Decision Memo

Special Use Permit

Montana Department of Fish Wildlife and Parks - Installation and Maintenance of Fencing for Bison Management

USDA-Forest Service
Gallatin National Forest
Gardiner Ranger District
Park County, Montana

Introduction

This documents the decision to issue a special use permit to the Montana Department of Fish, Wildlife and Parks (FWP) authorizing installation and maintenance of fencing necessary to keep bison in acceptable areas as described in the Interagency Bison Management Plan (IBMP). The project area is located north of Gardiner, Montana and Yellowstone National Park, south of Yankee Jim Canyon, and west of the Yellowstone River (see Appendix A for vicinity map). This decision is only applicable to National Forest System (NFS) lands.

Bison are essential to Yellowstone National Park because they contribute to the biological, ecological, cultural, and aesthetic purposes of the Park. However, Yellowstone National Park is not a self-contained ecosystem for bison, and periodic movements of bison out of the Park and into Montana occur regularly.

The IBMP employs an adaptive management approach that allows the agencies to gain experience and knowledge before proceeding to the next management step, particularly with regard to managing bison on winter range outside Yellowstone National Park (YNP). The IBMP uses many tools to minimize or eliminate the risk of transmission of brucellosis but primarily relies on the spatial and temporal separation of Brucella abortus-infected or exposed bison from cattle on neighboring private and public lands.

The IBMP's adaptive management strategy of spatial and temporal separation works to eliminate bison and cattle from commingling in the same area or adjacent areas at the same time and maintains a specific period between the time bison are moved from an area and when cattle are moved onto those lands.

The plan defined three areas bison migrate into Montana beyond YNP. Those three areas are the western (West Yellowstone), northern/east side (Eagle Creek / Bear Creek), and northern/west side (Reese Creek to Yankee Jim Canyon). From there, the areas were further broken down into zones to define the lands where bison were and were not tolerated because of concerns about potential brucellosis transmission. Zone 1 is defined as within YNP bison winter habitat where bison are tolerated but would be subject to hazing in the spring when bison from Zone 2 are returned to the Park to maintain the 45-day separation period between bison and cattle. Zone 2 is Forest Service winter habitat

where bison are managed for bison tolerance limits set forth in the IBMP Step 2. Lastly, Zone 3 is a zero tolerance area because of the likelihood cattle will be using those areas for grazing.

Proposed Action

The Gallatin National Forest proposes to issue a special use permit authorizing installation and maintenance of fencing described above where located on National Forest System lands. The proposed fence would not affect Wilderness, Wilderness Study Areas or other specially designated areas where this use would be either incompatible or would require more in-depth analysis.

- Approximately 4,900 feet of fence could be located on four segments of National Forest System lands west of the Yellowstone River between Yellowstone Park and Yankee Jim Canyon. The National Forest Federal lands is displayed on the map in Appendix A (T9S, R8E, Section 8, and T8S, R8E, Sections 24 and 30, and T8S, R7E, Section 14) and are as follows (distances are estimates):

  1) Section 8 Reese Creek to RTR property boundary (north of Beattie Gulch) = 2,100 feet
  2) Section 30 South -RTR property boundary to Yellowstone River = 1,200 feet
  3) Section 30 North –RTR property boundary drift fence = 400 feet
  4) Section 14 Trestle Ranch west side drift fence = 1,200 feet
  Total Fence Length on NFS Lands = 4,900 feet

Assuming a 20 foot (10 feet each side of centerline) fence right-of-way (ROW) the total affected NFS lands is 1.1 acres. This project will proceed in phases and will be based on monitoring and adaptation made throughout its implement to accommodate bison migration patterns and project objectives

The fence is designed to direct bison movements after they leave Yellowstone Park and enter Montana. The Gallatin National Forest is assessing the environmental consequences of permitting this activity as proposed by Montana Fish Wildlife and Parks (FWP). The following description of the project was forwarded by FWP:

In the IBMP, the Royal Teton Ranch (RTR) was identified as one of the areas where the bison's presence could be tolerated after the cattle were removed from the area. The ranch's properties lie within the Reese Creek to Yankee Jim Canyon management area north of YNP's boundary and west of the Yellowstone River.

In the plan's adaptive approach, three steps were defined in order to decrease the probability of brucellosis transmission to cattle and allow a limited number of bison to roam north into Montana during winter months. During step 1, cattle would still be using ranch property and bison movement would be restricted to areas south of Reese Creek and would be hazed back into YNP. If the hazing were unsuccessful, NPS would capture all bison attempting to leave the park to be tested, processed, and monitored per the IBMP.

Step 2 would be implemented when cattle no longer graze on the RTR. In this phase of the IBMP, a limited number bison would be allowed north beyond Reese Creek through RTR to Forest Service lands near Yankee Jim Canyon that have been tested and found seronegative for brucellosis. This corridor will provide bison a safe avenue to winter forge areas on public lands thusly providing bison more natural free-ranging movement opportunities and allowing the IBMP partner agencies to meet their brucellosis management goals.

In step 2 of the IBMP, initially only 25 seronegative bison would be allowed to roam in designated "bison use areas" north of the Park on RTR lands. As per the IBMP and the RTR Bison Management Plan, if management of the pilot bison group and the initial implementation of step 2 is successful, the number of bison allowed to move through the RTR could be increased to 100 animals.

FWP proposes to implement its' part of the step 2 of the IBMP by 1) entering into a 30-year grazing agreement with the Royal Teton Ranch, 2) contributing $300,000 to the costs of the agreement, and 3) constructing and maintaining fences, cattle guards, and related structures as necessary to manage bison moving through the bison use areas per the RTR grazing agreement. Fence construction and maintenance would be contracted to a second party by FWP.

Obtaining this grazing agreement is one of the wildlife management goals identified in the Bison Management Plan EIS to establish a bison-tolerant zone north of the YNP boundary where bison could emigrate in the winter for forage. The goals of the proposed action are:

- *To ensure tested and non-tested bison are appropriately segregated;*
- *To move seronegative bison through the RTR to a more suitable grazing lands on public lands north of the ranch; and*
- *Prevent damage to persons and property.*

As part of the terms of the RTR grazing agreement, FWP will contract the construction and maintenance of the electrical fence along the 7-mile bison corridor primarily parallel to the RTR property line and county road right-of-way. The fencing was designed, in consultation with bison ranchers and wildlife fencing experts, to be a strong enough deterrent to bison movement but to be easily traversed by other wildlife and easily collapsed when the bison have been moved back into YNP.

The electric fence will be only as high as necessary (approximately 49"), to keep bison out, but will allow most deer, elk and bighorn sheep to cross by jumping over the top. Only the minimum number of wires (4; 2 electrified, 2 ground) will be used to keep bison out, but also allow smaller animals to cross under or through fewer wires. Spacing distance of the 4 wires from the ground (16" high, 27" high, 38" high, and 49" high) will keep bison in, but allow smaller animals (particularly antelope) to cross under or through the wires more easily. Only two wires (the second from the bottom and the top) will be electrified, which will facilitate smaller animals (antelope, small to medium sized

mammals) crossing under the bottom wire. All wires will be 12.5 gauge high tensile strength smooth wires. No barbed wire will be used. The use of smooth wire greatly reduces the risk of animals accidentally catching and twisting a leg between two wires. Fence posts will be equipped with "take-down" stays over large distances or the entire fence length. The take down feature will allow for seasonally removing (lowering) fence wires. Furthermore, the fence will only be operational (either electrified or in place) for about 12-14 weeks from approximately January 15 to April 20, when needed to restrict bison movements. For the remaining 38-40 weeks of the year the power will be turned off and the wires for large selected distances or its entire length will be dropped to the ground.

Wherever possible steep natural topography is used to form the western boundary of the bison corridor, eliminating the need for fencing for large distances in several areas south of Mulherin Creek. Utilizing natural barriers reduces the length of fence construction.

The power required for the hot wires will be provided by small solar panels that store electricity in batteries located periodically along the fence line. Stored electricity will provide enough high voltage power 24 hours a day to discourage bison from crossing the fence without causing permanent harm to them.

In addition to the new fencing, FWP plans to install approximately eight cattle guards and six metal gates at various locations throughout the bison corridor, primarily at intersections along the Yellowstone Trail Road where access to RTR residences and ranch operation buildings are required. The cattle guards are expected to allow normal vehicle traffic through the ranch and deter the bison from moving out of the designated bison corridor. Like the cattle guards, the gates will allow ranch employees access to all areas of the RTR property while discouraging bison movements from the corridor. The gates are expected to facilitate the directed movement of the bison during herding operations.

Fence Description:

1) Type: Four stand smooth wire electric fence with wire let down capability and powered by high voltage, low amperage solar powered fence chargers.

2) Basic fence design: 8 foot wooden fence posts (3 ft below ground, 5 ft above ground) spaced at 20 foot intervals supporting 4 12.5 gauge high tensile strength smooth wires spaced as indicated from the ground: bottom wire (16" high), 2nd wire (27" high), 3rd wire (38" high), and top wire (49"). The 2nd and top wire will be electrified "hot wires". Wires will be supported by insulators.*

** In places the basic fence design may be altered or modified to suit the terrain and/or site specific fencing needs (e.g., on steep or rocky terrain, fence post spacing and/or type of post may be changed, temporary fiber glass stand up posts may be incorporated in the fencing that crosses the irrigated hay field, the short length of drift fencing in the Spring Creek Area may or may not be electrified).*

3) A few standard metal ranch gates will be located along the fence to allow for controlled passage of bison and riders during bison herding operations (see map for potential gate locations). During the non-operation time period the gates will be left open.

4) Where necessary cattle guards will be installed to allow vehicle passage along major roads while prohibiting the passage of bison onto or across the roadway. Two standard cattle guards will be installed side by side to insure that bison do not cross them (see map for cattle guard locations).

Fence location:
1) The location of the fence was designed to meet the concerns, needs, and requirements of the Royal Teton Ranch with regard to farming operations, property protection, and human safety issues (see map for the location of the fence).

Fence operation/management plan:
1) Period of operation: The period of operation will be restricted to coincide with typical dates when bison are present. Anticipated dates of electrification are January 15 – April 20. End date is 5 days following current mandated return of bison to Yellowstone National Park under the Interagency Bison Management Plan. Actual use period may be modified based on experience, field circumstances, or changes in bison management policies.

2) Period of non-operation: Anticipated dates of non-operation/non-electrification are April 21 – January 14. Actual non-use period may be modified based on experience, field circumstances, or changes in bison management policies. During periods of non-use the electric fencing will be disconnected and the wire will be dropped to the ground or down to the lowest (16") stay either A) over a large portion of the fence length where wildlife are likely to cross or B) over the entire length of the fence.

3) At least one month prior to January 15 the fence will be physically inspected along its entire length and tested by activating the fence chargers. Any minor or major repairs will be completed before January 15 to insure the proper functioning of the fence.

4) During the anticipated period of operation (January 15 – April 20) the fence will be periodically monitored to make sure that it is properly functioning to keep bison out of designated areas. Necessary repairs or modifications will be made as needed.

5) Shortly after April 20th the electricity will be disconnected, the fencing wires will be dropped to the ground or down to the lowest (16") stay either A) over a large portion of the fence length where wildlife are likely to cross or B) over the entire length of the fence, and the fence gates will be left opened.

Decision To Be Implemented

A. General Description of Decision

My decision is to issue a special-use permit to the Montana Department of Fish, Wildlife and Parks, authorizing the installation and maintenance of a four-strand, smooth wire, electric fence for bison management on National Forest lands, located north of Gardiner, Montana and Yellowstone National Park, south of Yankee Jim Canyon, and west of the Yellowstone River. The permit will be issued under the authority of the Federal Land and Management Policy Act of October 21, 1976. The special use permit will be issued for a ten year period and will expire on December 31, 2019. The permit will contain conditions and stipulations addressing the use, operation, and maintenance of the facility. The applicant has requested and been granted a waiver for cost recovery fees and land use rental fees. My decision to grant a waiver is based on MFW&P willingness to work cooperatively with the Forest Service and others to implement the Interagency Bison Management Plan.

In 2000, the Montana Department of Livestock, Montana Fish, Wildlife and Parks, Yellowstone National Park, Gallatin National Forest and the Animal and Plant Health Inspection Service (APHIS) adopted the Interagency Bison Management Plan (IBMP) that provides the framework for managing bison in Montana that migrate out of Yellowstone National Park (YNP). The IBMP is intended to maintain a wild, free-ranging population of bison, and address the risk of brucellosis transmission to protect the economic interest and viability of the livestock industry in Montana. The risk of transmission is primarily limited by providing for spatial and temporal separation of bison and domestic cattle.

The IBMP describes a three-step adaptive management process for the west and north sides of YNP with the successive steps triggered by management actions. On the north side of YNP the second adaptive step begins when cattle no longer graze private lands outside YNP on portions of lands known as the Royal Teton Ranch (RTR).

More specifically, my decision includes:

- Issue a ten (10) year special use permit to FWP authorizing construction and maintenance of a fence on NFS lands north of Yellowstone Park and west of the Yellowstone River as described in this document and illustrated on the attached maps.

- The fence to be installed will be a four-strand, smooth wire, electric fence with wire let down capability and powered by high voltage, low amperage solar powered fence chargers. Basic fence design will include: 8 foot wooden fence posts (3 ft below ground, 5 ft above ground) spaced at 20 foot intervals supporting 4 12.5 gauge high tensile strength smooth wires spaced as indicated from the ground: bottom wire (16" high), 2nd wire (27" high), 3rd wire (38" high), and top wire (49"). The 2nd and top wire will be electrified "hot wires". Wires will be supported by insulators.

- In some places the basic fence design may be altered or modified to suit the terrain and/or site specific fencing needs (e.g., on steep or rocky terrain, fence post spacing

and/or type of post may be changed, temporary fiber glass stand up posts may be incorporated in the fencing that crosses the irrigated hay field, the short length of drift fencing in the Spring Creek area may or may not be electrified).

- Also, a few standard metal ranch gates will be located along the fence to allow for controlled passage of bison and riders during bison herding operations (see map for potential gate locations). During the non-operation time period the gates will be left open.

- The general location of the fence on federal lands is displayed on the map in Appendix A (T9S, R8E, Section 8, and T8S, R8E, Sections 24 and 30, and T8S, R7E, Section 14, Principal Meridian, Montana). The fence installation may take place in installments as necessary to accommodate bison migration patterns and project objectives.

- Where it is deemed necessary, cattle guards will be installed to allow vehicle passage along major roads while prohibiting the passage of bison onto or across the roadway. Two standard cattle guards will be installed side by side to insure bison do not cross them (see map for cattle guard locations). All cattle guards will be installed within existing Park County road easement areas.

- The project will not adversely affect any resource values including wetlands or floodplains; threatened, endangered or sensitive species; archeological, cultural, prehistoric, historic or scientific values. (See Findings section)

B. Purpose of Decision

The Montana Department of Fish, Wildlife and Parks and the Gallatin National Forest jointly scoped this proposal in July, 2008 to determine 1) if the State should purchase the grazing rights from the Royal Teton Ranch (RTR) for a 30 year period, and 2) whether or not to authorize, install and maintain fencing, gates, and cattle-guards necessary to keep bison in acceptable areas as described in the IBMP. Fencing is required as part of the grazing rights purchase agreement with the RTR to reduce the risk of property damage and human injury. These actions would enable the IBMP partners to implement step two of the IBMP Record of Decision (Dec. 2000) and allow specific numbers of bison to occupy portions of management zone 2 north of YNP.

C. Mitigation

The following mitigation measures are included in my decision for resource protection, public safety, and to prevent conflicts with other public land uses.

1. Fencing will remain erected and electrified only as necessary to accommodate bison movement.
2. If, at some point, fencing is determined to be no longer needed, all fence materials will be removed from NFS lands at FWP expense.

Reasons for Categorically Excluding the Decision

I have determined that these actions would have no significant effect on the human environment individually or collectively. I find the proposed action may be categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA), provided that there are no extraordinary circumstances related to the action, under Forest Service Handbook (FSH) 1909.15, Chapter 30, Section 31.2(3) "*Approval, modification or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land.*"

The Biological Assessment for Terrestrial Wildlife Species (Tyers, 11/19/2009) and the wildlife report prepared by Tom Lemke, FWP, for the "RTR Grazing Restriction and Access Agreement Environmental Assessment", both prepared to evaluate potential effects of this proposal, has lead me to the conclusion that there would be no significant effects to terrestrial wildlife species resulting from the proposed construction and maintenance of an electric fence in the Gardiner Basin.

A cultural survey of NFS lands affected by the proposed fence was conducted October 24, 2008. The proposed project is expected to have no effects to cultural resources.

A sensitive plant survey was conducted June 23, 2008. No sensitive plant species were found.

I have concluded that this decision is appropriately categorically excluded from documentation in an environmental impact statement or environmental assessment as it is a routine activity within a category of exclusion and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment. My conclusion is based on information presented in this document and the entirety of the record.

B. Finding of No Extraordinary Circumstances

Based on the site specific environmental analysis documented in the Decision Memo and project file, I have determined that there are no extraordinary circumstances described in Forest Service Handbook 1909.15, Ch. 30, sec 30.0, 2 (a-g) that might significantly affect the environment.

1. Federally Listed or Proposed Threatened or Endangered Species or Designated Critical Habitat and Forest Service Sensitive Species. There will be no significant effects to federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service/BLM sensitive species.

The Endangered Species Act requires that federal activities do not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species' designated critical habitat.

In accordance with Section 7(c) of this Act, a Biological Assessment was prepared (Dan Tyers 11/19/09).

Currently, there are two wildlife species protected under the Endangered Species Act that are known or suspected to occur in the area covered by the proposed fence installation. They include the Canada lynx and the grizzly bear.

Implementation of the proposed Federal action will have *"no affect"* on either species. That is, it is not likely to compromise the continued existence of these listed species.

Lynx - In January 2000 the *Canada Lynx Conservation Assessment and Strategy* (LCAS) was published, which established early conservation measures for lynx habitat. It recommended that Lynx Analysis Units (LAU's), which contain all components of lynx habitat and approximate the size of an area used by an individual lynx, be delineated (Ruediger et al. 2000, page 7-4). The Gallatin National Forest reviewed lynx habitat and re-delineated LAU's across the Forest in 2005. The project area is within the Gardiner-Tom Miner LAU.

Lynx Cumulative Effects- Cumulative effects analyses for proposed federal actions involve contrasting a baseline or existing condition against changes that have occurred or will occur within the LAU. Because the proposed project does not involve vegetation manipulation, it was not relevant to perform a cumulative effects analysis regarding changes in lynx habitat. In this case, no management activities within several miles of the proposed project site have converted lynx habitat to the stand initiation stage. Moreover, the amount of lynx habitat in the stand initiation stage would not change under the preferred alternative because no clearcuts, shelterwood, or seed tree harvest would occur.

When a cumulative effects analysis is performed, all forested stands classified as subalpine fir types are considered to be primary lynx habitat. Moist Douglas-fir types are considered secondary lynx habitat. Sagebrush, willow, and aspen stands in proximity to conifer stands can also provide habitat for lynx (Ruediger et al. 2000, pages 2-13 and 2-14). Therefore, sagebrush, willow, and aspen stands within 200 meters of primary or secondary habitat are considered secondary lynx habitat. The BA determined that the proposed fence installation would have no effect on lynx in this context (Tyers, 11/19/2009)

Determination of Effects - Lynx- Implementation of the proposed Federal action will have *"no affect"* on the Canada lynx. That is, it is not likely to compromise the continued existence of threatened or endangered species. This determination is based on the above discussion and the following rationale:

1) Populations of lynx and its prey base, the snowshoe hare, are not involved.
2) Habitat elements important to lynx and snowshoe hare will not be affected.

Grizzly Bear- The site proposed for fence construction and bison management is within spring, summer, and fall grizzly bear habitat. However, habitat value specifically

associated with these fields during all seasons is nominal. Bears do frequent the area in the fall because of the occasional gut pile available from harvest of big game species. In addition, adjacent apple orchards on private land are a major attraction. These two food sources bring bears into juxtaposition to private homes and state and county roads, which is undesirable to agency managers. Again, the fields and road corridor identified in the proposal, with or without the proposed treatment, have no inherent value to bears.

Denning habitat is characterized by steep, relatively inaccessible slopes on northern and western aspects at high elevation. Habitat meeting this description is not immediate to the proposed project site, and, consequently, impacts to denning habitat are not an issue.

Any human use has some possibility of attracting bears because of the potential availability of food items. However, this proposal does not have any connection to generating human related attractants.

The proposed project would not require construction of any new roads nor allow sustained use of any currently restricted roads. Consequently, it will not result in a proliferation of human activity in the Basin outside of previously impacted areas.

Grizzly Bear Cumulative Effects Analysis - Past land management activities in the area, including timber harvesting, road construction, and residential development have decreased and/or fragmented hiding cover and forage for wildlife species. Increased human activity has decreased security levels for most wildlife species, including Canada lynx, and grizzly bear. However, the conversion of mature forest to early successional habitats has generally provided increased levels of forage and higher population potentials for ungulates. The increased emphasis on road closures over the last 15-20 years has had a generally positive effect on all wildlife species.

The current level of human activity within and adjacent to the Forest generates the chance for disturbance or displacement of threatened, endangered, and Forest Service sensitive species. However, implementation of this proposal will have only minimal additional cumulative effects over the current baseline because no vegetation alteration involving removal of cover, road construction, or livestock use is authorized. The proposed action will create a minimal and ephemeral increase in the amount of human activity on federal land.

Determination of Effects – Grizzly Bear- Implementation of the proposed project may impact individual grizzly bears, but will not likely result in reduced viability for the population or species. That is, in current terms, the project determination is "no effect". This determination is based on the above discussion and the following rationale:

1) The proposed project will occur in grizzly bear habitat.
2) Habitat security is not impacted because the project does not authorize vegetation alteration involving cover or road construction.
3) The project will not increase the number of authorized facilities that generate sustained human use.
4) The proposed project will not increase the availability of attractants.

5) The risk of increasing grizzly bear mortalities is minimal with the implementation of mitigation measures.
6) No adverse cumulative effects were identified.
7) Specific standards and guidelines for grizzly bear conservation specified in the Gallatin Forest Plan and its amendments will not be violated.

Sensitive Species (Forest Service Manual 2670) – Forest Service Manual direction requires analysis of potential impacts to sensitive species, those species for which the Regional Forester has identified population viability is a concern. Potential effects of this decision on sensitive species have been analyzed and documented in a Biological Evaluation (BE) (Tyers, November, 2009).

Surveys for sensitive plant species were conducted to assess project effects. No listed plants were identified that would be affected if the project was implemented.

In the context of the activities listed in this description, the construction and maintenance of a 7-mile fence, with stipulations, in the Gardiner Basin related to bison management will not alter habitat beyond the existing condition in a measurable way. Though some displacement of individual animals is possible, the proposed project, in combination with all other human activities (cumulative effects), is not expected to adversely affect the sensitive species addressed (i.e., No Impact).

2. Floodplains, wetlands, or municipal watersheds.
Floodplains: Executive Order 11988 is to avoid adverse impacts associated with the occupancy and modification of floodplains. Floodplains are defined by this order as, "... the lowland and relatively flat areas adjoin inland and coastal waters, including flood prone areas of offshore islands, including at a minimum, that area subject to a one percent [100-year recurrence] or greater chance of flooding in any one year." This decision will not affect floodplains.

Wetlands: Executive Order 11990 requires that projects avoid adverse impacts associated with destruction or modification of wetlands. Wetlands are defined by this order as, "... areas inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds." This decision will not affect wetlands.

Municipal Watershed: Municipal watersheds area managed under multiple use prescriptions in land and resource management plans. There will be no negative impacts to municipal watersheds associated with the project. The RTR fencing project is not located near any municipal watersheds.

3. Congressionally designated areas.

No wilderness designation, wilderness study areas, or national recreation areas exist within or adjacent to the analysis area for this proposal.

4. Inventoried roadless areas.
The project area is not in an inventoried roadless area.

5. Research natural areas.
The fence does not pass through or adjacent to designated research natural areas.

6. American Indians and Alaska Native religious or cultural sites.
Scoping was undertaken with Tribes that have aboriginal territories in this vicinity. The Federal government has trust responsibilities to Tribes under a government-to-government relationship to insure that the Tribes reserved rights are protected. Consultation with tribes helps insure that these trust responsibilities are met. The Forest consulted with potentially affected tribes. The intent of this consultation has been to remain informed about Tribal concerns.

7. Archaeological sites, or historic properties or areas.
Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in the National Register. Section 106 of the National Historic Preservation Act also requires federal agencies to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The Archaeological Resources Protection Act covers the discovery and protection of historic properties (prehistoric and historic) that are excavated or discovered on federal lands. It affords lawful protection of archaeological resources and sites that are on public and Indian lands. The Native American Graves Protection and Repatriation Act cover the discovery and protection of Native American human remains and objects that are excavated or discovered on federal lands. It encourages avoidance of archaeological sites that contain burials or portions of sites that contain graves through "in situ" preservation, but may encompass other actions to preserve these remains and items. This decision complies with the cited Acts. Archeological surveys were conducted for Native American religious or cultural sites, archaeological sites, and historic properties or areas that may be affected by this decision. A "no effect" determination was made.

Cultural resource issues have been resolved in the design of this project.

Public Involvement
A joint (FWP-Forest Service) scoping information document was sent to 192 groups and individuals on July 11, 2008. Comments were received through November 21, 2008. In response to scoping efforts, 4 letters were received; two persons called FWP with comments and 12 persons attended an open house in Gardiner July 30, 2008 and provided comments. A summary of comments is in the project file.

Findings Required By and/Or Related To Other Laws And Regulations

The decision complies with all applicable laws and regulations. Pertinent laws and regulations are summarized below.

Forest Plan Consistency (National Forest Management Act) – This Act requires the development of long-range land and resource management plans (Plans). The Gallatin Forest Plan was approved in 1987 as required by this Act. Forest Plans provide for guidance for all natural resource management activities. The Act requires all projects and activities are consistent with the Plan. The Plan has been reviewed in consideration of the building of this fence. This decision is responsive to guiding direction contained in the Plans. This decision is consistent with the standards and guidelines contained in the Plans.

Environmental Justice (Executive Order 12898) - This order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this Act. Public involvement occurred for this project, the results of which we have considered in this decision-making. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

Gallatin National Forest Travel Management Plan
This decision is consistent with the Gallatin National Forest Travel Management Plan.

Administrative Review and Appeal Opportunities
The decision [by the Gallatin Forest Supervisor] is not subject to appeal under 36 CFR 215 (36 CFR 215.12(f)).

Implementation Date
This decision is effective upon approval. The authorization governed by this decision may be implemented immediately.

Contact Person
Further information about this decision can be obtained from Mary Maj, District Ranger, Gardiner Ranger District, P.O. Box 5, Gardiner, MT 59030; Phone: (406) 848-7375, ext 22.

Signature and Date

_____ _____

MARY C. ERICKSON
Forest Supervisor

Date

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