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File Code: 1570

Date: December 11, 1998

Mr. David H. Smith  
164 Bristlecone Pines Road  
Sedona, Arizona 86336

Reference: Coconino National Forest Plan  
Amendment 12  
Appeal# 98-03-00-0035-A217

Dear Mr. Smith:

Pursuant to 36 CFR 217, this is my decision on your appeals regarding the Decision Notice and Finding of No Significant Impact for an amendment to the Coconino Forest Land and Resource Management Plan. The decision notice is for Amendment 12 and it was signed by Acting Forest Supervisor Fred S. Salinas on June 24, 1998. This amendment will provide 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 Notice of Appeal letters on July 30, 1998, and notified you on August 3, 1998, that your appeal was timely and would be processed under 36 CFR 217. I was notified by the District Ranger, Ken Anderson, that you did meet with him to discuss possible resolution of your appeal on August 27, 1998. However, I received nothing from you to indicate your points of appeal were resolved or changed as a result of the meeting. Therefore, I must respond to the issues you expressed in your July 26, 1998 letter. The District Ranger transmitted all the relevant decision documentation and Appeal Record (AR) to this office on September 25, 1998.

#### APPEAL ISSUES AND FINDINGS

Issue: The amendment attempts to restrict the freedoms of the aviation community for the limited benefit of the few hikers and campers allowed in the area.

Contention 1: Appellant contends the Amendment does not recognizing legally established prior uses of the management area.

Contention 2: Appellant contends that the accusation which charge that unnamed pilots are not complying with existing flight rules is recriminatory.



Response: The rules in this issue are within 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, 67.1,2,3, 69.1,3, 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 (Forest Service Manual 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.

## 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