



United States
Department of
Agriculture

Forest
Service

R3 Regional Office

333 Broadway SE
Albuquerque, NM 87102
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570/2350

Date: February 23, 2004

John Carnie Rivera, Sr., et al
Bar JR Ranch
Terraro, NM 87573-9998

**CERTIFIED MAIL – RETURN
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NUMBER: 70002870000011358002**

RE: Appeal #03-03-00-0039-A217, Pecos Wild and Scenic River Management Plan, Santa Fe National Forest

Dear Mr. Rivera:

This is my decision on the appeal concerning Santa Fe National Forest Supervisor Gilbert Zepeda's decision regarding the Pecos Wild and Scenic River Management Plan, and Forest Plan Amendment. On July 31, 2003, Mr. Zepeda signed a Decision Notice and Finding of No Significant Impact regarding the river management plan and forest plan amendment. This decision was appealed on September 5, 2003, under 36 CFR §217.

FINDINGS

The Pecos Wild and Scenic River Plan provides:

- Appropriate programmatic direction for management of the Pecos River.
- Appropriately restricts recreation use to provide adequate protection to Wild and Scenic River values.
- Appropriately provides flexibility to the Forest Supervisor to select and implement various management actions, including prescribed fire.

The Forest Plan Amendment and Pecos Wild and Scenic River Management Plan do not interfere with State or County authorities or private landowner's rights, and are consistent with the Wild and Scenic Rivers Act and the National Environmental Policy Act. The disposition of the Cowles Leases is outside the scope of this decision. Repeal of the designation of the Pecos as a Wild and Scenic River is outside of the scope of this decision and the authority of the Forest Service.

I am affirming the Forest Supervisor's July 31, 2003, decision amending the Forest Plan and adopting the direction in the Pecos Wild and Scenic River Management Plan. A detailed discussion of each appeal point, contention, and finding is available in the attached Review and Findings.



This decision is subject to discretionary review by the Chief of the Forest Service (36 CFR 217.7(c)(1). The Chief will have 15 days from receipt of this decision to choose whether or not to exercise discretionary review (36 CFR 217.17(d)).

Sincerely,

/s/ Lucia M. Turner
LUCIA M. TURNER
Appeal Reviewing Officer, Deputy Regional Forester

Enclosure

cc: Gilbert Zepeda, Forest Supervisor, Santa Fe National Forest
Joe Reddan, District Ranger, Pecos/Las Vegas Ranger Districts
Deidre St. Louis, R3 RHWR
Christina Gonzalez, R3 Appeals
Barbara Timberlake, WO
Jackie Diedrich, WO

REVIEW AND FINDINGS

of

John Carnie Rivera, et al.

Appeal #03-03-00-0039-A217

Pecos Wild and Scenic River

ISSUE 1: The appellants feel that the decision interferes with State and County laws and regulations, and usurps local authority.

Contention: The decision interferes with the State’s authority over waters, fish and wildlife resources, management of State lands, and is in conflict with local authority.

Response: Section 13(a) of the Wild and Scenic Rivers Act (WSRA) states, “Nothing in this Act shall affect the jurisdiction or responsibilities of the States with respect to fish and wildlife.” Section 13(b) states, “The jurisdiction of the States and the United States over waters of any stream included in the national wild and scenic or recreational river area shall be determined by established principles of law.” Page 3 of the Environmental Assessment (EA, Project Record (PR) #152) correctly states “...the Forest Service is responsible for providing direction on National Forest System lands and establishing a framework for river protection in cooperation with other federal, state, local agencies and private landowners on non-federal lands within the corridor...” This is also consistent with Sections 10(d) and 10(e) of the Act. Page 10 of the Pecos Wild and Scenic River Management Plan (PR #181) provides for developing cooperative management with New Mexico Game and Fish, but does not attempt to regulate activities under their authority. Also on page 10 of the Pecos Wild and Scenic River Management Plan is a recommendation that San Miguel County amend their Comprehensive Land Use Plan to contain direction on minimum lot size, building setbacks, agricultural uses, septic system guidelines, and floodplain restrictions to consistently protect river values. Again, the Forest Service does not attempt to regulate activities under the County’s authority.

Finding: The decision did not attempt to regulate activities under the authority of the State or County. The Plan is not in conflict with State or county laws or regulations.

ISSUE 2: The appellants feel that the decision is in conflict with the WSRA.

Contention A: River boundary establishment procedures were not correctly followed relative to inclusion of private land.

Response: Inclusion of private lands within the boundary of a Wild and Scenic River is consistent with the WSRA. However, the Act confers no regulatory authority to the river administering agency on these non-federal lands. Section 11(b)(1) of the WSRA describes the

authority that the Secretary of Agriculture possesses with regard to private lands, which is to “assist, advise, and cooperate with...landowners...to plan, protect, and manage river resources.”

The detailed boundary for the Pecos Wild and Scenic River is approximately ¼-mile on each side of the river with “adjustments made to follow subdivision and legal landlines.” It does not exceed the 320 acres per river mile limitation specified in Section 3(b) of the Act (EA, p. 3, PR #152).

Finding: The Forest properly included private land within the boundary of the Pecos Wild and Scenic River.

Contention B: River boundary establishment procedures were not correctly followed relative to public involvement and notice.

Response: The boundary for the Pecos Wild and Scenic River was developed in a manner consistent with the direction in Sections 3(b) and 3(c) of the Act. The detailed boundary was determined as a part of the river planning process, included public involvement, and its availability was noticed in the Federal Register on March 24, 2000 (PR #125; EA p. 3, PR #152).

The Forest Service made the following efforts to involve or notify the public:

A January 30, 1989 letter (PR #7) was sent to Cowles Permittees making them aware of the congressional proposal with questions and answers attached. One of the questions and answers is “how are boundaries developed?” The response is that agencies delineate boundaries based on natural features and property lines (see question 5Q p. 2, PR #7). Project Record #9 is an April 3, 1989 letter to Senator Domenici with recommended boundaries based on public involvement. On March 20, 1989, a letter was sent from District Ranger Larry J. Roybal to Mr. John Carnie Rivera responding to Mr. Rivera’s concerns about designation of the Pecos River as a Wild and Scenic River, informing him that a management plan would be developed, and that private landowners within the corridor would be encouraged to participate (PR #10).

On July 12, 1991, a scoping letter was sent to interested parties asking for interests and concerns regarding future management of the river and its corridor (PR #12). A copy of this letter was sent to over 200 parties, including John Carne Rivera at Bar JR Ranch. Project Record #15 indicates that there was a public meeting on October 19, 1991. On January 30, 1997, a letter was sent to interested parties asking for public comment on various aspects of the planning process including river boundaries (PR #31). John Carne Rivera at Bar JR Ranch was on the mailing list for this letter. Boundary alternatives were brought up in PR #34A, notes of March 5, 1997. On March 18, 1997, a letter was sent to interested parties inviting comment (PR #50A). A July 25, 1997 letter was sent to interested parties providing an update on the planning process and an invitation to comment (PR #50A). On October 3, 1997 a letter was sent to interested parties, including John Carne Rivera at Bar JR Ranch, notifying them of an upcoming open house (PR #46). The enclosure mentions that one of the decisions to be made is to determine the final corridor boundary. On October 18, 1997, the Forest Service held a public open house to discuss the progress of the environmental analysis (PR #46 and #47). On October 31, 1997, a letter was

sent to interested parties, including John Carnie Rivera at Bar JR Ranch, regarding the results of the October 18 meeting (PR #50).

On February 12, 1999, a letter was sent to interested parties, including John Carnie Rivera at Bar JR Ranch, with the Environmental Assessment for the Pecos Wild and Scenic River asking for comment (PR #61). PR #68, a February 25, 1999 letter from the Regional Office to the Chief, says that the boundaries were the result of extensive public comment. On June 22, 1999, a letter was sent to interested parties notifying them that the Pecos Wild and Scenic River decision had been made and that it was subject to appeal (PR #80). The boundary location was published in the Federal Register on March 24, 2000 (PR #125). The Pecos Wild and Scenic River Management Plan (PR #180) on page 2 describes the boundary. The authority of the agency to define the boundary is on page 4 and is also found in the EA on pages 11-12 (PR #152). A summary of public involvement, which generally identifies who was contacted and how, can be found on page 4 of the July 31, 2003, Decision Notice (PR #179).

Finding: The Forest properly involved and notified the public regarding establishment of the river's boundaries.

Contention C: Establishment of the Pecos Wild and Scenic River boundaries was not done in a timely manner.

Response: Section 3(b) of the WSRA requires that detailed boundaries be established within one year of designation of a Wild and Scenic River. The Pecos Wild and Scenic River was designated by PL 101-306 on June 6, 1990 (PR #11a). The legislation identified the river segments, lengths, and classifications, but not the portion of the boundary lateral to the river. The detailed boundary should have been described by June 6, 1991, but was not. On February 25, 1999, boundary descriptions and maps for the Pecos Wild and Scenic River were forwarded to the Chief of the Forest Service from the Southwestern Region's Regional Forester (PR #68) the boundary was noticed in the Federal Register on March 24, 2000, and forwarded to Congress (PR #125).

Finding: The Pecos Wild and Scenic River corridor boundary was not completed within the one year statutory timeframe. It was, however, completed in a manner consistent with the requirements of the WSRA.

Contention D: The Plan does not address how adjacent federal lands are to be managed.

Response: Section 12(a) of the WSRA requires that the Secretary of Agriculture take necessary action to protect National Forest System lands "which include, border upon, or are adjacent to" any river included within the National Wild and Scenic Rivers System...." Pages 6-11 of the Pecos Wild and Scenic River Management Plan (PR #180) describe the outstandingly remarkable values to be protected, and specifies how they will be protected through standards and guidelines that are incorporated into the Forest's Land and Resource Management Plan. The Plan states that, "The management direction was designed to meet WSR Act and Forest Service requirements to provide a long-term management strategy for protecting and enhancing the

river's free-flowing conditions, water quality, and scenic, recreational, and cultural/historic values.”

Finding: The Plan adequately addresses how the Secretary will protect National Forest System lands adjacent to the Pecos Wild and Scenic River.

ISSUE 3: The appellants feel that the decision infringes on their private property rights.

Contention: The appellants believe the Plan unlawfully guides development, management, and restoration activities on private lands, without due process or compensation.

Response: Private property rights are unaffected by the Act. The title to appellants' property is not affected by its inclusion in the Pecos Wild and Scenic River Corridor. Private landowners may develop, use, and sell property as they have prior to the river's designation, subject to State and local authorities. Page 3 of the Environmental Assessment (PR #152) correctly states "...the Forest Service is responsible for providing direction on National Forest System lands and establishing a framework for river protection in cooperation with...private landowners on non-federal lands within the corridor...."

Finding: The Forest Service decision does not affect private property rights.

ISSUE 4: The appellants feel that the decision violates the National Environmental Policy Act.

Contention A: The process lacked adequate public involvement.

Response: It is up to the Responsible Official to ensure scoping occurs on the project, that the public is kept informed, and that an appropriate level of environmental analysis and documentation occurs (FSH 1909.15 section 10.4).

Correspondence on the Wild and Scenic River Management Plan in the Project Record is extensive. See response to Issue 2 earlier. There are several letters in the record, beginning at #14; #28--#44; #50 (which has about 80 letters); #78 (78 has about 50 letters); and #155--#176. The record includes the first analysis and decision notice (PR #81, June 22, 1999) which was appealed by 34 appellants (PR #83-116).

Finding: The public involvement on this proposal was extensive, not only in the amount of regular correspondence, but also through the appeal process which allowed for further public input into the decision process.

Contention B: The decision was not based on scientific data.

Response: Forest Service policy (FSH 1909.15 section 12.1) directs that the skills and disciplines of the interdisciplinary team, that does the analysis, must be appropriate to the scope of the action and the issues identified. The team must have the expertise to identify and to evaluate the potential direct, indirect, and cumulative social, economic, physical, and biological

effects of the proposed action and its alternatives. A list of the EA interdisciplinary team members and their skills is found on page 86 of the EA (PR #152).

Scientific report data is listed in the bibliography attached to the EA (PR #152). These same documents are referenced in the EA and in separate specialist reports found in the Project Record. Specialist reports and monitoring data in the record include: a mine waste contamination evaluation (PR #16); an instream flow report (PR #21); recreation use monitoring (PR #41); a scenic area quality report (PR #48); a developed recreation capacity report (PR #51); a sensitive plant report on *Salix arizonica* (PR #54); grazing effects (PR #57); a recreation solutions field monitoring report (PR #130); angler monitoring data (PR #131); a fire and fuels report (PR #132); a proper functioning condition stream checklist (PR #133); a Biological Assessment (PR #134); a Management Indicator Species Report (PR #135); a Biological Evaluation (PR #136); and migratory bird effects (PR #137). Recreation trends and statistics noted in the EA (p. 26) reference a national report (NRSE 2000) and census data. Scenic integrity objectives are from USDA reports (EA, p. 41, PR #152). The historic evaluation in the EA (p. 46) uses a published history (Hmura 1996).

Finding: The EA and specialist reports in the Project Record are based on site-specific monitoring data and evaluations of the resource by journey-level or higher professional employees and consultants. The EA and reports cite relevant scientific data. The analysis meets the requirement under the Council of Environmental Quality regulations for implementing NEPA and use of high quality environmental information (40 CFR 1500.1 (b)).

Contention C: Environmental effects were not properly identified, particularly socioeconomic effects.

Response: The effects displayed in the EA include both site specific and cumulative effects (PR #152). A list of past, present, and reasonably foreseeable projects is found on EA pages 78-85. Affected resources and effects are analyzed in the EA as follows: Management Indicator Species and Mexican spotted owl in wildlife section pages 66-74; heritage in pages 44-47; recreation pages 11, 13, and 26-40; water resources on pages 17 and 60-63; and land ownership on pages 12, 16, and 56-68. Plan resources such as fisheries (page 65); scenic values (pages 15 and 40-43); and wilderness (pages 10 and 27) are addressed. Resource issues such as livestock grazing are addressed on pages 11, 13, 18 and 48-56 and water rights are addressed on page 12. Other resources such as transportation are covered on pages 15-16, and 43-44 and vegetation and fire are addressed on pages 17-18 and 74-79.

Requirements for social and economic analyses are described in Forest Service Manual (FSM 1970) and Forest Service Economic and Social Analysis Handbook (FSH 1909.17). The responsible line officer determines the scope, appropriate level, and complexity of economic and social analysis needed (FSH 1970.6). Socio-economic effects are covered on pages 59-60. The designation decision does not propose more ground disturbance but sets some limits on recreational use (EA, p. 13, Proposed Action, PR #152) and adds standards to the Forest Plan (Decision Notice, PR #179). The effects of these limits are addressed in the economic analysis and the effect of the Wild and Scenic River designation on the economy is negligible.

Finding: The effects discussion is specific and relevant to the decision being made. The economic analysis is consistent with direction for this type of analysis and is not in violation of applicable laws, regulation, or policy.

Contention D: The Finding of No Significant Impact was flawed.

Response: All ten items used to review significance (40 CFR 1508.27) were considered and discussed in the Finding of No Significant Impact which is found at pages 6-8 in the Decision Notice (PR #179). There is no change to the conditions on the ground except some limits on recreational use.

Finding: The FONSI is adequate for the decision being made, which is a Forest Plan amendment and is largely programmatic in nature.