United States Department of Agriculture

Forest Service

Southwestern Region

517 Gold Avenue, SW
Albuquerque, NM 87102-0084
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570

Date: December 11, 1998

Commander Michael Paul Muetzel
2476 Commander Court
Camp Verde, Arizona 86322

Reference: Coconino National Forest Plan
Amendment 12, Appeal# 98-03-00-0033-A217

Dear Commander Muetzel:

This is my decision on your appeals 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 Decision Notice was 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. I thoroughly reviewed the appeal record regarding the disposition of your appeal. My review decision hereby incorporates by reference the entire appeal record.

APPEAL SUMMARY

I received your eight Notice of Appeal letters on July 27 and 29,1998 and notified you on July 31, 1998 that your appeals were timely and would be processed under 36 CFR 217. Your appeal letters included 6 requests for stay of implementation. All requests for stay were denied in my letter dated August 10, 1998. I was notified by the District Ranger, Ken Anderson, that you did meet with him to discuss possible resolution of your appeal on September 3, 1998. I received a letter from you dated September 22, 1998 in which you dropped appeals on all issues except those concerning compliance with existing flight rules and the effects of commercial helicopter flights over wilderness. The District Ranger transmitted the Appeal Record (AR) containing all the relevant decision documentation to this office on September 25, 1998.

APPEAL ISSUES AND FINDINGS

Issue 1: The amendment fails to recognize legally established prior uses of the air space over the management area.

Contention: Appellant contends the Amendment violates Public Law 91-100 by not recognizing legally established prior uses of the management area.

Response: Public Law 91-100 has to do with American Indians; we assume appellant is referring to Public Law 100-91, National Park Overflights Act of 1987. Section Five directs the Forest Service to conduct an assessment to determine what, if any, adverse impacts to wilderness resources are associated with overflights of National Forest System wilderness areas and to report the results to Congress within two years after enactment of the Act. That has been done. We do not find the direction to recognize legally established prior uses that appellant refers to.

Finding: The Forest Supervisor is affirmed on this issue.

Issue 2: Forest Service is attempting to change current aviation laws or regulations, and makes recriminatory charges against unnamed pilots.

Contention: Appellant contends; (1) the amendment will cause irreparable harm to ongoing research programs, (2) that small minority owned businesses in the Sedona area would suffer unrecoverable financial damage, and (3) aviation safety would be impaired if previously established legal uses of the airspace were interrupted.

Response: The rules affecting overflights are contained in Federal Aviation Administration (FAA) flight rules and advisories. The Federal Air Regulations (FAR 91.119) establish general operating and flight rules concerning minimum safe altitudes. Additionally, Federal Aviation Administration Advisory Circular 91-36C provides advice on minimum levels over wilderness areas.

The Sedona District Ranger used independent research, Forest Service monitoring, professional opinion and public comments to determine and document a problem with low-level flights over the Wilderness (AR 5, 8.1, 27.1, 30.2, 32, 37.1, 48, 51, 54.1, 58.1, 67.1, 67.2, 67.3, 69.1, 69.3, 93.1, 97.9, 109.2 and 126).

The Forest Service manages wilderness according to the Wilderness Act of 1964 to provide..."outstanding opportunities for solitude, or a primitive and unconfined type of recreation." Thus, the Forest Service has a responsibility to act when aircraft use of the airspace over Wilderness unreasonably interferes with the agency's ability to manage the land for its intended use (Griggs v. Allegheny County, 369 U.S. at 88-89 and E.g., Camfield v. United States, 167 U.S. 518, 525).

The FAA is recognized as the agency responsible for regulating air space and has the authority to preserve, protect, and enhance the environment by minimizing, mitigating, or preventing the adverse effects of aircraft overflights on the public. Concerning this issue, the Forest Supervisor appropriately followed Forest Service policy to work with the FAA to gain compliance with its existing rules and advisories, and request that the FAA evaluate and determine the need for further regulations or for development of an airspace management plan (FSM 2326.03).

Finding: I find that the statements in Amendment 12 on page 20 and new pages 206-25 appropriately identify a concern in wilderness management and are not recriminatory. The Forest Supervisor is affirmed on this issue.

Issue 3: The amendment attempts to protect archeological ruins from the effects of helicopters unnecessarily by the implementation of a Special Federal Aviation Regulation restricting flight in the National Forest around Sedona.

Contention: The possibilities of stress fractures in archeological ruins caused by sonic booms or nearby helicopters are undocumented and scientifically unsubstantiated.

Response: There is a body of research in the historic preservation field that documents the effects of low frequency vibrations, such as those produced by helicopters, on archaeological ruins and historic structures. The record shows that the potential effects of helicopter vibrations on archaeological ruins was identified as a concern early in the planning process (A.R. 14, 28, 53.1, 57, 67.3, 69.3, 72, 83-203, 83-245, 85.1, 97.6). In addition, the record documents numerous incidents of helicopters flying and hovering close to archaeological ruins (A.R. 126). The statement on page 24 of the amendment is listed in the DN/FONSI as one of a number of "situational factors" the Forest Supervisor considered in formulating recommendations regarding aircraft activity in the planning area. The record supports this as a reasonable concern.

Finding: The Forest Supervisor is affirmed on this issue.

DECISION

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 all issues and contentions made 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