

Decision Memo
Berry Energy, Inc. Gas Well B-800 Project

USDA Forest Service
Cheat-Potomac Ranger District, Monongahela National Forest
Tucker County, West Virginia

I. Decision to be Implemented

I have decided to approve the locations of the B-800 gas well site and access road as shown in Berry Energy, Inc.'s (Berry Energy's) plans.

Berry Energy's plans for the B-800 gas well and access road locations are shown in the approved State of West Virginia well work permit application (API Well No: 47-093-0107) a copy of which is available for review at the Monongahela National Forest Supervisor's Office in Elkins, West Virginia. Figure 1 (attached at the end of this document) is a map showing the planned well site and access road locations on Monongahela National Forest System land. The project area is located south of Parsons, West Virginia in the McGowen Mountain area.

I have decided to approve the locations of the B-800 gas well site and access road as proposed by Berry Energy without requiring additional water quality protection mitigating measures because Berry Energy's proposed locations and plans have incorporated measures, or design features, which adequately prevent adverse impacts to National Forest waters.

A. Description of the Proposed Activities
Gas Well Site and Access Road

About 3.5 acres will be used to create the B-800 well drilling site (2.5 acres) and construct the approximately 1100-foot long access road (1 acre). Trees will be cleared from this acreage, followed by the earthwork to construct a 15-foot wide road, a level drill pad of approximately 100 feet by 200 feet, and a pit 80 feet by 120 feet by 8-11 feet deep. Figure 2 (attached at the end of this document) depicts the proposed well site and access road cleared area. The drilling pit's purpose is to contain rock cuttings and drilling residues. It will be lined with plastic and installed and maintained so as to prevent seepage, leakage, and overflows. Land application of drilling pit liquids that meet West Virginia discharge standards is proposed at the location shown in Figure 2.

Upon completion of well drilling, testing, any well stimulation and, if not productive, plugging, Berry Energy will restore the disturbed area by backfilling the pit area, returning the land to near-original contour, and seeding with Forest Service recommended species, liming, fertilizing and mulching to establish herbaceous vegetative cover.

Berry Energy's West Virginia well work permit has been approved indicating compliance with State gas well permitting requirements. West Virginia Department of Environmental Protection, Office of Oil and Gas inspectors will enforce State oil and gas regulations during operations.

Berry Energy has the right to access their planned gas operations as specified in the mineral reservation. With this decision, I will issue a permit to Berry Energy for commercial use of Forest System Road 701 over which equipment needed to support gas drilling and development will be transported. Issuance of this permit is an administrative action that identifies Berry Energy's contribution to the maintenance of Forest System Roads they will be using.

Berry Energy plans to drill this well in late 2007 or in 2008 at the first opportunity that a drilling rig becomes available. Tree clearing for this project will occur after November 15 and before March 31. Construction of the access road and well site, and well drilling is expected to follow soon after the trees are removed.

B. Purpose of Decision

As the Forest Supervisor with authority for administering mineral reservations on Monongahela National Forest System land, I received a plan from Berry Energy to drill a gas well on Monongahela National Forest System land overlying privately owned mineral rights in which Berry Energy holds an oil and gas lease. While it is probable a pipeline will need to be constructed if this exploratory well proves productive, Berry Energy has not determined the planned gas pipeline location. A separate analysis of the proposed gas pipeline will be completed if Berry Energy submits a gas pipeline plan of operations to the Forest Service.

National Forest System land on which the gas well and access road are planned is underlain by mineral rights that were reserved by the seller when the United States acquired the land in 1915. This means that these mineral rights are privately owned, and the mineral owner has a right to explore for and develop their minerals. The deed for this land purchase in 1915 identifies the terms of the mineral reservation that the seller and all subsequent mineral owners and their lessees are required to comply with whenever exercising their rights to explore for or develop minerals.

The purpose and need for the federal action is identified by and limited to the terms of the mineral reservation. Although there are 10 terms in the mineral reservation (Department of Agriculture, General Rules and Regulations for the Mining and Removal of Minerals of 1911), the mineral reservation terms pertinent to the subject federal action require the Forest Service to:

- 1) approve the locations of structures or improvements, such as roads or bridges on National Forest System land, needed to carry out the operation; and
- 2) ensure that operations prevent the obstruction, pollution, or deterioration of National Forest streams, lakes, ponds or springs, and the escape of harmful or deleterious material or substances to National Forest System land from the operations.

The remaining mineral reservation terms are either not pertinent to the Berry Energy proposal, such as those that apply to the conduct of underground mining, or provide no discretion as to how to meet them, such as paying market value for the timber cleared to carry out the mineral operation.

In order to respond to Berry Energy's gas well operating plan, I, as Forest Supervisor, needed to review and approve the locations of the proposed Berry Energy gas well site and access

road as shown in Berry Energy's plans or not, and to determine what, if any, conditions or mitigating measures Berry Energy must implement to prevent adverse impacts to water quality from their planned gas well site and access road.

II. Reasons for Categorically Excluding the Decision

Decisions may be categorically excluded from documentation in an environmental impact statement or an environmental assessment when they are within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3, or one of the categories identified by the Chief of the Forest Service in Forest Service Handbook (FSH) 1909.15 sections 31.1b or 31.2, and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment.

I have concluded that this decision is appropriately categorically excluded from documentation in an environmental impact statement or environmental assessment as the proposed land use is a routine activity within a category of exclusion, and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment. My conclusion is based on information presented in this document and the entirety of the Record.

A. Category of Exclusion

The decision fits within the category of exclusion 31.2(3): "Approval, modification, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land." Although issuance of a special use permit is not required by the terms of the mineral reservation, Berry Energy, Inc.'s exercise of private mineral rights requires Forest Service approval of the location of proposed improvements on National Forest System land. As such, my approval of the location included in Berry Energy's proposal is the same as approving the use of National Forest System land as described in category 31.2(3), absent issuing a special use permit.

Berry Energy, Inc.'s well site and access road combined use approximately 3.5 acres (2.5 acres for the well site and 1 acre for the access road) of National Forest System land. Corridor cleared for the road is less than 1 mile in length.

B. Relationship to Extraordinary Circumstances

1. Threatened and Endangered Species or Their Critical Habitat

The Endangered Species Act requires that federal activities do not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species' designated critical habitat. In accordance with Section 7(c) of this Act, a list of the listed and proposed, threatened or endangered species that may be present in the project area was obtained from the U.S. Fish and Wildlife Service.

A Biological Evaluation (BE) determined that Berry Energy's proposed activities: 1) will have no effect on Cheat Mountain salamander (*Plethodon nettingi*), West Virginia northern flying squirrel (*Glaucomys sabrinus fuscus*), shale barren rock cress (*Arabis serotina*), and Virginia spirea (*spiraea virginiana*), and 2) may affect, but are not likely to adversely affect running buffalo clover (*trifolium stoloniferum*), small whorled

pogonia (*Isotria medeoloides*), Indiana bat (*Myotis sodalis*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*).

A copy of this BE was sent to the U.S. Fish and Wildlife Service as my authority in making this decision does not extend to imposing protection measures for threatened or endangered species. Since I have advised the U.S. Fish and Wildlife Service of the findings of this BE, my decision is consistent with the Endangered Species Act, and results in no significant effects to threatened or endangered species.

2. Floodplains, Wetlands, or Municipal Watersheds

Floodplains: Executive Order 11988 is to avoid adverse impacts associated with the occupancy and modification of floodplains. Floodplains are defined by this order as, "...the lowland and relatively flat areas adjoining inland and coastal waters, including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent [100-year recurrence] or greater chance of flooding in any one year." The project is not located in or near floodplains. This has been validated by map and site-review. This decision will not affect floodplains.

Wetlands: Executive Order 11990 is to avoid adverse impacts associated with destruction or modification of wetlands. Wetlands are defined by this order as, "...areas inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds." The project is not located in or near wetlands. This has been validated by map and site-review. This decision will not affect wetlands.

Municipal Watersheds: Municipal watersheds are managed under multiple use prescriptions in land and resource management plans. The Elklick Run watershed, in which Berry Energy's operation will occur, was formerly a municipal watershed for Parsons, West Virginia. Parsons no longer uses Elklick Run for a water supply, and it is no longer a municipal watershed. Therefore, this decision will not affect any municipal watersheds.

3. Congressionally Designated Areas

This project is not in nor does this decision affect any Wilderness Study Areas, Wild and Scenic Rivers, or National Recreation Areas. Increases in the amount of noise audible within a small portion of the Otter Creek Wilderness may occur associated with the operation, such as traffic and motors associated with Berry Energy's operation. Most of the added noise will occur during the low recreation use winter months. This decision does not affect any other Wilderness areas. Therefore, this decision will not result in significant effects to Wilderness areas.

4. Inventoried Roadless Areas

There are no inventoried roadless areas (RARE II or Forest Plan) in the decision area. This decision will not affect inventoried roadless areas.

5. Research Natural Areas

There are no Research Natural Areas within the project area and this decision will not affect any Research Natural Areas or candidate research natural areas.

6. American Indian and Alaska native religious or cultural sites

The Federal government has trust responsibilities to Tribes under a government-to-government relationship to ensure that the Tribes' reserved rights are protected. No tribal concerns were identified for this project. Therefore, this decision will not affect American Indian and Alaska native religious or cultural sites.

7. Archaeological sites or historic properties or areas

Consultation requirements with the West Virginia Division of Culture and History have been fulfilled. A determination of "no effect" was made and this decision will not affect archaeological sites, or historic properties or areas.

The categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects which may significantly affect the environment. I realize it is probable a pipeline will need to be constructed if this exploratory well proves productive, and that a separate analysis of the proposed pipeline location will need to be completed if Berry Energy submits a gas pipeline plan of operation.

Caves and Karst Resources

I considered the project's potential to affect caves and karst resources, and interconnected surface water and groundwater resources since the B-800 well site and access road are located on limestone rock units that present karst topography. I concluded that the proposed B-800 operation incorporates measures that provide for protection as explained herein.

Hydrogeologic Setting Raised Concerns

The proposed Berry Energy B-800 well site and access road are located in karst. Surficial bedrock geology is the Greenbrier Group, which includes cavernous limestone. Karst features, including closed bottom sinkholes and water disappearing into the subsurface within intermittent and ephemeral stream channels, are present within the B-800 well site and access road location. Groundwater emerges at two major springs which are located approximately 3300 feet northeast of and at a lower elevation than the B-800 well site location. The nearest underground passage ways within the Big Springs (Blowing) Cave are located approximately 2000 feet away from, and also at a lower elevation than, the B-800 location. A hydrological connection is indicated between the lower spring (also the Big Springs (Blowing) Cave stream), and an open bottom sink that takes water (insurgence) during heavy rainfall. The open-bottom sink is located approximately 600 feet away, and down hill from the planned B-800 well site (See Project File, Visual Observation of Turbidity Event, 2003).

This hydrogeologic setting generated the following concerns about the proposed project relating to degradation of water quality within Big Springs (Blowing) Cave, at either or both springs, and the streams fed by the two springs:

- Earth disturbance associated with well site and access road construction presents the risk of erosion and sediment delivery to groundwater through sinkholes and run-off to surface streams.

- Well drilling fluids may escape from the well bore during drilling and enter groundwater through voids or enlarged fractures in the limestone.
- Drilling pit contents could release drilling residues, such as traces of oil, drilling muds, salts, and sediment created by ground up rock as a result of leaks from tears and the eventual decay of the pit liner.

In addition, there is was concern expressed about the well drilling's possible effect on the amount of water that discharges from the upper of the two springs. In particular, long term or permanent loss of the upper spring flow was of concern should the well bore puncture the water perching rock layer responsible for the resurgence of water at the upper spring.

These concerns were examined as they relate to on-the-ground geologic and hydrologic conditions and the specifics of the State-approved B-800 well work permit. The findings are described below.

Earth Disturbance and Sediment

Measures which are designed to trap and retain sediment generated by the well site and access road construction and use have been incorporated into the State of West Virginia-approved well work permit. The standard measures include practices shown in the West Virginia Erosion and Sediment Control Field Manual (West Virginia Division of Environmental Protection, Office of Oil and Gas, Charleston, WV), such as controlling run-off and reducing the amount of contact run-off has with exposed and unprotected soil through the use of ditches, culverts spaced appropriately for the road grade, and gravel armoring. The proposal includes installation of silt fence and placement of tree tops cleared from the well site to reduce sediment carried away from the well site, followed by re-establishing vegetation on disturbed or exposed soil.

The closed-bottom sink holes on the well site and along the access road, and sinking ephemeral and intermittent surface streams affected by access road represent potential entry points for sediment into the subsurface which, in turn, may be transported through enlarged solution fractures to two major limestone springs, and into Big Springs (Blowing) Cave near Big Springs Gap. Because of the potential for earth disturbance from well site and road construction to deliver sediment to springs and area caves by way of sinks and sinking surface water, an additional measure has been incorporated into the approved well work permit. The measure is that any sinks or voids encountered during construction will be covered with geotextile material and have clean, large stone placed over the geotextile material to create a barrier to sediment movement into the subsurface.

The measures described above, when applied concurrently with or immediately after earth disturbance, limit the amount and duration of effects to water quality within Big Springs (Blowing) Cave, at the springs, and the streams fed by the two springs to the short term. Although short-duration sediment introduction is possible, the sediment is expected to pass from the system within several days as it did when a new sink opened below Forest Road 701 in 2003, that introduced sediment into the subsurface which emerged as turbid water at the lower of the two major limestone springs and continued downstream in the surface waters of Big Springs Run and Elklick Run (See Project File, Visual Observation of Turbidity Event, 2003).

Maintaining Groundwater Quality and Flow

Measures have been incorporated into the State of West Virginia-approved well work permit that provide for maintaining groundwater quality and flow. Standard measures incorporated include cementing steel casing pipe in place from the deepest expected freshwater zone to the surface so that materials used in drilling (such as drilling muds) and hydraulic fracturing (acid, sand or surfactants), and encountered during drilling (brine) are excluded from entering fresh groundwater zones.

The hydrogeologic setting (described above) warranted an additional measure which has been incorporated into State-approved well work permit.

It is not known if groundwater zones will be present in the well bore as it penetrates the first approximately 250 feet through the Greenbrier Group, but the measures have been identified to address the possibility. The measure has been designed to retain groundwater quantity at two separate aquifers that discharge as two springs, and limit the duration of any changes to groundwater quality to the fewest number of days possible should groundwater be encountered during drilling.

The measure includes installing up to two steel casing pipes cemented to the surface for the two major aquifers through which the well bore is expected to penetrate as it passes through the Greenbrier Group. The specific depths at which these two casings are to be installed will be determined by rock layer types, water zones, or voids encountered or detected during drilling the top several hundred feet of the well bore. For example, the first casing will be installed at the rock layer and depth determined to represent the aquaclude which separates the groundwater flows that most likely recharge or feed the upper and lower springs.

The casings work in the following way. As drilling proceeds down from the surface and encounters the point at which the first, or uppermost, casing is to be installed, a 16-inch diameter steel pipe will be cemented to the soil and rock sides of the well bore, isolating any materials inside the now steel pipe-lined well bore from the earth surrounding the well bore. The drilling then is continued through the Greenbrier Group and 100 feet into the Pocono sandstone. An 11.75-inch diameter steel casing will be installed, part of which is inside the 16-inch casing, and cemented to the surface. At this point, any materials inside the now steel pipe-lined well bore will be isolated from intrusion into the surrounding the Greenbrier Group rock. The drilling continues to the deepest expected freshwater zone (1250 feet deep), the point at which a third steel casing pipe is cemented in place to the surface. The casing separate the well bore hole from its surroundings preventing mixing between the two.

Drilling Fluids and Pit Contents Leakage and Contamination

There was concern that drilling pit contents could leak and enter surface or groundwater resulting in degraded water quality. Measures are in place to reduce the risk that drilling pit contents, if contaminated, would result in degraded water entering the groundwater, surface water or Big Springs (Blowing) Cave. State oil and gas best management practices require the pit be constructed and maintained so as to prevent seepage, leakage and overflows. Upon completion of the well, drilling pit liquids that meet State water quality standards will be land applied. The approved land application site is located below the Greenbrier Group rock units, such that the liquids will not be applied on or where they could seep into the area's karst. When the drilling pit is no longer needed to contain materials used during drilling or

well development, remaining pit solids, which are primarily ground rock, will be solidified in place to stabilize, contain and separate them from the surrounding ground.

Also of concern was the potential for animals to use or contact potentially harmful liquids, such as traces of oil, grease or drilling muds, present in standing water on the site or in the pit after drilling operations are complete, but prior to reclamation. Depending on the risk for animal contact with potentially harmful liquids, banners or flagging suspended over the pit will be installed to deter animal use or contact until the source of harm can be removed.

Big Springs (Blowing) Cave Concerns

A concern was raised about the possibility of changing airflow or the cave temperature in the winter (even by a couple of degrees) as a result of drilling into the cave sinkhole system. Such a change could cause impacts to the bat population of Big Springs (Blowing) Cave. The nearest known underground passages (surveyed and mapped in 1984 by the Tucker County Speleological Survey) are 2000 feet, (0.4 miles) from the B-800 well site. Analysis of the situation led to the conclusion that changing airflow or cave temperature such that it would affect cave dwellers has only a remote chance of occurring. If no voids or enlarged fractures are intersected or opened to the air by creating the B-800 well site or well bore, changes to airflow within the Big Springs (Blowing) Cave as a result of the B-800 well are not reasonably possible. Likewise, if voids or enlarged fractures are intersected by the operation, but they are not connected to the Big Springs (Blowing) Cave, changes to airflow are not possible as a result of the B-800 well.

Should voids or enlarged fractures be encountered during the B-800 well site construction, the measure that includes placement of geotextile material and stone will reduce or eliminate the possibility for air entering or discharging from such an opening in the event that there would be a connection to the Big Springs (Blowing) Cave.

If voids or enlarged fractures are intersected by the well bore and connected to the Big Springs (Blowing) Cave, the steel pipe casing plan described above (*Maintaining Groundwater Quality and Flow*) would limit the amount of time the void would be open. It is highly unlikely that an opening the size of the well bore (18 inches in diameter), open for no more than a few days at most, will change the airflow in a cave 0.4 to 0.6 miles away such that the overall cave temperature would change. The opening of the open-bottom sink below Forest Road 701 in 2003, with hydrological connection to the Big Springs (Blowing) Cave, has not presented noticeable changes to Indiana bats in Big Springs (Blowing) Cave, and their numbers are holding steady or increasing overall (See Biological Evaluation). It is also highly unlikely that the casings (12 and 18 inches in diameter) would block or influence airflow to the Big Springs (Blowing) Cave given the presence and location of larger openings into this cave relative to the project area. For example, for the casing to block or influence airflow to the 0.4 mile distant Big Springs (Blowing) Cave, the well bore would have to intersect a fracture or void that has a major influence on the Big Springs (Blowing) Cave airflow, and the 12 or 18 inch casing virtually block the entire fracture to air passage. It is highly doubtful that any fracture or void that may be encountered in the well bore would have an influence on the Cave's airflow given the 3 documented openings to the cave. Airflow is most likely primarily influenced by the presence of two openings at a higher elevation and connected by 0.2 miles of single, linear passage to the main entrance, and the direction of flowing water within the Cave.

Fernow Experimental Forest

I considered the project's potential to affect the Fernow Experimental Forest current research studies and its research values.

Silvicultural Demonstration Area

Clearing for the B-800 well site and the expansion of the existing skid trail to accommodate the well access road would remove 3.5 acres from the two-age silvicultural demonstration and research area set up in 1989 which is used by the Fernow Experimental Forest staff as a teaching tool and for field trips. A concern was raised that the road and well site clearing will render this two-age silvicultural demonstration area unusable for research and demonstration purposes.

While the B-800 well site will clear 2.5 acres or 10-11% percent of the area within the demonstration area, the remainder of the demonstration area will have some additional clearing beyond that of the existing skid trail. As such, most of the silvicultural demonstration area will remain intact, and continue to provide field trip and demonstration opportunities, with some changes in what the area shows.

Exacerbating Non-Native Invasive Species (NNIS) Introduction

Concern was expressed about the Project's potential to be a vector of NNIS spread. The commenter suggested that there needs to be a plan for NNIS management associated with the proposal.

The State-approved B-800 well permit's Erosion and Sediment Control Plan includes use of hydroseed techniques or weed-free straw as mulch. It also provides for Forest Service specification of the seed mix, which has been designed to match Fernow Experimental Forest staff revegetation objectives and strategies. NNIS are typically monitored as part of routine Forest Service inspections at gas operations, and will occur for the B-800 operations, as well.

III. Public Involvement

Public involvement included mailing notification of an opportunity to comment along with a description of the Berry Energy, Inc. Gas Well B-800 Project to 6 interested and potentially affected parties (September 21, 2007), publishing notice in *The Inter-Mountain* newspaper Elkins, WV (September 21, 2007), and posting on the Monongahela National Forest public internet site (September 26, 2007) and the Forest Service Schedule of Proposed Actions for the Monongahela National Forest (October-December 2007 report).

Two letters were received related to this decision. The comments included in the letter were used to refine the analysis and explore the possibility of extraordinary circumstances and potential effects to resources.

IV. Findings Required by Other Laws

My decision will comply with all applicable laws and regulations. I have summarized some pertinent ones below.

Forest Plan Consistency (National Forest Management Act) – The Act requires all projects and activities be consistent with the Forest Plan. The Monongahela National Forest Land

and Resource Management Plan (Forest Plan) (September 2006) has been reviewed in consideration of this project. This decision is consistent with the direction, and standards and guidelines contained in the Plan. In particular, the Plan directs “Allow for and support reasonable use of National Forest System (NFS) land for the exercise of reserved and outstanding mineral rights consistent with deed terms and law.” (Forest Plan, II-45) Berry Energy has submitted their West Virginia Well Work Permit Application as an operating plan which includes rehabilitation of areas affected by their proposal (Forest Plan, II-46). Endangered Species Act - See Section II, Item B1 of this document. This decision is consistent with the Endangered Species Act.

Sensitive Species (Forest Service Manual 2670) – This manual direction requires analysis of potential impacts to sensitive species, those species for which the Regional Forester has identified population viability is a concern. Potential effects of this decision on sensitive species have been analyzed and documented in a Biological Evaluation. Although Berry Energy’s activities may impact individual timber rattlesnakes (*Crotalus horridus*), southern rock vole (*Microtus chrotorrhinus carolinensis*), eastern small-footed myotis (*Myotis leibii*), Greenbrier cave amphipod (*Stygobromus emarginatus*), and nodding pogonia (*Triphora trianthophora*), they are not likely to cause a trend to federal listing or a loss of species viability.

Clean Water Act – This Act is to restore and maintain the integrity of waters. This decision recognizes that because Berry Energy has secured an approved well work permit from the State of West Virginia, their operations will be subject to and are in compliance with State and Federal laws, including the Clean Water Act.

Wetlands (Executive Order 11990) – See Section II, Item B2 of this document. This decision will not affect wetlands.

Floodplains (Executive Order 11988) - See Section II, Item B2 of this document. This decision will not affect floodplains.

Federal Cave Resources Protection Act - This Act is to secure, protect, preserve, and maintain significant caves, to the extent practical. The proposed Berry Energy B-800 well site and access road are located in karst. I considered the project’s potential to affect caves and karst resources, and interconnected surface water and groundwater resources since the B-800 well site and access road are located on limestone rock units that present karst topography. I concluded that the proposed B-800 operation incorporates measures that provide for protection. See Section II, under item heading Caves and Karst Resources.

National Historic Preservation Act and Archaeological Resources Protection Act – See Section II, Item B7 of this document. This decision will not affect archaeological sites, or historic properties or areas.

Native American Graves Protection and Repatriation Act – See Section II, Item B6 of this document. This decision will not affect American Indian and Alaska native religious or cultural sites.

Wild and Scenic Rivers Act – See Section II, Item B3 of this document. No designated rivers or study rivers are affected by this decision.

Environmental Justice (Executive Order 12898) - This Order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this Act. Public involvement occurred for this project, the results of which I have considered in this decision-making. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

National Environmental Policy Act - This Act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with this Act.

V. Administrative Review or Appeal Opportunities

This decision is subject to appeal pursuant to 36 CFR 215. An appeal may be filed by those who provided comment or otherwise expressed interest in the proposed action during the comment period. To appeal this decision, a written Notice of Appeal must be postmarked or received within 45 calendar days of when the Legal Notice is published in *The Inter-Mountain* newspaper. However, when the 45-day filing period would end on a Saturday, Sunday or Federal holiday, then the filing time is extended to the end of the next Federal working day. The date of publication of the Legal Notice is the exclusive means for calculating the time to file an appeal. Those wishing to file an appeal should not rely upon dates provided by any other source.

Send the Notice of Appeal to: Randy Moore, Appeal Deciding Officer, Attn: Appeals and Litigation, USDA-Forest Service, Eastern Region, 626 E. Wisconsin Avenue, Milwaukee, WI 53202-4616. The Notice of Appeal may alternately faxed to: Attn: Appeal Deciding Officer, (414) 944-3963 or hand-delivered to the above address, during the normal business hours of 7:30 a.m. to 4:00 p.m., Monday Through Friday. If submitted electronically, appeals should be directed to appeals-eastern-regional-office@fs.fed.us. They should be in TXT, RTF, DOC, PDF or other Microsoft Office-compatible formats. In cases where no identifiable name is attached to an electronic message, a verification of identity will be required. Contents of an appeal must meet the requirements of 36 CFR 215.14.

VI. Implementation Date

The appeal period for this decision begins the day after notice of this decision is published in *The Inter-Mountain* newspaper. Those wishing to file an appeal must do so within 45 days after the legal notice is published. If an appeal is not filed, implementation may begin on, but before the fifth business day from the close of the appeal filing period (36 CFR 215.9(a)). If an appeal is received, implementation may occur on or before the fifteenth business day following the date of appeal disposition.

VII. Contact Person

Further information about this decision can be obtained from Linda Tracy during normal office hours (weekdays, 8:00 a.m. to 4:45 p.m.) at the Monongahela National Forest Supervisor’s Office at 200 Sycamore Street, Elkins, West Virginia; phone: voice (304) 636-1800, ext. 275; facsimile (304) 636-1875.

VIII. Signature and Date

/s/Clyde N. Thompson
CLYDE N. THOMPSON
Forest Supervisor

11/2/2007
Date

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD).

USDA is an equal opportunity provider and employer.