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File Code: 1570-1/2200
Date: December 22, 2004

Billy Stern
Forest Guardians
312 Montezuma Ave. Suite A
Santa Fe, NM 87501

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7000 1530 0003 5303 6291

RE: Appeal #05-03-02-0001-A215, Mogotito Allotment

Dear Mr. Stern:

This is my review decision on the appeal filed regarding the Decision Notice (DN), Environmental Assessment (EA), and Finding of No Significant Impact (FONSI) on the above-referenced project, which provides for grazing of 150 cattle from June 10 to October 20 annually.

BACKGROUND

District Ranger Travis Moseley made a decision on September 30, 2004, and published it on October 14, 2004 for the Mogotito project on the Carson National Forest. The District Ranger is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of the appeal. The record indicates that informal resolution was not reached.

My review of this appeal has been conducted in accordance with 36 CFR 215.18. I have reviewed the appeal record, including the recommendations 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 on the Mogotito Allotment Project with the following instructions:

- The District needs to add to the project record the cover letter from the Forest to the US Fish and Wildlife Service that transmitted the Biological Assessment requesting concurrence.
- A complete copy of the Management Indicator Species Assessment for the Carson National Forest used in the wildlife report should be added to the project record.

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

Sincerely,

/s/ *Kendall Clark*
KENDALL CLARK
Deputy Forest Supervisor Appeal Deciding Officer

Enclosures (2)

cc: Constance J. Smith, Audrey Kuykendall, Berwyn Brown, David M. Stewart, Ernesto Hurtado, Travis Moseley

REVIEW AND FINDINGS

of

Forest Guardians Billy Stern's

Appeal #05-03-02-0001-A215

Mogotito Allotment, Carson National Forest

ISSUE 1: The decision violates the National Forest Management Act (NFMA) and Carson Land and Resource Management Plan

Contention A: The Forest Service violates NFMA by continuing to allow cattle grazing on the allotment without first evaluating the allotment's suitability for grazing. The Forest Service must determine in Forest planning the suitability and potential capability of the National Forest System lands pursuant to 36 CFR 219.3. Absent a suitability analysis, the appellant contends the Forest Service failed to discharge its obligation under NFMA to take a hard look at each alternative; and, therefore, the choice of any alternative is premature.

Response: The National Forest Management Act does not require that a suitability analysis be conducted at the project level. On August 24, 1999, the United States Court of Appeals for the Ninth Circuit, in *Wilderness Society v. Thomas,* 188 F.3d 1130 (9th Cir. 1999), concluded the Forest Service complied with NFMA in adopting the Prescott Land and Resource Management Plan (LRMP or Forest Plan), including the Plan's allocation of acreage suitable for grazing. The Forest Plan complies with the requirements outlined in 36 CFR 219.20 through the analysis process applied in preparation of the Forest Plan.

The Carson Forest Plan complies with the requirements outlined in 36 CFR 219.20 through the analysis process applied in preparation of the Forest Plan (Carson Forest Plan EIS Appendix B, Description of Analysis Process).

Finding: There is no requirement to conduct a suitability analysis when conducting a NEPA analysis at the project level concerning the management and permitting of livestock grazing. All requirements for suitability under the provisions of 36 CFR 219.20 were met upon completion of the Carson LRMP. The 36 CFR 219 regulations are not applicable in this case; therefore, the decision is not premature.

Contention B: The Forest Service violates NFMA's mandate to identify the alternative that maximizes public benefit. Livestock grazing from strictly an economic efficiency standpoint does not serve the broader public interest as shown in literature such as Loomis 1991, Souder 1997, and the FS publication GTR-INT-224. By failing to conduct a cost/benefit analysis for all uses of the land rather than just for elk hunting and watching, the Forest Service failed to consider whether permitting grazing on this allotment makes economic sense despite the requirement of 36 CFR 219.3.

Response: A determination of agency policy of grazing on National Forest System lands is outside the scope of this decision. The Carson LRMP allocated lands for grazing activity,

balancing permitted livestock with grazing capacity. No grazing capacity is assigned to soils on the Mogotito Allotment with unsatisfactory condition (EA PR #63b p.2). The allotment contains lands identified as suitable for grazing in the Forest Plan (PR #63b p.6). Forest-wide standards and guidelines are summarized in the EA (p.16) for the allotment. The Mogotito Allotment EA purpose and need statement is to authorize livestock grazing and provide long-term management direction through an Allotment Management Plan (PR #63b p.5).

Finding: The alternatives meet the purpose and need statement for economic analysis and are consistent with Forest Plan objectives.

Contention C: The decision fails to manage riparian areas to achieve recovery, and to make the health of riparian areas a priority, and in so doing violates both the Forest Plan and Regional Guide. Impacts to riparian areas were either not examined or were not examined in sufficient detail.

Response: The Regional Guide for the Southwestern Region (1983) was removed as guidance and either incorporated into Forest Plans or dropped as guidance (see Federal Register Notice, 66 FR 65463, December 19, 2001).

The record documents all stream courses within the Mogotito Allotment are intermittent in nature. Sanchez Canyon, the most prominent watercourse in the allotment, has limited riparian areas in the upper end of the canyon. Existing vegetation is providing for bank stabilization and protection from spring and summer runoff events. The channel is stable and no evidence of down cutting is present. Abundant forage and extensive water sources across the allotment result in good distribution with less than ten percent actual use of riparian vegetation occurring in Sanchez Canyon (PR #63b). Monitoring indicates that under the selected Alternative B range condition is good with a stable to slightly upward vegetation trend and an overall increase in ground cover.

Finding: The presence and condition of riparian areas are documented in sufficient detail in the record. Continued protection of and improvement of Sanchez and Lopez Canyons is ensured under this decision, and there is no violation of the Carson Forest Plan.

ISSUE 2: The decision violates the NFMA requirement to maintain viable numbers of all species.

Contention A: The Forest Service must manage sensitive species to sustain viability and prevent the need for listing. In addition, the Forest Service must manage fish and wildlife habitat to maintain viable populations of native species. The appellant contends the Forest Service has failed dramatically in its efforts to protect riparian obligate species and their riparian habitats as a result of continued livestock grazing.

Response:
Sensitive Species. The project record (#62b) addressed two sensitive species on the allotment, the northern goshawk and Ripley's milkvetch, and for both species the determination was a "no effect." In essence, a "no effect" determination would sustain viability and prevent the need for listing for both sensitive species.

Native Species. The wildlife specialist report (PR #62b) analyzed the effects of the selected

alternative on native species, such as elk, red squirrel, sage sparrow, and Bendire's thrasher. The wildlife specialist report found that the selected alternative would manage for native species by maintaining habitat conditions and nesting habitat. This assertion is supported by Breeding Bird Survey data collected in 2003 documenting the presence of high priority Partner's In Flight species, such as the olive-sided flycatcher and Grace's warbler, on the allotment.

Riparian Habitat and Obligate Species. The environmental assessment (PR #63b, p. 11) determined that "no aquatic systems or recreational fisheries exist" within the allotment. The soil and watershed effects analysis (PR #61) determined that "all streams within the allotment are intermittent," and the selected alternative "is not expected to cause any notable degradation or damage to these resources." In addition, the wildlife specialist report (PR #62b) did not address riparian habitat or the two riparian associated MIS (resident trout and macroinvertebrates) due to lack of presence of both habitat (i.e., perennial streams) and species within the allotment.

Finding:
Sensitive Species. Based on documentation in the project record (#62b), sensitive species will be managed to sustain viability and prevent the need for listing.

Native Species. Native species habitat within the allotment is currently being managed and will be managed under the selected alternative to maintain habitat and nesting opportunities for native populations of wildlife.

Riparian Habitat and Obligate Species. The project record (#62b and #63b) provides documentation that riparian species and aquatic systems are not found to exist within the allotment. Management of the existing intermittent stream systems will be accomplished by implementing Best Management Practices within the allotment (PR #61), and will be monitored according to the DN/FONSI (PR #63c).

Contention B: Population survey data of management indicator species are needed to ensure the maintenance of minimum viable populations of wildlife. The appellant asserts that since the Forest Service lacks quantitative monitoring data on many, if not all, MIS in the planning area and the Forest as a whole, and the scant data that it does have indicates some species are declining, the agency's decision is arbitrary and capricious.

Response: The Forest Service has population survey data for the seven MIS found on the Mogotito Allotment (PR #42). Population survey data consists of breeding bird survey data, personal observations by journey level wildlife biologist, and survey data from the New Mexico Department of Game and Fish. Population survey data was used to determine population trends for the seven MIS at the Forest scale. Of the seven species, two species (elk and turkey) showed an upward population trend, four showed a stable trend (sparrow, Abert's squirrel, red squirrel, and woodpecker), and one species (titmouse) showed a downward trend. The project level MIS analysis (PR #62b) determined that the selected alternative would not negatively impact the Forest population trend and would maintain habitat conditions for each of the seven MIS. In addition, the Forest's migratory bird analysis (PR #62b) documents the presence of juniper titmouse, the one species with a downward Forest trend, within the allotment in 2003.

Finding: The project record provides data and information to support that the selected alternative for the Mogotito Allotment will maintain habitat and will not negatively impact the Forest population trend for the seven MIS found within the allotment.

<u>ISSUE 3</u>: The Mogotito term permit issuance must be suspended until the Carson National Forest revises its land and resource management plan and until the Forest Service develops a renewable resources program.

Contention: There is no legally adequate RPA program or land and resource management plan to which the Mogotito term grazing permit issuance project can be tiered. Term permit must be suspended until the Forest publishes a new final environmental impact statement supporting a revised Carson LRMP.

Response: There are no statutes or regulations that describe an expiration date for the Forest Service renewable resource program or land and resource management plans. A recent court decision in Wyoming upheld the use of the current Plan until revised *(Biodiversity Assoc. v. USFS*, decision September 30, 2002). Also, language in the 2004 appropriations bill (section 320) states, "Prior to October 1, 2004, the Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)(A)) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System." The Carson Land and Resource Management Plan will remain in effect until it is revised, consistent with the requirements of the National Forest Management Act and implementing regulations.

Finding: The current plan is in effect until the revision process is completed. There are no requirements to suspend activities until the process is completed.

<u>ISSUE 4</u>: The project does not meet the requirements of the National Environmental Policy Act (NEPA).

Contention A: A range of reasonable alternatives, as required by NEPA implementing regulations, was not analyzed. The environmental assessment fails to take a hard look at potential effects of the proposed action and the no grazing alternative. By examining only one action alternative and refusing to analyze others that result in a lower stocking rates, the Forest Service has violated NEPA requirements to address a range of reasonable alternatives that not only emphasize different factors but also lead to differing results.

Response: In *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir. 1992), the court states, **"**[A]n agency must look at every reasonable alternative, within the range dictated by the 'nature and scope of the proposed action' and 'sufficient to permit a reasoned choice'." For an alternative to be reasonable, it must meet the stated purpose and need and address one or more issues. The formulation of alternatives is driven by significant issues identified in scoping (40 CFR 1501.2(c)).

In the scoping and public involvement phase of the NEPA process, no significant issues were raised that would generate a new alternative (PR #41 interdisciplinary notes, #62a substantive comment listing, #63a documentation of no significant issues). The EA (p. 8) summarizes that no significant issues were raised during scoping of the project. Two alternatives were eliminated from detailed consideration in the EA. These alternatives were to use prescribed burning to reduce the amount of scrub oak and regenerate the grassland areas, but this was dropped because the Forest Service could not predict burning every 1-2 years could maintain the vegetation type. Another alternative that would change livestock numbers or season of use was dropped since the

existing number of head and current season of use maintains flexibility, allowing reductions as needed for range conditions and management objectives (PR #63b, pp. 8-9).

Finding: The Responsible Official appropriately defined the scope of the analysis and analyzed a range of reasonable alternatives within that scope.

Contention B: The Forest Service violates NEPA because the EA fails to consider and disclose adequately the location and protocol for monitoring key forage utilization areas within the allotment. The appellant contends the EA must disclose the names, locations, forage utilization limits, and monitoring protocol for each and every key area within the allotments.

Response: Proper forage utilization standards are employed to sustain such things as plant health and vigor, long-term soil productivity, and protection for threatened, endangered, and sensitive species and their habitats. Forage utilization levels are determined based on guidelines set out in the R-3 Allotment Analysis Guidelines. These guidelines specifically describe appropriate forage utilization levels recommended for the purpose of improving rangeland condition.

Forage utilization is measured by key area on key forage species within various pastures encompassing a grazing allotment. Key areas are locations readily accessible to water and forage and are located on level to intermediate slopes. Key species are herbaceous and woody vegetation that domestic livestock prefer at any given time of the year. By monitoring key areas, the Forest Service can ensure that an allotment or pastures within an allotment are not overgrazed.

The record demonstrates that utilization standards for herbaceous forage will be 40 percent of annual available forage. Projected utilization by livestock and wildlife is expected to vary between 5 and 40 percent depending on the variability in precipitation and annual forage production (PR# 63b). Locations of key areas are disclosed in the project record (PR #65).

Finding: Utilization standards for the Mogotito Allotment were developed in accordance with Forest Service policy. There have been no violations of NEPA.

Contention C: The Forest Service violates NEPA by failing to consider and disclose the cumulative impacts of the proposed action. The appellant contends the cumulative effects of the alternatives were not adequately addressed, considering past, present, and reasonably foreseeable activities, as required by NEPA. Appellant states, "The EA contains virtually no analysis of cumulative effects…" The EA does not even attempt to catalog other activities occurring with the allotment's boundaries.

Response: The EA lists several past activities and details present and foreseeable future actions that could have effects on resources. Such activities include a 2002 wildfire and road uses. Effects are disclosed and their importance discussed (EA PR #63b, pp. 24, 33-35, 40, 50-51, 54-55).

Finding: The record includes consideration of past, present, and reasonably foreseeable actions and their cumulative effects on the components of the human environment. The cumulative effects analysis is adequate for an informed decision.

Contention D: The Forest Service violated NEPA because the EA fails to consider the full

economic implications of this action. The EA failed to weight the economic costs and benefits of the project. Costs and benefits of elk forage use and elk hunting should have been considered. Although the methodology for considering user days is not clear, hunting and other recreation use has an impact on the local economy that should have been considered in the EA.

Response: Projects such as the Mogotito grazing allotment are developed to be consistent with direction described in the Forest Plan. Project level requirements for social and economic analysis are described in Forest Service Manual (FSM 1970) and Forest Service Social and Economic Analysis Handbook (FSH 1909.17). The proposed action is the implementation of previously approved practices that are included in the current Carson LRMP. The responsible line officer determines the scope, appropriate level and complexity of economic and social analysis needed (FSM 1970.6).

The economic effects of the project were identified and disclosed in the analysis (PR #51) and EA (PR #63b). Benefits of maintaining traditional land uses, reduced public land grazing fees (as compared to private land grazing fees) are benefits to the permittee while fees paid and range improvements maintained are benefits to the Forest Service (PR #63b, pp.52-55).

With respect to costs and benefits of elk forage and elk hunting, the appropriate level for determining resource output tradeoffs is at the Forest level. The number of hunting permits and wildlife population numbers vary from year to year based on habitat conditions and management goals. The economic effects of wildlife use where there is a trade-off with other multiple uses must be made at the Forest Plan level.

Finding: The economic analysis is consistent with regulation and manual and handbook direction for project-level decision making and is not in violation of applicable laws, regulations or policy.

<u>ISSUE 5</u>: The FS has violates NFMA and NEPA because the EA fails to consider the effects of consistent past violations of the grazing term permit.

Contention A: The Forest Service violates NEPA because the EA fails to consider the effects of consistent past violations of the term grazing permit in relation to the preferred action.

Response: There is nothing in the record to indicate there is a history of permit violations on this allotment.

Finding: The appellant's contention is unsubstantiated.

Contention B: The EA fails to recognize or discuss the significant impacts of new water developments and range improvements. The impacts of additional fencing, water developments and other developments need to be fully analyzed in a draft EA prior to issuance of any permit.

Response: There are no new water developments and range improvements proposed.

Finding: The appellant's contention is unfounded.

Contention C: The stocking numbers in the preferred alternative are based on undisclosed, arbitrary and capricious predictions about the levels of forage that will be available. The EA includes extensive tables (pp. 54-55), predicting the expected range conditions from the various

proposals but has no basis for these predictions.

Response: There are no tables in the EA predicting the expected range conditions. Monitoring indicates that under the selected alternative range condition is good with a stable to slightly upward vegetation trend and an overall increase in ground cover (PR # 63b).

Finding: The appellant's contention is unfounded.

ISSUE 6: The Forest Service fails to provide an EA for comment in violation of existing law in NEPA, Appeals Reform Act and Administrative Procedures Act.

Contention: The 9th Circuit has ruled in two cases (*Anderson v. Evans* and *Citizens for Better Forestry v. USDA*) that the agencies must provide a full EA for comment. The document provided for public comment gave little detailed information on the expected effects of the proposed action. The public did not have the information available to provide the substantive comments being demanded by the new regulations. The appellant believes this was an additional scoping notice.

Response: In the *Citizens for Better Forestry v. USDA* case (August 2003), the court said that the 2000 Planning Rule EA/FONSI was issued 5 months after the comment period in the Federal Register had closed. In the *Anderson v. Evans* (Makah tribe whaling case, November 2003), NOAA had prepared an EA that went out for comment, then the proposed management plan was incorporated into the final EA and DN, but no public comment opportunity was given on the changed proposal. There is no language in either court decision saying that a full EA must be sent out for public comment.

In the Mogotito project, a 30-day notice and comment period was used and the proposed action sent out for public comment included a summary of the proposed action, a description of the existing condition, purpose and need statement and the alternatives (PR #49). These parts included enough information for the public to respond with substantive comments specific to the proposed action, comments relating to the proposed action, and reasons for the Responsible Official to consider in making the decision (36 CFR 215.2).

Finding: The proposed action sent out under the 30-day notice and comment period met the new appeal regulations at 36 CFR 215.3. Enough information was given in the proposed action package to generate substantive comments from the public.

ISSUE 7: The decision violates the Multiple Use and Sustained Yield Act.

Contention: The decision violates the Multiple Use and Sustained Yield Act by failing to manage for the highest public benefit. The appellant further alleges that the decision will continue to impair land productivity.

Response: Management of National Forest Lands for the highest net public benefits was analyzed and decided upon in the preparation of the Carson LRMP. The Forest Plan provides direction for management emphasis within the project area. Net public benefits were analyzed appropriately during the forest plan's preparation and are outside the scope of project-level analysis.

In reference to the contention that the decision will continue to impair land productivity, EA (PR

#63b p.19) describes the effects of the selected alternative on the various resources. The effects of Alternative B as it continues current management, is a stable trend in terms of vegetation species composition, a decrease in the amount of bare ground, and an increase in overall ground cover. The effects analysis demonstrates that current stocking rates and management practices are in balance with resource capabilities. The DN (PR #63c, p.1) states that Alternative B best moves toward all of the desired future conditions described in the EA.

Finding: This decision will improve land productivity and is, therefore, consistent with the Multiple Use and Sustained Yield Act.

ISSUE 8: The EA violates the Administrative Procedures Act.

Contention A: Given the current degraded condition of the land due to historical and ongoing livestock grazing, the decision to continue to graze the land is inexplicable. Based on data in the EA, there is little known about the effects this alternative would have on the ecosystem.

Response: The EA/DN and documents in the record disclose the analysis done to evaluate resource conditions on the allotment and the effects of alternatives considered.

Finding: In the DN for the Mogotito Allotment, the Responsible Official properly assessed the issues, public input, and impacts to resources in his decision rationale. The Responsible Official made a reasoned and informed decision based on the analysis and has not violated the Administrative Procedures Act.

Contention B: The EA also fails to connect the allowable use annual use level presented, with measurements of available forage, while the EA admits that higher forage levels are connected with years of above average precipitation. Thus the actual annual use allowed is an arbitrary decision.

Response: The EA describes drought conditions over the last 3 years and connects that with lower than normal forage production. The permittee has reduced livestock numbers due to drought. Finally the proposed alternative with flexible season of use and livestock numbers allows adjustments for water and forage (EA, PR #63b, pp. 3, 19).

Finding: The annual use in the selected action is in keeping with current conditions and is flexible in terms of weather and drought. The Responsible Official made a reasoned and informed decision based on the analysis and has not violated the Administrative Procedures Act.

ISSUE 9: The decision violates the Endangered Species Act (ESA).

Contention A: It is a violation of the ESA to issue permits for grazing allotments without conducting a Biological Assessment to determine the impacts of permit issuance and prior to consulting with USFWS regarding impacts. The Forest Service is violating its duty to conserve species under the ESA.

Response: Section 7(a)(2) of the Endangered Species Act requires Federal agencies to "insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence" of threatened or endangered species. Effects to threatened and endangered species are assessed in documents found in the project record.

A Biological Assessment (BA) was completed for the Mogotito Allotment on June 30, 2004, by journey level biologist Joseph Lujan (PR #58a). The BA reached a "May Affect, Not Likely to Adversely Affect" determination for the Mexican Spotted Owl and its proposed Critical Habitat.

The US Fish and Wildlife Service issued a letter of concurrence (PR #60) for the "May Affect, Not Likely to Adversely Affect" determination made in the Mogotito Allotment BA on September 10, 2004 (Cons. # 2-22-04-I-286 and #2-22-03-I-272). The project record should have contained the cover letter from the Forest to the Fish and Wildlife Service that transmitted the Biological Assessment requesting concurrence from the Service.

Finding: The selected action for the Mogotito Allotment EA complies with the Endangered Species Act of 1973, as amended, since Section 7 consultation was completed through the issuance of a letter of concurrence by the US Fish and Wildlife Service (PR #60) on September 10, 2004.

United States Department of Agriculture | **Forest Service** | **Southwestern Region 3**
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File Code: 1570-1/2200 **Date:** December 21, 2004
Route To:

Subject: ARO, Appeal #05-03-02-0001-A215, Mogotito Allotment

To: Forest Supervisor, Carson NF, Appeal Deciding Officer

This is my recommendation on the disposition of the appeal filed in protest of the Decision Notice and Finding of No Significant Impact concerning the Mogotito Grazing Allotment, Canjilon Ranger District, Carson National Forest.

District Ranger Travis Moseley signed the decision on September 30, 2004. The District Ranger is herein termed as the Responsible Official. Forest Guardians filed an appeal of this decision under the 36 CFR 215 appeal regulations.

Informal Disposition

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of this appeal. The record reflects that informal resolution was not reached with Forest Guardians.

Review and Findings

My review was conducted in accordance with 36 CFR 215.19 to ensure that the analysis and decision are in compliance with applicable laws, regulations, polices, and orders. The appeal records, including the appellant's issues and requests for relief have been thoroughly reviewed. Having reviewed the Environmental Assessment (EA), decision, and the project record file, as required by 36 CFR 215.19(b), I conclude the following:

1) The decision clearly describes the actions to be taken in sufficient detail that the reader can easily understand what will occur as a result of the decision.

2) The selected alternative should accomplish the purpose and need established. The purpose and need stated in the EA reflect consistency with direction in the Forest Plan for the Carson National Forest.

3) The decision is consistent with policy, direction, and supporting evidence. The record contains documentation regarding resource conditions and the Responsible Official's decision documents are based on the record and reflect a reasonable conclusion.

4) The record reflects that the Responsible Official provided ample opportunity for public participation during the analysis and decision making process. The Responsible Official's efforts enabled interested publics the opportunity to comment and be involved in the site-specific proposal.

After considering the claims made by the appellant and reviewing the record, I found that the Responsible Official conducted a proper and public NEPA process that resulted in a decision that is consistent with the Carson National Forest Plan. I found no violations of law, regulations, or Forest Service policy, however, I have requested the following document be added to the project record for clarification.

The District needs to add to the project record the cover letter from the Carson National Forest to the Fish & Wildlife Service that transmitted the Biological Assessment requesting concurrence from the Service.

Recommendation

I recommend that the Responsible Official's decisions relating to this appeal be affirmed with respect to all of the appellant's contentions.

/s/ Ernesto G. Hurtado
ERNESTO HURTADO
District Ranger, Appeals Reviewing Officer

cc: Travis Moseley, Berwyn Brown, Mailroom R3 Carson, Constance J. Smith, David M. Stewart

Hard copy attached to ADO letter sent to appellant; Forest Guardians