



File Code: 1570
Route To: 2810
Subject: Appeal #00-01-00-0094
To: Appeal Reviewing Officer

Date: June 9, 2000

In accordance with 36 CFR 251, subpart C, I am hereby submitting the decision documentation and appeal record for Ronald Hartig's and Edward C. Ogden's appeal of the District Ranger's decision to not approve construction of an All Terrain Vehicle (ATV) trail into the appellants mining claim located on the North Fork Ranger District of the Clearwater National Forest.

The administrative record is contained in two folders, the project file (PF) and the appeal file #00-01-05-0001 (AF). In the project file individual documents are numbered in one consecutive series. References to the project file are by document and page number. The project file and appeal file will be delivered to your office on June 12, 2000.

Decision Being Appealed

The North Fork District Ranger received a supplemental plan of operations on May 3, 1999, from Ronald Hartig and Edward C. Ogden, for activities planned at their mining claim, E & R Tough Luck mine. In the supplemental plan of operations the owners of the E & R Tough Luck mine expressed an interest in working with the Forest Service to develop an ATV trail to their mining claim. The District Ranger approved the supplemental plan of operations on May 28, 1999, and agreed to meet with Mr. Hartig after snowmelt at the mining claim to review the proposal on the ground.

The District Ranger and staff met Mr. Hartig at Blacklead Mountain, near the mining claim, and walked the proposed ATV trail location to the mining claim on August 26, 1999. February 1, 2000, the District Ranger sent a letter to Mr. Hartig not approving his request to construct an ATV trail into the mining claim because:

- 1) A motorized trail would not be compatible with the Forest Plan management objectives for the area which is recommended wilderness, and
- 2) A motorized trail is not reasonably necessary for the current stage of the mining operations, which is in the late prospecting/early exploration stage.

March 2, 2000, the Forest Supervisor received a letter from Mr. Hartig and Mr. Ogden appealing the Ranger's decision to not approve construction of the ATV trail into their mining claim. On March 27, 2000, the District Ranger submitted a letter to the Forest Supervisor responding to the issues raised by the appellants. The appellants were sent a copy of the Ranger's responsive statement, to which they responded to in a letter received by the Forest Supervisor on April 20, 2000.



May 19, 2000, the Forest Supervisor, as the Reviewing Officer, affirmed the District Ranger's decision to not approve construction of an ATV trail into the E & R Tough Luck mining claim. The appellants submitted a letter to the Regional Forester dated June 1, 2000, requesting a second-level review of the Clearwater National Forest Supervisor's decision denying their request to construct an ATV trail into their claim on the North Fork Ranger District.

Decision Documentation Responding to Points of Appeal

Issue 1: *“Whether the District Ranger exceeded his authority by refusing to process our Supplemental Plan within the regulatory timeline.”*

Response – The supplemental plan of operations indicates the District received the supplemental plan of operations on May 3, 1999, with the Ranger approving the plan on May 28, 1999 (PF Document 1 pages 1-9). The Ranger's response to the issues letter, document 5 page 2, states that the Forest Service met the regulatory timeline by approving the supplemental plan of operations within the 30-day regulatory timeframe. In addition, it states that the Ranger met Mr. Hartig's objective of working with him to develop an ATV trail into his claim by meeting with Mr. Hartig at the claim site and reviewing the proposed ATV trail location, which the Ranger did on August 26, 1999 (PF Document 17).

The Forest Supervisor's appeal decision stated he could not find in the administrative record or project file where the Ranger refused to process the supplemental plan. The Ranger approved the supplemental plan in a timely manner and complied with Mr. Hartig's "intent to work with the U. S. Forest Service to develop an ATV trail down the ridge to the E & R Tough Luck mining claim" by meeting on August 26, 1999, to review the proposal at the claim. The appeal decision document states that the Ranger's decision letter dated February 1, 2000, while not timely, did not materially interfere with the appellants operations, since the plan of operations indicated the operating season for the mine was to end September 15, 1999. The end of the operating season is within 30-days of the field review of the proposed ATV trail. (AF Appeal Decision Document pages 2 and 3).

Issue 2: *“Whether the District Ranger exceeded his authority by demanding that I not use an ATV to access our claim.”*

Response – The District Ranger's response to the issues letter states that the Forest Service has the responsibility and authority for surface management, which has been delegated to the District Ranger. The Ranger stated that there would be significant resource disturbance from constructing an ATV trail into Forest Plan recommended wilderness and would not meet the Forest Plan objective for the area of protecting the wilderness character of the area. This document states that the Forest Service is not obligated to approve or to issue a permit regulating access, if the proposed means of access or the mode of transport is not reasonably necessary for the work to be performed for prospecting, locating, and developing the resource. Also, the Ranger stated, "construction of an ATV trail is not reasonably necessary for the current stage of mining" (PF Document 5 pages 2 and 3).

The Ranger stated “at no time did I deny Mr. Hartig access to his mining claim” (PF Document 5 pages 2 and 3). The document states transport by foot or pack animal are both reasonable alternatives for the current stage of operations. The mine has been accessed in this manner for over 10 years.

Notes from a meeting with Mr. Hartig and the Forest Geologist further explains that building a trail needs to be justified. Mr. Hartig stated he did not intend to do more extensive exploration or work more than a few days a year (PF Document 15 page 1).

Issue 3: *“Whether the District Ranger failed to comply with the procedural requirements of 36 CFR 228.5 by refusing to process our Supplemental Plan, when in fact a lack of response and failure to comply with the allowed timeline, makes us believe that our plan is approved.”*

Response – The District Ranger did respond in a timely manner by approving the supplemental plan of operations on May 28, 1999, and by meeting the appellant in the field in a timely manner to review the ATV proposal (AF Appeal Decision Document page 3, PF Document 1 pages 1-9, and PF Document 17 pages 1-2). While the

Even if the District Ranger had not met the timelines described in 36 CFR 228.5, this would not under any circumstance, result in automatic approval of a proposed mining related activity. There is no provision for default approval of a supplemental plan of operations (AF Appeal Decision Document page 3, PF Document 5 page 3).

Issue 4: *“Whether the District Ranger failed to comply with his obligations by failing to perform an environmental assessment of the potential impacts from my planned operations (exceeded) his authority by refusing to allow a use, which he deemed, without analysis, not to be absolutely ‘necessary’ to my operations, even though the use is ‘reasonably incident to such operations.’”*

Response – The District Ranger did not complete an environmental assessment, since construction of an ATV trail into recommended wilderness is not warranted with the current stage of mining operations. The decision to not allow trail construction was an administrative decision, and a NEPA decision is not necessary (PF Document 5 page 3).

In verbal conversations Mr. Hartig indicated he did not want an environmental assessment done for the proposed ATV trail (PF Document 5 page 3).

The decision to not approve the proposed ATV trail is within the delegated authority of the District Ranger (PF Document 5 page 4, AF Appeal Decision Document page 3).

Please contact Doug Gober, North Fork District Ranger, Vern Bretz, Forest Geologist, or Stewart Wilson, District Staff at (208) 476-4541 for any additional information.

/s/ James L. Caswell

JAMES L. CASWELL
Forest Supervisor