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Forest Service
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File Code: 2720

Date: May 12, 2000

Ms. Helene M. Hart
HCR, Box 418
Pine, AZ 85544-9718

CERTIFIED MAIL - RRR
Z 095 964 359

Re: Appeal #00-03-00-0058-A215, Brooke Utility Decision, Payson Ranger District, Tonto National Forest

Dear Ms. Hart:

This is my review decision concerning the appeal you filed regarding the Decision Notice and Finding of No Significant Impact which authorize construction of a water pipeline across the National Forest between Strawberry and Pine, Arizona.

BACKGROUND

Forest Supervisor Charles R. Bazan issue the decision on February 9, 2000 . The decision was related to approval of a water pipeline between Strawberry and Pine, Arizona . The Forest Supervisor is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

Pursuant to 36 CFR 215.16, an attempt was made to seek informal resolution of your appeal. The record indicates that informal resolution 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 and the recommendation of the Appeal Reviewing Officer. My decision incorporates the appeal record.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer has recommended that the Responsible Official's decision be affirmed and that your request for relief be denided. The evaluation concluded: (a) decision logic land rationale were generally clearly disclosed; (b) the benefit of the proposal was identified; (c) the proposal and decision are consistent with agency policy, direction and supporting information; (d) public participation and response to comments were adequate; and

(e) all of the major issues raised by the appellants were adequately addressed in the project record.

APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision concerning the approval to build a water transmission pipeline on the National Forest between Strawberry and Pine, Arizona, with the following instructions:

Do not issue the special use authorization until Brooke Utilities provides the following information:

1. Proof of well registration assignment to Brooke Utilities from the previous owner through the Arizona Department of Water Resources for all wells which would feed the proposed pipeline;

2. Copies of incorporation documents;

3. A current certificate of good standing from the Arizona Corporation Commission.

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

cc:
Forest Supervisor, Tonto NF
District Ranger, Payson RD
L&M Staff, R3
Appeals & Litigation Staff, R3

REVIEW AND FINDINGS

of the

Helene M. Hart Appeal #00-03-00-0058-A215

and

Dr. Richard E. Wentz Appeal #00-03-00-0067-A215

regarding

Forest Service Authorization To Brooke Utilities For Waterline Between Strawberry and Pine, Arizona

ISSUE 1(Hart): Water supply is limited. The proposal will adversely affect other existing private wells.

Contention: Appellant contends that sufficient supply of water does not currently exist in Strawberry. Her well has run dry on occasion. Continuing high volume pumping by Brooke Utilities, Inc. only exacerbates the problem.

Response: Brooke Utilities provided well production data for the period August 1996 through and including April 1999. Approximately 4.5 million gallons of water were pumped from the Brooke Utilities Strawberry Wells in the summer of 1997 and trucked to Pine. The highest production between August 1996 and April 1999 occurred in August 1997.

Water table data showed a seasonal cycle with the highest water tables (closest to the surface) occurring in April and the lowest levels occurring in December. This is a typical cycle in the Strawberry-Pine area. The data also showed that the water table for the Brooke wells rose to a level higher in April 1998 and in April 1999 than existed in April 1997. This data indicates that the Brooke wells were not adversely impacted by the heavy pumping in the summer of 1997. It is reasonable to extrapolate that same relationship to other private wells in the area.

Finding: The Forest Supervisor made a reasonable effort to assess the impacts of Brooke pumping on other private wells. Since the Forest Service has no jurisdiction over wells on private land, concerns relating to other private well owners should be addressed to the appropriate State agency. The State agency with jurisdiction over water wells in Arizona is the Arizona Department of Water Resources.

ISSUE 2 (Hart): Reduced water supply will complicate fire fighting efforts.

Contention: The Appellant contends that the Forest Service is preaching fire awareness, but is apparently not concerned that a reduced water supply could affect those efforts.

Response: The Forest Service is concerned with fire protection and fire suppression, but does not own the water in question.

Finding: The Forest Service has no jurisdiction over the water in question.

ISSUE 3 (Wentz): Public involvement was not adequate.

Contention: The Appellant contends the details of the proposed action were not made public and there weren't enough public meetings.

Response: The Decision Notice and Finding Of No Significant Impact (one document, page and the Environmental Assessment (page 2, item G) for the project includes a description of scoping and public involvement activities. Legal notices were published in the Tribune (East Valley Edition). In addition, the decision was publicized through articles and press releases in the Payson Roundup. There is no prescribed number of public meetings which must be conducted. The single joint meeting held on October 15, 1998, fulfilled the intended purpose.

Finding: Forest Service efforts to obtain public participation meet the intent of law and regulation.

ISSUE 4 (Wentz): Brooke Utilities, Inc. and the County control the decision making process.

Contention: The Appellant contends that broader public participation should be used to make this decision.

Response: The Responsible Officer made a decision for which he has the delegated authority. The decision was made independently from Brooke Utilities, Inc. and from County Government. Input from Brooke Utilities and from the County was considered along with everyone else's, but that input did not pre-determine the decision. The level of public participation in the process has already been found to be adequate.

Finding: Brooke Utilities, Inc. and County did not control the decision making process for this project.

ISSUE 5 (Wentz): Use of limited water resources should be restricted to private individuals.

Contention: The Appellant contends that limited water resources should not be available to parties whose primary motivation is profit oriented. Use should be restricted entirely to those in need.

Response: This is a social issue involving private property rights over which the Forest Service has no jurisdiction.

Finding: The Forest Service has no jurisdiction in this matter.

<u>ISSUE 6 (Wentz)</u>: Brooke Utilities, Inc. acquired water rights illegally.

Contention: The Appellant contends that Brooke Utilities, Inc. acted in collusion with other private parties to acquire water rights.

Response: The method by which Brooke Utilities acquired approval to pump water from wells on private land is not at issue, however, the Forest Service will confirm that Brooke Utilities does have approval from the appropriate State agency to pump the water before a special use authorization is issued.

Finding: The Forest Service will confirm that Brooke Utilities has approval to pump the water before issuing a special use permit.

ISSUE 7 (Wentz): Public opposition is ignored.

Contention: The Appellant contends that the Forest Service can ignore public opposition by hiding behind the term "valid objections".

Response: The appeals process is defined very precisely. Requirements are clearly explained in the Decision Notice and Finding Of No Significant Impact. In this case, the Forest Service afforded Dr. Wentz the courtesy of an additional explanation during the appeal period.

Finding: Public input was appropriately used to quantify the issues for this analysis. Resolution of some of the issues identified in scoping for this analysis is outside Forest Service jurisdiction. The Forest Service has clearly identified what constitutes a valid appeal.