

# ***Decision Notice and Finding Of No Significant Impact***

## **Clear Creek Land Exchange**

USDA Forest Service, Southwestern Region  
*Coconino National Forest*  
Coconino County, Arizona

### **Contents**

<b>Introduction</b>	<b>1</b>
<b>Purpose and Need</b>	<b>2</b>
<b>Decision and Proposed Action</b>	<b>3</b>
<b>Decision Rationale – Public Interest Determination</b>	<b>4</b>
<b>Alternatives Considered</b>	<b>7</b>
<b>Alternatives Considered But Not Carried Forward for Further Analysis</b>	<b>7</b>
<b>Public Involvement and Issues Raised</b>	<b>8</b>
<b>Issues</b>	<b>9</b>
<b>Finding of No Significant Impact</b>	<b>9</b>
<b>Findings Required by Other Laws and Regulations</b>	<b>12</b>
<b>Project Implementation</b>	<b>13</b>
<b>Appeal Rights</b>	<b>13</b>
<b>Contact</b>	<b>14</b>
<b>Legal descriptions</b>	<b>15</b>
<b>Floodplain Notice</b>	<b>16</b>

### **Introduction**

This Decision Notice documents my decision to select Alternative B, the Proposed Exchange, as described in the September 2007 Environmental Assessment (EA) for Proposed Clear Creek Land Exchange. This decision will approve conveyance of approximately 503 acres of National Forest System land described as the federal parcel to Clear Creek 820 LLC for approximately 820 acres of private property described as the non-federal parcel. Both parcels are located within the Mogollon Rim Ranger District of the Coconino National Forest. Legal descriptions for these parcels are attached at the end of this document.

This exchange will be completed under authority of, and in accordance with, the General Exchange Act of March 20, 1922, as amended; the Federal Land Policy and Management Act of October 21, 1976; and the Federal Land Exchange Facilitation Act of August 20, 1988. It is in accordance with current Forest Service regulations at 36 CFR 254 and policies and contributes to achieving Coconino National Forest Land Management Plan direction. The scope of my decision is limited to the actions described in the

EA and this Decision Notice/Finding of No Significant Impact (DN/FONSI). This decision is site specific. The environmental analysis documented in the EA is available for public review in the offices of the Mogollon Rim District Ranger (Happy Jack, AZ), the Coconino Forest Supervisor (Flagstaff, AZ), and the Southwestern Regional Forester (Albuquerque, NM).

Appraisals for the federal and non-federal lands were approved for agency use on July 5, 2007, with an effective value of May 11, 2007. The values are valid through May 9, 2008. Execution of a formal Land Exchange Agreement will commit the United States and Clear Creek 820, LLC to accept as final the agency-approved appraisal values for the subject lands. The federal land has an approved value of \$6,465,000 and the non-federal land has an approved value of \$6,075,000. At closing, Clear Creek 820, LLC will pay the United States a \$390,000 cash payment to equalize values.

## **Purpose and Need for Project**

The Forest Service plans to consolidate land ownership by conveying a parcel of land adjacent to an existing parcel of private land to Clear Creek 820, LLC, in order to acquire a privately-held parcel within the National Forest. Resource and public use values of the privately held parcel are significant in comparison to those found on the Federal parcel.

This exchange is consistent with the Coconino National Forest Land and Resource Management Plan (1987).

The non-Federal lands proposed for exchange meet Plan criteria appropriate for the type of area (wild lands with large non-Forest ownership):

1. Acquire into Forest ownership to achieve cost efficient management of Forest lands and to maintain them as Forest type lands.
2. Pursue acquisition where special resource needs such as key wildlife habitat or key public recreation sites are identified.
3. Acquire threatened and endangered species habitat if adjacent Forest lands do not provide adequate habitat.
4. Acquire riparian habitat, where adjacent riparian areas are in Forest ownership.

The Federal lands proposed for exchange meet Plan criteria for (offered) Federal lands:

1. Lands needed to meet the needs of expanding communities.
2. Lands that will improve management, benefit specific resources, or increase management efficiency.

The acquisition of the non-federal parcel will achieve several goals as stated in the USDA Forest Service Strategic Plan for Fiscal Years 2007-2012. Acquisition of this inholding will protect environmentally important forest from conversion to other uses (Goal #3); will secure legal entry to forest lands and waters especially to highly desirable property along East Clear Creek (Goal #4); and will improve the administration of national forest lands (Goal #5).

The land to be acquired provides habitat for all of the local wildlife species, including significant populations of elk, deer and turkey. It includes approximately 1.5 miles of East Clear Creek, a significant perennial stream important for fisheries and other wildlife, including habitat for the endangered Southwestern willow flycatcher, and three threatened species: the Bald Eagle, Mexican spotted owl and Little Colorado spinedace. Grass meadows and riparian areas adjacent to east Clear Creek provide excellent spring foraging areas for deer, elk and antelope.

National Forest administration is made more difficult by the existence of private parcels surrounded by large tracts of National Forest System land such as increased management costs related to fire suppression and resource protection, fragmentation of wildlife habitat and limited access to water sources, incompatible developments which often negatively impact adjacent National Forest System lands and in general, prevent a unified approach to Forest management. The non-Federal parcel is a complete block of private land surrounded by National Forest.

## **Decision and Proposed Action**

It is my decision to approve the land exchange, as proposed. This action responds to and implements the goals and objectives outlined in the Coconino National Forest Land and Resource Management Plan, USDA 1987, (Forest Plan) and helps move the project area towards desired conditions described in the plan.

The 503-acre federal parcel that will be conveyed into private ownership is adjacent to an 82 acre and 1 acre private land parcels on the Mogollon Rim Ranger District of the Coconino National Forest. Uses on these adjacent private lands include a commercial lodge and campground, commercial storage, and private single-family residential development. Forest Highway 3 cuts north through the eastern portion of the federal parcel and is currently authorized under a special use road permit to Coconino County. Utility permits on the federal parcel authorize buried lines to TDS telecom and Arizona Public Service. These permitted rights will be protected in the parcel conveyance by the issuance of easements or other acceptable instruments to the permit holders. The special use permits will be amended to exclude the exchanged lands. The United States will reserve a road right-of-way for Forest Road 122 as it crosses the exchange parcel.

The government will acquire a valuable resource parcel within the Mogollon Ranger District. The 820 acre non-federal parcel contains riparian and meadow habitat important for various wildlife species, and additional opportunities for dispersed recreation. Ownership consolidation of this land will also reduce complexity of the land ownership pattern and eliminate the potential for development of this private land in an inconsistent manner with adjacent National Forest System lands. Mineral rights are being acquired with this parcel.

## Decision Rationale – Public Interest Determination

This decision best meets the purpose and need for the project, responds to public issues, and minimizes overall disturbance to federal resources. Forest Service specialists reviewed and analyzed public comments that were used to formulate and strengthen the environmental analysis. These have been thoroughly considered and discussed in the EA. All comments and resulting analysis are contained in the project record.

Considering all alternatives, including those that were considered but eliminated from detailed study, a range of reasonable alternatives was considered. I have also reviewed the alternatives considered in detail and find that they were responsive to key issues and the purpose and need for the analysis.

In accordance with 36 CFR 254.3(b), I have determined that this exchange will serve the public interest. My reasons for proceeding with this action and selecting action Alternative B are as follows:

1. This exchange will achieve better management of federal land through consolidation of national forest ownership (EA: 19-23). Consolidation will result in a net reduction of approximately 1.25 miles of shared property boundary between National Forest System and privately-held lands; and the elimination of a complete inholding.
2. The exchange will meet the needs of national, state, and local residents by securing important riverside and riparian resources (EA: 52-54), acquiring wildlife habitat (EA: 29-45), and protecting a segment of east Clear Creek (EA: 53-54).
3. The resource values and the public objectives served by the non-federal lands or interests to be acquired exceed the resource values and public objectives served by the federal land to be conveyed.
4. The intended residential use of the conveyed federal land will not substantially conflict with established management objectives on adjacent federal lands. National Forest research personnel working with projects on the nearby experimental forest have agreed with this finding.
5. This exchange will place private land adjacent to the east fork of Clear Creek into public ownership, thereby protecting approximately 2 miles (EA: 53) of existing and potential riparian corridor from future development and potential effects to water quality. The non-federal land will be consolidated with the adjoining National Forest System lands contributing to a contiguous land base where consistent management objectives are applied. Protection of this area will occur under Forest Service jurisdiction and management.
  - a. Floodplains: Executive Order 11988, which was signed on May 24, 1977, was promulgated to avoid adverse impacts associated with the disposal, occupancy and modification of floodplains. Floodplains are defined by this order as:

“...lowland and relatively flat areas adjoining inland and coastal waters including flood prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any one year.”

There are approximately 2.4 acres of floodplain associated with the washes on the Federal parcel (Forest Service hydrologist report, November 14, 2005). These are ephemeral drainages (washes) that only flow in response to precipitation. They contain no significant riparian vegetation and minimal floodplain values. Once the lands are passed out of federal ownership, they are subject to floodplain restrictions of the Floodplain Management Overlay Zone of the Coconino County Zoning Ordinance. The National Flood Insurance Program (42 U.S.C. 4001-4128) provides the umbrella document for states' floodplain control programs. In Arizona, A.R.S. § 48-3601 through § 48-3627 provides directions to counties and local governments. Counties must have floodplain regulations in effect in order to qualify for the National Flood Insurance Program. In Coconino County, floodplain regulations are found in the *Coconino County Zoning Ordinance -Floodplain Management Overlay Zone*, approved (as amended) November 7, 1983.

The Forest Service hydrology report (November 14, 2005) indicates that the non-federal land contains about 25 acres of floodplain. The exchange will result in a net federal gain of approximately 23 acres of riparian floodplain. The floodplain value on the non-federal parcel is considered significant. The Forest Service will be receiving lands with higher floodplain resource values than it is yielding. A notice to be contained in the Exchange Agreement and reflected in the patent will mitigate potential impacts to floodplain on the federal property. A copy of that notice is attached hereto and made a part hereof. Disturbance on the floodplain will not change as a result of this exchange; therefore, the exchange will have no effect on the floodplain and does not constitute a significant effect.

b. Wetlands: Executive Order 11990, signed on May 24, 1977, was promulgated to avoid adverse impacts associated with the destruction or modification of wetlands. Neither the federal nor the non-federal parcel contains natural wetlands. Approximately 1.5 acres of ponds created by mining activity occur on the federal parcel; however no riparian vegetation exists at the two sites where the water occurs.

c. Municipal Watersheds: This decision will not affect a municipal watershed.

The exchange will result in a net gain of 23 acres of riparian habitat and 2 miles of floodplain and no loss of natural wetland. This exchange is favorable to the United States and meets the goals of Executive Order 11988 (Wetlands) and Executive Order 11990 (Floodplains) (EA: 34-37).

6. There will be no negative effect or loss of viability across the Forest for any endangered, threatened, or sensitive species or their habitat with the implementation of this project (EA: 36-40). In the Biological Assessment and Evaluation dated June 1, 2007, Forest Service wildlife biologists determined that this exchange will have no effect on the habitat for the nine special status species occurring on the Federal parcel. This project will comply with the Endangered Species Act of 1973.

7. Executive Order 13186, signed on January 10, 2001, emphasizes conservation of migratory birds. The Migratory Bird Analysis (EA: 43-45) finds that the changes caused by this project will not impact priority migratory bird species. The exchange is expected to have an overall beneficial effect to migratory birds (EA: 45).

8. Management Indicator Species Analysis (EA: 40-43) shows loss of pinyon-juniper woodland habitat type. However, the loss is so minute (less than one hundredth of one percent of the pinyon-juniper on the Coconino National Forest) that it will not alter forestwide habitat or population trends (EA: 43).
  9. Sixteen special-status species were identified as having potential habitat on the non-Federal parcel. These include five federally-listed species including the Chiricahua leopard frog, Gila trout, Little Colorado spinedace, Mexican spotted owl, and southwestern willow flycatcher; (the bald eagle was also listed in the Biological Assessment but was recently delisted), and eleven sensitive species including the American peregrine falcon, common black hawk, eared trogon, giant tiger beetle, Maricopa tiger beetle, narrow-headed gartersnake, Navajo Mountain Mexican vole, northern goshawk, northern leopard frog, spotted skipperling, and southwestern Arizona toad. The non-Federal parcel is designated Mexican spotted owl critical habitat, and East Clear Creek is designated critical habitat for the Little Colorado spinedace. No intensive species-specific surveys were completed on the non-Federal parcel; therefore, the presence of rare amphibians/reptiles, Mexican spotted owls, and northern goshawks on the non-Federal parcel is unknown. However, due to the presence of optimal habitat characteristics for some of the species discussed, it is likely that they are present.
  10. There are both positive and negative effects on landowners adjacent to the properties involved and to the general public. However, the negative effects, as described in the EA and within this decision, appear to be minimal and limited in scope (EA: 23, 52, 59).
  11. The exchange would result in an overall increase of 317 acres, more or less, of public ownership. National Forest administration will be simplified and enhanced through acquisition of the non-federal land and the resulting consolidation of landownership. Completion of this exchange will result in a reduction of approximately 1.25 miles of private / national forest property boundary.
  12. The EA shows that National Forest management will not be adversely affected by this exchange. It further shows that there will be no significant adverse impacts on the quality of the human environment and the exchange is in the public interest.
- The non-federal lands will be consolidated with the adjoining National Forest System land and managed in accordance with prescriptions for surrounding NFS lands in the Coconino National Forest Plan (EA: 10-11; 36 CFR 254.3(f)).
- The intended use of the conveyed federal land will not conflict with established management objectives on adjacent federal land or current development on adjacent private land. County zoning and ordinances will regulate the amount and type of future development on the property. (EA: 19-23).
13. Public access to the federal land conveyed into private ownership would be restricted. The United States is reserving a road right-of-way for Forest Road 122 which provides access to public and private lands west of the Federal parcel(EA: 9).

14. The resource values and public objectives served by the non-federal land to be acquired exceed the resource values and the public objectives served by the federal land to be conveyed. Consolidation of lands will allow application of consistent management objectives to the contiguous arrangement of federal and non-federal lands. Greater protection of valuable natural resources is possible under the jurisdiction and management of the Forest Service through contiguous arrangement of federal and non-federal parcels.

15. The exchange meets the equal value requirements of 36 CFR 254.3(c). The non-federal and federal lands in the exchange have been appraised. The Agency-approved appraisals indicate the value of the federal land is more than that of the non-federal land. The federal land has an approved value of \$ 6,465,000 and the non-federal land has an approved value of \$ 6,075,000. A cash equalization payment of \$ 390,000 will be made to the United States, as provided in 36 CFR 254.12.

16. Other than transfer of title, landownership, and management of the lands identified, revocations of special-use permits and issuance of the easements identified previously in this document, this action will not authorize any site-specific management activities by either party. Any site-specific management activities or actions on the acquired non-federal land would require environmental analysis. Lands conveyed out of federal ownership become subject to all laws, regulations and zoning authorities of state and local governing bodies. The laws, ordinances, and zoning authorities of the United States, the State of Arizona, and Coconino County will adequately protect the resources and will not result in a significant effect on the character of the area, soil, water or air quality, visual quality, wildlife, or other natural resources.

## Alternatives Considered

Two alternatives were considered (EA: 19):

- Alternative A – No Action: where no land exchange would occur;
- Alternative B – The Proposed Exchange (selected) where federal and non-federal parcels would be exchanged, as proposed; special use permits would be amended or revoked, as applicable.

A comparison summary of the alternatives may be found in the EA on pages 65-72. Detailed analyses of effects may be found in Chapter 3, pages 19-65.

## Alternatives Considered But Not Carried Forward for Further Analysis

### **Acquire non-federal lands by other means such as fee purchase or donation.**

Purchasing non-federal parcels via funding such as a Land and Water Conservation Fund Act allocation was dropped from further consideration because funds were not currently available and the landowners did not wish to sell their land. The parcel was purchased by the Clear Creek 820, LLC investment group for a land exchange. The proposal was to exchange, not to sell or donate, their parcel.

**Place restrictions on the deed for federal land.**

Deed restrictions are to be imposed in rare occasions when necessary to protect critical federal interests following consummation of an exchange. Neither scoping nor evaluation of the federal land by specialists identified any critical resources or National Forest System lands in need of protection through deed restrictions. Deed restrictions can devalue the land such that the exchange as proposed is no longer viable. Therefore, this alternative was not studied in detail.

**Configure the exchange differently.**

The exchange process, itself, limits the range of alternatives. The exchange proponent identifies specific lands and the federal agency uses its discretion to not process an exchange that it finds undesirable or not in the public interest. After several years of discussion the proposal being considered was submitted to the Forest Service in January 2004. The exchange proposal analyzed in the EA reflects parcels mutually agreed upon by representatives for Clear Creek 820, LLC and the Forest Service.

## Public Involvement and Issues Raised

### Public Involvement

- A. The public was notified of the proposed exchange by legal Land Exchange Notice that appeared once a week for four consecutive weeks (December 14, 21, 28, 2005 and January 4, 2006) in the *Arizona Daily Sun*, the local newspaper for the affected county.
- B. As required by the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, since this case involves federal land in excess of \$500,000 value, the House and Senate Appropriations Committees were notified of the publication of the Land Exchange Notice and given 30 days within which to review the case. The 30-day review period ended October 24, 2007, without comment; therefore, case processing may proceed.
- C. On December 15, 2005, the Coconino County Board of Supervisors, State agencies and the Arizona Congressional delegation were notified of this exchange. No objections were received.
- D. A public meeting was held on November 19, 2005, at the Happy Jack Lodge. Seventeen interested citizens attended.
- E. A letter was mailed on April 5, 2000, to potentially interested or affected groups, including individuals, local, state and federal agencies and special interest groups and nine tribes. Information included a project description, maps and a request for comments. The Forest Service received 36 responses to this initial scoping effort. The summary of scoping comments is located in Appendix B of the Environmental Assessment. Responses were considered in defining the issues and developing alternatives for the project proposal.
- F. The Environmental Assessment was initially made available for 30-day review with a legal advertisement in the *Arizona Daily Sun* on March 30, 2007. A letter (3/26/2007) announcing the availability of the EA for review was sent to 61 addresses, including all those who had commented previously, government agencies, organizations and tribes. The Forest Service received 10 responses to the draft environmental assessment. The summary of these comments is located in Appendix C of the Environmental Assessment.

- G. All comments were considered in the environmental analysis and were used to develop and refine the issues and alternatives. In an effort to respond to the comments, changes were made in the EA after the April 2007, 30-day comment period.

## Issues

Issues of limited scope were identified through public input, including the public meeting and review of the draft EA; including (EA: 16 & Appendix C):

1. Concerns about types and density of development of future development of the federal parcel (EA: 17-23)
2. Concern that the Federal Government was not receiving appropriate or equal value for the federal land (EA: 11-12)
3. Concerns about water quality and availability related to development of the federal parcel (EA: 52-55)
4. Increased traffic and noise on Forest Highway 3 due to development of the federal parcel (EA: 50 & 57)

## Finding of No Significant Impact

The proposed action is consistent with and meets the Standards and Guidelines of the Coconino National Forest Land and Resource Management Plan, as amended, because the project is feasible and reasonable, meets the Plans' overall direction of protecting the environment while producing goods and services, and uses landownership adjustment as a tool for accomplishing resource management objectives.

## Context and Intensity

National Forest administration will be simplified and enhanced through acquisition of the offered private land and the resulting overall consolidation of landownership through this exchange.

The physical and biological effects are insignificant and are limited to the project area and the immediately surrounding areas.

I have determined that this project is not a major federal action significantly affecting the quality of the human environment. Therefore an environmental impact statement is not needed.

The following areas were considered in evaluating intensity of project impacts:

- a) **Beneficial and adverse environmental impacts.** The EA shows that National Forest management will not be adversely affected by this transaction. It further shows that there will be no significant adverse or beneficial impacts on the quality of the human environment. The physical and biological effects are limited to the exchange areas or the immediate vicinity. The transaction is in the public interest. This land exchange meets the guidelines of the Coconino, National Forest Land and Resource Management Plan. Upon conveyance of the non-federal land to the United States, the newly acquired lands will be managed together with the surrounding

National Forest System lands in accordance with the standards and guidelines in the appropriate Forest Plans. Greater protection of valuable natural resources is possible under the jurisdiction and management of the Forest Service through contiguous arrangement of federal and non-federal parcels. The federal land on the Mogollon Rim Ranger District conveyed into private ownership will be deleted from the management area in which it is located.

- b) **Public health and safety.** Public health and safety are minimally affected by the proposed action. The effects on water quantity and quality will be negligible (EA: 52-55). Lands conveyed out of federal ownership become subject to the laws, regulations and zoning authorities of state and local governing bodies (36 CFR 254.3).
- c) **Unique characteristics of the geographic area.** The federal land is not unique within its geographic setting, in terms of physical and biological characteristics, and is similar to many other areas of national forest and private land in the area. The federal land does not contain any prime farmland, forestland, or rangeland. (EA: 1, 29, 35, 53, 64)

The exchange will result in a net gain of 23 acres of riparian habitat and 2 miles of floodplain and no loss of natural wetland. The riparian and wetland areas will likely be afforded greater protection under government management.

- d) **Degree to which the effects on quality of human environment are likely to be highly controversial.** There are no known scientific controversies over the effects of this project on the human environment. The exchange will not significantly affect the quality of the human environment.
- e) **Degree to which the effects are highly uncertain or involve unique or unknown risks.** There are no known effects on the human environment that are highly uncertain or involve unique or unknown risks. Effects of this action will be similar to the effects of past similar actions. The Southwestern Region of the Forest Service has implemented numerous land exchanges over many years. The effects of land exchanges are well understood (EA: 13-14).
- f) **Degree to which this action will establish a precedent for future actions with significant effects.** This project does not set a precedent for other projects that may be implemented to meet the goals and objectives of the Forest Land and Resource Management Plan. Other than transfer of title, land ownership, and management of the identified lands, this action will not authorize any site-specific management activities by either party. Each land exchange or other action must be evaluated on its own merits. Any future actions will be evaluated through the National Environmental Policy Act process, if applicable, and will stand on their own regarding environmental effects and project feasibility.
- g) **Relationship to other actions with cumulatively significant impacts.** Cumulative effects were considered as part of the analysis. There are no known significant cumulative effects from individual or connected actions (EA: 23, 27, 28, 30-34, 36, 39, 40, 42, 43, 45-52, 54-65).
- h) **Degree to which the action may affect archaeological/cultural/heritage resources, listed on, or eligible for, the National Register of Historic Places, Native American or Cultural Sites and/or Traditional Cultural Properties.** A heritage resource survey was completed for the federal parcel in 2006 in compliance with the *National Historic Preservation Act*, section 106. The survey identified three historic sites and six isolated features. Based on this survey, two of the historic

sites and the six isolated features were determined not eligible for the *National Register of Historic Places*. The archaeological investigation determined that one site AR-03-04-04-105, a 1930's – 1950's era collapsed frame cabin and associated features was eligible for the Register.

The effect on heritage properties in a land exchange is that conveyance out of federal ownership removes eligible properties from federal protection. This, in turn places the properties at risk of loss or damage through development and vandalism in situations where the federal laws and regulations do not apply. The effects of the land conveyance are being mitigated through data recovery (testing and excavation) and treatment. In December 2007 a Memorandum of Agreement was signed by the Forest Service and the Arizona State Historic Preservation Officer (SHPO) for developing the data recovery and treatment plan. With this commitment, the Section 106 process has been completed.

The following Native American Indian groups were notified of the project in the Coconino National Forest Annual Consultation letters dated June 5, 2003, Aug. 14, 2004, February 28, 2006, and July 6, 2007 as well as the Forest's Schedule of Proposed Actions and quarterly updates sent to them from June, 2003 to September 2007: Dine' Medicine Man's Association, Fort McDowell Yavapai Nation, Hopi Tribe, Hualapai Tribe, Havasupai Tribe, Navajo Nation, Pueblo of Zuni, San Carlos Apache Tribe, San Juan Southern Paiute Tribe, Tonto Apache Tribe, Yavapai-Apache Nation, Yavapai-Prescott Tribe, and White Mountain Apache Tribe. No replies about tribal concerns about this project were received. No areas of traditional cultural importance or areas of specific tribal concern are known for this part of the Forest, based on previous consultations and Forest research into tribal uses of the Forest. (EA: 48-49).

- i) **Degree to which the action may affect threatened, endangered, or sensitive species or their habitat.** Proposed or currently listed Endangered, Threatened or sensitive species and their habitats will not be affected by implementation of this land exchange. A Biological Assessment and Biological Assessment & Evaluation were prepared for the exchange parcels (June 1, 2007) and informal consultation was conducted with the U.S. Fish & Wildlife Service. The U.S. Fish & Wildlife Service concurred with findings in the Biological Assessment (August 31, 2007) (EA: 34).
- j) **Whether the action violates federal, state, or local laws or requirements imposed for the protection of the environment.** This action does not threaten a violation of federal, state or local law or requirements imposed for protection of the environment. State, county and town governments were made aware of the proposed land exchange. The action will authorize transfer of title, landownership, and management of the lands identified. The action will not authorize any site-specific activities by either party.

Lands conveyed out of federal ownership become subject to all laws, regulations and zoning authorities of state and local governing bodies. Various federal, State of Arizona agencies, as well as Coconino County will be the regulatory authorities for all land use activities that may occur on the land conveyed into private ownership. (EA: 19-23).

## Findings Required by Other Laws and Regulations

- Conveyance of the National Forest System land into private ownership does not conflict with the requirements of Sec. 402(g) of **Federal Land Policy and Management Act**. The Pivot Rock Allotment will be reduced by approximately 500 acres, which is less than 1% of the total acreage. There will be no direct reduction in permitted numbers as a result of this land exchange; however the grazing period for the involved pasture will be shortened. Movement of cattle through the pasture area will also be effected.
- Resources eligible for the *National Register of Historic Places* were located within the federal land. These were treated in conformance with the **National Historic Preservation Act** and **Executive Order 11593**. The State Historic Preservation Officer has concurred with mitigation measures.

The Coconino National Forest consulted with thirteen interested tribes to identify and evaluate traditional cultural properties and to develop appropriate measures to protect heritage resources. This exchange meets the requirements of the **Native American Graves Protection and Repatriation Act** and the **American Indian Religious Freedom Act**.

- 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 and no loss of wetland acres meet the objectives of the Executive Orders.
- The exchange complies with the **Endangered Species Act** of 1973, as amended. A Biological Assessment and Evaluation (June 1, 2007) showed that no proposed or currently listed Endangered, Threatened or sensitive species or their habitats will be affected.
- A Migratory Bird Analysis was completed in accordance with **Executive Order 13186**. Implementation of the exchange is not expected to cause a trend in any of the analyzed migratory bird species toward federal listing as Threatened or Endangered.
- This exchange is in compliance with the Coconino National Forest Land and Resource Management Plan and therefore complies with the **National Forest Management Act** of October 22, 1976, as amended.
- No caves are known to exist on the federal land (EA: 64-65). Therefore, this exchange does not conflict with the intent of the **Federal Cave Resources Protection Act** of November 18, 1988.
- This exchange does not conflict with **Executive Order 12898** regarding Environmental Justice in Minority Populations and Low Income Populations. No concerns related to Environmental Justice have been identified.
- The non-federal and federal lands in the exchange have been appraised. The appraisals indicate the value of the federal land is \$ 6,465,000 and the non-federal land is \$ 6,075,000. A payment of cash by Clear Creek 820, LLC to the United States in the amount of \$ 390,000 will equalize

values as required by Sec. 206(b) of the Federal Land Policy and Management Act and the Federal Land Exchange Facilitation Act.

- The Bureau of Land Management concurred with the Mineral Report on September 9, 2007. There is no to low potential for all mineral commodities on the federal and non-Federal parcels with the exception of manganese on the federal parcel. Although the potential for manganese is high it is low grade quality, like most other sites in the United States. Manganese has not been mined domestically since 1985. Minerals will be exchanged with the parcels.
- 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. Transaction Screening forms and Phase I Environmental Site Assessments for all parcels were completed by qualified investigators. 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.

## Project Implementation

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 *Arizona Daily Sun*, 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.

## Appeal Rights

This Decision is subject to administrative review (appeal) pursuant to **both** 36 CFR Parts 215 and 251. Appellants must submit appeals under only one authority.

Individuals or organizations who provided comment or otherwise expressed interest in the proposed action by the close of the 30-day comment period (April 30, 2007) 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.

Those who hold written authorizations to occupy and use National Forest System lands pursuant to 36 CFR 251 may appeal this decision with a written Notice of Appeal meeting the requirements at 36 CFR 251.90.

Appeals, including attachments, must be filed within 45 days from the publication date of the notice in the *Arizona Daily Sun*, the newspaper of record. The publication date of said 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 another source. However, when the 45-day filing period would end on a Saturday or Sunday or federal holiday, the filing time is extended to the end of the next federal working day. The written Notice of Appeal must be filed (regular mail, fax, email, hand-delivery, or express delivery) with:



## LEGAL DESCRIPTIONS

### Non-Federal Land

#### **COCONINO NATIONAL FOREST**

Mogollon Rim Ranger District

GILA AND SALT RIVER MERIDIAN, Coconino County, Arizona

T. 14 N., R. 12 E., section 19

Containing 820.72 record acres, more or less.

### Federal Land

#### **COCONINO NATIONAL FOREST**

Mogollon Rim Ranger District

GILA AND SALT RIVER MERIDIAN, Coconino County, Arizona

T. 14 N., R. 10 E., section 30

NE1/4SE1/4, S1/2SE1/4, lots 6 to 10, inclusive, and lots 12 to 16, inclusive;  
TOGETHER WITH all that portion of Mineral Survey 4291 contained within said section 30, LESS and EXCEPTING THEREFROM all that portion of the excepted parcel from Mineral Survey 4291, described as a part of the patented Shafer No. 3 Lode Mining Claim in Warranty Deed, Instrument No. 10206, Docket 688, pages 625-626, recorded July 20, 1978, Coconino County Recorder, within said section 30.

Containing 503.35 record acres, more or less.

**Notice  
Clear Creek Land Exchange**

**FLOODPLAINS**

The information contained in this notice is provided pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

There is approximately 2.4 acres of federal land within the 100-year floodplain. Once the lands are conveyed out of federal ownership, they are subject to floodplain restrictions of the Floodplain Management Overlay Zone of the Coconino County Zoning Ordinance. The National Flood Insurance Program (42 USC 4001-4128) provides the umbrella document for the states' floodplain control programs. Counties must have floodplain regulations in effect in order to qualify for the National Flood Insurance Program. The State of Arizona has required that local governmental units adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry (A.R.S. § 48-3601 through § 48-3627). The Flood Control District of Coconino County is charged with regulating the use of land in accordance with these regulations and those specified in the Floodplain Management Overlay Zone of the Coconino County Zoning Ordinance approved (as amended) November 7, 1983. These regulations regulate development in the 100-Year Floodplains.

A floodplain Notice (all that is detailed above) will be also entered into the Exchange Agreement and in Patent conveying the federal parcels to the non-federal party.

*The Forest Service considers County restrictions to be what Clarence W. Brizee, OGC Assistant General Counsel for the Natural Resource Division, references in his October 8, 1980 letter when he talks about: When property in floodplain is proposed for . . . disposal to non-federal public or private parties, the federal Agency shall (1) reference in the conveyance those uses that are restricted under identified federal, State, or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law. . . .”*

The non-federal party is willing to have a reference in their conveyance document that cites the local floodplain regulations (1). The Forest and the Regional Hydrologist concur that these are restrictive enough so there is no necessity to cite other restrictions (2). Therefore, we have met the requirements of both 3(d) (1) and (2).

Further, it is direction that:

*“In general, deed restriction controlling future use and development of federal land conveyed into non-federal ownership should be used only when required by law or executive order or when clearly and specifically supported by the applicable forest land and resource management plan.”*

The Forest Service feels that the objectives of completing this exchange are of greater benefit to the government in the long run than putting any further restrictions on 1.6 miles of floodplain or eliminating the 1.6 miles, which would stop the land exchange altogether.