

## DECISION MEMO

### SPECIAL USE PERMIT AMENDMENT MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

#### INSTALLATION AND MAINTENANCE OF FENCING ON NATIONAL FOREST SYSTEM (NFS) LANDS

USDA Forest Service, Northern Region, Gallatin National Forest  
Gardiner Ranger District  
Park County, Montana  
NW ¼ Section 3, T8S, R7E, PMM

Amendment #1

#### I. DECISION TO BE IMPLEMENTED

##### A. Description of Decision

My decision is to authorize an amendment to the Montana Department of Fish, Wildlife and Parks (FWP) Special Use Permit (Authorization ID: GAR22001) to include the installation and maintenance of barrier drift fencing necessary to keep bison within acceptable areas as identified by the Interagency Bison Management Plan (IBMP).

This amendment to the existing Special Use Permit shall authorize the installation of drift fencing, gates and a cattle guard (capable of preventing bison from crossing) on National Forest System (NFS) lands. The location of the improvements will be on the south end of Yankee Jim Canyon on Gardiner Ranger District on both sides of the Yellowstone River in the NW ¼ Section 3, T8S, R7E, PMM (see attached map). The fence installation will be more or less perpendicular to the river with the goal of preventing bison from moving further downstream. The fence will be of jackleg construction made from treated wood. It will be installed from the north bank of the Yellowstone River to the existing cattle/bison guard (bison guard) on US Highway 89, thence uphill from the north side of this bison guard approximately 550 feet to rock outcropping. A twelve (12) foot wide panel gate (Powder River type gate) will be utilized as part of the drift fence on the north side of US 89 in the highway borrow pit.

On the south side of the Yellowstone River, the jackleg fence will be installed from the south bank of the river approximately 350 feet uphill to a talus slope. Along this route, the fence will cross a Forest user river access road, a Park County Road (Old Yellowstone Trail South, County Road No. 14) and the Old Yellowstone Trail. Twelve (12) foot wide Powder River type gates will be installed on the minor access road and on the Old Yellowstone Trail (an abandoned County Road). A bison guard will be installed crossing the County Road in accordance with terms of the Public Road Easement issued to Park County, Montana (United States Grantor) on September 19, 1997. Immediately south of the County Road, a horse and pedestrian by-pass gate will be installed. Combined, the fence, gates and bison guards will prevent the downstream movement of bison on both sides of the river. The three (3) twelve (12) foot wide Powder River type gates will remain open from May 1 through December 1 annually. Alternate dates needed to respond to bison movement may be arranged with the Gardiner District Ranger.

The jackleg fence will utilize five (5) inch minimum diameter 'jacks' with ten (10) foot spacing. Each span will have five (5), four (4) inch minimum diameter rails with the top rail being at least 52 inches above ground level. An additional single split rail will be placed at the top of the jacks. To accommodate the movement of other wildlife, the bottom rail of the fence will be a minimum of twenty (20) inches above ground. The top rail and split rail will be removed in at least two locations (one on each side of the river) to provide for other wildlife passage over the fence provided this does not prove problematic to bison containment. On the north side of the river, immediately adjacent to the US 89 bison guard, the fence will be reinforced with anchor posts at the jacks. These posts will extend approximately 82 inches above ground with two additional split rails between the anchor posts above the jackleg fencing. This reinforced fencing will extend from the highway bison guard to the river bank and approximately 30 to 40 feet above (north) this bison guard.

The entire length of fencing and associated improvements on NFS lands will encompass a right-of-way approximately 900 feet in length and 20 feet in width (0.41 acre).

Cost Recovery and Rental fees shall be waived as provided in 36 CFR 251.57(b)(1) and 251.58(f)(1)(i).

## **B. Purpose of the Decision..**

The Interagency Bison Management Plan (IBMP) provides guidance for managing bison outside Yellowstone National Park on National Forest System (NFS) lands north of Gardiner, Montana. The IBMP employs an adaptive management approach that allows the agencies to utilize a number of management tools in regard to winter range outside the Park.

On March 31, 2011, the proposal to construct drift fencing on NFS lands at the southern end of Yankee Jim Canyon was reviewed for compliance with the IBMP's adaptive management strategy. It was concluded that the action conforms to that decision. This adaptive management strategy was signed by all IBMP partners on April 14, 2011.

The scope of this decision is limited to the amendment of the FWP Special Use Permit (Authorization ID: GAR22001) to include the installation and maintenance of barrier drift fencing necessary to keep bison within acceptable areas as identified by the IBMP.

## **C. Planned Mitigation and Construction**

The following mitigation and construction requirements shall be incorporated into the Special Use Permit Amendment and will be the responsibility of FWP and/or its contractors:

- The drift fence will be a treated wooden jackleg fence, installed from the north bank of the Yellowstone River to the existing bison guard on US Highway 89, thence uphill from the north side of this bison guard approximately 550 feet to rock outcropping. On the south side of the Yellowstone River, the jackleg fence will be installed from the south bank of the river approximately 350 feet uphill to a talus slope.
- The jackleg fence will utilize five (5) inch diameter jacks with ten (10) foot spacing between jacks. Each span will have five (5), four (4) inch minimum diameter rails with the top rail being approximately 52 inches above ground level. An additional single split rail will be placed at the top of the jacks. The bottom rail of the fence will be a minimum of twenty (20) inches above ground. The top rail and split rail will be removed in at least two locations (one on each side of the river) provided this does not prove problematic to bison containment.
- On the north side of the river, immediately adjacent to the US 89 bison guard, the fence will be reinforced with anchor posts at the jacks. These posts will extend approximately 82 inches above ground with two additional split rails between the anchor posts above the jackleg fencing. This reinforced fencing will extend from the bison guard to the river and approximately 30 to 40 feet above (north) this bison guard.
- Twelve (12) foot wide Powder River type gates will be utilized as part of the fencing. One is to be placed on the north side of US 89 in the highway borrow pit. Two of these panel gates will be located on the south side of the river, one where the fence crosses a minor Forest user access road and the other on the Old Yellowstone Trail.
- A bison guard will be installed across the Park County Road (Old Yellowstone Trail South, County Road No. 14). The bison guard will consist of round rails approximately 16 feet in width across the road and approximately 16 feet in length. Dimensions shall be adjusted to fit the road.
- Immediately south of the County Road, a horse and pedestrian by-pass gate will be installed.
- FWP is responsible to coordinate with Park County Officials with regards to all County Road use including public safety concerns, necessary closures and, road restoration to County specifications.
- FWP shall comply with all Federal, State, and local laws and regulations regarding fence and cattle (bison) guard construction within County Road and highway rights-of-way.
- FWP shall coordinate and complete all "locates" prior to start of work as needed.
- Equipment used off-road for fence, gate and/or bison guard installation shall be inspected and certified as weed seed free by Forest Service personnel prior to off-road use.
- Staging areas may be located on NFS lands as agreed to in advance by the Forest Service.

- Existing vegetation shall be left in place as much as possible. Although cutting of vegetation should be minimal, where necessary, stumps shall be flush cut not to exceed six (6) inches in height. Remaining stumps shall be angle cut away from likely travel corridors. Cut brush shall be removed from NFS lands.
- If any cultural resources or artifacts are discovered during project implementation, the District Ranger will be notified immediately and operation must cease until further notice.
- Seed all disturbed areas off the County Road with native seed mix. The Gardiner Ranger District will approved seed mix(es), designate appropriate application rates and recommend timing of application.
- Compaction of any disturbed area will take place immediately following installation, ultimately utilizing hand tools (rakes and shovels) to restore the visual appearance of the County Road and cross country as needed to its current appearance and stability.
- All hazards associated with construction must either be removed daily or secured and attended by FWP.
- FWP is responsible for any cleanup resulting from spills or accidents involving hazardous, toxic or industrial wastes associated with their activities. Cleanup will be conducted in accordance with all applicable Federal and State laws.
- Handling, storage, application, or disposal of hazardous or toxic materials will be in a manner that prevents pollution to streams, lakes or wetlands or that may cause damage or injury to humans, land, animals or plants.
- Fence, gate and bison guard maintenance shall occur on an annual basis or more often as needed. Maintenance shall consist of inspection of approved facilities and making repairs. This shall include replacement of fencing and gates as needed and cleaning the bison guard on the County Road. All improvements shall be kept in good condition.
- FWP shall be responsible for opening, closing and securing all gates associated with this authorization on the following schedule: lock open gates May 1 annually, lock gates closed December 1 annually. Alternate dates needed to respond to bison movement may be arranged with the Gardiner District Ranger.
- Excess material generated from bison guard installation shall be removed from NFS lands or placed in locations approved in advance by the Forest Service. Any additional soil or other fill needs shall come from an approved weed seed free source off NFS lands.
- Construction may begin immediately upon issuance of an amendment to the special use permit.
- FWP shall abide by all terms, conditions and appendices to Special Use authorization: GAR222001 issued December 4, 2009 to the Montana Department of Fish, Wildlife and Parks as appropriate to this amendment.

## II. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Decisions may be categorically excluded from documentation in an environmental impact statement or environmental assessment when they are within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3 or one of the categories identified at 36 CFR 220.6 and where 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.

I have concluded that this decision is appropriately categorically excluded from documentation in an environmental impact statement or environmental assessment as (1) it is an activity that may be categorically excluded and (2) there are no extraordinary circumstances related to the decision. My conclusion is based on information presented in this document and the entirety of the record.

### A. Category of Exclusion

I have determined that this proposal fits criteria found at 36 CFR 220.6(e)(3), "Approval, modification, or continuation of minor special uses of NFS lands that require less than five (5) contiguous acres of land" and is therefore categorically excluded from further environmental documentation as defined by the National Environmental Policy Act. I have made this finding since (1) the right-of-way for the fence encumbers less than 5 contiguous acres of NFS lands and (2) there are no extraordinary circumstances have been identified regarding this proposal.

## B. Relationship to Extraordinary Circumstances

I have determined that there are no extraordinary circumstances related to my decision to issue an amendment to the existing special use authorization to the Montana Department of Fish, Wildlife and Parks for the bison drift fence and installation of bison guards. I base this conclusion on the following findings:

1. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat or Forest Service sensitive species:

The Endangered Species Act requires that federal activities 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. The project would have "No Effect" to Grizzly Bear and Canada Lynx or their critical habitat and would "Not Likely Jeopardize" the continued existence of non-essential experimental population of Gray Wolf or their habitat. The project would have "No Effect" on Wolverine or its habitat (a candidate species managed as sensitive). "No Impact" would occur to the majority of sensitive wildlife and fish species or their habitat as a result of implementing the decision. The project may impact individual Bighorn Sheep (a sensitive wildlife species), but will not likely contribute to a trend towards federal listing or loss of viability to the population or species (Canfield, 4/11).

Habitats found along the project route are not suitable for listed sensitive plant species (verbal communication: Senger, 3/2011). Furthermore, excavation will be limited to installing several fence posts with little ground disturbance and the installation of a bison guard along the County Road. Therefore, the project is not likely to impact sensitive plants.

The proposed action conforms to the federal 2000 FEIS and ROD for the Interagency Bison Management Plan.

2. Floodplains, Wetlands, or Municipal Watersheds:

Floodplains: The 100 year floodplain does not extend to the project area on the north side of the river but does occupy about 50 feet from the edge of the top of the riverbank on the south side of the river. This floodplain area is inundated by events only in excess of approximately a 50 year recurrence interval (at about 28,000 cfs). Parts of the jackleg fence could be within the high water mark of the Yellowstone River events exceeding 28,000 cfs. In such events, the water flow would not be encumbered by the fence. The fence could be vulnerable to damage by bank erosion and from floating debris. The proposed gate on the Forest user access road would not be a floodwater constraint but could also be damaged by floating debris. In conclusion, the FWP bison drift fence does not pose an adverse effect to the floodplain but is subject to damage from flood flows that occasionally overtop the south bank of the Yellowstone River (Story, 4/2011).

Wetlands: The north side of the Yellowstone River is coarse textured boulders augmented with additional rocks to protect the US 89 fill slope. This side of the river has no wetlands. The south side of the river has a narrow (about 20 feet in width) section of coarse textured Riverine Wetland. This wetland area is from the edge of the river bank to the edge of the river water level. The jackleg fence construction will not directly impact this wetland. (Story, 4/2011).

Municipal Watersheds: There are no municipal watersheds within the project area.

This decision will have no affect to floodplains, wetlands, or municipal watersheds.

3. Congressionally Designated Areas:

There are no designated Wilderness areas, Wilderness Study Areas, National Recreation Areas, Wild or Scenic Rivers, National Monuments within or near the project area. The Act of May 26, 1926 (P.L. No. 295) withdraws this area to provide winter range for the continued existence of Yellowstone Park elk and antelope herds. Nothing within this decision, or associated impacts, will affect the movement and/or use of the area to elk or antelope therefore; the proposal will not affect Congressionally Designated Areas.

4. Inventoried Roadless Areas or potential Wilderness Areas:

The southern portion of the proposal is near the Gallatin Fringe Inventoried Roadless Area (I-548). The proposal

would have no long term effects to Roadless or Wilderness characteristics of the Gallatin Fringe Inventoried Roadless Area (verbal communication: Schlenker, 4/11). There are no proposed areas for Wilderness designation in vicinity of the project area.

5. Research Natural Areas:

This decision does not affect Research Natural Areas.

6. American Indians and Alaska Native Religious or Cultural Sites:

There are no known American Indian or Alaska Native religious or cultural sites that would be affected by this project (Moschelle, 4/2011).

7. Archeological Sites or Historic Properties or Areas:

The historic Northern Pacific Railroad bed (now a Park County Road) and the Old Yellowstone Trail are linear cultural features of concern for this project proposal. The Old Yellowstone Trail maintains its integrity in this locale however; the County Road now overlaps the Northern Pacific Railroad bed causing the cultural significance of the railroad bed to lose all integrity in this area.

The Gallatin National Forest and the Montana State Historic Preservation Officer (SHPO) have reviewed the FWP proposal to construct the fence and gate that crosses the Old Yellowstone Trail and have determined that the installation would not diminish the integrity of the Old Yellowstone Trail. Therefore, the project proposal will have "no effect to historic properties" (Moschelle, 4/2011).

Numerous cultural surveys have been conducted in the project area. The project will not cause loss or destruction of other archeological resources. If any cultural resources or artifacts are discovered during project implementation, the Forest Archeologist should be notified immediately and operations halted.

The mere presence of one or more of these resource conditions listed above does not constitute an affect. The installation of the drift fence and associated improvements has been evaluated and does not involve any other unique or unknown risks nor does it set precedent for future actions.

### III. SCOPING AND PUBLIC INVOLVEMENT

Installation of the proposed bison drift fence conforms to the Final Environmental Impact Statement and Record of Decision prepared in 2000 for the Interagency Bison Management Plan and Adaptive Management Plan (USDI, 2008). At that time, the decision was extensively scoped with the public. Additional scoping occurred in 2009 regarding the decision to allow Montana Fish Wildlife and Parks to construct fence for the management of bison on the NFS lands south of the current proposal. This included a public open house in Gardiner, MT on July 30, 2008 which reviewed decisions in the IBMP. The Gardiner District Ranger also had several meetings and phone conversations with individuals in the Gardiner area about the proposed project. Another public meeting was held in Gardiner on April 14, 2011 to discuss the IBMP. Summary of comments are in the appropriate project files.

Park County Commissioners have acknowledged that the Forest Service is the appropriate authority to approve facilities for non-highway purposes (bison movement) within the right-of-way easement granted by the United States for the Old Yellowstone Trail South Road (Park County Road No. 14). As the road management entity, Park County will determine the road and right-of-way rehabilitation and traffic control needs during construction. FWP will need to coordinate with Park County to address road use, roadbed and road surface protection.

### IV. FINDINGS REQUIRED BY OTHER LAWS

My decision will comply will all applicable laws and regulations including:

- Federal Land Policy and Management Act,
- National Forest Management Act,
- Endangered Species Act,
- Act of June 25, 1910 (Power Site Reservation No. 23),
- Act of May 5, 1926 (P.L. No. 295),
- Migratory Bird Act,

- Floodplains (Executive Order 12888),
- National Historic Preservation Act,
- Archaeological Resources Protection Act,
- Native American Graves Protection and Repatriation Act,
- Environmental Justice (Executive Order 12898),
- National Environmental Policy Act.

This action is consistent with the management direction in the Land and Resource Management Plan (Forest Plan) for the Gallatin National Forest, Chapter II, Section E, 12.c. (p.11-27).

## V. ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

Pursuant to 36 CFR 215.12(f), this decision is not subject to administrative review or appeal except as provided under 36 CFR 251, (opportunities to appeal by applicants). The applicant must file an appeal within forty-five (45) days of the date on the notice of the written decision. For additional information specific to applicant's appeal filing procedure and requirements refer to CFR 36 251.88-90.


## VI. IMPLEMENTATION DATE

This decision is effective immediately upon issuance of an amendment to the existing special use permit.

## VII. CONTACT PERSON

Further information about this decision can be obtained from Frank Cifala during normal office hours (weekdays 8:00 a.m. to 4:30 p.m. at the Supervisor's Office, Gallatin National Forest, 10 West Babcock St, Bozeman, MT 59715; telephone: (406) 587-6713; e-mail: fcifala@fs.fed.us.

## VIII. SIGNATURE AND DATE

  
**MARY C. ERICKSON,**  
**Forest Supervisor**  
**Responsible Official**

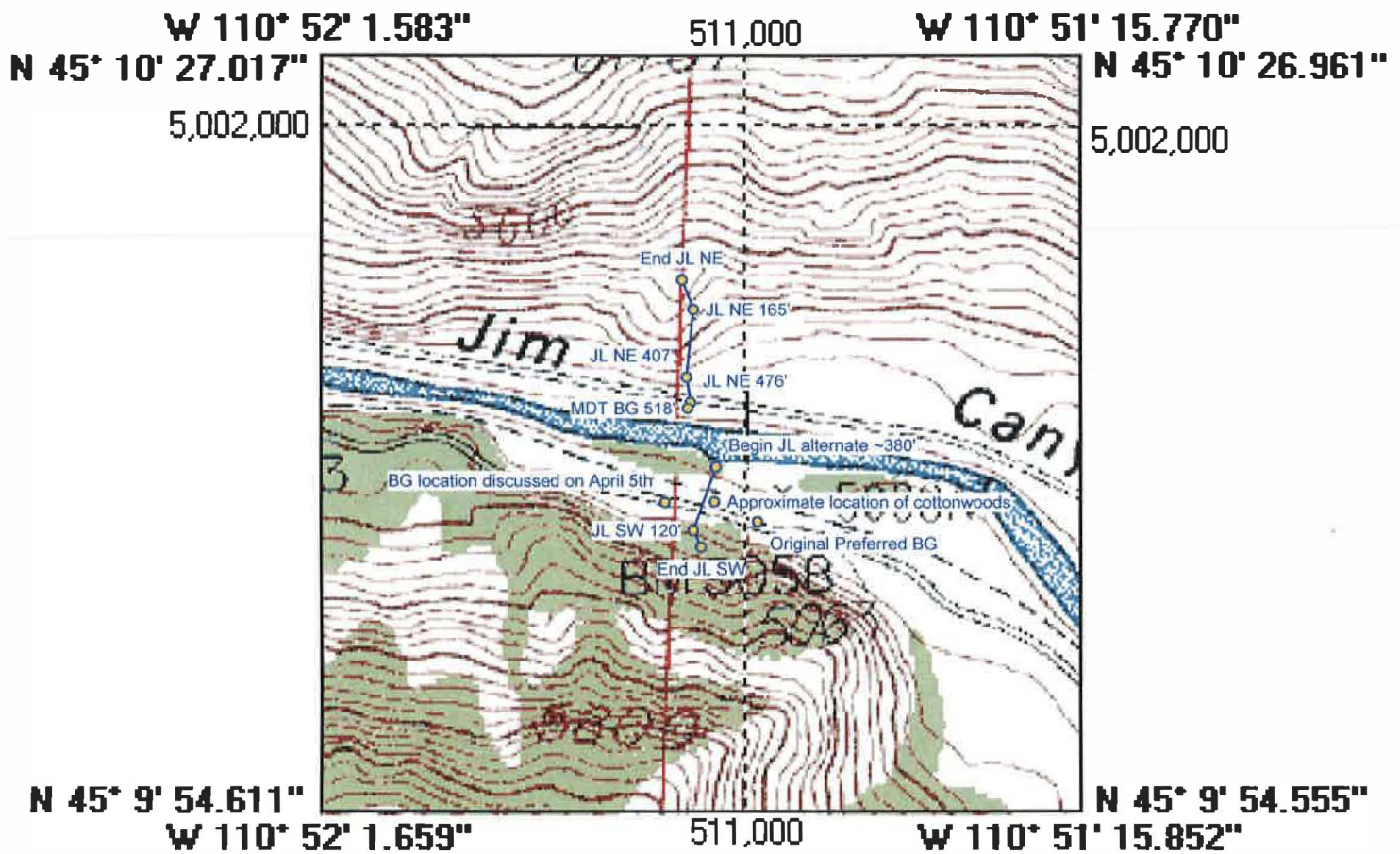
  
**DATE**

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# Bison Fence April 2011



1927 North American Datum; 1,000-meter UTM grid zone 12

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