

March 21, 2011

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NOTICE OF APPEAL

Decision Notice and Finding of No Significant Impact  
DELICH LAND EXCHANGE Project Ottawa National Forest  
Posted in Ironwood Daily Globe Feb. 9, corrected repost Feb. 12, 2011

Decision Notice and Finding of No Significant Impact Ottawa National Forest (DN/FONSI) Delich Land Exchange Project dated Feb. 4, 2011.

This notice of appeal is submitted pursuant to 36 CFR 215. The decision appealed is documented in a Decision Notice signed Feb. 4 2011 by Keith B. Lannom, Acting Forest Supervisor. The legal notice was published on Feb. 12 , 2011. The project area is the Ottawa National Forest, in the Upper Peninsula of Michigan.

This appeal is made by an individual in his own right and as a representative of the following organization, exactly the same manner their comments were previously filed.

Appellant, Partners in Forestry Cooperative (PIF), is a grassroots membership coalition of individuals and forest product based businesses with an interest in the health and well being of forests in the north woods and the Upper Peninsula. Members have continued to express concern to our directors regarding the Delich Land Exchange project. PIF maintains an office at 6063 Baker Lake Road, Conover, WI 54519. PIF has members, including but not limited to appellant Joe Hovel, that use and enjoy the Ottawa National Forest and will be unfairly harmed by the decision at hand. The board of directors of PIF is unanimous in filing this appeal.

Keith B. Lannom is acting Forest Supervisor of the Ottawa National Forest (ONF).

Partners in Forestry takes public land exchanges very serious and strongly believes that this decision notice is not in the public interest. As we stated in our Jan. 2010 comments, PIF has no objection to a Forest Service acquisition of the Delich parcel, but, in this case, the FS is trading away parcels with very substantial public interest, much more so than the acquired parcel. Although the monetary values likely were brought to reason, because of the increased acreage of the Delich parcel, the intrinsic values lost in this proposal are too extensive to ignore. We have studied the public comments on this process, and agree with the value to the public of the parcel near the Porcupine Mountain State Park, however most comments in favor ignored the pristine nature of the parcels given up, and we do not feel they have done an adequate comparison. This in turn is also relevant to the DN/FONSI, in which the FS parcels that the public had no objection to trading were eliminated from the exchange. There is no rational for trading parcels in which there is significant opposition, and removing parcels from the exchange in which no objection was registered.

There are several specific points to our appeal, of which had the greatest interest from our members and board. Included in our concerns are the loss of Wildcat Falls, the loss of riparian resources, the loss of hemlock and old growth characteristics and what seems to be a willingness to pander to the development plans of Mr. Delich, by accepting a parcel he has mismanaged, in

trade for parcels in pristine condition. This exchange needs to be in the interest of the public, not private parties.

#### Wildcat Falls:

While the DN/FONSI acknowledges the public objection, and the reasons for the objections, of trading away Wildcat Falls, the importance of Wildcat Falls to the public is simply brushed off as one opportunity in many on the Ottawa. Wildcat Falls is a relatively accessible waterfall, near Watersmeet, in an area that has limited waterfall viewing opportunities. In this case, the DN/FONSI gives little regard to the public objection, but places more importance on satisfying Mr. Delich's desire to fragment and develop an area that the public has enjoyed in its natural state for decades. This is not in the best interest of the public. This small but very unique feature is much closer to the tourist visits which originate on the Hwy. 45 region of Vilas County Wis., than are most other waterfalls on the Ottawa, and indeed is a very important feature much too valuable to be expendable because 'there are other waterfalls on the forest'. "Opportunities for .....viewing.....natural features, such as Wildcat Falls.....maybe altered; however there are many other opportunities within the Ottawa to gain similar recreation experiences (page 27)." From page 17 of DN/FONSI. We strongly disagree with this rationale, that another waterfall on the forest replaces this location.

#### Cedar and Hemlock communities and Old Growth Characteristics

One of the main reasons why the proposed Delich land exchange between the Ottawa National Forest and Mr. Delich is not in the public interest is the net loss of hemlock and old-growth forests. Both Eastern Hemlock and old-growth forests are now a very rare feature on the landscape. In the EA, I note page 38 mentions the Old Growth and Hemlock and/or Cedar, being an important feature on Parcels 2, 3 and 4. Mr Delich's treatment of the parcel the ONF is to acquire, leads us to believe that these important features would be sacrificed. It is unconscionable to consider sacrificing the pristine nature of these parcels, with all of their important features.

Hemlock decline: For example, in the northern Great Lakes region, hemlock cover types presently occupy only 0.5% of the upland landscape (Mladenoff and Stearns 1993; see also Abrams and Ruffner 1995). Mladenoff and Stearns compared presettlement vegetation patterns with late 20<sup>th</sup> century cover type patterns for a 9600 ha (30,000) area in the Border Lakes region of Vilas County. This area is less than 20 miles from the lands the Ottawa National Forest would trade to Mr. Delich. It can easily be considered the same landscape and the results of the study are valid for northern Michigan. In 1989 hemlock forests covered 3.7% of the 30,000 acre study area compared to nearly 69 % hemlock and hemlock-hardwoods in the Border Lakes area around 1860.

**Table 2. Percent area of upland forest types for three periods mapped: presettlement (1860s), peak human activity (1931) and current period (1989).**

	1860	1931	1989
Pin Cherry	–	37.2	2.3
Mixed hardwood	–	13.7	21.8
Mixed conifer	–	0.5	10.3
Hardwood/conifer	–	5.9	29.4
Northern hardwood	–	19.4	30.5
Old growth Hemlock/hardwood	22.5	–	–
Old growth Hemlock	46.2	7.2	3.7
Old growth Hardwood	31.4	16.1	1.9

Due to its rarity, hemlock forests should not be exchanged for ubiquitous aspen and second-growth northern hardwood cover types that cover Mr. Delich’s property. In no way can the diminution of this rare resource be considered insignificant. In light of the fact that eastern hemlock is threatened with extinction due to the introduced invasive Hemlock Woolly adelgid, The Forest Service should make every effort to retain and protect these rare forests. The ONF has an obligation to the public to care for these diminishing forest communities.

#### Old-Growth

Some of the (hemlock) forests that the Ottawa National Forest proposes to exchange with Mr. Delich exhibit old-growth characteristics and are identified as old-growth in the environmental assessment. Old-growth forests are also an extremely rare feature in the Upper Midwest. Again, we want to stress that it is not in the public interest to exchange a rare resource for one that is common. The forests on Mr. Delich’s property are recent cutover or, second-growth hardwoods. They contain no old-growth and the exchange as proposed would result in a loss of old-growth from the Ottawa National Forest. While old-growth forest is slightly more common on the Ottawa National Forest, due to the Sylvania Wilderness Area, than surrounding ownerships, old-growth forests still make up no more than 3-4% of all of northern Michigan.

The loss of these rare features are very significant because they are not increasing on the landscape. Hemlock forests continue to decline due to regeneration problems and old-growth forests are still lost due to wind throw or logging. If the Ottawa would trade rare and declining resources for ubiquitous lands like those currently owned by Mr. Delich, then it would send the message that it has no adequate policy for protecting, and maintaining or enhancing rare resources. We reject the finding of no significant impact! These important areas are declining and must be protected. It is the duty of the Forest Service to protect these public features.

#### Riparian Resources

As mentioned on page 48 of the EA, there is a loss of perennial streams. A .32 mile loss of perennial stream is significant when coupled with our other concerns. The EA mentions the loss of EPT. This net loss of riparian resource is not in the best interest of the public, and we reject the rationale to give this up for a parcel already decimated by poor management.

#### Decision Rationale-Public Interest Determination questioned

1. While the exchange may improve ownership pattern, the “old growth features” discussed would require little management so the argument for better management objective becomes diminished.
2. As stated throughout this document, we reject the idea that the resource values and public objectives are better served in this proposal.
3. We take great exception to this paragraph. Township zoning is inadequate to protect water degradation, long term cumulative effects of development, and protection of rare communities of cedar and hemlock, which feature old growth characteristics.

#### Alternatives Considered, but not Carried Forward

We do not agree with including the parcels near County Line Lake road in this exchange. If this leads to an unbalanced exchange, so be it, the exchange should be dropped.

Purchasing the non-federal parcel was inadequately considered, in our opinion. We also feel that NOT enough consideration was given to using Land and Water Conservation Funds as an alternative. The courts have demonstrated that money for land is as fair an exchange as land for land. If Mr. Delich was not interested in this, it only furthers our suspicions that he wishes to degrade pristine parcels as he had the parcel he wishes to exchange.

Finding of No Significant Impact: We strongly feel that you need to consider and disclose the cumulative/indirect effects resulting from any reasonably foreseeable future development of the lands to be exchanged. We do not agree that findings are insignificant.

#### Under ‘intensity’

1. **A significant effect may exist even if the Forest Service believes that on balance the effect will be beneficial.** The FS states that the exchange will be beneficial overall, but there are many negative effects, including the loss of old growth cedar/hemlock, the loss of a unique waterfall, and the loss of a portion of an important perennial stream.
2. ...
3. **Wildcat Falls is an ecologically important feature, and we disagree with the lack of emphasis placed on this feature. There are also important plant and riparian resources at risk as are discussed throughout this appeal.**

**4. The degree to which the effects on the quality of the human environment are likely to be highly controversial are understated. Our members are very passionate about this issue, and strongly disagree with this finding.** The comments from the public on the prior EA indicate that there is considerable controversy about the FS exchanging out of the County Line Lake Road parcels.

**5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks. We do not agree that all risks are known, or predictable.** The loss of old growth cedar/hemlock, and a unique waterfall do involve unknown risks. It may prove to be impossible to grow cedar/hemlock stands to this age and condition ever again (because of the numerous problems facing these tree species - climate change, disease, deer herbivory, etc) , which means that trading away parcels of land that contain such unique vegetation is a very unwise move. Trading away the parcel containing Wildcat Falls also involves unknown risks, because Delich's development of the parcel may negatively affect the watershed and change the unique riparian plant and animal community found in the area near the waterfall.

**6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration. We see this action as a possible precedent setting move, as the public values to be traded are very important, and if dismissed in this action, are more likely to be dismissed in future actions with similar attributes.**

#### Closing Summary

In summary, PIF believes that the proposed land exchange is not in the public interest, for several reasons. First, the loss of a unique feature (Wildcat Falls) is unacceptable. The argument that recreationists can/will simply visit other waterfalls to have the same experience is flawed, since most waterfalls on the Ottawa are located much closer to Lake Superior - a much further drive for most recreationists. Second, the loss of unique vegetative resources - namely old growth cedar and hemlock - in the parcels near County Line Lake Road, is unacceptable. The EA fails to adequately assess the rarity and value of these resources, which are rapidly disappearing from the landscape in the Upper Midwest. Third, the loss of public land containing a portion of a high quality perennial stream is unacceptable. The EA fails to adequately assess the value of this resource, and the damage that could be caused to this stream and its watershed by unwise land development practices. Although acquisition of the Delich parcel would be desirable, the price that the public is being asked to pay for that acquisition is far too high in our view. We believe that the No Action Alternative should have been selected in this case. To proceed should require more in depth study, as is offered in an Environmental Impact Statement

Partners in Forestry is a Cooperative with members interested in and involved in sustainable forestry. Our members and board of directors is a cross section of land owners, foresters, loggers and other resource professionals. We appreciate and care deeply about the greater forest landscape, and respect the public-private land partnership. Our membership is dispersed throughout northern Wis. and the western Upper Peninsula.

Sincerely,

*Joe Hovel*

Joe Hovel, President and acting director Partners in Forestry COOP

