



United States
Department of
Agriculture

Forest
Service

Pacific
Northwest
Region

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Reply To: 1570-1
(97-06-0010-51)
Date: July 9, 1997

Ms. Susan Buxton
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CERTIFIED MAIL - RETURN
RECEIPT REQUESTED

Dear Ms. Buxton and Mr. Turcke:

This letter is my decision, pursuant to 36 CFR 251, Subpart C, on your appeal of the Decision Notice (DN) for the Wild and Scenic Snake River Outfitter Environmental Assessment (EA). Former Wallowa-Whitman National Forest Supervisor Robert M. Richmond signed the DN and Finding of No Significant Impact (FONSI) on September 9, 1996.

You request that the Regional Forester reverse the DN. Your Notice of Appeal discusses destination limits within the permitted area of operation and the consequences of those limits. You question the need for the proposed permit adjustments in commercial powerboat use. You question the need for the non-motorized window and the reduction of one-day float opportunities.

I have examined the appeal record, including the DN, FONSI, EA, Appendices, your Notice of Appeal, and intervenor comments. I have also considered the information received as a result of the outfitter-guide meetings held in Clarkston and Grangeville and the intervenor comments relevant to the meetings.

Decision

I find the EA provides sufficient, site-specific analysis to support the need to amend special-use permits and place limits on the number of launches for outfitter-guide operations, including the implementation of the non-motorized period. Therefore, I affirm the decision to amend special-use permits as described by the EA, except for destination limits within your permitted area of operations and the decision to change from monthly allocation of boat days to bi-weekly as discussed below.

Based on my review of the record, specifically the information provided during the oral presentations and the findings in the DN and EA, I am reversing that portion of the decision relevant to destination limits. The site-specific, permit-by-permit analysis establishing the need for and consequences of destination limits is inadequate. In addition, I am reversing that part of the decision to change from monthly allocation of boat days to bi-weekly. The rationale for this change is addressed in the DN.



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Discussion

The purpose of the following section is to help you understand how I arrived at my decision relevant to your appeal.

Destination Limits/Launch Allocations

My review of the issue regarding the need for destination limits included the administrative record for the Record of Decision (ROD) and Final Environmental Impact Statement (FEIS) for the Wild and Scenic Snake River Recreation Management Plan (RMP), as well as the administrative record for the Wild and Scenic Snake River Outfitter EA.

In my 1995 appeal decision on the ROD for the Wild and Scenic Snake River RMP, I found the issues relevant to amending the terms and conditions of special-use permits had merit and reversed the decision to allow permit amendments. This included reversal of the decision to implement destination limits. My appeal decision stated National Environmental Policy Act (NEPA) decisions that change special-use operating plans and have an effect on permittees' well-being must be analyzed. The permit-by-permit assessment was intended to provide an understanding of how use allocation and operational limits affect outfitters and their ability to provide recreation services to the public.

The DN states, "There are many variables in the plan which will affect how commercial powerboat outfitters will conduct business in the future. How the outfitters will respond to these changes is unknown until the plan is implemented. The ability of powerboat outfitters to respond to a decrease in revenue can place a business at risk if the business cannot mitigate or overcome the losses." Table III-9 of the EA (p. III-40) displays the expected changes in annual gross revenues for commercial powerboats. On page III-41 the EA states, "It is also important to understand that a rigorous determination of individual business viability is not possible due to the private nature of each businesses financial records. Primary season gross revenue per service day is therefore used as a proxy to assess the potential of each outfitter to adjust to changes in gross revenue."

The former Forest Supervisor relied on the July 1989 Hells Canyon Visitor Profile and Recreation Use Study to determine the need to adjust management of river use. He used this information in forming the purpose and need for the FEIS; the Interdisciplinary Team (IDT) used the information, in part, to address the issues and conduct an analysis of consequences for the FEIS and EA. Limiting destinations was proposed by both the FEIS and EA.

I find no meaningful analysis to support the former Forest Supervisor's determination that destination limits are required to meet the desired recreation experience. The Hells Canyon Visitor Profile and Recreation Use Study suggests reducing the total numbers of users is required to mitigate the impacts to the outstandingly remarkable values. The FEIS (p. IV-47) states "Historically, the inability of floaters to achieve a recreation experience similar to a wilderness trip and their feelings about the unequal use allocation between float and powerboat recreationists has produced the major social conflict on the Snake River."

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Appendix K (p. K-130) of the FEIS states that determining the specific rates of encounters in the absence of detailed research specific to the Snake River is subjective. The FEIS displays a table demonstrating that alternatives which allow higher use levels would create conditions where there could be an expectation of more congestion at launch ramps and more on-river encounters.

The opposite would be true for alternatives with lower use levels. The FEIS and use study attributes the encounter and congestion problems to total numbers of users on the river. The record is unclear on how the limits on destinations for commercial outfitters and guides is needed to achieve the river management objectives.

I find limiting numbers of powerboats provides a reasonable approach to improve the recreation experience and is supported by meaningful analysis. However, there is no analysis in the FEIS or EA that can be relied on to support the decision that commercial powerboat destination limits are required to meet the desired recreation experience or address the congestion issue. The EA (p. II-2) states several options were considered for reconfiguring the allowable commercial powerboat destinations including eliminating any limits on destinations. These options were eliminated from detailed study because the most effective option for providing business flexibility and meeting the underlying needs identified in Chapter I was carried forward for detailed study in Alternative C. A detailed analysis of the need for destination limits and consequences of these limits is never undertaken by the EA.

Page I-3 of the EA identifies areas of operation as a key decision element. However, the EA avoids a meaningful discussion of the site-specific consequences of limiting destinations within the permitted area of operations. The options studied in detail do not provide a discussion of the effectiveness of providing business flexibility specific to destination limits. The site-specific beneficial or detrimental consequences of destination limits on the outstandingly remarkable values and the desired recreation experience is not addressed by meaningful analysis. The alternatives considered in detail fail to undertake a rigorous study of destination limits and provides no

meaningful analysis of the specific cause and effect relationships relevant to destination limits and associated concentrated use and total encounters. The alternatives as described and the associated consequence analysis never allows the decisionmaker to examine the specifics of limiting destinations.

The DN (p. 15) discusses the many variables in the RMP which will affect how commercial outfitters conduct their business in the future. How the outfitters respond to these changes is unknown until the RMP is implemented. The EA discusses the flexibility of permit holders to adjust business practices, such as changing marketing strategy or offering a different array of trips. However, the EA does not provide analysis supporting the determination that the business practice changes relevant to destination limits, such as offering a different array of trips, can be readily made or accepted by the public. It is just as likely that the cumulative impact of implementing destination limits could result in a bewildering array of newly marketed recreation products that fail to serve the public need.

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Boat-Day Allocations

Your issue relevant to shifting boat-day allocations from monthly to bi-weekly has merit. This issue was a topic of discussion at the outfitter-guide meetings held in Clarkston and Grangeville. The former Forest Supervisor addressed the boat-day allocation change in the DN. The DN was the first notice to outfitter-guides regarding this specific permit adjustment. The former Forest Supervisor did not adequately address the effects of the boat-day allocation change. By failing to provide the potentially affected parties the opportunity to comment, the decision-maker failed to take the hard look required by the NEPA.

Additionally, the Forest Supervisor did not follow the procedures contained in 36 CFR 251.93. This section of the rule states "Authorized Forest Service officers shall, to the extent practicable and consistent with the public interest, consult and meet in person, or by phone, with the holders of written instruments prior to issuing written decisions related to administration of a written authorization." This means the outfitter-guides that would have been affected by this decision will not have their boat-day allocations changed from monthly to bi-weekly.

One-Day Floats

The Forest Supervisor has provided a mechanism for you to continue to schedule the one-day float trips in their existing status as a temporary use. Unused float trips obtained will allow you to continue to schedule a one-day float opportunity. This will require you to use one of your powerboat launches for jet back or jet out service if you plan to use a jetboat to support the float trip where a boat day is already being utilized. For instance, you could pick up a one-day float trip as part of the return trip of an all day tour.

In order to provide additional opportunity for the one-day float, I have developed the following guidelines. On the weekdays that fall on your pre-assigned one-day float launch dates where you have not been able to obtain a one-day float launch, you may elect to substitute one of your allocated powerboat launches for a one-day float. However, an additional powerboat launch would still be required for jet back or jet out service. Substitution launches will qualify as use under the temporary use status of the one-day float permit.

Other Operational Issues

On April 7 and 8, 1997, Forest Service Representatives Mike Cole and Mike Heilman met with the appellants (commercial powerboat outfitter-guides) to explore opportunities to clarify and resolve operational issues. At that meeting, several options for resolving operational issues were introduced. The Acting Forest Supervisor reviewed those options and prepared a summary discussion.

I have determined the following option can be implemented within the scope of the current management direction without diminishing the beneficial consequences resulting from the limits placed on total numbers of powerboat

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users. The option of crossovers as explained below offers the opportunity for commercial businesses to make adjustments without increasing the total number of powerboat launches. The crossover option makes unused private launches available to serve the public need without increasing the total numbers of powerboat launches. However, the crossover of unused private powerboat permits should not take place prior to notifying private powerboat users.

Private powerboat users should be involved in determining the type of reservation system that will continue to focus on obtaining private launches for private users, yet allows for the unused launches to be allocated. Based on the need to involve private boaters, the crossover option cannot be ready for implementation before the 1998 primary season. It is my expectation that private powerboaters will be given ample opportunity to participate in any modification to the existing private powerboat reservation system that would address crossover launches.

I am establishing the following parameters for the implementation of crossovers. This appeal decision is not intended to provide the final detailed direction of how to implement the crossover option. The details of implementation continue to rest with the Forest Supervisor in consultation with private and commercial users.

1. Allow crossovers between private powerboat launches and commercial boat days. Unallocated private powerboat launches could be utilized by commercial powerboaters. Pending involvement with the private powerboat users, a number of other implementing ideas may be identified and considered prior to finalizing a crossover policy.
2. Each private powerboat launch obtained through crossover would convert to one boat day for commercial powerboat use. Since private powerboat launches can be used for multi-day trips, crossover to commercial boat day allocations could actually reduce cumulative daily numbers of powerboats.
3. Develop a policy to distribute the commercial crossover dates.
4. The total combined caps on private and commercial powerboat use on the river would not increase.
5. Vacant private powerboat launches utilized by commercial powerboats would be valid for the same destination as provided for private powerboats.

This crossover system may be used both ways, that is private powerboaters would have an opportunity to utilize unused commercial launches.

Conclusion

I find your appeal issues regarding destination limits, boat-day allocations, and one-day floats have merit. The EA and FONSI do not adequately address the need for limiting destinations within your permitted area of operations. The EA does not adequately disclose the expected effects of modifying the boat-day allocations or the changes in one-day float opportunities.

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I affirm the decision to amend the permits of outfitter-guides as described by the EA, with the exceptions noted above. The Forest Supervisor's decisions regarding use allocation restrictions are affirmed. The Forest Supervisor's determination to maintain one-day floats as temporary use is also affirmed. This allows one-day floats to continue as a temporary use within the total cap for float launches per day.

My 1995 appeal decision for the ROD and FEIS also affirmed the concept of the non-motorized window. The specifics of timing and duration of a non-motorized window is adequately addressed as part of the analysis of operational limitations for commercial uses. Therefore, the non-motorized window may be implemented in 1998.

Adapting to the changes in river use will continue to surface new issues regarding the effects of implementation. The long-term success of the RMP will be measured by how well the resource values are protected and by the quality of diverse public services. These public services include the recreation experience provided by both commercial powerboat and floatboat outfitter and guides. Therefore, I am instructing the Forest Supervisor to initiate implementation monitoring for a minimum period of 3 years. The information gathered will determine if there is a need for any additional NEPA analysis regarding destination limits. This monitoring information should also include an assessment of visitor satisfaction. The former Forest Supervisor used the best available information in an attempt to reach an informed decision regarding destination limits; however, the available information precludes completing a meaningful analysis specific to consequences of destination limits.

This is the final administrative determination of the U.S. Department of Agriculture unless the Chief of the Forest Service elects to review this decision within 15 days of receipt (36 CFR 251.100(b)).

Sincerely,

/s/ Richard A. Ferraro

RICHARD A. FERRARO
Reviewing Officer
Deputy Regional Forester

cc:
Intervenors - see enclosed list

Intervenors for 251 Appeals

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