



United States
Department of
Agriculture

Apache-Sitgreaves
National Forests

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File Code: 1570-1/2810

Date: August 12, 2004

Lee Chartrand
Sierra Stone Claimant
Southwestern Stone Co.
P.O. Box 454
Taylor, AZ 85939

RE: Appeal # 04-03-01-0001-A251, Sandstone Mining Operations, Lakeside Ranger District, Apache-Sitgreaves National Forests.

Dear Mr. Chartrand:

Pursuant to 36 CFR 251, Subpart C, this letter is my decision on your appeal, filed May 2, 2004. You appealed District Ranger Edward W. Collins' Decision Notice and Finding of No Significant Impact for Sandstone Mining Operations on the Lakeside and Black Mesa Ranger Districts. The Decision provides for two active operating or exploratory areas, each no larger than five (5) acres in size, for each operator in the identified project area.

BACKGROUND

On January 1, 2004, Lakeside District Ranger Collins issued a decision to implement alternative #2 for the Sandstone Mining Operations. The District Ranger is identified as the Responsible Official whose decision is subject to administrative review under 36 CFR 251 appeal regulations.

Pursuant to 36 CFR 251.93, an attempt was made to seek informal resolution of the appeal. A meeting between you and District Ranger Collins that was also attended by two other representatives of your business and Lakeside Ranger District and Forest Supervisor's Office employees was held at your Taylor store on May 20, 2004, in which it was agreed you would respond in writing to District Ranger Collins with your suggestions for resolution of the two issues you believed would resolve your appeal. A 30 day extension was granted on June 2, 2004, to allow you additional time to provide your suggestions. The record reflects that District Ranger Collins has not received your suggestions and therefore, informal resolution of the appeal was not reached.

On June 30, 2004, I received a Responsive Statement from District Ranger Collins addressing your appeal. You were sent a copy of the letter and according to regulations given 20 days in which to file a written reply with the Reviewing Officer. In the letter Mr. Collins summarized the results of his May 20, 2004, meeting with you and your associates. You did not request a stay of implementation of the decision, and did not submit additional information after the responsive statement was provided to you. On July 23, 2004, I sent you a letter notifying you that the 20 day time period for receipt of your reply had passed and that the appeal record period closed on July 21, 2004.



My review of this appeal was conducted in accordance with 36 CFR 251.99(c). I have thoroughly reviewed the appeal record, federal statutes, policies, and operational procedures set out in the directives system of the USDA Forest Service, including the recommendations of the Appeal Reviewing Officer. The appeal points presented in your May 2, 2004, appeal were reviewed, as well as the District Ranger's decision and June 30, 2004, Responsive Statement. My review decision incorporates the appeal record.

POINTS OF APPEAL

My review will focus on your appeal points in your May 2, 2004, letter.

Appeal Point #1:

“We request the appeal officer change the limits and restrictions proposed in the E.A. Report for sandstone mining on the Sierra Stone Claims from Alternative 2 to Alternative 1 for the following reasons:

“1) To be limited in the proposed action in Alternative 2 would severely hinder our ability to explore the quality and quantity of stone needed for our future business planning.”

Contention: You contend that the proposed action would prevent you from exploring your claims for the stone that is needed for your business.

Response: You still have all of the rights you have always had under law and policy. You are entitled to explore for stone under the 1872 Mining Law, as amended. Your operations fall under the 36 Code of Federal Regulations (CFR) 228, Subpart A for Locatable Minerals for surface protection. Environmental analysis is required with each new significant surface disturbance. There is no categorical exclusion from environmental analysis under National Environmental Policy Act (NEPA) for mining operations. This Environmental Assessment (EA) analyzed 3 areas and 15 acres that were identified by you for the purpose of conducting the necessary environmental analysis for predicted future operations over the next 5 years in one document. If you were to require areas in addition to the 3 you provided for the analysis they would be addressed as described in Alternative 1.

Appeal Point #2:

“2) Southwestern Stone plans to increase the quarrying, manufacturing and processing of the numerous products now being produced with new items, some of which are just now being developed. These new products are important to our growth.”

Contention: You contend that the proposed action would prevent you from increasing your production in order to provide new products which are being developed.

Response: The purpose of the decision was to expedite the approval time for new operating areas and to consolidate the environmental analysis for proposed operations over the next five

years. If anything, the decision shortens the response time necessary for approval of new operating areas which would enable you to respond more quickly to increases in production.

Appeal Point #3:

“3) We have new machinery arriving within 90 days which will double or triple our present production abilities. The order for this machinery was placed long before the restrictions in the E.A. Report were known to us.”

Contention: You contend that the proposed action would prevent you from increasing your production.

Response: The purpose of the decision was to expedite the approval time for new operating areas and to consolidate the environmental analysis for proposed operations over the next five years. The decision shortens the response time necessary for approval of new operating areas which would enable you to respond more quickly to increases in production. As stated in the response to Appeal Point #1 above, if you require areas in addition to those you provided for the analysis they would be addressed as described in Alternative 1, Current Management.

Appeal Point #4:

“4) Our ability to produce in quality and quantity is crucial to our business growth. The limits and restrictions that would be imposed on us in Alternative 2 causes serious uncertainty and must not exist for future business development.”

Contention: You contend that the proposed action would prevent you from increasing your production.

Response: As stated in the response to Appeal Point #1 above, if you require areas in addition to those you provided for the analysis they would be addressed as described in Alternative 1, Current Management.

Appeal Point #5:

“5) Marketing for our business in the past has always been by word of mouth! We have never advertised this beautiful stone in any magazines, catalogs or other marketing publications to avoid being overwhelmed with orders we were not capable of filling. With the new machinery now on order, our increased production was assured and our future plans included limited advertising to generate increased volume.”

Contention: You contend that the proposed action would prevent you from increasing your production that would be generated by new machinery and limited advertising.

Response: As stated in the response to Appeal Point #1 above, if you require areas in addition to those you provided for the analysis they would be addressed as described in Alternative 1, Current Management.

Appeal Point #6:

“6) Our Sierra Stone claims remain under the claim-patent mining laws. The patent laws require each claim group to have mineral showing and at least five-hundred dollars worth of improvements. Our claims have three claim groups, each connected to the other by section corners (note: S.W. corner and S.E. corner Section 18). To be limited to only two operating areas under Alternative 2 would seriously jeopardize our future needs.”

Contention: You contend that the proposed action would restrict where your ability to meet the requirements of claim-patent mining laws.

Response:

The EA analyzed one area in each of your three claim groups. If you believe you need to have three separate active operating areas you can submit your request for the third area in accordance with CFR 228 for Locatable Minerals, as you have previously done under the current management. A separate environmental analysis will need to be completed for the third area.

APPEAL DECISION

After a detailed review of the records and the Appeal Reviewing Officer’s recommendations, I affirm the Responsible Official’s decision on the Sandstone Mining Operations.

My decision is subject to further administrative review under 36 CFR 251. Any appeal of this decision to the second level must be fully consistent with 36 CFR 251.90, content of notice of appeal. Pursuant to 36 CFR 251.87(c)(2), “the appeal for a second level of review is filed with the Regional Forester within 15 days of the first level appeal decision. Upon receiving such a request, the Regional Forester shall promptly request the first level file from the Forest Supervisor. The review shall be conducted on the existing record and no additional information will be added to the file.”

Appeals must be filed with:

Regional Forester
Southwestern Region
333 Broadway SE
Albuquerque, NM 87102

Sincerely,

/s/ Kate Klein for
ELAINE J. ZIEROTH
Forest Supervisor

cc: Christina Gonzalez, R3 Appeals and Litigation, Lakeside DR, Joe Sitarzewski, Jon Schendel