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Department of  
Agriculture

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Date: May 18, 2004

Mr. John Talberth  
Forest Conservation Council  
P.O. Box 22488  
Santa Fe, New Mexico 87502

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RE: Appeal #04-03-02-0001-A215, Questa/Lama Wildland Urban Interface Project, Questa Ranger District, Carson National Forest

Dear Mr. Talberth:

This is my review decision on the appeal filed regarding the Decision Notice (DN) and Finding of No Significant Impact (FONSI) on the above-referenced project, which provides for the installation of 12.1 miles of fuel breaks and thinning of 959 acres on the Carson National Forest.

### **BACKGROUND**

District Ranger Ron Thibedeau made a decision on February 13, 2004, for the Questa/Lama Wildland Urban Interface Project. The District Ranger is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR § 215 appeal regulations.

Pursuant to 36 CFR § 215.17, an attempt was made to seek informal resolution of the appeal. The record indicates that informal resolution was not reached.

My review of this appeal has been 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 RECOMMENDATION**

The Appeal Reviewing Officer found that: a) the decision logic and rationale were generally clearly disclosed; b) the benefits of the proposal were identified; c) the proposal and decision are consistent with agency policy, direction, and supporting information; and d) public participation and response to comments were adequate.

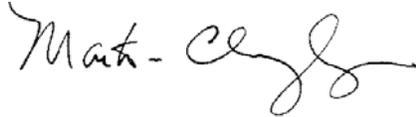


**APPEAL DECISION**

After a detailed review of the project record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision on the Questa/Lama Wildland Urban Interface Project with instructions to address resource concerns related to roads during the maintenance activity.

This decision constitutes the final administrative determination of the United States Department of Agriculture [36 CFR § 215.18(c)].

Sincerely,

A handwritten signature in black ink, appearing to read "Mart - Chavez". The signature is fluid and cursive, with a long horizontal stroke at the end.

MARTIN D. CHAVEZ, JR.  
Appeal Deciding Officer  
Forest Supervisor

Enclosure

cc: Daniel Crittenden, Constance J Smith, Mailroom R3 Carson, Audrey Kuykendall, Ron Thibedeau, Roy A Hall

**Appeal: 04-03-02-0001-A215****(John Talberth, Julie Sutherland, Richard Schiffman)****Questa/Lama WUI****Appeal Issues, Responses and Findings****ISSUE I. The Questa/Lama project violates National Environmental Policy Act (NEPA).**

**Contention A:** The appellant contends that the threshold of significance is reached; therefore, an Environmental Impact Statement (EIS) is required to the degree to which the project affects “public health and safety” by increasing the fire risk, due to the short-term accumulation of project-generated fuels and increased access.

**Response:** Both the Decision Notice (DN, PR #115, pp. 6-9, 13) and the Environmental Assessment (EA, PR #114, p. 64) state that the selected alternative will reduce risk by decreasing fuels and decreasing fire intensity. Effects of fuel treatments and general thinning activities are disclosed in the EA consequences section (pp. 60-64). Treatment of short-term accumulations of fuel is restricted to pile burning with frozen ground conditions or with snow cover (EA, p. 62; mitigation measure S7, p. 30).

The communities are responsible for doing the fuels treatments in acres immediately adjacent to communities (DN, p. 10; EA, p. 64). Collaborative Forest Restoration Program (CFRP) grants were sought by and awarded to the Village of Questa and Lama Community (PR #77, #99, #112, #118; and DN, p. 10).

Regarding access, no new roads are proposed in any of the alternatives in the project area. Existing roads would be left open and would provide access for fire suppression (EA, pp. 139-140). Public safety on existing roads is addressed (EA, p. 141).

**Finding:** The risk from short-term accumulation of fuels does not rise to a level of significance; therefore, an EIS is not required.

**Contention B:** The appellant contends that the threshold of significance is reached; therefore, an EIS is required, to the degree to which the effects on the “quality of the human environment are likely to be highly controversial...” The appellant makes a case that 29 landowners believe this reaches the level of “highly controversial.”

**Response:** As to NEPA significance, court rulings have refined the term of “highly controversial.” “The term ‘controversial’ refers to cases where a substantial dispute exists as to the size, nature or effect of the major federal action rather than to the existence of opposition to a use.” *Town of Cave Creek, Arizona v. Federal Aviation Admin. and Dept. of Transportation*, D.C. Cir., 2003, referencing *Found. For N. Am. Wild Sheep v. U.S. Dept of Agric.*, 9th Cir., 1982.

A collaborative effort was made on this project for two years and opposition remains from a group of concerned landowners (PR #112). The Lama neighborhood association sought and received a CFRP grant in order to oversee and carry out fire protection activities on 216 acres adjacent to the Lama community, and the association supported the purposes of the project (PR #77, #112, and #118). A grant was also sought and awarded to the Village of Questa

(PR #99) to do WUI (Wildland-Urban Interface) and forest health treatments on 150 acres of adjacent National Forest System lands. A history of public contacts and letters are in the record. Summaries of meetings are found in PR #24, #33, #37, #39, #54, #57, #62B, #65, #112; and page 13 of the EA (PR #114).

**Finding:** The opposition expressed is not a dispute about the size, nature or effects of the proposal that were disclosed; therefore, an EIS is not required.

**Contention C:** The appellant contends that the threshold of significance is reached; therefore, an EIS is required because of the degree to which the effects “are highly uncertain and involve unique and unknown risks.” Appellant mentions fire risks, competition with goshawks in openings, and failure to disclose scientific opposition.

**Response:** The fire and fuel models are described in the EA (PR #114, pp. 55-56) and an example of how the fuel model works in the Questa/Lama area is included. Fire risks will decrease (see earlier references in Issue 1, Contention A response).

A discussion of how the goshawks are using the habitat, which includes a need for more habitat openings, low numbers of prey, and a dense understory; is in the Wildlife Specialist report (PR #91, p. 4). The on-the-ground observations point to a need for more openings, not a history of competition of other predators with goshawks.

Opposition to the project was brought up in terms of the size and number of trees to be removed (EA, p. 37), not because of risks or uncertainty of effects. Opposition to fuels treatment beyond the immediate boundaries of home ownership was discussed and addressed (EA, p. 54). There were no scientific papers or professional science information presented during the two-year analysis that raised new information or disagreement with effects that were analyzed (see project record).

**Finding:** No unique or unknown risks were brought forward in the public review; therefore, an EIS is not required.

**Contention D:** The appellant contends that the threshold of significance is reached; therefore, an EIS is required because of the degree to which the project in conjunction with widespread piñon mortality poses a cumulatively significant impact. Appellant contends that mitigation may not be effective and that VSS (Vegetative Structural Stage) and residual trees were not evaluated for beetle attack after the treatments.

**Response:** Bark beetle mortality in ponderosa and piñon pine trees in recent years is disclosed in the EA (PR #114, pp. 6, 33-36). Mitigation measures on treatments were developed to avoid periods of high bark beetle activity, and monitoring of bark beetle activity is scheduled to determine when thinning might occur and when thinning should be restricted (EA, pp. 30-31, and Appendix C). The effectiveness of mitigation was estimated (EA, pp. 30-31.)

The cumulative effects analysis on vegetation evaluated effects beyond the project area in relation to bark beetle attacks (EA, p. 33). The role of beetles in the ecosystem is discussed with beneficial and adverse impacts (EA, p. 40). The cumulative effects of beetle attack over time, within and south of the project area, are described (EA, pp. 43-44). VSS is described, and effects to VSS are disclosed (EA, pp. 44-47). The No Action alternative (Alternative A), shows a

possible epidemic insect infestation as a consequence; while growth into VSS classes and balance between VSS classes should improve under Alternatives B, C, and D.

Thinning treatments would reduce mortality in the future, by reducing competition for limited resources in the dense ponderosa pine and piñon pine stands (EA, pp. 35-36). Thinning overcrowded forests will not eradicate pests, but would reduce them to more natural levels and increase health of remaining stands, which are better able to withstand infestation; and this is described as an output of Alternatives B, C, and D (EA, p. 42). Mitigation measures were developed in response to possible risk of increased bark beetle populations after treatment (EA, pp. 42-43). The DN states that thinning will reduce susceptibility over time (PR #115, pp.9-10).

**Finding:** Cumulative effects included an adequate consideration of bark beetle impacts to adjoining areas; therefore, an EIS is not required.

**Contention E:** The maintenance of the fuel breaks is a reasonable and foreseeable action on the agency's part and should be included in the analysis. Appellant includes activities such as prescribed burning, thinning, brush control, and suppression of invasive species in maintenance.

**Response:** The EA describes fuel break maintenance such as thinning and fuels treatment at regular intervals to enhance and maintain desired conditions and rates effectiveness of the fuel treatments (PR #114, pp. 44, 49, and 65). The actual fuel break treatments would be implemented over a 5- to 10-year time period (EA, p. 17), thus maintenance activities would not begin for at least 5 to 10 years. Mitigation measures require that fuel break work be completed before any general thinning starts (EA, p. 29).

**Finding:** The outyear maintenance work was estimated for cumulative effects analysis and is adequate.

## **ISSUE II. The Questa/Lama EA violates National Forest Management Act (NFMA).**

**Contention A:** The Questa/Lama Project fails to provide for the diversity of plant and animal communities in the planning area or insure the maintenance of viable populations of management indicator species.

**Response:** Eleven of the Carson National Forest's Management Indicator Species (MIS) were considered in the project analysis; however, because of the relatively homogeneous forest conditions, six species were analyzed in detail (PR #110). Population trends were assessed in terms of changes in suitable acres and from data through the Breeding Bird Survey and North American Breeding Bird Survey programs. The project is in accord with the recent Corner Mountain decision (*Center for Biological Diversity v. US Forest Service*, No. CV 01-1106 WJ/RLP ACE) that concluded, "The Forest has the discretion regarding the identification of the geographic area within which the effects of the environmental impacts are measured." The Forest is monitoring five MIS (Abert's squirrel, red squirrel, Brewer's sparrow, hairy woodpecker, and juniper titmouse) and 109 other bird species across all six ranger districts (PR #111A, B, and C).

**Finding:** Data used in this analysis is consistent with recent court opinions and appropriate for the decision level. Therefore, the project does not violate NFMA.

**Contention B:** The Questa/Lama Project fails to demonstrate consistency with the Forest Transportation system management policy or the Land and Resource Management Plan RAPS.

**Response:** The project implementation does not propose any changes in traffic service or maintenance levels; it does not recommend any reconstruction of existing roads, nor does it intend any changes in access. The project implementation only requires maintenance to the current road system. Road maintenance activities do not require a RAP. The maintenance of the roads will address and mitigate any resource damage associated with the implementation of the project.

**Finding:** The Questa/Lama EA is consistent with Forest Service Transportation System policy.

**Contention C:** The Questa/Lama Project fails to demonstrate consistency with the management recommendation for the northern goshawk (MRNG).

**Response:** The Questa/Lama project follows the management standards and will lead to uneven-aged stand conditions for live trees and retain live reserve trees, snags, downed logs, and woody debris (goshawk standards, PR #6, p. 91). The EA (PR #114) and the Wildlife Report (PR #110) both address the project's effects to soil and ground cover. The ponderosa pine forest in the project area is currently dominated by VSS 3. Forest structure within this project area is largely homogeneous (PR #110). Project implementation will follow MRNG by increasing the mosaic in vegetation density, age class, and species composition across the landscape (PR #6, p.91). The project will add to forest heterogeneity by creating early seral stage conditions (fuel breaks), thinning to reduce fuels (which may also increase individual tree health and growth rates), and by designating stands for developing and sustaining old growth within the project area.

The contention is based on perceived inconsistencies between the project and MRNG. Specifically, the contention is that the guidelines, and hence the Forest LRMP, are violated by designating the project a foraging area rather than a post-fledgling family area. However, the Record of Decision (ROD) that adopted the MRNG discusses spatial scale and states that the distribution of forest structural elements "should be evaluated at the ecosystem management area level, mid-scale such as drainage, and at the small scale of site (p. 92)." The MRNG is a landscape approach that "offer[s] a design that can be adapted for sustaining productive forests at the landscape level" (MRNG, p.8). The recommendations and guidelines are not intended to prevent addressing site-specific needs such as forest health or human safety.

**Finding:** The project is consistent with the Management Recommendations for the Northern Goshawk.

**Contention D:** The Questa/Lama project fails to insure that soil conditions will not be permanently impaired. Appellants contend that since a quantitative analysis of soil impacts did not occur, there is no guarantee that the area will not be significantly and permanently impaired.

**Response:** The project soil and water technical report (PR #108) describes the existing condition of the soil in the project area and evaluates the effects of each alternative on soil properties that appropriately represent soil condition. The aerial extent of anticipated soil disturbance and soil enhancement is described and analyzed. Mitigation is required to minimize disturbance impacts (PR #114, pp. 28-31). Mitigation measures were chosen based on their effectiveness in past situations and will be monitored for their effectiveness (PR #115).

**Finding:** Adequate analysis was completed and appropriate mitigation will take place to insure that no permanent impairment to the productivity of the soil will occur.

**Contention E:** The Questa/Lama Project fails to demonstrate consistency with LRMP regarding created openings. The appellants insist that the project-created openings are limited by the LRMP as well as the MRNG.

**Response:** Appellants cite extensively from the *Regional Guide for the Southwestern Region* (1983). This guide was removed as guidance and either incorporated into Forest Plans or dropped as guidance (see Federal Register Notice, 66 FR 65463, December 19, 2001).

Appellants also cite MRNG (Management Requirements for Northern Goshawk) that places maximum created opening sizes of 2 and 4 acres within the Post Fledgling Areas (PFAs) or foraging areas (FAs), respectively. Appellants fail to point out the MRNG involves primarily the ponderosa pine, mixed conifer, and spruce forest types and does not apply within the woodland type. The project area consists of 41 percent ponderosa pine, 47 percent piñon woodland, and 11 percent grass/shrub (PR #114- EA- Table5, p. 37). The MRNG applies to approximately 40 percent of the analysis area.

The proposed thinning treatments within the analysis area consist of “general thinning” to 50-60ft<sup>2</sup> of basal area and “fuel break thinning” to 40-50ft<sup>2</sup> of basal area. Neither thinning scenario will result in the creation of openings within forested areas (PR #114; Alternative D, p. 23). Treatments will generally be a *thinning-from-below*, where the smallest trees are removed first. A 10-inch diameter cap has been placed on thinning treatments, and it is estimated that between 50 and 120 trees/acre will remain.

The increase in beetle activity, especially in the woodland type, was recognized and documented in the EA (PR #114- Ponderosa Pine and /Juniper –*Existing Conditions* EA, p. 6; and Forest Health – *Affected Environment*- PJ- EA, pp. 35-36). The effects of both wildfire and bark beetle activity that extend beyond the boundaries of the project area were considered in the cumulative effects section of the EA (PR #114- Chapter 3-Cumulative Effects, p. 33).

**Finding:** The EA factored into the analysis the current epidemic of bark beetles that appears to be creating openings in areas dominated by piñon pine. Proposed thinning will not increase existing opening size or add to the percentage of the landscape in openings. Proposed thinning will retain all live trees greater than 10” and will retain between 50 and 120 live trees/acre when they exist. Openings resulting from the current epidemic of bark beetles in the piñon pines are considered created openings, although these openings are not the result of thinning activities but rather the result of the current environmental conditions.

**Contention F:** Appellants also contend that insufficient stand exam data was collected to determine existing opening sizes and to project the extent of future openings within the project area. Appellants contend that the Forest Service has failed to perform an adequate analysis of the project area due to a lack of stand exam data. They contend that exam data are needed to accurately determine the location of existing openings and to predict where future openings are likely to occur due to recent bark beetle activity in piñon pine.

**Response:** Stand exam data is not collected at an intensity that would allow stand mapping of existing openings. Aerial photos would be more useful in performing that type of activity.

Unfortunately, we are in the middle of an ongoing bark beetle epidemic and would need very recent aerial photos to map existing openings resulting from beetle activity.

Analysis teams rely on more than stand exams to complete their analyses. Both aerial photo interpretation and field reconnaissance are important in determining existing conditions. Because of the uncertainty over predicting insect epidemics and the extent of their impacts on stand conditions, field reconnaissance is more effective than either old aerial photos or stand exam plots.

**Finding:** There are no national or regional standards concerning the amount of stand exam data that must be collected before an analysis can be undertaken. Stand exam plot data is typically not at an intensity that would allow for detailed stem mapping (the mapping of dead and live tree areas). There are numerous environmental variables involved in insect epidemics so that it is difficult to predict future impacts with any degree of certainty using stand exam data, aerial photos, or stand reconnaissance.