



File 1570 (215) Date: July 12, 1999
Code:
Route
To:
Subject: East Pioneers Grazing Allotments Decision Notices, Appeals #99-01-00-0126,
0127, 0128, 0129, and 0130, Beaverhead-Deerlodge NF
To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Glenn Hockett on behalf of the Gallatin Wildlife Association protesting the East Pioneers Grazing Allotments Decisions [Birch Creek, Dutchman Mountain, Grasshopper, Lost Willow and Rattlesnake Allotment Management Plan Decision Notices (DN)] signed by the Dillon District Ranger, Beaverhead-Deerlodge National Forest.

The District Ranger's decisions adopt a modified Alternative B which allows for 45 percent forage utilization for non-functioning and functioning-at-risk streams in the first 5- year period with adaptive management actions to be taken at the 5- year check point depending on monitoring results. The decisions also allow for a maximum utilization threshold on functioning streams of 55 percent on grass/grass-like types and 60 percent on grass/willow types, and a maximum utilization standard of 55 percent on all uplands except on elk winter range and sage grouse habitat, which have additional mitigation measures listed in the DN.

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' Issues 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, the Forest Service Manual, and the Endangered Species Act. The Appellants request: the decision be remanded; the Forest Service and Bureau of Land Management (BLM) conduct an inter-agency EIS; immediately implement the Best Management Practices (BMP) of extended rest; properly manage grazing on the remaining watersheds; the BLM conduct the necessary environmental reviews to ensure the standards for rangeland health are being met; and the important sensitive wildlife habitats on BLM lands be designated as Areas of Critical Environmental Concern.

District Ranger David Fallis held an informal meeting with Glenn Hockett of the Gallatin Wildlife Association and Dave Dittloff of the Montana Wildlife Federation on June 21, 1999. No resolution was reached. No interested party comments were received.

ISSUE REVIEW

Issue 1: Significant effects to the environment may result from the federal action. An interagency EIS is required because significant environmental benefits are expected as a result of implementing the proposed actions.

Response: 40 CFR 1501.4 guides the Forest Service on whether to prepare an environmental impact statement (EIS). In the case of the East Pioneers Grazing Allotment project, the District Ranger



conducted an Environmental Assessment (EA) to determine whether an EIS was required. This is in compliance with 40 CFR 1501.4.b, c, and e. The analysis found no past, present, or future significant impacts or cumulative impacts, either adverse or beneficial. In his DN, the District Ranger stated "Analysis of the environmental consequences [in] the EA (Chapter IV) indicated this is not a major federal action with significant effects on the quality of the human environment. Therefore, an environmental impact statement will not be prepared. I made this determination based on the...factors set forth in 40 CFR 1508.27."

The word "Significant(ly)" as used in NEPA requires considerations of both context and intensity of the action (CFR 40 1508.27). In the "Findings of No Significant Impact" (FONSI) the District Ranger addressed both the context and intensity of the action. The decision notice goes on to state that context of the project is localized and only has implications for the immediate area of each grazing allotment. Likewise the action is of low intensity: it has no significant or unacceptable effect on public health or safety; known historic or cultural resources will be protected; the effects on the human environment are not likely to be highly controversial; the actions are common and have been employed in the past on similar sites and habitats; the decision does not set a precedent for future actions; the decision will not adversely affect threatened, endangered, or sensitive wildlife or plant populations; and the action does not violate any Federal, State, or local laws or requirements. The FONSI fully support the decision not to conduct an EIS.

Issue 2: Important environmental information has not been collected, reviewed or disclosed.

Response: The affected environment, discussed in Chapter III of the EA, addresses the current conditions of plant communities and wildlife habitats that may be affected by the proposed action. This includes information on functioning-at-risk and non-functioning riparian areas in the project area. Additional information is presented in the Pioneer Landscape Analysis, which is incorporated by reference (Appendix J). Chapter IV addresses the effects of the project on these resources and how the project will move toward the desired future conditions. See Issue 4 for effects on important wildlife species and Issue 1 for the need for an inter-agency EIS.

Issue 3: A full range of reasonable alternatives has not been reviewed. The Forest Service and BLM failed to review reasonable alternatives that provide for implementation of the best management practice (BMP) of extended "rest" or no grazing on certain portions of the affected environment.

Response: The ID team developed a range of alternatives to focus on and help define the issues identified by the Forest Service, other public agencies and the public, which are identified in Chapter II of the EA. These alternatives included four alternatives which were considered in detail (no grazing, the proposed action, establish allowable use levels and no action) and three alternatives that were considered but not given detailed study. Extended "rest" or "no grazing" was included in Alternative A, the no grazing alternative, which could have been chosen for portions of the allotments. I find this to be an adequate range of alternatives.

Issue 4: Cumulative effects analysis is insufficient. The EA failed to review, document and address the cumulative effects to watershed, native plant and wildlife values of timber harvest, road building, off road vehicle use, mining, fire suppression, recreation, wildlife use (such as elk, moose and beaver) historic livestock use and other domestic livestock grazing, including BLM activities within the East Pioneers Ecosystem.

Response: The EA adequately discloses the cumulative effects of past, present and reasonably foreseeable activities under each resource area. Chapter III summarizes the past and present actions, and

Chapter IV adds reasonably foreseeable actions. Further documentation of the cumulative effects analysis is provided in the wildlife biologist's report in the Project File.

Issue 5: The grazing utilization standard is too broad and does not identify which plants will be consumed by domestic livestock or the final utilization level that will occur on important wildlife foraging habitats.

Response: Measurement of forage utilization is a tool used to determine whether management practices are moving resource conditions toward desired future conditions. The grazing utilization thresholds for the East Pioneers Grazing Allotments were determined based on vegetation types, stream function, and westslope cutthroat trout presence (DN, pp. 1-2). Appendix H of the EA displays the site-specific application of these thresholds. The District Ranger provides his rationale for using forage utilization thresholds by stating "Forage utilization thresholds appear to be easier for everyone to understand and measure and provide more consistent measurement results" (DN, Reasons for the Decision).

Issue 6: Science demands controls. Scientific watershed level controls are not part of the final decision, thereby rendering the subsequent monitoring data useless.

Response: Chapter II of the EA, pages II-9 to II-12, identifies monitoring common to all alternatives. This includes both annual and trend monitoring. Watershed level monitoring is found in the 1986 Beaverhead Forest Plan (VI-II) and in the Riparian Amendment, page 10.

Issue 7: Public comments were not reviewed, addressed or displayed. GWA received no scoping announcement(s) from the BLM.

Response: The regulations state that "The Responsible Official shall address comments received from the public during the comment period in an appendix to the environmental assessment" [36 CFR 215.6(d)]. These regulations do not specify that the public receive or review the Response to Comments prior to the decision being made. In this case, a draft Response to Comments was prepared prior to the decision. The District Ranger considered the comments received (DN, Public Involvement) and responded to each commentor individually by letter (EA, Appendix I). Although the letters were dated after the decision was signed, I find that the public comments were adequately considered prior to the decision.

The Forest Service (FS) and BLM have a "Memorandum of Understanding" which allows for one agency to administer an allotment with both FS and BLM land use. As the lead agency on this analysis, the FS was responsible for issuing the scoping announcements (Vol. A, 384a-384q), and as a result, the appellant only received announcements from the Forest Service.

Issue 8: Conservation strategies for identified sensitive species are required. Conservation plans/strategies for sensitive, management indicator or threatened and endangered species have not been developed for any of the wildlife/fisheries present on the analysis area or for unoccupied suitable habitat.

Response: The Forest Service Manual (under 2672.1 - Sensitive Species Management) states "Sensitive species of native plant and animal species must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing." The regulations at 36 CFR 219.19 require the Forest to "maintain viable populations of existing native and desired non-native vertebrate species..." The Pioneer Landscape Analysis considered strategies for wildlife populations. All threatened, endangered, and sensitive species were analyzed for effects. This analysis is documented in the EA, Biological Evaluation, and Biological Assessment. The wildlife biologist, fisheries biologist, and botanist used existing recovery plans; published literature, reports, and

their own observations to determine whether an impact would occur from the grazing and to prescribe mitigation measures, if necessary. The U.S. Fish and Wildlife Service concurred with the Forest's findings of 'no effect' on peregrine falcon and mountain plover, 'not likely to adversely affect' on bald eagle and lynx (when listed), and 'would not jeopardize' on gray wolf and lynx (as a candidate species).

Issue 9: The mitigation is insufficient for sensitive species. For sage grouse and westslope cutthroat trout (Montana's State Fish), as Forest Service identified sensitive species, this decision(s) prescribes mitigation of known adverse livestock management practices that are being authorized at tax payer expense rather than protection of important critical habitats.

Response: The Beaverhead National Forest and the States of Idaho and Montana worked together to assess the population status of, and problems with, sage grouse. This collaboration produced two reports (Crowley and Connelly, 1996 and 1997). The information in those reports was used by the Forest to set grazing timing and limits in sage grouse habitat. The BLM, which is a cooperating agency in this EA, and the Montana Department of Fish, Wildlife and Parks have begun further studies on sage grouse to determine the extent of sage grouse habitat and possible causes of the decline. The District Ranger stated in the decision notice "I believe this is a good approach and I'll pursue joining this endeavor. We need to further investigate at a landscape level in order to fully assess all cause and effect relationships dealing with sage grouse habitat." The mitigations prescribed in the EA were developed from the Crowley and Connelly reports and are designed to improve brood-rearing habitat in the grazing allotments.

Westslope cutthroat trout played a major part in the modification of the alternative selected. In the Grasshopper and Rattlesnake decisions, District Ranger David Fallis states "I'm concerned about what listing the west slope cutthroat trout as an endangered species would do to grazing. I want to keep grazing viable. I'm choosing a forage utilization threshold...[that]...will insure westslope cutthroat trout occupied habitat is improved more rapidly and still will allow for grazing." As stated in the Grasshopper and Rattlesnake decisions "The District fisheries biologist has determined [the modified Alternative B] will guarantee the establishment of a strong upward trend in habitat conditions for westslope cutthroat trout."

RECOMMENDATION

I recommend the District Ranger's decisions be affirmed and the Appellants' requested relief be denied.

I also recommend that, pursuant to FSH 1909.15, Section 18.1, the Responsible Officials conduct a review of this decision in light of the March 12, 1999, Update of the Northern Region Sensitive Species List to determine if any plant species listed therein could be impacted by this project. The findings of this review are to be documented in a letter to the file with a copy sent to the Regional Forester.

/s/ Maureen McBrien

MAUREEN MCBRIEN

Reviewing Officer

Deputy Director, Recreation, Minerals, Lands, Heritage and Wilderness