



File 1570 (215)  
Code:  
Route  
To:  
Subject: Cherry Creek Native Fish Introduction DN,  
Gallatin National Forest (Bozeman Ranger District)  
To: Appeal Deciding Officer

Date: December 2, 1998

RE: Appeals #98-01-00-  
0135/0136/0137/0140/0141/0142/0143/0144/0145/0155/0156/0158/0159/0160/0162/0163/0167/, and  
Appeals #99-01-00-  
0001/0002/0003/0004/0006/0007/0008/0009/0010/0011/0018/0019/0021/0039/0043/0047/0052/0057

This is my recommendation on disposition of the appeals protesting the Cherry Creek Native Fish Introduction Decision Notice signed by the Gallatin National Forest Supervisor (Bozeman Ranger District).

The decision is to authorize application of EPA approved and registered fish toxicants (i.e. antimycin and rotenone) within Cherry Lake and Cherry Lake Creek within the Lee Metcalf Wilderness. In addition, the decision deals with the request from the State of Montana to use an inflatable raft equipped with a battery-powered pump and motor (battery or gas) to facilitate and enhance the probability of success of that component of the project (i.e. Cherry Lake) which is within the Lee Metcalf Wilderness.

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

### FINDINGS

My recommendation is based upon the following evaluation:

#### Appeal Review Findings

The Appellants allege violations of the National Environmental Policy Act (NEPA), the Clean Water Act and the Forest Service Manual. An informal meeting was held, however, no resolution of appeal issues was reached. Interested party comments were received from Stephen L. Lewis, Regional Supervisor, Montana Fish, Wildlife and Parks.

#### **Objection 1: Project violates Federal Clean Water Act prohibition against discharge of pollutants to waters of the U.S.**

The discharge of poison into Cherry Creek and Cherry Lake does not violate the Clean Water Act. The Montana Code and Administrative rules must be examined to make this determination. Under the Code, Cherry Lake is an "outstanding resource water" and Cherry Creek is designated as "high-quality water." Even with the different classifications, both Cherry Creek and Cherry Lake meet the Montana Nondegradation policy through the same authorization and exemptions in Montana Code Annotated (MCA). MCA provides several exemptions for the Forest Service and the Montana Fish Wildlife and



Parks. The first exemption is that the changes in the existing water quality of Cherry Creek from poisoning are designed to protect the environment through the protection and restoration of a species in decline (MCA 75-5-317). Second, the change is only temporary and is pursuant to MCA 75-5-308, which states in part that the department may authorize short-term exemptions for the purposes of elimination of undesirable and non-native aquatic species. The poisoning of Cherry Creek and Cherry Lake does not violate the Montana Administrative Rules (ARM). Again, there is an exemption under 17.30.637(3)(b) that exists for game fish restoration. Further, ARM 17.30.715-716 provides a set of criteria that exempts an activity from the nondegradation policy. Included in this exemption, are activities listed under MCA 75-5-317, where game fish restoration is exempted. Thus, the poisoning of Cherry Creek and Cherry Lake does not violate the Montana Code or its Administrative Rules.

**Objection 2: Forest Service should complete an EIS due to the significant impacts of the proposal.**

As outlined in the Decision Notice and Finding of No Significant Impact, the decision authorizing the use of fish toxicants and motorized equipment within the Lee Metcalf Wilderness was not considered to be a major Federal action which would significantly affect the quality of the human environment. The project involves the use of approved fish toxicants which have been demonstrated to have a temporary influence within the environment and minimal risks to public health and safety. There has been no disagreement between experts over environmental effects of the projects. The temporary use of motorized equipment is consistent with wilderness administration and provisions for State management of the fishery resource. The project is not precedent-setting given that numerous other chemical treatments have been conducted within wilderness areas. I find the Environmental Assessment adequate for the scope and nature of the effects resulting from implementation of this project.

**Objection 3: Petroleum powered engines and poison should not be used in a wilderness area.**

Recreation, Wilderness and Related Resource Management Direction (FSM 2300) and the Policies and Guidelines for Fish and Wildlife Management in Wilderness and Primitive Areas provide the needed policy and guidance regarding activities to occur in a wilderness area. This includes chemical treatments, as well as the use of motorized equipment. I find that this project is within the guidelines established for management of a wilderness area.

RECOMMENDATION

I recommend the Forest Supervisor's decision be affirmed and the Appellants' requested relief be denied.

/s/ Martin Prather

MARTIN PRATHER  
Reviewing Officer  
Acting Director, Watershed, Wildlife, Fisheries and Rare Plants