



To all who have supported and donated to the Save Wildcat Falls Legal Fund,

I am afraid that I am the bearer of bad news regarding the outcome of our lawsuit to block the U.S. Forest Service from trading the Wildcat Falls parcels near Watersmeet, MI for cut-over, badly abused land in a remote area further north. U.S. District Judge Robert Bell ruled in favor of the US Forest Service on all counts. In his 25 page summary, Judge Bell stated:

“The court is satisfied that the Forest Service adequately studied the issues and took a hard look at the environmental consequences of its decision,” Bell said. “It is not the court’s role to second-guess the correctness of the Forest Service decision.”

A recent note from our attorney in response to the court's decision:

“ The court ruled against us without even holding oral argument. Almost but not completely unheard of.

It's a bad decision and I'd be happy to appeal it.

Notice of appeal is due November 8. We may have to file for an injunction pending appeal if it appears that the deeds would be exchanged in the interim.”

To review the reasons for our decision to file suit, and now to appeal Judge Bell's decision, several points regarding this matter that leave us to conclude that a significant injustice to the American people continues to be perpetrated by this exchange:

- Bob Delich purchased the 421 acres that the Forest Service (FS) wishes acquire in this land trade for \$380,000. He then sold the timber and received for stumpage somewhere between \$150,000 (per Delich to third party) and almost \$400,000 (per local logger friend of Delich). The actual timber sale value was likely somewhere between these two figures.
- Bob Delich approached the FS and instigated this land trade, at first asking for much more acreage than the 240 acres justified by the appraisal.
- The appraisals were Yellow Book certified in 2010. The timber on the Forest Service land is worth more today than it was then.
- The Forest Service received at least 40 comments opposing this exchange, **and only** two supporting it.
- The Forest Service parcels were valued at \$1210 per acre. The actual timber value of \$1310 per acre (2010 cruise), was reported in the 2010 appraisal. Actual timber values have climbed since then. However, a recent Yellow Book appraisal by the same appraiser, in reference to land values, states “the Upper Peninsula in general continues to decline (2.6% annually since 2007).....”, essentially demonstrating that the difference between timber and land values are even greater now than they were when the original appraisals were done. Timber values have risen and land values have declined. The FS lands will bring significantly less in compensatory value than the timber value. Many cutover parcels in the UP now have asking prices of \$500 acre.
- The Delich property, which has minimal residual timber volume and insignificant timber value, was appraised at \$750 per acre (\$316,000). The Forest Service will make up the difference in cash, paying Mr. Delich an additional \$26,000 for the trade.
- The Wildcat Falls-County Line parcels owned by the Forest Service exhibit old growth character including increasingly rare Hemlock and Cedar stands. They also include unique and impressive moss-covered rock outcrops, Scott & Howe Creek, Wildcat Falls, beaver ponds and associated high-quality wetlands.
- The Delich parcel now supports mostly sapling-sized aspen and regenerating northern hardwoods, with no outstanding features. The Forest Service admits that it will take at least 100 years for this land to recover to a forested condition similar to what the land supported before Mr. Delich clear-cut it.
- Joe Hovel had offered to drop the suit if Mr. Delich would sell the land to a nonprofit land conservancy at 5 percent more than its 2010 appraised value, but Delich declined.

In short, our team feels that we have no other recourse than to file an appeal. It is well known that Judge Bell is a conservative judge appointed by President Reagan. Studies have

shown that a judges' political affiliations often have a pronounced impact on their disposition of NEPA claims. An appeal would be filed in the U.S. Courts of Appeals where the case would be reviewed by a three judge panel. Again, the composition of this panel is by luck of the draw, and the political affiliations of the individual judges assigned to our appeal could have a bearing on the outcome. However, the feeling is that we must try. In response to the court decision, a fellow supporter who happens to be an attorney himself commented:

"The underlying 'legal' problem here is that there is no substance to administrative law, only procedures. The court won't substitute its own evaluation of the issue for that of the forest service, as long as the forest service has followed its own procedures. Therefore, whether or not this is a bad decision, or a travesty, isn't an issue -- as long as the bureaucrats followed the bureaucratic procedures. That said, I'm sending more money to appeal because the alternative is to let them just keep on doing this without any public objection at all."

Our team will again be contributing to this campaign out of their own pockets, but the bottom line is that we need to come up with \$5500 to cover the costs of an appeal. If you are looking for a worthy cause to support, please consider donating to us again. You can be assured that all donations will be used to fund local conservation projects. Checks should be made out to Northwood Alliance, Inc. (Note: "Wildcat Falls Legal Defense Fund" on the notation line.) Or, if you prefer, you may donate on-line on the NWA website: www.northwoodalliance.org

Northwood Alliance continues to handle the fundraising and payouts for expenses involved in this endeavor. Northwood Alliance is a 501c (3) charitable organization, whose mission is the conservation of unique lands and public values. Your gift is tax deductible to the fullest extent of the law.

Thank you all for your continued support,

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PS: Two points by which to base our appeal are the appraisals and the alternatives.

We feel very strongly that the law, with case law to prove the issue, demands a deciding official to study the appraisals. The FS admits in court documents that the deciding officer did not read the appraisals. Common sense tells me there is no other basis to make an equitable decision, especially when the supervisor also admitted that he had not seen the lands himself.

Secondly the showed only 2 items as 'alternatives'. To proceed or not to proceed were the only alternatives, the never went any further, refusing to try to purchase the Delich parcel with LWCF funds for example, or trading for parcels other than the Wildcat Falls area.

I will not guarantee we can win this, but who are we if we do not attempt to. Please help if you can.