

PDR

J. P. ...
WM-29



UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
P.O. Box 2417
Washington, D.C. 20013

1570 (NFS-295)
2810

Mr. Robert J. Golten, Counsel
National Wildlife Federation
Natural Resource Clinic
University of Colorado School of Law
Boulder, Colorado 80309



Dear Mr. Golten:

Here is our decision on your appeal of Regional Forester
Craig Rupp's decision to affirm Forest Supervisor Jimmy Wilkins'
approval of the Operating Plan of the Homestake Mining Company
"Pitch" project. The area of concern is in the Gunnison National
Forest, Colorado.

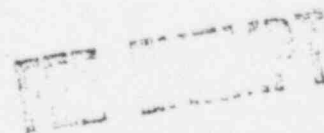
Copies of this decision are being sent to the intervenor and all
other parties of interest. In accordance with Title 36, Code of
Federal Regulations, Part 211.19(j)(2), a copy has been sent to the
Secretary for his review.

Sincerely,

Walter E. Schluumpf

R. MAX PETERSON
Chief

Enclosures



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Chief

Enclosures

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R-2 (3) w/enclosures

U.S. DEPARTMENT OF AGRICULTURE
BEFORE THE CHIEF, FOREST SERVICE

In re: Operating Plan Approval of the Homestake Mining
Company "Pitch" Project, Gunnison National Forest,
Colorado

National Wildlife Federation, et al.

Appellants

Homestake Mining Company

Intervenors

DECISION OF THE CHIEF OF THE FOREST SERVICE

I. Background Information

On November 16, 1979, appellants filed a request for administrative review pursuant to 36 C.F.R. 211.19 of Regional Forester's decision of October 16, 1979, which upheld Forest Supervisor Jimmy R. Wilkins' decision to approve an Operating Plan for the Homestake Mining Company (Homestake) "Pitch" project.

The appellants contend that approval of the Operating Plan was improper because the Final Environmental Impact Statement (FEIS) approved in conjunction with the decision failed to properly identify and discuss alternatives, and adequately discuss impacts of selected alternatives. Additionally, appellants urge that the FEIS failed to determine mitigation measures for: radon emission from the spoil dumps, disruption to area wildlife by the open pit, effects on surrounding lands by the lake which may form in the north pit after mining, effect of the pit on surface water flow and resultant disruption to plants and wildlife, and impacts on scenic values. According to appellants, failure to determine costs of the mitigation measures resulted in an inaccurate determination of whether Homestake has a "valuable" mineral deposit.

Concisely, the remedial action appellants seek is: (1) rescission of the Plan of Operation, (2) revision of the FEIS, and (3) recommendation that legal action be instituted to cancel patents issued to Homestake.

II. Discussion

Appellants urge that the Forest Service request the Department of the Interior to take action to cancel patents located in the "Pitch" project which were issued to Homestake. The basis for the recommendation would be failure to properly identify reclamation and environmental costs in the valuable deposit determination. The United States has no jurisdiction over patented lands. Any challenge to patents must be by judicial action instituted by the Attorney General. Absent fraud or some other very unusual circumstance, the Forest Service will not recommend that the patents be cancelled. Appellants' argument regarding the erroneous issuance of the patent are not persuasive. In contrast to the basis for cancellation offered by appellants, we find that the patents were issued in accordance with the long-standing practices and procedures relating to the patenting process. The Regional Forester's Responsive Statement fully addresses this issue and further elaboration is unnecessary.

We believe that the Forest Service approved operating plan applies only to those operations which occur or will occur on National Forest System lands. The Forest Service has no jurisdiction within the boundaries of the patented claims because they are now private lands. If future activities in the pit (private land) illegally impact adjacent National Forest System lands, the Forest Service will then take action to stop them. The operating plan meets all requirements for use of the National Forest System lands. Forest Supervisor approval of the plan was proper.

Appellants' assertion that extreme brevity has precluded adequate identification and discussion in the FEIS is not sufficient to require its revision. The review of the official record of this appeal indicates that NEPA requirements have been met. We find that the FEIS properly identifies and discusses the alternatives as well as the impacts of the selected alternatives.

The Forest Service expended a great deal of time and effort in determining that the mining activity would be conducted in a manner necessary to protect the public lands. Such efforts, however, were not limited to the Forest Service. Preparation of the FEIS was a joint participation by the Forest Service, U.S. Nuclear Regulatory Commission, and the State of Colorado. During the environmental analysis of the "Pitch" project, the Forest Service solicited and considered comments from other Federal agencies, agencies of the

State of Colorado, and the public. Through this process and other measures taken in approving the operation plan, the Forest Service contemplated total backfilling as an alternative, and determined it was not suitable or necessary for environmental protection. To the contrary, evaluation of the reclamation proposal revealed that partial backfilling of the open pit with overburden from adjacent mining and in a concurrent operation is appropriate.

We note that the patents were issued on the Homestake claims after the publishing of the draft EIS and prior to completion of the FEIS. This is shown by a short statement in the front of the FEIS. Since the environmental effects were assumed to be the same, regardless of ownership, no changes were made in the EIS to reflect the patent issuance.

However, it is not environmentally significant that the Forest Service no longer has jurisdiction on the private land, because we find that the State has the authority and capacity to deal with matters within the pit.

Even so, if backfilling were required in the final pit opening, there would then be a prolonged environmental impact on National Forest System lands since the waste dumps would be disturbed after a long period of reclamation and vegetation growth.

Regardless of how the open pit mining is conducted, there will be waste rock dumps on the National Forest System lands. There is no way to backfill concurrent with mining without making some of the in-place ore impossible to mine. Therefore, there would be waste dumps, in any event, which would be disturbed.

Removing the waste material for backfilling could cause the following:

1. Up to 20 years growth of vegetation would have to be removed from the dumps.
2. Complete reclamation would have to be redone on areas where waste material would be removed for backfill.
3. The movement of vehicles and machinery into the previously reclaimed areas could disturb the wildlife.
4. Wildlife which would have become accustomed to the revegetated waste dumps would be denied forage for a considerable length of time until the area where material was removed could be reclaimed.
5. Erosion control would be required on National Forest System lands after the mining ceased, because of the secondary removal of waste soil and rock.

All matters raised by appellants were considered; to the extent they have not been addressed herein, we believe they were sufficiently addressed by the Regional Forester in his Responsive Statement.

III. Decision

Responses to appellants' contentions as shown in the Responsive Statements of the Regional Forester, the Forest Supervisor, and the intervenor, were convincingly presented in the official record.

We find that the Regional Forester's affirmation of the Forest Supervisor's April 27, 1979, approval of Homestake's Plan of Operations was correct.

The October 16, 1979, decision of the Regional Forester is affirmed.

8/12/80
Date

Thomas C. Helms
for Chief, Forest Service