



File Code: 1570-1 (251-1)  
#00-01-00-0023  
Date: November 9, 2001

Blaine and Janet Messer  
1904 Hamburg Street  
Anaconda, MT 59711

CERTIFIED MAIL – RETURN RECEIPT  
REQUESTED

Dear Mr. and Mrs. Messer:

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, Georgetown Lake Group #4, Tract C, Lot #3, located 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. An outline 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 your oral presentation held in Butte on October 17, 2000, is included in the appeal record. I also requested additional information from the Beaverhead-Deerlodge Forest Supervisor, Janette Kaiser, on December 12, 2000. Her response, which is enclosed, is incorporated into my response to the issues you identified in your February 7, 2000, appeal. This review decision hereby incorporates by reference the entire administrative appeal record.

**SUMMARY**

On April 6, 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 you raise are similar to those of the following appellants and are consolidated for review. I have also represented your individual concerns that differ from those which were consolidated.

**Appeal Number**

**Appellant(s)**

#00-01-00-0023  
#00-01-00-0037  
#00-01-00-0038  
#00-01-00-0039  
#00-01-00-0040  
#00-01-00-0041

**Blaine and Janet Messer**  
Page Wellcome  
Dorothy Dire  
Ronald and Catherine Eccleston  
William F. Antonioli  
Andrew and Charen McFarland



#00-01-00-0042	Marvin F. Cline
#00-01-00-0043	Norman and Patricia Olson
#00-01-00-0044	Bernard J. and Charmaine Everett
#00-01-00-0045	Donald L. Gillespie
#00-01-00-0046	Paula B. Jermunson
#00-01-00-0047	Dodge and Kathleen Leary
#00-01-00-0048	Mildred Williams
#00-01-00-0049	Stephen C. Neal
#00-01-00-0050	John Pahut

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 11, 2000. I will reference this document throughout my review. In addition to this record of the process, I am incorporating information I received during your oral presentation. On December 12, 2000, I requested additional information from the Forest Supervisor to help me clarify the concerns you raised during your oral presentation. Her response is dated December 21, 2000. This information completed the appeal record.

#### 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 Georgetown 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:

The fair market values of appellants' lots are as determined by appraiser Tom Stuckey, MAI, RM, State of Montana General Certification No. 70 (Appellants' appraiser).

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 my lot is developable or undevelopable property and the effect thereof on its fair market value.

The Forest Service appraiser identified the lots as having lake frontage, which they do not.

Tract value modifications have been made in select cases outside of the contract appraisal process for select tracts while ignoring similar or more compelling evidence on my permitted properties. The fair market value of typical lot E (Murto) was reduced because of the size of the lot.

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

The appellants' appraiser was correct in using a valuation date more current than the Forest Service appraiser used.

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)].

On several occasions in the Swan Valley of western Montana, the Forest Service accepted appraisals based upon the evidence of undevelopable property. Forest Service Chief Appraiser, Paul Tittman, unilaterally, and in an arbitrary and capricious manner, instructed that the previously accepted Swan Valley "undevelopable appraisal" be rejected in an obvious attempt to circumvent and undermine appellants' appraisals.

The Forest Service Bill for Collection is not based upon an appraisal of the fee simple value of appellants' lots.

You raised the concern that your lot is like your immediate neighbors' lots, yet yours was valued at nearly double of what they were during the latest appraisal. You believe that your assignment to the Gillespie typical lot is in error.

The relief requested is to reduce the fair market value of your recreation residence lot to a value more similar to the lots immediately adjacent to yours, which you believe are like your own. You would like to be reassigned to a new typical for appraisal and fee assessment purposes.

## REVIEW FINDINGS

I have thoroughly reviewed the appeal record, including the concerns raised in your Notice of Appeal, the notes from the appeal resolution meeting of March 20, 2000, the Forest Supervisor's Responsive Statement, my notes and filed exhibits from your oral presentation on October 17, 2000, and the additional information supplied by the Forest Supervisor in her December 21, 2000, letter. 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 she has provided. I will not reiterate those arguments here.

During the oral presentations, I listened with considerable interest as several appellants, including yourself, 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 11, 2000, Responsive Statement.

*The fair market values of appellants' lots are as determined by appraiser Tom Stuckey, the appraiser hired by the appellant group to provide a second appraisal.*

The Forest Supervisor has thoroughly discussed this issue in her Responsive Statement under Contention 1. The Georgetown Lake Homeowner Association contracted with Mr. Stuckey to have a second appraisal done in accordance with specifications provided by the Forest Service. Mr. Stuckey completed A Self-Contained Appraisal Report on November 30, 1999. Mr. John Hickey, ARA, Regional Review Appraiser, reviewed this report and found, "In his opinion, this

report cannot be used for Federal appraisal purposes due to 1) the assumption that the lots are undevelopable, 2) the date of the appraisal, November 30, 1999, should match the date of the first appraisal, December 18, 1997, and 3) the incorrect assumption that there is private ownership between cabins and the lake” (Appeal Record, Doc. 30, p. 6).

Mr. Stuckey’s appraisal did not meet the Forest Service standards and he was unwilling to provide an appraisal that would meet the Forest Service specifications. Without two valid appraisals the Forest Supervisor was unable to consider both appraisals in determining fair market value. She correctly considered the only valid appraisal, the one prepared by Ms. Kim Johnson, ARA, Phoenix, Arizona. I agree with the Forest Supervisor that this is the only valid appraisal that can be considered in determining annual rental fees.

*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 2. I can add nothing; thus, I agree with her argument and conclusion that the “undevelopable lot size” assumption is incorrect.

*The Forest Service appraiser identified the lots as having lake frontage, which they do not.*

I agree with the Forest Supervisor’s extensive discussion on this issue under Contention 3 in her Responsive Statement. Mr. Stuckey erred in his assumption that there was private land (other ownership) between the recreation residence lots and the lake, effectively negating any perceived lake frontage. The land between the lake and the permitted lot is National Forest land, as is the permitted lot. Recreation residence owners, as members of the public, are free to use these parcels between their lots and the lake. In fact, some have boat docks and other authorized improvements on the lake, outside of their recreation residence lot boundary. I also believe that the discussion, on how the differences between lake-view lots and lake-frontage lots were integrated into the valuation process appropriately, represents the regulations that guide this work. I find no evidence that either lake-view or lake-frontage lots were improperly represented in the appraisal process.

*Tract value modifications have been made in select cases outside of the contract appraisal process for select tracts. The fair market value of typical lot E (Murto) was reduced because of size of the lot.*

I agree with the Forest Supervisor’s summary of the record (Contention 4) on this issue. I find no evidence in the record to indicate that the lots subject to the Murto typical were reduced in value because of size. The Murto lot has improvements approved by the Forest Service and installed at permittee expense. These improvements mitigated the effect of a higher water table. The Forest Service contract appraiser equated the value of the Murto lot with the adjacent lots once that information on the Murto lot became known. The prior estimate of \$75,000 for the Murto lot was in error since permittee improvements had not been taken into account. These lots

have an appraised value of \$45,000, specifically because of the wetness associated with the raised lake level, not lot size.

*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 5 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 these recreation residence lots.

*The appellants' appraiser was correct in using a more current date of valuation than the Forest Service appraiser used.*

This issue is discussed in detail in the appeal record and is summarized well in the Forest Supervisor's Responsive Statement under Contention 6. Mr. Stuckey chose to provide a second appraisal that did not meet federal standards in spite of requests from the Forest Service to meet the standards, and given the opportunity to do so. He did not provide his appraisal information with the same date of value as the Forest Service appraisal (December 18, 1997). Therefore, under those circumstances, the Forest Service could not approve nor consider his appraisal.

*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. 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.

You stated during your oral presentation that there is a "power service road" beginning at Forest Road #8686 and across the top end of your lot. You are concerned that this reduces the lot's value to you as the permittee for the recreation residence lot. I have researched the source and uses of this road. The road was in place on September 17, 1997, when Forest personnel made a field review. You were also along on this activity. If the road is being used as you describe, it is not a "power service road" under permit to Montana Power Company or other users. You will need to work with the Forest Supervisor on the long-term need and use of that road.

*On several occasions in the Swan Valley of western Montana, the Forest Service accepted appraisals based upon the evidence of undevelopable property. Forest Service Chief Appraiser, Paul Tittman, unilaterally, and in an arbitrary and capricious manner, instructed that the previously accepted Swan Valley "undevelopable appraisal" be rejected in an obvious attempt to circumvent and undermine appellants' appraisals.*

This issue is similar to Contention 2, above. The Forest Supervisor has provided arguments in Contention 8 of her Responsive Statement that apply here, also. I find nothing in the appeal

record to indicate that the Forest Service appraisal was completed incorrectly, or that appraised values were inappropriately applied to the subject lots near Georgetown Lake.

*The Forest Service Bill for Collection is not based upon an appraisal of the fee simple value of appellants' lots.*

The fee simple values of the lots have been established through an appropriate appraisal that was reviewed and approved by the Forest Service. The Forest Supervisor covered this issue well in her Responsive Statement. The only basis for the permit fee is the approved Forest Service appraisal.

*You raised the concern that your lot is like your immediate neighbors' lots, yet yours was valued at nearly double of what they were during the latest appraisal. You believe that your assignment to the Gillespie typical lot is in error.*

As I stated above, I asked the Forest Supervisor to research this contention and provide additional facts on how assignment of a typical for your lot evolved (letter of December 12, 2000, to Forest Supervisor from Gary Morrison, Reviewing Officer). Forest Supervisor Kaiser outlines the process in her December 21, 2000, letter (copy enclosed). She explains that you were involved in the review designed to establish the appraisal process and typical lot(s) used for the 1997 appraisals. You, in fact, signed a September 29, 1997, letter, along with the Clines and the Wells, requesting your lots be included in Group 4 for which the Gillespie lot was the typical. I don't believe that you apprised me of this fact during the oral presentation.

In my review of the record on this issue, I have determined that the appraisal and lot assignments to the Gillespie typical were done according to law, regulation and policy, and with your direct participation. I find that you have recognized what appear to be obvious differences between your lots and the typical assigned to your lot. These are legitimate concerns. However, you signed the Cline letter requesting to change your typical for the 1997 appraisal to the Gillespie lot. This requested change was approved by the Forest Supervisor and determined to be reasonable by the contract appraiser, Ms. Johnson. Without the benefit of a valid second appraisal, your lot value will remain as it is until new procedures are developed pursuant to the Cabin User Fee Fairness Act of 2000 (CUFFA, P. L. 106-291, October 11, 2000). Activities under this act are scheduled to occur within the next 2 years, and may result in assignment of new typical lots and/or new appraisals.

You would have the opportunity, under yet to be established regulations, to participate in any new typical lot assignments or appraisal processes. This process will determine whether or not there will be any change in the fair market value of your lot, and likewise your rental fee.

## DECISION

After a careful review of the appeal record, including exhibits and notes from your oral presentation, I find the Forest Supervisor's decision to be reasonable and in conformance with applicable laws, regulations and policy. Although you brought several issues to the table for re-evaluation, I find that with the additional information, the Forest Supervisor has appropriately

discussed and addressed these issues 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 Georgetown Lake lot on the existing, approved Forest Service appraisal. Your request for relief is denied.

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

Enclosures (2)



United States  
Department of  
Agriculture

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Service

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File Code: 1570-1 (L)  
00-01-00-0023-A251

Date: November 30, 2001

Blaine and Janet Messer  
1904 Hamburg Street  
Anaconda, MT 59711

Dear Mr. and Mrs. Messer:

We received Appeal Reviewing Officer (ARO) Gary A. Morrison's November 9, 2001, decision letter and accompanying documentation. You are appealing Beaverhead-Deerlodge National Forest Supervisor Janette Kaiser's decision to implement a fee increase for your recreation residence special use permit in the Georgetown Lake Group 4, Tract C, Lot 3, located within the Beaverhead-Deerlodge National Forest.

I find the actions and decisions taken by the ARO are consistent with current regulations and agency policies and procedures concerning the appraisal process and rental fee determination 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/ Paul Brouha

PAUL BROUHA  
Reviewing Officer for the Chief