

DECISION NOTICE
and
FINDING OF NO SIGNIFICANT IMPACT

Dry Lakes Land Exchange

Exchanges--AZA 31946
USDA Forest Service
Southwestern Region
Apache-Sitgreaves National Forests
Alpine, Lakeside, Springerville Ranger Districts
Apache and Navajo Counties, Arizona

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INTRODUCTION AND DECISION SUMMARY

This Decision Notice documents my decision to select alternative 2, the proposed action, as described in the August 2005 Environmental Assessment (EA) for the Dry Lakes Land Exchange. This decision will convey 176.9 acres of Federal land described as Federal "Tracts A, B, C, D, and E" to BC2 LLC/Genesis Real Estate and Development, Inc. (BC2 LLC) in exchange for 586.4 acres of non-Federal land described as South Fork, Dry Lakes, Reagan, Nutrioso, and Morgan Wash parcels. All of the Federal and the non-Federal Morgan Wash parcels are located within the Sitgreaves National Forest, Navajo County, Arizona. The South Fork, Dry Lakes, Reagan, and Nutrioso parcels are located within Apache National Forest, Apache County, Arizona (See "Legal descriptions" at the end of this document).

This land exchange will be completed in accordance with the General Exchange Act of March 20, 1922, as amended; the Federal Land Policy and Management Act of October 21, 1976, as amended; and the Federal Land Exchange Facilitation Act of August 20, 1988. It follows current Forest Service regulations and policies and contributes to achieving the Apache-Sitgreaves National Forests' Land Management Plan direction. The scope of my decision is limited to the actions described in the EA and this DN/FONSI. This decision is site specific.

Appraisals of the Federal and non-Federal lands were originally approved for Agency use on August 13, 2004 (valuation dates of April 14, 2004). The appraisals expired for Agency use on January 14, 2005. New appraisals have been completed and were approved for agency use on September 22, 2005 (valuation dates of July 13, 2005). The appraisals expire for Agency use on January 13, 2006. The execution of a formal Land Exchange Agreement would commit both parties to accept as final the Agency-approved appraisal values for the subject lands. The Agency-approved appraisals indicate the value of the Federal land is more than the non-Federal land. A payment of cash by BC2 LLC in the amount of \$110,000 to the United States is required to equalize values as required by Sec. 206(b) of the Federal Land Policy and Management Act. The Agency-approved values would remain valid under the conditions cited in the Federal and non-Federal appraisal review reports and continue to be fixed and valid as long as the estate to be conveyed is consistent with the estate appraised.

DECISION RATIONALE

Based on the information documented in the EA, documents contained in or referenced in the project record, and past experience, it is my decision to approve this land exchange proposal and proceed with alternative 2, the proposed action.

I reviewed public comments from the original June 24, 2003, scoping request and the May 24, 2005, Proposed Dry Lakes Land Exchange request for comment. All public comments that were received have been thoroughly analyzed and discussed in the EA. All comments and the resulting analysis are contained in the project record.

I have reviewed the two alternatives given detailed study to determine if they were responsive to key issues and the purpose and need for this analysis. I also reviewed alternatives that were considered but not given detailed study to help me decide if a thorough and complete range of alternatives was considered. I find that the range of alternatives considered is thorough and complete.

I considered the following items in making my decision; the effects may be both positive and negative. The net public benefit is greatest from the proposed action.

1. As required by 36 CFR 254.3, the following statement is made regarding the completion of the Dry Lakes land exchange as a determination of public benefit.

Full consideration has been given to the opportunity to achieve better management of Federal lands and resources by the Dry Lakes land exchange. This exchange will result in the consolidation of lands for more logical and efficient management and development. It will meet the needs of the State of Arizona and local residents to secure important wildlife habitat objectives, protect cultural resources, protect riparian influenced lands, enhance recreation opportunities and improve public access to Federal land.

I find that:

The resource values and the public objectives served by the non-Federal lands to be acquired meet or exceed the resource values and public objectives served by the Federal land by contributing to the blocking up of public land ownership and the acquisition of water influenced lands containing habitat for sensitive wildlife and plant species; and

The intended use of the conveyed Federal land for foreseeable future residential development will not substantially conflict with established management objectives on adjacent Federal lands, including Indian Trust lands.

2. This land exchange is within the context and meets the guidelines envisioned and spelled out in the Final EIS and approved Apache-Sitgreaves National Forests' Land Resource Management Plan. Upon conveyance of the non-Federal land to the United States, the newly acquired land will be managed together with the surrounding management areas in accordance with the standards and guidelines in the Apache-Sitgreaves Forests' Plan. The Federal land will be deleted from the management area within which it is located.
3. The EA shows that National Forest management will not be adversely affected by this transaction or the reasonably foreseeable future use of residential development on the Federal lands. It further shows that there will be no significant adverse impacts on the quality of the human environment and the transaction is in the public interest.
4. The acquisition of the non-Federal parcels will result in the Forest acquiring 5 acres of floodplain/riparian habitat. Although the gain of this quantity of riparian habitat is not considered substantial, it continues to move the Forest forward towards its goal of increasing the quantity of wetland/floodplain/riparian habitat under Federal management. Floodplain acquisition will include 0.85 miles of Morgan Wash.
5. National Forest administration would be both simplified and enhanced through acquisition of the non-Federal land and the resulting consolidation of landownership through this exchange. Completion of this exchange will result in a reduction of approximately 8.6 miles of private/National Forest property boundary and a reduction of 25 property controlling landline corners. This will also result in an estimated annual savings of approximately \$2500.
6. Any future uses would occur within the constraints of applicable Federal and State laws regarding the Clean Water Act for storm water discharge, impacts to wetlands, floodwater management, and groundwater development, including State of Arizona and Navajo County subdivision and development standards.
7. It is expected that Navajo County tax revenues will increase as a result of this proposal. According to the Zoning Ordinance of Navajo County, Arizona these lands have been identified as Rural 1 Rural Zoning District. Property values would be expected to continue to increase in the area over time.
8. Apache County tax revenues will slightly decrease as a result of this exchange. The property taxes paid on BC2 LLC's parcels located in Apache County totaled \$794.00 for 2004. Based

on payments received by Apache County from years 2002 through 2005 the payments to the County from the Payments to States programs would equal approximately \$496.00.

The EA which discusses the impacts of this exchange is available for public review at the offices of the Lakeside Ranger District in Lakeside, Arizona and the Forest Supervisor, Apache-Sitgreaves National Forests in Springerville, Arizona.

PROPOSED ACTION

In accordance with the above cited authorities, the United States will acquire non-Federal land containing 586.4 record acres, more or less, within the Alpine, Lakeside and Springerville Ranger Districts, Apache-Sitgreaves National Forests, Apache (551.43 ac.) and Navajo (35.00 ac.) Counties, Arizona; and the United States will convey to BC2 LLC Federal lands containing 176.90 record acres, more or less, within the Lakeside Ranger District, Sitgreaves National Forest, Navajo County, Arizona.

The non-Federal land consists of five separate parcels. The South Fork, Dry Lakes, Reagan, and Nutrioso parcels are located in the Apache National Forest. The Morgan Wash parcel is in the Morgan Flat area on the Sitgreaves National Forest. These parcels will be incorporated into the National Forest Management Areas in which they are located.

South Fork Parcel (111.09 acres): This parcel is within the Apache National Forest on the Springerville Ranger District. The parcel is located about eight miles west of the town of Eagar and south of State Highway 260, approximately one-quarter mile northwest of the Little Colorado River. A road right-of-way easement granted by the Arizona State Land Department to BC2 LLC provides legal access to the property from State Highway 260. Physical access is provided by a low standard road from SH 260 through a locked ADOT gate that is not located within the described easement. The land has an elevation of 7,700 to 8,040 feet a.s.l. Vegetation is primarily plains grassland. The parcel adjoins private land on its east and northwest sides, state land along the northeast, and National Forest on the south and west.

Dry Lakes Parcel (260.00 acres): This parcel is within the Apache National Forest on the Springerville Ranger District. The parcel is the largest in the proposed land exchange and is located within the Dry Lakes drainage about eight miles north of Escudilla Mountain. The land has an elevation of 7,580 to 7,680 feet a.s.l. Vegetation is plains grassland and pinyon-juniper woodland. The parcel includes approximately 0.5 miles of an unnamed tributary to the enclosed basin of Dry Lakes. This basin is characterized by soft sandy soils with two depressions that are seasonally inundated during wet periods. Drainage of the parcel is to the north. Access is by low standard Forest Service Roads. The property is currently surrounded by Federal lands except for a 20 acre parcel of private land owned by others along the northeast corner. The owner of this parcel was contacted by the BC2 LLC regarding the availability of the 20 acres for purchase and inclusion in the exchange.

Reagan Reservoir Parcel (160.00 acres): This parcel is within the Apache National Forest on the Springerville Ranger District. The parcel is just north of Reagan Reservoir and approximately seven miles north of Escudilla Mountain. The land has an elevation of 7,720 to 7,860 feet a.s.l. Vegetation is plains grassland and pinyon-juniper woodland. Drainage of the parcel is to the north. The parcel is surrounded on all sides by Federal lands. Access is by low standard Forest Service Roads.

Nutrioso Parcel (20.34 acres): This parcel is within the Apache National Forest on the Alpine Ranger District. The parcel is located about two miles northwest of the community of Nutrioso and three miles northwest of Escudilla Mountain. The parcel is bordered by National Forest on the north, east, south, and southwest sides. Private land adjoins it on the northwest side. The land has an elevation of 7,700 to 7,800 feet a.s.l. Vegetation is primarily plains grassland fringed by pinyon-juniper woodland and

ponderosa pine forest. The parcel includes approximately 0.10 mile of a small, unnamed tributary to Nutrioso Creek. Access is by a low standard road that crosses the adjacent private property owned by others along the west boundary. There is no legal access to the parcel.

Morgan Wash Parcel (35.00 acres): This parcel is within the Sitgreaves National Forest on the Lakeside Ranger District. The parcel is located in the southwest corner of the Morgan Flat area and adjoins private land along its north, east and southeast sides. National Forest adjoins it on the south and west sides. The land has an elevation of 7,100 feet a.s.l. Vegetation consists of a scattered overstory of second growth ponderosa pine with an understory of various grasses, scattered oak brush and small openings. The parcel includes approximately 0.5 miles of Morgan Wash, a tributary to Scott Reservoir. Access is from the northeast by low standard roads from the end of Forest Road (FR) 9717 (Navajo County Sponsellor Siding Road). An exchange of easements has been agreed to by both the non-Federal party and the Forest Service that would provide public road access across the northeast boundary of Federal Tract E through the non-Federal party's land, to Tract D. This exchange of easements would occur even if the land exchange is not carried forward because of the mutual benefits to both parties. The public benefit is legal access to Tract D, which increases its land value. The benefit to the non-Federal party is more direct legal access to their lands south of Tract D, whether the land exchange is completed or not. If the land exchange is completed, public access to the Morgan Wash parcel would be either across Forest System lands to the west or across the non-Federal party's public subdivision roads.

The Federal land consists of five separate parcels located in the Morgan Flat area northeast of Pinetop-Lakeside, Arizona, in the Sitgreaves National Forest and Lakeside Ranger District. These parcels will be conveyed to the non-Federal party with the reasonable foreseeable future use being residential development.

Tract A (78.93 acres): This parcel is currently public land within the Sitgreaves National Forest and Lakeside Ranger District. The land has an elevation of 7,045 to 7,120 feet above sea level (a.s.l.). Vegetation consists of a scattered overstory of second growth ponderosa pine with an understory of various grasses, scattered oak brush and small openings. A Navopache Electric power transmission line crosses the parcel in a northeast-southwest direction. FR 9717 creates the eastern boundary and FR 45 (Navajo County Porter Mountain Road) the northern boundary. Private land adjoins it along both the west and south sides.

Tract B (5.11 acres): This parcel is currently public land within the Sitgreaves National Forest and Lakeside Ranger District. The land has an elevation of 7,000 feet a.s.l. Vegetation consists of second growth ponderosa pine overstory and scattered oak brush. The tract legally described as Lot 16 is the remaining portion of the originally selected Tract B. The majority of the Federal lands in the originally identified tract were dropped from the exchange at the request of the non-Federal party due to the presence of several unpatented mining claims. The Forest Service concurred with consideration to public comments. Private land adjoins it along the east and south sides. No roads currently access this parcel. Navajo County has agreed to accept a public road easement from the Forest Service for access to this parcel from FR 45.

Tract C (41.90 acres): This parcel is currently public land within the Sitgreaves National Forest and Lakeside Ranger District. The land has an elevation of 7,000 to 7,020 feet a.s.l. Vegetation consists of a scattered overstory of second growth ponderosa pine with an understory of various grasses, scattered oak brush and small openings. FR 45F (Navajo County Deer Run Road) crosses through the parcel north-south near the center of the property. A Navopache Electric power transmission line crosses the parcel in a northeast-southwest-west direction. Private land adjoins it along the north, east and south sides.

Tract D (30.96 acres): This parcel is currently public land within the Sitgreaves National Forest and Lakeside Ranger District. The land has an elevation of 7,060 feet a.s.l. Vegetation consists of a scattered overstory of second growth ponderosa pine with an understory of various grasses, scattered oak brush and small openings. This Federal parcel is completely surrounded by private land. No road currently provides access to the parcel. An exchange of easements has been agreed to by both the non-Federal party and the Forest Service that assures legal access to this parcel across the adjoining private land located between Federal Tracts E and D that is owned by the non-Federal party.

Tract E (20.00 acres): This parcel is currently public land within the Sitgreaves National Forest and Lakeside Ranger District. The land has an elevation of 7,020 to 7,040 feet a.s.l. Vegetation consists of a scattered overstory of second growth ponderosa pine with an understory of various grasses, scattered oak brush and small openings. A small seep affecting an area less than 0.1 acre in size with minimal wetland type species present is located on the parcel. Private land adjoins it along the north and east sides. The non-Federal party has agreed to the Forest Service reserving a north-south road easement through the parcel that would provide for continued public access to National Forest land south of the parcel. An easement for this section of road would be granted to Navajo County extending the length of the current County Road easement for FR 45F through the parcel. The Forest Service would grant an easement to the non-Federal party for a west-east road paralleling the northeast boundary of the tract and entering private land owned by the non-Federal party that lies between Federal Tracts E and D. The non-Federal party would grant an easement across the northern boundary of their land (continuation of same road) for access from Federal Tract E to Tract D.

PUBLIC INVOLVEMENT

Legal notice of the proposed land exchange was published for 4 consecutive weeks between December 10 and December 31, 2002 in the *White Mountain Independent* (36 CFR 254.8) for Navajo and Apache Counties; and for the additional private land within Apache County from June 24 to July 15, 2003. The Navajo and Apache County Boards of Supervisors, State agencies and the appropriate Congressional delegation members were formally advised. No objections were received as a result of the newspaper publication.

Consultation occurred with Native American Tribes, the Arizona State Game and Fish Department and the U.S. Fish and Wildlife Service. Public involvement was sought through mailing of a scoping report with a request for public input to determine any issues of concern. A mailing list consisting of 237 addresses was compiled that included Federal, State, and local agencies, as well as individuals and organizations that it was believed had an interest in or may be affected by the project. The mailer included the scoping report with a description of the proposed project, maps showing the lands being considered for exchange, and a request that written comments be submitted to the Forest Service by July 29, 2003.

The A-S received a total of 57 comments in the form of letters and e-mails. All comments that were received were included in the analysis by the Interdisciplinary Team (IDTeam) for the project.

No objections, or adverse comments, were received from any of the Native American Tribes or state agencies that were contacted.

A letter announcing the EA comment period for the Dry Lakes Land Exchange Proposed Action was mailed to all individuals who provided comments during the scoping comment period and provided the Forest with a mailing address. The 30-calendar day comment period ran from May 24, 2005 through June 23, 2005. A legal notice announcing the availability of the Proposed Action was published in the *White Mountain Independent* the newspaper of record on May 24, 2005. The public was invited to a June 14, 2005 open house that was held from 4 to 7 p.m. at the Lakeside Fire Station in Lakeside, Arizona to

receive information about the proposed action, discuss their concerns and to submit written comments. Notification of the open house was made by way of the letter informing individuals of the availability of the Proposed Action and publication of a news release in the *White Mountain Independent* on June 10, 2005. 51 people signed the attendance sheet at the open house. Following the open house an article was published in the *White Mountain Independent* on June 24, 2005 discussing concerns and opinions regarding the proposed exchange expressed by several individuals who were in attendance.

The A-S received a combination of 17 letters and comment forms, e-mails, and one telephone call commenting on the proposed action. All comments were received prior to the end of the 30-day comment period identified in the May 24, 2005 legal published in the *White Mountain Independent*. All comments were considered in the environmental analysis and preparation of the environmental assessment by the IDTeam and are included in the project.

The IDT identified one key issue. The issue was a concern about the effects from future development on the Federal lands. This issue was addressed in the environmental analysis and carried forward and documented in the EA. In addition, all comments received during the scoping period and comment period on the proposed action were considered in this decision and are included in the project record.

ALTERNATIVES CONSIDERED, BUT NOT CARRIED FORWARD FOR FURTHER ANALYSIS

The range of alternatives that are considered in a discretionary land exchange is limited by the exchange process itself. A balanced exchange package is eventually arrived at by a series of proposals and counter proposals until both the non-Federal and Federal parties accept a mix of parcels. Once both parties agree upon an acceptable mix, the Federal agency proposes to go forward with an analysis of the action and an Agreement to Initiate a Land Exchange is signed by both parties. The exchange proposal analyzed in this document reflects lands that were mutually agreed upon by the non-Federal landowner and the Forest Service.

Purchase of non-Federal lands. Other means of acquiring the non-Federal lands were considered but eliminated from further study. The Land and Water Conservation Fund (LWCF) is the funding mechanism used by the Forest Service to purchase parcels of land. Funding for the purchase of non-Federal lands is limited by Congressional appropriation. Funding is almost always limited to acquiring only a few of the highest national priorities. The majority of deserving projects go without funding. Although the sale of non-Federal lands to the United States is an alternative to a land exchange the possibility of purchasing the non-Federal parcels through the LWCF is extremely remote. BC2 LLC proposed a land exchange because they wish to receive lands of equal value in the Morgan Flat area to those they are willing to convey to the Forest Service. The Federal government can only purchase land from willing sellers. In addition, as stated above, funds to purchase these privately owned parcels are not available. It is likely that appropriated LWCF funds for land purchases will continue to be limited in the foreseeable future as funding is now in a downward trend.

Deed restrictions. The application of deed restrictions to direct and control future development on the Federal land once it is conveyed into private ownership was considered. Through the environmental analysis process the Apache-Sitgreaves National Forests reviewed the need for deed restriction on the Federal lands. The resource values associated with the Federal lands indicated that no restrictive deed or covenant was warranted to comply with legal, regulatory requirements, executive orders, policy, or to meet Forest Plan management objectives. An alternative that included a deed restriction was not fully developed or analyzed, except as the “No Action” alternative. Chapter 3 in the EA describes the existing conditions and possible effects of the proposal and the No Action alternative. The Biological Analysis

and Evaluation (BA&E) and supplements for sensitive wildlife, fish and amphibians, and plants, and threatened and endangered wildlife are contained in the project record. The Federal lands are upland sites with no water and no fish or amphibians; there are no fisheries, amphibian, or wetland concerns associated with them. Except for a small seep with minimal wetland type species (iris) present in an area totaling less than 0.1 acre no riparian areas, wetlands or floodplain would be lost through this exchange. The Federal lands are not considered critical habitat as outlined in any Recovery Plan, or a high use area for sensitive wildlife species. Game animals, including elk and mule deer, do frequent the area but any future development that occurs would have no major impact on these species. No cultural sites or traditional cultural properties that might be adversely affected by the proposal or alternatives were identified, so a need for a deed restriction related to cultural resources was not required. While the non-Federal party would have full discretion on what they could do with the property should the exchange go forward, any future uses of the land would occur within the constraints of applicable laws and regulations, including but not limited to, clean air laws, the Endangered Species Act, state law, and county subdivision and development standards.

A deed restriction would not fulfill the purpose and need for action. The Forest Service has long taken the position that zoning and regulation of uses on private land are within the responsibility of state and local governments. Forest Service Manual 5403.3 reads “*Except as authorized by law, order, or regulation, Forest Service policies, practices, and procedures shall avoid regulating private property use*”. A principal objective of discretionary land exchanges is to reduce administrative costs and requirements, not to increase them.

Exchange of other Federal lands. The non-Federal party initiated discussion with the Forest Service regarding a land-for-land exchange proposal that identified Federal lands adjacent to Porter Mountain and Misty Mountain Estates. During the discussions that eventually resulted in an acceptable mix of lands it was clear the non-Federal party required the Federal lands be in this location. If another alternative that included the exchange of other Federal lands outside the Morgan Flat area was not acceptable to the non-Federal party it could not be fully developed or analyzed, except as the No Action alternative.

ALTERNATIVES CONSIDERED IN DETAIL

The primary factors I considered in making my decision were how well each alternative met the purpose and need for the proposal, and responded to the key issues and other concerns raised during scoping. A summary of the key issue and the consequences of the alternatives relative to this issue appears on page 10 in the EA. A summary of other concerns and the consequences of the alternatives are contained on pages 16-38 in the EA.

The two alternatives that were considered and discussed in detail are:

Alternative 1 - No action. No exchange of lands would take place and lands would remain in current ownerships.

Alternative 2 – Proposed action. Complete the exchange as proposed; exchange 586.4 acres of non-Federal land for 176.9 acres of Federal land.

DETERMINATION OF PUBLIC INTEREST

As required by 36 CFR 254.3 I have determined that the public interest is well served through this exchange.

The resource values and public objectives served by acquisition of the non-Federal parcels equal or exceed the resource values and public objectives served by conveyance of the Federal parcels. The non-

Federal lands contain floodplain/riparian habitat containing habitat for sensitive wildlife and plant species and will contribute to the blocking up of public land ownership.

The intended reasonably foreseeable future use of residential development on the Federal lands to be conveyed will not substantially conflict with established management objectives on adjacent Federal lands or private lands. The non-Federal party has stated all development will comply with applicable state and county laws and subdivision ordinances.

FINDING OF NO SIGNIFICANT IMPACT

My decision is based on the August 2005 Environmental Assessment for the Dry Lakes Land Exchange, the Biological Assessment and Evaluation, and a review of the scoping comments and public comments received on the May 24, 2005 Dry Lakes Land Exchange Proposed Action. I have determined that this project is not a major Federal action and will not significantly affect the quality of the human environment, either individually or cumulatively, with other activities in the general area. An Environmental Impact Statement is not needed. This finding is based on the following factors:

Consideration of the beneficial and adverse environmental impacts:

Adverse effects are primarily related to the effects from future development on the Federal lands. None of the environmental effects were determined to be significant, singularly or in combination.

Based on the EA, there are no significant adverse or beneficial impacts likely to occur as a result of the proposed exchange.

(EA Chapter 3, pages 16-38, 51-52.)

Consideration of the effects on public health and safety:

The proposed exchange will have no adverse effect on the public health or safety. The analysis of reasonably foreseeable development indicates development and future use of the Federal parcels would occur within the constraints of applicable laws and regulations, including but not limited to, clean air laws, the Endangered Species Act, State law, and county subdivision and development standards. There will be no significant impact on public safety or demand for additional public services.

(EA Chapter 3, pages 33, 35, 36.)

Consideration of the unique characteristics of the geographic area:

The Federal land to be conveyed is not unique within its geographic setting, in terms of physical and biological characteristics, and is generally similar to many other areas of National Forest and private land in the area. The west and southwest areas drain into Morgan Wash and eventually to Scott Reservoir. There are no prime farms, range, or forestlands, or roadless, wilderness, natural, study or other specially designated areas located on the lands proposed for exchange.

(EA Chapter 3, pages 18-21, 34, and 35.)

The Forest Service will acquire three parcels that have associated floodplain. The acquisition of these parcels would result in the Forest acquiring 5 acres of floodplains.

(EA Chapter 2, page 14; Chapter 3, pages 17-19.)

Consideration of the degree to which the effects are likely to be highly controversial:

The effects on the quality of the human environment are not likely to be highly controversial because there is no known scientific controversy over the impacts of the project.

(EA Chapter 3, pages 16-38.)

Consideration of the degree to which effects are uncertain or unknown:

There are no known effects on the human environment that are highly uncertain, or involve unique, or unknown risk as a result of this proposed exchange. Effects of this action will be similar to the effects of past similar actions. Land exchanges have occurred in the Southwestern Region for quite some time and their effects are relatively well understood. Based on the results of past actions there are no known or expected effects on the human environment that are highly uncertain or involve risk as a result of implementing this proposal.

(EA Chapter 2, pages 6-9.)

Consideration of the degree to which this action will set a precedent for future actions with significant effects:

The proposed exchange will not establish a precedent for future actions of this nature in this area. Each proposed land exchange or other similar action must be evaluated on its own merit. My decision neither establishes a precedent for future actions nor represents a principle about future considerations.

(EA Chapter 2, page 6.)

Consideration of the action as related to other actions with cumulatively significant impacts:

Cumulative effects were considered as a part of the analysis. The analysis did not reveal any significant cumulative impacts from individual or connected actions.

(EA Chapter 3, pages 16-38, 51-52.)

Consideration of the degree to which the action may affect archeological/cultural sites, listed, or eligible Historic Places:

The Forest prepared a cultural resource survey report for the Federal lands. No archaeological properties were identified on the Federal lands. Consultation was conducted with the Hopi Tribe, the White Mountain Apache Tribe, the Pueblo of Zuni, and the Navajo Nation regarding the exchange. The exchange does not conflict with the requirements of the National Historic Preservation Act of 1966 and Executive Order 11593.

(EA Chapter 3, pages 28-29.)

Consideration of the degree to which the action may affect threatened, endangered, and sensitive species, or habitat:

No adverse impacts to any endangered, threatened, or sensitive species nor their habitat is foreseen. No threatened, endangered, or sensitive species are known to inhabit the Federal area within the proposed land exchange.

(EA Chapter 3, pages 20-26.)

Consideration of whether the action violates Federal, State, or local laws or requirements imposed for the protection of the environment:

The proposed exchange will not violate nor threaten to violate any Federal, State, or local law requirement for the protection of the environment. Local, county, and municipal governments were contacted, as were State agencies. The respondents were supportive or quiet regarding the protection of the environment as a result of this project. Also, see “Findings Required by Laws/Regulations” below.

(EA Chapter 3, pages 16-38.)

FINDINGS REQUIRED BY LAWS/REGULATION

- a. Conveyance of the Federal lands into private ownership does not conflict with the requirements of Sec. 402(g) of FLPMA (Grazing Permittee/Lessee).
- b. No archeological/cultural values on the Federal lands are involved. The exchange does not conflict with the requirements of the National Historic Preservation Act of 1966 and Executive Order 11593.
- c. This exchange does not conflict with Executive Order 11988 regarding floodplain management and Executive Order 11990 regarding wetlands management. The positive acquisition of floodplain lands into Federal ownership supports the objectives of the Executive Orders as interpreted in the Forest Plan.
- d. No threatened, endangered, or sensitive species of animals or plants, or habitat are adversely affected. A Biological Assessment and Evaluation was completed on February 8, 2004. U.S. Fish and Wildlife Service concurrence was not required for the proposed exchange. The exchange does not conflict with the requirements of the Endangered Species Act of 1973, as amended.
- e. No caves are involved; therefore, this exchange does not conflict with the intent of the Federal Cave Resources Protection Act of November 18, 1988.
- f. The Federal and non-Federal lands have been examined for evidence of hazardous materials in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601), as amended. No evidence of hazardous materials was discovered indicating the likelihood of contamination on the Federal or non-Federal lands. No evidence was found to indicate that any hazardous material was stored for one year or more or disposed of or released on the properties.
- g. A formal Forest Service Mineral Report dated May 23, 2003 and amended December 3, 2004 concluded that both the Federal and non-Federal lands have low potential for leasable oil, gas, coal, and geothermal resources. There is no potential for sodium, phosphate or any other leasable minerals. The geologic environment, the inferred geologic processes, and the lack of reported mineral resources indicate a low potential for the accumulation of locatable minerals within the subject parcels. The potential for saleable mineral deposits is low to moderate. Most of the parcels have a moderate potential for the presence of cinders, due to the volcanic origins of the surface rocks. However, there are no indications that any parcel contains a valuable cinder deposit. Both the Federal and non-Federal lands will be exchanged without any mineral reservations. The report was submitted to and concurrence received from the Bureau of Land Management, Arizona State Office and is in the project record.
- h. This exchange does not conflict with Executive Order 12898 regarding Environmental Justice in Minority Populations and Low Income Populations. The exchange itself will not affect low income or minority population members.

IMPLEMENTATION DATE

This project will not be implemented sooner than five business days following the close of the appeal filing period established in the Notice of Decision in the *White Mountain Independent*, the newspaper of record. If an appeal is filed, implementation will not begin sooner than 15 business days following the date of the last appeal disposition.

ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

This Decision is subject to administrative review (appeal) pursuant to 36 CFR Part 215. The written appeal must be filed (regular mail, fax, e-mail, hand-delivery, or express delivery) with the Appeal Deciding Officer.

Send appeals by regular mail to:

Appeal Deciding Officer, USDA Forest Service, Southwestern Region
333 Broadway, SE
Albuquerque, NM 87102

Federal Express and hand-delivery address is:

Appeal Deciding Officer, USDA Forest Service, Southwestern Region
333 Broadway, SE
Albuquerque, NM 87102

Telephone 505-842-3292; and Fax number is 505-842-3142.

The business hours for those submitting hand-delivered appeals are: 8:00 a.m. to 4:30 p.m. MDT (MST), Monday through Friday, excluding holidays. An electronic appeal must be submitted in a format such as an email message, plain text (.txt), rich text format (.rtf), and Word (.doc) to appeals-southwestern-regional-office@fs.fed.us. In cases where no identifiable name is attached to an electronic message, a verification of identity will be required. A scanned signature is one way to provide verification.

Appeals, including attachments, must be filed within 45 days from the publication date of the notice in the *White Mountain Independent*, the newspaper of record. The publication date in the *White Mountain Independent*, the newspaper of record, is the exclusive means for calculating the time to file an appeal. Those wishing to appeal this decision should not rely upon dates or timeframe information provided by any other source.

Individuals or organizations who submitted substantive comments (36 CFR 215.2) during the comment period specified in 36 CFR 215.6 may appeal this Decision. The notice of appeal must meet the appeal content requirements at 36 CFR 215.14.

INFORMATION CONTACT PERSONS

For further information concerning this Decision or the Forest Service appeal process, contact the Forest Supervisor, Apache-Sitgreaves National Forests, 309 S. Mountain, P.O. Box 640, Springerville, Arizona 85938, (928) 333-4301 or the District Ranger, Lakeside Ranger District, 2202 W. White Mountain Blvd., Lakeside, Arizona 85929, (928) 368-5111.

December 20, 2005
Date

/s/ Elaine J. Zieroth
ELAINE J. ZIEROTH
Forest Supervisor
Apache-Sitgreaves National Forests

Legal description of Federal land to be exchanged

Sitgreaves National Forest

Lakeside Ranger District

GILA AND SALT RIVER MERIDIAN, Navajo County, Arizona

T. 9 N., R. 23 E.

sec. 3 — Lots 10, 15, 17, 19, and 20. (“Tract A”)

Containing 78.93 record acres, more or less.

sec. 4 — Lot 16. (“Tract B”)

Containing 5.11 record acres, more or less.

sec. 9 — Lots 1, 2 and 3; N1/2N1/2S1/2SW1/4. (“Tracts C, D, E”)

Containing 92.86 record acres, more or less.

ALTOGETHER containing 176.90 record acres, more or less.

Legal Description of non-Federal land to be exchanged

Apache National Forest

Springerville Ranger District

GILA AND SALT RIVER MERIDIAN, Apache County, Arizona

T. 8 N., R. 27 E.

sec. 24--Lot 1; (South Fork)

T. 8 N., R. 28 E.

sec. 19 — Lots 6 and 7.

Containing 111.09 record acres, more or less.

T. 8 N., R. 30 E.

sec. 26 — NE1/4, E1/2NE1/4NW1/4, N1/2SE1/4. (Dry Lakes)

Containing 260.00 record acres, more or less.

T. 8 N., R. 30 E.

sec. 35 — W1/2SW1/4NE1/4, SE1/4SW1/4NE1/4, SW1/4SE1/4NE1/4, E1/2SE1/4NW1/4, W1/2NE1/4SE1/4, E1/2NW1/4SE1/4, E1/2SW1/4SE1/4, SE1/4SE1/4. (Reagan Reservoir)

Containing 160.00 record acres, more or less.

Legal Description of non-Federal land to be exchanged (continued)

Alpine Ranger District

T. 7 N., R. 30 E.

sec. 21 — SE1/4SW1/4SE1/4;

(Nutrioso)

sec. 28 — Lot 12 (a.k.a NE¹/₄NW¹/₄NE¹/₄)

Containing 20.34 record acres, more or less.

Sitgreaves National Forest

Lakeside Ranger District

GILA AND SALT RIVER MERIDIAN, Navajo County, Arizona

T. 9 N., R. 23 E.

sec. 9 — S1/2NW1/4SW1/4SE1/4, S1/2SW1/4SE1/4,

(Morgan Wash)

SW1/4SE1/4SE1/4.

Containing 35.00 record acres, more or less.

ALTOGETHER containing 586.43 record acres, more or less.

Apache County – 551.43 record acres, more or less.

Navajo County – 35.00 record acres, more or less.