



File Code: 2710

Date: **OCT 16 2009**

Mr. Howard Hutchinson  
Executive Director  
Coalition of Arizona/New Mexico Counties For Stable  
Economic Growth  
P.O. Box 4963  
Santa Fe, NM 87502

Dear Mr. Hutchinson:

Thank you for your October 7 letter concerning repairing and maintaining ditches and diversions on National Forest System lands, and the Forest Planning MOU. These acequias are honored and valued by the Forest Service.

The section of the Forest Service manual (FSM) that you refer to (2541.35) is based in the 2700 FSM as described below. While your reference to uses classified as range improvements do not apply here, we will attempt to further explain the sentence referring to acequias. The Forest Service does have authorities and prescribed processes, governed by laws, directives, and policies. Directives result from rulemaking through the Federal Register. In working with acequias which predate the National Forest, we follow direction in our 2700 FSM which involved congressional weigh-in and public involvement through the Federal Register process. The current FSM 2710 became final in September 2008. The 2008 Manual does not change Region 3's position regarding respecting either New Mexico Law or the Treaty of Guadalupe-Hidalgo. Claims made under the Treaty of Guadalupe-Hidalgo required confirmation and the reference to State law is specified to the water rights and process required. The following summarizes key points in the 2700 FSM that apply here:

- A May 2009 Region 3 Manual Supplement (FSM 2719.10.b) reinforced the Region's recognition that acequias are vital institutions critical to the health of local communities. Routine operation and maintenance may be allowed without a special use authorization (permit) if documentation of the use pre-dates the reserved public domain status for National Forest purposes. Minimum documentation is a declaration of water right from the State with a priority or seniority date that precedes the National Forest proclamation date covering that location. Additional documentation from an acequia association is encouraged.
- Routine operation and maintenance that do not require a special use authorization are defined in FSM 2719.10.b to include activities such as recurrent removal and deposition of silt and sediment from fish screens, diversion structure, canals, weirs, and ditches; armoring of dams, ditches, or canals with rocks or other protective materials to prevent or remedy damage from erosion, avalanches, or landslides; pruning vegetation within or immediately adjacent to a water development facility that might be impeding or




precluding the storage, diversion, or free-flowing transmission of water; and recurrent adjustment, opening, and closing diversions, headgates, valves, and other devices necessary to control the timing and water flow volumes consistent with using the water being stored, diverted, and transmitted within the right-of-way.

- However, under FSM 2719.10.c special use authorizations are required for any activities other than routine operation and maintenance, such as construction or reconstruction within the scope of an outstanding right-of-way or within the scope of a documented linear right-of-way or for any activities (including operation, maintenance, construction, or reconstruction) that are outside of the scope of an outstanding right-of-way or a documented linear right-of-way.

The Forest Service has not changed its position with regard to recognizing these improvements. Recent proposals made by a number of acequias, on the Carson National Forest, go beyond that of maintenance and propose reconstruction or construction. Forest Service line officers have no discretion to waive SUA requirements which involve construction or reconstruction activities. Obtaining needed environmental clearances and coordination through the National Environmental Policy Act (NEPA) is part of the SUA process." Forest Supervisor Clark has done everything within her authorities to accommodate the needs of the acequia community, including meeting with acequias on the ground to understand their projects, coordinating with other agencies and entities of jurisdiction, waiving costs associated with planning and processing permits, and assisting acequias within the bounds of her authorities. Four out of five acequias are currently working with the Forest on their special use applications. Please contact Kendall Clark at (575) 758-6301 if you need additional information.

As we have communicated before, the planning rule for NFMA was enjoined this past summer. The Forest Service is still developing the strategies for a new planning rule and to determine which Forests that were in revision should continue forward. Until that time it is premature to discuss an MOU with the Coalition. If you wish to pursue a more generic MOU related to planning in general, we can discuss that approach. As for travel management, each Forest has its own approach to travel management analysis and have been in contact with their local counties to discuss cooperating agency status or other means of collaboration. Since each case is unique a generic MOU with the Coalition related to travel management does not seem appropriate. If you have any questions call Bob Davis, Director of Planning, Watershed and Air at (505) 842-3210.

Sincerely,



**Corbin L. Newman, Jr.**  
Regional Forester

cc: Carson NF, Santa Fe NF