



United States
Department of
Agriculture

Forest
Service

Southwestern
Region



City of Alamogordo, Fresnal, La Luz, and Maruche Canyon Water Pipelines Special Use Permit

Decision Notice and Finding of No Significant Impact

**Lincoln National Forest,
Sacramento Ranger District,
Otero County, New Mexico**

Decision and Rationale

Introduction

The City of Alamogordo (City) has been operating and maintaining a water collection and conveyance system within most of the project area for almost six decades. The first permit was issued by the Lincoln National Forest (Forest) to the City in 1948 for use of National Forest System (NFS) lands in La Luz Canyon for water transmission pipelines and associated structures. A second permit was granted in 1953 for use of NFS lands in sections 32 and 33 of Fresnal Canyon. In 1956, a third application was approved for a similar permit for use of NFS lands in section 1 of Fresnal Canyon. The City received a permit from the New Mexico Office of the State Engineer (OSE) to change the point of water diversion in Fresnal Creek in 1957.

In 1959, the City conveyed approximately 452 acres of land in La Luz and Maruche Canyons to the United States for management, but the City retained all mineral and water rights. In addition, the City reserved rights-of-way to the pipelines and diversion structures within these two tracts for the purposes of operation and maintenance of the system. The 20-foot wide pipeline corridor occupies approximately 7.7 acres within these two tracts.

On February 22, 1983, a Special Use Permit (SUP) was issued to the City for use of 5.33 acres (2.2 miles of the pipeline corridor) of NFS lands for the purpose of constructing, using, and maintaining a water pipeline and ditches in La Luz and Fresnal Canyons. As part of this permit, 32 terms of use clauses were identified for the use of NFS lands. The term of the SUP was through December 31, 2002.

Since then, the City has applied for, and received, 3 amendments to the permit. The first amendment was in August of 1993, for a radio repeater to help in monitoring the water flow in the pipelines. A second amendment in June 1997, was required to add Maruche and the east end of La Luz Creeks that were conveyed to the United States in 1959. The third amendment was issued on December 13, 2002, to extend the permit through December 31, 2003.

On June 6, 1997, the Sacramento District Ranger signed a Decision Memo, excluding the decision from further documentation under Category 2 (FSH 1909.15, Chapter 31.2), that authorized the City to replace certain segments of the existing pipeline in Fresnal Canyon. On June 11, 1997, the Forest Supervisor signed a Decision Memo, excluding the decision from further documentation under Category 3 (FSH 1909.15, Chapter 31.2), that authorized the City to reconstruct and improve existing diversion structures (spring boxes) and feeder lines located on the acquired lands in La Luz Canyon. Biological Assessments and archeology reports were produced as a part of these analyses. Construction on these diversion and pipeline improvements were completed in 1997.

The water collection system and pipelines have been in use in their current configuration since 1997. These pipelines are an important component of the City's municipal water system that delivers potable water to approximately 40,000 people living in and around the City. A new SUP is needed at this time to authorize use of NFS lands in such a manner that will allow the City to exercise its existing water rights and to transport the water obtained pursuant to those rights for the beneficial uses associated with the City's municipal water system. The City's most recent SUP covering the existing water conveyance system expired on December 31, 2003. Issuance of a

new SUP also provides the opportunity to include updated terms of use which provide further protection for NFS resource values.

Analysis of this permitting action is required under the Stipulation agreed to by all parties to the consolidated lawsuits known as Sacramento Mountains Watershed Restoration Corporation v. United States Forest Service, et al. (Civ. No. 03-01110 JC/LCS, Civ. No. 04-00780 LH/RHS (Consolidated)), filed September 6, 2005, and approved by the US District Court for the District of New Mexico on September 12, 2005.

Decision

My decision is to select the Proposed Action Alternative. The Proposed Action Alternative will authorize the continued use, operation and maintenance of the existing water transmission pipelines and water collection structures in Fresno, La Luz, and Maruche Canyons on NFS lands. This action would be implemented through the issuance of a new, 25-year SUP to the City. The SUP would allow the use of approximately 15.3 acres (approximately 6.5 miles along a 20-ft-wide corridor, 10 feet either side of the existing pipeline) of NFS land. Updated terms of use, including mitigation measures for anticipated maintenance and repair and monitoring activities will be incorporated into the SUP.

Additionally, the Proposed Action Alternative would consolidate all previously issued SUPs into a single SUP covering all NFS lands within these three canyons on which the current diversion and pipeline system is located. I have determined that this consolidation is in the interest of the Lincoln National Forest (Forest), the City, and the general public in order to provide consistency in permit administration, permit terms and conditions, mitigation measures, monitoring requirements and in coordinated operation and maintenance planning. An Operation and Maintenance Plan was developed cooperatively by the Forest and the City which provides for coordinated planning between the Forest and the City, mitigation measures, and monitoring requirements for all NFS lands on which the water diversion and conveyance system is located. The Plan will attach to the SUP upon its issuance, and may be found in Appendix B of the Environmental Assessment (EA). Mitigation measures and monitoring requirements include provisions for the protection of Threatened and Endangered species and their habitats as well as cultural, soil, air, water, and recreational resources.

Rationale for the Decision

The analysis of effects is documented in the Environmental Assessment for the City of Alamogordo, Fresno, La Luz, and Maruche Canyon Water Pipelines Special Use Permit, with the reference publications and specialist analyses in the project record. I considered the following applicable laws, regulations and policies in my decision.

Lincoln National Forest Land and Resource Management Plan (Forest Plan) Forest-wide Standards and Guidelines:

This proposed action is in accordance with Forest-wide standards and guidelines regarding the use and occupancy of NFS lands for non-recreational purposes. The project area overlaps Management Areas 2A – La Luz, 2B – Alamo, and 2F- Mountain Park (See Appendix A, Forest Management Areas map). There are no standards and guidelines

specific to these management areas that are applicable to the Proposed Action Alternative.

Specifically, five Forest-wide standards and guidelines apply to the Proposed Action Alternative. These standards and guidelines are listed in Chapter 1 of the EA under Table 1 (p. 4). Various specialists addressed each of these standards and guidelines in their reports and at interdisciplinary team meetings, and determined that the Proposed Action Alternative is consistent with the Forest Plan.

Although improvements to some diversions and pipelines within the system have occurred since the Forest Plan was approved in 1986, the lands currently occupied by the pipeline system were so occupied at the time the Forest Plan was being developed. I have therefore determined that since the Forest Plan does not contemplate removal or realignment of the pipeline system already in place, this use and occupancy of NFS lands is therefore consistent with the Forest Plan.

Endangered Species Act:

Consultation with the US Fish and Wildlife Service is required under Section 7(a)(2) for actions that may affect Threatened and Endangered Species. Mexican spotted owl is a listed Threatened Species. One Mexican spotted owl Protected Activity Center (PAC) overlaps a relatively small portion of the project area. In addition, the Sacramento prickly poppy is a listed Endangered Species. Sacramento prickly poppy populations are known to exist within the project area, and the District and Forest Wildlife Biologists determined that individual plants may be adversely affected. The Forest has consulted with the US Fish and Wildlife Service on these two species (see Finding of No Significant Impact below). The Proposed Action Alternative includes project design elements in mitigations and monitoring requirements and an Operation and Maintenance Plan to effectively eliminate the opportunity for adverse effects on these species during pipeline maintenance activities, except in cases where emergency repairs are required.

FSM 2670 Sensitive Species:

FS sensitive species requirements were reviewed and analyzed to meet standards for actions on the Forest. Based on previous and current survey information, Wright's marsh thistle and Alamo penstemon are the only two species on the Regional Forester's Sensitive Species list that are known to occur within the project area, and may be affected by the operation and maintenance of the diversion and pipeline system.

The District and Forest Wildlife Biologists found that some individuals of both plant species may be affected by the Proposed Action Alternative, but this alternative will not lead toward the listing of either species as threatened or endangered. This meets the appropriate standard under which the Proposed Action Alternative may be selected.

Migratory Bird Treaty Act:

The Forest lists priority migratory bird species of concern by vegetation type as established by the Forest Biologist. The species of concern for vegetation types found in this project area (Desert shrub and, pinyon/juniper woodland) include bank swallow, black-chinned sparrow, Crissal thrasher, lark bunting, McCown's longspur, prairie falcon, summer

tanager, scaled quail, black-chinned hummingbird, loggerhead shrike, black-throated gray warbler, green-tailed towhee, pinyon jay, and gray vireo. No significant effects will occur to migratory birds because the project will not substantially alter existing habitat for migratory bird species of concern. Some actions associated with the project will have the potential to impact individual birds during inspection, maintenance and emergency repair activities, so the possibility of unintentional take exists. The likelihood of take is remote; if unintentional take does occur, it will not rise to a level that would affect the population as a whole of any of the species.

FSM 2541.35 Special-Use Authorizations for Water Developments:

The Proposed Action Alternative is consistent with Forest Service Manual direction regarding Special-Use Authorizations for Water Developments as the Alternative infers no waiver of any water rights that may be held by the United States within the analysis area. Water rights within the area analyzed for this project were adjudicated by the State of New Mexico in 1918, and by analysis of the pertinent documents in the project record, I have determined that the City's exercising its valid rights to divert and transport water within the analysis area, as determined by the Office of the State Engineer, will not affect any water rights that may be held by the United States.

FSM 2718.5 - Acquired Lands Subject to Reserved or Outstanding Rights:

The Proposed Action Alternative is consistent with Forest Service Manual direction regarding Acquired Lands Subject to Reserved or Outstanding Rights as the Alternative does not conflict with the City's reserved rights in and to the lands conveyed to the United States in 1959. The City's reserved water rights and rights-of-way for access to and maintenance of the diversions and conveyance structures in Upper Maruche and La Luz Canyons are not restricted under this alternative. Terms and conditions of an SUP issued under this alternative will not restrict the City's exercise of these reserved rights, but do provide for the protection of other Forest resources located on these and other NFS lands in and around the project area.

Federal and State Permit Requirements:

The Proposed Action Alternative does not require any Federal or State permitting of the Forest. Under the Terms and Conditions of a SUP issued under this decision, it will remain the responsibility of the City to acquire and maintain any permits required under Federal, State or local authority including relevant environmental laws, public health and safety laws and other laws relating to the sitting, construction, operation, and maintenance of any facility, improvement, or equipment on the property.

National Historic Preservation Act:

The Forest completed a compliance report under the Act and consulted with the New Mexico State Historic Preservation Office (SHPO), and with the Mescalero Apache, Hopi and Zuni Tribes. Discussion of the affects of the Proposed Action Alternative is found in Chapter 3 of the EA under Archeology, and the Forest Archeologist found that this Alternative provides sufficient mitigations to preclude effects to any historically

significant sites within the project area. The SHPO provided its concurrence with the Forest's determination on November 13, 2006.

Executive Order 11990:

This order requires all Federal agencies to avoid adverse impacts associated with the occupancy and modification of floodplains. The Proposed Action Alternative was analyzed for its effects, and is expected to have minimal impacts in floodplains.

Executive Order 11988:

This order requires all Federal agencies to avoid adverse impacts associated with destruction or modification of wetlands. The Proposed Action Alternative was analyzed for its effects, and is expected to have minimal impacts on approximately 3 acres of wetlands located within the project area.

Executive Order 12898:

This order requires all Federal agencies to incorporate environmental justice into their mission. I have determined that the Proposed Action Alternative would not disproportionately affect minority or low-income populations.

Key Considerations in My Decision

The following were important considerations for my decision as this project was developed and analyzed: the historical context of the City's water diversion and pipeline system located within the project area; the intermingled pattern of land ownerships on which this water system is located; the effects of the operation and maintenance of the pipelines and structures on the wildlife, rare plants and their habitat located in and around the project area; the concerns expressed by a number of other water users in and around the project area; and the potential for the City to find an alternative to the existing water system located within the project area.

In reaching my decision, I first considered the tenure of the City's water developments related to this project. The system has been in place, at least in part, for over 60 years. The City and the LNF have had a relationship over the City's water developments located in this project area and elsewhere on the Forest for at least that long. My conclusion was that the relationship between the City and the Forest was very important, and that improving the communication and coordination of activities related to the operation and maintenance of the water developments was the most effective way to ensure the consideration and protection of other valuable resources located on lands administered by the Forest, as well as under the control of others.

I considered the fact that the City's water developments located within these three canyons traverses an intricate pattern of land ownerships, and that the vast majority of that land is not owned by either the United States or the City. Over the course of time, the City had to secure easements and rights-of-way to cross the many tracts of private land in order to locate the pipelines on a reasonably efficient route from the top of the system to the bottom. I also considered that the National Forest System lands covered under the SUP

were a minor part of this intricate pattern, but vitally important for the City to use without having to completely redesign the entire system.

I considered the fact that over the past decade, the Sacramento Mountains, like much of New Mexico, have experienced recurring drought conditions that have had an impact not only on the amount of water available for the human population of the area, but also the wildlife and plants that have existed here through the centuries. One plant in particular, the Sacramento prickly poppy is of particular concern as it relates to this project. The existence of the City's water developments in this area is thought to be at least a part of the reason for the decline in numbers of this plant, as determined and discussed by the US Fish and Wildlife Service. My immediate concern was that whatever decision I made, the Forest should continue to search for ways to work with the City and other landowners in the area of the poppy's habitat to enhance the species recovery.

I considered the concerns raised by the Forest's and the City's neighbors in the area who expressed their belief that the ten-year-old modifications to certain of the diversion structures were affecting their quality of life and property values. In that consideration, I weighed all the evidence I had available to me, including reports and publications from various sources (included in the Project Record), and I came to the conclusion that there are numerous other explanations for the causes of their concerns, including the extended period of recurring drought along with other factors outside of the control of the Forest Service.

Finally, I considered that the failure to provide the City with an authorization to use and occupy this small but important area of NFS lands would create immediate and perhaps lasting hardships on the City and its municipal water users, as well as foregoing the opportunity to work cooperatively to address some of the concerns mentioned above.

Mitigation Measures in Proposed Action Alternative (EA – Chapter 2)

The following mitigation measures apply to the Proposed Action Alternative. The Forest will discuss these mitigation measures with the City annually while coordinating routine operation and maintenance activities. The Forest will conduct any surveys required on NFS lands to comply with these mitigations, and any reports produced will be maintained in the SUP file.

Archeology:

Confine ground disturbing activities to the existing disturbed areas.

Re-contour any disturbed surfaces within the railroad grade sites.

Avoid disturbance of features adjacent to the railroad grade sites, including box culverts, the trestle, and the Ostic Mill site.

Soils and Hydrology

Implement Best Management Practices (BMPs) such as wattle placement, buffering of the wetland areas, and restricting the use of heavy equipment in the wetland and riparian areas during times of saturation when any ground disturbing activities are implemented.

Use water bars and other erosion-prevention techniques as appropriate prior to any ground disturbing activities, to minimize erosion.

Avoid vehicle use in wetlands and wet meadows at all times. Excessively muddy roads (ruts created when traveled) will not be traveled until conditions improve.

Designate access routes to minimize compaction of wet soils.

Use watering and/or straw mulching of ground-disturbance areas as appropriate to reduce fugitive dust and to minimize wind erosion.

Use hand treatments for revegetation and vegetation control where other methods would disturb fragile soils on steep slopes or in wet areas. This includes those portions of the pipeline on Terrestrial Ecosystem Unit Inventory (TEUI) Map Units 171, 295 and 604.

Wildlife and Rare Plants

Survey for Threatened, Endangered and Sensitive plants in occupied and suitable habitat prior to any ground disturbing activities related to the pipeline and its associated structures. If individuals are found, they will be flagged to avoid disturbance.

Report all survey results to the USFWS New Mexico Ecological Services Field Office annually.

Design activities in occupied and suitable habitat to protect emerging Sacramento prickly poppy seedlings from trampling and mechanical damage.

Avoid activities within Mexican spotted owl protected activity centers during the breeding season (April 1 through August 31).

Specific Applications Found in the Operation and Maintenance Plan

Specific applications of the above mitigations as they relate to the Proposed Action may be found in the Operation and Maintenance Plan (Appendix B, pp. B-9 through B-11). In addition, routine maintenance and repair of the pipelines and associated structures will apply to the Proposed Action as provide in the Operation and Maintenance Plan (Appendix B).

Monitoring

The Forest will be responsible for the following monitoring measures, which apply to the Proposed Action Alternative.

Monitor the wetland characteristics (vegetation, hydric soils, open/flowing water) on NFS lands in Fresno, La Luz, and Maruche for five years starting in 2008.

Monitor wetland and riparian areas around Springer Springs and Upper Maruche Springs for compaction before and after maintenance activities involving ground disturbance or the use of heavy equipment.

Monitor stream flow with a flow meter three times a year (March/April, July/August, October/November) for five years at designated locations starting in 2008.

Monitor the implementation of BMPs for soil erosion on access maintenance and ground disturbing activities associated with pipeline maintenance on areas greater than or equal to 100 sq. ft.

Monitor areas of ground disturbance for re-vegetation for two growing seasons.

Annual monitoring for compliance with the terms and conditions of the SUP will be conducted by Forest personnel under the Proposed Action.

Other Alternatives Considered but Eliminated from Detailed Analysis (EA – Chapter 2):

Alternative – By-Pass Flow:

This alternative is the same as the Proposed Action Alternative except the City would allow 5 cfs to flow down Fresno, La Luz and Maruche streams during all times of year for the maintenance of the existing wetland and riparian areas.

This alternative was eliminated from detailed analysis because it is outside the scope of the project, and the issue of requiring bypass flows has already been decided by law, regulation, the Forest Plan, or other higher level decision. I do not have authority to require bypass flows as a term or condition over the State-approved beneficial use of water rights not owned or controlled by the United States. The City currently owns or controls rights to all water being diverted and transported through the pipelines considered under the Proposed Action Alternative. The City retained all water and mineral rights in the lands it conveyed to the United States in 1959 at the upper end of Maruche and La Luz Canyons. The City also retained rights-of-way on those lands for the purposes of operating and maintaining water diversion structures and pipelines.

Alternative – Sacramento Prickly Poppy Recovery:

This alternative is the same as the Proposed Action Alternative except the City would establish drip lines off the pipeline to maintain populations of the Sacramento prickly poppy within the permit area where they now exist.

This alternative was eliminated from detailed analysis because the issues driving this alternative are conjectural and not supported by scientific or factual evidence. In the Biological Assessment, the Forest has determined that the Proposed Action may “adversely affect” the Sacramento prickly poppy, however there is little or no evidence to suggest that drip lines would mitigate the potential adverse effects identified in the Assessment. The Proposed Action includes mitigation measures designed to protect poppy plants occurring within the pipeline corridor. These mitigations will assist the Forest in its obligation to meet the intent of the Sacramento prickly poppy Recovery Plan. Because the mitigation measures are a part of the Proposed Action, there was no need for another alternative to minimize potential impacts to the Sacramento prickly poppy.

Alternative – Develop Alternative Water Sources

Under this alternative, the City would use their desalinization plant for water to replace water coming from Fresno, La Luz, and Maruche streams. The City and the Forest would work with

the OSE to develop a plan that would allow the City to decrease the amount of water withdrawn from the streams over the next 10 to 15 years. The City would negotiate with the OSE for the transfer of the water right to the United States.

This alternative was eliminated from detailed analysis because it does not meet the purpose and need of the Proposed Action, it is outside the scope of the project and it is irrelevant to the decision to be made. I do not have authority to require the City to pursue alternative water sources as it relates to State-approved beneficial use of water rights not owned or controlled by the United States. The City currently owns or controls rights to all water being diverted and transported through the pipelines considered under the Proposed Action. The City retained all water and mineral rights in the lands it conveyed to the United States in 1959 at the upper end of Maruche and La Luz Canyons. The City also retained rights-of-way on those lands for the purposes of access for operating and maintaining water diversion structures and pipelines. Although alternative water sources may be pursued at some point in the future, the City has made every indication that it intends to continue to make beneficial use of its existing water rights within the project area, rendering this alternative moot as it relates to the Proposed Action.

Alternative – Relocate All Water Diversions to a Single Point Downstream from Current Locations

Under this alternative, the City would agree to make application to the OSE for changes to the points of diversion of its existing water rights to a single point beyond the confluence of all the streams located within the project area. Upon approval by the OSE and construction (or reconstruction) of the diversion structure required, the City would abandon its SUP, and remove all diversion structures, pipelines and facilities from NFS lands.

This alternative was eliminated from detailed analysis because it does not meet the Purpose and Need for Action. It is substantially identical to the No Action Alternative in its effects on the environment. In addition, the City has clearly indicated its need and desire to continue to exercise its rights to use the waters within these watersheds, and the City reserved rights-of-way to operate and maintain the pipelines, diversion structures and other facilities located on the acquired lands in La Luz and Maruche Canyons. This alternative is therefore entirely dependant on the actions of the City, and outside the scope of this project and the authority of the Forest Service.

Public Involvement

The City of Alamogordo provided a request to renew their existing SUP for the water transmission lines in Fresnal and La Luz Canyons on June 28, 2002. An Interdisciplinary Team (IDT) consisting of specialists in the fields of archeology, engineering, lands, recreation, range, hydrology, wildlife, and soils was assembled to review the application and identify potential internal issues and concerns. The proposed project was listed in the Schedule of Proposed Action (SOPA) for October 2002 and has been listed in the SOPA ever since.

In October and November of 2005, a scoping letter went out to the public to solicit input on the Proposed Action. During the same time period, legal notices were published in the *Alamogordo Daily News (ADN)* announcing an opportunity for the public to comment on the Proposed Action. There were a total of 25 responses received during this scoping and public comment period.

On November 24, 2007, legal notice was published in the *ADN* announcing an additional opportunity for the public to provide comments regarding the Proposed Action. By letter dated

November 20, 2007, those who had responded during the 2005 scoping and comment period and other individuals and organizations who had expressed an interest in the proposal were provided updated information including the Proposed Action, the purpose and need for action, background, public involvement (to date), a summary of the effects of the Proposed Action, and maps depicting the location of the existing pipeline and facilities. There were a total of 28 comments received, one of which was a copied petition signed by approximately 115 individuals.

On February 13, 2008, legal notice was published in the *ADN* announcing an additional opportunity for the public to provide comments regarding the Proposed Action. Copies of a near-final draft of the EA were made mailed to those who had previously provided individual comments, and made available electronically on the LNF website and hard copy format at the Supervisor's Office, as well as the Sacramento Ranger District Office. A total of seven comments were received in response to this most recent notice.

The majority of the responses received identified concerns that the existence of the pipelines and diversion structures in their current configuration are contributing to a decline in the availability in both surface and ground water for citizens living in the general vicinity of the project area outside of the Alamogordo city limits. Several of those commenting went on to express their belief that the current configuration of the pipeline and diversions is contributing to ecological damage to the area, negative effects to flora and fauna associated with or dependant upon wetlands and riparian systems, negative effects to the quality of life of those living in and around the project area, and negative economic effects to the area, primarily related to a loss in property values. Many of these responses suggested alternatives to permitting the pipeline under the proposed SUP; those alternatives and their disposition are addressed in Chapter 2 of the EA.

Others, including the City, responded in summary that all water rights associated with the current collection system have been adjudicated, water collection into the system is under permit from the State of New Mexico, failure to reauthorized the SUP would result in negative effects on approximately 40,000 residents in and around the City, and that natural fluctuations in recharge and other depletions of ground water in the basin are responsible for the recent decline in ground and surface water availability in the area.

Comments were also received from the New Mexico Environment Department regarding certain aspects of the regulatory process that may be required under State and Federal laws given continued operation and maintenance of the diversion and pipeline system. Although it is acknowledged in the context of this decision that identified maintenance of the pipeline and facilities are needed, these requirements will be met under activities provided for in the Operation and Maintenance Plan (See EA - Appendix B).

Finding of No Significant Impact

After considering the environmental effects described in the EA, I have determined that these actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. I base my finding on the following:

1. My finding of no significant environmental effects is not biased by the beneficial effects of the action.

Although I acknowledge that this finding will allow for a continued benefit to the City and its municipal water users, I have carefully weighed this effect against the known, potential and perceived negative effects on the residents, property, and other Forest resources in and around the project area. This beneficial effect does not come without a cost to the Forest and its resources. As discussed above, I had particular concerns with the effects on the Endangered Sacramento prickly poppy populations within the project area and concerns raised by nearby residents related to quality of life and property values. Having weighed these issues against the benefits to the City, I have determined that the Proposed Action Alternative is the most feasible way to provide the City with an opportunity to exercise its water rights.

2. The degree to which the proposed action affects public health or safety.

Under the terms and conditions specified for the SUP under the Proposed Action Alternative, the City will be responsible for operating and maintaining pipeline in accordance with all Federal, State and local laws, including those related to the public health and safety associated with municipal supply water developments. The water diversion and pipeline system has been operated and maintained by the City for over 60 years, and in its current configuration for over 10 years. No significant alterations to the current system are authorized by this decision. To date, no issues have surfaced related to public health and safety related to the operation and maintenance of the water diversion and pipeline system, with the exception of minor modifications needed to the system and access routes to it, identified through a recent inspection by the New Mexico Department of the Environment. Modifications of this type are and will continue to be authorized under the terms and conditions of the applicable SUP and under the Operation and Maintenance Plan (See EA – Appendix B).

3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas.

The process involved in consultation with the State Historic Preservation Officer and three Native American tribes revealed no significant impacts to historic or cultural resources. Four sites eligible for the National Register of Historic Places have been identified within the project area. Mitigations are incorporated into the Proposed Action Alternative that would preclude effects to any of these historically significant sites.

Approximately 3 acres of wetlands occur within the project area. Mitigations are incorporated into the Proposed Action Alternative to minimize the effects of operation and maintenance of the water diversion and pipeline system. Considering the potential effects of factors outside the control or jurisdiction of the Forest and their impact on the availability of water to maintain NFS resources, this alternative would likely result in some degradation of wetlands and riparian areas occurring on NFS lands over time. Mitigation measures incorporated into the SUPs as provided in the Proposed Action would reduce the effects of those activities that are implemented under the jurisdiction of the Forest.

The Forest Plan states that segment 10 of Fresno Canyon has been inventoried as eligible for a suitability analysis for Wild and Scenic River designation. The conditions of Fresno Canyon that identified segment 10 as eligible for a suitability analysis have not changed since the Forest's Eligibility Report of 2001; however this report is in error since the creek had been diverted many times and in several different places prior to enactment of the Wild and Scenic Rivers Act in 1968. This segment does not meet the requirement that a designated segment be free flowing. The Proposed Action Alternative will have no effect on those outstandingly remarkable characteristics for which the segment was inventoried (EA – Chapter 3, page 18).

4. The degree to which the effects to the quality of the human environment are likely to be highly controversial.

The existence and continued operation and maintenance of the water diversion and pipeline system in the project area has been the subject of litigation as described in the Purpose and Need section of the EA. As noted in the Decision Framework section of the EA, however, the Forest Service has limited to no authority to control the most notable concerns raised during public involvement, that being the location of water diversion points within the watersheds and the withdrawal of water from the upper reaches of the streams. The effects of issuing a new SUP for the operation and maintenance of the system in its current configuration will do little to resolve this controversy. The location of water diversion points in the current system has already been decided by a higher authority than this decision. Concerns related to other resource issues have been addressed, and effects of the project thereto are limited in scope and intensity as a result of the mitigations and monitoring described in Chapter 2 of the EA.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

The water diversion and pipeline system has been operated and maintained by the City for over 60 years, and in its current configuration for over 10 years. No significant alterations to the current system are authorized by this decision. The history of the construction, operation and maintenance, as well as the Forest Service's permitting of these activities on NFS lands is well documented in the Project Record.

Effects of the No Action Alternative would likely pose greater uncertainty and unknown risks to the City and its municipal water users, and no certain benefit to the environment, as opposed to the Proposed Action Alternative. As described in the Decision Framework (Chapter 1), Alternatives Eliminated from Detailed Consideration (Chapter 2), and the

Hydrology (Chapter 3) sections of the EA, it is highly unlikely that the City would cease water diversions at most of the current locations, and the uncertainty would lie in the City's ability to locate and secure access to an alternate route for conveyance pipelines from these diversion points to its water treatment facilities.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

The water diversion and pipeline system has been operated and maintained by the City for over 60 years, and in its current configuration for over 10 years. No significant alterations to the current system are authorized by this decision. The history of the construction, operation and maintenance, as well as the Forest Service's permitting of these activities on NFS lands is well documented in the Project Record.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.

On December 5th, 2002, the New Mexico State Engineer declared the La Luz and Fresnal Canyon 6th HUC watersheds as a Critical Management Area (CMA). This means the OSE would no longer allow new groundwater appropriations for non-domestic purposes from within either of the watersheds. Diversions from any new domestic wells would be limited to 0.50 acre-feet-per-year and all permits for domestic wells issued after December 4, 2002 would be metered. This limitation on future groundwater diversions from within these watersheds was considered in analysis for the Hydrology Specialist Report, and summarized in the Hydrology (Chapter 3) section of the EA. Considering the potential effects of factors outside the control or jurisdiction of the Forest and their impact on the availability of water to maintain NFS resources, cumulative effects of this alternative would likely result in some degradation of wetlands and riparian areas occurring on NFS lands over time. Mitigation measures incorporated into the SUP as provided in the Proposed Action Alternative would reduce the effects of those activities that are implemented under the jurisdiction of the Forest. Based on existing conditions within the project area, potential degradation would not be expected to reach the level of significance as the result of selecting the Proposed Action Alternative.

Other past, present and foreseeable future activities are identified in Table 3 (Chapter 3) of the EA, and considered by all specialists in their analyses.

No significant effects were found that would require the preparation of an Environmental Impact Statement.

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 process involved in consultation with the SHPO and three Native American Tribes revealed no significant impacts to historic or cultural resources. Four sites eligible for the National Register of Historic Places have been identified within the project area.

Mitigations are incorporated into the Proposed Action Alternative that would preclude effects to any of these historically significant sites. The SHPO provided its concurrence with this determination on November 13, 2006.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

Potential effects of the Proposed Action Alternative on Threatened and Endangered species are analyzed in the Biological Assessment which is a part of the Project Record. Potential effects of this Alternative were analyzed for two species – Mexican spotted owls and Sacramento prickly poppies.

For Mexican spotted owl, a listed Threatened Species, the Proposed Action Alternative would result activities occurring within a portion of one Protected Activity Center, and the majority of the project area is not considered to be suitable Mexican spotted owl habitat. Breeding season restrictions on operation and maintenance activities are incorporated into the Proposed Action Alternative as identified in the Alternatives Considered in Detail (Chapter 2) section of the EA. Effects of the continued operation and maintenance of the water diversion and pipeline system were determined to be “may affect, not likely to adversely affect.”

For the Sacramento prickly poppy, the effects from this Alternative are determined to be “may affect, likely to adversely affect” due to the potential for individual plants to be harmed or killed during rare emergency repair situations. For routine inspection, operation and maintenance activities, mitigations are incorporated into the Preferred Action Alternative involving survey and marking requirements prior to activities in occupied and suitable poppy habitat prior to any routine operations within those areas. Maps of known poppy locations on NFS lands will be updated annually, to allow coordinated planning that will avoid impacts to this species.

On April 25, 2008, the U.S. Fish and Wildlife Service concurred with the Forest’s determination for the Proposed Action Alternative of “may affect, not likely to adversely affect” regarding the Mexican spotted owl. The Service also issued an opinion that this Alternative would not jeopardize the continued existence of the Sacramento prickly poppy due to relatively low level of anticipated effects on the poppy, and minor effects on poppy habitat.

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

As discussed above, no Federal, State, or local law or requirement would be threatened with violation because of this action.

Administrative Review and Appeal Opportunity

This decision is subject to administrative review (appeal) pursuant to 36 CFR Part 215. Individuals or organizations who provided comment or otherwise expressed interest in the proposed action during the comment period may appeal. Interest expressed or comments provided on this project prior to or after the close of the comment period do not have standing for appeal purposes. The appeal must be filed (regular mail, fax, email, hand-delivery, or express delivery) with the Appeal Deciding Officer, Corbin Newman, Southwestern Regional Forester, 333 S. Broadway, SE, Albuquerque, NM 87102.

The office business hours for those submitting hand-delivered appeals are: 7:30AM-4:30PM, Monday through Friday, excluding holidays. Electronic appeals must be submitted in a format such as an email message, plain text (.txt), rich text format (.rtf), portable document format (pdf), or Word (.doc) to appeals-southwestern-regional-office@fs.fed.us. In cases where no identifiable name is attached to an electronic message, a verification of identity will be required. A scanned signature is one way to provide verification.

Appeals, including attachments, must be filed within 45 days from the date of this legal notice. Attachments received after the 45 day appeal period will not be considered. The publication date in the *Alamogordo Daily News*, newspaper of record, is the exclusive means for calculating the time to file an appeal. Those wishing to appeal this decision should not rely upon dates or timeframe information provided by any other source. The notice of appeal must meet the appeal content requirements at 36 CFR 215.14.

Implementation Date

If no appeals are filed within the 45-day time period, implementation of the decision may occur on, but not before, 5 business days from the close of the appeal filing period. When appeals are filed, implementation may occur on, but not before, the 15th business day following the date of the last appeal disposition.

Copies of the Environmental Assessment and Contact for Further Information

Copies of the Environmental Assessment are available from the Sacramento Ranger District, P.O. Box 288, Cloudcroft, NM 88317, or the Lincoln National Forest Supervisor's Office, 1101 New York Avenue, Alamogordo, NM 88310 in either paper or electronic formats. The Lincoln National Forest website, at <http://www.fs.fed.us/lincoln> can also be accessed for copies of the environmental documents.

