



United States
Department of
Agriculture

Forest
Service

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File Code: 1570-1/2350-4

Date: March 5, 2003

Board of County Commissioners
Otero County
1000 New York Ave. Rm. 101
Alamogordo, NM 88310-6935

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
NUMBER:**

Re: Appeal #03-03-00-0009-A217, Forest Plan Amendment 11, Lincoln National Forest

Dear County Commissioners:

On September 11, 2002, the Lincoln National Forest Supervisor, Jose Martinez, signed a Decision Notice amending the Lincoln National Forest Land and Resource Management Plan (Lincoln Forest Plan) to protect eligible rivers. This Forest Plan Amendment 11 applies to Lincoln National Forest Rivers that have been inventoried and deemed eligible. The amendment placed current Forest Service policy for eligible rivers into the Lincoln Forest Plan.

Section 2(b) of the Wild and Scenic Rivers Act describes eligibility. It states that “*A wild, scenic or recreation river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possess one or more of the values referred to in Section 1, subsection (b) of this Act.*” Interagency guidelines (Departments of Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas), which are in the Federal Register—Vol. 47, No. 173, describe the purpose of a Wild and Scenic River study report, including eligibility. The Forest Service Handbook provisions (FSH 1909.12, Chapter 8) are agency policy defining eligibility and river protection measures. Eligible rivers are identified through an eligibility determination process where specialists compare rivers against identified criteria. Rivers that meet the criteria are determined to be eligible. This eligibility determination process does not fall under the National Environmental Policy Act because it is not an agency decision.

On October 31, 2002, we received your appeal of Mr. Martinez’ decision. You requested additional time to further express your views and attempt to resolve the appeal issues. Your request for additional time was not granted. On December 2, 2002, your representatives met with Lincoln National Forest Officials to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on the appeal. At that meeting you agreed to continue the appeal process.

Your appeal challenges the protection of eligible rivers through measures included in the Lincoln Forest Plan Amendment. You suggested that Mr. Martinez’ decision violates law, regulation and policy. You alleged that there was no coordination or consistency review, the decision lacked effects analysis, and that the decision is inconsistent or contrary to specific concerns.

I am affirming the Forest Supervisor’s September 11, 2002, decision amending the Lincoln Forest Plan. My decision is based on the following:



1. Forest Supervisor Jose Martinez's decision is a Forest Plan amendment that moves current Forest Service policy into a common location for interested public and agency administrators. There are no effects of placing current agency policy into the Lincoln Forest Plan since the Forest is already following agency policy. Because the decision was to continue present management following Forest Service policy, minimal analysis was required. (Appeal point 1)
2. Several of your concerns were related to the analysis of effects of the decision. Effects analysis was completed for this decision. The effects of following agency policy are very limited because it is continuation of current management. The analysis of effects only included issues within the scope of this decision.

Your concerns about evaluation of effects and consistency with other governmental concerns will be appropriately addressed during suitability analysis or project-level analysis. The suitability analysis will be completed during the Lincoln Forest Plan revision that is proposed to begin in 2008. This eligible river interim direction will apply until suitability analysis is completed. (Appeal points 2- 6)

3. The Wild and Scenic Rivers Act section 5(d)1 requires "*In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas...*" The identification of eligible rivers will allow us to give consideration to potential rivers during future water resources analysis processes. Although this is a federal requirement, it is consistent with State land use planning and evaluations. (Appeal point 7)
4. Health and safety concerns would be evaluated during project level analysis and suitability analysis. (Appeal point 8)

This decision is subject to discretionary review by the Chief of the Forest Service. 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

cc: Jose M Martinez, Denise McCaig, Christina Gonzalez