



File Code: 1570-1 (251-1)
#00-01-00-0100

Date: September 11, 2001

David Stratton
1502 Hwy. 2 West
700 Fish Creek
Whitehall, MT 59759

CERTIFIED MAIL – RETURN RECEIPT
REQUESTED

Dear Mr. Stratton:

This letter is my review and decision on your July 3, 2000, Notice of Appeal (NOA) of Forest Supervisor Janette Kaiser's March 24, 2000, decision regarding your occupancy and use of the Moonlight and Last Chance mill sites located in the Highland Mountains about 12 miles south of Butte, Montana. These mill site claims are on National Forest System lands administered by the Beaverhead-Deerlodge National Forest. The March 24, 2000, decision relied upon an extensive record that included an August 10, 1999, Surface Use Determination (SUD) report. The report analyzed the reasonableness of your occupancy and use and your compliance with the Plan of Operations and the regulations.

Based on her review of the record, Forest Supervisor Kaiser decided that you are not in compliance with the federal mining law and Forest Service regulations in three ways:

1. Your occupancy and use of the Forest are not reasonably necessary or justified under the mining laws.
2. Your continued occupancy and use does not minimize adverse environmental impacts to surface resources as required by the regulations.
3. Your milling operation is now in the abandonment stage, and you are in noncompliance with the removal and reclamation provisions of the 1979 Plan of Operations and Forest Service regulations at 36 CFR 228.10.

The Forest Supervisor provided a schedule for you to come into compliance by removing a large amount of personal property from the National Forest and invited you to discuss further the possibility of a settlement agreement on the future ownership of any remaining equipment and structures on the National Forest. In the event that you could not reach a settlement agreement with the Forest Service, the Forest Supervisor decided that you were to remove all remaining materials, equipment and structures from the National Forest, which would end your residency on National Forest lands. Her decision also included your appeal rights.

My review of the appeal and the appeal record was conducted in accordance with 36 CFR 251, Subpart C. My responsibility as Reviewing Officer is to ensure that Forest Supervisor Kaiser's



analysis and decision are in compliance with applicable laws, regulations, and policy. As part of my review, I considered the information in the five-part, fourteen-volume appeal record prior to making my determination. This review decision hereby incorporates by reference the entire administrative appeal record.

I. SUMMARY

The administrative appeal record shows that your family has used the area around the Moonlight and Last Chance mill site claims in the vicinity of Roaring Brook and the headwaters of Fish Creek for over 90 years. The Stratton family owns patented and unpatented mining claims near this area and has conducted some placer mining and hard rock mining on those claims. However, the Stratton family's principle use of the mill site claim area in recent decades has been as a residence. Historically, the area was also used for lumber milling. In 1939, the Forest Service issued Howard and Bill Stratton a special-use permit for construction and maintenance of a portable sawmill, shed, cabin, barn, garage, toilet, garbage pit, diversion dam, lumber flume, and Pelton wheel (for power generation) (Doc. 17). The permit was amended over the years to allow construction of additional cabins for use related to logging and lumber processing.

The record indicates that the amount of personal property and equipment your family has placed on the National Forest has steadily grown over the years, as has the Forest's concern over the extent of that use. In the 1960s, the Forest Service made numerous attempts to get your family to clean up the area. In 1973, the District Ranger sent a letter to Howard Stratton advising of the general need for cleanup of what the Ranger described as a large accumulation of junk not being used for any operations at the site (Doc. 138). After more meetings and discussions, the Regional Forester in 1978 revoked the Stratton special-use permit authorizing the occupancy and use of the site (Doc. 214).

Only relatively recently, in 1973, did the Stratton family stake mill site claims, and it was not until 1978 that the Strattons submitted a notice of intent to use the mill sites for ore milling purposes (Doc. 229). The Forest Service authorized ore milling operations in an operating plan approved September 7, 1979 (Doc. 279). Although ore milling may have occurred at the site for short periods in May and June of 1980 and possibly in 1981 for a brief time, the evidence indicates only a few hundred tons of ore were processed and no milling operations have been conducted since then (Doc. 1, Part I, Volume 9). The Strattons abandoned the mill site claims and they were declared null and void by BLM in 1989 (Doc. 428). It was not until October 1992 that the current mill site claims were located (Doc. 429). No new or amended Plans of Operations have been submitted or approved.

The 1979 operating plan authorized the use of several buildings and a variety of mining and milling equipment needed in the operation of an ore milling facility. Among other things, in approving the Plan of Operations, the Forest Service stipulated that all buildings and materials not needed in the operation of the ore mill were to be removed from the site by August 20, 1979, and that the plan was to be bonded to completely rehabilitate the mill site and insure removal of all equipment and materials from the site if, for any reason, the operation was not put into production (Doc. 276).

You appealed the Forest Supervisor's decision [Doc. 605]¹ in your letter of May 9, 2000 [Doc. 607]. Although this appeal was dismissed [Doc. 615], you refiled your appeal under a revised time frame on July 3, 2000 [Doc. 617].

The Forest Supervisor has responded to your points of appeal in her September 1, 2000, Responsive Statement [Doc 621]. Your reply to her statement is dated September 19, 2000 [Doc. 622]. At my request, the Forest Supervisor submitted additional information regarding this appeal, on January 30, 2000 [sic] (2001) [Doc. 632]. You also responded to my request for more information in your letter dated January 15, 2001 [Doc. 633]. I have considered these documents and other materials in the appeal record in preparing my review response.

II. OVERVIEW OF ISSUES AND RELIEF REQUESTED

Your Notice of Appeal [Doc. 617] raises the following issues:

1. The decision had a pre-determined outcome and has a strong personal bias.
2. Norman Day, Forest Service Mineral Examiner, is now not considered to be competent enough for his work to be relied upon. The Plan of Operations was approved based on Norman Day's validity determination. All operations have continued as per the Plan of Operations.
3. The Stratton Mill is on private land. A legal homestead was filed in 1913 which the Forest Service withheld title on.
4. The appellant does not have the information needed to make an informed decision or appeal.
5. What is the status of the investigations for a small group of Beaverhead-Deerlodge Forest Service employees?
6. The appellant is in full compliance with all Federal Laws and the only basis for the March 24, 2000, decision is Forest Service policies. (The same decision letter on the Surface Use Determination dated April 4, 2000, was also sent to Mrs. Vadis Stratton and Mark Stratton.)
7. The District Ranger and Assistant Ranger publicly and falsely announced through numerous newspaper articles and briefing documents that Appellant was a trespasser on the public land before any studies were conducted.
8. The historic sign stating "Stratton Mill 7 Miles" was removed and replaced before any studies were conducted.
9. Forest employee Dan Avery used the Surface Use Determination as a threat and insisted that Appellant's mother sign over her personal property while under severe pressure and duress by a group of Forest Service employees.
10. Pat Barringer declared that her group has never lost a land battle and considers the preservation of the Stratton mill to be one of her personal land battles.

¹ As described in the Declaration of John R. Thompson [Doc. 637], the Regional Office adjusted document numbers in Part I of the Administrative Record beginning with document number 583 to incorporate un-numbered documents and correct misnumbered documents. I have cited renumbered documents using brackets [] and documents numbers not changed using parenthesis (). All cites are to Part I of the Administrative Record unless otherwise identified.

11. The land trade was officially proposed and had a predetermined outcome; the group conducting the land trade refused to follow Federal Land Trade procedures; and the public was not allowed to be involved even though thousands of public citizens sent letters and signed petitions supporting the land trade and the preservation of the Stratton mill.
12. Tom Heintz (Acting Forest Supervisor) stated that the Forest Service would not destroy the Stratton Mill, but the Forest Service was going to force Appellant to leave and if he took his personal property he would be destroying the Stratton mill and not the Forest Service. Appellant asserts that Mr. Heintz made this statement before any studies were conducted and that this statement shows that the Beaverhead-Deerlodge Forest Service thinks that they have found a loophole in the Historic Preservation laws.
13. Pat Barringer stated that she was going to make Appellant's home a rental cabin and later said that she would maybe take out the windows and let it rot, and made these statements before any studies were conducted.
14. Grant Godbolt disclosed that the directive from the Region One office was to remove the Historic Stratton Mill.
15. The Forest Service rejected Stratton's homestead application because the Forest Service thought it might want to build a sawmill there someday.
16. The list of items to be removed listed in the decision is outdated and the time schedules for compliance with this decision are unrealistic. Appellant is not going to destroy 130 years of history and heritage in a few months.
17. Strattons are continuing reclamation of the site along with the operations as per their approved Plan of Operations.
18. The Beaverhead-Deerlodge Forest has refused to discuss, propose, outline, explore, plan or talk about any preservation of the Stratton mill. Appellant asserts that Forest employees Pat Barringer and Grant Godbolt want to destroy this rare piece of history.
19. Former Forest Supervisor Deborah Austin ordered Rangers escorted with Forest Service law enforcement armed with loaded weapons to the door of the Appellant's mother's house, placing his mother's life in danger, and causing her to seek medical and physiological treatment. Appellant asserts that this occurred after the Forest Supervisor received a No Trespass Order from the appellant.

The elements of relief you have requested are in several parts of your appeal letter of July 3, 2000 [Doc. 617]. You would like "an immediate release of the land title according to the Homestead Act, and settle this issue to insure the preservation of the Historic Stratton Mill." You also request just compensation for personal property that you state is "All improvements to the Historic Stratton Mill and the 7 miles of road leading to the Historic Stratton Mill...." You also request that the Forest Service leave your 75-year-old mother alone.

4. REVIEW FINDINGS

I have reviewed the extensive administrative appeal record containing over 2,000 pages of text, numerous maps, and photos, and have developed my responses to your appeal issues from the appeal record. The administrative record includes the Forest Supervisor's

September 1, 2000, Responsive Statement [Doc. 621], your July 3, and September 19, 2000, letters [Doc. 617] and [Doc. 622], the Forest Supervisor's letter of January 30, 2000, [sic] (2001) [Doc. 632], and your letter of January 15, 2001 (Doc. 633).

ISSUES

1. *The decision had a pre-determined outcome and has a strong personal bias.*

Forest Supervisor Kaiser discussed this issue in detail in her September 1, 2000, Responsive Statement [Doc. 632] and in her response to the November 29, 2000, request for additional information from the Appeal Reviewing Officer [Doc. 625]. Former Beaverhead-Deerlodge Forest Supervisor Austin initiated the Surface Use Determination (SUD) process on February 3, 1998, to fully analyze occupancy and use of the mill sites under the mining laws. The process is specified in the Forest Service Manual at FSM 2818.1 and FSM R1 Supplement 2800-92-2 at 2817.23, which explain its basis in law and direct how to deal with occupancies and uses of National Forest System lands that are asserted as justified under the mining laws.

The Forest Service Manual provides that the authorized officer is to request the assistance of Forest Service mineral specialists or mineral examiners to evaluate a situation on the ground and to advise the officer whether the proposed or existing surface use is reasonable and consistent with existing laws and regulations. A SUD report is the formal way to document such an investigation and to provide to the authorized officer expert recommendations and conclusions on the reasonableness of proposed or existing uses. The Forest Supervisor's use of this process showed no bias. It is appropriate and fully consistent with longstanding Forest Service policy on addressing issues regarding whether a proposed or existing use or activity is required for, or reasonably incidental to, mining operations conducted under the 1872 Mining Law.

As directed by the Forest Service Manual, the Forest Supervisor requested assistance from experts. She requested examiners from elsewhere in the Region to help address your allegations about bias and to insure a neutral review of the situation. At that time, she asked for any information you had that would assist the examiners in their work. You did not provide any information, and instead denied the examiners access to the occupied areas on the mill sites and your patented mining claims through a "trespass order" you issued. This was after the Forest Supervisor delayed the starting date of the SUD for 1 month (September 15, 1998, rather than August 17, 1998, (Doc. 578, 580, and 582) in order to give you more time to prepare and participate. In a letter dated September 9, 1998, [Doc. 584] you asked for a further delay in the process, which the Forest Supervisor thought was unwarranted [Doc. 586].

The mineral examiners conducted their field work September 17 and 18 and October 13 to 15, 1998. After that, Ray TeSoro contacted you again. The only information you offered was that you did not think any of the mine dumps had value and that you thought Mr. Tesoro should sample on two other claims. The examiners conducted this additional sampling on October 27, 1998, as documented in the SUD report. They completed their SUD report on July 28, 1999, and it was reviewed and approved on August 10, 1999 (Cover Page, Part I,

Volume 9). The Forest repeatedly invited you to provide information supporting your position. After you were formally notified on August 17, 1998, of the examination, you had almost a year (until August 10, 1999) to provide any information supporting your position to the examiners before they finished their report.

The record indicates that the Forest Supervisor's decision, and the SUD report upon which it relied in part, were completed without bias, in a professional manner, and without a predetermined outcome. You were given due notice and ample opportunity to participate.

2. *Norman Day, Forest Service Mineral Examiner, is now not considered to be competent enough for his work to be relied upon. The Plan of Operations was approved based upon Norman Day's validity determination. All operations have continued as per the Plan of Operations.*

The Forest Supervisor's September 1, 2000, Responsive Statement [Doc. 621] and her response to Allegation 12 [Doc. 632] cover this issue in detail. Mr. Day was unable to complete the 1979 validity examination of the Moonlight and Last Chance mill sites due to problems with the monumentation and alignment of your lode claim corners (Doc. 274 and 278, p. 4). Although Forest Supervisor Salomonsen approved the Plan of Operation in August of 1979 (Doc. 278), it was approved contingent upon additional work to be completed by Mr. Day. The remaining work was rescheduled for the summer of 1980 (Doc. 309). However, claimant Howard Stratton never relocated these corners while Mr. Day was available, and as a result, the validity examination was not completed. I agree with the Forest Supervisor's analysis of this issue. A letter from Ranger Godbolt to you dated November 5, 1997, (Doc. 541) informed you that the Plan of Operation approved in 1979 did not cover current activities at the mill sites, and that an updated plan should include the present and future plans as well as maintenance of the sites. There is no record to indicate that such updated plan was ever prepared.

3. *The Stratton Mill is on private land. A legal homestead was filed in 1913 which the Forest Service withheld title on.*

The Forest Supervisor has thoroughly discussed this issue in her Responsive Statement under contention 3, and included detailed cites to the appeal record that she used to determine that the Stratton Mill sites (Moonlight and Last Chance) are not on private land [Doc. 621]. I have reviewed the appeal record and concur with the Forest Supervisor.

Mr. W. F. Stratton's application for a homestead was rejected by Acting District Forester, D. T. Mason in a letter dated April 29, 1913 (Doc. 11). I found no documentation in the appeal record that the lands selected for homesteading nor the Moonlight and Last Chance mill sites are private lands. You have provided no documentation that supports your assertion of ownership. In addition, your assertion of ownership is inconsistent with your family's actions of applying to the Forest Service for permits and a Plan of Operations for the use of these lands, and your proposing a land exchange to obtain title to these lands. These actions demonstrate that you recognize these are public lands.

I agree with the Forest Supervisor's determination that the Stratton buildings, equipment and activities are on National Forest lands administered by the Beaverhead-Deerlodge National Forest. I have reviewed pertinent discussions in documents [626], [627] and [632] of the several allegations (1, 4, 5, 7, and 9) you made in your appeal letter of July 3, 2000, [Doc. 617] that relate to this issue. I agree with the Forest Supervisor's analysis and comment regarding those allegations. I find that there is no legal basis to support your claim that the Stratton Mill is on private land.

4. *The appellant does not have the information needed to make an informed decision or appeal.*

The Forest Supervisor has documented the fact that you have had several opportunities to obtain copies of all Forest Service files on your occupancy and use of the Moonlight and Last Chance mill sites. The Forest Service has responded to your Freedom of Information Act (FOIA) requests, as required by law, regulation and policy (Docs. 460, 463, 464, 470 and 480). Please note that this appeal is being reviewed pursuant to the appeal process set forth at 36 CFR 251, Subpart C, which is a distinct process separate from your FOIA request.

The record shows that the Forest Supervisor was willing to provide you any copies you wanted, but you refused to pay the fees calculated to research and copy the requested information (Docs. 464, 465 and 475) and the Bill for Collection was cancelled (Doc. 503). You also did not respond with information the Forest Supervisor requested to determine whether you are eligible for a waiver of fees. Nor did you take advantage of the District Ranger's and Forest Supervisor's offers to assist you in reviewing the files at Forest Service offices (Doc. 456, p. 2).

My review of the record shows the Forest Supervisor has responded accurately and in detail to this issue, and has made considerable effort to comply with your requests under the law and regulations that control the public distribution of government files. It is clear you have had ongoing opportunities to access, review, and copy those files.

You also sent an April 4, 2001, Freedom of Information Act request (Doc. 635) to me as the Reviewing Officer. Regional FOIA coordinator Dellora Gauger has processed your request, and we replied in a letter dated July 3, 2001, (Doc. 636), again explaining the FOIA process and the costs necessary to respond to your request. To date, we have not received a response from you.

5. *What is the status of the investigations for a small group of Beaverhead-Deerlodge Forest Service employees?*

There is no specific information in the record of this appeal regarding an investigation of Forest Service employees, other than the statement from the Forest Supervisor in her Responsive Statement: "The investigation has been completed and the findings have been given to the appropriate official." If you have made formal charges against Forest Service employees through, for example, the federal hotline complaint process, you will be notified

of the results of any such investigation by the authorized officials and separate from this appeal process.

6. *The appellant is in full compliance with all Federal Laws and the only basis for the April 4, 2000, decision is Forest Service policies.*

The Forest Supervisor carefully detailed in her April 4, 2000, decision (Doc. 605) the basis for her determination that you are in noncompliance with federal laws and regulations and the 1979 Plan of Operations. She carefully considered the contents of the SUD report, as well as all other information in the record for this case. As discussed under Issue 1, above, her analysis was fully based in law and longstanding Forest Service directives. The Forest Supervisor gave you numerous opportunities to provide information to support your arguments and to work with her to voluntarily come into compliance with the laws and regulations.

The record shows that the vast majority of the Stratton's long time occupancy of the area along Roaring Brook upon which you now have the Moonlight and Last Chance mill site claims staked has not been related to mining. It has related to logging, lumber milling, and use as a residence. Only relatively recently, in 1973, did the Stratton family stake mill site claims, and it was not until 1978, after their special-use permit was cancelled (Doc. 214), that the Strattons submitted a notice of intent to actually use the mill sites for ore milling purposes (Doc. 229). The Forest Service authorized limited ore milling operations in an operating plan approved September 7, 1979 (Doc. 279).

Although ore milling may have occurred at the site for short periods in May and June of 1980 and possibly in 1981 for a brief time, the evidence in the record indicates only a few hundred tons of ore were processed and no milling operations have been conducted since then (SUD p. 12, Part I, Volume 9). Further illustrating that the extensive use and occupancy of the site is not mining-related, the SUD report points out the Strattons abandoned their mill site claims and BLM declared those claims null and void in 1989 (SUD, p. 12, Part I, Volume 9). It was not until October 1992 that the Strattons staked new mill site claims (Doc. 429), although there was still no mining-related use, or new or amended Plans of Operations submitted or approved.

In approving the 1979 operating plan, the Forest Service stipulated that all buildings and materials not needed in the operation of the ore mill were to be removed from the site by August 20, 1979, and that the plan was to be bonded to completely rehabilitate the mill site and insure removal of all equipment and materials from the site if, for any reason, the operation was not put into production (Doc. 276, p. 7).

Based on this evidence, as documented in the SUD report and elsewhere in the record, the Forest Supervisor determined that your occupancy and uses of National Forest System lands on the Moonlight and Last Chance mill sites are not reasonably necessary or justified under the mining laws. Since your occupancy is not reasonably incident to mining or justified under the mining laws, she determined that your continued occupancy and use is not in compliance with the requirements in 36 CFR 228, Subpart A, to minimize adverse

environmental impacts to the surface resources. In addition, based upon evidence in the record, she determined that the milling operation that may once have occurred under the 1979 Plan of Operations is now in the abandonment stage and, therefore, you are not in compliance with the removal and reclamation provisions in the 1979 Forest Service environmental analysis report, the 1979 Plan of Operation, and the accompanying reclamation plan [Doc. 621]. The Forest Supervisor further noted that you are not in compliance with Forest Service regulations at 36 CFR 228.10, which requires removal of structures and equipment upon cessation of operations. The SUD report indicates you hold no current state permits with Montana Department of Environmental Quality to operate ore milling facility or conduct other mining-related activities at the site. This further supports the Forest Supervisor's conclusion that you are in the abandonment stage and are in noncompliance with the regulations and 1979 Plan of Operations.

I have reviewed in detail the administrative record on this issue and the Forest Supervisor's interpretation of the laws and regulations and the reasons for her decision that you are in noncompliance. I concur with her conclusions.

7. The District Ranger and Assistant Ranger publicly announced through numerous newspaper articles and briefing documents that Appellant was a trespasser on the public lands before any studies were conducted.

The record shows the District Ranger has had a longstanding concern about the Stratton's extensive occupancy of the site and questioned its compliance with regulations and law. District Ranger Godbolt's letter of November 19, 1991, (Doc. 394) informed the Strattons that they were occupying the National Forest without a special-use permit, and that the execution of a permit would give the family legal occupancy within federal regulations and Forest Plan objectives. The Forest Supervisor's discussion of this issue lists other instances where this issue was raised [Doc. 632].

As noted previously, your family had abandoned its mill site claims in 1989 and had not conducted any mining-related activity at the site since 1980 or 1981. It is understandable that, under these circumstances, the Ranger raised this issue in 1991 (Doc. 394). In fact, the Stratton family did not stake new mining claims at the site until 1992 (Doc. 429), after the Ranger's 1991 letter.

After reviewing the record, I conclude the Ranger's and Forest Supervisor's concern, that you had no authorization or basis in law for occupying the site, was justifiable, and should have helped place you on notice long ago that you needed to provide any information you had and to work with the District Ranger and Forest Supervisor to resolve the situation. The fact that the Forest Supervisor requested that a surface use determination report be completed indicates the care she was taking and the due process she was providing you before making a final decision on this issue and taking enforcement action.

Congressional briefing papers from the Beaverhead-Deerlodge National Forest, signed by Jefferson District Ranger Grant Godbolt and dated July 29, 1997, (Doc. 481) and September 12, 1997, (Doc. 512) both state that the Strattons are illegally occupying National Forest lands without approved permits. These briefing papers are public information and are often

quoted in the media. News stories published or aired by the media are derived from these Forest Service documents, but the Forest Service has no control over any editorial focus or emphasis used by the media.

Since these are public lands, the Forest Service is obligated to inform elected officials and the public, often through media contacts, about issues and uses of the National Forests. This is especially true when a case may lead to issuance of a formal notice of noncompliance or potential future enforcement action. Based on my review of the record on this issue, I find no inappropriate behavior by the District Ranger or Assistant Ranger.

8. The historic sign stating "Stratton Mill 7 Miles" was removed and replaced before any studies were conducted.

You objected to the decision to remove the Forest Service sign on Forest Road 668 "without study" that had "STRATTONS MILL" and other Fish Creek locations on it. This sign was damaged by a vehicle during the winter of 1996-1997 and was no longer serviceable [Doc. 626]. Since it needed to be replaced, the Jefferson District Ranger followed existing procedures outlined in Forest Service Handbook EM-7100-15, 2.7, Standards for Forest Service Signs and Posters (Doc. 543, p. 3). The Forest Service Handbook states, "use only those destination names that are significant and that are shown on Forest Service maps." The new sign has only the public destination sites that were on the current Forest Service map of the area. District Ranger Godbolt's letter to you dated November 19, 1997, (Doc. 543) clearly explained the situation. My review indicates that Forest Service used appropriate procedures to replace the sign.

9. Forest employee Dan Avery used the Surface Use Determination as a threat and insisted that Appellant's mother sign over her personal property while under severe pressure and duress by a group of Forest Service employees.

A Surface Use Determination examination, as explained previously, is appropriate and consistent with Forest Service policy regarding whether an existing use is reasonably incident to mining operations under the 1872 Mining Law. It is conducted only by Forest Service certified mineral examiners, who are experts in this type of analysis. Its purpose is to assist the authorized officer in addressing concerns she may have about the reasonableness of proposed or existing uses, activities or occupancy incident to mining operations conducted under current mining law. It also gives a mining claimant an opportunity to furnish information to support his position. The SUD process was explained to the Strattons prior to its initiation (Doc. 575). The Stratton's responsibilities based on the outcome of the SUD were explained in the Forest Supervisor's letter of March 24, 2000 [Doc. 605].

There is no evidence in the record, and you have provided no additional evidence, other than your statement in your appeal letter (Doc. 617), that any Forest Service person used threats or intimidation against the Strattons, or insisted that your mother sign over her personal property. My review of the record indicates the opposite, that in fact Forest employee Dan Avery and other Forest Service employees have conducted themselves in a professional manner with due concern for Mrs. Stratton's personal welfare and rights.

10. Pat Barringer declared that her group has never lost a land battle and considers the preservation of the Stratton mill to be one of her personal land battles.

There is no evidence in the record that Pat Barringer made any such statement. You have provided no evidence she made any such statement. Even if such a statement of personal views by a District employee had been made, it is not clear what bearing it might have on the central issue of your compliance with regulations and laws regarding occupancy and use of the National Forest. As discussed under Issue 1, above, my review of the record reveals no evidence of bias or inappropriate behavior by Forest Service employees regarding your case.

11. The land trade was officially proposed and had a predetermined outcome; the group conducting the land trade refused to follow Federal Land Trade procedures; and the public was not allowed to be involved even though thousands of public citizens sent letters and signed petitions supporting the land trade and the preservation of the Stratton mill.

Forest Supervisor Austin's letter of January 30, 1998, to Senator Max Baucus is a succinct discussion of the land exchange (Doc. 50, Part II, Volume 1). She points out that the decision had not been made; that the Strattons had received land exchange information contained in Forest Service manuals, handbooks and the Federal Register; that public opinion existed on both sides of the exchange issue; that the decision will be based on facts, not personal agendas; that decisions to enter into exchanges are not appealable; and that all exchange process reports used as a basis for the decision will be available to the Strattons.

Forest Supervisor Austin's March 30 1998, letter to you (Doc. 76, Part II, Volume 2) states that the time for public participation in a land exchange is after she determines if the exchange would be a sound resource management decision. She goes on to say, "In making this determination, which is discretionary on the part of the Forest Service and not subject to appeal, I will rely largely on an internal review by specialists and others on my staff who are familiar with these regulations etc. Public comment would be actively sought only if the Forest Service determines to move forward with an exchange."

The Beaverhead-Deerlodge Forest Supervisor Kaiser provided a detailed response to this issue in her January 30, 2001, letter addressing Allegation 5 [Doc. 632]. The letters cited above along with others in the record indicate that Supervisor Austin completed a thorough study of the land exchange before deciding not to proceed. While I understand that you object to the outcome of the land exchange determination, my review of the documents in the appeal record indicate that the land exchange proposal was processed appropriately, and all laws and regulations were followed in addressing your land exchange proposal.

12. Tom Heintz (Acting Forest Supervisor) stated that the Forest Service would not destroy the Stratton Mill, but the Forest Service was going to force Appellant to leave and if he took his personal property he would be destroying the Stratton mill and not the Forest Service. Appellant asserts that Mr. Heintz made this statement before any studies were conducted and that this statement shows that the Beaverhead-Deerlodge Forest Service thinks that they have found a loophole in the Historic Preservation laws.

There is no record that Acting Forest Supervisor Tom Heintz made the statements you allege. My review of the record and the Forest Supervisor's decision letter indicates the Forest Service is following all applicable historic preservation laws and procedures. The Forest Service has evaluated the Stratton Mill site for National Register significance under the National Historic Preservation Act, reached a consensus determination with the Montana State Historic Preservation Office (SHPO) on the overall eligibility of the site, including which structures and features at the Stratton Mill site do or do not contribute to the historic significance of the site, and is implementing the Section 106 process to determine mitigation needs at the site (Part III, Docs. 1, 4 and 5). The Forest Service will continue to consult with SHPO and, if necessary, will enter into and implement a Memorandum of Agreement with SHPO to mitigate any impact to the historic features of this site either by preserving or otherwise capturing the historic values of the site before removal.

13. Pat Barringer stated that she was going to make Appellant's home a rental cabin and later said that she would maybe take out the windows and let it rot, and made these statements before any studies were conducted.

Supervisor Kaiser addressed this allegation on page 6 of her response [Doc. 632]. There is no evidence in the record that Pat Barringer made any such statement. It appears there have been several discussions speculating on what could happen to the Stratton's buildings if the Forest Service acquired them. However, Ranger Godbolt noted in a January 2, 1992, memorandum that the Forest Service had no desire to acquire the Stratton's buildings to use them for rental cabins (Doc. 405). The record indicates the Forest Service has made no decisions on the final disposition of the Stratton buildings should it acquire them. In fact, Forest Supervisor Kaiser clearly indicates in her March 24, 2000, decision letter to you [Doc. 605] that she wants to discuss and reach agreement with you on the final status of those buildings. In my review of the record on this matter, I find no evidence of Forest Service employee misconduct or behavior prejudicial to your interests.

14. Grant Godbolt disclosed that the directive from the Region One office was to remove the Historic Stratton Mill.

My review of the record and of the Forest Supervisor's response to this allegation [Doc. 632, Allegation 8] found no evidence that either Ranger Godbolt or the Region One office ever issued a directive to remove the Stratton Mill. The record indicates the Forest Service has shown due concern about the historic value of the Stratton Mill and is trying to work with the Strattons to reach agreement on the final disposition of the mill and other buildings.

15. The Forest Service rejected Stratton's homestead application because the Forest Service thought it might want to build a sawmill there someday.

The reasons for the Forest Service's rejection of your family's homestead application were clearly stated in an April 29, 1913, letter (Doc. 11) to W. F. Stratton from Acting District Forester, D. T. Mason. In that letter, the Acting District Forester stated, "After due consideration I regret it is necessary to reject your application for the reason the land

involved comprising approximately ten acres is required in the local administration of National Forest Lands in the locality.” This was based upon the reports prepared on the homestead application (Docs. 8, 9 and 10). An April 19, 1913, memorandum from Forest Supervisor Stockdale (Doc. 10) stated, “...the entire area applied for is covered, and in this description it is shown that the area designated as the Fish Creek Ranger Station on the map is needed for public use as a mill site and headquarter camp, etc., for use in logging timber, and as a summer station.” Regardless of the historic reasons for the rejection of your family’s homestead application, your opportunity to seek review of that decision is long past.

16. The list of items to be removed listed in the decision is outdated and the time schedules for compliance with the decision are unrealistic. Appellant is not going to destroy 130 years of history and heritage in a few months.

The record indicates the Forest Service has repeatedly placed the Strattons on notice that equipment and facilities on what are now the Moonlight and Last Chance mill sites must be removed from the National Forest. The Forest Supervisor’s response to this issue in Allegation 11 [Doc. 632] lists over 25 letters and memos to your family requesting cleanup and debris removal. A February 3, 1998, letter (Doc. 561) from Forest Supervisor Austin to you references 40 entries from 1953 to 1992 discussing problems at the site, most of which relate to unnecessary items on the National Forest.

The record also demonstrates the Forest Supervisor’s due regard for preserving the history of the site. The Forest’s January 20, 2001, response [Doc. 632] to this issue documents the efforts taken to inform the Strattons and to involve them in preserving the history of the Stratton lumber mill. As part of this, the Forest Supervisor assigned Forest Service archeologists to complete a report entitled “STRATTON MILL (24SB61): A CULTURAL RESOURCE INVENTORY AND NATIONAL REGISTER EVALUATION” (Doc. 1, Part III) to help insure the historic values were recognized and documented. The Forest has consulted with the Advisory Council for Historic Preservation and the Montana State Historic Preservation Office.

My review of the record indicates the time schedule the Forest Supervisor stipulated in her March 24, 2000, [Doc. 605] decision for staged removal of your personal property and for resolution of the structures more than adequately provided procedures for the preservation of the history of the site, as well as provided you the necessary time for removal of those items and to comply with her decision.

17. Strattons are continuing reclamation of the site along with the operations as per their approved Plan of Operations.

You have provided no evidence to substantiate this assertion. I concur with the Forest Supervisor’s response [Doc. 632]. As documented in the SUD report, the mineral examiners saw no active mining or ore milling operations, nor any evidence of current reclamation activities.

18. The Beaverhead-Deerlodge Forest has refused to discuss, propose, outline, explore, plan or talk about any preservation of the Stratton mill. Appellant asserts that Forest employees Pat Barringer and Grant Godbolt want to destroy this rare piece of history.

As indicated in my response to Issue 16 (above), the record indicates there has been considerable work done by the Forest Service inventorying and evaluating the Stratton mill site to determine its historic significance. I found no evidence that the Forest Service has refused to work with the Strattons while determining the historic significance of the Stratton mill. To the contrary, the record shows the Beaverhead-Deerlodge National Forest has spent considerable time and energy researching, documenting and preparing a National Register assessment of the site. The Forest Supervisor acknowledged in her February 11, 1998, letter (Doc. 62, Part II) that the site has historic significance. The Forest is concerned about any adverse affects to the site, and has recognized the Stratton family concern that “historic preservation is a prime concern in the resolution of the occupancy issue” (Doc. 3, Part III, Volume 1).

The Forest Service has evaluated the Stratton Mill site for National Register significance under the National Historic Preservation Act, reached a consensus determination with the Montana State Historic Preservation Office on the overall eligibility of the site, including which structures and features at the Stratton Mill site do or do not contribute to the historic significance of the site, and is implementing the Section 106 to determine mitigation needs at the site.

19. Former Forest Supervisor Deborah Austin ordered Rangers escorted with Forest Service law enforcement armed with loaded weapons to the door of the Appellant’s mother’s house, placing his mother’s life in danger, and causing her to seek medical and physiological treatment. Appellant asserts that this occurred after the Forest Supervisor received a No Trespass Order from the appellant.

The Forest Supervisor has provided a detailed discussion of this allegation in her January 30, 2000, (sic) [2001] letter [Doc. 632], and I concur with her response. My review of the appeal record showed there is no evidence that Forest Service Law Enforcement officers ever escorted Rangers to the Stratton’s home, including after the Forest Supervisor received a “No Trespass Order” from the appellant. As the SUD report states, the mineral examiners conducted their work without any assistance from law enforcement officers and respected your Order that they not approach your mother’s residence on the National Forest.

IV. DECISION

After careful review and consideration of the appeal record, I find the Beaverhead-Deerlodge Forest Supervisor’s decision, on your noncompliance with federal mining laws and Forest Service Regulations, to be reasonable and in conformance with applicable laws, regulations and policy.

I concur with her decision that your occupancy and uses of National Forest System lands on the Moonlight and Last Chance mill sites are not reasonable, necessary or justified under the mining laws.

Second, since your occupancy is not reasonably incident to mining, nor justified under the mining laws, I also concur that your continued occupancy and use would not serve to minimize adverse environmental impacts to the surface resources as required by 36 CFR 228, Subpart A. I concur with the Forest Supervisor's decision that, unless a settlement to the contrary is reached in the near future, you should remove all materials, equipment and structures on the National Forest, which would end your residency on National Forest System lands.

Third, I concur that the milling operation that may have once occurred under the 1979 Plan of Operations is now in the abandonment stage. You are not in compliance with the removal and reclamation provisions in the 1979 Forest Service environmental analysis report, the 1979 Plan of Operation and accompanying reclamation plan, and the Forest Service regulations at 36 CFR 228.10.

The Forest Service has evaluated the Stratton Mill site for National Register significance under the National Historic Preservation Act. It has reached a consensus determination with the Montana State Historic Preservation Office on the overall eligibility of the site, including which structures and features at the Stratton Mill site do or do not contribute to the historic significance of the site. As to structures and features that do contribute to the historic significance of the site, the Forest Service will continue to follow the Section 106 process identified under the National Historic Preservation Act, including consultation with the State Historic Preservation Officer about mitigation requirements for historic properties. As to structures and features that do not contribute to the historic significance of the site, it is time for you to remove them, consistent with the 1979 operation plan and emphasized in the Forest Supervisor's letter of March 24, 2000.

The following is a revised schedule to allow you additional time to come into compliance with federal law, Forest Service regulations, and the reclamation provisions of the 1979 operation plan.

1. By October 15, 2001, you are to remove from the National Forest the items as listed "A through W" on page 3 of the March 24, 2000, decision letter [Doc. 605]. In addition, you are to remove any additional, non-historic items or equipment that have been added since March of 2000.
2. By October 31, 2001, your family can enter into a settlement agreement with the Forest Service, through Forest Supervisor Janette Kaiser, on the future ownership of all remaining materials, equipment and structures on the National Forest that we have not identified above for removal in Item 1, above.
3. In the event that you and your family have not entered into a settlement agreement with the Forest Service by October 31, 2001, you are to remove all remaining materials, equipment and structures on the National Forest by June 30, 2002, except those items that have been identified as contributing to the historic significance of the site in the Cultural Resource Inventory and National Register Evaluation of the Stratton Mill (Doc. 3, Part III, Volume 1). Also by June 30, 2002, you and your family are to cease residential use of your structures on the National Forest.

Your request for relief is denied.

Former Regional Forester Bosworth (Doc. 578), and Forest Supervisors Austin [Doc. 586] and Kaiser [Doc. 632] have all expressed concern for your family's welfare. I also sympathize with your family's ties to this piece of public land and desire to preserve its history. I strongly urge you to consider negotiating a settlement with Forest Supervisor Kaiser, under Item 2, above. I assure you that the Forest Service will be as reasonable as the law allows under these circumstances.

This is the final determination of the Department of Agriculture, unless the Chief of the Forest Service, on his own initiative, elects to review the decision within 15 days of receipt [36 CFR 251.87(e) and 251.100].

Sincerely,

/s/ Gary A. Morrison
GARY A. MORRISON
Reviewing Officer
Director of Recreation, Minerals,
Lands, Heritage and Wilderness