



United States  
Department of  
Agriculture

Forest  
Service

Region 1

200 East Broadway  
P. O. Box 7669  
Missoula, MT 59807

File Code: 1570 (215)  
#97-01-00-0106

Date: September 16, 1997

George Nickas, Policy Coordinator  
Wilderness Watch  
P.O. Box 9175  
Missoula, MT 59807

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dear Mr. Nickas:

This is my decision on disposition of the appeal you filed on behalf of Wilderness Watch, Friends of the Bitterroot, Alliance for the Wild Rockies, and The Ecology Center protesting the Bitterroot National Forest Supervisor's Decision Notice (DN) for the Tin Cup Dam Repair Project.

The Forest Supervisor has selected Alternative 2 which will implement repair work related to deficiencies of the water transmission pipe, core drilling, and clearing debris and brush from the dam site.

#### DECISION

After careful consideration of the Appeal Reviewing Officer's recommendation, I affirm the Forest Supervisor's decision to implement Alternative 2. Your requested relief is denied.

My review of your appeal was conducted pursuant to, and in accordance with, 36 CFR 215.17 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. I have thoroughly reviewed the appeal record, including the recommendation of the Appeal Reviewing Officer (copy enclosed) regarding the formal disposition of your appeal. My decision hereby incorporates by reference the entire appeal record.

#### APPEAL SUMMARY

You allege violations of the Federal Advisory Committee Act, the Wilderness Act, Forest Service Policy, and the National Environmental Policy Act.

Central objections identified in your appeal concern motorized intrusion into wilderness, outlet pipe repair urgency not supported by the record, water company representative only out-Service person invited to participate in interdisciplinary team meetings, primitive tool use not adequately considered, failure to consider packstock to haul equipment and supplies, trend of motorized use

in the wilderness, inadequate range of alternatives, lack of a campsite or air operations management plan, failure to disclose impacts to other wilderness management programs, economics, connected and cumulative actions, and the need for an Environmental Impact Statement (EIS).

You request the decision be rescinded and the Forest Supervisor be ordered to prepare an EIS, allow only routine maintenance with primitive tools, and complete dam operating plans.

An informal meeting was held on September 16, but no resolution was reached. Interested party comments were received from the Tin Cup Water Company, Inc. and Grassroots for Multiple Use.

### APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer recommends the Forest Supervisor's decision be affirmed and your requested relief be denied.

### FINDINGS

Following is my evaluation of the objections raised in your appeal and your requested changes.

#### Scope of Decision

Decisions made in Forest Plans are subject to administrative review under 36 CFR 217 and are not subject to review in project or activity decisions [36 CFR 215.8(a)(1)]. These decisions are considered to be beyond the scope of the project-level decision, and the opportunity to challenge these decisions has been exhausted,

Similarly, Appellants may not request review of activities that are not "connected" to the project decision being challenged or ask that additional decisions be made that are not "ripe" for decision. Under NEPA, the Responsible Official has the discretion to propose actions and determine which actions warrant a decision and those that do not.

I have determined your objections are within the scope of the decision.

#### Scope of Decision Documentation

Appeal Regulations at 36 CFR 215 allow for expanded opportunities for public involvement in Forest Service decisionmaking. The public is best served by mutual efforts to resolve differences during the decisionmaking process rather than after a decision is made.

Your objections correspond closely to comments you raised in scoping and during the comment period. Because of your early participation in the pre-decisional process, the Forest Supervisor was able to analyze these concerns by incorporating them into the environmental analysis and consider them in making the decision.

Procedural Determination

I have thoroughly reviewed your arguments and the information referenced in the Forest Supervisor's September 5, 1997, Transmittal Letter (copy enclosed). The Transmittal Letter provides specific page references to discussions in the Environmental Assessment (EA), the DN, and project file which bear upon your objections. The objections you raise in your appeal are similar to the comments you made on the EA. The project file indicates your objections were either addressed as environmental issues in the EA or are discussed in the DN. I specifically incorporate in this decision the references and citations contained in the Transmittal Letter. Based upon a review of the references and citations provided by the Forest Supervisor, I find the objections you raised were adequately considered in the EA/DN and the Forest Supervisor made a reasoned decision concerning those issues. I find the Forest Supervisor has complied with all laws, regulations and policy.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ KATHLEEN A. MCALLISTER

KATHLEEN A. MCALLISTER  
Appeal Deciding Officer  
Deputy Regional Forester

Enclosures (2)