



File 1570 (215) Date: April 21, 1999
Code:
Route
To:
Subject: Horse Butte Bison Capture Facility DN, Appeal #99-01-00-0109,
Gallatin National Forest
To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Jim Coefield on behalf of The Ecology Center, Inc. and Cold Mountain, Cold Rivers, Inc. protesting the Horse Butte Bison Capture Facility Decision Notice (DN) signed by the Gallatin National Forest Supervisor.

The Forest Supervisor's decision authorizes issuance of a special use permit to the Montana Department of Livestock to install and operate a bison capture facility in the Horse Butte area, approximately 9 miles northwest of West Yellowstone.

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' 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.

FINDINGS

Appeal Review Findings

The Appellants allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Administrative Procedures Act (APA). The Appellants request the decision be remanded. No informal meeting was held, and no interested party comments were received.

Objection 1: The Gallatin National Forest was pre-decisional in its decision to issue a special use permit for the bison capture facility.

Response: The EA (pp. 2-4) explains that the decision to issue a special use permit to construct and operate the bison capture facility is tiered to the existing Interim Bison Management Plan Environmental Assessment (Project File, A-4 through A-6) developed by the Montana Department of Livestock (MDOL); the Montana Department of Fish, Wildlife, and Parks (FWP); the National Park Service (NPS); the Forest Service; and APHIS Veterinary Services. This issue is also addressed in the Response to Comments (DN, Appendix C, p. 15) which explains the relationships between this decision, the Interim Bison Management Plan EA and the Draft Interagency Bison Management Plan EIS. If the final Interagency Plan does not include the use of trapping facilities, then this facility will cease to operate.

Objection 2: The Forest Plan amendment violates NFMA.

The Appellants contend that the decision violates NFMA because the site-specific amendment related to bald eagles will have significant effects.



Response: The effects of the project on bald eagle populations and habitat is documented in the EA (EA, pp. 19-22) and the Biological Assessment (Project File, D-8, pp. 10-15). The USFWS issued a Biological Opinion which determined that the action was not likely to jeopardize the continued existence of the bald eagle (Project File, D-11, pp. 11-29). Based on the information contained in these documents, the Forest Supervisor determined that the exemption from management guidelines contained in the Montana and Greater Yellowstone bald eagle management plans is a non-significant amendment to the Gallatin National Forest Plan (DN, p. 12)

Objection 3: The EA fails to include the best available data.

The Appellants contend that the EA failed to consider new information relating to the transmission of brucellosis.

Response: The EA explains that the scope of the project is limited to the issuance of a special use permit to the MDOL for the installation and operation of the bison capture facility. The EA also explains that issues relating to the management of migrating bison are addressed in the Interim Bison Management Plan EA and are outside the scope of this proposed action (EA, p. 5).

Objection 4: The EA violates NEPA by "piece-mealing" decisions to be made in the Draft Interagency Bison Management Plan.

The Appellants contend that the decision to construct the trapping facility short-circuits the Draft Interagency Plan and prejudices that decision to be made.

Response: The EA (pp. 2-4) explains that the decision to issue a special use permit to construct and operate the bison capture facility is tiered to the existing Interim Bison Management Plan EA. This issue is also addressed in the Response to Comments (DN, Appendix C, p. 15) which explains the relationships between the decision implemented in accordance with the Categorical Exclusion (CE), this decision, the Interim Bison Management Plan EA and the Draft Interagency Bison Management Plan EIS.

Objection 5: The DN violates NEPA by failing to make a clear decision.

The Appellants contend that allowing the MDOL to make its own choice between two alternatives is inappropriate.

Response: The Forest Supervisor provides the rationale for his decision in the DN (p. 4). He also explains that, "Approval of two alternate sites optimizes the ability of the State to manage bison and minimize effects on other resources" (DN, p. 2). I find this rationale to be reasonable and consistent with NEPA.

Objection 6: The decision to construct the facility should be considered in the EIS for the Interagency Bison Management Plan.

The Appellants contend that the site-specific analyses for a capture facility should be delayed until the Draft Interagency Bison Management Plan EIS is completed, a Record of Decision (ROD) is published, and the Plan is successfully implemented.

Response: The EA discloses the site-specific effects of the project and explains that the decision to construct and operate the bison capture facility is tiered to the existing Interim Bison Management Plan EA. The operation of the capture facility is consistent with the Interim Bison Management Plan which is in effect pending completion and implementation of the Final Interagency Bison Management Plan.

The decision to permit this facility may change as a result of the more comprehensive Interagency Bison Management Plan EIS.

Objection 7: The EA and Gallatin Forest Plan fail to consider bison habitat.

Response: The EA explains that the scope of the project is limited to the issuance of a special use permit to the MDOL for the installation and operation of the bison capture facility. Management of bison habitat is beyond the scope of this decision. However, the Gallatin National Forest Plan (p. II-1) includes providing habitat for viable populations of all indigenous wildlife species and for increasing populations of big game animals and maintaining or improving the forage resource.

RECOMMENDATION

On March 12, 1999, an Update of the Northern Region Sensitive Species List was sent to Forest Supervisors. This is new information that was not available to the Responsible Official at the time this decision was made. Pursuant to FSH 1909.15, Section 18.1, this new information must be reviewed to determine its importance to this decision. I recommend that the Responsible Official conduct a review to consider this information within the context of the project, that the Forest Supervisor's decision be affirmed and that the Appellants' requested relief be denied.

/s/ Maureen McBrien

MAUREEN MCBRIEN
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