



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

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**File Code:** 1570-1 (5430)

**Date:** August 23, 1999

Mr. Donald Weinstein  
P.O.Box 228  
Sonoita, AZ 85637

Re: Appeal #99-03-00-068-A215, Sierra Grande Land Exchange, Nogales Ranger District, Coronado National Forest

Dear Mr. Weinstein:

This is my review decision on the appeal you filed regarding the decision made by Forest Supervisor John McGee on May 21, 1999. The Forest Supervisor is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

### **BACKGROUND**

On May 21, 1999, the Responsible Official issued a Decision Notice and Finding of No Significant Impact in which he decided to implement Alternative 1. The Alternative proposes to exchange 500 acres of Federal land in Santa Cruz County, Arizona for 429.56 acres in fee of non-Federal land in Santa Cruz County, Arizona.

Pursuant to 36 CFR 215.16, a teleconference was held on July 20, 1999, with you in an attempt to seek informal resolution of the appeal. The record reflects that informal resolution of the appeal 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, including the recommendation of the Appeal Reviewing Officer. My review decision incorporates the appeal record. My review and findings are enclosed.



**APPEAL DECISION**

After a detailed review of the records and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision to implement Alternative 1.

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

Enclosure

cc Forest Supervisor, Coronado NF  
District Ranger, Nogales RD  
Lands and Minerals, R-3  
Appeals and Litigation, R-3  
Kirby Knoy

**REVIEW AND FINDINGS**  
**of the**  
**D. Weinstein Appeal #99-03-00-068-A215**  
**regarding the**  
**Sierra Grande Land Exchange**

**ISSUE 1:** The Forest Service did not look at watershed effects.

**Contention:** Development would "...have a severely deleterious affect [sic] on the watershed...".

**Response:** The record includes Forest Hydrologist Robert LeFevre's findings on wetlands and floodplains (dated 5/20/94) and a 1996 study done by the Yale School of Forestry and Environmental Studies entitled "Water Use and the Future of the Sonoita Valley".

Mr. LeFevre's report concludes that "This exchange is favorable to the United States in that it brings more riparian area habitat into public ownership." He also states that future use of the Federal lands will not significantly affect downstream floodplain or wetland values.

The Yale Study (dated 8/8/96 and funded by the National Audubon Society and Yale School of Forestry), found that after calculating water consumption per land use in the Sonoita Valley, and calculating groundwater withdrawals, there would be an overall basin *surplus of 1317 acre feet* which could be used for further development in the area without adversely lowering the water table. One home per 12.26 acres in the 53 square miles of private land in the valley would result in consumption of exactly 1317 acre feet. The proponent has said he plans 1 residence for every 36 acres (for a total of 14 residences) which would consume far less than the safe yield build-out.

The Forest also responded to the issue of water quality in Appendix D of the EA (Response to Comments - EA 30-day comment period). See pages 7-9 where issues of watershed quality and state control of groundwater for residential development are discussed.

**Finding:** The EA and associated studies adequately cover the issue of water and water quality with sufficient evidence to support the Responsible Official's findings of no significant impact.

**ISSUE 2:** More homes will be developed than the proponent states, thus destroying the rural character of the area.

**Contention:** There is a concern the proponent will develop more lots than he has publicly stated to the Forest Service, thereby causing "...totally unacceptable resident and home density...".

**Response:** The proponent has publicly stated his intention to subdivide this 500 acre parcel into 14 lots of 36 acres in size. Arizona law does state that division of land into lots of 36 acres or greater is not subject to the definition of a subdivision (see item 54 on page 169, ARS 32-2101). However, this does not exempt the owner of these lands from ignoring state, county and local statutes concerning residential development of property. In fact, Arizona law provides penalties for a subdivider who tries to circumvent or ignore state statutes. For example, the law on water availability says, "Vendor who owns several subdivided lots could be held liable on theory of negligence per se for misrepresentation by omission for failing to disclose problems with availability of water service to lot, based on duty posed on owner's subdivided lands under subdivision reporting statutes...".

Future use or development of lands conveyed out of Federal ownership are subject to all laws, regulations and zoning authorities of Arizona, Santa Cruz County, and local governing bodies. Currently, Santa Cruz County ordinances allows one residence for every 4.22 acres. Proponents proposal is well within the limits of this regulation. If the proponent does attempt to "wildcat" subdivide, as the appellant charges, he could be liable for civil penalties under Arizona statues ARS 11-809, Review of land divisions, which states it is unlawful for a person or group of persons acting in concert to attempt to avoid the provision of the law. ARS 11-809 may be enforced by any county where the division occurs or by the state real estate department pursuant to title 32, chapter 20.

**Findings:** While the Federal government cannot guarantee the proponent will do what he has stated, there is no evidence to support that he will not do as he has stated. The Responsible Official correctly states that lands conveyed out of Federal ownership are subject to all laws, regulations and zoning authorities of the state, county and local governing bodies. The proponent must follow these laws or be subject to penalty.

**ISSUE 3:** The Forest did not look at impacts to local communities.

**Contention:** The DN and EA "...do not adequately consider the general impact upon the local communities."

**Response:** Forests such as the Coronado and Tonto in Arizona are classified as "urban forests" who struggle to maintain a forest character with unrelenting urban pressure for development all around them. The Responsible Official correctly states that development of private lands would continue whether the Forest Service did any more land exchanges or not. So the question becomes, how do forests help retain rural characteristics while at the same time, help communities grow in an acceptable and controlled manner? The decision space is limited and decisions are often not acceptable to everyone. The Coronado National Forest Land and Resource Management Plan (LRMP) addresses these concerns and will continue to be the guidance followed until the Plan is revised.

Those who have moved into this area for its rural character would understandably like no more development to occur. They feel strongly that while any development they have promulgated is okay, further development ruins what they now enjoy. The Federal land offered in the exchange is bounded on three sides by private land with limited or no physical legal access for the rest of the public. Those whose land adjoins the National Forest enjoy a "beautiful backyard" but the general public has no access to it. It is land which is suitable for exchange because of these very things.

County governments are asked to provide regulations which limit growth (which Santa Cruz County has done. General Rural development is limited to 1 residence for every 4.22 acres) and to provide services to that expanding tax base. The Forest Service relies on these local entities to provide guidance once the land passes from Federal ownership. There is nothing more within law or regulation which the Forest Service can do.

**Finding:** The Responsible Official adequately considered the impacts to local communities in making the Sierra Grande Land Exchange decision. Guidance from the Coronado LRMP was followed and used by the Responsible Official to correctly make his determination to implement the exchange.