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Department of  
Agriculture

Forest  
Service

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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- 0002- A215, NATIONAL ENVIRONMENTAL POLICY  
ACT (NEPA) COMPLIANCE FOR THE ROUGH MOUNTAIN, WILLIE ROSE,  
EAST WHITETAIL, WEST WHITETAIL, AND COCHISE HEAD  
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 subject allotments, which are located on the Douglas Ranger District and are known collectively as the North Chiricahua allotments.

**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 five North Chiricahua allotments. The DN authorizes implementation of Alternative 2, which was described in detail in the EA and which proposes grazing as follows:

<u>Allotment</u>	<u>Upper permitted limit</u>	<u>Total allotment acres</u>
Rough Mountain	.....147 cows	.....19,830
Willie Rose	.....31 cow/calf pairs	..... 1,572
West Whitetail	.....72 cow/calf pairs	..... 3,842
East Whitetail	.....100 cow/calf pairs	.....12,830
Cochise Head	.....126 cow/calf pairs	..... 6,975

Each of these allotments are authorized to be grazed during the dormant season with the exception of West Whitetail, on which grazing will be allowed during any month of the year up to a maximum of six months.

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 recommendation, I affirm the Responsible Official's decision, with the following instruction, regarding grazing management on the North Chiricahua allotments. My instruction is that the following referenced letter be added to the record:

- Letter from the Coronado National Forest, dated October 22, 2007, initiating Endangered Species Act consultation with the U.S. Fish and Wildlife Service (Project Record, Item #55).

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  
Mailroom R3 Coronado  
David M Stewart  
Berwyn Brown  
Heather C Provencio

Enclosure: Appeal Reviewing Officer's letter

## **REVIEW AND FINDINGS**

of

### **Western Watersheds Project Appeal #08- 03- 05- 0002- A215**

#### **Rough Mountain, Willie Rose, East Whitetail, West Whitetail and Cochise Head (or North Chiricahua) 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 North Chiricahua Allotments (Rough Mountain et al) project does not meet the requirements of NEPA.**

**Contention A:** The document is silent about range condition and trend on the allotments, a NEPA violation. In 1996 the Wood Canyon and other areas were mentioned as being in very bad shape, with problems such as riparian damage, but all evidence of resource problems has vanished from the documentation. Previous problems are not discussed in the EA and current conditions are not described. Monitoring has been spotty and incomplete and the EA does not reveal its' findings (appeal pp.1- 2).

**Response:** For Rough Mountain data collected at seven permanent monitoring sites indicates that uplands are in fair to good condition with stable or upward trend (PR #26). With exception of one site at a water concentration point, upland conditions are meeting Forest Plan standards for range condition. For Willie Rose monitoring data indicates uplands are in fair condition. Indicators of soil condition such as bare ground and litter show positive trends (PR #23). For West Whitetail monitoring data indicates that uplands are in good to excellent condition and are nearing their ecological potential (PR #24). Bare soil is decreasing and litter is increasing.

For East Whitetail monitoring data collected in 2005 at two permanent monitoring transects indicate fair condition at one site and excellent condition at the second (PR #22). Indicators of soil stability are stable or improving. For Cochise Head monitoring data collected at two permanent transects indicate fair to good condition with upward trends (PR #25). Indicators of soil condition show strong positive trends. Specialist's reports on soils, water quality and quantity and riparian areas on the allotments are found in the project records (PR #50, #51, #52, and #53) for the Rough Mountain, Willie Rose, East Whitetail, West Whitetail and Cochise Head Allotments (also known as North Chiricahua group). The EA summarizes these trend and condition findings in Chapter 1 (PR #79 pp.3- 4).

Environmental consequences documented in the EA include among other things increased plant density and improved vigor, sufficient residual biomass to protect soils, dormant season grazing or regular rest or deferment to allow for growth and reproduction of perennial grasses. Although none of the allotments in this analysis have perennial streams, riparian vegetation is sustained primarily through sub-surface flow and the proposed action is expected to improve the recruitment of riparian vegetation (PR #79 pp.31- 33).

Wood Canyon is part of the Rough Mountain allotment. The riparian areas of Wood Canyon T1 and T2 show tree and shrub canopy percentages at high levels and vigor is good or fair (PR #79, Table 4 p.32). New water developments are designed specifically to take pressure off riparian areas of Wood Canyon and Emigrant Canyon and will allow development of channel bank protection and more vigorous riparian areas (PR #79 p.33).

**Finding:** The project record documents past monitoring and discloses range condition and trend on the allotments, as well as existing conditions and issues in conformance with NEPA.

**Contention B:** The EA lacks the specificity required of a NEPA document. 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. The decision document fails to reveal the location or frequency of its monitoring plans, and the location or effects of spring developments or other improvements. The Allotment Management Plan (AMP) and features from the Annual Operating Plan should be released as part of the NEPA document so that management goals and strategies are revealed (appeal pp. 2- 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 analyses. 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 #79 pp. 10, 15, and 16 including footnotes, and DN PR #78 p.2).

The North Chiricahua Allotments environmental assessment addresses future monitoring plans in Chapter 2 (PR #79 pp. 15- 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 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, (PR #79 p.15) and the Principles of Obtaining and Interpreting Utilization Data on Southwest Rangelands, 2005 (PR 45). Forest Officers have the discretion to use the protocols in the Interagency Technical Reference in accordance with their specific needs.

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. Specific numbers disclosed include: 1) Rough Mountain 147 cows; 2) Willie Rose 31 cows; 3) West Whitetail 72 cows; 3) East Whitetail 100 cows; 4) Cochise Head 126 cows. All of these allotments are grazed during the dormant season with the exception of West Whitetail which can be grazed any month of the year up to six months total to avoid periods when livestock poisoning occurs (EA PR #79 p.11, DN PR #78 pp.2- 3).

The location of all range improvements including water developments, are disclosed in Chapter 2 of the environmental assessment (PR #79 pp.12- 13). Proposed range improvements will enhance management flexibility and contribute to improved distribution and moderate levels of grazing intensity. The environmental effects of these potential management actions have been disclosed in the environmental assessment (PR #79 pp.20, 21, 25, 29- Wildlife, p.33- Riparian, p.36- Water, p37- Heritage, pp.38 and 39- Economics). If implementation 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 (PR #79 pp.13 and 16, DN PR #78 p.4).

Key areas are discussed in Chapter 2 of the environmental assessment (PR #79 pp.10, 13, 15 16 and footnotes). 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.

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 these 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. There is no need to include Allotment Management Plans or Annual Operating Instructions in the environmental analysis for public review. 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 C:** 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:** Coordinated resource management plans are not required, but in some cases they are prepared to enhance management of rangelands within multiple jurisdictions. In the North Chiricahua Allotment project, East Whitetail allotment mentions private inholdings that may affect pasture fencing (PR #79 p.3). Coordinated Resource Management Plans are encouraged where the presence of intermingled ownership is conducive to more flexible management (PR #79 p.11, DN PR #78 p.3). Examples of multiple jurisdictions include private land, land administered by the Forest Service, Bureau of Land Management, and Arizona State Lands Department.

**Finding:** 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 D:** The maintenance of Montezuma quail cover habitat by maintaining grass over 6 inches height is related to a 45 percent utilization standard. DN 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 p.6).

**Response:** The management and analysis of Mearns' (Montezuma) Quail (PR#79, pp.27-29; also MIS report at PR #48) follows procedures and guidance developed by the Coronado National Forest and officially adopted in a forest supplement to the Forest Service Manual 2630 (PR#64). Monitoring of utilization follows

established guidelines as discussed in the EA (PR#79, pp. 10, and 15 and footnotes).

**Finding:** The management and monitoring of Mearns' (Montezuma) Quail habitat is in accordance with established FS policy.

**Contention E:** The DN does not identify if the permittee is responsible for monitoring. Permittees have no incentive to accurately report what they find and on June 15, 2006 the overuse of Wood Canyon was noted in a letter to Rough Mountain Ranch (appeal p.6).

**Response:** As described in the EA, the Douglas District Range Staff Officer is responsible for monitoring. Active cooperation and participation by the permittees is encouraged (PR #79 pp.12, 15).

**Finding:** Permittee monitoring is not required as part of the decision, the Forest Service is responsible for the monitoring.

**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 North Chiricahua Allotments EA discloses there would be no direct or indirect effects to Air Quality (PR #79, p. 35), and thus no cumulative effects. The direct and indirect effects resulting from the project activities on other resources including wildlife, vegetation, riparian, soils, water quality, special management areas, and heritage resources, are disclosed in Chapter 3 of the EA (PR #79, p. 18 – 38). The effects associated with other past, present, and reasonably foreseeable actions are disclosed in the Cumulative Effects section of the EA (PR #79, p. 40-41). A discussion of historic grazing activities and how the proposed action was developed to address some of the resource concerns resulting from past grazing practices is presented. Furthermore, it is acknowledged that while an additional 21 grazing allotments are present in the Chiricahua Mountains, they are located in a separate watershed and thus, are not expected to contribute to effects associated with the allotments discussed in this EA (PR #79 p.40).

**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 pp.7-8).

- 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 FONSI for the Rough Canyon et al. allotments (PR #78, p. 10- 12) also considered significance in relation to context and intensity for various factors, including public health and safety, unique characteristics, and the degree to which the possible effects on the human environment were highly uncertain.

For these allotments, the FONSI states there would be no significant effects on public health and safety. There is no evidence that non- point source pollution or point source pollution from grazing in the North Chiricahua allotments is contributing to water quality problems as disclosed in the specialist water quality report (PR #51 pp. 2- 3). Numerous canyons and washes dissect the area but none of these has year round surface water flow (perennial waters), all channels have intermittent or ephemeral flow (PR #53 p.1). 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 #51, pp.4- 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 #79, pp.36- 37) acknowledges the depth and diversity of historic and prehistoric human presence in the Chiricahua area. Mitigations were developed to minimize the effects to heritage resources from activities associated with grazing (PR #79, pp. 14- 15). 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 #66, #78 p.11). No park lands, prime farmlands, wetlands (PR #79, p.32), wilderness, or wild and scenic rivers are located within the allotments. There are no designated ecologically critical areas such as research natural areas, zoological areas or special botanical areas (PR #79, p. 36).

The effects on the human environment are disclosed and the EA provides a detailed discussion of the activities associated with the proposal. While flexibility is built in to the management of the allotments, 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 #79, pp. 18- 41).

**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.

**ISSUE 2: The North Chiricahua (Rough Mountain et al) Allotments project does not meet the requirements of NFMA, the Coronado Forest Plan and the Endangered Species Act.**

**Contention:** The lesser long-nosed bat is not protected by this document because the EA disguises effects to the bat. Livestock grazing can affect agave production at bolting time and this project will reduce agaves. The project also does not protect Mearns or Montezuma's quail as described earlier (appeal p.8).

**Response:** Effects to the lesser long-nosed bat are found in the EA (PR #79, pp. 18- 19), and the Biological Assessment (PR #47, pp. 11- 13). Formal consultation on the effects of grazing were initiated on October 22, 2007 (note, this consultation initiation letter was not included in the project record), as confirmed by the USFWS letter dated November 8, 2007 (PR #55). A draft biological opinion (BO) was issued on December 26, 2007 (PR #57). The Forest responded to the draft BO (PR #59) and a final BO was issued on February 29, 2008 (PR #60; the date in the header of the document incorrectly says 2/29/07). The USFWS found no jeopardy to the lesser long-nosed bat and determined that the proposed action was consistent with the incidental take statement issued in

prior BOs (PR #41 for programmatic range consultation on Coronado NF, PR#42 on the Forest Plan).

**Finding:** The Coronado NF complied with all procedures regarding the Endangered Species Act, NFMA, and the Coronado Forest Plan. **The Forest is instructed to include the consultation initiation letter of October 22, 2007, referenced within PR #55, to complete documentation of procedural requirements.**



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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  
District Ranger  
Appeals Reviewing Officer

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



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cc: Constance J Smith



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