

Focused on the Stars, Telescope Project Tramples Rare Squirrel

by Lillian Labate

THE ENDANGERED MT. Graham red squirrel has been in the center of a controversy over a plan spearheaded by the University of Arizona to build an astrophysical observatory on Mt. Graham's Pinaleno Peaks. The mountaintop area marked for construction, a unique alpine ecosystem, is the heartland of the squirrel's breeding population. Last year, Congress passed legislation granting the university permission to build on the peaks, which are under the jurisdiction of the U.S. Forest Service. In doing so, Congress exempted the university from the National Environmental Policy Act and from provisions of the Endangered Species Act. Several organizations are financing the project, including the Vatican, Arcetri Astrophysical Lab of Florence, Italy, Ohio State University, and the Max Planck Institute of Bonn, Germany.

A grayish-brown tree squirrel, the Mt. Graham squirrel—a unique subspecies of the red squirrel that is more widely distributed throughout North America—is geographically and biologically isolated from other populations. The squirrel feeds primarily on spruce and fir cones, which it stores in piles of debris, or middens.

A survey conducted this past spring estimated that there were between 99 and 116 Mt. Graham red squirrels left, down from 328 in 1986. The squirrels have already lost much of their forested habitat to logging, summer home and recreation development, and extensive road-building. Construction of the telescopes, support buildings, and roads on the peaks would directly affect a portion of the squirrel's habitat, but the protective forest canopy would be destroyed in a much larger area. This would allow wind and sunlight to dry out the middens and destroy the squirrels' stored food source.

Under the Endangered Species Act, when a major federal action may affect an endangered species, the agency in question is required to consult with the U.S. Fish and Wildlife Service. After making a scientific assessment, the service issues a "biological opinion" stating whether the project will or will not jeopardize the species. Environmentalists believe that approval for the observatory was granted based on an inadequate biological opinion by the Fish and Wildlife Service on whether the project would hurt the squirrel. New studies show that the



Star-crossed squirrel. If the plans of the University of Arizona succeed, an observatory complex will rise in the last mountain stronghold of the endangered Mt. Graham red squirrel. BOB MILES/ARIZONA GAME AND FISH DEPT.

squirrel's population is dropping; in addition, the university is now requesting to enlarge the project and destroy more habitat than in the plan approved by Congress.

Construction of the observatory has been delayed due to unsuccessful efforts to monitor the species' population by radio-tagging, but was tentatively slated for this fall. National Audubon Society has joined with five Arizona Audubon chapters, the National Wildlife Federation, Sierra Club, and Defenders of Wildlife in a lawsuit against the Fish and Wildlife Service and the Forest Service. The plaintiffs (which include the squirrel)

want to see a new biological opinion based on the more recent data.

◆
Letters are needed to the financial backers of the project, requesting that the squirrel and Mt. Graham's unique alpine ecosystem be protected: Henry Koffler, President, University of Arizona, Tucson, Ariz. 85721; Edward Jennings, President, Ohio State University, Columbus, Ohio 43210; Ambassador Juergen Ruhfus, West German Embassy, 4645 Reservoir Rd., N.W., Washington, D.C. 20007. Arizona activists can also write to the state's congressional delegation. □

Pope sends conflicting word

Dear Editor:

The environmental thrust of the Pope's New Year's message heartened environmentalists. Ironically, this country's three largest environmental groups (NWF, Audubon, Sierra) are litigating against construction of Vatican and West German telescopes on Arizona's Emerald Peak. These telescopes would devastate the heartland of the last remaining, old-growth, spruce-fir habitat of one of the rarest, most endangered mammals in the U.S., the Mt. Graham Red Squirrel. Conservative estimates predict only 88 squirrels alive by spring.

Although the Pope decried "lack of due respect for nature and "unre-

stricted deforestation," it is deforestation by the Vatican and German telescopes which could bring the squirrel to extinction. These telescopes would be the first of a University of Arizona telescope complex including Smithsonian, Ohio State University, and Italy.

The Vatican and Germany are accomplices in the U of A's desecration of this nation's environmental laws. Congress was told Germany and the Vatican threatened to move to Chile or elsewhere due to environmental delays. Congressional pressure resulted in "cooperative" federal officials reversing their own biologists' Endangered Species Act prohibitions of telescopes on Emerald Peak. Next a million dollar, 12 week lobbying blitz ensued. Without public hearings, a rider was slipped in at the close of Congress exempting the university from the National Environmental Policy Act, and codifying a compromised Endangered Species

Act consultation.

This sets the precedent for developers being able to bypass the environmental laws Americans worked diligently to establish.

Germany's (government-funded) Max Planck Institute admitted they preferred Hawaii's Mauna Kea, a superior site, but said it cost more. Do the German people want to extirpate a U.S. endangered species just to save a few deutschmarks? The Vatican should examine its conscience and refuse to be a part of this amoral, shabby page in American environmental history.

**Charles J. Babbitt, president
Maricopa Audubon Society**

Thursday, December 21, 1989 The Arizona Republic

Vatican should get off Mount Graham

Editor:

Your article on the environmental thrust of the pope's New Year's message heartened environmentalists. Ironically, this country's three largest environmental groups are litigating against construction of Vatican and West German telescopes on Arizona's Emerald Peak. These telescopes would devastate the heartland of the last remaining, old-growth, spruce-fir habitat of one of the rarest, most endangered mammals in the U.S., the Mount Graham red squirrel. Conservative estimates predict only 88 squirrels will be alive by spring.

Although the pope decried the "lack

of due respect for nature" and "unrestricted deforestation," it is deforestation by the Vatican telescopes which could bring the squirrel to extinction.

The Vatican and West Germany are accomplices in the desecration of this nation's environmental laws.

The Vatican should examine its conscience and refuse to be a part of this amoral, shabby page in American environmental history.

CHARLES J. BABBITT
President
Maricopa Audubon Society
Phoenix

University's "Road to Nowhere" Based on Biological Untruths

By Charles Babbitt

Not only has the University of Arizona tried to operate above the law when it comes to the National Environmental Policy Act and the Endangered Species Act. On Oct. 6, their attorneys asked the federal district court in Tucson to disallow the use of any witnesses or expert testimony by the environmental plaintiffs. Judge Maroquez declined to grant them their request and the Sierra Club, Audubon, Wildlife Federation, and DOW plaintiffs will eventually be heard in court on Nov. 27. While the university is pleased in having postponed conservationists until after construction of their two-mile access road, conservation groups have already dubbed this swath of destruction a "road to nowhere."

Federal agencies are preparing to artificially feed the endangered Mt. Graham red squirrel. At the same time they are allowing a University of Arizona astronomy project to destroy the heartland of the most valuable portion of the squirrel's remaining mountaintop habitat.

With only 87 to 145 squirrels left and the mountaintop facing another cone crop failure, it is unthinkable that Arizona's congressmen, and the federal agencies they have browbeaten, are still fastracking university bulldozer and chainsaws aimed at the core of the squirrel's best quality, spruce-fir habitat. Cone crop failures on Mt. Graham have occurred for centuries. But superimposed on this is a population reduced by years of man-caused habitat destruction. If University development proceeds, species extinction is inevitable.

In July 1988 the University of Arizona's West German and Papal collaborators threatened to pull out of the project and go to alternative U.S. and foreign sites with fewer environmental de-

lays. The university then hired the high powered D.C. lobbying firm of Patton, Boggs and Blow. In a matter of weeks, and without public hearings, the Arizona delegation exempted the university from the National Environmental Policy Act and added weakening provisions to the Endangered Species Act consultation. The mountaintop was wrested from the people of this country and bequeathed to the University of Arizona. The nation's two key environmental laws were circumvented by our congressmen, and the federal agencies were bludgeoned into carrying out the will of Congress and the University.

The university's well-financed public relations campaign centers around five biological untruths:

Non-fact #1: *The project only impacts one tenth of one percent of the squirrel's habitat.* Fact: This figure erroneously incorporates vast acreages unsuitable or only marginally suitable for the squirrels. In fact, the telescopes would be situated in the very heart of the best quality spruce-fir mountaintop habitat. Even the university's John Schaefer concedes that up to 10 squirrels will be affected. Since *all* other squirrel habitat niches are already filled, these project-displaced squirrels represent net population loss. Thus, the University of Arizona could destroy 10 percent of a greatly stressed population teetering on the brink of extinction.

Non-fact #2: *Only university dollars can save the squirrel.* Fact: It is only the university which is proposing to invade and destroy the heart of the squirrel's critical habitat. It is this piecemeal habitat loss (logging, roads, etc.) which has

historically brought the squirrel to the threshold of extinction. No amount of dollars can bring back that habitat. Tree-planting is public relations eyewash. Government experts say it will take 200 years to replace the old growth habitat which the U. of A. machinery can easily obliterate in just a few days.

Non-fact #3: *The proposed 8.6-acre (3-scope) and 24 acre (7-scope) projects involve small, inconsequential acreages.* Fact: The 3-scope version is simply a foot in the door. In fact, the university says the 7-scope version is vital to its needs, and that it is the smallest cost-effective project they can build. Project acreages like 8.6 and 24 are meaningless. The government says that forest canopy removal in a 24 acre, 7-scope version would destroy the equivalent of 86 to 125 acres of squirrel habitat. This is because canopy removal exposes adjacent storage middens to desiccation from wind and sun — more than quadrupling habitat destruction. Loss of midden humidity causes stored cones to open and the seeds to be lost. Most of the 86-125 acres destroyed are in the 472 acres of the last remaining, very best, old growth spruce-fir habitat so critical to the integrity of the mountain's high density "core" breeding population.

Non-fact #4: *The introduced Abert's Squirrel is a threat to the red squirrel.* Fact: If true, a study could prove it. But the university will not wait for studies for fear their collaborators will vanish.

Non-fact #5: *Hunting has contributed to the precarious status of the squirrel.* Fact: Federal, state and private biologists concur that cumulative habitat destruction, not hunting, is the reason.

The Mt. Graham red squirrel is but an indicator species of a unique, wonderful, and complex Arizona desert island mountain ecosystem which has been evolving in isolation for thousands of years. How can the university's collaborators; the Vatican, Ohio State University, West Germany's Max Planck Institute, Italy's Arcetri Observatory and the University of Ari-

zona, justify the destruction of life forms on earth in a ruthless quest for prestige and glory?

Institutions like these contain great scholars, philosophers, biologists and teachers. These academic leaders are the role models for future generations. We are confident that once they have heard both sides of this controversy they will not allow their astronomy departments and administrators to destroy this irreplaceable island mountain ecosystem and its endangered species.

Charles J. Babbitt is president of the Maricopa Audubon Society, an attorney, and University of Arizona Law School graduate.

University is spreading myths about red squirrels

By CHARLES J. BABBITT

Federal agencies are preparing to artificially feed the endangered Mount Graham red squirrel. At the same time, they are allowing a University of Arizona astronomy project to destroy the heartland of the most valuable portion of the squirrel's remaining mountaintop habitat.

With only 87 to 145 squirrels left and the mountaintop facing another cone crop failure, it is unthinkable that Arizona's congressmen, and the federal agencies they have browbeaten, are still fast-tracking university bulldozers and chainsaws aimed at the core of the squirrels' best spruce-fir habitat. Cone crop failures on Mount Graham have occurred for centuries. But superimposed on this is a population reduced by years of man-caused habitat destruction. If university development proceeds, species extinction is inevitable.

In July 1988 the University of Arizona's West German and Papal collaborators threatened to pull out of the project and go to alternative U.S. and foreign sites with fewer environmental delays. The university then hired the high powered D.C. lobbying firm of Patton, Boggs and Blow.

In a matter of weeks, and without public hearings, the Arizona delegation exempted the university from the National Environmental Policy Act and added weakening provisions to the Endangered Species Act consultation. The mountaintop was wrested from the people of this country and bequeathed to

Arizona could destroy 10 percent of a greatly stressed population teetering on the brink of extinction.

Non-fact #2: Only university dollars can save the squirrel. Fact: It is only the university which is proposing to invade and destroy the heart of the squirrel's critical habitat. It is this piecemeal habitat loss (logging, roads, etc.) which has historically brought the squirrel to the threshold of extinction. No amount of dollars can bring back that habitat. Tree-planting is public relations eyewash. Government experts say it will take 200 years to replace the old growth habitat which the UA machinery can easily obliterate in just a few days.

Non-fact #3: The proposed 8.6-acre (3-scope) and 24-acre (7-scope) projects involve small, inconsequential acreages. Fact: The 3-scope version is simply a foot in the door. In fact, the university says the 7-scope version is vital to its needs, and that it is the smallest cost-effective project they can build. Project acreages like 8.6 and 24 are meaningless. The government says that forest canopy removal in a 24-acre, 7-scope version would destroy the equivalent of 86 to 125 acres of squirrel habitat. This is because canopy removal exposes adjacent storage middens to dessication from wind and sun — more than quadrupling habitat destruction. Loss of midden humidity causes stored cones to open and the seeds to be lost. Most of the 80-125 acres destroyed are in the 472 acres of the last remaining, very best, old growth spruce-fir habitat so critical to the integ-

Guest opinion

The mountaintop was wrested from the people of this country and bequeathed to the University of Arizona.

the University of Arizona.

The nation's two key environmental laws were circumvented by our congressmen, and the federal agencies were bludgeoned into carrying out the will of Congress and the university.

The university's well-financed public relations campaign centers around five biological untruths:

Non-fact #1. The project only impacts one 10th of one percent of the squirrel's habitat. Fact: This figure erroneously incorporates vast acreages unsuitable or only marginally suitable for the squirrels. In fact, the telescopes would be situated in the very heart of the best spruce-fir mountaintop habitat. Even the former university president John Schaefer concedes that up to 10 squirrels will be affected. Since all other squirrel habitat niches are already filled, these project-displaced squirrels represent net population loss. Thus, the University of

rity of the mountain's high-density "core" breeding population.

Non-fact #4: The introduced Abert's Squirrel is a threat to the red squirrel. Fact: If true, a study could prove it, but the university will not wait for studies for fear their collaborators will vanish.

Non-fact #5: Hunting has contributed to the precarious status of the squirrel. Fact: Federal, state and private biologists concur that cumulative habitat destruction, not hunting, is the reason.

The Mount Graham red squirrel is but an indicator species of a unique, wonderful and complex Arizona desert island mountain ecosystem which has been evolving in isolation for thousands of years. How can the university's collaborators — the Vatican, Ohio State University, West Germany's Max Planck Institute, Italy's Arcetri Observatory and the University of Arizona — justify the destruction of life forms on Earth in a ruthless quest for prestige and glory?

Institutions like these contain great scholars, philosophers, biologists and teachers. These academic leaders are the role models for future generations. We are confident that once they have heard both sides of this controversy, they will not allow their astronomy departments and administrators to destroy this irreplaceable island mountain ecosystem and its endangered species.

Charles J. Babbitt is president of the Maricopa Audubon Society, a lawyer and University of Arizona Law School graduate.

Environmentalists sue to block Mt.

By Jim Erickson
The Arizona Daily Star

The Sierra Club Legal Defense Fund yesterday filed a lawsuit to prevent the UA from building an observatory on Mount Graham, home to a subspecies of red squirrel on the verge of extinction.

Environmentalists who filed the suit say construction of the University of Arizona's proposed \$200 million observatory would hasten the demise of the Mount Graham red squirrel. Observatory proponents say the project would have no significant impact on the endangered subspecies.

The Denver-based defense fund filed the suit on behalf of the Mount Graham red squirrel, the Sierra Club, the National Audubon Society, the National Wildlife Federation, Defenders of Wildlife, several Arizona

chapters of those national conservation organizations, and Mesa resident Wayne Woods.

The combined membership of the various conservation groups taking part in the suit is about 7 million, according to Paul Pierce, chairman of the Grand Canyon chapter of the Sierra Club.

"We're not picking on the observatory," said Pierce.

The UA hopes to begin construction of the Mount Graham International Observatory this summer.

"Given what we know about the current situation the squirrels are in, any type of effort to develop in the squirrel's habitat would cause the same reaction among the environmental groups," Pierce said.

The 20-page complaint was filed in U.S. District Court in Washington, D.C.

Graham scopes, protect squirrels

Named as defendants are: Agriculture Secretary Clayton Yeutter; Interior Secretary Manuel Lujan; F. Dale Robertson, chief of the U.S. Forest Service; Steven Robinson, interim director of the U.S. Fish and Wildlife Service; and David Jolly, Southwestern regional forester.

The suit claims:

- The Forest Service has violated the Endangered Species Act by engaging in management practices that have caused, and will continue to cause, the squirrel's decline.
- The Forest Service has violated the Endangered Species Act by failing to take "affirmative measures" to conserve the Mount Graham red squirrel.
- The Forest Service has violated the National Forest Management Act by failing to ensure that a viable

population of Mount Graham red squirrels will be maintained.

- The Forest Service has failed to follow the Idaho-Arizona Conservation Act, which mandated construction of the observatory.
- The Forest Service and the U.S. Fish and Wildlife Service violated the Endangered Species Act by failing to re-evaluate its approval of the observatory project despite new evidence about the declining squirrel population.

The suit calls for a permanent halt to site-disturbing activities in red squirrel habitat until the alleged violations are corrected.

A motion for a preliminary injunction will be filed

See **LAWSUIT**, Page 2B

Lawsuit

Continued from Page 1B

soon, said Mark Hughes, staff attorney at the Sierra Club Legal Defense Fund.

"This is not an anti-observatory lawsuit," Hughes said. "This is a pro-squirrel lawsuit."

"But it's our position that if they comply with the laws, the observatory project could not go through," Hughes added.

The Mount Graham red squirrel is an endangered subspecies found only on the 10,720-foot mountain near Safford. Mount Graham is in the Coronado National Forest, which is managed by the U.S. Forest Service.

The squirrel prefers the spruce-fir forest above 10,000 feet and relies on cones from those trees for food. The University of Arizona has received congressional approval to build three telescopes, a two-mile access road and support facilities in squirrel habitat atop the mountain.

In the spring of 1986, an estimated 328 of the squirrels lived on the mountain, and the numbers have steadily declined since that census was done. The number of Mount Graham red squirrels now is estimated at 116 to 167.

"Nobody in the Forest Service has received a copy of this lawsuit, and until we do, we can't respond to any

of the points in it," said Randy Smith, a Forest Service wildlife biologist.

"Really all I can say to you at this time is that we are doing our best to comply with the terms of the Endangered Species Act while complying with the public law providing for astrophysical development," he said.

Mount Graham contains 11,733 acres of "suitable" red squirrel habitat, according to a Forest Service report. About 470 acres of that land is considered "excellent" red squirrel habitat.

The first three telescopes and the access road will use 8.6 acres on the mountaintop. The UA eventually hopes to build seven scopes, which would occupy about 24 acres.

"I don't know why these groups are so opposed to the observatory," said Michael A. Cusanovich, UA vice president for research.

"I don't believe that the telescopes will have any significant impact on the squirrels, and I do not feel the red squirrel issue is a viable reason to oppose the observatory," he said yesterday.

Research, not litigation, is what's needed to save the squirrels, Cusanovich said. He pointed out that the UA plans to spend about \$150,000 a year, over the next decade, on biological and ecological studies related to the red squirrel.

"I just don't think this is a pro-squirrel lawsuit," he said. "The lawsuit, if they were successful, will not benefit the squirrel in any way, shape or form."

LAW OFFICES
STOMPOLY & STROUD, P.C.

1600 CITIBANK TOWER
POST OFFICE BOX 3017
TUCSON, ARIZONA 85702-3017
(602) 792-2781

1 Mark Hughes, Esq.
2 Douglas L. Honnold, Esq.
3 Federico Cheever, Esq.
4 Sierra Club Legal Defense Fund
5 1600 Broadway Street, Suite 1600
6 Denver, Colorado 80202
(303) 863-9898

7 David L. Horley, Esq.
8 Stompoly & Stroud, P.C.
9 Post Office Box 3017
10 Tucson, Arizona 85702
(602) 792-2781
11 State Bar No: 27268

12 Attorneys for Plaintiffs

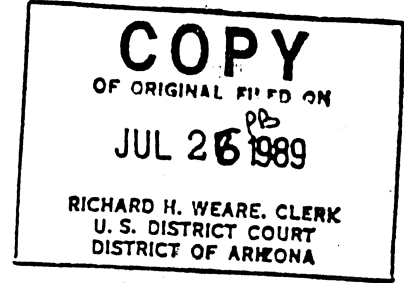
13 UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA
15 TUCSON DIVISION

16 MT. GRAHAM RED SQUIRREL (Tamiasciurus)
17 hudsonicus grahamensis), an endangered)
18 species; SIERRA CLUB, a non-profit)
19 corporation; NATIONAL AUDUBON SOCIETY,)
20 a non-profit corporation; NATIONAL)
21 WILDLIFE FEDERATION, a non-profit)
22 association; ARIZONA WILDLIFE FED-)
23 ERATION, a non-profit corporation;)
24 MARICOPA AUDUBON SOCIETY, a non-profit)
25 association; TUCSON AUDUBON SOCIETY,)
26 a non-profit association; PRESCOTT)
AUDUBON SOCIETY, a non-profit associ-)
ation; YUMA AUDUBON SOCIETY, a non-)
profit association; NORTHERN ARIZONA)
AUDUBON SOCIETY, a non-profit associ-)
ation; DEFENDERS OF WILDLIFE, a non-)
profit organization; and WAYNE WOODS,)
an individual)

Plaintiffs,

v.

CLAYTON YEUTTER, in his official)
capacity as Secretary of Agriculture;)
F. DALE ROBERTSON, in his official)
capacity as Chief Forester, United)



89 410 GLO

AC

Civil Action
No. _____

COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF

Injunction halts telescope work for 4 months

By Russ Hemphill
THE PHOENIX GAZETTE

TUCSON — A federal judge has put the snow-covered Mount Graham telescope complex into a deep legal freeze, blocking new work at the site for at least four months.

U.S. District Judge Alfredo Marquez also invited Congress to restudy the project during the 120-day period that the preliminary injunction is in effect.

The delay, ordered Monday, is almost certain to prompt new political attacks from environmentalists who sued to get the case to Marquez and who claim the project threatens the endangered Mount Graham red squirrel.

Marquez's injunction is the first significant halt of the Mount Graham project since Congress in 1988 passed the Arizo-

Phoenix Gazette, March 27, 1990, A1

na-Idaho Conservation Act, which exempted the telescope complex from complying with some federal environmental protection laws.

"It certainly gives them another four months to whack away at us in the press," said Steve Emerine of Tucson, a University of Arizona spokesman. Emerine said the UofA is considering an appeal and intends to fight for the project.

"We're convinced that it is a good project from a scientific standpoint... and that it will have a minimum impact on the mountain and squirrels," Emerine said.

Marquez, however, said serious questions had been raised over whether the construction would cause irreparable harm to the red squirrel.

Extinction of the species is at issue, the judge said.

"There'll be a lot more heat" on Arizona's congressional delegation to restudy the project as a result of the court-ordered delay, predicted

Charles Babbitt, president of the Maricopa Audubon Society.

"I would hope that Congress would demand an immediate, impartial study," he said, referring to testimony by federal employees who said they were ordered to prepare a biological study that supported construction of the telescope project.

"Congress relied on a phony document," Babbitt said.

Before winter snows, workers had completed a two-mile access road to the proposed telescope site. Marquez's order means work on the telescope site can resume no earlier than July 15, Emerine said.

Includes material from The Associated Press.

The Phoenix Gazette

Thurs., Dec. 28, 1989

UofA 'desecration'

The environmental thrust of the pope's New Year's message heartened environmentalists. Ironically, this country's three largest environmental groups (National Wildlife Federation, Audubon Society, Sierra Club) are litigating against construction of Vatican and West German telescopes on Arizona's Emerald Peak. These telescopes would devastate the heartland of the last remaining, old-growth, spruce-fir habitat of one of the rarest, most endangered mammals in the United States, the Mount Graham Red Squirrel. Conservative estimates predict only 88 squirrels alive by spring.

Although the pope decried "lack of due respect for nature" and "unrestricted defor-

estation," it is deforestation by the Vatican and German telescopes that could bring the squirrel to extinction. These telescopes would be the first of a University of Arizona telescope complex that would also include the Smithsonian Institution, Ohio State University and Italy.

The Vatican and Germany are accomplices in the University of Arizona's desecration of this nation's environmental laws. Congress was told Germany and the Vatican threatened to move to Chile or elsewhere due to environmental delays. Congressional pressure resulted in "cooperative" federal officials reversing their own biologists' Endangered Species Act prohibitions of telescopes on Emerald Peak. Next, a million-dollar, 12-week lobbying blitz ensued. Without public hearings, a rider was slipped in at the

close of Congress exempting the university from the National Environmental Policy Act and codifying a compromised Endangered Species Act consultation.

This sets the precedent for developers being able to bypass the environmental laws Americans worked diligently to establish.

Germany's (government-funded) Max Planck Institute admitted they preferred Hawaii's Mauna Kea, a superior site, but said it cost more. Do the German people want to extirpate a U.S. endangered species just to save a few *deutschmarks*? The Vatican should examine its conscience and refuse to be a part of this amoral, shabby page in American environmental history.

Charles J. Babbitt
President, Maricopa Audubon Society
Phoenix

Shedding light on UA's success on Mount Graham

Editor:

The recent hiring of Rep. Jim Kolbe's legislative director by the Arizona Board of Regents and the earlier hiring of two of Rep. Morris Udall's staff by the University of Arizona may shed light on the astonishing success the university has had in exempting its telescopes from the two major environmental laws of this nation. The university's \$1 million Washington lobbying firm also probably helped.

The UA is Tucson's largest employer. The hiring of three congressional aides may reflect why universities are considered by many to be the largest lobbying force in Washington, second only to oil.

Congressional staff members' attention to university desires may be aspiring to

university employment. Isolation of congressmen by their aides from alarmed constituents might explain why Arizona's delegation is now so out of touch with its constituents on Mount Graham. Four of Arizona's five largest newspapers have taken positions vigorously opposed to university destruction of this mountaintop ecological treasure.

One wonders how the great conservationist and humanitarian, Mo Udall, could condone a project that destroys the heart of an ecologically priceless old-growth, spruce-fir remnant forest, as well as a mountain sacred to the Apache people. Could it be that some of his staff covet UA jobs?

CLEMENS TITZCK
(MAS Past President) Phoenix

LETTERS

April 4, 1990 THE PHOENIX GAZETTE

Easy help for wildlife

While people are racing to finish their tax returns by April 16, there is another race going on. It's the race to save our endangered wildlife.

People may take a tax-deductible donation to the Arizona Endangered Wildlife Fund on line 39 of their Arizona state tax return. Money raised benefits the Arizona Endangered Wildlife Program, administered by the Arizona Game and Fish Department's Nongame Division.

This is the state's only professional, coordinated effort to save its endangered wildlife. Activities include inventorying, habitat protection, basic research, education, reintroductions, rescue and recovery, lobbying and law enforcement.

By law, the program receives no general tax dollars. Funding is dependent upon the voluntary contributions that taxpayers make on their returns. The cost of operation is augmented with federal matching funds that those donations make possible.

Recent achievements that have

been funded by these dollars include reintroduction of the native thick-billed parrot, Colorado River squawfish and razorback sucker to their historic habitat within the state. In addition, major work has been done with the bald eagle, peregrine falcon, gray hawk, river otter, gila topminnow, desert pupfish and Navajo Mountain vole. Overall, a lot has been done. But this is only a fraction of what remains to be done.

Taxpayers may designate \$2 or more on their state income tax form. Taxpayers may make a donation whether they are expecting a tax refund or not. Donations made on this year's return are tax-deductible on next year's taxes.

Overall, Arizona has 116 species listed as threatened or endangered. With the help of concerned people who have donated in the past, wildlife biologists have made great progress in managing these important animals.

This year, before you sign your state tax return, make sure you have checked off a donation for one of our state's most precious resources, its endangered wildlife.

Dr. Robert Witzeman
Maricopa Audubon Society
Phoenix

Judge OKs 4-month work ban on Mount Graham telescopes

Biologists will restudy fate of red squirrels

By Sam Negri
The Arizona Republic

TUCSON — U.S. District Judge Alfredo C. Marquez on Monday ordered that no work begin for at least four months on the Mount Graham telescope site while biologists restudy the fate of the mountain's red squirrels that live nowhere else.

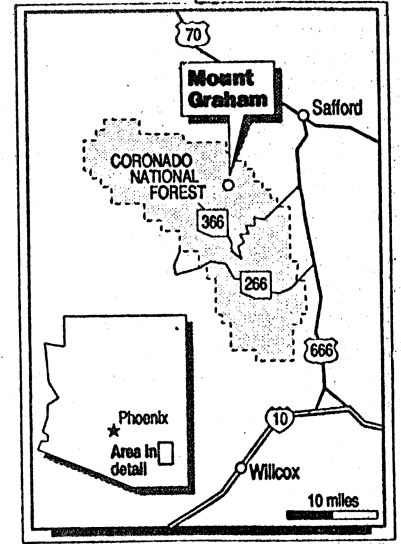
Marquez granted a 120-day injunction requested by attorneys for the Sierra Club. He said

he took into consideration sworn statements by two federal biologists that they had been ordered by superiors to write a report concluding that the \$200 million observatory would not harm the Mount Graham red squirrels. Fewer than 200 squirrels in the subspecies exist.

The report was prepared by U.S. Fish and Wildlife Service biologists Sam Spiller and Leslie Fitzpatrick. It had helped pave the way for congressional approval of the project to construct the first three of seven telescopes atop the 10,700-foot mountain near Safford.

After hearing an hour of arguments from lawyers for the Justice Department, the Sierra

— See 4-MONTH, page A6



Gus Walker/The Arizona Republic

4-month work ban placed on telescopes

— 4-MONTH, from page A1

Club and the University of Arizona, which is the project's main sponsor, Marquez granted the injunction.

"There are serious issues raised, and irreparable harm tilts in favor of the plaintiffs (the Sierra Club)," he said. "There's some question in my mind about whether the biological opinion was preordained, based on the depositions."

In depositions made public last month, Spiller said the report was based on "a predetermined intent" to show that the telescopes and squirrels were compatible.

Fitzpatrick works for Spiller and wrote the biological opinion. She said she was unhappy with it because "we did not know enough to allow for development in the near term, and we need much more information on the squirrel and its habitat before a decision to site the project should have been made."

Marquez's decision evidently came as a surprise to the university, which indicated that it may appeal.

UA spokeswoman Sharon Kha said, "The position of the university is that we feel the decision was in error, and we're currently reviewing our options to see what's available to us."

"We couldn't do anything on the mountain until the snow melts anyway, so a delay of 120 days may really translate to 90 days."

Ten days ago, the university had informed the judge that it intended to publish invitations to bid on the project in anticipation of starting construction from April 15 to May 10, depending on when snow-covered roads became passable.

Marquez immediately wrote back suggesting that the university not advertise for bids until the conclusion of the hearing.

David Todd, a Washington, D.C., lawyer representing the university, and Larry Bradfish of the U.S. Department of Justice argued that the court had no authority to interfere with a project Congress had approved.

"If Congress went ahead and approved the construction, it really isn't up to the court to go ahead and tell Congress they can't do this," Todd told the judge.

"If Congress acted unwisely, the only body that can undo the legislation is Congress itself."

On several occasions, Marquez interrupted Todd and Bradfish, asking asked them if, hypothetically, it were shown that the project would result in

the squirrels' extinction, wouldn't it make "common sense" to stop the project and take another look?

Todd responded, "If it turned out it was going to kill every squirrel, could anything be done? I must say, 'No, I doubt it.'"

A coalition of environmental groups under the umbrella of the Sierra Club Legal Defense Fund sued the U.S. Forest Service and the U.S. Fish and Wildlife Service in June. It sought the injunction on grounds that the project violated the federal Endangered Species Act.

Conservationists pointed to biological studies indicating that the squirrel population had declined since UA began construction of an access road to the telescope site last year. Under the Endangered Species Act, they said, the Fish and Wildlife Service should formally declare the area a "critical habitat."

The wildlife agency made that formal declaration earlier this year and stated that it was then required by law to review the squirrel population and habitat within 120 days. It said the laws mandates that the Forest Service, which controls the site because it lies within the Coronado National Forest, may not do any "irreparable harm" to the habitat while the study is under way.

The Forest Service maintained that by passing the Arizona-Idaho Conservation Act in which the project was authorized, Congress in effect exempted the development from conditions of the Endangered Species Act.

Federal panel hears scope arguments

By Jim Erickson
The Arizona Daily Star

Dec. 14, 1990

PASADENA, Calif. — The first three Mount Graham telescopes are permanently exempt from national environmental status, a UA attorney maintained in a federal appeals court yesterday.

Attorney David Todd said the 1988 law that authorized construction of the three telescopes "carved out an exemption from generally applicable environmental statutes."

Therefore, the first phase of the multimillion-dollar international astronomy project cannot be delayed by additional studies of the endangered Mount Graham red squirrel, Todd told a three-member panel of the 9th U.S. Circuit Court of Appeals.

The three judges heard oral arguments from the University of Arizona, the U.S. Justice Department and the Sierra Club Legal Defense Fund. The Defense Fund filed an anti-observatory lawsuit in 1989, claiming the project threatens to wipe out the squirrel.

Three telescopes, a 2-mile access road and a few support buildings were approved by Congress in the 1988 Arizona-Idaho Conservation Act. They are planned for Graham's 10,500-foot Emerald Peak near Saford and will occupy 8.6 acres.

Congressional approval of the observatory was based on a 1988 U.S. Fish and Wildlife Service red squirrel study called a biological opinion. That document states a new biological opinion is required if significant new information on the squirrel's plight surfaces.

"Congress felt this project was significant enough to merit exemption from applicable environmental statutes," Todd said. Those laws include the Endangered Species Act

and the National Environmental Policy Act.

"The whole purpose (of the 1988 act) was to bring this process to an end," and allowing a new squirrel study "makes no sense and reduces what Congress did to nullity," Todd said.

Defense Fund attorney Mark Hughes told the panel that the Arizona-Idaho Conservation Act was not meant as an "unconditional mandate."

He said both the 1988 law and the Endangered Species Act require a new biological opinion when certain "triggering events" — such as significant new squirrel data — occur.

Hughes pointed out that in August, a blue-ribbon U.S. Fish and Wildlife Service committee concluded that three of the four triggering events had occurred.

Judges Thomas Tang, Betty Fletcher and Stephen Reinhardt heard the arguments. A ruling will be made at a later date.

The Sierra Club case went to the panel because Hughes appealed a Tucson judge's decision to deny temporary restraining orders and injunctions that would have stopped construction.

But the biological opinion issue dominated yesterday's hearing,

The judges asked more than a dozen questions about the wording of the 1988 Arizona-Idaho Conservation Act and a 1988 U.S. Fish and Wildlife Service study called a biological opinion.

which ran nearly two hours.

The judges asked more than a dozen questions about the wording of the conservation act and the biological opinion. They queried the attorneys about the Fish and Wildlife committee's Aug. 6 red squirrel update, which recommended a new biological opinion.

"What you're saying is that Congress, through the act, said, 'Go ahead and build those three telescopes without these environmental laws?'" Reinhardt said to Todd at one point. Todd agreed.

Justice Department attorney Alice Thurston said the Aug. 6 update "sheds very little light on the legal status of this case."

Reinhardt countered: "But it says quite a bit about the practical status."

After explaining the squirrel monitoring program to the panel, Hughes added: "Nothing in this case is as simple as it appears."

"So it appears," Reinhardt responded.

UA ARGUES THEY ARE EXEMPT FROM ALL U.S. ENVIRONMENTAL LAWS

Judge Marquez on Mar. 26, 1990 asked UA lawyer David Todd: *"If the project 'is having the effect of making the species totally extinct...you are saying Congress has said to go ahead with this project?"*

Todd: *If "it was going to kill every squirrel...[nothing] could be done about it."*

Judge Reinhardt to Todd, 9th Circuit, Dec. 13, 1990:

"And your position is basically that what Congress was saying is we want you to build the three telescopes, build those three without regard to any laws, we've made the decision, everything else is taken care of."

Todd reply: *"That's correct your Honor...Delay the other four, they're subject to normal environmental laws...The amendment preserves NEPA and the Endangered Species Act processes only for the remaining four scopes."* (above from court transcripts).

Todd to Reinhardt: *"The whole purpose [of the rider] was to bring this process to an end, and allowing a new squirrel study 'makes no sense and reduces what Congress did to a nullity.'" (Arizona Daily Star, Dec. 14, 1990)*

Todd to Reinhardt: *"The 1988 law that authorized construction of the first three telescopes 'carved out an exemption from generally applicable environmental statutes.'" (Star)*

Todd to Reinhardt: *"Congress felt this project was significant enough to merit exemption from applicable environmental statutes." Those laws include the End. Species Act and NEPA." (Star)*