USDA United States Department of Agriculture | Forest Service | Region One | Northern Region
200 East Broadway
Missoula, MT 59802

File Code: 1570 (215)
#12-01-00-0075

Date: June 4, 2012

Michael Garrity
Alliance for the Wild Rockies
PO Box 505
Helena, MT 59624

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
NUMBER: 7011 0110 0001 4030 3215

Dear Mr. Garrity:

This is my decision on the disposition of the appeal you filed, on behalf of Alliance for the Wild Rockies and Native Ecosystems Council, regarding the Trapper Creek Vegetation Management DN/FONSI, signed by the Forest Supervisor of the Beaverhead-Deerlodge National Forest.

My review of your appeal was conducted pursuant to, and in accordance with, 36 CFR 215.18 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. I have reviewed the appeal record, including your arguments, the information referenced in the Forest Supervisor's May 4, 2012 transmittal letter, and the Appeal Reviewing Officer's analysis and recommendation (copy enclosed). The transmittal letter provides the specific page references to discussions in the DN and project file, which bear upon your objections. I specifically incorporate in this decision the appeal record, the references and citations contained in the transmittal letter, and the Appeal Reviewing Officer's analysis and recommendation.

The Appeal Reviewing Officer has considered your arguments, the appeal record, and the transmittal letter and recommends the Forest Supervisor's decision be affirmed and your requested relief be denied.

Based upon a review of the references and citations provided by the Forest Supervisor, I find the objections were adequately considered and addressed in the DN/FONSI. I agree with the Appeal Reviewing Officer's analysis and conclusions in regard to your appeal objections. I find the Forest Supervisor has made a reasoned decision and has complied with all laws, regulations, and policy.

After careful consideration of the above factors, I affirm and approve the Forest Supervisor's decision to implement the Trapper Creek Vegetation Management Project. Your requested relief is denied.

Sincerely,

Jane L Cottrell
JANE L. COTTRELL
Deputy Regional Forester

cc: Dave Myers, Jan M Bowey, Ray G Smith, Kim Smolt

United States Department of Agriculture | Forest Service | Dakota Prairie Grasslands | 240 W. Century Ave. Bismarck, ND 58503

File Code: 1570 **Date:** May 31, 2012
Route To:

Subject: 1570 (215) A&L - ARO Letter - Trapper Creek Veg - B-D NF - AWR/NEC - #12-01-00-0075

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Michael Garrity, on behalf of Alliance for the Wild Rockies and Native Ecosystem Council, of the Trapper Creek Vegetation Management Decision Notice on the Beaverhead-Deerlodge National Forest.

The Forest Supervisor's decision adopts slashing small-diameter conifers within and on the edges of sagebrush and grass parks on approximately 3,070 acres; slashing small diameter conifers and creating snags on approximately 230 acres of aspen and riparian areas; slash, pile and burn conifers within mountain mahogany stands on approximately 100 acres; and broadcast (mosaic) burn sagebrush parks experiencing conifer colonization. No roads will be constructed and no commercial harvest will occur. The project is designed to meet Forest Plan objectives.

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 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.

The appellants contend members of AWR and NEC would be directly and significantly affected by the logging and associated activities (Appeal, p. 1). Activities selected for implementation in the Trapper Creek Vegetation Management DN/FONSI **do not include commercial logging**.

The appellants allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Endangered Species Act (ESA), and the Administrative Procedures Act (APA). The appellants request a reversal of the DN. An informal meeting was held but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1: SOIL PRODUCTIVITY

The appellants contend that the Forest does not consider detrimental soil disturbance from livestock grazing or off-road vehicle use. The appellants further allege that the proposal violates NFMA requirements to assure regeneration, sustained yield and maintain soil productivity, specifically related to tree cutting and burning in low soil productivity due to past and ongoing grazing and ATV use. The appellants allege that the Forest Service's determination that it may permanently damage soil on 15% of an activity area and still meet

NFMA and planning regulations is arbitrary, and that the EA does not cite any scientific basis for adopting the 15% numerical limit. The appellants allege the Forest is violating the Regional Soil Quality standards by not measuring the amount of detrimentally disturbed soils from past or ongoing activities in logically bounded Activity Areas. The appellants further allege that the EA does not disclose the location and acreages of burning areas, and that the FS does not adequately address the chemical and biological make-up of the specific soils in the project area, and their ability to withstand fire and detrimental disturbance that lowers productivity.

Response: Cumulative effects on soil from the proposed action and existing detrimental disturbance are disclosed in the EA (p.102) and the DN (p. 15). The EA (pp. 92-94) discusses the existing condition of soil resources, including effects from current and past livestock grazing and associated environmental consequences from the proposed action to soil resources. The existing detrimental soil disturbance does not exceed three percent in any given activity unit. The ID team responded to many comments related to soil productivity, providing similar information, which is published in the EA (e.g., Appendix B, pp. B-35, B-56, B-57, & B-58). Furthermore, the EA thoroughly describes the soil characteristics expected from a low severity burn (pp. 97, 100-102) and holds that the amount of detrimental soil disturbance due to severely burned soil is not expected to exceed one-tenth of one percent of the activity units. The proposed action would protect soil productivity and meet the Northern Region Soil Quality Standards (USDA Forest Service 1999), also referred to in the BDNF Forest Plan (USDA Forest Service, 2009) (Soils Report - EA, pp. 92-102). Changes in the chemical and biological make-up of the mineral soil amounting to .01 percent do not warrant an exhaustive discussion, nor does it threaten regeneration, sustained yield or soil productivity.

We have responded on numerous occasions to the appellants' assertion that the Regional Soil Quality Standards have no scientific basis. We repeat here that they are based on research done by the Rocky Mountain Research Station by the following soil scientists: D. Page-Dumroese, M. Jurgensen, W. Elliot, T. Rice, J. Nesser, T. Collins, R. Meurisse (USDA Forest Service 1999, PF Doc. D-197).

The EA documents that motorized use is allowed only on open, designated routes. Furthermore, the 2009 BDNF Forest Plan limits motorized wheeled travel to designated roads and trails (EA, Appendix B, p. B-15, Response to Comment 62). The routes in the project area constitute a "designated use" and are exempt from the soil quality standards and are not managed as part of the productive land base.

The location of burning areas are disclosed on maps included in the EA. The EA (Table 1, p. 4) includes proposed treatment units, acres, a summary of existing vegetation and the proposed treatment by unit.

With regard to the appellants' challenge, I find that the Forest Service appropriately considered detrimental soil disturbance from livestock grazing and off road vehicle use in the soils report in the EA. Furthermore, the DN/FONSI discloses impacts to soil, including cumulative effects from proposed action and existing detrimental disturbance. I find that the Trapper Creek project is in compliance with R1 Soil Quality Standards and the National Forest Management Act.

Issue 2:ROADLESS ANALYSIS IS INADEQUATE

The appellants assert that the Roadless Analysis was inadequate, that unroaded areas and Inventoried Roadless Areas were considered differently in the analysis, and that maps of Inventoried Roadless Areas were not included in the EA. They assert that we are violating policy because cutting and burning trees in an IRA requires an EIS, and that the EA does not include an alternative that does not affect unroaded contiguous areas.

Response: Agencies may prepare an Environmental Assessment on any action at any time in order to assist agency planning and decision making (40 CFR Part 1501.3 (b)). Based on the environmental assessment, a determination is made whether to prepare an environmental impact statement (40 CFR Part 1501.4 (c)). A Finding of No Significant Impact (FONSI) is prepared if the agency determines on the basis of the environmental assessment not to prepare a statement. The FONSI was published as part of the Decision Notice for Trapper Creek. The FONSI addresses IRAs (pp. 13-15, 20-22).

NEPA Handbook 1909.15 21.2 provides for Classes of Actions which normally require an EIS. Class 2 includes proposals that would substantially alter the undeveloped character of an inventoried roadless area or potential Wilderness Area. Potential effects to roadless/wilderness characteristics were evaluated, and it was determined that neither hand-felling small-diameter trees that are encroaching on aspen, grassland or sagebrush areas that were maintained historically by a fire disturbance - nor the mosaic burning of sagebrush - will alter the undeveloped character of the IRAs. This is documented in the DN/FONSI (pp. 10, 13-15 and 20-22) and EA (pp. 8, 61-69, 71-85; Appendix B, Response to Comments, pp. B-2, B-6, B-15, B-23, B-54 and B-118 thru B-119).

The Chief is redelegated authority to approve: c) The cutting, sale, or removal of generally small-diameter timber when needed for one of the following purposes: (2) To maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period (Secretary's Memorandum 1042-155 Authority to Approve Road Construction and Timber Harvesting in Certain Lands by the Forest Service). In a letter dated June 10, 2011, it was clarified that the appropriate responsible official may make the decision covered by the re-delegated authorizations to the Chief in this memorandum. Upon reading the EA and DN, it is clear the purpose of the Trapper Creek project is to maintain or restore the characteristics of ecosystem composition and structure (EA, pp. 17-34).

The appellants assert that IRAs and their contiguous unroaded areas were dealt with differently. I find no difference in the document between the treatment of units within the Inventoried Roadless Areas and those within unroaded contiguous areas. In fact, it appears that the authors purposefully combined the unroaded contiguous area with the Inventoried Roadless areas, just as the appellants contend should be done. The Trapper Creek Proposed Treatment Units and Inventoried Roadless Areas is the third map in Appendix A. It clearly shows IRA boundaries and unit boundaries.

Design criteria and mitigations were developed to minimize potential negative effects to wildlife and noxious weeds and the environmental consequences of the proposed action are detailed in the EA (pp. 71-85). A review of the Proposed Treatment Units in Table 1 (EA, pp. 4-6) indicates no difference in treatment based on location of units in Inventoried Roadless Areas or unroaded contiguous areas.

I find that the Roadless Analysis was complete and thorough and the project comports with NEPA, the Roadless Rule, and Forest Service direction.

Issue 3: SENSITIVE SPECIES/MIS

Contention 3a: The appellants allege the EA failed to disclose the forest-wide status of sagebrush in the BDNF. The appellants allege therefore, sagebrush and juniper dependent species' habitat adversely affected by the Project may be crucial to maintaining viable populations of these species. The appellants further allege that in the total absence of population monitoring information, the FS's decision to cut and burn in the project area that provides habitat for sagebrush and juniper dependent wildlife species is arbitrary and capricious. They allege the project would remove such habitat as well as adversely affect these habitat components."

Response: The EA describes the influence of the vegetation analysis in the Revised Forest Plan FEIS in developing the purpose and need for the project and proposed action (pp. 1-3 and 27-28). Forest-wide status of sagebrush, aspen, riparian vegetation and grasslands habitat is provided in the Forest Plan FEIS (pp. 450-484). The Forest-level analysis of existing conditions of sagebrush/grasslands and juniper and environmental consequences to wildlife habitat from vegetation management are disclosed (Forest Plan FEIS; Forest Plan PF Doc. A1-40, pp. 462-465, 471-473 & 532-533). The current amounts of xeric and montane shrublands are less than the historical range and the likely cause is identified as conifer encroachment. The EA (p. 21) discloses the amount of sagebrush habitat within the affected environment of the Trapper Creek Vegetation Management project. The Trapper Creek Project is designed to reduce conifer encroachment, thus leading to an increase of habitat for sagebrush dependent species, as described in the EA (p. 129). The EA also described the desired results of treatment as related to wildlife habitat (p. 106).

Sagebrush and juniper were considered in the Pioneer Landscape Assessment and informed the analysis for this site-specific project (PF Doc. C1-10, pp. 1-1, 1-2, 1-7, 1-52 thru 1-55, 1-62, 1-63, 1-73, 1-74, 1-82 & 1-83). The decision rationale includes achieving stable or upward trends for declining habitats (including sagebrush/grasslands) (DN, pp. 8-9).

The appellants do not indicate what sagebrush and juniper dependent species they are referring to - nor do they mention what the adverse effects are to habitat; however, the environmental consequences of the proposed action to species using sagebrush and juniper included bighorn sheep, Great Basin pocket mouse, sage grouse, pygmy rabbit, elk and migratory birds (EA, pp. 120-134, 140-141 & 144-146).

Particularly for sage grouse, "the proposed action would improve brood-rearing habitat through reducing sage cover, creating a diversity of age classes, reducing conifer colonization, improving riparian condition, and increasing sage and herbaceous vigor overall. The long-term effects of implementing this project are beneficial to sage-grouse habitat". (EA, p. 129)

Design features include treating juniper and sagebrush in the manner agreed upon with MT FWP (DN, p. 8). The DN also considered concerns about effects to wildlife habitat and associated species (pp. 9-10).

The Forest Plan FEIS (pp. 532-533), *Effects on Wildlife Habitat Management from Vegetation Management*, states that Alternative 6 (selected alternative) is the most proactive alternative in treating the aspen and conifer/grassland/sagebrush ecotone to benefit wildlife.

The project does not "remove" habitat. Many comments from the appellants were received regarding sagebrush, some very similar to the appeal point. Each comment was responded to clearly, providing additional information and directing the commenter where to find information on the topic (EA, Appendix B, p. B-70, Comments 3.4 & 3.5; p. B-73, Comment 4.3; p. B-77, Comment 4.11; pp. B-79 thru B-83, Comments 4.16-4.23; pp. B-87 thru B-101, Comments 4.31, 4.34, 4.35, 4.38, 4.39, 4.64, 4.68 & 4.69). The project has full support from Montana Fish, Wildlife & Parks (*Ibid.*, p. B-18, Comment 76.)

I find the EA and DN both convey a thorough analysis of sagebrush and juniper habitat and effects to wildlife and the project is consistent with the Forest Plan.

Contention 3b: The appellants allege that the EA does not consider cumulative effects on boreal toads or their upland habitat.

Response: Cumulative effects result from the impact of the action when added to other past, present, or reasonably foreseeable actions (40 CFR 1508.7). The sensitive amphibian Biological Evaluation conducted for boreal toad determined the project would have no impact (PF Doc. C10-3). Therefore, there is no cumulative impact. This information is provided in the EA in the section regarding the affected environment and environmental consequences of proposed action for amphibians, including western (Boreal) toad (pp. 147-149 & 151-153). Further, the FONSI (DN, p. 17) discloses the lack of impacts to western toad. The project includes a design feature to protect western toad[1] breeding sites and this was stated in the DN (p. 6).

[1] Western toad and boreal toad refer to the same species

Contention 3c Part 1: The appellants assert that wolverines are a MIS for the revised forest plan but no surveys were done in the project area. They further opine that because there is not a requirement in the Revised Forest Plan to monitor sage-grouse or wolverine population trends in response to management activities, the 1982 NFMA planning regulations are being violated.

The appellants also allege the Forest Service admits that the wolverine and/or its habitat are present within the project area and would be impacted by the project and must go through ESA consultation for the wolverine for this project. The appellants express concern that there was no analysis of the impacts of the Trapper Creek project on wolverines or sage-grouse in violation of NEPA, NFMA, the APA and the ESA.

Response: The EA (p. 138) and DN (p. 16) indicate that the project units do not occur within wolverine denning habitat or persistent spring snowpack and therefore no effects to wolverine are anticipated. While the Forest Service "admits" that there is habitat within the greater 110,000 acre project area, and that wolverines have been documented in the Pioneer Mountains, the appellants are mistaken in asserting we imply an impact to wolverine with any of the approximately 3,400 acres to be treated in the Trapper Creek project. Wolverine is listed as a candidate species and none of the substantive or procedural provisions of the Endangered Species Act apply to candidate species; therefore, no consultation is required under the ESA (PF Docs. D210 and D216). The appellants asked about consulting on wolverine with USFWS in their comments on the EA and the requirements and reasoning were clearly explained to them (EA, Appendix B, p. B-42, Comment 2.36).

As a management indicator species, the presence (or absence) of wolverines is monitored mainly through MFWP records (Forest Plan PF Doc. C1-13, p. 277). The Revised Forest Plan was appealed by AWR/NEC and the Reviewing Officer for the Chief's appeal determination (for appeals filed under 36 CFR 217) found the BDNF Revised Plan MIS selection process and monitoring requirements are adequate and comply with NFMA (Forest Plan PF Doc. I4-05, pp. 81-82). The 1982 NFMA planning regulations no longer apply.

The direct, indirect, and cumulative effects determination for wolverines for the Trapper Creek project are disclosed in the EA (p. 138) and concluded that the Trapper Creek Vegetation Management Project would have no impact on the wolverine population or species viability. Appendix A includes a map showing both wolverine denning habitat and Trapper Creek activity units. There is no overlap.

The project units do not occur within wolverine denning habitat or persistent spring snowpack and therefore no effects to wolverine are anticipated (EA p. 138, DN p. 16).

Sage grouse is not an MIS. As a sensitive species, the Forest Plan includes monitoring of sage grouse through the location of leks and determining if management activities are affecting brood-rearing habitat (Forest Plan, p. 276). The Greater Sage-Grouse analysis is documented in the EA (pp. 124-132). Furthermore, the direct, indirect and cumulative effects determination for sage-grouse are disclosed (pp. 128-132) and concluded that the proposed action would improve brood-rearing habitat through reducing sage cover, creating a diversity of age classes, reducing conifer colonization, improving riparian condition, and increasing sage and herbaceous vigor overall and

that the long-term effects of implementing this project are beneficial to sage-grouse habitat. Appendix A includes maps of sage grouse habitat and sage grouse leks.

The project and analysis are in compliance with NEPA, NFMA, APA and ESA.

Contention 3c Part 2: Appellants allege that without any indication that there are viable populations of MIS in the Project Area before the Project, it is unclear how the Forest Service could conclude that viable populations of MIS will be maintained after the Project.

Response: Management indicator species for the BDNF are elk, mountain goat, and wolverine. Population estimates of elk in the project area are included in the EA (p. 139). Elk population estimates are listed for Hunting District-331 and Pioneer Elk Management Unit levels. The elk population on the BDNF is up from the previous four years and very close to MFWP objectives at that scale.

The State estimates about 80 mountain goats in this hunting district (MFWP 2011); previous estimates from 2003 and 2006 were at 150. The population across the BDNF is also in decline. MFWP has not been able to establish reasons for the goat declines (EA, p. 141). It is anticipated that project activities would improve the quality of forage on winter range in the long term through reduction of conifer colonization and cessation of conversion to forest.

Issue 3d: ***There is no requirement in the Revised Forest Plan to monitor elk (an MIS) population trends in response to management activities, in violation of the 1982 NFMA planning regulations.***

Response: Having appealed the B-D Revised Forest Plan over its choice of MIS and monitoring requirements, the appellants should be fully aware that the Forest Plan monitoring measure for elk is population data (Forest Plan PF Doc. C1-13, p. 276). There is no violation of NFMA.

Issue 4: GRIZZLY BEAR

The appellants assert that there is no mention of Grizzly Bears in the DN, in violation of NEPA and ESA.

Response: ESA requires analysis of impacts to Threatened and Endangered Species within the project area.

The appellants are correct that there is no direct mention of grizzly bears in the Decision Notice. The FONSI (DN, p. 20) states, "There are no listed terrestrial, aquatic, avian or plant species in the project area." This includes the grizzly bear, a terrestrial species (EA, p. 103 and 105). During Forest Plan (USFS 2009) consultation on grizzly bear, the USFWS determined that the only area requiring consultation is the Yellowstone Distinct Population Segment (DPS), which falls within the Gravelly and Madison landscapes (Forest Plan, PF Doc. K2-11, Biological Opinion for grizzly bear for BDNF RFP). This project is outside of the Yellowstone DPS. There

are no confirmed sightings of grizzly bears in the Pioneer Landscape, and there is no other evidence of use by grizzly bears in the area. Furthermore, there is no habitat for grizzly bear in the treatment areas. The appellants raised this issue in comment 2.36 (EA, Appendix B, p. B-42) and a response was given.

There is no requirement to discuss individual species in a decision document if the species is unaffected by a project. The decision is in compliance with NEPA and ESA.

Issue 5: CANADA LYNX

The appellants assert that the Beaverhead NF is home to the Canada Lynx, that USFS must formally consult with USFWS on the effect of this project on lynx, that Canada Lynx may be present and may be affected by the project, and that failure to consult with USFWS violates the ESA, NEPA and NFMA.

Response: ESA requires analysis of impacts to Threatened and Endangered Species within the project area. NRLMD requires particular management direction on all National Forest System Lands that are known to be occupied by Canada Lynx.

The EA (p. 142) states: "Lynx surveys were conducted on the BDNF between 1999 and 2001 as part of a National Lynx Survey effort. Through this effort, the BDNF was determined to be Unoccupied, secondary habitat as no lynx were detected in the Pioneer landscape during this survey (USFWS and USFS 2006) and continues to be considered unoccupied (USFWS 2011)."

Furthermore, the BDNF is not currently considered "occupied" by lynx and there is no habitat for lynx in the treatment area (EA, pp. 103 and 105). Responses to comments (EA, Appendix B, pp. B-42 and B-62 thru B-68) indicate that these issues were brought up previously and answered. Even as an unoccupied forest, the BDNF has elected to consider management direction and apply standards and guidelines from the NRLMD. Guideline VEG G4 was applied. The guideline states that prescribed fire activities should not create permanent travel routes that facilitate snow compaction. Constructing permanent firebreaks on ridges or saddles should be avoided.

I find that the BDNF has considered Canada lynx and has followed guidelines from NRLMD. I find further that formal consultation with USFWS is not required and there is no violation of the ESA.

Issue 6: CUMULATIVE EFFECTS

The appellants allege the EA and FONSI did not adequately consider all past and future burning, logging or cutting, grazing, ATV use and other cumulative affects [sic]. The Fleecer project decision was recently signed just north of this project but it was not adequately considered. They assert the EA does not discuss how past activities have affected fish and wildlife habitat and species viability; and that it fails to disclose the ramifications these issues

have for fish wildlife species' viability. They opine the EA also fails to discuss how past timber harvest, grazing, and fire suppression actions have altered vegetative diversity, fuels and fire risk, and fire behavior each subjects of much discourse in the EA. They purport portions of the project area were heavily logged and roaded in previous management actions, and the EA didn't disclose the differential effects of those different projects on all resources of concern.

Response: Actions must overlap in time and space to have cumulative effects. The Fleecer project is located approximately 20 miles north of the Trapper Creek Vegetation Management project, outside the range for cumulative effects for Trapper Creek.

The appellants recognize vegetative diversity, fuels and fire risk, and fire behavior were each subjects of much discourse in the EA, but fail to recognize that discourse does indeed discuss how past actions, particularly fire suppression, have altered them. For example (EA, p. 37), "Over the last 100 years, fire suppression changed the landscape from on dominated by mature, open park-like stands to one dominated by overmature, overstocked, multilayered Douglas-fir stands. These stands will burn as crown fires instead of ground fires if ignited during a dry season with windy conditions. This shift from a landscape that would generally burn as a ground fire with some crown fire on slopes greater than 35 percent to one that will generally burn as a crown fire may be a substantial deviation from the pre-settlement disturbance processes in this area."

The EA (pp. 14-16) also lists all known timber harvests, prescribed fire, and a list of ongoing and reasonably foreseeable actions. It also states that effects of those actions which predate NEPA are accounted for in the assessment of the existing condition. The EA (p. 14) discloses that recorded timber harvest occurred on less than 1 percent of the project area, and precommercial thinning on 185 acres of the approximate 110,000 acres. The EA (p. 15) discloses that less than 1 percent of the project area (579 acres) has been affected by past prescribed fire. Table 4 (EA, p. 16) lists all ongoing and reasonably foreseeable (5 years) projects and activities planned for the analysis area.

The EA (pp. 16-28) provides a detailed and extensive description of the existing conditions of the analysis area as they relate in context to pre-European settlement conditions shaped primarily by natural disturbances and processes.

Cumulative effects of past actions and their effects on current conditions are evaluated (EA, pp. 33-34), including timber harvest, prescribed fire, invasive weed treatments, and cattle grazing. Additionally, effects of ongoing and reasonably foreseeable actions are discussed and evaluated - including combined effects from past, proposed, ongoing and foreseeable actions associated with recreational use and domestic and wildlife grazing use.

The EA (p. 35) discloses past, present, and foreseeable activities relevant to the fire/fuels analysis. Existing conditions of the fuels, including effects of past fire suppression activities and prescribed burns, are disclosed (EA, pp. 35-38). The invasive plants section of the EA (pp. 43-57) identifies past, present, and foreseeable activities related to the analysis (pp. 44-45). The EA (pp. 50-57) discloses the spatial and temporal context for the effects analysis, the direct, indirect, and cumulative effects for Alternative 1 and the proposed action. The cumulative effects analysis for invasive plants includes effects from livestock grazing, motorized vehicle travel, mining, and noxious weed treatment.

The livestock grazing analysis (EA, pp. 56-61) identifies past, present and reasonably foreseeable activities for grazing, noxious weed treatment and prescribed fire. The environmental consequences section discloses the direct, indirect, and cumulative effects of Alternative 1 and the proposed action including cumulative effects from noxious weed treatment and prescribed fire.

The EA (pp. 90-91) discloses the cumulative effects, including past, present and reasonably foreseeable actions for sensitive plants, including effects from livestock grazing, vegetation management, fuels reduction, road use, trail use, noxious weed control activities, timber harvest, firewood cutting, mining and recreational activities.

The EA (pp. 95-102) discloses the cumulative effects for soils and the soils analysis assessed existing soil condition within the project area based on historical and current activities - including livestock grazing, vegetation management, mining, recreation, and road building.

A description of cumulative effects for the wildlife analysis area and past, present and foreseeable activities is also included (EA, pp. 106-112).

Cumulative effects for peregrine falcon, bald eagle, bighorn sheep, gray wolves, Great Basin pocket mouse, sage grouse, pygmy rabbit, spotted bat, Townsend's big-eared bat, wolverine and migratory birds are displayed in the EA (pp. 119-124, 126-132, 134-136, 138, and 145).

Past, present and foreseeable activities relevant to the aquatics cumulative effects analysis are displayed in the EA (pp. 150, 152-153).

I find cumulative, direct and indirect effects were appropriately analyzed and disclosed and the project is in compliance with NEPA.

Issue 7: WEEDS

The appellants assert that the Trapper Creek project did not provide an alternative that eliminates units that have noxious weeds present on roads with units from fire management proposals. They also contend that the EA did not address the ecological, social and ascetic (sic) impact of current noxious weed infestations within the project area. They allege that the EA does not discuss long term monitoring of weed populations, or native plant restoration. They are further concerned that the EA does not adequately discuss which units have no noxious weed populations within their boundaries, or minimum standards in the BDNF to address noxious weed infestations. They also assert that the DN and FONSI did not include an alternative that includes land management standards that will prevent new weed infestations.

Response: The appellants are correct when they say that no units were eliminated due to noxious weed concerns. Instead, design features were included to reduce the likelihood of weeds being spread. These design features are listed in the DN (pp. 6 and 7). Decision rationale considered the potential to spread noxious weeds through project implementation (DN, pp.8-9). The FONSI provides a disclosure of risks that the decision may spread noxious weeds and that the risk within the proposed treatment units is low (pp. 11-13 and 23). The impacts of current

noxious weed infestations are discussed in the Invasive Plants section of the EA (pp. 43–57). Cumulative, direct and indirect effects are discussed (DN, pp. 52-56). Effectiveness monitoring will occur on an annual basis by district weed control crews and be reported in the FS FACTS database. A map of known noxious weed populations within the project area is printed in the EA, Appendix A.

The 2002 BDNF Noxious Weed Control FEIS and ROD contain the standards for addressing noxious weed infestations (PF Doc. D-198). The appellants asked during scoping that the EA include an alternative that includes land management standards that will prevent new weed infestations. This is dealt with directly (EA, p.9; EA, Appendix B, p. B-4). All of the concerns about weeds listed above were included in comments to the EA and responses are included in Appendix B of the EA.

I find that the EA does adequately address impacts, effects and monitoring of noxious weeds.

Issue 8: RARE PLANTS

The appellants assert that the EA does not adequately examine what threatened, endangered, rare and sensitive plant species and habitat are located within the proposed project area. The appellants further assert that the standards used to protect these species and habitats from the management actions proposed in this project are inadequate.

Response: ESA requires analysis of impacts to Threatened and Endangered Species within the project area. It is Forest Service policy to protect the habitat of federally listed threatened and endangered species (FSM 2670.31), and to avoid or minimize adverse impacts to species designated by the Forest Service as sensitive (FSM 2670.32). The BDNF Forest Plan Goals are that sensitive plant populations and their habitat are maintained or restored. Large core populations or fringe-of-range populations of sensitive plants are conserved in research natural areas, botanical special interest areas, or protected as populations in conservation strategies or project design specifications.

The Decision Notice (p. 20) states, "There are no listed terrestrial, aquatic, avian or plant species in the project area." No federally listed plant species are known to occur on the BDNF and none were found during survey work.

Four sensitive plant species, *Physaria carinata ssp. pulchella, Arabis fecunda, Penstemon lemhiensis,* and *Pinus albicaulis*, are identified in the EA as existing or potentially existing in the project area. Direct, indirect and cumulative effects to these species are discussed in the Sensitive Plants section of the EA (pp. 89-92). The DN/FONSI lists design features to protect Sensitive Plants (p. 7) and discloses potential effects to sensitive plant species (pp. 15-16). The project may impact individuals or habitat, but will not likely contribute to a trend towards federal listing or loss of viability to the population or species (*Arabis fecunda, Physaria carinata ssp. pulchella*, and *Penstemon lemhiensis)* present in the Trapper Creek project area (PF Doc. C7-1). The project will have no impact to all other BDNF sensitive plant species within the analysis area.

Multiple comments regarding sensitive plants sent in by appellants were answered in Appendix B of the EA (pp. B-9 & B-10, Comments 38 thru 41).

I find that the EA does adequately examine what T&E and Rare and Sensitive plant species and habitats exist in the project area and that the standards to protect those species found are adequate.

Issue 9: RESPONSE TO ISSUES RAISED IN COMMENT

The appellants assert that the EA did not respond to all of the issues the appellants raised in the comments in violation of NEPA and APA.

Response: NEPA and the APA provide for keeping the public informed and public participation. Comments and responses are part of the record and used in agency review processes when making decisions.

A comparison of the four letters from AWR and NEC with response to comments indicates that all comments and questions have responses in Appendix B of the EA. For example, the interdisciplinary team provided a response to 88 comments/questions from Michael Garrity and Sara Jane Johnson in the letter dated January 5, 2011 (PF Doc. B3-2). These responses can also be found in Appendix B of the EA (pp. B-27 thru B-69). Likewise, the IDT responded to the 104 comments/questions from Sara Jane Johnson, Mike Garrity, Summer Nelson and Tom Woodbury in the letter dated January 4, 2011 (PF Doc. B3-4). These responses can also be found in Appendix B of the EA (pp. B-72 to B-121).

All organizations that were suggested to be solicited for comments were included in the scoping mailing list. There were many questions that the appellants wanted published in the final EIS. As there is no EIS required by this project, these questions were not published.

The DN (pp.9-11) includes how the responsible official considered public comment, citing input from AWR and NEC by name. I find that the EA does adequately respond to all the comments submitted by the appellants and the analysis and decision are in compliance with 40 CFR 1505.1 and 1506.6, as well as APA.

ISSUES UNRELATED TO THE DECISION AND BREIFLY ADDRESSED

The appellants identify several issues/contentions I believe are not relevant to the Trapper Creek Vegetation Management DN. The following list summarizes these issues and provides an explanation for why I have not addressed them in the body of this letter.

1. *The Forest Service must prepare an EIS for this* ***timber sale*** *(appeal p. 2).* I am unsure what components of the October 30, 2008, District Court Order appellants contend apply to the current decision being reviewed, especially in light of the fact that the Trapper Creek project is not a timber sale. However, a 2008 Order would apply to a previous

decision based on the 1986 Beaverhead Forest Plan or the 1987 Deerlodge Forest Plan. The March 5, 2012 decision for the Trapper Creek Vegetation Management Project is guided by the 2009 Revised Forest Plan for the BDNF. The appellants refer to a supplemental EA for Trapper Creek, which does not exist. The decision is based on the analysis presented in the Updated EA dated March 2012 (PF Doc. A2-1).

2. *The Forest Service did not take a hard look at climate change (appeal pp. 2-3).* Appellants contend **logging** exacerbates climate change. No commercial timber harvest will occur (DN, p. 2). Appellants also contend climate change will lead to increased wildfire severity undermining the purpose of the Project. The purpose of this project is to reduce conifer encroachment in riparian areas, sage and grass parklands, and mountain mahogany, and increase the aspen component (DN, pp. 8-9) – not reduce fire severity.

3. *The EA fails to disclose how soil productivity will be affected by this **proposed timber sale** (appeal pp. 3-11).* Contentions applicable to the decision are addressed in Issue 1, above. No commercial timber harvest will occur (DN, p. 2). No determination was made that the decision would permanently damage soil on up to 15% of each 6th code HUC watershed. The EA does not state "Sampling did not cover known previously harvested areas" or "Disturbance from recreation and grazing occurs in the project area though the impacts are unclear." Nor does it include "mitigation measures such as operating ground-based equipment when soil moisture is low", because the only equipment this project will employ are chainsaws and drip torches in the hands of human beings walking across the ground.

4. *Sensitive, Old Growth and Management Indicator Species (appeal pp. 17-18 & 22).* Appellants contend the EA analysis for species viability determinations for the **proposed logging** is inadequate. However, no road construction or commercial timber harvest will occur (DN, p. 2) in this project. Appellants also contend the EA lacks analysis for designated **old-growth** and old-growth species. However, no old growth forest will be treated or impacted (DN, p. 12) with this decision. Appellants contend the Revised Forest Plan standards for logging and road density associated with elk (MIS) management is inadequate. Again, no road construction or commercial timber harvest will occur (DN, p. 2).

5. *Grizzly bear: NEPA, NFMA, and ESA Violations (appeal pp. 22-24).* Most of this contention appears based on information disclosed in the Fleecer EA. The decision is not associated with the Fleecer Project – located roughly 20 miles north of the project area in a **different landscape.** Information concerning grizzly bear in the Trapper Creek Vegetation project area is addressed in Issue 4 above.

6. *Trapper Creek Project violates NFMA and the Clean Water Act (appeal p. 28).* Appellants contend an NPDES permit is necessary, **logging and road building** is not consistent with the Forest Plan aquatic, watershed and scenic integrity protections and logging and road building will affect westslope cutthroat trout. However, no road construction or timber harvest will occur (DN, p. 2) with this project. The mayfly is a Forest Plan MIS for aquatic species (Forest Plan, p. 16). The Chief's Office affirmed the

adequacy of MIS selection (including the mayfly) for the Revised Forest Plan in the 217 appeal decision (Forest Plan PF Doc. I4-5, p. 81-82).

7. *Please perform a complete cost benefit estimate as required by NFMA and NEPA and the Forest Plan (appeal p. 31).* Appellants reference a number of GAO reports concerning the Forest Service **timber sale** program. No timber harvest will occur (DN, p. 2). The Forest Plan does not require a cost benefit estimate.

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 appellants. I recommend the Forest Supervisor's decision be affirmed and the appellants' requested relief be denied.

Nancy Peak

NANCY PEAK
Acting Grasslands Supervisor