

United States
Department of
Agriculture

Forest
Service

Region 1

Federal Building
P.O. Box 7669
Missoula, MT 59807

File Code: 1570 (215)
#97-01-00-0028

Date: April 14, 1997

Dr. Belle Richards
American Wildlands
801 Linden
Helena, MT 59601

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dear Dr. Richards:

This is my decision on disposition of the Appeal you filed on behalf of American Wildlands protesting the Livingston District Ranger's Decision Notice (DN) for the Porcupine Allotment on the Gallatin National Forest.

The District Ranger's decision adopts Alternative 2 reauthorizing reissuance of two 10-year term grazing permits allowing grazing of 68 cow/calf pairs from July 1 to October 25 in pasture 1 and 94 cow/calf pairs in pasture 2 from July 1 to October 30. Total use is 135 animal months or 178 animal-unit months in compliance with prescribed utilization levels. A spring will be developed to increase livestock distribution in pasture 2.

DECISION

After careful consideration of the Appeal Reviewing Officer's recommendation, I affirm the District Ranger's decision to implement Alternative 2. Your requested relief is denied.

My review of your Appeal was conducted pursuant to, and in accordance with, 36 CFR 215.17 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. I have thoroughly reviewed the Appeal Record, including the recommendation of the Appeal Reviewing Officer (copy enclosed) regarding the formal disposition of your Appeal. My decision hereby incorporates by reference the entire Appeal Record.

APPEAL SUMMARY

You allege violations of the Administrative Procedures Act and the Clean Water Standards.

Central objections identified in your Appeal concern grazing suitability, water quality impacts, and riparian areas. You request that an environmental impact statement be completed.

An Informal Meeting was offered, but you declined. No Interested Party comments were received.

APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer recommends the District Ranger's decision be affirmed and your requested relief be denied.

FINDINGS

Following is my evaluation of the objections raised in your Appeal and your

requested changes.

Scope of Decision

Decisions made in Forest Plans are subject to administrative review under 36 CFR 217 and are not subject to review in project or activity decisions [36 CFR 215.8(a)(1)]. These decisions are considered to be beyond the scope of the project-level decision, and the opportunity to challenge these decisions has been exhausted.

Similarly, Appellants may not request review of activities that are not "connected" to the project decision being challenged or ask that additional decisions be made that are not "ripe" for decision. Under NEPA, the Responsible Official has the discretion to propose actions and determine which actions warrant a decision and those that do not.

I have determined that your objection related to suitability for livestock grazing is a decision made in the Gallatin National Forest Plan and is beyond the scope of this decision. Therefore, it will not be considered in this review.

I have determined your remaining objections are within the scope of the decision.

Scope of Decision Documentation

Appellants have an affirmative obligation under the NEPA to structure their comments and participation to allow the decisionmaker an opportunity to address and deal with concerns prior to making a decision. The Appeals Reform Act, 16 U.S.C. 1612, requires the Responsible Official to provide an opportunity for public comments prior to making a decision. A response to those comments becomes part of the decision documentation. Issues and comments raised during or before the comment period are to be considered and responded to by the Responsible Official prior to issuance of a decision [36 CFR 215.6(d)]. If the Appellants have not raised specific issues or concerns with the project or have withheld information until after a decision has been issued, they have effectively prevented the Responsible Official from being able to respond.

Your objections correspond closely to comments you raised in scoping and during the comment period. Because of your early participation in the environmental analysis, the District Ranger was able to analyze these concerns by incorporating them into the environmental analysis and consider them in making the decision.

Procedural Determination

I have thoroughly reviewed your arguments and the information referenced in the District Ranger's March 14, 1997, Transmittal Letter (copy enclosed). The Transmittal Letter provides specific page references to discussions in the environmental assessment (EA), the DN, and project file which bear upon your objections. The objections you raise in your Appeal are similar to the comments you made on the EA. The project file indicates your objections were either addressed as environmental issues in the EA or are discussed in the DN. I specifically incorporate in this decision the references and citations contained in the Transmittal Letter. Based upon a review of the references and citations provided by the District Ranger, I find the objections you raised were adequately considered in the EA/DN and the District Ranger made a reasoned decision concerning those issues. I find the District Ranger has complied with all laws, regulations and policy.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Richard M. Bacon (For)

KATHLEEN A. MCALLISTER
Appeal Deciding Officer
Deputy Regional Forester

Enclosures (2)