

File Code: 1570
Route To:

Date: January 13, 1997

Subject: Appeal Reviewing Officer Recommendation
Appeal No. 97-13-00-0007-A215, Susan McDonald
Appeal No. 97-13-00-0008-A215, Bob McClain

To: Appeal Deciding Officer, Janice McDougle, NFS

This is my review of the substantive quality and correctness of the October 24, 1996, decision made by H. Wayne Thornton, Southwestern Regional Director of Lands and Minerals in his Decision Notice (DN) to culminate a land exchange involving 61.98 acres, more or less, of non-Federal land and 9.83, acres, more or less, of Federal land with Venice H. Lewis, Lelia Mae Lewis, and Gordon H. Lewis, on the Coronado National Forest.

Mr. Thornton's decision selects the proposed action alternative for "The Lewis, Land Exchange" Environmental Assessment (EA) which was prepared under the provisions of the National Environmental Policy Act.

As part of my review of the entire administrative appeal record, I have considered the arguments presented in the appeals filed by Susan McDonald and Bob McClain. I recommend that only one appeal decision be made for both appeals.

Appeal Summary

(a) Appellant objections and brief Forest Service response

Issue #1 McDonald and McClain - Access to adjacent National Forest System land will be lost.

Response to Issue #1 - Access to the adjacent National Forest System land will continue by two 66 foot wide easements. One will be along the north side of the parcel, and the other will be along the west side of the parcel. The Federal government will reserve these two easements when the parcel is exchanged to the Lewises.

Issue #2 McDonald - There will be an effect on pronghorn antelope movement.

Response to Issue #2 - Pronghorn antelope do not carry a special status. No significant impacts to the antelope were identified.

Issue #3 McDonald - The exchange will open up the rest of the parcel to development and set a precedent.

Response to Issue #3 - It is not clear as to whom the developer is. The exchange does not open up nearby National Forest System land for development. The parcel and adjacent National Forest System land have long been identified as available for exchange.

Issue #4 McDonald - The agave plant population will be affected which will in turn affect the Mexican Bat.

Response to Issue #4 - Neither the agave plant nor the present bats carry a special status. A partial lost of the agave population (about 30 plants) will not significantly effect foraging habitat for the bats.

Issue #5 McDonald and McClain - Question the value of the lands, and the appraisal of the lands should be available for public review before the exchange is culminated.

Response to Issue #5 - It is Agency policy to not release the appraisal or the appraised value until title has changed hands.

Issue #6 McDonald and McClain - The exchange will cause adjacent private land values to decrease.

Response to Issue #6 - The land exchange may cause adjacent land values to decrease. However, the parcel in question has long since been identified as available for exchange. The lands long identified as available for exchange were again discussed in the Forest Plan that was finalized in 1986.

Issue #7 McDonald - The land exchange will impact water resources.

Response to Issue #7 - McDonald states that a 1996 study by Yale, not available at this time, indicates that additional land exchanges will impact existing water resources.

The US Geological Survey was contacted and information, not available at this time, indicates that the impacts to the water resources can not be predicted because of the land exchange.

State and County development and zoning regulations should reasonably control development.

Issue #8 McDonald and McClain - The natural gas pipeline is vulnerable to failure and is a presents a public health and safety problem.

Response to Issue #8 - The gas company has an ROW along the north boundary of the parcel. However, the record does not indicate whether the exposed section of pipeline is safe or unsafe. This section of gas line will be safety inspected by the Forest Service and E1 Paso Natural Gas. If unsafe conditions are found, they will be corrected. You will be notified of the results of the inspection.

Issue #9 McDonald and McClain - A petition against the exchange signed by nearly 170 people. Petition mentions access, lifestyle, and value of the parcel. Petition should be given a big consideration.

Response to Issue #9 - Access and value have already been discussed above. In the environmental analysis, there was no significant effects to the existing lifestyles found on the private land.

(b) Informal meeting results

The record submitted begins in July 1980, with a draft development plan submitted by the local residents to the county. However, there are references that the area of concern has been classified as available for exchange for nearly 40 years. There has been various land exchange alternatives proposed and considered during the last 10 years. Several public meetings have been held, and a considerable amount of correspondence has been developed regarding the proposed Lewis land exchange. Attempts to informally resolve public concerns associated with the Lewis Land Exchange have failed.

(c) Interested party comments

Seven letters were received during the 30-day comment period which begun September 12, 1996. Two parties has no objections (El Paso Natural Gas and Pima County, The other five commenters were land owners adjacent to the Federal parcel. Their comments along with the Forest Service response are included as part of Document #42.

Findings

(a) Clarity of the decision and rationale

I find that clarity of the decision and its rationale meets agency standards. The proposed action is clearly stated in the DN and is specifically described in the EA. The basis for the Finding of No Significant Impact on the human environment is clearly stated. Mr. Thornton disclosed that the proposed land exchange is consistent with the Coronado Land and Resource Management Plan. The issues raised by the public are identified and addressed. Environmental consequences and mitigation measures are clearly presented in the documentation. The limits of the decision are stated and the reader is informed that, Alternative 2 is being selected (DN page 1).

(b) Comprehension of benefits and purpose of proposal

The purpose and need for the Lewis Land Exchange is found in section I B., pages 1 and 2 of the EA. The decision clearly documents that the land exchange benefits the American public by accomplishing land ownership management goals, reduce the total number of land line survey miles to maintain boundaries of private inholdings with the Forest boundary, eliminate from Federal ownership those parcels that have lost their National Forest character, improve management efficiency and reduce management costs, and acquire lands valuable for recreation.

(c) Consistency of the decision with policy, direction, and supporting information

I find the decision for the Lewis Land Exchange to be consistent with Agency policy, goals of the Coronado National Forest Land Management Plan, and the supporting information

contained in the project record. Further, I find the conditions and stipulations placed in the selected alternative. These conditions and stipulations reflect that the land exchange will still provide access to those lands previously used for recreation purposes, cut down on possible trespass, and include additional lands for recreation purposes. Requirements under the General Exchange Act, Federal Land Policy and Management Act, Federal Land Exchange Facilitation Act, National Environmental Policy Act, and the Federal Administrative Procedure Act have been met.

(d) Effectiveness of public participation activities and use of comments

I find that there has been an extensive public participation process for this proposed action. As stated in the DN, a public notice of availability of the EA for a 30-day comment period was published in the Arizona Daily Star, Nogales International, Sierra Vista Herald Dispatch, and Sonoita Weekly Bulletin. The Arizona State Clearinghouse, the Pima and Santa Cruz County Board of Supervisors, and the appropriate Congressional delegation were formally advised. There was also a direct mailing to 32 interested parties. Both appellants commented on the alternatives during the development of the EA. The Agency considered their comments when it prepared the EA and the DN and included a specific response to each appeal point raised (Appendix C of the EA). The project record adequately documents the appellants participation and the Agency's consideration of the input.

(e) Requested changes and objections of the appellants

I find that the appellants are knowledgeable about the proposed land exchange and its environmental consequences. Their requested relief was raised before the decision was made and the EA addressed their concerns.

This is discussed in fully discussed in the Appeals Summary, (a) Appellant objections and brief Forest Service response.

I find that the decision meets substantive quality and correctness standards, and that there was sound reasoning for the proposed land exchange. Mr. Thornton's decision was within the authority of the Forest Service, and it conforms to the goals and objectives as outlined in the Coronado Forest Plan.

Recommendation

From my review, I recommend that the Regional Directors decision be affirmed.

/s/ David C. Fredley for

LARRY O. GADT
Director of Minerals and
Geology Management
Appeal Reviewing Officer