

United States
Department of
Agriculture

Forest
Service

Region 1

Federal Building
P.O. Box 7669
Missoula, MT 59807

File Code: 1570 (215)
#97-01-00-0025

Date: March 17, 1997

Sara Jane Johnson
Native Ecosystems Council
P.O. Box 125
Willow Creek, MT 59760

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dear Ms. Johnson:

This is my decision on disposition of the Appeal you filed on behalf of Native Ecosystems Council protesting the Madison District Ranger's Decision Notice (DN) for the Tobacco Roots Grazing Management project on the Beaverhead-Deerlodge National Forests.

The District Ranger's decision adopts Alternative B. This Alternative will direct grazing management on the North Meadow, Willow Creek, South Meadow, Granite Creek, Noble/Indian, Wisconsin Creek, Nugget Creek, and Strawberry Ridge Allotments for the next 10 years. No more than 1,669 cow/calf pairs will be grazed between June 16 and October 20. Permittees will be required to follow standards to ensure moving toward Forest Service objectives for vegetation and riparian conditions. The following improvements will be constructed to improve distribution of cattle and to facilitate management: (1) riparian enclosures, (2) drift fences, (3) spring enclosures, (4) stock tanks, and (5) pipeline extensions. The Wisconsin/Nugget Allotment will be designated as two allotments.

DECISION

After careful consideration of the Appeal Reviewing Officer's recommendation, I affirm the District Ranger's decision to implement Alternative B. Your requested relief is denied.

My review of your Appeal was conducted pursuant to, and in accordance with, 36 CFR 215.17 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. I have thoroughly reviewed the Appeal Record, including the recommendation of the Appeal Reviewing Officer (copy enclosed) regarding the formal disposition of your Appeal. My decision hereby incorporates by reference the entire Appeal Record.

APPEAL SUMMARY

You allege violation of the National Forest Management Act, the National Environmental Policy Act (NEPA), the Multiple Use Sustained Yield Act, and the Administrative Procedures Act.

Central objections identified in your Appeal are completion of an environmental impact statement, prescribed sagebrush burning, reduction in livestock grazing levels, cumulative impacts on wildlife and fisheries, wildlife habitat, songbirds, economic analysis, range of alternatives, grazing restrictions, and management area direction,

You request the Forest Service remand the decision; complete an environmental

impact statement; develop a range of alternatives fully addressing the issues; disclose and evaluate all management activities, costs, and benefits; clearly define all proposed management actions; and fully disclose all associated wildlife/fisheries impacts,

An Informal Meeting was offered, but you were unavailable to meet. No Interested Party comments were received.

APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer recommends the District Ranger's decision be affirmed and your requested relief be denied.

FINDINGS

Following is my evaluation of the objections raised in your Appeal and your requested changes.

Scope of Decision

Decisions made in Forest Plans are subject to administrative review under 36 CFR 217 and are not subject to review in project or activity decisions [36 CFR 215.8(a)(1)]. These decisions are considered to be beyond the scope of the project-level decision, and the opportunity to challenge these decisions has been exhausted.

Similarly, Appellants may not request review of activities that are not "connected" to the project decision being challenged or ask that additional decisions be made that are not "ripe" for decision. Under NEPA, the Responsible Official has the discretion to propose actions and determine which actions warrant a decision and those that do not.

I have determined your objection that the Tobacco Root Grazing Management decision should have been disclosed in an environmental impact statement because of the controversy relative to associated sage-brush burning is beyond the scope of this decision and will not be considered in this review.

I have determined the rest of your objections are within the scope of the decision and are considered in my review.

Scope of Decision Documentation

Appellants have an affirmative obligation under the NEPA to structure their comments and participation to allow the decisionmaker an opportunity to address and deal with concerns prior to making a decision. The Appeals Reform Act, 16 U.S.C. 1612, requires the Responsible Official to provide an opportunity for public comments prior to making a decision. A response to those comments

becomes part of the decision documentation. Issues and comments raised during or before the comment period are to be considered and responded to by the Responsible Official prior to issuance of a decision [36 CFR 215.6(d)]. If the Appellants have not raised specific issues or concerns with the project or have withheld information until after a decision has been issued, they have effectively prevented the Responsible Official from being able to respond.

Requested changes or objections raised by Appellants not identified or brought to the Responsible Official's attention prior to the decision will either be referred to the Responsible Official as new information pursuant to Forest Service Handbook 1909.15, Section 18, or will be determined to be beyond the scope of the decision documentation and not reviewed.

Your remaining objections correspond closely to comments you raised in scoping and during the comment period. Because of your early participation in the environmental analysis, the District Ranger was able to analyze these concerns

by incorporating them into the environmental analysis and consider them in making the decision. Therefore, your remaining objections may be reviewed to determine if the District Ranger has complied with all procedural requirements.

Procedural Determination

I have thoroughly reviewed your arguments and the information referenced in the District Ranger's February 18, 1997, Transmittal Letter (copy enclosed). The Transmittal Letter provides specific page references to discussions in the EA, the DN, and project file which bear upon your objections. The objections you raise in your Appeal are similar to the comments you made on the EA. The project file indicates your objections were either addressed as environmental issues in the EA or are discussed in the DN. I specifically incorporate in this decision the references and citations contained in the Transmittal Letter. Based upon a review of the references and citations provided by the District Ranger, I find the objections you raised were adequately considered in the EA/DN and the District Ranger made a reasoned decision concerning those issues. I find the District Ranger has complied with all laws, regulations and policy.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Kathleen A. McAllister

KATHLEEN A. MCALLISTER
Appeal Deciding Officer
Deputy Regional Forester

Enclosures (2)