



File 1570 (215) Date: July 12, 1999
Code:
Route
To:
Subject: East Pioneers Allotment Management Plans DN, Appeals #99-01-00-0137, 0138,
0139, 0140, 0141 Beaverhead-Deerlodge NF
To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by John D. Grove on behalf of James Olsen and Friends of the Bitterroot, Inc. protesting the East Pioneers Allotment Management Plans Decision Notices (DN) signed by the Dillon District Ranger (Beaverhead-Deerlodge NF).

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 Clean Water Act, and the National Forest Management Act (NFMA). The Appellants request the decision be remanded until the District Ranger prepares an Environmental Impact Statement (EIS) or otherwise evidences full compliance with NEPA and Beaverhead Forest Plan requirements. An informal meeting was held but no resolution was reached.

ISSUE REVIEW

Issue 1: An Environmental Impact Statement (EIS) is required.

Contention A: The Appellants contend that there is a disagreement regarding the effectiveness and legal sufficiency of Alternatives B and C between District personnel and Forest specialists.

Response: The EA describes two "schools of thought" regarding potential effects of the proposal on riparian resources (EA, II-17 and 18). The District Ranger provides the rationale for the decisions in each DN and states that he considered both theories in making the decisions (DN, pp 3-5). The District Ranger held a meeting on April 12, 1999, to get agreement on effects from the Interdisciplinary Team (IDT). The IDT agreed that a 45 percent forage utilization level should result in improving trends in functioning-at-risk and non-functioning riparian areas (Project File, Vol. B, pp. 793-797).



Contention B: The Appellants contend that the decision not to prepare an EIS was arbitrary and capricious because the Finding of No Significant Impact (FONSI) is not supported by disclosures in the Environmental Assessment (EA).

Response: The regulations at 40 CFR 1501.4(c) provide for the preparation of an EA to determine whether or not to prepare an EIS. In his decision notices, the District Ranger stated that "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 Appellants lists several statements from Chapter III of the EA which describe current resource conditions on the allotments. Significance in terms of NEPA refers to the effects of proposed action, not the existing condition. The conclusions drawn in the EA regarding the effects of the proposed action are supported by scientific research and professional judgement. Adaptive management and monitoring are integral parts of the selected alternative, and will provide flexibility needed to make adjustments in livestock management to improve resource conditions and move them toward desired future conditions.

Contention C: The Appellants contend that the EA does not provide any firm assurances that the proposed grazing practices will fully protect the degraded watersheds or fisheries from further cumulative significant adverse impacts.

Response: As discussed in response to Contention B, the information provided in the EA is supported by scientific research and professional judgement. Implementation of the adaptive management strategy will allow for adjustments in management designed to move toward desired future resource conditions. Each DN contains mitigation measures and provisions which, based on monitoring results, will be implemented to ensure that watersheds and fisheries habitat are making progress toward meeting Forest Plan standards.

Contention D: The Appellants contend that the DNs indicate they will use a 45 percent "utilization rate" under Alternative B (modified, cycle 2) instead of the 40 percent utilization rate originally listed in the EA even though the EA discloses that previous studies found that a 45 percent utilization rate may not allow for improvement of the degraded conditions. They believe that the EA documents significant adverse impacts and that an EIS should be prepared.

Response: The Appellants cite a portion of a paragraph in Chapter IV of the EA to support their claim. The paragraph states in full (EA, IV-22):

In portions of streams that are currently functioning-at-risk or non-functioning, and which do contain westslope cutthroat trout (French, Trout, Mono, and Sheldon Creeks), 45% utilization may show an upward trend from the current conditions, but probably not result in the stream becoming functioning. As long as there is an upward trend, 45% utilization would be the threshold/standard. *If the trend becomes static and the desired conditions is not reached, the 35% standard would apply. At 35% utilization, there is a high probability that the desired condition would be achieved* (emphasis added).

The Beaverhead Forest Plan Riparian Amendment 7 (Amendment 7) Final EIS (to which the East Pioneers EA is tiered) analyzed 35-45 percent utilization on streams containing westslope cutthroat trout and disclosed that "In streams containing 90 percent+ pure westslope cutthroat trout, the standards would initiate recovery of degraded riparian areas" (Amendment 7 Final EIS, IV-6).

The adaptive management strategy is an integral part of improving degraded conditions. In his rationale for the decisions documented in the DN, the District Ranger states:

This decision enables non-functioning and functioning-at-risk riparian areas to begin to regain functioning condition as a minimum and achieve all site-specific riparian desired conditions within a reasonable time frame. The Adaptive Management Decision Chart insures we find the right utilization thresholds to keep us moving towards the proper functioning condition without overshooting the mark.

As previously discussed, the District Ranger determined that there would be no significant effects on the quality of the human environment; therefore, an EIS is not required.

Issue 2: The decisions violate the "prescribed grazing standard" (Code 528A).

The Appellants contend that Alternative B does not meet the intent of the United States Department of Agriculture/Natural Resources Conservation Service, Prescribed Grazing Standard (Code 528A) because it does not meet all the criteria.

Response: The EA discusses the criteria and intent of Code 528A in detail on pages IV-11 through 13. The EA discloses that Alternative B as originally proposed would not meet the intent of Code 528B because it only meets 3 of the 6 components important to riparian management listed in the Montana Supplement 2. In response to comments submitted by the Appellants, the District Ranger states, "I decided to choose Alternative B, Cycle 2 and modify it because it would then meet the intent of Code 528A. The utilization standards between 35 percent and 45 percent become a surrogate for other components which adequately address all the criteria required under Code 528A" (Project File, Vol. C, pp. 1444-1145).

Issue 3: The EA and decisions violate the NFMA, Forest Plan, and the Clean Water Act.

Response: The Appellants do not specify how the NFMA, Forest Plan, or CWA are being violated. They quote several excerpts from 1987 and 1991 letters from the State of Montana commenting on other projects, as well as excerpts from Chapter III of the EA describing current watershed and fisheries conditions in the project area. Based on the analysis presented in the EA, the District Ranger concludes that his decision is consistent with the Beaverhead Forest Plan, Amendment 7, and the CWA (DN, Applicable Laws, Regulations and Policies, and Consistency with Forest Plan).

Issue 4: The EA and DN/FONSI document a continuing non-compliance with the 1986 Beaverhead Forest Plan standards.

The Appellants contend that several Forest Plan standards, Range standard #7, Watershed standards #3 and #9, and Fisheries standards #2 and #4 are being violated by the decisions.

Response: The Appellants are not specific in stating how the decisions violate these standards. As pointed out by the Appellants, the EA acknowledges that some Forest Plan standards are currently not being met. In his decision notices, the District Ranger concludes that "This decision moves the area towards desired conditions and achieves the objectives described in the Beaverhead Forest Plan and Beaverhead Forest Plan Riparian Amendment #7..." (Decision Notices, Reasons for the Decision).

Issue 5: Beaverhead Forest Plan standards for elk effective cover are not being complied with.

The Appellants contend that current standards for elk-effective cover are not being met and that the decisions make no attempt to correct the non-compliance.

Response: The elk effective cover standard is related to timber harvest and road construction. The proposed action in the East Pioneers Grazing Allotments EA is limited to the revision of grazing direction and range improvements. No timber harvest or road construction is proposed. The EA discusses elk habitat and the effects on elk winter and summer range (EA, III-50 through 52; IV-25). The decision notices state that sufficient cover and winter forage for the support of elk and deer will be maintained.

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 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