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#98-01-00-0016
Date: March 3, 1998

Kimberly Davitt
American Wildlands
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dear Ms. Davitt:

This letter is my review decision on your Notice of Appeal (NOA) filed on behalf of Alliance for the Wild Rockies, American Wildlands, Montana Ecosystems Defense Council, and Native Ecosystem Council protesting the Forest Supervisor's decision regarding the Riparian Amendment to the Beaverhead National Forest (BNF) Plan.

My review is conducted pursuant to, and in accordance with, 36 CFR 217. My responsibility as Reviewing Officer is to ensure the analysis and decision are in compliance with applicable laws, regulations, and orders. This review decision hereby incorporates by reference the entire administrative appeal record, which also includes the project file.

I. DECISION UNDER REVIEW

The Forest Plan provides the framework for management of land and resources on the BNF and describes "desired conditions" to be achieved. The Forest Plan was prepared in response to the requirements of the National Forest Management Act (NFMA) of 1976.

The purpose and need for the Riparian Amendment is to restore degraded riparian areas and to maintain functioning riparian areas.

On October 10, 1997, the Beaverhead-Deerlodge National Forests (NFs) Supervisor published a Record of Decision (ROD) adopting Amendment 7 to the Forest Plan.

II. OVERVIEW OF ISSUES AND RELIEF REQUESTED

The central issues outlined in your NOA are whether the Riparian Amendment violates the National Environmental Policy Act (NEPA), the NFMA, the Clean Water Act (CWA), and the Endangered Species Act (ESA) by failing to ensure restoration of riparian areas and implement standards that adequately maintain functioning riparian areas, maintain habitat for sensitive native fish, provide adequate information, evaluate cumulative effects on fisheries and watersheds, conduct monitoring of management indicator species (MIS) and watershed conditions, conserve grizzly bear habitat, and analyze impacts of noxious weeds.

You request the decision be remanded and a viability analysis be completed for westslope cutthroat trout (WCT), Arctic grayling (AG), and other native and desirable non-native species;

adequate standards for cold water fisheries and water quality be adopted and implemented; an analysis be completed on each waterbody prior to each grazing season and any other new activities that may adversely affect aquatic life or water quality, especially in fish-bearing streams; an on-the-ground-based monitoring plan be funded and implemented, analyzed, and reported annually prior to any activity that may adversely affect aquatic ecosystems or riparian features; and formal consultation with the U.S. Fish and Wildlife Service (USFWS) be completed regarding grizzly bear impacts.

III. REVIEW FINDINGS

The purpose of the Forest Service's appeal regulations (36 CFR 217) is to provide "... the final administrative opportunity for the public to influence National Forest System decision making prior to implementation of various decisions. The rules ... complement, but do not replace, numerous opportunities to participate in and influence agency decision making provided pursuant to ... NEPA, and the associated implementing regulations and procedures in 40 CFR parts 1500 through 1508, 36 CFR parts 216, and 219 ..." and the Forest Service directives system [36 CFR 217.1(b)].

Amendments to, and revisions of, Forest Plans are part of the dynamic planning procedures established by the NFMA and its implementing regulations (36 CFR 219.10). Forest Plans provide for amendment and revision.

I have reviewed the Forest Supervisor's December 12, 1997, letter of transmittal identifying references in the decision documentation where the issues you raised are addressed. The transmittal letter provides specific page references to discussions in the project file which bear upon your issues. I specifically incorporate the references and citations contained in the Forest Supervisor's transmittal letter into this decision. Based upon a review of the references and citations provided by the Forest Supervisor, I find that the issues you raised were adequately considered in the FEIS and ROD and that the Forest Supervisor made a reasoned decision concerning those issues. You will find my conclusions for each issue articulated at the end of each issue discussion and summarized at the end of this letter with associated appeal language.

In the following section, I have identified your concerns and responded to the associated issues to help you understand how I arrived at my decision.

Appeal Issues

Issue I: Alternative 7 fails to adequately protect declining native fish populations in a timely fashion, and fails to re-establish fish populations where past management activities have caused local extinction.

Response: In response to the issue that Alternative 7 fails to adequately protect declining native fish populations in a timely fashion, regarding WCT, Alternative 7 contains both an interim fisheries protection and restoration strategy and more stringent livestock utilization standards in drainages supporting WCT populations. The goals, objectives, and standards of the interim fisheries restoration strategy [Short-term Strategy, Final Environmental Impact Statement (FEIS), Appendix F] were determined through NEPA analysis to be adequate to initiate protective and restoration activities in WCT drainages until a Montana State long-term recovery

strategy is adopted [ROD, pp. 12-13; ROD, Attachment A; FEIS, Appendices C (pp. 31-33) and F; and FEIS, Chap. IV, pp. 5-21]. As discussed in the FEIS (Chap. IV, p. 20), a specific objective for livestock management in WCT drainages is provided. Meeting this objective would require that management changes be incorporated into Annual Operating Plans, which are revised yearly.

In addition, you contend Alternative 7 fails to re-establish fish populations where past and ongoing management activities have caused local extinction. The intent of the BNF Riparian Amendment, which incorporates the WCT Interim Short-term Strategy, is to initiate protection and restoration efforts for the remaining populations. It is not intended to identify reintroduction sites as part of an overall recovery plan for this subspecies in the Upper Missouri River Basin UMRB). A "recovery" strategy is being led by the State of Montana; and they have convened a technical team, of which the Forest Service is a part, to develop a restoration plan for this subspecies (Appendices C (p. 33) and F).

Relative to fluvial AG, it is also not appropriate for the Forest Service to dictate where re-establishment of extant AG populations will occur within their historic range. Recovery and viability objectives are defined by the State or, if listed under ESA, by the USFWS. The State has adopted a Fluvial Arctic Grayling Restoration Plan which describes restoration goals (Appendix C, p. 34). Although not specifically addressed in the record, the Forest Service is a signatory to an agreement with the State to further these goals. As stated in the FEIS, Appendix C, p. 34, "All action alternatives are designed to improve riparian and stream function and would then reduce impacts to the Big Hole River."

Issue IA: The Amendment fails to maintain habitat for sensitive native fish species and fails to maintain minimum viable populations.

Response: There are two native fish species regionally listed as "sensitive" within the administrative boundaries of the BNF (WCT and fluvial AG). As discussed under Issue A, Alternative 7 amending the Beaverhead National Forest Plan is intended not only to protect existing populations of AG and WCT on National Forest System lands but to initiate recovery of riparian processes and function. In addition, for WCT, the Short-term Strategy's standard analysis process was designed to identify and implement actions to mitigate any resource management activity that may be adversely affecting streams supporting this subspecies [ROD, pp. 12-13 and Attachment A; FEIS, Appendices C (pp. 31-34) and F; and FEIS, Chap. IV, pp. 14-24].

You also contend the Amendment fails to maintain minimum viable populations of sensitive native fish species. Population viability assessments have been completed on all WCT populations with greater than 90 percent genetic purity on all National Forest System lands within the UMRB (FEIS, Chap. III, p. 15). As part of this assessment, risks associated with land management activities were evaluated. Based on recommendations from the State's WCT Technical Committee, the BNF adopted both an interim Short-term Strategy to protect and begin to restore WCT drainages, completed the standard analysis process for assessing risk from ongoing activities, and completed drainage-specific action plans to mitigate adverse effects identified as being "moderate- to high-risk" to resident WCT populations (FEIS, Appendix F). Long-term regional viability objectives for this subspecies will be identified through the State's

development of a recovery strategy (long-term conservation/restoration strategy) (FEIS, Appendix C and FEIS, Chap. IV, p. 16).

For AG, the Riparian Amendment (FEIS, Appendix C) is designed to improve riparian and stream function, thereby increasing the probability that necessary instream habitat conditions are available to support all life stages of AG. Long-term persistence of a population (viability) is dependent upon many factors, including but not based solely on, the availability of suitable habitat. A discussion of species viability relative to both WCT and AG is provided in the FEIS, Chap. IV, p. 16 and Appendix C. The Biological Assessment for WCT and AG determines the Amendment will not likely result in a trend toward Federal listing or reduced viability for populations or species.

Issue IA1: The Beaverhead NF fails to provide the protective and restorative measures needed to assure species viability and distribution. The failure to collect population data, to analyze population trends, to survey important habitat components related to riparian function, and to assess whether the maintenance of habitat will be sufficient enough to ensure viability for these sensitive species violates NFMA and Forest Service Manual.

Response: Alternative 7, which includes both the WCT Short-term Strategy and riparian utilization standards begins to reverse the trend in degraded habitat conditions. The record supports that the BNF has provided necessary interim measures to both protect and restore AG and WCT habitats until long-term conservation and recovery objectives are defined by the State [FEIS, Chap. IV, pp. 14-29; Appendices C (pp. 31-32) and F].

The collection of population data is primarily the responsibility of the State. Monitoring population trends and habitat occurs on NFS lands (36 CFR 219.19(a)(5)]. This information, in addition to documented linkages of physical habitat function and life stages of sensitive species is described in FEIS, Chap. III, pp. 11-16. Full discussion of tools, data collection, analyses, assessments at various hierarchical scales which provide both the context for, and description of, riparian and associated stream habitats which support both WCT and AG is provided in FEIS, III, pp. 5-10. Additional information is found in FEIS, Appendix C, pp. 31-34. The additional monitoring elements for fishes and their habitats added to the Forest Plan are described in the ROD, Attachment A.

Issue IA2: The BNF Plan Riparian Amendment fails to disclose information or analysis about sensitive species viability and does not address how the short-term WCT strategy ensures the viability of WCT and Arctic grayling populations.

Response: FEIS, Chap. III, pp. 14-15 describes information and results of two separate population viability analyses on WCT populations on the BNF. FEIS, Chap. III, p. 14 provides information on geographical extent of the Big Hole AG population and presents population estimates of yearling (1+) AG which were used as a measure of population viability. In addition the ROD, pp. 12-13 and FEIS (Appendix C) document the results of the viability assessment made for AG and WCT relative to this Amendment (Biological Assessment determination).

The objectives of the Short-term Strategy are to secure (prevent habitat degradation) and improved existing (known) UMRB populations of WCT and their habitats until a long-term recovery strategy can be developed and implemented (FEIS, Appendix F and ROD, p. 19). This

strategy will provide quantitative objectives related to the viability of this subspecies throughout its historic range in Montana (FEIS, Appendix C, p. 33). The Short-term Strategy does not apply to fluvial AG. Restoration/recovery objectives for this fish species are provided in the State's Fluvial Arctic Grayling Restoration Plan. This is the mechanism for ensuring that the viability of this native fish is secured (FEIS, Chap. III, p. 15). The FEIS links population viability with habitat conditions at Chap. IV, p. 14. Viability of WCT (FEIS, Chap. IV, p. 16) and the relationship with the Short-term Strategy are discussed in the FEIS, Chap. IV, pp. 15-16.

Issue IA3: The Short-term Strategy for Upper Missouri WCT and Standard Analysis Process have no scientific credibility and fail to discuss methods for maintaining minimum viable populations of WCT, Arctic grayling, and other aquatic species.

Response: The Short-term Strategy and Standard Analysis Process were developed based on scientific information related to instream habitat requirements of WCT. Use of the Standard Analysis Process allows identification of management activities which are adversely affecting critical WCT habitats and development of an action plan which focuses on contributors to loss of habitat and population viability. These were not intended to provide long-term strategies for maintaining minimum viable populations of WCT. In addition, the Short-term Strategy and Standard Analysis Process were never intended to address either AG or aquatic species outside of occupied WCT drainages.

Issue IA4: There is no excuse for the failure to at a minimum adopt interim standards for fisheries and aquatic conservation similar to those adopted in the Columbia River Basin by the USFS and BLM.

Response: This approach was presented for the decision makers in Alternative 5 (Fisheries Strategy) as discussed throughout the record (ROD, p. 10). INFISH and PACFISH riparian habitat conservation strategies were intended to serve as interim direction to prevent degradation of riparian function and processes and initiate improvement until replaced by a long-term strategy which would address dependent native fish species viability. These are the same objectives as those described in the Short-term Strategy for WCT (FEIS, Appendix F).

Issue IA5: For most of the WCT streams on the Forest, Alternative 7 ensures that they "would be maintained in their existing condition until management was changed through AMP revision" (Chap. IV, p. 20) thereby continuing the decline of current populations and the need to list these species as threatened or endangered under ESA.

Response: The FEIS states in Chap. IV, p. 20, "Using Alternative 7's interim standards, riparian areas on streams supporting WCT, as well as a few others, would improve." Those streams not supporting WCT would likely be maintained in their existing condition until AMP revision. WCT populations are not expected to decline under Alternative 7.

Issue IB: The FEIS fails to provide adequate information.

See responses to B1 through B3.

Issue B1: The Forest violated 40 CFR 1500.1(b) by failing to provide high quality information and accurate scientific analysis.

Response: FEIS, Chap. III, p. 15 provides a summary of two separate assessments completed for WCT populations on the BNF: a qualitative assessment of risk of extinction (viability) for WCT populations 95-100 percent genetically pure and a quantitative regional population viability assessment completed for 144 WCT drainages within the UMRB. The latter has been peer reviewed and was published in the North American Journal of Fisheries Management (November 1997). Both of these assessments demonstrate that high quality information and "accurate" scientific analyses of WCT viability has been completed and used. In addition, a letter from the Montana Chapter of the American Fisheries Society endorses the Beaverhead Riparian Amendment proposal and states, "We believe the Beaverhead Riparian Guidelines have been developed with the best available science by a very capable staff of professionals" (Project Record, Vol. 1, pp. 1-34).

Issue B2: The FEIS fails to adequately describe the affected environment of terrestrial and aquatic habitat conditions ecosystem-wide (including intermittent streams and effects of non-grazing activities).

Response: Forest-wide affected environment descriptions of terrestrial and aquatic habitat conditions are described in FEIS, Chap. III (p. 13, link between riparian function and fish habitat and p. 14, fish habitat survey data). Information on intermittent streams is found throughout the FEIS and ROD [FEIS, Chap. II, p. 3; ROD, Attachment A (Alternative 7); FEIS, Chap. III, p. 12; FEIS, Chap. III, p. 17; and FEIS, Appendix A, Alternative 4, p. A-20/Alternative 5 p. A-34].

Chapter III of the FEIS addresses the current condition of riparian areas, which includes the effects of grazing and other activities that have resulted in degraded conditions; FEIS, Chap. III, pp. 6-10, summarizes data collection and analysis. Upland activities other than grazing are discussed in FEIS, Chap. III, pp. 10, 18, 15, 33, and 34.

Issue B3: The analysis documents failed to address the diversity and viability of native fish species and the critical natural processes that threaten them (i.e., relationship between whirling disease and grazing).

Response: Diversity and viability of native fish species and the critical processes that threaten them are discussed in FEIS, Chap. III, pp. 14-30; Chap. IV, pp. 14-34; and Appendices C and F; and was determined to be adequate. The subject of whirling disease was addressed briefly in the record (Response to Comment #3, FEIS, Chap. V, p. 99) where it is stated that it is unlikely that the tubifex worm (an organism that is linked to the transmission of whirling disease) could be introduced on the Forest via transportation of mud by cattle.

Issue IC: Alternative 7 fails to evaluate cumulative effects upon fisheries and the watershed on which they depend.

Response: Current condition of all watersheds is discussed in FEIS, Chap. III, pp. 7-11. Indirect and Direct Assessments, Project Level Analyses, and Past Management of Watersheds are discussed on pages 3-15. Cumulative effects to native fish and their habitats are discussed in the FEIS, Chap. III, p. 8 (CE); p. 10 (past management); p. 15 (cumulative effects from current physical and biological conditions); FEIS, Chap. IV, p. 2 (Effects common to all alternatives); and p. 233 (cumulative effects of Alternatives on Vegetation). The Forest adequately considered

past activities in describing the current conditions and has considered cumulative effects of current and foreseeable future activities. More site-specific analysis will occur when Allotment Management Plans are revised.

Issue II: The Beaverhead Riparian Amendment fails to identify, protect and restore impaired waterbodies currently not meeting State water quality regulations or beneficial use standards required under the Clean Water Act.

Response: The Project Record contains the State of Montana Water Quality Report (305(b)), which lists all impaired waterbodies with the impaired uses listed (Project Record, Vol. 8, Doc. 22). A discussion of this report and its relation to activities on the BNF is found in the FEIS (Chap. III, p. 7). A watershed assessment was completed Forest-wide to identify "trouble spots" on streams.

All action alternatives considered in the Riparian Amendment FEIS would result in a net positive gain in riparian function across the Forest (Chap. IV, pp. 1-2). Water quality is expected to improve from changes in thermal and sediment loading. This decision is not resulting in any further impairment of beneficial uses and is in full compliance with the CWA and State of Montana water quality regulations.

Issue III: The FEIS fails to condition the funding of actions on mitigation, in violation of NEPA 40 CFR 1505.3, and fails to monitor MIS and watershed conditions, in violation of NFMA Sect. 6(g)(3)(c), 36 CFR 219.12(k), and 36 CFR 219.29(a)(6).

Response: 40 CFR 1505.3 states "Mitigation and other conditions established in the environmental impact statement...and committed as part of the decision shall be implemented by the lead agency...The lead agency shall ... (b) condition funding of actions on mitigation." The FEIS and ROD adopt management direction which will serve as mitigation on future actions (ROD, pp. 16-17). This portion of NEPA refers to the implementation phase (which the Forest has not yet reached) and does not apply in this situation, since the entire action is considered to be mitigation.

Section 6(g) of the NFMA requires the Secretary of Agriculture to promulgate regulations that set the process for development and revision of the Land Management Plan and standards and guidelines. Those amendments have been promulgated as 36 CFR 219 et seq. and are beyond the scope of this decision and the authority of the Forest Supervisor.

36 CFR 219.12(k) applies only to "The preparation, revision, or significant amendment of a Forest Plan." This Decision is determined not to be a significant amendment (ROD, p. 12), therefore, this issue is beyond the scope of this decision.

You allege violations of 36 CFR 219.29(a)(6). There is no such regulation.

It appears the underlying concern in your appeal relates to monitoring. Monitoring requirements, as established in the Forest Plan, are still in place and will continue to be implemented. In addition, this Amendment replaces Monitoring Item 2-3 with an updated item that better reflects the questions that need to be answered with regard to riparian conditions (ROD, Amendment, p. 10). An additional fish monitoring item was added to address fish habitat and population

information. This includes the monitoring of changes in the number and quality of habitat features critical to the population and changes in trout population density, distribution, or community structure. The monitoring items that are included as part of this Amendment are in compliance with regulations and meet the intent of NFMA.

Issue IV: FEIS fails to prevent taking, fails to aid in recovery, and fails to conserve the habitat of the threatened grizzly bear, in violation of the Endangered Species Act (ESA).

Response: The Forest completed a Biological Assessment for the grizzly bear, in compliance with the ESA (EIS, Appendix C). As a result of the informal consultation process, the Forest received concurrence from the USFWS on September 19, 1997, with the determination that the proposed Amendment is not likely to adversely affect the grizzly bear (Project Record, Vol. 7). This Amendment will not result in an adverse affect or a taking; therefore, formal consultation was not requested by the USFWS, nor was an incidental take statement needed or issued. The Forest is in full compliance with the ESA in regard to this decision and its effect on the threatened grizzly bear.

Issue V: The Beaverhead Riparian Amendment fails to adequately protect sensitive species on the Forest.

Response: The issue focuses on the failure to analyze viability and to provide monitoring for threatened, endangered, and sensitive (TES) species on the Forest. In addition, you raise the concern that the Forest did not provide any discussion or analysis of what wildlife or birds occupy the project area and how the alternatives affect them. Appendix C of the FEIS documents the Biological Evaluation for U.S. Forest Service (Region 1) sensitive species. The conclusion of the evaluation for all sensitive species under Alternative 7 (and all other alternatives that allow grazing at any level) is "may impact individuals or habitat but will not likely contribute to a trend towards Federal listing or reduced viability..." Or "no negative or beneficial impact."

The effects of the alternatives are described in the FEIS (Chap. IV, pp. 24-35). Those wildlife groups that were analyzed with respect to the alternatives were small mammals, neotropical migrant birds, amphibians, ungulates, and TES species. Alternative 7 has the potential to reduce negative effects of grazing, as well as to recover and maintain wildlife habitats (FEIS, Chap. IV, p. 34).

Monitoring, as required in the Forest Plan, and as included in this Amendment, will take place. Items 1-1 through 1-2 in the Forest Plan relate to monitoring requirements for wildlife and fish species.

Issue VI: The Beaverhead Riparian Amendment failed to analyze the impacts of noxious weeds on riparian vegetation.

Response: Noxious weeds are addressed in the Response to Comments section (FEIS, Chap. V, p. 100). Noxious weeds are not likely to be spread through grazing animals except under unique situations. Southwest Montana has a weed-free hay, straw, and feed requirement on public lands. Under the implementation of Alternative 7, it is predicted that native plants will improve

in vigor and recover. "Where non-native species...presently occupy sites, improvement would be slow, as natives attempted to reestablish themselves" (FEIS, Chap. IV, p. 23).

IV. DECISION

After thorough review of the Record and the appeal issues, I find the Forest Supervisor's decision to be in full compliance with laws, regulations, and policies. I affirm the Forest Supervisor's decision to proceed with the Riparian Amendment. The decision is reasoned and in conformance with applicable laws and regulations. Your request for relief is denied.

Pursuant to 36 CFR 217.17(d), this is the final administrative determination of the U.S. Department of Agriculture, unless the Chief elects to review this decision.

Sincerely,

/s/ J. Doug Glevanik

J. DOUG GLEVANIK
Reviewing Officer