alleges as follows:
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PARTIES

1. Plaintiff, the Hopi Tribe, is a Federally Recognized Tribe. The United States Department of the Interior Office of Indian Affairs approved the Constitution and By-Laws of the Hopi Tribe on December 19, 1936, and as amended on August 1, 1969, February 14, 1980, and December 7, 1993. The Hopi Tribal Council is located at 1 Main Street, Kykotsmovi Village, Arizona 86039.

2. The Hopi Reservation is approximately 1,542,306 acres, located in Coconino and Navajo Counties, in Northeastern Arizona.

3. Plaintiff is, and at all times material hereto was, the owner and sole shareholder of the Hopi Tribe Economic Development Corporation ("HTEDC"). Plaintiff brings this action on behalf of itself and the HTEDC to enforce a right of the HTEDC.

4. The HTEDC is a wholly owned corporation of the Hopi Tribe, with the Tribe as the sole shareholder.

5. The Hopi Tribe will fairly and adequately represent the interests of the corporation in enforcing the right of the HTEDC in issue in this case.

6. The HTEDC is, and at all relevant times has been, a taxpayer of the City of Flagstaff and the State of Arizona.

7. The HTEDC owns several parcels of property in the City of Flagstaff including at 6 East Aspen Avenue (the "Heritage Square Retail/Office Complex"); 2602 North Steves Boulevard, 2626 North Steves Boulevard, 2710 North Steves Boulevard and 2718 North Steves Boulevard (the "Kachina Square Shopping Center"); and 5200 East Courtland Boulevard (the "Continental Plaza Shopping Center") (collectively, the "HTEDC Flagstaff Property"). The Hopi Tribe also owns additional property in Coconino County.

1 8. The Heritage Square Retail/Office Complex, located in the heart of
2 downtown Flagstaff in the business district, is a two story office and retail multi-use
3 complex with 15,391 square feet of rentable property. The HTEDC owns both the
4 building and the parking lot below the complex providing a 62-vehicle parking garage
5 for this downtown area. The City enjoys a perpetual use easement for the square in the
6 center of this property, which includes an amphitheatre for outside concerts and events.
7 The City, through its Parks and Recreation Department provides a full schedule of
8 activities for the Heritage Square and puts on weekly special events for the benefit of
9 Flagstaff residents.

10 9. The Kachina Square Shopping Center is a bustling neighborhood center in
11 the City located on Route 66, and is located in a high-traffic area of the City. The
12 Kachina Square Shopping Center houses 34 tenants in 56,606 square feet of rentable
13 property on 3.1 acres.

14 10. The Continental Plaza Shopping Center, located at the interchange of
15 Country Club Drive and Route 40, includes five buildings with 28 tenants in 60,874
16 square feet of rentable property on 6.3 acres. The Continental Plaza Shopping Center
17 services the large number of Flagstaff residents living in the Continental Country Club
18 area.

19 11. The HTEDC pays property taxes to Coconino County for the HTEDC
20 Flagstaff Property. The HTEDC also pays sales tax to the City for operations at these
21 properties.

22 12. In addition to being a taxpayer to the City, HTEDC is an active member
23 and contributor to the Flagstaff Chamber of Commerce.

24 13. Defendant, the City of Flagstaff, is now and at all relevant times has been a
25 municipal corporation duly organized and existing under the laws of the State of
26

1 Arizona. The City of Flagstaff is located in Coconino County, and the Flagstaff City
2 Hall is located at 211 West Aspen Avenue, Flagstaff, Arizona 86001.

3
4 **NATURE OF THE ACTION**

5 14. This action is brought by the Hopi Tribe to enjoin performance of, or in the
6 alternative for damages due to, the contract between the City of Flagstaff and the
7 Arizona Snowbowl Resort Limited Partnership ("the Snowbowl") to sell municipal
8 wastewater for snowmaking at the Snowbowl ski area, because the contract violates
9 various provisions of the Arizona Code and the public interest, will infringe upon the
10 Hopi Tribe's water rights, and will cause a public nuisance.

11 **VENUE AND JURISDICTION**

12 15. Pursuant to A.R.S. § 12-401, venue is proper in Coconino County because
13 Plaintiff the Hopi Tribe resides in Coconino County. The Hopi Reservation is located
14 within Coconino and Navajo Counties.

15 16. Pursuant to A.R.S. § 12-401, venue also is proper in Coconino County
16 because Defendant City of Flagstaff is a municipality within Coconino County.

17 17. Pursuant to A.R.S. § 12-401, venue also is proper in Coconino County
18 because the City of Flagstaff contracted in writing to perform an obligation in Coconino
19 County.

20 18. Pursuant to A.R.S. § 12-401, venue also is proper in Coconino County
21 because this is an action against the City of Flagstaff and the claims for relief asserted by
22 the Hopi Tribe against the City of Flagstaff arose in Coconino County.

23 19. Pursuant to A.R.S. § 12-401, venue also is proper in Coconino County
24 because the City of Flagstaff has agents and/or representatives in Coconino County.

25 20. Pursuant to A.R.S. § 12-401, venue also is proper in Coconino County
26 because the City of Flagstaff conducts business in Coconino County.

1 28. The Snowbowl's operations are limited by a Special Use Permit issued by
2 the U.S. Forest Service, and its operations are limited to the area defined by the Permit
3 (the "Snowbowl Resort Area").

4 29. The Snowbowl Resort Area is surrounded on three sides by the Kachina
5 Peaks Wilderness Area (the "Wilderness Area"), and protrudes nearly 10,000 feet into
6 the Wilderness Area.

7 30. The Snowbowl has stated that its average ski season runs from mid-
8 December through early-April, and that the average seasonal snowfall is 260 inches.

9 31. During the 2010-2011 season, a record number of skiers visited the
10 Snowbowl ski area. In January 2011 the Snowbowl reported that "As Flagstaff
11 experiences a record dry month, Arizona Snowbowl has set a record for the most skier
12 visits in a 30 day period (December 25 – January 24) with 68,237 visitors, and more than
13 half coming from out of town." As of April 2, 2011, it was reported that the Snowbowl
14 ski area had recorded over 196,000 visits. During the 2004-2005 season the Snowbowl
15 ski area recorded 193,000 visits. Nonetheless, the Snowbowl is attempting to implement
16 an expansion plan to increase its profits.

17 32. The Snowbowl has pursued an expansion plan that calls for the production
18 of artificial snow, and includes, among other things, a pipeline, an underground network
19 of water lines, snowmaking equipment, and a ten-million gallon surface impoundment
20 for storage of reclaimed wastewater, along with the addition of other expanded facilities.

21 33. This expansion plan will result in a relatively small increase in profits for
22 the Snowbowl while imposing a great cost on the users of the San Francisco Peaks,
23 including the Hopi Tribe.

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1 34. The Snowbowl's expansion plan would add approximately 66 acres of new
2 ski trails, as well as a snowplay area that would include snow tubing in sculpted lanes,
3 lifts, and a new lodge.

4 35. On July 2, 2010, the Forest Supervisor issued to Snowbowl an amendment
5 to the Special Use Permit authorizing the expansion projects.

6 36. As further described below, the City of Flagstaff has entered into a contract
7 with the Snowbowl to provide reclaimed wastewater for the purpose of making artificial
8 snow as part of the Snowbowl's expansion plan.

9 **The City's Reclaimed Wastewater**

10 37. Reclaimed wastewater is water that has been used and circulated through
11 the City's municipal water sewer system, has passed through a treatment facility, and
12 meets certain standards.

13 38. The reclaimed wastewater the City has contracted to sell to the Snowbowl
14 will be treated by the Rio de Flag treatment plant.

15 39. The Rio de Flag treatment plant uses tertiary treatment, which is designed
16 to remove some, but not all, contaminants from the wastewater.

17 40. Reclaimed wastewater contains recalcitrant chemical components that are
18 not degraded or removed in the wastewater treatment process, including pharmaceuticals,
19 personal care products, legal and illicit drugs, veterinary drugs, hormones, caffeine,
20 cosmetics, food supplements, sunscreen agents, solvents, insecticides, plasticizers,
21 detergent compounds, and other chemicals. Some of these chemicals are harmful to
22 animal populations.

23 41. Some chemicals found in reclaimed wastewater are known to be
24 "endocrine-disrupters," which interfere with natural hormone levels in animals and
25 humans.

26

1 42. Reclaimed wastewater is not used as drinking water in Arizona.

2 43. Amphibians, fish, and other animals with porous skin are particularly
3 sensitive to endocrine disruptors. Studies have shown negative impacts of endocrine
4 disruptors, which can include aberrant sexual development and behavior, and
5 reproductive problems in animal populations.

6 44. Studies of reclaimed wastewater from the Rio de Flag Treatment Plant
7 found detectable levels of contaminants including human drug compounds, human and
8 veterinary antibiotics, and industrial and household wastes. The U.S. Geological Survey
9 has sampled water from the Rio de Flag reclamation facility and detected the presence of
10 human drug compounds, pharmaceutical compounds, including Cotinine,
11 Acetaminophen, Dhydronifedipine, Carbamazapine, and Caffeine, as well as numerous
12 industrial and household waste products.

13 45. Studies exposing female bullfrogs to reclaimed wastewater from the Rio de
14 Flag reclamation facility found that such exposure adversely affected the bullfrogs'
15 feeding behavior.

16 46. Another study where tadpoles were placed in reclaimed wastewater from
17 the Rio de Flag reclamation facility found that the tadpoles underwent metamorphosis in
18 fewer days, weighed less, and were shorter than individuals from control groups,
19 indicating that exposure to reclaimed wastewater from the Rio de Flag reclamation
20 facility influences endocrine-directed development in this species.

21 47. Reclaimed wastewater from the Rio de Flag reclamation facility has
22 elevated levels of nitrogen.

23 48. Elevated nitrogen levels in the reclaimed wastewater can lead to increased
24 growth of weedy non-native species that could dominate and outcompete native species
25 and can adversely impact both flora and soil fauna.

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**The City of Flagstaff's Contract with
the Snowbowl for Sale of Reclaimed Wastewater**

49. On or about March 20, 2002, the City entered into a contract with the Snowbowl for the sale of reclaimed wastewater to the Snowbowl ("the Contract") for the express purpose of making artificial snow from reclaimed wastewater as part of the Snowbowl expansion project.

50. The Contract sat dormant for many years and no provision of reclaimed wastewater has yet occurred under the Contract.

51. Along with many others, the Hopi Tribe has repeatedly and consistently voiced its opposition to both the sale of reclaimed wastewater and any additional development on the San Francisco Peaks, including through the specific actions outlined in Paragraphs 52 to 67 below.

52. The 2002 Contract, including amendments thereto, provided that the Contract would become null and void within two years if Snowbowl did not obtain all necessary approvals for the snowmaking activity. Snowbowl failed to obtain these necessary approvals within two years.

53. On January 20, 2004, the City amended the Contract to extend the term of the agreement and the deadline to obtain all necessary approvals for the snowmaking activity. The amendment provided that the Contract would become null and void if Snowbowl did not obtain all necessary federal and state environmental approvals for the snowmaking activity by March 20, 2006.

54. The City and Snowbowl subsequently amended the Contract to further extend the term and the deadline to obtain all federal and state environmental approvals for the snowmaking activity.

1 55. On March 31, 2004, Caleb Johnson, who was then the Vice Chair of the
2 Hopi Tribe, submitted a letter to the Flagstaff Water Commission Chairman and
3 Commissioners confirming the Tribe's prior request for a hearing to explain the Tribe's
4 position on the proposed sale of recycled wastewater for snowmaking on the Peaks. This
5 request was denied.

6 56. In denying the request of the Hopi Tribe to further discuss the issue of use
7 of reclaimed wastewater for snowmaking at the Peaks, the City of Flagstaff indicated it
8 would take no action unless and until the U.S. Department of Agriculture and the U.S.
9 Forest Service completed the National Environmental Procedure Act ("NEPA") process,
10 and that the final decision would be made by the U.S. Forest Service, and not the City of
11 Flagstaff Water Commission.

12 57. On June 1, 2004, Mr. Johnson submitted a subsequent letter addressed to
13 the Chairman of the Flagstaff Water Commission transmitting the Hopi Tribe's
14 comments on the Snowbowl Facilities Improvement Draft Environmental Impact
15 Statement and repeating the Tribe's objection to the proposed sale of recycled
16 wastewater for snowmaking on the Peaks.

17 58. In December 2004, the Hopi Tribe declined to sign the Memorandum of
18 Agreement between the U.S. Department of Agriculture, Forest Service, the Advisory
19 Council on Historic Preservation and the Arizona State Historic Preservation Officer
20 regarding the Arizona Snowbowl Ski Area Proposed Modifications because it was the
21 Tribe's position that there were no administrative actions described in the Memorandum
22 of Agreement that could mitigate the adverse effects of using reclaimed wastewater for
23 artificial snowmaking at the Snowbowl.

24 59. From 2005 through 2008, the Tribe continued to actively oppose proposals
25 for the use of reclaimed wastewater for snowmaking at the Snowbowl.
26

1 60. Throughout 2009 and into 2010, the U.S. Department of Agriculture, the
2 City of Flagstaff, Snowbowl, and Tribal Leaders continued to discuss potential
3 alternatives to the sale of reclaimed wastewater at the Snowbowl.

4 61. On May 20, 2010 the Flagstaff Water Commission held a meeting to
5 introduce proposed alternatives to the sale of reclaimed wastewater for snowmaking.

6 62. On July 2, 2010, the U.S. Forest Service completed its permitting process
7 and issued an Amendment to the Special Use Authorization to allow the Snowbowl
8 expansion process to move forward.

9 63. On July 29, 2010, the Flagstaff City Water Commission held a public
10 hearing to decide whether or not to approve a contract to sell potable water to Snowbowl
11 in lieu of reclaimed wastewater.

12 64. Members of the Hopi Tribe attended the hearing and provided the Hopi
13 Tribe's input on the proposal consistent with the Hopi Tribe's position.

14 65. In August and September 2010 the City considered alternatives to the
15 contract with the Snowbowl and/or amendment to the Contract with the Snowbowl. A
16 series of public hearings culminated in a public hearing that was many hours long, during
17 which strong opposition to the implementation of the Contract was presented by the Hopi
18 Tribe and many other taxpayers in Flagstaff.

19 66. Following these hearings, on September 2, 2010, the City voted to proceed
20 with the Contract for sale of reclaimed wastewater to the Snowbowl for production of
21 artificial snow.

22 67. On September 7, 2010, the Flagstaff City Council heard, debated, and
23 accepted public comment a motion to reconsider the September 2, 2010 vote, but
24 ultimately voted not to reconsider its decision to proceed with the Contract for sale of
25 reclaimed wastewater to the Snowbowl.

26

1 68. Under the Contract, the City will provide to the Snowbowl up to 1.5
2 million gallons of reclaimed wastewater every day from November to February (the
3 “Delivery Period”), or up to 552.4 acre-feet per year.

4
5 **Sale of Reclaimed Wastewater for Snowmaking at the Snowbowl Ski Area
6 Violates Arizona Reclaimed Wastewater Regulations**

7 69. The Arizona Revised Statutes and the Arizona Administrative Code
8 regulate use of reclaimed wastewater.

9 70. The Arizona Administrative Code “Direct Reuse of Reclaimed Water”
10 governs permissible direct uses of reclaimed wastewater in Arizona.

11 71. The Arizona Department of Environmental Quality (“ADEQ”) issued a
12 Type 3 General Permit to the City to allow it to operate as a Reclaimed Water Agent
13 upon the City’s representation that all end users would meet the Arizona Administrative
14 Code requirements for use of reclaimed water. The Notice of Intent that the City sent to
15 ADEQ listed the Snowbowl among numerous other end users, but contained no analysis
16 or explanation of how the Snowbowl would comply with Arizona regulatory restrictions
17 on use of reclaimed water.

18 72. The Arizona Administrative Code provides that reclaimed wastewater may
19 only be directly used if all of the requirements of Article 7 of the Arizona Administrative
20 Code are met. R18-9-718(A).

21 73. Arizona Administrative Code Section R18-9-704 provides for “General
22 Requirements” for direct discharge of reclaimed wastewater.

23 74. Use of reclaimed wastewater for the purpose of making artificial snow at
24 the Snowbowl ski area violates several provisions of the Arizona Administrative Code
25 regulating proper use of reclaimed wastewater.

26

1 75. Snowmaking at the Snowbowl does not meet the requirements of the
2 Arizona Administrative Code, despite the general listing of Snowmaking in the table at
3 18 A.A.C. 11, Article 3, Appendix A. Moreover, snowmaking was added to Appendix A
4 without any analysis or opportunity for public comment.

5 ***Runoff of Reclaimed Wastewater Is Prohibited***

6 76. The Arizona Administrative Code and the City's authorization to operate
7 as a reclaimed water agent prohibit "[a]llowing runoff of reclaimed water or reclaimed
8 water mixed with stormwater from a direct reuse site, except for agricultural return flow
9 that is directed onto an adjacent field or returned to an open water conveyance." R18-9-
10 704(G)(3)(c).

11 77. During spring snowmelt, some of the over 180 million gallons of reclaimed
12 wastewater will runoff the application area and the Snowbowl Resort Area.

13 78. The sale of reclaimed wastewater to the Snowbowl for the express purpose
14 of making artificial snow will impermissibly allow runoff of reclaimed wastewater or
15 reclaimed wastewater mixed with stormwater from a direct reuse site, in violation of
16 R18-9-704(G)(3)(c).

17 ***Reclaimed Wastewater Standing on Open Areas Is Prohibited***

18 79. The Arizona Administrative Code and the City's authorization to operate
19 as a reclaimed water agent also require users to "Prevent reclaimed water from standing
20 on open access areas during normal periods of use." R18-9-704(F)(2).

21 80. The Snowbowl plans to use the reclaimed wastewater from the City to
22 create a base layer of artificial snow throughout the Snowbowl ski area on all ski runs
23 and in the snowplay area.

24 81. Up to 552.4 acre-feet, or over 180 million gallons of reclaimed wastewater
25 will accumulate on open access areas in the Snowbowl Resort Area, as well as in the
26

1 surrounding Kachina Peaks Wilderness Area during the winter season in violation of
2 R18-9-704(F)(2).

3 82. During spring snowmelt, some of the over 180 million gallons of reclaimed
4 wastewater will pool or stand on the surface in the Snowbowl Resort Area as well as in
5 creeks and streams carrying runoff from the application area and the Snowbowl Resort
6 Area in violation of R18-9-704(F)(2).

7 83. The Contract for the sale of reclaimed wastewater for the purpose of
8 making artificial snow at the Snowbowl ski area violates Arizona Administrative Code
9 provision R18-9-704(F)(2).

10 ***Human Contact with Reclaimed Wastewater Must Be Precluded***

11 84. The Arizona Administrative Code and the City's authorization to operate
12 as a reclaimed water agent also require that end users of reclaimed water "Use
13 application methods that reasonably preclude human contact with reclaimed water."
14 R18-9-704(F)(1).

15 85. The sale of reclaimed wastewater for snowmaking at the Snowbowl ski
16 area will result in human contact with reclaimed wastewater both in and outside the
17 boundaries of the Snowbowl Resort Area.

18 86. Artificial snow made from reclaimed wastewater at the Snowbowl
19 snowplay area will come into contact with humans, particularly children.

20 87. The sale of reclaimed wastewater to the Snowbowl for the express purpose
21 of making artificial snow for ski and snowplay areas does not reasonably preclude
22 human contact with reclaimed wastewater, in violation of R18-9-704(F)(1).

23 ***Efforts to Obtain Action from the HTEDC***

24 88. Plaintiff has made diligent effort to have the present action instituted by the
25 HTEDC in its own right. On or about August 3, 2011, the Hopi Tribe made formal
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1 demand upon the directors of HTEDC that they take prompt action to enforce the rights
2 of the corporation asserted against the City of Flagstaff.

3 89. On August 10, 2011, the Hopi Tribe's General Counsel appeared before
4 the directors of the HTEDC to again demand immediate action to enforce the rights of
5 the corporation asserted against the City of Flagstaff.

6 90. On August 15, 2011, the HTEDC provided written notification to the Hopi
7 Tribe respectfully declining the Hopi Tribe's demand to file litigation to enforce the
8 rights of the corporation against the City of Flagstaff.

9 **The San Francisco Peaks**

10 91. The San Francisco Peaks area has wide variation in elevation, and consists
11 of diverse ecosystems, making it an important and unique area for biodiversity within
12 Arizona and the Southwest.

13 92. The Peaks, and more specifically the Snowbowl Resort Area, are
14 ecologically significant, containing rare types of habitat and numerous threatened,
15 endangered, and sensitive species.

16 93. Tundra habitat is extremely rare in Arizona, consisting of less than 1400
17 acres on the Peaks in the vicinity of the Snowbowl Resort Area.

18 94. The San Francisco Peaks have been described in the following way:

19 The San Francisco Peaks, at 12,633 feet the highest point in
20 Arizona, tower over the flat, heavily timbered Colorado Plateau,
21 home of the largest contiguous stand of ponderosa pine in the
22 world. The Mogollon Rim, a high rocky escarpment, slashes
23 across the southern reaches of the Forest and forcefully separates
the cool timber country from the arid, high desert scrub along the
Verde River, the Forest's southern boundary. Deep canyons and
natural lakes round out the picture of a Forest that spans the
major life zones of Arizona.

24 Forest Management Plan for Coconino National Forest, at p.3.
25
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1 95. The Arizona Game and Fish Department has issued "Arizona's
2 Comprehensive Wildlife Conservation Strategy: 2005-2015." It states that tundra
3 habitat is significantly stressed and that "[t]he trend in this habitat type is to continued
4 loss of species and populations of rare components of the tundra. Many of these
5 influences are being actively managed by the [U.S. Forest Service] under strict rules
6 which lack a significant enforcement effort due to restricted funding and the remote
7 location at which tundra is found."

8 96. Rare Alpine Confer Forests in Arizona are also found exclusively in and
9 around the Snowbowl Resort Area and "have been disproportionately affected by a small
10 number of development projects such as ski runs, communication towers, and
11 observatories" Arizona Comprehensive Wildlife Conservation Strategy.

12 97. Over three-quarters of all species in the Coconino National Forest fall
13 within a category defined by the U.S. Forest Service planning directives such as
14 endangered or threatened, wildlife of special concern, species of concern, and species of
15 interest.

16 98. The Northern Leopard Frog, Northern Goshawk, Olive-Sided Flycatcher,
17 Western Purple Martin, American Peregrine Falcon, the Pine Grosbeak, Red-Naped
18 Sapsucker, and Mexican Spotted Owl, are present in the Snowbowl ski area and have
19 been identified as "Species of Greatest Conservation Need" by the Arizona
20 Comprehensive Wildlife Conservation Strategy.

21 99. Several species that inhabit the Snowbowl Resort Area and surrounding
22 areas are also nationally designated as endangered or threatened including the Mexican
23 Spotted Owl and the San Francisco Peaks Groundsel.

24 100. The U.S. Fish and Wildlife Service also has commenced the listing process
25 for the Northern Leopard Frog, which is found in the Snowbowl area. *See* 74 Fed. Reg.
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1 31,389 (July 1, 2009) (finding that listing the Northern Leopard Frog to the endangered
2 species list may be warranted). The petition to list the Northern Leopard Frog cited
3 exposure to pesticides and water pollution as among the factors affecting the species'
4 continued existence.

5 101. The Snowbowl Resort Area is surrounded on three sides by the Kachina
6 Peaks Wilderness Area, which was established in 1984 by the United States Congress.
7 Arizona Wilderness Act of 1984, Pub. L. No. 98-406, § 101(a)(22), 98 Stat. 1485
8 (1984). The Snowbowl Resort Area protrudes nearly 10,000 feet into the Wilderness
9 Area.

10 102. The purpose of the Wilderness Act of 1964 is stated by Congress as:

11 In order to assure that an increasing population, accompanied by
12 expanding settlement and growing mechanization, does not
13 occupy and modify all areas within the United States and its
14 possessions, leaving no lands designated for preservation and
15 protection in their natural condition, it is hereby declared to be
16 the policy of the Congress to secure for the American people of
17 present and future generations the benefits of an enduring
18 resource of wilderness. For this purpose there is hereby
19 established a National Wilderness Preservation System to be
20 composed of federally owned areas designated by Congress as
21 "wilderness areas", and these shall be administered for the use
22 and enjoyment of the American people in such a manner as will
23 leave them unimpaired for future use and enjoyment as
24 wilderness, and so as to provide for the protection of these areas,
25 the preservation of their wilderness character, and for the
26 gathering and dissemination of information regarding their use
and enjoyment as wilderness

16 U.S.C. § 1131(a).

21 103. The Kachina Peaks Wilderness Area is named for the Hopi deities, in
22 recognition of the importance of the Peaks to the Hopi way of life and use of the area for
23 traditional practices. 130 Cong. Rec. H8908 (Aug. 10, 1984) (Statement of Rep. Udall)
24 ("the San Francisco Peaks Wilderness has been changed to Kachina Peaks to reflect the
25 deep Hopi religious significance of the area"); *see also* 130 Cong. Rec. S10361 (Aug. 9,
26

1 1984) (Statement of Senator DeConcini) (“I am also pleased that we will add Kachina
2 Peaks, an area sacred to the cultures of the Navajo and Hopi peoples”).

3 104. In introducing the bill that designated the Kachina Peaks Wilderness Area,
4 sponsoring Representative Udall specifically noted that “the San Francisco Peaks are
5 considered sacred to several Indian tribes, including the Hopi and the Navajo. Religious
6 practices and herb gathering are still conducted on the mountain by these people and the
7 wilderness designation is in no way intended to interfere with these practices.” H.R.
8 Rep. No. 98-643, at 18 (1984). Representative Udall also noted the significant and
9 unique ecological importance of the Peaks area. *Id.* at 18-19.

10 **The Impact of the Snowbowl Ski Area on the Surrounding Environment**

11 105. Pursuant to activities specifically contemplated in the Contract between the
12 City and the Snowbowl, reclaimed wastewater will be discharged to the slopes of the San
13 Francisco Peaks, contaminating sensitive ecosystems.

14 106. Runoff cannot be contained to the application area or the Snowbowl Resort
15 Area.

16 107. Some of the snowmelt from the Snowbowl ski area will infiltrate regional
17 perched aquifers and subsequently be discharged to the surface via springs.

18 108. All of the springs and seeps in the Coconino National Forest that may be
19 recharged by snowmelt from the Snowbowl ski area support important ecosystems for
20 wildlife and plant communities. Arizona’s Comprehensive Wildlife Conservation
21 Strategy states with respect to springs and seeps in the Arizona-New Mexico Mountain
22 Region of Arizona that “All are critical to maintain due to the role they play in providing
23 key habitat components to wildlife.”

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1 109. Snowmelt from artificial snow made from reclaimed wastewater will be
2 environmentally harmful because it contains chemicals including endocrine disruptors
3 that adversely affect certain species.

4 110. Some of the springs in the Coconino National Forest that may be recharged
5 by snowmelt from the Snowbowl ski area, including the Wilson and Colton Springs, are
6 used for domestic water supply.

7 111. In addition, prevailing winds will blow the artificial snow, made with
8 reclaimed wastewater, beyond the boundaries of the application area and the Snowbowl
9 Resort Area. The artificial snow made from reclaimed wastewater cannot be contained
10 within the Snowbowl Resort Area, but rather will accumulate and coat trees and plants
11 outside the Snowbowl Resort Area, including in the Wilderness Area. The blown snow
12 will impact substantially more of the environment than just that within the Snowbowl
13 Resort Area.

14 112. The creation of artificial snow will also result in a significant increase in
15 unnatural noise that will penetrate into the Wilderness Area and surrounding
16 environment. The significant increase in unnatural noise cannot be contained within or
17 limited to the Snowbowl Resort Area.

18 113. The snowmaking equipment will generate exhaust and other fumes
19 affecting the air quality and environment in the Snowbowl Resort Area and surrounding
20 areas. It is expected that the snowmaking will attract additional traffic in the vicinity of
21 the Snowbowl Resort Area, thus further increasing air pollution and associated impacts
22 to the natural environment.

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The Impact of the Snowbowl Ski Area on the Hopi Tribe

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2 114. The Hopi Tribe has lived in Northeastern Arizona for centuries. Old
3 Oraibi, one of the cities on the Hopi Reservation, is believed to be the oldest
4 continuously inhabited village in the United States, established as early as 1150 A.D.

5 115. The Peaks have played a central and essential role in Hopi culture,
6 traditions, and way of life for centuries. The Peaks, known as Nuvatukya'ovi to the
7 Hopi, are the single most important sacred place the Hopi have. Every month Tribe
8 members go to the Peaks for prayers, and during some months tribe members collect
9 water, greens, and herbs for the ceremonies.

10 116. The Hopi have been making regular pilgrimages and trips to the Peaks
11 since before recorded history as a central part of their culture and the Hopi way of life.
12 The various Hopi ceremonies conducted during the year, particularly Powamuya in the
13 winter and Niman in the summer, require visits and offerings to specific shrines on the
14 Peaks.

15 117. The Hopi also frequent the Peaks to hunt deer, elk, and small game and to
16 gather plants, herbs, tobacco, food, and other natural resources.

17 118. The Peaks mark a cardinal direction defining the Hopi universe.

18 119. The U.S. Forest Service has identified the Peaks as a Traditional Cultural
19 Property and has determined that the Peaks are eligible for the National Register of
20 Historic Places. Through this determination, the U.S. Forest Service recognizes that the
21 Peaks contain shrines and other places where ceremonies and prayers are performed; are
22 the source of life-giving water and soil, plant and animal resources that are necessary for
23 ceremonial and traditional purposes; mark the boundaries of traditional and ancestral
24 lands; form the ceremonial calendar; contain places that relate to legends and stories
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1 concerning Hopi origins, clans, traditions, and ceremonies; and contain specific sites and
2 places that are significant in the history and cultural practices of the Tribe.

3 120. Before the Snowbowl ski area was established on the Peaks, the Hopi made
4 regular pilgrimages to and used the area where the Snowbowl Resort is now located, as
5 well as to Hart Prairie and other areas immediately surrounding the Snowbowl Resort
6 Area.

7 121. The Snowbowl Resort Area and its immediate vicinity have been
8 traditionally used by the Hopi because the topography and existence of paths and roads
9 in this area allowed greater accessibility for members of the Hopi Tribe, whereas other
10 portions of the Peaks are less accessible and harder to reach.

11 122. There are Hopi sacred areas, including shrines, in the immediate vicinity of
12 the Snowbowl Resort Area.

13 123. The presence of the Snowbowl Resort has forced the Hopi to move their
14 trips to and use of the Peaks into the adjacent areas, including the Kachina Peaks
15 Wilderness Area and Hart Prairie.

16 124. As one example, Hart Prairie at the base of the Snowbowl is a tipkya (or
17 "womb") that the Hopi consider to be the spiritual birthing place of the Kachina (known
18 to the Hopi as the "Katsina"). This prairie has been sacred to and traditionally used by
19 the Hopi for hundreds of years.

20 125. The Hopi collect water from springs on the Peaks and use the water for a
21 variety of ceremonial activities. Several of the springs on the Peaks are associated with
22 specific ceremonies and religious societies. In addition, "Lakonva" is a sacred spring on
23 the west side of the Peaks that is used by members of a women's society.

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1 126. Multiple times each year, members of the Hopi Tribe make pilgrimages to
2 the Peaks, including trips to areas in the immediate vicinity of the Snowbowl Resort
3 Area.

4 127. When making trips to the areas near the Snowbowl Resort Area, the Hopi
5 collect ceremonially important objects, including Douglas fir and spruce boughs, water,
6 tobacco, and other natural resources. These materials are taken back to the Hopi
7 Reservation, where they are used for ceremonial and utilitarian purposes by many
8 members of the Hopi Tribe. During the trips, the Hopi leave gifts and offerings to the
9 Peaks including feathers and cornmeal.

10 128. Douglas fir, white fir, and aspen are used for a variety of ceremonial
11 materials. Native tobacco, mixed with white fir, is used for ritual smoking in preparation
12 of and during ceremonies. Boughs of Douglas fir and spruce are collected and used for
13 several ceremonies, including for use as symbolically important portions of the Katsina
14 clothing. Oak, holly grape, mountain mahogany, and beeweed are used for a variety of
15 cultural activities.

16 129. The Hopi gather boughs and other natural resources throughout the vicinity
17 of the Snowbowl Resort Area, along Snowbowl Road and the Inner Basin. These are
18 important collecting areas because of their accessibility and traditional use.

19 130. In recognition of the Hopi Tribe's use of the Snowbowl and the
20 surrounding areas, the U.S. Forest Service constructed pull-offs along the Snowbowl
21 Road specifically for the Hopi to gather boughs and to perform religious ceremonies.
22 These places have been used every year for Hopi pilgrimages since their creation.
23 However, the Snowbowl expansion project has already resulted in destruction of some of
24 these areas and will deprive the Hopi of their use.

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1 131. The purity of the ceremonial objects collected by members of the Hopi
2 Tribe during pilgrimages is of particular importance. These objects cannot be used for
3 ceremonial purposes if they are tainted or impure.

4 132. When making trips to the areas near the Snowbowl Resort Area, the Hopi
5 also observe wildlife. After returning to the Hopi Reservation, the individuals who made
6 the trip report to other Hopi members what plants and animals are present. The wildlife
7 observed and the pristine conditions of the Peaks are essential to the Hopi's use and
8 enjoyment of these areas.

9
10 **Harms to the Hopi Tribe From the Introduction of Reclaimed Wastewater
Into the Snowbowl Ski Area and its Vicinity**

11 133. The Snowbowl plans to use reclaimed wastewater from the City to create a
12 base layer of artificial snow and then to supplement natural snowfall with artificial snow
13 as needed throughout the ski season.

14 134. If permitted to proceed, the Snowbowl would be the first ski resort in the
15 country to use undiluted reclaimed wastewater for snowmaking.

16 135. Artificial snow made with reclaimed wastewater will introduce numerous
17 chemicals that are not degraded or removed in the wastewater treatment process to the
18 San Francisco Peaks, in particular to the areas in the Snowbowl Resort Area and its
19 vicinity that have been a part of Hopi use for ceremonial pilgrimages and hunting and
20 gathering trips for centuries.

21 136. The chemicals that will be introduced to the Snowbowl Resort Area,
22 surrounding environment, and the Wilderness Area include, but are not limited to
23 endocrine disrupters and other pharmaceuticals, personal care products, legal and illicit
24 drugs, veterinary drugs, hormones, caffeine, cosmetics, food supplements, sunscreen
25 agents, solvents, insecticides, plasticizers, detergent compounds, and other chemicals.
26

1 137. Artificial snow made with reclaimed wastewater will melt in the spring,
2 causing drainage of reclaimed wastewater from the Snowbowl Resort Area into the
3 Wilderness Area and surrounding environment, causing the chemicals found in
4 reclaimed wastewater to spread throughout the environment.

5 138. In addition, prevailing winds will blow the snow, made with reclaimed
6 wastewater, beyond the application area and the boundaries of the Snowbowl Resort
7 Area. Natural resources that the Hopi collect, as well as shrines, sacred areas, and
8 springs on the Peaks will come into contact with the blown reclaimed wastewater,
9 including the chemicals and endocrine disruptors the reclaimed wastewater contains.
10 This will negatively impact the Hopi's use of the Snowbowl Resort Area, the Wilderness
11 Area, and surrounding areas, and cause Hopi practitioners to stop using the areas they
12 have traditionally used.

13 139. The spread of chemicals from the use of reclaimed wastewater to make
14 artificial snow cannot be limited or controlled.

15 140. Chemicals from the use of reclaimed wastewater to make artificial snow
16 will have a significant adverse impact on animal and plant species that are important to
17 the Hopi belief system and cultural practices.

18 141. If artificial snow made from reclaimed wastewater is used at the Snowbowl
19 ski area, the Hopi will be forced further outside of the area they have used and visited for
20 centuries as a part of their way of life.

21 142. The increased unnatural noise caused by the generation of artificial snow
22 that will penetrate into the wilderness areas will disrupt the Hopi's use and visits to and
23 ceremonies on the Peaks.

24 143. The Hopi have a specific interest in protecting the physical and spiritual
25 purity of the Peaks.
26

1 144. The Douglas fir boughs, water, tobacco and other natural resources are
2 collected and used in ceremonies on the Reservation where hundreds more benefit from
3 the gatherings.

4 145. The Contract for sale of reclaimed wastewater to the Snowbowl for the
5 express purpose of snowmaking will have a direct and unreasonable negative impact on
6 the Hopi's use and enjoyment of the Peaks, including use of areas within the Snowbowl
7 Resort Area, the Wilderness Area, and the surrounding areas.

8 **The Hopi Tribe's Groundwater Rights**

9 146. The Tribe has a right to sufficient water to accomplish the current and
10 future needs of the Hopi Reservation. This right vested in 1882, when the U.S.
11 Government established the Hopi Reservation.

12 147. The Hopi Tribe has also purchased ranches outside of its Reservation as
13 part of an attempt to restore the Tribe's ancestral homelands. These lands have been
14 placed into trust for the Tribe.

15 148. The regional C-Aquifer and R-Aquifer underlie the Hopi Reservation.
16 These aquifers also underlie parts of the City of Flagstaff, including the Rio de Flag
17 recharge zone.

18 149. There are additional smaller perched aquifers above the C-Aquifer and R-
19 Aquifer.

20 150. The City of Flagstaff is currently drawing more water than it is entitled to
21 withdraw, including so large of a volume of water as to infringe upon the Hopi Tribe's
22 water rights.

23 151. Flagstaff purchased Red Gap Ranch with the specific intent to install a
24 wellfield.

25 152. Flagstaff's water demand and use are projected to continue to grow.
26

1 153. There is currently insufficient groundwater to meet the current and future
2 needs of the Hopi Reservation.

3 154. The City of Flagstaff is currently recharging the aquifer with reclaimed
4 wastewater, which has offset part of the City of Flagstaff's over-use of water.

5 155. Under the Contract, the City of Flagstaff will sell up to 552.4 acre-feet, or
6 over 180 gallons, of water to the Snowbowl each year instead of using that water to
7 recharge the local aquifer.

8 156. Much of the reclaimed wastewater used for snowmaking at the Snowbowl
9 will be lost to evaporation, transpiration, and infiltration to other aquifers and will not
10 recharge the local aquifers, forcing the City and the Hopi to rely on other sources of
11 water to meet their needs.

12 157. The City's purchase of Red Gap Ranch included the purchase of two
13 groundwater supply wells. The City plans to develop a well field at the Red Gap Ranch
14 with the express intent to supplement Flagstaff's long-term water supply, which is
15 currently insufficient to meet projected demand.

16 158. Red Gap Ranch is located directly adjacent to the Hart Ranch, which was
17 purchased by the Hopi Tribe in 1998 as an effort to regain ancestral Hopi lands.

18
19 **FIRST CLAIM FOR RELIEF:**
20 **PERMANENT INJUNCTION OF CONTRACT FOR SALE OF**
21 **RECLAIMED WASTEWATER TO THE SNOWBOWL**
22 **DUE TO VIOLATION OF ARIZONA LAW AND PUBLIC POLICY**

23 159. Paragraphs 1 through 158 above are incorporated by reference.

24 160. The Contract with the Snowbowl for sale of reclaimed wastewater for use
25 in making artificial snow violates a number of provisions of Arizona law and public
26 policy.

1 161. The sale of reclaimed wastewater to the Snowbowl for the express purpose
2 of making artificial snow for ski and snowplay areas will impermissibly allow runoff of
3 reclaimed wastewater or reclaimed wastewater mixed with stormwater, in violation of
4 Arizona Administrative Code R18-9-704(G)(3)(c).

5 162. The sale of reclaimed wastewater to the Snowbowl for the express purpose
6 of making artificial snow for ski and snowplay areas does not "reasonably preclude
7 human contact with reclaimed water," in violation of Arizona Administrative Code R18-
8 9-704(F)(1).

9 163. The sale of reclaimed wastewater to the Snowbowl for the express purpose
10 of making artificial snow for ski and snowplay areas will impermissibly allow reclaimed
11 wastewater to stand on open access areas during normal periods of use, in violation of
12 Arizona Administrative Code R18-9-704(F)(2).

13 164. The Contract for the sale of reclaimed wastewater to the Snowbowl for the
14 express purpose of making artificial snow is contrary to public policy.

15 165. As a taxpayer, the HTEDC has an interest in the lawful expenditure of
16 taxpayer money by the City of Flagstaff, Arizona.

17 166. On behalf of the HTEDC, as the owner and sole shareholder, the Hopi
18 Tribe has a derivative interest in the lawful expenditure of taxpayer money by the City of
19 Flagstaff, Arizona.

20 167. The City of Flagstaff will expend taxpayer money under the Contract to
21 connect the pipeline conveying reclaimed wastewater to the Snowbowl to the Rio de
22 Flag treatment plant.

23 168. The City of Flagstaff will expend taxpayer money to treat wastewater at the
24 Rio de Flag treatment plant for delivery to the Snowbowl under the Contract.

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1 169. The City of Flagstaff must be permanently enjoined from spending any
2 taxpayer money in performance of the Contract.

3 170. The Hopi are regular users of the wilderness areas in the immediate
4 vicinity of the Snowbowl Resort Area and have been for centuries. The Hopi and the
5 natural resources they use will be injured by the sale of reclaimed wastewater for
6 snowmaking at the Snowbowl.

7 171. The sale of reclaimed wastewater to make artificial snow is contrary to
8 public policy because it will result in unreasonable harm to the environment and public
9 health.

10 172. The sale of reclaimed wastewater to make artificial snow is contrary to
11 public policy because it will result in unreasonable harm to natural resources in the
12 region.

13 173. The sale of reclaimed wastewater to make artificial snow is contrary to
14 public policy because it will unreasonably imperil the diverse and ecologically
15 significant flora and fauna present in the Snowbowl Resort Area, the Wilderness Area,
16 and the surrounding areas.

17 174. The sale of reclaimed wastewater to make artificial snow is contrary to
18 public policy because it will result in injury to the public through diversion of water that
19 would otherwise be used to recharge the local and/or regional groundwater aquifers. The
20 misuse of this reclaimed wastewater is contrary to public policy.

21 175. The sale of reclaimed wastewater to make artificial snow is contrary to
22 public policy because it violates principles of environmental justice in desecrating a site
23 sacred to many Native American Indian Tribes.

24 176. Because the sale of reclaimed wastewater to the Snowbowl for the express
25 purpose of making artificial snow for ski and snowplay areas violates the provisions of
26

1 the Arizona Administrative Code and is contrary to public policy, performance of the
2 Contract must be enjoined.

3
4 **SECOND CLAIM FOR RELIEF:**
5 **PERMANENT INJUNCTION OF, OR IN THE ALTERNATIVE**
6 **DAMAGES FOR, INFRINGEMENT OF THE TRIBE'S WATER RIGHTS**

7 177. Paragraphs 1 through 176 above are incorporated by reference.

8 178. The Tribe has a reserved water right to the volume of water necessary to
9 accomplish the current and future needs of the Hopi Reservation. This right vested in
10 1882, when the U.S. Government established the Hopi Reservation.

11 179. The City of Flagstaff is currently drawing so large of a volume of water out
12 of the C-Aquifer and R-Aquifer, as to infringe upon the Hopi Tribe's water rights.

13 180. The Contract for sale of reclaimed wastewater will exacerbate the City's
14 infringement on the Hopi Tribe's water rights.

15 181. The City's planned withdrawal of water from the Red Gap Ranch will
16 adversely impact availability of groundwater at the Hart Ranch.

17 182. The planned well field at Red Gap Ranch will adversely impact the
18 availability of groundwater for the Hopi Tribe.

19 183. The City of Flagstaff's use of water that impinges on the Tribe's water
20 rights must be enjoined or in the alternative, damages awarded to the Hopi Tribe.

21 **THIRD CLAIM FOR RELIEF:**
22 **PERMANENT INJUNCTION, OR IN THE ALTERNATIVE,**
23 **DAMAGES FOR PUBLIC NUSAINCE**

24 184. Paragraphs 1 through 183 above are incorporated by reference.

25 185. The sale of reclaimed wastewater to make artificial snow will result in
26 unreasonable harm to the environment and the Hopi Tribe.

186. The release of various pollutants, including, but not limited to endocrine
disruptors and other pharmaceuticals, personal care products, legal and illicit drugs,

1 | veterinary drugs, hormones, caffeine, cosmetics, food supplements, sunscreen agents,
2 | solvents, insecticides, plasticizers, detergent compounds, and other chemicals will harm
3 | the environment.

4 | 187. The release of these pollutants will significantly interfere with the public
5 | use and enjoyment of the San Francisco Peaks, in particular the Snowbowl Resort Area
6 | and its vicinity, including the Wilderness Area.

7 | 188. The Contract for the sale of reclaimed wastewater for snowmaking at the
8 | Snowbowl will cause material annoyance, inconvenience, and discomfort to the Hopi
9 | Tribe and its members.

10 | 189. The City is responsible for the harm to the Hopi Tribe because it is the
11 | City's Contract for the reclaimed wastewater that sets into motion the forces that cause
12 | the harm to the Hopi Tribe.

13 | 190. The harm caused by the City's Contract is a substantial, unreasonable and
14 | intentional interference with a right common to the general public.

15 | 191. The Contract for the sale of reclaimed wastewater for snowmaking on the
16 | San Francisco Peaks is contrary to Arizona law.

17 | 192. The Contract for the sale of reclaimed wastewater for snowmaking at the
18 | Snowbowl is contrary to Arizona species conservation policies and will unreasonably
19 | harm sensitive and threatened species.

20 | 193. The harms to the Hopi Tribe, its members, the unique environmental
21 | resources, and the public from the sale of reclaimed wastewater for snowmaking at the
22 | Snowbowl outweigh any benefit of making snow from reclaimed wastewater.

23 | 194. The harms to the Hopi Tribe, its members, the environment, and the public
24 | from the sale of reclaimed wastewater for snowmaking at the Snowbowl will be
25 | irreparable and substantial, because the presence of artificial snow will permanently
26 |

1 | compromise the pristine nature of these areas. These permanent alterations will affect
2 | the use and enjoyment of the Peaks by the Hopi and other direct users, as well by as the
3 | public at large.

4 | 195. The sale of reclaimed wastewater poses a significant risk of harm to the
5 | Hopi Tribe and the thousands of its members and community, and all other users of the
6 | wilderness areas who rely on the purity and sanctity of the Peaks. This harm outweighs
7 | the slight incremental economic benefit the City and the Snowbowl may realize if the
8 | expansion plan proceeds.

9 | 196. The risk of additional harm created by the abundance of unknown factors
10 | involved in the sale of reclaimed wastewater for snowmaking will be borne by the Tribe
11 | and other users of these unique and important ecosystems, including the Wilderness
12 | Area.

13 | 197. The utility that the Snowbowl expansion project may provide to the City is
14 | minimal in comparison to the harm and risk facing the Tribe and other users of the
15 | Wilderness Area and other areas in and around the Snowbowl Resort Area.

16 | 198. The sale of reclaimed wastewater for snowmaking on the Peaks is
17 | unreasonable.

18 | 199. The Hopi Tribe has standing to bring this action for public nuisance.

19 | 200. The Hopi Tribe will suffer specific injury from sale of reclaimed
20 | wastewater for snowmaking at the Snowbowl because it has special interests in the
21 | environment, including the flora and fauna, of the San Francisco Peaks in the immediate
22 | vicinity of the Snowbowl Resort Area.

23 | 201. The Hopi Tribe will suffer specific injury from the sale of reclaimed
24 | wastewater for snowmaking because the prevailing winds will blow the artificial snow
25 | outside the boundaries of the application area thus negatively impacting Hopi's use of
26 |

1 | these areas, including for ceremonial practices, hunting and the gathering of natural
2 | resources.

3 | 202. The Hopi Tribe will suffer specific injury from the sale of reclaimed
4 | wastewater for snowmaking because the artificial snow will blow towards, and melting
5 | snow will runoff into, springs and water bodies the Hopi Tribe uses for ceremonial and
6 | utilitarian purposes. The Hopi Tribe will suffer specific injury by the disturbances in the
7 | Hopi's use and enjoyment from the increased unnatural noise caused when making
8 | artificial snow from the reclaimed wastewater.

9 | 203. The sale of reclaimed wastewater for snowmaking in such a manner that
10 | runoff, windblown snow, increased unnatural noise, and elevated air pollution will
11 | pervade beyond the Snowbowl Resort Area is inconsistent with the Congressional
12 | establishment of the Kachina Wilderness Area. Congress established the Kachina
13 | Wilderness Area for preservation and protection of wilderness in its natural condition
14 | and intended the wilderness area to be left "unimpaired for future use and enjoyment as
15 | wilderness."

16 | 204. The Hopi Tribe will suffer specific injury from the sale of reclaimed
17 | wastewater for snowmaking at the Snowbowl because it will interfere with the Hopi
18 | Tribe's reserved right to the volume of water necessary to accomplish the current and
19 | future needs of the Hopi Reservation.

20 | 205. Unless enjoined by the Court, the Contract with the Snowbowl will result
21 | in a public nuisance.

22 | 206. The City of Flagstaff's Contract for the sale of reclaimed waste water must
23 | be enjoined or in the alternative, damages awarded to the Hopi Tribe.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff Hopi Tribe respectfully requests that judgment be entered in its favor and in favor of the HTEDC for the following:

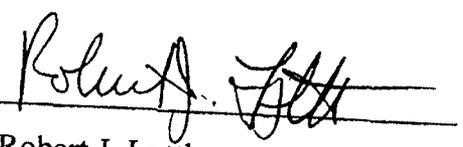
- A. Declare that the Contract with the Snowbowl for delivery of reclaimed wastewater for the purpose of making artificial snow is illegal, contrary to public policy, and void.
- B. Declare that the Contract with the Snowbowl for delivery of reclaimed wastewater for the purpose of making artificial snow will result in a public nuisance.
- C. Declare that the Contract with the Snowbowl for delivery of reclaimed wastewater will result in an illegal infringement of the Hopi Tribe's reserved water right.
- D. Award damages for the illegal infringement of the Hopi Tribe's reserved water right caused by the Contract with the Snowbowl for the sale of the reclaimed wastewater.
- E. Permanently enjoin the City of Flagstaff from implementing the Contract with the Snowbowl for delivery of reclaimed wastewater for the purpose of making artificial snow.
- F. Permanently enjoin the City of Flagstaff from selling reclaimed wastewater for delivery to the Snowbowl for the purpose of making artificial snow.
- G. Award damages for the special injury that will be suffered by Plaintiff from the public nuisance that will be caused by the sale of reclaimed wastewater to the Snowbowl for snowmaking.
- H. Permanently enjoin the City of Flagstaff from using any groundwater deemed necessary for the present and future needs of the Hopi Reservation.

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Alternatively, require the City of Flagstaff to recharge the aquifer to preserve sufficient water for the present and future needs of the Hopi Reservation.

- I. Award costs and attorneys fees to Plaintiff Hopi Tribe.
- J. Grant any other relief that the Court deems appropriate.

DATED this 19th day of August, 2011.

By: 

Robert J. Lyttle
Arizona Bar No. 028064
ROBERT J. LYTTLE, P.C.
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Attorneys for Plaintiff Hopi Tribe

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VERIFICATION

I, Lionel Puhuyesva, pursuant to Arizona Rules of Civil Procedure 23.1 and 80.1, hereby verify under penalty of perjury:

1. That I am the Director of the Water Resources Program of the Hopi Tribe, and as such, I have the authority to make this Verification on behalf of the Hopi Tribe;

2. That I have read the foregoing Verified Complaint and know the contents thereof, and that the allegations made therein are true and correct to the best of my knowledge and belief.

DATED this 19th day of August, 2011

By: 

Lionel Puhuyesva
P.O. Box 123
Kykotsmovi, AZ 86039
Telephone: (928) 734-3711

EXHIBIT B

**Direct Delivered
Reclaimed Water Agreement**

Place of Use Id. No. 28

This agreement ("Agreement") is made and entered into this 8th day of August, 2014, by and between the City of Flagstaff Utilities Director on behalf of the City of Flagstaff ("City"), and

CUSTOMER/BUYER	Arizona Snowbowl Resort Limited Partnership ("Buyer")
ADDRESS:	P.O. Box 40, 14 miles NW of Flagstaff
CITY - STATE - ZIP:	Flagstaff, AZ 86002

WHEREAS, Buyer is a current reclaimed water customer of the City, and Buyer desires to continue purchasing reclaimed water for purposes that do not require potable water quality under City, State, or Federal regulations; and

WHEREAS, the City has authority under A.R.S. §9-511(A), and Flagstaff City Code Section 7-02-001-0024 to enter into an agreement to sell reclaimed water to Buyer; and

WHEREAS, the City and Buyer entered into a Reclaimed Wastewater Agreement on March 20, 2002; and

WHEREAS, the City and Buyer entered into a First Amendment of the Reclaimed Wastewater Agreement on January 20, 2004 (the Reclaimed Wastewater Agreement and First Amendment thereto are hereinafter defined as "Original Agreement"); and

WHEREAS, the City owns and operates a treatment and delivery system (Rio de Flag Water Reclamation Plant ("WRP") and/or Wildcat Hill Wastewater Treatment Plant) which is capable of delivering to Buyer reclaimed water that meets quality standards applicable to snowmaking as set forth in Arizona Administrative Code, Title 18, Chapter 11, Article 3, Reclaimed Water Quality Standards; and

WHEREAS, the City owns and operates a public reclaimed water pipeline from the WRP to the City's Meter Vault within Thorpe Park; and

WHEREAS, Buyer has constructed, owns, operates, and maintains a private reclaimed water distribution system from the City's Meter Vault to the Buyer's property ("Buyer Reclaimed Water Facilities").

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the City hereby agrees to sell and Buyer hereby agrees to purchase reclaimed water from the City, subject to the following terms and conditions

- 1. Termination and Replacement of Original Agreement.** The Original Agreement is hereby terminated and replaced in its entirety by this Agreement.
- 2. Place of Use.** Reclaimed water delivered by the City under this Agreement shall be stored and used by Buyer on the following described property ("the Property"), for the use described in paragraph 3 below:

BUYER:	Arizona Snowbowl Resort Limited Partnership
ADDRESS:	P.O. Box 40, 14 miles NW of Flagstaff
CITY - STATE - ZIP:	Flagstaff, AZ 86002
PHONE:	(928) 779-1951 x112 or (928) 853-6064
LOCAL CONTACT PERSON: (for notice hereunder)	J.R. Murray
E-MAIL ADDRESS:	jrmurray@arizonasnowbowl.com

Arizona Snowbowl Resort Limited Partnership - Site 28		P.O. Box 40, 14 miles NW of Flagstaff	
TOWNSHIP: T22N T22N T23N T23N		RANGE, SECTION: R6E, SEC 1 R7E, SEC 5,6 R6E, SEC 36 R7E, SEC 31, 32	
LONGITUDE:	LATITUDE:	APPROX ACRES:	TYPE OF REUSE:
111° 42' 34"	N35° 19' 50"	206	Snowmaking

CITY:	City of Flagstaff
ADDRESS:	211 W. Aspen Ave.
CITY - STATE - ZIP:	Flagstaff, AZ 86001
PHONE:	(928) 213-2400
LOCAL CONTACT PERSON: (for notice hereunder)	Brad Hill
E-MAIL ADDRESS:	bhill@flagstaffaz.gov

3. **Intended Use/Quality Standards.** Buyer intends to use the reclaimed water delivered by the City for the purpose of snowmaking ("Intended Use"). If required, the Buyer is responsible for conducting all testing and analysis of the reclaimed water at the Point of Delivery (defined below) to ensure that it meets all applicable standards under City, State, and Federal law and is of adequate quality for Buyer's Intended Use. City is not obligated and shall not be required under this Agreement to meet standards higher than those imposed pursuant to City, State, or Federal requirements.

4. **Point of Delivery/Maintenance Obligations.** The City shall deliver the reclaimed water contemplated by this Agreement to the existing lower pump house located within Thorpe Park, 191 Thorpe Road, Flagstaff, Arizona ("Point of Delivery"). Buyer agrees that it shall accept, test (if required) and measure the reclaimed water at the Point of Delivery. The Point of Delivery consists of a vault, pit, meter, valves, and other appurtenances necessary to meter reclaimed water (collectively, the "Meter Vault"). The City shall be responsible for maintaining and operating the public reclaimed water system, up to and including the meter Vault. Buyer shall be responsible for maintaining and operating all mechanical items and associated equipment with the Buyer Reclaimed Water Facilities from the Meter Vault to the Property, including any and all areas where Buyer directly or indirectly uses reclaimed water (collectively the "Place of Use"). The Parties further agree that the City shall be responsible for meeting all applicable obligations for the reclaimed water while the reclaimed water is within the Meter Vault; and that the Buyer shall be responsible for meeting all applicable obligations from the point where the reclaimed water leaves the Meter Vault and enters the Buyer Reclaimed Water Facilities, and to any and all Places of Use.
5. **Reclaimed Water Delivery Schedule.** The Parties agree that the City shall deliver reclaimed water at the Point of Delivery during the months of November, December, January and February ("Seasonal Months"), at the following total maximum peak day rate of 1.5 million gallons. Upon approval of the Utilities Director, maximum peak day rate may be increased up to but not exceed 2.25 million gallons per day. The Parties further agree that the City shall not be obligated to deliver reclaimed water on an annualized basis in excess of 552 acre-feet/year. Buyer acknowledges that during the Seasonal Months, the City will incur certain costs in the provision of such reclaimed water, such associated costs in an amount calculated based on the City's provision of 138 acre-feet of reclaimed water per year (even if Buyer takes less than 138 acre-feet of water per year). Therefore, even in the event that Buyer takes less than 138 acre-feet of reclaimed water per year, in consideration for the City incurring associated costs, Buyer shall pay City for City's associated costs as calculated based on the City's provision of 138 acre-feet of reclaimed water per year. This amount shall be known as the "Annual Minimum Payment."
6. **Commodity and Monthly Rate.** After satisfaction of the Annual Minimum Payment, payable in three (3) equal payments in the months of December, January and February, the rate to be paid by Buyer for reclaimed water delivered by the City under this Agreement in excess of 138 acre feet shall be the standard rate that is applicable to Commercial, no main extension, outside city rates for reclaimed water at the time, date, and place of delivery, all as set forth in Title 7 of the Flagstaff City Code. Nothing herein shall excuse Buyer from payment of service or other charges, such as the base monthly service charge, as are applicable to the time, place, or manner of service and delivery.
7. **Costs to Buyer.** All cost and expense arising from or related to the use of reclaimed water by Buyer, including, but not limited to those associated with the construction, maintenance, and operation of the reclaimed water delivery system on the Property, shall be the sole responsibility and obligation of Buyer.
8. **Compliance with Regulations.** In connection with its duties and obligations under this Agreement, Buyer, at its sole cost and expense, shall comply with all Federal, State and local laws, regulations, ordinances, permits and standards that now exist, and as may be enacted in the future, including those that pertain to the use, handling and distribution of reclaimed water. Such laws, regulations, ordinances and standards may include, but not be limited to, requirements and restrictions governing use of reclaimed water; limits on reclaimed water contact with residents, guests, invitees, employees, members of the public, and adjoining properties; control of access to reclaimed water, its delivery system, and the area of storage and use; and warning signs on Buyer's reclaimed water delivery system, and in the area of on-site storage and use of reclaimed water on the Property. All deliveries

of reclaimed water by the City to the Point of Delivery shall be made in accordance with the City's ordinances, rules, and regulations.

9. Buyer's Responsibilities.

The Buyer shall comply with all applicable City, State, and Federal standards now or in the future, pertaining to the use of reclaimed water, including but not limited to:

- a) The Buyer shall provide and install sufficient signage as required by State law for reclaimed water use. Such signs shall be prominently displayed at each reuse site. Said signs shall be placed at a minimum at all logical points of entry to each reuse site, at the entrance to all lakes and ponds at each reuse site, at all plumbing outlets, and at all hose bibs providing reclaimed water or other locations as required by the City's permits with ADEQ.
- b) The Buyer shall prevent reclaimed water from standing on open access areas during normal periods of use.
- c) The Buyer shall prevent reclaimed water from coming into contact with drinking fountains, water coolers, or eating areas.
- d) The Buyer shall secure hose bibs discharging reclaimed water to prevent use by the public.
- e) The Buyer shall take such other precautions as may be prudent to retain reclaimed water within the Place of Use.

10. Continuation of Service. Continuation of service after the expiration of this Agreement is within the City's sole discretion, and is subject to the City's inspection of Buyer's on-site reclaimed water storage and reuse system in order to verify the installation of proper backflow prevention equipment, signage, and any other applicable requirements for the storage and use of reclaimed water including all applicable City, State, and Federal requirements.

11. Duration and Termination of Service. The duration of this Agreement shall be twenty (20) years from August 8, 2014 to August 7, 2034.

12. Potential Disruption of Service. Buyer hereby agrees and acknowledges the possibility that the City may be required to permanently or temporarily terminate, in whole or in part, delivery of reclaimed water to the Buyer for any number of reasons, including, but not limited to emergency conditions, water quality or other regulatory issues, peak demands, insufficient water supply, or planned system maintenance. The City will use its best efforts to provide advance notice to Buyer of any permanent or temporary termination of reclaimed water delivery. Buyer shall be solely responsible for any damage that may be caused to Buyer-owned facilities by such permanent or temporary termination in the reclaimed water delivery. In the event of an emergency which requires the City to temporarily suspend or curtail delivery of reclaimed water to Buyer, Buyer understands and agrees that the City will turn off the Meter Valve at the Point of Delivery. In order to accommodate peak demand periods or planned maintenance of the public reclaimed water delivery system, the City shall provide Buyer with at least twenty-four (24) hour notice of the need to completely cease reclaimed water usage, or to reduce the volume of reclaimed water used at the Property. Upon receiving such notice, Buyer shall alter Buyer's reclaimed water usage in accordance with the City's request.

13. Resale or Off-Site Use of Reclaimed Water Prohibited. Buyer shall not, without the express

written permission of the City Manager, deliver, use, or resell reclaimed water, either directly or indirectly, off-Property or to any other person or entity, or use the reclaimed water for any purpose other than the Intended Use.

- 14. Inspection.** Buyer acknowledges and agrees that, in order to verify compliance with this Agreement and with all applicable laws and regulations, the City, State, County or other agency with jurisdiction may inspect the Property being served with reclaimed water at any reasonable time.
- 15. Successors and Assigns.** The Agreement shall be binding upon the successors and assigns of the City and the Buyer, and may be assigned or transferred by either Party with the prior consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. The Party seeking to assign or transfer shall give the other Party thirty days written notice of its intent to assign or transfer. If no response is made within the thirty day period, the lack of a response will be deemed to be consent to the assignment or transfer. The assigning or transferring Party shall be released from any and all liabilities and/or obligations and/or performance arising, accruing or occurring under this Agreement after the time of that assignment or transfer and the other Party shall look solely to the assignee or transferee with respect to any such liabilities and/or obligations and/or performance under this Agreement.
- 16. Cancellation for Conflict of Interest.** This Agreement is subject to the cancellation provisions of A.R.S. §38-511.
- 17. Insurance.** Buyer shall maintain during the term of this Agreement, and during any renewal term of this Agreement, general liability insurance in the minimum amount of Two Million Dollars (\$2,000,000.00) to cover any liability arising from the acts and omissions of Buyer, its officers, employees, or agents. The City shall be identified as an additional insured on any such policy. Buyer shall provide the City with a current certificate of insurance with respect to such coverage and conditions.
- 18. Indemnification.** Buyer agrees to indemnify the City, and its past, present and future officers, officials, agents, representatives, employees, successors and assigns ("City Indemnitees") from all damages, losses, costs and expenses (including reasonable attorneys' fees and litigation expenses) regarding Buyer's use or handling of the reclaimed water purchased pursuant to this Agreement. This indemnity obligation begins following Buyer's acceptance of the water at the Point of Delivery. Buyer's indemnity obligation pursuant to this paragraph shall not include -any damages, losses, costs and expenses resulting from the City Indemnitees' own negligence (active or passive), failure to comply with any federal, state, or local law, statute, ordinance, rule, regulation or court decree, or breach of the City's obligations under this Agreement. The City Indemnitees agree to provide notice to Buyer of any formal legal action instituted in a federal or state court of law for which they seek indemnity no later than thirty (30) business days after City's receipt of the formal legal action instituted in a federal or state court of law.
- 19. Excusable Non-Performance.** In the event of an act of God, natural catastrophe, war, civil insurrection, accident, act of governmental or judicial bodies other than the City, the failure of either Party to perform its obligation under this Agreement shall be excused for so long as the condition interfering with performance continues. The maintenance and operation of the City's sewage system and of the City's wastewater treatment plants shall be solely within the discretion of the City, and, in the event the City discontinues operation of its sewage treatment plant, or does not retain legal authority to provide reclaimed water or recovered reclaimed water, as the case may be, all obligations of either Party to perform under this Agreement shall terminate without prejudice to any claims or causes of action existing prior to such termination of this Agreement.

20. Default

20.1 Buyer's Default and City's Remedies. The Buyer shall be in default under this Agreement if the Buyer: (i) fails to pay within ten (10) days of when due any sum or other payment required to be paid to the City by the Buyer under this Agreement; (ii) fails to perform or observe any other covenant, agreement or condition which the Buyer is required to perform or observe or breaches any other provision of this Agreement, and such failure or breach is not cured within thirty (30) days after delivery of written notice to the Buyer of such failure or breach; (iii) is named as a debtor in any voluntary or involuntary bankruptcy proceeding; (iv) places substantially all of the Buyer's assets in receivership or causes or allows substantially all of the Buyer's assets to be subject to attachment or other judiciary seizure; or (v) makes or suffers a general assignment for the benefit of creditors. In the event that the failure or breach cannot be cured within thirty (30) days, the Buyer shall cure such failure or breach expeditiously or shall be in default.

20.2 City's Default and Buyer's Remedies. The City shall be in default under this Agreement if the City fails to perform or observe any covenant, agreement or condition which the City is required to perform or observe, or breaches any other provision of this Agreement, and such failure is not cured within thirty (30) days after delivery of written notice to the City of such failure. In the event that the failure or breach cannot be cured within thirty (30) days, the City shall cure such failure or breach expeditiously or shall be in default.

21. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement, and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are hereby superseded and replaced by this Agreement.

22. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona, and venue for any action under this Agreement shall be Coconino County, Arizona.

23. Waiver. Any waiver granted by either Party shall not be deemed effective except when specified in the waiver, in writing, and executed by the Party against whom enforcement of the waiver is sought. No waiver by any Party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any other breach of this Agreement or any other term, covenant or condition contained in this Agreement.

24. No Third Party Beneficiaries. The Parties acknowledge and agree that the terms, provisions and conditions of this Agreement are for the sole benefit of, and may be enforceable solely by, the Parties to this Agreement, and none of the terms, provisions, conditions and obligations of this Agreement are for the benefit of, or may be forced by, any person not a party to this Agreement.

25. Severability. In the event that any phrase, clause, sentence, paragraph, section or other portion of this Agreement becomes illegal, invalid or against public policy for any reason, or is held by any court of competent jurisdiction to be illegal, invalid or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permitted by law.

26. Venue and Attorneys' Fees. Except as otherwise agreed by the Parties, any litigation brought by either Party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court. In the event any action at law or in equity is instituted between the

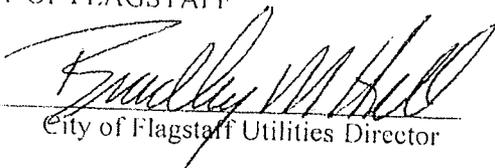
Parties in connection with this Agreement, the prevailing Party in the action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing Party, as well as expenses incurred in connection with the prosecution or defense of such action.

- 27. Modification of Agreement.** This Agreement may be amended at any time by written amendment executed by both Parties. No modification of this Agreement shall be deemed effective unless in writing and signed by the Parties.
- 28. Dispute Resolution.** In the event that a dispute arises out of or relates to this Agreement and such dispute cannot be settled through negotiation, the Parties shall first attempt to resolve the dispute in good faith by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the Parties. Unless the Parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each Party shall bear its own costs in mediation. The Parties shall not be obligated to mediate if an indispensable Party is unwilling to join the mediation. This mediation provision shall not constitute a waiver of the Parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation.
- 29. Authorization.** The Parties to this Agreement represent and warrant that the persons executing this Agreement have full authority to bind the respective Parties to all of the terms and provisions of this Agreement.
- 30. Captions.** The captions used in this Agreement are for convenience only, are not a part of this Agreement and do not in any way limit or amplify this Agreement's terms and provisions.
- 31. Construction of Agreement.** This Agreement has been arrived at by fair negotiation and shall not be construed against either Party.
- 32. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.
- 33. Notice.** Notice hereunder shall be hand-delivered or delivered by postage prepaid first class U.S. mail to the "Local Contact Person" listed under paragraph 2 above, and sent by email to the same person. Notice shall be effective upon actual receipt by the Local Contact Person.

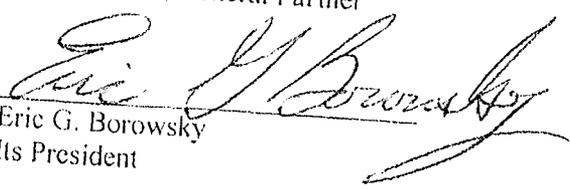
APPROVED and EXECUTED this 8th day of August, 2014.

CITY OF FLAGSTAFF

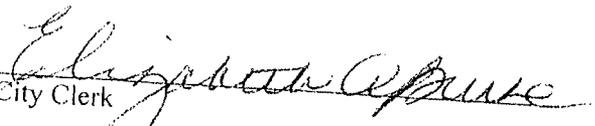
By:


City of Flagstaff Utilities Director

ARIZONA SNOWBOWL RESORT LIMITED PARTNERSHIP
EGB Enterprises, Inc., General Partner

By: 
Eric G. Borowsky
Its President

Attest:


City Clerk

Approved as to form:

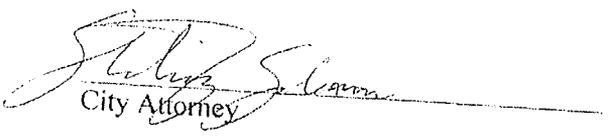

City Attorney

EXHIBIT C



Snowmaking Coverage

Legend

-  Existing Lifts
-  Existing Snowmaking
-  Special Use Permit Boundary

