



United States  
Department of  
Agriculture

Forest  
Service

Southwestern  
Region

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File Code: 1570-1

Date: October 6, 1997

Mr. Ray A. Padilla  
Padilla & Associates, P.A.  
12400 Menaul Blvd. NE., Suite 120  
Albuquerque, NM 87112

CERTIFIED MAIL--  
RETURN RECEIPT REQUESTED

RE: Decision on Proposed Cabin Expansion: #97-03-00-0037-A251  
Santa Fe National Forest/Pecos-Las Vegas Ranger District

Dear Mr. Padilla:

This is my decision in your appeal on behalf of Steven Padilla. You have appealed the Forest Supervisor's decision to deny Steven Padilla's request for permission to expand his cabin on Cowles Lease Lot 15.

#### Background

On August 6, 1976, under authority of the Department of Agriculture Organic Act of August 3, 1956 (P.L. 84-979; 7 U.S.C. 428a), the United States of America, Grantee, purchased 299.58 acres, more or less, from Cowles Limited Partnership, a New Mexico Limited Partnership, Grantor, by Warranty Deed, subject to: "A total of 24 leases for summer home purposes, covering a total of 38.60 acres in 23 lots, outstanding to 53 individuals and all recorded in San Miguel County, New Mexico. Grantor further agrees to assign said leases and all rights therein to the United States."

The acquired lands are administered by the Forest Service as a part of the Santa Fe National Forest. The 24 leases are considered special uses authorized under the Organic Administration Act of June 4, 1897 (16 U.S.C. 551). All terms and conditions in the original leases remain in effect. If leases expire, there is presently no authority to extend them. Since the purchase was completed, both the Santa Fe Forest Supervisor and the Pecos District Ranger have administered this area and the leases as recreation cabins in accordance with the original terms.

A decision to deny the application for permission to expand the Padilla cabin on Cowles Lease Lot 15 was announced to the lease holder in the Ranger's letter dated April 1, 1996 (Appeal Record [AR] document number 5). The Ranger's letter dated May 24, 1996, states that she is "deferring approval of requests for cabin additions ..." (AR-6).



The Forest Supervisor, acting as "Deciding Officer" (36 CFR 251.81), chose to reiterate the April and May decisions in a letter (AR-10) dated May 9, 1997. In that letter the Forest Supervisor described appeal rights under 36 CFR 251 and advised that Mr. Padilla would have 45 days in which to file an appeal. The appeal subsequently filed is treated as timely under 36 CFR 251.

Mr. Padilla appeals the denial of permission to expand his cabin. He also contends that the Forest Supervisor has acted in an arbitrary and capricious manner that has been prejudicial to his interests.

In order to gain a better perspective on the issues, I needed to obtain additional documents to add to the administrative record. I extended the time period for decision in accordance with 36 CFR 251.95(c). You were given an opportunity to comment upon the additions and your comments have been considered. My letter dated September 19, 1997, gave notice to you that the record had been closed, but additional time was then allowed to you because of difficulties in forwarding your mail.

In making my decision I reviewed all the documents in the administrative record including your appeal, the Forest Supervisor's responsive statement, and your comments on his statement, which you provided in your letter dated July 29, 1997, and further comments in your letters dated August 19, 1997, and September 24, 1997. Additionally, I considered relevant Federal statutes and policies and procedures as set out in the directives system of the USDA Forest Service.

## Findings

Appeal Issue 1: Denial of permission to expand the cabin.

Contention: The appellant contends that the Forest Supervisor denied permission to expand for spurious reasons; i.e., the need to first complete the Pecos Wild and Scenic River Management Plan.

Response: The record shows that Mr. Padilla's lease allows for construction of a cabin (AR-1, clause 9). The language of the lease is internally consistent in that the permitted construction is a cabin and not a "house" or "dwelling" or other structure. A cabin is commonly understood to be a small and simple shelter. The record shows that Mr. Padilla currently has a cabin on Lot 15 and that, in February 1996, he applied for permission (AR-3) to double the size of his cabin (AR-5).

Terms of the lease require that permission be obtained prior to any "additional improvements to the existing cabin ..." (AR-2, clause 2); there is no inherent right to construct additions. The Forest Supervisor has been delegated the authority to administer the 24 Cowles leases. It is within his authority to review any request for expansion and he has the authority to either grant or deny the request. It is also within the authority of the Forest Supervisor to establish standards by which to manage the Cowles leases (AR-10).

The development of a long-term management plan for the Cowles leases has been linked to actions necessary under the Wild and Scenic Rivers Act (AR-4, 5, 7, and 10). Ranger McCaig's letter of April 1, 1996, (AR-5) attempted to separate the Cowles leases management standards and the Wild and Scenic Rivers study. As noted in the Forest Supervisor's Responsive Statement, the Cowles lease management standards need not be a part of the Wild and Scenic Rivers management plan but would have to be consistent with it.

In this case, the Forest Supervisor has given his reason for denial of applications for expansion; that is, his need to complete a long-range management plan for the Cowles leases (AR-5). If the final management plan for Cowles leases should prescribe the removal of all improvements at the end of each lease period, then it would be no service to leaseholders to allow further building at this time. A Forest Service letter dated January 30, 1997, addressed to all "Neighbors" of the Pecos River analysis area, indicated that proposed actions include "Cowles leases would not be renewed upon expiration" (AR-16).

I find that the Forest Supervisor has the authority to determine whether an expansion is appropriate.

The Forest Supervisor's decision is upheld. The decision to deny the expansion proposal was reasonable based upon this administrative record.

Appeal Issue 2: The Forest Supervisor has acted in an arbitrary and capricious manner that has been prejudicial to Mr. Padilla's interests.

Contention: Mr. Padilla contends that construction has been allowed on another lot in the Cowles lease area and that it started after he was denied permission to expand his cabin. This is offered as proof that he has been treated in a prejudicial manner. Further, Mr. Padilla contends that linkage of the Cowles management plan with the Wild and Scenic Rivers management plan is unreasonable.

Response: The appellant, in effect, alleges a violation of the Administrative Procedures Act (P.L. 89-554) but failed to cite a section of the law or directly relate the application of the law to the actions of the Forest Supervisor.

The appellant reports (AR-24) that a neighbor began construction of improvements after Mr. Padilla had been refused permission for his proposed expansion. The date of authorization of that work (on Cowles Lease Lot #11) is September 7, 1995 (AR-13). The Forest Supervisor's Responsive Statement (AR-22) declares that no authorizations were issued after Mr. Padilla's application in February of 1996. The record contains letters denying permission for similar activities on other residence areas of the Pecos Ranger District. These include two denials for expansion on recreation residence permits (February 1996 and 1997) and a denial to convert a porch into living quarters for a Cowles lease (September of 1996)(AR-14, 15 and 17). Thus, there have been denials of permission to make additions to other cabins both before and after

Mr. Padilla made his request. Mr. Padilla has not demonstrated that he was singled out for separate and prejudicial treatment. He has received the same consideration as others in the Cowles lease area.

The record does not support the allegation of arbitrary and capricious actions prejudicial to Mr. Padilla. Rather than acting in an arbitrary and capricious manner, the Forest Supervisor has delayed expansion authorizations until nonarbitrary standards have been developed.

The Forest Supervisor's decision is upheld.

#### Decision

My review of your appeal was conducted in accordance with 36 CFR 251 subpart C. After a detailed review of the record, I find that the Forest Supervisor's decision is proper and consistent with laws and regulations.

The Forest Supervisor is affirmed with respect to all appellant contentions.

The Forest Supervisor is directed to ensure that the management plan for Cowles leases is promptly completed.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 251.99(f)] unless the Chief should elect to exercise his rights to discretionary review [36 CFR 251.87(e)(1)].

Sincerely,

/s/ Gilbert Vigil  
GILBERT VIGIL  
Acting Deputy Regional Forester  
Appeal Reviewing Officer

cc:  
Santa Fe NF  
Chief (1570)