



Elaine B. Kohman

April 01, 2015

Forest Supervisor

Cibola National Forest

2113 Osuna Rd. NE

Albuquerque, NM 87113

Re: Cibola National Forest Plan Revision

Dear Ms. Kohman:

I am writing in response to the Cibola National Forest's ("Cibola") letter to users and the interested public, dated February 3, 2015 ("Cibola Letter"), requesting written comments on the needs-for-change statements addressing proposed revision ("Proposed Action") of the 1985 Cibola National Forest Land and Resource Management Plan ("1985 Plan").

One of the needs-for-change statements regarding the Proposed Action was submitted by letter dated June 17, 2014, by the New Mexico Department of Cultural Affairs, Historic Preservation Division (Michelle M. Ensey, Archaeologist) ("HPD Letter"). In particular, the HPD letter stated in part that:

[t]here is a need to allow for adverse effects [to historic properties], not only to non-archaeological properties, but to archaeological sites as well. The 1985 plan allowed for data recovery and interpretation only if SHPO [the State Historic Preservation Officer] indicated that it was the best use of the resource. In some cases adverse effects cannot be avoided and the Forest needs to acknowledge that preservation of the historic property or cancellation of the project may not be possible.

HPD Letter, at 2. Cibola's draft needs-for-change document incorporates this proposed change. *See Revising the Cibola National Forest Land and Resource Management Plan: Needs for Change to the Existing 1985 Plan*, § IV.A.h (Feb. 9, 2015).

Rio Grande Resources ("RGR") supports this proposed change to the 1985 Plan. In particular, the 1985 Plan includes standards for the treatment of historic properties pursuant to the National

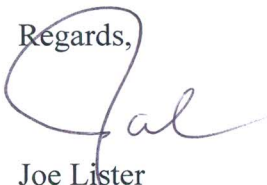
Historic Preservation Act (“NHPA”) on lands managed by Cibola. Standard No. 4 of these 1985 Plan standards states that sites covered by the NHPA “will be managed during the conduct of undertakings to achieve a ‘no effect’ finding in consultation with the SHPO and the Advisory Council on Historic Preservation.” *See* 1985 Plan, at 63. Standard No. 5 of these standards provides a list of conditions under which “preservation of cultural resources in place will be the preferred option,” and that where those conditions exist “the minimum management standard will be to achieve a ‘No Adverse Effect’ finding.” *Id.* at 63 to 63-1.

To the extent that the 1985 Plan standards mandate a decision by Cibola simply to avoid adverse effects on historic properties in the Cibola National Forest, the standards are in conflict with the NHPA and its implementing regulations, which expressly provide that adverse effects can be minimized or mitigated. *See, e.g.* 36 C.F.R. § 800.5(d)(2) (if an adverse effect in an undertaking is found, “the agency official shall consult further to resolve the adverse effect pursuant to § 800.06”); *id.* § 800.6(a) (agency official shall consult “to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.”); *id.* § 800.6(b) (same). These 1985 Plan standards are also contrary to Cibola’s commitment that “[t]he revised Forest Plan will not replace overarching laws and regulations.” *See* Cibola Letter, at 2.

RGR therefore agrees with the New Mexico Historic Preservation Division that in making management decisions regarding the Cibola National Forest, there is a need to allow for adverse effects to be made to historic properties. The Cibola National Forest Plan should be revised accordingly.

Thank you for your consideration. Please do not hesitate to raise any questions you may have.

Regards,

A handwritten signature in dark ink, appearing to read "Joe Lister", written over the typed name.

Joe Lister
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