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United States
Department of
Agriculture

Forest
Service

Pacific
Northwest
Region

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Reply To: 1570-1
(97-06-0005-51)
Date: July 9, 1997

Mr. Sammy J. Whitten
River Adventures Ltd.
P.O. Box 518
Riggins, ID 82549

CERTIFIED MAIL - RETURN
RECEIPT REQUESTED

Dear Mr. Whitten:

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 focuses on proposed permit changes within your permitted area of operation and the consequences of those changes. You question the need for the permit adjustments.

I have examined the appeal record, including the DN, FONSI, 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 with the exceptions as described by this appeal decision. 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. This decision also addresses the issues relevant to access, boat-day allocations, and other operational issues.

Discussion

The purpose of the following section is to help you understand how I arrived at my decision relevant to destination limits within your permitted area.

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."

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.

Access

This issue addresses commercial business operations on the Salmon River. This part of my decision applies to all outfitter guides holding commercial outfitter guide permits on the Salmon River. An analysis has never been undertaken that provides a meaningful discussion of the consequences of restricting your use of the Salmon River relevant to access via the Snake River. Access to Salmon River property by Lewiston-Clarkston based outfitters involves a short stretch of the scenic section of the Snake River, not the

"Wild" section. Each of the Riggins based outfitters also hold commercial outfitter guide permits on the Salmon River. Some of their access to the Salmon River is through the Scenic Snake River via Pittsburg Landing. Therefore, I am granting relief relevant to access to the mouth of the Salmon River via the "Scenic" Snake River. The Forest Supervisor will provide provisions in Snake River permits that allow access to the Salmon River to utilize private property and/or conduct business in conjunction with Salmon River permitted use. In summary, this decision will provide an opportunity to pass through the Scenic portion of the Snake River as needed to conduct business on the Salmon River. However, this decision does not authorize additional recreation use, such as fishing, of the Snake River.

I note the private lands issue remains unresolved. The Forest Supervisor is currently undertaking an analysis of private land access needs for ingress and egress. Pending the final decision on access to private lands, the direction contained in my February 21, 1997, letter will be followed.

Boat-Day Allocations

The issue relevant to shifting boat-day allocations from monthly to bi-weekly was discussed 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 specific outfitter-guides that would have been affected by this decision will not have their boat-day allocations changed from monthly to bi-weekly.

Riggins Outfitters

EA page III-12 through page III-16 discusses the capability to provide a diversity of necessary outfitter services to the public. Page III-16 states Alternative C would have a high capability of providing a diverse outfitted experience by offering a variety of outfitted services. EA page III-43 recognizes the fishing businesses are least capable of mitigating changes by raising prices. Page 19 of the DN recognizes that some outfitters are at risk of experiencing a greater than 10 percent reduction of their gross revenue under Alternative C, as modified, over Alternative A. The Riggins outfitters are among those at greater risk. Table III of the DN provides a summary of annual gross revenue effects.

On page 17, the DN makes the finding the decision maintains a high capability of providing a diverse outfitted experience to the public by offering a wide variety of outfitter guide services. I find no analysis supporting this finding relevant to the services provided by the Riggins outfitters. In the

absence of meaningful analysis supporting this determination for the Riggins outfitters, it is just as likely the opposite will be true. The record addresses the uncertainty of the businesses to adjust to change, but has reached an unsupported conclusion the Riggins outfitters will be able to contribute to the future desired diversity of services.

During the planning process, 88 boat days were considered for allocation to the Riggins outfitters. The appeal states these days were offered to Riggins outfitters at one time, but when the three Riggins outfitters learned they would be good for only a 4-mile stretch of river between Pittsburg Landing and Kirkwood, the three Riggins outfitters declined the offer because it would be impossible to market such a trip. Seventy of these boat-days were then allocated to Lewiston based outfitters, with the Riggins outfitters retaining 18 of the original 88 boat-days. The destination limit making the 88 days undesirable from a marketing standpoint has been reversed. Had the destination limit not been part of the proposed action for the EA, the Riggins outfitters would have been able to pursue assignment of the entire allocation. Therefore, I am directing the Acting Forest Supervisor to provide for allocation of the 70 days originally considered for the Riggins outfitters. This allocation will allow for a pool of 70 days available for use by the Riggins outfitters.

This allocation of 70 days is beyond the currently established cap for total numbers of boat-days. I am providing the following stipulations relevant to this allocation. At the end of a 3-year period of implementation monitoring, the Forest Supervisor may conclude the use needs to be eliminated to meet the management objectives of the plan. This will require the completion of a NEPA analysis which will include a meaningful analysis and informed decision relevant to the capacity of the Riggins outfitters to continue to contribute to the diversity of services. However, the Forest Supervisor retains the authority to make adjustments due to non-use of the available 70 pool days during the 3-year monitoring period.

Other Operational Issues

On April 7 and 8, 1997, Forest Service representatives Mike Cole and Mike Heilman met with the appellants (commercial powerboat outfitters and 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 users. The option of crossovers as explained below offers the opportunity for commercial business 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 have ample opportunity to participate in the formulation of a reservation system addressing 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 and reservation system.

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 considering details, such as on a first-come, first-served basis or a rolling schedule to distribute use among all commercial powerboat outfitters.

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.

Conclusion

I affirm the decision to amend the permits of outfitters and guides as described by the EA, with the exceptions discussed in my appeal decision. 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. However, the non-motorized window will not be implemented during the July 4 holiday period. The non-motorized window for July 4 was reversed by my 36 CFR 215 appeal decision.

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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.

In addition, 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

RLM - MHeilman
Wallowa-Whitman NF - K.Wiedenmann, W.Fine

ROgden:appeals:snake:Whitten Decision - 0005
edit:p.jeffrey:335:07/09/97

Intervenors for 251 Appeals

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