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Forest
Service

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File Code: 1570-1/2300

Date: November 10, 2003

Gerald Nailor
Governor
Pueblo of Picuris
P.O. Box 127
Penasco, NM 87553

RE: Appeal #03-03-00-0037-A215, Sipapu Ski Area Improvements, Camino Real Ranger District, Carson National Forest

Dear Governor Nailor:

This is my review decision on the appeal you filed regarding the decision to approve the Sipapu Ski Area Improvements.

BACKGROUND

District Ranger Cecilia Seesholtz approved the implementation of work identified within the 2000 Summer Work Plan on July 12, 2000. Essentially, this work consisted of moving one surface (Poma) lift (1,212 linear feet in length) to a new location up the mountain from where it was currently situated, installing one aerial (triple chair) lift (796 linear feet in length), clear approximately 13 acres for trails - including lift lines and other ski-able terrain, thin approximately 10 acres for gladed trails providing ski-able terrain, and modify the previous boundary by approximately 30 acres to incorporate the new improvements.

During the late spring of 2001, District Ranger Seesholtz discovered that the magnitude of the work was actually outside her authority and moved to halt further activity.

In August, 2001, the permittee sued the Forest Service in United States District Court seeking a preliminary injunction to allow for the implementation of the 2000 Summer Work Plan. The District Court Judge granted the preliminary injunction in September of 2001. He also ordered the Forest Service to complete an environmental analysis. The work on the expansion was implemented during 2001/2002. The District Court also ordered the Forest Service to complete the National Environmental Policy Act (NEPA) analysis.

Forest Supervisor Martin Chavez signed the environmental decision concerning the implementation of work for the Sipapu Ski area improvements on August 5, 2003. The Forest Supervisor is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

Pursuant to 36 CFR 215.16, an attempt was made to seek an informal resolution of your appeal. The record indicates that an informal resolution was not reached.



My review of this appeal has been conducted in accordance with 36 CFR 215.17. I have reviewed the appeal record, including the recommendation of the Appeal Reviewing Officer. My review decision incorporates the appeal record.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer found that: a) the decision logic and rationale were generally clearly disclosed; b) the benefits of the proposal were identified; c) the proposal and decision are consistent with agency policy, direction and supporting information; and d) public participation and response to comments were adequate.

APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision for the Sipapu Ski Area.

REQUEST FOR RELIEF

1. No further expansion of the Sipapu Ski Area is to be permitted without prior consultation and consent of the Pueblo of Picuris.

Any future expansion or action of this use will undergo NEPA analysis which will require consultation with the Pueblo. There is no requirement that the Pueblo consent to activities approved on National Forest System lands.

2. The Forest Service and the permit holder should establish a management plan which minimizes the impacts of the expansion on the ski area.

Summer and winter management plans (operating plans) are an integral part of the management of a ski area. These plans describe the approved actions that are to be taken over that period of time. They are approved by the Authorized Officer, either the Forest Supervisor or his designee who in this case may be the District Ranger.

3. The issuance of a new permit should be conditioned on the change of the ski area's name from "Sipapu" to a non-Picuris word.

Requiring a business name change is not within the authority of the Forest Service. Any issue concerning the word "Sipapu" is an issue for discussion and agreement between the Pueblo of Picuris and the permittee.

This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR §215.18(c)].

Sincerely,

/s/ Abel M. Camarena
ABEL M. CAMARENA
Appeal Deciding Officer,
Deputy Regional Forester

Enclosure

cc: Mailroom R3 Carson National Forest, Christina Gonzalez, John Beckley, Cecilia Seesholtz, Leonard Atencio, June Trujillo.

REVIEW AND FINDINGS

of

The Pueblo of Picuris'

Appeal #03-03-00-0037-A215

Sipapu Ski Area Improvements

ISSUE 1: The Pueblo of Picuris is concerned with the feature that the Forest Service's proposed mitigation measures do not do enough to ensure that unauthorized activities will not occur in the future.

Contention : "That the Forest Service's proposed mitigation measures do enough to ensure that unauthorized activities will not recur in the future."

Response: The Environmental Analysis (EA) is appropriate and contains sufficient mitigation measures to allow for reasonable implementation of the expansion activities. Existing policy and guidelines (in terms of NEPA, permit amendments/authorized activities and proposed actions) will allow for analysis and approval through the authorized approval process.

Finding: The EA and Decision Notice adequately disclosed the effects of the improvements and ski area expansion. Propose mitigation measures are adequate to alleviate potential impacts to the resource. Any additional authorization for additional expansion and/or actions must be approved by the Authorized Officer and follow existing regulations, polices, and guidelines.

ISSUE 2: There is concern about the impacts of this project on the cultural resources of the Pueblo of Picuris.

Contention: The EA fails to adequately address the impacts on traditional cultural of the Pueblo of Picuris.

Response: The Cultural Effects Report (Project Record [PR] #15) and the EA (pages 50-51) address the traditional property concerns identified by the Pueblo of Picuris in the ethnographic study completed pursuant to the previous EIS. Both the EA (page 50) and the Decision Notice (page 6) disclose that the Pueblo considers the entire Rio Pueblo Watershed, including the canyon sides, stream, and surrounding mountain peaks, as a traditional cultural property. The EA (page 50) also notes that no specific properties or areas of concern were identified within the project area. The potential impact of the proposed action on the larger Rio Pueblo Watershed is discussed (pages 51-53). The project record documents that the specific concerns raised by the Pueblo of Picuris in meetings, phone calls, and correspondence regarding the proposed action (PR #27) focused on water use and water quality issues, rather than impacts to traditional cultural properties.

Finding: The EA adequately addressed impacts on traditional cultural properties based on input received from the Pueblo during the environmental analysis.

ISSUE 3: The Pueblo of Picuris is concerned about the effect of this project on the water quality of the Rio Pueblo.

Contention: The EA contains inadequate analysis of water quality for the Rio Pueblo.

Response: The effects of the proposed action on water quality were examined thoroughly (PR #12, PR #24). Best management practices to protect water quality are required (PR #24, PR #31).

Finding: The analysis and disclosure of the effects on water quality is adequate.

ISSUE 4: The Pueblo of Picuris is concerned about the effect of this project on the water quantity of the Rio Pueblo.

Contention E: The EA contains an inadequate analysis of water quantity. Impacts to water quantity within the Rio Pueblo Watershed and to downstream users are inadequately analyzed in the EA.

Response: The project does not propose any increase in water usage for the specific project activities nor does it propose any additional summertime water use. The ski area's use of water for snowmaking is permitted and regulated by the New Mexico Office of the State Engineer. Monitoring for water use is a stipulation of the State Water Right Permit and is accomplished by the ski area and reported quarterly to the State Engineer's Office (PR #12).

Finding: The analysis and disclosure of effects on water quantity is adequate.