

File Code: 1570/2300

Date: March 27, 2000

Forest Guardians
c/o Mr. John C. Horning
1411 Second Street
Santa Fe, NM 87505

RE: Appeal #99-03-00-0106-A217; Environmental Assessment, Decision Notice and Finding of No Significant Impact for the East Fork of the Jemez Wild and Scenic River Management Plan, 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 East Fork of the Jemez Wild and Scenic River Management Plan and Forest Plan Amendment. Your notice of appeal dated August 10, 1999 was received on August 11, 1999. My review of your appeal was conducted pursuant to 36 CFR §217.

BACKGROUND

On June 6, 1990, the East Fork of the Jemez was congressionally designated as a component of the Wild and Scenic River System, under the Act of October 2, 1968, as amended [16 U.S.C. 1271-1287]. On October 7, 1998, Forest Guardians submitted a Complaint for Declaratory Injunctive Relief to the United States District Court, District of New Mexico. On February 4, 1999, the District Court issued the Settlement Agreement and Stipulation of Dismissal in which the Forest Service agreed to prepare a comprehensive management plan (CMP) for the East Fork of the Jemez Wild and Scenic River. The Environmental Assessment (EA) 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 22, 1999, and notice of decision was published on June 28, 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 CMP for the East Fork of the Jemez Wild and Scenic River lacks the necessary analysis directed by the Wild and Scenic Rivers Act and by Forest Service policy. Therefore, I am reversing Forest Supervisor Atencio's final DN/FONSI approving the East Fork of the Jemez Wild and Scenic River Management Plan and Forest Plan Amendment. It is premature to make a review decision on the adequacy of NEPA for the CMP.

Instructions:

I am directing Forest Supervisor Atencio to reanalyze and complete a CMP for the East Fork of the Jemez Wild and Scenic River to the standards prescribed within the Wild and Scenic Rivers Act and Forest Service policy interpreting the Act. The CMP should provide specific direction on what activities are proposed to resolve the problems identified as affecting the outstandingly remarkable values (ORV's) for which the river was designated, where these activities will occur, and when they will occur (i.e. an activity schedule) and the criteria for scheduling treatments. The CMP should address monitoring to determine whether the implemented treatments are correcting the problems identified. The CMP must present a clear vision of the management actions, prioritizations and mitigations needed to protect and enhance ORV's. A revised East Fork of the Jemez Wild and Scenic River 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, Resources

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
J. Stokes, WO Recreation

REVIEW AND FINDINGS

of the

Forest Guardians's Appeal #99-03-00-0106-A217

regarding the

East Fork of the Jemez Wild and Scenic River Management Plan

ISSUE 1: The plan/EA violates the Wild and Scenic Rivers Act.

Contention: A comprehensive management plan (CMP) is required to address (1) resource protection, (2) development of land and facilities, (3) user capacities and (4) other management practices. The plan/EA fails to address user capacities. FS regulations (policy) require that the plan include specific and detailed management direction. No such management direction has been established. Forest Plan standards and guidelines are inadequate to protect and enhance outstandingly remarkable values (ORV's). The management plan fails to enhance and protect the ORV's.

Response: The plan/EA does not:

(1) adequately address resource protection. The plan/EA identifies problems on the ground related to concentrated and unregulated recreation use and also heavy use on both system and non-system trails. These problems are then identified as having extensive impacts on the riparian, soil and water resources. Of approximately 100 dispersed sites and trails, about 51 sites were identified as having resource disturbances being classified as "severe" and the resulting use directly contributing to litter, human waste, trampled vegetation and soil impacts. Grazing was identified as a factor in some of the sites characterized as "severely impacted". However, no specific management direction has been developed to resolve these problems. The plan/EA fails to develop specific management actions sufficient to meet the Act's requirement to protect and enhance the ORV's of the river. The plan/EA also fails to provide (a) specific direction to resolve these identified problems, (b) where these specific locations occur, (c) when the mitigations measures/solutions will occur, and (d) the criteria for scheduling treatments.

(2) The plan/EA fails to address development of land and facilities. It recognizes that there is a disagreement as to the level of facility development and types of recreation uses that should occur within the corridor but it is not clear what level of recreational facilities or which types of recreational uses are appropriate. The plan/EA fails to develop the specific management actions sufficient to meet the Act's requirement to protect and enhance the ORV's of the East Fork of the Jemez Wild and Scenic River.

(3) The plan/EA fails to address user capacities as required by the Act. The plan/EA does not address recreational user capacities therefore, it is not possible to determine which specific management actions are appropriate for the wild, scenic, or recreational classifications of the East Fork of the Jemez Wild and Scenic River.

(4) The plan/EA fails to address other management practices . The plan/EA identifies various problems on the ground related to heavy fishing pressure, various conditions which negatively affect sensitive plants and forest vegetation, and high levels of use combined with congested parking and high speed traffic which then creates a recognized dangerous situation for the visitors. Again, the plan/EA fails to develop specific management actions sufficient to meet the Act's requirement to protect and enhance the ORV's of the river. The plan/EA also fails to provide (a) specific direction to resolve these identified problems, (b) where these specific locations occur, (c) when the mitigations measures/solutions will occur and (d) the criteria for scheduling treatments.

Finding: The East Fork of the Jemez Wild and Scenic River Management Plan is not a comprehensive management plan as required by the Wild and Scenic Rivers Act and as provided by Forest Service policy. It does not address resources protection, development of lands and facilities, user capacities and other management practices with enough specificity to ensure the enhancement and protection of the ORV's .

ISSUE 2: Any level of cattle grazing within the river corridor is inconsistent with the Wild and Scenic Rivers Act.

Contention: The appellants contend that the East Fork of the Jemez Wild and Scenic River Management Plan fails to meet the standards of protecting and enhancing the ORV's and any level of cattle grazing within the Wild and Scenic River corridor under the current degraded ecological conditions is inconsistent with the Wild and Scenic Rivers Act.

Response: Lacking an adequate CMP as defined within the Wild and Scenic Rivers Act, it is premature to determine the appropriate level of cattle grazing within the Jemez Wild and Scenic River boundaries. The Forest Supervisor has an affirmative duty to evaluate and determine whether grazing is diminishing the ORV's for which the Wild and Scenic river was established. Grazing and other uses may continue if and when they are consistent with protecting and enhancing river values.

Finding: The appropriateness of grazing and any defined level of cattle grazing within the East Fork of the Jemez Wild and Scenic River must be analyzed and addressed within the CMP as it is being developed.

ISSUE 3: The plan/EA violates NEPA. An EIS is necessary.

Contention: The plan/EA violates NEPA because it includes an inadequate description of environmental impacts of the proposed plan.

Response: The development and approval of a Wild and Scenic River Management Plan 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.

Finding: Until a CMP for the East Fork of the Jemez Wild and Scenic River (prepared within the guidelines and direction established by the Wild and Scenic Rivers Act and Forest Service

policy interpreting the Act) is completed, it is premature to make a review decision on the adequacy of NEPA.