



File Code: 1570 (215)
#99-01-00-0072

Date: December 17, 1998

Sara Jane Johnson
Native Ecosystems Council
P.O. Box 125
Willow Creek, MT 59760

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear Ms. Johnson:

This is my decision on disposition of the appeal you filed on behalf of Native Ecosystems Council, Concerned Citizens of Pony, and Montana Environmental Information Center protesting the Nicholson Mine Decision Notice signed by the Jefferson District Ranger (Beaverhead-Deerlodge National Forests).

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 District Ranger'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 District Ranger's November 30, 1998, 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 Decision Notice (DN), Environmental Assessment (EA) 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 District Ranger, I agree with the Appeal Reviewing Officer's analysis and conclusions in regard to your appeal objections.

After careful consideration of the above factors, I affirm the District Ranger's decision. 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)