



File Code: 1570; 2850

Date: January 11, 2001

Mr. Scott Smith
Managing Member
Matterhorn Mining and Manufacturing, LLC
P.O. Box 797
Telluride, CO 81435

Re: Rocky Mountain Regional Forester decision of August 17, 2000, and
Appeal No. 00-13-00-0012

Dear Mr. Smith:

This is my decision on the appeal you filed on September 21, 2000 (dated September 11, 2000), on behalf of Matterhorn Mining and Manufacturing, LLC, pursuant to 36 CFR 251.100. Your appeal seeks review of an August 17, 2000, decision by Regional Forester Lyle Laverty. His decision was that the granite boulder deposit on the Millennia placer mining claim was not locatable, and therefore not subject to the United States mining laws and Forest Service Regulations at 36 CFR Part 228, Subpart A. Rather, the Regional Forester concluded that the stone is properly classified, according to 36 CFR Part 228, Subpart C, as a common variety mineral material subject to sale by the Forest Service pursuant to the Materials Act of 1947.

As part of my review, I have considered the arguments you presented on behalf of Matterhorn Mining and Manufacturing, in appeal documents dated September 11, 2000, and October 22, 2000, and in ancillary documents and correspondence. I have also thoroughly examined the Rocky Mountain Region's responsive statement, including appended documents, dated October 17, 2000.

The relief requested in your notice of appeal is reversal of the Regional Forester's decision. You contend that although the granite boulders on the Millennia placer are indeed of common composition, other features of the boulders, and the boulder deposit as a whole, justify classifying them as an uncommon mineral subject to location under the general Mining Law. In support of your contention, you offer a package of characteristics combining color, size, shape, and lichen covering of the boulders with their location, mineability, accessibility to market, and access to a major transportation link that taken together give the deposit unique, qualifying properties.

The documents and ancillary materials comprising the appeal record suggest that Matterhorn may have originally planned to sell the Millennia placer boulders for a variety of uses. Specific mention is made of a potential use in retaining walls, capping of mine tails, landscape rock, riprap in diversion channels and on stream banks, and river habitat restoration. A letter from the company to the Norwood District Ranger, dated March 1, 2000, states that the placer claim is "for building stone" and that the Millennia deposit has properties that "greatly increase its value as a building



stone quarry.” In what appears to be an attempt to clarify, the letter of appeal dated September 11, 2000, states that the principal use of the stone would be in “structural support walls”; only the proposed mine waste rock would be used as common riprap. I assume this clarifying statement is intended to show that the company plans to use the Millennia deposit primarily as a source of stone, having unique properties that impart a distinct and special value, suitable either as an uncommon variety of building material and/or structural support.

All of the specific uses mentioned above, however, reflect activities generally associated with construction and landscaping materials. Further, there is no evidence presented in the entire appeal record that the Millennia deposit of lichen-covered, granite boulders has such outstanding features to warrant its classification as an uncommon, and therefore locatable, mineral.

As to your request, that I reverse the substance of the Regional Forester's decision that the stone on your mining claim is common variety, not subject to disposal under the United States mining laws, I find the decision to affirm the previous classification and regulation of the Millennia placer stone as a salable mineral material to be consistent with the Materials Act of 1947, 30 U.S.C. § 601.

This review further leads me to find that the stone proposed for mining and marketing by Matterhorn Mining and Manufacturing at the Millennia placer is common landscaping material covered by Forest Service regulations under 36 CFR 228, Subpart C, and more specifically at Paragraph 228.41 (c)(5) rather than at Paragraph 228.41 (d). The Millennia stone, as described by Matterhorn, is appropriately categorized as cobbles or boulders used for retaining walls and similar landscape purposes. This finding negates the application of Paragraph 228.41 (e)(2) in regulating Matterhorn's stone.

I affirm the Regional Forester's decision.

This decision is the final administrative determination of the Department of Agriculture on this appeal unless the Secretary of Agriculture exercises discretion to review the decision. The Secretary has 15 calendar days from the date of receipt of the decision to decide whether or not to exercise his discretionary review authority, 36 CFR 251.100 (c).

Sincerely,

/s/ Paul Brouha

PAUL BROUHA
Associate Deputy Chief, National Forest System
Appeal Reviewing Officer for the Chief