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Department of  
Agriculture

Forest  
Service

Southwestern  
Region

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File Code: 1570-1/2330

Date: October 14, 1998

Ross A. Quigley  
Mt. Lemmon Cooperative Water Company  
P.O. Box 706  
Mt. Lemmon, AZ 85619

CERTIFIED MAIL -- RETURN RECEIPT  
REQUESTED

RE: Appeal 98-03-00-0057-A215, Coronado National Forest, Whitetail Group Use Area

Dear Mr. Quigley:

This is my decision on the appeal filed on behalf of Mt. Lemmon Cooperative Water Company. You have appealed the District Ranger's decision of July 13, 1998 to construct group use camping and picnicking facilities at Whitetail on Mt. Lemmon. The appeal was timely and has been accordingly processed under the provisions of 36 CFR 215.

On September 1, 1998, District Ranger Dean McAlister met with Ross Quigley and Mike Stanley from the Mt. Lemmon Cooperative Water Company, Inc. in an attempt to informally resolve this appeal. The meeting is documented in a letter of September 1, 1998 which indicates that resolution of appeal issues was not possible.

The Coronado National Forest prepared an Environmental Assessment (EA) for development of Whitetail (AR 18). Appendix A of the EA includes a response to public comment. The issues raised in your appeal are the same as the issues raised under the heading "Water Rights" of appendix A, along with supplemental discussion.

1. The rights of water for development.

Contention (a):

Appellant claims that the Forest Service does not have the right to use off-site surface water or federal reserve water rights for recreational use at Whitetail.

Response (a):

The District Ranger's decision does not use either off-site surface water or federal reserve water rights, rather it would utilize water currently classified as groundwater for recreational purposes (AR 15 and AR 16, Arizona Department of Water Resources (ADWR) letter of June 30, 1998).

Contention (b):

The Forest Service should be using water rights in closer proximity to Whitetail (i.e. Rose Canyon, CWR #3121).



Response (b):

Appropriate uses of water and water rights for various FS facilities are addressed in a 1993 report by Forest Hydrologist Bob Lefevre (AR 17H)]. The FS considers development of a water source at Rose Canyon to serve Rose Canyon to be a viable alternative (AR 17H and AR 27, memo of July 7, 1995). A large storage tank was constructed at Whitetail which has existing capacity to serve the proposed use at Whitetail (AR 12, page 6).

Contention (c):

The State may reclassify the Loma Linda well as surface influenced rather than as groundwater.

Response (c): The administrative record at AR 16 indicates that the State may reclassify the well pending guidance from the courts regarding the distinction between groundwater and surface water, but that no action is imminent. The well is currently classified as groundwater, therefore the water may be transported off-site (AR 15, AR 16, AR 18, Appendix A, and 29, ADWR prehearing order of Sept. 5, 1995). The record at AR 16, AR 18, Appendix A and AR 19, page 2 indicate options that the FS may consider if the well is reclassified. Furthermore the record indicates at AR 15 and 19 that the District Ranger considered this in making his decision.

Contention (d):

Pumping at the Loma Linda well will impact creek flow.

Response (d):

The FS system for Whitetail has been designed to store water during high flow months in order to prevent impacts during low flow months (AR 12, EA page 6; AR 19 page 2).

## 2. Pending and Protested Rights

Contention:

The appellant claims that the FS is a protestant in the co-op's application by virtue of the fact that the Sierra Club (a co-applicant for instream flows in Upper Sabino Creek) protested the co-op's application.

Response:

The record at AR 19 indicates that the FS does not consider itself a protestant to the co-op's application. Regardless, the disposition of the FS's instream flow application and the co-op's application are beyond the scope of the decision to use water from the Loma Linda well to provide water for recreational purposes at Whitetail.

## 3. Instream Flow

Contention (a):

The appellant claims (a) that the FS instream flow application prevents other allocations of water in the upper watershed.

Response (a):

The ADWR letter of June 29, 1994, (AR 29) indicates that the FS application for instream flow has not been granted, therefore water rights have not been entirely allocated for the upper watershed. If the FS application is granted, it will be junior to preceding valid applications and rights.

Contention (b):

The appellant claims pumping of groundwater from Loma Linda well affects instream flow.

Response(b):

See response to 1 (d).

Contention (c):

The appellant claims lack of water at Rose Canyon prevents its use as mitigation.

Response (c):

See response to 1 (b).

Regardless of the resolution of instream flow water rights in the upper watershed, they are beyond the scope of the decision to use water from the Loma Linda well to provide water for recreational purposes at Whitetail.

#### 4. Surface water issue

Contention:

The appellant claims that if the well is reclassified as surface water, different rules apply to its use and that without a management plan, the FS can pump the Creek dry.

Response:

The AR shows that both the State (AR 16) and the FS (AR 18 appendix A) recognize that different rules will apply if the well is reclassified, but that the well has not been reclassified. The State has encouraged a management plan to resolve disputed applications for water rights (AR 16) and the FS recognizes that a management plan is desirable (letter of September 1, 1998).

#### 5. Arizona Law of Surface Water Appurtenant to the Land

Contention:

Appellant contends that the water to be used at Whitetail could be outside of its place of use and that the FS did not provide proper notification of intention to drill the Loma Linda well.

Response:

The record at AR 15, AR 16 and AR 18, appendix A indicate that the rules for use of surface water do not apply at this time, rather the rules for groundwater apply and therefore the Loma Linda well may serve offsite facilities. The record at AR 15, ADWR letter of 9-22-83 indicates that the FS did provide a proper Notice of Intention to drill the Loma Linda well.

## 6. Removal of water above the Upper Gauge

Contention (a):

Appellant contends that sites lower in the watershed should be served by closer sources, rather than using the water from the Loma Linda well.

Response (a):

See response to 1 (b).

Contention (b):

It is unknown what the FS will do if the Loma Linda well is reclassified as surface water

Response (b):

See response to 1 (c).

Contention (c):

Appellant contends that the FS is undercutting its own application for instream flows.

Response (c):

The FS application for instream flows is beyond the scope of the decision to use water from Loma Linda well at Whitetail.

## 7. Management Plan to address FS and Co-op water uses

Contention:

The FS and Co-op need to complete a management plan for water uses.

Response:

The record at AR 19 page 3, and AR 27 memo of July 7, 1995, and 16 recognize that a management plan would be beneficial, but has not been completed. A water management plan is not legally required.

### DECISION

This appeal raises many concerns about unresolved water rights issues in the Mt. Lemmon area. However only one issue is within the scope of the decision at hand, and that is whether the decision to supply water for recreational purposes at Whitetail from the Loma Linda well is within the agency's discretion. The Deciding Officer based his decision to utilize the Loma Linda well to supply Whitetail on the State's current classification of this water source as an exempt well. I find that the District Ranger's decision is within his discretion and supported by the administrative record. Therefore I affirm the District Ranger's decision to develop Whitetail utilizing the Loma Linda well as a source of water. You have requested that the decision be amended to eliminate the construction of water service infrastructure within the Whitetail development. Your request to amend the decision to drop water service infrastructure is denied.

In accordance with 36 CFR 215.18, this decision is the final administrative determination of the Department of Agriculture.

Sincerely,

/s/John R. Kirkpatrick  
JOHN R. KIRKPATRICK  
Appeal Deciding Officer  
Deputy Regional Forester, Resources

cc:  
R3 appeals  
R3 recreation  
Coronado National Forest  
Santa Catalina Ranger District