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Subject: ARO Letter - Antelope Basin/Elk Lake Allotment Management Plan Updates DN - Beaverhead-Deerlodge NF - Appeal #04-01-00-0011 - Alliance for the Wild Rockies, et al.

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Michael Garrity, on behalf of the Alliance for the Wild Rockies and The Ecology Center, protesting the Antelope Basin/Elk Lake Allotment Management Plan Updates Decision Notice (DN) on the Beaverhead-Deerlodge National Forest.

The District Ranger's decision adopts Alternative B, which updates the allotment management plans (AMPs) on the Elk Lake, North Saddle, Conklin, Neely's Camp, Cliff Lake Bench, Red Rock, Hidden Lake Bench, Antelope Basin, Horn Mountain, Wade Lake, and Two Drinks Allotments consistent with management direction in the Beaverhead National Forest Land and Resource Management Plan.

Alternative B would exclude livestock from Elk Springs Creek and around portions of Elk Lake. The Elk Mountain Allotment would be eliminated and the livestock use would be allocated to adjacent allotments, without an increase in permitted animal unit months (AUMs). The Two Drinks Allotment would be established by modifying the northwest boundary of the Elk Lake Allotment. Livestock use on the Two Drinks Allotment would be coordinated with adjacent State lands.

Under Alternative B, allowable upland forage utilization would not exceed 50 percent. Allowable riparian forage utilization would not exceed 55 percent. Allowable stream bank alteration levels would range from 25 to 30 percent. Stubble height of riparian vegetation at the end of the grazing season would range from 3 to 4 inches. Livestock would be moved when a shift in preference from herbaceous to woody species is noted. Authorized livestock use is estimated at 10,453 AUMs. However, since pasture moves and end of season moves would be made when one of the prescribed thresholds is met, the annual season of use would vary depending upon forage production, weather patterns, and on-the-ground livestock management practices.

Under Alternative B, existing structural range improvements (fences, water troughs, etc.) would be maintained and reconstructed as necessary. Two miles of fence would be removed and 5 miles of existing fence would be relocated. An additional 6.75 miles of fence, 26 troughs, 5.75 miles of pipeline, and a reservoir may be constructed on an "as needed" basis.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the appellants' objections and recommended changes, has been



thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

The appellants allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Endangered Species Act (ESA), the Multiple Use Sustained Yield Act (MUSYA), the Administrative Procedures Act (APA), and the Beaverhead Forest Plan. The appellants did not request any relief. The appellants declined the offer of an informal appeal resolution meeting.

ISSUE REVIEW

Issue 1. The Antelope Basin/Elk Lake AMP Environmental Assessment (EA) and DN do not satisfy the economic requirements of the Forest Plan and Federal financial reporting laws. The EA does not analyze economic consequences of the loss of plant and animal communities due to grazing. Nor was the value of clean water in the project area analyzed or the economic impact of logging on clean water. There is an inaccurate and incomplete economic analysis in the EA.

Response: The Forest included the required economic analysis in the project file (Doc. 333). Project-level economic analysis does not require that non-commodity economic values be addressed. “Weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations” (40 CFR 1502.23). The NEPA process shall be used “...to emphasize real environmental issues and alternatives” [40 CFR 1500.2(b)]. The primary focus at the project level is to identify the potential impacts that are unique to the decisions made about these allotments, as was done for watershed, plants, and animals in the EA (pp. 47 to 126 and 132 to 166) and in the project file (Doc. 333, pp. 11 to 12). This project is an update of the grazing allotment management plans; it does not including any logging (DN, pp. DN-1 to DN-4). The economic analysis complies with all laws and the Forest Service Manual and Handbook.

Issue 2. NFMA and the Forest Plan require annual economic monitoring. The Forest no longer provides a Timber Sale Program Information Reporting System (TSPIRS) report. This is clearly a violation of NFMA and the Forest Plan monitoring requirements.

Response: TSPIRS was an economic reporting system for timber that is no longer used. This project is an update of the grazing allotment management plans; it does not include any logging (DN, pp. DN-1 to DN-4). The Beaverhead-Deerlodge National Forest continues economic monitoring of timber sales. Financial information for each timber sale is entered into the Timber Sale Accounting System, a nation-wide database. This information is used to provide Congress and the public with a clear understanding of what is accomplished with appropriated funds and the revenues generated. The EA and DN are in compliance with NFMA, NEPA, and the Forest Plan.

Issue 3. There is inadequate analysis of the cumulative affects on gray wolf, buffalo, lynx, and grizzly bear.

Response: Bison are discussed in the Response to Comments (Appendix H, p. H-7). The Interagency Bison Management Plan (IBMP) guides the management of free-ranging bison in order to prevent the transmission of brucellosis from bison to cattle. Free ranging Yellowstone bison are not allowed in the project area under IBMP. Since bison do not currently occur in the project area, and there are no plans to modify the existing IBMP to allow bison in the area, the use of the project area by bison is not reasonably foreseeable. Therefore, an effects analysis on bison is not required.

The analyses of direct, indirect, and cumulative effects on gray wolf, Canada lynx, and grizzly bear were done in the Biological Assessment (BA) found in the project file (Doc. 371) and summarized in the EA (pp. 159 to 161). The wildlife biologist determined the project may effect, not likely to adversely affect gray wolf, Canada lynx, and grizzly bear. USDI Fish and Wildlife Service (USFWS) concurred with the determination on gray wolf and grizzly bear (Doc. 214, p. 2), and stated the impact to lynx and its habitat would be insignificant and/or discountable, and no incidental take is anticipated (Doc. 214, pp. 18 to 19). The cumulative effects analyses of gray wolf, Canada lynx, and grizzly bear are adequate and are in compliance with the ESA.

Issue 4, Contention A. The Beaverhead and Deerlodge Forest Plans and the project EA are in violation of NEPA, NFMA, and ESA in regard to Canada lynx.

Response: The Northern Regional Office has issued the draft Environmental Impact Statement (EIS) on Canada lynx, which proposes to amend Forest Plans on 18 National Forests to incorporate direction to manage lynx habitat. The purpose and need of the draft EIS is to incorporate management direction that conserves and promotes the recovery of the Canada lynx, by reducing or eliminative adverse effects from land management activities, while preserving the overall multiple-use direction in existing Forest Plans. At this time, the Lynx Conservation and Assessment Strategy (LCAS), authored by a team of scientists and researchers and based on numerous publications, is the best available science on lynx. The LCAS was used in the analysis for the Antelope Basin/Elk Lake AMP EA.

The USFWS issued a BO on the impact to Canada lynx from the project. It is the USFWS's opinion there would be no incidental take from the project. Since there would be no incidental take, they stated there is no need for issuing any reasonable or prudent measures or any terms and conditions (PF, Doc. 214, p. 19). The project is in compliance with NEPA, NFMA, and ESA.

Issue 4, Contention B. The USFWS listing of lynx as threatened rather than endangered, and the failure to designate critical habitat, was recently held to be a violation of ESA. The project area is recognized as lynx habitat, and may well end up being designated as critical habitat. It is thus unlawful to proceed with further adverse modifications of lynx habitat pending final designation of critical habitat.

Response: USFWS determined the project would have negligible or discountable effect to Canada lynx or its habitat (PF, Doc. 214, p. 17). They reached this conclusion because the potential for change to lynx habitat for this project is insignificant, potential denning habitat is

not expected to be effected, the potential for altering foraging habitat is insignificant, alteration of travel corridors is not expect to result, and the potential for displacement is extremely unlikely (PF, Doc. 214, p. 18). The project is in compliance with the ESA.

Issue 5. The addition of sediment to a water quality limited segment (WQLS) from grazing activities under the alternative adopted by the DN is a violation of the Clean Water Act (CWA). The states are required to develop Total Maximum Daily Loads (TMDL) for these WQLS. Section 4.1 of the EA notes the damage caused to streams and the cold water fishery beneficial use is further damaged in violation of the Multiple Use Sustained Yield Act (MUSYA) and NFMA. The EA notes that only Alternative 4 would lead to recovery of the streams within the project timeline.

Response: There are no WQLS in the project area. Antelope Creek was removed from the State of Montana 303(d) list in 1998 (PF, Doc. 351, p. 2). Therefore, the State of Montana is not required to develop a TMDL for Antelope Creek. There is no Alternative 4 in the analysis, only Alternatives A, B, and C. Under Alternative B, the chosen alternative, stream reaches that are presently non-functioning or functioning-at-risk would move towards fully functioning. The downward trend of Horse Creek would be halted and this stream would remain in functioning condition. The stream channels that are presently fully functioning would continue to be so (EA, p. 138). The EA indicates Alternative B would lead to recovery of the streams in the project area. The project is in compliance with the NFMA.

RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found that the analysis and decision adequately address the issues raised by the appellants. I recommend the District Ranger's decision be affirmed and the appellants' requested relief be denied.

/s/ Eric P. Johnston
ERIC P. JOHNSTON
Appeal Reviewing Officer
Deputy Director of Watershed, Wildlife, Fisheries and Rare Plants