

File Code: 1570/2300

Date: April 10, 2000

Mr. John C. Horning
Watershed Protection Program
c/o Forest Guardians
1411 Second Street
Santa Fe, New Mexico 87505

RE: Appeal #99-03-00-0109-A217; Appeal of the Environmental Assessment, Decision Notice and Finding of No Significant Impact for the Jemez National Recreation Area, Santa Fe National Forest.

Dear Mr. Horning:

This is my decision on your appeal filed on behalf of Forest Guardians, concerning Forest Supervisor Leonard Atencio's final Decision Notice and Finding of No Significant Impact (DN/FONSI) for the Jemez National Recreation Area Management Plan and Environmental Assessment. My review of your appeal was conducted pursuant to 36 CFR §217.

BACKGROUND

The Jemez National Recreation Area (Jemez NRA) was congressionally designated by Congress in October, 1993 (Public Law 103-104). In 1998, The Santa Fe National Forest started the process of developing a management plan for the Jemez NRA.

The Environmental Assessment for the management plan was released for public comment on February 26, 1999. The public comment period ran through April 1, 1999. The DN/FONSI was signed on June 29, 1999. Your notice of appeal, dated August 16, 1999, was received on August 16, 1999. By letter of October 26, 1999, you were informed that your appeal was timely and that I would exercise discretionary authority to establish a timeline for this and related appeals. By letter of November 24, 1999, you were sent a copy of that timeline.

APPEAL DECISION

After a detailed review of the record, I find that the management plan for the Jemez NRA lacks the necessary analysis directed by the Jemez National Recreation Area Act and by Forest Service policy. Therefore, I am reversing Forest Supervisor Atencio's final DN/FONSI approving the management plan for the Jemez NRA and Forest Plan Amendment. It is premature to make a review decision on (1) the adequacy of NEPA (2) whether the plan violates the Clean Water Act and (3) whether the EA violates the Administrative Procedures Act.

Instructions:

I am directing Forest Supervisor Atencio to reanalyze and complete a management plan for the Jemez NRA which will conserve, protect and restore those values and standards prescribed within the Jemez National Recreation Area Act and Forest Service policy. Those values are the recreational, ecological, cultural, religious, and wildlife resources of the Jemez Mountains.

As specifically directed in the Act, this plan "shall" also (1) provide for the management of the natural resources only to the extent that such management is compatible with and does not impair the purposes for which the recreation area was established, (2) give particular emphasis to the preservation, stabilization and protection of the cultural resources located within the recreation area, (3) give particular emphasis to the conservation and protection of wildlife resources and (4) prepare a transportation plan that provides for the most efficient use of roads and trails to accomplish the purposes of the Act and provide for a comprehensive trails system that provides for dispersed recreation while minimizing impacts on significant archaeological and religious sites.

The Jemez NRA Management Plan should provide actions which will resolve the problems identified as distracting from the ability to conserve, protect and restore the values of the Jemez NRA and follow Forest Service policy which directs the management of special areas that are established by law. The plan should include an implementation schedule (per FSM 2371.22) which contains: (1) specific actions needed to follow forest plan direction and accomplish forest plan objectives, (2) general priorities for action items, (3) identification of unit or individual responsibilities, and (4) identification of target dates for completion of the actions.

The Jemez NRA Management Plan must present a clear vision of the management actions, prioritizations and mitigations needed to conserve, protect and restore the values and standards as directed by the Jemez National Recreation Area Act. The revised Jemez NRA Management Plan and decision must be prepared within two years of this appeal decision.

This is the final administrative decision of the Department of Agriculture unless the Chief elects to review the decision within 15 days of receipt (36 CFR § 217.7(d)(1) and 217.17). By copy of this letter, I am notifying all parties to the appeal of my decision.

Sincerely,

/s/ James T. Gladen
JAMES T. GLADEN
Appeal Reviewing Officer
Deputy Regional Forester

cc

Santa Fe National Forest

D. Tafoya, Jemez Ranger District

C. Gonzalez, R3, Appeals and Litigation

C. Holbrook, R3, Recreation

S.Segovia, WO, Ecosystem Management

REVIEW AND FINDINGS

of the

Forest Guardians's Appeal #99-03-00-0109-A217

regarding the

Jemez National Recreation Area Management Plan

and

Environmental Assessment

ISSUE 1: The plan/EA violates the Jemez National Recreation Area Act.

Contention: The Forest Service is required to promulgate standards to insure that grazing on federal lands in the Jemez NRA is compatible with the ecological, wildlife and recreation purposes of the Jemez NRA. The vague forest plan standards are inadequate. The proposed management plan ignores the resource conflicts that exist between grazing and the other values of the Jemez NRA. The EA and the proposed management plan are completely lacking in the implementation of a management plan that would result in the protection of the environmental, recreation, wildlife and archaeology values of the Jemez NRA.

Response: The Jemez National Recreation Area (NRA) Act is specific in recognizing the purpose and establishment of the Jemez NRA when it identifies the values and emphasis for which the Jemez NRA is to be managed "to conserve, protect, and restore the recreational, ecological, cultural, religious, and wildlife resource values of the Jemez Mountain". The Jemez NRA must be administered in accordance with the Act and in a manner that furthers the purposes of the Jemez NRA. Management of the other natural resources within the Jemez NRA is permitted only to the extent that such management will be compatible with (and does not impair) those designated values of the recreational, ecological, cultural, religious, and wildlife resources.

The Jemez NRA Management Plan should provide specific direction on those actions which are proposed to resolve the problems identified as distracting from the ability to conserve, protect and restore those values for which the Jemez NRA was designated. The plan should also contain an implementation schedule which ensures the direction and objectives established in the forest plan are met. The implementation schedule should contain: (1) specific action needed to follow forest plan direction and accomplish forest plan objectives, (2) general priorities for action items, (3) unit or individual responsibilities and (4) target dates for completion of the actions.

The plan/EA identifies problems on the ground related to developed recreation sites, dispersed recreation impacts and also heavy use on existing and non-system trails. These problems are then identified as having extensive impacts on the riparian, soil and water resources. However, no specific management directions have been developed to resolve these problems. The plan/EA fails to develop specific management actions sufficient to meet the Jemez NRA Act's intent "to

conserve, protect, and restore the recreational, ecological, cultural, religious, and wildlife resource values of the Jemez Mountain's".

The plan/EA identifies a variety of problems on the ground related to soils erosion, water quality, fuels management, forest health, wildlife and habitat, grazing and transportation. Some of these problems are also recognized as creating a dangerous situation for the public. However, the plan/EA fails to develop specific management actions needed to resolve those identified problems.

Finding: The Jemez NRA Management Plan does not contain the specificity as directed within the Jemez NRA Act and required by Forest Service policy. The plan/EA is too general to ensure that the Act's requirements of "conserve, protect and restore" can be attained.

It is not a management plan which meet the provisions established by the Jemez NRA Act and as provided by Forest Service policy. It does not address the direction to "conserve, protect and restore" with enough specificity to assure that the management of those values for which the Jemez NRA was established are not impaired by the other natural resources which may be continued if "such management is compatible with and does not impair the purposes for which the recreation area is established...".

ISSUE 2: The DN/FONSI violates NEPA.

Contention: The appellant contends that the Forest Service has violated NEPA (1) by failing to conduct an environmental impact statement, (2) because the EA fails to consider and disclose adequately the cumulative impacts of the proposed action and (3) because the EA fails to analyze a range of reasonable alternatives.

Response: The development and approval of the management plan for the Jemez NRA does not in and of itself reflect the need for an EIS. Applying the guidance provided within 40 CFR 1508.27 and Forest Service policy, the decision as to whether an EIS is necessary should be based on the environmental assessment which will evaluate whether effects are significant.

Lacking an adequate management plan for the Jemez NRA as defined within the guidelines and direction of the Jemez NRA Act and Forest Service policy, it is premature to determine whether the EA presented the cumulative impacts of the proposed action and a reasonable range of alternatives.

Finding: Until the Jemez NRA Management Plan is completed within the guidelines and direction established by the Jemez NRA Act and Forest Service policy, it is premature to make a review decision whether (1) an environmental impact statement is necessary, (2) if the cumulative impacts were disclosed and (3) if the EA fails to analyze a range of reasonable alternatives.

ISSUE 3: The plan violates the Clean Water Act (CWA)

Contention: Appellant contends that the Jemez NRA did not address the water quality problems in the Jemez NRA and as a result, permits activities that will continue to degrade water quality. Appellant also contends that required certification from the State of Arizona under Section 401 of the CWA was not obtained.

Response: Lacking an adequate management plan for the Jemez NRA as defined within the guidelines and direction of the Jemez NRA Act and Forest Service policy, it is premature to determine whether the plan violates the Clean Water Act. A required certification from the State of Arizona under Section 401 of the CWA is not needed nor applicable within the State of New Mexico.

Finding: Until the Jemez NRA Management Plan is completed within the guidelines and direction established by the Jemez NRA Act and current Forest Service policy, it is premature to make a review decision that the plan/EA violates the CWA.

ISSUE 4: The EA violates the Administrative Procedures Act.

Contention: The EA violates the Administrative Procedures Act because it is arbitrary, capricious, and abuse of discretion and otherwise not in accordance with the law. The preferred alternative simply does not represent a reasoned and rational decision to comply with the mandate of the Jemez NRA.

Response: Lacking an adequate management plan for the Jemez NRA as defined within the guidelines and direction of the Jemez NRA Act and Forest Service policy, it is premature to determine whether the plan violates the Administrative Procedures Act.

Finding: Until the Jemez NRA Management Plan is completed within the guidelines and direction established by the Jemez NRA Act and existing Forest Service policy, it is premature to make a review decision whether the EA violates the Administrative Procedures Act.