Rationale – Approval of UWR U-4-010
Mountain Caribou (*Rangifer tarandus caribou*)
Kinbasket Planning Unit

In approving this ungulate winter range (UWR) U-4-010 each of the tests under the *Government Actions Regulation* (GAR) was considered.

GAR 2 – Limitations on Actions

1. *The order is consistent with established objectives.*

In my review of objectives established by government under the *Forest and Range Practices Act*, I found no objectives established under Section 180 (grandparenting specified designations) or S. 181 (grandparenting objectives).

In my review of objectives established by government under the *Forest Planning and Practices Regulation*, I find the order is consistent with Section 5 (soils), S.6 [timber; as outlined below in my rationale relevant to the *Government Action Regulation* section 2(1)(b) and 2(1)(c)], S.8 (water, fish, wildlife and biodiversity in riparian areas), S.8.1 (fish habitat in fisheries sensitive watersheds), S.8.2 (community watersheds), S.9 (wildlife and biodiversity – landscape level), S.9.1 (wildlife and biodiversity – stand level), S.9.2 (visual quality), and S.10 (cultural heritage resources).

In my review of existing objectives established by *Land Act*, *Land Use Objectives Regulation*, and *Government Action Regulation* orders, I have determined that all but two of these objectives are fully consistent with this order. The two objectives that may not be fully consistent are found within the Kootenay Boundary Higher Level Plan Order and relate to Section 3 "Caribou", specifically objectives 1 and 2. For these objectives, I have assumed that they will be rescinded prior to this order coming into effect. I am comfortable with this assumption given this was an interagency collaborative process and staff have informed me that the minister responsible for the *Land Act* will imminently rescind these objectives from the Kootenay Boundary Higher Level Plan Order to facilitate this order's approval and implementation. Therefore, I find this order is consistent with all relevant objectives established by order.

Having considered all available information pertaining to this order, I find that there are no elements of this order that would be inconsistent with established objectives applicable to forest and range practices and planning within the Kinbasket Planning Unit.

2. *The order would not unduly reduce the supply of timber from British Columbia's forests.*

The *Forest and Range Practices Act* (FRPA) does not define "unduly" so I will consider dictionary definitions of "unduly", such as "excessive", "disproportionate" and "unwarranted", when assessing the test under section 2(1)(b).

In the area of the Kinbasket planning unit government's timber supply impact policy relating to the management of mountain caribou is established by the Kootenay Boundary Higher Level Plan Order objectives for mountain caribou, which are managed through a series of Resource Management Zone objectives.

On October 16, 2007, government announced a plan to recover mountain caribou. The plan included a provincial commitment to protect 2.2 million ha of forested habitat, capturing 95% of mountain caribou's high suitability winter habitat, with an incremental impact of 380,000 ha of which 77,000 ha was expected to be in the timber harvesting land base (THLB); impacts to the THLB are based on TSR 2. The Kinbasket planning unit is identified as a status quo management area. As such no incremental habitat is being identified in this planning unit, only a continuation of existing management intent as per the Kootenay Boundary Higher Level Plan Order.

UWR U-4-010 is a conversion of management as detailed within the Kootenay Boundary Higher Level Plan Order into management through UWR under FRPA. The approval of UWR U-4-010 will not alter government's timber supply impact policy as is relates to the management of mountain caribou in the area of the Kinbasket planning unit.

I am satisfied that this order will not unduly reduce the supply of timber from British Columbia's forests.

3. *The benefits to the public derived from the order would outweigh any material adverse impact of the order on the delivered wood costs of a holder of any agreement under the Forest Act that would be affected by the order.*

The FRPA does not define "material adverse impact". The test under section 2(1)(c)(i) is a "material adverse impact" not just an "adverse impact". A "material" effect is often defined as a "highly important" or "significant" effect.

No *Forest Act* agreement holders, either prior to the review and comment period or during the review and comment period, provided information to suggest that the order for UWR U-4-010 would create a material adverse impact on delivered wood costs.

In addition to considering the potential for this order to have a material adverse impact on delivered wood costs, I have considered the public benefits that will be derived from this order. Mountain caribou are currently listed as "threatened" under the federal *Species at Risk Act* and are "red-listed" (endangered or threatened) in British Columbia. The provincial Conservation Framework ranking lists this southern population as a high priority[1] for conservation action. The Kootenay Boundary Higher Level Plan Order previously identified mountain caribou management as being in the public interest and includes habitat management objectives for mountain caribou. The Species at Risk Coordination Office conducted extensive stakeholder consultation on the 2006 Draft Mountain Caribou Recovery Implementation Plan. This stakeholder consultation

[1] Ranked out as high priority "2" for Goal 1 (global conservation efforts) and Goal 3 (maintaining native diversity).

informed government's October 16, 2007 announcement to recover mountain caribou. This announcement establishes the public interest for mountain caribou management.

As such, I find the public benefit of this order to be compelling relative to the potential for any material adverse impact on the delivered wood costs of a holder of any agreement under the *Forest Act* that would be affected by the order.

4. *The benefits to the public derived from the order would outweigh any undue constraint on the ability of a holder of an agreement under the Forest Act or the Range Act that would be affected by the order to exercise the holder's rights under the agreement.*

The FRPA does not define "undue" so I will consider dictionary definitions of "undue", such as "excessive", "disproportionate" and "unwarranted", when assessing the test under section 2(1)(c)(ii).

No information has been provided by *Forest Act* agreement holders, either prior to the review and comment period or during the review and comment period, to suggest that the order for UWR U-4-010 would constrain the ability of a holder of an agreement under the *Forest Act* or the *Range Act* to exercise the holder's rights under the agreement.

There are no affected *Range Act* agreement holders; the GWMs do not speak to range practices.

In addition to considering the potential for this order to unduly constrain the ability of an agreement holder to exercise their rights, I have considered the public benefits that will be derived from this order. Mountain caribou are currently listed as "threatened" under the federal *Species at Risk Act* and are "red-listed" (endangered or threatened) in British Columbia. The provincial Conservation Framework ranking lists this southern population as a high priority[1] for conservation action. The Kootenay Boundary Higher Level Plan Order previously identified mountain caribou management as being in the public interest and includes habitat management objectives for caribou. The Species at Risk Coordination Office conducted extensive stakeholder consultation on the 2006 Draft Mountain Caribou Recovery Implementation Plan. This stakeholder consultation informed government's October 16, 2007 announcement to recover mountain caribou. This announcement establishes the public interest for mountain caribou management.

As such, I find the public benefit of this order to be compelling relative to the lack of an indication of an undue constraint on the ability of a holder of an agreement under the *Forest Act* or the *Range Act* to exercise the holder's rights under the agreement.

GAR 3 – Consultations and Reviews

1. *An opportunity for review and comment was provided to the holders of agreements under the Forest Act or the Range Act that would potentially be affected by the order.*

On June 20, 2008, all affected *Forest Act* agreement holders were given an opportunity for review and comment on U-4-010. No comments were received.

Considering the review and comment period on the final line work and proposed GWMs conducted in June 2008, I find that an opportunity for review and comment was provided to the holders of agreements under the *Forest Act* that would potentially be affected by the order. There are no affected *Range Act* agreement holders.

GAR 9 - General Wildlife Measures

1. *The general wildlife measures are necessary to protect or conserve the species at risk.*

In October 2007 government announced a plan to recover mountain caribou and committed to protecting 2.2 million ha of high suitability forested habitat from logging and road building.
http://www.env.gov.bc.ca/sarco/mc/files/MC_Recovery_Implementation_Plan_News_Release_20071016.pdf

The GWMs for UWR U-4-010 are consistent with the management contained in the Kootenay Boundary Higher Level Plan Order for mountain caribou. The October 2007 announcement to recover mountain caribou did not indicate that additional management was needed over what was provided for mountain caribou by the Kootenay Boundary Higher Level Plan Order.

I am satisfied that the GWMs established by this order are necessary to protect and conserve mountain caribou. The measures are consistent with current standards and are supported by the current best available science.

2. *The regulations under the Forest and Range Practices Act or another enactment do not otherwise provide for that protection or conservation.*

While other regulations under the FRPA or other enactments may deliver some of the special management required for the protection or conservation of mountain caribou in the Kinbasket planning unit, these do not provide the necessary protection for mountain caribou.

I find the GWMs established by this order to be necessary and I am satisfied that the regulations under the FRPA or another enactment do not otherwise provide for the protection or conservation of mountain caribou in the areas addressed by this order.

GAR 12 – Ungulate Winter Ranges

1. *The ungulate winter range is necessary to meet the winter habitat requirements of a category of specified ungulate species.*

UWR U-4-010 contains winter habitat for mountain caribou that was identified during the development of the Kootenay Boundary Land Use Plan. The Mountain Caribou Science Team did not identify the need for additional management for mountain caribou within this planning unit. Management as identified under the Kootenay Boundary Higher Level Plan Order is adequate to meet the winter habitat requirements of caribou in this planning unit.

I am satisfied that UWR U-4-010 contains habitat that is necessary to meet the winter habitat requirements of mountain caribou.

2. *The ungulate winter range requires special management that is not otherwise provided for under the Forest and Range Practices Act or another enactment.*

While other regulations under the FRPA or other enactments may deliver some of the special management required for the protection or conservation of mountain caribou UWR habitat in the Kinbasket planning unit, these do not provide the necessary protection for mountain caribou, specifically the protection of high suitability winter habitat.

I find the UWR established by this order to be necessary and I am satisfied that the regulations under the FRPA or another enactment do not otherwise provide for the protection or conservation of mountain caribou winter range habitat in the areas addressed by this order.

Joan Hesketh

Signed this 18 day of December, 2008
Joan Hesketh, Deputy Minister
Ministry of Environment