



File Code: 1570/2230

Date: July 19, 2000

Mr. Robert C. Smith
Cavan & Smith, Attorneys at Law
300 North 25th Street, Penthouse Suite
P.O. Box 1297
Billings, MT 59103

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Dear Mr. Smith:

I have received your Notice of Appeal from District Ranger's Decision dated July 3. In a letter to Dan and Les Schwend dated May 19, District Ranger Rand Herzberg removed them from preferred applicant status. District Ranger Herzberg's decision is not subject to administrative appeal procedures relating to occupancy and use of National Forest System Lands found at Title 36 of the Code of Federal Regulations (CFR) Part 251, Subpart C, specifically:

§ 251.86 Parties.

Only the following may participate in the appeal process provided under this subpart:

- (a) An applicant who, in response to a prospectus or written solicitation or other notice by the Forest Service, files a formal written request for a written authorization to occupy and use National Forest System land covered under § 251.82 of this subpart and
 - (1) was denied the authorization, or
 - (2) was offered an authorization subject to terms and conditions that the applicant finds unreasonable or impracticable.
- (b) The signatory(ies) or holder(s) of a written authorization to occupy and use National Forest System land covered under § 251.82 of this subpart who seeks relief from a written decision related to that authorization.

The Forest Service has not prepared any kind of prospectus, written solicitation or other notice to authorize anyone the use of the Sage Creek allotment. Therefore, I find that Dan and Les Schwend were not applicants responding to a prospectus, written solicitation or other notice by the Forest Service to occupy and use National Forest System land.

I find that Dan and Les Schwend are not the signatories or holders of a written authorization to occupy and use National Forest System lands covered under § 251.82 of this subpart. Therefore, they cannot seek relief from the District Ranger's decision pursuant to this subpart (36 CFR 251 Subpart C).

For these reasons I am dismissing their appeal and closing the record without a decision on the merits because they were not eligible to appeal the District Ranger's decision under this subpart (36 CFR 251 Subpart C)(§ 251.92 Dismissal).



This is the final determination of the Department of Agriculture, unless the Regional Forester, on his initiative, elects to review the decision within 15 days of his receipt of the first level appeal decision (36 CFR 251.87 and 251.100).

Sincerely,

//s// *Nancy T. Curriden*

NANCY T. CURRIDEN

Forest Supervisor

Enclosures