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**Subject:** ARO Letter - Loon-Roberts Range Allotment DN - Kootenai NF - Appeal #03-01-00-0006 - The Ecology Center, Inc.

**To:** Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Sherman Bamford, on behalf of The Ecology Center, Inc., protesting the Loon-Roberts Range Allotment Decision Notice (DN) on the Kootenai National Forest (Fortine Ranger District).

The Forest Supervisor's decision adopts the Combined Allotments Alternative, which authorizes the following activities in the Loon-Roberts Project Area:

- Issue a term grazing permit to allow cattle grazing on available forage for the purpose of livestock production.
- The permit will authorize grazing to begin in 2003 and expire in 2013. The Forest Service will combine the Loon Lake and Roberts Mountain Allotments into one allotment called the Loon-Roberts Allotment. Turn-out dates will be set at May 23 of each year and take-off dates will be set at September 30.
- The existing permitted cow pair number will be reduced from 77 to 65. The grazing system would change from a continuous use/season-long grazing management system to a herding/pasture system to allow for more efficient use of pinegrass, which is primarily found in the Roberts Mountain Allotment.
- A number of design criteria, including monitoring actions, will be implemented to identify and reduce cattle grazing within identified Special Emphasis Areas (DN, Appendix A).
- The permittee and the Forest Service will share the responsibility of constructing new range improvement structures and cattle barriers on Forest Service lands. The permittee will be responsible for maintaining improvements.

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), the Kootenai Forest Plan, the Clean Water Act (CWA), the Endangered Species Act (ESA), and the Forest



Service Manual. The appellant requests that the Forest withdraw the decision, conduct appropriate analysis, and implement an alternative that adequately protects the resources of concern in their appeal, such as the No Grazing Alternatives examined in the Environmental Assessment (EA). District Ranger Ed Monnig contacted the appellant and offered to meet, but the appellant declined.

## ISSUE REVIEW

### **Issue 1. Impacts to soils not adequately analyzed or protected.**

**Response:** The analysis was based on activity areas. The specialist report for soils (PF, Doc. 246, pp. 2 to 3) discusses the measurement indicator for impacts to soil. It says the percent detrimental soil disturbance will be the indicator used in the analysis, and the disturbance is measured within activity areas. In the Worksheet for Consideration of Cumulative Effects to Soils (PF, Doc. 249, p. 3) the soils scientist states, “The Meadow EIS determined that the cumulative effects of the selected alternative would result in only 4% of the activity area experiencing detrimental soils impacts. The Swamp EIS analysis of cumulative effects to soils also concluded that the Forest Plan standards would be met. The Forest soils scientist’s field review of harvested units in the allotment (June 18 and July 22, 2002) confirmed that grazing impacts generally overlie existing compaction, and therefore do not increase the percentage of area disturbed within the units. The units inspected did not exceed the standard of 15 % detrimental soil impacts.” Again, on the worksheet (p. 6), the soils scientist discussed the amount of the activity area cumulatively impacted and concluded, “This field review confirmed that grazing and other activities, in combination with harvest operations, does not exceed the [15 percent] threshold.”

The soils scientist’s on-the-ground monitoring of the impacts to the allotment are documented in the project file (PF, Doc. 250). In the letter to the Fortine District Ranger he concludes, “noted cattle impacts in the Loon-Roberts Allotment are minimal.”

The direct, indirect, and cumulative effects of the alternatives are analyzed and discussed in the EA (pp. 37 to 39) and the project file (Doc. 246, pp. 5 to 6; Docs. 247, 248, 249, and 252).

The design criteria used for protection or restoration of resources (DN, Appendix A, pp. 1 to 2) are adapted from FSH 2509.22.10, the Soil and Water Conservation Handbook (FSH) (PF, Doc. 256). As stated in the introduction of the handbook, this handbook includes procedures and identifies practices for the conservation of soil and water resources and it provides examples of *proven* soil and water site-specific practices. Each of the practices identified in the Soil and Water Conservation Handbook also cite required Forest Service Manual and Handbook direction and Soil and Water Conservation Practices (SWCP). The SWCP are also known as best management practices, which the State of Montana has already determined to be effective. The Soil and Water Conservation Best Management Practices (BMPs) are the mitigation measures the Forest is using to protect soils (EIS, Appendix F). The Kootenai National Forest has been monitoring the effectiveness of their Soil and Water Conservation BMPs since 1988. The results of BMP monitoring are documented in the Monitoring and Evaluation Reports for the Kootenai National Forest by Fiscal Year (for example, see: PF, Doc. 526, FY 2000 Monitoring and

Evaluation Report, Monitoring Item F-1, Soil & Water: Soils and Water Conservation Practices, pp. 39 to 41). Based on a review of the Monitoring and Evaluation Report, the soil mitigation measures (design criteria) are adequate and are in compliance with NEPA and Forest Plan Standards.

Forest-wide monitoring of the Kootenai National Forest Plan is beyond the scope of this project. Nevertheless, the project file demonstrates the Forest is in compliance with the Forest Plan monitoring requirements. Monitoring item F-4 requires that soil compaction, surface displacement, and site quality be measured annually and the results be reported every 5 years (Forest Plan, p. IV-12). The Fiscal Year 1999 Monitoring Report included a report on item F-4 (PF, Doc. 253) for the years 1993 through 1999. The soils analysis is in compliance with NEPA, NFMA, and the Forest Service Manual.

**Issue 2: Failure to analyze impacts to, protect, or maintain the viability of TES and locally rare (LR) plant species; failure to maintain biological diversity.**

**Response:** Impacts to threatened, endangered and sensitive (TES) plant species are addressed in the DN and EA. The DN (pp. 9-11) states that there will be no effect to threatened or endangered species. Two federally listed threatened species, Spalding's catchfly and Water howellia, are suspected to be on the Kootenai National Forest; however, no populations are known to exist on the Fortine Ranger District (EA, p. 30).

The Regional Forester designates sensitive plants based on significant current or predicted downward trends in population numbers or predicted downward trends in habitat capability that would reduce an existing species distribution. These population numbers or occurrence records are tracked by the Montana Natural Heritage Program (MNHP), which aids the Regional Forester in assessing the status of the species and thus determining the Region One Listing of Sensitive Plants.

The Fortine Ranger District documents sensitive plant species listed by the MNHP and considers populations when found. The District botanist and field crews have identified a list of species known or suspected of occurring on the allotments. These are displayed in the EA (Table 14, p. 31). Information from previous Forest Service and MNHP element occurrence records were used to identify the sensitive plant locations. In addition, vegetation transects in wetland and riparian areas were conducted on the District to search for threatened, sensitive and rare plant populations, and visits to sites in and near the allotment area are documented in the project file (EA, p. 31; PR, Docs. 91, 120, 138 to 140, and 210-218). Searches indicate four sensitive plant species are known to occur within the allotments. Two other sensitive plant species are located on sites bordering the allotments and several additional sensitive species have been located in similar habitats outside the allotments and are likely to exist on the allotments.

Direct, indirect, and cumulative effects to sensitive plants are addressed in the EA and project file (EA, pp. 3-4 and 50-51; PF, Doc. 91). Under the proposed action, cattle grazing in unprotected sensitive plant areas would continue to put sensitive plant populations at risk. However, the proposed action includes provisions for an adaptive management approach if cattle are detected in these areas (DN, pp. 6-7; EA, pp. 50-51). These provisions would include implementing protective measures such as fencing, mineral blocks, or slash mats if needed (DN,

Appendix A). Successful herding of cattle away from riparian and wetland areas when utilization exceeds 30 percent would also allow vegetation to recover by minimizing rutting and puddling in wet areas. Design criteria for the proposed site protection and restoration actions are included in Appendix A of the DN, as are implementation of monitoring actions under the selected alternative. This issue was also addressed in detail in Response to Comments (DN, Appendix B).

**Issue 3: Failure to analyze impacts to, protect, or maintain the viability of TES and MIS wildlife; failure to maintain biological diversity.**

**Response:** Existing condition of lake, pond and wetland species, including the Common Loon, Western Toad, and Leopard frog are in the EA (pp. 26-27). Effects are discussed in Chapter 4 (pp. 42-43). Additional supporting information, including survey information, is in the project file (Docs. 372-374, 382-383, and 389). Caring for Our Community: Region 1 – TES Program (USFS, 1989) defines Coeur d’Alene salamander habitat in three main habitats: spring seeps, waterfall spray zones, and streambanks of small cascading creeks. As discussed in Appendix B of the EA (p. 59), there is none of this type of habitat within the Loon-Roberts Allotment. The EA documents that the proposed alternative may impact individuals, but will not likely contribute to a trend towards federal listing or cause a loss of viability to the population or species. This issue is also addressed in Response to Comments (DN, Appendix B).

Affected environment and grazing impacts to fisher are discussed in the EA (pp. 28-29 and 46-47) and further discussed in the fisher specialist reports and cumulative effects worksheets located in the project file (Docs. 299, 300 and 358).

Surveys for the northern bog lemmings and their habitat on the Fortine Ranger District are reported in the 1993 northern bog lemming survey (1994 MNHP). These surveys located bog lemmings on the District. Suitable habitat was also surveyed on the District. No suitable sites were located within the Loon-Roberts Allotment based on the comparison to occupied bog lemming habitat on the District (EA, p. 24; DN, Appendix B, p. 28).

Goshawks are identified as a sensitive species suspected to occur within the allotments or area of project influence. The affected environment and environmental effects, including cumulative effects are discussed in the EA (pp. 24-25, 29 and 48) and project file (Docs. 409, 410 and 458).

The Kootenai National Forest Plan designates the white-tailed deer and elk as management indicator species (MIS) representing big game in a general forest setting. White-tailed deer are more numerous in the Loon and Roberts Allotments and the habitat found within this area is more suited to white-tailed deer than elk. Therefore, white-tailed deer were used as the MIS species in the analysis (EA, p. 25).

Monitoring of species to develop population trends, as the appellants discuss, is a Forest-level issue and outside the scope of this project. The Forest issues an Annual Monitoring and Evaluation Report as required by the Forest Plan. This report addresses the monitoring done for threatened and endangered, management indicator, and sensitive species. NFMA imposes duties on the Forest Service that include providing for a diversity of plant and animal communities (36

CFR 219.26). Specifically the Forest Service is obligated to maintain sufficient habitat (36 CFR 219.19) and to monitor the population trends of MIS [36 CFR 219.19(a)(b)]. In *Inland Empire Public Lands v. United States Forest Service*, the U.S. Court of Appeals for the 9th Circuit deferred to the Forest Service interpretation of these regulations to find that the Forest Service can fulfill its population monitoring requirements by maintaining sufficient habitat.

**Issue 4: Failure to analyze impacts to and protect migratory birds.**

**Response:** Migratory birds are addressed in the DN, EA and project file. The DN specifically states, “Upon review of the information provided in project analysis, I find that the Selected Alternative complies with this Executive Order.” The EA addresses the existing condition of neotropical migrants (p. 30), as well as the environmental consequences (pp. 48-49). The project file includes supporting information (Docs. 447, 448 and 458). Harlequin Duck are identified as a sensitive wildlife species not suspected to occur within the allotments or area of project influence (EA, p. 24).

**Issue 5. Failure to adequately analyze impacts to or protect the bull trout.**

**Response:** The EA (pp. 25 to 26 and 43 to 45) and project file (Docs. 485 to 487, and 498) analyze and discuss the direct, indirect, and cumulative impacts the project will have on bull trout and their habitat. The impacts are based in part upon pertinent literature, surveys, and research (PF, Docs. 488 to 497).

In the specialist report on the existing condition of the aquatic ecosystem, the hydrologist determined the categories and RHCA definition that apply to the riparian areas in the analysis area (PF, Doc. 220, pp. 2 and 3). This report also displays the RMOs, and their current condition for Fortine Creek (Tables C and D). The hydrologist concludes (PF, Doc. 221, p. 3), “**INFISH** (USDA 1995a) sets Standards and Guidelines for grazing management that are followed under both the Proposed Action and the No Grazing alternatives, but not under the No Action alternative. None of the alternatives affect attainment of Riparian Management Objectives (due to the limited number of impacts from this allotment in the context of other factors affecting the condition of Fortine Creek) or adversely impact inland native fish” (emphasis in original).

The fisheries biologist concluded (PF, Doc. 486, p. 2), “any impacts from the proposed alternatives would be indiscernible downstream in the Tobacco River. Consequently, the proposed alternatives would have **no effect** on the **bull trout** or critical habitat. All alternatives would follow Forest Plan direction as amended by INFISH. All alternatives would implement the Range BMPs Controlling Livestock Distribution and Rangeland Improvements as outlined in FSM 2240. Guidelines pertaining to management of grazing effects on aquatic and riparian resources include protecting these resources, meeting water quality goals, preventing livestock use of riparian areas other than permitted areas, and locating improvements to discourage livestock use of non-permitted riparian areas. Proposed alternatives are consistent with habitat relationships discussed in ‘Demographic and Habitat Requirements for Conservation of Bull Trout’ (USDA 1993a)” (emphasis in original). The Loon-Roberts project analysis is in compliance with the ESA, NFMA, the Forest Plan as amended by INFISH, and the Forest Service Manual.

**Issue 6. Failure to adequately analyze impacts to or protect the torrent sculpin and other sensitive fish species.**

**Response:** The EA (pp. 23 to 26 and 43 to 45) and project file (Docs. 459 to 461, 468 to 470, and 498) analyze and discuss the direct, indirect, and cumulative impacts the project will have on torrent sculpin, burbot, and their habitat. The impacts are based in part upon pertinent literature, surveys, and research (PF, Docs. 462 to 467 and 471 to 484). The other two sensitive fish on the Forest are westslope cutthroat trout and redband trout. The redband trout is located below Koochanusa Dam. It is so far removed from the project area and District that continued use of the Loon-Roberts Allotments would have no impact on the species or its habitat (EA, Appendix B, p. 59). According to the Montana Department of Fish, Wildlife, and Parks, the westslope cutthroat trout in Fortine Creek are less than 90 percent genetically pure (PF, Doc. 514). Therefore, continued cattle grazing will not impact any populations of pure westslope cutthroat trout (EA, Appendix B, p. 59).

The project file contains a portion of the *Montana Rivers Information System*, a Montana Department of Fish, Wildlife, and Parks document, containing data from comprehensive surveys of the State's riparian habitats (PF, Doc. 463). The sensitive species analysis is in compliance with the Forest Service Manual and the Forest Plan.

**Issue 7. Failure to analyze impacts to or protect watersheds and riparian areas.**

**Response:** As discussed in the Response to Comments (DN, Appendix B, p. 14, Number 32), and documented in the project file (Docs. 120, 198 to 199, and 210 to 219), riparian areas and wetlands have been surveyed by the interdisciplinary team (ID team) as a group on four different dates and by the hydrologist on two additional dates. Protective measures for, and future monitoring of, these places are included in the EA (Tables 5 and 6, pp. 12 and 13). The information gained on the field trips was used in discussing the existing condition of the aquatic resources (PF, Doc. 220), the botanist's report on listed plants (PF, Doc. 89), and for identifying those areas the cattle may not use (DN, Appendix A, pp. 1 to 2).

Documentation in the project file (Doc. 201) explains that the ID team worked to set a standard that would protect the riparian areas and provide an incentive to the permittee to actively work to keep cattle out of areas of concern. The ID team reviewed the literature and reports concerning grazing impacts of riparian areas and wetlands (PF, Docs. 201 to 209), and surveyed the wetlands in the allotments (PF, Docs. 212 to 217). The EA explains the impact the various alternatives would have on the aquatic, wetland, and soil resources (pp. 37 to 40). As explained in the conclusion of the cumulative effects section of watershed and aquatic ecosystem (EA, p. 39), "The existing condition of the aquatic resources in the allotment is the result of past actions, including cattle grazing of a larger herd than is proposed. The past grazing also occurred without the proposed design criteria to protect areas of concern. Since animal numbers would be reduced and special sites would be protected, the Proposed Action is likely to result in an improvement in the condition of stream channels, riparian areas, lakes, and wetlands." The EA is in compliance with NFMA and the Forest Plan.

**Issue 8: Failure to analyze the effects of connected actions associated with the timber-grazing program.**

**Response:** Timber and range activities were both considered as part of past, present and reasonably foreseeable activities within the cumulative effects analysis (EA, pp. 3, 17-19 and 35-36; PF, Doc. 133; DN, Appendix B). Timber activities are not connected actions (40 CFR 1508.25).

**Issue 9: Regeneration of plantations and forests is not ensured.**

**Response:** Plantations are addressed in the EA in the affected environment (p. 16) and under environmental consequences. Supporting information on the effect on plantations is in the project file (Docs. 149-170). Grazing of seedlings by cattle rarely occurs on the Fortine Ranger District; any grazing damage to seedlings is normally done by deer and elk (DN, Appendix A, Response to Comments, p. 10). Cattle trampling can occur in some plantations. The EA (p. 13) and DN (Appendix A) list Design Criteria and Monitoring Measures used to mitigate the potential for impacting plantations. These include: mineral blocks and herding would be used to discourage cattle; mineral blocks would not be allowed to be placed within ¼ mile of non-regeneration certified units; the permittee is required to “ride” the allotment to keep cattle out of areas where cattle are to be excluded and if cattle return to non-certified plantations and continued to cause damage, slash placement or fencing would be used where cattle encroachment causes damage to greater than 20 percent of the plantation.

**Issue 10: Suitability of livestock grazing not determined.**

**Response:** Range manager’s specialist report (PF, Doc. 129) contains his determination of the suitability of the allotments for grazing. The Range Analysis Handbook (2209.21 R-1 FSH 8/81 Amendment 20) at 261 defines suitable livestock range as land that “is or can be made accessible to livestock, produces or has inherent capabilities to produce at least 50 pounds per acre air dry weight of palatable forage, and can be grazed on a sustained-yield basis in harmony with other resource uses and values under reasonable management goals.” The project file (Doc. 130) contains the part of the Range Analysis Handbook that discusses the procedure to estimate the forage production. This estimation was done for the Pinkham Ridge area, including Roberts Mountain (PF, Doc. 132). In all cases, the test plots indicated the area produces well in excess of the minimal 50 pounds per acre. The project file contains the information necessary to conclude the allotments are suitable for grazing. The EA is in compliance with NFMA.

**Issue 11: Project area boundaries do not allow proper consideration of effects.**

**Response:** The allotment area boundary is shown on Map 2 of the EA, which displays the Roberts Mountain and Loon Lake Allotment boundaries. The introduction to Chapter 3 of the EA (p. 15) states that different analysis areas were used for specific resources (which may reach beyond the allotment boundaries). The analysis boundary for the aquatic ecosystem combines allotment and watershed boundaries (EA, p. 21). The analysis area extends beyond the allotment boundary to include the entirety of drainages that contain a portion of the allotments. This boundary allows for the analysis of cumulative effects, as integrated by stream channels. Analysis area boundaries are discussed for various resources in Chapter 3, as well as in the many supporting specialist reports and cumulative effects worksheets in the project file.

**Issue 12: Failure to analyze impacts of grazing at the volume approved in the DN.**

**Response:** The DN (p. 2) says the carrying capacity of the combined allotment is 340 animal month units (AUMs), and the proposed action is to allow 276 AUMs on the combined allotment. The DN (p. 3) says the No Action Alternative would be to allow 27 cow-calf pairs on Roberts Mountain and 50 cow-calf pairs on Loon Lake for 4 months. This is a total of 308 AUMs. In the Rationale for the Decision, the DN (p. 4) again discusses the carrying capacity of 340 AUMs and the permitted utilization level of 276 AUMs.

The EA in Chapter 2 (Table 3, p. 8) clearly displays the available and permitted AUMs for each alternative, and the key issues that are involved with the alternative. Chapter 3: The Affected Environment (Table 10, p. 19) displays the AUMs for each range type in the allotment. The total carrying capacity is 340 AUMs. This is in agreement with the number stated in the DN.

In Chapter 4: Environmental Consequences, under the Effects of the Alternatives, the EA uses the same AUM numbers (p. 35): “Suitable range on the combined allotments supports a carrying capacity of 340 AUMs. Under [the proposed action] 276 AUMs would be permitted, reducing the number of cow-calf pair (sic) by 12... Under the No Action alternative, forage supporting 308 AUMs would be utilized.” The Economics discussion (EA, p. 36) uses the same AUMs to calculate grazing fees. These numbers are in agreement with the DN. It is clear the various resource specialists used the carrying capacity of the allotment and the grazing levels approved in the DN when analyzing the impacts of the project.

The project file (Doc. 129) and EA (pp. 1, 17, and 18) display the current allotment management. The Roberts Mountain allotment has a total of 57 cow-calf pairs using it, with 30 on private portion and 27 on the National Forest, with 128 AUMs of use on the National Forest. The Loon Lake allotment has 50 cow-calf pairs on it, and 264 AUMs of use. The analysis is in compliance with NEPA.

**Issue 13. Failure to provide adequate utilization standards.**

**Response:** The rationale for the 30 percent utilization standards is contained in the project file (Docs. 201 to 219). The hydrologist explained that the ID team wanted to set a standard that would protect the riparian habitat and provide an incentive for the permittee to actively work to keep the cattle out of the riparian and wetland habitats (PF, Doc. 201). She cites reports and research she and the team reviewed to determine the appropriate level of utilization (Docs. 202 to 209). The ID Team also conducted site visits to assess the existing condition and impacts the present utilization levels are having on the allotment (PF, Docs. 210 to 219). The determination of the utilization standard is in compliance with the Forest Plan, NFMA, and APA.

**Issue 14. Effectiveness of design criteria, mitigation measures, and BMP's is not demonstrated.**

**Response:** Allotment monitoring, Forest Plan monitoring, specialist's reports and supporting research in the project file document the effectiveness of the design criteria, mitigation measures, and BMP's implementing this project. The design criteria used for protection or restoration of resources (DN, Appendix A, pp. 1 to 2) are adapted from FSH 2509.22.10, the Soil and Water

Conservation Handbook (FSH) (PF, Doc. 256). As stated in the introduction of the handbook, the handbook includes procedures and identifies practices for the conservation of soil and water resources, and it provides examples of *proven* soil and water site-specific practices (see Issue #1). The mitigation measures (design criteria) are adequate and are in compliance with NEPA.

**Issue 15. Arbitrary purpose and need statement.**

**Response:** The Agency's Deciding Official has the discretion to determine the purpose and need for a project proposal. The NEPA implementing regulations state the NEPA document shall, "briefly specify the underlying purpose and need to which the agency is responding..." (40 CFR 1502.13). The Forest has provided information on the project to support the stated purpose and need. In addition, the purpose and need relates to the Forest-wide Management Direction. I find the purpose and need identified to be within the discretion of the Responsible Official.

**Issue 16. Reasonable range of alternatives not considered.**

**Response:** As discussed in the DN (p. 3; EA, p. 11), a no-grazing alternative combined with ecological restoration work was considered by the ID Team but was dropped because it would not meet the purpose and need. A strict no grazing alternative was considered in detail (DN, p. 3; EA, p. 14; and under each resource, pp. 35 to 54). The range of alternatives is reasonable and in compliance with NEPA.

**Issue 17. Inadequate economic analysis.**

**Response:** Economic analysis is discussed in the EA (pp. 9, 19 and 36). Detailed documentation of the appropriate level of economic analysis is in the project file (Doc. 183) along with additional supporting information (Docs. 176-182).

Project-level economic analysis does not require that non-commodity economic values be addressed. "Weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations" (40 CFR 1502.23). The NEPA process shall be used "...to emphasize real environmental issues and alternatives" [40 CFR 1500.2(b)]. The primary focus at the project level is to identify economic implications that are unique to the decisions made at this management level, as was done in the EA. The economic analysis complies with all laws and the Forest Service Manual and Handbook.

**Issue 18. Reliance on outdated plan and stale NEPA analysis; inadequate NFMA monitoring.**

**Response:** On November 5, 2001, President Bush signed into law H.R. 2217, the Department of the Interior and related Agencies Appropriations Act for Fiscal Year (FY) 2002. Section 327 of the law reads as follows:

Revision of Forest Plans. Prior to October 1, 2002, the Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 [16 U.S.C.

1604(f)(5)(A)] solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System...Provided, that if the Secretary is not acting expeditiously and in good faith, with the funding available, to revise a plan for a unit of the National Forest System this section shall be void with respect to such a plan...

As of October 1, 2002, the Forest Service is operating under a Continuing Resolution. As such, all operations continue under the FY 2002 appropriations bill until Congress passes and the President signs a FY 2003 Appropriations Bill for the Department of the Interior and related agencies.

The Forest is monitoring implementation of the Forest Plan as required by NFMA and the Forest Plan (pp. IV-6 to 13). The most recent Monitoring and Evaluation Report (FY 2001) can be found in the project file (Doc. 527). Past reports are available from the Forest. The project is in compliance with NEPA and NFMA.

**Issue 19. Inadequate management indicator species.**

**Response:** Identification of MIS in the Kootenai Forest Plan is outside the scope of this project. The Kootenai Forest Plan directs the Forest to consider the MIS listed in Appendix 12-1 (Forest Plan, Vol. 2). The EA clearly identified the affect environment for the MIS species considered for this project (pp. 25, 28, and 30) along with the environmental effects (pp. 45-50).

**Issue 20. Clean Water Act violations.**

**Response:** The DN (p. 11, and Appendix B, p. 7, Comment 12) documents the project would be in compliance with the CWA. The EA (pp. 39 to 40) and the project file (Doc. 220) analyzed the impacts to the watershed, including cumulative impacts, and documents the project would be in compliance with the CWA (EA, pp. 40 to 41).

**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 Forest Supervisor's decision be affirmed and the appellant's requested relief be denied.

/s/ Cindy S. Swanson  
CINDY S. SWANSON  
Appeal Reviewing Officer  
Director of Watershed, Wildlife, Fisheries and Rare Plants