

**FILED**

AUG 28 2012

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE SAVE THE PEAKS COALITION;  
KRISTIN HUISINGA; CLAYSON  
BENALLY; SYLVAN GREY; DON  
FANNING; JENEDA BENALLY;  
FREDERICA HALL; BERTA  
BENALLY; RACHEL TSO; LISA TSO,

Plaintiffs - Appellants,

v.

UNITED STATES FOREST SERVICE;  
JOSEPH P. STRINGER, Acting Forest  
Supervisor for the Coconino National  
Forest,

Defendants - Appellees,

ARIZONA SNOWBOWL RESORT LP,

Intervenor-Defendant -  
Appellee.

No. 10-17896

D.C. No. 3:09-cv-08163-MHM  
District of Arizona,  
Phoenix

ORDER

Before: WALLACE, NOONAN, and M. SMITH, Circuit Judges.

Our order filed on June 21, 2012 (ECF No. 77) is hereby amended. All portions of the order, except the portion denying Intervenor-Defendant-Appellee Arizona Snowbowl Resort Limited Partnership's (Snowbowl) motion for

attorney's fees, are withdrawn, Snowbowl's motion for costs is denied, and our referral of the order to the Appellate Commissioner is withdrawn.

In light of these amendments, Attorney Plaintiffs'/Appellants Save the Peaks Coalition's July 5, 2012 Petition for Rehearing En Banc is denied, as moot.

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WALLACE, Circuit Judge, dissenting:

I respectfully dissent. I would impose sanctions on Shanker for “grossly abus[ing] the judicial process by strategically holding back claims that could have, and should have, been asserted in the first lawsuit (and would have been decided earlier but for counsel’s procedural errors in raising those claims).” *Save the Peaks Coal. v. U.S. Forest Serv.*, 669 F.3d 1025, 1028 (9th Cir. 2012).