



File Code: 1570/2720-2

Date: November 13, 2006

Mr. Kevin T. Fitzgerald  
Ingaldson, Maassen & Fitzgerald, P.C.  
813 West Third Avenue  
Anchorage, AK 99501

Dear Mr. Fitzgerald:

This is my decision on the appeal you filed under Forest Service regulations at 36 CFR 251 on behalf of your clients, Darren and Kimberly Byler (No. 07-10-00-0001). Your clients requested a second level review of the Glacier District Ranger's and Chugach Forest Supervisor's decisions related to the District Ranger's evaluation of the Bylers' performance under their 2005 outfitter/guide special use authorization and his decision with regard to their request for a five-year special use authorization.

#### Discussion

On January 17, 2006, the Glacier District Ranger signed a decision related to the Bylers' 2005 annual performance evaluation. The District Ranger rated their performance during the 2005 season as "unacceptable." In a separate decision, also dated January 17, 2006, the District Ranger denied the Bylers' December 21, 2005, request for a five-year special use authorization. On March 3, 2006, you appealed those decisions on behalf of the Bylers. The Chugach Forest Supervisor affirmed the District Ranger's decisions on September 25, 2006. In accordance with 36 CFR 251.78(c), you filed a second level appeal on October 12, 2006.

Byler's Alaska Wilderness Adventures has been operating under a special use authorization on the Chugach National Forest since 2000, providing outfitting/guiding services. Administration of the permit was at first the responsibility of the Cordova District Ranger. The record indicates that a contentious relationship developed between the Bylers and staff on the Cordova Ranger District when complaints from clients, other forest users and permittees, and Forest Service permit administrators regarding Darren Byler's conduct were reported. In an effort to address those conflicts, administration of the permit was transferred to the Glacier Ranger District in March 2003. While the Bylers' relationship with the Glacier District staff was cordial in the beginning, a similar pattern of conflicts emerged and the relationship began to deteriorate a year later. The Forest Supervisor arranged for professional mediation between the Bylers, the Cordova and Glacier District staffs, and himself, and a mediation agreement was signed by the Bylers and Forest Service staff in the fall of 2004 [Appeal Record (AR) 21]. The initial result of the mediation was improved communication with District staff, as documented in the Bylers' 2004 annual performance evaluation [AR 29]; however, the improvements were short-lived as the Forest Service continued to receive complaints from some clients and other users of the National Forest.



The record thoroughly documents the nature of relationships between Mr. Byler and various Forest Service personnel, other Federal and State agencies, some clients, and other permittees. Included in this documentation are complaints from clients, other forest users and permittees, and records from Forest Service permit administrators indicating that Mr. Byler's conduct was intimidating and unprofessional. The record also contains documentation that is highly complimentary of the services the Bylers provide, which indicates to me that many of the conflicts and concerns related to Mr. Byler's permit could have been resolved if he had exhibited the same high level of customer service enjoyed by some of his clients to all of his business contacts, and actively worked to reduce conflicts to sustain professional relationships. This is particularly true in light of the fact that the record indicates that the permit administrators, District Rangers, and Forest Supervisor attempted to give the Bylers every opportunity to establish a successful business on the Chugach National Forest.

The continuous pattern of Mr. Byler's unacceptable behavior, despite attempts by the Forest Supervisor to reduce the level of conflict through mediation, is particularly troubling to me. The following excerpts from annual and mid-year performance evaluations clearly demonstrate this pattern.

- **Letter from Ranger Nourse to Darren Byler dated March 27, 2002 [AR 12]**

We view our outfitter/guides as agents for the Forest Service and thus expect them to provide a quality experience and to conduct themselves in a congenial and professional manner, and in such a way that reflects positively on the Forest Service.

Unfortunately there have been public comments, reports from law enforcement officers, and concerns from my staff which have caused me to question whether this authorization should be reissued. My concern stems primarily from your involvement in numerous documented hostile verbal conflicts with other outfitter/guides, native corporations, law enforcement people, and my staff. These kinds of conflicts obviously do not fall within the expectations I listed above and most certainly would not lend themselves to a positive experience for your clients.

- **2002 Annual Performance Evaluation [AR 9]**

Communications with District Staff

District staff have noticed a big difference in both Mr. and Mrs. Byler during the 2002 season through e-mail and telephone communications. It was obvious an effort was being made to respond to the Ranger's expectations. The staff found them to be pleasant, cooperative, and courteous throughout the season. Unfortunately, recently events have altered the mood dramatically and the Byler's telephone communications have reverted to aggressive, confrontational behavior toward district staff.

Evaluation Rating

We find the permit holder's overall rating is "acceptable" with the exception of the deficiencies noted.

▪ **2003 Annual Performance Evaluation [AR 10]**

Communications with District Staff

Overall, Mrs. Byler was courteous and acted in a professional manner when communicating with district staff. Mr. Byler for the most part was confrontational and demanding.

Communication or contact with other public, outfitter/guides or law enforcement officers

One outfitter guide notified the Cordova District about a letter he received from Byler's lawyer requesting that he not contact Byler anymore.

Annual Rating: Acceptable

▪ **2004 Annual Performance Evaluation [AR 29]**

Performance results for the 2004 season (as identified for improvement on the 2003 evaluation)

Since the mediation meeting held in March, communications with district staff have significantly improved.

We are aware of several situations in which the Holder had confrontational contacts with other publics. Some of these individuals filed complaints with the State Troopers; however, to date none of these have resulted in a citation or violation notice.

Deficiencies

Written correspondence by the Holder to his peers (Woods, Henrichs, and Zadra, 3/09/2004) had statements that were condescending, derogatory and/or inflammatory, and not helpful in building professional relationships. Written correspondence to Kodiak Division of ADF&G on 11/27/04 also included non-professional statements.

Annual Rating: Probationary

- **2005 Mid-year Performance Evaluation [AR 59]**

Deficiencies: Communication or contact with other public, outfitter/guides or law enforcement officers

The holder has not been successful in meeting this requirement. The following are documented examples of unprofessional communication:

1. On 7/6/05 during a phone conversation with Forest Service employee Terry Reid, the holder made several accusatory statements regarding Forest Supervisor Joe Meade and vague threats to the Forest Service.
2. On 7/22/05 during a conversation with Jim Fincher, the holder made threats to the Forest Service regarding a 5-year permit.
3. An advertisement was placed in two local newspapers, Cordova Times on 8/4/05 and Turnagain Times 8/18/05. The advertisement was forwarded by the permit holder to Jim Fincher in an e-mail that included threatening language of specified and unspecified future action against the Forest Service.
4. A complaint was received from Ninilchik Charters alleging that the holder verbally harassed a Ninilchik Charters' boat captain during the spring bear hunting season, the week of June 1<sup>st</sup>.
5. A telephone call was received from Wayne Woods of Woods Outfitting about an incident in which the holder allegedly verbally harassed his clients near Wood's hunting camp sometime late May.<sup>1</sup>

Corrective Action Needed

During the 2005 season the holder has conducted himself in an unprofessional and threatening manner with the Forest Supervisor, Forest Service Staff, and outfitter/guide peers and their clients... [I]n order to facilitate permit administration and work cooperatively with the Forest Service and others the holder must conduct himself in a business-like and professional manner...

Mid-year Rating: Minimally Acceptable with Needs Improvement (see discussion in cover letter referenced below)

- **2005 Mid-year Performance Evaluation Cover Letter [AR 58]**

The overall rating for your 2005 mid-year performance evaluation is based strictly on the terms and conditions of the permit and operating plan, and therefore you have been given a rating that is minimally acceptable and needs improvement. The rating for the technical aspects of your permit aside, and despite extensive efforts to work with you on your behavior and professionalism, you continue to fail to behave in a manner the Forest Service expects of our permit holders.

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<sup>1</sup> Your client has disputed the nature of this encounter during the oral presentation, and subsequently provided a video tape recording of the incident. I have personally reviewed this video, as discussed in my decision below.

- **2005 Annual Performance Evaluation [AR 73]**

Comments and Corrective Action Needed, Unacceptable Ratings

During the 2005 season, the permit holder has conducted the operations in an unprofessional, misleading, and threatening manner with his own clients, other outfitter guides and their clients, and Forest Service Staff.

The Forest Service received five complaints regarding the permit holder's interactions with his clients and other outfitter guides and their clients. Two complaints were received from other outfitter guides in Prince William Sound prior to completion of the 2005 mid-year performance evaluation. Three complaints were received from the permit holder's clients after the completion of the 2005 mid-year performance evaluation. These complaints raise safety concerns and evidence violations of Federal and State laws, misrepresentation, and noncompliance with the terms of the special use permit.

Summary

The Forest Service has issued an unacceptable 2005 annual rating because of the permit holder's inability to comply with the terms of his permit, including compliance with laws and regulations, and because of his interactions with clients and the public, which creates safety concerns and degrades the quality of the recreation experience for all Forest Service land users in the Prince William Sound area.

In my opinion, Mr. Byler was well informed that his behavior was perceived to be intimidating and unprofessional, yet he was unwilling to improve his conduct. I note that this pattern of behavior continues to this day, as demonstrated by his email formally requesting a second level review of his appeal. Statements such as "[u]nlike Joe Meade wasting three months of our valuable time..." and "[t]his is nothing more than payback by Joe Meade for the significant embarrassment that he and the Cordova Ranger District received over the Olsen Bay Scandal" are not indicative of a desire to have a healthy, professional relationship with the Forest Service.

Decision

My staff and I have completely reviewed the appeal record forwarded by the Forest Supervisor, including your Notice of Appeal dated March 3, 2006; the District Ranger's Responsive Statement dated April 7, 2006; the transcript from your oral presentation held on June 11, 2006; the audio and video tapes submitted by the Bylers; and the Forest Supervisor's decision at the first level of appeal (enclosed). I have also reviewed other relevant law, regulations, and policies.

In regard to the video and audio tapes submitted by the Bylers and incorporated into the record following the oral presentation, Mr. Byler has indicated his belief that these tapes provide evidence that refutes the other documents in the administrative record. I disagree. On the contrary, these tapes provide further evidence of Mr. Byler's disrespectful and intimidating attitude towards other permittees, their clients, and Forest Service staff. In particular, the video

tape Mr. Byler recorded of the encounter with the outfitter/guide working for Wayne Woods is disturbing. In your first level appeal, your client acknowledged this encounter, asserting that he approached them because he believed they were operating in violation of U.S. Coast Guard regulations [AR 82]. As the District Ranger pointed out in his Responsive Statement and as evidenced in the video tape provided by your client, this encounter was initiated by Mr. Byler and aggressive in nature. Mr. Byler's actions towards this guide were inappropriate, and provided a great disservice to the clients who witnessed the encounter. I believe this video, and the other tapes submitted by Mr. Byler, provide further evidence of Mr. Byler's apparent belief that he is not bound by any code of professionalism or respect towards other users of the Forest and Forest Service staff.

Based on my review of the record, I concur with the discussion of the issues presented in the Forest Supervisor's decision letter and will not reiterate all of those discussions here. I uphold his decision to affirm the District Ranger's decisions in full. The actions and decisions of the District Ranger and Forest Supervisor are consistent with the requirements of applicable laws, regulations, and policies. The exercise of discretion related to these decisions was fully within their authority. The Forest Service Handbook (FSH) provides the applicable direction related to annual performance ratings and issuance of special use permits where the holders are not assigned priority use. The direction states: "[i]f a holder receives an annual rating of Unacceptable, the permit shall be revoked or allowed to terminate" [FSH 2709.11, 41.53k(1)(e)(2)(b)].

I believe that the record clearly demonstrates that the issuance of a new special use authorization to Mr. Byler is not in the public interest, for the reasons outlined in the District Ranger's Responsive Statement and the Forest Supervisor's decision on the first level appeal.

My decision constitutes the final administrative determination of the Department of Agriculture on your appeal [36 CFR 251.87(e)(3)]. It is not subject to further review by the Chief of the Forest Service.

Sincerely,

*/s/ Dennis E. Bschor*  
DENNIS E. BSCHOR  
Appeal Reviewing Officer

cc: Darren and Kimberly Byler  
Joe Meade  
James M Fincher



File Code: 1570

Date: September 25, 2006

Darren and Kimberly Byler  
PO Box 848  
Cordova, AK 99574

**CERTIFIED MAIL #7002 0860 0008 4417 7204**

Dear Mr. and Mrs. Byler:

This is my decision on the appeal you filed under 36 CFR 251 (Appeal No. 06-10-04-0001 A251) on March 3, 2006 (Administrative Record 82). You requested a review of Glacier District Ranger Jim Fincher's decisions relating to his performance evaluation of your 2005 outfitter/guide special-use authorization and your request for a five-year special-use authorization.

Mr. Fitzgerald also requested that I recuse myself from these matters due to my involvement in efforts to improve the relationship between yourself and the Forest Service. I gave his request serious consideration, but declined to do so since the regulations at 36 CFR 251.81 et seq. do not provide for recusal (AR 130). I am fully committed to giving your appeal an objective review. You also have recourse to a second-level review of my decision by the Regional Forester, per 36 CFR 251.87(c)(2).

Review of Appeal Issues

In conducting this review, my duty is to determine whether the District Ranger was reasonable and objective in evaluating your 2005 performance and in exercising his discretionary authority with respect to your request for a new permit. My review is based on the Administrative Record (AR), starting with your appeal issues (AR 82). I have considered any clarification, emphasis, or restatement you provided on those issues in your oral presentation (AR 157).

In order to maintain a logical and consistent analysis, I will conduct my review of the appeal issues in the same order as Ranger Fincher used in his Responsive Statement (AR 161). First I will look at the basis for the 2005 performance evaluation. I will then review the six year history of permits you have held on the Chugach National Forest as context for Ranger Fincher's decision not to issue you another special use authorization. My review of his decision will consider permittees' key role to provide recreation services to visitors of the National Forest, acting as agents and partners with the Forest Service.

**Issue 1: Whether it is appropriate to consider the two complaints received from other outfitter/guides in the Bylers' 2005 performance evaluation.**



2005 Evaluation: Ranger Fincher considered complaints regarding incidents that occurred both prior to and after the midyear evaluation. In doing so, he had to judge the relative credibility of different versions of the same incidents: yours and those of other individuals (guides and clients). He considered a total of five complaints from other guides and clients, two before and three after the midyear evaluation. You provided your accounts of the two interactions with other operators in your rebuttal to your midyear performance evaluation (AR 65).

One complaint considered by Ranger Fincher was from Ninilchik Charters (AR 45). You describe your motivations for initiating the encounter with Ninilchik Charters in your November 15, 2005 letter (AR 65). You cite guidance from Alaska Department of Fish and Game regarding interfering with hunts as your reason to challenge this operator (AR 65, your exhibits 5, 5A, 5B). You circled two passages as the basis for your confronting the other guide. This guidance from the state does not suggest in any way that one guide or hunter should confront another regarding alleged interference with a hunt, nor does it state that a guide is obligated or has a duty to do so.

The second complaint was from Wayne Woods (AR 49). In addition to the written documentation in the record, I also reviewed two videotapes of the incident leading to this complaint, one which you provided as an exhibit after your oral presentation, and the tape you provided to Forest Service Officer Tim Walthers, which you said is the original tape (163b). These videotapes were not available to Ranger Fincher at the time of his decision.

I find the videotape you say is the original to be problematic in that it is dark; therefore the identities of the people involved in the encounter are not verifiable. It also appears that the tape has been edited and/or altered, with a gap in the middle and the recording abruptly ending before the encounter was over. It appears that Wayne Woods was not involved in the encounter, in that the two male voices discuss Wayne Woods in the third person.

On the videotape the discussions focused on you questioning the other operator with respect to his compliance with US Coast Guard regulations and you asking the guide to relay a variety of complaints you have about Wayne Woods to Mr. Woods. It is clear from the administrative record that there is conflict between you and Mr. Woods of several years standing. During your oral presentation you stated that "...over the past several years we've had a problem with Mr. Woods" (AR 157). In this incident, however, you confronted an employee of Mr. Woods, not Mr. Woods himself.

Putting aside your reasons for initiating these contacts, the result of your decision to confront other operators is that both your clients and clients of other operators were subjected to an argument between two guides about matters which should be of no concern to clients. It is apparent that Ninilchik Charters' clients were so distressed by the incident that it significantly affected the quality of their trip (AR 45).

Your choice to confront another operator in front of clients resulted in an unsatisfactory experience for visitors to the National Forest, and demonstrates a lack of appropriate emphasis on your part for customer service and professional relationships with other guides. As Ranger

Fincher noted, you had other options, none of which you chose to use, which would have enabled proper authorities to take appropriate action and avoided subjecting National Forest visitors to the experience of hearing Forest Service permittees arguing with each other.

In your midyear performance, Ranger Fincher put you on notice on the need to improve your performance on your midyear evaluation based on these complaints, with a minimally acceptable rating. In conjunction with complaints from clients and your manner of dealing with Forest Service employees subsequent to the midyear evaluation, Ranger Fincher stated you had not improved your performance and thus rated you as unacceptable (AR 73). I conclude that Ranger Fincher was indeed reasonable in giving credence to these two complaints by operators regarding your conduct towards them and the effect of that conduct on the recreational experience of their clients.

Context: Beyond these specific issues during the term of your 2005 permit, I note that the record shows that your relationships with other guides have had elements of confrontation and intimidation for most of the years in which you held a special-use authorization.

In 2001, the Forest Service permit administrator encouraged you (and another new guide in the area) to communicate with other permittees to avoid hunting at the same time in the same area, in order to ensure everyone's clients had the best possible hunting experience (AR 28). This coordination among the guides had worked successfully in previous years. However, in 2004 guides requested to meet with the Forest Service to discuss issues with bear hunting in eastern Prince William Sound and their relationship with you. After listening to the guides' concerns, we gained their commitment to have a mediation session with you, and they stated their willingness to work on their relationships with you (AR 31).

Unfortunately, the administrative record shows that you have not successfully created and sustained such relationships, despite the Forest Service's efforts in counseling you on the need to improve your performance in this area, and in arranging for a mediation session with other guides to facilitate improved relationships with your peers. The incidents documented in AR 45, AR 49, and the videotapes (AR 163b) are examples of you actively seeking out other guides in order to confront and intimidate them, even in the presence of clients.

**Issue 2: Whether Ranger Fincher erred in his determination that the Bylers have been unprofessional, intimidating, and/or harassing in their interactions with Forest Service employees, and whether this behavior constitutes a violation of 36 CFR 261.3.**

2005 Performance: The midyear evaluation serves to inform a permittee of any performance issues needing attention, such that they can implement corrective actions as necessary to receive an acceptable rating by the end of the year. Ranger Fincher's overall midyear evaluation of your permit performance in 2005 was "minimally acceptable and needs improvement" (AR 58, 59). He informed you that he was concerned with the "intimidating, accusatory and threatening manner in which you communicate with the Forest Service staff" and rated you as unacceptable in the Permit Compliance category as a result. He further informed you that continuing failure to adhere to societal norms of conduct in your professional communication would not be tolerated.

As far as whether this pattern of behavior constitutes a violation of 36 CFR 261.3, I conclude it does. The regulation does not limit consideration solely to threats of physical violence, but states “[t]hreatening, resisting, intimidating, or interfering with any forest officer engaged in or on account of the performance of his official duties in the ...administration of the National Forest System is prohibited” (36 CFR 261.3). The following statements can be interpreted only as efforts on your part to force the Forest Service to issue you a permit despite any issues identified with your performance:

- “Mr. Byler told me that I better tell Joe to call him immediately or things will start happening and he will take action that will cause us problems.” (AR 32)
- “He [Byler] said that if he failed to receive a five year permit that he would make sure that we were investigated.” (AR 35)
- “He [Byler] has spoken with Senator Stevens office. If the Forest Service pulls his permit there will be an investigation.” (AR 51)
- “Mr. Byler then went on to say that after our review, if it didn’t turn out in a way that he agrees with, ‘everything will change and the gloves will come off.’” (AR 19)
- “In the mean time he [Byler] says ‘he will not go down without a fight and that is a promise.’ He suggests that the easy thing to do is give him a permit and he will be cooperative.” (AR 61)
- “He [Byler] also indicated that he would have lots of time on his hands to make things difficult for us through the court system, with the delegation, and in the media.” (AR 122)

The last two comments cited were made subsequent to the midyear evaluation. You did not make the corrective actions on this performance issue necessary to ensure an acceptable rating by the end of the year (AR 73, AR 160). Therefore, it was appropriate for Ranger Fincher to include this issue in his final performance appraisal.

Context: For the years 2000 through 2003, I reference the permit review conducted by Regional Special Uses Program Leader Marti Marshal (AR 11). She states “Numerous times throughout the history of his permit, staff and troopers have reported and documented that Mr. Byler has displayed aggressive behavior and language, including profanity, and what some employees perceived as “slander” or threats.” Ms. Marshall concludes that your demeanor and actions “are not indicative of a desire to have a healthy, professional partnership with the Forest Service and represent the Forest Service through his permitted services.”

Concerned about the state of relationships between you and staff on Cordova District and committed to giving you every opportunity to establish a successful business on the Chugach National Forest, we took three steps intended to give both yourself and Forest staff a fresh start. First, administration of your permit was transferred to the Glacier Ranger District in early March 2003, which they agreed to (AR 110). In addition to giving everyone a new start, the transfer also was appropriate given that most of your use was occurring on Glacier Ranger District. I was certainly gratified to hear of your initial steps to establish cordial relations with Glacier Ranger District staff (AR 79).

Secondly, I arranged for professional mediation with Glacier and Cordova staffs, myself, and yourselves when your relationship with Forest Service staff continued to be problematic a year

later (AR 21). I took this extraordinary step with the belief that this step would enable us to collectively put the past behind us and begin anew in working together to establish a successful permit operation.

Thirdly, I also arranged for professional mediation for you and the other Eastern Prince William Sound guides. Again, my intention was to assist the guides in working together to all have successful business as Forest Service permittees.

Over the six years of your permits, the administering District Rangers have regularly informed you as to their expectations of professional dealings with Forest Service staff and others (in chronologic order: AR 118, 12, 110, 108, 39, 58). After our mediation session and transfer of your permit to Glacier Ranger District, you improved in your demeanor towards Forest Service employees, as noted in Ranger Fincher's evaluation (AR 10). However, as the record indicates, you did not sustain this improvement long, with relationships deteriorating again in 2004 and beyond (e.g. AR 29, 32, 35, 124, 125).

The Forest Service is not the only public agency with which you have had problematic relationships. With respect to the Alaska State Troopers, the record indicates that you have exhibited aggressive behavior (AR 15). On a radio show, you chose to air complaints against the troopers performing their duty, making statements such as "These people do not want to know the truth. They sit back like snakes in the grass, and lay low and want to do this big investigation." (AR 33).

You have had conflicts with staff of the Alaska Department of Fish and Game in the exercise of their duties (AR 20), accusing Area Biologist Van Daele of scheduling a guide meeting at a time you could not attend, solely to exclude you, and of unjustifiably expressing concern over you submitting client names for the Kodiak brown bear draw without their knowledge. In fact, your tone of intimidation towards Mr. Van Daele is very similar to what you have expressed towards Forest Service employees. In reviewing Mr. Van Daele's response to your letter (AR 163a), it is apparent that he was not trying to exclude you as an "outsider" and that he was taking appropriate steps to ensure equitable access to hunting opportunities.

An inability to sustain professional relationships with each of the agencies empowered to administer your permitted activities is a significant detriment to operating a business serving the public and using the public's resources.

**Issue 3: Whether it is appropriate to consider the complaints received from the Bylers' clients in their 2005 performance evaluation.**

2005 Evaluation: In your appeal, you stated that you would be submitting affidavits from yourself and a defense investigator to counter these complaints. However, you did not submit such material, but did provide your view of the situations leading to the complaints as part of your oral presentation. As with the complaints from other operators (Issue 1), I must consider relative credibility of your accounts and the clients' accounts in looking at the reasonableness of Ranger Fincher's determinations on this issue (AR 45, 49, 56a, 56b, 66).

*Client Complaints.* I find that the complaints contain common descriptions of your behavior, including intimidation, displays of anger, unwillingness to accommodate requests despite your invitation to clients to express such needs, and not providing the accommodations or services promised. The consistency in these complaints extend across different hunting parties. Your account of the incidents on these trips during your oral presentation did not convince me that the original complaints themselves were without merit.

For example, in listening to your presentation regarding the complaint from Steven Lange, I expected you would be submitting documentation in support of your statements. You stated that the credit card company "...deemed him [Lange] as a, quote, low level con artist", and that Safari Club International had found "...we had done nothing unethical at all." (AR 157). You also stated that you had audio taped one of the signatories to affidavits submitted on behalf of Mr. Lange stating that Mr. Lange had authored the affidavits and "...passed them out like candy to his friends that he asked them to sign", suggesting that the signer had no recollection of the events she swore to have witnessed (AR 157).

In reviewing the record and your oral presentation and exhibits, I do not find any objective documentation from either the credit card company or Safari Club International indicating their dispositions of the complaint (AR 155, 156, 163 Ex. 14, p. 22, 1-8, 25, 20-21), nor did you submit the audio tape of the affidavit signer. If documents exist that support your contention that both the credit card company and Safari Club International have exonerated you of Mr. Lange's allegations, I would have needed to see them to give credence to your statements.

*Client Surveys.* With respect to client surveys, you acknowledge that certain clients changed their ratings of their trip with you (AR 157). That ratings were indeed changed is documented by both the original and revised ratings being submitted by you in a package of client surveys. Their complaints to us state they changed the ratings after you challenged their original ratings. They report that "Darren became explosively angry and a physical altercation was narrowly averted" (AR 56a, 56b, 66).

In your oral presentation, you state that in your discussion of the original ratings with these clients, you merely brought their attention to the services and accommodations you provide in contrast to other guides (AR 157). In your own words, you described your conversation with the client regarding his initial rating as follows:

"But you're hunting with me and you're riding around in a brand new, quarter of a million dollar, high speed catamaran that's burning 50 gallons an hour and I'm paying for it and I'm providing you this free transportation with this brand new piece of equipment and I am getting you into Cordova and giving you a ride to the airport. I'm just wondering what it would take for me to get a good evaluation from you on quality of equipment. Then he said, well, I never thought of it like that. Why don't you give me the form back and I'll refill it out. I gave him a new form and he gave me a high evaluation rating. At no time was that coerced. At no time did I get physical. Just this whole shot that this man has taken at me has formed from the showing up without a release, thinking that he wasn't going to get to mountain goat hunt. And he has been handed this complaint on a silver platter."

In contrast, the client described his experience with you as follows (AR 66):

“Accommodations were not what was advertised. The informant noted a “toolshed like structure” built on the deck for living accommodations and lack of cooperation in spite of Darren offering to do anything to make their trip more enjoyable. That in fact, every request was met with resistance, demeaning abuse and/or hostility from Darren....The individual reports a feeling of being held captive until a customer survey rating of excellent (required) was completed before they would be returned to Cordova. Threatening body language and verbal language were pervasive throughout the trip. My informant told me that all they wanted to do was get away from Darren.”

Your perception of the incident is different from the clients’, but that does not negate the reality of their feeling of physical danger while in your care. Given other examples of your aggressive and demeaning behavior with other clients and agency employees, I feel that it was reasonable for Ranger Fincher to consider this complaint in his evaluation.

*Kodiak Brown Bear Drawing.* You do not refute that you submitted names of clients for the Kodiak brown bear drawing without their knowledge or consent. Your judgment was that you were providing a service for the clients with no obligation on their part and felt that you had an agent relationship to your clients which implicitly authorized you to submit their names without their express permission (AR 157). However, ASS 16.05.420(b) clearly prohibits any person from making a false statement in an application for a license, tag or permit. Whether this action was a violation of Alaska State Statutes at the time is for the State of Alaska to ultimately determine. At a minimum, the practice of submitting large numbers of your clients for the draw creates inefficiency in the State program, and is contrary to the spirit of the program, as Alaska Department of Fish & Game Area Biologist Larry Van Daele states in his letter to you (AR 163, Ex. 16).

A client stated that you told him in a phone call that “...if anyone called we should say that it was done with our permission” (AR 55). Although you dispute that you made this statement, I can see no reason for the client to make up such a statement. Despite your arguments that submitting names in this way was not clearly illegal at the time, the fact that you asked a client to cover up the truth indicates you knew that what you did was falsification. At best, you behaved in an unprofessional manner in submitting names without the express permission of the individuals.

Ranger Fincher states he gave weight to the clients’ complaints regarding their treatment while in your care, given your similar interactions with other clients, agencies, and Forest Service employees. In reviewing the Administrative Record, I note a clear pattern is evident in many of your interactions with other people, particularly those you disagree with. In the absence of objective evidence to support your account, I find that Ranger Fincher was reasonable in considering these complaints in his evaluation.

*First Aid Certification.* The paper trail on the issue of staff certifications is extremely convoluted. I conclude that Ashley Smith’s certification was not submitted timely, and Jerry Byler’s certification expired as of May 2005, with no new certification submitted. If this issue

had been the only deficiency ever noted in a performance evaluation for you, it would not have been sufficient as reason to not issue you another permit.

Context:

*Client Complaints.* Without a doubt, you have many very satisfied customers. In particular, I refer to communications written by clients (AR 163, Ex. 11; AR 92; AR 11a). However, as Ranger Fincher notes, the Forest Service has received far more client complaints about your behavior and performance than we received about any other guide, accounting for 15 of the 16 complaints received from between 2000 and 2005 (the 16<sup>th</sup> complaint was submitted by yourself) (AR 160). It is also troublesome to me that there are documented incidents of you speaking in a negative fashion about clients to other clients.

The nature of the complaints by clients is not trivial, particularly being concerned about your temper and not receiving the services/accommodations they believe they contracted for. A representative of the Forest Service must be able to consistently provide excellent and professional customer service, even when he/she disagrees with a customer's view of a situation. Certainly, a client should never feel coerced or physically at risk from a Forest Service permittee while under the permittee's care.

*First Aid Certification.* At first glance, the issue with expired or untimely certifications may seem trivial. As Ranger Fincher noted, the Forest Service is very committed to ensuring that permittees provide services in a safe manner to clients. Being current with safety training and providing documentation to the Forest Service is an obligation you accepted in being a permittee.

Of significant concern to me with respect to the safety of clients in your care, is this statement written by you to a former client:

“But what was truly alarming and unacceptable was when he threatened to kill you on the mountain in the presence of others when you simply asked him to quit complaining about the trip. As you must know by now, Steve is a sorry excuse for a human being, as well as, strong characteristics of a sociopath.” (AR163, Exhibit 14, p. 20. Email from Darren and Kimberly Byler to past client.)

What troubles me about this statement is that, if you sincerely felt the client was at risk, it was your duty as the guide to take action to ensure the safety of all your clients, especially given the presence of firearms. If one client truly threatened another, in the presence of other clients, it would have been essential for you to take appropriate action to ensure no harm came to any of the clients entrusted to your care.

2006 Proposal Response

Ranger Fincher establishes the authority for his decision to not issue you another permit within the terms of your 2005 special use permit and regulations at 36 CFR 261. He then discusses the basis for his decision to not issue you a permit in detail in his responsive statement. Although

you did not reply to his responsive statement as allowed for in appeal regulations, I considered your oral presentation as a reply.

After careful review of your oral presentation and associated exhibits, your appeal, Ranger Fincher's Responsive Statement, and the entire Administrative Record, I do not find any information which objectively contradicts the facts upon which Ranger Fincher based his decision. He identified four reasons for his decision to not issue you another permit:

1. Public safety
2. Misrepresentation of services
3. Adherence to permit conditions
4. Professionalism in interactions with others.

These reasons are similar to the expectations of performance that we agreed to in the mediation of 2004 (AR 21). We agreed that the measurement of success for a positive, professional relationship is:

1. To provide customers quality experiences in a safe manner with equipment in good condition.
2. To comport all aspects of your operation on behalf of or as an agent of the U.S. Forest Service in a highly professional manner. This includes working professionally and with mutual respect with all agency officials, administrators, and other Federal, State, and/or local government officials.
3. To maintain a professional relationship in your interactions with your outfitter peer group.
4. Achieve an acceptable rating on the annual and midyear evaluations.

Permit holders represent the Forest Service. As such, they must maintain professional relationships with clients, other permittees, other agencies, and with Forest Service staff, even when inevitable misunderstandings and miscommunications occur in the relationships. An operator who cannot meet these expectations is not suitable to act as an agent of the Forest Service. My review of the record shows recurrent problems in the first three expectations, substantiating that Ranger Fincher had a reasonable basis for his decision to not issue you another permit.

My review of the extensive administrative record gives me even more concern about the extent of your unprofessional conduct. I am quoting at some length from the record to convey the tone of your interactions with clients, agency officials, and other guides, relying on your own words whenever possible.

**Expectation 1: To provide customers quality experiences in a safe manner with equipment in good condition.**

- “We were also informed that all four hunters the previous week had killed goats and that they were a ‘bunch of whiners’. I felt that this expression of apparent

disdain and/or contempt and lack of respect for clients was inappropriate.” (AR 52. Email from client.)

- “He [client] mentioned that he met two other guys which were being kept on another boat somewhere that had been promised deluxe accommodations on Darren’s boat and gourmet meals but that Darren switched the boats on them and had them stay on the other vessel.” (AR 53. Notes of phone conversation with client.)
- “The fourth item is the fact that Byler cut our hunt short by one day, stating that he needed to go pick up his next party. After we complained, we were put on a second boat that Byler had contracted for another party. However, we had to sign off on the contract and our guide was assigned to the hunters in the other party; therefore we could not hunt brown bear.” (AR55. Email from client.)
- “One of the guides and some of the packers had never been on a mountain goat hunt.” (AR56a. Notes of phone conversation with client.)
- “The luxurious base camp we expected turned out to be what I consider “makeshift” accommodations that were not at all what we expected. There was one toilet that we were allowed to use and it had to be shared by eight men. It could only be flushed by pouring a bucket of water into it.” (AR 56b. Email from client)
- “On our boat ride back to Cordova we were given surveys to fill out about the quality of our experience. When we did Mr. Byler went over them in front of us and was furious because we did not check excellent on everything listed. It was so bad that I asked him if he had a blank copy so I could fill out another one and say what he wanted me to say. I only did so to avoid any further controversy. At that point I only wanted to be away from him and out of his control.” (AR 56b. Email from client.)
- “I believe that it was never an option for any of us to stay any longer and that that was all a part of the promises before Mr. Byler had the balance of our money for the hunt. This does not bother me nearly as the fact that we were told that whenever two of us killed goats that we go back down and were not allowed to do so.” (AR 56c. Email from client.)
- “After awhile Jerry and I had enough, pulled away and motored to our camp about 100 yards away on the island that sets at the mouth of Olsen Bay. The boat [Mr. Byler’s boat, the *Sound Adventure*] then put it’s four large flood lights on us for about 10 minutes and then finally left...I consider Mr. Byler’s actions as ‘hunter harassment’ that would be expected from anti-hunters, not from a ‘professional’ guide and outfitter. His actions were also very unprofessional in front of his clients.” (AR 86. Letter from client of another guide.)
- “The guide (Alaska Adventure, Darren Byler) we selected turned out to be very unprofessional, deceiving (sic), understaffed and just not a nice person. From the beginning I had a hard time finding and communicating with him once he had our deposits. His lack luster attitude and unprofessionalism cost us close to 3K dollars due to lack of detail and disorganization.” (AR 126. Letter from client.)

**Expectation 2: To comport all aspects of your operation on behalf of or as an agent of the U.S. Forest Service in a highly professional manner. This includes working**

**professionally and with mutual respect with all agency officials, administrators, and other Federal, State, and/or local government officials.**

- “This meeting is what I view as the “Good Old Boys Club” in Kodiak that has been used to having State Land to hunt Kodiak Brown Bears for many years all to themselves. They obviously have you in their pocket for you to make the bold statement in writing that you consider the new request for changes “excellent suggestions”. (AR20. Letter from Darren Byler to ADF&G.)
- “Mr. Van Daele I can promise you that if your office recommends these most prejudice and bias new guidelines to the Board of Game, this will most definitely set-up the State of Alaska for a Class-Action Lawsuit. Every one of my hunting clients that cannot enter the draw that wants to enter the draw because of the new proposals will legitimately have grounds for suing the State. We can assure you that this will receive Statewide Media Coverage.” (AR 20. Letter from Darren Byler to ADF&G.)
- “The fish and wildlife enforcement people (AST) – these investigators that flew over from Palmer – they are unethical people...On the side of their trucks it says integrity, honor, and something else. There is no integrity in this type of behavior [while talking about the search of his boat].” (AR 33. Notes of Darren Byler’s remarks on radio call-in show, by FS Law Enforcement Officer.)
- “Trooper Beck acknowledged that Mr. Byler does have a reputation with some of the other troopers – some problems. When Trooper Beck arrived in Prince William Sound less than two years ago, they briefed him on Darren Byler – that he ran hot and cold – to be careful. He said that Byler does work the system. Trooper Beck said he has heard of calls from clients where Mr. Byler has “freaked” – reacted when there was an incident where a client walked across a carpet.” (AR149. Phone call with Alaska State Trooper.)
- “When the State Fish & Game boat pulled up along side Mr. Bylers vessel he immediately started running along the side of his boat from bow to stern screaming and swearing. At one point he unscrewed the handle of a mop and started brandishing that at the officers and demanding that they leave...Trooper Jones said he [Byler] came as close to assaulting an officer as you can without being arrested.” (AR 15. Notes of phone call with Alaska State Trooper)
- “On the boat ride back to Cordova, Mr. Byler made disparaging comments about Alaska Fish and Game and explained to the entire group that the local US Forest Service Personnel were ‘mean and vicious people’ and they were dishonest and out to get him.” (AR 52. Email from client.)
- “Although this has nothing to do with our hunt I want you to know that upon our arrival to his boat Mr. Byler wanted to show us some video footage from a local TV news program whereby he contends that he has uncovered a travesty your agency had committed in the form of a mess left at a test site. He freely described the incompetence of you and your agency and advised us that you were out to get him.” (AR 56b. Email from client).
- “The individual [client on phone call] says that Darren spent a lot of time berating the Forest Service and FS personnel with allegations and comments such as:
  - The Forest Service is a “Nazi organization” and out to ruin him.

- Joe Meade the Forest Supervisor is blind and can not even see what is going on around him and is therefore unqualified to do his job.
- That Darren made insulting and derogatory comments regarding the sexual orientation of some FS woman in power...and complained that she was totally uncooperative. He indicated that he 'had to get something on her' to make it look like the FS was denying his permit because of his whistleblower actions (a reference to Olsen Bay)...
- That the search and seizure on his boat by the State Troopers was orchestrated by the USFS." (AR 66. Notes from phone conversation with client.)

**Expectation 3: To maintain a professional relationship in your interactions with your outfitter peer group.**

- "I have personally seen your equipment and camps and am not impressed. It is because of guide services like yours not mine that have given 'a black eye to both the Alaskan Guiding Industry and the Chugach National Forest'." (AR 22. Letter from the Bylers to guide Wayne Woods.)
- "Providing false statements as you have done in a small community could only hurt ones character and professional reputation. That is the reason there is a law against it. It is called liable slander. Your entire letter dated January 2, 2004 of false allegations could most definitely be used as Exhibit A if necessary." (AR 24. Letter from the Bylers to guide Dennis Zadra.)
- "One of the men appeared to be in charge and wanted to know who we were and he wanted to know everyone hunting in "his" territory.... The man then began telling us what a sorry outfitter and individual Wayne Woods was. After about five minutes of this, I spoke up and said he needed to talk to Wayne in person and with his big boat he could be in Wayne's camp in about 15 minutes. He sidestepped my comment and continued his attack on Wayne Woods and his outfitting business." (AR 86. Letter from client of another guide.)
- "He started accusing me of running an illegal operation because I didn't have a US Forest service permit and he accused me of interfering with a hunt in progress by his hunters and a guide. My clients who were allegedly involved informed him they were on the ground hunting when his clients came in by small boat...The skipper of the boat then indicated that we were in great trouble because if my hunters killed a bear and tried to take it out of the state they faced stiff fines and loss of guns, etc...He indicated that I seemed like a nice guy and that if I left back to Seward immediately, he wouldn't turn me in." (AR 45. Email from guide regarding encounter with Darren Byler.)

The fact that you have many satisfied clients does not balance the pattern of negative and unprofessional relationships with clients who express some dissatisfaction; with agency employees carrying out their duties; and with guides operating in the same areas as you. I find that this behavior of several years duration is unacceptable in an agent of the Forest Service and as a provider of recreation services to the public.

In your oral presentation, your attorney asked that you be put under oath, and suggested that because you were willing to be sworn in, I should give more credence to your account of such incidents than the accounts of other individuals. When your attorney asked you: "...do you still intend to tell the whole truth and nothing but the truth in response to any questions that may be put to you?", you answered: "Yes, I do." (AR 157). However, in looking at the record, I have to note several occasions where your veracity is in question:

*Fish and Game Violations.* During your oral presentation, Mr. Fitzgerald asked you: "And during that period of time, have you ever been charged with any Fish and Game violation?" (The time period referred to was your 10 years of guiding and outfitting in Alaska.) You responded: "No sir, I've not ever been charged with any crime, ever." (AR 157, p. 12).

A search of the State of Alaska Criminal Court indicates that your statement is not truthful, showing that you have been charged 11 times, pled no contest five times, and had charges dismissed six times. Four of the charges related to fish and game activities, to which you pled no contest to three (AR 167). (Although nine of these charges occurred longer than ten years ago, your avowal that you have "not ever been charged with any crime, ever" is in question.)

*Loss of Hunt Income.* On multiple occasions, you stated that Forest Service actions led to you losing a \$12,500 hunt in 2000. The client, Gary DeRue, states he expected to hunt at the heads of Gravina and Fidalgo Bays, where he understood the main bear population to be located (AR 11a). He further described you entering Fidalgo and Gravina Bays, encountering other guides who stated these areas were their "exclusive areas", and then you leaving the area. You maintain that Forest Service employees "lied" to you in stating the guides had exclusive areas (AR 120), and are therefore responsible for you losing this income.

In reviewing your special use permit from 2000, you were authorized to hunt in Guide Use Areas 06-05 and 06-06 (AR 2). Gravina and Fidalgo Bays are in GUA 06-03. Clearly, you had represented to Mr. DeRue that you would guide him in an area that your permit did not authorize. The loss of the hunt was due to your error in not knowing where your GUAs were, not to any actions or representations by the Forest Service. Ms. Marshall noted this same discrepancy in her review of your permit, and you have not submitted any information to contradict this conclusion (AR 11). Nevertheless, you continue to aver that the Forest Service's actions caused you to lose the income from this hunt (AR 67, AR 157).

*Use of National Forest Lands.* In the oral presentation, you had the following exchange with your attorney:

Mr. Byler: Without the Forest Service permit, we will go out of business. In fact, we're putting our boat up for sale on Monday morning due to this permit being taken

away. And unless we get it back, we will be out of business in the Chugach National Forest...Without our permit, we will lose everything.

Mr. Fitzgerald: So it's fair to say then that the denial of a permit has a significant economic impact on your livelihood?

Mr. Byler: Devastating. (AR 157, pp. 14-15)

Yet, in your letter of November 25, 2005 to Ranger Fincher, you state that "Ninety-Five Percent of the bears harvest by our clients are on State Controlled beaches and tidal flats." (AR 67)

Given these documented inconsistencies in your oral presentation with the record, I find there is no reason to give your account of incidents any greater weight than that of other individuals.

### **Decision**

I have thoroughly reviewed all of the issues raised in your appeal, as well as the administrative record forwarded by the Glacier District Ranger. I have also reviewed other applicable law, regulations, and Forest Service policies.

My review of the record shows that Ranger Fincher made his decisions within the scope of his authority and for good reasons. Special use permittees, and hunting guides in particular, must be able to comport themselves at all times in a professional manner. They must be capable of representing the Forest Service as its agent with clients, other Federal and State agencies, and with fellow permittees. You have not demonstrated this ability. Based on my review of the record, I conclude that an overall rating of "unacceptable" for Byler's Alaska Wilderness Adventures 2005 performance is appropriate. I further conclude that you should not be awarded another permit based on your inability to represent the Forest Service and serve the public consistently in a professional manner. I affirm the District Ranger's decisions.

Pursuant to 36 CFR 251.87(c), written decisions by a District Ranger are subject, on request, to a second level of review by the Regional Forester. The request for a second level of review must be filed, in writing, within 15 days of this decision at the address below.

Regional Forester  
Alaska Region  
USDA Forest Service  
P.O. Box 21628  
Juneau, AK 99801

The appeal must be filed in accordance with 36 CFR 251.90, Content of Notice of Appeal. Upon receipt of your request, the Regional Forester will promptly request the

first level appeal file from this office. The second level review will be conducted on the existing record and no additional information will be added to the file.

Sincerely,

*/s/ Joe L. Meade*

JOE L. MEADE

Appeal Deciding Officer

cc: Mr. Kevin Fitzgerald (Attorney)  
James M Fincher