United States Department of Agriculture | Forest Service | Region 1 | 200 East Broadway
P. O. Box 7669
Missoula, MT 59807

File Code: 1570 (215) Date: July 12, 1999
Route To:
Subject: Grasshopper Allotment Management Plan DN, Appeal 99-01-00-0142, Beaverhead-Deerlodge NF
To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by John E. Bloomquist, Attorney for Appellant, on behalf of J. Dwight Harrison and Tash Livestock Co., Inc., signed by Patti Rowland, protesting the Grasshopper Allotment Management Plan Decision Notice (DN) signed by the Dillon District Ranger (Beaverhead-Deerlodge NF).

The District Ranger's decision adopts 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 (NFMA), and the regulations for administration of grazing permits (36 CFR 222). The Appellants request the decision be remanded. An informal meeting was held but no resolution was reached.

ISSUE REVIEW

Issue 1: The District Ranger failed to respond to comments prior to the decision in violation of NEPA.

The Appellants contend that the Decision Notice (DN) and Finding of No Significant Impact (FONSI) violate NEPA because the District Ranger failed to adequately consider and respond to comments submitted prior to making the decision.

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 theResponse 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, p. 10) 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.

Issue 2: The EA failed to consider the economic impacts on the permittees.

The Appellants contend that negative economic impacts to the permittees of reducing the availability of forage to the permittees has never been analyzed, in violation of the Beaverhead Forest Plan Riparian Amendment 7 (Amendment 7) and the regulations directing consideration of direct and indirect impacts.

Response: The analysis of the overall economic impact of the grazing program was conducted during development of the Forest Plan and Amendment 7, which stressed the importance of several social/economic factors when making decisions on grazing riparian areas. Appendix E of the EA discloses the direct monetary costs associated with each alternative. The District Ranger considered the economic impacts on the permittees in his decision. The DN states:

> Alternative B gives me the flexibility to address resource, social and economic concerns. Alternative B allows higher forage utilization thresholds in functioning riparian areas than other alternatives. This may help the permittees manage their livestock away from non-functioning areas without unnecessary reductions (DN, p. 4).

Issue 3: Neither the EA or the DN/FONSI provide the scientific basis for determination of forage utilization thresholds.

The Appellants contend that there is no scientific support for the imposition of utilization thresholds on "functioning at risk" and "non-functioning" streams. The Appellant objects to using information from the Pioneer Landscape Analysis because it was not reviewed by the public in a NEPA process.

Response: The scientific basis for the methodology for determining stream function is described in the Beaverhead Riparian Amendment 7 Environmental Impact Statement (EIS), Appendix B, "Methods of Riparian Inventory and Procedures for Determining Riparian Function." The EA is tiered to the Amendment 7 EIS and Record of Decision (ROD) (EA, p. I-4).

The Pioneer Landscape Analysis does not result in project-specific decisions and is not a NEPA document. Therefore, it does not require public review. Incorporation of resource information gathered in the Pioneer Landscape Analysis is appropriate for this project.

Issue 4: The EA and DN/FONSI rely upon unexplained and unsubstantiated assumptions on the effects of livestock grazing.

The Appellants list several assumptions regarding the stream function determinations made in the EA that he feels are unsubstantiated in the EA, even though the Beaverhead County Commissioners asked for justification.

Response: The regulations at 40 CFR 1502.24 state in part:

> Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analysis... [T]hey shall identify any methodologies used and shall make explicit reference...to scientific and other sources relied upon for conclusions...

As previously discussed, the methodology used for determining stream function is described in Appendix B of the Amendment 7 EIS. The methodology has had extensive review both within and outside the Forest Service. The resource specialists based the conclusions disclosed in Chapter 4 of the

EA on research, professional knowledge, and monitoring. The response to comments from the Beaverhead County Commissioners (Project File, Vol. C, 1213-1237) adequately addresses their comments.

Issue 5: The EA and DN/FONSI fail to recognize or consider other impacts.

The Appellants contend that imposition of stricter utilization thresholds due to presence of west-slope cutthroat trout are not justified because impacts of other fish species on westslope cutthroat trout were not considered.

Response: The effects of non-native fish species on westslope cutthroat trout are discussed in the EA (EA, pp. III-33 through 40; pp. IV-20 through 23). The Aquatic Resource Existing Condition Report (Project File, Vol. B, pp. 541-550) provides additional information regarding effects of non-native fish species on westslope cutthroat trout.

Issue 6: The preparers of the EA have a bias against livestock grazing.

The Appellants contend that a lack of objective analysis led to the imposition of more stringent grazing thresholds for the allotment.

Response: This issue is not based on environmental concerns and is outside the scope of the decision. The interdisciplinary team (IDT) was made of resource specialists highly qualified to objectively analyze the issues identified for this project.

Issue 7: The DN/FONSI violate the terms of Amendment 7.

The Appellants contend that the development of more restrictive utilization thresholds in the allotment management plan (AMP) revision process is contrary to implementation of points 4 and 5 of Amendment 7 because they make permanent changes in the permit.

Response: Points 4 and 5 of Amendment 7 prohibit changes to permitted animal unit months (AUMs) without trend monitoring data to support the change. As explained in the DN, the adaptive management strategy described in Amendment 7 is being applied to the allotment and will be used to obtain trend data before making any permanent changes to the permit (DN, p. 2). Point 5 of Amendment 7 states in part:

> Part of the "best management strategy" mentioned in implementation of point 4 will be allowable thresholds that facilitate achievement of allotment goals and objectives. The first 3-5 years of implementation is a period of evaluation and adjustment. During this time, the allowable resource thresholds will be used to determine pasture moves and adjust management through the annual operating plan as needed to meet allotment goals and objectives, but will not be used to make permanent changes in the livestock grazing permit.

Issue 8: The EA and DN/FONSI do not describe how monitoring of the allotment will be done.

The Appellants contend that how or when monitoring will be done is not disclosed and that the monitoring provisions of Amendment 7 are not being implemented.

Response: The decision is based on the adaptive management strategy which relies heavily on monitoring. Specific monitoring activities are disclosed in the EA (EA, pp. II-9 through 12) and referenced in the DN on page 4.

Issue 9: The decision violates the 36 CFR 222 regulations for administration of grazing permits.

Contention A: The AMP fails to consider the economic needs of the permittees [36 CFR 222.1(2)].

Response: Please refer to the response to Issue 2.

Contention B: Modification of season of use is not preceded by the regulatory time frames for such modifications [36 CFR 222.4(a)(8)].

Response: The regulations cited by the Appellants state that 1 year's notice will be given when there will be a modification in the season of use. The Amendment 7 ROD was signed on October 7, 1997. Affected permittees were notified of the changes to their permit with a January 20, 1998 letter (Project File, Vol. A, p. 21a-21b). The permittees operated under terms similar to those proposed in the EA during the 1998 season. The scoping notice for this EA was sent to the permittees on May 5, 1998 (Project File, Vol. A, pp. 90-98). The ProjectFile contains documentation that coordination with the permittees did occur and that they were aware of potential changes in their permit terms in advance.

Contention C: The AMP was not developed in consultation with the permittees [36 CFR 222.2(b)].

Response: The analysis documented in the EA was coordinated with the permittees (see response to Contention B). The AMP is the implementation document developed after the decision is made and has not yet been developed. Permittee involvement in development of the AMP for the Grasshopper allotment will be encouraged.

Contention D: The AMP was not developed in accordance with the Forest Plan guidance on AMP implementation in Amendment 7 [36 CFR 222.4(a)(8)].

Response: The AMP has not yet been developed. It will be developed in compliance with all laws, regulations, policy, and the terms of the decision made in the DN.

RECOMMENDATION

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

I also recommend that, pursuant to FSH 1909.15, Section 18.1, the Responsible Official 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