



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

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**JUN 28 2007**

In Reply Refer To:  
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Interior Board of Land Appeals  
Deputy Chief Administrative Judge  
Bruce R. Harris  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

**Subject: Request for Expedited Review, Shasta Coalition for the Preservation of Public Land,  
IBLA 2007-21**

Dear Judge Harris:

On January 19, 2007, after full briefing, an Order was issued denying Appellant's request for stay in the above appeal. Shortly thereafter Appellant filed its Statement of Reasons in support of its Notice of Appeal. To that Statement of Reasons, the Bureau of Land Management filed its response. The matter is therefore fully briefed and is ready for review and the issuance of a decision by your office.

On or about June 7, 2007, a member of my staff called your docketing attorney to ascertain the status of the appeal. My staff was informed that the appeal was not yet assigned to a Judge for review, and that any decision would likely not issue for about 12 months. For the following reasons, I ask that you consider an expedited review of this appeal.

In its Request for Stay, Appellant argued that the Environmental Assessment and FONSI violated NEPA because it was biased in favor of the exchange, conclusory in nature, that BLM had failed to provide adequate public participation, and that an EIS should have been prepared instead of an EA. Appellant complained that BLM failed the "hard look" test required by NEPA providing a laundry list of "violations" and other inadequacies under NEPA, and challenged the validity of the appraisal report under FLPMA. Every one of these arguments was responded to by the BLM. In its January 19, 2007 Order that denied the stay, the Board completely upheld the position of the BLM.

On December 4, 2006, Appellant filed its Statement of Reasons. It argued that BLM had violated NEPA because it failed to prepare an EIS rather than an EA, prepared a conclusory and biased environmental document, violated the NEPA hard look standard, failed to provide adequate public participation, and provided the same laundry list of "violations" and other inadequacies previously responded to by BLM in its response to protests, and in its response to Appellant's stay request. In addition, Appellant restated its argument that BLM failed to comply with FLPMA appraisal standards. On February 2, 2007, BLM filed its response to Appellant's Statement of Reasons.

BLM could rely on the rationale in the Order Denying the Stay as support to move forward with the land exchange because the Order denying the stay completely addresses the same arguments presented by Appellant in its Statement of Reasons. BLM could then argue that the appeal was moot. However, reliance on the Order denying the stay, as opposed to a ruling on the Statement of Reasons is problematic. Obviously an Order denying a stay request is not a complete ruling on the substance of the appeal. As such, a slight risk exists that the Board would not decide the appeal arguments the same as it decided the arguments presented in the request for stay. As such, the consummation of a land exchange, including patenting of public lands without a decision on the merits of the appeal is risky. If the Board ruled against the Bureau, the BLM would have to reverse the land exchange, a complicated process, and one that has been shown to be difficult to unwind.

With this in mind, the BLM asks that a decision on the appeal be expedited based on the following specific reasons.

The delay in deciding the appeal adds additional wait time to an already lengthy process. In this case the exchange proposal began in April 2001. For over six years to date the exchange proponent has expended time and money to participate in a process that will ultimately benefit the government. To ask the proponent to wait an additional 12 months, particularly where no appeal issues have been identified that are different from or additional to those already decided by the Board is not reasonable.

The delay in deciding the appeal creates a chilling effect on land transactions and is inequitable to the parties to the exchange. Not all exchange proponents can afford to engage the BLM in a process that, on average, may take in excess of two to five years to complete. The added delay in the resolution of the appeal is not equitable to the exchange proponent, the County that is on hold pending a merits decision, or the BLM whose land use planning activities are uncertain based on the lack of resolution of the appeal.

Land exchange appeals contain a time sensitive component that is not found within all appeals. For all of the above reasons, I ask that the appeal be expedited, and a decision be issued at your earliest convenience.

Sincerely,



Mike Pool  
State Director

cc: Steve Anderson  
Erica Niebauer  
Joseph J. Brecher  
Sandra K. Dunn