



**Decision Notice
and
Finding of No Significant Impact
for
Continental Divide National Scenic Trail:
Miner-Berry-Goldstone**

USDA - Forest Service
Beaverhead-Deerlodge National Forest
Wisdom Ranger District
Beaverhead County, Montana

Salmon-Challis National Forest
Leadore Ranger District
Lemhi County, Idaho

DECISION SUMMARY

This Decision Notice documents our decision to select a route for the Continental Divide National Scenic Trail (CDNST) in the Miner, Berry, and Goldstone area and includes a total of 21.9 miles of the CDNST, with approximately 8.3 miles of new trail construction on the Beaverhead-Deerlodge National Forest (BDNF) and approximately 2.8 miles of new trail construction on the Salmon-Challis National Forest (SCNF). All 21.9 miles of the CDNST under this decision will be designated as non-motorized.

BACKGROUND INFORMATION

Congress established the CDNST through the National Trail System Act (P.L. 90-543) as amended November 10, 1978. The CDNST extends approximately 3100 miles from Canada to Mexico and is administered by the Secretary of Agriculture in consultation with the Secretary of Interior.

The following is a timeline of events in the establishment of the CDNST

- October 2, 1968 Congress enacted the National Trail System Act
- 1976, the Continental Divide Trail Study Report initiated in 1969 is completed
- 1977, the legislative Final Environmental Impact Statement for the proposed Continental Divide Trail was completed to accompany the Study Report
- November 10, 1978, Congress amended the National Trail System Act to establish and designate the Continental Divide Trail (P.L. 95-625)
- 1985, the Continental Divide Trail Comprehensive Plan was approved by the Chief of the Forest Service
- April 7, 1989, Environmental Assessment and Decision Notice for the Continental Divide National Scenic Trail on Federal Lands along the Geographic Continental Divide Montana – Idaho is signed.
- October 5, 2009, the Continental Divide Trail Comprehensive Plan and internal agency directives at Forest Service Manual (FSM) 2350 were amended by the Associate Chief of the Forest Service.

While the direction to establish a CDNST is clear, portions of the trail remain on interim routes and/or have not received a detailed site-specific analysis to determine the final and best location for the trail. The CDNST: Miner-



Berry-Goldstone Updated EA provides the site-specific analysis to help us determine the final and best location for the trail.

The Miner Creek to Berry Creek portion of the CDNST is currently in a good geographical location, although certain segments are in need of reconstruction due to steep grades and several wet area crossings. Reconstruction is designed to remedy existing erosion and grade problems.

The current CDNST trail from Berry Creek to the Goldstone/Pratt Creek Divide is currently in an interim location utilizing existing jeep, ATV, and foot trails to traverse the mid to lower elevations in Berry, Pioneer, and Jahnke Creeks before ascending the geographic divide at the head of Darkhorse Creek. System trails exist in Hamby, Berry, Pioneer, Jahnke and Darkhorse Creeks. Proposals locating the trail off of current system roads and trails and up higher on the divide pose a challenge due to the topography. The key location question is which drainage to go up to access the Continental Divide. At some point, a headwall must be climbed to reach the divide. A detailed description of the existing condition can be found in Chapter 2 of the updated EA.

Important to note here is that the Record of Decision Enacting Forest Plan Travel Management Direction for Certain areas of the Beaverhead-Deerlodge National Forest closed many routes in the project area to motorized use that are within summer non-motorized allocations during the analysis process for this project. Additionally, a Forest Closure Order was put into place to ensure that these routes were closed to motorized use.

PURPOSE AND NEED FOR ACTION

The BDNF manages a high quality segment of the trail in southwest Montana that needs additional work to better meet the nature and purpose of the CDNST as described below.

The purpose of this project is to make routing decisions for a portion of the CDNST to best meet the legislative and administrative direction for the trail. In doing so, the Forest Service will further the nature and purpose of this National Scenic Trail as described in the following:

1. The National Trails System Act of 1968 as amended (Public Law 90-543) which state: "National scenic trails, established as provided in section 5 of this Act, which will be extended trails so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass."
2. The 1976 Trail Study Report written by the Department of Interior, Bureau of Outdoor Recreation: "The primary purpose of this trail would be to provide a continuous, appealing travel route designed for the hiker and horseman, but compatible with other uses."

The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor (Forest Service Manual 2353.42).

The Forest Service intends to meet the above direction to develop a trail that connects people and communities to the Continental Divide by providing scenic, high-quality, primitive hiking and horseback riding experiences, while preserving the significant natural, historic, and cultural resources along the trail.

The need for the project stems from the fact that segments of the CDNST, from Miner Creek to the Goldstone Divide are on interim routes, mostly consisting of Forest Service system roads, and have not received detailed analysis, nor are they located in an optimum route location. There is a need to examine alternate locations, to understand the experiences offered on each route, understand the environmental effects of alternatives, ensure



consistency with other direction for the area, and select the best location for the trail.

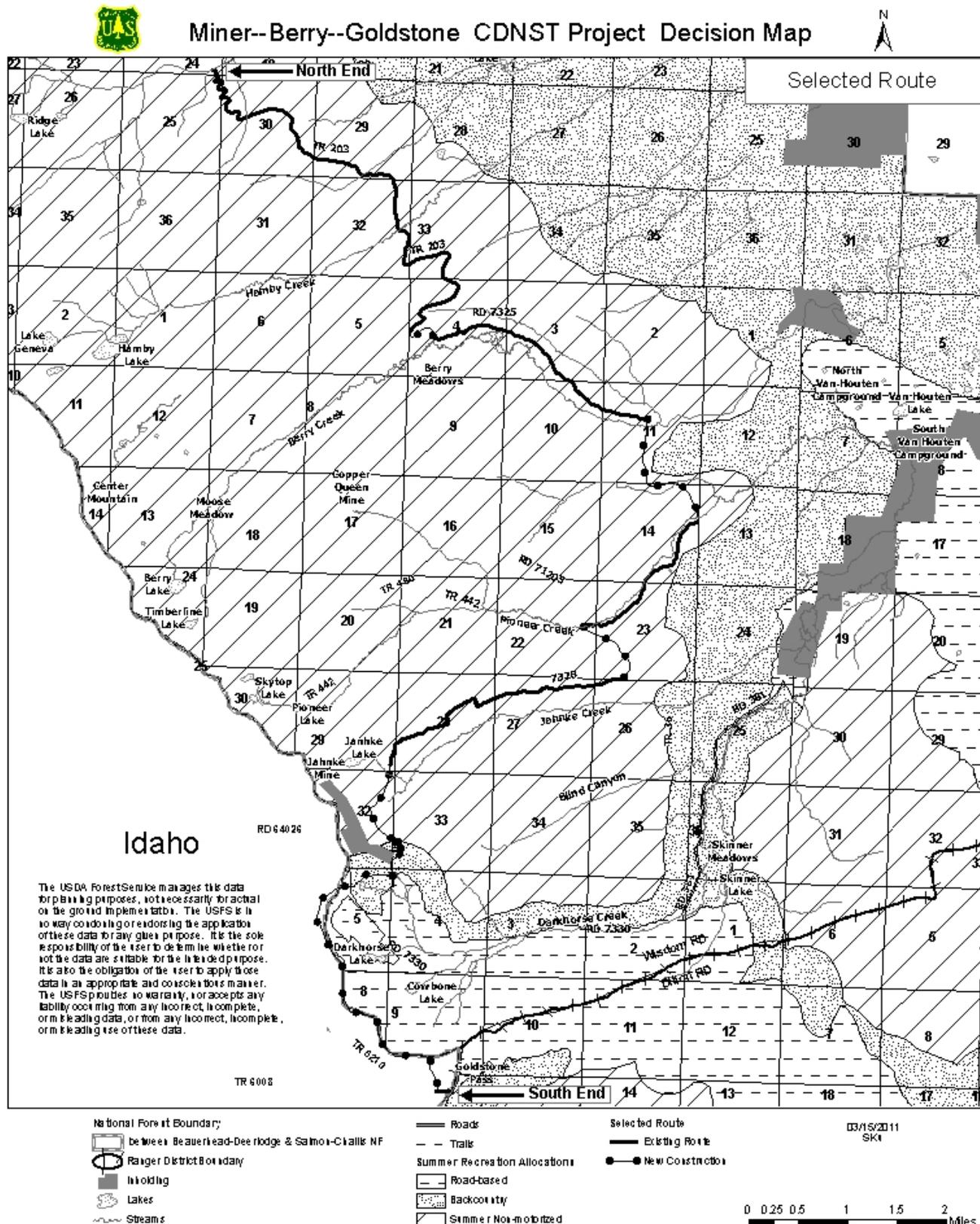
DECISION

Based on review of all alternatives, the environmental effects analysis in the updated EA, project file documents, and all public comments, we have decided to implement a selected route displayed in figure one and described in detail of table one of this Decision Notice. The selected route was developed in response to public concerns regarding elk security, scenery, fragile high mountain lakes, and to be consistent with the 2009 BDNF Forest Plan. The new route from Berry Creek to the headwaters of Janke Creek will utilize the existing route from Berry Creek Meadows down the Berry Creek drainage for approximately three miles. The route then turns south and requires construction of new trail for approximately 2 miles until joining up with the existing route in the North Fork of Pioneer Creek for two miles. Once across Pioneer Creek, new trail will be constructed for ½ mile before utilizing the existing route on Janke Creek. The existing route on Janke Creek to the headwaters below Janke Lake will be approximately 4 miles. This route will avoid high quality elk habitat and a number of wet areas. The trail bypasses all the high lakes and routes users onto the Continental Divide allowing users to enjoy the sweeping views of Montana and Idaho. The trail location avoids visible headwalls in Pioneer and Jahnke Creeks and by locating the trail on some existing routes there will be reduced construction costs and less new trail visual impacts. This decision does not change or close existing motorized travel routes. Motorized and non-motorized uses in the project area on the BDNF and the SCNF will be implemented according to the BDNF and SCNF Forest Plans and other travel management decisions. Please refer to Figure 1 on page 4 of this decision notice to reference the trail location. All segments of the CDNST under this decision will be designated as non-motorized. The trail will be constructed using both hand tools and trail machine equipment. Project design features address concerns associated with the construction of the trail.

Table 1. Miner-Berry-Goldstone CDNST Project Decision – Route Miles and Designation by Segment

Miles	Label	Location	Type	MBG CDNST Travel Management Designation
2.9	7328	Rd 7328 to new construction by Jahnke	Existing Route	Non motorized
2.7	TR 203	Miner to Englejard	Existing Route	Non motorized
3.0	TR 203	Englejard to New Construction	Existing Route	Non motorized
0.2	SC Road	SC Road 64025	Existing Route	Non motorized
2.7	RD 7325	Rd 7325 to New Construction	Existing Route	Non motorized
1.8	RD 71205	Along Pioneer Creek	Existing Route	Non motorized
13.2		Total Existing Route		
0.4		New Construction to Rd 7325	New Construction	Non motorized
1.4		New Construction From Rd 7325 to Rd 71205	New Construction	Non motorized
0.8		New construction from Rd 71205 to Rd 7328	New Construction	Non motorized
3.9		New Construction From Rd 7330 To Goldstone Pass	New Construction	Non motorized
2.1		New Construction from Rd 7328 To Rd 7330	New Construction	Non motorized
8.7		Total New Trail Construction		

Figure 1. Miner-Berry-Goldstone CDNST Project Decision Map



Approximately 1.8 miles of route #71205 will be designated as a connector route to the CDNST. A parking loop and parking area may be developed after site-specific clearances are performed.

Table 2. Design Features Required by this Decision

Criteria Item	Description of Project Design Criteria
Recreation	
1	If topography and vegetation allow, some segments of trail may simply be marked, rather than receive tread construction. <u>Purpose:</u> To reduce trail construction cost and provide a primitive recreation experience
2	The CDNST routes will be designed and constructed to pack and saddle standards for a mainline trail (8 foot clearing 10 feet height, maximum sustained grade of 10-15% and 24 inch tread). <u>Purpose:</u> To be in conformance with CDNST manual direction and FSH 2309.18 - trails management handbook
3	Barriers will be installed where the CDNST crosses roads to discourage motorized entry onto the trail system. Signing will be installed. <u>Purpose:</u> To inform visiting public of regulations and trail designated use
4	Where possible, existing trail tread or natural openings will be used to reduce ground disturbance. Abandoned trail segments will be rehabilitated and closed to eliminate parallel routes. <u>Purpose:</u> To prevent additional impacts to resources
Heritage Resources	
5	Prior to the actual construction of the various segments of the trail, and following placement of a proposed trail flag line on the ground, the Section 106 compliance process must be completed. This will require a Class III inventory, which includes intensive archaeological surveys to insure that significant heritage resources are not adversely affected by trail construction. Where potential trail locations conflict with heritage resources the trail will be relocated to provide a suitable buffer to protect the historic and cultural values of the heritage sites. <u>Purpose:</u> To protect known and unknown heritage sites from project activities that would cause adverse impacts.
Sensitive Plants and Noxious Weeds	
6	Trail construction contracts will include provisions that require all trail construction equipment and all vehicles be washed prior to entering National Forest lands, to prevent the spread and/or introduction of noxious weeds. New trail construction and associated ground disturbance will be monitored for noxious weeds and treated according to applicable BDNF and SCNF direction. <u>Purpose:</u> To control, reduce, and minimize the spread of noxious weeds.
7	Prior to construction of tread, an on the ground survey of the proposed trail as flagged will be conducted in the alpine and subalpine portions of the trail and in riparian zones, where potential sensitive plant habitat may occur. If any of the sensitive plant species are located, the trail will be routed to avoid adverse impact to these species. Surveys will be conducted during the month of July, the time of flowering. <u>Purpose:</u> To reduce impacts to sensitive plants
8	Surveys of known populations of sensitive species will occur at least once every three years to determine if impacts are occurring as a result of increased visitor use. If impacts are noted, signing or other measures will occur, to limit impacts to those small populations. <u>Purpose:</u> To reduce impacts to sensitive plants
Scenery	
9	Stumps created by clearing operations will be flush cut. <u>Purpose:</u> To reduce impacts to scenic resources
10	Impacts associated with trail construction and reconstruction will be minimized by utilizing vegetative and topographic screening of trail improvements where feasible. <u>Purpose:</u> To reduce impacts to scenic resources
11	Cairns or other assurance markers will be utilized in lieu of constructing trail in visually sensitive areas and where appropriate. This may include rock/scree slopes, open meadows/parks, and tops of ridges.
12	Switchback, climbing turns, and other trail features will be designed and constructed to take advantage of areas that will allow for screening or blending of the trail as seen from the trail and the surrounding area.
13	Under Alternative 4, the trail climbing out of Darkhorse will be designed and constructed to maximize screening by existing vegetation and to utilize existing trails. The length and number of stretches across exposed scree/talus/rock slopes will be minimized. <u>Purpose:</u> To reduce impacts to scenic resources
14	Under Alternatives 4 and 6, trail construction will be minimized on scree/talus/rock slopes in steeper areas on the Idaho side. <u>Purpose:</u> To reduce impacts to scenic resources
15	Occasional viewing opportunities in the forested areas of the trail will be provided by using natural openings where they occur, and views of areas with high scenic quality will be facilitated. <u>Purpose:</u> To reduce impacts to scenic resources

Criteria Item	Description of Project Design Criteria
Hydrology	
16	Where possible wet areas will be avoided. If wet areas are unavoidable then spanning structures will be constructed to reduce impacts to resources <u>Purpose:</u> To reduce impacts to hydrological resources
17	Streams will be crossed using spanning structure rather than allowing users to cross through the stream. <u>Purpose:</u> To reduce impacts to hydrological resources
Wildlife	
18	Trail construction/reconstruction will avoid sensitive habitats such as bog-fens, riparian zones, and White Bark pine, old growth Douglas-fir and spruce stands when possible. <u>Purpose:</u> To reduce impacts to wildlife resources
19	If an active bald eagle, goshawk, great gray owl, or flammulated owl nest is found within the project area, appropriate mitigation measures as determined by the Forest Service wildlife biologist will be implemented. <u>Purpose:</u> To reduce impacts to wildlife resources
20	If threatened, endangered or sensitive species are observed at or within ½ kilometer of the project area notify the District Biologist within 24 hours. <u>Purpose:</u> To reduce impacts to wildlife resources
21	Trail construction/reconstruction activities (blasting, cutting, and trail excavation) will not occur during large ungulate parturition periods, and most wildlife breeding periods May 15 – July 15. <u>Purpose:</u> To reduce impacts to wildlife resources
22	All newly constructed trail, access points, and any trails converted to non-motorized will be built to prevent motorized access. Trees will be felled opportunistically to detour motorized access. <u>Purpose:</u> To reduce impacts to wildlife resources

PUBLIC INVOLVEMENT

On March 3, 2004, a scoping notice was mailed to 289 individuals and groups. Over 100 parties responded with comments and/or concerns, and a comment content analysis was conducted. Public comments helped develop and shape issues, and led to development of alternatives to the proposed action. The majority of the comments received from the public were concerns about motorized or non-motorized use of the trail.

In addition to formal public involvement, the Forest maintains a Schedule of Proposed Actions (SOPA) that summarizes planned project proposals. This summary is available on the BDNF web page at <http://www.fs.usda.gov/goto/bdnf/projects> . The CDNST Miner-Berry-Goldstone project has been listed on the SOPA since March 2004. The project has been listed on the SCNF SOPA since October 2007.

On September 13, 2005, an update on the progress of the project was mailed to individuals and groups who commented during scoping. An open house was held on October 6, 2005, and some user groups were contacted directly to clarify their issues and concerns. The scoping mailing list, public involvement documents, and comment letters received are located in the project file.

Given the expansion of trail construction onto the SCNF, the mailing list for this EA was expanded and legal notices related to the project were expanded to include Idaho. On May 29, 2008, legal notices were published in the *Montana Standard* (Butte, MT) and the *Recorder-Herald* (Salmon, ID) newspapers alerting the public of the opportunity to comment on the EA for 30 days.

Twenty-five people/organizations commented on the EA. The interdisciplinary team reviewed and responded to the comments on the EA. In summary, public comments generally fell into the following categories; the vast majority of which were related to the first two categories:

- Allowance and compatibility of motorized use on the CDNST
- Loss of motorized access or routes for the creation of the CDNST
- Snowmobile access

- Sensitive high mountain lakes
- Visuals/Scenery
- Miscellaneous: choice of individual trail location, "extra" access trails. Need for trailheads, etc.
- Wildlife habitat

The comments and Forest Service responses are contained in Appendix A to the updated environmental assessment.

A decision on this project was published on February 21, 2011. One member of the public commented that they were unclear as to whether the decision in fact designated all portions of the Miner-Berry-Goldstone section of the CDNST as non-motorized. Based in part on that comment, the previous decision was withdrawn on March 22, 2011. We believe the language in this decision provides greater clarity on that issue, although the decision remains the same.

ISSUES

The five key issues listed below were identified during scoping and addressed in the environmental analysis. A summary of the issues and the consequences of the alternatives relative to the issues are disclosed in the updated EA, pages 4 through 6, and 14 through 16. The interdisciplinary team (ID Team) examined potential effects of the proposed route and its alternatives on the following key issues:

1. Quality of motorized and non-motorized recreation opportunities and experiences.
2. Reduction in elk security due to increased trail densities.
3. Fragile high mountain lakes, riparian areas, and cirque basins.
4. Scenic integrity.
5. Noxious weeds.

ALTERNATIVES CONSIDERED

In addition to the selected route, we considered five other alternatives that were fully developed and analyzed in the CDNST: Miner-Berry-Goldstone Updated EA; and five others were considered, but not analyzed in detail. Refer to updated EA pages 7 through 16 for additional details on the alternatives analyzed in detail, and updated EA page 16 for a summary of alternatives considered but not analyzed in detail. A summarized comparison of the following alternatives analyzed in detail can be found in the updated EA on pages 14-16, with additional information provided in updated EA Chapter 3 and the detailed resource reports in the project file.

Alternative 1 – No Action: This alternative provides a baseline for comparison of the potential impacts of the action alternatives to the existing condition and is a management option that could be selected by the Responsible Officials. The results of taking no action would be the current condition as it changes over time due to natural forces. No new trail would be constructed; therefore the CDNST users would remain on the existing roads and trails. Motorized and non-motorized travel would remain under current restrictions and no trail reconstruction would occur. This alternative would not meet the objective of implementing the strategic plan for the CDNST. Refer to updated EA page 7.

Alternative 2 – Proposed Action: The proposed action was the starting point for analysis and was carried through the analysis as Alternative 2 in the updated EA.

The project area is approximately 10 miles southwest of Jackson, Montana and 30 miles southwest of Wisdom, and 15 miles east of Salmon, Idaho in the Beaverhead Mountains of the Bitterroot Range. The proposed action addressed the trail corridor in three segments:

- Miner Creek to Berry Creek
- Berry Creek to Goldstone-Pratt Creek Divide Pass
- Goldstone-Pratt Creek Divide/Goldstone Pass (Leadore Ranger District, SCNF)

The proposed action came from a process that was completed in the late 1980s regarding possible trail locations, and formed the starting point for analysis of trail locations. This alternative included constructing approximately 8.6 miles of new trail and managing the new trail as a wheeled non-motorized trail. Further, the proposed action called for reconstructing approximately 12.7 miles of existing trails and low standard roads from Miner Creek to Goldstone Pass to implement the CDNST. Refer to updated EA pages 2, 3, and 8.

The trail segments listed below for the proposed action now fall within the summer non motorized allocation of the BDNF Forest Plan.

1. Reconstruct 2.7 miles of existing trail from Miner Creek to Englehard (Trail #203) and maintain current use of the trail which is closed to wheeled motorized vehicles year long.
2. Reconstruct 0.8 mile of trail from Englehard to Hamby (Trail #203) and close the trail to all wheeled motorized vehicles yearlong.
3. Lightly reconstruct 2.5 miles of trail from Hamby to Berry (Trail #203) Use 0.5 mile of the Berry Meadows Road (Road # 7325) for trail route Construct 4.3 miles of new trail which would be closed to wheeled motorized vehicles yearlong.
4. Reconstruct 0.5 miles of Road #71205 to the junction with Trail # 480 and close the road to all wheeled motorized vehicles yearlong.
5. Reconstruct 0.8 mile of Trail #480 to its junction with Trail #442 and reconstruct 1.5 miles of Trail #442 to Pioneer Lake and maintain current use of the trail, which is closed to all wheeled motorized vehicles yearlong.
6. Construct 4.2 miles of new trail from the end of Trail #442 and the intersection with Road #7330 (Darkhorse Creek). The new trail would be closed to all wheeled motorized vehicles yearlong.

The BDNF Forest Plan was enacted during the environmental analysis for this project. Portions of this alternative are inconsistent with the direction specified in the BDNF Forest Plan and associated RODs. Although this alternative was fully developed and considered, selection of this alternative for implementation would require an amendment of the BDNF Forest Plan.

Alternative 3: This alternative is very similar to Alternative 2; however, it responds to some public comments that requested a route with a non-motorized character, as compared to the Proposed Action. Alternative 3 includes a location change at Berry Creek, Darkhorse Lake, and Cowbone Lake the moves the trail off popular and open motorized travel routes. Alternative 3 proposes to construct approximately 12.2 miles of new non-motorized trail, and reconstruct 8.7 miles of trail. Of these miles of reconstruction, 3.8 are proposed to be converted from existing motorized trails and low standard roads to non-motorized use. The location of the new trail would be essentially the same as in Alternative 2, except two segments of new trail construction are proposed. Alternative 3 proposes 20.9 total miles of CDNST trail. To respond to public comment requesting a non-motorized route or experience from a passenger car location, Alternative 3 contains 2.5 miles of access trail from the Skinner Meadows Road to access the trail in Pioneer Creek. Refer to updated EA pages 8-9. The BDNF Forest Plan was enacted during the environmental analysis for this project.

Alternative 4 – Preferred Alternative: This alternative was developed in response to concerns regarding elk security, scenery, and fragile high mountain lakes. The new trail construction from Berry Creek to Pioneer Creek is moved east and down slope to avoid high quality elk security cover and a number of wet areas. The trail bypasses

all the high lakes and routes users onto the Continental Divide at the head of Darkhorse and Wimpey Creeks, allowing users to enjoy the sweeping views of Montana and Idaho. The trail location avoids visible headwalls in Pioneer and Jahnke Creeks and is located on an existing trail in Darkhorse, thus reducing construction costs and new visual impacts. This Alternative does not change or close motorized travel routes. Alternative 4 includes a total of 21.8 miles of CDNST trail. Alternative 4 proposes new trail construction for approximately 8.3 miles of trail on the BDNF and approximately 2.8 miles of trail on the SCNF. In addition, approximately 10.5 miles of existing trails and low standard roads would be reconstructed, and 0.2 miles of the Goldstone Road would be used. This alternative provides access to the Continental Divide through the Jahnke drainage and accesses the divide at Darkhorse. It then follows along the west side of the divide to Goldstone Pass. This alternative directs the trail construction along the west side of the Continental Divide from Darkhorse south, where the topography is much gentler. The proposed route would cross motorized roads that access the divide from Wimpey Creek. This route is more scenic, with more construction proposed on the divide itself. This alternative minimizes the amount of construction in highly visible scenic areas at the head of Pioneer Creek and directs use away from sensitive high mountain lakes in the Pioneer drainage. This alternative routes the trail out of sensitive elk habitat and moves the trail off of the Darkhorse-Cowbone road. Existing motorized and non-motorized uses in the project area on the BDNF and the SCNF would remain unchanged. Refer to updated EA pages 9-10. The BDNF Forest Plan was enacted during the environmental analysis for this project. Portions of this alternative are inconsistent with the direction specified in the BDNF Forest Plan and associated RODs. Although this alternative was fully developed and considered, selection of this alternative for implementation would require an amendment of the BDNF Forest Plan.

Alternative 5: Alternative 5 responds to public comment as it combines moving the trail between Berry and Pioneer Creeks east out of secure elk habitat and wet areas; it responds to concerns about motorized use by being largely non-motorized and provides a non-motorized access trail. Alternative 5 stays out of the weed prone areas in Wimpey Creek and most of Pratt Creek on the Idaho side of the divide and it bypasses about half the high lakes and avoids new visible trail on headwalls in Jahnke and Pioneer Creeks. This alternative is similar to Alternative 4 in that it routes the Continental Divide Trail through the Jahnke drainage. However, this alternative would remain on the BDNF and restrict motorized use on some trail segments. This alternative does not provide a great deal of direct travel on the Continental Divide itself. The route in this alternative is more scenic and directs use away from sensitive high mountain lakes in the Pioneer drainage. This alternative analyzes 20.1 miles of CDNST trail. Approximately 10.8 miles of new trail would be constructed, 9.1 miles of existing trails and low standard roads would be reconstructed, and 0.2 miles of existing road would be used. This alternative also proposes to obliterate 0.3 miles of motorized trail. Additionally, this alternative proposes 2.5 miles of trail to provide a non-motorized access to the CDNST from the Skinner Meadows road. Refer to updated EA pages 10-11. The BDNF Forest Plan was enacted during the environmental analysis for this project. This alternative is consistent with the direction specified in the BDNF Forest Plan and associated RODs.

Alternative 6: Alternative 6 was developed in response to public comment in that some members of the public felt the best place for the trail would be as close to the Continental Divide as possible for as many miles as possible and one individual pointed out the actual route identified in Alternative 6. This alternative moves the southern end of the route high on the divide and provides scenic views of both Idaho and Montana. This alternative also responds to individuals wishing to see the CDNST as a non-motorized experience. This alternative includes 21.3 total miles of CDNST trail. Approximately 6.8 miles of new non-motorized trail would be constructed on the BDNF, and 4.6 miles of new construction would occur on the SCNF. Reconstruction would occur on approximately 10 miles of existing trails and low standard roads on the BDNF. This alternative would also use 0.2 miles of existing road. The proposed route would cross motorized roads that access the divide from Wimpey Creek and makes no changes to the existing motorized travel routes on the SCNF. This alternative also proposes to obliterate 0.3 miles of motorized trail. This route contains the most new construction proposed on the actual divide. Additionally, this alternative



proposes 2.5 miles of trail to provide a non-motorized access to the CDNST from the Skinner Meadows road. Refer to updated EA pages 11-12. The BDNF Forest Plan was enacted during the environmental analysis for this project. All action alternatives include the "Features Common" as described in the updated EA on pages 12-14.

RATIONALE FOR THE DECISION

Based on our review of all alternatives, we have decided to implement the selected CDNST route as described above in the Decision section of this document. When compared to the other alternatives the selected route best meets the legislative and administrative direction for the CDNST and provides a trail that connects people and communities to the Continental Divide by providing scenic, high-quality, primitive hiking and horseback riding experiences, while preserving the significant natural, historic, and cultural resources along the trail. The selected route provides the best balance in relation to the key issues, while meeting the intent of the National Trails System Act and the Continental Divide Trail Comprehensive Plan. One commenter questioned whether the short segment of trail that traverses a summer non-motorized recreation allocation in the Upper Darkhorse Creek area would be designated non-motorized. We want to be clear that the selected route designates the entire 21.9 miles of trail under this decision, including the portion of route in question, as non-motorized trail. The selected route provides a high quality trail experience; avoids high quality elk habitat and a number of wet areas; has the least overall impact to high mountain lakes, riparian areas, and cirque basins; and has the highest overall scenic rating.

Consistency with Forest Plans

For the Beaverhead-Deerlodge portion of the trail, the proposed action and alternatives to the proposed action described in the EA were developed during the time the 1986 Beaverhead Forest Plan was being revised. In 2009 the Forest Plan revision process was completed and a new Forest Plan is currently being implemented. Instead of completely revising the EA for this project, we have described the effects of implementing the decision, based on revised Forest Plan direction, in this decision. Record of Decision number two for the revised Forest Plan affected this project area by closing all roads and trails to motorized use within non-motorized recreation allocations. These closures were implemented beginning in June 2010. This decision designates the entirety of the Miner-Berry-Goldstone CDNST as non-motorized trail, both within non-motorized recreation allocations as well as in the upper Darkhorse creek drainage which is outside a non-motorized allocation, consistent with the 2009 revised Forest Plan direction for the Beaverhead-Deerlodge National Forest.

This decision is consistent with the goals, objectives, and standards of the 2009 Beaverhead-Deerlodge National Forest Revised Forest Plan and the 1988 Salmon National Forest Plan as described for the management areas specific to this proposal. Refer to the Environmental Assessment pages 9 and 10 for more information regarding this project's consistency with the Forest Plans.

FINDINGS REQUIRED BY LAWS, REGULATIONS, AND POLICIES

Numerous laws, regulations, and agency directives require the decision be consistent with their provisions. We have determined this decision is consistent with all laws, regulations, and agency policy. The following summarizes findings required by major environmental laws. Our decision to implement the CDNST: Miner-Berry-Goldstone project, including all design features listed in the updated EA and on pages 5-6 of this decision, is consistent with land management direction described in the 2009 Beaverhead-Deerlodge National Forest Revised Land and Resource Management Plan and the Salmon National Forest Land and Resource Management Plan.

National Environmental Policy Act (NEPA)

NEPA provisions and all regulations for implementation of NEPA (as required under 40 CFR 1500) have been followed in the development of the environmental assessment and Decision Notice. The detailed specialist reports



(summarized in the updated EA) in the project file disclose the expected impacts of this project. This Decision Notice describes the decision we have made and our rationale for making it.

National Forest Management Act (NFMA)

The National Forest Management Act and accompanying regulations require that several specific findings be documented at the project level.

Consistency With Forest Plan. See discussion under “Consistency with the Forest Plan” section above.

Sensitive Species. Federal law and direction applicable to sensitive species include the National Forest Management Act and the Forest Service Manual (2670). The Regional Foresters have approved the sensitive species list – those plants and animals for which population viability is a concern. In making the decision, we have reviewed the analysis and projected impacts on all sensitive species listed as occurring or possibly occurring on the BDNF and SCNF. These findings support the conclusion the project will have no adverse impacts on sensitive species and will not lead to loss of viability or trend toward federal listing of any sensitive species.

National Historic Preservation Act, Archaeological Resources Protection Act, and Native American Graves Protections and Repatriation Act

A standard Class I review of existing documents and records on file at the BDNF and the Montana State Historic Preservation Office was conducted. Prior to the construction or reconstruction of any trail segment, and following placement of a proposed trail flag line on the ground along the selected route, the National Historic Preservation Act Section 106 compliance process will be completed and documented in the Supervisor’s Office and District files. Intensive archaeological survey will be completed to insure that significant heritage resources are not adversely affected by project implementation. Native American communities have been contacted and public comment encouraged. The decision meets the intent of the National Historic Preservation Act, Archaeological Resources Protection Act, and Native American Graves Protections and Repatriation Act.

Clean Water Act and State Water Quality Standards

The design of project activities is in accordance with Forest Plan standards and guidelines, the Regional Guide, Best Management Practices, and applicable Forest Service manual and handbook direction. Project activities are consistent with the Clean Water Act, State Water Quality Standards, and consistency requirements for TMDL watersheds.

The Endangered Species Act

In accordance with Section 7 (c) of the Endangered Species Act, as amended, and as described in the Wildlife Species Considered and Regulatory Authority section in the wildlife specialist report in the project file, the U.S. Fish and Wildlife Service (USFWS) identified gray wolf as the listed species that may be present in the analysis area. The Biological Assessment concludes the project is “not likely to jeopardize the continued existence of the gray wolf within the nonessential experimental population area”. This decision meets the intent of the Endangered Species Act.

Environmental Justice and Civil Rights

Executive Order 12898, issued in 1994 ordered Federal Agencies to identify and address any adverse human health and environmental effects of agency programs that disproportionately impact minority and low-income populations. The Order also directs agencies to consider patterns of subsistence hunting and fishing when an agency action may affect fish or wildlife. The project will not alter opportunities for subsistence hunting and fishing by Native American tribes. Tribes holding treaty rights for hunting and fishing on the BDNF are included on the project mailing list, and have the opportunity to provide comments on this project. Public involvement occurred for this project, the results of which I have considered in this decision. 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.

The Civil Rights Act of 1964 provides for nondiscrimination in voting, public accommodations, public facilities, public education, federally assisted programs, and equal employment opportunity. Title VI of the Act, Nondiscrimination in Federally Assisted Programs, as amended (42 U.S. C. 2000d through 2000d-6) prohibits discrimination based on race, color, or national origin. This decision complies with this act.

Continental Divide National Scenic Trail Comprehensive Plan; FSM 2350

The 2009 Continental Divide National Scenic Trail Comprehensive Plan sets forth direction to guide the development and management of the CDNST. It provides a uniform CDNST program that reflects the purposes of the National Scenic Trail system, and allows for the use and protection of natural and cultural resources found along the right-of-way. The Comprehensive Plan describes the nature and purposes of the CDNST: "The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor." This decision meets the intent of the CDNST Comprehensive Plan.

Roadless Area Conservation of National Forest System Lands in Idaho Final Environmental Impact Statement (2008) the "Idaho Roadless rule"

A portion of this project (in Idaho) falls within the primitive theme portion of the West Big Hole #943 roadless area. The project is consistent with the 2008 Idaho Roadless Rule (36 CFR 294 Subpart C) because the rule does not limit or prohibit trail construction or maintenance (73 FR 201 61463 [October 16, 2008]). The cutting, sale, or removal of timber is permissible in Idaho Roadless Areas under certain circumstances. The Rule permits the cutting of trees incidental to implementation of a management activity not otherwise prohibited by the final rule (36 CFR Subpart C 294.24 (b)(v) (Primitive) and 294.24(c)(vii)(Backcountry Restoration). Examples of these activities include, but are not limited to, trail construction or maintenance; removal of hazard trees adjacent to forest roads for public health and safety reasons; fire line construction for wildland fire suppression or control of prescribed fire; survey and maintenance of property boundaries; other authorized activities such as ski runs and utility corridors; or for road construction and reconstruction where allowed by this rule (73 FR 201 [61463]). The falling of dead trees in this case is incidental to a management activity that is not prohibited (helicopter landing).

The proposed trail construction and trail maintenance will maintain wilderness attributes and roadless characteristics because they limit ground-disturbing activities (i.e. they do not use mechanical treatments). They will maintain high quality or undisturbed soil and water, diversity of plant and animal communities, habitat for threatened, endangered and sensitive species, natural appearing landscapes, and traditional cultural properties (Recreation Report).

Other roadless area direction

We have carefully evaluated the actions proposed within the Montana portion of the West Big Hole # 1-943 roadless area in light of ongoing development of long term roadless policy and relevant court cases. On Jan 21, 2001 the 2001 Roadless Conservation rule was established (36 CFR 294 Subpart B). The 2001 rule prohibited road construction, road reconstruction and timber cutting, sale and removal in inventoried roadless areas with some exceptions. On July 13, 2003, the 2001 roadless rule was enjoined by a U.S. District Court Judge Brimmer in Wyoming, after which the Forest Service established Interim Directives for the management of roadless areas.

In May 2005, the 2005 State Petitions Rule was established which allowed governors to petition for individual, state-specific rules to manage IRAs in national forests and grasslands in their states. In October 2006, Judge Laporte (Northern District Court of California) set aside the State Petitions Rule and reinstated the 2001 Roadless Rule (*California ex rel. Lockyer v USDA*). In December 2008, the Court limited its injunction to states within the



Ninth Circuit and New Mexico (excluding Idaho). In August 2009, the 9th Circuit Court of Appeals affirmed the Northern District Court of California's opinions.

On Jan 12, 2007 the state of Wyoming again challenged the 2001 Roadless rule Wyoming. On August 12, 2008 the District Court of Wyoming, Judge Brimmer issued a ruling enjoining the 2001 Roadless Rule for the second time (Wyoming v. USDA). This opinion has been appealed to the 10th Circuit Court of appeals.

On May 28, 2010, Secretary of Agriculture Tom Vilsack issued Memorandum 1042-155 which reserves "to the Secretary the decision making authority to approve or disapprove road construction or reconstruction and the cutting, sale, or removal of timber in those areas identified in the set of inventoried roadless area maps contained in Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2, dated November 2000." The Secretary has since re-delegated five categories of activities back to the Forest Service including category (c)(3):

- c)The cutting, sale, or removal of generally small diameter timber when needed for one of the following purposes:
 - 3. For personal or administrative use, as provided for in Title 36 CFR 223, where personal use includes activities such as Christmas trees and firewood cutting and where administrative use includes providing materials for activities such as construction of trails, footbridges and fences.

We have determined that we have the authority to approve this decision based on the May 28, 2010 redelegation letter from the Secretary. This decision authorizes the cutting of generally small diameter trees to facilitate new trail construction.

This activity also falls within one of the exemptions in the 2001 Roadless Rule (36 CFR Subpart B 294.13(b)(2)) [The cutting, sale, or removal of timber is incidental to the implementation of a mangement activity not otherwise prohibited]. Like the Idaho Roadless Rule, the 2001 Roadless Rule did not prohibit the construction of trails in inventoried roadless areas. We have also concluded that this decision is not in conflict with Judge Brimmer's decision, because the alternatives were not constrained by whether or not to permit timber cutting for trail construction.

FINDING OF NO SIGNIFICANT IMPACT

We have reviewed the direct, indirect, and cumulative effects of the proposed activities documented in the CDNST: Miner-Berry-Goldstone updated EA and specialist reports. We have also reviewed the project file for this analysis and the effects of the alternatives as disclosed in the updated EA. Implementing regulations for NEPA provide criteria for determining the significance of effects. Significant, as used in NEPA, requires consideration of both context and intensity as set forth in 40 CFR 1508.27:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short and long-term effects are relevant:

The disclosure of effects in the updated EA found the project limited in context. The setting of this project is localized with implications only for the immediate area. The impacts associated with this project are short-term and local and are not likely to significantly affect regional or national resources. The actions involved in this decision are

consistent with management direction contained in the 2009 BDNF Revised Forest Plan and the Salmon Forest Plan.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following are considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effects will be beneficial.

The decision meets the intent of goals and objectives outlined in the BDNF and Salmon Forest Plans. Beneficial and adverse impacts of this decision are addressed in the updated EA. No significant impacts were identified.

(2) The degree to which the proposed action affects public health or safety.

This decision will have no significant or unacceptable effect on public health or safety. The project is designed to provide a trail that is safe, environmentally sound, and meets Forest Service manual standards for grade, clearing, and trail width.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

This project has been reviewed for potential impacts to historic or cultural resources; there are no resource concerns. Design features associated with the selected route will insure protection of any currently unknown historic or cultural resources. Refer to updated EA pages 13, and 47-49.

There are no park lands, no prime farmlands, no ecologically critical areas, and the area is not being considered for Wild and Scenic River designation. No negative effects to water quality are expected, beneficial uses will be fully protected by the design, implementation, and BMP's associated with the selected route. Refer to updated EA pages 29-31, and 49.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

Based on internal discussion and the analysis of the actions in this decision, the effects on the human environment (updated EA) are not likely to be considered highly controversial by professionals, specialists, and scientists.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

Scoping did not identify highly uncertain, unique, or unknown risks. The possible effects on the human environment are not highly uncertain nor do they involve unique or uncertain risks. The technical analyses conducted for determinations of the resources are supportable with use of accepted techniques, reliable data, and professional judgment. Impacts are within the limits that are considered thresholds of concern. Therefore, we conclude there are no highly uncertain, unique, or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

The implementation of this decision is not precedent setting and does not represent any future decisions. Any other proposals for this area will be subject to full NEPA disclosure.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

A cumulative effects analysis was conducted for this project. There are no known significant cumulative effects between this project and other projects implemented or planned on areas separated from the affected area of this project. Other known and reasonably foreseeable activities were considered and documented; refer to EA pages 19-22.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources.

No cultural resources are expected to be affected by this action. This project has been reviewed in compliance with applicable regulations for implementing Section 106 of the National Historic Preservation Act; there are no cultural resource concerns. Prior to any ground disturbing activities, Section 106 compliance process will be completed.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

The project will not adversely affect any threatened or endangered wildlife, fish, or plant species (updated EA and BA/BEs in the project file).

(10) Whether the action threatens a violation of Federal, State or local law or requirements imposed for the protection of the environment.

This action will not threaten a violation of Federal, State, or local laws or requirements imposed for the protection of the environment. Applicable laws and regulations were considered in the updated EA, pages 48-50. The action is consistent with the BDNF and Salmon Forest Plans (refer to updated EA Chapter 3 and the project file).

Conclusion

Based upon the review of the test for significance and the environmental analyses conducted, we have determined that the implementation of this decision as analyzed in the CDNST: Miner-Berry-Goldstone Updated EA will not significantly affect the quality of the human environment. Accordingly, we have determined that an Environmental Impact Statement need not be prepared for this project.



ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

This decision is subject to appeal pursuant 36 CFR 215. Individual or organizations appealing this decision must meet the requirements of 36 CFR 215.13. A written appeal must be submitted within 45 days following the publication date of the legal notice of this decision in the *Montana Standard* (Butte, MT). The legal notice will also be published in the *Recorder-Herald* (Salmon, ID). It is the responsibility of the appellant to ensure their appeal is received in a timely manner. The publication date of the legal notice of the decision in the newspaper of record (*Montana Standard*) is the exclusive means for calculating the time to file an appeal. Appellants should not rely on date or timeframe information provided by any other source.

The appeal must be filed with the Appeal Deciding Officer in writing. It is the appellant's responsibility to provide sufficient project or activity-specific evidence and rationale, focusing on the decision, to show why the decision should be reversed. At a minimum, the appeal must meet the content requirements of 36 CFR 215.14, and include the following information:

- The appellant's name and address, with a telephone number if available;
- A signature, or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal);
- When multiple names are listed on an appeal, identification of the lead appellant and verification of the identity of the lead appellant upon request;
- The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;
- The regulation under which the appeal is being filed, when there is an option to appeal under either 36 CFR 215 or 36 CFR 251, subpart C;
- Any specific change(s) in the decision that the appellant seeks and rationale for those changes;
- Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;
- Why the appellant believes the Responsible Official's decision failed to consider the comments; and
- How the appellant believes the decision specifically violates law, regulation, or policy.

Written appeals must be submitted to:

For Postal Delivery:	For Hand Delivery:
USDA Forest Service, Northern Region ATTN: Appeals Deciding Officer P.O. Box 7669 Missoula, MT 59807	Northern Region Headquarters Federal Building, 200 East Broadway Missoula, Montana Business Hours: 8:00 AM to 4:30 PM

Appeals may be FAXed to (406) 329-3411.

For electronic appeals, the e-mail subject line should contain the name of the project being appealed. An automated response should confirm your electronic appeal has been received. Electronic appeals must be submitted in MS Word, Word Perfect, or Rich Text Format (RTF). Electronic appeals must be submitted to: appeals-northern-regional-office@fs.fed.us

If an appeal is received on this project, there may be informal resolution meetings and/or conference calls between the Responsible Official and the appellant(s). These discussions would take place within 15 days after the closing date for filing an appeal. All such meetings are open to the public. If you are interested in attending any informal resolution discussions, please contact the Responsible Official or monitor the following website for postings about current appeals in the Northern Region of the Forest Service: <http://www.fs.usda.gov/goto/r1/appeal-meetings>



If no appeal is received, implementation of this decision may occur on, but not before, five business days from the close of the appeal filing period. If an appeal is received, implementation may not occur for 15 business days following the date of appeal disposition. Implementation of this decision will likely begin in the spring 2011.

Supporting documentation for this decision is available for public review at the Wisdom Ranger District, P.O. Box 238, Wisdom, Montana 59761.

CONTACT PERSON

For further information on this decision, please contact Russ Riebe, Wisdom District Ranger, P.O. Box 238, Wisdom, Montana 59761, phone (406) 689-3243.

RESPONSIBLE OFFICIALS

<u>/s/ David R. Myers</u>	<u>April 14, 2011</u>
DAVID R. MYERS	Date
Forest Supervisor, BDNF	
Responsible Official	

<u>/s/ Frank V. Guzman</u>	<u>April 14, 2011</u>
FRANK V. GUZMAN	Date
Forest Supervisor, SCNF	
Responsible Official	

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