



File Code: 1570 (215)  
#99-01-00-0109

Date: April 28, 1999

Jim Coefield  
The Ecology Center, Inc.  
801 Sherwood Street, Suite B  
Missoula, MT 59802

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear Mr. Coefield:

This is my decision on disposition of the appeal you filed on behalf of The Ecology Center, Inc. and Cold Mountain, Cold Rivers, Inc. protesting the Horse Butte Bison Capture Facility Decision Notice (DN) signed by the Gallatin National Forest Supervisor.

### 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 which do not. I have determined your objections are within the scope of the decision.

### APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer has considered your arguments, the appeal record, and the transmittal letter and recommends the Forest Supervisor's decision be affirmed and your requested relief be denied.

### DECISION

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, your arguments, the information referenced in the Forest



Supervisor's April 2, 1999, transmittal letter (copy enclosed) and the Appeal Reviewing Officer's analysis and recommendation (copy enclosed). The transmittal letter provides specific page references to discussions in the Environmental Assessment (EA), DN and project file which bear upon your objections. I specifically incorporate in this decision the appeal record, the references and citations contained in the transmittal letter, and the Appeal Reviewing Officer's analysis and recommendation.

Based upon a review of the references and citations provided by the Forest Supervisor, I find the objections were adequately considered in the EA/DN. I agree with the Appeal Reviewing Officer's analysis and conclusions in regard to your appeal objections. I find the Forest Supervisor has made a reasoned decision and has complied with all laws, regulation, and policy.

The Appeal Reviewing Officer recommends that, pursuant to FSH 1909.15, Section 18.1, the Responsible Official conduct a review of the March 12, 1999, Update of the Northern Region Sensitive Species List to determine if any species listed therein could be impacted by this project. After careful consideration, I affirm the Forest Supervisor's decision to implement Horse Butte Bison Capture Facility project with the following instructions. The Responsible Official is to conduct the review and documentation described above. The findings are to be documented in a letter to the file with a copy sent to the Regional Forester. Your requested relief is denied.

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)