

USDA

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Decision Notice

BIG ICE CAVE WITHDRAWAL FROM LOCATION AND ENTRY UNDER THE UNITED STATES MINING LAWS

Beartooth Ranger District Custer National Forest

**Carbon County, Montana
Principal Meridian, Montana**

T. 8 S., R. 27 E.

Sec. 3, SE $\frac{1}{4}$;

Sec. 10, N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$.

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I. Decision

After careful review of the environmental assessment (EA) for Big Ice Cave Mineral Withdrawal, the Finding of No Significant Impact (FONSI), public comments, resource reports, and the project file, I have decided to request the Secretary of the Interior, through the Bureau of Land Management (BLM), to withdraw Big Ice Cave and the surrounding 170-acre area from location and entry under the United States mining laws. The project area is located in T. 8 S., R. 27 E., P.M.M. Sec. 3, SE $\frac{1}{4}$ and Sec. 10, N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$. See enclosed map. Included as part of the proposed action is a correction to Forest Plan Appendix IV, page 167, to note that the acreage withdrawn is 170 acres rather than 90 acres.

The proposed action does not include requesting withdrawal of any National Forest System (NFS) lands from proposals to lease, explore, and develop oil and gas resources. No National Forest System lands in the Pryor Mountains have been analyzed for oil and gas leasing. A separate oil and gas leasing analysis would have to be completed to determine whether any NFS lands in the Pryor Mountains land unit would be made available to lease for oil and gas development.

II. Project Background

There are numerous limestone caves in the Pryor Mountains (Pryors), but only a few of these develop large quantities of perennial ice. Worldwide, ice caves in limestone are fairly unique occurrences. Big Ice Cave has the best and most unique ice development and is the most visited of any known ice caves in the Pryors. The entrance opens into an immense room of ballroom proportions of which the floor is heavily underlain with ice year round. The ice floor is 25-feet thick at the left rear of the cave where a vertical passageway provides access to other chambers below. The lower-chamber walls are studded with ice crystals exhibiting high light refraction. Calcite crystals and fossils of the Mississippian Age are found at various locations throughout the cave.

There are three types of known mineral deposits in the vicinity of the Big Ice Cave. Historically, the area has been prospected for high-grade uranium deposits and there may be low to moderate potential for those types of deposits in the vicinity of Big Ice Cave. There has also been recreational collecting of low-grade agate and jasper in the area.

The Big Ice Cave was originally withdrawn from mineral location and entry under Public Land Order (PLO) 6119, BLM Serial Number M 29832 on January 28, 1982 in Federal Register Vol. 47, No. 25 page 5423. The mineral withdrawal is identified in the Custer National Forest and National Grasslands Land and Resource Management, page 167, (hereafter, Forest Plan). In the Forest Plan, part of this withdrawn area was allocated to Management Area F because of recreation improvements. These improvements consisted of a 13-unit picnic site and a paved 700-foot trail leading to the chain link fenced cave entrance. The cave interior contained walkways, platforms and a staircase leading to the lower chamber. In 1985, the Big Ice Cave was no longer operated on a set schedule due to budgetary constraints. Currently, it is available for public self-guided tours when the area is accessible; approximately mid-June to mid-October. In 1988, approximately six units were removed from the picnic site as well as the chain-linked fence at the cave entrance, the wooden boardwalk within the cave's first room, the lighting system and the spiral staircase leading to the cave's second room. Current improvements include

a road, parking area, vault toilet, seven picnic tables and grills, an asphalt trail and treated wood steps from the parking lot to the viewing platform just inside the cave mouth.

Big Ice Cave qualifies as a feature protected by the Cave Resources Protection Act of 1988. Forest Plan Amendment Number 8 dated March 29, 1991, adopted forest-wide management standards for protecting caves subject to the Act.

As required by public law, in early 2000, BLM notified the Forest Service Public Land Order (PLO) No. 6119 covering the Big Ice Cave would expire February 4, 2002. In response the Forest Service notified BLM of its intent to request an extension of the withdrawal and on November 25, 2001, the Regional Forester formally requested BLM extend the withdrawal for Big Ice Cave. The Montana State Office was notified on February 19, 2002, that the extension had not been completely processed prior to the February 4, 2002 expiration date and a new application would need to be submitted.

III. SCOPING AND PUBLIC INVOLVEMENT

On August 22, 2002, a Notice of Proposed Withdrawal and Opportunity for Public Meeting, BLM Serial Number MTM 93636, was published in Vol. 67, No. 163 page 54462 of the Federal Register proposing to withdraw 170 acres covering the Big Ice Cave area. The comment period ended September 23, 2002; no comments or requests were received by the Forest Service or the Bureau of Land Management. The Crow Tribe was contacted, and their representative said the Tribe had no concerns about the proposal.

A notice of availability to review and comment was again published on May 9, 2008, in *The Billings Gazette*, *The Missoulian* and *The Great Falls Tribune* newspapers. The comment period ended June 9, 2008. Additionally, the draft Environmental Assessment and Finding of No Significant Impact were posted on the Forest's website and a letter was sent May 6, 2008, to our planning partners inviting them to view the documents and comment. The proposed mineral withdrawal was also listed on the Custer National Forest quarterly Schedule of Proposed Actions notifying the public of this proposal. The Forest received five comments all in support of this proposed withdrawal, including one from the Stillwater County Commissioner's Office.

IV. DECISION RATIONALE

I have made my decision to implement the proposed action based on:

- Limited environmental consequences as documented in the Finding of No Significant Impact, EA, and the associated resource reports;
- How well the management action addresses the project's purpose and need;
- Consideration of the Forest Plan standards and guidance for the project are as amended;
- Consideration of issues raised during the scoping and comments periods.

A. Purpose and Need

PLO 6119 dated January 28, 1992, withdrawing Big Ice Cave expired on February 4, 2002. The geologic, hydrologic, scenic, historical, and aesthetic values of the Big Ice Cave and the adjacent

area could be lessened and may be lost entirely should a mining claim be filed. Thus, there is a need to protect the cave resources and surrounding lands from mineral exploration and development from someone filing a claim pursuant to the locatable mineral laws of the United States. The purpose of the Big Ice Cave Withdrawal Project is to protect Big Ice Cave, its water supply, its associated resources, and the 170 acres surrounding the cave from location and entry under the United States mining laws as identified in the Custer National Forest and National Grasslands Land Resources Management Plan (USDA, 1986). By regulation, withdrawals are subject to a 20-year timeframe, after which, the withdrawal will terminate unless an application for and extension of this withdrawal is submitted and approved.

The Forest Service has prepared this Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA) and other relevant Federal and State laws and regulations. This EA discloses the project's foreseeable environmental effects for consideration in determining whether or not to prepare an Environmental Impact Statement or a Finding of No Significant Impact document (40 CFR 1508.9).

B. Forest Plan

Big Ice Cave and part of the surrounding area are allocated to Management Area F in the Forest Plan, pages 61-63. This management area includes all developed recreation sites on the Forest as well as most access corridors to and from those sites. The management area goal is "To provide a spectrum of recreation opportunities and settings in and around developed sites and the access corridors to the sites in the categories of Semi-primitive Non-motorized/ Motorized, Roaded Natural Appearing and Rural. Resource management conflicts are resolved in favor of maintaining or enhancing the recreation opportunities including the visual setting." The management area standard for mineral withdrawal reads: "Withdrawal from mineral entry under the General Mining Law of 1872 will be evaluated for developed sites based on the criteria contained in the Forest Management Direction for the review of existing withdrawals." (Forest Plan, page 62, 6. Minerals. d. 2.). See also Appendix A.

The area beyond the developed recreation area surrounding Big Ice Cave is allocated to Management Area B in the Forest Plan. The goal of the Management Area B is to provide for the continuation of livestock grazing, implementation of intensive range management systems and the facilitation of minerals and energy development with consideration of other resource needs. Special uses may be considered as long as they are consistent with the goal of the area. This area is currently part of the Crooked Creek grazing allotment, an active allotment. The proposed mineral withdrawal is consistent with Forest Plan direction, pages 45 and 47, for this management area, and does not prohibit use for the Crooked Creek grazing allotment.

B. Consideration of issues raised during Scoping & 30-day Comment Period

One issue expressed was to include withdrawal from proposals to lease, explore, and develop oil and gas resources in addition to mineral entry for the project area. Oil and gas leasing requests are discretionary, meaning decisions to lease or not to lease legally available NFS lands must be made in accordance with planning regulations and appropriate NEPA analysis. No National Forest System lands in the Pryor Mountains have been analyzed for oil and gas leasing. A separate oil and gas leasing analysis would have to be completed to determine whether any NFS lands in the Pryor Mountains land unit would be made available to lease for oil and gas

development before any proposals to lease, explore and develop oil and gas resources would be allowed. Due to the Forest Service's discretion to allow or not allow this activity on NFS land it was determined to not withdrawal the land from mineral leasing.

V. FINDING OF NO SIGNIFICANT IMPACT

After considering the environmental effects described in the Big Ice Cave Environmental Assessment and the associated documents, I have determined the selected alternative will not have a significant impact on the quality of the human environment based on context and intensity of impacts (40 CFR 1508.27). Therefore, an environmental impact statement will not be prepared. The Finding of No Significant Impact is included with this decision notice.

VI. FINDINGS REQUIRED BY OTHER REGULATIONS AND POLICIES

To the best of my knowledge, this decision is in compliance with all applicable laws, regulations, and policies (FONSI, page 4; EA, pages 4-8).

National Forest Management Act (NFMA)

The selected alternative is consistent with the NFMA and the Custer National Forest and National Grasslands Land Resources Management Plan (FONSI, page 2, EA, page 4). This proposal does not require Forest Plan amendments; however, it does require correction to the Forest Plan to replace the currently noted 90-acre withdrawal acreage to the correct 170-acre withdrawal as published in PLO 6119.

Cave Resources Protection Act (16 USC 4301 et seq.; 102 Stat. 4546)

Public Law 100-691 was enacted by Congress in 1981 to secure, protect, and preserve significant caves on Federal lands for the perpetual use, enjoyment, and benefit of the public. Big Ice Cave qualifies as a feature protected by the Act (FONSI, page 2, EA, page 3). Forest Plan Amendment Number 8 dated March 29, 1991, adopted forest-wide management standards for protecting caves subject to the Act.

Clean Water Act

The selected alternative ensures the continued delivery of clean water from NFS lands. It preserves hydrologic conditions that currently exist by precluding industrial mining uses thereby reducing the risk of affecting subsurface flow paths and ice formations (FONSI, page 4; EA, page 6).

Endangered Species Act (ESA)

Section 7 of the ESA directs Federal agencies to ensure that actions authorized, funded, or carried out by them are not likely to jeopardize the continued existence of any Threatened or Endangered species or result in the destruction or adverse modification of their critical habitat. The selected alternative is consistent with ESA (Wildlife, Fisheries, and Rare Plants Reports). The selected alternative may affect but will not adversely affect Canada lynx. Implementation of the selected alternative will not jeopardize the continued existence of gray wolf and may affect but not adversely affect critical habitat for gray wolf (FONSI, page 4; EA, page 8).

National Historic Preservation Act (NHPA)

The selected alternative complies with NHPA (FONSI, page 4; EA, page 5). The selected alternative is an administrative action; no districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places would be adversely affected, nor would there be any loss or destruction of significant scientific, cultural, or historical resources (EA page 5).

Environmental Justice Executive Order 12898

No disproportionate impacts to minority or low-income populations were identified during scoping or during any other portion of public involvement over the course of this analysis. The selected alternative complies with Executive Order 12898 since the Big Ice Cave cannot be moved or replaced there are no alternative locations where the action can be taken.

VII. IMPLEMENTATION DATE

If no appeal is received, implementation of this decision may occur five business days from the close of the appeal filing period. The appeal filing period is the 45 days following the publication date of the legal notice of this decision in the paper of record, *The Billings Gazette*. If an appeal is received, implementation may not occur for 15 days following the date of appeal disposition. The project planning record is located at the Custer National Forest Supervisor's.

VIII. REVIEW AND APPEAL OPPORTUNITIES

The documents cited in this decision notice can be obtained from the Custer National Forest Supervisor's Office in Billings, Montana or from the Custer National Forest's website: www.fs.fed.us/r1/custer/.

This decision is not subject to appeal pursuant to 36 CFR 215.12(e). The decision may be implemented immediately, effective upon withdrawal by the BLM.

For more information or to review the project planning record, contact the Forest Supervisor, or Mark Slacks, Custer National Forest, 1310 Main Street, Billings, MT 59105 or by telephone at 406-657-6200.

for 
THOMAS L. TIDWELL
Regional Forester
Northern Region
USDA Forest Service

11/21/09
Date