



United States
Department of
Agriculture

Forest
Service

Southwestern Region
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File Code: 1570-1/2710
Date: April 25, 2008

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RE: Appeal #08-03-00-0007, Buckman Water Diversion Appeal

Dear Mr. Frederick, Attorney for Appellants:

This is our decision on the appeal filed on the October 5, 2007, Record of Decision (ROD) and Final Environmental Impact Statement (FEIS) made by Daniel Jiron, Forest Supervisor of Santa Fe National Forest, to authorize special use permits to the Buckman Direct Diversion Board for the Buckman Water Diversion project to move water from the Rio Grande into the City of Santa Fe and Santa Fe County. Mr. Jiron’s decision was one of two decisions issued from a joint agency effort with the USDI Bureau of Land Management (BLM). The Forest Service decision was published February 11, 2008.

New Mexico Environmental Law Center (Bruce Frederick, attorney) filed an appeal on behalf of Concerned Citizens for Nuclear Safety (Joni Arends) and Amigos Bravos on March 24, 2008. The appeal was filed pursuant to 36 CFR 215.

The proponents for the project filed a response to the appeal on April 21 which was put in the project file; however, this information was not considered in the appeal review. As of June 4, 2003, interested parties and their filings are no longer included in the appeal review process (see preamble to final rule, 36 CFR 215.2 Definitions).

BACKGROUND

The proposal was submitted by the applicants, Las Campanas Limited Partnership and the City of Santa Fe and Santa Fe County, and analyzed in the FEIS.

The project involves federal lands administered by the USDI Bureau of Land Management. A separate decision was issued on October 4, 2007, by Sam Des Georges, BLM Taos Field Office Manager. The same appellant appealed the BLM decision to the Interior Board of Land Appeals by filing with the BLM Taos Office on March 12, 2008.

The Forest Service decision authorizes issuance of permits for the river water diversion structure and low-head pumps near the Rio Grande river, a sediment processing facility and associated pipelines and pumping stations, a raw water pipeline, road maintenance of Buckman Road by Santa Fe County, and upgrades of buried powerlines by Public Utility of New Mexico.

Pursuant to 36 CFR § 215.17, attempts were made to seek informal resolution of this appeal. The record indicates that informal resolution was not reached.



We have weighed the recommendation from the Appeal Reviewing Officer and incorporated it into our decision. A copy of the Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes our decision on the appeal and on the specific relief requested.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer found that: a) the actions to be taken and purpose and need are clearly described; b) the selected alternative should accomplish the purpose and need of the project; c) the proposal and decision are consistent with direction in the Forest Plan, agency policy, direction and supporting information; and the Responsible Official's decision represents the scope of agency authority for the project; and d) scoping and the public involvement process was appropriate and there was ample opportunity for public participation.

APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, we affirm the Responsible Official's decision on the Buckman Water Diversion 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 Santa Fe National Forest appeals listing by date (scroll to bottom of page) at http://www.fs.fed.us/r3/appeals/forest_santafe/forest_santafe_index.htm and at the national appeals web page at <http://www.fs.fed.us/appeals>.

Sincerely,

/s/ Faye L. Krueger

FAYE L. KRUEGER

Appeal Deciding Officer, Deputy Regional Forester

Enclosures:

1. Review and Findings
2. ARO letter

cc: Daniel Jiron
Allen Fowler
Sandy Hurlocker
Paul H Wachter
Robert Cordts
Constance J Smith
Mailroom R3 Santa Fe
Mailroom R3
William Avey

REVIEW AND FINDINGS

of

**New Mexico Environmental Law Center's Appeal representing
Concerned Citizens for Nuclear Safety, Amigos Bravos and Joni Arends
#08-03-00-0007-A215 of****Buckman Water Diversion Project, Santa Fe NF**

For the purposes of this review, contentions have been rearranged from the original order found in the appeal so that they are addressed in the context of applicable laws, regulations, and directives.

ISSUE: The Decision violates National Environmental Policy Act and Administrative Procedures Act.

Contention A: The FEIS fails to evaluate adverse environmental impacts that could foreseeably result if water and soil contaminants from the Los Alamos National Laboratory were to migrate into the Rio Grande and enter the Buckman Water Diversion project. Comments made to the DEIS by appellants highlighted this issue, but the FEIS analysis at page 265 is minimal and concludes that effects on drinking water quality are speculative (appeal pp.3, 4). The ROD says that the diverted water will be monitored and treated, but this does not constitute an adequate analysis of the environmental impacts. The conclusion that diverted water will meet Federal drinking water standards is not supported (appeal pp.5, 6).

Response: The Record of Decision for the Buckman Water Diversion Project (PR #437, p. 17) clearly establishes that the responsibility for providing clean drinking water lies with the water providers (City of Santa Fe, Santa Fe County, and Las Campanas) and that this FS/BLM decision is not directly accountable for meeting the requirements of the Safe Drinking Water Act. Nevertheless, the potential for transmitting potential hazards was evaluated as a part of the project feasibility assessment. Many documents and reports were reviewed (Review of Contamination October 2, 2007, PR #435) leading to the conclusion that the risk of introducing harmful substances is low and that the measures proposed to cease water intake during storm events (Report on Buckman Water Quality Issues, July 26, 2007, PR #432)-provide a reasonable certainty that delivered water will meet drinking water standards.

Finding: The agencies performed an appropriate analysis of potential impacts for the activities that were within the scope of their decision, and there is no violation of the National Environmental Policy Act.

Contention B: The decision ignores documentary evidence that Los Alamos National Laboratory contaminants have an impact that is more than speculative. Appellants refer to a letter from the Chair of the Buckman Direct Diversion Board (November 1, 2007) mentioning continued migration of LANL-origin waste and a hydrologist report from George Rice, *New Mexico's Right to Know: The Potential for Groundwater Contamination from Los Alamos National Laboratory to Reach the Rio Grande* (June 2004), as evidence. Appellants also cite a recent filing of a complaint in Federal District Court of New Mexico as evidence of contamination (appeal pp.4, 5, 6, exhibits 1 and 2).

In the Record of Decision, the two agencies (BLM and FS) do not identify the specific reports they reviewed. The agencies do not provide any discussion of the reports that were reviewed and how the reports support the conclusion that the risk of contamination is small (appeal pp.5, 6).

Response: The project record (Review of Contamination, October 2, 2007, PR #435) contains a listing of over 40 reports, memos, and articles that were reviewed in evaluating the potential for contamination and provides a detailed explanation to support the conclusion that the risk of contamination was low. The George Rice/CCNS paper (PR #285) is identified as one of the number of documents considered in the review. The Record of Decision responded to appellant's comments and determined that the risk of such contamination is small (PR #437 ROD p.33, with comment responses 3, 4, and 5).

The appellants raised the same issue in their comments to the DEIS. The Rice/CCNS report mentioned in the comments to the DEIS is one of the references that were considered in the comment response review (Comment and Response #5-5 at FEIS PR #401, pp. 233-234 and 266). The FEIS considered the impact of Los Alamos National Laboratory on water quality in terms of drinking water quality standards to be speculative. The applicants will test and treat all water from the diversion site to Federal drinking water quality standards. Two new water treatment plants are required for processing the raw water to safe drinking water standards. Water quality data reviewed in this analysis does not indicate that there would be any problem with treating diverted water to bring it up to Federal drinking water quality standards. A full discussion of surface water quality and ground water quality status is included in the FEIS (Appendix A, Response to Comments, p.265; and FEIS, pp. 21, 100-101, 115-117).

Finding: The agencies considered a hydrologic report from George Rice, along with over 40 other reports, and performed and disclosed substantive analysis in the DEIS and FEIS in compliance with NEPA and the APA.