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**Subject:** ARO Letter - Cherry Creek and Spanish Creek Grazing Allotments DN - Gallatin NF - Appeal #04-01-00-0003 - Native Ecosystems Council

**To:** Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Sara Jane Johnson, on behalf of Native Ecosystems Council, protesting the Cherry Creek and Spanish Creek Grazing Allotments Decision Notice (DN) on the Gallatin National Forest.

The District Ranger's decision implements Alternative B. Following is a brief summary of the decision.

**Red Knob North Allotment** - Continue to graze the current number of livestock of 220 to 245 cow/calf pairs for a 36- to 40-day season each year (EA, Table 1).

**Red Knob South Allotment** - A small portion of the allotment will be incorporated into Red Knob North at location B (EA, Figure 3). The rest of the allotment will remain in non-use and closed with the next Forest Plan Revision. The area remaining open will be grazed when Pasture 2 is grazed on the Red Knob North Allotment.

**Cherry Creek Allotment** - Reduce the acres in the grazing allotment by 85 percent. About 1,331 acres of the Cherry Creek Allotment will be incorporated in the Red Knob Allotment. The remaining 7,300 acres of the Cherry Creek Allotment will be recommended for closure to grazing.

**Spanish Creek and Twin Creek Allotments** - These allotments will be recommended closure with the next Forest Plan Revision.

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 appellant's 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 appellant alleges violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA) and the Administrative Procedures Act (APA). The appellant requests a remand of the DN. An informal meeting was held but no resolution of the issues was reached.



## ISSUE REVIEW

### **Issue 1. The proposed grazing plan will impede establishment and long-term viability of Westslope cutthroat trout populations in Cherry Creek.**

**Response:** Water quality and wildlife, including boreal toad, northern leopard frog, and westslope cutthroat trout, were identified as significant issues (EA, pp. 4-5). In addition, Issue 2.2.3, Vegetation, includes an indicator related to trends and condition of willow and riparian areas (EA, p. 5). The effects of all alternatives on these issues and associated indicators were analyzed (EA, pp. 48-53). I find that the Responsible Official adequately analyzed the effects of his decision on the potential reintroduction of westslope cutthroat trout and grayling in Cherry Creek.

The appellant's suggestion that there be an action alternative that solely optimizes the long-term viability of re-introduced sensitive fish is beyond the scope of this grazing document. The direct, indirect and cumulative effects of this project on re-introduced, sensitive fish are adequately disclosed in the EA on pages 48 through 53.

### **Issue 2. There was no action alternative developed that would have decreased the total acres of this landscape grazed by domestic livestock as well as fences, even though numerous conflicts between the public, livestock, and wildlife were identified in public scoping.**

**Response:** The current Allotment Management Plans for the five allotments allow grazing to occur in all five allotments. The Cherry Creek, Spanish Creek, and Twin Creek Allotments have been in non-use status since 1991 (EA, pp. 12-14). The Red Knob South permit holder waived the use of his permit in 1977. Therefore, only the Red Knob North permit currently has active grazing. Under Alternative B, the total acres allowed for grazing would significantly decrease from 5,286 to 1,864 (EA, p. 41, Table 10). However, because of the non-use status of four of the allotments and the acres from Red Knob South and Cherry Creek being added into Red Knob North, the acres currently being grazed would increase, as the appellant states. If Alternative C were to remain in effect with the grazing activities approved under previous decisions, the acres currently in non-use status could receive use in the future, which would increase the actual use over what is proposed in Alternative B.

The appellant also states that the selected alternative increases the level of grazing intensity. In the past, the entire Red Knob North Allotment was grazed with all AUMs being used in 1 year. Under Alternative B, a two-pasture rotation system would rest one pasture each year while all livestock would be placed in the other pasture.

The EA identifies the reasons for the two-pasture system, allowing grasses to grow to maturity without livestock use (EA, p. 9). Also, livestock distribution and use would improve in the Red Knob North Allotment with a fence constructed along the adjacent Cherry Creek Allotment, with the establishment of a water development to provide water for the two pastures, and by moving livestock away from sensitive riparian areas in Cherry Creek (EA, pp. 10 and 15). The vegetation analysis in the project file also states that closing one pasture each year would allow

for optimum plant vigor and vegetative recovery (Project File, Doc. 86). As with the other alternatives, the selected alternative includes annual adjustments in livestock numbers (no increases); adjustments in the grazing season to take advantage of good or bad conditions; and livestock movements by the permit holder to better use forage and reduce impacts in sensitive areas (EA, p. 11). Finally, the updated riparian grazing standards would be implemented (EA, Appendix A), and the alternative would still be within utilization standards.

Because some acres from the Cherry Creek Allotment would be added to the Red Knob North Allotment under Alternative B, the acres of grazed riparian area would increase; however, other acres of riparian area in the present Cherry Creek Allotment would then be closed to grazing (EA, p. 46).

I find that the Responsible Official adequately analyzed the effects of his decision on the size and distribution of grazing allotments.

**Issue 3. The relationship between the Trail Creek Allotment and the Red Knob North and other allotments in the Cherry Creek Area was never identified or addressed in regard to the proposed management decision or the development of alternatives.**

**Response:** Coordination between the Beaverhead-Deerlodge and Gallatin National Forests is documented in the EA (pp. 1, 7, 10, 13, 32, and 63) and in the project file (Docs. 33, 40, 41, and 65). The appellant's request for an alternative analyzing the effects of combining the management of the Trail Creek Allotment and the Red Knob Allotment was not raised by the appellant until her appeal letter. Therefore, it is not an alternative formally considered in the EA or DN. I find that the analysis appropriately considered the Trail Creek Allotment.

**Issue 4. The agency is doing piecemeal analysis of management impacts on wildlife by separating connected/interrelated activities into different NEPA evaluations.**

**Response:** NEPA defines "cumulative impact" as the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions (40 CFR 1508.7). In this case, the District has analyzed the cumulative impacts of this grazing decision with other activities, including the effects of continuing to implement the Cherry Creek Prescribed Burn Decision Memo of 2002 (EA, p. 35 and Figure 5). The EA discloses the cumulative effects of the prescribed burning program for resource issues as water (EA, p. 40), elk (EA, pp. 41-42), wolf (EA, pp. 44-45), grizzly bear (EA, p. 48), migratory birds (EA, p. 55), and vegetation (EA, p. 61).

The District has adequately analyzed the cumulative effects of this decision on the on-going Cherry Creek prescribed burning program. I find that the District has addressed the range of impacts appropriate for the decision being made and the issues raised.

**Issue 5. The agency is making management decision without the benefit of management indicator species for riparian and shrubland habitats; no monitoring data exist to base management decisions on.**

**Response:** Livestock grazing effects on migratory birds were identified as a significant issue (EA, p. 5). The effects of all alternatives on this issue and associated indicators were analyzed in the EA (pp. 53-55).

The EA states that grazing utilization standards would be monitored to verify that livestock use is within standards and within the permitted season (EA, p. 60). Riparian health would remain at current levels. If utilization or streambank trampling levels are met, livestock will be removed from allotments. Also, the improved streambank standards in Alternative B (realigning the fence to not concentrate livestock in this area) would improve riparian health (EA, p. 61; Appendix A). Under all alternatives, willow health would continue to be influenced by browsing wildlife. I find that the analysis was adequate for this issue.

Through references to monitoring and range condition surveys, the EA establishes that 50 percent utilization will result in acceptable range conditions and upward trends in range conditions (EA, pp. 15, 31 and 56-61).

I find that the decision to implement the July 15 turn-on and 50 percent use, along with the updated riparian grazing standards, are sufficiently analyzed and are justified by that analysis.

**Issue 6. Forest Plan direction for management areas did not appear to play any role in the proposed management actions.**

**Response:** The management area (MA) designations included in the selected alternative include 3, 10 and 17. All three MA's allow livestock grazing. The management goal for MA 17 is to maintain or improve vegetative conditions and forage production for livestock and wildlife use. Grazing and burning are approved activities. On big game winter range, direction is to meet big game forage needs before making forage allocations to livestock. The potential effect of livestock grazing on big game species was an issue clearly addressed in the analysis. The selected alternative is consistent with the Forest Plan direction.

**Issue 7. The Forest Service has misled the public about overall management activities on this landscape by breaking out grazing management activities into separate decision.**

**Response:** The Madison and Bangtail Burns project had a very different purpose and need than the purpose and need for this project, and the burning project is not a connected action with this project. Burning is addressed separately in the Decision Memo for the Madison and Bangtail burns (Project File, Doc. 13). However, burning is addressed under the cumulative effects analysis for this project (see response to Issue 4).

**Issue 8. The analysis of the effects on the boreal toad is inadequate.**

**Response:** Water quality and wildlife, including boreal toad, were identified as significant issues (EA, pp. 4-5). In addition, Issue 2.2.3, Vegetation, includes a trend and condition indicator related to willow and riparian areas. The effects of all alternatives on these issues and associated indicators were analyzed (EA, pp. 37-40 and 48-53). I find that the Responsible Official adequately analyzed the effects of his decision on boreal toad.

**Issue 9. The agency failed to address public issues in a meaningful manner in development of various alternative ways to manage these public lands.**

**Response:** An EA must, “rigorously explore and objectively evaluate all reasonable alternatives” [40 CFR 1502.14(a)]. The courts have established that this direction does not mean every conceivable alternative must be considered, but that selection and discussion of alternatives must permit a reasoned choice and foster informed decision making and informed public participation.

Chapter II of the EA describes how comments received in public scoping were used to identify issues and develop alternatives. It gives detailed information about four alternatives, and several alternatives were considered but not given detailed study. The reasons these alternatives were not analyzed in detail is adequately described. The alternatives in the EA respond to the objectives of the proposed action, the issues raised during public scoping, and are reasonable for this project. I find this to be an adequate range of alternatives.

**Issue 10. The agency failed to demonstrate how the proposed action represents a net public benefit.**

**Response:** Economics is discussed in the EA on pages 62 to 63 with supporting documentation for the calculations in the Project File (Doc. 14). Economics was also identified as an issue and the indicators used to analyze were the present net value, the benefit/cost ratio and a discussion of economic resources not quantified (EA, p. 5). Costs considered in the analysis included construction and maintenance of fences, administration of the allotment by the Forest Service and the permittee, the cost of materials for improvements, and noxious weed management. Benefits include grazing receipts. No attempt was made to try and quantify recreational user days, or to put economic values on wildlife or recreation. Effects on these resources are, however, included in a qualitative discussion in the EA. The EA adequately displays the economic analysis for the project.

**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 appellant. I recommend the District Ranger’s decision be affirmed and the appellant’s requested relief be denied.

/s/ Bruce L. Fox  
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