



File Code: 1570 (251-1)  
#00-01-00-0035

Date: January 23, 2001

Bonnie and John Powell  
24 4<sup>th</sup> Avenue NW  
Dutton, MT 59433

CERTIFIED MAIL – RETURN RECEIPT  
REQUESTED

Dear Mr. and Mrs. Powell:

This letter is my review decision of your Notice of Appeal (NOA) on the decision to implement a new Recreation Fee Schedule for your recreation residence lot, Group C, Lot 128, located at Echo Lake, on the Beaverhead-Deerlodge National Forest. The recent appraisal and the fee based on the appraisal are at issue. You were notified of your right to administrative review (appeal) and your responsibilities in filing that appeal in the letter dated January 24, 2000, that accompanied your Bill for Collection. A discussion of the appeal process is presented in the Forest Supervisor's Responsive Statement.

My review was conducted pursuant to, and in accordance with, 36 CFR 251, subpart C. My responsibility as Reviewing Officer is to ensure the analysis and decision are in compliance with applicable laws, regulations and policy. Information that was acquired during Mr. Bernard Everett's oral presentation on October 13, 2000, here in Missoula, and from several appellants in Butte on October 16 and 17, 2000, is included in the appeal record. This review decision hereby incorporates by reference the entire administrative appeal record.

I. SUMMARY

On March 2, 2000, I notified you that several appeals were being consolidated pursuant to 36 CFR 251.95(b), due to significant similarities in their issues. The issues for the following appellants are similar and are consolidated for review.

**Appeal Number**

**Appellant(s)**

#00-01-00-0021	Michael F. McMahon
#00-01-00-0022	John M. Chor
#00-01-00-0024	William Morley
#00-01-00-0025	John W. Lillberg
#00-01-00-0026	Kirk R. and Joanne E. Wells
#00-01-00-0027	E. G. Leipheimer, Jr.
#00-01-00-0028	Linda Lombardi
#00-01-00-0029	David A. Micheletti



#00-01-00-0030	Ralph and Kay Warnstrom
#00-01-00-0031	Richard R. and Christine Carnevale
#00-01-00-0032	Ray and Patricia Capp
#00-01-00-0033	James M. Miller
#00-01-00-0034	Nanci Taylor
<b>#00-01-00-0035</b>	<b>Bonnie and John Powell</b>

The Forest Supervisor for the Beaverhead-Deerlodge National Forest succinctly summarized the history of the appraisal process as it has affected you in her Responsive Statement dated July 12, 2000. I will reference this document throughout my review. In addition to this record of the process, I am incorporating information I received during the oral presentations. This information completed the appeal record, and I closed the record on October 19, 2000.

## II. OVERVIEW OF ISSUES AND RELIEF REQUESTED

The following issue, identified from your Notice of Appeal, is consistent in all the above appeals. "I am affected by the decision because it (appraisal) does not reflect a true and correct assessment of the appraised fee simple value of the lot I occupy near Echo Lake. The fee increase simply does not represent the fair market value of the rights and privileges authorized to me under my special use permit."

Appellants' similar contentions under this issue are:

1. The lots are undevelopable. The Forest Service appraiser ignored state and county zoning laws relative to the development of property for parcels under one and two acres in size. Consequently, the issue is whether my lot is developable or undevelopable property and the effect thereof on its fair market value.
2. There is a correlation between the size of the property and the value of the property.
3. The Forest Service appraisal is not based upon the fair market value of the rights and privileges authorized under appellants' permits, and therefore is in contravention of 36 CFR 251.57(1). [Please note that this is more specifically 36 CFR 251.57(a)(1)].
4. The Forest Service Bill for Collection is not based upon an appraisal of the fee simple value of appellants' lots.
5. The Forest Service is completely insensitive to the financial effects that this sudden and unsubstantiated fee increase has on my family and me.

The relief requested is to reject the current fair market value of \$48,000 for my recreation residence lot because it does not represent the actual fair market value of the right and privileges authorized to me.

## III. REVIEW FINDINGS

I have thoroughly reviewed the appeal record, including the concerns raised in your Notices of Appeal, the notes from the appeal resolution meeting of March 20, 2000, the Forest Supervisor's Responsive Statement, and my notes and filed exhibits from the oral presentations on October 13, 16 and 17, 2000. I wish to commend you on the level of interest you have demonstrated,

energy and financial resources you have expended, and genuineness with which you have expressed your concerns.

However, the Forest Supervisor and her staff have also dedicated considerable time and energy attempting to resolve your appeals. I agree with the Forest Supervisor's resolution process and the analysis and discussion in her Responsive Statement, and I will not reiterate those arguments here.

During the oral presentations, I listened with considerable interest as you and several others expressed concerns about the appraisal process, its outcome and how that has affected you individually and recreation residence permittees, in general. I empathize with you and your concerns over increased fees.

From the appeal record, I have developed my response to your appeal points and contentions. I have relied heavily on the previous work of the Forest Supervisor, in particular her July 12, 2000, Responsive Statement.

1. *The lots are undevelopable. The Forest Service appraiser ignored state and county zoning laws relative to the development of property for parcels under one and two acres in size. Consequently, the second issue raised by this appeal is whether an appellant's lot is developable or undevelopable property, and the effect thereof on its fair market value.*

The Forest Supervisor provided a detailed argument on this issue in her Responsive Statement under Contention 1. I can add nothing; thus, I agree with her argument and conclusion.

2. *There is a correlation between the size of the property and the value of the property.*

I find that the Forest Supervisor's discussion of this issue under Contention 2 of her Responsive Statement is correct and succinct. The Forest Service appraiser followed applicable law, regulation and policy, and properly used lot size in combination with other factors to appropriately value your recreation residence lot.

3. *The Forest Service appraisal is not based upon the fair market value of the rights and privileges authorized under appellants' permits, and therefore is in contravention of 36 CFR 251.57(1), [more specifically 251.57(a)(1)].*

I understand this issue to mean obtaining a fair appraisal of a recreation residence lot, the use of which is restricted to those rights and privileges authorized under special use permit. I find that the appraisal of the recreation residence lots did in fact consider those rights and privileges authorized under permit. The authorization is for a lot to be used for recreation residence purposes. This recreation residence use fee is established at 5 percent of the appraised value in lieu of a higher 8-12 percent assessment that is common for private lands. The Forest Supervisor's argument under Contention 3 provides a concise discussion of this issue. I agree with her analysis and conclusion.

4. *The Forest Service Bill for Collection is not based upon an appraisal of the fee simple value of appellant's lot.*

The fee simple values of the lots have been established through an appropriate appraisal that was reviewed and approved by the Forest Service. The appraisal that affected your lot is the one for the Ash lot that is adjacent to yours. The Forest Supervisor covered this issue well in her Responsive Statement under Contention 4. The only basis for the permit fee is the approved Forest Service appraisal.

5. *The Forest Service is completely insensitive to the financial effects that this sudden and unsubstantiated fee increase has on my family and I.*

The Forest Supervisor did not cover this issue in her July 12, 2000, Responsive Statement so I have taken this opportunity to review it with you. A contract appraisal of the typical lot (Ash, Lot 129) was approved by the Forest Service Review Appraiser, Mr. John Hickey, and then accepted by the Forest Supervisor. The Forest Supervisor advised you in her May 29, 1998, letter, that if you disagreed with the appraisal you could seek a second appraisal. Forest Service policy, as published in the Federal Register, Vol. 59, No. 105, Thursday, June 2, 1994, explains that if after the holders have reviewed the first appraisal report and are not satisfied, the Forest Service must "provide an opportunity for affected holders to obtain, at their expense, an appraisal report from an appraiser holding at least the same or similar qualifications as the one selected by the Forest Service."

The policy further explains that the Forest Service must give full and complete consideration to both appraisals. If the appraisers cannot agree, the Forest Supervisor will utilize either or both appraisals to determine the fee, unless a third appraisal is requested and accepted by the Supervisor. The Forest Supervisor contacted you on May 16, 2000, with information about the appraisal process. You did not, however, seek a second appraisal.

The above volume of the Federal Register also gives the policy and background for using the "5 percent" factor for fee determination. This is five percent of the appraised and approved fair market value, which is less than the 8-12 percent common in the private recreation residence rental market. While the same Federal Register issue does reaffirm that recreation residence special use permits are valid and important components of the overall National Forest recreation program, it does not address or direct the program toward any specific income bracket.

#### IV. DECISION

After a careful review of the appeal record, including exhibits and notes from the oral presentations, I find the Forest Supervisor's decision to be reasonable and in conformance with applicable laws, regulations and policy. Although several issues were brought to the table for re-evaluation during the oral presentations, I find that the Forest Supervisor has appropriately discussed and addressed these in her decision. I affirm the Beaverhead-Deerlodge National Forest Supervisor's decision to base the calendar year 2000 recreation residence permit fees for your Echo Lake lot on the existing, approved Forest Service appraisal. I have determined that

the typical lot selected for your lot is the Ash lot, #129. This lot did appraise for \$33,000 and not

the \$48,000 that you had quoted in your appeal. The relief that you requested in your February 22, 2000, appeal is already available to you.

This is the final determination of the Department of Agriculture, unless the Chief of the Forest Service, on his own initiative, elects to review the decision within 15 days of receipt (36 CFR 251.87(e) and 251.100).

Sincerely,

/s/ Gary A. Morrison

GARY A. MORRISON  
Reviewing Officer  
Director of Recreation, Minerals,  
Lands, Heritage and Wilderness

cc:

Beaverhead-Deerlodge NF  
R-1, Appeals  
WO, Appeals  
WO, Land Uses



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File Code: 1570 (L)  
00-01-00-0035-A251

Date: February 6, 2001

Bonnie and John Powell  
24 Fourth Avenue, N.W.  
Dutton, MT 59433

Dear Mr. and Mrs. Powell:

We have received Reviewing Officer Gary A. Morrison's January 23, 2001, decision letter and accompanying documentation. You are appealing the Beaverhead-Deerlodge National Forest Supervisor's decision to implement a fee increase for your recreation residence special-use permit located in Group C, Lot 128, in the Echo Lake area, Beaverhead-Deerlodge National Forest.

I find the actions taken by the Reviewing Officer are consistent with current statutory regulations concerning the fee determination and appraisal process for your special-use permit.

Therefore, I have elected not to review this decision. This action is consistent with 36 CFR 251.100(c) of the Secretary of Agriculture's Appeal Regulations, and constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

/s/ Sally Collins (for)

PAUL BROUHA  
Reviewing Officer for the Chief