



File Code: 1570-1  
#08-04-00-0054 A-215  
Date: September 5, 2008

Craig Smay  
174 East South Temple  
Salt Lake City, UT 84111

CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED  
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Dear Mr. Smay:

I received the July 15, 2008 appeal you filed on behalf of Ashley Creek Properties, LLC, Ashley Creek Phosphate Company and John D. Archer regarding the decision by Caribou-Targhee Forest Supervisor Larry Timchak set forth in the Record of Decision (ROD) and Final Environmental Impact Statement (FEIS) for the Smoky Canyon Mine Panels F & G Project.

Your appeal claims that the Environmental Impact Statement (EIS) for the Forest Service (FS) decision to authorize off-lease roads and utilities for the Smoky Canyon Mine violates the National Environmental Policy Act (NEPA) by failing to consider all reasonable alternatives as required under 40 CFR 1502.14. Specifically, the appeal claims that the EIS should have considered the alternative of mining phosphate on property in Utah instead of allowing development of a phosphate mine at Smoky Canyon.

The FS decision which is the subject of this appeal was confined to authorization of the use of National Forest System (NFS) land outside of phosphate lease boundaries for access and haul roads, power lines, and temporary topsoil stockpiles. Under the Mineral Leasing Act (MLA), 30 U.S.C. 211, the Secretary of the Interior is authorized to lease phosphate deposits of the United States and lands containing phosphate deposits, including associated and related minerals, when the Secretary determines the public interest will be served. The Secretary is also authorized to establish terms and conditions for such leases. 30 U.S.C. 211(a). Accordingly, leases for phosphate on NFS lands are issued and modified by the Secretary of the Interior, and mining operations within lease boundaries are administered by the Secretary of the Interior in accordance with 43 CFR Part 3590.

Under the Secretary's regulations, the Department of the Interior (DOI) is required only to consult with the FS when issuing or modifying a phosphate lease, or approving operations on a phosphate lease located on NFS land. 43 CFR 3503.20, 3590.2(h). While the FS cooperates with DOI in evaluating the potential effects of leasing and on-lease operations on NFS land and resources through consultation, the FS makes no decisions regarding leasing, lease modification, or authorization of on-lease operations that have binding legal effect. The only related decisions of the FS that have legal effect concern the authorization of the use of NFS land outside of lease boundaries that are associated with on-lease operations.



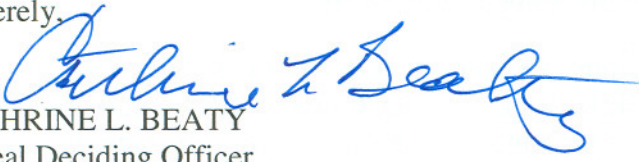
Your request for relief concerns the decisions of DOI to modify leases and authorize mine development on-lease, and the environmental analysis supporting those decisions. You assert that alternative locations for leasing and mining operations should have been considered. The requested relief cannot be granted by the FS under the laws and regulations governing phosphate leasing and mining operations on phosphate leases on federal lands because the FS does not control the issuance or modification of phosphate leases, or regulate on-lease mining operations. Accordingly, your appeal is subject to dismissal under 36 CFR 215.16(a)(3).

In addition, similar arguments were addressed in *Ashley Creek Phosphate Co., v. Norton*, 420 F.3d 934 (9<sup>th</sup> Cir. 2005). The court determined that appellants lacked standing to bring this challenge under NEPA because their interests were purely economic.

For the foregoing reasons, I am dismissing your appeal without review.

This constitutes the final administrative determination of the United States Department of Agriculture under 36 CFR 215.18 (c).

Sincerely,

  
CATHRINE L. BEATY  
Appeal Deciding Officer

cc: Larry Timchak