



**United States
Department of
Agriculture**

**Forest
Service**

**Southwestern
Region**

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File Code: 1570-1

Date: December 4, 2000

Michael A. Brown
1409 N. Silver St.
Silver City, New Mexico 88061

CERTIFIED MAIL – RRR
7099-3220-000-8708-2209

Re: Appeal # 01-03-00-0001-A215, Wireless Communication Site at the Arizona Snowbowl, Peaks Ranger District, Coconino National Forest

Dear Mr. Brown:

This is my review decision on the appeal you filed regarding the Decision Notice and Finding of No Significant Impact which authorizes a wireless communication site at Arizona Snowbowl and amends the Forest Plan. This decision consolidates one other appeal filed by the Center for Biological Diversity.

BACKGROUND

Forest Supervisor Jim Golden issued the decision on August 25, 2000. The Forest Supervisor is identified as the responsible official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

Pursuant to 36 CFR 215.16, an attempt was made to seek informal resolution of your appeal. The record indicates that informal resolution was not reached.

My review of this appeal has been conducted in accordance with 36 CFR 215.17. I have thoroughly reviewed the appeal record and the recommendation of the appeal reviewing officer. My decision incorporates the appeal record.

Appeal Reviewing Officer's Recommendation

The Appeal Reviewing Officer has recommended that the responsible official's decision be affirmed and that your request for relief be denied. The evaluation concluded: (a) decision logic and rationale were generally clearly disclosed; (b) the benefit of the proposal was identified; (c) the proposal and decision are consistent with agency policy, direction and supporting information; (d) public participation and response to comments were adequate; and (e) all of the major issues raised by the appellants were adequately addressed in the project record.



Appeal Decision

After a detailed review of the record and the appeal reviewing officer's recommendation, I affirm the responsible official's decision concerning the wireless communication site at Arizona Snowbowl.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18 (c)].

Sincerely,

/s/ James T. Gladen
JAMES T. GLADEN
Appeal Deciding Officer
Deputy Regional Forester, Resources

cc:
Forest Supervisor, Coconino NF
District Ranger, Peaks RD
L&M Staff, R3
Appeals & Litigation Staff, R3
Mr. Brian Segee

REVIEW AND FINDINGS

of the

Michael A. Brown Appeal #01-03-00-0001 - A215

and

Brian Segee Appeal #01-03-00-0004 -A215

Regarding

A Proposal To Construct a Wireless Communication Site At Arizona Snowbowl

ISSUE 1 (Brown): The decision creates an unacceptable public health and safety threat.

Contention: Microwaves from wireless phones and from the communication site antenna for the wireless phone system cause cancer in humans and may cause problems for aircraft. Wireless phone users endanger other road users.

Response: Three kinds of hazards have been identified – microwaves from wireless phones, microwaves from the system antenna, and the wireless phone users themselves.

The Forest Service does not have jurisdiction to regulate manufacturing or use of wireless phones or to regulate affects of microwaves on aircraft. Most air traffic occurs at higher altitudes than would be affected by microwave beams between communication sites. A decision to use a wireless phone is the prerogative of the individual user.

The Forest Service can and does regulate placement and use of communication site towers and antennae on the National Forest. Microwave transmitters do pose a health threat when improperly placed or maintained (AR 120b). Current information (AR 120b) does not identify known hazards to wireless phone users or to workers who are using normal safety precautions. Transmitters must be placed high enough above the surface level to prevent people from unknowingly intersecting the focal point of the microwave beam. The schematic in Appeal Record Document # 101 (AR 101) shows the microwave transmitter significantly higher than ground level. The Forest Service Communications Use Lease requires the holder to "... comply with all applicable Federal, State, county, and municipal laws, regulations and standards for public health and safety, environmental protection, siting, construction, operation, and maintenance in exercising the rights granted by this lease". The Forest Service will require appropriate measures (signs, fencing) to protect the casual visitor from the effects of electromagnetic radiation, including microwaves. These measures will be included in the communication site plan which is part of the lease. The lease holder has the responsibility to protect employees and contractors.

Traffic hazards created by irresponsible wireless phone users can occur; however, the Forest Service does not have the jurisdiction to regulate the use of wireless phones on Federal or State highways or County roads.

Finding: Based on current information, the proposed communication site and the related actions under Forest Service jurisdiction will not create a threat to public safety.

ISSUE 2 (Brown): The Forest Service has no authority to issue authorizations for any activity around the San Francisco Peaks.

Contention: The land in question belongs to the Hopi Tribe, and the 1848 Treaty of Guadalupe Hildago recognizes the property rights of the Pueblo Indians.

Response: This land was designated as part of the Coconino National Forest on May 24, 1902. It was created from existing federal public land under the authority of the 1897 Organic Act. Under law, the Forest Service has the responsibility to manage these lands. The Forest Service can only be relieved of that responsibility by legislation or a court decision.

Finding: The Forest Service has the authority to issue the authorization for the proposed wireless communication site on the Coconino National Forest.

ISSUE 3 (Brown, Segee): Consultation with affected American Indian tribes was not sufficient.

Contention: The Forest Service did not consult with American Indian traditional and religious leaders as required by the American Indian Religious Freedom Act (AIRFA). The decision violates the National Historic Preservation Act (NHPA) because consultation did not adequately address visual impacts to the San Francisco Peaks as a Traditional Cultural Property.

Response: The record indicates that American Indian concerns regarding the proposed action's potential impact on the San Francisco Peaks were identified as an issue early in the environmental analysis process (AR 13, 15, 53, 54). Efforts were made during the analysis to solicit input from 13 Indian tribes who consider the Peaks sacred (AR 56, 78-90, 94). This included participation by the Hopi Cultural Resources Advisory Task Team and the Navajo Nation Historic Preservation Department Hataalii Advisory Council. The religious significance of the San Francisco Peaks and concerns about the impact of the proposed project on the Peaks are documented in meeting and field trip notes (AR 13, 15, 95), in tribal correspondence (AR 72, 92, 96), in public input (A.R. 29, 40-15, 69), in consultation with the State Historic Preservation Officer (A.R. 63, 120), and in the Final EA and Decision Notice (AR 59, 126).

A number of tribal representatives and cultural advisors visited the proposed construction site, viewed plans, and discussed the nature, size, and visual impacts of the cellular tower with Forest Service officials. Based in part on tribal input, modifications were made to the location and design of the tower to lessen ground disturbance and visibility. Based on consideration of the final comments of the tribes, the Forest Service and the State Historic Preservation Officer (SHPO) agreed on a determination of No Adverse Effect for the project (AR 120).

Consultation on a project-by-project basis with American Indian traditional and religious leaders, in addition to tribal government officials, is not a requirement under AIRFA. The record demonstrates that consultation with tribal officials and designated cultural advisors of 13 tribes clearly documented the religious importance of the San Francisco Peaks. The record further demonstrates that tribal religious concerns were taken into account in the decision-making process, and the project was modified in response to these concerns. The decision complies with AIRFA.

With respect to NHPA, a number of tools were used to characterize the nature, scale, and visual impacts of the cellular tower, including plans, drawings, photo simulations, and especially on-site visits. A precise visual model is not required in order to consult about visual effects. The information provided was sufficient for various tribes to provide input on the proposed action that helped in the development of mitigation measures. It was also sufficient for the SHPO to concur in a determination of No Adverse Effect for the project, which documents compliance with NHPA.

Finding: Consultation with affected American Indian tribes was sufficient to meet the requirements of the AIRFA. Visual impacts to the San Francisco Peaks as a Traditional Cultural Property were adequately addressed to meet the requirements of NHPA.

ISSUE 4 (Segee) : The decision violates the National Environmental Policy Act (NEPA).

Contention: The Snowbowl cellular tower EA fails to meet the legal obligation of the Forest Service to consider a reasonable range of alternatives.

Response: "[A]n agency must look at every reasonable alternative, within the range dictated by the 'nature and scope of the proposed action' and 'sufficient to permit a reasoned choice.'" Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520 (9th Cir. 1992). For an alternative to be reasonable, it must meet the stated purpose and need, and address one or more issues. The formulation of alternatives is driven by significant issues identified in scoping 40 CFR 1501.2(c).

The environmental assessment (EA) discusses several alternatives that were considered and subsequently dropped from detailed study for various reasons (40 CFR 1502.14(a)).

These alternatives included the Baderville/Fort Valley area, Saddle Mountain, Wing Mountain, areas north of Baderville, lower elevations, and the use of a monopole tower.

The EA identifies four issues and then explains why they were not significant to the proposed action (40 CFR 1501.7(a)(3)). EA's include brief discussions of alternatives as required by section 102(2)(E) of NEPA which states, "Study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." With the conflicts essentially resolved by the proposed action, and after considering the alternatives dropped from detailed study, there were no other appropriate alternatives to study.

Finding: The Responsible Official appropriately defined the scope of the analysis and analyzed a range of reasonable alternatives within that scope.

ISSUE 5 (Segee): The decision violates the National Forest Management Act (NFMA).

Contention: There is no indication that the four significance factors for forest plan amendments were considered. Additionally, the Coconino failed to provide the public with meaningful notification that the proposed cellular tower construction would require an amendment to the forest plan. The Forest Plan was not properly amended.

Response: The significance of the forest plan amendment was discussed in a meeting held at the Peaks Ranger Station (AR 130). The conclusion of those present was that it would not be a significant amendment, considering the four significance factors: timing; location and size; forest plan goals, objectives and outputs, and management prescriptions.

The public was provided with notification of the proposed forest plan amendment. A cover letter transmitting the EA for comment points out the need for a forest plan amendment. The EA circulated for comment describes the need for a forest plan amendment and included a copy of the proposed forest plan replacement page.

Finding: The Responsible Official adequately evaluated the significance of the proposed forest plan amendment and provided appropriate public notice of the proposed forest plan amendment. The forest plan was properly amended.

ISSUE 6 (Segee). The Forest Service failed to consider effects to bird species, including migratory birds.

Contention: The project will adversely affect raptors and other bird species. The decision fails to ensure the scientific integrity and accuracy with regard to effects on birds, particularly migratory birds. The decision does not incorporate pertinent, new information that was available between the dates the decision was issued and the decision notice was signed.

Response: The appellant's contention that the Environmental Analysis Report does not include information that became available between the dates the decision was issued and the decision notice was signed is not true. Sandra Nagiller, Peaks District Wildlife Staff Officer and one of the authors of alleged new information cited by the appellant as "Nagiller 2000" completed a paper titled Summary of a Literature Review on Avian Mortality From Collisions with Telecommunications Towers (AR 120a) in June 2000. She then analyzed the effects the tower would have on migratory birds by comparing the specifications of the tower and its location with the guidelines she identified in her Paper. Her analysis determined the proposed tower is well within the guidelines for minimizing the impact the tower would have on migratory birds (AR 129). She discussed her findings with the project leader thus making the information available to the Forest Supervisor as part of his decision process (AR 126). Because her analysis did not alter any of the findings from the affects analysis she had previously provided (AR 44), no changes were made to the EA.

The guidelines Ms. Nagiller used are identical to the ones the US Fish and Wildlife Service issued on September 14, 2000 (AR 128).

Finding: The proposed action of constructing a tower at the Arizona Snowbowl will not adversely affect raptors and other bird species as the appellant contends. Because the allegedly "new information" was included in the environmental analysis, no supplement to the EA is needed.

ISSUE 7 (Brown) : An Environmental impact statement (EIS) is required.

Contention: Since this is a new use, an EIS is required.

Response: Significance of environmental effects determines the level of documentation required under NEPA. The Responsible Official found the effects of authorizing a wireless communication site at the stated location were not significant. The record supports this finding. The Responsible Official's determination is documented in the Finding of No Significant Impact which is incorporated in the Decision Notice.

Finding: The Responsible Official adequately analyzed the environmental effects of the proposed action and appropriately found that they were not significant. The Responsible Official appropriately chose to document the analysis in an environmental assessment instead of an environmental impact statement.

ISSUE 8 (Segee) : The decision violates the Administrative Procedures Act (APA).

Contention: Due to previously cited appeal points, the decision is arbitrary and capricious.

Response: Reference is made to all other responses and findings in this administrative review. For the reasons stated, the environmental analysis, documentation, and decision are complete. The Responsible Official took a hard look at the proposed action and the alternatives, disclosed the environmental effects in a public arena, and determined that the effects were not significant.

Finding: The Responsible Official has conducted and documented a reasoned analysis which is consistent with the Administrative Procedures Act.