

DECISION NOTICE
and
FINDING OF NO SIGNIFICANT IMPACT

Education Land Grant Act
Transfer of National Forest System Land
Blue School District #22

USDA Forest Service
Southwestern Region
Apache-Sitgreaves National Forests
Alpine Ranger District
Greenlee County, 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 June 2006 Environmental Assessment (EA) for the Education Land Grant Act Transfer of National Forest System Land to Blue School District #22. This decision will quitclaim 8.76 acres of Federal land to Blue School District #22. All of the Federal land is located within the Apache National Forest, Greenlee County, Arizona.

This land transfer will be completed in accordance with the Education Land Grant Act (ELGA) P.L. 106-77, Title II (16 U.S.C. 479a) and the Federal Land Policy and Management Act of October 21, 1976, as amended. 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.

No appraisal of the Federal land was necessary as the ELGA directs that the qualified school district is required to pay a nominal fee of \$10.00 per acre conveyed. A nominal fee in the amount of \$87.60 will be made by Blue School District #22 to the United States as required by Sec. 202 of the Education Land Grant Act.

A reversionary interest clause will be included in the quitclaim deed that states if, at any time after the land is conveyed the school district attempts to transfer title to or control over the land to another or the land is devoted to a use other than the use for which the land was conveyed, title to the land shall revert to the United States as required by Sec. 202(e) of the Education Land Grant Act.

LEGAL DESCRIPTION OF FEDERAL LAND TO BE TRANSFERRED

Apache National Forest
Alpine Ranger District

GILA AND SALT RIVER MERIDIAN, Greenlee County, Arizona
T. 3 N., R. 31 E.

sec. 1 — SW1/4 NW1/4 NW1/4 SW1/4 NE1/4, W1/2 SW1/4 NW1/4 SW1/4 NE1/4,
S1/2 NE1/4 NE1/4 SE1/4 NW1/4, SE1/4 NW1/4 NE1/4 SE1/4 NW1/4,
S1/2 NE1/4 SE1/4 NW1/4.

Containing 8.76 acres, more or less.

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 transfer and proceed with alternative 2, the proposed action.

I reviewed public comments from the October 28, 2005 public meeting, November 11, 2005, scoping request, and the May 19, 2006, Proposed Sale of National Forest System Land to Blue School District #22 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 the key issue 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 the ELGA the conveyance will serve the public interest. I find that:
 - the land to be conveyed is not otherwise needed for the purposes of the National Forest System.
 - the total acreage to be conveyed does not exceed the amount reasonably necessary for the proposed use; and
 - the intended use of the conveyed Federal land for a public elementary school will not substantially conflict with established management objectives on adjacent Federal lands, including Indian Trust lands.
2. This land transfer 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. The Federal land will be deleted from the management areas within which it is located.
3. 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 impacts on the quality of the human environment and the transaction is in the public interest.
4. Approximately 4 acres of Johnson Creek floodplain will leave Federal ownership.
5. National Forest administration would be slightly more complicated with the transfer of the Federal land and the resulting creation of a new private inholding. Completion of this land transfer will result in creation of approximately 0.4 miles of private/National Forest property boundary and 6 new property controlling landline corners. This will result in an estimated annual cost to the Government of approximately \$160.
6. Any future development 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 Greenlee County zoning and development standards.
7. Greenlee County property tax revenues remain the same as a result of this proposal. Private property values in the area would not be affected by this land conveyance.
8. Based on Federal payments received by Greenlee County for fiscal year 2005 the payments to the County from the Payments to States programs would decrease by approximately \$8.00.
9. There will be a net loss to the Forest Service of approximately 4.0 acres of floodplain. This has been validated by field visits. A copy of the floodplain report dated April 28, 2004 is on file. The conveyance has been reviewed by the Office of General Counsel regarding applicability of Executive Order 11988—Floodplain Management and nothing was identified that would preclude disposal of the parcel.

Floodplains: Executive Order 11988 was promulgated to avoid adverse impacts associated with the disposal, occupancy and modification of floodplains. Floodplains are defined by this order as: “. . . the 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.”

Once the Federal lands are conveyed out of United States ownership, they are subject to floodplain restrictions of the County Flood Control District Ordinance. The National Flood

Insurance Program (42 USC 4001-4128) provides the umbrella document for the states floodplain control programs. In Arizona, A.R.S. § 48-3610 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 Greenlee County, Floodplain Regulations are found in the office of the County Engineering Department. These ordinances strictly control development in Base Flood areas, which are the same as our "100-Year Floodplains." Greenlee County has enacted a floodplain ordinance, restricting uses and development on floodplains within the county.

A NOTICE to be contained in the Quitclaim Deed will mitigate the presence of floodplain on the Federal property. The disturbance on the floodplain will not change because of the land transfer; therefore, the impact of this transfer will have no effect on the floodplain and therefore, does not constitute an extraordinary circumstance.

The EA which discusses the impacts of this land transfer is available for public review at the offices of the Alpine District Ranger in Alpine, 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 transfer to Blue School District #22 Federal land containing 8.76 record acres, more or less, within the Alpine Ranger District, Apache National Forest, Greenlee County, Arizona.

The Federal land consists of one parcel located along the east side of Blue River Road (Greenlee Road Number 67004) approximately ½ mile north of the Blue Range Primitive Area's northern boundary. The parcel will be transferred to the school district with the use of the land continuing to be for the Blue Elementary School. The Special Use Permit issued May 21, 1987 for the existing school facilities displays the current improvements and is in the file. No additional drawings of planned improvements (development plan) were prepared by the school district as any future improvement would be contingent upon the donation of materials and volunteer time from the local community. A survey plat of the parcel identifying existing facilities and utilities will be provided to the Forest Service by the school district. A road easement would be issued for the existing access road from Greenlee County Road Number 67004 to the school property should the County's road right-of-way not be coincident with the school's west boundary.

PUBLIC INVOLVEMENT

Legal notice of the proposed land transfer was initially published for 4 consecutive weeks between November 9 and November 30, 2005 in the *Copper Era* (36 CFR 254.8) the newspaper with circulation in the Blue School District #22. The Greenlee County Board of Supervisors and the Congressional delegation were formally notified by letter on November 11, 2005. The Greenlee County Administrator on behalf of the Board of Supervisors responded with a letter of support for the proposal. No objections were received as a result of the newspaper publication or notification letters.

Consultation occurred with Native American Tribes and the U.S. Fish and Wildlife Service. Public involvement was sought through mailing a letter of notification with a request for public input to determine any issues of concern. A news release dated November 7, 2005 was sent to local media in Greenlee, Apache, and Navajo Counties.

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

On October 28, 2005 a public meeting was held at 9:00 A.M. at the Blue School in Blue, Arizona to discuss the proposed action and to solicit comments and concerns. Notification of the open house was made by posting notices announcing the meeting at local post offices and businesses. 12 people signed the attendance sheet for the public meeting.

A notification letter informing interested parties of the Proposed Action to transfer 8.75 acres of Federal land to Blue School District #22 was mailed on May 19, 2006 to all individuals who previously provided comments or asked to be notified about this project. The 30-calendar day comment period on the Proposed Action ran from May 23, 2006 through June 23, 2006. A legal notice announcing the availability of the Proposed Action was published in the *White Mountain Independent* the newspaper of record on May 23, 2006. The A-S received no comments on the proposed action during the 30-day comment period.

The IDT identified one key issue. The issue concerned the potential flood hazard to the School District's improvements along the Johnson Canyon floodplain. This issue was addressed in the environmental analysis and carried forward and documented in the EA.

Any and all comments received by the Forest Service during the scoping and comment periods regarding the Blue School District #22 ELGA proposal were considered during the environmental analysis and preparation of the Environmental Assessment. All comments are included in the project record.

ALTERNATIVES CONSIDERED, BUT NOT CARRIED FORWARD FOR FURTHER ANALYSIS

The range of alternatives for the sale of NFS lands under ELGA is limited by the Act itself. Once both parties agreed upon the acceptable land configuration, the Forest Service proceeded with an analysis of the proposed action. The proposal analyzed reflected the land mutually agreed upon by the school district and the Forest Service. The transfer of NFS land to the school district will convey interests in the land and the resources associated with it, except for minerals and water rights. The environmental analysis focused on the current and future use of the NFS land to be conveyed and the effect of the transfer on the remaining lands that adjoin it.

Deed restrictions. The application of deed restrictions to direct and control future development on the Federal land once it is transferred to the school district was considered. Through the environmental analysis process the Apache-Sitgreaves National Forests reviewed the need for deed restriction on the Federal land. 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. Approximately fifty percent of the Federal land is located on floodplain associated with Johnson Canyon. It was determined that it is not necessary to restrict the use of the Federal land as the final conveyance document will include proper floodplain language subjecting the land to floodplain the restrictions of Greenlee County. The Aquatic Biological Assessment Evaluation determined that project implementation would have no effect or not likely to adversely affect threatened, endangered, or experimental species. The Federal lands are not considered critical habitat as outlined in any Recovery Plan, or a high use area for sensitive wildlife species. Continued and future use of the Federal parcel for the elementary school would have no major impact on any game animals that frequent the area. 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 school district would have discretion on what they do on the property should the transfer be completed, future use on the land would occur within the constraints of the ELGA, other applicable laws and regulations, including but not limited to, clean air laws, the Endangered Species Act, state law, and county development regulations.

A deed restriction is not required to fulfill the purpose and need. 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*”.

Transfer of other Federal lands. The Blue School District #22 initiated discussion with the Forest Service regarding acquisition of the identified Federal land where the current Blue Elementary School has been located since 1963. During the discussions that eventually resulted in agreement on the configuration of the Federal land it was clear the school district wanted the school to remain in its current location. An alternative that would result in the relocation of the existing elementary school to Federal land elsewhere along the Blue River Road was not necessary as the school district stated its intentions to remain in its present location. The concern regarding with the facilities’ location in the floodplain was addressed; therefore, there was no reason to require relocation to another site.

ALTERNATIVES CONSIDERED IN DETAIL

The primary factors I considered in making my decision were how well the alternatives met the purpose and need for the proposal and responded to the floodplain issue. No other concerns were raised during scoping. A description of the floodplain issue appears on page 7 in the EA and the consequences of the alternatives relative to this issue appear on page 26 in the EA. A summary of environmental concerns and the consequences of the alternatives are contained in pages 13-26 in the EA.

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

Alternative 1 - No action. No transfer of Federal land to the Blue School District #22 would take place. The land would remain in Federal ownership.

Alternative 2 – Proposed action. Complete the transfer of 8.76 acres of Federal land, as proposed.

DETERMINATION OF PUBLIC INTEREST

As required by ELGA I have determined that the conveyance will serve the public interest.

The Blue School District #22 will continue to use the transferred land to provide grounds for facilities for a publicly funded elementary school.

The Federal land contains floodplain that once in private ownership can be adequately managed through existing State and local regulations. The School District recognizes the floodplain and it is acceptable to them as documented in their November 5, 2004 conveyance acceptance letter that is in the file.

The intended use of the Federal land to be transferred would serve local public objectives that outweigh the objectives and values which would be served by maintaining the land in Federal ownership.

FINDING OF NO SIGNIFICANT IMPACT

My decision is based on the June 2006 Environmental Assessment for the ELGA Transfer of National Forest System Land to Blue School District #22, the Terrestrial and Aquatic Biological Assessments and Evaluations, and a review of the scoping comments and public comments received on the 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 use and development on the Federal land. 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 land transfer.

(EA Chapter 3, pages 13-26)

Consideration of the effects on public health and safety:

The proposed land transfer would have no adverse effect on the public health or safety. The analysis of reasonably foreseeable development indicates future use on the Federal parcel would remain the same and any future development 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 Greenlee County development standards. There will be no significant impact on public safety or demand for additional public services.

(EA Chapter 3, page 22)

Consideration of the unique characteristics of the geographic area:

The Federal land to be transferred is not unique within its geographic setting, in terms of physical and biological characteristics, and is similar to the National Forest and private lands in the area. There are no prime farms, range, or forestlands, or roadless, wilderness, natural, study or other specially designated areas located on the land proposed for transfer.

(EA Chapter 1, page 6; Chapter 3, pages 14, 17)

The Forest Service will convey a parcel that has associated floodplain.

(EA Chapter 1, page 7; Chapter 3, page 11)

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 11-26.)

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 land transfer. Effects of this type of action will be similar to the effects of past similar actions involving land sales and land exchanges that have occurred in the Southwestern Region for quite some time. 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 5-6)

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

The proposed land transfer will not establish a precedent for future actions of this nature in this area. Each proposal for an ELGA land transfer 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 1, page 5)

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 13-26)

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 Fort McDowell Yavapai Nation, The Hopi Tribe, The Navajo Nation, Ramah Navajo Chapter, San Carlos Apache tribe, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai-Apache Nation, Yavapai-Prescott tribe, Pueblo of Zuni, and the State Historical Preservation officer regarding the land transfer. The land transfer does not conflict with the requirements of the National Historic Preservation Act of 1966 and Executive Order 11593.

(EA Chapter 3, pages 14-15)

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 or their habitat are foreseen. No threatened, endangered, or sensitive species are known to inhabit the Federal area within the proposed land transfer.

(EA Chapter 3, pages 17-21)

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

The proposed land transfer will not violate nor threaten to violate any Federal, State, or local law requirement for the protection of the environment. Greenlee County was contacted, as were State and other Federal 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 11-12)

FINDINGS REQUIRED BY LAWS/REGULATION

- a. Transfer of the Federal land to ownership by a public school district does not conflict with the requirements of Sec. 402(g) of FLPMA (Grazing Permittee/Lessee).
- b. No archeological/cultural values on the Federal land are involved. The land transfer does not conflict with the requirements of the National Historic Preservation Act of 1966 and Executive Order 11593.
- c. This land transfer does not conflict with Executive Order 11988 regarding floodplain management and Executive Order 11990 regarding wetlands management. The conveyed land containing floodplain into private ownership can be adequately protected through implementation of existing State and County regulations.
- d. No threatened, endangered, or sensitive species of animals or plants, or habitat are adversely affected. Terrestrial and Aquatic Biological Assessments and Evaluations were completed.

U.S. Fish and Wildlife Service concurrence for the proposed land transfer was received on February 6, 2006. The land transfer does not conflict with the requirements of the Endangered Species Act of 1973, as amended.

- e. No caves are involved; therefore, this land transfer does not conflict with the intent of the Federal Cave Resources Protection Act of November 18, 1988.
- f. The Federal land has 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 land. No evidence was found to indicate that any hazardous material was stored for one year or more or disposed of or released on the property.
- g. A formal Forest Service Mineral Report was not required as the land transfer does not include the transfer or conveyance of the mineral estate.
- h. This land transfer does not conflict with Executive Order 12898 regarding Environmental Justice in Minority Populations and Low Income Populations. The land transfer itself will not affect low income or minority population members.

IMPLEMENTATION DATE

No comments expressing concern were received during the comment period. Only supportive comments were received by the close of the comment period. Implementation may begin immediately following publication of this decision in the Legal Notice section of the *White Mountain Independent*, the newspaper of record.

ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

This Decision is not subject to appeal pursuant to 36 CFR 215.12(e)(1). No comments expressing concern were received during the 30-day comment period.

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, Alpine Ranger District, P.O. Box 469, Alpine, Arizona 85920, (928) 339-4384.

10/31/06
Date

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