

FLYING H RANCH LLC CULTIVATION SPECIAL USE PERMIT

Decision Notice

Lolo National Forest
Superior Ranger District
Mineral County, Montana

February 2013

Lead Agency:	USDA Forest Service
Responsible Official:	Tawnya Brummett, Superior District Ranger
For Further Information, Contact:	Ron Schlader, Superior District Ranger P.O. Box 460 Superior, MT 59872 (406) 822-3915

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Flying H Ranch LLC Cultivation Special Use Permit Decision Notice

TABLE OF CONTENTS

I. Decision..... 1

II. Purpose and Need for Action..... 1

III. Rationale for the Decision..... 1

IV. Public Involvement 2

V. Issues..... 3

VI. Other Alternatives Considered..... 3

VII. Findings Required by Laws, Regulations, and Policies..... 4

VIII. Appeal Provisions and Implementation..... 5

APPENDICES

Appendix A: Finding of No Significant Impact (FONSI)

Appendix B: Map

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FLYING H RANCH LLC CULTIVATION SPECIAL USE PERMIT Decision Notice

I. DECISION

It is my decision to implement the proposed action as presented in the Flying H Ranch LLC Cultivation Special Use Permit Environmental Assessment (EA) (and described below.)

- 1) Issuance of a special use permit in accordance with 36 Code of Federal Regulations (CFR) 251.50 that authorizes the following improvements on National Forest land:
 - a. Cultivation of approximately 35 acres for hay production;
 - b. Maintenance of approximately 2,930-feet of fencing consisting of 4 strands of wire to prohibit unauthorized livestock access to non-permitted National Forest land. The fence includes three-rail high gates every 1,000-feet to be open when livestock is not present to provide easy access for wildlife to the 35-acre parcel.
 - c. Use and maintenance of approximately 385-feet of buried 4-inch metal irrigation line at its current location.
 - d. Incidental grazing of livestock during early spring and late fall periods when the field is not used for hay production.
- 2) Continuation of the historic management of the 35-acre parcel as it was under Montana Department of Natural Resources and Conservation ownership.
- 3) Issuance of a special use authorization will be for a term of 10-years with renewal rights, provided the parcel is still needed for cultivation and incidental livestock use.
- 4) Annual monitoring by Forest Service personnel to ensure that the terms of the permit are being followed.

II. PURPOSE AND NEED FOR ACTION

The purpose of the project is to issue a special use permit to Flying H Ranch LLC of Superior for hay production and incidental livestock grazing on \pm 35 acres of National Forest System land adjacent to their private property.

III. RATIONALE FOR THE DECISION

In 2011, the Lolo National Forest acquired a 120-acre parcel of land, known as the “Marble Creek Parcel,” from the Montana Department of Natural Resources and Conservation (DNRC)

located in the S ½ SW ¼ and SW ¼ SE ¼ of Section 16; T17N; R27W; P.M.MT approximately 4 air miles southeast of St. Regis (see map in Appendix B). Approximately 35 acres of this parcel was cultivated for hay production by former adjacent landowner Warnkin Inc. when it was under DNRC management. The current owner of the adjacent property, Flying H Ranch LLC, has requested a special use authorization from the Forest Service to continue the historic use on the 35-acre portion.

Cultivation of the National Forest portion of the field by Flying H Ranch LLC constitutes a “special use” of National Forest System lands. This requires a special use authorization from the Lolo National Forest in accordance with 36 Code of Federal Regulations (CFR) 251.50(a) which states, “Before conducting a special use, individuals or entities must submit a proposal to the authorized officer and must obtain a special use authorization from the authorized officer.”

I have made my decision based on the information in the Environmental Assessment and the Project File; and consideration of issues and public comments. I have determined my decision is consistent with the Lolo Forest Plan and all laws, regulations, and agency policies. I have also considered the potential cumulative effects. My decision addresses the purpose and needs of the project as described above.

IV. PUBLIC INVOLVEMENT

On March 31, 2012, the letter describing the proposal was mailed to adjacent landowners, organizations, other agencies, and individuals who have previously requested notification about special uses on the Lolo National Forest. The letter was also posted on the Lolo National Forest website. In addition, the project has been listed on the Lolo National Forest Schedule of Proposed Actions since April 2012, which is also available on the Lolo National Forest website.

Legal notices soliciting public comment were published in the *Missoulian*, *Clark Fork Valley Press*, and *Mineral Independent* on April 4, 2012.

There were two comments received and four requests to be kept on the mailing list. One comment was in favor of the proposal and one was against. The opposing comment expressed an opinion that public land should not be cultivated for personal profit.

On Jan. 18, 2013, copies of the Flying H Ranch LLC Cultivation Special Use Permit Environmental Assessment and Draft Finding of No Significant Impact were mailed to six individuals and organizations that had previously commented on or expressed interest in the project. The EA was also posted on the Lolo National Forest website. The 30-day comment period on the EA began with the publication of a legal notice in the *Missoulian* newspaper on Jan. 23, 2013. At the close of the comment period, no comments had been received.

V. ISSUES

The Forest Service reviewed all comments received during the scoping period to identify issues, determine appropriate analysis procedures, and identify if there were any alternatives to the proposed action. The Forest Service found no significant issues or unresolved conflicts concerning issuance of a special use permit to the Flying H Ranch LLC. There was one negative comment in regards to the ranch owners profiting from the use of public land. This issue was addressed within the EA (page EA-2) as follows:

The Forest Service administers and manages National Forest System lands in accordance with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C.528-531); the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600-1614); and the National Forest Management Act of 1976. These laws authorize the Forest Service to grant many forms of land and resource uses to the general public through the issuance of permits or leases. This particular request by the Flying H Ranch is considered a “special use” and may be authorized under 36 Code of Federal Regulations (CFR) 251.50(a). Although the individual permittee would benefit from the use of this land through hay production and incidental livestock grazing after the hay has been harvested, they would be required to pay the Forest Service a yearly fee for use of the land. 36 CFR 251.57(a) states, “The fee shall be based on fair market value of the rights and privileges authorized, as determined by appraisal or other sound business management principles.”

VI. OTHER ALTERNATIVES CONSIDERED

Section 102 (2)(E) of the National Environmental Policy Act (NEPA) requires the Forest Service to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. My staff did this with the Proposed Action and the No Action alternative.

The results of taking no action would result in the following current and future condition of the project area:

- 1) No special use authorization would be issued for cultivation or incidental livestock grazing.
- 2) The adjacent property owner would be required to fence the forest boundary to ensure livestock did not access National Forest lands.
- 3) That portion of existing hay field on National Forest land would be left to naturally transition back to the habitat type of the surrounding vegetation.
- 4) The 35-acre parcel would not receive noxious weed treatments by the adjacent property owner currently conducted in conjunction with his property. The Forest Service would not likely integrate treatment of this area into their weed management plan due to funding and access issues.
- 5) There would be no revenue generated from the issuance of a special use authorization.

I did not select the No Action alternative because it did not meet the purpose and need and because the Forest Service does not have the funding or resources for weed control on this parcel.

VII. FINDINGS REQUIRED BY LAWS, REGULATIONS, AND POLICIES

I have determined that my decision is consistent with the laws, regulations, and agency policies related to the project. The following summarizes findings required by major environmental laws.

National Environmental Policy Act (NEPA)

NEPA requires Federal agencies to: (a) use a systematic interdisciplinary approach in planning and decision-making; (b) consider the environmental impact of proposed actions; and (c) consider alternatives to the proposed action. I find that the analysis process and documentation of the Flying H Ranch LLC Cultivation Special Use Permit request is consistent with NEPA.

National Forest Management Act (NFMA)

Consistency with the Forest Plan

On March 23, 2012, The U.S. Department of Agriculture issued a final planning rule for National Forest System land management planning (2012 Rule). For the Lolo National Forest, where the Forest Plan was developed under a prior planning rule, 36 CFR 219.17(c) of the 2012 Rule explains, “This part supersedes any prior planning regulation. No obligations remain from any prior planning regulation, except those that are specifically included in a unit’s existing plan. Existing plans will remain in effect until revised.” Except for the plan consistency provisions, none of the requirements of the 2012 regulations apply to projects or activities.

NFMA requires that projects and activities be consistent with the governing Forest Plan (16 USC 1604 (i)). The Lolo National Forest Plan establishes management direction for the Lolo National Forest. This management direction is achieved through the establishment of Forest Plan goals and objectives, standards and guidelines, and Management Area goals and accompanying standards and guidelines.

This decision is consistent with the standards, goals, and objectives of the Lolo National Forest Plan (USDA Forest Service 1986).

NFMA Diversity

The NFMA specifies that land management plans provide for diversity of plant and animal communities based on the sustainability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives, preserve the diversity of tree species similar to that existing in the region (16 USC 1604 (g)(3)(B)). The Forest Plan

contains an array of components that contribute to the plant and animal (terrestrial and aquatic) habitat capability of the Lolo National Forest. Based upon consideration of these components of the Forest Plan, the Biological Assessments/Evaluations, and the analysis in the EA, I find this decision will continue to provide for a diversity of native species.

Endangered Species Act

Under provisions of this Act, Federal agencies are directed to seek to conserve endangered and threatened species and to ensure that actions are not likely to jeopardize the continued existence of any of these species. The biological assessments disclose that the project will have no effect on any Threatened or Endangered species or its habitat. This project is consistent with the Endangered Species Act.

Clean Water Act and State Water Quality Standards

Upon review of the Flying H Ranch LLC Cultivation Special Use Permit EA and the hydrology and fisheries reports in the Project File, I find that the activities associated with the Selected Action will comply with the Clean Water Act and Montana State Water Quality standards through application of best management practices.

National Historic Preservation Act

A comprehensive evaluation of cultural and historic resources was conducted and no sites were found. The Selected Action is consistent with Forest Plan direction and Section 106 of the National Historic Preservation Act.

VIII. APPEAL PROVISIONS AND IMPLEMENTATION

No comments were received during the 30-day comment period that commenced with publication of legal notice in the *Missoulian* newspaper on Jan. 23, 2013. Thus, pursuant to 36 CFR part 215 regulations, this decision is not subject to appeal. Implementation may begin immediately after publication of legal notice of this decision in the *Missoulian* newspaper.

Further information about this decision can be obtained from Ron Schlader during normal office hours (weekdays, 8:00 a.m. to 4:30 p.m.) at the Superior Ranger District Office (Address: 209 West Riverside Avenue; P.O Box 460; Superior, MT 59872); Phone/voicemail: (406) 822-4233.

/s/ Tawnya Brummett

March 1, 2013

TAWNYA BRUMMETT
District Ranger

Date

APPENDIX A

Finding of No Significant Impact

After considering the environmental effects described in the Flying H Ranch LLC Cultivation Special Use Permit Environmental Assessment (EA), I have determined that the Selected Action will not have a significant effect on the quality of the human environment based on the context and intensity of its impacts (40 CFR 1508.27). Therefore, an environmental impact statement will not be prepared.

/s/ Tawnya Brummett

March 1, 2013

TAWNYA BRUMMETT
District Ranger
Superior Ranger District
Lolo National Forest

Date

I base my findings on the following:

The special use authorization will permit the adjacent landowner to conduct cultivation and incidental livestock grazing, activities which have been occurring on this parcel for at least 40 years. These activities are allowed under the Lolo Forest Plan. The issuance of a permit will provide the Forest Service with administrative control through site-specific clauses to minimize environmental effects on the designated area.

The Forest Service found no significant issues or unresolved conflicts concerning alternative uses of available resources that warrant consideration of additional alternatives. Implementing regulations for NEPA (40 CFR 1508.27) provide criteria for determining the significance of effects. Significance, as used in NEPA, requires consideration of both context and intensity.

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale, rather than the world as a whole. Both short- and long-term effects are relevant (40 CFR 1508.27).

The effects of the Selected Action are limited in context. The project activities are limited in size (35 acres) and duration (the term of the special use permit will be for 10 years. At the end of the 10 years, a new environmental analysis will be completed if the permittee requests a new authorization). Effects are local in nature and are not likely to significantly affect regional or national resources.

Within the context of the landscape as a whole, the ecological consequences are not found to be significant in either the short- or long-term.

(b) Intensity. This refers to the severity of impact. The following ten aspects are considered in the evaluation of intensity (40 CFR 1508.27).

1. Impacts that may be both beneficial and adverse

I considered beneficial and adverse impacts associated with the proposed action as presented in the Flying H Ranch LLC Cultivation Special Use Permit EA. These impacts are within the range of effects identified within the Lolo National Forest Plan. Based on the detailed specialist reports contained within the project file and summarized in the EA, I conclude that the specific direct, indirect, and cumulative effects of the Selected Action are not significant, and this action does not rely on beneficial effects to balance adverse environmental effects.

No Effects

Site-specific permit clauses will effectively eliminate or reduce to negligible most of the potential impacts, therefore, implementation of the Selected Action will result in no negative effects to the following resources: Federally listed Threatened or Endangered species (EA, pages 5-7); heritage resources (EA, page 5); fisheries (EA, page 6); water quality (EA, page 6); wildlife (EA, page 6); soil resources (EA, page 6); and weeds (EA, page 7).

Beneficial Effects

The authorization will ensure continued management of the 35-acre parcel for noxious weeds and forage for wildlife. Allowing for fencing of the south portion of the permit boundary will prevent livestock from entering the non-permitted National Forest lands and competing with the surrounding wildlife for forage.

Potential Adverse Effects

There are no potential adverse effects anticipated.

2. The degree to which the proposed action affects public health or safety

There will be no effect to public health or safety. The public will continue to have access to the permitted 35-acre parcel from the south and west. The permit will not grant any type of authorization to the public for crossing any private property to access National Forest System land.

3. Unique characteristics of the geographic area, such as proximity to historic or cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas

The Selected Action will not impact any known historic or cultural sites (EA, page 5). The project area does not contain any parklands, wild and scenic rivers, wetlands, or ecological critical areas. The majority of the 35-acre parcel could be considered farmland, but not prime farmland. The parcel is surrounded on two sides by farmland. The purpose of the special use

authorization is to allow the adjacent property owner to maintain the historic use of the 35-acre parcel as farmland. Based on this information, I conclude that the Selected Action will have no effects on unique resources.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial

Based on the limited context of the project, my review of the public comments received, and the analysis documented in the EA and Project File, I do not find any controversial effects to the human environment. In the NEPA context, “highly controversial” does not encompass all public opposition to a proposed action, but instead only applies to a substantial dispute as to the size, nature, or effect of an action.¹ While one person expressed disagreement with the use of public land for “personal profit” (which the Forest Service addressed in the EA on page 2) this person has not presented a substantial dispute as to the size, nature, or effect of this proposal.

I conclude that the effects of the Selected Action are not considered highly controversial by professionals, specialists, and scientists from associated fields of forestry, wildlife biology, soils, fisheries, and hydrology.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risk

Based on my review of public comments received on this project and the analysis documented in the EA and Project File, I conclude that there are no uncertain or unique characteristics in the project area which have not been previously encountered or that would constitute an unknown risk to the human environment.

A technical analysis (EA and Project File) that discloses potential environmental impacts (which is supportable with use of accepted techniques, reliable data, and professional judgment) has been completed, and I believe that the impacts of implementing this decision are within the limits that avoid thresholds of concern.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration

The Flying H Ranch LLC Cultivation Special Use Permit request is a site-specific project that does not set precedence for future actions or represent a decision in principle about future considerations. Any proposed future project must be evaluated on its own merits and effects. The Selected Action is consistent with the Lolo National Forest Plan and the capabilities of the land.

¹ Indiana Forest Alliance, Inc. v. United States Forest Service 325 F.3d 851 (10th Cir.2003) citing Wetlands Action Network v. United States Army Corps of Engineers, 222 F.3d 1105 (9th Cir.2000); Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1212 (9th Cir.1998) citing Greenpeace Action v. Franklin, 14 F.3d 1324, 1335 (9th Cir.1993)); Sierra Club v. United States Forest Service, 843 F.2d 1190, 1193 (9th Cir.1988) (accord); LaFlamme v. Federal Energy Regulatory Commission, 852 F.2d 389, 400-01 (9th Cir.1988)

7. Whether the action is related to other actions with individual insignificant but cumulative significant impacts

Connected, cumulative, and similar actions have been considered and included in the scope of the analysis. The analysis accounts for past, present, and reasonably foreseeable future actions. There are no other actions proposed or currently ongoing within the project area. Based on my review of the analysis and disclosure of effects in the EA, specialists' reports, Biological Assessments and Evaluations, and other analyses in the Project Record, I conclude that the Flying H Ranch LLC Cultivation Special Use Permit will not contribute potential cumulative adverse impacts (EA, pages 4-7).

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources

A comprehensive evaluation of heritage resources was conducted and there are no known sites that will be impacted (EA, page 5). In the event that such resources are discovered during project implementation, they will be evaluated and protected.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973

This project would have no effect on any threatened or endangered species or its habitat (refer to #1 above).

10. Whether the proposed action threatens a violation of Federal, State, or local law requirements imposed for the protection of the environment

The Selected Action meets all federal, state, and local laws, including those for heritage resources (EA, page 5), water quality (EA, page 6), and threatened and endangered species (EA, pages 5-7). It also meets the National Environmental Policy Act disclosure requirements (Flying H Ranch LLC Cultivation Special Use Permit EA and Draft Finding of No Significant Impact).

The Selected Action is consistent with the National Forest Management Act (NFMA) and the Lolo National Forest Plan. Authorized activities are consistent with the standards, goals, and objectives of Management Area 23, as determined in the Forest Plan. This project does not require any Forest Plan amendments.

APPENDIX B



