



United States
Department of
Agriculture

Forest
Service

Cibola National Forest
and National Grasslands

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File Code: 1570-1/2300

Date: June 24, 2005

Thomas Jervis
New Mexico Audubon Council
60 Barranca Rd.
Los Alamos, NM 87544

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
NUMBER: 7003 1010 0005 0060 5248**

RE: Appeal #05-03-03-0002-A215, Water Canyon Campground Relocation and Watershed Restoration Project, Magdalena Ranger District, Cibola National Forest

Dear Mr. Jervis;

This is my review decision on the appeal you filed regarding the Decision Notice (DN), Environmental Analysis (EA), and Finding of No Significant Impact (FONSI) on the above-referenced project, which provides for replacement and relocation of the existing campground facilities out of the riparian and floodplain areas. This project will also allow for the rehabilitation of those portions of the watershed within the project area where erosion levels exceed state, forest, regional and national standards.

BACKGROUND

District Ranger Dennis Aldridge made a decision which was published on March 30, 2005, for the Water Canyon Campground Relocation and Watershed Restoration Project. The Forest Supervisor/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 your 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 describes the actions to be taken in sufficient detail; b) the selected alternative should accomplish the purpose and need; c) the decision is consistent with agency policy, direction and supporting evidence; and d) ample opportunity was provided for public participation during the decision making process, however the relationship with appellants should be rebuilt.



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 Water Canyon Campground Relocation and Watershed Restoration Project. This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR §215.18(c)]. A copy of this letter will be posted on the internet on the Cibola Forest appeals listing by date (scroll to bottom of page) at http://www.fs.fed.us/r3/appeals/forest_cibola/forest_cibola_index.htm .

Sincerely,

/s/ Nancy Rose
NANCY ROSE
Forest Supervisor

cc: Deborah L Walker, Jeffrey W Saari, Judy Levin, Constance J Smith, Dennis Aldridge, Jackie C Andrew

2 enclosures: Findings document and ARO letter

REVIEW AND FINDINGS

of

Mr. Jervis/ New Mexico Audubon Council's

Appeal #05-03-03-0002-A215

Water Canyon Campground Relocation and Watershed Rehabilitation Project Magdalena District, Cibola National Forest

ISSUE 1: The Water Canyon Project violates NEPA

Contention A: The need expressed in the EA is for “*balancing the public’s demand for increased recreation opportunities while maintaining and where appropriate improving the resources*”, however the project is primarily focused on providing expanded opportunities in a sensitive environment. The described project does not answer the defined purpose and need as follows.

- There is no expressed need in the EA for the proposed group site nor is there demand from the public for expansion.
- The new host site will be in the hydrologic floodplain. Without the host site the entire riparian area south of the FR-235 stream crossing could be restored, thus better meeting the stated Purpose and Need.
- Construction of a new shelter structure and expansion of day-use facilities are contradictory to the goal of riparian restoration, not supported by the purpose and need and not consistent with Forest Plan direction.

Response: The proposed action, (EA PR#45 pp.5-8), includes provisions for both increasing recreation opportunities and maintaining and improving resources. In addition to establishing campsites, day use sites, an interpretative trail, and restrooms, the proposed action contains over 15 individual activities designed to rehabilitate a degraded riparian area (such as removing structures from the floodplain, providing erosion control, and planting native species). Other activities will be implemented to rehabilitate the area south of the FR-235 stream crossing, which will help restore the riparian area. The mitigation measures (PR#45 Table 2) and Design Features (PR#45 Table 4 Appendix A) are also aimed at maintaining or improving resources.

The new campground host site and other construction will increase recreational opportunities per the Purpose and Need statement. The proposed campground host site will be out of the floodplain area after the re-grading of the loop area (PR# 57, Response to Jervis comment #6). The host site will block vehicle access to the original road alignment to the upper loop (PR# 37, p. 4) and improve riparian resources thus meeting the purpose and need.

Expanding the total number of sites can also be interpreted as part of *increasing* recreational opportunities. Expansion of day use facilities is located outside of the riparian area (PR# 45,

p.17 and PR #57, p. 4).

The construction of a new shelter structure is to replace the *existing* day use shelter that will be moved out of the riparian area, the District is not proposing any “new” type of day use facility (EA PR#45 p.6). These actions are intended to help restore the riparian area, which meets the Purpose and Need and is consistent with Forest Plan direction to maintain existing developed sites in MA 16.

Finding: The Proposed Action includes activities that will meet the Purpose and Need. See Contention C for answer about expansion and demand for group site.

Contention B: There is an absence of reasonable alternatives presented in the EA. Only the preferred alternative and “no action” are described. Appellant refers to comments made during the scoping process.

Response: “[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.’” *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir. 1992). 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)).

The District considered and responded to scoping comments in the EA (PR#45 Appendix A Table 5 p. 44). Based on their analysis of comments, the interdisciplinary team and Responsible Official did not determine any issues as significant and documented their rationale for determining this in the Issues Report (PR# 76), Alternatives Considered (PR #75), and the EA (PR#45 pp.12-13). No issues were brought up during the scoping or from the interdisciplinary team that required an alternative different from the proposed action.

Finding: The Forest Service analyzed a reasonable range of alternatives based on the issues identified during scoping.

Contention C: There is no expressed need in the EA for the proposed group site, nor do the scoping or draft EA comments provide evidence that there is demand for expanded facilities.

Response: The response to comments on the EA (PR#57) acknowledges that no comments received during scoping requested expansion, but documents that a request was received during the comment period and local publics had approached the District Ranger with requests. The recreation specialist report states that the day use group site and overnight group site address needs expressed by local communities such as group meetings and family reunions (PR#37 p. 4).

Finding: The project record supports the Responsible Officials’ decision to expand the facilities.

Contention D: None of the comments that appellants made during scoping period were addressed in the EA. None of the substantive comments provided by appellants on the EA and in meeting with the District Ranger were addressed in the DN/FONSI.

Response: The interdisciplinary team considered and answered scoping comments made by Tom

Jervis, representing the New Mexico Audubon Society early in the planning process (PR#36 comment review) and in the EA (PR#45 Appendix A Table 5 p.44). Responses to the appellant's EA comments are found in the project record (PR#57 pp. 2 through 6).

Finding: Comments made by the appellant during scoping and the official 30-day EA comment period were reviewed and considered by the District.

Contention E: The appellant objects to the new 50 person overnight group-use area proposed for North Fork Canyon because this area hosts flammulated owls, a Partners-in-Flight Priority Species. There are also breeding western screech-owls and breeding gray flycatchers in this canyon, other Partners-in-Flight Priority Species.

Response: The Bird Specialist Report (PR# 24) documents the presence of flammulated owl and gray flycatcher in the Water Canyon analysis area. Nest cavities for the flammulated owl are present in the newly proposed overnight group campground and gray flycatcher seems to be fairly common in the new individual site area. This document notes that care must be taken to “not disadvantage” the flammulated owl by removal of nest trees, and that the gray flycatcher would not be affected “short of drastic habitat alternation.”

The General Wildlife, Management Indicator Species, and Migratory Bird Specialist Report discloses that 2.5 acres of flammulated owl habitat would be affected by the removal of some trees, but there would be “no impacts to population or habitat trend” for this species because the habitat lost will be inconsequential compared with the amount of habitat that exist (PR#33 pp.12-13). For the gray flycatcher, the General Wildlife report also states there would be no impacts to population or habitat trend (p. 12) because the amount of habitat affected is inconsequential compared to the total amount of habitat that exists. From the EA (PR#45, map between pp. 7 and 8), the total area of new campgrounds is approximately 6.5 acres. The EA (PR#45, p. 15) notes temporary disturbance effects to wildlife due to construction will be temporary.

The General Wildlife Report (PR#33) lists mitigation measures for the project (PR#33 pp. 14-15) and these mitigation measures were incorporated into the EA (PR#45, p. 36). Mitigation measures include consulting with a wildlife biologist where there are questions regarding leave trees, retaining all large conifers where feasible, and retaining large snags or trees with defects if these do not pose a safety hazard.

Effects to western screech-owl were not analyzed as this species is not a Partners-in-Flight Priority Species. However, the analysis of Priority Species with similar habitat and life history characteristics as well as analysis of Management Indicator Species are sufficient for determining that effects to this species would be similar to those analyzed.

Finding: The specialist reports disclose habitat affects to the flammulated owl and gray flycatcher. The EA provides for mitigations to minimize effects to migratory species.

Contention F: The improvements in FR-39 to the location of the proposed group site will exacerbate excessive vehicle use in the streambed of the North Fork Canyon further degrading the riparian area.

Response: In the EA several “improvements” are listed for Forest Road 39, including relocating up to 1/8 mile of the road, installing a new cattleguard, selective cutting along the relocated

route; and placing water bars, rolling dips and straw bales to decrease erosion (PR#45 p.7). Effects of these improvements on FR-39 are analyzed in the EA (PR#45 pp. 14 to 24). The entire family and group overnight camping areas will be fenced to exclude livestock which will also prevent vehicles from driving into the streambed of North Fork Canyon from the campground area.

Finding: The effects of improvements to FR-39 were appropriately analyzed and disclosed.

Contention G: Extensive removal of trees and marking of the proposed campground had already occurred on February 1, 2005. [Appellant implies decision is already being implemented.]

Response: The project record does indicate plans to go to the site on July 23, 2004 for some preliminary conceptual staking of the proposed project area (PR# 17). However, there is no record in the EA, meeting notes, comment letters or specialist reports stating that any type of removal and marking of trees has already occurred within the boundaries of the proposed campground.

Finding: It is not uncommon to stake out conceptual designs for a project and does not imply implementation. No evidence has been submitted with the appeal to support the cutting of trees in the proposed campground therefore this contention has no basis.

Contention H: This project is unsuitable for a Finding of No Significant Impact because of

- the unique geographic characteristics of the area, making it a destination for birding and resources for a number of uncommon species of birds,
- adverse effects on the presence and nesting of flammulated owls, western screech owls, gray flycatchers and elf owls
- adverse effects on the visitor's experience of solitude and quiet, and
- potential of controversy in the changes proposed for an ecologically sensitive and important area.

Response: A Finding of No Significant Impact (FONSI) is determined when an action would not have a significant effect on the human environment, and is therefore exempt from requirements to prepare an environmental impact statement (EIS). The EA addresses all ten points of determining significance outlined in the Council on Environmental Quality NEPA regulations (40 CFR § 1508.27) on pages 24-27 (PR#45).

The Decision Notice also addresses the finding of no significant impact for this project (PR# 63 pp.3-4). The 30-Day EA Comments and Responses document addresses each of the above contentions in detail (PR# 57, p. 10).

40 CFR § 1508.27(b)(3): *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.* The proposed project area is not listed as an ecologically critical area (e.g. a Congressionally-designated area) and does not contain any parklands, prime farmlands, or wetlands, refer to EA (PR#45, p.4). It is also not adjacent to any such area.

40 CFR § 1508.27(b)(4): *The degree to which the effects on the quality of the human environment are likely to be highly controversial.* The Responsible Official noted that no highly controversial effects to the quality of life were identified (PR#63). There were no comments from the scientific community identifying any controversy nor did the public identify any controversy or conflict in the scientific findings in the EA (Response to Comments, PR# 57 p. 10).

40 CFR § 1508.27(b)(8): *The degree to which the action may adversely affect districts, sites, highways, structures or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources.* The eligibility of one historical site was not determined and will be avoided or mitigated. The District determined that with mitigation the proposed action would not affect any historical or cultural resources eligible for the National Register of Historic Places (EA PR#45 p.25).

40 CFR § 1508.27(b) (10): *Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.* The project has been determined to be in compliance with applicable environmental laws, regulations, and policies, including those regarding wildlife. Therefore, the proposed action does not threaten to violate a requirement imposed for the protection of the environment. In regards to the species listed by the appellant, the effects to these species were analyzed and disclosed (see Response to Contention E).

The contention that the proposed project will impose adverse effects on the visitor's experience of solitude and quiet was addressed in the EA Response to Comments (PR# 57 p. 10). This is a developed recreation site and the concept of visitor's experience of solitude and quiet are not equivalent to that of a wilderness area.

Finding: The analysis of the project supports the Finding of No Significant Impact.

ISSUE 2: The Water Canyon Project Violates NFMA.

Contention: The project is to renovate existing picnic facilities to make them accessible, to relocate a campground of about a half dozen sites located in the floodplain, replacing it with an expanded campground of 18 sites, and to create a new group site further up the North Fork. These actions are not consistent with Forest Plan direction which, as pointed out in the EA (p. 21 of 57), is to "maintain" the site, nor are they consistent with the statement of Purpose and Need, nor do they move the project area towards the desired conditions described in the Forest Plan.

Response: The management emphasis for recreation in the Forest Plan, for Management Area 16 (PR #2, p. 182, Amendment #7, 09/96) containing the Water Canyon campground, is that "Existing developed sites will be maintained." Forest-wide management emphasis for riparian areas (PR #2, p. 71-3, Amendment #7, 09/96) is to "Emphasize maintenance and restoration of healthy riparian ecosystems..." and "Management strategies should move degraded riparian vegetation toward good condition as soon as possible". The Forest Plan lists the Water Canyon campground in its rehabilitation schedule of recreation sites to be rehabilitated in the first period of plan implementation (PR #2, p. 286, Amendment #7, 09/96). Furthermore, the standards and guidelines for Management Area 16 (PR#2, p. 187, Amendment #4, 05/90) allow for the

construction of new trails and developed sites in the first period to accommodate a capacity of 100 additional PAOTs (Persons At One Time).

The Purpose and Need statement of the EA (PR #45, p. 11) states that “There is a need for balancing the public’s demand for increased recreational opportunities while maintaining and where appropriate, improving the resources that provide those opportunities.” It goes on to further state “Maintain and where appropriate improve riparian habitat, while maintaining the remote characteristic of the campground” and “Specifically the Proposed Actions help the district to comply with current laws and regulations governing activities in riparian and flood plain areas, accessibility, watershed restoration and the public’s desire for day and overnight recreation opportunities.”

The main contention seems to be what is meant by the Management Area 16 management emphasis to “maintain” existing developed sites. The Forest Plan clearly identified the need to protect riparian areas by maintaining *and improving* the Water Canyon campground, by scheduling it for rehabilitation in the first period *and* allowing for new developed site construction to accommodate up to 100 additional PAOTs.

Findings: The EA decision does move the Water Canyon campground project area toward the desired conditions for riparian and developed recreation sites described in the Forest Plan, and follows the forest-wide riparian standards and guidelines, as well as the recreation standards and guidelines for Management Area 16. Therefore, the project is consistent with the Cibola Forest Plan and with NFMA.



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File Code: 1570-1/2300
Route To:

Date: June 22, 2005

Subject: ARO, Appeal#05-03-03-0002-A215, Magdalena Ranger District, Water Canyon Campground, New Mexico Audubon Council

To: Forest Supervisor

This is my recommendation on the disposition of the New Mexico Audubon Council appeal filed in protest of Water Canyon Campground Relocation and Watershed Rehabilitation Project Decision Notice and Finding of No Significant Impact, Magdalena Ranger District, Cibola National Forest.

District Ranger Aldridge signed the decision on March 28, 2005. The District Ranger is herein termed as the Responsible Official. New Mexico Audubon Council 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. The record reflects that Ranger Aldridge attempted to reach resolution with Dr. Bernie Foy and Tom Jarvis, both appellant parties expressed a desire for consideration of another alternative, if the suggested alternative was not considered, the appellants wished to proceed with appeal disposition.

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 describes the actions to be taken in sufficient detail that the reader can understand what will occur as a result of the decision. The Decision Notice and the Environmental Assessment with its included maps sufficiently describe the proposed action (Selected Alternative) in appropriate detail. The maps are clear and the areas to be affected and rehabilitated are delineated.



- 2) The selected alternative should accomplish the purpose and need established. When the description of the existing conditions and the purpose and need sections are both considered it becomes evident that the Water Canyon project has a dual purpose of moving existing use out of riparian areas and meeting the public demand for recreation opportunities. The purpose and need stated in the EA balance the objective to maintain the campground, the direction to restore riparian areas and the need to accommodate increasing recreational use. As such, the selected alternative is within the Forest Plan for the Cibola National Forest.

- 3) The decision is consistent with policy, direction, and supporting evidence. The record contains documentation regarding resource conditions and the effects of the selected alternative. The descriptive conclusions contained in the Environmental Assessment are supported by analysis in the project record. The evidence is sufficient for a project of this small scope; 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 public was offered two opportunities to comment on the proposed action and alternative. The Responsible Official met with appellants, on site, prior to the final decision and discussed many of the same concerns expressed in the appeal. The Responsible Official's efforts enabled interested publics the opportunity to comment and be involved in the site-specific proposal.

- 5) The decision process was adhered to but the Deciding Official allowed an opportunity to more fully include appellants in the analysis process to be neglected. Appellants have in the past been involved in partnership projects with the Forest Service and I would hope the Service makes every effort to maintain or rebuild that relationship.

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 Cibola National Forest Plan. I found no violations of law, regulations, or Forest Service policy.

Recommendation

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

Signed,

/s/ Jackie Andrew
JACKIE ANDREW
District Ranger

Hard copy of this letter to be attached to ADO letter sent to appellants.

cc: Constance J Smith