DECISION MEMO
SPECIAL USE AUTHORIZATION FOR GROUNDWATER MONITORING WELLS
USDA-Forest Service, Eastern Region
Huron-Manistee National Forests, Baldwin/White Cloud Ranger District
Newaygo County, Michigan

I. DECISION

A. Background

CSX Transportation has a special use permit for groundwater monitoring wells which expired on 12/31/2011. The current groundwater monitoring network consists of 116 wells with 87 of the wells located on National Forest System lands. The wells are constructed of either 2-inch diameter steel or PVC, with 2-foot tall above ground metal casing secured with a padlock. The wells are installed with a 1-foot by 1-foot concrete base on the ground surface. The wells are gauged and sampled once a year. The annual groundwater sampling is part of the CSX Transportation’s remedial activities conducted under Part 201 of the Natural Resources and Environmental Protection Act 1994, Public Act 451, as amended. The wells are located in T15N, R13W, Sections 3 and 10, Newaygo County. There is a continued need for the groundwater monitoring and CSX Transportation has requested a new permit for 20 years.

B. Description of Decision

My decision is to issue a 20-year special use permit to CSX Transportation. The permit would allow for the continued maintenance and monitoring of the 87 groundwater wells currently located on National Forest System land. No new construction or disturbance will be allowed by this decision. Total National Forest System land involved in this decision is approximately 3.6 acres.

A New Information Review was completed by the District on December 2, 2011, and has been made part of the project file. Results of that review indicated there are no Cultural resources, ETS species, or sensitive areas that will be impacted by this decision.

This decision will be implemented through issuance of a special use authorization that meets the requirements of the decision and Forest Service regulations. Forest Service regulations require the applicant to: pay any necessary fees, post any necessary bonds, and secure any state or federal permits or authorizations required by law.

It is also my decision that a special use fee will be charged for this special use authorization because CSX Transportation does not qualify for a fee waiver in accordance with the Code of Federal Regulations (CFR) Title 36 part 251, section 57(b).

C. Purpose of Decision

The purpose of the decision is to respond to the expiration of CSX Transportation’s special use permit. There is a continued need for groundwater monitoring at the site of a 1978 train derailment in Woodland Park and issuing a new permit will allow this to continue.
The proposal is consistent with the approved Forests’ Land and Resource Management Plan. The lands are located in Management Area (MA) 4.4, Rural (Pages III-4.4-1 to III-4.4-8).

II. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Decisions may be categorically excluded from documentation in an environmental impact statement or environmental assessment when:

1. They are within one of the categories identified by the U.S. Department of Agriculture in 7 CFR Part 1b.3 or;
2. They are within one of the categories identified in 36 CFR 220.6(d) or (e) and;
3. There are no extraordinary circumstances related to the proposed action.

A. Category of Exclusion

This project is within Category 15 of 36 CFR 220.6(e)

“Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are not changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.”

This project is the continuation of use of approximately 3.6 acres of National Forest System land.

B. Relationship to Extraordinary Circumstances

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. The New Information Review did not identify the need for additional surveys or new circumstances related to the environmental impacts of continuing these activities in this area. There is no change in the scope or intensity of the activities from those previously permitted or from the management direction set forth in the Huron-Manistee National Forests Plan for Management Area 4.4, Rural (Forest Plan pgs. III-4.4-1-8).

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 flood prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any one year.”
The subject National Forest System land is not located in or near floodplains. This has been validated by map and site-review (U.S. Fish and Wildlife Service, Wetlands Geodatabase, http://wetlandsfws.er.usgs.gov/NWI/index.html).

**Wetlands** – The primary purpose of 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.”

The subject National Forest System land does contain wetlands. This has been validated by map and site-review (U.S. Fish and Wildlife Service, Wetlands Geodatabase, http://wetlandsfws.er.usgs.gov/NWI/index.html).

**Municipal Watersheds** – Municipal watersheds are designated by Congress and managed under multiple use prescriptions in forest plans.

There are no municipal watersheds within the Huron-Manistee National Forests.

**Native American Religious or Cultural Site, Archaeological Sites or Historic Properties or Areas** - Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in the National Register. Section 106 of the National Historic Preservation Act also requires federal agencies to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment.

The Archaeological Resources Protection Act covers the discovery and protection of historic properties (prehistoric and historic) that are excavated or discovered in federal lands. It affords lawful protection of archaeological resources and sites that are on public and Indian lands.

The Native American Graves Protection and Repatriation Act cover the discovery and protection of Native American human remains and objects that are excavated or discovered in federal lands. It encourages avoidance of archaeological sites that contain burials or portions of sites that contain graves through “in situ” preservation, but may encompass other actions to preserve these remains and items.

The *New Information Review* did not identify the need for additional surveys or new circumstances related to the environmental impacts of continuing these activities in this area. There is no change in the scope or intensity of the activities from those previously permitted or from the management direction set forth in the Huron-Manistee National Forests Plan for Management Area 4.4, Rural (Forest Plan pgs. III-4.4-1-8).

**Congressionally Designated Area**

**Wilderness** - The only Wilderness Area within the Huron-Manistee National Forests is Nordhouse Dunes and the proposed action does not take place in or adjacent to the Wilderness Area.
This decision does not affect Wilderness.

**Wilderness Study Areas** - There are no Wilderness Study Areas on the Forests.

This decision will not affect Wilderness Study Areas.

**National Recreation Areas** - There are no National Recreation Areas on the Forests.

This decision will not affect National Recreation Areas.

**Wild & Scenic Rivers** – The permit area is not located within a Wild and Scenic River corridor.

This decision will not affect Wild and Scenic Rivers.

**Inventoried Roadless Areas** – The National Forest System land is not in or near the “Bear Swamp” Roadless Area.

This decision will not affect inventoried roadless areas.

**Research Natural Areas** – There are no Research Natural Areas (RNA) in the decision area.

This decision will not affect RNA’s.

No other extraordinary circumstances related to this decision were identified.

**III. PUBLIC INVOLVEMENT**

Scoping was conducted internally on this proposal and the project was listed in the Schedule of Proposed Actions (SOPA) and the Forest’s website beginning in July, 2011. No comments were received.

As provided for in 36 Code of Federal Regulations (CFR) 215.4, this action is not subject to notice and comment procedures.

36 CFR 215.4 – The procedures for legal notice (§215.5) and opportunity to comment (§215.6) do not apply to:

(a) Projects and activities which are categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA) pursuant to FSH 1909.15, Chapter 30, section 31.

**IV. FINDINGS REQUIRED BY AND/OR RELATED TO OTHER LAWS AND REGULATIONS**

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

**Environmental Justice (EO12898)** – 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 the 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.

I have summarized the pertinent regulation below:

Title 36, Code of Federal Regulations, Part 251, Subpart B – This subpart provides direction for special uses management on National Forest System lands, including guidance pertaining to the special-use process; terms and conditions of use; rental fees; fee waivers; termination, revocation, suspension, and modification of existing authorizations; and permit administration.

V. ADMINISTRATIVE REVIEW AND APPEAL

This Decision Memo is not subject to the appeal procedures for National Forest System projects and activities pursuant to 36 CFR 215.12(f), Decisions Not Subject to Appeal.

VI. IMPLEMENTATION DATE

This decision may be implemented immediately.

VII. CONTACT PERSON

Further information about this decision can be obtained from Diane Walker at the Baldwin District Office, Baldwin, Michigan; Telephone: (231) 745-4631; TTY/TDD: (231) 745-8297; FAX: (231) 745-2345; email dtwalker@fs.fed.us.

VIII. SIGNATURE AND DATE

The New Information Review did not identify the need for additional surveys or new circumstances related to the environmental impacts of continuing these activities in this area. There is no change in the scope or intensity of the activities from those previously permitted or from the management direction set forth in the Huron-Manistee National Forests Plan for Management Area 4.4, Rural (Forest Plan pgs. III-4.4-1-8). Therefore, I have concluded that this decision qualifies for categorical exclusion from documentation in an environmental impact statement or environmental assessment as identified in Category 15 of 36 CFR 220.6(e)

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It is my finding that there are no extraordinary circumstances which may result in significant individual or cumulative effects on the quality of the human environment.
My conclusions are based on information presented in this document and the entirety of the Project Record.

/s/Barry Paulson  
BARRY PAULSON, Forest Supervisor  
Dated: 2/1/2012

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