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Subject: ARO Letter - Antelope Basin/Elk Lake Allotment Management Plan Updates DN - Beaverhead-Deerlodge NF - Appeal #04-01-00-0012 - 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 Antelope Basin/Elk Lake Allotment Management Plan Updates Decision Notice (DN) on the Beaverhead-Deerlodge National Forest.

The District Ranger's decision adopts Alternative B, which updates the allotment management plans (AMPs) on the Elk Lake, North Saddle, Conklin, Neely's Camp, Cliff Lake Bench, Red Rock, Hidden Lake Bench, Antelope Basin, Horn Mountain, Wade Lake, and Two Drinks Allotments consistent with management direction in the Beaverhead National Forest Land and Resource Management Plan.

Alternative B would exclude livestock from Elk Springs Creek and around portions of Elk Lake. The Elk Mountain Allotment would be eliminated and the livestock use would be allocated to adjacent allotments, without an increase in permitted animal unit months (AUMs). The Two Drinks Allotment would be established by modifying the northwest boundary of the Elk Lake Allotment. Livestock use on the Two Drinks Allotment would be coordinated with adjacent State lands.

Under Alternative B, allowable upland forage utilization would not exceed 50 percent. Allowable riparian forage utilization would not exceed 55 percent. Allowable stream bank alteration levels would range from 25 to 30 percent. Stubble height of riparian vegetation at the end of the grazing season would range from 3 to 4 inches. Livestock would be moved when a shift in preference from herbaceous to woody species is noted. Authorized livestock use is estimated at 10,453 AUMs. However, since pasture moves and end of season moves would be made when one of the prescribed thresholds is met, the annual season of use would vary depending upon forage production, weather patterns, and on-the-ground livestock management practices.

Under Alternative B, existing structural range improvements (fences, water troughs, etc.) would be maintained and reconstructed as necessary. Two miles of fence would be removed and 5 miles of existing fence would be relocated. An additional 6.75 miles of fence, 26 troughs, 5.75 miles of pipeline, and a reservoir may be constructed on an "as needed" basis.

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), the Administrative Procedures Act (APA), and the Beaverhead Forest Plan. The appellant requests a remand of the DN, and an Environmental Impact Statement (EIS) be completed to address the numerous significant environmental impacts associated with grazing. The appellant also requests a Forest Plan amendment be done to address the lack of management indicator species (MIS) for grazing allotments and lack of conservation strategies for MIS and sensitive species. An informal meeting was held but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. The Forest Service failed to complete an EIS to address the loss of viability of the sage grouse on the Antelope Basin/Elk Lake landscape that can be largely attributed to grazing management practices. The agency's failure to acknowledge the decline of sage grouse on the Antelope Basin allotments resulted in a failure of them to look at the role that livestock grazing management may have played in this decline. The Forest Service failed to address the cumulative impacts of the agency's sagebrush control programs and burning of sagebrush in the Gravelly Mountains, and in the general landscape surrounding the Antelope Basin/Elk Lake allotments. The agency has failed to address the inevitable continuation of sagebrush burning on these allotments.

Response: The DN (pp. DN-7 and DN-11; and Appendix 2, pp. 4 to 5) and the EA (pp. 20 and 110 to 111) acknowledgement that sage grouse populations in Southwest Montana, including the project area, have been on a downward trend for the past decade. The District Ranger directed the ID Team to disclose potential impacts the project would have on sage grouse habitat (PF, Doc. 263). The ID Team analyzed and disclosed the impacts (EA, pp. 154 to 157; DN, Appendix 2, pp. 7 to 10 and 14 to 15; PF, Doc. 370, pp. 1 to 4, Doc. 435, pp. 13, Doc. 370, and pp. 8 to 12). The EA points out, "Nesting conditions as described by Connelly, *et al.* (2000) are **not** met within the project area during the sage grouse nesting season (May to mid-June). This appears to be limited by growing conditions and plant physiology, not by past years' cattle grazing because the nesting conditions are met in the project area later in the summer" (emphasis in original) (EA, p. 110).

The EA discusses the past and present activities that were considered in the cumulative effects analysis that produced the present vegetative conditions (pp. 107 to 110 and 116 to 123). The EA states, "Livestock grazing has occurred in the Gravelly Range and adjacent land for the past century...In addition, these areas (sagebrush/grasslands) were sprayed in the 60's and 70's (sic) to reduce sagebrush cover and increase grass forage...Prescribed fire has also been used in some areas to return a more natural role of fire due to suppression efforts" (p. 107).

At one point the ID team did consider the use of prescribed fire as part of the project, as well as a reasonably foreseeable future activity (EA, p. 33, Appendix D, p. D-2, Appendix H, p. H-24, Item CE-5; PF, Doc. 620, pp. 3-12 and 3-25). A recent review of the West Fork AMP EA, the Gravelly Sagebrush EIS, and the Upper Ruby EIS determined they were outdated, and as a

result the prescribed burning within the Gravelly Area has been postponed and is no longer considered a reasonably foreseeable future activity (EA, Appendix H, p. H-24, Item CE-6, and errata sheet, dated November 14, 2003, attached to inside cover of revised EA; PF, Doc. 158). The purpose and need, the proposed action, and the analysis do not include prescribed burning. The DN does **not** authorize burning (EA, p. 14).

The regulations at 40 CFR 1501.4 (c) provide for the preparation of an EA to determine whether or not to prepare an EIS. As documented in the DN and Finding of No Significant Impact (FONSI), the District Ranger determined this project is not a major federal action with significant effects on the quality of the human environment (DN, pp. DN-19 to DN-21); therefore, an EIS is not required. The analysis is in compliance with NEPA.

Issue 2. The Forest Service failed to do an EIS to address the many unknown impacts their grazing management program has had on wildlife, including the sensitive sage grouse. The impact of 50 percent utilization on sage grouse and other wildlife is unknown. The impact of fences on wildlife is unknown.

Response: The impact of fencing and grazing on sage grouse and other wildlife is addressed in the EA (pp. 20, 151 to 160; Appendix H, pp. H-9, H-10, H-78, and H-79), the DN (Appendix 2), and the project file (Docs. 371, 471, and 622). As documented in the DN and FONSI, livestock grazing has occurred in the project area for the past century. The decision does not involve any unique or unknown risks (DN, p. DN-20). The District Ranger determined this project is not a major federal action with significant effects on the quality of the human environment (DN, pp. DN-19 to DN-21); therefore, an EIS is not required. The analysis is in compliance with NEPA.

Issue 3, Contention A. The Forest Service failed to complete an EIS to address the lack of effective mitigation of the proposed grazing program on viability of the sage grouse and other wildlife.

Response: The existing EA addresses monitoring and mitigation (EA, pp. 116, 120 to 123, 132 to 138, 140, 141, 157 to 162, and the errata sheet). An EIS is not necessary to address monitoring and mitigation. Mitigation features from current management practices, such as planned grazing systems, structural developments, closed areas, and upland utilization levels, which led to desired vegetative conditions, were continued in the DN (pp. DN-3 and DN-4). Utilization thresholds to mitigate impacts to areas presently not at desired conditions (such as streams functioning-at-risk or non-functioning) were added to the DN (pp. DN-2, DN-3, and DN-6, and Appendix 1). The analysis is in compliance with NEPA.

Issue 3, Contention B. Some sage grouse habitat improvements will be balanced out by habitat degradation elsewhere on these allotments (for example, increased habitat degradation in the uplands where new stock tanks will be installed). Potential improvement of riparian habitats for sage grouse represents a very limited part of the overall landscape.

Response: Part of the purpose and need for the analysis is to take into consideration today's concerns for riparian management, and to update the AMP to be consistent with the Beaverhead Forest Plan, which includes the 1997 Riparian Amendment (EA, pp. 3 to 6). Any decision on management of a National Forest requires a balancing of resource uses and impacts. The EA displayed, and the District Ranger considered, the impacts to sage grouse and riparian habitats from the three alternatives analyzed in detail (EA, pp. 132 to 141 and 150 to 157; DN, p. DN-11). After reviewing the analysis, the District Ranger made his decision to implement Alternative B, which will improve the riparian habitats.

Issue 4, Contention A. The Forest Service management of the grazing program on these allotments fails to ensure viability of native wildlife species. The Forest Service has violated the Beaverhead Forest Plan by failing to include wildlife management planning in allotment management plans. Sage grouse and other MIS habitat needs, and the impacts of livestock grazing on those habitats, have not been monitored. The Forest Service has never identified any management indicator species to monitor the impacts of livestock grazing on smaller mammal populations and their associated predators, or songbirds. The Madison Ranger District failed to use any MIS or monitoring data to address cumulative grazing impacts on willow habitat.

Response: The Forest Plan (p. II-27) states, "Range allotment management plans will address wildlife habitat needs." The Antelope Basin Elk Lake Allotment Management Plan Updates Environmental Assessment addressed the habitat needs of wildlife and considered the impact the updates would have on wildlife (EA, pp. 106 to 115 and 150 to 162; PF, Docs. 362 to 371).

Both the National Forest and State of Montana personnel have monitored sage grouse habitat and conducted surveys for the presence of sage grouse (PF, Docs. 404 to 413, 418, 422, 424, 427, 428, 430, 619m, 619f, and 619g). This information was considered in the EA (pp. 110 to 111, and 151 to 157). Habitat of other MIS in the project area and the effects on them from livestock grazing were also considered in the EA (pp. 111 to 115 and 157 to 160).

Choosing which MIS best suits the need of Forest Plan monitoring is a decision best made during Forest Plan revision. The MISs for the Beaverhead National Forest were chosen and the selection criteria displayed and discussed in the 1987 EIS prepared during the Forest Planning process (Forest Plan EIS, pp. III-18). The Beaverhead-Deerlodge National Forest is in the process of revision, with a draft EIS expected in December 2004. It would be inappropriate to add a Forest-wide MIS with a site-specific, project-level EA, and it would be inappropriate to add a Forest-wide MIS at this time. Nevertheless, the Forest has monitored small mammal populations on the District (EA, Appendix G, p. G-66; PF, Docs. 415 and 419), and considered the existing condition of, and impacts to, willow habitat and the wildlife it supports (EA, pp. 124 to 126, 164 to 165, and Appendix H, pp. H-87, H-90, and H-91). The project is in compliance with the Beaverhead Forest Plan.

Issue 4, Contention B. A sage grouse conservation strategy must be implemented simultaneously with a grazing program so that conflicts can be addressed. There is no conservation strategy for sage grouse in the Antelope Basin/Elk Lake grazing plan.

Conflicts between cattle use and sage grouse viability must be addressed if significant impacts to sage grouse are going to be eliminated and population restoration achieved.

Response: The Montana Sage Grouse Work Group has produced a draft *Management Plan and Conservation Strategies for Sage Grouse in Montana* (PF, Doc. 538). The Montana Department of Fish, Wildlife, and Parks currently is accepting public comments on the draft. Even though the Strategy is in draft as this time, the EA's analysis of key issues for sage grouse incorporates the suggestions included in the Strategy and also those from Connelly, *et al.* (2000) (EA, pp. 20 and 152; DN, Appendix 2, p. 7). The ID Team considered several recommendations from the public to focus on Species Conservation Plans. While the Team agreed this had merit, the driving force behind the AMP updates was implementation of the Final Settlement Agreement for the National and Montana Wildlife Federation vs. the Beaverhead National Forest lawsuit, and bringing the allotments into compliance with the Forest Plan (EA, pp. 33 to 34).

Issue 5, Contention A. In violation of the Forest Plan range standard #12, the agency made a predetermined decision to maintain the current livestock grazing capacity on the Antelope Basin/Elk Lake allotments. The allotted number of cows did not change significantly between any action alternatives. This is clearly demonstrated in the limited range of action alternatives that were developed.

Response: Beaverhead Forest Plan range standard #12 requires that if conflicts between grazing and other resources cannot be resolved through improved allotment management, adjustments in grazing use may be used to facilitate rehabilitation efforts (Forest Plan, p. II-35). Alternatives to reduce livestock numbers, season, or forage utilization levels were considered but not analyzed in detail (EA, pp. 33 to 36). The ID Team did consider a reasonable array of alternatives (EA, p. 37). In the end, the District Ranger determined the best way to resolve conflicts between livestock grazing and other resources in the project area was to maintain the current management practices that led to desirable vegetative conditions, and add utilization thresholds to mitigate impacts to areas that were not at desired conditions. The decision adjusts utilization thresholds, rather than livestock numbers, to resolve conflicts between livestock grazing and other resources (DN, pp. DN-7, DN-8, DN-9, and DN-21). The project is in compliance with the Forest Plan.

Issue 5, Contention B. The decision to eliminate the Elk Mountain allotment was predetermined, and made outside this NEPA process.

Response: Alternative A maintained the Elk Mountain allotment. Alternative B eliminated the allotment. The District Ranger states he based his decision on the EA, the Biological Assessment, the Biological Evaluation, the review of public comments, the Forest Plan, and the Gravelly Landscape Analysis. He made his decision to choose Alternative B for the reasons set forth in the DN (pp. DN-4 to DN-7). The decision is in compliance with NEPA.

Issue 5, Contention C. An increase in the amount of ungrazed lands was not considered in any action alternative.

Response: The ID Team did consider an alternative proposed by Glenn Hockett to close 25 percent of each allotment for 10 years to mitigate the impacts of grazing the rest of the allotment, which is based on an article by Bock, Bock, and Smith (1993). After discussions about this

particular alternative by the ID Team, they decided not to analyze the alternative in detail for a number of reasons discussed in the meeting notes (PF, Doc. 281) and in the DN (p. DN-16). Not considering an alternative in detail, which was offered by the public, is in compliance with NEPA [40 CFR 1502.14(a)].

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/ Eric P. Johnston
ERIC P. JOHNSTON
Appeal Reviewing Officer
Deputy Director of Watershed, Wildlife, Fisheries and Rare Plants