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Agriculture

Forest  
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File Code: 1570- 1/2200

Date: September 5, 2008

Mr. Erik Ryberg  
Attorney for  
Western Watersheds Project  
445 West Simpson Street  
Tucson, AZ 85701

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED  
NUMBER: 7003 3110 0002 8580  
7724**

Dear Mr. Ryberg:

**RE: APPEAL #08- 03- 05- 0001- A215: NATIONAL ENVIRONMENTAL  
POLICY ACT (NEPA) COMPLIANCE FOR JACKWOOD AND PRICE  
CANYON GRAZING ALLOTMENTS**

With this letter, I am advising you of my review decision regarding the subject appeal, which you filed with me on July 23, 2008, on behalf of Western Watersheds Project. Your appeal was filed in protest of the following NEPA compliance documents: Environmental Assessment (EA), Decision Notice (DN), and Finding of No Significant Impact (FONSI) for the Jackwood and Price Canyon allotments on the Douglas Ranger District.

### **BACKGROUND**

On June 2, 2008, Douglas District Ranger William Edwards signed a DN and FONSI based on a NEPA review of proposed grazing on the Jackwood and Price Canyon allotments. The DN authorizes implementation of Alternative 2, which was described in detail in the EA and which proposes grazing of 406 yearlings on the Jackwood allotment and 190 cow/calf pairs on the Price Canyon allotment. The latter is conditional upon an initial stocking limit of 170 head until range improvements are completed. Grazing on the Price Canyon allotment is authorized year- round across 14,016 acres. Winter seasonal grazing is authorized on the Jackwood allotment across 10,832 acres.

On June 8, 2008, a legal notice of the signed decision documents was published in the newspaper of record, the *Douglas Dispatch*. In this notice, the District Ranger was identified as the Responsible Official for the decision, which is subject to administrative review under 36 CFR § 215 appeal regulations.

Pursuant to 36 CFR § 215.17, the Forest attempted to schedule a meeting with you to discuss informal resolution of your appeal. The record indicates that informal resolution did not occur.

My review of this appeal was conducted in accordance with 36 CFR § 215.18. I have reviewed the appeal record, including the recommendations of the Appeal Reviewing Officer. My review decision incorporates the appeal record.

**APPEAL REVIEWING OFFICER'S RECOMMENDATIONS**

The Appeal Reviewing Officer found that:

- a) the proposed action (Alternative 2) and the purpose of and need for this action are clearly described in the NEPA documents;
- b) the selected alternative will accomplish the purpose of and need for the action and is consistent with direction in the Forest Plan;
- c) the environmental analyses were thorough, reasoned and reflective of laws, regulations, and national policy;
- d) the decision documents are supported by the project record and reflect reasonable conclusions; and
- e) 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 recommendations, I affirm the Responsible Official's decision on the Jackwood and Price Canyon Allotments.

This decision constitutes the final administrative determination of the U.S. Department of Agriculture [36 CFR § 215.18(c)]. A copy of this letter will be posted on the national appeals web page at <http://www.fs.fed.us/appeals>.

Sincerely,

*/s/ Jeanine A. Derby*  
JEANINE A. DERBY  
Forest Supervisor  
Appeal Deciding Officer

cc: William A Edwards  
Andrea W Campbell  
Richard A Gerhart  
Heather C Provencio  
David M Stewart  
Berwyn Brown

Mailroom R3 Coronado  
Teresa Ann Ciapusci  
Kent C Ellett

Enclosure: Appeal Reviewing Officer's letter

## **REVIEW AND FINDINGS**

of

### **Western Watersheds Project Appeal #08- 03- 05- 0001- A215 Jackwood and Price Canyon Allotments, Coronado NF**

For the purposes of this review, contentions have been re-arranged from the original appeal order so that they are addressed in the context of applicable laws, regulation and directives.

#### **ISSUE 1: The Jackwood and Price Canyon Allotments project does not meet the requirements of NEPA.**

**Contention A:** The EA lacks the specificity required of a NEPA document. The decision document fails to reveal the location or frequency of its monitoring plans, or the location and effects of its spring development and other improvements (appeal pp. 3-4). Past monitoring has been spotty and incomplete and the EA does not reveal their findings (appeal pp. 2, 5, 6).

**Response:** The Jackwood Price environmental assessment addresses future monitoring plans in Chapter 2 (PR #57 p.16). Future monitoring will include both effectiveness and implementation monitoring. In the near term implementation monitoring will determine if acceptable progress is being made towards attainment of resource management objectives and desired conditions. If acceptable progress is being made, current management may continue. If acceptable progress is not being made, then various adaptive management adjustments may be initiated.

Monitoring results are displayed in the record and summarized in the EA. Specialist's reports on soils, riparian areas, water quantity, and water quality are found in project records 26, 27, 28, and 29 for the Jackwood and Price Canyon Allotments. The EA discloses that 81 percent of the Jackwood allotment is in fair or better condition and is meeting Forest Plan standards for ecological condition. The EA also summarizes findings for vegetative conditions on some lower elevation sites which are considered poor (PR #57 p.3). Soils were assessed in 2006 and were found to be 92 percent satisfactory with 8 percent impaired on Jackwood allotment (PR #26 and EA PR #57 p.3). Production /utilization studies conducted between 2004 and 2006 indicate that permitted use is within existing capacity (PR #8, 11, 12, and 13). For the Price Canyon Allotment, rangeland vegetation and trend were evaluated between 2004 and 2006 (PR #5). Rangeland conditions are predominately fair or better with upward trend. Soil assessment in 2006 concluded 83 percent of the soils on the Price Canyon allotment are in

satisfactory condition with 17 percent impaired (PR #26). The EA displays these monitoring results (EA PR #57 pp.29- 32).

Certain range improvements (i.e. water developments, and fences) have been identified to improve management flexibility and contribute to improved distribution and moderate levels of grazing intensity. These developments have been identified as possible adaptive management practices to be implemented to achieve desired resource conditions based on the results of implementation monitoring. The location of all range improvements including water developments, are disclosed in Chapter 2 of the environmental assessment. The environmental effects of these potential adaptive management actions have been disclosed in the environmental assessment. If monitoring indicates the need for additional improvements that were not included in the environmental assessment they will be subject to site specific NEPA analysis before they are constructed (EA at PR #57 pp.13- 14 and DN at PR #58 pp.3- 4).

**Finding:** The environmental assessment describes monitoring plans, proposed improvements and past monitoring history that is sufficient for public review and for the Deciding Officer to make an informed decision under NEPA.

**Contention B:** The FS does not reveal how the project will be modified if guidelines are exceeded, and upon what information it will be modified. The EA does not specify the numbers of livestock that will be permitted, and what kinds of monitoring will result in on- the- ground changes The FS has not revealed where its key areas are located that will be measured for utilization (appeal pp.3- 4). The Allotment Management Plan (AMP) and features from the Annual Operating Plan should be released as part of the NEPA document for public comment so that management goals and strategies are revealed (appeal pp.4- 5).

**Response:** The environmental assessment identifies specific numbers of livestock authorized, dates for grazing, class of animal, and modifications in pasture rotations as the principal variables that will be used to adapt management annually based on changing precipitation patterns and annual forage production. Any changes in the aforementioned variables will be within the limits of timing, intensity, duration, and frequency of grazing disclosed in the NEPA analysis. Intensity of grazing will be managed at a level corresponding to light to moderate intensity, 32–43 percent. Consistent patterns of annual utilization in excess of light to moderate grazing in key areas will be used as a basis to modify management practices or take administrative actions to reduce utilization in subsequent grazing seasons (PR #57 p.17).

Monitoring protocol will be consistent with the Interagency Technical Reference, 1996, Cooperative Extension Service, USDA Forest Service, Natural Resources Conservation Service, and USDI Bureau of Land Management, revised 1999, which is referenced in the EA (PR #57 p.16), and the Principles of Obtaining and

Interpreting Utilization Data on Southwest Rangelands, 2007 (PR #37). Forest Officers have the discretion to use the protocols in the Interagency Technical Reference in accordance with their specific needs.

Key areas are discussed in Chapter 2 of the environmental assessment (PR #57 pp. 11, 14, 16, 17 and footnotes 4 and 9). A key area is a relatively small portion of range selected because of its location, use or grazing value as a monitoring location for grazing use. Key areas, if properly selected, will reflect the overall acceptability of current grazing management over the range. Therefore, they are subject to change over time and their specific locations are not required for purposes of NEPA analysis. However, monitoring results incorporating all key areas are available annually to both the public and other interested entities.

The upper numbers of livestock to be grazed are disclosed in the environmental assessment. These upper numbers may be adjusted downward to the point of total removal of livestock from the allotments under severe drought conditions. The decision for Jackwood authorizes 406 yearlings and the decision for Price Canyon authorizes 190 cow/calf pairs with a provision that initially stocking will be limited to 170 head until range improvements are completed. Grazing will be authorized year long on Price Canyon and Jackwood will be grazed during the dormant period (EA at PR #57 pp.11- 12 and DN at PR #58 pp.2- 3).

Allotment management plans (AMP) and the yearly implementation guidance in Annual Operating Instructions are administrative actions that implement NEPA decisions and are not subject to NEPA or appeal. Grazing Permit Administration Handbook, Chapter 90, Region 3 Supplement No. R3- 2209.13- 2007- 1, (September 8, 2007) requires the responsible official to prepare new allotment plans for all allotments analyzed in the decisions within 90 days of final agency action. Concurrent with issuance of a new permit following a NEPA decision the allotment management plan must be modified to be consistent with the NEPA decision and must be included in Part 3 of the term grazing permit. All allotments must maintain a current AMP developed within the bounds of the NEPA-based decisions.

**Finding:** Guidelines for modifying the project, numbers of livestock, and key areas for monitoring are disclosed in the environmental assessment and supporting documentation. There is no need to include Allotment Management Plans or Annual Operating Instructions in the environmental analysis for public review.

**Contention C:** The decision approves an undefined plan to cut down juniper and manzanita in undisclosed locations. Mechanically thinning is not disclosed as to where it will occur and what effects it will have (appeal pp.3, 5).

**Response:** The proposed locations of the thinning areas are identified on a map in the project record (PR #42) and the actions are described in the EA (PR #57 pp.

3, 7, 14 and 35). The environmental consequences of mechanical thinning are disclosed in Chapter 3 of the environmental assessment (PR #57 pp.25, 30, and 39). Mitigation measures related to slope, soil disturbance and compaction, buffers, large oaks and junipers, agaves and other non-target species are documented in Chapter 2 of the environmental assessment (PR #57 pp.15- 16). The method of thinning (Hydro- axe or similar machine) is described in detail in the Heritage Resources Report (PR #41). Since this is a multi- year project and funding is not anticipated within the next two years, a phased approach was used following protocol on heritage resources (PR #41 and PR #57 p.35).

**Findings:** The environmental effects, mitigation measures, and location of thinning areas are well documented in the environmental assessment for the Jackwood and Price Canyon Allotments.

**Contention D:** The DN at page 3 does not disclose whether or not this allotment has intermingled ownership and whether a Coordinated Resource Management Plan will be needed (appeal p.5).

**Response:** The EA discloses that the Jackwood allotment has 50 percent state and private holdings controlled by the permittee (PR #57 p3). Price Canyon has a private land permit for horses (PR #57 p.12). Water pipeline developments are described in the EA that involve private parcels on both allotments (PR #57 p.14). Coordinated resource management plans are not required, but in some cases they are prepared to enhance management of rangelands within multiple jurisdictions. Examples include private land, land administered by the Forest Service, Bureau of Land Management, and Arizona State Lands Department.

**Finding:** The EA disclosed ownership within the allotments and the project plan and effects that were relevant. Intermingled ownership does not imply a coordinated resource management plan is necessary. The various entities involved may have inconsistent objectives for their land that may not include common goals and objectives for management of rangelands.

**Contention E:** The maintenance of Montezuma quail cover habitat by maintaining grass over 6 inches height is related to a 45 percent utilization standard. The decision does not describe how this will be checked or measured with a percentage of utilization. FS has not revealed where these areas of measurement are and why utilization is being used instead of stubble height inches measurement (appeal pp.5- 6).

**Response:** The management and analysis of Mearns' (Montezuma) Quail (see PR #57, pp. 22 and 28; also PR #34) discloses the effects due to livestock grazing. Utilization standards to meet minimum height requirements were developed by the Coronado National Forest and officially adopted in a forest supplement to the Forest Service Manual 2630 (PR#38). Utilization was discussed in the EA

(PR#57, p. 11 including footnote). Monitoring follows established procedures as discussed in the EA (PR#57, pp. 16- 17 including footnotes).

**Finding:** The project complies with utilization guidelines for Mearns' (Montezuma) quail, and utilization will be monitored according to established procedures.

**Contention F:** The Forest Service violated NEPA by failing to consider and disclose the cumulative impacts of the proposed action. The cumulative effects chapter at the end of the EA lists effects but does not discuss the interaction of those effects with the proposal. The allotment is part of a larger ecosystem in the Chiricahua Mountains that should be addressed (appeal pp.6- 7).

**Response:** Cumulative effects result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Where there are no direct and indirect effects associated with the proposed action, there are no cumulative effects associated with the project.

The Jackwood and Price Canyon Grazing EA discloses there would be no direct or indirect effects to air quality (PR #57, p. 33), as such, there would be no cumulative effects. The direct and indirect effects resulting from project activities on other resources including wildlife, vegetation, riparian, soil, water quality, wilderness, and heritage resources are disclosed in Chapter 3 of the EA (PR #57, pp.19- 35). The EA also identifies and describes the effects associated with other past, present and reasonably foreseeable actions (PR #57 pp. 38- 39) including those effects associated with past grazing. The cumulative effects section also acknowledges that livestock grazing on State and private land adjacent to the project area is expected to continue.

**Finding:** The EA demonstrates consideration of the direct and indirect effects of the proposal and discusses the interaction between the project's effects and other past, present, and reasonably foreseeable actions.

**Contention G:** A FONSI is not justified and an EIS must be prepared. The context of the activity has been masked by subsuming it into one portion of the Chiricahuas. The Chiricahua range is one of great significance to science to biological diversity and to people throughout the Southwest. The following items in the Finding of No Significant Impact are specified in the appeal (appeal p.7).

- The impact of coliform contamination from livestock use has not been addressed as an impact to public health and safety.

- The Chiricahuas are unique and important for biological and ecological reasons as well as historic ones. Saying that there are no known unique characteristics is a lack of knowledge of the area in the FONSI.
- The effects of this project are completely unknown because the FS has not disclosed whether it will determine when, whether, or where to put what number of cows and build what number of improvements.

**Response:** Preparation of an EIS is not required or necessary to demonstrate an agency has taken a requisite “hard look” at the environmental consequences of a proposal. Agencies may initially prepare an environmental assessment (EA) and if the analysis supports a Finding of No Significant Impact (FONSI), the action is exempt from the requirements to prepare an EIS (40 CFR 1500.4 (q)). In preparing a FONSI, the agency considers both the context and intensity of effects related to several significance factors (40 CFR 1508.27).

The responsible official considered the degree to which the proposed action would affect public health and safety and unique characteristics of the area, as well as the degree to which the possible effects on the human environment would be highly uncertain (PR 58, p. 10- 12).

The impacts from livestock use were disclosed in the specialist water quality report. Current livestock management practices are not contributing to adverse negative effects, and therefore, the proposed action would not contribute to adverse negative effects (PR #29, p.4). While water quality has not been assessed on the allotments in question, watersheds outside the allotments and downstream of Cave Creek were assessed and water quality results did not show any coliform contamination from livestock (PR #29, p.3 table). Past, present and foreseeable future projects or actions that have affected or would affect the project area include historic heavy grazing, prescribed and natural fires, wildfire suppression, invasive exotic plants and water developments. These actions have contributed incrementally to effects that have changed water quality conditions of the area. The proposed action is designed to implement properly managed grazing allotments and would not contribute effects that would adversely change the water quality conditions of the analysis area (PR #29, p.5).

The CEQ regulations (40 CFR 1508.27 (b)(3)) direct responsible officials to consider the effects on *unique characteristics* of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. Regarding historic or cultural resources, the EA (PR #57, pp. 34- 35) acknowledges that the Chiricahua area has a long history of human occupation including both Native American and later, Euro- American land use. Mitigations were developed to minimize the effects to heritage resources from activities associated with grazing (PR #57, p. 15- 16). The Forest consulted with the Arizona State Historic

Preservation Office (SHPO) on the anticipated effects of the project and the SHPO concurred with the determination of No Adverse Effect (PR #41, and #58 p.11). No park lands, prime farmlands, wetlands (PR #57, p. 30), or wild and scenic rivers are located within the allotments. The EA discloses that about 3,000 acres of the 87,700 acre Chiricahua Wilderness overlaps the Price Canyon Allotment (PR #57 pp.5, 30). However, the effects are minimal because very little livestock use occurs within the wilderness as much of the area is not considered capable for grazing due to steep slopes, dense vegetation, and lack of available water (PR #57, p. 34). There are no designated ecologically critical areas such as research natural areas, zoological areas or special botanical areas within the allotments.

The effects on the human environment are not unknown. The EA provides a detailed discussion of the activities associated with the proposal. While flexibility is built in to the management of the allotment, the flexibility exists within prescribed parameters for timing, intensity, duration, and frequency. Furthermore, the type and location of proposed improvements are identified and the EA appropriately discloses the anticipated effects associated with the activities proposed (PR #57, pp. 19- 39).

**Finding:** The analysis supports the conclusions in the Finding of No Significant Impact. In the absence of significant effects, the preparation of an EIS is not required.



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File 1570- 1/2200  
Code:  
Route  
To:

Date: August 28, 2008

Subject: ARO, Appeal #08- 03- 05- 0001- A215, Jackwood and Price Canyon Allotment Project and Appeal #08- 03- 05- 0002- A215 North Chiricahua Allotments (Rough Mountain, Willie Rose, East Whitetail, West Whitetail and Cochise Head) Project, Douglas Ranger District, Coronado National Forest

To: Forest Supervisor

To: Jeanine Derby, Coronado Forest Supervisor, Appeal Deciding Officer

This is my recommendation on the disposition of the appeals filed in protest of the two Decision Notices and Findings of No Significant Impact concerning the Jackwood/Price Canyon and North Chiricahua Allotment Projects on the Douglas Ranger District.

District Ranger William Edwards signed the two decisions on June 2, 2008. The District Ranger is herein termed as the Responsible Official. Erik Ryberg for Western Watersheds Project filed separate but largely identical appeals of these decisions under the 36 CFR 215 appeal regulations.

### **Informal Disposition**

Pursuant to 36 CFR 215.17, attempts were made to set up a meeting for informal resolution of these appeals but no communication was returned and informal resolution was not reached.

### **Review and Findings**

My review was conducted in accordance with 36 CFR 215.19 to ensure that the analysis and decisions are in compliance with applicable laws, regulations, polices, and orders. The appeal records, including the appellant's issues and requests for relief have been thoroughly reviewed. Having reviewed the Environmental Assessments (EAs), decisions, and the project record files, as required by 36 CFR 215.19(b), I conclude the following:



- 1) The decisions clearly describe the actions to be taken in sufficient detail that the reader can easily understand what will occur as a result of the decisions
- 2) The selected alternatives on these two projects should accomplish the purpose and need established. The purpose and need stated in the EAs reflect consistency with direction in the Forest Plan for the Coronado National Forest.
- 3) The records show that the environmental analyses were thorough, reasoned and in line with laws, regulations and national policy.
- 4) The decisions are consistent with policy, direction, and supporting evidence. The records contain documentation regarding resource conditions and the Responsible Official's decision documents are based on the records and reflect reasonable conclusions.
- 5) The records reflect that the Responsible Official provided ample opportunity for public participation during the analyses and decision making processes. The Responsible Official's efforts enabled interested publics the opportunity to comment and be involved in the site-specific proposals.

After considering the claims made by the appellant and reviewing the records, I found that the Responsible Official conducted a proper and public NEPA process that resulted in decisions that are consistent with the Coronado National Forest Plan. I found no violations of law, regulations, or Forest Service policy.

### **Recommendation with Instruction**

I recommend that the Responsible Official's decisions relating to these two appeals be affirmed with respect to all of the appellant's contentions, with the following instruction:

- The Forest is instructed to include the consultation initiation letter of October 22, 2007, referenced within PR #55 of the North Chiricahua Allotments Record.

*/s/ Heather C. Provencio*  
HEATHER C. PROVENCIO



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District Ranger  
Appeals Reviewing Officer

Hard copy of this letter to be attached to ADO letters sent to appellant.

cc: Constance J Smith



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