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Department of
Agriculture

Forest
Service

Southwestern
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File Code: 1570

Date: December 11, 1998

Mr. Ed DeMar
P.O. Box 3716
Sedona, Arizona 86340

Re: Coconino Forest Plan Amendment 12
Appeal # 98-03-00-0041-A217

Dear Mr. DeMar:

This is my decision on your appeal regarding the Decision Notice (DN) and Finding of No Significant Impact (FONSI) for Amendment 12 to the Coconino Forest Land and Resource Management Plan. The DN and FONSI were signed by Acting Forest Supervisor Fred S. Salinas on June 24, 1998. This amendment provides new management direction for the Sedona/Oak Creek planning area. My review of your appeal was conducted pursuant to and in accordance with 36 CFR 217.

APPEAL SUMMARY

I received your Notice of Appeal on August 13, 1998 and notified you on August 25, 1998 that your appeal was not timely due to being postmarked August 11, 1998 and it would not be processed under 36 CFR 217. Based on a Certificate of Mailing dated August 10, 1998, I accepted your appeal as timely, and notified you on September 3, 1998. The District Ranger transmitted the Appeal Record (AR) containing all relevant decision documentation to this office on September 25, 1998.

APPEAL ISSUES AND FINDINGS

Issue 1: "Fraud Cover-up by Messrs, Anderson and Salinas"

Contention: Appellant asserts that signatures obtained on a Sierra Club petition through the illegal use of the Forest Service logo should be repudiated. The Sierra Club misrepresented its petition opposing Red Rocks Crossing by illegally using the Forest Service logo on an internet document. Appellant argues that the Forest Service should not accept the petition as comment.



Response: National Environmental Policy Act (NEPA) implementing regulations direct federal agencies to consider public comments:

- Federal agencies shall to the fullest extent possible encourage and facilitate public involvement in decisions which affect the quality of the human environment (40 CFR 1500.2(d)).
- There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action (40 CFR 1501.7).

Forest Service planning regulations, which implement the Forest and Rangeland Renewable Resources Planning Act (RPA) as amended by the National Forest Management Act (NFMA), also require consideration of public comments:

- Because the land and resource management planning process determines how the lands of the National Forest System are to be managed, the public is encouraged to participate throughout the planning process. The intent of public participation is to ensure that the Forest Service understands the needs, concerns, and values of the public (36 CFR 219.6(a)(2)).
- Public comments shall be considered individually and by type of group and organization to determine common areas of concern and geographic distribution (36 CFR 219.6(e)).

The Forest Supervisor responded to appellant's concern in his March 25, 1998 letter which appellant includes as "Exhibit A-2" in his appeal. The Forest Supervisor correctly, explained that the Forest Service evaluates comments and opinions to identify significant issues. Further, the evaluation is not dependent on vote counting, but rather an evaluation of content. The Forest Supervisor also explained that the content, not the number of signatures was considered, along with all other comments received.

Finding: The Forest Supervisor appropriately considered the Sierra Club comments and is affirmed on this issue.

Issue 2: "Secret connections with activists"

Contention: Appellant argues that the Sierra Club, Responsible Residents of the Red Rocks (4R's), and Jim Bishop have all inordinately influenced Amendment 12.

Response: As stated in response to the first issue above, the planning process is open to all who express an interest or comment. Mr. Bishop's relationship to the Forest Service planning process was contractual. As a writer/editor, Mr. Bishop organized and wrote the amendment text under Forest Service direction. Mr. Bishop's work was reviewed and approved by the Forest Service before inclusion in the final document (record at 128).

Finding: The Forest Supervisor appropriately considered comments from the Sierra Club and 4R's. Mr. Bishop was an appropriate contributor to the amendment in his capacity as a contractor. The Forest Supervisor is affirmed on this issue.

Issue 3: "Conflict of interest"

Contention: (a.) Appellant asserts that Ranger Ken Anderson's membership on the board of the Sedona Chamber of Commerce is a conflict of interest.

Response: (a.) Ranger Anderson's membership in the Sedona Chamber of Commerce is not prohibited by law, regulation, nor policy. Ranger Anderson participated in the environmental analysis upon which the Deciding Officer based his decision. The Deciding Officer was Forest Supervisor, Fred Salinas. Appellant offers no connection between Ranger Anderson's involvement with the Sedona Chamber of Commerce and the analysis provided to the Deciding Officer. Therefore, this issue is outside the scope of this administrative review.

Contention: (b.) Appellant asserts that an ongoing lawsuit with Sedona Photo Tours (Appellant's Exhibit G) should be resolved prior to a decision on amendment 12.

Response: (b.) The ongoing lawsuit with Sedona photo Tours involves administration of a special use permit and is beyond the scope of this amendment to the Forest Plan.

Finding: Ranger Anderson's involvement with the Sedona Chamber of Commerce, and the Sedona Photo Tours lawsuit are outside the scope of this review. The Forest Supervisor is affirmed on this issue.

Issue 4: "Sierra Club propaganda influence on USFS"

Contention: Appellant argues that the Sierra Club and 4R's have made misleading public statements and thereby influenced the Forest Service actions concerning Red Rocks Crossing.

Response: Amendment 12 includes no decision concerning Red Rocks Crossing. This issue is outside the scope of Amendment 12 and this administrative review.

Finding: The Forest Supervisor made no decision in Amendment 12 concerning Red Rocks Crossing. The Forest Supervisor is affirmed on this issue.

Issue 5: "Freewheeling, self-funding USFS?"

Contention: Appellant contends that the Forest Service illegally presented draft legislation to Senator Jon Kyl concerning the use of funds received.

Response: This issue is outside the scope of Amendment 12.

Finding: The Forest Supervisor is affirmed on this issue.

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DECISION

I thoroughly reviewed the appeal record regarding the disposition of your appeal. My review decision hereby incorporates by reference the entire appeal record.

After a detailed review of the record, I find the Forest Supervisor conducted a thorough process based on the National Environmental Policy Act regulations and Forest Service Policy to amend the Coconino National Forest Land and Resource Management Plan. The Supervisor is affirmed with respect to the issue and contentions raised in your appeal.

This is the final administrative decision of the Department of Agriculture unless the Chief, on his own initiative, elects to review the decision within 15 days of receipt (36 CFR 217.7(d)(1) and 217.17 (d)) . By copy of this letter I am notifying all parties to the appeal of my decision.

Sincerely,

/s/ John R. Kirkpatrick

JOHN R. KIRKPATRICK
Appeal Reviewing Officer