

Mike Pool
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Mike Pool, State Director
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California State Office
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Dear Mr. Pool:

Thank you so much for taking the time to meet with me and the representatives of the Shasta Coalition for the Preservation of Public Land and Shasta Resources Council on January 30, 2006. We appreciate your open-mindedness and willingness to consider the community's proposal and all sides of the issues involving Area 51. Your upcoming trip to view Area 51 will be most helpful in that regard. We believe that the meeting was highly productive. We would like to summarize for you our views concerning the current situation and the course of action we believe would be best for BLM and the community.

BLM possesses wide discretion and is not obligated to proceed with the proposed exchange. First, it is important to emphasize the wide discretion BLM possesses with respect to retention or disposal of its lands. BLM is currently under no obligation to proceed with the proposed land exchange on an expedited basis or, indeed, to carry out the exchange, at all. 43 CFR §2200.0-6(a) states that:

The Secretary is not required to exchange any Federal lands. Land exchanges are discretionary, voluntary real estate transactions between the Federal and non-

Federal parties. Unless and until the parties enter into a binding exchange agreement, any party may withdraw from and terminate an exchange proposal or an agreement to initiate an exchange at any time during the exchange process, without any obligation to reimburse, or incur any liability to, any party, person or other entity.

Thus, at this moment, because no binding exchange agreement exists, BLM is free to reflect carefully on our proposals before taking any action. Any delay inherent in that process will do no harm to BLM, since the Grass Valley Creek parcel will assuredly not be logged or otherwise developed until this issue is settled. On the other hand, the value of Area 51 will certainly continue to increase, meaning BLM will be able to demand additional exchange lands or a higher value equalization payment under 43 CFR §2201.6 should it ultimately decide to go through with the presently-proposed exchange. Nor will a delay harm Mr. Rice. He has not expended significant funds on the exchange. In summary, Mr. Rice has no vested right in seeing that the proposed exchange go forward at this time; there is no impediment to BLM's fulfilling its duty to act in the public interest.

Until recently, the Redding Field Office, following its long-established practice, has been reluctant to consider any form of disposition for Area 51, other than a land exchange. At our meeting, Mr. Anderson indicated that the Redding Office has had virtually no experience with other possible management or disposal alternatives for lands which BLM no longer wishes to manage. As a result, it has been reluctant to consider other alternatives. But, in fact, there are a number of possible scenarios that would yield better results for BLM and the community.

The proposed exchange is unwise. FLPMA, 43 U.S.C. §1716(a), emphasizes the public interest component of any proposed exchange

A tract of public land . . . may be disposed of by exchange . . . where the Secretary concerned determines that the public interest will be well served by making that exchange: Provided, that when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired.

The proposed exchange of Area 51 for the Grass Valley Creek parcel does not comport with this standard. As we pointed out at our meeting, Area 51 is the centerpiece of a key informal natural recreation area on Redding's west side. Volunteers have constructed a 5-mile trail network throughout the parcel and, as residential development expands, the area will become even more precious as a recreational resource. Furthermore, as the Department of Fish

& Game has indicated, the lower Salt Creek fishery would be severely impacted by sediment produced by the residential development of Area 51.

On the other hand, the Grass Valley Creek parcel is undeveloped and will remain so for the foreseeable future. Thus, if no exchange occurs, no public resources will be lost. The specter has been raised that logging of that parcel may cause ecological damage, particularly sedimentation of fish-bearing streams. This ignores the fact that any logging on that parcel will require approval of a timber harvest plan by the California Department of Forestry (CDF). The Forest Practice Rules contain stringent requirements forbidding adverse impacts on fisheries from logging. 14 CCR §936.2 recognizes and demands protection for “The restorable uses of water for fisheries as identified by the DFG. . . , “ Riparian habitat that provides for the biological needs of native aquatic and riparian-associated species. . . and “Sensitive conditions near watercourses. . .” The regulation states that “*These values shall be protected from potentially significant adverse impacts from timber operations and restored to good condition, where needed, through a combination of the rules and plan-specific mitigation.*” Thus, CDF will not approve a logging operation unless it protects fisheries and, indeed, provides for their restoration, as necessary. Furthermore, a recent report (attached as Exhibit “A,” indicates that water quality below the Grass Valley Creek parcel, contrary to previous assertions, is not impaired. In short, BLM intervention is unnecessary to protect fisheries values at and adjacent to the Grass Valley Creek parcel.

Other management considerations have been cited as favoring the exchange. It has occasionally been stated that BLM has management problems with retaining supposedly small, isolated areas on the urban fringe, such as Area 51, but this argument has recently been abandoned. In fact, the Bureau owns and will continue to manage small properties in the nearby Swasey Drive area to protect fisheries and archaeological sites.

It has also been stated that fire-suppression activities at Area 51 are expensive and time-consuming for BLM. But fire suppression in that area would be come much more difficult and expensive if it is developed. BLM should take this consequence of its proposed action into account. In contrast, one of BLM’s primary justifications for acquiring the Grass Valley Creek area, to stem erosion into nearby streams there, might cost the BLM much more in time and money than fire suppression at Area 51. (As we noted previously, a recent report casts doubt on the supposed need for erosion control at that location.)

One further reason exists for assuring that Area 51 will not be developed. There is a tremendous interest in retaining the parcel by many individuals and groups in the Redding area. Major opposition has developed to the proposed exchange. BLM has a long history of working cooperatively with local interests. The proposed exchange would undo the good relations that have been established.

Direct sale to the community. Under 43 CFR §2711.3(a), “direct sales (without competition) may be utilized, when in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by a direct sale. Examples include, but are not limited to: (1) A tract identified for transfer to State or local government or nonprofit organization.” Under 43 CFR §2710.0-6 (c)(1), a direct sale may be made “to recognize equitable considerations or public policies, including but not limited to, a preference to users.” We believe we have demonstrated that the important public policies inherent in keeping Area 51 open to the public and preventing harmful development on that parcel fits within these criteria.

Community organizations are prepared to offer full market value for Area 51 and, perhaps, other, adjacent parcels. They will follow the mandatory procedures of 43 CFR §2711.3-1 and will pay the full amount due at the time mandated by the regulations. At our meeting, the Redding office indicated it has had little experience with direct sales and so did not give this alternative full consideration. We believe it should sit down with community leaders and analyze this alternative fully and fairly.

Conveyance under RPPA. BLM also has discretion under the Recreational and Public Purposes Act, 43 USC §869, et seq., to convey to “political subdivision for any public purposes, or to a nonprofit corporation or nonprofit association for any recreational or any public purpose” up to 640 acres of land. Such a conveyance to a political entity is to be made “without monetary consideration.” 43 USC §869-1, while a conveyance to a non-profit entity may be made such as to a nonprofit corporation or nonprofit association, for the purpose for which the land has been classified, “at a price to be fixed . . . through appraisal, after taking into consideration the purpose for which the lands are to be used.” As we have noted, both types of entities are available to take title.

The Shasta Community Services District has informally proposed conveyance of Area 51 under RPPA, but there was never any response from BLM. SCSD made a second RPPA proposal to the Redding office, for an office site, but, in a letter dated August 6, 2004, the Redding Office refused to process the application, without giving any reason, other than its desire “to focus on Bureau critical programs.” Thus, the Redding office dismissed the proposal out of hand and has never given it any real consideration, despite the compelling public interest to do so.

You have indicated that BLM is interested in being responsive to community concerns. The agency should sit down with community groups to discuss and analyze a RPPA proposal for Area 51, as well as other parcels in the vicinity. As with the direct sale alternative, such a transaction would provide BLM with the necessary funds to purchase the Grass Valley Creek parcel or other critical lands. Those funds would *not* be available under the proposed exchange for Area 51.

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Exchange of parcel other than Area 51. Finally, if BLM is determined to acquire the Grass Valley Creek parcel, it should consider the possibility of exchanging other tracts in the Redding area that do not have such high recreational and ecological values. We would be happy to work with you to identify such parcels. We request that BLM encourage Mr. Rice to consider such a possibility.

We are confident that, with good will on both sides, a solution to this problem that will satisfy the needs of BLM and the community can be reached. We look forward to working with you to achieve that goal.

Sincerely,

Joseph J. Brecher
Attorney for Shasta Coalition for the Preservation
Public Land and Shasta Resources

of
Council

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